Australian Water Association NSW Branch – Young Water Professionals' Seminar Series

The ACCC and the Murray Darling Basin

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Commissioner Ed Willett

Good evening and many thanks for the invitation to be with you.

It seems that water, water, water, is all we've been hearing in recent times, and I have no doubt as Young Water Professionals, you have been aware of these pressing issues much longer.

The scarcity of water is now permanently burnt into the Australian psyche. Water restrictions are a common part of life for most of us, and people understand that their personal water use impacts on the environment.

But even if it's only recently become the focus of broad public attention, it would be a mistake to believe that water has only just caught the eyes of regulators, policy makers and governments.

In 1901, the newly formed Commonwealth of Australia grappled with the Federation Drought which impacted on the Murray River.

In 1962, the Australian Water Association was formed following the installation of water and sanitation infrastructure after World War Two.

In 1992, COAG's first meeting recognised the 'intrinsic and environmental importance' of appropriate pricing and distribution of water as a resource.

As you can see, water has been and will continue to be a significant issue for Australians.

Tonight, I will speak about the ACCC's distinct and significant role in the water sector, with responsibility for shaping, regulating and removing the barriers to trade across the Murray-Darling Basin.

This includes developing water market and water charge rules for the basin that will be considered by the Minister for Climate Change and Water, Senator Penny Wong.

We are also responsible for advising the Murray-Darling Basin Authority about water trading rules.

This all of course is particularly relevant to NSW, given you have the largest share of the basin.

I will also explain later that in developing these rules, the ACCC is listening carefully to what stakeholders are saying and ensuring this is done in a transparent way.

We believe that removing barriers to trade across the basin will not only benefit the water sector but move water usage towards more efficient, cost effective and environmentally sound practices.

Let me begin tonight by evaluating the state of the Murray-Darling Basin.

As you are all aware, the Murray-Darling Basin is the most valuable river system in Australia and has deep connections to the nation's identity and sense of wellbeing.

Two-thirds of the nation's $5 billion irrigated agriculture industry stems from the Murray-Darling Basin.

Twenty per cent of Australian agricultural land and 40 per cent of all farms are located within the basin.

And as you know as well as I do, at the moment, the Murray-Darling Basin is in dire straits.

We are suffering the worst drought on record. The average annual inflow into the Murray system was 3,800 GL/year during 2002 to 2008.

This was lower than the previous two droughts on record with inflows of 4,900 GL/year from 1897 to 1904 and 5,600 GL/year from 1938 to 1946.

The CSIRO predicts substantial decrease in the water resources of the basin in the next 30 years.

There are three other factors which are contributing to the rapid degradation of the Murray-Darling Basin.

The first issue is the over allocation of water systems. This has reduced water security for irrigators and leaves little water for environmental purposes.

Next, there are barriers in place that prevent effective water trading across the basin. Where water can be traded, it is able to move to uses where it is most highly valued.

Often caused by states having complex and inconsistent processes, water resources have not always been used effectively or to their highest value.

The final problem is that much of the basin's infrastructure is old and inefficient, resulting in water losses during transportation.

Although the situation is grim, there is some hope for the future.

The first wave of water reform began in 1994 when COAG introduced the Water Resource Policy. This was a significant milestone, heralding the beginning of whole-of-government cooperation and coordination on water resource issues. The 1994 reform framework covered significant issues including natural resource management, pricing, more rigorous approaches to future investment, trading in water entitlements, institutional reform and improved public consultation.

COAG subsequently incorporated this 1994 reform framework into the 1995 National Competition Policy as a 'related reform', for implementation over the period to 2005.

A second, larger wave of reform came through in 2004 when COAG announced the National Water Initiative. Among its goals were:

- To expand water trading bringing about profitable and cost effective use of water

- To recover water for the environment
- To address over-allocated water systems
- To promote more confidence in the water industry by providing more secure water access entitlements and simpler registry arrangements
- To improve the management of water in urban environments.

As part of these reforms, the National Water Commission, which now reports to COAG on the progress of the National Water Initiative, was established in 2005.

You'd be aware, however, that a tidal wave of reform has developed concerning the Murray-Darling Basin over the last 12 months or so, beginning with the Commonwealth *Water Act 2007*, which created new roles for the ACCC and other agencies.

Key elements included the preparation of a whole-of-basin plan that provided for limits on water use and measures safeguarding the water needs of communities.

The ripple effects from these reforms led to the historic COAG Intergovernmental Agreement between the Murray-Darling Basin states and the Australian Government in July this year.

The agreement outlines arrangements for a consistent water trading scheme across the basin and the merger of the Murray-Darling Basin Commission with the Murray-Darling Basin Authority.

The Australian Government has recognised that urgent action is needed to address the needs of the basin and has committed $12.9 billion over 10 years under the *Water for the? future plan*.

This includes $3.1 billion for water entitlement purchases from within the basin states and $5.8 billion to modernise irrigation infrastructure.

The basin states have or are in the process of introducing legislation to refer powers for management of the Murray-Darling Basin to the Australian Government while the Government has amended the *Water Act* for this purpose.

The ACCC's regulatory involvement with the Murray-Darling Basin will build on the foundation set by the National Competition Council over the last decade.

During that time, the council, consistent with the 1994 COAG water reform framework, advocated competition in the water sector along with effective and efficient water management. These objectives can be traced back to the council's first annual report in 1995, which highlighted that the COAG reforms were not only fundamental to a competitive water sector but also would have a significant impact on the welfare of Australians.

That's the history, but let me spend some time now explaining the ACCC's new and significant responsibilities, courtesy of the Water Act.

As I said earlier, the ACCC is responsible for shaping, regulating and removing the barriers to trade across the Murray-Darling Basin.

In order to this, the ACCC is:

- Developing draft water market rules and water charge rules for consideration by the Minister for Climate Change and Water, Senator Penny Wong; and
- Advising the new Murray-Darling Basin Authority on water trading rules.

Once these rules are in place, the ACCC will be also be responsible for monitoring them.

Before I go any further, let me make this important point: the ACCC prides itself on open and inclusive consultation processes, and its water functions will be no different.

There is an enormous amount of experience and knowledge about these issues in the community—from irrigators, operators and governments. We will continue to talk to as many stakeholders as possible to ensure that the ACCC's advice and draft rules are robust and comprehensive.

Now I'll give you some details about the rules we are developing.

The water market rules relate to properly vesting rights in water; the water trading rules concern trading up and down the basin; while the water charge rules regulate the market power of service providers.

I'll now begin by speaking about the water market rules.

The purpose of these rules is to properly vest water rights to irrigators to free up trade in these rights within the basin. This is achieved primarily by ensuring the policies of irrigation infrastructure operators do not represent a barrier to trade.

The water market rules apply to the conduct of irrigation infrastructure operators that prevent or unreasonably delay transformation of a water right to an irrigator; or where there is trade of a transformed irrigation right.

Reforms to date have already included measures to vest water rights with irrigators. These reforms include separating rights to water from land title. But many irrigation infrastructure operators hold a group access entitlement on behalf of irrigators within their system, so that irrigators don't hold the rights themselves.

One of the main objectives of both the National Water Initiative and the *Water Act* is to promote water trading and the operation of efficient water markets.

By holding the statutory rights to water, an operator can prevent or delay their members from fully realising the benefits of their irrigation right.

The water market rules provide more flexibility for irrigators. They can:

- transform (whether or not in association with trade) and retain delivery rights with their existing operator; and
- trade and choose to terminate delivery rights with their operator.

The draft water market rules prohibit actions of an operator that prevent or delay transformation arrangements unless there is a permissible restriction.

And these permissible restrictions include:

- regulated water charges, including termination fees and unpaid access charges
- security over ongoing access fees
- consideration of conveyancing losses
- installation of water meters
- requirements expressly permitted under state law or a related instrument.

In preparing its advice on water market rules to the Minister, the ACCC released an issues paper in May this year, followed by a position paper in July.

The draft water market rules and advice to the Minister were released on 10 October and we took into account over 100 submissions and stakeholder consultations.

The ACCC is continuing to consult on its draft advice and is holding public forums in regional centres. Submissions close on the 10th of November.

The final advice to the Minister for Climate Change and Water is due in December.

The ACCC is also involved in the drafting termination fee rules. Termination fees are levied by irrigation infrastructure operators when irrigators terminate their access to a delivery network.

These fees are typically charged as a multiple of access fees. High multiples reduce the net returns from trade to irrigators, stifling incentives to trade.

As with the water market rules, the ACCC will provide advice to the Minister in December and enforce the termination rules once in place.

The next set of rules we are developing are the water trading rules.

The ACCC is required by the *Water Act* to provide advice to the Murray-Darling Basin Authority about water trading rules that will form a mandatory component of the Basin Plan.

Currently, water trading is subject to a range of rules and restrictions. The Basin Plan seeks to provide an efficient water trading scheme across the basin.

Transaction costs of water trade can be high due to varying processes by the states. Irrigators have informed the ACCC that delays can run into weeks which can lead to significant adverse impacts for allocation trade in particular. Furthermore, the lack of standardisation can make trading complex and fragment markets unnecessarily.

Another barrier to trade is the limits on the amount of water that can be ‘traded out’ of irrigations areas. Examples include the 4 per cent interim threshold on permanent trade and restrictions about who is eligible to buy water.

These issues will no doubt be raised by stakeholders as the ACCC develops its water trading advice.

The ACCC is at preliminary stage considering its advice about the water trading rules that will form a part of the Basin Plan, which is expected to be completed by 2011.

The final set of rules I want to speak about tonight are water charge rules.

Once in place, water charge rules must be applied when determining charges for water storage and delivery infrastructure.

Water charge rules will apply to:

- Bulk water charges (such as those levied by State Water in NSW and Goulburn-Murray Water in Victoria)
- Fees and charges payable to an irrigation infrastructure operator in relation to access to the operator’s irrigation network
- And fees and charges levied to recover the cost of water planning and management activities, which are predominantly undertaken by governments.

The aim of the water charge rules is to:

- Prevent misuse of monopoly power by infrastructure operators
- Prevent discrimination against irrigators that transform their water entitlements or trade their water
- And promote transparency around the pricing and investment decisions of operators.

Already, we have released two issues papers as well as a position paper in September about water charge rules.

The ACCC recognises the significant challenge ahead, with more than 600 bulk water and irrigation operators of varying sizes and with different ownership structures.

And in light of this, we have recommended a three-tier approach to regulating water charges:

- Tier 1— provides a basic level of pricing transparency that includes rules prohibiting unfair price discrimination and a requires operators to publish regulated fees and charges
- Tier 2—includes the rules in tier 1 plus a requirement to produce a network service plan and publish an explanatory statement outlining the basis for the charges
- Tier 3— adds the use of a building-block model to approve or determine charges.

These tiers have been developed with regard to current governance and charging arrangements and principles of the *Water Act*. The ACCC has also balanced the need for economic regulation against the regulatory compliance costs for different types of water infrastructure operators.

Tier 1 rules will apply to all operators including those covered by tier 2 and tier 3 rules. The basis of the non-discrimination rule is that irrigation infrastructure operators, irrespective of their size, have an incentive to discriminate against non-members who seek to transform and conduct water trade.

Tier 2 rules will apply to large member owned operators such as NSW's Murray Irrigation Limited and SA's Central Irrigation Trust, and similar sized non-member owned operators not regulated under tier 3.

The rationale behind Tier 2 rules is that the benefits of increased transparency and accountability are likely to outweigh compliance and administrative costs.

Most businesses to be regulated under tier 2 already undertake similar types of reporting to that proposed in the rules. Therefore the compliance costs associated with these rules are likely to be minimal.

Tier 3 rules will apply to the following large non-member owned operators:

- State Water, the bulk water service provider which is New South Wales Government owned
- Goulburn-Murray Water—Victorian Government owned bulk water and irrigation infrastructure operator
- And Lower Murray Water— also a Victorian Government owned irrigation infrastructure operator.

As with the other rules, the ACCC is consulting with stakeholders about the development of the water charge rules.

Final advice to the Minister is due in June 2009 and it is likely that the rules will not be registered as legislative instruments until mid to late next year.

As I said at the beginning, water has and will always continue to be a significant issue for Australians.

The past four years has seen major reforms culminating with the Intergovernmental Agreement between the Murray-Darling Basin states and the Australian Government, and major investment.

Although we are unable to predict the extent of the drought, the ACCC is confident that the implementation of water market and water charge rules will provide strength and certainty to the water and irrigating farming sectors.

However we must remember the ACCC's role is only one part of broader water reforms. It is hoped that the goodwill and momentum generated by these reforms continues well into the future.

Thank you.