



Australian Government



Inspector-
General of
Water
Compliance

WATER'S EDGE: TRANSCRIPT

S3, Episode 10 – 'Accuracy in trade price reporting'

- Speaker: *Water's Edge* podcast acknowledges the traditional owners of country throughout the Murray-Darling Basin and Australia, and recognises the continuing connection to Lands, waters, and community. Coming up in this episode of *Water's Edge*.
- AD: Plans for a follow-up trade price reporting investigation by the IGWC audits and investigations team.
- Z: If we're going to look again, familiarise yourself with the legislation, ask questions, and if you're not sure, then don't do it. Find out.
- AD: How do those new rules sit with those working with the water market?
- PG: You know, we want it to be fairly priced and have the market have the right sort of information and materials so that participants can make informed decisions.
- AD: And a look at the bigger picture with a community member question.
- DT: Given that there are four states and one territory in the Murray-Darling Basin, and they all have their own rules and regulations, what happens when the rules and regulations conflict with those under which the Inspector-General operates?
- Speaker: You are listening to *Water's Edge* with your host, Allison Dance.
- PG: It's the laidback country lifestyle. So, you bump into people you know all the time, and there's no traffic and there's less stress, and housing is cheap. You can buy a beautiful house and all of that. We've got a really good airport, and we can fly to Sydney, Melbourne, Adelaide. So, when you want to misbehave and get away and go the footy and do that, you still can.
- AD: That's Phil Graham, general manager of Rural Co. Water in Mildura, a regional Victorian city on the banks of the Murray River. It's this water that keeps Phil's family in the town, which is home to almost 40,000 people.
- PG: My parents had a little water broking business, and it was the millennium drought back then. I was a property valuer and came home for Christmas one year, and Dad wanted to retire or was thinking about retiring. It just felt like a business that was too good just to sort of shut down or let go. So, I thought I'd come back and give it a go for a little while, and I've stayed. I'm glad I came back. I love it.
- AD: Tell us, what is a water broker?
- PG: It's simply a role where we match up buyers and sellers. So, there's a few different water products now. There are temporary allocation markets, there's permanent

entitlement forwards, leases, carryover, and a water broker just builds relationships with their client base, understands their business, what water needs they have, and seeks to find solutions for them and simply matches up the buyers and sellers in the market to create a trade, and then manage that trade through to completion.

AD: And, on the water markets, for those who aren't familiar with it, can you give us a breakdown of what the water market is?

PG: Yeah. In its simplest form, it's just a cap-and-trade model, where years ago the state governments capped the number of water licenses that they issued. And now, if a farmer wants to irrigate more, they have to buy that water from someone who wants to irrigate less. So, it's a market for the underlying permanent entitlements, which they own in perpetuity - that's the permanent market. And then, each year, those entitlements get granted an allocation, which farmers either use or, if they don't use it themselves, can sell in the spot market to another farmer who wants to use it for that year. So, that's called the temporary allocation market. They're the two main ones.

AD: You've probably touched on it a little bit, there. So, what are some of the benefits of being able to do this trading?

PG: I think the biggest benefit is flexibility. It's given farmers and governments and other environmental water users the ability to have flexibility in their operations so they can be rewarded for using water efficiently. So, if they put in drip systems and use less water, they've got an asset they can sell. That creates an incentive for efficiency. And, if they want to expand, they have options to do that. In my view, it's been a massive positive for the Basin, the creation of the water markets. There are some issues and some problems, obviously, but, overall, it's created a lot of flexibility and gets water to its highest and best use. So, it gets it to the operations and the crop types that are profitable at that time versus leaving it on unprofitable land that was never really suited for irrigation.

AD: Mm. So, really making the most of every drop?

PG: Yes. It's an efficient way to allocate a scarce natural resource, that's for sure.

AD: What sort of clients are you working with here?

PG: We've got a real mix. It ranges literally from stock and domestic customers, who have to buy one mega litre a year, to private, high net-worth individuals who have invested in the water market to institutional investment funds. Family farmers are probably the predominant, in terms of numbers - the mid-size family farm. Then we've got high-end corporate farming operations and governments of course. Lots of governments now participate in the water market as well.

AD: There you go. So, you would've seen this scene really change since the time that you've started?

- PG: Yeah, very much so. It was paper-based forms that you'd fill out and fax off and hope to get a reply a couple of weeks later. Now it's more digital and more live-time. People are more educated and use the water markets more.
- AD: Can you delve into those issues and challenges a little bit? What are some of those that you see?
- PG: Probably the big one at the moment, I think, that is yet to sort of manifest, is the expansion we've seen in permanent plannings without entitlements. Developers of greenfield have been able to do that and source their water needs in the temporary allocation market versus buying the permanent entitlements because the capital that's required is a lot higher. So, we've seen a massive expansion. But, as I said before, the water entitlement volume is capped. So, I think in the next drought, when we see a bit of a tightening or a shortage of availability of water, we will see some shortage in the market, which will create problems for high temporary allocation prices, and potentially properties that may not get water for that year and get dried off. So, that's probably the main problem I think we're going to encounter.
- AD: What about in terms of transparency? How do you see that across the water market at the moment? Room for improvement? Not too bad?
- PG: It's generally pretty good. We operate on a digital exchange, which is open for anyone to see and view, and every trade we do is visible on a website. Most of the water trades that are conducted these days are done on an exchange. So, there is some good transparency and visibility. There are those little pockets that aren't done on exchanges and are done on brokers desks, and they're potentially less transparent and less visible to the market. But we've got some change in legislation, and some regulatory changes coming, which we're all hoping will fix that. And certainly, the state government registers - whilst they're out of date, with the trades appearing well after they've happened - more and more people are becoming aware of them and using them and using them as a source of transparency as well. So, overall: it's not too bad, but room for improvement.
- AD: Yeah, absolutely. That's basically the view of the Inspector-General for Water Compliance, too. And he did make the call - I think it was earlier this year - about wanting to see more transparency, particularly around \$0 trades. Do you want to give us an overview of what a \$0 trade is, for those who aren't familiar with it?
- PG: It's a transfer of allocation. So, it's a transfer from one allocation account to another, for a certain volume, and the price is recorded at \$0. So, it's not a commercial trade where someone has bought and sold. We execute a lot of them for our clients. It's just helping them get water where they need it to be. They'll have a license in South Australia, for example, and they need it to use on their Sunraysia property. We help them facilitate the transfer of allocation from their SA license to their Vic[toria] ABA, and that goes through the register as a \$0 trade. So, it's a value-add service that most brokers do for their customers.

- AD: I've just really visualised \$0 trades as, 'My mum up the road is going to give some of her water to the other half of the family farm down the road.' So, much bigger than that? What sort of trades are you seeing that are in the \$0 form?
- PG: Well, most of it now, is large corporates or larger family farms that have multiple entitlements. They have high security or general security licenses, or they have Vic licenses and SA licenses or New South Wales licenses in the 'Bidgee and New South Wales licenses in the Murray. So, they're shifting the allocations granted to those licenses around between each water account for various reasons. They might have excess in the Bidgee, so they want to shift it down to use it on their Murray property, or they have a license in SA that they don't extract from, but they bought it to supplement their Victorian property. So, they need to shift the allocation across each year. So, that's the main purpose behind them - shifting allocation between customers' accounts.
- AD: So, it wouldn't make sense to sell and buy when it's your own account already?
- PG: That's right. Yep.
- AD: What are your thoughts about the new legislation that's come in from 1 July this year, about \$0 trades and to improve that transparency?
- PG: I think it's good. I think there was a lack of awareness of how many \$0 trades were actually happening and the reasons why. And they are all legitimate reasons. Farmers are buying a whole range of different entitlement types and shifting allocation between those entitlements in different valleys and different states and zones. That's becoming more and more prevalent. So, there's going to be more and more \$0 trades and the change to identify now why they're occurring just gives the market confidence that they're genuine. So, overall, a good thing.
- AD: The Inspector-General of Water Compliance, the Honourable Troy Grant, called for the tightening of rules at Senate Estimates last year, where the operations of governments are scrutinised as part of its annual budget cycle.
- TG: The ACCC did a significant body of work to assess what was happening in the water trading space, and it was well short of any decent standards. The conduct and the standards weren't there. The timeliness of reporting, the ability to manipulate price reporting on trades, and impact the market and the fairness in the system. So, the roadmap was developed, and we are playing a new role in the water trading space. We played a role in enhancing the legislation late last year, which we're proud of. But there's still a long way to go. It's really a case where, if you're doing the right thing, you've got nothing to fear. If you're doing the wrong thing, you've got to have a real good, hard look at yourself because we'll come after you and we'll hold you to account and the penalties won't be pretty. It's just the decent thing to do, to do the right thing. We know things can get tough and people push the margins at times and try and get away as much as they can. But when you're dealing with such a precious natural resource, as water is, and such a valuable commodity, that water is as well, there's no room for people to be doing the wrong thing. We are part of that process, of holding people to account. We don't shy away from that. Our job is to continue to investigate and audit, to see

what the status of things are, and feed that back into the policymaker's information, so they can shift policy or change the law, where it's required, to continually improve the regulatory process as they call it. So, we have an important role to continually play in that area. The water theft issue that really concerns the public out there, that still sits primarily with the state jurisdictions and the ACT. We don't duplicate in that area, to confuse the space. So, they effectively are the, the police officer for water theft, farm gate to pump and et cetera. And we're doing the Basin-wide policing of the overall volumetric take and making sure there's compliance there.

Speaker: The Inspector-General of Water Compliance is an independent statutory office holder with oversight, monitoring, regulatory functions and powers established under the Water Act 2007. For more information on what we do, visit our website at iwc.gov.au.

AD: Zach and Matt worked on the IGWC's first investigation into trade price reporting. This investigation gave the Inspector-General evidence to call for tightened legislation. If you're curious, it's up on the Inspector-General's website: www.igwc.gov.au.

AD: Zach, why don't you talk us through how this investigation eventuated? What made us want to look into the \$0 water trading?

Z: Sure. So, when the Inspector-General of Water Compliance came to be, specific legislation that made it an offense not to report the price of a trade became the responsibility of the Inspector-General's enforcement arm. So, the Water Act made it an offense not to report the price of a trade. It was an important piece of legislation that needed looking into, and we were aware that the MDBA [Murray-Darling Basin Authority] had done some work and had seen it as quite a large - I don't want to say 'issue', but it was something that happened a lot, these \$0 trades. We really needed to understand, as an agency, what the purpose of all of these \$0 trades were, because the numbers of trades that were occurring were so high. There was a report by the Bureau of Meteorology in 2019 or 2020 that found that 70% of surface water trades in the Northern Basin didn't report a price. So, as you can imagine, the larger the volume of unreported prices there are, the more likely there is to be a distorted market. And we really wanted to understand what or how big the problem was, if there was one. That's why we decided, in consultation with our subject matter expert - we have Edwina Carter, who's the Director of Water Trade Regulation - we decided that we needed to look under the hood and just see whether there was a real issue happening in this area.

AD: And the Inspector-General has a couple of different tools. We've got audits, investigations, and inquiries. We went for an investigation this time. Why did we opt for that, and what does it mean we could find?

Matt: Well, when you do an audit, you're looking at the extent of compliance. You might come across non-compliance in an audit, but you're looking at the extent of compliance with investigations. You are being a lot more specific. So, with this, it was section 73G of the Water Act that tells us that you must declare a price on a trade. So, we were able to get really specific on the actual legislation. We were

able to look for the elements of meeting that legislation, so that we could try and make sure that what was going on was lawful. It took me to a bunch of different questions that I had within myself that I wanted the team to also have and to try and answer. What's the impact on the market? Are people making decisions in the market based on the best available information that they have? And, ultimately, is it lawful? Are we allowed to be doing this? Are people who own water allowed to do this? That was my basis for wanting to do an investigation. We were looking to see whether the law has been broken.

AD: And how did you find that out? What did the investigation involve?

MJ: The investigation involved going out into the community and looking at trades. We took a sample of 59 trades that didn't report a price.

AD: Is that a small sample?

MJ: It was small. There's a lot of trades out there that are \$0, and we selected 59 of them.

AD: But a diverse set?

MJ: Yeah. We just wanted 59 water trades that we could investigate. Basically, my job after that was fairly easy. I just set the team free. I said, 'Okay. Go find out whether it's lawful or not.' And the great work of the team, they went out and did that research and that investigation and they came back with a report that highlighted that we were compliant but that, Jeez, the rules are quite easy to get around.

AD: What does an investigation involve? That section there, where the team's going out researching?

MJ: Oh, they're detail gatherers. They gather as much detail as they can. Most investigators by nature are quite suspicious people. So, it involved speaking to the parties involved on the trade and identifying whether there was a reason or why there wasn't, and Zach will talk to that better than I would. But they're suspicious by nature and that gets them asking questions and digging.

AD: Can you talk about some of the reasons people are doing the \$0 trades? We've mentioned gifts. Why else would someone be putting zero down next to a trade?

Z: Sure. So, in some circumstances, the same person owns multiple water access licenses. So, they may have something in a business name as a sole trader or similar, but also in their personal name. So, it wouldn't make sense for them to have already purchased the water and then have to trade it to a different license, and then pay for it from themselves again. So, of course, we call that a water access license or water access licenses under common ownership. And we found that 38% of the 59 trades were trades between commonly owned water access licenses. We found that 58% of the trades were non-commercial - between related parties or within irrigation schemes. So, there's a number of schemes out in the

Macquarie, and obviously that makes up a larger or fairly large portion of the trades - 58%. And then there was 4% of the trades were involved in environmental water use.

AD: I think it's a good point in our work, as well, um, being the Inspector-General of Water Compliance, to have suspicious people around, within the investigators, but not necessarily there for a 'gotcha!' moment. I mean, this report finding that there is 100% compliance is still a really significant find and has made quite an impact. Can you talk about what the result of this report has helped us to learn?

Z: Yeah, absolutely. So, we found that although the legislation was met with 100% compliance, it's still a large number of trades across the Basin that were... Like, we can't get away from that high number of trades that were made across the Basin that didn't report a price. The suspicious mind of me goes, 'Well, there is a lot of them. Surely there's 1 or 2 that aren't quite correct or compliant.' Out of that sample, we found 100% compliance. That doesn't mean that there's not non-compliance somewhere else. Some of the reasons that were on the application forms for a trade were things like, 'What's the reason for trade?' And then it had a bunch of reasons on there - then, all of a sudden, it just had 'Other'. Well, I'm interested in those 'Other's'. What's the 'Other'?

MJ: There were questions like that which come out, and that's where I think this report has aided the new legislation, the Restoring Our Rivers bill. When we were talking about what we did with the investigation, once it was finished, and Zach had put together his report with his team and got it up to me, we were very quick to say, 'Let's get it to the Deputy Inspector-General and our Water Trade Regulation Director,' because they were in discussions about the amendments. We were able to give them the evidence base to support the changes that were required. So, they were able to go in there with that in their back pocket and help that working group in making sure that the legislation amendments were going to make a difference and make sure that it was more transparent, and just ultimately better run.

AD: Gosh, it must feel good knowing that your work can influence change like this.

Z: A lot of my team are investigators and, being investigators for a long time, we all get into the habit of getting a big prosecution something like that. But, on this one, we actually were able to encourage a change without anybody getting a big smack or anything like that, which was really nice. So, to inform a positive change in the Basin is our reward, I guess.

MJ: One of the findings that we made as part of our investigation was that a) we couldn't ensure the integrity of data that we were receiving as a regulator, but that b) it was very difficult to get the data as the regulator. There were so many steps involved. We found that we thought there needed to be higher quality standards, but we also needed data in a centrally located database that was easy for us to access in a timely fashion. I can gladly say now that we're involved with the Bureau of Meteorology and their Water Market Data Hub project, and we are having active input into getting that really timely access to data as that project

progresses. So, that's really exciting for water markets and the ability to regulate. So, we look forward to where that ends up in the future.

AD: And speaking of the future, I think it's fair to say the majority of irrigators and people working in this space are doing the right thing. What's ahead? And, when you are doing the right thing, what can you do to make sure that you don't get yourself caught out by accident?

Z: Yep. So, absolutely. I completely agree. The community in this country is awesome - especially our water users as well. We find that the ethical use of water is common. We think that's great. We want you to not be scared. If you've got a question, then ask it, whether it's a state question, a federal question or whatever. The only silly question is the one not asked.

AD: The strengthened legislation came into force from the 1st of July 2024 through the Water Amendment Restoring Our Rivers Act 2023.

EC: I've worked around water trade for almost 15 years, now, and I've been working in water for almost 25. So, I've worked in a lot of different areas of the Basin.

AD: That's Edwina, the IGWC expert in water trade regulation.

EC: It's very complex. No two days are the same. It's a constant challenge. The water trade aspects can be quite complex because every state and different infrastructure operator has their own rules and they're their own little independence state and bodies. Understanding those and how they interact and things like that is very challenging, but it also means that I'm doing a lot of different work all the time. So, it keeps me thinking quite a lot.

AD: Edwina published 'Frequently asked questions' on the new Water Trade Rules on the IGWC website - that's www.igwc.gov.au. But let's take a closer look at those changes now.

EC: There's some updated requirements in relation to trade reporting. So, the simple takeaway is that people need to fill out their trade forms accurately and comprehensively. When people are filling out trade forms, they just need to report all the information that's requested and to report it accurately. Those are new requirements from the 1st of July 2024. There's lots of questions around, 'Well, if I do a \$0 trade, what does that mean?' The rules aren't saying that \$0 trades aren't trades that don't happen, or trades that can't exist. If it is a genuine \$0 trade, you report it as a \$0 trade. You might be also asked for the reason for trade. Again, you report the reason for trade accurately. So, if you were trading to yourself, you would nominate that as the reason for trade. Really, it's just about improving the water market information and the accuracy of the water market information that's out there. This is the start of wider water market reforms that were legislated in 2023 as part of the Restoring Our Rivers Act.

AD: Who do these rules apply to?

- EC: So, they apply to anyone trading water, basically. The legislation talks about the owner, the buyer, and the broker. When people are trading, the other part of the rules that commence on the 1st of July is that they need to keep records to support price and reason to trade. So, if the application form that you're filling out for the trade requests price information and/or the reason for trade, the buyer, seller and broker need to keep information to support both the price and the reason for trade for five years. That might include when you're talking about price, it might include an invoice, it might include an email, or things like that. There's a requirement for people trading water to keep those records to support price and reason for trade for five years after the trade.
- AD: Yeah, and it could even be things like emails?
- EC: Yes. So, there are civil penalty provisions attached to these rules.
- AD: With these new rules now in place, the IGWC Audits and Investigation team is planning to take another look.
- Z: The big thing here is that I want to use the new legislation toward the back end of this calendar year. I want to peek again. I want to have another look. I think it's fair notice to anybody listening or anybody who's read our report that it would actually be irresponsible of my team to not look again, given that new legislation has come in. I'm still in the finer details of how I'll do that, but rest assured my team will look again at \$0 trades in the Basin and - pardon the pun - we will do a deep dive into them and see where we end up. But I can't stress enough the importance to not play with legislation. I always say I'm not a lawyer, so I don't muck around with it. I don't play with the words in legislation. If it says I shouldn't do something, then I don't do it. So, if it says I should do something, then I should do it. So, I think there's a fair notice there from this office that, we're going to look again. So, familiarise yourself with the legislation, ask questions, and if you're not sure, then don't do it. Find out. Please don't play the legislation report. Your reasons for trade... Water is also a very emotive place. Entire communities and entire industries are formed upon the ethical use of it. You want a market that's transparent, you want a market that's robust, you want a market that's well regulated, and you want to make sure that the rules are being played with nicely.
- AD: A notion Phil agrees with. As a water broker, why do we need that market to be fair and transparent?
- PG: It just sends the right signals to the participants. We want it to be fairly priced and have the market have the right information and materials so that participants can make informed decisions. That's the goal of any market. Then the market will price the water accordingly. We want this to be something that we are proud of. We see a lot of overseas players come out to look at what we've done here. Often, I have universities from America or other people from different areas come to look at what we've done. And I think it is something we should be proud of. We've just got to keep it that way and fix the areas that need attention.
- Speaker: You are listening to *Water's Edge*. Thanks for being part of the conversation.

- AD: The systems states use to record and approve water trades are all different, so the data coming through varies between jurisdictions. It's just one example of how complex water compliance is across the Murray-Darling Basin. The Inspector-General of Water Compliance, Troy Grant, received a question on this topic to answer in *Water's Edge* podcast.
- DT: I'm councillor David Thurley, from Albany city, and I'm also chair of Region 1 of the Murray-Darling Association. And my question to the Inspector-General is, given that there are four states and one territory in the Murray-Darling Basin, and they all have their own rules and regulations, what happens when the rules and regulations conflict with those under which the Inspector-General operates?
- TG: Yeah, great question, David. The Inspector-General of Water Compliance and how we operate is clearly written in the federal legislation, in the Water Act 2007, and how they've created this role as a statutory body. So, we're independent, we're a statutory office holder, established to enforce compliance with the Commonwealth water laws. The Inspector-General's job is to monitor and oversee how agencies and the Commonwealth perform their roles and use their powers, including relating Basin water resource management. We're also charged with enforcing compliance with Commonwealth laws that regulate Basin water resource management and engage with the Australian community on Basin water resource management. Water management in the Murray-Darling Basin is really complex, as you know. There's lots of bodies involved. But generally speaking, it's managed through a partnership between the Australian government and the Basin states and the ACT - so, New South Wales, Queensland, South Australia, Victoria, and the ACT. Generally speaking, when they have a state law or a jurisdictional law that's inconsistent with the Commonwealth law, the Commonwealth law is upheld because of Section 109 of the Constitution. This is a very broad summary, and if the situation arises, it'll be managed case by case. There is some overlap in water theft-related laws where both the Basin states and myself can prosecute. I have step-in powers that are articulated in the legislation, and there are restrictions in relation to that on the use of the powers by the Inspector-General.
- Speaker: Got a question that you would like answered on *Water's Edge*? You can email us via contact@igwc.gov.au. Make sure you put '*Water's Edge* podcast' in the subject line.
- AD: Still to come this season on *Water's Edge*: a report card on metering compliance across the Murray-Darling Basin. How's your jurisdiction tracking ahead of the 2025 metering reform deadline?
- Speaker: There are concerns in the community that water isn't being metered, that we don't understand how much water is being taken from the basin. We are starting to see some patterns in the metering report card.
- AD: And how do the Inspector-General of Water Compliance's inquiry powers work?
- TG: One of the key powers that exists is the Inspector-General has the capability to compel information from someone, provided that it assists the inquiry that he is running.

Speaker: *Water's Edge* is produced by the Inspector-General of Water Compliance, Australian Government, Canberra. If you like this episode of *Water's Edge*, make sure you like our other social media channels. Connect with us on LinkedIn: search for IGWC. You can also subscribe to our YouTube page via @igwc.au.