Namoi Water

PO Box 548 Narrabri NSW 2390
Ph: 0267 925 222 Fax: 0267 925 225 Email: namoiwater@optusnet.com.au
Contact: John Clements Mob: 0428 896 554

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Submission by Namoi Water commenting on the draft IPART determination on bulk water pricing.

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Comments relating directly to IPART draft determination

It is difficult for Namoi Water to offer specific comment on the draft determination due to IPART being unwilling to supply the pricing model that IPART has used to reach the specific findings contained in the draft determination.

Clearly IPART have developed their own pricing model and without access to this model the draft determination simply offers stand-alone figures for adoption by State Water and DNR. The lack of access to this pricing model has particular impact on our capacity to comment on rates of return on capital. IPART has been placed in the position of either accepting or rejecting on behalf of the NSW government the introduction of upper bound pricing to rural water infrastructure.

Without capacity to examine in detail the pricing model used to generate the raising of returns on capital that IPART has approved it is impossible to assess the basis for the generation of this capital.

All Water Sources - Rates of return on capital

The establishment of a notional capital asset base may have legitimacy for the purposes of establishing a good credit rating for State Water by providing a vehicle for raising debt finance. The negative consequence of establishing a notional asset base it that it has probably been used as a Trojan Horse to introduce upper bound pricing without public debate. Potentially the construction of the RAB has allowed the re-inclusion of pre 1997 infrastructure as a price signal for future investment via upper bound rates of returns on portions of that infrastructure. This overrules a previous IPART determination that ring fenced pre 1997 infrastructure from being a price signal to Treasury for future investment.

The 1995 COAG agreement to implement the recommendations of the 1994 report of the working group on water resource policy is the basis for competition payments made to NSW as well as the review process carried out by both the National Competition Council as well as more recently by the National Water Commission.

The 1995 agreement led directly to IPART being charged with overseeing the fair pricing of water in NSW as well as moves to full cost recovery as defined by the 1994 recommendations. The Prime Minister confirms, in a 1997 letter (10 February 1997) to all premiers and heads of government, that the 1994 recommendations are the sole basis of the 1995 COAG agreement and not later reports (with the inclusion of groundwater and stormwater as requested in the 1994 framework).

The 1994 recommendations state that full cost recovery in regard of rural infrastructure be regarded as

E.6 the report recommends that the Heads of Government adopt a strategic framework for reform that involves

For Rural Water Services

Changing pricing regimes to ensure that on time charges fully recoup operating costs and contain a component to enable supply systems to be fully maintained and refurbished or replaced as appropriate.

The IGA regarding the National Water Initiative simply states that moves to upper bound pricing be contemplated where practicable.

Rural and Regional
- Full cost recovery for all rural surface and groundwater based systems:- continued movement towards *lower bound pricing* per NCC commitments; and- achievement of *upper bound pricing* for all rural systems, where practicable. 66 (v)(b)

NWI IGA preamble 6. The Parties acknowledge that the NWI builds on the 1994 strategic framework for the efficient and sustainable reform of the Australian water industry (the 1994 COAG
framework),

Namoi Water will take issue with the assumption in the National Water Initiative IGA that any move to upper bound pricing be contemplated where practicable. There is no basis in the 1994 agreement for this progression and no detailing in the 2004 agreement as to any process that leads to a decision to seek upper bound price recovery within the 2004 agreement.

The mutterings of bureaucrats and reports generated in line with terms of reference that are contrary to the signed agreements do not amount to more than the wish list of senior bureaucrats. They are not policy and should not be allowed to assume the status of policy.

IPART should view the actual agreements and be competent in the instruction offered through the actual agreements. These agreements should form the basis of regulation, legislation and policy in NSW. IPART should detail the NSW policy or legislation that guides it in respect of the IPART pricing model used to generate the rates of return on capital in the draft determination reached by IPART.

It should also be noted that rates of return on capital are a guide as to future investment through a pricing signal. The provision of future rural water infrastructure in NSW will be funded through the private sector with funds being raised from industry. This policy is detailed in both the 1995 agreement and the 2004 agreements.

As such, aside from neither agreement seeking upper bound pricing for rural infrastructure, there is no need for a pricing signal for Treasury through an upper bound rate of return on the rural infrastructure. Clearly Treasury has no future obligation to fund new infrastructure for the purposes of delivering water for consumptive use and is in need of no price signal relating to future capital investment relating to rural water infrastructure.

Dam safety upgrades and protection from monopoly rent

The NSW government had, until now, seemed to acknowledge that it had accepted responsibility for the dam safety upgrades.

The admission by the GM of State Water, at the Dubbo IPART hearing, that the NSW Treasury had required that State Water include in State Water's submission to IPART a rate of return on capital of seven percent brings this commitment into question.

The relationship of the NSW Treasury to State Water also requires greater scrutiny, as well as whether the financial responsibility for the upgrades has been passed from NSW Treasury onto irrigation farmers via the monopoly status of State Water.

IPART has a responsibility to protect consumers from the monopoly activity of government business under any name or structure constructed by government for the delivery of these services. The capacity of the NSW Treasury to require of State Water a seven percent rate of return on capital for rural water infrastructure requires

scrutiny. IPART have simply altered the amount of capital generated with no explanation of the basis for the generation of the capital.

Namoi Water will require both the methodology and pricing models that IPART has used to deliver the generation of returns on capital as well as the proportion per mega litre of upper bound rate of return on capital for the Namoi Catchment.

Namoi Water also requires that the budgeted transfer of funds from the NSW Treasury to State Water over the span of this determination also be detailed. The dam safety upgrade has been accepted by IPART as a NSW Treasury cost. It would be reasonable to expect a significant transfer of funds from the NSW Treasury into State Water during the years that this upgrade is being funded.

Recommendations relating to return on capital

- That there be no move to upper bound pricing on rural water infrastructure in NSW this being in keeping with NSW obligations to meet its COAG requirements.

- That there be a full examination of the mechanisms and relationships that the NSW Treasury utilised to require of State Water a seven percent rate of return on capital.

- That IPART detail the pricing model and methodology that IPART constructed and used to deliver its draft recommendation specifically with regard to the component of the per megalitre pricing that relates to the generation of returns on capital.

- That the transfer of NSW Treasury funds to State Water during the years covered by this determination be detailed to allow public scrutiny of the honouring of the financial responsibilities held by the NSW Treasury regarding the Dam Safety upgrades.

- That IPART state either in writing to Namoi Water or in its final pricing determination that IPART is satisfied that IPART has met its requirement to protect water entitlement holder consumers from the abuse of monopoly power in regard of the raising of capital within State Water for the purpose of carrying out the Dam Safety Upgrade.

- That IPART state in writing to Namoi Water or in its final determination that IPART is satisfied that IPART has met its requirement to protect water entitlement holder consumers from the abuse of monopoly power in regard of the NSW treasury requiring that State Water seek a seven percent return on capital (reduced by IPART to 6.4%) effectively establishing upper bound cost recovery for rural water infrastructure in NSW.

- That IPART detail the policy or instruction from the relevant Minister detailing the requirement for IPART to move to upper bound cost recovery for rural water infrastructure.

(Independent **Pricing and Regulatory Tribunal Act 1992 No 39**
15 Matters to be considered by Tribunal under this Act

(b) The protection of consumers from abuses of monopoly power in terms of prices, pricing policies and standard of services,)

All Water Sources - Cost Shares

The issue of the apportioning of cost shares remains vexed with once again conflicting recommendations being delivered by State Water and independent consultants. There is an underlying concern that is held by Namoi Water on behalf of entitlement holders that the unwillingness of the NSW government to honour the clauses in the 1995 COAG agreement that recommend that environmental water be attributed a CSO lead to cost shares always being prejudiced towards the only identifiable cheque book namely that of irrigators.

There are now numerous reports including the initial report commissioned by the 1994 COAG working group on water reform that recommended that the cost of public benefits / impact management which are unable to be attributed and charged to specific beneficiaries / impactors should be treated as community service obligations.

It is no surprise to industry that NSW Treasury would pursue upper bound pricing despite this being against signed agreements, at the same time as ignoring recommendations that a CSO process be developed and identified.

Recommendations relating to cost shares

- Namoi Water recommends that IPART request the NSW government enter a formal policy development process aimed at developing a CSO process for recommending that the cost of public benefits / impact management which are unable to be attributed and charged to specific beneficiaries / impactors should be treated as community service obligations.

DNR Groundwater Pricing

The Achieving Sustainable Groundwater Entitlements (ASGE) programme has crystallised years of uncertainty for Groundwater Entitlement holders in the Namoi Catchment.

Reductions in entitlements ranging between 41% and 87% are being experienced due to the poor management practices of DNR under a variety of portfolio names spanning the last twenty years. DNR has spun a new version of why the over allocation occurred quoting a variety of policies that have little basis in fact.

Suggesting any increase in charges at the same time as businesses are facing closure due to endemic agency mismanagement is at the least brutal. The recommendation to allow DNR to increase cost and indeed to increase the price per mega litre to cater for any reduction over 50% sends a signal that IPART approves of DNR's mismanagement. Has IPART contemplated the outcome for zone one irrigators facing an 87% reduction in entitlement of a formula that will almost double their price per mega litre in comparison to the lower Namoi who by coincidence have reductions that closely relate to IPART's starting point of assuming 50% reductions?

The approach of a regulator (DNR) to IPART to recover regulatory costs requires further scrutiny.

Attempts by DNR to re-badge their regulatory activities, as activities that underpin property rights or resource security are an obvious mechanism employed to give credibility to the approach of a regulator to the IPART process. Namoi Water rejects the findings of IPART that DNR should be able to increase the charge that DNR applies to groundwater resources.

DNR should be required to separate their costs into the categories of regulatory activity and administrative and operational delivery roles.

Property rights and resource security are not enshrined by the regulatory activities of DNR. Resource security is legislated in a much diminished manner in NSW and the notion that industry needs to pay as we go to keep DNR interested in meeting its legislated responsibility is offensive.

Namoi Water will accept cost recovery on administrative and operational roles. It is however questionable to allow a regulator to approach the IPART process. The IPART process is aimed at introducing the semblance of competitive pricing into government owned monopoly business. Regulatory activity as defined in the relevant legislation that governs DNR is not monopoly business activity. Exactly how IPART has determined whether the regulatory activity of DNR is being conducted on a commercial basis equating to competitive pricing needs to be detailed.

The administrative and operational activities being conducted by DNR in regard of the delivery of groundwater are required to be separated from DNR’s regulatory functions. This requirement for separation of roles is detailed under both the 1995 COAG agreement to implement the recommendations of the 1994 report of the working group on water resource policy and the 2004 COAG accepting the National Water Initiative. IPART appears to have reached a pricing determination for groundwater that ignores the lack of operational separation of the regulatory role from the administrative and operational roles carried out by DNR.

Namoi Water will also continue to raise the culpability of DNR for DNR's role in the enormous over allocation of the groundwater resource in the Namoi Catchment. This past failure by DNR to fulfil its legislated responsibilities is the main driver of the elevated expense of groundwater plans and future DNR regulatory costs. IPART cannot continue to switch horses regarding impactor or beneficiary pays methodology when apportioning cost shares. The methodology applied to industry by IPART for apportioning cost shares should be applied to DNR when considering DNR's claims of planning costs.

DNR is the chief contributor to elevated planning costs through its past failure to carry out its legislated responsibility in regard of avoiding over allocation of the groundwater resource.

Recommendations relating to groundwater charges

- That IPART reject any increase in groundwater charges pending the separation of operational and administrative roles from the regulatory role of DNR.

- That IPART resile from any pricing policy that prejudices the costs of a groundwater zone that varies from the 50% starting point assumed by IPART.

- That the regulatory role of DNR as required in legislation be formally identified to the IPART process and that the recovery of costs for the regulatory role be subject to scrutiny through the legislation review committee as well as through appropriate policy development process.

- That IPART detail the methodology used by IPART to ensure that the regulatory role of DNR has been carried out in a manner that equates to commercially competitive practice.

- That IPART detail fully the proportion of the costs sought to be recovered by DNR attributed to the activities detailed by DNR as administrative or operational delivery costs.

- That IPART detail fully the assessment that IPART has developed showing that DNR's operational and administrative roles are being conducted in commercially competitive manner.

- That IPART inform Namoi Water in writing as to the direction or legislation that requires IPART to rule on regulatory costs.

- That IPART state either in writing to Namoi Water or in its final pricing determination that IPART is satisfied that IPART has met its requirement to protect the groundwater consumers from the abuse of monopoly power.

(**Independent Pricing and Regulatory Tribunal Act 1992 No 39**

15 Matters to be considered by Tribunal under this Act

(b) The protection of consumers from abuses of monopoly power in terms of prices, pricing policies and standard of services,)

Unregulated River Charges

Namoi Water welcomes a reduction in prices for unregulated systems in the Namoi Catchment. We would note however that the format used to detail the draft determination on unregulated river charges is confusing and ambiguous. A clearer format that takes into account the current status of unregulated licences re areas and status of volumetric conversion is essential in the final determination.

The Macro Planning process

The macro planning process is a desktop study approach to unregulated water sharing plans that DNR has developed to allow NSW to receive outstanding National Competition payments.

The National Water Commission has approved the Macro planning process. Namoi Water has attended the first round of meetings in the Namoi Catchment and asks IPART to note that the desktop approach is inappropriate when asking for transfers of water from the consumptive use to environmental use. Put simply unregulated licence holders are entering a period of great economic uncertainty in a poorly detailed process. The Macro process appears to be a low budget attempt to extract Commonwealth competition funds at the same time as seeking environmental outcomes important to the agendas of the environmental agencies.

The need for separation of roles in the pricing and management of unregulated water

The approach of a regulator (DNR) to IPART to recover regulatory costs requires further scrutiny.

Attempts by DNR to re-badge their regulatory activities, as activities that underpin property rights or resource security are an obvious mechanism employed to give credibility to the approach of a regulator to the IPART process

DNR should be required to separate their costs into the categories of regulatory activity and administrative and operational delivery roles.

Property rights and resource security are not enshrined by the regulatory activities of DNR. Resource security is legislated in a very diminished manner in NSW and the notion that industry needs to pay as we go to keep DNR interested in meeting its legislated responsibility is offensive.

Namoi Water will accept cost recovery on administrative and operational roles. It is however questionable to allow a regulator to approach the IPART process. The IPART process is aimed at introducing the semblance of competitive pricing into government owned monopoly business. Regulatory activity as defined in the relevant legislation that governs DNR is not monopoly business activity. Exactly how IPART has determined whether the regulatory activity of DNR is being conducted on a commercial basis equating to competitive pricing needs to be detailed.

The administrative and operational activities being conducted by DNR in regard of the delivery of unregulated water are required to be separated from DNR's regulatory functions. This requirement for separation of roles is detailed under both the 1995 COAG agreement to implement the recommendations of the 1994 report of the working group on water resource policy and the 2004 COAG accepting the National Water Initiative.

Recommendations relating to unregulated river water charges

- That the regulatory role of DNR as required in legislation be formally identified to the IPART process and that the recovery of costs for the regulatory role be subject to scrutiny through the legislation review committee as well as through appropriate policy development process.

- That IPART detail the methodology used by IPART to ensure that the regulatory role of DNR has been carried out in a manner that equates to commercially competitive practice.

- That IPART detail the direction of the relevant Minster or Act that requires IPART to rule on the regulatory services provided by DNR in regard of unregulated rivers.

- That IPART detail fully the proportion of the costs sought to be recovered by DNR attributed to the activities detailed by DNR as administrative or operational delivery costs.

- That IPART detail fully the assessment that IPART has developed showing that DNR's operational and administrative roles are being conducted in commercially competitive manner.

- That IPART note that the Macro Planning process is likely to become grid locked due to the inadequacy of a desktop study to deal with complex equity issues, and that this inadequacy will lead to unacceptable uncertainty for unregulated license holders.

- That IPART state either in writing to Namoi Water or in its final pricing determination that IPART is satisfied that IPART has met its requirement to protect the unregulated water consumers from the abuse of monopoly power.

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(b) The protection of consumers from abuses of monopoly power in terms of prices, pricing policies and standard of services,)

Peel River Regulated Water Entitlements

The enormous price increase sought in regard of the Peel regulated system has revealed deficiencies in the IPART process.

Clearly Chaffey storage is an inappropriate size structure in regard of efficient cost recovery. This current price determination has shown the inadequacy of a process in which State Water is taking instruction from its major shareholder rather than acting as an advocate for its clients. State Water is a monopoly service provider and it is reasonable to expect that State Water should provide information to the NSW Treasury as well as the Minister for Utilities regarding aberrations that are easily missed given that IPART effectively removes contact with these entities during the determination process.

Chaffey Dam is located in close geographical proximity to Keepit Dam, yet the cost of delivering water from Chaffey Dam will be approximately double the cost of delivering water from Keepit Dam at the end of this price determination period.

Both Chaffey Dam and Keepit Dam were built at a time when the policies applied to the decision to build storage were regional development and flood mitigation considerations. Cost recovery was not a consideration. The1994 water policy group recognized that there were inappropriate legacy investment and policy decisions that would limit the extent of the reform in the area of rural water pricing.

1994 report of the working group on water resource policy to the Council of Australian governments
For Rural Water Services
E.9 while the need for is recognized, the legacy of past investment and policy decisions , particularly in relation to irrigation schemes, means there are real constraints on the extent and pace of reform in some areas.

Despite the willingness of NSW to adopt certain clauses in the 1995 COAG agreement that accepted the 1994 document as the basis for reform, inappropriate ‘legacy’ policy and investment decisions remain unconsidered.

There needs to be recognition by the NSW government that Chaffey Dam is an inappropriate vehicle for full cost recovery due to the legacy decision relating to the size of the storage. This decision being taken at a time prior to there being any consideration of significant cost recovery on rural water.

DNR and the need for the separation of regulatory and operational costs

The approach of a regulator (DNR) to IPART to recover regulatory costs requires further scrutiny.

Attempts by DNR to re-badge their regulatory activities, as activities that underpin property rights or resource security are an obvious mechanism employed to give credibility to the approach of a regulator to the IPART process. Namoi Water rejects the findings of IPART that DNR should be able to increase the charge that DNR applies to regulated water resources.

DNR should be required to separate their costs into the categories of regulatory activity and administrative and operational delivery roles.

Property rights and resource security are not enshrined by the regulatory activities of DNR. Resource security is legislated in a much diminished manner in NSW and the notion that industry needs to pay as we go to keep DNR interested in meeting its legislated responsibility is offensive.

Namoi Water will accept cost recovery on administrative and operational roles. It is however questionable to allow a regulator to approach the IPART process. The IPART process is aimed at introducing the semblance of competitive pricing into government owned monopoly business. Regulatory activity as defined in the relevant legislation that governs DNR is not monopoly business activity. Exactly how IPART has determined whether the regulatory activity of DNR is being conducted on a commercial basis equating to competitive pricing needs to be detailed.

The administrative and operational activities being conducted by DNR in regard of the delivery of regulated water are required to be separated from DNR's regulatory functions. This requirement for separation of roles is detailed under both the 1995 COAG agreement to implement the recommendations of the 1994 report of the working group on water resource policy and the 2004 COAG accepting the National Water Initiative. IPART appears to have reached a pricing determination for regulated water that ignores the lack of operational separation of the regulatory role from the administrative and operational roles carried out by DNR.

DNR are unable to fully detail or account for these roles and it is doubtful that all services being costed by DNR are even strictly required following the delegation of responsibilities to the Catchment Management Authorities.

ABARE report

Namoi Water rejects the findings of IPART relating to the impact of cost increases for Peel River regulated irrigators. The ABARE study is an inappropriate tool to measure financial impact even assuming the report was accurate. The study is too narrow in its perspective to be an effective measure of social impact of adverse economic conditions. Unfortunately through including financial data from another river system the ABARE report became completely unrepresentative of the circumstances of PEEL valley irrigators.

Recommendations relating to the pricing of regulated Peel River Water

- That IPART request the NSW government to develop a policy relating to the NSW government's share of costs as described by inappropriate past 'legacy' policy and investment decisions. That this policy develops a factor that should be applied to full cost recovery to reduce those costs to the fair costs relating to an appropriate sized storage. That the Keepit storage be used as a reference of fair costs.

- That, pending the development of this policy, IPART recommends the delivery costs for the Peel regulated water be the same as the costs of water delivered from the Namoi regulated system storage and identify the CSO required to be paid from consolidated funds. This CSO being to fund the difference between Namoi regulated costs and Peel regulated costs.

- That IPART reject the findings of the ABARE study as unrepresentative of Peel Valley irrigators.

- That IPART commit to studies that are effective in identifying social and economic impacts across the whole community.

- That IPART identify the direction from the relevant Minister or the legislation that instructs IPART on the apportioning of cost shares.

- That the regulatory role of DNR as required in legislation be formally identified to the IPART process and that the recovery of costs for the regulatory role be subject to scrutiny through the legislation review committee as well as through appropriate policy development process.

- That IPART detail the methodology used by IPART to ensure that the regulatory role of DNR has been carried out in a manner that equates to commercially competitive practice.

- That IPART detail the direction of the relevant Minster or Act that requires IPART to rule on the regulatory services provided by DNR in regard of regulated rivers.

- That IPART detail fully the proportion of the costs sought to be recovered by DNR attributed to the activities detailed by DNR as administrative or operational delivery costs.

- That IPART detail fully the assessment that IPART has developed showing that DNR's operational and administrative roles are being conducted in commercially competitive manner.

- That IPART state either in writing to Namoi Water or in its final pricing determination that IPART is satisfied that IPART has met its requirement to protect the regulated water consumers from the abuse of monopoly power.

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Namoi Regulated System

The ABARE study of the Namoi Regulated system was conducted in absolute isolation to the other economic issues pressuring entitlement holders in the Namoi System.

Fuel prices have more than doubled in the last two years and local cotton prices are suppressed due to low international prices. The ABARE study is an ineffective tool to measure social and economic impact.

It Is the contention of Namoi Water that capacity to pay is an argument that a diverts attention away from study into whether the costs being requested of us by DNR and State Water are fair and whether these costs are being delivered via the mechanism of the monopoly structure of State Water and the regulatory role of DNR.

DNR and the need for the separation of regulatory and operational costs

The approach of a regulator (DNR) to IPART to recover regulatory costs requires further scrutiny.

Attempts by DNR to re-badge their regulatory activities, as activities that underpin property rights or resource security are an obvious mechanism employed to give credibility to the approach of a regulator to the IPART process. Namoi Water rejects the findings of IPART that DNR should be able to increase the charge that DNR applies to regulated water resources.

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Namoi Water will accept cost recovery on administrative and operational roles. It is however questionable to allow a regulator to approach the IPART process. The IPART process is aimed at introducing the semblance of competitive pricing into government owned monopoly business. Regulatory activity as defined in the relevant legislation that governs DNR is not monopoly business activity. Exactly how IPART

has determined whether the regulatory activity of DNR is being conducted on a commercial basis equating to competitive pricing needs to be detailed.

The administrative and operational activities being conducted by DNR in regard of the delivery of regulated water are required to be separated from DNR's regulatory functions. This requirement for separation of roles is detailed under both the 1995 COAG agreement to implement the recommendations of the 1994 report of the working group on water resource policy and the 2004 COAG accepting the National Water Initiative. IPART appears to have reached a pricing determination for regulated water that ignores the lack of operational separation of the regulatory role from the administrative and operational roles carried out by DNR.

DNR are unable to fully detail or account for these roles and it is doubtful that all services being costed by DNR are even strictly required following the delegation of responsibilities to the Catchment Management Authorities.

The issue of the apportioning of cost shares remains vexed with once again conflicting recommendations being delivered by State Water and independent consultants. There is an underlying concern that is held by Namoi Water on behalf of entitlement holders that the unwillingness of the NSW government to honour the clauses in the 1995 COAG agreement that recommend that environmental water be attributed a CSO lead to cost shares always being prejudiced towards the only identifiable cheque book namely that of irrigators.

There are now numerous reports including the initial report commissioned by the 1994 COAG working group on water reform that recommended that the cost of public benefits / impact management which are unable to be attributed and charged to specific beneficiaries / impactors should be treated as community service obligations.

It is no surprise to industry that NSW Treasury would pursue upper bound pricing despite this being against signed agreements, at the same time as ignoring recommendations that a CSO process be developed and identified.

Recommendations relating to the regulated Namoi system pricing

- Namoi Water recommends that IPART request the NSW government enter a formal policy development process aimed at developing a CSO process for recommending that the cost of public benefits / impact management which are unable to be attributed and charged to specific beneficiaries / impactors should be treated as community service obligations.

- That IPART reject the findings of the ABARE study as unrepresentative of Namoi Valley irrigators.

- That IPART commit to studies that are effective in identifying social and economic impacts across the whole community.

- That IPART identify the direction from the relevant Minister or the legislation that instructs IPART on the apportioning of cost shares.

- That the regulatory role of DNR as required in legislation be formally identified to the IPART process and that the recovery of costs for the regulatory role be subject to scrutiny through the legislation review committee as well as through appropriate policy development process.

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