



Australian Government

Department of Climate Change, Energy,  
the Environment and Water

# Water Markets Intermediaries Code and Trust Accounting Regulations

## Overview of the Exposure Draft

March 2025



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We acknowledge the Traditional Owners of Country throughout Australia and recognise their continuing connection to land, waters and culture. We pay our respects to their Elders past and present.

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## Summary

This paper gives background and provides an overview of the Exposure Draft of the *Water Amendment (Water Markets Intermediaries Code and Trust Accounting Framework) Regulations 2025* and highlights where changes have been made in response to earlier stakeholder feedback.

Interested parties can provide feedback on the Exposure Draft. Feedback will be considered by the Australian Government in developing and making the regulations for the purposes of the new Part 5 of the *Water Act 2007* (Water Act) to enable:

1. the new mandatory Water Markets Intermediaries Code, and
2. effective operation of the statutory trust accounting framework.

Part 5 contains civil penalties for contraventions of certain obligations and commences on 1 July 2025. Part 5 also provides for making the Code in regulations and that the Code may contain civil penalties. The regulations are expected to commence on 1 July 2025.

The Department of Climate Change, Energy, the Environment and Water (DCCEEW) is developing the Code and the regulations and is responsible for policy decisions. The Australian Competition and Consumer Commission (ACCC) will monitor and enforce compliance with the Code and the statutory trust obligations.

The reforms in Part 5 aim to:

- improve the integrity of, and trust, in water market intermediaries,
- give users of those services greater protection and confidence,
- help increase participation in water markets, and
- subject water market intermediaries to broadly comparable regulatory safeguards that apply to intermediaries in other markets – such as stock and station agents, real estate agents and stockbrokers

## Background

Reform of the Murray–Darling Basin’s water markets framework is an Australian Government priority.

In October 2022, the Australian Government announced its commitment to implementing the Water Market Reform Roadmap (Roadmap) to restore transparency, integrity and confidence in Murray–Darling Basin water markets. This formed the Australian Government’s response to the 2021 ACCC Murray–Darling Basin water markets inquiry – final report (the ACCC Inquiry Report).

The Water Amendment (Restoring Our Rivers) Act 2023 (RoR Act) includes amendments to the Water Act 2007 (the Water Act) that relate to the Basin water markets. There are various reform activities continuing to be progressed following the passing of the RoR Act in December 2023.

The new Part 5 of the Water Act, as inserted by the RoR Act, provides a framework for a new mandatory Water Markets Intermediaries Code (Code) to apply to eligible water markets intermediaries (intermediaries), to be developed in regulations.

Part 5 also establishes a statutory trust accounting framework, which places obligations on intermediaries to use a trust account when they receive money on behalf of another person in the course of providing water markets intermediary services. Part 5 provides that the Code can prescribe details about the new trust accounting requirements and that regulations can include exceptions from the scheme for state and territory laws.

One of the current priorities is the potential development of new regulations that will enable the new mandatory Code, and effective operation of the statutory trust accounting framework for water markets intermediaries.

DCCEEW released a Policy Position Paper in November 2024 setting out the policy positions for the development of regulations for the Code and details to support the statutory trust accounting framework. DCCEEW has also released information for intermediaries about opening trust accounts. These are available on the water markets website at [Water market reform - DCCEEW](#).

A Consultation Paper considering trust accounting exceptions and Code exemptions is currently available for stakeholder feedback at [Water market reform - DCCEEW](#) with submissions able to be made in conjunction with submissions on the Exposure Draft, or separately.

For more information on the full suite of activities currently underway, or on the history of this broader water market reform project, please see the water markets reform website at [Water market reform - DCCEEW](#).

## Overview of the Exposure Draft

This overview is intended to be a guide only and is not a substitute for the draft regulations in the Exposure Draft.

### Structure of the Exposure Draft

The Exposure Draft includes:

- a new Part 5 to be inserted into the *Water Regulations 2008*, containing two divisions:
  - Division 1 – Water Markets Intermediaries Code
  - Division 2 – Trust accounting framework
- definitions to be inserted into subregulation 1.03(1) of the *Water Regulations 2008*.

### Who does the Code apply to?

Regulation 5.02 of the Exposure Draft applies the Code to all eligible water markets intermediaries as defined in Appendix A that provide a water markets intermediary service to a person, subject to the following circumstances where the Code will not apply.

### When does the Code not apply?

Regulation 5.02 of the Exposure Draft provides that the Code will not apply in relation to the following water markets intermediary services:

- services provided by a water market authority to approve, allow or register the trade or transfer of an eligible tradeable water right in exchange for a commission or fee.
- services provided by an irrigation infrastructure operator for the purpose of processing, on behalf of a member of the operator, the trade or transfer of an eligible tradeable water right between the member and a person who is not a member of the operator, in exchange for a commission or fee.
- services provided in respect of eligible tradeable water rights that automatically transfer with land.

The Code applies in relation to a water markets intermediary service that involves the provision of a trading platform, only if:

- a. the trading platform is an online-enabled application, website or system; and
- b. the operator of the platform enables representations to be made on the platform that eligible tradeable water rights are available for trade or transfer; and

- c. the operator facilitates the trade or transfer of those rights on the platform in exchange for a commission or fee by doing one or more of the following:
  - i. communicating the acceptance of offers or counter-offers;
  - ii. preparing contracts or other agreements;
  - iii. arranging documents necessary for the trade or transfer;
  - iv. submitting applications to water market authorities to approve, allow or register the trade or transfer.

The following Code obligations will not apply to water market intermediaries which are irrigation infrastructure operators:

- prohibition on providing intermediary services when the intermediary or a related party has a material personal interest. An IIO will have other obligations in these circumstances (see regulation 5.06)
- obligation to hold written authorities to submit trades (regulation 5.10)
- broking water account obligations (regulation 5.12)

IIOs who provide intermediary services may obtain a different level of professional indemnity insurance if the yearly total value of trades for which they provide intermediary services (averaged over the last 3 years) is below a certain value (regulation 5.14(3)).

### **Separate consultation on Code exemptions**

The Exposure Draft of the Code includes a power for the Minister to grant exemptions from the Code (see regulation 5.19).

A separate consultation paper, considering Code exemptions and exceptions from the statutory trust accounting requirements for water markets intermediaries, has been released for stakeholder feedback and is available here: [Water market reform - DCCEEW](#)

## **Summary of Code obligations in Division 1**

### **Regulation 5.03 - General obligations**

Intermediaries must comply with requirements to place the client's interests ahead of the intermediary or a related party of the intermediary; to represent the client's interests diligently and with due care and skill; not to use or disclose any confidential information obtained from the client or in the course of providing intermediary services unless authorised by the client or otherwise required or authorised by law; and to act in accordance with the lawful instructions provided by the client.

### **Regulation 5.04 - Intermediary must deal in good faith**

Intermediaries must deal with clients in good faith in the course of providing intermediary services. Regulation 5.04(2) also lists matters that a court may have regard to in determining whether an intermediary has dealt with a client in good faith.

### **Regulation 5.05 - Intermediary must disclose conflicting interests in provision of services**

Intermediaries must disclose if they have a conflict of interest when providing water markets intermediary services. This includes where an intermediary receives, or expects to receive, a commission, fee or other benefit from a person other than the client in relation to the provision of the service. The disclosure of the conflict must be in writing and include what the conflict of interest is and be made before providing the service to the client or as soon as practicable after the intermediary becomes aware of the conflict of interest. The intermediary must request that the client confirm in writing that they have received the disclosure.

### **Regulation 5.06 - How intermediary must deal with conflicting interests in eligible tradeable water rights**

Where an intermediary or a related party has a material personal interest in an eligible tradeable water or will have a material personal interest in an eligible tradeable water as a result of providing an intermediary service, they must not provide the intermediary service to the client in respect of those eligible tradeable water rights and must notify the client in writing that the intermediary is prohibited from providing the service.

Where the intermediary is an IIO the above prohibition does not apply. However, IIO intermediaries must not, in providing the service improperly use its status, power or authority to gain an advantage for itself or a related party.

IIO intermediaries must also ensure that a related party does not improperly use its status, power or authority to gain an advantage for itself or the intermediary. However, this will not apply if the IIO intermediary does not know, and cannot be reasonably expected to know, that the related party is improperly using its status, power or authority to gain, or to seek to gain, an advantage for itself or for the intermediary in respect of the provision of the service.

### **Regulation 5.07 - Intermediary must provide general information about services and obligations**

Intermediaries must provide certain general information to clients in writing before providing intermediary services. An intermediary does not have to provide the information if the same information was provided to the client in the previous 12 months.

### **Regulation 5.08 - Intermediary must provide additional information about particular services**

Intermediaries must provide information specific to clients in writing before providing intermediary services. Certain information is not required to be provided if it has already been provided in writing to the intermediary by the client. Intermediaries must provide the information before they begin to provide the service, or if the information changes or becomes known after commencement, as soon as practicable afterwards.

Intermediaries must also provide information to clients about the outcomes of trade applications, including any reason for rejection or delay, no later than 2 days after the intermediary becomes aware of the outcome.

### **Regulation 5.09 - Intermediary must deal with complaints**

Intermediaries must follow certain steps when dealing with complaints from clients in relation to the provision of intermediary services which are to be documented in a complaints handling process.

### **Regulation 5.10 - Intermediary must have authority to trade or transfer eligible tradeable water rights**

An intermediary, other than an IIO intermediary, must hold a written authority to make an application for trade or transfer eligible tradeable water rights in the course of providing intermediary services.

### **Regulation 5.11 - Intermediary must have authority to act as an agent**

Intermediaries must hold a written authority to act as an agent of the client.



### **Regulation 5.12 - Intermediary must maintain broking water accounts**

Intermediaries, other than IIO intermediaries, must comply with certain requirements when holding eligible tradeable water rights on behalf of a person in the course of providing intermediary services, including holding client water rights in a broking water account.

### **Regulation 5.13 - Intermediary must prepare statements about broking water accounts**

Intermediaries, other than IIO intermediaries who are required to maintain broking water accounts must prepare a yearly statement in relation to these accounts.

### **Regulation 5.14 - Intermediary must hold professional indemnity insurance**

An intermediary must hold professional indemnity insurance that covers provision the service. The insurance must be a minimum of \$5 million for any one claim or \$10 million in the annual aggregate or both.

IIOs who provide intermediary services must obtain adequate and appropriate professional indemnity insurance if the yearly total value of trades for which they provide intermediary services (averaged over the previous 3 financial years) is below \$5 million.

### **Regulation 5.15 - Intermediary must comply with record-keeping requirements**

An intermediary must keep a record of the certificate of currency and insurance policy for professional indemnity insurance for a 6-year period from the day the record was given to or created by the intermediary.

### **Regulation 5.16 Intermediary must comply with requirements for holding client records**

An intermediary must keep specified client records for a 6-year period from the day the record was given to or created by the intermediary.

### **Regulation 5.17 - Intermediary must maintain client ledgers for statutory trust accounts**

Intermediaries who are required to maintain a trust account under s100R of the Water Act must maintain and keep a ledger in respect of money held in the account on behalf of a client, and if requested by the client, provide a statement from the ledger to the client within 5 business days.

### **Regulation 5.18 - Intermediary must maintain client ledgers for broking water accounts**

Intermediaries who are required to maintain a broking water account under regulation 5.12 must maintain and keep a ledger in respect of water rights held in the account on behalf of a client, and if requested by the client, provide a statement from the ledger to the client within 5 business days.

### **Regulation 5.19 - Exemption by Minister**

The Minister may, by legislative instrument, exempt an eligible water markets intermediary from the Code or specified provisions of the Code.



## Summary of trust accounting framework regulations in Division 2

### Regulation 5.20 - Designation of trust accounts

For trust accounts which are required to be maintained under s100R of the Water Act, the name of the trust account must include the words “water market trust account” and; either the legal name of the intermediary or the registered business name of the intermediary (only if permitted by the Australian ADI that maintains the trust account and where the registered business name is used in connection with the provision of water markets intermediary services).

### Regulation 5.21 - Trust account statements—information and statements

For trust account statements which are required to be prepared under s100V of the Water Act, the statement must include certain information specified in this regulation.

### Regulation 5.22 - Trust account audit reports—information and statements

For trust account audit reports which are required to be obtained under s100V of the Water Act, the audit report must include certain information specified in this regulation.

### Regulation 5.23 - Trust account audit reports—eligibility requirements for auditors

For trust account audit reports which are required to be obtained under s100V of the Water Act, this regulation specifies the eligibility requirements a person who prepares a trust account audit report must comply with.

## Definitions

The Exposure Draft includes definitions for certain terms to be inserted into subregulation 1.03(1) of the *Water Regulations 2008*. The terms and the draft regulations they relate to are:

- *Australian ADI* – draft regulations 5.17, 5.20, 5.21, and 5.22.
- *Financial year* – draft regulations 5.13, 5.14, 5.17, 5.18, 5.21, and 5.22.
- *Related party* – draft regulations 5.03, 5.06 and 5.23.
- *Trust account audit report* – draft regulations 5.16, 5.22 and 5.23.
- *Trust account statement* – draft regulations 5.16, 5.21 and 5.22.

# What has changed since the Policy Position paper?

## Changes from feedback

The department received 16 submissions in response to the November 2024 Position Paper. Changes as a result of that feedback include:

- Changes to the provisions relating to providing information to clients to:
  - Better distinguish between general and specific information that must be provided to clients.
  - Reducing the frequency of having to provide general information.
  - Removing infringement notices from the list of enforcement outcomes that must be disclosed to clients.
  - Clarifying the requirements to provide specific information to clients.
- Clarifying that the complaints handling process applies to complaints from clients only in relation to the provision of intermediary services.
- Providing additional details to clarify record keeping obligations.
- Changes to the provisions relating to broking water accounts to:
  - Ensure that water held on behalf of clients is able to be transferred out of a broking water account into another broking water account maintained by the same intermediary.
  - Clarify that a broking water account includes an account maintained with an irrigation infrastructure operator (IIO).
  - Simplify the requirements for broking water account statements.
- Changes to trust accounting related provisions, including:
  - Removal of the requirement to provide client ledger accounts for statutory trust accounts at the end of the financial year, so that it must be provided only upon request of the client.
  - Removal of some of the restrictions on eligibility for trust account auditors.
  - Specifying that the name of a trust account may include the registered business name of the intermediary (used by the intermediary in connection with the provision by the intermediary of water markets intermediary services) instead of the legal name of the intermediary, if the financial institution allows.

## Irrigation infrastructure operators - changes made in the November 2024 Policy Position Paper and in the Exposure Draft to reduce burden

The department made changes in the November 2024 Policy Position Paper relating specifically to irrigation infrastructure operators (IIOs) to:

- a. Include an exception for IIOs from the broking water account obligations given that they already hold rights on behalf of others, and intermediary services provided by IIOs tend to be limited to facilitating trades between members within their networks or with an external party. Accordingly, IIOs won't need to maintain a separate water account to hold these water rights on behalf of others when providing intermediary services.
- b. Exclude IIOs from the prohibition on an intermediary providing intermediary services for their own water rights, or rights of a related party. This is appropriate to ensure that IIOs can attract board members and employees and reflects that usually IIOs provide intermediary services not as their core function, but as a low-cost service to their members rather than as a commercial operation.

However, additional obligations to prevent an unfair advantage from the use of the service are included for IIOs so that other users of the service are protected.

The department has made additional changes following the November 2024 Policy Position Paper relating specifically to irrigation infrastructure operators (IIOs) to:

- a. Include an alternative obligation for professional indemnity insurance for IIOs who provide intermediary services for trades under a certain average total yearly value. These IIOs will be required to obtain 'adequate and appropriate' cover, which is likely to reduce their insurance costs.
- b. Exclude IIOs who provide intermediary services from having to hold written authorities to submit trades. Because intermediary services provided by IIOs tend to be limited to facilitating trades between members within their networks or with an external party, this would have involved an authority to submit the trade to themselves in their capacity as a water market authority, or an authority to submit a trade to/from the IIO's own bulk licence.

The Australian Government will continue to consider regulatory impacts as the regulation is developed. This includes considering the benefits of increased transparency, integrity and confidence in Murray- Darling Basin water markets against the burden and costs for stakeholders in complying with these important water market reforms and that they are otherwise appropriate and necessary.

## Matters still being considered

The following matters remain under consideration and any further stakeholder feedback on these matters is welcome:

- A function of reviewing the Code, and the review period.
- Who will approve forms for trust account statements and audit reports.
- Whether the voluntarily reporting of confidential information to the ACCC where there is suspected market misconduct under new Part 5A of the Water Act should be included in these regulations or as a consequential amendment in regulations to be made under Part 5A. It is the department's position that this information may be reported to the ACCC without the intermediary contravening the Code, and further consideration is being given to give effect to this policy, given that the new Part 5A will not commence until 1 July 2026.
- Whether the Code can and should regulate intermediaries when they wish to trade their own rights but are not providing intermediary services, by including additional disclosure obligations.
- Whether the Code should allow an intermediary to provide services in relation to their own rights or a related party's rights where the matching services are fully automated and where the intermediary can demonstrate that there is no ability for the intermediary to intervene in the provision of the service to gain an advantage for themselves or a related party.

## Civil penalties

The Exposure Draft contains civil penalty provisions. The Code is able to contain civil penalty provisions with a maximum penalty of 600 penalty units (up to \$198,000). This is the maximum for individuals. The Water Act contains a multiplier, so the maximum penalty for body corporates will be five times the penalty stated in the Exposure Draft.

Stakeholders have previously been consultation on a proposed range of civil penalty amounts ('medium' 200-399 penalty units, and 'high' 400-600 penalty units). We have incorporated feedback from stakeholders as follows:



- A 'low' range has been added, so that there are now 3 classifications.
- The lower amount of the proposed 'high' range has been adopted for 'high' (where contraventions may lead to serious harm or require a high level of deterrence), being 400 penalty units.
- The lower amount of the proposed 'medium' range has been adopted for 'medium' (where a medium level of harm may result from a contravention or require a level of deterrence), being 200 penalty units.
- An amount of 100 penalty units has been adopted where it is unlikely that serious harm would result from a contravention but it requires a level of deterrence.

In determining the amounts of the penalties for each classification, and the suitability of the classification for each of the Code provisions, the department has considered the seriousness of the harm that could arise from a contravention, and the level of deterrence to be effective where there is strong incentive to contravene a provision.

## Appendix A – Definitions

### EXTRACTS OF RELEVANT PROVISIONS RELATING TO KEY MATTERS RAISED IN THIS PAPER AND RELATED DEFINITIONS

Note: Full legislation is available through the Federal Register of Legislation at: [Federal Register of Legislation - Water Act 2007](#) and [Federal Register of Legislation - Basin Plan 2012](#)

### Relevant Definitions

#### Section 4(1) of the Water Act

**eligible water markets intermediary means a person who provides any of the following services:**

- a. trading of ETWRs on behalf of another person in exchange for a commission or fee;
- b. investigating ETWRs trading possibilities on behalf of a water market participant or a potential water market participant in exchange for a commission or fee;
- c. preparing documents that are necessary for the trade or transfer of ETWRs on behalf of a water market participant or a potential water market participant in exchange for a commission or fee;
- d. providing a trading platform or water exchange for ETWRs;
- e. giving advice (whether or not for payment of any kind) in the course of providing services of a kind mentioned in paragraph (a), (b), (c) or (d) to a water market participant or a potential water market participant about trading in ETWRs, other than advice that is of a general nature and not provided to address the specific circumstances of a water market participant or a potential water market participant;
- f. making a representation that an ETWR is available for sale or purchase, if the person will facilitate the trade or transfer of the ETWR in exchange for a commission or fee.

**pretrade:** in relation to the trade or transfer, or proposed trade or transfer, of any type of ETWR includes, but is not limited to, offers to buy or sell occurring before an agreement or contract for the trade or transfer is entered.

**water market authority:** in relation to the proposed trade or transfer of an eligible tradeable water right, means:

- a. a person authorised or required under a law of a State to approve, allow or register the trade or transfer; or
- b. an irrigation infrastructure operator that approves, allows or registers the trade or transfer.

– Section 6A of the Water Act

1. For the purposes of this Act, an **eligible tradeable water right** means the following:
  - a. a tradeable water right;
  - b. any other right in relation to the taking or use of water that is able to be traded or transferred, other than a right prescribed by the regulations;
  - c. a right prescribed by the regulations;  
to the extent that the right relates to Basin water resources or any other water resource prescribed by the regulations.
2. For the purposes of Parts 5 and 5A, an **eligible tradeable water right** does not include a right that is a financial product within the meaning of section 761A of the *Corporations Act 2001*.

Civil penalty: 120 penalty units.

