

## **SUBMISSION**

# **NSW Government Response to the ACCC Murray-Darling Basin Water Markets Inquiry**

Public Consultation

May 2021



## NSW Irrigators' Council

The NSW Irrigators' Council (NSWIC) is the peak body representing irrigation farmers and the irrigation farming industry in NSW. NSWIC has member organisations in every inland valley of NSW, and several coastal valleys. Through our members, NSWIC represents over 12,000 water access licence holders in NSW who access regulated, unregulated and groundwater systems.

NSWIC members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton and horticultural industries. NSWIC engages in advocacy and policy development on behalf of the irrigation farming sector. As an apolitical entity, the Council provides advice to all stakeholders and decision makers.

NSWIC welcomes this opportunity to provide a submission to the consultation period on the *NSW Government Response to the ACCC Murray-Darling Basin Water Markets Inquiry*.

NSWIC sees this as a valuable opportunity to provide expertise from our membership to inform the response. Each member reserves the right to independent policy on issues that directly relate to their areas of operation, expertise or any other issues that they deem relevant.

## NSW Irrigation Farming

Irrigation farmers in Australia are recognised as world leaders in water efficiency. For example, according to the Australian Government Department of Agriculture, Water and the Environment:

*“Australian cotton growers are now recognised as the most water-use efficient in the world and three times more efficient than the global average”<sup>1</sup>*

*“The Australian rice industry leads the world in water use efficiency. From paddock to plate, Australian grown rice uses 50% less water than the global average.”<sup>2</sup>*

Our water management legislation prioritises all other users before agriculture (critical human needs, stock and domestic, and the environment), meaning our industry only has water access when all other needs are satisfied. Our industry supports and respects this order of prioritisation. Many common crops we produce are annual/seasonal crops that can be grown in wet years, and not grown in dry periods, in tune with Australia's variable climate.

Irrigation farming in Australia is also subject to strict regulations to ensure sustainable and responsible water use. This includes all extractions being capped at a sustainable level, a hierarchy of water access priorities, and strict measurement requirements.

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<sup>1</sup> <https://www.agriculture.gov.au/ag-farm-food/crops/cotton>

<sup>2</sup> <https://www.agriculture.gov.au/ag-farm-food/crops/rice>



## NSW Irrigators' Council's Guiding Principles

Integrity	Leadership	Evidence	Collaboration
Environmental health and sustainable resource access is integral to a successful irrigation industry.	Irrigation farmers in NSW and Australia are world leaders in water-efficient production with high ethical and environmental standards.	Evidence-based policy is essential. Research must be on-going, and include review mechanisms, to ensure the best-available data can inform best-practice policy through adaptive processes.	Irrigation farmers are stewards of tremendous knowledge in water management, and extensive consultation is needed to utilise this knowledge.
Water property rights (including accessibility, reliability and their fundamental characteristics) must be protected regardless of ownership.	Developing leadership will strengthen the sector and ensure competitiveness globally.	Innovation is fostered through research and development.	Government and industry must work together to ensure communication is informative, timely, and accessible.
Certainty and stability is fundamental for all water users.	Industry has zero tolerance for water theft.	Decision-making must ensure no negative unmitigated third-party impacts, including understanding cumulative and socio-economic impacts.	Irrigation farmers respect the prioritisation of water in the allocation framework.
All water (agricultural, environmental, cultural and industrial) must be measured, and used efficiently and effectively.			Collaboration with indigenous nations improves water management.



## Introduction

NSWIC welcomed the ACCC Inquiry into Water Markets in the Murray-Darling Basin, and believes the Final Report generally provides a necessary reform pathway to address the many challenges and issues that have emerged. NSWIC has called on the Commonwealth and State governments to act fast to implement the ACCC's recommendations, in order to promptly restore confidence in the water market, provide the necessary regulation to address the deficiencies, and better support food and fibre production.<sup>3</sup>

NSWIC is still to formally consider all of the ACCC's 29 recommendations, but supports most of the recommendations in-principle (with some exceptions and concerns as outlined in this submission).

NSWIC agrees with the ACCC findings, particularly that while water markets have grown in size and importance to both farmers and consumers, the regulatory framework has not developed at the same rate, and that must change. Specifically, NSWIC agrees with the key findings that:

- Quality, timely and accessible information for water market participants is lacking;
- Very few rules exist to govern the conduct of market participants, and no specific agency exists to oversee trading activities;
- Trading behaviours that can undermine the integrity of markets, such as market manipulation and insider trading, are not adequately regulated;
- The rules, policies and arrangements that enable and support trade in the southern Basin do not always adequately reflect scarce storage and delivery capacity, and this has led to river channel congestion and negative third party and environmental impacts.

NSWIC refers DPIE-Water to the NSWIC submission to the ACCC on the Interim Report for further details.<sup>4</sup> NSWIC provided key principles to the ACCC for assessing the reform options presented in the Interim Report, and maintain these key principles for assessing the recommendations of the Final Report.

### ***Criteria for assessing reform options***

- Cost-effective (i.e. minimal cost-burden);
- Proportional (i.e. to the extent/severity of the problem, the degree of risk, and the size of the market particularly in terms of participants);
- Justifiable (i.e. the 'problem' can be clearly articulated and evidenced);
- Fit-for-purpose (i.e. effective in addressing the problem);
- Minimal compliance burden;
- Avoidance of any reduction in competition;
- Avoidance of any cost-shifting;
- Avoidance of third-party impacts, particularly regarding impacts on the water entitlements of individuals not party to a trade;
- Simplicity (to avoid adding additional complexity where possible);
- Practical (i.e. can be implemented into the framework to achieve efficiencies and increased effectiveness)
- Adherence to the Principles of Best Practice Regulation.

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<sup>3</sup> NSWIC Media Release (March 2021) "Governments must act on ACCC Water Market Report", available here: <https://www.nswic.org.au/wordpress/wp-content/uploads/2021/03/2021-03-26-MR-ACCC-Final-Report.pdf>

<sup>4</sup> NSWIC Submission (October 2020) "ACCC Murray-Darling Basin Water Markets Inquiry – Interim Report", available here: <https://www.nswic.org.au/wordpress/wp-content/uploads/2021/05/NSWIC-Submission-ACCC-Water-Markets-Interim-Report.pdf>



## Submission

The core of the NSWIC submission is provided at **Appendix 1**, with a detailed table assessing each of the recommendations, including the industry position and level of priority.

### Priorities for NSW:

1. Increase the transparency of **allocations** decisions and the drivers of water availability (recommendation 15).
2. Address **delivery shortfall** risks:
  - Improve modelling of delivery and trade (recommendation 18).
  - Formalise and communicate plans for managing delivery shortfalls (recommendation 19).
  - Refine river-operations guidance to more effectively and transparently balance trade-offs (recommendation 20).
  - Improve transparency of conveyance losses and other delivery impacts (recommendation 21).
  - Implement clear and integrated mechanisms for delivery of environmental water (recommendation 23).
3. Improve **information availability**, such as:
  - Implement a public-facing Water Market Information Platform which harnesses improved data collection and quality (recommendation 12).
  - Implement a digital platform ('Backbone Platform') as a single repository for water market data and a single hub for trade approvals (recommendation 11).
  - Adopt a comprehensive Digital Messaging Protocol for the capture, storage and transfer of water market data and trade applications (recommendation 10).

### Key Recommendations not supported:

#### *Water Markets Agency (and related recommendations to give effect to this recommendation)*

Whilst it is recognised that there is an important need for there to be a vehicle overseeing the implementation of these recommendations, there have also been significant concerns raised around creating another water bureaucracy. These concerns involve:

- This proposed solution is not proportionate to the issues identified by the ACCC, and will not address the fundamental issues driving irrigators concerns with the water market (e.g. high annual allocation prices).
- The expense of establishing and operating an agency (and whether these costs will be recovered from market participants);
- The added complexity given the many existing water bureaucracies at both State and Commonwealth levels already;
- The ACCC has not completed suitable analysis at this stage (as required under the Principles of Best Practice Regulation), and as such, it is too preliminary to support such a significant recommendation. For example, further investigation would require a cost-benefit analysis, exploration of alternatives, and further specific consultation (inclusive of information on costs for both establishment and on-going costs).
- Whether this is necessary as a separate agency, or whether this will create confused roles and responsibilities.

Whilst there is agreement that there are currently regulatory gaps with no agency currently responsible for functions such as market conduct enforcement, market surveillance, and data standards compliance, there have been discussions of whether the roles and responsibilities of a Water Markets Agency instead fall within existing agencies (or could be added), such as the Inspector-General of Water Compliance (as a water markets division within this Office), which may be a more cost-effective and efficient way forward.



### Carryover changes

NSWIC notes that during the WRP process it was made clear by water users in NSW that there was no appetite for changes to carryover rules. This is because carryover is an important risk management tool for water users, and there are concerns around adverse impacts of rule changes.

Additionally, the ACCC report does not adequately reflect in forming this recommendation that NSW (and SA) have very different carryover policies to Victoria, thus the logic of applying evaporation losses to NSW and SA is highly erroneous. In NSW, Murray and Murrumbidgee water entitlement account limits apply with carryover and annual water allocation is limited to 100 percent in the Murrumbidgee and 110 percent in the Murray. Carryover is also not available on high security water entitlements. In contrast, Victoria allows carryover on both high reliability and low reliability water shares and water above 100 percent can be held in these accounts, subject to a spill rule.

Implementation of this recommendation must be done with respect to the different carryover rules across states, and recognise that carryover operates differently. In NSW, current carryover rules are supported and seen to be working effectively.

Water users are highly concerned that applying evaporation to carryover in NSW will alter general-security property rights. Any changes must not erode entitlement reliability nor utility. Further, if such a recommendation was implemented in NSW, determining the percentage to apply for evaporation would be highly problematic and arbitrary.

This is a low priority issue for NSW, but very high-risk for irrigators, and thus it is advised to not progress at this time. Focus should instead be on better transparency and reporting of carryover parking trades at this stage. Further details are included in Appendix 1.

### **General Comments:**

- NSWIC is concerned that the ACCC recommendations are not costed (nor subject to cost-benefit analysis), and it is not clear who will be funding the reforms (e.g. if subject to cost-recovery by market participants). Any recommendations adopted by NSW must adhere to the Principles of Best Practice Regulation, including cost-benefit analysis, consideration of alternatives and public consultation.
- Further consultation on the specific reforms to be progressed by NSW is required, particularly with the irrigation sector directly impacted (including IIOs).
- NSWIC is highly concerned that some recommendations will lead to changes in the nature of existing property rights – focus should instead be on water management and the water market avoiding negative third party impacts including on the environment.
- Governments should identify opportunities to improve efficiency and reduce duplication of processes - i.e. the reforms progressed should not add new layers of reform but improve efficiency and reduce duplication.
- NSWIC agrees with the ACCC that the Southern connected systems are unique to the northern Basin, and this must be considered in delivery of recommendations.

## **Conclusion**

NSWIC considers that the ACCC recommendations provide an important pathway forward to reform water markets in the Murray-Darling Basin, and seeks prompt action by all Governments to act upon these recommendations.

Kind regards,

NSW Irrigators' Council.

## Appendix 1: Detailed Analysis of ACCC Recommendations

### Key:

- Status:
  - Green = supported;
  - Yellow = some concerns or issues raised, considerations required;
  - Red = not supported.
- Priority:
  - Green = low;
  - Yellow = medium;
  - Red = high;
  - Grey = N/A.

Rec No.	ACCC Recommendation	Details of Recommendation (see P 26-41)	Status	Commentary	Priority
<b>Market Integrity and Conduct</b>					
1	Implement centralised, Basin-wide water market conduct and integrity legislation.	<p>New centralised Basin-wide legislation should be introduced to protect the integrity of Basin water markets by regulating conduct of market participants, to be enforced by the proposed Water Markets Agency (see recommendation 26).</p> <p>The proposed new legislation should include:</p> <ul style="list-style-type: none"> <li>• an enforceable mandatory code for intermediaries, to address the detrimental conduct and practices identified by the inquiry and ensure that intermediaries are subject to the standard safeguards that apply in similar markets</li> <li>• integrity protections such as broader price reporting requirements, and conduct prohibitions on market manipulation and insider trading</li> <li>• a requirement for exchange platforms and trade</li> </ul>		<p>There have been a number of concerns raised on this recommendation which require consideration in forming the NSW Government response:</p> <ul style="list-style-type: none"> <li>• NSWIC does not support (in-principle) ceding any powers to the Commonwealth for decision-making that impacts water entitlement holders.</li> <li>• The complexity of the required legislative change and new legislation would be very time-intensive (as exemplified by the drafting of legislation for the Inspector-General), which may delay reforms beyond a reasonable timeframe for implementation.</li> </ul>	



		<p>approval authorities to keep records of trades and to provide trade data to the Water Markets Agency through arrangements for the flow of trading data outlined in recommendations 10 and 11</p> <ul style="list-style-type: none"> <li>• a role for the proposed Water Markets Agency to conduct surveillance, enforcement and reporting</li> <li>• compulsory information gathering powers and appropriate enforcement powers for the Agency</li> <li>• a requirement to issue a unique common identifier to each market participant, to enable trades to be traced and traders to be identified across regions and multiple accounts (see recommendation 4).</li> </ul>		<ul style="list-style-type: none"> <li>• Concerns have been raised about the potential cost that may be imposed on water users. The cost of this reform should not be transferred to water users.</li> </ul> <p>NSWIC do not support the proposed legislation to create a Water Markets Agency (see recommendation 26 below).</p> <p>Whilst legislation changes (and new legislation) may be required where it addresses gaps in the market (and is proportionate to the issues identified, and is adequately resourced); priority should be given to strengthening existing state and federal legislation.</p>	
<p><b>2</b></p>	<p>Incorporate key obligations as part of an enforceable mandatory code for water market intermediaries</p>	<p>The mandatory code should apply to all parties that provide intermediary services, including irrigation infrastructure operators, and include obligations to:</p> <ul style="list-style-type: none"> <li>• act in the best interests of a client, when providing certain services typically provided only by brokers</li> <li>• provide the following information in writing to a client at the outset of each engagement:                             <ul style="list-style-type: none"> <li>o the services being provided by the intermediary</li> <li>o the obligations owed to the client by the intermediary</li> <li>o the fees/commissions to be charged by the intermediary</li> </ul> </li> <li>• inform the client in a timely manner of any reasons for a trade approval authority rejecting or delaying the processing of an application</li> <li>• implement a complaints-handling process, including obligations to keep records relating to complaints or resolution of complaints</li> <li>• hold written authorities to submit trades for approval on behalf of clients</li> <li>• hold written authorities to act as an agent on behalf of clients, when providing certain services typically provided only by brokers</li> <li>• act in accordance with client instructions, when providing certain services typically provided only by brokers</li> <li>• communicate all buy and sell offers to clients in relation to the proposed trade, when providing</li> </ul>		<p>A mandatory code should be considered and coordinated with Basin states.</p> <p>Government should ensure that water users and water market intermediaries be appropriately consulted.</p>	





		<p>certain services typically provided only by brokers <input type="checkbox"/> disclose to the client when receiving multiple fees/commissions in relation to a single trade, when providing certain services typically provided only by brokers, excluding trades matched through an exchange platform</p> <ul style="list-style-type: none"> <li>• disclose to the client when an intermediary or a related entity has a personal interest in the trade, and that the water rights they have a personal interest in are to be transferred to/from the intermediary's or related entity's trading water account (that is, not the intermediary's broking water account which is used to hold client water rights). The intermediary must provide an opportunity for the client to get independent advice and the client must return written consent before proceeding with the trade</li> <li>• disclose to the client when water rights are to be transferred to/from the intermediary's broking water account which holds client water rights</li> <li>• comply with client water rights management and accounting obligations (under statutory trust accounting framework for broking water accounts which hold client water rights)</li> <li>• comply with client funds management and accounting obligations (under statutory trust accounting framework for client funds)</li> <li>• hold professional indemnity insurance</li> <li>• keep records of client instructions, trade details (including strike date) and client details for the period of time (five years) required under Australian Tax Law</li> <li>• disclose which method the intermediary is using to allocate successfully transferred volumes following an intervalley trade opening (for example, in chronological order or pro rata).</li> </ul>			
<p><b>3</b></p>	<p>Prohibit price manipulation, broaden price reporting and broaden and strengthen insider trading obligations</p>	<p>Existing price reporting obligations and insider trading prohibitions should be removed from the Basin Plan Water Trading Rules, and incorporated into the new water market conduct and integrity legislation.</p> <p>The price reporting obligations should be broadened</p>		<p>We support measures to prohibit price manipulation, broaden price reporting and prevent insider trading. We recognise the need to address material gaps in water markets framework. However, implementation should be conducted in concert with states.</p>	



		<p>to require prices to be reported for all transactions of tradeable water rights, including irrigation rights and water delivery rights — not only water access rights. Trade approval authorities (including irrigation infrastructure operators) should be required to collect, record and transmit this information.</p> <p>The insider trading prohibition should be broadened and strengthened to apply to the use of any material information prior to it being made public in order to gain an unfair advantage in the market — not only to ‘water announcements’ (for example, government announcements about allocations, carryover and trading restrictions). The proposed new conduct and integrity legislation should include a prohibition on price manipulation.</p> <p>The price reporting obligations, insider trading prohibition and market manipulation prohibition should be enforced by a single Basin-wide regulator – recommended to be the Water Markets Agency (see recommendation 26). Implementing this recommendation will address challenges in enforcing prohibitions against misconduct that arise under current laws, and address regulatory gaps.</p>			
4	Require identifiers on trade forms	<p>Traders should be required to include a unique common identifier on trade forms. This could be their ABN, ACN, and/or the unique identifier issued to them by the centralised regulator.</p> <p>The ability to identify market participants, and trace and follow transactions, is a foundational issue for protecting market integrity and maintaining market confidence. This will improve the regulator’s ability to detect misbehaviour and enforce against it.</p>		Support.	
<b>Trade Processing and water market information</b>					
5	Implement technical and procedural solutions to provide consistency for interzone trade.	New South Wales, Victoria, South Australia and the MDBA should work collaboratively to upgrade trade processing systems and interoperability protocols to ensure these systems provide consistency for market participants wanting to access interzone trade		Support.	



		<p>opportunities. In principle, this should happen as part of enhancements that move all states towards the longer-term goals outlined in recommendations 10 and 11.</p> <p>This will help ensure that market participants in some states are not disadvantaged relative to participants in other states when accessing interzone trade opportunities, particularly when opportunities are limited due to trade restrictions such as the Barmah Choke trade restriction and the Goulburn and Murrumbidgee intervalley trade limits. It will also help ensure traders face more consistent and neutral incentives when deciding whether or not to use aggregator services/brokers when trading interzone.</p>			
<p><b>6</b></p>	<p>Reshape current information portal initiatives</p>	<p>Australian and Basin State governments should work collaboratively to substantially improve existing information portal initiatives to improve information availability and prepare to transition towards the proposed digital infrastructure for water markets, particularly the proposed Water Market Information Platform (see recommendation 12).</p> <p>This will ensure that benefits of existing initiatives are leveraged and that water market transparency continues to improve during the transition to the proposed new legal framework and digital infrastructure for water markets.</p> <p>Priority actions are:</p> <ul style="list-style-type: none"> <li>*New South Wales to publish water access licence (WAL) and water trade data for the NSW Murray Regulated River water source in a manner that clearly identifies which zone(s) are associated with the WAL or trade (as applicable).</li> <li>*South Australia to implement collection and publication of ‘reason for trade’ and ‘strike date’ data from trade application forms, in line with actions already undertaken or committed to by New South Wales and Victoria.</li> <li>* The Bureau of Meteorology to incorporate into its water market information dashboard data from New</li> </ul>		<p>NSW has significantly invested in reshaping and improving information portal initiatives through the development of WaterInsights. From a NSW perspective, it will be important that additional measures as recommended by the ACCC build on (rather than replace) this platform, to avoid duplication and inefficiency. In efforts to develop ‘single sources of truth’, it is important that multiple ‘single sources’ are not developed. Given the ACCC recommendations look at all Basin State governments and the Australian Government, and NSW has a recently developed model platform in place, opportunities should be sought for other Basin States and the Cth to adopt this model for consistency.</p>	



		<p>South Wales, Victoria and South Australia on 'reasons for trade' and 'strike date' as soon as practicable.</p> <ul style="list-style-type: none"> <li>* Australian government agencies to map existing and 'in development' data sharing agreements relevant to water market data or related information such as rainfall, inflows and storage levels, river flow data, water allocations, intervalley trade limits, environmental watering.</li> <li>* All information portals which display price data to document and make available easily accessible metadata on how price series are calculated, including explaining any data cleaning processes undertaken prior to derivation of aggregate or average price series.</li> </ul>			
7	<p>Implement Water Market Data Standards to provide a clear and fit-for-purpose framework for water market data and water trade services</p>	<p>Australian and Basin State governments should establish mandatory Water Market Data Standards governing the collection, storage, transmission and publication of water market data and related information by trade service providers.</p> <p>This will deliver a robust and consistent legal framework to bring about improved data quality and water market data flows, leading to improved transparency for water market participants and enhanced interoperability between trade service providers.</p> <p>Key recommended actions are:</p> <ul style="list-style-type: none"> <li>*Develop Water Market Data Standards to provide a consistent framework underpinning the collection, storage, transmission and publication of water market data and related information (noting that technical specifications such as for data transmission will be implemented via the proposed Digital Messaging Protocol and proposed Backbone Platform – see recommendations 10 and 11).</li> <li>*Trade service providers such as brokers, exchange platforms, irrigation infrastructure operators and Basin State trade approval authorities and register operators should have clear obligations to provide data as specified in legislation and to comply with the proposed Water Market Data Standards (see</li> </ul>		Support.	



		<p>recommendation 1).</p> <ul style="list-style-type: none"> <li>* Establish a centralised Water Market Data Standards compliance and enforcement role to ensure compliance with the standards once they are established. It is recommended the Water Markets Agency (see recommendation 26) should have this role.</li> <li>*The Water Market Data Standards should specify the form, and process for issuing and use, of Basin-wide common party identifiers for tradeable water rights holders, and Basin-wide single transaction identifiers to be used to uniquely identify all trades of tradeable water rights.</li> <li>*Harmonise or standardise terminology in water management law, where possible, as part of changes to legal frameworks to implement the proposed Water Market Data Standards.</li> </ul> <p>Development of Water Market Data Standards should be undertaken collaboratively by government, trade service providers and water user representatives (such as irrigator groups, environmental water holders and traditional owner groups), and should be based on meaningful ‘user needs’ consultation with water market participants.</p>			
<p><b>8</b></p>	<p>Implement mandatory trade approval service standards</p>	<p>Australian and Basin State governments should implement consistent mandatory service standards that apply to all trade approval authorities, including irrigation infrastructure operators.</p> <p>This will help ensure that trade approvals are undertaken in a consistent and timely manner.</p>		<p>Support.</p>	



<p><b>9</b></p>	<p>Implement rules and processes for water announcements</p>	<p>Australian and Basin State governments should implement rules and processes for water announcements, which apply, at a minimum, to all governments or government agencies, and all trade service providers. This should build on existing relevant provisions in the Basin Plan Water Trading Rules (note that recommendation 3 proposes relocating these rules into the proposed new conduct and integrity legislation).</p> <p>Agencies or organisations making water announcements should be required to provide them to the proposed Water Market Information Platform in a timely manner (see recommendation 12). The current materiality criterion applying to water announcements – that the announcement ‘can reasonably be expected, if made generally available, to have a material effect on the price or value of water access rights’<sup>20</sup> – should be retained, but broadened to apply to all tradeable water rights.</p> <p>The recommended processes for making water market announcements could be integrated into the proposed centralised legislation (see recommendation 1).</p> <p>This will ensure that information which could materially affect the price or value of water access rights will be accessible by all market participants from a single source, at a specified time.</p>		<p>NSWIC note that there has been confusion around what is meant by ‘water announcements’, and thus this recommendation will require further consultation with clearer information about what is proposed.</p> <p>NSW has recently improved processes so that the timing of allocation announcements is known. NSWIC is of the position that Basin Plan Water Trading Rules adequately capture these processes.</p> <p>Concerns have been raised regarding broadening the criteria to all tradeable water rights and believes it will be extraordinarily difficult to confirm whether the materiality criteria are relevant to announcements made by Irrigation Infrastructure Operators (IIOs) where they provide members with access to additional volumes arising from improvements in delivery efficiency. NSWIC refer to the submissions of our member organisation on this matter.</p>	
<p><b>10</b></p>	<p>Adopt a comprehensive Digital Messaging Protocol for the capture, storage and transfer of water market data and trade applications</p>	<p>Australian and Basin State governments should work collaboratively with trade service providers to establish and implement a mandatory Digital Messaging Protocol for water trade and water market data, which will enable:</p> <ul style="list-style-type: none"> <li>*enhanced interoperability between Basin State registers, by providing automated digital connections (that is, machine-to-machine connections) and the ability to establish a direct digital interface between the proposed digital platform (Backbone Platform) and irrigation infrastructure operators, private exchange platforms and Basin State trade approval authority systems</li> </ul>		<p>Support.</p>	



and water registers

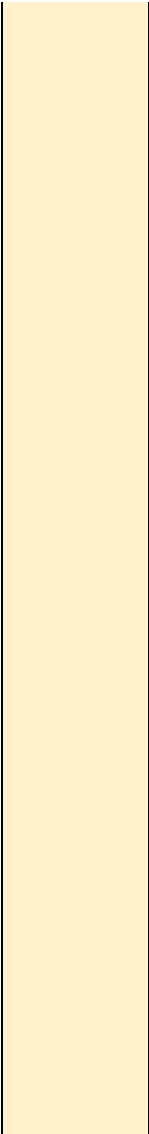
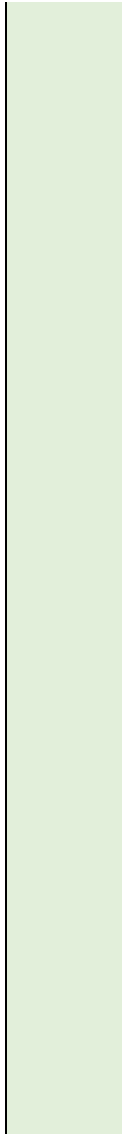
- \* the ability to securely transmit data and trade applications between trade service providers
- \*the ability to automatically execute instructions, and automate collection, cleaning and publishing of water market data.

It is recommended that the proposed Water Markets Agency (see recommendation 26) play a lead role in developing the Digital Messaging Protocol, and should be assigned the role of enforcing adoption of the protocol (once established), as required by legislation. The proposed Water Markets Agency should also be assigned the responsibility of developing appropriate governance arrangements for the Digital Messaging Protocol.

When fully implemented, the Digital Messaging Protocol should give effect to the relevant requirements of the proposed Water Market Data Standards (see recommendation 7).

The Digital Messaging Protocol should be implemented in conjunction with the proposed Backbone Platform and public-facing Water Market Information Platform (see recommendations 11 and 12).

The ACCC recommends Australian and Basin State governments consider subsidising some of the cost of private service providers' system upgrades to assist with the transformational change needed to deliver digitised trading processes and digital infrastructure for water markets.





<p>11</p>	<p>Implement a digital platform ('Backbone Platform') to act as a single repository for water market data and a single hub for trade approvals</p>	<p>Recommendation 11 - Implement a digital platform ('Backbone Platform') to act as a single repository for water market data and a single hub for trade approvals</p> <p>Australian and Basin State governments should work collaboratively with trade service providers to establish and implement a digital platform ('Backbone Platform') to underpin trade services and water market data.</p> <p>It is recommended that the proposed Water Markets Agency (see recommendation 26) play a lead role in developing the Backbone Platform and operating it, or have oversight of its operation, once established. The proposed Water Markets Agency should also be assigned the responsibility of developing appropriate governance arrangements for the Backbone Platform.</p> <p>Establishing the Backbone Platform will help streamline trade approvals and the collection and dissemination of water market data by providing a single hub through which water trade applications are made, and within which water market data is stored.</p> <p>When fully implemented, the Backbone Platform should comprise:</p> <ul style="list-style-type: none"> <li>• a secure digital repository for water market data and related information</li> <li>• digital connections between the Backbone Platform and trade service providers, regulators, approval authorities, river operators, and the public-facing Water Market Information Platform, with purpose- or entity-specific access controls</li> <li>• single portal for lodging trade applications (Southern Connected Basin)</li> <li>• harmonised 'trading rules engine' for assessing trade application against trading rules (Southern Connected Basin).</li> </ul> <p>The Backbone Platform should be implemented in</p>		<p>We agree with the analysis by the ACCC. We support establishing a Digital Messaging Protocol, the Backbone Platform and the Water Information to improve water trading across Basin jurisdictions.</p> <p>If implemented correctly, the Backbone Platform will provide critical infrastructure underpinning water trading by enhancing interoperability between state registers, addressing mismatches between water terminologies, and improving consistency in data quality and flow between water service providers without replacing existing state infrastructure.</p> <p>We support the approach to deliver harmonisation, coordination and translation rather than centralisation. State systems and processes have evolved to suit own individual circumstances and must be recognised. This approach does not preclude the capacity for a single exchange for future trade.</p> <p>However, significant public investment will be required to deliver this piece of digital infrastructure. The Backbone Platform will require substantial coordination between Basin states, other water market intermediaries and IIOs. The Commonwealth is best placed to facilitate collaboration, but the process should be led by Basin States. The proposed Expert Panel should have a role in developing the implementation pathway.</p>
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		<p>conjunction with the proposed Digital Messaging Protocol, public-facing Water Market Information Platform and in compliance with the proposed Water Market Data Standards (see recommendations 7, 10 and 12).</p> <p>When implemented together, these technologies will form an underlying digital framework and common digital 'language' and processes, upon which different trade service providers can build their own digital infrastructure.</p> <p>The Backbone Platform is not intended to operate as an exchange platform or to replace the role of existing trade approval authorities, although the proposed single lodgement portal and 'trading rules engine' could assist trade approval authorities to undertake their roles in a more timely and consistent manner.</p>			
<p><b>12</b></p>	<p>Implement a public-facing Water Market Information Platform which harnesses improved data collection and quality</p>	<p>Australian and Basin State governments should build on centralised information platform initiatives already in place to improve the transparency of water market information. Industry and government should work collaboratively to implement a public-facing Water Market Information Platform. This will ensure all the key information market participants need to make well-informed trading decisions is available from one location, is accurate and is up-to-date.</p> <p>It is recommended that the proposed Water Markets Agency (see recommendation 26) play a lead role in developing the public-facing platform and operate it, or have oversight of its operation, once established. The proposed Water Markets Agency should also be assigned the responsibility of developing appropriate governance arrangements for the Water Market Information Platform.</p> <p>At a minimum, the platform should make publicly available:                  *water market data (in general, sourced via automated data feeds from the digital repository</p>		<p>A centralised Water Market Information Platform is strongly supported in order to have accessible and accurate information for market participants to make well-informed and timely decisions. The focus of this platform should be on: quality, timeliness and accessibility of information.</p> <p>Timeliness of information is a significant area for improvement, and such a platform should strive for near real-time information availability (e.g. all trades being reported and publicly available within 1 hour).</p> <p>In the development of such a platform, consideration will need to be given to the demand for information (i.e. the level of detail, intended purpose, etc).</p> <p>Consideration will also need to be given to where the platform will be located/hosted from, and alignment with other platforms. There has been numerous efforts in recent times to develop a 'single source of truth' at both state and</p>	



		<p>contained in the Backbone Platform)                  *information on relevant government policies and decision-making (see recommendation 15 concerning improving transparency of policies and procedures)                  * water announcements (see recommendation 9).</p> <p>The Water Market Information Platform should be implemented in conjunction with the proposed Digital Messaging Protocol and the Backbone Platform (see recommendations 10 and 11).</p>		<p>commonwealth levels (e.g. the WaterInsights platform in NSW, as well as BoM portals). Whilst these platforms are all welcomed, there is concern that too many 'single sources of truth' are being developed, which is counter to the objective. Efforts to streamline and integrate these platforms where possible would be most desirable.</p>	
<p><b>13</b></p>	<p>Implement a Basin-wide Water Market Education Program</p>	<p>The Australian Government should develop a Basin-wide Water Market Education Program, in collaboration with irrigation infrastructure operators, brokers, water exchange platforms, water information service providers and Basin State governments.</p> <p>This will assist current and potential market participants – especially irrigators – to better understand water products and trading rules, and to engage confidently in water trading.</p>		<p>This is supported, however consideration must be given to how this can best be delivered. Often market participants will want information as required, more so than a one-off short course for example. A phone service with a help centre may be one example, or tutorial videos that can be viewed on-demand. Engagement with market participants is required to identify which delivery modes and type of content would be most suitable.</p> <p>Water literacy is also a broader problem, that extends beyond just water markets, and beyond just market participants. Whilst a Water Market Education Program directed at market participants is beneficial, consideration should also be given to whether the scope can be broadened to non-market participants and other water policy areas.</p>	



<p><b>14</b></p>	<p>Implement lifetime traceability for water allocations</p>	<p>Australian and Basin State governments should implement lifetime traceability for water allocations when implementing the proposed Digital Messaging Protocol.</p> <p>This will make it possible to trace water from its original point of allocation to its eventual use. This will facilitate implementation of policies, trading rules or water management options that rely on the ability to track how water moves in detail.</p> <p>The governments should implement this in consultation with water market participants, river operators and infrastructure operators.</p>		<p>NSWIC fully support water entitlement holders being able to use, trade, or carryover their annual allocation (within the relevant rules), and would consider any restriction to this as an impact on a water property right.</p> <p>NSWIC is thus concerned by what the intent of lifetime traceability is, and whether this may be used to restrict or impede these practices.</p> <p>Without a clear intent (and noting above risks), NSWIC consider it premature to support such a recommendation.</p>	
<p><b>Market Architecture</b></p>					



<p>15</p>	<p>Increase the transparency of allocations decisions and the drivers of water availability</p>	<p>Basin States should increase the transparency of inputs, assumptions and administrative decision making involved in determining allocation announcements by:</p> <ul style="list-style-type: none"> <li>* publishing in detail the steps taken and factors considered by relevant authorities</li> <li>* explaining calculations and how assumptions or inputs, such as conveyance losses and forfeiture rates, have varied over time</li> <li>* communicating how authorities apply discretion based on their risk appetite.</li> </ul> <p>Basin States should publish accessible and easy to understand guidance explaining how states will manage periods of extreme dry conditions and low water availability. The guidance could include fact sheets on the triggers for when special provisions occur and how water access will be affected – that is, how, when and on whom temporary water restrictions will be imposed.</p> <p>Australian and Basin State governments should help entitlement holders better understand the changes in, and drivers of, entitlement reliability and allocations (including the role of carryover arrangements). A key part of building this knowledge of changing drivers will involve improving the transparency and understanding of how water allocated to different water access right categories is influenced by accounting for conveyance losses, carryover policies and use, and climate variability.</p> <p>Another element of this should include communicating how trading for carryover parking can interact with user account limits. Building knowledge in this regard should also be an element of the proposed Water Market Education Program (see recommendation 13).</p> <p>This information and improved transparency will help stakeholders to interpret market information and understand the drivers of changes, likely supporting improvements to market confidence.</p>		<p>Water allocations and availability should be timely, transparent and predictable by water users / market participants. The 'formula' or processes to determine allocations should be transparent and easily communicated, so that it is predictable and foreseen by water users without surprise.</p> <p>For example, announcements should include explanatory material to ensure transparency and understanding of the factors behind the announcements. Announcements should thus be predictable in most instances, if implemented alongside the package of recommendations made by the ACCC.</p> <p>An agreed measure of reliability must be established, and data collected to map the trends of reliability, and the drivers of those trends. This could be communicated via a 'Reliability Index' for example, hosted on the central information platform.</p> <p>'Reliability Impact Assessments' should be conducted as part of the due-diligence in water policy decision-making, with reporting requirements to ensure no adverse impacts.</p>	
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16	<p>Improve efficiency in accounting for the costs of carryover</p>	<p>New South Wales and South Australia should update carryover rules and policies to appropriately account for evaporation losses associated with storing water in a dam beyond the year in which that water was allocated, and attribute those losses to the individual.</p> <p>South Australia should update its registers and trade forms to be able to identify carryover parking trades.</p> <p>Once robust data on trade for carryover parking is available, Basin States or the proposed Water Markets Agency (if established in time) should assess whether demand for storage space (as measured by carryover parking trade) is such that carryover is generating externalities (such as opening or closing trade barriers) which cannot be adequately managed through carryover policy or rule design.</p> <p>This is to ensure that individual users face the full costs of their decisions, including evaporation losses, and the water accounting more accurately reflects the hydrological realities of the system, to drive more efficient decisions by individuals about use of available storage capacity and water.</p>	<p>NSWIC notes that during the WRP process it was made clear by water users in NSW that there was no appetite for changes to carryover rules. This is because carryover is an important risk management tool for water users, and there are concerns around adverse impacts of rule changes.</p> <p>Additionally, the ACCC report does not adequately reflect in forming this recommendation that NSW (and SA) have very different carryover policies to Victoria, thus the logic of applying evaporation losses to NSW and SA is highly erroneous. In NSW, Murray and Murrumbidgee water entitlement account limits apply with carryover and annual water allocation is limited to 100 percent in the Murrumbidgee and 110 percent in the Murray. Carryover is also not available on high security water entitlements. In contrast Victoria allows carryover on both high reliability and low reliability water shares and water above 100 percent can be held in these accounts, subject to a spill rule. Implementation of this recommendation must be done with respect to the different carryover rules across states.</p> <p>Water users are highly concerned that applying evaporation to carryover in NSW will alter general-security property rights. In NSW, current carryover rules are supported and seen to be working effectively.</p> <p>Further, if such a recommendation was implemented in NSW, determining the percentage to apply for evaporation would be highly problematic and arbitrary.</p> <p>This is a low priority issue for NSW, but very high-risk for irrigators, and thus it is advised to not progress at this time. Focus should instead be on better transparency and reporting of carryover parking trades at this stage.</p>
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<p>17</p>	<p>Strengthen metering and monitoring</p>	<p>Australian and Basin State governments, and the MDBA should strengthen existing commitments to better metering and measurement of water take across the Basin through:</p> <ul style="list-style-type: none"> <li>*continuous improvement and harmonisation of the metering standards and technology in use in the Southern Connected Basin. In particular, South Australia should commit to upgrading its metering standards to require telemetry where cost effective</li> <li>*implementation of telemetry across the Southern Connected Basin, where technologically possible and cost effective</li> <li>* monitoring progress on the measurement and outcomes of overland flows/flood plain harvesting. In particular, Queensland and NSW should continue efforts to more accurately measure overland flows/floodplain harvesting using new technologies; and to bring these forms of water take into the licensing framework</li> <li>* Basin States, in consultation with the MDBA and the proposed Water Markets Agency should implement a consistent approach across jurisdictions and reporting agencies for the collection, storage, transmission and reporting of usage data. This should be consistent with existing Basin Compliance Compact commitments on the automation of reporting of water take, and with any relevant proposed Water Market Data Standards (see recommendation 7)</li> <li>* Basin States should improve compliance and enforcement programs and invest in systems to identify and prevent water users being able to go</li> </ul>		<p>Recent reports by Irrigation Australia show uneven uptake by states of commitments to national metering standards (with NSW ahead by far). All states should be required to have consistently high levels of metering, and no negative balances in accounts.</p>	



		<p>into negative balances by extracting more water than is available in their account.</p> <p>This could be achieved by extending and expanding the scope of the Basin Compliance Compact.</p> <p>These measures will provide a foundation for good management of markets and water resources, increase the confidence and trust of market participants and water users generally, and support other improvements to market architecture, modelling and water information.</p>			
<p><b>18</b></p>	<p>Improve modelling of delivery and trade</p>	<p>Australian and Basin State governments should improve modelling of water use, delivery and trade across the Basin, including through improving linkages between models. Specifically, this can be achieved by working with and supporting:</p> <ul style="list-style-type: none"> <li>* the MDBA, and relevant industry and academic bodies, to continually improve hydrological and river modelling capability and research</li> <li>* the MDBA, the Australian Bureau of Agricultural and Resource Economics and Science, the Bureau of Meteorology, and relevant industry and academic bodies, to improve hydro-economic modelling capability and research.</li> </ul> <p>This will help policy makers better understand and predict the impacts of water trade and associated changing patterns of usage on conveyance losses and delivery risks; improve and update water user behavioural assumptions; and strengthen the capability to forecast and incorporate trends in crop mixes and climate-change scenarios.</p>		<p>Supported as an important step to providing an evidence-base for decision-making on deliverability.</p>	



<p>19</p>	<p>Formalise and communicate plans for managing delivery shortfalls</p>	<p>Basin States and the MDBA should move promptly to:</p> <ul style="list-style-type: none"> <li>* formalise their arrangements for managing shortfall events, including how they will enforce those arrangements</li> <li>* publicly release plans, or a joint plan, that clearly and with consistent messaging, describe:             <ul style="list-style-type: none"> <li>– the delivery risks faced by water users, and how these will be communicated to users in a timely fashion</li> <li>– how a shortfall would be managed by authorities, including the mechanisms and approaches that will be used to ration water availability</li> <li>– how water users can take steps to mitigate their own risks or potential impacts of shortfall events based on their location in the river system.</li> </ul> </li> </ul> <p>This will give irrigators more certainty about how water deliveries will be managed in times of high demand and potential shortfall. This will help irrigators make decisions about, for example, whether they invest in water storages on their farms.</p>	<p>Strongly supported with high-priority, as an important step to ensure water users have certainty and predictability of water access arrangements. Water users feel in the dark on shortfall planning and mitigation measures, which makes planning for both water users and IIOs difficult.</p> <p>The policies to manage delivery shortfall risk must be developed in consultation with the impacted water users.</p> <p>Specifically the arrangements to manage shortfall events must:</p> <ul style="list-style-type: none"> <li>• Protect the property rights of entitlement holders (i.e. water availability, accessibility, reliability);</li> <li>• Ensure no negative unmitigated third-party impacts (including for the environment);</li> <li>• Delivery shortfall risks are to be borne by new developers;</li> <li>• Be agnostic to (not discriminate between) agricultural industries;</li> <li>• Seek to minimise operational losses – with delivery of productive water not being overbank;</li> <li>• Maintain entitlement characteristics;</li> <li>• Enforce trade rules;</li> <li>• Improve the understanding of risk, and the management of risk, for all water users (historical and new);</li> <li>• Recognise and account for the environmental benefits from the delivery of productive water;</li> <li>• Ensure consultation with stakeholders.</li> </ul> <p>Arrangements must recognise that an implied delivery right of water entitlements exists.</p>	
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20	Refine river-operations guidance to more effectively and transparently balance trade-offs	<p>River operations guidance should be refined, to more effectively and transparently balance trade-offs. Specifically, that the MDBA and Basin States, through Basin Officials Committee, should work together to:</p> <ul style="list-style-type: none"> <li>* update key governance documents and operational guidance to clarify how important 'trade-offs' between operations, market activity, trade opportunity and the impacts on third parties and environmental risks will be managed</li> <li>* better integrate consideration of impacts on and of trade and market design into operational decision-making</li> <li>* establish ecological tolerances within which to operate in the Southern Connected Basin, and enshrine these in whole-of-system operational guidance for river operators</li> <li>* ensure that reviews of river operations also include a section which analyses the market effects of river operations decisions and the way decisions are announced.</li> </ul> <p>This is to improve guidance to river operators and policy makers on how to manage operational, environmental and market trade-offs, more effectively integrating and improving understanding of the interaction between water management and water markets and the management of connected systems in an integrated way.</p>		River systems must be managed most efficiently to minimise operational losses and maintain reliability and accessibility to all water users, whilst respecting the physical capacity and needs of the river system.	
21	Improve transparency of conveyance losses and other delivery impacts	<p>The MDBA and Basin States should improve the transparency of conveyance losses and other delivery impacts. Specifically, that the MDBA should commit to the active and ongoing monitoring, and communication about trends and drivers, of conveyance losses through the annual publication of the 'River Losses in the River Murray System' report, in a timely manner following the finalisation of each water year. Basin States should also consider releasing similar reports to explain the nature and drivers of conveyance losses in other rivers where concerns are present, such as the Murrumbidgee.</p> <p>This will help water users and their communities</p>		River systems must be managed most efficiently to minimise operational losses and maintain reliability and accessibility to all water users, whilst respecting the physical capacity and needs of the river system. Inefficient management (i.e. high losses) impacts on the reliability of general-security entitlements.	



		<p>better understand the relevant issues and operational considerations, and provide further evidence to water managers in considering potential avenues for revising how these losses are accounted for within the market architecture.</p>			
<p><b>22</b></p>	<p>Improve intervalley trade mechanisms</p>	<p>Basin States and the MDBA collectively and, where required, Victoria and New South Wales separately, should improve and harmonise the operation of the rules governing intervalley trade and trade through the Barmah Choke, by:</p> <ul style="list-style-type: none"> <li>* improving the efficiency of, and equity of access to the opportunity to trade, which are currently largely ‘first in, first served’</li> <li>* removing the exemption in Basin Plan water trading rule 12.23 for ‘grandfathered’ tagged water access entitlements, because it affords a small number of market participants an inequitable exemption from restrictions on intervalley trade.</li> <li>* considering if current ‘rolling’ intervalley trade limits can be replaced with ‘dynamic limits’ – to develop trade rules that better match opportunities to trade with the constraints of the physical system.</li> </ul> <p>Revising intervalley trade arrangements so that trade opportunities more accurately reflect the benefits, costs and risks of water use and delivery will encourage market participants to make efficient usage, trading and investment decisions. Dynamic limits that change to increase trade opportunity at times when there are fewer impacts on the river system, such as during late winter in alignment with natural flow patterns, and to reduce trade when there are negative impacts on the river system, such as at times of peak demand in summer, will help with this. Removing exemptions that undermine effective operation of limits will also improve market operation and outcomes.</p>		<p>Support harmonisation of rules.</p> <p>Support removing grandfathered tagged water access entitlements.</p> <p>Support a review into equity of access to trade (noting this may be challenging).</p>	



23	Implement clear and integrated mechanisms for delivery of environmental water	<p>Basin States, in collaboration with the MDBA and the Commonwealth and State environmental water holders, should better integrate environmental watering arrangements into trading arrangements and market design, including by:</p> <ul style="list-style-type: none"> <li>* ensuring that trading and delivery arrangements are not contingent on the intended use of the water, including by making available arrangements currently only open to environmental water holders to consumptive water users, where possible, and ensuring neither consumptive or environmental users are given preference over the other</li> <li>* committing to explicitly assess and address likely impacts on water markets, landholders or the environment of any new trading or delivery arrangements developed in future</li> <li>* clearly and consistently accounting for environmental trade and delivery across Basin States</li> <li>* developing a transparent policy position on how and when environmental water holders, and consumptive users, should use trade mechanisms to move water, and clearly articulating how movements of water within and outside of the trading framework affect trade opportunities, particularly for interzone trade opportunities governed by restrictions.</li> </ul> <p>This will contribute to developing arrangements and tools to deliver environmental water in ways that help improve transparency and confidence, and alleviate system congestion.</p>		<p>This recommendation regarding the delivery of environmental water is linked to constraints management. Concerns have been raised that constraints management will set a precedent for overbank productive water delivery. Overbank productive water delivery is not supported as it will increase losses with significant impacts on entitlement reliability. Constraints management projects must only serve to achieve environmental outcomes using environmental water (including the environment bearing the full losses). This must be demonstrable through clear operational rules and transparent accounting and reporting.</p> <p>SDLAM constraints measures are supported to the extent that:</p> <ul style="list-style-type: none"> <li>• Directly affected landholders are consulted and in a position to make informed decisions. All agreements must be voluntary.</li> <li>• Constraints are managed solely to deliver environmental water and improve environmental outcomes, with environmental water holders bearing the full losses.</li> <li>• Clear rules are developed in consultation with stakeholders to ensure no third-party impacts on entitlement reliability.</li> <li>• Clear rules are developed in consultation with stakeholders to ensure constraints are not managed to facilitate delivery of productive water.</li> </ul>	
24	Assess whether the current configuration of geographical units remains fit-for-purpose	<p>Basin States, together with the MDBA, should assess the appropriateness of the current set of, and spatial definitions of, geographical units used in water management and river operations and as the basis for trading zones.</p> <p>This is to ensure that the spatial boundaries of geographical areas relied upon to manage water remain fit for purpose; assess whether new geographical units may be required; and to assess whether and how the current spatial definitions may need to be formalised and aligned across agencies.</p>		Support.	



25	<p>Develop a reform roadmap for designing and operating efficient markets now and into the future</p>	<p>The proposed Water Markets Agency should work with the Australian and Basin State governments and the MDBA to undertake a work program to progress a long-term reform roadmap that better integrates water market design with water management and aligns market architecture with the hydrological realities of the natural system.</p> <p>This work program should consider how more fundamental reforms of the market architecture may drive improved market efficiency, such as through creating appropriate market based incentives and reducing generation of externalities. Informed by improved information gathering stemming from other recommendations in this report, this should include assessing the feasibility and merits of adopting new market mechanisms, pricing measures or complimentary policies within the Southern Connected Basin or across the whole Basin, as appropriate. Potential mechanisms to explore include, but are not limited to:</p> <ul style="list-style-type: none"> <li>* applying water accounting that better aligns with the physical transfer of water, such as through ‘tagged allocation trade’</li> <li>* applying congestion or time-of-use charges</li> <li>* developing formal markets for rights to delivery capacity and/or water extraction (for example, ‘constraint rights’, ‘on-river delivery rights’, ‘extraction shares’)</li> <li>* applying ‘loss factors’ to water trades in the Southern Connected Basin</li> <li>* adopting ‘capacity sharing’ – where each water user is allocated with a share in storage capacity and a share in water inflows – in the Southern Connected Basin, including its potential to offer long-term alternatives to intervalley trade account-balance limits</li> <li>* considering the potential use of ‘water banks’ to fulfil roles like coordinating particular trading opportunities, such as allocating out intervalley trade capacity, and holding and redistributing water rights as a ‘safety net’ in the markets</li> <li>* developing a water market operator/smart market to operate the Southern Basin water markets and co-</li> </ul>		<p>It is important to recognise that there are further reform areas that go above and beyond the scope of this Inquiry.</p> <p>However, NSWIC is of the position that many of these further issues in the work program are outside the scope of market reform.</p> <p>A number of the areas identified are matters for state planning frameworks, and should be addressed by states outside the scope of Basin-wide market reform.</p> <p>Whilst NSWIC is of the firm position that water markets must not have negative third party impacts (including on irrigators not party to the trade and the environment) and is thus supportive of those recommendations, this should occur outside of market reform. Focus within market reform could simply be on improving transparency and management of third party risks associated with the current rules (rather than developing new products at this stage).</p> <p>Additionally, establishing a statutory review period (or including water markets more specifically within the Productivity Commissions 5 yearly reviews) may help to assess States progress with other areas of reform, determine when future changes are necessary, as well as monitoring progress on implementing the reforms recommended in this Inquiry.</p>
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		<p>ordinate water delivery to users as one integrated system, matching bids for water with offers of supply, within the physical constraints of the system.</p> <p>Developing the roadmap and considering longer term reform options will provide pathways and timeframes for continued improvement of markets through improved design and integration of the rules and arrangements for trade across the Basin.</p>			
<b>Governance of the Basin water markets</b>					
<b>26</b>	Create a Water Markets Agency	<p>The Australian and Basin State governments create an independent Basin-wide Water Markets Agency to consolidate and carry out new and existing trade-related roles and functions.</p> <p>The ACCC considers the Water Markets Agency would be best established through a cooperative legislative scheme between the Australian and Basin State governments.</p> <p>The key functions of the proposed Water Markets Agency would be:</p> <ul style="list-style-type: none"> <li>* Market regulation and surveillance functions – ongoing monitoring of market activities and investigating allegations of potential market misconduct. This will address key regulatory gaps, such as in relation to water market intermediaries (see recommendations 1 to 3).</li> <li>* Market information functions – provide a ‘one-stop-shop’ for water users to access market information, such as pricing and availability, water storage information, announced allocations and access to policy documents (see recommendation 12).</li> <li>* Market evaluation function – undertaking proactive whole-of-basin market evaluation and reporting activities of trading market issues and cross-jurisdictional trade impacts. This would enable research and analysis in relation to market issues, including those set out in recommendation 25.</li> <li>* Advisory and advocacy functions – providing expert and technical advice to the Australian and</li> </ul>		<p>Whilst it is recognised that there is an important need for there to be a vehicle overseeing the implementation of these recommendations, there have also been significant concerns raised around creating another water bureaucracy. These concerns involve:</p> <ul style="list-style-type: none"> <li>• This proposed solution is not proportionate to the issues identified by the ACCC, and will not address the fundamental issues driving irrigators concerns with the water market (e.g. high annual allocation prices).</li> <li>• The expense of establishing and operating an agency (and whether these costs will be recovered from market participants);</li> <li>• The added complexity given the many existing water bureaucracies at both State and Commonwealth levels already;</li> <li>• The ACCC has not completed suitable analysis at this stage (as required under the Principles of Best Practice Regulation), and as such, it is too preliminary to support such a significant recommendation. For example, further investigation would require a cost-benefit analysis, exploration of alternatives, and further specific consultation (inclusive of information on costs for both establishment and on-going costs).</li> <li>• Whether this is necessary as a separate agency, or whether this will create</li> </ul>	



		<p>Basin State governments and advocate for the interests of water markets in broader policy discussions.</p> <p>It is not proposed that any existing rule making functions be transferred to the proposed Water Markets Agency.</p> <p>This will establish an organisation distinct from broader water management governance, so that there is a greater institutional focus on delivering important specific functions that support efficient markets. It would have a Basin-wide reach and a whole-of-Basin perspective.</p>	<p>confused roles and responsibilities.</p> <p>Whilst there is agreement that there are currently regulatory gaps with no agency currently responsible for functions such as market conduct enforcement, market surveillance, and data standards compliance, there have been discussions of whether the roles and responsibilities of a Water Markets Agency instead fall within existing agencies, such as the Inspector-General of Water Compliance (as a water markets division within this Office), which may be a more cost-effective and efficient way forward.</p> <p>Regardless, if this recommendation does progress, it will be critically important that the staff have adequate training and expertise water markets, water resource management more broadly, and are able to be responsive to the demands of water market participants.</p>	
<p>27</p>	<p>Implement better rule-making process</p>	<p>The Australian and Basin State governments should implement a consistent and transparent process for reviewing and amending water trading rules and other decisions with significant impacts on water markets.</p> <p>Details about each review, including commencement of consultation, preliminary and final decisions, and any other stages in the process relevant to market participants should be published through the proposed water market announcements platform to be operated by the proposed Water Markets Agency (see recommendation 9).</p> <p>This will improve transparency of decision making processes across the Basin and improve accountability and confidence in processes and outcomes.</p> <p>It is not proposed that any existing rule making powers be transferred from their existing bodies.</p>	<p>Support.</p>	



28	Have regard to advice from the Water Markets Agency	<p>The Australian Government and Basin State governments should incorporate a requirement into applicable legislative frameworks to obtain and have regard to advice from the proposed Water Markets Agency before making changes to trading rules and other decisions with significant impacts on water markets.</p> <p>The proposed Water Markets Agency should also be given a mandate to provide advice in relation to broader reforms not subject to the proposed requirement, where it considers it necessary to highlight potential water market impacts for decision makers.</p> <p>This will ensure that policy makers understand the impact on markets of their decisions, and enable more adequate consideration of markets impacts in water policy.</p>		<p>See Recommendation 26 commentary.</p> <p>Whilst NSWIC note that the ACCC has not explicitly recommended that the Water Markets Agency overrides state powers, a legislative requirement to have regard to such advice may be interpreted that way and interfere with state powers.</p>	
29	Increase transparency of roles and functions of intergovernmental committees	<p>The Murray–Darling Basin Ministerial Council and the Basin Officials Committee should publish procedural documents to improve the transparency of the roles, functions and strategic priorities of its intergovernmental committees, with particular regard to how water trade matters are escalated and decisions are made.</p> <p>This will deliver important information to stakeholders about how these governance arrangements work.</p>		Support.	