

**Submission to**

**Independent Pricing and Regulatory Tribunal**

**Water NSW Regulated Water Charge Review**

**1 July 2017 to 30 June 2021**

**161017**

## **Introduction**

The NSW Irrigators' Council (NSWIC) is the peak body representing irrigators and the irrigation sector in NSW. NSW irrigators hold water access licenses to 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.

NSWIC engages in advocacy and policy development for the irrigation sector. As an apolitical entity, the Council provides advice to all stakeholders and decision makers.

This submission represents the views of the Members of NSWIC in respect to WaterNSW's pricing application to the Independent Pricing and Regulatory Tribunal (IPART) and IPART's Issues Paper on the Review of Regulated Water Charges for WaterNSW.

However, each Member reserves the right to independent policy on issues that directly relate to their areas of operation, or expertise, or any other issue that they may deem relevant.

## Compliance with Consultation Expectations

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

We assess this first round of consultation on the review of WaterNSW's regulated water charges as *indirect* and encourage IPART to ensure that individual irrigators affected by this price determination, have access to the process.

Having stated this, NSWIC congratulates IPART on taking the initiative to engage with NSWIC and its members in an informal setting in September 2016 and make staff available to answer questions and clarify concerns. NSWIC also welcomes the decision by IPART to have an additional public forum in April 2014 to discuss IPART's draft determination on WaterNSW's regulated water charges.

Furthermore, NSWIC welcomed the increased engagement between stakeholders and WaterNSW through the Customer Service Committees and through separately organised meetings. We appreciate the time and effort WaterNSW has extended to NSWIC and its members to discuss its pricing proposal to IPART. Furthermore, NSWIC welcomes WaterNSW's initiative to conduct a North Coast Pilot in recognition of the ongoing cost challenges in the NSW coastal valleys.

Despite this endorsement for WaterNSW's deepened consultation process, NSWIC highlights that there are number of outstanding issues that need to be discussed with stakeholders, including:

- WaterNSW's long term vision for its business operation,
- WaterNSW's suggestion to move to tailored customer contracts and service level delivery,
- IPART's review of WaterNSW's operating licence, and
- The transfer of functions and responsibilities between DPI Water and WaterNSW and any resulting efficiency savings.

NSWIC and its members hope that WaterNSW continues the conversation (as indicated in its pricing submission and as per its commitment to NSWIC). NSWIC believes an ongoing dialogue between WaterNSW, NSWIC and its Members is critical to work through the significant water reform process that we are currently find ourselves in.

Finally, our policy requires consultation to proceed through five stages.

- *Identification of problem and necessity for change*

Partly satisfactory.

NSWIC welcomes IPART's decision to focus on a number of specific issues in this regulated water charge review. All of the issues that IPART discusses on page 5 of its Issues Paper were raised by NSWIC and its members in previous submissions (to IPART and the ACCC) and we are pleased to see that IPART has dedicated resources to address these issues as part of this pricing review.

As an extension of this process, NSWIC would appreciate if IPART conducts a review of those functions (and costs) that have recently been transferred from DPI Water to WaterNSW. Stakeholders have been deeply dissatisfied that the most recent determination of the Water Administration Ministerial Corporation's (i.e. DPI Water) water management charges was handed down only days before the *NSW Amendment (Staff Transfer) Bill 2016* was passed through the NSW Parliament. The determination of DPI Water's charges now raises a number of questions as to their validity and efficiency. It also leaves open the question as to how IPART will assess any efficiency savings resulting from the transfer of functions and staff from DPI Water to WaterNSW.

Pertinent to WaterNSW's current price review, NSWIC also believes IPART has provided insufficient information on the potential risks arising from a change to the Water Charge (Infrastructure) Rules 2010 (WCIR). As far as NSWIC understands, IPART's regulated water charge review for WaterNSW will be conducted under both the WCIR and the Independent Pricing and Regulatory Tribunal Act 1992. However, should changes to the WCIR be executed prior to the completion of IPART's regulated water charge review, material changes to the way IPART calculates WaterNSW's Weighted Average Cost of Capital, the Regulated Asset Base and ultimately its regulated water charges could materialise.

NSWIC believes it is important that IPART provides a comparison between regulated water charges under each Act so stakeholders can understand the implications of any legislative changes to the WCIR.

- *Identification of solutions and proposed method for implementation*

This process must occur subsequent to the close of submissions.

- *Summary of submissions, identification of preferred approach*

This process must occur subsequent to the close of submissions.

- *Explanation of interim determination and final feedback*

This process must occur subsequent to the close of submissions.

- *Publication of final determination*

This process must occur subsequent to the close of submissions.

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## Summary of Recommendations

1. *NSWIC recommends that IPART require WaterNSW to provide a detailed comparison between its actual revenue and costs throughout the last two price Determinations in order to allow stakeholders to assess WaterNSW's actual financial risk and supply side vulnerability.*
2. *NSWIC recommends that IPART consider NSWIC's submission to the Tribunal on the review of WaterNSW's Operating Licence (Appendix E) for this pricing review.*
3. *NSWIC recommends that IPART institute a price freeze for NSW coastal valley regulated water charges until such time as WaterNSW completes its North Coast Pilot, conducts a similar study in the NSW South Coast and finds a viable long term water pricing solution for all of the NSW coastal valleys*
4. *NSWIC recommends that IPART consider the benefits and costs of both an annual price setting approach and a four-year price path irrespective of further changes to the WCIR.*
5. *NSWIC recommends that IPART should reconsider the distribution of savings between WaterNSW's urban and rural customers that have resulted from the merger of the Sydney Catchment Authority and SWC.*
6. *NSWIC recommends that IPART should also consider the level of savings proposed by WaterNSW in its Greater Sydney price determination due to the additional year since these saving estimates were determined.*
7. *NSWIC recommends that IPART should consider imposing a further efficiency dividend on WaterNSW to ensure that WaterNSW has incentives to expedite the integration of DPI Water staff and regulatory responsibilities into their business and to find additional efficiencies.*
8. *NSWIC recommends that further WaterNSW efficiency savings be considered for determination by IPART for the next regulatory period.*
9. *NSWIC recommends that further detail on the drivers of WaterNSW's proposed OPEX increases in 'water delivery and other operations', 'dam safety compliance' and 'customer support and compliance' be requested and considered by IPART.*

10. NSWIC recommends that IPART requests WaterNSW to identify the major items of capital expenditure required in each valley to implement the 'maintaining capability approach'.
11. NSWIC recommends that IPART requests WaterNSW to provide further detail on the assumptions and parameters underlying WaterNSW's MEERA calculations in order to assess whether WaterNSW's approach is prudent and efficient.
12. NSWIC recommends that IPART scrutinize WaterNSW's proposed CAPEX program for the next determination period to ensure that it only includes necessary capital.
13. NSWIC recommends that IPART investigate whether the renaming of CAPEX categories has resulted in any cost shifting to customers, in particular around the current categories of dam safety compliance and environmental planning and protection.
14. NSWIC recommends that IPART scrutinize WaterNSW's CAPEX proposal for 'maintaining capacity' to determine its drivers – in particular in the context of WaterNSW's OPEX proposal for 'routine maintenance', 'asset management planning' and 'corrective maintenance'.
15. Given the importance of the RAB for future regulated water charges, NSWIC recommends that IPART review the efficiency of WaterNSW's RAB as well as WaterNSW's past CAPEX to ensure that future cost burden on WaterNSW's customers is minimised.
16. NSWIC recommends that IPART conduct a prudency and efficiency review of WaterNSW's past CAPEX independent of the WCIR.
17. As WaterNSW's customers' pay a return on capital on all under-spent CAPEX, NSWIC recommends that IPART conduct a thorough investigation of WaterNSW's past CAPEX and the associated aggregate holding costs to customers.
18. NSWIC recommends that the WaterNSW RAB value must be based on actual expenditure figures rather than forecasts, given the intrinsic link to regulated water charges.
19. NSWIC recommends that the opening RAB value must be set at the end of the third quarter of 2013/14 based on updated information from WaterNSW which includes actual CAPEX figures together with an update on forecast expenditure for the remaining quarter.

20. NSWIC recommends that IPART use the WACC calculated in the NSW inland valleys as a WACC for the NSW coastal valleys.
21. NSWIC recommends that a lower beta value for WaterNSW's WACC calculation should be considered in light of WaterNSW's proposed Risk Transfer Products.
22. NSWIC submits that the ACCC's previous decision to amend SWC's asset lives has caused additional cost burden on WaterNSW's customers and recommends that IPART consider mitigating the cost impacts on WaterNSW's customers from this previous regulatory decision.
23. NSWIC recommends that the ICD rebates be maintained, as no evidence has been provided by WaterNSW that a reduction to the economies of scale and system-wide benefits has occurred.
24. NSWIC recommends a further deduction to MDBA and BRC charges to reflect the lack of transparency and clarity around them. NSWIC hopes such deductions will send a signal to the NSW Government that further action must be initiated at Ministerial Council level that allows for a review of these charges to take place in line with all regulated, unregulated and groundwater charge reviews in NSW.
25. NSWIC recommends that IPART must – as far as possible – conduct an efficiency review of MDBA and BRC related costs and apply its previous cost sharing approach to these charges.
26. NSWIC recommends that WaterNSW provide a comparison between actual costs and revenue so stakeholders can determine the profitability of WaterNSW and thereby assess its real level of financial risk. NSWIC submits that WaterNSW faces significantly less revenue risk than its customers, due to its current tariff structure.
27. NSWIC recommends that IPART reject WaterNSW's revenue volatility proposal on the grounds that it unreasonably shifts risks to customers, leads to significant additional costs to WaterNSW's customers to provide compensation for temporary revenue shortfalls (compared to WaterNSW's notional revenue allowance), which is ultimately adjusted for in the long term through the Unders and Overs Mechanism. Further, NSWIC recommends that this creeping approach to risk shifting by WaterNSW be explicitly rejected by IPART.
28. NSWIC rejects IPART's proposal to introduce an Efficiency Carryover Mechanism in this Price Determination and recommends that IPART direct further WaterNSW consultation with stakeholders around such a mechanism for future Determinations.



29. *NSWIC submits that the current tariff structure has served both WaterNSW and its customers well over the current and previous Determination period and recommends that it should be continued.*
30. *NSWIC recommends that a consumption forecasting model that takes into consideration the full IQQM data is the most valid method available and should be included in this Determination.*
31. *NSWIC rejects WaterNSW's meter service charges and recommends that IPART conduct a comprehensive review of WaterNSW's proposed metering charges.*
32. *Further, NSWIC recommends that IPART exercise caution in approving WaterNSW's proposed Meter Reading charges prior to the completion of DPI Water's Water Take Measurement Strategy.*
33. *NSWIC recommends that improvements to the current cost share framework be made in recognition of the additional demands imposed on WaterNSW from its environmental customers (through both rules based planned and held environmental water).*
34. *Further, NSWIC recommends that improvements to the current cost share framework be also made around the category of 'legacy issues'.*
35. *NSWIC recommends that provisions be made to capture all beneficiaries of WaterNSW's infrastructure and services who currently do not pay for the maintenance of the infrastructure.*
36. *NSWIC recommends that IPART initiates a separate review on the preliminary options for NSW Coastal Valleys as outlined in its Issues Paper, which sit outside WaterNSW's regulated water charge review.*

## General Comments

NSWIC welcomes the opportunity to make a submission to the Independent Pricing and Regulatory Tribunal (IPART) on WaterNSW's pricing application and IPART's associated Issues Paper.

Since the last determination of State Water Corporation's (SWC) regulated water charges in 2014, significant changes have occurred in the management and regulation of water resources in NSW. Not only have the functions, services and operations of NSW's bulk water service provider changed but the regulatory framework governing regulated water charges has continually been in flux.

With the amalgamation of SWC with the Sydney Catchment Authority, a first step was made towards bringing bulk water delivery in NSW under the operation of one entity - WaterNSW. As the most recent Determination of WaterNSW's Greater Sydney water charges has shown, this decision has led to efficiency savings that have been partially passed on to Greater Sydney customers in form of lower water charges. The Council is pleased to see that a proportion of these efficiency savings will flow through to WaterNSW's rural customers in this regulated water charge determination. NSWIC will look for guidance from IPART as to the appropriateness of the 45:55 apportionment ratio and the amount of efficiency dividend which is ultimately allocated to WaterNSW's rural customers.

Further, the *WaterNSW Amendment (Staff Transfer) Bill 2016* raised a number of questions as to the validity and efficiency of the most recently completed Determination of the Water Administration Ministerial Corporation's (WAMC) water management charges. NSWIC and its members are deeply dissatisfied that the WaterNSW Amendment (Staff Transfer) Bill 2016 was passed only days prior to IPART's final Determination of WAMC charges.

As IPART has declared that it does not intend to reopen the previous WAMC Determination, NSWIC questions how IPART will be able to ensure that water licence holders pay efficient water charges to DPI Water even though staff and functions are now transferred to WaterNSW. NSWIC considers this result to be deeply frustrating and urges IPART to consider an adjustment of DPI Water charges either within the current WAMC Determination or at the next regulatory review in 2020 – if only to provide transparency and clarity to stakeholders as to what they pay for to DPI Water and WaterNSW.

In related matters, stakeholders are concerned that the Bill has bound WaterNSW to a WAMC Determination (including additional efficiencies) that does not reflect current operational conditions for either DPI Water or WaterNSW. While NSWIC is confident that WaterNSW will be able to achieve these efficiency requirements (and likely to exceed them), NSWIC is concerned that water licence holders ultimately will benefit little from the shift of functions and responsibilities in the short term.

NSWIC requests that IPART provides clarity on the issue of costs arising from the shifting of functions from DPI Water to WaterNSW and seeks a commitment from IPART that any additional efficiencies resulting from the transfer of functions will flow through to customers in form of lower water charges. Preferably, NSWIC would like to see IPART re-run its models to determine the efficient costs for all those functions that have been transferred to WaterNSW.

In other matters, NSWIC understands that, under the current accreditation arrangements, IPART is required to regulate WaterNSW's inland valleys under the Water Charge

(Infrastructure) Rules 2010 (WCIR) and the ACCC Pricing Principles. Should the WCIR be amended – in particular Part 9 – it would be possible for IPART to conduct its review of WaterNSW's regulated water charges under the Independent Pricing and Regulatory Tribunal Act 1992. As the IPART and ACCC Acts differ in their calculations of the Weighted Average Cost of Capital and WaterNSW's Regulated Asset Base, NSWIC is concerned that stakeholders are not sufficiently informed about the impact on regulated water charges of Determinations under these two provisions. NSWIC's preliminary assessment is that the outcome would be materially different – hence warranting further discussions with stakeholders.

Irrespective of the ACCC's final advice on the WCIR, NSWIC would like to point out that irrigators have had to adapt to three regulatory frameworks governing regulated water charges in NSW over the **last three Determinations**:

- IPART conducting a review of SWC's bulk water charges under the Independent Pricing and Regulatory Tribunal Act 1992 in 2009/2010.
- The ACCC taking over the regulatory responsibilities and conducting a review of bulk water charges under the WCIR and the ACCC Pricing Principles in 2013/14.
- IPART conducting a review of WaterNSW's inland valley regulated water charges under the WCIR and the ACCC Pricing Principles and NSW coastal valleys under the IPART Act.

NSWIC would like to raise its deep concerns that the ongoing amendments to the regulatory framework has led to confusion amongst stakeholders and resulted in significant costs. NSWIC would like to see IPART work with the ACCC to identify the total costs of these ongoing regulatory changes.

In the event of the WCIR being amended, NSWIC request's IPART clarify the basis for its determination.

In conclusion, NSWIC has identified four additional uncertainties that could have an impact on WaterNSW's final regulated water charges and stakeholders would like to have further clarification on:

- The NSW Government has yet to commit to a cost sharing framework between the WaterNSW's customers and the NSW Government<sup>1</sup>.

While NSWIC welcomes IPART's initiative to review the current cost share framework, NSWIC is concerned that we are yet to receive an in-principle commitment from the NSW Government on continuing any cost share framework in this Determination. NSWIC has written to the NSW Minister for Primary Industries, Lands and Water on this matter and is waiting for a response (Appendix C).

In addition, NSWIC is concerned that over the last three determinations, we have seen a significant shift in the proposed user share of WaterNSW's notional revenue

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<sup>1</sup> As per the IPART review of Rural Water Charge System in 2012, the NSW Government has only made an explicit commitment to the cost sharing framework until 2017

requirement. As outlined in IPART's Issues Paper, WaterNSW is proposing a user share component of approximately 70 per cent (including MDBA cost pass through). This is 8 per cent higher than the user share of notional revenue requirement under the 2014 ACCC Determination and 10 per cent higher than under the 2010 IPART Determination. NSWIC would like IPART to review this trend to ensure that WaterNSW is not unduly shifting costs to customers.

- NSWIC is yet to understand the relationship between the recently passed Dam Safety Act 2015 and WaterNSW's pricing proposal (in particular around WaterNSW's 'dam safety compliance' and 'maintaining capability' CAPEX). The Dam Safety Act's associated final report suggested that the Act should provide greater flexibility to dam operators in finding dam safety solutions (i.e. non-CAPEX solutions). However, given WaterNSW's proposed increases in CAPEX, NSWIC is unclear whether the recently passed Dam Safety Act 2015 has had any effect on WaterNSW's proposal.
- NSWIC is also unclear about the interplay between the current regulated water charge review and IPART's review of WaterNSW's operating licence. Based on IPART's Issues Paper (Operating Licence), WaterNSW has proposed significant changes to its operational requirements, service delivery and customer engagement. NSWIC suggests that changes to WaterNSW's operating licence could impact future regulated water charges and as such this review should be discussed as part of this broader regulated water charge review.

As we outlined in our submission to IPART on the review of WaterNSW's operating licence (Appendix D), NSWIC recommends that a Determination on WaterNSW's licence is postponed (or only minimal changes made) until further stakeholder consultation can take place in order to discuss costs, benefits and risks of these proposed changes.

- Finally, any river operations rule change proposals (i.e. Prerequisite Policy Measures) that may be introduced in the future as a result of Murray Darling Basin Plan implementation could necessitate amendments in the management of environmental flows in the NSW MDB valleys and hence could have implications on water storage/delivery. NSWIC request IPART to consider the additional costs for WaterNSW from these and other environmental water demands, including opportunities for price differentiation based on different services and costs.

Finally, NSWIC is deeply concerned that WaterNSW is continuing to advance its own interests (and the interests of the NSW Government as its shareholder) by proposing multiple risk transfer products. The Council is of the view that WaterNSW again attempts to shift the vast bulk of its business risk and costs to customers, who are – by definition – most vulnerable.

On this point, NSWIC would like to reiterate a note by the ACCC Chairman Rob Sims in his speech to the University of Wollongong (23 February 2012);

*"...that we regulate for reasons for allocative efficiency, or to reduce dead weight loss. That is, the higher prices charged by the unregulated monopolist will see some*

*customers who would have used the facility at efficient prices now choosing not to do so."*<sup>2</sup>

NSWIC submits that customers of WaterNSW are not given a choice on whether to utilise WaterNSW's facilities and pay WaterNSW's charges as these charges are intrinsically linked to customer's Water Access Licenses. The only option available for WaterNSW's customers is to sell their licences and exit the irrigation sector, which would have a large scale impact on irrigated agricultural production in NSW. In short, we are bound to WaterNSW as a monopoly operator. Their shift of risk to customers is classic monopoly behavior which IPART has consistently rejected in past Determinations. We call on IPART to do likewise in this Determination.

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<sup>2</sup> <http://www.accc.gov.au/system/files/Infrastructure%20-%20why%2C%20when%20and%20how%20to%20regulate.pdf>

# Detailed Comments

## Chapter 1 – WaterNSW’s Operating Environment and Proposal

### Operating Environment

NSWIC acknowledges that WaterNSW operates in a difficult regulatory environment and is subject to significant policy and regulatory changes at the moment. These changes have come amidst three regulatory pricing reviews - one for Water Administration Ministerial Corporation’s water management charges, one for WaterNSW’s Greater Sydney charges and one for WaterNSW’s rural water charges. While the processes and timeframes for the pricing reviews are rigid, the broader regulatory and policy changes have occurred out of sync and are still ongoing.

The Council considers this point to be of importance as it significantly complicates IPART’s work as the regulator of all of these price Determinations. It is also critical because it leads to price Determinations that do not reflect the current operating environment for both the Water Administration Ministerial Corporation and WaterNSW. NSWIC requests that IPART consider the broader scale water reform process as part of its review of WaterNSW’s regulated water charges.

### WaterNSW Pricing Proposal

NSWIC found it challenging to unpick WaterNSW’s pricing proposal to IPART. Compared to previous regulated water charge reviews, WaterNSW’s current submission to IPART is unorthodox in that WaterNSW seems to focus more on its longer term objectives (presupposed on further regulatory changes that are yet to materialize) instead of its four-year price Determination.

Also, NSWIC found it difficult to compare WaterNSW’s current operating and capital expenditure proposal with previous regulated water charge determinations, as little detail was provided on past allowances and actual expenditure. As NSWIC has raised on many occasions, there are justifiable concerns that SWC (and now WaterNSW) have never provided actual expenditure figures as part of its pricing proposal and instead relied solely on a comparison between allowed and actual revenue to justify its business risk and propose a range of risk protection mechanisms, including a volatility allowance.

**Recommendation1: NSWIC recommends that IPART require WaterNSW to provide a detailed comparison between its actual revenue and cost throughout the last two price Determinations in order to allow stakeholders to assess WaterNSW’s actual financial risk and supply side vulnerability.**

## Chapter 2 – Water NSW Services and Length of Determination

NSWIC notes that IPART is currently reviewing WaterNSW's operating licence. As this review is expected to be completed alongside the final Determination of WaterNSW's regulated water charges, NSWIC urges IPART to closely liaise with stakeholders on any possible changes to WaterNSW's operating licence which could have a flow on effects on WaterNSW's future service delivery level and ultimately regulated water charges.

NSWIC believes this of particular importance as WaterNSW has proposed a number of key changes to its operating licence which have not yet been discussed with WaterNSW's customers or stakeholder representative organisations like NSWIC.

**Recommendation 2: NSWIC recommends that IPART consider NSWIC's submission to the Tribunal on the review of WaterNSW's Operating Licence (Appendix E) for this pricing review.**

### Length of Determination

NSWIC is broadly supportive of a four-year price determination for WaterNSW's regulated water charges, except in the NSW coastal valleys. NSWIC's coastal valley Members are deeply concerned that a four-year determination would bind WaterNSW into future regulated water charges that will – in the absence of a fundamental re-think of coastal valley water charges – be completely unsustainable. As we outline in Chapter 16 of this submission, NSWIC proposes a price freeze in the NSW coastal valleys until such time as WaterNSW completes its North Coast Pilot, conducts a similar study in the NSW South Coast and finds a viable long term solution for all of the coastal valleys.

**Recommendation 3: NSWIC recommends that IPART institute a price freeze for NSW coastal valley regulated water charges until such time as WaterNSW completes its North Coast Pilot, conducts a similar study in the NSW South Coast, and finds a viable long term water pricing solution for all of the NSW coastal valleys.**

In addition, NSWIC would like to point out that there is ongoing regulatory uncertainty for NSW MDB valleys which are subject to the Water Charge (Infrastructure) Rules 2010 (WCIR) and the ACCC Pricing Principles. It is NSWIC's understanding that the WCIR do not allow IPART to set regulated water charges over the entire four-year determination. NSWIC acknowledges that IPART has no control over the WCIR and hence no capacity to amend this approach, however the Council would still like to raise the issue of additional costs associated with annual pricing reviews as well as the uncertainty it creates for WaterNSW's customers around future regulated water charges. Should the WCIR be amended prior to the completion of IPART's review of WaterNSW's regulated water charges, NSWIC recommends IPART to consider the benefits and costs of both – an annual price setting approach and a four-year price path.

**Recommendation 4: NSWIC recommends that IPART consider the benefits and costs of both an annual price setting approach and a four-year price path irrespective of further changes to the WCIR.**

### Chapter 3 – WaterNSW Notional Revenue Requirement

NSWIC notes that WaterNSW has proposed a notional revenue requirement of \$350.4 million for the 2017-2021 Determination and a user share component of \$227.49 million. On average, this would equate to a user share of \$56.87 million per annum. Compared to the last Determination in 2014 where SWC was allowed a notional revenue requirement of \$257.8 million and an associated user share of \$159.3 million (i.e. approximately \$53.1 million per annum), the current WaterNSW's submission would constitute a \$3 million **increase** in revenue requirement from WaterNSW's customers each year (on average).

NSWIC is aware that this increase is a result of the WaterNSW's future capital expenditure, however the Council is concerned that despite the ongoing reform process which has seen an amalgamation of the Sydney Catchment Authority with SWC and a transfer of functions from DPI Water to WaterNSW, this has not resulted in a cost reduction for WaterNSW's regulated customers. NSWIC understands that every reform has its costs, however the Council believes the fundamental driver of these past (and ongoing) reform processes should be efficiencies that ultimately flows through to WaterNSW's customers in form of lower charges and/or better service delivery.

#### WaterNSW's Financial Viability

NSWIC would like to point IPART to this excerpt from our previous submission on the ACCC SWC's (now WaterNSW) financial position to highlight the fact that WaterNSW is financially stable and more than capable of achieving further efficiency savings:

*“State Water Corporation (SWC) suggests to the ACCC that they will fully recover their allowed revenue requirements for the first time since corporatization in (2012-13)<sup>3</sup> and that under-recovery of revenue amounted to \$79.1million over the previous regulatory period<sup>4</sup>. SWC uses this argument as evidence that a change in tariff structure is warranted.*

*NSWIC notes that SWC used exactly the same argument at the last Determination before IPART to request that it dramatically alter its demand forecasting model. The request was allowed, the model was changed, and the revenue forecast was met. SWC now wants to double dip by using the same (now solved) problem to shift risk to its customers.*

*NSWIC submits that the focus should not be on whether SWC has met its allowed revenue requirement but whether SWC was able to generate a net profit from its operation. We note that SWC has returned a positive net profit before tax over the current and previous Determination periods based solely on actual revenue, despite the fact that the previous Determination included the worst drought on record<sup>5</sup>. In 2012-13 alone, SWC was able to generate a \$50 million net profit before tax and it is forecast that this situation will continue over the entire next Determination period, albeit at a slightly lower level<sup>6</sup>.*

*In addition, NSWIC emphasises that 2011/12 – 2012/13 have been marked by significant increases in water availability across NSW which has led to record water releases by SWC in 2012-13. This has generated revenue in excess of the IPART allowed revenue allowance - in the order of \$6.2 million<sup>7</sup>.*

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<sup>3</sup> Page 33, SWC submission to ACCC

<sup>4</sup> Page 33 and 34, SWC submission to ACCC

<sup>5</sup> Page 120, SWC submission to ACCC

<sup>6</sup> Page 120, SWC submission to ACCC

<sup>7</sup> Page 34, SWC submission to ACCC



*NSWIC is particularly disappointed that SWC attempts to claim a shortfall in revenue of \$79.1 million when only a comparison between allowed and actual revenue is being presented. We submit that such an analysis is misleading and does not show the full picture of profitability of SWC. In order to assess the profitability of SWC, a full analysis between actual costs and revenues must be presented.*

***NSWIC submits that SWC attempts to provide an indication of business performance in the current regulatory period that is significantly different from reality.”***

NSWIC is of the view that the above mentioned points are as relevant today in regard to the WaterNSW pricing submission as it was in the last Determination of SWC’s regulated water charges and should be considered in the context of WaterNSW’s current notional revenue proposal to IPART.

## Chapter 4 – Operating Expenditure

NSWIC acknowledges a decrease in WaterNSW's proposed operating expenditure for the NSW MDB valleys for the next Determination period. As Operating Expenditure (OPEX) constitutes nearly half of WaterNSW's proposed Notional Revenue Requirement (NRR), the Council believes IPART must conduct a detailed assessment of WaterNSW's proposed OPEX expenditure categories (outlined on page 97) and compare it to WaterNSW's required functions, regulatory obligations and services delivered to customers.

### Amalgamation of the Sydney Catchment Authority and SWC

The Council had expected an efficiency dividend from the amalgamation of the Sydney Catchment Authority and SWC in 2014 and we are pleased to see that these savings flow through as cost savings to WaterNSW's rural customers. However, NSWIC and its Members would like to query the savings split between WaterNSW rural and urban customers (i.e. at 45:55). While NSWIC understands that a change in the ratio could have implications on the recently completed WaterNSW Greater Sydney price Determination, rural customers feel the split should be more equally divided between urban and rural customers.

**Recommendation 5: NSWIC recommends that IPART should reconsider the distribution of savings between WaterNSW's urban and rural customers that have resulted from the merger of the Sydney Catchment Authority and SWC.**

**Recommendation 6: NSWIC recommends that IPART should also consider the level of savings proposed by WaterNSW in its Greater Sydney Price Determination due to the additional year since these saving estimates were determined.**

### Transfer of Functions Between DPI Water and WaterNSW

NSWIC stresses that rural customers are expecting a further efficiency dividend from the recent transfer of functions and responsibilities from DPI Water to WaterNSW (on top of IPART's broad scale efficiency dividend imposed as part of the WAMC review).

While we understand that this transfer will not instantly yield benefits, we expect savings in WaterNSW's OPEX in the medium to long term. As the savings from the amalgamation of the Sydney Catchment Authority and SWC became apparent two years into the merger, NSWIC suggests this has a reasonable guide as to when the transfer of functions and responsibilities from DPI Water to WaterNSW should yield additional OPEX savings.

**Recommendation 7: NSWIC recommends that IPART should consider imposing a further efficiency dividend on WaterNSW to ensure that WaterNSW has incentives to expedite the integration of DPI Water staff and regulatory responsibilities into their business and find additional efficiencies.**

NSWIC believes such a step is necessary as licence holders have, to date, enjoyed little benefit from the restructure of water management activities and functions between DPI Water and WaterNSW, despite the fact that 'better customer service and efficiency' was at the heart of the reform process. NSWIC is of the view that IPART must ensure that customers are a beneficiary of the reform process – not only expressed in better service delivery, but also in the form of lower regulated water charges.

## OPEX Comparison

In terms of WaterNSW's overall OPEX proposal, NSWIC would like to point out that the ACCC had allowed \$116.5 million in OPEX over the last determination of State SWC's regulated water charges - equating to around \$38.6 million per year for the three-year determination. Comparing this average annual OPEX allowance with WaterNSW's proposal<sup>8</sup>, the difference is only around \$3.5 million per annum. Such a small OPEX saving should be considered in the context of WaterNSW's proposed notional revenue requirement of \$350.4 million.

**Recommendation 8: NSWIC recommends that further WaterNSW efficiency savings be considered by IPART for the next regulatory period.**

## OPEX in the NSW Coastal Valleys

NSWIC questions the significant increases in OPEX proposed for both the North and South coast valleys. NSWIC believes WaterNSW has not provided sufficient justification for such an increase.

Given the systemic structural problems around regulated water charges in the NSW coastal valleys, NSWIC is deeply concerned that the proposed increases by WaterNSW will drive even more licence holders into surrendering their water entitlements with the result that the burden of costs for WaterNSW's infrastructure will have to be shared amongst a shrinking pool of customers. As outlined in Chapter 16, NSWIC has written to the NSW Minister for Primary Industries, Lands and Water (Appendix A) to request he write to IPART seeking a freeze in coastal valley charges until such time as WaterNSW can complete its North Coast Pilot, conducted a similar study in the NSW South Coast and find a viable long-term solution for NSW coastal valley charges. This matter is covered by Recommendation 3, above.

## Specific OPEX Expenditure Categories

NSWIC requests more detailed information on a range of proposed OPEX expenditure items, including 'water delivery and other operations', 'dam safety compliance', 'customer support, compliance and other' and 'Corporate systems'.

NSWIC is not clear on the drivers for the proposed increases, except for the WaterNSW statement on page 96 of its pricing proposal:

*"WaterNSW is not expecting any significant changes to [its] obligation other than from the new Dam Safety Act 2015 and the agreement on implementation of section 218 of the Fisheries Management Act 1994."*

We have raised our concerns regarding the recently passed Dam Safety Act 2015 on a number of occasions because we were unsure about its implications for WaterNSW's future OPEX and CAPEX user shares.

It is our understanding that the Dam Safety Act 2015 provides WaterNSW with greater flexibility to conduct dam safety activities and hence gives WaterNSW the option to find 'non-

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<sup>8</sup> Page 95

Capex' alternatives to achieve dam safety outcomes. We have questioned on a number of occasions whether this could have implications for future OPEX requirements imposed on users however we are yet to receive a detailed response from WaterNSW.

For the remaining OPEX categories outlined above we would welcome further information as to the specific projects leading to the increase in proposed OPEX. NSWIC and its members believe it is simply not sufficient to state that '*most of the increases in OPEX are due to [WaterNSW's] obligation under legislation and operating licence<sup>9</sup>*'.

**Recommendation 9: NSWIC recommends that further detail on the drivers of WaterNSW's proposed OPEX increases in 'water delivery and other operations', 'dam safety compliance' and 'customer support and compliance' be requested and considered by IPART.**

Finally, NSWIC would like to point out that IPART is currently reviewing WaterNSW's operating licence. As evident from the quote above, changes in the operating licence could have repercussions for WaterNSW's OPEX requirements and we urge IPART to consider the interaction between these two reviews to ensure it does not negatively impact WaterNSW's customers.

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<sup>9</sup> WaterNSW Pricing Application (p.96)

## Chapter 5 - Capital Expenditure

### Approach

NSWIC has noted a significant shift in WaterNSW's approach to its capital expenditure (CAPEX) program over the next Determination period. Instead of a detailed CAPEX program for each valley which can be linked to particular projects or undertakings, WaterNSW is basing its future CAPEX proposal on a 'theoretical upper limit benchmark' derived through the Modern Engineering Equivalent Replacement Asset model (MEERA) to establish the level of investment required to maintain assets in "as new" condition.

NSWIC and its members cannot see how such an approach will enable a clear and transparent assessment of WaterNSW's actual CAPEX needs over the next Determination period.

At a minimum, NSWIC expects that WaterNSW would have identified the major items of capital expenditure required in each valley to implement the 'maintaining capability' approach. NSWIC requests that WaterNSW provides the basis and assumptions that support its 'maintaining capability' calculations. Without this detail, WaterNSW's customers have no confidence that the costs linked to the proposed CAPEX is prudent and efficient.

**Recommendation 10: NSWIC recommends that IPART request WaterNSW to identify the major items of capital expenditure required in each valley to implement the 'maintaining capability approach'.**

**Recommendation 11: NSWIC recommends that IPART requests WaterNSW to provide further detail on the assumptions and parameters underlying WaterNSW's MEERA calculations in order to assess whether WaterNSW's approach is prudent and efficient.**

Irrigators have been funding SWC's asset management planning in past Determinations, and whilst use of MEERA calculations provides useful information to guide investment, actual investment must be grounded in engineering assessment of key assets and planned expenditure programs. WaterNSW's proposed top-down theoretical approach needs to be tested against previous and proposed programs. Without such an assessment, NSWIC and its members view WaterNSW's decision to transition to MEERA as a simple attempt to gain maximum CAPEX allowance and the flexibility to spend it without a corresponding engineering need.

### Level of CAPEX

NSWIC is deeply concerned by WaterNSW proposed CAPEX levels over the next Determination.

On page 80 of WaterNSW's pricing proposal, WaterNSW suggests a user share of capital expenditure of \$149 million compared to a Government share of \$45 million. It should be noted that the ACCC determined a **total** SWC capital expenditure program of \$132 million for the **entire last Determination**. While the last Determination was only for three years, NSWIC considers WaterNSW's proposal for a significant upwards adjustment will materially impact customers' regulated water charges in the next (and following) Determinations

through the return on and from that capital as well as through the change in the size of WaterNSW's regulated asset base.

**Recommendation 12: NSWIC recommends that IPART scrutinize WaterNSW's proposed CAPEX program for the next Determination period to ensure that it only includes necessary capital.**

#### Re-Naming CAPEX Categories

NSWIC is concerned that WaterNSW has proposed to rename and amalgamate its capital expenditure categories. As the current CAPEX categories are intrinsically linked to the cost sharing framework between the NSW Government and WaterNSW customers, NSWIC is concerned that the renaming and amalgamation of categories could result in a shift in costs to customers, in particular around dam safety compliance and environmental planning and protection.

**Recommendation 13: NSWIC recommends that IPART investigate whether the renaming of CAPEX categories has resulted in any cost shifting to customers, in particular around the current categories of dam safety compliance and environmental planning and protection.**

#### CAPEX for Maintaining Capability

NSWIC noted that WaterNSW has stated that the majority (60 per cent) of its future capital expenditure is for 'maintaining capability', followed by 25 per cent for 'regulatory compliance'.

As WaterNSW's regulated water charges are reviewed on a **regular** basis (either three or four years), NSWIC is deeply suspicious of WaterNSW's proposed CAPEX for 'maintaining capability'. NSWIC is of the view that 'maintaining assets' should be part of WaterNSW's normal business activity and reviewed by the regulator on a regular basis. It is our understanding that the ACCC has done so in 2014 when it last reviewed SWC's regulated water charges. WaterNSW argues<sup>10</sup> that the current ACCC average annual allowance for replacement and renewals is far below the rate required to maintain capability, and is essentially arguing that previous pricing Determinations have resulted in significant under-investment in maintaining assets.

As such, NSWIC must presume that the significant increases in proposed CAPEX for 'maintaining capability' is either a result of a change in Government policy, an internal direction from WaterNSW's board, or a result of WaterNSW's decision to apply the MEERA model. In all instances, NSWIC notes that the decision is completely outside customers' control with customers being asked to bear the greatest proportion of the costs (page 84 of WaterNSW's pricing proposal). NSWIC considers this inequitable and rejects it.

In addition, NSWIC is confused about the inter-relationship between WaterNSW's proposed CAPEX for 'maintaining capability' and WaterNSW's proposed OPEX for 'corrective maintenance', 'routine maintenance' and 'asset management planning'. On page 97 of WaterNSW's pricing proposal, it is stated that WaterNSW is requesting LESS operating expenditure for these thematic expenditure items even though NSWIC would have thought that these OPEX expenditure categories are correlated with WaterNSW's proposed CAPEX program.

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<sup>10</sup> WaterNSW Rural Regulatory Pricing Proposal, page 98

**Recommendation 14: NSWIC recommends that IPART scrutinize WaterNSW's CAPEX proposal for 'maintaining capacity' to determine its drivers – in particular in the context of WaterNSW's OPEX proposal for 'routine maintenance 'asset management planning' and 'corrective maintenance'.**

## Chapter 6 – Regulated Asset Base

NSWIC considers Chapter 6 to be the foundation that underpins WaterNSW's submission to IPART. The calculations and proposals put forward in this chapter not only influence WaterNSW's overall revenue proposal but also most directly impacts on customers' regulated water charges.

### Growth in RAB

NSWIC is deeply concerned about the continuous growth in WaterNSW's Regulated Asset Base (RAB) since the 2014 Determination. In the 2014 Determination, the ACCC set an opening RAB for SWC of \$657.3 billion (nominal) of which the user share was \$219.3 million.

In the current review, WaterNSW is proposing an opening RAB of \$802.2 million and a closing RAB of \$926.6 million in 2020-21. The user share component of the RAB in 2020-21 is proposed to be \$378.2 million – a near 72 per cent increase in RAB over only two Determinations.

**Recommendation 15: Given the importance of the RAB for future regulated water charges, NSWIC recommends that IPART review the efficiency of WaterNSW's RAB as well as WaterNSW's past CAPEX to ensure that future cost burden on WaterNSW's customers is minimised.**

### Prudency and Efficiency Review

NSWIC acknowledges that IPART is unable to conduct a prudency and efficiency review of WaterNSW's past CAPEX in the NSW MDB valleys due to the WCIR. NSWIC considers this to be a significant shortcoming of the current WCIR and requests that IPART undertake such an assessment as a matter of principle.

**Recommendation 16: NSWIC recommends that IPART conduct a prudency and efficiency review of WaterNSW's past CAPEX independent of the WCIR.**

### Roll Forward RAB

NSWIC considers the practice of rolling forward the RAB in order to create an opening value for the next regulatory period as flawed, given that the process is based on forecasts in the last year of the current Determination. As NSWIC has highlighted in countless submissions, WaterNSW (and previously SWC) has significantly under-spent on its CAPEX in previous Determinations, and while it typically weights the CAPEX in the early years of a Determination for planning purposes, the actual spend is frequently deferred to the final year of the Determination.

Following from the last Determination of SWC's regulated water charges, NSWIC raised its concerns that WaterNSW under-spent \$67 million of the proposed CAPEX. Furthermore, NSWIC notes that in the current Determination (2013/14 – 2016/17), WaterNSW has again significantly under-spent on its CAPEX in both 2014/15 and 2015/16 – with a combined value of \$10.02 million.



**Recommendation 17: As WaterNSW's customers' pay a return on capital on all under-spent CAPEX, NSWIC recommends that IPART conduct a thorough investigation of WaterNSW's past CAPEX and the associated aggregate holding costs to customers.**

Furthermore, IPART's noted in its Issues Paper (page 42) that WaterNSW's CAPEX in 2016-17 is supposed to be \$30.93 million, even though the last year of the current regulatory period is not complete. Not only is the heavy weighting of actual CAPEX in the last year of the current Determination typical for SWC / WaterNSW (as mentioned earlier), but it is also of concern as it would be \$7 million more than what is allowed by the ACCC. As the WCIR requires IPART to include all actual CAPEX into WaterNSW's RAB regardless of its prudence and efficiency (i.e. for NSW MDB valleys), NSWIC is concerned that the RAB is unnecessarily inflated.

**Recommendation 18: NSWIC recommends that the WaterNSW RAB value must be based on actual expenditure figures rather than forecasts, given the intrinsic link to regulated water charges.**

**Recommendation 19: NSWIC recommends that the opening RAB value must be set at the end of the third quarter of 2013/14 based on updated information from WaterNSW which includes actual CAPEX figures together with an update on forecast expenditure for the remaining quarter.**

NSWIC also requests that IPART explore WaterNSW progress with its capital expenditure in 2015/16, noting some valleys have significant expenditure proposed for the 2015/16 year. Where expenditure is substantially less than forecast this should be taken into account when setting the RAB.

In this way, IPART will have a better understanding on the actual capital expenditures made by WaterNSW over the last year of the current Determination and should be better placed to determine an appropriate opening RAB value.

NSWIC believes such a proposal is not only appropriate but also supported by the ACCC Pricing Principles;

*"The RAB should represent the value of all assets that have been funded directly by the operator and which are required for the provision of infrastructure services for which regulated charges are payable." <sup>11</sup>(emphasis added)*

We consider this comment to clearly outline that the RAB value should represent the value of the assets that have actually been funded, not the value of the assets that might be funded. Given WaterNSW's proposed changes to its CAPEX, this principle contained in the ACCC Pricing Principle, is more important than ever – in particular since WaterNSW's CAPEX proposal makes it significantly more difficult to determine what WaterNSW has actually spent on CAPEX.

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<sup>11</sup> Page 23, ACCC Pricing Principles

## Chapter 7 – Return on Assets and Regulatory Depreciation

### Weighted Average Cost of Capital

Due to the two regulatory jurisdictions (coastal and inland valleys), we have ended up a rather bizarre situation where IPART is considering the introduction of two different Weighted Average Cost of Capital (WACC) figures for WaterNSW – with a deviation of 2 per cent.

NSWIC cannot see how such an approach is sensible or appropriate. Based on the broad definition of the WACC as the rate of return a business is expected to pay on average to its shareholder (the NSW Government in this instances) to finance its assets, there is no reason to have two WACC values - unless there is a good reason why the cost of financing assets in the NSW coastal valleys is different to the NSW MDB.

NSWIC believes that IPART's discussions around two different WACC calculation approaches clearly highlights the arbitrary nature of setting a rate of return for a regulated monopoly business in the context of a regulated water charge review. While NSWIC understands the rules IPART has to apply, common sense suggests that this outcome is nonsensical.

Since IPART now regulates all of WaterNSW's regulated water charges, it seems sensible to derive one WACC value for WaterNSW. In considering an appropriate WACC value for WaterNSW, NSWIC would like to point to IPART's discussion on pages 53 and 54 of its Issues Paper. As IPART stated:

*"[IPART] will comply with the ACCC Pricing Principles in setting the WACC for the MDB valleys, while [IPART] is subject to the WCIR."*

Whilst uncertainty remains as to whether the ACCC will submit its final advice to the Federal Government on the review of the WCR (including the WCIR), IPART's current lack of flexibility around the WACC calculation for NSW MDB valleys appears to provide the guidance principle around which IPART should consider a WACC for WaterNSW's entire business.

NSWIC suggests that IPART should apply the WCIR calculated WACC value for the coastal valleys – in particular as the NSW coastal valleys appear to be penalised by IPART's standard approach at this regulatory review. NSWIC recognise that the current situation (i.e. a higher coastal valley WACC) might change depending on the market rates used by IPART in its future calculations, however it seems that the rigidity of the WCIR and the ACCC Pricing principle should lend support for the argument to apply the same approach to calculating the WACC in the coastal valleys.

**Recommendation 20: NSWIC recommends that IPART use the WACC calculated in the NSW MDB valleys as a WACC for the NSW coastal valleys.**

Despite this previous comment, NSWIC would like to reiterate that the Council has expressed its preference to 'stop the clock' on the review of WaterNSW's coastal valley regulated water charges until such time as the North Coast Pilot can be completed and a viable cost solution can be found for all of the NSW coastal valleys.

If such an approach is taken, NSWIC points out that the previous argument is somewhat moot as only one WACC value will be determined at this Determination.

### WACC Beta

In addition to NSWIC's earlier point, the Council would like to query WaterNSW's proposed beta value which is used to calculate the weighted average cost of capital for the NSW MDB valleys.

In its last pricing proposal, SWC asked for a 0.9 beta based on a consulting report by Strategic Finance Group (SFG) who undertook a comparison study of 'equivalent businesses in the US and UK'. As SWC was not a listed company, NSWIC raised its concern that there exists no methodology that would allow for a direct estimation of beta. In addition, NSWIC noted that a comparison with UK and US water networks is flawed given the significantly different market conditions and regulatory environments in the respective countries.

NSWIC acknowledges that in this Determination, WaterNSW has proposed a beta of 0.7 - in line with the ACCC Pricing Principles. However, NSWIC also notes the ACCC state in the 2014 Determination of SWC's regulated water charges that the Essential Service Commission determination of regional and rural water prices in Victoria determined a beta of 0.65 in the past. As such, NSWIC believes there is the capacity for IPART to consider a lower beta value for WaterNSW than 0.7.

Given WaterNSW proposed Risk Transfer Products (Unders and Overs Mechanism, Volatility Allowance, Tariffs and Cost Shares), NSWIC submits IPART must consider the realistic level of business risk faced by WaterNSW and adjust the beta value accordingly. The Council does not consider it prudent or efficient to simply use a beta value of 0.7 just because it is 'suggested by another regulator'. NSWIC is of the view, IPART must come to its own conclusion as to the appropriateness of the individual parameters used for the WACC calculations.

**Recommendation 21: NSWIC recommends that a lower beta value for WaterNSW's WACC calculation should be considered in light of WaterNSW's proposed Risk Transfer Products.**

### Regulatory Depreciation

NSWIC would like to seek further clarification on WaterNSW's proposed approach to capital depreciation.

NSWIC does not clearly understand the basis of WaterNSW's argument but noted that WaterNSW's depreciation figures are proposed to significantly increase by the end of the next Determination. NSWIC presumes this is a result of WaterNSW's decision to apply the MEERA approach (please see Chapter 5 of the NSWIC submission on this approach) and as a result of the ACCC decision to amend the asset lives of WaterNSW's assets.

NSWIC continues to hold the view that the adjustments to WaterNSW's asset lives has caused additional costs to WaterNSW's customers as replacement capital has been brought forward – in some cases significantly. As this has been a regulatory decision and not based on an imminent need for WaterNSW, NSWIC considers the additional cost burden

unjustified and requests IPART reconsider mitigating the cost impact on WaterNSW's customers.

**Recommendation 22: NSWIC submits that the ACCC's previous decision to amend SWC's asset lives has caused additional cost burden on WaterNSW's customers and recommends that IPART consider mitigating the cost impacts on WaterNSW's customers from this regulatory decision.**

## Chapter 8 – ICD Rebates

NSWIC welcomes WaterNSW's decision to continue the ICD rebates and we are pleased to see IPART supports this.

Despite our support, NSWIC cannot see any evidence that a reduction in rebates is justified – in particular given the scale of WaterNSW's proposed reductions. WaterNSW argues that the proposed reductions arise because WaterNSW's reduced operating expenditure means that the avoided costs are consequently lower. However, WaterNSW has not aligned these reductions with valley based cost reductions. It is also relevant that some customer service based operational costs have increased.

NSWIC submits that the calculation of the rebates must be a transparent process and that any reduction in the level of rebate must be justified by WaterNSW providing information to substantiate that there has been a reduction in their expenditure for metering, compliance and billing. NSWIC is of the view that the economies of scale and system-wide benefits persist and significant cost savings, including avoided costs, can be enjoyed by WaterNSW through the aggregation of many customers in a single WaterNSW customer as is the case with the ICDs.

**Recommendation 23: NSWIC recommends that the ICD rebates be maintained as no evidence has been provided by WaterNSW that a reduction to the economies of scale and system-wide benefits has occurred.**

NSWIC urges IPART to consult closely with the irrigation corporations on this issue as their knowledge and expertise on this matter is invaluable.

## Chapter 9 – MDBA and BRC Pass-Through Charges

NSWIC is deeply concerned by the preliminary Murray Darling Basin Authority (MDBA) and Border River Commission (BRC) costs that are proposed to be passed through to WaterNSW's customers (as per WaterNSW's pricing proposal). The Council has held these concerns for many pricing Determinations for both SWC (now WaterNSW) and for the Water Administration Ministerial Corporation (DPI Water).

NSWIC and its members are simply unable to review the efficiency of MDBA and BRC charges as we have no transparency around these costs or are able to gain clarity on what these charges are for.

NSWIC is deeply dissatisfied with the process of how the passing these costs through to WaterNSW's customers is done without enabling these costs to be reviewed in line with all other water charges (i.e. via WaterNSW or DPI Water).

NSWIC looks to IPART to reduce the recovery of these costs from irrigators. NSWIC is not asking WaterNSW to absorb any under-recovery by the NSW Government. However, it is the NSW Government who agrees to fund the MDBA, with irrigators excluded from all cost pass-through processes and with no opportunity for input on the efficiency of the services paid for.

In the case of the Murrumbidgee Valley River Murray Water costs these are not even used to supply the regulated water supply.

**Recommendation 24: NSWIC recommends a further deduction to MDBA and BRC charges to reflect the lack of transparency and clarity around them. NSWIC hopes such deductions will send a signal to the NSW Government that further action must be initiated at Ministerial Council level that allows for a review of these charges to take place in line with all regulated, unregulated and groundwater charge reviews in NSW.**

In addition, NSWIC notes that in 2014, the ACCC was advised that the NSW Treasurer had directed SWC under the *Public Finance and Audit Act 1983* (NSW) to recover all MDBA costs each year in the Murray and Murrumbidgee Valleys for the 2014-17 regulatory period. As a result, recovering these costs became a regulatory obligation for SWC (and WaterNSW). However, despite being a regulatory obligation, the NSW Government has completely devolved its responsibilities from paying any or all of these charges and has instead chosen to impose these costs solely on WaterNSW's customers.

NSWIC considers such an outcome not only dissatisfactory but also completely inequitable.

NSWIC notes that historically IPART has applied a user share model to derive the user contributions of these costs (in accordance with the following table - shaded activities could fall into MDBA activities).

Activity code	Activity name	User share %	Government share %
10	Customer Support	100	0
11	Customer Billing	100	0
12	Metering and Compliance	100	0

14	Water Delivery and Ops	100	0
15	Water transfers	100	0
16	Flood operations	50	50
17	Hydrometric monitoring	90	10
18	Water quality monitoring	50	50
19	Public liability insurance	100	0
30	Corrective maintenance	100	0
31	Routine Maintenance	100	0
32	Asset management planning and replacement	100	0
33	Dam safety compliance – pre 1997	0	100
33	Dam safety compliance – post 1997	50	50
34	Environmental planning and protection	50	50
50	Renewal and replacement of assets	90	10
51	Structural and other enhancements	100	0
98	Corporate systems	100	0

In accordance with the final direction from the NSW Treasurer prior to the 2014 final Determination, the MDBA costs are now a full additional component in charges, averaging around \$10.0 million each year over the 2014–17 period in the NSW Murray Valley compared to an average of \$2.2million per year for the Murrumbidgee Valley.

A costs comparison between Ex-MDBA charges and Inc-MDBA charges for WaterNSW's NSW Murray Valley customers are shown below (as per the 2014 final Determination):

Product	2014-15		2015-16 indicative		2016-17 indicative	
	Ex MDBA	Inc MDBA	Ex MDBA	Inc MDBA	Ex MDBA	Inc MDBA
High Security entitlement (fixed)	1.68	4.52	1.65	4.55	1.63	4.21
General Security Entitlement (fixed)	0.96	2.56	0.94	2.58	0.92	2.39
Usage (variable)	2.49	6.68	2.45	6.72	2.40	6.23

Indicative prices due to the application of an annual price review process.

As indicated in the table above, NSW Murray customers are paying more than double for their regulated water charges for the MDBA related costs, despite the fact that these costs cannot be verified for accuracy or efficiency.

Furthermore, NSWIC notes that WaterNSW has proposed a further increase in MDBA charges in 2017/18 to \$18.163 million for both the NSW Murray and Murrumbidgee Valleys (followed by approximately \$13 million per annum in the following years). Such a significant spike in MDBA related costs will dwarf any costs to customers actually resulting from WaterNSW's normal business activities which are reviewed by IPART as part of this review.

It can simply not be the case that neither IPART nor the ACCC have the regulatory capacity to review the cost basis of the MDBA and BRC charges. To not be able to provide scrutiny to these costs makes a mockery of the Government's approach to price regulation.

**Recommendation 25: NSWIC recommends that IPART must – as far as possible – conduct an efficiency review of MDBA and BRC related costs and apply its previous cost sharing approach to these charges.**

## Chapter 10 – Price Control Mechanism

Prior to NSWIC providing a response to WaterNSW's proposed price control mechanism and Risk Transfer Products, NSWIC would like to discuss WaterNSW's (and previously SWC's) financial viability and risks.

### Past Determination outcomes

In 2013, SWC suggested to the ACCC that they *"will fully recover their allowed revenue requirements for the first time since corporatization in (2012-13)"*<sup>12</sup> and that *"under-recovery of revenue amounted to \$79.1million over the previous regulatory period"*<sup>13</sup>. SWC used this argument at the 2014 Determination as support that a change in tariff structure is warranted.

NSWIC notes that SWC used exactly the same argument to IPART for the 2010 Determination to request a dramatic alteration to its demand forecasting model. The request was allowed; the model was changed; and the revenue forecast was met. SWC wanted to use the same (now solved) problem to shift risk to its customers. In the current determination, WaterNSW is again using the same argument to ask for a range of risk transfer products that would mirror an 80:20 fixed to variable tariff structure.

### **There are only so many times the same argument can be used before it gets old.**

NSWIC submits that the focus should not be on whether WaterNSW has met its allowed revenue requirement but whether WaterNSW was able to generate a net profit from its operation. We note that SWC returned a positive net profit before tax over the last Determination and the Determination before that based **solely on actual revenue**, despite the fact that the previous Determination included the worst drought on record<sup>14</sup>. In 2012-13 alone, SWC was able to generate a \$50 million net profit before tax and it was forecast that this situation would continue over the entire current Determination period, albeit at a slightly lower level<sup>15</sup>. As outlined previously, NSWIC is unable to determine the amount of net profit generated by WaterNSW at this pricing review, as this information was not provided in WaterNSW's pricing proposal. However, we have reviewed the Annual Reports for 2013/14 and 2014/15 and determined that in 2013/14 State Water reported a net profit after tax of \$42 million and paid a dividend to Government of \$24.3 million. In 2014/15 WaterNSW reported a net profit after tax of \$24.5 million and paid a dividend of \$20.3 million. We note that the 2014/15 result was after a \$73.2 million devaluation of property, plant and equipment resulting from a different approach to the valuation of infrastructure.

Furthermore, NSWIC emphasizes that the years 2011 - 2013 have been marked by significant increases in water availability across NSW which led to record water releases by SWC in 2012-13. This generated a revenue for SWC in excess of the IPART allowed revenue allowance - in the order of \$6.2 million<sup>16</sup>. Given the current (2016) wide-spread rainfall which has led to near full storages across NSW over the last few months, NSWIC anticipates another record water year for WaterNSW in this or the following water year, thereby generating large actual returns for WaterNSW.

As we outlined before, NSWIC continues to be disappointed that SWC has in the past and WaterNSW continues to claim a 'significant financial risk' despite the fact it only compares

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<sup>12</sup> Page 33, SWC submission to ACCC

<sup>13</sup> Page 33 and 34, SWC submission to ACCC

<sup>14</sup> Page 120, SWC submission to ACCC

<sup>15</sup> Page 120, SWC submission to ACCC

<sup>16</sup> Page 34, SWC submission to ACCC



allowed and actual revenue. We submit that such an analysis is misleading and does not show the full picture of profitability of WaterNSW. In order to assess the profitability of the corporation, a full assessment of WaterNSW's actual costs and revenues must be presented as part of this pricing review.

**Recommendation 26: NSWIC recommends that WaterNSW provide a comparison between actual costs and revenue so stakeholders can determine the profitability of WaterNSW and thereby assess its real level of financial risk. NSWIC submits that WaterNSW faces significantly less revenue risk than its customers, due to the current tariff structure.**

### Business Risk

To expand on the points regarding real financial risk to WaterNSW detailed above, NSWIC submits that the current 40:60 fixed to variable tariff structure, the cost share framework, and the Overs and Unders mechanism sets an effective minimum revenue stream for WaterNSW - thereby overcoming the "volumetric risk" of WaterNSW.

Additionally, NSWIC submits that WaterNSW's customers are exposed to the same risk without any compensated minimum revenue stream or geographical dispersion to offset localised water shortages. As NSWIC has outlined in Appendix B, the current price control mechanism, tariff structure, and cost share framework guarantees WaterNSW a revenue stream of over 70 per cent of its allowed revenue (not taking into account actual costs). This revenue stream is completely non-dependent on whether WaterNSW delivers a single ML of water to even one of its customers.

NSWIC submits that irrigators in NSW would be delighted by the prospect of a 70 per cent guaranteed revenue stream with unlimited upside potential. Compared to WaterNSW, irrigators in NSW are price takers for their produce in international markets and are exposed to significantly greater risk than WaterNSW. In this context NSWIC and its Members conclude that WaterNSW significantly overstates its real level of business risk and is seeking to 'gold plate' its revenue streams.

### Overs and Unders Mechanism

WaterNSW has proposed the continuation of the Overs and Unders Mechanism (OUM) which was introduced at the last Determination in 2014. This mechanism allows WaterNSW to recovery any revenue shortfalls over the long term, hence providing WaterNSW with an insurance against lower than expected revenue within one water year.

While NSWIC acknowledges that WaterNSW might not be able to balance the OUM at the end of a regulatory determination, NSWIC notes that WaterNSW will **over the long term** always achieve its notional revenue allowance through this mechanism and hence be ultimately protected from supply side risk.

As NSWIC mentioned in the last review of SWC's regulated water charges, the UOM has the capacity to cause significant price shocks within years and across Determinations which can – at the extreme – have substantial impacts on the medium and long term planning and investment decisions for irrigators.

Fixed capital investment in irrigation generally represents 'sunk costs', and are made based on irrigators' best available knowledge at the time about future input costs. Should regulated

water charges change dramatically between Determinations, then this could have a detrimental effect on the viability of capital investments by irrigators. The mechanism is therefore likely to serve as a disincentive for WaterNSW's irrigation customers to further modernise their operations.

That said, and despite our previously expressed concerns about the UOM, NSWIC and its Members consider this approach to be preferable to the previous Volatility Allowance approach applied by IPART. This is because the UOM (under its current design) allows WaterNSW to adjust its water charges each year to ensure it is able to recover notional revenue allowance rather than artificially inflating prices at the beginning of the Determination, irrespective of actual water sales.

### Revenue Volatility Allowance

As outlined in the previous section, NSWIC rejects WaterNSW's proposal to introduce a volatility allowance in addition to an UOM. NSWIC sees absolutely no need for another Risk Protection Mechanism which is paid for by irrigators as a premium on WaterNSW's regulated water charges in order to replicate an 80:20 fixed to variable tariff structure - particularly if WaterNSW has access to a UOM that ensures it is able to recover its notional revenue over the long term. For reasons outlined in Appendix B, NSWIC has provided ample reasons to continue the current 40:60 fixed to variable tariff ratio – particularly given all of the other risk protection mechanisms WaterNSW has at its disposal to recover its notional revenue (i.e. cost share framework, tariff structure, UOM).

NSWIC emphasizes that SWC previously advocated for a change in tariff structure to an 80:20 fixed to variable tariff structure at the last two Determinations and both times it has been rejected by the regulator. WaterNSW now tries to do likewise, albeit under a different corporation identity. WaterNSW's proposal for a revenue volatility allowance is an attempt to create an 80:20 fixed to variable tariff structure – a goal SWC had for many years, and which WaterNSW has previously advocated with NSWIC and our Members.

**Recommendation 27: NSWIC recommends that IPART reject WaterNSW's revenue volatility proposal on the grounds that it unreasonably shifts risks to WaterNSW's customers to provide compensation for temporary revenue shortfalls (compared to WaterNSW's notional revenue allowance), which is ultimately adjusted for in the long term through the Unders and Overs Mechanism. Further, NSWIC recommends that this creeping approach to risk shifting by WaterNSW be explicitly rejected by IPART.**

To further elaborate, NSWIC considers WaterNSW's proposal for a volatility allowance as the most unreasonable of the risk protection mechanisms that WaterNSW is seeking. We note that WaterNSW has not attempted to quantify the actual risk it faces as a result of revenue volatility that is not already addressed by the UOM. It states that the revenue volatility may impact on the cost of financing capital expenditure and that the WACC is not an appropriate measure of the interest rate that may be applicable in those circumstances, but makes no attempt to estimate what the actual costs incurred by WaterNSW could be. We believe that the RTP proposed is an extremely expensive means of managing this risk and that it could only be contemplated by a business that expected to pass all costs on to customers. We note that in the past SWC proposed amendments to its tariff structure on multiple occasions in the past, but IPART has continuously and comprehensively rejected such an approach on the basis of equity and risk sharing between SWC and its customers.

NSWIC reiterates that we consider the WaterNSW proposed approach as clear evidence that WaterNSW is exercising its monopoly power to wholly shift its business risk to customers. In particular, this additional risk transfer product will protect WaterNSW from all possible water availability scenarios. In case of very low water availability, WaterNSW is effectively seeking to recover its full allowed revenue (through fixed charges and the volatility allowance) while the business is not able to provide its full services to customers and, in fact, in drought conditions such as experienced from 2003-2009, based on the past experience of SWC WaterNSW would provide very little service to very many paying customers. As irrigators have no choice but to pay WaterNSW's fixed charge component due to the intrinsic link with irrigator's Water Access Licences, we consider WaterNSW's proposal as highly inequitable and reject it as a matter of principle – as covered in Recommendation 27, above.

NSWIC rejects WaterNSW's proposed price control amendments on the grounds that WaterNSW - as a monopoly operator - is simply aiming to acquire four separate risk protection mechanisms without any equivalent compensation for customers.

NSWIC, asks, is the purpose of regulation to allow the monopoly provider to be guaranteed 100 percent of their notional revenue requirement?

Finally, WaterNSW claims that the introduction of a Volatility Allowance is necessary and inevitable in order to ensure the commercial viability of WaterNSW and to guard against WaterNSW's business risk that arises due to a mismatch between variability in WaterNSW's actual and allowed revenue. NSWIC notes that a mismatch between revenue and costs is also present for any of WaterNSW's customers with the additional constraint that the latter do not have access to the insurance that is afforded to WaterNSW by its **base level revenue mechanism**.

#### Efficiency Carryover Mechanism

NSWIC notes that IPART has raised the possibility of introducing an Efficiency Carryover Mechanism. While the principle driving this suggestion is sound, the Council does not believe a four-year period over which WaterNSW is able to retain any OPEX efficiency savings is appropriate and equitable for WaterNSW's customers, who already have seen little benefit from the current water reform process that was designed to achieve further efficiency savings and place the customer at the heart of the benefits of the reform process.

In addition, and in line with our previous comments, NSWIC does not understand why IPART wishes to provide further benefits to a monopoly service operator at the possible expense of customers who are not able to join in the benefits of any OPEX savings. Should such a mechanism be discussed further, NSWIC suggests that the sharing of benefits between customers and WaterNSW be considered.

**Recommendation 28: NSWIC rejects IPART's proposal to introduce an Efficiency Carryover Mechanism at this price Determination and requests further consultation with stakeholders around such a mechanism for future Determinations.**

## Chapter 11 – Tariff Structure

As mentioned in Chapter 10, NSWIC is deeply disappointed that WaterNSW is trying to artificially create an 80:20 fixed to variable tariff structure under the guise of a revenue volatility allowance.

NSWIC policy supports the current fixed to variable tariff structure for WaterNSW's regulated water charges. We have reiterated this policy position to IPART and the ACCC in previous Determinations and water charge reviews.

Based on WaterNSW's preliminary consultation, NSWIC considers there to be little or no benefit from moving to a higher fixed charge tariff structure (not considering WaterNSW's additional revenue volatility allowance proposal). The additional WaterNSW revenue that would be paid by licence holders under the current tariff structure would be minimal in the context of WaterNSW allowed revenue, but there would be additional cost that water licence holders would have to accept for this additional risk mitigation tool provided for WaterNSW against low or no water allocations – higher costs to water users but less water provided.

It should be stressed that WaterNSW's comparison between the different tariff structures only considers 'notional revenue requirements' for WaterNSW and not the actual revenue that is recovered from water licence holders. The concerns of water licence holders relate to the requirement to pay fixed bulk water charges in times of low or no water availability. This supply side risk is real and a serious concern to licence holders and water users, and a key reason the Council has strongly supported the current fixed to variable tariff structure.

As we have outlined in our previous submissions to the ACCC, we have considered SWC's previous higher fixed charge tariff proposal to be a direct attempt to shift business risk to customers and we see a similar attempt in WaterNSW's current proposal for an additional volatility allowance.

It is our view that the current tariff structure and the cost share framework eliminate the majority of WaterNSW's volume-related risk because a large percentage of WaterNSW's allowed revenue is recovered independent of water availability. Such a revenue guarantee is under no circumstances available to WaterNSW's customers. The higher fixed charge proposal (via the volatility allowance) is a clear attempt by WaterNSW to exploit its monopoly power, whilst irrigators continue to struggle with increasing input costs and highly variable output returns.

Finally, NSWIC has justified its position for the 40:60 fixed to variable ratio (in Inland valleys) on the basis that it has provided a degree of protection for WaterNSW's customers against supply side risk (i.e. of low or no water availability). NSWIC has provided evidence<sup>17</sup> that in cases of low water availability and a high fixed to variable tariff ratio for WaterNSW's regulated water charges, the cost impost on WaterNSW's customers can be significant in some valleys. In the absence of a comprehensive 'fixed charges relief trigger' policy<sup>18</sup> offered by the NSW Government under its hardship provisions, NSWIC considers the current tariff structure equitable and adequate<sup>19</sup>.

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<sup>17</sup> NSWIC submission to ACCC in 2013

<sup>18</sup> [http://www.nswic.org.au/pdf/policy\\_documents/Fixed%20Charges%20Trigger%20policy%20v5.pdf](http://www.nswic.org.au/pdf/policy_documents/Fixed%20Charges%20Trigger%20policy%20v5.pdf)

<sup>19</sup> NSWIC would like to reiterate that NSWIC members reserve 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. As such, individual NSWIC members may want to continue the discussions around tariff structures with WaterNSW to clarify all benefits and costs of a change.

**Recommendation 29: NSWIC submits that the current tariff structure has served both WaterNSW and its customers well over the current and previous Determination period and recommends that it should be continued.**

NSWIC would like to refer IPART to an Addendum Paper we have submitted to the ACCC as part of the last determination of SWC's regulated water charges (**Appendix B**) on this matter.

In conclusion, NSWIC would like to point out that individual valleys may wish to continue the discussions around tariff ratios, and NSWIC urges IPART to closely liaise with its Members on this issue.

## Chapter 12 – Demand Forecast

NSWIC notes that creating a forecast for consumption has been - and must continue to be - a task for the regulator. Nevertheless, NSWIC acknowledges that climate variability and unpredictable rainfall patterns make this task difficult. In order to assess and determine consumption forecast values, IPART has – in the past - relied upon the Long Run Average (LRA) from the IQQM model for the determination of SWC's regulated water charges (or a similar approach in valleys where IQQM is not used).

Whilst NSWIC also acknowledges that IPART has deviated from this approach in the 2010 Determination, we continue to support the use of the full IQQM (or equivalent) dataset and submit that the 20-year weighted average approach is not necessarily superior to the full IQQM model. In particular, the full IQQM model provides a long run average consumption forecast of 5450GL which closely aligns with actual extraction figures in 2012-13 for example (5986GL). In comparison, the 20 year rolling average approach returned a value of 4627GL in the last Determination in 2014, and an even lower value of 4464GL in 2016<sup>20</sup>.

NSWIC believes that the 20 year rolling average approach significantly favours WaterNSW, as it currently understates the long term average consumption figures in NSW. As a result, WaterNSW's regulated water charges are higher than (possibly) necessary.

Furthermore, the full IQQM dataset shows clearly that there have been previous periods of very low water availability (including droughts) and these factors are incorporated into the calculation of long term average consumption. In comparison, the use of a 20-year rolling average has the potential to cause significant fluctuations in assumed valley consumption from year to year, leading to significant shifts in regulated water charges.

As the last Determination showed, the yearly consumption updates, in accordance with Part 6 Division 3 of the WCIR, has caused some significant shifts in regulated water charges in some valleys where a year of higher than average consumption was replaced with a year of lower than average consumption. This effect was exaggerated by the fact that consumption over the course of the determination was low, causing regulated water charges to rise even further.

In addition, as this year have clearly highlighted, there is sometimes no correlation between weather conditions from one year to another, and hence the move towards a 20-year moving average does not add any significant benefits to the analysis, but rather decreases the transparency for customers.

**Recommendation 30: NSWIC recommends that a consumption forecasting model that takes into consideration the full IQQM data is the most valid method available and should be included in this Determination.**

Finally, to support our position on this issue NSWIC advises that Murray-Darling Basin Authority has discarded the 20-year average demand forecasting model in favour of the full IQQM dataset for the Murray-Darling Basin Plan.

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<sup>20</sup> As per WaterNSW's pricing application to IPART.

## **Chapter 13 – Meter Charges**

In line with NSWIC submission to the ACCC in 2013 on the review of SWC's regulated water charges, NSWIC disagrees with the cost build up and assumptions underlying WaterNSW's metering charges. NSWIC has still not received any justification for the level of charges WaterNSW's proposes per meter sizes or the increases in metering costs throughout the next determination.

In addition, WaterNSW has not provided any justification for the equalisation of meter charges for both telemetered and non-telemetered meters. As a principle, telemetry – where it is feasible to be installed – should lead to lower costs for WaterNSW and hence lower charges.

**Recommendation 31: NSWIC rejects WaterNSW's meter service charges and recommends that IPART conduct a comprehensive review of WaterNSW's proposed metering charges.**

### Meter Reading Charges

NSWIC would like to point out that DPI Water is currently in the process of developing a Water Take Measurement Strategy. As this strategy is not yet finalized, and could have significant impact on the cost of reading meters, NSWIC urges caution in IPART prematurely approving WaterNSW's proposed Meter Reading Charges.

**Recommendation 32: NSWIC recommends that IPART exercise caution in approving WaterNSW's proposed Meter Reading charges prior to the completion of DPI Water's Water Take Measurement Strategy.**

## Chapter 14 – Cost Share Framework

NSWIC welcomes IPART's decision to review the current cost share framework to ensure it continues to accurately reflect the share of costs imposed by each party under the 'impactor pays' approach.

The Council has – on many occasions – pointed out the shortfalls in the current cost share framework and urged IPART to address these issues in the regulated water charge reviews. In particular, NSWIC has been deeply frustrated by the lack of willingness to address the issue of 'free riders' in the context of WaterNSW's bulk water service delivery. We note that there are many more 'impactors' and 'beneficiaries' of WaterNSW's infrastructure who currently do not pay for WaterNSW's services.

Furthermore, NSWIC notes that under the current cost share approach, an increasing proportion of WaterNSW's notional revenue allowance is allocated towards WaterNSW's customers (i.e. water access licence holders). This is despite the fact that the demands of water licence holders to WaterNSW have not materially changed. On the contrary, NSWIC maintains that the only customers who have imposed further demands on WaterNSW have been the environment (i.e. through Basin Plan requirements and State held and planned environmental water flows). NSWIC submits that there is increasing evidence that the delivery of environmental water, both planned and licensed, requires WaterNSW to incur additional operational and administrative costs that are not required when delivering to other licensed customers. NSWIC feels this fact must be recognised in the cost share framework.

Despite our support for IPART's review of cost shares, NSWIC would like to emphasise that the NSW Government has not officially committed to a continuation of a cost sharing framework as per the 2012 Review of Rural Water Charging System. At this review, the NSW Government agreed to continue the current cost sharing framework until the explicit date of July 2017 and requested IPART to conduct a review of the cost share framework ahead of the next Determination. Whilst IPART has decided to undertake this review during this review of WaterNSW's regulated water charges, NSWIC point out that the NSW Government has still not made a commitment to cost sharing. This fact continues to pose a significant risk and uncertainty to WaterNSW's customers, who could be faced with a significant increase in costs should the NSW Government decide not to continue with the current cost sharing approach.

NSWIC supports IPART engaging external expertise to review the cost shares.

The Council has sought a confirmation from the NSW Government that a cost sharing approach between the Government and WaterNSW's will continue. We have stated this request in a letter to the NSW Minister for Primary Industries, Lands and Water (Appendix D).

Given the significant concerns that the cost share framework might not be continued NSWIC members expressed a wish for the NSWIC secretariat to review the current cost sharing framework and approach. This paper outlines our preliminary views on where improvements to the current cost share framework can be made.

NSWIC urges IPART to consider this document (Appendix C) in its review of the cost share framework.



**Recommendation 33: NSWIC recommends that improvements to the current cost share framework be made in recognition of the additional demands imposed on WaterNSW from its environmental customers (through both rules based planned and held environmental water).**

**Recommendation 34: Further, NSWIC recommends that improvements to the current cost share framework be also made around the category of 'legacy issues'.**

**Recommendation 35: NSWIC recommends that provisions must be made to capture all beneficiaries of WaterNSW's infrastructure and services who currently do not pay for the maintenance of the infrastructure.**

## Chapter 16 – Coastal Valley Issues

NSWIC welcomes IPART's acknowledgement that some valleys may never be able to achieve full cost recovery. This situation is pertinent to the NSW North and South Coast Valleys and is a significant risk to the Hunter Valley in the future.

NSWIC is heartened by the fact that IPART has dedicated a chapter to the NSW coastal valleys and we applaud IPART in suggesting a number of preliminary proposals that could address the significant cost pressure in these valleys.

Despite our support for IPART conducting such an analysis and deriving a viable solution for WaterNSW's coastal valley customers, we understand that such a project will take time - which we and our coastal valleys Members, in the context of a rigid timeframe for a regulated water charge determination – do not have.

In addition, NSWIC would like to reiterate that WaterNSW is currently conducting a North Coast pilot in recognition of the ongoing cost challenges in the NSW coastal valleys. Given the complexities and the need for a fundamental re-think of how water pricing is conducted in the coastal valleys, NSWIC submits that IPART should institute a freeze of WaterNSW's regulated water charges in the NSW coastal valleys until such time as WaterNSW can complete its North Coast Pilot, and conduct a similar analysis in the NSW South Coast Bega-Brogo system. NSWIC maintains that it is absolutely imperative that WaterNSW and IPART have sufficient time to thoroughly consult with stakeholders in the NSW coastal valleys on the options outlined in IPART's Issues Paper. This issue is covered in the discussion earlier in this Submission and summarised in Recommendation 3. NSWIC has written to the NSW Minister for Primary Industries, Lands and Water on this matter and urged him to support NSWIC's Recommendation 3 related to a coastal valleys price freeze with to IPART (Appendix A).

**Recommendation 36: NSWIC recommends that IPART initiate a separate review on the preliminary options for NSW Coastal Valleys as outlined in its Issues Paper, which sit outside WaterNSW's regulated water charge review.**

## Appendix A

### Letter to NSW Minister for Primary Industries, Lands and Water on Coastal Valley Price Freeze



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BY EMAIL

October 14 2016

**The Hon Niall Blair MLC**

Minister for Primary Industries, Lands and Water  
52 Martin Place  
SYDNEY NSW 2000

Dear Minister

#### **RE: WATER PRICE FREEZE FOR COASTAL VALLEY IRRIGATORS**

As you are aware IPART has commenced its pricing review of WaterNSW Rural Water charges for the next four-year regulatory period, commencing from July 1 2017.

In response to the matters we raise relating to the water cost crisis currently impacting on north and south coast irrigators (detailed below), and likely to similarly impact Hunter Valley irrigators in the mid-term future, NSWIC is requesting that you make a submission to IPART to request that it institutes a cost freeze on WaterNSW charges for coastal valleys for the period of its next price determination. NSWIC has requested that IPART also separately assess water charges on the coastal valleys rather than adopting a one-size-fits-all approach to regulated pricing across the State.

A water price freeze would allow the current North Coast Pilot Study being conducted by WaterNSW to determine options to mitigate the high cost of water supply to be completed. South Coast irrigators are also very eager to see the results of the North Coast Pilot as an indicator of options they might pursue to mitigate their high water costs.

By way of background, prior to the last State Election NSWIC established a policy position that requested the NSW Government to take a different approach to management of rural water on NSW coastal valley irrigators compared to the inland valleys. This was to recognise the peculiarities of rural water supply and water use patterns along the coast.

Coastal valley water access licence holders are widely dispersed along the length of the coastal districts in NSW across 3 broad zones – North Coast, Hunter Valley and South Coast; are generally smaller licence holders than their inland counterparts; generally use water for supplementary irrigation in drier months

only; and in most cases have water storages that were built by the Government to support dairy production that has now greatly diminished – leaving significant legacy costs for remaining irrigators. All three coastal zones have varying ratios of fixed to variable costs in their water charging regimes – once again in direct contrast to their inland counterparts.

In keeping with the IPART upward cost “glide path” to achieve eventual full cost recovery for water supply in all valleys in NSW, costs have continued to trend steadily upwards in both the north and south cost irrigation districts. While the Hunter Valley is at full cost recovery, its irrigator cost base is very likely to increase significantly once the region’s two power stations (which currently hold 30% of licenced water in that valley) are decommissioned over the next decade – leaving Hunter Valley irrigators also facing unsustainable water supply costs.

In response to rising concerns amongst north and south coast irrigators over the increasing cost of water NSWIC last year formed a Coastal Valleys Forum to tackle the water cost sustainability crisis confronting irrigators in the coastal valleys. The rising cost of water charges is beginning to price coastal irrigators out of utilising their water entitlements; and on the north coast we are already seeing irrigators beginning to surrender their licences rather than continue to pay significant fixed charges for the holding of those licences. This is a deeply concerning trend, as it calls into question the whole future of irrigated agriculture in coastal valleys, unless solutions to this cost crisis can be found. This trend towards abandonment of irrigation has significant consequences for the value of agricultural production in coastal districts and to the regional economy of NSW.

The recent engagement of the NSWIC Coastal Valleys Forum with WaterNSW to explore how water costs might be contained and reduced is a direct recognition that the status quo is not acceptable and will continue to see irrigators surrender their licences – leaving remaining irrigators to bear increased cost. While this issue is not completely intractable, there is no future for a large number of coastal valley irrigators if water costs continue to escalate. Needless to say, without the maintenance of the current levels of the Government subsidies of the cost of maintaining the Toonumbar Dam in the north and Brogo Dam in the south, there will be a mass exodus of irrigators – precipitating a major crisis for the sector and for agriculture in NSW coastal districts. Similarly, if IPART were to continue down its current track of moving to full cost recovery on the north and south coasts, the cost of accessing irrigation water would rapidly become completely untenable.

The key to finding a solution is to allow the completion of the WaterNSW North Coast Pilot Study and the exploration of all available options for cost mitigation over the next 18 to 24 months. In this context it is vital that coastal irrigators not have further cost pressures applied via increased regulated water charges during the next IPART determination period until the North Coast Pilot is completed and all the water pricing options for the coastal valleys are identified and thoroughly explored with coastal stakeholders.

A water price freeze during the next determination period is, in NSWIC’s view, absolutely essential to finding ways of ensuring a sustainable future for coastal irrigators, and once again we request that you write to IPART requesting it to introduce a coastal valleys water charge price freeze.

Yours Sincerely



Mark McKenzie  
Chief Executive Officer  
NSW Irrigators Council

## Appendix B

### Addendum from 2013/14 Regulated Water Charge Determination Regarding Tariffs and Risk of State Water Corporation



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## ACCC Draft Decision

### Additional Information

Stefanie Schulte  
Economic Policy Analyst

## Introduction

In light of State Water's response to the ACCC Draft Decision, NSW Irrigators' Council (NSWIC) would like to provide further additional information in support of the ACCC's proposed cost recovery mechanism and tariff structure for State Water Corporation's (SWC) bulk water charges. The following sections are in direct response to State Water's consultant report prepared by Frontier Economics.

In particular, NSWIC would like respond to the Frontier Economics' claims on page 25 of the Final Report;

*"It would require accepting;*

- that State Water's proposed tariff structure involves transferring an 'unreasonable' amount of volume-related risk from State Water to customers which is inappropriate.*
- that State Water's proposed change to the tariff structure would have such a material impact on irrigator's cashflows particularly during dry years as to itself be a major cause of irrigators not being able to obtain finance.*
- that any impacts of assigning more volume-related risks to water users are 'perverse' or 'unintended' and represent some sort of market failure to be addressed by State Water*
- that no better instrument for farmers to manage such risks or to address any concerns about financial viability for some farmers exists."*

As we have outlined in our previous submission to the ACCC, we consider SWC's tariff proposal and associated cost recovery mechanism to be a direct attempt to shift business risk from SWC to customers. SWC's tariff proposal alone would eliminate the majority of SWC's volume-related risk and ensure that 88 per cent of SWC's allowed revenue is recovered independent of water availability. Such a revenue guarantee is under no circumstances available to SWC's customers. SWC's proposal is a clear attempt by SWC to exploit its monopoly power whilst irrigators continue to struggle with increasing input costs and highly variable output returns.

In addition, NSWIC stresses that water costs are a significant input cost for irrigators in NSW. While every irrigation operation is different, water charges can constitute 20 per cent of on-farm input costs and fixed water charges are a significant obstacle for irrigator's financial viability in years of low water availability. This point highlights the lack of understanding by Frontier Economics of farm business cashflow situations and irrigator's financial viability. Many irrigators continue to struggle with the aftermath of the millennium drought and hence often have minimal additional reserves to address significant price shocks. SWC's proposed tariff structure would constitute such a price shock - in particular when water availability is low. In these circumstances, fixed water charges constitute an ongoing financial liability for irrigators despite the fact they are unable to utilise water to generate returns. To suggest that farmers have access to a range of other 'risk-mitigation' strategies is also flawed given the following argument;

- Funds held in farm management deposit schemes are often insufficient to cover the full impact of bulk water charges (and other input costs) during low water years. In addition, many irrigators utilise these funds to fund maintenance and innovation to increase yields and remain profitable.
- Funds from NSW and Commonwealth Government assistance are only available after a number of consecutive years of low water availability and only accessible under a strict set of criteria. In particular, the hardship provisions are only available in cases of three years of consecutive zero allocations. Hence it is unlikely that these funds will be readily available.
- Water trading cannot be considered an effective risk management tool as water market prices are highly volatile and not necessarily available in all areas of NSW. In addition, allocation trading to supplement cash flow has minimal effect on the proposed fixed entitlement charges as irrigators who hold the entitlement are liable to pay these costs. Furthermore, the assumption that allocation trade can be used to offset other on farm costs is based on the assumption that allocations are available. In case of dry years where cost pressures are greatest, allocations will not necessarily be available for trade. In the case of the Lachlan valley, only 4382 ML of temporary water was traded in 2009/10 (compared to 660,000 ML of entitlement in the valley) and only three general security water transfers took place. This indicates that in severe drought, water trading may not be an option. Furthermore, for a market to be an adequate risk mitigation mechanism, market depth must exist. This is unfortunately not the case in all valleys.

Finally, a change in the tariff structure, will have a significant repercussion on the temporary and permanent entitlement market. It is possible that individual irrigators opt out of holding entitlements (i.e. a significant supply increase in the permanent market) and rely on temporary water to maintain their business (i.e. a significant increase in demand for temporary water). Such market implications must be considered by the ACCC when considering any changes in the tariff structure.

- Overall variable costs might slightly reduce during low water years but SWC's proposed tariff structure would mean that the proportion of input costs related to bulk water charges increases significantly during low water years, hence posing a direct threat to irrigator's financial viability.

The ACCC assured NSWIC and its members at two council meetings (November 2013 and March 2014) that the current tariff structure of 40 per cent fixed and 60 per cent variable charges will be maintained. This assurance was supported by the ACCC Draft Decision which was released in March 2014. The ACCC stated explicitly that;

*'The ACCC's draft decision is to maintain State Water's current tariff structure so that 40 per cent of its revenue is recovered through entitlement charges (fixed charges) and 60 per cent is recovered through usage charges (variable charges) over the 2014-17 regulatory period. The ACCC considers this tariff structure best contributes to the BWCOP.'*<sup>21</sup>

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<sup>21</sup> ACCC Draft Decision on State Water Pricing Application 2014-15 - 2016-17

In addition, the ACCC stated that the continuation of the current tariff structure is appropriate;

*'The ACCC considers that a 40:60 tariff structure with an appropriate form of price control will also allow State Water the opportunity to recover its efficient costs. An appropriate form of price control will allow State Water to adjust its prices to account for a proportion of the difference between its actual and target revenue. This structure avoids the detriments associated with transferring volume related risk to customers, while allowing State Water to earn sufficient revenue to efficiently deliver its services<sup>22</sup>.'*

In addition, the ACCC shared NSWIC's view that a change in tariff structure to 80 per cent fixed and 20 per cent variable charges would constitute an unreasonable shift of risk to customers;

*'The ACCC considers that the 80:20 fixed to variable structure does not promote the three BWCOP factors which we have identified as particularly relevant to water infrastructure charges. The ACCC considers that State Water's proposed 80:20 tariff structure would transfer an unreasonable amount of volume-related risk from State Water to customers and that this has potential perverse and/or unintended pricing outcomes for the financial viability of farm businesses and on farm investment<sup>23</sup>.'*

Furthermore, the ACCC indicated in its Draft Decision that not all of the Basin Water Charging Objectives and Principles (BWCOP) should be equally considered for the determination of State Water's bulk water charges;

*"In having regard to the BWCOP, the ACCC considered the following aspects of the BWCOP to be particularly significant:*

- avoid perverse or unintended pricing outcomes*
- to ensure sufficient revenue streams to allow efficient delivery of the required services*
- to promote the economically efficient and sustainable use of water resources.*

*The ACCC placed more weight on these aspects of the BWCOP as it considered them to be the most relevant to determining water charges for MDB valleys (emphasis added)<sup>24</sup>.*

While State Water has argued in its response to the ACCC that the proposed tariff structure would impose an inappropriate amount of risk for State Water, we highlight the ACCC's Draft Decision that;

*'The ACCC considers that a 40:60 tariff structure in conjunction with the ACCC's proposed form of price control will adequately address any risk to State Water of revenue under recovery as a result of volatility in water availability.'<sup>25</sup>*

NSWIC supports this analysis and adds that State Water's initial and subsequent submission to the ACCC clearly indicates an intention to shift all of State Water's business risk to customers without acknowledging that customers are exposed to a significantly greater

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<sup>22</sup> Ibid, p.16

<sup>23</sup> ACCC Draft Decision, attachment A, p.213

<sup>24</sup> ACCC Draft Decision, Appendix A, p. 210

<sup>25</sup> Ibid, 216



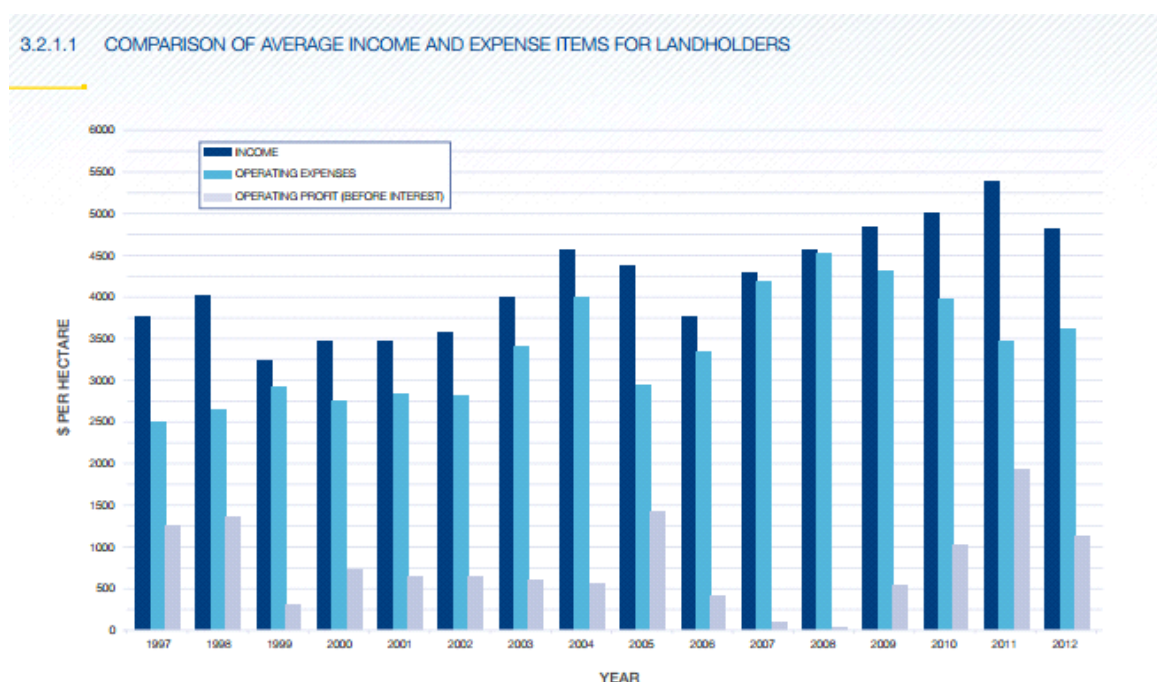
degree of risk as part of their business operation. The following section will provide further detail on this point.

## Operating Expenditure and Revenue

The current 40:60 (fixed/variable) tariff structure is based on the assumption of 100 per cent allocation, despite the fact that long term yield on entitlements (General Security (GS) in particular) are well below that in most values in NSW. As such, the example of a 50 per cent allocation as suggested by Frontier Economics is a significant overstatement of the long term average yield in some valleys.

Irrigators who hold GS entitlements have paid fixed entitlement charges to SWC despite the fact that during the millennium drought allocations were often minimal (if not zero). This ongoing fixed liability is of importance, as irrigators often have few opportunities to pass any additional cost increases on. In addition, returns are often minimal in these years. NSWIC has continuously raised this issue since the bulk water charge determination in 2006<sup>26</sup>.

The importance of fixed charges is further supported by the *Australian Cotton Comparative Analysis (2012)* prepared by Boyce Chartered Accountants<sup>27</sup>. The study shows that farm financial viability is threatened in case of low water availability. As the graph below outlines, operating expenditure in cotton production (when cotton was actually grown) is highly variable and in years of very low water availability (2007 and 2008), operating expenditures and income were nearly identical.



If the tariff structure during these years was based on an 80:20 fixed/variable model, then operating expenditures would most likely have exceeded income and hence led to a negative net financial position for irrigators in those years.

<sup>26</sup> file:///C:/Users/Stefanie/Downloads/Submission\_-\_Bulk\_Water\_2006\_-\_NSw\_Irrigators\_Council\_-\_website\_document.pdf

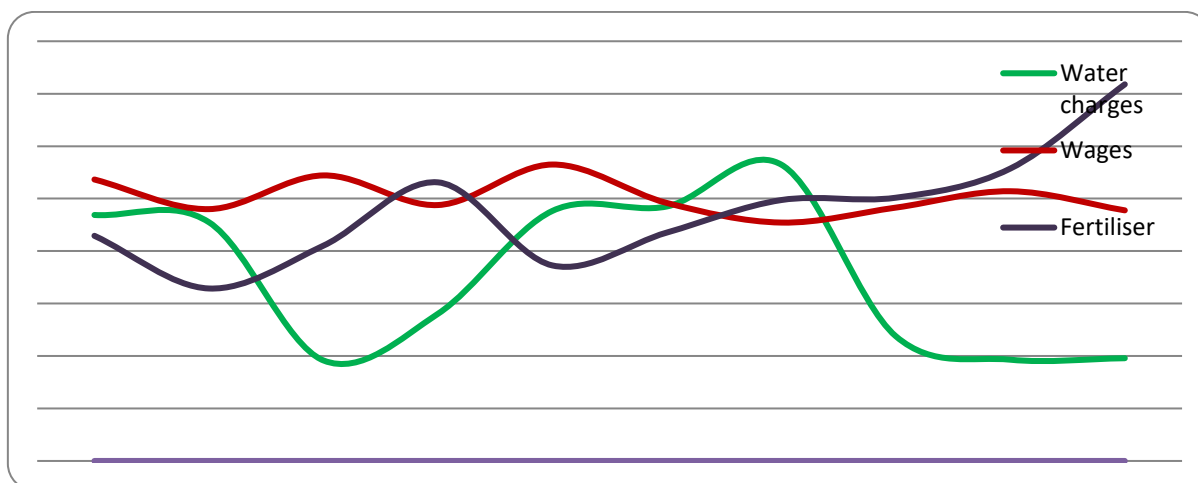
<sup>27</sup> <http://www.boyceca.com/assets/uploads/1/files/Corporate%20Ag/Australian%20Cotton%20Comparative%20Analysis%202012.pdf>

The graph above also shows that both operating expenditure are highly variable in food and fibre production. Operating expenditures include a large list of inputs which varies between dry and wet seasonal conditions. An example provided in the Boyce study is given in the table below (yellow indicates that in case of zero water availability, these costs would be reduced or not incurred);

EXPENSES	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Cartage	69	70	96	105	128	101	100	112	136	117
Chemical application	105	172	137	158	115	110	87	136	138	131
Chemicals - defoliant	67	95	55	57	54	71	79	63	55	53
Chemicals - herbicide	133	178	153	109	159	183	174	108	108	85
Chemicals - insecticides	232	451	198	292	132	116	144	151	142	84
Chemicals - others	10	11	5	3	3	4	48	38	11	7
Chipping	50	44	44	66	91	39	24	15	2	3
Consultants	54	69	58	59	75	63	76	72	64	57
Contract picking	195	178	173	180	257	250	255	261	282	241
Contract farming	108	135	57	89	77	85	42	24	122	164
Cotton picking wrap	12	9	19	11	10	6	14	9	55	84
Depreciation	322	376	206	199	338	508	372	426	164	178
Electricity	40	33	25	21	40	46	59	79	76	29
Fertiliser	292	263	242	356	312	394	428	399	387	517
Fuel and oil	216	239	229	323	418	429	327	305	258	271
Hire of plant	11	10	3	3	9	12	2	7	22	43
Insurance	131	152	116	144	227	216	217	179	161	123
Licence fee - bollgard	52	49	127	150	173	232	218	252	286	292
Licence fee - roundup	12	14	16	25	26	50	50	62	60	56
Motor vehicle	26	30	22	22	30	31	34	35	21	19
R&M - farming plan	147	143	174	135	133	139	137	154	121	109
R&M pumps & earthwork	121	151	114	101	128	133	116	183	61	84
Seed	84	103	80	77	112	98	105	126	115	146
Water charges	319	364	113	188	399	439	486	189	134	141
Wages - employees	365	384	321	327	473	445	391	384	357	344
Wages - proprietors	82	91	46	38	96	105	106	69	20	21
Administration	66	75	45	41	68	58	58	35	49	47
Other farm overheads	81	111	75	73	103	162	154	103	65	155
	3402	4000	2949	3352	4186	4525	4303	3976	3472	3601

Table 1

The Boyce study furthermore highlighted that water charges (highlighted in red) are one of the three most important inputs into food and fibre production. In addition to chemicals and pesticides, water charges (based on the current tariff regime) made up between 4 per cent and 11 per cent of overall input costs (in the sample).



Based on Boyce Study (2003 - 2012)

It is important to emphasise that these proportions are based on the assumption that production takes place. Should production not occur, then these proportion would naturally increase.

In addition, the Boyce study highlighted that in low water years when crop area is also low, the percentage of total expenses for water increases while profits decline. This is best calculated in a \$/Ha value of the total cost of water per hectare of cotton grown, which was as high as \$486/Ha and reducing to \$92/Ha in large crop years (based on the study results). The total cost on an average basis can be calculated as \$236,511 for 2009 and \$172,132 in 2013<sup>28</sup>. The following table provides further information of the percentage of water charges in relation to overall input costs for cotton growers.

	Average water charges ex	Extrapolated average	% Total Exp	Profit/Ha
2003	319	\$ 170,636.29	9%	599
2004	364	\$ 181,304.76	9%	569
2005	113	\$ 116,131.23	4%	1,421
2006	188	\$ 175,971.76	6%	415
2007	399	\$ 211,920.87	10%	96
2008	439	\$ 197,150.51	10%	37
2009	486	\$ 236,511.90	11%	534
2010	189	\$ 117,401.13	5%	1,026
2011	134	\$ 191,148.32	4%	1,919
2012	141	\$ 236,269.47	4%	1,192
2013	92	\$ 172,132.00	2%	849

Table 2: Summary of Boyce chartered Accountants

However, individual examples in the Gwydir highlighted that the actual costs per ha can be significantly higher. Based on example 2 in this document, the true water cost for a single irrigator during times of low water availability was \$1016/ha rather than the Boyce average

<sup>28</sup> For further information, please contact Zara Lowien at Gwydir Valley Irrigators - zara.lowien@gvia.org.au

value of \$188/ha. If an alternative tariff structure was proposed, this real cost per ha would be even greater again.

However, a study that was submitted by SWC in 2009 as part of their pricing application to IPART showed that the proportion of water charges compared to other on-farm costs can be significantly higher in some valleys<sup>29</sup>;

- Murray: 10.1 to 16.3 per cent
- Murrumbidgee: 4.1 per to 11.3 per cent
- Macquarie: 5.9 per cent
- Namoi: 5.8 per cent

It must be stressed that every irrigation operation is different and the proportion of water charges in relation to other on-farm costs varies for each food and fibre producers. Many irrigators have reported to us that the proportion of water charges in relation to overall input costs are around 20 per cent (in years of production). This highlights that the impact of a shift in tariff structure will impact each individual irrigator differently.

### **Farm Specific Examples 1**

The following example provides a farm level input cost analysis for the 2013/14 water year (obtained from a member of NSWIC located in the southern connected system);

Area irrigated crop: 413 ha

Crop: Annual Crops (Rice, Canola, Wheat, Oats and winter cereals)

Water Entitlements: 4000 Delivery Entitlements, 3300 Water entitlements (GS)

Allocation: 63% AWD

Major Inputs: Water, Fertiliser, Chemicals

Operating Expenditure:

- **Water Charges: \$145,526**
- Fertiliser: \$143,946
- Chemical: \$114,876

It must be acknowledged that a water entitlement attracts a number of related charges. A regulated river entitlement holder will have to pay both licence fees to the NSW Office of Water as well as bulk water charges by State Water. In addition, irrigators who operate in the area of an irrigation corporation also have to hold delivery entitlements and need to pay drainage fees and other water management related charges. So although State Water

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[http://www.ipart.nsw.gov.au/Home/Industries/Water/Reviews/Bulk\\_Pricing/Review\\_of\\_Bulk\\_Water\\_Prices\\_from\\_2006\\_to\\_2010/31\\_May\\_2006\\_-\\_Draft\\_Determination\\_and\\_Draft\\_Report/Draft\\_Determination\\_and\\_Draft\\_Report\\_-\\_Bulk\\_Water\\_Prices\\_for\\_State\\_Water\\_Corporation\\_and\\_Water\\_Administration\\_Ministerial\\_Corporation\\_-\\_From\\_1\\_August\\_2006\\_to\\_30\\_June\\_2010](http://www.ipart.nsw.gov.au/Home/Industries/Water/Reviews/Bulk_Pricing/Review_of_Bulk_Water_Prices_from_2006_to_2010/31_May_2006_-_Draft_Determination_and_Draft_Report/Draft_Determination_and_Draft_Report_-_Bulk_Water_Prices_for_State_Water_Corporation_and_Water_Administration_Ministerial_Corporation_-_From_1_August_2006_to_30_June_2010), p.261 (or p.35 of the RMCG consultant)

charges are only one component of the overall 'water costs' on farm, they make up a significant portion of operating expenditure.

If water allocations are low and irrigators decide not to grow a crop, then some of the cost outlined above (table 1) will not have to be incurred. As such, this elevates the impact of fixed water charges on irrigator's financial viability. To gain an understanding of the importance of fixed charges and irrigator's financial viability, the irrigator in example 1 incurred total fixed water charge of \$56,000 in 2007/08 (4 per cent AWD in February 2008). This fixed cost was incurred under the current 40:60 fixed tariff structure, however with an 80:20 fixed/variable tariff structure, the fixed costs would be closer to \$100,000.

## **Farm Specific Example 2**

The following example shows that fixed water charges can be the dominant input cost component for some food and fibre producers. The example was provided to us by a cotton grower in northern NSW whose fixed charges include State Water charges, NSW Office of Water charges and valley based member fees.

### **2008:**

- 172 ha (cotton production)
- 40 licences were held
  - Fixed costs: \$141,145
  - Variable costs: \$33,730

### **2012:**

- 3924 ha (cotton production)
- 40 licences were held
  - Fixed costs: \$245,314
  - Variable costs: \$ 124,074

This example clearly illustrates that this particular irrigator incurred 80.7 per cent of total costs in 2008 in fixed charges and 66 per cent in 2012. As is evident, water costs constitute a significant financial obligation for food and fibre producers in NSW.

## **Valley Specific Example 3<sup>30</sup>**

Frontier use an extremely simplified analysis of the effect of alternative bulk water charges in their analysis<sup>31</sup>. This table shows the gross margin for irrigated rice in the Murray to be \$785/Ha using an average of 13ML/Ha to produce. Frontier then goes onto show that by changing the tariff structure there would be no change in gross margins during times of 100% allocation and only a -6% change when allocations were 50%. This analysis does not

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<sup>30</sup> For further information, please contact Perin Davey at Murray Irrigation Ltd. - [perin.davey@murrayirrigation.com.au](mailto:perin.davey@murrayirrigation.com.au)

<sup>31</sup> Review of Appendix A, Frontier Economics, April 2014, p11-12.

consider the real impact of low water allocations. However, when you comparing the costs versus income in relation to real production the numbers don't align.

Murray Irrigation reviewed the Frontier calculations and percentage of farm costs against real areas planted (surface water) within the Murray Irrigation area of operations and water use between 2006-07 and 2012-13. The realities of the Murray General Security entitlement cropping community is that customers will purchase water on the temporary market in a good season and the below table reflects the highly variable usage patterns across the years.

Year	ML used on rice	Rice area (ha)
2013/14*	464,046	42,595
2012/13	686,412	52,918
2010/11	274,497	33,862
2009/10	41,831	4,196
2008/09		
2007/08		
2006/07	1,854	24,546

\* Estimates

According to the Murray Irrigation Farm Business Survey 43 percent of our farmers produce rice, so for the purposes of example, we estimate 43 percent of our held entitlement volume<sup>32</sup> which equals 598,783. Using the same farm income and variable costs and the same bulk water and alternative bulk water charges as used by Frontier Economics<sup>33</sup>, Murray Irrigation analysed the real impact across the rice growing areas in the NSW Murray.

This analysis clearly shows the significant impact changing tariff structure can have on the percentage of total farm costs represented by water charges, particularly in years where there is zero production and water is the only crop-related cost incurred on a farm.

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<sup>32</sup> ACCC Draft decision on State Water Pricing Application, Attachments, March 2014, P227 – Murray Irrigation entitlements = 1,392,519

<sup>33</sup> Review of Appendix A, Frontier Economics, April 2014, p11-12

<b>Input Allocation</b>	<b>2006/07 Oct: 50% Peak: 50%</b>	<b>2007/08 Oct: 0% Peak: 0%</b>	<b>2008/09 Oct: 0% Peak: 0%</b>	<b>2009/10 Oct: 0% Peak: 10%</b>	<b>2010/11 Oct: 6% Peak: 100%</b>	<b>2012/13 Oct: 100% Peak: 100%</b>	<b>2013/14 Oct: 100% Peak: 100%</b>
Farm Income (\$2,340/ha)	57,437,640	0	0	9,818,640	79,237,080	123,828,120	99,672,300
Total Variable costs (\$1,555/ha)	38,169,030	0	0	6,524,780	52,655,410	82,287,490	66,235,225
Gross Margin	19,268,610	0	0	3,293,860	26,581,670	41,540,630	33,437,075
<b>2012-13 Bulk water charges</b>							
Variable usage charge (\$4.90/M L)	9,084.6	0	0	204,971.90	1,345,035.30	3,363,418.80	2,273,825.40
GS Entitlement charge (\$2.32/M L)	1,389,176.56	1,389,176.56	1,389,176.56	1,389,176.56	1,389,176.56	1,389,176.56	1,389,176.56
<b>TOTAL</b>	<b>1,398,261.16</b>	<b>1,389,176.56</b>	<b>1,389,176.56</b>	<b>1,594,148.46</b>	<b>2,734,211.86</b>	<b>4,752,595.36</b>	<b>3,663,001.96</b>
% Total cost	4%	***	***	24%	5%	6%	5%
<b>Alternative bulk water charges</b>							
Variable usage charge (\$1.44/M L)	2,669.76	0	0	60,236.64	395,275.68	988,433.28	668,226.24
GS Entitlement charge (\$5.78/M L)	3,460,965.74	3,460,965.74	3,460,965.74	3,460,965.74	3,460,965.74	3,460,965.74	3,460,965.74
<b>TOTAL</b>	<b>3,463,635.50</b>	<b>3,460,965.74</b>	<b>3,460,965.74</b>	<b>3,521,202.38</b>	<b>3,856,241.42</b>	<b>4,449,399.02</b>	<b>4,129,191.98</b>
% Total cost	9%	***	***	54%	7%	5%	6%
Difference	2,065,374.34	2,071,789.18	2,071,789.18	1,927,053.92	1,122,029.56	(303,196.34)	466,190.02

## Price Development

Bulk water charges have increased significantly over the last five years. According to IPART, bulk water charges were to increase by 28 per cent (on average) between 2009/10 and 2013/14 across all valleys. Furthermore, high security entitlement holders with a 500 ML entitlement and a 100 per cent allocation were expected to see price increases between 2 per cent and 73 per cent in NSW. General Security entitlement holders with a 500 ML entitlement and a 60 per cent allocation were expected to experience price increases of up to 47 per cent<sup>34</sup>.

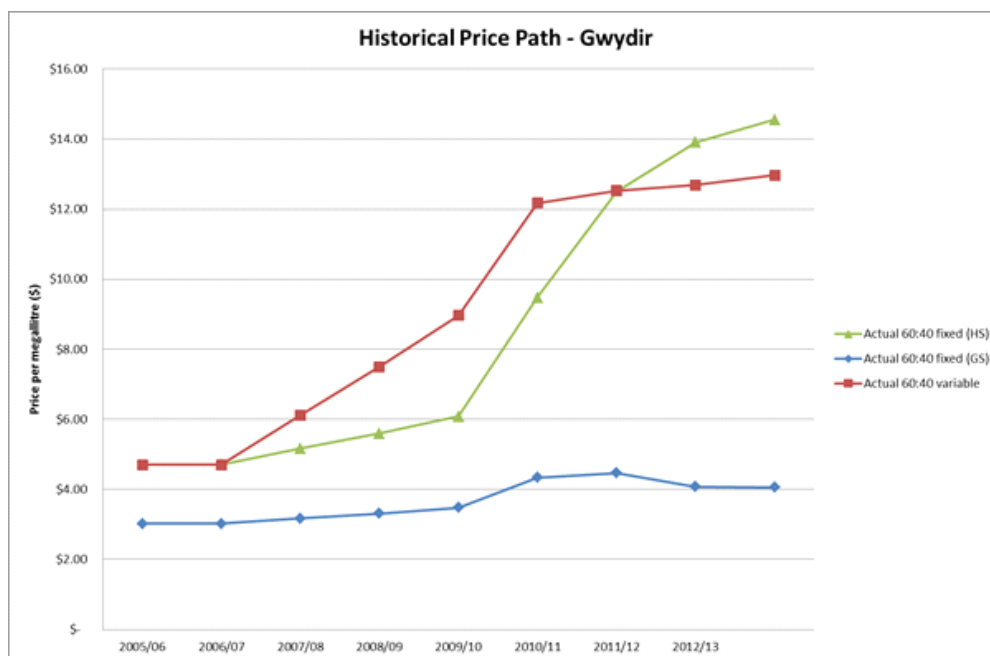
<sup>34</sup> file:///C:/Users/Stefanie/Downloads/Fact\_Sheet\_-\_Review\_of\_Bulk\_Water\_Charges\_for\_State\_Water\_Corporation\_-\_Richard\_Warner\_-\_7\_July\_2010\_-\_Website\_Document%20(2).pdf

Valley specific observations have confirmed this exponential price increase. In the Gwydir valley, high security entitlement charges have increased by 68 per cent since 2005/06 and general security entitlement charges have risen by 26 per cent. In addition, variable charges have fluctuated by up to 64 per cent since 2005/06.

The Gwydir valley<sup>35</sup> is characterised by a high variable water availability, where the long term reliability (likely allocation) is 36% and is measured mainly through very large water years followed by low water years. As such, it is highly likely that Gwydir irrigators under an 80:20 fixed/variable tariff structure would find themselves needing to pay for a resource that they will not be able to utilise. NSWIC is not aware that there is another business where customers would pay for services that may or may not utilise.

Whilst irrigators generally accept some level of annual cost associated with maintaining their asset, the potential shift in tariff structure will place considerable undue pressure on customers and jeopardise the industries sustainability in the long-term.

The graph below outlines the bulk water price developments over the last eight years in the Gwydir valley;

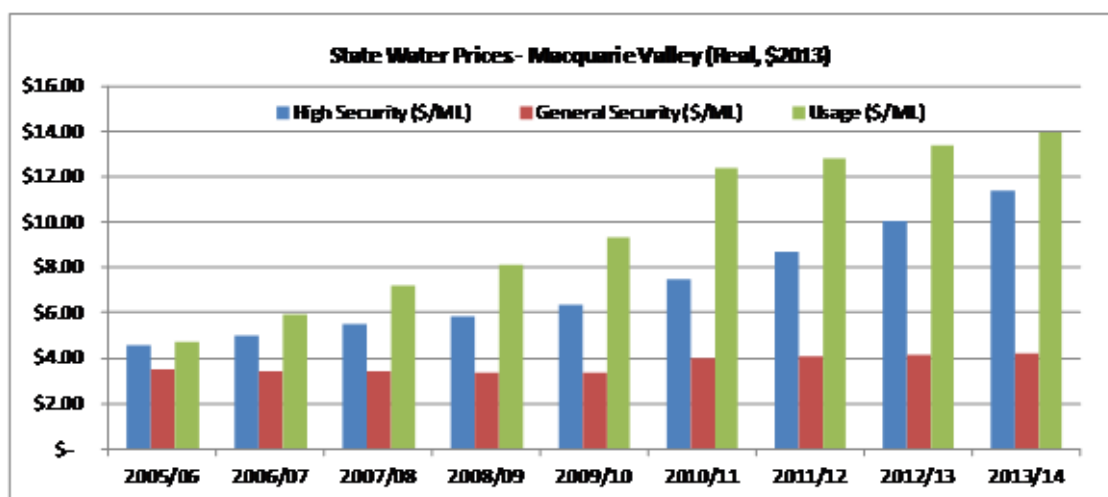


A similar picture can be observed in the Macquarie Valley<sup>36</sup> as outlined below;

<sup>35</sup> Please contact Zara Lowien at Gwydir Valley Irrigators' for more information.

<sup>36</sup> Please contact Susan Madden for further information - mrff@bigpond.com





In both examples, the increase in both entitlement and usage charges are significant and surpass to a large extent price increases indexed by consumer price inflation.

### Hypothetical Example

To illustrate the financial risk that State Water's pricing application would impose on General Security entitlement holders in 2014-15, NSWIC has prepared customer bills based on the ACCC draft decision and the SWC pricing application. The bills are based on 500 ML entitlements and low AWD (5 per cent);

500 ML entitlement & 5% allocation	ACCC	State Water	Difference
Border	\$ 1,271.25	\$ 1,787.00	\$ 515.75
Gwydir	\$ 1,974.00	\$ 2,773.75	\$ 799.75
Namoi	\$ 4,485.25	\$ 6,327.00	\$ 1,841.75
Peel	\$ 2,654.00	\$ 4,653.50	\$ 1,999.50
Lachlan	\$ 2,062.25	\$ 3,020.00	\$ 957.75
Macquarie	\$ 2,107.75	\$ 3,137.00	\$ 1,029.25
Murray	\$ 565.00	\$ 796.50	\$ 231.50
Murrumbidgee	\$ 689.50	\$ 994.00	\$ 304.50
Lowbidgee	\$ 439.50	\$ 589.00	\$ 149.50

The difference in cost is even more evident in the case of larger general security entitlement holdings;

3000 ML entitlement 5% allocation	ACCC	State Water	Difference	% difference
Border	\$ 7,627.50	\$ 10,722.00	\$ 3,094.50	40.57
Gwydir	\$ 11,844.00	\$ 16,642.50	\$ 4,798.50	40.51
Namoi	\$ 26,911.50	\$ 37,962.00	\$ 11,050.50	41.06
Peel	\$ 15,924.00	\$ 27,921.00	\$ 11,997.00	75.34
Lachlan	\$ 12,373.50	\$ 18,120.00	\$ 5,746.50	46.44
Macquarie	\$ 12,646.50	\$ 18,822.00	\$ 6,175.50	48.83
Murray	\$ 3,390.00	\$ 4,779.00	\$ 1,389.00	40.97
Murrumbidgee	\$ 4,137.00	\$ 5,964.00	\$ 1,827.00	44.16
Lowbidgee	\$ 2,637.00	\$ 3,534.00	\$ 897.00	34.02

As the examples above illustrate, State Water's proposed tariff structure imposes a significant higher financial burden on irrigators in case of low AWD.

### State Water's Financial Position

Despite State Water's continuous claim that the tariff structure has led to significant 'under-recovery' of allowed revenue over the last decade, it must be stressed that State Water has nevertheless achieved a profit over this time period. On page 120 of State Water's pricing application to the ACCC, State Water stated that its net profit before tax is \$50 million in 2012-13 and is expected to be positive in every year of the next determination. In addition, State Water anticipates a \$21.6 million profit after tax in 2016-17.

As such, a claim that 'under-recovery' has led to a significant deterioration of State Water's financial position must be assessed in light of sustained profits that have been achieved.

An analysis of allowed revenue vs. actual revenue completely ignores State Water's underlying cost basis. As State Water has over the last two determinations significantly underspent on its capital expenditure, its actual expenditure has not exceeded achieved revenue. This shows clearly that the current tariff structure has not caused significant financial impasses for SWC despite the fact that we have seen some of the lowest water sales on record over the last decade. In addition, it must be stressed that State Water was able to recover 77.5 per cent of their allowed revenue in the period 2007-10 despite the fact that water sales were only 31 per cent. This shows that State Water has recovered a significant amount of revenue under the current tariff structure.

Furthermore, the last two years have led to a significant financial gain for State Water who has seen the highest water sales on record and significant 'over-recovery' in their revenue. A shift in the tariff structure that would lead to even greater protection of State Water's revenue is highly inequitable and inappropriately protects a monopoly operator.

## Equitable Risk Sharing

Central to the discussion of an adequate cost recovery mechanism is a consideration of an efficient and equitable risk sharing arrangements between State Water and its customers. Under the current arrangements, State Water receives a proportion of its revenue from the NSW Government. Over the next determination, the NSW Government has guaranteed to maintain current cost share arrangements.

In addition, State Water would also receive 40 per cent of its user share revenue in fixed charges. This revenue is independent of water sales and hence is also 'guaranteed' for SWC. Under such an assessment, State Water already receives 65 per cent of its revenue in fixed charges. This argument stands in stark contrast to SWC's claim that no 'risk protection' mechanism is available to SWC. It must be stressed that such a revenue security is not available to irrigators in any form.

As such, NSWIC questions the rationale that a move to an 80 per cent fixed charge regime would be an equitable risk sharing arrangements. Should such a system be implemented, it must be noted that 88 per cent of revenue will be guaranteed for SWC due to the cost sharing arrangements with the NSW Government. This means that a monopoly operator would be allowed to nearly recover 90 per cent of its revenue irrespective of water availability and demand.

**Table 1 – Fixed proportion of SWC's current and proposed revenue requirement**

	<b>\$2013/14, \$million</b>			
	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>	<b>2016/17</b>
Total Revenue Requirement	126.23	111.64	118.85	121.54
Government Share	54.26	44.24	49.11	50.81
User Share – Fixed	28.788	53.92	55.792	56.584
<b>Fixed revenue as a proportion of total revenue</b>	<b>65%</b>	<b>88%</b>	<b>88%</b>	<b>88%</b>
Operating costs	41.64	49.05	48.5	47.81
Forecast RAB		766.06	871.92	917.97
<b>Net return on assets</b>		<b>6.4%</b>	<b>6.5%</b>	<b>6.5%</b>

The constant pressure from paying 80 per cent fixed charges does stand in complete contradiction to the reliability of water in many of NSW valleys. As we have outlined in our above, irrigators revenue is highly dependent on water availability, which is one of the most important inputs to production. When water is not available, revenue for irrigators is low, whilst their charges would remain fixed.

## Efficiency

The ACCC must consider whether a move to a higher fixed charge tariff structure would promote the economically efficient use of water infrastructure. Where charges are fixed, rather than related to use, there is no incentive for water users to invest to improve efficiency or for State Water to respond to changed business circumstances. Further, where income to State Water is fixed, there is little incentive for them to adjust their business costs to reflect times of hardship as is required by non-regulated business.

## Additional Risk Protection Mechanism

NSWIC believes that the ACCC has provided SWC with ample risk protection mechanisms in its Draft Decision. In addition to the fixed/variable tariff structure, the annual adjustment mechanism and the 'unders and overs' mechanism, the ACCC has **also** proposed a 20 year moving average consumption forecast approach.

Given that the consumption forecast is based in large part on the millennium drought years there is a significant downwards adjustment in the overall consumption forecast values which benefits State Water significantly. This downward adjustment has a direct effect on bulk water charges.

In addition, State Water makes the point they are "capital-constrained"<sup>37</sup> saying that they cannot borrow unlimited amounts of money. However, they also note that they borrow from NSW Treasury Corporation who determine fees and interest rates based on State Water's credit rating. This is another facility not available to State Water customers who must negotiate with corporate banks operating in the competitive market place.

Frontier then goes onto say that the ACCC's position that smaller enterprises do not have easy access to capital markets and often face borrowing constraints "stretches credulity"<sup>38</sup>. It is poor debating practice to apply an argument to one side but dismiss the same argument when used by the other side.

While we accept that there are other instruments for farmers to manage financial risks, we do not accept that State Water's charges do not have a material risk for farmers particularly in dry years.

## Administrative Issues

Any amendments to the ACCC proposed tariff structure would cause significant cost to irrigation operation who are - by law - required to provide customers with information on future bulk water charges within 10 business days' notice prior to implementing charges to fees and prices. To allow irrigation corporation to process these fees for the 1 July deadline, decisions by the boards have to be made by mid-May. Should the ACCC final decision be significantly different to the Draft Decision, large additional costs will have to be incurred by the irrigation operation (including administrative, postage etc).

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<sup>37</sup> Analysis of aspects of ACCC Draft Decision on State Water Application, Frontier Economics, April 2014, p8

<sup>38</sup> Analysis of aspects of ACCC Draft Decision on State Water Application, Frontier Economics, April 2014, p15

Further, there is a risk that irrigation operation will either be wearing the differences in charges until regulatory obligations are met and new charges are allowed to be implemented.

In addition, should any amendments to the tariff structure be considered prior to the 1<sup>st</sup> July deadline, further valley specific consultation must take place to outline the impacts of this change on individual irrigators and irrigation operation.

Given the additional uncertainties surrounding other aspects of the next determination (final values for OPEX, CAPEX and MDBA/BRC charges), NSWIC strongly urges the ACCC to consider this issue carefully.

## **Conclusion**

NSWIC is deeply concerned about an amendment to the existing tariff structure. As we have outlined throughout our analysis, a shift to an 80:20 (fixed: variable) charge regime would cause significant financial pressure on irrigators, in particular those with low reliability.

In addition, we have outlined that each irrigation operation is different and hence statements that *'water charges only constitute a small proportion of irrigator's operating expenditures'* is incorrect. As irrigators incur a range of water related fixed and variable charges, the overall cost of water is often understated. In addition, the proportion of water cost in relation to other input cost increases significantly in times of low water availability.

We request that the ACCC maintains the existing tariff structure and proposed cost recovery mechanism.

## Appendix C

### COST SHARE DISCUSSION PAPER



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#### Discussion Paper

#### Cost Share Framework Methodology

160629

#### Background

At the NSWIC General Meeting in November 2015, the Cost Share Framework Position Paper<sup>39</sup> was presented and the Council reached the following decision:

***"That NSWIC refer the Cost Share Position Paper to the NSWIC Water Charge Reference Group to discuss the three issues outlined in the position paper further."***

Since the November 2015 meeting, we have reconvened a meeting with the water charge reference group to discuss the three key issues raised in the Position Paper:

- The NSW Government only explicitly agreed to the current cost share framework for bulk water charges until 2017.
- IPART indicated that it would review the current cost share framework in October 2016.

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<sup>39</sup> Appendix A

- DPI Water (formally NSW Office of Water) indicated in 2012 that it intends to prepare a discussion paper on basic landholder rights and environmental contingency allowance and how these groups could be incorporated into the current cost share framework.

Since the reference group meeting, we have written to the Minister for Primary Industries, Lands and Water, Niall Blair to seek an ongoing commitment from the NSW Government to a cost sharing arrangement for regulated water charges beyond 2017.

In addition, we have spoken to Minister Blair and his water adviser Darcy Moar about the cost sharing arrangements in April and June 2016 to get clarification on the commitment for the upcoming WaterNSW bulk water charge review (to commence in July 2016).

The cost sharing framework has also been discussed with WaterNSW who indicated that they intend to propose a continuation of the current cost share framework and ratios for the next regulatory control period (i.e. 2017 - 2021) and seek a review (via IPART) of the cost share ratios during the next regulatory period (2017-2021) with the intention to incorporate any amendments into the 2021 price determination.

This discussion paper has been prepared in response to requests from NSWIC members for further information on the methodology underlying the current cost share framework.

## Original Cost Allocation Framework

The Independent Pricing and Regulatory Tribunal (IPART) reviewed and determined water charges for the Department of Land and Water Conservation (DLWC) in 2001. One component of the 2001 water charge determination was the establishment of a *cost sharing framework* which allocated costs for bulk water delivery between the NSW Government and water licence holders (users). The framework was established in recognition that some costs incurred by DLWC in managing the rivers, dams, weirs and other parts of the NSW bulk water systems were not **exclusively** related to bulk water delivery but instead incurred to meet other needs. These needs included:

- environmental protection
- flood mitigation
- navigation

Furthermore, IPART acknowledged that some of DLWC costs related to past practices and activities. IPART raised the argument that inclusion of these 'legacy' costs in bulk water charges may distort the price signal to users of the current and future cost of providing wholesale water services and hence should not be fully attributed to users.

On this basis, IPART established individual cost sharing ratios for 20 different bulk water activities and products provided by DLWC. The ratios were based on a mix between an 'impactor pays' principle and a 'beneficiary pays' principle<sup>40</sup>, which was developed through consultation with DLWC and user groups.

The end result was a **hybrid approach** which was more weighted towards the 'beneficiary pays' principle.

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<sup>40</sup> Further information below.

Impactor Pays	Beneficiary Pays
<p>An 'Impactor' is defined as any individual or group of individuals whose activities generate the costs or a justifiable need to incur the costs that are to be allocated.</p> <p>The impactor pays principle seeks to allocate costs to different individuals or groups in proportion to the contribution that each individual or group makes to creating the cost or the need to incur the costs.</p>	<p>A 'Beneficiary' is defined as any individual or group of individuals who derive benefits from the costs that are to be allocated.</p> <p>These benefits may result from their own use of the services involved (in which case the beneficiary is also the impactor) or be in the form of reduced damage to their interests due to the usage patterns of others.</p> <p>The beneficiary pays principle seeks to allocate costs to different individuals or groups in proportion to the benefits that each individual or group stands to derive from the costs being incurred.</p>

Since the 2001 water charge determinations, IPART has consistently taken the view that certain costs incurred by the NSW bulk water service operator (i.e. State Water) should not be recovered from users. Instead, IPART has determined that, *'due to public good and/or legacy features of these costs'*, a portion should be borne by the NSW Government (i.e. **Cost Share**).

Furthermore, IPART has allocated<sup>41</sup> any revenue shortfall incurred by the NSW bulk water service operator (i.e. State Water) to the NSW Government where IPART considered full cost reflective pricing would have significant adverse impact on users (i.e. via a **Community Service Obligation**).

## ACIL Consulting 2001 Review

As part of the 2001 water determination, IPART engaged ACIL Consulting to review water management costs and provide recommendations on an appropriate cost sharing framework that allocates costs between users and the NSW Government.

In its final report, ACIL Consulting argued for a clean or pure implementation of the 'impactor pays' approach, in particular for all **forward-looking costs**. In addition, ACIL Consulting recommended a clear separation of any legacy costs from other water management costs, stating that these costs *'should be clearly separated and allocated to government'* (legacy costs should only be allocated to users' under very specific circumstances and should consider 'affordability' for users<sup>42</sup>).

IPART accepted ACIL Consulting's recommendation on the 'impactor pays' approach, but defined it as:

*'allocating costs to individuals or groups in proportion to the contributions they make to creating the costs or the need to incur the costs'.*

**IPART also went on to assert that government, in imposing higher environmental standards, can be the causer of costs, thereby allowing some of the costs of higher environmental standards to be attributed to the broader community rather (as ACIL Consulting recommended) attributing such costs entirely to extractive users.**

IPART did explicitly identify, in its 2001 water charge determination, the broader community as a **causer of higher environmental standards** and therefore allocated a share of costs to the NSW government.

<sup>41</sup> With the agreement of the NSW Government.

<sup>42</sup> This was left undefined.



Furthermore, there was some concern about compliance capital cost in the 2001 water charge determination (i.e. the cost associated with ensuring structures such as dams and weirs comply with relevant dam safety standards, meet relevant public safety and occupational health and safety standards and **comply with contemporary standards to mitigate the environmental impacts of stream interruption.**)

In IPART's view, the need to incur these costs arose out of the community's expectation that the needs of the environment will be met at the same time as the needs of extractive users (i.e. indicating a sharing of costs) however IPART also stated that there was a significant legacy component to some of these compliance costs evidenced in the fact that the construction of fish ladders had occurred for many years although some constructed in earlier years were now thought to be inadequate.

IPART concluded that environmental compliance capital expenditure has both **legacy and non-legacy** components and should be attributable to both extractive users and the general community (on behalf of the environment). IPART believed that this decision would result in cost allocations that appropriately balance the **competing interests of different stakeholders**.

**The approach IPART took in 2001 determination resulted in a lack of clarity around the Tribunal's application of the 'impactor pays' vs 'beneficiary pays' approach which was most evident in IPART's treatment of legacy costs. IPART was of the view that capital costs incurred to meet regulatory obligations prior to July 1997 should be attributed exclusively to the NSW Government irrespective of the 'impactor pays' approach. In contrast, costs of regulatory obligations imposed after July 1997 were excluded from the consideration of legacy costs. This has left IPART in the position where more recently incurred costs to comply with regulatory obligations cannot be labelled as 'legacy costs' and hence have to be borne partially by users (irrespective of the 'impactor pays' approach).**

In conclusion, while IPART accepted ACIL Consulting's recommendation to revise the basis for sharing cost between the NSW Government and users by adopting an 'impactor pays' approach, the result was a hybrid system between an 'impactor pays' and a 'beneficiary pays' approach to cost sharing<sup>43</sup>.

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<sup>43</sup> IPART was also concerned with ACIL consulting's methodology around MDBC charges.

## CIE 2006 Review

In 2006, IPART engaged the Centre for International Economics (CIE) to review the cost sharing framework used by IPART in the 2001 water charge determination for State Water. CIE was **not** required to develop new sharing ratios from first principles but was tasked to build on the principles developed by ACIL Consulting in 2001. These principles included:

### Legacy Costs:

- In the 2001 Determination, legacy costs were treated as current and future costs that are attributable to the past which, on **equity grounds**, should be fully borne by the NSW government and therefore not shared with current or future water licence holders. This principle acknowledges that (a share of these costs) arise from a number of past factors, including possible **poor policy decisions, extractive activities and past community values**. As such, government (on behalf of the community) should accept responsibility for these past actions and appropriately bear their costs.
- The Tribunal drew a 'line in the sand' at July 1997 for assessing liability for such cost recovery. Legacy costs include 'current and future costs attributable to past (pre-1997) activities and/or restoring natural or artificial infrastructure to prevailing 1997 community standards'. **Expenditure related to meeting standards established after this date do not form part of the legacy**. These latter costs are shared between the NSW government and users.

According to the ACIL Consulting's 2001 report<sup>44</sup>, the compliance capital costs and capital costs serving environmental purposes have both **legacy and non-legacy components** - costs should therefore be **equally shared**. In addition, occupational health and safety should also be equally shared.

### Impactor Pays:

- In the 2001 determination, **IPART changed to an 'impactor pays' approach**<sup>45</sup>.

IPART was of the view that an 'impactor pays' approach would encourage efficiency and cost savings by sending the '**right price signal**' to customers. In addition, IPART was also of the view that an 'impactor pays' approach is often 'easier to implement', implying that water licence holders are easier to identify and hence be charged.

### Efficiency and Equity

- ACIL Consulting recommended in the 2001 determination that costs should be **efficient and environmental sustainable** (which is in accordance to the WMA 2000). While IPART agreed, it also noted that:

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<sup>44</sup> ACIL Consulting's recommendations do not all align with the approach taken by IPART.

<sup>45</sup> Based on its own assessment. Please see note on ACCC 2012 review below.

- Overall costs had to increase (over time) to better manage the bulk water system and mitigate its environmental impacts; and
- A balance was needed when implementing broader Government commitments with other important consideration 'including the ability of bulk water users to absorb the price rises'.

## **Regulatory and Policy Context of CIE 2006 Review**

Since the 2001 determination of regulated water charges in NSW and the establishment of the cost share framework, CIE recognised that the regulatory and policy framework changed in NSW:

### Regulatory and Policy

- Introduction of Water Sharing Plan in 2004<sup>46</sup>
  - This caused changes to the operational conditions for State Water. It also triggered revised access regimes and an explicit recognition of environmental water in the Water Management Act 2000 which had further implications for the (then) newly corporatised State Water Corporation.
- Signing of National Water Initiative in 2004.
- Progressive implementation of the Water Management Act 2000 (including amendments in 2004 and 2005).
  - Water management reforms responded to the joint demands of i) the public, to manage resources in a sustainable manner seeking improved environmental outcomes to the betterment of the State ii) extractive users, to strengthen and enforce property rights and iii) the State's obligation under the National Water Initiative.

### Operational

- Final separation of bulk water delivery and water resource management activities through the corporatisation of State Water in July 2004.
- Establishment of the Catchment Management Authority as part of the process of devolving some responsibilities of the Department of Natural Resources.

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<sup>46</sup> In most NSW river valleys.

- CMAs were entities sharing responsibility for the management of adaptive water and the general health of the catchments. CMAs were not regulated by IPART but their activities and those of the Department of Natural Resources in servicing them, created wider issues in cost recovery.

## Proposals in 2006

In response to these institutional changes and new responsibilities, State Water Corporation and the Department of Natural Resources proposed new approaches to the cost sharing framework that diverged from the 2001 determination.

Each proposal builds on a particular **interpretation** and view of the new responsibilities and their drivers.

In general, State Water **proposed** to:

- Not explicitly or exclusively follow an 'Impactor pays' approach.
- Allocate 100 per cent of environmental operating expenditure to users.
  - Argument: Management of environmental water is part of '**doing business**' and therefore should be passed through to customers.
- Allocate 'a portion' of environmental capital expenditure to users.
  - Argument: These capital reflect a change in community standards.
- Allocated **100 per cent of its operating expenditure to regulated river customers**.
  - Argument: State Water pursues NWI principles.
  - *One implication of this would have been that all of the operating costs – maintenance, flow data, river operations – of bulk water operations would be recovered from paying customers, regardless of whether the water being stored and delivered as part of these operations is water released for extractive purposes or 'environmental water' made available through the WMA and WSP.*
- Allocate environmental compliance capital costs on a 50-50 per cent basis between customers and the NSW government where such expenditure is triggered **by legislative requirements**.
  - Argument: Pursuant to the ACIL Consulting 2001 principles of legacy costs definition.
- Allocate 100 per cent for dam safety compliance to the NSW government (i.e. pre-1997).
  - Argument: Pursuant to the 2001 principle of legacy costs and a result of 'mixed government objectives'.

- Allocate incremental costs to '**beneficiary**' for any future dam upgrades of dams for flood mitigation beyond 1997.

#### Stakeholder views to Proposal

- Stakeholder supported the 2001 Cost Share principles and acknowledged the *practicality* of an 'Impactor pays' approach.
- **Stakeholder said that planning, development and implementation of policy are government functions and should therefore be charged to government (in full).**
- Stakeholder raised the concern that few of State Water's services are *contestable* (i.e. giving rise to monopoly exploitation).
- Stakeholder expressed concerns about '**free- rider**' who (indirectly) demand benefits that would be paid for by licence holders – therefore showing a preference for a 'beneficiary pay' approach to cost sharing.

### **CIE Final Recommendations**

Based on the views received by State Water and customers, CIE recommended the following cost sharing proportions:

- Maintain the legacy cost component of dam safety upgrades (pre-1997) – i.e. 100 per cent government funded.
- Apply a 50-50 per cent cost sharing to some of the environmental compliance capital driven by **increased community standards**. CIE stated that these environmental compliance capital costs will result in better servicing the **joint** needs of users and the environment and as such, a 100 per cent allocation of costs to the environment would be **inappropriate**.
- Pass through costs to customers for increasing storage or improved delivery capacity without any enhancement of activity flood control capacity. This would be in line with 'Impactor pays' principle.
- Where an active flood control enhancement is undertaken in response to a government demand (on behalf of the community) the **incremental cost** should be isolated and paid for by government, again in line with an 'Impactor pays' approach.
- Share the costs of Water Sharing Plans and a number of other activities directed through WMA 2000 which are in response to the **joint demands** of the community and extractive users.

CIE also stated that the storage of contingency environmental water and the release of environmental water on demand (or according to operating rules) are generating (increased) costs and are driven by environmental demands. For consistency, CIE therefore recommended that government should fund State Water's operating expenditure associated with environmental water via a Community Service Obligation. In addition, CIE recommended that IPART should allow the cost of delivering environmental water to be passed through the adaptive licence holders (this was preferable for future price determinations).

Furthermore, CIE stated that the Water Sharing Plans have emerged as **community based agreements** for dealing with the rivalry of extractive use and in-stream and wetland uses for water. According to CIE, it is therefore not reasonable to allocate all of the costs implementing Water Sharing Plans as a cost of users meeting their (users) environmental obligation - there are dangers in characterising 'duty of care obligation' on behalf of users **when the latter have no control over costs**.

Under the CIE recommendations, 32-42 per cent of CAPEX costs would have been recovered from users and 70-89 per cent of OPEX costs.

#### 6.1 SWC's proposed cost share allocations

<b>Cost</b>	<b>SWC's proposed user share (%)</b>	<b>CIE's comment</b>
Operating costs	100	70–100% allocated to users. 70% recognises that some of the operating costs are associated with environmental water management and provision which is demanded by the community.
Hydrometric costs	100	70–100% allocated to users. 70% recognises that some of the operating costs are associated with environmental water management and provision which is demanded by the community.
Service reliability/enhancement (capital costs)	100	Incremental additional costs demanded by community (eg, to meet enhanced flood mitigation capability) should be paid for by government.
Dam safety capital costs	0	Appropriate for bringing infrastructure to 1997 standards.
OH&S capital costs	100	50% recognising that it serves joint demands.
Environmental compliance capital costs	50	Appropriate split where the structure is principally in place to manage delivery of water and at the same time meet community demands for upgrades.
Environmental enhancement	0	Appropriate given the demand is most likely generated by the community.
Corporatisation costs	100	On balance, these costs are driven by user demands/needs for better service and should result in savings to users through efficiency gains.

Sources: SWC (2005) and CIE.

## CIE Conclusion

CIE concluded that the stated objectives of the WMA 2000 make it clear that it is **inappropriate** to cast bulk water users as the only significant impactors on water resource management costs. The WMA 2000 recognises **shared** government and water user responsibilities for achieving sustainable use of the State's water resources.

In addition, CIE stated that **equity** also suggests that costs should be shared in a way that recognises both extractive users and the community expectation and their demand for water resource management services.

## ACCC Review 2012

The regulatory framework for the review of regulated water charges changed in 2010 when the Water Charge (Infrastructure) Rules (WCIR) commenced.

Under the 2004 National Water Initiative, the Australian governments had agreed on full cost recovery principles for water storage and delivery (i.e. all rural surface and groundwater-based systems). These principles were subsequently incorporated into the Water Act 2007 and into the WCIR.

Under the WCIR, the regulator is required to set regulated water charges at a level that allows the service provider (i.e. State Water/WaterNSW) to receive sufficient revenue to cover the prudent and efficient costs of the service, less '**any other source of revenue**<sup>47</sup>'. Based on this wording, the ACCC suggested that it had no mandate to regulate government cost shares or set the level of government contributions. However, the ACCC **accepted** government contributions if they were provided by the respective state Government.

In response to stakeholders' concerns (and IPART) that the WCIR may preclude the application of the previously used cost-sharing framework in NSW and hence result in very significant price increases to regulated water charges from 1 July 2014 onwards, the ACCC drafted a working paper in 2012 titled '*Allocation of costs between government and users in the regulation of wholesale water service providers in NSW*'.

The ACCC attempted to address the following three questions in the working paper:

- *Is there an economic argument for government contributions?*
- *Is there an economic argument for delegating the task of setting the government contribution to an independent authority?*
- *Is there an economic foundation for the cost allocation methodology used by IPART?*

The ACCC's assessment on each of these questions is provided below:

### Rationale for Government Contributions

The ACCC declared that there may be an economic argument for 'long-term under-recovery of costs' where there are **public goods aspects to the service provided**. Specifically, long-term under-recovery of costs might be justified if:

- *the monopoly infrastructure provides services other than services directly associated with the provision of bulk water; and those additional services cannot easily be directly charged to the beneficiaries and*
- *either those services require the supplier to incur some additional (incremental) cost; and/or*
- *there is an implicit or explicit agreement that any common costs will be shared in a particular way.*

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<sup>47</sup> The ACCC suggested that the only other source of revenue would come from government.

In the case of NSW, the ACCC suggested that the underlying infrastructure of State Water (dams, weirs, canals, and monitoring and flow control assets) provides services to the broader community such as flood mitigation or environmental monitoring benefits – thereby fulfilling criteria 1. On the point of ‘environmental benefits’, the ACCC however stated that the argument for government contributions is ‘not clear’. **Despite this ambiguity, the ACCC suggested that even if there are ‘no additional or incremental costs incurred in providing the external benefits, it is still often considered fair for a share of the common costs to be paid by the external benefit beneficiaries (or the government on their behalf)’.**

In regards to legacy and grandfathering issues, the ACCC declared that there is an economic argument for the NSW government to contribute to costs, however only during ‘**phase-In’ periods of new regulatory requirements**. It is the ACCC’s opinion that any **upgrades** to dams to meet updated safety and environmental standards (based on increased standards and obligation) should be borne by government. However, any **new** assets should conform to the new standards and therefore should be paid for by users of those assets in full. In the transitional period, as the existing sunk assets wear out and are replaced, the government **should expect to make contributions** to the infrastructure.

It is also worth noting that the ACCC recognised that downstream customers have made sunk investments in reliance on a supply of water from State Water **at a reasonable long run price** and that an unexpected increase in those charges would threaten future investment by customers. As such, the ACCC stated that charges should only be increased to existing customers where the **quality or the volume of the service** they receive increase.

In conclusion, the ACCC stated that there is a case, **but not a strong case**, ‘that a) there are some broader services provided by water infrastructure assets – particularly flood mitigation and b) it is not easy to charge the beneficiary of these services for these services; and c) where there are additional costs incurred in the provision of these services, direct users should not pay these incremental costs, and in any case, the external beneficiaries should pay a fair share of the common cost. To the extent that this case has merit, there is an argument for under-recovery of the costs associated with bulk water services from users in the long run’.

Finally, the ACCC suggested that while there is an underlying economic rationale for the cost sharing framework the ACCC recommended further clarification on the **methodology** used by IPART.

### **Government Contributions & Independent Regulator**

On the question of whether there are circumstances which deem it appropriate to delegate government expenditure decisions to an independent authority, the ACCC stated there are two possible circumstances:

- *The first arises where the service provider is privately owned, and where the service provider (or its customers) must make on-going sunk investment in reliance on a continuing stream of government contributions.*
- *The second circumstance arises where the service provider is government owned and where achieving various reforms is not politically feasible.*

In broad, the ACCC recognised that there is an economic argument for an independent regulator to have **some role** in setting the level of the government contribution. Although the ACCC suggested that government contributions could be paid in the **form of an occasional capital injection** linked to specific capital projects, the ACCC acknowledges that this has not been the route taken in NSW. Where there is an on-going government contribution, delegating the task of tariff setting and cost allocation to an independent authority both **increases the assurance** to the customers that the contribution will continue (thereby facilitating sunk



investment) and also (in the case of a government-owned service provider) increases the scope for **pricing reform and changes in the level of the contribution that would otherwise be politically infeasible**.

The ACCC concluded that while governments should retain control over expenditure decisions, there is a clear historic case for delegating pricing decisions when a) the service provider is privately owned and there is a need for the government to commit to a level of government contribution or subsidy for a period of time, or b) the service provider is government-owned and achieving needed price or performance reform would otherwise be politically infeasible.

*Ultimately, the ACCC rationale is based on the assumption that an independent regulation is able to correct defects in governance that arise in government ownership.*

## **Economic Foundation for Cost Sharing Framework**

The ACCC was of the view that despite the previous ACIL Consulting report, IPART has continued to blur the distinction between 'beneficiary pays' and 'impactor pays' approach. The ACCC suggested that the problem with 'lack of clarity [around the] objectives and methods arise in part due to IPART's treatment of legacy costs'.

As such, the ACCC suggested that (in principle), any **new regulatory obligation which imposes significant costs or constraints on existing users should potentially be grandfathered, no matter when it was introduced**. Instead IPART has taken the approach of defining 'legacy costs' as those costs incurred to meet regulatory obligations imposed prior to July 2017 (line in the sand). The cost of regulatory obligations imposed after July 1997 are excluded from the legacy cost consideration and hence shared between the NSW Government and users. The ACCC believes that this principle is flawed and blurs the 'impactor pays concept'.

The ACCC provides an alternative suggestion whereby all 'forward looking costs of providing new bulk water services infrastructure or the costs of upgrading new facilities to meet new environmental or safety standards should be met by the future users of those facilities'. This could be called an *impactor pays* approach. Where there are external benefits, such as flood mitigation, and where it is not easy to charge the beneficiaries for these services, there is an argument for a government contribution which should cover at **least the incremental cost of providing these external benefits** and may include a share of the common costs.

In the ACCC's opinion, legacy issues should be treated separately and a careful analysis should precede any costs being passed on to customers for any new environmental or safety obligations. As a general rule, the ACCC suggested that existing users should not be **materially disadvantaged** by new regulatory obligations. In particular, where there are material costs associated with upgrade works such as fish passages, the associated costs should not be passed on to extractive users in the short or medium term. In the long-term, as existing assets reach the end of their useful life, there can be a transition price path to a new full cost recovery level.

## **Reference**

**The Independent Pricing and Regulatory Tribunal of NSW**, 'Department of Land and Water Conservation Bulk Water Prices from 1 October 2001', December 2001, available via:

[http://www.ipart.nsw.gov.au/files/sharedassets/website/trimholdingbay/determination\\_and\\_final\\_report\\_-\\_department\\_of\\_land\\_and\\_water\\_conservation\\_bulk\\_water\\_prices\\_-\\_from\\_1\\_october\\_2001.pdf](http://www.ipart.nsw.gov.au/files/sharedassets/website/trimholdingbay/determination_and_final_report_-_department_of_land_and_water_conservation_bulk_water_prices_-_from_1_october_2001.pdf)

Centre for International Economics, Review of cost sharing ratios, Analysis in support of 2006 Bulk Water Price Review, March 2006, available via:

[http://www.ipart.nsw.gov.au/files/sharedassets/website/trimholdingbay/bulk\\_water\\_prices\\_2006\\_-\\_cie\\_-\\_review\\_of\\_cost\\_sharing\\_ratios\\_-\\_website\\_document.pdf](http://www.ipart.nsw.gov.au/files/sharedassets/website/trimholdingbay/bulk_water_prices_2006_-_cie_-_review_of_cost_sharing_ratios_-_website_document.pdf)

Australian Competition and Consumer Commission, the allocation of costs between government and users in the regulation of wholesale water service providers in New South Wales, Working Paper No 7, September 2012, ACCC/AER Working Paper Series, September 2012, available via:  
<https://www.accc.gov.au/system/files/Working%20paper%20no.%207%20-%20Cost%20allocation%20in%20wholesale%20water%20supply.pdf>

## Addendum to Appendix C

### Cost Share Framework

Water NSW's overall costs<sup>48</sup> are shared between 'users' and the NSW Government on the basis of the **Impactor Pays Principle**. This means that those costs are allocated to users that have contributed to the cost being incurred.

According to the National Water Initiative Pricing Principles:

*"An impactor is any individual, group of individuals or organization whose activities generate costs, or a justifiable need to incur costs. The impactor pays approach seeks to allocate costs to different individuals, groups of individuals or organisations in proportion to the contribution that each individual, group of individuals or organisations makes to create the costs, or the need for the costs to be incurred."*

In addition, the Australian Government Water Reform Program also endorsed the following principles:

*"..pricing reform based on the principles of consumption-based pricing and full-cost recovery, the reduction or elimination of cross subsidies and making subsidies more transparent."*

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<sup>48</sup> Regulated Revenue Allowance

The current user share proportions are outlined below:

<b>Activity</b>	<b>User share</b>
<b><i>Operating expenditure</i></b>	
Customer Support	100%
Customer Billing	100%
Metering & Compliance	100%
Water delivery & Other Operations	100%
Flood Operations	50%
Hydrometric Monitoring	90%
Water Quality Monitoring	50%
Corrective Maintenance	100%
Routine Maintenance	100%
Asset Management Planning	100%
Dam Safety Compliance Capital Projects pre-1997	0%
Dam Safety Compliance	50%
Environmental Planning & Protection	50%
Insurance	100%
<b><i>Capital expenditure</i></b>	
Asset Management Planning	100%
Routine Maintenance	100%
Dam Safety Compliance - Pre 1997 Construction	0%
Dam Safety Compliance	50%
Renewal & Replacement	90%
Structural and Other Enhancement	100%
Corporate Systems	100%
Environment Planning and Protection	50%
Environment Planning and Protection	50%
Flood operations	50%
Office Accommodation Capital Projects	100%
Information Management Projects	100%
River Channel Protection Works	50%
Water Delivery and other operations	100%
Hydrometric Monitoring	100%

**Note:** Some activity codes have not been used to set prices for the 2010 Determination period.

**Source:** IPART, *Determination Review of bulk water charges for State Water Corporation from 1 July 2010 to 30 June 2014*.

## Review of Rural Water Charging System

The NSW Government instructed IPART to conduct a review of the NSW rural water charging system in May 2012.

According to the Terms of References, IPART was asked to assess (among other things):

*2. Potential methods for determining the Government cost share for ACCC determined bulk water charges in NSW, which may include a role for IPART,*

and

*3. The potential impacts to customers, State Water Corporation (...) of future pricing arrangements, and make recommendations that will assist the NSW Government to maintain viable and economically sustainable provision of services to customers.*

According to the IPART's final report which was released in August 2012:

*"Under ACCC's determination process, State Water's prices in the Murray-Darling Basin will be set based on efficient costs, taking into account contributions from sources other than users. The ACCC expects the NSW Government's cost shares of activities, and any subsidiaries to users, to be known at the time it sets State Water's prices."*

In the review, IPART explored options to enable the NSW Government to determine the amount of government contributions prior to the ACCC price review process. These included values for:

- Government cost shares; and
- Subsidies (CSO) in the Peel Valley, where users' share of costs was under-recovered.

**IPART recommended the continuation of the current approach to determining government cost shares, using the cost sharing ratios applied in the 2010 determination for State Water until 1 July 2017. IPART also recommended to review the cost share ratios every two years after 2017.**

The IPART report continued with the words that IPART will 'likely start its review of cost sharing ratios in October 2015, to inform State Water's submission to the ACCC in early 2016'.

## Future Cost Share Framework - Options

In addition, IPART considered four options for a cost sharing framework between 'users' and the NSW Government:

- Continue IPART's existing method of reviewing cost sharing ratios at each determination.
- Freeze the current cost sharing ratios.
- Apply cost sharing ratios with reviews of methodology at every second determination period.

- Government cap contribute at fixed amount.

IPART's assessment of the four options is outlined in the table below:

**Table 6.1 Assessment of proposed options against criteria**

Criteria	Option 1: Status quo	Option 2: Freeze ratios	Option 3: Review every 8 years	Option 4: Fixed amount
1. Effectiveness in addressing customer impacts	Neutral impact.	Neutral impact.	Neutral impact.	Uncertain – based on government's decision on its contribution.
2. Financial impact on State Water	Neutral impact.	Neutral impact.	Neutral impact.	Neutral impact.
3. Financial impact on State Budget	Neutral impact – if cost shares component remains similar to current.	Neutral impact – if cost shares component remains similar to current.	Neutral impact – if cost shares component remains similar to current.	Uncertain – could be positive or negative.
4. Consistent with ACCC principles and WCIR	Consistent.	Consistent.	Consistent.	Consistent.
5. Consistency with NWI pricing principles	Consistent.	Consistent.	Consistent.	Uncertain – based on government's decision.
6. Economic efficiency	Neutral impact.	Neutral impact.	Neutral impact.	Potentially less efficient.
7. Ease of administration	Low.	High.	Medium.	Potentially high.
8. Transparency	High.	Low.	Medium.	Potentially low.

**Note:** We have assessed each option against the status quo (ie, 2010 State Water Determination), using the criteria described in Chapter 3.

According to IPART options 1,2, and 3 differed in their degree of third party supervision and administration required to maintain a transparent method of determining cost shares between users and the NSW government.

IPART decided that reviewing the cost sharing ratios at every second pricing determination strikes a suitable balance between the need to ensure that the cost sharing ratios remain appropriate, and the additional costs imposed in undertaking a separate review at every price determination.

### Stakeholder Concerns

Some stakeholders raised concerns during the IPART review of rural water charging system that there are water users which impose costs on Water NSW, but who are not subject to water charges. Examples of these users include holders of basic rights and planned environmental

**water. It was argued that there is no framework to licence basic rights holders or to support the allocation of costs associated with planned environmental water.**

IPART responded that there is limited information available on the costs that these users impose on Water NSW and how these costs are allocated between users and the NSW government.

IPART suggested that in order to account for basic rights holders and planned environmental water explicitly in the cost share methodology there needs to be either:

- An adjustment to the cost share ratios such that Government's cost share is increased, which will have a negative impact on the State Budget, or
- An expansion of the current customer base, which will require legislative change. Such steps would only be taken if it can be shown that basic rights holders and planned environmental water has a **material impact on the system**, under the 'impactor pays' principle.

IPART elaborated on these points by saying that the first step of accounting for basic rights holders and planned environmental water explicitly in the cost share methodology would include identifying the management activities that arise due to the impacts of these customers. This could then be presented as either adjusted cost share ratios or alternatively expanding the current customer base, which will require legislative change. Expanding the customer base would enable basic rights to be billed directly for their impact. However, such steps would only be taken if it can be shown that basic rights holders and planned environmental water have a material impact on the system, under the impactor pays principle.

It was IPART's view that despite stakeholder comments, it did not have sufficient information to estimate and assign the costs arising from the managing basic rights holders and planned environmental water. However, IPART considered it appropriate that these issues be investigated in more detail, to enable recommendations to be made.

**IPART recommend that following steps be taken by State Water and NOW, with IPART's assistance, to inform Government on the matter:**

**1. NOW and State Water to determine the magnitude of the costs, if any, they individually incur arising from providing services to basic rights holders and in managing environmental contingency allowances.**

**2. If the magnitude of the cost as determined under step 1 is significant and the costs can be accurately recorded, further consideration of who should pay for these costs under the impactor pays principle should be undertaken, separately for basic right holders' costs and the environmental contingency allowances.**

**3. If there is a case for change, then consider the following options:**

- **Option 1: create a separate activity code for basic rights holders and providing for environmental contingency allowances and allocate 100% government share to this activity code.**

- **Option 2: determine which of the existing activity codes are impacted by basic rights holders and in providing for environmental contingency allowance and adjust the cost sharing ratios based on an allocation of the current costs consistent with the impactor pays principle.**
- **Option 3: create new water licences for basic rights holders and for environmental contingency allowance, and bill these new licence holders for the costs that they incur.**

The same approach was suggested for planned environmental water.

#### Water NSW / DPI Water Views on Review

State Water was of the view that it had sufficient information available to determine cost shares for these (new class of) users, however NOW submitted that the reason for the environmental contingency allowance was to acknowledge and to offset the impacts of, regulation and extraction by consumptive users. That is, under the impactor pays principle it was NOW's view that the extractive users caused the need to incur the costs.

#### **Water Chare Rule Review**

As part of the review of the Water Act in 2014, the Parliamentary Secretary to the Minister of the Environment requested that the ACCC review the Water Charges rules (including the Water Charge (Infrastructure) Rules 2010). These rules are the legislative framework for determining bulk water charges in the NSW MDB.

An Issues Paper on the Water Charge Rules review was released in May 2015 and public forums were held in August 2015 in which the issue of cost shares was raised.

IPART also made a submission to the ACCC review on the WCIR in which it recommended that the WCIR should be amended to allow the regulator to determine the customer ('user') share of costs.

*The ACCC's Pricing Principles imply that when making a determination under the WCIR, the regulator is not able to independently consider the most appropriate share of costs between water customers (or 'users') and other parties (e.g., the Government, on behalf of the broader community). The Pricing Principles state: ...while the costs associated with an activity that is not funded through regulated charges will be assessed for prudence and efficiency, the source or amount of that funding will not be determined by the regulator.*

*When setting prices for bulk water services, we have typically assessed the proportion of total costs of a given activity that should be borne by water users (i.e., water entitlement holders). In doing so, we have allocated costs between water users and the Government (on behalf of the broader community) using the impactor pays principle. We consider that the ability to independently review cost shares is important to achieve appropriate pricing signals and inform future investment decisions. It allows the regulator to make a decision on how much of the costs of a certain activity should be passed through to customers via prices. Therefore, we recommend that the WCIR, in conjunction with the ACCC's pricing principles, allow the regulator to review the user-share of costs*



*to be recovered from regulated prices. This proposal that the regulator be permitted to determine the user share of costs is consistent with the Basin water charging objectives. It would facilitate the efficient functioning of water markets by sending appropriate price signals (objectives (a) and (c)); give effect to the principles of user-pays and pricing transparency (objective (d)); and avoid perverse or unintended pricing outcomes (objective (e)).*

## Appendix D

### Letter to NSW Minister for Primary Industries, Lands and Water on the Cost Shares Framework



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ABN: 49 087 281 746

10 March 2016

**The Hon Niall Blair MLC**  
Minister for Primary Industries  
Minister for Lands and Water  
52 Martin Place  
SYDNEY NSW 2000

Dear Minister,

#### **RE: NSW GOVERNMENT CONTRIBUTIONS TO *WATERNSW* BULK WATER CHARGES**

As you are aware New South Wales irrigators and irrigation infrastructure operators have endured very significant changes in the regulatory framework governing the review of the bulk water charges in NSW over the last two pricing determination periods (2010 - 2017).

The transfer of regulatory responsibilities from the Independent Pricing and Regulatory Tribunal (IPART) to ACCC for the NSW areas within the Murray Darling Basin has meant a significant change in approach and the application of completely different rules in the review of NSW's bulk water charges for Inland NSW vs the Coastal Valleys. The Coastal Valleys remain under the jurisdiction of IPART and the application of its original framework for price determinations.

We note that under a new accreditation arrangement agreed with the ACCC, IPART will once again be the lead regulator for the review of bulk water charges for Inland NSW in 2016, but will be operating under the ACCC's Water Charge (Infrastructure) Rules 2010 and the ACCC Pricing Principles.

The reason for this letter is to alert you to an issue of serious concern to the State's irrigation sector which NSWIC believes may have been lost in this period of pricing regulator churn. In 2012 the NSW Government commissioned IPART to conduct a review of the rural water charging system. The final report, which was released in October 2014, recommended that:

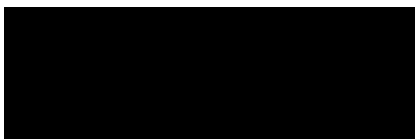
*"Government pay State Water, until 1 July 2017, a community service obligation equivalent to the government's share of efficient costs as calculated using the same cost sharing ratios determined by IPART in the same cost sharing ratios determined by IPART in the 2010 price determination for State Water. After that, IPART would review the cost share ratios and activities prior to every second ACCC determination (i.e. every 8 years) starting in 2017."*

With the introduction of the Water Charge (Infrastructure) Rules 2010 (WCIR) and the ACCC Pricing Principles for Inland NSW pricing determinations, this fundamental principle of cost sharing has been removed from the pricing determination process for delivery of bulk water to the irrigation sector in Inland NSW beyond the next WaterNSW pricing determination next year. Under the current rules, neither IPART nor the ACCC have a direct mandate to determine cost sharing between the NSW Government and bulk water users - posing significant economic risks to irrigators and NSW Basin communities.

In the last bulk water charge determination in 2014, the ACCC accepted the NSW Government's decision to pay the NSW Government's share of the 'efficient costs' using the same cost sharing ratios as determined by IPART in 2010. However, this commitment was only given until July 2017. NSWIC stresses the vital importance of the continuation of this commitment by Government. It goes to the heart of the ongoing sustainability of regional communities and irrigation dependent food & fibre producers in the State. The recognition of the wider community benefits associated with the provision of bulk water charges equitably shared between irrigators and Government has had a long history in NSW and has been honoured by previous NSW Governments as an integral part of provision of bulk water services in rural NSW.

Therefore, we seek your urgent assurance that the NSW Government will continue its commitment to a cost share framework between water users and the NSW Government beyond the current July 1 2017 timeframe in future reviews of bulk water charges in NSW.

Yours Sincerely,



Richard Stott  
Chairman

## Appendix E

### NSWIC SUBMISSION TO IPART ON WATERNSW OPERATING LICENCE REVIEW



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**12 September 2016**

Review of the Operating Licence for WaterNSW  
C/o Jessica Hanna  
Independent Pricing and Regulatory Tribunal  
PO Box K35  
Haymarket Post Shop NSW 1240

Dear Ms Hanna,

#### **Re: NSWIC Submission to the Review of the Operation Licence for WaterNSW**

The NSW Irrigators' Council (NSWIC) appreciates the opportunity to comment on the Independent Pricing and Regulatory Tribunal's (IPART) review of WaterNSW's operating licence. As the NSW bulk water supplier has undergone significant operational changes over the last two years, NSWIC acknowledges that a review of WaterNSW's operating licences is necessary for the realisation of further operating efficiencies within WaterNSW. It is also important that WaterNSW is able to fulfill all of its licence obligations under the current two operating licences and is able to conduct its operation legally, and to an equivalent service level as was the case prior to the amalgamation of the Sydney Catchment Authority and State Water Corporation.

Despite these arguments in support of a review of WaterNSW's operating licence, NSWIC holds the view that significant uncertainty and confusion remains as to which direction WaterNSW should take under the provisions of an updated future operating licence.

Reviewing WaterNSW's submission to IPART, it is evident that WaterNSW intends to fundamentally change the operation of its business, its interaction with customers, and its approach to future service delivery. While NSWIC supports customer choice and the intent of WaterNSW to transform into an efficient and customer-centric business, there is no clarity around the exact detail of what these proposed changes will mean for irrigator customers and Irrigation Infrastructure Operators, including an understanding of the necessary legislative amendments and executive actions that will be necessary to realise this transition. The lack of information and data about WaterNSW's proposed approach makes it difficult

for NSWIC members to assess the likely outcomes and raises concerns amongst NSWIC and its membership, in particular around the future benefits and costs to customers.

It should be noted that WaterNSW has only started the conversation about tailored service delivery with its customers and as such, it might be premature to consider major amendments to the current operating licence until conversations have progressed further and stakeholders are clear about the consequences.

NSWIC believes that WaterNSW is embarking on a path that resembles the previous reform processes of the National Electricity Market, including the move to tailored contracts and individual customer service delivery. While the electricity reform process has resulted in some benefits to some customers, rural and regional communities have lost more than they have gained in the process and continue to pay a high price of the electricity reform process. For that reason, NSWIC urges caution to embark on a wide-scale reform in rural water delivery before all the issues have been discussed.

WaterNSW must present a detailed outline about their proposed changes, a list of their current legislative requirements, and a thorough assessment of the costs and benefits of the reform. In particular, NSWIC urges IPART to consider the implications of stripping back the more prescriptive functions of WaterNSW's operating licence and instead implementing 'minimum service standards'. NSWIC believes that this could - if incorrectly designed - lead to a reduction in service provision by WaterNSW and/or greater costs to customers.

Despite these preliminary concerns, NSWIC does welcome WaterNSW's efforts to provide greater choice to customers and better service delivery and we look forward to further engagement with WaterNSW and IPART on these issues.

### Water Charge Review

In a related matter, it should be noted that WaterNSW is currently undergoing a review of its regulated water charges. NSWIC believes it is even more critical that extra care is taken when assessing any changes to WaterNSW's operating licence as it could lead to unintended or perverse consequences in the next or any following regulated determinations - including significant shifts in prices.

The interaction between the WaterNSW operating licence review and the regulated water charge review must be carefully assessed and further information must be provided to stakeholders in order to understand the implications of any change. Due diligence is therefore necessary to guard against potential price shifts for WaterNSW's customers, as well as to provide sufficient transparency around the process.

The issue is further complicated by the transfer of functions from DPI Water to WaterNSW - the effective incorporation of these functions in WaterNSW is incomplete - and the WaterNSW Integration Team continues to work on the transition.

### Transparency

Transparency is important, as stakeholders currently have limited understanding of all of WaterNSW's legislative requirements, including how many of WaterNSW's services are negotiable and hence can be tailored. Previous conversations between NSWIC and WaterNSW suggested that the majority of WaterNSW operations are non-negotiable due to WaterNSW's complex legislative requirements. Should this be the case, NSWIC raises the question as to the benefits of WaterNSW's broader proposal. NSWIC and its members do

not suggest that WaterNSW's proposal should be rejected outright, customers simply need to have a clearer understanding about which operational functions are negotiable and which are aspirational. In addition, NSWIC and its members want to understand how WaterNSW proceeds to offer such tailored contracts to customers.

NSWIC is looking to IPART through this process to provide clarity around the risk to WaterNSW's stakeholders resulting from the proposed changes by WaterNSW.

### Metering

NSWIC also urges caution with regards to WaterNSW's proposal that it should be authorised to operate, replace, repair, maintain, remove, connect, disconnect or modify any metering equipment it does not own. This should apply to government funded meters only, not customer-owned meters.

### Planned Environmental Water

In addition, customers are seeking greater transparency around WaterNSW's time, effort and cost of delivering planned environmental water. This does not only include the physical storage and delivery of planned environmental water but also the additional time spent attending and participating in committees and calculating planned environmental deliveries. NSWIC and its members have for a long time been concerned that licence holders have paid more than their fair share of these costs. As the held environmental water portfolio increases, the complexity of delivering this water for the environment and associated increased costs are becoming more apparent.

### Customer Service Committees

NSWIC emphasises the importance of the Customer Service Committees as a vehicle for discussions and information distribution around bulk water delivery in NSW.

Given the increased functions and responsibilities WaterNSW has acquired since the WaterNSW Amendment (Staff Transfer) Bill 2016, these local forums are a cornerstone for discussions between the NSW bulk water operator and its customers. As such, NSWIC stresses the need to maintain these forums and to ensure that all types of WaterNSW's customers are adequately represented.

### Broader Reform Process

NSWIC also notes that WaterNSW is highly likely to be subject to further operational changes through the implementation of the Murray-Darling Basin Plan and/or the development of NSW Water Resource Plans. Examples include implementation of the Pre-Requisite Policy Measures and the Constraints Management Strategy in the southern Basin. These changes are far from resolved, as such IPART should consider whether the benefits of amending WaterNSW's operating licence at this stage are greater than the costs.

### North Coast Pilot

NSWIC believes that WaterNSW's current North Coast Pilot is an ideal opportunity to gauge customers' interest in changing WaterNSW's service delivery and assessing the feasibility around the proposed changes. As this pilot is still in its infancy, NSWIC urges IPART to consider shifting the final determination of WaterNSW operating licence review to a later date to enable this North Coast Pilot to be completed.

However, in the interim, and on view of the potentially significant impact that WaterNSW's proposals may have for many customers, NSWIC does believe IPART should consider only minimal changes to the operating licences.

### Specific Recommendations

NSWIC makes the following specific recommendations to IPART:

- NSWIC supports the amalgamation of the two operations licences (i.e. the Sydney Catchment Authority and State Water Corporation) and emphasises the need to avoid duplication between the two licence obligations.
- NSWIC supports the continuation of State Water's operating licence obligation to deliver water to its customers - recognising the important role WaterNSW plays in supplying water for food and fibre production in NSW.
- NSWIC supports the removal of regulatory overlap between legislation, WaterNSW's operating licence and its work approvals.
- NSWIC believes there is a regulatory gap in the operating licence where the services required by the environment are not captured adequately in the operating licence and consequently the cost of these services are being paid by all licence holders. NSWIC believes this oversight should be addressed in the operating licence review.
- NSWIC highlights that WaterNSW's area of operations has significantly expanded with the transfer of functions from DPI Water to WaterNSW. As such, NSWIC urges IPART to ensure that WaterNSW is legally enabled to conduct these new functions.
- NSWIC seeks further clarification on the interaction between the WaterNSW's operating licence and the recently passed Dam Safety Bill 2015.

In conclusion, NSWIC is open to further conversations with WaterNSW and IPART on WaterNSW's proposal for a change in the WaterNSW operating framework - if the changes are feasible and likely lead to a positive impact on WaterNSW customers.

If you have any questions to the issues we have raised in this letter, please do not hesitate to contact us.

Sincerely,



Stefanie Schulte  
Policy Manager  
NSWIC Irrigators' Council

## **Appendix (to Appendix D)**

### Changes since last Operating Licence Review - 2013

Since the last review of State Water Corporation's operating licence review in 2013 the following events have occurred:

#### Amalgamation

In March 2014, the then Minister for Primary Industries Katrina Hodgkinson announced the amalgamation of State Water Corporation with the Sydney Catchment Authority to form WaterNSW. This has resulted in two operating licences for WaterNSW.

#### Transfer of Functions

On 31 May 2016, the *Water NSW Amendment (Staff Transfer) Bill 2016* passed through the NSW Parliament and reallocated functions between DPI Water and WaterNSW. This has increased the area of operations for WaterNSW - incorporating unregulated and groundwater sources.

In addition, the following functions have been transferred from DPI Water to WaterNSW:

- Customer transactions (excluding corporate customers);
- Compliance investigations for customers (excluding compliance activities such as compliance relating to local water utilities, water corporations, major utilities, mining companies and state significant developments);
- Licence administration and billing (excluding licencing activities such as licencing of major utilities and mining projects);
- Water quality monitoring;
- Hydrometric assessment;
- Metering operations.

#### Price Determination

The ACCC issued its final decision to accredit the Independent Pricing and Regulatory Tribunal of NSW as the regulator of WaterNSW infrastructure charges in the NSW Murray-Darling Basin. The decision took effect on 1 June 2016 for a period of 10 years.

#### ACCC Review of Water Charge Rules

On 17 December 2014, the Parliamentary Secretary to the Minister for the Environment requested the ACCC to review:

- Water Charge (Infrastructure) Rules 2010



- Water Charge (Planning and Management Information) Rules 2010, and
- Water Charge (Termination Fees) Rules 2009.

The request for advice is in response to a recommendation of the Independent Review of the *Water Act 2007*, which was tabled in Federal Parliament in December 2014.

Any changes to the Water Charge Rules may have an impact on WaterNSW's operating licence and the upcoming regulated water charge review.

## Appendix F



**NSWIC**  
NEW SOUTH  
WALES  
IRRIGATORS'  
COUNCIL

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# 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 Diversers' 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 Corugan 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 woeful<sup>49</sup>. Irrigators believe that a method of consultation should be determined prior to the commencement of a policy change process. To that end, this document sets out the methods which we believe are acceptable and ought to 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.

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<sup>49</sup> 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 to be considered the preferred method of consultation.

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

- The number of affected stakeholders (the smaller the number, the more ideal this method);
- The timeframe available for implementation (the longer the timeframe, the more ideal this method)<sup>50</sup>; and
- The geographical distribution of stakeholders (the closer the proximity, the more ideal this method).

## Indirect (Peak Body) Consultation

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

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

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

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

- Timeframes

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<sup>50</sup> Although note specifically that artificial timeframes, such as political necessity, will not be well received by irrigators.

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

- Resource Constraints

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

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

Prior to commencing the consultation process, discussions with peak bodies must be held to ensure that the needs of stakeholders with respect to resourcing and timeframes are respected. This may include ensuring that consultation does not occur during times of known peak demand; coordination with other government agencies to avoid multiple overlapping consultation processes; and coordination with peak bodies existing consultation mechanisms (for example, NSWIC meeting dates are set annually and publicly available. These are an ideal forum for discussion as they provide 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.

- *Identification of problem and necessity for change*

Irrigators are wary of change for the sake of change. In order to engage industry in the process of change, an identification of its necessity is required. This should take the form of a published discussion<sup>51</sup> paper as a minimum requirement.

- *Identification of solutions and method for implementation*

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

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<sup>51</sup> We accept that “published” may mean via internet download, but require that hard copies be made available free of charge on request.

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

It is likely, in practice, that steps (i) and (ii) will be carried out concurrently. This should take the form of a document seeking written submissions in response. The availability of the document must be widely publicised<sup>52</sup>. 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.

- *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.

- *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.

- *Publication of final determination*

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<sup>52</sup> Regional newspapers, radio stations and the websites of representative groups and infrastructure operators are useful options in this respect.

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.