

Public webinar – Questions and Answers

Questions about water markets generally

If someone has land that is previously irrigated and it is no longer viable to do so, can they retain the licence irrespective of where they reside?

Yes, water is unbundled from land and can retain or use water licences regardless of land use.

Why were water rights unlinked from land? Was this good for farmers?

Water was unlinked from land to enable water users to have more flexibility with how they used those rights. Overall, this change has been beneficial for the production sector. However, it is something that was done in the past and we will not be revisiting this as part of the roadmap project. Instead, our job is to use the ACCC inquiry and its findings as the starting point, acknowledging existing baseline reforms and historical policy.

Why isn't there already a transparent water trading system in place, given the water markets importance?

Water markets have expanded and evolved rapidly. The regulatory framework will need to adapt as the water market continues to grow. There has been good progress in transparency but there's more to do, which is what we're looking to do in the roadmap.

It is also important to note that the ACCC did examine the claims and comments people had made about the deficiencies in water market. They carried out a forensic audit of around 8 million transactions to see whether the perceptions about what was happening in the market were factually correct. The ACCC did not find evidence to support those claims, however they did find that there was potential for misconduct to occur. Increasing transparency will assist to prevent misconduct.

Questions about the roadmap

How will First Nation water ownership and historical disposition of water be factored into the roadmap?

Our project is not looking at questions of ownership or use of water. We are looking at systems, mechanisms and information flows that improve the performance of the trading systems, regardless of the nature of their operations.

However, there is a federal government program which has just been transferred to the National Indigenous Australians Agency which aims to achieve indigenous water ownership (the Indigenous Water Entitlement Program).

Further, we will be looking at ways we can otherwise facilitate improve participation in water markets, including for First Nations communities through means such as education programs.

What reforms do you envision might re-balance the market so that small irrigators can compete equitably with full-time traders?

We are exploring measures to improve information for all traders, and technological or procedural solutions that help improve equity of access across all traders. This includes making better data available and improving data systems, regulating trading and intermediary services, and clarifying

the responsibilities of those providing those services. However, these reforms need to be considered carefully to ensure that any solutions are also cost-effective and fit for purpose.

What response have you had from state governments about collaborating and surrendering responsibility to a central body?

There has been a high level of interest and goodwill to develop and implement changes to address the ACCC findings so far. But while the ACCC recommendations and report is a strong starting point for these issues, we will need to look especially carefully at the options for institutional models and arrangements and apply our own analysis. In particular, it may be difficult for states to refer additional powers to the Commonwealth, as would likely be required to create a new central body. Accordingly, we are also thinking about the existing agencies and their capabilities to assume functions proposed for the Water Markets Agency.

Has the Inspector General of Water Compliance (Inspector-General) been consulted as a possible overseer of trading?

Yes, the Inspector General has provided advice about what role that agency could play in implementing measures to address the ACCC's findings. The Principal Adviser will continue to have ongoing conversations with the Inspector General in this regard.

What might access to information and education look like?

On education, we will need some help - more information is needed to understand how to provide targeted education and tailor the information to the people who will need the education, acknowledging that there are very different education and information needs for market participants in comparison to other interested parties. When it comes to information, we will be seeking an approach to improve access to information across the board.

How might financial market principles be applied to the water market?

Logically, it's good to think about what works in other markets and how those kinds of regulatory mechanisms could work in the water market. However, none are perfect in their own right and none are perfect for water. So, we will need to think about what the most cost-effective approach for the particular characteristics for the water market would be, considering scale and practicality.

Will this reform process address the fact that overseas investors don't have to pay capital gains tax (CGT)?

This reform proposed roadmap for water market reform process will not be a tax reform process. However, there are a range of mechanisms for considering foreign ownership that are also applicable to water, such as the Foreign Investment Review arrangements.

Is there any plan to make more information about financial investors more accessible?

No, the ACCC was firm that the water trading system should be blind or neutral with respect to the identity of the trading entity. It did not recommend publishing personally identifiable details of traders' activities. This was because the ACCC noted the potential for misuse of this information, and because doing so would do little to address the actual issues that people were concerned about, such as market manipulation. We're looking to address market manipulation at the source by taking up the ACCC's recommendations on new conduct rules and regulation of intermediaries.

Who will the proposed mandatory code and conduct regulation (market manipulation and insider trading prohibitions) apply to?

When it comes to a new code, we will be seeking to regulate the *services being offered* (being water market intermediary services), rather regulating a particular person or group of persons based on what they happen to be called.

The conduct rules regarding market manipulation and insider trading will apply to regulate *behaviours*. Therefore, these will apply to a much broader group of persons than just water market intermediaries.

What is the preliminary thinking regarding only some IIOs being regulated by the mandatory intermediary code?

We will be looking to regulate anyone who provides water market intermediary services, rather than based on the nature of the entity. There is a great deal of diversity in the legal and institutional form of IIOs. In a sense, we are only interested in the provision of the services and regulation of those services. Therefore, if an IIO does not provide the relevant services, the code will not apply to them.

Is the regulation proposing to cover free exchange services? What benefit do you see of doing so and who would pay any costs of regulation in this scenario?

We appreciate that some operators provide free services for their members. We're still to work through how the intermediary code will be implemented, including the costs of regulation.

What work will you be doing to make sure investors pay the same infrastructure and delivery costs as irrigators?

This is outside the scope of the project. The ACCC did not make any findings or recommendations of this nature, and the purpose of the roadmap is to develop reforms to address the ACCC's findings.

Should floodplain harvesting be regulated?

Floodplain harvesting rules are outside the scope of the water markets roadmap, but the ACCC did make the point that if different water users face different rules, this can create an unlevel playing field when it comes to interacting in water markets. So, we'll be looking at the issue of metering and monitoring water take from that perspective only.

Should IIO's internal meters be required to meet the AS4747 so that their shareholders have confidence in their water trades?

This should be a conversation between the shareholders and their respective IIO's. The ACCC's report notes the importance of accurate metering to help underpin public confidence in water markets.

What should be done to stop IIO Murrumbidgee stealing water from their stakeholder's accounts?

The internal issues of Murrumbidgee IIO (or any other IIO) are not within the scope of the project, as the project is focussed on water market reform broadly and will not look into the operations of specific commercial entities in the Basin. However, if a person has evidence of certain behaviour, then this should be put to the relevant authority for investigation.

How do you foresee dealing with accounting for carryover and conveyance losses?

At this stage, it is too early to say. This has been raised during several discussions and it is on our work program.

Shouldn't the MDB Federal organization have participants from all States, given the importance of the Basin to Australia and its Balance of Trade figures?

This is outside the scope of the water market reform process. However, all jurisdictions have been made aware of this roadmap process.

Is the objective of the reform to implement the ACCC recommendations or to involve more people in the water market, noting these are very different objectives?

The overriding objective of the reform roadmap is to address the findings of the ACCC's Inquiry. This includes a finding that the way water markets are currently operating is creating barriers to entry to water market participation, and barriers for new entrants to the trade service sector, and this inhibits the competitiveness of these markets. Therefore, the roadmap will consider reforms to reduce these barriers to entry.

Questions about the Advisory Group

Why are there no NSW general security water holder representatives on the Advisory Group?

Appointments to the Advisory Group were made by the Commonwealth Minister for Resources and Water, in consultation with Basin State water ministers. There is a good blend of skills on the group, so that will be a valuable resource for the Principal Adviser in testing ideas and working up recommendations to government.

However, there are several relevant interests which are not represented on the Advisory Group, and the Advisory Group will not be the only source of advice. The Principal Adviser will be talking with other affected parties and market participants, including those with specialist expertise. There are no restrictions on the Principal Adviser seeking advice elsewhere outside of the Advisory Group so there should not be a lack of advice in any specific area.

Why are there no members on the Advisory Group to give Environmental Water Holders' perspectives?

See answer above regarding the general composition of the panel. Environmental water holders are an important stakeholder, and we will be spending as much time as needed with these holders, and others, to understand the different needs of these interests in the water trading processes.

Is the Principal Adviser aware of the political commitment of members of his advisory panel to the effective re-bundling of land and water?

The Principal Adviser is not aware of the political affiliations of the Advisory Group members and is only interested in the quality of their advice. As stated above, this project will not consider the re-bundling of water and land.

Questions about engagement throughout the roadmap process

Will you use a web portal to inform and engage stakeholders on your journey to a roadmap?

Yes, the DAWE website will be the main place to post information as we go along. Go to <https://www.awe.gov.au/water/policy/markets/reform>.

Will there be a public review or submissions process for the first-round of written Ministerial advice, due at the end of December? Will the advice be published and if so, where?

No, time will not permit a structured public submission process for the first advice due in December. However, the contents of the first advice have been discussed widely and information has been provided to the most affected parties. Given limited time frames, this project will use more targeted engagement approaches with interested parties.

The Principal Adviser will provide advice to the Commonwealth Minister for Resources and Water that the December advice should be made public, but ultimately, publication of the December advice will be a decision for the Minister. If it is published, it will be available at <https://www.awe.gov.au/water/policy/markets/reform>.

Will the December advice explain how Daryl Quinlivan and the Advisory Group will engage with different groups, e.g. environmental water holders?

Environmental water holders are important stakeholders and important participants of the water trading system. We will be spending time with environmental water holders (such as the Commonwealth environmental water holder) through the consultation phases of this project, and we do not have any concerns about our ability to get advice in this area.

How can people and communities not represented on the Advisory Group get involved and proactively offer perspectives?

We don't have scope for a large-scale public submissions process given the limited timeframes to develop this roadmap. However, ongoing consultation will occur including targeted meetings and consultation. Any person can also send us their perspectives and inputs by emailing us at water.markets@agriculture.gov.au.

Many irrigators are not available during the day – can the webinar be held again?

This session will be available to anyone who wants to view it via the DAWE website. There will be further and ongoing consultation such as this and several opportunities for engagement.