



# NSW IRRIGATORS' COUNCIL

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## Response to ACCC

### Water Market Rules and Water Charge Rules

### Draft Advice on Proposed Amendments

Andrew Gregson

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**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 Corrgan Private Irrigation District, Wine Grapes Marketing Board.

## **Introduction**

NSW Irrigators' Council (NSWIC) represents more than 12,000 irrigation farmers across NSW. These irrigators are on 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.

In responding to Australian Competition & Consumer Commission, NSWIC is responding with 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 any other issues that they may deem relevant.

## **General Comments**

### **Section Two**

#### *Murray Irrigation Limited's variation to its members' water entitlements*

Murray Irrigation is a Member of NSW Irrigators Council, as is Southern Riverina Irrigators, a representative group that encompasses shareholders and customers of MIL.

NSWIC believes that the matter raised is specific to MIL and its customers/shareholders and, as a result, makes no submission in respect of this matter.

### **Section Three**

#### *Rule 10(1) allowing operators to seek security from irrigators in certain circumstances*

Like the ACCC, NSWIC is not aware of any IIO's that currently operate on a flow rate basis. Under no circumstances ought this be presumed to mean that no such operators exist in this state. The ACCC has repeatedly ignored the advice of NSWIC that several hundred operators pursuant to the Act fall within the definition of IIO. Given that the ACCC have not accepted our advice to determine and assess each of these operators, it is not possible to definitively state if any operate on a flow rate basis.

NSWIC supports the concept of a reasonably required threshold for when security can be requested. With adequate publication of the threshold, irrigators ought be well aware of their obligations in the event of a decision to transform in a flow rate environment.

Conversely, NSWIC does not support a conversion formula approach. In an ever-changing physical environment, fixed conversion rates can quickly become outdated potentially resulting in unexpected or unintended outcomes. Any organisation familiar with the management of water would recognise this very simply from an analysis of conversion factors under WSP's in NSW.

#### *Rule 16(1) preventing operators from delaying or preventing transformation*

The Rules as written require an irrigator to lodge a transformation application *in writing* before an IIO can be said to have unreasonably delayed the process through act or omission.

It is far from unreasonable to expect that a transformation affecting a property being dealt with in writing. At law, transactions involving real property are required to be engrossed. Given the nature of water as a property right and the dollar term value of that asset, it is reasonable to expect that transactions relating to it would be in writing.

Conversely, it is entirely unreasonable – and patently absurd – to expose IIO’s to potential claims of delaying behaviour without at the very least *prima facie* written evidence of the intent of an irrigator to transform. Is an IIO expected to act on the basis of verbal information to one of its officers? If so, how might the ACCC suggest that evidence of such request is later documented should the transaction not proceed? Would the IIO be liable should it commence work on a transformation on the basis of verbal advice that is later denied?

Continuing further into this absurdity, in the event that an irrigator insinuates through word or deed that they may transform, would the ACCC propose that an IIO must ensure that it takes action (or avoids omissions) in respect of transformation in those circumstances?

The recommendation of the ACCC that a written document not be required is absurd, is rejected by NSWIC and does little to repair the image that the ACCC has acquired that it clearly does not understand the practical realities of water management.

#### *Rule 7(1) requiring provision of details of irrigation rights*

NSWIC submits that operators would have provided such calculation in any event. We make no submission in respect of altering this rule.

NSWIC does observe – in light of the previous section – that this rule continues to require that a request be *in writing*.

#### *Rule 7(1)(c) requiring operators to provide details of irrigation rights that can be transformed*

NSWIC makes no submission on this matter.

### **Section Four**

#### *Rule 7 imposition of termination fee*

The ACCC states that it has written to “PWT’s and PIDs”, noting some 12 entities. Pursuant to countless previous submissions from NSWIC, the number of entities that fit within the definition is several magnitudes higher than this. It is inappropriate, at best, for the ACCC to intimate that 12 letters equates to engagement with small operators.

Like the ACCC, NSWIC considered the outcome to be self-evident. Whilst we maintain that no rule is necessary, we make no submission in respect of creating one.

#### *Rule 7(a) timing of termination of access and calculation of termination fee*

NSWIC concurs with the proposed amendment.

*Rule 4 prohibition on operators requiring payment of termination fee when water is traded out of an operators network.*

The proposed amendment does not relate to irrigators in NSW. NSWIC makes no submission on this matter.