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Joanne Chong  
Commissioner  
National Water Reform 2024  
Productivity Commission

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Dear Commissioner Chong

**Re: ACCC submission to the National Water Reform inquiry 2024**

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to provide a submission to the Productivity Commission's (PC) inquiry into the progress of Australian governments towards achieving the objectives and outcomes of the 2004 intergovernmental agreement on a National Water Initiative (NWI).

The ACCC is an independent Commonwealth statutory agency that promotes competition, consumer protection, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to promote compliance with the *Competition and Consumer Act 2010* (CCA), regulate national infrastructure and undertake market studies.

Under the *Water Act 2007* (Cth), the ACCC has several ongoing functions that contribute to the effective operation of water (and related) markets in the Murray-Darling Basin. These roles include:

- advising the Commonwealth Minister on water rules and the Murray-Darling Basin Authority on the Basin Plan water trading rules,
- monitoring and reporting on regulated water charges, transformation arrangements and compliance with the water rules,
- enforcing the water rules and the CCA, including the Australian Consumer Law,
- additional functions provided for by the *Water Amendment (Restoring Our Rivers) Act 2023* (Restoring Our Rivers Act), discussed further below.

The ACCC notes that:

- This is the third inquiry the PC will undertake on national water reform. The second inquiry (PC's 2020 inquiry) provided detailed advice on future national water reform directions, including advice on renewing the NWI to meet the challenges of climate

change, population growth and changing community expectations, especially better integration of First Nations perspectives and interests into the NWI framework (PC NWI renewal advice).

- In addition to the matters listed in its terms of reference, the PC has requested submissions on whether the findings, recommendations and NWI renewal advice from its 2020 inquiry should be strengthened or added to, considering the policy developments and changes that have occurred since that inquiry was completed.

This submission focuses on matters raised in the PC's call for submissions and the PC's NWI renewal advice that are relevant to the ACCC's Water Act functions and inquiry work, including water entitlements and markets, pricing and economic regulation, and knowledge and capability building, and the agency's strategic focus on regulation that supports the long term interests of consumers and delivers productivity and efficiency outcomes.

It is now 20 years since the NWI was signed by Australian governments as the blueprint for national water reform. While progress on reform during this period has been significant, the emerging challenges of climate change, and the associated adaptation required in all sectors of the economy, have also become more apparent.<sup>1</sup> Managing these challenges requires governments (and service providers) to invest significantly in research, planning, monitoring and new or upgraded infrastructure, with implications for charges and opportunity costs if not done well. The Australian Government has committed to – and commenced work on – renewing the NWI, with a focus on delivering water security. Updating the NWI offers the opportunity to:

- ensure a new NWI anticipates and manages the impacts of climate change and population growth on all aspects of water policy and service provision, including infrastructure investment decisions, fit-for purpose arrangements for the economic regulation of monopoly water service infrastructure and the pricing of water services
- ensure a new NWI reflects the increased size and complexity of Australian water markets, which have grown substantially since the NWI was signed in 2004, especially in the Murray-Darling Basin (Basin)
- incorporate into a new NWI the findings and recommendations from the PC's 2020 and current inquiries into national water reform, the ACCC's 2019-21 Murray-Darling Basin water markets inquiry (ACCC inquiry), and the Quinlivan Murray-Darling Basin Water Reform Roadmap (the water reform roadmap) where these recommendations are yet to be actioned or where the reforms could have wider or national application.

## **Water entitlements and markets**

Water access entitlements and water trading and market principles

The ACCC inquiry concluded that the benefits derived from water trading rely on fair and efficient water markets, underpinned by an environmentally healthy river system. Clear property rights are necessary to underpin confidence in water markets and realise the benefits of water trading. Therefore, the ACCC strongly supports the PC's NWI renewal advice that jurisdictions recommit to the key NWI outcomes and actions related to water access entitlements (PC NWI renewal advice 6.1).

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<sup>1</sup> See Mackey, B et al, "[New IPCC report shows Australia is at real risk from climate change, with impacts worsening, future risks high, and wide-ranging adaptation needed](#)", *The Conversation*, 28 February 2022.

The NWI committed jurisdictions to establishing statutory water entitlements as a property right to water and included important principles for defining water access entitlements.<sup>2</sup> The ACCC agrees with the PC that where possible, it is important that water access entitlements are statutory based, separated from land, provide a perpetual or open-ended share of the consumptive pool, and are fit for purpose.<sup>3</sup> Secure and tradeable water access entitlements enable water trading which encourages more efficient use of water and allows entitlements to move to the highest value use. As noted in the ACCC inquiry, water trading also allows irrigators to supplement their water supply (or income) in the short and long term, expand production, develop new business models and/or free up capital that can be invested elsewhere in their businesses.<sup>4</sup>

The ACCC also supports the PC's NWI renewal advice that jurisdictions recommit to the NWI water trading and market principles (PC NWI renewal advice 7.2). These principles support the objective that arrangements facilitate the efficient development and operation of markets, where system and water supply considerations permit. These NWI principles also specify that water market and trading objectives should minimise transaction costs through good information flows, enable the development of an appropriate mix of products, recognise and protect the needs of the environment, and provide appropriate protection for third party interests.<sup>5</sup> These principles should be included in a new NWI.

#### Water market information

PC NWI renewal advice 7.3 noted that in efficient water markets:

- registers of all water access entitlements and trades are publicly available, timely and reliable
- basic trade data – including on prices (specifying reasons for zero-price trades), volumes, dates, locations and product types – are publicly available
- publicly provided non-trade information covers market rules and the quality and accessibility of water resources.

The ACCC inquiry found that there was a lack of quality, timely and accessible information for Basin water market participants and made recommendations for comprehensive and decisive reform over the long-term to enhance markets for tradeable water rights, including their operation, transparency, regulation, competitiveness, and efficiency. The subsequent water reform roadmap developed by Daryl Quinlivan and the independent panel was largely consistent with ACCC inquiry recommendations but focussed on reforms that were considered necessary, practical, and cost effective over the short to medium term.

In response to the ACCC inquiry and water reform roadmap, the Australian parliament passed the *Water Amendment (Restoring Our Rivers) Act* in November 2023.<sup>6</sup> This included reforms designed to improve water market integrity and information, including:

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<sup>2</sup> Clauses 28-34 of the 2004 NWI include principles for defining tradeable water access entitlements. The NWI recognises that in some instances, differences in entitlement provisions may be justifiable. There are provisions that allow for 'fixed term or other types of entitlements where demonstrably necessary', 2004 NWI paragraph 33(i).

<sup>3</sup> PC (2021), [National Water Reform 2020, Inquiry Report, no. 96](#), p. 74.

<sup>4</sup> ACCC inquiry, p. 6.

<sup>5</sup> Clause 58 of the 2004 NWI.

<sup>6</sup> The Water Amendment (Restoring Our Rivers) Act also removed the exemption for grandfathered tagged water access entitlements in the Basin Plan water trading rules, consistent with ACCC Inquiry recommendation 22, improving the equity of access to intervalley trade opportunities.

- new and strengthened market manipulation and insider trading prohibitions, a framework for the development of a water market intermediaries code of conduct under the CCA and requirements to make water market decisions in a specified manner, which are to be enforced by the ACCC
- new data reporting obligations, to be enforced by the Inspector-General of Water Compliance (IGWC)
- requiring the Bureau of Meteorology to develop Water Markets Data Standards, establish and maintain a Water Data Hub and a Water Markets Website to ensure transparency and timeliness of trade information and enable the publication of aggregated water trade statistics.

Some Basin states have also commenced work on upgrades and improvements to their water registers to improve the availability and quality of information and the efficiency of trade administration.<sup>7</sup> While these measures may be cost effective and practical over the short to medium term, over the long term, Australian governments could do more to implement the recommendations from the ACCC inquiry to facilitate efficient market operation, minimise third party impacts or restrictions on trade and deliver greater opportunities for and benefits from water trading. The NWI renewal process is an opportunity for Australian and Basin state governments to consider implementing recommendations or, where relevant, implementing recommendations outside the Basin for:

- mandatory trade approval standards for all trade approval authorities, including state governments and irrigation infrastructure operators (ACCC inquiry recommendation 8).<sup>8 9</sup> (Roadmap recommendation 12 was that all trade approval authorities regularly report trade approval processing times to the Bureau of Meteorology for publication).
- policies and procedures, and accelerated roll out of infrastructure, to strengthen metering and monitoring, which supports effective compliance (ACCC inquiry recommendation 17)<sup>10</sup>
- improving the capacity to model delivery and trade; formalising and making publicly available plans for managing delivery shortfalls where there are physical constraints and demand warrants; transparent documentation of river operations procedures and other information that illustrate how trade-offs will be made and increase the transparency of conveyance losses and other delivery impacts (refer to ACCC inquiry recommendations 18-21)

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<sup>7</sup> Victorian Water Register, '[Victorian Water Register Transform Project](#)', accessed 25 January 2024; Department for Environment and Water (SA), '[Water Register](#)' (see 'What changes to the Water Register are proposed?'), accessed 25 January 2024.

<sup>8</sup> The Water Market Rules 2009 (water market rules), which are enforced by the ACCC, prohibit irrigation infrastructure operators from preventing or unreasonably delaying irrigators in the Murray-Darling Basin permanently transforming their irrigation right into or onto a statutory water access entitlement (the process of transformation). These rules include time limit by which an irrigation infrastructure operator either needs to approve an application for transformation or notify the applicant that their application has not been approved.

<sup>9</sup> Following agreement by the now defunct Council of Australian Governments, the now defunct Natural Resources Management Ministerial Council set voluntary service standards for Basin jurisdictions in 2009. These standards require at least 90 per cent of water allocation trade applications to be processed within 5–20 business days, depending on the complexity of the trade. This initiative was intended to promote faster processing of trades and is aligned with the NWI outcome of minimising transaction costs. The PC's 2017 National Water Reform report (no. 87) also noted that there would be merit in reviewing service standards for trade approval processing times, with a view to tightening them. There are currently no mandatory trade approval authorities for trade approval authorities that are not irrigation infrastructure operators.

<sup>10</sup> This ACCC recommendation is consistent with PC NWI renewal advice 10.1 and 10.2 that system integrity should be incorporated into the NWI, and that system integrity should be ensured through fit for purpose metering and measurement, registers and effective compliance and enforcement systems.

- a work program to progress long term reform that better integrates water market design with water management and that aligns market architecture with the hydrological realities of the natural system (ACCC recommendation 25)
- clear and integrated mechanisms for the delivery of environmental water (ACCC inquiry recommendation 23, PC NWI renewal advice 8.6).

#### Environmental water and addressing overallocation

As noted in our 2023 submission to the PC's Basin Plan implementation review, it is important that any strategy (or NWI principles or framework) to address overallocation adequately considers how buybacks or other activities to recover water affect confidence in water markets, how to minimise market impacts and also support efficient investment in and use of irrigation infrastructure.

Issues for a new NWI to consider include appropriate principles, procedural obligations, or other measures:

- to maximise market transparency, including through appropriate and timely disclosure of tender outcomes, which will support efficient decision-making
- to adopt pricing strategies that recognise the broader environmental and social costs of overallocation and that employ values that recognise the negative externalities associated with overallocation
- to encourage strategic timing of government participation in markets, to support market confidence and provide appropriate incentives for participants, and
- to mitigate potential impacts on related markets, including regional and sub-regional impacts and unintended flow-on consequences in these markets.

It is also important that there is accountability for ensuring that held environmental water, which now accounts for roughly 30% of water holdings in the Southern Connected Basin,<sup>11</sup> is used effectively to realise holistic environmental benefits. Routine and robust monitoring of environmental outcomes (either site-specific or based on robust indicators) should be a key element of water management policies, as this will assist in resolving the inevitable tension between the demands for additional water for consumptive or environmental use, while retaining market confidence.

As noted in the ACCC inquiry, the way water market architecture interacts with the hydrological characteristics of the Basin produces a series of 'disconnects' between the time of trade and the physical movement of water.<sup>12</sup> In the Inquiry, the ACCC identified that Basin state water trade rules could better align with changing system conditions, be more equitable and better able to maximise trade opportunities within physical constraints and environmental tolerances.<sup>13</sup> A new NWI should contain a principle recognising the benefits of regular review of market architecture and other trade arrangements, to support the efficient operation of water markets. As noted in our submission to the PC's Basin Plan implementation review interim report, the ACCC agrees with the PC's Basin Plan interim recommendation that it would be appropriate for the ACCC to conduct a detailed review of

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<sup>11</sup> ACCC inquiry, p. 414, figure 3.29 and section 4.2.

<sup>12</sup> ACCC inquiry, p. 435

<sup>13</sup> ACCC inquiry, p. 431

the Basin Plan water trading rules before the Murray Darling Basin Authority undertakes its review of the whole Basin Plan in 2026.<sup>14</sup>

The ACCC inquiry also found that the use of trade mechanisms and other arrangements by environmental water holders to deliver water are generally not well understood by water users. This contributes to perceptions that environmental water holders receive special treatment and that environmental watering is negatively affecting other water users, such as through increased conveyance losses or receiving priority delivery.<sup>15</sup> Therefore, it is important that environmental water holders' trade strategies are in place and transparent (PC NWI renewal advice 8.6, ACCC inquiry recommendation 23) and that environmental water holders can vary their entitlement portfolio over time (PC NWI renewal advice 8.8).

Potential national application of Basin water reforms

The ACCC agrees with the PC's comment that lessons from the Basin experience provide valuable pointers for NWI renewal and the appropriate regulatory settings for nascent water markets outside the Basin.<sup>16</sup> State and Territory governments could consider whether there is merit in applying any of the existing regulation or reforms undertaken in the Basin outside of the Basin (such as the water charge rules which support pricing transparency and govern termination fees). Jurisdictions would need to consider the costs and benefits of these reforms outside the Basin because while there are markets developing outside of the Basin (including in Tasmania, Queensland, and Western Australia), most water trading in Australia occurs in the Southern-connected Basin. Markets outside the Basin (and even in the Northern Basin), are much smaller, with fewer, less valuable trades. The costs of regulatory oversight and data harvesting in smaller markets may be higher relative to the benefits.

### **Pricing and economic regulation**

The efficient use of monopoly infrastructure supports productivity growth and should be enabled by effective regulation as a matter of course. The ACCC therefore strongly supports the PC's NWI renewal advice 11.1–11.3. We consider that:

- it is important that all jurisdictions recommit themselves to efficient cost recovery from users, independent economic regulation, cost reflective pricing and pricing transparency in the new NWI
- jurisdictions should update and recommit to the National Water Initiative Pricing Principles and provide guidance on achieving those pricing requirements
- 'light touch' economic oversight of pricing for monopoly services may be appropriate where the benefits of full scale price reviews exceed the efficient costs.

ACCC's water monitoring report

Under the *Water Act 2007* (Cth), the ACCC monitors and reports on regulated water charges<sup>17</sup> in the Basin and enforces the Water Charge Rules 2010, which ensure transparency of these charges. The ACCC monitors infrastructure operators because they are natural monopolies that have at least some degree of market power. This is because the

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<sup>14</sup> PC (2023) [Murray-Darling Basin Plan: Implementation Review 2023: interim report](#), interim report recommendation 8.1. p. 34

<sup>15</sup> ACCC inquiry, p. 462

<sup>16</sup> PC (2021), [National Water Reform 2020, Inquiry Report, no. 96](#), p.91.

<sup>17</sup> A regulated water charge to which the Water Charge Rules 2010 apply. Section 91 of the Water Act 2007 provides a full definition. These charges include charges imposed by bulk water operators and irrigation infrastructure operators for access to their infrastructure.

infrastructure they operate is generally uneconomic to duplicate and they operate in geographically exclusive areas where competition is unlikely to develop.

Our 2021-22 water monitoring report noted that:

- Sunwater's irrigation charges are set by the Queensland Government after the Queensland Competition Authority makes recommendations. In 2021-22, Queensland Government discounts and rebates for irrigators substantially reduced the charges paid to Sunwater by irrigators, especially horticulturalists. Typical on-river bills calculated by the ACCC for Sunwater's irrigation customers for 2021–22 were lower than in 2020–21, partly because the Queensland Treasurer applied a 15% discount to the (lower bound) charges recommended by the Queensland Competition Authority. The Queensland government also provided horticulturalists with an additional 35% discount via a rebate. The ACCC agrees with the PC's assessment in 2020 that this kind of differential charge based on end-use, where that end-use does not affect the cost of supply, could undermine the NWI principle of user-pays and cost-reflective pricing.<sup>18</sup>
- In contrast, typical on-river bills for WaterNSW customers rose substantially in 2021–22 compared to 2020-21 due to the ending of the NSW government's drought rebate.<sup>19</sup> The NSW Independent Pricing and Regulatory Tribunal's (IPART) 2021 price review decision that WaterNSW's efficient forecast capital and operational costs, including dam safety measures, had risen compared to the previous regulatory period.<sup>20</sup> IPART's review appears to be consistent with the principles of independent regulation and cost recovery under the NWI, and sustainable investment in water service infrastructure.

The impact of climate change on pricing and economic regulation

The ACCC agrees with the PC that water trading and markets increase the flexibility of how and where water is used and will become increasingly important to enabling entitlement holders to adapt to seasonal variability and climate change.<sup>21</sup> The ACCC also considers it important that jurisdictions:

- undertake work to ascertain the costs of infrastructure investment and renewal to reduce emissions and to increase resilience/adaptability to climate change
- explicitly consider how these additional costs (for example, enhanced dam safety compliance and climate change mitigation and adaptation) will affect asset value, cost recovery and pricing

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<sup>18</sup> As noted in PC (2021) [Assessment of National Water Initiative implementation progress \(2017–2020\): Productivity Commission National Water Reform 2020 Inquiry Report](#), p 94, accessed 12 January 2024.

<sup>19</sup> The NSW government's drought rebate was first introduced by the NSW Government on 30 June 2018. It formed part of a financial assistance package and included rebates up to \$4000 on the fixed component of bills associated with all general security and supplementary water access entitlements in regional New South Wales. It also applied to customers of irrigation infrastructure operators for water access entitlement costs that were passed through to the operator's customers. In 2019–20, the NSW Government continued the rebate for general security water access entitlements and extended it to high security water access entitlements in the Macquarie, Namoi, Peel and Border valleys (in the Northern Basin). In 2020–21, the rebate was removed for high security water access entitlement holders in the Macquarie valley because conditions had improved in that valley. The rebate ceased for all entitlement classes in all valleys for 2021–22. The rebate was applied automatically to WaterNSW bills between 2018–19 and 2020–21 and reflected in typical bills calculated by the ACCC for these years. [See ACCC \(2023\) Water Monitoring Report 2021-22](#), p. 32-33.

<sup>20</sup> ACCC (2023), [Water Monitoring Report 2021-22](#). IPART (2021) [Review of WaterNSW's rural bulk water prices from 1 October 2021 to 30 June 2025: final report](#), accessed 9 June 2023, p 16. IPART's 2021 price review included all rural valleys in NSW, including valleys outside the Basin (the Hunter valley and the North and South Coast NSW valleys).

<sup>21</sup> PC (2021), [National Water Reform 2020, Inquiry Report, no. 96](#), p.9.

- consider the impact of costs associated with climate change and related challenges on the NWI water markets and trading objectives, and the pricing and economic regulation principles.

### **Knowledge, capacity and capability building**

The ACCC agrees that jurisdictions should commit to a culture of evidence-based decision making (PC NWI renewal advice 16.1). The ACCC considers that there is a gap at the system level in the proactive monitoring of water trading (particularly long term market dynamics), and its interaction with resource availability and system constraints.

No entity is currently responsible for overseeing trade operations within the broader, long term water resource management and system operation context. The ACCC considers that there would be benefits to establishing a body to oversee and coordinate knowledge generation and sharing across the nation (for example, in the form of a reestablished National Water Commission).

We welcome the opportunity to comment on the PC's inquiry and look forward to the interim report.

Yours sincerely

Mick Keogh  
Deputy Chair  
Australian Competition and Consumer Commission