



# NSW IRRIGATORS' COUNCIL

Level 6, 139 Macquarie Street  
SYDNEY NSW 2000

ACN: 002 650 204

ABN: 49 087 281 746

Tel: 02 9251 8466

Fax: 02 9251 8477

[info@nswic.org.au](mailto:info@nswic.org.au)

[www.nswic.org.au](http://www.nswic.org.au)

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## **Submission to Senate Environment, Communications and the Arts Reference Committee**

### **Water Licensing**

# **091001**

Submit to [eca.sen@aph.gov.au](mailto:eca.sen@aph.gov.au) by 5 pm on 1 October

Andrew Gregson  
Chief Executive Officer

## **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 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 independent policy on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

## Compliance with Consultation Expectations

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

We assess this consultation as *Direct* and encourage the Committee to ensure that individual irrigators, together with representative groups, have access to the process.

Our policy requires consultation to proceed through five stages.

(i) *Identification of problem and necessity for change*

Unsatisfactory. No evidence has been provided – by Discussions Paper or any other means – to suggest that the existing licensing regime has any impact on the sustainable management of water resources. NSWIC specifically notes that licensing regimes *do not* equate to extraction regimes.

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

This process must occur subsequent to the close of submissions.

(iii) *Summary of submissions, identification of preferred approach*

This process must occur subsequent to the close of submissions.

(iv) *Explanation of interim determination and final feedback*

This process must occur subsequent to the close of submissions.

(v) *Publication of final determination*

This process must occur subsequent to the close of submissions.

## General Comments

New South Wales Irrigators Council (NSWIC), as the peak body representing 12,000 irrigators in this state, has been actively involved in the water reform process across the Murray-Darling Basin (and, indeed, across our State) for many years. We have been instrumental in the design and implementation of policy since the introduction of the watershed National Water Initiative.

NSWIC remains committed to the National Water Initiative and expects that Governments – State and Federal – will continue to honour the obligations to which they acceded in this Inter Governmental Agreement.

Irrigators face far too much uncertainty – climate variability, climate change, policy change – and do not take kindly to the playing of politics with the asset, the water license, that underpins their business, their livelihood, their family and the community within which they exist.

NSWIC is very concerned that this is a politically motivated Inquiry which seeks to simplify the range of issues facing the Murray-Darling Basin and the communities who live within and rely upon it. Furthermore, we believe that this Inquiry is seeking a simplified scapegoat, in the form of licenses and license management, to blame for ills caused by a vastly more complicated range of factors.

Our submission to this Inquiry can be summed up simply – the system of property rights that Australia has adopted, underpinned by licenses, is the very foundation upon which efforts to increase water use efficiency and to support environmental sites is based upon. It would be foolhardy **in the extreme** to destabilise that foundation.

## Water Licenses – The Basis for Australian Water Policy

Australia made a determination to lead the rest of the world by recognising water as an economic good and by underpinning that recognition with an indefeasible property right. The recognition of water as an economic good did away with the notion that “water belongs to all”, instead recognising the basic human right to water through ensuring that provision of critical human needs – town water – was considered above all other uses. Subsequent to meeting human *and environmental* needs, the Australian property rights regime then issues title to available water above and beyond these necessities for economic use.

It is this very basic proposition that has enabled both the previous and current Australian Governments to embark upon a comprehensive policy program to ensure the sustainable nature of water use in this country. Infrastructure investment programs, the purchase of entitlement via “Restoring the Balance” and the entire Basin Plan concept are all underpinned by the existence of the property right. To question that property right is to end the entire policy process that has been built around it and to destroy the work done to date.

## **The National Water Initiative**

The concept of secure and certain water access entitlements underpins the National Water Initiative. In particular, Clause 25 clearly outlines the characteristics that water access entitlements must have in order to ensure the benefits which the NWI aims to achieve.

Clause 28 further details the property right, noting that it is a share of a consumptive pool. It is this notion – a share in a pool determined by annual conditions – that underpins the capacity of the Murray-Darling Basin Authority and the various Governments to move to sustainable extraction levels.

## Responses to Specific Terms of Reference

- a. *The issuing, and sustainability of water licenses under any government draft resource plans and water resource plans;*

Water resource plans in the NSW section of the Murray-Darling Basin are set legislative instruments that are in place until 2014.

Pursuant to the Commonwealth *Water Act* (2007)<sup>1</sup>, new water resources plans<sup>2</sup> must be compliant with the Basin Plan at the expiry of transitional plans<sup>3</sup>.

Any issuing of new licenses must be pursuant to the relevant section of the NWI and designed to provide a property right recognising long-term operations. Licenses for flood plain harvesting in NSW is an ideal example. This form of irrigation water harvesting has underpinned production in large parts of the state for many years, is a recognised part of the resource set and is best managed at a macro-level with the issue of permanent licenses.

- b. *The effect of relevant agreements and Commonwealth environmental legislation on the issuing of water licences, trading rights or further extraction of water from river systems;*

NSWIC notes two matter currently being considered by the High Court in respect of agreements between States and the Commonwealth in respect of water entitlement matters.

Any issue of water entitlements within the Murray-Darling Basin ought be on the basis of conforming with NWI requirements or based on scientific evidence that shows further extraction from a closed system will not exceed sustainability requirements.

- c. *The collection, collation and analysis and dissemination of information about Australia's water resources, and the use of such information in the granting of water rights;*

Water licenses have been issued across decades based on varying information. With the benefit of hindsight, too many licenses in many systems – and particularly parts of the Murray-Darling Basin – were issued. That said, development of a yield system across those licenses<sup>4</sup> has effectively allowed control of extraction levels, meaning that over allocation is not the issue *per se*.

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<sup>1</sup> Section 63

<sup>2</sup> Water Sharing Plans in NSW.

<sup>3</sup> Transitional plans are defined in Section 241 of the Water Act (2007).

<sup>4</sup> Water Sharing Plans in NSW that recognise that long term average yields must be below the quantum issued via entitlement.

NSWIC maintains a position that a decision to issue new licenses in any system ought be based on best-available science to show that the system has not reached its sustainable extraction limit *or* must be done on the basis of underpinning existing legal practice with a property right.

For clarity, NSWIC believes that licenses ought be issued to reflect existing and long-term legal practice to then enable the suite of extraction reduction policies currently in position (all of which are based on property rights in existence), including the Basin Plan, to reduce extraction to sustainable levels.

*d. The issuing of water rights by the states in light of Commonwealth purchases of water rights;*

Purchases under the Restoring the Balance program is one of the suite of tools that the Commonwealth is using – with the support of irrigators – to reduce extraction levels. It is based upon property rights existing in the first instance, which can be directly traced to the National Water Initiative.

*e. Any other related matters*

NSWIC submits that the foundation of property rights – as advanced by the National Water Initiative – has underpinned the capacity of Australia to not only continue to be a global leader in agriculture production, but to operate as one of the most efficient operators on the planet.