

## ACCC Murray-Darling Basin Water Markets Inquiry

NSW preliminary comments on options in the ACCC's Interim Report

### Background

The Australian Competition and Consumer Commission (ACCC) were directed by the Commonwealth Government in August 2019 to conduct an inquiry into water markets in the Murray-Darling Basin (MDB).

The ACCC released an [Issues Paper](#) in October 2019 seeking views on the key issues affecting water markets in the MDB, followed by an [Interim Report](#) in July 2020. The ACCC's Final Report is due to be delivered in February 2021 and will contain recommendations to the Commonwealth Government on measures that can be adopted to improve the operation of markets for tradeable water rights within the MDB.

The NSW Government supports an open, fair, efficient and sustainable water market characterised by integrity, transparency and accountability. In this context, the NSW Government is actively working with the ACCC as part of this inquiry.

### Interim Report

In the Interim Report, the ACCC analysed a broad range of issues raised in relation to the transparency and operation of water markets and presented a series of options to improve market confidence. These options were focused around regulating the conduct of market participants, improving trade processes and market transparency, market architecture, as well as overarching governance.

The NSW Government has made a high-level [submission](#) in response to the Interim Report and is currently giving detailed consideration to each of the options presented by the ACCC. To support these considerations, and to assist NSW in understanding the ACCC's proposed options, the Department of Planning, Industry and Environment engaged Aither to undertake an [independent review](#).

The department has also prepared preliminary comments on each of the individual options and identified a series of considerations for which more detail will be required to properly understand their implications.

### Purpose of this document

This document outlines some preliminary comments the department has prepared on the options presented in the ACCC Interim Report. These comments do not represent a formal NSW Government position, but rather are intended to provide transparency to stakeholders about our initial thinking and considerations.

This information will be used to help ongoing discussions with the ACCC and stakeholders as NSW works towards developing a formal response to the inquiry, once it is completed. This document may be updated as the department undertakes further consultation with stakeholders.

For further information or to provide feedback, please contact [watermarkets@dpie.nsw.gov.au](mailto:watermarkets@dpie.nsw.gov.au)

These preliminary comments have been prepared as a discussion starter to support consultation and **do not represent NSW Government policy.**

### Conduct of market participants

<b>ACCC issue</b>	There is insufficient regulatory oversight, as well as enforcement and compliance activity, in relation to some practices of some market participants
<b>Overall NSW position</b>	NSW supports the need to improve confidence in the overall regulation of conduct in the market. While the market is generally considered to be functioning well, performance may be undermined if market participants lack confidence in the market. Therefore, it would be appropriate to take steps to ensure that the market is, and is perceived to be, functioning fairly. A more active and independent market oversight could increase confidence in the integrity of the water market.

### Improving trade processes and market transparency

<b>ACCC issue</b>	Various issues relating to quality and timeliness of data; legislative mandates to provide trade services; trade processes; transaction costs; and information transparency
<b>Overall NSW position</b>	NSW supports in-principle the improvement of trade processes and systems that consider user needs and demands, achieve cost-benefit objectives and address defined, material issues. NSW has already taken several steps recently to improve transparency of our water markets, including the development of <a href="#">Trade Dashboards</a> and the <a href="#">WaterInsights Portal</a> .

### Market architecture

<b>ACCC issue</b>	The design of the southern connected Basin market architecture has not kept pace with increasing trade activity, and the ACCC is seeking to identify options for reform.
<b>Overall NSW position</b>	NSW supports the need to improve transparency and understanding of market architecture policies, as well as practical reforms to increase the equity of access to available trade opportunities. However, NSW believes a shift from existing carryover, allocation and accounting policies are unwarranted at this time. These changes would significantly increase the complexity of the water markets and are unlikely to meet a cost benefit test. They also have the potential to impact on existing property rights and may not be appropriate (or superior) from a broader water policy and management perspective.

### Governance

<b>ACCC issue</b>	Improved governance will help to effectively resolve many of the issues identified throughout the Inquiry, as well as strengthening the system so fewer problems emerge in the future
<b>Overall NSW position</b>	Improved governance is supported in principle, but it is difficult to provide a further position given the lack of detail on actual models or arrangements.

Option	Preliminary comments	
<b>1. There is insufficient regulatory oversight, and enforcement and compliance activity, in relation to some practices of market participants</b>		
1(a)	Government initiated licencing scheme	<ul style="list-style-type: none"> <li>NSW would likely support the improved regulation of market intermediaries, to improve market confidence.</li> <li>More work is needed to identify the most appropriate approach, noting that it may require a combination of options. For example, licensing (option 1(a)) could fit within the scope of a market regulator (option 1(c)).</li> <li>A consistent MDB-wide (or even national) approach is needed, even if implemented at a state level.</li> <li>Consideration will need to be given by the ACCC to: <ul style="list-style-type: none"> <li>Who would lead this regulation, under what legislation, and with what funding to establish the framework?</li> <li>Is there precedent for comparable market regulation at the national level?</li> <li>Whether or not other states support this model – noting that any inconsistency across states would be problematic.</li> </ul> </li> <li>Noting that previous work has been done to consider regulatory impacts, an up to date cost benefit analysis and Regulatory Impact Statement would be required.</li> </ul>
1(b)	Applying the financial regulation framework to all water products	<ul style="list-style-type: none"> <li>While the financial framework has relevant principles, it is not necessarily fit-for-purpose and is not a straightforward solution.</li> <li>Consideration will need to be given by the ACCC to: <ul style="list-style-type: none"> <li>Whether market participants require an Australian Financial Services Licence (AFSL) (not just an intermediary)?</li> <li>Whether the Commonwealth would fund the establishment of the regime (noting that obtaining an AFSL and other requirements would be a cost of business for a market participant)?</li> <li>How to learn from and apply relevant aspects of the financial regulation framework to water markets, while respecting water management arrangements and needs?</li> <li>How the framework would fit with other proposed governance and regulatory reforms?</li> </ul> </li> </ul>
1(c)	Independent market-focused government regulator	<ul style="list-style-type: none"> <li>NSW would likely support further consideration of an independent market regulator in order to improve market confidence and performance.</li> <li>Consideration would need to be given to the scope of the regulator, given the strong interlinkages between water management and water markets, and the need for holistic management where efficient operation and management of our water resources are prioritised.</li> <li>Consideration will also need to be given by the ACCC to: <ul style="list-style-type: none"> <li>How would functions be allocated to institutions?</li> <li>How would water resource regulation and market regulation be managed under this model?</li> <li>Who would lead reforms?</li> <li>How would licencing be done at a national level under this model?</li> <li>Whether or not other states support this model.</li> <li>The implications and opportunities arising from the announcement of a Commonwealth Inspector General of Water Compliance.</li> </ul> </li> </ul>

Option	Preliminary comments	
<b>2. Practical changes to trade processing are needed to improve the quality and timeliness of core market data</b>		
2(a)	Improve trade data validation and quality assurance before providing to the Bureau of Meteorology (BoM)	<ul style="list-style-type: none"> <li>Further information will be required to understand this issue before its materiality and cost to remedy could be properly determined and whether intervention would deliver a priority solution to the market.</li> <li>This option raises questions as to what the specific shortcomings are and whether they are an issue for NSW, the Bureau of Meteorology (BoM) or another Basin state. Furthermore, the broader question of the role of BoM in water information remains important, given the fact that NSW publishes trade information using the same data.</li> </ul>
2(b)	Update trade application forms to capture reason for trade	<ul style="list-style-type: none"> <li>NSW has already implemented this option, developed in collaboration with Victoria and the Murray-Darling Basin Authority (MDBA). NSW supports similar measures being undertaken across the Basin as a low cost and effective way to improve market performance.</li> <li>Consideration needs to be given as to whether this approach will be adopted in Queensland and South Australia (given that NSW and Victoria have recently implemented these changes).</li> </ul>
2(c)	Remove ability for zero-dollar trades without justification	<ul style="list-style-type: none"> <li>NSW supports improving transparency around 'zero-dollar' trades and has already implemented new reporting requirements. NSW supports similar measures being undertaken across the Basin. We believe this is an important achievable improvement that can be implemented in the short term.</li> </ul>

		<ul style="list-style-type: none"> <li>The transition to online trade forms is desirable in the future and would benefit from having consistency of online portals across the states. The current system in NSW meets requirements set by the former Council of Australian Governments (COAG), and future improvements should focus on user preferences and improving the efficiency of background systems.</li> <li>Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>The provision of greater clarity on how new data requirements will be verified / validated.</li> <li>How qualitative explanations would be verified or checked while still increasing speed and automation of trade?</li> <li>The need to determine what method will actually work, is verifiable at low cost, and will not result in perverse incentives.</li> <li>The potential to introduce concepts from the Commonwealth <i>Corporations Act 2001</i> such as 'related parties' (i.e. directors, spouses, controlling entities of a company) to better distinguish between commercial trades and transfers between accounts.</li> <li>The transition to on-line forms requires planning to ensure both customers and licensing authorities are able to use the functionality.</li> </ul> </li> </ul>
2(d)	Increase terminology and data harmonisation across the Basin States' registers	<ul style="list-style-type: none"> <li>NSW supports systems and registers being able to 'work with each other' but considers that there is a need to examine the materiality of the issue to market confidence and integrity or confirm that a harmonisation solution is feasible or cost beneficial.</li> <li>It is unclear that harmonisation would bring benefits to current users who generally understand the products and terminology relevant for them.</li> <li>Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>The costs (particularly given past inter-jurisdictional experience) and benefits of this.</li> <li>The practicalities and feasibility.</li> <li>Addressing if this is a back-end issue or customer-facing issue.</li> <li>Identifying if this is a material issue to market confidence and integrity.</li> </ul> </li> </ul>

Option	Preliminary comments
<b>3. Practical changes need to be underpinned by clear and comprehensive mandates to provide efficient trade services and high-quality information to market participants</b>	
3(a)	Mandate to keep register to record all entitlement trades and all allocation trades
	<ul style="list-style-type: none"> <li>NSW supports robust register arrangements and the collection of complete transaction data and providing appropriate mandates to deliver this.</li> <li>NSW has existing legislation in place in relation to our Water Register and we are unclear as to what mandate or register function is missing for NSW. We will soon commence further consultation on water market transparency in NSW.</li> <li>Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>The legislative mandates that already exist.</li> <li>What is missing from current arrangements?</li> <li>Whether there are there particular states or registers of concern?</li> </ul> </li> </ul>
3(b)	Mandate to provide information services based on registry data
	<ul style="list-style-type: none"> <li>NSW makes available all data from water registers (subject to privacy considerations) and has developed <a href="#">Trade Dashboards</a> and the <a href="#">WaterInsights Portal</a> to present this information in an accessible form to market participants.</li> <li>NSW supports all states making their trade data equally accessible.</li> <li>In terms of NSW, we need further detail on the specifics of this recommendation to determine the merits of changing our existing arrangements.</li> <li>Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>What further publication requirements would be specified?</li> <li>What is missing and is this impacting the states' capacity to act as approval authorities or manage registers?</li> <li>Whether this is problematic for approval authorities?</li> <li>What issues may arise if states step outside their mandated roles by trying to respond to stakeholders' needs for improved data and greater transparency?</li> <li>Whether user needs been analysed?</li> </ul> </li> </ul>
3(c)	Establish comparable Irrigation Infrastructure Operator (IIO) registers
	<ul style="list-style-type: none"> <li>NSW would likely support developing solutions to improve transparency of Irrigation Infrastructure Operator (IIO) water markets, particularly given the significant proportion of trade that is undertaken within IIOs and strong support from market participants to address transparency of IIO markets.</li> <li>Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>Whether the mandate to develop registers would be provided at Commonwealth level.</li> <li>How (or would) trades be reported any differently - given external trades are all to or from the IIOs licence(s).</li> </ul> </li> </ul>

3(d)	Update Water Regulations for trades of irrigation rights	<ul style="list-style-type: none"> <li>• NSW would likely support developing solutions to improve transparency of IIO water markets as better IIO trade data would increase the breadth and depth of available water market data.</li> <li>• Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>- What problem(s) is this change addressing?</li> <li>- What updates are actually proposed?</li> </ul> </li> </ul>
3(e)	Ability to register contracts with water registers	<ul style="list-style-type: none"> <li>• NSW has already addressed this issue through amendment of our trade forms, which will identify forwards and futures. NSW supports similar consideration by other Basin States in order to improve the accuracy of price reporting across the Basin.</li> <li>• The ACCC should compare the benefits and impacts of this option against other options that may exist to address the specific problems that the ACCC has raised.</li> </ul>
3(f)	Standardised single party identifiers across the Basin	<ul style="list-style-type: none"> <li>• NSW supports improved transparency of the behaviour of market participants and believes this option merits further consideration.</li> <li>• Any solution that relates to 'identification' would need to consider privacy legislation.</li> <li>• Consideration would need to be given to whether this information is shared publicly or retained within licensing authorities and regulators.</li> <li>• Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>- Whether the information would be made publicly available (including to competitors), or would it only be available to a regulator?</li> <li>- How 'related', associated, and affiliated parties would be managed.</li> <li>- What extent would current analysis of trade activity on / off specific Water Access Licences (WALs) satisfy the objective?</li> </ul> </li> </ul>
3(g)	Standards and agreed processes for trade processing across Basin (including IIOs)	<ul style="list-style-type: none"> <li>• NSW supports improved customer experience, noting that this does not require having the same processes across states. More detail would be required to fully assess the merits of specific proposals.</li> <li>• Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>- The costs (particularly given past inter-jurisdictional experience) and benefits of this.</li> <li>- The differences that exist in the trade information provided publicly by each state.</li> <li>- The extent to which the various jurisdictional trade processes are the product of legislation (and therefore harder to amend) as opposed to administrative process (in which case, some standardisation may be more easily achieved).</li> </ul> </li> </ul>
3(h)	Harmonised trade application fees (noting principles for cost recovery)	<ul style="list-style-type: none"> <li>• NSW supports cost recovery reflecting the cost of trade processes, rather than seeking consistent transaction costs across states.</li> <li>• Consideration needs to be given to how this recommendation could be met in practice. Processing costs are likely to differ, so any standardisation of fees is likely to be contrary to the cost reflective pricing principles of the National Water Initiative (NWI).</li> </ul>
3(i)	Require prices to be reported for irrigation rights and water delivery rights	<ul style="list-style-type: none"> <li>• NSW would likely support improving the transparency of IIO water markets and consistent price disclosure requirements across all tradeable products.</li> </ul>

Option	Preliminary comments
<b>4. Digital technologies offer the opportunity to streamline trade services, at the same time as improving information quality and availability</b>	
4(a)	Comprehensive and open digital protocol to enhance interoperability
	<ul style="list-style-type: none"> <li>• NSW supports greater interoperability. However, given the likely cost-benefit outcomes, this option may only warrant further consideration as a longer-term action after more immediate and material issues are prioritised.</li> <li>• Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>- Whether open digital protocol is the best solution.</li> <li>- The extent to which there is shared content or infrastructure – who owns it?</li> <li>- Whether this is just a consolidation in real time of all the state registers to enable search and data analysis.</li> <li>- What is the role of the BoM?</li> <li>- What is the status of the number of funded projects that are aimed at delivering this (or a similar) outcome?</li> <li>- The issue of broker and exchange access, are there lessons from the Victorian broker portal experience?</li> </ul> </li> </ul>

4(b)	Single information portal for publishing water availability and trade information	<ul style="list-style-type: none"> <li>• NSW strongly supporting improved transparency of water information and we believe a single information portal in response to a user-needs analysis has merit for further consideration, noting that the Commonwealth is already working with Basin states to progress this option.</li> <li>• NSW has already implemented the <a href="#">WaterInsights Portal</a>, which brings together all water related information in NSW into a user-friendly interface.</li> <li>• Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>- Who would develop and maintain the proposed portal?</li> <li>- What is the role of the BoM?</li> <li>- What is the status of the number of projects that are already funded and are aimed at delivering this (or a similar) outcome?</li> <li>- Whether improvements could be made to existing sources of information, where targeted issues are identified.</li> </ul> </li> </ul>
4(c)	A spot market and real-time automated matching	<ul style="list-style-type: none"> <li>• While this option should achieve the objectives of increasing transparency and data quality, other options in this category may have more merit. This option may warrant further consideration, but as a longer-term action after more immediate and material issues are prioritised.</li> <li>• Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>- Would this actually address identified problems and, if so, to what extent would the investment and reform would be justified – particularly compared with other less significant options?</li> <li>- What lessons could be drawn from the National Energy Market to develop a 'lite' version?</li> </ul> </li> </ul>
4(d)	A single exchange platform for posting and matching	<ul style="list-style-type: none"> <li>• NSW acknowledges the potential benefits in addressing some market issues, alongside the potential impacts on existing intermediaries. This option may warrant further consideration, but as a longer-term action after more immediate and material issues are prioritised.</li> <li>• Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>- Whether off-exchange trade be allowed.</li> <li>- How transfers between accounts owned by the same entity would be managed.</li> <li>- How price discovery and reporting would work for those trades?</li> <li>- Whether the exchange would be publicly or privately owned and managed.</li> </ul> </li> </ul>
4(e)	An Australian Securities Exchange (ASX) like approach of a single clearinghouse	<ul style="list-style-type: none"> <li>• NSW notes the potential benefits of an Australian Security Exchange (ASX) like approach, noting it may be an over investment in the context of this water market. This option may warrant further consideration, but as a longer-term action after more immediate and material issues are prioritised.</li> <li>• Consideration needs to be given by the ACCC to whether there is any merit in considering this further in the absence of exchanges being agreed as the way forward – given the reliance on exchanges for this option.</li> </ul>
4(f)	Distributed Ledger Technology which administers trade	<ul style="list-style-type: none"> <li>• NSW acknowledges the benefits of Distributed Ledger Technology for transactional confidence, but also notes the significant foundational work required before it could be applied to water markets and the potential complexities of this option. This option may warrant further consideration, but as a longer-term action after more immediate and material issues are prioritised.</li> <li>• Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>- Whether this is a priority in the context of known problems with market integrity and confidence.</li> <li>- How the existing work of several separate public and private sector initiatives to explore this option can be best utilised to inform Government decision-making on this option.</li> <li>- What further foundational work is required (e.g. codifying rules and improving use data) – and might this deliver sufficient benefits alone?</li> <li>- What other relationships / dependencies are there – e.g. the use of 'smart contracts'?</li> <li>- What are the user-needs and views on this transition?</li> </ul> </li> </ul>
4(g)	Single common register	<ul style="list-style-type: none"> <li>• NSW supported a single common register in the past, but development failed due to the significant complexities involved. NSW supports the principle of interoperability but is concerned that repeating a past approach will result in the same unsuccessful outcome.</li> <li>• Alternative options that better address trade processing and transparency issues, while also preserving state-based registers and processes, may be more appropriate.</li> <li>• Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>- The lessons learnt from previously unsuccessful attempts.</li> <li>- The costs (particularly given past inter-jurisdictional experience) and benefits of this option.</li> <li>- The practicalities and feasibility of this option.</li> </ul> </li> </ul>

Option	Preliminary comments
<b>5. The design of the southern connected Basin market architecture has not kept pace with increasing trade activity, and the ACCC is seeking to identify options for reform</b>	
5(a) Improvements to policy transparency and consultation processes	<ul style="list-style-type: none"> <li>• NSW support improving transparency around policy and decision making in order to improve the knowledge of market participants, and confidence in water markets.</li> <li>• NSW has already worked towards improving policy transparency with the development of the <a href="#">WaterInsights Portal</a>.</li> </ul>
5(b) Alternative approaches for allocation and carryover policies	<ul style="list-style-type: none"> <li>• Subject to further stakeholder consultation, NSW does not believe substantial changes to allocation and carryover policies are warranted. Current arrangements are the product of long-term stakeholder engagement and development. NSW has investigated these issues and found majority support for current arrangements.</li> <li>• NSW does however support improved communication of the current arrangements, as per Option 5(a), to ensure the policies are clear, accessible and transparent.</li> <li>• Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>- The further or continued work required to understand the drivers of changes in reliability and how issues like state sharing may affect end user allocations.</li> <li>- The additional work required to address other material concerns about any perceptions of erosion of property rights.</li> <li>- The additional work required to address information and knowledge issues regarding carryover.</li> <li>- The opportunity to establish evidence base to test negative perceptions.</li> </ul> </li> </ul>
5(c) The creation of formal markets for storage and delivery capacity	<ul style="list-style-type: none"> <li>• NSW would likely support further consideration of markets for delivery capacity in specific constrained systems. However, any options would require careful consideration of the impacts on property rights of existing market participants</li> <li>• NSW has investigated delivery rights over recent years. To date, major changes have not been supported given the significant complexities involved in NSW's diverse systems, the likely cost benefit analysis outcomes and pushback from some water users.</li> <li>• NSW is already examining the issue of sharing capacity in the Murray through the inter-jurisdictional Capacity Policy Working Group.</li> <li>• NSW considers that our existing carryover policies are efficient and that moving to formal markets for storage rights is unlikely to deliver significant benefit.</li> <li>• Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>- Other approaches to sharing capacity through key constraints that could be undertaken (and may already be occurring).</li> <li>- The costs and benefits of options required to implement these types of changes.</li> </ul> </li> </ul>
5(d) Application of transmission loss factors to water deliveries in the southern Murray-Darling Basin	<ul style="list-style-type: none"> <li>• NSW considers that transmission loss factors in the southern Murray-Darling Basin would add major complexity to trade and accounting arrangements and could impact the value of property rights of existing market participants.</li> <li>• NSW does not believe that the materiality of the issue at the retail level warrants the cost of pursuing this option.</li> <li>• Consideration needs to be given by the ACCC to substantiating the materiality of losses at the 'retail' (individual trade) level, and given this, the costs and benefits of pursuing this option.</li> </ul>
5(e) Removal of exemption for grandfathered tags / tag trade	<ul style="list-style-type: none"> <li>• NSW supports amending the Basin Plan to ensure all water users are subject to the same trade rules, in particular in relation to tagging.</li> <li>• NSW notes that moving away from existing tagged entitlement trading arrangements has the potential to impact on property rights of existing market participants and is not convinced of the merit of this approach.</li> <li>• Consideration needs to be given by the ACCC to providing an alternative option for entitlement trade if tagged trade is removed altogether.</li> </ul>
5(f) Alternative mechanisms to manage inter-valley trades (IVT)	<ul style="list-style-type: none"> <li>• NSW supports improving transparency and understanding around inter-valley trades (IVTs) and the Barmah Choke more generally, as well as implementing process improvements to improve equity of access to available trade opportunities, but the introduction of alternative mechanisms to IVTs is not supported at this time.</li> <li>• Careful consideration would need to be given to any proposed alternative to using IVTs to manage interstate trade given the potential impacts on water users.</li> </ul>
5(g) Changing all allocation trade to tagged allocation trade	<ul style="list-style-type: none"> <li>• NSW is unclear of the rationale or detail of this approach and would require further information in order to consider this option. However, in general we do not support adding further complexity to the allocation trade and accounting systems unless there is a clear and demonstrable benefit.</li> <li>• Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>- How the ACCC proposes this might work in NSW or on an interstate basis?</li> <li>- Assessing the costs and benefits of this on an interstate basis.</li> </ul> </li> </ul>
5(h) Improving consistency across Basin States' accounting and metering requirements	<ul style="list-style-type: none"> <li>• NSW has undertaken substantial metering reforms over the past two years and are in the process of an ongoing implementation program. We strongly support consistency across jurisdictions, consistent with the strong NSW reforms underway.</li> <li>• NSW supports effective water accounting, but we are unclear as to what problems needs to be addressed.</li> <li>• NSW would be interested to know if the ACCC has found specific NSW accounting or metering issues.</li> </ul>

Option	Preliminary comments
<b>6. There is a need to reconsider governance frameworks to enable independent and clear decisions on the development of market settings</b>	
6(a) Establish clear, independent decision-making structures	<ul style="list-style-type: none"> <li>• NSW supports improved decision-making structures in principle. All five potential governance options require further consideration, noting that it is difficult to provide a position given the lack of detail on the proposed options.</li> <li>• Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>- What structures do the ACCC have in mind?</li> <li>- Will the ACCC attempt to define a new structure, or principles?</li> <li>- What overseeing body does the ACCC propose to drive the reforms?</li> <li>- How does the ACCC think states can work better together to make better/faster decisions?</li> </ul> </li> </ul>
6(b) Separate market governance roles from broader water management governance	<ul style="list-style-type: none"> <li>• NSW does not endorse full separation of market governance from broader water management governance. Consideration would need to be given to the scope of the regulator, given the strong interlinkages between water management and water markets, and the need for holistic management where efficient operation and management of our water resources are prioritised.</li> <li>• Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>- What specific water market outcomes are the ACCC addressing here?</li> <li>- The appropriate separation of roles and functions.</li> </ul> </li> </ul>
6(c) Consolidate or harmonise fragmented roles	<ul style="list-style-type: none"> <li>• NSW supports improved co-ordination and alignment of government services in principle, but the ACCC option here is non-specific and repeats problems raised under other options or actions.</li> <li>• Any options need to recognise state-based responsibilities.</li> <li>• Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>- What solutions does the ACCC propose?</li> <li>- Does the ACCC have any specific roles it can point to and how it thinks they should be consolidated or harmonised?</li> </ul> </li> </ul>
6(d) Reduce regulatory gaps by creating and assigning new roles or functions	<ul style="list-style-type: none"> <li>• NSW supports the reduction of regulatory gaps in principle, noting it is unclear how this option differs to others proposed by the ACCC (e.g. Option 1(c) and 5(a)).</li> <li>• Specifically, we support further review of the issues of visibility and transparency within IIOs in order to improve confidence in these significant trade markets.</li> <li>• Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>- Specific options to address the underlying problems – in this case brokers, market manipulation, and IIO roles and practices.</li> <li>- Further consider options for regulation in the southern Murray-Darling Basin (e.g. how to implement option 1(c)).</li> <li>- How specific issues with IIOs would be addressed.</li> </ul> </li> </ul>
6(e) Address conflicting roles	<ul style="list-style-type: none"> <li>• NSW supports addressing conflicting roles in order to provide more co-ordinated government involvement in the water market.</li> <li>• Specifically, we support further consideration of how to address conflicting roles within IIOs.</li> <li>• Consideration needs to be given by the ACCC to: <ul style="list-style-type: none"> <li>- What approach would be used to address the conflicting IIO roles?</li> <li>- Whether this would be voluntary or regulatory?</li> <li>- Whether this would be State or Commonwealth regulation?</li> </ul> </li> </ul>

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