

## **Submission**

Productivity Commission

Regulation of Agriculture - Draft Report

160823

## Introduction

The NSW Irrigators' Council (NSWIC) represents irrigators and the irrigation industry. 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, the Council is 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 - Draft Report*. However, each Member preserves the right to independent policy on issues that directly relate to their areas of operations, or expertise, or any other issues that they may deem relevant.

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## General Comments

The NSW Irrigators' Council (NSWIC) appreciates the opportunity to provide a further submission to the Inquiry into *Regulation of Agriculture*. As per our previous submission to the Productivity Commission's Issues Paper, the Council acknowledges that this Inquiry was triggered as a response to the Federal Government's Agricultural Competitiveness White Paper (Agricultural White Paper) and the Developing Northern Australian White Paper (Northern Australia White Paper) and as such, we recommend that the Commission to review NSWIC's and our members submissions to the respective papers.

Further, NSWIC urges that the issues raised in this submissions are assessed by the Commission in conjunction with other relevant submissions made by the Council and its member organisations including:

- Productivity Commission Inquiry into Regulation of Agriculture - Issues Paper
- Statutory Review of the Water Act 2007 (Cth)
- Senate Select Committee Inquiry into the Murray Darling Basin Plan
- ACCC Review of Water Charge Rules
- NSW Legislative Council Inquiry into the Augmentation of Water Supply for Rural and Regional NSW.

As a peak irrigation sector body, our submission will only address those issues pertinent to irrigation and water resource management and as such exclusively focus on Chapter 4 of the Productivity Commission's draft report. NSWIC urges the Commission to refer to our member organisations about other agricultural industry specific regulatory burdens, constraints and restrictions. NSWIC acknowledges that focusing this submission on water alone will narrow our response to only a subset of all regulations pertinent to agriculture, however the Council stresses that water is a crucial input factor for agricultural production and therefore requires a dedicated submission.

Given the multitude of recent Inquiries and Reviews relating to water management in NSW and the Murray Darling Basin, NSWIC urges the Commission to coordinate with other State and Federal departments to develop coherent policies that minimises the regulatory burden on irrigated agriculture and support the ongoing profitability and competitiveness of the industry. NSWIC seeks a whole of government approach in respect to future policy development around this regulatory review and urges the Federal Government to critically assess whether the reviews and the resulting recommendations assist in removing the regulatory red and green tape on Australian agriculture. 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 designed to achieve clear defined policy objectives and to avoid any unnecessary regulatory costs.

NSWIC noted that the Productivity Commission endorsed the recommendations made by the Interagency Working Group on Commonwealth Water Information Provision. The Council equally supports the removal of regulatory duplication and overlap however stresses that this is not equivalent to an endorsement of regulatory streamlining and centralisation of water policy or functions. The Council is of the view that those departments and agencies that are best placed to undertake the regulatory functions around water policy and management (i.e. have the resources, knowledge and capacity) should be those who should undertake it. As the NSW Government has long had carriage of water resource management in NSW and NSW Irrigators have confidence in the management processes and

frameworks, albeit with some limitations, we are broadly supportive of these processes and functions remaining with the States agencies.

Furthermore, NSWIC and its members are concerned about both the current level and possible expansion of regulatory burden imposed by Federal Government agencies and departments through Federal water legislation - including the Water Act 2007 (Cth) and the Murray-Darling Basin Plan 2012. In particular, we advocate that the future functions of the Productivity Commission under the Water Act 2007 are confined to the functions of the previous National Water Commission and do not intrude on State water management practices and policies counter to what is suggested in the draft report.

In addition, NSWIC notes that Chapter 4 contains a range of issues (i.e. water trading, exit fees, regulation of water brokers) which have been discussed at length via various Inquiries and Reviews. The Council does not believe it is necessary or appropriate to revisit these issues at this point in time - in particular if the case for a review has not been made.

## **Specific Comments**

### Current Approach to Water Resource Regulation

While the regulatory framework governing water resources in NSW is complex and multi-faceted, NSWIC is broadly satisfied that current resource management processes and licensing arrangements are adequate to ensure the ongoing protection of the states' water resources in NSW.

Although improvements can be made in developing and review of the state's water resource management practices and consultation frameworks, NSWIC is satisfied that the State is able to fulfil its water management functions adequately. In addition, NSWIC stresses that the knowledge and understanding of water resources and hydrological connectivity is continuously improving, suggesting that there is no need to fundamentally alter the current approach to water management and transfer any additional functions to Federal departments or agencies.

It should be stressed that the involvement of Federal agencies, departments and statutory authorities has exponentially increased since the passing of the Water Act in 2007 and the Basin Plan 2012. NSWIC considers this additional layer of regulation to be of significant concern and suggests further effort should be made to decrease the regulatory overlap and duplication that has resulted from this Federal intervention.

### Centralised or National Water Policy

The draft report suggests on a number of occasions that considerations should be given to a more centralised or national policy approach to the water resource management in Australia. Given the inherent differences between States, and the different approaches to water resource management, NSWIC believes that such a change could result in severe and unintended consequences that could undermine the water property rights of irrigators by effectively dismantling existing Water Sharing and Resource Plan frameworks that underpin these property rights, in an attempt to centralise water resource management. NSWIC believes that such an approach would - be in direct conflict with the Federal Government's mandate to reduce the regulatory burden on Australian agricultural producers.

NSWIC suggests that instead of a centralised or national water policy approach, the Productivity Commission should review where there are current regulatory gaps in the States' approach to water management and then target its involvement in those areas where gaps exist and additional regulation is truly warranted.

### Water Markets and Trading (Groundwater and Supplementary Water)

As we outlined in our response to the previous Issues Paper, NSWIC is concerned with the plethora of Federal Government, Department, Regulator and Commission reviews of - Australian water markets. It appears to the Council 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 regarding additional and unnecessary regulatory burden. NSWIC believes that Australian

water markets are continuously evolving and rapidly maturing and at this time there is no need to introduce additional regulatory burden on irrigators, water traders or water brokers.

There are numerous options for water access licence holders to access water broking services at reasonable cost, and numerous sources of water market information. In short, the water market is working well and does not need heavy handed intervention by Government, including the regulation of water brokers who are currently working under a self-regulation system. NSWIC recognises that water market matters are very popular for investigation by Government agencies which have clamoured to play a role in market development, reporting and regulation. NSWIC continues to favour the approach that Government should not interfere in the natural development of the Australian water market unless there is market failure – clearly not the case at the moment.

NSWIC does not favour heavy regulation of the water market because the cost of regulation ultimately is borne by irrigators via water broking and Government administrative cost burden, and over-regulation of brokers will tend to make small transactions more expensive – potentially disadvantaging smaller water brokers who provide a valuable additional choice of broker to water traders in the market.

NSWIC is not convinced that despite recent accusations from some quarters within the irrigation sector that Government needs to regulate the water market to prevent price speculation and market manipulation there is still no evidence yet provided to prove such allegations. NSWIC maintains its view that there must be clear evidence of market manipulation to justify heavier regulation of the Australian water market.

Should another review of Australian water markets or water brokers be conducted, it should be targeted and have a clear objective. To continue with wholesale reviews of Australian water markets is a regulatory burden in its own right and results in obvious duplication between agencies - leading to a waste of resources.

### Water Charge Rules and Market Rules

NSWIC is alarmed that despite widespread concerns raised by the agricultural industry and its key representative bodies about the recent ACCC review of the Water Charge Rules, the Productivity Commission intends to embark on the path of condemning water charges and exist fees as a main impediment to water trading. Without repeating our response to our previous submission, NSWIC rejected the recent draft advice by the ACCC on the grounds that it would impose further unnecessary regulatory burden on irrigators and the irrigation industry.

Furthermore, NSWIC has long supported provisions around termination and exit fees. These fees are a vital and reasonable requirement on those selling out of an irrigation network to help offset the financial impacts of exits on the forward revenue requirements of irrigation infrastructure operators required to sustain its network operations. It is vital that infrastructure operators are able to maintain sufficient revenue streams to manage the infrastructure on which their customers rely. Termination and exit fees are - a key component in this objective.

### Environmental Water

NSWIC is of the view that the Productivity Commission's draft report is misleading in that it does not acknowledge the significant volumes of water that are dedicated to the

environment - instead only comparing agricultural water consumption with the water consumption of other industries. Since the early days of water management in NSW, significant volumes of water have been allocated to the environment (either via the NSW Water Sharing Plans or recently via the Water Act 2007 and the Basin Plan 2012). NSWIC considers it - incorrect to refer to a 2/3rds of water use by agricultural producers when it does not capture the very significant volumes reserved for environmental water use.