

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for the Environment and Water

*Water Regulations 2008*

*Water (Water Markets Intermediaries Code—Exemptions) Instrument 2025*

### **Legislative Authority**

Subregulation 5.20(1) of the *Water Regulations 2008* (the Regulations) provides that the Minister may, by legislative instrument, exempt an eligible water markets intermediary (intermediary) from the Water Markets Intermediaries Code (the Code) or specified provisions of the Code. The Code is contained in Division 1 of Part 5 of the Regulations.

Subregulation 5.20(2) provides a list of matters the Minister must consider when deciding whether to make an exemption instrument under subregulation 5.20(1). The Minister considered these matters when deciding to make the *Water (Water Markets Intermediaries Code—Exemptions) Instrument 2025* (the Instrument).

### **Purpose**

The purpose of the Instrument is to exempt intermediaries from Subdivisions B and C of Division 1 of Part 5 of the Regulations, where the intermediary has existing obligations under a State or Territory law that are similar to obligations created under the Code.

This will avoid unnecessary duplication of regulatory requirements where there is already sufficient protection for water market participants.

Provisions in Subdivisions B and C made for the purposes of the statutory trust accounting framework for eligible water markets intermediaries under Division 5 of Part 5 of the *Water Act 2007* (Water Act) will continue to apply to water markets intermediaries (where appropriate), despite this exemption instrument.

### **Background**

The Water Act makes provision for the management of the water resources of the Murray-Darling Basin, and for other matters of national interest in relation to water and water information, and for related purposes.

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 Australian Competition and Consumer Commission (ACCC) Murray-Darling Basin water markets inquiry – final report (the ACCC Inquiry Report). The Roadmap recommended an enforceable mandatory code for intermediaries be implemented, at least across the Basin, applying to all tradeable water rights as part of a broader conduct and integrity legislation package.

The *Water Amendment (Restoring Our Rivers) Act 2023* (RoR Act) amended the Water Act to, among other things, establish a framework for the Code to be prescribed in regulations, as well as creating a statutory trust accounting framework for intermediaries.

The *Water Amendment (Water Markets Intermediaries Code and Trust Accounting Framework) Regulations 2025* (Amendment Regulations) commenced on 1 July 2025, to insert the Code into the Regulations.

The Code provides a set of rules or standards of conduct for intermediaries, including the relationship between intermediaries and their clients. The ACCC is responsible for regulating the Code, including monitoring compliance and taking enforcement action when necessary or appropriate.

## **Regulatory Impact**

The department consulted with the Office of Impact Analysis (OIA) on the making of the Instrument. The OIA advised that the Instrument is in scope of the original Impact Analysis Equivalent (IAE) process conducted in respect of the Water Market Reform Roadmap, and additional analysis through an Addendum would not be required at this stage (OBPR22-01397).

## **Consultation**

Extensive stakeholder consultations were conducted in relation to the Amendment Regulations from February 2024 to May 2025, both with key stakeholders and with the public. Relevantly, key stakeholders included peak bodies for legal practitioners, conveyancers and real estate agents in order to advise them of their proposed obligations under the Code and seek feedback.

Peak body stakeholders provided feedback relevant to the Instrument in response to the Code Policy Proposal Paper in July 2024, the Code Policy Position Paper in November 2024, and the Exposure Draft of the Amendment Regulations in March 2025.

Targeted consultation in relation to the Instrument occurred between November 2024 and April 2025, which included:

- Targeted emails to relevant peak bodies in November, December and January advising them of the development of the Code and posing specific questions relevant to the Minister's consideration of exemptions for the Code. The peak bodies were invited to meet with the department to discuss any potential duplication of obligations.
- Public consultation via a Consultation paper on statutory trust accounting exceptions and Code exemptions in March 2025.

Six email responses were received in response to the targeted email consultations for this instrument, and six submissions were received in response to the public Consultation paper in March 2025.

Stakeholders expressed concern around potential duplication of conduct obligations under the Code with existing State and Territory laws regarding professional frameworks for legal practitioners, conveyancers and real estate agents. The department analysed all feedback and submissions carefully, particularly in developing recommendations for the Minister about

which professionals may be appropriate to be exempt from the Code due to duplication of obligations.

This instrument exempts legal practitioners and conveyancers from the requirements of the Code during any period when the intermediary provides intermediary services and, in doing so, provides legal or conveyancing services under the relevant state or territory law. The rules or standards of conduct (including the relationship between intermediaries and their clients) for legal practitioners and conveyancers required under the relevant state or territory law either duplicates or exceeds the rules or standards of conduct set out in the Code.

This instrument does not exempt real estate agents, stock and station agents or land agents from the requirements of the Code. Real estate agents, stock and station agents or land agents holding trust accounts as part of providing water markets intermediary services are excepted from statutory trust accounting requirements under Division 5 of Part 5 of the Water Act. This is due to the potential for duplication between the statutory trust accounting requirements under state or territory law and the statutory trust accounting requirements under Division 5 of Part 5 of the Water Act. However, these state and territory laws do not generally set rules or standards of conduct, beyond those relating to trust accounting, for real estate agents, stock and station agents or land agents while they are providing water markets intermediary services.

The regulations already disapply the Code to intermediary services for water rights which automatically transfer with land. As much of the state and territory legislation applying to real estate agents, stock and station agents or land agents is based on the transfer or sale of land, the Code will not apply to those water rights which automatically transfer or sell “attached” to the land. This reduces the likelihood that the Code will apply to real estate agents, stock and station agents or land agents as in the majority of services they provide, the focus is on the sale or transfer of land.

### **Details/ Operation**

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Instrument are set out in Attachment A.

### **Other**

The Instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

Details of the *Water (Water Markets Intermediaries Code—Exemptions) Instrument 2025*

Section 1 – Name

This section provides that the name of the instrument is the *Water (Water Markets Intermediaries Code—Exemptions) Instrument 2025* (the Instrument).

Section 2 – Commencement

This section provides for the Instrument to commence immediately after the Instrument is registered.

Section 3 – Authority

This section provides that the Instrument is made under regulation 5.20 of the *Water Regulations 2008* (the Regulations).

Section 4 – Definitions

This section provides that the term **regulations** used in the Instrument means the Regulations. A note provides that a number of other terms used in the Instrument are as defined in the *Water Act 2007*.

Section 5 – Exemption from the requirements of the Water Markets Intermediaries Code

Subsections 5(1) and (2) provide for the application of the exemption.

Paragraph 5(1)(a) provides the first criterion that must be satisfied in order for the exemption to apply – that the eligible water markets intermediary (intermediary) must be either enrolled as a legal practitioner of a federal court or the Supreme Court of a State or Territory; or the intermediary must be licensed or registered under a law of a State or Territory as a conveyancer.

If an intermediary satisfies the first criterion, then the exemption will apply in relation to an intermediary during any period when the intermediary provides water markets intermediary services, and, in doing so, provides legal or conveyancing services under a law of a State or Territory covered by subsection 5(2).

Subsection 5(2) provides a list of State or Territory laws for the purposes of subparagraph 5(1)(b)(ii).

Subsection 5(3) provides the exemption – that the intermediary is, during the period mentioned in paragraph 5(1)(b), exempted from Subdivisions B and C of Division 1 of Part 5 of the Regulations, other than any provision in those Subdivisions made for the purposes of Division 5 of Part 5 of the Act (which establishes a statutory trust accounting framework for intermediaries).

Section 100Q of the *Water Act 2007* (the Act) provides that Division 5 of Part 5 of the Act, or any provision in that Division specified by the regulations, does not apply to an intermediary during a period when the intermediary maintains a trust account in accordance with a prescribed law of a State or Territory.

The limitation of the exemption in the Instrument to subregulations other than those made for the purposes of Division 5 of Part 5 of the Act is necessary to ensure that the Instrument does not exempt an intermediary from subregulations relating to statutory trust accounting, and for which exceptions are already provided for under section 100Q of the Act and Division 2 of Part 5 of the Regulations.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Water (Water Markets Intermediaries Code—Exemptions) Instrument 2025**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The purpose of the Legislative Instrument is to avoid unnecessary duplication of regulatory requirements where there is already sufficient protection for water market participants.

It does this through exempting intermediaries from Subdivisions Band C of Division 1 (Water Markets Intermediaries Code) of Part 5 of the Regulations, where the intermediary has existing obligations under a State or Territory law that are similar to obligations created under the Code.

The exemption does not apply to any provision in those Subdivisions made for the purposes of Division 5 of Part 5 of the Act, which establishes a statutory trust accounting framework for eligible water markets intermediaries. Exceptions to this framework are set out in Division 2 of Part 5 of the Regulations. ,

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon. Catherine King MP  
Acting Minister for the Environment and Water**