

Submission to

Productivity Commission Inquiry

Mineral and Energy Resource Exploration Issue Paper

130314

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Introduction

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

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

This document represents the views of Members of NSWIC with respect to the Productivity Commission's inquiry into *Mineral and Energy Resource Exploration - Issue 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.

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Executive Summary

Water resources in NSW have increasingly come under threat from rapidly expanding mining and energy resource extractive industries. With existing rules and regulations being inadequate to manage these activities in NSW, water resources are continuously at risk of possible irreversible damages which will have devastating effects on the communities, the environment and other industries in NSW.

This submission was drafted to highlight the severe inefficiencies of existing regulation governing mining and energy resource exploration activities in NSW, which includes the *Environmental Planning and Assessment Act 1979* (AP&A Act), the *Mining Act 1992* (Mining Act), and the *Petroleum (Onshore) Act 1991*. Additionally, a special consideration is given to the *NSW Aquifer Interference Policy* and its inability to protect water resources in NSW.

It is evident that current regulation favours the mining and coal seam gas industry in NSW. Since the first mining legislation codified the ownership of minerals vests with the Crown (1851), we have seen a continuous and rapid expansion of mining and energy resource extractive activities in NSW with little regulatory scrutiny - particular at the exploration stage. While regulation for exploration activities exists in NSW, it is the content and not the quantity of regulations that concerns NSWIC. Being either inadequately phrased or insufficiently detailed, the current regulation provides insufficient protection for NSW's water resources - both ground and surface water. In light of the inherent deficiencies, NSWIC submits that an urgent legislative reform is initiated that addresses these inadequacies and ensures that NSW's water resources are protected and preserved.

NSWIC has continuously stressed the need for balance between the preservation of the state's significant agricultural production and the extractions of the state's coal and coal seam gas (CSG) reserves. Such a balance will enable a sensible coexistence between both industries - mining and agriculture - which will ultimately allow both industries to grow and thrive. While we have called for sensible coexistence between both industries we have also highlight the importance of a 'no regrets' approach to mining and CSG activities that will ensure that the state's vital water resources are not irreversibly damaged. We remain of the opinion that the protection of all water resources in the state must be absolute and unconditional and that this condition must form the backbone of any legislative framework governing mining and CSG activities in NSW.

This submission is divided into three sections to emphasize NSWIC's view about a sensible and sustainable regulation for mining and energy resource exploration activities;

1. Outline the main aspects of NSWIC's Policy on Mining and Coal Seam Gas Approvals.
2. Assess the current regulations and policies governing mining and energy resource exploration activities against NSWIC's policy.
3. Recommend areas for improvements to current rules and regulations in order to protect and preserve water resources in NSW.

NSWIC primary objective is to ensure the indefinite protection and preservation of the NSW's water resources - both ground and surface water. In order to achieve this objective, we make the following five key recommendations to this inquiry;

- All relevant regulation governing mining and energy resource extractive activities has to apply state wide;
- All relevant regulation government governing mining and energy resource extractive activities has to apply to all water sources (ground and surface);
- All relevant regulation governing mining and energy resource extractive activities has to apply through all stages of mining and CSG activities (exploration, operation, and post-closure).
- All relevant regulation governing mining and energy resource extractive activities has to ensure that all mining and energy resource extraction activities are subject to the same binding Aquifer Interference assessment processes.
- All relevant regulation governing mining and energy resource extractive activities must not allow for any exemptions for state significant projects.

While these recommendations are not limited to the exploration stage of mining and energy resource exploration, NSWIC believes that these five key recommendations will ensure that the state's water resources are adequately protected from all mining and energy resource extractive activities in the future.

General Comments

NSWIC welcomes the opportunity to make a submission to the Productivity Commission's inquiry into *Mineral and Energy Resource Exploration - Issue Paper*. As exploration licences have been issued for nearly all of NSW, the monitoring and regulatory framework governing these activities is of direct concern to our Members¹.

As an expert in water resource management, NSWIC is greatly concerned about the impact mining and energy resource exploration activities has on water resources - both ground and surface - and the consequential impact on the development and growth of sustainable irrigated agriculture in NSW.

It needs to be recognised that mining and energy resource exploration activities have had an impact on NSW's water resources and irrigated agricultural production and this impact will continue to expand with the further growth of mining and energy resource exploration and development activities around the state.

Mining and energy resource extractive activities have added to the competitive pressure on productive land and labour resources and increased the demand for water resources which underpins irrigated agricultural production. The increased demand for resources is one of the impacts that mining and energy resource extractive activities has had on agricultural producers.

Furthermore, the potential threat that mining and energy resource exploration activities pose to water sources - i.e. structural damage to existing water sources, contamination and changes in water pressure and quality - are additional sources of concern for NSWIC. While data and information on mineral and energy resource deposits are extensive, insufficient work has been done to assess the impact of mining and energy resource exploration and extraction on water resource.

As irrigators in NSW rely on water as their primary input factor they have to comply with two main regulation - the *Water Management Act 2000* (NSW) (WMA 2000) and the *Water Act 2007* (Water Act). These two Acts set out the guidelines and management framework for water resources in the state. According to the WMA 2000 the objective is;

(...) to provide for the sustainable and integrated management of the water sources of the State for the benefit of both present and future generations and in particular;

(a) ...

(b) to protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity and their water quality, (and)

(c) to recognise and foster the significant social and economic benefits to the State that result from the sustainable and efficient use of water,

i. benefits to the environment, and

ii. benefits to urban communities, agriculture, fisheries, industry and recreation, and (...)²

(emphasis added)

¹ A map of current exploration licences in NSW is appended to this submission.

² Water Management Act 2000 (NSW), Section 3(b)

Given the rapid expansion of mining and mineral resource exploration activities in NSW and the insufficient and often conflicting regulatory framework governing these activities, NSWIC is greatly concerned that the objectives of the WMA 2000 are not adequately fulfilled. In light of further expansion of mining and coal seam gas (CSG) activities, the long term future of NSW's water resources - both ground and surface water - and the productivity capacity of those industries dependent on them will be severely threatened.

While mining and energy resource exploration activities will require a water access license if water is diverted from a particular water source, insufficient regulation exists that governs surface or groundwater impacts of exploration activities. While the *NSW Aquifer Interference Regulation* was initially designed to address this regulatory void, its downgrading to a policy shows that the protection of water resources is clearly subordinated to the needs of the mining and CSG industry.

With focus on the inadequacies of existing regulation to manage exploration activities in NSW, we emphasise that the inquiry's narrow focus on exploration activities alone does not capture to the scope and impact of mining and energy resource extractive activities in NSW. A more comprehensive approach and assessment must take place that analyses the full impact of mining and energy resource extraction on the socio, environmental and economic wellbeing in NSW in order to understand the magnitude of the challenges that lie ahead.

PART 1 - NSWIC Policy

NSWIC is not opposed to the mining industry or its future development. We recognise that there may be significant social and economic benefits which in many instances can be delivered with limited negative impact to communities, businesses and to the environment. We also recognise that these benefits may accrue at an individual level, a community level, a regional level or a state-wide level. We do however stress that in several instances, the social and economic costs of mining and other energy resource extractive activities outweigh the benefits. It is therefore absolutely necessary to proceed on any further mining and coal seam gas activities with caution.

NSWIC has adopted a policy on mining and coal seam gas that outline the following axioms³;

The preservation of sustainable resources for agriculture - including water - must be absolute in addressing mining exploration or operational licence applications.

*NSWIC advocates a strict "no regrets" approach to the licencing of both exploration and operations in mining in respect of water resources.*⁴

As minerals and other energy resource deposits are non-diminishable, it is absolutely critical to understand the impact that the extraction of those resources has on productive water resources in the state. In light of currently available knowledge, NSWIC is not convinced that those impacts are yet fully understood nor that mining and energy resource extractive industries have proven beyond reasonable doubt that their activities have no impact on water resources - both ground and surface.

By its nature, mineral and energy resource extraction is a short to medium term activity. Once the resource has been extracted, the business ceases to operate. Agriculture, on the other hand, is a sustainable long term activity. Sensibly managed, its use of renewable resources will allow for food and fibre production indefinitely. We believe that this fact must underpin the regulatory framework governing mining and energy resource exploration. The preservation of sustainable resources for agriculture - including water - must be absolute in addressing any mining and coal seam gas activity.

While irrigators are subject to significant obligations in respect to access, reliability, quality and impacts, we believe that the regulatory framework governing mining and energy resource extractive must be equally stringent, rigorously implemented and enforced.

NSWIC has outlined in its policy that areas of concerns about mining and CSG activities are as follows;

- Access

There must be no circumstances under which the watercourse or aquifer is damaged or altered either permanently or temporary.

³ NSWIC Policy - Mining and Coal Seam Gas Approvals; Protecting Water Resources is appended to this submission.

⁴ NSWIC Policy - Mining and Coal Seam Gas Approvals; Protecting Water Resources

- Reliability

There must be no interference with a water source that causes a change in the reliability at both short or long term temporal intervals.

- Quality

There must be no change to the beneficial use characteristics of a water source. Contaminated water - be it through mining or an adjunct process - is unacceptable and must be vigorously guarded against.

- Availability and Use

There must be no exemption to the licence requirements for mining and energy resource extractive industries. Any take of water in association with mining and energy resource exploration and extraction must be accounted for.

In the first instance, NSWIC believes that there must be 'no negative impacts to third parties'. Where an exploration permit is sought, the applicant must be able to prove beyond reasonable doubt that the operation under the permit will not cause any damage to the water source and will not have any negative third party impacts.

Furthermore, NSWIC believes that a risk management approach is the most appropriate framework to avoid impacts during any stage of mining and energy resource extraction. Such an assessment must be undertaken by a suitably qualified independent party and must take into account potential cumulative impacts. Such an assessment may utilise a risk management matrix that allows variance for high value or strategically important areas to ensure that the response meets the potential threat. Based on such an assessment, a security bond mechanism must be determined and enforced such that the NSW government holds a financial instrument capable of fully compensating for any damage occasioned.

The risk management approach and matrix must also take into account the environment and water resource history of the applicant. Where an applicant has a poor history - breaches of entitlements by it or an associated entity - or said applicant has no history in managing environmental water or water resource impacts, their potential threat level must be increased.

Regular oversight and reporting against conditions on permits must be made mandatory and full transparency of the results must be guaranteed.

Finally, breaches of conditions at any phase must be considered a 'reportable incident' and state authorities must, at the expense of the operator, provide a publically accessible report of the breach and must notify stakeholders directly of the breach, what measures were taken to avoid the breach and what additional conditions will be imposed as a result of the breach.

PART 2 - Regulation

The existing regulatory framework for mining and energy resource exploration activities does not align in many aspects with the policy of NSWIC. As our policy clearly outlines, we expect the state and federal authorities to provide a strong regulatory framework that can be rigorously implemented and enforced to ensure the thorough protection and preservation of the state's water resources.

While the regulatory framework governing mining and other energy resource extractive activities is extensive, complex and spans both state and federal legislation, the component of this framework that applies to the issuing and monitoring of exploration activities is minimal and shows a severe lack of detail.

Exploration activities that are considered to have minimal impact are able to proceed without further approval from *NSW Trade & Investment - Division of Resources and Energy*⁵. In higher sensitive areas, proposed exploration activities are assessed against Part 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Section 111 sets out the matters that need to be considered by the *Minister for Resources and Energy* when considering these proposals;

(1) For the purpose of attaining the objects of this Act relating to the protection and enhancement of the environment, a determining authority in its consideration of an activity shall, notwithstanding any other provisions of this Act or the provisions of any other Act or of any instrument made under this or any other Act, examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity.

In practice, the environmental assessment for the purpose of Part 5 of the EP&A Act are usually fulfilled through the preparation and submission of a "Review of Environmental Factors" (REF). *The Department of Primary Industries* is responsible for approving these reviews and hence has the sole discretion over the interpretation of "examine and take into account to the fullest extent possible all matters affecting the environment by reason of that activity". In case the impacts are significant or the exploration activities will occur in environmental sensitive areas of state significance, an "Environmental Impact Statement" (EIS) must be prepared. While an EIS must be made available for public consultation, there is no provision within Part 5 of the EP&A Act that requires proponents, (who are subject to a REF) to undertake full public consultation prior to the exploration activity.

Furthermore, there is considerable public concern about the assessment process undertaken by the *Department of Primary Industries*. Without having comprehensive public and stakeholder consultation, such one-sided assessment must be evaluated with caution. Also, once a decision about a REF is made, there is no provision within the EP&A Act that allows for a challenge of the assessment.

In relation to CSG exploration activities, the NSW regulation prescribes that such activities can only take place in accordance with a petroleum title issued under the *Petroleum (Onshore) Act 1991* and in line with the environmental assessment of PART 5 of the EP&A Act. One component of the environmental assessment requires the proponent to rehabilitate the site used for exploration. For that requirement, the

⁵ <http://www.resources.nsw.gov.au/community-information/exploration>

proponent has to provide a security deposit that is likely to 'cover any necessary rehabilitation' work. As NSWIC has outlined previously, such rehabilitation work is in some cases not possible if irreversible damage has been done to a water source. A simple 'make good' provision that is backed by financial resources is absolutely insufficient as a regulation to protect and preserve water resources in NSW. At this instance, we would like to reiterate our policy in that we strongly advocate for a 'no regrets approach' to mining and CSG activities that ensures no detrimental damage is inflicted on any water source in NSW.

Furthermore, the amount of the security deposit is assessed according to the scale and nature of the potential impacts whereby the potential impacts are self-assessed by the proponents. NSWIC regards this provision as highly inadequate for the regulation of mining and energy resource exploration activities. Not only are the impacts of mining and energy resource exploration activities not yet fully understood but the provision that proponents can self-assess the potential impacts of their activities is highly contradicting and will likely lead to a principle agent problem.

Similar to CSG exploration activities, mining exploration activities can only be undertaken in accordance with a mining lease granted under the *Mining Act 1992 (NSW)* as well as the provisions of Part 5 of the EP&A Act. As the flaws of Part 5 of the EP&A Act have already been outlined above, the following sections will provide more detailed account of the inefficiencies of the *Mining Act 1992 (NSW)*, the *Petroleum (Onshore) Act 1991* as well as further policies that relate to mining and CSG activities in the context of water resources in NSW.

Overall, current regulation clearly favours the mining and energy resource extractive industries whilst providing little to no protection for water resources or for industries that crucially depend on them. The sections below will reaffirm this hypothesis and will highlight the inconsistencies and lack of detail inhibit within the current regulatory context.

Mining Act 1992 (NSW)

The *Mining Act 1992 (NSW)* lacks considerable detail over what constitutes allowable exploration activities. It also does not provide any reference to water resources in conjunction with the exploration stage of mining activities.

In order to apply for an exploration licence under the *Mining Act 1992 (NSW)*, an applicant has to merely provide the following;

- *a description, prepared in the manner prescribed by the regulations, of the land over which the exploration licence is sought;*
- *particulars of the financial resources available to the applicant;*
- *particulars of the technical advice available to the applicant;*
- *particulars of the program of work proposed to be carried out by the applicant on the land over which the exploration licence is sought;*
- *particulars of the estimated amount of money that the applicant proposes to expend on prospecting.*⁶

⁶ Mining Act 1992 (NSW), Part 3, Division 1, Section (13) (3)

While no further detail on each of these requirements is available, the above mentioned points highlight that the primary focus is on the availability of financial resources by mining and other energy resource extractive industries. Furthermore, no consideration is given to the impact that the activities will have on water resources or impediments imposed on industries that rely on this crucial input factor.

Restrictions on granting an exploration licence are also not stringent, as the following section highlights;

An exploration licence may not be granted over any land within:

- (a) an opal prospecting area; or*
- (b) a reserve in respect of which an order prohibiting the granting of exploration licences is in force under section 367.*

An exploration licence may not be granted over any land (emphasis added):

- (a) the subject of some other exploration licence that includes a group of minerals in respect of which the firstmentioned exploration licence is sought; or*
- (b) the subject of mining lease, assessment lease or mineral claim; or*
- (c) the subject of an application for an exploration licence, assessment lease, mining lease or mineral claim that was lodged before the application for the firstmentioned exploration licence was lodged (...)⁷*

Not only does this section highlight that the *Mining Act 1992 (NSW)* ranks mining and energy resource exploration activities ahead of any other industry (apart from opal prospecting areas) that uses productive land in NSW, but it also shows that there is no binding restriction that would prohibit multiple exploration activities in one area. This shows clearly that mining activities have long been privileged over other land uses, including agriculture, and the protection of the environment.

This fact is furthermore emphasized in section 3A of the *Mining Act 1992 (NSW)*;

to encourage and facilitate the discovery and development of mineral resources in New South Wales, having regard to the need to encourage ecologically sustainable development. (emphasis added)

The discretion in granting exploration licences in areas where other exploration licences have already been approved show that little consideration is given to cumulative impacts of mineral and energy resource exploration activities.

Additionally, little consideration is given to individuals living and working in the area that are in close proximity to mining and energy resource exploration activities as the following section highlights;

An exploration licence may not be granted over land within a colliery holding unless the chief inspector of coal mines is satisfied that prospecting operations may be carried out under the licence without any adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the exploration area⁸.

⁷ Ibid. Division 2, Section (18) and (19)(1)

⁸ Ibid, Section 21

While consideration is given to the person or individual working on site, little consideration is given to individuals and water resources that are adjacent to and will be impacted by the exploration activity.

Also, the *Mining act 1992 (NSW)* itself does not require proponents to directly notify landholders or other stakeholders of an application for an exploration licence. Instead, departmental guidelines require the applicants to simply publish notices of their application in a newspaper before a licence is granted.

Finally, the arbitrary nature of exploration licence becomes most evident in section 26 of the *Mining Act 1992 (NSW)*;

(1) An exploration licence is subject to such conditions as the Minister may, when granting the licence, impose.

Overall, the Mining Act 1992 (NSW) does not only lack detail on the requirements imposed on mining and mineral resource exploration activities but it also provides the Minister with significant liberties in deciding over future mining activities in NSW.

Petroleum (Onshore) Act 1991 (NSW)

The parts of the *Petroleum (Onshore) Act 1991 (NSW)* that deal with exploration activities is minimal and mirror the same lack of detail that is present in the *Mining Act 1992(NSW)*.

Section 21 provides the scope of possible restrictions for the approval of an exploration licence;

An application for a petroleum title may be refused if:

(c) the proposed work program does not meet the Minister's minimum standards in relation to the nature and extent of activities that should be carried on by the holder of the title under the authority of the title; or

(d) the applicant does not meet the Minister's minimum standards in relation to technical and financial capabilities to carry out the proposed work program; or

(e) having regard to the nature and extent of the activities proposed to be carried out by the applicant under the authority of the title , the Minister decides that, in the public interest, it would be better not to grant the title or to grant to someone else the same or another kind of title over the land concerned⁹.

As this section highlights, financial considerations, ministerial discretion and limited detail on what constitutes appropriate work programs and standards are again the main focus points.

⁹ Petroleum (Onshore) Act, Part 3, Division 1, Section 21

The discretion of the Minister is even more evident in Section 16;

Before granting a petroleum title, the Minister may require the applicant to give security in such amount and form as the Minister may determine for fulfillment of the applicant's obligations under the title.¹⁰

While NSWIC supports the establishment of a security bond, this section clearly outlines that the Minister has a significant freedoms to decide about the detail of such a bond.

Similar to the *Mining Act 1992 (NSW)*, the *Petroleum (Onshore) Act 1991 (NSW)* also does not require proponents to directly notify landholders or other stakeholders affected by an application for a petroleum exploration licence. Again, departmental guidelines require applicants to simply publish a notice of such application in a newspaper before a licence is granted.

Furthermore, the *Petroleum (Onshore) Act 1991* does not take into account third party impacts and any associated compensation payments in case the exploration licence holder breaches the terms and conditions of the licence. The only provision given in the Act is that a title may be cancelled if the holder, at any time during the term of the title;

*(a) fails to fulfill or contravenes any of the conditions of the title; or
(b) fails to use the land comprised in the title in good faith for the purposes for which it has been granted; or
(c) uses the land for purposes other than that for which the title has been granted.¹¹*

The cancellation of the licence does not provide sufficient compensation for affected parties in NSWIC's opinion.

Section 29 reaffirms this point even further;

The holder of an exploration licence has the exclusive right to carry out such surveys and other operations, and to execute such works, as are necessary to explore the land comprised in the licence for petroleum¹².

As the holder of the exploration licence has full discretion to use the land over which the licence is granted, any damages, impacts or impediments on the original landholders are subordinated to the mining and energy resource exploration activities.

¹⁰ Petroleum (Onshore) Act, Part 3, Division 1, Section 16

¹¹ Petroleum (Onshore) Act, Part 3, Division 1, Section 22 (1)

¹² Ibid. Section 29

Aquifer Interference Policy

NSWIC has followed, with great disappointment, the progression and slow dilution of the *NSW Aquifer Interference Regulation*. Whilst starting as a regulation, the final iteration has downgraded the regulation to a policy (AI Policy) with the effect that it merely provides advice on aquifer impacts and not impose binding restrictions or requirements for mining and CSG operations in NSW.

In its current form, the AI Policy does not place any additional regulatory requirements on mining and CSG operations but simply consolidates existing state and federal legislation. Without the regulatory strength to protect water resources in NSW, it is unclear what the policy applies, and to whom.

In particular, NSWIC has identified the following flaws of the current AI Policy;

- Gateway process;

NSWIC is extremely concerned about the framework for the gateway process. The provision of either a conditional or unconditional Gateway certificate for state significant mining and CSG proposals on strategic agricultural land clearly lacks a consideration of a third option for the Gateway Panel to advise that a project will not proceed under certain circumstances.

"An independent panel of experts will be established to undertake the gateway assessment. Proposals assessed to satisfy specific criteria relating to its agricultural and aquifer impacts can be certified to proceed to the development application stage. Other proposals that the panel considers do not fully satisfy these criteria will be issued with conditional certificates (...)"¹³

Furthermore, insufficient detail is provided on who will be a member of the independent panel of expert, what the level of assessment will be and how this process will deliver greater rigor to the scientific assessment process.

- Surrendering of Water Access Licence

NSWIC is concerned that mining and CSG operations are able to surrender their water access licence after an aquifer interference activity has ceased.

"Where there is ongoing take of water, the licence holder must retain a water licence for the period until the system returns to equilibrium or surrender it to the Minister."¹⁴

If a mining or CSG operation is not held responsible for the aquifer interference activity, NSWIC is apprehensive about the level of care that will be taken to ensure that the system is restored to equilibrium. For that purpose, NSWIC holds the strong opinion that all mining and CSG operations have to be held responsible for the perpetual flow volumes of water for the entire life of the operation.

Furthermore, NSWIC is concerned that the AI Policy suggests that the surrendering of a licence is preferable;

¹³ Aquifer Interference Policy, p.10

¹⁴ Ibid. p.9

"Given the likelihood of a less active mine management regime post-closure, surrendering of licence entitlements (...) is preferable." ¹⁵

The surrender of a water access licence dilutes the responsibilities of the mining and CSG operation and provides no guarantee that appropriate care will be taken to prevent any damages to the water source. As the AI Policy clearly acknowledges, any aquifer interference activity can have long term impacts on the water source;

"..the post-closure continued take of water until an aquifer system reaches equilibrium may extend from months to centuries after cessation, depending on the scale of the activity, recharge relationships and aquifer characteristics." ¹⁶

Given the uncertain duration for a convergence of a water source towards equilibrium, the surrendering of a water access licence could have significant financial implications for the NSW Government in the form of ongoing management and licensing costs. While these costs are difficult to assess, the current AI policy provides inadequate explanations on how this aspect will be dealt with.

NSWIC is aware that the licence and management costs of any surrendered water access licence is referenced to in Section 4 of the AI Policy however insufficient detail is provided on how it will be managed and what the magnitude of the security deposit has to be to cover the ongoing costs. This is evident in the following section;

"A security deposit or appropriate insurance policy may be required as a condition of a planning approval to provide for the cost performing the proponent's obligations in the event that they fail to perform those obligations." ¹⁷

NSWIC does not concur with the suggestion that a security deposit is a possible option - to insure the protection of the state's water sources, to evade any third party impacts and to avoid any additional cost burden for other entities, including the state government. NSWIC strongly recommends that the requirement for a security deposit is made binding for any mining or coal seam gas operation.

Furthermore, no specific detail is provided on who will manage those deposits, the magnitude of the funds required, and the assessment process that will determine the level of risk involved.

"The actual amount calculated to be deposited will reflect the level of risk to the aquifer or its dependent ecosystems from the proposed activity." ¹⁸

- Dealing with Damages

As damages to an aquifer are potentially irreversible, it is unacceptable that the *Minimal Impact Considerations* refer to an option for 'make good provisions'.

*"Minister **may** (emphasis added) recommend that a security deposit be held relating to the potential water issues." ¹⁹*

¹⁵ Aquifer Interference Policy, p.10.

¹⁶ Ibid, p.9

¹⁷ Ibid. p.30

¹⁸ Ibid.

¹⁹ Ibid, p.15

NSWIC re-emphasises that the protection of the state's water resources must be absolute and unconditional. In exceptional circumstances where damages to an aquifer occur incidentally through any stage of a mining or coal seam gas activity, adequate measures must be imposed to restore any occurred damages. It is therefore of crucial importance that the 'make good provisions' are binding and not an option.

In the current iteration of the AI Policy, these issues are insufficiently addressed;

"..actual amount calculated to be deposited will reflect the level of risk to the aquifer or its dependent ecosystems from proposed activity. This amount will be determined on a case by case basis."²⁰

Without any further detail on an appropriate system in place that will assess the level of risk; how the funds will be managed and the amount of funds that will be required, significant uncertainty remains for all remaining water access licence holders.

Furthermore, the avoidance of third part impacts is imperative - damages to aquifers or any other water resource will impact other licence holders and hence appropriate compensation needs to be provided to those affected.

- Uniformity of assessment

NSWIC has strongly advocated for all mining and CSG operations to be subject to a comprehensive and uniform assessment process. As such, it is a significant concern that the final iteration of the AI Policy makes only reference to a risk management approach where;

"The level of detail that is required to be provided by the proponents is proportional to a combination of the likelihood of impacts occurring on water sources, users and dependent ecosystems and the potential consequences of these impacts."²¹

NSWIC considers it of great importance that a uniform process is put in place that assesses all mining and coal seam gas activities under the same rigorous conditions as any aquifer interference activity can have substantial impacts to NSW's water resources.

Furthermore, the current iteration of the AI policy clearly segregates between different aquifer interference activities as the following section highlights;

"If the Gateway process applies (...)"²²

or

"If a development consent under Part 4, Division 4.1. of the EP&A Act applies for any mining or CSG production activity not subject to the Gateway (...)"²³

²⁰ Aquifer Interference Policy. p.30

²¹ Ibid. p.14

²² Aquifer Interference Policy. p. 27

²³ Ibid.

NSWIC recommends strongly that all aquifer interference activities are assessed uniformly under the same comprehensive and rigorous framework that takes economic, social and environmental objectives into considerations at the onset of the assessment.

- Minimal harm

NSWIC is greatly concerned that the *Minimum Impact Considerations* in the current iteration of the AI Policy as it only recommends 'make good provisions' without requiring them to be binding. The *Minimum Impact Considerations* must require the binding obligations of adequate 'make good provisions' that ensures the best possible recovery for water sources and/or compensation for any third parties in case an aquifer has been damaged.

NSWIC is furthermore concerned that the *Minimum Impact Considerations* only provide a loose framework for any 'additional studies' that are required as part of the assessment;

"...then appropriate studies are required (...)"²⁴

It is a great concern that no benchmark or reference point is provided on what constitutes such appropriate studies. For a study to be suitable, NSWIC recommends that guidelines and references are provided that would allow for an adequate, comprehensive and useful study to be commissioned which assesses the level of impact for a mining or CSG activity.

More detail on the 'appropriate studies' must be made public at the earliest opportunity to allow for an assessment and give confidence to stakeholders that appropriate steps have been taken to accurately assess minimal impact on the water source.

Furthermore, NSWIC is concerned about the risk assessment levels included in this iteration of the AI Policy. As Section 3.2.1. indicates;

"identify where further mitigation, prevention or avoidance measures would be necessary to meet the Level 1 minimal impact consideration or, under the Level 2 minimal impact considerations, what further studies are necessary (...)"²⁵

After careful considerations, NSWIC regards these level considerations to have no material impact on the activities of any mining or CSG activity as the following section highlights;

"Where the predicted impacts are greater than the Level 1 minimal impact considerations (...), then the assessment will involve additional studies to fully assess these predicted impacts. If this assessment shows that the predicted impacts do not prevent the long-term viability of the relevant water-dependent asset, then the impacts will be considered to be acceptable."²⁶

It appears that only further modelling is required to show that no long-term viability of the relevant water dependent asset is imposed whilst no explanation is given as to whether there are situations that would restrain any mining or CSG activity from continuing their activities.

²⁴ Aquifer Interference Policy. p.17

²⁵ Ibid. p.13

²⁶ Ibid.

NSWIC recommends that this section is extended to explicitly outline the process that will be activated if the modelling shows that the predicted impacts do cause long-term impacts on the relevant water-dependent asset as well as outline the threshold levels for the risk assessment levels. For that purpose, the AI Policy must establish rigorous restrictions that will be imposed if the level of risk is beyond acceptable. Nowhere in the current iteration of the AI Policy are there set restrictions that would constraint mining or CSG from continuing their activities.

- Alternative Disposal Options

NSWIC is greatly concerned about the alternative disposal options suggested in the current iteration of the AI Policy.

*"Alternative disposal options might include reinjection to an aquifer (...)."*²⁷

NSWIC would like to stress that the quality of a water resource is of crucial importance for agricultural producers and hence any modifications to the water quality and/or pressure is unacceptable from NSWIC's point of view.

As the reinjection of product water into an aquifer can change the chemical composition and potential pressure of an aquifer, NSWIC strongly recommends that this section is removed from the current AI Policy.

NSWIC would like to raise the following additional concerns with the AI Policy;

1. Provision of information;

- The Policy also continues *'The NSW Office of Water's assessment will determine the potential level of impact and will identify where further mitigation, prevention or avoidance measures are required.'* NSWIC holds a strong preference for public access to all information to the development proposals and associated aquifer impacts. We recommend that this information is made public by the NSW Office of Water.

2. Minimal Harm Criteria;

- NSWIC is concerned that the minimal harm criteria have substantially changed. The percentages and water source references included in this document vary substantial from the initial draft Aquifer Interference Policy. We are particular unsure how the minimal harm criteria compare to the current condition of aquifers in 2012/2013. We are alarmed that certain sections of the minimal harm criteria have been removed - aquifer compaction, water quality assessment, and the reinjection of water into a water source.

3. Compliance with other policies;

- NSWIC would like to highlight the gateway process has to comply with other state and national regulation, in particular the National Groundwater Standards. Furthermore, we would like to raise the question as to how the

²⁷ Ibid, p.25

Aquifer Interference Policy - in particular the minimal harm criteria - will apply/ interact with the current Water Sharing Plans.

4. Cumulative Impacts;

- NSWIC would like to see further detail provided on the individual and cumulative impact assessment as part of the AI Policy. We are aware that cumulative impacts are mentioned, however we do not believe the Policy adequately covers this aspect. Furthermore, NSWIC would like to highlight that the overall impact of this Policy on AWD is ambiguous and requires further explanation.

PART 3 - Recommendations

As Part 2 of this submission outlined, the current regulatory framework that governs mining and energy resource exploration activities is insufficient and ineffective in protecting the state's water resources - both ground and surface.

Instead, we expect both state and federal governments to provide a strong regulatory framework for all stages of mining and CSG activities that can be rigorously implemented and enforced.

As our primary objective is the indefinite protection and preservation of the state's water resources, we make the following five key recommendations to this inquiry;

- All relevant regulations governing mining and energy resource extractive activities have to apply equally throughout NSW;
 - While the *Mining Act 1992 (NSW)* and the *Petroleum (Onshore) Act 1991* apply throughout NSW, their lack of detail leaves water resources unprotected throughout the exploration stage of mining and energy resource extraction. The inadequacies of both Acts must be addressed urgently in order to protect both land and water resources in NSW.
- All relevant regulation government governing mining and energy resource extractive activities has to apply to all water sources (ground and surface);
 - As the *Mining Act 1992 (NSW)* and the *Petroleum (Onshore) Act 1991* make no reference to water resources, NSWIC is unable to see how ground and surface water resources will be protected through the exploration stages of mining and energy resource extraction.
- All relevant regulation governing mining and energy resource extractive activities has to apply through all stages of mining and CSG activities (exploration, operation, and post-closure).
 - While this inquiry only focuses on the exploration stage of mining and energy resource exploration, NSWIC emphasize the importance of a broader perspective.
- All relevant regulation governing mining and energy resource extractive activities has to ensure that all mining and energy resource extractive activities are subject to the same binding Aquifer Interference assessment processes.
 - For that purpose, the NSW Aquifer Interference Policy has to be amended immediately to address its current deficiencies.
- All relevant regulation governing mining and energy resource extractive activities must not allow for any exemptions for state significant projects.

While these recommendations are not limited to the exploration stage of mining and energy resource exploration, NSWIC believes that the implementation of these five key aspects will ensure that the state's water resources are adequately protected from all mining and energy resource extractive activities in the future.

Additional Comments

While the scope of the inquiry is limited to the exploration stage of mining and other energy resource extractive activities, NSWIC would like to emphasise that this limited approach does not provide for a comprehensive evaluation of the impact that mining and other energy resource extractive activities have had on water and land resources in NSW. For that purpose, NSWIC submits that the scope of the inquiry is extended to incorporate both the development and post closure stages of mining and energy resource extractive activities. It is absolutely crucial that this inquiry recognises that these two phases of mining and energy resource extraction are an integral part in the process and must be adequately regulated.

Australia's Position in International Markets

As the issue paper indicates, Australia is one of the largest mineral and energy producers in the world with around 9% of Australia's GDP accounted for by the resource sector. While Australia has significantly benefited from the increased demand from domestic and international markets for resources, it should be highlighted that such a dependency on one sector exposes Australia to extreme risk of price and demand volatility. Furthermore, given that coal and coal seam gas is a finite resource, diversification in industry mix will be important for Australia's sustainable and ongoing growth.

As Prime Minister Julia Gillard indicated, Australia has the capacity to become a food bowl for Asia. With the continuous focus on mining and energy resource extraction, as well as federal / state regulations that favour these industries there are significant obstacles in places before this goal can be achieved.

Expenditure

The issue paper indicates that the expenditure necessary to undertake exploration activities has tripled in the last decade. While operating expenditure have increased for mining and other energy resource extractive operation, this is also true for agriculture.

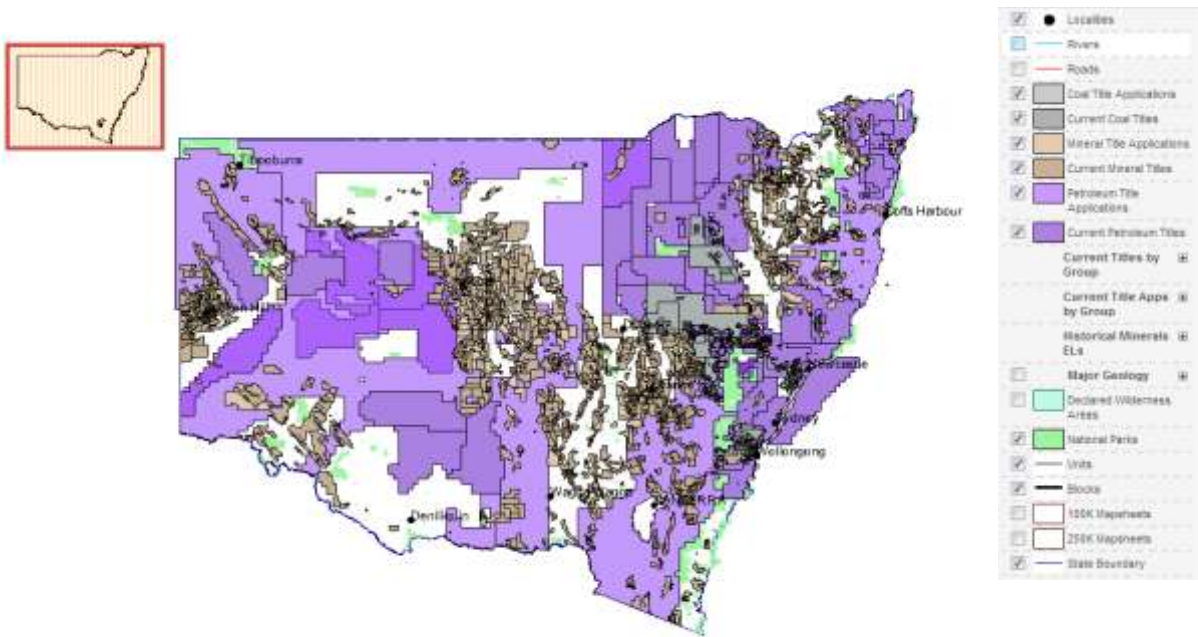
Not only does agricultural producers have to increasingly compete for land, labour and water resources with the mining and CSG industry, but the input costs in form of water and electricity charges has exponential increased over the last decade.

Conclusion

Contrary to the issue paper's suggestion that there is a need to overcome unnecessary regulatory burden, NSWIC submits that it is not the quantity but the quality of regulation that provides insufficient protection for NSW's water resources. The current regulation is neither effective nor efficient and does not achieve an overall net benefit for communities in NSW.

ENDS.

Appendix A



NSW Trade & Investment - Division of Resources and Energy;

<http://www.resources.nsw.gov.au/geological/online-services/minview> and <http://minview.minerals.nsw.gov.au/mv2web/mv2>

*Please refer to 'conditions of use' for further information.

Appendix B



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Mining and Coal Seam Gas Approvals; Protecting Water Resources

Policy

110829

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 policy of NSWIC in respect of the issuing of permits for mining, including for coal seam gas, across this state, for both exploration and operations.

The preservation of sustainable resources for agriculture – including water – must be absolute in addressing mining exploration or operational licence applications.

NSWIC advocates a strict “no regrets” approach to the licencing of both exploration and operations in mining in respect of water sources.

NSWIC believes that a strong aquifer interference policy must be developed, extended to all water sources, be of regulatory strength (not simply policy) and rigorously implemented and enforced.

Background

Our constituency and expertise is linked to water, both surface and ground. It is on that basis that this policy was drafted and accepted. NSWIC claims significant expertise in water resource management, but not in respect of mining, gas extraction or processing.

This policy is limited to the potential impacts of mining, including coal seam gas extraction, on water resources. This does not preclude NSWIC – or any of its Member organisations – from holding additional or separate policy positions on other issues with the mining industry that affect our stakeholders.

NSWIC is not opposed to the mining industry nor to its further development. We recognise that there may be significant social and economic benefits which in many instances can be delivered with limited negative impact to communities, to businesses and to the environment. We recognise that benefits may accrue at an individual level, a community level, a regional level and a state-wide level. In light of a sustained attack on productive water use, any additional economic activity generated by mining may be much needed by many communities.

NSWIC believes that the local and regional social and economic costs of mining activity may, in many instances, outweigh the benefits. A full analysis of both costs and benefits across the long term must be undertaken by independent experts and fully published.

By its nature, resource extraction is a short to medium term activity. Once the resource has been extracted, the business ceases to operate. Agriculture, on the other hand, is a sustainable long term activity. Sensibly managed, its use of renewable resources allows for food and fibre production indefinitely. We believe that this fact must underpin a basic policy proposition; the preservation of sustainable resources for agriculture – including water – must be absolute in addressing mining exploration or operational licence applications.

Potential Impacts

NSWIC has considered the potential impacts that mining activity may have on water resources. We have considered both ground and surface water sources, as we believe that both stand to be impacted by mining operations.

Irrigators are subject to significant obligations in respect of access, reliability, quality and impacts. These are largely contained with the *Water Management Act* and subordinate legislation. That is, irrigators face a legislative regime to manage, preserve and protect the water resource. We believe that mining and coal seam gas operations must be subject to a process that is *at least* as prescriptive and enforced.

Whilst it would seem a simple process to regulate and monitor individual operations to avoid impacts, NSWIC is concerned at the likelihood of cumulative impacts of multiple operations in and around individual water sources.

The Water Resource – Access

Physical access to the water resource – and its integrity – is a non-negotiable threshold requirement for NSWIC. There must be no circumstances under which the watercourse or aquifer is damaged or altered either permanently or temporarily.

Examples of such damage might be cracking an underground aquifer such that water is able to escape or become depressurised. In surface water, the diversion of a watercourse or escape to, say, an open cut that would not otherwise have occurred is a similar example, as is land and watercourse subsidence from long-wall operations.

Examples of temporary damage might include transfer of drilling fluids in the period prior to permanent casing.

The Water Resource – Reliability

The value of a water resource and an associated extraction licence to an irrigator is not only access to it, but the reliability of it. Irrigation necessarily involved the precise application of water resources at precise times. Impact on the reliability at both short and long term temporal intervals will have a material negative impact on irrigators.

Examples of reliability impacts might include temporary loss of availability.

The Water Resource – Quality

NSWIC is concerned at diminution of water quality from mining operations including salinity impacts and the addition of chemicals to water sources. It is our policy that contaminated water – be it through mining process or an adjunct to operations – is utterly unacceptable and must be vigorously guarded against. Any returned water must be of a quality *at least* equal to or higher in quality to independently assessed benchmark data obtained prior to operations commencing. NSWIC will not accept averaging of water quality testing, but requires that all returns meet this standard.

Examples of such impacts may include incursion of saline water and other contaminants to either surface or ground water as part of extraction operations. The injection of chemical-laden liquids to achieve hydraulic fracturing clearly has the potential to significantly diminish water quality, aside from the potential damage to the physical structure of an aquifer.

The Water Resource – Availability and Use

NSWIC is aware that mining operations and exploration are often significant users of water. We absolutely oppose the granting of water use exemptions in either case. Mining, by its nature, is a commercial activity. Commercial options to obtain water for use exist in the form of tradeable water entitlements. NSWIC insists that all mining use of water must be on the basis of licensed extraction to avoid third party impacts associated with further allocation in fully allocated systems.

Measures to Avoid Impacts

NSWIC recognises that there are essentially three separate phases of mining activity where water resources must be protected; exploration, operation and post-operation.

We believe that a risk management approach needs to be adopted to avoid impacts.

NSWIC believes that each phase must be adequately regulated. We are content for this to be achieved by a Regulation based on an aquifer interference policy in conjunction with Water Sharing Plans. We require that in areas where Water Sharing Plans are not yet finalised, any mining activity – including exploration – must be deferred until such time as the Plan is finalised and active. We further require that the aquifer interference policy and regulation be extended to all water sources, not simply underground aquifers. We may be content with alluvial aquifers being included which essentially protect surface watercourses.

Council is concerned that there may be instances where no alluvial aquifers are situated adjacent to surface water courses, such as where a surface water course passes through a hard rock zone. In these instances, Council requires a methodology where a deemed alluvial aquifer exists or another legislative measure is used to enforce the conditions of the aquifer interference regulation.

Council is further concerned at impacts occasioned by interaction between deep and shallow aquifers. We understand that a stacked aquifer policy may address this, but reserve comment until such policy is understood.

An approved suite of tests – including isotope testing – must be undertaken (at least quarterly) and reported against by a suitably qualified independent entity at the expense of the proponent at each of the phases listed below.

Exploration

NSWIC acknowledges that the exploration phase of mining operations may pose a comparatively lower risk to water sources than full operations in some cases. At the same time, we believe that potential damage at this phase remains significant and hence protection mechanisms must be strongly made and rigorously enforced.

In the first instance, we believe that a “no negative impacts to third parties” approach must be adopted, save and except to levels that would be permitted pursuant to a Water Sharing Plan. Where an exploration permit is sought, the applicant must be able to prove that operations under the permit will not negatively impact third parties in respect of water resources. Such proof must be independently verified.

Where an applicant is required to provide proof of any matter, NSWIC believes that the burden must be that of “beyond reasonable doubt”.

We believe that an assessment of potential damage must be undertaken by a suitably qualified independent third party. This assessment must take into account potential cumulative impacts. Such an assessment may utilise a risk management matrix that allows variance for high value or strategically important areas to ensure that the response meets the potential threat. Based on such assessment, a security bond

mechanism must be determined and enforced such that the state holds a financial instrument capable of fully compensating for any damage occasioned.

The risk management approach and possible resultant matrix must also take into account the environmental and water resource history of the applicant. Where an applicant has a poor history – breaches of entitlements by it or an associated entity – or said applicant has no history in managing environmental and water resource impacts, their potential threat level must be increased.

Any take of water – either deliberate or inadvertent – as an adjunct to exploration must be fully accounted. Where threat levels are assessed on a higher scale according to the proposed matrix, this accounting must be required up front. That is, an operator must hold an entitlement (temporary or permanent) equivalent to the potential take from exploratory operations at the commencement of such operation.

Regular oversight and reporting against conditions on permits must be required and full transparency of the results must be guaranteed.

Operation

NSWIC believes that the operation phase has the greatest potential to cause significant damage to water sources and, as such, advocates that the strictest conditions and requirements be imposed at this phase. It is our position that all of the requirements for exploration permits must be continued and built upon, together with additional requirements being imposed.

As the potential for damage is significantly more considerable, the security bond mechanism and risk matrix analysis must again be used but must result in significantly higher values of bond held. The risk matrix analysis must include consideration of performance against requirements at the exploration phase both on the current proposal and on any previous operations by the proponent or any associated entity.

A full benchmarking process of the immediate and surrounding areas of the proposed operations must be conducted prior to the commencement of any activity. This must be completed by an independent entity and the results must be fully transparent and available publicly. It is against this benchmark data that all compliance must be measured over the course of operations.

As a minimum, quarterly testing of water quality, water quantity, pressure and availability must be undertaken and reported against the benchmark data. Again, this testing must be undertaken by an independent entity and be made publicly available. Where the risk matrix indicates a higher risk operation, testing at a greater frequency must be considered.

Any negative impact reported against a benchmark must be treated as a strict liability offence. That is, unless the operator can prove (on the balance of probabilities) that the damage was occasioned by an event or events *other than* those for which they are responsible, they must be held liable for the damage occasioned.

Produced Water

NSWIC recognises that operation of both mining and coal seam gas extraction routinely results in water being extracted, either subsequent to injection or as a tangent to operations.

As a basic premise, NSWIC notes that all extractions (other than recovery of injected water) must be pursuant to a Water Access License.

Where extracted water is of lower quality than the surrounding source and needs to be either stored or disposed of, a strict management regime must be required and rigorously enforced. Storage must be effected by a “closed system” that allows no opportunity for leakage or evaporation. Treatment of contaminated water (be it saline extracted water or recovered water from operations that contains chemicals) must include filtration to remove heavy metals. Independently verified testing of both input and output to treatment must be undertaken and made publicly available.

Any water to be reinjected or released in any fashion must be to *at least* the quality of the surrounding sources based on independently tested and publicly reported benchmark data.

Post Operation

By their nature, mining operations have a limited lifespan. The impacts on water resources, however, may not be restricted to that same lifespan.

It is the position of NSWIC that applications for operations permits must include an identifiable and third party verified withdrawal strategy with respect to water sources. That is, before a permit is issued and operations allowed to commence, an exit strategy that deals with how water management issues will be dealt with on withdrawal must be provided and independently verified.

At the conclusion of operations, independent verification of potential damage that may still be occasioned (taking into account the withdrawal strategy) must guide the quantum of security bond to be kept and the period over which it must be kept. The same verification must address the potential water requirements (leeching, inadvertent take and the like) that the site is likely to demand. Those demands must then be fully accounted (by acquisition of entitlement) and held until proof is presented that such requirements are not longer present.

Other Matters

At the time of writing, NSWIC is concerned at the capacity of Government regulatory bodies to deal with the anticipated scope of mining and coal seam gas exploration, operations and post-operation requirements pursuant to this policy. Without adequate resourcing – and efficient use of those resources – Council believes that the most rigorous of policy will be meaningless.

We specifically believe that industry self-regulation and self-reporting is meaningless and must be abandoned as a protocol or measure of protection, specific or implied.

Breaches of conditions at any phase must be considered a “reportable incident”. The State authorities must, at the expense of the operator, provide a publicly accessible report of the breach and must notify stakeholders directly of the breach, what measures were taken to avoid the breach and what additional conditions will be imposed as a result of the breach.

ENDS

Appendix C



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Submission to NSW Government

NSW Aquifer Interference Policy

NSW Government policy for the licensing and approval of aquifer interference activities

120710

Stefanie Schulte
Economic Policy Analyst

Member Organisations: Bega Cheese Limited, Border Rivers Food & Fibre, Coleambally Irrigation Co-Op Ltd, Cotton Australia, Gwydir Valley Irrigators' Association Inc., High Security Irrigators Inc, Hunter Valley Water Users' Association, Lachlan Valley Water, Macquarie River Food & Fibre, Mid Coast Dairy Advancement Group, Mungindi-Menindee Advisory Council, Murray Irrigation Limited, Murray Valley Water Diverters' Association, Murrumbidgee Groundwater Inc., Murrumbidgee Irrigation Ltd, Murrumbidgee Private Irrigators' Inc., Murrumbidgee Valley Food and Fibre Association, Namoi Water, NSW Farmers' Association, Ricegrowers' Association of Australia, Richmond Wilson Combined Water Users Association, Riverina Citrus, Southern Riverina Irrigators, South Western Water Users', West Cororgan Private Irrigation District, Wine Grapes Marketing Board.

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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 association, food and fibre groups, irrigation corporations and community groups from the rice, cotton, dairy and horticulture industries. Many of these Members have been – and will be – affected by mining, including coal seam gas, in NSW.

This submission represents the views of the Members of NSWIC to the *NSW Aquifer Interference Policy*. 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.

Executive Summary

The recent amendments to the Draft NSW Aquifer Interference Policy will severely threaten the long term future of the state's water resources and the productive capacity of those industries dependent on them.

NSWIC has stated on many occasions that we recognise the need for balance between mining / coal seam gas (CSG) activities and irrigation in order for both to coexist successfully. Given the proposed changes to the Draft Aquifer Interference Policy, NSWIC does not believe that such an optimal balance has been achieved or that a practical alternative has been provided for sensible management of the state's water resources through all stages of mining and coal seam gas activities. The exemptions included in the revised Aquifer Interference Policy still provide countless opportunities for mining, including coal seam gas operations to use highly productive water sources without sufficient regulatory scrutiny and with potential detrimental effects. It is clearly evident that the objective to find an optimal balance between the preservation of the region's significant agricultural production and the extraction of the state's coal and coal seam gas reserves has not been achieved. Given the exemptions, it is furthermore questionable what this policy applies to, who it applies to will apply to and when.

NSWIC remains resolute in its opinion that the preservation of a sustainable resource for agriculture - water - must be absolute and unconditional. It is unacceptable that the NSW Government has ignored our recommendations for a sensible Aquifer Interference Policy and has continued to put water sources at risk of potential irreversible damage. If implemented in its current form, this Policy will provide insufficient protection of the state's water resources and those industries dependent on them.

As we have been provided with two business days to provide a response to the new, mining-friendly policy, we would like to voice our discontent over the grossly insufficient timeframe for a peak group like NSWIC to consult adequately with its Members. We believe that this abrogation of responsibility is also designed to further assist the mining and minerals sector.

Finally, and despite our best efforts to find a mutually acceptable path, we are now faced with a policy that is unacceptable. We urge the Government to rethink it and its implication as a matter of great urgency. In the event that it is adopted in its current form, we will have no choice but to join other parties in vigorously opposing it and encouraging the NSW Parliament to reject it.

Compliance with Consultation Expectations

In March 2009, in response to the growing number and complexity of consultation process, 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.

Our policy requires consultation to proceed through five stages.

(i) Identification of problem and necessity for change

Satisfactory. NSWIC has highlighted on multiple occasions that there is a need for a sensible Aquifer Interference Policy that protects the state's water resources from potential irreversible damages.

(ii) Identification of solutions and proposed method for implementation

Unsatisfactory. The document does not outline the changes that have taken place between the Draft and the Aquifer Interference Policy document. Substantial flaws remain in the proposed Aquifer Interference Policy.

(iii) Summary of submissions, identification of preferred approach

Unsatisfactory. The Aquifer Interference Policy does not make any reference to stakeholder comments and submission.

(iv) Explanation of interim determination and final feedback

Unsatisfactory. NSWIC was provided with two business days for consultation and hence has not had sufficient time to provide a comprehensive final feedback to the proposed Policy. More time should be provided to stakeholders to thoroughly understand the implication of this Policy and to prepare an appropriate response.

(v) Publication of final determination

We are under the impression that this document constitutes the final recommended changes to the Draft Aquifer Interference Policy. We are disappointed that little positive change has been implemented.

General Comments

NSWIC has attempted on multiple occasions to find ways for both industries – mining and agriculture - to coexist. We have worked vehemently for an effective and sensible Aquifer Interference Policy that will protect water resources against potential irreversible damages.

NSWIC believes it has done all it can to be reasonable in this debate and as such, it comes at a significant disappointment that our recommendations have been comprehensively ignored.

We have proposed five very reasonable changes to the Draft Aquifer Interference Policy that we believe would allow for a sustainable management of the state's water resources.

These five recommendations are;

1. The Policy has to apply state wide;

NSWIC remains resolute in its opinion that the preservation of water resources must be absolute and unconditional. We have always strongly advocated for the Policy to apply state wide to protect all water resources in NSW.

2. The Policy has to apply to all water sources - both ground and surface water;

Given the high interconnectivity between water sources, NSWIC strongly believes that both ground and surface water have to be included in this Policy. The impact on one water source, can have a direct and irreversible impact on the other. To only address impacts on one water source, nullifies the effort to have a comprehensive regulation that protects all water sources in the state.

3. The Policy has to apply through all stages of mining and coal seam gas activities - exploration, operation and post-closure;

A comprehensive policy that protects all water sources across NSW needs to apply to all stages of mining and coal seam gas activities - exploration, operation and post-closure. In the exploration stage, damage to an aquifer can arise to the same extent as during the operation phase and hence require regulation. Furthermore, an aquifer might take years or decades to reach equilibrium again, a thorough consideration of post-closure impacts / management are crucial for the maintenance of healthy water sources in the state.

4. The Policy has to apply to all projects to be subject to an Aquifer Interference Approval regardless of a Gateway Certificate (or alternative that the advice to the Gateway Panel is binding);

NSWIC strongly advocates for ALL mining and coal seam gas activities to be subject to the Aquifer Interference Policy. We believe it contradicts the purpose of this Policy if the acquisition of a gateway certificate has the capability to override the regulation of the Aquifer Interference Policy.

5. The Policy has to remove the exemptions for "state significant projects"

NSWIC believes it is highly inadequate that there exists a streamlined approval process for state significant projects. Should such a provision be implemented, then this would potentially result in a significant number of projects to bypass the requirement to hold an Aquifer Interference Approval. NSWIC objects to the exemption of state significant projects from the need to hold an aquifer interference approval. NSWIC stresses that all mining and coal seam gas projects should be treated identically as the regulatory framework would otherwise be severely diluted.

It appears that we have been comprehensively ignored on all but one of our recommendations. While the revised Draft Aquifer Interference Policy now appears to apply state wide, all other recommendations have been rejected. Surface water resource issues are still insufficiently addressed in the Policy and very little change has take place with respect to the regulation of exploration / post-closure of mining and coal seam gas activity and the exemptions of state significant projects. Furthering the insult, the policy is now deliberately vague on a range of key areas which we believe is clearly designed to further assist the mining and minerals sector.

Specific Comments

We would again like to voice our discontent over the very short timeframe for consultation. Given the timeframe, we will not be able to comment in detail on all the aspects of the changes to the Draft Aquifer Interference Policy.

Outlined below are the sections that are relevant for our submission and which support our response to the Aquifer Interference Policy;

NSWIC Recommendation	Draft NSW Aquifer Interference Policy - Stage 1 (March 2012)	NSW Aquifer Interference Policy (July 2012)	Comments
<p>The Policy has to apply state wide;</p>	<p><i>The NSW Government is rolling out Aquifer Interference approvals under the Water Management Act 2000. The first stage of this roll out will require aquifer interference activities in groundwater that is covered by the Water Management Act 200- and underlies Biophysical Strategic Agricultural Land (...). The second stage of this roll out will address the aquifer interference approval requirements for activities in groundwater that does not underlie biophysical Strategic Agricultural Land. (p.4)</i></p>	<p><i>This policy explains the licensing and approvals framework for all aquifer interference in NSW. (p.3)</i></p>	<p>NSWIC welcomes the change to the Aquifer Interference Policy in that it now applies statewide. However we would like to raise our concern that this does not apply state significant developments. Applying first to all areas with Water Sharing Plans in place and a goal of 2014 for full state coverage.</p>
<p>The Policy has to apply to all water sources - both ground and surface water;</p>	<p><i>An Aquifer interference approval will either be exempted or will only be issued where it can be demonstrated that adequate arrangements are in place to ensure that no more than minimal harm will be done to the aquifer or its dependent ecosystem. The minimal harm criteria set out in Appendix 1 cover the key potential impacts of water table and water pressure drawdown, aquifer compaction and water quality. (p.25)</i></p> <p>Appendix 1 makes only reference to Groundwater and Groundwater Bores.</p>	<p><i>Under section 97(6) of the Water Management Act 2000, an aquifer interference approval is not to be granted unless the Minister is satisfied that adequate arrangements are in force to ensure that no more than minimal harm will be done to the aquifer (..) (p.38)</i></p> <p><i>For each of these highly productive and less productive groundwater sources thresholds for key minimal harm criteria have been set. (p.39)</i></p>	<p>NSWIC objects to the amendment to the minimal harm criteria as it is still focused on groundwater sources without taking sufficient consideration of surface water resources.</p> <p>NSWIC would also like to highlight that the minimal harm criteria have substantially changed. Given the short timeframe, we are unable to comment in full on all changes made. More detail; needs to be provided on the changes made to the revised policy.</p>

<p>The Policy has to apply through all stages of mining and coal seam gas activities - exploration, operation and post-closure</p>	<p><i>Section 3.4. Exemption from the need to hold an aquifer interference approval</i></p> <ul style="list-style-type: none"> <i>mineral and coal exploration activities undertaken in accordance with conditions of authorization under the Mining Act 1992 subject to those conditions not allowing the exploration activity to cause or enhance interconnectivity of aquifer</i> <i>petroleum exploration activities undertaken in accordance with conditions of titles under the Petroleum (Onshore) Act 1991 subject to those conditions not allowing the exploration activity to cause or enhance interconnectivity of aquifers. (p.28)</i> <p><i>Section 2.4. Dealing with perpetual inflow volumes</i></p> <ul style="list-style-type: none"> <i>Where there is ongoing take of water, the license holder must retain a water license for the period until the system returns to equilibrium or surrender it to the Minister. If the water license is surrendered, the Minister will retain the license entitlement to account for the ongoing take of water. (...) Given the likelihood of a less active management regime post-closure, surrendering of license entitlements which adequately cover any likely future low available water determination periods is preferable. (p. 11)</i> <p><i>Section 4.1. Security deposits and penalties</i></p> <ul style="list-style-type: none"> <i>A security deposit is a bank guarantee or sum of money held by the Government to cover the costs of remediation works for unforeseen impacts or ongoing post-closure activities. (p.32)</i> 	<p><i>Section 3.3. Exemption from the need to hold an aquifer interference approval</i></p> <ul style="list-style-type: none"> <i>mineral and coal exploration activities undertaken in accordance with conditions of authorization under the Mining Act 1992 (...)</i> <i>petroleum exploration activities undertaken in accordance with conditions of titles under the Petroleum (Onshore) Act 1991 (...) (p.54)</i> <p><i>Section 2.4. Dealing with perpetual inflow volumes</i></p> <ul style="list-style-type: none"> <i>Where there is ongoing take of water, the license holder must retain a water license for the period until the system returns to equilibrium or surrender it to the Minister. If the water license is surrendered, the Minister will retain the license entitlement to account for the ongoing take of water. (...) Given the likelihood of a less active management regime post-closure, surrendering of license entitlements which adequately cover any likely future low available water determination periods is preferable (p.9)</i> <p><i>Section 4.1. Security deposits and penalties</i></p> <ul style="list-style-type: none"> <i>A security deposit is a bank guarantee or sum of money held by the Government to cover the costs of remediation works for unforeseen impacts or ongoing post-closure activities. (p.57)</i> 	<p>NSWIC does not believe the Policy adequately applies to all stages of mining and coal seam gas activities.</p> <p>Since insignificant changes have taken place between the Draft and the recently released Aquifer Interference Policy, we would like to reiterate our concerns over the insufficient regulation in the exploration and post closure stage of mining and coal seam gas activities.</p> <p>To limit the damages of exploration activities, NSWIC has suggested in its previous submission that any renewal of exploration licenses should be covered by an AI approval.</p> <p>NSWIC has stressed that a provision that allows mining and coal seam gas operations to surrender their licenses to the Minister, will provide insufficient incentives for mining and coal seam gas operations to take necessary precaution to ensure that the water sources are not damaged.</p> <p>NSWIC also called for greater detail on make good provisions, burden of proof, monitoring/management requirements and how security deposits will be managed.</p>
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<p>The Policy has to apply to all projects to be subject to an Aquifer Interference Approval regardless of a Gateway Certificate (or alternative that the advice to the Gateway Panel is binding);</p>	<p><i>Section 3.4. Exemptions from the need to hold an aquifer interference approval:</i></p> <ul style="list-style-type: none"> • <i>State significant mining and coal seam gas development proposals</i> • <i>those individual activities that existed prior to aquifer interference approvals</i> • <i>those activities that are covered by a water supply work approval</i> • <i>mining and coal exploration activities</i> • <i>petroleum exploration activities</i> • <i>in aquifers that the Minister determines as being high value aquifers</i> • <i>in aquifers that the Minister determines as not being high value aquifers</i> • (...) <p>(p.27-28)</p>	<p><i>Section 3.3. Exemptions from the need to hold an aquifer interference approval:</i></p> <ul style="list-style-type: none"> • <i>State Significant mining and coal seam gas development proposals</i> • <i>road or rail infrastructure construction</i> • <i>State significant infrastructure</i> • <i>those individual activities that existed prior to aquifer interference approval being switched on</i> • <i>mining and coal exploration activities</i> • <i>petroleum exploration activities</i> • <i>in aquifers that the Minister determines as being high value aquifers</i> • <i>in aquifers that the Minister determines as not being high value aquifers</i> • (...) <p>(p.53 -54)</p>	<p>NSWIC rejects the broad list of exemptions included in the Aquifer Interference Policy. We reiterate our concern that a Policy that has more exemptions than applications cannot constitute an adequate Policy that protects the state's water resources.</p> <p>NSWIC strongly advocates for a uniform and comprehensive assessment framework for all mining and coal seam gas project proposals. All proposals should be subject to the same thorough assessment in which all relevant information on local and regional costs/ risk are taking into consideration.</p>
<p>The Policy has to remove the exemptions for "state significant projects"</p>	<p><i>General exemptions from the need to hold an aquifer interference approval (...) will be specified in the Aquifer Interference Regulation and are as follows:</i></p> <p><i>State significant mining and coal seam gas development proposals that have been granted either a gateway certificate or development consent (where the gateway does not apply) under the EP&A Act. (p.27)</i></p>	<p><i>General exemptions from the need to hold an aquifer interference approval (...) will be specified in the Water Management(General) Regulation and are as follows:</i></p> <p><i>State significant mining and coal seam gas development proposals that have been granted either a gateway certificate or approval (where the gateway does not apply) under the EP&A Act. (p.53)</i></p>	<p>NSWIC considers it highly inadequate that the Policy suggest for streamlined approval process for state significant development proposals.</p> <p>Should such a provision be implemented, NSWIC believes that a significant number of projects will bypass the regulation with the consequence that water resources in NSW will be at risk of potentially irreversible damage.</p>

Additional Comments:

NSWIC would like to raise additional concerns with the Aquifer Interference Policy;

- **Return of water to a water source;**

"In addition, where an aquifer interference activity is incidentally taking water from a river it must be returned to that river when river flows are at levels below which water users are not permitted to pump." (p.6)

We are unsure how the inclusion of this section will impact irrigators and irrigation activities. We would like to see further detail on how this affects individual irrigators.

- **Provision of Information;**

"The NSW Office of Water's assessment will determine the potential level of impact and will identify where further mitigation, prevention or avoidance measures are required." (p.38)

NSWIC holds a strong preference for public access to all information to the development proposals and associated aquifer impacts. We recommend that this information has to be made public by the NSW Office of Water.

- **Minimal Harm Criteria;**

NSWIC is concerned that the minimal harm criteria have substantially changed. The percentages and water source references included in this document vary substantial from the initial draft Aquifer Interference Policy. We are particular unsure how the minimal harm criteria compare to the current condition of aquifer in 2012. We are alarmed that certain sections of the minimal harm criteria have been removed - aquifer compaction, water quality assessment, and the reinjection of water into a water source.

- **Compliance with Other Policies;**

NSWIC would like to highlight the gateway process has to comply with other state and national regulation, in particular the National Groundwater Standards. Furthermore, we would like to raise the question as to how the Aquifer Interference Policy - in particular the minimal harm criteria - will apply/interact with the current Water Sharing Plans.

- **Cumulative Impacts;**

NSWIC would like to see further detail provided on the individual and cumulative impact assessment as part of the Aquifer Interference Policy. We are aware that cumulative impacts are mentioned, however we do not believe the Policy adequately covers this aspect. Furthermore, NSWIC would like to highlight that the overall impact of this Policy on AWD is ambiguous and requires further explanation.

- **Consideration of Aquifer Impacts**

Where mining and coal seam gas development proposals on strategic agricultural land need to pass a gateway test before proceeding to DA lodgement, it is unacceptable that this only requires “consideration” of the impacts on aquifers against the AI policy. This must “comply” with the AI Policy.

Conclusion

NSWIC would like to reiterate our disappointment that despite our best efforts to find a mutually acceptable path, we are now faced with a policy that is entirely unacceptable. We urge the NSW Government to rethink it and its consequences as a matter of urgency. If the policy is adopted in its current form, water resources across the state and the industries dependent on them will be severely threatened.

Appendix:



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Consultation

The Expectations of Industry

090303

Andrew Gregson
Chief Executive Officer

Member Organisations: Bega Cheese Limited, Border Rivers Food & Fibre, Coleambally Irrigation Co-Op Ltd, Cotton Australia, Gwydir Valley Irrigators' Association Inc., High Security Irrigators Inc, Hunter Valley Water Users' Association, Lachlan Valley Water, Macquarie River Food & Fibre, Mid Coast Dairy Advancement Group, Mungindi-Menindee Advisory Council, Murray Irrigation Limited, Murray Valley Water Diverters' Association, Murrumbidgee Groundwater Inc., Murrumbidgee Irrigation Ltd, Murrumbidgee Private Irrigators' Inc., Murrumbidgee Valley Food and Fibre Association, Namoi Water, NSW Farmers' Association, Ricegrowers' Association of Australia, Richmond Wilson Combined Water Users Association, Riverina Citrus, Southern Riverina Irrigators, South Western Water Users', West Cororgan Private Irrigation District, Wine Grapes Marketing Board

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 woeful²⁸. 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.

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.

²⁸ See case studies later in this document.

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)²⁹; 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;

- 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

²⁹ Although note specifically that artificial timeframes, such as political necessity, will not be well received by irrigators.

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 published³⁰ discussion paper as a minimum requirement.

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

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.

³⁰ We accept that “published” may mean via internet download, but require that hard copies be made available free of charge on request.

The availability of the document must be widely publicised³¹. 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.

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*

³¹ Regional newspapers, radio stations and the websites of representative groups and infrastructure operators are useful options in this respect.

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 for 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.