

Further comment on the Murray-Darling Basin Plan: Five-year assessment

Scope of the inquiry In accordance with the provisions of Part 3 of the Water Act, the Commission is to report on the matter of the effectiveness of the implementation of the Basin Plan and the water resource plans for the five year period ending 31 December 2018.

Uniform Pricing

During the five year period from 2013 until now the ACCC conducted a review of the infrastructure rules concerning the MDB. As part of this review the legal framework was discussed and the Final Decision stated that the legal framework was satisfactory noting that no legal recourse had been taken during the implementation of the Water Act.

The ACCC failed in their assessment by excluding the process for challenging decisions in the Administrative Decisions Tribunal for Commonwealth decisions or how the State Ombudsman would deal with decisions made by State authorities. This oversight has lead to misleading statements being made without any recourse to affected irrigators. In any other corporate dealing under the umbrella of ASIC this would be an offence.

I will give an example where the ACCC used misleading information from the Essential Services Commission to allow a decision which was not within the framework of the BWCOP in allowing uniform pricing within the GMID.

GMW submitted its Water Plan 4 Document to the ESC asking the ESC approve uniform pricing throughout the GMID. During this time submissions were taken from stakeholders and sent to the ESC. The option considered was a 6.0 option where all six districts would have the same pricing for the same service.

Also during this period the ACCC had their review of the infrastructure rule charges for which I wrote a submission outlining that uniform pricing was against the intent of the Water Act as outlined by the ACCC in their decision on the Peel Valley. The Expert Panel in their Review of the Water Act also highlighted the ACCC decision on valley to valley pricing. The ACCC ruled that valley to valley pricing should remain, Peel Valley irrigators held public meetings stating that the cost of infrastructure costs will be the highest in NSW if this pricing is used, however the ACCC ruled against them and valley to valley pricing will be used. The ACCC in answering my submission stated that although the rules contained were not enacted the overseeing state body should make their decision as though it was enacted, thus refusing uniform pricing.

The ESC ignored the ACCC advice and told GMW it would not approve the 6.0 model where all valleys pay the same price but will accept a 5.1 model where five valleys pay the same price but Shepparton will have to pay more. In doing so the ESC used submissions from Shepparton irrigators and businesses that supported the 6.0 option as evidence of support for the 5.1 option. There was no support for 5.1 option at any of the public hearings as this option was not in the Water Plan 4 document nor was it an option when these meetings were held.

I wrote to the ESC and asked about the Shepparton submissions for the 6.0 option and they replied saying these submissions were in support of the 5.1 option. I then wrote to the Victorian Ombudsman clearly stating what had occurred and they replied after a considerable amount of time saying they can do nothing as "in their shoes" legislation would prevent us from taking action.

In the ACCC Final Decision of the Infrastructure Rule Charges the ACCC back flipped and allowed the uniform pricing stating that GMW had support for uniform pricing using the false information from the ESC. In their Final Decision the ACCC will provide material at a later date about this new legislation. This ruling is outside the terms of reference given to them as any rule changes had to be within decisions made by the Expert Panel in their Review of the Water Act 2007.

If I pursued this decision in the ADT it would have been costly, time prohibiting and unfair. The Banking Royal Commission highlighted that although there were laws in place to protect people in the financial services they were hard to access

which allow unconscionable behaviour by the banks, the ACCC is no different in their assessment of the Water Act knowing that accessing legal recourse could face a complainant with financial ruin even though their pursuit of action was just.

Barmah Millewa Forest Environmental Water Allocation (B-MF EWA)

The submission I made to the ACCC about the B-MF EWA in their Review of the Infrastructure rules questioned the legality of the water account. Remember the Commonwealth provided \$560m for 480GL of water for six iconic sights including the Barmah Millewa Forest. The Commonwealth knew that this B-MF EWA entitlement was a bulk entitlement and under unbundling this water account would not be a part of the new legislative framework. Also the Expert Panel in their Review of the Water Act 2007 stated that all State laws will cease in 2018. The Expert Panel never mentioned the B-MF EWA.

Before the Four Corners program was screened the ACCC in their Final Decision of the Infrastructure Rule Charges stated that the B-MF EWA should be seen the same way as River Operations in NSW. The ACCC cleverly allowed this allocation to continue, however legislation was disguised under Non Discrimination Rule Changes where it stated operators will need time to adjust to the new non discrimination rules but included all State rules which allow the B-MF EWA to continue. This 150GL of water pays no infrastructure charges adding to costs paid by entitlement holders, remembering that all costs are paid by the water user although paid directly by the entitlement holder these costs are passed down to users. As well allocations for low reliability water shares have been directly affected by the inclusion of the B-MF EWA.

The ADIC in their submission to this assessment also questioned States having their own rules outside the MDBA guidelines.

Non Discrimination Rules

The ACCC had a submission from me as to the EWH paying delivery share equivalent prices within the GMID.

GMW in their Water Plan 4 document stated that DELWP was negotiating a delivery share equivalent price for the EWH's. The Board of GMW should have included this in their Water Plan document; however the State Government department took this away from the appointed authority board.

The ESC was misleading in their reply to the GMW Water Plan 4 document, they stated that we can confirm that the EWH's pay the same fees and charges as all water uses. I wrote to the ESC and asked if they could confirm this statement and provide written documentation, they could not. The statement was false and misleading. The ESC in their response corrected their earlier statement by including, except for the delivery share equivalent and the B-MF EWA. However they included this correction under bulk water charges and not under the heading of infrastructure charges leaving readers that EWH's do pay the same.

The ACCC had a problem with non discrimination rules. These rules which applied only to Part 3 operators were now to cover all operators. One of the rules was an operator can only use one casual use fee, with the inclusion of delivery share equivalent that would mean there are now two casual usage fees. The ACCC would have to overturn the ESC allowance in their approval of the Water Plan 4 for GMW.

The ACCC used submissions from National Irrigation Council and their member bodies. The ACCC never once mentioned that support for these rules, which are now discriminatory, were from members of the NIC. This made it look like there was wide support, added weight, from numerous bodies when in fact the submissions could have been all written at the same table by the same person for each of the members of the NIC as well as the NIC submissions.

One of the non discrimination changes called for a "Prudent Discount" which by definition is misleading. The word prudent would mean concise, true, actual however when used here it means unknown sum of fee, confidential, non transparent. The EWH's do not have to disclose the sum paid to the ESC, so the ESC can assume they pay zero and charge all other customers more to obtain the required revenue. Alternatively the EWH's could pay a large sum and tell the ESC they pay zero and State Governments use the money as consolidated revenue.

There is also collusion with the CEWH and VEWH negotiating together to obtain a lower fee with infrastructure operators.

Once again the rule changes to the non discrimination rules were outside the terms of reference given to the ACCC to allow. All changes were to be based on the Objectives and Principles of the Water Act. During the Infrastructure Rule Charges Issue Paper we were asked if there should be a tiered system of Objectives with the most important first and so on, the ACCC ruled that any change should be based on its own merit with the greater objective used in each individual circumstance. This new non discrimination bypasses the whole framework of the Act, creating new rules which are discriminatory.