

NATIONAL WATER BROKERS PTY. LTD.



**SUBMISSION TO THE EXPERT PANEL CONDUCTING THE
STATUTORY REVIEW OF THE WATER ACT 2007 (Cth)**

20TH JUNE 2014

INTRODUCTION

National Water Brokers is a privately owned company specialising in water market products throughout the Murray Darling Basin. We are members of the Australian Water Brokers Association Inc. and I am the current President.

A primary role of the Association is to set and maintain the highest standards of professional practice, education, ethics and professional conduct for its members and the broader water intermediary industry.

We are a voluntary member based organisation governed by Constitution and our members are bound under a voluntary Code of Conduct.

The Association's members transact business in each of the Murray Darling Basin States and anecdotally our members are intermediaries in excess of 60% of all water entitlement and allocation transactions across these States. In addition to our members' brokerage functions, some members also act in the capacity of providing consultative advice, water portfolio management, valuation, water market product development and as expert witnesses in litigation.

Accordingly, legislative and administrative matters that are pivotal to the Australian Water Industry are also pivotal to our company which on a daily basis deals with the many issues that arise in the industry and its' key stakeholders.

Thank you to the Expert Panel for providing the forum for our Company to represent those opinions garnered from years of experience 'at the coalface' in the Australian Water Industry.

COMMENTS ON THE REVIEW

It is noted that the terms of reference for the review are legislatively established under Section 253 of the Water Act.¹

"The terms of reference for the review must require the following:

*(a) having regard to the extent to which water resource plans are in transition—
an assessment of*"

This provision is the minimum review required and is not only limited to those matters referred to in Section 253. This is acknowledged in the published terms of reference which includes matters at item 2 not addressed in this section.

2) In addition, the review will examine and report on:

a) the effectiveness of the Act in achieving its objects, as set out in section 3 of the Act; and

b) opportunities to reduce or simplify the regulatory and/or reporting burden while maintaining effective standards.

We are of the belief that the Review Terms of Reference needs to be expanded to also critically examine the rate at which water resource plans are being implemented in each of the States and take these changes into account.

¹ Water Act (Cth) 2007

It is acknowledged that much arduous work has been undertaken to regulate the major water systems within the Basin and this is commended.

There is a widely held perception that the process of regulating water resource plans in many of the smaller river systems and many of the groundwater systems within the Basin has been unfortunately slow.

We are aware that these are State based regulation programs and often encounter difficult localised issues, however, the ultimate success in achieving the objects of the Water Act is underpinned by the development and implementation of the water resource management plans and where established, completing scheduled reviews of such plans in a timely manner.

A renewed, across governmental commitment to establishing, completing and reviewing of all relevant water resource sharing plans is vital to the success in achieving the objects of the Act.

ARE THE MANAGEMENT AND OBJECTIVES OF THE BASIN PLAN BEING MET?

The objects of the Basin Plan are:

1. giving effect to relevant international agreements, including the Biodiversity Convention and the Ramsar Convention, to the extent they relate to the use and management of Basin water resources;
2. establishment and enforcement of environmentally sustainable limits on the quantities of surface water and groundwater that may be taken from Basin water resources;
3. Basin-wide environmental objectives for water-dependent ecosystems, and water quality and salinity objectives;
4. use and management of Basin water resources in a way that optimises social, economic and environmental outcomes;
5. water to meet its most productive use through the development of an efficient water trading regime across the Murray-Darling Basin;
6. requirements that must be met by water resource plans; and
7. improved water security for all uses of Basin water resources.

We do not wish to specifically make comment upon items 1-3 as that may well be addressed more appropriately in other submissions to the Expert Panel, other than to acknowledge the importance of meeting the objectives of our International obligations, the long term sustainability of our water dependent environments and the necessity to maintain or improve our water quality standards.

There has been much debate on whether the Basin Plan has achieved objective No.4. In particular, the balance between the social, economic and environmental outcomes is and will probably always be a contentious issue.

The last three Irrigation seasons in the Murray Darling Basin has generally resulted in a balanced availability of water to meet productive and environmental demands. The agricultural sector has been quite vocal about the amount of water retained by the Commonwealth Environmental Water

Holder and the impacts that the non-release of such water allocation has to the Basin's productive capacity.

The effect of such allocation storage held and not released to either environmental uses or productive capacity use has been two-fold:

1. The last three irrigation seasons have seen generally above average rainfall conditions, higher than average allocation announcements and a corresponding reduction in average allocation trading prices. However, the average price of allocation water to irrigators has been higher than it necessarily needed to be, had such reserved Commonwealth held allocation (excess to required environmental needs) been traded by Government, to the wider irrigation market.
In simple economic terms, given static demand, the greater the supply of water to the market, the greater the downward pressure on pricing.
The effect of such non-trading has been amplified by a perceptible improvement in the financial prospects for many of the irrigated agricultural businesses within the Basin leading to an increase in water demand and thus exerting even higher than necessary pricing pressures.
2. Annual Carryover provisions for Irrigators are negatively impacted when a large volume of allocation water storage capacity is taken by water allocation held over by the Commonwealth Environmental Water Holder. This then makes such Carryover capacity unavailable to other productive users.

Appropriate means be developed as a matter of priority for the Commonwealth Environmental Water Holder to release to the water market temporary allocation when environmental needs have been met.

WATER TRADING OBJECTIVES

Water Trading objectives are high on our agenda. The objectives are in clause 3 of Schedule 3 to the Water Act, and are to:

- facilitate the operation of efficient water markets
- minimise transaction costs on water trades
- enable the appropriate mix of water products to be developed
- recognise and protect the environment's needs
- provide appropriate protection of third-party interests.

We are of the opinion that in order to facilitate efficient water markets then there is a need for both transparency and reliability of information in such markets for both intermediaries and water market participants. The Act provides in Part 7 for Water Information to be collected, interpreted and disseminated by the Bureau of Meteorology.

We believe that in many of the statutorily required areas the Bureau of Meteorology meets its statutory functions.

However the failure to develop a timely, comprehensive and easily accessible reporting system of water trades being completed throughout the Basin States and Territories fails to enhance the operation of efficient water markets. Currently, market participants may need to access many information sites in order to gain an informed opinion of market pricing, trends and volatility.

The disparate nature of information sources, reliability of such sources and cost of accessing multiple sources does not improve stakeholders' confidence in water trading markets.

The development of a timely, comprehensive, reliable and consistent water market transaction reporting system is vital to ensuring efficient markets.

Furthermore, we acknowledge the improvements in reporting trade availability, restrictions and trade barriers made by the various State and Territory statutory water management authorities. However, centralisation into a single information source for such announcements would be optimal.

A central timely reporting information source for all vital water market trading information is a pre-requisite to ensure transparency.

A great disparity exists in transaction costs across each jurisdiction. Such disparity has the effect of acting as a cost barrier to efficient trade from or to States (or Irrigation Districts where Irrigation Infrastructure Operators charge separate administration fees) where the fees are higher.

Such disparity is currently as high as a 700% difference from one State to another and has a substantial effect upon the efficiency of water market trading, particularly small volume transactions.

A more consistent water fee charging regime should be implemented to enable more efficient water trading.

It is our opinion that a nationally consistent water entitlement registration system is ideal. Across jurisdictional differences, the manner in which water entitlement transactions are approved, documented and registered leads to confusion, unnecessary expense and acts as a barrier to trade. The differing securitisation (particularly by mortgage lenders) regimes in each jurisdiction acts as a disincentive for lenders and borrowers alike, to acquire interests in some States in preference to others.

A National Standard of Water Registers should be developed to increase market efficiency and consistency thereby reducing costs and increasing market confidence.

Our experience is that there are inconsistencies between State jurisdictions in recording data concerning water market transactions. In particular, delays in recording of transactions by some State Registers and the failure to record any values of transactions or inaccurate values leads to a lessening of transparency and confidence in the market.

A timely and consistent approach to recording all water transaction values in each of the jurisdictions without exception is vital to ensure confidence in water markets

We are aware of a report written by the Department of Sustainability, Environmental, Water, Population and Communities 'Regulation of Water Market Intermediaries' Draft COAG regulation impact statement for consultation April 2013 concerning the relative merits of regulating those persons who are appropriately qualified to act as water market intermediaries.

The conclusion of that report opted in favour of a self-regulation system rather than one which was statutorily regulated.

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Many water market intermediaries transact significant business and as a consequence control significant client assets and extremely large sums of clients' funds.

We acknowledge that the general law, in the area of trust law and the law of torts, provides for legal standards, remedies and penalties in the event that a water market intermediary acts improperly or misappropriates clients' monies.

This is faint comfort in the absence of compulsory professional Indemnity Insurance cover.

However, at present, any person may hold themselves out to be a water market intermediary. This is regardless of their knowledge, experience or formal qualifications or their suitability as fit and proper persons to control such significant client assets. They need not be members of the Australian Water Brokers Association and as such not bound by a voluntary Code of Conduct.

There is little or no regulated protection for the public and self-regulation is embryonic and ineffective to those that choose not to be members of a voluntary unfunded Association.

We note that we are aware of the findings of the report financial and administrative burden that a compulsory regulatory scheme imposes, but believe, contrary to the report, that a regulation scheme coupled with a regulated assurance fund would provide greater confidence and protection to the water market trading participants. Consequently this would lead to a higher facilitation of efficient water trading markets and greater protection of third party interests.

We strongly support the introduction of a National Scheme of Registration of water market intermediaries with appropriate levels of Professional Indemnity Insurance to offer regulatory protection to market participants.

CONCLUSIONS

National Water Brokers are of the opinion that much of the 'hard lifting' work has been done with the co-operation between the Federal Government and the State and Territory Governments in the Murray Darling Basin. Whilst work is continuing there appears to be some slowing in the improvements being driven since the 2004 COAG intergovernmental agreements and the National Water Initiative and the implementation of the Water Act 2007.

We submit that more needs to be completed and trust that the recommendations made in this submission be properly considered and brought into action.

The recommendations that we submit to the Expert Panel are set out below.

RECOMMENDATIONS

1. *A renewed, across governmental commitment to establishing, completing and reviewing of all relevant water resource sharing plans is vital to the success in achieving the objects of the Act.*
2. *Appropriate means be developed as a matter of priority for the Commonwealth Environmental Water Holder to release to the water market temporary allocation when environmental needs have been met.*
3. *The development of a timely, comprehensive, reliable and consistent water market transaction reporting system is vital to ensuring efficient markets.*
4. *A more consistent water transaction fee charging regime should be implemented to enable more efficient water trading.*
5. *A National Standard of Water Registers should be developed to increase market efficiency and consistency thereby reducing costs and increasing market confidence.*
6. *A timely and consistent approach to recording all water transaction values in each of the jurisdictions without exception is vital to ensure confidence in water markets.*
7. *Introduction of a National Scheme of Registration of water market intermediaries with appropriate levels of Professional Indemnity Insurance to offer regulatory protection to market participants.*

Further details may be obtained by contacting:

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