



SUBMISSION TO THE INQUIRY INTO MURRAY-DARLING BASIN WATER MARKETS INTERIM REPORT

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to

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Australian Competition and Consumer Commission
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by

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CITRUS AUSTRALIA AND THE CITRUS INDUSTRY

Citrus Australia is the peak industry body for the national citrus industry.

The citrus industry is one of Australia's largest fresh produce exporters, with export volumes increasing from 158,000 tonnes in 2014 to 291,000 tonnes in 2019.

As a result, the Australian citrus industry contributed almost \$900 million to the GDP through farm gate sales in 2019, including \$540 million in citrus exports alone.

While the industry's size and output are significant in Australia, it comprises less than three per cent of global production and is one of the highest cost producers in the world, relying on its reputation for quality and safety to command premium prices in high paying export markets.

The Australian citrus industry is one of Australia's largest horticulture industries, with commercial production spanning 27,000 hectares across five states and one territory. It is estimated that 20 per cent of the citrus businesses in Australia produce 70 per cent of the volume; whilst 70 per cent of citrus businesses are less than 100 hectares in size.

The citrus industry is a major employer in regional and rural Australia, with an estimated 25,000 people employed in citrus production at peak harvest, and more employed in allied businesses.

Approximately 73 per cent of the citrus industry is situated across the Lower Murray Darling; the Riverina, centred on the towns of Griffith and Leeton New South Wales, is the largest citrus producing region, with 30 per cent of the nation's area under production.

The Riverland in South Australia, including Renmark and Loxton, and the Murray Valley on the border of Victoria and New South Wales, including Mildura and district, each comprise approximately 20 and 21 per cent of the nation's area under production respectively.

Citrus Australia facilitates market access for growers and export expansion by eradicating barriers to export markets, through government liaison; driving the Australian Citrus Quality Standards to maintain fruit quality; and developing more effective export promotion programs.

It also works with growers and government departments to improve biosecurity; agrichemical best practice, awareness, and adherence to Maximum Residue Limits; and coordinates industry research and development.

Whilst Citrus Australia does not own or trade water directly, it represents almost 1,600 grower businesses that do, approximately 70 per cent of which are based in the Murray Darling Basin.

RESPONSE TO THE INTERIM REPORT

The Murray Darling Basin has been subject to countless investigations and inquiries through the years; disappointingly the ACCC inquiry into the water markets in the Basin is another which concludes that 'it's complicated'.

In the lead up to the commission of this report, many growers asked that the inquiry question the appropriateness of a water market:

- that trades a commodity that is unique in its necessity for plant and animal life;
- that includes participants that have no tangible use for water;
- that encourages market practices that drive up the price for a commodity which is irreplaceable in the production of food and livestock;

- that allows factors other than natural supply and demand to inflate the price of a critical input; noting agriculture is an industry that cannot easily pass on cost increases to its consumer.

Growers have repeatedly called for a water market that is exclusive to water users which, as the interim report reflects, was the genesis of the current water market in the 1980's. Other than noting these origins, the interim report does not investigate this request, preferring to report on the fiscal benefit to the economy of the trade of water valued at some \$1.5 billion per year. In contrast to the growers' view, the interim report focuses on the ACCC's perception that by making adjustments to the water market to exclude certain participants, it would devalue the market, and write down water assets of all participants; which to the ACCC and others is not a suitable outcome.

Evidence shows that the inflows of water to the Murray Darling Basin have significantly decreased over the past 20 years, and that the price of water has increased markedly in the preceding 5-10 years. The effect across the Lower Murray Darling Basin will be a further centring of cropping to a small number of profitable industries. Whilst that may bring efficiencies and secure supply, it hobbles diversity and increases risk of events such as biosecurity incursions and industries collapsing due to market access or political issues (see China/Australia continued political stoush) leaving both industries and communities vulnerable.

The issues that make trading in this market difficult are numerous, they stem largely from the governance framework; variances in state policy, state regulation and processes. As pointed out in the interim report, the *Commonwealth Water Act 2007* reforms were meant to be the first step toward greater centralisation whereby the states would refer their power to the Commonwealth.

The inconsistencies in state governments' approach to the ongoing approval of water use licences creates inequality between growers who are but 100 metres apart, separated by a river. It also creates twice as much work for growers who live in border regions and farm on both sides of the river, whereby they must understand the cumbersome water trading rules made up by not just one government, but two or sometimes three.

This modern market with its sophisticated products is too slick for the cobbled together, counterproductive structures on which it is built; and farmers who rely on this superseded structure for information to make decisions find it can only deliver inaccurate, untimely and incomplete data.

To Citrus Australia's knowledge there is limited uptake of the 'new products' the water markets offer because there is mistrust in the system, therefore the 'many benefits' the markets provide are of little consequence to most irrigators. None the less, the ACCC see value in improving the markets in order to increase the opportunity for trade in these new products. Whilst this may offer some flexibility to growers, it can't help but also point to a desire for more products to derive financial gain for investors; these two goals do not always align.

The report does identify some very simple and achievable actions that can be taken, such as improving procedures to stop zero-dollar trades without a justification. It identifies the lack of regulation in the brokerage sector, noting there is a lack of obligation and inadequate oversight of brokers which should be rectified with regulation; we would hope this regulation is uniform across all Basin States.

The potential for manipulation of the market by sophisticated traders is an ongoing focus of the ACCC and no conclusions have been drawn. However, the lengths the ACCC have had to go to obtain sufficient information to investigate stakeholder concerns are a testament for the need to improve collection, coordination and transparency of data.

Whether data is provided by state institutions, brokers or Irrigation Infrastructure Operators (IIO) - there are too many opportunities for market asymmetry.

The great conundrum industry faces is that whilst this report highlights easily (and some not so) identifiable issues that could be addressed in the short and medium term to improve the transparency, accuracy and timeliness of information, it ultimately comes down to this:

- Who will drive the change that will have to be enacted by the states?
- How will the states be enticed or cajoled in to action?
- Who ultimately will pay?

It seems the irrigator and the tax payer are punished over and over to pay for the mistakes of poor policy, poor governance, and a lack of regulation which has now gotten so far out of control that the consequences have become irreversible.

The long-term solutions, the big picture items the report references like single information platforms or single trading models, appear to be so far from achievable in this modern political landscape. News cycles dictate policy rather than long term strategic planning for the good of the nation. It is unfathomable that these projects will be realised in any of our lifetimes without the emergence of strong leadership in our political or perhaps agri-political environment.

SUMMARY OF CONSULTATION

Citrus Australia conducted a survey (Appendix 1) with grower members based on the interim report's chapters and questions of most relevance, as requested by the ACCC. This yielded little response, and the responses received are varied. To put it simply, an irrigator seeks fair access to water to grow their crop.

A grower must be knowledgeable in climate, soil, growing practices, agrichemicals and fertilisers, biosecurity, irrigation, mechanics, sales, marketing, human resources – they are not seeking to be experts in water markets as well. Irrigators should be able to have faith that this responsibility is being appropriately managed by authorities responsible for the management of markets, with the consideration that this is not just any commodity, but the primary natural resource to sustain life.

The poor response to the survey was also an indication that growers are not familiar with, or do not regularly utilise, the practices being questioned.

Citrus Australia has identified key topics in the report which are continually raised by growers, and have summarised our position on these below.

Broker regulation

To close some loopholes, put an end to some of the unconscionable conduct and ensure that the primary goal for water brokers is to serve the best interests of their clients, Citrus Australia feels that brokers must be more tightly regulated and should not be able to trade water in their own right. Brokers should be licensed and registered and this information should be on a national platform and include other water markets.

Transparency

Steps need to be undertaken to increase transparency in markets, for example, the introduction of a statutory trust account framework to lessen client risk when brokers are holding their water.

However, full transparency has its dangers.

Listing companies and individuals that own water could put growers at more risk of predatory behaviour. Growers could be targeted by banks, real estate agents, or investment companies who want to put pressure on them and can see how much water they do (or do not) have. For large corporations, the amount of water they own may already be found in their annual reports.

Improvement in transparency should be improvement of timely information about the volume traded, the value of the trade, the reason for the trade and the allocation associated with the trade; and less about the entities involved.

Central platforms

Growers' have repeatedly called for a clearer line of site on the water rights markets.

Much of the distrust that has built up in the market comes back to not knowing the depth of the market - the value and volume of trades - so as to make informed business choices.

The report articulates the many issues the Basin States have with governance of the water rights market. Growers called for centralising of information or in some cases a move to the ASX model. The report puts forward some key insights into the dangers that some of the proposed models would create. For example, whilst an ASX model would provide regulation of brokers and uniformity in trade across the Basin it could create a monopoly leaving stakeholders open to increasing/unfettered costs. It would also mean all trade would have to be through a broker, preventing private trade between neighbours without involving a third party. Regardless, the cost and time it would take to create such a market seems insurmountable.

What is potentially more achievable would be reform in the architecture and governance of water rights trade that allows the states to retain ownership of the statutory processes, but feeds information in to one source of truth - a central information platform. Stakeholders could opt to use brokers or trade privately, however state regulations would require an equal amount of transparency on the value, volume and reason for trade as well as the amount of allocation. This information should be digital and instantaneous.

Inter-Valley Trade (IVT)

The report has identified that many growers have limited knowledge on IVT, and little access to the opportunities it presents due to more sophisticated investors controlling a lot of trade during the small window it is available.

The suggestion of removing the current exemption for grandfathered tags will have a negative impact on water holders in the Murray Valley region, as this will further reduce the level of water available on the market and access to this water if tags were established prior to 2010.

The ACCC's position is that IVT is not an effective way to manage the delivery of water and the report notes that the review into the Goulburn Murray IVT is promising as it presents flexible delivery options for River Managers. Citrus Australia supports flexible approaches to water delivery through IVT.

Carryover

There is a call for carryover to be standardised across states as it lacks fairness.

The report explains how carryover policy is determined, and makes it clear that New South Wales has a lot of work to do to reach a satisfactory level for water users, compared to Victoria and South Australia.

Victoria and South Australia provide easy to access information and share the risk and evaporation loss for carryover with water users who choose to do so, whilst New South Wales has not yet considered this. Given the different physical characteristics of water access and storage in each

state, it is difficult to standardise this, but it would be useful for the primary policies to be listed in one place.

CONCLUSION

Citrus Australia found that the interim report recognises many of the concerns raised by grower members in our submission to the inquiry in November 2019.

For this reason, we are supportive of the direction that the ACCC inquiry is taking to increase regulation, compliance and transparency of the markets, whilst improving timely and accessible information to irrigators. However, it remains disappointing that water in the Murray Darling Basin continues to be treated primarily as a commodity available to trade and earn a profit, considering its significance to the sustainability of life in regional Australia.

In addition, the reference to numerous past and current strategies and plans highlights that much of the change required to improve the water markets stems from state governments who lack motivation or incentive to collaborate for the best outcome, and instead often politicise the Basin, dragging issues out for many years.

APPENDIX 1

Survey Feedback

The survey was completed by 12 citrus growers, or representatives of growers, whereby they only responded to points of relevance to them. There was an equal response from all three states – New South Wales, Victoria and South Australia. Responses are provided below.

CHAPTER 6

Should a broker or brokerage firm be able to provide brokerage services:

To both the buyer and seller?

6 growers answered YES

Where they are the principal buyer or seller in a trade with a client?

1 grower answered YES

Where they have their own water account?

0 growers answered YES

For personal irrigation purposes and in that case, always through an unrelated broker?

3 growers answered YES

Please share any thoughts you have on this

- It makes sense that they provide services to both the broker and seller but should not claim commission from both sides. If this is the case, the other examples are not acceptable in any circumstances.
- If a broker is buying water both temporary and permanent on their own behalf, there should be full transparency.

If you had access to easy to understand, timely information, do you think this would prevent brokers from providing misinformation to clients?

10 growers answered YES

2 growers answered NO

Additional comments

- There is a lot of information available already if you know where to look.
- The information is out there but hard to gather across many different websites.
- Interpretations can be made to distort the market. Example: I got a call from so and so to place a sale at X.

Do you have any experiences to share regarding brokers holding your funds? Do you think they should have statutory obligations to do so?

2 growers answered YES

4 growers answered NO

Additional comments

- No experiences but they should have the obligation.
- The main hold up on trades is the slowness of the processing through state departments.

Should brokers be required to have professional indemnity insurance?

11 growers answered YES

Additional comments

- It would be in their own interests to do so.

Do you think brokers should have statutory obligations when holding your funds?

11 growers answered YES

Do you have any experiences to share regarding brokers holding your funds?

- I have experiences where brokers did not transfer water when a transfer fee had been paid.

Have you been provided with misleading information by a broker?

4 growers answered NO

- Not for a long time, I now don't listen to them, I often know more about water policy than they do. The availability information/reports they put together are useful but all numbers can be made to look any way you want them to depending on what numbers you use. The main issues are the discrepancies in numbers between state departments and the MDB authority, plus the boundaries set for regions by the authority vs states differs. How can the modelling they do be correct? The Millennium Drought is terrible for misinformation.
- Entered into a long-term lease in the 19/20 water year and was told the water was from below the choke, however the water was from above the choke and would be difficult to transfer into SA. National water brokers arranged the lease and after I found out that it was not what I originally requested, I discussed the issue and found it very difficult to cancel the contract. They made me feel that I should have known when I signed the docs etc. and because the sellers were happy with the lease the only way I was going to get out was for the national water brokers to find another irrigator to take on the lease. Luckily for me they were able to suck in someone else and I was released from the lease. This still cost me legal fees and more grey hair as this was a very difficult time and I was made feel like an idiot. I have also been a buyer of temp water and agreed on a price with a broker only to find out a couple of weeks later that the seller apparently wanted more money now as the market has gone up. I complained as I thought I had the water but that was a waste of time as the seller had not apparently signed. A similar situation occurred with a long-term lease with Duxton. They showed me all the contracts etc. and took about two months to then complete the signing there end, and guess what happens? The price goes up because they say the markets moved. I asked why they took so long to sign and it was obvious they did it to manipulate the price up.

Should brokers have to provide a reason for their \$0 trades?

11 growers answered YES

Please share any thoughts on this

- There is no such thing as a \$0 trade, even between related entities there is an opportunity cost - which is the current market cost.

Are you able to effectively access inter-valley trade (IVT) opportunities when they arise?

3 growers answered YES

5 growers answered NO

Why/why not? Do you use a broker for this?

- Too complex.
- They disappear as they are being advertised.
- Seems like a device for the people 'in the know'.
- Because it seems to be controlled by a few people in the know, maybe inside trading?
- It is very confusing and very clear sometimes. Who can trade what and where.

CHAPTER 7

Option 1

Do you think that brokers and water traders in the MDB water market should be licenced?

6 growers answered YES

Please share any thoughts on this

- Yes, and a stricter code of conduct be established similar to an ASX stock broker or real estate agent.

Should a broker licencing scheme be enforced at a federal level, or a Basin State level?

5 growers answered FEDERAL

Why?

- To cover all water licensing, not just in the MD Basin.
- Why isn't the ACCC ensuring trading is fair, not politicians?
- Having different rules and regulations between states allows loop holes to be found, the scheme should be federal to keep it uniform and less confusing. Half the reason the plan is such a mess is different rules between states. Federation happened 119 years ago but yet government bodies seem to be moving away from it more and more to suit their own agendas.

Should the licencing scheme be entrusted to an already established body, or to a new independent body specific to the MDB water market?

4 growers answered ESTABLISHED

2 growers answered NEW

Why?

- Far too complex not to make a new body.

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?

5 growers answered YES

Please share your thoughts on this

- Sorry don't understand question, already too much red tape.

Option 3

Should an independent market focused regulator be established for the MDB water market?

4 growers answered YES

1 grower answered NO

Please share your thoughts on this

- Would this be like the power market? Consumers still pay high prices!
- Far too complex not to make a new body.

Should the regulation of the water market be entrusted to an already established independent regulator, or a new body?

4 growers answered ESTABLISHED

2 growers answered NEW

Please share your thoughts on this

- Far too complex not to make a new body.

If you haven't already advised, which of the above 3 options would you prefer?

3 growers chose OPTION 1

1 grower chose OPTION 2

1 grower chose OPTION 3

Why?

- One and three, new body on a federal level.

CHAPTER 8

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?

4 growers answered YES

1 grower answered NO

Any comments?

- Full transparency is not the complete answer.

Do you consider the benefits of improving price reporting would outweigh the cost of adopting this approach?

5 growers answered YES

Any comments?

- Keeping the brokers and non-farmer major water holders from manipulating the market for huge profits should be the main goal.

Would you be more likely to trade in derivative products if there was a central clearing house which took on the counterparty risk?

4 growers answered YES

1 grower answered NO

CHAPTER 10

What information do you think is critical to your ability to make water trading investment decisions?

- Water availability and price.
- The amount of water in accounts that aren't tied to farms at any given time.

Do you agree with the ACCC's findings so far on key transparency issues?

3 growers answered YES

CHAPTER 11

Do you think that the Basin Plan Water Trading Rules should be updated so that trade approval authorities are required collect more information on trades?

- If a private investor with no farm buys water, this should be provided with big fines if false information is given which could lead to the manipulation of the market.

Do you think that Basin Plan Water Trading Rule 12.50, which says that Basin States must make water allocation announcements 'generally available', is sufficient?

1 grower answered YES

3 growers answered NO

Any comments?

- The allocation announcements make a big difference to a farm's budget throughout the year. I'm not sure the MDBA know how important these announcements are.

Would you support extending the above obligation to require consistency across allocation announcements made by all Basin States?

5 growers answered YES

Do you agree that each state should make, in one place, the following:

How much has been allocated to entitlement holders

5 growers answered YES

What the current carryover limit is in each zone, with an explanation as to why

5 growers answered YES

Historical trading information, with detail to understand what products are being traded and the price

5 growers answered YES

Current bids and offers to understand market depth and current prices

5 growers answered YES

Trading and carryover policies and rules

5 growers answered YES

Please share any further thoughts you have on this

- The bid system currently has "buy price", there should be a "offer price" the same as the ASX.

Do existing information platforms meeting your information needs (eg. BOM, Waterflow, private exchanges)?

2 growers answered YES

2 growers answered NO

Do you agree that it is important to preserve the ability for buyers and sellers to strike 'off-market' deals (i.e. sales to your neighbour), provided that all approved trades are registered and captured in historical trade data?

5 growers answered YES

Why?

- Don't want a water trades to become too complex and more expensive.

Do you support the short- and medium-term changes proposed in this chapter?

2 growers answered YES

CHAPTER 12

Has the ACCC identified the main concerns with trade activity and Basin market architecture, particularly the below?

- ***Extractions caps (Sustainable Diversion Limits)***
- ***Allocation policies and available water determinations***
- ***Carryover***
- ***Geographical trade rules (including inter-valley trade (IVT) limits)***
- ***River operations***
- ***Metering***

3 growers answered YES

Is there anything else under this subject that you would like the ACCC to consider?

- More information on the current flows from the rivers and creeks that flow into the Murray. There are no flow meters at the mouth of the Murrumbidgee, Darling or Goulbourn rivers, or examples that provide information on exactly how many megalitres per day they are allowing into the Murray.

CHAPTER 14

The ACCC seeks feedback on the pros and cons of adopting the options below.

Making carryover parking markets more formal

3 growers support this option

Unbundling storage access/carryover eligibility from water access entitlements and creating formal, separate markets for carryover storage

2 growers support this option

Harmonising or increasing the frequency of water account reconciliation and reducing the ability to reconcile accounts by entering water markets (this would increase costs due to updates in metering technology)

2 growers support this option

Removing the exemption for grandfathered tags or getting rid of entitlement tagging altogether

1 grower supports this option

Make all allocation trade tagged allocation trade (so that water only moves between valley accounts when it is being delivered, and remains in the origin valley accounts at the time of trade and for carryover)

3 growers support this option

Developing more dynamic IVT mechanisms (timely and responsive tools to allocate access to the limited water available for trade and manage impacts on other water users)

3 growers support this option

Is there a need to further develop the limited trading rules for unregulated systems in northern NSW, or for trade of floodplain harvesting rights?

4 growers answered YES

Why?

- Very obviously corruption taking place in big corporates controlling the river and gaining a lot of free water that never makes it to south of Menindee.

CHAPTER 15

Is the 'governance' of the MDB water rights markets causing harm to the markets? **4**

2 growers answered YES

1 grower answered YES

What changes (if any) should be made to governance arrangements, and what do you think this would achieve?

- Very obviously corruption taking place in big corporates controlling the river and gaining a lot of free water that never makes it to south of Menindee.