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ACCC Murray-Darling Basin water markets inquiry: Interim report

30 October 2020

About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in Sydney.

Established in 1982, PIAC tackles barriers to justice and fairness experienced by people who are vulnerable or facing disadvantage. We ensure basic rights are enjoyed across the community through legal assistance and strategic litigation, public policy development, communication and training.

Energy and Water Consumers' Advocacy Program

The Energy and Water Consumers' Advocacy Program (EWCAP) represents the interests of low-income and other residential consumers of electricity, gas and water in New South Wales. The program develops policy and advocates in the interests of low-income and other residential consumers in the NSW energy and water markets. PIAC receives input from a community-based reference group whose members include:

- NSW Council of Social Service;
- Combined Pensioners and Superannuants Association of NSW;
- Ethnic Communities Council NSW;
- Salvation Army;
- Physical Disability Council NSW;
- Anglicare;
- Good Shepherd Microfinance;
- Financial Rights Legal Centre;
- Affiliated Residential Park Residents Association NSW;
- Tenants Union;
- The Sydney Alliance; and
- Mission Australia.

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The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

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Introduction

PIAC welcomes the opportunity to respond to the Australian Competition and Consumer Commission's (ACCC) Murray-Darling Basin (MDB) water markets inquiry interim report (the report).

The report highlights the comprehensive reform required to ensure the MDB water markets support the efficient, sustainable long-term operation of the MDB system. The impacts of COVID-19, following protracted drought, are further impetus for reforms that build more efficient, sustainable and resilient systems to support communities. PIAC supports the ACCC's work in identifying and progressing the range of reforms required to ensure the MDB water markets work more effectively.

PIAC highlights the following priority considerations addressed in our responses to the questions raised in the report.

Ensuring the market reflects and supports the system

The report identifies a range of areas where the physical parameters of the system are not appropriately recognised and supported. The setting of sustainable extraction caps, the allocation of water against entitlements, the impact of conveyance across the system, the limits of delivery in areas of the system, and the certainty of allocations carried from one period to the next, all have objective physical parameters that must be reflected in the operation of the system and the market.

Ensuring consistency of access and transparency of information

Throughout the MDB system and water market, the availability of key information is fragmented, inconsistent and unreliable. Water markets cannot operate efficiently and effectively where the availability, flow, extraction and price of water is not uniformly known and transparently communicated. The ACCC must prioritise measures to enhance the reliability and consistency of market information collected and retained. The market and the community must have confidence in the amount of water available in the MDB system, who owns it, where it is, how it is traded and how much it is being traded for. It is vital that this information is made available transparently to the public in a manner that supports the efficient operation of the market, and community trust in the market to enable better outcomes.

Creating an objective focus for assessing the structure and performance of the market

The report provides a picture of the MDB system as a dysfunctional collection of operations, linked through water markets. The failures of the current market structure to effectively reconcile the complex range of requirements is demonstrated by the declining health of MDB river system, the exclusion of First Nations communities, the declining prosperity and sustainability of many MDB communities, and the poor experience of many farmers and irrigators in the market. Rather than a narrow focus upon individual aspects of the MDB and its water markets, the performance of the system as a whole should be considered. Such an assessment requires developing an explicit objective for the design and operation of markets.

Undertaking comprehensive governance reform

The MDB system is operated through a governance and regulatory architecture which has evolved, ad hoc, to integrate basin state systems. The fragmentation of roles and responsibilities, and the inconsistency in the objectives and approaches of entities in the MDB system undermines the efficiency of the system as a whole. The ACCC's investigation is a crucial opportunity to complete the process of reform by identifying and implementing measures to ensure MDB governance supports better outcomes in the long term interests of basin communities and producers.

Continuing engagement

PIAC looks forward to engaging further with the ACCC and stakeholders on the issues in this submission and regarding this review more broadly.

Responses to Issues Paper questions

PIAC will respond directly to selected questions listed according to the chapter of the interim report they relate to.

Chapter 4

Why are irrigators adopting riskier water ownership and trading strategies?

Whereas some users may adopt riskier trading ownership and trading behaviour as an intentional business management measure, PIAC notes for many it may be an unintended consequence of the interaction between the water market and the different requirements and capacity of different producers.

Historically, many users, particularly smaller irrigators, have engaged in production that is more flexible and less reliant upon a fixed and secure irrigation entitlement, such as dairy or varied seasonal crop and vegetable production. For many of these producers on-farm storage, rainfall, and the ability to vary production has reduced their reliance upon entitlements at any particular time. In many cases the nature of their production also meant they have a limited capacity to pay high prices for these entitlements.

Particularly in times of scarcity or drought, producers of more permanent, water reliant, higher value products (such as nuts) have an incentive to secure permanent entitlements. The relative value of their produce and structure of their operations gives them increased scope to pay higher prices. The prices they pay give many smaller, more flexible users an incentive to sell as a short-to-medium-term measure for securing farm viability. This is often not a strategic trading decision, but an example of pragmatic decision making, often under stress. In the longer term, such producers are required to seek water allocations more often, and are more exposed to price fluctuations.

In dry periods with allocation shortages, competition in the market can drive prices beyond the point at which many small producers remain viable. Where this results the reduction in diversity of production across the MDB, this could be regarded as a failure of MDB markets to deliver outcomes in the long term interests of producers and the community.

PIAC recommends not all actions of irrigators and users in the MDB market be assumed to be conscious, strategic decisions. We encourage a more holistic recognition of the interaction between necessary production decisions, particularly by small and family operations, and the structure of the market. This is particularly important where the market is leading to riskier behaviour that may endanger the long-term viability of many producers and the diversity and resilience of communities.

Given the benefits to farmers of being able to trade water and the increase in use of allocation and entitlement trade by irrigators in recent years, what do you believe explains the reported decline in irrigators views that trading is a good idea?

PIAC does not consider that the interim report has presented strong evidence to show the benefits to farmers of water trading are a 'given'. In its current form the question appears to frame less supportive attitudes to water trading as irrational, unreasonable and/or inexplicable.

Many producers have realised benefits from interacting with water markets, for example by securing entitlements or allocations, or gaining income from trade, but this is not likely to be a universal experience. It is likely many who have interacted with the water markets have done so reluctantly, and many have had outcomes they regard as sub-optimal. We caution against the assumption that any opportunity for benefit to some market participants is evidence of a general benefit to all.

Many farmers and water market users have had experiences that justify a more negative appraisal of markets, including:

- Being driven to sell part or all of their entitlements in order to sustain the overall viability of their farming or productive operation.
- Having to pay unsustainable prices for water allocations, particularly in times of drought.
- Sustained increases in the costs of water entitlements and allocations as rapid changes in production dynamics favour producers with more sustained water requirements and more scope to sustain higher water prices.
- Being forced to change, reduce or cease production because they are unable to secure water at a sustainable price.
- Rapid changes to the viability of surrounding producers and communities directly or indirectly related to shifts in entitlement and allocation availability and pricing.
- An apparent disconnect between allocation availability and the volume of water flowing through systems to down-river users.
- Lack of transparency in extractions and lack of faith in monitoring and enforcement of river operation regulations and market trading conditions.
- Continued decline in the health and sustainability of MDB river systems despite apparent actions to limit allocations, with associated impacts upon the price and availability of water.
- Increased operation of investors and non-productive market participants, in conjunction with the decreased availability of allocations and sustained increases in their price.

These factors correlate with widespread changes in productive mix, the exit of farmers and producers, and stress on communities. In this context it is reasonable for many farmers, irrigators and their surrounding communities to have negative perspectives of the value and benefit of the water market in its current form.

What might explain irrigators views that non-farm entities (investors) should not be allowed to buy water, and that retired irrigators should not be allowed to retain their water rights?

The purpose of the MDB water markets is to enable the most efficient and productive use of water resources in the MDB. Farmers and irrigators views of investor participation is likely related to their impact, whether perceived or actual, on the water market's ability to fulfil its fundamental purpose.

The MDB is a resource constrained market. There is a limited supply of water entitlements and allocations, and unlike many markets, there is limited scope for investors intervention in the market to increase or enhance supply.

For producers, this water is an essential production input for their primary business and crucial to their viability as they have little ability to pass on higher production costs through their products. Investors and other entities not engaged in water-dependant production are able to determine their trading activity solely according to what maximises investment returns and are not limited by other productive or consumptive considerations.

This may result in an agency and market power imbalance between investors and productive market participants. In the supply constrained market for water in the MDB, this may result in the transfer of value from farmers and producers, to investors and other non-productive traders.

PIAC considers this counter to the intended purpose of the water market to enable the most efficient and productive employment of water resources. Many producers and irrigators may have reached a conclusion regarding the role of investors on this basis.

The already constrained supply of water in the MDB is being further impacted by the changing climate. In order for the MDB water market to deliver on its purpose and meet the range of economic, community and environmental objectives required, the ACCC should consider limiting the participation of investors and other third-parties without a direct need or use for water as an input (whether productive, consumptive, environmental or cultural). Otherwise the agency and market power imbalances described above may continue to impede or distort intended market outcomes.

What barriers, financial, regulatory or other, do First Nation and Traditional Owner groups currently face to acquiring permanent and temporary water in Basin water markets? Please provide examples of these barriers, as well as evidence of their magnitude, frequency and impact.

The market for water entitlements and allocations is founded upon historic water rights connected to land ownership. First Nations communities were dispossessed of their land, and excluded from the ability to own or purchase productive land until well after most property with associated water rights had been granted or purchased. The progressive creation of separate water entitlements and allocations, based upon property ownership, excluded First Nations communities and meant they started from a position of structural disadvantage.

The historic overallocation of water property rights, and the capping and reduction of water entitlements over time has not been accompanied by any measures to address the initial inequity of access to water rights and entitlements experienced by First Nations communities. This has entrenched historic exclusion by making water property rights scarcer, and more expensive to acquire. Where First Nations communities experience broader economic disadvantage, their ability to independently overcome these structural inequities in access to water entitlements is limited.

The introduction of a water market has compounded this ongoing inequity by monetising the value of these limited entitlements and increasing the advantage of those with existing property and water assets to use, leverage and trade. More explicit mechanisms to confer existing entitlements to First Nations communities, or ensure a proportion of allocations are reserved for

First Nations communities for an unrestricted range of purposes, are required to overcome First Nations people's structural disadvantage in their access to water entitlements and allocations.

While the report notes a range of initiatives to increase First Nations access to water, these do not address the historic and structural determinants of the ongoing barriers to First Nations communities. PIAC supports these measures, but considers a more coherent and strategic approach is required.

PIAC recommends that the ACCC build upon existing processes, such as the Victorian Governments Aboriginal Water Program. This must involve engaging meaningfully with First Nations communities to ensure their preferences are represented in a comprehensive set of reforms to improve First Nations communities' access to water.

Chapter 6

Should a broker or brokerage firm be permitted to provide brokerage services to both parties to a trade?

Allowing brokers to have contractual and financial responsibility to both parties in a trade creates potential for conflicts of interest. There are risks that a broker may not have an equal incentive to act in the best interests of each party, at all stages in the trade. Without additional measures to ensure transparency and regulate the operation of brokers, PIAC considers it appropriate to restrict brokers to act for a single party in a trade.

Should a broker that is providing intermediary services in a trade, be permitted to have an interest as a principal in that trade?

PIAC considers it inappropriate for a broker to have a principle interest in a trade they are acting as an intermediary for. In this circumstance the broker has a financial interest in completing the trade for the benefit of one principle, while retaining a contractual obligation to act in the interests of the other. This is a fundamental conflict of interest that undermines the independence of the broker. Those engaging brokers to undertake trading in the water market must have faith that the broker is acting solely in their best interest.

Chapter 7

Do you think that brokers and intermediaries in MBD water markets should be licenced?

Any brokers or other intermediaries allowed to operate in the MDB water market should be licenced and be required to abide by agreed professional standards.

Should a licencing scheme be enforced at the Basin State or Federal level?

A licencing scheme for intermediaries and other trading entities should be operated and enforced at a Commonwealth level. Trading entities are likely to operate in multiple basin states, and are likely to be involved in trading activities that cross state borders. Enforcement of a single licencing scheme with consistent standards of probity, practice and information provision would be the most appropriate response.

Should the licencing scheme be entrusted to an already established body or an independent new body specific to the MDB water market?

PIAC recommends establishing a new, independent body to undertake a range of water market licencing, regulation and monitoring functions. It is unlikely any existing body has the appropriate capability and authority to assume such functions. PIAC agrees reforms to regulation, information provision and transparency will not be effective without significant reform to the governance structures of the MDB water markets. Such reform is necessary and an option to establish new bodies to undertake the regulation and operation of the market should be considered (potentially considering the example of the Australian Energy Regulator and Australian Energy Market Operator in the energy market).

Should the financial regulation framework be applied to basic tradeable water rights and arrangements to buy and sell them, noting that it is a ready-made market regulation framework?

PIAC notes the financial regulation frameworks have not prevented a range of serious failures that have substantially undermined public faith in the probity of the finance industry. We strongly support a process to introduce a more effective regulatory framework to the operation of water markets, and therefore do not consider it appropriate to apply the existing financial regulatory framework.

A survey of the operation of relevant regulation should be undertaken, to determine elements most appropriate to the MDB. However, the MDB, and the water market operated within it, are a unique case likely to require a bespoke regulatory framework. Specifically:

- There are strict physical parameters, and further environmental qualifiers, that place hard boundaries on what, when and where water can be traded and how it can be delivered. Regulation of trade must recognise these physical parameters while supporting the long term sustainability of the whole system.
- The limited overall supply of water products able to be traded in the market is being further constrained by a changing climate. The regulatory framework must be able to incorporate increased supply scarcity and intermittency.
- The MDB water markets must deal with a scarce and essential resource that has significant economic, environmental, cultural and communal value. The regulatory framework must enable effective prioritisation where some of these values may conflict with each other.
- The value of water traded in the market reflects not just the economic value it may create for an individual producer, but how that contributes to the best mix of values realised throughout the basin. Assuming the entity able to pay the highest price contributes the greatest value may not be correct. The regulatory framework must support measures to maintain the viability of communities in the MDB, as well as the broader national interest.
- The market operates as both a wholesale and retail market simultaneously. Many farmers and irrigators act as 'retail' consumers who engage in the market only as necessary. Larger entities operate as 'wholesale' purchasers with significant information and credit resources and the scope to engage in the market in a wide range of ways. The regulation of information provision, consumer protection, transparency and the mitigation of market power must account for the needs of both.

PIAC does not consider the financial regulation framework capable of dealing effectively with these factors. We recommend development of a regulation framework for MDB water markets that responds specifically to these considerations, and integrates effectively with the reformed governance framework for the MDB water market.

Should a market focused independent regulator be established for the MDB water market?

PIAC supports the creation of a new independent body to undertake regulation of the MDB water market. However, we note the difference between a market focussed regulator and an objective/principle-based expert regulator of the market.

Any independent body created to regulate the MDB water market should not be narrowly focussed on the market itself. It must have a clearly stated objective to ensure the market operates in the long term interests of the community and the MDB system, with respect to:

- the security, resilience and sustainability of the system;
- the prosperity and sustainability of the communities and businesses within the MDB system;
- the diversity, efficiency and sustainability of production within the MDB system; and
- the recognition and sustainability of first nations communities and their cultures within the MDB system.

PIAC supports the establishment of a new independent regulatory body as part of wider reforms of the governance frameworks for the MDB. Alongside an independent regulator, other new or materially re-purposed bodies may be needed to clarify roles and responsibilities. The governance and regulatory framework of the National Energy Market (NEM) may serve as an example demonstrating how necessary functions of a water market rule maker, regulator and operator may be divided to incorporate the spread of existing responsibilities across the basin states. The overarching objective of any such governance framework must be enshrined in an MDB water markets objective (as outlined above), directing the actions of the independent regulatory body.

Should the regulation of the water market be entrusted to an already established regulator or a new body?

PIAC supports the establishment of a new independent regulatory body, as part of co-ordinated measures to comprehensively reform the parameters, governance, regulation and operation of water markets in the MDB.

Chapter 8

Do you consider that there would be benefits in aligning the states water management roles (as much as hydrologically possible)?

PIAC support aligning water management roles to the greatest degree possible, across the basin states.

Would you like to see one trade form with standardised language be used across the states?

PIAC supports the standardisation of all aspects of trade administration in MDB water markets. This should include trade related terminology and forms.

Would you like to see the trade type and party type (investor, irrigator, other) recorded publicly?

PIAC supports the recording and public availability of key information regarding the trade, including the type, quantity, price, of the trade and nature of the parties involved.

Would you like to see all state water register websites provide the same information presented consistently? If no, why not?

PIAC prefers the creation of a single water market registry for the entire MDB, that consistently and transparently registers up to date information regarding the market. However, in the interim or as a minimum, state water registries should be required to present a consistent range of information in a consistent format.

Do you think that the consolidation of trading rules into one document per state/per Basin would assist users in undertaking trades?

Consolidation of trading rules, and their consistent and easy availability to market participants and the community, would help facilitate better understanding and more confident engagement in the market.

Do you think there would be benefit in standardising and making it clear that each state should have the following separate and distinct registers and information should be published on each:

PIAC supports standardisation of the registry and public availability of identified information regarding the MDB system, water operations, markets and trade. We agree that it is appropriate to consider a range of alternatives to determine the most effective and practical means of achieving this consistency within current and future regulatory and governance frameworks.

Standardisation, transparency and accessibility would be most practically and effectively achieved through a single platform covering the entire MDB system. Such a single registry and information platform would require co-operation of all basin states and comprehensive reform of governance frameworks covering the regulation and operation of water resources and how they link to water markets and trade. PIAC supports this being identified as the end goal of water market reform, and encourages the ACCC to examine what practical steps would be required to facilitate such reform.

As an interim measure, PIAC supports single, standardised, state-based registries of key market information points. Where possible these registries should be linked and co-ordinated (rather than wholly separate) in order to maximise their functionality.

Ownership register (water entitlement)

As above.

Water entitlement trade/transfer register

As above

Water allocation trade/transfer register – including identifying product type

As above

Water use register (account balances)

As above

Chapter 10

Do you agree with the ACCC's preliminary analysis of the key transparency issues? Is anything missing?

PIAC supports the ACCC's preliminary analysis of the key transparency issues in MDB water markets.

Chapter 11

Do you consider that the Basin Plan Water Trading Rules should be updated to include requirements on trade approval authorities to collect more information on trades?

PIAC supports Water trading rules being updated to require trade approval authorities collecting a range of key trading data points, and making them publicly available on an agreed central information platform. Where there are limitations in what data can be made publicly available, approval authorities should still be required to collect this information, and make it discoverable upon request, according to appropriate freedom of information provisions.

Do you consider that each state should make, in one place, the following:

PIAC strongly supports reforms requiring transparent, standardised public provision of up-to-date information relating to all aspects of the water market. It would be preferable for basin states to collaborate on the creation and maintenance of a single public information point for the entire MDB to accomplish this.

In our responses to questions regarding specific information, it is our preference that a single MDB information point be utilised, while a single information point per state is an appropriate interim measure until wider governance and regulatory reforms can enable a single information source to be effective.

How much has been allocated to entitlement holders

Alongside key information on the amount and distribution of water entitlements in each basin area, PIAC supports the transparent provision of information regarding how much water has been allocated against those entitlements. This information should include historic allocations for at least a 10-year period.

What the current carryover limit is applying to in each zone, with clearly explained reasoning if there are any differences

Where carryovers continue to be permitted, any limits that apply should be made transparently public. PIAC supports reasoning for carryover limits being provided alongside information regarding the level of those limits.

Historical trading information, with sufficient detail to understand what products are being traded and for what price

Information regarding the amount of water allocated to the entitlement, currently and historically, should be provided alongside information regarding the historic prices of those entitlements and allocations when traded.

Current bids and offers to understand market depth and current pricing

Key market trading information must be provided transparently and dynamically to be a meaningful source of information for market participants. Historic sales as well as current bids should be updated and provided in real time where possible.

Trading and carryover policies and rules

All rules and policies that directly impact the value of entitlements and allocations, and the ability of traders to realise that value (such as carryover rules) should be provided transparently as part of a single market information point.

Do you support the short-and-medium-terms options proposed? Why or why not? Do you consider alternative options should be considered for implementation in the short-to-medium-term? Please provide details.

PIAC broadly supports the short-and-medium-term options proposed. However, implementation of these measures should be undertaken as part of a planned pathway to longer-term, comprehensive reform, including reform of the governance framework and regulatory architecture for the MDB system and its water market. These reforms must be identified now, with interim measures taken not only to address immediate issues, but facilitate transition.

PIAC is concerned without identification of long term reforms now, any short or medium term measures undertaken may undermine the momentum of reform and the potential for the co-operation required.

Chapter 12

Has the ACCC identified the main concerns with trade activity and Basin market architecture, and in particular, with the key elements as set out below?

Extractions cap (sustainable diversion limit)

PIAC agrees the level, determination, enforcement and adjustment of the cap on extractions within the MDB is the primary issue undermining the sustainability and effectiveness of the MDB water market architecture. It is crucial the parameters of entitlement and allocation trade within the market reflect the physical parameters of the MBD systems. The level this cap is set at is

fundamentally flawed and any reform of the MDB water market must comprehensively review the way that the cap is determined and implemented. Specifically:

- The initial setting of caps was compromised and did not reflect the best scientific understanding of the maximum amount of extractions allowable in maintaining sustainable MDB systems.
- The initial setting of the caps did not consider the known and likely impacts of climate change upon the MDB water systems, and has made such consideration extremely difficult.
- The way the cap is set results in a static limit to extractions that is not able to account for variation in the physical parameters of the MDB water systems. Particularly where actual inflows have declined, this is likely to result in the impact of allowed extractions under the cap exceeding what is actually sustainable or available within MDB systems.
- It does not set levels for flow required to sustain MDB systems, which are objectively discoverable and relatively fixed, and provide a mechanism to allocate the actual remaining water in the systems according to entitlement shares.

PIAC recommends the ACCC to explore options to address this key flaw in MDB water market architecture, and ensure the necessary reforms are implemented.

Allocation policies and available water determinations

This issue is linked to that of the extractions cap and PIAC agrees that the current architecture for determining and allocating water is not fit for purpose. We note a range of alternative means for linking the determination of allocations to available water have been proposed. PIAC considers mechanisms setting sustainable flow levels according to the ongoing needs of the system, and allocating remaining water according to agreed entitlement shares, have merit and should be explored in detail. Mechanisms operating in this way have the potential to better maintain system health and security in periods of scarcity, and be more adaptable and resilient in the face of accelerating climate change impacts.

Carryover

PIAC agrees a mechanism to retain unused allocations provides a range of benefits to producers and the system as a whole. However, we are concerned the frameworks governing carryover can result in a divergence between what is traded, and what physically exists in the system. It is clear a detailed review of carryover arrangements is required.

PIAC recommends the ACCC determine how to ensure the architecture facilitating carryover of entitlements consistently reflects and supports the physical parameters of water in the system.

Geographical trade rules (including inter-valley trade (IVT) limits)

PIAC agrees it is crucial to ensure geographic trade rules and regulations reflect the local physical parameters and support the long-term sustainability of individual zones and the system as a whole.

River operations

PIAC agrees the framework for determining and overseeing appropriate operations of MDB rivers is a key area of concern in reform of the architecture underpinning the MDB water markets.

Metering

Metering is a key area of concern for reform of MDB market architecture. Certainty and transparency of water take is fundamental to ensuring the effectiveness of the market and of monitoring and enforcement, and the faith of participants and the community in the MDB market and the viability of MDB systems.

The ACCC seeks stakeholder feedback on the merits and drawbacks of, and the potential to adopt, the options outlined below:

PIAC has responded to a selection of potential reforms we regard as of particular merit. This is to highlight these particular reforms, and is not intended to suggest other proposed options should not be explored as part of comprehensive reform.

We note a range of proposals include the creation of separate market mechanisms, such as those for carryover parking and delivery capacity. PIAC cautions the ACCC against uniform application of a market-based response to all discrete issues within the wider MDB system. It is necessary to view all aspects of the operation of the system cumulatively, with a focus on overall efficiency and sustainability. Within the water market structure there are individual aspects that may contribute to better overall market outcomes if operated through non-market mechanisms. PIAC strongly recommends any proposed mechanism also be assessed on its ability to contribute to an efficient market that supports the long term interests of MDB communities and producers.

Re-evaluating the assumption that conveyance losses should be socialised and considering whether transmission loss factors can be applied to deliveries to particular zones (that is, all zones would have a transmission loss factor applied, and inter-zone trade would apply a factor that is the difference between two 'zone factors', like the approach taken in some systems in Queensland).

The current assumptions regarding conveyance losses are inappropriate, inefficient and not fit for purpose. Water trades must reflect the physical reality of water in the system, and recognise physical limitations and impacts. The impacts of transmission are not transparently recognised or accounted for consistently and accurately. The associated 'costs' of those impacts should be recovered from the trading entities who benefit from the water traded. PIAC recommends reforms to the treatment of transmission that:

- Consistently recognise the physical limitations of delivery systems.
- Ensure conveyance losses are calculated from the point of origin.
- Account for the actual impact of losses during transmission according to an objective science-based framework determined by what is actually likely to be lost along the system.
- Ensure transparent trade information includes relevant loss factors, in all trades.

Unbundling storage access/carryover eligibility from water access entitlements and creating formal, separate markets for carryover storage.

PIAC is not convinced the additional complexity involved in this proposal is justified. Storage access and carryover will continue to play an important role in enabling risk management and good outcomes for producers and communities trading in the MDB market. However, we do not consider further separation of carryover and storage products from the physical water access

entitlements they are associated with is likely to deliver meaningful improvements for the majority of users.

There is significant risk the creation of separate markets such as these will produce unintended incentives and impacts and impede efficient trading and delivery of water allocations to the producers and communities requiring them. We recommend non-market mechanisms to deal with storage and carryover access should be explored.

Developing more dynamic IVT mechanisms (that is, timely and responsive tools to allocate access to limited delivery capacity and manage impacts on other water users and the environment, as are being explored in the Victorian Governments review of the Goulburn to Murray trade rule)

PIAC supports examining a range of alternative mechanisms to more effectively manage delivery capacity. Ensuring the allocation of delivery capacity reflects the sustainable physical parameters of river systems is a priority. This should include those measures currently under review by the Victorian Government.

Non-market allocation mechanisms for on-river delivery capacity, that allocate capacity on a less than annual accounting periods and are defined with respect to specific constraints.

PIAC supports exploring non-market mechanisms for the allocation of on-river delivery capacity. The physical parameters of river systems and the requirements of river system sustainability must be the key determinants of delivery capacity. On-river delivery capacity must not only remain sustainably within the boundaries of river systems, but be able to accommodate the vital needs of river-dependent communities, First Nations people, and ecosystems, as well as those of producers and users of water allocations.

It is unlikely capacity regulated by a market will be capable of responding effectively to these overlapping interests. The complexity and additional cost involved in creating and operating such a market should also be a priority consideration.

Shepherding and other arrangements available to trade/change the location of environmental water

Ensuring the integrity of environmental water flows is crucial to the ongoing viability of the entire MDB system. PIAC agrees the ACCC should identify consistent measures to ensure environmental water can be transparently identified and managed, with mechanisms to ensure and monitor its trade and delivery when required.

PIAC notes reforms to set sustainable system flow requirements prior to the allocation of remaining available resources would be more effective with strong, transparent mechanisms to ensure delivery of environmental flows.

Chapter 15

In what ways is the ‘governance’ of the Murray-Darling Basins water-rights markets helping or harming those markets? Please give examples to explain your answer.

The governance frameworks that underpin the operation of the Murray Darling Basin and its water markets need comprehensive reform. As the report sets out in part VI, governance of the MDB is complex and fragmented, with role duplication, incomplete and opaque responsibility allocation, fragmented and opaque decision-making frameworks, and a fundamental lack of consistent unifying objectives that link the operations of the market with those of the physical water system, to deliver the best outcomes for water users and the community.

What changes to the governance arrangements (if any) should be made; how and why?

We support the ACCC continuing to identify the range of issues currently related to or exacerbated by failures or weaknesses of governance. This process can map out what the key problems of governance are, determine what key principles and objectives of effective governance should be, and assess a range of potential reform proposals.

PIAC also supports the ACCC recommending this process be undertaken with an explicit target of implementing reform of governance arrangements in the MDB by 2025. Such a target will frame implementation of interim and transition measures, and enable planning of the information gathering, consultation, planning and workstreams required to assess and implement comprehensive governance reform.

PIAC highlights the example of the governance arrangements and regulatory framework in the National Energy Market as worthy of consideration. The NEM governance and regulatory framework puts in place a relatively stable, transparent and consistent architecture for integrating state roles, responsibilities, information and actors in an interconnected system. The NEM sets a stated objective that frames the purpose of laws and rules in the operation of the market, and directs the operations of the rule maker, regulator and operator.

PIAC recommends the ACCC examine the applicability of a similar governance architecture in the operation of the MDB system and water market. Particular attention should be paid to the separation of the rule-making, operating, and regulating functions into three distinct entities.

PIAC looks forward to providing more detailed comments and recommendations to the ACCC and stakeholders regarding specific changes to governance arrangements.