

# ACCC inquiry into water markets in the Murray-Darling Basin

## Terms of Reference and scope

The Terms of Reference for the Inquiry, as set by the Treasurer, state that matters to be taken into consideration in the Inquiry must include, but are not restricted to:

- a. market trends since 2012, including demand for water, changes in the location where water is used, the quantity of water traded, water availability, changes in water users and their communities, development of new trading products, and the number of participants and sectors participating in the water markets
- b. the role of carryover arrangements, and the trading of water allocations which have been carried over, on water markets
- c. the role and practices of market participants, including water brokers, water exchanges, investment funds and significant traders of water allocations and entitlements
- d. the availability to the public of information on water market activities and tradeable water right holdings
- e. the timeliness, accuracy, and completeness of public information released on water market activities and tradeable water right holdings, including true trade price reporting and the types of trade (for example, immediate purchases, forward contracts, leases)
- f. barriers to entry, expansion and exit, including transaction costs
- g. the management of constraints on the storage or delivery of water, including adjustments made to give effect to trades and intervalley transfers.

## Matters that are out of scope

There are a number of topics that are important to people interested in the Murray-Darling Basin but are out of scope of this Inquiry. The Terms of Reference state that the Inquiry does not extend to any of the following:

- a. the social and economic impact of water trading on communities in the Murray-Darling Basin
- b. the effectiveness of water buy-backs for environmental purposes

The social and economic impact of water trading on communities in the Murray-Darling Basin falls within the scope of the [Independent assessment of social and economic conditions in the Basin requested by the Australian Government.](#)

Water resource planning processes, water resource plans and the sustainability of any caps imposed under these are also not within the scope of the Inquiry.

# Executive Summary

Submission by the Wamba Wamba Land Council and non-indigenous farmer Bob Worrell (as a representative of family owned farms) to the ACCC Murray Darling Water Markets Inquiry

## **Making a submission: tell us about yourself**

When making a submission, it would assist the ACCC if you could provide some background information relevant to your views on water markets, including:

1. the reasons for your interest in water markets
2. where you are located and where you hold or trade water
3. the nature and frequency of your dealings with water markets
4. the types of water rights you hold, if any
5. any other information that provides context to your observations.

This submission to the ACCC Murray Darling Water Markets inquiry into the is being made by Wamba Wamba Aboriginal Land Council and farmer Bob Worrell on behalf small family owned farms. Wamba Wamba Land Council is a New South Wales entity, incorporated under the Aboriginal Land Rights Act (1983).

Our interest in the efficient and effective operation of the Murray Darling Basin water markets arises from our participation in the water markets as traditional custodians of the land including its waters, as residents who use water for irrigation and conservation purposes including cultural flows.

We are concerned that regulation of distribution of markets for water from the Murray Darling Basin are not being distributed to participants on an efficient, fair or equitable basis commensurate to that of more traditional times when Aboriginal people managed the land and water nor is the market, nor are the water markets enabling regulation of distribution of water on an efficient, fair or equitable basis commensurate to that of more recent times since European settlement when the rights of residents in the market for water for irrigation and conservation purposes was clearly and explicitly defined in the Australian Constitution. This is also evident with our neighbours, communities, family owned farms and our shared frustration watching water flow out into the ocean during the middle of a drought. For example, the mechanism that sets aside water for environmental purposes lacks a common-sense governance mechanism that an Aboriginal voice can bring (and is our legal and legislated right to bring) to the regulation of the water markets and that might enable environmental water to be allocated to farmers with families during a drought to help them survive as active, value creating water market participants and end users of the water as primary producers rather than as users forced to live on soul-destroying welfare and handouts, living from hand to mouth at the favour of a government that doesn't really care.

Our interests together with family owned farms' interests are diminishing with the obscenity of the current governance of water which appears to favour large corporate interests, foreigners and speculators, who we are concerned may have included politicians, who manipulate water prices upwards during a severe drought and thus are using the markets for Murray Darling Basin water as a corrupted mechanism to strip assets from family owned farms and rural communities during a drought.

If we have been managing the land for 40,000 years and in recent years as our interests have diminished, we need to be able to take the lead again on water resource and land management, acting in the best interests of participants in the markets for water from the Murray Darling Basin, including indigenous peoples who live on the land near the water, rural communities and farmers as primary

producers and their families who have become our neighbours and for whom the water is now also their lifeblood.

The use of water and land management was our right but in recent years it has been presented to Aboriginal people as a privilege.

especially during a drought when efficient allocation to most productive users requires consideration to be given on the local context of the role those market participants for whom the markets for Murray Darling Basin water currently appears incapable of pricing or management either through design flaws or corruption of systems of internal control.

To establish a connection between land and water and to re-establish the true Aboriginal identity as the caretakers of the land for tens of thousands of years in acknowledgement with the land and water in that we are all one – the people, the land and the water are all one. We have shared interests with small holding farmers and therein is a true opportunity for Reconciliation.

Despite good intentions, the current markets for water from the Murray Darling Basin Plan are not working. Efficient markets are undermined when participants lose faith in that the institutions responsible for the development and operation of the market. In the case of the markets for water from the Murray Darling Basin, indigenous groups and family own farms believe the processes associated with the development and operation of the market have been corrupted. The names of politicians who are believed to have been actively engaged in the exploitation supply chain via their activities and behaviours in the water markets are already being openly shared between people in rural communities. We need the ACCC to restore faith in the fair and equitable operation of the water markets by disclosing whether the proven corruption of politicians' disclosure obligations is hiding actual corruption in the design and operation of water markets.

Wamba Wamba Land Council and Darling River farmer Bob Worrelll hereby call for a dialog between the Land Councils of the indigenous peoples who are the traditional custodians of the land and water with farmers with families, for whom the water is now also your lifeblood. We would like to hear about your need to access environmental flows during a severe drought. We would like to use our voice to help you and your families who are our neighbours. The bush tradition of neighbours helping neighbours sits well with us because it is consistent with our own traditions. We want to work with you to replace the current markets in water from the Murray Darling Basin Plan because they defy common sense and replace them with a solution that local people can agree makes common sense. In return we ask that you give fair consideration to how our culture can help you better achieve your goals - for example, Aboriginal beliefs, are water is part of the landscape, and it's ownership cannot be detached from the people and places where it is used.

## Issue 1 – Market trends and drivers

Focus feedback on:

1. How water availability and demand are changing over time, the reasons for these changes and the impact they are having on water markets.
2. The factors that have been driving movements in prices for water access entitlements and allocations over time.
3. Changes to the number, diversity and behaviour of water market participants over time, and how this is affecting water markets.
4. Changes to the number, diversity and amount of trading activity of water market products on offer over time, and how this is affecting water markets.

Wamba Wamba Land Council and Bob Worrell Submission

1. Wamba Wamba Land Council and farmer Bob Worrell are concerned that government has not heard the message of the overallocation of water to land for irrigation purposes and that new land continues to be opened up. Just in the past few days we hear that new land for irrigation has been opened up for a new cotton plantation in South Australia, and that this is happening in an environment where participants in the water markets have already lost confidence in the integrity of the market because the processes that require disclosure of conflicts of interest have been corrupted by politicians who may have vested interests.
2. We are concerned at the threat to water markets from politicians who appear to have reinterpreted Section 100 of the Australian Constitution without a referendum. Just this week we are reading reports of participants in the water markets taking matters into their own hands as has been reported by Deputy Commissioner Mick Keelty just this week. Whilst we don't condone civil disobedience, we can understand their behaviour when the regulator appears to have turned a blind eye, at least to date, towards politicians acting as both participants in the water markets and also as members of government, appear to have acted unethically and possibly illegally in their own self-interest or with bias that favour new market participants not previously protected by the Constitution and who now appear to have somehow acquired protection by virtue of some dodgy deal on an environmental treaty that led to unforeseen consequences for the water markets. We are concerned that if appropriate rollback in the corruption of the processes that led to the development of the water markets, for example, by the ACCC as the water markets regulator, then the water markets are at risk from a widespread breakdown of the rule of law, particularly with reports emerging of widespread civil disobedience including the theft of water by people who, like indigenous groups, can't understand the common sense of that water flowing past them and out to the sea during the middle of a drought.
3. Wamba Wamba Land Council and farmer Bob Worrell are concerned with changes to the number, diversity and behaviour of water market participants over time, and how this is affecting water markets. We are concerned at the persistent rumours of corruption of the processes for disclosure of conflicts of interest by politicians, some of whom are being named as being actively engaged in insider trading in the water markets and for participation in the human exploitation supply chain even as they make statements in Parliament to the contrary.
4. We are concerned at the risks arising from politicians' corruption of their disclosure obligations, of unfair and inequitable treatment of some participants in the markets for Murray Darling Basin water, with apparent political favour being directed towards new participants in the markets for water used for irrigation and conservation purposes including large corporations,

speculators in the Big Cities and foreign investors overseas and the subsequent negative impact that is having on the prices of water and on the number and diversity of small end-users (for example, family owned farms and indigenous users) to be able to access the market.

5. We believe there is a risk that the corruption by politicians of their disclosure obligations may be a fundamental factor that has been driving movements in prices for water access entitlements and allocations over time such that is now impacting upon the ability of “residents” – our neighbours and indigenous users, to access the water markets on a fair and equitable basis.
5. We are concerned about changes to the number, diversity and amount of trading activity of water market products on offer over time, and how this is affecting water markets. Specifically, we believe water is a fundamental feature of our landscape just like the mountains and plains and as such it is a sovereign asset. It is the lifeblood of indigenous users who live along the river and now also for end users who are our neighbours. We do not believe the water markets are operating effectively if one market participant is forced to buy it to protect capital assets such as their investment in livestock, trees or vines and another user is buying up water assets during a drought in order to profiteer from the desperation of farmers trying to keep animals from dying. That is manifestly, utterly and completely unethical, obscene and twisted and is undermining the confidence of people all across Australia in the development and operation of our water markets. It appears that the trading of water rights separated from the land has enabled its acquisition and use by large corporations including foreigners, speculators, superannuation funds and politicians. Clearly, water is not just another commodity because without water, people including families, small farmers and indigenous peoples cannot survive. If the market is allocating water rights to people who will never use it, on the false basis that those participants are delivering liquidity to the market, then we believe the regulator is confused between the role of a broker and a speculator.

Politicians then separated water ownership from the land. That enabled water prices to be bid up by stakeholders who were not previously included in the definition of “Residents”, who could then profiteer against family owned farms and strip assets away from rural communities to the big cities and to overseas investors without a direct connection to the land.

Politicians then overallocated diminishing sovereign water assets by opening up enormous tracts of new farmland which was developed and is owned by institutions including superannuation funds, large corporations and overseas investors who are not our neighbours, whose families typically do not live in or out in our rural communities with us and thus do not share our interest in the waters of the Murray Darling Basin as the lifeblood of small communities of people. So those communities, including dairy farmers and other family owned farms have begun to die at the hands of these politicians who have corrupted their compliance processes, possibly to hide their conflicts of interest, including in terms of the actions taken in parliament against traditional and constitutionally protected users of waters in favour of big corporate and foreign interests with their newly found interest in and access to our sovereign water assets. This development is not producing equitable outcomes for family owned farms, indigenous peoples and small rural communities.

Aborigines managed the land and water for 40,000 years and we have difficulty articulating that within the European context, but it is important to us because in the years since European settlement, that right has been taken from us. Prior to white settlement, water was used for the economic, cultural and environmental purposes of the Aboriginal peoples who lived near the water. Water use by people was connected to the land near the water where people lived near the water.

The impact of the loss of the right of Aboriginal Groups who live along the river to manage the land has been a loss of purpose among young Aboriginal people. We understand you have declared out of scope consideration of the social and economic impacts of the people who live near the water and whose rights as participants in the market for water was traditionally protected by the Australian Constitution and we wonder whether this is a further example of how the markets for water have been corrupted such that it is even impacting this ACCC investigation? We point out that one way to articulate what happened to indigenous people in our loss of our right to manage the land and water is to compare what happened to us with what is happening right now to family owned farms in their interest in the water under the Murray Darling Basin Plan. And therein, we believe we may have common ground with our neighbours with families who live on the land near the water and who own farms.

The Wamba Wamba Land Council would like to establish a dialog with the local grower associations who represent our neighbours (farmers with families who live by the water and for whom the water is their lifeblood and thus who share our interest in safeguarding the right of access by market participants who are our neighbours because we believe these are some of the Residents that the Australian Constitution purportedly protected, at least until corruption of processes by Australian politicians. We believe this crisis represents an opportunity for indigenous people to demonstrate our commitment to families who are our neighbours and who have a desperate need for access to water for their survival during a drought and who cannot afford to pay the outrageous prices for water as speculators, politicians and foreign corporations and other institutional investors bid up its price during droughts that are unsustainable for the “residents” who live on the land near the rivers and who need access to water for irrigation and conservation purposes. Our interest in this particular regard can be described as “access to water via the market mechanism” rather than a socio-economic consideration, although of course, the two are closely related.

After white settlement, new immigrants arrived and began diverting water for irrigation. Section 100 of the Australian Constitution directed that the Federal Government would not abridge the rights of States of Residents therein for the use of water for irrigation or conservation purposes. Our interpretation of the Constitution is that its reference to “Residents” is to the local people who live on the land by the rivers. Thus “Residents” includes indigenous groups (today represented by Land Councils) and small family owned farms who live on the land by the rivers (i.e. people with a direct connection to the land). We do not believe “Residents” should be defined as including large institutional investors in the land, nor foreign owned corporations, speculators and politicians who have undisclosed conflicts of interest. We believe that decisions about the use of water for irrigation and conservation purposes should in the first instance be made by local people (“Residents”) for whom the water is a need or lifeblood and not by people who live in Canberra, Sydney and Melbourne for whom profiteering from farmer’s distress is a unethical “want”, possibly enabled by an illegal reinterpretation of Section 100 by politicians who have corrupted the internal control systems that were essential to the proper and legitimate development and operation of the water markets. We are happy to receive advice from subject matter experts who live in the big cities, but the plan for how the water should be used should in the first instance be made at a decentralised or local level, perhaps with oversight from people living in the big cities.

Sometime during the past two decades corrupt politicians in both State and Federal Governments appeared to have conspired to diminish Section 100 by detaching water ownership from the land and via the Federal Government signing an external treaty on the environment that was then used in conjunction with the Franklin River precedent to override the constitutional protects for residents. We would like the ACCC to investigate and disclose whether any current or former politicians in either the Federal Parliament or the State Parliaments of Queensland, Victoria and New South Wales had undisclosed water holdings and/or engaged in trading of water. We would like to decide for ourselves

if those politicians may have been inappropriately influenced them in voting in Federal or State parliaments on legislation relevant to the operation of water markets.

The primary driver of the current issues with the mismanagement of water in the Murray Darling Basin is greed. Politicians, driven by institutional investors as opposed to the people who live near the water have constructed a mechanism to hide their corruption by not disclosing their pecuniary interests in water assets.

The first factor that allowed the gross mismanagement of water and a dramatic increase in prices of water was the separation of water ownership from the land. Section 100 of the Constitution exists to protect the interests of "residents" and "States" in our nation's sovereign water assets. Its intention might have been subverted via a transfer of power from the States to the Federal Government. The Federal Government can now redefine loosely the term "resident" as anyone with a toe in a State. Thus the rights of "residents" (as traditionally defined) can now be subverted by "institutions" at the hands of legislators in Federal and States governments. Residents were previously defined "de facto" as those who lived near the rivers (i.e. by virtue of the fact that by law, water ownership was previously always connected to the land) – small family owned farms, indigenous groups and wider communities who live near the water. Now, speculators, politicians, pension funds and even foreign corporations can directly own Australia's sovereign water assets, in competition against "residents".

The apparent subversion of the Constitution via Parliaments acting to hide politicians' ownership of water and thus their conflicts of interest, or not acting by voting in favour of legislation that requires disclosure. That has given politicians who hold water rights an opportunity to vote in their own interests and against the interests of farmers and rural communities without having to worry about their conflict of interest being disclosed.

That the implication of the above is that it has allowed water speculators (widely also known as "leeches" or "blood sucking parasites") to strip the assets of farmers and rural communities by bidding up the price of water, particularly during drought conditions. The issue that most farmers face is that they are small to medium sized businesses and unlike big listed corporations, they do not have the ability to tap liquidity (cash) from global capital markets during a drought. By contrast to corporations with deep lines of liquidity, often the only way small farmers can survive a drought is to sell their water. Then their businesses are lost. It might be that the water market was set up by bankers to enable competition for water from large, listed corporations who are more likely to survive a drought than small family owned farms because large corporations have a greater capacity to borrow during lean times. The Government's plan is an absolute recipe for the decimation of small, family owned farms during droughts.

Peak bodies such as the National Farmers Federation have a conflict of interest. It appears that a substantial proportion of their funding comes from large corporate farms (etc). So, it is not clear that the NFF is in a position to be able to defend family owned farms against big corporate interests where those interests collide. Indigenous groups have never had a good experience in our attempts to work with the NFF and so we would now like to work directly with the local grower associations (as opposed to national associations) to find solutions to their need for water during a drought, because we believe those local associations better reflect the interests of our neighbours including families who own farms.

The Federal Government is set up to "listen" to the NFF and other institutions and not to people such as small holding irrigation farmers nor to indigenous groups who have a legislated and legal (local, national and international) right to be heard but we do not currently have a voice in the management of the Murray Darling Basin Plan. In fact, grower associations representing growers in Wentworth, Euston and Balranald such as the Sunraysia Table Grape Growers Association, Robinvale Table Grape Growers

Association and the Swan Hill Summerfruit Development Association are specifically precluded from engaging in lobbying activities. They have been castrated from their traditional role defending their families, workers and communities. But they cannot afford to pay the NFF for a seat at the table. This has had a negative impact upon the government's ability to listen to (or hear) the people and communities at the bottom. And that is particularly the case when the interests of people and communities collide with big institutions – it is the residents living in rural communities who lose out. The Wamba Wamba Land Council would like to help give back a voice to Residents and we would like their help in having our voice heard too. We believe it is possible for us to inject common sense into the current debate over access to water, including environmental waters that appear to currently be flowing out to the sea in the midst of a drought.

Governments in Victoria, NSW and South Australia have overallocated water by opening up enormous tracts of land for irrigation to big corporate interests, thus allowing them and their deep pockets to compete directly with the interests of small holding farmers an indigenous peoples and thereby dramatically increasing the risk that during a drought, small holding farmers will be wiped out of Australia's rural economy. Big almond growers are just like dairy farmers and stonefruit, table grape and orange growers ... during a drought they simply MUST have water to keep their trees alive. So, in an environment where water has been overallocated, during a drought, small holding farmers will be guaranteed to be wiped out by the water speculators and the big guys. Water speculators (“blood sucking parasites”) produce nothing and make enormous profits during a drought. Whilst farmers use water to produce food for our tables and during a drought their cows, vines and trees die because they can't compete for water with the big guys.

The Wamba Wamba Land Council is deeply sympathetic to the interests of our neighbours and in particular farmers whose families live here near the rivers of the Murray Darling Basin. We believe the mechanism at the heart of the Murray Darling Basin Plan, which defines water as either for irrigation or for environmental purposes, is fundamentally flawed. The mechanism that allocates water between irrigation and environmental does not reflect the voice of indigenous people, who managed the land and water for thousands of years and who have a common sense perspective to share with local, family owned farms, as we both watch enormous amounts of so called “environmental water” flowing out to the sea in the middle of a drought.

We do not believe anything should be done to reduce environmental water because we believe the hand of corrupt politicians have already been busy at work reducing the amount of water that is available to sustain the environment. However, as traditional custodians of the land and water we would like to have a say about how water that has been set aside for the environment is used during a drought. In particular, we are conscious that this drought is threatening the survival of our neighbours, the families that live on family owned farms. And so, as has always been the tradition of indigenous peoples during times of hardship that threatens survival, we want our voice to be heard as we advocate for common sense on behalf of farming families and for restoration of our own right to a voice in the sustainable management of the land including rollback of overallocation of water to land owned by institutions and not by people, for the role of brokers in the efficient allocation of water, for the elimination of speculators and for the identification and removal from parliament of politicians who have engaged in corruption by voting on legislation that may affect water markets without first disclosing their conflicts of interest.

Australian superannuation funds and other institutions have been investing heavily in the newly created arable land for which water has been overallocated. That then creates a conflict over water resources with other users of water, including in particular indigenous groups and family owned farms. The overallocation of water is unsustainable, particularly during a drought as everyone competes for finite and declining and available water resources to keep their cows, vines and trees alive. That has created



the current situation, in which all irrigators, including foreign owned farms, farms owned by superannuation companies as well as family owned farms start to eye off diversion of environmental flows to irrigation in order to keep orchards and pastures alive during the drought. And we do not know how long it will last or whether the current predictions of more frequent droughts, higher temperatures, lower rainfall and greater evaporation is going to result in permanent damage to the environment.

## Issue 2 – Market transparency and information

Focus feedback on:

1. Your use of market information, including the types and sources of information you currently access, the information you would like to access and the methods and tools you use to access it (including whether you get information through public sources, such as state water registers, or private sources, such as through water brokers, and the reasons for using your preferred sources).
2. Whether and, if so, how the availability, accessibility, accuracy, consistency and timeliness of water market information affects your trading decisions or markets more generally.
3. Your views on the types of water market information that should and should not be publicly available.
4. How much you rely on the information and knowledge possessed by water market intermediaries, such as brokers, exchanges and advisors.
5. What avenues you are aware of to increase or improve your knowledge of water markets, and any suggestions on additional information and information delivery methods you would like to see made available.

Wamba Wamba Land Council and Bob Worrell Submission

Indigenous peoples participate in the Murray Darling Basin water market as both irrigators and as traditional custodians of the land with an interest in environmental and cultural water flows.

Indigenous peoples have built up knowledge over the past 40,000 years that is relevant to the proper functioning of the markets in water rights. For example, we have noticed that in droughts, flows of water in the rivers and going out to sea tend to decline whilst during wet years they tend to rise. Among Aboriginal people, we call this our “common sense”. We have noticed that the markets and environmental flows for Murray Darling Basin water do not appear to follow our common sense.

The Murray Darling Basin Plan was supposed to give traditional, indigenous custodians of the land a voice in the operation of the plan which would allowed us to contribute important information and advice relevant to the efficient operation of the markets in water rights: for example, the knowledge that water flows into the ocean should substantially decline in a drought and then substantially increase when it is wet. Lack of access to market information and a mechanism for our voice being heard.

Your views on the types of water markets information that should and should not be publicly available:

- a. We understand that there are people who hold water rights who do not have wider fiduciary and legal obligations to disclose their water trading activities and who may wish to keep their holdings and trading activities confidential.
  - b. However, Indigenous groups and farmers of family owned farms need and require transparency when it comes to evaluating the decisions of politicians because of their role as legislators responsible for infrastructure assets such as dams and pipelines, treaties and other matters that sit within their domain as participants in the water markets. Neither indigenous groups nor family owned farms currently have transparent access to the information we need from politicians in terms of their water right asset holdings and trading activity in their role as legislators responsible for water markets and associated infrastructure assets and agreements.
2. We believe that given politicians may have undisclosed conflicts of interest, that some politicians may have a vested interest in unfairly manipulating the market for water including its associated price in order to damage the interests of some participants in the market, including family owned farms and indigenous groups. We believe that when politicians are allowed to vote on legislation and other factors that can directly and indirectly influence the operation of a market such as the

one for water rights, it is essential for us to have confidence in the market that there is an obligation on all politicians are required to disclose their pecuniary interests. Further, we believe that this requirement extends not just to current politicians and their pecuniary interests today and in the future, but we also believe that an obligation to disclose must also extend to historical holdings of the politicians who were involved in establishing the market in water rights so that we can evaluate the risk that undisclosed conflicts of interest of politicians in the past may be continuing to undermine confidence in the water markets today.

3. We intend to have a more transparent common-sense process under Aboriginal Management, in collaboration with small holding farmers and rural communities that depend upon the water.
4. We believe in the management of economic resources for communities for social / economic purposes and we believe environmental allocations are about preservation of the landscape for fish, for the 50 year old cod, and today we see potential for management of the water to conserve both the natural ecosystem as well as the economic ecosystem insofar as it relates to protection of rural communities including in particular the interests of small holding farmers in the midst of a terrible drought.
5. We understand that corruption has already damaged the health of the river system and that has been exacerbated by environmental conditions. We are under no illusions that if Aboriginal Groups have unrestricted control over environmental water, that they would be targeted by the same narrow corporate and special interests that that have already corrupted our politicians. Therefore, we propose a mechanism whereby we own and manage environmental water in trust as custodians [past issues with "trust"] with a common sense and transparent mechanism for managing the water, which reflects environmental conditions. We are willing to give a blocking vote for our plans to [parliament ?], because whilst we are excited about the possibility of good careers for Aboriginal people that could come from this, we are also aware of the risk of further destruction to Aboriginal lives if we get the governance and operational structure wrong.
6. Management of economic resources for communities – social / economic, murray cod. Environmental allocations are about preservation of the land for fish and today we see potential for management of the water for conservation of both the natural ecosystem as well as the economic ecosystem insofar as it relates to protection of rural communities including in particular the interests of small holding farmers.

## Issue 3 – Regulation and institutional settings

Focus feedback on:

1. Whether regulation and institutional settings for Murray-Darling Basin water markets are effective and appropriate.
2. Whether and how regulatory and policy differences between states, Basin catchments and trading zones impact competition, efficiency and access to water markets.
3. The extent to which market settings, such as trading rules and management of constraints, are positively or negatively impacting efficient and equitable water market activity.
4. The extent to which regulatory functions, settings and actions are clear and understood.

### Wamba Wamba Land Council and Bob Worrell Submission

Wamba Wamba Land Council are concerned at the risk of political corruption on proper regulation and operation of water markets including the apparent existence of undisclosed interests of politicians in water rights and the consequential risk of an impact on the water markets in terms decisions they are making that result in higher water prices and the impact that has on the efficient and equitable development and operation of the market for participants such as family and indigenous owned farms.

Wamba Wamba Land Council do not want our claim to be transferred to an indigenous advisory committee in Canberra, Melbourne or Sydney. This is an initiative of local Aboriginal Land Councils to benefit our members, the wider community and local farmers. We believe that one of the key regulatory and institutional issues we face as participants in the water market is that individually we are small and disaggregated and so larger participants in the market, including their lobbyists, have a disproportionate and inappropriate control over air-time with decision-makers including State and Federal politicians. We believe that institutions that regulate the market for water prices should have a loud voice in the form of the indigenous communities and our neighbours, the family owned farms that live on the land near the rivers and who's interests in water for irrigation and conservation, Section 100 of the Australian Constitution has traditionally protected as an explicit obligation. We believe that institutions including banks, large corporations, superannuation funds, foreign investors and water speculators may have pressured politicians in both the Liberal / National Coalition as well as the Labour Party (all institutions and/or Government), including via corrupt and inappropriate rules that have allowed non-disclosure of their conflicts of interests that by all norms of political probity should be disclosed, and that may have gotten in the way of the development and current operations of fair and transparent water markets.

We believe that the market for water suffers from inelastic demand during a drought. We believe that water speculators in particular can exploit water users (and especially those traditionally defined as "residents" within Section 100 of the Constitution who have a need to keep their cows, trees or vines alive, can have their need used against them by speculators who simply have a want to profiteer off family owned and indigenous farms during a crippling drought.

We also believe that if local indigenous land councils were given their legal right to a voice within the institutions responsible for the operation of water markets, our ancient understanding and role as custodian of the land could be used to improve the efficiency of the market, in particular in terms of our evaluation of the amount of environmental water that can be made available to participants in the market who are users of water.



## Issue 4 – Market participant practices and behaviours

Focus feedback on:

- How you use water markets, and your understanding and experience of how other market participants use water markets.
- How the practices and behaviours of different water market participants are positively or negatively impacting water market access, transparency, efficiency, and competition.
- Whether and, if so, how large market participants have influenced water markets (for example, by changing water availability or prices) through their trading strategies.
- How you use different water market products (including carryover, leases, options and forward contracts) and services provided by water market intermediaries.

Wamba Wamba Land Council and Bob Worrell Submission

Indigenous water users and farmers who own family farms use water to maintain capital assets such as vines, fruit trees and livestock by keeping them alive during a drought. In a severe drought, we compete for access to water from large corporations and superannuation funds who have access to funding from capital markets and thus are less likely to be forced to dispose of water rights in order to manage liquidity. We also have to compete in the market against speculators, who can use our desperation (need for water) drive water prices to outrageous levels and as a mechanism to strip us (rural communities) of our assets.

Politicians who are participants in the water market and who hold the ultimate regulatory power as legislators and who hold undisclosed interests in water rights, have an unfair advantage over other participants in the market including in particular indigenous participants and family owned farms. They are able to directly and indirectly drive the market in water prices, for example, by quietly overallocating water on newly opened up arable land being developed by superannuation funds, large corporations and foreign investors, none of whom were historically defined as “residents” for the purposes of the constitutional protects of people including indigenous users and family owned farms who use water for irrigation and conservation purposes.

The role of politicians as water market participants, where they have undisclosed interests in water rights, in negotiating external treaties should be investigated, in particular where those treaties have changed the interpretation of Section 100 of the Constitution, with subsequent impacts upon the development and operation of water markets including by enabling new participants such as speculators, superannuation funds, foreign investors who were not to even allowed compete against indigenous users and farmers who own family farms in the Australian markets for water. There is a very substantial risk that the lack of transparency has resulted in outcomes that favour politicians, speculators and large and foreign market participants over traditional participants.

## Issue 5 – Competition and market outcomes

Focus feedback on:

- The extent to which the objectives of water markets have been achieved and any unintended consequences that may have resulted.
- Whether and how competition and efficiency in water markets have changed over time.
- The extent to which water markets are currently operating efficiently.
- How the outcomes of water markets vary between different industries, locations and individuals.

Wamba Wamba Land Council and Bob Worrell Submission

The objectives of water markets have not been achieved. In particular, because the market regulator has taken an incorrect definition of “efficiency” and “most productive user” that are not supported by the traditional interpretation of Section 100 of the Australian Constitution. Water is a unique commodity because it is part of the landscape. Thus, a measure of the “efficient” use of water needs to reflect the geographic location or region where it is being used. And a most efficient user of water was never defined as one that takes its revenues and profits away from the region around the rivers. It is not an “efficient” use of water to allow speculators to strip assets from desperate farmers including indigenous farmers who are trying to protect their investment in stock during a severe drought.

Markets have become less efficient as corrupt politicians, potentially motivated by ideological reasons or by undisclosed interests in the water have redefined Section 100 of the Australian Constitution and allowed speculators, large corporations and superannuation funds and foreign corporations into the market and without an indigenous voice within the water markets management as traditional custodians of the land and water and as representatives of rural communities.

Water markets are not operating efficiently. They are operating without effective regulation because politicians’ disclosure rules that serve to reduce the risk of political corruption have been disabled to hide conflicts of interest of politicians, who may have made then decisions that have prejudiced the interests of some market participants over others. A worst-case scenario is that this corruption of the market for irrigation water has led to the destruction of family owned farms, the deaths of farmers and indigenous peoples who have a legal right to a voice and participation in the market.

Clearly there is currently no standard approach to monitoring the extraction of water and that is not fair nor equitable as it is clear that water theft is an enormous issue in some States. We believe consideration should be given to a governance, operational and pricing model for water markets that will incentivise investing equity of funds in the infrastructure required to efficiently manage the distribution including monitoring the extraction of water. Creation of a national asset that contributes to better water management and the efficient operation of water markets will deliver better outcomes for market participants including in particular, indigenous and family farmers and career opportunities for young Aboriginal people.

## POTENTIAL SOLUTIONS

The ACCC has been asked to recommend options to enhance markets for tradeable water rights, including options to enhance the markets' operations, transparency, regulation, competitiveness and efficiency.

The ACCC invites your views and ideas regarding potential solutions to any problems you may have raised in your submission. Please briefly summarise the problem, describe your proposed solution and give your reasons for proposing it.

- Transition from the current Murray Darling Basin Plan, which defies common sense, to a better, common sense solution developed by indigenous people in consultation with farmers with family owned farms and rural communities.
- Voice for indigenous peoples as traditional custodians and managers of the land and water and as represented by the Land Councils of the First Nations who live on the land beside the rivers (decentralised as opposed to centralised governance model for indigenous interests in the water)
- Voice particularly focused on the use and trading of environmental waters, including in particular as part of reallocation of environmental water to irrigation market participants during a severe drought.
- Voice on the development of new land for irrigation including the potential for overallocation of land for available for irrigation purposes.
- Voice in the development and operation of Murray Darling Basin water markets, able to use national and international recognition to cut through red tape that may be constraining the efficient functioning of the water markets, including metering and inconsistent laws that may be constraining the development and deployment of sustainable, new fresh water sources.
- To kick things off, we call for a dialog between indigenous peoples as traditional custodians of the land and its water with farmers of family owned farms (as represented by individual growers and local grower associations). Because between us and the people living in rural communities, this question as to how water markets operate is ours because there are still enough votes in rural electorates that if we (indigenous groups, family farms and communities) work together effective as a team, we can control our shared destiny in relation to water, the lifeblood of the land.
- We would like the ACCC to make Murray Darling Basin's water markets operate more efficiently such that small participants can have confidence in the integrity of the development and operation of the market by mandating that politicians including former politicians who've held office since the commencement of the Murray Darling Basin Plan must disclose their holdings of water rights during the period they were in parliament.
- We would like the ACCC to require the government to fulfil its commitment to give indigenous peoples a voice in the management of the water markets, including management of both environmental flows and irrigation flows. We want the ACCC to allow indigenous groups to use their legal right to a voice in the management of the water markets to better protect environmental flows and to use our voice to restore the protection of family owned farms who were traditionally protected by Section 100 of the Australian Constitution before it was reinterpreted by politicians through a series of mechanisms that might have been designed to thwart their constitutional protections in favour of new market participants including large corporations, superannuation funds, foreign investors and speculators.
- We want a commitment to replace the current, deeply flawed markets for water from the Murray Darling Basin with a transparent, gated process with a series of pilots to gradually build capacity



among indigenous peoples so they can most effectively deploy their voice at the table in the regulation, development and operation of the Murray Darling Basin water markets.

- We hereby call for transitional arrangements, from the current management and operation of the markets for water from the Murray Darling Basin, which defies common sense, to a new model that is designed to use common sense, including in relation considerations for the management and allocation of environmental water during a severe drought.
- We ask for a transitional arrangement as we move to a more efficient model for the allocation of water that:
  - Avoids sudden shocks to the market;
  - That constrains new commitments by politicians and governments to further overallocation of land for irrigation purposes that is being acquired by participants in the water markets who do not have the traditional constitutional protections of “residents” and which allows existing commitments to be unwound in an orderly fashion;
  - To provide time for capacity building among indigenous stakeholders in the water markets of the Murray Darling Basin.

Wamba Wamba Land Council and Darling River farmer Bob Worrell hereby call for a dialog between the Land Councils of the indigenous peoples who are the traditional custodians of the land and water with farmers with families, for whom the water is now also your lifeblood. We would like to hear about your need to access environmental flows during a severe drought. We would like to use our voice to help you and your families who are our neighbours. The bush tradition of neighbours helping neighbours sits well with us because it is consistent with our own traditions. We want to work with you to replace the current markets in water from the Murray Darling Basin Plan because they defy common sense and replace them with a solution that local people can agree makes common sense. In return we ask that you give fair consideration to how our culture can help you better achieve your goals - for example, Aboriginal beliefs, are water is part of the landscape, and it's ownership cannot be detached from the people and places where it is used.