



6 April 2025

Water Market Reform Division
water.markets@dcceew.gov.au

Sent Via Electronic Mail

RE: NIC submission on Water Amendment (Water Markets Intermediaries Code and Trust Accounting Framework) Regulations 2025 – Exposure Draft

Thank you for the opportunity to provide input into the Exposure Draft for Water Amendment (Water Markets Intermediaries Code and Trust Accounting Framework) Regulations 2025 as part of the ongoing consultations on the matter.

NIC acknowledges the commitment of the Water Market Reform team to consider the feedback throughout the multiphase engagement. We welcome the inclusion of several amendments following discussions on the Final Policy Position paper.

However, we offer the following as considerations for further clarity within the proposed regulations as well as recommendations regarding the timing of the regulations.

1.1 Concerns relating to the potential negative impacts of the regulatory burden including pace

NIC and many other stakeholders, are increasingly concerned by the regulatory burden of this reform, particularly given its scale and pace. We are also concerned that the reform is going too far, and is becoming disproportionate to the problem at hand, the size and extent of water markets.

While market integrity, transparency and good governance are important – there is enormous risk of not striking the right balance for a proportionate policy response – particularly given the cost to comply and the assessment of the potential negative consequences. Under current proposals, these regulatory costs (set to be borne by both taxpayers and water users), as well as regulatory burdens, appear to far outweigh the benefits.

As the Office of Impact Assessment states:

“Impact analysis helps policymakers consider how proposals affect businesses, individuals and community organisations, as well as broader economic and other impacts.

Strong evidence-based impact analysis is a powerful tool when applied intentionally and consistently. The Australian Government's Policy Impact Analysis Framework ensures that decision makers are supported with the necessary evidence base, and that policy options are well-designed, well-targeted and fit-for-purpose.”¹

We strongly recommend that a final cost benefit analysis is completed prior to finalisation of the regulations (this one, as well as the collective suite of regulations that make up this reform) to provide the evidence base to ensure the final reform is proportionate, well-designed, well-targeted and fit for purpose.

We recommend further consideration of exemptions for intermediaries where water trading is not their core business or turnover is below a minimum threshold, as with the proposed professional indemnity insurance thresholds.

We also recommend to a further staging of the roll out of the reform. The 1 July 2025 implementation date for this draft regulation is now overly ambitious as the federal election

¹ <https://oia.pmc.gov.au/>

timing has created significant uncertainty which means intermediaries cannot act on the draft regulations because a new Government may decide to amend these policies. We note that the 'education phase' of this reform is to be confirmed which highlights the uncertainty being driven by the federal election.

This uncertainty and delay, must not shorten the implementation timeframes available to intermediaries to modify their systems, establish new processes and prepare. Appropriate lead time in the 'education phase' of the regulations must be maintained to allow for proper communication and education from the Department and the future regulator, the ACCC on what is expected – once finalised, to avoid unintentional non-compliance as well as, inefficient adoption. All of which will result in poor policy outcomes and higher costs for water users.

We recommend a later implementation date to be adopted provided a minimum of 6-months to prepare.

1.2 Application of the regulations

In regard to the application of Part 5 Division 1 5.02 Application of this Division, a note could be added to clarify that an eligible water market intermediary must receive a commission or fee. Sub regulation 5.02 (5) was provided to avoid doubt, for automatic water transactions made when attached to land, the same should be made for any actions not attaching a commission or fee.

Furthermore, we recommend consideration of an exemption for intermediaries (IIO or others) that do not undertake a significant volume and value of trades and who can establish that trading is not their core business but part of a range of services. Smaller intermediary operators provide an important service and are at risk of being out-regulated and out-priced by these reforms which will see these services not attainable for some water users. This will have an impact on water utilisation and water availability, as well as cost for remaining water users.

There is precedent for such exemptions within these regulations (sub regulation 5.14(3) as well as the Water Charge Rules 2010² which should be considered.

1.3 Information about services

Section 5.07 and 5.08 outlines how an intermediary must provide general information about services and obligations and intermediary must provide additional information about services respectively, however the regulations do not allow for a provision for this information to be provided online. Rather stating that an intermediary can contravene the sub regulation if it does not provide the information 'in writing'. We recommend inclusion of online documentation for clarity.

1.4 Conflict of interest

Section 5.09 Intermediary must deal with complaints, outlines a general framework for a process that an intermediary must have in place stating:

(2) The intermediary must:

- (a) act in good faith in dealing with the complaint; and*
- (b) make a genuine attempt to resolve the complaint within 20 business days; and*
- (c) if the complaint is not received in writing—make a written record of the complaint; and*
- (d) within 2 business days of receiving the complaint, give to the client:*

² Section 92 of the Water Act, ie Part 6 and Part 7 operators.



- (i) written confirmation that the complaint has been received; and*
 - (ii) a copy of the record of the complaint made under paragraph (c) (if applicable); and*
 - (iii) information about the process the intermediary will follow in dealing with the complaint; and*
 - (e) within 10 business days of receiving the complaint, give to the client a written response to the complaint that specifies the actions the intermediary proposes to take in seeking to resolve the complaint; and*
 - (f) within 5 business days of completing the process for dealing with the complaint, give to the client written notice of the outcome of that process.*
- (3) The intermediary must have a documented process for dealing with complaints that enables the intermediary to meet the requirements of subregulation (2).*

However, these minimum expectations do not outline a requirement for intermediaries to act when a complaint is not resolved satisfactorily to either party.

The documented process in subregulation 5.09(3) must include opportunities for dispute solution.

1.5 Professional indemnity

NIC supports the new alternative in Section 5.14 (3) for Irrigation Infrastructure Operators that have offer relatively small water market services.

1.6 Record keeping

NIC remains concerned there is duplication with the requirements in Section 5.16 Intermediary must comply with requirements for holding client records and the water market data requirements, and the risk that multiple sources of truth maybe being maintained.

We thank you for the opportunity to provide this additional feedback and would welcome the opportunity to meet and discuss solutions to these issues with you.

Please feel free to contact Zara and thank you for your attention to this matter.



Mrs Zara Lowien
Chief Executive Officer
National Irrigators' Council

