



Detailed paper A – Context

Submission to IPART for prices from 1 July 2021 for water management services provided by the Department of Planning Industry and Environment-Water and the Natural Resources Access Regulator on behalf of the Water Administration Ministerial Corporation

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Detailed paper A – Context

In setting the NSW Government Priority of “sustainable and secure water resources” and Premier’s Portfolio Priority to “develop an integrated water strategy for the entire state to ensure efficient use of resources and future water security for both regional and metropolitan NSW”, the NSW Government has emphasised the importance of, and its commitment to, water access and availability across NSW.

We contribute to those priorities through meeting legislated responsibilities for our water management activities, to ensure available water is shared according to agreed water sharing rules, the integrity of water rights are protected, and water resources are managed in a way that is sustainable in the long term for both water dependent ecosystems and water users.

Investigations and legislative changes

Since 2016 when WAMC prices were last determined by IPART, there has been significant water user, community and government concern about, and critical external reviews on, water resource management systems. Several independent investigations into water management in NSW conducted since 2016 collectively concluded that additional resources were required to deliver effective compliance and enforcement arrangements in NSW.

A report by the ABC’s Four Corners in July 2017 that revealed alleged widespread water theft, meter tampering and allegations of special treatment for irrigators, sparked the Ken Matthews-headed Independent Review of Water Management and Compliance¹ (the Matthews Review) that led to development of the *NSW Government’s Water Reform Action Plan*, which fed into legislative reform passed by the NSW Parliament in June 2018. That legislative reform and more rigorous implementation of existing laws and regulations underpin a substantial proportion of the increased expenditures proposed in this submission.

Reports released by the Matthews Review in September and November 2017 noted that while irrigator non-compliance was not rife, there was intense “community concern about compliance shortfalls” and “strong and broad-based stakeholder support for firm and speedy action to fix the compliance and enforcement system.”² Mr Matthews referred to ‘serious shortcomings,’ noting that ‘decisive action is expected, and will be widely supported’ and that there was ‘strong and broad-based stakeholder support for firm and speedy action to fix the compliance and enforcement system.’³

The Matthews Review found the water-related compliance and enforcement arrangements in NSW in place at that time to be “ineffectual and require significant and urgent improvement. Specifically:

- the overall standard of NSW compliance and enforcement work has been poor
- arrangements for metering, monitoring and measurement of water extractions, especially in the Barwon–Darling river system, are not at the standard required for sound water management and expected by the community

¹ Full details of the Matthews Review are available at <https://www.industry.nsw.gov.au/water/what-we-do/how-water-is-managed/independent-review-water-management-and-compliance>

² Matthews, K. Final Report - *Independent investigation into water management and compliance in NSW*, November 2017 p1.

³ Ibid. p1 and p2.

- certain individual cases of alleged non-compliance have remained unresolved for far too long and
- there is little transparency to members of the public of water regulation arrangements in NSW, including the compliance and enforcement arrangements which should underpin public confidence.”⁴

The Matthews Review final report advised on implementation of the recommendations set out in its interim report. In it, Matthews identified that “budgetary resourcing of the reform projects will be a key success factor”⁵ in the ongoing work of NRAR and DPIE Water, and that “reforms go nowhere without resources to complete the work.”⁶ He stated that a major risk to the successful long-term management of water was the allocation of the necessary resources, with the major critical resource constraint being human resources (staff).⁷

The Matthews review recommended establishing a natural resources regulator to police water laws and hire staff working in compliance. The NSW Government in December 2017 legislated to create NRAR as an independent body to oversee the compliance and enforcement of water regulation in NSW.

Along with establishing NRAR, the NSW Government’s response to the Matthews review was to put in place its December 2017 Water Reform Action Plan (WRAP),⁸ referring to the need for an equitable and transparent approach to the management of NSW water for future generations and the Government’s commitment to the Murray Darling Basin Plan. The WRAP’s four goals are to:

- introduce best practice for water management,
- ensure transparency in how water is shared, allocated and managed,
- build a compliance and enforcement regime that ensures strong and certain regulation, and
- build capability to support implementation of water reforms.

The NSW Government responded with major reform commitments to provide greater accountability and transparency in water management service delivery. Water resource management activities we deliver have substantially increased in scope and cost as a result.

In June 2018 the NSW Government made major legislative amendments to the *Water Management Act 2000* required to implement the WRAP and respond to the Matthews Report. The then Minister for Regional Water in his second reading speech emphasised the need to restore confidence in water management, enhance compliance capacity and improve transparency and accountability. The 2018 legislation provided for:

- better transparency from better access to information by the public, through creating a central public register of water access licences (WALs), and other approvals, water balance and meter readings and information on water availability,
- increased regulation of water metering with more agricultural irrigators required to be metered, a presumption that water taken is first subject to a WAL rather than basic landholder rights to runoff water (protecting water for the environment), and water users being required to own their own meters, maintain them and report faults in a timely manner,

⁴ Matthews, K. Interim Report - *Independent investigation into water management and compliance in NSW*, September 2017 p4.

⁵ Matthews, K. Final Report - *Independent investigation into water management and compliance in NSW*, September 2017 p10.

⁶ *ibid* p2.

⁷ *ibid* p2.

⁸ Available at https://www.industry.nsw.gov.au/__data/assets/pdf_file/0016/136204/nsw-government-water-reform-action-plan.pdf

- more rigorous monitoring, compliance and enforcement measures and more significant penalties for taking water without a WAL,
- more flexibility and control in managing environmental flows, and
- additional powers to manage extraction limits, including Ministerial power to amend the share or extraction limits of WALs, assign individual daily extraction components between users and suspend basin management plans during extreme events.

The Government's legislative reforms included the establishment of NRAR with power to carry out compliance audits and enter into enforceable undertakings.

The NSW government's expectation in making these legislative changes was for an improvement in the compliance and enforcement of water regulation, giving NRAR a clear mandate to drive the delivery of "an effective, efficient, transparent and accountable compliance and enforcement regime for water management" in NSW, and for NRAR to become "a leading example of best practice regulation".⁹

Reinforcing the need for the 2018 legislative changes, the NSW Ombudsman released its Special Report to the NSW Parliament in August 2018. It noted there were close to 20 times over two decades when the responsibility for managing ground and surface water resources was moved from one government agency to another.¹⁰ These combined to have a "devastating impact"¹¹ on staff, expertise, and the ability to maintain management and information systems. The Ombudsman noted that there was "seriously inadequate resourcing to properly protect the state's increasingly scarce and valuable water resources"¹² and indicated that because compliance functions were inadequately resourced in terms of funding and staff, the agencies failed to take appropriate and timely action on instances of clear breaches of the law and meet acceptable standards of compliance management.

The NSW Ombudsman also stated that "it is vital that any water compliance and enforcement effort is adequately funded and resourced and staffed by qualified experienced persons with investigative experience in dealing with offences where the burden of proof is beyond reasonable doubt".¹³

The legislation reinforced NSW's water management framework, contributing a necessary boost to public confidence, credibility and the effectiveness and fairness of water management and the Government's ability to ensure compliance. Strong water management frameworks provide greater certainty for business investment in water dependent industries in regional NSW, including irrigated agricultural production, mining and nature-based tourism.

The water management framework was again the subject of an investigation following three significant fish death events in the Lower Darling in December 2018 and January 2019. The events covered a 40 kilometre stretch of the Darling River, downstream of Menindee Lakes and while the exact number of fish deaths is unknown, anecdotal estimates ranged from hundreds of thousands to at least three million fish deaths. Influencing factors considered by an independent Panel into the fish death events led by Professor Rob Vertessy, included climatic conditions and, more relevantly in terms of the water management framework,

⁹ Ministerial Letter of Expectations, Correspondence from Hon Niall Blair Minister for Primary Industries, Regional Water, Trade and Industries to Craig Knowles Chair NRAR, 27 February 2018, p1

¹⁰ NSW Ombudsman, *Investigation into water compliance and enforcement 2007-17*, November 2017 p5

¹¹ *ibid* p6

¹³ *ibid* p28

hydrology and water management and Menindee Lakes operations. The Vertessy Report¹⁴ said that Basin Governments should prioritise:

- protection of flows, through committing to protect low flows in drier conditions
- Basin connectivity, by developing flow management strategies and removing barriers to fish movement to protect pools for native fish habitats
- improvements to Menindee operations, by reviewing and considering changes to the Menindee Lakes' operating procedures
- publication of joint plans for implementation of northern Basin Toolkit Measures with an aggressive timeline for delivery, and
- increased investment in research and development to address knowledge gaps.

The Vertessy Report also made recommendations about better ongoing monitoring of fish populations, development of authentic native fish management and recovery strategies, management of water for the environment and research into understanding how climate change threatens Basin water availability and aquatic ecosystems. The report underscores the state's increasing obligations for improved water management strategies to protect water resources for the benefit of water users and environmental water holders, along with the community, industries and the environment. The work we commenced following the Matthews' review including implementation of our significant environmental water work program focusing on better management of environmental water in the northern NSW Murray Darling Basin will address the concerns raised in this report.¹⁵

And even more recently, the November 2018 final report of the Natural Resource Commission (NRC) Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources (the Barwon-Darling WSP)¹⁶ observed that the *Water Management Act 2000* clearly prioritises protection of the water source and dependent ecosystems, followed by basic landholder rights including native title, and then other extractive uses, going on to conclude "[t]he current Plan has not effectively achieved this prioritisation"¹⁷, in other words, that WSP is not currently meeting requirements of its legislation.

The NRC noted that our initiatives to improve floodplain harvesting management, improve gauging, metering and telemetry, and active management in unregulated tributaries will assist in meeting the objectives of the Barwon-Darling WSP and called for the plan's rules to be strengthened in a number of ways so that it can better achieve the requirements of the *Water Management Act 2000*, restore shareholder trust in the water planning process and increase the ability of the river eco-system to absorb future shocks.¹⁸ The work to do that, and to do similar work on a number of other WSPs, will require greater from us at a cost borne by users and Government.¹⁹

Our ability to undertake the water management activities we are tasked with, to the standards expected by the NSW Government and community, and legislated through the

¹⁴ <https://www.mdba.gov.au/publications/mdba-reports/response-fish-deaths-lower-darling>

¹⁵ Further information of this work is provided under WAMC activity code W05-03 in Detailed Paper E that forms part of this submission.

¹⁶ Available at <https://www.nrc.nsw.gov.au/wsp-reviews>

¹⁷ Natural Resources Commission Final report, Review of the *Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012*, September 2019, p1

¹⁸ Ibid. p6

¹⁹ Information on the work we have been doing on this in the 2016 regulatory period and will continue to do going forward is set out in Detailed paper E of this submission under WAMC activity code W06-03.

Water Management Act 2000, is wholly reliant on our levels of resourcing, our people. Our proposal sets out the resourcing we need in order to meet our obligations, and the prudent and efficient expenditures required to put in place and retain that resourcing.

Climate and economy: users’ ability to pay

The water users who are faced with contributing to the significant step change increase in expenditures we forecast are spread across regional NSW, holding licences with rights to purchase water from a wide range of sources and using that water for a wide range of purposes. The regional NSW economies that water users operate in are underpinned by agriculture (including irrigated agriculture), mining and tourism and the services that support these industries. These industries are the engine room of the regional economy and all require water availability and access to ensure their ongoing viability.

Our proposal takes into account the impacts on the water users who will pay the proposed prices, of climatic conditions, including drought and bushfire, and economic impacts caused by the COVID pandemic.

Drought and bushfires are a natural part of Australian climatic conditions; however, the conditions experienced in NSW over recent years are at the extreme end of what can be expected. All of NSW has experienced major drought conditions since mid-2017. Although significant rainfalls have been recorded in the first quarter of 2020, describing the weakening drought conditions as a ‘recovery’ as at June 2020 is highly contentious at this stage. Sustained drought recovery is dependent on several consecutive months of above average rainfall to address the current low levels of soil moisture.

The Bureau of Meteorology has reported that March 2020 rainfall was above average through much of NSW. However, soil moisture averaged over the 39-months since January 2017 remains at lowest on record across almost half of the Basin and will likely remain low without several months of above average rainfall. Water storage levels increased in many of the major storages in the Murray–Darling Basin during March 2020. However, storages in the South decreased, resulting in the total storage across the Basin increasing only slightly to 32% of capacity. Although at the time of writing, all major rivers continue flowing, most rivers in the southern Basin remain with average to lowest flow on record since 1980.²⁰

The risk of ‘false recovery’ is still possible and this is a key period of exposure of farm businesses managing a long-term drought event. Even when climatic conditions return to normal, time is needed for pastures and crops to grow. Extended drought resulting in production losses has already stripped more than a billion dollars from the NSW farm sector, with the total value of agricultural production falling from \$14.5 billion in 2016-17 to \$11.7 billion in 2018-19, a 19% drop.²¹ ABARES forecast this trend of lower production to continue for 2019-20 with:

- summer crop production at a record low, with rice forecast to remain around 46,000 tonnes, way below 806,000 tonnes grown in a regular season and
- forecast winter production levels 68% below the ten-year average to 2018-19.²²

²⁰ Australian Bureau of Meteorology (2020), Drought report 8 April 2020. Available at <http://www.bom.gov.au/climate/drought/archive/20200408.archive.shtml#tabs2=Rainfall-deficiencies>

²¹ ABS (2019), Value of Agricultural Commodities Produced, Australia, 2016-17.

ABS (2020), Value of Agricultural Commodities Produced, Australia, 2018-19. Available at <https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/7503.0Main+Features12017-18?OpenDocument>

²² ABARES (2020), Australian crop report (February 2020), p9-10. Available at https://daff.ent.sirsidynix.net.au/client/en_AU/search/asset/1029921/0

ABARES also projects that due to drought, the average profit on NSW broad acre farms in 2019–20 will to be the lowest in more than 40 years.²³ The average farm business is projected to make a loss of \$143,000 in 2019-20, on top of a \$120,600 loss in 2018-19 and a business profit of only \$6,400 in 2017-18.²⁴

The NSW Government has responded to the drought conditions by waiving the fixed charge component of water access licences since July 2018, which reduces our actual revenue. (A package of drought support for primary producers has also been provided by the NSW Government and administered by DPIE Water; no funding for any aspect of that package or its administration is sought through this proposal.)

On top of drought impacts, the bushfires over the summer of 2019/2020 have had significant localised impacts on water dependent horticultural industries including apple, pear and grape growers in the Hawkesbury and Riverina, as well as grape growers in the Hunter Valley, Canberra, Mudgee and Orange. There have also been significant stock losses in some areas along with machinery, pasture and fences. Although the bushfires were largely localised to the southern parts of the state, they affected business confidence in those regional communities and will require significant investment to restore affected agricultural businesses.

Hard on the heels of the bushfires, the COVID-19 pandemic is impacting every aspect of the NSW economy. Quantification of the COVID effect on NSW agricultural irrigators and regional communities is impossible, with uncertainty underpinning all decision making in the agricultural sector, as in other sectors. Concerns exist about labour availability for growers that rely on overseas workers who can no longer enter the country. Anecdotally, there is increased demand for some fresh foodstuffs. ABARES says the pandemic represents a significant short-term risk to Australian exports, particularly to China.²⁵

Reserve Bank Governor Philip Lowe has warned that because of COVID the Australian economy is experiencing its greatest contraction since the 1930s, with national output down 10 per cent and the unemployment rate likely to reach double figures, and that Australia is in 2020 likely to experience its biggest contraction in national output since the Great Depression. Dr Lowe is quoted as saying “Whatever the timing of the recovery, when it does come, we should not be expecting that we will return quickly to business as usual ... Rather, the twin health and economic emergencies that we are experiencing now will cast a shadow over our economy for some time to come.”²⁶

Although it is impossible to forecast the impact of the COVID pandemic with any accuracy at this time, we can expect a sharp increase in the incidence of financial hardship amongst water users, magnifying the effect of drought and bushfires already being experienced by water users across NSW.

Our proposal is based on a commitment to best practice water pricing as set out in the National Water Initiative, which includes recovery from water users of a share of the cost of the management of water under the principle of impactor or user pays, to secure sufficient revenue to allow efficient delivery of the required services. We balance this commitment

²³ ABARES (2020), Farm performance: broadacre and dairy farms, 2017-18 to 2019-20, Summary. Available at <https://www.agriculture.gov.au/abares/research-topics/surveys/farm-performance#performance-by-state-and-region>

²⁴ ABARES (2020), Farm performance: broadacre and dairy farms, 2017-18 to 2019-20, Table 4: Financial performance, all broadacre industries, by state, 2017–18 to 2019–20. Available at <https://www.agriculture.gov.au/abares/research-topics/surveys/farm-performance#performance-by-state-and-region>

²⁵ ABARES (2020), Agricultural Commodities March quarter 2020, p2. Available at https://daff.ent.sirsidynix.net.au/client/en_AU/search/asset/1030081/0

²⁶ Report by ABC News, 21 April 2020. Available at <https://www.abc.net.au/news/2020-04-21/reserve-bank-warns-challenges-for-australian-economy-coronavirus/12169914>

against our recognition that regional communities and water entitlement holders are experiencing ongoing financial hardship due to exogenous climatic and economic factors, quite outside their control. We do not propose to pass on in full the significant step change increase in the efficient costs of water resource management to water users already impacted by extended drought, bushfires and the COVID-19 pandemic. We recognise that this current combination of tough climatic and uncertain economic conditions combines to create a difficult operating environment for water users across NSW.