



## Guidelines for Water Trading Rules

# Restrictions on the delivery of water under a tagged water access entitlement established on or after 22 October 2010

### Rule covered by this guideline

The water trading rule covered by this guideline is contained in section 12.23 in Chapter 12 of the Basin Plan. This guideline should be read together with section 12.23.

### Purpose of the rule

The purpose of this rule is to ensure that water made available to be taken at a location through a tagged water access entitlement does not receive different treatment to water made available (delivered) through alternative mechanisms, i.e. by trading a water allocation.

### 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.

### What is a tagged water access entitlement?

A tagged water access entitlement is a water access entitlement which is registered on a water register in one place, but under which water allocation is able to be extracted in a different place – and the different place is ‘tagged’ on the register.

The tagging of a water access entitlement is therefore a process for altering—subject to certain conditions—the location of extraction of water that is allocated to that water access entitlement. It is an alternative to trading water allocation between trading zones or Basin States and may be used for example if an individual wishes to access different allocation conditions.

### Explanation of the rule

This rule requires water ordered under a tagged water access entitlement is subject to the same restrictions that would apply to a trade of a water allocation. Section 12.23 states that if:

- (a) a State restriction has effect on the trade of water allocations between two places, each of which is in a regulated system; and
- (b) a tagged water access entitlement exists in relation to those two places; and

(c) an order for water is made under the tagged water access entitlement;

then the State must equally impose the same restriction to an order for water under the tagged water access entitlement.

This rule applies to tagged water access entitlements established on or after 22 October 2010.

### Who do this rule apply to?

These rules apply to:

- Basin States
- approval authorities administering tagged water access entitlements.

### Scope of the rule

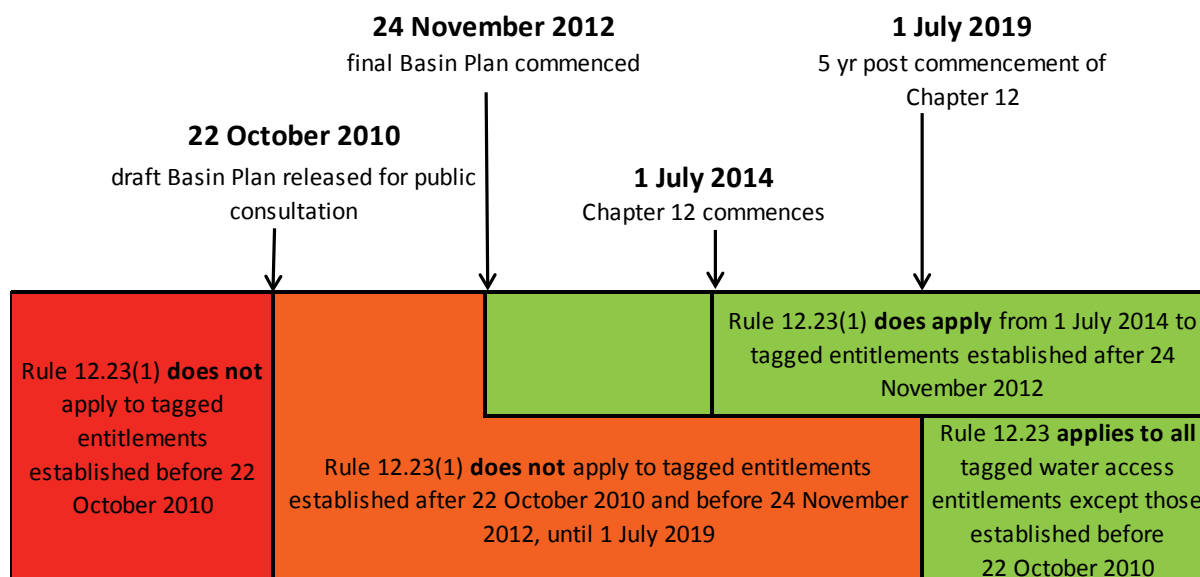
If a tagged water access entitlement was established after 24 November 2012, the tagged water access entitlement is subject to section 12.23 from 1 July 2014 (the commencement of Chapter 12 of the Basin Plan).

If a tagged water access entitlement was established between 22 October 2010 and 24 November 2012 (the commencement of the Basin Plan), the tagged water access entitlement is not subject to section 12.23 until 1 July 2019.

If a tagged water access entitlement was established before 22 October 2010 (the release of Volume II of the Guide to the Proposed Basin Plan), the tagged water access entitlement is not subject to section 12.23 of the Basin Plan.

Note: A tagged water access entitlement is established once the once the tag has been approved by all relevant authorities (section 12.23 (4)).

### Diagram 1: Application of section 12.23



Note: Section 12.23 does not preclude or prevent a Basin State or its agencies from applying other valid delivery conditions to an established tag.

Note: Section 12.23 does not prevent a Basin State to cancel a tag if it elects to do so under State legislation.

### **Rule Requirements**

This rule only applies where there is a restriction on water allocation trade:

- *from* the place where the tagged water access entitlement is registered
- *to* the place where water can be extracted under the tagging arrangement.

This means that if there is a restriction on the trade of a water allocation from place A to place B, this restriction must also apply to the delivery of water under a tagged water access entitlement.

However, this rule does not guarantee the delivery of water under established tagged water access entitlements. Delivery of water under a tagged water access entitlement is the responsibility of relevant Basin State(s) and is subject to any rules and conditions that have been applied.

### **When does the restriction apply?**

The restriction will apply at the time when delivery is requested i.e. when water is ordered against the tag.

## Defined Terms

The following definitions 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.

**Tagged water access entitlement** means a water access entitlement:

- (a) which is registered on a water register in relation to one place; and
- (b) under which the water allocation is extracted in a different place (which is tagged on the register);

pursuant to an arrangement for water access entitlement tagging.

**Restrict**, in relation to trade, includes refuse, prevent, deter, delay or impose a condition or a barrier on, and restriction has a corresponding meaning.

**Water allocation** means the specific volume of water allocated to water access entitlements in a given water accounting period.

**Water access entitlement** means a perpetual or ongoing entitlement, by or under a law of a State, to exclusive access to a share of the water resources of a water resource plan area.

**Water access entitlement tagging** means an accounting approach that allows a water access entitlement that is traded from one jurisdiction or trading zone to another jurisdiction or trading zone to retain its original characteristics when traded to the new jurisdiction or trading zone (rather than being converted into a form issued in the new jurisdiction or trading zone).

**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.