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SUBMISSION

Water Management Amendment (Metering) Regulation 2019

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Introduction

The NSW Irrigators' Council (NSWIC) is the peak body representing irrigation farmers and the irrigation farming industry in NSW. Our Members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries. Through our members, NSWIC represents over 12,000 water access licence holders in NSW who access regulated, unregulated and groundwater systems.

NSWIC engages in advocacy and policy development on behalf of the irrigation farming sector. As an apolitical entity, the Council provides advice to all stakeholders and decision makers.

Irrigation farmers are stewards of tremendous local, operational and practical knowledge in water management. With over 12,000 irrigation farmers in NSW, there is a wealth of knowledge available. To best utilise this knowledge requires participatory decision making and extensive consultation to ensure this knowledge can be incorporated into best-practice, evidence-based policy. NSWIC and our Members are a valuable way for Governments and agencies to access this knowledge.

NSWIC welcomes this public exhibition as an opportunity to share local, practical and operational knowledge and expertise in water management. NSWIC offers the expertise from our network of irrigation farmers and organisations on an ongoing basis to ensure water management is practical, community-minded and follows participatory process.

This submission represents the views of the Members of NSWIC with respect to the *Water Management Amendment (Metering) Regulation 2019*, and *Non-Urban Water Metering Framework*. Each member reserves the right to independent policy on issues that directly relate to their areas of operation, expertise or any other issues that they deem relevant.



NSW Irrigators' Council's Guiding Principles

Integrity	Leadership	Evidence	Collaboration
Environmental health and sustainable resource access is integral to a successful irrigation industry.	Irrigation farmers in NSW and Australia are world leaders in water-efficient production with high ethical and environmental standards.	Evidence-based policy is essential. Research must be on-going, and include review mechanisms, to ensure the best-available data can inform best-practice policy through adaptive processes.	Irrigation farmers are stewards of tremendous knowledge in water management, and extensive consultation is needed to utilise this knowledge.
Water property rights (including accessibility, reliability and their fundamental characteristics) must be protected regardless of ownership.	Developing leadership will strengthen the sector and ensure competitiveness globally.	Innovation is fostered through research and development.	Government and industry must work together to ensure communication is informative, timely, and accessible.
Certainty and stability is fundamental for all water users.	Industry has zero tolerance for water theft.	Decision-making must ensure no negative unmitigated third-party impacts, including understanding cumulative and socio-economic impacts.	Irrigation farmers respect the prioritisation of water in the allocation framework.
All water (agricultural, environmental, cultural and industrial) must be measured, and used efficiently and effectively.			Collaboration with indigenous nations improves water management.



Overview

The NSW Irrigators' Council (NSWIC) welcomes this public consultation relating to the NSW Non-Urban Water Metering Framework.

NSWIC supports the continued improvement of metering, monitoring and measurement actions for all water users across the state. If it can't be measured, it can't be managed. It is a key principle of NSWIC that all water must be measured and used efficiently and effectively.

Industry strongly supports the objectives of the policy that:

- the vast majority of licensed water take is accurately metered;
- meters are accurate, tamper proof and auditable;
- undue costs on smaller water users are minimised; and
- metering requirements are practical and can be implemented effectively.

However, this submission outlines several key concerns and recommendations to improve the policy and its implementation.

Following consultations with Member organisations and water users, the Council wishes to convey feedback relating to:

- Draft *Water Management Act Amendment (Metering) Regulation 2019* – specific comments relating to the regulatory burden on water users and clarity of the new metering rules.
- *NSW Non-Urban Water Metering Policy* – general feedback relating to the Metering Framework and its implementation.

PART 1: Comments on the Draft Water Management Act Amendment (Metering) Regulation 2019

On-Farm Works

NSWIC believes it is an appropriate measure for the metering requirements to only apply for water coming from the water source onto the farm, given that on-farm works are used for redistributing water, rather than accessing new water. This is a welcomed amendment to clause 231(I)(f).

Inactive Works

NSWIC agrees that if a work is 'inactive' it is only reasonable that it will not be required to comply with the metering rules, as it would then be redundant.

NSWIC suggests that provisions for temporary inactivity are developed. This would apply to water users who are not utilising their pumps for an extended period, but who still require their infrastructure to be operational for future use. It would be beneficial for water users in that scenario to be able to notify the Government of being temporarily inactive, and thus have a lesser reporting requirement. For example, this may include being exempt from reporting (as this would be a pre-reported amount/rate of 0 ML/day) until such a time as they re-commence pumping activity. This would be beneficial to many water users at present who



have 0% water allocations and would consistently be reporting nil use for a long period of time (over 24 months in many cases).

There is information required around the process to allow works/approvals to become active as well as the cost of applying to make works inactive or active. It is assumed that the renewal of work approvals and the cost therein would not change, guidance to industry on this matter would also be useful.

Reporting requirements without telemetry

NSWIC believes that reporting of water takes through telemetry or otherwise, is critical to appropriately measuring and managing water resources in NSW. Where telemetry or data-loggers are not installed, reporting through other means is a necessary and reasonable requirement.

Clarification is needed regarding what constitutes “*an approved form and manner*” for reporting water take. Clear guidelines or specific forms should be provided to simplify the reporting as much as possible if the requirements will be highly prescriptive for part [10] to avoid confusion or misunderstanding the requirements.

NSWIC believes the timeframes proposed to be reasonable (meter readings monthly, and water take data annually). However, NSWIC notes that reporting of water taken under Basic Landholder Rights (BLR) to be quarterly, meaning there is some form of recording/reporting requirements daily, monthly, quarterly and annually. NSWIC believes it would assist to ensure understanding of requirements, that this is streamlined as much as possible. One option would be for BLR water take to be reported on *annually* alongside annual water take reporting requirements, so that there are simply monthly and annual reporting requirements.

NSWIC understands that the water take data includes the flow *rate* and cumulative volume of water taken (Clause 244A (4)). NSWIC seeks confirmation as to whether this will be the only data required, or if other data may be required, as that would impact on the regulatory burden.

Installation of meters

NSWIC has no issues with the omission of “by a duly qualified person” from clause 2(1), provided that the requirement for a DQP to *validate* the meter remains to ensure integrity and confidence in the accuracy of the meters can be maintained.

Tamper evident seals

NSWIC supports the requirement for the installation of tamper-proof seals for meters be sourced from an approved body, to ensure the integrity of the seals, and that they can be traced and audited. It is critical that the tamper-proof seals are readily accessible for appropriate persons, and that a list of approved suppliers be advertised.

NSW Metering Guidance Tool

NSWIC strongly supports the development of the NSW Metering Guidance Tool, as a means to easily navigate metering obligations. NSWIC understands that there is currently a large



amount of confusion about the new metering requirements, and whilst this tool will assist those with doubts about whether or not they comply, there remains a gap to inform water users who are assuming they are compliant (largely because of recently updating their meters to new requirements which may not actually suffice). NSWIC recommends that the tool is actively promoted to stakeholders to encourage use.

Multiple Works

NSWIC recommends that the Metering Guideline Tool more clearly specifies how the multiple works requirements apply. Specifically, there is some confusion as to whether 'multiple works' involves multiple works on the same Water Access Licence, same landholding, or within the same business.

Discretionary powers of NRAR

NSWIC appreciates the *intention* of the 6-month one-off register for water users to notify NRAR if they have made genuine attempts to comply but have not been able to. This intended flexibility is positive.

However, it is important that a mechanism is developed to allow water users to access their available allocations, despite not attaining regulatory compliance due to delays beyond the control of the water user. The NRAR register does not provide a legal certainty for water users and relies solely on 'discretion' and this is not acceptable.

NSWIC does have several concerns with this register. These include:

- **Legal protections for water users** – there is no legal certainty for water users who are 'on or off' the register to legally access allocations available to them. During the metering roadshow, neither agency could provide an appropriate certainty to water users on this matter.
- **Timeframe** - The 6-month time frame may not be long enough to be compliant under severe circumstances, such as those issues arising from drought and/or certified technicians that may be beyond the control of the water user. Such issues may not be resolved for some time, thus a 6-month extension is probably not long enough for the register.

Recommendation: Develop a mechanism to allow for Ministerial Exemption on a temporary basis in extreme circumstances. Alternatively, (least preferred) consider extending the life-span of the one-off register (whilst ensuring the aforementioned concerns are adequately addressed).

- **Subsequent action** – NSWIC is concerned about what happens at the completion of the time period if water users have still not become compliant due to reasons beyond their control. This must be clearly specified from the beginning when water users register so that it is transparent.
- **Confidentiality of data** – NSWIC understands that the register will have utmost confidentiality to protect the privacy of water users. This is an essential requirement. NSWIC strongly recommends that any data (even high-level statistics) from this register are withheld due to the likelihood of the information being misinterpreted/misrepresented by media, and thus having negative social licence implications for water users.



- Further information is required about the types of information which may demonstrate a reasonable attempt to comply.

NSWIC submits that the requirement for this register relate to either the unrealistic timeframe for implementation of these reforms or poor management of timelines for implementation. Therefore, industry should not bear any criticism for a delay in implementation.

Consultation

NSWIC thanks the Water Reform Taskforce, NRAR and WaterNSW for conducting Roadshows throughout regional NSW, and for presentations to NSWIC at the July General Meeting in Sydney.

Some Members felt that these Roadshows were inadequate as there were key pieces of information unavailable to attendees, for various reasons. For example, information around telemetry equipment, reporting requirements, and the hand back of public meters was not provided, and this is not appropriate for a major change in regulation of water use in NSW that has a key implementation date occurring within 100 days.

PART 2: General Comments on the NSW Non-Urban Water Metering Policy and implementation

Broader scope – not just compliance

NSWIC firmly believes that improvements to metering and measurement of water use should not solely focus on compliance but be part of a broader strategy for gaining greater data to inform natural resource management. For example, this should encompass providing data to support river operations, billing, and understanding changing patterns of water use. Whilst compliance is a critical and important element, the singular focus on compliance distracts from opportunities to design the framework to suit a broader suit of needs for water management. Water resources in NSW are scarce and valuable, hence all tools should be available to both government and users for management of the resource.

Improved metering is not just about compliance, but about improving systems and gaining greater data to better manage scarce water resources.

Compliance

There are 2 key issues relating to compliance with the new framework:

1. Initial compliance – meeting the requirements of the new metering standard by the timeframes.
2. On-going compliance – regarding how real time live metering information will be managed and how the Regulator applies its powers to more highly resolved data.



Timeframes

NSWIC Members are concerned about the current implementation timeframes, specifically for 1 December 2019. Impractical timeframes offer significant risk to all parties including perceived recalcitrance from water users; perceived botched implementation from government; and failing on political commitments. There are concerns that these timelines are unlikely to be met due to:

- **Ministerial endorsement** – The Government has not been able to provide a list of endorsed data loggers and telemetry. As such, on a technicality (that endorsement is required under the regulations), all water users will become non-compliant by default if this list is not provided.
- **Lack of water for calibration** – In order to verify the meters in-situ requires water to calibrate them. On a practical note, given extreme drought conditions, there simply isn't the water to calibrate the meters. As such, if it does not rain significantly and there remain 0% water allocations across much of the Murray-Darling Basin (as is expected), it will not be possible to test the meters on the ground. There also remains a lack of agreed methodology for in-situ testing.
- **Lack of guidance on *in situ* accuracy methodologies** – water users and Duly Qualified Persons are still waiting for guidance on methodologies to test existing meters *in situ*.
- **The pattern approval process has been slow and uncertain** – The pattern approval process is yet to deliver a suite of meters that satisfy all conditions (particularly large users). Furthermore, with existing wait times of 13 weeks (plus install) the December 1, 2019 timeframe is already at risk.
- **Duly Qualified Persons** – With approximately 100 days until the requirements come into effect, it is physically not possible for the number of Duly Qualified Persons to install the volume of meters required.
- **Changes to technical specifications** have caused feelings of uncertainty and water users have held off upgrading again as a result of uncertainty. This is particularly pertinent to telemetry where the Regulations and approved devices is still evolving.

NSWIC is hesitant to call for a broad extension to the timeframes as this is not aligned with the position held by many water user organisations that highly value the timely need for improved metering. However at this stage, on a practical note, it is not realistic for the timeframes to be met, and an extension may be necessary. It is critical that any extension is accompanied by a commitment (and interim mechanism) that water users are actively progressing to move forward to meeting the requirements. Clear communication from Government will become critical, including the justification for any delays.

Recommendation: At a minimum, by 1 December 2019, ensure that all Water Access Licence (WAL) holders have had an initial meeting with a Duly Qualified Person, or have had their paperwork assessed, to ensure that progress is made towards meeting the new requirements.

Recommendation: Council recommends the telemetry requirements deadline be extended to December 1, 2020. A lack of approved telemetry devices, a single



approved network and legacy customer and licencing systems will deliver a superficial solution with little redeeming value in terms of compliance or river operations. Mandated data loggers and tamper evident seals will ensure data security on-site, delivering a significant improvement in compliance and regulation. A revised deadline will enable more telemetry devices and networks to be approved, legacy systems to be developed to capitalise on the real-time data thus delivering a more enduring solution.

Real time live metering information

A further issue relates to the accessibility of the data by WAL holders. NSWIC is concerned that the new requirements result in WAL holders not having access to the information in a timely manner. If WAL holders cannot access the data, it negates the benefit to them. There was a commitment in the original regulations that WAL holders would own the information coming from the telemetry systems. This commitment that water users would not go backwards in terms of their data access must be adhered to.

NSWIC recommends the Taskforce establish an authorisation process for third-party data providers. Council is keenly aware of the need for data security and third parties would need to demonstrate adequate security to avoid data breaches. The evolving nature of the Telemetry Regulations risk water users adopting hasty solutions with little enduring value.

Greater clarification is required for why data loggers are required where telemetry is currently in place with the data already being logged by WaterNSW in real time. This is seen as a duplication, and unnecessary cost.

Recommendation: It is critical that water users maintain their data ownership. Given that the source of truth is the data logger – the parameters for data acquisition should be flexible to enable WAL holders to access information within current arrangements.

Recommendation: The Taskforce establish an authorisation process for third-party data providers.

Upfront cost of installation

Redundancy

NSWIC notes that the redundancy of recently installed metering systems (data loggers and telemetry) and consequent need to again install new metering systems due to the changing requirements, causes an unnecessary additional cost burden on water users. The metering systems which have been recently installed by water users was done so in good faith to be compliant with new standards in a timely manner. However, water users have expressed frustration that the ad-hoc and piecemeal approach by Government will now result in financial burden on water users again having to install new systems.



Government funding

NSWIC members strongly recommend financial assistance in order to implement the Metering Framework. NSWIC wishes to highlight that much of the reason for upgrading the metering framework is to foster increased public confidence in water management and compliance, following years of inadequate regulatory action through the various Government departments. Following from the *Matthews Inquiry*, responsibility and cost now shifts to water users. Whilst that motivation for public confidence is highly supported by industry, in terms of cost, it must be recognised that this framework is largely for the public interest and not for the benefit of the individual irrigation farmers bearing the cost. This should be paramount in cost arrangements.

NSWIC understands that the Federal Government has a budget allocated for ensuring compliance with AS4747 but understands that this has not yet been delegated to the NSW Government.

NSWIC seeks further information on:

- Where the funding process stand at present, and what is the process for ensuring all eligible license holders can access this benefit?
- Why the funding is only for the Northern Basin, when this is a state-wide framework?

The lack of supply on the market, and lack of market competition are going to be a large constraint on reducing costs.

With the prevailing drought many farmers are under financial stress and government grants to assist with installation will be welcome.

Ownership

NSWIC members have divergent views on the hand back of Government owned water meters. What is agreed is that forcing users to take a meter that is not currently compliant, or unable to be made compliant by the relevant roll out date, is inappropriate and unacceptable.

Water users were of the expectation that the government-owned meters (which were only relatively recently installed) were state-of-the-art and would be able to meet the standard for a number of years into the future. Water users participated based on the understanding that the new Government owned meters, installed in replacement of their own existing meters, was a long-term measure.¹

NSWIC notes that the 'transfer scheme' is intended be founded on principles of voluntary participation, yet, it is highly unlikely there will be voluntary participants given the situation.

Users with a Government owned meter should have that site verified by a DQP at the cost of the Government to ensure it will meet all requirements including telemetry. Once this process

¹ Note: Under Variation Number 2 to Project Schedule 6 of the Water Management Partnership Agreement Between the Commonwealth and New South Wales for the NSW Metering Project: B.3.1. "The State agrees that: a. the State will appoint a contractor or contractors to install water meters throughout the New South Wales Murray-Darling Basin, with ownership of the new meters being retained by the State and Water NSW.



is complete the site can be handed to the user, the user could elect to pursue other metering paths at their own discretion, however this process should be voluntary.

Recommendation: All meters, telemetry and data loggers be made fully compliant prior to any proposed transfer of ownership.

Recommendation: Ensure that any plan for the transfer of ownership is developed with water users (not just consultation at a later stage). It is critical that the plan is practical when implemented, and this requires drawing from the practical knowledge held by water users who are required to operate the meters (and who will be most impacted if the plan is impractical).

Recommendation: Water users request a refund of costs incurred from the Government-owned meters, particularly of the depreciation component of the fees.

Conclusion

We hope this feedback and the recommendations are valuable in the ongoing implementation and refinement of the new Metering Framework.

Please do not hesitate to be in contact if you have any questions or require any further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'W. S. Smith'.

NSW Irrigators' Council