

SUBMISSION TO –

AUSTRALIAN COMPETITION & CONSUMER COMMISSION

REVIEW of WATER CHARGE RULES

DRAFT ADVICE – November 2015

SUBMITTED BY –

THE AUSTRALIAN WATER BROKERS ASSOCIATION INC (AWBA)

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MARCH 4TH, 2016.

BACKGROUND

The Australian Water Brokers Association was established in 2007.

Membership of the AWBA is Voluntary.

The association is funded only through membership fees. All functions of the association are conducted by AWBA members without remuneration.

The Associations 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.

The AWBA aims to improve transparency and promote efficiently functioning Water Markets and actions to reduce barriers to trade.

Constitution - The operations, functions and governance of the AWBA is clearly detailed in our Constitution. (Available at www.awba.org.au).

Code of Conduct - All members of the AWBA operate under our Code of Conduct. This code ensures the users of the services provided by members of the AWBA are protected by the specified duties to clients, customers and the public. (Available at www.awba.org.au).

Addressing specifically:

Managing Client Funds

Professional Indemnity Insurance

Professional Conduct

Managing Potential and Existing Conflicts of Interest

Trade Facilitation

Complaints Handling

Compliance Systems and Training

Understanding Existing Commonwealth Laws and Broader Market Rules

And Regulations

Becoming a Member - Our membership application process seeks to ensure those individuals who seek a career in the water broking industry have the required skills, experience and training to achieve a sustainable and rewarding career in the water broking industry. Those who seek to become a member of the AWBA must complete our application process which includes:

Confirmation of the required level of demonstrated experience and knowledge of the water industry

Satisfactory Viva Voce interview with the AWBA executive committee

INTRODUCTION

The Review of Water Charge Rules – Draft Advice prepared by the ACCC is a substantial document. The AWBA considers all areas of advice given to be important and to which due consideration should be given. However comment will be limited reflecting the resource constraints of the AWBA as a voluntary unfunded organisation.

The AWBA supports all actions to improve transparency and efficiency of Water Markets and the provision of easily accessible market and market related information to all water market participants.

This support is given provided the cost of obtaining this information is not excessive and does not create an excessive or unfair financial burden upon those tasked with providing this information.

DRAFT ADVICE – SECTION 8 OTHER ISSUES OF CONCERN

WATER MARKET CONCERNS

This section primarily addresses Recommendation 9 of The Expert Panel Review of the Water Act 2007:

...industry develop, in consultation with the Australian Government, an industry-led scheme of regulation for water market intermediaries. The scheme could include voluntary accreditation, a code of conduct and a defalcation fund. If a scheme is not developed, the Australian Government should regulate water market intermediaries. State referrals would be necessary to give effect to Basin-wide or national regulation.

The ACCC's response:

The ACCC notes that although water market intermediaries (including water brokers) are not currently subject to any industry specific legislation, they must still comply with the provisions of the Competition and Consumer Act 2010 (CCA) including the Australian Consumer Law (ACL). The ACL prohibits, among other matters, misleading and deceptive conduct, and false or misleading representations of various kinds. The ACCC enforces the CCA and, together with state and territory fair trading agencies, enforces the ACL.

The ACCC further noted:

The Commonwealth government had previously released for consultation in 2013 a COAG draft Regulation Impact Statement for the potential regulation of water market intermediaries, but that to date no further action has been taken.

Notable from this document:

3.3 Summary Evidence indicates misconduct is not widespread. The risk of misconduct remains of concern to some stakeholders. Current legislation covers many aspects of intermediary behaviour but there are no requirements for intermediaries to undertake industry-specific actions which may prevent problems arising. Stakeholder concerns may be based on a perception that the risk is higher or there is less protection available under the current regulation. Government action could address stakeholder concerns by improving understanding of the risks and regulatory arrangements already in place, or changing regulatory arrangements to reduce the impact and likelihood of problems arising. Specific areas where regulation could reduce the risks include: • the use and adequate management of trust accounts to handle client funds; • a requirement to hold a level of professional indemnity insurance; and • positive obligations on intermediaries to disclose conflicts of interest.

AWBA RESPONSE

The AWBA as an association has addressed these concerns and continues to address concerns as they arise, as demonstrated previously in this document.

The ACCC has clearly outlined that there is no evidence the issues raised by the Expert Panel regarding potential for misconduct of Water Market Intermediaries (Water Brokers) has occurred.

Professional Water Brokers, the majority of whom are members of the AWBA, live and breathe the Water Market all day, every day. They are at the forefront of the Water Industry, interacting with water licence owners, water users, Water Authorities etc. on a daily basis. Consequently they are eminently qualified to identify issues as they arise, provide feedback and offer solutions.

The ability of Water Brokers to disseminate information is extraordinary. This was recently demonstrated when on November 19th intervalley trade between the Murrumbidgee and Murray Rivers was opened. Within a day, Water Brokers were able to efficiently lodge compliant applications with as many as three different Water Authorities and with the consent of their clients to transfer approximately 74,000 megalitres of water.

Notably, not all these temporary transfers were direct sales. The Brokers were able to provide their clients with enough information to allow them to see an advantage in participating in this trade from the Murrumbidgee River to the Murray while the window of opportunity was open.

CLEARLY THE ACCC DOES NOT SEE THE NEED TO REGULATE WATER MARKET INTERMEDIARIES DUE TO CONCERNS MISCONDUCT MAY OCCUR.

However all parties would benefit from a stronger Water Brokers Association.

The Expert Panels recommendation for *an industry-led scheme of regulation for water market intermediaries* already exists in the form of the AWBA.

The AWBA is resource constrained. Membership of the AWBA is not compulsory.

An unfunded association is limited by the time members are willing to contribute for no financial remuneration.

Meaningful support and close and regular consultation with the AWBA will be beneficial to all parties:

Government at all levels

Regulating Authorities

Water Market Participants

Groups/Associations who purport to represent the interests of Irrigators

Others too numerous to mention.

THE AWBA MEETS FORMALLY FOUR TIMES A YEAR.

INTERESTED PARTIES ARE WELOCME TO ATTEND THESE MEETINGS OR CONTACT MEMBERS OF THE AWBA EXECUTIVE AT ANY TIME.

Should you require any further information or clarification of the information contained within this submission or matters related to the Australian Water Brokers Association please do not hesitate to contact me at any time.

Tom Wilks - President AWBA

March 7th 2016.

