

Briefing Note

ACCC Water Monitoring Report 2010 -11

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Introduction

This Briefing Note is a summary of the Australian Consumer Competition Commission (ACCC) "Water Monitoring Report 2010-11". The report outlines changes in regulated water charges, transformation arrangements and compliance with Water Market Rules and Water Charge Rules in the 2010-11 year. The ACCC did not seek input from stakeholders but merely provided this report as a reference.

Under the *Water Act*, the ACCC was given the responsibility to develop a common framework for regulating water charging and water markets across the Murray Darling Basin. A key objective of the framework was to facilitate the effective operation of water markets whilst promoting the efficient use of rural water infrastructure.

The full ACCC report is available under the following link;

<http://www.accc.gov.au/content/item.phtml?itemId=1048287&nodeId=c6c697028884d37c71db11518751df72&fn=Water%20Monitoring%20Report%202010-11.pdf>

In undertaking its monitoring role, the ACCC is required to monitor:

- regulated water charges
 - transformation arrangements, and
 - compliance with rules made under Part 4 of the *Water Act*;
- **Water Market Rules 2009 (WMR) -**
these Rules prohibit the actions or omissions of an irrigation infrastructure operator (IIO) that prevent or unreasonably delay an irrigator from transforming an irrigation right into a water access entitlement. These Rules came into full effect on 1 January 2010.
 - **Water Charge (Termination Fees) Rules 2009 (WCTFR) -**
these Rules regulate the fees or charges payable to an IIO relating to the termination or surrender of access to an operator's irrigation network. These Rules came into full effect on 1 September 2009.
 - **Water Charge (Infrastructure) Rules 2010 (WCIR) -**
these Rules set requirements relating to the fees and charges payable to infrastructure operators for bulk water services and to IIOs for access to the irrigation network and related services. These Rules came into full effect on 12 April 2011.
 - **Water Charge (Planning and Management Information) Rules 2010 (WCPMIR) -**
these Rules provide for the publication of information on fees and charges imposed by, or on behalf of, governments relating to water planning and management (WPM) activities. These Rules came into full effect on 1 July 2011.

Executive Summary:

According to the ACCC, the following changes have occurred over the 2010 - 11 period;

- Water Market Rules and Water Charge (Termination Fees) Rules have reduced barriers to trade.
- Water operators are largely complying with the ACCC rules.
- Water markets are responsive to changing conditions.
- Irrigators are utilising the flexibility provided by the water markets to maximise the value of their water assets.
- Rural water charging is undergoing reform and public investment in infrastructure is increasing.
- Rural water charges are generally stable.

Participation in Water Markets

According to the ACCC:

The Water Market Rules and Water Charge (Termination Fees) Rules have reduced barriers to trade.

The Water Market Rules (WMR) and Water Charge (Termination Fees) Rules (WCTFR) address potential barriers imposed by irrigation infrastructure operators (IIOs) that might prevent irrigators from participating in water markets.

In NSW, many irrigators' rights to water are specified as a share of their IIO's water access entitlements¹. According to the ACCC, IIOs have an incentive to preclude irrigators from transforming their water rights to preserve their customer and revenue base.

'The WMR address this by making it compulsory for operators to allow irrigators to transform their irrigation rights without unnecessarily impediment.'

'The WCTFR allowed for fees to be imposed on an irrigator upon termination of their access to an IIO irrigation network but capped the fees that can be charged at 10 times the current annual fixed charges for irrigation network access.'

Data collected by the ACCC in 2009 - 10 shows that termination fees fell considerably after the introduction of the WCTFR and that IIOs improved their processing times for transformations after the WMR commenced.

'High rates of transformation and termination immediately after commencement of the WCTFR and WMR indicate that the rules have made it easier for irrigators to participate in water markets. In 2010 - 11 termination fees and transformation processing times by IIOs remained generally stable compared to 2009 - 10.'

NSWIC assessment:

The high rate of transformation and termination is merely a result of the first introduction of the ACCC Rules. Two years of data is completely inadequate to assess the effectiveness of the Rules. Further data needs to be gathered to support this claim.

¹ In those circumstances, before an irrigator can sell its right to water, it needs to change that right into a water access entitlement which is held in the irrigator's name. This process is known as transformation. After transformation an irrigator can trade its water access entitlement without the need to approval from its IIO.

Compliance with ACCC Rules

According to the ACCC:

ACCC monitoring shows that water operators are largely complying with the rules.

Throughout 2010 - 11, the ACCC ran a compliance and monitoring program. It collected data and information from 27 IIOs on transformation, terminations, transformation processes and processing times, and investigated all complaints it received that relate to the ACCC's area of responsibility.

Monitoring by the ACCC shows operators are generally compliant with the WMR and the WCTFR in 2010 - 11. The number of complaints received by the ACCC from irrigators in 2010 - 11 also suggests that there is a good compliance culture amongst IIOs.

In 2010 - 11 changes to the NSW legislation allowed irrigation trusts and districts in the states to give effect to the WMR and WCTFR. According to the ACCC, this helped to reduce the barriers to trade facing many customers of smaller IIOs in NSW.

ACCC staff worked closely with the affected IIOs to help them understand and comply with the rules. Amongst other activities, ACCC staff visited each of the IIOs, produced new guidance material, and developed seminars for rural lawyers and other stakeholders.

NSWIC Assessment:

The ACCC has yet to identify the number of IIOs in NSW. Claiming that they have visited each is completely contradicting the facts.

The ACCC also does not provide any evidence on behaviour changes of irrigators and consistently fails to acknowledge that the compliance regulations have caused substantial cost burden.

Trade in the Water Markets

According to the ACCC:

Water markets are responsive to changing conditions however barriers remain.

The MDB recorded its wettest year on record in 2010. The high levels of rainfall resulted in widespread flooding of some regions of the MDB between September 2010 and February 2011. The increased water availability has had major impact on water market outcomes in the MDB during 2010 - 11.

The significant increase in water availability for the 2010 - 11 season meant many irrigators had water which was surplus to their on-farm requirements, contributing to an increased volume of trade and lower prices in temporary water allocations. Outcomes in the water allocation market reflected this in 2010 - 11.

Trade in water allocations increased from 2301 GL in 2009 - 10 to 3417 GL in 2010 - 11, an increase of 48%. The average price of allocations fell from \$150/ML in 2009 -10 to \$32/ML in 2010 - 11, a decrease of 79%. The volume of permanent trade in the MDB declined from 1818 GL in 2009 - 10 to 999 GL in 2010 - 11. Prices for high - reliability and lower reliability entitlement fell by between 10 to 15% in 2010 - 11 over the same period due to a fall in demand for these entitlements.

A major influence on entitlement markets in the MDB in recent years has been the impact of purchases by the Australian Government through its voluntary buyback program. The Australian Government significantly reduced the volume of entitlement purchased in 2010 - 11. This reduction is a key factor in reducing entitlement prices and trade volume.

Increased water availability may also have had some impact on entitlement markets in 2010 - 11. This is because many irrigators in the MDB would have expected an increase in on-farm production and future revenue, lessening the need to exit irrigation.

In general, this pattern is reflected in transformation and termination patterns.

Data collected by the ACCC shows the volume of transformation decreased from 157 GL to 102 GL while the volume of terminations decreased from 129 GL to 59 GL. This demonstrates that irrigators are not just transforming and exiting the irrigation industry, but rather many are electing to maintain their access to an irrigation network after transformation.

Despite the flexibility available to the majority of irrigators, there are still artificial barriers to trade which continues to limit trade in some areas of the MDB. For instance, the 4% limit in Victoria on permanent trade outside of an irrigation district in Victoria continues to be detrimental to some irrigators wishing to trade their entitlements. In 2010 - 11 six districts in Victoria reached the trade limit, up from 5 in 2009 - 10.

NSWIC Assessment:

The claim that government buybacks are mainly responsible for reductions in allocation and entitlement prices in the water market is incorrect. Climate conditions and general market sentiment are as much of a driving force for market prices.

The ACCC assessment that irrigators are not exiting the industry ignores the fact that they are continuing to pay access charges whether they irrigate or not. This shows clearly the fundamental misunderstanding the ACCC has to irrigation.

Use of Water Markets

According to the ACCC:

Irrigators are utilising the flexibility provided by the ACCC rules to maximise the value of their water assets.

In 2009 - 10, 45% of transforming irrigators terminated all or almost all of their water delivery rights after transforming. It is likely that many of these irrigators exited irrigation. In contrast, in 2010 - 11 only 10% of transforming irrigators terminated all or almost all of their water delivery rights after transforming, and 72% did not terminate any water delivery rights after transforming.

These patterns suggest that in 2010 - 11 many sales of water access entitlements from customers of IIO/s were not from irrigators who planned to immediately exit irrigation. Even though irrigators may be selling their permanent rights to water, many are still preserving their option of irrigating into the future.

Their water needs can continue to be met through the temporary market.

Overall, this further illustrates the flexibility, adaptability and benefits water market reforms have provided to irrigators in the MDB.

NSWIC Assessment:

It should be highlighted that irrigators have successfully used the water market prior to the involvement of the ACCC. The ACCC has neither invented or assisted in the establishment of the water market. All of the positive water market attributes - flexibility and adaptability - are not a result of the ACCC Rules.

Rural Water Charge Reform and Public Investment in Infrastructure

According to the ACCC:

Rural Water charging is undergoing reform and public investment in infrastructure is increasing.

As part of the Australian Government's rural water infrastructure reforms, the ACCC has had a role in developing a more *consistent* framework for monitoring and regulating rural water charges cross the MDB.

This framework is now in place with the Minister making the Water Charge (Infrastructure) Rules (WCIR) and Water Charge (Planning and Management) Information Rules (WCPMIR) in 2010 - 11. The ACCC has worked with and is

continuing to assist both operators and government agencies covered by the rules to help them understand and implement their obligations. One of the key benefits of both sets of rules will be to improve pricing transparency for rural water users.

Through the WCIR, several larger IIOs will be required to develop and provide customers with a Network Service Plan outlining estimated charges in the future along with the costs on which these charges are based.

Through the WCPMIR, government that levy charges for water planning and management activities in the MDB will be required to publish information about the charges and the costs of the activities the charges cover.

ACCC data shows that across all Basin states the revenue collected from water planning and management charges was \$160 in 2010 - 11. However, Basin states have not provided detailed information to the ACCC about the cost of water planning and management activities nor about the allocation of costs between Basin and non-Basin revenue sources. The ACCC will continue to work with government and government agencies to improve the data.

As part of the water reform process, the Australian Government has committed \$4.8 billion through its Sustainable Rural Water Use and Infrastructure Program to improve rural water infrastructure in the MDB. This includes \$650m to improve water use and efficiency for private irrigation infrastructure operators in NSW, up to \$110m for private irrigation infrastructure in SA and \$1b in Northern Victorian Irrigation Renewal Program.

While this expenditure will be undertaken over a number of years, the level of investment is significant given the revenue generated by MDB irrigation infrastructure charges imposed by IIOs reporting to the ACCC.

NSWIC Assessment:

Infrastructure investment in NSW is not an achievement of the ACCC but existed long before their involvement. It should be highlighted that the expenditure mentioned above cannot be characterised as a mere investment as it involves a two way transaction with water entitlements being provided to the Commonwealth.

The compliance regulation imposed by the ACCC has added substantial costs to irrigators. NSWIC calls for a thorough cost benefit analysis that assesses the usefulness of the Network Service Plans.

The ACCC Water Charge Rules have also fostered high levels of inequality between Murray Darling Basin states, as some Basin States are effectively excluded from the regulation. Such inequity is highly unacceptable.

Rural Water Charges

According to the ACCC:

Rural water charges are generally stable.

As part of its role in administering a consistent and transparent framework for rural water charges across the MDB, the ACCC also collects data on charges for rural water services in the MDB for water delivery, storage, management and operation of irrigation networks, and also for water planning and management activities.

For most customers, charges for irrigation infrastructure are about 80 - 90% of an irrigator's total annual water bill, with the remaining proportion made up of bulk water and/or water planning and management charges.

The ACCC has observed that charges faced by rural water users vary significantly across the MDB - one factor influencing the diversity in charges faced by irrigators is the type of delivery infrastructure.

There are a range of other factors that affect charges facing irrigators, such as economies of scale, the level of public funding, the type of water entitlement held, and historical charging arrangements in MDB states. The mix of light handed and direct regulation of water charges across the MDB, and the different ownership arrangements of water operators and relative levels of operational efficiency, are also factors in the varied approaches to charges and the extent of cost recovery by operators.

In 2010–11, the ACCC has estimated that the average increase in charges levied by IIOs was approximately 5 per cent, although there were some significant variations across different operators and within their service districts. One possible reason for charges increasing was to compensate for under-recovery of costs during the drought.

As the WCIR and WCPMIR are implemented, more data will be available to the ACCC about rural water charging arrangements in the MDB. Future monitoring reports will be able to examine drivers of rural water charges in more detail, along with observations about potential future reforms to charging arrangements.

NSWIC Assessment:

The ACCC should acknowledge that one of the reasons for the price increases are the Rules changes. An urgent review of the ACCC Rules should be conducted by an independent agency.