



NSWIC
NEW SOUTH
WALES
IRRIGATORS'
COUNCIL

PO Box R1437
Royal Exchange NSW 1225
Tel: 02 9251 8466
Fax: 02 9251 8477
info@nswic.org.au
www.nswic.org.au
ABN: 49 087 281 746

Submission

Productivity Commission

National Water Reform - Draft Report

27 October 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 system. 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 on behalf of 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 to the Productivity Commission's draft report on the *Review of the National Water Reform*. However, 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 may deem relevant.

Overview

The NSW Irrigators' Council (NSWIC) welcomes the opportunity to provide further input to the Productivity Commission's Review of the National Water Reform.

NSWIC is encouraged that the Commission's draft report acknowledges the significant progress that Australia has made over the last 20 years in its water reform process. Further, we are pleased that the Commission has taken into consideration a range of issues that NSWIC has raised in its previous submission to the Commission and has acknowledged the gains that have been made in the management and allocation of water resources, water trading and pricing.

However, NSWIC reiterates that irrigators and rural communities suffer from a significant reform fatigue and as such the Council considers it to be critical that time is taken to solidify accomplished gains from the National Water Initiative (NWI) and through the Murray-Darling Basin Plan (in particular around the monitoring of environmental benefits from the Commonwealth environmental water recovery efforts). Further efforts to pursue the NWI should focus on areas where rollout has not been as consistent with the Murray-Darling Basin.

Overall, NSWIC is supportive of the draft recommendations put forward by the Productivity Commission, even though we believe some draft recommendations will require further review. For those areas that warrant further investigation, NSWIC has provided additional comments.

Please find below NSWIC's summary of responses to the Productivity Commission's draft recommendations:

Summary of responses to draft recommendations

Draft Recommendation from Productivity Commission	NSWIC Response
<p>DRAFT RECOMMENDATION 3.1 State and Territory Governments should ensure that entitlement and planning reforms are maintained and improved. Priorities are:</p> <ol style="list-style-type: none"> a. Western Australia and the Northern Territory should establish statutory based entitlement and planning arrangements that provide for water access entitlements that are long term, not tied to land, and tradeable b. State and Territory Governments should ensure that water entitlement and planning arrangements explicitly incorporate extractive industries, such as by ensuring entitlements for extractive industries are issued under the same framework that applies to other consumptive users unless there is a compelling reason otherwise c. State and Territory Governments should develop a process to regularly assess the impact of climate change on water resources. Where this is considered to have been significant and detrimental, they should ensure that the next water plan review fundamentally reassesses the objectives of the plan (including environmental and consumptive) and the consequent balance between environmental and consumptive use of water, to ensure it is suited to a drier climate d. State and Territory Governments should ensure that, as water plans reach the end of their planning cycle, suitable review processes are undertaken that allow optimisation of water use and system operation across all users, include explicit consideration of Indigenous cultural values and involve adequate community and stakeholder engagement e. State and Territory Governments should ensure that their entitlement frameworks can incorporate alternative water sources, such as stormwater, wastewater, and managed aquifer recharge, so they do not present a barrier to efficient investment in these supply options. <p>Australian, State and Territory Governments should revise relevant provisions in the National Water Initiative to align with recommendations 3.1(b) to 3.1(e).</p>	<p><u>Draft Recommendation 3.1</u></p> <p>b – strongly agree c – NSW is required to take into consideration extreme events in their development of the WRPs. d - agreed e – NSWIC has concerns about managed aquifer recharge and seeks further information.</p>
<p>DRAFT RECOMMENDATION 3.2</p> <p>State and Territory Governments should ensure that:</p> <ol style="list-style-type: none"> a. Indigenous cultural objectives are explicitly identified and provided for in water plans, and progress in achieving Indigenous cultural objectives is regularly monitored and publicly reported on a. there is public reporting of how Indigenous cultural objectives have been considered in the management of environmental water — both held and planned. 	<p><u>Draft Recommendation 3.2</u></p> <p>It is NSWIC’s policy that the Council recognises and supports the traditional and cultural uses of water by Aboriginal people and that access to water for commercial use is based on attainment through the existing market.</p>
<p>DRAFT RECOMMENDATION 3.3</p> <p>Where State and Territory Governments provide access to water for Indigenous economic development they should:</p> <ol style="list-style-type: none"> a. source water within existing water entitlement frameworks, such as by purchasing water on the market or as part of transparent processes for releasing unallocated water b. ensure adequate supporting arrangements (such as training and business development) are in place to enable Indigenous communities to maximise the value of the resource c. involve Indigenous communities in program design d. ensure future governance arrangements are specified and implemented. <p>Australian, State and Territory Governments should revise relevant provisions in the National Water Initiative to align with recommendations 3.3 (a) to 3.3 (d).</p>	<p><u>Draft recommendation 3.3</u></p> <p>a – strongly agree b – NSWIC seeks further information around the funding for these arrangements c – agreed d – NSWIC seeks further detail.</p>

DRAFT RECOMMENDATION 4.1

Australian, State and Territory Governments should maintain trade reforms to date and improve arrangements to facilitate open and efficient water markets.

Priorities are:

- a. State and Territory Governments should remove those residual trading rules, policies (whether or not explicitly stated) and other barriers that prevent water being traded, or otherwise transferred, between the irrigation and urban sectors
- b. the Australian Government should commission an independent review of the effectiveness and efficiency of service standards for trade approvals. The review should consider whether the standards should require shorter approval times
- c. the role of governments in providing water market information should be focused on ensuring the quality and accessibility of basic trading data. In fulfilling this role, State and Territory Governments should improve the quality and accessibility of trade data in water registers.

Australian, State and Territory Governments should revise relevant provisions in the National Water Initiative to align with recommendation 4.1 (a).

Draft recommendation 4.1

- a – NSWIC seeks further information
- b. Agreed
- c. Agreed

DRAFT RECOMMENDATION 5.1

Australian, State and Territory Governments should ensure that their policy frameworks provide for the efficient and effective use of environmental water to maximise environmental outcomes, and where possible, provide additional community outcomes relating to water quality, Indigenous values, recreation and economic benefits.

Australian, State and Territory Governments should enhance the National Water Initiative to align with this recommendation.

Draft recommendation 5.1

NSWIC strongly agrees.

DRAFT RECOMMENDATION 5.2

State and Territory Governments should ensure the management of environmental flows is integrated with complementary waterway management at the local level.

To achieve this:

- a. State and Territory Governments should ensure that consistent management objectives for rivers, wetlands and floodplains govern the use of environmental water and complementary waterway management activities
- b. where possible, one planning process should be used to set objectives for both activities, but if not, State and Territory Governments should ensure planning at the local level is aligned and coordinated. Planning processes should also provide explicitly for other public benefit outcomes where these are compatible with environmental outcomes.

Australian, State and Territory Governments should enhance the National Water Initiative to align with recommendations 5.2 (a) and 5.2 (b).

Draft Recommendation 5.2

- a. Agreed.
- b. Agreed.

DRAFT RECOMMENDATION 5.3

Where governments own significant environmental water holdings, they should ensure that decisions on the use of the holdings are made by independent bodies at arm’s length from government.

The Australian and New South Wales Governments should review current governance arrangements for held environmental water to ensure holdings are managed:

- a. independently of government departments and political direction
- b. by statutory office holders with an appropriate range of expertise.

Australian, State and Territory Governments should enhance the National Water Initiative to align with this recommendation.

Draft Recommendation 5.3

- a. Agreed.
- b. Agree in principle.

DRAFT RECOMMENDATION 5.4

Australian, State and Territory Governments should ensure there are clear roles and responsibilities for managing environmental water in shared resources, with no duplication.

Consistent with this principle, The Living Murray program should be disbanded as there is no clear rationale for its continued existence in the context of the Murray Darling Basin Plan. Each Basin jurisdiction should manage its share of former Living Murray entitlements as part of its broader portfolio of held environmental water. The Murray Darling Basin Authority should complete the divestment of its holdings.

Draft recommendation 5.4

NSWIC agrees in principle but would like to have further information around the TLM program.

DRAFT RECOMMENDATION 5.5

Where capable partners are available, Australian, State and Territory Governments should devolve the use of held environmental water to the lowest practical level, consistent with the principle of subsidiarity.

Australian, State and Territory Governments should enhance the National Water Initiative to align with this recommendation.

Draft recommendation 5.5

NSWIC strongly agrees.

DRAFT RECOMMENDATION 5.6

Australian, State and Territory Governments should improve monitoring, evaluation, auditing and reporting to demonstrate the benefit of allocating water to the environment, build public trust in its management, keep managers accountable and make better use of environmental water over time.

Priorities are:

- a. Australian, State and Territory Governments should increase their focus on monitoring environmental and other public benefit outcomes — not just flow delivery — where additional effort would be commensurate with the risk to, and value of, those outcomes
- b. monitoring and evaluation should involve collaborative and complementary partnerships, consistent methods that enable the synthesis of outcomes across different temporal and spatial scales, and long term investment. In the Murray Darling Basin, governments should develop a strategy to coordinate monitoring and evaluation of the outcomes of environmental flows, both planned and held
- c. all managers of environmental flows should publicly report on whether outcomes have been achieved or not, and the reasons why
- d. Australian, State and Territory Governments should establish arrangements for independent auditing of environmental flow outcomes to support transparency
- e. managers of held environmental water should use the results of monitoring, evaluation and research to improve water use as part of an adaptive management cycle. To achieve this, managers should clearly allocate responsibility and provide adequate resourcing for adaptive management.

Australian, State and Territory Governments should enhance the National Water Initiative to align with recommendation 5.6 (e).

Draft recommendation 5.6

- a. Strongly agree
- b. Agreed.
- c. Agreed.
- d. Agreed.
- e. Strongly agree

DRAFT RECOMMENDATION 7.1

State and Territory Governments should ensure the delivery of government owned irrigation infrastructure services is underpinned by full cost recovery and economic regulation that is proportionate to the scale of the regulated service.

Priorities are:

- a. any terms of reference issued to the Queensland Competition Authority by the Queensland Government for advice on the pricing of irrigation infrastructure services should be aligned to the National Water Initiative Pricing Principles. The reason(s) for any Government decision to diverge from price recommendations based on those principles should be published
- b. the Western Australian Government should amend the role of the Economic Regulation Authority (ERA) so that irrigation bulk water customers can request the ERA to review the infrastructure prices and / or services proposed by Water Corporation (WA) as part of bulk water supply contract negotiations
- c. the Tasmanian Government should amend the role of the Office of the Tasmanian Economic Regulator (OTTER) so that irrigation bulk water and distribution customers of Tasmanian Irrigation can request OTTER to review the infrastructure prices and / or services of Tasmanian Irrigation
- a. d. an equitable share of the cost of any price review requested by users should be treated as a regulatory cost and passed through to users at the discretion of the bulk water supplier in Western Australia and Tasmania.

Draft recommendation 7.1

NSWIC requests further information.

DRAFT RECOMMENDATION 7.2

Relevant jurisdictions should ensure that the cost of River Murray Operations (RMO) are recovered from water users. RMO costs should also be subject to a periodic independent review. Specifically:

- a. South Australia should pass through RMO costs to bulk water entitlement holders
- b. RMO should be subject to transparent and independent five yearly efficiency reviews overseen by the economic regulators in New South Wales, Victoria and South Australia. The next review should be completed by 31 December 2019.

Draft recommendation 7.2

- a. Agreed.
- b. Strongly agree.

DRAFT RECOMMENDATION 7.3

Governments should not provide grant funding for irrigation infrastructure, or that part of infrastructure, that is for the private benefit of irrigators. Rather, Australian, State and Territory Governments should ensure that:

- a. National Water Initiative-consistent water entitlements and planning are in place before any new irrigation infrastructure is considered (including infrastructure being financed under the Northern Australian Infrastructure Facility)
- b. government grant funding is limited to those projects, or parts of projects, delivering a public good. Any grant funding should be subject to an independent analysis of the project being completed and available for public comment before any government announcements on new infrastructure are made. The analyses should establish that the project will be:
 - environmentally sustainable
 - economically viable and deliver public benefits that are at least commensurate with the grant funding being provided
- c. government financing (such as loans) for infrastructure generating private benefits should only be provided after:
 - an independent assessment has confirmed the finance can be repaid on commercial terms. The assessment should be released for public comment before any announcement on new infrastructure is made
 - robust governance arrangements have been put in place to deliver merit based decision making and the ongoing monitoring of (and public reporting on) the government's investment
 - sufficient water entitlements have been sold to reduce the project's risk profile and provide assurance the finance will be repaid.

Australian, State and Territory Governments should enhance the National Water Initiative to align with recommendations 7.3 (a) to 7.3 (c).

Draft recommendation 7.3

NSWIC holds concerns about this recommendation and seeks further information.

DRAFT RECOMMENDATION 8.1

Australian, State and Territory Governments should:

- a. identify the key knowledge and capacity building priorities needed to support the ongoing implementation of the National Water Initiative (including the revisions and enhancements recommended in this report)
- b. develop mechanisms through which the jurisdictions can work cooperatively and share knowledge to build overall capability and capacity.

Australian, State and Territory Governments should update relevant provisions in the National Water Initiative to align with recommendations 8.1 (a) and 8.1 (b).

Draft recommendation 8.1

- a. Agreed.
- a. Agreed.

DRAFT RECOMMENDATION 8.2

Where Governments consider there are significant and rapid adjustment issues affecting communities as a consequence of water reform, the response should:

- a. avoid industry assistance and subsidies
- b. consider all the factors impacting on the community (not just water reform)
- c. target investment to developing the capacity of the community to deal with the impacts of structural adjustment
- d. be subject to monitoring and publicly reported evaluation of outcomes.

Australian, State and Territory Governments should revise relevant provisions in the National Water Initiative to align with recommendations 8.2 (a) to 8.2 (d).

Draft recommendation 8.2

- a. Agree with some conditions.
- b. Strongly agree.
- c. Strongly agree.
- d. Strongly agree.

DRAFT RECOMMENDATION 9.1

Australian, State and Territory Governments should recommit to a renewed National Water Initiative through COAG by 2020. This should:

- a. maintain the achievements in water entitlements and planning, water markets, water accounting, water pricing and governance, knowledge and capacity building, and community engagement delivered by the current National Water Initiative as the key foundations underpinning sustainable water resource management and efficient infrastructure service delivery
- b. revise a number of policy settings:
 - incorporating extractive industries and alternative water sources into water entitlement frameworks
 - water planning to take account of climate change and enable ongoing optimisation
 - Indigenous access to water for economic purposes
 - arrangements for water trading between irrigation and urban sectors
 - better targeted adjustment assistance
- c. significantly enhance policy settings relating to:
 - urban water management to ensure innovative and efficient provision of services in the future under the combined pressures of population growth and climate change
 - environmental water management to ensure maximum return on government investment in this area
 - decision making on building and supporting new infrastructure for agriculture.

Draft recommendation 9.1

Please see comments above.

DRAFT RECOMMENDATION 9.2

In developing the renewed National Water Initiative, Australian, State and Territory Governments should:

- a. consult with relevant stakeholders, including by establishing an Indigenous working group to provide advice on the development of relevant provisions
- d. ensure that progress with implementing a renewed National Water Initiative continues to be independently monitored and reported on every three years.

Draft recommendation 9.2

- a. Agreed
- b. Agreed.

SPECIFIC COMMENTS

In addition to the summary responses provided above, NSWIC would like to provide the following comments to the Productivity Commission:

Commonwealth Government's Environmental Water Recovery

(relevant for: draft recommendation 7.1, 7.3 and 5.2)

NSWIC has reservations about the conclusion reached by the Productivity Commission about the Commonwealth's Government environmental water recovery method. The Council disagrees with the Commission's assessment that "*purchases of water entitlements have proven to be a more cost-effective means of recovering water for the environment compared to government infrastructure modernization and water efficiency initiatives*".

The Council considers this assessment to be flawed on two grounds:

- Direct water entitlement purchased by the Commonwealth Government has caused negative social and economic impacts in many parts of the Murray-Darling Basin. The transfer of productive water from agricultural producers to the environment not only has had an impact on food and fibre production in NSW, but also impacted water market prices and led to a 'swiss cheese' effect within the irrigation infrastructure operators. The Productivity Commission's assessment fails to recognise the benefits of infrastructure investment – in particular the retention of productive capacity of the irrigation industry that underpins regional communities.
- While the Productivity Commission suggested that State and Territory governments should ensure the management of environmental flows to be integrated with complementary waterway management at a local level (draft recommendation 5.2), the above comment on environmental water entitlement purchases fails to acknowledge that complementary measures could – if well targeted – provide greater and more enduring environmental benefits than direct environmental water recovery by the Federal Government. The single focus on *flows* under the Water Act 2007 (Cth) and the Basin Plan 2012 continues to frustrate the Council and its members, because it does not include the full range of measures that could be implemented to achieve the Basin Plan environmental objectives.

Additionally, NSWIC does not concur with the Commission's suggestions that the purchase of water entitlements is a "*more equitable approach to recovering water for the environment*" compared with water efficiency programs. As both environmental water recovery mechanisms – direct entitlement purchases and infrastructure investment – transfer entitlements to the Federal Government, NSWIC cannot see that there is an equity issue between the two approaches.

Cost-reflective Pricing

While NSW has achieved cost-reflective pricing for regulated water charges in the NSW inland valleys (with exception of the Peel), the same does not hold true for the NSW coastal valleys and/or for NSW water management charges recovered by NSW Crown Lands and Water Division (formally DPI Water):

- Due to the small number of regulated system licence holders on the NSW coast, the Independent Pricing and Regulatory Tribunal has acknowledged that 'full cost recovery' is not feasible in the NSW North and South Coast valleys. Similarly, NSWIC believes the Productivity Commission should acknowledge that 'full cost recovery' is not achievable in every instance, for example, in cases where there is small number of licence holders and large infrastructure costs or where the previous investment has not been prudent and efficient. In these circumstances, the achievement of full cost recovery would only be feasible

at significant adverse local social and economic costs and as such, a different approach should be aspired to.

- As water access licence holders, irrigators are an easily identifiable target for water charges. However, not all costs currently recovered from irrigators should be attributed to them. There are a range of water users (i.e. the state environmental water holders) and other beneficiaries (tourism and recreational fishing) who either create costs for the river operator or derive benefits from the water management activities which they currently do not pay for. NSWIC contends that this does not align with the definition of 'cost-reflective' pricing and should be addressed. As the Commission may be aware, NSWIC has raised this issue on multiple occasions with the NSW Independent Pricing and Regulatory Tribunal (IPART) in the pricing reviews for WaterNSW and DPI Water (now Crown Lands and Water).

NSWIC proposes the Productivity Commission affirms that these two issues warrant further investigation.

Consideration of Climate Change

(relevant for: draft recommendation 3.1)

While NSWIC does not in-principle reject draft recommendation 3.1., the Council would like to raise the point that the Murray-Darling Basin Plan already requires the Basin States, in their preparation of the Water Resource Plans, to take 'extreme events' into consideration.

In order to fulfil the requirements of the Commonwealth Water Act 2007 and the Basin Plan 2012 (section 10.51), each NSW Water Resource Plan must describe how water resources in the WRP plan area will be managed during:

- an extreme dry period;
- a water quality event that renders water acutely toxic or locally unusable; and
- any event that has resulted in the suspension of a plan in the last 50 years.

Water Resource Plans must also set out how critical human water needs will be met during such events. Critical human water needs are defined under s.86A(2) of the *Water Act 2007* (Cth) as:

"... the needs for a minimum amount of water, that can only reasonably be provided from Basin water resources, required to meet:

- *core human consumption requirements in urban and rural areas; and*
- *those non-human consumption requirements that a failure to meet would cause prohibitively high social, economic, or national security costs."*

The new Water Resource Plans are also required to explain how **consideration** will be given to managing water resources differently if new scientific information indicates that there is an increased likelihood of an extreme event occurring. However, at this stage, there is no clear guidance of what constitutes an 'extreme dry period'.

Under the current section 49A of the *Water Management Act 2000*, the NSW Minister can suspend a Water Sharing Plan (or parts of it) and introduce alternate water sharing arrangements during periods of severe water shortage. This section of the Act was used during the 'millennium drought' to allow more flexible water sharing arrangements to be put in place between consumptive water users and the environment, and between consumptive water users themselves.

In conclusion, as the circumstances surrounding extreme events - particularly extreme dry periods - can vary greatly from event to event and from river system to river system, so any attempt to prescribe or 'hard wire' differing water sharing responses into a statutory plan isn't feasible. It is simply not possible to develop water sharing rules for extreme circumstances now and expect those

rules to meet the community's water sharing requirements or expectations many years later (especially if we do not know what we are dealing with).

NSWIC considered that a better approach would be to establish a narrative in the contextual part of each water resource plan which describes how existing rules in the water sharing plan already meet some of these requirements; how sections of the *Water Management Act 2000* can be used; the types of factors that will be taken into consideration when using those sections; the decision making and public communication processes; and the water sharing goals during such events. This section will also need to discuss how changes in scientific information about extreme weather events will be taken into consideration in the future management of water resources.

NSWIC suspects that similar arrangements can be instituted for other Water Resource Plans in other jurisdictions.

In response to the Productivity Commission's draft report, NSWIC suggests that the above-mentioned approach is adequate to address concerns about 'extreme events' and 'climate change'.

Water Planning Framework

(relevant for: draft recommendation 3.1)

NSWIC welcomes the Commission's findings that entitlement planning reforms have provided economic benefits and promoted certainty. This certainly aligns with the experiences of our members. Also welcomed is the finding that acknowledges improved environmental outcomes from entitlement planning reforms. This presumes of course, that the benefits of environmental improvements will take some time to be fully realised.

Furthermore, the Commission's recommendations regarding the incorporation of extractive industries into the entitlement and pricing arrangements are also welcomed by NSWIC and its members, who have long argued that these industries should not sit outside the current water management framework.

Aquifer ReInjection

(relevant for: draft recommendation 3.1)

As outlined in NSWIC's response to the Productivity Commission's Issues Paper, 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 3rd party impacts' through management of water resources – including negative water quality impacts through management of water. The cost-benefit analysis of any aquifer reinjection proposal must also take into account the significant energy costs of redrawing injected water for use.

Indigenous-Cultural Water Issues

(relevant for: draft Recommendation 3.2 and 3.3)

As raised in our previous submission to the Productivity Commission, NSWIC would like to refer the Commission to the recognition of indigenous values in the NSW Water Sharing Plans and the MDBA developed tools to allow indigenous communities to assess cultural values of water. NSWIC is of the view that both initiatives have gone some way to addressing indigenous-cultural issues.

In relation to the Water Resource Plans, Basin States are required under the Basin Plan to 'have regard' to indigenous views on cultural flows. Part 14 of the Basin Plan sets out the requirements of a Water Resource Plan for dealing with indigenous values and uses, including the requirement to have regard to cultural flows.

Specifically, section s. 10.54 requires that:

“A water resource plan must be prepared having regard to the views of Indigenous people with respect to cultural flows.”

NSWIC and its members look forward to working with the State Government and indigenous communities on how their views with respect to cultural flows can be considered in the development of the Water Resource Plans.

Further, in response to the Commission’s draft recommendation 3.3, NSWIC would like to direct the Commission to NSWIC’s 2002 policy motion on indigenous water issues:

“NSWIC recognises and supports the traditional and cultural uses of water by Aboriginal people and that access to water for commercial use is based on attainment through the existing market”.

NSWIC supports the Commission’s draft recommendation that access to water for indigenous economic development should be sourced from water within the existing water entitlement frameworks (i.e. the purchase of water on the market). Should the State and Federal Governments aspire to purchase entitlements for indigenous communities to advance their economic development, then it must be assured that the characteristics of any of these entitlements maintain the same characteristics as those of the original water entitlement. Additionally, it must be assured that these licences are subject to the same water pricing framework as entitlements for all other water licence holders in the State or Territory.

In relation to draft recommendation 3.2, NSWIC suggests the Commonwealth and State environmental water holders should liaise with indigenous communities around potential synergies between cultural and environmental objectives and outcomes. This suggestion is informed by the view that environmental watering activities may – in some instances - align with the water demands targeted at cultural or spiritual significant sites as suggested by the Productivity Commission in its Issues Paper.

In conclusion, NSWIC would like to seek further information around the Commission’s draft recommendation 3.3 (b) and 3.3 (d). Specifically, we would like to understand how the Commission envisions any supporting arrangements to be funded.

Water Markets and Trade

(relevant for: draft recommendation 4.1)

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 costs for water trade and the completion of trades and trade registrations as quickly as feasible.

However, NSWIC also recognises that some restrictions such as caps on Inter Valley Transfers are necessary to match trade or transfer volumes to available resources for delivery (i.e. Murrumbidgee IVT account) and not erode the reliability of future water delivery to irrigators in those valleys. Also, NSWIC would like to see further information from the Commission on the residual trading rules, policies and other barriers that prevent water being traded between the irrigation and urban sector.

We direct the Productivity Commission to NSWIC’s previous submission to the Issues Paper for further information on NSWIC’s position on water markets and trade.

Public Access to Licence Holders Water Holdings and Trade Information

NSWIC would like to put on record that there have been several calls following the recent ABC 4 Corners program 'Pumped' to further develop information to allow the public access information on individual licence holdings and water trading. Such information would go well beyond the information available in relation to information provided to the public by the ASX in relation to equities. As raised in our response to the Matthews' Inquiry, NSWIC considers this to be a significant overreach that would reveal commercial in confidence information and potentially open Access Licence Holders up to interference in the water marketplace or harassment by parties opposed to irrigation. NSWIC is in favour of an open and transparent water market, but not at the expense of licensee privacy in relation to trading activities. NSWIC would welcome the Productivity Commission to raise these concerns in its final report.

Trade of Commonwealth Environmental Water Holder

With the growth in the Commonwealth Environmental Water Holder's water entitlement portfolio, NSWIC and its members have a keen interest in section 4.6 of the Productivity Commission's draft report. NSWIC has, in conjunction with other representative bodies, strongly supported the capacity of the Commonwealth Environmental Water Holder (CEWH) to trade (both entitlements and allocation) to manage the Commonwealth's environmental water portfolio and to achieve environmental outcomes. NSWIC acknowledges that despite the amendments to the Commonwealth Water Act 2007 (Cth) section 106, the CEWH continues to be restricted in its trading options.

However, NSWIC is pleased that the CEWH has recently released a discussion paper on the development of a framework for investing in environmental activities. NSWIC intends to make a submission to the paper supporting the use of *trade* as an environmental water management tool to achieve cost-effective, enduring and efficient environmental outcomes. NSWIC long held the view that trade will be an important tool to optimise the CEWH's environmental water portfolio holdings and fund complementary measures.

Once finalised, NSWIC will direct the Productivity Commission to NSWIC's submission to the CEWH's investment framework discussion paper.

Environmental Water Management

(relevant for: draft recommendation 5.1 – 5.3)

As NSWIC stated in its response to the Productivity Commission's Issues Paper, NSWIC strongly supports the notion that all environmental water should be managed and delivered for maximum efficiency and effectiveness. As such, NSWIC supports the Commission's draft recommendation 5.1.

However, given the early stage of Basin-wide environmental water management, it is simply not possible to fully assess the impacts or efficiency of environmental watering. NSWIC believes such an assessment could take years to be effectively assessed.

Having said this, NSWIC reiterates that there may be inefficiencies around measuring and monitoring environmental impacts from environmental watering activities. NSWIC believes more could be done to record successes and failures of environmental watering events as this information will be critical to develop strategies around future environmental watering.

In relation to this point, NSWIC welcome the Commission's comments and recommendations around bottom-up management and integration of waterway management. Local knowledge will be critical to achieve the targets of the Water Act 2007 and the Basin Plan 2012. Our members consistently express concern about turnover of staff dealing with environmental water planning.

In this regard, there is substantial benefit to be gained for the environment in working closely with private landholders and locals who understand the behaviour of waterways, including how water could be used to improve ecological outcomes. Draft recommendation 5.5, which considers the devolution of the use of environmental water to the lowest practical level, is consistent with the philosophy of localism; it is supported by NSWIC and other representative bodies and consistent with our policy.

In conclusion, NSWIC would be interested to receive further information on draft recommendation 5.4 – the recommendation to disband the TLM programs.

Murray-Darling Basin Cost Pass-through

(relevant for: draft recommendation 7.2)

NSWIC is pleased that the Commission raised the issue of transparency around the Murray-Darling Basin Authority pass-through costs. NSWIC is of the view that there is no adequate regulatory oversight or transparency of the veracity of these charges or how these costs are built up.

MDBA cost pass-through is not formally recognised as ‘regulated water charges’ pursuant to section 91 of the Water Act 2007 (Cth). They therefore fall outside the remit of the Water Charge (Infrastructure) Rules 2010 and the ACCC’s pricing principles. As a consequence, they are also outside the jurisdiction of the Independent Pricing and Regulatory Tribunal in its assessment of regulated water charges in NSW. NSWIC considers this a significant regulatory gap that needs to be addressed.

In 2017, WaterNSW proposed to pass through MDBA (and BRC) charges to users of around \$61.65 million over the four years of the 2017 determination period. The MDBA payments represent a significant proportion of the total customer share Notional Revenue Requirement (in the NSW Murray and Murrumbidgee valleys) – these costs represent 69% and 22% of total proposed customer share Notional Revenue Requirements for the Murray and Murrumbidgee valleys, respectively.

For the 2017 determination of WaterNSW’s regulated water charges, IPART instructed consultant Aither to conduct a high-level review of MDBA expenditure and cost sharing arrangements in NSW. Aither found that the MDBA was generally able to *explain* its processes for promoting prudence and efficiency, however Aither also stated that WaterNSW’s expenditure could not be applied to MDBA’s costs as WaterNSW applies different processes to manage its own assets relative to the management of MDBA assets.

Aither noted its findings **should not be considered as a definitive assessment that MDBA expenditure is prudent and efficient.**

Further, it identified some issues with historical underspend, documentation in support of proposed expenditure, and processes for developing, refining and approving capital expenditure. Aither made a number of suggestions for improving the MDBA’s processes to ensure expenditure passed on to users was prudent and efficient:

Box 8.1 Aither's suggested improvements to MDBA expenditure development

- ▼ Clearer requirements about when a business case is required, such as a clearly established dollar value (or similar metrics) to trigger a requirement for a business case.
- ▼ Minimum requirements or standards for expenditure justification under the program, such as general requirements to clearly investigate alternative options, cost proposals to a certain confidence level, or to complete business cases with minimum requirements.
- ▼ Clearer roles and responsibilities for development and completion of business cases, including which agencies lead their development, and how these should be resourced (e.g. via WaterNSW's (and other state constructing authority's) operational expenditure within the program, MDBA operating expenditure, or otherwise).
- ▼ A greater level of rigour around justifying proposals for operating expenditure, noting the MDBA advised that significant changes in operating expenditures would be tested.
- ▼ Greater requirements placed upon WaterNSW (and other state constructing authorities) to justify (including providing documentation for) expenditures that do not require a formal business case (noting the additional resources this may require).
- ▼ Modifying the committee structure so that there is a more formal and independent review of planned expenditures (based on better documented submission).
- ▼ Placing codified requirements into the committee structures (e.g. Terms of Reference) or other governance processes to explicitly require that only demonstrably prudent and efficient expenditures are included in the annual corporate plan and budget.
- ▼ Codifying and documenting the role the MDBA plays in verifying the prudence and efficiency of planned expenditure.
- ▼ Considering modifications to the various agreements that give effect to the roles of the MDBA, WaterNSW and other state constructing authorities, to explicitly require prudent and efficient asset expenditure.

Source: Aither, *A review of MDBA expenditure and cost sharing in New South Wales*, February 2017, pp 23-26.

Aither recommended that IPART present to the NSW Government that:

- MDBA expenditure is subject to periodic independent public review, to provide much needed transparency to customers;
- The MDBA's state constructing authorities (such as WaterNSW) should be subject to incentives to out-perform historical levels of expenditure;
- Cost sharing agreements and processes within NSW need to provide a greater degree of transparency.

NSWIC would welcome these recommendations being endorsed by the Productivity Commission and to be endorsed Basin-wide. Also, NSWIC suggests that the periodic review function should be conducted by the Australian Competition and Consumer Commission as it is the appropriate body that has ultimate oversight of the Water Charge Rules.

Water Infrastructure for Agriculture

(relevant for: draft recommendation 7.3)

NSWIC, like other irrigation representative bodies, has some reservations with the Productivity Commission's draft recommendation 7.3 which concerns the provision of grant funding for irrigation infrastructure or part of infrastructure.

While NSWIC agrees that new irrigation schemes must be considered on a much more holistic basis than some older schemes, we would not want to see Government dismiss the significant benefits of irrigation development in regional and rural areas, particularly for economic and social development of communities and the growth of jobs. Irrigation infrastructure should provide an economic return on investment; however it is also critical to ensure that Australia achieves broader goals of regional development, export or even use of infrastructure to mitigate other environmental impacts.

Also, in NSWIC's view, this chapter is relevant for the development of infrastructure more broadly and we recommend that the overall framing of the chapter be expanded to include all uses, not just agricultural uses. With such an extension, NSWIC supports the Productivity Commission's recommendations, which will encourage governments to ensure that they make the upfront investment in scientific analysis required to support the long-term sustainability of projects; ensure NWI consistent water entitlements; water resource planning processes are in place; and that investment decisions are made on sound and transparent business cases.

Other NWI Elements

Measurement, Monitoring and Compliance

As the Productivity Commission's draft report indicates, recent media stories including the ABC 4 Corners program, made allegations of non-compliance or lack of compliance activity in relation to water users, particularly in the Northern Basin.

In response, NSWIC reiterates that Australia leads the way in water management globally and has for the last two decades undertaken significant reforms to ensure our precious water resources are managed sustainably. NSW has been leading Australia in water resource administration. In NSW, water take compliance is a responsibility of WaterNSW (and was previously DPI Water) and these management functions are paid for by water licence holders, the NSW Government and the Federal Government through water management charges.

According to the submission made by DPI Water, on behalf of the Water Administration Ministerial Corporations, to the Independent Pricing and Regulatory Tribunal (IPART) for the 2016 water administration charge review, IPART had allowed DPI Water to recover \$29,488,000 for compliance activities from water licence holders between 2012 and 2016. In addition to this funding, the NSW Government also received \$16,736,368 in Commonwealth Government funding to implement the Compliance and Enforcement Framework in NSW over the five years to 2016. Finally, DPI Water asked IPART to accept DPI Water's proposal to recover \$21,491,000 for compliance from water licence holders for the 2016-2021 price determination. Based on above-mentioned funding and given that the responsibility of compliance and enforcement is a regulatory responsibility of the NSW Government, water licence holders expect the compliance system to be stringent and operating effectively.

The current NSW water access licensing framework, measurement of water take, and water take compliance system, is well above international best practice, but the Matthews Inquiry Interim Report has highlighted some short-comings. NSWIC agrees that the compliance system needs to be transparent and effective and we expect the system that manages water resources in NSW to be beyond question.

NSWIC believes there must be a proactive compliance approach, that provides for safeguards that function effectively and are well accepted and supported by industry, and that meet public expectations.

NSWIC will continue to engage with Government and other organisations to ensure the effective and efficient management of our water resources, so that industry, rural communities, and the environment can continue to share and safeguard these precious resources for future generations.

In conclusion, NSWIC strongly supports the current compliance system and accurate measurement of water extraction as it is essential to protect every irrigators' property rights. NSWIC has zero tolerance for illegal take. It is a fundamental principle of the Council that all water for irrigation in NSW must be measured and water take must be able to be audited. "If you can't measure it, you can't control it" – which is the foundation of the NSW water regulation system. We expect that Crown Lands & Water or WaterNSW will regularly audit water take to ensure that the licence volumes and the provisions of those water licences are strictly adhered to.

Below are NSWIC's principles around measurement, monitoring and compliance

1. NSWIC supports as a fundamental that the accurate measurement, monitoring and ensuring of compliance with licensed water extraction in NSW is absolutely essential, based on the principle that "if we cannot measure water extraction, we cannot effectively and efficiently manage water resources across the State".
2. NSWIC believes that an efficient regulatory system for rural water extraction is transparent, based on established systems of measurement, with regular monitoring and audit of water extraction by water access licence holders, and is essential to irrigators as it ensures the protection of irrigators' property right under their water access licence.
3. NSWIC does not support any non-compliance with State water access licence conditions whatsoever. Any contravention of water access licence conditions has third party impacts on all licence holders and is condemned by NSWIC and its Members.
4. The NSW Government, through DPI Water (now Crown Lands & Water) - as the regulatory body - has the statutory responsibility and legislative powers to fulfil the regulatory functions for rural water use in NSW. DPI Water's monitoring and compliance functions are resourced through water administration fees on water access licence holders, as determined by the Independent Pricing and Regulatory Tribunal. As such NSWIC expects the Department (Division) to implement its monitoring and compliance functions stringently. NSWIC also expects that any concerns about non-compliance are thoroughly investigated by the Department (Division) through a transparent, evidence based audit and compliance process and that the legislated penalties for non-compliance are strictly applied.
5. NSWIC believes that the long-term sustainability and viability of individual irrigators, as well as the irrigation sector as a whole, depends on a properly functioning regulatory system for water extraction across NSW and expects nothing less from the NSW Government.

Further Information

For further information on the content of this submission please contact:

Mark McKenzie
CEO

Or

Stefanie Schulte
Policy Manager