



NSW IRRIGATORS' COUNCIL

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12 August 2007

Committee Secretary
Senate Environment, Communications,
Information Technology and the Arts Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

SUBMISSION TO THE COMMITTEE INQUIRY ON THE WATER BILL 2007

Please find attached, a submission from the NSW Irrigators' Council responding to the Committee's Inquiry into the *Water Bill 2007*.

If you require further information, please contact me, in the first instance on 02 9251 8466.

Yours sincerely

**COL THOMSON
CHAIRMAN**



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Submission to the
Environment, Communications,
Information Technology and the Arts Committee

Inquiry
into the
Water Bill 2007

August 2007

Member Organisations: Bega Cooperative Limited, Border Rivers Food & Fibre, Coleambally Irrigation Co-Op Ltd, Cotton Australia, Gwydir Valley Irrigators' Association Inc., Hunter Valley Water Users' Association, Lachlan Valley Water, Macquarie River Food & Fibre, Murray Irrigation Limited, Mungindi-Menindee Advisory Council; Murray Valley Water Diversers' Association, Murrumbidgee Groundwater Preservation Association, Murrumbidgee Horticultural Council Inc., Murrumbidgee Irrigation Ltd, Murrumbidgee Private Irrigators' Inc., Namoi Water, NSW Farmers' Dairy Committee, NSW Farmers' Association, Ricegrowers' Association of Australia, Richmond Wilson Combined Water Users Association, Riverina Citrus, Southern Riverina Irrigators, South Western Water Users', West Corugan Private Irrigation District, Wine Grapes Marketing Board.

NEW SOUTH WALES IRRIGATORS' COUNCIL

NSW Irrigators' Council (NSWIC) represents more than 11,000 irrigation farmers across NSW. These irrigators are on regulated, unregulated and groundwater systems. Its members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries.

With respect to the focus of this Inquiry, NSWIC's membership represents all NSW irrigation regions that are encompassed by the Murray-Darling Basin.

[Attachment 1](#) records the membership details of the NSW Irrigators' Council.

In responding to the substance of the *Water Bill 2007*, NSWIC is representing the views of its members. However, each member reserves the right to make independent submissions on issues that directly relate to their areas of operation, or expertise, or on any other issues they may deem relevant.

NSWIC RESPONSE

NSWIC welcomes the opportunity to provide input into this Senate Committee Inquiry on the *Water Bill 2007* and is fully supportive of the establishment of this Inquiry process.

NSWIC has, since the Prime Minister's announcement of the National Plan for Water Security (NPWS) in January, followed with interest the development of the NPWS and of late the drafting of the *Water Bill 2007*. Council has supported, in-principle, the NPWS but has reserved its final position on the program until all relevant details have been placed in the public domain and subjected to detailed scrutiny.

Done properly, significant benefits will accrue to the NSW irrigation sector if the NPWS is implemented and supported by the promised \$10 billion injection of funds to support the 10 Point Plan that is the heart of the NPWS. This \$10 billion dollar investment will build on many initiatives that have already been put in place by industry and individuals and will create momentum to lever further investment from entitlement holders and third party interests.

The details of the National Plan for Water Security are not well known in the irrigation industry. With no public access to the *Water Bill* before its tabling in the Parliament this week, knowledge of its substance is virtually non-existent beyond the 10-15 national industry leaders who have been involved in the review process.

This also applies to the impacts and benefits of the Water Bill into regions outside of the Murray-Darling Basin, in particular, NSW coastal regions. These have not been articulated in any meaningful manner.

A small number of NSWIC members have been participating with the National Farmers' Federation in a review of various iterations of the Bill, this access was most appreciated, albeit though it occurred under strict and in most instances delayed access.

NSWIC is firmly of the view that individuals within both the irrigation industry and regional communities must be provided with an exhaustive opportunity to scrutinise the Bill and all that it entails, so that they are fully aware of the implications, benefits and scope of the reforms.

It is for these reasons that NSWIC members unanimously supported the conduct of a thorough Parliamentary Committee Inquiry into all aspects of the Bill following its introduction into the Parliament.

NSWIC wrote to the Prime Minister on 24 July, 2007 seeking his support for an extensive public inquiry into all aspects of the *Water Bill* after it was tabled in the Federal Parliament. (See [Attachment 2](#)). Council was then, and remains adamant that the reforms and initiatives contained in the Prime Minister's National Plan for Water Security and subsequently encapsulated in the *Water Bill 2007*, require detailed consideration prior to their passage through the Parliament.

That has not happened to date, and, despite the best endeavours of this Committee, a one day hearing and limited Parliamentary debate will not provide sufficient time for the level of scrutiny required for such a momentous policy change.

Indeed, Minister Turnbull in his Second Reading speech stated that:

“The reforms set out in this Bill are the most far reaching in the history of water management in Australia.

“This Water Bill is the first water reform programme introduced into the Parliament in 106 years.”

NSWIC acknowledges both of these statements, but can not reconcile the rush to pass this Bill without detailed scrutiny by Parliament, industry and community groups that such momentous changes deserve.

There is no denying that the reforms encompassed in the National Water Initiative and the National Plan for Water Security, which are now being enshrined in the draft *Water Bill 2007* are momentous for the Murray-Darling Basin and beyond. In total, the substance of the *Water Bill 2007* represents the most far reaching review and reform of national water resource policy since Federation.

NSWIC is supportive of much of the Bill, in particular the inclusion of the National Water Initiative principles into the *Water Bill 2007*.

However, notwithstanding this support, NSWIC still has many concerns with aspects of the Bill. As the Bill is scrutinised by our members, it is highly likely that even more issues will be identified that require clarification, elaboration and perhaps amendment.

The time provided to examine the Bill and respond to this Committee's tight timeframe will not allow elaboration of each issue. This submission will attempt to identify the most obvious issues. The issues outlined in this submission are not exhaustive, but illustrative of the range of concerns held by NSWIC members at this time.

The lack of certainty on the States' commitment to the Commonwealth's current approach is not helpful. NSWIC has seen an early draft of the Intergovernmental Agreement (IGA) and in New South Wales' case is aware that Premier Iemma has rejected the conditions imposed by the Commonwealth in the latest iteration.

What impact this will have on the efficient implementation of the *Water Bill* and the NPWS is not clear. NSWIC is concerned that the conditions in any future IGA do not in any way diminish the risk assignment principles agreed by COAG in the National Water Initiative (NWI), in particular as they apply to the shares to be apportioned to licensed entitlement holders. This is an untenable situation and would not be supported by NSWIC.

NSWIC is also concerned at other associated risk assignment issues such as the repayment and use of existing MDBC CAP credits that have accrued during times of low water allocation and drought. Governments must guarantee that these CAP credits will be rolled-over under all future CAP management scenarios.

NSWIC is concerned at the proliferation of Government bureaucracy, agencies and water recovery programs to support this reform program and the attendant costs. Irrigators must not be held accountable for the costs of this proliferation and governments must accept full responsibility for the costs of this burgeoning bureaucracy if they do not act immediately to actively minimise the number of these agencies involved in the water reform program.

The Bill does clarify and provide certainty on a number of issues that NSWIC members have previously discussed with the Government.

Importantly, the status of existing Water Sharing Plans has been assured for the duration of their life. Also the inclusion of a specific Section (S 254) stating that the Bill does not authorise the compulsory acquisition is welcomed.

Both of these inclusions do underpin the security of existing property rights, which is one of the most contentious issues for NSWIC members.

The inclusion of an appeals pathway to the Administrative Appeals Tribunal is supported. NSWIC would like to see the Government underwrite the financial cost of this appeals processes, so that individuals are not inhibited, by the lack of financial resources, in their ability to challenge future management decisions.

The Bill has a number of issues that lack definition. For example S10 (2) (f) states:

“....the inefficient and/or inappropriate use of the Basin water resources would have a significant detrimental impact on:

Section S10 (2) (g) uses similar language. It is not clear what is meant by “inefficient and/or inappropriate use of the basin water resources” and how this will be determined.

Similarly, S26 (1) (b) states that Water trading and transfer rules may deal with:

“....the terms on which tradeable water rights are traded or transferred;”

Does this imply that the Government will be setting the basis by which water will be traded and not rely on the wisdom of the open market? What is the definition of “terms”.

Together with S26 (1) (e) & (g) these clauses will impact on the confidence of individuals to use the water market to manage their production and investment profiles and risks. It does imply conditions being imposed on land and water use that is at odds with the NWI's objective to let the market manage the transfer of water between competing uses, ie low value to high value uses, supported by a planning process that determines the balance between environmental and consumptive uses.

NSWIC's Irrigation Corporation members are very concerned at the intrusion of the Australian Competition and Consumer Commission (ACCC) into the conduct of their business operations. These Corporations are privately owned entities operating under the Corporations Law and are held fully accountable to all aspects of those Laws. They do not support being subjected to an additional level of compliance and control that is not equally applied to all other private Corporations in Australia.

It appears that the long-term efficiency drivers that have driven these business operations could now be to their detriment in the setting of future access and termination fees. This issue requires much more detailed scrutiny to ensure that the success of these businesses operations is not jeopardised by the introduction of these water reforms.

NSWIC fully supports compliance activities to ensure that all entitlement holders exercise the rights and obligations attached to their individual water rights and do not breach those rights. However, the scope of the Enforcement, Civil Penalties and Liability of Executive Officers and Conduct of Directors, Employees and Agents Sections appear heavy handed and out of proportion to the issues to be addressed, when they are compared to the compliance provisions in the existing *NSW Water Management Act 2000*.

NSWIC is concerned that the membership structure of the Murray-Darling Basin Authority (MDBA) does not actually guarantee that one of the Members will have expertise in irrigated agriculture. NSWIC would argue for an amendment that will guarantee this outcome, to reflect the importance of irrigated agriculture across the Murray-Darling Basin (MDB).

Similarly, NSWIC has supported the establishment of a specific Irrigation Committee to be established at the same level as the Basin Community Committee. Again, the value of irrigated agricultural output across the MDB and its benefit to regional communities dictates that it must be represented at the highest level and in a manner that enables full focus on issues related to the productive uses of the Basin's water resources.

The Bill is proposing that 8 of the Basin Community Committee's members must be "water users", but that does not guarantee that any of these members would be experts, or experienced in irrigated agriculture.

The Bill is also deliberately biased against industry being able to ensure that its leaders are able to represent it on relevant Committees. Sections 178 (4), 180 (4) and 186 all discriminate against industry leaders being eligible to represent their members. Section 186 states that:

"An Authority member must not be body of a relevant interest group."

Experienced and current industry leaders have a support network and are linked into the activities of industry at a level that can influence and provide leadership to generate desired outcomes. There is also a clear accountability mechanism to ensure that they are representing the views of industry in the many forums they participate in. It is precisely these leaders who must be encouraged to participate in the deliberation of the MDBA and its various Committees, without having to relinquish their existing leadership positions.

NSWIC has not yet had time to fully examine the application of S35, Effect of Basin Plan, on other agencies and persons.

Similarly the Constitutional implications of Sections 59, 60 and 61 have not been fully evaluated in relation to the:

- Effect of water resource plan on other agencies and bodies S (59);
- Constitutional operation of section 59 (general) s (60); and
- Constitutional operation of section 59 (water trading rules) s (61).

The use by the Commonwealth of its Step-in powers is also an area where further time is required to fully understand the reach, necessity and application of these powers in the environment where the Commonwealth is using its Constitutional powers and not relying on a referral of powers from the States.

The roll of the ACCC in reviewing and approving all fees introduced by the MDBA is supported. NSWIC seeks a fully transparent and open process that allows for industry submissions prior to the ACCC's final determination of the level of MDBA fees and charges.

Schedule 2 addresses Basin water charging objectives and principles.

NSWIC reiterates its long held opposition to the implementation of Upper Bound Pricing as outlined in: Part 3, 3. Water storage and delivery, (4) *Water charges in the rural water sector are to continue to move towards upper bound pricing where practicable.*

NSWIC also reiterates its opposition to the introduction of the mechanisms to impose externalities pricing as promoted in Part 3, 5 Environmental externalities (1) and (2).

Benchmarking and efficiency reviews as proposed in Part 3, 6 Benchmarking and efficiency reviews, are fully supported by NSWIC. However, this support is conditional on the costs associated with the conduct and management of these reviews being borne by Governments as a Community Service Obligation, as the benefits will accrue to a wider group in the community than just those individuals who will be encompassed by regulated water charges.

The Bill is also silent on a very important aspect of all NSW bulk water price determinations that are set by the Independent Pricing and Regulatory Tribunal (IPART). This issue relates to the 'Line in the Sand' treatment of 'sunk cost' costs relating to all investment by Government pre 1997.

For NSWIC members, this is an immutable principle that must be reflected in all future pricing determinations, irrespective of whoever makes them, ie the ACCC or IPART.

Under Schedule 3, Basin water market and trading objectives and principles, NSWIC does not support the inclusion of the following clause as a water market and trading objective.

3 Basin water market and trading objectives

The objectives of the water market and trading arrangements for the Murray-Darling Basin are:

(d) to recognise and protect the needs of the environment;

The needs of the environment are determined through the Basin and Water Resource planning processes that will determine the relevant shares of the available resource between competing uses.

Once the entitlements available for consumptive use have been determined, the market must be the determinant of how this resource is allocated. If the environment requires further consideration, this will be determined through the regular reviews of the performance of all planning mechanisms.

NSWIC also seeks further clarification of many clauses in **4 Basin water market and trading principles**. Without further consultation and elaboration, NSWIC does not support the application of clauses (4) (5) (7) (8) (9) (b) and (12).

The issues relating to transmission losses and reduction in on-farm dams sizes are not supported by NSWIC.

Each of these clauses will add uncertainty to the water trading market and work to diminish the water right that is held by entitlement holders. Importantly, there has been no argument made to industry that would support the imposition of these types of trading conditions.

Clarification of the taxation treatment of NPWS payments is essential to ensure that the value of NPWS assistance is not diminished by taxation policies, covering both income or capital gains tax. NSWIC has experienced this issue first hand with the Achieving Sustainable Groundwater Entitlements (ASGE) program where it was originally proposed to tax ASGE assistance payments as income and not capital. This would have significantly eroded the benefits of the reform program and industry's commitment to the outcomes.

ATTACHMENT 1 – NSW IRRIGATORS' COUNCIL MEMBERSHIP

Bega Cooperative Society Limited
Border Rivers Food and Fibre
Coleambally Irrigation Co-operative Limited
Cotton Australia
Gwydir Valley Irrigators Association Inc.
Hunter Valley Water Users Association
Lachlan Valley Water
Macquarie River Food and Fibre
Mungindi Menindee Advisory Council
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 Water
NSW Farmers' Association Dairy Section
NSW Farmers' Association
Ricegrowers' Association of Australia
Richmond Wilson Combined Water Users Association
Riverina Citrus
Southern Riverina Irrigators
South Western Water Users
West Corugan Private Irrigation District
Wine Grapes Marketing Board



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24 July, 2007

The Hon John Howard MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

Water Bill 2007

NSW Irrigators' Council (NSWIC) has, since your announcement of the National Plan for Water Security (NPWS) in January, followed with interest the development of the NPWS and of late the drafting of the *Water Bill 2007*.

NSWIC still has many concerns with aspects of the Bill, but of equal concern has been the limited exposure of the Bill to industry scrutiny. A small number of my colleagues have been participating with the National Farmers' Federation in a review of various iterations of the Bill, this access has been most appreciated, albeit under strict and in most instances delayed access.

There is no denying that the reforms encompassed in the National Water Initiative and the National Plan for Water Security, which are now being enshrined in the draft *Water Bill 2007* are momentous for the Murray-Darling Basin and beyond. In total, the substance of the *Water Bill 2007* represents the most far reaching review and reform of national water resource policy since Federation.

It is for this reason that my Council unanimously supports the conduct of a thorough Parliamentary Committee Inquiry into all aspects of the Bill following its introduction into the Parliament.

Individuals within both the irrigation industry and regional communities must be provided with an exhaustive opportunity to scrutinise the Bill and all that it entails so that they are fully aware of the implications, benefits and scope of the reforms.

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Prime Minister, I can assure you that the details of your National Plan for Water Security are not well known in the irrigation industry. With no public access to the draft Water Bill to date, knowledge of its substance is non-existent beyond the 10-15 industry leaders who have been involved in the review process.

The irrigation industry's future is too important for this Bill to be rushed through the Parliament to meet a political deadline. There must be comprehensive discussion and debate on the substance of the final Bill, which is exactly what a reference to a Parliamentary Committee would facilitate.

NSWIC seeks your support for the immediate reference of the *Water Bill 2007* to a thorough Parliamentary Committee Inquiry. The Committee's Terms of Reference and deliberations must provide opportunity for public submissions on all aspects of the Bill and be supported by a round of regional hearings in centres across the Murray-Darling Basin. Attachment 1 details the locations across the Murray-Darling Basin where NSWIC believes the Committee's public hearings must be held.

A Committee Inquiry would afford all interested industry participants an equitable opportunity to review and comment on plans that will have a far reaching impact on their future and that of their families.

I commend this proposition to you and seek your earliest public expression of the establishment of this Inquiry.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'C. Thomson', with a stylized flourish extending from the end.

COL THOMSON
CHAIRMAN

ATTACHMENT 1

NSW Irrigators' Council members passed the following resolution with respect to the conduct of regional hearing of a Parliamentary Committee Inquiry established to review all aspects of the *Water Bill 2007*.

That the Parliamentary Committee charged with reviewing the Bill be required to call for public submissions on the Bill and conduct public hearings in the following regional centres:

Dalby, QLD	Goondiwindi, QLD	Narrabri, NSW
Bourke, NSW	Deniliquin, NSW	Griffith, NSW
Albury, NSW	Wentworth, NSW	Renmark, SA
Murray Bridge, SA	Shepparton, VIC	Swan Hill, VIC