

6 October 2020

Commissioner Mr Mick Keogh
Deputy Chair
ACCC

<https://consultation.accc.gov.au/agriculture/murray-darling-basin-inquiry-interim-report/consultation/subpage.2019-10-15.3276925484/>

Dear Commissioner Keogh

CICL Submission to the ACCC Murray Darling Water Markets Interim Report

Key points

1. Coleambally Irrigation Co-operative Limited (CICL) appreciates the significant work completed to date by the ACCC, however, CICL is concerned that the ACCC is seeking views on a range of significant options for improved regulation of the water market in the absence of any proper analysis or detail on the potential costs and benefits of the different forms of increased regulation. Significantly more work is required before any decision on the more significant options raised by the ACCC can be seriously considered by government and industry.
2. The ACCC's interim report does not clearly identify how options to improve the operation of the water market, including increased regulation, will provide solutions to the two key drivers of this inquiry, namely concerns with high annual allocation prices and the impact of investors on annual allocation prices.
3. CICL recommends the ACCC in its final report:
 - provides clearer conclusions about behaviours and effects of the different market participants on annual allocation prices; and
 - provides clear recommendations on changes required to address any negative effects identified.
 - discloses the potential full cost of any increased regulation proposed.
4. Establishing clear, practical solutions which can be applied to the current framework to improve the operation of the water market should be a priority for the final report.
5. CICL does not believe the interim report fairly represents Irrigation Infrastructure Operators (IIO) accountable governance arrangements and significant efforts to efficiently and effectively deliver irrigation water services to their members. CICL would welcome the final report providing a more constructive commentary on IIOs. The interim report implies that if an IIO operates an exchange or market platform other trades are disadvantaged, CICL refutes this claim and argues that our trade platform provides trusted and transparent information to the water market which is valued by our members.
6. The Principles of Best Practice Regulation agreed by Governments include eight principles, which should guide governments' decisions to regulate. CICL believes the ACCC is at point one on this table, establishing a case for action with significantly more information and consultation required before a preferred option can be established.
7. CICL agrees with the ACCC that some form of regulation of water brokers would assist with improving confidence in the operation of water brokers. However, any regulation needs to be proportional to the problems and risk identified. Whilst the ACCC has identified potential problems and behaviours, to date they have not publicly identified any actual problems. Brokers have a critical role in matching buyers and sellers in the

dispersed irrigation foot print, adding to market liquidity and supporting irrigators with administrative processes. It is important that increased regulation does not reduce opportunities for brokers and reduce competition. CICL looks forward to the ACCC more clearly articulating the problems and proposed solutions in their final report.

8. CICL expects, where the ACCC identifies evidence of brokers taking a position in intervalley trades, the ACCC's recommendations for regulation of brokers should prevent this circumstance.
9. CICL strongly encourages the ACCC in the final report to focus on practical options to improve the operation of the current market, use of technology to improve the flow of price and volume information into the market, and not the pursuit of more complex water products.
10. CICL supports further work to identify the opportunities to improve interoperability between state registers, IIOs and exchanges. It is CICL's view that significant further work is required between and with the owners of the various systems to establish clearer options and costs for how to address the issues identified in this report, many of which are known issues. Further work must draw together policy, administration, information technology and communication accountabilities in organisations to deliver practical, affordable and effective solutions. In addition, governments need to learn how to constructively engage with IIOs and include IIOs in the development of practical implementation options. Solutions involving IIOs must not be developed in isolation from IIOs business' models.
11. Information transparency and a single point of truth are popular concepts and CICL supports efforts to improve transparency and accessibility of information. However, there is no simple solution to this issue and not all stakeholders want the same information. Governments and industry need to build on current efforts to improve the quality, timeliness and accessibility of information relevant to the water market. This should include more effective ways to involve and consult with IIOs and frontline operators.
12. In terms of market architecture and the impacts on trade, CICL supports initiatives such as the removal of grandfathered tagged trades and consideration of loss allowance on annual allocation trades. However, CICL does not support exploration of options such as continuous accounting, storage capacity etc. through the ACCC's process. These issues will impact the foundations of each water resource's planning and entitlement framework. CICL believes the place for consideration of alternative policy options should remain in state-based planning frameworks, with the Basin Officials Committee responsible for establishing much better mechanisms for stakeholder input.
13. CICL is concerned the ACCC's approach to governance is to separate market governance from water management. CICL believes it is not possible to divorce the market from the physical water management. It is CICL's view that ensuring sustainable river operating regimes and avoiding third party impacts on other entitlement holders and the environment should be the priority, with the market options added on.
14. CICL is concerned the ACCC's view is the market options should take primacy. There are sound reasons for catchment-based planning and management rules and these rules form the basis of water entitlement holders' property rights. The current movement of water from upstream to downstream is not without impacts; there are physical limitations and environmental consequences when demand patterns alter. There are delivery efficiency impacts when large volumes of irrigation demand need to be met from upstream catchments.

Introduction

15. CICL welcomes the opportunity to respond to the ACCC's Murray-Darling Basin Water Markets Inquiry Interim Report. CICL believes the points made in our first submission to this Inquiry remain pertinent. This submission is written as an Irrigation Infrastructure Operator (IIO) and bulk water access licence holder on behalf of our irrigators. Therefore, our submission does not include responses to several questions which seek the opinion of water market participants, buyers and or sellers of water entitlement or annual allocation.¹ However, given our strong links with our members and knowledge of the irrigation sector in the southern Murray-Darling Basin, CICL provides insights on some questions focussed on irrigator confidence.
16. CICL has informed our members/customers of this Inquiry and encouraged them to provide individual responses to the interim report.
17. CICL agrees with the ACCC's position that water and land should not be tied together again with limited trade. CICL in its first submission wrote:

*The tying of land and water back together, whilst popular with some farmers and communities, will have significant implications for asset values and be extremely disruptive to today's irrigation farm businesses and is not supported.*²

Chapter 2 Water Market Basics

18. It is correct to identify that non-government irrigation infrastructure operators (IIO) are holders of significant water access rights, however, most of these rights are subject to contractual arrangements. Whilst the ACCC acknowledges this at times³⁴, it is CICL's view that the final report should be explicit that whilst non-government IIOs may hold the water access right in the state register, the IIO has issued non-statutory or contractual 'irrigation rights' for most of their water access rights and allocation and permanent trade activity is driven by the IIO's irrigation right holders' decisions.
19. The interim report implies IIOs may have the opportunity to behave in ways that exert monopoly powers and have negative impacts on the operation of water markets. CICL does not believe the ACCC is fairly representing our accountable governance arrangements and the significant efforts of member owned IIOs to support the efficient and effective delivery of irrigation water and provision of a range of services to their members.

Chapter 3 Trends and Drivers

- *Could there be more scope to allow more inter-valley trade, while still appropriately limiting the potential for negative impacts on other water users and the environment?*
 - *Are there costs to inter-valley trade which are not reflected in current prices? If such costs were factored into prices, would demand for inter-valley trade correspondingly reduce (other things being equal)?*
20. It is CICL's view that there are opportunities to refine intervalley trade **but** providing opportunities to increase or remove the IVT limits will have third party impacts including on the environment and CICL does not support initiating a major review of the Murrumbidgee IVT limits.

¹ CICL uses annual allocation or water allocation when referring to the volume of water available to holders of irrigation rights and water access entitlements.

² CICL Submission to the ACCC Murray-Darling Basin Water Markets Inquiry.

³ Ibid, page 66.

⁴ Ibid, page 136.

21. There is clear evidence from Victoria that their current IVT arrangements and the legacy decisions of government are causing significant issues on the Goulburn River, contributing to congestion issues in the River Murray and potentially reducing operational efficiency. These impacts are all socialised, with impacts borne by third parties (irrigators) and the environment.
22. Trade rules should avoid third-party impacts (negative reliability impacts, increased river operational losses, increasing congestion issues and harmful environmental impacts). Just because a trade limit is becoming binding does not mean the trade limit is not justified. Water trading rules should recognise the physical and hydrological realities as noted by the ACCC.⁵ Water policy needs to provide the right mix of signals to encourage investment in irrigated agriculture where the water can be delivered efficiently and without exacerbating environmental and or congestion issues.

Chapter 4 Buyers and sellers: Who trades what?

23. CICL assumes the analysis of IIO trade data is trade to and from an IIO's bulk water licence, with variable proportions of this trade being a direct result of individual member/customer water allocation sales or purchases. CICL believes the final report needs to be clear that IIOs are the trade approval authority for trades to and from their licence and these approvals are primarily on behalf of their customers/members based on their direction. CICL also makes transfers between its licences to manage its water availability.
24. A key driver for this inquiry was general concern with the behaviours of investors on the price of annual allocation. CICL is particularly interested in the final conclusions the ACCC draws from their analysis of commercial allocation trade by the different groups in the southern connected Basin. Stakeholders are seeking more definitive answers of the effects, if any, of the different groups' behaviours and strategies on the primarily of annual allocation prices.
25. CICL recommends the ACCC in its final report:
 - provides clearer conclusions about behaviours and effects of the different market participants on annual allocation prices; and
 - provides clear recommendations on changes required to address any negative effects identified and who should be responsible for these costs.

Issue one – Irrigator engagement in the water market

- *What barriers, if any prevent irrigators from buying and selling allocations or entitlements, using leases, carryover parking of forward contracts?*
 - *How do these barriers prevent irrigators from using a given water product?*
 - *What is the impact of the barrier on the irrigator?*
26. CICL does not provide market advice therefore we do not have an evidence base to answer these questions and believes the answers should come from irrigators, their commercial advisors and water market intermediaries that support irrigators in their water market decision making. However, based on CICL's observations, irrigator knowledge of the different water products and the allocation system combined with trust of brokers may impact on an irrigator's participation in the water market. It is also CICL's view large scale operations with dedicated water management and planning resources have a distinct advantage compared to smaller family farmers.

⁵ Ibid, page84.

Issue two – irrigator risk

- *How many and what type of irrigators are adopting these riskier water ownership and trading strategies?*

27. CICAL in its earlier submission provided data to the ACCC on the volume of water entitlements that have left CICAL's licence since separation from government. This volume is material and represents a 26 percent reduction in the volume of general security water entitlements available for irrigated agriculture in our foot print. This reduction is not matched by a change in the irrigation footprint. CICAL expects this circumstance is not uncommon in the southern Murray-Darling Basin which means an increasing number of irrigators are reliant on the water market and its various options to meet their water demands. The Basin Plan sustainable diversion limit is 30 percent less than the long-term average water use under the Basin Plan cap on diversions (1993/94 levels of development)⁶. This change is material and in CICAL's view a key driver, when combined with seasonal scarcity, of concerns with the water market. Increasing transparency around water markets and increased regulation will not change this fundamental and its associated impact on annual allocation prices.

Issue three – lack of confidence

- *The ACCC is interested in better understanding irrigators' views on water trading, the process of water trading and irrigators' confidence in water markets and market rules.*

28. CICAL's observation is that irrigators, when making decisions about engaging in water markets, are focussing on current water allocation prices, commodity prices and seasonal conditions. Irrigators are adept at making commercial decisions which balance risk and return when making their decisions to enter the market as a seller or a buyer of annual allocation. CICAL's members actively sell or buy annual allocation based on commercial returns and CICAL's observation is its members are confident participants in the annual allocation water market.

29. Irrigators are not homogenous with very different capabilities, business structures and resources. This reality feeds into irrigators' confidence with operating in the water market. In CICAL's case most of our members are 'family farms' with a range of scales and business structures.

30. Unless the ACCC identifies the behaviour of some market participants is having material impacts on actual water prices and acts to stop this behaviour, improving transparency about the price and volume being traded by whom and for what purpose is unlikely to change the actual price of water in the annual allocation market.

31. Drought and uncertainty around future allocations have had pervasive impacts on the irrigation sector. Individuals have different personal and business resilience to cope with this uncertainty. The harsh reality for some irrigators is their business model may not be sustainable under the combined impact of the reduction in the volume of water available for irrigated agriculture because of the water recovery for the environment, and secondly, reduced water availability because of climate and changed land management in upstream catchments.

32. In terms of concerns with the impact of investors or non-farming owners of water entitlements, market regulation should be robust enough to prevent investors from exploiting market power. CICAL looks forward to the ACCC providing more detail on how

⁶ Murray-Darling Basin Authority, personal communication, April 2020.

the market could be better regulated to protect against the price in thin markets being impacted by any water entitlement or annual allocation holder.

Chapter 5 – Investors roles, strategies and conduct

- *What types of water investors participate in Murray-Darling Basin water markets?*
- *What are the investment objectives and strategies of small water investors?*
- *What are the investment objectives and strategies of water investors that participate in the water market by buying and selling water allocations but do not own water entitlements?*
- *What are the investment objectives and strategies of irrigators that buy and sell water allocations for profit, alongside their farming operations?*
- *What are the investment strategies adopted by retired irrigators who have retained their water access entitlements?*

33. Investors provide important sources of additional water for commercial irrigation business either through the annual allocation market and or other opportunities such as carryover parking, leases and forward contracts.. Market opportunities to access 'water' in addition to individual farm business holdings are important to farm businesses whose business model is based on using more than the volume of water entitlements held or the volume they can reasonably expect to have allocated to them. Government water recovery for the environment has increased the number of businesses with increased reliance on the water market.

34. It is the negative implications, if any, of investors' strategies on the price of water in the annual allocation market, and on water entitlements values, that is concern to irrigators.

35. CICL believes the analysis the ACCC is completing of investor behaviours is crucial to answering the many assertions of the impact of investors on the water allocation market, specifically the spot market. CICL's initial submission to the Inquiry supported a forensic analysis of the market behaviours of market participants to identify opportunities for improvements, including increased regulation, where the ACCC is provided evidence of weaknesses in current regulation.⁷

36. CICL still holds this view. It is essential and a priority that the ACCC's final report clearly articulates its findings and provides a pathway forward for effective regulation to prevent investors harming the fair operation of the water allocation and the water entitlement market.

Chapter 6 – Water broker roles, practices and conduct

- *Should a broker or brokerage firms be permitted to provide brokerage services to both parties to a trade? Should a broker that is providing intermediary services in a trade, be permitted to have an interest as a principal in that trade?*
- *In what circumstances should individual brokers or brokerage firms be permitted to have water accounts?*
- *Should individual brokers be permitted to trade in water markets for personal irrigation purposes and in that case, always through an unrelated broker (in an unrelated firm)?*

37. CICL supports brokers acting for both parties provided there is full disclosure of this fact to both parties. CICL also supports brokers holding water accounts provided there is full disclosure of their purpose. One option may be for brokers to be required to hold their water accounts as a trust. Brokers holding accounts assists irrigators by minimising transaction costs and provides administrative efficiency.

⁷ CICL Murray-Darling Basin Water Markets Inquiry, submission, November 2019 page 1.

38. CICL believes brokers and brokerage firms should be required to have clear policies and procedures for declaring and managing conflicts of interests.
39. CICL only supports individual brokers trading in water markets for personal purpose where this activity is through an unrelated broker or firm.
- *What is your experience of brokers holding client funds? Should a broker or brokerage firm have statutory obligations in respect of holding client funds?*
40. CICL supports brokers and brokerage firms having statutory obligations in respect of holding client funds. Any regulation developed to support this approach should demonstrate least cost.
- *If statutory trust accounts were mandatory for brokers, should any interest on client funds be directed to an assurance of fidelity fund?*
41. CICL supports this approach, noting in the current low interest rate environment and the short time funds would be in the account, the interest funds directed to the fidelity fund will be small.
- *Should brokers be required to hold professional indemnity insurance?*
42. Yes
- *If clear, reliable and timely information about the market was more easily available, would this prevent brokers from providing misinformation to clients?*
43. Information empowers the holder. Improving the clarity and timeliness of water market information will assist irrigators complete their own due-diligence and therefore strengthen their position as buyers or sellers.
44. Brokers have a critical role in facilitating the matching of buyers and sellers. Their extensive network of clients and contacts in the dispersed irrigated agriculture foot print contribute significantly to market liquidity by bringing parcels of water onto the market and supporting irrigators with the administrative processes.
- *Should brokers be required to give reasons for zero-dollar trades?*
45. Yes, and more importantly the type of trade which can be reported as a zero-value trade should be limited. CICL notes WaterNSW has recently updated its Application to Assign Surface Water Allocation (71T and 71V) forms to specify the purpose of the trade including circumstances where a zero-value trade cannot be reported.⁸ CICL welcomes this initiative but notes it cannot be responsible for verifying the reasons for the zero-value trade. The next step in NSW is to ensure this detail is captured in the NSW Water Register.
- *Do you consider you are able to effectively access inter-valley trade opportunities when they arise? Why/Why not?*
 - *For holders of water rights who have traded into another valley during an inter-valley trade opening, did you use a broker to facilitate the trade? Why, Why not?*
 - *Does the broker aggregate your water rights on to their water account before an opening? How far in advance of the anticipated inter-valley trade opening do you transfer water rights on to the brokers' water account?*

⁸ <https://www.waternsw.com.au/customer-service/ordering-trading-and-pricing/trading#stay>, accessed 17 August 2020

- *When is the price for the water rights agreed on? When do you receive payment for the transfer of your water rights? (Before or after the inter-valley trade is approved?)*
 - *If there is a delay in transferring the water rights off the broker's account in the destination valley? If so, is this because you don't have a water account in that valley, and you require the broker to hold the water rights on their account until you can find a buyer? Or do the water rights remain in the broker's account until they can find a buyer?*
 - *Are you aware/are you able to see the price the buyer pays to the broker for purchase of your water rights?*
 - *Are you aware of brokers taking a personal position in inter-valley trades? Is this disclosed to the other party to the trade?*
46. Current arrangements where the trade is only open for hours preclude individual participation. It is CICL's observation that brokers have established sophisticated arrangements to maximise their clients' opportunities to sell annual allocation through the inter-valley transfer arrangements. CICL is aware many of our members work with brokers to benefit from these opportunities.
47. The opening and closing limits established by WaterNSW several years ago and the daily (week day) update of the inter-valley account status are an improvement compared to earlier arrangements. This information is accessible via the website and stakeholders can subscribe for updates to changes in the trade limit.⁹
48. CICL cannot comment on whether a broker has taken a personal position in intervalley trades but would support the ACCC analysis establishing an evidence base to either support or reject the assertion brokers are taking a position in the market.
49. CICL expects, where the ACCC identifies evidence of broker's taking a position in intervalley trades, the ACCC recommendations for regulation of brokers should prevent this circumstance.
- *Are you aware of instances where an IIO has prioritised the approval of a trade facilitated by their own brokers or trading platform over other approval requests? If so, provide details.*
 - *Are you aware of instances where an IIO has limited a client's choice of independent intermediary by bundling water delivery services with their own intermediary service? If so, provide details.*
50. WaterMart Coleambally Pty Ltd is the operator of an online temporary trading platform, WaterMart. WaterMart Coleambally Pty Ltd is a wholly owned subsidiary of CICL. CICL's business practice is to process all water allocation trades received in chronological order. CICL is not aware of any cases where it has prioritised WaterMart transactions over other approval requests.
51. WaterMart matches the buy and sell order, creating a trade which is then lodged with CICL for approval. Administration of CICL trades versus operation of WaterMart are treated as equal priorities. In practice, CICL can approve all correctly completed trade applications on the business day received, with the only exception being if there is a short-term increased trade application volume. WaterMart administration is also completed within one business day.

⁹ <https://www.waternsw.com.au/customer-service/ordering-trading-and-pricing/trading/murrumbidgee>, accessed 24 August 2020

Chapter 7 – Regulatory settings and solutions

52. CICL agrees with the ACCC that ASIC market integrity rules are an example of regulation that could be modified and tailored to be fit for purpose for the Basin water trading markets. CICL stresses the importance of fit for purpose. What will the cost of establishing the regulatory framework be? What will the ongoing operating costs be? Who will pay? Are there public good benefits or will irrigators pay for the increased cost of regulation?
53. CICL also agrees with the ACCC that rather than placing restrictions on investors regulation should focus on restricting behaviours of investors that are harmful to the fair and transparent operation of the water allocation and water entitlement markets.
- *Do you consider that there is a place for bona fide water options and futures in the water market?*
 - *Would you buy or sell water futures on-exchange or over-the-counter, if they were?*
54. CICL strongly encourages the ACCC to focus on improving the operation of the current market, and the use of technology to improve the flow of price and volume information into the market and not the pursuit of more complex water products which are fraught with risk. As evidenced by the market, industry can develop their own products, for example carryover parking and forward contracts, to meet industry demands.
- *What records do you keep for calculating the cost base of your allocations and entitlements for Capital Gains Tax purposes, and the cost of good purchased for income tax purposes?*
55. The ACCC should be aware of the increased administrative burden associated with requiring ABNs or ACNs being required when completing trade forms (allocation and entitlement). CICL as an approval authority is concerned it would be responsible for verifying the information including whether there is a business linkage between the registered owner of the entitlement and the ABN or ACN. A likely outcome of requiring this information is that, at least initially, trade approvals will be slower.

Options to enhance water market regulation

Government initiated and licensing scheme Option 1

- *Do you think that brokers and intermediaries in the MDB water market should be licensed?*
- *Should a licensing scheme be enforced at the Basin State or federal level?*
- *Should the licensing scheme be entrusted to an already established body or an independent new body specific to the MDB water market?*

Applying the financial regulation framework to water products Option 2

- *Should the financial regulation framework be applied to basic tradeable water rights and arrangements to buy and sell them, noting that it is a ready-made market regulation framework?*

Independent market focussed government regulator Option 3

- *Should an independent market focused regulator be established for the MDB water market?*
- *Should the regulation of the water market be entrusted to an already established independent regulator or a new body?*

56. The ACCC is asking for the views of stakeholders on preferred regulation options but has provided no indication of what any of the three different options may cost and the benefits relative to the costs incurred. In addition, the ACCC has not clearly explained how the three alternatives would function. This is important information to ensure the ACCC receives considered feedback. The absence of any cost benefit analysis of the proposed options is a major weakness with the Interim Report. Whilst CICL is not opposed to increased regulation the ACCC interim report is inadequate to properly inform feedback.
57. The Principles of Best Practice Regulation agreed by Governments include eight principles (table 1), which should guide governments' decisions to regulate. There is significantly more information and consultation required before a preferred option is established.

Table 1 Australian Government Best Practice Regulation Principles¹⁰

<ol style="list-style-type: none"> 1. Establishing a case for action before addressing a problem. 2. A range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed. 3. Adopting the option that generates the greatest net benefit for the community. 4. In accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:- the benefits of the restrictions to the community as a whole outweigh the costs; and the objectives of the regulation can only be achieved by restricting competition; 5. Providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear. 6. Ensuring that regulation remains relevant and effective over time; 7. Consulting effectively with affected key stakeholders at all stages of the regulatory cycle; and 8. Government action should be effective and proportional to the issue being addressed.

58. The ACCC's Guides - [Water brokers & exchanges - your fair trading obligations](#) and [Water trading - a guide to your rights](#) show the Competition and Consumer Act, 2010, including Australian Consumer Law, apply to protect market participants.¹¹ However, there are a low number of complaints to the ACCC about behaviours with a total of 14 water sector complaints reported to the ACCC in 2017/18.¹² The fact that current laws provide significant consumer protection and there are low numbers of complaints raises important questions about what is driving the dissatisfaction with water markets that caused the Government to have this inquiry. It is essential efforts to improve operation of the water market, including regulation, are proportional to the issue being addressed.

¹⁰ <https://www.pmc.gov.au/ria-mooc/coag/principles-best-practice-regulation>, accessed Thursday 27 August 2020

¹¹ <https://www.accc.gov.au/regulated-infrastructure/water/water-trading-brokers-exchanges>, accessed Thursday 27 August 2020

¹² <https://www.accc.gov.au/publications/accc-water-monitoring-report/accc-water-monitoring-report-2017-18>, accessed Thursday 27 August 2020.

CICL does not believe the ACCC has clearly articulated the issue that needs to be addressed with specific regulation.

59. The cost of the Australian Energy Regulator is significant, but the costs are incurred for all energy consumers. In contrast the Murray-Darling Basin water markets operate at a much smaller scale. CICL believes the costs of an independent market regulator are likely to be excessive and completely disproportionate to the potential risks identified by the ACCC.
60. More detail on the benefits, disadvantages and potential costs of the different options being considered is needed to generate more informed feedback. The ACCC is asking for the views of stakeholders on preferred regulation options but has provided no indication of what any of the three different options may cost and the benefits relative to these costs incurred.
61. If the ACCC is to consider licencing it needs to be mandatory and operate effectively and efficiently across states.

Chapter 8 Trade processes – advising, matching, clearing, settlement, registration and information

62. CICL notes the ACCC's reference to the statements by Malcolm Turnbull in 2007 referring to the Commonwealth's efforts to gain state support for referral of their powers¹³. CICL does not support the states referring their 'water' powers to the Commonwealth and believes any efforts to reignite debate on this issue will only detract from the important need for states to focus on how to improve trade processing services and the quality and timeliness of information provided to the water market.
63. CICL supports increased communication effort to assist market participants navigate different states' terminology as opposed to asking one or more states to change their terminology, thereby potentially creating more confusion within a state.
64. CICL supports greater use of electronic form lodgement and consistent assessment processes for allocation trades¹⁴.
65. CICL supports further work to improve consistency in the recording of water entitlements and annual allocation trades on state registers.
66. CICL supports further work to identify the opportunities to improve interoperability between state registers, IIOs and exchanges. However, it is imperative any discussion considers the options and their cost, implications for cyber security and the practical requirements of operators and administrators. IIO's need to be involved directly and not have regulation and technology imposed on them.
67. Efforts to speed up approval processes must maintain the integrity of the approval process. There are important criteria which need to be met when facilitating trades, for example:
 - Is the water allocation being sold in the seller's account? (CICL does not support negative account balances.)
 - Is the seller financial with their water supply company?
 - Is the seller the registered owner? If not for allocation trades has the registered owner authorised the seller to act? (Water entitlement trades should require the consent of all owners.)
 - Has the fee been paid?
 - Has the price been disclosed?

¹³ ACCC Murray-Darling Basin water markets inquiry – interim report, page 263.

¹⁴ This includes consistent requirements to ensure the volume being sold is available in the account.

- Are the buyer's details complete and in a zone where the trade can be completed?
 - o *Do you consider that automating the flow of information (price, struck date, product type) from an exchange to a register would greatly improve accuracy of data? Do you consider the benefits of improving price reporting would outweigh the cost of adopting this approach?*
68. CICL supports efforts to automate the flow of price information to the market place and the clearer definition of the type of trade as has recently been required by NSW. On face value, including this information will improve the quality of the information in the public arena. However, in the absence of any cost information it is impossible to answer this question properly.
- o *Do you consider that there would be benefits in aligning the states' water management rules (as much as hydrologically possible)?*
69. CICL is not clear in what is meant by this question. If the ACCC is seeking aligning water sharing plan rules and allocation policy, then the answer is categorically no. If the question is around terminology, allocation announcements etc. the answer is yes. CICL would also agree with common approaches to implementation of freight rates for allocation trades between zones.
- o *Do you consider, that apart from state-specific water or water sharing plan specific rules that each allocation trade within the Basin should be subject to the same assessment framework? For example, that a standard and automatable checklist should be used for each state (including: is there enough water in account balance, check trading rules, check fee is paid, check correct form is used, check consent is given)? Do you consider that this check list should be made available to water traders so that they understand what assessment processes their application is subject to?*
70. Yes
- o *Do you consider that entitlement trades should also be standardised across the states? Do you think this will create more equal trading opportunities? Do you consider that fees should then also be standardised? Do you consider that the NSW framework provides a good starting point for separating out different transfer types?*
71. CICL supports the NSW approach of 'tagged licences' to facilitate inter-valley and inter-state trades. This approach maintains the characteristics of the water entitlement and planning framework and is essential to avoiding third party impact of water trade. CICL also supports the options provided by the NSW framework which include term leases.
72. Standardisation should not result in a reduction of options within a state.
- o *Would you like to see one-trade form with standardised language used across states?*
73. Trade forms need to efficiently capture the information required to approve a trade, whether this is via a single form is not material.
- o *Would you like to see the trade type and party type (investor, irrigator, other) recorded publicly?*
74. CICL supports environmental water holder trades being recorded separately to other types of trade and for this information to be publicly available. This is our highest priority for separation as these trades are not-commercial on market trades. It should be easy for the market to separate these trades from other commercial trades.

75. CICAL is aware many stakeholders are seeking increased transparency around the market behaviours of investors and believes capturing the type of trade would provide interesting data about market participants and changes in the behaviours of market participants. However, CICAL would have concerns with the efficacy of classifying different types of trades, apart from environmental water holder trades. CICAL also believes the benefits of disclosure to the market, and the public more generally, should be identified before this issue is progressed. CICAL notes that the ASX does not require disclosure of trades as to whether they are by a superfund, corporate, fund manager, retail etc, so why should water?

- *Would you like to see all state water register website provide the same information presented consistently? If no, why not?*

76. In principle yes, provided this approach does not diminish the improvements completed or in progress with the existing state registers and does not make the investments already made by the states redundant. For example, the NSW environmental water register because other states' registers capture this information differently.¹⁵

Chapter 9 Transaction costs of trade

77. The questions in this chapter are best answered by market participants which CICAL isn't. CICAL corrects the information in the interim report for CICAL's water entitlement transfer charges. CICAL's charge for a permanent trade is \$250 application, plus WaterNSW charge of \$371.85 plus Land Registry Service of \$146.40, totalling \$768.25 (not \$1,109.95).

Chapter 10 – Information transparency

Transparency of carryover

78. CICAL notes the ACCC indicates NSW information on carryover arrangements is contained in the Water Sharing Plan and therefore difficult to access. In NSW the Water Sharing Plans are the appropriate place to detail the water allocation policy. Details of NSW allocation policy by regulated surface water catchment can be accessed on the Department of Industry website in their water allocation dashboard.¹⁶

79. There is an ever-increasing amount of information available. The challenge for stakeholders with varying degrees of knowledge is to navigate the information to find the information sought. Whilst the owners of information need to be responsive and accountable and provide clear, accurate information in a timely way to stakeholders, market participants must also take responsibility for their own education and research.

Trading rules can be dispersed across multiple documents

80. CICAL agrees with this statement, particularly in relation to interstate water trading and Schedule D of the Murray-Darling Basin Agreement. The relevant NSW Water Sharing Plans reference Schedule D and there is no clear process for communicating to stakeholders when Schedule D is changed and no process CICAL is aware of where stakeholders are consulted on changes to Schedule D.

Chapter 11 Solutions to improve trade processes, transaction costs and information

¹⁵ <https://www.industry.nsw.gov.au/water/environmental-water-hub/public-register/environmental/licences>, accessed Tuesday 18 August 2020.

¹⁶ <https://www.industry.nsw.gov.au/water/allocations-availability/water-accounting/accounting-rules-summary-dashboard>, accessed Tuesday 18 August 2020.

- *Do you consider the publication of IIO trading data (internal and external) would be of benefit to water traders?*
81. CICL notes there are numerous references to IIO trading data not being readily accessible. CICL meets its water information requirements under the Water Regulations 2008 to the Bureau of Meteorology and to the ACCC as part of the water monitoring under the Water Act 2007.
82. CICL currently reports irrigation right and annual allocation trades weekly to the Bureau of Meteorology. Small changes could be made to CICL data collection to include collection of price and trade type as currently captured in WaterNSW forms without incurring additional costs.
83. The changes proposed for IIOs will require significant change and additional investment. The interim report is silent on what these changes are likely to cost, who should pay, or what the benefit would be and who the beneficiaries would be. This information is not being demanded by our members. The ACCC needs to provide a much clearer explanation of why this information is needed to justify increased regulation of IIOs. Duplication of reporting to either the BOM or the ACCC must be avoided or replaced.
84. CICL also has concern that the ACCC is mandating registers should be separate from water management systems. If there is to be investment in designing new systems the investment should deliver efficiency and robust systems that minimise the potential for human error. IIOs core business is the supply of irrigation (and in some cases drainage services) to their customers. Our water management systems and water allocation account management are inextricably linked. Our systems need to be automatically linked or a single system.
85. In addition, IIOs do not have the same powers as government and therefore any expectation that IIOs are able to verify price information or even ABNs or ACNs provided is unreasonable. Accountability for providing correct information should rest with the customer/broker completing the form/application.
- *Would a customisable IT application be an efficient solution for standardisation of IIO registers and trading data? Would the National Irrigation Corporations Water Entitlements Register form a useful basis for this?*
86. NICWER is a separate business entity and could be further developed. However, NICWER in its current form would still require each IIO to maintain their own data storage and reporting systems. CICL's preference in the short to medium term is to retain its own registers, which provide data to a host portal.
- *Do you think that the Basin Plan Water Trading Rules (BPWTR) should be updated to include requirements on Trade Approval Authorities to collect more information on trades?*
87. Yes, although it is relevant that the BPWTR were developed based on the ACCC's advice to the Murray-Darling Basin Authority.
- *Do you consider the reporting obligations on sellers under section 12.48 of the BPWTR are well understood? (12.48 trading of a water access right, requires the seller to report a price.)*
88. No.

- *Do you consider that section 12.50 of the BPWTR, which applies to states to make water allocation announcements generally available, is sufficient? Would you support extending this obligation to require consistency across the states' announcements?*
89. No. Each state currently presents their information differently with NSW and Victoria providing significantly more detail than South Australia, particularly on holdings of environmental water. Significant effort has been made by NSW to improve the clarity and quality of their Water Allocation Statements. Work continues in this area as there are always opportunities for improvements and for stakeholders to understand the water allocation process better.
90. CICL would not like, because of mandating consistency between the states, details currently available in the NSW water allocation statements to be diminished.
91. Standardising the dates for water allocation statements, being the 1st and 15th of each month or the next business day, is an important improvement in the flow of information into the market. The efforts of NSW and Victoria to have standard and repeated times for their allocation statements is also an improvement.
- *Do you consider that each state should make available, in one place the following:*
 - *How much has been allocated to entitlement holders?*
 - *What the current carryover limit is applying to each zone, with clearly explained reasoning if there are any differences?*
 - *Historical trading information, with sufficient details to understand what products are being traded and for what price?*
 - *Current buy and sell offers to understand market depth and current pricing?*
 - *Trading and carryover policies and rules?*
92. Ease of access to information material to the water market will help stakeholders' ability to acquire information to make informed decisions. CICL acknowledges it could be easier for stakeholders to find the information relevant to their trade zone and connected trading zones.
93. CICL is not convinced that the reasons for different rules applying in each state, and between catchments within a state, need to be explained. These are issues for the holders of the water entitlement in each planning framework to be concerned with and involved in consultation over any changes that may be considered. If water entitlement holders are fortunate to own entitlements in multiple jurisdictions this is a complexity of their business model and it their responsibility to understand the different rules applying to their portfolio.
- *Do existing information platforms (for example BOM dashboard, Waterflow, private exchanges) meet your information needs? Please provide details of areas you consider are working well, and areas where information needs to be improved?*
94. The BOM dashboard is hard to navigate and it is not clear how the data is cleansed to remove the same trade being reported through the different registers. Waterflow is an easy to use platform which allows market participants to tailor the information to their trading zone. This is an important advance which removes some of the complexity for participants. Waterflow needs more exchanges to participate in the platform to be effective. Other private exchanges are all useful data sources. Anecdotal feedback from our members is they value WaterMart because of its transparency and **all** transactions are listed.
- *What information should a single water market information portal cover?*
 - *If a single information portal was to be adopted, what is the best way to build on existing information platforms?*

95. Given the public money already invested in Waterflow, if a single water market information portal is to be progressed, it should build on this model. CICL believes the Waterflow model which supplies market information, but is not a water exchange, is a sound basis for considering how to improve the supply of market information. There is a difference between water listed for sale, buy bids, sell bids and actual trades. Further detail is required on what is envisaged for the provision of information about the 'spot' market versus actual trade data based on the date the trade is registered, which may be days or weeks after the actual trade price and volume is agreed. The ACCC has not provided any clarity on how to address this timing issue. There are risks where the 'spot' price recorded may not result in a 'real' trade. The information portal needs to protect against 'spot' market prices being manipulated i.e. recording trades, that don't become 'real' trades or recording the same parcel of water more than once.
- *Do you consider that the markets for permanent trade, derivatives and temporary transfers can all be dealt with under one technological solution? Do you consider permanent trades less reliant on real-time data and would be better suited to a different solution?*
96. The linkages between the two systems need to be efficient and minimise risk of errors. Whether it is the same system, or a different system is not relevant.
- *Do you agree that it is important to preserve the ability for buyers and sellers to strike 'off-market' deals provided that all approved trades are registered and captured in historical trade data? Why or why not?*
97. Yes, the flexibility and efficiency and low transaction costs of allowing buyers and sellers to agree on trade is essential. The ACCC should not be considering options that reduce competition in the water market.
- *Do you support the short and medium-term options proposed? Why or why not? Do you consider the alternative options should be considered for implementing in the short to medium term? Please provide details.*
98. In principle CICL agrees with the short and medium-term solutions proposed except for agreeing to increased regulation of IIOs.
99. The ACCC is silent on what the improvements will cost and who will pay. In CICL's experience NSW will impose their costs on water entitlement holders and market participants. It is CICL's view that significant further work is required with the owners of the various systems to establish clearer options and costs for how to address the issues identified in this report, many of which are known issues. Further work must draw together policy, administration, information technology and communication accountabilities in organisations to deliver practical, affordable and effective solutions. In addition, governments need to learn how to effectively and constructively engage with IIOs and include IIOs in the development of practical implementation options. Solutions involving IIOs must not be developed in isolation.
- *Which of the technological options presented in section 11.3 would you support? Please provide reasons for supporting your preference. Are there additional technological or policy/governance solutions which should be considered for implementation over the long term? Please provide details.*
100. CICL cannot support any of the options raised until further information is available on the costs and benefits of the different options and the associated cyber security and system risks the options may present.

- *Do you consider the identification of water right holder types (land-owner, brokers, agribusiness, environmental water holders) in ownership, permanent and temporary trade registers would change your approach to engaging in water markets? How do you consider such a classification would be made by account or by individuals?*
101. CICL is most interested in the disclosure of environmental volumes available, traded and used. It is important these volumes, their use and their trades can be simply and clearly separated from the volume available, use and trade in the consumptive pool. The volume of water now held by environment in the southern Murray-Darling Basin materially impacts on the volume of water in the consumptive pool and therefore on annual allocation prices.¹⁷
102. CICL does not support individual account information being publicly accessible in terms of ownership and does not believe this information is necessary to improve confidence and trust in the operation of the water market. It also increases opportunities for market participants to be subject to vexatious behaviours.
103. CICL believes there is general merit in being able to identify where ownership of water entitlement is not linked to land ownership and agrees there is general interest in understanding the profile of water entitlement ownership in each catchment.
- *Do you support disclosing some ownership information for those who own more than a certain amount of entitlement in a system? If yes, what proportion should this be and how will this change your approach to engaging in the water market? If no why?*
104. CICL has considered the merits of disclosure like the ASC requirements but has concluded increased transparency of ownership is not relevant to improving the operation of the water market. As the ACCC has identified, it is behaviours if harmful that require regulation, not ownership.
- *Do you support the mandatory collection of broker details in trade forms where the trade was facilitated by a broker? Do you consider that reporting (in an aggregate manner) on broker facilitated trades would increase transparency and reduce concerns with broker misconduct?*
105. Yes, and CICL agrees that more transparency around broker transactions would be beneficial, whether it reduces concerns will depend on the data.

Chapter 12 Market architecture and the impacts of trade

- *Has the ACCC identified the main concerns with trade activity and the Basin market architecture, and in particular with the key elements, as set out below?*
 - *Extraction caps (Sustainable Diversion Limits)*
 - *Allocation policies and available water determinations*
 - *Carryover*
 - *Geographical trade rules (including inter-valley (IVT) limits)*
 - *River operations*
 - *Metering*
- *Are there gaps in or issues with other areas of the market architecture that you would like the ACCC to consider?*

¹⁷ <https://www.agriculture.gov.au/abares/publications/insights/economic-effects-of-water-recovery-in-murray-darling-basin>, accessed 9 September 2020.

106. Some aspects of this chapter extend the influence of the inquiry into the foundations of each water resource's water planning and entitlement framework and CICL does not support this extension.
107. There are two specific issues directly related to current trade which need to be addressed as a priority. Firstly, the current exemption to the IVT rules of 'tagged' licences under Basin Plan water trading rule 12.23 that protects tagged licences established prior to 22 October 2010 from the current IVT limits. The ACCC should be recommending this exemption be removed because it provides 'unfair' access to a small number of water access licence holders. Secondly, it is CICL's view that current arrangements do not adequately protect third parties or the environment from the negative externalities associated with the movement of water between trade zones. It is CICL's view the priority should be for operational arrangements to establish arrangements for sustainable flow regimes and efficient river operations. What is happening now is river operations are compromised, particularly in the River Murray and the riparian zone is being severely compromised, to meet demands facilitated by the water market. This effect is compounded by the material reduction in the volume of water available for consumption in South Australia and the Victorian Lower Murray because of the extent of water recovery for the environment.
108. It is CICL's view the policy settings are driven to support expanded trade with little or no consideration of the impacts of shifts in water use on third parties and the environment. The other policy gap, from CICL's perspective, is the failure of the planning frameworks to establish daily extraction limits which are aligned with the regulated system's capacity.
109. A weakness of the National Water Initiative is that it did not explicitly require water access licences to have their capacity to take water defined. Consequently, the extraction conditions of water access licences in the regulated southern Murray-Darling Basin have not been adequately described. Governments do not have an effective policy tool for managing congestion issues and implementing restrictions, and limited policy tools to guide new investments. What happens in practice is that river operators go to extraordinary lengths to manage supply to avoid delivery shortfalls. This can be at the expense of upstream riparian environments and delivery efficiency.
110. The separation of land and water now means the implied right to water delivery associated with water entitlements will be difficult to link to work approvals/extraction points. Establishing formal markets in delivery shares will reward those who can afford to pay the most. It is also contingent on being able to clearly describe the nature of the delivery share.
111. In contrast, a different approach has been taken by IIOs. The Water Market Rules 2009 (*Cth*) which required IIOs to separate water access charges from delivery charges resulted in CICL establishing delivery entitlements separate to irrigation right (water entitlement) ownership. The outcome is that CICL has policies for defining delivery rights and a clear policy for managing daily flow access in the event of delivery restrictions.¹⁸ Permanent trade of delivery rights is allowed, provided that after the trade the destination channel continues to meet CICL's defined minimum daily service level.

Chapter 14 Market architecture reform options

- *The ACCC is exploring options for reform, seeks stakeholder feedback on the merits and drawbacks of, and the potential to adopt options outlined above.*
 - *Improving policy transparency and consultation processes.*
112. CICL supports efforts to improve policy and transparency and consultation processes. Consultation processes need to be well designed, have clear objectives and properly involve the stakeholders that will be materially impacted by any policy changes. The

¹⁸ <https://www.colyirr.com.au/de-fact-sheet>, accessed Wednesday 29 August 2020

consultation process needs to include a sound evidence base which properly assesses the benefits and disadvantages and to whom of the different policy choices.

113. NSW has just completed a long process to develop its Water Resource Plans required under the Basin Plan. The place for further consultation in NSW on the significant policy changes, such as capacity sharing, is in their regional water strategies.¹⁹
114. Providing clear information about current policy versus consultation on changes to current policy are different things. CICL would argue there is an extraordinary amount of information available on the websites of organisations involved in water management and governance. The challenge for water market participants is the time involved to access and analyse this information and to extract the information which is relevant to their decisions. In addition, for new market entrants who have limited knowledge and understanding of the water industry, building their knowledge and understanding can be a daunting task.
115. Waterflow's university is one good example of where targeted communication products are available to assist market participants build their understanding.²⁰
- *Examining policy improvements to allocations and carryover policies and the feasibility of adopting alternative approaches like continuous accounting and capacity sharing in the southern connected Murray-Darling Basin.*
116. The options raised in this discussion introduce complex issues and if supported would result in significant changes to current water entitlement planning frameworks with implications for the property rights of existing entitlement holders.
117. CICL believes the place for consideration of alternative policy options is in state based planning frameworks with options developed and considered in consultation with entitlement holders and regional communities who benefit from the regulated river system, the values it provides, and the economic activity it generates.
118. Careful consideration must be given to any proposed changes to the water entitlement and planning framework so that stakeholders are fully informed of the consequences of the proposed changes and the implications for water entitlement holders.
119. NSW has just completed the development of its Water Resource Plans required under the Basin Plan which has included a review of the current water allocation rules in the Water Sharing Plans. CICL has supported, through this process, continuation of the current water allocation policy, including carryover provisions. It is our view that whilst some irrigation farmers are seeking changes to allocation policy that in effect reduce the extent of socialisation, most irrigation farmers understand the current policies and have developed their farm businesses around the current policies.
120. In our first submission to the Water Markets Inquiry, CICL raised the importance when the ACCC was exploring opportunities to improve the operation of the water market, that it was essential any recommendations to enhance the water market do not act to undermine the unique characteristics of the different water products and therefore irrigators rights. CICL remains of this view. To this end CICL supports continuation of catchment-based water sharing and allocation policies as these rules form the basis of water entitlement holders' property rights. The current rules in NSW provide certainty and stability to water entitlement holders and the water market²¹. Policy certainty is important to commercial investment.

¹⁹ <https://www.industry.nsw.gov.au/water/plans-programs/regional-water-strategies>, accessed Monday 24 August 2020

²⁰ <https://www.waterflow.io/university>, accessed Thursday 20 August 2020

²¹ CICL Submission to the ACCC Murray-Darling Basin Water Markets Inquiry, November 2019

- *Exploring the potential for further unbundling of property rights and the creation of formal markets for storage and delivery capacity in the southern connected system.*

Formal markets for storage capacity

121. In the Murrumbidgee total water availability is a combination of storage volumes and tributary inflows downstream of the storage. The contribution of inflows downstream of storages to total water availability is variable and in 'better' resource years, inflows downstream of the storage are a significant share of total water availability.²²
122. River operators aim to operate the regulated system to optimise the storage and delivery of water to water users. This means in effect water demand is often met by tributary flows not storage releases. Creating storage rights separate to the water entitlement framework will fundamentally alter the foundations of current storage management and river operations and impact on property rights.
123. CICL does not believe the irrigation sector is ready to consider this type of reform and believes any reform which adds more complexity will advantage the corporate sector to the disadvantage of many family farmers. The development of carryover parking markets is a sound mechanism for providing market options within the established entitlement framework.

Delivery capacity

124. The IIOs were forced to unbundle delivery capacity because of the Water Market Rules 2009. Fortunately, unbundling was done at a point in time when most water entitlements were still attached to farms. In our case one delivery entitlement was issued for each water entitlement.
125. In contrast, extraction components, whilst supported by at least the NSW Water Management Act, were not established through the water entitlement planning and management frameworks. The implied delivery right associated with water entitlements has now been lost by the removal of restrictions on ownership of water entitlements.
126. It is clear from the current issues in the River Murray and the impacts of IVT delivery on the Goulburn River system, combined with challenges of the Barmah/Choke, that current rules are inadequate for managing congestion issues and protecting the environment.
127. CICL supports establishing a sound policy mechanism to manage congestion issues that sends signals to developers/investors in new or expanding irrigation developments. Using a market mechanism is reliant on having a sound basis for establishing delivery shares. The question of whether these shares should be tradeable and whether on only an annual or permanent basis is a separate question. Significantly more information is required on this issue before robust decisions can be made. The step to move towards markets in delivery shares relies on having a sound foundation for establishing these shares.
- *Investigating the feasibility of applying conveyance loss factors to water deliveries in the southern connected basin.*
128. CICL supports the application of conveyance loss factors (freight rates) to water deliveries where there is evidence that trade is reducing river operational efficiency and increased losses are impacting on third parties.

²²https://www.waternsw.com.au/supply/regional-nsw/balance?result_119816_result_page=1, accessed Thursday 20 August 2020

- *Removing the exemption of grandfathered tags or getting rid of entitlement tagging altogether.*
129. CICL supports the removal of the exemption of grandfathered tags. CICL does not support entitlement conversion and believes many of the issues in the Lower Murray and Goulburn system are driven by legacy decisions. CICL supports continuation of tagged entitlement trading.
- *Changing all allocation trade to tagged allocation trade.*
130. If CICL understand this option correctly, it involves the water allocation traded through the annual allocation process remaining in the selling catchment's water allocation account until the water is called on and then used in the destination catchment. On face value this option seems unworkable with current water accounting arrangements.
131. How does this option deal with the physical limitations of delivering water? Who wears the delivery risk and via what mechanism? How does this option address existing water allocation and account management rules? Is this reliant on continuous accounting?
- *Improving consistency, including compliance activity across Basin states accounting and metering requirements.*
132. CICL agrees with this point and made this point in its first submission.

Chapter 15 Governance

- *In what ways is the 'governance' of the Murray-Darling Basin's water-rights markets helping or harming those markets? Please give examples to help explain your answer.*
 - *What changes to the governance arrangements (if any) should be made; how, and why?*
133. CICL is concerned the ACCC's approach to governance is to separate market governance from water management. CICL believes it is not possible to divorce the market from the physical water management. It is CICL's view that ensuring sustainable river operating regimes and avoiding third party impacts on other entitlement holders and the environment should be the priority, with the market options added on. CICL is concerned the ACCC's view is the market options should take primacy. There are sound reasons for catchment-based planning and management rules and these rules form the basis of water entitlement holders' property rights. The current movement of water from upstream to downstream is not without impacts. There are physical limitations and environmental consequences when demand patterns alter. There are delivery efficiency impacts when large volumes of irrigation demand need to be met from upstream catchments. In addition, there are third party impacts on those not involved in the trade when there is a mis-match between delivery of traded water between water years.
134. CICL believes many of the issues which have caused interstate 'ad hoc' decisions are a result of the water market and where government policy makers have not anticipated industry's response to the market options available and have been slow to respond to the emerging problems. This has resulted in 'ad hoc' decision making.
135. CICL believes the decision-making frameworks need to build a much better understanding of the implications of industry's behaviours on both the physical and third parties. CICL strongly supports the Basin Officials Committee framework being more effective. Currently its role is important, but details of its deliberations are not available to industry and there is **no** transparency in their decision-making process. It also seems the process of introducing what are agreed as sensible changes, for example improved

price reporting and limitations when zero value trades can be reported is extraordinarily slow.

136. One of the challenges for the governance framework is industry expertise is excluded because of perceived conflicts of interest and the bureaucracy does not have the essential industry knowledge to understand how the commercial sector is likely to respond to certain policy changes. Consideration of how the input of the commercial sector can be better involved in both strategic and administrative decision making would be beneficial. Public consultation processes which are open and targeted are one way of managing concerns with market sensitive information.
137. CICL rejects the assertion that IIOs that operate a trading platform are unable to manage fairly their trade approval process. If the outcome of the ACCC's review was that IIOs were precluded from operating a trading platform, this would remove trusted, transparent market information on the water allocation market in the Murrumbidgee. This would be a backward step.
138. CICL agrees with the ACCC that some form of regulation of water brokers would assist with improving confidence in the operation of water brokers. As noted previously the regulation needs to be proportional. Whilst the ACCC has identified potential problems and behaviours, to our knowledge to date they have not identified any actual problems. CICL looks forward to the ACCC more clearly articulating the problems and proposed solutions in their final report.

Conclusion

139. CICL would be pleased to discuss this submission further with the ACCC. I can be contacted on T. 02 6954 4003.

Yours sincerely



Clifford Ashby
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