Overview of the Water Market Reform in the Water Amendment (Restoring Our Rivers) Act 2023
Overview

In October 2022, the Australian Government announced its commitment to implementing the Water Market Reform Roadmap (Roadmap) by independent Principal Adviser, Mr Daryl Quinlivan AO to restore transparency, integrity and confidence in Murray–Darling Basin water markets. This formed the Australian Government’s response to the 2021 Australian Competition and Consumer Commission (ACCC) *Murray–Darling Basin water markets inquiry – final report*. Basin governments also gave their in-principle endorsement to the implementation of these reforms.

The Roadmap recommendations included support for the development of legislation to regulate the conduct of water market participants, set new data reporting obligations to support the enforcement of the new conduct regulation, and enable water users to better access market information.

The *Water Amendment (Restoring Our Rivers) Act 2023* includes amendments that relate to the Basin Plan implementation and water markets. This Act received Royal Assent on 7 December 2023. This guide outlines the water market reform amendments.
The key areas of reform in this legislation are:

**Water Markets Intermediaries Code and statutory trust accounting framework**

A new mandatory Water Markets Intermediaries Code (the Code), focusing on the conduct of intermediaries in relation to their clients, will be developed in regulations and regulated by the ACCC. A statutory trust accounting framework will establish new requirements for water market intermediaries who handle client funds.

**Water markets decisions**

Certain decisions by Commonwealth and Basin State governments, their agencies (including public irrigation infrastructure operators) and private irrigation infrastructure operators will be required to be announced in a specified manner.

**New and strengthened insider trading prohibitions**

Existing insider trading prohibitions will be strengthened, and regulated by the ACCC.

**New market manipulation prohibitions**

There will be new prohibitions on all water market participants against market manipulation, to be regulated by the ACCC.

**Data and systems reforms**

There will be new data reporting obligations, including a framework for developing Water Market Data Standards, with the Inspector General of Water Compliance (IGWC) as the enforcement agency and the Bureau of Meteorology (Bureau) responsible for issuing the Water Markets Data Standards and otherwise collecting and holding water markets information.
Table 1: The table below provides an overview of who will be impacted by the reforms.

Who will the changes apply to?

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>IIOs that provide intermediary services</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>IIOs</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
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</tr>
<tr>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Basin State agencies</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

Data reforms - These will be specified in regulations and the Water Market Data Standards, which will be consulted on separately.

Grandfathered tags - This will only impact owners of grandfathered tags.

Table 2: The table below provides an overview of when the changes will come into effect for the various aspects of the reforms.

When will the changes come into effect?

<table>
<thead>
<tr>
<th>Water Market Participant</th>
<th>Intermediaries Code</th>
<th>Water Markets Decisions</th>
<th>Insider Trading - Water Announcements</th>
<th>Insider Trading - General</th>
<th>Market Manipulation</th>
<th>Data Reforms - Trade application information</th>
<th>Data Reforms - Broader water markets information</th>
<th>Grandfathered Tags</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date and details</td>
<td>By 1 July 2025</td>
<td>Requires the development of new regulations, expected to be finalised by 1 July 2026</td>
<td>Requires the development of new regulations, expected to be finalised by 1 July 2026</td>
<td>By 1 July 2026</td>
<td>1 July 2026</td>
<td>1 July 2024</td>
<td>Requires the development of new regulations and Water Markets Data Standards, expected to be finalised by 1 July 2026</td>
<td>1 July 2024</td>
</tr>
</tbody>
</table>

* Further commencement details will be provided in 2024.
Regulatory Impact Statement

Due to the extensive analysis and consultation undertaken as part of the Roadmap process, the Roadmap was certified as meeting the requirements of a regulatory impact statement. An independent cost-benefit analysis of the Roadmap recommendations found that the expected benefits significantly outweighed the costs with a ratio of 1.75 to 1.

Further consultation with affected stakeholders will be undertaken during the development of standards and regulations to implement the new framework, with a focus on impact analysis and mitigation options.

Water Markets Intermediaries Code

A new mandatory Water Markets Intermediaries Code (Code) will be developed to prescribe requirements for eligible water market intermediaries’ conduct in relation to their clients. A statutory trust accounting framework will establish new requirements for water market intermediaries who handle client funds.

Further consultation will be undertaken throughout the development of the regulations.

The Code will apply to eligible water market intermediaries providing services related to the pre-trade, trade or transfer of an eligible tradeable water right. They may include:

- brokers;
- exchanges;
- irrigation infrastructure operators (IIOs) that provide intermediary services including operating an exchange; and
- any other intermediary service providers.

Who is the regulator?

The ACCC will be the regulator for the Code and will monitor and enforce compliance with the Code and the statutory trust accounting obligations.

Non-compliance and penalties

The legislation provides that the Code may impose penalties for non-compliance.

| Non-compliance with the Code or statutory trust accounting obligations will incur a penalty of no greater than 600 penalty units | Part 5 of the Water Act 2007 – Water Market Intermediaries Code and trust accounting framework |
Water markets decisions

The legislation will require that all water markets decisions by Commonwealth and Basin State governments and agencies, and private and public IIOs be announced in a certain manner. The regulations will prescribe what constitutes ‘water markets decisions’.

There are 2 ways of announcing a water markets decision:

- Provide the water markets decision to the Bureau to announce the decision publicly.
- The legislation allows for alternative methods of making announcements which will be set out in regulations, which can be used instead of announcing through the Bureau. These announcements must also be reported to the Bureau.

In addition, there will be new record-keeping requirements for water markets decisions.

Further consultation will be undertaken with stakeholders and Basin States throughout the development of the regulations to ensure these are fit-for-purpose.

Who is the regulator?

The ACCC will be responsible for ensuring that these announcement obligations are met.

Do the current requirements in the Basin Plan regarding water announcements still apply?

Yes, under the Basin Plan, a person who makes a water announcement must ensure that it is made in a manner that makes it generally available. The IGWC remains the enforcement agency for this obligation until the reforms commence.

Non-compliance and penalties

The legislative amendments include penalties for not meeting water markets decisions obligations.

Non-compliance will incur a penalty of 120 penalty units per contravention

Part 5A of the Water Act 2007 – Water markets decisions and insider trading
New and strengthened insider trading prohibitions

Insider trading relates to trading on, or sharing market-sensitive information before interested members of the public could reasonably become aware of that information.

Insider trading prohibitions related to water announcement information

The legislation establishes a prohibition on any person with knowledge of water announcement information from engaging in certain trading activities or communicating the information to someone who is likely to trade on that information.

Water announcement information includes a water markets decision or sensitive information relating to that decision, where the water markets decision has not yet been announced, or has been announced but has not yet been generally available for a reasonable period of time.

Exceptions are provided where Commonwealth and Basin State governments and agencies, and IIOs have information barriers in place to ensure staff who are aware of water announcement information do not communicate the information to other staff making trading decisions.

The legislation also provides an exception so that IIOs who are aware of water announcement information are able to approve or facilitate a specific trade or transfer on behalf of a member or customer.

New general insider trading prohibition

The new prohibition will apply to anyone who is aware of water market-sensitive information that is not captured by the water markets decisions insider trading framework. A person who is aware of this type of information will be prohibited from engaging in certain trading activities or communicating the information to someone who is likely to trade on that information, until such time as the information in question is made publicly available.

Exceptions apply in situations where:
- The information relates to a person’s own business or trading activity.
- An eligible water market intermediary is trading on behalf of a client.
- A client is communicating information to their water market intermediary about their trading or business activity.
- A Commonwealth or Basin State agency or IIO has information barriers in place, or is taking an action that is consistent with, and conducted pursuant to, a trading strategy that has already been announced.
- An IIO is approving or facilitating a specific trade or transfer on behalf of a member or customer.
- A person is required by a law of the Commonwealth, a state or a territory to take the action.

Who is the regulator?

The ACCC will monitor and enforce compliance with these prohibitions.

Do the current requirements in the Basin Plan regarding insider trading still apply?

Yes, the Basin Plan has existing insider trading rules, which will continue to apply until the new prohibitions commence. The IGWC remains the enforcement agency for the insider trading rules until the new prohibitions commence.

Non-compliance and penalties

Failure to comply with the insider trading prohibitions may attract civil penalties for an individual and significantly greater penalties for a body corporate. These penalties, and the penalties for the market manipulation prohibitions, reflect both the serious nature of the conduct and penalties under comparable regulatory schemes.
New market manipulation prohibitions

Market manipulation involves deliberately undertaking actions that create a false picture of price or trading activity in a market. The Corporations Act 2001 bans market manipulation in financial markets, however this does not apply to water markets.

The legislation includes prohibitions on all water market participants against market manipulation, including:

- Creating an artificial price for eligible tradeable water rights or maintaining the price at an artificial level.
- Creating a false or misleading appearance of active trading.
- Making false offers or undertaking false trades or transfers that result in maintaining, increasing or reducing market price or causing the market price to fluctuate.

Spreading information about the above activities will also be prohibited.

Who is the regulator?

The ACCC will have powers to regulate compliance with the market manipulation prohibitions.

Non-compliance and penalties

Failure to meet any of these requirements may attract civil penalties for an individual and significantly greater penalties for a body corporate.

Non-compliance will incur a penalty of 2000 penalty units for an individual and a significantly greater penalty for body corporates

Part 5A of the Water Act 2007 – Water markets decisions and insider trading
Data and systems reforms

The ACCC's 2021 inquiry final report found that there is insufficient high-quality water markets data and information to provide the transparency needed to support equitable water markets participation and regulatory functions. The new data reporting requirements relate to water markets information, including but not limited to information relating to:

- The pre-trade, trade or transfer of an eligible tradeable water right;
- The allowance, approval or registration of a trade or transfer of an eligible tradeable water right; and
- Accounts relating to eligible tradeable water rights.

These reforms also include requirements for buyers, sellers and intermediaries to accurately report trade and transfer data in application forms, and to keep records about this information.

Additional functions and powers for the Bureau of Meteorology

The Bureau of Meteorology will have functions and powers in addition to its existing water information functions to fulfil its role as the custodian of water markets information. These changes will allow the Bureau to collect and publish water markets information and to share information with the ACCC and the IGWC. The legislation also gives the Director of Meteorology powers to issue Water Markets Data Standards by legislative instrument (these will be made at a later date) and requires the Director of Meteorology to consult with Basin States in preparing these Standards. The Bureau will consult further throughout the development of the Standards.

Who is the enforcement agency?

The IGWC will have powers to monitor and enforce compliance with the obligations. The Bureau of Meteorology will have powers to collect and publish water markets information in the capacity of a data custodian.

Non-compliance and penalties

The amendments include penalties for not meeting the obligations detailed in the legislation.

| Non-compliance will incur penalties between 60 – 120 penalty units | Part 7A of the Water Act 2007 – Water markets information |

Removal of the grandfathered tag exception

Rule 12.23(2) of the Basin Plan water trading rules currently exempts water access entitlements that were established before 22 October 2010 from trade restrictions that apply to other water access entitlements – creating 'grandfathered' tags. The ACCC inquiry found that the grandfathered tags exception in the Basin Plan water trading rules is inequitable, and recommended it be removed. The Roadmap supported this recommendation. The amendments will repeal rule 12.23(2) of the Basin Plan to remove the exception for grandfathered tags.