



Australian Government

Department of Climate Change, Energy,  
the Environment and Water

# Water Market Reform 2023 Exposure Draft

## What We Heard Report

September 2023



# Introduction

In July 2023, the Department of Climate Change, Energy, the Environment and Water (the department) released an Exposure Draft of proposed Water Market Reforms (the Exposure Draft) for limited consultation. The Exposure Draft was consistent with the recommendations for legislative change in the [Water Market Reform: Roadmap Report](#).

The department held a series of stakeholder forums targeted at those most directly affected by the proposed legislative water market reforms, including Irrigation Infrastructure Operators (IIOs), water market intermediaries and Basin State agencies.

Water market stakeholders had the opportunity to review the Exposure Draft and provide feedback via the department's Have Your Say website.

We also consulted with the Committee on Aboriginal and Torres Strait Islander Water Interests (CAWI) and held separate meetings with Basin States.

The department ran two webinars, providing stakeholders with an overview of the Exposure Draft and a Q&A for participants. Representatives from the department, the Bureau of Meteorology, the Australian Competition and Consumer Commission (ACCC) and Inspector General of Water Compliance (IGWC) were available to answer questions.

This report summarises feedback provided to the department on the Exposure Draft and outlines the changes to the Bill. The feedback will be considered in the development of regulations following passage of the Bill.

We thank everyone who made a submission on the Exposure Draft. The feedback gathered through the consultation process has provided the department with valuable insights and informed the final Bill that was introduced into Parliament.

# Summary of feedback and actions

The department received feedback from a range of stakeholders, including Commonwealth agencies, Basin States, IIOs and water brokers. The department considered all feedback and a number of changes were made to the Bill.

Overall, there is widespread support for the reforms with stakeholders acknowledging they are necessary to increase integrity safeguards for Basin water markets.

One of the key issues raised was the need for the regulations in the Bill (if passed) to be underpinned by consultation. The department will be undertaking consultation in the development of the regulations to ensure they are fit for purpose and to minimise burden on stakeholders.

Stakeholders also requested clarity on the scope and application of the reforms, highlighting the need for further education by government.

We have summarised the key themes identified during the consultation and actions taken by the department to address feedback.

## Water Markets Intermediaries Code

Consultation was sought on the framework for the Intermediaries Code, set out in the Exposure Draft. As the Code itself would be a separate regulatory instrument, further consultation will be held during its development. As the trust account framework needs to have a statutory basis, it was included in the Exposure Draft and feedback was sought on this specific issue.

During the consultation stakeholders asked for:

- Clarity on some definitions.
- Detail regarding the statutory trust account framework including duplication of existing state and territory frameworks.
- Detail on the Code such as who will be responsible for its development and review.

The department has taken the following actions to address stakeholder feedback:

- The definition of 'eligible water markets intermediary' was amended to provide greater clarity and avoid incorrect application of the Code, particularly in relation to some of the functions performed by State agencies.
- The definition of 'eligible tradeable water right' was amended to future-proof this definition such that regulations may prescribe or preclude rights as required, for inclusion or exclusion. This will avoid inadvertent capture of non-targeted activity and allow flexibility to prescribe inclusion of any future water rights.
- Provisions were included to ensure that the regulations for statutory trust account requirements will be able to provide exemptions where existing State frameworks perform the same function to the same standard.

The department will consult with stakeholders during the development of the Code and the statutory trust account framework. This will be undertaken in close collaboration with the ACCC.

## Insider trading and market manipulation

Comments on these provisions were largely focussed on the need for greater clarity, preferences in relation to water announcements, the reasonable period of time requirement and perceived inequity of exceptions to the insider trading prohibitions.

To address stakeholder feedback the department has committed to:

- Developing regulations in accordance with best practice for water announcements, including consulting with the States, IIOs and Commonwealth agencies.
- Seek to ensure compatibility with existing State processes in relation to water announcements to maximise efficiency and minimise disruption.
- Develop regulations which will prescribe an exhaustive list of what constitutes a 'water markets decision'. Consultation will take place in the development of this list so that any unintended consequences can be avoided.
- Undertake education to provide clarity for stakeholders in relation to insider trading and market manipulation prohibitions. In particular exceptions to insider trading prohibitions, as they are a complex area for stakeholders. These are modelled on provisions in the Corporations Act.

The exceptions within the Bill for insider trading were carefully considered before and after the release of the Exposure Draft. This was to ensure the appropriate framework was established to suit market structures and operations.

The 'reasonable period of time' in the insider trading prohibitions is modelled on similar legislation in the Corporations Act and was included following consultation with the ACCC. We note this is an area of concern to many stakeholders. The [Explanatory Memorandum](#) provides more information on this and will be addressed in any educational material.

## Data and system reforms

Feedback received on data and systems reforms related to the scope of data collection including pre-trade data, whether the data and system reforms will be fit-for purpose, the potential for duplication of information collection, protection of the information collected, and responsibility for the accuracy of information collected.

The department is taking the following actions to address stakeholder feedback:

- The pre-trade information, that will be required to be reported to the Bureau, will be specified in regulations and the Water Market Data Standards.
- Collection of pre-trade data beyond water exchanges will only take place following consultation. This has been included to allow for collection of this data from other intermediaries in the future, providing greater transparency in the market.

- The Bill was amended to place an obligation on intermediaries to ensure complete and accurate information is provided in instances where they are making the application to a water markets authority for a trade or transfer.
- The Bureau will implement appropriate cybersecurity measures as part of the development of the Water Data Hub.
- The Bill makes explicit that giving information to the Bureau does not affect the ownership of that information.
- The Bill prohibits the Bureau from publishing personal information. Requirements set out in Commonwealth legislation along with state privacy laws (if relevant) will be considered in the development of regulations and other legislative instruments.
- Education and educational materials will be developed to clarify requirements around the provision of data and how these interact with contractual obligations.
- The department and the Bureau will also consult broadly with market participants in the development of regulations and the Water Market Data Standards.

## Justification for the reforms

Many submissions commented on the overall need for the reforms. There was widespread support for the reforms in general. Stakeholders acknowledged that the reforms were necessary and would increase integrity safeguards for, and confidence in, Basin water markets.

## Scope

A significant part of the feedback received requested clarity on the scope and application of the reforms. The department is committed to engaging in meaningful consultation in the development of the associated regulations, Code and the Water Market Data Standards (by the Bureau) and producing education products on all aspects of the Bill.

## Timelines for commencement

Stakeholders emphasised the importance of:

- The need for commencement timelines to consider existing state frameworks.
- Appropriate lead time being given to enable stakeholders to make systems changes.
- Clarity on commencement times for all aspects of the reforms.

To address these concerns, the implementation of the regulations and statutory instruments will be staggered over two to three years to allow time for businesses and agencies to adjust.

Further information about timelines for the various reforms will be communicated by the department following passage of the Bill.

## **Consultation and regulatory impacts**

Stakeholders raised concerns around regulatory and financial burden which will be incurred by those affected by the reforms. They requested further engagement opportunities during the development of the regulations, with adequate time allowed for input and feedback.

The department has committed to consulting throughout the regulatory development and implementation process, with Commonwealth regulators and enforcement agencies, data providers, water market intermediaries, IIOs and Basin State agencies. This includes assessing the impacts of the regulations and minimising costs, where possible.

The Bureau will also be consulting on the Water Market Data Standards and the Water Data Hub.

## **Penalty regime and powers**

With regard to penalties, stakeholders raised concerns around unintentional breaches due to the complexity of provisions, if penalties are proportionate to the size of a IIO and clarity around infringement and penalty levels.

To address these concerns the department has committed to delivering education products, in consultation with regulators and enforcement agencies, to ensure that stakeholders will understand what the provisions mean and their obligations. The enforcement agencies can exercise their discretion about what compliance action is taken.

## How we consulted

The department launched a Have Your Say web page for targeted stakeholders on 7 July 2023. The page included the Exposure Draft, a guide to the Bill, a link to the Bureau’s consultation report on the Water Market Data Standards and a registration page to webinars. In addition to the activities listed below, we consulted with appropriate Commonwealth agencies.

Table 1: Engagement activities

Activities	Description	Attendees
Basin States meeting	Basin States were presented with an overview of all aspects of the Exposure Draft, with opportunity for questions throughout. The meeting was attended by all Basin States.	<ul style="list-style-type: none"> <li>5 Basin States and territories</li> </ul>
Webinars	<p>Two webinars were held on 18 and 19 July providing an overview of the Exposure Draft.</p> <p>1) The webinar for intermediaries focussed on the Water Market Intermediaries Code, pre-trade data reporting obligations, new market manipulation prohibitions and new and strengthened insider trading prohibitions.</p> <p>2) The second webinar was targeted for private and public IIOs covering data reporting obligations, new market manipulation prohibitions and new and strengthened insider trading prohibitions.</p>	<ul style="list-style-type: none"> <li>33 attendees in the Intermediaries webinar</li> <li>41 attendees in the Private and public IIOs webinar</li> </ul>
Committee on Aboriginal and Torres Strait Island Water Interests (CAWI) information session	CAWI members were presented with an overview of all aspects of the Exposure Draft, with opportunity for questions throughout.	<ul style="list-style-type: none"> <li>6 members attended</li> </ul>
Written submissions	Targeted stakeholders provided written submissions via the department’s Have Your Say website.	<ul style="list-style-type: none"> <li>12 written submissions were received from a range of stakeholders</li> </ul>

## Next steps

Subject to the passage of the Bill, consultation on the development of the regulations will begin in early 2024.