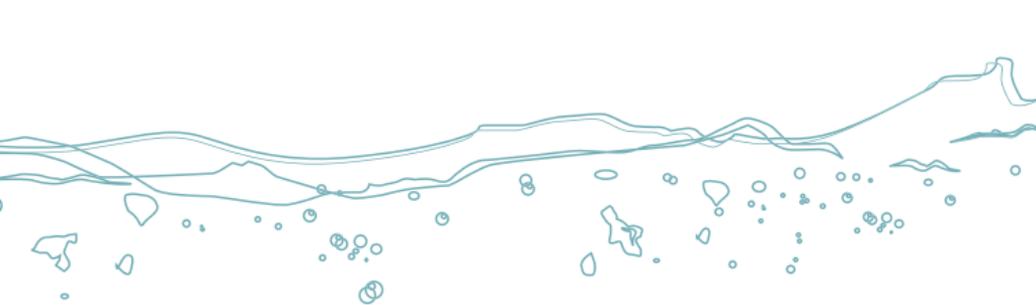




Australian
Competition &
Consumer
Commission

Water trading—an overview of your fair trading rights when using brokers and exchanges





This overview sets out the things you should think about when you are looking for a water exchange or water broker and the fair trading laws that protect you when you use their services.

The rights you have under fair trading laws are in addition to any contractual rights and obligations between you and your broker or exchange. Make sure you understand and agree to any contract before you sign it.

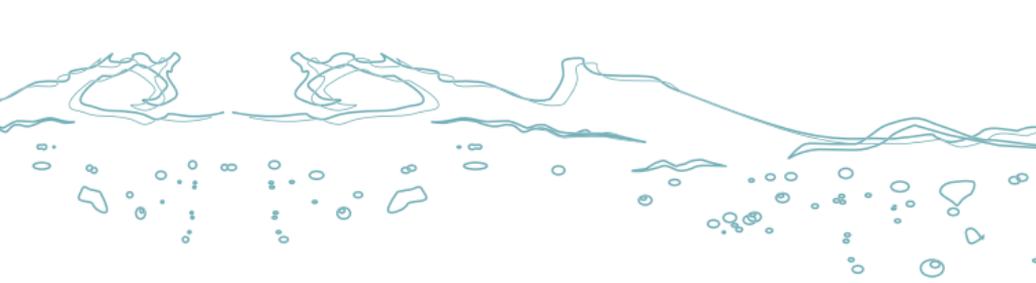
Tips

Ask around—friends, family and neighbours may be able to recommend a good broker or exchange, or warn you about bad ones.

Shop around—try your phone book or the internet to find out which brokers and exchanges are available.

Do your homework—find out exactly what service they can provide to you, what experience or qualifications they have, how long the trade is likely to take and the fees or commission that you will be facing (including the size of the deposit).

Payment—make sure you know how much and when you need to pay. If you have to pay a deposit or even the full purchase price before a trade is approved, find out what happens if the trade is rejected.



If you have a problem with a broker or exchange

Step 1: Approach the broker or exchange with your concerns

Step 2: Make a written complaint to the broker or exchange

Step 3: Contact the Australian Competition and Consumer Commission (ACCC)

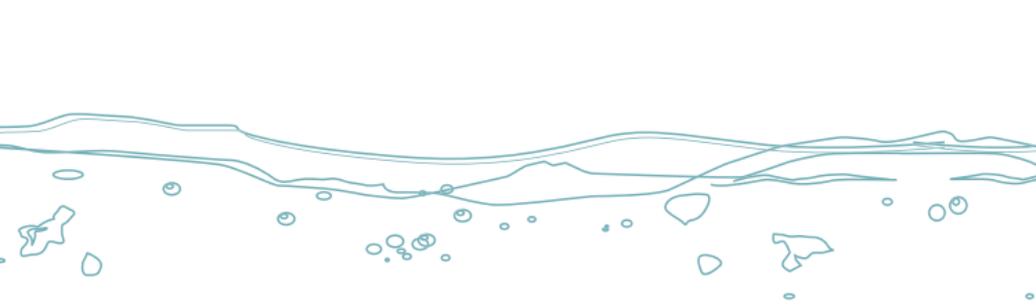
See 'useful contacts' at the end of this leaflet.

Know where you stand—do not assume that a broker will act in your best interests—make sure you know whether or not a broker is acting on your behalf (i.e. as your agent).

Get further advice—ask a lawyer, accountant or other relevant professional to look at any contract you may be asked to sign. For trades of water entitlements, you may wish to engage a lawyer or conveyancer to act on your behalf as well.

Get it in writing—make sure you take a note of your conversations with the broker or exchange, and be sure to get a copy of any contract you sign.

Remember—be wary of brokers or exchanges that are difficult to contact, avoid your questions, make promises that sound too good to be true, or don't want to put anything in writing.



Your legal rights

The ACCC enforces the Competition and Consumer Act (the CCA). The CCA includes the Australian Consumer Law (ACL). The ACL applies to all Australian businesses.¹ The ACL states that businesses and individuals—including water brokers and exchanges—**must not:**

- engage in misleading or deceptive conduct

Example: a broker ‘guarantees’ a water trade, even though the trade has not yet been approved.

Example: a broker does not tell you they are buying or selling water on their own behalf, when you would want to know this.

- make false or misleading representations

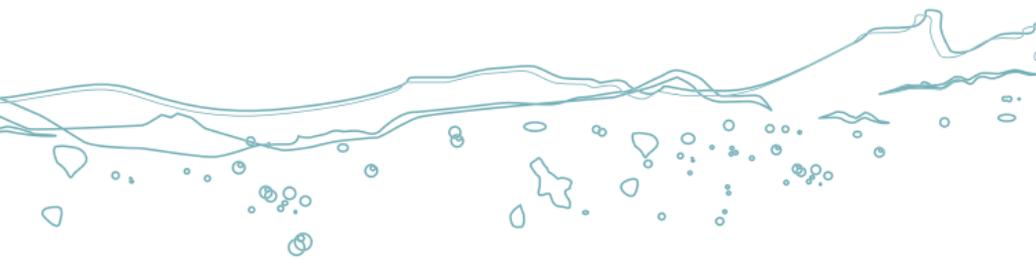
Example: a claim that a water entitlement is as reliable as the ‘high reliability’ water entitlements you are familiar with, when it actually has a lower reliability.

Example: a broker falsely claims to already have someone lined up and ready to trade through the broker.

Example: a claim by an exchange or broker that they are accredited by a government agency or industry association if they are not.

Example: a claim that your money will be held ‘in trust’ while the trade is finalised, when the broker does not use a genuine trust account.

¹ Where the products and services on offer are financial products or services (e.g. financial advice, a water derivative or an option), the consumer protection provisions of the *Australian Securities and Investments Commission Act 2001* (the ASIC Act) would apply. Aspects of the ACL are reflected in these provisions, which are enforced by ASIC.



Example: a false claim about the commission you will have to pay if a water trade takes place or the price of the water.

Example: a claim that you have to trade through a particular exchange if this is not the case.

- accept payment if they are unable to deliver

Example: a broker requires you to pay a deposit when the broker knows that it is unlikely they would be able to arrange a suitable trade within the time they have specified (or, if no time is specified, within a reasonable time).

- use harassment or coercion

Example: a broker calls you several times a day or very late at night to demand payment of their fees or to pressure you to trade water.

- engage in unconscionable conduct

Example: a business engages in unreasonable conduct that goes against good conscience. It may involve conduct that is bullying, oppressive or otherwise lacking in good faith.

Remedies and penalties

The ACCC or any other person can seek injunctions (for example, to stop certain conduct) or other court orders if they believe a breach of the ACL has occurred.

Any person suffering loss or damage as a result of this conduct can seek damages or other orders from a court.

A number of penalties may also be available depending on the offence. These include infringement notices up to \$6600 for companies (\$66 000 for listed companies) and \$1320 for individuals, and civil and criminal penalties up to \$1.1 million for businesses and \$220 000 for individuals.

Guarantees

In most cases when you engage a broker or exchange the ACL provides you with an automatic guarantee that their service will be carried out with 'due care and skill' and also be 'fit for purpose'—that is, their service meets your needs.

If a broker or exchange does not meet these requirements, you may be able to take action to have the service performed again—or for payment of the cost of having the service performed again—and compensation for any related loss or damage.

Useful contacts

Australian Competition and Consumer Commission

The ACCC can provide information on the fair trading rights that you have and the best way to go about resolving any issues.

You can call the ACCC Infocentre on 1300 302 502.

- For languages other than English, call 13 1450 and ask for 1300 302 502.
- Speak and Listen users phone 1300 555 727 and ask for 1300 302 502.
- Internet relay users connect to the NRS (see www.relayservice.com.au) and ask for 1300 302 502.

ACCC staff are available to answer your call during normal business hours.

ACCC website: www.accc.gov.au

Offices of fair trading/consumer affairs

You can also call your local state or territory office of fair trading (sometimes called consumer affairs) for information and suggestions about your rights and how to reach an agreement with the broker or exchange.

Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

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Important notice

Please note that this publication is for general guidance only. The information contained in this publication is a summary designed to give you the basic information you need. The information does not cover all of the relevant legislation and general law principles, nor is it a substitute for professional legal advice. Moreover, because this publication avoids legal language wherever possible, there may be some generalisations about the application of legislation. Some of the provisions referred to in this booklet have exceptions or important qualifications. It is important to note that the particular circumstances of the conduct need to be taken into account when determining the application of the law to that conduct.

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