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Commissioner Joanne Chong
Murray-Darling Basin Plan: Implementation Review 2023
Productivity Commission
To be uploaded to www.pc.gov.au/inquiries/current/basin-plan-2023

Dear Commissioner Chong,

ACCC submission to the Murray-Darling Basin Plan: Implementation Review 2023

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to provide a submission to the Productivity Commission's Murray-Darling Basin Plan: Implementation Review 2023 (the Review). Our submission is focused on governance and institutional arrangements in the Murray-Darling Basin (Basin), the Basin Plan water trading rules, and considering the market impacts of meeting current water recovery timelines.

The ACCC considers that Basin water markets are a core element of the Murray-Darling Basin Plan 2012's (Basin Plan) design and support the delivery of its objectives. Efficient Basin water markets will maximise the economic benefits from consumptive water use by:

- revealing the value of water to existing and potential users
- generating incentives to optimise water use
- timely signalling in response to changes in the availability of and demand for water resources
- allowing for water to be reallocated between users, enabling flexibility in response to changes in the operating environment.

The ACCC's work on the *Inquiry into Murray-Darling Basin Water Markets* (ACCC inquiry) concluded that the benefits derived from water trading rely on fair and efficient water markets, underpinned by an environmentally healthy river system.[1] Efficient water markets that encourage innovation, investment and technological development will help manage our water appropriately, assist implementation of the Basin Plan, and protect the Basin and its communities for future generations. We endorse the Murray-Darling Basin Authority (MDBA)'s position, as expressed in its advice to the Minister for the Environment and Water

[1] ACCC, *Murray-Darling Basin water markets inquiry 2019-21*, page 1.

on 25 July 2023, that 'it is important that the challenges inhibiting the full delivery of the Basin Plan are quickly addressed to provide a clear pathway forward'.[2]

Efficient water markets depend on building and maintaining user confidence, integrity, transparency and certainty of decision-making. The ACCC's roles under the *Water Act 2007* (Water Act) help ensure Basin water markets exhibit these characteristics and involve:

- **advising the MDBA on the Basin Plan water trading rules**.[3] These rules contribute to achieving the Basin water market and trading objectives set out in Schedule 3 of the Water Act by limiting restrictions on trade and improving market transparency and access to information. The ACCC's role providing advice on the development of the Basin Plan water trading rules improves market confidence through a more robust, independent, and transparent rule-making process.
- **advising the Commonwealth Minister on the Water Market Rules 2009 and the Water Charge Rules 2010 (collectively, the water rules)**.[4] The water rules support transparency and market efficiency by providing protections for irrigators that want to adjust their water holdings or delivery capacity by permanently transforming[5] their irrigation rights and / or terminating[6] their water delivery rights. The Water Charge Rules 2010 aim to strike a balance between the interests of terminating and remaining irrigators and the operator by limiting the termination fee that the operator can impose, while ensuring a contribution from terminating irrigators to the ongoing fixed costs of operating the infrastructure.
- **enforcing the water rules**,[7] **and monitoring and reporting on regulated water charges (including termination fees), transformation arrangements and compliance with the water rules**.[8] This role ensures transparency of regulated water charges, transformation arrangements and compliance with the water rules across the Basin.

The ACCC's regulatory and advisory roles under the Water Act reflect that the geographically exclusive infrastructure operators are natural monopolies and, in the absence of regulation, would be able to exercise market power to the detriment of water users.

The Australian Government has also committed to giving the ACCC new water market functions to support market integrity and confidence. The new functions are likely to include compliance and enforcement of new prohibitions on water market manipulation, stronger insider trading rules and a mandatory code of conduct for water market intermediaries.

This submission draws on the ACCC inquiry and the ACCC's work under the Water Act, including our monitoring. Based on our experience, meeting the objectives of the Basin Plan should be an urgent priority that should be achieved by delivering the plan's commitments in

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[2] Murray-Darling Basin Authority (MDBA), *2023 Authority advice on Basin Plan implementation - Authority response to Minister's request for advice*, accessed on 25 July 2023.

[3] *Water Act 2007*, section 42 and 46.

[4] *Water Act 2007*, section 92 and 97.

[5] 'Transformation' refers to when an irrigator permanently transforms their entitlement to water under an irrigation right against an irrigation infrastructure operator into a water access entitlement held by the irrigator (or anybody other than the irrigation infrastructure operator), thereby reducing the volume (for example, the share component) of the irrigation infrastructure operator's water access entitlement.

[6] 'Termination' refers to when an irrigator terminates or surrenders the whole or part of a right of access to an operator's network, typically by terminating a water delivery right. A termination fee is a fee that an operator may impose when an irrigator terminates.

[7] *Water Act 2007*, Part 8 and section 137.

[8] *Water Act 2007*, section 94 and 99.

full. The submission makes three main points in response to the Productivity Commission's call for submissions, focusing on coverage of Basin governance and institutions, resetting the balance, and the future of the Basin Plan:

- **Address the remaining gaps in Basin water market governance**. Basin water markets are a core element of the Basin Plan's design and support the delivery of the plan's objectives to reset the balance between consumptive and environmental water holdings. Gaps remain in Basin water market governance and should be addressed. Aside from the ACCC's intermittent role advising on the Basin Plan water trading rules, there is presently no independent expert body responsible for advising on market design and assessing whether Basin water markets are operating efficiently.
- **The timing of ACCC advice on the Basin Plan water trading rules is important.** The Basin Plan water trading rules have been in effect for almost 10 years. Their ongoing fitness-for-purpose will be evaluated by the ACCC, in its role in advising the MDBA but the timing of this evaluation is critical. It can feed into the 2026 Basin Plan review and should consider changes in market conditions and the water market roadmap reforms currently in development.
- **Supporting further consideration of current water recovery timeframes.** Noting the MDBA's statement on 25 July 2023[9] that 'full implementation of the Basin Plan will not be possible by 30 June 2024 under the current settings', the ACCC encourages careful reconsideration of the current water recovery timeframes. Ahead of the 2026 Basin Plan review, delivering the core elements of the plan should be prioritised as a matter of urgency. However, maintaining market confidence and minimising significant market impacts should also be considered. Extending current water recovery deadlines beyond 1 July 2024 will allow water recovery strategy to appropriately consider and avoid possible adverse impacts on the confidence of water market participants, and on efficient investment in and use of irrigation infrastructure.

Each of these points are addressed below.

Basin water markets are a core element of the Basin Plan's design, and support the delivery of the plan's objectives – but gaps in Basin water market governance remain.

The Basin Plan is a 'cap and trade' instrument, with sustainable diversion limits capping consumptive water use via limits on extractions in specific water resource plan areas. Under a 'cap and trade' system, markets are the tool that allow water to move to where its economic value is highest. This can help mitigate some of the economic impacts arising from the cap. However, markets need to function efficiently to deliver this outcome – that is, trade arrangements need to facilitate opportunities for trading, minimise unwarranted barriers to trade and transaction costs, recognise and protect the interests of the environment and other water users, and support the development of new products and innovations.

The ACCC inquiry found that current oversight of Basin water markets is fragmented across multiple regulators and policy agencies. It found that aspects of existing governance and institutional arrangements were impeding the fair and efficient working of Basin water markets, including through:

[9] Murray-Darling Basin Authority (MDBA), *2023 Authority advice on Basin Plan implementation - Authority response to Minister's request for advice*, accessed on 25 July 2023.

- a lack of prioritisation of water trade and markets policy by the relevant government departments, agencies and committees
- a lack of focus by Basin governments on delivering administrative functions in a manner that makes it easier for participants to engage in water markets
- market participants in some states being disadvantaged relative to participants in other states when accessing interzone trade opportunities
- differences in rulemaking processes used by Basin governance bodies
- insufficient transparency of existing intergovernmental processes and responsibilities, impacting market participants understanding of these bodies and reducing market confidence.[10]

The ACCC inquiry made 29 recommendations to enhance markets for tradeable water rights. The independent Murray-Darling Basin water market reform roadmap (the Roadmap) considered how to prioritise and cost-effectively implement the ACCC inquiry recommendations. The Roadmap noted that:

> *'expert market evaluation, research and analysis are important to proactively identify market issues and to objectively analyse the impacts of policies, rules and conduct on the effectiveness of Basin water markets'*[11]

Instead of the Water Markets Agency recommended by the ACCC, the Roadmap recommended that a proposed new National Water Commission take on the leadership role as the water markets expert and Roadmap implementation monitor. It proposed the Department of Climate Change, Energy, the Environment and Water (DCCEEW) take on appropriate roles in the interim until the National Water Commission is established.[12]

The Government response accepted all the Roadmap recommendations and noted its intention to introduce legislation giving new market integrity enforcement functions to the ACCC, data and systems functions to the Bureau of Meteorology, and data standards regulation to the Inspector-General of Water Compliance. The Government states its commitment on the DCCEEW website to establishing a National Water Commission to drive water reform and future-proof Australia's water resources.[13] DCCEEW is undertaking initial scoping work to determine the National Water Commission's roles and responsibilities as a first step in its establishment.

The new functions under the Roadmap, and the National Water Commission will, if delivered, substantially improve key aspects of Basin water market governance. But uncertainty remains on the establishment, timing and functions of the National Water Commission, with a risk that assessing market effectiveness remains an implied, ad hoc responsibility of the Murray-Darling Basin Ministerial Council. The Government should ensure gaps in water market governance are addressed, with clear responsibility allocated for oversight of market design and effectiveness. Further, in delivering the Roadmap reforms, it will be crucial for the ACCC to be given the necessary tools to investigate and enforce its new market integrity

[10] ACCC, *Murray Darling Basin water markets inquiry – final report*, page 13.

[11] The Department of Climate Change, Energy, the Environment and Water, *Water market reform roadmap*, Australian Government, October 2022, page 88, accessed on 21 June 2023.

[12] The Department of Climate Change, Energy, the Environment and Water, *Water market reform roadmap*, Australian Government, October 2022, page 16, accessed on 5 July 2023.

[13] DCCEEW, *National Water Policy*, accessed on 19 July 2023.

functions. This will ensure market misconduct can be detected and addressed, to help maintain and restore confidence in water markets.

Review how the Basin plan water trading rules are working as an input to the 2026 Review and associated processes

Efficient water markets depend on those markets being free from unnecessary encumbrances and restrictions, including transaction costs.

The Basin Plan water trading rules were designed to facilitate efficient water markets by overlaying a framework of requirements governing the trade of water access rights, water delivery rights and irrigation rights on top of the trading rules imposed by individual Basin State and irrigation infrastructure operators. The Basin Plan water trading rules seek to facilitate 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.

The commencement of the Basin Plan water trading rules in 2014 led to improvements in the information available to water users on trade arrangements and restrictions, and to the removal of some distortionary trade restrictions, including volumetric limits and thresholds on water ownership by non-water users. However, as the ACCC inquiry showed, issues with restrictions and distortionary arrangements remain in some markets, and the MDBA and now the Inspector-General of Water Compliance have faced challenges enforcing some elements of the Basin Plan water trading rules. This undermines the deterrence value of the rules.

There have only been minor amendments to the Basin Plan water trading rules since they came into effect.[14] In the intervening years, there have been significant changes to the volume and location of trade, the participants in the market, Basin State trade administration practices, the evolution of environmental watering arrangements and the impacts of changing climate patterns. The ACCC inquiry found that trade is facilitating significant changes in patterns of water use in the Southern Connected Basin. These patterns are posing increasing challenges to river operators, who are also faced with changing system conditions on a number of fronts.[15]

The ACCC inquiry noted that Frontier Economics drew out this point by stating that the MDBA's river operations team 'is increasingly challenged to deliver large and growing volumes downstream'.[16] This is not necessarily due to increased downstream consumption but due to a combination of factors in the Victorian and New South Wales Murray Below Choke zones that are contributing to challenging delivery conditions for river operators, including:

- significant increase in volumes traded into zones 7 and 11
- river system constraints, including the declining capacity of the Barmah Choke
- water recovered for the environment, and increased flows to South Australia due to trade and environmental flows.[17]

[14] In July 2018, some minor changes were made to the Basin Plan water trading rules to provide more clarity. See: MDBA (2021), *Basin plan amendments for groundwater and minor practical changes*, accessed on 21 July 2023.

[15] ACCC (2021), *Murray Darling Basin water markets inquiry – final report*, page 448.

[16] Frontier Economics (2021), *Market architecture assessment*, page 49, accessed on 28 July 2023.

[17] Frontier Economics (2021), *Market architecture assessment*, page 48-49, accessed on 28 July 2023.

The ACCC inquiry and the Roadmap recommended removing the exemption under rule 12.23 for grandfathered tagged water access entitlements.[18] The ACCC proposed the removal of the grandfathering provisions because they distort the market by allowing a limited number of market participants (who hold grandfathered tagged water access entitlements) to circumvent inter-valley trade limits. However, the ACCC inquiry did not have the scope or resources to consider the detailed operation of every Basin Plan water trading rule.

The ACCC notes that there are current and upcoming reviews that could be relevant to the Basin Plan water trading rules (but which will not advise on changes to these rules).

- **Trade Working Group, Schedule D review**[19] – this process provides an opportunity to assess whether interstate trade arrangements in the Southern Basin align with the Basin Plan requirements and reflect the Roadmap recommendations.
- **2024 review of the Water Act** – this review could consider whether the matters the Basin Plan water trading rules are required to have regard to should be amended, and whether these rules should sit within the Basin Plan or as a separate instrument.

In light of the changes since 2014, it will be important that the ACCC undertake a thorough evaluation of the Basin Plan water trading rules in order for the findings of the ACCC's evaluation to feed into the MDBA's **2026 Basin Plan review** process.

A review of this scope will require significant resourcing and adequate time for the ACCC to conduct an appropriately consultative process. For the findings of this work to be of benefit to the 2026 review of the Basin Plan, it would need to be started in 2024.

Among other matters, the MDBA's request for advice could ask the ACCC to have regard to:

- changes to Basin water market arrangements and governance arising from the Roadmap reforms
- any relevant recommendations from the Productivity Commission[20] or findings from the reviews of Schedule D and the Water Act
- specific sectoral impacts and changes
- other new knowledge or practices.

The review could also consider how the rules might support further improvements to trade administration and rule-making practices not already being addressed by the Roadmap reforms, to instil a deeper level of confidence and understanding among market participants.

[18] A tagged water access entitlement is a water access entitlement which is registered on a water register in one place, but under which water allocation is able to be extracted in a different place – and the different place is 'tagged' on the register. Rule 12.23 of the Basin Plan water trading rules provides that water ordered under a tagged water access entitlement is subject to the same restrictions that would apply to a trade of a water allocation. If a tagged water access entitlement was established before 22 October 2010 the tagged water access entitlement is not subject to section 12.23 of the Basin Plan.

[19] Basin state water management laws establish the legal entitlements to water, whilst the Murray–Darling Basin Agreement sets out the structures and mechanisms for interstate and intervalley trade (IVT) in the Southern Basin. Schedule D to the Murray–Darling Basin Agreement established the administrative arrangements that permit water users within South Australia, Victoria and New South Wales to trade water across state boundaries and between valleys. The Trade Working Group is currently reviewing Schedule D.

[20] For example, the Productivity Commission's 2018 inquiry recommended development of an assessment framework for evaluating the consistency of trade restrictions against the Basin Plan water trading rules (recommendation 10.1, page 259).

Considerable work remains to deliver key elements of the Basin Plan and the 'restoring the balance' commitments

The Basin Plan sets sustainable diversion limits, which cap how much water can be taken from Basin rivers for town, industrial and agricultural use, while leaving enough water to sustain natural ecosystems.[21] The Basin Plan's primary water recovery target was calculated by comparing the difference between the baseline diversion limits and the sustainable diversion limits. The baseline diversion limits are an estimate of water use limits and water used in the Basin prior to the Basin Plan.[22] The difference between the baseline and sustainable diversion limits is known as the 'gap' and is a total of 2,750 GL per year. The measures being used to 'bridge the gap' include infrastructure investments, water purchases and supply and constraints measures.[23]

Regardless of implementation timeframes, effective implementation of the Basin Plan relies on achieving the plan's elements, including:

- monitoring and enforcing compliance, including with the Basin Plan water trading rules and sustainable diversion limits
- accrediting water resource plans in all Basin States
- meeting the Bridging the Gap (including supply measures) and the Efficiency Measures water recovery targets.

Non-compliance with the Basin Plan water trading rules and sustainable diversion limits

Since its establishment, the Inspector-General of Water Compliance has undertaken various audits and investigations to support compliance with, and effective implementation of, the Basin Plan water trading rules.

In July 2022, the Inspector-General of Water Compliance published the results of an audit of Goulburn-Murray Water's (GMW) compliance with the Basin Plan water trading rules 12.37 and 12.38. It found that GMW does not have a formal arrangement to ensure that all their legal, equitable and commercial interests and those of any related party are identified. This means GMW cannot confidently determine whether disclosure is required under rules 12.37 and 12.38 of the Basin Plan.[24]

Another audit undertaken by the Inspector-General of Water Compliance identified discrepancies in water trade and sustainable diversion limit accounting. The audit identified water being traded from one state but not appearing in an account in the other state, incorrect volumes being recorded in water accounts, and manual adjustments being made by the authorities without documented explanations.[25]

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[21] Section 6.04(2) of the Basin Plan 2012. Murray-Darling Basin Authority (2023), *Sustainable diversion limit adjustment mechanism*, accessed on 3 July 2023.

[22] Murray-Darling Basin Authority (2022), *Current diversion limits for the Basin*, accessed 3 July 2023

[23] A 'constraint' is a technical term for anything that reduces the ability to deliver water for the environment. Constraints can include physical restrictions such as low-lying bridges, crossings or private land. Constraints can also include operational aspects such as river rules or operating practices. See Murray-Darling Basin Authority (2021), *Managing constraints*, accessed 3 July 2023. There is also a target to recover an additional 450 GL per year for enhanced environmental outcomes. Measures to achieve these outcomes include efficiency measures with neutral or positive socio-economic impacts. Department of Climate Change, Energy, the Environment and Water (2023), *How we recover water in the Murray Darling Basin*, accessed on 3 July 2023.

[24] Inspector-General of Water Compliance, *Audit of Goulburn–Murray Water disclosure obligations under the Basin Plan*, accessed on 28 July 2023.

[25] Inspector-General of Water Compliance, *Audit of Accounting for Interstate Trade in the Northern Basin*, accessed on 28 July 2023.

The 2026 review of the Basin Plan, including the Basin Plan water trading rules should help ensure that these rules are effective and can be enforced.

Some New South Wales water resource plans remain outstanding, undermining sustainable diversion limits compliance

The process of preparing and accrediting water resource plans has taken considerably longer than expected when the Basin Plan was made in 2012. At that time, it was anticipated that all Basin States would have accredited plans in place by 1 July 2019.

As at 25 July 2023, the MDBA is assessing 13 New South Wales water resource plans while waiting for the New South Wales Government to re-submit a further 7 water resource plans.[26]

As the Inspector-General of Water Compliance has explained, the outstanding plans affect his ability to assess sustainable diversion limit compliance in the relevant water resource plan areas in New South Wales. Without water resource plans, sustainable diversion limit compliance provisions in the Basin Plan are not operational.[27] Similarly to the MDBA, the ACCC considers that New South Wales Government should prioritise work required to finalise accreditation of outstanding water resource plans. Effective sustainable diversion limit accounting and compliance supports the 'cap' element of the 'cap and trade' system.

Water recovery savings from infrastructure and constraints projects have been slow and difficult

The Productivity Commission's call for submissions (pages 7 and 8) summarises the variable progress on recovering water to meet the different recovery targets, with key deadlines for delivery of water savings under sustainable diversion limit adjustment mechanism (SDLAM) projects (supply measures), Northern Basin Toolkit projects and Efficiency Measures unlikely to be met.

The MDBA December 2022 report card noted that the 'SDLAM package of measures, in its entirety, will not be operational by 30 June 2024', and that 'this is due to several of the major measures being significantly rescoped and still at design and concept stage with the due date for entering operation only 18 months away'.[28] In its advice to Minister Plibersek on 25 July 2023, the MDBA noted that one such project, the Menindee Lakes Project, 'will not or cannot be implemented as notified, regardless of the time available'.[29]

Additionally, the failure of sustainable diversion limit adjustment mechanism projects to become operational by mid-2024 will require a reconciliation with the 2017 volume of the sustainable diversion limit adjustment provided for in the Basin Plan. The MDBA stated on 25 July 2023 that 'a June 2024 reconciliation would likely result in a new determination in the order of approximately 290 GL/y (instead of the existing 605 GL/y). This would mean an

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[26] Murray-Darling Basin Authority (MDBA), pages 4 and 5, *2023 Authority advice on Basin Plan implementation - Authority response to Minister's request for advice*, 25 July 2023, accessed on 25 July 2023.

[27] Inspector-General of Water Compliance, *Sustainable Diversion Limit compliance statement for 2020–2021*, 2022, accessed on 1 July 2023.

[28] Murray-Darling Basin Authority (MDBA), *MDBA December 2022 Report Card*, pages 5 and 10, accessed on 5 July 2023.

[29] Murray-Darling Basin Authority (MDBA), *2023 Authority advice on Basin Plan implementation - Authority response to Minister's request for advice*, page 5, accessed on 25 July 2023.

additional 315 GL of water recovery would be needed to bridge the gap to sustainable levels of water take'.[30]

The second Statutory Review of the Water for the Environment Special Account, provided to then Minister Pitt on 21 December 2021, concluded that neither the 450 GL of water recovery through efficiency measures nor the constraints measures would be delivered by 30 June 2024.[31] While this review stated that 2 of the 6 constraints projects could possibly be delivered by 30 June 2024, the remaining 4 projects were not scheduled to each deliver detailed feasibility studies in sufficient time for full implementation by mid-2024. The ACCC supports the MDBA's statement on 25 July 2023, that 'constraints projects should remain one of the highest priorities for Basin governments' and that these governments 'must find a clear pathway forward so that this program can be continued beyond 2024 to a feasible timeframe, and ultimately delivered to ensure outcomes are achieved.'

In addition to recommending allowing more time for sustainable diversion limit adjustment mechanism projects to be implemented, the second Statutory Review of the Water for the Environment Special Account review outlined that off-farm efficiency projects would also benefit from a post-30 June 2024 deadline.[32] The review noted that only 2.6 GL has been recovered or contracted to be recovered through previous efficiency measures programs, and it would not be possible to recover an additional 60 GL through the off-farm efficiency program by 30 June 2024. Putting aside program and timing limitations, the estimated cost to recover the full 450 GL through efficiency measures was between $3.4 billion and $10.8 billion.

Delays in project delivery, with the associated uncertainty around water recovery strategy, not only inhibit implementation of the Basin Plan, but are also likely to be having a negative impact on potential water market participants' confidence to make water-related investment decisions. In this context, it is especially important that Governments carefully consider the potential impacts of water recovery measures on water markets.

Extending water recovery target deadlines may be advisable on the basis that meeting the current deadlines will likely require costly and complex interventions in the market. These interventions may have unintended consequences depending on how they are structured and, even if they successfully recovered remaining water required, they would likely significantly affect market prices, certainty and confidence.

Buybacks were capped by the Commonwealth Government in 2015

The Australian Government has purchased relatively small amounts of water since it legislated a 1,500 GL cap on surface water purchases in 2015.[33] In February 2023, the Australian Government commenced voluntary purchases of 49.2 GL to 'bridge the gap' in

[30] Murray-Darling Basin Authority (MDBA), *2023 Authority advice on Basin Plan implementation - Authority response to Minister's request for advice*, page 3, accessed on 25 July 2023.

[31] The Department of Climate Change, Energy, the Environment and Water, *Second Review of the Water for the Environment Special Account*, Australian Government, 2021, accessed on 5 July 2023.

[32] The Department of Climate Change, Energy, the Environment and Water, *Second Review of the Water for the Environment Special Account*, Australian Government, table 3, page 26, accessed on 6 July 2023.

[33] The Department of Climate Change, Energy, the Environment and Water, *Australian Government water purchasing in the Murray-Darling Basin*, Australian Government, accessed on 5 July 2023. This cap is legislated in Section 85C of the *Water Act 2007*.

7 Basin catchments[34] to achieve sustainable diversion limits (noting that the final volume to be recovered will only be possible after finalising all outstanding water resource plans in New South Wales). The legislative cap would need to be repealed if further buybacks are to be undertaken.

Buybacks are the simplest and least expensive water recovery tool but have flow on effects

Buybacks have been highly controversial with Basin communities.

In research published in 2020, the Australian Bureau of Agricultural and Resource Economics and Sciences observed that while 'buybacks are the simplest and least expensive method of recovering water for the environment' they 'can have flow-on effects to regional economies as a result of reduced irrigated agricultural production'.[35] The same report added that the Government could choose to 'pair buybacks with spending on regional development projects to help ease adjustment pressure on affected communities'.

Noting the sensitivities of buybacks, the available alternatives would appear to be extending water recovery timelines in the Basin Plan and exploring alternative structures or arrangements for the provision of water to meet the targets. Allowing more time for projects to be delivered would be consistent with the observation that infrastructure projects are generally complex, involve significant planning and require realistic delivery time frames before benefits can be recognised.

Any further buybacks should be targeted to minimise impacts on viable, highly efficient and concentrated irrigation networks

If water recovery timelines were not extended, then buybacks would need to be used to recover the outstanding sustainable diversion limit adjustment mechanism volumes, subject to the cap on surface water purchases being amended or removed. Buybacks of the scale required in the timeframes required to meet the current deadline would likely have significant impacts on market prices, market confidence and broader community engagement and outcomes.

Irrigation infrastructure operators' business models are based on customers paying the operator for access to their network and the delivery of water. Irrigators who choose to sell water to the Government may no longer require water to be delivered to their property (terminating their right of access). These irrigators will cease paying ongoing fixed infrastructure charges but the potential negative impacts for remaining customers (arising from the fact that the unavoidable fixed costs of maintaining the network would be spread over fewer customers) are mitigated by termination fees calculated in accordance with the Water Charge Rules 2010.[36,37]

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[34] This round of strategic water purchases are targeted in the Condamine-Balonne in Queensland, the Barwon-Darling, Border Rivers, Namoi, Lachlan and Murray catchments in New South Wales, and the Murrumbidgee catchment in the Australian Capital Territory.

[35] Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES), *Economic effects of water recovery in the Murray–Darling Basin*, accessed on 5 July 2023.

[36] Part 10 of Water Charge Rules 2010 limit the maximum general termination fee that an infrastructure operator can levy to 10 times the fixed volumetric charges for the right of access the customer wishes to terminate (subject to specified exclusions). This is levied per unit of water delivery or drainage right for a full financial year, or if an infrastructure operator does not allow the trade of the type of water delivery or drainage right that the customer wishes to terminate, the amount (**not** 10 times the amount) of the fixed volumetric charges. This is levied per unit of water delivery or drainage right for a full financial year. See ACCC *What the charge rules mean for infrastructure operators and irrigators*, 2020, and ACCC *Review of the water charge rules Final Advice*, 2016, page 264.

[37] ACCC, *Review of the water charge rules Final Advice*, 2016, page 14.

ACCC monitoring has found that historically irrigators have often not been liable for a termination fee in circumstances where they sell water to the government, because these transactions were usually co-ordinated with infrastructure rationalisation projects (generally, the New South Wales Private Irrigation Infrastructure Operators Program or the Goulburn-Murray Water Connections Program). For example, between 2012-13 to 2015-16, only 28 per cent of the total volume of reported terminations attracted a termination fee.

Data collected by the ACCC for its *Water Monitoring Report*[38] illustrates where there has been a concentration of transformation and termination activity. However, the ACCC does not collect information from irrigation infrastructure operators on reasons for transformation, nor to explain why an operator may report that no transformations have occurred.

ACCC analysis found there was a broad correlation between the volume of Australian Government acquisitions of environmental water in the Basin (transferred to the Commonwealth Environmental Water Holder) and a net decrease in irrigation rights, especially between 2009-10 and 2013-14.[39] This trend was less evident after 2015-16, when the Australian Government legislated the 1,500 GL cap and introduced on-farm and off-farm water efficiency projects to recover water.[40]

As shown in chart 1, aggregate termination and transformation volumes have fallen steadily since 2009-10 and have been at very low levels in recent years. In 2021-22, the volume of irrigation right transformed was around 1% of the rights on issue, and the volume of water delivery right terminated was close to 0% of the rights on issue.

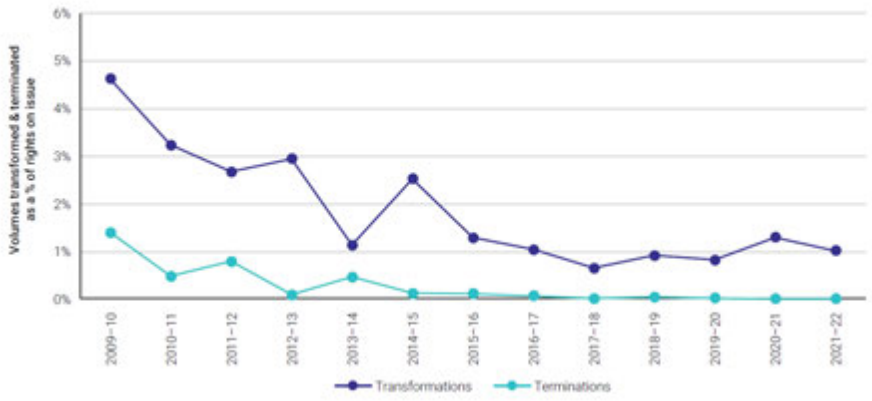
[38] ACCC, *ACCC water monitoring report*.

[39] However, relationship between these datasets has been less clear since 2014–15, with some years having less transformations while Australian Government acquisitions increased. See: ACCC, *Water Monitoring Report 2017-18*, page 52, chart 4.3.

The ACCC's Murray Darling Basin inquiry also found that there was an increase in the proportion of irrigators reporting water access entitlement trades between 2008–09 and 2014–15, which coincided the end of Millennium Drought and the implementation of the government buyback of water access entitlements under the Restoring the Balance Programme. See: ACCC, *Murray Darling Basin water markets inquiry – final report*, page 574.

[40] Commonwealth acquisitions exceeded the total volume of irrigation rights transformed in this year reflecting a change in water recovery methods in 2015-16 to focus on acquisitions via infrastructure upgrades rather than buyback. Infrastructure investment was associated with transformation in some cases. However, projects which focussed on upgrading networks without significant rationalisation were less likely to involve transformation, as in these cases water transferred to the environment under the project was more likely to be sourced from operators' conveyance licences than from customers' irrigation rights. See: ACCC, *Water Monitoring Report 2015-16*, page 128, footnote 175.

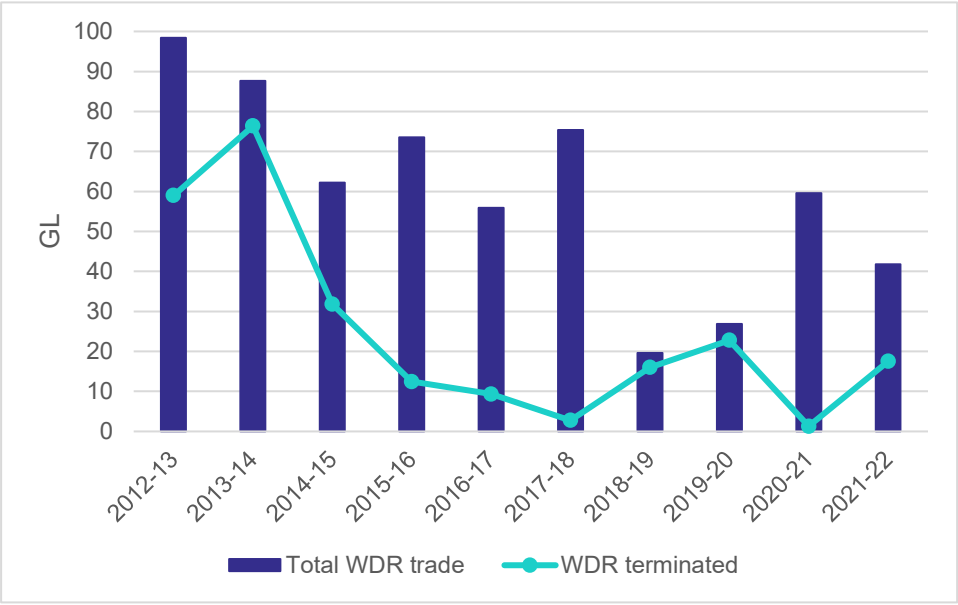
Chart 1: **Volumes of irrigation rights transformed and water delivery rights terminated as a percentage of rights on issue (2009-10—2021-22)**



After the Basin Plan water trading rules commenced in 2014, irrigation infrastructure operators were prevented from unreasonably restricting the trade of water delivery right. This means operator's customers could choose to trade (rather than terminate) their water delivery right, if they no longer wanted access to the operators' irrigation network or wanted to reduce the volume of their right of access.

As shown in chart 2, irrigation infrastructure operators' customers have traded substantial volumes of water delivery right since 2014. For example, in 2021-22 42 GL of water delivery right was traded in irrigation infrastructure operators' networks. Less than half this volume (18 GL) of water delivery right was terminated in the same year.

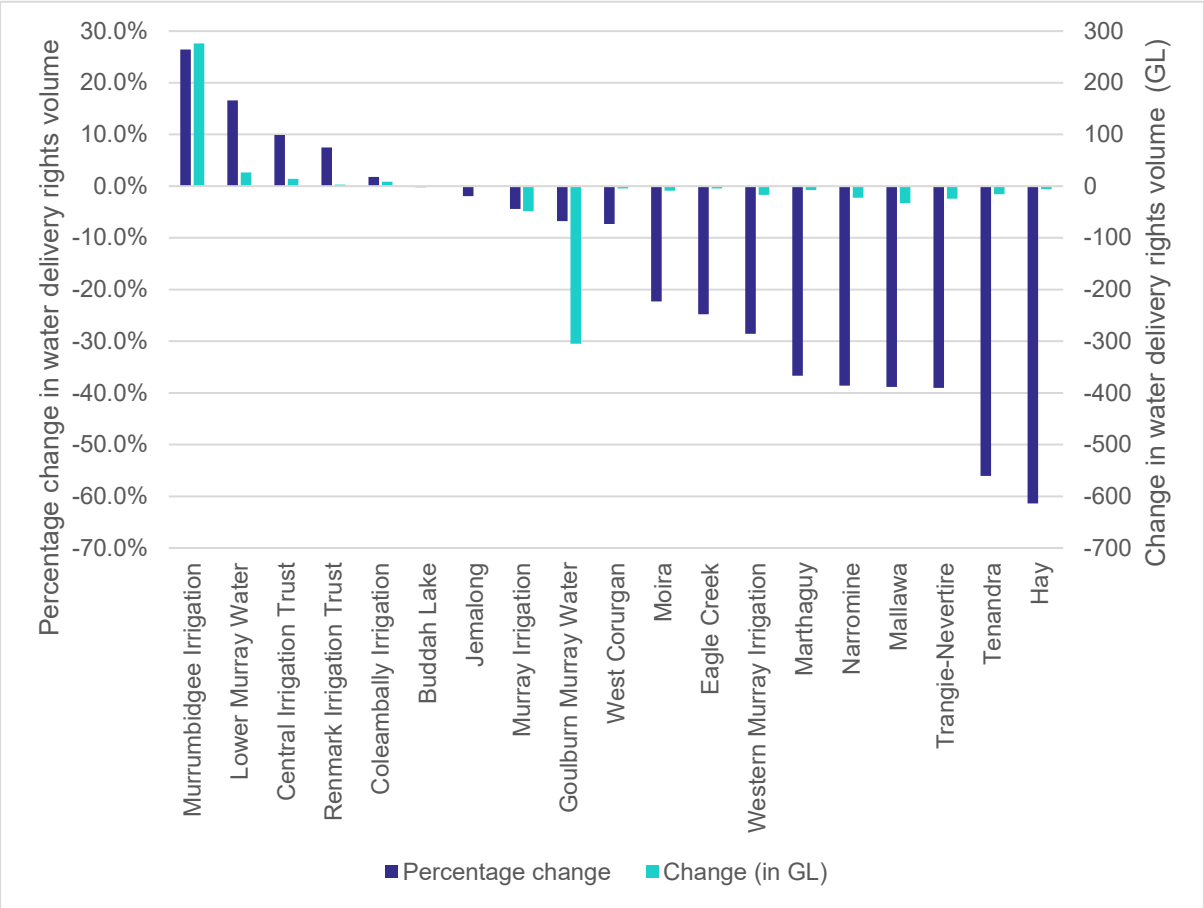
Chart 2: **Volume of water delivery right trades and terminations (2012-13—2021-22)**



Note: Water delivery right trade figures include water delivery trades with and without irrigation right.

As shown in chart 3, 74% of irrigation infrastructure operators monitored by the ACCC reported a decrease in water delivery right volume on issue between 2009 and 2021. However, this reduction did not occur equally across operators, with the aggregate volume of water delivery rights on issue reduced by only 2.1% from just over 8,000 GL in 2009 to 7,861 GL on 30 June 2022.[41]

Chart 3: Change in water delivery rights volume on issue, July 2009 to 30 June 2022



Notes: On 1 July 2018, Mallawa Irrigation Limited took over the St George channel scheme. Prior to this date, the scheme was operated by Sunwater. The volume of water delivery right on issue in Mallawa's area of operations has not changed since this time. In 2017-18 Murrumbidgee Irrigation made substantial changes to its pricing structure. Murrumbidgee Irrigation's previous pricing structure included a declining block tariff based on the volume of a customer's water delivery right and pricing groups based on location, within, and type of, irrigation network. The 2017-18 pricing schedule replaced these charges with a single flat rate for water delivery rights. Murrumbidgee Irrigation customers became responsible for ensuring they had sufficient water delivery right for the flow rate they needed. Some high security customers may have needed to acquire more water delivery rights to secure the same level of service (or flow rate) that they had enjoyed previously. This could have impacted the volume of water delivery rights on issue in Murrumbidgee Irrigation's network.

[41] This reflects terminations, the issuing of new water delivery rights, and that irrigation infrastructure operators may have re-issued water delivery rights that had been previously terminated.

Conclusion

In summary, the ACCC considers that implementation of the Basin Plan would benefit from:

- a sustained commitment to addressing gaps in current Basin water market governance, including an independent expert body responsible for advising on market design and assessing whether Basin water markets are operating efficiently
- the ACCC's advice on Basin Water Plan water trading rules occurring with sufficient time for the findings and recommendations to be fed into the 2026 Basin Plan review
- an extension of the current water recovery targets beyond 30 June 2024 to allow for an increased likelihood that the Basin Plan can be delivered, and to minimise the potential for significant market impacts.

We welcome the opportunity to comment on the Review and look forward to the draft report.

Yours sincerely,

Mick Keogh
Deputy Chair