

## **Submission**

## **IPART**

# **Reforming licensing in NSW Review of licence rationale and design**

**121211**

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# 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 associations, food and fibre groups, irrigation corporations and community groups from the rice, cotton, dairy and horticulture industries.

NSWIC engages in advocacy, policy development, public and media relations. As an apolitical entity, we are available for the provision of advice to all stakeholders and decision makers.

This submission represents the view of the Members of NSWIC with respect to IPART's *Reforming licensing in NSW - Issue Paper*. 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.

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## General Comments

NSWIC welcomes the opportunity to make a submission to IPART's issue paper on reforming licensing in NSW. As NSWIC supports the development and growth of sustainable irrigated agriculture through the optimal management of the state's water resources, the issue of licensing is of significant importance to our Members.

The management of NSW water resources is a complex task, involving a range of legislations, initiatives and cooperative arrangements with both Federal and State government departments. The two key pieces of legislation related to the management of NSW water resources are the *Water Management Act 2000* (WMA 2000) and the *Water Act 1912* together with its subsequent amendments. Since the WMA 2000 was enacted, some amendments were necessary to also give effect to the *National Water Initiative* (NWI).

Under the WMA 2000, water extraction must be conducted under an appropriate water access license, a basic landholder right or a license exemption. Apart from existing water access licenses for high security, general security and supplementary water, the NSW Government is currently in the process of developing a Floodplain Harvesting Policy that will lead to licensing of floodplain harvesting activities.

This submission will outline in detail stakeholder's concerns to the current floodplain harvesting policy as well as address further issues with the licensing framework for supplementary water entitlements in NSW. NSWIC urges IPART to address these issues immediately so that a consistent and comprehensive water licensing framework can be developed that will guide the sustainable management of NSW water resources.

# Specific Comments

## Supplementary Licences

Supplementary water, for the purpose of defining the licence category, is water that is available and surplus to other requirements, generally during wet periods or at times of low water demand. Access to supplementary water is triggered in a range of circumstances, including dam spill and unregulated inflows (below the dam wall).

When these excess flows exceed the environmental requirements determined in the environmental flow rules, then they may be made available to supplementary licence holders.

Supplementary water is an important source for many areas both inland and coastal. Furthermore, this form of irrigation water is in some instances more reliable than regulated General Security Water.

With the commencement of the WMA 2000, supplementary water is included in the 'Category of licence', but it continues to be treated differently to other water entitlements in that this licence type is not issued in perpetuity but rather as "Life of Plan". This means that supplementary licences are issued for ten years from the commencement of the individual relevant Water Sharing Plan.

The consequence of such an approach is that irrigators who hold supplementary licences are in possession of a depreciating asset that does not provide them or their communities with any asset value security.

Given the ongoing high levels of on-farm irrigation infrastructure investment, it will be important that the asset that underpins this investment is secure. Given the high reliability of supplementary water in northern NSW, the possession of such an associated licence, constitutes a significant asset for irrigators and this asset value must be secured. From NSWIC's perspective, a guarantee of the value of the asset would be achieved through converting supplementary water access licences from "Life of Plan" into a perpetuity licence.

Furthermore, clause 28 of the *National Water Initiative* (NWI) states that licenses ought be perpetual and expressed as a share in an available resource.

*The consumptive use of water will require a water access entitlement, separate from land, to be described as a perpetual or open-ended share of the consumptive pool of a specified water resource, as determined by the relevant water plan (..)<sup>1</sup>*

This has clearly not been achieved in relation to Supplementary Licences in NSW.

However, NSWIC acknowledges that clause 33 of the NWI allows for fixed term entitlement, such as "Life of Plan" where it is "demonstrably necessary".

*(..) fixed term or other types of entitlements such as annual licences will only be used where it is demonstrably necessary (..)<sup>2</sup>*

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<sup>1</sup> Intergovernmental Agreement on a National Water Initiative , pp. 5-6 , <http://www.water.wa.gov.au/PublicationStore/first/82387.pdf>

<sup>2</sup> Ibid, p. 6

The relevant example of this in the NWI is given by "*where the access is contingent upon opportunistic allocations*". The term "opportunistic" is not defined in the NWI, was not defined in the original *Water Act 2007 (Cth)* or the subsequent amendments to the Water Act passed in 2008.

In any event, even if supplementary water is deemed "opportunistic", the temporary licensing of it is certainly not demonstrably necessary. Supplementary Water has been a feature of the NSW landscape for many decades and underpins the operations of many irrigators.

As most supplementary licences will expire in 2014 in NSW, NSWIC considers it important that the issue of license tenure with this particular license is urgently addressed as part of this review process.

Annexed to this submission is NSWIC's policy on Supplementary or Uncontrolled Flow Water Policy.

## **Floodplain Harvesting Licences**

THIS SECTION REFERS TO THE DRAFT POLICY DISTRIBUTED BY THE NSW OFFICE OF WATER (NOVEMBER 2012). AS SUCH, IT MUST BE READ IN CONJUNCTION WITH THE NSW GOVERNMENT DRAFT POLICY.

Floodplain harvesting is the collection, extraction or impoundment of water flowing across floodplains, excluding the following types of water extracts:

- taking water under a water access licence that is not a floodplain harvesting access licence;
- taking of water under a basic landholder right, including water taken under a harvestable right;
- taking of water under an applicable water access licence exemption under the WMA 2000;
- runoff of irrigation and stormwater which is subsequently captured in tailwater return systems or other means in accordance with licence conditions or methods which have been approved by the NSW Office of Water.

Floodplain harvesting has been a critical component of the irrigation resource mix in the northern NSW valleys since large scale irrigation development commenced in the 1960s and 70s. It is been a longstanding practice that has fostered significant investment in infrastructure and employment related to the activity and which has taken place in full knowledge and encouragement of the NSW Government.

Since the early days of northern basin irrigation, floodplain harvested water has been a key input resource and while the rainfall events that generate the opportunity are episodic, historical data and modelling shows that access to floodplain harvesting occurs frequently and is predictable over the medium to long term. In some instances, irrigators are able to demonstrate that floodplain harvesting is more reliable than their regulated water allocations. In the northern valleys, floodplain harvested water has shown to account for 25 to 60 per cent of the average available water resource, and in some seasons it represents the majority of the available water resource.

Up until the introduction of the WMA 2000, the taking of floodplain harvested water was an implied right, in a similar manner to taking of supplementary water. Since then, the NSW Office of Water (NOW) has been in the process of developing a NSW Floodplain Harvesting Policy in order to bring floodplain harvesting activities into a statutory licensing and approvals framework under the WMA 2000.

NSWIC members accept the right of the NSW Government to licence floodplain harvesting in accordance with the WMA 2000, but also stresses that the licensing of floodplain harvesting water should not, under any circumstances, result in any net reduction in the overall Cap, or the Cap on any other classes of water.

Furthermore, State and Federal Government must recognise that the licensing of floodplain harvesting water is only bringing a recognised and accepted practice into line with the requirements of the WMA 2000. It must therefore be ensured that this process will not lead to an increase in extractions.

While the recent iteration of the draft NSW Floodplain Harvesting Policy has seen some positive changes, NSWIC continues to be concerned about several aspects of the proposed Policy;

- The determination of the Long-Term Average Annual Extraction Limits (LTAAELs) and share components. NSWIC remains concerned about how well the modelling will reflect the historical use of floodplain harvested water.
- The licensing of floodplain harvested water in unregulated rivers. NSWIC would like to highlight that the issue of whether floodplain harvesting was accounted for when unregulated licences were issued remains an area of dispute.
- The issue of licensing where a works approval exists under the *1912 Water Act*. NSWIC strongly supports the notion that Floodplain harvesting licence is issued under the *1912 Water Act* and then converted to the WMA 2000.
- The 500% Water Account Initialisation and Carryover. NSWIC requests that accounting rules are assessed against the criteria that no irrigators will be worse off (or better off) under the new licensing framework. As such, NSWIC believes that accounts should be initialised to 500%, followed by immediate annual 100% allocation credits.
- The floodplain harvesting licence commencement date. There is some concern that due to the different roll-out timetables across valleys, some valleys may be disadvantaged if their licences are issued earlier than other valleys.
- The inter-agency decision model. NSWIC understands that the most recent draft policy is being considered by an Inter-Departmental committee and we suggest that NSWIC is invited to nominate a representative to sit on this committee, and indeed any other Inter-Departmental Committee that is considering water policy which has the capacity to impact on irrigators.

Furthermore, we would like to highlight the following key policy issues that have not yet been addressed in the current iteration of the Floodplain Harvesting Policy;

- The issuing of floodplain harvesting licences must not have any third party impacts on other entitlement holders. As such, the NSW Government needs to issue an official statement that this policy change is subject to the risk assignment provisions of the NWI.
- Any essential work on eligibility and historical floodplain harvesting activities needs to be conducted at the earliest opportunity and not be deferred until this policy is finalised;
- The collection of data identifying works and their capacity will need to be undertaken as this information will be crucial for the proper development and calibration of the IQQM as well as for proper measurement and compliance purposes. For this reason, irrigators need to be consulted in the floodplain harvesting model calibration process;

- Clarity needs to be given about the July 3, 2008 works cut-off date. Specifically, information on how partially completed works, and approved but un-constructed works will be considered must be provided;
- More information and consultation is required on any environmental impact assessment that may need to be carried out.
- An Anomalies Committee will be required to adjudicate on issues such as the eligibility of works and the volume of entitlement shares issued to licence holders.
- Floodplain Harvesting Water Access Licences need to be issued in perpetuity; and
- Floodplain Harvesting Water Access Licences need to be fully tradeable.

While those steps are essential, NSWIC continues to reserve its position on how the available entitlement pool should be shared among irrigators. NSWIC believes that further consultation is required before selecting a distribution method.

NSWIC stresses that while the licensing process is being completed, floodplain harvesting needs to remain a lawful activity, and should be exempt from the WMA 2000 provisions making it illegal to take water without a Water Access Licence and associated works and use approvals.

## **Conclusion**

The ongoing management of NSW's water resources is of crucial importance for the sustainable development of irrigated agriculture. An optimal licensing framework will not only protect irrigator's property right but also provide the correct incentives for individual irrigators to use this valuable resource efficiently and effectively and thereby achieve the government's social, environmental and economic objectives.

## Appendix A:



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# Supplementary or Uncontrolled Flow Water Policy

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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.

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.

## **Executive Summary**

This document deals with Supplementary Water licences in New South Wales, primarily the tenure and name of this water access entitlement.

NSWIC has adopted a policy to change the tenure of surface derived<sup>3</sup> Supplementary entitlements to a perpetual licence aligning them with other categories of water access licenses pursuant to the *Water Management Act* (NSW) 2000.

The reliability of this entitlement is such that it is a vital source for operators in parts of NSW and therefore ought be renamed. "Supplementary" is an incorrect way of describing an asset upon which businesses and communities rely. Further, as some Supplementary licenses were issued as a transitional measure only (particularly in groundwater sources), the nomenclature ought be altered to take account those that are not transitional in nature.

NSWIC has adopted a policy to change the name of the entitlement to Uncontrolled Flow Entitlement.

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<sup>3</sup> But specifically not groundwater supplementary licenses or transitional arrangements.

## Background

Supplementary licences are an important part of irrigation operations in northern NSW, the Lower Darling, the NSW Murray and coastal areas. In some cases, the entitlement is more reliable than regulated General Security water.

Prior to the introduction of the *Water Management Act 2000*, in some systems no license was required to access Supplementary water. Referred to by various names (including High Flow and Off Allocation water), access to this water was an implied right.

Supplementary water, for the purposes of defining this licence category, is water that is available and surplus to other requirement, generally during wet periods or at times of low water demand. Access to supplementary water is triggered when a dam overflows due to natural inflows or there are significant flows on regulated rivers.

The *Water Management Act 2000* lists supplementary water in the “Categories of licence”<sup>4</sup>. As such, licences were issued for regulated rivers and groundwater sources. These licences were not issued in perpetuity but rather as “Life of Plan”<sup>5</sup>.

The Life of Plan approach establishes that licences are valid for ten (10) years from the commencement of the relevant Water Sharing Plan.

## Tenure of Licence

Supplementary licenses in NSW will expire in 2014. As such, they are currently a depreciating asset and do not provide any investment certainty for the irrigators that rely on them, the communities that they support or the financiers that have secured them to fund investment. In an era where high levels of investment in efficient irrigation infrastructure by both the public and private sector are being encouraged by government, it is important that the asset that underpins that investment is secure. Only a perpetual license can achieve that.

Council supports the Life of Plan approach where Supplementary licences have been issued for groundwater sources as a transitional adjustment method.

## The National Water Initiative

Clause 28 of the National Water Initiative set the goal of licensing of water to provide irrigators with a property right separate to their land. It stated that licenses ought be perpetual and expressed as a share in an available resource. This has clearly not been achieved in relation to Supplementary Water in NSW.

Clause 33 of the NWI allowed for fixed term entitlements, such as “Life of Plan”, where it is “demonstrably necessary”. The relevant example of this in the NWI is stated as “where the access is contingent upon opportunistic allocations.”

The term “opportunistic” is not defined in the NWI, was not defined in the original *Water Act 2007* (Commonwealth) or the subsequent amendments to the Act passed in 2008.

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<sup>4</sup> Water Management Act 2000 Section 57, Chapter 3, Part 2

<sup>5</sup> Where “plan” represents Water Sharing Plans pursuant to the Act.

In any event, even if supplementary water is deemed to be opportunistic, the temporary licensing of it is certainly not demonstrably necessary. Supplementary Water has been a feature of the NSW landscape for many decades underpins the operations of many irrigators and is, in some instances, more reliable than other forms of perpetual water entitlement.

### **Third Party Impacts**

NSW Irrigators Council recognises that the priority and security of supplementary water is low. We do not wish to alter that, nor the rules that surround determination of access periods to supplementary water. We note that supplementary water is not presently made available until all environmental and higher priority rights holders have been satisfied.

Further, we recognise that Supplementary Entitlement provides significant flexibility in NSW against activation of entitlement (growth in use) across the state. We do not wish to see this buffer removed.

We do not, however, believe that limiting tenure of Supplementary Entitlement is required to achieve these ends.