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SUBMISSION

Water Reform Action Plan and Draft Exposure Bill

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Introduction

The NSW Irrigators' Council (NSWIC) is the peak body representing irrigators and the irrigation 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 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 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 with respect to the NSW Government's proposed Water Reform Action Plan. 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. NSWIC urges the Department to consider closely all submissions made by NSWIC's member organisations for further detailed information.

General Comments

The NSW Irrigators' Council welcomes the opportunity to comment on the NSW Government's Water Reform Action Plan. In this submission, NSWIC will respond to all four consultation papers and the *Water Management Amendment Bill 2018* (draft Exposure Bill).

Prior to providing detailed comments on each Consultation Paper, the Council would like to raise its concerns that the draft Exposure Bill already suggests a particular direction that the NSW Government intends to take in respect to the protection of environmental flows, metering and the provision of water related information, prior to any public consultation on the proposed amendments. This is regrettable, particularly since NSWIC and other representative organisations were assured that extensive consultation would take place prior to further discussions on any matters raised in the Matthews Inquiry Final Report on NSW Water Management and Compliance. NSWIC anticipates that there will be further stakeholder consultation around the refinement of the draft Exposure Bill, similar to previous amendments to the Water Management Act 2000. Further, we consider it also unacceptable if changes are being proposed to address isolated issues that may then create precedents for other valleys where unintended, perverse outcomes may result.

Nonetheless, NSWIC appreciates the NSW Government's decision to conduct a number of regional consultation sessions to seek feedback on the four Consultation Papers and the draft Exposure Bill. This has been a positive development in broader consultation and we hope to see more of these in the future. The Council had hoped that more time would be provided to stakeholders between the launch of the Water Reform Action Plan package and the commencement of the regional consultation process in order to allow all interested parties sufficient time to review the information contained in the water reform package and assess any potential impacts from the proposed changes. NSWIC stresses that further consultation and an ongoing dialogue on these matters will be critical; particularly the drafting of any related regulatory instrument that is associated with the *Water Management Amendment Bill 2018*.

In addition, NSWIC is of the view that the NSW coastal valleys have not been given sufficient attention in this consultation process as only two regional forums have been held in Coffs Harbour and Maitland. This is despite the fact that three of the four consultation papers and the draft Exposure Bill are relevant to coastal irrigators and could have a significant impact on their future irrigation operations. NSWIC strongly urges the Department of Industry – Water to reconsider holding additional public forums in the NSW coastal valleys and across NSW to allow all WAL holders to provide input into the Water Reform Action Plan.

Finally, NSWIC wishes to restate some general principles about measurement, monitoring, compliance and transparency prior to providing detailed comments on the four Consultation Papers and the draft Exposure Bill.

As outlined in NSWIC's media release (dated 14 March 2018) following the release of the Water Reform Action Plan¹, the Council supports accurate, reliable and innovative measurement of water take that can be verified and audited. Irrigators and the irrigation industry in NSW must have a system that is easy to understand, implement and monitor to avoid any unnecessary costs or inefficiencies in the management of NSW's water resources. In simple terms, NSW irrigators and the irrigation industry need a system that works, is cost effective and is able to protect irrigators' property rights in water.

NSWIC is committed to working with the NSW Government and the new Natural Resources Access Regulator as a new system is rolled out, and we will play a leading part in ensuring the new regulatory system is well understood and supported on the ground by irrigators. However, it needs to be recognised that in the short term, there are operational and practical challenges that must be addressed. As outlined in the Consultation Paper on Water Take Measurement and Metering, NSWIC considers it impractical to *immediately* implement new state-wide metering requirements without addressing issues around the availability of AS4747 compliant meters and registered meter installers; a transitional process for meters where retrospective pattern-approval is possible; and standards that need to be met between now and when an AS4747 compliance standard eventually applies. NSWIC believes information on the current status of metering in each valley and how many of these installations meet AS4747, need to be considered along with these practical challenges of upgrading the existing fleet of meters before further amendments to current water management practices are made. However, NSWIC is committed to working constructively through these challenges in order to rebuild confidence in NSW's water management system.

Further, NSWIC stresses that since the National Water Initiative (NWI) and the separation of land and water rights, there are public and private benefits from water extraction in NSW. The benefits from water extraction must be acknowledged by the NSW Government and it needs to be understood that the commercial use of water carries with it commercially sensitive information. While NSWIC strongly support the principle of transparency, the Council urges caution for the Government not to unintentionally initiate changes to the current water management and allocation framework that would undermine irrigators' rights to use water or the commercial activities of any water access licence holder who operates within the law. It is important that a suitable balance is struck between disclosing information in order to increase public confidence in the system and mitigating against privacy risks that are protected under the *Privacy and Personal Information Protection Act 1998*. In broad terms, it needs to be better understood why the

¹ <http://www.nswic.org.au/wordpress/wp-content/uploads/2018/03/2018-03-14-Irrigators-welcome-new-water-compliance-regime-consultation.pdf>

information would need to be released, who would benefit from it, and what the risks are if this information is made publicly available on a real time, individual WAL holder basis.

Also, it will be absolutely crucial that the Water Reform Action Plan clearly delineates the roles and responsibilities of each of the Government agencies (i.e. WaterNSW, Department of Industry – Water, NRAR) so that there are clear boundaries between the various regulatory responsibilities and visibility around the processes and protocols that will be followed in case of measurement discrepancies or meter failures. Transparency around regulatory responsibilities is also crucial so that all WAL holders understand the process as to when elevation from non-compliance to prosecution will occur and are assured that NSW has a seamless system for managing the updating and sharing of information between Government agencies.

NSWIC looks forward to discussing the Water Reform Action Plan further with the Department of Industry – Water.

Specific Comments

The NSW Irrigators' Council wishes to provide the following specific comments to the four Consultation Papers relating to the Water Reform Action Plan and the Exposure Draft of the *Water Management Amendment Bill 2018*:

Consultation Paper 1 – Water Take Measurement and Metering

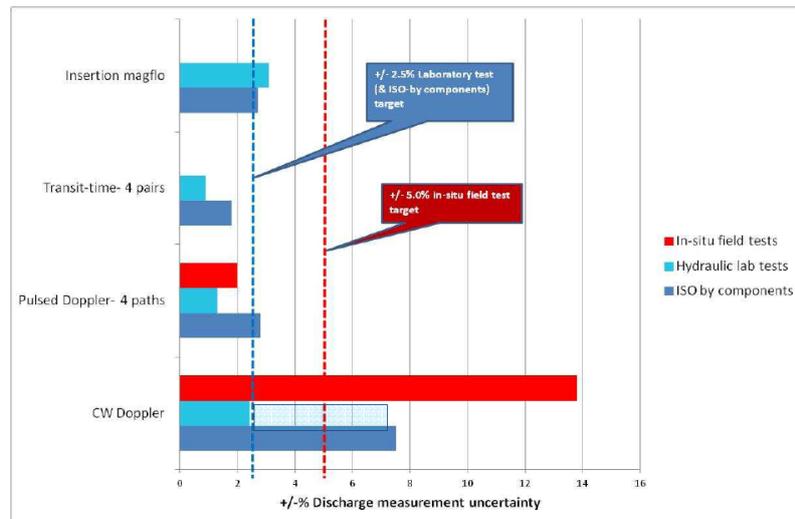
As specified in the Consultation Paper on 'Water Take Measurement and Metering', NSWIC supports **in principle** the key objectives of the NSW Government's future water take measurement and metering approach:

1. That the take of water can be accurately and reliably determined;
2. That meters used to measure water take are auditable, verifiable and accurate;
3. That data from meters can be easily communicated to relevant authorities;
4. That mandatory requirements and resources are targeted to high risk water users (i.e. those that have a greater capacity to take water in high risk water sources);
5. That the benefits of water measurement outweigh the costs; and
6. That the framework is simple to understand, comply with, administer and enforce.

NSWIC suggests that the intent of these six objectives should guide the NSW Government's future approach to develop an efficient, equitable and enduring methodology for water take measurement and metering. Based on this principle, NSWIC urges the Department of Industry – Water to consider **how** NSW can establish a reliable and accurate water take measurement and metering system that can achieve the NSW Government's overall policy objectives whilst at the same time being sufficiently flexible to address existing practical, short-term challenges.

As such, NSWIC recommends that the NSW Government should be careful not to be locked into one narrow pre-determined solution that may preclude the consideration of a more pragmatic, cost effective and appropriate solution that may be more reliable and accurate. For example, NSWIC is concerned that narrowly focusing on the AS4747 standard could prevent us from considering other innovative and accurate water take measurement approaches (including other standards like the ISO accreditation) that may be equally, if not more, appropriate and fit-for-purpose for NSW. As outlined in the NSW Office of Water report on 'Suitability of selected meter

types for non-urban flow metering', a one single standard may not be appropriate in all circumstances and for all metering equipment:



Discharge measurement uncertainty comparison for 0.5m/s velocity

NSW Office of Water, 'Suitability of selected meter types for non-urban flow metering' p.3

Furthermore, NSWIC would like to reiterate that pattern-approval alone does not necessarily lead to more accurate measurement of water take and as such, NSWIC recommends that the focus should rather be on **how** to validate the accuracy of any water take through a range of metering equipment. This is particularly important as AS4747 is not available for all types of water take structures (e.g. for the Irrigation Infrastructure Operators for example).

NSWIC reiterates that the key purpose of a water take measurement and metering system is, and must continue to be, better resource management and an improved river operation, hence all options should be considered.

Some of the additional challenges that NSWIC has identified with the proposed approach to move to AS4747 accreditation are outlined below:

1. Availability of Pattern-approved Meters

NSWIC is concerned that there is only a narrow range of meters that would be considered as 'pattern-approved' in accordance with the Consultation Paper on 'Water Take Measurement and Metering'. NSWIC has identified the following meters as currently pattern approved:

- Krohne Waterflux 3070
- Siemens MAG 8000
- ABB Aquamaster 3 FEV2
- Aquamonix I500 and IR2060
- Sensus WP Dynamic
- Euromag MUT 2200EL

Further information on how many of these pattern-approved meters are currently available and how many may be required for a potential future installation will be crucial to assess the timeframe around a transition to a new water take measurement and metering approach.

NSWIC is aware for example that one of the widely used meters in inland NSW, 'Mace', is currently not pattern approved, although NSWIC understands that the company is applying for pattern approval for the Series 3AgriFlo meters. The timeframe around the accreditation is currently not known, hence NSWIC suggests that further assessment around these practical challenges should be taken into consideration in the further development of a NSW water take measurement and metering approach.

Furthermore, the meters on large open channel offtakes used by Irrigation Infrastructure Operators (IIO's) are not pattern approved and it is unlikely that pattern-approved meters of sufficient size will be commercially available. However, the IIO's currently have the accuracy of their offtakes independently assessed on a regular basis, either monthly or six monthly, and recalibrated if necessary to ensure measurement of water take is accurate to within +/-5%. We recommend that an alternate measurement system for large, open channel offtakes incorporating regular, independent verification is endorsed by the NSW Government.

For example, the meters installed at the Coleambally Irrigation Cooperative Ltd offtake are Accusonic (brand name) Acoustic Transit Time Meters. This type of meter is considered best in its class for accurate metering of offtakes of this type. However, this meter cannot be pattern-approved because of its scale. This metering installation is consistent with ISO 6416:2017 Hydrometry – Measurement of discharge by the ultrasonic transit (time of flight) method. The AS4747 provides for approval for use of these meters to be agreed between the meter owner and the entitlement issuer. This approval process needs to be formalised. NSWIC and its irrigation infrastructure operator members consider it important that this issue is clarified by the Government and we jointly request that the Government requires that the relevant ISO standard apply where the most appropriate meter cannot be pattern approved.

2. Availability of Registered Meter Installers

NSWIC is concerned about the sufficient availability of registered meter installers who are able to assist WAL holders in case augmentation to existing equipment or new meter installation may be required in the future. Preliminary discussions indicate that the current number of registered installers would not be sufficient to implement a broad-scale introduction of an AS4747 required standard across NSW. As such, NSWIC recommends that the NSW Government reviews the existing meter installation and verification training through Irrigation Australia with a view to streamlining the course and providing options for those who are already accredited to attend a 'refresher' course.

NSWIC also recommends that funding is provided by the NSW Government for the review of the current training schemes and the provisions of training courses sufficient to meet the needs of WAL holders.

3. Existing Meters

There needs to be a resolution to the existing meter installations which may or may not be compliant with the AS4747 standard and allow for telemetry and remote data collection.

When the National Framework for Non-urban Water Metering Policy was developed in 2009 there were few, if any, pattern approved meters suitable for irrigation usage and it was recognised that a standard should not necessarily be made mandatory. Consequently, the NSW Office of Water

developed the NSW Interim Standards for Metering which allowed the installation of non-pattern approved meters which were accurate to within +/- 5% in the field, and specified installation requirements to ensure accuracy.

NSWIC recommends that an assessment is made on whether existing meter installations that are compliant with the NSW Interim Standards can be upgraded to meet AS4747 standard, and if so, what a suitable transition period and process would be (i.e. including for those meters that were installed under the NSW Metering Program). Also, NSWIC understands that retrospective pattern-approval for Mace Series 3 meters already installed will be possible with a firmware upgrade. We recommend that implementation of new metering requirements should allow for a transition program for Mace meters, given the large number of Mace meters currently installed in inland NSW.

NSWIC recommends that if an upgrade to meet AS4747 is not possible, the existing installations should be grandfathered for a reasonable period in recognition that the replacement of (recently) installed meters would be cost prohibitive for WAL holders.

4. Telemetry and Data Communication

In respect to telemetry requirements and data communication, NSWIC recommends the following communication approach. This approach is intended to reduce communication costs, ensure data security and is readily deployable. The approach also assumes WaterNSW retains its meter reading function and meters are privately owned (further detail below):

NSWIC recommends that WAL holders be offered the choice of:

- a. A WaterNSW issued subscriber identity module (i.e. SIM card). This would enable WaterNSW to poll the site directly and securely. On-going data contract costs would be reduced due to WaterNSW managed accounts (particularly for satellite services). Existing services within WaterNSW will enable rapid deployment.
- b. Owner supplied communications: Meter owners should retain the right to poll their own meters without duplication of telemetry. This provision ensures security of private networks and captures sites already privately polled. Where meter owners choose their own communication strategy and data is not directly polled by WaterNSW, a secure and reliable data conveyance is required (e.g. authenticated web service). Owners would be subject to the same data provision standards.

Data provision standards should be determined as a matter of priority. Data provision standards such as polling interval, data granularity and data type will have practical implications for asset selection and power management.

We recommend that data polling and data frequency rates be informed by metering and compliance requirements only.

Finally, NSWIC seeks clarification from the Department of Industry – Water on whether telemetry would be required for every meter or whether there is a threshold below which telemetry may not be required. Also, further assessment around how improved data gathering could assist Water

NSW's river operation functions would be beneficial for further discussion on an appropriate water take measurement and metering approach.

5. Value for Money

NSWIC seeks further information on the cost and benefits of meter installation and telemetry to ensure that the costs are not cost prohibitive for **small** water users. As outlined in the introduction of our response to the Consultation Paper on 'Water Take Measurement and Metering', NSWIC is of the view that the NSW Government needs to be flexible and consider individual valley's circumstances to meet the six key objectives in the most efficient, equitable and appropriate manner available. For example, in those cases where it would be cost prohibitive to require AS 4747 pattern approved meters (e.g. like the large number of small licence holders on the NSW coast and some small unregulated systems), NSWIC would urge the NSW Government to consider surrogate measurement approaches that can be regularly and independently audited and verified.

Further, NSWIC notes that the Consultation Paper states that log books will be phased out and that those not required to have a meter will be able to self-report. It is suggested this will be done through an online portal, however, some water users who fall below the threshold may be unable to self-report through such a mechanism due to a lack of a reliable internet connection. NSWIC considers it essential to assess these technological constraints prior to settling on a particular water take measurement and metering approach.

6. Environmental Water Licences

The consultation paper proposes that only held environmental water extracted through a pump should comply with AS4747. We recommend that any diversion of held environmental water from the main river channel should be measured to the same level of accuracy as other licences.

Meter Requirement Thresholds

The Consultation Paper suggests that the NSW Government is committed to implement a '*no meter, no pump*' approach. A literal application of this '*no meter, no pump*' approach – combined with a requirement to meet an AS4747 standard - would mean that every licence holder and every basic landholder rights user would need to install a pattern-approved meter that meets the standard. Such an approach would clearly impose unacceptable costs and complexities on the State's smallest water users and potentially result in perverse outcomes (e.g. the handing back of water licences).

It is encouraging that the Consultation Paper raises the possibility for a threshold value for when the installation of a meter may be required, in line with a risk management approach.

Based on Figure 1 in the Consultation Paper, it is acknowledged that metering 46% of works would cover around 95% of water use in the State. However, it should be pointed out that Figure 1 also indicates that 15% of works cover 70% of water use. As the gradient of the curve in Figure 1 flattens out considerably above 70% of water use, this indicates that a more cost-effective threshold point would be somewhere between the 70% and 95% points - with 70% likely being the most cost effective. As Figure 1 is based on a State-wide assessment, NSWIC recommends that the Department segregates the data further and conducts an analysis that leads to Figure 1, page 5 of the Consultation paper being replicated for each valley/water source to inform further discussion

around appropriate thresholds for each extraction zone. This will not only be important in understanding the differences between NSW inland and coastal valleys² (particularly given the wide variation between coastal and inland water take), but also to highlight any differences within and between water sources/valleys that need to be factored into the assessment of appropriate thresholds. Hence a profile of an average WAL holder in each valley would be useful to provide appropriate recommendations to the questions raised in the Consultation Paper.

As a general principle, NSWIC recommends that a minimum threshold is justified on the basis of cost-effectiveness and risk assessment, but that a valley-by-valley approach to the threshold is appropriate. The threshold should enable confidence in the management of the resource for river operation, the measurement of water take, and management of environmental flows. All works that fall below the minimum threshold should require an alternate method of measurement, as discussed earlier.

In terms of the options outlined in the Consultation Paper, NSWIC supports in-principle **Option 5**, however the Council holds concerns about the accuracy of the risk assessment and would like to seek further clarification on **how** the Department of Industry – Water has approached its risk assessment analysis and verified the accuracy of the data used in the assessment³. NSWIC is concerned that if the assumptions or data used in the analysis are inappropriate or out-dated, or if the Department is unable to appropriately resource this function, it could lead to a risk assessment that does not accurately represent the actual risk to the resource. NSWIC stresses that stakeholders require confidence in the risk assessment by the Department to allow them to fully support Option 5.

Also, NSWIC would like to seek clarification whether all environmental water use is captured in Figure 1, page 5 of the Consultation Paper. If not, this could skew the results, as the environmental water holders are now the largest single licence holder in most valleys. As the Consultation Paper acknowledges, a proper risk assessment is a complex process and requires significant resources and periodic reviews.

Irrespective of the concerns raised in the previous paragraph, **Option 5** which is a combination of options 2, 3 and 4 appears reasonable as it provides a balanced approach for all water users. Differing thresholds for options 2 and 3 are likely to be required based on water source type (i.e. regulated rivers, unregulated rivers and groundwater) in coastal and inland regions. An appropriate combination of these thresholds cannot be determined without the relevant information around each option being made available (as outlined earlier). Furthermore, an adaptive approach should be used in recognition that an individual's circumstances will change over time. This would involve ongoing risk assessments, perhaps at 5-yearly intervals or in co-ordination with future WRP/WSP development, or as necessary.

Prior to further considerations on progressing with Option 5, NSWIC recommends detailed valley by valley risk assessment that includes amongst other things, the capacity to take water, the conflict of access and any water management challenges (e.g. including losses). A useful first step would be for the Department to release its approach to conducting a risk assessment in order for all stakeholders to review whether further refinement in the methodology may be justified.

² As recognised in an earlier draft of the NSW Water Take Measurement Policy in 2015, there are significant differences between the NSW coast and inland valleys hence a potential different approach may be justified.

³ NSWIC has raised its concerns about the Department's data gathering and accuracy of existing data that has been used for other purposes like the Water Resource Plan development.

In terms of the other options raised in the Consultation Paper, NSWIC is concerned that using licence share components alone (Option 2) does not cover transfers into small or zero share licences and can impose a high burden on unregulated licences where entitlement is high but take is intermittent. It would also not cover any licences that cannot take water (e.g. because they are not linked to any water supply work).

Similarly, the difficulties with using infrastructure size/capacity alone (Option 3), are discussed in the Consultation Paper and should therefore not be supported. However, NSWIC acknowledges that it would make it very clear when a meter is required.

The option to use the risk to water sources approach (Option 4) appears to provide a balanced outcome for water users, however if the water source has been classified as low risk then it is not clear why a user should be required to be metered when it has been assessed that the water source is not at risk from their level of extraction. The Paper states that risk assessments may not be comparable across water sources but it is not clear why this would be the case if the same risk assessment process is used. Further detail may be required on this option.

Additional Considerations

Approach When a Meter is Not Working

NSWIC would like to better understand the Department of Industry – Water proposed approach to a situation where a meter is not working. As a general principle, NSWIC believes that there be a clear protocol to follow in the event of a meter failure and that repair times should be contingent on proof that attempts have been made to have an alternative meter installed.

Ownership

NSWIC strongly recommends private ownership of meters. This ensures that responsibility for meter maintenance and replacement when necessary, clearly rests with the WAL holder.

NSWIC also recommend that the preferred method for Government assistance with funding of new meters should be via the availability of low interest loans through the NSW Rural Assistance Farm Innovation Fund. We note that for coastal valleys and smaller irrigators, the availability of funding on reasonable terms would be a significant incentive for compliance.

Finally, as outlined earlier in the paper, NSWIC strongly supports consideration of surrogates for small and coastal irrigators.

Regardless of the ownership of the meter, data integrity remains paramount for the protection of all water-users.

Provision of Clear Information

Effective implementation requires readily available information on the requirements of AS4747, and a regularly updated list of pattern-approved meters.

- As a priority, WaterNSW and DoI Water should provide plain English information on their websites on what the AS4747 requires, and a regularly updated list of pattern-approved meters.
- Once the timetable for implementing the Water Reform Action Plan is settled, information should be readily available from NRAR, DoI Water and WaterNSW on the metering standards and timetables.
- Individual advice should be provided to all licence holders clearly explaining the requirements and timetables. Where retrospective approval is possible, it must clearly set out the licence holder's obligations to achieve that approval.

Finally, further information must be provided on which standard must be met between now and when a new standard/approach may take effect. The on-ground role of WaterNSW in meter reading, education and information is essential during this transitional phase.

Proposed Amendments to the draft Exposure Bill:

Amendment [9]: Please refer to our concerns regarding amendment [12] (available on page 14 of the submission). In addition, NSWIC stresses that further consultation on the issue of water take measurement and metering will be necessary to finalise a new strategy.

s.115C(2): NSWIC request further consultation on this provision.

Overall, NSWIC is concerned that the draft Exposure Bill only refers to 'metering' and does not include 'water take measurement'. NSWIC requests that the NSW Government reviews this issue urgently.

Consultation Paper 2 – Better Management of Environmental Water

NSWIC notes the disparities between the content of the Consultation Paper on 'Better Management of Environmental Water' and the draft Exposure Bill. While the Consultation Paper appears to focus primarily on the unregulated systems in the Northern Basin, the draft Exposure Bill expands these environmental water protection measures across NSW (i.e. in all unregulated and regulated systems). The proposed broader application of these environmental water protection mechanisms in the draft Exposure Bill is of serious concern to NSWIC and its members and hence will be the focus of our response.

As a general principle, NSWIC wishes to make the point that:

All of the proposed measures will impact existing reliability of access for consumptive water users unless off-setting measures are put in place.

In case off-setting measures are not put in place, the resulting impact could be used by the Commonwealth to bridge-the-gap between Baseline Diversion Limits and Sustainable Diversion Limits under the Basin Plan. This would not be in keeping with the Basin Plan implementation IGA whereby the Commonwealth's water recovery targets are to be met from infrastructure projects, supply measures and 'willing sellers'.

Alternatively, not putting in place off-setting measures would result in a claw-back of water for the environment above that agreed by the Commonwealth and NSW Governments in implementing the Basin Plan.

Currently under section 324 of the *Water Management Act 2000* (the WMA), the Minister can make an order to restrict the take of water for a specified period. These orders are temporary and whilst the need for them simply has to be in the public interest, examples such as coping with a water shortage or threat to public health or safety are specified.

Amendment [12] in the Exposure Bill proposes to include new regulation making powers in the WMA which would allow the imposition of new conditions directly on licences and approvals which prohibit or limit the taking of water in order to protect environmental water or manage water for environmental purposes.

Unlike a section 324 order, these conditions could be ongoing and therefore have a long-term impact on water access.

The proposed new section 115B (1) (c) would result in the mandatory condition imposed via the regulations overriding any other condition or instrument (eg, WSP rules or Ministerial Order) made under the WMA. Therefore, if such conditions are not temporary but are on-going or occur as regularly recurring temporary measures, then in effect new long-term water access/water sharing rules will have been imposed outside of the water sharing plan development/amendment process.

Imposing new conditions via the WMA's regulations and circumventing the water sharing plan amendment process will allow the Government to avoid having to pay compensation to impacted water users.

This is because the WMA's compensation provisions (as set out in sections 87 and 87AA) only relate to amendments to Water Sharing Plans. Section 87AA provides that Plan amendments having an impact of more than 3% would trigger compensation except where the respective Plan allows such changes (e.g. the imposition of any new regulations in unregulated river systems).

The proposed new section 115B (2) makes the avoidance of compensation even clearer by specifying that the "imposition of a mandatory condition on an access licence relating to the extraction of water does not give rise to a claim for compensation". Even more concerning is that by not explicitly referring to the imposition of a condition via the regulations, the new section 115B (2) could be interpreted to apply to the imposition of any new mandatory condition, even those resulting from Water Sharing Plan amendments.

Imposing new water access rules that result in greater impacts on consumptive water users whilst preventing those users from seeking compensation is outside the framework of the NWI. Under the NWI, such risks to reduced water access are to be shared between water users and Governments. Paragraph 49 of the NWI requires that for those plans made or renewed after 2014 the risks of any reduction in allocation/access as a result of improved knowledge in a water systems' capacity to sustain particular extraction levels are to be shared between entitlement holders and Governments.

Paragraph 50 adds that Governments are to bear these risks where they arise from changes in government policy (for example, new environmental objectives). It could be argued that the Government's aim of improving the management of environmental water is effectively a change in Government policy.

The Consultation Paper states that the initial focus is on unregulated rivers in the Northern Basin. Hence there is the potential to impose new approval and licence conditions via the Act's regulations in other valleys to provide greater protection of environmental water, especially in those regulated rivers where there are no specific supplementary water sharing rules. Such actions could be used to 'bridge-the-gap' between existing WSP limits and the respective Basin Plan SDL, particularly if concerns begin to emerge over NSW's ability to implement its Prerequisite Policy Measures.

The Government has not explained why it is seeking to move away from the risk assignment framework currently set out in the NWI and the WMA and seek to weaken one of the key foundations of the WMA which is to provide secure and compensable water rights.

Imposing new mandatory conditions on approvals and licences via the regulations allows these conditions to apply without them physically being part of the approval or licence, unlike the current approval and licence condition statements. The proposed new section 115B (1) (a) will allow holders to be notified of new conditions imposed via the regulations. However, this means that holders will effectively have multiple sets of conditions to consider and will need to work out which conditions apply at any point in time.

The Government has not explained why it needs to implement such a fragmented approach to the imposition of licence and approval conditions and why the existing Water Sharing Plan development/amendment process cannot be used.

Further, NSWIC is concerned that the Consultation Paper suggests that the implementation of the proposed five protection measures should be expedited (i.e. "an immediate response is required before any interim or enduring measures are identified and implemented") **before** a proper assessment of the impacts or potential risks to all other WAL holders is conducted. NSWIC considers it prudent to work towards one enduring arrangement rather than multiple interim steps that might be conflicting, confusing and lead to unintended consequences.

The industry is urgently seeking an answer to the following questions:

- a) What are the current adverse impacts of extractive water users on environmental flows in the system which the Department of Industry - Water wishes to mitigate? Have these impacts been clearly identified, described and quantified?
- b) Are the existing provisions in the Barwon-Darling WSP and elsewhere insufficient to address the issues of sharing water between extractive users and held environmental water? For example, the Barwon-Darling WSP already includes IDELs which were developed in consultation with other stakeholders during the development of the WSP.

If the objective of the Consultation Paper is to achieve a better utilisation of environmental water, then these outcomes should be developed in consultation with all stakeholders and after an appropriate risk assessment (i.e. including the potential for cost shifting to non-environmental

WAL holders) and further work on the achievability of these measures. The current Consultation Paper on 'Better Management of Environmental Water' makes no attempt to develop an inclusive stakeholder approach to the issue of environmental management and leaves the Interagency Working Group in charge of developing proposed solutions. It is a serious concern to NSWIC that the IWG does not include any stakeholder representatives and that the proposed five mechanisms will, if introduced as currently proposed, undermine the property right of all WAL holders in the State without recourse to appropriate compensation.

It should be highlighted at this point that during the development of the original Water Sharing Plans, NSW already made provisions for the environment, including the creation of environmental flow targets, access thresholds and other sharing mechanisms (e.g. IDELs), and the implementation of the MDBA's Cap on surface water extraction (and soon to be implemented SDLs). All these measures were implemented to address sharing issues between extractive water users and the environment and little evidence has been provided that would prove they are ineffective. NSWIC urges caution to not undo all the work that has been done over the last 20 years through the development of the Water Sharing Plans and place at risk the property rights of all WAL holders in the State.

NSWIC supports in principle the concept of IDELs as an effective way of sharing daily flow access with the environment whilst providing licence holders with a tradeable property right. However, NSWIC would be concerned if, as a result of the Government's Water Reform Action Plan, the implementation of IDELs was to be expedited in NSW unregulated rivers before more detail on the following can be provided:

- What specific environmental outcomes are being sought and will IDELs provide them;
- In what river systems would IDELs be expected to be implemented;
- How would IDELs be distributed between licences (including environmental licences);
- Would IDELs apply in certain flow ranges only or would they apply to any flow above the cease-to-pump threshold;
- What new infrastructure and administrative systems would be required; and
- What additional costs would licence holders (including environmental licences) be expected to incur?

Finally, NSWIC recommends that attachment C of the Discussion Paper outlines a number of factors which could support better management of environmental water. All of these mechanisms are currently in place in other areas and along with IDELs have been available for many years. Failure to implement these measures in some WSPs and refine our understanding about flows in the system have resulted in many of the issues generated around environmental water in the Barwon-Darling and most of the Darling tributaries. Also, many of the measures that are proposed in the Discussion Paper require the tools in Attachment C to operate effectively.

Proposed Amendments to the draft Exposure Bill:

s.71QA: TBA

Amendment [12] new Part 5, s.115 and s.115A: Remove. These provisions should be discussed during the development of the Water Resource Plans and not be imposed via mandatory licence conditions. In particular, NSWIC is deeply concerned about the proposed new s.115(2) and s.115A(2) as it explicitly allows licenced environmental water to be treated differently to all other

WAL holders (for example by effectively being given priority of access) despite the repeated assurances by Government that any licences that are held by the Office of Environment and Heritage or were recovered by the Commonwealth on behalf of the environment retain their original characteristics. Favouring environmental water licences over all other WAL holders is rejected by NSWIC and its members. Effectively allowing the imposition of new planned environmental water rules outside of the normal water sharing plan amendment and compensation processes is also rejected.

If s.115 and s.115A are not removed then s.115B(2) amend to: *“the imposition of a mandatory condition on an access licence relating to the extraction of water does give rise to a claim for compensation under Division 9 of Part 2 of Chapter 3”*. This should be accompanied by complementary changes to the existing s.87 and s.87AA which would make clear that the existing compensation provisions will also apply to impacts occurring through the new s.115 and s.115A.

Amendment [14] s.324: Remove. NSWIC does not support that specific water access restrictions are made for the benefit of one particular type of water licence holder. The current s.324 provisions should be sufficiently broad to ensure that the NSW Government can, if required, impose temporary water access restrictions.

Schedule 2 Amendment of Natural Resources Access Regulator Act 2017 No 64: NSWIC would like to seek confirmation that s.12(3B) only relates to the Natural Resource Access Regulator and does not extend beyond.

Consultation Paper 3 – Transparency Measures

NSWIC acknowledges that the Consultation Paper on ‘Transparency Measures’ seeks feedback on a range of proposals to make information on water use, management and compliance more widely available to the general public.

It is evident that the proposed options outlined in the Consultation Paper were informed by the recommendation of the Matthews Inquiry Report which stated that water was a “community-owned resource” and that the public had a right to satisfy themselves that it is being used in compliance with the law. While NSWIC fully supports monitoring and compliance with NSW water management regulation, we are concerned that Mr. Matthews’ statement on NSW’s water resources ignores the important aspect that since the NWI and the separation of land and water rights, there are public and private benefits from water extraction in NSW. The benefits from water extraction must be acknowledged by the NSW Government and it needs to be understood that the commercial use of water carries with it commercially sensitive information.

Hence further discussions around the public provision of information needs to acknowledge and account for the fact that some information (i.e. water account balances and water trading) may be commercial-in-confidence and so NSWIC urges the NSW Government to reconsider the wording of the draft Exposure Bill and the Consultation Paper to reflect the commercial sensitivity of WAL holders’ water use in the state and in recognition that some fundamental challenges around data gathering would need to be addressed first before we can progress any discussions around the transparency measures.

Further, it should be noted that public information on water licencing, licence conditions, water entitlements, water allocation, trade and water use (at an aggregate water resource level) is **already available**. This information can be accessed through the existing registers and the name of the WAL holder can be obtained via a search of the WAL Register at a cost of \$14.20 per search. The only information that is currently not publicly available is individual water account balances and meter readings.

NSWIC supports this additional information being accessible by the regulator only.

Real time information on individual water licence account balances and meter readings should not be made publicly available as it could affect commercial activities of WAL holders and impact the functioning of the water market (i.e. increase market volatility and potentially change water trading behaviour). For example, if a buyer is aware that the seller is facing the forfeiture of a significant amount of unused water allocations, then the buyer could use that information to drive the price of the unused water allocations down. Alternatively, if the seller is aware that the buyer does not have any water allocation left in their account, then the seller could use this information to drive the price of their unused water allocations up. In the same notion, NSWIC supports the Consultation Paper's statement that the

“disclosure of water account balances could be commercially sensitive and pose risks to the operation of the water market (...) the information could reveal operational strategy by providing a detailed pattern of water use and if in real time, would provide a clear indication of the value of water to the individual or enterprise at a particular time (...) Further water brokers or other water suppliers could inflate or depress by or sell offers.”

NSWIC agrees with all of these statements and urges the NSW Government to consider concentrating on making the existing information in the registers more easily available, accessible and transparent as a first step. Further discussions around the provisions of any additional information should only commence after this first stage is completed. Detailed stakeholder consultation needs to accompany these discussions.

If the intent of the NSW Government is to better inform the general public about the amount of potential remaining water extraction and not impact the temporary water market, then account balance information should only be made publicly available on a total licence category or total water source scale (i.e. in an aggregate manner) at an appropriate time (potentially with a one-month lag).

If we return to Mr. Matthew's position “The overall objective of publishing water management information and data in a transparent way (..) is to improve compliance effectiveness and public confidence in the regulation of our water resources;” it would be a fair question to ask whether the provision of individual real time water account balances, water trading and meter readings would enhance public confidence? NSWIC considers that the granularity of information sought could potentially expose individuals to vexatious scrutiny and community policing – a role that must be reserved for the regulator. However, NSWIC strongly supports a seamless, unfettered sharing of information between WaterNSW, the Department of Industry and the Natural Resources Access Regulator (NRAR) and the development a mechanism for the sharing of data between these organisations.

In terms of information on the trade in allocations or entitlements, the NSW water register already reports on trade and it is possible through the WALs database to obtain information on where the water has been traded to and from. As such, NSWIC contends that the information is already available for those who wish to search for it.

Further, in terms of privacy concerns, the proposed new section 391B (2) contained in the draft Exposure Bill will allow for disclosure of information to overcome restrictions that may arise under other Acts (e.g. the *Privacy and Personal Information Protection Act 1998*). NSWIC raises its concern that:

The need for the Government to not have to adhere to the requirements of these other Acts and allow commercially sensitive information to be published in the public domain has not been explained.

Prior to a detailed explanation of why s.391B(2) is required, NSWIC cannot support it.

In conclusion, NSWIC agrees that transparency is important. Greater transparency around **when** water take is permitted to be taken would certainly enhance WAL holders' (and the general public's) understanding of the rules governing water management in the State.

Also, greater transparency around the environmental water entitlements and e-flows would be supported by NSWIC and its members. Ideally, NSWIC would like to see a system that is capable of tracking all environmental flows through the system, however the Council also recognises that this is unlikely to be feasible in the near future and would require significant additional resources. As such, NSWIC would support further work by the Department which would enable more detailed provision of data around environmental releases from storages as well as bulk water sharing information between extractive licence holders and the environment. However, as a general principle NSWIC has outlined on numerous occasions, the environmental licence holders should be held to the same standard and be subject to the same rules and regulations as all other WAL holders.

NSWIC is of the view that there could be merit in exploring whether currently available information could be made more easily accessible and usable (i.e. potentially through existing online portals like SEED⁴ which provides spatial information on an aggregate resource scale for other industries. In addition, SEED could provide a platform to make other published reports like WaterNSW's weekly Water Availability Reports more easily accessible and more user-friendly to use), however NSWIC suggests the real question is "**how granular the information needs to be to fulfil the objective of transparency and public confidence in the system**"? NSWIC would suggest that all currently available information (if more easily accessible) would go a long way in increasing the public confidence in the system. However, further detailed risk assessments need to be conducted before further individual information is publicly released. This information is and should always be available to the regulator for the purpose of monitoring and compliance with NSW water management regulation.

⁴ Or other innovative technologies that may be submitted under the NSW Government's \$500,000 funding initiative: <https://www.industry.nsw.gov.au/media/media-releases/2018-media-releases/national-call-for-new-technology-ideas-to-support-action-on-nsw-water-reforms>

Proposed Amendments to the draft Exposure Bill:

s.87D(2): NSWIC would like to seek clarification on the process in cases where the information published on a publicly accessible website is incorrect.

s.391B(1)(b) and s.391B(1)(c): **Amend** to reflect that account balance information should only be made publicly available on a total licence category or total water source scale (i.e. in an aggregate manner) at an appropriate time (potentially with a one-month lag).

s.391B(2): **Remove**

Consultation Paper 4 – Implementing the NSW Floodplain Harvesting Policy

NSWIC notes the NSW Government's ongoing commitment to the Floodplain Harvesting Policy's original intent to incorporate legitimate floodplain harvesting access into the NSW licencing framework.

NSWIC raises its concerns that not all valleys have the same level of data and information, hence it is significantly more challenging to comment on a preferred approach without more specific facts. NSWIC urges the Department to ensure there is consistency and a consideration of equity in the approach to the development of the NSW Floodplain Harvesting Policy (in particular for those who are not considered to be on a floodplain).

NSWIC supports the ongoing implementation of this work and recommends that the Department of Industry – Water reviews the detailed submissions made by all NSWIC's members who have responded to the Consultation Paper on 'NSW Floodplain Harvesting Policy', in order to obtain a list of outstanding issues that need to be addressed in the context of the Floodplain Harvesting Policy.