

NSW IRRIGATORS' COUNCIL
SUBMISSION TO THE
NATIONAL COMPETITION COUNCIL'S
WATER REFORM ASSESSMENT
FRAMEWORK 2004

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NSWIC Response to the Water Reform Assessment Framework 2004

1. Preamble

NSW Irrigators Council (NSWIC) represents approximately 10,000 irrigation businesses across New South Wales (NSW). Its members include valley water user associations, food and fibre groups, irrigation corporations, NSW Farmers Association and commodity groups, from the rice, cotton, dairy and horticulture industries.

NSWIC supports a vision for a future in which, as a nation, we achieve from our natural resources the greatest possible long-term social, economic and environmental benefits for all Australians.

NSWIC welcomes the opportunity to provide some constructive input into the National Competition Council's (NCC) *Water Reform Assessment Framework 2004*.

2. Concerns with the Assessment Timeframe

NSWIC has some concerns about the value of undertaking an assessment of NSW's progress on water reforms in the first half of 2004, as there are a number of reform initiatives underway that will have a direct bearing on the issues being addressed by the NCC's Assessment.

The National Water Initiative (NWI), which is a Council of Australian Governments (COAG) initiative, will address, amongst other things, issues relating to water entitlements, markets and pricing and water resource accounting.

The Living Murray proposal focuses on increased environmental flows to address river health in the Murray River. This will be achieved, in the first instance, through management efficiencies in both river and on-farm operations. Water trading, from willing sellers, will be just one tool governments may use to source environmental water.

In addition, within NSW, 35 Water Sharing Plans have been approved by the Minister and were to be introduced on 1 January 2004. However, to ensure close alignment with the outcomes of the NWI, the implementation of these Plans has been delayed until 1 July 2004. The Government has also proposed the corporatisation of State Water, a process that NSW Irrigators' Council endorses. This has a target for completion of 1 July 2004.

The NSW Government has also proposed a number of amendments to the Water Management Act 2000 and, finally, the recently formed Catchment Management Authorities will play a major role in the review and management of water sharing plans.

NSWIC takes this opportunity to repeat our concerns about the NCC undertaking the Water Reform Assessment at this time, with the major reform processes listed above still incomplete. It appears to NSWIC a questionable use of time and resources, both on the part of the NCC, and the many stakeholders including Government, that are currently writing reports and submissions to inform the Assessment.

Despite these concerns NSWIC still believes it is important to participate in NCC's assessments of water reform progress in NSW and has, therefore, provided comments in the remainder of this submission on items for consideration under NCC's 2004 assessment.

3. Water Pricing

In 2003, State Water formed a small working group consisting of customer representatives to assist in the preparation of the next pricing submission to the Independent Pricing and Regulatory Tribunal (IPART). This working group's progress was halted when the IPART hearing was delayed to 2004. NSWIC understands that this working group will recommence its deliberations in the near future and commends State Water on the initiative and also acknowledges the significant progress towards institutional separation, with State Water to make its own submission, separate to DIPNR, for the first time in 2004.

3.1 Full Cost Recovery:

From the Water Assessment Framework (WAF), 2004 (p14), prices should be set to:

“fully recover efficient business and resource costs”

and

“Costs that should be recovered include operating and maintenance expenses, administrative costs, the natural resource management costs imposed on and incurred by the business, finance costs, rates and taxes, (or equivalent) depreciation expenses and a non-negative rate of return reflecting the opportunity cost of capital.”

NSWIC has several concerns to raise with regard to NSW Government's approach to full cost recovery pricing:

- *Transparently passing natural resource management costs through to water users* (WAF requirement, p16). DIPNR can not provide a quarterly breakdown in line with State Water's reporting to Customer Service Committees nor even an annual breakdown of natural resource management costs, with these costs still appearing as one bulk figure in financial reporting.
- *The issue of appropriately apportioning costs to water users.* The NCC, DIPNR and IPART definition of 'water user' does not acknowledge the extent of benefits and costs attributable to 'non-irrigator water users', with the focus purely on recovering costs from irrigators, as the easiest group to charge. For instance:
 - dam safety expenditure and the flow-on benefits to downs stream communities;
 - supplementary water, shared between irrigators and environment;
 - the environmental allocation stored and released for environmental benefit; and
 - the many locks on the lower Murray that facilitate recreational boating traffic.

All of these activities have capital and operating costs that are fully (or largely) passed on to irrigator water users. These would seem to be perfect examples of the need for identification and invoicing of other 'water users' or, for the application of community service obligations where the 'water user' can't pay or where there is a wider public benefit.

For example invoicing environmental account holders such as the Murray Wetlands Working Group (MWWG) and other valleys' environmental allocations and licences, through the same process as other users would be an equitable approach to full cost recovery, where CSO's are not identified. The licences can enjoy trading rights in some cases, incur dam management and delivery costs and hold licences for environmental (not water-user benefit).

NSWIC understands the State Water did attempt to pass usage costs onto MWWG in the last year but that DIPNR and the MWWG objected and did not pay.

In summary, there are many examples in the breakdown of water prices that demonstrate that irrigators are wearing 100% of the cost item despite obvious community benefits and, in many cases, where there is a complete absence of benefit to the irrigator for the service being charged. NSWIC is happy to provide much more detail and specific valley examples to NCC on this issue.

Much more progress in apportioning costs to different water users would appear to be in line with and a logical flow-on from Clause 4 of the COAG Water reform agreement, as quoted in (WAF, p 36). Governments are obliged to 'recognise the environment as a legitimate user of water by implementing comprehensive systems of water allocations, including environmental allocations, for surface water and groundwater resources'.

- The concept of 'legacy costs' which was raised as part of consultancy work completed for the last determination. This concept was based on costs that should not be the responsibility of current irrigators and should be paid for by Government – some of these costs are still being passed onto irrigators as part of IPART and NSW Government's approach to full cost recovery;
- Discussion by Murray-Darling Basin Commission (MDBC) and State Governments relating to a flat fee to be charged to water users for externalities – NSWIC does not support this approach as it is not transparent and is an inequitable and blunt method of achieving full cost recovery. NSWIC supports an approach where costs are attributed transparently between States and between valleys and then users within States. The current process is managed through DIPNR and transparency of MDBC costs, which was always inadequate, has actually reduced since the creation of State Water. NSWIC notes that this problem is likely to be less the fault of MDBC and more of NSW, as it is assumed that MDBC do what the State's ask of them and NSW has demonstrated disinterest in this issue; and
- The issue of recovery of Living Murray policy work costs from water users – again this is an example of full cost recovery being applied to water users in the absence of identifying government and other users' responsibilities. NSWIC argues that Living Murray policy work is clearly the responsibility of government and should not be charged to River Murray Water.

Other rural water pricing issues of concern to NSWIC include:

- *Policy regarding charging a rate of return*: it appears to NSWIC to be double-dipping to charge water users depreciation and annuity charges as well as a rate of return. From the (WAF, p 14):

“Costs that should be recovered include... a non-negative rate of return reflecting the opportunity cost of capital”.

NSWIC's response to this requirement is that non-negative can mean “zero” and if it is water users' capital that is being contributed, Government should not be earning a rate of return on it. NSWIC believes there should be no positive rate of return charged on sunk infrastructure.

A zero rate of return is appropriate as a positive rate will be a regressive tax on a productive irrigation sector (as opposed to it being a progressive tax on urban water infrastructure investment), with water being an input into productive business. Charging an unfounded rate of return will just increase the cost of production and contradict other COAG pricing principles.

- *Identification of community service obligations* - as mentioned earlier, there have been no community service obligations (CSO) identified to NSWIC's knowledge (WAF requirement p 17), despite a clear need, both from a public benefit and a capacity to pay position in various parts of NSW. The issue of exorbitant costs of monitoring and metering relative to resource use, particularly for groundwater and unregulated water users, is one example of an inefficient service delivery and the need to lower costs or consider CSO's. Also, the last IPART determination process acknowledged the difficulty of water users, particularly in the Peel River to reach full cost recovery, yet there has been no work on applying a CSO to NSWIC's knowledge.
- *NSW is supposed to be able to demonstrate a 'robust and transparent method for allocating the Murray-Darling Basin commission's water resource management costs to users' in this assessment* (WAF requirement p 19). Murray water users and other affected valleys have not been informed of any progress towards the development of a new method for allocating costs and would certainly expect to be consulted in NSW's process of determining a new method (refer to earlier comments on MDBC costs under full cost recovery issues).
- *Service delivery in the area of water access licence applications and renewals for permanent and temporary licence transfers* – (WAF requirement p 19), states that:

“NSW needs to show that its approach to charging for licences meets cost recovery objectives”.

NSWIC reiterates the concerns of some NSW water user groups, who are experiencing completely unacceptable delays in processing of permanent licence transfers, (up to 18 months for several individuals in the Macquarie Valley for instance).

These delays have real economic consequences and NSWIC's concern is that NCC is focussed on assessing whether full cost recovery is being achieved, with no requirement for NSW to demonstrate provision of an efficient and acceptable service delivery. The delays illustrate the need for introduction of a commercial imperative. No doubt many government agency staff do not currently appreciate the commercial nature of their work in relation to water trade processing, allocation announcement and failure to ensure compliance.

This is a significant challenge, but through regulators such as NCC and government leadership there should be incentives to DIPNR to adopt a more commercial focus in the delivery of these key services.

- *Inaccurate measurement of water use:* NSWIC supports accurate and efficient measurement of all water use. High costs have been used as an excuse not to measure water user adequately. State Water should be using real-time technology and an auditing approach to improve compliance and where cost is prohibitive on users it should be identified as a CSO or a case for a subsidy.

4. Water rights and provisions to the environment

Water Rights: NSWIC reiterates its long-held position regarding the importance of acknowledging the different requirements of water entitlements in providing long term security and the environment's needs being flexible and determined based on robust adaptive resource planning.

This approach indicates a contradiction in NCC's interpretation of the COAG water reform agreement (WAF, p 31), by stating that entitlements, though specified in the long term and providing the highest possible security to water users, must also be linked to a robust adaptive resource planning system, which by definition needs flexibility to respond to the needs of the environment.

NSWIC repeats its position with respect to the means by which security and adaptive management can be achieved: "governments must take responsibility for compensation for reduced access as a result of new rules to achieve environmental objectives."

There has already been significant progress made for the environment and in improving landscape management by farmers, at the expense of farmers and water users. The benefits of these actions are still to be measured, or even observed, in many cases. The development of Water Sharing Plans and the CAP management arrangements in NSW need to be given time to work, as do the results of the implementation of the first step of the Living Murray decision. NCC needs to challenge the assumption that the Murray Darling basin continues to remain in long term decline because of water extraction, in the absence of the above mentioned results.

NSWIC would add that security, from a water user's perspective, must be based on long term knowledge of risks and potential for erosion to access, but more than this knowledge, security is derived from actual protection of today's assets and investment values. (it's not enough to know what the risks are, security must also deliver some protection from these risks.) NSWIC is concerned that neither NCC nor the National Water Initiative have fully embraced this definition of security, based on NCC's summary of the new framework for a nationally compatible system of water access entitlements (WAF p31):

"The security of access entitlements is to be improved by the clear identification and assignment of risks between governments and water users of possible future reductions in water availability".

In addition to the above general comments, NSWIC wishes to bring to NCC's attention the issue of security of supplementary water licences. Supplementary water is an extremely valuable source of water to irrigators, especially towards the north of the State, where there is much more variability in rainfall and lower levels of reliability in general security licences.

NSWIC strongly advocates the need for supplementary water entitlements to be issued in perpetuity. The right signals are then sent, not only in terms of irrigators' security needs, but in enabling the value of supplementary water to increase as it becomes a tradeable resource.

New Water Access Licensing & Registry System

NSWIC has been having limited input into the discussion of high level principles for a new water access licensing and registry system through Minister Truss' NWI working group. However, it has been disappointing to see that this input has not been reflected in the release of the recent NWI Discussion Paper. At this point, NSWIC is concerned about the absence of opportunity for more meaningful involvement in the development of the draft Inter Government Agreements for COAG First Ministers.

Provision of water for the environment

NCC refers to the State Water Management Outcomes Plan (SWMOP) in the WAF, p41. NSWIC believes it is important to reiterate the problems with the SWMOP and its process of development. As NCC should be aware, the SWMOP was developed internally by DIPNR and did not feed into the Water Sharing Plan development process at all. Other comments related to the provision of water for the environment are provided under the following sections on Water Sharing Plans and The Living Murray.

Water Sharing Plans

NCC has indicated (WAF, p41) that:

"water sharing plans do not need to have formally commenced for the Council to assess whether the plans are consistent with the COAG obligations."

NSWIC understands this to mean NCC will be assessing each water sharing plan's compliance with COAG in this assessment. Some issues NSWIC raises for NCC's consideration in assessing the water sharing plans are listed below.

The Expert Reference Panel (ERP) under the Living Murray Initiative has *one* approach to defining a 'healthy working river', as documented: (WAF p38). NSWIC is concerned that NCC has indicated it intends to adopt the ERP concept of a 'healthy working river' to assist it in determining whether water sharing plans will achieve the COAG goal of enhancing/restoring the health of stressed and overallocated river systems.

While NSWIC supports the ERP's acknowledgement that rivers need to be managed to provide a sustainable compromise between the condition of the river and the level of human use, the ERP concept of assuming 'a substantial risk (to a river's health) when key system level attributes of the flow regime are reduced below two-thirds of their natural level' is a broad-brush, generalised indicator. As such, it is not applicable at the valley level in terms of understanding ecological requirements and in applying robust adaptive management in a manner that enables NSWIC's vision for a future in which we achieve from our natural resources, the greatest possible long-term social, economic and environmental benefits for all Australians. NSWIC expects that more specific and informed information that is based around actual ecological requirements is appropriate in assessing NSW's water sharing plans.

In addition, the ERP has taken a purely scientific approach to defining a healthy working river and there is no doubt that there other processes that have applied social and economic expertise as well as scientific expertise to provide a holistic and balanced approach in line with COAG requirements. For instance, the NSW Healthy Rivers Commission was established in 1996 and operated till 2004, with the purpose of undertaking public inquiries into river systems and:

"to make recommendations to the Government on appropriate long-term approaches and strategies to achieve environmental, social and economic objectives for the systems."
(Healthy Rivers Commission website: (www.hrc.nsw.gov.au/aboutus/role)).

The Healthy Rivers Commission produced many publications and occasional papers all of which are available on its website. A couple of these publications which provide specific direction for NCC in assessing Water Sharing Plans include: "*Healthy Rivers For Tomorrow – Final Report*", Nov 2003, and "*Securing Healthy Coastal Rivers: A Strategic Perspective*"

The Healthy Rivers Commission also explores and recommends a definition for a healthy working river:

"The concept of a healthy river includes the water quality and adequate flow to sustain the river environment, the condition of river banks and river beds, the riparian vegetation, and so on. It can also involve the best and most sustainable ways of using the river as a source of potable and agricultural water, as a recreational resource or as a centerpiece in regional development or community well being." (Healthy Rivers Commission website: (www.hrc.nsw.gov.au/aboutus/role)).

Also, the Healthy Rivers Commission process (unlike the closed ERP process) was a:

“public process, so in its discussions with people about a given river the Commission found that they have quite varied expectations of the river....”. (Healthy Rivers Commission website: (www.hrc.nsw.gov.au/aboutus/role)).

It would be of great concern to NSWIC and no doubt to those who contributed to the Healthy Rivers Commission process and also to the taxpayers who funded the Commission, if it is not now used for the intention it was undertaken, in providing a pathway forward on water reform, management and assessment issues.

Other research which provides an alternative and more balanced approach than that of the ERP includes the two recent reports undertaken by scientist, Dr Lee Benson. NSWIC understands that Murray Irrigation Ltd has written to NCC raising concerns about NCC's adoption of ERP's approach and has forwarded copies of these reports to NCC. Dr Benson's work demonstrates clearly that the ERP has no proven quantitative or causal basis and, therefore, adoption of its criteria for the purpose at hand would be a fundamentally flawed decision by NCC.

Following its reference to the ERP, NCC also refers to the ARMCANZ /ANZECC National Principles for the Provision of Water for Ecosystems as a COAG requirement of water reforms. These principles go significantly further than the ERP in defining characteristics of making and managing environmental water provisions and have been adopted to varying degrees in the water sharing Plans. For instance:

- It has been impossible to determine DIPNR's financial commitment and 5 to 10 year program for the necessary environmental monitoring and research to support the plans and enable continued improvement in our understanding of environmental water requirements (with reference to Principles 8 and 11, WAF p37). NSWIC adds that a state-wide monitoring system, if proposed by DIPNR, will not be adequate in assessing valley by valley rules and specific ecological requirements;
- In addition to concerns about the absence of monitoring programs for the future, current environment releases and operating rules of the new water sharing plans have not specified monitoring requirements and some valleys are seeing environmental releases being made without associated monitoring for performance against targeted outcomes; and
- Most plans have been made with the acknowledgement of limited scientific information and understanding of ecological processes, particularly for groundwater plans (Principles 2 and 4). While there is a place for the 'precautionary principle' to protect against environmental damage, some Plans have recommended permanent cuts in entitlement, without the scientific backing to justify these cuts.

Perhaps these plans could have ensured environmental outcomes with far less (potentially unnecessary) social and economic impact with a more flexible approach by not immediately cutting entitlements, but monitoring the impacts of use and regularly reviewing annual use limits as more information is gathered.

Most water sharing plans have gone little way towards defining the environmental objectives and outcomes sought through management of environmental flows. This now leaves the ongoing management process with ambiguous direction which will be difficult to build meaningful environmental performance indicators and monitoring programs around.

Some plans have specified targets to manage for, but these are hydrological targets – such as 10% of flows reaching the end of the system or inflow triggers for environmental releases from dams. A focus on management for and achievement of these targets will yield little information about actual environmental outcomes. The focus should be shifted onto how to manage flow volumes to most efficiently achieve environmental outcomes, rather than a continuing emphasis on the (in many cases unfounded) need for more environmental flows.

Another issue which has influenced the Water Sharing Plans is that NSW Government agencies including Fisheries and EPA brought policy positions such as the need to ‘return closer to natural conditions’ to the water sharing plan process, whereas NSWIC continues to advocate a targeted approach that identifies and defines the outcomes being sought and seeks to understand the limitations of the system in delivering these outcomes.

NSWIC has made comments earlier in Section 4 regarding water user’s security needs and repeats its concerns that 10 year water sharing plans, some with an opportunity for review and alteration of access rights at 5 years, do not provide the level of business security water users need.

NSWIC and individual valley water user groups are uncertain about the ongoing process of implementation of water sharing plans, and our opportunity for detailed involvement, given the establishment of Catchment Management Authorities and the unknown future of water committees.

The Living Murray & National Water Initiative

NCC is assessing information on implementation of the Cap, progress on improving environmental flows in the Murray River and other initiatives aimed at improving the environmental health of the Murray-Darling river system.

Specific comments on Cap

Cap compliance across the basin is an issue with many unsatisfactorily resolved issues. The Cap allows both Queensland and South Australia to expand their water use. Implementation of the Cap has resulted in significant adjustment of allocation rules and in some valleys a combination of allocation and trading rules. There are ongoing equity issues associated with the way NSW has chosen to implement its Cap management arrangements which NSW government refuses to recognise.

Specific to the NSW Murray WSP, there is provision for an improvement in the water allocation for the Barmah/Millewa forest, (50GL each year plus 25GL in some years from NSW with an equal contribution from Victoria), along with an option for government to improve environmental flows downstream of Hume dam and a specific environmental allocation for wetlands of nearly 32,000MLs. NSWIC and Murray water users believe it is now a government responsibility to focus on measuring the results of all the environmental provisions and landholder investment in improved land and water management.

Other valleys such as the Gwydir and Border rivers are still working with inaccurate Cap management tools, given the lack of accuracy in the IQQM model in reflecting the huge variability of northern NSW river systems. In some cases NSW valleys are still yet to sign off on final Cap limits, due to delays in the Intergovernmental Agreement process with Queensland and other information and policy related issues.

With respect to the Living Murray process, there is a feeling within the local irrigation community that community has not been involved in decision making. Whilst not underestimating the difficulty of communicating and involving people in this issue because of its scope, the current process has resulted in significant ill will and distrust towards the Commission and all those involved. The MDBC Community Advisory Committee (CAC) alone is not an adequate forum for providing community input into the Living Murray process. The cumbersome State and Commonwealth process with layers and layers of decision making and process further complicate this issue and highlight the inadequacy of the current intergovernmental arrangements.

The next phase of the Living Murray must address these issues better, with the MDBC and State agencies needing to work with key stakeholders in developing a mechanism for progressing the Living Murray. NSWIC proposes that a first step in improving the process would be the establishment of Icon Committees for each of the six identified Icons.

Refer to general discussion regarding unresolved issues under Section 5 on Water Trading and Section 8 on Public Education and Consultation for more comments relevant to The Living Murray and National Water Initiative.

5. Water trading

NSWIC notes that NCC's 2004 assessment for NSW is focussed on demonstrating progress towards removing constraints on trade out of irrigation districts and reporting on the trading rules in water sharing plans, with explanations of reasoning behind any restrictions (WAF p48).

NSWIC believes the NCC terminology with respect to "constraints, restrictions and barriers" to trade, does not reflect the fundamental difference between rules and barriers. Barriers and constraints should be described as "rules" of trade as the rules have been agreed by corporation members in accordance with the memorandum and articles of association of the Corporations concerned and in accordance with the Corporations Law. NSWIC adds that a major factor that will enhance trade out of the Corporations is when there are clearly defined property rights (based on water user requirements for security, not in terms of NSW Government meeting NCC's interpretation of COAG's minimum requirement with respect to property rights).

In addition, NSWIC believes that trade within regions and districts needs to be recognised as a major portion of the trade in water. This is particularly so in Victoria, where much of the water that has left the Kerang district (which always seems to be the point of focus in discussions about trade case studies) has in fact gone to neighbouring regions in Victoria and has not actually left the State.

Also NSWIC believes that NCC should seek to increase its understanding of (and challenge) the information it is receiving about existing trading rules and the extent to which they are limiting trade. Trade is demand driven by nature and this is possibly one good reason why there have not been permanent trades out of Corporations, regardless of rules. There are also physical restrictions and DIPNR imposed operational restrictions, such as limitations on trading above and below chokes in the system. Therefore, it could be argued that the rules are not at all the cause of the current absence of permanent trades out of Corporations. In addition if NCC is to consider the objectives the COAG reforms are seeking (rather than focussing on trade for trade's sake), it is clear that significant adjustments are occurring (including change of ownership and development of properties) despite the lack of permanent trade.

NSWIC is not clear on NCC's position for assessing trade restrictions due to socio-economic concerns. For instance, NCC states (WAF p 47):

"Where restrictions on trade exist, governments should provide information on the physical, social or ecological reasons for the restrictions."

This statement is followed by comments (WAF p48) indicating NCC's concern that some water sharing plans contain trade restrictions which:

"appear to be a response to socioeconomic concerns"

NSWIC makes comments on its views about socioeconomic grounds for trade restrictions in the second dot point below.

From NCC's WAF p 48:

"NSW indicated it would consider its approach on trading prohibitions when the outcome of the MDBC's work on trading restrictions is available."

NSWIC's understanding of MDBC and NWI discussions and the level of current debate indicates that several key contentious issues are yet to be resolved with respect to water trading and the broader water reform agenda:

- The issue of 'tagging' of entitlements (where the entitlement retains all the conditions of the system where it originated, rather than being completely detached from its origins after purchase) verses application of exchange rates. Water trade based on exchange rates effectively converts any water purchased into the same product as those already owned by the buyer; i.e. the water rights or entitlements become the same as the entitlements in the 'receiving' location. Once converted, the water entitlement permanently reflects the seasonal allocations and reliability of the receiving location, despite the fact the water may come from storages with very different reliabilities. This requires the development of exchange rates to convert the seller's water entitlements to the buyer's water entitlements in order to accommodate any losses through changes in the level of security and to ensure that other users and the environment are not adversely affected by the trade. (MDBC, 2003);

- Socioeconomic restrictions and the precautionary principle - NSWIC finds that Government (and NCC in its assessment of reforms) approaches environmental issues using the precautionary principle, but not social circumstances. We can not afford policy options such as water trade to portend the ruination of rural communities;
- The issue of defining what COAG, the National Water Initiative and NCC mean by best use – ie “objectives of the NSWI include ensuring *water is put to best use* by encouraging the expansion of water market. (WAF p46);
- The issue of defining what Governments mean by the term clear public interest – ie “institutional and regulatory arrangements and operational decisions by licence holders need to facilitate trade unless there is a *clear public interest* argument for restricting trade” (WAF p 47);
- Consideration of externalities: references to externalities are to date almost purely focussed on negative issues, whereas both negative and positive occurrences would be considered in a more balanced approach;
- flood mitigation issues; and
- operational and physical constraints, it is important that national trade principles are applied with flexibility at the valley level, rather than the blanket principle of ‘the more trade the better unless a clear public interest can justify the existence of restrictions’. For example, enabling trade in the Gwydir from regulated to unregulated parts of the system, say from the Mehi (regulated) to the Barwon (unregulated), may trigger ‘commence to pump’ conditions on the Barwon, as these conditions are often based on river height in unregulated systems. Therefore, the trade may create an artificial flow and an access event in the unregulated system and the buyer may have great difficulty in accessing the water purchased.

NSWIC is keen to lead the NWI process on these issues, as it is apparent that there is little understanding of the principles of trade within government departments. At this point, NSWIC notes that rather than taking a position on specific rationale for restricting trade, we would support policy makers taking informed and consultative approach to fully understanding and weighing the benefits and impacts of trade where any change to an existing regime is being considered.

In addition, it is of deep concern to NSWIC that there appears to be no debate taking place on the complex yet critical issues of defining what is appropriate for the bulk water industry in terms of defining “best use” and “clear public interest” (noted in dot points above).

There is no suitable answer yet to defining best use – the best economists can do is to suggest optimising farm gate values per megalitre of water used. What about considering the value-adding process and regional scale values, and social concerns in how to best use water, rather than just considering economic or environmental issues?

NCC and Government also need to engage community in a transparent debate about public interest, for instance:

- is public interest different to the economic term “net public benefit” or are these terms interchanged without full understanding of their meanings?
- how do we define social sustainability (surely this must be done in order to determine what is in the public interest)? and
- how has Government been demonstrating to NCC that it has assessed the public interest and is acting in the public interest with respect to implementing the many components of water reforms?

NSWIC believes it is important for NCC not to simplify what are very complex issues with respect to trade and trade constraints. NSWIC is willing to provide industry leadership in partaking in, or facilitating such debates. However, at the moment, these subjects are not even acknowledged as unresolved and undefined issues despite being critical to the outcome of reforms and so policy decisions are being made in the ensuing knowledge vacuum.

Further to the above comments on trade, NSWIC notes (WAF p46) that:

“appropriate administrative arrangements, including reliable and accessible water entitlement registers are a necessary’ component of effective water trading.”

NSWIC supports this position and adds that administrative arrangements must also include the ability to process trades in a commercial timeframe (refer to concerns raised about lengthy delays in approving transfers in Section 3 on Water Pricing).

6. Institutional Reform Arrangements

NSWIC notes that NCC has not listed specific items within the areas of institutional role separation, devolution of irrigation scheme management or integrated catchment management for which NSW needs to demonstrate progress. This would seem inappropriate, given the lack of certainty at the present time of the exact nature of State Water’s corporatisation, or the implementation of NSW’s new model for integrated catchment management.

NSWIC provides the comments under the following areas:

Institutional role separation

NSWIC has had limited opportunity to be involved with the process of determining the appropriate structure for the new State Water. However, Council has been invited along with other stakeholders to comment on a discussion paper released by Minister Sartor. NSWIC’s information prior to the discussion paper was based on the recent Hansard records from NSW parliament, which informed NSWIC that corporatisation had been selected as the business model for State Water and that the new body will be State-operated rather than being a combination of valley-run businesses.

A copy of NSWIC submission in response to the State Water Corporatisation Discussion Paper is attached.

Integrated catchment management

NCC has not indicated in its WAF for 2004 how it intends to assess progress on institutional reform arrangements with respect to integrated catchment management. Since NSWIC's 2003 submission to NCC there has been significant progress in improving institutional arrangements surrounding integrated catchment management in NSW. NSWIC is pleased to see a model that has the potential to deliver the basic principle of community ownership of planning and implementation through the new Catchment Management Authorities.

However, local communities are yet to see evidence of a transparent process of Board selection, the level of community control in decision making or Government's commitment to resourcing research, monitoring and implementation activities.

The four key planks NSWIC identified in its 2003 submission still stand and are yet to be observed through the implementation of a new system of integrated catchment management in NSW:

- i. implementation of the necessary linkages to ensure an integrated approach to natural resource and catchment management;
- ii. a meaningful and worthwhile community engagement process (see comments in Section 8);
- iii. a scientifically robust assessment process (environmental, economic and social) for determining environmental objectives and achieving (and monitoring) outcomes; and
- iv. agreement and documentation of funding commitments and proper cost sharing arrangements – how to deal with the change management process and the equity shift.

It is of concern to NSWIC that there is a poor track record in most of the above areas, as has been raised in Section 4 under Water Rights and Provisions for the Environment. Hence, there would appear to be high value in some more detailed assessment process by NCC in the area of integrated catchment management – NSWIC would be happy to provide input to this process.

7. National Water Quality Management Strategy

NSW was to have demonstrated implementation of the National Water Quality Management Strategy by the 2003 NCC assessment. NCC has not specified in its WAF 2004, what issues remain outstanding for NSW with respect to the National Water Quality Management Strategy.

NSWIC has listed concerns in Section 4 under Water Rights and Provisions for the Environment, with respect to the poor monitoring track record of NSW.

NSWIC refers NCC to the NSW Auditor's report of water quality monitoring released recently, which was quite damning of NSW's capacity to measure performance.

8. Public Education and consultation

As a general comment, NSWIC would see great value in NCC adopting a set of principles such as those listed by the OECD for guiding and assessing Governments' approach to public education and consultation, just as NCC has referred to and adopted recognised principles for the many other aspects of COAG water reform commitments.

The OECD has developed a set of guiding principles to assist member countries strengthen their engagement processes with citizens. These principles are:

- i. information must be complete, objective, reliable, relevant and easy to find and understand;
- ii. consultation must have clear goals and rules defining the limits of the exercise and government's obligation to account for feedback and input; and
- iii. participation provides sufficient time and flexibility to allow for the emergence of new ideas and proposals from the community, as well as mechanisms for their integration into the government policy making process.

Specific comments on NSW's record on public education and consultation are provided under the following headings, which NCC has listed for assessment in 2004:

- *Rural cost recovery and pricing*: Refer to comments under Section 3 on Water Pricing and Section 6 on Institutional reform. There has been positive progress made with State Water including customers in the IPART process. However, there has been no indication of consultation from DIPNR at this point with regard to the MDBC's price allocation method or the upcoming IPART determination. There has also been little opportunity for input to date into the process of determining State Water's new corporatised structure;
- *Water management arrangements*: The Living Murray and recently completed Water Sharing Plans have had significant consultation components. NSWIC acknowledges the genuine efforts of MDBC and NSW Government to consult or at least inform community in these processes. However, there have been problems, particularly in the Living Murray process with making consultation appropriate to the target group and in language that group understands. There have also been problems with transparency and honesty in communication, with instances where presentations have differed, to tailor to what audience wants to hear, rather than providing all the facts in a transparent manner;
- *Water trading arrangements*: Refer to Section 5 for comments on water trading. In summary there has been very limited consultation to date, with the whole NWI consultation process proving virtually non-existent. NSWIC has been invited into a small number of Minister Truss' NWI working group meetings, largely to discuss risk assignment issues and has been included on one broad stakeholder teleconference convened by Minister Anderson, which did not constitute an opportunity for detailed input. So seven months into the process, the NWI is shaping up as a lost opportunity because expertise that resides in NSWIC's membership has not been brought to bear to get the best outcomes from the NWI;

- *New rural water infrastructure*: this is an area that is extremely important and, to date, has not been a topic of consultation with water users. NSWIC believes there is an urgent need for continued focus and consultation between State Water and customers to identify management and operational efficiencies across the state. Menindee Lakes is one striking example from an equity and efficiency perspective, of the need to consider new water infrastructure. Also, NSWIC is mindful of the increasing pressures on urban water supplies and supports analysis of new urban water infrastructure and recycling opportunities to meet increases in demand and, to avoid these potentially being met from irrigation supplies in the future.

9. Concluding Comments

NSWIC acknowledges the complexity of NCC's task in reviewing submissions and making its assessment of NSW's progress with water reforms. NSWIC has raised many concerns in this submission and in most cases has only touched on the issues rather than going into detail and providing case study examples. Given the significant number of issues raised and their complexity, NSWIC would welcome the opportunity to meet with NCC staff during the assessment process, to clarify and build on the points made in our submission.

And despite the overwhelmingly critical nature of this submission, NSWIC does acknowledge aspects of the water reforms where significant progress is being made in a way that works with water user's needs, as operators of commercial businesses. The main example of such progress at the present time is the step towards corporatisation of State Water to achieve genuine separation from the regulator and resource manager.

