



Northern Victoria
Irrigation Renewal Project

NVIRP
waterforgrowth

**Exemption to the 4% Cap on Trade: Exempt Zone
Program Review
Executive Report**



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This report has been prepared for the Exemption to the 4% Cap on Trade Working Group of the Northern Victoria Irrigation Renewal Project, PO Box 1665, Shepparton Victoria 3632; Australia.
<http://www.nvirp.com.au>; phone: 1300 163 006.

Findings, conclusions and recommendations apply to the scope of services described in the agreement and in subsequent conversations between Rod McLennan and Associates Pty Ltd and the Northern Victoria Irrigation Renewal Project. The list of interviewees and scope of questions asked was determined by the Northern Victoria Irrigation Renewal Project. The Northern Victoria Irrigation Renewal Project and its employees and Rod McLennan and Associates Pty Ltd and its employees do not guarantee that this publication is without flaw of any kind or is appropriate for your particular purposes and therefore disclaims all liability for any errors, loss or other consequences which may arise from reliance on any information contained in this document.

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1. Background

This executive report on the Exempt Zone Program (EZP) has been prepared after a draft review (dated 24 June 2011) was considered by NVIRP's modernisation coordinating committees and its Exemption to the 4% Cap on Trade Working Group.

The emphasis of this first year review is on opportunities for improvement rather than on exhaustive analysis, which heavily influences the review's products and the completeness of background data and associated commentary. This executive report is appropriate for public release, while the more detailed draft review is appropriate for internal use as a background resource that informs decisions and helps communicate specific items. The draft review includes data on EZP applications that needs to be verified for communication.

2. Introduction to the review

The manager of NVIRP's Exempt Zone Program (EZP) commissioned Rod McLennan and Associates Pty Ltd to conduct this first year review.

Review objectives and key evaluation questions

During the early stages of the review an opportunity was recognised to also identify efficiencies via improvements to processes. The review objectives (below) and the terms of reference (Appendix 1) were modified accordingly. Results of these broader aspects of the review are reported in sections 3 and 4.

The words "Exempt Zone Program" were also added to the name of the review to more precisely reflect its scope.

Review objectives and evaluation questions were established with NVIRP personnel to ensure that the review could proceed logically while meeting the terms of reference.

Review objectives

The objectives of the review are:

- To assess how effective and efficient the exemption to the 4% cap on trade from exempt zones (areas not identified as a priority for modernisation) has been
- To identify improvements to the exempt zones process.

It is timely to conduct this review of the EZP, given:

- the large scale of interest (619 applications from water share owners in exempt zones since the beginning of the program in February 2010 until 15 May 2011, including exemption requests totalling 134,000 ML, with a trade value of the order of \$270 million)
- it is likely that that the scale of interest will be maintained while the tender process under Restoring the Balance in the Murray Darling Basin Program continues
- it is now mature enough (underway for just over 12 months) for:
- improvements, including efficiencies, to be readily identified
 - an indication of the benefits and costs to be gained.

Evaluation questions and tasks undertaken to answer them

Objectives of the review are to be achieved by answering three key evaluation questions (KEQ).

Further sub-questions are also listed below to help identify tasks to be undertaken to answer KEQs.

KEQ1 How effective has the EZP been?

- How is EZP effectiveness measured?
- What contribution is the EZP making to NVIRP Connections Program targets?
- How easy is it to achieve commitment agreements through the EZP?
- How well do commitment agreements help in negotiating connections agreements?
- What land and water management outcomes is the EZP generating?
- Are commitment agreements appropriate in areas not deemed suitable for irrigation?
- Are there other criteria that should be included to define exempt zones?

Tasks: Identify how many EZP applications were received and what their fate was.

Assess a sample of commitment and connections agreements, collate and ask NVIRP and partner personnel what their thoughts are on the above questions.

KEQ2 How efficient has the EZP been?

- What are the costs of administering the EZP?

Tasks: Obtain a coarse estimate of costs in assessing applications from NVIRP personnel and ask NVIRP personnel about potential resource savings and needs.

- Are the criteria that define exempt zones being applied correctly?

Tasks: Assess how EZP criteria are being applied and identify improvements via Exemption to the 4% Cap on Trade Working Group members and NVIRP personnel. Criteria are:

- irrigation suitability (include advice from North Central and Goulburn Broken CMAs)
- land-use change (also assess maps via G-MW and assess impact of changes to planning zones)
- distance from the backbone (a geographic information system layer is being prepared for analysis).

KEQ3 How transparent and open has the EZP been?

- How accessible has the EZP been to potential applicants?
- How is feedback managed to improve processes?
- Have appeals been addressed appropriately?

Tasks: Identify appeals and complaints and their fate, including timeliness of responses.

Exclusions from this review

Types of exemptions to the 4% cap on trade that are not included in this review are:

- Transfer of water savings arising from the Commonwealth's On-farm Irrigation Efficiency Program
- Specific exemptions for Campaspe Irrigation District and for Living Murray projects
- Trades associated with the Commonwealth's Small Block Irrigator Exit Grant Package (not relevant to the NVIRP area and therefore not relevant to this review)
- Trades associated with the Commonwealth's Exceptional Circumstances Exit Grant not relevant to the NVIRP area and therefore not relevant to this review)
- Water sold by mortgagees (this water can be sold irrespective of whether it is an EZ or not).

Complementary reviews

NVIRP's *Connections Program Operational Guidelines* (updated January 2011) apply to the EZP and include the context for, and an overview of, the administration of the EZP.

"The Connections Program Operational Guidelines establish the framework for the delivery of the Connections Program, which is consistent with the Connections Program Operational Rules [MO001] and overall NVIRP Business and Corporate Plans. The guidelines ensure the Connections Program is delivered in a consistent, fair and transparent manner that will allow NVIRP to withstand scrutiny both internally and externally and outlines the process required to deliver the program." (NVIRP 2011)

A complementary internal statement of the *4% Trade Exemption (administrative) Process (including assessment steps)* in February 2011 informed these guidelines and also effectively became a staff manual.

Other complementary reports include:

- Water trade in Victoria 2009-10 (Victorian Water Registrar n.d.2)
- Farm Water Program Process Review – Summary (McLennan 2010)
- Of drought and flooding rain – Inquiry into the impact of the Guide to the Murray-Darling Basin Plan (House of Representatives Standing Committee on Regional Australia 2011).

Method

Objectives, evaluation questions, tasks, limits of data gathering and analysis, the list of stakeholders consulted, and the scope of the project were determined with NVIRP personnel.

Emphasis on improvement rather than analysis

The emphasis was on gathering data that facilitates improvement rather on data that enables assessment to be undertaken for its own sake. The following supplementary questions were asked of interviewees to focus responses on this emphasis:

- What worked well?
- What didn't work well?
- What can be improved?

Limits of data gathering and analysis

The evaluation method is limited by being appropriate for a first year review.

The review relies mostly on data from iterative interviews with key stakeholders and from reports supplied by these stakeholders.

While all interviewees were encouraged to offer whatever thoughts they had, the interview process was deliberately non-exhaustive and constrained to satisfy NVIRP's needs. Appropriate to the purpose of the review and its bias towards the perspective of NVIRP, the method is limited and excludes the possibility of statistical analysis: there is a heavy reliance on qualitative data from a small, non-random sample.

Interviews were semi-structured. Once responses from interviewees began to be duplicated and it became unlikely for different perspectives to be uncovered, no further interviews were conducted with stakeholders who had similar involvement with the NVIRP. It was not appropriate for interviewee comments to be verified for efficiency reasons. It was more useful for key stakeholders, especially members of the Exemption to the 4% Cap on Trade Working Group and the modernisation coordinating committees, to have an opportunity to comment on a draft of this report.

The EZP's immaturity contributed to uncertainties about the extent and availability of several data sources. This has implications for:

- the depth to which key questions can be answered
- the way in which the review progressed (a more iterative approach with key personnel was needed to confirm evaluation questions and to subsequently identify how they were answered, which also impacted on how rapidly the review could proceed).

Stakeholders consulted

Table 1 shows who was consulted and how they were consulted during this review. Efforts were made to consult people who had significantly different levels of involvement in the EZP.

Table 1: Consultation summary

Organisation	Category	Number	Method
NVIRP	Modernisation Coordinators	3	Consulted as issues were identified
NVIRP	Modernisation Coordinating Committees	1	Response to questionnaire (April – June 2011) (5 committees were invited to submit responses) Feedback on draft report (24 June 2011)
NVIRP	Modernisation Coordinating Committees	4	Response to questionnaire (April – June 2011) Feedback on draft report (24 June 2011)
NVIRP	Planners	3	Consulted as issues were identified
NVIRP	Personnel other than the above	6	Consulted as issues were identified
Goulburn Broken CMA	Staff	1	Via Working Group*
North Central CMA	Staff	1	Via Working Group*
DPI	Staff	1	Via Working Group*
G-MW	Staff	1	Via Working Group*
DSE	Staff	2	Via Working Group*
Water share owner applicants	Successful applicants	4	From four different irrigation areas; telephone interviews.
Water share owner applicants	Appellants	7	NVIRP appeal/complaint file reviewed (appellants were not consulted as part of this review).

* The Exemption to the 4% Cap on Trade Working Group, which includes partner agency representatives, contributed to the Terms of Reference and provided comments on the draft report (June).

Modernisation objectives

The 4% limit, exemptions, the EZP and modernisation

“Victoria maintains a 4% annual limit on permanent trade (or transfers of water shares) out of irrigation areas in northern Victoria. The limit, which sets a ceiling on the rate at which water can leave an irrigation area, was introduced to allow irrigation communities time to adjust to social changes associated with trade.

On 4 June 2009 the Victorian and Commonwealth Governments announced the Water for the Environment Agreement which creates exemptions to the 4% limit.

Under the Agreement, exemptions to the 4% limit are granted to allow trade out of irrigation areas to the Commonwealth where it complements the modernisation program” (NVIRP n.d.).

“Exemptions to the limit are available for the following categories –

Trades from areas not identified as a priority for modernisation, and therefore not benefiting from the \$2 billion investment in the Northern Victorian Irrigation Renewal Project (NVIRP) to modernise Victoria’s irrigation system. Exempt areas are set on the basis of irrigation suitability, land use change and distance from the backbone. Further information on eligibility for exemptions under this category can be obtained from NVIRP:

- *Trades associated with the Commonwealth’s Small Block Irrigator Exit Grant Package*
- *Trades associated with the Commonwealth’s Exceptional Circumstances Exit Grant*
- *Transfer of water savings arising from the Commonwealth’s On-farm Irrigation Efficiency Program - Goulburn Broken CMA can provide further information here.*
- *Specific exemptions for Campaspe Irrigation District and for Living Murray projects – see Trading Rules*

Notes and disclaimers:

The 4% trade-out limit may be exceeded in some cases due to:

- *correction of wrong locations given to some water shares at unbundling*
- *sale of water shares by a mortgagee (the Water Act does not currently require this to be subject to the 4%), or*
- *processing issues” (Victorian Water Registrar n.d.).*

EZP criteria

The Exemption to the 4% Cap on Trade Working Group (NVIRP n.d.) determined exemption criteria and a map of exempt zones for the second and subsequent rounds of buybacks. The criterion related to modernisation is to ensure that the outcome: “...complements the NVIRP modernisation program:

- *results in a reduction in the G-MW irrigation footprint*
- *supports ongoing efficient irrigation in the region*
- *generates water savings, and*
- *increases the affordability and security of irrigation for those who wish to remain in the industry into the future” (NVIRP n.d.).*

3. Findings

Operations until 15 May 2011

1. The EZP is being delivered competently in accordance with the Water Act 1989 Trading Rule (for Declared Water Systems) 25A(e) and the guidelines published on NVIRP's web site.
2. The EZP is being embraced by water share owners: 619 applicants sought exemptions for 134,000 megalitres, resulting in 156 NVIRP/water share owner agreements (and 156 Exemption Evidence Notices) for an exempt volume of 51,843 megalitres.
3. The 156 NVIRP/water share owner agreements comprised 143 commitment agreements and 13 connections agreements. Water savings are generated when connections agreements are achieved, so the objective is to ultimately convert commitment agreements into connections agreements. Because the EZP has only been in place since April 2010, it is not possible to determine whether commitment agreements are helping NVIRP to negotiate connections agreements.
4. Analysis of all water savings associated with the issuing of Exemption Evidence Notices indicates that the EZP would benefit from being more spatially targeted.
5. Only 2.3 per cent of rejected applicants appealed the decision. The review of the appeals detected two material administrative errors indicating that administrative processes need to be tightened.
6. The EZP has already been enhanced by adoption of:
 - desk top assessments to measure distance to the backbone
 - a review of planning scheme status where applicants are close to a town
 - NVIRP's recently introduced appeals process.

Future operation

1. The Campaspe (under Trading Rule 25(f)) and Mt Hope projects demonstrated that targeted water purchase can achieve significant water savings. NVIRP should consider expanding the EZP to include:
 - strategic connections areas
 - channels experiencing material capacity constraints.

This will require NVIRP to resolve with government how it meets its obligations under the Trading Rules to give notice that these areas have been identified as *"... land as requiring change to the irrigation infrastructure serving that land"*¹.

2. The term "not suitable for irrigation", which has been used in various NVIRP documents and the Trading Rules, has negative connotations, often creating a negative community response. NVIRP should consider using a more appropriate term like "environmental benefits".
3. DSE should consider broadening existing hardship criteria to include water share owners experiencing severe hardship and who are not eligible for exemption under the current rules.

¹ Trading Rules For Declared water Systems Rule 25A(e)(i)A (see Appendix 2)

4. Actions

Strategic and tactical actions

The list of 33 recommended actions in the draft review included nine at the strategic level and six at the tactical level. After consideration of the recommended strategic and tactical actions by the Modernisation Coordinating Committees and the Exemption to the 4% Cap on Trade multi agency Steering Committee:

- two of the recommendations were deleted
- one was modified
- two were re-categorised (to lower levels); and
- one (related to hardship) was identified for consideration by DSE.

	Action – Strategic and Tactical
*	From recommended actions of draft review
2	Develop widely agreed program logic (a cause and effect chain or objectives hierarchy) for the EZP prior to a subsequent review of the EZP.
4	Insert a trigger that alerts modernisation coordinators to immediately pursue a connections agreement when an EZP applicant offers all delivery shares.
5	NVIRP should only enter into a connections agreement if the agreement includes the termination or relocation of all relevant delivery shares to the backbone.
6	Consider creating “natural resource management” or “environmental benefit” zones as a criterion to enable targeting of projects across multiple properties to implement Trading Rule 25A(e)(i)A.
9	Work with the Lower Loddon Irrigators Recovery Package Taskforce to ensure its rules complement those of the EZP.
11	In areas identified as unsuitable for irrigation, NVIRP considers developing incentives for landholders to terminate all delivery shares and have their water use licences cancelled, so that the area is permanently retired from irrigation.
12	Consider expansion of the EZP in areas identified as having channel capacity issues-
13	Consider modifying the EZP to include the issuing of multiple EENs as part of a Strategic Connection Project, consistent with Trading Rule 25A(e).
24	Reinforce the importance of communicating EZP issues to brokers and bankers.
32	Formally remind real estate agents and water brokers that water shares associated with properties which comply with trading rule 25A(e) are eligible for an EEN, and that when the water shares are disassociated from that property via the sale of the property, they are not eligible for an EEN.
33	NVIRP recommends that DSE considers broadening existing hardship criteria to include water share owners experiencing severe hardship and who are not eligible for exemption under the current rules.

* Recommended action number in internal draft review.

Operational and administrative actions

As a consequence of the review, 21 operational and administrative level actions are being actively pursued. These relate to NVIRP staffing, website updates, more detailed data to allow greater analysis of application status, application and applicant management (including appeals process and quality control).

Appendices

- Appendix 1 Terms of reference for this review
- Appendix 2 Trading rules
- Appendix 3 Minister's letter, December 2009

Appendix 1: Terms of reference for this review

The Terms of Reference listed in the original project plan were:

Terms of Reference for the Exemption to the 4% Cap on Trade Review – Stage 1

The Review has three main elements:

1. Review the following aspects of the exempt areas:
 - a. Irrigation suitability (The report to include advice from North Central and Goulburn Broken CMAs)
 - b. Land use change (DPI GIS to advise if planning zones have been modified)
 - c. Distance from the backbone (A GIS layer is being prepared).
 - d. Other (Should other issues be included in the criteria eg Pods experiencing capacity problems (advice to be sought from MCC and NVIRP staff)
2. Assess a random sample of successful applicants to determine whether:
 - a. connections agreement were easier to negotiate
 - b. commitment agreements assist Modernisation Co-ordinators negotiate connections agreement (specifically the effectiveness of DS termination) and whether Commitment agreements are appropriate in areas not deemed suitable for irrigation.
3. If it is determined that the 4% exemption process is assisting modernisation, identify areas where policy settings can be improved.

The review will also provide direction on future resourcing levels.

A minor change was made to the terms of reference during the first phase of the review, specifically an insertion in term of reference #3, as underlined in the following:

If it is determined that the 4% exemption process is assisting modernisation, identify areas where processes and policy settings can be improved.

Appendix 2: Trading rules

Trading rule 25

(from the *Water Act 1989* Trading Rules for Declared Water Systems, updated 11 April 2011)

Trading rule	Relevant to this EZP review?
25A An exemption may be granted to any application, received after 1 July 2009, that could otherwise be refused under Rule 25 if –	
(a) the application is for transfer of a water share to the Commonwealth of Australia (the 'Commonwealth'), and -	No
(i) an application (an 'exit grant package application') has been made to the Commonwealth for the Murray-Darling Basin Small Block Irrigators Exit Grant Package; and	
(ii) the water share is associated with land that is the subject of the exit grant package application; and	
(iii) the applicant provides evidence to the satisfaction of the Minister that the Commonwealth will not accept the exit grant package application without approval of the application to transfer the water share; or	
(b) the application is for transfer of a water share to the Commonwealth or the State Owned Enterprise for Irrigation Modernisation in Northern Victoria (NVIRP), and the applicant provides evidence to the satisfaction of the Minister that the transfer is being made as a result of Commonwealth or NVIRP assistance in achieving on-farm efficiencies, and	No
(i) exemptions given under sub-rule (b) to NVIRP do not exceed a volume of five gigalitres; or	
(c) the application is for transfer of a water share to the Commonwealth, and -	No
(i) the water share is currently associated with land in an area that has been identified by the relevant water corporation as being not a priority for modernization, based on criteria such as suitability for irrigation, the environmental impact of irrigation, existing land-use change, and distance from the main irrigation 'backbone'; and	
(ii) since 1 July 2009, no water share has become associated with the land with which the water share that is the subject of the application is associated; and	No
(iii) exemptions given since 1 July 2009 under sub-rules (a), (b) and (c) of Rule 25A collectively do not exceed a volume of 60 gigalitres; or	No
(d) the application is for transfer of a water share, and -	No
(i) an application (an 'ECEG application') has been made to the Commonwealth for the Exceptional Circumstances Exit Grant; and	
(ii) the water share is associated with land that is the subject of the ECEG application; and	
(iii) the applicant provides evidence to the satisfaction of the Minister that the Commonwealth will not accept the ECEG application without approval of the application to transfer the water share; or	
(e) the application is for transfer of the whole or part of a water share to the Commonwealth of Australia, or to the Murray Darling Basin Authority as part of The Living Murray program, or to Joint Government Enterprise Limited, or to any other person who provides evidence to the satisfaction of the Minister that the water share is being purchased for the environment, and	Yes
(i) the water share is currently associated with land for which State Owned Enterprise for Irrigation Modernisation in Northern Victoria (NVIRP) has given a notice:	Yes
A. identifying the land as requiring change to the irrigation infrastructure serving that land; and	Yes
B. stating that the owner of that land has made an agreement with NVIRP regarding changes to the irrigation infrastructure serving that land and the service of delivering water to that land; and	Yes
(ii) the agreement referred to in (i)(B) relates to the whole or part of the water share which is the subject of the application; and	Yes
(iii) the water share has been associated with that land since at least 1 July 2009 or for at least 12 months (whichever is the lesser period); or	Yes
(f) the application is for transfer of a water share to State Owned Enterprise for Irrigation Modernisation in Northern Victoria (NVIRP), and the water share is or has been associated with land in the Campaspe Irrigation District; or	No
(g) the application is for transfer of the whole or part of a water share to the Murray Darling Basin Authority to implement a project listed on the eligible measures register of The Living Murray program.	No

Appendix 3: Minister's letter, December 2009



Minister for Water

File: CS/35/0011

121 Exhibition Street
Melbourne Victoria 3000
GPO Box 4509
Melbourne Victoria 3001
Telephone: (03) 8684 8000
Facsimile: (03) 8684 8014

Mr Murray Smith
Chief Executive Officer
Northern Victoria Irrigation Renewal Project
PO Box 1665
SHEPPARTON VIC 3632

30 DEC 2009

Dear Mr Smith

RULES FOR EXEMPTIONS TO THE FOUR PER CENT LIMIT

As you know, the Victorian and the Commonwealth Governments have entered into the Water for Environment Agreement which allows exemptions to the four per cent annual limit on trade of water shares out of irrigation areas, in order to better align Commonwealth buybacks with irrigation modernisation.

I have made a trading rule to implement these exemptions, and the implementation requires NVIRP's assistance. I am advised that you and your staff have been involved in the development of the approach.

To assist in delivering the exemption program, NVIRP will need to:

- develop and communicate clear guidelines on the administration of the exemption process;
- enter into an agreement with each affected landowner to undertake modernisation actions, and then issue a notice that the water share owner can use in seeking an exemption to the four per cent limit under the trading rule; and,
- track the agreements and the possible water volumes arising from the exemptions.

In order for the exemptions to achieve the intended policy objectives, the landowner modernisation agreements must be created on the following basis:

- (a) Exempt areas have been set on the criteria of irrigation suitability, land use change and distance from backbone, and are as shown on the attached map. The criteria and low resolution map are to be made public, with NVIRP to establish a transparent process to, on a case-by-case basis, meet with irrigators, identify whether or not they may be eligible for exemptions, and negotiate conditions.
- (b) Exemptions in exempt areas are to be conditional on the landowner agreeing to undertake actions to:
 - i. support modernisation, with the actions to be negotiated with NVIRP; and,

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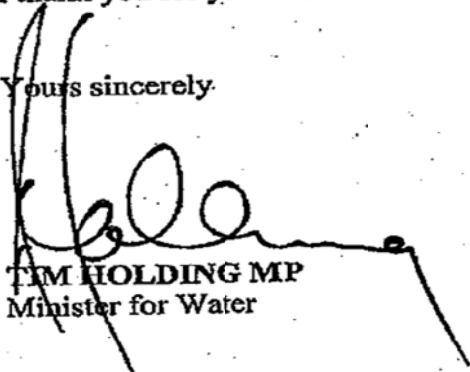
- ii. surrender or relocate a proportionate part of the related delivery share, with the delivery share proportion to be 0.01 ML/day for each 1 ML of exempted high reliability water share, and zero for an exempted low reliability water share.
- (c) No exemptions are to be made available at this stage in non-exempt ('green') areas. If a property is in both green and yellow areas (either because it straddles the boundary, or is an amalgamation of land in each of the green and yellow areas), exemptions will generally be limited to the yellow area.

Exemptions are also to be subject to the following requirements, which will, however, be managed at the point of approval and so are less likely to involve NVIRP.

- (d) Exemptions are to be granted only for water shares that have been associated with the exempt land for 12 months or since 1 July 2009, whichever is the shorter;
- (e) While the Commonwealth expects 300 GL of exemptions under the Agreement, there are to be no annual minimum or maximum limits on the volume of exemptions granted, and no additional exemptions created merely to reach the Commonwealth's 60 GL annual target; and
- (f) Exemptions are to be made available to eligible sellers provided they are selling to the Commonwealth or to others buying for the environment.

I thank you for your assistance with this complex process.

Yours sincerely,



TIM HOLDING MP
Minister for Water

Att.
Map of exempt and non-exempt areas