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Jane Doolan, Commissioner
John Madden, Assistant Commissioner (Water)
Murray-Darling Basin Plan: Five Year Assessment
Productivity Commission
GPO Box 1428
Canberra City ACT 2604
basin.plan@pc.gov.au

Dear Commissioners Doolan and Madden,

Re: ACCC Submission to the Productivity Commission Issues Paper on the Murray Darling Basin Plan: Five Year Assessment

The ACCC has previously commented on issues relevant to this inquiry, including the elements required for efficient water markets. We refer the Productivity Commission (PC) to our submissions to the PC's Inquiry into National Water Reform (October 2017, April 2017); our Review of the Water Charge Rules – Final Advice (September 2016); our Advice to the MDBA on Water Trading Rules (March 2010) and submission to the review of the *Water Act 2007* (4 July 2014), all available on the ACCC website.

As previously noted in our submissions, the Commonwealth and Basin State governments have made significant progress towards implementing more efficient water markets and opportunities for water trading since the enactment of the Water Act and the making of the Basin Plan 2012. The water trading rules contained in chapter 12 of the Basin Plan (the Basin Plan water trading rules), and the Water Market Rules and Water Charge Rules made under Part 4 of the Water Act, have contributed to facilitating well-functioning water markets. They have done this by:

- reducing barriers to trade
- ensuring information is available, and
- reducing transactions costs associated with transforming irrigation rights into water access entitlements and terminating water delivery rights.

We note also the recent work facilitated by the Victorian Government to assess the effectiveness of Victorian water markets (*Effectiveness of Victoria's Water Markets, Aither and DG Consulting Report prepared for DELWP*, released 19 April 2018 and *Findings and Actions from 2017 Review*, DELWP, released 19 April 2018). This work could provide a starting point for a wider, consistent assessment of market effectiveness across the southern MDB.

The following comments highlight areas where further improvements or changes may facilitate the operation of efficient water markets.

Water Trading Rules to prevail over Water Resource Plans to the extent of inconsistency

We draw your attention to the need, as part of the water resource plan (WRP) accreditation process, for careful consideration of the consistency of WRPs with the Basin Plan water trading rules.

Under the Water Act, if an accredited WRP imposes obligations in relation to a matter, and the Basin Plan (including the water trading rules) also provide that WRPs must impose the same or similar obligations in relation to that matter, the obligations imposed by the WRP prevail.

We remain concerned that a WRP may be accredited but subsequently found to contain provisions that are inconsistent with the Basin Plan water trading rules. The inconsistency may arise from provisions of a WRP (specified in chapter 10 of the Basin Plan) that expressly address trading, or from provisions otherwise included or implied into the WRP by Basin State instruments. Inconsistency may also arise where WRP provisions negatively affect people's ability to trade (for example, through provisions that manage capacity constraints or impose conditions on water access rights).

We consider that the Basin Plan water trading rules should prevail over trade-relevant provisions of WRPs, to the extent of any inconsistency. The rationale for this is that the water trading rules embody the objectives of the Basin Plan and the WRPs are a mechanism to give effect to those objectives. The water trading rules are intended to be applied consistently Basin-wide. The issue of potential inconsistency may be resolved by setting out a clear hierarchy under the Water Act, or through the incorporation of a clause to this effect in each WRP.

Incorporation of a clause setting out a hierarchy has been used in the MDBA's recent accreditation of the Warrego-Paroo-Nebine WRP. The clause provides that the WRP is subject to the water trading rules in the Basin Plan. This type of statement may assist in clarifying issues where an inconsistency arises, but amendments to the Water Act may also be warranted to clarify which instrument prevails in the event of an inconsistency.

Importance of robust compliance monitoring and enforcement arrangements and other opportunities for review

Recent inquiries and reviews into compliance arrangements for the Basin Plan have highlighted the importance of robust monitoring and compliance arrangements. We recognise the importance of such arrangements and acknowledge the role of the MDBA's new Office of Compliance and the Basin Compliance Compact agreed by the Commonwealth and Basin States.

We also point to the importance of regular reviews of State and Commonwealth regulatory frameworks in reducing barriers to trade and identifying areas for improved water market efficiency. In this regard we note the importance of the cooperative and collaborative work of the relevant jurisdictions, for example through the working groups and committees convened by the MDBA (for example, the Trading Rules Working Group and the Trade Working Group, on which the ACCC sits as an observer).

Timely, accurate and accessible water market information that can inform assessment of market performance

Access to timely and accurate information allows participants in water markets to make informed decisions about managing their water needs and avoid unnecessary transaction costs. The Commonwealth water charge rules and water market rules have assisted water market efficiency by ensuring information is available and by reducing transaction costs for transformation and termination.

Basin States and Commonwealth water agencies will continue to play an important role in improving access to water market information and in assessing market performance. These bodies produce a range of information on aggregate market outcomes and have begun looking at market effectiveness (including information needs for such assessments). As a next step, Basin States could consider adopting a more consistent approach to assessing and reporting on market effectiveness.

Despite the information currently available, the ACCC heard concerns from some stakeholders during its consultation on the water charge rules that water markets lacked adequate transparency. We consider that the quality and accessibility of water market information could be improved in a number of areas. For example, information about the extent of opportunities to trade, reporting of both on and off market transactions, and accurate price data can assist in improving market transparency and increasing water market participants' understanding and awareness of the opportunities and costs of trade.

We note the PC's draft recommendation 4.1 in its National Water Initiative Inquiry Draft Report: that the role of government in providing water market information should be focused on the quality and accessibility of basic trade data. The ACCC considers that data in raw form may be insufficient to support water users' and policy makers' needs. Government agencies may need to collect and publish additional data in order to meet these needs. Further, market participants are likely to require more than basic trade data in order to make informed decisions. It is important also that market participants have equivalent access to information to preclude some market participants having an advantage over others in water market transactions. 'Value adders' with exclusive access to information from government agencies may offer market report services on a fee-for-service basis only, which would limit access to those services and result in asymmetric market information. The opportunity for other market participants to access such information from government agencies should therefore not be limited.

The ACCC acknowledges the 'Water Market Innovation challenge' currently being managed by the Department of Agriculture and Water Resources, through the Business Research and Innovation Initiative (BRII), which is intended to improve the transparency and reliability of water market information and develop innovative information solutions. Noting the BRII project, and other work underway by relevant Commonwealth government agencies with a role in providing water market information, the ACCC considers there would be merit in Commonwealth and Basin State governments considering how best to improve water users' awareness of the information that is available. The provision of public access to information (including detailed registry data) may go some way to alleviate imbalances in the availability of market information. Consideration should be given to the merits of providing information free of charge. Consideration of whether market information is adequate should also cover the form of reporting, the level of data aggregation and the timeliness of reporting.

Cost reflective charging and implementation of user pays principles

There is still more work to be done on achieving a user-pays approach to cost recovery for water planning and management, as well as for water storage and delivery in irrigation systems, and in promoting the economically efficient and sustainable use of water

infrastructure assets more generally. To the extent that charges and fees are too high or do not reflect the cost of the service they relate to, they may act as a disincentive to trade and prevent the market from operating efficiently.

The ACCC's Water Charge Rules Final Advice recommended several amendments to the water charge rules which provide scope to advance the goals of 'user pays' and efficient price setting. These include advice on:

- wider measures to prevent unreasonable differences in charges (price discrimination) or service provision
- limiting charges levied on trade of tradeable water rights, and
- clarifying the charges that can be included in calculating termination fees.

The ACCC considers that, by promoting more efficient charge structures, these proposed amendments should also make an important contribution to the objective of efficient water markets by removing artificial barriers to participation.

The ACCC's Water Charge Rules Final Advice on these matters was provided to the Minister for Agriculture and Water Resources in September 2016 and is currently under consideration.

Role of the ACCC

Under the Commonwealth *Water Act 2007*, the ACCC carries out a variety of water-related functions in the Murray Darling Basin. Most relevantly, the ACCC is required to provide advice to the MDBA on making and amendment of the water trading rules, a key component of the Basin Plan. The ACCC has provided advice to the MDBA in March 2010 and in October 2016.

Thank you for providing this opportunity to comment. Please do not hesitate to contact Tina Pigliardo or Megan Utter with any queries regarding this submission.

Yours sincerely

Darren Kearney
A/g General Manager
Insurance, Water and Wireline Markets Branch