



30 May 2014

Bret Walker SC
5th Floor, St James Hall
169 Phillip Street
SYDNEY 2000

Via electronic mail: arbitration.submissions@trade.nsw.gov.au

Dear Mr Walker,

Re: **Examination of the Arbitration Framework under the *Petroleum (Onshore) Act 1991* and the *Mining Act 1992***

NSW Irrigators' Council (NSWIC) appreciates the opportunity to provide comments to the review of the arbitration process under the *Petroleum (Onshore) Act 1991* and the *Mining Act 1992*.

Our policy¹ clearly outlines that NSWIC is not opposed to the mining and Coal Seam Gas (CSG) industry nor its further development. However, we believe that the State government must, first and foremost, ensure that the sustainable resources for agriculture - including water - are comprehensively and adequately protected. In that context, a robust arbitration framework is of increasing importance as the interface between irrigated agriculture and resource extractive industries increases.

NSWIC supports the views expressed by NSW Farmers and Cotton Australia and we reiterate the key recommendations made in their submissions;

- That in addition to reasonable legal fees, the time of landholders at arbitration must be adequately compensated. Irrigator's core business activity is food and fibre production and hence the company seeking access should financially compensate irrigators for the time spent at arbitration, rather than their core business activities.
- That in the interests of transparency a list be published on the *NSW Resource and Energy* website that contains the names, contact details and expertise of arbitrators on the Minister's arbitration panel.
- That there be further development of guidelines and policy documents that outline a set of minimum standards for an arbitration process. In addition, that these documents also address any possible conflict of interest issues arising in the arbitration process.

¹ NSWIC Policy, Mining and Coal Seam Gas Approvals; Protecting Water Resources http://www.nswic.org.au/pdf/policy_documents/110829.pdf

- That the qualification of the arbitrators include a good working knowledge of the two Acts as well as a reasonable understanding of the on-ground irrigation and agriculture production issues arising from mining or CSG activities.
- That aside from procedural oversight to ensure guidelines are met, records are kept and processes remain transparent, NSWIC recommends that any departmental oversight role is kept at a minimum.

In addition, we recommend that s 31 of the *Mining Act 1992* and s 72 of the *Petroleum (Onshore) Act 1991* is amended to include 'any irrigation infrastructure' in the definition of 'significant improvement'. This would eliminate any discretionary powers by the arbitrator and ensure that no irrigated cropping activity will be disrupted if that is the wish of the landholder.

In concluding, we would like to reemphasise that we welcome the initiative of the NSW Government to engage with stakeholders on the formulation of a new arbitration process. However we remain concerned that no further stakeholder consultation is scheduled before the Final Report is presented to the Minister.

NSWIC holds the firm view that it would be appropriate if there was an opportunity for a draft report to be circulated with further stakeholder feedback sought on the recommendations. As the timeframe for initial consultation was extremely short we urge the NSW Government to reconsider the next drafting stages of the framework and hope further consultation will take place in the near future.

Sincerely,



Mark McKenzie

Chief Executive Officer
NSW Irrigators' Council