

Feedback on the Draft Water Market Reform Bill 2023

We are establishing an integrity and transparency framework for Murray-Darling Basin water markets by making amendments to the Water Act 2007.

Your feedback will help inform the proposed legislative amendments set out in the draft Water Market Reform Bill 2023. Please read the draft Bill and accompanying overview before providing your feedback.

There are 3 key questions about the draft Bill. You can use this document to submit an organisation-wide response.

When you have completed this document, you can email your submission to water.markets@dcceew.gov.au by **11:59pm Friday 28 July 2023**. Please note late submissions will not be accepted.

About you

Please fill in your details. This information will help us understand more about you and your views. We will not publish it on the website.

1. First name (Required)

2. Last name (Required)

3. Email (Required)

4. Phone (Optional)

We may use your phone number to contact you, if needed, to clarify your feedback and comments.

5. Who are you answering on behalf of? (Required. Check 1 box below)

☐ Individual or individuals

☒ Organisation

6. Organisation name (if applicable)

Australian Water Brokers Association (AWBA)

7. What sector best describes you or your organisation? (Required. Check up to 3 boxes below)

- | | |
|---|--|
| <input type="checkbox"/> Australian government and agencies | <input checked="" type="checkbox"/> Industry body |
| <input type="checkbox"/> State or territory government and agencies | <input type="checkbox"/> Natural Resource Management |
| <input type="checkbox"/> Local government | <input type="checkbox"/> First Nations interests |
| <input type="checkbox"/> Agriculture | <input type="checkbox"/> General public |
| <input checked="" type="checkbox"/> Peak body | <input type="checkbox"/> Other (Explain in the text box below) |
| <input type="checkbox"/> Irrigation infrastructure operator | |

8. What state or territory do you live in? (Check 1 box below)

- ☐ Australian Capital Territory
- ☒ New South Wales
- ☐ Queensland
- ☐ South Australia
- ☐ Tasmania
- ☐ Victoria
- ☐ Western Australia

9. Please provide your postcode

10. What area best describes where you live? (Required. Check 1 box below)

- ☐ City
- ☒ Regional area
- ☐ Remote area

Questions about the draft Water Market Reform Bill

11. Do you have any comments or concerns on the draft Bill? Is there anything that would cause major issues for your agency, organisation or business?

YES

The AWBA has been actively engaged in the water market reform process and remains supportive of a compulsory Code of Conduct (CoC) for all water market intermediaries and a 'true' trust account structure for protection of client funds. However we do have some concerns with the draft bill, as outlined below (noting also that given the limited review timeline we haven't been able to give the draft bill as full an analysis as we would have liked).

- The ACCC review was very clear there was *potential* for misconduct but that none was found and yet the changes being implemented from the Quinlivan review are based on the assumption that misconduct is actually occurring and needs to be stopped at any cost. While the AWBA is generally supportive of the 23 recommendations set out in the Quinlivan report, the reforms go far beyond what is needed to combat the *potential* nefarious activity in the water market. Further, we object to the assumption of guilt on the part of water market intermediaries that seems to be a base assumption of the review.
- Many of the Recommendations regarding transaction attributes (reason for trade, strike date) have been or are in the process of being implemented by the states. Every water transaction must go through an IIO and/or state registry and therefore the department should focus on enforcing standards at those levels. Intermediaries and participants will then be forced to comply when lodging their application. For instance, the lodging party should be questioned for lodging an application for a "standard commercial trade" with a value twice as high as the prevailing market price. Or the price per megalitre on an application is insignificant (cents or less) indicating the lodging party has entered a price per megalitre rather than a total price for the transaction. Implementing cursory data validation when receiving applications would greatly improve the accuracy of data.
- Recommendation 19 was about implementing a long term research agenda to inform future market improvements. The AWBA believes the Roadmap recommendations should be prioritised and implemented transitionally after periodic reviews determining the benefits of implemented reforms and informing whether additional reforms need to be introduced. This would allow the market (intermediaries and participants) to adapt to the changes and potentially reduce the financial burden incurred by intermediaries and ultimately participants. In addition, cost:benefit analysis, in the form shown in the roadmap, can then be updated before implementation is considered for each additional reform.
- The AWBA supports a mandatory CoC however it needs to be workable. As demonstrated by the failure of financial planning regulation (which resulted in pages of paperwork for clients which effectively achieved nothing) simplicity is key. The water market is small in comparison to other industries and can not afford to be bogged down in paperwork, restrictions and onerous financial and time costs. As per the Quality of Advice Review Roadmap (13 June 2023, Stream One) we need to avoid "...onerous red tape that adds to the cost of advice with no benefit to consumers".
- According to the documentation the mandatory CoC will cover:
 - "a person who provides any of the following services:*
 - (a) trading of eligible tradeable water rights on behalf of another person in exchange for a commission or fee;*
 - (b) investigating eligible tradeable water rights trading possibilities on behalf of a potential water market participant in exchange for a commission or fee;*

(c) preparing documents that are necessary for the trade or transfer of eligible tradeable water rights on behalf of a potential water market participant in exchange for a commission or fee;

(d) providing a trading platform or water exchange for eligible tradeable water rights;

(e) providing advice in the course of professional dealings (whether or not for payment of any kind) to a potential water market participant about trading in eligible tradeable water rights, other than advice that is of a general nature and not provided to address the specific circumstances of the potential water market participant.”

This is a broad remit and the AWBA is unsure how it will be enforced without explicitly knowing who is involved in the industry through a licensing framework. We understand that Solicitors, Accountants and Conveyancers providing advice and undertaking water transactions related to property will fall under the CoC. Are they aware of their obligations under the CoC? It would seem easier to ensure communication to all intermediaries if a registration process was used. To be clear we do not view this as a material cost to doing business for an intermediary (see further comments below).

A CoC is only relevant if it is enforced and enforcement starts with market participants reporting bad behaviour to the regulator (ACCC). What will be the process of reporting issues to the ACCC? Will the ACCC have sufficient resources to investigate issues? Will the ACCC produce reports outlining the issues investigated, the parties involved and what resolutions were sought?

- with specific reference to the exposure draft, we note that the regulations in relation to the Water Markets Intermediaries Code may “.....make provision for requirements in relation to the following:

.....

(d) protecting and holding separately clients’ eligible tradeable water rights”.

It may be clarified elsewhere but it would be useful to define what the water rights are to be held separate to. For example does it mean to hold them separate to water rights held by the intermediary (if any)? Or does it mean held separately to the interests of other clients? Or something else?

- The Government has been vocal about minimising “barriers to entry” for new intermediaries. The argument has been made that an intermediary licencing scheme would impose a barrier to entry (when compared to a mandatory code) due to the “...additional burden of obtaining and maintaining a licence”. It’s hard to see that this would impose a significant additional cost meaning this argument is tenuous at best especially considering the technological and financial barriers that will be borne by existing intermediaries to implement the other planned reforms. Such barriers include;
 - Implementation of unique identifiers for participants. While the regulator will manage the unique identifiers, intermediaries will need to validate these unique identifiers as part of their client onboarding.
 - Implementing new financial procedures to manage trust accounts, including frequent auditing regardless of the volume of transactions.

- Developing/implementing IT systems to provide pre-trade data to the BOM which includes the recurring costs related to IT system security and maintenance.
- The AWBA agree that access to pre-trade data is important for market participants to understand market depth. Providing this data is relatively easy for a large intermediary or exchange who is already operating on a digital platform. The greatest challenge is that most intermediaries operate with systems that may not be as conducive to easy extraction of this data. This will result in additional time to implement the required changes, meaning the cost of doing so will be proportionally higher than the larger businesses. This hurdle also exists with other intermediaries who undertake water transactions as a secondary business such as real estate agents. This is a significant “barrier to entry” for smaller intermediaries that will fundamentally result in less diversity across the industry.
- All exchanges have the capability of “reporting” transactions. These transactions are shown as trades, but there is no buy/sell listing loaded into the market prior to the trade being matched. In the water market, a substantial volume of allocation trade is “reported” and therefore never listed on any public facing web site. This is also what happens between individuals who negotiate privately - the terms are agreed, the applications are lodged and the settlement made. It is unclear from the documentation what pre-trade data would need to be reported to the BOM for these transactions given there is no pre-trade information available. We suspect this loophole will be exploited by many intermediaries further reducing the visibility of bids and offers in the market - contrary to the intent of the market reform.
- A meeting was convened on 27 July between some AWBA committee members and DCCEEW staff to discuss Statutory Trust Accounts (STA). The AWBA understands the STA clauses must be included in the draft Bill.

To reiterate what was discussed, the AWBA is supportive of STA so long as they are effectively implemented at a Commonwealth level (rather than at a State level).

- There needs to be clarity of whether all intermediaries need to have a water specific STA or whether alternative STA can be used (real estate, legal etc) with appropriate legislative amendment to provide the same outcome as a water specific STA.
- Detail on the protections offered to market participants should be clearly communicated to ensure the market understands the benefit.
- Auditing is a key element of operating a STA and more information is needed on the auditing standard and frequency. DCCEEW should undertake a thorough review of other similar industries and provide an outline to existing intermediaries prior to making a decision.
- The AWBA is open to whether the STA should be interest bearing or not provided the overriding principle of not providing any incentive to the intermediary to retain funds for longer than necessary is met. If an intermediary chooses an interest bearing STA, the AWBA is of the strong opinion that the interest should be returned to the relevant contracting party whose funds are being held in trust (in preference to the interest earned going to the ACCC or other government entity to be used for educational or other purposes). To be clear - interest earned should not be retained by the intermediary. This removes all possibilities of the intermediary benefiting from holding third party funds longer than required.

- The AWBA is conscious that the introduction of STA will create a further financial burden on existing intermediaries however believe that the client protection benefit should outweigh this cost.

12. Do you have any comments or concerns with the proposed reforms outlined in the draft Bill?

- The current process feels rushed. Two online presentations during which participants could only ask written questions and not have an open discussion and a very limited time for providing written feedback in the context of a reform that is projected to take years does not feel particularly equitable or thorough.
- Cost to businesses to implement and maintain new reporting and compliance systems which will ultimately be passed on to customers. We expect that the largest cost will be that of implementing IT to meet the (yet to be determined) pre and post trade reporting requirements under the reform. Financial costs will also be incurred by anyone falling under the CoC for additional auditing costs. These costs will present a further barrier to entry for smaller intermediaries and could thus result in less options for market participants.
- The increased costs associated with implementing the water market reforms will be incurred by the intermediary and passed on to market participants. This will reflect poorly on the intermediary, not the government enforcing the changes. The government needs to clearly communicate to the market that the changes being implemented will result in increased costs for intermediaries and that is likely to increase fees and charges for participants.
- What is pre-trade price requirement going to achieve? And how far does it extend? For example if a client makes ten changes to their sale (purchase) price before a trade is achieved, does every price have to be reported? What if a trade is matched (at market price) without even being listed on an exchange? If we have to go through the work of supplying this data (which may be out of date on receipt) it would be nice to know that it will have value.
- Can you confirm that the removal of grandfathered tags applies to the Goulburn legacy entitlements?
- An announcement by BOM of a significant change in weather forecast will have an effect on water price. We presume this information is regarded as 'publically available' and thus not affected by insider trading (etc) restrictions?

13. Do you have any other comments or suggestions you would like to see covered?

YES

- We would have appreciated it if the AWBA had been invited to be one of the 15 entities consulted with as part of BOM's 'Discovery Phase Consultation Summary of Findings - June 2023' regarding the development of the Water Market Data Standard (WMDS). Surely it would make sense to seek input from the industry's representative body?
- What is the process and timeline for finalising the WMDS? Will there be a working group established to ensure input is gathered from a range of market intermediaries when developing the standard?