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## MEDIA RELEASE

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# FPH regulation the only way to end legal ‘tit for tat’

**26/05/2021**

The release of Departmental legal advice on floodplain harvesting by Independent MP Justin Field just adds another layer to the pile of legal opinion, reinforcing the need for certainty through regulation once and for all.

CEO of NSWIC, Claire Miller, said: “The DPIE-Water legal advice is not definitive nor certain. It also explicitly raises doubt about its own findings.

“We agree that this tit for tat over legal opinion has to end. There has already been an open and transparent public consultation process backed by scientific technical reports.

“Regulations are needed to limit floodplain harvesting to the Cap and require metering to ensure compliance. This is what we would have had, if not for the disallowance.

“As an industry, we want the practice of floodplain harvesting more tightly regulated, but politics is repeatedly stopping that from happening.”

Ms Miller said the proposed licences would cut back irrigators’ access to floodwater by a third, leaving more on floodplains for the environment and downstream, but nonetheless the industry had done the right thing supporting this public interest reform.

“All sides of politics, and diverse stakeholders including environmental representatives and scientists, say they support reducing, licensing and metering of floodplain harvesting.

“It is disappointing that the Upper House seems happy to leave the status quo in place, rather than coming to the table in good faith. The issues must be resolved on their technical and scientific merits, starting with the DPIE reports already in the public sphere.

MS Miler said that beyond the headlines and political point scoring, the growing pile of legal advice is in many ways rather consistent.

“This DPIE advice, for example, is also consistent with our legal advice and that of the Crown Solicitor, in that a floodplain is not currently recognised as a water source, and in raising doubt on whether the practice is considered a form of water ‘take’.”

The DPIE-Water advice also points to case law which establishes that in such circumstances of uncertainty and ambiguity, *‘that ambiguity is to be resolved in favour of the Defendants’*.<sup>1</sup>

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<sup>1</sup> <https://drive.google.com/drive/folders/1k13W2LMEQ-kMGreH1Ov7gYD33kfRMPM1>