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# **Submission to the Independent Pricing and Regulatory Tribunal**

## **NSW Office of Water Determination**

# **100615**

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Chief Executive Officer

## **Introduction**

NSW Irrigators' Council (NSWIC) represents more than 12,000 irrigation farmers across NSW. These irrigators access regulated, unregulated and groundwater systems. Our members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries.

This document represents the views of the members of NSWIC. However each member reserves the right to independent policy on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

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## 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. Consultation processes in which NSWIC participates are evaluated against this policy.

We assess this consultation as *Indirect* and encourage the Committee to ensure that individual irrigators, together with representative groups, have access to the process.

Our policy requires consultation to proceed through five stages.

*(i) Identification of problem and necessity for change*

Satisfactory.

*(ii) Identification of solutions and proposed method for implementation*

This process must occur subsequent to the close of submissions.

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

This process must occur subsequent to the close of submissions.

*(iv) Explanation of interim determination and final feedback*

This process must occur subsequent to the close of submissions.

*(v) Publication of final determination*

This process must occur subsequent to the close of submissions.

## General Comments

NSWIC harbours extremely serious concerns as to the veracity of this IPART Determination process.

Any objective consideration of the information provided by NOW – and the manner in which it has been provided – would conclude that the process itself has been tainted. The capacity of those potentially impacted by the submission of NOW to understand and effectively analyse the multitude of conflicting documents, tables and letters must be seriously considered by IPART. NSWIC does not mind admitting that it has been difficult for us to understand the entirety of the submission put by NOW given its fractured nature.

NOW are seeking *massive* price increases at a time that irrigated agriculture can least afford it. After suffering multiple years of drought, NOW is demanding that cash reserves – where available – be accessed to fund programs that are at best ill-defined and at worse dubious in terms of necessity.

In particular, NSWIC asks IPART to seriously consider the necessity of the wide ranging and scantily documented series of programs that NOW seeks to fund in respect of the Murray-Darling Basin programs rolled out by the Commonwealth. The NSW Government sought, during negotiations with the Commonwealth, to protect itself with a “no net costs” approach. It appears through this submission of NOW to IPART that this approach does not extend to Water Access License holders and that they face massive cost increases as a result of the policy approach of Government. IPART must reject this as anti-competitive behaviour.

In particular, we insist that IPART take great umbrage to the demand of NOW that millions of dollars of MDBA costs be approved in the complete absence of any analysis of efficiency. It is anathema to the very existence of IPART that the capacity to charge costs that are protected from efficiency audit is maintained. Until – and unless – an external audit of the efficient operations (or otherwise) of the MDBA is carried out, IPART *must* reject all applications for contributions to those costs.

## Section 2

### 2.1 National changes

NOW claim that transfers of power and responsibilities to the Commonwealth have “not reduced the level of the Office’s water management activities, but added a substantial extra layer of policy development and implementation, information provision, consultation, reporting and negotiation...”<sup>1</sup>

NSWIC rejects this spurious claim and refers to the dot points provided by NOW as examples of “additional” work:

- The creation of the Murray-Darling Basin Authority with a key role of developing a Strategic Basin Plan by 2011 setting new (and expected lower) water extraction limits for each catchment in the Basin.
  - Work to develop the Basin Plan is being undertaken by the MDBA, not NOW. Pursuant to the agreement between NSW and the Commonwealth, funding to develop the Plan is being provided by the Commonwealth. Moreover, the development of sustainable diversion limits being undertaken by the MDBA ought result in reduced workload for NOW and this process was previously required in developing Water Sharing Plans.
- The involvement of the ACCC in the setting of water trading rules and water pricing across the Basin.
  - Far from a requirement for increased involvement in these matters, NOW did not even accrue significant expenses through the provision of a submission to the ACCC! Submissions on Water Market Rules were provided by the Department of Premier and Cabinet and State Water, no submission from the NSW Government or NOW was received at any stage of the Water Charing Rules (Termination Fees) process and only State Water lodged a submission on Water Charge (Infrastructure) Rules

It appears that only two papers were lodged by NOW – one on Water Trading Rules (direct from NOW – and lodged late) and the other on Water Planning and Management (lodged by “NSW Government”)<sup>2</sup>.

In any event, the fact that the ACCC has undertaken work that would previously have been within the realm of NOW ought result in a cost *saving* rather than an additional expense.

- The need to meet standards of water information required by the Bureau of Meteorology.

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<sup>1</sup> At page 8.

<sup>2</sup> Submissions listed on ACCC website viewed 3 March 2010.

- Even if expense was incurred to bring information up to standards required by the Bureau (which NSWIC does not concede), it is a one-off rather than a recurring expense once systems are in place to derive information.
- Reaffirmation of commitment to water reforms under the National Water Initiative
  - NSWIC submits that this one point clearly shows the misleading nature of the rhetoric advanced by NOW in claiming an additional workload. The NWI was not renegotiated, nothing was altered and no new work resulted from this “reaffirmation”.
- The entry of the Commonwealth as a major buyer and holder of water licenses for the environmental in the Murray-Darling Basin.
  - It is absurd to claim that the consolidation of “customers” could in any way result in additional expenditure, particularly when quantum of water remains unchanged. The fundamental economic principle – cost saving through scale – must be contemplated in respect of NOW and the consolidation of customers.

### 2.1.1 Murray-Darling Basin State Priority Projects

Whilst not a matter for IPART, NSWIC entirely rejects the assertion put by NOW that projects must be able to deliver water savings “in the form of environmental water licenses.”<sup>3</sup> To do so would be a fundamental breach of a commitment given by both the NSW and Commonwealth Governments that entitlements obtained under Water for the Future *will not have their fundamental characteristics altered*.

We note with interest the disclosure of NOW that the NSW Government have committed to providing “a 10 per cent contribution to the projects.”<sup>4</sup> Such commitment was not disclosed at the time of the Inter-Governmental Agreement having been announced. Stakeholders certainly did not agree to such a contribution and, as a result, thoroughly reject the assertion that any cost incurred by NOW ought be passed through to irrigators. If it was a decision of the NSW Government, then any of these costs should be borne by them (a 0% user cost share in the terminology of the NOW Submission).

Further, we note the assertion of NOW that “Commonwealth funding is for capital costs only, it does not cover the ongoing operation and maintenance and increased compliance costs.” When considering the mooted projects<sup>5</sup>, the vast majority in dollar terms have zero impact on the NOW budget. No “ongoing operation” will be necessary from NOW for private infrastructure upgrades (\$650m) or on farm projects (\$300m – run via the Department of Primary Industries in any event). Operation costs for stock and domestic systems which will be piped should, in fact, decrease due to their more efficient nature. Operation costs for replacement meters for regulated and

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<sup>3</sup> At page 9.

<sup>4</sup> At page 9.

<sup>5</sup> See list at page 9.

unregulated rivers and groundwater sources should be significantly lower given their remote telemetry capability. Moreover, we would expect that maintenance costs over the Determination period would be covered by warranty on purchased products – and if it is not, this should be considered a procurement failure by NOW and duly charged to Government.

### 2.1.2 Restoring the Balance

This program is based around the purchase of existing entitlement by the Commonwealth. That is, the transfer of existing entitlement from one owner to another. It is entirely misleading (which we submit is deliberate) for NOW to suggest that such activity could increase its cost base in any fashion. To the contrary, the concentration of large entitlement volumes to the hands of one owner ought result in a significant efficiency gain for NOW as it services lower customer volumes.

NOW point to negotiations with the Commonwealth in respect of shepherding. In response, we note that the Commonwealth has agreed to fund 100% of the costs of those negotiations.

### 2.1.3 Murray-Darling Basin Authority and the Basin Plan

This section describes the role of the MDBA in developing the Basin Plan. It goes on to suggest that NOW has provided – and will continue to provide – “significant resources”<sup>6</sup> to this process.

We note in response that the Commonwealth has agreed to pay 100% of the costs associated with the development of the Basin Plan. We therefore assume that any work undertaken by NOW is on a commercial, fee-for-service basis. As a result, there ought be no costs to be recovered and it is misleading for this comment to be included in NOW’s submission to IPART.

Moreover – and as discussed elsewhere – the suggestion by NOW that their Commissioner will “ensure the work of the MDBA is closely scrutinised”<sup>7</sup> is nothing short of an affront to the authority of IPART. NOW go on to note that they “do not believe it is appropriate for the Office or Water to publicly release details of MDBA costs.”<sup>8</sup> As noted elsewhere, it is entirely inappropriate for IPART to agree to set charges for costs whose efficiency are unable to be scrutinised by it.

### 2.1.5 Bureau of Meteorology and water information

NOW note that they have been allocated capital costs for the replacement of equipment and continue to state that the “ongoing operation and maintenance” of that equipment will “remain a State responsibility”.<sup>9</sup>

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<sup>6</sup> At page 11.

<sup>7</sup> Letter from Commissioner Harriss to Chairman Cox, 27 January 2010.

<sup>8</sup> Ibid.

<sup>9</sup> At page



NSWIC submits in response that new equipment replacing dated equipment must be cheaper to operate or, at very least, maintain due to warranty considerations. As a result, this provision ought result in a decrease in revenue requirements as efficiency is improved.

#### 2.1.6 Expansion of the hydrometric network

Whilst NSWIC supports the installation (or upgrade) of gauging stations to “improved real time continuous technology”<sup>10</sup>, we fail to understand how remote telemetry technology can possibly “require a doubling of visits per year”. We submit that the whole point of remote telemetry is the redundancy of physical site visits and the accompanying *cost reduction*.

River operations management is clearly a key part of NOWs remit. At the same time, the benefits of this task accrue far more widely that just to Water Access License holders. NSWIC submits that the costs of the network expansion should be met in large part by Government.

#### 2.1.8 Cap and Pipe the Bores Program

This program involves both a cost and revenue centre. IPART will recognise that part of the savings achieved is then publicly auctioned. NSWIC submits that this ought be a cost-neutral program *at very least*.

#### 2.1.11 National Water Initiative and Water Reform Commitments

As noted previously, the NWI has not been altered. No additional commitments have been made by NSW. It is mischievous of NOW to suggest that any additional costs will be incurred in the coming Determination period.

Moreover, an Inter Governmental Agreement between NSW and the Commonwealth in 2008 removed significant Risk Assignment liability from NSW, together with any work that would have been required by NOW in that process. That is, the anticipated work load should, in fact, have *decreased* in this respect.

### **2.1 National changes and requirements**

#### 2.2.1 Agency restructuring

NOW’s submission makes much of the changes brought about through consolidation of Departments in 2009.

NSWIC submits that the entire reason for the consolidation was increased efficiency. Whilst we recognise that “readjustment and reallocation”<sup>11</sup> may have occurred initially, we note that this was in the previous Determination period and was a result

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<sup>10</sup> At page 12.

<sup>11</sup> At page 14.

of Government policy change (and, as such, ought have been funded by Government). IPART must require NOW to identify the efficiencies achieved and hence pass on cost-savings to users.

### 2.2.3 Conversion of water licenses

NSWIC notes NOW's admission that they "had expected to complete this process"<sup>12</sup> in the previous Determination period. As such, NSWIC submits that the costs to achieve the conversion will have been included in the current Determination and that no provision is necessary in the current Determination as revenue ought have been carried over.

We are interested in the statement of NOW that the conversion of a license "increases its value"<sup>13</sup>. Given the rapidly evolving water market, NSWIC is concerned that NOW may be straying toward to the provision of advice which may require a Financial Services License.

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<sup>12</sup> At page 15.

<sup>13</sup> At page 15.

## Section 3

### 3.1 Revenue received

NSWIC accedes that the revenue received by NOW was lower than that forecast by IPART in the 2006 Determination.

The question that IPART ought pose to NOW in light of decreased revenue caused by short term climate variability is “what did NOW do to address the situation?”

NOW have not provided any data to that effect, but have merely sought increases based on quantum. There is no assessment of what was done, what might have been done or what should have been done. In the absence of any such assessment, NOW clearly have no plan to address such circumstances into the future should they reoccur.

Moreover, merely seeking increased revenue (and percentage returns on assets) *and* consumption forecasting heavily biased in favour of NOW, does not provide incentive to ensure that the Office can accommodate future climate variability.

NSWIC recognises that “affordability” is one of the components that IPART is to take into account. We submit, however, that efficiency must be given the same weighting. Whilst efficient operations cannot be determined based on the information currently provided by NOW, a lack of contingency planning measures that were taken into account or can be used for the future clearly shows an inefficient operation.

### 3.4 Operating costs

NSWIC is intrigued that the shortfall in operating costs was covered by a “supplementation of the Office’s budget of around \$5m by the State Government and by the Office drawing on cash reserves.”<sup>14</sup>

NSWIC submits that IPART must enquire as to the level of cash reserves held by NOW and, more particularly, from whence those reserves have been derived. The holding of significant reserves – as would seem to be indicated by the capacity to draw \$14.4m in the current period – indicates that NOW have been over collecting under previous Determinations and, as such, may not require the significant increases that they now seek.

NSWIC further submits that IPART must enquire as to whether NOW have been receiving a commercial interest rate return on cash holdings and, if so, where those returns have been disclosed in forward operating expense coverage.

### 3.5 User share expenditure

NSWIC is dismayed at the lack of information provided by NOW in its original submission. Despite a petition from NSWIC that resulted in a demand from IPART for

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<sup>14</sup> At page 22.

complete information, actual expenditure broken down into user shares has not been provided.

The lack of information makes it impossible for NSWIC to provide submissions in respect of user share expenditure. Until such time as information is available and time is provided to us to make submission, we submit that a proper Determination process cannot proceed.

#### 3.6.4 Water sharing plans

NOW submit, as part of their “achievements” over the current Determination period, that they “Administered \$135m in financial assistance to groundwater license holders”<sup>15</sup> as part of the ASGE program.

NSWIC agrees that NOW did, indeed, administer the program – but note that \$1m of the total sum was retained by NOW as an administration fee!

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<sup>15</sup> At page 26.

## Section 4

### 4.1 Length of determination

NSWIC rejects the NOW proposal of a 3 year Determination.

NSWIC submits that the current process of a 4 year Determination is reasonable and would support a further 4 year Determination.

The reasons advanced by NOW are not compelling. In particular, NOW notes that “the preparation for a determination imposes significant costs on the organisation and is a distraction from the Office’s role in delivering water management services.”<sup>16</sup> NSWIC concurs absolutely with this argument in favour of a longer Determination period and is perplexed that NOW would use it to seek a shorter period.

NOW point to “major uncertainties”<sup>17</sup> in respect of pricing, pointing particularly to the Basin Plan and metering projects. NSWIC submits that no uncertainty exists in either; the Basin Plan will not be implemented in NSW until the implementation of new Water Sharing Plans which would need to be developed prior to 2014 in any event (for surface water systems) and we expect that any metering project costs would either be met by the Commonwealth or covered under warranty during a 4 year Determination period.

The “range of activities” undertaken by NOW “that could not have been foreseen”<sup>18</sup> in the current Determination period is used as evidence by NOW that the same might occur. Whilst NSWIC submits that this is irrelevant in terms of a Determination, we further submit that the policy process at a Commonwealth level is now primarily in respect of implementation of known programs. To that extent, “unforseeability” ought not be taken into account.

NOW conclude their submission by requesting an adjustment process for prices in the event that their bid for a 3 year Determination is unsuccessful. NSWIC rejects the concept, noting that any “adjustment process” would essentially undermine the Determination process and would, in our submission, be a trigger for a full consultation tantamount to another Determination in any event.

Furthermore, NSWIC does not accept the notion of a mid-year alteration to prices. We submit that the new Determination must commence on 1 July 2011 to ensure that WAL holders – including irrigation infrastructure operators – can understand prices (and set prices where relevant) with a degree of certainty for annual operations. Whilst recognising that this may cause difficulty for NOW, NSW can only submit that the timely provision of a submission to IPART by NOW would have overcome that difficulty.

#### 4.2.1 Regional-based prices for groundwater

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<sup>16</sup> At page 32.

<sup>17</sup> Ibid

<sup>18</sup> Ibid

NOW seek to have groundwater sources amalgamated for pricing purposes.

NSWIC rejects this approach as giving rise to cross-subsidy across groundwater sources. NSWIC submit that groundwater pricing ought be on a source by source basis to provide transparency; a move which would also alleviate NOW's concern in respect of valley overlap.

#### 4.2.2 Increased emphasis on fixed charges

NOW submit that it ought be provided with an absolutely secure revenue stream through a 100% fixed charge.

NSWIC submits in response that such request is a reflection of the lack of focus on efficiency. Security of revenue will undoubtedly lead to an inefficient organisation that does not respond to the risk profile of its customers.

NSWIC is perturbed that on the one hand NOW wants to be treated as a business (seeking depreciation and a 7.9% return on assets in the very next paragraph) yet at the same time wants to assume zero risk burden. This is, in our opinion, institutional arrogance that ought be flatly denied by IPART.

NSWIC submits that NOW have provided no reason for fundamental change to the fixed/variable balance and hence submits that no change from the current Determination is warranted.

NSWIC does note a need for a reasonably stable minimum revenue stream for NOW. We recommend that IPART give consideration to increasing the minimum license charge to encourage amalgamation of multiple licenses, thereby decreasing the overall number of customers and increasing the efficiency of NOW. NSWIC would support such a move if limited to a \$200 minimum charge and the change was preceded by a 12 month lead-in period together with notification to multiple license holders of the increased charge to enable amalgamation where warranted.

#### 4.2.3 Revenue required to fund capital expenditure

The NSW Office of Water is a section within the NSW Department of Environment, Climate Change and Water. On any reasonable interpretation, NOW is clearly not a "business" in any way, shape or form.

Whilst NSWIC concurs that a charging component ought be added to the Determination in respect of depreciation (as was the case in the current Determination), we flatly reject the very concept of a return on asset base (let alone the exorbitant 7.9% sought).

NSWIC submits that a return on assets – with funds delivered to Government through its own Department is, quite bluntly, a tax. IPART must have no part in accepting or setting the levels of taxation. This is rightly the business of Parliament and must be left to Parliament.

In respect of a return on Government-owned assets, IPART ought consider whether it would be appropriate for a range of other Government-owned assets to derive a return. Examples to consider include schools, hospitals and prisons. The clear answer to this rhetorical question is “no”; as must be the answer to NOW.

In the event that IPART sanction this request for taxation, IPART must require that NOW provide justification rather than arrogantly demanding “the same as that requested by State Water.”<sup>19</sup> In particular, IPART must consider the request for a 100% fixed charge in light of a 7.9% demand for return on assets. NSWIC submits that at least one – and preferably both – of these requests must be denied.

#### 4.3.1 Floodplain harvesting licenses

Some \$50m has been provided to NSW by the Commonwealth for the development of flood plain harvesting. NSWIC supports the issue of licenses for flood plain harvesting in perpetuity, pursuant to policy available on our website.

With the provision of Commonwealth funds, NSWIC rejects the NOW assertion that additional operating expenses will be incurred by them in establishing a licensing system. In our submission, the costs of planning and implementing the system – including costs associated with issuing licenses – ought rightly be covered by the Commonwealth contribution. No charges ought be levied against users.

NSWIC agrees that flood plain harvesting licenses, once issued, ought be charged at the same level and in the same manner as any other entitlement.

#### 4.3.2 Licences with adaptive environmental conditions

NSWIC concurs with the basis of the submission of NOW as a basic tenet of our organisation – the acquisition of entitlement for environmental purposes must not alter the fundamental characteristics (including charges) of the entitlement.

#### 4.3.3 Great Artesian Basin conveyance licenses

NSWIC concurs that these licenses ought be issued, but submits that the costs of issue ought be borne by the recipient.

#### 4.3.4 Tidal pool licences

NSWIC concurs that tidal pool extractions must be licensed. We submit that the costs of establishment and issue ought be met by Government with ongoing usage being paid by holders.

#### 4.4 Simplifying the billing process

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<sup>19</sup> At page 33.

A cap on increases is, in essence, the glide path approach that IPART have instituted previously where significant change has been implemented.

NSWIC notes that very significant changes are proposed by NOW in this Determination and, as a result, submit that the glide path approach would be both relevant and necessary if IPART were to accede to NOW's requests. For that reason, we oppose the NOW submission for a removal of a cap on increases.

Moreover, the foundation for NOW's submission – that a cap is “complex” and “time consuming”<sup>20</sup> – is entirely unsupportable in an age of computerised billing systems.

#### 4.5 Water management activities

NSWIC recognises and supports the NOW position where “water consents transaction costs are charged directly to the applicant as a ‘fee for service’ arrangement.”<sup>21</sup>

We are, however, extremely concerned that the fee for service may not be particularly efficient and request that it be further examined by IPART.

Whilst there is clearly a significant change to costs per transaction, it is not in itself evidence of an efficient process. It is merely evidence of increased efficiency, but does not show that optimum efficiency has been reached nor, for that matter, aimed for. It is for this reason that we submit IPART should more closely examine this matter.

Further, we note that both NOW and PwC assume that overhead costs associated with fee for service transactions are covered by operating revenue. In our submission, these costs ought also be covered through the fee for service arrangements.

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<sup>20</sup> At page 35.

<sup>21</sup> At page 37.



## Section 5

### 5.1 Staffing Numbers

It is in the area of staffing efficiency that NSWIC has the most significant concerns in respect of the efficient levels of operation of NOW. This concern has been shown during the course of the Determination process to date to be well founded. NOW has done much to undermine its own credibility; from the lack of data provided initially through to the conflicting array of data that it eventually provided. Indeed, NOW provided data that suggested that 24 of its FTE's were "unallocated".

It is PwC's report, however, that firmly underscores our concern. Comments such as "no business case has been made"<sup>22</sup>, "there are inefficiencies in NOW's existing deployment"<sup>23</sup> and "concerns whether the processes are adequate to determine required FTE's"<sup>24</sup> ought make for extremely harrowing reading for IPART. We note in particular that PwC eventually have to make what can at best be described as educated guesses at the efficient level of staffing required to carry out services in the areas which they investigated in detail and, moreover, have had to transpose those guesses to areas which they did not investigate. It was this process that led to what are essentially random reductions in staff numbers sought by NOW. This is clearly an inadequate process.

Pursuant to the *Independent Pricing and Regulatory Tribunal Act (NSW) 1992*, it is the role of IPART to establish an efficient cost. Without adequate information provided to it, IPART cannot fulfil its statutory role.

In the submission of NSWIC, the information provided to IPART, and to PwC as its consultant, has been grossly insufficient to determine efficient costs. This is particularly the case in respect of current FTE's and FTE requirements over the Determination period being considered.

We submit that the Determination process must *again* be deferred until such time as adequate information has been provided to all parties. We submit that a determination of adequacy be made by IPART's consultants in this respect.

### 5.2 Costing of water management activities

We believe that the issues raised in this section are, in large part – and to the extent possible – addressed by the PwC report. We note that, on current operating levels, some 60% of costs are labour costs. Notwithstanding our comments in respect of the efficiency of those staffing allocations or, indeed, the necessity of all operations carried out by those staff, we are further concerned that little information on the balance 40% costs has been provided by NOW.

We do not believe that sufficient focus has been placed on achieving efficiencies in non-staff related costs. We submit that IPART ought instruct NOW to provide further

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<sup>22</sup> PwC Report at page 9.

<sup>23</sup> Op cit

<sup>24</sup> Ibid, page 49

information on the costs attributed to this area in order to determine their efficiency or otherwise.

We note in particular several changes over recent years to the operating structures of NOW and particularly the recent formation of “Super Departments” in NSW which resulting in the transition from DWE to NOW. At the time of this transfer, then-Premier Nathan Rees announced that the move was to achieve efficiencies, yet no such efficiency is planned to be delivered by NOW over this Determination period save the paltry 4% in years one and two<sup>25</sup>.

We submit that significant efficiencies ought be examined and mandated from centralisation of services. Moreover, we submit that a simple carryover of costs from previous years is not relevant given the dramatically changed structure of NOW from DWE. We submit that it is necessary for NOW to define their operating structure in its entirety to IPART so that a full and proper assessment of efficiency against competitive practice can be achieved.

### 5.3 Future water management costs – core activities

NSWIC was stunned by the claims in this section of the initial submission from NOW. Nothing within the multitude of documents since has changed that opinion. We further note that the PwC report is at great pains to point out that no businesses cases have been prepared, presented or reviewed for the inclusion of this vast array of “core new” activities.

There is a significant irony, at best, in the contemplation of the requirement of large numbers of new staff in order to undertake programs whose aim is efficiency. If the efficiency cannot be identified, quantified and applied then clearly no efficiency exists and the veracity of pursuing the program must be brought into question.

We submit that the conclusions of PwC – that no business plans have been prepared – ought lead IPART to the inevitable conclusion that these programs either must not proceed or must not have their charges visited upon water users until such time as they are prepared and proven.

Within this section lie specific matters with which NSWIC must take issue;

- NSW was at pains to negotiate with the Commonwealth in terms of increased activity or projects that they face “no net costs”. It appears to be the case that NOW believe this to mean “no net costs” to *them* by passing charges through to users. This is clearly unacceptable and we submit must be rejected by IPART;
- Efficiency gains appear to be either not forthcoming or non-existent. In light of this, we are particularly concerned at the assumed roll-over of staff resources and submit that there is clear evidence that staff resources were not efficiently employed during the previous Determination period. Note that the previous Determination contemplated the creation of around 60 Water Sharing Plans by 2009, yet there are still some 38 to be completed from that program. NSWIC

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<sup>25</sup> NOW submission at page 39

legitimately submits that there has been considerable inefficiency or, at very least, a gross underestimate of the resources required to complete these tasks;

- We note “and additional 7 FTEs”<sup>26</sup> for compliance and the like. NSWIC harbours significant concern in respect of redundant activity due to the level of compliance undertaken by State Water. We submit that IPART should instruct NOW to provide further detail and, in the words of PwC, a full business plan to justify the necessity of these additional resources; and
- C07 contemplates that part of the role of an additional 6.4 FTEs by 2013 will be to “assess increasing number of mines and major project approvals to ensure that their extractions are appropriately managed and licensed.”<sup>27</sup> NSWIC submits that it is entirely inappropriate to demand that irrigators pay for assessment of mining applications. This is, quite clearly and obviously, a matter entirely for the applicant and/or the government and is most certainly not a cost that irrigators should contribute to.

#### 5.4 Forecast water management operating expenditure

NSWIC has considered the PwC report in detail and concurs with many of their findings.

We are concerned, however, that the process to which PwC was forced was essentially random reductions based on lack of information.

NSWIC submits that IPART ought engage the same process for operating expenditure as it does for capital expenditure. That is, remove the arbitrary reduction of 20% from the arbitrary request of the Director of NOW and implement a system where *all resource requirements* are proven.

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<sup>26</sup> NOW Submission 1 at page 40

<sup>27</sup> Ibid at page 41

## **Section 6**

### Capital Expenditure

To a large extent, NSWIC concurs with the findings of PwC.

In particular, we concur with a requirement to prepare thorough business plans prior to engaging in any capital expenditure.

## Section 7

### MDBA and BRC forecast costs

This section of the NOW submission – at half of one page of text together with one table providing information of questionable use – does not in any way, shape or form justify what constitutes a very significant portion of the price increases that NOW seek. Moreover, we note that this section of the submission proposes a massive increase in user share costs and, as a result, ought provide significant details in respect of necessity and efficiency as opposed to a dramatic lack of detail.

It is the role of IPART to determine if a monopoly or monopoly like organisation is acting in an efficient manner. Recognising that, IPART (and stakeholders including NSWIC) have sought further information from NOW in respect of the efficiency of the MDBA charges prior to making submissions on their proper incorporation into this Determination.

In response, Commissioner Harriss provided a letter to IPART which stated, *inter alia*, “In my capacity as a member of the Basin Officials’ Committee I ensure the work of the MDBA is closely scrutinised and through the Murray Darling Ministerial Council we have recently requested (a) review of the efficiency and effectiveness of the MDBA program delivery.”<sup>28</sup>

To translate into common parlance, NOWs response to this quite simple request for information translates as “trust me”.

With all due respect, NSWIC submits that the entire IPART process is called into question by this denial of capacity.

Mr Harriss continues in his letter that he “does not believe it is appropriate for the Office of Water to publicly release details of MDBA costs.”<sup>29</sup>

That is, NOW will not provide details of whether the MDBA is efficient or not.

We note that the MDBA were content to provide a submission to NOW in respect of the Issues Papers published in 2009. We therefore submit that, *in absentia* the provision of information by NOW, IPART must request access to information in respect of efficient costs directly from the MDBA, rigorously assess them and then determine if the costs sought by NOW are reasonable. Whilst undertaking that process, the clock ought be stopped on this Determination.

In the alternate, we submit that these costs should be struck *in their entirety* from the Determination. In making this submission, we refer to IPART’s own comments that “in our view, it is unsatisfactory to pass through unspecified costs to users without an independent review of their efficiency.”<sup>30</sup> We can see no reason why this situation ought differ.

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<sup>28</sup> Supplementary submission to IPART from NOW, 27 January 2010.

<sup>29</sup> Op cit.

<sup>30</sup> Draft Determination for State Water, IPART, March 2010, at page 12.

## Section 8

### 8.1 Projected revenue to be recovered from users

NSWIC has made submissions in respect of the veracity of “return on assets” charges levied by a Government entity previously.

In respect of this section, we note that the projected “return on assets” allocated to user share is some 400% greater than the Government share.<sup>31</sup> We submit that, in the event that IPART determine that a return on assets for a Government Department is warranted, that such costs should be borne in the same ratios as all others. We note that NOW have expressed no reason as to why this should not be the case.

As further evidence of insufficient data having been provided for IPART to make a meaningful judgment of efficiency, we note NOWs submission that “the Office requires **in the order of** (emphasis added) an additional \$10m per year to meet the additional Commonwealth requirements set out in Chapter 9.”<sup>32</sup> Whilst submissions in respect of those claimed expenses are made in the next chapter, NSWIC draws IPARTs attention to the contempt with which NOW treats this process in making such a statement. “In the order of” clearly suggests that NOW have given no consideration to efficient pricing and, as is shown by PwC, have not drawn business plans in order to achieve efficient outcomes. On that basis alone, NSWIC submits that this claim ought be rejected outright.

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<sup>31</sup> Table 9 at page 49.

<sup>32</sup> At page 51.

## Section 9

NSWIC is particularly perturbed at the claim in this section for some 57 staff at a cost of “around \$10.5m per year”<sup>33</sup> when each and every one of the activities is in relation to reforms that the Commonwealth are pursuing only in agreement with the NSW Government.

We submit that policy actions agreed to voluntarily by the NSW Government should be entirely at the cost of the NSW Government.

Moreover, we note that NSW entered into discussions with the Commonwealth on the basis of “no net costs”. It becomes apparent in NOWs submission that “no net costs” was clearly only in relation to the NSW Government and that it is considered entirely appropriate to pass massive cost increases directly to customers who had no input into the agreement in the first instance.

We submit that NSW must extend the “no net cost” principle to the customers of NOW either via negotiation with the Commonwealth, by paying for the projects itself or by cancelling projects.

We are further concerned that a large number of projects have been listed that are either not the responsibility of NSW or are not the responsibility of NOW customers.

- “Structural adjustment” (3 FTEs at \$500,000) is entirely without definition or description. We submit that this be struck on that basis;
- “National Water Accounts” (2.5 FTEs at \$400,000) is potentially duplication of “National Water Database, “National Water Market Systems” and/or “National Hydrologic Modelling Strategy”. Until such time as NOW provide a description of this project together with a business plan and proof of efficient costs, it should be struck from IPART consideration. In any event, NSWIC notes that the Commonwealth is providing funding for the vast majority of national projects, including the Water Market System. Business plans would identify such funding and avoid the potential for double collection by NOW, further evidence as to why this item must be struck;
- “Environmental Water Management – Shepherding” (5 FTE at \$900,000) is a project *entirely funded by the Commonwealth* pursuant to an agreement between the NSW Government and the Commonwealth. In any event, the benefit of shepherding accrues entirely to the license holder that benefits and should be charged to them rather than socialised. This item must be struck. NSWIC does note, however, that we maintain a policy on the development of trade within and out of unregulated systems which, if available to all entitlement holders, would obviate and shepherding arrangements in any event;

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<sup>33</sup> At page 52, noting a \$500,000 increase over the previous page.

- “Basin Plan – Planning” (18.5 FTE at \$3,400,000) is a project *entirely funded by the Commonwealth* pursuant to an agreement between Governments. This item must be struck;
- “ACCC Development and implementation” (9.4 FTE at \$1,700,000) is a process being undertaken by the ACCC and not charged to NOW. NOW falsely states that it “will also be responsible for the implementation of the ACCC’s new water trade, charge and market rules and their adoption.”<sup>34</sup> This is demonstrably incorrect; the ACCC will implement and enforce the Rules pursuant to the Rules. This item must be struck;
- “Legislative Amendments” (0.3 FTE at \$100,000) are clearly the responsibility of Government as they are not Water Planning and Management activities;
- “Systems for urban water consumption reporting” (1 FTE at \$200,000) are not the responsibility of agricultural water users and must not be paid by them;
- “Assessment of Water Purchase” (2 FTE at \$400,000) is clearly for the benefit of the purchaser and must be paid by them.

We submit that IPART must approach these claimed costs not only from an efficiency and necessity viewpoint, but also from a “cost driver” position. If a benefit does not accrue to the customer, then the customer must not pay.

We are further concerned that the costs of these Basin-related projects may be spread across non-Basin customers. We submit that IPART must receive an assurance – together with proof of that assurance – that costs have not been incurred by non-Basin customers.

We suspect that these claims for expenses are part of the “Scenario One or Scenario Two” approach based on NOW not having confirmation of Commonwealth funding. NSWIC submits that failure on behalf of NOW to negotiate Commonwealth funding should clearly result in cancellation of the program, as would be shown in an effective business case. Customers of NOW should not be seen as a cash-cow in the event of external funding not being granted; and IPART should condemn this approach.

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<sup>34</sup> At page 52.



## **Section 10**

### **10.1 Metering projects**

NSWIC notes that the vast majority of metering projects proposed by NOW and SWC are the subject of a State Priority Project with funding to be provided by the Commonwealth. We further note that Commonwealth funding pursuant to the Water for the Future program is predicated upon the return of Water Access Licenses. NSWIC harbours significant concerns in respect of that process and notes that it has not been consulted in the design of the project to date. We reserve our rights in that respect.

In light of the uncertainty, we submit that the consideration of a meter service charge is premature. This is particularly the case when viewed against the fact that it has taken in excess of 18 months to reach this stage (no business case provided to the Commonwealth for funding), no plan has been advanced to industry and the Determination sought by NOW is for a period of three years only. We submit that it is a bold prediction, at best, that a significant number of meters would be rolled out in that timeframe.

Moreover, we submit that any meters installed during the Determination period (be that 3 years or more) must have full warranty during that period. A failure to negotiate substantial warranties by NOW should not result in increased costs to users. In normal circumstances, such matters should be covered in a business plan. We therefore submit that NOW not contemplate a meter service charge until such time as a business plan for their implementation – including identifying efficiency gains from telemetry – is provided and analysed.

## Section 11

### 11.1 Rationale for fixed pricing regime

NOW seek a shift in pricing for a fixed and variable component to a 100% fixed charge. NSWIC submits that IPART must flatly reject this proposal.

NOW make their submission based on a range of spurious factors;

- The cost base of NOW is largely fixed;

We note that the cost base of irrigators is likewise largely fixed. This argument does not justify the shift of risk entirely to customers. We note that NOW seek both a commercial rate of return and the elimination of risk, which is clearly a monopolistic behaviour which must be strongly responded to by IPART with a flat rejection.

- Water charges are a “small part”<sup>35</sup> of farm business costs;

We submit that this is utterly irrelevant. The percentage of budget costs to a customer has nothing to do with whether a charge is efficient or necessary. We further note that these charges *are* a significant impost in dry periods when farm income is low.

Furthermore, agricultural input costs have increased significantly comparative to income in recent years thereby making referent to costs irrelevant to assessing affordability.

- Allocation trading sends price signals;

We agree that allocation trading sends price signals as to the highest value use of water. This does not, however, address issues of competition across state borders. NSW, in collecting a much higher proportion of water planning and management charges than other states, is at a significant competitive disadvantage. We submit that IPART succumbing to the submission of NOW in respect of fixed charges will significantly increase that disadvantage, sending a clear signal to the market that more efficient operations can be achieved elsewhere.

- Actual or perceived conflict of interest.

NOW submit that two part tariffs result in a potential conflict of interest as revenue could be gained from increased water being made available. NSWIC is concerned that NOW effectively admit that it does not have a stringent policy in place for determining and avoiding conflicts of interest in carrying out its role. We submit that any such conflicts should be rigorously managed internally rather than penalising customers with risk-shift.

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<sup>35</sup> At page 58.

### 11.2.1 Consumption forecasts

NSWIC strenuously disagreed with the submission of SWC that IQQM should be abandoned in favour of a risk-shifting 15 year model of consumption forecasting. We maintain that submission, particularly in respect of the spurious ground of a “statistical break” advanced by CIE. In evidence of our submission, we point to recent record-breaking rains in northern NSW and southern Queensland that will skew a short term model significantly. Clearly, the use of all available data is the most statistically significant method of achieving forecasts. It would be foolhardy in the extreme to abandon the IQQM model.

We note NOWs submission in respect of large volumes of entitlements being held by environmental water users<sup>36</sup>. NOW submit that “the effort required in managing these licenses will be no less than that required for consumptive purposes.”<sup>37</sup> NSWIC submits that this claim is entirely inaccurate. In any business environment, concentrating a customer base from many individuals to a single entity results in efficiency. NOW ought be no different. In dealing with fewer clients holding the same quantum of entitlements, NOW ought realise efficiencies. We submit that IPART must insist that NOW identify and quantify those efficiencies or must make a determination on what they ought be and deduct them from the revenue sought by NOW.

NSWIC submits that the interstate transfer charges recovery sought by NOW<sup>38</sup> ought be approved by IPART.

NSWIC submits that a usage only charge must be maintained in respect of Supplementary entitlement.

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<sup>36</sup> At page 61.

<sup>37</sup> Op cit.

<sup>38</sup> Op cit.

## Section 12

### 12.1 Price structure

NOW submits that it is “not proposing any amendment” to the current structure “other than lifting of the cap on price increases.”<sup>39</sup>

NSWIC submits that the cap on price increases is without question the most significant part of this particular structure. We note that NOW advance no reasons as to why the cap should not be implemented. Given that significant level of change envisioned (and requested) by NOW (and opposed in certain detail by NSWIC), we submit that retention of the cap on annual increases is vital to provide a glide path approach and a capacity for customers to adjust.

NSWIC submits that a cap of 15% on average annual real increases must be applied across the Determination. We note that a similar cap exists in the current Determination and that no reasons for the removal of this approach have been advanced by NOW.

NOW submits a number of changes to tariffs and tariff structures<sup>40</sup>;

- Amalgamation of groundwater areas to “inland and coastal”;

Very little justification for this significant alteration is provided by NOW. NSWIC submits that this approach be rejected by IPART. In the first instance, sufficient justification is lacking to contemplate significant change and, in the second instance, such change will clearly lead to cross-subsidy between groundwater sources which IPART should seek to avoid.

Moreover, NOW have demonstrably failed to identify any efficiency gain from this significant change. Without any efficiency based reason advanced for the change, NSWIC submits that it ought be struck.

- 100% fixed cost or 70/30 with change to consumption forecasting;

NSWIC has rejected both submissions elsewhere in this response.

- Movement from 90% to 100% cost recovery;

NSWIC recognises the NWI aim of full cost recovery and its applicability to water planning and management charges. We further recognise the recent ACCC-led discussion process in this field.

IPART needs to undertake a close analysis of cost recovery in other jurisdictions. In doing so, it will come to the clear and obvious conclusion that NSW is significantly further advanced than all other states in collection of charges.

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<sup>39</sup> At page 65.

<sup>40</sup> Op cit.

The result of this situation is that irrigators in NSW operate at a considerable competitive disadvantage to their interstate colleagues. We submit that it would be entirely incompatible with the charter of IPART to exacerbate this competitive disadvantage by acceding to the submission of NOW. We submit that, far from moving from 90% to 100%, IPART should require that NSW retreat to the weighted average collection percentage of other MDB states.

- Return on capital charge;

NSWIC is *incensed* by such a proposal. It is entirely inappropriate for a Government Department to seek a commercial rate of return. In the event that IPART sanction such request, we expect that it will insist such arrangements be made for *all* government Departments including Education and Corrective Services.

- Increase in MDBA costs;

Submissions in this respect appear elsewhere in this document.

- New types of licenses.

NSWIC concurs with the inclusion of new license types.

NSWIC is particularly concerned at the “Scenario One / Scenario Two” approach submitted by NOW. We submit, in response, that activities required by the Commonwealth ought properly be funded by the Commonwealth. NSW has made much of its “no net cost” position and we see no reason why it ought be abandoned. The projects to which this process refers are driven by Commonwealth policy and have been entered into voluntarily by NSW. Should negotiations with the Commonwealth not conclude successfully, we submit that NSW should be under no obligation to complete the program.

For the avoidance of doubt, we submit that Scenario Two should be ignored by IPART. In the event that the Commonwealth do not fund those programs, they ought be cancelled. We submit that such outcome would be a clear direction of a properly completed business plan that NSWIC and PwC believe should have been undertaken.

## Section 13

NOW goes to significant lengths to suggest that the massive price increases that it seeks are insignificant to its customers.

NSWIC begs to differ and submits that little could be further from the truth.

In the first instance, the percentage of total farm costs analysis is entirely irrelevant and, in any event, is subjective to a range of externalities. We submit that in dry years, the percentage of these charges rises significantly and *contributes to losses*.

In the second instance, we submit that the relative impact of costs increases has no relationship to the need for NOW to operate efficiently.

NOW further attempt to justify massive percentage increases by reference to the quantum of charges. NSWIC submits in response that any quantum charge is significant when revenue is negative or negligible; particularly so if the charge was based on inefficient service in the first instance.

Not content, NOW then advances the returns of various crops as further evidence why massive increases ought be accepted by IPART. NSWIC submits that such analysis is unbecoming, at best.

NSWIC understands that the profitability impact assessment has been based on a 100% allocation, which is clearly rarely the case across most license types. We submit that the analysis of NOW ought be rejected based either on relevance or this unrealistic assessment of reliability.

## Section 14

### Transaction fees for water consents

Whilst NSWIC concurs with the NOW position that consent transactions should be based on a “user pays” principle (including overhead costs), we harbour some significant concern in respect of the efficiency of these costs. We note that PwC considered some of these matters, but we submit that the information provided by NOW (or lack thereof) warrants further investigation by IPART.

We note from table 32<sup>41</sup> that the total number of transactions completed approximated those forecast in the current Determination, but that a significant financial loss was incurred nonetheless. We submit that this is as a result of either a serious miscalculation of actual costs of providing consent transaction in the first instance, *or* is the result of four years of horrendous inefficiency. In either event, NSWIC submits that a full review of this area by IPART is warranted.

We note that significant efficiency gains have been achieved since 07/08 as shown by the supplementary submission of NOW<sup>42</sup>. Table 1<sup>43</sup> of that letter shows that an increase of 7.74 transactions per FTE has increased to 16.6 transactions. Costs per transaction, on that basis, have reduced from \$12,248 to \$6,636.

Whilst that is a significant saving, NSWIC submits that the cost per transaction is still extraordinarily high and that massive efficiency gains must clearly remain to be realised.

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<sup>41</sup> At page 80.

<sup>42</sup> Letter of 27 January.

<sup>43</sup> At page 6.



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## **Consultation**

# **The Expectations of Industry**

## **090303**

Andrew Gregson  
Chief Executive Officer



## **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>44</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 be adopted by Government both State and Commonwealth.

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<sup>44</sup> See case studies later in this document.

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.

#### Direct Consultation

This method involves engaging directly with affected parties, together with their representative organisations. As a default, it ought always be considered the preferred method of consultation.

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

- The number of affected stakeholders (the smaller the number, the more ideal this method);
- The timeframe available for implementation (the longer the timeframe, the more ideal this method)<sup>45</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;

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<sup>45</sup> Although note specifically that artificial timeframes, such as political necessity, will not be well received by irrigators.

- Timeframes

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

- Resource Constraints

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

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

Prior to commencing the consultation process, discussions with peak bodies must be held to ensure that the needs of stakeholders with respect to resourcing and timeframes are respected. This may include ensuring that consultation does not occur during times of known peak demand; coordination with other government agencies to avoid multiple overlapping consultation processes; and coordination with peak bodies existing consultation mechanisms (for example, NSWIC meeting dates are set annually and publicly available. These are an ideal forum for discussion as they provides access to key stakeholders with no additional cost to stakeholders).

## **Stages of Consultation**

Irrigators believe that a multi-stage consultative model, in either the Direct or Indirect applications, is necessary.

(i) *Identification of problem and necessity for change*

Irrigators are wary of change for the sake of change. In order to engage industry in the process of change, an identification of its necessity is required. This should take the form of a published<sup>46</sup> discussion paper as a minimum requirement.

(ii) *Identification of solutions and method for implementation*

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<sup>46</sup> We accept that “published” may mean via internet download, but require that hard copies be made available free of charge on request.

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

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>47</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.

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

Subsequent to the closing date, a document ought to be published that summarises the submissions received in the various points covered. It must also append the full submissions.

Acknowledgement of a consideration of the weighting of submissions must be given. As an example, a submission from a recognised and well supported peak body (such as NSWIC) must be provided greater weight than a submission from a small body, an individual or a commercial body with potential commercial interests.

There are no circumstances in which submissions ought to be kept confidential. Whilst we recognise that identification of individuals might be restricted, any material on which a decision might be based must be available to all stakeholders.

The document must then identify a preferred approach, clearly stating the reasons why that approach is preferred and why alternate approaches have been rejected.

Where the need for change has been questioned by submissions, indicating that a case has not been made in the opinions of stakeholders, further discussion and justification of the necessity must be made in this document.

### *(iv) Explanation of interim determination and final feedback*

The document prepared in stage (iii) must now be taken directly to stakeholders via forums, hearings or public discussions. All stakeholders, whether a Direct or Indirect model is chosen, must have an opportunity to engage during this stage.

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<sup>47</sup> Regional newspapers, radio stations and the websites of representative groups and infrastructure operators are useful options in this respect.

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.

*(v) Publication of final determination*

Subsequent to stage (iv), a document must be published summarising the feedback received from that stage, identifying any further changes, identifying why any particular issues raised across various hearings at stage (iv) were not taken into account and providing a final version of the preferred solution.

**What Consultation Is Not**

“Briefings” after the fact are not consultation (although they may form part of the process). Stakeholders will not be well disposed to engagement where prior decisions have been made by parties unwilling to change them. Briefings in the absence of consultation will serve to alienate stakeholders.

Invitations to attend sessions with minimal notice (less than 10 days) is not consultation. Consideration must be given to the regional location of parties involved, together with the expenses and logistical issues of travel from those regions.

## **Case Study One**

### **Australian Productivity Commission (Review of Drought Support)**

#### ***Getting it Right***

During 2008, the Australian Productivity Commission commenced a review of Government Drought Support for agriculture. The review commenced with the publication of a document to which submissions were sought. A significant period of time was allowed for submissions.

Subsequent to the close of submissions, a draft position was published which took into account written submissions that were received, identified issues raised in submissions and identified a number of changes considered subsequent to submissions.

The Commission then engaged in a large series of public hearings in areas where affected stakeholders were located. Parties were invited to provide presentations in support of their submissions. Parties who had not lodged written submissions were also welcome to seek leave to appear. The meetings were open to the public, who were also given the opportunity to address the hearing.

A series of “round tables” in regional areas was conducted with identified and self-disclosed stakeholders. These meetings gave those who were unable or unwilling to provide presentations in public the opportunity to have input. At the same time, no submissions were kept confidential, the Commission recognising that the basis for its determinations must be available to all.

Importantly, present at the hearing were three Commissioners. It is vital that the decision makers themselves are available to stakeholders, rather than engaging staff to undertake this task.

We understand that a final publication will be made available in 2009.

## **Case Study Two**

### **CSIRO (Sustainable Yields Audit)**

#### ***Getting it Wrong***

In early December, CSIRO (in conjunction with a number of other Government entities) conducted a regional “consultation” series with respect to the Sustainable Yields Audit. The series was, in our opinion, ill-informed, poorly organised, poorly executed and poorly received.

In late November, CSIRO sought advice from NSWIC over the format and timing of the series. We provided advice that:

- The series did not cover sufficient regional centres to engage all stakeholders. In particular, Northern NSW had not been included;
- The series should not be by invitation, but should be open to all comers given the implications not only for irrigators but for the communities that they support;
- Ninety minutes was vastly insufficient to cover the depth and breadth of interest that would be raised by attendees; and
- That the timeframe between invitation and the event was insufficient.

None of that advice was adopted.

Invitations were sent to an undisclosed number of stakeholders who had been identified by an undisclosed method. In the short space of time available to advise attendance, CSIRO threatened to cancel a number of sessions on the basis of low responses. Given the limited notice and invitation list, NSWIC became aware of a number of stakeholders who wanted to attend but were unable to.

During the sessions, information was presented as a “briefing” despite being described as consultation. As such, extremely limited time was available was 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.