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Commissioner Joanne Chong  
Murray-Darling Basin Plan: Implementation Review 2023  
Productivity Commission  
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Dear Commissioner Chong,

**ACCC submission to the Murray-Darling Basin Plan: Implementation Review 2023 (interim report)**

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 interim report (the interim report). Our submission is focused on the interim recommendations and commentary in chapter 8 of the interim report (water trading), which is of most relevance to the ACCC's functions under the *Water Act 2007* (Cth) (Water Act).

In summary, this submission:

- reiterates support for an ACCC review of the Basin Plan water trading rules occurring before the MDBA undertakes its review of the Basin Plan in 2026.
- supports the Productivity Commission's recommendation to amend the Water Act to enable the ACCC to provide advice to the MDBA about the Basin Plan water trading rules on its own initiative.
- notes the potential resourcing implications for the ACCC of a full review of the Basin Plan water trading rules, and of an ongoing role in providing proactive advice to the MDBA on the rules.
- reiterates support for further consideration of current water recovery timeframes and efforts to address the remaining gaps in Basin water market governance.

Each of these points is addressed below:

**The ACCC would welcome a request to undertake a comprehensive review of the Basin Plan water trading rules, given adequate time to undertake the review.**

The Basin Plan water trading rules form part of the Basin Plan. They were prepared by the Murray-Darling Basin Authority (MDBA) largely on the advice of the ACCC. They are now enforced by the Inspector-General of Water Compliance (IGWC) but were previously enforced by the MDBA. The interim report notes that the Basin Plan water trading rules provide a common framework for trading of water rights across the Basin. They seek to limit

restrictions on trade, improve transparency and access to market information, and maintain market integrity and confidence.<sup>1</sup>

We agree that it would be appropriate for the ACCC to conduct a detailed review of the Basin Plan water trading rules before the MDBA undertakes its review of the whole Basin Plan 2026 because:

- As noted in our submission to the issues paper, and acknowledged by the Productivity Commission, there have been significant changes to the volume and location of trade, the participants in the market, Basin State trade administration practices and an evolution of environmental watering patterns, all of which pose challenges to river operations and the implementation of the Basin Plan water trading rules.
- As noted by the IGWC, the process and system failures of certain trading rule obligations that it has identified in recent audits and investigations will not be addressed by the current market reforms, and a review of the Basin Plan water trading rules is required to ensure the rules support Basin Plan outcomes.

To have adequate time to explore stakeholder concerns, undertake the detailed review and develop solutions to the issues identified, it is important that the ACCC receives any request for advice with sufficient time, including to allow for consulting with interested stakeholders, Basin State governments and trade administrators, peak bodies, and the IGWC.

**ACCC review could consider whether the current Basin Plan water trading rules are operating effectively to remove unnecessary trade restrictions but would not have the capacity to review the justifications for individual Basin state trading restrictions**

The ACCC could consider the effectiveness of the current Basin Plan water trading rules, and the benefits of an assessment framework to guide implementation and enforcement of the Basin Plan water trading rules.

As noted by the interim report, a complete list of trade restrictions is not available. However, in 2018 the MDBA reported that there were over 1500 restrictions on surface water trade (most of which remain in place as far as we're aware). The ACCC's expertise is in markets and regulation rather than the science related to hydrology and environmental management. The ACCC would not have a role in determining restrictions put in place due to hydrological or water supply considerations and it would be beyond the scope of an ACCC review to consider the validity of each current trading rule. In any case, this is a matter for the IGWC in undertaking its enforcement of compliance with the Basin Plan.

**The ACCC would welcome an ongoing power to instigate advice to the MDBA on the Basin Plan water trading rules, subject to being supported with appropriate additional resourcing**

The ACCC only provides advice to the MDBA about the Basin Plan water trading rules when requested by the MDBA under s. 46(2) of the Water Act, which provides that in amending the Basin Plan water trading rules, the MDBA 'must obtain, and have regard to, the advice of the ACCC.'

An ongoing power to instigate advice on its own initiative would have the benefit of allowing the ACCC to provide timely and well-considered advice to the MDBA. It would make water market policy more adaptive by allowing the ACCC to identify and respond to issues related

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<sup>1</sup> Some of the integrity provisions are proposed to be expanded and moved into the Water Act under the Water Amendment (Restoring Our Rivers) Bill 2023), which implements recommendations from the ACCC's water markets inquiry and the water reform roadmap).

to water markets and the Basin Plan water trading rules as they arise. It would also allow the ACCC to plan for adequate public consultation and support the ACCC's independence from other government agencies. The ACCC would notify the MDBA before providing any such advice.

### **Supporting further consideration of current water recovery timeframes**

If legislated, the Water Amendment (Restoring our River Rivers) Bill 2023 (Restoring Our Rivers Bill) would give more time and more flexibility for the recovery of water to bridge the gap (by allowing new supply measures and voluntary purchases). However, the ACCC notes the Productivity Commission's interim findings that:

- this will not be enough to deliver the Plan in full (p. 2)
- weak accountability and other underlying risks to Basin Plan implementation remain (p. 2)
- waiting until reconciliation in 2026 to address the supply measure shortfall will perpetuate uncertainty for Basin communities and could further erode trust and confidence in Basin governments (p. 51)
- delivering the 450 GL/y efficiency measures by 2027 will cost more than budgeted and risks significant disruption to water markets and Basin communities (p. 51)
- the Australian Government should develop a renewed approach to water recovery, including staged voluntary purchases alongside a commitment to assist communities (p. 51)
- a new government-owned corporate entity that operates at arm's length from governments is an option for undertaking water recovery and implementing some supply projects (p. 51)

As mentioned in the ACCC's issues paper submission, the ACCC considers that regard needs to be given to what will happen if the extended timeframes are either not legislated or not met. It is important to ensure that the water recovery strategy adequately considers impacts on water market participants' confidence in water markets, and how to minimise significant market impacts and maintain efficient investment in and use of irrigation infrastructure. Issues to consider include appropriate measures to maximise market transparency, strategic timing of government participation in markets, potential regional and sub-regional impacts, and appropriate and timely disclosure of outcomes of tenders.

### **Address the remaining gaps in Basin water market governance and co-ordination**

Recent reviews (including the ACCC's 2021 water markets inquiry and Daryl Quinlivan's subsequent advice to the Minister for the Environment and Water on a water reform roadmap (the Quinlivan report)) have found that water markets in the Basin need reform, including in the areas of insider trading, price reporting, water announcements, rule-making processes, and institutional and governance arrangements.

Following the ACCC's 2021 water markets inquiry, Basin governments (other than Victoria) have committed to a roadmap. The Restoring Our Rivers Bill seeks to implement some of the institutional changes recommended in the ACCC's 2021 water markets inquiry. If passed, the ACCC will have new responsibilities, which will address some of the gaps identified in the ACCC's water markets inquiry report, especially relating to water market integrity and water market intermediaries. However, governance and co-ordination gaps will remain. The Quinlivan report recommended that a new re-established National Water Commission have a leadership role as the water markets expert and roadmap implementation monitor (with the

Department of Climate Change, Energy, the Environment and Water to take on appropriate roles in the interim until the proposed new National Water Commission is established). However, the Restoring Our Rivers Bill would not establish a National Water Commission.<sup>2</sup>

The ACCC supports the Productivity Commission's interim recommendation 6.3 to establish a role, for example, in the form of a re-established National Water Commission, for overseeing and coordinating knowledge generation and sharing across the Basin.

We welcome the opportunity to comment on the interim report and look forward to the final report.

Yours sincerely,

Mick Keogh  
Deputy Chair  
ACCC

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<sup>2</sup> Interim report, page 193.