

FINAL REPORT OF THE MURRAY-DARLING BASIN WATER MARKETS INQUIRY CALLS FOR A NEW WATCHDOG

Further to our [update on 27 August 2020](#) regarding the Interim Report of the inquiry by the Australian Competition and Consumer Commission (ACCC) into the Murray-Darling Basin Water Markets (Inquiry), the Final Report of the Inquiry was publicly released by the Commonwealth Government on 26 March 2021.

The ACCC has found that as it stands currently, the system contains many significant deficiencies that undermine the efficiency of water markets and the agricultural industries that depend on them.

In particular, the Inquiry found that there has been great distrust amongst farmers who believed that the water market was being manipulated by investors who hoard water in times of need so that it could be later sold at higher prices. The Final Report acknowledges that confidence amongst market participants in the integrity of the market is not assisted by the unavailability of comprehensive and transparent data, but the ACCC's extensive analysis found no evidence to prove such claims of market manipulation. Nevertheless, the Final Report concludes that such distrust shows the need for reform for better transparency, competitiveness and regulation of tradeable water rights.

The Final Report offers 29 recommendations as to how this can be achieved.

THE RECOMMENDED REFORMS

The recommendations made by the ACCC in the Final Report centre around four main themes:

- / governance of the Basin water markets;
- / market integrity and conduct;
- / trade processing and water market information; and
- / market architecture.

In particular, while research has shown that there is no evidence of water hoarding in the Murray-Darling Basin, the Final Report noted that regardless of whether market manipulation exists, this conduct is not prohibited under current legislation. Consequently, the ACCC is calling for new Basin-wide legislation that will include integrity protections such as price reporting requirements and will prohibit conduct such as market manipulation and insider trading. It is also proposing the introduction of an enforceable mandatory code for intermediaries, including water brokers and exchange platforms.

In seeking to improve governance within the Basin water markets, the Final Report also recommends the establishment of a new Water Markets Agency (Agency). It proposes that the Agency be independent and responsible for a range of functions, such as regulating the market and functioning as a market information provider, evaluator, adviser and advocate. Furthermore, it recommends that the Agency be responsible for administering and enforcing the new legislation but not itself be a rule-making body. The ACCC's aim is that, by introducing such a body, there will be improvement in the water market's integrity.

Many of the other recommendations relate to potential improvements to the architecture of the trading system and the availability of information. However, there are no recommendations to limit the ability of individuals to purchase or trade allocations or to 're-bundle' water rights with property rights.

NEXT STEPS

The Government has yet to publish an official response to the Final Report. However, the Minister for Resources, Water and Northern Australia has stated, in a joint [media release](#) with the Federal Treasurer, that in an effort to implement the ACCC's recommendations, the Government has invested \$5.4 million in a single source water information platform to improve access to water information. Furthermore, the Minister has also pledged to establish a statutory position of Inspector-General of Water Compliance. However, we anticipate more clarity on this matter towards the end of May 2021, at around the time of the announcement of the 2021-2022 Federal Budget.

CONTACT DETAILS

If you have questions regarding the Murray-Darling Basin Water Markets Inquiry or if you would like assistance with trading your water allocations, please contact:



Kyra Reznikov, Special Counsel
kyra.reznikov@finlaysons.com.au
+61 8 8235 7561



Will Taylor, Partner
will.taylor@finlaysons.com.au
+61 8 8235 7421



Ned Hewitson, Lawyer
ned.hewitson@finlaysons.com.au
+61 8 8235 7463