

## **SUBMISSION**

# **Productivity Commission Review Of National Water Reform Issues Paper**

**April 18 2017**

## Introduction

The NSW Irrigators' Council (NSWIC) is the peak body representing irrigators and the irrigation sector in NSW. NSW irrigators hold water access licenses to 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 and policy development for the irrigation sector. As an apolitical entity, the Council provides advice to all stakeholders and decision makers.

This submission represents the views of the Members of NSWIC in respect to the Productivity Commission Issues Paper on National Water Reform March 2017. However, each Member reserves the right to independent policy on issues that directly relate to their areas of operation, expertise, or any other issue that they may deem relevant.

NSWIC makes this submission in response to a number of issues raised by the Commission in its Issues Paper. It is the Council's intention to provide more detailed input in its submission to the Draft Inquiry Report in October 2017.

## Overview

### Progress with NWI Implementation in Inland NSW

In general terms NSWIC believes that the progress of implementation of the National Water Initiative (NWI) principles in the inland (Murray Darling Basin) regions of NSW has been sound.

Using the Preliminary Framework on National Water Reform Priorities (Issues Paper Table 1) as a guide to progress, NSWIC can report the following:

#### Property rights for water are clear and secure:

NSWIC believes this priority has been achieved in NSW, and has been further reinforced by the NSW Government's amendments to the Water Management Act 2000 to allow for the formal ongoing licencing of floodplain harvesting and of supplementary water licences. We believe all the points in this section of the Preliminary Framework are being met.

#### Processes for determining allocation and sharing of water are transparent, inclusive and cost effective:

In general terms this is occurring; albeit the irrigation sector has expressed its concerns with the delay of over two years in the NSW Government's review of the Water Sharing Plans for the water sources in these areas – now underway.

As these Plans form the foundation of irrigators' property rights over water, uncertainty over the operations of Water Access Licences can have far reaching business impacts on irrigation enterprises. NSWIC and its Members continue to express concern over the impact of Departmental restructuring on DPI Water's capacity to successfully deliver the review of

Water Sharing Plans and the development of Water Resource Plans under the Murray Darling Basin Plan within the Plan's timeframes.

The loss of experienced water management personnel from the NSW Government and the need to gear up the water planning and modelling resources of DPI Water to successfully review and deliver 21 revised WSPs on a very tight timeline continues to be contentious. Nevertheless while the irrigation sector in Inland NSW has been frustrated by these delays and the impact of the restructuring of water administration in NSW, all the requirements of this section of the Preliminary Framework are being met.

Water is able to be traded to its highest value:

This priority is also being well implemented, and we can report that water trading has become a central feature of irrigated agriculture in Inland NSW.

NSWIC makes these additional points for the Commission's consideration:

- Government agencies – Federal and State – have displayed an obsession with water market information, analysis and regulation, often based on the misconception of there being some level of 'market failure' in water trading within the Murray Darling Basin. NSWIC emphatically rejects any conception that the water market is not working effectively – as water trade has rapidly matured and is now a central part of commerce within irrigated agriculture sectors in the Basin.
- Admittedly there has been some aggravation amongst irrigators and water traders over the information on capped volumes of water for Inter Valley Transfer trade. However, NSWIC acknowledges that there has been improved information flow on the triggers for the closure of IVT trade out of the Murrumbidgee, in particular, and the timeliness of information flow from DPI Water has been steadily improving. NSWIC absolutely supports the NSW Government approach that caps be implemented when the capacity of the regulated system to actually deliver the physical water may be compromised.
- There have also been significant gains in the timeliness of trades and the Government processes to track and record these processes. The large range of water broking services aids in information flow to irrigators and others, and there is no evidence of any lack of timely information on water available for trade or the prevailing prices in Inland valleys.
- NSWIC is aware of the views of some in the irrigation sector and in Government that water broking requires tighter regulation. NSWIC believes there has not been sufficient instance of maladministration in water broking to justify a significant tightening of regulation on water brokers. The Council is concerned that the introduction of stricter and more costly financial administration measures on brokers will tend to make small trades unviable and disadvantage smaller water brokers, and will add significantly to the cost of water trades to sellers and buyers. NSWIC favours minimal intervention in the regulation of water brokers, if Government deems this necessary.

- NSWIC is comfortable with the general progress towards improved measurement, monitoring and water accounting systems. In general, monitoring and measurement in the regulated systems of the NSW MDB valleys is well established and managed. DPI Water is about to unveil a new Water Take Measurement Strategy which will allow for water measurement proxy methodologies (such as power use or fuel consumption time on pumps), and Floodplain Harvesting Measurement and Monitoring trials are well progressed in the northern NSW MDB.

#### Environmental Management is efficient and effective:

In general terms NSWIC is satisfied with the performance of NSW Office of Environment & Heritage as the environmental water management agency for the State – managing both held (licenced) and planned (a proportion of defined system flows) water. The provisions for environmental water volumes and deployment are well covered in Water Sharing Plans.

These Plans will be further developed through Water Resource Plans under the Basin Plan and will also cover the management of water held by the Commonwealth Environmental Water Holder. The NSWIC policy position is that all environmental water should be managed and delivered for maximum efficiency and effectiveness. However, given the early stage of Basin-wide environmental watering management it is simply not possible at this point to fully assess the impacts or efficiency of environmental watering, which could take some years yet to effectively assess.

The only significant gap NSWIC is aware of in the environmental and catchment management space is anecdotal evidence that there is insufficient monitoring of impacts in some systems. NSWIC supports greater resources being deployed to measure and monitor environmental water impacts. The Council also favours the use of infrastructure and other water management methods to meet environmental watering objectives with minimum volumes of water.

#### **Progress with NWI Implementation in NSW Coastal Valleys**

The picture with progress against the NWI principles in the Coastal Valleys of NSW is somewhat less positive – largely in relation to the fragmented nature of the river systems and the large numbers of smaller Water Access Licence holders on unregulated streams or accessing groundwater.

The sharing of water resources is well governed by Water Sharing Plans, but the trading of water is very under developed – often due to small trading zones and relatively small trade transaction sizes. Coastal irrigators have also struggled to manage increasing fixed costs associated with licenced water volumes – particularly in the North and South Coast districts where there are disconnects between the size of water storages in the regulated systems and the number of irrigators utilising the resource. The consequence of this is a crisis in the financial sustainability of irrigation in many coastal irrigation districts. Improved water trading arrangements could assist in providing options for Water Access Licence holders to offset these cost impacts.

## **The Efficient Provision of Rural Water Services**

We refer to the Water Services section of the Preliminary Framework for the National Water Reform Priorities on whether rural water services are provided efficiently.

NSWIC has only provided comments in this submission on issues related to rural water services. In this context the Council is generally satisfied with the efficiency of rural water service provision, and NSWIC strongly supports the principle of limiting cross subsidies between valleys and classes of Water Access Licence holders.

### Rural Water Pricing & Charges Determination

However NSWIC has fundamental concerns with the basis for the setting of regulated water prices in NSW – particularly around the degree of realistic ‘cost reflectivity’ in regulated charges. We acknowledge that the intent of IPART is to determine prices for provision of water services by DPI Water and WaterNSW according to the cost reflective principle, but NSWIC strongly contends that the regulatory approach to allowing rolling buildup of costs over time as the basis of future charges to Water Access Licence holders is deeply flawed, and does not necessarily reflect ‘true’ costs.

Principally this problem lies with the system by which the Regulated Asset Base and Weighted Average Cost of Capital for the two water agencies is determined by the regulator, and is in urgent need of review and greater transparency on ‘actual’ rather than ‘allowed’ costs, as determined by IPART.

### MDBA Pass-through River Murray Operations Charges

This issue of lack of transparency in costs and efficiency in service provision is also very apparent in Murray Darling Basin Authority pass-through costs for River Murray Operations via charges embedded in WaterNSW prices for irrigators on the Murray and Murrumbidgee systems. In effect there is no regulatory oversight or transparency of the veracity of these charges, or the MDBA system of cost-building or charge determination. This is due to the MDBA being beyond the jurisdiction of IPART and the other State regulators. This is also of most serious concern to NSWIC and should be noted by the Commission as a significant gap in regulatory oversight of charges.

## **Murray Darling Basin Plan**

NSWIC acknowledges the ongoing implementation of the Basin Plan as the centerpiece of recent national water reform. However, given that this Inquiry is not focused on the Basin Plan per se we would make these few points:

- There has been a distinct skewing of the basis of the Plan implementation by the MDBA towards the environment, with only limited focus on social and economic impacts of Plan implementation until quite recently. NSWIC believes this has been in contradiction of one of the basic tenets of the NWI.
- NSWIC continues to express concern over the lack of flexibility in the approach to modelling the potential environmental flow outcomes of the Plan by the MDBA, and the acceptance of their modelled outcomes as absolute. This approach has largely

led to the imbalance in assessing the real and potential triple bottom line impacts of the Plan, as detailed above.

- A more flexible and adaptive approach to Plan implementation is required by the MDBA – in line with the principles espoused in the Preliminary Framework on National Water Reform Priorities.

## **Specific Comments**

### **Preliminary Framework – National Water Reform Priorities**

Notwithstanding the comments provided (above) NSWIC supports the Preliminary Framework.

#### NSW Priority Reform

NSWIC reiterates the introduction of more flexible and accessible water trading arrangements in coastal valleys of NSW as a priority area for water reform in the future.

#### Future Drivers of Water Reform

NSWIC makes a strong point to the Commission that, particularly in the Murray Darling Basin, water reforms are still rapidly progressing and communities are suffering significant 'reform fatigue'. Given the alignment of the NSW MDB regions with the Preliminary Framework, we would not support additional major water reform in the Basin until well after the completion of the Basin Plan in 2024. Nor does NSWIC support the so called Basin Plan Mark 2 mooted in the past by the MDBA.

### **Property Rights**

#### Incorporating Extractive Industries into the Planning and Entitlement Framework

NSWIC has been concerned that the licencing of water take by mining and other extractive industries has operated under resource management provisions in NSW, and although potential impacts are assessed by DPI Water extractive industries have not been formally incorporated into regional Water Sharing Planning processes.

In line with this, NSWIC has long requested the NSW Government to legislate its Aquifer Interference Policy, as a legislative protection against negative impacts of extractive industries on other groundwater and surface water Water Access Licencees. Regrettably the State Government has declined to do so – only heightening our concerns that some extractive industry projects may be provided with water licences despite negative or undetermined impacts on groundwater or surface water resources. NSWIC believes all extractive industries must be included in Planning and Entitlement Frameworks and operate under the same provisions as irrigators and other Water Access Licence holders.

## New Water Resources – Aquifer ReInjection

NSWIC urges extreme caution in progressing with exploration of Aquifer ReInjection where this may result in injection of non-potable water into high water quality aquifers. NSWIC holds a strong policy of ‘no negative 3<sup>rd</sup> party impacts’ through management of water resources – including negative water quality impacts through management of water. The cost-benefit analysis of any aquifer reInjection proposals must also take into account the significant energy costs of redrawing injected water for use.

## **Water Planning**

### Dynamic & Responsive Planning Arrangements

NSWIC strongly supports the need for dynamic and responsive water planning arrangements, and believes that the NSW Water Sharing Planning process is designed to deliver just such arrangements through the current review provisions. In line with the other information provided and sought by the Commission, NSWIC also makes the point that the current WSP and future Water Resource Planning provisions (in the MDB valleys) allow for adjustment to resource fluctuations and annual water allocations according to the impacts of climate change and extreme weather patterns.

We also point the Commission to the recognition of indigenous values in the Basin Water Resource Planning process, and the MDBA developed tools to allow indigenous communities to assess cultural value of water for incorporation into water planning in their regions. We would recommend the incorporation of these approaches in the development of water sharing / resource plans in other regions.

## **Water Trading**

### Efficient Trade Restrictions

As a guiding principle NSWIC strongly supports water trade that is open, transparent and as flexible as possible – with minimal restrictions on trade within and between connected valleys. NSWIC also strongly endorses the lowest possible transaction cost for water trade and the completion of trades and trade registrations as quickly as feasible.

However, as stated earlier, NSWIC also recognises that restrictions such as caps on Inter Valley Transfers are also necessary to match trade or transfer volumes to available resources for delivery (eg Murrumbidgee IVT account), and not erode the reliability of future water delivery to irrigators in those valleys.

### NWI Open Water Market Principles

While we have stated previously that significant improvements in the utility of water trading in NSW Coastal Valleys should be achieved in the future, NSWIC reiterates that – in the NSW MDB regions – the NWI goal of open water trading markets has been achieved.

## **Environmental Management**

### Trade of Environmental Water

NSWIC strongly supports the trade of environmental water by Government environmental water holders back to irrigators whenever there is an opportunity to utilise environmental water volumes not required by those agencies. The imperative in NSWIC support for the trade of environmental water is the significant water price impact of the transfer of the large volume of entitlements to the Commonwealth under the Basin Plan. This has restricted the pool of water for trade on the temporary water market and seen price increases to irrigators needing to supplement their annual water requirements. Recent research on the cost impacts of less available temporary trade water for irrigated agriculture in the MDB shows that in dry climatic sequences where stored water is less available for annual allocations, industries such as dairy, rice and cotton will be priced out of the market.

## **Rural Water Services**

### Setting Infrastructure Charges

As detailed in the Overview, NSWIC reiterates that while an independent regulator (IPART) sets infrastructure charges for WaterNSW – in line with the NWI principles – we have serious concerns over whether the regulatory price setting framework allows for truly cost reflective pricing.

NSWIC is not opposed to cost reflectivity, as long as the system of assessing costs allows for an accurate assessment of ‘real’ costs of building and operating infrastructure rather than a construct of costs built on historical precedent and an artificially inflated return on investment for the Government owner of the infrastructure. We do not believe that all current and immediately prospective infrastructure charges are truly cost reflective in NSW – in contradiction of this NWI principle.

### Ongoing Viability of Irrigation Networks

We note the Commission’s comments regarding the costs associated with operating and maintaining privately owned irrigation networks; citing some concerns with the prime driver of network operational and maintenance costs being the financial self-interest of irrigators within those networks. We provide the following points of clarification:

- The Inland irrigation corporations or Irrigation Infrastructure Operators (IIOs) are not just bound by their stakeholder (irrigator) self-interest. Under the ACCC rules applying to IIOs in the MDB, the IIOs are bound by Water Charge Infrastructure Rules, and currently must also provide the ACCC with a regular Network Service Plan (under Ministerial review). There is a significant Government regulatory oversight of IIOs in relationship to charges on irrigators.
- NSWIC absolutely concurs with the Commission view that the disconnection of irrigators from the network leaves the remaining irrigators with higher fixed charges spread over fewer customers. While the IIOs are compensated in the short term by exit fees on irrigators leaving the network, in the longer term the viability of the network and the sustainability of capex and opex charges to run and maintain a network now delivering less water but still spread over the same geographic footprint,



is under threat. The purchase by the Commonwealth of large volumes of water for the environment out of the privately owned irrigation networks in the Murray and Murrumbidgee Valleys has had a significant impact.

This impact has been particularly deep in the Murray Irrigation Ltd region which has had almost 28% of its water entitlements recovered for the environment by State and Federal agencies. This has caused a significant 'swiss cheese effect' in its water distribution network and increased delivery costs for supplying geographically isolated irrigators. While not completely intractable, this problem and the cost impacts on remaining irrigators as the network restructures over time, is very significant for the future viability of irrigation in affected districts and of the corporation.

### Making Decisions on Irrigation Water Infrastructure

As detailed earlier in this submission, NSWIC is particularly concerned about the governance of MDBA infrastructure operating cost pass-throughs to Murray and Murrumbidgee Valley irrigators. There is no transparency for impacted stakeholders about either the prudence or efficiency of these charges, and whether the planned level of infrastructure investment is warranted through rigorous cost-benefit analysis. NSWIC continues to push for independent regulatory oversight of MDBA infrastructure and operating charges for joint River Murray Operations.

We are also concerned over the recently introduced WaterNSW capex management system – the MEERA system – which reduces the capacity of stakeholders to assess the efficiency of proposed capital expenditure in the WaterNSW infrastructure network; despite IPART oversight and regulation of charges.

## **Further Information**

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