National Irrigators' Council

Submission to ACCC Water Markets Inquiry
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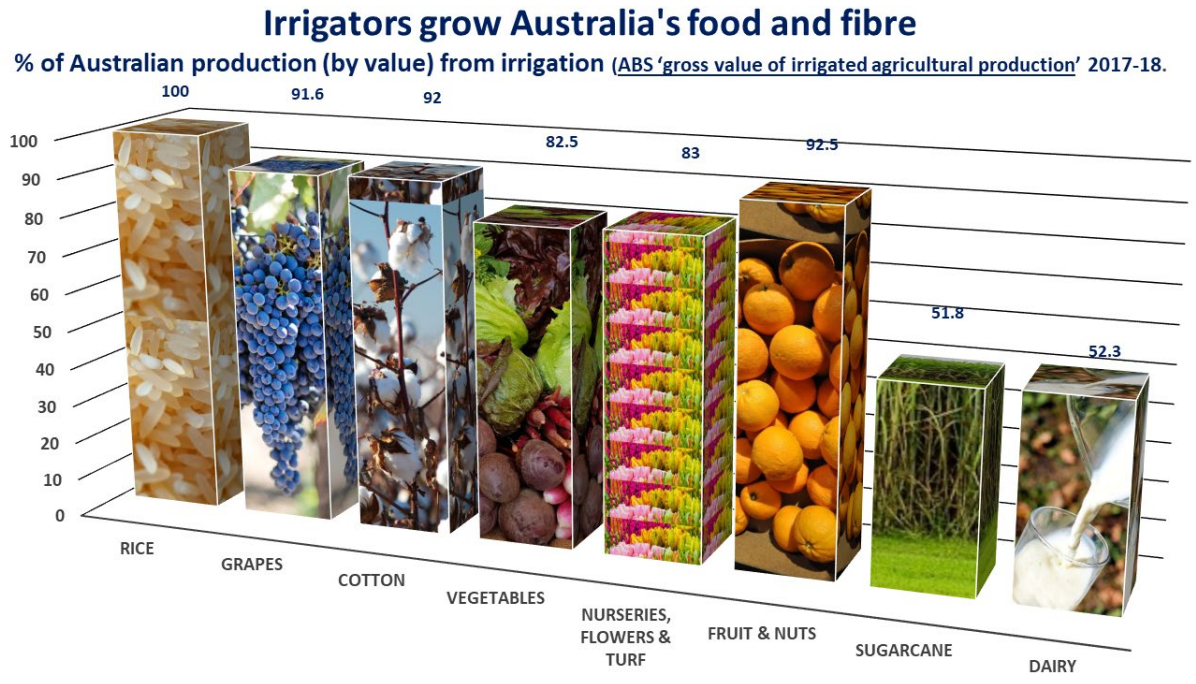

Summary and key policy objectives

- Separating land and water and creating markets had a direct benefit to irrigators, it made water entitlements a property right and that gave a level of security to irrigators that was not previously available.
- The protection and enhancement of the property right attached to water is a key principle for NIC.
- Changes in crops grown are driven by the return farmers get at the farm gate. Commodity prices, market access and input costs impact these decisions. Water markets facilitate change by allowing water to be moved (within physical constraints) to its highest value use.
- Water markets have enabled inflow of capital and have enhanced the value of irrigated agriculture. It has had positive impacts overall but negative impacts in some regional areas mostly reflecting the economic returns for water use (as measured at the farm gate).
- NIC acknowledges concerns, from some irrigators, about non-water users owning entitlement, in particular, allocation and carryover. Restrictions on ownership would cause negative impacts for irrigating businesses including those relying on allocations, unintended consequences and costly compensation. NIC supports the ACCC taking specific action if it identifies anti-competitive behaviour or evidence of market manipulation.
- Carryover rules have developed differently in different catchments, often for very practical reasons. The rules are built into the value of the property right and have been an important part of enabling better planning of farming operation.
- The ACCC should consider whether there are aspects of the operation of carryover that have unintended consequences or unfair impact on water markets, Evidence of such impact needs to be shown before considering any changes.
- It is not possible or practical to have a fundamental reversion of water markets, either back to the pre-1990s situation of water tied to land or even to have a blanket exclusion of non-water users owning water entitlement or allocation.
- NIC's priority is to ensure that the water markets are working fairly and transparently. It is important to reduce the complexity and confusion around the myriad of different exchanges and products and to ensure that enough information is publicly available for a competition authority to make an informed judgement about what constitutes anti-competitive or unfair behaviour.

Policy objectives for the water market

1. All entitlement of the same category continues to have the same characteristics regardless of who owns it and continues to be treated in the same way as any property right.
2. Trade restrictions are based on real physical constraint, avoidance of third-party impacts on the water rights of those not party to the trade and backed by transparent expert analysis of system capacity.
3. Reform to the water market should enhance simplicity, transparency and consistency of information without adding administrative burden or additional cost to farmers and irrigation operators.
4. Ensure the water market is easily accessible for all potential participants including small entitlement holders.
5. Basin Governments should improve the consistency, transparency and timeliness of water market information across State Government registries, including confidence in the accuracy of price disclosure and extent of price disclosure. Market information is improved by including clearer and timelier information on water supply, demand, delivery constraints, allocation and use.
6. State based water registry information – particularly in the Southern Murray Darling Basin - is brought together in a consistent platform providing timely information on the market, trades and water availability along with historical usage information.
7. Within particular markets, the holders of significant shares of water entitlement or those engaged in the trade of significant volumes of allocation, notify their positions in a similar way to the ASX.
8. ACCC takes a continuing role in monitoring and acting, if necessary, to ensure no anti-competitive behaviour or market manipulation in the water market, particularly focusing on periods of low supply.
9. Ensure that codes of conduct for water brokers are adequate to ensure market participants' rights are protected.
10. Consider whether any further regulation is required for provision of financial type advice relating to the water market.
11. Governments move toward standardised requirements for positive account balances along the Southern connected system.
12. As a significant water owner, Government environmental water holders should provide transparent, advance information about intention to engage in particular markets and undertake to minimise impact on the market, including third party impacts on other market participants.

Background

NIC appreciates the opportunity to contribute to this inquiry. We recognise that we will have the opportunity to comment further as the Commission brings out its reports.

Water markets were created by Governments with the aim of allowing water resources to move to the agricultural uses that produced the highest and best returns. Inevitably this is determined by the returns at the 'farm-gate' by irrigators.

Water markets and the rules governing trade were part of water reform as part of the National Water Initiative (NWI) in 2004. This facilitated expansion of water markets within river and aquifer systems, across inter-connected valleys and eventually state borders in the Basin.

The objective of the NWI was to develop a compatible, market, regulatory and planning-based system for managing surface water and groundwater resources and rural and urban use that optimises economic, social and environmental outcomes. It has largely succeeded in doing so, and remains the blueprint guiding water reform in the Basin.

The process of separating land and water and creating a market had a very important direct benefit to irrigators, it made water entitlements a property right and that gave a fundamental level of security to irrigators that was not previously available. Prior to this water entitlements could be taken off irrigators by State Governments, this restricted investment and certainty.

Irrigators participated in the creation of the markets and in other reforms based on assurances that their entitlement would be secure and that, to the extent possible, it would be reliable. Any reform which negatively impacts that security or reliability would not be supported.

The protection and enhancement of the property right attached to water is a key principle for NIC. That property right is built into the value of many products and any potential changes to water products need to take that into account.

The creation of water markets did make water a 'commodity' to an extent. However, unlike many other inputs for agriculture this one is finite and constrained. In addition the volume available to a particular licence type is not just a product of climate but of the allocation rules in place. These factors make these markets very different to other markets.

In the context of the water market and trade arrangements, the NWI sought to deliver the following outcomes:

I. *facilitate the operation of efficient water markets and the opportunities for trading, within and between States and Territories, where water systems are physically shared or hydrologic connections and water supply considerations will permit water trading;*

II. *minimise transaction costs on water trades, including through good information flows in the market and compatible entitlement, registry, regulatory and other arrangements across jurisdictions;*

III. *enable the appropriate mix of water products to develop based on access entitlements which can be traded either in whole or in part, and either temporarily or permanently, or through lease arrangements or other trading options that may evolve over time;*

IV. *recognise and protect the needs of the environment; and*

V. *provide appropriate protection of third-party interests.*

Market creation has enabled the expansion of crops in a number of areas; has enhanced the value of irrigated agriculture; and has proven to be an effective drought mitigation tool in some circumstances. It has had positive impacts overall but negative impacts in some regional

areas mostly reflecting the economic returns for water use (as measured at the farm gate). The distributional impacts are arguable exacerbated by the quantum in the reduction of the volume available for extraction as a result of significant investment by Governments in held environmental.

Water markets have facilitated the most efficient and valuable use of a finite resource, they do that by facilitating the movement of water to the area it is producing the highest return. Ultimately this is driven by the relative profit able to be gained for particular crops. This has resulted in real growth and economic benefit for some communities where the crops with the highest returns are being grown, the downside is in communities with significantly worse terms of trade for their crops.

NIC has consistently advocated policy responses for communities that have suffered as a result of poor terms of trade combined with severe negative impacts of water reform. This should be a responsibility of Government working with communities, it is not something changing the water markets can resolve.

The 2019 Aither water markets report estimated that the total value of Southern Murray Darling Basin entitlement on issue was $22.7 billion (Aither, 2019), with that figure representing a 3.7 times increase since 2013. The owners of that entitlement range from family farmers, corporate farming businesses and people who have retired from the farm but retained their entitlements, ASX listed companies, and investment funds comprising Australian and foreign sourced capital.

It is possible to see the way water markets have met the objective of going to the highest value use by looking at the ABS figures. These show a real growth in the value of irrigated agricultural production in the Murray Darling Basin between 2009-10 and 2017-18 of over 65% (though noting variation in rainfall over those years).

The value of production in 2017-18 dollars in 2009-10 was $5.2 billion and in 2017-18 $8.6 billion, with significant growth and change in the value of crops produced. In 2009-10 fruit was the highest value product at $1.3 billion (2017-18 dollars), with grapes at $851 million and dairy $739 million. By 2017-18 Cotton was the biggest value at just over $2 billion; fruit and nuts next on $1.9 billion, followed by grapes ($979m), dairy ($963m) and vegetables ($844m).

Clearly commodity prices and returns drive this change (particularly the expansion of cotton and nuts). Water markets have facilitated growth in many areas and in that sense has benefited particularly those commodities with high returns and the region's most able to facilitate their growth.

The underpinning structure of Australia's water markets (i.e. the resource tends to move to the highest bidder), has also formed the backbone of the Federal Government's ability to purchase water for the environment thus facilitating the environmental objectives of the Murray Darling Basin Plan (Basin Plan).

The reduction in the volume of water available for consumptive use as a result of the Basin Plan, combined with the making of the Water Market Rules (2007) *Cth* and the Basin Plan Water Trade Rules in 2012, have fundamentally changed the business environment facing the irrigation sector and water markets (both water entitlement and allocation markets[1]) and are key elements of this change.

[1] For an explanation of entitlement and allocation see the MDBA's outline of water markets https://www.mdba.gov.au/managing-water/water-markets-and-trade

The developing market has also seen the creation of new products, including longer term water entitlement leases and forward and deferred water allocation purchase/sales contracts. These have assisted some irrigators to better manage their balance sheet exposures, water supply risk, cash flow and commodity forward sales. The creation of these price and water risk management products has been enabled by an increasing ownership of water entitlements by non-water users.

Not surprisingly, the operation of water markets has resulted in a substantial shift in the ownership and holding of water entitlements and use of allocation across the Murray-Darling Basin, and in the Southern Basin particularly. This has been positive for some regions and distinctly negative for others.

NIC recognises that impacts are uneven.

NIC recognises that the operation of the market and the movement of water to highest value use can also affect environmental outcomes and have socio-economic impacts. It is also reasonable to ensure that the market reflects the intent of Government and that arrangements adequately deal with collateral impacts such as river operations and riparian issues.

NIC has raised issues around transparency and operation of water markets for some time, noting that deliverability of water allocations is emerging as a critical issue in some areas of the River Murray in particular. The compounding effects of water supply and river operations, due to changing use patterns, will see deliverability emerging as a critical issue in some areas.

NIC has called on Minister's to address the issues around deliverability and consider mechanisms for ensuring that delivery can be assured.

With environmental water holders now a large holder of water entitlements and inclined to move their water allocations around in their portfolio to suit delivery requirements, it is no longer clear that all registered water trade data is reflecting the actual traded market. NIC argues trade registers should clearly distinguish environmental water portfolio trades that relate to portfolio management from commercial trades.

NIC recognises that the Southern Murray-Darling Basin connected water market is the most developed and most active. While in the longer term we would like to see similar standards and principles nationwide, at this stage it is appropriate that the focus for any improvements be based on the Southern Basin.

As outlined above, the move to separate land and water was a fundamental reform. Creating a market where non-water using entitlement holders could participate has also been a significant change. There are pluses and minuses in both; in the current situation with a market stressed by drought and with 1 in every 5 litres of previously available entitlement now owned by environmental water holders, this has put a major focus on the minuses.

Even if this drought only continues for a short time, we will see the negative impacts, including people leaving the industry, permanent plantings lost and potentially major economic impacts in communities.

The question is, what, if anything, could be changed in the water market that would have an overall benefit?

NIC would suggest that it is not possible or practical to have a fundamental reversion of the water market, either back to the pre-1990s situation of water tied to land or even to have a blanket exclusion of non-water users owning water entitlement or allocation.

NIC's priority as expressed in our policy papers (and below) is to ensure that the market is working fairly and transparently. It is important to reduce the complexity and confusion around the myriad of different exchanges and products and to ensure that enough information is publicly available for a competition authority to make an informed judgement about what constitutes anti-competitive or unfair behaviour.

It is reasonable therefore to consider whether there are any aspects of the market operation that enable non-water users to unfairly influence market price or 'profiteer'; this may include interaction between carryover and non-water users, though noting that there are now a range of forward products offered to farmers which do utilise, for positive farm planning purposes, these characteristics of water products.

As such the core focus for the NIC's request to this inquiry is to improve the transparency of the water market, significantly improve information available to market participants and observers and to use this as the basis to ensure the market is operating fairly. At the same time, we would emphasise the need for this to occur without adding additional administrative burden or cost to industry participants.

NIC Policy

NIC has a number of key principles established previously by members. These include to 'protect or enhance water as a property right'. Our strategic plan explains this as:

> *Water entitlement reform was a fundamental building block of the 2004 National Water Initiative. The agreement established a property right to water which is a share of the available resource. It required governments to improve the security and commercial certainty of entitlements by documenting how water users would bear the risks of reduced entitlements if water became scarce.*
>
> *When water users have a legally-defined share of water that is safe from government interference, illegal take and arbitrary change, it becomes a financial asset. This can be used in much the same way as land held as a financial asset; it can be bought and sold, borrowed against and used to invest.*
>
> *The principle of water as a property right must be upheld. Water property rights provide our members with authority over their asset, allowing them exclusive access to the asset and the right to exclude others from accessing this right. Water property rights provide an important underpinning in support of business investment and form part of the assets of a business enterprise.*
>
> *The existence of property rights in water is considered a necessary precondition to water trading. Property rights are recognised as being stable, secure and flexible and are capable of sustaining a water market.*

These principles are included in our strategic plan (available on the NIC web site), in the summary above we list agreed policy objectives for this inquiry.

Market Transparency

Improving market transparency, market related information and understanding is at the core of the work NIC hopes to see from this inquiry. Points 3 to 8 of our policy priorities lay out the improvement we hope to see in the medium term.

The Southern Basin water markets have a large range of water products, along with quite different systems of registration and information. While there is a substantial amount of information available, there are still inconsistencies, different timeframes for information and even in the ability to understand what type of product has actually been traded.

Over the last decade the water markets have developed with a range of products available. It would be fair to say the registers haven't kept up. Registers record and publish the spot allocation and permanent entitlement volume and price for all transactions. This is an important first step and enable a level of price discovery for irrigators and market participants however in 2019 the movement of a volume of allocation can be as a result of a more advanced product offering than just an allocation trade.

The registers do not capture the specifics of these new possible transfers. These included:

- Greater internal business movement of allocation within and across regions. Irrigators have built diverse water entitlement portfolios to provide better risk management of their water input and need to consolidate the usable water to their production location.
- Delivery of allocation from leased entitlement
- Delivery of allocation from forward allocation contracts (these are agreed in advance and price may not reflect the current market value at the point of delivery);
- The transfer or return of carry over water.

Registers are also not capturing the nuance in the permanent market. Permanent entitlements can be sold with all (a 'Wet' Parcel), some (partially 'wet') or none of the usable allocation in the water year ('Dry' parcel) that the entitlement transacts. From a value perspective between the counter parties this can deliver a significate variance in the price of permanent water. Price tracks through the register at a single price, making it difficult for other stake holders to specifically determine a in effect 'dry market equivalent price for the permanent entitlement.

The information available to the public does not appear to provide the ability for people to understand the drivers of the market, how thin a market is at a particular time, and to be able to bring that together with timely information about water supply, constraints, demand and use.

There are significant differences in the amount of information in each states public registers and these registers are difficult to navigate. In NIC's view we also lack the information to enable the ACCC to keep an ongoing watch on market competition and determine if any market manipulation or anti-competitive behaviour is occurring.

Improving information for market participants and for ensuring competition is a key to this inquiry providing useful outcomes. This needs to happen while also ensuring legitimate private business information is not compromised.

In doing so NIC would reiterate the principles we outlined above:

- Reform to the water market should enhance simplicity, transparency and consistency of information without adding administrative burden or additional cost to farmers and irrigation operators.
- Ensure the water market is easily accessible for all potential participants including small entitlement holders.
- Basin Governments should improve the consistency, transparency and timeliness of water market information across State Government registries, including confidence in the accuracy of price disclosure and extent of price disclosure. Market information is improved by including clearer and timelier information on water supply, demand, delivery constraints, allocation and use.
- State based water registry information – particularly in the Southern Murray Darling Basin - is brought together in a consistent platform providing timely information on the market, trades and current water availability along with historical usage information.

- Within particular markets, the holders of significant shares of water entitlement or those engaged in the trade of significant volumes of allocation; notify their positions in a similar way to the ASX.
- ACCC takes a continuing role in monitoring and acting, if necessary, to ensure no anti-competitive behaviour or market manipulation in the water market, particularly focusing on periods of low supply.

It is noted that there have been a number of projects attempting to improve market information. These have included Government funded projects to provide information systems, MDBA and Victorian projects to improve information availability and transparency along with private sector efforts along the same lines. No doubt over time these projects and others would start to bear fruit – our concern is that the efforts need to be sped up and more consistent.

NIC notes that the NFF and NSW Irrigators Council have expressed similar concerns in their submissions, and we would support the points they have made.

Market trends and drivers

Water availability is ultimately dependent on weather conditions. The current severe drought is the key factor in high prices, and clearly over coming years the predicted reductions in run off, as a result of climate change, will have real negative impacts on irrigation water availability.

Other factors that have impacted availability include:

- 1 in every 5 litres of water previously available for consumptive use being transferred to the environment as part of the Basin Plan;
- More conservative decisions on allocations by authorities;
- Operational and water resources plan rules building in underutilisation.

Irrigation infrastructure has been built in Australia so that we can continue to produce food and fibre in a variable climate. The whole purpose of storing water is to smooth some of the climatic variations we experience, as we have seen it works in the first few years of a drought. The current drought has a severity which means we also have an irrigation drought and that is at the core of the current high water prices.

It should be noted that the impacts of decreased run off impact first on irrigators with lower security entitlement, that's because the allocations made for human consumption and the river overall are made first. If there was an average year then the Sustainable Diversion Limit (ie the theoretical amount able to be extracted) would be around 1/3 of the overall flow.

In most years the SDL is never reached. Irrigators allocations are reduced when inflow is low, and in that sense it is clear that irrigation will bear the largest impact of climate change and that will have long term impacts on the water markets. NIC has issued a policy on Climate Change which advocates an equitable sharing of responsibility.

There is an additional level of uncertainty about future water availability from the remaining implementation of the Basin Plan. As mentioned above one in every five litres of water has already been removed from irrigation. Remaining parts of the Plan include the Sustainable Diversion Limit Adjustment Measures and the so called 'up-water' a targeted 450GL of water the plan aims to transfer to the environment via efficiency measures.

As quite correctly highlighted by the Productivity Commission in its five-year review of the Basin both these components of the Plan are very high risk. The risk for irrigators is that a failure to achieve the equivalent of 605GL for the SDLAM is likely to see further water

purchased, similarly any water recovered from irrigation for the 450GL will further shrink the water available for consumptive use and thin the markets.

That is a key reason NIC advocates urgent action to get the SDLAM projects on track and for recovery for the 405GL to have an off-farm focus.

A key part of providing enough information for a fair market is to improve the level, clarity and timeliness of information around water availability, allocation decisions and water in storages.

The creation of markets has meant water entitlement has become very valuable and that has an inevitable impact in reducing under-utilisation of licences. This has had an obvious impact in many parts of the system.

Transferability has been a key factor in changes to where water is used, and the crops grown.

In the introduction above, figures are quoted for the increase in value of crop grown in the Murray Darling Basin. A further indication can be provided by the graphs below which compare two single years 2005-06 and the most recent data for 2017-18.

While this approach has a clear limitation in that it does not include all years (NIC did not have the time available to do that) and it is unable to account for differing rainfall, inflows and allocations between the years. It is a very simple indication of the change to water use overall, and the changes in the crops being grown.

Figure 1 shows the water use in total for the significant crop types in the Murray Darling Basin, showing the growth in cotton and nuts. This growth is fundamentally driven by terms of trade and the return for the farmer, which are linked to availability of capital, access to markets and regulatory reform which gave some legal security to water. This has driven increased demand in some areas for water by higher value crops.

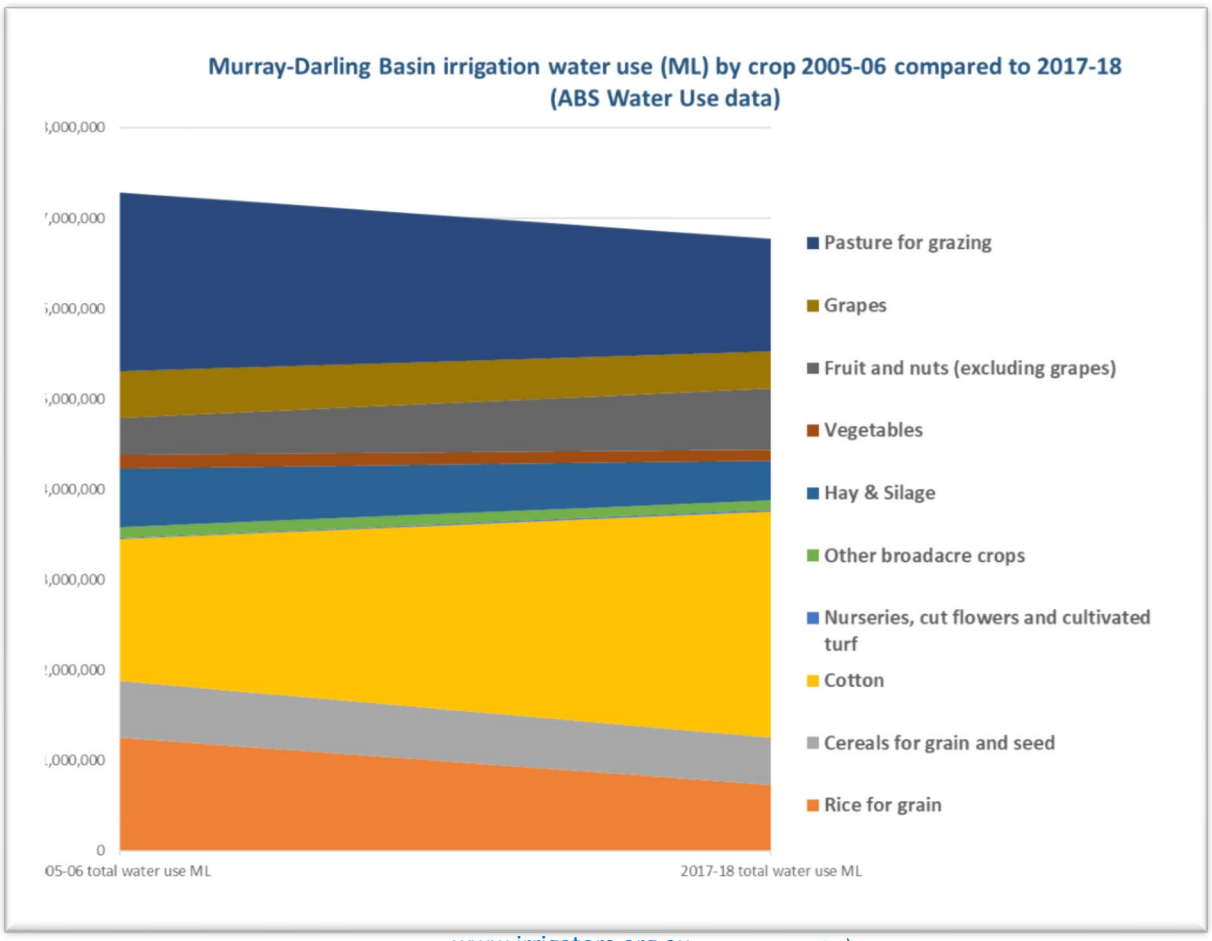

Figure 2 (below) provides the same story but in terms of land use. A reduction in overall land use for irrigation and in particular for pasture and rice.

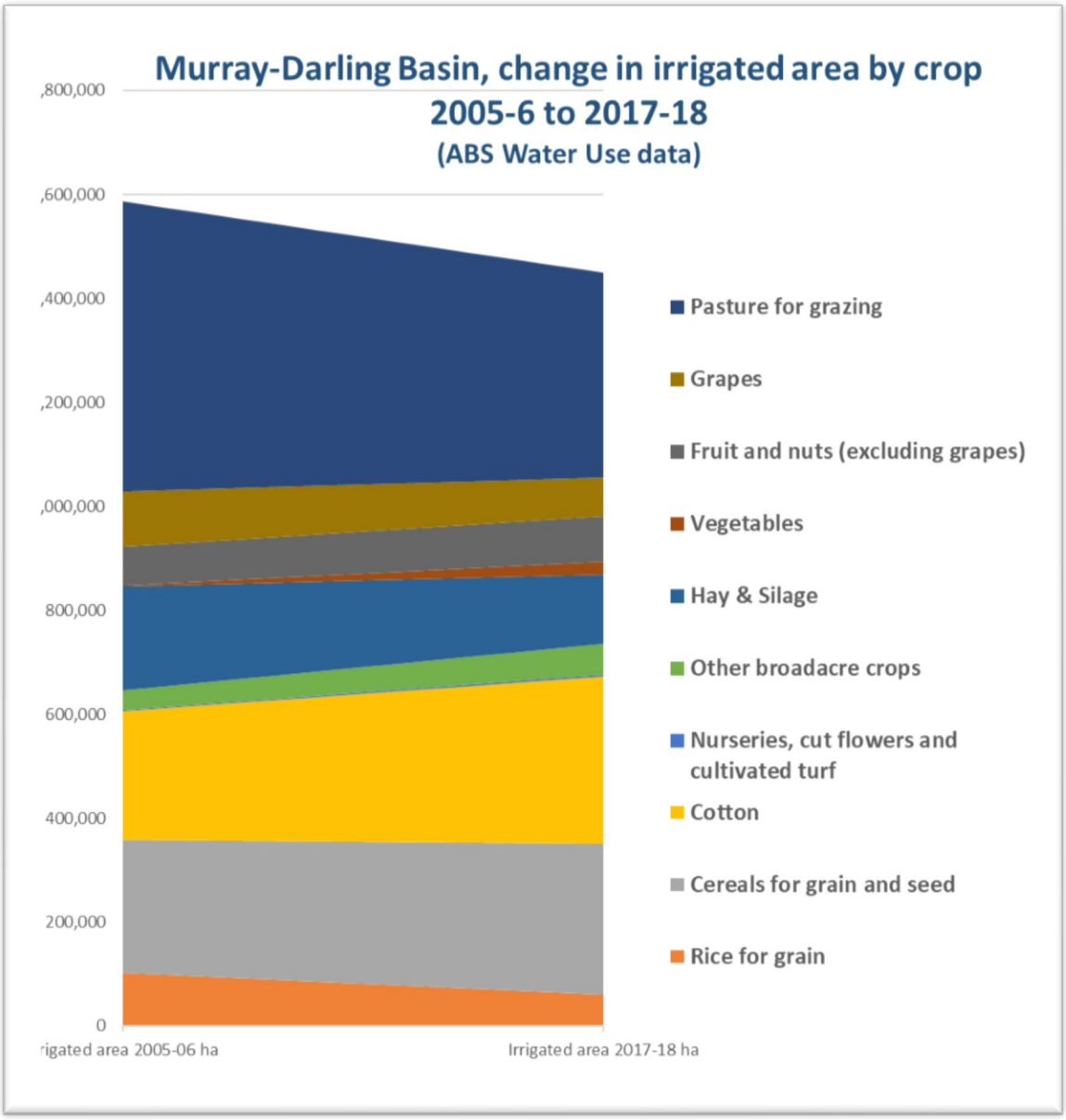

Figure 3, below is the 'missing wedge' from figure 1. Figure 1 shows an overall decline water use for irrigation. Figure 3 is Commonwealth Environmental water holdings from 2008-09 to 2018-19. The Commonwealth is now the biggest owner of water entitlement in the Murray Darling Basin (by a long way), not surprisingly the withdrawal of that water from productive use impacts the market and the Commonwealth's actions in managing that water have the potential to impact aspects of the market.

For clarity, these Commonwealth environmental water holdings are not all the water that is available for the environment. This water comes on top of the existing base flows that have always been released for the river, communities and health of the river. The average year (if there is such a thing) sees around 33,000 GL flow into the system, around two thirds of that stay in the system and are not extracted for human use.

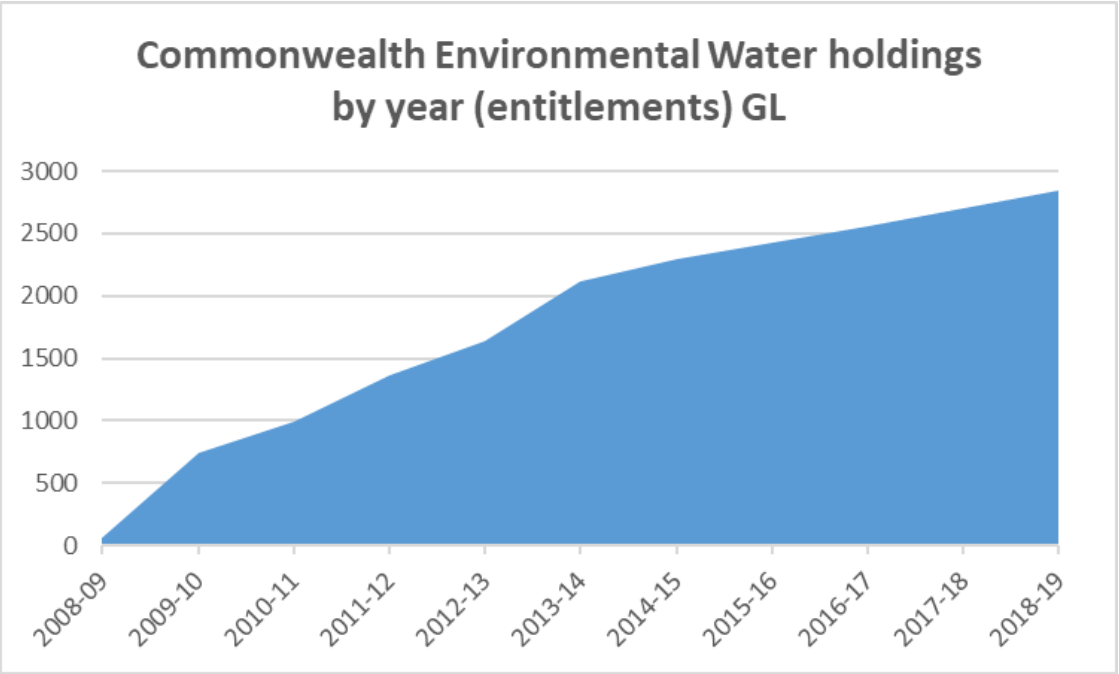

Figure 1 - Commonwealth environmental water holdings by year

Accompanying this (as the ACCC would be well aware from its consultations) has been a move in the areas where water is used with large growth in permanent plantings in the lower Murray.

This development is driven by the market for agricultural product and generally NIC would accept that the market will determine where the resource will go. However, there is a very real concern that in the absence of some coordinated (ie cross state) mechanism we are seeing new development in permanent plantations reaching levels that will be unsustainable from several perspectives – particularly water availability in constrained seasons and physical capacity to deliver.

Obviously, there is a very blunt and costly market solution for this, which is that in a constrained year many growers will lose their permanent plantings. Some might say that is the risk they have accepted and the market will provide the solution, but it is hard to see how the impact can be 'equitably' distributed.

In a variable climate and a system like the Murray Darling it is vital that we have a balance between permanent plantings and annual plantings. In dry years annual croppers, who have allocation, will often put that on the market providing an important resource for permanent plantings.

NIC shares the concern that this balance is being lost and we are worried about the impacts on farmers and communities. We are not as certain that this problem can be resolved via water market rules – except where they legitimately reflect constraints and where they might at some stage include a delivery component.

As a general principle a well-functioning water market should enable farmers to make business decisions about what they grow, based on their land and the return they expect to get – within physical constraints and ideally without causing negative third-party impacts.

Constraints

NIC has expressed concern to authorities, Ministers and publicly about capacity constraints impacting on delivery of water to the lower Murray, and at the same time highlighting the damage being caused to the Barmah Choke and other parts of the upper Murray in the way the river is currently being operated.

NIC's July 2019 policy paper states:

> NIC calls on Ministers to address issues of delivery constraints (particularly impacting the Murray below the Choke), by:
>
> a. Consulting with the irrigation sector to ensure there is confidence that water can be delivered without impacting reliability overall;
> b. Developing a strong and well researched understanding of physical constraints under stressed scenarios including impacts on river losses deliverability risks;
> c. Ensuring that trade rules reflect genuine constraints;
> d. Considering the interaction of the CEWH's operations in stressed scenarios and formalising existing 'good neighbour' arrangements;
> e. Considering developing different models for river management (and interstate water sharing arrangements) depending on whether water is available from the Darling River and how to reasonably share losses from river operations, taking into account contemporary patterns of use, and tributary inflow scenarios;
> f. Ministers providing a timetable for dealing with this issue and a commitment to consulting with the irrigation sector in the process;
> g. In the interim, NSW, Victoria and South Australia agree a mechanism to temporarily halt (put a moratorium on) new greenfields irrigation developments on the Murray below the Choke.

We recognise that dealing with the issues around constraints and delivery are primarily the responsibility of river managers and Basin Governments – and there is a strong expectation that they will act on the issues.

The cross over into this inquiry comes in ensuring that trade rules reflect actual physical constraints, including recognising that they may change over time; that they protect the environment (including not exacerbating the damage to the Barmah Choke) and seek to mitigate third party impacts.

NIC acknowledges that the complexity of the market makes finding a perfect solution to this very difficult. We also acknowledge that there will be very differing views on how to achieve objectives, depending on which part of the system an irrigator is located and that person's activity in the water market.

Trade rules reflecting constraints must be transparent with publicly available justification.

Market participant practices and behaviours

NIC acknowledges that the ability for non-landowners and investors to own water is causing some concern in parts of the irrigation industry and the community.

At the core is whether this involvement inflates prices causing profit from agricultural activities to move from the grower to non-water users, thus in the longer term putting further pressure on the viability of primary producers.

While NIC puts a very high priority on ensuring the property right attached to water is protected and enhanced, we also want to encourage productive water to be used to grow crops.

There is no doubt that the involvement of large investors including superannuation funds has been a significant change in the market. It has led to suggestions that speculators are withholding water or buying allocation water with a view to inflating the price.

On the flip side it has also enabled access to new sources of capital for the irrigated farming sector; the development of products that are assisting some irrigators in managing their businesses more effectively, including long-term water entitlement leases, and forward contracts for water supply. In time this may lead to ever more sophisticated products including options on forward water allocation supplies.

This enables many irrigators to more effectively hedge water access or water supply and water price (input cost) risk. It has also enabled farmers to more confidently forward sell their expected commodity production, specifically if they are able to forward purchase water allocations for future years and simultaneously forward sell their expected commodity outputs at times when forward commodity prices are relatively high and profitable.

The fact that there are investor owners of water in the market also enables some irrigating businesses to take a business decision to invest available capital in their land rather than in owning entitlement.

Investors do take a number of forms ranging from large companies to small investors, often retired farmers.

NIC has noted concerns (including from NIC members) about the ability of investors to own water and the potential that has to see profit motivation work in a way that is detrimental to agricultural production.

These concerns relate, in particular, to the ability of investors to purchase allocation and carryover water, and whether or not that is being sold to a producer or utilised for crop production in a timely manner. Whether for instance carryover is held to increase its value and show an annual capital increase for a fund manager when perhaps it should have been made available for consumption.

On the other side of the coin it would be reasonable to expect that a water investor who has sold a forward product to a producer would potentially need to buy allocation or own carryover to meet their guarantee to deliver water at a certain time.

We would also acknowledge concern among many in the community about water being commodified.

NIC recognises that the development of the market has seen a range of investors become involved and they have a reasonable expectation that they will not have the value of their investment arbitrarily reduced by Government action (as opposed to market movement).

In considering commentary on non-water users owning and investing it is relevant to consider how that is defined. There is no clear-cut boundary, many investors with portfolios of water but who don't irrigate are retired farmers; while a number of the higher profile large companies who invest in water also own significant irrigated property portfolios. This suggests that a market rule that was meant to apply to 'investor only' participants might end up with unintended impact.

NIC also notes that its members and the majority of irrigators overall, strongly support carryover arrangements. Though this is not universal. For many, carryover has been an important part of enabling better planning for farm operations.

There are a range of differences in the carryover operates between states and even between different rivers within states. That is understandable, and justified in most cases, as it relates to the reliability of the catchment, storage sizes and a range of other factors.

There is room to keep under review some rule differences – for example the fact that some states take a percentage out of carryover for loss in storage and others effectively socialises that loss.

While carryover is valued by most irrigators, it would be reasonably to keep under review over a period of time the flow on impacts of changes in its use. It does appear that use of carryover entitlement is increasing driven by its use as a tool to underwrite the reliability of supply. This is a good outcome for some but increasing use may then impact allocation to General Security entitlements.

There is also room to look at how the ability to carryover for multiple years in the Southern Basin crosses over with market operation. On the one side it has been suggested that this provision enables speculators to hold on to water over multiple years to push prices up; on the other it enables farmers to potentially have water available in a multi-year dry period providing either opportunity to grow something or to earn much needed income.

Existing rules in particular catchments have now been built into the property right and the value of that property right attached to each product.

The bottom line is that neither can predict when it will rain and that means each is taking a decision balancing risk and return.

NIC would need evidence of failure or unintended consequences before considering support for changes to carryover rules. It would be reasonable for the ACCC to look into the carryover arrangements to determine if this evidence exists.

NIC would agree with the National Farmers Federations' comment in its submission that "*markets are the most efficient mechanisms to allocate scarce resources and play an important role in resource management. Given the difficulty valuing social and environmental outcomes, they are not directly reflected in the price water prices and require regulation to be adequately accounted for.*

The principle that markets should be designed to meet the objective of allocating and using water in a way which optimises economic, social and environmental outcomes is sound, but the NFF suggests it should be further interrogated to understand what optimal social and environmental outcomes are so the market and trading rules can be designed to align with these values."

For the NIC it is difficult at the moment to resolve concerns or suspicions about activity in the water market because we just don't have firm evidence one way or another. We don't have enough transparency in the market to know if concerns about market manipulation or profiteering are justified.

NIC sees improving that transparency and being able to determine what constitutes unfair market behaviour as being at the core of the ACCCs work in this inquiry.

NIC welcomes the ACCC using its powers to complete a forensic audit of allocation market behaviours and acting where they identify any legal behaviours. NIC also believes this inquiry is an important opportunity to provide recommendations to improve the transparency of the water markets and to build confidence in their operation.

Separation of water and land title

NIC acknowledges that in the current stressed situation we have seen a growing number of comments from farmers and some political representatives suggesting water should never have been separated from land.

It would not be fair to characterise these people as calling for a return to water tied to land. In most cases they are expressing a sense of 'regret' (for want of a better word) without having any expectation that the old arrangement can be returned.

However, for completeness, NIC would like to emphasise that this is not a sensible, practical, or affordable option.

NIC's well established policy position is to "protect or enhance water property rights". While we don't see any sensible call for such a move to re-attach water to property, we would point out how impractical any call would be.

Any move in that direction would overall have huge negative economic impacts; the separation of water from land has enabled a massive injection of capital into agricultural production, it has enabled increased production both quantity and value (outlined briefly in other parts of this submission).

It has seen the value of entitlements in the Southern Basin rise to an estimated $22.7 billion. Value that is built into the balance sheets of most irrigating farm operations along with non-water user owners.

A change that cut that value would not only hurt institutional investors but would certainly result in bankruptcy for large numbers of family farmers whose banks include the value of entitlement as part of their assets.

It would also raise a number of equity questions. Many of the people suffering the most at the moment do not own entitlement; perhaps in some cases they have sold it or they have made a business decision to rely on allocation. Combine that with no allocation to zero, or low security licences and an industry with poor terms of trade, and you have significant hardship. No doubt for some of those people the idea of returning to water connected to land arrangement is superficially appealing. The question is what would they pay for the entitlement? Would they pay back the price for which they sold it, or would it be the current market value – and if it was not, then would the taxpayer be expected to fund the difference?

The bigger question is what would the outcome be? Almost certainly a backward step away from allowing a clear pathway towards using water for its "highest value use", and a consequential loss in overall economic activity from irrigation.

Twenty per cent of previously available irrigation water is now owned by environmental water holders, all purchased from (at the time) willing sellers. That among many other aspects would make it impossible to work out an equitable way of returning water to a land-based title system.

The ability to trade water is used by farming operations of all sizes and is part of what makes Australia's agricultural sector internationally competitive. While the move to separate land and water might be a subject of continuing regret for some, there can be no realistic prospect of turning the clock back.

About the NIC

The National Irrigators' Council (NIC) is the voice of irrigators across Australia.

It aims to develop projects and policies to ensure the efficiency, viability and sustainability of Australian irrigated agriculture and the security and reliability of water entitlements and to promote those projects and policies with a view to having them adopted or ratified by governments, statutory authorities and other groups and organisations.

The NIC was created in 2008 to represent the interests of irrigation entitlement holders across Australia.

A summit of representative groups across the industry recognised the need for a strong, independent and unified voice for irrigators across Australia, particularly with the Commonwealth Government playing a greater role sunset water policy.

NIC members are not individual irrigators directly, but their respective representative organisations. An 'irrigator' is defined as "a person or body with irrigation entitlement for commercial agricultural production".

The majority of NIC's voting members are member owned irrigation corporations, not for profit regional irrigator representative groups and not for profit peak commodity groups. Observer members include companies involved in irrigated agriculture.

NIC is a non-federated body, meaning no state has any greater say in policy than another. The NIC is committed to representing all irrigators, no matter where they are or what they produce. The Council meets regularly to discuss, and debate matters of policy. Adoption of policy is on a consensus basis.

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