

NSW IRRIGATORS' COUNCIL

RESPONSE TO THE

STATE WATER CORPORATISATION

DISCUSSION PAPER

APRIL 2004

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1. EXECUTIVE SUMMARY

NSW Irrigators' Council (NSWIC) supports the NSW Government's decision to corporatise State Water as a State Owned Corporation (SOC) and endorses the key objective of the corporatisation of State Water: to separate the Government's commercial water delivery functions from its policy and regulatory functions.

Council fully supports the establishment of corporate governance and management functions that will ensure State Water's activities are subject to a transparent and accountable governance regime.

The establishment of an independent Board of Directors is paramount to the future success of State Water as a State Owned Corporation. As NSWIC members have been instrumental in the successful operation of the Private Irrigation Corporations since they were privatised some years ago it is Council's view that State Water would benefit from expertise of this nature being represented on its Board of Directors.

The Independent Pricing and Regulatory Tribunal (IPART) must continue to regulate bulk water prices. All previous IPART bulk water determinations must be preserved, in full. Council also supports the Consumer Price Indexation adjustment to bulk water charges being applied from 1 July, 2004. Council does not support the Department of Infrastructure, Planning and Natural Resources (DIPNR) having an independent relationship with IPART.

If the corporatisation model implements DIPNR's role as being one of auditing and regulatory functions only, then there is no need for DIPNR to participate in IPART's bulk water determination. If DIPNR insists on direct access to IPART, then NSWIC would view the separation sought by the National Competition Council as incomplete and the subject of ongoing competition policy conflict.

Consultative arrangements must be established to bring industry's perspective on river operations and bulk water delivery to the benefit of State Water's executive and regional management decision making processes.

State Water's accountability to its shareholders, stakeholders and the regional communities it serves must be supported by timely publication of a wide range of indicators and reports that demonstrate its performance against its corporate ideals and objectives and, importantly, its stakeholders expectations.

The NSW irrigation industry must have confidence that State Water is focused on cost efficient delivery of bulk water, utilising the application of best practice corporate governance and management processes and principles. State Water must have a clear business objective of delivering bulk water efficiently and cost effectively. There must be no transfer of new debt by the Government to State Water. This would be viewed as a new tax on industry, as a time when NSW irrigators are still recovering from the impact of drought and historically low allocation levels.

State Water must be committed to being a global leader in the delivery of bulk water and the management, maintenance and operation of its asset base. Corporatisation of State Water as a stand-alone State Owned Corporation is a positive start by Government to meeting industry's expectations.

2. RECOMMENDATIONS

NSWIC recommends that:

- to represent the interests of irrigators, State Water's Board of Directors include two members nominated by the NSW Irrigators' Council;
- the funds generated by the CPI adjustment be applied, in full, to State Water's operating budget for the period 1 July 2004, to 30 June 2005;
- State Water be provided twelve (12) months operating capital to cover, in full, its operating costs for the period 1 July 2004, to 30 June 2005;
- there must be no transfer of new debt by the Government to State Water;
- there must be no cross-subsidisation between valleys;
- services on unregulated and groundwater systems be maintained through State Water under contract to DIPNR, with representation from these customers on the Valley Customer Service Councils;
- all hydrometric services be transferred to State Water by January 2005. As these are purely an operational function, they should be managed within an operating agency and not the policy and planning agency;
- stakeholders be consulted during the development and review of State Water's Operating Licence;
- two (2) NSWIC nominees be included on the panel developing the Operating Licence protocols; and
- the following consultative arrangements are established:
 - Valley Customer Service Councils (CSCs);
 - a Catchment Management Authorities Consultative Agreement; and
 - a Natural Resources Advisory Council Consultative Agreement.

3. NEW SOUTH WALES IRRIGATORS' COUNCIL

NSW Irrigators' Council (NSWIC) represents more than 10,000 irrigation farmers across NSW. Its members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries.

Attachment 1 records the membership details of the NSW Irrigators' Council.

4. GOVERNMENT DECISION

NSWIC supports the NSW Government's decision to corporatise State Water as a State Owned Corporation (SOC).

In particular, NSWIC supports:

- State Water being corporatised as a stand-alone State Owned Corporation;
- The clear separation of State Water from the Department of Infrastructure, Planning and Natural Resources (DIPNR) and the Department of Energy, Utilities and Sustainability;
- The delineation of responsibilities between State Water and DIPNR with respect to regulated river systems, unregulated river systems and groundwater;
- State Water's principal function continuing to be the efficient delivery of the State's bulk water supplies;
- The establishment of an independent Board of Directors;
- The continued role for the Independent Pricing and Regulatory Tribunal (IPART) to regulate bulk water prices; and
- The preservation of all existing State Water staff entitlements and staff positions, subject to each position being justified under the proposed corporatisation model.

The NSW irrigation industry must have confidence that State Water is focused on cost efficient delivery of bulk water, utilising the application of best practice corporate governance and management processes and principles.

State Water must be committed to being a global leader in the delivery of bulk water and the management, maintenance and operation of its asset base.

5. RATIONALE FOR CORPORATISATION

NSWIC endorses the key objective of the corporatisation of State Water: to separate the Government's commercial water delivery functions from its policy and regulatory functions.

Council fully supports the establishment of corporate governance and management functions to ensure that State Water's activities are subject to an accountable governance regime, including:

- an independent and accountable Board of Directors;
- clear commercial objectives;
- managerial authority and autonomy;
- competitive neutrality being fully applied to all future business operations;
- performance monitoring by shareholders and stakeholders;
- stakeholder consultative processes being established at both valley and Board level; and

- commercial financial arrangements, including a capital structure, a Statement of Corporate Intent and transparent community service obligation (CSO) payments.

NSWIC also supports:

- the ability of State Water to acquire services and to sell services on the best commercial terms. The outcome of this approach must contribute to enhancing innovation, cost saving, resource efficiency and positive financial outcomes;
- improved clarity over State Water's cost of implementing its water resource management and regulatory obligations and obligations;
- State Water having an ability to provide incentives that encourage on farm and off farm water delivery and water use efficiency which could benefit farm profitability; and
- the identification of all non-commercial services and community service obligations that State Water is required to deliver as part of its core business activities that must be funded by CSO funding.

6. MERGERS

i. Country Energy

NSWIC supports the Government's decision to not merge State Water with Country Energy.

ii. Fish River Water Supply Authority

NSWIC supports the Government's decision to merge State Water with the Fish River Water Supply Authority, effective 1 January 2005, or, at a time that is appropriate for the efficient business management of the process.

7. PROPOSED CORPORATISATION MODEL

NSWIC supports the preferred business model that envisages the establishment of State Water as a state-wide stand-alone statutory State Owned Corporation under the provisions of the *State Owned Corporations Act 1989*.

The preferred commencement date for operations under the SOC regime of 1 July 2004, is supported by NSWIC. However, this timetable must not be used to compromise the introduction of appropriate policies and business procedures that will guide State Water's establishment as a SOC and its ongoing business operations.

Under corporatisation, State Water's principal function must continue to be to supply bulk water to licensed users (including regional towns) throughout rural NSW. This core objective must be assisted by centralised efficiency and, the development of expertise in relation to asset maintenance, monitoring and management.

State Water must be, at all times, free to implement management decisions relating to its core business activities free of any political interference.

In the first instance, NSWIC supports the view that the benefits of a state-wide business structure are considered most appropriate for managing State Water's business risks and operations. However, in offering support for this model, NSWIC reiterates and recommends its long held view that there must be no cross-subsidisation between valleys.

NSWIC expects that State Water will continue to strive to deliver cost effective and profitable services in all regions of the State.

A state-wide business structure must be established that is capable of reducing the cost of support services, head office facilities and all general business overheads. State Water must have a clear business objective of delivering bulk water efficiently and cost effectively.

It will be incumbent on the State Water Board of Directors and management, to implement business systems and operational policies that deliver cost effective and efficient services across its customer base.

NSWIC recommends that:

- services on unregulated and groundwater systems be maintained through State Water under contract to DIPNR, with representation from these customers on the Valley Customer Service Councils; and
- all hydrometric services be transferred to State Water by January 2005. As these are purely an operational function, they should be managed within an operating agency and not the policy and planning agency.

i. Board of Directors

NSWIC supports the decision to ensure that State Water has its own independent Board of Directors that reflects the customer focus of the organisation. NSWIC recommends that there be two members nominated by the NSW Irrigators' Council to represent the interests of irrigators.

The establishment of the Private Irrigation Corporations and the very strong irrigator involvement in their development and management since privatisation, is testament to the depth of business acumen that NSWIC nominated representatives would bring to State Water's Board of Directors.

The State Water Board should have expertise in the following areas:

- Irrigated agriculture;
- Water delivery and river management;
- Business management and corporate governance;
- Environmental management;
- Engineering and infrastructure and asset management;
- Communication and marketing; and
- Regional development.

8. IPART

Council supports the continuation of IPART's role in the determination of bulk water prices. It is imperative that IPART's independent role is not diluted by the corporatisation of State Water.

Of particular concern to Council is the preservation of all past decisions made by IPART with respect to:

- Sunk costs;
- Funding Capital Works;
- Rates of return on investment;
- The clear articulation of State Water's Community Service Obligations (CSO)

Council does not support DIPNR having an independent relationship with IPART.

If the corporatisation model confirms DIPNR's role as being one of auditing and regulatory functions only, then there is no need for DIPNR to participate in IPART's bulk water determination. If DIPNR insists on direct access to IPART, then NSWIC would view the separation sought by the National Competition Council as incomplete and the subject of ongoing competition policy conflict.

i. Consumer Price Indexation

In lieu of an IPART Price Determination being concluded in 2004, NSWIC supports the Government's decision to apply Consumer Price Indexation (CPI) to bulk water charges for the period 1 July 2004 to 30 June 2005.

NSWIC recommends that the funds generated by this CPI adjustment be applied, in full, to State Water's operating budget for the period 1 July 2004, to 30 June 2005.

ii. Pricing

State Water must continue to be subject to pricing determinations by the Independent Pricing and Regulatory Tribunal (IPART). This must include:

- price path guarantees of at least 3 years;
- the maintenance of IPART's current practice of differential pricing between valleys; and
- a capacity for IPART to implement differential pricing within a valley, based on recommendations from relevant Customer Service Councils.

9. FINANCIAL STUDY

NSWIC supports the conduct of the proposed Financial Study to address State Water's future financial and business structures.

i. Community Service Obligations

The Government must fully fund the delivery, by State Water, of its community service obligations (CSO).

CSOs must be clearly articulated, with an assessment of the cost of implementing, maintaining and delivering all CSOs forming part of State Water's annual budgetary and reporting processes. There must be clear articulation of all Government contributions for meeting CSO costs.

CSOs must be implemented as part of State Water's Operating Licence.

State Water's CSOs must cover:

- Environmental services, including:
 - the delivery of basic environmental health water, supplementary environmental health water and adaptive environmental health water as agreed in Water Sharing Plans and State Water's Operating Licence;
 - operational expenditure relating to the provision of water to the environment as a customer (storage, management, delivery); and
 - capital expenditure relating to the provision of water for the environment including storage space and the repair, maintenance, management and upgrading of infrastructure for environmental purposes (eg fish passage over weirs, and mitigation of thermal pollution).
- Industry affordability
With individual valley accounting, there may be some regions, valleys or water sources that may be unviable business entities. In these cases, after business restructuring, there may be a requirement for Government subsidisation in these areas;
- Exceptional Circumstances
Acts of God such as drought, flood, flood mitigation, fire and earthquakes; and
- Community and Recreational Services
The costs of providing community and recreational services, such as lock passage for houseboats on the Murray River, must be fully funded as a CSO. Alternatively, NSWIC supports full cost recovery being applied to users of recreation and community services supplied by State Water.

ii. Rate of Return on Assets

IPART has made a number of determinations that must be carried forward, unamended, into the future operations of State Water as a SOC:

- in 1996 IPART determined that all water assets put in place prior to 1 July, 1997 should not be included in the asset base for pricing purposes, including depreciation and rate of return for expenditure prior to this date;
- in 2001, IPART determined that charging users a rate of return in addition to annuity payments for post 1997 assets would amount to double charging on users; and
- no rate of return should be payable on the capital provided by water users and other beneficiaries for the maintenance of State Water capital assets.

iii. Dividends to Government

a. Efficiency Dividend

NSWIC does not support the imposition of an efficiency dividend that transfers new debt to State Water; and

b. Dividend to Government

State Water must be able to re-invest cash surpluses in its business, either as:

- ◆ cash reserves to enable business stability through droughts or very wet years; or
- ◆ continued refurbishment and replacement of capital infrastructure assets.

iv. Competitive Neutrality

The principles of Competitive Neutrality must be strictly applied to the corporatised entity.

v. Valley-based accounting

There must be valley-based accounting, with no cross subsidisation between valley accounts. Valley contributions to the corporate entity must be pro-rata on the cost of delivering services to that valley.

vi. Externalities

NSWIC does not support the use of State Water's operations or bulk water charges to deliver any NSW Government environmental obligations or policy objectives.

vii. Start-up Funding

At the time of privatisation, some Private Irrigation Corporations and Districts were provided with twelve (12) months operating funds. NSWIC recommends that State Water be provided twelve (12) months operating capital to cover, in full, its operating costs for the period 1 July 2004, to 30 June 2005.

10. REGULATORY FRAMEWORK

i. Operating Framework

State Water's resource management role must be defined by its Operating Licence. The Operating Licence must address:

- Objectives of the Corporation;
- Term of the licence;
- non-exclusive licence;
- Area of Operation;
- identification of customers and requirement for contractual arrangements between State Water and its customers;
- customer participation, including consultative committees;
- transparent process for addressing and resolving customer complaints;
- requirements for Review (mid-term and conclusion);

- dam safety and regulatory compliance;
- environmental management plan (eg energy consumption, demand management etc);
- requirement to develop a Memorandum of Understanding with the Water Administration Ministerial Corporation;
- community service obligations, including resource management responsibilities;
- monitoring, reporting and auditing requirements; and
- competitive neutrality.

NSWIC recommends:

1. that stakeholders be consulted during the development and review of State Water's Operating Licence; and
2. two (2) NSWIC nominees be included on the panel developing the Operating Licence protocols.

ii. Customer Contracts

Customer Service Level Agreements (SLA) should be negotiated by each CSCs and should address issues such as:

- service delivery standards (developed and agreed through CSCs);
- responsibilities of the customer (eg to provide metering, access to State Water Staff etc);
- rights of redress for customers in event of breach of customer contract (eg rebates, claims for damages, legal rights of redress);
- commitment to customer involvement (eg through CSCs);
- commitment to customer notification (in the event of changes to or interruptions in service provision); and
- dispute resolution procedures.

iii. Memoranda of Understanding with Regulators

State Water must maintain a Memorandum of Understanding with the Water Administration Ministerial Corporation (WAMC) to cover:

- the Objectives and term of its the Water Management Licence;
- what actions and activities are authorised by the licence (ie to take, use deliver from specified water sources using specified works [dams/weirs]);
- environmental flow requirements based on Water Sharing Plans and Implementation Programs (Annual Operation Plans);
- the specific circumstances under which WAMC can exercise any of its functions and otherwise act in the name of the Department;
- specific water delivery functions and resource management obligations;
- flood/disaster management programs;
- monitoring and reporting arrangements (eg gauge readings etc); and
- mechanism for dispute resolution between WAMC and State Water.

iv. Monitoring and Accountability

State Water must report annually on the following matters:

- Financial performance:
 - Budget performance;
 - Budget outline;
 - Liability management; and
 - Investment performance.
- Operating Licence performance:
 - Against key regulatory performance indicators.
- Customer service performance
 - Against guarantee of service and customer service level agreements;
 - Summary of complaints received and resolutions agreed; and
 - Operation of the Customer Service Councils.
- Competitive neutrality performance:
 - Use of consultants;
 - Use of contractors to provide services; and
 - Management systems to ensure competitive neutrality.
- Capital expenditure; and
- Human resources.

State Water's Annual Report should be presented to:

- Shareholders;
- stakeholders; and
- regulating authorities; and
- the State Parliament.

v. Resource Management Role

State Water's resource management role must be defined by the Operating Licence issued by the Water Administration Ministerial Corporation (WAMC). Resource assessment, including the announcement of allocations and supplementary water availability, in accordance with the Water Sharing Plans, must become the sole responsibility of State Water.

vi. Responsibility for Major Works

NSWIC notes that State Water has full responsibility for major works. NSWIC is concerned that currently, State Water may not have sufficient expertise to fully discharge these responsibilities. If State Water is to fully assume these functions, additional resources, both financial and human, may be required.

There also appears to be some vagueness in responsibility for flood management and mitigation. NSWIC seeks an assurance from Government that no attempt is made to pass these risks, or the cost of these functions off onto water users. There must be full State underwriting of liability exposure, especially for management and mitigation of flood effects.

11. INDUSTRY CONSULTATIONS

Communication and consultation between State Water's Board of Directors, management and stakeholders is critical to enhance understanding of forward planning, operational and management decision processes.

NSWIC recommends the establishment of:

i. Valley Customer Service Councils (CSCs)

CSCs must be established for each valley to provide input into:

- the development of annual allocation plans;
- recommendations for and prioritisation of infrastructure repairs, maintenance and upgrade programs and asset management priorities;
- the development and review of customer service level agreements;
- State Water's submissions to IPART (including within valley pricing differentials); and
- reviews of valley financial and operational management performance.

ii. Catchment Management Authorities Consultative Agreement

State Water and the Valley Customer Service Councils must be directed to develop a close working relationship with relevant Catchment Management Authorities (CMA) to promote an integrated approach to valley and catchment-wide resource management.

iii. Natural Resources Advisory Council Consultative Agreement

Customer Service Councils must be encouraged to establish a working relationship with the Natural Resources Advisory Council to again ensure that there is an integrated approach to valley and catchment-wide resource management.

12. ATTACHMENT 1 – NSW IRRIGATORS’ COUNCIL MEMBERSHIP

Border Rivers Food and Fibre
Coleambally Irrigation Limited
Cotton Australia
Darling River Food and Fibre
Gwydir Valley Irrigators Association Inc.
Hunter Valley Water Users Association
Lachlan Valley Water
Macquarie River Food and Fibre
Murray Irrigation Ltd
Murray Valley Water Diverters Advisory Association
Murray Valley Groundwater Users’ Association
Murrumbidgee Groundwater Pumpers’ Association
Murrumbidgee Horticulture Council Inc.
Murrumbidgee Irrigation Ltd
Murrumbidgee Private Irrigators’ Inc.
Namoi Valley Water Users Association
NSW Dairy Farmers’ Association Limited
NSW Farmers Association
Ricegrowers’ Association of Australia
Southern Riverina Irrigation Districts Council
South Western Water Users