



**NSW Fisheries**

D001508

Mr Thomas G Parry  
Chairman  
Independent Pricing and Regulatory Tribunal of NSW  
PO Box Q290  
QVB Post Office NSW 1230

Dear Mr Parry

**RE: REVIEW OF DEPARTMENT OF LAND AND WATER CONSERVATION  
BULK WATER PRICES FROM 1 OCTOBER 2001 – DRAFT REPORT**

NSW Fisheries would like to thank the Tribunal for providing the time and arranging the facilities to allow the department to present an overview of the current status of fishways, cold water pollution, environmental flows and water management costs on 5 November 2001 to assist the Tribunal in its determination.

At this meeting NSW Fisheries was specifically requested by the Tribunal staff in attendance to provide in its submission debate on the cost treatment concepts proposed, rather than the specific comments on dollar values for inclusion in the Department of Land and Water Conservation's (DLWC) submission. As the department has previously provided two detailed submissions outlining concerns with the DLWC submission in relation to environmental compliance costs, this information will not be repeated here.

#### Cost Sharina Principles within the Draft Report

NSW Fisheries was encouraged by the Tribunal's support for a review of the way costs are allocated between water users and the community, moving away from the "beneficiary pays principle" towards the "impactor pays principle". However, it is apparent that the "impactor pays" definition used in the Draft Report is not reflective of the traditional "polluter pays" definition, as outlined in the Productivity Commission's report quoted in the Draft Report on page 30.

NSW Fisheries recommends that the Tribunal consider adopting the Productivity Commission's definition within the Final Report as it is consistent with international (e.g. Organisation for Economic Cooperation and Development (1972) "polluter pays" definition) and state-wide approaches (e.g. the Environment Protection Authority's enforcement of "polluter pays principles" for managing point-source discharges) or a "polluter pays principle" definition.

The "impactor (polluter) pays" definition within the Productivity Commission's report states that those with a property right (in this case for water access) are required to meet the costs of environmental standards in order to avoid the generation of external costs, such as loss of biodiversity. If there are inefficiencies created by past decisions, then this principle requires impactors to meet at least some of the costs of addressing environmental degradation to ensure that important signals about the true costs of resource use are passed on, triggering market-driven efficiencies in water use. This definition is supported as a more appropriate way of simply defining costs between water users and the community.

As noted in NSW Fisheries initial submission, the department supported a 50/50 cost sharing of environmental compliance costs as a minimum between water users and the community. This cost-sharing aimed to recognise that fishways and cold water pollution mitigation costs, while generated by the need for river regulation structures by water users, may also partially benefit the community, in particular tourism, recreational fishing opportunities and general recreational use of rivers. This cost-sharing arrangement is still supported by the department as a starting point for negotiation.

Bulk water users may argue that such costs are generated or imposed by government as a regulatory requirement (i.e. the requirement for fishways to be constructed on dams and weirs may be triggered each time DLWC constructs, alters or modifies a dam, weir or reservoir), and therefore government should bear the costs. However, the regulatory requirement, in the case of fishways, has been created to address the scientific evidence that dams and weirs have created a significant impact (external cost to the community) on fish communities (i.e. loss of biodiversity, reduced populations and presence of native fish and increased abundance of alien species within regulated rivers, versus unregulated rivers). Copies of relevant research can be prodded if required. If the government is considered the "impactor" then it could theoretically exercise much more cost-efficient options to address the degradation of fish communities and river health generally, such as the removal of these structures at much less cost in the short and long term (i.e. long-term costs associated with ongoing maintenance of fishways and cold water pollution mitigation devices).

While the department supports the "impactor pays principle" the treatment of environmental compliance costs associated with the construction of fishways and cold water pollution devices on existing DLWC/State Water structures as "legacy costs" rather than "forward costs" greatly affects the ability for the "impactor pays principle" to fully apply in this instance. The "legacy cost" argument ensures minimal recovery for "external costs" associated with water delivery, thus the government continues to subsidise the full cost of environmental degradation.

ACIL, and subsequently the Tribunal, argue that there is inequity in passing on costs to bulk water users that are a legacy of past practices and decisions. The argument appears to be based on fairly arbitrary views on what constitutes a "legacy" cost versus a "forward cost".

As NSW Fisheries advised on 5 November 2001, any new dams or weirs **constructed** by DLWC since the 1970s have incorporated **fishways**, and several large dam construction projects within the **same** period **have** incorporated multi-level off-take **towers** in their designs (i.e. to **address** cold water pollution as well as other operational needs). The construction of **these** technologies was a result of decisions by government to address emerging information on methods to address the environmental impact of these structures on **riverine** habitats. It could be argued strongly that this "**risk**" management approach will be an ongoing -environmental impact assessment requirement and **while** the technology may be **refined** and **improved over time**, the environmental impact being addressed remains the same.

Therefore according to the.. logic outlined in the Tribunal's Draft Report,, it would be more appropriate to treat such costs as "forward costs" in line with point 2 of Table 5.1, rather than point 1.

There also appears to be an inequity in government subsidising ongoing environmental compliance costs for the water industry when other major industries must adapt to and bear the costs of regulatory requirements to meet environmental standards.

In a real sense, the costs of compliance with environmental standards should be seen as the cost of ~~retaining~~ the structures. Retaining those structures benefits both the industry and the community and each should share in meeting the costs of environmental compliance.

NSW Fisheries can appreciate the concerns with passing on the "legacy" costs for past poor maintenance of assets prior to the 1 July 1997 to water users, however, incorporating environmental compliance co&s within this definition is not supported. For example **fishways** have been constructed to the best available technology at the **time of construction**. While there may be costs associated with maintenance of all structures and retrofitting of pre-1985 **European** fishway designs to meet **post-1985** Australian **fishway** design criteria, these costs can be argued to be "activities to maintain the functionality of assets" as defined in Table 2 and be considered as "forward costs", rather than "legacy costs".

To this end NSW Fisheries has held discussions with State Water on proposed **fishway** maintenance costs within the Total Asset Management Plan (TAMP) to ensure that funds are not spent on maintenance of pre-1985 **fishways** (which are inefficient costs), and are targeted on maintenance of post-1985 **fishways** or construction of **fishways** on priority structures identified as requiring **fishways** under the initial weir review process.

NSW Fisheries also wish to advise the Tribunal that the department is **working** closely with State Water to link in **fishway** construction requirements with annual TAMP bids to Treasury. Where major **works** are proposed on existing structures each year, the two departments will negotiate the number and funding requirements for **fishways** or decommissioning of weirs, **linked** closely with the priorities identified in the initial weir assessment process.

Fishways will not be imposed where no works are proposed on a structure. Similarly, NSW Fisheries does not intend that all priority structures for fishways or decommissioning are completed by a set date (as implied in the Draft Report in respect of repairing the environment to a standard above that of 1 July 1997). This working relationship between the two authorities ensures that cost efficiencies can be maximised while works are underway at any one location during the life of the TAMP. To this end in the 2002/2003 draft Treasury bid, State Water have factored in 9 fishways for construction in consultation with NSW Fisheries. This process will be continued on an annual basis.

NSW Fisheries is also disappointed that the Draft Report does not adequately reflect the issues/debate raised in the department's submission, and other submissions, in relation to the treatment of environmental costs, thus limiting the ability of the community to scrutinise the decisions made. It is hoped that this may be addressed in the Final Report.

#### Water Management Costs

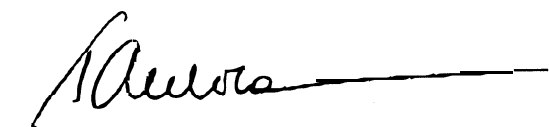
NSW Fisheries was concerned to note that the water resource management costs incurred by other agencies in servicing the water management planning processes under the NSW Water Reforms are not considered in the scope of the Tribunal's review of bulk water pricing. There are five natural resource management agencies (including DLWC) heavily involved in this "whole-of-government" commitment to water sharing and water management planning in NSW. To this end specific Treasury enhancements have been provided to these agencies to assist in covering the costs required to service the committee processes and environmental flow monitoring programs.

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The department strongly recommends that the Tribunal initiate a working group with these natural resource management agencies to review the costs incurred and the terms of reference of the bulk water pricing review to ensure consideration of cost recovery of these costs. As outlined in NSW Fisheries previous submission, the department's costs alone equate to \$6 million over the three years of this pricing determination.

Should you have any further queries, or would like to arrange a meeting to further discuss this submission, please contact Mr Paul O'Connor, Deputy Director on (02) 8437 4945.

Yours sincerely



STEVE DUNN  
Director, NSW Fisheries

9/11/01