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Submission

Independent Pricing and Regulatory Tribunal Review of Rural Water Cost Shares

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Introduction

The NSW Irrigators' Council (NSWIC) is the peak body representing irrigators and the irrigation industry in NSW. Our Members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries. Through our members, NSWIC represents 12,000 water access licence holders in NSW who access regulated, unregulated and groundwater systems.

NSWIC engages in advocacy and policy development on behalf of 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 with respect to the Independent Pricing and Regulatory Tribunal's (IPART) review of 'Rural Water Cost Shares'. However, each member reserves the right to independent policy on issues that directly relate to their areas of operation, expertise or any other issues that they deem relevant.

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Executive Summary

NSWIC has a close interest in IPART's review of rural cost shares as the outcome of this review directly influences the next determination of WaterNSW's and the Water Administration Ministerial Corporation's (WAMC) water charges.

Considering the significant regulatory and institutional changes that have occurred since the original cost share framework was first introduced in 2001, NSWIC considers it prudent and timely to conduct a thorough review of the current methodology to assess whether it remains fit-for-purpose or whether it could be improved.

Despite NSWIC's support for this review[1], the Council remains agnostic as to the future methodology that IPART applies to efficiently and equitably share costs between water users and the NSW Government when reviewing and determining water charges for WaterNSW and the WAMC as long as the framework is **transparent, robust, practical, cost reflective, measurable and auditable**.

In this context, NSWIC stresses that the current cost share methodology is complex and opaque (e.g. 17 operating and 18 capital expenditure activities for WaterNSW and 34 operating expenditure and 34 capital expenditure activities for WAMC) and few WAL holders would fully understand the basis on which their regulated, unregulated and groundwater charges are determined by IPART – particularly in the context of the ongoing regulatory reforms and institutional changes that have occurred within and between the two entities under review. WAL holders in particular find it challenging to understand the basis of WAMC's charges as its regulatory and policy functions are viewed as a normal function of government akin to other State Government departments.

However, whether the shortcomings in the current cost share methodology warrant the development of a completely new methodology remains questionable in NSWIC's view. In particular, IPART has not provided sufficient evidence to convince NSWIC that a new framework would substantially improve the current approach applied by IPART or lead to a materially preferable regulatory decision.

Furthermore, NSWIC remains concerned that without further data collection and a thorough assessment of the drivers for a new 'service-based' approach, there is a significant risk that future costs are incorrectly or inappropriately assigned (e.g. leading to price shocks) or that they lead to cross-subsidisation between different water users (e.g. as shared costs cannot be correctly identified).

Thus, NSWIC proposes that prior to IPART making a decision about new cost share methodology, IPART must firstly:

1. establish the shortcomings of the current approach
2. assess the current data and information gaps that could inform a change in approach
3. analyze the net benefits of a change in methodology.

[1] NSWIC has called for a review of cost shares since 2012.

Without these preliminary steps, NSWIC urges caution to fundamentally change its current approach to cost sharing. In this submission, NSWIC will provide its perspective on points 1 and 2 and conclude with a preliminary assessment of point 3.

In broad terms, NSWIC is of the view that a range of improvements can be made to the current cost share methodology to more efficiently and equitably share costs between water users and the NSW Government. Whilst some of the recommendations in this submission will likely require further investigations, NSWIC considers them critical to develop a robust cost share framework in the context of an ever-changing water management framework in NSW.

Recommendations

1. NSWIC proposes that prior to making a decision about new cost share methodology, IPART must firstly:

- *establish the shortcomings of the current approach;*
- *assess the current data and information gaps that could inform a change in approach;*
- *analyse the net benefits of a change in methodology.*

2. NSWIC submits that a future cost share framework must be transparent, robust, practical, cost reflective, measurable and auditable.

3. NSWIC submits that IPART must consider the context of potential large-scale costs that may be imposed on WAL holders through ongoing (unfunded) Basin Plan implementation and other matters (e.g. including any future maintenance costs of the SDL adjustment mechanism supply measure projects[2] or the costs of managing pre-requisite policy measures[3] in the state).

4. NSWIC submits that IPART should review the benefits of Frontier Economics' proposal to separate extractive users and environmental users in the cost share framework

5. NSWIC would welcome further discussions with IPART on how legacy costs should be defined and reported on in future price determinations (contingent on an impact assessment).

6. NSWIC submits that IPART should broaden the principles against which it determines cost shares.

7. NSWIC considers it prudent to revisit the 'impactor-pays' vs 'beneficiary-pays' approaches in the context of large scale environmental water holdings.

8. NSWIC believes there are serious gaps in quantifying the costs incurred by WaterNSW and WAMC to service "other users" (including recreational, stock and domestic, regional communities and the environment). As such, NSWIC submits that IPART should consider conducting a thorough analysis of the drivers of WaterNSW's and WAMC costs with the objective to more accurately identify the group (or groups) that generate the costs of the service and then allocate the cost shares accordingly.

9. NSWIC recommends that IPART conducts a thorough assessment of WaterNSW's and WAMC's 'water security' functions and quantifies the costs imposed on WaterNSW and WAMC to service this function.

10. NSWIC submits that IPART should institute an iterative process to collect data on these cost drivers and how they may change over time with the progressive implementation of the Basin Plan and other state water reform processes – in particular in the context of the current draft Exposure Bill related to the NSW Water Reform Action Plan.

11. NSWIC urges IPART to conduct a thorough review of the KPIs and reporting measures by both WaterNSW and WAMC and request both entities to submit yearly progress reports on their performance that are then independently verified to assure their accuracy. It is important that WAL

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[2] https://www.mdba.gov.au/basin-plan-roll-out/sustainable-diversion-limits/sdl-adjustment-proposals-state-projects
[3] https://www.water.nsw.gov.au/__data/assets/pdf_file/0004/723334/Pre-requisite-Policy-Measure-Implementation-Plan.pdf

holders pay water charges that are built on an output and performance system which is accurate, transparent, cost-reflective and practical but also robust and auditable.

12. NSWIC recommends that IPART should recommend regular 10-year reviews of the cost sharing framework to ensure that it remains fit for purpose.

13. NSWIC urges IPART to consider a range of emerging issues listed on page 18 of this submission.

General Comments

Since the IPART first introduced a cost sharing framework in 2001 for the water charge determination of the then *NSW Department of Land and Water Conservation*, the institutional and governance settings for water resource management and the delivery of bulk water services have fundamentally changed in NSW. The functions and responsibilities of the NSW Department of Land and Water Conservation were devolved in 2003 and are currently assigned to WaterNSW (e.g. to undertake bulk water delivery); the Department of Industry – Water (e.g. to provide water policy and regulatory functions) and (as a subcategory) the Natural Resources Access Regulator (e.g. to deliver monitoring and compliance functions on behalf of the Water Administration Ministerial Corporation. However, even prior to this current structure, there have been several amalgamations, restructures and rationalisations within and between these organisations (and their predecessors) which have raised questions as to the efficiency and effectiveness of previous water charge determinations and by extension the cost shares framework.

In addition, WAL holders in the NSW Murray-Darling Basin have had to endure an ever-changing regulatory framework for the setting of regulated water charges which has caused confusion and concerns about the application of the cost sharing framework between water users and the NSW Government. Under the 2004 National Water Initiative, the Australian Governments agreed to the full cost recovery principle for water storages and delivery. This principle was subsequently incorporated into the Water Act 2007 and the Water Charge (Infrastructure) Rules 2010 (WCIR) which made the Australian Competition and Consumer Commission the responsible regulator for regulated water charges in NSW. Under the WCIR, the regulator was required to set regulated water charges at a level that allows the service provider to receive 'sufficient revenue to cover the prudent and efficient cost of the service, less any other source of revenue'. Based on this wording, the ACCC suggested that it had no mandate to set government cost shares or determine the level of government contributions. However, the ACCC accepted any form of government contributions if so provided by the respective State Government. Given the concerns about future cost shares and the possibility of significant price shocks, NSWIC wrote to the NSW Minister for Primary Industry, Lands and Water in 2016 to seek an assurance that the cost share approach would continue[4].

However, 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 Working Paper addressed the questions of:

a) whether there is an economic argument for government contributions;
b) whether there is an economic argument for delegating the task for setting the government contribution to an independent authority; and
c) whether there is an economic foundation for the cost allocation methodology used by IPART?

In terms of the first question, the ACCC made the point that there is an economic argument for "long-term under-recovery of costs" where there are public good aspects to the services provided. In the case of WaterNSW and WAMC, NSWIC suggests this is certainly the case as both the water delivery and management functions of the two entities are vital for the provision of water to rural communities and the environment and to ensure healthy regional economies.

[4] Appendix B

While the second question is irrelevant in the context of IPART's current review of cost shares (e.g. pertaining that IPART continue to consider itself to have a role in setting cost shares), NSWIC would like to deliberate on the ACCC's answer to the last question.

First of all, the ACCC suggested that (in-principle) any new regulatory obligations which impose significant costs or constraints on existing users should potentially be grandfathered, **no matter when they were introduced**. NSWIC suggests that IPART should consider this principle in the context of potential large-scale costs that may be imposed on WAL holders through ongoing Basin Plan implementation or other matters (e.g. including any future maintenance costs of the SDL adjustment mechanism supply measure projects[5] or the cost of managing pre-requisite policy measures[6] in the state.

Secondly the ACCC stated that a careful review should precede the allocation of costs on WAL holders for any new environmental or safety obligation (and if they should be passed on to WAL holders who would be the most appropriate group). The ACCC made this assessment on the basis that existing 'users' should **not be materially disadvantaged** by new regulatory obligations, particularly where they relate to items like fish passages (e.g. which would benefit a particular group of customers). While NSWIC agrees with the ACCC, the argument around the impactor pays approach may not be as straight-forward. First of all, the 'beneficiaries' of these works would potentially be users who currently do not pay rural water charges (e.g. Environmental Contingency Allowance). Secondly, since the environment has become a large water licence holder, NSWIC suggests that the simple application of the 'impactor pays approach' has become vastly more complex.

Furthermore, NSWIC would also like to raise several points in relation to the previous consultant reports commissioned by IPART in relation to the cost share framework.

In 2006, the Centre for International Economics (CIE) conducted a review of Cost Shares and emphasized that the stated objectives of the *Water Management Act 2000* make it clear that it would be "inappropriate to cast bulk water users as the only significant impactor on water resource management costs". In particular, CIE stated that the *Water Management Act 2000* recognises the **shared** government and user responsibilities for achieving "sustainable use of the State's water resources". In addition, CIE declared that equity should be considered in the context of bulk water determinations in order to recognize the expectations and demands for water management services by both extractive users and the wider community.

In 2016, Frontier Economics recommended to switch from an 'activity code' approach to a 'service level' approach for the determination of user and government shares for the two entities providing bulk water services in NSW. While NSWIC is agnostic about the approach to sharing costs (as outlined earlier), we would like to emphasise that the main question is whether this change **would improve** the robustness and transparency of the existing cost share framework, reduce complexity and be implementable without significant costs – in short, NSWIC is not convinced that the switch is feasible with the currently available data or would return a net benefit to WAL holders[7].

[5] https://www.mdba.gov.au/basin-plan-roll-out/sustainable-diversion-limits/sdl-adjustment-proposals-state-projects
[6] https://www.water.nsw.gov.au/__data/assets/pdf_file/0004/723334/Pre-requisite-Policy-Measure-Implementation-Plan.pdf
[7] According to Frontier Economics' Executive Summary, "Water NSW was unable to commit resources to support a detailed review of cost shares and as a result we were unable to access key information from WaterNSW to implement the proposed cost sharing framework. In our view, implementing this framework in a sustainable way will require consultation with WaterNSW and other stakeholders regarding these matters. It may also require changes to WaterNSW's systems for information collection and billing as well as changes to the legislative and regulatory framework."(p.viii)

In addition, NSWIC suggests that the success of a potentially new framework will not only depend on good data but also be contingent on the level of granularity of the 'service-level definitions. NSWIC is concerned that the change in approach could potentially be a step backwards (akin to what was originally introduced in 2001) leading to greater complexity in IPART audit functions, decrease transparency around WaterNSW's and WAMC's performance and diminish the accountability around external funding (e.g. funding that has been received from the Federal Government).

While NSWIC believes there is merit in considering some aspects of the Frontier Economics report (particularly the consideration of separating 'extractive users' and 'environmental users' for pricing purposes), we consider it prudent to first review the shortcoming of the existing approach before embarking on designing a new system that may not align with WaterNSW's operating licence and the reporting requirement for WAMC.

Specific Comments

Topic 1: Cost Share Principles

When IPART reviewed and determined water charges for the Department of Land and Water Conservation in 2001, it divided costs for bulk water delivery between the NSW Government and water licence holders in recognition that some costs incurred by the Department in managing the rivers, dams, weirs and other parts of the NSW bulk water system were not exclusively related to bulk water delivery but instead incurred to meet **'other needs'**. NSWIC suggests that these other needs (e.g. provision of stock and domestic water, flood mitigation, as well as water for recreation purposes and the environment) continue to exist which – inter alia – provides sufficient justification to continue with a cost sharing framework between WAL holders and the NSW Government.

Also, IPART acknowledged that some of the previous Department of Land and Water Conservation's costs related to past practices and activities (e.g. legacy costs) whose inclusion in bulk water charges **'may distort the price signal to users of the current and future cost of providing wholesale water services'**. Hence it was decided that these costs should not be fully borne by water users. IPART again made a similar point in the current Issues Paper by stating that water users should not pay if there are 'unavoidable' legacy costs – or costs that would continue to be required even if there was no demand for the regulated services. In particular, IPART states on Page 11 of its Issues Paper that the inclusion of these (unavoidable legacy) costs in setting WAL holders' charges does not provide *"accurate price signals to current and future customers, nor is there any economic efficiency rational for the cost inclusions"*. NSWIC is pleased that IPART raises the issues of legacy costs in the context of the review of rural cost shares, however the Council would welcome further discussions with IPART throughout the review on how legacy costs should be defined and reported on in future price determinations. NSWIC suggests that the further we move away from 1997, the more inappropriate the current IPART approach may be – particularly given the ongoing legislative and regulatory obligations imposed on WaterNSW and WAMC, which, in NSWIC's perspective should potentially be considered legacy costs (e.g. if a change in government policy has created additional costs that have neither been demanded by extractive water users or been the result of extractive water users)[8].

Example: NSW Murray Valley

The NSW Murray is part of the shared Murray River Resource and therefore is regulated under the inter-jurisdictional Murray-Darling Agreement (Schedule 1 of the Water Act 2007) as well as State water regulations. The costs of the shared resource are shared proportionately between the three jurisdictions, however, NSW is unique in its method of cost recovery and application of cost shares. (IPART has, in the past, applied the same cost share ratios to MDBA charges in the NSW Murray as apply to WNSW charges).

In accordance with the Murray-Darling Agreement, State river operators must operate the works in the river:

a) in accordance with any procedures determined by the Authority under clause 66; and
b) if the work is a lock, maintain immediately downstream of the lock such a depth of water -

[8] Contingent on a full assessment of the impacts (including liability) this may have on WAL holders.

i) as is sufficient for navigation of vessels drawing 1.4 metres of water; or
ii) such other depth determined by the authority under clause 124 (MDA Clause 68(1))

Under the current cost share arrangements 100% of water delivery and other operations (both CAPEX and OPEX) are allocated to water users who do not require river operations to be maintained at a navigable depth.

While NSWIC is of the view that the above 'costs' could be considered a legacy cost, it also shows that extractive water users currently bear costs created by other impactors. In the context of IPART's existing cost share framework, this should not occur.

Further, where these 'other impactors' cannot be directly charged, or the benefits are delivered to the broader community, IPART suggested in its Issues Paper that these aggregate costs should be funded by Government. While NSWIC does not disagree with the general reasoning for this approach, the Council continues to be disappointed that insufficient works has been done by IPART (or WaterNSW and WAMC) to accurately quantify the costs for providing services to a) the environment (e.g. both planned and licenced environmental water); b) basic landholder rights c) recreational users d) rural communities (e.g. flood mitigation and water security in times of drought) and e) potentially cultural water (e.g. given the context of recent legislative amendments to the Water Act 2007 and associated agreements). From NSWIC's perspectives, a thorough valley-by-valley assessment of
the magnitude of these costs (e.g. including further data and information gathering) must be conducted. NSWIC calls on IPART to recommend to the NSW government to conduct a separate review to identify the services provided to these five sub-categories and costs them against the individual sub-groups. This would bring greater transparency around WaterNSW and WAMC's costs.

Finally, NSWIC also would like to point out that IPART is required, under Section 15 of the Independent Pricing and Regulatory Tribunal Act 1992, to have regard to the following matters when determining rural water charges (in addition to any other matters IPART considers relevant):

a) the cost of providing the services concerned;
b) the protection of consumers from abuses of monopoly power in terms of prices, pricing policies and standard of services;
c) the appropriate rate of return on public sector assets, including appropriate payment of dividends to the Government for the benefit of the people of New South Wales;
d) the effect on general price inflation over the medium-term;
e) the need for greater efficiency in the supply of services so as to reduce costs for the benefit of consumers and taxpayers;
f) the need to maintain ecologically sustainable development (within the meaning of section 6 of the Protection of the Environment Administration Act 1991) by appropriate pricing policies that take account of all the feasible options available to protect the environment;
g) the impact on pricing policies of borrowing, capital and dividend requirements of the government agency concerned and, in particular, the impact of any need to renew or increase relevant assets;
h) the impact on pricing policies of any arrangements that the government agency concerned has entered into for the exercise of its functions by some other person or body;
i) the need to promote competition in the supply of the services concerned;

j) considerations of demand management (including levels of demand) and least cost planning;
k) the social impact of the determinations and recommendations;
l) standards of quality, reliability and safety of the services concerned (whether those standards are specified by legislation, agreement or otherwise).

While each of these factors are considered when determining rural water charges, NSWIC believes that criteria a), h) and j) are of key relevance to the cost share review and should be strengthened in the cost share determinations. As such, NSWIC recommends that IPART adds these three principles it is cost share framework.

<u>Topic 2: "Impactor" vs "Beneficiary" Pays Approach</u>

When IPART established the original cost share methodology, the result was a hybrid between an "impactor pays" and "beneficiary pays" approach which was developed in consultation with the Department of Land and Water Resources and water user groups.

While IPART has since emphasised its preference for the "impactor pays" approach, NSWIC considers it prudent to revisit the two approaches in order to emphasise that the application of a pure "impactor pays" approach is not equitable in the context of the State and Federal ongoing water reform processes that are not driven by licence holders and would not be reconcilable with the context of a "service-based" cost share approach.

In terms of the impactor pays approach, IPART states in its Issues Paper that "setting prices above or below cost-reflective levels can encourage poor investment decisions (e.g. by the service provider) and sub-optimal consumption decisions". While NSWIC questions IPART's assessment regarding the poor investment decisions in the context of a monopoly service operator whose costs are mostly guaranteed, the Council would like to highlight several issues on the consumption side.

Firstly, "consumption" depends on climatic factors. In dry periods, water allocations can be very low or even zero which means that although access to water is restricted (e.g. resource availability restriction), licence holders will be asked to pay for a 'service' or 'function' by WaterNSW and WAMC that is not being provided. While NSWIC acknowledges that IPART attempts to address this supply side risk through the current 40:60 fixed to variable tariff structure, NSWIC suggests that the current (total) allocation of costs against WAL holders' entitlement charge is too large as the **need to incur the costs** (as per the impactor-pays principle) varies in different climate scenarios. Alternatively, in wet periods, water allocations might be high, but WAL holders may not access water due to prevalent catchment conditions. Although it could be argued the WAL holders make use of WaterNSW's infrastructure to 'store' water, the need to incur costs for WAMC and WaterNSW mostly arises due to flood mitigation of which Water Licence Holders are only one amongst many beneficiaries. Again, the user costs shares would be too large based on a pure 'impactor pays' principle.

Secondly, "consumption" of water depends on the State's decision to make water allocation announcements throughout the year. Hence, "consumption" decisions often lie outside WAL holder's control. While this argument appears similar to the previous one, it differs to the basis of the 'under-consumption'. NSWIC is aware that the current NSW regulated river water sharing plans within the Murray-Darling Basin set long-term extraction limits that are less than the respective long-term Murray-Darling Basin Cap limit for each valley. This has meant that while these regulated river water sharing plans allow for total annual extractions to exceed the respective long-term extraction limit in any particular year, the long-term extraction limits will always result in lower consumption than what is allowed under the Water Sharing Plan limit (these excessively restrictive water sharing plan rules lead to inefficient consumption and hence lower revenue recovery by WaterNSW and WAMC). Hence by the very nature of the NSW Government setting these limits, NSWIC suggests that the driver of the under-consumption is the NSW Government, not licence holders.

Thirdly, NSWIC would consider it highly inequitable if IPART suggests that extractive water users should burden the full costs of further (environmental) regulatory obligations (e.g. particularly through Water Act and Basin Plan) even though it is not for their benefit and instead due to external legislative changes or government agreements. It should not be forgotten that WAL holders have no alternative but to utilise WaterNSW and WAMC services for the delivery of rural water – irrespective of the regulatory obligations imposed on both entities. NSWIC submits that IPART should conduct a thorough assessment about the drivers of these environmental regulatory obligations – with particular focus on whether these regulatory amendments are a result of change in Government policy due to greater community expectations around environmental water management. Furthermore, it should be reiterated that there are large quantities of planned environmental water established under water sharing plans (e.g. Environmental Contingency Allowance water) that pay for only a fraction of the functions/services provided by WaterNSW and WAMC.

Example: Lachlan Valley

Section 27 of the Lachlan Regulated River Water Sharing Plans 2016 specifies that 20,000 ML in Environmental Contingency Water (ECW) is available when General Security allocations at 1st July are greater than 50%. While the actual usage of the ECA varies, it is modelled at 10,000 ML/yr over the long term.

In order to deliver this water, WaterNSW has to a) consult with the NSW Office of Environment and Heritage (OEH) and DPI Fisheries, b) may have to manually operate regulators depending on where delivery is required, and c) has to measure and account for the water is it doesn't go through a pump (it's usually measured at a river gauge.)

This is a much greater "level of service" than is required to deliver an equivalent volume of water to an irrigator, but there is no charge to the impactor (e.g the state environmental water manager).

Finally, NSWIC would like to seek further information from IPART on how a potential 'service-based' cost share methodology would align with the "impactor-pays" approach. Without any further explanation on how the two approaches would be aligned, NSWIC's preliminary view would be that the "beneficiary-pays" approach would much closer suit a 'service-based' approach.

Topic 3: Economic Considerations

As outlined earlier, NSWIC considers it prudent that further work is being done on identifying the true 'impactor' of WaterNSW's and WAMC's operations and services (including stock and domestic, recreational, cultural and environmental water users).

For example, while the current costs for water quality monitoring has a 50% user share (e.g. for surface water) or 100% user share for groundwater, NSWIC suggests that the real driver of water quality are not necessarily extractive licence holders but rather local councils and stock and domestic users.

NSWIC believes there are serious gaps in the analysis of how much costs are incurred by WaterNSW and WAMC to service these other groups. To simply aggregate these costs in the government share does not overcome the problem that the actual quantification of these costs has never been fully completed (e.g. which requires significantly more data) and hence the whole basis of IPART's prudent and efficient cost allocation might not be accurate as the total shares might be inaccurate.

Also, if the NSW Government pays for WaterNSW's and WAMC's and services that are really the result of particular water user groups (e.g. recreational fishery), then NSWIC considers this process to undermine IPART's fundamental premise that 'impactors' should pay the prudent and efficient cost of the service.

It should be asked what the true drivers of WaterNSW's and WAMC's services are, for example:

- Who/what are the drivers of WaterNSW and WAMC's operations and services during dry periods (e.g. low flows)?
- Who/what are the drivers to install and maintain additional in-river gauging stations and attend environmental management meetings?
- Who/what are the drivers of water quality monitoring?
- Who/what are the drivers to provide water for cultural purposes?
- What is the purpose of the individual water storages in NSW?

NSWIC alleges that the answer will vary valley by valley, however it is likely that the primary drivers of these costs are not consumptive WAL holders.

Example: Gwydir Valley

The sharing of supplementary water from unregulated (below dam) events in the Gwydir Valley is split 50:50 between the environment and extractive users however costs are 100% (extractive) user funded. This is although: a) the first 500 ML/day are required to flow to wetlands; b) any additional flows can be shared 50:50 between extractive users and the environment and c) new rule to allow the delivery/direction of the environment (non-extracted portion) of the flow to be delivered at the environmental water managers discretion.

It is unreasonable to expect extractive water users (which may or may not include the NSW and Commonwealth environmental water managers) to pay for these outcomes when the community and/or environment is directly receiving at least 50% of the benefit (vis-a-via create costs for the management and allocation of these flows). It should also be added that any non-extracted share is also provided to the environment.

Further, the Gwydir Valley has an Environmental Water Advisory Group (EWAG) where local river operators provide substantial technical and operational support to implementing environmental watering plans. The time taken to assist in operationalising these plans has exponential grown with the size of the environmental water portfolio, in opposite to the historical behaviours of the rest of the consumptive pool. With water delivery remaining 100% impactor pays, this does not reflect the additional time taken to address the differing users either discrete or planned environmental water portfolios.

Finally, similarly to the Lachlan Valley, the Gwydir has an environmental contingency allowance of 45,000ML which is not captured in the cost share model.

As the examples above indicate, the answer on 'who' is the impactor may not be static but contingent on a range of other variables and conditions. As such, NSWIC suggests that IPART should consider conducting a thorough analysis of the drivers of WaterNSW's and WAMC costs with the aim to more accurately identify the group (or groups) that generate the cost of the service and then allocate the cost shares accordingly.

Without such a detailed analysis, NSWIC is concerned that an increasing burden of costs is (unnecessarily) imposed on WAL holders.

In this context, NSWIC also suggests that IPART should consider the impacts of the cost share methodology on consumptive WAL holders' decisions. While water charges are only one of the costs of food and fibre producers input costs, they can make up a substantial cost in dry periods (e.g. as outlined in NSWIC's pricing submission to the Australian Competition and Consumer Commission).

Example: NSW Coastal Valleys

The perverse outcomes of a state-wide application of the cost share framework is clearly evident in the NSW coastal valleys. The peculiarities in usage patterns, WAL holder distribution and cost apportionment between different classes of water "users" has led the NSW coastal valleys to experience some of the highest regulated charges (e.g. South Coast) and highest unregulated charges (e.g. North Coast) in NSW. Although the adjustment to the tariff structure in the NSW North Coast has brought some relief to the small number of regulated WAL holders, the same does not hold for the NSW South Coast Valley (or potentially the Hunter Valley in the future)[9].

Further, the state-wide application of the cost share framework is leading to very high unregulated water charges in the North Coast (e.g. mainly through the current sharing of costs for gauging stations[10]). Although WAL holders benefit from these gauges, the main purposes of these structures are flood mitigation and prevention of salt intrusion. However, as the current (state-wide) cost share framework cannot distinguish between the NSW coastal valleys and the NSW

[9] https://www.ipart.nsw.gov.au/files/sharedassets/website/shared-files/investigation-legislative-requirements-water-bulk-water-review-of-prices-for-waternsws-rural-bulk-water-services-from-1-july-2017-formerly-state-water-corporation/consultant-report-by-agripath-capacity-to-pay-submissions-review.pdf
[10] http://waterinfo.nsw.gov.au/drr/northcoast.shtml

MDB valleys, unregulated water charges in the North Coast are dis-proportionately higher than elsewhere in the state.

In addition, the NSW coast experience a much higher population density (i.e. creating needs for town, stock and domestic water supply as well as water management initiatives to avoid tidal salt intrusion), and there is also greater demand for water from recreational users who currently do not pay WAMC or WaterNSW charges. For example, both the NSW North Coast and South Coast are major tourist destinations in NSW. According to the NSW Government's official tourism website (VisitNSW.com), one of the four major attraction for the Bega region was the Brogo Dam. According the information, "Just 19 kilometres north of Bega is the stunning Brogo Dam, which is contained within the Brogo wilderness area and the southern section of Wadbilliga National Park. The park protects rugged coastal escarpment and plateau areas surrounding the Wadbilliga, Tuross and Brogo Rivers. The Brogo Dam is situated in the southern region of the park and offers picnic facilities and a ramp from which to launch your canoe or row boat. Power boats are also welcome in this area. You can hire canoes to explore the Dam and gain access to remote pockets of bushland. Explore tranquil rainforest gullies, and the rugged picturesque surrounds. Sheer cliffs overhang the water with rock orchids and ferns, while the surrounding bush harbours many native birds and animals."

As this example highlights, the costs of maintaining water infrastructure along the coastal valleys have been influenced by other drivers (including tourism).

Topic 4: Social Considerations

A greater focus should be placed on the importance of WaterNSW's and WAMC's 'water security' functions in drought periods.

While rural communities (including indigenous), stock and domestic water users, recreational users and small businesses benefit from WaterNSW's and WAMC's operations throughout the years, NSWIC suggest that the weight of these benefit shifts significantly during dry/drought periods where the vast majority of WaterNSW's and WAMC's efforts are directed to manage water resources as efficiently and effectively as possible to provide critical human needs and protect the broader environment.

As WAL holders' access to water is subordinated to fulfilling critical human and environmental needs in times of drought, NSWIC questions whether the current cost share framework accurately recognises this shift in operational functions of both WaterNSW and WAMC in different climate scenarios.

NSWIC recommends that IPART conducts a thorough assessment of WaterNSW's and WAMC's 'water security' functions and quantifies the costs imposed on WaterNSW and WAMC to service this function.

Topic 5: Environmental Considerations

As outlined in earlier sections of this submission, there have been significant changes in the legislative and policy framework pertaining to WaterNSW and WAMC.

With the endorsement of the Inter-governmental agreement on a National Water Initiative in 2004, the Council of Australian Governments embarked on a new era of water reform which not only consolidated the 1994 National Competition Policy reforms but also extended the Cap and Trade market-based system, facilitated efficient water use and addressed structural adjustment issues. In the preamble to the Intergovernmental Agreement on a National Water Initiative it was stated that “water may be viewed as part of Australia’s natural capital, service a number of important productive, environmental and social objectives”. In addition, it was stated that “governments have a responsibility to ensure that water is allocated and used to achieve socially and economically beneficial outcomes in a manner that is environmentally sustainable”. Hence, there is clear evidence that governments have a key role to play not only in efficiently managing of water resources but also in delivering water resources to achieve a true triple bottom line outcome.

Further, water management in NSW fundamentally changed with the introduction of the *Water Act 2007 (Cth)* and the *Basin Plan 2012 (Cth)* as it has imposed another layer of regulation on NSW water licence holders that was strongly focused on the environment. While NSWIC understands that the State Governments have received partnership funding to implement the Basin Plan within their respective jurisdictions, NSWIC suggests that the Federal water reform process has generated many more (unaccounted) costs for WaterNSW and WAMC in the form of management and coordination between the various state and now Federal departments responsible for water as well as the delivery of environmental water (both held and planned environmental water). As these changes could not have been foreseen by IPART when it first introduced the cost share framework in 2001, NSWIC suggest that IPART should consider whether the current cost share proportion for WaterNSW’s OPEX (e.g. environmental planning and protection) are accurate and equitable in the context of significant legislative and policy amendments imposed on NSW over which consumptive licence holders had no control. In addition, NSWIC suggests a review of WAMC’s cost share proportion for Water Management Planning (W06-01 to W06-06) and Surface Water Monitoring (W01-01 to W01-05).

Further, in Part 5, section 5.4 of the Intergovernmental Agreement on implementing water reform in the Murray-Darling Basin (revised version 2017) it is stated that “the Parties will work to facilitate the use of environmental water by protecting environmental water in-stream and on land (…) where feasible and agreed by: a) implementing measures, to enable the delivery of held environmental water in-stream through arrangements such as water shepherding to facilitate environmental flows; b) enabling further use of environmental water at multiple locations along the river, such as through return flow provisions; c) enabling river operators to deliver specified flow rates at particular locations to meet environmental water requirements within capacity constraints and as efficiently as possible; d) working together to refine methods to accurately monitor, measure and account for environmental water use and return flows; and e) implementing measures to enable environmental water to be used to supplement unregulated flows, while addressing third party impacts”. Further, section 5.5 of the agreement notes that “the Parties agree to establish mechanisms to coordinate planning, delivery and monitoring of environmental water”. These sections within the IGA give clear evidence that both WaterNSW and WAMC are under significant pressure to plan, coordinate and implement measures for the prime benefit of the environment – a fact that is not recognised in the current cost share framework. As a key principle, NSWIC is of the view that planning is (and must remain) a role for government and be paid for by government.

NSWIC submits that IPART should request WaterNSW and WAMC to report on the costs of providing these services and functions.

In addition, NSWIC also suggests that IPART institute an iterative process to collect data on these cost drivers and how they may change over time with the progressive implementation of the Basin Plan and other state water reform processes – in particular in the context of the current draft Exposure Bill related to the NSW Water Reform Action Plan.

In addition, NSWIC is of the view that IPART should conduct a review of WaterNSW's individual assets to determine whether there are any assets that are operated for the primary purpose of environmental water delivery. It needs to be determined how much of WaterNSW's services are a result of regulatory (environmental) obligations imposed which are independent of WaterNSW's core water delivery functions.

<u>Topic 6: Governance / Performance:</u>

Despite the significant administrative changes that have occurred within and between WaterNSW and WAMC, NSWIC is of the view there is merit in reviewing the current roles and responsibilities for all NSW agencies involved in water with a view to streamline functions and services, increase performance and achieve cost savings that can ultimately be passed back to WAL holders.

NSWIC is very disappointed that since the last restructure in 2016 (and then following in 2018 with the establishment of the Natural Resources Access Regulator), WAL holders in NSW have seen a deterioration in the performance of the Department of Industry – Water (e.g. particularly around the development of the Water Resource Plans and other key policy matters) and no cost savings (e.g. an efficiency dividend passed back in forms of lower charges).

Further, as highlighted in the output measures report submitted by the Department of Industry – Water (appended) to IPART, there are some serious issues with the performance reporting by the WAMC. On Page 16 of the report, it is stated that WaterNSW and DPI apparently achieved an output performance of 130 per cent against the activity code related to 'reviewing, replacing, extending and merging Water Sharing Plans'. While NSWIC acknowledges that WAMC reviewed and extended the existing WSPs, no satisfactory review was conducted (despite WAL holders paying for this cost code for six years)

Also, the output report seems to suggest that the Department of Industry – Water has completed the development of the Water Resource Plans. Considering that none of the Water Resource Plans are yet completed and NSW is running into serious risks of not meeting the Basin Plan deadline to have all 22 Water Resource Plans accredited by 1 July 2019, NSWIC urges IPART to conduct a thorough review of the KPIs and reporting measures by both WaterNSW and WAMC and request both entities to submit yearly progress reports on their performance that are then independently verified to assure their accuracy. It is important that WAL holders pay water charges that are built on an output and performance system which is accurate, transparent, cost-reflective, practical but also robust and auditable.

NSWIC strongly suggests that IPART considers (either via the cost share review or via the next determination) to impose a penalty component on WaterNSW and WAMC if the KPIs are not met. NSWIC believes this is necessary to discourage poor performance by both entities – which lies at the heart of the rural cost share review which is designed to only allocate efficient costs to both the NSW Government and water users.

<u>Topic 9: Service vs Activity</u>

Prior to considering whether the current fundamentals to determine users vs. government cost shares should be amended, NSWIC suggests that IPART should clearly articulate the shortcomings of the current approach. While NSWIC would support the notion that the existing cost sharing framework is complex and riddled with uncertainties, the Council and its members are not convinced that IPART has provided sufficient evidence to convince stakeholders that a service-based approach is necessarily preferable to the current 'activity code' approach. Without a significant improvement in data collection that would allow for greater precision in cost estimates (e.g. which are verifiable), NSWIC suggests that a 'service based' approach could actually lead to less transparency and clarity for stakeholders – particular in the context of the external 'funding' provided by the Commonwealth Government to activities undertaken by WAMC. NSWIC is particularly concerned that the move to a 'service based' approach could lead to 'double-dipping' in the recovery of costs.

In addition, NSWIC suggests that any potential benefits from a 'service-based' approach will depend how granular the services are defined as it would be difficult to accurately determine the 'impactor' (e.g. or any changes over time). It does perplex NSWIC slightly that IPART is considering a 'service-level approach' which would more closely align with a 'beneficiary pays' approach – a principle that IPART suggested it is not interested to embark on.

In broad, NSWIC is agnostic as to which approach is applied to a future cost share framework, except that we believe it needs to be robust, based on solid evidence and data, be transparent, audible and yet sufficiently flexible to incorporate future changes in the regulatory and policy framework that governs water resources in the state.

As such, NSWIC recommends that IPART should recommend regular 10-year reviews of the cost sharing framework to ensure that it remains fit for purpose.

Further Issues

In addition, NSWIC would like to flag the following emerging issues that will impact on the operations of WaterNSW and WAMC and ultimately impact the cost share framework:

- The ongoing costs of Basin Plan implementation that are not funded by the Commonwealth (e.g. any future water resource plan amendments which will be costlier due to the dual state-federal accreditation process and any future costs related to the SDL adjustment mechanism, the protection of environmental flows). The current cost share framework is not able to recognise these **significant** future costs.

- The structure of the cost share framework should be the same for both WaterNSW and WAMC (e.g. there should be one set of 'umbrella' activity codes within which more specific codes apply to the different organisations. Common cost sharing decisions might then be made at the umbrella activity code level ensuring greater consistency across the two organisations and prevent any 'double-dipping'). Finally, there appears to be very little information on how the current cost share framework fits the existing accounting system across WaterNSW and WAMC (or indeed the tripartite structure with NRAR).

Response to IPART Issues Paper Questions

1. Do you agree that Water NSW and WAMC's costs should be allocated between water customers and the Government (on behalf of the broader community) using the impactor pays principle – i.e. those that create the need for the cost to be incurred should pay the cost.

Firstly, NSWIC strongly supports the continuation of a cost share framework which allocates WaterNSW's and WAMC's costs between water customers and the NSW Government. For further detail on why a cost sharing framework is appropriate and justified, NSWIC advises IPART to review our submission (Topic 1).

Secondly, on the topic of the 'impactor pays' vs. 'beneficiary pays' principle, NSWIC refers IPART to further details outlined under Topic 2.

NSWIC acknowledges that IPART has expressed a preference for the 'impactor pays' approach, however NSWIC stresses that the current application of this approach is too rudimentary to accurately reflect current conditions or the range of 'impactors' that generate cost for WaterNSW and WAMC (e.g. the costs incurred for rural communities, stock and domestic users, the environment, recreational users, fisheries and cultural needs have never been fully assessed or quantified in all climate scenarios).

Further, the environment in which WaterNSW and WAMC operate has become more complex through wide-scale State and Federal regulatory and legislative changes concerning water management in NSW and through the environment becoming a major water licence holder in NSW. As such, the current application of the impactor-pays approach is inappropriate as it does not pick up on the different demands of different WAL holders in NSW and the resulting different 'needs to incur costs' (e.g. the need to incur a cost for an extractive water licence holder would differ to an environmental water licence holder).

Also, NSWIC emphasizes that the current 'impactor pays' approach does not pick up the different 'needs to incur costs' within different climate scenarios (e.g. the need to incur costs in dry vs average vs floods would vary vastly) – however this fact has never been acknowledged or incorporated by IPART in the cost share framework.

In order to improve the current 'impactor pays' approach, NSWIC submits that IPART should conduct a further detailed analysis on:

1. The true impactor of WaterNSW and WAMC's costs in all climatic scenarios; and
2. The difference in needs between licence holders (e.g. the environment vs consumptive water users).

Without this analysis, IPART runs into the risk of potentially cross-subsidising different 'impactor' groups within the framework.

2. Do you agree that the NSW Government's share of WaterNSW and WAMC's regulated costs should be limited to where:
- there are genuine legacy costs and/or
- is not practical or cost-effective to recover costs from other users?

As outlined in Topic 1, NSWIC agrees with IPART that it would be inappropriate to require water customers to pay for ‘legacy costs’, however the Council questions whether the current “1997-line in the sand approach” remains appropriate to define legacy costs.

NSWIC is of the view that there needs to be a much more sophisticated approach to defining legacy costs and how these should be reported on in future price determinations. NSWIC does not believe there has been sufficient clarity to date on how WaterNSW and WAMC report on legacy costs and as such, there is room to provide WAL holders with greater transparency.

Further, NSWIC suggests that the further we move away from 1997, the more inappropriate the current IPART approach will be – particularly given the ongoing legislative and regulatory obligations imposed on WaterNSW and WAMC, which, in NSWIC’s perspective should potentially be considered (partial) legacy costs (e.g. if a change in government policy has created additional costs that have neither been demanded by extractive water users nor been the result of extractive water users).

As outlined in our response to Question 1, NSWIC suggests that further detailed work is required to identify and quantify the true impactors of WaterNSW’s and WAMC’s services in all climate scenarios. In addition, NSWIC is of the view that extractive water users should not pay for the costs that are incurred due to the needs of other licence holders (e.g. the environment).

3. Do you agree with the current cost share ratios? Should the list of activities and/or cost share ratios be amended? If so, how and why?

Based on NSWIC’s response to Questions 1 and 2, NSWIC does not support the current cost share ratios, however without further analysis (e.g. outlined in NSWIC’s response to Questions 1 and 2), NSWIC would not be able to comment in detail on how the cost share ratios should be refined.

However, NSWIC would like to make the general observation that it is not clear whether the cost share framework(s) for WaterNSW and WAMC fundamentally have one underlying basis (e.g. are derived from one master cost share framework). If not, NSWIC suggests, IPART should consider creating such master cost share framework to not only improve the transparency of the current system but also ensure that there is no ‘double-dipping’ between the two frameworks.

Finally, in respect to the current cost codes, NSWIC suggests the following should be reviewed:

WaterNSW:

- OPEX: Asset Management Planning, Hydrometric monitoring, flood operations, environmental Planning and Protection.
- CAPEX: Asset Management Planning, Water Delivery and Other Operations, Office Accommodation Capital Projects, Environmental Planning and Protection, Flood Operation

WAMC:

- Any cost codes related to planning and regulatory functions, including W10-02, W08-01, W06-05, W06-6, W06-01, W06-02 and W05-01; and

- Any cost codes related to water quality monitoring (e.g. W01-03, W01-04, W01-05, W05-02)

4. Do you agree with the issues identified with the current cost sharing framework?

While the Frontier Economics report has identified some of the issues with the existing cost share framework (e.g. the need to separate the environmental licence holders and extractive water users), NSWIC is of the view that Frontier Economics' assessment remains superficial and does not address some fundamental issues with the current cost share framework.

In order to uncover these additional issues, IPART must conduct further detailed assessments around the true impactor of the costs, the magnitude of these costs imposed on WaterNSW and WAMC, whether the impactors vary in different climate scenarios, whether the definition and reporting of legacy issues is efficient and equitable, the impact and drivers of any regulatory and policy changes that have occurred since 2001. Without these assessments, NSWIC remains unconvinced that there are net benefits to moving to a 'service-based' approach (please see NSWIC's answers to Questions 8, 9 and 10).

5. Are there any other issues with the current sharing framework that should be considered in this review?

NSWIC refers IPART to our responses to Question 1, 2, 3 as well as the detailed comments provided in the main section of this submission.

6. Do you agree with our proposed approach to reviewing the current cost sharing framework?

While NSWIC does not object to IPART's approach to reviewing the current cost share framework (e.g. as per page 17 of the Issues Paper), there are further key ancillary analysis required to support this work.

Firstly, as NSWIC outlined in its response to Question 1, IPART must conduct a separate analysis of the true impactors (and quantify their costs), the drivers of costs in different climate scenarios, a review of legacy costs definition and a thorough assessment of the regulatory and policy changes that have occurred in NSW since 2001 and which have impacted the operations of WaterNSW and WAMC. Without these additional reviews, NSWIC does not believe IPART is in a position to adequately and efficiently review the current list of activity codes or even consider an alternative cost sharing framework.

Secondly, without a full analysis of the regulatory and policy changes that have occurred since 2001 and the additional complexities that have arisen through the involvement of the Federal Government in water management (via the Water Act 2007 and the Basin Plan 2012), a simple review of the activity codes will assist IPART in improving its cost sharing objectives.

7. What are the potential challenges and barriers to moving to a service-based approach?

NSWIC suggests that the barriers and challenges are vast – practically, the modification of the cost share framework from "activity codes" to service-based approach would require an appropriate mapping of current activity codes to services codes for WaterNSW and WAMC. NSWIC suggests that this will be challenging – evidenced by the previous (modest) amendments to WAMC's activity code in the 2016 regulatory determination which raised a number of concerns amongst irrigators that costs would be shifted to licence holders.

Furthermore, NSWIC remains concerned that without further data collection and a thorough assessment of the drivers for a new 'service-based' approach, there is a significant risk that future costs are incorrectly assigned (e.g. leading to price shocks) or that they lead to cross-subsidisation between different water users (e.g. as shared costs cannot be correctly identified).

Also, depending on the granularity of a service-based approach (and without adequate information on the costs incurred from 'other users'), such an approach could lead to an inequitable shifting of costs to WAL holders, who by the nature of being a licence holder, are easily identifiable.

Finally, NSWIC suggests that IPART must consider how 'external costs' would be incorporated into a potential new 'service-based' approach. NSWIC believes there are countless risks for 'double-dipping' and 'cost shifting' as well as transparency issues.

8. What are the benefits of moving to a service-based approach?

As outlined in the Executive Summary, NSWIC is unsure whether the shortcomings of the current cost share methodology would warrant the development of a completely new methodology. In particular, as outlined in NSWIC's response to Question 7, IPART has not provided sufficient evidence to convince NSWIC that a new framework would substantially improve the current approach applied by IPART or lead to a materially preferable regulatory decision.

9. Are the benefits of moving to a service-based approach likely to exceed the cost?

NSWIC suggest that the answer to this question depends on the assessment of Questions 7 and 8.

10. Would there be merit in transitioning to the service-based approach over time?

Whether or not there are merits/benefits in transitioning to a service-based approach will depend on a thorough analysis of the shortcomings of the current approach, an assessment of the current data and information gaps which will inform whether a change in approach is warranted. Without these preliminary steps, NSWIC urges caution to fundamentally change its current approach to cost sharing.

11. Are there alternative cost sharing frameworks that could better achieve our objectives or could achieve them at lower costs? If so, how would they operate?

Please refer to NSWIC's answer to question 10. NSWIC suggests that this question should be secondary to a thorough assessment of the operation of the existing cost share framework.

12. Is there any other information we should consider in our review and assessment of the current activity- based cost sharing approach.

NSWIC hopes this submission (Topic 1 to Topic 9) provides further information that would assist IPART in reviewing the current cost share framework.

For any further questions, please contact:

Stefanie Schulte
Policy Manager
[redacted]

Appendices

Appendix A – WAMC Output Measures for 2016-2017

Extract from IPART website – Prices for WAMCs water management services, WAMC Output Measures for 2016-17 (p.16)

Activity	Outputs	Measures and Indicators	Information reported by WaterNSW and DoI Water in November 2017	Information reported by WaterNSW and DoI Water in March 2018
W06-02 Water plan development (inland) The development, review, amendment, and extension or replacement of water management plans; the development of additional planning instruments to comply with the Commonwealth Water Act; and the consultation activities associated with developing these plans for the inland water sources.	• Water Resource Plans development for MDB water sources. • Implementation of the WSP Ecosystem Performance and Assessment Strategy. • Each WSP audited every 5 years to determine its provisions are being actioned. • Completion of evaluation reports for the WSPs as they expire. • Remake or extension of each WSP as it expires. • WRP assessment tasks	**Output measure (OM19)** • 8 WSPs will be reviewed and replaced/extended. • 2 WSPs will be reviewed. • 3 WSPs will be reviewed and merged into an existing WSP. • 22 WRPs will be completed. **Performance indicator** Cumulative percentage of forecast WSPs reviewed, replaced/extended or merged: • Forecast: 100% Cumulative percentage of forecast WRPs completed: • Forecast 100%	**DoI Water** **Output measure** - 7 WSPs replaced/extended - 2 WSPs reviewed - 8 WSPs were reviewed and merged into existing WSPs - 1 WRP completed **Performance indicator** 130% percentage of forecast WSPs reviewed, replaced/extended or merged WRPs completed	N/A
W06-03 Floodplain management plan development The development, review, amendment and extension or replacement of Floodplain Management Plans in collaboration with OEH.	• Floodplain Management Plan (FMP) development. • Remake of each FMP as it expires.	**Output measure (OM20)** Number of FMP completed or remade: • 5 new FMPs will be developed **Performance indicator** • Cumulative percentage of forecast FMPs completed: • Forecast 100%	**DoI Water** **Output measure DoI Water** Regulated - Gwydir - 1 plan (Gwydir Valley FMP commenced 10 August 2016) Unregulated - Far West - 1 plan (Barwon-Darling Valley FMP commenced 29 June 2017) **Performance indicator** 40% cumulative percentage. Details as it follows	N/A

WAMC Output Measures for 2016-17 IPART 16

The full report is available via:

https://www.ipart.nsw.gov.au/files/sharedassets/website/shared-files/investigation-legislative-requirements-water-bulk-water-water-administration-ministerial-corporation-nsw-office-of-water-pricing-review-commencing-1-july-2016/report-wamc-output-measures-for-2016-17.pdf

Appendix B – Letter to the Minister

NSW Government Contributions to WaterNSW Bulk Water Charges

NSWIC
NEW SOUTH WALES IRRIGATORS' COUNCIL

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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 the Australian Competition and Consumer Commission (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 dependant 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,

[redacted]

Richard Stott
Chairman