



Australian
Competition &
Consumer
Commission

**Australian Competition & Consumer Commission
Submission to the Review of the Water Act 2007**

4 July 2014

The Australian Competition & Consumer Commission (ACCC) welcomes the opportunity to participate in the review of the *Water Act 2007* (the Act).

This submission is divided into three parts. Part 1 provides an overview of the ACCC's water functions and observations on water reforms to date. Part 2 addresses the Review's terms of reference with particular relevance to the ACCC's roles. Part 3 sets out specific recommendations for amending the Act.

Part 1: The ACCC's water functions and the effect of the Act's reforms

Under the Act, the ACCC has the following functions:

- providing advice to the Commonwealth minister on the making, amendment and repeal of the water market rules and water charge rules
- enforcing the water market rules and water charge rules
- monitoring regulated water charges, transformation arrangements and compliance with the water market rules and water charge rules in the Murray-Darling Basin (MDB)¹
- providing advice to the Murray-Darling Basin Authority (MDBA) on Basin Plan water trading rules
- advising the MDBA on the appropriateness of any prescribed fees that it may charge.²

The ACCC also enforces competition and consumer laws applicable to all businesses, including those in the water industry, under the *Competition and Consumer Act 2010* (Cth).

The performance of the ACCC's functions under the Act, along with concurrent water reforms undertaken by other Commonwealth and Basin State agencies, has facilitated the development of world-leading water markets in the MDB. These water markets enable the trade of statutory water access rights between users and between locations. Where trade is well-developed, water markets are an efficient and effective means of allocating scarce water resources between competing uses.

Since 2007, the ACCC has provided advice to the Minister on the making of water market rules and three sets of water charge rules.³ In the time since the rules were made, the ACCC has worked closely with Basin States and the irrigation sector to ensure successful implementation and compliance. Where necessary, the ACCC has taken enforcement action to ensure the benefits of the rules are able to be realised.⁴

The water market rules and water charge rules, enforced by the ACCC, have reduced barriers to trade and given irrigators greater access to water markets. Water trading has become an important tool for many irrigators who can now adjust the mix of their water holdings to better suit their business needs. Throughout the MDB this reduction in barriers to trade has provided flexibility to respond to variable water availability, allowing water resources to move between users more easily in response to climatic conditions and commodity prices.

The volume of water traded in the MDB has grown significantly in recent years due in large part to improved trading opportunities for irrigators and an increase in the use of trade by environmental water holders. Water allocation trade has more than quadrupled (by volume) since 2007-08, while the volume of water access entitlement trade is also trending upwards.

¹ The ACCC prepares an annual water monitoring report for the minister, which is also published on the ACCC's website at <http://www.accc.gov.au/regulated-infrastructure/water/water-monitoring-reporting>.

² To date, the ACCC has not been required to provide advice under s. 238 as the MDBA has not proposed charging any prescribed fees.

³ The ACCC has also provided the Minister with advice on amendments to the Water Market Rules 2009 (March 2010) and to the Water Charge (Termination Fees) Rules 2009 (March 2010, June 2010).

⁴ The ACCC's approach to enforcing compliance with the water market rules and water charge rules is set out in the [ACCC Enforcement Guide to the Water Rules](#). In June 2010, the ACCC accepted an enforceable undertaking from Murray Irrigation Ltd and, in September 2010, the ACCC accepted an enforceable undertaking from, and issued three infringement notices to, Murrumbidgee Irrigation Ltd for alleged breaches of the rules.

While the market reforms facilitated by the Act have led to significant and enduring benefits for irrigators, infrastructure operators, water market participants and the environment, there is room for further improvement, including by:

- eliminating or reducing state government barriers to trade
- broadening coverage of the Act's regulatory regime
- simplifying the legal and regulatory framework created by the Act
- improving transparency of water market information and prices for water
- reducing red tape
- improving market outcomes by clarifying definitions and addressing other operational aspects of the Act.

The remainder of this submission will expand on these points with reference to terms of reference relevant to our roles (Part 2) and specific proposed Act amendments (Part 3).

Part 2: ACCC comments on relevant terms of reference

Term (1)(a)(i): The extent to which the management objectives and outcomes of the Basin Plan are being met; and

Term (1)(a)(iv): The extent to which water trading is occurring effectively and efficiently

In this section, the ACCC will jointly address the extent to which relevant Basin Plan management objectives are being met, and—more broadly—water trading is occurring effectively and efficiently.

The whole-of-Basin Plan management objectives in 5.02(1)(c) and (d) of the Basin Plan, and the objectives and outcomes in relation to trading in the water market in 5.07, are particularly as these are relevant to the ACCC's role in advising the MDBA on the water trading rules. The ACCC's roles in advising on, monitoring and enforcing the water market rules and water charge rules, although separate from the Basin Plan, are also relevant to the extent to which water trading is occurring effectively and efficiently.

In preparing its water trading rules advice,⁵ the ACCC considered how the rules would help achieve the Basin water market and trading objectives (set out in Schedule 3 of the Act).⁶ The Basin Plan picks up these objectives in section 5.07(1) as objectives (for the Basin Plan) in relation to trading in the water market.

The Basin Plan water trading rules will only commence on 1 July 2014 and do not apply to the extent of any inconsistency with transitional or interim water resource plan provisions. Despite these factors, the ACCC considers that there is merit in the Review considering the scope for the water trading rules to achieve the management objectives and outcomes of the Basin Plan.

Once operational, the Basin Plan water trading rules have the potential to achieve the objectives and outcomes, but much will depend on:

- how the rules are implemented by Basin States and Irrigation Infrastructure Operators (IIOs),
- the degree to which trading-related provisions of accredited water resource plans are fully consistent with the rules, and
- the ongoing enforcement and compliance activities of the MDBA as the relevant enforcement agency.

As noted in Part 1 of this submission, the ACCC considers the reforms embodied in the water market rules and water charge rules have also reduced barriers to trade and enabled greater access to water markets.

However, the effectiveness and efficiency of water markets and trading, and the achievement of relevant Basin Plan management objectives and outcomes, will be affected by a range of factors beyond the reach of the Basin Plan water trading rules, the water market rules and water charge rules. The ACCC's advice on water trading rules made a number of recommendations on matters impacting on the operation of

⁵ ACCC, Water Trading Rules – Final Advice, March 2010, available at <http://www.accc.gov.au/regulated-infrastructure/water/water-trading-rules-advice-development/final-advice>

⁶ As required under item 12 of section 22 of the Act.

efficient and effective water markets which could not be addressed through the rules, or were otherwise better addressed through other means.

Please also see the ACCC's response to ToR 1(c) below.

Term (1)(b): The level of Basin-wide consistency in water charging regimes and the contribution made by those charging regimes to achieving the Basin water charging objectives

The regulatory framework for water charges in the MDB consists in large part of the three sets of water charge rules, made by the Minister on the advice of the ACCC:

- the Water Charge (Termination Fees) Rules 2009
- the Water Charge (Infrastructure) Rules 2010, and
- the Water Charge (Planning and Management Information) Rules 2010

These rules represent a consistent legislative approach to the regulation of water charges across the MDB. However, the ongoing split of regulatory responsibility for water charges between MDB and non-MDB areas, when entities may operate across both areas, means that MDB-wide consistency in charging regimes is arguably achieved at the expense of consistency across the whole of a Basin State.

The ACCC considers it is important to ensure MDB-wide consistency in water charging regimes, even if there is inconsistency within a Basin State. This is because water trade is rarely possible between MDB and non-MDB areas within a state, but trade across Basin State borders within the MDB is significant and increasingly important to the efficient use of scarce water resources.

Where charging regimes (particularly for infrastructure charges) are inconsistent between areas where water is able to be traded, they have the potential to distort trading decisions. Better understanding the nature and materiality of these relationships will be a focus on the ACCC's ongoing monitoring activities.

Consistency in water charging regimes between MDB areas and non-MDB areas of a single Basin State also offers some advantages particularly to infrastructure operators active in both areas. The ACCC notes that the Act provides Basin States with the ability to extend the operation of the water charge rules (and / or the water market rules) to water resources outside the MDB, although this has not been done to date.⁷

Infrastructure charges

The ACCC considers that the 'water charging regime' in effect is a function of the rules governing the setting of charges, the manner in which those rules are applied by the regulator and the specific approach taken by the infrastructure operator. Infrastructure charges provide one example where the conjunction of these factors is particularly apparent.

In its advice to the Minister on the Water Charge (Infrastructure) Rules 2010, the ACCC developed a 'tiered' approach to regulating infrastructure-related water charges, where different forms of regulation apply depending upon the size and governance structure of infrastructure operators. Only the largest operators are automatically subject to the determination and approval of their charges.

At the request of the Minister, the ACCC provided further advice on the accreditation by the ACCC of state agencies to carry out approvals and determinations under the

⁷ See Part 4A of the Act.

rules. Part 9 of the Water Charge (Infrastructure) Rules 2010 now provides for the accreditation of approved state agencies and, under the accreditation arrangements in place in Victoria, the two largest Victorian infrastructure operators (Goulburn-Murray Water and Lower Murray Water) are regulated by the Essential Services Commission of Victoria (ESCV). The ACCC is responsible for regulating State Water in NSW.

Although the ESCV and ACCC both regulate in accordance with the Water Charge (Infrastructure) Rules 2010 and related pricing principles, the two regulators have taken different approaches in a number of areas, such as the weighting between fixed and variable charges.

Another example of where different approaches can arise under the same regulatory regime is where an infrastructure operator is member-owned, or is below the threshold size set out in Part 6 of the Water Charge (Infrastructure) Rules 2010. These IIOs are free to set their own charges and structure their tariffs as they see fit (subject to their customers' views), which can result in different approaches being taken by similar sized operators.

While the difference in approaches is not inherently problematic, there is a growing focus on the impact of water infrastructure charges on water markets, particularly where trade occurs between places where water users face very different tariff structures. The ACCC will continue to monitor regulated water charges throughout the MDB to ensure that differences in water charging regimes do not materially and adversely affect broader water markets.

Water planning and management charges

Water planning and management charges is one area where there is significant inconsistency in the approach to water charging across Basin States (although previous ACCC water monitoring reports have estimated that the charges are unlikely to be sufficiently material to significantly distort water markets). Basin States take different approaches to recovering the costs of water planning and management activities from water users through water planning and management charges. These differences in approach create challenges for the regulatory framework under the Act to effectively contribute to achieving the Basin water charging objectives in Schedule 2 of the Act.

The Water Charge (Planning and Management Information) Rules 2010 seek to improve the transparency and availability of information on charges for water planning and water management activities by requiring the publication of specified information about the costs being recovered and the process for setting water planning and management charges. This information required by the rules is intended to assist assessment of the extent of cost-recovery from water users across the MDB, consistent with the Basin Water charging objectives in Schedule 2 of the Act. However, legal and practical limitations—such as the limited application of the rules only to MDB areas within the Basin State and their inability to require disclosure of the costs of water planning and management activities not recovered through charges—have significantly affected the ability of these rules to give effect to the Basin water charging objectives and to achieve a consistent water charging regime across the MDB.

While the Water Charge (Planning and Management Information) Rules 2010 remain in place, the ACCC will continue to work closely with reporting entities to improve the standard and timeliness of the provision of information under the rules. The ACCC's more recent water monitoring reports have noted the difficulties encountered by some Basin State agencies in satisfying the requirements of these rules.⁸

⁸ See, for example, page 44 of the ACCC's Water Monitoring Report 2012-13.

Streamlining the operation of the water charge rules

The ACCC believes that any future review of the water charge rules should consider the merits of streamlining the three sets of water charge rules into a single consolidated instrument. This could also remove the need to consider whether a charge was a water planning and management charge (subject to the Water Charge (Planning and Management Information) Rules) or an infrastructure charge (subject to the Water Charge (Infrastructure) Rules 2010), to the extent that publication requirements in relation to water planning and management charges were harmonised with those relating to infrastructure charges. It would also enable a more transparent approach to the provision of information on the calculation of termination fees.

Urban water charges

The Act excludes from the operation of the water charge rules those charges in respect of urban water supply activities beyond the point at which the water has been removed from a Basin water resource (section 91(3)).

The ACCC has provided advice and enforced rules based on this provision in its current form, but notes that the current exclusion limits the ability of the water charge rules made under the Act to contribute to the achievement of key Basin water charging objectives. In particular, the Act and its water charge rules cannot contribute to the objective of promoting the economically efficient and sustainable use of water resources and water infrastructure assets in urban settings, nor the objective of facilitating the efficient functioning of water markets in urban settings.⁹

Term (1)(c): The extent to which water is being used in higher value uses

As set out in Part 1 of this submission, reforms facilitated by the Act have contributed to the further development of water markets in the MDB.

Well-functioning water markets are the primary mechanism through which water moves to higher value uses. The water market rules and water charge rules enforced by the ACCC and – upon their commencement – the water trading rules to be enforced by the MDBA are, in our view, the key measures through which the Act can influence this outcome.

The ACCC's water monitoring reports have documented the positive impact of the water charge rules and water market rules on the development of water markets in the Murray-Darling Basin. Monitoring has also shown how irrigators are increasingly electing to retain their connection to irrigation networks when they transform their irrigation rights into more tradeable water access entitlements. In particular, the ACCC's water monitoring reports have found that reforms have played a significant role in reducing IIO barriers to trade, while the impact on the IIOs has been manageable to date.¹⁰

The application of water market rules and water charge rules

The Act limits the operation of the water market rules and water charge rules to Murray-Darling Basin water resources.

The ACCC notes that the rules made under the Act (as well as the Basin Plan water trading rules), are designed to address issues that exist both inside and outside the

⁹ Schedule 2, Part 2, sections 2(a) and 2(c).

¹⁰ Since 2009-10, customers have transformed less than 15 per cent of irrigation rights and terminated less than 10 per cent of water delivery rights in the majority of reporting IIOs. See ACCC water monitoring report 2012-13, pp ix-vii, available at: <http://www.accc.gov.au/publications/accc-water-monitoring-report/accc-water-monitoring-report-2012-13>

MDB. For example, the water market and trading rules address barriers to the development of water markets that are not unique to the MDB.

The substantive requirements set out in the rules may also be applicable to non-MDB parts of Basin States as well as in non-Basin States.

An option for Basin States to extend the application of the water market rules or water charge rules to non-MDB water resources already exists; however, no Basin state has done this to date.¹¹ To the extent that barriers to the development of water markets outside the MDB remain unaddressed, water resources in these areas are unlikely to be used in higher value uses.

Other factors preventing water from moving to higher value uses

As noted in response to terms of reference (1)(a)(i) and (1)(a)(iv) above, a range of matters outside the scope of the Water Act's rules will affect the extent to which water is being used in higher value uses.

A number of significant trading restrictions remain in place throughout the southern connected system of the MDB, frustrating the 'effective and efficient' operation of water markets and preventing water from reaching higher value uses. These restrictions will not be resolved when the Basin Plan water trading rules commence on 1 July 2014, as they are a product of deficiencies in State water sharing arrangements under the Murray-Darling Basin Agreement.

The clearest examples of such restrictions in recent years were the sudden suspensions of interstate water allocation trade in the southern MDB, when storages were full or close to full. Interstate trade increases the obligation on the destination state to supply water, but not the storage capacity available to that state. The suspensions were imposed to prevent trades that would reduce the ability of the destination state to capture subsequent inflows and thereby reduce the amount of water that would be available to water access entitlement holders in the following year.¹²

Other issues have also arisen with how State water sharing arrangements give effect to trades to and from South Australia that occur late in the irrigation season.

While the text of the Agreement is a schedule to the Act, the ACCC notes that any amendment of the Agreement itself requires the approval of all relevant Basin States.

The ACCC considers there are other measures that Basin States governments could and should take to improve irrigators' access to markets and further the scope for markets to efficiently allocate scarce resources.

In particular, Basin States should consider further 'unbundling' their water access rights into their component parts, with separate clearly defined and tradeable rights to storage, carryover and delivery where appropriate.

Similarly, Basin State restrictions on the use and trade of water according to the identity of the water access right holder, or the purpose for which the water is used, should be critically assessed as they are inimical to the efficient allocation of water resources and operation of water markets. While the Basin Plan water trading rules will address many of these issues (in the MDB) when they take the form of specific trading restrictions, they are unlikely to overcome situations where such restrictions are conditions or characteristics of a water access right itself.

¹¹ There is also no mechanism in the Act for Basin States to extend the operation of Basin Plan water trading rules to non-MDB water resources.

¹² The potential for sudden trade suspensions has now been reduced, but at the cost of ongoing limits on interstate (and some intra-state) water allocation trade which may unnecessarily limit otherwise feasible trades.

These two measures above are beyond the scope of the Act to compel, but they are nevertheless crucial to the development of the more effective and efficient water markets required to ensure water moves to higher value uses.

Term 2(b): Opportunities to reduce or simplify the regulatory and/or reporting burden while maintaining effective standards

The interaction between the water market, charge and trading rules

The Water Market Rules 2009 and Water Charge (Termination Fees) Rules 2009, enforced by the ACCC, place certain requirements on irrigation infrastructure operators (IIOs) in relation to irrigation rights, water delivery rights and the provision of information. The ACCC has observed through its monitoring activities that compliance with these rules is now part of 'business as usual' for most IIOs.

The newly-commencing Basin Plan water trading rules (to be enforced by the MDBA) also directly apply to IIOs and relate to different aspects of their operations – the provisions of the Basin Plan water trading rules were carefully drafted to avoid duplication between the sets of rules.

The ACCC will continue to work closely with the MDBA to ensure a consistent approach to enforcement and compliance between our two agencies. Close and ongoing liaison will also be required to ensure that IIOs and other stakeholders understand our respective roles and the scope of the rules that each agency enforces.

Reducing reporting burdens on stakeholders

The ACCC is committed to minimising the reporting burden on stakeholders.

Under the Act, the ACCC is required to monitor regulated water charges, transformation arrangements and compliance with the water market rules and water charge rules. To do this, the ACCC prepares an annual water monitoring report for the Minister, which is also made public.

The ACCC relies on the voluntary provision of information by Basin State agencies, bulk water suppliers and IIOs by means of a request for information (RFI) sent to reporting entities.

The ACCC is very mindful of the need to minimise the burden on reporting entities. For its most recent report (covering the 2012-13 financial year) the ACCC eliminated parts of the RFI no longer considered essential to our reporting functions, and pre-filled many other parts with information obtained from other sources and previous years' responses. This meant that for many parts of the RFI, reporting entities were only required to verify the information that had been pre-filled by ACCC staff, thereby reducing the burden of responding.

The RFI for the 2013-14 water monitoring report will be further streamlined to eliminate some sections altogether, further reducing reporting burdens on stakeholders.

The ACCC also notes the significant reduction in the reporting requirements placed on some bulk water suppliers and IIOs due to the cessation of the National Water Commission's National Performance Reports.

Finally, the ACCC notes that while the new Basin Plan water trading rules include requirements on Basin States and IIOs to provide information to their customers and the MDBA, these requirements have been drafted to avoid any unnecessary duplication with the water market and charge rules, or the Bureau of Meteorology's water information roles.

Term 3: Appropriate future review points for the Act and Basin Plan

The Basin Plan water trading rules commence on 1 July 2014, and are subject to any inconsistent provisions in interim or transitional water resource plans. The water trading rules represent a significant reform to how trade and markets in the MDB are regulated. The MDBA will work closely with Basin States, infrastructure operators and market participants to ensure the rules are fully implemented in a timely manner.

While the Basin Plan (including the water trading rules) will be reviewed as a matter of course in 2022,¹³ the ACCC considers there would be merit in reviewing the operation of the water trading rules at an earlier date to ensure they continue to address unnecessary impediments to trade in an efficient way. The ACCC notes that the MDBA is required to report every five years on “the facilitation, by efficient and effective water markets, of tradeable water rights reaching their most productive use” as part of its Basin Plan reporting requirements.¹⁴ A review of the water trading rules in 2017-18 could follow the first such report by the MDBA.

¹³ The Minister, or all Basin States, may request that the MDBA review the plan earlier (but no earlier than 2017 and only if the outcomes specified for the Basin Plan are not being met) – section 50.

¹⁴ See item 15 of Schedule 12 of the Basin Plan.

Part 3: Specific suggested amendments to the Act

This section sets out specific amendments that the ACCC considers would improve the operation of the Act.

Clarify the definition of ‘infrastructure operator’ & ‘irrigation infrastructure operator’ [section 7]

These terms are relevant to the application of the water market rules, water charges rules and water trading rules. The ACCC has adopted an interpretation of these terms that has received broad acceptance among stakeholders.¹⁵ However, the ACCC also notes that section 7 is open to other interpretations which could have the effect of casting doubt on the application of the rules in some circumstances where infrastructure is owned by one party but operated by another, or where infrastructure is used for both irrigation and other purposes.

The ACCC recommends that the drafting of section 7 be revisited to improve the clarity of the provision, and believes that this can be done without expanding the scope of the definitions beyond what is currently contemplated.

Enhancing the utility of enforceable undertakings [sections 163-4]

The ACCC has previously worked with the Department on amendments and / or regulations to enhance the utility of enforceable undertakings as a remedy for breaches of the rules.

The Act provides a range of enforcement mechanisms, including the power to accept enforceable undertakings, to the following Commonwealth enforcement agencies:

- the MDBA in relation to the Basin Plan;
- the ACCC in relation to the water market rules and water charge rules; and
- the Minister, as advised by the Bureau of Meteorology (BoM), in relation to information on water trades that must be provided to the BoM.

Enforceable undertakings can provide an effective alternative to costly and lengthy litigation and are a standard mechanism to resolve contraventions.

Section 163(2) lists in broad terms the undertakings that an enforcement agency may accept to comply with the Water Act or subordinate legislation.

The Department, in consultation with the ACCC, the MDBA and the BoM, has previously identified areas where it may be desirable to specify a non-exhaustive list of examples of particular kinds of undertakings that may be accepted under the general terms of section 163. These are:

- The payment of refunds, compensation or other forms of restitution to an affected person where appropriate
- Commitments to undertake community service
- Donations for the benefit of the environment
- Projects to be undertaken for the benefit of the environment

There is also merit in allowing for undertakings to directly require:

¹⁵ See ACCC, A guide to the water market rules and water delivery contracts, October 2012, pg 5. Available at: <http://www.accc.gov.au/publications/a-guide-to-the-water-market-rules-water-delivery-contracts>

- the provision of information to enable regulatory agencies to monitor compliance with the undertaking
- a person providing an undertaking to publish information on, or directly inform others of, the existence and content of the undertaking and matters relevant to the undertaking
- the appointment of an independent reviewer to monitor the undertaking, and
- the implementation of recommendations included in the written report of the independent reviewer.

Amendments that add specific examples of kinds of undertakings that may be accepted, without limiting the existing generality of the provision, can increase certainty for enforcement agencies and industry participants without unduly increasing regulatory requirements.

Section 163 (2) (d) allows for undertakings that can be accepted by enforcement agencies to be specified in regulations. The proposed amendments could be made to the Act itself, or in regulations made under this section.

Minor technical amendments to improve the operation of the water charge rules and water market rules

Through the course of implementing the water charge rules and water market rules, the ACCC has identified a number of minor possible amendments which would enhance the operation of the rules and, in some cases, reduce the regulatory burden on operators.

The ACCC understands that the current review of the Act will not be considering the content of the rules themselves. Rather, the Minister may request ACCC advice on the rules under sections 93 and 98 of the Act. These minor amendments could be considered in the course of a future review of the rules.

Avoid potential inconsistencies between water resource plans and the Basin Plan water trading rules [section 39]

The MDBA is required to determine whether water resource plans (WRPs) should be accredited and make a recommendation to the Minister. The MDBA will be required to consider a large number of proposed WRPs in a relatively short period.

As such, it may not be possible to ensure that all potentially inconsistent water trade-related provisions (which may also be new and not yet implemented) are identified and addressed prior to accreditation.

In the event that a WRP has been accredited, but is subsequently found to contain provisions inconsistent with provisions of the Basin Plan, the benefits of Basin-wide consistency may be jeopardised.

This is particularly the case as it is not clear whether the accreditation of WRPs relates to the entire instrument containing the WRP or only those parts specifically required to be included by chapter 11 of the Basin Plan. Similarly, it is not clear whether a draft WRP known to contain provisions inconsistent with the Basin Plan water trading rules could nevertheless still be considered consistent with the 'relevant Basin Plan' and accredited.

To avoid uncertainty arising, the Act should be amended to make clear that a Basin Plan water trading rule will prevail over a WRP provision relating to the trade of a tradeable water right to the extent of any inconsistency, even if the WRP has been accredited.

Clarify the status of the Murray-Darling Basin Agreement, its schedules and protocols [section 250A]

Trade-related matters are addressed through a range of Commonwealth and Basin State legislation, as well as intergovernmental agreements such as the Murray-Darling Basin Agreement.

The status of:

- the Murray-Darling Basin Agreement and its schedules (the text of which is reproduced in Schedule 1), and
- protocols made under the schedules to the Agreement

is not obvious and alternative interpretations are feasible.

The meaning of 'Commonwealth water legislation' in section 250A of the Act should be amended to explicitly exclude the Agreement, Schedules and Protocols. This is necessary to avoid possible confusion about the application of the water market, charge and trading rules in the event of any inconsistency.