Senate Standing Committee on Environment, Communications and the Arts

Inquiry into Water Licences and Rights

This submission addresses inquiry reference point (a) the issuing, and sustainability of water licences under any government draft resource plans and water resource plans and concerns water resources in NSW.

The ability of the Commonwealth to sustainably manage water resources across state borders in the national interest has historically been through taxation incentives. There are numerous instances where NSW irrigators invested considerably in water savings in response to Commonwealth incentives as sustainable use of Australia's water resources has been on the Commonwealth's agenda for at least three decades.

A good example of a Commonwealth initiative encouraging sustainable water use was s 75B of the *Income Tax Assessment Act 1936 (Cth)*: *Deduction of expenditure on conserving or conveying water* which applied to expenditure after 14 April 1980 and before 20 September 1985 by primary producers on land in Australia, and was incurred by the construction, acquisition or installation of plant or structural improvements for the purpose of conserving or conveying water used in carrying on a primary producer business.

The size of water savings made by NSW irrigators utilising Commonwealth tax incentives is demonstrated where this incentive encouraged conversion from flood irrigation to centre pivot (spray) irrigation, achieving, on average, 50% water savings. In practical terms water savings were produced by a reduction in extraction rates with the result that the depth of wet soil with spray irrigation being approximately 50 cm compared with one metre totally saturated land using flood irrigation. 50 cm is sufficiently deep to provide the roots of most crops with adequate water. Conversions have typically had the effect of diminishing constant extraction of water from a fortnight per flooded paddock to one week for the same paddock using pivot sprinkler irrigation.

The enduring value of these successful joint Commonwealth and primary producer water savings has been seriously undermined in NSW with the introduction of the *Water Management Act 2000* which established water rights using an arbitrarily short-range period (1991-92 – 2000-01) to determine the basis for conversion of volumetric rights to water per acreage to water access licences issued on the basis of existing water use.

NSW's short term analysis of existing use has produced a perverse outcome where irrigators who took advantage of the Commonwealth's sustainable water incentives and created irrigation facilities that halved water use were penalised by the introduction of water access licences as they were only entitled to half the value of their water pumping licences under the *Water Act 1912* due to their remarkable water savings. Wasteful irrigators became entitled to their maximum pumping licence rights.

Water rights under access licences are valuable rights that can be traded whereas pumping licence rights were allocated by acreage and therefore traded with the land. The loss of entitlement value is directly proportionate to the water savings made. Having detached the water from the land the value of this class of sustainable irrigators' property value has diminished with the introduction of water access licences, effectively financial punishment for sustainable water use. The consequent loss made by sustainable irrigators stands in stark contrast with the valuable perpetual asset gained by the majority class of unsustainable irrigators who hold general security access licences which may be dealt with flexibly, as they can be not only traded but converted to high security access licences as well as assigned or transferred.

More perniciously, these savings were made progressively, with considerable investment in sustainable water equipment and systems, including labour and supporting infrastructure costs, all borne by sustainable irrigators in the belief that water savings were better for the environment and for Australian primary production. Sustainable irrigators therefore hold a legitimate expectation that expenditure on perpetual sustainable water use of their pumping licence allocation would also be conserved as a perpetual sustainable asset attached to their private

property rights but were instead were penalised because this investment reducing extraction rates prior to 1991 was not taken into account by the NSW Legislature.

The depth of the cynicism of the NSW Legislature in avoiding assessment of sustainable water use over the period encompassing Commonwealth initiatives was bolstered by the contemptible amendments made to the WMA in 2004 and 2005 in reaction to the NSW Supreme Court's finding that the WMA created a duty to make an Environmental Water Assessment which would commit an actual amount of water for fundamental ecosystem health prior to allocating water for consumptive use (although this did not necessarily result in the invalidity of the relevant Water Sharing Plan): *Nature Conservation Council v Minister Administering the Water Management Act 2000* (2005) 137 LGERA 320 at [90]–[95]. These amendments effectively scuttled High Court consideration of this important validity question: *Nature Conservation Council v Minister Administering the Water Management Act t2000* [2005] HCA Trans 668 2 September 2006.

NSW's failure to include water savings and sustainable irrigation infrastructure funded by the Commonwealth in its water resource laws and policies demonstrates a serious disregard for the principles established and agreed by the Council of Australian Governments to increase the productivity and effectiveness of water use and ensure the health of rivers and groundwater systems. Accordingly, NSW management of water resources under the WMA has failed to distinguish between financial assistance linked to protection of the environment but instead protects and provides large financial advantages to irrigators who have historically practiced over consumption of NSW's water resources.

Libby Ciesiolka, 1 October 2009.