

**From:** [Damian Crowe](#)  
**To:** [Water Inquiry](#)  
**Subject:** Submission by Damian Crowe ACA to ACCC MDB water markets inquiry - feedback on interim report  
**Date:** Saturday, 15 August 2020 4:05:55 PM  
**Attachments:** [Response to ACCC MDBA interim report V1.0.docx](#)  
[20200320 - Wamba Wamba Swan Hill Summerfruit Development Association DRAFT MOU.docx](#)

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Please find attached my full submission to the inquiry.

Yours sincerely,

Damian

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Damian Crowe ACA



**ACCC Murray Darling Basin Water Markets Inquiry – Interim Report**  
**Response from Damian Crowe ACA**  
**Version 1.0, 15<sup>th</sup> August 2020**

**Executive Summary**

The COVID-19 pandemic has forced people and governments all over the world to consider their priorities. Australia has had pause for thought about our supply chain resilience because of rising geopolitical tensions in the Indo-Pacific region.

The reality is that even in a world with more resilient supply chains, Australia will never be a major manufacturing hub because of our small domestic market. Our integrated Security and Trade policy will always have a dependency upon international trade. But Australia does have enormous strategic value to an international coalition because we can provide security over their need for minerals, energy and food. We have always been a dependable supplier because we had a stable democracy, comprising an influential contingent of reliable, conservative, diverse, prosperous rural farming families who controlled the resources needed to grow and export food.

Back in the early days of our nation, indigenous peoples were violently displaced from their lands by colonial settlers who needed to produce food, first to deliver food security to the young colonies, and then later to support our allies in the region and the United Kingdom during periods of conflict or political tension. Early Australian settlers attempted to honour the sacrifice of indigenous Australians in a hidden message in a draft of the bill that created Victoria's First National Park to tell the world "we owe indigenous Australians a debt that we can never fully repay<sup>1</sup>". Food security has always been a major dimension to the security of our nation. I am a thought leader on Data + Liquidity, including its value, mechanisms to enable the release of data. I believe it is important to defend the interests of small to medium sized businesses and small communities in the value that can be released by digital integration, including from the MDB water markets, because small to medium sized businesses are important to democracy and freedom. This philosophy of prosperous small businesses with protected rights to data then speaks to the business requirements needed for the MDB water markets solution.

In a globalised world where we believed that international trade delivers win-win outcomes, we might be believing "supply chain resilience" and "food security" are guaranteed by "efficient markets" and an international rules-based order. But the pandemic has shown us that in the real world, there are no guarantees and the geopolitical reality is that Security and Trade policy must be considered together. Australia's strategic value proposition to our allies is that we are reliable supplier of food and minerals. Our democracy has traditionally been seen by our allies as a reliable source of food security because essential food production resources were controlled by Australian families. The lesson of the pandemic is historic Australian Security and Trade policies still makes sense today. Except that today, we may also have a genuine opportunity for Reconciliation with First Nations that could help us to deliver even greater food security for Australia and its allies and trading partners and simultaneous unity with and self-determination for indigenous Australians, including exciting careers paths.

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<sup>1</sup> <https://trove.nla.gov.au/newspaper/article/173678236>

The ACCC Interim Report is thorough in that it systematically identified serious internal control issues with the functioning of the MDB water markets that may contribute to undermining the efficiency of our markets and the resilience of our supply chains:

- Lack effective governance and regulation of the water markets
- The Productivity Commission’s prioritisation of “efficient markets” over “security”
- Neither MDBA nor the ACCC have a security (Security and Trade policy) focus
- Forgotten the lessons of Australia’s founding fathers
- Lack of clear regulatory regime
- Lack of transparency
- Poor operations controls
- Poor KYC, AML and anti-money laundering controls.
- Does not support Australia’s small businesses and rural communities.

Taken together, these issues and the enormous size of the MDB water markets (\$22 billion) means that large scale Australian corruption may have occurred and been hidden. Given these flaws have now been revealed by the ACCC, it is not appropriate to simply assume that large scale corruption did not occur. There has been a persistent bias against Rural Communities and families on farms by successive governments at both end of the political spectrum. However, given the seriousness of the economic crisis now facing Australia and the world, it may make more sense to focus on the present and the future, rather than on the past.

The solution for the water markets should be considered within the context of an overarching national digital strategy for agriculture and Rural Communities. We have an opportunity for global thought leadership in the midst of an international economic catastrophe. The pandemic has inspired democracies to begin to think about teamwork for the development of resilient supply chains. Strategists have identified supply chain transparency technology and the combination of Liquidity and Data as being a key to Security and Trade policy. But there are ethical implications to supply chain transparency. The value that can be released could be used to drive exploitation or to stop it from happening. Aggregated data can help small businesses to overcome the size advantage of large corporations. To the extent that standards can be agreed between democracies, our liberal world order will endure against authoritarianism. However, the best outcomes require a commitment by governments and other institutions to ethical standards including the right of people and small business owners to data. The design of the replacement water markets mechanism should reflect those standards.

The ACCC is to be commended for the rigorousness of its evaluation of the internal control weaknesses in the regulation, governance, and operations of the MDB water markets. The Interim Report provided incontrovertible evidence of the need to comprehensively reform the MDB water markets. However, the ACCC may not be following the best Project Approach for reaching the goal of identifying the solution that is most consistent with Australia’s national security and trade interests. It is important that in designing the replacement solution for the MDB water markets, “nice to have” business requirements are not misclassified as “must haves”.

## **Introduction**

In a speech to the Aspen Institute delivered on Wednesday, 5<sup>th</sup> August 2020, Prime Minister Scott Morrison rightly called for Security and Trade policy to be much better integrated.

The ACCC interim report from our Water Markets inquiry did not consider Mr Morrison's call to arms, nor any of the lessons we learned from the COVID-19 pandemic. The Terms of Reference for the inquiry were published by Hon Josh Frydenberg MP on 7<sup>th</sup> August 2019. He asked the ACCC to examine markets for tradeable water rights in the Murray Darling Basin (the Basin). The ACCC was asked to recommend options to enhance markets for tradeable water rights, including options to enhance their operations, transparency, regulation, competitiveness and efficiency<sup>2</sup>. Mr Frydenberg did not mention "security," "food security" or "resilience." Mr Frydenberg's direction had an exclusive trade policy focus which is also consistent with the trade only focus of the Productivity Commission and so does not reflect the PM's call for better integration between Security and Trade policy. The implication is that some of the most fundamental assumptions used in the ACCC Interim Report are wrong or only partly right. An example is the assumption used throughout the Report that "efficient markets" is a top priority. But "resilient supply chains" and "food security" are not. The implications for the report's interpretation are profound. Corporate agribusinesses may be more efficient (and that's debatable), but family farmers and indigenous users are far more secure.

The Murray Darling Basin water, its Rural Communities and their productivity are a national asset of enormous strategic importance to our nation's security. The ACCC was not asked, nor did it consider within its interim report into the Murray Darling Basin water markets the national security implications of water trading (Security and Trade policy).

The Terms of Reference for the ACCC Interim Report has an exclusive trade policy focus that is ignorant of security policy. It does not reflect what we have learned from the coronavirus pandemic about the importance of integrated Security and Trade policy. The implications of the facts revealed by the pandemic challenges the assumptions that were inherent within the ACCC's Terms of Reference and subsequent interim report into Australia's water markets are fundamental to the interpretation of the Report's findings.

Some of the high-level assumptions made by Mr Frydenberg in setting the Terms of Reference for the ACCC's inquiry and which underpin the subsequent conclusions that the ACCC has reached interim report are inconsistent with the lessons we have learned from the pandemic. We have learned from COVID-19 that it may be important to prioritise "resilience" over "efficiency". The Prime Minister's call for better integrated Security and Trade policy demonstrates that he now understands the priority we must give to resilience.

The ACCC's Interim Report reveals that "efficiency" has been prioritised and "security" has not been considered, both by the ACCC and by the Productivity Commission. It then demonstrates a bias against family owned farms and indigenous users on the basis that corporate agribusinesses are

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<sup>2</sup> ACCC Report, Page 6

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more efficient. And that bias against families on farms and indigenous water users and for large corporate agribusinesses is reflected elsewhere in Liberal National Party agriculture policies (e.g. Plant Breeders Rights, Modern Day Slavery Act). However, there is common ground in acknowledging the ACCC's detailed findings of internal control weaknesses and unmitigated risks and the need for comprehensive reform of the MDB water markets.

There has been a change in mindset among the general-public following the COVID-19 pandemic and perception of risks and rewards from globalisation. Our previous assumptions including of win-win outcomes from globalisation made a "trade policy only" strategy appropriate in the past became wrong when the COVID-19 pandemic forced nations to think about their true priorities. Democracies throughout the world are thinking about these issues and about new standards for sharing and releasing value from data as an aid to recovery and to address the hidden facts that have emerged during the pandemic – the importance of integrated Trade and Security policies. When Federal and State Governments deliver better integrated Security and Trade policies, that may help moderate the adverse impacts on families and rural communities arising from the operation of the Murray Darling Basin water markets. A carefully considered digital replacement of the Murray Darling Basin current water trading systems that reflects integrated thinking about Security and Trade Policy could deliver global thought leadership for Australia and become a platform for the export of Australian digital supply chain technologies and for sharing of international best practices. The data architecture of the replacement solution for the Murray Darling Basin water markets should be consistent with other emerging opportunities for the digitisation of Australian agriculture.

I am an expert on financial markets and corporate treasury management systems including in-house bank technology, earned from 20 years providing global multinational corporations and banks with advice on processes and systems, including as a treasury systems expert with PwC UK. I am also an internationally recognised thought leader on FinTech as a supply chain transparency technology. My ideas on supply chain transparency, including the need for ethical standards over the use of data so that it defends democracy from authoritarianism, are contributing to a current discussion between democracies on cooperation on standards for sharing of Liquidity and Data. I grew up on the Murray River in a horticulture and dairy producing region in Northern Victoria. I have unique, expert insights on the potential for a relationship between AgTech and FinTech and on the selection and implementation of upgrades to complex financial services systems. I am making this submission to share my insights insofar as they relate the questions raised by the ACCC in its Interim Report.

#### Invitation for feedback<sup>3</sup>

"This interim report explains the ACCC's preliminary conclusions on what needs addressing in the Basin's water-rights markets; and potential options to do this. The ACCC seeks feedback on these preliminary conclusions and options. Submissions and feedback in response to the interim report will be requested by a date to be confirmed (approximately six weeks after the interim report is released). The timing and process for submitting feedback will be set out on the ACCC website when the interim report is released. The ACCC can be contacted at:

• [waterinquiry@acc.gov.au](mailto:waterinquiry@acc.gov.au)"

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<sup>3</sup> Page 33

- The ACCC is continuing to consider the best approach to address each of the issues identified in this interim report, and has outlined various options for reform. The ACCC has not yet decided which options are preferred, and seeks feedback on the options presented, or suggestions of alternative options to address the concerns identified.

The ACCC Interim Report reveals evidence that suggests that ACCC may be following a weak Project Approach. The Potential Options<sup>4</sup> listed on Page 30 of the ACCC Interim Report are a mixture of requirements, data architectures, strategies, technology platforms and solutions. Each of these types of deliverable should be produced at the appropriate point during the Project Lifecycle so that institutional knowledge is gradually built up. Typically, the transformation project would be led by the national teams who will either operate or regulate the solution.

As it currently stands, this project and the associated institutional knowledge is being built up within the ACCC. If the plan is for the ACCC (or a spin off) to become the national regulator of the MDB water markets, then it is appropriate that institutional knowledge about the water markets is being built up within the ACCC. Given the importance of building up layers of institutional knowledge, it is bad practice to narrow down the options for solutions before the “as is” and “to be” business requirements and evaluation criteria have been properly documented and signed off. Consideration of options for solutions only comes afterwards. The risk from identifying options for solutions before business requirements and “as is” and “to be” processes are documented is that stakeholders typically start choosing their preferred solution without going through a rigorous process of identifying what is needed.

<b>According to the ACCC Interim Report into the water markets, digital technologies offer the opportunity to streamline trade services, at the same time as improving information quality and availability (ACCC Interim Report, page 30). Potential options are:</b>	<b>Deliverable</b>
A comprehensive and open digital protocol to enhance interoperability between Basin State approval authorities and registers, IIOs and exchanges, with the ability to securely transmit data, seamlessly interface between private exchanges, IIOs, trade approval authorities and registers, execute instructions, and automate collection, cleaning and publishing of water market information	A strategy option
A single information portal for publishing water availability and trade information, which collates data from multiple sources, but does not facilitate trade	A feature of a strategy option (a business requirement).
A National Electricity Market type approach for water with a spot market and real-time automated matching of buyer and seller offers	Target for Peer Review
A single exchange platform for posting and matching trade offers by creating a single mandatory online platform for matching buyers and sellers	A strategy option
An ASX-like approach of a single clearinghouse for administering trading (but connecting via interoperability protocols to trading	Target for Peer Review

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<sup>4</sup> Page 30

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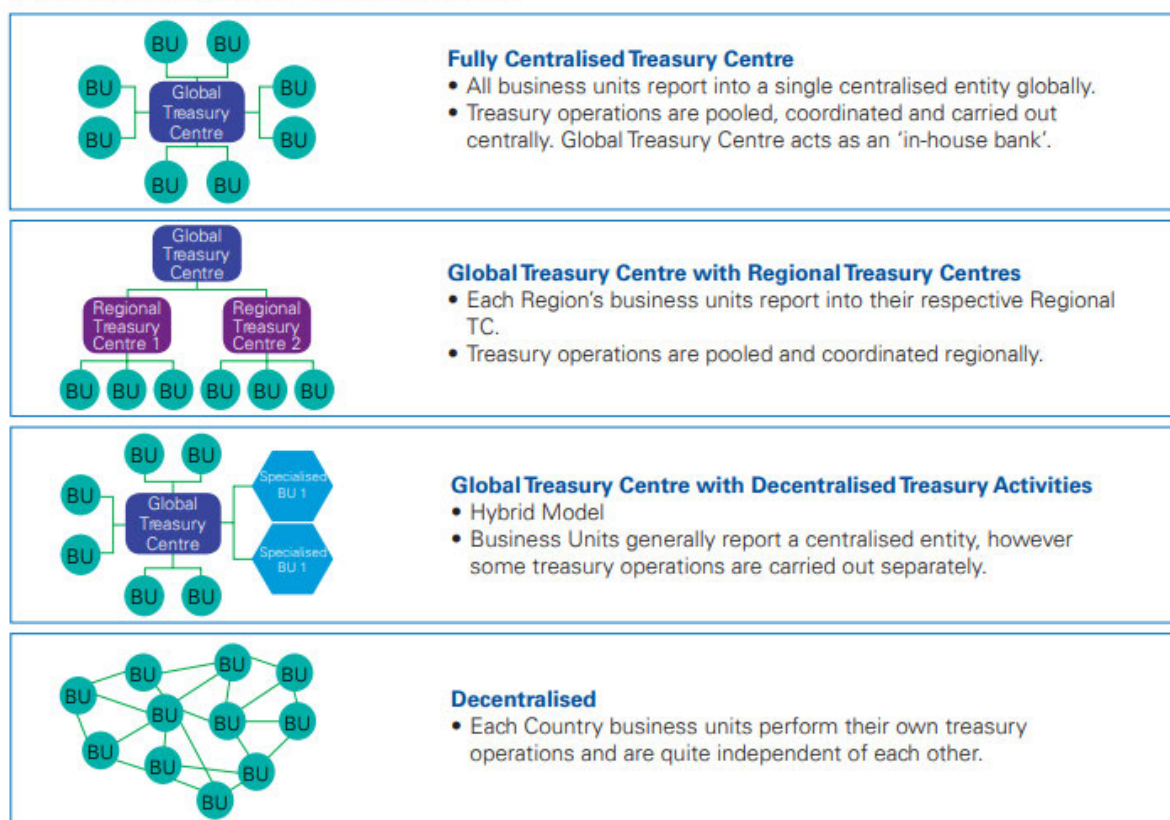
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platforms as overlays and different Basin State registers underneath)	
Distributed Ledger Technology which administers trade through smart contracts and also records all registry information	Technology architecture. Should not be a driver of the solution.
A single common register in which all water accounting for both trade and delivery (use) would be accounted for in the same, single system.	Data architecture

The options identified by the ACCC on page 30 of its interim report do not show a good breadth of thinking of the range of possibilities. With all of the options provided by ACCC as examples on page 30, the ACCC has made the same crucial assumptions. And the ACCC did not articulate those assumptions in its Interim Report. An example is the priority it gives to efficient markets but not to resilient markets or food security. It is only through a robust and transparent selection process can we challenge those assumptions and find the best possible solution.

A better way of thinking of the different options for the future design of the MDB water markets is to think of them in term of (say) the extent of the distribution (degree of centralisation) of the MDB’s water markets’ governance, operations processing and systems. The Corporate Treasury profession can draw on relevant model options to illustrate the true choice of MDB water markets stakeholders. Here are some illustrative examples drawn from a KPMG Singapore paper<sup>5</sup>:

**Figure 1: Treasury Centre Operating Models**



<sup>5</sup> <https://assets.kpmg/content/dam/kpmg/pdf/2016/05/sg-The-Structure-Role-and-Location-of-Financial-Treasury-centres.pdf> p 5.

Model Option drawn from Corporate Treasury	MDB Water Markets Option	Description
Global Treasury Centre	<b>Option 1: Centralised</b> E.G. National MDB Water Markets Solution	A detailed description of each model according to a given set of characteristics. Can plug and play characteristics to create variations from core Model Options.  E.G. Single national MDB water market with national regulation and centralised transaction processing and data management.
Regional Treasury Centres (e.g. Europe, USA, Asia)	<b>Option 2: Regionalised</b> E.G. State based solution with National governance and policy coordination	E.G. Separate water markets in each state with regional (state based) transaction processing and data management
In Country (distributed transaction processing)	<b>Option 3: Local</b> E.G. Distribute water markets transaction processing to the regions.	E.G. Upgrade what we already have. Local transaction processing.

Here is an example of a good practice methodology for either upgrading or replacing a crucial Financial Markets platform:

Good practice project approach	Deliverable
1. Update Australia’s overall objectives from the MDB water markets from what we learned about our priorities from the COVID-19 pandemic.	Australia’s objectives for its irrigation water resources. Security and Trade policy
2. Identify key sponsors	Governance
3. Hire treasury team (Group Treasurer for national and State Treasurers for each state)	Build institutional knowledge of the requirements and solution
4. Document “as is” MDB water markets. E.G.: <ul style="list-style-type: none"> <li>• Purpose</li> <li>• Application architecture</li> <li>• Key process flows</li> <li>• Data architecture</li> <li>• Technology architecture</li> <li>• Legal, regulatory and compliance model</li> <li>• Business model. Operational model</li> </ul>	“As Is” documentation  Performance baseline
5. Capture “as is” as baseline against which to measure MDB water markets performance improvements	



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6. Identify external drivers of change (e.g. pandemic, international focus on supply chain transparency and data sharing)	List of external trends and influences
7. Quick wins (blocking internal control issues that must be addressed immediately – it never makes sense to migrate a mess). <ul style="list-style-type: none"> <li>• Identify quick wins</li> <li>• Implement</li> </ul>	Quick wins
8. Update “as is” MDB water markets documentation for elimination of quick wins	Updated “As Is”
9. Identify initial business requirements (rate between “blocking and non-blocking”) – draft 1	Business requirements Evaluation criteria
10. Peer review (Analyse peer review results to identify additional business requirements) – draft 2	Peer review analysis Updated business requirements
11. Identify appropriate performance metrics for the MDB water markets, drawing on peer review	MDB water markets performance metrics
12. Document “to be” MDB water markets <ul style="list-style-type: none"> <li>• Purpose</li> <li>• Application architecture</li> <li>• Key process flows</li> <li>• Data architecture (crucial to get the best results)</li> <li>• Technology architecture (crucial to get the best results)</li> <li>• Legal, regulatory and compliance model</li> <li>• Business model. Operational model</li> </ul>	“To Be” documentation  Target Operating Model
13. Document options for MDB Water Markets treasury systems strategy (say, 3 options)	Systems strategy options
14. Analyse each systems option against blocking business requirements and select preferred and reserve solutions for the MDB water markets	Preferred and backup systems strategy.
15. Implementation plan <ul style="list-style-type: none"> <li>• Migration strategy</li> <li>• Rollout strategy</li> </ul>	Implementation plan

If possible, an MS Excel model of the “as is” environment should be created together with a similar MS Excel model of the proposed “to be”. The preferred option should be chosen based upon its ability to deliver the requirements that have been articulated by the MS Excel “to be” model. Process issues (such as serious internal control weaknesses) should be resolved in the “as is” before migration to the “to be” begins because it never makes sense to migrate an internal controls mess. The implementation plan then becomes a migration from a stabilised “as is” to the chosen “to be” solution.

It does not make sense to be zeroing in on a blockchain solution at this stage. That is a high-risk technology strategy. It is better to focus on getting the “meat and potatoes” (the basics) right before thinking about adding spice (risk). Farmers do not have a need for a blockchain solution within the MDB water markets. They have a need for properly functioning water markets. A technology platform such as blockchain must follow the business requirements and given the rapidly evolving

geopolitical situation, agility and flexibility should be highly valued and that suggests blockchain might not be the correct technology in the first instance.

Comment on methodology: The ACCC appears to be leading us towards a waterfall type approach to finding a solution rather than an AGILE methodology. Evidence: the ACCC has not flagged the coronavirus pandemic as a potential material impact upon its inquiry. A waterfall methodology is like blockchain ... the wrong methodology given the rapidly evolving external environment dictates a need for the project to remain AGILE.

### Conduct of market participants

There is insufficient regulatory oversight, and enforcement and compliance activity, in relation to some practices of some market participants

The ACCC's preliminary view is that market integrity regulation needs to be improved for water rights trading. This regulation could be limited to brokers, or could cover other market participants such as investors and IIOs. In the case of water brokers, our preliminary view is that regulation should be introduced. The ACCC continues to examine the conduct of investors and other market participants, including the need and adequacy of regulation of these parties. The ACCC has identified the following three options for improving market regulation and seeks feedback about which option would best improve market integrity.

(a) Government-initiated licensing scheme: This option proposes a compulsory licensing regime at the federal or Basin State level, which sets out the relevant requirements for intermediaries and is supported through civil penalties for non-compliance. This would be limited to regulating intermediaries.

(b) Applying the financial regulation framework to all water products: The financial regulation framework provides a comprehensive, ready-made market regulation framework that could be applied to tradeable water rights. Its provisions are relevant to the activities of a range of market participants.

(c) Independent market-focused government regulator: This option envisages establishing a market-focused regulator. This could involve creating an entirely new body, or giving an existing regulator new functions. For example, this could be achieved through adding market integrity protections to new or existing legislation, such as a rule prohibiting market manipulation, or through introducing a mandatory industry code. This option would enable the regulation of market participants such as intermediaries, investors and IIOs if necessary, and could be used to consolidate some existing regulation.

The impression one gets from reading the ACCC Interim Report from the inquiry into the Murray Darling Basin water markets is that the ACCC sees the water markets as a productive resource that creates value in isolation from farming and rural communities. The focus of the ACCC, including the ACCC's deliberations on the regulatory requirements, is on the markets to the exclusion of the land, food producers and rural communities. So, the Interim Report spends a lot of time examining the water markets and its participants, without first questioning "what are our overall purposes here?". And we end up with discussions on whether (say) the markets should offer water futures, without first asking and answering the question "what is the purpose of our water markets and how would

(say) water futures help further that purpose? I believe the purpose of the water markets may have shifted since the pandemic and the acknowledgement by Prime Minister, Scott Morrison, of the need for better integrated thinking on Security and Trade policy.

## **Governance**

In Australia's Federal Government, it is the Role of Cabinet to ensure balanced outcomes between rural communities and cities. Cabinet's role in defending rural communities is implementing policy.

According to the ACCC in its Interim Report:

*"In situations where adverse socio-economic consequences emerge from markets (including water markets), Governments may choose to implement policy measures to moderate these impacts via targeted policies that have specific distributional, equity and regional-development objectives. It is always preferable to use focused policy tools to achieve these objectives, rather than to use policies which undermine the efficient operations of markets, including water markets, to the disadvantage of all participants in those markets."*<sup>6</sup>

As a consequence, the ACCC did not consider adverse socio-economic outcomes from the water markets. Nor did the ACCC consider the way the MDB water markets enable the transfer of wealth from Rural Communities to big cities by speculators who would not exist if the MDB was set up to maximise farm production.

Given our Federal Cabinet is developing a better integrated Security and Trade policy, it is important the Cabinet reconsiders the value of prosperous family owned farms and rural communities to Australia's security. The focus on "residents" in Section 97 of our Constitution was deliberate – drawn from the lesson Irish-Australian settlers learned of the risks from absentee landlords.

## **Most Productive User**

There is an assumption that the current design of our water markets enables water to be allocated to the most productive user. However, there are a number of factors that may influence a determination on who is the most productive user other than which end user can afford to pay the highest price. Some water users and their production are participating in value chains that add significant additional value to rural communities and our nation outside of the farm gate. An example of economic value and productivity that may be overlooked by the water markets is the economic multiplier of different agriculture products. For example, the high labour requirements of some horticulture varieties results wages and salaries that stimulates aggregate demand in rural communities. That demand is crucial to support keyworker roles including healthcare. The value contributed by horticulture workers to Rural Communities should be properly accounted for and the implications taken into account in defining "Most Productive User" and the implications of integrated Security and Trade policy on the MDB water markets. However, the MDB water markets do not consider the post farm gate value add of different crops.

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<sup>6</sup> Page 9

On the assumption that security is an important priority for Australia and that “efficiency” should be tempered by our need to prioritise security, then it follows that our water markets should operate to support Security and Trade policy objectives. That means, maximising production of food and fibre supported efficient, automated water markets that enables farmers and indigenous users to optimise their productivity with as little overhead as possible. That means automating the role of brokers and eliminating their “rent” from our food production supply chains. Liquidity for the solution can be managed via an in-house bank model that enables efficient trading within a closed loop with effectively no risk to the liquidity capital. Efficient liquidity management precludes a need for a role for speculators. Investors providing liquidity capital will receive a modest return, reflecting the low risk to the capital. A deeply experienced Group Treasurer could manage a team that develops a product set that meets the needs of farmers and indigenous water users.

Data held by the Murray Darling Basin water markets should be considered within the context of a Grower Data Bank. It is valuable to family owned farms (both on its own, but much more so when it is combined with other data whether from a farmer’s own data sets, or by combining farmers’ data sets to create aggregated position data.

### **Single regulator**

Regulation of the MDB water markets should follow its purpose, users, products, operations, risk exposures, security role, the natural geography of the Murray Darling Basin and its importance as a strategic national resource. That points to a single national regulator with local water markets aligned to the communities that have traditionally depending upon water for food and fibre production. Our nation’s forefathers allocated water to the land for the purpose of security – to avoid the risk that arises from absentee landlords. The ACCC says we cannot go back to the days when water was allocated to the land because we would lose the benefits of an efficient market. But our understanding of “efficiency” changes when it has to be considered through the lens of “supply chain resilience.” Perhaps there is a way that we can get the best of all worlds (e.g. national regulation of water markets with the security from water being more closely attached to the land by allocating water resources between regions)?

A single regulator for the MDB water markets will have the power to convene the aggregation of data that should allow the communities that depend upon the rivers to better manage their risks.

The appropriate regulatory model for a solution that can provide family owned farms, indigenous water users and rural communities with valuable position information that they can use to optimise their outcomes is a cooperative type of model. Government should have an obligation to promote to the rural small business community including in particular family owned farms and indigenous users of water the value to them of different models. And a cooperative type of model is likely to have enormous value for them compared to some other models. A Group Treasurer could design products that reduce the excess volatility suffered by producers as a consequence of the way the water markets are currently working. If volatility is exposed to producers, it undermines their productivity. A water market that exposes volatility to food producers isn’t more efficient than one that manages it for participants. It is just that one that exposes volatility to producers has a bias towards large corporate agribusinesses who can afford to hire the in-house staff required to manage volatility.

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One of the issues that the ACCC did not consider is the ethical standards (or lack of them) in the overall governance and operation of the Murray Darling Basin water markets project. Rigorously defended values and robust ethical standards should be at the very top of the governance model for the Murray Darling Basin water markets. When the replacement solution for the water markets is implemented, it will include a new capability to release valuable data to market participants. Robust, transparent ethical standards are needed to release the most value and to ensure small business owners can give informed consent to how their data is used. There is potential for exciting new business models and employment opportunities.

In Germany, a project has begun to design a governance framework for supply chain transparency technology which will draw inspiration from my family's experience with Australia's social contract over the past 170 years. An EY Germany Partner is promoting a model for a governance mechanism that includes a role for a Social Contract in the release of value from the implementation of supply chain transparency solutions in Europe. The foundation will promote a minimum set of standards from supply chain transparency projects to safeguard the future prosperity of small to medium sized businesses and communities. I propose the ACCC and Murray Darling Basin water markets project should consider the project in Germany. There is potential for Australia to exert influence over the supply chain transparency standards adopted in Germany / the EU and potentially other countries (United Kingdom, United States). Digital supply chain transparency will eventually release tens of trillions of dollars into the global economy. Elimination of human trafficking and exploitation is a primary

#### Chapter 4—Buyers and sellers: Who trades, where and why?

Chapter four describes the different groups that participate in water markets, the relative size of their water ownership and trading behaviours and identifies possible barriers some groups may face in more effectively engaging in water markets.

- What barriers, if any, prevent an irrigator from buying or selling allocations or entitlements, or using leases, carry over parking or forward contracts? Please describe any barriers and give specific examples where possible.
  - How do these barriers prevent irrigators from using a given water product?
  - What are the impacts of the barriers on irrigators?

Lack of access to data (appropriate information)

Lack of trust

There are two ways to think of the Murray Darling Basin water markets:

- One is to think of the water markets in isolation from socio-economic factors and from the security policy of ensuring food security, as the ACCC has done with in its Interim Report. The ACCC has given Australians a “trade policy only” perspective of our water markets.
- The alternative is to think of Water (and thus the water markets) as a strategic, scarce resource, deeply relevant to Security and Trade Policy because it is essential for food security and for prosperous Rural Communities. Our ancestors referred to “residents” in Section 97 of our Constitution because of the experience of Irish-Australian settlers to the risk of absentee landlords during a crisis.

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The pandemic has woken up politicians and bureaucrats to the importance of security, including food security and resilient supply chains. We can expect our nation's objectives from the MDB water markets might now be considered within the context of Security and Trade policy, and thus socio-economic outcomes from the water markets are relevant. Further, the data released by a digital MDB water markets' mechanism will potentially be valuable from a socio-economic development perspective and that should be acknowledge and the Use Cases supported by an integrated Security and Trade policy.

The water markets should support Australia's integrated Security and Trade policy. Assuming one of our nation's objectives from the MDB water markets is to efficiently provide security for Australia and our allies in this region, then food security, prosperous family owned farms and rural communities should be targeted outcomes for the markets.

So, from the perspective of User Experience, including trust in the water markets, farmers should feel confident that the water markets are helping them maximise production. When purchasing MDB Water Markets' products, they should see those products from their perspective. Farmers don't think in terms of the Murray Darling Basin water markets products and so that is a barrier to their adoption of different water markets products. They think in terms of their production and profit objectives. Farmers will maximise their production outcomes to the extent that the volatility in their industry is minimised (there is a mathematical formula used by Group Treasurers that demonstrates that volatility destroys value for producers). Farmers are experienced solving our food security objective and so that is what they should focus on. In my experience, a business typically requires turnover of significantly more than \$100 million before it can afford to hire a specialist treasurer for the purpose of managing volatility in input prices. So, it is unreasonable for Australia's water markets to expose our food producers to the volatile water prices. The role of the Water Markets should be to support farmers in maximising production and that means by providing greater price stability.

The impact of lack of access to data, lack of trust in the markets and excess volatility in input prices is that irrigators are less profitable than they might otherwise be. It drains investment capital away from family owned farms.

How many and what type of irrigators are adopting these riskier water ownership and trading strategies?

- Why are they adopting these riskier water ownership and trading strategies?
- Are irrigators who adopt these riskier strategies able to accurately assess the change to their water supply and price risks?

Many family owned farms were advised sell their water entitlements by organisations such as accountants and banks who have expertise in working capital but who don't have financial planning qualifications or experience.

Commodity and financial risk management are specialised skillsets. Farmers do not have the financial services experience, nor the data needed to compete fairly in water markets against bankers with specialist experience and strategies designed to exploit information asymmetries.

Data belonging to family owned farms should be accessible on a stand-alone and consolidated basis to contribute to their productivity.

What risk management strategies, if any, are they using to mitigate the increase in water supply and price risk? Why are they choosing these risk mitigation strategies?

- Are their barriers to these irrigators adopting certain risk management strategies over others, including increased use of single and multi-year lease, forward contracts or other strategies?

Barrier to adoption is lack of expertise among family owned farms of expertise in the use of financial products to manage volatility. This assumes a model for the water markets where this volatility is exposed to growers, who are unsophisticated and have now ended up competing in a financial market against slick bankers. There are alternative models that would allow risk management to be centralised via an in-house bank and packaged so that farmers better understand their risks and opportunities and costs of risk mitigation.

Indigenous users are locked out of the water markets by a lack of access to permanent and temporary water and an inability to trade water allocations in return for a capacity building partnership with family owned farms.

Given the benefits to farmers of being able to trade water and the increase in use of allocation and entitlement trade by irrigators in recent years, what do you believe explains the reported decline in irrigators' views that water trading is a good idea?

- What might explain the difference between irrigators' more positive views on the ease of making an allocation or entitlement trade, and their more negative views on the fairness of water markets and water market rules?

The water markets were designed by bankers who are a lot like the people who operate online gambling services in the UK. Their services are designed to be easy to use but the odds are always stacked against the punter.

- What might explain irrigators' lack of confidence in the fairness of water markets and water market rules?

There is an information asymmetry in the water markets that bankers are able to exploit against farmers (just like the bankers who are behind online gambling services). The bankers behind the water markets have better information. In addition, there has been a lack of focus on capacity building among farmers, including in particular family owned farms and indigenous water users. The markets flipped responsibility for managing volatility from market operators (such as the State Rivers and Water Supply Commission) onto family owned farms and then sharp bankers stepped in with financial products to help farmers manage that volatility. This was then pitched to politicians as "efficiency", when in fact it was "corruption".

- What might explain irrigators' beliefs that entitlements held by the government were not subject to the same rules and charges as other participants' entitlements?

There has been a loss of trust with the government over the water markets. Many people believe there are constitutional issues that the government has ignored. Information asymmetries favour

some participants over others. And rumours exist in rural communities throughout Australia of political leaders who have been using the water markets to secretly profiteer from farmers.

- What might explain irrigators' views that non-farm entities (investors) should not be allowed to buy water, and that retired irrigators should not be allowed to retain their water rights?

Because those non-farm entities including retired irrigators are extracting a tax off food and fibre producers. That is undermining production. If retired irrigators want to earn an income from farming, then they should not retire or they can invest in lending to farms and financing of water infrastructure via their superannuation savings (capital markets). Australia should have Security and Trade policy objectives for its water markets that include resilient food supply chains. The role of non-farm entities (investors and retired irrigators) is a water trading model that is undermining the resilience of our food security supply chain.

Historically Australia's water markets were protected by our constitution for residents for irrigation and conservation purposes. Irrigators' had a single objective for their holdings and use of water – production. Now, with retired farmers and others able to hold water for purposes other than production ... it creates a market for draining profits away from producers and risk takers and transfers them to investors who have different motivations for holding water rights other than production given the market is rigged towards rising water prices.

What barriers, financial, regulatory or other, do First Nation and Traditional Owner groups currently face to acquiring permanent and temporary water in Basin water markets? Please provide examples of these barriers, as well as evidence of their magnitude, frequency and impact.

[Insert Wamba Wamba & Swan Hill Summerfruit draft MOU]

[Consider this from a Security and Trade policy perspective]

I do not speak for any First Nations or a Traditional owner group. I supported the Wamba Wamba Aboriginal Land Council together with a farmer representing family owned farms in writing a response to the ACCC Inquiry. I ran several workshops and numerous one on one meetings with indigenous leaders and family farmers from the Swan Hill horticulture region. I also facilitated a site visit to a stonefruit farm and packing shed for an indigenous leader and a joint meeting between representatives of Wamba Wamba and the board of the Swan Hill Summerfruit Development Association. And then several meetings afterwards. I facilitated a meeting between a senior representative of Wamba Wamba and Leader of Victoria's National Party, Peter Walsh. I also facilitated meetings between senior representatives of Wamba Wamba and councillors and executives from Murray River Shire Council. I facilitated the drafting of requirements for Wamba Wamba and for the Swan Hill Summerfruit Development Association from the water markets inquiry. I also facilitated the drafting of a MOU for a cooperation agreement between First Nations and the local stonefruit growers' association which has been refined through several one on one face to face meetings and via numerous telephone calls. I also facilitated media interviews for Leena Sweeney and Michael Tripodi. The MOU is incomplete because it has not yet been reviewed, debated and signed off by the Wamba Wamba Aboriginal Land Council Board. However, it is also worth mentioning that Uncle Col Williams (the interim CEO of Wamba Wamba) told me that his objective for the partnership between Wamba Wamba and Swan Hill Summerfruit Development



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Association was to create a repeatable model partnership between rural indigenous people and rural farming families. If a MOU between family owned farms and indigenous users can be negotiated and projected benefits subsequently delivered (set up for success), then my view is that would be something valuable, including for various dimensions of Security and Trade policy. An opportunity for partnership and Reconciliation on issues that go to the heart of indigenous Australian priorities and their identity. I hereby request that if indigenous leaders and local grower associations see value in partnership that funding be provided so that the MOU can be completed and approvals obtained for moving forward with the project.

In my experience as the facilitator of the negotiation of the MOU, a key barrier faced by First Nations in acquiring permanent and temporary water in Basin water markets is a lack career opportunities that might lead to roles where water can be used for irrigation or environmental purposes. The Murray Darling Basin water markets' products are inaccessible to indigenous users because of a lack of capacity in terms of career pathways to becoming horticulturalists or professional water management experts. The Murray Darling Basin Plan has not fulfilled its responsibility for an indigenous voice at the table in managing water. Closing the gap targets were imposed from top down. There is now an opportunity for rural indigenous Australians to establish partnerships with family owned farms to achieve their goals in terms of capacity building and employment outcomes.

Based upon my research and what I have observed, the cost of acquiring permanent water entitlements is a barrier to indigenous stakeholders acquiring water entitlements. If local indigenous people could gain access to the permanent water rights that would enable them to trade short-term rights with local farmers in return for education and training in the use of those water rights and employment with businesses in the horticulture supply chain. Eventually that would lead to indigenous water users with the expert experience necessary to run their own horticulture businesses.



Here is Wamba Wamba Office Manager, Lena Sweeney together with President of the Swan Hill Summerfruit Development Association, Michael Tripodi, talking about their vision for partnership from the use of permanent and temporary water rights.

<https://www.abc.net.au/radio/programs/vic-country-hour/victorian-country-hour/12013168> (Lena Sweeney and Michael Tripodi start talking at 13 minutes into this radio segment)

Reconciliation and Truth telling process with Australia’s First Nations that has just begun in some states. It will inevitably include a discussion about indigenous whether indigenous peoples have any sovereign rights to Murray Darling Basin water, including not just for cultural purposes but as part of the career opportunities at all levels that comes from professional and commercial water management. A mechanism to build partnership and teamwork between family owned farms and indigenous water users should be considered a crucial dimension of Australia’s national and regional Security and Trade policies because it will strengthen communities with a role for a Social Contract and a profit motive. It may offer a pathway for indigenous and non-indigenous Australians to genuine Reconciliation.

When I spoke to the interim CEO of Wamba Wamba Aboriginal Land Council about family owned farms, he regularly referred to them as neighbours of local indigenous people. That is both an indigenous perspective and it is also a traditional non-indigenous perspective on the relationship between people and family owned businesses in rural communities. That’s to say, “good neighbours” and “prosperous communities” are values shared by all Australians. And that could be one of the bases for a proper Reconciliation.

On a separate but related matter, all Australians understand the importance to the cultures of indigenous Australians of their traditional responsibilities as owners and custodians of the land and its waters. It is at the very heart of the indigenous identity. So, attempts at Reconciliation that do not deliver exciting career paths for indigenous people with a seat at the table in the management of water would be taking the piss. The context is that right at this moment, leaders all over the world are referring to our Social Contract as the moral and rational basis for necessary actions that are being taken at the moment to defend our communities from the pandemic. It is important that our Social Contract is more than political spin. If careers in water management is what indigenous Australians want then given that is so obviously the right thing to do (to make happen) given our Social Contract, then surely the only question is, how do we make it happen? Clearly we have an obligation to all Australians to defend food security for our nation and perhaps our neighbours in the region. So, the key is to define and implement a development process that allows for all the risks to be systematically identified and mitigated.

[insert: Wamba Wamba & Swan Hill Summerfruit Development Association draft MOU]

## **Chapter 5—Investor roles, strategies and conduct**

This chapter examines the role and practices of investors in water markets. This chapter has primarily focussed on four large investors in water markets for the interim report. However, the ACCC has the following questions about other investors.

- What types of other water investors participate in the MDB water markets?
- What are the investment objectives and strategies of small water investors?
- What are the investment objectives and strategies of water investors that participate in the water market by buying and selling water allocations but do not own entitlements?
- What are the investment objectives and strategies of irrigators that buy and sell water allocations for profit, alongside their farming operations?
- What are the investment strategies adopted by retired irrigators who have retained their water access entitlements?

The argument that the water markets need investors who are not irrigators to provide liquidity and to the market is not valid. A fixed amount of liquidity could be provided at a modest cost of capital with a closed loop system (e.g. in-house bank or exchange), extensive use of AI and automation and with a Group Treasury in a cooperative type structure and product prices designed to recover costs. Non-farm investors other than a capital markets investor to provide liquidity to the market should be excluded from the markets altogether because they have an objective for the use of water rights other than food production.

## **Chapter 6—Water broker roles, practices and conduct**

This chapter examines the roles, practices and conduct of water brokers.

- Should a broker or brokerage firm be permitted to provide brokerage services to both parties to a trade?
- Should a broker that is providing intermediary services in a trade, be permitted to have an interest as a principal in that trade?
- In what circumstances should individual brokers or brokerage firms be permitted to have water accounts?
- Should individual brokers be permitted to only trade in water markets for personal irrigation purposes and in that case, always through an unrelated broker (in an unrelated firm)?
- What is your experience of brokers holding client funds? Should a broker or brokerage firm have statutory obligations in respect of holding client funds?
- If statutory trust accounts were mandatory for brokers, should any interest on client funds be directed to an assurance or fidelity fund?
- Should brokers be required to hold professional indemnity insurance?
- Have you been provided with misleading information by a broker? Provide details.
- If clear, reliable and timely information about the market was more easily available, would this prevent brokers from providing misinformation to clients?
- Should brokers be required to give reasons for zero dollar trades?
- Do you consider you are able to effectively access inter-valley trade opportunities when they arise? Why/why not?
- For holders of water rights who have traded water into another valley during an intervalley trade opening, did you use a broker to facilitate the trade? Why/why not? If yes,
  - Does the broker aggregate your water rights on to their water account before an opening? How far in advance of the anticipated inter-valley trade opening do you transfer your water rights on to the broker's water account?
  - When is the price for the water rights agreed on? When do you receive payment for the transfer of your water rights? (Before or after the inter-valley trade is approved?)
  - Is there a delay in transferring the water rights off the broker's account in the destination valley? If so, is this because you don't have a water account in that valley, and you require the broker to hold the water rights on their account until you can find a buyer? Or do the water rights remain in the broker's account until they can find a buyer?
  - Are you aware/are you able to see the price the buyer pays to the broker for the purchase of your water rights?
- Are you aware of brokers taking a personal position in inter-valley trades? Is this disclosed to the other party to the trade?
- Are you aware of instances where an IIO has prioritised the approval of a trade facilitated by their own brokers or trading platform over other approval requests? If so, provide details.
- Are you aware of instances where an IIO has limited a client's choice of independent intermediary by bundling water delivery services with their own intermediary service? If so, provide details.

Australia's key objective from its Murray Darling Basin water markets should be Australia's national security. Specifically, food security and resilient food supply chains. The ACCC has made a repeated point about the importance of efficiency in our water markets. To the extent that brokers can

extract “rent” from food producers, that represents a drain on the productivity and profitability of food producers. It represents a drag on investment by family owned farms. The “broker” Use Case can be coded as an automated role and product suite as part of a digital Murray Darling Basin water markets solution. The cost of providing efficient markets to end users of water can be materially reduced by eliminating the overhead of market participants whose presence in the water markets is because they are exploiting the inefficiencies of the current water markets.

## Chapter 7—Regulatory settings and solutions

In this chapter, the ACCC examines the effectiveness of the regulatory environment for MDB water markets. The chapter then considers regulatory options to address the problems and harms the ACCC has identified.

- Do you consider that there is a place for bona fide water options and futures in the MDB water market?

The Murray Darling Basin is a long way from getting its basic “meat and potatoes” right. Change management good practice is to stabilise the “as is” environment before adding anything new. Further, the mindset of the ACCC and other stakeholders in Australian water resource management should be on how to use our nation’s scarce water resources to achieve a very short list of goals including national security goals rather than on developing new bells and whistles that will only add further complexity without obvious value for producers.

- Would you buy or sell water futures on-exchange or over-the-counter, if they were available?

Water futures will complicate the Murray Darling Basin water markets issues even further. The ACCC and the government should be thinking of the water markets in terms of their role delivering an integrated Security and Trade policy for Australia. National security, prosperous rural communities, Food security and resilient supply chains for Australia and our partners in this region should be a top priority from our integrated Security and Trade policy. That means water markets designed to maximise the productivity and resilience of Australian food producers including in particular, families on farms, prosperous rural community and being willing to embrace Reconciliation and Partnership with indigenous Australians, including in particular recognition of their role as traditional custodian of the land and its waters.

If water futures and other sophisticated financial services products help growers mitigate risks and thus improve their efficiency, then that should only be considered after the water markets are stabilised and migrated to their “to be” environment.

- What records do you keep for calculating the cost base of your allocations and entitlements for CGT purposes, and cost of goods purchased for income tax purposes?

Not applicable. I do not trade water and so do not keep these records. However, I note that a sophisticated trading platform could be implemented that would offer to users a suite of reports for tax and other purposes.

- Do you think that brokers and intermediaries in MDB water markets should be licensed?

Brokers and other intermediaries should be eliminated from the market if they can be replaced by technology such as AI and automation. Each market participant collecting “rent” from food producers should be carefully scrutinised for the value they are contributing to producers.

- Should a licensing scheme be enforced at the Basin State or federal level?

Regulation of the Water Markets should follow its physical form. Thus, if licensing is used, licensing should be enforced at a federal level. Note the constitutional protections – so the Federal solution should be able to articulate a rationale for how it addresses constitutional protections. Alternatively, the Constitution should be changed by referendum.

- Should the licensing scheme be entrusted to an already established body or an independent new body specific to the MDB water market?

The water markets should operate like a cooperative for water users. Perhaps an independent statutory authority (similar to Transport for London). It should be headed up by a Group Treasurer with a team of treasury professionals whose role it is to support resilient food supply chains and food security. It should access liquidity direct from capital markets and be mandated to cover its operating costs via fees charged to producers. It should be independent but draw upon best practices from elsewhere (e.g. financial services regulation). Retired farmers who want to invest can invest via superannuation. Risk and return are correlated. Data is available to support investment by capital markets in rural producers. Systems are designed to support farmers by making data available that contributes to management

- Should the financial regulation framework be applied to basic tradeable water rights and arrangements to buy and sell them, noting that it is a ready-made market regulation framework?

Yes. Australia’s water markets should follow our financial services rules because it is a ready-made regulatory regime but also because regulation is likely to change in coming years because of the evolution of Liquidity + Data and likely rulesets that will follow for maximising value extracted from data whilst protecting data ownership and access rights.

- Should a market focused independent regulator be established for the MDB water market?

Yes.

- Should the regulation of the water market be entrusted to an already established independent regulator or a new body?

A new body. Perhaps an independent statutory authority (like Transport for London). Because given the need to better integration Security and Trade policy, the water markets must have an objective beyond “efficiency”. Our water markets also need to support Australia’s national security objectives and that means resilient supply chains and prosperous rural communities.

The type of regulation of the water markets should depend upon the national objectives for the water markets, the types of market participants, products, risks and processes. So, regulation follows design. Given the ACCC is establish an irrefutable argument for comprehensive reform of the water markets, they should have an “as is” and a “to be” design.

I believe the “as is” should be subject to the financial regulation framework and gaps in systems of internal control quickly closed, within the “as is” environment. A well understood rule of change management is that one should never outsource a mess. Clean the mess up first. Then a “to be” target operating model should be developed and a migration plan to articulate the transition from the “as is” to the “to be”. Depending upon the target operating model for the water markets, a dedicated regulator could then be established for Australia’s water markets.

## Chapter 8—Trade Processes—advising, matching, clearing, settlement, registration and information

This chapter discusses the roles, functions and services provided by brokers, exchanges, approval authorities and registers in water trading in the Basin. The chapter does not discuss broker and exchange conduct.

- Do you consider that automating the flow of information (price, struck date, product type) from an exchange to a register would greatly improve accuracy of data? Do you consider the benefits of improving price reporting would outweigh the cost of adopting this approach?

Yes. Automation of process flows is a standard feature of any modern financial market. If the water markets are established as a statutory authority, then it can borrow the money required for and upgrade systems and operating environment. So, the cost can be amortised over several years against the income generated by the markets. Data capture is crucial. As is recognition of ownership rights to data.

- Would you be more likely to trade in derivative products if there was a central clearing house which took on the counterparty risk?

The question should be, how will these derivative products assist with maximisation of Security and Trade policy. Sometimes the financial services industry can act as a tax on the economy. London has the most complex financial services ecosystem in the world and yet British people have poor pensions. Financial products for the water markets like derivatives may destroy value for food producers.

- Do you consider that there would be benefits in aligning the states’ water management roles (as much as hydrologically possible)?

Yes. Standards and transparency.

- Do you consider, that apart from state-specific or water sharing plan specific rules that each allocation trade within the Basin should be subject to the same assessment framework? For example, that a standard and automatable checklist should be used for each state (including; is there enough water in account balance, check trading rules, check fee is paid, check correct form is used, check consent is given)? Do you consider that this checklist should be made available to water traders so that they understand what assessment process their application is subject to?

Yes. Standards and transparency. Integrated Security and Trade policy.

- Do you consider that entitlement trades should also be standardised across the states? Do you consider this will create more equal trading opportunities? Do you consider that fees

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should then also be standardised? Do you consider that New South Wales's framework provides a good starting point for separating out different transfer types?

Yes. Standards and transparency. Integrated Security and Trade policy.

- Would you like to see one trade form with standardised language be used across the states?

Yes. Standards and transparency. Integrated Security and Trade policy.

- Would you like to see the trade type and party type (investor, irrigator, other) recorded publicly?

The information should be available internally within the Water Markets statutory authority. It should be available to be audited and it should be audited for compliance purposes. Depending upon the decision about the purpose and strategy of the water markets, including regulatory strategy, it may or may not be appropriate to release trade information.

- Would you like to see all state water register websites to provide the same information, presented consistently? If no, why not?

Yes. Standards and transparency.

- Do you think there would be value in extending the application of BPWTR 12.48 to include a requirement on trade approval authorities to collect this information? Do you think 12.48 should also include a requirement to report the reason for the trade, and an equivalent provision for the trade approval authorities to collect this information?

Yes. Standards and transparency. Note that it may be possible to combine data sets to help the markets operator and regulator to better achieve their national security objectives.

- Do you think that the consolidation of trading rules into one document per state/per Basin would assist users in undertaking trades?

Yes. Standards and transparency.

- Do you think there would be benefit in standardising and making it clear that each state should have the following separate and distinct registers and information should be published on each: o Ownership register (water entitlement) o Water entitlement trade/transfer register o Water allocation trade/transfer register—including identifying product type o Water use register (account balances).

Standardising, yes. But a register per state? That doesn't make sense from the perspective of the fundamental nature of the basin. It is a national resource, it needs a national regulator and "states" should just be a field to support state-reporting requirements, but within a single national register.

- Do you consider that the roles of approval authorities and registers are clearly understood? Are trade processes, what is actually assessed when a trade form is submitted, well known to participants? Do you consider that the assessment of applications and how it differs across states and across trade types is well understood? How could this be improved?

They are not well understood by indigenous water users because of the lack of investment in capacity building.



- Do you consider that roles, services and products offered by intermediaries are well understood?

They are not well understood by indigenous water users because of the lack of investment in capacity building.

### Chapter 9—Transaction costs of trade

This chapter examines the transaction costs associated with water trading, considering the impact of regulatory approval processes for individual trade applications and the cost of intermediaries on individual trading decisions.

- Do trade approval authority and irrigation infrastructure operator fees influence your water market trading decisions?
- What actions do you undertake to minimise your transaction costs of trading?
- Do the trade processing times identified reflect your experiences or have you experienced other significant delays in trade processing approvals?
  - What are the impacts of these lags on your approach to water management? For example, you may have invested in on-farm storage to ensure you have immediate access to water when needed.

The “user experience” of water users (producers) accessing Australia’s water markets influence their trading decisions. There is an “air gap” between a farmer’s farm management systems and the water markets and high fees to pay for the inefficiency associated with that air gap. To the extent that farmers can gain access to an integrated data set for decision-making, at low or no cost (because other data users subsidise the cost of data to producers) that will influence their trading decisions.

### Chapter 10—Information transparency

This chapter examines information transparency in the Basin water markets by identifying the information necessary for water market traders to make decisions that are in their best interests, which will lead to effective and efficient markets and improved productivity.

- What information do you think is critical to your ability to make water trading and investment decisions?

Producers use farm management systems that increasingly include (for example) IoT sensors that monitor soil moisture levels, and which can be combined with Bureau of Meteorology data and robotic systems to efficiently manage production of food and fibre. A data governance model for the water markets and appropriate investment in systems could enable data connectivity and exchange to optimise the value of the water markets to producers and communities. Information from the water markets combined with data from farm management systems such that farm production outcomes are optimised is what is most critical to water users’ ability to make water trading and investment decisions.

- How do transparency and data quality issues impact your trading activity?

Data silos and lack of standards undermines national productivity policy objectives whilst also undermining integrated Security and Trade policy objectives.

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- Do you agree with the ACCC’s preliminary analysis of the key transparency issues? Is anything missing?

Yes, something is missing. Consideration of the implications of better integrated Security and Trade policy on the national water markets (as per Prime Minister Scott Morrison’s speech to the Aspen Institute on 5<sup>th</sup> August 2020). The ACCC was asked by the Hon. Josh Frydenberg to recommend options to enhance markets for tradeable water rights, including options to enhance their operations, transparency, regulation, competitiveness and efficiency.<sup>7</sup> He did not consider Security and Trade policy. The design of the “to be” water markets should address these gaps in the ACCC’s interim report. There needs to be a political process for articulating the impact of the lessons learned from the pandemic on government’s integrated Security and Trade policy. Here is an analysis that demonstrates potential impacts on the design of solutions for the key problems with the water markets identified by the ACCC in its Interim Report:

<b>Key problems with the water markets that the ACCC has identified include<sup>8</sup></b>	<b>Trade Policy issue?</b>	<b>Security and Trade Policy issue?</b>
Lack of trust is leading to lack of confidence in the water markets	Yes. Must address asap.	yes
Need to restore trust. Need to remove the factors leading to a loss of trust in the water markets. Governance. Transparency. Data rights.		
Lack of supply chain transparency in the water markets	Yes. Inefficient. Information asymmetry is biased to big corporate agribusinesses. Potential to better use data to support growth of digital economy.	Yes. Undermines resilient supply chains. Trade Policies that undermine family farms and communities are undermining security. Bias towards concentration of ownership and control is undermining security.
High risk of political corruption. Risks of Insider trading. Conflicts of interest. Opaque markets.	Yes. Inefficient. Contributes to loss of confidence in the market.	Yes. Undermines confidence and resilience.
No-one questioning the premise of the inquiry or that bigger is better. No documented business requirements or identification of strategy options.	Perhaps not a pure trade policy issue.  Data can overcome disadvantages of size.	Yes. Undermines confidence and resilience of farmers and communities
Assets being stripped away from rural communities	It is difficult to not see this as a trade policy issue. Assets should be defended	Yes. Undermines resilience and confidence

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	by government, including against poor governance of our national water markets.	
Water trading system isn't fit for purpose, neither for protecting the environment, nor for building value in rural communities that depend upon irrigation water.	Yes. Destroys value (productivity, food security, profits, environmental outcomes)	Yes. Undermines resilience and confidence
Solution is biased towards big players	Yes, perhaps	No. Undermines confidence and resilience.
“There is a disconnect between the rules of the trading system and the physical characteristics of the river system. For example, on-river delivery capacity scarcity, conveyance losses and adverse environmental impacts are not considered in the processing of trades that change the location of water use, except through some blunt and imprecise rules, such as limits on inter-valley trade/transfers” <sup>9</sup>	Yes. Inefficient.	Yes. Potential to create career opportunities for indigenous Australians in partnership with family owned farms (neighbours).

The global pandemic has led to discussion about collaboration on standards for sharing data sharing between democracies. The context is global interest in the opportunities presented by supply chain transparency. There may be potential to create a global best practice solution for the Murray Darling Basin water markets that helps release the value of data trapped in silos, supports prosperous small businesses and rural communities, and that facilitates partnership and value creation between democracies.

“In situations where adverse socio-economic consequences emerge from markets (including water markets), Governments may choose to implement policy measures to moderate these impacts via targeted policies that have specific distributional, equity and regional-development objectives. It is always preferable to use focused policy tools to achieve these objectives, rather than to use policies which undermine the efficient operations of markets, including water markets, to the disadvantage of all participants in those markets.”<sup>10</sup>

- “It is always preferable ...” – is that true? This assertion by the ACCC is based upon an assumption that globalisation and international trade will deliver win-win outcomes. It does not consider the value of strong local economies. But we have seen from the COVID-19 pandemic and the trade tensions that have emerged with China that demonstrates that fundamental assumption is wrong. Australians potentially face national security risks if we do not consider implications for “efficient” trading mechanisms on security. That means the

<sup>9</sup> Page 7

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entire “consider market efficiency to the exclusion of socio-economic factors in the operation of the Murray Darling water markets” mindset is wrong.

- Implementation Management is always easier with the cooperation of those affected (e.g. family owned farms) rather than by attacking them and their businesses and their communities (e.g. the way the Modern Day Slavery Act has been implemented, the gaps in Plant Breeders Rights legislation and the inefficiencies in the Murray Darling Basin water markets from the perspective of family owned farms, indigenous stakeholders and rural communities.
- Australia’s small to medium sized businesses and our rural communities are being threatened and poorly supported if the Australian Federal Government and the ACCC does not consider the value to them of Data + Liquidity information derived from a digital water markets infrastructure with a single national regulator and an ability for farmers to easily integrate water markets datasets into their farm management software.

### Chapter 11—Solutions to improve trade processes, transaction costs and information

This chapter considers short-term and medium-term solutions and a longer term technological solution to address the transparency, fragmented processes and transaction costs issues identified in chapters 8 to 10.

- Do you consider that the Basin Plan Water Trading Rules should be updated to include requirements on trade approval authorities to collect more information on trades?

The water markets should be regulated as a financial market. Information on trades should be consistent with financial markets disclosure obligations. To the extent that processes can be automated, costs can be minimised.

- Do you consider that price reporting obligations on sellers under Basin Plan Water Trading Rule 12.48 are well understood?

They are not being enforced so it stands to reason they are not well understood. The systemic controls to enable price transparency are not in place.

- Do you consider that Basin Plan Water Trading Rule 12.50, which applies to states to make water allocation announcement generally available is sufficient? Would you support extending this obligation to require consistency across the states’ announcements?

Yes, consistency. Transparency and standards.

- Do you consider that each state should make, in one place, the following:
  - How much has been allocated to entitlement holders
  - What the current carryover limit is applying to each zone, with clearly explained reasoning if there are any differences
  - Historical trading information, with sufficient detail to understand what products are being traded and for what price
  - Current bids and offers to understand market depth and current pricing o Trading and carryover policies and rules.

Yes. Transparency and standards.

## Chapter 12—Market architecture and the impacts of trade

This chapter provides information on some key elements of the Basin market architecture, and describes the main stakeholder concerns with the different rules and regulatory settings.

- Has the ACCC identified the main concerns with trade activity and Basin market architecture, and in particular, with the key elements, as set out below?
  - Extractions cap (Sustainable Diversion Limit)
  - Allocation policies and available water determinations
  - Carryover
  - Geographical trade rules (including inter-valley trade (IVT) limits)
  - River operations
  - Metering.
  - Supply chain transparency. Data architecture.
- Are there gaps in or issues with other areas of the market architecture that you would like the ACCC to consider?

Yes, something is missing. Consideration of the implications of better integrated Security and Trade policy on the national water markets (as per Prime Minister Scott Morrison’s speech to the Aspen Institute on 5<sup>th</sup> August 2020).

The global pandemic has led to discussion about collaboration on standards for sharing data sharing between democracies. The context is global interest in the opportunities presented by supply chain transparency. There may be potential to create a global best practice solution for the Murray Darling Basin water markets that helps release the value of data trapped in silos, supports prosperous small businesses and rural communities, and that facilitates partnership and value creation between democracies.

Is there any external factor that is preventing consideration of a full range of options from consideration (e.g. free trade agreements that prevent us from enforcing a definition of the Australian constitution that favours Australian residents (defined as local indigenous water users and local families on farms)? Do we need a referendum to approve these changes to residents’ constitutional rights to water?

There is an environmental dimension to the architecture that should be considered. According to the ACCC Interim Report, “Climate analysis by the Bureau of Meteorology and the Commonwealth Scientific and Industrial Research Organisation indicates that April to October rainfall between 1999 and 2018 was either the lowest on record or very much below average across most of the Basin, compared to average rainfall since 1900.”<sup>11</sup>

Observations on the governance implications of these architecture factors:

- From an Australian National Security perspective, we need a governance structure that includes a capability to deal with the overall environmental issue (e.g. the need to be able to consider options for creating more water and the need to manage the environmental impacts from the reduced flow of water.

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<sup>11</sup> Page 11

- Our natural environment does not neatly fit within a Federated state-based structure.
- We should not forget the lessons of our founders (e.g. Irish Catholic immigrants. Importance of food security – of domestic control over key food production resources)
- The preferred solution is likely to be influenced by better integrated thinking on Security and Trade Policy in accordance with the Prime Minister’s call on 5<sup>th</sup> August 2020.

## Chapter 14—Market architecture reform options

This chapter explores how and why the Basin market architecture might need to evolve and seeks feedback on some potential options to address issues identified by the analysis to-date.

- The ACCC seeks stakeholder feedback on the merits and drawbacks of, and the potential to adopt, the options outlined below:
  - re-evaluating the assumption that conveyance losses should be socialised and considering whether transmission loss factors can be applied to deliveries to particular zones (that is, all zones would have a transmission loss factor applied, and inter-zone trade would apply a factor that is the difference between two ‘zone factors’, like the approach taken in some systems in Queensland)
  - making carryover parking markets more formal
  - unbundling storage access/carryover eligibility from water access entitlements and creating formal, separate markets for carryover storage
  - introducing continuous accounting in the southern Basin
  - introducing capacity sharing in the southern Basin
  - harmonising or increasing the frequency of water account reconciliation and reducing the ability to reconcile accounts by entering water markets (this would require upgrades to metering technology, the cost of which would vary by location)
  - removing the exemption for grandfathered tags or getting rid of entitlement tagging altogether
  - developing more dynamic IVT mechanisms (that is, timely and responsive tools to allocate access to limited delivery capacity and manage impacts on other water users and the environment, as are being explored in the Victorian Government’s review of the Goulburn to Murray trade rule)
  - make all allocation trade tagged allocation trade (so that water only moves between valley accounts when it is being delivered, and remains in the origin valley accounts at the time of trade and for carryover)
  - developing markets for on-river delivery capacity
  - non-market allocation mechanisms for on-river delivery capacity, that allocate capacity on a less than annual accounting period and are defined with respect to specific constraints.

These are all valuable operational efficiency opportunities. However, they should be delivered after the “meat and potatoes” (basic) objectives for the water markets have first been met. In terms of the implementation plan, these services are part of a future “to be”, to be delivered after the “as is” has been stabilised. The water markets are not currently stabilised because the internal control weaknesses identified by the ACCC are so profound, they materially undermine the overall credibility and confidence in the integrity of the water markets themselves.

## ACCC Murray Darling Basin Water Markets Inquiry – Interim Report

### Response from Damian Crowe ACA

#### Version 1.0

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- The ACCC seeks feedback on the need to further develop missing or underdeveloped market architecture mechanisms, including:
  - the continuing lack of a framework to allow trade between Australian Capital Territory and New South Wales
  - limited development of trading rules for unregulated systems in northern New South Wales, or for trade of overland flow/floodplain harvesting rights.
  - shepherding and other arrangements available to trade/change the location of environmental water

The water markets need comprehensive reform. The future target operating model for the markets should be consistent with national Security and Trade policies, with uniform rules and transparency building trust and confidence among water users.

WAMBA WAMBA ABORIGINAL LAND COUNCIL & SWAN HILL SUMMERFRUIT DEVELOPMENT  
ASSOCIATION  
MEMORANDUM OF UNDERSTANDING (WAMBA WAMBA PERSPECTIVE)  
DRAFT FOR DISCUSSION version 1, 20<sup>th</sup> March 2020

1. Governance structure
  - 1.1. Wamba Wamba owned from the start, (but indigenous run and operated only after young members to through agreed gates with have experience, which could mean apprenticeships and then subsequent relevant career development roles) – may require years' experience and accredited training before today's young members are ready to take over running the business. That's to say, a normal career path.
  - 1.2. Escalation path
2. Commercial / for profit (1<sup>st</sup>).
  - 2.1. Greenhouse to be run on a for-profit basis.
  - 2.2. Create a model for First Nations socio-economic development that can be replicated
  - 2.3. If it's a hot-house then it does not need to be run on a for profit basis.
3. Gated development opportunity for Wamba Wamba members (1<sup>st</sup>)
  - 3.1. Wamba Wamba Land Council youth members have priority in employment programs.
  - 3.2. Training and career path for Wamba Wamba members (1<sup>st</sup>). Apprenticeships. Access Rights. Career development. But no interference with horticulture expert operations driving sustainable "for profit" and a viable model for future prosperity of Wamba Wamba members.
  - 3.3. Need a funding model that delivers up front apprenticeships for Wamba Wamba members and which enables indigenous run and operated after Wamba Wamba members have the required experience (passed through the training gates)
4. Reasonably priced water to support its use by indigenous water users and family owned farms among Swan Hill Stonefruit's Growers
5. A sympathetic indigenous voice at the table managing water for conservation and possibly for irrigation purposes. [NOTE: SEE APPENDIX 1 FOR PROPOSED REQUIREMENTS FOR A "VOICE AT THE TABLE MANAGING WATER"]
6. Leave the past in the past so that we can focus on Reconciliation and partnership (including development of social and economic opportunities) for both now and the future (per Wamba Wamba's offer at its first meeting with SHSDA)
7. Options for the Greenhouse
  - 7.1. Small hothouse like existed before. It could provide good training and something for Wamba Wamba young members to do, but it is unlikely to be commercial and it suffers from the issue that the chemicals used (etc) will be close to Wamba Wamba housing.
  - 7.2. Commercial model (small)
  - 7.3. Commercial model (large)
  - 7.4. Commercial model (small at first but capable of growing to a large model)
8. Space required for the Greenhouse
  - 8.1. 5000 m<sup>2</sup> is available on stock route but that won't be enough
  - 8.2. May need 60,000 m<sup>2</sup> of land space so that there is room for growth
  - 8.3. May need land for workers' housing?
9. Location (options)



- 9.1. Wamba Wamba Aboriginal Land Council reserve is ruled out. It is not an option because the greenhouse may be an eyesore (Lena also thinks there may be an issue with use of chemicals).
- 9.2. Tooleybuc (note Wamba Wamba has two properties there – potentially one for the greenhouse and another)
- 9.3. Industrial estate on the stock route is an option
- 9.4. Lena would like to locate the greenhouse on Meneira Station. But advice from Col is that if for whatever reason Lena cannot make the Station an economic success, she would risk losing both the station AND the greenhouse. I believe it is important that the greenhouse is run separately and it should be easily accessible by the Swan Hill grower community, particularly if this is to be a successful “for profit” partnership.
10. Example of a possible gated capacity building process and timeline together with career paths for Wamba Wamba members
  - 10.1. 0 – 2 years
    - 10.1.1. Define requirements and strategy for addressing requirements
    - 10.1.2. Fundraising
    - 10.1.3. Identify location and construct the greenhouse
    - 10.1.4. Appoint an experienced horticulture industry CEO (paid via salary + profit share) who will drive the business to profit and deliver apprenticeships (etc) for Wamba Wamba members
    - 10.1.5. Identify opportunities for careers paths for Wamba Wamba membership.
    - 10.1.6. Apprenticeship opportunities for Wamba Wamba members (ASAP) for those wanting a career in horticulture or jobs during school holidays (for those wanting a professional career as consultants in water stewardship)
    - 10.1.7. Establish partnership and teamwork between Wamba Wamba and local growers
    - 10.1.8. Learning opportunities.
    - 10.1.9. Access rights for Wamba Wamba membership
  - 10.2. 2 – 5 years
    - 10.2.1. Full time
    - 10.2.2. Established career paths for Wamba Wamba members
    - 10.2.3. Horticulture including operations, sales & marketing
    - 10.2.4. Water management
    - 10.2.5. Construction
    - 10.2.6. Consultancy
    - 10.2.7. Finance & Administration
    - 10.2.8. Development of indigenous branded foods
  - 10.3. 5 – 10 years
    - 10.3.1. Building out career experience with a variety of related roles
    - 10.3.2. Building horticulture subject matter expertise
    - 10.3.3. Generating significant profits
    - 10.3.4. Wamba Wamba membership gaining experience in senior operational and management roles at the Greenhouse or with related businesses in the horticulture industry supply chain (e.g. with Category Managers)
  - 10.4. 10 years +
    - 10.4.1. Fully indigenous owned, led, run and operated
11. Professional business plan, including site visits
  - 11.1. Commercial crop (e.g. tomatoes)

- 11.2. Stonefruit seedling stock from the greenhouse or hot house, supplied under contract on a commercial basis
- 11.3. R&D for native food varieties to find commercial opportunities
- 12. Stakeholder map and communications strategy
  - 12.1. Who are the Wamba Wamba youth members? 6 boys and 6 girls aged 17 – 22 years old
  - 12.2. Other stakeholders

Risks & Issues register

Fears	Mitigating actions
<ul style="list-style-type: none"> <li>• That Wamba Wamba members may get left out</li> </ul>	<ul style="list-style-type: none"> <li>• Contractually commit to Wamba Wamba members</li> <li>• CEO is rewarded for developing Wamba Wamba members</li> </ul>
<ul style="list-style-type: none"> <li>• Wamba Wamba membership does not have priority</li> </ul>	<ul style="list-style-type: none"> <li>• Contractually commit to Wamba Wamba children coming first</li> <li>• Create a gated process for their development. Guaranteed promotion once they go through the gate.</li> </ul>
<ul style="list-style-type: none"> <li>• Pollution, chemicals</li> <li>• Greenhouse may be an eyesore</li> </ul>	<ul style="list-style-type: none"> <li>• Locate the greenhouse away from the Wamba Wamba reserve</li> </ul>
<ul style="list-style-type: none"> <li>• Protect the environment</li> <li>• Culture and heritage management</li> <li>• Lack of cultural considerations</li> </ul>	<ul style="list-style-type: none"> <li>• Do not locate the greenhouse on or near a Wamba Wamba sacred site</li> <li>• Establish a governance process that builds Wamba Wamba / indigenous values into the management of the greenhouse</li> </ul>

## APPENDIX 1:

### What do indigenous Australians want from Australia's Murray Darling Basin water flows? Indigenous Australians' Requirements List (Wamba Wamba perspective) Col Williams, Damian Crowe, 15<sup>th</sup> March 2020 Draft for Discussion, Version 0.5

#### Context

1. Indigenous peoples participate in the Murray Darling Basin water market as both irrigators and as traditional custodians of the land with an interest in environmental and cultural water flows.
2. Indigenous peoples have built up knowledge over the past 40,000 years that is relevant to the proper functioning of the markets in water rights. For example, we have noticed that in droughts, flows of water in the rivers and going out to sea tend to decline whilst during wet years they tend to rise. Among Aboriginal people, we call this our "common sense". We have noticed that the markets and environmental flows for Murray Darling Basin water do not appear to follow our common sense.
3. The Murray Darling Basin Plan was supposed to give traditional, indigenous custodians of the land a voice in the operation of the plan which would allowed us to contribute important information and advice relevant to the efficient operation of the markets in water rights: for example, the knowledge that water flows into the ocean should substantially decline in a drought and then substantially increase when it is wet. Lack of access to market information and a mechanism for our voice being heard.

#### Purpose

The purpose of this document is to articulate the requirements of Wamba Wamba Aboriginal Land Council from the Murray Darling Basin Plan and its water markets:

1. Opportunity for Reconciliation. Indigenous people working together with farmers as neighbours and collaborators in defending and developing rural communities.
  - a. We believe this crisis represents an opportunity for indigenous people to demonstrate our commitment to families who are our neighbours and who have a desperate need for access to water for their survival during a drought and who cannot afford to pay the outrageous prices for water as speculators, politicians and foreign corporations and other institutional investors bid up its price during droughts that are unsustainable for the "residents"
  - b. The Federal Government is set up to "listen" to the NFF and other institutions and not to people such as small holding irrigation farmers nor to indigenous groups who have a legislated and legal (local, national and international) right to be heard.
  - c. Wamba Wamba Land Council do not want our claim to be transferred to an indigenous advisory committee in Canberra, Melbourne or Sydney. This is an initiative of local Aboriginal Land Councils to benefit our members, the wider community and local farmers. We believe that one of the key regulatory and institutional issues we face as participants in the water market is that individually we are small and disaggregated and so larger participants in the market, including their lobbyists, have a disproportionate and inappropriate control over air-time with decision-makers including State and Federal politicians. We believe that institutions that regulate the market for water prices should have a loud voice in the form of the indigenous communities and our neighbours, the family owned farms that live on the land near the rivers and who's interests in water for irrigation and conservation,

Section 100 of the Australian Constitution has traditionally protected as an explicit obligation.

2. Respect as traditional custodians of the land and its waters. But that doesn't mean indigenous people should be pigeon-holed. It means their role as custodians is modernised for the 21<sup>st</sup> century and respected.
3. Respect for indigenous culture and the contribution it can deliver to enhance outcomes for everyone. In return we ask that you give fair consideration to how our culture can help you better achieve your goals - for example, Aboriginal beliefs, are water is part of the landscape, and it's ownership cannot be detached from the people and places where it is used.
4. Aboriginal voice at the table – re efficient and effective operation of the Murray Darling Basin Plan (i.e. common-sense voice at the table). Not as an adviser in some side group, but with a seat with the decision-makers at the top table and in all the various sub-groups beneath.
5. Aboriginal voice at the table – re management of the mechanism responsible for allocating water between environmental flows and irrigation flows during floods and droughts. Prevent the obscenity of water flowing out to the ocean during a crisis.
  - a. Australian superannuation funds and other institutions have been investing heavily in the newly created arable land for which water has been overallocated. That then creates a conflict over water resources with other users of water, including in particular indigenous groups and family owned farms. The overallocation of water is unsustainable, particularly during a drought as everyone competes for finite and declining and available water resources to keep their cows, vines and trees alive. That has created the current situation, in which all irrigators, including foreign owned farms, farms owned by superannuation companies as well as family owned farms start to eye off diversion of environmental flows to irrigation in order to keep orchards and pastures alive during the drought. And we do not know how long it will last or whether the current predictions of more frequent droughts, higher temperatures, lower rainfall and greater evaporation is going to result in permanent damage to the environment.
6. Aboriginal voice at the table defending the interests of rural communities in the water.
  - a. The objectives of water markets have not been achieved. In particular, because the market regulator has taken an incorrect definition of “efficiency” and “most productive user” that are not supported by the traditional interpretation of Section 100 of the Australian Constitution. Water is a unique commodity because it is part of the landscape. Thus, a measure of the “efficient” use of water needs to reflect the geographic location or region where it is being used. And a most efficient user of water was never defined as one that takes its revenues and profits away from the region around the rivers. It is not an “efficient” use of water to allow speculators to strip assets from desperate farmers including indigenous farmers who are trying to protect their investment in stock during a severe drought.
7. Aboriginal voice at the table defending the environment's need for water.
  - a. The Wamba Wamba Land Council is deeply sympathetic to the interests of our neighbours and in particular farmers whose families live here near the rivers of the Murray Darling Basin. We believe the mechanism at the heart of the Murray Darling Basin Plan, which defines water as either for irrigation or for environmental purposes, is fundamentally flawed. The mechanism that allocates water between irrigation and environmental does not reflect the voice of indigenous people, who managed the land and water for thousands of years and who have a common sense perspective to share with local, family owned farms, as we both watch enormous

amounts of so called “environmental water” flowing out to the sea in the middle of a drought.

- b. We do not believe anything should be done to reduce environmental water because we believe the hand of corrupt politicians have already been busy at work reducing the amount of water that is available to sustain the environment. However, as traditional custodians of the land and water we would like to have a say about how water that has been set aside for the environment is used during a drought. In particular, we are conscious that this drought is threatening the survival of our neighbours, the families that live on family owned farms. And so, as has always been the tradition of indigenous peoples during times of hardship that threatens survival, we want our voice to be heard as we advocate for common sense on behalf of farming families and for restoration of our own right to a voice in the sustainable management of the land including rollback of overallocation of water to land owned by institutions and not by people, for the role of brokers in the efficient allocation of water, for the elimination of speculators
  - c. We believe in the management of economic resources for communities for social / economic purposes and we believe environmental allocations are about preservation of the landscape for fish, for the 50 year old cod, and today we see potential for management of the water to conserve both the natural ecosystem as well as the economic ecosystem insofar as it relates to protection of rural communities including in particular the interests of small holding farmers in the midst of a terrible drought.
8. Aboriginal voice at the table defending family’s need for water.
    - a. We believe that the market for water suffers from inelastic demand during a drought. We believe that water speculators in particular can exploit water users (and especially those traditionally defined as “residents” within Section 100 of the Constitution who have a need to keep their cows, trees or vines alive, can have their need used against them by speculators who simply have a want to profiteer off family owned and indigenous farms during a crippling drought.
    - b. We also believe that if local indigenous land councils were given their legal right to a voice within the institutions responsible for the operation of water markets, our ancient understanding and role as custodian of the land could be used to improve the efficiency of the market, in particular in terms of our evaluation of the amount of environmental water that can be made available to participants in the market who are users of water.
  9. Aboriginal voice at the table evaluating new technologies options (such as desalination, harvesting the artisan basin, solar and nuclear energy, floodplain harvesting and anything more drastic if climate conditions substantially worsen).
  10. Good jobs including exciting career paths for indigenous Australians.
  11. A right to support our neighbours during a drought because water is their lifeblood, just as it is ours and we recognise that.
  12. Transition to ownership and operation of profitable enterprises because profit is sustainable and will free indigenous Australians from the life-destroying scourge of welfare and handouts.
  13. A right and an ability to stand with farmers with families against large corporate interests, foreigners and speculators.

14. The right and an ability to call for a judicial review or Royal Commission into the water markets, particularly when Federal politicians on both the right and the left are not holding each other to account for their parliamentary disclosure obligations.
  - a. Sometime during the past two decades Section 100 appears to have been diminished by detaching water ownership from the land and via the Federal Government signing an external treaty on the environment that was then used in conjunction with the Franklin River precedent to override the constitutional protects for residents. We would like the ACCC to investigate and disclose whether any current or former politicians in either the Federal Parliament or the State Parliaments of Queensland, Victoria and New South Wales had undisclosed water holdings and/or engaged in trading of water. We would like to decide for ourselves if those politicians may have been inappropriately influenced them in voting in Federal or State parliaments on legislation relevant to the operation of water markets.
15. The use of water and land management was our right but in recent years it has been presented to Aboriginal people as a privilege. There should be a (balanced) return of this right to indigenous Australians. "Balanced" means governance for all local "residents" (neighbours, including families on farms).
16. A voice at the table to ensure water allocation mechanism prices in rare events such as the need to maintain food supplies during the coronavirus (as opposed to a pricing mechanism that redirects production away from food towards cotton).
17. A right to convene a dialog between indigenous water users as traditional custodians of the water and land and other end users of water including farmers with families (neighbours). The bush tradition of neighbours helping neighbours sits well with us because it is consistent with our own traditions.
  - b. The Wamba Wamba Land Council would like to establish a dialog with the local grower associations who represent our neighbours (farmers with families who live by the water and for whom the water is their lifeblood and thus who share our interest in safeguarding the right of access by market participants who are our neighbours because we believe these are some of the Residents that the Australian Constitution and we share common ground.
  - c. Indigenous groups have never had a good experience in our attempts to work with the NFF and so we would now like to work directly with the local grower associations (as opposed to national associations) to find solutions to their need for water during a drought, because we believe those local associations better reflect the interests of our neighbours including families who own farms.
18. Aboriginal voice at the table, articulate a concern that government has not heard the message of the overallocation of water to land for irrigation purposes and that new land continues to be opened up. The current model lacks a common sense voice at the table.
  - d. Governments in Victoria, NSW and South Australia have overallocated water by opening up enormous tracts of land for irrigation to big corporate interests, thus allowing them and their deep pockets to compete directly with the interests of small holding farmers an indigenous peoples and thereby dramatically increasing the risk that during a drought, small holding farmers will be wiped out of Australia's rural economy. Big almond growers are just like dairy farmers and stonefruit, table grape and orange growers ... during a drought they simply MUST have water to keep their trees alive. So, in an environment where water has been overallocated, during a drought, small holding farmers will be guaranteed to be wiped out by the water speculators and the big guys. Water speculators ("blood sucking parasites") produce

nothing and make enormous profits during a drought. Whilst farmers use water to produce food for our tables and during a drought their cows, vines and trees die because they can't compete for water with the big guys.

19. An right and an ability for indigenous Australians to insert agility together with their voice of common sense into the Murray Darling Basin Plan, so that unexpected adverse outcomes can be quickly identified and resolved. E.G. severe drought. Corona virus. Etc.
20. An indigenous right and voice to call for transparency in water markets, including in particular who owns / has owned water rights. Investigation into politicians holdings of water rights (trust but verify).
21. An understanding by all participants in the Murray Darling Basin water markets that the pricing strategy for water may have consequences for risks of exploitation of workers in agriculture. Understanding of the relationship between Modern Day Slavery and pricing of inputs such as water into agriculture production.
22. An indigenous voice at the table on the proper operational functioning of the market including in terms of the role of participants such as speculators and investors in water who aren't end users.
23. An indigenous voice at the table to explain to non-indigenous Australians that water is a unique, sovereign asset on a dry continent. Clearly, water is not just another commodity because without water, people including families, small farmers and indigenous peoples cannot survive. Sovereign is defined as people (Australians).
24. An indigenous voice at the table to call for a review the decision to separate water ownership from the land. That enabled water prices to be bid up by stakeholders who were not previously included in the definition of "Residents", who could then profiteer against family owned farms and strip assets away from rural communities to the big cities and to overseas investors without a direct connection to the land.
25. An indigenous voice at the table that allows us to define for ourselves who our neighbours are. Investors who live outside our communities do not share our common interest with our neighbours in the waters of the Murray Darling Basin as the lifeblood of our small communities.
26. The impact of the loss of the right of Aboriginal Groups who live along the river to manage the land has been a loss of purpose among young Aboriginal people. We understand you have declared out of scope consideration of the social and economic impacts of the people who live near the water and whose rights as participants in the market for water was traditionally protected by the Australian Constitution. We point out that one way to articulate what happened to indigenous people in our loss of our right to manage the land and water is to compare what happened to us with what is happening right now to family owned farms in their interest in the water under the Murray Darling Basin Plan. And therein, we believe we may have common ground with our neighbours with families who live on the land near the water and who own farms.
  - a. Voice for indigenous peoples as traditional custodians and managers of the land and water and as represented by the Land Councils of the First Nations who live on the land beside the rivers (decentralised as opposed to centralised governance model for indigenous interests in the water)
27. Control / influence / management control over water, particularly environment flows, so that indigenous people can achieve our goals.
  - e. Our interest in this particular regard can be described as "access to water via the market mechanism"

28. Indigenous voice at the table able to contribute to the interpretation of “resident” in the Australian constitution.
  - f. Thus “Residents” includes indigenous groups (today represented by Land Councils) and small family owned farms who live on the land by the rivers (i.e. people with a direct connection to the land). We do not believe “Residents” should be defined as including large institutional investors in the land, nor foreign owned corporations, speculators and politicians who have undisclosed conflicts of interest.
29. We are happy to receive advice from subject matter experts who live in the big cities, but the plan for how the water should be used should in the first instance be made at a decentralised or local level, perhaps with oversight from people living in the big cities.
30. The issue that most indigenous users and farmers face is that they are people and small to medium sized businesses and unlike big listed corporations, they do not have the ability to tap liquidity (cash) from global capital markets during a drought. By contrast to corporations with deep lines of liquidity, often the only way small farmers can survive a drought is to sell their water. Then their businesses are lost. It might be that the water market was set up by bankers to enable competition for water from large, listed corporations who are more likely to survive a drought than small family owned farms because large corporations have a greater capacity to borrow during lean times. An indigenous voice may call for a fair working capital solution to help address these liquidity issues for farmers with families.
31. Gated transition processes
  - a. Transition from the current Murray Darling Basin Plan, which defies common sense, to a better, common sense solution developed by indigenous people in consultation with farmers with family owned farms and rural communities.
  - b.
  - c. We are under no illusions that if Aboriginal Groups have unrestricted control over environmental water, that they would be targeted by the same narrow corporate and special interests that have already corrupted our politicians. Therefore, we propose a mechanism whereby we own and manage environmental water in trust as custodians [past issues with “trust”] with a common sense and transparent mechanism for managing the water, which reflects environmental conditions. We are willing to give a blocking vote for our plans to [parliament ?], because whilst we are excited about the possibility of good careers for Aboriginal people that could come from this, we are also aware of the risk of further destruction to Aboriginal lives if we get the governance and operational structure wrong.
  - d. Management of economic resources for communities – social / economic, murray cod. Environmental allocations are about preservation of the land for fish and today we see potential for management of the water for conservation of both the natural ecosystem as well as the economic ecosystem insofar as it relates to protection of rural communities including in particular the interests of small holding farmers.
  - e. We believe consideration should be given to a governance, operational and pricing model for water markets that will incentivise investing equity of funds in the infrastructure required to efficiently manage the distribution including monitoring the extraction of water. Creation of a national asset that contributes to better water management and the efficient operation of water markets will deliver better outcomes for market participants including in particular, indigenous and family farmers and career opportunities for young Aboriginal people.



- f. Transition from the current Murray Darling Basin Plan, which defies common sense, to a better, common sense solution developed by indigenous people in consultation with farmers with family owned farms and rural communities.
- g. Voice for indigenous peoples as traditional custodians and managers of the land and water and as represented by the Land Councils of the First Nations who live on the land beside the rivers (decentralised as opposed to centralised governance model for indigenous interests in the water)
- h. Voice particularly focused on the use and trading of environmental waters, including in particular as part of reallocation of environmental water to irrigation market participants during a severe drought.
- i. Voice on the development of new land for irrigation including the potential for overallocation of land for available for irrigation purposes.
- j. Voice in the development and operation of Murray Darling Basin water markets, able to use national and international recognition to cut through red tape that may be constraining the efficient functioning of the water markets, including metering and inconsistent laws that may be constraining the development and deployment of sustainable, new fresh water sources.
- k. To kick things off, we call for a dialog between indigenous peoples as traditional custodians of the land and its water with farmers of family owned farms (as represented by individual growers and local grower associations). Because between us and the people living in rural communities, this question as to how water markets operate is ours because there are still enough votes in rural electorates that if we (indigenous groups, family farms and communities) work together effective as a team, we can control our shared destiny in relation to water, the lifeblood of the land.
- l. We would like the ACCC to require the government to fulfil its commitment to give indigenous peoples a voice in the management of the water markets, including management of both environmental flows and irrigation flows. We want the ACCC to allow indigenous groups to use their legal right to a voice in the management of the water markets to better protect environmental flows and to use our voice to restore the protection of family owned farms who were traditionally protected by Section 100 of the Australian Constitution before it was reinterpreted by politicians through a series of mechanisms that might have been designed to thwart their constitutional protections in favour of new market participants including large corporations, superannuation funds, foreign investors and speculators.
  - i. This should be part of the gated process, transitioning indigenous people into water markets.
  - ii. We understand that there may be some resistance to granting indigenous Australians a role managing irrigation flows.
- m. We want a commitment to replace the current, deeply flawed markets for water from the Murray Darling Basin with a transparent, gated process with a series of pilots to gradually build capacity among indigenous peoples so they can most effectively deploy their voice at the table in the regulation, development and operation of the Murray Darling Basin water markets.
- n. We hereby call for transitional arrangements, from the current management and operation of the markets for water from the Murray Darling Basin, which defies common sense, to a new model that is designed to use common sense, including in

relation considerations for the management and allocation of environmental water during a severe drought.

- o. We ask for a transitional arrangement as we move to a more efficient model for the allocation of water that:
  - i. Avoids sudden shocks to the market;
  - ii. That constrains new commitments by politicians and governments to further overallocation of land for irrigation purposes that is being acquired by participants in the water markets who do not have the traditional constitutional protections of “residents” and which allows existing commitments to be unwound in an orderly fashion;
  - iii. To provide time for capacity building among indigenous stakeholders in the water markets of the Murray Darling Basin.