



Friday, 6 December 2019

Director
Murray-Darling Basin Inquiry
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

To the Director,

Thank you for the opportunity for the Murray Darling Association (MDA) to provide this submission to the Inquiry into markets for tradeable water rights in the Murray-Darling Basin.

About us

The Murray Darling Association is the peak body for local government in the Murray-Darling Basin, informing policy and contributing local knowledge and regional solutions since 1944. There are 167 councils that sit within the Basin across all 4 Basin states and whose communities rely upon water from within the catchment.

The management of water is a matter that is of significant interest to local government. Local government has a direct and immediate relationship to the communities we serve; responsible for delivering core services, maintaining economic growth, resilience and community health and wellbeing.

The allocation, sustainability, availability and affordability of water resources is recognised as a critical factor in the environmental, social, cultural, and economic health and stability of our nation as whole. This is never more applicable than across the rural and regional communities of the Murray Darling Basin.

Significantly, the Murray Darling Basin Plan came into effect in 2012, with a planned implementation of major reforms in stages over a 12-year period. The allocation of water resources and the changes in availability continues to impact communities which requires adaptive strategies and planning foresight. This is notwithstanding the need for the water trading systems to remain transparent, equitable, consistent and reliable if communities are to capture the benefits of the implementation process and pursue economic opportunity.

The MDA has had limited but active experience in water trading over the last 10 years as the holder of small parcels of tradeable water rights in three zones in the southern connected Basin – NSW Murray (Below Choke) Zone 11, SA River Murray Zone 12, and VIC Murray (Below Choke) Zone 7.

The MDA holds that unregulated investment in the water market compromises the ability to ensure adequate, affordable, safe and secure water supply is available to water users consistent with the objectives of the Water Act 2007, and the Murray-Darling Basin Plan 2012.

In 2017, the MDA (a non-water-user) recognised the inconsistency of advocating for investigation into the methodologies that could inhibit the purchase and trade of water entitlements by market participants not involved in productive water and land uses; while actively holding and occasionally trading albeit small parcels of water.

In 2019, the MDA finalised a strategy to divest all water licences and entitlements held by the MDA.

For many years the annual National Conferences held by the MDA have consistently highlighted and resolved motions calling for inquiry and remedy of entitlement provisions on the trade of water. Particularly those entitlements and trades that have an adverse impact on sustainable agricultural productivity, create inequity for farmers in the marketplace and encourage speculation by non-agricultural interests in the trading of water rights. A summary of those resolutions will be provided as an appendix to this submission.

The MDA looks forward to the Commission's recommendations to enhance markets for tradeable water rights, including options to enhance their operations, transparency, regulation, competitiveness and efficiency.

Submission

The Commission has called for submissions that may offer policy solutions under five strategic themes / focus areas. Broadly, the Murray Darling Association believes greater consultation with local government on all five areas is critical.

Issue 1 – Market Trends and Drivers

Members of the MDA regularly report of the impacts on their communities resulting from changing water availability and demand.

The number of participants in the water market has increased significantly in recent years due largely to the expansion of the irrigation footprint, driven by commodity demand, technology and crop diversification.

Formerly arid dryland farming areas are now increasingly populated by permanent horticultural plantings. Such variations in the irrigation footprint and diversification in irrigation use has led to changing behaviour in water market participants.

The increase in permanent plantings has meant that demand for water is more inelastic than it has ever been. The business model and need for water entitlements and allocations is completely different for permanent plantations than it may be for dairy farmers which differs again from cotton growers. Different market participants have different demand pressures. With the almond industry now exporting around 70% of total almond production in Australia, compared to dairy where only 36% of production is exported and product demand fluctuates rapidly, the inelasticity of the water market is squeezing out many industries that require a higher level of flexibility and access to the affordable water.

Loss of primary, secondary and even tertiary industries from our rural and regional communities is having significant knock on effects for councils in how we support existing business, maintain and manage investment in community infrastructure and services.

It should also be noted that market complexity has a major impact on how participants are operating within those markets, and on participants' confidence in the market.

Many irrigators do not necessarily have highly developed skills in water market participation. The complexity of water products and the number of products on offer can be seen as overwhelming for some Irrigators and can affect the way in which farmers and irrigators participate in markets.

There have been complaints that carry-over rules have rendered low-security or general-security entitlement useless as the pool of water that can be allocated in one year is diminished by the previous year's carryover. The existence of so many products and the frequency in which market conditions change can have a negative effect on water markets.

Recommendation 1: That water market products, principles and rules should:

- a) be synthesised and simplified to reflect regional requirements;
- b) have consistent and reliable application across all states;
- c) have a single source of accessible information to support informed decision making by farmers, irrigators;
- d) ensure carry-over rules avoid unnecessary distortion of the market;
- e) be re-connected to land title; and,
- f) that the MDAs Motion below be given due consideration.

Extract from MDA National Conference 2015 – Minutes

2015 - [Motion 5 Region 2](#)

POSITION STATEMENT

The Murray Darling Association is concerned that current entitlement provisions on the trade of water have an adverse impact on sustainable agricultural productivity, create inequity for farmers in the marketplace and encouraging speculation by non-agricultural interests in the trading of water rights.

MOTION

That the Murray Darling Association seek a formal investigation into

- a) *the effects of speculation by non-productive holders of water licences in the Murray Darling Basin.*
- b) *suggested methodologies that could inhibit the purchase of water licences solely for speculative purposes as opposed to productive use.*
- c) *the costs and benefits of re-bundling water licences with land ownership*

Current Status

- Separation of water from land, and unbundling has led to speculators and superannuation funds entering the market.
 - Price of water is unsustainable, impacting farmers and food producers
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Issue 2 – Market transparency and information

Our members have consistently expressed concern over the lack of information available to farmers and irrigators for the markets that they participate in, as well as information on markets that may be affecting the market they trade in through intravalley transfers.

Trade data is insufficient as it does not allow participants to gain a full level of understanding of what is happening in a market, who is influencing it and how market conditions may be varying whilst they are trying to partake in it.

There is little regulation to ensure all buyers receive equal opportunity to purchase an allocation or entitlement – which is a common issue that many participants have raised.

The MDA has consistently held and advocated for the position that there is an immediate need for comprehensive database of all water related information for the entire country. system must be easy to use; capable of generating reports regarding water movement and use across the nation; highlighting national / foreign ownership and interests; large market participants in specific trading zones; is in the interests of security of future water supply for communities and industry. Such information is not only essential for an effective and transparent water trading system, but importantly will enable effective planning by all stakeholders for future events such as extended dry periods and even peak / surge demand periods.

A system similar in functionality to that of the Australian Stock Exchange would ensure all buyers and all sellers receive equal opportunity in the market. Furthermore, where large participants who hold market power in a specific trade zone; should be required to disclose any existing holdings in that zone. In addition to these underpinning principles, there is further need to ensure there is an enhanced system which separates the relationship between brokers; selling clients; buying clients and even brokers then becoming clients themselves. Such a system would increase transparency and make decision making of market participants more informed.

Recommendation 2: That a National Water Registry be established to monitor and report on all rainfall, surface and groundwater storage, evaporation and capacity or movement, including flow rate and interstate or intervalley trade, extraction, unaccounted activity, licenses and allocation in real time, and inform the public in relation to foreign ownership of water assets and infrastructure.

Extract from MDA National Conference 2018 – Minutes

2018 – Leeton - Motion 9 Region 4

Motion: *That the Murray Darling Association lobby the Federal and Shadow Minister to instigate a National Water Registry, to monitor and report on all rainfall, surface and groundwater storage, evaporation and capacity or movement, including flow rate and interstate or intervalley trade, extraction, unaccounted activity, licenses and allocation in real time, and inform the public in relation to foreign ownership of water assets and infrastructure.*

Objective:

To have a comprehensive database of all water related information for the entire country, easy to use and capable of compiling reports regarding water movement and use across the nation,

including foreign ownership information tracking and reporting, in the interests of security of future water supply for communities and industry and being able to plan for future events such as extended dry periods. Downstream impacts of illegal take and government policy need to be addressed. A better understanding of water availability and demand across Australia as our population continues

to grow and more rapid identification of illegal take or impacts on long term sustainable future can inform planning and policy.

Key Arguments:

While previous versions and elements of Water Registry have come and gone, the technology now exists which enables live data tracking and GPS monitoring of water flow and movement across land. There also is greater capability to combine multiple state databases into a one stop shop, which is easy to use and can adhere to standards, privacy and ensure secure data.

Perhaps the biggest single issue facing water management in this country is lack of transparency and public perception of mismanagement. Sourcing multiple websites from the Department of Agriculture and Water Resources, Commonwealth Environmental Water Office, Bureau of Meteorology, various state water authorities and agencies and Regulatory offices can be a tiresome exercise.

Indeed, various macro data is available across NSW which is patently incorrect or the “missing” data referred to in NSW Land and Water Commissioner dataset. Ken Matthews’ report called for verifiable accurate data, the recently signed Compliance Compact highlights metering and a raft of goals and targets, prioritising risk areas, which suggests there is an appetite across the board for access to trustworthy data.

For companies wishing to maximise their investments, the best way to determine whether the price they want to pay for land and water meets their needs is to have access to all the variables and some historical data to inform possible investment or growth. Indeed, how much water is available is perhaps the biggest determination of investment decisions at the present time.

As well as a commercial function, foreign investors and the Australian public and regulators need to ensure that investment is in line with current legislation pertaining to percentage of foreign ownership. By providing accurate, current information and transparency, there can be greater certainty in the international and domestic market and in the wider public arena, that investment is supportive of Australian industry as a priority.

Issue 3 – Regulation and Institutional Settings

The intervention in water markets and revision of rules that are in full operation by Government ministers is a clear indication of incorrect or in-sufficient settings in the first instance. An example of this is the recent Victorian State Government’s moratorium on intervalley trade and tagged licenses out of the Goulburn which has caused a jump in prices of some allocations up to \$150 within a day.

Such sudden interventions have profound impacts on both supply and demand in the market and likely intervened with other markets which are directly / indirectly linked. Similarly, the consternation around the South Australian contribution of water to be released to the market at artificially low prices for the production of fodder indicates regulatory and institutional settings ill-equipped to deal with the required fluidity of the water market.

The management of constraints has also been a challenging influence on markets. In the summer of 2018/19, it is reported that the MDBA was forced to conduct transfers that resulted in significant overbank flows in the Barmah Forrest in order to make surge deliveries on allocations downstream of the Choke.

These transfers resulted in an **additional 50GL of conveyance loss** and an untimely flooding of the asset already suffocating under un-natural levels of sapling vegetation.

Had this constraint been managed better and no additional water lost, there would have arguably been more water allocated to those holding entitlements without the unnecessary negative impacts on the environment.

The MDA regularly hears anecdotal evidence of the tensions between water traders and the markets due to regulatory and institutional settings. However, as representatives of local government, we are perhaps less qualified than others to make recommendations on the efficacy of settings for Murray-Darling Basin water markets.

We are however, of the view that regulation and institutional settings must be synthesised to support the objectives of the Murray Darling Basin Plan. For example information regarding water recovery targets, water holdings, and water sales is frustratingly difficult to find and collate. It should be simple to find and located in one place.

Recommendation 3: That Government:

- i. **Establish a National Water Information Platform which will serve as a single source of information on water, from recovery targets to allocations, through to sales (whether permanent or temporary)**
- ii. **Require routine disclosure statements by larger water holders (such as any person or entity that owns upwards of 2% of available entitlements in an area or any water trading companies), and**
- iii. **Require routine disclosure by banks of any debts recovered through forced water sales in irrigation farming areas.**

Extract from MDA National Conference 2019 – Minutes

2019 – Motion 16 – Region 9

Motion: *That the Murray Darling Association calls on Federal and State governments to*

- iv. *Develop a transparent National Water Information Platform which will serve as a single source of information on water, from recovery targets to allocations, through to sales (whether permanent or temporary)*
- v. *Require routine disclosure statements by larger water holders (such as any person or entity that owns upwards of 2% of available entitlements in an area or any water trading companies), and*
- vi. *Require routine disclosure by banks of any debts recovered through forced water sales in irrigation farming areas*

Objective:

Provide Australians with easy access to information about water holdings and water trading to ensure an agricultural future that is fair, informed and not prone to manipulation or speculation.

Key Arguments:

- *Finding information of water recovery targets, water holdings, and water sales is frustratingly difficult. It should be simple to find and located in one place.*
- *Sometimes information is released too late - it should be available in real time.*
- *Until we understand the full picture, we are less able to respond to the unintended consequences of water trading policies / rules / regulations*
- *There is increasing concern that people with inside knowledge or large water holdings can manipulate markets or hold farmers to ransom*
- *There is some evidence of banks choosing to recover farm debt by forcing farmers to sell their water entitlements, which serves only to make the farmer less productive. Banks view water entitlements as 'easy money'.*
- *recognise and properly evaluate the compounding effects of an unregulated water trading environment and the implementation of the Murray Darling Basin Plan on the viability and sustainability of established nation building irrigation schemes that would be unaffordable to replicate today and consider how these should be optimised to ensure the most responsible use of available water for agricultural endeavour. In particular, the advantages of a diversified agricultural sector within established irrigation systems to GDP, and its associated local economic and community resilience, should be weighed up against the risk of shifting water to monoculture-based 'high value' crops on greenfield (cheaper) lands downstream of the established irrigation schemes*

Issue 4 – Market participant practices and behaviours

Concerns have been raised by our members over participants in the market who have conflicting interest, potentially unfair market advantages, and access to market information that may give them a market advantage and an un-necessary presence in the market that would contribute to a loss of market efficiency, integrity and transparency.

Water Brokers who also hold entitlement allocation accounts or ABA's should be properly regulated to avoid conflict of interests. Further regulation is also required to avoid both conflicting interest and potentially an unfair market advantage for Irrigation Infrastructure operators who own and trade water entitlements and allocations.

Recommendation 4: That the Government establish an appropriate regulatory framework that enables the water market to operate in an efficient, effective and transparent manner while upholding the principles and objectives of the Murray Darling Basin Plan.

Issue 5 – Competition and Market Outcomes

By applying the free market principle to the trade of water, the MDA has seen a scarce resource allocated more efficiently. The pursuit of increasing productivity has also been achieved through the water markets and has encouraged and grown secondary industries that can assist irrigators in increasing productivity.

However, there have also been significant unintended consequences that poor regulation of the water markets has created. The commodification of water and poor regulation of the market fails to recognise it's social, cultural and environmental values.

Recommendation 5: That the Government establish a 'single point of entry' website to assist water market participants, authorities, stakeholders and communities to navigate the water

management environment and to access timely and accurate information, referrals and other assistance,

SUMMARY

In summary, the MDA has called on State and Federal Governments to engage meaningfully and have genuine regard to the findings of the ACCC Inquiry into water trading. As members of the Murray Darling Basin ourselves, the MDA also seeks outcomes that will support a diverse and flourishing agricultural sector, that will accommodate and respond to changing water availability, and that restores community confidence in the water markets and the Murray-Darling Basin Plan.

Yours sincerely,



Emma Bradbury
Chief Executive Officer
Murray Darling Association