

Mr Michael Cosgrave
Executive General Manager
Infrastructure Regulation
Australian Competition and Consumer Commission

Via electronic mail: waterchargerules@acc.gov.au

4 March 2016

Dear Mr Cosgrave,

The NSW Irrigators' Council (NSWIC) welcomes the opportunity to provide comments to the Australian Competition and Consumer Commission's (ACCC) Water Charge Rules Review: Draft Advice dated November 2015¹.

We acknowledge that the review of the Water Charge Rules (WCR) was initiated in response to the Federal Government's statutory review of the Water Act 2007 (Cth) and the resulting expert panel's final recommendation 11². The Federal Government's acceptance of recommendation 11 and the resulting letter that was sent to the ACCC by the then Parliamentary Secretary to the Minister for the Environment Simon Birmingham, outlining the Terms of References (ToR) for this review, clearly stated that the Government would appreciate the ACCC's advice on 'amending the (WCR) rules to improve regulatory clarity or efficiency, or to reduce regulatory burdens, while maintaining effective standards'. NSWIC believes that the ToR are pivotal to our response to the ACCC's draft advice because in our view the ACCC has failed to fulfil the requirements of the ToR.

NSWIC contends that the ACCC draft advice is complex, confusing and imposes further regulatory burden and compliance cost on NSW irrigators and irrigation infrastructure operators. Therefore NSWIC doubts whether the proposed draft advice would lead to a materially preferable regulatory outcome but instead believes that the draft measures recommended by the ACCC would instead lead to additional administrative and compliance costs for bulk water suppliers, IIOs and stakeholders who have to familiarise themselves with yet another set of rules.

As an example, over four bulk water charge determinations in NSW we will have seen four different regulatory structures if the WCR are amended in line with the ACCC draft advice. We had the NSW regulator IPART conduct a review of State Water's bulk water charges under the Independent Pricing and Regulatory Tribunal Act 1992. Then the ACCC took over the regulatory responsibilities and conducted a review of bulk water charges under the WCR and the ACCC Pricing Principles. Should the ACCC draft advice be accepted we are likely faced with a bulk water charge review that is conducted by IPART under the amended WCR and the ACCC Pricing Principles and then subsequent IPART conducting the review under the Independent Pricing and Regulatory Tribunal Act 1992. We would have thereby come full circle in the review of bulk water charges while at the same time deploying significant resources to achieve no real regulatory 'change'.

¹ However, each Member reserves the right to independent policy on issues that directly relate to their areas of operation, or expertise or any other issues that they may deem relevant.

² NSWIC would recommend the Commission review NSWIC's previous submission to the Water Act 2007 (Cth) review and also closely reviews the submissions of our member organisations who will be directly and indirectly be impacted by any changes to the current WCR.

Furthermore, as one of the intentions of the 2014 statutory review of the Water Act 2007 (Cth) was to simplify the current regulatory framework – including the WCR - . it is NSWIC's view that the ACCC draft rules propose instead a burdensome increase in regulation, including a host of complex new rules, which would significantly increase compliance costs to industry and government.

In addition, NSWIC believes that many of the ACCC proposals will add greater complexity when there was little call for such amendments. NSWIC stresses that our members did not request such wholesale changes to the WCR, and rather that meeting the objective of streamlining regulation the proposed rules will create confusion greater confusion amongst our members rather than greater clarity. NSWIC and its members are extremely concerned that the proposed amendments of the WCR constitute a very significant shift in regulatory framework which could have adverse and unintended consequences for the burden and cost of regulation for the irrigation sector.

NSWIC joins with other stakeholders and agricultural representative organisations in voicing our concerns about the short timeframe for consultation on the ACCC draft rules. While we understand that the ACCC has been instructed to extend the timeframe for consultation until March 2016, we still believe that the timeframe has been unreasonably short to review and respond to the proposal for such significant regulatory changes. This has been contrasted by the short timeframe provided for the review of the ACCC Draft Advice compared with the 2014 statutory review of the Water Act 2007 (Cth).

In conclusion, NSWIC believes that the ACCC has not only not fulfilled the requirements of the Terms of Reference and but has (in reality) proposed even greater regulatory complexity and costs which will place additional burden on all water licence holders, including the NSW's IIOs. As such, NSWIC rejects the ACCC draft rules in full and will recommend to the Minister for Agriculture and Water Resources that the draft rules be handed back to the ACCC for complete revision.

Yours faithfully,



Stefanie Schulte

NSW Irrigators' Council

The NSW Irrigators' Council represents irrigators and the irrigation industry. The Council has 25 member organisations which include valley water user associations, food and fibre producers, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries. We support the development and growth of sustainable irrigated agriculture in NSW.