

Submission to IPART

State Water Corporation Draft Operating Licence 2013-2018

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Introduction

NSW Irrigators' Council (NSWIC) represents more than 12,000 water access licence holders across NSW. These water access licence holders 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.

This submission represents the views of the Members of NSWIC with respect to IPART's *State Water Corporation - Draft Operating Licence 2013 - 2018*. 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 appreciates the opportunity to provide a submission to IPART on *State Water Corporation - Draft Operating Licence 2013 - 2018*.

We acknowledge that State Water Corporation (SWC) is operating in a highly complex regulatory environment and is subject to a wide range of legislation. Given the existing regulatory complexity, we have stressed to IPART the need for clarity and simplicity in SWC's Operating Licence. We are pleased to see that IPART has incorporated several of our recommendations.

We note however that regulatory ambiguity still exists in the proposed Draft Operating Licence as insufficient detail is provided on the development, implementation and certification of the Australian and International Standards that SWC will have to comply with. We have outlined in our last submission to IPART that we are unable to determine the benefits from implementing such Standards or assess the costs involved in complying with them. We therefore question the need to impose such Standards as they are likely to lead to additional costs without providing further customer benefits. A thorough assessment of all costs associated with implementing such Standards must be conducted prior to consider an adoption of them.

Finally, we would like to reiterate to IPART that SWC will be subject to two different regulators from 2014 onwards, when the ACCC regulates SWC's bulk water charges in the Murray-Darling Basin portion of NSW. We urge IPART to thoroughly consider the additional regulatory complexity and costs involved in complying with two different regulators. We stress that care must be taken when proposing significant amendments to the current Operating Licence in order to keep costs for customers at a minimum.

Specific Comments

Water Quality

NSWIC noticed that IPART has explicitly formalised operational requirements relating to water quality. While NSWIC is not opposed to the monitoring and quality assurance procedures related to water quality, we are concerned over who will pay for those additional services. NSWIC submits that the proposed Draft Operating Licence must be explicit that the fees and charges associated with these services will be paid for exclusively by the Local Water Utilities and not passed on to other customers of SWC. As other customers of SWC do not derive direct benefits from water quality monitoring, they should not be obligated to pay for such activities. This is consistent with the 'beneficiary pay principle', which NSWIC supports.

Water Quantity

The proposed operational requirements in respect to SWC's water delivery functions have been significantly shortened. We note specifically that section 6.2 of the current Operating Licence has been amended and subsection 2.6(a) has been removed entirely;

... is accountable for the management and delivery of water allocated to Customers;

As we have stressed in our last submission, NSWIC considers SWC to be a crucial component in the delivery of water to its customers through the operations of SWC's infrastructure. The connection between SWC's activities and its functions is, in the opinion of NSWIC, accurately reflected in the current Operating Licence and should be adopted in its current form. As the Operating Licence is the only regulatory instrument that obliges SWC to operate its infrastructure so that its customers can access water made available under their water access entitlements, we consider it particularly important that the link between release and delivery of water is maintained.

We have repeatedly emphasized that SWC can only be held responsible for those aspects over which it has direct control. As the current *State Water Act 2004* clearly outlines, the systems and services provided by SWC relate to the capture, storage and release of water. This release of water is one component in the delivery of water allocations to customers. We submit that instead of removing section 6.2(a), the definition of 'water delivery' should be tightened to ensure that SWC is not held responsible for occurrences outside its control.

In respect to section 3.1 of the proposed Draft Operating Licence, NSWIC submits that more detail should be provided on what constitutes 'all reasonable steps' and 'timely' delivery so that customers are able to fully assess the SWC's operational requirements.

Water accounting reports

NSWIC does not support Section 3.2 of the proposed Draft Operating Licence. The NSW Office of Water should be sole responsible authority for the preparation of all water accounting reports in NSW.

SWC primary responsibility is the efficient and effective operation of its infrastructure that will enable the delivery of water to its customers. The preparation of water account reports are not directly related to SWC's primary operating function and should be removed.

Furthermore, NSWIC does not concur with the amendments made to section 6.3 of the current Operating Licence;

State Water must take such steps as are reasonably practicable to conserve water and to minimise losses that result from its operations.

Instead of referring to operations, the proposed Draft Operating Licence imposes the following requirement on State Water under Section 3.1.4;

State Water must take all reasonable steps to conserve water and minimise water losses that result from undertaking its functions under this Licence.

As 'functions' is only a subset of 'operations', NSWIC considers there to be a downgrade in responsibilities for SWC to minimise water losses. Such a downgrade cannot be accepted by NSWIC. We request that this section is amended to refer to the operations of SWC and not only to its functions under this licence.

Assets

Without further detail, NSWIC cannot support the development, implementation and certification of an *Asset Management System*. NSWIC is of the opinion that there will be insignificant changes to SWC's current operations as a result of such Standards and as such, the implementation and compliance requirements imposed on SWC are unlikely to be justified. Furthermore, the auditing costs associated with those Standards will likely be passed on to customers, without providing equivalent customer benefits.

Additionally, NSWIC is concerned that currently existing requirements may be lost in the transition to the newly proposed *Asset Management System*. In particular, we submit that section 3.1 of the current Operating Licence must be featured in the proposed Draft Licence;

State Water must ensure that its Assets are managed in a manner consistent with:

(a) its obligations in the Licence and all applicable laws, policies and guidelines with which State Water must comply, including the requirements of the NSW Dams Safety Committee;

(b) the principles of the NSW Government's Strategic Management Framework and the NSW Government's Total Asset Management (TAM) Policy and Guidelines;

*(c) achieving the lowest cost of service delivery across the whole life of the Assets;
and*

(d) identifying business risks related to the Assets and managing them to a commercially acceptable level.

Furthermore, NSWIC submits that section 3.3.2 of the current Operating Licence is featured in an amended form in the *Asset Management System*;

(a) investigating and reporting on, or reviewing the pricing of State Water's services under the relevant regulation of the responsible regulator. (emphasis added)

It needs to be ensured that the responsible regulator is able to fully assess SWC's services which are directly related to fees and charges imposed on its customers.

Water metering

NSWIC does not concur with section 4.2.2 of the proposed Draft Operating Licence;

State Water may operate, replace, repair, maintain, remove, connect, disconnect or modify the metering equipment that State Water does not own. (emphasis added)

We submit that SWC must be held responsible for all state-owned meters but should not have authority over meters it does not own.

Additionally, NSWIC does not concur with IPART's assessment of the 2009 amendments to the *State Water Act*¹. While the amendments to the Act provide an option to include metering responsibilities in SWC's operating licence, this option is not a requirement. Furthermore, we would like to make IPART aware that the process and outcome of the metering project are not yet finalised, and that considerable uncertainty remains over how many meters SWC will own in the future.

Furthermore, according to proposed amendments to section 91I of the *Water Management Act 2000*²;

State Water is responsible for maintaining, repairing or replacing all state-owned meters (emphasis added).

NSWIC has outlined with its submission³ to the proposed amendments, that we consider SWC to be responsible for the operation or otherwise of a State owned meter because a metering service charge is levied against users. Should SWC be furthermore able to 'operate, replace, repair, maintain, remove, connect, disconnect or modify the metering equipment that State Water does not own', then this could cause additional costs for some water access licence holders who hold private meters. Such cost increases are not supported by NSWIC.

In any event, NSWIC submits that IPART must ensure that any requirement imposed on SWC through its Operating Licence is consistent with all current and proposed changes to other relevant regulation.

¹ IPART, Cost benefit analysis of proposed changes to State Water Corporation's operating licence, February 2013.

² Department of Primary Industries Office of Water, Proposed new section 91I requirements

³ NSWIC submission to the proposed new section 91I requirements is appended to this submission

Customers

As the Operating Licence is the only regulatory instrument that addresses customer management functions, NSWIC strongly recommends that they be maintained or extended.

As customers of a monopoly service provider, Members of NSWIC value the customer management functions highly and only support amendments if they extend or improve current arrangements.

While we support the removal of the requirements relating to the CCC, we oppose the proposed amendments to the CSC. We strongly disagree that further amendments are necessary to the representation on the CSC, particularly of further environmental water customers. We consider the current member composition of the CSC to be adequate and reject the inclusion of the Commonwealth Environmental Water Holder in replacement for a 'customers', 'regional business and consumer' and 'local government' representative.

Furthermore, we submit that section 5.2 is extended to include the following;

State Water must by no later than 1 September each year, for the preceding financial year, report to IPART on its overall performance against its obligations under the Charter and where appropriate State Water is also to report on its performance against its obligations under the Charter in relation to each Valley.

Procedure for payment difficulties

NSWIC submits that further detail be provided on the procedure for payment difficulties. In the current Operating Licence, it was made explicit that the Code must;

- (a) provide for deferred payment or payment by installment options; and*
- (b) require that State Water provide a point of contact, notified on bills for customers in financial hardship.*

We submit that these points be added to the Draft Operating Licence.

Furthermore, NSWIC submits that the following are also featured into the new Operating Licence;

State Water must report, no later than one month following the end of each quarter, commencing 1 July 2008, on:

- (a) the number of requests by Customers for assistance with paying Bulk Water bills, including which valleys they are located in;*
- (b) the number of Customers in receipt of assistance with paying Bulk Water bills, including which valleys they are located in.*

Internal Complaints Handling Procedure

NSWIC submits that section 5.6 be extended to include the following;

By no later than 1 September each year, State Water must report to the regulator on an exceptional basis, for the immediately preceding financial year on the following details concerning Complaints made against State Water which are handled by its internal handling procedures:

(a) the total number of Complaints;

(b) the number of Complaints received by the category of Complaint;

(c) the number and type of Complaints resolved or not resolved in sufficient detail and using sufficient classifications to enable IPART to gain a reasonable understand of how and how well those Complaints were resolved, or why the Complaint was not resolved, as the case may be; and

(d) any problems of a systemic nature arising from Complaints.

External dispute resolution scheme

NSWIC submits that more detail be provided in section 5.7.2 in relation to the responsibilities imposed on SWC in hearing disputes and complaints made by customers. In particular, we insist that section 5.2.3 of the current Operating Licence is added to the Draft Operating Licence;

The Dispute Resolution Body (..) is to hear disputes and complaints made by Customers in relation to:

(a) Water Delivery

(b) Customer accounts;

(c) State Water's responsibilities in relation to the communication of water availability and access notifications; and

(d) the exercise by State Water of the Functions conferred under clause 2.4 of the Licence.

Furthermore, NSWIC submits that the following is added;

The Scheme or Industry Scheme must have the following features:

(a) the decision-making process of the Dispute Resolution Body and administration of the Scheme or Industry Scheme is to be independent from State Water;

(b) State Water must agree to abide by the decisions of the Dispute Resolution Body in relation to dispute referred to it for resolution;

(c) the Scheme or Industry Scheme must adopt informal proceedings which discourage an adversarial approach;

(d) decisions of the Dispute Resolution Body should observe the principles of procedural fairness, be based upon the information before it, and apply that information to specific criteria;

(e) the Scheme or Industry Scheme is to operate efficiently by:

(i) keeping track of disputes referred to it;

(ii) ensuring complaints are dealt with by the appropriate process;

(iii) the Dispute Resolution Body regularly reviewing the operation of the Scheme or Industry Scheme; and

Environmental Management

Similar to the *Asset Management System*, NSWIC is unable to determine the benefits of imposing Standards on SWC in relation to environmental management. We are particularly concerned about the costs involved in developing, implementing and certifying those Standards. As no further detail is provided on what constitutes those Standards, NSWIC is again unable to comment on their effectiveness.

The previous Operating Licence was significantly more specific on what needed to be included in the Environmental Management Plan. Section 7.1.5 states that;

The Environmental Management Plan must:

(a) include details of State Water's program for addressing its environmental impacts and achieving environmental improvements, including (but not limited to);

(i) management and mitigation of riverbank and bed erosion;

(ii) management and mitigation of water quality issues associated with storage and release (including mitigation of thermal impacts);

(..)

(b) adopt Economically Sustainable Development principles;

(c) be integrated into State Water's business plans;

(d) include indicators to measure the environmental impact of State Water's Asset operations and maintenance; and

(e) incorporate environmental improvement targets and timetables for State Water to achieve those targets over the term of the Environmental Management Plan.

NSWIC submits that the same level of detail is provided in the Draft Operating Licence.

Furthermore, NSWIC submits that SWC must undertake regular reporting in respect to its *Environmental Management System*, as follows;

State Water must, by no later than 1 September each year, for the preceding financial year, report to the regulator on its environmental performance against the Environmental Management System.

Additionally, NSWIC is disappointed that our previous recommendations in relation to planned environmental water have not been incorporated in the proposed Draft Operating Licence. The management and release of planned environmental water (not held entitlement) must be clearly defined with the new SWC Operating Licence. NSWIC believes that the costs associated with releasing planned environmental water is identical as the release of allocated water to customers, and hence managers of planned environmental water should be charged for the services that SWC provides.

For this reason, SWC's function and services with respect to environmental water should be explicitly defined, so that an assessment of the costs for managing this planned environmental water can take place. There are tangible costs associated with the explicit functions imposed on SWC, and hence these costs should be paid for by the responsible parties, i.e. the State Government.

As planned environmental water currently enjoys services provided by SWC and does not pay for them, NSWIC considers there to be regulatory gap that needs to be addressed urgently. NSWIC recommends that amendments are made to the Draft Operating Licence to explicitly define the functions imposed on SWC in respect to environmental water so that all beneficiaries of SWC's services can be charged accordingly, including the managers of environmental water(not held entitlements).

Performance Monitoring

NSWIC submits that the Draft Operating Licence must be more specific on what information and records must be kept by SWC so that IPART is able to conduct an investigate of SWC's compliance with its obligation or review SWC's performance against its Indicators.

We have highlighted in our previous submission that we support the introduction of explicit customer service performance indicators and we are pleased to see that IPART has incorporated this recommendation. We submit that the Draft Operating Licence is extended to allow for a regular review of those performance indicators whereby the results are made publically available. This will allow customers of SWC to assess the performance of SWC.

End of Term Review

NSWIC supports the end of term review of SWC's Operating Licence in order to investigate whether this licence is fulfilling its objective. It will also allow IPART to address any issues that have arisen during the term of this licence which may affect the effectiveness of SWC's operation.

In light of the Basin Plan implementation in 2019, this review will provide an ideal opportunity to assess any necessary amendments to SWC's Operating Licence that will enable for a more effective and efficient operation of SWC. It will also enable for a review

of the existing regulatory environment, especially in light of the future involvement of the ACCC.

Additional Comments

Pricing

NSWIC submits that section 9 of SWC's current Operating Licence is transferred to the new Operating Licence;

State Water must apply the level of fees, charges and other amounts payable for its services subject to the terms of the Licence, the Act and the maximum prices and methodologies for State Water's monopoly services as determined from time to time by IPART or any other pricing authority vested with the power to determine water prices for State Water.

This section will ensure that fees and charges imposed by SWC comply with all relevant regulation.

Conclusion

While the Draft Operating Licence has been shortened to clarify and simplify some of the requirements imposed on SWC through its Operating Licence, NSWIC reminds IPART that explicit obligations must be imposed on SWC to provide sufficient guideline for an effective and efficient monitoring of SWC's activities.

Appendix



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Submission to Office of Water

Regulations Pursuant to Section 91I of the Water Management Act 2000

130125

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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 commodity groups from the rice, cotton, dairy and horticultural industries.

This document represents the views of those Members but does not preclude and of those Members from lodging separate submissions that may contain further information or detail specific to their interests.

Notes on Consultation

Whilst pleased to have the opportunity to comment on the proposed Regulations, NSWIC submits that the timing of the process is inappropriate. Attached to this submission is our Consultation Expectations Policy. The process does not comply with that policy *per se*, but engaged in a further transgression by conducting consultation in the holiday period.

NSWIC has sought an extension on submissions for all stakeholders to Friday 1 February.

Furthermore, NSWIC emphasises that meter equipment is an operational issue and varies at a local level. For this reason, more extensive consultation should be sought from valley representatives and existing networks who deal with metering issue on a regular basis.

General Comment

NSWIC concurs with the intent of the amendment and the concept of the Regulations. We harbour some concerns in respect of the content of the latter.

Specific Responses

The requirements referred to below mirror those in the paper provided by NOW. The balance of this document should be read in conjunction with that paper.

Requirement 1

NSWIC disagrees with the notion that a water user be responsible for the operation or otherwise of a State owned meter. A metering service charge is levied against users. It is incongruous that they must also face legal responsibility for ensuring that a piece of infrastructure that they do not own is operable.

Users of a state owned meter should not be required to make themselves aware that a State owned meter is inoperable, however should they become aware that a meter is not working, then users should be requested to assist the owner in a) informing them when a meter is not working and b) helping to provide back-up information to help assist in determining water usage.

NSWIC is content with the capacity to report online on the basis that alternative mechanisms, including telephone and fax notification, are available.

Requirement 2

Whilst content with the provision of "date when they intend to take water" data, NSWIC submits that such information must specifically not be binding. It is the nature of irrigated agriculture that external variables - including weather - can see such intent change rapidly and frequently.

The requirements to provide a reason as to why a meter has ceased to operate must be worded such that an absence of such information cannot lead to transgression. It is not reasonable to assume that an approval holder will necessarily know why a meter - particularly one that they do not own - has ceased to operate.

Requirement 3

NSWIC submits that 72 hours is a reasonable timeframe, but specifically notes that an obligation to notify in respect of state-owned infrastructure is not acceptable.

Requirement 4

We concur that maintenance of existing procedures is preferable.

We submit that a requirement to maintain information in respect of readings subsequent to the installation of an alternative meter is both onerous and unnecessary. In the instance of a state-owned facility, it is unacceptable given that the user is forced to pay a metering service charge as well.

Similarly, NSWIC does not believe it reasonable to require a user of a state-owned meter to record times when pumps are operated, the size of the pump or the extraction rates. We submit that that a charge is paid for a service. The provision of such service where infrastructure becomes inoperable must not be cost-shifted to irrigators.

Requirement 5

NSWIC concurs that the metering of take is preferable in circumstances described.

We submit that determination of use in the absence of a meter based on maximum extraction rates is demonstrably unfair, particularly in respect of state-owned installations.

NSWIC submits that the section 91I explicitly states that a replacement meter need not be an identical make or model to the one it replaces. It should only be a requirement that the replacement meter is compliant with current standards.

Requirement 6

NSWIC believes the 21 day period is both arbitrary and unsupportable. The geographical location of many irrigators together with the specialised nature of the equipment means that three weeks is unlikely to be achieved in many circumstances. NSW submits that an application for extension for a further 21 period should see a deemed acceptance unless NOW can provide good reason why this should not be the case in each individual circumstance.

Requirement 7

No submission.

Requirement 8

NSWIC strenuously objects to the concept of approval holders providing information to State Water from state-owned installations. A metering service charge is paid by the approval holder. That charge is specifically levied to obtain such information. We will not accept cost-shifting in the absence of a review of this charge by IPART or the ACCC.

ENDS



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Consultation

The Expectations of Industry

090303

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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 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 woeful⁴. 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.

⁴ 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)⁵; 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

⁵ 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 published⁶ 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.

⁶ 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 publicised⁷. The method for doing so will vary depending on the method of consultation. As a threshold, at least 90% of affected stakeholders ought to be targeted to be reached by publicity.

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

Subsequent to the closing date, a document ought to 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 to 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.

⁷ 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.