



National Irrigators' Council

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Water Act 2007 Section 253 - Review of Operation of Act

**A Submission to the Expert Panel from the
National Irrigators' Council**

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The National Irrigators' Council

Introduction

The National Irrigators' Council (NIC) is the peak body representing irrigators in Australia. The NIC currently has 33 member organisations covering all MDB states, irrigation regions and the major agricultural commodity groups. Our members collectively hold approximately 7,000,000 megalitres of water entitlement.

The NIC is the voice of irrigators and believes in the following principles to guide future policy decisions:

- A healthy environment is paramount.
 - Sustainable communities and industries depend on it.
- Protect or enhance water property rights.
 - Characteristics of water entitlements should not be altered by ownership.
- No negative third party impacts on reliability or availability.
 - Potential negative impacts must be compensated or mitigated through negotiation with affected parties.
- Irrigators must be fully and effectively engaged in the development of relevant policy.
- Irrigators expect an efficient, open, fair and transparent water market.
- Irrigators require a consistent national approach to water management subject to relevant geographical and hydrological characteristics.
- Irrigators expect Government policy to deliver triple bottom line outcomes.
- Regulatory and cost burdens of reform be minimised and apportioned equitably.

While this document has been prepared by NIC, each member retains the right to express independent views on policy matters that directly relate to their areas of operation, or expertise, or any other issues as they see fit.

Executive Summary

In developing this submission, NIC has resisted the temptation to advocate wholesale changes to the *Water Act 2007* and the *Murray-Darling Basin Plan* (hereafter referred to as the “Basin Plan”). Such advocacy would only serve to rekindle community anxiety and/or delay the consideration of matters that must be resolved before Basin States, Basin communities and the nation as a whole so they can enjoy the certainty that has been promised by the past and current Commonwealth Governments. Instead, NIC is suggesting a small number of changes to the Water Act, Basin Plan and supporting legislation – changes that will make the Act and the Plan more rational and reduce the amount of red tape that currently binds the irrigation industry.

NIC’s submission is focused on the Terms of Reference issued to the Expert Panel that require it to examine and report on the effectiveness of the Act in achieving its objects; the opportunities to reduce or simplify the regulatory and/or reporting burden while maintaining effective standards; and the identification of appropriate future review points for the Act and Basin Plan.

NIC notes that some of the observations it makes are consistent with those contained in the recent Commonwealth Government’s Commission of Audit Recommendation No. 7 in which it was observed that *“There is significant overlap between the activities of the Commonwealth and the States. The Commission recommends that a comprehensive review of the roles and responsibilities between the Commonwealth and State governments be undertaken....”*

NIC further notes *the COAG Agreement on Murray-Darling Basin Reform* entered into on 3 July 2008 by the Commonwealth of Australia and the Governments of the Basin States and the Australian Capital Territory (ACT) specifically guaranteed there would be “no additional net cost commitment” associated with implementation of the Water Act 2007 to be borne by the Basin States and the Australian Capital Territory. However, clause 5.25 of the Agreement states; *‘The parties agree that the no additional net cost undertaking by the Commonwealth will cease on 30 June 2015.’* These statements would appear to be contradictory and NIC is seriously concerned about the prospect of future Commonwealth-State stand-offs on funding of the Basin Plan being sheeted home to irrigators under the general guise of the ‘user-pays’ principle – the Basin Plan clearly establishes the Plan is primarily for the benefit of the environment and the nation; that being the case, irrigators and Basin communities should not be required to fund its implementation.

We also note that when the Water Act passed Parliament in 2007 most of the work in implementing the Basin Plan was envisaged to have been completed by 2014, which is why this review is being undertaken now. The Basin Plan is nowhere near being fully implemented. For example how key components of the Basin Plan such as the Sustainable Diversion Limit Adjustment Mechanism; the Long Term Environmental Watering Plan; the Northern Basin Review; or the Constraints Management Strategy will actually work is still to be finalised. Each of these issues will have a major bearing on whether the Water Act is achieving, or can achieve its objects set out in Section 3.

Recommendations:

1. Review of the Water Act:

- a. *Section 21 of the Water Act, and subordinate regulations as required, be amended to give equal weighting to environmental, economic and social imperatives.*
- b. *Relevant sections of the Water Act including Section 18H, Section 31, Section 114 be amended to allow the Commonwealth Environmental Water Holder (CEHW) to assume control of all Commonwealth environmental water planning, delivery, metering, monitoring and evaluation.*
- c. *Part 2, Division 4 (Allocation of risks in relation to reductions in water availability) be amended to reflect the Commonwealth Government's policy of no compulsory acquisition (already referred to in Section 255) and its commitment to fund all water recovery needed to 'bridge the gap' if there is a reduction in Sustainable Diversion Limits;*
- d. *Remove all of section 106 and replace it with a clause which states; 'the Commonwealth Environmental Water Holder can trade for environmental reasons and the funds can be used for environmental purposes within the Murray Darling Basin'.*

2. Review of the Basin Plan:

- a. *Amend Subdivision G (Review of Basin Plan), Section 50 1a & b to allow the Basin Plan to have been fully implemented and operational for at least five years before it is reviewed.*
- b. *Chapter 12 of the Basin Plan*
 - i. *Amend Rule 12.05 by deleting the words "other than an agency of a basin state"*
 - ii. *Remove those references to Water Delivery Rights that cause these rights to be captured by Chapter 12.*
 - iii. *Remove 12.02(5) and (6) and these review provisions in the Basin Plan review required by Part 2, Division 1, Subdivision G of the Water Act.*
 - iv. *Remove the reference to "over-allocation" in 12.13*
 - v. *Rule 12.18(c) be removed from the Murray Darling Basin Plan*
 - vi. *Apply a cost-benefit analysis to each remaining rule.*

3. Improve Accountability & Efficiency:

- a. *Utilise the opportunities afforded by the current reviews into the structure and operation of the Murray-Darling Basin Authority (MDBA) to minimise duplication and identify areas of the Act where this can be achieved.*
- b. *Require Commonwealth water agencies, including the MDBA, to follow the example of the CEWH by appointing regional engagement officers to ensure the agencies have a face throughout, and have first-hand knowledge of, the Basin and that localism is 'hard wired' into the Basin Plan.*
- c. *Re-assign environmental water use and performance reporting so that annual reports are produced by the CEWO and Basin States, with five-yearly audits of performance being undertaken by the MDBA.*
- d. *Require Basin State Agencies be subject to penalties for non-compliance with sensible Service Standards*

- e. *Amend sections of Part 2AA – Water for the Environment Special Account to better reflect the current policies of the Government and improve accountability.*

4. Reduce Red Tape:

- a) *Amend the ACCC's Water Charge Infrastructure Rules to remove excessive, costly and proscriptive information requirements.*
- b) *In order to provide administrative clarity, combine the MDBA's Water Trade Rules and the ACCC's Water Market Rules, with the ACCC being the responsible agency.*
- c) *Amend the reporting obligations of Irrigation Infrastructure Operators (IIOs) so that reporting is done by exception unless there is a compelling reason to do otherwise...*
- d) *Support the Bureau of Meteorology's 'single portal, many uses' as being the appropriate vehicle to rationalise what are a range of duplicated, excessive and uncoordinated Commonwealth water-related reporting requirements.*

5. Refocus and Reprioritise Research Development and Extension

1. Review of the Water Act:

- a. *Section 21 of the Water Act, and subordinate regulations as required, be amended to give equal weighting to environmental, economic and social imperatives.*

NIC has long made known its concerns that the Water Act 2007 fails to give effect to the National Water Initiative's tripe bottom line approach. All relevant sections of the Water Act 2007, including Section 21, and subordinate legislative instruments should be amended to ensure that social and economic considerations be given equal weighting with environmental imperatives.

The NIC notes its position was echoed by the findings and recommendations of the 2011 Senate Inquiry report; ['A Balancing Act: provisions of the Water Act 2007'](#) which found section 21 gave precedence to environmental considerations.

The Senate Committee was forthright in its view that the Water Act was flawed and needed to be amended as the Act in its current state "...is at risk of legal challenge."

The Senate Committee's fourth recommendation states; *'The committee recommends that the Australian Government take whatever measures are necessary to strengthen the constitutional validity of the Water Act 2007.'*

Former MDBA Chair, Mike Taylor, in announcing his resignation 7 December, 2010 cited the fact that the Water Act gave precedence to environmental outcomes over social and economic considerations as an obstacle to the formation of a Basin Plan. The [Media Release](#) announcing Mr Taylor's resignation stated:

*The Guide was developed with full regard to the requirements of the Water Act, and in close consultation with the Australian Government Solicitor. However, **the Authority has sought, and obtained, further confirmation that it cannot compromise the minimum level of water required to restore the system's environment on social or economic grounds.***

Notwithstanding Mr Taylor's view, NIC notes that the Commonwealth has sought advice from the Attorney General's Office on two occasions in relation to this matter but NIC is uncertain whether all of the legal advice held by the Government and MDBA has been publically released.

Further, there is a distinct gap between the state of the MDBA's understanding of the social and economic consequences of the Basin Plan compared to its understanding of the environmental challenges that have to be addressed. The fact that the MDBA continues to gather data to undertake social and economic modelling is a further indication of the gap.

The Commonwealth Government's commitment to cap buyback at 1500GL and to recover any additional water by way of investments in infrastructure provides a measure of certainty for irrigators and Basin communities that goes some way towards addressing the triple bottom line, but it is a commitment that is subject to the vagaries of time and changes in/to Government – hence NIC's submission that the Act ought be changed.

- b. *Relevant sections of the Water Act including Section 18H, Section 31, and Section 114 are amended to allow the Commonwealth Environmental Water Holder (CEHW) to assume control of all*

Commonwealth environmental water planning, delivery, metering, monitoring and evaluation.

The NIC's view is that one Commonwealth agency should control environmental water planning, delivery, monitoring, metering and evaluation, not two. As the Commonwealth Environmental Water Holder has responsibility for managing the Commonwealth environmental water holding, it would make sense for this agency to assume this responsibility.

The CEWH should hold all Commonwealth environmental water, including the Living Murray water to streamline environmental water management at a Commonwealth level. To achieve this, amendments would be necessary to the Water Act and subordinate legislative instruments and bilateral and multilateral agreements.

On 25 January 2007, then Prime Minister, John Howard observed in 'A National Plan for Water Security' that:

"Widely distributed responsibilities for the management of the Basin have led to inefficiency, blame-shifting and under-resourcing by State and Territory Governments."

There are more agencies involved in planning environmental water deliveries at a State and Federal level now than there were prior to the Water Act; the Water Act has not addressed the issue John Howard identified.

Therefore, it is reasonable for just one Commonwealth agency to work with State environmental water managers to plan, manage and deliver on agreed environmental outcomes that meet the environmental objectives, including those of the Basin Plan. That agency should be the CEWH, which holds the largest amount of environmental water.

It is in the national interest to avoid duplication and this can be achieved by focussing on a single centre of excellence with a well-resourced environmental water manager responsible for delivery, planning, metering and monitoring capacity within the Basin.

c. Part 2, Division 4 (Allocation of risks in relation to reductions in water availability) be amended to reflect the Commonwealth Government's policy of no compulsory acquisition (already referred to in Section 255) and its commitment to fund all water recovery needed to 'bridge the gap' if there is a reduction in Sustainable Diversion Limits;

The Water Act incorporates the allocation of risk based on the risk assignment framework agreed upon under the National Water Initiative which endeavoured to recognise the property rights of a water holder and apportion a reduction of water availability according to the reason for that reduction.

The Basin Plan rightly allocates 100% of the reduction in water availability due to the Basin Plan to the Commonwealth.

The Basin Plan also states: *"Nothing in the Basin Plan requires a change in the reliability of water allocations of a kind that would trigger Subdivision B of Division 4 of Part 2 of the Act"* (BP, 6.14)

NIC is of the view that Subdivision B of Division 4 of Part 2 of the Act should be amended to ensure that the Commonwealth share of any future change to the Basin Plan that results in a change in reliability of water allocations or a further reduction in access to water

entitlements, be 100% in keeping with the “bridge the gap” policy. Further, NIC believes the Government commitment to cap buyback at 1,500GL and thereafter meet the difference through investment in infrastructure ought to be included in the Water Act.

- d. Remove all of section 106 and replace it with a clause which states; ‘the Commonwealth Environmental Water Holder can trade for environmental reason and the funds can be used for environmental purposes within the Murray Darling Basin’.***

Section 106 is an example of where the Water Act 2007 is unnecessarily restricted. There is no need for the Water Act to differentiate the reasons the Commonwealth Environmental Water Holder can trade environmental water and the purposes to which the associated proceeds can be put.

All of section 106 be removed and replaced with a simple clause which states;

‘The Commonwealth Environmental Water Holder can trade for environmental reasons and the derived funds can be used for environmental purposes within the Murray Darling Basin’

2. Review of the Basin Plan:

- a. Amend Subdivision G (Review of Basin Plan), Section 50 1a & b to allow the Basin Plan to have been fully implemented and operational for at least five years before it is reviewed.***

The Basin Plan is still being implemented and by the time of the first review in 2022 will still not have been fully implemented because the final determination of Sustainable Diversion Limit amounts does not occur until 2024, in accordance with Chapter 7 (7.21) of the Basin Plan.

The NIC believes it is inappropriate to undertake a review of the Basin Plan without allowing time for the impacts of the final Basin Plan to be properly understood and assessed.

The proposed amendment will align the timing of the review of the Basin Plan with the first review of Water Resource Plans. This alignment would benefit both the MDBA and the State agencies.

b. Chapter 12 of the Basin Plan

NIC is a strong advocate of sensible Water Trade within the Murray-Darling Basin. NIC believes that a market mechanism is beneficial in allowing water to move to areas of greatest demand, and has allowed flexibility and diversity for irrigators and other market players.

The [ACCC Water Monitoring Report 2012-13](#) released in May 2014 states: ‘*Australian water markets are considered to be the most advanced in the world. Twenty years of reform have established clear water rights and reduced barriers to water trading.*’

NIC would not disagree with the ACCC’s finding but observes that recent reforms have increased reporting obligations while not delivering improved outcomes for the market.

The Water Trade Rules imposed by Chapter 12 of the Basin Plan came into force on 1 July 2014 and have again increased the obligations on irrigation infrastructure operators (IIOs) beyond the requirements of the Water Act.

That said, there are sections of Chapter 12 that are relevant and the following recommendations will make the rules more relevant and less proscriptive.

i. Amend Rule 12.05 by deleting the words “other than an agency of a basin state”

Both the Water Act 2007 and the Basin Plan exclude Basin State Agencies from liability for loss/damage suffered by any person, as a result of conduct of the Basin State Agencies that contravene a rule (listed in a table in Rule 12.05) that forms part of the Water Trading Rules.

NIC contends that this exclusion is discriminatory. The CEWH is now the biggest participant in the water market and if IIOs are to be held accountable and liable for their actions or omissions, so too should the Commonwealth and State Government water market participants.

NIC also contends that all Government agencies operating in a context that is related to the activities governed by Chapter 12 should be bound by the associated requirements providing a further layer of protection for market participants.

ii. Remove those references to Water Delivery Rights that cause these rights to be captured by Chapter 12.

Relevant Rules: 12.01 2 (b), 12.03, 12.06, Division 2 (12.28, 12.29, 12.30, 12.32, 12.34)

Division 2 of Chapter 12 relates to the trade of water delivery rights and is beyond the requirements of the Water Act. This is an example of over-reach and duplication. The interests of water holders with regard to delivery rights are captured in the Water Market Rules, which outline contractual terms and conditions and provision of information while the Water Charge Rules outline termination fees and requirements to inform customers of fees and charges.

NIC considers that the rules relating to the Trading of Water Delivery Rights should be excluded from the Murray-Darling Basin Plan. The Water Act does not require rules around delivery rights because such rights do not extend beyond the boundaries of an IIO; because there is no market for such rights across the MDBA; because the trade of water entitlements and water allocations is unrelated to the trade of delivery rights; and because the ACCC already governs IIO behaviour in respect of delivery rights.

iii. Remove 12.02(5) and (6) and these review provisions in the Basin Plan review required by Part 2, Division 1, Subdivision G of the Water Act.

Section 12.02(5) requires the MDBA to complete a review of the application of Chapter 12 on certain water access rights by 2020. NIC believes this review should be conducted as part of the overall review of the Basin Plan required by Part 2, Division 1, Subdivision G of the Water Act to reduce the number of reviews relevant to the Basin Plan.

iv. Remove the reference to “over-allocation” in 12.13

Chapter 12.13 of the Basin Plan refers to “overallocation”. NIC has long made the point that this terminology is both false and misleading. Water management in all States is now undertaken on an allocation basis whereby the State Government announces what

“allocation” of a water entitlement (share) can be used in a given year. That is to say the entitlement or share is the right to extract water while the allocation is the volume of water that is allowed to be extracted and can change from year to year, season to season, dependent on water availability. Given Australia’s highly variable climate and rainfall patterns, this adjustable allocation system is sensible and allows water managers to ensure the available resource is shared equitably.

NIC believes any reference to “overallocation” is misleading and should be removed. In the case of Chapter 12.13 of the Basin Plan the section provides no further protections for water holders and should be removed.

v. *Rule 12.18(c) be removed from the Murray Darling Basin Plan*

Rule 12.18(1c) states that “Restrictions of a type referred to in section 12.16 or section 12.17 may be necessary because of: the need to protect the needs of the environment’.” NIC contends this rule could be abused to give preference to water for environmental purposes in water trading and should therefore be removed.

vi. *Apply a cost-benefit analysis to each remaining rule.*

NIC members are concerned that many of the rules in Chapter 12 of the Basin Plan further increase compliance costs for Irrigation Infrastructure Operators (IIO), which in-turn are passed on to irrigators, yet provide no apparent benefit regarding water trading.

A key finding in the ACCC Water Monitoring Report 2012-13, released in May 2014 stated:

‘The transformation of irrigation rights into water access entitlements, and the termination of water delivery rights, is increasingly becoming part of normal business practice for IIOs. IIOs continue to proactively approach the ACCC to self-report suspected breaches or seek guidance on new policies that may raise compliance concerns under the Rules.’

That being the case, the question is raised why Chapter 12 is so proscriptive in its requirements of IIOs?

NIC believes the Expert Panel should seek a cost benefit analysis from the MDBA to each Rule in Chapter 12, and if the cost of compliance is estimated to be significant in proportion to the estimated benefit received, then the rule should be removed from the Murray-Darling Basin Plan and the Water Act 2007.

3. *Improve Accountability & Efficiency:*

a. *Utilise the opportunities afforded by the current reviews into the structure and operation of the Murray-Darling Basin Authority (MDBA) to minimise duplication and identify areas of the Act where this can be achieved.*

NIC does not agree with the Commonwealth Commission of Audit’s (CoA) recommendation that all the MDBA’s functions should be ‘consolidated into departments’ (recommendation contained in Annex C: Principal bodies for rationalisation). NIC however does agree with the following statements by the CoA:

“There are too many government bodies in Australia. This leads to duplication and overlap, unnecessary complexity, a lack of accountability, the potential for uncoordinated advice and avoidable costs.”

“In examining the potential for rationalisation of bodies and agencies, the Commission was guided by the Principles of Good Government outlined in Chapter One, together with additional propositions including:

- the Commonwealth should consider withdrawing from activities that are outside its areas of core responsibilities;*
- portfolio departments should undertake policy work, while agencies should deliver programmes and services;*
- as far as practicable, bodies should be incorporated into the portfolio department;*
- organisations and bodies should capture economies of scale where possible;*
- bodies should have clear accountability and focus, with defined roles and performance management measures; and*
- the need for independence alone does not justify the establishment of a new operational body.”*

The MDBA is currently a regulatory, policy and delivery agency responsible to both the Commonwealth Minister for the Basin Plan and to the Basin States and Territory Ministerial Council for everything else. It is effectively running three business units in the Basin Plan; River Operations and Joint Programs (including water quality and salinity management), although it is becoming increasingly less transparent to stakeholders (including State Governments) regarding reporting on allocation of funds.

b. Require Commonwealth water agencies, including the MDBA, to follow the example of the CEWH by appointing regional engagement officers to ensure the agencies have a face throughout, and have first-hand knowledge of, the Basin and that localism is ‘hard wired’ into the Basin Plan.

The Commonwealth Environmental Water Holder (CEWH) is in the process of recruiting six regional engagement officers to be based in the communities where environmental watering has an impact. This initiative is commended by NIC and should be replicated by other Commonwealth agencies with responsibility for water matters.

The MDBA has indicated that river managers need to recognise, respect and respond to the needs of local communities and local environments. Managers should tap local knowledge and experience, and establish effective mechanisms for consultation and feedback. The CEWH has recognised the best way to achieve this is to have a ‘face’ in the local community and the MDBA should follow suit.

Such presence allows for local knowledge and experience to be ‘tapped’ and provides a conduit for more effective consultation/engagement. It should also provide a better basis for the coordination of environmental water planning, delivery, metering, monitoring and evaluation. Moreover, it will demonstrate a real commitment to ‘localism’

c. Re-assign environmental water use and performance reporting so that annual reports are produced by the CEWO and Basin States, with five-yearly audits of performance being undertaken by the MDBA.

Currently too many agencies are providing too many reports on water-related matters. For example, at the last count, these included the Australian Bureau of Agricultural Research and Economics, the Australian Competition and Consumer Commission, the Bureau of

Meteorology, the Department of Environment; the Murray-Darling Basin Authority, and National Water Commission – and that does not include State agencies.

NIC submits that Commonwealth water-related reporting would be greatly improved were the focus on what agencies are trying to achieve, with references to whatever baselines they are working; what progress is being made; and an indication of what lies ahead and how the related goals are to be realised.

The abolition of the National Water Commission provides an opportunity to re-align roles and reporting on water-related matters at the Commonwealth level. As suggested earlier, NIC considers that the MDBA would be logically placed to take on those audit functions previously undertaken by the NWC provided the Authority's role was narrowed.

d. Require Basin State Agencies be subject to penalties for non-compliance with sensible Service Standards

NIC contends that if the Commonwealth wishes to further improve the operation of the water market, Basin State Agencies should be obliged to meet [Service Standards](#). As it is, they currently face no penalty for non-compliance. Further, there should be no reason for different jurisdictions to have different service standards.

e. Amend sections of Part 2AA – Water for the Environment Special Account to better reflect the current policies of the Government and improve accountability.

During the Senate debate on the Water Amendment (Water for the Environment Special Account) Bill 2012, then Coalition Shadow Minister for Water, Barnaby Joyce, moved the three amendments on behalf of the Coalition.

- Section 86AE be amended to include a new Section 86AEA - Limit on purchase of water access rights.
- Insert: Section 86AEA: *'The total amount of water access rights purchased by, or on behalf of, the Commonwealth since 2009, whether with amounts debited from the Water for the Environment Special Account or otherwise for the purposes of the Basin Plan, must not exceed 1500 gigalitres.'*

NIC notes that this amendment would fulfil the Government's commitment to place a legislated 1500 gigalitre cap on purchase of water access rights.

- After 86AI (2)(c), insert: *'for all water recovery for which an amount was debited from the Water for the Environment Special Account during the report year for the purposes of paragraph 86AD(2)(b) - how that recovery achieved a neutral or beneficial socio-economic outcome;'*

NIC notes that this amendment would better ensure that the annual report included a section on whether the water recovered through Part 2AA was achieving a neutral or beneficial socio-economic outcome.

- Amend Section 86AA 3(b) by omitting paragraph 86AA (3)(b), and substituting: (b) *increasing the volume of the Basin water resources that is available for environmental use by up to 450 gigalitres.*

NIC believes in addition to the amendments proposed by Senator Joyce, Part 2AA would benefit from additional amendments including:

- Omitting Section AJ – Reviews of this Part. The two reviews in this Section are not warranted and should be revisited as part of annual reporting requirements under Section 86 AI – Annual Report.
- Section 86AE be amended by omitting all of Section 86AE (2). There is no reason for the water recovered via the Water for the Environment Special Account and held by the Commonwealth Environmental Water Holder to be treated and managed differently from the other water it holds. NIC believes the CEWH should be free to trade for environmental reasons and the funds should be used for environmental purposes within the Murray Darling Basin.

4. Reduce Red Tape:

a. Amend the ACCC's Water Charge Infrastructure Rules to remove costly and inefficient information access requirements.

The ACCC's [Water Charge Infrastructure Rules \(WCIR\)](#) requires IIOs to “provide” information to customers, including the Network Consultation Paper, Network Services Plan, Fees and Prices Schedule and the Fees and Prices Information Statement. This not only increases the administrative burden, but also the cost burden on IIOs.

The requirement for IIOs to develop a fully-costed Network Service Plan (NSP) is particularly onerous and requires a fully developed business case for all of the intended capital works; provide five-yearly projections of revenues and expenditures estimates of water charges over the same time frame. In doing this IIOs also have to make estimates of how State water charges and electricity charges may impact on their pricing without having the benefit of any advice regarding what the States and electricity providers will do. The WCIR also outline how IIOs must consult with customers and how the ACCC will review the NSPs.

Prior to developing their NSPs, the IIOs must write to all of their members/customers inviting inputs into the NSPs and later to indicate why any submissions were or were not incorporated into the NSP as it was being finalised. Once the NSP has been finalised, it is reviewed by the ACCC – this process involves external engineering and financial reviews in support of the ACCC's overarching review. It is interesting to note:

- the audit reviews subsequently compiled by the ACCC with the assistance of Aurecon and Deloitte were lengthier than the plans and supporting information provided by the IIOs
- that in all cases, the ACCC found that the charges being levied by the IIOs were reasonable; that their provisioning for capital replacement was appropriate and that their financial arrangements generally met the required levels of probity
- in all cases the invitations by IIOs to their members to provide submissions/input into the development of the IIOs elicited comment by fewer than 1% of their members/customers
- the cost of developing the NSPs and of communicating in the method mandated by the ACCC was estimated by the IIOs to have been in excess of \$150,000

The IIOs and NIC contend that the type of information required by the ACCC through NSPs should only be required by exception i.e. when the ACCC forms a view that an IIO's charges may be too high based on its monitoring of those charges over time, or that the trajectory of IIO's 'pricing path' over time gives cause for concern. This approach would also recognise

the fact that most IIOs are member owned and customers have ample opportunity to interact with the IIO and hold them to account.

NIC would suggest that the requirement for private, member owned IIOs to produce NSPs be removed from the WCIR.

Further, the WCIR require IIOs to “provide” information beyond the NSPs including fees and charges and information statements. To meet this requirement IIOs who cannot guarantee 100% customer access to email must post this information adding to administrative costs. This burden can be relieved by requiring IIOs to “make available” rather than “provide” information. For example an IIO could publish the information on their website and inform customers how the information can be assessed. It is less expensive for an IIO to mail out a one-page letter informing customers where and how they can access information than it is to send out multi-page booklets such as the Network Services Plan.

b. In order to provide administrative clarity, combine the MDBA’s Water Trade Rules and the ACCC’s Water Market Rules, with the ACCC being the responsible agency.

The Water Act requires the Basin Plan to include the Water Trade Rules (WTR); however, the rules incorporated in Chapter 12 of the Basin Plan go beyond the requirements of Section 22 of the Water Act.

The WTR require State water managers to remove trade barriers which are not captured in the ACCC’s water market rules and this section must be maintained. However, NIC submits the WTR and the WMR should be consolidated into one regulation in order to remove duplication and simplify compliance and enforcement.

c. Amend the reporting obligations of Irrigation Infrastructure Operations (IIOs) so that reporting is done by exception unless there is a compelling reason to do otherwise.

As previously noted, some of the ACCC’s requirements of larger IIOs with respect to the annual justification of their water charges are onerous, costly and disproportionate and seem to ignore the fact that IIOs are in frequent and close contact with their members/customers. NIC submits that all of the current reporting requirements levied on IIOs by Commonwealth agencies need to be reviewed to establish if reporting obligations and mechanisms can be made more rational.

d. Support the Bureau of Meteorology’s ‘single portal, many uses’ as being the appropriate vehicle to rationalise what are a range of duplicated, excessive and un-coordinated Commonwealth water-related reporting requirements.

NIC notes that the Bureau of Meteorology has embarked on a project to consolidate reporting on water-related matters developing a ‘single portal, many uses’ concept which would see IIOs only having to provide data to the Bureau of Meteorology from whom other agencies could access information that is currently being provided in a variety of formats, at a variety of times, to a variety of Commonwealth agencies. While IIOs understand that there may be matters that may require an IIO to furnish specific information direct to an agency, like the ACCC, it considers many of the current standing reporting requirements should be consolidated under the one system and that IIOs and Government alike would benefit from such an arrangement.

5. Refocus and Reprioritise Research Development and Extension

The November 2013 issue of the Australian Farm Research Institute's *Insights* newsletter [published](#) work which highlights declining investment in agricultural research, development and extension. The Report found 'the investment intensity in R&D by the states had halved over the past decade falling from 0.9% of gross volume of agricultural production in 2001 to around 0.4% in 2011. Most recently, the Commonwealth Government has announced budget cuts to agencies such as CSIRO, the Australian Research Council, and the Cooperative Research Centres.

Recommendation 14 of the *'Drought and Flooding Rains'* report, by the House of Representatives Regional Australia Committee inquiry into the Murray–Darling Basin water reforms, suggested the need for the Commonwealth Government to *"focus greater investment into research and development to improve irrigation efficiency"*.

While Recommendation 14 has been adopted "in principle" by the Commonwealth Government, the reality is that Land and Water Australia, Irrigation Futures, Cotton and Forestry Cooperative Research Centres and the Merbein CSIRO Laboratory have all been abolished or closed. In addition, the 2014-15 federal budget announced the closure of the Griffith CSIRO Irrigation Laboratory and cuts to flagship research programs.

There is a need for environmental R&D to be refocused. As the Basin Plan moves from development to delivery, the nation needs practical environmental water research on how, when and where is the best time to water for maximum environmental, social **and** economic outcomes.

NIC submits that any public funds available for this type of research, especially through the Australian Research Council, should be assigned not only to universities, but also to faculties like the Murrumbidgee College of Agriculture at Yanco, the University of Melbourne's Dookie Campus and the Merbein CSIRO Laboratory. Greater use could also be made of underutilised facilities like the CSIRO's Griffith Laboratories.

Conclusion

NIC finds itself, like others, surrounded by a host of reviews and constantly learning of new reviews. NIC requested to the Department of the Environment and the MDBA to provide a list of all of the current water-related reviews that are required by regulation, underway or contemplated. Neither agency was able to provide such information. Nor was either agency able to provide NIC with a breakdown of which Commonwealth and State agencies are responsible for implementation, metering, monitoring, reporting and evaluation of matters mandated in the Water Act and associated regulations. This suggests the need for clearer delineation of roles and responsibilities.

Notwithstanding the observations and recommendation made by NIC in this submission, progress is being made on water reform and the Basin Plan. However the cost of that reform, both economically and administratively, and the social impacts, remain of significant concern for NIC's members and Basin communities.

The review of the Water Act and the progress that has been made to date is therefore timely and presents an opportunity to 'take stock' and further examine what more can be done to better ensure the objects of the Act are delivered.