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Submission

Senate Standing Committee on Rural and Regional Affairs and
Transport

The Integrity of the Water Market in the Murray-Darling Basin

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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 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 Senate Standing Committee's Terms of Reference for the *Inquiry into the Integrity of the Water Market in the Murray-Darling Basin*. However, each NSWIC Member reserves the right to independent policy in 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 respond to the Senate Standing Committee on Rural and Regional Affairs and Transport on its Inquiry into the Integrity of the Water Market in the Murray-Darling Basin.

Given the specific Terms of Reference for this Inquiry, and the context in which the Inquiry was established, NSWIC has interpreted the reference to "water market" to mean the Cap & Trade model that underpins the water management in the Murray-Darling Basin since the first introduction of the Cap in 1995.

While NSWIC's submission will concentrate on the specific Terms of Reference, we would like to leave the Committee in no doubt that NSWIC strongly supports the water market and water trade that is open, transparent, and as flexible as possible – with minimal restrictions on trade within and between connected valleys. As outlined in our response to the Productivity Commission's review of the National Water Initiative, NSWIC also strongly endorses the lowest possible transaction cost for water trade and the completion of trades and updating of trade registers as quickly as feasible.

Having settled NSWIC's position on the water markets and water trade, the Council would like to provide the following responses to the Inquiry's Terms of Reference.

Specific Comments

- **The allegations of theft and corruption in the management of water resources in the Murray-Darling Basin,**

As a guiding principle, the NSW Irrigators' Council and its Members take allegations of water theft and corruption in the management of water resources most seriously. For the avoidance of any doubt, any non-compliance with State or Federal water legislation is not tolerated by NSWIC or its Members and any contravention with water access licence conditions is condemned by NSWIC as it has serious third-party impacts on all licence holders, communities, and the environment.

However, NSWIC contends that at this point, the allegations of water theft aired by the ABC's 4 Corners programme in July 2017 remain allegations - and are yet to be proven. As the 4 Corners program has caused serious reputation damage to the irrigation industry in NSW and beyond, the Council has urged the NSW Government to expedite the thorough investigation of these allegations to provide clarity on these matters. At the point of making this submission, the matters have not been settled despite extensive assessment by Mr. Ken Matthews AO in his *Independent Investigation into NSW Water Management and Compliance* or the review of compliance being undertaken by the Murray-Darling Basin Authority. NSWIC has urged the NSW Government and the Authority to do everything possible to ensure these allegations are resolved as quickly as possible, in the interests of restoring confidence in the water take compliance system in NSW. Any unresolved allegations of illegal water take have the potential to damage the public's confidence that water management in NSW and beyond is robust and effective, and that the water take compliance system is also stringent and effective.

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 previously of DPI Water) and these management functions are paid for by water access 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 a \$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 last year requested that IPART accept its proposal to recover \$21,491,000 for compliance from water access licence holders for the 2016-2021 pricing determination. Based on above-mentioned funding, and given that the responsibility of compliance and enforcement is a regulatory responsibility of the NSW Government, water access 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 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 water 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 Water NSW will regularly audit water take to ensure that the licence volumes and the provisions of those water licences are strictly adhered to.

What is alleged to have happened in the Barwon Darling are currently being investigated, and if there are deficiencies in the regulatory system they need to be fixed immediately. In the broad the regulatory system for rural water in NSW has been very effective and irrigators, as well as the community, expect that the system will be well administered – that is what our irrigators pay for when they pay water administration charges to the Government.

The Matthews review findings clearly pointed to process failure, however the report only briefly covered the potential reasons for this occurring. NSW Government has undertaken a major reform agenda of the public service sector and as part of this process DPI Water was restructured. This "transformation" process took over 18 months - this length of uncertainty, the loss of corporate knowledge and experience of senior level management compounded the water management administration challenges within DPI Water. NSWIC requests that this Inquiry acknowledges that the allegations raised are a product of process failure, rather than systemic failure of the overall water management framework. The proposed solution has been to again restructure the organisation and split compliance from the policy and planning functions, and whilst this may provide independence of the compliance functions it is unlikely to resolve the real issue unless there is an acknowledgement by NSW Government that the cause and effect was within their control.

NSWIC principles around water extraction 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, is essential to irrigators as it ensures the protection of irrigators' property rights under their water access licences.
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 and now by the new Independent Natural Resources Regulator - as the regulatory body - had (and will have) the statutory responsibility and legislative powers to fulfil the regulatory functions for rural water use in NSW. The 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 Independent Regulator to implement its monitoring and compliance functions stringently. NSWIC also expects that any concerns about non-compliance are thoroughly investigated by the Regulator 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.

- **The investigation and public disclosure by authorities, including the New South Wales Government and the Murray-Darling Basin Authority, of reported breaches within the Murray-Darling Basin, including the Barwon-Darling Water Sharing Plan,**

As outlined in our response to the previous Term of Reference, the regulatory responsibilities, and legislative powers to monitor and audit water take and (if necessary) investigate any breaches against water access licence conditions, lies with the appropriate agency of the NSW Government.

Previously DPI Water's monitoring and compliance functions were resourced through water administration fees paid for by water access licence holders (as determined by the Independent Pricing and Regulatory Tribunal). These functions will now be managed by the Independent Regulator utilising the resources of WaterNSW compliance staff on the ground. As such NSWIC expects the stringent implementation of monitoring of compliance functions. NSWIC also expects that any concerns about non-compliance are thoroughly investigated by the Government through a transparent, evidence based audit and compliance process, and that the legislated penalties for non-compliance are strictly applied.

NSWIC submits that the 4 Corners programme has resulted in five separate reviews relating to compliance. The Council is of the view that these inquiries and reviews into compliance being conducted by ICAC, the MDBA, the Australian National Audit Office (ANAO) and the Matthews Inquiry must be completed before making further recommendation on any additional inquiries, including a protracted Royal Commission or Judicial Inquiry that could take years to complete and provide no real benefit in resolving the issues identified as contributing to the recent compliance process failures.

- **The actions of member states in responding to allegations of corruption and the potential undermining of the Murray-Darling Basin Plan,**

As detailed above, five separate inquiries have been initiated into the allegations aired on the 4 Corners programme. In addition to this Senate Inquiry, the Murray-Darling Basin Authority is currently conducting a compliance review across the Murray-Darling Basin, the NSW Government has tasked Ken Matthews AO to conduct an independent investigation into NSW water management and compliance, the NSW Independent Commission Against Corruption (ICAC) is investigating the conduct of senior officials of the NSW Government water administration, and the Australian National Audit Office (ANAO) is undertaking an audit on the effectiveness of monitoring and payment arrangements under the National Partnership Agreements. NSWIC believes the scope of these reviews is sufficient and will highlight any inefficiencies in the system. We look forward to the findings of the reviews and inquiries.

In terms of the potential of these allegations to undermine the Murray-Darling Basin Plan, NSWIC contends that there is simply no correlation. The Water Act 2007 (Cth) and the Murray-Darling Basin Plan 2012 have been signed into law and the Basin Plan is currently being implemented. The Murray-Darling Basin Plan will take effect from 2019.

- **The use of Commonwealth-owned environmental water for irrigation purposes, and the impact on Basin communities and the environment,**

As outlined in our response to the first question, NSWIC does not support any non-compliance with State and Federal water legislation whatsoever. Any contravention of water access licence conditions has third party impacts on all licence holders and is condemned by NSWIC and its Members.

The community has every right to have confidence that the water the Commonwealth Government has recovered for the environment is used for the environment and achieves environmental outcomes. For that purpose, the effective and efficient deployment of environmental water is paramount.

Water Licence Holders in NSW operate under a complex regulatory system, including Water Sharing Plans (soon to be Water Resource Plans under the Basin Plan provisions) and water access licence conditions. Water Access Licences allow for the take of water according to the rules and regulations of the relevant Water Sharing Plans (including flow heights and access restrictions). These same rules apply to the Commonwealth Environmental Water Holder as the holder of water access licences in NSW. At this point, NSWIC would also like to reiterate that since the Federal water reform process commenced, irrigators have been given the assurance that the water entitlements held by the Commonwealth as environmental water retain the same characteristics as the original entitlements - as purchased by the Commonwealth.

In conclusion, irrigators must be assured that their legitimate rights to take water are not impacted due to the simplistic approach to a very complex issue of determining what water is environmental water and what water is able to be taken by irrigators, industry and urban utilities under Water Sharing Plans - as espoused by many in the environmental lobby following the airing of the 4 Corners allegations. NSWIC emphasises for the Inquiry's attention that only 5% of the total average annual flows in the Barwon Darling system are available to irrigators and urban water utilities. Nevertheless the operator of the river systems in NSW - WaterNSW - has confirmed that in contradiction to claims that environmental water was stolen by irrigators on the Barwon Darling at the time of the allegations there were no planned State or Commonwealth controlled environmental water flows in that system.

- **The operation, expenditure, and oversight of the Water for the Environment Special Account.**

The Water for the Environment Special Account is contained within the Water Act 2007 (Cth) Part 2AA section 86AA – section 86AJ. Section 86AG of the Water Act 2007 outlines the amounts to be credited to the Water for the Environment Special Account which totals \$1.775 billion. Information about the Water for the Environment Special Account is also provided in the yearly Federal Budget Papers.

According to section 86AI of the Water Act, the Secretary of the Department of Agriculture and Water Resources is required to (as soon as practical) after 30 June each year to prepare and provide to the Minister for Agriculture and Water Resources a report on the operation of the Water for the Environment Special Account.

According to the Department of Agriculture and Water Resource website, the payments totalling \$3,985,125 were made from the Water for the Environment Special Account during 2015-16. Payments totalling \$3,979,000 were made to NSW, SA and VIC to assist the three governments to contribute to the preparation of business cases for measures that will ease or remove constraints on the movement of environmental water to the environmental assets of the Murray, Murrumbidgee, Gwydir and Goulburn Rivers.

Two payments totalling \$6,145 were made for specialist advice in the development of the Commonwealth On Farm Further Irrigation Efficiency (COFFIE) program - the program designed to recover water for the environment under the Special Account provisions.

NSWIC suggests that the transparency around the projects and programs funded under the Water for the Environment Special Account is sufficient at this stage, as the activities related to water recovery under the Account provisions are preliminary and are yet to fully commence.

In conclusion, NSWIC reiterates that it is critical that the 2750GL recovery target under the Basin Plan is completed before any consideration is given to further environmental water recovery under the 450GL 'Up-Water' provisions via the Environment Special Account provisions. Given the significant social and economic impacts of the existing environmental water recovery found by the Murray-Darling Basin Authority's research in the Northern Basin Review, NSWIC suggests that the 450GL cannot proceed without significant further social and economic hardship - counter to the specific provisions in the Basin Plan that the additional 450GL of 'Up Water' can only be recovered if the social and economic effects are neutral or positive.

NSWIC maintains that as MDBA and independent social and economic analysis to date demonstrates very significant and negative social and economic impacts on Basin communities through previous water recovery, further recovery of 'Up Water' cannot happen without contravening the specific requirements of the Basin Plan legislation. Therefore, NSWIC does not wish to provide further comment on the operation and expenditure of the Water for the Environment Special Account.

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