

Submission

Productivity Commission

Regulation of Agriculture - Issues Paper

160205

Introduction

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

NSWIC engages in advocacy, policy development and media relation. As an apolitical entity, we are available for the provision of advice to all stakeholders and decision makers.

This submission represents the views of the Members of NSWIC with respect to the *Regulation of Agriculture - Issues Paper*. However, each Member reserves its 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.

General Comments

NSWIC welcomes the opportunity to make a submission to the Productivity Commission's public inquiry into *Regulation of Agriculture* (Issues Paper). We acknowledge that this Inquiry was initiated in response to the Federal Government's Agricultural Competitiveness White Paper (Agricultural White Paper) and the Developing Northern Australia White Paper (Northern Australia White Paper). In this context, NSWIC would like to draw the Commission's attention to NSWIC's previous submissions to the Agricultural Competitiveness Issues Paper¹. In addition, we recommend the Commission closely reviews the submissions of our member organisations to this Inquiry.

Our submission to this Productivity Commission Inquiry will again revisit a range of issues that we raised in our previous submissions and also incorporate new regulatory burdens that have imposed on irrigated agriculture since the finalization of the Agricultural White Paper. However, as a peak irrigation sector body, our submission will only address those issues pertinent to irrigation and water resource management and we urge the Commission to liaise closely with our member organisations about agricultural industry specific regulatory burdens and restrictions. NSWIC acknowledges that focusing this submission on water alone will narrow our response to a subset of all regulation pertinent to agriculture, however we do stress that water is a critical component to agriculture and we believe it therefore requires a dedicated submission.

NSWIC considers it critical that future policy developments are aligned in order to ensure that the regulatory burden on irrigated agriculture is minimised and the competitiveness as well as profitability of food and fibre producers is not constrained by unnecessarily confusing and conflicting regulation. For that reason, NSWIC seeks a whole-of-government approach in respect to future policy development around this regulatory review.

NSWIC is delighted that the Federal Government acknowledges the importance of agriculture in the Australian economy and looks for opportunities to reduce regulatory 'red tape' in order to position agriculture to drive future economic activity and employment in regional Australia in particular. As Australia has for many years relied on resource extractive industries to drive Australia's economic growth, we welcome this broadened perspective and focus on other industries that will drive Australia's future economy.

While the Commission's Issues Paper discusses a range of areas where regulatory constraints impact irrigated agriculture, NSWIC stresses that irrigated agriculture is faced by many challenges and obstacles. These challenges include (among other things) natural climate conditions, input cost pressures and competitive resource demands. These challenges have both a direct and indirect impact on the competitiveness and profitability of irrigated agriculture and must be carefully considered as part of the *Regulation of Agriculture* inquiry.

A good regulatory structure is of crucial importance for the ongoing competitiveness and financial viability of Australian agriculture. It must be ensured that the regulatory framework is set such that it achieves clearly defined policy objectives and avoids any unnecessary regulatory costs. There are a range of areas where the current regulatory structure is suboptimal and leads to inefficient and costly outcomes. We provide further detail in the sections below.

¹ <http://agwhitepaper.agriculture.gov.au/IP%20Submissions%20for%20publication/2014-04%20April/IP371%20NSW%20Irrigators%20Council.pdf>

Specific Comments

Regulation of Water Resources

The regulatory framework governing water resources in NSW is extremely complex and multi-faceted. On a state level, the management of water resources is governed by the Water Management Act 2000 (NSW) (WMA 2000) and Water Act 1912². A critical component of the WMA 2000 is the statutory requirement for Water Sharing Plans (WSP) which prescribe the sharing of water resources in individual valleys or catchments. NSW is currently reviewing those WSPs made in 2004. It must not be underestimated that the time and resources required to adequately review these plans are very significant at Government and industry levels.

With the introduction of the Water Act 2007 (Cth) and the Murray Darling Basin Plan 2012, water management in NSW has invariably become more complex as well as imposed greater regulatory burden on irrigators and irrigation infrastructure operators in NSW. In particular, the introduction of the Basin Plan in 2012 has required irrigators and agricultural representative bodies to dedicate significant resources to respond to policy and program developments associated with the Federal environmental water recovery process. One example which illustrates the additional regulatory burden is the Water Resource Plan development required under the Water Act 2007 (Cth).

Water Resource Plans

Without having yet completed the first round of review of the Water Sharing Plans in NSW, irrigators and agricultural representative bodies are asked to work on the development of Water Resource Plans (to be completed by 2019) which will set out the arrangements to share water for consumptive use and establish rules to meet the environmental and water quality objectives of the Water Act 2007 (Cth). While the Water Resource Plans will build on existing state water planning arrangements it will also address (among other things):

- whether the environmental water rules are consistent with the Environmental Watering Plan and the Basin wide environmental watering strategy;
- whether the management of water quality outcomes are in line with the Water Quality and Salinity Management Plan;
- whether the current arrangements are compliant with the basin wide water trading rules;
- whether water resources are sustainably managed;
- whether water dependent indigenous values are identified.

NSWIC stresses that the timeframe imposed on irrigators and irrigation infrastructure operators to respond to these significant changes in water resource planning and management is inappropriate and must be reviewed with the focus of providing greater flexibility and time throughout the review process.

SDL Adjustment Mechanism

Furthermore, the Federal Water Act 2007 (Cth) and the Basin Plan 2012 requires the NSW Government to submit all of NSW's Sustainable Diversion Limit Offset Projects pertinent to

² In cases where the Water Management Act 2000 (NSW) has not been in operation.

s86AA of the Water Act 2007(Ch) to the Murray Darling Basin Authority (MDBA) by June 2016. The assessment of suitable projects and the development of appropriate business cases will require further time and resources to ensure that all opportunities have been properly assessed and put forward. In light of the Federal Government's commitment to 'adaptive management' NSWIC considers the enforcement of a strict timeline around the submission date for SDL Offset Project to be contradictory. Again, further flexibility around the timelines are required to ensure that irrigators and irrigation infrastructure operators are able to respond adequately to the task at hand.

NSWIC submits that the Productivity Commission recommends amendments to the timeframe for completion of policies and projects relating to the Federal water reform process.

ACCC Water Charge Rules

In addition to the inadequate timeframes associated with the Federal water reform process, NSWIC would also like to raise the issue of additional regulatory burden imposed by the Australian Competition and Consumer Commission (ACCC). The Water Act 2007 (Cth) gave the Minister for Sustainability, Environment, Water, Population and Communities the role of making water charge rules. There are currently three sets of water charge rules:

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

Not only did the three sets of water charge rules mean a significant additional regulatory burden for irrigators and irrigation infrastructure operators (either indirectly, through the determination of bulk water charges in NSW, or directly, through additional reporting and compliance requirements) but the Parliamentary Secretary to the Minister for the Environment, Simon Birmingham, also requested a review of the water charge rules in December 2014 in response to the Expert Panel final report on the statutory review of the Water Act 2007 (Cth).

The ACCC has released its draft advice on water charge rules in December 2015 which comprised a 250 page report and a substantive legislative amendment document. Stakeholders were initially only given until 5 February 2016 to respond to the draft advice. While the Federal Government has extended the timeframe for consultation until March 2015, stakeholders will require a significant amount of time to meaningfully respond to the draft ACCC advice to the Minister of Agriculture and Water Resources.

In addition, NSWIC would like to point out that the ACCC draft advice (if accepted) constitutes significant additional regulatory burden for most irrigators or irrigation infrastructure operators despite the terms of references requesting the ACCC to provide advice on how to reduce the current regulatory burden. NSWIC has reviewed the current draft advice and has raised its concerns about a range of issues. We urge the Commission to review NSWIC's submission to the ACCC for further detail about all regulatory issues associated with the ACCC recommendations.

Harper Competition Policy Review

NSWIC notes that the final report on the Competition Policy Review recommended that the administration and management of both rural and urban water pricing should be conducted by a new national regulator - 'the access and pricing regulator'.

The Council stresses that the current Federal Government has committed itself to deregulation and reduction in regulatory 'red tape'. The suggestion to introduce yet another regulator in water goes completely against Federal Policy objectives and should therefore be rejected.

Not only did the Water Act 2007 (Cth) and its subordinated legislation significantly increase the complexity of water regulation in Australia, it has also elevated the Australian Competition and Consumer Commission (ACCC) to be the national arbiter for water pricing and markets. Despite of this role, NSWIC notes that the ACCC has recently released its Draft Advice on the review of the Water Charge Rules which suggests that bulk water charge determinations should be a matter for the existing state regulators.

NSWIC considers it quite extraordinary that over **FOUR** bulk water charge determinations in NSW, we will have come full circle if the ACCC's Draft Advice is accepted: IPART conducting a review of State Water under the Independent Pricing and Regulatory Tribunal Act 1992; then the ACCC conducting a review of State Water under the Water Charge (Infrastructure) Rules 2010; then IPART (accredited under the Water Charge (Infrastructure) Rules) conducting a review of WaterNSW (previously State Water) under the Water Charge (Infrastructure) Rules; and then (if the ACCC advice is accepted) IPART conducting a 2016 review of WaterNSW under the Independent Pricing and Regulatory Tribunal Act 1992 - once again.

The constant change in the regulatory framework governing the determination of bulk water charges in NSW is not only disruptive but also costly for irrigators, government agencies, bulk water suppliers and stakeholder representative bodies. NSWIC strongly rejects the establishment of yet another regulator (an access and pricing regulator) who would be overseeing the review of bulk water charges in NSW.

Bureau of Meteorology - Information Reporting Burden

Furthermore, NSWIC also recommends that the Commission review the findings of the Bureau of Meteorology's review of *Water Information Reporting Burdens*. In response to the expert panel's final recommendations on the review of the Water Act 2007 (Cth), the Bureau of Meteorology set up a Federal interagency working group to report on:

- current water information reporting requirements under the Act and associated regulatory burdens for data providers, including an estimate of current costs.
- The benefits of the suite of information products with reference to associated costs borne by data providers
- Options to reduce the regulatory burden imposed on data providers in the order of 20 per cent or more compared to current regulatory burdens.

While NSWIC has not yet reviewed the final report delivered by the Bureau to the Minister for Agriculture and Water Resources, we believe the findings will be of value to the Commission.

Australian Water Markets

Finally, NSWIC is concerned with the plethora of Federal Government, Department, Regulator and Commission reviews of the Australian water markets. It appears to NSWIC that these general reviews are conducted for the purpose of introducing further regulation in water resource management and not to progress already identified concerns by previous reviews and stakeholder feedback. NSWIC believes that Australian water markets are continuously evolving and that if another review of the Australian water market is conducted, it should be targeted, with a clear objective. To continue with wholesale reviews of Australian water markets is a regulatory burden in its own right and given the obvious duplication of effort between agencies a waste of resources.

NSWIC submits that any further reviews of Australian water markets must be targeted, have a clear objective, and be designed to progress already identified concerns by previous reviews and stakeholder feedback.

Overallocation

NSWIC rejects the reference in the Commission's Issues Paper to 'overallocation' of water resources. Even the Federal Government in their 2015 Draft Bill (in response to the Water Act review) recommends the removal of all references to 'overallocation' of water resources in the Water Act 2007(Cth). The Commission should refrain from using such language, as it is misleading.

NSWIC submits that the Commission removes all references to 'overallocation' in the Issues Paper and any future reports relating to *Regulation of Agriculture*.

ENDS.