

Waterfind Submission to the Review of the Water Act 2007

Waterfind

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1.0 INTRODUCTION

Over the last 10 years the development of water policy in Australia has progressed at a remarkable rate and in many areas more has been achieved in the last ten years than the one hundred years prior.

This pace of policy development has been necessary for Australia to meet the challenges of feeding a growing world and for our irrigators to compete with our rapidly developing neighbouring countries.

The challenges that need to be overcome were starkly revealed through the Millennium drought and that Australia responded to this once in a century crisis by accepting the challenge to reform water management structures down to their core is a historically important policy success and one that in future decades will be pointed to as the reason Australia has a successful and innovative agribusiness sector.

The Water Act 2007 has been a keystone piece of legislation of the water reform agenda and its implementation has resulted in the achievement of important water management outcomes in the Murray Darling Basin over the last seven years.

In this submission Waterfind provides comment on how the Act has been implemented and improvements that can be made to the Act itself and how the objects of the Act are being achieved.

As a leading organisation in the water market Waterfind's comments in this submission focus on the water market policy aspects of the Water Act and how these policies can help irrigators. This focus on water markets does not diminish Waterfind's belief in the importance of the environmental goals that have been achieved and are still being developed.

The comments in this submission are arranged by specific aspects of the Water Act. The aspects of the Act discussed in the submission are;

- Chapter 12 of the Murray Darling Basin Plan and the pending implementation of these rules
- The creation of the Commonwealth Environmental Water Holder
- Reporting of water availability data by the Bureau of Meteorology
- Dissemination of water market information
- Objects of the Commonwealth Environmental Water Holder
- Water Market Rules and Transformation of water rights

In this submission Waterfind has also provided specific policy recommendations to ensure clarity.

1.1 WHO IS WATERFIND

Waterfind was founded in 2003 to service the need for agricultural irrigators to buy and sell water to secure their water supply needs. In a relatively short time, Waterfind has become Australia's largest water broker and the only company to offer instant water trading via an online trading system. Waterfind has offices in NSW and Victoria, with our head office located in Adelaide, SA.

Waterfind is a results orientated company with in-depth knowledge of water markets around Australia. Recently Waterfind has been using this knowledge to develop solutions for the water

industry to allow more efficient and productive use of water, these products include Australia's first online Forward Water Market and development of a water infrastructure management division. Waterfind is continually innovating and is working on further innovative products that will be released over the next 12 months.

Since its creation in 2003 Waterfind has had a commitment to provide resources to engage with governments on developing water market policy and programs in order to develop and expand the benefits from water trading. During this time there has been many changes to water policy and Waterfind has been proud to have been able to engage with all levels of government to provide feedback, assistance and advice wherever possible. This submission has been completed as part of this commitment and Waterfind is

1.2 TERMS OF THE REVIEW OF THE WATER ACT 2007

Among the strengths of the Water Act 2007 was the clear and unambiguous statement that the national interest in regards to water management is broader than either just the irrigated agribusiness industry or just the environment and that to successfully manage Australia's water resources meant developing innovative solutions that overcame the simplistic divisions between these two users of water.

Waterfind believes that the inclusion of water markets as a core strategy to manage water resources has created a solid base of policy that can be built on over coming decades so that Australia is a world leader in water resource management.

In this submission Waterfind provides comments on the extent to which these objectives have been met through discussing specific policy initiatives that were created in order to achieve these objectives.

In regards to the Terms of Reference of the review of the Water Act, this submission is written using Waterfind's expertise in the development and operation of water markets and the comments in this submission are most relevant to Section 1), a), iv); 1), c) and 2), a) in the Terms of Reference.

It also should be noted that Waterfind's experience and knowledge is within water markets, the irrigated agribusiness sector and helping our clients grow their businesses and this submission focusses on these areas. Waterfind is a supporter of the environmental goals included within the Water Act and encourages the Secretariat to also engage with submissions that focus on how the environmental aspects of the Water Act has been met.

2.0 WHAT HAS GONE WELL FROM THE WATER ACT

2.1 CHAPTER 12 OF THE MURRAY DARLING BASIN PLAN

The Water Act 2007 includes a commitment to supporting water markets as a core strategy for achieving efficient and productive use of water in the Basin.

The clear statement of support for water markets in the Act has been important in developing the acceptance of water markets in Australia and is also proving to be important in communicating the benefits of water markets to governments in North America and Asia, who are looking to Australia as

a leader in water policy solutions. The Objectives of the water Act in regards to water markets are set out in Schedule 3 of the Act, which are;

The objectives of the water market and trading arrangements for the Murray-Darling Basin are:

- (a) to facilitate the operation of efficient water markets and the opportunities for trading, within and between Basin States, where water resources are physically shared or hydrologic connections and water supply considerations will permit water trading; and*
- (b) to minimise transaction cost on water trades, including through good information flows in the market and compatible entitlement, registry, regulatory and other arrangements across jurisdictions; and*
- (c) to enable the appropriate mix of water products to develop based on water access entitlements which can be traded either in whole or in part, and either temporarily or permanently, or through lease arrangements or other trading options that may evolve over time; and*
- (d) to recognise and protect the needs of the environment; and*
- (e) To provide appropriate protection of third-party interests.*

These Objectives have been operationalised into 'on the ground' policies through Chapter 12 of the Murray Darling Basin Plan which came into effect on the 1st July 2014. Chapter 12 realises these objectives through implementing a small number of very clear policy statements, including;

12.06 (1): *A person may trade a water access right free of any condition as to the holding, buying, selling, obtaining, accepting or terminating of a separate location-related right.*

12.09: *A person may take and use water under a water access right free of any restriction arising from the fact that the person acquired the water access right by way of trade.*

12.48 (1): *If the trade of a water access right requires the approval of an approval authority, the person disposing of the water access right must notify the approval authority in writing of the price agreed for the trade.*

The rules and policies contained in Chapter 12 represent an important step in the development of water markets away from an informal amalgamation of systems that were built up over time by different authorities, were very expensive to run and required irrigators to deal with significant red tape every time they wanted to conduct a trade, to a harmonised system that is efficient, cheap and effective.

The rules in Chapter 12, which are being fully implemented on the 1st July 2014, will have multiple benefits to water market participants including;

- Increasing confidence that water rights are assets that can be treated separately to farmland assets that they are attached to. This will support the use of water assets as a basis for finance which can then support the future growth of the irrigated agribusiness industry.
- Reduce transaction costs within the water market by reducing the policy research required to determine the rules of a water trade.
- Increase the confidence in price signals produced by the market through requiring full transparent reporting of market prices.

This latter point is important for realising the goals of Schedule 3 (c) of the Water Act. There are many products that have been conceptualised that can increase the efficiency of the water market and provide benefits to irrigators, including exchange traded forward water contracts that Waterfind launched in March this year, but all of these products require a reliable base of pricing information from spot market trading in order to function.

Erroneous reporting of water trade prices in the past has had the effect of increasing the volatility of reported prices and making the market appear riskier than it actually is. Waterfind hopes that the requirement for accurate price reporting across the Murray Darling Basin will reduce the volatility of reported pricing and support the further growth of new water market products and support investment into the irrigation sector.

Once the rules contained within Chapter 12 have been implemented Waterfind expects that there will be transition issues that arise and also ensuring these issues are managed is essential for ensuring the success of the Chapter 12 reforms.

Recommendation 1: That the MDBA be fully resourced to manage transition issues that may arise from the implementation of Chapter 12 of the Murray Darling Basin Plan.

2.2 CREATION OF THE COMMONWEALTH ENVIRONMENTAL WATER HOLDER

Prior to the beginning of the water recovery strategy in 2007 there were multiple State and Commonwealth agencies that held water assets and had responsibility for providing this water to environmental sites. This created confusion and uncertainty about environmental water including, how much there was, how it was going to be used and how the organisations that held environmental water would interact with the market.

Even in the early years following the beginning of the buyback tenders the task of finding out how much environmental water there was and where it was being used was challenging. This situation lessened confidence in water markets and allowed space for erroneous beliefs to develop amongst water users about future engagement in the market by environmental water holders.

The creation of the Commonwealth Environmental Water Holder (CEWH) as a single manager of environmental water has allowed the CEWH to;

- Provide clear reporting of the Commonwealth’s holdings of environmental water through the ‘How Much is There’ section of the CEWH website.
- Publication of trading strategies and water use plans that include descriptions of how the plans will change depending on water supply conditions.

Recommendation 2: That the importance of the CEWH’s role in achieving the Objectives of the Water Act be recognised and supported by the Commonwealth.

2.3 REPORTING OF WATER RESOURCE DATA THROUGH THE BUREAU OF METEOROLOGY

In 2007 Waterfind began reporting aggregate storage level data for major water storages in the Murray Darling Basin. At the time this reporting by Waterfind was the first time that water storage data from all of the Basin states had been reported, this was because while each State Government had their own reporting systems they didn’t work together. At the time Waterfind recognised the fact that a private company was the first organisation to provide such important information revealed a weakness in the way that critical water data was provided.

A strength of the Water Act was to recognise this weakness and realise that the solution was to give the responsibility for collecting and reporting data to a single agency, which in the Act is the Bureau of Meteorology (BOM). Giving this responsibility to a single organisation has increased the effectiveness of data collection and reporting and reduced the inefficiencies and expense that occurred when the responsibility was shared amongst several agencies.

Since the passing of the Water Act the BOM has made substantial progress in developing water data and for some data types, particularly water storage data, Waterfind believes that the goals of the Water Act have been met.

For other data initiatives, particularly the National Water Account and other complex data sets, the data has been collected and is available online but the presentation of the data and the frequency of reporting limits the potential usefulness of this data. Waterfind’s observation is that while significant resources have been committed to collecting and curating data that this has not necessarily resulted in an outcome that is usable for irrigators and water market participants.

Recommendation 3: That the BOM continue to develop and expand the user interface capacities of BOM’s water reporting and develop innovative ways to communicate ‘insight’ about water availability to water users.

Recommendation 4: That the BOM consider ways to further develop the usability of complex data resources that it collects.

3.0 WHAT CAN BE CHANGED IN THE WATER ACT

3.1 DISSEMINATION OF WATER MARKET INFORMATION

In Division 2 of the Water Act 2007 the Bureau of Meteorology is provided with broad responsibilities to collect and disseminate ‘water information’ defined as;

any raw data, or any value added information product, that relates to:

- (i) the availability, distribution, quantity, quality, use, trading or cost of water; or*
- (ii) water access rights, water delivery rights or irrigation rights;*

As discussed above, for many types of water information, particularly water storage data, the BOM have made advances in this area that have improved the water data available.

However, included in the definition of 'water information' in the Act includes 'water market' data and 'water use' data that reports on the volumes of water used for production by irrigation and industry.

Reporting of these data types have not yet been developed to the same level as water storage data and the lack of a central reliable data source for this data, particularly water use data, is limiting the development of water management processes.

The current sources for water market and water use data are;

- **Water Trading Data** – The BOM collects and reports water market data through the AWRIS system and this data is made publically available through the National Water Market System website in a convenient, useful excel format.

As the National Water Market System has not received ongoing funding Waterfind is concerned that a new portal for this data is developed as soon as is practicable.

Also, there are quality issues in regards to the completeness of the data. For example, 56% of entitlement trade records have a price of less than \$1 per ML. While this lack of completeness of data is a concern, however Waterfind is aware that in the Murray Darling Basin this issue may be addressed through the implementation of Chapter 12 of the Murray Darling Basin Plan on the 1st July 2014.

- **Water Use Data** – There are two current sources for water use data in the Murray-Darling Basin, the MDBA, which provides weekly reports on the volumes of water diverted for use in the River Murray system as part of its Weekly River Operations Report, and the ABS through its Water Use on Australian Farms survey.

While both of these sources are of benefit, they are limited in that the MDBA weekly report only covers the River Murray and the Water Use on Australian Farms survey is released approximately 12 months following the close of an irrigation season.

In the Water Act there are overlapping of responsibilities for water market and use data collection and reporting with Section 103 providing authority for the MDBA to develop a water information service and section Part 7 of the Act providing BOM with responsibilities to collect and report water market data.

Waterfind imagines that there was a possibility that this reporting would occur through the National Water Market System, an initiative of COAG, possibly further complicated the responsibilities between organisations.

Waterfind believes that both the BOM and the MDBA have the capacity to collect and report data on water resources and water markets and Waterfind recommends that one of these organisations be provided a clear and definitive responsibility for making this essential data available. If this occurs it will simplify the processes for collecting and reporting data and result in a better result for a lower cost.

Recommendation 5: further develop the reporting of water market data collected through the AWRIS system, taking advantage of the reporting requirements of Chapter 12 of the MDB Plan.

Recommendation 6: Expanding current reporting to include water diversions from each major river system in the Murray-Darling Basin on at least a weekly basis.

3.2 OBJECTS OF THE COMMONWEALTH ENVIRONMENTAL WATER HOLDER

The experience since the implementation of the Water Act 2007 and the Commonwealth Environmental Water Holder (CEWH) is that the objects of the organisations have not been appropriately established and as such the mission of the CEWH is not clear.

Waterfind has observed that this lack of a clear mission for CEWH has resulted in public resources being spent in areas where State Government or non-government agencies could have provided services at a lower cost.

In the Water Act the functions of the CEWH are described as;

- (1) The functions of the Commonwealth Environmental Water Holder are, on behalf of the Commonwealth:
 - (a) to manage the Commonwealth environmental water holdings; and
 - (b) to administer the Environmental Water Holdings Special Account.

And the purpose of the CEWH are to;

- The functions of the Commonwealth Environmental Water Holder are to be performed for the purpose of protecting or restoring the environmental assets of:
- (a) the Murray-Darling Basin; and
 - (b) other areas outside the Murray-Darling Basin where the Commonwealth holds water; so as to give effect to relevant international agreements.

This purpose of the CEWH is unfeasibly broad and Waterfind believes that it has not been provided guidance as to what strategies the CEWH is to undertake to achieve this purpose or how the CEWH is to relate to other state and Federal agencies to ensure that there is no overlap in services or expertise.

Waterfind contends that the current purpose of the CEWH as set out in the Water Act is too broad and that a single organisation cannot reasonably be expected to develop strong capacities in the fields of NRM management, water policy, financial management and market strategy that CEWH requires to achieve its purpose.

The CEWH has prioritised the development of NRM capacities over capacities in portfolio management or market strategy. While this focus has allowed the CEWH to develop processes to

effectively use Commonwealth environmental water to achieve environmental outcomes, Waterfind contends that these capacities already existed in state government agencies and non-governmental organisations and may not be necessary to mirror these capacities in the CEWH.

Waterfind believes that a better model would be for the CEWH to develop capacities in portfolio management and market strategy and then engage government or non-governmental sector organisations, including environmental groups that specialise in water and private Water Trusts, to manage the use of environmental water. This would be a similar model to the Future Fund which sets a strategy for the Fund's assets and then engages external managers to implement the strategy.

Waterfind believes that this model for the CEWH is supported by the Water Act, particularly in that the CEWH was vested with broad powers to engage with water market products including water options contracts and invest funds into infrastructure in order to achieve environmental outcomes. That these powers are specifically provided to the CEWH suggests that the intention of the Act was that CEWH act primarily as an asset portfolio manager rather than an NRM organisation.

Recommendation 7: That the functions of the CEWH in the Water Act be more clearly defined as the manager of the Commonwealth's Government Water Assets.

Recommendation 8: That the CEWH examines the use of state government and non-government organisations to manage the use of environmental water for projects.

3.3 WATER MARKET RULES

When the Water Market Rules within the Water Act were implemented in 2009 it was a significant development in water management policy that provided certainty for irrigators that accessed water through an Irrigation Infrastructure Operator (IIO).

Since then though it has become clear that the Water Market rules are unnecessary and that a model where irrigators held a water right against a state government and a delivery contract with the IIO would be far simpler for irrigators and would be less costly for IIO's and for Government.

Achieving this model would simply require that the water rights held by irrigators on an IIO's bulk licenses be transformed into a water right registered on a State Government register. This would allow for IIO's to focus on their core role of operating water infrastructure and would reduce the compliance burden on IIO's and reduce the work required for the ACCC to monitor IIO's.

It should be noted that this transformation only needs to be undertaken in NSW and South Australia. Victorian and Queensland irrigators already hold water licenses on State Registers.

At the time the Water Market Rules Delivery Contracts between irrigators and IIO's were rare in NSW and Bulk Licenses were a way for IIO's to create security in their relationships with irrigators. Since the introduction of the Water Market Rules the use of Delivery Contracts has become more widespread and is now a standard between irrigators and IIO's.

This increased use of Delivery Contracts is due to Part 4, Section 8 of the Water Market Rules which requires that when irrigators transform their water rights out of IIO's that the IIO must offer the irrigator a Delivery Contract that allows the irrigator the capacity to use the IIO's infrastructure on

similar terms as to before the transformation. IIO's found that once they created Delivery Contracts and engaged some irrigators on that basis, that there were benefits to broadly using these contracts in their engagement with irrigators regardless of whether their water was transformed out of the district.

Given that Delivery Contracts are now standard for IIO's the regulations and oversight in the Water Market Rules are no longer needed, the IIO's business relationship with irrigators are protected and irrigators water rights can be transformed to privately held water rights.

Recommendation 9: That all water rights held against IIO bulk licenses be transformed into water licenses held on State Government Water registers.

Recommendation 10: Subject to Recommendation 9 being implemented that *Division 2 – Water Market Rules* be removed from the Water Act.