



National Irrigators' Council

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Regulation of Australian Agriculture

Submission to the Productivity Commission

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The National Irrigators' Council is the peak body representing irrigators in Australia, supporting 27 member organisations covering the Murray Darling Basin states, irrigation regions and the major agricultural commodity groups. Council members collectively hold approximately 7,000,000 megalitres of water entitlement.

The Council represents the voice of irrigators who produce food and fibre for Australia and significant export income. The total gross value of irrigated agricultural production in Australia in 2013-14 was \$14.6. {ABS} Irrigated agriculture produces essential food such as milk, fruit, vegetables, rice, grains, sugar, nuts, meat and other commodities such as cotton and wine. The Council aims to develop policy and projects to ensure the efficiency, viability and sustainability of Australian irrigated agriculture and the security and reliability of water entitlements.

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1. Executive Summary

The National Irrigators' Council (NIC) welcomes the Productivity Commission's inquiry into Regulation of Australia Agriculture and is pleased to provide our submission. For this purpose we will focus on the burden of regulation in the areas of **Water and Environmental protection**.

The aim of the Australian Government to minimise red tape and reduce the financial burdens on business is strongly supported by the irrigated agriculture sector. We note the Productivity Commission has been asked to take into consideration regulatory concerns raised in the white papers on agricultural competitiveness and developing northern Australia.

NIC supports aims to improve Australia's agricultural competitiveness through initiatives like the Agricultural Competitiveness inquiry, the Harper Review and other inquiries which have sought to address barriers to productivity and competition.

In our submissions to the Australian Government's Energy Green Paper, the Agricultural Competitiveness inquiry and the Competition Policy Review (Harper) we highlighted the issues currently impeding the profitability and sustainability of Australia's irrigated agriculture sector, a recognised contributor to the national economy and to the social and economic wellbeing of local communities.

Agricultural industries across a range of sectors over a period of time have faced increased regulation. Since the introduction of the Water Act 2007 irrigated agriculture has seen a dramatic increase in regulation as well as more complex governance arrangements where now both state and federal governments have assumed overlapping responsibilities in the management of our water resources. This represents significant duplication which impacts on the profitability and financial viability of the businesses and the government agencies involved in the sector.

With the massive growth of water regulations and reporting obligations combined with the cumbersome nature of requirements with the involvement of state and Commonwealth agencies, it is time to undertake a legislative and regulation mapping exercise across governments to identify all regulations, which agencies and which governments are involved and for what purpose.

The Productivity Commission issues paper itself notes: *Regulations with sound objectives can also sometimes have unintended economic or social effects and can cause businesses to adjust their production decisions and processes. They may also inhibit innovation and competition or reduce incentives to improve business productivity.*

A series of recommendations provided by the Expert Panel to the Government as part of the 2014 review of the Water Act 2007, related to the burden of regulation on the irrigated agriculture sector and irrigation businesses. These recommendations were:

- **Recommendation 11:** A review to be conducted by the ACCC, in consultation with industry and Basin State governments, of the Water Charge (Infrastructure) Rules, the Water Charge (Termination Fees) Rules and the Water Charge (Planning and Management Information) Rules. The review to focus on reducing the cost to industry and governments.
- **Recommendation 18:** Water Information and the proposal to establish an interagency working group led by the Bureau of Meteorology to report to the Government on:
 - (a) current water information reporting requirements under the Act and associated regulatory burdens for data providers, including an estimate of current costs
 - (b) the benefits of the suite of information products with reference to associated costs borne by data providers
 - (c) options to reduce the regulatory burden imposed on data providers in the order of 20 per cent or more compared to current regulatory burdens.

2. NIC Recommendations

2.1 Water

(a) ACCC Review of Water Charge Rules:

- (i) NIC rejects the ACCC Water Charge Rules draft advice as it currently stands.
- (ii) NIC recommends that:

The ACCC Water Charge Rules final advice to Government must accurately recognise the feedback provided by irrigated agriculture businesses that will result in practical changes to the rules guiding water charges, remove unnecessary regulation and have no unintended consequences.

(b) BoM Interagency Working Group: NIC recommends that:

- (i) The Working Group delivers in its final report to Government, a commitment to bring rural water entities and Commonwealth government agencies together to work to further streamline water information provided by rural water entities.
- (ii) The BoM lead government agencies, water stakeholders and NIC members to work to examine in detail every clause contained in each regulation with the aim to identify and remove those clauses which cannot be reasonably justified.

(c) Legislation and regulation mapping: NIC recommends that:

- (i) A legislative and regulation mapping exercise be undertaken across governments to identify and address overlap and/or malalignment of regulations.

2.2 Environmental protection

The NIC recommends:

- (a) recognition by Government and greater collaboration between Commonwealth departments, of the link between water and energy where improved on farm and delivery technology for water efficiency adds significant cost burdens to agriculture.
- (b) existing protections provided under the EPBC Act 1999 'water trigger' remaining in place to ensure the security of agricultural assets.
- (c) amendments to the EPBC Act that guarantee that, prior to any new listings being made, key stakeholders, including NIC are consulted at the commencement of the process.
- (d) the removal of duplication in relation to environmental regulation at a state and Commonwealth level that impedes innovation and restricts irrigated agriculture producers in achieving triple bottom line outcomes.

3. Introduction

The National Irrigators' Council (NIC) is the national peak body representing irrigators in Australia. The Council supports twenty seven (27) member organisations covering the Murray Darling Basin states, irrigation regions and the major agricultural commodity groups. Council members collectively hold approximately 7,000,000 mega litres of water entitlements.

The national body is the policy and political voice of those who use water for commercial agricultural purposes, producing food and fibre for local consumption as well as making a significant contribution to Australia's export income.

NIC is funded by irrigators, for the benefit of irrigated agriculture which provides jobs in rural and regional communities. Members are not individual irrigators but members of their respective representative organisations. An irrigator is defined as *'a person or body with irrigation entitlement for commercial agricultural production'*.

Member organisations are located in irrigation regions across Australia within the Murray-Darling Basin and beyond. They represent a diversity of organisations from irrigation infrastructure operators, individual irrigators, processors through to agricultural commodity groups who produce and value add food and fibre for domestic consumption and significant export income.

NIC advocates on behalf of irrigated agriculture and aims to develop projects and policies to ensure the efficiency, viability and sustainability of Australian irrigated agriculture and the security and reliability of water entitlements. The NIC advocates to governments, statutory authorities and other relevant organisations for their adoption.

Irrigated agriculture contributes to the social and economic wellbeing of rural and regional communities and to the national economy, producing goods such as milk, fruit, vegetables, rice, grains, sugar, nuts, meat and other commodities like cotton.

In 2013-14 the total Gross Value of Irrigated Agricultural Production (GVIAP) for Australia was \$14.6 billion, an increase of 9% from 2012-13. In 2011-12 the total gross value of GVIAP in the Murray Darling Basin (MDB) region rose by 13% to \$6.7 billion (*accounting for 49% of the total GVIAP for Australia*), *{Australian Bureau of Statistics}* with the volume of water applied in the same period, 5.9 million megalitres

NIC Guiding Principles

The objective of the National Irrigators' Council is to protect or enhance water as a property right and to champion a vibrant sustainable irrigation industry.

The Council's policy positions are guided by the following principles:

- A healthy environment is paramount
 - Sustainable communities and industries depend on it
- Protect or enhance water property rights
 - Characteristics of water entitlements should not be altered by ownership
- No negative third party impacts on reliability or availability
 - Potential negative impacts must be compensated or mitigated through negotiation with affected parties
- Irrigators must be fully and effectively engaged in the development of relevant policy
- Irrigators expect an efficient, open, fair and transparent water market
- Irrigators require a consistent national approach to water management subject to relevant geographical and hydrological characteristics
- Irrigators expect Government policy to deliver triple bottom line outcomes
- Regulatory and cost burdens of reform must be minimised and apportioned equitably.

4. Water

The Productivity Commission notes in the Issues paper certain matters around the costs of regulation and unnecessary regulatory burden and the costs imposed on those affected, namely:

- excessive regulatory coverage, including regulatory creep — where the regulation covers more activity than was intended or warranted, or where the reach of regulation has become more extensive over time
- redundant regulation — regulation can become ineffective or unnecessary with changes in circumstances or technology
- excessive reporting or recording requirements, including demands for information from different arms of government

- heavy-handed regulators (or regulatory forbearance)
- inconsistent or overlapping reporting requirements, either within government or across jurisdictions, which can generate confusion and extra work for businesses than would otherwise be the case.

Through the process of the 2014 review of the Water Act 2007, the NIC resisted advocating wholesale changes to the Act and the Basin Plan. We did however make the case for rational changes and measures that would result in a reduction in red tape that would serve to remove impediments and on costs for irrigation businesses. NIC has welcomed, and provided significant input into, the measures progressed by Government in response to key recommendations of the Water Act 2007 review Expert Panel. These include:

4.1 ACCC Review of Water Charge Rules

A recommendation of the Expert Panel was to undertake a review of the Water Charge (Infrastructure) Rules, the Water Charge (Termination Fees) Rules and the Water Charge (Planning and Management Information) Rules. The aim of the review conducted by the Australian Competition and Consumer Commission (ACCC) is *to identify possible amendments to the Commonwealth water charge rules, that regulate the charges imposed upon water market participants in the Murray-Darling Basin*. NIC provided significant feedback to the ACCC review which was tasked with focusing on reducing the cost to industry and governments and reduce the regulatory burden of providing water information to the Commonwealth.

NIC provided a submission in May 2015 to the ACCC Water Charge Rules Issues paper. Our members have also participated in ACCC consultations throughout 2015, including most recently at the ACCC regional hearings held in Griffith and Mildura in January 2016.

NIC is currently preparing a comprehensive response to the ACCC Water Charge Rules draft advice released in late 2015. We emphasise that NIC does not accept the proposed changes reflected in ACCC draft advice. The draft advice currently represents wholesale changes and significant intrusion into irrigation infrastructure operator businesses and ultimately, increased regulation and associated cost burden. The draft advice has gone beyond the original remit of the review and contains elements of 'mission creep' in the role of the ACCC as well as increased complexity for NIC members to understand and interpret. The proposed removal of Part 5 operators and network service plans is welcomed but the proposed expansion of the rules in other areas of the draft advice appears to be based on little evidence.

The original intent of the review of the Water Act 2007 was to improve the operation of the Water Act and to ensure that it delivers on its objects more effectively and efficiently. The terms of reference also included a requirement for the Expert Panel to examine ways to reduce red tape.

The Water Charge (Infrastructure Rules) 2010, Water Charge (Termination Fee) Rules 2009, and the Water Charge (Planning and Management Information) Rules 2010 were initially developed after widespread consultation throughout the Basin. While it is generally accepted that the basis for the water charge rules and water market rules is sound, the ACCC review presents a real opportunity to examine the rules in detail and settle on the areas where practical changes can be made. Since the inception of the rules, our members are well positioned with experience and knowledge to provide comprehensive feedback in this process to reduce the administrative burden on both irrigation businesses and the ACCC without removing or altering the principles for the rules.

Significant costs are imposed on irrigation businesses complying with water charge rules, particularly the Water Charge (Infrastructure) Rules. We have previously submitted that savings in compliance costs can

be made without jeopardising outcomes of the rules if the ACCC adopted a 'by-exception' approach to aspects of the compliance requirements it currently levies on irrigation infrastructure operators (IIOs).

Changes to the rules will undoubtedly require many changes to the business models of IIOs. It is therefore a concern that the opinion of those who will be most adversely impacted by proposed changes, is not accurately reflected in the ACCC draft advice.

A key issue raised by state agencies is that the rules are not national rules but rather rules for the Murray Darling Basin and as states are required to operate within and outside the Basin, this results in further duplication in regulation and costs.

The significant diversity between infrastructure operators occurs within the basin which dictates that consistent pricing, while an aspirational target, is almost impossible to achieve. Some of the reasons are as follows; Irrigation infrastructure can be gravity channels, pressurised pipelines or a hybrid of the two; they can be automated or manually operated; lifts from the River vary significantly and whilst power has a national market it is still a state based cost structure.

Differentiation between member and non-member based infrastructure operators should continue to be recognised as each group of operators have very different accountability to their customers. Member based infrastructure operators through their structure operate a business model where their customer is their owner. This means that the customer has a direct say in who runs the business, how the business is run and the future directions of the business. If they do not like the way the business is operating they have built in direct mechanisms to bring about change such as changing the Board. Such change mechanisms are not available to Government agencies or corporations.

4.1 Interagency Working Group led by the Bureau of Meteorology (BoM)

As part of the 2014 review of the Water Act 2007, the Expert Panel recommended (*Rec 18*) the establishment of an Interagency Working Group led by the Bureau of Meteorology to report to the Government on:

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

At the time the Interagency Working Group was established, NIC sought representation on the Group, a request that was not agreed. The Working Group however did invite NIC members to provide information regarding where duplication of reporting was occurring, particularly to more than one Commonwealth agency, and where the reporting burden was unreasonable. NIC's IIO sub-committee members subsequently met with the Working Group and provided detailed feedback during 2015, like that provided by our members previously to government agencies in an attempt to achieve sensible changes and a reduction in reporting obligations.

NIC has long campaigned for the removal of the unnecessary burden of reporting on water information and the duplication, overlapping and frequency of reporting to agencies like the BoM, the ACCC, the Australian Bureau of Statistics (ABS) and state agencies that occurs within existing arrangements. With intimate working knowledge of water reporting requirements, our members have called for practical changes to enable a reduction in such requirements and reduced costs for irrigation businesses.

We have also advocated for improved interface between relevant agencies so as to avoid overlap and to facilitate water agencies sharing information provided by irrigation infrastructure operators. Failure to streamline water reporting requirements earlier through inter agency collaboration adds to the frustration of our members around the data supply burden reporting and duplication. It had been hoped that the Interagency Working Group would in the first instance, provide NIC with a comprehensive list of reporting requirements, the legislative instruments under which data is collected and detailing clearly for what purpose.

Compliance by NIC members in the provision of a large amount of data mostly results in little or no reciprocal benefit for them. As small businesses our members operate on fine margins with small staff teams to undertake these reporting obligations. In some circumstances IIOs have been required to employ additional staff specifically dedicated to meet reporting obligations. We have previously queried why the agencies to whom our members report, are not themselves acutely aware of the array of reporting requirements, for example, who reports what information to which agency, how data is collected and for what purpose. Currently, there is significant duplication in reporting.

While we are yet to see the Working Group's final report to Government, it is hoped that the report's recommendations include measures that will genuinely translate into a removal in duplication and an overall reduction in reporting requirements for rural water entities.

5. Environmental Protection

5.1 Amending the Environmental Protection and Biodiversity Conservation (EPBC) Act 1999

Through the Australian Government Agricultural Competitiveness process, the green paper detailed the following feedback received from stakeholders:

- i. *The EPBC Act be amended to remove onerous on-farm conditions*, such as certain excessive flora and fauna caveats. Since the EPBC Act commenced in 1999, there have been 54 agriculture-related projects referred for assessment, of which eight projects have been subject to conditions. The Government is interested in hearing from stakeholders about specific examples where the Act imposes excessive conditions on farmers.
- ii. *The Act be amended to ensure that national transport and infrastructure goals/corridors have right of way*. The Government is interested in feedback from stakeholders about specific examples where the Act impedes national transport and infrastructure objectives.

Amendments to the EPBC Act that provide for the removal of onerous on-farm conditions and right of way for national transport and infrastructure goals and corridors are supported. Agricultural industries have long been subjected to significant levels of state and Commonwealth red and green tape.

In 2013 NIC successfully argued for the disallowance of listings of the Murray River and Macquarie Marshes as 'critically endangered' under the EPBC Act. The ambiguity around the Act and the listing would have potentially created additional red tape for local government development around housing approvals, roads, levy banks and other routine works ordinarily undertaken by councils, as well as tourism ventures along rivers. It was not clear at the time why the listings were proposed, in addition to other protections such as state government legislation, the Murray Darling Basin Plan and Ramsar listings of wetlands. Nor was there consultation with irrigators or the communities who would have been directly impacted.

The protections provided under the EPBC Act 'water trigger' must remain in place to ensure agricultural assets are secured in the case of coal seam gas and coal mining development approval processes.

Agriculture producers would not argue with the role of regulation in circumstances when there is a clear purpose, where it is appropriately targeted and where restrictions imposed are minimised so as to avoid unnecessary barriers to productivity and profitability.

6. Conclusion

For decades Australia's agriculture producers have sustained increases in costs, while income derived from food and fibre production has not matched the level of input cost increases. The agricultural sector has demonstrated over a sustained period, its ability to adapt to a change, to pursue new market opportunities while taking up new technologies. This agility must not be undermined by an over-zealous regulatory environment which stifles innovative business practice.

NIC endorses the focus by the Government on examining options and implementing policy measures designed to increase returns for agriculture producers by reducing costs and unnecessary barriers to productivity, profitability and competitiveness. The contribution of the irrigated agricultural sector to the social and economic wellbeing of regional communities and the national economy must continue to be recognised by policy makers.

We look forward to working with Government in the continued effort to examine the need for regulation imposed on irrigated agricultural businesses in a way that offers real world pragmatism supported by knowledge and experience.