

Response to ACCC

Water Planning and Management

Issues Paper

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Introduction

NSW Irrigators' Council (NSWIC) represents more than 12,000 irrigation farmers across NSW. These irrigators are on 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.

In responding to Australian Competition & Consumer Commission, NSWIC is responding with the views of its members. However, each member reserves the right to make independent submissions on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

Comments on consultation

The ACCC must recognise that responses will be provided by representative groups in many instances, rather than directly from individuals. The nature of those representative groups, such as NSWIC, is such that they must consult with their membership as a draft response is drawn. This serves to severely limit the timeframe available.

It is our very strong view that this and any future consultative processes undertaken by the ACCC must be at least consistent with the eight week timeframe proposed in the current draft regulations.

General Comments

Rules Worthless Without Complete Jurisdiction

The Minister, as noted by the ACCC, has the power to make rules only with respect to regulated water charges. The result of this is that rules can only be made where a charge already exists.

If the aim of the Water Planning and Management Charing Rules is to ensure a level playing field as part of an overall aim to encourage an efficient water market, then the rules must apply and be enforced equally across all jurisdictions.

Rather than commit the resources of the ACCC, the Minister and representative groups such as NSWIC to an enormous process of creating rules that will not achieve desired aims, NSWIC submits that the ACCC should advise the Government that any rules that it creates will be ineffective and that the legislative power to encompass all players must be sought prior to creation of the rules.

In short, the process of creating these rules is a waste of time and resources – both in limited supply – for all parties. If they do not apply to all, then what is the point in making them?

No Problem to Address in New South Wales

The ACCC specifically note that “New South Wales has the most comprehensive cost recovery approach”, that 87% of costs were recovered in 2006/07 and that approximately 98% will be recovered in 2009/10.

Clearly there is not a problem with cost recovery in NSW. The Government and stakeholders have invested heavily in the IPART process which all parties find satisfactory.

In short, no party wishes the involvement of the ACCC and there is clearly no problem to be addressed that requires the involvement of the ACCC.

Further, any increase in compliance burden placed on parties within NSW will clearly lead to an increased charge to stakeholders pursuant to cost recovery whilst delivering negligible, at best, benefits.

Targeting Licensed Users

NSWIC has maintained over a significant period that all users of water – recreational, stock, domestic, industry, environment and irrigators – ought contribute to the costs of that use. NSWIC remains concerned that the easiest users to target for charges are those that are licensed – including all irrigators – and hence those users are likely to be targeted for cost recovery. Without a clear plan to address how levels of use will be determined across all categories of user, NSWIC will not support a further layer of bureaucracy that its members must eventually pay for.

Maintenance of Existing Price Paths

NSWIC submits that the ACCC must provide a guarantee from the outset that existing price paths be maintained.

Opportunity for Cost Shifting

NSWIC is concerned that any rules will provide the opportunity for cost shifting from government to irrigators of activities currently undertaken.

Council submits that the rules ought stipulate that in jurisdictions that currently comply to a cost recovery level in excess of 80%, an overriding principle that *costs to an individual irrigator cannot increase prior to the review period* ought be adopted.

Answers to Specific Questions

1. *What form of regulator approach is likely to be the most effective method for achieving the Basin water charging objectives and principles?*

None of the proposed forms will apply equally to all Water Planning and Management activities across the Basin and hence none of them are capable of fulfilling the water charging objectives or principles. They will merely result in added cost to irrigators within jurisdictions that are already moving toward full cost recovery, such as NSW.

NSWIC submits that a jurisdictional basis should be sought for enforceable rules that apply to all users prior to engaging in a foolhardy waste of resources to develop rules that will likely be worthless in encouraging competitive neutrality.

2. *What advantages and disadvantages do you perceive with the different approaches?*

There is no advantage in any approach.

The most telling statement supporting this in the Issues Paper is that the “voluntary rules” approach would “demonstrate how Basin jurisdictions might properly give effect to the Basin water charging objectives and principles in the Act and to their commitments in the NWI”, prior to noting that “Model rules cannot be enforced...”.

Under this process, those states that have pursued cost recovery objectives will suffer a competitive disadvantage compared to those that haven't. NSWIC does not believe that the ACCC is sufficiently naive to believe that model rules will either encourage or force recalcitrant states to discount the political capital that they have invested in belligerence.

In simple terms, the rules would only apply to those that are already complying with them. This is worthless.

NSWIC again submits that an agreement on binding jurisdiction must be concluded prior to investing resources into developing unenforceable rules.

NSWIC has considered each of the remaining sixty (60) questions. Providing a response to them would, in our opinion, legitimise the exercise of developing rules that will have negative consequences for our members (increased costs), whilst providing no benefit to them and having no impact on the issue of competitive neutrality.