





Submission to the ACCC Water Markets in the Murray Darling Basin Interim Report

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About NSW Farmers

A profitable and sustainable New South Wales farming sector

The NSW Farmers' Association is Australia's largest state farming organisation representing the interests of its farmer members.

Farmers across New South Wales produce about \$12 billion worth of food and fibre every year, representing around one quarter of Australia's total agricultural output. Our state's unique geography means a wide variety of crops and livestock can be cultivated and nurtured. NSW Farmers is Australia's only state-based farming organisation to represent the interests of farmers of all agricultural commodities – from avocados and tomatoes, apples, bananas and berries, through grains, pulses and lentils to oysters, cattle, dairy, goats, sheep, pigs and chickens.

Our focus is not just on issues affecting particular crops or animals – it extends to the environment, biosecurity, water, economics, trade and rural and regional affairs. We also have an eye on the future of agriculture; we are advocates for innovation in agriculture, striving to give our members access to the latest and greatest innovations in research, development and extension opportunities. Our industrial relations section provides highly specialised advice about labour and workplace matters.

Our regional branch network ensures local voices guide and shape our positions on issues which affect real people in real communities. Members are the final arbiters of the policies of the Association – through our Annual Conference and elected forums such as Executive Council, members can lobby for the issues which matter to them and their community to become Association policy. Our issue- and commodity-specific Advisory Committees are elected by members to provide specialist, practical advice to decision makers on issues affecting the sector. We are proudly apolitical – we put our members' needs first.

In addition, NSW Farmers has partnerships and alliances with like-minded organisations, universities, government agencies and commercial businesses across Australia. We are a proud founding member of the National Farmers' Federation.

Executive summary

NSW Farmers Association (NSW Farmers) welcomes the opportunity to provide comment on the Australian Competition and Consumer Commission (ACCC) Interim Report into Water Markets in the Murray Darling Basin.

NSW Farmers have a number of concerns regarding the evolution of the water market. Our members believe there is a lack of transparency in the water market and that the market has matured in a way that was not intended. Emerging market trends are having impacts on water prices, availability, and deliverability and creating third party impacts.

NSW Farmers supports a fair and robust water market that underpins viable and resilient communities throughout the Murray Darling Basin (the Basin). Water trading is a valuable tool for businesses to manage their individual water needs, with water trading in the Basin worth approximately \$2 billion annually.

NSW Farmers supports a well-designed water market that avoids third-party impacts. The water market has provided flexibility to allow farm businesses an input that can be bought or sold and make decisions to manage through variable climates and water availability. It is vital that the water market operate to support the achievement of these objectives.

NSW Farmers agrees that the water market requires comprehensive reform to address the following issues identified in the interim report:

- Conduct of market participants;
- Trade processes and market transparency;
- Improving market architecture; and
- Market governance.

As a relatively new market and one which has grown in the past decade it is clear that the institutions, rules and regulations and governance frameworks have not developed to accommodate a market of this scale, and are no longer appropriate.

NSW Farmers supports appropriate and effective reform to address serious problems with the water market. However, many of the suggested reform options provided in the Interim Report lack specific details, cost analysis, and advantages and disadvantages analysis. Therefore, NSW Farmers requests that the ACCC provide thorough assessment of possible reform options in the Final Report, and conduct further consultation with water users, to facilitate shaping the optimal reforms. Given the significance of the potential reforms, NSW Farmers recommends that the ACCC conduct a secondary public consultation on a possible 'Draft Reform Package', before finalising any reform options as final recommendations.

NSW farmers expects an outcome from the reform options for the regulation of water markets resulting in balance in the market, where large or investor participants in the water market do not prevent the cost efficient availability of water to all users. The combination of changes to

governance, transparency and delivery of water should not dictate a market outcome where present and future farming development is restricted by water market dominance. This can lead to a restriction of opportunity and variety of on-farm decisions with a long term effect on the viability of not only smaller operators, but also of market diversification and flexibility.

Conduct of Market Participants

In relation to the conduct of market participants, the ACCC identifies that:

- Water market intermediaries such as brokers and water-exchange platforms operate in a mostly unregulated environment, allowing conflicts of interest to arise, and opportunities for transactions to be reported improperly;
- There are scant rules to guard against the emergence of conduct aimed at manipulating market prices, and no particular body to monitor the trading activities of market participants;
- There is significant distrust in the role of major investors in water markets, creating questions about the fairness of the markets and whether they are working in the interest of all participants and the interests of the nation.

NSW Farmers agrees that there is insufficient regulatory oversight, and enforcement and compliance activity, in relation to the practices of some market participants. The perception of misconduct are enough to significantly undermine confidence in water markets, therefore, NSW Farmers supports greater regulation of brokers and intermediates and is seeking that all brokers and intermediates are licenced.

The Interim report proposes three options for consideration to improve the conduct of market participants:

1. 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.
2. Application of the financial-regulation framework to 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.
3. An independent, market-focused regulator: This option envisages establishing a market-focused regulator. This could involve creating an entirely new body, or involve 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.

NSW Farmers would like to seek a cost-benefit analysis of the three proposed options to understand any additional costs that may be imposed by the proposed options. NSW Farmers supports greater regulation, however, the response must be proportionate and cost-effective to minimise the cost burden to farmers. The option that is selected must harmonise with existing regulation and be flexible to respond to emerging issues in the market.

NSW Farmers is supportive of options one and two in principle. NSW Farmers supports greater regulation of brokers and intermediates and is seeking that all brokers and intermediates are licenced. A commonwealth government initiated licencing framework harmonised across the Basin States is a flexible option that can be tailored to address existing issues. However, as the licensing powers sit with state governments, a commonwealth government initiated licensing scheme may be difficult to establish as it requires agreement by all relevant states. Although, as many brokers operate across jurisdictions, a consistent and harmonised licensing scheme is required. Additionally, a proposed licensing scheme should be made as simple as possible and with minimal costs as to not impact the number of brokers, therefore reducing competition.

The proposal to apply the financial regulation framework to water products is mostly supported as a robust regulatory framework is required to protect both brokers and their clients. There is value in complex water products being subject to this framework.

The introduction of a market-focused government regulator is not a preferred option as this option is likely to result in high costs to implement and administer, which would be passed onto the end user. A number of benefits that a regulator may provide could be delivered through other lower cost means such as instilling confidence, monitoring and undertaking enforcement actions and creating transparency and certainty.

Improving Trade Processes and Market Transparency

In regards to trade process and market transparency, the ACCC identifies that:

- There are information failures which limit the openness of markets and favour better-resourced and professional traders who can take advantage of opportunities such as inter-valley trade/transfer openings;
- Differences in trade processes and water registries between the Basin States prevent participants from gaining a full, timely and accurate picture of water trade, including price, supply and demand.

NSW Farmers supports the need to improve transparency and accessibility of market information. Readily available information including price, location and volume, provide market participants with the information required to make informed decisions. Without transparency and improved functional capacity, trust in the water market and wider market reforms is being eroded and the ability of the water market to deliver the social, economic and environmental objectives of the Murray Darling Basin Plan is greatly diminished.

The objectives of reform options aimed at improving market transparency should focus on improving the quality, timeliness and accessibility of information. Improvements to processing and transparency must also maintain the integrity of the market processes.

Trade Processing

NSW Farmers agrees with the ACCC’s statement that there is a need to make practical changes to trade processing, to improve the quality and timeliness of core market data. The immediate task should be to resolve existing issues with trade processing with the longer term aim that market data provides a clear view of market operations across the Basin.

NSW Farmers provides comment of the ACCC recommendations below:

ACCC Recommendation	Comment
<p>1. Basin States to improve trade data validation and quality checking processes before providing data to the Bureau of Meteorology (BOM) as required under the Water Regulations 2008 (Cth).</p>	<p>Supported.</p> <p>NSW Farmers supports processes to improve data validation and quality to ensure there is confidence in market information.</p> <p>NSW Farmers understands that the data published by BOM is collected by the states. There is a need to assess what information is reported, ensure there is consistent and harmonised information provided by the states and that any information gaps are closed.</p>

<p>2. Update trade application forms to capture the reason for trade or trade type, struck date, lodging party and matching pathway—for example, matched on exchange or via broker</p>	<p>Supported.</p>
<p>3. Removing the ability for zero dollar trades to be approved or recorded unless certain conditions are met (as exception, and with explanation provided) and continue progress to move trade forms online</p>	<p>Supported.</p> <p>The rules for zero dollar trades should be restricted to ensure they are used in legitimate circumstances. WaterNSW has updated their allocation assignment trade form to include 12 reasons to select from to identify the reasons for trade.</p> <p>The MDBA’s audit of water trade price reporting also identified that where a price is submitted as zero, a reason for the zero dollar trade must be provided.</p>
<p>4. Increasing harmonisation across the Basin States’ registers by working towards consistent terminology and data structures.</p>	<p>Supported.</p>

Mandates

The practical changes identified above need to be underpinned by clear and comprehensive mandates to provide efficient trade services and high-quality information to market participants.

NSW Farmers provides comment of the ACCC recommendations below:

<p>ACCC Recommendations</p>	<p>Comments</p>
<p>5. Each Basin State should have a clear legislative mandate to keep a register to record all entitlement trades and all allocation trades.</p>	<p>Supported.</p> <p>NSW currently has a water register for owners of water entitlements, however there is a gap for a register of allocation trades. The role and function of state registers need to be specific and standardised. NSW Farmers is also seeking the establishment of a register for foreign owned water entitlements.</p>
<p>6. Each Basin State water register should have a clear legislative mandate to provide information services based on registry data, and clear publication requirements should be specified</p>	<p>Supported.</p> <p>Water registers provide a legal record. Therefore, reported trades must go through a due-process and assessment requirements.</p>

(although detailed requirements should be specified in delegated legislation such that they can be changed from time to time as needed).	Adequate privacy protections are important to the publication of information. Legislation (or delegated legislation) should protect the privacy of personal information.
7. Update Water Regulations 2008 (Cth) to more clearly specify data reporting requirements for trade of irrigation right.	Supported.
8. Create the ability to register contracts with water registers and/or annotate allocation trades conducted pursuant to a contract with an identifier such that all allocation trades arising under one contract can be identified together.	Supported.
9. Introduce standardised single party identifiers across the Basin, for example using ABNs.	Supported. The identifier should remain confidential, so that personal details are not made available. Therefore, the ABN option is not supported.
10. Standards and agreed processes for processing trade applications and recording and disseminating trade data should be mandated. These should apply to all entities engaged in processing trades—including exchanges, IIOs and Basin State approval authorities.	Supported. Standards and agreed processes are necessary to facilitate greater transparency.
11. Basin States should work towards harmonising trade application fees for allocation trade in the Southern Connected Basin, while also recognising the National Water Initiative principles for cost recovery.	Supported.
12. Basin Plan trading rule 12.48 should be revised to require prices to be reported for all tradeable water rights; that is, including irrigation rights and water delivery rights, not only water access rights	Supported.

Digital Technologies

Digital technologies offer the opportunity to streamline trade services, at the same time as improving information quality and availability.

NSW Farmers provides comment of the ACCC recommendations below:

ACCC Recommendations	Comments
<p>13. 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.</p>	<p>Supported.</p> <p>A digital protocol would facilitate a set of rules for trade-related information which would be positive for harmonisation of information.</p>
<p>14. A single information portal for publishing water availability and trade information, which collates data from multiple sources, but does not facilitate trade.</p>	<p>Supported.</p> <p>Markets participants would benefit from a single digital platform of water market information, collating data from multiple sources. This would assist to overcome issues of fragmentation.</p>
<p>15. A single exchange platform for posting and matching trade offers by creating a single mandatory online platform for matching buyers and sellers.</p>	<p>Not Supported.</p> <p>The proposal for a single exchange platform for posting and matching trades is not supported as it is likely to increase transaction costs and reduce competition in the market.</p>

Foreign Ownership of Water

NSW Farmers suggests that the ACCC carry out investigations into foreign owned water and how this may be interacting with the water market and the ability of locally owned business to access and trade water. NSW Farmers would like to see the establishment of a register for foreign owned water entitlements to improve the openness and transparency of the water market. A gigalitre (GL) or investment (\$) threshold would also be beneficial to provide an opportunity to review foreign investment in Australian water resources, similar to the threshold test for the acquisition of Australian agricultural land. NSW Farmers suggests that the ACCC undertake investigations as to whether a social and economic test would be beneficial to reduce potential negative impacts on the water market by foreign owned businesses. NSW Farmers Association also would request a detailed examination is carried out on the purchasing ability of foreign investors that benefit from taxation concessions, increasing their competitive bias in the market.

Improving Market Architecture

In relation to market architecture, the ACCC Interim report identifies that:

- Important information, such as allocation policies and river operations policy, which can significantly impact water pricing, are inadequately communicated to the irrigators and traders who rely on these to make business decisions;
- There is a disconnect between the rules of the trading system and the physical characteristics of the river system;
- Rules creating water markets are extremely complex, and subject to cumbersome and complex decision making processes;
- Trade activity and use of water have changed and market rules may no longer be fit for purpose or efficiently manage delivery and storage capacity and conveyance losses may not be appropriately attributed.

Market architecture is integral in setting rules about where and when water can be traded. Existing market architecture has not kept pace with increasing trade activity. NSW Farmers suggests a considered response to the reform options for improving market architecture, due to the complexity and capacity to create unintended consequences. NSW Farmers suggest that further investigations and stakeholder consultation is required on the specific reform areas and options. Water users are seeking stability and certainty following a lengthy period of water reforms. Many irrigation dependent communities are experiencing reform fatigue and have reduced appetite for certain changes, especially those where the potential impacts are unknown or not well understood. Potential impacts of highest concern to water users are impacts on existing property rights, such as the reliability of entitlements, the stability of those entitlements, the affordability of water on those entitlements and accessibility.

NSW Farmers provides comment of the ACCC recommendations below:

ACCC Recommendations	Comments
1. Improvements to policy transparency and consultation processes.	Supported. The involvement of community members must be facilitated in consultation processes and decision-making to incorporate valuable local knowledge.
2. Alternative approaches for allocation and carryover policies, such as continuous accounting and capacity sharing.	Carryover is an important and essential risk mitigation tool. Carryover allows businesses to manage low reliability. Carryover rules are supported and seen to be working effectively in New South Wales. However, there should be investigations into improvements to carryover arrangements that can be made in the longer-term.

	<p>Any changes to allocation, accounting and carryover policies are high risks and any proposed changes must not erode entitlement reliability to utility.</p>
<p>3. The creation of formal markets for storage and delivery capacity.</p>	<p>Storage – formal markets for storage capacity would add complexity to an already complex system. Alternatively, focus should be on better transparency and reporting.</p> <p>Delivery – implied rights to water delivery exist as part of water entitlements. Delivery shares may be supported for the specific purpose of addressing transmission losses. This proposed recommendation requires further investigation and detail.</p>
<p>4. Application of transmission loss factors to water deliveries in the southern connected Basin.</p>	<p>Transmission losses must be better regulated. Transmission losses is a priority issue that is currently occurring and requires immediate reform.</p> <p>Regulation should focus on reducing conveyance losses, rather than factoring conveyance losses into trade. This ensures that the maximum amount of water is retained within the productive pool.</p> <p>NSW Farmers is seeking for:</p> <ul style="list-style-type: none"> • The prevention overbank events in systems which are characterised by high transmission losses • A halt in the approval of all new irrigation developments in New South Wales downstream of the Barmah Choke until there is evidence that water can be delivered without third party impacts • Stronger regulations of new irrigation developments to take into consideration impacts on the total resource and river operations. <p>Delivery risk is related to transmission losses, therefore a better understanding of how</p>

	delivery risk will be managed is also required to address transmission losses.
5. Alternative and more dynamic mechanisms to manage inter-valley trades	Inter-valley trade arrangements are supported, however, NSW Farmers would like to see consideration of options to strengthen and improve the operation of inter-valley trade accounts in the medium to long term.
6. Improving consistency across Basin States' accounting and metering requirements.	Supported.

Education

Also of concern is the capacity of many farmers to participate in a market that is so complex, especially where reliable market information is scarce and difficult to find. The level of expertise and experience required to navigate the complexity of the water market unfairly advantages professional and institutional investors, notwithstanding that all farmers who rely on regulated water sources must participate in the market. The knowledge of market operations and processes, particularly what is available to them may be limited. The Government should be more proactive in ensuring that market participants are aware of the options available to them and processes. NSW Farmers encourages the ACCC to investigate possible recommendations for addressing knowledge gaps of market participants.

Changes to Governance

The ACCC identifies that:

- Overarching governance arrangements, such as fragmentation and overlap of roles between governing bodies, contribute to the problems identified in this interim report, or prevent them from being addressed.
- Governance issues have impeded past reform efforts, with the result that some problems which have long been raised by stakeholders, and which have previously been acknowledged by governments, continue to persist.
- The ACCC's preliminary view is there is a need to realign governance frameworks to focus on the development, oversight and regulation of markets.

NSW Farmers strongly supports improvements to strengthen market governance. Market governance is the foundation to an effective water market. The benefits of water trading rely upon a fair and efficient water market, underpinned by an environmentally healthy river system. Market participants require a robust governance system in which they can have confidence in and ensures that trading rules and regulations are developed with a Basin-wide perspective.

The ACCC Interim Report identified significant issues with existing governance arrangements across the Basin that has contributed to regulatory fragmentation, overlapping roles and complexity. The existing arrangements had not been designed to accommodate a market of this scale. Industry behaviours must be better understood and integrated into the decision making framework. This will require the inclusion of industry in strategic and administrative decision making.

NSW Farmers supports the proposed recommendations in the ACCC interim report, to:

- Establish clear, independent decision making structures
- Separate market governance roles from broader water management governance
- Consolidate or harmonise fragmented roles
- Reduce regulatory gaps by creating and assigning new roles or functions
- Address conflicting roles.

Conclusion

NSW Farmers appreciates the opportunity to provide comment on the ACCC Interim Report into Water Markets in the Murray Darling Basin. NSW Farmers supports appropriate and effective reform to address serious problems with the water market and agrees that the water market requires comprehensive reform to address the following issues identified in the interim report:

- Conduct of market participants;
- Trade processes and market transparency;
- Improving market architecture; and
- Market governance.

NSW Farmer's appreciates the significant amount of work the ACCC has undertaken to understand the complex water market and propose reform options. We encourage the ACCC to undertake further investigations and provide thorough assessment of possible reform options in the Final Report.

NSW Farmers are happy to provide further information about the issues raised in this submission, if this would be helpful to the ACCC.