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# **Submission to DEWHA/CEWH**

## **Proposed Framework for**

### **Commonwealth Environmental**

#### **Watering**

**090725**

Andrew Gregson  
Chief Executive Officer

## **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.

This document represents the views of the members of NSWIC. However each member reserves the right to independent policy on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

## Compliance with Consultation Expectations

In March 2009, in response to the growing number and complexity of consultation process, NSWIC adopted a policy outlining the expectations of industry in this respect. The policy is appended to this submission. Consultation processes in which NSWIC participates are evaluated against this policy.

We assess this consultation as *Indirect*. Pursuant to our policy, two specific considerations must be addressed in this form.

(i) *Timeframes*

Advice was **not sought** by DEWHA of NSWIC, as the peak body representing irrigators in NSW, as to the adequacy of the timeframe provided. Had such advice been sought, NSWIC would have advised, pursuant to our policy, that a 3 week period is **insufficient**.

(ii) *Resource Constraints*

Advice was **not sought** by DEWHA of NSWIC, as the peak body representing irrigators in NSW, as to resource constraints within the timeframe identified. Had such advice been sought, NSWIC would have advised, pursuant to our policy, that this was a period of **medium demand** for our resources and consideration of this ought have been given.

Our policy requires consultation to proceed through five stages.

(i) *Identification of problem and necessity for change*

Satisfactory.

(ii) *Identification of solutions and proposed method for implementation*

Satisfactory.

(iii) *Summary of submissions, identification of preferred approach*

This process must occur subsequent to the close of submissions.

(iv) *Explanation of interim determination and final feedback*

This process must occur subsequent to the close of submissions.

(v) *Publication of final determination*

This process must occur subsequent to the close of submissions.

## General Comments

NSW Irrigators Council (NSWIC) is pleased to see the development of this framework. We have consistently advocated that an identifiable and understandable plan is vital to the success of the entire national water plan. Our constituents – and the communities that they support – need to know that there is a clear plan and result for the pain that they are suffering.

At the same time, it is our clear position that a framework for managing environmental water is but a part of a much larger process. It is essential that this part fit in with the whole.

### *The Bigger Picture*

Our single greatest concern with this framework is not the framework itself, but its lack of integration with any larger strategy.

In our submission, the framework is being developed to manage an unknown quantum of entitlement in unknown geographic areas. By their very nature, the sheer size of these variables renders the framework extremely difficult to develop, at best.

Our Council has consistently advocated a strategic approach to environmental water that commences with identification of assets prior to identification of methods to obtain entitlement prior to defining a management framework.

Put simply, the current process appears to be:

1. Obtain water assets without geographic or product type reference;
2. Develop a management framework for water assets; and
3. Identify the environmental assets that need water.

We believe that this approach has the capacity to deliver the perverse outcome of devastating economic and social affects in regional communities without delivering the environmental benefits sought.

In our submission, this process ought be completely reversed:

1. Identify the environmental assets that need water;
2. Develop a management framework that includes descriptions of geographic requirements, regularity of watering requirement and volume of water requirement; and
3. Develop and implement a method of obtaining the water assets necessary to implement that framework.

We believe that this process will not only deliver the environmental benefits sought, but will limit the social and economic consequences for regional communities within the Basin.

### *No Change in License Characteristics*

NSW Irrigators Council has advocated throughout this change process that entitlements obtained by the Commonwealth – howsoever that may occur – must not have their characteristics altered in any way that is not possible for a privately owned entitlement. For example, a NSW Murray General Security Entitlement that is obtained by the CEWH through an on-farm infrastructure scheme must continue to exhibit the characteristics that it would in private hands.

### *Integration of Government Programs*

We recognise that the Murray Darling Basin Authority (MDBA) is tasked with developing the Environmental Watering Plan (EWP) as part of the Basin Plan process set out in the *Water Act 2007* (Cth). We further recognise that the proposed framework on which we are commenting is an interim framework until the EWP is implemented.

That said, it is clear that the EWP must learn from your current process, giving it the capacity to be informed by practical experience. To that end, we submit that the MDBA – and, particularly, the Basin Community Committee – must be involved in the development of the interim framework.

### *Environmental Asset Register*

The register, referred to in the draft framework, must be developed with wide consultation and must be publicly available.

### *Monitoring and Reporting*

By any criteria, the policy program to obtain and manage additional environmental watering is massive. It is therefore critical that a proper monitoring and reporting regime is implemented at the outset. Submissions to this extent appear within this paper.

## Specific Comments

### SECTION ONE – Introduction

No comments.

### SECTION TWO – Overall objectives and scope of Commonwealth water use

The “watering actions” that the framework attempts to define cannot be seen in isolation from the processes to obtain water from consumptive use and the impacts that this will necessarily have.

Whilst acknowledging that this framework is designed to assist in the application of environmental water, we submit that considerations of environmental maintenance other than the application of water must be considered in determined optimum outcomes. As a specific example, we refer to the Macquarie Marshes. Outcomes obtained by land purchase – as opposed to the further application of scarce water resources – have proved to provide a significantly better environmental outcome. Similarly, that better environmental outcome has come at less third party expense due to the removal of the economic driver – water – from an area reliant in part on irrigation<sup>1</sup>.

The draft notes that “Determining the optimum levels and ecological equilibrium points will be limited, in some cases seriously so, by available scientific knowledge”<sup>2</sup>. Such a statement serves to underscore our submission that this entire process is being inappropriately run backwards. The effects on communities – both social and economic – of removing water are well documented. It is foolhardy, then, to allow these negative effects to occur without a sufficient scientific understanding of the environmental positive affects that are being pursued. In our submission, “available scientific knowledge”, particularly that which is “seriously” missing, should be obtained before this process continues.

In the context of the “risk management framework” noted as required to operate without scientific certainty, we submit that the risks on the other side of the ledger of water removal are well known, recognised and documented.

We are particularly concerned at the characteristics described in the paper on page 4, noting success if ecological processes are “as close as possible to natural”. Recognition needs to be given to the fact that Australia – including rural Australia – is populated and developed. It is unhelpful to employ language that suggests such activity is necessarily bad or wrong. As an example, current conditions would have seen the Murray River run dry several years ago prior to crossing the South Australian border were it not for the regulatory structures brought to the rivers by development.

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<sup>1</sup> See Hogendyk, G (2007) *The Macquarie Marshes: An Ecological History*, Institute of Public Affairs, Occasional Paper, September 2007. See also *Macquarie Marshes Pilot Project “Burrina” – 3 Year Report, 2005-2008* (Unpublished report for Macquarie Marshes Environmental Trust).

<sup>2</sup> A Framework for Determining Commonwealth Environmental Watering Actions, page 3.

In light of the population and development of Australia, it is unrealistic to suggest that “as close as possible to natural” is a symbol of success.

*Question 1 Does the scope of Commonwealth environmental watering as outlined, meet your expectations of the range of ecological parameters that should be considered in the use of Commonwealth environmental water?*

Our answer is an unqualified no due to the absence of underlying detail either not available or not pursued.

This framework ought be seen as a plan for irrigating the environment. If an irrigator were to develop a plan without an understanding of what they needed to apply water, where that application was to take place, when that application was to take place, what it is they are seeking to achieve in that application, what the likely outcome of that application is and the alternatives available, he or she would be considered an inefficient operator, at best – and would likely be labelled an economic vandal.

Simply put, irrigators believe that rules for water use must apply to all water users. We are expected to account for every drop – so must the Commonwealth Environmental Water Holder.

### **SECTION THREE – Specific water use objectives**

In table 1, in the “management actions” section describing “extreme dry” conditions, the framework suggests “use carryover volumes to maintain critical needs.

Whilst we suspect this means nothing more than using the standard carryover provisions attached to certain types of license to meet the critical needs of environmental assets, we are concerned at possible misinterpretation.

We ask that specific reference be made to use of carryover provisions of licenses held by the CEWH. Our concern stems from recent “mining” of carryover from private entitlement holders to meet critical human needs and conveyance water. We would most certainly not support carryover mining to provide precedence for entitlements held by the CEWH as this would clearly infringe the requirement of not changing license characteristics.

Further, we are concerned at the use of “critical needs”, as it may be misinterpreted in light of “critical human needs” as noted in the Act. We suggest instead “critical environmental needs”.

*Question 2 Do you agree with the proposed ecological objectives under different water availability scenarios outlined in the table above, or can you offer suggestions for improvement?*

It is our belief that this proposal reinforces the incorrect approach of *managing the entitlement that you have* rather than *obtaining the entitlement that you need*.

In particular, we urge consideration of alteration of the mix of products obtained by the CEWH to meet the outcomes that you seek. Consideration must be given to derivative water products that provide water at times and locations required by environmental assets.

## **SECTION FOUR – Prioritisation process**

We are concerned that the resources – human, financial and time – required to develop the environmental asset register has been grossly underestimated in developing the framework. This is a massive task which underpins the entire concept of Commonwealth environmental water management and hence it is imperative that it be undertaken in a fashion that is open, accountable and transparent as well as allowing significant input from stakeholders, NSWIC and its member included.

Further, we are concerned that the framework set out in figure 1<sup>3</sup> treats “Water Holdings” as a fixed, rather than variable, component. A single class of water entitlement is subject to regular change – hence the mix of products that will necessarily be held by the CEWH will require a process that allows for constant re-evaluation.

*Question 3 Do you have a view on how the four main steps outlined above should be further developed?*

NSWIC notes with interest – and supports – the proposed requirement to detail the opportunity cost of any watering action<sup>4</sup>. It is our strong contention that this opportunity cost detail be extended to describe the opportunity cost *in dollar terms* of returning the water used in any action to consumptive use.

Rarely does the opportunity present to enable an accurate and understandable quantification of environmental management costs. In implementing an opportunity cost consideration, the CEWH has allowed just such an opportunity. With the volume of water derived from a mix of entitlements, a simple calculation can be made at the time of use to value that water at point-in-time market prices. Such an evaluation will enable not only the CEWH, DEWHA and the Minister to consider the fiscal viability of environmental watering actions, but will allow the Australian public a genuine and bona fide opportunity to quantify their environmental willingness.

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<sup>3</sup> Page 10

<sup>4</sup> Page 11 – Section 4 subparagraph (e)

*Question 4 Do you have a view on the adequacy of the 'basis for determination', 'possible criteria' and 'information sources' for each step as outlines in the above table?*

Whilst the sources noted are valuable, we submit that significant sources of local knowledge – which will be vital in adequate and appropriate environmental knowledge – have not been identified.

In particular, extensive reference to State Government Departments, NSW Catchment Management Authorities, NSW State Water Corporation and local stakeholder representative groups – including irrigators and infrastructure operators – will provide not only a valuable trove of on-ground data, but will have the added benefit of providing a community attachment to environmental watering management.

*Question 5 Do you have a view as to how the various studies/tools/frameworks mentioned should be used to develop the Commonwealth's framework for prioritising watering actions?*

It is our clear belief that an approach of “just add water” will not solve the underlying environmental issues. Further detailed consideration of specific requirements for each environmental asset is necessary – hence our concern at the sheer size of the development process for the asset register.

## **SECTION FIVE – Cooperative environmental water use**

*Question 6 Do you have a view on how the process for cooperative environmental watering as described could be improved?*

It is absolutely necessary that a collaborative – rather than a prescriptive – approach be adopted.

As a specific comment, the Delivery Phase must take into account capacity share to ensure minimised negative third party impacts. The capacity of the Barmah Choke is a good example.

## **SECTION SIX – Prioritising environmental watering actions in 2009-10**

*Question 7 Do you have any suggestions on improving the criteria for short-listing watering priorities at Attachment A, for use in 2009-10?*

We seek the addition of two further criteria;

1. The financial opportunity cost, as outlined earlier, should be implemented immediately; and

2. The environmental results of each any every watering action must be monitored and reported so that consideration of impacts against costs can be undertaken.



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## **Consultation**

# **The Expectations of Industry**

# **090303**

Andrew Gregson  
Chief Executive Officer

## **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.

This document represents the views of the members of NSWIC. However each member reserves the right to an independent view on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

## **Executive Summary**

This document sets out the consultation process that the irrigation industry expects from Government on policy matters affecting the industry.

Specifically, the industry expects that the contents of this document inform the consultation process with respect to preparation of the Basin Plan by the Murray Darling Basin Authority.

## **Background**

Industry has been critical of consultation processes entered into by both State and Commonwealth Government entities in the change process with respect to water policy. Irrigators have significant sums invested in their businesses, all of which are underpinned by the value, security and reliability of their primary asset – water.

Irrigators recognise the imperatives for change and are content to provide advice on policy measures to ensure effective outcomes for all involved.

In light of these two factors, it is not unreasonable that irrigators request adequate consultation.

Recent consultation efforts have ranged from excellent to woeful<sup>5</sup>. Irrigators believe that a method of consultation should be determined prior to the commencement of a policy change process. To that end, this document sets out the methods which we believe are acceptable and ought be adopted by Government both State and Commonwealth.

In particular, this document aims to inform the Murray Darling Basin Authority in its work developing the Basin Plan.

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<sup>5</sup> See case studies later in this document.

## Forms of Consultation

We consider two forms of consultation to be acceptable – Direct and Indirect. The preferred option will be dictated by circumstances.

### Direct Consultation

This method involves engaging directly with affected parties, together with their representative organisations. As a default, it ought always be considered the preferred method of consultation.

Irrigators acknowledge that practical exigencies must be considered to determine if Direct Consultation is possible. Such considerations will include:

- The number of affected stakeholders (the smaller the number, the more ideal this method);
- The timeframe available for implementation (the longer the timeframe, the more ideal this method)<sup>6</sup>; and
- The geographical distribution of stakeholders (the closer the proximity, the more ideal this method).

### Indirect (Peak Body) Consultation

This method involves engaging with bodies that represent affected parties. NSW Irrigators Council is the peak body representing irrigators in this state. The National Irrigators Council is the peak body in respect of Commonwealth issues.

Irrigators acknowledge that there will be occasions on which consultation with peak bodies is necessary for practical reasons. Such reasons may include:

- An overly large number of affected stakeholders;
- A short timeframe (not artificial) for implementation;
- A large geographic spread of stakeholders; and
- An issue technical in nature requiring specific policy expertise.

This form of consultation requires some specific considerations that must be addressed in order for it to be considered acceptable;

- Timeframes

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<sup>6</sup> Although note specifically that artificial timeframes, such as political necessity, will not be well received by irrigators.

Indirect Consultation is, in essence, the devolution of activity to external bodies. That is, the task of engaging with affected stakeholders to assess their views and to gather their input is “outsourced” to a peak body. That peak body cannot operate in a vacuum and, as such, must seek the views of its members lest it become unrepresentative. Dependent on the nature of the issues and the stakeholders, this may take some time. It is vital that peak bodies be requested to provide advice on necessary timeframes prior to seeking to engage them in an Indirect Consultation model.

- **Resource Constraints**

Peak bodies do not possess the resources of government. In most instances – and certainly in the case of irrigation industry peak bodies – their resources are gathered directly from members and hence must be well accounted for.

Peak bodies engage in a significant range of issues and activities, many of which feature their own time constraints.

Prior to commencing the consultation process, discussions with peak bodies must be held to ensure that the needs of stakeholders with respect to resourcing and timeframes are respected. This may include ensuring that consultation does not occur during times of known peak demand; coordination with other government agencies to avoid multiple overlapping consultation processes; and coordination with peak bodies existing consultation mechanisms (for example, NSWIC meeting dates are set annually and publicly available. These are an ideal forum for discussion as they provides access to key stakeholders with no additional cost to stakeholders).

## **Stages of Consultation**

Irrigators believe that a multi-stage consultative model, in either the Direct or Indirect applications, is necessary.

(i) *Identification of problem and necessity for change*

Irrigators are wary of change for the sake of change. In order to engage industry in the process of change, an identification of its necessity is required. This should take the form of a published<sup>7</sup> discussion paper as a minimum requirement.

(ii) *Identification of solutions and method for implementation*

With a problem identified and described, a description of possible solutions together with a proposed method of implementation should be published.

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<sup>7</sup> We accept that “published” may mean via internet download, but require that hard copies be made available free of charge on request.

It is imperative that the document clearly note that the proposed solutions are not exhaustive. The input of stakeholders in seeking solutions to an identified problem is a clear indicator of meaningful consultation.

It is likely, in practice, that steps (i) and (ii) will be carried out concurrently. This should take the form of a document seeking written submissions in response. The availability of the document must be widely publicised<sup>8</sup>. The method for doing so will vary depending on the method of consultation. As a threshold, at least 90% of affected stakeholders ought be targeted to be reached by publicity.

(iii) *Summary of submissions, identification of preferred approach*

Subsequent to the closing date, a document ought be published that summarises the submissions received in the various points covered. It must also append the full submissions.

Acknowledgement of a consideration of the weighting of submissions must be given. As an example, a submission from a recognised and well supported peak body (such as NSWIC) must be provided greater weight than a submission from a small body, an individual or a commercial body with potential commercial interests.

There are no circumstances in which submissions ought be kept confidential. Whilst we recognise that identification of individuals might be restricted, any material on which a decision might be based must be available to all stakeholders.

The document must then identify a preferred approach, clearly stating the reasons why that approach is preferred and why alternate approaches have been rejected.

Where the need for change has been questioned by submissions, indicating that a case has not been made in the opinions of stakeholders, further discussion and justification of the necessity must be made in this document.

(iv) *Explanation of interim determination and final feedback*

The document prepared in stage (iii) must now be taken directly to stakeholders via forums, hearings or public discussions. All stakeholders, whether a Direct or Indirect model is chosen, must have an opportunity to engage during this stage.

The aim of this direct stage is to explain the necessity for change, to explain the options, to identify the preferred option (together with an explanation as to why it is the preferred option) and to seek further input

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<sup>8</sup> Regional newspapers, radio stations and the websites of representative groups and infrastructure operators are useful options in this respect.

and feedback. Further change to a policy at this point should not, under any circumstances, be ruled out.

(v) *Publication of final determination*

Subsequent to stage (iv), a document must be published summarising the feedback received from that stage, identifying any further changes, identifying why any particular issues raised across various hearings at stage (iv) were not taken into account and providing a final version of the preferred solution.

### **What Consultation Is Not**

“Briefings” after the fact are not consultation (although they may form part of the process). Stakeholders will not be well disposed to engagement where prior decisions have been made by parties unwilling to change them. Briefings in the absence of consultation will serve to alienate stakeholders.

Invitations to attend sessions with minimal notice (less than 10 days) is not consultation. Consideration must be given to the regional location of parties involved, together with the expenses and logistical issues of travel from those regions.

## **Case Study One**

### **Australian Productivity Commission (Review of Drought Support)**

#### ***Getting it Right***

During 2008, the Australian Productivity Commission commenced a review of Government Drought Support for agriculture. The review commenced with the publication of a document to which submissions were sought. A significant period of time was allowed for submissions.

Subsequent to the close of submissions, a draft position was published which took into account written submissions that were received, identified issues raised in submissions and identified a number of changes considered subsequent to submissions.

The Commission then engaged in a large series of public hearings in areas where affected stakeholders were located. Parties were invited to provide presentations in support of their submissions. Parties who had not lodged written submissions were also welcome to seek leave to appear. The meetings were open to the public, who were also given the opportunity to address the hearing.

A series of “round tables” in regional areas was conducted with identified and self-disclosed stakeholders. These meetings gave those who were unable or unwilling to provide presentations in public the opportunity to have input. At the same time, no submissions were kept confidential, the Commission recognising that the basis for its determinations must be available to all.

Importantly, present at the hearing were three Commissioners. It is vital that the decision makers themselves are available to stakeholders, rather than engaging staff to undertake this task.

We understand that a final publication will be made available in 2009.

## **Case Study Two**

### **CSIRO (Sustainable Yields Audit)**

#### ***Getting it Wrong***

In early December, CSIRO (in conjunction with a number of other Government entities) conducted a regional “consultation” series with respect to the Sustainable Yields Audit. The series was, in our opinion, ill-informed, poorly organised, poorly executed and poorly received.

In late November, CSIRO sought advice from NSWIC over the format and timing of the series. We provided advice that:

- The series did not cover sufficient regional centres to engage all stakeholders. In particular, Northern NSW had not been included;
- The series should not be by invitation, but should be open to all comers given the implications not only for irrigators but for the communities that they support;
- Ninety minutes was vastly insufficient to cover the depth and breadth of interest that would be raised by attendees; and
- That the timeframe between invitation and the event was insufficient.

None of that advice was adopted.

Invitations were sent to an undisclosed number of stakeholders who had been identified by an undisclosed method. In the short space of time available to advise attendance, CSIRO threatened to cancel a number of sessions on the basis of low responses. Given the limited notice and invitation list, NSWIC became aware of a number of stakeholders who wanted to attend but were unable to.

During the sessions, information was presented as a “briefing” despite being described as consultation. As such, extremely limited time was available was questions to be addressed – a key feature of consultation. Moreover, where information that was presented was questioned, a defensive stance was taken – a key feature of lack of willingness to engage stakeholders in a consultative fashion.

In particular, NSWIC is particularly concerned at the lack of willingness to engage on factual matters contained within the report. Where glaring inaccuracies were pointed out, defensiveness was again encountered. In several instances, inaccuracies that had been advised by stakeholders were perpetuated in later documents.

Further, several presenters were clearly not aware of the full range of detail surrounding the matters that they discussed. It is imperative that those seeking feedback on a subject understand that subject in depth prior to commencing consultation.



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# **Response to ACCC**

## **Water Planning and Management**

### **Issues Paper**

**081118**

Andrew Gregson  
Chief Executive Officer

## **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 Charging 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* must 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.**