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Inspector-General of Murray–Darling Basin Water Resources

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Deputy Inspector-General of Murray–Darling Basin Water Resources

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## Letter of Support and Priorities for the Inspector-General

Dear Inspector-General,

The NSW Irrigators' Council (NSWIC) is the peak body representing irrigation farmers and the irrigation industry in NSW. NSWIC is highly supportive of the establishment of the Inspector-General and function of this Office. It is our hope that this position can assist to restore the integrity, confidence and accountability of the management of water resources in the Murray-Darling Basin.

We wish to express our sincere thanks for the Deputy Inspector-General's presentation at our General Meeting earlier this month. In particular, our Members appreciated the acknowledgement of the complexity of water management in the Basin, the enthusiasm to ask questions, and to take action to make changes rather than simply admiring a problem. We also wish to thank the Inspector-General for his meeting with us on 13 November 2019.

We look forward to all opportunities to assist the staff of the Inspector-General position, with matters relating to the Irrigation Farming and Infrastructure Sector. This letter seeks to provide you with some of our initial priorities.

### ***Powers of the Inspector-General***

We are aware that some Inspector-General positions in other fields have *“strong investigative powers, akin to those of a royal commission”*. As you would be aware, calls for a Royal Commission have been plentiful in recent times, but calls have also been divisive. NSWIC has not joined calls for a Royal Commission, as we feel there has been an inundation of reviews, reports, and inquiries in recent times (most paramount is the Productivity Commission Report) which have already provided key recommendations to set out a pathway forward on a number of the most critical issues. However, we do feel that these recommendations from the Productivity Commission and other inquiries have been insufficiently adopted and responded to by Government. Further, we have a persistent concern that reviews get captured by sensationalism and alarmism, which only worsens public perception rather than restoring confidence and integrity.

NSWIC seeks clarification of whether the Inspector-General of Murray-Darling Basin Water Resources has powers akin to a Royal Commission. We feel that powers akin to a Royal Commission would be appropriate. These powers in a statutory office would be much more valuable than a one-off snapshot Royal Commission. If this is the case – strong communication around the powers of the Inspector-General may assist to take pressure off. If not – we feel that the Inspector-General should seek those powers.

### ***Planned Environmental Water***

Water users are concerned that new interpretations of Planned Environmental Water (PEW) will mean that any underused consumptive water becomes classified as PEW by default, which then shifts management of that water not only out of the consumptive share of water, but from the State to the Commonwealth. Not only does this lock water users out of underused consumptive water, but it hampers the capacity to amend river management into the future.

Until recently, the NSW Government and Murray-Darling Basin Authority (MDBA) interpret provisions that relate underused water very differently according to the differences in the *Water Management Act (2000)* (WMA) and *Water Act (2007)* in determining Planned Environmental Water. Under the Water Act, any water not specified for consumptive use (thus including the underused water) becomes Planned Environmental Water (PEW) by default. The NSW Government in the Fact Sheet relating to PEW have adopted the MDBA position that this unused water is PEW and any change to Water Sharing Plans to allow access up to SDL would result in a reduction in PEW. This position is inconsistent with NSW WMA which specifies all water above Plan Limit is PEW, or water that is specified.

The difference in PEW protection creates a problem due to the interpretation that ‘no net reduction’ requires an “effectiveness test”<sup>1</sup> relating to the protection of PEW (and thus, restricts access to the underused water) as a result of any changes to the rules in place at the time of signing the Basin Plan (Nov 2012). The NSW WMA does not legally recognise this water as PEW, the use of an *effectiveness test* and the interpretation of its legal standing is currently not substantiated.

The rigidity of the effectiveness test has stopped Stakeholder Advisory Panels (SAPs) from progressing viable and constructive rule changes. NSWIC Members have reported that SAP members came to the conclusion that there was neither opportunity nor appetite to change rules for improved conditions for productive water use (or for other usage such as town water supply, drought resilience or improved environmental outcomes), and consequently many rule changes were either withdrawn, not put forward, or not progressed.

What this means:

- 1) Water users will be locked out of underused consumptive water as it becomes PEW by default. This is in addition to the agreed water recovery under the Basin Plan. This also undermines NSW ability to efficiently manage water resources into the future.
- 2) The consultation process for WRP development was flawed, as viable options were not considered by the SAP (as many were immediately dismissed by NSW, for a range of reasons but one being not being capable of passing the MDBA effectiveness test).

### **Recommendation:**

**(1)** Simplification of the Planned Environmental Water (PEW) definition to give confidence to water users that PEW excludes consumptive water, such as the definition of PEW adopted under the

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<sup>1</sup> s 10.28 of the Basin Plan

Queensland WRPs. Consistency of the definition/interpretation of policy between Basin states would be beneficial more broadly.

**(2)** Demonstration of how the change in PEW definition has impacted (or not impacted) the capacity of NSW to change water management rules and operations into the water.

### ***Underusage of consumptive water***

There has been a consistent and systemic trend of under-usage of water by irrigation farmers over time, with usage further decreasing far beyond water recovery programs. This is demonstrated through the significant accumulation of Cap-Credits (see MDBA Cap Compliance Reports<sup>2</sup>) as well as the MDBA's *Transition Period Water Take Report 2017/18*<sup>3</sup> (see Appendix 2<sup>4</sup>). There are concerns that this accumulation of 'credits' for underusage will also accumulate under the SDL framework. Whilst there are mechanisms in place to respond if usage goes over the compliance amount to reduce usage, there is no mechanism in place for if compliance is consistently under the usage level.

Underusage occurs for many reasons. Underusage can be the result of decision making of water users (we can call this '*voluntary underusage*') because of factors such as capital availability following from a severe drought for example. However, underusage can also be the result of rules that restrict optimal usage (we can call this '*involuntary underusage*'). Water users describe this as a further form of unaccounted for and uncompensated water recovery. For example, restrictive Water Sharing Plan (WSP) rules have reduced the accessibility, utility and feasibility of water take, which has in effect reduced ability for diversions. When water users have put forward recommendations to improve the usage of water (within the consumptive share of water), they have faced a reluctance from Government (NSW) for any changes which would benefit the agriculture sector. As a result, water users feel there is no opportunity to create a regulatory environment (even within permitted requirements) that improves the optimal use of consumptive water.

**Recommendation:** NSWIC is now advocating that WRPs should not be accredited unless they contain:

- a **review trigger** to respond if a trend of under-utilisation occurs to allow for the timely investigation of the cause of underuse and whether there may be a need to amend the WRP;
- an **SDL credit mechanism** or process to outline transparently what happens if 'SDL credits' do accumulate;
- [in response to an ineffective public engagement and Stakeholder Advisory Panel process in NSW] a **clause for each unresolved grievance**, or rule change that was inappropriately not progressed from the SAP by the NSW Department, to be subject to review and further consideration by the SAP with amendments to be provided by July 2020.

### ***Culture of water administration***

We are concerned that there is an entrenched culture amongst government departments that adopts the populist public sentiment against irrigation. We are concerned that this influences decision-making within Departments, which results in further hurdles and impediments to water access beyond the decisions made by Ministers.

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<sup>2</sup> <https://www.mdba.gov.au/publications/mdba-reports/cap-compliance-reports>

<sup>3</sup> <https://www.mdba.gov.au/sites/default/files/pubs/Transition%20Period%20Water%20Take%20Report%202017-18.PDF>

<sup>4</sup> <https://www.mdba.gov.au/sites/default/files/pubs/Appendix%202%20-%202017-18%20Surface%20water%20trial%20SDL%20accounts.PDF>

Bureaucrats have a responsibility to not exert their own influence. Any individual who demonstrates to be an 'activist' within their professional duties within government, must be reprimanded and removed from their duties.

Simply put – the NSW Government should do what they are supposed to do (administering NSW water resources, not water recovery) – and federal agencies should do what they are supposed to do (not exerting undue influence on the states, and only doing water recovery by agreed means from willing sellers).

### **Complexity of water governance**

We strongly welcome your intentions to map the legislation and agreements that form the architecture for water management in the Basin and hope that the mapping will be made available for the public and policy practitioners to have as a valuable resource.

NSWIC and our Members have been calling for confirmation of primacy of the NSW Water Sharing Plan (WSP), above other instruments. One of the most significant risks associated with NSW formally moving to the Basin Plan/Water Resource Plan model is that the WSP might be misconstrued as being subordinated to the Basin Plan or the Commonwealth's other water legislation, regulations and Instruments. NSWIC have specifically requested that NSW WSPs specifically include:

*"The Water Act 2007 of the Commonwealth, the regulations and other instrument made under it do not exclude, or limit in any way, concurrent operation of this Plan."*

### **Triple bottom line objectives**

Much of the legislation around water management in the Basin adopts triple-bottom-line objectives, seeking to balance or achieve social, economic and environmental objectives. For example, the Basin Plan includes:

*"to optimise social, economic and environmental outcomes arising from the use of Basin water resources in the national interest"*

Whilst a great deal of emphasis is placed on ensuring environmental objectives are met, there is significantly less attention on measuring and achieving the social and economic objectives. NSWIC questions how the social and economic objectives are measured, accounted for, and achieved, and particularly questions the imbalance of these outcomes.

### **Impacts on Yield and Reliability**

NSWIC questions what test is used to ensure implementation of the Basin Plan does not impact on yield and reliability of entitlements, as was committed to, given there has been a significant reduction in reliability. For example, s. 6.14 in the Basin Plan specifies that:

*"Nothing in the Basin Plan requires a change in the reliability of water allocations of a kind that would trigger Subdivision B of Division 4 of Part 2 of the Act."*

**Recommendation:** An Assessment to identify if impacts on reliability and yields has occurred, or at minimum, transparency around how this is assessed, is required.

### ***Extremism***

NSWIC is concerned by the growing 'extremism' developing around water management, which is perpetuated by misinformation. We feel that the media, key spokespeople, and some politicians inappropriately or incorrectly present information, which inflames and misleads the public. This is wrong and must be called out.

There is a need for a 'voice-of-truth' to correct information, and to reprimand people of influence for actions which deliberately misrepresent information and/or mislead or inflame the public. Without a 'voice-of-truth' the radical actions and often false ideas remain unchallenged and perceived as true by the general public. This is highly inappropriate, but also counter to ensuring confidence and integrity in water management.

### ***Water Sharing Plan Reviews***

The NSW Department is currently under considerable criticism from stakeholders for the lack of audit and review of existing Water Sharing Plans. This is failing statutory obligations. As a result, there are a number of outstanding issues which impact on water users which have not been addressed and remain unresolved. This has serious impacts on water users, as well as the degree of confidence in government processes for water management.

### ***The Murray–Darling Basin Agreement***

Whilst focus tends to be on the Murray-Darling Basin Plan, it is important that the Murray-Darling Basin Agreement receives adequate attention. There are concerns that the Agreement has become outdated, particularly in the context of increasingly frequent, severe and long droughts (particularly in the upper Basin). Concerns have been raised regarding the extent to which the Agreement allows appropriate sharing of drought risk/impact across the states. For example, questions should be asked regarding the appropriateness of special accounting provisions, state entitlements to water (Division 1, Subdivision B, 88) during extreme events particularly when Menindee is offline. There is a perception that the Agreement is a 'product of history' and has become outdated.

### ***Losses – Overbank Transfers***

There is concern around the accountability and management of losses in the system. For example, the idea of 'overbank transfers' which adopts a 'water delivery at all costs' mentality, with enormous losses and damage to riverbanks.<sup>5</sup>

### ***Environmental Water Accountability***

There are concerns around the accountability and transparency of environmental water management. Concerns extend to the volumetric focus of environmental water management, which ignores many other opportunities to achieve real environmental outcomes, outside of the 'just add water' approach.

### ***Deliverability***

Water users, particularly in the NSW Murray region, are concerned with the mounting issue of managing the deliverability of water. This is a result of increasing downstream demand (from growing irrigation developments, and large parcels of environmental water delivery), and a declining capacity of the river (siltation, erosion, etc.).

The consequence for irrigation farmers is a risk to both the reliability of water entitlements, and risk to the accessibility of allocations. The risk to reliability is a result of substantial losses in the system

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<sup>5</sup> See: <https://www.mdba.gov.au/sites/default/files/pubs/River-murray-system-losses-report.pdf>

reducing the total water balance; and the risk to accessibility is a result of the physical capacity of the system to deliver desired volumes of water.

### **Menindee Evaporation**

Water users are concerned about the management of Menindee Lakes, and the appropriateness that the Lakes are one of the key water storages in the Basin given extreme evaporation (may lose up to up to 700 GL a year in evaporation)<sup>6</sup>. This is counter to objectives around efficient and effective manage of water resources.

### **Lower Lakes**

We are highly concerned with the management of the Lower Lakes.

A recent peer-reviewed scientific paper published by Professor Peter Gell found that the lower lakes of South Australia had been naturally saline. This reaffirmed the findings from the work he undertook with his colleagues in the late 1990s and early 2000s that found these lakes to be naturally and historically saline and published in peer-reviewed papers in 2002 and 2007. Professor Gell's paper debunks the reinterpretation by his colleagues that suggested the lakes to be naturally freshwater with only occasional intrusion of seawater. Their reinterpretation was published in a (non-refereed) article in 2009 on an institutional website. The reinterpreted results were used in the Murray-Darling Basin Plan using 700 GL/year of water, a quarter of the total annual environment allocation, to keep these naturally estuarine (saline) lakes as freshwater. While the human development of the Lower Lakes has now been geared to this modified eco-system, there remains an argument, for revisiting the Murray Darling Basin Agreement, particularly the fixed volumes diverted to keep these naturally saline lakes as freshwater. More broadly, questions must be asked about the scientific premise of aspects of the Basin Plan.

### **Conclusion**

As I am sure you are aware, confidence by irrigation communities in the Basin water resources and integrity of the system, is dwindling. This is despite one of the objectives of the Basin Plan to be:

*“productive and resilient water-dependent industries, and communities with confidence in their long-term future”*

Industry and our communities feel let down by Government processes in administering the Basin Plan and other relevant instruments.

Amidst this turmoil, NSWIC strives to be the constructive and reasonable voice to bring intelligent, well-considered policy initiatives forward, as well as striving for Government to implement best-practice policy for all involved. We hope the issues raised in this letter are valuable to your work, and we are always available if we can be of any assistance.

Yours sincerely,



Luke Simpkins  
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NSW Irrigators' Council

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<sup>6</sup><https://www.mdba.gov.au/river-murray-system/river-murray-operations/joint-management-river-murray/menindee-lakes-facts>