

Submission to

Independent Expert Panel

2014 Statutory Review of the Water Act 2007 (Cth)

140704

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Introduction

The NSW Irrigators' Council (NSWIC) represents more than 12,000 water access licence holders across NSW. These water licence holders access regulated, unregulated and groundwater systems. Our Members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries.

NSWIC engages in advocacy, policy development and media relations. As an apolitical entity, we are available for the provision of advice to all stakeholders and decision makers.

This submission represents the views of Members of NSWIC in respect to the 2014 statutory review of the *Water Act 2007 (Cth)*. However, each Member reserves the right to develop independent policy on issues that directly relate to their areas of operation, or expertise, or any other issue that they may deem relevant.

Executive Summary

In the context of the terms of references (ToR) for the 2014 statutory review of the Water Act 2007 (Cth) (Water Act), NSWIC provides the following comments and recommendations;

- The trade restrictions imposed on the Commonwealth Environmental Water Holder (CEWH) do not allow for an effective and efficient management of the Commonwealth environmental water portfolio.
 - **NSWIC Recommendation:** Remove Part 6 Division 1 section 106¹.
- The Murray-Darling Basin Authority (MDBA) operates without sufficient regulatory scrutiny in respect to its expenses. Without a thorough and independent assessment of the MDBA costs, the efficiency of the Authority - whose costs are largely paid by irrigators in NSW - cannot be verified.
 - **NSWIC Recommendation:** Amendment to Part 4 Division 1 section 91 and 92.
- The functions of various Federal agencies must be streamlined to ensure a clear delineation of responsibilities to avoid unnecessary duplication. This will ensure a reduction in costs and complexity as well as an efficient aggregation, assessment and distribution of water related information.
 - **NSWIC Recommendation:** Amendments to Part 3, Part 5, Part 7, Part 9 and Part 10

¹ In summary, section 106 states that the CEWH cannot dispose of allocation or holdings unless they are not required to meet the objectives of an environmental water plan and cannot be carried over (section 106(1)), however, the CEWH can dispose of allocation or holdings in a system with carryover provisions if the proceeds are used to acquire entitlement or allocation in another water area (section 106(2)).

General Comments

NSWIC welcomes the opportunity to make a submission to the 2014 statutory review of the Water Act 2007(Cth). Our comments only relate to those terms of reference that are of direct interest to our Members.

While we acknowledge that the review is carried out in accordance with section 253 of the Water Act, we welcome the extension of the Terms of References (ToR) to include a review of the effectiveness of the Act to achieve its objectives, as well as an assessment of opportunities to reduce or simplify the regulatory and/or reporting burden. NSWIC will comment in detail on each of these additional ToR below.

It appears that the ToR are reflective of the attitude and knowledge that prevailed at the time when the Water Act was drafted in 2007. However, continuous research and ongoing stakeholder consultation has revealed the enormous complexity of water management in the Murray-Darling Basin and the impact that changes to the management of Basin water resources can have on water users and Basin communities.

In this context, NSWIC would like to voice its concern that the Water Act has not, to date, achieved its triple bottom line objective as stated in section 3(c) of the Act;

...to promote the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes.

While the Water Act contains a detailed set of targets for environmental outcomes (i.e. salinity), it fails to provide guidance on specific social and economic targets. The absence of these targets continues to be a significant concern to NSWIC and its Members.

In addition, the Water Act places too much emphasis on simply 'adding water' to enhance environmental outcomes instead of focusing on more effective approaches to achieve the objectives of the Water Act. With the additional knowledge that has been accumulated since the Water Act was first drafted, NSWIC stresses the need for a more holistic approach to water management and a focus on 'sophisticated approaches' to enhancing environmental outcomes. To assist in such an approach being taken, NSWIC urges the expert panel to consider legislating the long held policy position of Federal Government to cap 'buybacks' at 1500GL. Such a cap would not only provide assurance for irrigators and Basin communities that this cap would be adhered to but it also enshrines the Commonwealth Government's commitment to focus on water recovery through infrastructure funding, that aligns with the triple bottom line objectives of the Water Act.

Further, the Murray-Darling Basin Authority (MDBA), which was created through the Water Act and has been charged with evaluating the social and economic impacts of the Basin Plan, often appears to operate in social and economic isolation. Irrigators and Basin communities have questioned on many occasions whether their concerns and views have been properly considered in the decision making processes of the MDBA.

In order to ensure that the Water Act is able to fulfill its triple bottom line objective, NSWIC requests greater clarity, transparency and accountability of the MDBA. A first step in achieving greater transparency would be to conduct a full cost-benefit analysis of the MDBA's work program as this will ensure that its costs are efficient and cost reflective.

Specific Comments

NSWIC is pleased to provide the following specific responses to the ToR of the 2014 statutory review of the Water Act;

1. Effective and Efficient Water Trading

- Terms of Reference: 1(a)(iv)

As the Basin Plan trading rules only come into effect in July 2014, NSWIC considers it premature to comment on the effectiveness of the Water Act in assisting with the development of water trading in the Murray-Darling Basin.

However, NSWIC believes that the current trading arrangements for the Commonwealth Environmental Water Holder (CEWH) are too restrictive to enable effective and efficient management of Commonwealth environmental water.

With an increasing volume of environmental water holdings across the Murray-Darling Basin, the CEWH will be responsible for the management of a highly complex water portfolio. While there are currently no legislative restrictions on the volume of entitlement held and managed by the CEWH, the Commonwealth environmental water recovery is now guided by the Murray-Darling Basin Plan (2012) and the Water Recovery Strategy which was published in May 2014.

While the volume of entitlement and allocation held by the CEWH is not restricted, the Water Act restricts the disposal of both entitlements and allocations under section 106(1) and 106(2) of the Act. This one-way restriction on trade has the potential to limit the efficient management of Commonwealth environmental water and the optimal water use for environmental assets in the Murray-Darling Basin.

Through amendments of section 106, the environmental trading strategy could be enhanced by enabling the CEWH to;

- generate funds to address barriers to the effective delivery of environmental water (i.e. works and measures projects);
- generate funds to implement non-flow related management actions for river and wetland health (i.e. fish ladders, land management incentives);
- generate funds for ongoing administration and management of CEWH holdings;
- provide opportunities to increase irrigated agricultural production and associated flow-on benefits to regional economies under certain seasonal conditions and hence strengthen the triple bottom line objective of the Water Act;
- permanently restore regional agricultural production in areas where environmental water has been over-recovered.

It is important to note that in the period between the establishment of the CEWH in 2007 and adoption of the Murray Darling Basin Plan in 2012, the then Commonwealth Labor Government recovered water under a 'no regrets' policy. This policy resulted in the recovery of environmental water beyond the local reduction requirements later specified in

the Basin Plan for a number of water resource areas, including the Lachlan, Macquarie and Gwydir Valleys in NSW.

Hydrological constraints limit the ability of allocations in these valleys to be physically delivered to northern and southern shared reductions, i.e. environmental targets downstream of the catchment area. This means that in most of the afore mentioned valleys, if not all, the CEWH holds more water than required by the Basin Plan to meet the environmental outcomes to be achieved through the Basin Plan. This means that there is opportunity to increase social and economic outcomes from water use through trade on at least a temporary, i.e. annual lease of water allocation, basis.

Given the provision for carry-over in each of these valleys, the CEWH is only able to trade this excess allocation or entitlement under section 106 if the proceeds are used to purchase allocations or entitlements elsewhere (or at another time). This means that unless there is amendment to section 106, trade in these valleys may see other irrigation areas of NSW targeted for further water purchase.

The CEWH undertook its first trade of allocation water in the Gwydir Valley in January 2014. The CEWH reported proceeds in excess of \$3.2 million from the sale of 10 GL of allocation, which will now be held in the Environmental Water Special Account and used for the purchase of water within the Murray-Darling Basin at a future date.

NSWIC believes that the inflexibility of the requirement to purchase further allocations and/or entitlements elsewhere in the Murray-Darling Basin is not only inefficient but could have detrimental social and economic consequences for food and fibre producers who will directly have to compete with the CEWH in the water market.

In addition, NSWIC believes that amendments to section 106 could improve the management opportunities for Commonwealth environmental water and enable the CEWH to use the proceeds of trade in a way that benefits the environment optimally at the same time as optimising social and economic outcomes.

To allow more efficient and effective management of the Commonwealth environment water portfolio, NSWIC recommends;

Part 6 Division 1 section 106: remove

2. Basin Wide Consistency of Water Charges

- Terms of Reference: 1(b)(i)

NSWIC is of the opinion that the Water Act has failed to achieve consistency in water charging regimes across the Murray-Darling Basin. As such, the Water Act has been unsuccessful in meeting its objective under section 3(g)

Since the 1990s, NSW has operated under a sophisticated bulk water charging regime that has worked effectively within the State. Other States have not, to the extent of NSW, did not have to pay comparable water charges. This has been the case in South Australia and to a degree in Victoria, where bulk water charges are heavily subsidised by the State

Governments. This has been identified by the ACCC in their Water Monitoring Report 2012-13².

In addition, NSWIC believes that the plans and rules made under Part 1 section 10(1) have not improved the Basin-wide consistency of water charges but, to the contrary, have added additional complexity and costs for NSW's bulk water provider, irrigation infrastructure operators (IIOs) and water licence holders.

The Water Act has given the Australian Competition and Consumer Commission (ACCC) increasing responsibility to monitor and regulate water charges in the Murray Darling Basin. Those responsibilities include;

- enforce water charge rules made under the Water Act 2007;
- monitor and report on regulated charges and compliance with water charge rules;
- determine regulated charges in specific circumstances;
- provide advice to the Commonwealth Minister for Water on development of water charge rules;

NSWIC would like to point out the compliance requirement related to these additional responsibilities are in addition to the requirement imposed on IIOs and water licence holders through other State and Federal legislation. The additional cost and added complexity is significant.

Water Charge Rules

The Water Act provides for water charge rules to be made which regulate water charges across the Murray-Darling Basin. The three sets of water charge rules are;

- Water Charge (Termination Fees) Rules 2009 (incl. amendments in 2011 and 2012)
- Water Charge (Planning and Management Information) Rules 2010
- Water Charge (Infrastructure) Rules 2010

Under the Water Charge (Infrastructure) Rules 2010 (WCIR), the ACCC is the default regulator responsible for approving or determining bulk water charges for NSW State Water Corporation (SWC). SWC's charges were previously regulated by IPART.

NSWIC has identified some issues with this change;

1. Cost of ACCC Regulation

NSW is the first State in the Murray-Darling Basin to undergo the review of bulk water charges under the ACCC framework. As the ACCC has never before determined bulk water charges in NSW, the level of corporate knowledge and understanding of the NSW's water resources has been minimal, and the bridging of this ACCC "knowledge gap" has imposed additional costs on SWC, representative organisations and bulk water users due to this attenuated process.

An example of the additional costs resulting from the new system is the additional expenses that IIOs could be asked to carry if their published charges are different to the ACCC's determined bulk water charges. The IIOs, like most businesses, operate on a

² p.119 and 134

standard July - June financial year and implement annual adjustment to their fees and charges as at 1 July. The ACCC requires the IIOs to give customers 10 business days' notice prior to implementing adjustments to their fees and prices which would require decisions to be made and notification to be given by at least mid-June. This year, however the ACCC's final determination will only be available at the end of June. This leaves IIOs no time to assess the ACCC's final determination and publish their charges. As such, IIOs have been forced to estimate next year's charges in the absence of a clear signal of the level of bulk water charges, particularly as there have been several areas of significant negotiation between publication of the draft determination and the final determination by ACCC, meaning the draft cannot be relied upon to be a reasonable indication of the final outcome. This creates significant risk and uncertainty for all bulk water users. In addition, the uncertainty could impose a financial liability on IIOs and their customers and shareholders who will have to bear the difference in costs of the ACCC's determined bulk water charges and the IIOs initially published charges; not to mention the administrative costs incurred through multiple mail-outs and notifications to customers.

2. Basin Wide Consistency

NSWIC stresses that both NSW and Victoria had water charging systems prior to the Water Act and the involvement of the ACCC in determining bulk water charges. The introduction of the ACCC into the determination of water charging regimes was supposed to achieve consistency between Basin States, however as we observe in the case of Victoria and NSW, one State's bulk water charges are still regulated by the State regulator (Victoria) , while the other State's bulk water charges are determined by the ACCC. As such, the involvement of the ACCC in bulk water charge determinations has demonstrably not achieved greater consistency.

3. Complexity of Water Charges in NSW

The change in regulator in NSW from IPART to the ACCC has added complexity to the bulk water charging system in NSW, as we now have two regulators that determine water charges in the State. The ACCC is currently reviewing bulk water charges for the Murray-Darling Basin portion of NSW, while IPART will determine bulk water charges in the coastal regions of the State. In addition, IPART will also determine unregulated charges in NSW. This increased complexity raises costs and confusion for bulk water users in NSW.

In addition, SWC is currently undergoing a significant structural adjustment as it is amalgamated with the Sydney Catchment Authority (SCA). The SCA is currently regulated by IPART.

Finally, the determination timeframes for SWC, SCA and the NSW Office of Water are also different. This means that in addition to two regulators, NSW has to undergo three determination processes for water charges in NSW. NSWIC believes that this process is not transparent for NSW or consistent across the Murray-Darling Basin.

In addition, the WCIR and the ACCC pricing principles raise some concerns for irrigators in NSW;

1. Annual review process

After setting charges for the first year of the regulatory period, the ACCC can adjust charges for the second and subsequent years of a regulatory period through an annual review process. Such a system did not exist prior to the ACCC's involvement. IPART used to set prices for the entire determination period with only annual CPI adjustments. The ACCC approach creates greater risk and uncertainty about future bulk water charges as any 'over' or 'under' recovery by SWC could trigger significant adjustments and volatility in bulk water charges from one year to the next.

2. Reopening a Determination

Under Division 4 of the WCIR, a Part 6 operator may apply for a variation of a determination in case something;

- material and adverse affects the operator's water service infrastructure or otherwise materially and adversely affects the operator's business; and
- the operator could not reasonably have foreseen the event.

NSWIC is concerned that this provision creates significant uncertainty for bulk water users. As bulk water users need to make forward planning decisions, the risk associated with facing significantly altered bulk water charges is significant.

3. Cost allocation principle

While IPART had a mandate for cost sharing between bulk water users and the NSW Government, the ACCC does not operate under such a provision. Even though the NSW Government has agreed to maintain the current cost share arrangements throughout the next determination period, this might not necessarily be the case in future determinations. This situation does not adequately recognise the inherent community service obligation that is provided by river operators that should be met by Government under the 'users pays' principle which IS captured in Schedule 2 and 3 of the Water Act and in the National Water Initiative Pricing Principles.

4. MDBA charges

Even though the ACCC is a Federal regulator, there is no provision within the Water Act, the WCIR or the ACCC's pricing principles that would allow for the review and efficient determination of MDBA costs. This is a significant regulatory gap and needs to be addressed urgently.

To conclude, NSWIC is of the opinion that the Water Act has not achieved consistency in water charges across the Murray-Darling Basin.

In addition, NSWIC believes that the Water Act could be improved through the following amendment;

1. To amend the Water Act to allow the ACCC or a State agency to review the efficiency and effectiveness of MDBA charges to enable greater transparency;
 - *Amendments to Part 1, section 10(1): (ia) MDBA charges'*
 - *Amendments to Part 4 Division 1 section 91(1)(c): add 'and MDBA charges'*
 - *Amendment to Part 4 Division 1 section 92(7)(a): 'but must include MDBA charges'*

3. Long-term average sustainable diversion limits

- Terms of Reference: 1(a)(ii)

Given the current Federal Government, and bi-partisan, policy on 'bridging the gap' in water recovery for the environment under the Basin Plan, NSWIC believes further amendments to the Water Act must be made to remove any references to the 'risk assignment framework' and replace with a provision recognizing the Commonwealth's responsibility to compensate for changes to water access or reliability as a result of the Basin Plan or Water Act. NSWIC believes it is important that the Government's commitment to fully compensate water licence holders for any reduction in reliability is enshrined in the Water Act.

Part 2 Division 4 was created to manage the highly complex Risk Assignment Framework which was developed as part of the National Water Initiative in 2004. Since its creation in 2004 public policy has moved on, and as stated above there has been demonstrated bi-partisan support for full market-based compensation for any water acquired by the Commonwealth to meet the requirements of the Basin Plan.

NSWIC strongly recommends that all relevant sections of the Water Act (including Part 2 Division 4) be amended so that it clearly states that any water entitlement acquired by the Commonwealth, or any loss of reliability suffered by an entitlement holder as a result of the actions taken under the Water Act, is fully compensated by the Commonwealth through a market based mechanism.

4. Adjustment Mechanism

- Terms of Reference: 1(a)(i)

NSWIC supports the original wording of Part 2AA section 86AA(3)(b) of the *Water Amendment (Water for the Environment Special Account) Bill 2012* as it was introduced to the House of Representatives on 31 October 2012. Section 86AA(3)(b) originally stated that;

"The objective of this Part is to be achieved by:

(b) increasing the volume of the Basin water resource that is available for environmental use by up to 450 gigalitres. (emphasis added)

Between the first introduction of the Bill and its subsequent adoption, the wording of Part 2AA was changed significantly. It now requires the Federal Government to recover 450GL of water regardless of whether it enhances environmental outcomes. This amended form of words is concerning and conflicts with the objectives of the Water Act and the '*Water for the Environment Special Account*' objectives.

NSWIC recommends an amendment to the Water Act which would reintroduce the original wording of the Amendment Bill;

- *Insert into Part 2AA section 86AA(3)(b) 'up to'.*

Such an amendment will not only reflect the intent of this Part of the Act but also provide the Federal Government with flexibility to only recover additional 'up water' if enhanced environmental outcomes can be achieved.

5. Water Information System

- Terms of Reference: 1(b)

NSWIC is concerned about the wide dispersion of information and the unclear delineation of responsibilities across several Federal agencies and departments.

It is our understanding that the same (or similar) water information is collected, aggregated and distributed by the Bureau of Meteorology (BOM), the Murray-Darling Basin Authority (MDBA), the NSW Office of Water (NOW), State Water Corporation (SWC), the Australian Competition and Consumer Commission (ACCC), the National Water Commission (NWC), the Australian Bureau of Agricultural and Resource Economics and Science (ABARES) and the Commonwealth Environmental Water Holder (CEWH) and office (CEWO). Such overlaps are not only inefficient but also add significant costs to IIOs and water licence holders who are often under legislated obligation to provide information to each of these agencies and departments.

The confusing state of the current responsibilities and functions in water information gathering and analysis between Government agencies has hindered the progress of setting up a consistent water information system. As such, NSWIC calls for a clear delineation of responsibilities and functions of these agencies to avoid overlap, confusion and also mitigate cost pressures on both the Federal Government budget and water licence holders in the Murray-Darling Basin.

NSWIC recommends that the following system be considered as part of the review;

- For the Bureau of Meteorology to collect, hold, manage and disseminate Australia's water information. In addition, the Bureau should also compile and maintain water accounts, including the National Water Account, and set information standards.
- For the Department of Agricultural and Resource Economics and Science (ABARES) to conduct all research and science related assessments relevant for Water Resources in the Murray-Darling Basin.

- For the audit functions of the National Water Commission (NWC) to be transferred to either the Productivity Commission or the ACCC to utilise the existing knowledge and expertise in this area.
- For the CEWH to plan for and manage Commonwealth environmental water.
- For the Murray-Darling Basin Authority to oversee shared / joint river operations.

To achieve this clear delineation of responsibilities the following amendments to the Water Act 2007 must be made;

Bureau of Meteorology:

- *Section 120(f): remove. This responsibility should be transferred to ABARES.*
- *Section 120(g): remove. This responsibility should be transferred to ABARES.*

PC or ACCC

- *Amendment to Part 3 (section 87,88,89,90): replace reference to National Water Commission with Productivity Commission or Australian Competition and Consumer Commission.*

Murray-Darling Basin Authority:

- *Amendment to Part 5 (section 103): transfer of responsibilities from the Murray-Darling Basin Authority to the Bureau of Meteorology. As far as these responsibilities are already undertaken by the Bureau, the relevant sections should be removed.*
- *Part 9 (section 172(1)(ii)): remove*
- *Amendment to Part 9 section 172(1)(b), section 172(1)(c) and section 172(1)(i): These responsibilities should be transferred to the Bureau of Meteorology.*
- *Amendment to Part 9 section 172(1)(d) and section 172(1)(h): These responsibilities should be transferred to ABARES.*
- *Amendment to Part 9 section 172(1)(e): These responsibilities should be transferred to the CEWH.*
- *Amendment to Part 9 section 172(1)(g): add 'in so far as it relates to shared projects'.*
- *Amendment to Part 9 section 172(2): add ' in so far as it relates to shared projects'.*
- *As far as necessary, amendments to Part 10 to align with reduced responsibilities under Part 9.*

6. Objectives

- Terms of Reference: 2(a)

NSWIC notes that the Water Act requires a consideration of the social, environmental and economic outcomes, such as in section 3(c) of the Act:

...to promote the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes³.

Whilst section 3(c) echoes the triple bottom line approach of the Basin Plan, the overall emphasis of the Water Act remains with environmental targets and outcomes. This is evident when the various environmental targets (section 6, section 20, section 22, section 28 and section 86AA) are assessed. Similar prescriptive targets for social and economic targets are not provided in the Water Act.

Given the significant impact that the Water Act 2007 and the Basin Plan has had and will have on Basin communities, we believe greater emphasis must be placed within the Water Act on social and economic targets.

In addition, it will be important that the MDBA also places greater emphasis on social and economic impacts to align with section 3(c) of the Water Act. As such we believe it is prudent to conduct a full and transparent cost-benefit analysis of the MDBA's work to date, including its framework for assessing the social and economic impacts of the Basin Plan, which will inform the future phase of the MDBA's work in meeting the Plan targets.

MDBA Fees for Service Provision

In addition, NSWIC raises concern about Part 9 Division 5 Subdivision B section 212. The section gives the MDBA the authority to charge a 'fee for service'. NSWIC is unclear what these fees refer to and points to the fact that MDBA costs for joint programs are currently recovered through the States (and largely through referral of MDBA charges through inclusion in State charges on irrigators in NSW).

NSWIC therefore recommends;

- *Part 9 Division 5 Subdivision B section 212: remove*

7. Regulatory Burden

- Terms of Reference: 2(b)

There are several sections contained in the Water Charge (Infrastructure) Rules (WCIR) that, require Irrigation Infrastructure Operators (IIOs) to physically post out certain information including the Network Consultation Paper, Network Services Plan, Fees and Prices Schedule and the Fees and Prices Information Statement.

This not only increases the administrative burden, but also the cost burden on IIOs.

³ *Water Act 2007 (Cth) s 3 (c).*

One way that this burden can be relieved while still providing customers with access to information is to amend sections of the WCIR to require IIOs to “make available” information rather than “provide”.

Examples of where this change could be applied in the WCIR include:

- *18(1) change “provide” to “make available”*
- *18(3) and (4) change “when providing” to “when making available”*
- *19(2) change “must give” to “must make available”*
- *20(3)(a) change “give” to “make available”*
- *22 change “provided” to “made available”*

In addition, we urge the expert panel to assess the regulatory burden imposed through the Water Trade Rules and the Water Market Rules. We believe there are opportunities to reduce regulatory overlap by combining the two rules into one section of the Act with the ACCC assuming regulatory responsibility for both functions. For further details on the streamlining the management of these two sets of water market rules, we recommend that the expert panel to engage with the Irrigation Infrastructure Operator in NSW.

8. Future Reviews

- Terms of Reference: 3

NSWIC is concerned about the multiple and sometimes conflicting review points incorporated into the Water Act. NSWIC recommends that the expert panel evaluates the dates and timelines for all reviews and considers their timing in light of important milestones that need to be achieved within the Basin Plan implementation.

In addition, we recommend that the expert panel considers consolidating and aligning the various reviews with the goal of decreasing the regulatory burden for stakeholders, departments, the MDBA and State or Federal regulators.

Additional Comments

NSWIC would like to make the following additional recommendations to the 2014 Water Act and any subordinate legislation;

1. Consultation

NSWIC believes it crucial that the Water Act is amended to ensure that adequate stakeholder consultation will take place in the future. As such, we recommend the following;

- *Part 2 Division 1 Subdivision F section 46: insert section (1)(d) 'the public'*
- *Part 2 Division 1 Subdivision F section 48(2)(b): Insert 'and with stakeholder consultation'*
- *Part 2 Division 1 Subdivision G section 51(2): Insert section 2(d) 'the public'*

In addition, any further reviews of the Water Act 2007 or the Basin Plan must be conducted in consultation with stakeholders and the wider public to ensure a balanced view and the utilisation of existing experience and expertise.

2. Basin Community Committee

NSWIC believes there is scope to strengthen the advisory role of the Basin Community Committee (BCC) to the MDBA. As Part 2 Division 1, the Authority must consult with the Basin Community Committee, however the Authority is under no obligation to have regard to the advice provided by the BCC. As such, NSWIC recommends the following amendment;

- *Part 2 Division 1 section 46(2) add "and the Basin Community Committee".*
- *Part 2 Division 1 section 51(2) add: "and have regard to".*

In addition, NSWIC considers it vital that communiqués between the Basin Community Committee and the MDBA are documented and made publicly available. This will increase the accountability and transparency of both the BCC and the MDBA. As such, NSWIC recommends the following;

- *Add Part 9 Division 3 section 205(4): All communiqués between the Basin Community Committee and the MDBA must be documented and made publically available.*

3. Water for higher value use

NSWIC questions the appropriateness of ToR 1(ii)(c) as the Water Act itself provides only one other references to 'higher value use of water' - Part 2 Division 1 Subdivision B section 20(3). It is evident that 'highest value use' is a subjective assessment and depends crucially on a range of exogenous factors at the time (i.e. commodity prices). Instead of focusing on 'highest value use', the emphasis should be placed on effective and efficient use of water.

In addition, the water market and water trade rules have seen the establishment of various water markets that continue to grow and evolve with new products being developed on a continuous basis. This will allow water licence holders to make conscious decision on how they can best utilise their water at a particular point in time whilst taking into account water availability, climatic conditions, commodity prices and other factors. Having said this however, greater emphasis should be placed on simplifying current market arrangements to allow all water licence holders (including the holders of environmental water) to operate more effectively and without additional regulatory burden.

3. "Overallocation"

The Water Act as well as the Basin Plan make reference to the term "overallocation". This term is misleading as an allocation can be adjusted between and within a water season in accordance with water availability. Therefore, "overallocation" would only occur if a water manager has miscalculated available water at a given point in time during a season.

As such, we recommend the following;

- *Remove any reference to "overallocation" in the Water Act 2007 and the Basin Plan.*

4. Delivery Rights

Part 12 Division 2 relates to the trade of water delivery rights. This section is not required by the Water Act and there is no reason for the trade of delivery rights to be covered in the Water Trading Rules or the Basin Plan. The Water Market Rules outline contractual terms and conditions for delivery rights and obligations to provide customers with information. The fees charged for delivery rights are published in the *Fees and Prices Schedule* as required by the Water Charge Rules (WCR).

Delivery rights are a mechanism for private Irrigation Infrastructure Operators (IIOs) to recover fixed costs and are of no value or consequence outside the IIOs' boundaries. Trade of delivery rights can only occur within an IIOs network and even then may be limited by channel capacity and flow share constraints.

It is not in the interests of an IIO to restrict trade of delivery rights except where a customer may wish to acquire delivery rights in excess of more than five times their irrigation entitlement as allowed for under the Water Trade Rules. Under the Water Market Rules if, as a result of a transformation, the volume of water a person is entitled to have delivered (delivery rights) is more than five times the volume of water they are entitled to receive under their irrigation right, the IIO may demand security for future fees and charges⁴. The same should apply to the trade of delivery entitlements.

The Water Trade Rules go beyond the scope of the requirements of the Water Act 2007 and consideration must be given to excising those sections of the WTR that are unnecessary or excessive, specifically those relating to water delivery rights.

⁴ *Water Market Rules 2009 (Cth)*, Subrule 10(1).

We therefore recommend;

- *Remove 12.32(2)(a) and 12.34(3) from the Water Trade Rules*

Conclusion

NSWIC believes that several improvements can (and should) be made to the Water Act 2007. The necessary amendments generally require little change to the body of the Act but would lead to significant benefits for all water licence holders and basin communities in the Murray-Darling Basin through refocusing of objectives and program delivery, removal of unnecessary regulatory burden and duplication, and streamlining of processes.