

Level 5, 491 Kent Street,
Sydney NSW 2000

PO Box Q640,
Queen Victoria Building NSW 1230



Tel: 02 9264 3848
nswic@nswic.org.au
www.nswic.org.au

ABN: 49 087 281 746

ACCC Murray-Darling Basin Water Markets Inquiry

Interim Report

October 2020



Contents

| | |
|---|----|
| Introduction to NSWIC..... | 3 |
| NSW Irrigation Farming..... | 3 |
| NSW Irrigators’ Council’s Guiding Principles | 4 |
| Acknowledgement of Country | 4 |
| Overview | 5 |
| Summary of Key Recommendations ^{*(non-exhaustive)} | 6 |
| PART 1: GENERAL COMMENTS..... | 8 |
| PART 2: REFORM OPTIONS | 11 |
| Reading this section | 11 |
| Conduct of Market Participants..... | 12 |
| 1) Regulatory Oversight | 12 |
| Improving trade processes and market transparency | 16 |
| 2) Trade Processing..... | 17 |
| 3) Mandates..... | 18 |
| 4) Digital Technologies | 21 |
| Improving market architecture | 25 |
| 5) Design of market architecture | 26 |
| Changes in market governance..... | 32 |
| 6) Governance Frameworks | 32 |
| Conclusion | 33 |



Introduction to NSWIC

The NSW Irrigators' Council (NSWIC) is the peak body representing irrigation farmers and the irrigation farming industry in NSW. Through our 18 member organisations, we represent over 12,000 water access licence holders in NSW who access regulated, unregulated and groundwater systems. Our member organisations include valley water user associations, food and fibre groups, irrigation corporations and commodity groups.

NSWIC policy is centred on creating a **sustainable** and **productive** irrigation industry in NSW, with **secure** water access. Our sector is committed to being world-leaders in water-efficient, ethical and sustainable food and fibre production, while supporting healthy river environments.

Irrigation farmers are stewards of tremendous local, operational and practical knowledge in water management. NSWIC is a valuable way for Governments and agencies to access this knowledge. NSWIC offers our collective expertise to ensure water management is secure, sustainable and productive. As an apolitical entity, NSWIC provides advice to all stakeholders and decision makers.

NSWIC welcomes this opportunity to provide a submission on the ACCC Interim Report on the Murray-Darling Basin Water Markets Inquiry. Each member reserves the right to independent policy on issues that directly relate to their areas of operation, expertise or any other issues that they deem relevant.

NSW Irrigation Farming

Irrigation farmers in NSW produce the food and fibre we all enjoy – from fruits, vegetables, dairy, nuts, meat, cotton, grains and wine – while being an important contributor to our regional and national economies.

Irrigation farmers in Australia are recognised as world leaders in water efficiency. According to the Australian Government Department of Agriculture, Water and the Environment:

“Australian cotton growers are now recognised as the most water-use efficient in the world and three times more efficient than the global average”¹

“The Australian rice industry leads the world in water use efficiency. From paddock to plate, Australian grown rice uses 50% less water than the global average.”²

Our water management legislation prioritises all other users before agriculture (critical human needs, stock and domestic, and the environment), meaning our industry only has water access when all other needs are satisfied. Our industry supports and respects this order of prioritisation. Many common crops we produce are annual/seasonal crops that can be grown in wet years, and not grown in dry periods, in tune with Australia's variable climate.

Irrigation farming in Australia is also subject to strict regulations to ensure sustainable and responsible water use. This includes all extractions being capped at a sustainable level, a hierarchy of water access priorities, and strict metering requirements.

¹ <https://www.agriculture.gov.au/ag-farm-food/crops/cotton>

² <https://www.agriculture.gov.au/ag-farm-food/crops/rice>



NSW Irrigators' Council's Guiding Principles

| Integrity | Leadership | Evidence | Collaboration |
|---|--|---|--|
| Environmental health and sustainable resource access is integral to a successful irrigation industry. | Irrigation farmers in NSW and Australia are world leaders in water-efficient production with high ethical and environmental standards. | Evidence-based policy is essential. Research must be on-going, and include review mechanisms, to ensure the best-available data can inform best-practice policy through adaptive processes. | Irrigation farmers are stewards of tremendous knowledge in water management, and extensive consultation is needed to utilise this knowledge. |
| Water property rights (including accessibility, reliability and their fundamental characteristics) must be protected regardless of ownership. | Developing leadership will strengthen the sector and ensure competitiveness globally. | Innovation is fostered through research and development. | Government and industry must work together to ensure communication is informative, timely, and accessible. |
| Certainty and stability is fundamental for all water users. | Industry has zero tolerance for water theft. | Decision-making must ensure no negative unmitigated third-party impacts, including understanding cumulative and socio-economic impacts. | Irrigation farmers respect the prioritisation of water in the allocation framework. |
| All water (agricultural, environmental, cultural and industrial) must be measured, and used efficiently and effectively. | | | Collaboration with indigenous nations improves water management. |

Acknowledgement of Country

NSWIC acknowledges the Traditional Custodians of the lands and waters across NSW, and pays respect to Elders past, present and emerging. NSWIC recognises and supports the traditional and cultural uses of water by Aboriginal people.



Overview

NSWIC welcomes the ACCC Interim Report, and considers this Inquiry a significant opportunity for positive reform to improve regulatory and policy settings for water users, particularly in the Southern Basin. NSWIC agrees that comprehensive, immediate and decisive reforms are required to address market problems, but urges utmost due diligence in designing and delivering reforms to avoid adverse impacts and achieve optimal results. This must also include ensuring any increased regulation is proportional to the evidence found of problems or harmful effects of the current regulation.

NSWIC notes that this Inquiry largely arose following significant allegations about market behaviour and operations. It is essential for the ACCC in its final report to (1) determine if the allegations are substantiated and legitimate, and if so, the extent/severity, and what solutions are required to reach resolution; or, (2) to dispel any myths and rumours to restore confidence in the market. An underlying objective of this Inquiry and subsequent reform process is improving trust and confidence in the water market.

At this stage, NSWIC believes it would be premature to support or preference many of the suggested reform options, due to limited information on the specific details, costs, pros, and cons. NSWIC requests the ACCC to provide thorough assessment of possible reform options in its Final Report, and consult further with water users to shape the optimal reforms. Given the significance of the potential reforms, and that there is no simple solution, NSWIC recommends the ACCC conduct a secondary public consultation on a possible 'Draft Reform Package', before finalising any reform options as final recommendations. Alternately, the Final Report could be crafted as the first step in a reform process, setting out the pathway for further consultation to resolve the more complex issues identified.

NSWIC and our Members have diligently undertaken to provide the ACCC with the most-likely preferred reform options based on the information available, but we emphasise that these positions can only be preliminary until more specific details are provided. At the crux, the problems must be well-understood before successful solutions can be designed. To determine the positions provided in this submission, NSWIC has developed and applied the following criteria to each reform option.

Criteria for assessing reform options

- Cost-effective (i.e. minimal cost-burden);
- Proportional (i.e. to the extent/severity of the problem, the degree of risk, and the size of the market particularly in terms of participants);
- Justifiable (i.e. the 'problem' can be clearly articulated and evidenced);
- Fit-for-purpose (i.e. effective in addressing the problem);
- Minimal compliance burden;
- Avoidance of any reduction in competition;
- Avoidance of any cost-shifting;
- Avoidance of third-party impacts, particularly regarding impacts on the water entitlements of individuals not party to a trade;
- Simplicity (to avoid adding additional complexity where possible);
- Practical (i.e. can be implemented into the framework to achieve efficiencies and increased effectiveness)
- Adherence to the Principles of Best Practice Regulation.

While NSWIC agrees significant reforms are required, we also agree with the ACCC findings that water markets have led to many improved outcomes for water management and water users, and any drastic abolition would be a backward step. Reforms should be focused on addressing the issues and possible improvements, to deliver the best possible outcomes from water markets.



NSWIC respects that the market is operating within a natural and living river system, and the market must work within the physical natural system (not vice-versa). As key principles, the water market, and trade of water, should not have negative impacts on the environment, efficient river operations, nor on entitlement holders that are not party to the trade.

Summary of Key Recommendations ^{*(non-exhaustive)}

Conduct of Market Participants

ACCC to recommend a **Commonwealth-government-initiated licensing framework** for intermediaries, harmonised across States.

ACCC to recommend obligations are imposed on brokers, such as for **statutory trust accounts** and holding **professional indemnity insurance**.

Improving trade processes and market transparency

ACCC to recommend the development of a **single information portal** to collate information into a 'single source of truth' for water availability and trades, or at minimum, consistency across state platforms

ACCC to recommend **automation of trade processing** to allow for real-time data availability and price discovery. Standardisation of forms, harmonisation of terminology, structures and registers, are necessary steps to developing automated systems.

ACCC to recommend each Basin State has a clear legislative mandate to develop a **public water trade register** that could provide timely information on temporary and permanent trade, at a valley or zone level.

ACCC to pursue investigating the **ASX-like approach of a single clearinghouse** for administering trading as a medium-long term reform option, noting further investigation is required, including full disclosure of the potential costs associated with this option.

ACCC to not recommend a single exchange platform, given it would lead to the creation of a monopoly, high transaction costs, remove flexibility for peer-to-peer trade, and have only one price for water in each market.

Improving market architecture

NSWIC supports continuation of the state-based planning and entitlements frameworks.

ACCC to not recommend changes to carryover at this time.

ACCC to not recommend continuous accounting in southern valleys.

ACCC to note that formal markets for storage capacity, as an alternative to facilitate carryover parking, is not supported at this stage. ACCC to focus instead on better transparency and reporting of carryover parking trades.

ACCC to note that delivery shares may be supported but only for the specific purpose of addressing transmission losses, in specific circumstances where delivery demand is creating additional losses in the system.

ACCC to consider **transmission losses** as a priority issue, and that reform options should be based on maximising the water retained within the productive pool.

ACCC to thus recommend, as the primary reform option, preventing overbank events in systems with exceptionally high transmission losses.



As a secondary option, the ACCC to recommend establishing Individual Daily Extraction Limits (IDELs), or factoring transmission losses into trades.

ACCC to recommend the proposed reform option of improving consistency across Basin States' accounting and **metering requirements**, noting NSW is significantly ahead of other jurisdictions in meeting national frameworks.

Changes to market governance

ACCC to recommend reform options to **improve market governance** in the Final Report, noting these are largely pre-requisites to further market reform. Market governance objectives should ensure sustainable river operations and avoid third-party impacts.

Disclaimer: NSWIC recommendations have been developed based on the limited detail presently available on the specifics of the proposed reform options. NSWIC reserves the right to amend these positions on the basis of any additional information becoming available.



PART 1: GENERAL COMMENTS

Scope of Market Reforms

Many water policy issues evidentially sit tangentially to market operations, reflective of the interconnected nature of water management systems. NSWIC is concerned that many proposed reform options attempt to solve policy and planning problems with market solutions.

The Final Report should clearly specify what problem areas require a market solution, and what problem areas (while directly related to the market) require planning framework/policy solutions. Those areas that require planning framework solutions, while important to raise as issues, are larger than this Inquiry's scope and require further separate and extensive investigation. Market reforms should be the ACCC's priority area of focus, with recommendations for planning framework changes as a secondary focus.

Reform Pathway

Given the Interim Report suggests comprehensive and large-scale reforms, it is critical that the Final Report includes recommendations on the pathway to deliver these reforms. This is important to ensure reforms are delivered in an optimal way, while minimising market interference during the reform process and avoiding adverse impacts such as infringements on water property rights.

NSWIC recommends that a staged reform pathway is developed to prioritise the short-term high-priority reforms, and work through a logical pathway to develop and deliver the medium-long term reforms. This may include:

1. Addressing the 'low-hanging fruit' (low-risk and relatively straight forward reforms) in the first instance.
2. Thoroughly investigating, modelling, and consulting on the more complex and higher-risk reform areas, including identifying to what extent the problem requires:
 - a. Market reform solutions; or
 - b. Planning framework solutions.
3. Identifying final packages of the more significant reform options.

Final recommendations for any more significant reforms must be based on principles of best practice regulation and include sound analysis of the benefits and costs of the preferred options. NSWIC also recommends the following key elements to a successful reform pathway:

- Identifying an organisation/agency responsible for overseeing reform;
- Determining the likely timeframe for implementing the reforms, including priorities for each stage of the reform pathway;
- Determining likely costs and cost-recovery approaches upfront; and,
- Allowing utmost consultation with market participants in the design and delivery of reforms.

For Part 1 of the reform pathway – i.e. the 'low-hanging fruit' – these reforms are largely those associated with market reforms as opposed to planning framework reforms. Examples of the priority (short-term) low-hanging fruit include:

- Reforms to market governance (this is fundamental and a pre-requisite to further reforms);
- Reforming intermediaries; and,
- Improving information availability.

It will be important the right people are engaged in designing and delivering each reform. Government must effectively partner with the private sector to ensure problems are well-understood, the solutions are fit for purpose, third-party impacts are avoided, and delivery is



optimised. A well-defined reform pathway will ensure that reforms are implemented in a way that does not create major disruptions in the market, nor damage participants.

Protecting water property rights

The maintenance of water property rights is integral to the design and delivery of market reforms. Given the value of water assets held by farmers now averages around 40% of their total business assets, any market changes must have the utmost consideration for any potential impacts on the value, integrity and utility of these water assets.

Any 'big-bang' reforms carry a high risk of undermining or weakening water property rights, particularly during the reform delivery stage which would be characterised by uncertainty and instability. This is no reason to avoid significant reform, but firm justification for change is required and careful design and a considered delivery pathway will be integral to success.

Resourcing and delivery of reforms

Governments implementing any of the ACCC recommendations must commit adequate resourcing and prepare an appropriate delivery plan. Water users have raised concerns that previous government reforms have typically been under-resourced (money, staffing, and time) which has undermined the quality of both the delivery and the final outcome. Reform implementation requires working with the right people to design and deliver solutions, to achieve best possible results.

NSWIC also notes that with these reforms, including the additional resourcing required, comes additional costs to water users, which in NSW is incurred via the costs for the Water Administration Ministerial Corporation (WAMC). In NSW, WAMC has recently already proposed a 22% price increase over the next 4 years for water users to cover the costs for improved water management in response to changes made following recent reviews and inquiries.³ Whilst this should not be a barrier to genuinely positive and necessary reform, it must be understood that water users will be the ones paying for reforms, which is the reason NSWIC is advocating for: cost-effective and proportionate reform options, clear justification that change is needed, appropriate consultation with water users to design the changes in which they will fund, and adequate resourcing so that reforms are delivered well.

Consistency between jurisdictions

The status quo involves joint systems, whereby multiple state-based planning frameworks jointly operate within and alongside markets. A fundamental question for stakeholders is whether consistency across multi-jurisdictional planning frameworks is desirable, or whether to remain with State-based/catchment-based approaches to determine the planning and policy framework that best meets the needs of entitlement holders? NSWIC strongly supports continuation of the state-based planning and entitlements frameworks, that are already tailored to the needs and circumstances of each unique valley. This is of greater value than simply 'consistency' of planning frameworks across jurisdictions, which would likely have perverse outcomes.

NSWIC notes that particular market reforms, on the other hand, do require consistency between jurisdictions, where a single market has multiple jurisdictions. However, consistency in this respect is not to be interpreted as requiring the same rules (e.g. account management rules), as these vary on a state basis. Further, flexibility is required for distinct and vastly unique markets that are not well suited to a one-size-fits-all model. This would include the Central and Northern Basin valleys.

NSWIC strongly support consistent processing, reporting and metering requirements between states.

³ <https://www.ipart.nsw.gov.au/Home/Industries/Water/Reviews/Rural-Water/Review-of-Water-Management-prices-from-2021>



Scope of the Inquiry

NSWIC notes that the ACCC Interim Report focuses on the Southern connected systems. It is important that Inquiry's scope is clearly outlined, specifically regarding the Central and Northern valleys.

Water markets, as well as regulatory settings, hydrology and other characteristics, in the Southern connected systems are significantly different to the Northern and Central valleys of NSW. These differences include: less 'mature' markets in the Northern and Central markets that tend to be less complex; fewer trades in number and volume compared to the Southern Basin; mostly (almost all) trades being intra-valley trade; and, a large number of peer-to-peer trades. NSWIC is concerned about the Interim Report displaying a lack of full understanding of the different market settings (such as accounting mechanisms) in the Northern and Central valleys of NSW.

Overwhelmingly, Northern and Central valley water user groups are satisfied with their markets, and are not seeking fundamental changes. They are concerned that a one-size-fits-all model will be developed, based on the Southern connected systems, and applied to the Central and Northern valleys, where it would not be suitable given the uniqueness of these systems. Water users outside the Southern connected systems are also concerned that not only would a one-size-fits all model be unfit-for-purpose, but it would involve water users paying for a service they do not require, or facing additional administrative/regulatory burdens and complexity that is disproportionate to the nature of those markets.

NSWIC recommends that the Final Report reflects the differences between the Southern, Central and Northern systems, and takes account of those differences in determining the scope of certain reform options.

IIOs

NSWIC notes concerns raised about the representation of IIOs in the Interim Report. NSWIC asks the ACCC to work with IIOs to understand existing governance structures, obligations, reporting frameworks, market operations, and to mutually determine what reform options are (i) necessary, (ii) practical, (iii) desirable, and (iv) could have co-benefit opportunities.

In response to the question raised in the Interim Report, NSWIC is of the position that IIOs are not conflicted in their reporting and delivery duties. NSWIC is aware of a broader sentiment for increased transparency on internal trades within IIOs. Given this desire comes from broader market participants, and the broader public, NSWIC agrees with the Interim Report's suggestion that the associated costs should be recovered more broadly (not just from IIOs), aligned with the NWI user-pays principles.

IIOs have raised concerns that they are not suitably positioned to verify price information, and the responsibility for accuracy must thus rest with the provider of the information.

IIOs have noted current requirements to report internal trades weekly, which are published on the Bureau of Meteorology website. Any additional requirements resulting from this Inquiry must replace (not add to) existing obligations to ensure they are streamlined and not disjointed.

Physical and market systems

NSWIC is of the position that the market should operate within the ecosystem and hydrological limits of the physical natural river system. The water market, and trade of water, should not have negative impacts on the environment, efficient river operations, nor have third-party impacts on water entitlements and access. While our rivers are working rivers, the natural environment must be at all times respected and prioritised in applying a market mechanism.



NSWIC is of the position that the market objectives need to better encompass the physical realities of water availability, and trends of water supply and demand. Water trends at the moment involve, simultaneously:

- Reducing water availability, and an increasing variability of supply; and,
- Increasing demand, and an increasing reliance on high security water availability.

Evidently, the separation between trends of water demand (driven by the market) and water supply are widening.

Decisions made to invest in permanent plantings without holding high security water entitlements is a commercial, risk management decision. The market and water entitlement planning frameworks should not be overhauled to respond to these commercial decisions and the risks individuals have taken.

Size of the market

NSWIC is concerned that the Interim Report assumes the annual allocation market is larger than it actually may be. It will be important for the ACCC to clearly articulate the size of the market, in order to design proportionate responses, and to understand how reform will affect trade costs.

The volume of trades is not an accurate indicator of the size of the market, because often the parcel of water is traded multiple times to facilitate one transaction. In the Interim Report, it appears that each trade for the one parcel of water is accounted for as a separate volume each time. This means the market is likely to be significantly shallower than the Interim Report depicts.

PART 2: REFORM OPTIONS

This section outlines the NSWIC response to each of the proposed reform options from the Interim Report.

[Reading this section](#)

The submission includes a series of tables to show the reform option provided by the ACCC (Column 1), the level of priority NSWIC considers the reform option (Column 2), the level of agreement for the reform option (Column 3), and commentary (Column 4).

Traffic light colour-coding is used to indicate the level of priority and level of agreement with the proposed reform option, as presented in Table 1.

Table 1: Key for tables analysing Reform Options proposed by ACCC

| Key | | | |
|------------------------------|--|-----------------------------|--|
| Importance (Column 2) | | Agreement (Column 3) | |
| Low Importance | | Agree | |
| Mid Importance | | Neutral | |
| High Importance | | Disagree | |
| No comment or N/A | | No comment or N/A | |



Conduct of Market Participants

The ACCC identifies that:

- Market intermediaries are largely unregulated, generally do not have a fiduciary duty to clients, and can operate with significant conflicts of interest.
- Deficiencies in notification and market information obligations create a high risk of asynchronous and misleading market information, eroding market confidence.
- Unlike most other markets, there is no regulator charged with enforcing standards of behaviour on market participants.
- The role of major investors in water markets is widely distrusted, but deficiencies in market information mean the ACCC does not yet have a concluded view on this issue.

1) Regulatory Oversight

NSWIC agrees that: *There is insufficient regulatory oversight, and enforcement and compliance activity, in relation to some practices of some market participants.*

Ultimately, the reform objectives are: to prevent brokers from engaging in conduct that undermines the integrity of the water market; stronger obligations to avoid conflicts of interest; and, to ensure the financial security of client funds.

NSWIC notes that many of the aforementioned behaviours may not necessarily be illegal, but are certainly unethical and undesirable. Increased regulation is thus needed where legal or regulatory gaps exist to ensure clear rules and standards exist.

NSWIC has applied our aforementioned criteria to determine the most likely preferred approaches of industry to achieve those objectives. The central concerns in considering the reform options was cost-effectiveness and designing a proportionate response.

Recommendations:

- The preferred option is a Commonwealth-government-initiated licensing framework harmonised across the States.
 - This may be difficult and complex to implement at a national level, given it would require the agreement and coordination of all State governments.
- As a secondary option, should the above be unworkable (to get agreement from all jurisdictions), the application of the existing financial regulation framework to brokers may be supported, however, it would likely be too onerous.
- A government regulator would be overly expensive and difficult to establish.
- Irrespective of which reform option is adopted, it is essential that obligations are imposed on brokers, regarding statutory trust accounts and professional indemnity insurance, as well as to manage any third-party conflicts
- The ACCC should increase promotion of its role in investigating market misbehaviour.

Detailed commentary:

| Reform Option raised by ACCC | Priority | Agreement | Commentary |
|--|----------|-----------|---|
| 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 | | | Supported. A Commonwealth-government-initiated licensing framework harmonised across States is the preferred option to regulate brokers. |



| | | | |
|--|--|--|---|
| <p><i>through civil penalties for non-compliance. This would be limited to regulating intermediaries.</i></p> | | | <p>A licensing scheme can be more tailored to the specific types of conduct within the water market that the regulation seeks to address (as outlined above).</p> <p>NSWIC supports a Commonwealth-initiated, and harmonised licensing scheme across jurisdictions. Under existing constitutional arrangements, licensing powers sit with State governments, so a referral of powers would be required if it would be a purely Commonwealth government licensing scheme. For this reason, NSWIC suggest that a Commonwealth-<i>initiated</i> scheme (in which the Commonwealth has a coordination and harmonisation role to establish consistency between States) may be more workable.</p> <p>Despite a Commonwealth-initiated scheme also likely being difficult and complex given it would require all relevant States to agree - consistency and harmonisation is essential, particularly since many brokers work across jurisdictions. If this does prove unworkable, 1(b) would then be the preferred option.</p> <p>The licensing scheme should be made as simple as possible, with minimal cost and compliance burden on participants, so as not to severely impact the number of brokers in the market and thereby reduce competition.</p> <p>The licensing system should be managed by an existing agency, to avoid the additional costs of establishing a new dedicated agency. There must also be a clear complaint and resolution pathway.</p> <p>NSWIC notes that demonstration of a market failure is required to establish the need for government intervention to establish a licensing scheme (consistent with both the NSW and Victorian regulation principles). NSWIC agrees that a lack of transparency, and that fact water is a public good, suffices to demonstrate a market failure.</p> |
| <p><i>1(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</i></p> | | | <p>Based on the limited information available on what specifically this reform option would entail, we have concerns that this option would be over-the-top and not as cost-effective as a licensing system. As a result, while we are not necessarily opposed to this approach, we do prefer the licensing scheme at this stage. NSWIC looks forward to the Final Report fully exploring all alternative options, including the appropriateness and</p> |



| | | | |
|--|--|--|--|
| | | | <p>cost-effectiveness, to assist in identifying the most suitable option.</p> <p>A robust regulatory framework is required to protect brokers and their clients.</p> <p>The <i>Financial Services Reform Act 2001</i> – was developed to harmonize requirements for all financial products/services, and offers a ready-made framework.</p> <p>State powers have already been referred to the Commonwealth for financial regulation, so this option would avoid the need for any additional referral of powers.</p> <p>NSWIC sees some value in specific (more complex) water products being subject to this framework, but feels this may be overkill for more straightforward water products.</p> <p>Brokers should be required to have statutory trust accounts and be obliged to hold professional indemnity insurance.</p> |
| <p><i>1(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.</i></p> | | | <p>A market focused government regulator is not the preferred option to regulate intermediaries, due to high implementation and administration costs that are passed on to the end-user.</p> <p>NSWIC is of the position that the comprehensive benefits provided by a market focused government regulator – including instilling confidence, monitoring and enforcement (as required), and creating regulatory transparency and certainty – could be delivered at lower cost through other regulatory means.</p> <p>NSWIC notes that establishing a new agency would likely have the highest cost-burden of all proposed reform options in this chapter, and thus the preference would be for regulatory functions to be embedded within an existing agency.</p> <p>NSWIC agrees that the body (whether a regulator or ombudsman) would require access to comprehensive and up to date information.</p> |

Speculators

NSWIC considers the concerns raised around speculators to be a secondary, lower-priority issue, and would rather immediate resources be directed to higher priority issues (such as addressing market manipulation and harmful behaviours).



NSWIC requests the ACCC provide more information on this issue to determine whether: (i) speculators are a problem (and thus the extent/nature/severity of the problem), or (ii) if speculators are not a problem (and thus to put the issue to rest to restore confidence).

NSWIC specifically calls on the ACCC to identify (a) what is the extent/volume of speculators in the market, and (b) what impact do speculators have on the market (i.e. do they cause market distortion)? This information is critical to determine whether speculators are a real or a perceived problem, and whether regulations are necessary.

As the ACCC questions, defining a speculator is difficult. It is important that a 'speculator' is distinguished from an 'investor' (ultimately all market participants), and this is again distinguished from 'non-landowners' (which this issue commonly refers to). It must be noted that investors have an important role in providing capital in the marketplace.

NSWIC is of the view that prudent business decision making around managing water assets is entirely reasonable, and ultimately the entitlement holder should have discretion to use their property right as they determine best. The problem is not how an entitlement holder determines to exercise their property right, but rather, if their actions are untoward and involve misconduct or market manipulation. Any regulation, if deemed necessary, should only be targeted at the latter (i.e. unethical behaviour).

NSWIC has a long-standing principle to hold water property rights in the highest regard, which extends to the freedom for people to use their property right as they deem best. We are open to reconsider this principle should the ACCC identify significant unethical behaviour by water entitlement holders deemed to be 'speculators'. Simply, unless it is found that 'speculators' are distorting the market or involved in untoward conduct, NSWIC does not believe a case has been established to substantiate the need to regulate speculators.

(Re)bundling land and water

NSWIC is aware of a view that land and water should be 'rebundled'. NSWIC does not support that view, as it would be a significant backward step in water management, and would pose practical impossibilities to do properly.

While many say that you can't 'unscramble the egg', we believe that even if unscrambling the egg was possible, it would not be desirable. The unbundling of land and water has allowed for significant capital wealth to accrue to water entitlement holders, with the value of water assets held by farmers now averaging around 40% of the value of total business assets. Further, unbundling has added significant flexibility to farm businesses, particularly those using the allocation market to meet water needs. From an environmental perspective, unbundling has also created the ability for environmental water holders to recover water. NSWIC agrees with the ACCC conclusions about the impacts of any rebundling on water property rights, and the value of those entitlements.

Role of the ACCC

Typically, the role of the ACCC in water markets has two areas of focus: rules governing the behaviour of monopoly infrastructure operators; and behaviour in the market more generally. The latter, as governed by the *Competition and Consumer Act 2010*, enables the ACCC to investigate misbehaviour, particularly unconscionable conduct, misleading or deceptive conduct, and competition issues.

Typically, NSWIC understands that the ACCC does not tend to get involved in disputes between individuals, but is more focused on systemic behaviours. NSWIC also understands that the tools currently available to the ACCC to investigate and regulate these sorts of behaviours in the market are relatively cumbersome and slow-moving, and ultimately require testing in courts of law.



Where the ACCC does have existing powers, NSWIC would like to see the ACCC increase the promotion of its abilities to investigate these matters, to be more accessible to market participants. Despite the concerns of market participants that have led to this Inquiry, few disputes have been brought to the ACCC.

For areas where the ACCC considers its powers to be inadequate, cumbersome or ineffective in the context of water markets, NSWIC encourages the ACCC to investigate reform options that strengthen its powers and abilities to investigate and take action, and include these as part of the proposed reforms in the Final Report. An option such as establishing a code, for example, would allow the ACCC to immediately and more simply take enforcement action if breaches occur (such as through infringement notices), sending a clear signal to the market.

Improving trade processes and market transparency

The ACCC identifies that:

- Trade processing systems are largely outdated, and there is limited or no integration of State water registers to facilitate more efficient trading.
- Trade occurs on multiple platforms, and the resulting market information is piecemeal, often incomplete, difficult to access, and rarely timely.
- Information about trade into, within and out of IIOs is very difficult to access and compile, and this considerably reduces overall market transparency.
- While some progress has been made in enforcing water market information obligations, each State is at a different stage of updating its requirements. This highlights market governance limitations.

NSWIC supports improved processing and market transparency. No simple solution or silver bullet will improve information transparency (this was somewhat over-simplified in the Interim Report), given the nature of information is varied, complex and rapidly changing. The demand for information (i.e. level of detail, intended purposes, etc) must be well understood.

Reform options aimed at improving information transparency should thus be focused on improving information:

- **Quality;**
- **Timeliness** - to ensure near real-time information availability, such as all trades being reported and publicly available within one hour; and,
- **Accessibility.**

Any improvements to processing and transparency need to maintain the integrity of market processes. Certain processes (while timely and somewhat cumbersome) are necessary to protect the integrity of the market and transactions. Whilst efficiency is desirable to improve processing, this should not be at the cost of removing or over-riding due process.

Improved information availability should have a major role in addressing any 'perceived' market issues (as opposed to 'real' market issues). There is a view that many of the claims around market behaviours could be alleviated if information was available and accessible to provide clarity.

Anecdotally, it has been suggested that the largest impediment to market participation is access to information. While cost is important, it is not considered a key factor in determining whether to participate or not participate. For this reason and others, water users would welcome cost-effective measures that provide additional transparency and improve the effectiveness and adequacy of information platforms.



2) Trade Processing

NSWIC agrees that: *Practical changes to trade processing are needed to improve the quality and timeliness of core market data.*

Recommendations:

NSWIC recommends:

4. ACCC to recommend automated trade processing to allow for real-time data availability and price discovery. Standardisation of forms, harmonisation of terminology, structures and registers, are necessary steps to developing automated systems.
5. ACCC to recommend measures to allow for the availability of market data of trades in progress (not just completed trades), such as through traffic-light colour coding.

Detailed Commentary:

| Reform Option raised by ACCC | Priority | Agreement | Commentary |
|--|----------|-----------|---|
| 2(a) Basin States to improve trade data validation and quality checking processes before providing data to the Bureau of Meteorology as required under the Water Regulations 2008 (Cth). | | | <p>Supported.</p> <p>The data published by the Bureau of Meteorology (BoM) has deficiencies, which we understand is related to the data provided by States.</p> <p>In the process of improving quality checking processes, what data is required to be reported should be assessed to ensure the Bureau has all necessary information and any information gaps are closed.</p> <p>New processes should also include time requirements to ensure information is up to date.</p> <p>The Bureau is not an expected provider of water market information, and its role requires clarification. Given the Bureau's expertise and remit is typically on climate and meteorology, it is probably not the right agency to provide water market information. If the Bureau retains this role, it needs to be promoted so market participants are aware of it and where to locate the information.</p> <p>The WaterFlow App provides a good initial model, and opportunities for this sort of platform should be investigated (either by incorporating more information into this platform, or establishing a new one).</p> |
| 2(b) Update trade application forms to capture the reason for trade or trade type, struck date, lodging party and matching pathway (for | | | <p>Supported.</p> |



| | | | |
|---|--|--|--|
| example, matched on exchange, via broker, and so forth.). | | | |
| 2(c) Remove 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>Supported – a price should be required. However, zero dollar trades are justified in some circumstances, and the required price disclosure conditions must be broad enough to accommodate legitimate zero trades (e.g. by providing explanation).</p> <p>WaterNSW this year updated its allocation assignment trade form to include a list of 12 reasons for the trade. NSWIC encourages the ACCC to refer to these 12 reasons to assess the adequacy of using these categories, and opportunities to resolve issues regarding zero dollar trades.</p> <p>This issue may also be partly addressed or clarified by allowing for trades that form one transaction to be bundled with clarification on the reason for the bundled transaction.</p> |
| 2(d) Increase harmonisation across the Basin States' registers through consistent terminology and data structures. | | | Supported. |

3) Mandates

NSWIC agrees that: Practical changes need to be underpinned by clear and comprehensive mandates to provide efficient trade services and high quality information to market participants.

Recommendations:

NSWIC recommends:

6. ACCC to recommend each Basin State has a clear legislative mandate to develop a public water trade register to provide timely information on temporary and permanent trade, at a valley or zone level. For Basin States such as NSW with existing registers – e.g. NSW Water Register (administered by WaterNSW), and NSW Water Access Licence Register (NSW Land Registry Services) – any changes should be integrated into existing registers.
7. ACCC specify in recommendations around information publication requirements that privacy protections have due consideration, such as restricting access to sensitive personal information, and not limiting application of relevant privacy legislation.
8. ACCC to recommend the suite of reform options to streamline and facilitate enhanced automation and timeliness.



Detailed Commentary:

| Reform raised by ACCC | Option | Priority | Agreement | Commentary |
|--|--------|----------|-----------|---|
| 3(a) Each Basin State should be given a clear legislative mandate to keep a register to record all entitlement trades and all allocation trades. | | | | <p>Strongly supported.</p> <p>This is important to understand the depth of the market at any given point in time.</p> <p>NSWIC agrees that the roles and functions of State registers need to be specified and standardised, including the standardisation of information collected on trade forms.</p> <p>It should be noted that NSW already has a water register for owners of water entitlements.</p> |
| 3(b) Each Basin State water register should be given a clear legislative mandate to provide information services based on registry data, and clear publication requirements should be specified (although detailed requirements should be specified in delegated legislation such that they can be changed from time to time as needed). | | | | <p>Supported.</p> <p>Water registers provide a legal record, and as such, reported trades must go through due process and assessment requirements. While these are highly important for accuracy, these steps do add a significant lag time before information is published on registers. For this reason, the ACCC could investigate the possibility of having the reporting platform separate from the water register, so that the reporting platform is the 'live' and real-time indication, whereas the register is the verified final record.</p> <p>Note - adequate privacy protections are critically important in the publication of information. The legislation (or delegated legislation) should provide for "<i>the restriction of access to personal information recorded in the Access Register for the purpose of protecting the privacy of that information</i>" and should not limit the application of relevant privacy legislation (e.g. <i>Privacy and Personal Information Protection Act 1998</i>). This should explicitly not involve any search function, that enables searching for an individual or business name, as that would expose individuals/businesses to potential manipulation or vexatious behaviours.</p> |
| 3(c) IIOs should be required to establish and maintain comparable registers for both temporary and permanent trades, within, out and into their networks. This might occur in partnerships with State agencies. | | | | <p>NSWIC notes demand for changes to the publication of IIO trading data to provide completeness and streamlining of data availability, and thus full transparency of the market. This demand is largely on the basis of the large volume of water managed by IIOs.</p> <p>It will be important for the ACCC to note the existing reporting requirements of IIOs. Any further regulation should replace, not add to, existing regulation. This is to ensure requirements are clear and streamlined, and not overly complex.</p> <p>Any further requirements imposed on IIOs must be done with full consultation with IIOs to ensure outcomes are practical and workable, avoid imposing costly requirements, and to avoid duplication of any existing systems.</p> <p>NSWIC agrees that the National Irrigation Corporations Water Entitlement Register (NICWER) could form the basis</p> |



| | | | |
|---|--|--|--|
| | | | <p>of a registry and trade approval IT system that could be used by all non-government IIOs within the Basin. This would require funding to expand operations and improve flexibility. The NICWER does still require the IIO to manage its own register, which then feeds into the NICWER, and it only deals with entitlements, not allocation trade.</p> <p>IIOs have expressed that they don't have the powers nor capacity to verify information provided by customers/brokers. The onus of accuracy in information provided to IIOs must rest on the customer providing the information.</p> <p>NSWIC agrees with the ACCC Statement that, in line with NWI principles for cost recovery, costs should be borne by market participants generally as the beneficiaries (not just IIOs).</p> |
| <i>3(d) Update Water Regulations 2008 (Cth) to more clearly specify data reporting requirements for trades of irrigation rights.</i> | | | Supported. |
| <i>3(e) Create the ability to register contracts with water registers, and/or annotate allocation trades conducted under a contract, with an identifier such that all allocation trades arising under one contract can be identified together.</i> | | | Supported. |
| <i>3(f) Introduce standardised single party identifiers across the Basin, for example using ABNs.</i> | | | <p>Supported.</p> <p>The identifier should remain confidential, so that personal details are not made available. The ABN option is not supported, due to privacy concerns of being able to search the ABN register and obtain personal details.</p> |
| <i>3(g) Standards and agreed processes for processing trade applications and recording and disseminating trade data should be mandated and consistent across jurisdictions. These should apply to all IIOs and Basin State approval authorities. Further,</i> | | | <p>Strongly supported.</p> <p>Standards and agreed processes are necessary to facilitate greater automation and timeliness.</p> <p>Standards and agreed processes would be an important component in capturing data on trades-in-process in publicly available information (as recommended above).</p> |



| | | | |
|--|--|--|------------|
| <i>there should be standardised record-keeping and continuous disclosure rules placed on exchanges and brokers.</i> | | | |
| <i>3(h) Basin States should work towards harmonising trade application fees for allocation trade in the Southern Connected Basin, while also recognising the NWI principles for cost recovery.</i> | | | Supported. |
| <i>3(i) 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.</i> | | | Supported. |

4) Digital Technologies

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

Recommendations:

NSWIC recommends:

9. ACCC to recommend the development of a single portal to collate information into a 'single source of truth' for water availability and trade information. This should be considered a priority. The creation of multiple 'single sources of truth' should be avoided, such as by integrating with existing portals.
10. ACCC to not recommend a single exchange platform, as it would likely lead to the creation of a monopoly, high transaction costs, remove flexibility for peer-to-peer trade, and have only one price for water in each market.
11. ACCC to pursue the ASX-like approach of a single clearinghouse to administer trading as a medium-long term reform option, noting this requires further investigation, including full disclosure of potential costs associated with this option.
12. ACCC to recommend conducting a small-scale trial of Distributed Ledger Technology to water markets prior to broader implementation, to better understand possible opportunities and limitations, and determine whether it is suitable and cost-effective to be implemented fully across the Basin. These technologies would rely on fairly substantial changes for consistency between States (e.g. trading processes and



metering) before they could be implemented, and these groundwork measures should be the priority pending further investigations.

13. ACCC to progress the intent of developing a single common register through the single information portal. This would enable States to continue managing their registers, but for the information to be brought together in an easily accessible (and timely) manner. Ensuring the integrity of the approval process is essential.

Detailed Commentary:

| Reform Option raised by ACCC | Priority | Agreement | Commentary |
|--|-----------------|------------------|--|
| 4(a) 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>Supported.</p> <p>A digital protocol (and other technologies) provides significant opportunities for improvements.</p> <p>A digital protocol would facilitate a common language and rules for trade-related information. This would be positive for harmonisation and standardisation, while respecting where standardisation is not desirable or practical. For example, a digital protocol could allow State-based components to remain State-based, while still achieving consistency across jurisdictions (i.e. decentralised governance structure, with a centralised administrative approach). A digital protocol would enable efficiencies in information flows, such as by facilitating automation.</p> <p>However, such a protocol would be complex and difficult to develop properly and would need to be adhered to. A protocol also risks becoming rigid and restrictive, and thus clear amendment provisions should be included. While we note the ACCC raising the issue of potential resistance to newer technological solutions, if these solutions present an unrivalled opportunity for efficiency and improvements, users should be supported and guided to be comfortable with technology rather than simply avoiding it as a solution.</p> |
| 4(b) a single information portal for publishing water availability and trade information, which collates data from multiple sources, but does not facilitate trade | | | <p>Strongly supported – NSWIC agrees that market participants would benefit from a single digital platform of water market information, bringing together information from multiple sources. This would assist to overcome fragmentation and information asymmetries.</p> <p>NSWIC consider a single information portal as a more valuable and preferred approach to a central trading platform.</p> <p>A single information portal should include (non-exhaustive):</p> <ul style="list-style-type: none"> • real-time price discovery (which would require automation from trades so that the price is instantly available); • a ‘single source of truth’ for buy and sell offers, as well as potential trades; • Historic price and trade data; |



| | | | |
|---|--|--|--|
| | | | <ul style="list-style-type: none"> • Allocation announcements; • Trade rules and information about corresponding policy requirements; • Background information (e.g. terminology). <p>As a minimum there needs to be consistency across states.</p> <p>A way to capture potential trades (trades in-process), as well as completed trades, is required. Traffic light colour-coding should be investigated as a way to capture trades in progress, . to prevent information exclusivity.</p> <p>A single information portal would need to be part of a bundle of complementary/supporting measures to improve practices. An example is that a single information portal would only be as good as the information put into it. This has been a fundamental issue for the Bureau of Meteorology (as the water market information collator). The development of such a portal would need to give utmost consideration to underlying data collection issues to avoid simply recreating a different platform with the same problems. It is hoped that a single information portal would stimulate improved data capture and reporting requirements.</p> <p>Water users note that apps (such as Waterflow) have been a good starting point and serve as a good model – while noting the apps are not comprehensive.</p> <p>A ‘single source of truth’ has been proposed on multiple occasions in recent times, including by federal Water Minister Keith Pitt in early August, and attempts initiated, such the new WaterNSW WaterInsights Portal. While these are all positive developments, care is required to avoid duplication with multiple single sources of truth created. Opportunities to integrate these platforms should be investigated.</p> |
| <p>4(c) a spot market and real-time automated matching of buyer and seller offers, similar to the National Electricity Market</p> | | | <p>NSWIC has concerns that this reform option may be too complex, and more sophisticated than is required.</p> <p>This option would entail a spot market whereby demand/supply conditions determine prices in real time, and instant and automatic matching through a central system.</p> <p>Information accessibility and confidence in spot market prices is a core issue. Prices can vary significantly within a single day, meaning timeliness and ease of access are priority considerations. At present, people rely on brokers to provide this information in an accurate and timely manner. Greater price transparency and easy, timely access, such as through this option, would have considerable merit.</p> <p>However, as the ACCC notes, this would be costly to establish and operate and would increase regulatory burden. NSWIC agrees with the ACCC that “careful consideration is needed to assess which aspects might be relevant, in order to avoid building functionality for which there is no demand”. Any reform option, such as this, must adhere to best practice regulation.</p> |



| | | | |
|---|--|--|---|
| | | | NSWIC recommends that the ACCC further investigates and articulates what this reform option entails (i.e. what there is demand for), and what alternatives may be able to deliver similar outcomes in a less complex and less costly manner. |
| 4(d) a single exchange platform for posting and matching trade offers by creating a single mandatory online platform for matching buyers and sellers | | | <p>Not supported for the following reasons:</p> <ul style="list-style-type: none"> • Transaction costs would increase significantly, particularly given each individual market (of entitlements types, zones, and product) is relatively small and would require individual administration costs. • There would be no competition in matching and clearing, thus creating a monopoly. This would mean brokers (who play an important role in water markets) would be cut out of the market. This would have negative impacts (including loss of an information source). • The necessary mandates would remove the flexibility for peer-to-peer trade, and instead force all trade through an intermediary. • There would only be one price for water in every market. • Many transactions involve multiple trades (thus the market is a lot shallower than what is reported). |
| 4(e) an ASX-like approach of a single clearinghouse for administering trading (but connecting via interoperability protocols to trading platforms as overlays and different Basin State registers underneath) | | | <p>Supported in-principle.</p> <p>Notably, the Interim Report clarifies that <i>“in contrast to the expectations of some stakeholders, an ASX-like approach would not actually entail the creation of a single exchange”</i>. The concerns of NSWIC with a single exchange are outlined above.</p> <p>It is our understanding that this reform option would entail competition in <u>multiple</u> exchange platforms, with a single clearinghouse, and automation between the two (as well as respective State registers and trading rules).</p> <p>This option addresses the above concern of creating a monopoly, but other concerns remain, such as around removing flexibility for peer-to-peer trade, which is important, particularly for family farms. A reliance on brokers to participate in the market may also create additional problems for market participants.</p> <p>NSWIC notes the possible benefits of this option, including improving monitoring and compliance, and recognises exploring such an option may be a long-term prospect. However, much more investigation is required into this option, including possible adverse impacts.</p> <p>NSWIC is of the view that the ACCC should prioritise other reforms for now, and further investigate options of this magnitude as part of the ongoing reform process, so stakeholders can consider it in more detail in future.</p> |
| 4(f) Distributed Ledger Technology which administers trade through | | | <p>NSWIC supports further investigating this option.</p> <p>Distributed Ledger Technology (DLT) is a new and emerging technology (a commonly known example is Blockchain), which could reduce the complexity of market participation through smart contracts and streamlining information.</p> |



| | | | |
|--|--|--|--|
| <p><i>smart contracts and also records all registry information</i></p> | | | <p>Key benefits include: a real-time ‘single source of truth’; reduced transactions costs and time lags; and, digital tracking. A further advantage is that it could determine trade limits, which reduces the complexity of participants needing to understand complex trading or carryover rules. This would remove the disadvantage facing some participants compared with other, better resourced participants.</p> <p>This technology is new and still being developed. As a case study of application so far in the water industry, we draw the attention of the ACCC to <i>Civic Ledger</i> in Queensland.</p> <p>This technology would also require fairly substantial changes for consistency between States (e.g. trading processes and metering) before it could be implemented.</p> <p>For these reasons, NSWIC would support this approach being investigated through a small-scale trial, to identify possible opportunities and limitations, and determine whether it is suitable and cost-effective to be implemented across the Basin.</p> |
| <p><i>4(g) a single common register in which all water accounting for both trade and delivery (use) would be accounted for in the same, single system.</i></p> | | | <p>NSWIC supports a staged approach, in which the groundwork is completed in the first instance to collect comparable and sufficient information. This would then be published on the single information portal, and then further reform options would be explored based on gaps identified at that time.</p> <p>The intent of a single common register is supported, and would be an ideal scenario, but notably this would be a very complex and expensive process to achieve from the status quo.</p> <p>As a first step, NSWIC is of the view that consistency between State registers (e.g. terminology and data collection/publication requirements) is required, and that this data should be collated into the central information portal (above reform option). This should lead to similar outcomes to the proposed single common register, but likely in a more simple and cost-effective manner. This groundwork could then determine whether further reforms were required.</p> <p>It should also be noted that a single register would not in itself address concerns about information quality and timeliness, as this depends on the data collection processes (State-level). Priority at this stage should be on addressing these concerns, such as by improving processes for information collection and reporting, and terminology consistency.</p> |

Improving market architecture

Market architecture refers to the regulatory frameworks that govern water supply (allocation), storage and delivery, trading and other operational decisions. Market architecture is distinct from market governance, as the latter refers to who determines the market architecture (simply market architecture sits within and is informed by the governance framework). Key



issues include extraction caps (SDLs); allocation policies and AWDs; carryover; geographical trade rules (e.g. IVT); river operations; and, metering.

The ACCC identifies that:

- Rules creating water markets are extremely complex, and subject to cumbersome and complex decision-making processes.
- The communication of market-moving decisions by governments and regulators is fragmented and often poor, further eroding market confidence.
- Trade activity and water use have changed, and market rules may no longer be fit for purpose or efficiently manage scarce delivery and storage capacity, and conveyance losses may not be appropriately shared and attributed.
- Basin States have taken different approaches to key elements of market architecture, including metering, carryover and allocation rules, creating opportunities for regulatory arbitrage.

Overall, NSWIC is again of the position that further stand-alone investigations and stakeholder consultation is required on the specific reform areas and options relating to market architecture. Many market architecture problems are likely best addressed through State planning frameworks. While there may be some limited exceptions, overall, the market should not drive water policy reforms; the market should respond to policy reforms. Many of the issues raised in this section should be addressed based on the merits of various policy solutions, and not on simply what is best for the market.

While improvements to some components of water architecture are certainly welcomed, concurrently, water users are seeking stability and certainty following a lengthy period of water reforms and a still unsettled regulatory environment. Reform fatigue has left many irrigation-dependent communities with little appetite for change, particularly where the potential impacts are not fully understood. The highest concerns are potential impacts on existing water property rights, such as the reliability of entitlements; the stability of those entitlements; the affordability of water purchased on those entitlements; and, accessibility (i.e. deliverability). This is not to say that changes in market architecture should not occur, but rather, a clear case for change must be established prior to any changes; solutions must have a sound understanding of potential impacts; communities must be brought along on the reform journey; and, reforms must be delivered in a way that avoids negative impacts.

5) Design of market architecture

NSWIC agrees that: *The design of the southern connected Basin market architecture has not kept pace with increasing trade activity, and the ACCC is seeking to identify options for reform.*

Recommendations:

NSWIC recommends:

- 14. Allocations:** ACCC to recommend more timely, predictable and transparent allocation announcements, including better information on water allocations between States on the Murray River system (key finding of the recent IIG Review). All water users should be able to understand the formula for determining water allocations.
- 15. Carryover:** ACCC to not recommend changes to carryover at this time. ACCC should note the importance of carryover as a risk management tool, and that further investigation is required to better understand the problem, before designing solutions.
- 16. Continuous Accounting:** ACCC to not recommend continuous accounting in southern valleys, due to the likelihood of adverse impacts.
- 17. Storage markets:** ACCC to note that formal markets for storage capacity, as an alternative to facilitate carryover parking, is not supported at this stage. ACCC to alternatively focus on better transparency and reporting of carryover parking trades.



18. **Delivery markets:** ACCC to note that delivery shares may be supported but only for the specific purpose of addressing transmission losses, in specific circumstances where delivery demand is creating additional losses in the system.
19. **Transmissions losses:** ACCC to consider this a priority issue and recommend preventing overbank events in systems with exceptionally high transmission losses as the primary reform option. As a secondary option, the ACCC to recommend establishing Individual Daily Extraction Limits (IDELs), or factoring transmission losses into trades. ACCC to note this is tied to managing delivery risk.
20. **Metering & Accounting:** ACCC to recommend the proposed reform option of improving consistency across Basin States' accounting and metering requirements, noting NSW is significantly ahead of other jurisdictions in meeting national frameworks.
21. NSWIC supports the removal of the grandfathered protection for tagged licences.

Detailed commentary:

| Reform Option raised by ACCC | Priority | Agreement | Commentary |
|--|----------|-----------|---|
| 5(a) <i>Improvements to policy transparency and consultation processes</i> | | | <p>Fully agree.</p> <p>Consultation processes should facilitate including community members in decision-making, to incorporate and value local knowledge. Consultation should occur in the early stages of policy development, so that stakeholders feel engaged in developing the solutions, rather than simply commenting upon already formulated options.</p> |
| 5(b) <i>Alternative approaches for allocation and carryover policies, such as continuous accounting and capacity sharing</i> | | | <p>NSWIC does not consider carryover reforms a priority, and does <u>not</u> support changes at this time. Carryover is an important and essential risk mitigation tool, and a key part of the planning framework. This tool enables businesses to manage security of water supply to even out the peaks and troughs of wet and dry years. Current carryover rules are supported and seen to be working effectively in NSW.</p> <p>NSWIC does not rule out investigation of whether carryover arrangements that can be improved, in the medium to long term (as a lower priority), but changes would need to be subject to significant further analysis and modelling. Changes should not be made without sufficient analysis and modelling, and clear improvement opportunities identified. Further, changes in carryover provisions may affect property rights, and any changes (if progressed) must go through a thorough consultation process with State governments and water users.</p> <p>Carryover arrangements in the NSW southern connected systems must be distinguished from other jurisdictions, which allow higher percentages of carryover (e.g. 100% in Victoria). Regarding concerns that carryover allows lower reliability entitlements to become a high security product, it is likely the high percentage of permitted carryover in certain areas that creates this problem. This is a significant piece of work that requires further investigation.</p> <p>Continuous accounting in the southern valleys is <u>not</u> supported. It is expected that this would result in adverse impacts -</p> |



| | | | |
|--|--|--|---|
| | | | <p>particularly that it would facilitate the movement of water out of existing irrigation areas and industries.</p> <p>Any changes in allocation and carryover policies are high risk, and will need to closely assess the ramifications. Any changes must not erode entitlement reliability nor utility.</p> |
| 5(c) <i>The creation of formal markets for storage and delivery capacity</i> | | | <p><u>Storage</u> The notion of formal markets for storage capacity, as an alternative to facilitate carryover parking, cannot be supported at this stage. This would likely add complexity to an already complex system. Alternatively, the focus should be on better transparency and reporting of carryover parking trades.</p> <p><u>Delivery</u> Deliverability is addressed in further detail in the below section, and responses to the specific reform options are also contained in 5d below.</p> <p>NSWIC notes an implied right to water delivery exists as part of water entitlements, and also that delivery risks pose a further risk to entitlement reliability if substantial losses occur which reduces the total water balance</p> <p>Delivery shares may be supported but only for the specific purpose of addressing transmission losses, in specific circumstances where delivery demand is creating additional losses in the system.</p> <p>The trade of delivery shares on a market is considered a secondary matter. Generally speaking, there is hesitation around a market for delivery shares. The hesitation stems from the absence of formal delivery rights at present, whether it would advantage more well-resourced participants, and potential environmental impacts.</p> <p>Questions remain regarding who should bear delivery risk, and who should take responsibility for delivery risk (or is it a shared risk)?</p> |
| 5(d) <i>Application of transmission loss factors to water deliveries in the southern connected Basin</i> | | | <p>NSWIC is of the position that transmission losses must be better regulated. Transmission losses are a priority issue and the longer it is left unaddressed, the more embedded it will become. This requires immediate reform.</p> <p>Regulation should prioritise reducing conveyance losses, rather than factoring conveyance losses into the trade. This ensures maximum water is retained within the productive pool, rather than losing this water to river losses.</p> <p>In terms of reform options (in order of preference):</p> <ol style="list-style-type: none"> 1. Prevent overbank events in systems which are characterised by exceptionally high transmission losses. 2. Establish Individual Daily Extraction Limits (IDELs) where demand would likely result in an overbank event. 3. Consider options for factoring transmission losses into downstream trades (in conjunction with 1 & 2). |



| | | | |
|--|--|--|---|
| | | | <p>4. Stronger planning regulations on new irrigation developments to take into consideration impacts on the total resource and river operations.</p> <p>Delivery risk is related to transmission losses – a better understanding of how delivery risk will be managed in the planning framework is required to address transmission losses.</p> <p>NSWIC is of the position that this should be managed through the planning framework, rather than the market (as above).</p> |
| <p>5(e) Removal of the exemption for grandfathered tags or removing entitlement tagging altogether</p> | | | <p>NSWIC supports the removal of grandfathered tags, noting that it is difficult but very important. In principle, tagged licences are supported as a mechanism for efficient trade between zones. However, the protection of the small number of licences under the Basin Plan that are allowed to move water between zones outside of IVT limits is rejected.</p> <p>The ACCC identifies that water access entitlement tagging is administratively cumbersome, and has not had the uptake envisaged. The ACCC also notes that grandfathered tags are undermining the integrity of the IVT limit mechanism (a key mechanism to protect against negative third-party and environmental impacts).</p> <p>NSWIC does not support conversion of entitlements between catchments and or zones. Conversion of water entitlement can have significant impacts on the resource and on third parties not involved in the trade. Tagged licences is a more effective alternative, without the risks to parties not involved in the trade. Tagging provides a mechanism for people to efficiently manager ownership of water in different catchments.</p> |
| <p>5(f) Alternative and more dynamic mechanisms to manage inter-valley trades</p> | | | <p>NSWIC supports IVT arrangements and would like to see consideration of opportunities to strengthen and improve the operation of IVT accounts in the medium-long term.</p> <p>The ACCC raises that the IVT limit mechanism is insufficient to fully manage negative third-party and environmental impacts, and that it can also be overly restrictive to prevent some trades that do not have these impacts. Simply, it is the view of the ACCC that it cannot discern between beneficial/harmful trade.</p> <p>NSWIC supports the key principles outlined by the ACCC, that mechanisms need to be:</p> <ul style="list-style-type: none"> • Dynamic (not assume a pattern of water availability or trade); • Equitable; • Maximise trade opportunities; • Direct (costs and benefits should be felt by the user trading, not third-parties); and, • Robust (i.e. comprehensive and effective at managing environmental impacts). <p>Additionally, trades should not have negative third-party impacts.</p> |
| <p>5(g) Changing all allocation</p> | | | <p>NSWIC notes that this reform option is not clear and has caused confusion. NSWIC asks the ACCC to provide water users with</p> |



| | | | |
|---|--|--|--|
| trade to tagged allocation trade | | | <p>further information to clarify the intent and what this reform option entails.</p> <p>It is our interpretation that this would entail the traded water remaining in the seller's catchment account until it is physically delivered at the destination. If this interpretation is the case, it seems unworkable.</p> |
| 5(h) Improving consistency across Basin States' accounting and metering requirements. | | | <p>Fully agree.</p> <p>Irrigation Australia recently published data on progress of jurisdictions in meeting national metering framework requirements, which showed significant variations. NSW scores well ahead of other jurisdictions (on 72%) compared to VIC (60%), SA, (48%), QLD (28%), ACT (28%).⁴</p> |

Deliverability

NSWIC note an implied delivery right of water entitlements exists.

Deliverability issues arise as a result of increasing downstream demand (from growing irrigation developments, and large parcels of environmental water delivery), and a declining capacity of the river (siltation, erosion, etc.).

The consequence for irrigation farmers is a risk to both the reliability of water entitlements, and risk to the accessibility of allocations. The risk to reliability is a result of substantial losses in the system reducing the total water balance; and the risk to accessibility is a result of the physical capacity of the system to deliver desired volumes of water.

NSWIC has developed the below criteria for reform options to address deliverability challenges:

- Protect the property rights of entitlement holders (i.e. water availability, accessibility, reliability);
- Ensure no negative unmitigated third-party impacts (including for the environment);
- Delivery shortfall risks are to be borne by new developers (where appropriate);
- Be agnostic to (not discriminate between) agricultural industries;
- Seek to minimise operational losses – with delivery of productive water not being overbank;
- Maintain entitlement characteristics;
- Enforce trade rules;
- Improve the understanding of risk, and the management of risk, for all water users (historical and new);
- Recognise and account for the environmental benefits from the delivery of productive water;
- Ensure consultation with stakeholders.

The uniqueness of individual valleys and their distinct river operation practices must be a foremost consideration in response to deliverability challenges.

At the foundations, it will be important for the maximum capacity of systems to be clearly defined (as well as the level of losses), and that this is adhered to.

⁴ Irrigation Australia: https://www.pc.gov.au/data/assets/pdf_file/0010/255259/sub003-water-reform-2020.pdf



Education

NSWIC observes that many market participants have limited knowledge of market operations and processes, particularly what options are available to them. Irrigation industry bodies have taken on a role of educating their members, but with limited resourcing, it would be helpful if Government was more proactive in ensuring market participants are aware of the options and processes. The complexity of the system means that larger operators that are generally better resourced to have professional staff understanding the array of options, fare better than smaller operators without the same degree of knowledge. NSWIC encourages the ACCC to investigate ways to address knowledge gaps among market participants and even the field.

Environmental Water

The ACCC Interim Report is relatively light on environmental water, and its potential market impacts. In many valleys, the Commonwealth Environmental Water Holder (CEWH) is the largest single entitlement holder and is thus a major market participant.

The volume of Held Environmental Water (HEW) has increased substantially, and the market impacts must be understood. For example, large trades of HEW through the IVT and Barmah-Millewa trade accounts occur. These are often moving in the opposite direction to the price imperative - opening up the account and facilitating more water moving through those accounts than otherwise would have. The issue is, these accounts were developed to protect against losses in the system, and if the accounts are opened more frequently than previously, there is a risk of additional losses beyond what was intended.

Similarly, the impacts of Planned Environmental Water rules and reserve accounts on the market and market participants should also be considered. More sophisticated water users who understand the rather complex environmental water rules, and how they impact on allocation build, are generally at an advantage.



Changes in market governance

The ACCC identifies that:

- Current governance arrangements have been developed principally to facilitate State water-sharing arrangements and system operation, rather than to facilitate an efficient, basin-wide market.
- There are regulatory gaps and overlaps, and limited harmonisation of market-related roles and functions in each State.
- Decision-making often appears to be complex, involve multiple governments and agencies, can take considerable time, and is often implemented in an uncoordinated manner.
- Uncertainty in decision-making adversely impacts market confidence, reduces investment certainty and hence undermines water use efficiency.

NSWIC strongly supports changes to strengthen and improve market governance. Improving market governance is a prerequisite to further market reforms, as it sets the foundations under which these reforms are designed, delivered and evaluated.

The objectives of market governance reforms must be to ensure the governance frameworks serve to support and ensure:

- i. Sustainable river operations;
- ii. Avoidance of third-party impacts.

The market should not have primacy over these two issues, and market governance must serve to ensure this is the case. There are concerns that many of the market issues presented are a result of the market dominating over sustainable river operations and not adequately avoiding or mitigating third-party impacts.

Decision-making frameworks must better understand industry behaviours, and this requires inclusion of industry in strategic and administrative decision-making.

As an immediate reform option, the Basin Officials Committee, and the water trade working group must improve their processes, transparency and communications to be less opaque.

6) Governance Frameworks

NSWIC agree that: There is a need to reconsider governance frameworks to enable independent and clear decisions on the development of market settings.

Recommendations:

NSWIC recommend:

22. ACCC to recommend the suite of proposed reform options to improve market governance in the Final Report.
23. The objectives of market governance should be on ensuring sustainable river operations and avoiding third-party impacts.
24. ACCC to note that water users should not have to pay for previous poor performance or poor coordination of government agencies, and any new or transition costs should not be recovered from market participants.



| Reform Option raised by ACCC | Priority | Agreement | Commentary |
|---|-----------------|------------------|-------------------|
| <i>6(a) Establish clear, independent decision making structures</i> | | | Supported. |
| <i>6(b) Separate market governance roles from broader water management governance</i> | | | Supported. |
| <i>6(c) Consolidate or harmonise fragmented roles</i> | | | Supported. |
| <i>6(d) Reduce regulatory gaps by creating and assigning new roles or functions.</i> | | | Supported. |
| <i>6(e) Address conflicting roles.</i> | | | Supported. |

Conclusion

NSWIC thanks the ACCC for the work to date on this significant and important piece of work. NSWIC also thanks the ACCC for its responsive and positive engagement with NSWIC, and other organisations, during the consultation period.

NSWIC hopes the information provided through this submission is valuable to the ACCC to inform the further course of the inquiry. NSWIC is available to meet with the ACCC if further information is required, or if the ACCC has any questions.

Kind regards,

NSW Irrigators' Council.