



4 December 2019

Australian Competition & Consumer Commission
Water Market Inquiry Team

Dear Sir / Madam,

RESPONSE TO ACCC INQUIRY INTO WATER MARKETS IN THE MURRAY-DARLING BASIN

The following correspondence represents the response of the Australian Water Brokers Association (AWBA) to the ACCC inquiry into water markets in the Murray-Darling Basin Issues Paper.

The AWBA has developed a series of policies that are relevant to this review, these are included (APPENDIX 2 to 5) and form part of our submission.

WATER MARKET TRENDS

Since the millennium drought, there has been significant structural change within the water market and irrigated agriculture more broadly. The most significant change has been the implementation of the Basin Plan, which has delivered approximately 23% of all entitlement on issue in the Southern Murray Darling Basin (sMDB) to the Commonwealth Environmental Water Holder (CEWH).

There has also been a structural shift in the mix of crops grown in the sMDB, over the course of the last 8 years. Irrigated cotton has made inroads in Southern valleys and has displaced rice in the Southern Riverina as the dominant annual cropⁱ. At the same time there has been significant expansion in perennial crops in the sMDB. In particular - Almond production in the Murray system downstream of the Barmah Choke. The Victorian Department of Environment, Land, Water and Planning (DEWLP) reported the increase in almond developments in the region from 4,350ha in 2003 to 24,465ha in 2018, and noted that the area planted to almonds was continuing to expandⁱⁱ.

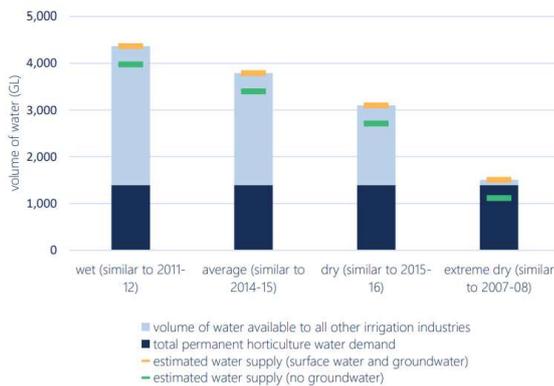
These two factors alone have made a material difference to the elasticity of temporary allocation markets and (to a lesser extent) water entitlement markets – especially in the following trading zones:

- Victorian Murray – Zone 7
- New South Wales Murray – Zone 11
- South Australian Murray – Zone 12

The increased demand below the Barmah Choke from perennial plantings has compressed the demand cycle and placed significant pressure on peak irrigation water deliveries during summer months. As such the Barmah Choke trade restriction has become a prominent influencer in allocation pricing, with trade to the high demand areas downstream restricted. This has also impacted the volume of water delivered through the Goulburn Intervalley Trade limit (IVT) and Murrumbidgee IVT as the MDBA attempt to meet downstream demand via the connected system.

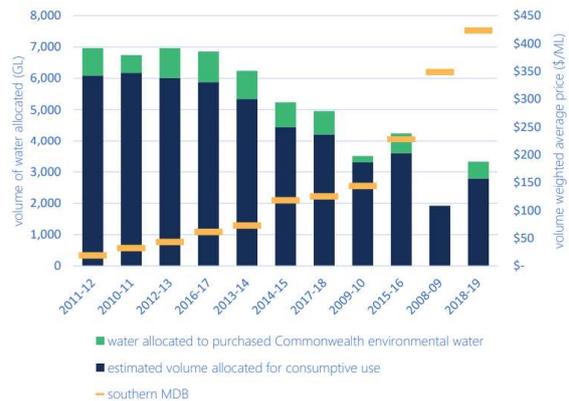
Over the past two seasons we have witnessed restricted supply via reduced allocations to entitlement, notably NSW General Security in both the Murray and Murrumbidgee systems, this along with continuing drought conditions has resulted in increased competition for allocation water. Annual crops have been unable to compete with permanent plantings in the allocation market during these periods, with many entitlement holders electing to sell allocation for income rather than grow an annual crop.

Whilst the price of allocation on the temporary market is historically high, the market is responding to the limited supply due to below average rainfall since January 2017 and increased baseline demand from permanent plantings – see charts belowⁱⁱⁱ.



Source: Aither, 2019.

WATER AVAILABILITY SCENARIOS AND BASELINE PERMANENT HORTICULTURE WATER DEMAND (AT FULL MATURITY), SOUTHERN MDB (EXCLUDING MURRUMBIDGEE)



Source: Aither, 2019. Based on Victorian, New South Wales and South Australian water registers, 2019.

WATER ALLOCATED AND AVERAGE ANNUAL VOLUME-WEIGHTED AVERAGE PRICES, 2008-09 TO 2018-19

In addition to the long-term changes to demand and supply factors, the water market has also innovated new products to assist irrigators manage their water risk over both short and long-term horizons. Many of these innovations have had their genesis with AWBA members through engagement with irrigators and are now commonplace across the industry. Some of the secondary water market products are:

- Long-term entitlement lease
- Limited allocation risk entitlement lease
- In-season Forward Allocation (also known as "deferred delivery")
- Intra-season Forward Allocation (can be single year or multiple year)
- Carry Over Parking

On the whole, irrigators are becoming more sophisticated in their interaction with the water market, which is a direct result of the education that water brokers, water authorities and government departments are providing to them. Each week there is an enormous volume of information that is disseminated by water brokers, water registers, water authorities and government departments. We recognise that some irrigators may feel "overwhelmed" by the both the volume and increasing complexity of information which is currently available.

Many irrigators are now looking at the sMDB entitlement market in its entirety with a view to balancing the risk within their entitlement portfolios, whether by leasing or purchasing. For example; it is now more common for a South Australian irrigator to hold entitlement in Victoria and NSW, and vice versa.

"Irrigators in GMW districts and LMW diverters are relying on the water market and carryover to help meet their water allocation needs." DEWLP Water Market Trends – March 2019



WATER MARKET TRANSPARENCY

The AWBA acknowledges that there is a vast volume of information that is available to market participants, particularly in the sMDB. There is, however, significant room for improvement in the way that some of this information is collected, recorded and reported which would have a beneficial impact on market transparency.

State Water Registers must collect information from market participants relating to the type of transactions lodged. Specifically, allocation trades should be coded to indicate the type of transaction that they relate to, for example: Forward Allocation, Deferred delivery, Carry-Over delivery, Entitlement Lease delivery. Rules for price recording of these deliveries needs to be agreed upon and set as a standard. We acknowledge that a zero dollar trade value is legitimate in some cases. It is for this reason that, zero dollar trades must also be codified on water registers, enabling market participants to understand the purpose of a zero dollar trade and enhancing confidence in the market.

Recommendation 1

"The AWBA calls on each of the State Water Registers to adopt and implement a common coding system on all water transactions that allows such data to be segregated into differing transaction types"

The AWBA would like to congratulate DEWLP for their work around increasing transparency, however we acknowledge that some information has the ability to create confusion and reduced transparency – for example the seven day average allocation price listing – which doesn't separate the zones of the Murray resulting in tainted price data. Also a more appropriate time frame for an average price would be a daily and three day weighted average that also reports the volume traded.

Recommendation 2

"The AWBA calls on the Victorian Water Register to adopt and publish a daily and a three-day weighted average price for each separate Trading Zone."

DEWLP also have implemented their Broker Portal for allocation trading which has increased the speed of allocation approvals (instantaneous) whilst reducing the cost to water market participants, however the AWBA would like to see real time price recording on the Victorian water register as trades are approved (currently next day).

New South Wales trade approvals can vary between same day to two days, South Australia allocation trade approvals are up to ten business days (in addition to a transfer fee that is five times higher than NSW or VIC). The latency in trade approvals not only has a significant impact on water market information, but also impacts the individual irrigators involved in trades.

The AWBA would welcome a Broker Portal that encompassed South Australia, New South Wales and Victoria, creating the opportunity to have a singular point of registered trade data, improved transaction times and reduced cost.

Recommendation 3

"The AWBA calls on the Victorian, South Australian and New South Wales Water Register(s) to adopt a common Broker Portal for processing Temporary Allocation Water Trades".

The AWBA acknowledge that our members have an important role to play with respect to water market transparency, ensuring that the information presented on member websites and marketing material is accurate, current and maintained in a timely fashion. Under an appropriate regulatory framework, this could be audited against trades lodged to ensure that there are no misrepresentations to customers in respect of pricing or volume.



Australian Water Brokers Association

The AWBA would encourage the requirement for Irrigation Infrastructure Operators (IIO's) to also report all internal trade data transparently, this would greatly improve the market information available.

Recommendation 4

"The AWBA calls on the Victorian, South Australian and New South Wales Water Register IIO's to be required to submit daily to the respective Water Registers all internal water trades (temporary and permanent) and for such data to be recorded and published on the respective Water Register websites in a timely manner."

The AWBA does not support the calls for full market transparency as part of the DEWLP Water Market Transparency Options Paper (2019). It is our view that the ability to identify which irrigators have been actively purchasing allocation or entitlement, may expose those irrigators to unintended consequences. These may include increased unsolicited contact from agricultural service providers or unwarranted negative public reaction.

One of the key objectives of the National Water Initiative (NWI) was to create a water market to "ensure scarce resources are allocated to their most valuable and productive use". This is evidenced in today's water market, however it is also true that any trading market creates winners and losers. Full market transparency under the guise in which it has been proposed in DEWLP's Water Market Transparency Options Paper, has the potential to intensify negative commentary as water moves to higher value use – particularly in dry times, which undermines confidence in the market.

Recommendation 5

"The AWBA calls on the Victorian, South Australian and New South Wales Water Register(s) to adopt a common "non-identity revealing" disclosure of all water transactions due to concerns about likely unintended consequences of "full identity" disclosure."

The AWBA also note commentary regarding the creation of a central exchange for water. We believe that the current water market has proven to be innovative and that if a central exchange were a genuine market need then it would be met by the private sector. We are unaware of any other market where Government has introduced and or operated a central exchange successfully. We also question whether the market would be accepting of the costs involved in regulating, overseeing and prosecuting breaches of fair trading and market manipulation rules via a central exchange.

It is also noted that water is only one input of many for irrigators (albeit a vital one), other markets have significantly less transparency than water (e.g. fertilizer, fuel, grain, livestock) and yet are able to operate efficiently without the need for a regulated central exchange.

Recommendation 6

"The AWBA does not support the concept of a "Centralized Exchange" model akin to say the ASX on the grounds that the regulatory and cost burdens of adopting such an exchange with monitored fair market trading principles would be excessive to most market participants, particularly smaller irrigators."



WATER MARKET REGULATION & INSTITUTIONAL SETTINGS

AWBA member brokers (including those who identify as exchanges) voluntarily agree to a Code of Conduct (APPENDIX 1), however we are acutely aware that not all entities who act as water market intermediaries are members of the AWBA. As such the AWBA would welcome Government regulation that applies to any entity that lodge water trades on behalf of clients.

The AWBA suggest that under the current settings, a Licencing and Registration system for water market intermediaries could be administered by the States. In this instance an entity would need to be licenced by the state in which it is lodging a transaction on behalf of a client (whether as a buyer or a seller or both), importantly this would apply for Broker Portal/online trades as well as manually lodged or paper trades.

The Licenced Entity must register brokers (client facing employees) that are employed or contracted by them, the licenced entity would be responsible for ensuring that brokers registered under their licence adhere to an industry wide Code of Conduct.

The registration of brokers would prevent brokers changing employees (under questionable circumstances) and continuing to deal with water market participants, as the Licensee will be required to self-report serious misconduct and de-register the broker from their licence and provide the relevant licencing authority appropriate reasoning.

This would have the advantage of requiring the Licensed Entity to maintain a Statutorily recognised audited Trust Account on which any interest earned may go to an Assurance Fund (administered by Government) which would assist in funding water market participants who faced losses for defalcation of Trust Funds and ongoing education in the Industry (similar to other schemes for other professions).

The Licenced Entity would be subject to annual audits, of the same nature of the current DEWLP Broker Portal audits to ensure procedural and financial compliance.

The AWBA note that if Victoria, New South Wales and South Australia agree to participate in a common Broker Portal, then the Licencing and Registration regime could be based with that entity.

The AWBA also note that any cost of regulation will eventually be passed on to water market participants and this needs to be considered when determining the appropriate model.

Recommendation 7

"The AWBA recommends that a Water Market Intermediary Licensing and Registration Scheme be investigated and if found to be desirable, then adopted by the Victorian, South Australian and New South Wales Governments as a common legislative scheme".

The AWBA have concerns around the lack of clarity and transparency in NSW Water announcements over the past 12 months, particularly regarding the lack of clear information presented to the market between April 2019 and June 2019 in announcements concerning carry over in the Murray Regulated River System. An announcement from August 2019^{iv} indicated how perilously close irrigators were to losing all their carry over water, despite this not being communicated clearly to the market prior.

Generally, Victorian DEWLP's allocation announcements and outlooks are consistent and transparent. South Australia's have improved over the past 12 months, with an increased focus on forward looking projections.

Recommendation 8

"The AWBA calls on the Victorian, South Australian and New South Wales Governments to adopt "a common style" announcement methodology with sufficient clarity and transparency."



MARKET PARTICIPANT PRACTICES AND BEHAVIOURS

Since the Millennium Drought, water markets have developed and innovated to meet the needs of participants, it is also noted that water market participants have become more sophisticated in their interaction with the market.

Secondary water market products, which are predominantly offered to the market by investors, have provided non-capital intensive ways for irrigators to manage irrigator risk over short, medium and longer term horizons. Since 2017 there has been an increase in the uptake of these products, especially:

- Carry-Over Parking
- Forward Allocation (single year and multi-year)
- Long Term Entitlement Lease

In addition to these products, we have also noted increased sophistication in the methodologies employed by irrigators in managing their entitlement portfolios, this may be diversification via ownership or entitlement lease. Many irrigators now hold interstate entitlement as a hedge against allocation announcements or to access more favourable carry-over characteristics.

We are aware of increased activity by parties trading allocation within a given year with a view to making a profit, this strategy carries an inherent risk equal to the quantum of the position taken. We note that whilst this is within the rules, it is up to market regulators to determine if this practice is anti-competitive or in excess of the social licence settings. We also note that their participation in the market provides significant capital injection into the agri-business sector.

Some large allocation buyers inhibit transparency by insisting on receiving "off-market" offers which they negotiate on, rather than interacting directly with live allocation markets. When deals are negotiated in this manner, they have often not been made available to other market participants.

There are several existing water exchanges that offer open transparency to the public, others hold their listings and trade data behind a login wall and consequently are not open to all members of the public. Others operate bulletin board listings for their water offers that are manually updated. It would be valuable to the broader market for individual companies claims to be able to be fact checked, especially trade prices and volumes to ensure that market misrepresentation is not occurring.

Recommendation 9

"The AWBA calls on greater market transparency from the wider Broker market with industry wide reporting standards being mandated".

There is an enormous amount of water market information disseminated by water brokers every week and providing weekly education opportunities for market participants. Indeed, much of the improved water market literacy of water market participants is thanks to the work of water brokers educating their clients via websites, newsletters, webinars, seminars, meetings and phone calls.

The AWBA has a code of conduct and conflict of interest policy which covers member behaviour see APPENDIX 1.

The AWBA note that there are some water market intermediaries who take personal positions in the market (on both allocation and entitlement), it is unclear as to whether these positions are explicitly disclosed to potential clients as we believe they should. The AWBA have further enhanced the conflict of interest policy within the code of conduct, see APPENDIX 2.

Recommendation 9

"The AWBA suggest that within any Licensing/ Registration scheme (if adopted) there should be conflict of interest guidelines for all water brokers, not just AWBA members"



Australian Water Brokers Association

The AWBA note that the environmental water holders are subject to the same market rules as all other market participants. In most cases their actions are clearly communicated to the market prior to interaction. The state based environmental water holders tend to engage with the market via AWBA member water brokers, whilst Commonwealth Environmental Water Holder (CEWH) choose to act via an open tender process. This process takes more time than direct market interaction and has a greater impact on the market.

Recommendation 10

"The AWBA calls on the respective Victorian, South Australian, New South Wales and Commonwealth Environmental Water Holders Register(s) to adopt a common full disclosure of all water transfers (or sales/purchases) which may affect water market operating conditions including opening of IVT relationships."

We note the importance of carry over arrangements as an important tool for irrigators to manage their water from year to year, but equally important is the impact that carry over arrangements have on secondary market products such as forward allocation. In times of reduced allocations, forward allocation products offer irrigators the opportunity to secure water with the benefit of being able to manage cash flows more efficiently.

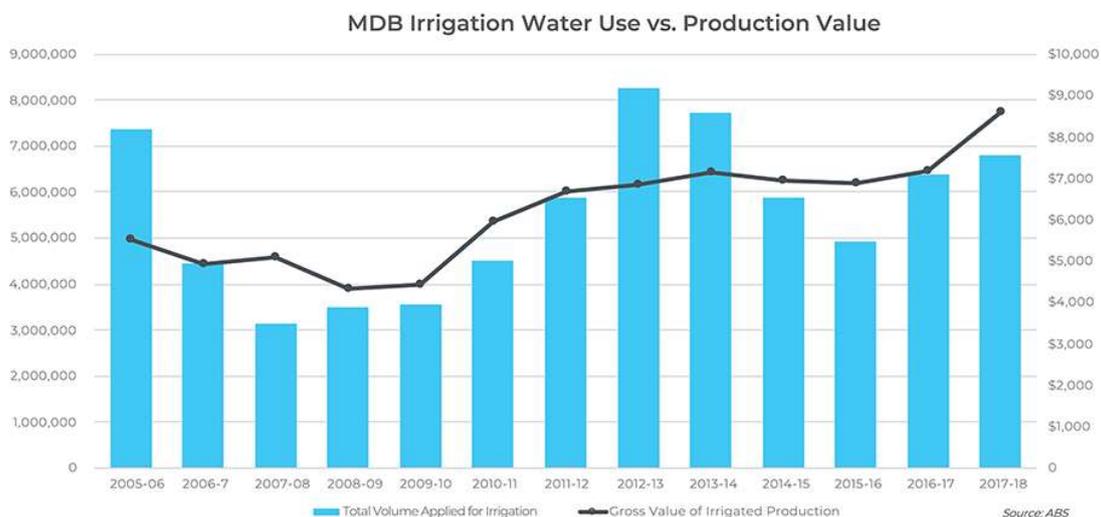
These products are generally offered by investors who may secure the water in the year prior and offer the water in the following year at a fixed price. We have received direct feedback from many investors regarding the proposed changes to carry over arrangements. As a direct result of the public discussion regarding Carryover certainty, these clients no longer have the confidence to offer forward allocation into the 2020/21 season. This may have a significant impact on the ability for irrigators (particularly small to medium sized irrigators) to manage their water risk and cash flow through this incredibly tough period.

Recommendation 11

"The AWBA calls on the Victorian, South Australian and New South Wales Water Register(s) to resist changing existing carryover arrangements or publicly releasing information about "possible changes" as this adversely affects water market behaviour and increases uncertainty for irrigators"

COMPETITION AND MARKET OUTCOMES

The re-allocation of water from lower value annual crops to higher value permanent plantings has been particularly evident over the past two seasons. The water market has enabled irrigators to make commercial decisions to trade their water to higher value users in lieu of growing a crop. The table below⁶ indicates the productive outcome of the existence of water markets, despite water availability being significantly constrained the corresponding reduction in economic output remained comparatively stable.





Australian Water Brokers Association

The AWBA acknowledge the existence of grandfathered tags in the Murray, Murrumbidgee and Goulburn systems of the sMDB create discrimination within the market at times of restrictions between these valleys and that they allow water transfer in conflict with the objectives of the MDBA river operation requirements.

Recommendation 12

"The AWBA calls on the Victorian, South Australian and New South Wales Governments to examine the effect of "Grandfathered Water Use Tags" where they have the effect of contradicting the Basin Plan objectives".

It is the belief of the AWBA that the water market has in the past and continues to operate efficiently, but we would point out that when the Government intervenes in the water market, it is critical that an explanation of planned actions are clearly articulated to the market with clear time frames.

Failure to clearly communicate planned actions results in water market confusion and can disadvantage some market participants through action or inaction predicated on opaque Government intervention. For example the lack of clarity around the Water for Fodder program, or announcements ahead of trade from the CEWH often this is months in advance and can have significant effects on the market.

Recommendation 13

"The AWBA calls on each of the Victorian, South Australian, New South Wales and Commonwealth Governments and their various instrumentalities to clearly articulate and publish widely to the market any proposed intervention in the water market with clear timelines.

The AWBA are supportive of the changes that have been made in South Australia to account balancing for the 2019/20 irrigation season, ensuring irrigators are balancing their water accounts on a quarterly basis, however, we believe that a consistent approach to metering and compliance in all basin states would improve market equity.

Recommendation 14

"The AWBA congratulate the South Australian Government's move towards a more equitable water meter reading system and that for equity reasons, we call on further improvements to a real time water use accounting system similar to those adopted in Victoria and New South Wales."



Australian Water Brokers Association

BACKGROUND

The Australian Water Brokers Association (AWBA) was established in May 2007 and represents the interests of water brokers and other participants of the water trading industry throughout Australia. The Association's primary role is to set and maintain the highest standards of professional practice, education, ethics and professional conduct for its members and the broader water broking industry.

Members of the AWBA are individuals (in conjunction with the Companies through which they are employed) who have been at the forefront of the emerging water trading market within Australia. From as far back as 1991, many members have been responsible for pioneering water broking services and new products to rural customers Australia wide.

Currently the water broking industry is unregulated with low barriers to entry and as such any firm or individual can offer services to vendors and purchasers without a basic level of experience and knowledge. Sometimes such services provided by such operators are not satisfactory which creates a negative experience to clients participating in the water market.

The AWBA has sought to address this issue by introducing such measures as a Code of Ethics and Standards and Policy Guidelines with ongoing Continuous Professional Development (CPD) requirements for all its members.

CONCLUDING REMARKS

The AWBA and our members, have been at the forefront of driving innovation within the water market and are very proud of the service that we provide to irrigators. Our members are acutely aware of the difficulties that the current drought conditions have placed upon our clients and are very active in assisting them navigate their way through these challenging times.

Our organisation has been engaging with government, both State and Commonwealth, for the past ten years and have been calling for improvements in transparency with the way that state water registers collect and report trading information. We are supportive of the ACCC and Victorian Government reviews into the water market and are hopeful that some improvements we have suggested may be delivered as a result.

Kind regards

A handwritten signature in blue ink, appearing to read 'Ben Williams', with a long horizontal stroke extending to the right.

Ben Williams
President - Australian Water Brokers Association

ⁱ Aither Water Markets Report – 2018/19 Review and 2019/20 outlook

ⁱⁱ DEWLP – Water Market Trends (March 2019)

ⁱⁱⁱ Aither Water Markets Report – 2018/19 Review and 2019/20 outlook

^{iv} NSW DPI Fact sheet - https://www.industry.nsw.gov.au/__data/assets/pdf_file/0003/272154/imposing-restrictions-on-carryover-water-in-regulated-rivers.pdf

^v Marsden Jacobs & Associates (ABS data source)



AWBA – ACCC Water Markets Review Public Submission

APPENDIX LIST

Appendix 1 – AWBA Code of Conduct	page 2
Appendix 2 - AWBA Conflict of Interest Policy	page 8
Appendix 3 – AWBA Audited Client Water Accounts	page 10
Appendix 4 – AWBA Water Market Transparency Policy	page 12
Appendix 5 - AWBA Water Market Regulation Policy	page 14

APPENDIX 1

AWBA Code of Conduct (June 13)



Australian Water Brokers Association (AWBA)

Code of Conduct

OBJECTIVES OF THIS CODE

The objectives of this Code are:

- to ensure high standards of conduct by water market intermediaries who are members of the AWBA, for the long term benefit of the members and their clients;
- to promote a high standard of integrity and efficiency in the work undertaken by water broking professionals;
- to set out appropriate standards for management and accountability in relation to client funds;
- to provide for appropriate protection of clients by ensuring that members are suitably insured;
- to promote accuracy in advertising and promotional materials; and
- to manage potential conflicts of interest between members and clients.

MANAGING CLIENT FUNDS

Sound and transparent management of client funds by members is an integral part of building and maintaining trust

in the water market. Specific consideration must be given to the management of client funds, specifically those deposited by clients with members.

1. Handling of client funds held on deposit

- a) All funds received by a member to hold on behalf of a client must be held in a separate account with a financial institution until those funds are paid to the persons entitled to them.
- b) All funds held by a member on behalf of a client must be readily identifiable and referable to that client and up-to-date and adequate records setting out all details required to identify funds held on behalf of a client must be kept and maintained. If funds are held by a member on behalf of a client for a period of more than 20 business days, the member must issue a statement to the client on request.
- c) The account in which funds are held by a member on behalf of a client must be audited at least annually by an independent accountant.

2. Interest earned on clients' funds

- a) Members can elect to hold funds held on behalf of clients in a non interest bearing bank account; or
- b) Subject to the member obtaining the written agreement of the client, any interest earned on funds held by a member on behalf of a client can be used for:
 - i. cost recovery of bank fees and audit costs associated with the operation of the bank account in which clients funds are held;
 - ii. should the total amount of interest earned in any given year exceed the bank fees and audit costs detailed above, the additional interest amount should be provided to the AWBA, to fund its educational and administrative functions.
- c) Unless the client has otherwise agreed as above, after all of the funds held by a member on behalf of a client have been paid to the persons entitled to them, the member must pay to the client all interest earned on the funds.

3. Refunding a client's funds held by a member

- a) Subject to clause 3(b), a member must return to its client all funds held by the member on behalf of the client within 5 business days after the member becomes aware that the relevant transaction will not proceed (for example, because it has been withdrawn or the application has been rejected by an approval authority).
- b) Clause 3(a) does not apply if:
 - i. an application is still subject to approval by an approval authority pending the provision of additional information, in which case, with the client's agreement, the member may retain the funds while the additional information is gathered and the application resubmitted and determined; or

- ii. the client is responsible for an incomplete or inaccurate application which has caused the transaction not to proceed, the member may retain the funds while the application is resubmitted and determined.

PROFESSIONAL INDEMNITY

Professional indemnity insurance is designed to provide protection for businesses which give advice to clients that may result in financial or other losses to the clients. The holding of professional indemnity insurance by members is one way in which a degree of confidence can be ensured while mitigating the risk of financial hardship.

4. Members must hold professional indemnity insurance offering a minimum coverage of at least \$5 million for any single claim.

PROFESSIONAL CONDUCT

An important part of a well functioning market is ensuring the professional and prudential conduct of participants. This Code is intended to guide members in the implementation of the principles of integrity and quality inherent in their professional obligations.

5. A member must act in the best interests of the client, except where it would be unreasonable or improper to do so.
6. A member must continue to satisfy:
 - a) the criteria for membership of the AWBA; and
 - b) the requirements of the AWBA's continuing professional development program.
7. Information provided by a member to clients about the water market and water products must, to the best of the member's knowledge be relevant, accurate and reasonably comprehensive and it must not be misleading or deceptive.
8. A member should recommend that its client seek legal and financial advice from independent qualified advisors when appropriate.
9. Before any transaction takes place, a member must obtain a written service agreement from the client, which includes (but is not limited to) details of the client's liability for the full extent of all known commissions, fees and disbursements that the client will incur in respect of the member's services.
10. A member must keep confidential all client-related information except to the extent:
 - a) necessary or desirable to perform the member's services for the client; or
 - b) that disclosure is authorised by the client or required by law;
11. A member must keep written records pertaining to a transaction between its client and a counterparty.
12. A member must keep the records referred to in clause 11 for 7 years after completion of the transaction and must provide the records to the client on request.
13. A member must provide its services to clients with due care, skill and diligence and must not knowingly submit an incomplete or inaccurate application to an approval authority.
14. A member must not offer services which it is not competent to perform. A member must not provide services which require an Australian Financial Services Licence, unless the member is lawfully entitled to do so.
15. A member's promotional and advertising material:
 - a) must, to the extent that it contains information about the expertise, services and fees of the member, or about the regulation of the water market, be accurate; and
 - b) must not contain false, misleading or deceptive statements.
16. An member must not, in the conduct of its business, take or threaten to take any action, or refrain or threaten to refrain from taking any action, with intent to coerce another person, or with intent to apply undue pressure to another person. Actions which are prohibited by this clause may include, for example, excessive unsolicited offers or information about the member's services, or the member exerting undue pressure on a client to accept or reject an offer.

MANAGING POTENTIAL AND EXISTING CONFLICTS OF INTEREST

This Code seeks to assist members in making robust, fully informed trading decisions as well as assisting members by promoting a rigorous and transparent approach in managing potential and existing conflicts of interest.

17. A member must not, without the client's fully informed consent, accept an engagement to act, or continue to act, where to do so would place the member's interest (or the interest of an immediate

- family member, employer, employee or associate of the member) in conflict with that of the client. Members (or their immediate family, employer or employee) must not buy or sell allocation or entitlements from clients without full prior disclosure to the client. This disclosure and the clients consent must be recorded in writing.
18. A member must not refer its client to another business for services (for example, legal, accounting or financial advisory services) without disclosing to the client any interest of the member in the other business and any commission or other consideration the member or immediate family member, employer, employee or associate of the member may receive in respect of the referral.
 19. A member must not represent both the buyer and seller in a transaction without:
 - a) prior full disclosure to both parties, including disclosure of all fees that the member will be entitled to receive from each party; and
 - b) the prior written consent of both parties.
 20. A member must disclose their relationship with a client when seeking information from a third party on behalf of the client.

TRADE FACILITATION

In the context of this Code, trade facilitation refers to assisting efficient and timely trading. Trade facilitation is integral in ensuring a well managed water market.

21. A member must:
 - a) ensure that when listing a water parcel for sale, the quantity and price listed reflects the client's instructions;
 - b) communicate all bids and offers to the client;
 - c) inform the client, in a timely manner, about material changes in the status of a transaction being undertaken on behalf of the client;
 - d) inform the client of any reasons for an approval authority rejecting, or delaying the processing of, an application; and
 - e) when representing a seller, provide information regarding a transaction to potential buyers upon request, including, without limitation:
 - i. the notional volume of the water right and its price;
 - ii. the reliability of the water right;
 - iii. the water source to which the water right relates;
 - iv. any known restriction on changing the water source; and
 - v. any present or contemplated interest.

COMPLAINTS HANDLING

22. If a complaint is made by a client or other stakeholder about a member, the member must:
 - a) provide a written acknowledgment to the complainant of the receipt of the complaint within 5 business days;
 - b) provide a substantive written response to the complainant as soon as reasonably practicable and no later than 10 business days after receipt of the complaint, and must attempt to resolve the complaint directly with the complainant; and
 - c) notify the complainant that it may have further rights to redress under the Australian Consumer Law or other legislation or regulations.
23. If a complaint is made by a client or other stakeholder about a member to the AWBA, the AWBA must:
 - a) provide a written acknowledgment to the complainant of the receipt of the complaint within 5 business days;
 - b) request a substantive written response from the member which must be provided by the member no later than 10 business days;
 - c) the AWBA President should then attempt to resolve the complaint directly with the complainant and the member on a confidential basis;
 - d) if no mutual resolution can be reached a meeting of the full AWBA Executive Committee must be called with a view to discuss the members conduct and any potential sanction under Rule 17 of Constitution.

COMPLIANCE SYSTEMS AND TRAINING

24. A member must implement adequate systems and procedures to ensure that it will be, and at all times remain, able to comply with, and uphold the standards of, this Code.
25. A member must ensure that its employees are made aware of the existence and terms of this Code and receive compliance training.

EXISTING COMMONWEALTH LAWS AND BROADER MARKET RULES AND REGULATIONS

26. A member must have a working knowledge of its legal obligations and must comply with them.
27. A member must, when entering into a service agreement with a client, notify the client that the member is bound by the Code and is subject to the obligations placed upon members under the Code.
28. The Australian Competition and Consumer Commission (**ACCC**) has published guides which may assist members and their clients to understand fair trading obligations under the Australian Consumer Law. These are available at: <http://www.accc.gov.au/content/index.phtml/itemId/862697>.

DEFINITIONS:

In this Code, unless the contrary intention appears:

approval authority means, in relation to the proposed trade of a water right, means an organisation whose approval is required for the trade to proceed (not being the buyer, seller, a person who holds the water right jointly with the seller, or a person with a security interest in the water right);

financial advice means advice in relation to financial products which would require an Australian Financial Services Licence under the *Corporations Act 2001* (Cth); and

member means a member of the AWBA and includes an employee or contractor of a member

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APPENDIX 2

AWBA Conflict of Interest Policy



AWBA POLICY

AWBA Conflict of Interest

Last updated – 18 November 2019

The AWBA acknowledge that water brokers are free to invest in water should they chose to do so.

However, the AWBA acknowledge that there exists the potential (if water accounts hold a water brokers clients water allocation and also hold the water brokers own water allocation) for this to:

- a. create a conflict of interest, and*
- b. create the perception in the wider market that the water broker has a perceived conflict, and*
- c. make it difficult to separate allocation held on a water account on behalf of clients from that of the brokers own personal water.*

The AWBA also acknowledge that where an AWBA Member Water Broker actually participates in the personal trade of water allocation or water entitlements with the public (especially with a client) then a conflict of interest inevitably arises.

Consequently, the AWBA have, as a matter of promoting Industry Best Practice formulated the following policy to mitigate these issues.

PROPOSED CODE OF CONDUCT AMENDMENT

An AWBA Member Water Broker is allowed to own and trade water, in their own right, under the following conditions:

1. The Water Broker (or any entity controlled or substantially established for the benefit of the member Water Broker) must not buy or sell water allocations or entitlement or any associated Water Market product in their own right (or to any person in a prescribed relationship to the Member Water Broker) from his or her own clients or clients of the firm or Company for which they work either as an employee or subcontractor.
 - 1.1. For the purpose of clarity, an entity controlled or substantially established for the benefit of a Member Water Broker includes (without limiting the definition);
 - a Company;
 - a Trust;
 - a Partnership;
 - a Superannuation Fund; and
 - a person in a "Prescribed Relationship" to a Member Water Broker includes a spouse, de facto spouse, mother, father, sibling or child of the Member Water Broker.
2. Any Member Water Broker may transact water transactions through the use of services of another independent Water Broker, Solicitor, Accountant or similarly appropriately qualified independent person genuinely representing and giving independent advice to the counterparty to the proposed transaction. The Member Water Broker must be seen to have been transacting genuinely at "arm's length."

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APPENDIX 3

AWBA Audited Client Water Accounts



AWBA POLICY UPDATE

AUDITED CLIENT WATER ACCOUNTS

Last updated – 18 November 2019

AUDITED BROKER INTERNAL ALLOCATION ACCOUNTS

The AWBA acknowledge that water brokers are free to operate internal water Allocation Accounts for the purpose of servicing clients, should they choose to do so.

However, an AWBA Member Water Broker is permitted to operate a Water Allocation Account in any State and with any Irrigation Authority (whether in the name of the Member Water Broker or of the Company or Firm through which they are employed) upon the following conditions:

- a. they have the appropriate written client authority to do so, and
- b. the purpose of doing so is to better facilitate the clients water trades, and
- c. the purpose for doing so is lawful, and
- d. no personal water allocation owned by the Member Water Broker is to at any time be held in such Water Account(s), and
- e. the Member Water Broker maintains timely records in sufficient detail as to record the identity and volumes of water allocation held by each client in such Water Accounts, and
- f. such water allocation is held in such Water Accounts on Trust for the client(s) for which it is held, and
- g. the Member Water Broker will annually have such records audited by a suitably qualified Auditor and such audit report shall be submitted by the AWBA Member to the AWBA at the time of their Membership renewal (or in the absence of having held any water allocation in Trust for clients in such Water Accounts during the twelve months preceding the application for renewal of membership to the AWBA, a written statement to that effect.)

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APPENDIX 4

AWBA Water Market Transparency Policy



AWBA POLICY

Water Market Transparency

Last updated – 18 November 2019

The water markets of the Southern Connected system in the Murray Darling Basin are the most highly traded and sophisticated water markets in the world. The state water registers of New South Wales, Victoria and South Australia record and report all allocation and entitlement trades in the Southern Connected System, providing transparent trading data.

The AWBA acknowledge that the water market has innovated at a pace that the state water registers have not been able to keep pace with, this has resulted in some reduction in transparency due to significant price divergence between alternative water market products.

The AWBA believe that the onus of water market transparency sits with Government, specifically the state water registers.

The AWBA have long been advocates for improved transparency and have discussed ways in which the state water registers could improve their data collection and subsequent reporting to provide additional and meaningful information to the market.

The AWBA would like to see recorded values mandated for all allocation and entitlement trades and for zero dollar trades to be appropriately coded on the water register.

The AWBA would like to see secondary water market products such as In-season Forward Allocation, Inter-season Forward Allocation, Entitlement Lease, Carry-Over etc, noted against the associated allocation trades.

AWBA members recognise that we have a part to play in market transparency, in so far as ensuring that the information presented on our own websites and marketing material is current and maintained in a timely fashion.

The AWBA would like to see consistency in Water Authority fees, currently South Australia is nearly 6 times the expense of Victoria and New South Wales for an allocation trade.

The AWBA would like to see improved transaction approval timeframes noting that; Victoria is the gold standard for allocation trades (instantaneous), South Australia is the best on entitlement trades (two weeks).

The AWBA would like to see improved transparency with regard to the way that allocations and outlook statements are made, especially in New South Wales.

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APPENDIX 5

AWBA Water Market Regulation Policy



AWBA DRAFT POLICY

Water Market Regulation

Last updated - 18 November, 2019

The AWBA have been engaged with Governments, both State and Commonwealth, on water market regulation in excess of ten years. We have been working towards a self-regulation regime and have made progress in a number of key areas to date:

1. AWBA Members abide by a Code of Conduct that specifically stipulates;
 - a. A separate account must be used for client funds held on deposit. This account must be audited annually, and the audit report presented to the AWBA upon membership renewal.
 - b. Members must hold professional indemnity insurance offering a minimum coverage of at least \$5 million for any single claim.
 - c. A defined complaint handling procedure.
 - d. Deference to the existing Commonwealth laws and broader market rules and regulations. Specifically highlighting members obligations under the Australian Consumer Law. <https://www.accc.gov.au/regulated-infrastructure/water/water-trading-brokers-exchanges>
 - e. Conflict of interest policy - promoting a rigorous and transparent approach in managing potential and existing conflicts of interest.
2. A Continuing Professional Development program and policy, ensuring members knowledge is kept relevant through educational seminars each year.

The AWBA is currently working on the following:

1. A minimum standard for auditing policy is currently being developed and will be implemented with a matter of urgency.
2. Water Broker Account Policy – bringing water accounts into line with financial accounts, and clearly stating rules that govern how a member is allowed to engage with the market.
3. Corporate Membership – the goal of which is to capture as many brokers under the self-regulation umbrella we are creating.
4. Industry wide Standardised Contracts for key water market products
5. Direct engagement with State Water Registers to assist them in improving both the capture and reporting of trade information in a timely and more meaningful manner.

The AWBA and its members operate under the law and rules that are currently in place. We welcome the current ACCC review and will co-operate with it fully. The AWBA will consider all feedback as a result of the review and look to enhance existing policies and develop new policies that provide the best practice example to the broader water trading community.

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