



Australian Government



Inspector-
General of
Water
Compliance

Investigation – Trade price reporting

Inspector-General of Water Compliance

October 2023

Ownership of intellectual property rights

Unless otherwise noted, copyright (and any other intellectual property rights) in this publication is owned by the Commonwealth of Australia (referred to as the Commonwealth).

Creative Commons licence

All material in this publication is licensed under a Creative Commons Attribution 4.0 International Licence, except for content supplied by third parties, logos and the Commonwealth Coat of Arms.

Inquiries about the licence and any use of this document should be emailed to copyright@dcceew.gov.au



Cataloguing data

This publication (and any material sourced from it) should be attributed as: Inspector-General of Water Compliance 2023, *Trade Price Reporting Investigation*, Australian Government, Canberra, October 2023. CC BY 4.0.

This publication is available at igwc.gov.au/reviews-reports.

Inspector-General of Water Compliance

GPO Box 3090 Canberra ACT 2601

Web www.igwc.gov.au

Disclaimer

The Australian Government, represented by the Inspector-General of Water Compliance, has exercised due care and skill in preparing and compiling the information and data in this publication. Notwithstanding, the Inspector-General of Water Compliance, the Australian Government's employees and advisers disclaim all liability, including liability for negligence and for any loss, damage, injury, expense or cost incurred by any person as a result of accessing, using or relying on any of the information or data in this publication to the maximum extent permitted by law.

Acknowledgement of all Traditional Owners

We pay our respect to the Traditional Owners and their Nations of the Murray–Darling Basin. We acknowledge their deep cultural, social, environmental, spiritual and economic connection to their lands and waters.

Aboriginal people should be aware that this publication may contain images, names or quotations of deceased persons.

Accessibility

The document and information are available in accessible formats. On some occasions the highly technical nature of the document means that we cannot make some sections fully accessible. If you encounter accessibility problems or the document is in a format that you cannot access, please contact us.



Contents

Summary	1
Observations	3
Background	5
Water trade reporting	5
NSW water trade reporting improvements (2021)	5
Legislation	6
Investigation approach	7
Zero-dollar trades	7
Investigatory purpose	7
Compliance results	8
Observations	9
Deficiencies in the breadth of offences	9
Data transparency and integrity	9
Low regulatory bar	9
Next steps	10
Glossary	11



Summary

Having clear and transparent information about water trading is important, it provides clarity and transparency to people trading water.¹

Pricing information is crucial for people involved in water markets to make well-informed decisions. Therefore, it is necessary to have readily available and up-to-date pricing information.²To facilitate this, a rule in the Basin Plan³ requires anyone disposing of a water access right⁴, to inform the relevant authority in writing about the price they have agreed upon for the trade. They can do this on the trading application⁵ or registration form, or if there is no specific form, they must still write to the approval authority or registration authority about the trades price.

A report⁶ by the Bureau of Meteorology (the Bureau) in 2019/20 looked at price reporting in the Murray-Darling Basin. They found that 70% of individual surface water trades in the Northern Basin and 43% in the Southern Connected Basin did not report their prices.

The IGWC Strategic Plan sets the long-term priorities and outcomes for the Inspector-General of Water Compliance, including ensuring people follow the law.

Ensure it’s lawful



OUTCOME 1: Ensure Basin water managers and users meet their obligations under the Water Act 2007 and the Basin Plan.

These are fundamental activities to increase accountability and meet the Inspector-General’s legislated remit and drive improvements in the compliance with obligations under the *Water Act 2007* and the Basin Plan.

The IGWC Regulatory Policy⁷ explains the detailed functions, role, jurisdiction, powers and approach of the Inspector-General. Relevantly, the Inspector-General takes a risk-based approach to compliance and enforcement. The Inspector-General of Water Compliance (IGWC) is a role with investigation⁸ and enforcement powers⁹ under the Water Act of 2007 (Cth). These powers allow the IGWC to assess how well people follow the Basin Plan¹⁰ and Water Act and take actions to ensure compliance with these laws.

The IGWC establishes an annual workplan¹¹ which is designed to respond to current and emerging risks and challenges affecting water compliance. Priority 1 for the 2022-23 annual workplan was trade enforcement, with a commitment to undertaking investigations into compliance with the Basin Plan Water Trading Rules and taking enforcement action as appropriate.

1 ACCC Water trading rules final advice: Chapter 9 – Reporting and the availability of information.

2 2012 – Basin Plan – Explanatory memorandum at p141.

3 Section 12.48 of the Basin Plan 2012.

4 Refer to the Glossary for the definition of a ‘water access right’. These investigations examined allocation trades (often referred to in NSW as ‘temporary trade’).

5 In NSW see [Form Z1](#) – Application to assign surface water allocation.

6 2019/20 Australian Water Markets report at p33.

7 <https://www.igwc.gov.au/about>

8 Part 10AA of the Water Act 2007 (Cth).

9 Part 8 of the Water Act 2007 (Cth); section 137(a) Water Act.

10 Basin Plan 2012.

11 Section 215E Water Act.

Table 1: IGWC Work Plan 2022/23

Priority 1: Trade enforcement	
Why it’s a priority	The healthy operation of the water market relies on transparent, accurate and timely reporting of data. Water market compliance and enforcement are predominantly the domain of Basin states, however the Inspector-General has a limited role to enforce rules within the Basin Plan. The ACCC’s final inquiry report demonstrated that significant improvements are needed across all aspects of water market regulation and a concerted effort is required by all levels of government and regulators.
Inspector-General’s desired outcome	The regulated water community understand the rules and comply with them.
What the Inspector-General will do	Focus on provisions in the Water Act and the Basin Plan which require the price of a trade to be reported.
	Publish one audit report in relation to compliance with trade disclosure obligations under the Murray-Darling Basin Plan.
	Publish one audit report in relation to trade accounting and compliance.
	Undertake investigations into compliance with the Basin Plan Water Trading Rules and take enforcement action as appropriate.

The lack of price reporting in the Northern Basin, especially in the New South Wales (NSW) Macquarie region¹², was highlighted by analysis as a risk to market transparency which warranted further proactive investigation. As a result, an investigation focused on trades with \$0 reported prices in the NSW Macquarie region. The primary focus was on the responsibility for making sure individuals report prices as required by section 12.48 of the Basin Plan.



12 The NSW Macquarie region water access licence dealing rules are specified in the Water Sharing Plan for the Macquarie and Cudgegong Regulated Rivers Water Source 2016 (see Part 9).

Observations

The investigations into a limited sample of a number of zero-dollar water allocation trades in the NSW Macquarie during 2021/22 did not uncover evidence of any non-compliance with section 12.48 of the Basin Plan. However, these investigations did reveal certain limitations in the legislation governing water trade price reporting.

While these limitations do not indicate non-compliance with the Basin Plan or Water Act, it's advisable for legislators to consider addressing these weaknesses to achieve two important goals:

- Greater public confidence: to instil greater confidence in the public regarding the water market.
- Effective contribution to Basin Plan outcomes: to ensure that compliance arrangements effectively contribute to achieving the goals of the Basin Plan.

Table 2: Observations

Issue	IGWC suggested next steps
<p>1. Deficiencies in the breadth of offences:</p> <p>As a result of these investigations the IGWC believes that the existing statutory requirements for trade price reporting do not support enforcement outcomes. Section 12.48 of the Basin Plan is too narrow, focusing solely on the ‘agreed’ trade price and the seller or ‘disposer’ of water. This observation is consistent with the ACCC’s findings and recommendations from their Murray-Darling Basin water markets inquiry.</p>	<p>Obligation for accuracy</p> <p>Consider amending the legislation so that parties to a trade (buyer and seller) are responsible for reporting water trade information including price, accurately. To support future investigations, there should be a requirement to keep sufficient and necessary information that supports the price paid and reasons for trade.</p>
<p>2. Data transparency and integrity:</p> <p>It is extremely difficult for investigators to access trade data. Once data is provided, it lacks the robustness required to conduct further enquiries. There is no chain of custody attached to data, without this information, the quality and integrity of data cannot be guaranteed.</p>	<p>Obligation for maintenance of data integrity</p> <p>Trade data should be consolidated in a central database that is readily accessible to the regulator. Consideration should be given to amending legislation to ensure continued integrity of data throughout its lifecycle, from submission to arrival at the database.</p>
<p>3. Low regulatory bar:</p> <p>Currently, section 73G(2) of the Water Act allows individuals to provide a ‘reasonable excuse’ for conduct that would otherwise contravene section 73G(1). This is seen as a low regulatory bar.</p> <p>There is no requirement to verify claims.</p>	<p>Review threshold</p> <p>Re-evaluate the threshold for what constitutes a ‘reasonable excuse’ and consider applying a more detailed and stringent test for exemption.</p> <p>Alternatively, remove the exemption. In support of this position, statutory and common law principles already exist to provide a person with a right of reply.</p> <p>Furthermore, verification of non-commercial trade purpose should be required.</p>

These proposed changes aim to enhance transparency, data integrity, and compliance within the water market.

These investigations form a case study into one of the deficiencies in integrity regulation regarding Basin water markets. The next steps, outlined herein, seek to clarify, and enforce participants’ roles and responsibilities in the Basin water market.

For a more extensive look at Basin market reform objectives, see [Water Market reform: final roadmap report](#).



Background

Water trade reporting

Water trade plays a crucial role in managing water scarcity in the Murray-Darling Basin. It’s essential to provide accurate and timely price information to make these markets work effectively.¹³

Accurate and publicly assessable price information ensures that all participants in the market have equal access to essential data. This helps people make informed decisions about investing in water and using it based on their specific needs.¹⁴

In 2018, the Murray-Darling Basin Authority conducted a two-part audit¹⁵ to evaluate how well trade price reporting was operating.

Part 1 of the audit found that Basin States didn’t have strong enough processes to collect and produce comprehensive and accurate price information. Several issues contributed to this problem, including:

- not all jurisdictions make price reporting mandatory.
- some trades were approved without reporting the prices.
- reported price information wasn’t always validated for accuracy.

Part 2 of the audit, conducted by Deloitte, uncovered a range of issues including:

- confusion about the requirement to report price.
- Inconsistent approaches to reporting price by different traders and brokers.
- Not being able to verify price on nearly half of all (sampled) transactions.

Deloitte concluded that many of these issues existed due to flaws within Basin State systems and processes - which was consistent with the findings of Part 1 of the Audit.

NSW water trade reporting improvements (2021)

In 2021, due to concerns about inaccurate price reporting, New South Wales made updates to their water allocation trade application forms. These changes aim to gather more detailed information about trades, including the price type, and purpose of the trade. They placed specific emphasis on reporting zero-dollar (\$0) and low value trade prices.¹⁶ WaterNSW trade forms¹⁷ now offer seven trade purposes classifications in which zero-dollar trades are allowed.

These include:

- Carryover parking return.
- Related party.
- Compensation for outcome delivery.
- Environmental use.
- Returned unused environmental water.
- Government program.
- Other.

WaterNSW requires that if the sale price is indeed zero (\$0) and it aligns with one of these trade purposes, the person disposing of the water allocation should select the appropriate trade purposes classification as listed above.

Legislation

Basin Plan 2012 – Chapter 12: Division 4—Trading prices to be made available

Section 12.48 Price of trade to be reported

(1)

If the trade of a water access right requires the approval of an approval authority, the person disposing of the water access right must notify the approval authority in writing of the price agreed for the trade.

(2)

If the trade of a water access right does not require the approval of an approval authority but does require registration, the person disposing of the water access right must notify the registration authority of the price agreed for the trade.

(3)

The notice must be given either at, or before, the time the approval or registration is sought.

Water Act 2007 (Cth)

73G Failing to report price for trade of water access right as required by the Basin Plan

(1)

A person contravenes this subsection if:

(a)

the person is required to give a notification under subsection 12.48(1) or (2) of the Basin Plan; and

(b)

the person fails to give the notification in accordance with subsection 12.48(3) of the Basin Plan.

(2)

Subsection (1) does not apply if the person has a reasonable excuse.

Note: The person bears an evidential burden in relation to the matter in this subsection (see section 154E).

(3)

A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 60 Penalty units

¹³ [Water Trade Price Reporting Audit](#), MDBA – 29 May 2018.
¹⁴ Ibid.
¹⁵ [2019 Water trade price reporting audit](#).
¹⁶ [Transparency in the NSW water market discussion paper](#) – November 2020.
¹⁷ [Form 71](#) – Application to assign surface water allocation.

Investigation approach

Zero-dollar trades

The Murray-Darling Basin Authority audit focused on \$0 water allocation trade during the 2017/18 water year¹⁸. Surprisingly, 43% of all trades during that year had no reported value. Removing these \$0 trades would raise the average water allocation price to about \$130 per megalitre, compared to around \$75 per megalitre when including them. This highlights how \$0 trades can affect price data.

In the 2021/22 water year, \$0 trades still made up a significant portion of water allocation trades in the Basin (see table 2 below).

Table 2 – allocation trades in the MDB for financial year 2021/2022

State	Total Trades	\$0 Trades	Percentage of \$0 trades
NSW	9645	4740	49%
VIC	12662	3760	30%
SA	1689	656	39%
QLD	128	66	52%
TOTAL	24124	9222	38%

The impact of potentially false zero-dollar trades on price data quality and reliability is hard to quantify. Generally, larger, connected markets with many brokers and online exchanges tend to have more reliable pricing data. However, smaller, disconnected trading zones, like the NSW Macquarie region, have fewer data points and water market participants, making the price data more vulnerable to the impacts of false zero-dollar trades. Around 40% of water allocation trades in the NSW Macquarie region reported zero-dollar¹⁹.

Due to these factors, the NSW Macquarie trading zone was chosen for investigation.

Investigatory purpose

The purpose of the investigation was to check if people disposing of a water access right (i.e., water allocations) in the NSW Macquarie for the 2021/22 water year followed reporting requirements as per section 12.48 of the Basin Plan.

¹⁸ 2019 Water trade price reporting audit.
¹⁹ Representing 121 out of 302 water allocation trade transactions in the water year.

Compliance results

All individuals investigated were found to have met the current legal requirements for reporting water trades.

Regarding the sample of zero-dollar (\$0) trades that were investigated, the following observations were made:



²⁰ These trades are often where the buyer and seller are the same person or entity, trades within a company, or between different branches of government. The water is moved from one commonly owned WAL to another, rather than being “sold” (often referred to as administrative transfers).

Observations

Deficiencies in the breadth of offences

Currently, under section 12.48 of the Basin Plan a person disposing of a water access right²¹ needs to report the agreed trade price (at or before approval or registration of the trade). For zero-dollar water allocation trades in NSW, the person disposing the water allocation has to choose a trade purpose classification from a list provided on the trade form only²². However, the existing legislation is limited in scope for both investigation and enforcement.

As the legislation stands, certain types of undesirable behaviour do not constitute an offence. This issue arises due to the narrow scope of section 12.48 of the Basin Plan. The only data captured by this legislative provision is the ‘agreed price’ of a trade, leaving the remaining data submitted during the trade process vulnerable to inaccurate reporting and maintenance.

The narrow scope of this offence also comes into play when we consider enforcement. The term ‘agreed price’ creates room for interpretation.

Data transparency and integrity

While there are legitimate reasons for zero-dollar trades, it’s essential for water markets to have transparency and public access to reliable price data. The current statutory requirements fall short of ensuring data integrity and transparency.

Trade data is held and maintained by numerous different agencies throughout the Basin. The IGWC as regulator does not have ready access to the data. Further to this, due to the lack of legislative breadth outlined above, the integrity of the data is difficult to verify as there is no requirement in the legislation to provide a chain of custody or maintain the data to a certain standard.

Low regulatory bar

The current Water Act allows for reasonable excuses for not reporting trade data accurately under subsection 73G(2). This sets a low bar for compliance with section 12.48 of the Basin Plan. However, ensuring data integrity and market transparency is crucial for a well-functioning water market.

A requirement for accurate trade price reporting is not overly burdensome. It merely expects honesty from the parties involved in a water trade transaction. Similar regulations exist in other markets, for example, reporting a price when buying and selling a car.

On balance, the reasonable excuse does not appear appropriate.

To strengthen compliance, policy agencies and legislators should consider placing a legislative requirement that makes both the buyer and seller responsible for providing accurate information on the trade form to the approval authority when lodging a trade.

Currently, there is no requirement to verify claims made when conducting a zero-dollar trade. Relationships should be verified when trading a water allocation for these reasons. For example, when trading to a related party or WAL under common ownership, attaching proof of these connections to the approval request could be requested or mandated.

21 For example, a water access entitlement or water allocation.

22 [Form 71](#) – Application to assign surface water allocation.

Next steps

Due to these shortfalls, the IGWC welcomes the proposed water market reforms recently suggested (see extracts below).

Water market reform: final roadmap report

Recommendation 4:

Broaden and strengthen price reporting requirements for trade data²³

The Commonwealth should broaden and strengthen the requirement for trade approval authorities and irrigation infrastructure operators who approve trades within their networks, to report price data for all tradeable water rights, including water delivery and irrigation rights. This data should be available to the water market regulators and de-identified data should be publicly available.

The ACCC’s Murray-Darling Basin – water markets inquiry

Recommendation 1:

Implement centralised, Basin-wide water market conduct and integrity legislation²⁴

New centralised Basin-wide legislation should be introduced to protect the integrity of Basin water markets by regulating conduct of market participants.²⁵

The proposed new legislation should include:

- integrity protections such as broader price reporting requirements



23 See ‘Areas for reform’, Water market reform: final roadmap report - September 2022 by Daryl Quinlivan AO, at p13.

24 The ACCC’s Murray-Darling Basin – water markets inquiry, at p 99.

25 To be enforced by the proposed Water Markets Agency (see recommendation 26).

Glossary

Term	Definition
Approval Authority	in relation to the proposed trade of a water access right, means a person whose approval is required under State water management law for the trade to proceed.
Basin Plan	Murray-Darling Basin Plan 2012
Bureau	Bureau of Meteorology
IGWC	Inspector-General of Water Compliance
MDBA	Murray-Darling Basin Authority.
ML	Megalitre
State water management law	relevant includes <i>Water Management Act 2000</i> , <i>the Water Act 1912</i> and <i>the Rivers and Foreshores Improvement Act 1948</i> of New South Wales.
Trade	includes a trade that does not involve the payment of consideration.
Water Access Entitlement	means a perpetual or ongoing entitlement, by or under a law of a State, to exclusive access to a share of the water resources of a water resource plan area.
Water Access Right	<p>means any right conferred by or under a law of a State to do either or both of the following:</p> <p>i. to hold water from a water resource;</p> <p>ii. to take water from a water resource.</p> <p>Includes:</p> <p>i. stock and domestic rights;</p> <p>ii. riparian rights;</p> <p>iii. a water access entitlement;</p> <p>iv. a water allocation,</p> <p>or the taking or use of water that is prescribed by the regulations for the purposes of this paragraph.</p>
Water Allocation	means the specific volume of water allocated to water access entitlements in a given water accounting period.

www.igwc.gov.au

