



Reflections on the ACCC Final Report - Murray-Darling Basin Water Markets Inquiry

by Waterfind CEO and Founder
Tom Rooney

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WATER FIND PTY LTD

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It was a busy weekend for Waterfind CEO and Founder, Tom Rooney reading and understanding the ACCC final report on the Murray Darling Basin inquiry. Tom identified four key observations from his review which are:

1. the inquiry is not in itself 'reform' but a recommendation of reform.
2. the report recognises the value of Australian Water Markets to the water / irrigation sector as well as the broader Australian Economy.
3. the report does not recommend the removal of involvement from speculators / investors in the Australian Water Market and instead, supports their involvement and importance.
4. that the structure and design of recommendations regarding water market regulation creates a strong environment for potential inaction from Federal and State Governments to adopt the ACCC recommendations.

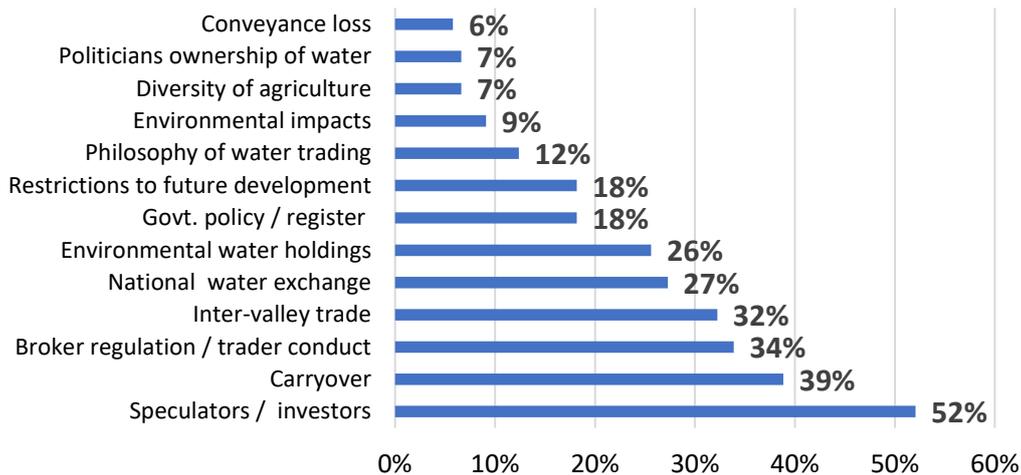
These key observations, together with his opinions and key facts, are outlined in the report below.

The Opinions

1. This is the most comprehensive review by an Australian Government on Water Market Reform since the National Water Initiative in 2004 where a suite of Water Market Governance initiatives was targeted and supported through state competition payments. The report is over 700 pages in length and is broken up into several sections with the real 'meat and potatoes' being in the first 45 pages as it outlines the key recommendations.
2. The report was conducted by the Australian Competition and Consumer Commission (ACCC) and highlights 29 recommendations to the Treasurer of the Australian Government that are considered by the ACCC as important to improve the operation of the Australian Water Market. At a high level, 27 of those recommendations are Governance or Government improvement related, and only 2 are water market service provider related (2 & 3).
3. A key difference between the MDB inquiry and the National Water Initiative (NWI) is that the NWI was an intergovernmental agreement on water reform rather than a report from a Federal Government Agency to State Governments on how we could improve our water market arrangements. The NWI also had every mainland state and territory (except WA) in Australia as signatories, and its implementation was funded by a series of Federal Government competition payments to States based upon their performance on an agreed schedule of outcomes in 8 key reforms areas.

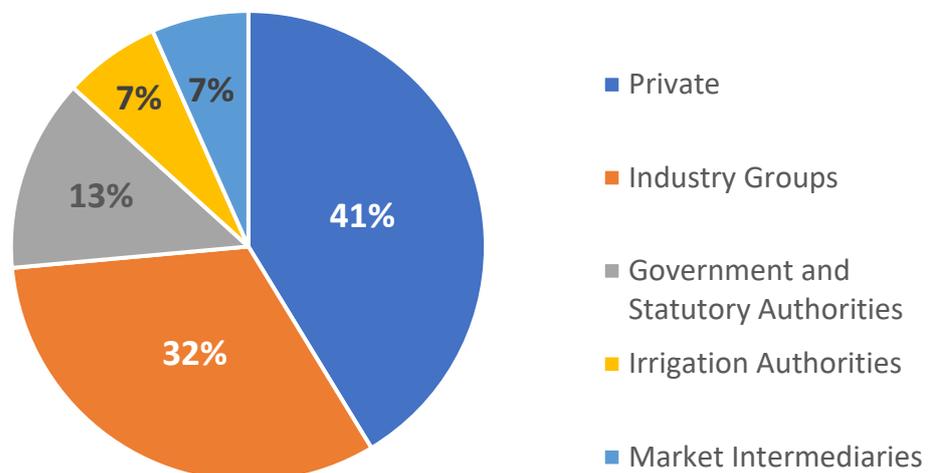
4. This bears the **first observation** in that **“the inquiry is not in itself ‘reform’ but a recommendation of reform”** and while it does set out a 3 staged reform agenda, it lacks any time commitment, and does address or recommend how the reform will be funded.
5. Waterfind has been a long-time supporter of Water Markets, the benefit that they provide the nation, and the need for Regulation of those markets to protect consumers, alleviate rouge behaviour, poor advise, high transaction costs and protect market confidence. The **second observation** of the report is **“the recognition of the importance that water markets now provide the water / irrigation sector as well as the broader Australian Economy.”** This was contrary to some of the concerns the ACCC heard during the report creation.
6. Waterfind conducted an analysis of 121 of the original submissions made to the ACCC during their community outreach process. Chart 1 is a ranking of the top 13 topics, raised by the Community. This may provide a good basis for the Australian community to judge the effectiveness of the ACCC work.

Chart 1.



7. The demographic / segmentation of respondents to the initial enquiry is set out in Chart 2.

Chart 2.



8. The top 3 issues / concerns raised by initial respondents to the inquiry were:
- Speculators / Investors
 - Carryover
 - Broker regulation / trader conduct

The top 3 topics have been used below to analyse the effectiveness / completeness of the ACCC report and to consider any further key personal observations. Following is an outline of that analysis which is preceded by Waterfind analysis of the initial community feedback on that topic.

Speculators / Investors

Initial Feedback

A total of 63 (52 percent) submissions mentioned the involvement of speculators and investors in the water market. Chart 3 presents this by submission type. It shows that private individuals and companies were those who referenced speculators and investors the most (43 percent), while market intermediaries referenced this topic the least (5 percent).

Chart 3: Speculators and investors – mentions by submission type

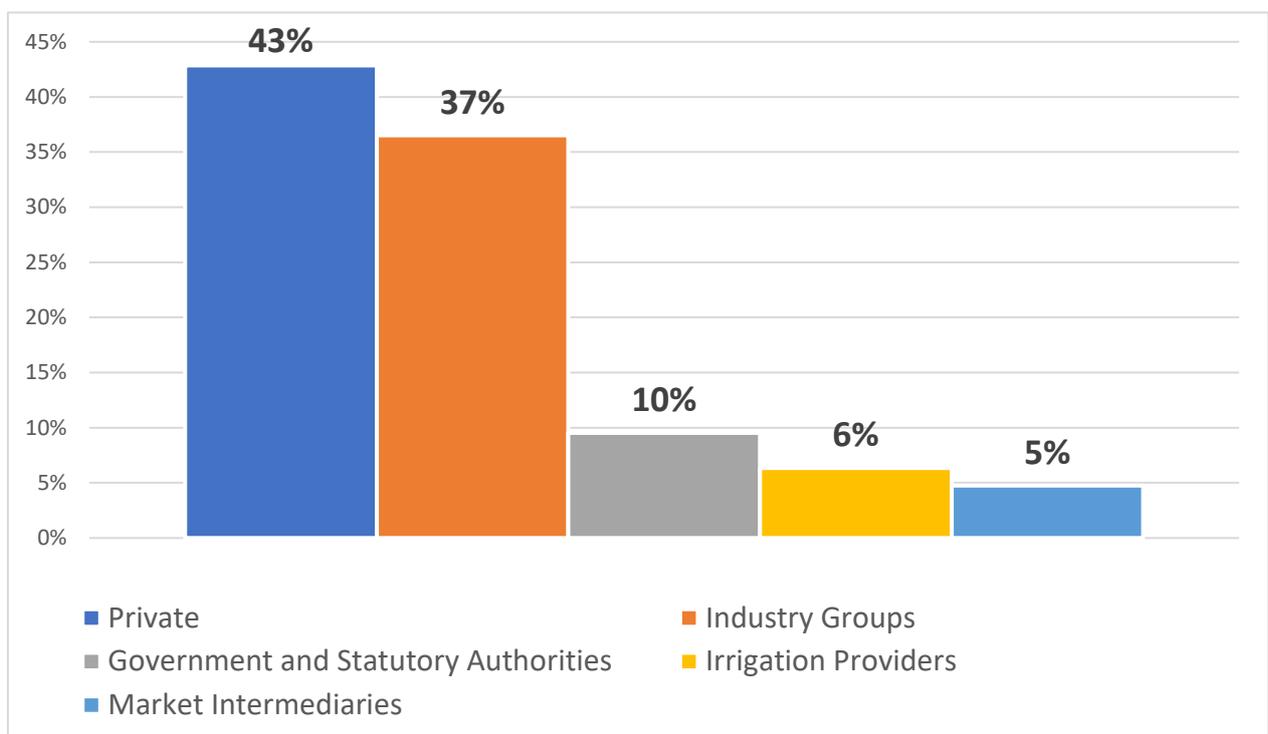
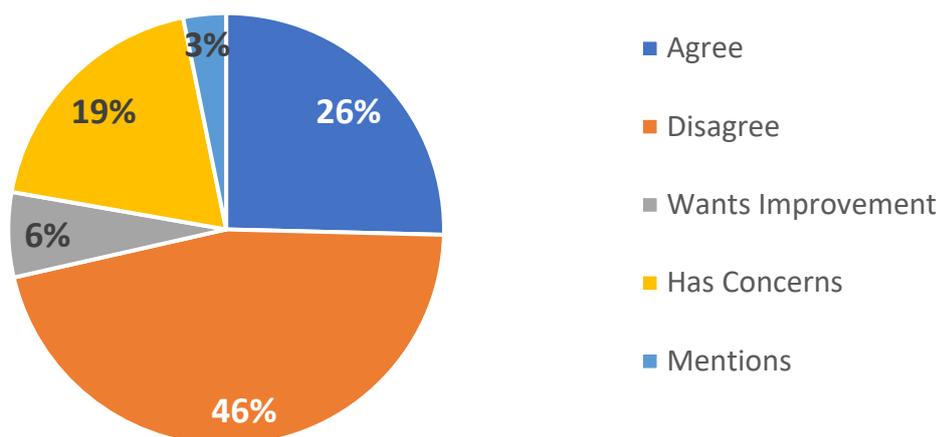


Chart 4 presents how respondents feel towards having speculators and investors in the market. It shows that 71 percent of submissions are not happy with the way that speculators and investors are currently acting in the market. (This is comprised of 46 percent disagreeing with speculators and investors plus 19 percent and 6 percent having concerns and wanting improvement respectively).

Chart 4: How respondents feel about speculators and investors in the market



Specific feedback provided from a number of submissions was that speculators and investors should be removed completely from the market, or for there to be improvements in the way they operate in the market.

These submissions argued that allowing speculators and investors to enter the water market has the potential to raise the market price of water, as they would be motivated to seek the highest sale price in order to maximise profits. In addition, it was argued by some that non-water users are intentionally holding onto water in times of need in order to decrease supply and raise the price of water.

Slightly over a quarter (26 percent), believe that speculators and investors play a beneficial role within the water market. These submissions believe that investors have the capability to provide needed capital into the agricultural sector and assist with the development and distribution of the range of water products. It was also raised that investors play a key role in the market by assisting to maintain stability within the market in otherwise volatile periods.

Final Report Analysis

The ACCC report did recognise that this group is now a major participant in the market but does not recommend removing their involvement. In fact, the report went further and condoned their behaviour and importance to the liquidity and general operation of the market. That said, recommendations 14, 13, 12, 10, 9, 4 and 3 would, if implemented effectively, address some of the concerns and or perceptions that were addressed in community submissions.

As this issue was the key political driver in getting the report commissioned in the first place and 71% of first respondents either disagreed with investor / speculator involvement, wanted improvement or had concern about this, I have chosen to be my **third observation**, in that; the ACCC report does **not remove involvement from speculators / investors in the Australian Water Market and instead condoned their involvement and importance.**

Carryover

Initial Feedback

There were 47 (39 percent) submissions that mentioned carryover water arrangements in the water market.

Carryover was initially introduced as a response to drought and is designed to maximise water availability in the early part of the season, subject to physical and environmental constraints. Carryover can decrease unpredictable market fluctuations and be an important water management tool in assisting irrigators plan for future seasons.

Chart 5 presents who mentioned carryover by submission type. A total of 4 out of 10 submissions that mentioned the use of carryover were industry groups. Just over a third of submissions (34 percent) were private individuals or companies, while 6 percent were market intermediaries.

Chart 5: Carryover – mentions by submission type

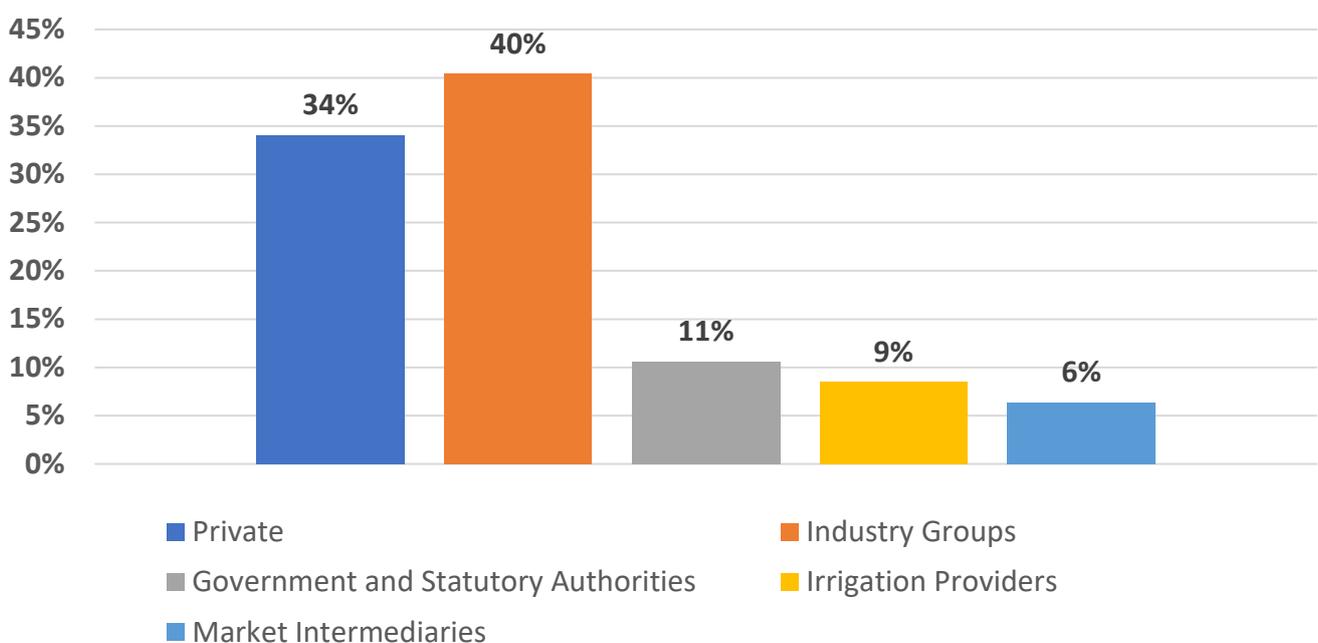
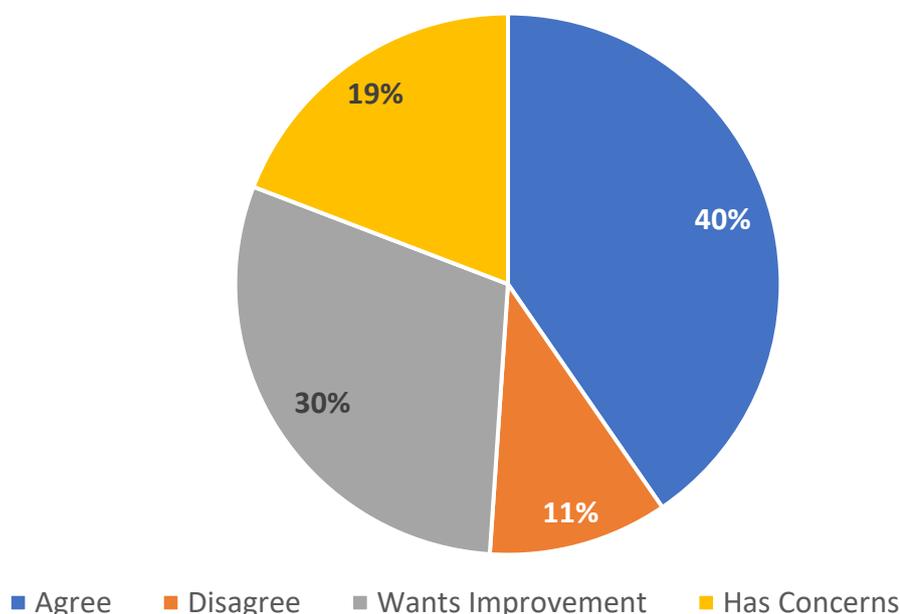


Chart 6 presents how respondents feel towards current carryover water arrangements.

Chart 6: How respondents feel about carryover arrangements



A total of 60 percent of submissions expressed a critical view of carryover arrangements, which included those who either had concerns, want improvements, or disagree with the current arrangements. Amongst the criticisms raised in these submissions were that carryover:

- Provides ‘water-hoarding’ ability that may result in a distorted market and possibly be abused in times when water allocations are low.
- May result in entitlement holders receiving reduced allocations, placing upward pressure on the market price.
- Is responsible for increased market speculation in the temporary water market.

Amongst the 40 percent of submissions in favour of carryover, were comments that carryover:

- Plays a critical and important role in increasing the economic use of temporary water and reducing seasonal volatility prices.
- Remains a useful tool for irrigators and allows entitlement holders to manage their inter-annual resource risk.
- Is an important mechanism that allows farmers to manage water resources on a year-to-year basis and meet their water needs.

Final Report Analysis

Recommendation 16 of the ACCC report focuses on improving the efficiency in accounting for the costs of carryover. Moreover, the report highlighted that the ACCC believed it was important for users to face the full costs of their carryover decisions, including evaporation losses, and that water accounting more accurately reflects the hydrological realities of the system. The ACCC believe that this transparency would drive more efficient decisions by individuals about the use of available storage capacity and carryover water opportunities.

The ACCC report states that many of the externalities that that carryover is generating (such as opening or closing trade barriers) cannot be adequately managed through carryover policy or rule design.

Broker regulation / trader conduct

Initial Feedback

There were 41 (34 percent) submissions that mentioned the registration or regulation of water brokers. Chart 7 presents who mentioned broker registration or regulation by submission type. It shows that approximately 40 percent of the submissions that mentioned broker registration or regulation were from industry groups.

While market intermediaries (which include water brokers) made up only 9 percent of the submissions that mentioned broker registration and regulation, this represents a total of 50 percent of all market intermediaries' submissions.

Chart 7: Broker registration and regulation – mentions by submission type

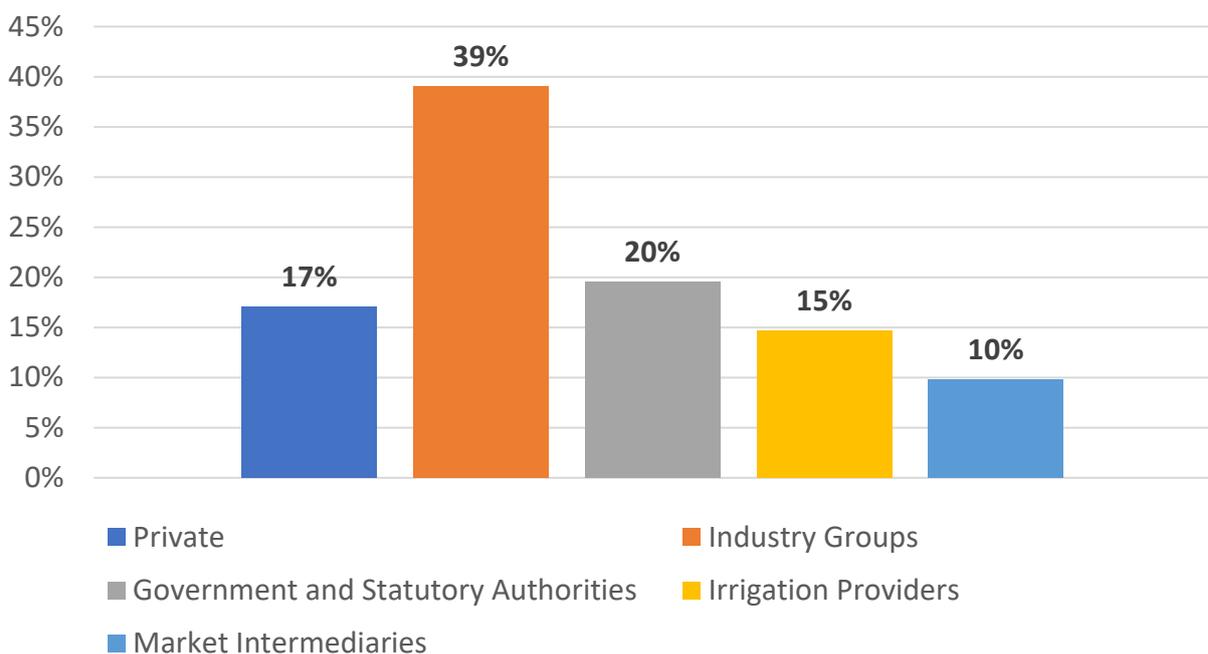
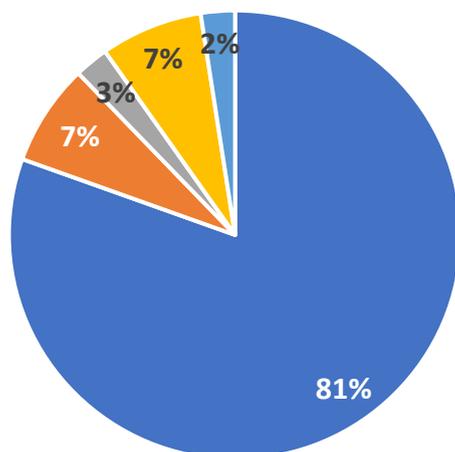


Chart 8 presents how respondents feel towards water broker registration or regulation. It shows that the vast majority (81 percent) are supportive of some form of broker registration or regulation.

Chart 8: How respondents feel about the registration and regulation of brokers



■ Agree ■ Disagree ■ Wants Improvement ■ Has Concerns ■ Mentions

When looking only at market intermediaries’ submissions, 75 percent support some form of regulation. Only 7 percent of market intermediaries disagreed and were not in support, with the remaining submissions either voicing their concerns or wanting improvement. (Waterfind supported broker regulation in its submission).

Arguments made in support of broker registration and regulation include:

- Making brokers accountable for their actions.
- Holding all brokers to industry standards.
- Increasing the transparency of the water market.
- Reducing the influence brokers have on the water market.
- Improving the trust between brokers and clients.

When analysing only market intermediary submissions, only a quarter (25 percent) of submissions have concerns with the registration and regulation of water brokers. The arguments against registration and regulation were that respondents were pleased and satisfied with the way brokers are currently operating, and that they are providing comprehensive and timely data that is relevant to respondents and their specific needs.

Final Report Analysis

As 81% of first respondents agreed that there needed to be regulation of the market, 3% wanted improvement and 7% had concerns that maybe addressed by regulation of the industry, I have decided to spend some time in this area. Yes, that’s a whopping 91% of first respondents being positive to this issue (the highest alignment / support of the top 3 topics).

So how did the ACCC report fair in addressing this issue?

At a first high-level read of either the ACCC guide to the report or the report recommendations itself, one could say that the ACCC addresses this issue 'very well', in that; the report, for the first time in our nation's history, represents a Government Agency recommending the need for regulation of the Australian Water Market. This is contrary to previous reports on the topic by government which did not identify any need / mandate for regulation.

While it could be argued the all parts of the report outline a set of regulatory requirements of the Australian Water Market, Recommendations; 1, 2, 3, 5, 8, 9, 10, 11, 14, 15, 16, 18, 22, 25, 26, 27 and 28 (17 of the 29 recommendations) more directly approach the issue of market regulation – an impressive and warranted focus given the high response rate on the topic to the issues paper.

Why the long face then Tom?

Well, it's not until one reads the full report, steps back, sits on their stump and scratches their chin for a while, that you realise that the report does not recommend regulation of the Australian Water Market however, recommends regulation of Water Markets in the Murray Darling Basin (MDB) or more particularly 'Surface Water' markets in the Southern MDB. Now that is an important market with major market behaviour and complexity however, it is NOT the Australian Water Market.

The Australian Water Market, I would define as, All Surface and GROUNDWATER markets in Australia, all water delivery right markets in Australia, all other water derivative markets that are offered in these market sectors. Other sectors that do not benefit from the recommendations will need to pay for the review and regulation but will not receive the benefit of this work and proposed reforms.

Moreover, if State Governments within the MDB accept and adopt legislation to give effect to the water market regulation recommendations they will in effect all be burdening themselves, their service providers and multi-jurisdictional water holders with the requirement to adopt a two-pathed water reform and operation agenda. This, along with the current lack of Federal Government financial support being offered and or State Mandates, provides a strong environment for inaction to the recommendations.

In essence, would mean that none of the reform recommendations may be started, attempted and/or will be too quickly abandoned at the first sign of difficulty or perceived community change. Yes, it's happened before (Australian Water Market System, Common Registry System etc. etc.) and we (the Australia taxpayer) have spent many tens of millions of dollars and much time trying, and then abandoning past water market reform projects to improve markets that had much more interjurisdictional support that the current recommendations.

This gives rise then to my **fourth key observation** which is; that the structure and design of the recommendations dovetailed with the current lack of Federal Government support being offered and lack of possible state government mandates / motivation, creates a **strong environment for inaction / lack of adoption of the ACCC recommendations.**

The biggest fear that I have with this outcome is that the current and successive State and or Federal Governments may lose any future interest / mandate to regulate the Australian Water Market. This would be because of the intense time, effort and money spent by the Australian taxpayer, the water industry, water service providers and concerned citizens, in responding to and contributing to this enquiry during a time of substantial risk / stress in the business environment caused by the COVID-19 pandemic.

Other Key Facts

Waterfind analysis of the remaining top 10 topics is not addressed in this report. It is fair to say however that the ACCC final report did address the majority of those topics.

The Australian Government Treasurer Hon Josh Frydenber commissioned the report the ACCC conducted the inquiry and Frontier Economics assisted the ACCC with market analytics (The Frontier Economics analytics is also available as a public document).

The report states that there are significant deficiencies in current water trading arrangements and highlights 8 examples (most of which were market governance / government related)

The report is 706 pages long and draws much information and intelligence from independent firm Frontier Economics report 'Water market architecture: Issues & options' which was published on 26th October 2020 and was an additional 102 pages long.

The final report of the ACCC's 'Murray-Darling Basin water markets inquiry' has 29 recommendations for adoption consideration, being:

29. Increase transparency of roles and functions of intergovernmental committees
28. Have regard to advice from the Water Market Agency
27. Implement better rule-making process
26. Create a Water Markets Agency
25. Develop a reform roadmap for designing and operating efficient markets now and into the future
24. Assess whether the current configuration of geographical units remains fit-for-purpose
23. Implement clear and integrated mechanisms for delivery of environmental water
22. Improve intervalley trade mechanisms
21. Improve transparency of conveyance losses and other delivery impacts
20. Refine river-operations guidance to more effectively and transparently balance trade-offs
19. Formalise and communicate plans for managing delivery shortfalls
18. Improve modelling of delivery and trade
17. Strengthen metering and monitoring
16. Improve efficiency in accounting for the costs of carryover
15. Increase the transparency of allocations decisions and the drivers of water availability
14. Implement lifetime traceability for water allocations
13. Implement a Basin-wide Water Market Education Program

12. Implement a public-facing water market information platform which harnesses improved data collection and quality
11. Implement a digital platform ('Backbone Platform') to act as a single repository for water market data and a single hub for trade approvals
10. Adopt a comprehensive Digital Messaging Protocol for the capture, storage and transfer of water market data and trade applications
9. Implement rules and processes for water announcements
8. Implement mandatory trade approval service standards
7. Implement water market data standards to provide a clear and fit-for-purpose framework for water market data and water trade service
6. Reshape current information portal initiatives
5. Implement technical and procedural solutions to provide consistency for interzone trade
4. Require identifiers on trade forms
3. Prohibit price manipulation, broaden price reporting and broaden and strengthen insider trading obligations
2. Incorporate key obligations as part of an enforceable mandatory code for water market intermediaries
1. Implement centralised, basin-wide water market conduct and integrity legislation

Pages 26 to 41 outline in more detail about the recommendations and the proposed implementation pathway (if adopted) is suggested to occur on a 3-stage process, being:

Stage 1. Improve current trade arrangement and existing commitments (recommendations; 4, 5, 6, 15, 16, 17, 18, 19, 20, 21, 22, 24, 29)

Stage 2. Creating new market focused governance, oversight and information arrangements (recommendations; 26, 1, 2, 3, 7, 8, 9, 27)

Stage 3. Strengthening governance, decision making and market design (recommendations; 10, 11, 12, 13, 25, 14, 23, 28)

ACCC FINAL REPORT

Read the Final Report available on the [ACCC website](#).

Or download the Guide to the Murray-Darling Basin water markets inquiry final report [here](#)

RELATED WATERFIND PUBLICATIONS

- The Waterfind Submission to the ACCC report is [available here](#).
- The Waterfind Analysis of Water Market Inquiry Submissions is [available here](#)

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CONTACT

For more information on the reflections, contact Tom Rooney, CEO and Founder Waterfind

Email: tom@waterfind.com

Phone: 0407 974 100

 Contact me on [Teams](#)