

EXPOSURE DRAFT



EXPOSURE DRAFT

Water Amendment (Water Markets Intermediaries Code and Trust Accounting Framework) Regulations 2025

I, the Honourable Sam Mostyn AC, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2025

Sam Mostyn AC
Governor-General

By Her Excellency's Command

Tanya Plibersek [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for the Environment and Water

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules	1
Schedule 1—Amendments		2
	<i>Water Regulations 2008</i>	2

EXPOSURE DRAFT

1 Name

This instrument is the *Water Amendment (Water Markets Intermediaries Code and Trust Accounting Framework) Regulations 2025*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2025.	1 July 2025

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Water Act 2007*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Water Regulations 2008

1 Subregulation 1.03(1)

Insert:

Australian ADI has the same meaning as in section 9 of the *Corporations Act 2001*.

financial year, of an eligible water markets intermediary, has the same meaning as in subsection 100V(6) of the Act.

related party, of an eligible water markets intermediary, means an entity that is, or has been in the previous 6 months:

- (a) if the intermediary is a partnership—a partner of the partnership; or
- (b) if the intermediary is a trust—a trustee of the trust; or
- (c) if the intermediary is an unincorporated association—a member of the committee of management of the association; or
- (d) if the intermediary, or a person covered by a preceding paragraph, is a body corporate:
 - (i) a director, secretary, employee or officer of the body corporate; or
 - (ii) a related body corporate (within the meaning of the *Corporations Act 2001*) in relation to the intermediary; or
 - (iii) a director, secretary, employee or officer of such a related body corporate; or
- (e) an entity controlled by a person covered by a preceding paragraph; or
- (f) a spouse, de facto partner, parent or child of:
 - (i) the intermediary; or
 - (ii) a person covered by a preceding paragraph; or
- (g) an employee of the intermediary; or
- (h) if a contractor of the intermediary has entered into an exclusive agreement to act as a broker for the intermediary—the contractor.

trust account audit report, in relation to a trust account maintained by an eligible water markets intermediary, means a report obtained by the intermediary under paragraph 100V(1)(b) of the Act for the account.

trust account statement, in relation to a trust account maintained by an eligible water markets intermediary, means a statement prepared by the intermediary under paragraph 100V(1)(a) of the Act for the account.

2 After Part 4

Insert:

Part 5—Water Markets Intermediaries Code and trust accounting framework

Division 1—Water Markets Intermediaries Code

5.01 Purpose of this Division

For the purposes of subsection 100G(1) of the Act, this Division prescribes the Water Markets Intermediary Code.

5.02 Application of this Division

- (1) Subject to this regulation, this Division applies in relation to an eligible water markets intermediary that provides a water markets intermediary service to a person.
- (2) Despite subregulation (1), this Division does not apply in relation to a water markets intermediary service 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.
- (3) Despite subregulation (1), this Division does not apply in relation to a water markets intermediary service 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.
- (4) Despite subregulation (1), this Division applies in relation to a water markets intermediary service that involves the provision of a trading platform mentioned in paragraph (d) of the definition of *eligible water markets intermediary* in subsection 4(1) of the Act 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.
- (5) To avoid doubt, this Division does not apply in relation to a water markets intermediary service provided in respect of eligible tradeable water rights that automatically transfer with land.

5.03 General obligations

- (1) An eligible water markets intermediary contravenes this subregulation if the intermediary:
 - (a) provides a water markets intermediary service to a person (the *client*); and
 - (b) fails to comply with a requirement in subregulation (2), (3), (4) or (5) in the course of providing the service.

Civil penalty: 400 penalty units.

- (2) The intermediary must place the interests of the client before the interests of:
 - (a) the intermediary; or
 - (b) a related party of the intermediary.
- (3) The intermediary must represent the interests of the client diligently and with due care and skill.
- (4) The intermediary must not use or disclose any confidential information obtained from the client, or otherwise obtained in the course of providing water markets intermediary services to the client, unless the use or disclosure of the information is authorised by the client or otherwise required or authorised by law.
- (5) The intermediary must act in accordance with the lawful instructions provided by the client.
- (6) A requirement in this regulation is subject to any contrary requirement in this Code.

5.04 Intermediary must deal in good faith

- (1) An eligible water markets intermediary contravenes this subregulation if the intermediary:
 - (a) provides a water markets intermediary service to a person (the *client*); and
 - (b) fails to deal with the client in good faith, within the meaning of the unwritten law from time to time, in the course of providing the service.

Civil penalty: 400 penalty units.

- (2) Without limiting the matters to which a court may have regard for the purpose of determining whether the intermediary deals with the client in good faith in the course of providing the service, a court may have regard to the following matters:
 - (a) the extent to which the intermediary has acted honestly;
 - (b) the extent to which the intermediary has not acted arbitrarily, capriciously, unreasonably, recklessly or with ulterior motives;
 - (c) the nature of the intermediary's relationship with the client (including the extent to which the intermediary has conducted the relationship without duress);
 - (d) any other relevant matter.

5.05 Intermediary must disclose conflicting interests in provision of services

- (1) An eligible water markets intermediary contravenes this subregulation if the intermediary:
 - (a) provides a water markets intermediary service to a person (the *client*); and
 - (b) has an interest that conflicts with the interest of the client in relation to the provision of the service; and
 - (c) fails to disclose the conflicting interest to the client in accordance with the requirements in subregulation (3).

Civil penalty: 400 penalty units.

- (2) Without limiting paragraph (1)(b), the intermediary has an *interest that conflicts* with an interest of the client if the 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.
- (3) For paragraph (1)(c), the disclosure of the conflict of interest must:
 - (a) be in writing; and
 - (b) specify the interest and the circumstances that give rise to the conflict; and
 - (c) be made:
 - (i) if the conflicting interest exists before the intermediary begins to provide the service to the client—before the service is provided; or
 - (ii) otherwise—as soon as practicable after the intermediary first becomes aware of the conflicting interest; and
 - (d) request the client to confirm, in writing, that the client has received the disclosure.

5.06 How intermediary must deal with conflicting interests in eligible tradeable water rights

- (1) An eligible water markets intermediary contravenes this subregulation if:
 - (a) the intermediary provides a water markets intermediary service to a person (the *client*) in respect of an eligible tradeable water right; and
 - (b) the intermediary, or a related party of the intermediary:
 - (i) has a material personal interest in the eligible tradeable water right; or
 - (ii) will have such an interest as a consequence of the provision of the service to the client; and
 - (c) the intermediary fails to comply with a requirement of this regulation in relation to the provision of the service.

Civil penalty: 400 penalty units.

Irrigation infrastructure operators must not take advantage of clients etc.

- (2) In the case that the intermediary is an irrigation infrastructure operator, the intermediary:
 - (a) must not, in providing the service, improperly use its status, power or authority to gain, or to seek to gain, an advantage for itself or for a related party; and

EXPOSURE DRAFT

Schedule 1 Amendments

- (b) must ensure that a related party does not improperly use 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.
- (3) Paragraph (2)(b) does not apply if the 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.

Intermediary (other than irrigation infrastructure operator) must not provide service

- (4) In the case that the intermediary is not an irrigation infrastructure operator, the intermediary:
 - (a) must not provide the service to the client; and
 - (b) must notify the client that the obligations imposed on the intermediary by this Code in respect of the provision of water markets intermediary services prohibit the provision of the service.
- (5) For paragraph (4)(b), the notification must:
 - (a) be in writing; and
 - (b) be made:
 - (i) if the interest exists before the intermediary begins to provide the service to the client—before the service is provided; or
 - (ii) otherwise—as soon as practicable after the intermediary first becomes aware of the interest.

5.07 Intermediary must provide general information about services and obligations

- (1) An eligible water markets intermediary contravenes this subregulation if:
 - (a) the intermediary provides a water markets intermediary service to a person (the *client*) in exchange for a commission or fee; and
 - (b) before providing the service, the intermediary does not provide to the client, in writing, the information specified in subregulation (2).

Civil penalty: 200 penalty units.

- (2) For paragraph (1)(b), the information is the following:
 - (a) the water markets intermediary services that the intermediary provides;
 - (b) the commission or fees generally charged by the intermediary to provide those services;
 - (c) the obligations the intermediary owes to the client under:
 - (i) Part 5 of the Act (including under this Code); and
 - (ii) the Australian Consumer Law (within the meaning of the *Competition and Consumer Act 2010*);
 - (d) copies of, or references to, the particular provisions of the Act, this instrument and the Australian Consumer Law that imposes the obligations mentioned in paragraph (c);
 - (e) if the intermediary provides a service that includes the transfer of a water allocation through an intervalley trade opening—the method the

intermediary will use to successfully transfer the water allocation between clients (for example, in chronological order or on a pro rata basis);

- (f) if the intermediary provides a service that requires eligible tradeable water rights to be held in a broking water account—how the intermediary will deal with eligible tradeable water rights that are not able to be transferred to a person who is lawfully entitled to receive them;
 - (g) if, within the previous 3 years, an enforcement action mentioned in subregulation (3) has occurred:
 - (i) what the enforcement action is; and
 - (ii) any outcomes achieved in respect of the enforcement action.
- (3) For paragraph (2)(g), the enforcement actions are the following:
- (a) the ACCC has issued a public warning notice under Division 6 of Part 5 of the Act about the conduct of the intermediary;
 - (b) an undertaking given by the intermediary in relation to a contravention of this Code, or Division 4 or 5 of Part 5 of the Act, has been accepted under section 163 of the Act;
 - (c) a court has found that the intermediary has contravened a provision of this Code, or of Division 4 or 5 of Part 5 of the Act.
- (4) Subregulation (1) does not apply if the intermediary has provided the same information to the client within the previous 12 months.

5.08 Intermediary must provide additional information about particular services

- (1) An eligible water markets intermediary contravenes this subregulation if the intermediary:
- (a) provides a water markets intermediary service to a person (the *client*) in exchange for a commission or fee; and
 - (b) does not provide to the client, in writing, the information specified in subregulation (2) in accordance with the requirement in subregulation (4).

Civil penalty: 200 penalty units.

- (2) For paragraph (1)(b), the information is the following:
- (a) the kind of service to be provided;
 - (b) the terms and conditions on which the service is to be provided;
 - (c) if the commission or fees to be charged by the intermediary to provide the service are different from the commission or fees generally charged by the intermediary—the commission or fees to be charged;
 - (d) if the service is to investigate the trading possibilities for the eligible tradeable water rights:
 - (i) the eligible tradeable water rights in respect of which the service is to be provided; and
 - (ii) whether the service is in respect of offers to buy or sell eligible tradeable water rights; and
 - (iii) the volume, in megalitres, of the eligible tradeable water rights to be traded and whether that volume may be split; and

EXPOSURE DRAFT

Schedule 1 Amendments

- (iv) the price per megalitre, or the range of the price, of each such volume; and
 - (v) details of when or how the client's instructions to provide the service expire or are rescinded; and
 - (vi) details of any other conditions applying to the service, including whether the provision of the service is exclusive or non-exclusive;
- (e) for a service other than a service mentioned in paragraph (d)—whether and, if so, why the client's eligible tradeable water rights are required to be held in a broking water account maintained by the intermediary;
- (f) if the intermediary has submitted an application to a water market authority to approve, allow or register the trade or transfer of an eligible tradeable water right:
 - (i) the outcome of the application; and
 - (ii) if the water market authority rejects, or delays the consideration of, the application—the reason for the rejection or delay.
- (3) Paragraph (2)(d) does not apply to information that has been provided by the client, in writing, to the intermediary.
- (4) The intermediary must provide the information to the client:
 - (a) for information mentioned in paragraphs (2)(a) to (e):
 - (i) before the intermediary begins to provide the service to the client; or
 - (ii) if the information changes, or first becomes known to the intermediary, after that time—as soon as practicable after the intermediary becomes aware of the new or changed information; and
 - (b) for information mentioned in paragraph (2)(f)—no later than 2 days after the intermediary becomes aware of the outcome of the application, or of the rejection or delay of the consideration of the application.

5.09 Intermediary must deal with complaints

- (1) An eligible water markets intermediary contravenes this subregulation if the intermediary:
 - (a) provides a water markets intermediary service to a person (the **client**) in exchange for a commission or fee; and
 - (b) receives a complaint from the client in relation to the provision of the service; and
 - (c) fails to comply with a requirement of subregulation (2) or (3).

Civil penalty: 100 penalty units.

- (2) The intermediary must:
 - (a) act in good faith in dealing with the complaint; and
 - (b) make a genuine attempt to resolve the complaint within 20 business days; and
 - (c) if the complaint is not received in writing—make a written record of the complaint; and
 - (d) within 2 business days of receiving the complaint, give to the client:
 - (i) written confirmation that the complaint has been received; and

-
- (ii) a copy of the record of the complaint made under paragraph (c) (if applicable); and
 - (iii) information about the process the intermediary will follow in dealing with the complaint; and
 - (e) within 10 business days of receiving the complaint, give to the client a written response to the complaint that specifies the actions the intermediary proposes to take in seeking to resolve the complaint; and
 - (f) within 5 business days of completing the process for dealing with the complaint, give to the client written notice of the outcome of that process.
- (3) The intermediary must have a documented process for dealing with complaints that enables the intermediary to meet the requirements of subregulation (2).

5.10 Intermediary must have authority to trade or transfer eligible tradeable water rights

- (1) An eligible water markets intermediary (other than an irrigation infrastructure operator) contravenes this subregulation if the intermediary:
- (a) makes an application to a water market authority to approve, allow or register the trade or transfer of an eligible tradeable water right in the course of providing water markets intermediary services; and
 - (b) does not hold a written authority to make the application:
 - (i) from each person (an **authorising person**) who holds a legal or equitable interest in the eligible tradeable water right proposed by the application to be traded or transferred; and
 - (ii) that meets the requirements in subregulation (2).

Civil penalty: 400 penalty units.

- (2) For subparagraph (1)(b)(ii), a written authority from an authorising person must:
- (a) include the following:
 - (i) the name of the authorising person;
 - (ii) the name of the eligible water markets intermediary who is authorised by the authorising person in respect of the application;
 - (iii) the licence or account number of the water account (however described) in which the eligible tradeable water right is held;
 - (iv) the period in respect of which the written authority is valid (if applicable), which must not be longer than 3 years;
 - (v) the number of trades or transfers in respect of which the written authority is valid (if applicable);
 - (vi) if the authorising person is a corporation—an extract from a register maintained by the Australian Securities and Investment Commission or the Office of the Registrar of Indigenous Corporations (as applicable), for the corporation, that is less than 12 months old; and
 - (b) state how the authorising person can rescind the authority; and
 - (c) be signed by:
 - (i) the authorising person; or
 - (ii) a person (other than an eligible water markets intermediary) who is authorised by the authorising person, by a document that is registered with a water market authority, to sign the written authority; and

EXPOSURE DRAFT

Schedule 1 Amendments

- (d) if the authority is signed by a person mentioned in subparagraph (c)(ii), be accompanied by the document mentioned in that subparagraph.
- (3) For paragraph (2)(c), if the authorising person is a body corporate, the written authority must be signed in accordance with the requirements for executing documents specified in section 127 of the *Corporations Act 2001*.

5.11 Intermediary must have authority to act as an agent

- (1) An eligible water markets intermediary contravenes this subregulation if the intermediary:
 - (a) acts as an agent on behalf of a person (the **client**) in the course of providing water markets intermediary services to the client; and
 - (b) does not hold a written authority from the client:
 - (i) to act as an agent of the client; and
 - (ii) that meets the requirements in subregulation (2).

Civil penalty: 400 penalty units.

- (2) For subparagraph (1)(b)(ii), a written authority from a client must:
 - (a) include the following:
 - (i) the name of the intermediary who is to act as the agent of the client;
 - (ii) the period of time for which the authority is valid;
 - (iii) if the client is a corporation—an extract from a register maintained by the Australian Securities and Investment Commission or the Office of the Registrar of Indigenous Corporations (as applicable), for the corporation, that is less than 12 months old;
 - (iv) the terms of the arrangement to act as an agent, including the overall trading objective and the eligible tradeable water rights to be made available to achieve that objective;
 - (v) if the agent is to make applications on behalf of the client to water market authorities to approve, allow or register the trade or transfer of eligible tradeable water rights—explicit authority for the agent to make such applications; and
 - (b) state how the client can rescind the authority; and
 - (c) be signed by the client.
- (3) For paragraph (2)(c), if the client is a body corporate, the written authority must be signed in accordance with the requirements for executing documents specified in section 127 of the *Corporations Act 2001*.

5.12 Intermediary must maintain broking water accounts

- (1) An eligible water markets intermediary (other than an irrigation infrastructure operator) contravenes this subregulation if the intermediary:
 - (a) receives and holds eligible tradeable water rights on behalf of a person (the **client**) in the course of providing water markets intermediary services to the client; and
 - (b) does not maintain one or more broking water accounts for the purpose of holding eligible tradeable water rights on behalf of the client in accordance with the requirements in this regulation.

Civil penalty: 400 penalty units.

- (2) As soon as practicable after receiving eligible tradeable water rights on behalf of the client, the intermediary must transfer the water rights into a broking water account (the **broking water account**) maintained by the intermediary for the purpose of holding the eligible tradeable water rights.
- (3) The broking water account must be maintained with:
 - (a) an agency of a State; or
 - (b) an irrigation infrastructure operator.
- (4) Within 3 months of the first day on which the obligation for the intermediary to maintain the broking water account arises, the intermediary must notify the ACCC that the intermediary is maintaining the broking water account.
- (5) Subject to subsection (6), the intermediary must not:
 - (a) transfer eligible tradeable water rights into the broking water account unless the water rights are received from, or held on behalf of, the client; or
 - (b) transfer eligible tradeable water rights out of the broking water account unless the rights are being transferred:
 - (i) to a person who is lawfully entitled to receive them; and
 - (ii) to the nearest possible amount able to be transferred.
- (6) The intermediary may transfer eligible tradeable water rights from one broking water account maintained by the intermediary to another broking water account maintained by the intermediary.

5.13 Intermediary must prepare statements about broking water accounts

- (1) An eligible water markets intermediary contravenes this subregulation if the intermediary:
 - (a) is required by regulation 5.12 to maintain a broking water account for the purpose of holding eligible tradeable water rights on behalf of a client; and
 - (b) does not, for each financial year of the intermediary, prepare a statement in relation to the account in accordance with the requirements in subregulation (2).

Civil penalty: 400 penalty units.

- (2) The statement must:
 - (a) be in writing; and
 - (b) be prepared within 3 months of the end of the financial year; and
 - (c) include the information and documents mentioned in subregulation (3); and
 - (d) not include information that is false or misleading in a material particular.
- (3) For paragraph (2)(c), the information and documents are the following:
 - (a) the name and address of the intermediary;
 - (b) the financial year for which the statement is prepared;
 - (c) the name of the State agency or irrigation infrastructure operator with which the account is maintained;
 - (d) the following information about the account:

EXPOSURE DRAFT

Schedule 1 Amendments

- (i) the name of the account holder of the account;
 - (ii) the licence or account number of the account;
 - (iii) the opening and closing balance of the account at the start and end of the financial year, as recorded in the statement for the account issued by the State agency or irrigation infrastructure operator with which the account is maintained;
- (e) a Schedule to the statement that includes details of the ledger prepared by the intermediary for the client in respect of the account for the financial year, including the name of the client and the closing balance of the ledger at the end of the financial year;
- (f) if eligible tradeable water rights held in the account were not able to be transferred to a person who is lawfully entitled to receive them—whether those rights were dealt with in accordance with the information provided to the client mentioned in paragraph 5.07(2)(f) and, if not, how those rights were dealt with;
- (g) a Schedule to the statement that includes:
 - (i) a copy of the statement for the account for the financial year issued by the State agency or irrigation infrastructure operator with which the account is maintained; or
 - (ii) a list of the transactions on the account for the financial year issued by the agency or operator;
- (h) if the account was used during the financial year in respect of the transfer of a water allocation through an intervalley trade opening—a Schedule to the statement that explains whether the method used to transfer the water allocation was in accordance with the information provided to the client mentioned in paragraph 5.07(2)(e) and, if not, why that method was not used;
- (i) a declaration by the intermediary that the information in the statement is true and correct.

5.14 Intermediary must hold professional indemnity insurance

- (1) An eligible water markets intermediary contravenes this subregulation if the intermediary:
 - (a) provides a water markets intermediary service; and
 - (b) does not hold professional indemnity insurance that:
 - (i) covers the provision of the service; and
 - (ii) complies with the requirements in this regulation.

Civil penalty: 400 penalty units.

- (2) Subject to subregulation (3), the insurance policy must provide for an insured amount:
 - (a) of at least \$5 million for any one claim or \$10 million in the annual aggregate; or
 - (b) both:
 - (i) of at least \$5 million for any one claim and in the annual aggregate; and
 - (ii) that includes an automatic right or reinstatement of the annual aggregate.

-
- (3) If the intermediary is an irrigation infrastructure operator, and the circumstance mentioned in subregulation (5) applies, the insurance policy must provide for an insured amount that is adequate and appropriate to cover the liabilities that may arise in providing the water markets intermediary services the intermediary provides.
 - (4) Without limiting subregulation (3), the following factors are relevant to whether an insured amount is *adequate and appropriate* to cover liabilities that may arise in providing water markets intermediary services:
 - (a) the kinds of water markets intermediary services the intermediary provides;
 - (b) the volume of eligible tradeable water rights the intermediary deals with in the course of providing those services;
 - (c) the variability of the price of eligible tradeable water rights between wet and dry years;
 - (d) the number and kind of clients of the intermediary;
 - (e) the number of employees of the intermediary.
 - (5) For subregulation (3), the circumstance is that over the previous 3 financial years for the intermediary, the average yearly sum of the value of all trades and transfers of eligible tradeable water rights for which water markets intermediary services have been provided by the intermediary is less than \$5 million (excluding the value of commissions and fees received in exchange for providing water markets intermediary services).

5.15 Intermediary must comply with record-keeping requirements

- (1) An eligible water markets intermediary contravenes this subregulation if the intermediary:
 - (a) provides a water markets intermediary service; and
 - (b) fails to keep the records mentioned in subregulation (2) for the period mentioned in subregulation (3).

Civil penalty: 200 penalty units.

- (2) The records that must be kept are the certificate of currency and insurance policy for the professional indemnity insurance held by the intermediary in accordance with regulation 5.14.
- (3) The period a record must be kept is the 6-year period beginning on the day the record was given to, or created by, the intermediary.

5.16 Intermediary must comply with requirements for holding client records

- (1) An eligible water markets intermediary contravenes this subregulation if the intermediary:
 - (a) provides a water markets intermediary service to a person (the *client*); and
 - (b) fails to keep the records mentioned in subregulation (2) for the period mentioned in subregulation (3).

Civil penalty: 200 penalty units.

- (2) The records that must be kept are the following:

EXPOSURE DRAFT

Schedule 1 Amendments

- (a) the details of the client, including the client's name, address, phone number and email address;
- (b) records of instructions received from the client;
- (c) information provided to the client under regulations 5.07 and 5.08;
- (d) for each buy or sell offer communicated to or on behalf of the client (other than offers listed directly by the client on a trading platform or water exchange):
 - (i) the eligible tradeable water rights in respect of which the offer is made; and
 - (ii) whether the offer is an offer to buy or to sell those rights; and
 - (iii) the volume, in megalitres, of those rights and whether the volume may be split; and
 - (iv) the price per megalitre, or the range of the price, of each such volume; and
 - (v) the conditions (if any) attaching to the offer; and
 - (vi) the date and time the offer is communicated; and
 - (vii) the name of the person who made the offer; and
 - (viii) the name of the person to whom the offer was communicated;
- (e) information about matched trades relevant to the client, including volumes, zones, prices, strike dates and names of buyers and sellers;
- (f) if the intermediary has submitted an application to a water market authority to approve, allow or register the trade or transfer of an eligible tradeable water right on behalf of the client:
 - (i) the written authority from the client authorising the intermediary to submit that application; and
 - (ii) if the written authority is signed by a person mentioned in subparagraph 5.10(2)(c)(ii)—the document mentioned in that subparagraph; and
 - (iii) the reference numbers relevant to the application; and
 - (iv) the notification provided to the client of the outcome of the application; and
 - (v) the date on which the application was approved or rejected;
- (g) if the intermediary has disclosed a conflicting interest to the client:
 - (i) a copy of the disclosure; and
 - (ii) the written confirmation from the client (if any) that the client has received the disclosure;
- (h) if the client has made a complaint to the intermediary about the water markets intermediary service provided:
 - (i) the complaint, either as received in writing from the client or as recorded by the intermediary; and
 - (ii) any responses to, or notifications of the outcomes of, the complaint; and
 - (iii) the documented process for dealing with the complaint at the time the complaint is received;
- (i) if the intermediary holds eligible tradeable water rights on behalf of the client in a broking water account:
 - (i) the broking water account statements for the account; and

-
- (ii) the ledger maintained by the intermediary for the client in respect of the account;
 - (j) the following financial and accounting records relevant to the client:
 - (i) receipts;
 - (ii) records of authorities to withdraw funds by electronic funds transfer;
 - (iii) records of deposits;
 - (iv) trust account receipts and payments cash books;
 - (v) client ledgers for statutory trust accounts;
 - (vi) trust account statements;
 - (vii) trust account audit reports.
 - (3) The period a record must be kept is the 6-year period beginning on the day the record was given to, or created by, the intermediary.

5.17 Intermediary must maintain client ledgers for statutory trust accounts

- (1) An eligible water markets intermediary contravenes this subregulation if the intermediary:
 - (a) is required to maintain a trust account in accordance with section 100R of the Act in respect of money received on behalf of a person (the *client*) in the course of providing water markets intermediary services during a financial year for the intermediary; and
 - (b) either:
 - (i) does not maintain and keep a ledger in respect of the money held in the account on behalf of the client during the financial year in accordance with the requirements in subregulation (2); or
 - (ii) does not give the client a statement from the ledger within 5 business days of receiving a request by the client for the statement.

Civil penalty: 200 penalty units.

- (2) The ledger must include the following information and records:
 - (a) the name of the client;
 - (b) the name and address of the intermediary;
 - (c) the financial year of the intermediary in respect of which the ledger is prepared;
 - (d) the name of the Australian ADI that maintains the account;
 - (e) the following information about the account:
 - (i) the name of the account;
 - (ii) the BSB and account number of the account;
 - (f) the date on which any money held in the account on behalf of the client is transferred into or out of the account;
 - (g) the following details in relation to any such transfer:
 - (i) the reason for the transfer;
 - (ii) the amount of money transferred;
 - (iii) the name of the person from, or to, whom (as applicable) the money is transferred;
 - (iv) the reference numbers relevant to the transfer;

- (h) a running balance for the account.

5.18 Intermediary must maintain client ledgers for broking water accounts

- (1) An eligible water markets intermediary contravenes this subregulation if the intermediary:
 - (a) is required to maintain a broking water account in accordance with regulation 5.12 for the purpose of holding eligible tradeable water rights on behalf of a client; and
 - (b) either:
 - (i) does not maintain and keep a ledger in respect of the water rights held in the account on behalf of the client during the financial year for the intermediary in accordance with the requirements in subregulation (2); or
 - (ii) does not give the client a statement from the ledger within 5 business days of receiving a request by the client for the statement.

Civil penalty: 200 penalty units.

- (2) The ledger must include the following information:
 - (a) the name of the client;
 - (b) the financial year of the intermediary in respect of which the ledger is prepared;
 - (c) the licence or account number of the account;
 - (d) the date on which any eligible tradeable water rights held in the account on behalf of the client are traded or transferred into or out of the account;
 - (e) the following details in relation to any such trade or transfer:
 - (i) the reason for the trade or transfer;
 - (ii) the volume, in megalitres, of the water rights involved in the trade or transfer;
 - (iii) the name of the person from, or to, whom (as applicable) the water rights are traded or transferred;
 - (iv) the reference numbers relevant to the trade or transfer;
 - (f) a running balance for the account.

5.19 Exemption by Minister

- (1) The Minister may, by legislative instrument, exempt an eligible water markets intermediary from this Code or specified provisions of this Code.
- (2) Without limiting the matters the Minister may consider in deciding whether to make an exemption, the Minister must consider:
 - (a) whether other requirements regulate the conduct of the class of intermediaries that would be the subject of the exemption towards participants and potential participants in the water market; and
 - (b) the nature of any such requirements, including:
 - (i) whether the requirements are imposed under Commonwealth, State or Territory laws; and
 - (ii) whether the requirements are standards that a member of a profession must comply with; and

-
- (c) the level of risk to participants and potential participants in the water market if the exemption were made.

Division 2—Trust accounting framework

5.20 Designation of trust accounts

- (1) For the purposes of subsection 100R(3) of the Act, this regulation specifies the manner in which a trust account maintained by an eligible water markets intermediary must be designated.
- (2) The name of the trust account must include:
 - (a) either:
 - (i) the legal name of the intermediary; or
 - (ii) subject to subregulation (3), a registered business name of the intermediary; and
 - (b) the words “water market trust account”.
- (3) Subparagraph (2)(a)(ii) does not apply in relation to a registered business name of the intermediary if:
 - (a) the registered business name is not used by the intermediary in connection with the provision by the intermediary of water markets intermediary services; or
 - (b) the Australian ADI that maintains the trust account does not permit the name of the account to include the registered business name.

5.21 Trust account statements—information and statements

- (1) For the purposes of paragraph 100V(2)(b) of the Act, this regulation specifies the information and matters that must be contained in a trust account statement prepared in relation to a trust account maintained by an eligible water markets intermediary under section 100R of the Act.
- (2) The information and records are the following:
 - (a) the name and address of the intermediary;
 - (b) the financial year of the intermediary in respect of which the statement is prepared;
 - (c) the name of the Australian ADI that maintains the account;
 - (d) the following information about the account:
 - (i) the name of the account;
 - (ii) the BSB and account number of the account;
 - (iii) the opening balance of the account at the start of the financial year, as recorded on the Australian ADI statement for the account;
 - (iv) the closing balance of the account at the end of the financial year, as recorded on the Australian ADI statement for the account;
 - (v) any adjustments of the account made during the financial year;
 - (vi) the reconciled balance of the account at the end of the financial year, in accordance with the Australian ADI statement for the account;

EXPOSURE DRAFT

Schedule 1 Amendments

- (vii) the total of the balances of each ledger (the *client ledgers*) maintained and kept by the intermediary in accordance with the requirements in regulation 5.17 for the financial year in respect of the account;
 - (viii) whether there is a difference between the balances of the account under subparagraphs (vi) and (vii);
 - (ix) whether the account is overdrawn, in accordance with the Australian ADI statement for the account or the ledgers prepared by the intermediary for the account;
 - (e) a Schedule to the statement that includes the details of any adjustments to the account during the financial year;
 - (f) a Schedule to the statement that includes a list of the names of each person for whom the intermediary has prepared a client ledger for the financial year in respect of the account, and the closing balance of each such ledger at the end of the financial year;
 - (g) if there is a difference between the balances of the account as mentioned in subparagraph (d)(viii)—a Schedule to the statement that includes an explanation for the difference;
 - (h) if the account is overdrawn—a Schedule to the statement that includes the statement or ledger mentioned in subparagraph (d)(ix);
 - (i) if the intermediary is a company—an extract from a register maintained by the Australian Securities and Investments Commission or the Office of the Registrar of Indigenous Corporations (as applicable), for the company, that is less than 12 months old;
 - (j) if the intermediary is a partnership, trust or unincorporated association—a copy of a current document that records the key individuals and the constituent documents for the partnership, trust or association;
 - (k) a declaration by the intermediary that the information in the statement is true and correct.
- (3) If the Australian ADI maintains the trust account in separate branches, different trust account statements may be prepared in relation to the trust account maintained in the separate branches.

5.22 Trust account audit reports—information and statements

- (1) For the purposes of paragraph 100V(2)(b) of the Act, this regulation specifies the information and matters that must be contained in a trust account audit report prepared for a financial year in relation to the trust accounts maintained by an eligible water markets intermediary.
- (2) The information and matters are the following:
 - (a) the name and address of the intermediary;
 - (b) the financial year of the intermediary in respect of which the report is prepared;
 - (c) the following information about the accounts:
 - (i) the name of each account;
 - (ii) the BSB and account number of each account;
 - (iii) the name of the Australian ADI that maintains the accounts;

-
- (iv) any information that has not been included in the trust account statements for the financial year in respect of the accounts, but that the auditor considers should be included in the report;
 - (d) the name and address of the auditor who has prepared the report;
 - (e) details of how the auditor meets the eligibility requirements specified in regulation 5.23;
 - (f) a declaration by the auditor:
 - (i) as to whether the auditor has examined the trust records of the intermediary for the financial year and is of the opinion that all necessary trust records were produced to the auditor; and
 - (ii) as to whether the auditor is of the opinion that the trust records for the financial year have been kept in accordance with the requirements of Part 5 of the Act and Part 5 of this instrument; and
 - (iii) as to whether anything has come to the auditor's attention to indicate that a trust account statement for the financial year is untrue; and
 - (iv) if a trust account was overdrawn—as to whether the trust account, and the ledger maintained by the intermediary for the trust account, were restored promptly and whether details of the overdrawn account were provided to the auditor and included in the report; and
 - (v) that the auditor has conducted the audit in accordance with the auditing and assurance standards issued by CPA Australia and Chartered Accountants Australia and New Zealand as in force, or applicable, from time to time.

5.23 Trust account audit reports—eligibility requirements for auditors

- (1) For the purposes of paragraph 100V(3)(a) of the Act, this regulation specifies the eligibility requirements a person who prepares a trust account audit report for an eligible water markets intermediary must comply with.
- (2) The person must be:
 - (a) a member of CPA Australia, and hold a current Public Practice Certificate issued by that body; or
 - (b) a member of Chartered Accountants Australia and New Zealand, and hold a current Certificate of Public Practice issued by that body; or
 - (c) a member of the Institute of Public Accountants, and hold a current Professional Practice Certificate issued by that body; or
 - (d) a registered company auditor (within the meaning of the *Corporations Act 2001*); or
 - (e) an authorised audit company (within the meaning of that Act).
- (3) The person must not be any of the following:
 - (a) a related party of the intermediary;
 - (b) an employee, director or partner of an entity that has, or has had in the previous 3 years, a contractual relationship with the intermediary, other than in relation to the provision of auditing services.