



Guidelines for Water Trading Rules

Trading prices to be made available

Rule covered by this guideline

The water trading rule covered by this guideline is contained in section 12.48 of Chapter 12 of the Basin Plan. This guideline should be read together with section 12.48.

Purpose of the rule

The purpose of this rule is to make price reporting mandatory for persons selling (disposing of) water access rights.

Approval authorities generally request price information as part of the trading process, but it is not always mandatory to provide this information. Making price reporting mandatory will assist market participants in making informed decisions by increasing the quality of information that is reported.

Defined terms

This guideline contains a number of defined terms. These terms are defined in the *Basin Plan 2012*, the *Water Act 2007* or the *Water Markets Rules 2009*. An explanation of these terms can be found at the end of this document.

Explanation of the rule

This rule requires that a person selling (disposing of) a water access right must report the agreed price of the trade when seeking approval or registration of the trade under section 12.48. This rule applies whether the water is traded temporarily or permanently.

Section 12.48(1) relates to trades of water access rights that require approval from an approval authority. In this case, the person selling (disposing of) the water access right must notify the approval authority in writing of the agreed price, either at, or before, the time the approval is sought.

Section 12.48(2) relates to trades of water access rights that do not require approval from an approval authority but do require registration with a registration authority. In this case, the person selling (disposing of) the water access right must notify the registration authority in writing of the agreed price, either at, or before, the time the registration is sought.

It is the responsibility of the seller to report the price of the trade.

Who does this rule apply to?

This rule applies to:

- sellers of water access rights.

It does not place an obligation on any other person involved in the trade, e.g. the person buying (acquiring) the water access right, an approval authority, a registration authority, or a water market intermediary.

Where are prices on water access rights currently reported?

Prices and quantities of trades for water access entitlement and water allocation trades are published on various websites including:

the National Water Market System

- www.nationalwatermarket.gov.au

Water Connect South Australia

- <https://www.waterconnect.sa.gov.au/Systems/WTR/Pages/default.aspx>

Department of Natural Resource and Mines Queensland

- <http://www.dnrm.qld.gov.au/water/markets-trading/market-information>

Victorian Water Register

- <http://waterregister.vic.gov.au/water-trading/water-share-trading>
- <http://waterregister.vic.gov.au/water-trading/allocation-trading>

Scope of the rule

Section 12.48 applies when a trade requires either approval by an approval authority or registration by a registration authority. This includes trades for zero consideration (i.e. trades where the agreed price for the trade is zero dollars — see box below).

The trade of rights other than water access rights (e.g. trades of water delivery rights or irrigation rights within the networks of irrigation infrastructure operators) are not covered by section 12.48.

Can zero be an accurate price of a trade?

There is a range of situations where \$0.00 may be the valid price for a trade. For example, if a water allocation is being gifted to a family member, or transferred between two environmental water holders.

However, recording \$0.00 is accurate only if this is actually the agreed price for the trade. Sellers are obliged to report the true and accurate price of the trade.

Approval authorities

Some examples of approval authorities include:

- Goulburn–Murray Water (Victoria)
- Lower Murray Water (Victoria)
- NSW Office of Water
- State Water Corporation (NSW)

- Department of Environment, Water and Natural Resources (South Australia)
- Department of Natural Resources and Mines (Queensland).

Rule requirements

How are prices notified?

The price can be notified in two ways depending on the trade application or registration form of the approval or registration authority.

1. If the approval or registration authority provides space (e.g. a box) on the trade application or registration form where the agreed price can be reported, reporting the price in such a manner is sufficient.
2. If the approval or registration authority does not provide space on a trade application or registration form where the agreed price can be reported, the person selling (disposing of) the water access right is still required to report the agreed price in writing, e.g. via a letter or email to their approval authority or registration authority.

If the person selling (disposing of) the water access right is using the services of a water market intermediary, the notification may be made by the water market intermediary on their behalf (whether on a trade application/registration form or by some other means). The extent to which the intermediary can discharge or assume this responsibility will vary.

Reporting price where one individual trades a water access right between two legal entities

In some cases a person may wish to undertake a trade of a water access right that involves changing the ownership of the right between two legal entities that both relate to that individual. Where this occurs, section 12.48 still applies — the price of the trade must be reported by the person, even if the reported price is \$0.00.

For example, John Smith runs two farms. One farm and the associated water access entitlement are held in the name of Smith Family Trust, and the other farm and its associated water access entitlements are held in John's own name. He wishes to trade water allocation from the farm held by Smith Family Trust for use on the other farm. This involves a change of ownership of the water allocation from Smith Family Trust to John, even though there is only one individual involved in this transaction. Therefore, the Smith Family Trust is required to report the price (even if it is \$0.00) to the approval authority, in order to fulfil the requirements of section 12.48.

Reporting price where water is sold with land or other consideration

In some cases, a person may undertake the sale of water at the same time as the sale of land, and/or other items such as physical infrastructure. In these instances, a single price may be agreed for all elements of the sale. In these circumstances, the MDBA encourages the seller to report the price of the water traded separately, which may involve a best estimate of the price.

Defined terms

The following defined terms are contained in the *Basin Plan 2012*, the *Water Act 2007* or the *Water Market Rules 2009*.

Approval authority, in relation to the proposed trade of a water access right, means a person whose approval is required under state water management law for the trade to proceed.

Where an approval authority is referenced in the water trading rules it refers to the persons whose approval (not just consent) is required under state water management law for the trade of water access rights to proceed.

NOTE: In some cases, an irrigation infrastructure operator (IIO) may be an approval authority through a delegated approval role from a Basin State. For example, the MDBA considers that Goulburn–Murray Water is an IIO that also acts separately as an approval authority.

Similarly, where an agency of a Basin State has a delegated approval role from a Minister, then in this context the agency would be the approval authority, rather than the Minister.

NOTE: Registration authority is not a defined term. It is used in this section to refer to an authority to which trades must be registered under state water management law. This may be the same entity as the approval authority, or it may be a different entity.

NOTE: The **disposal** of a water access right covers trade and transfer of rights where no monetary value is placed on the right. The price of a trade must be reported even if the right is disposed and a price of zero is recorded.

Trade: this is defined in section 1.07(2) and (3) in the Basin Plan.

In the Basin Plan, a reference to trade includes a reference to transfer.

To avoid doubt, trade includes:

- (a) a trade that does not involve the payment of a consideration; and
- (b) a trade between places under which ownership of the right being traded does not change; and
- (c) the establishment of a leasing arrangement; and
- (d) the establishment of a tagged water access entitlement.

Water access right

- (a) means any right conferred by or under a law of a State to do either or both of the following:
 - i. to hold water from a water resource;
 - ii. to take water from a water resource; and
- (b) without limiting paragraph (a), includes the following rights of the kind referred to in that paragraph:
 - i. stock and domestic rights;
 - ii. riparian rights;
 - iii. a water access entitlement
 - iv. a water allocation; and
- (c) includes any other right in relation to the taking or use of water that is prescribed by the regulations for the purposes of this paragraph.

Disclaimer: This Guideline is one of a series of guidelines on the water trading rules and as such it may be appropriate to also consider the information that is set out in other guidelines.

The provisions in the *Water Act 2007* and the *Basin Plan 2012* govern the water trading rules. All decisions regarding the water trading rules need to be made by reference to these laws. This Guideline is intended as guidance only and does not constitute legal advice. Users should seek their own legal advice where appropriate. This Guideline has no statutory force.

Whilst decisions in relation to water trading rules may consider this Guideline, decisions will be based on the aforementioned laws. Reasonable care has been taken in the compilation of this Guideline, however the Murray–Darling Basin Authority does not guarantee or warrant the accuracy, or completeness, or currency of its contents and shall not be liable for any loss or damage that may be occasioned directly or indirectly through the use of or reliance on this Guideline.

Note that the Guideline will be a living document, to be updated from time to time, in consultation with relevant stakeholders, in order to incorporate new knowledge and best practice.