

Submission to NSW Government

NSW Aquifer Interference Policy

NSW Government policy for the licensing and approval of aquifer interference activities

120710

Stefanie Schulte
Economic Policy Analyst

Table of Content

Introduction2
Executive Summary3
General Comments5
Specific Comments7
Conclusion.....10
Appendix A.....12

Introduction

NSW Irrigators’ Council (NSWIC) represents more than 12,000 irrigation farmers across NSW. These irrigators access regulated, unregulated and groundwater systems. Our Members include valley water user association, food and fibre groups, irrigation corporations and community groups from the rice, cotton, dairy and horticulture industries. Many of these Members have been – and will be – affected by mining, including coal seam gas, in NSW.

This submission represents the views of the Members of NSWIC to the *NSW Aquifer Interference Policy*. 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.

Executive Summary

The recent amendments to the Draft NSW Aquifer Interference Policy will severely threaten the long term future of the state's water resources and the productive capacity of those industries dependent on them.

NSWIC has stated on many occasions that we recognise the need for balance between mining / coal seam gas (CSG) activities and irrigation in order for both to coexist successfully. Given the proposed changes to the Draft Aquifer Interference Policy, NSWIC does not believe that such an optimal balance has been achieved or that a practical alternative has been provided for sensible management of the state's water resources through all stages of mining and coal seam gas activities. The exemptions included in the revised Aquifer Interference Policy still provide countless opportunities for mining, including coal seam gas operations to use highly productive water sources without sufficient regulatory scrutiny and with potential detrimental effects. It is clearly evident that the objective to find an optimal balance between the preservation of the region's significant agricultural production and the extraction of the state's coal and coal seam gas reserves has not been achieved. Given the exemptions, it is furthermore questionable what this policy applies to, who it applies to and when.

NSWIC remains resolute in its opinion that the preservation of a sustainable resource for agriculture - water - must be absolute and unconditional. It is unacceptable that the NSW Government has ignored our recommendations for a sensible Aquifer Interference Policy and has continued to put water sources at risk of potential irreversible damage. If implemented in its current form, this Policy will provide insufficient protection of the state's water resources and those industries dependent on them.

As we have been provided with two business days to provide a response to the new, mining-friendly policy, we would like to voice our discontent over the grossly insufficient timeframe for a peak group like NSWIC to consult adequately with its Members. We believe that this abrogation of responsibility is also designed to further assist the mining and minerals sector.

Finally, and despite our best efforts to find a mutually acceptable path, we are now faced with a policy that is unacceptable. We urge the Government to rethink it and its implication as a matter of great urgency. In the event that it is adopted in its current form, we will have no choice but to join other parties in vigorously opposing it and encouraging the NSW Parliament to reject it.

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.

Our policy requires consultation to proceed through five stages.

(i) Identification of problem and necessity for change

Satisfactory. NSWIC has highlighted on multiple occasions that there is a need for a sensible Aquifer Interference Policy that protects the state's water resources from potential irreversible damages.

(ii) Identification of solutions and proposed method for implementation

Unsatisfactory. The document does not outline the changes that have taken place between the Draft and the Aquifer Interference Policy document. Substantial flaws remain in the proposed Aquifer Interference Policy.

(iii) Summary of submissions, identification of preferred approach

Unsatisfactory. The Aquifer Interference Policy does not make any reference to stakeholder comments and submission.

(iv) Explanation of interim determination and final feedback

Unsatisfactory. NSWIC was provided with two business days for consultation and hence has not had sufficient time to provide a comprehensive final feedback to the proposed Policy. More time should be provided to stakeholders to thoroughly understand the implication of this Policy and to prepare an appropriate response.

(v) Publication of final determination

We are under the impression that this document constitutes the final recommended changes to the Draft Aquifer Interference Policy. We are disappointed that little positive change has been implemented.

General Comments

NSWIC has attempted on multiple occasions to find ways for both industries – mining and agriculture - to coexist. We have worked vehemently for an effective and sensible Aquifer Interference Policy that will protect water resources against potential irreversible damages.

NSWIC believes it has done all it can to be reasonable in this debate and as such, it comes at a significant disappointment that our recommendations have been comprehensively ignored.

We have proposed five very reasonable changes to the Draft Aquifer Interference Policy that we believe would allow for a sustainable management of the state's water resources.

These five recommendations are;

1. The Policy has to apply state wide;

NSWIC remains resolute in its opinion that the preservation of water resources must be absolute and unconditional. We have always strongly advocated for the Policy to apply state wide to protect all water resources in NSW.

2. The Policy has to apply to all water sources - both ground and surface water;

Given the high interconnectivity between water sources, NSWIC strongly believes that both ground and surface water have to be included in this Policy. The impact on one water source, can have a direct and irreversible impact on the other. To only address impacts on one water source, nullifies the effort to have a comprehensive regulation that protects all water sources in the state.

3. The Policy has to apply through all stages of mining and coal seam gas activities - exploration, operation and post-closure;

A comprehensive policy that protects all water sources across NSW needs to apply to all stages of mining and coal seam gas activities - exploration, operation and post-closure. In the exploration stage, damage to an aquifer can arise to the same extent as during the operation phase and hence require regulation. Furthermore, an aquifer might take years or decades to reach equilibrium again, a thorough consideration of post-closure impacts / management are crucial for the maintenance of healthy water sources in the state.

4. The Policy has to apply to all projects to be subject to an Aquifer Interference Approval regardless of a Gateway Certificate (or alternative that the advice to the Gateway Panel is binding);

NSWIC strongly advocates for ALL mining and coal seam gas activities to be subject to the Aquifer Interference Policy. We believe it contradicts the purpose of this Policy if the acquisition of a gateway certificate has the capability to override the regulation of the Aquifer Interference Policy.

5. The Policy has to remove the exemptions for "state significant projects"

NSWIC believes it is highly inadequate that there exists a streamlined approval process for state significant projects. Should such a provision be implemented, then this would potentially result in a significant number of projects to bypass the requirement to hold an Aquifer Interference Approval. NSWIC objects to the exemption of state significant projects from the need to hold an aquifer interference approval. NSWIC stresses that all mining and coal seam gas projects should be treated identically as the regulatory framework would otherwise be severely diluted.

It appears that we have been comprehensively ignored on all but one of our recommendations. While the revised Draft Aquifer Interference Policy now appears to apply state wide, all other recommendations have been rejected. Surface water resource issues are still insufficiently addressed in the Policy and very little change has take place with respect to the regulation of exploration / post-closure of mining and coal seam gas activity and the exemptions of state significant projects. Furthering the insult, the policy is now deliberately vague on a range of key areas which we believe is clearly designed to further assist the mining and minerals sector.

Specific Comments

We would again like to voice our discontent over the very short timeframe for consultation. Given the timeframe, we will not be able to comment in detail on all the aspects of the changes to the Draft Aquifer Interference Policy.

Outlined below are the sections that are relevant for our submission and which support our response to the Aquifer Interference Policy;

NSWIC Recommendation	Draft NSW Aquifer Interference Policy - Stage 1 (March 2012)	NSW Aquifer Interference Policy (July 2012)	Comments
The Policy has to apply state wide;	<i>The NSW Government is rolling out Aquifer Interference approvals under the Water Management Act 2000. The first stage of this roll out will require aquifer interference activities in groundwater that is covered by the Water Management Act 200- and underlies Biophysical Strategic Agricultural Land (...). The second stage of this roll out will address the aquifer interference approval requirements for activities in groundwater that does not underlie biophysical Strategic Agricultural Land. (p.4)</i>	<i>This policy explains the licensing and approvals framework for all aquifer interference in NSW. (p.3)</i>	NSWIC welcomes the change to the Aquifer Interference Policy in that it now applies statewide. However we would like to raise our concern that this does not apply state significant developments. Applying first to all areas with Water Sharing Plans in place and a goal of 2014 for full state coverage.
The Policy has to apply to all water sources - both ground and surface water;	<p><i>An Aquifer interference approval will either be exempted or will only be issued where it can be demonstrated that adequate arrangements are in place to ensure that no more than minimal harm will be done to the aquifer or its dependent ecosystem. The minimal harm criteria set out in Appendix 1 cover the key potential impacts of water table and water pressure drawdown, aquifer compaction and water quality. (p.25)</i></p> <p>Appendix 1 makes only reference to Groundwater and Groundwater Bores.</p>	<p><i>Under section 97(6) of the Water Management Act 2000, an aquifer interference approval is not to be granted unless the Minister is satisfied that adequate arrangements are in force to ensure that no more than minimal harm will be done to the aquifer (..) (p.38)</i></p> <p><i>For each of these highly productive and less productive groundwater sources thresholds for key minimal harm criteria have been set. (p.39)</i></p>	<p>NSWIC objects to the amendment to the minimal harm criteria as it is still focused on groundwater sources without taking sufficient consideration of surface water resources.</p> <p>NSWIC would also like to highlight that the minimal harm criteria have substantially changed. Given the short timeframe, we are unable to comment in full on all changes made. More detail; needs to be provided on the changes made to the revised policy.</p>

<p>The Policy has to apply through all stages of mining and coal seam gas activities - exploration, operation and post-closure</p>	<p><i>Section 3.4. Exemption from the need to hold an aquifer interference approval</i></p> <ul style="list-style-type: none"> <i>mineral and coal exploration activities undertaken in accordance with conditions of authorization under the Mining Act 1992 subject to those conditions not allowing the exploration activity to cause or enhance interconnectivity of aquifer</i> <i>petroleum exploration activities undertaken in accordance with conditions of titles under the Petroleum (Onshore) Act 1991 subject to those conditions not allowing the exploration activity to cause or enhance interconnectivity of aquifers. (p.28)</i> <p><i>Section 2.4. Dealing with perpetual inflow volumes</i></p> <ul style="list-style-type: none"> <i>Where there is ongoing take of water, the license holder must retain a water license for the period until the system returns to equilibrium or surrender it to the Minister. If the water license is surrendered, the Minister will retain the license entitlement to account for the ongoing take of water. (...) Given the likelihood of a less active management regime post-closure, surrendering of license entitlements which adequately cover any likely future low available water determination periods is preferable. (p. 11)</i> <p><i>Section 4.1. Security deposits and penalties</i></p> <ul style="list-style-type: none"> <i>A security deposit is a bank guarantee or sum of money held by the Government to cover the costs of remediation works for unforeseen impacts or ongoing post-closure activities. (p.32)</i> 	<p><i>Section 3.3. Exemption from the need to hold an aquifer interference approval</i></p> <ul style="list-style-type: none"> <i>mineral and coal exploration activities undertaken in accordance with conditions of authorization under the Mining Act 1992 (...)</i> <i>petroleum exploration activities undertaken in accordance with conditions of titles under the Petroleum (Onshore) Act 1991 (...) (p.54)</i> <p><i>Section 2.4. Dealing with perpetual inflow volumes</i></p> <ul style="list-style-type: none"> <i>Where there is ongoing take of water, the license holder must retain a water license for the period until the system returns to equilibrium or surrender it to the Minister. If the water license is surrendered, the Minister will retain the license entitlement to account for the ongoing take of water. (...) Given the likelihood of a less active management regime post-closure, surrendering of license entitlements which adequately cover any likely future low available water determination periods is preferable (p.9)</i> <p><i>Section 4.1. Security deposits and penalties</i></p> <ul style="list-style-type: none"> <i>A security deposit is a bank guarantee or sum of money held by the Government to cover the costs of remediation works for unforeseen impacts or ongoing post-closure activities. (p.57)</i> 	<p>NSWIC does not believe the Policy adequately applies to all stages of mining and coal seam gas activities.</p> <p>Since insignificant changes have taken place between the Draft and the recently released Aquifer Interference Policy, we would like to reiterate our concerns over the insufficient regulation in the exploration and post closure stage of mining and coal seam gas activities.</p> <p>To limit the damages of exploration activities, NSWIC has suggested in its previous submission that any renewal of exploration licenses should be covered by an AI approval.</p> <p>NSWIC has stressed that a provision that allows mining and coal seam gas operations to surrender their licenses to the Minister, will provide insufficient incentives for mining and coal seam gas operations to take necessary precaution to ensure that the water sources are not damaged.</p> <p>NSWIC also called for greater detail on make good provisions, burden of proof, monitoring/management requirements and how security deposits will be managed.</p>
--	--	--	---

<p>The Policy has to apply to all projects to be subject to an Aquifer Interference Approval regardless of a Gateway Certificate (or alternative that the advice to the Gateway Panel is binding);</p>	<p><i>Section 3.4. Exemptions from the need to hold an aquifer interference approval:</i></p> <ul style="list-style-type: none"> • <i>State significant mining and coal seam gas development proposals</i> • <i>those individual activities that existed prior to aquifer interference approvals</i> • <i>those activities that are covered by a water supply work approval</i> • <i>mining and coal exploration activities</i> • <i>petroleum exploration activities</i> • <i>in aquifers that the Minister determines as being high value aquifers</i> • <i>in aquifers that the Minister determines as not being high value aquifers</i> • (...) <p>(p.27-28)</p>	<p><i>Section 3.3. Exemptions from the need to hold an aquifer interference approval:</i></p> <ul style="list-style-type: none"> • <i>State Significant mining and coal seam gas development proposals</i> • <i>road or rail infrastructure construction</i> • <i>State significant infrastructure</i> • <i>those individual activities that existed prior to aquifer interference approval being switched on</i> • <i>mining and coal exploration activities</i> • <i>petroleum exploration activities</i> • <i>in aquifers that the Minister determines as being high value aquifers</i> • <i>in aquifers that the Minister determines as not being high value aquifers</i> • (...) <p>(p.53 -54)</p>	<p>NSWIC rejects the broad list of exemptions included in the Aquifer Interference Policy. We reiterate our concern that a Policy that has more exemptions than applications cannot constitute an adequate Policy that protects the state's water resources.</p> <p>NSWIC strongly advocates for a uniform and comprehensive assessment framework for all mining and coal seam gas project proposals. All proposals should be subject to the same thorough assessment in which all relevant information on local and regional costs/ risk are taking into consideration.</p>
<p>The Policy has to remove the exemptions for "state significant projects"</p>	<p><i>General exemptions from the need to hold an aquifer interference approval (...) will be specified in the Aquifer Interference Regulation and are as follows:</i></p> <p><i>State significant mining and coal seam gas development proposals that have been granted either a gateway certificate or development consent (where the gateway does not apply) under the EP&A Act. (p.27)</i></p>	<p><i>General exemptions from the need to hold an aquifer interference approval (...) will be specified in the Water Management(General) Regulation and are as follows:</i></p> <p><i>State significant mining and coal seam gas development proposals that have been granted either a gateway certificate or approval (where the gateway does not apply) under the EP&A Act. (p.53)</i></p>	<p>NSWIC considers it highly inadequate that the Policy suggest for streamlined approval process for state significant development proposals.</p> <p>Should such a provision be implemented, NSWIC believes that a significant number of projects will bypass the regulation with the consequence that water resources in NSW will be at risk of potentially irreversible damage.</p>

Additional Comments:

NSWIC would like to raise additional concerns with the Aquifer Interference Policy;

- **Return of water to a water source;**

" In addition, where an aquifer interference activity is incidentally taking water from a river it must be returned to that river when river flows are at levels below which water users are not permitted to pump." (p.6)

We are unsure how the inclusion of this section will impact irrigators and irrigation activities. We would like to see further detail on how this affects individual irrigators.

- **Provision of Information;**

"The NSW Office of Water's assessment will determine the potential level of impact and will identify where further mitigation, prevention or avoidance measures are required." (p.38)

NSWIC holds a strong preference for public access to all information to the development proposals and associated aquifer impacts. We recommend that this information has to be made public by the NSW Office of Water.

- **Minimal Harm Criteria;**

NSWIC is concerned that the minimal harm criteria have substantially changed. The percentages and water source references included in this document vary substantial from the initial draft Aquifer Interference Policy. We are particular unsure how the minimal harm criteria compare to the current condition of aquifer in 2012. We are alarmed that certain sections of the minimal harm criteria have been removed - aquifer compaction, water quality assessment, and the reinjection of water into a water source.

- **Compliance with Other Policies;**

NSWIC would like to highlight the gateway process has to comply with other state and national regulation, in particular the National Groundwater Standards. Furthermore, we would like to raise the question as to how the Aquifer Interference Policy - in particular the minimal harm criteria - will apply/interact with the current Water Sharing Plans.

- **Cumulative Impacts;**

NSWIC would like to see further detail provided on the individual and cumulative impact assessment as part of the Aquifer Interference Policy. We are aware that cumulative impacts are mentioned, however we do not believe the Policy adequately covers this aspect. Furthermore, NSWIC would like to highlight that the overall impact of this Policy on AWD is ambiguous and requires further explanation.

- **Consideration of Aquifer Impacts**

Where mining and coal seam gas development proposals on strategic agricultural land need to pass a gateway test before proceeding to DA lodgement, it is unacceptable that this only requires “consideration” of the impacts on aquifers against the AI policy. This must “comply” with the AI Policy.

Conclusion

NSWIC would like to reiterate our disappointment that despite our best efforts to find a mutually acceptable path, we are now faced with a policy that is entirely unacceptable. We urge the NSW Government to rethink it and its consequences as a matter of urgency. If the policy is adopted in its current form, water resources across the state and the industries dependent on them will be severely threatened.

Appendix A:



PO Box RI437
Royal Exchange NSW 1225
Tel: 02 9251 8466
Fax: 02 9251 8477
info@nswic.org.au
www.nswic.org.au
ABN: 49 087 281 746

Consultation

The Expectations of Industry

090303

Andrew Gregson
Chief Executive Officer

Member Organisations: Bega Cheese Limited, Border Rivers Food & Fibre, Coleambally Irrigation Co-Op Ltd, Cotton Australia, Gwydir Valley Irrigators' Association Inc., High Security Irrigators Inc, Hunter Valley Water Users' Association, Lachlan Valley Water, Macquarie River Food & Fibre, Mid Coast Dairy Advancement Group, Mungindi-Menindee Advisory Council, Murray Irrigation Limited, Murray Valley Water Diverters' Association, Murrumbidgee Groundwater Inc., Murrumbidgee Irrigation Ltd, Murrumbidgee Private Irrigators' Inc., Murrumbidgee Valley Food and Fibre Association, Namoi Water, NSW Farmers' Association, Ricegrowers' Association of Australia, Richmond Wilson Combined Water Users Association, Riverina Citrus, Southern Riverina Irrigators, South Western Water Users', West Cororgan Private Irrigation District, Wine Grapes Marketing Board

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 woeful¹. 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.

Forms of Consultation

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

¹ See case studies later in this document.

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)²; 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

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

² Although note specifically that artificial timeframes, such as political necessity, will not be well received by irrigators.

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 published³ 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.

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.

³ We accept that “published” may mean via internet download, but require that hard copies be made available free of charge on request.

The availability of the document must be widely publicised⁴. 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 and feedback. Further change to a policy at this point should not, under any circumstances, be ruled out.

⁴ Regional newspapers, radio stations and the websites of representative groups and infrastructure operators are useful options in this respect.

(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 for 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.