



Australian Government
National Water Commission

Chair and Chief Executive Officer

Water Branch: water trading rules position paper
Australian Competition and Consumer Commission
GPO Box 520
Melbourne Victoria 3001

National Water Commission submission: water trading rules position paper

The National Water Commission (the Commission) appreciates the opportunity to comment on the September 2009 *Water trading rules position paper* (the paper) prepared by the Australian Competition and Consumer Commission (ACCC).

The Commission commends the ACCC on producing a clear, well-structured and thorough paper that addresses a very complicated range of issues. Aside from the paper's role as a statement of the ACCC's positions, the paper is also a very valuable resource that explains major water trading issues within the operation of water markets in the Murray-Darling Basin (the Basin).

On 9 October 2009 the Commission released *Australian water reform 2009, Second biennial assessment of progress in implementation of the National Water Initiative* (the 2009 Biennial Assessment). The 2009 Biennial Assessment notes that:

"Water trading helps to ensure that increasingly scarce water resources are allocated to their most valuable uses (including both productive and environmental uses). This will require markets in which:

1. **Water is tradeable with no impediments** – except where water trade rules present the least-cost way to manage hydrological and environmental constraints.
2. **Water trades occur with minimum transaction costs and in a competitively neutral market environment** – costs include both financial costs and those associated with the time involved in acquiring information, processing trades and registrations, and facilitation of trade by market intermediaries.
3. **The necessary diversified range of water products are available to water market participants** – that can be traded either in whole or in part, or through leasing or other arrangements.
4. **Water trade does not cause unacceptable third party impacts** – on the environment or other water users.

The 2009 Biennial Assessment nominated water trading as one of the more successful areas of water reform in Australia since the signing of the National Water Initiative (NWI) in 2004. However, further reform is required and the Commission views the development of the trading rules as a significant opportunity to achieve the four market characteristics noted above. The ACCC's paper is a positive step in the production of these trading rules by the Murray-Darling Basin Authority (MDBA), within the Basin Plan.

The Commission makes seven recommendations with respect to water markets and trading in Chapter 7 of the 2009 Biennial Assessment. These recommendations are reproduced below:

Recommendation 7.1

The Commission recommends the coordinated removal of all artificial barriers to trade, including the 4% limit. The Commission considers that buyback programs should continue without being constrained by the 4% limit or other trade barriers in order to provide financial resources directly to entitlement holders and facilitate adjustment. The Commission supports monitoring and enforcement of the new water market and charge rules for the MDB by the ACCC, and the trading rules by the MDBA, to ensure that the rules are implemented effectively.

Recommendation 7.2

The Commission recommends that the feasibility and benefits of further unbundling, including in unregulated surface water and groundwater systems, should be considered in all states, and where jurisdictions decide against further unbundling the reasons for that decision should be published.

Recommendation 7.3

The Commission suggests that an assessment of factors potentially affecting the development of water markets across the Murray–Darling Basin (see examples listed in Section 7.3.1.9 [of the 2009 Biennial Assessment]) be undertaken in order to determine whether they distort market outcomes or undermine confidence in the market, and to recommend potential reforms. The development of the Basin Plan by the MDBA, including the water trading rules based on advice from the ACCC, could inform such an assessment.

Recommendation 7.4

The Commission recommends that NWI parties adopt consistent approaches to disclosure in line with the recommendations of the Commission's 2006 Pricing and Personal Information Disclosure Consultancy Project. The Commission supports further improvements to overcome current limitations of registry arrangements by ensuring full and accurate reporting of the volume and price of entitlement and allocation trades on individual state water registers, including for government purchases for the environment.

Recommendation 7.5

The jurisdictions and the ACCC should continue to monitor the actions of market intermediaries and should adopt any further measures considered necessary to preserve and build user confidence in the water trading system and to advance water market objectives under the NWI.

Recommendation 7.6

The Commission recommends that having decided to adopt tagged trade, jurisdictions do more to simplify and promote its use. The Commission notes that the ACCC will be investigating the issue of how to improve tagged trading.

Recommendation 7.7

The Commission recommends that direct impacts of water trade on third parties (for example, congestion and environmental externalities) be addressed through the most cost-effective instrument (such as water use licences) rather than by imposing trading restrictions where such restrictions are not based on hydrological or ecological constraints. Indirect impacts of water trade should not be managed by restricting the water market—they are better addressed directly through other policies (such as structural adjustment measures). Given the increasing volumes of water trade (including as a result of environmental water purchases), the Commission considers that further efforts are now required to ensure that rules governing water trade account

for and manage the impacts of transmission losses, to ensure that third parties are not adversely affected.

The Commission notes that the intent of these recommendations is reflected in the ACCC's paper also. A clear and important example of the consistent messages is the alignment between the Commission's recommendations 7.1 and 7.7 (above), and the ACCC's position 4-A:

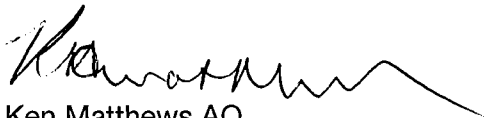
(4-A) As the rationales for the 4% limit are better addressed through other mechanisms, the ACCC believes that the 4% limit should be removed through the MDB.

Another common message is the importance of price disclosure, as reflected by both the ACCC paper and the 2009 Biennial Assessment urging the adoption of the Commission's *Pricing and Personal Information Disclosure Consultancy Project* (Disclosure Report) - refer Recommendation 7.4 and the ACCC paper, Chapter 9.3 and position 9-D.

The Commission strongly supports the new role of the ACCC in advising the MDBA about the development of trading rules, and clearly supports the ACCC's positions in the paper.

The 2009 Biennial Assessment and the Disclosure Report mentioned in this submission are available on the Commission's website at www.nwc.gov.au . Please do not hesitate to contact the Commission's Acting General Manager of Water Markets and Efficiency Group, Mr Will Fargher (02 6102 6039; Will.Fargher@nwc.gov.au), if you require further information.

Yours sincerely



Ken Matthews AO
23 October 2009