

**INQUIRY INTO CONSTITUTION AMENDMENT (WATER
ACCOUNTABILITY AND TRANSPARENCY) BILL 2020
AND THE PROVISIONS OF THE WATER MANAGEMENT
AMENDMENT (TRANSPARENCY OF WATER RIGHTS)
BILL 2020 AND THE WATER MANAGEMENT
AMENDMENT (WATER ALLOCATIONS - DROUGHT
INFORMATION) BILL 2020**

Organisation: NSW Irrigators' Council (NSWIC)

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SUBMISSION

**Inquiry into the provisions of the
*Constitution Amendment (Water
Accountability and Transparency) Bill
2020* and the provisions of the *Water
Management Amendment
(Transparency of Water Rights) Bill
2020* and the *Water Management
Amendment (Water Allocations -
Drought Information) Bill 2020***

July 2020



Introduction

The NSW Irrigators' Council (NSWIC) is the peak body representing irrigation farmers and the irrigation farming industry in NSW. Our members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton and horticultural industries.

Through our members, NSWIC represents over 12,000 water access licence holders in NSW who access regulated, unregulated and groundwater systems. NSWIC engages in advocacy and policy development on behalf of the irrigation farming sector. As an apolitical entity, the Council provides advice to all stakeholders and decision makers.

Irrigation farmers are stewards of tremendous local, operational and practical knowledge in water management. With more than 12,000 irrigation farmers in NSW, a wealth of knowledge is available. Participatory decision making and extensive consultation ensure this knowledge can be incorporated into best-practice, evidence-based policy.

NSWIC and our members are a valuable way for Governments and agencies to access this knowledge. NSWIC offers the expertise from our network of irrigation farmers and organisations to ensure water management is practical, community-minded, sustainable and follows participatory process.

NSWIC welcomes this inquiry into:

- *The Water Management Amendment (Water Allocations - Drought Information) Bill 2020;*
- *The provisions of the Constitution Amendment (Water Accountability and Transparency) Bill 2020;* and
- *The provisions of the Water Management Amendment (Transparency of Water Rights) Bill 2020.*

NSWIC sees this as a valuable opportunity to provide expertise from our membership to inform the Inquiry. Each member reserves the right to independent policy on issues that directly relate to their areas of operation, expertise or any other issues that they deem relevant.



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NSW Irrigation Farming

Irrigation farmers in Australia are recognised as world leaders in water efficiency. For example, according to the Australian Government Department of Agriculture, Water and the Environment:

“Australian cotton growers are now recognised as the most water-use efficient in the world and three times more efficient than the global average”¹

“The Australian rice industry leads the world in water use efficiency. From paddock to plate, Australian grown rice uses 50% less water than the global average.”²

Our water management legislation prioritises all other users before agriculture (critical human needs, stock and domestic, and the environment), meaning our industry only has water access when all other needs are satisfied. Our industry supports and respects this order of prioritisation. Many common crops we produce are annual/seasonal crops that can be grown in wet years, and not grown in dry periods, in tune with Australia’s variable climate.

Irrigation farming in Australia is also subject to strict regulations to ensure sustainable and responsible water use. This includes all extractions being capped at a sustainable level, a hierarchy of water access priorities, and strict measurement requirements.

¹ <https://www.agriculture.gov.au/ag-farm-food/crops/cotton>

² <https://www.agriculture.gov.au/ag-farm-food/crops/rice>



NSW Irrigators' Council's Guiding Principles

Integrity	Leadership	Evidence	Collaboration
Environmental health and sustainable resource access is integral to a successful irrigation industry.	Irrigation farmers in NSW and Australia are world leaders in water-efficient production with high ethical and environmental standards.	Evidence-based policy is essential. Research must be on-going, and include review mechanisms, to ensure the best-available data can inform best-practice policy through adaptive processes.	Irrigation farmers are stewards of tremendous knowledge in water management, and extensive consultation is needed to utilise this knowledge.
Water property rights (including accessibility, reliability and their fundamental characteristics) must be protected regardless of ownership.	Developing leadership will strengthen the sector and ensure competitiveness globally.	Innovation is fostered through research and development.	Government and industry must work together to ensure communication is informative, timely, and accessible.
Certainty and stability is fundamental for all water users.	Industry has zero tolerance for water theft.	Decision-making must ensure no negative unmitigated third-party impacts, including understanding cumulative and socio-economic impacts.	Irrigation farmers respect the prioritisation of water in the allocation framework.
All water (agricultural, environmental, cultural and industrial) must be measured, and used efficiently and effectively.			Collaboration with indigenous nations improves water management.



Overview

Part 1: Drought of record

1. NSWIC does not support this Bill.
2. NSWIC understands the proposed legislative changes will make no material difference to the security of town water supplies during droughts, but will have devastating impacts on water availability for farming and entitlements held by the environment. Figures suggest as high as a 25% reduction in annual average general security entitlement allocations.
3. NSWIC supports an adaptive water management framework reflecting the changing climate. Best-available information should be used in decision-making, with proper due-diligence. This has not occurred for this Bill. The impacts on all water users, including the environment, have not been thoroughly investigated and considered.

Recommendations

- i. That the Committee does not support a Bill in which the impacts, risks, and likelihood of realising the intended objectives, have not been diligently assessed; does not recognise the objectives already embedded in the current water management frameworks to safeguard town water supplies and other high priority needs during droughts; and that duplicates the objectives of current/on-going government strategy development (Regional Water Strategies).
- ii. That the Committee refer the matter for consideration in the development of Regional Water Strategies. This detailed and evidence-based planning process is about to get underway, and will incorporate paleo-climatic data into our water management framework. This will allow Government to make more informed decisions on managing water in a changing climate than a simple modelling update.

Part 2: Water ownership transparency and public information availability

1. NSWIC supports Members of Parliament being subject to the same disclosure requirements for water holdings as for other forms of property.
2. NSWIC does not support the expansion of current registers to provide and make searchable personal information. This information is sensitive and private. Many irrigation enterprises are small to medium family farm businesses and many members are elderly. They should not be exposed to potentially manipulative and malicious use of the registry.
3. NSWIC agrees that simplified public access to water availability and trade information is sought in general by water market participants. NSWIC supports the development of a public water trade register at a valley or zone level, that could provide timely information on temporary and permanent trade. However significantly more work is required to clearly identify the problem(s) and therefore the solution before the NSW governments progresses further development of a publicly searchable register.
4. NSWIC believes is it premature for NSW to be legislating any changes to its registers while the ACCC Inquiry into Murray-Darling Basin Water Markets is in progress. NSWIC supports deferring components of these Bills until the committee can consider the findings of the ACCC Inquiry, which covers public information in the terms of reference.

Recommendations

- i. Disallow the components of the *Water Management Amendment (Transparency of Water Rights) Bill 2020*, that make personally sensitive information publicly available, or that may cause real or perceived harm to an individual or business.
- ii. In relation to 71H of the Water Accountability and Transparency Bill – change “the regulations may make provision for or with respect to”, to “must”, for the purposes of 4(C).
- iii. Expand the Water Accountability and Transparency Bill to incorporate the development of a public water trade register that provides timely information on temporary and permanent trade at a valley level (both within valleys and between valleys/zones).
- iv. Await the Final Report by the ACCC to determine the appropriate pathway forward.



Part 1) Drought of Record

The Water Management Amendment (Water Allocations - Drought Information) Bill 2020

Summary of positions:

- NSWIC does not support this Bill.
- NSWIC understands that the proposed legislative changes will make no material difference to town water supplies, but will have devastating impacts on water availability for farming and entitlements held by the environment.
- Water management in NSW must continue to reflect the changing climate and be adaptive to include best-available information. But this must always occur in a robust and evidence-based manner, including full assessment of the impacts and risks, as well as strategies to ensure changes will achieve the intended outcomes.
- NSWIC is of the view that this Bill is misinformed and appears based on a misunderstanding of the water management framework. NSWIC is concerned this Bill will not deliver its objective to improve the security of town water supplies, because critical human need is already the highest priority in the legislated water access hierarchy. NSW Government has already acted to improve town water security through additional augmentation projects in response to the extreme drought .
- NSWIC is of the position that this Bill has not adequately considered third-party impacts, given impact assessment has only occurred for just one valley. This full assessment is not publicly available but we are given to understand the impacts are as great as a 25% reduction in water allocations against general security and other entitlements held by farmers and the environment. These impacts will be most significant in southern Basin valleys (where the Millennium Drought was a new drought of record); this region has already endured three years of zero or low water allocations.
- The NSW Government is currently developing Regional Water Strategies which assess 10,000 years of paleo-climatic data to inform the next 20 years of NSW water management. The Committee should refer the issues the Bill attempts to address to the Regional Water Strategies process. This will ensure Government actions are informed, based on scientific analysis, do not over-simplify these complex issues, nor duplicate the objectives of current Government planning efforts.

1) Impacts

Town Water Supply

Critical human needs/town water supply needs must be prioritised: this is not only fundamentally important, but also a legislative requirement. High priority needs (e.g. critical human needs) are unlikely to ever be impacted by differing assumptions about minimum inflows as they sit so far up the water allocation hierarchy.

Under NSW legislation, there is a clear order of priority in water access, with critical human needs at the top, and general security licences at the very bottom; while farmers still own most of these entitlements, many were also bought back for the environment. The entitlements retain the same legal characteristics regardless of ownership.

Water allocations against general-security entitlements are only made available when higher priority needs have been satisfied. Our industry respects this hierarchy of water access and this respect is a guiding principle of NSWIC. It is untenable (and incorrect) to think that reducing access at the bottom of the hierarchy will make more water available at the top of the hierarchy.



Water Management Act 2000 No 92 [NSW]

60 Rules of distribution applicable to making of available water determinations

(3) While an order under section 49A is in force, the following rules of distribution apply to the making of an available water determination—

- (a) first priority is to be given to—*
 - (i) the taking of water for domestic purposes by persons exercising basic landholder rights, and*
 - (ii) the taking of water for domestic purposes or essential town services authorised by an access licence,*
- (b) second priority is to be given to the needs of the environment,*
- (c) third priority is to be given to—*
 - (i) the taking of water for stock purposes by persons exercising basic landholder rights, and*
 - (ii) in the case of regulated rivers, the taking of water for purposes (other than domestic purposes) authorised by a regulated river (high security) access licence, and*
 - (iii) the taking of water for the purposes of supply of commercial and industrial activities authorised by a major utility access licence or local water utility access licence, subject to the water made available being in accordance with any drought management strategy established by the Minister for that purpose, and*
 - (iv) the taking of water for the purposes of electricity generation authorised by a major utility access licence, and*
 - (v) the taking of water for purposes authorised by a domestic and stock access licence or by persons exercising any other water rights in relation to stock, and*
 - (vi) the taking of water for purposes authorised by a conveyance access licence in connection with the supply of water for any other purpose or need referred to in this paragraph,*
- (d) fourth priority is to be given to the taking of water for purposes authorised by any other category or subcategory of access licence.*

(3A) While an order under section 49B is in force, the following rules of distribution apply to the making of an available water determination—

- (a) first priority is to be given to meeting critical human water needs,*
- (b) second, third, fourth and fifth priorities are to be given to the matters set out in subsection (3) (a), (b), (c) and (d), respectively, to the extent that those matters are not critical human water needs.*

Environment

The Commonwealth Environmental Water Holder (CEWH) will be the single largest party affected by this Bill, given the CEWH is the largest owner of water entitlements in many valleys, and owns upwards of 30% of general-security water entitlements in some valleys.

The CEWH's licences were purchased from irrigation farmers, and retain the same characteristics as when they were owned by irrigators. This means that reduced reliability of yield on irrigation licences also means a reduced reliability for environmental licences.

Note: The licences held by the CEWH and other environmental water holders (Held Environmental Water) is in addition to Planned Environmental Water, which is further up the water hierarchy to protect the fundamental environmental needs of river systems.



Farmers

NSWIC is deeply concerned that this Bill would lead to a significant reduction in the reliability of water access for farming even in non-drought years. From discussions with the Department, we understand that this impact would **average a 13% reliability reduction, but could be as much as 25% in any given year, regardless of the climatic conditions.**

NSWIC sought verification of these figures, but the Department denied access as the relevant documents are not yet publicly available. We were informed that only one valley (the Lachlan Valley) has been studied, and not the other NSW valleys that would be affected by this one-size-fits-all Bill. It would be highly inappropriate for this Bill to even be considered without the appropriate information on the actual impacts (intended and unintended) on all valleys. No two river valleys are the same in terms of their climate and inflows catchment, and what might make sense in one valley will have unintended, perverse impacts if applied in another.

Of all farmers, those with general security entitlements will be the most significantly impacted, as they are the lowest on the water prioritisation hierarchy. As the last water to be allocated, the more conservative inflow position proposed in this Bill will mean reduced allocations for general-security farmers in every year, for the purpose of setting aside larger reserves for the one year where inflows are worse than experienced before 2004.

Simply, this double hit to general security farmers would be from a combination of:

- Less water for allocation this year due to the modelling for the current year; and then,
- More reserves being set aside due to the modelling for the coming year(s).

The proposed change could also delay general security allocations being announced through the water year. As most inflows occur in late winter to early spring, changing the inflow modelling would have the greatest impact on these months, meaning general security allocations will be made later in the season, too late for planting many summer crops.

Thus, this is a critically concerning Bill for the NSW irrigation farming sector.

[2\) Background](#)

History

It is our understanding that the NSW Department of Planning, Industry and Environment (DPIE) assessed the impacts associated with changing the drought of record following the Millennium Drought. At that time, the Millennium Drought was a new drought of record for the southern valleys only.

Modelling indicated that following the Millennium Drought, if the Government simply increased storage reserves to continue to guarantee full allocation to higher priority licences (i.e. stock & domestic, local water utilities, and high security), this would reduce annual general security allocations by approximately 13% on average and up to 25% in some years.

The Government was cautious that this may trigger calls from general security users to open up the existing bulk sharing arrangements between high security and general security entitlement holders in southern valley Water Sharing Plans (WSPs). Such a move has historically been highly contentious.

For most northern valleys, at that stage, this was not an issue as the Millennium Drought did not result in a new drought of record. Even if a new drought of record was set, this would unlikely be a significant issue for northern valleys because the amount of high priority licence entitlement compared to general security entitlement is relatively small.



At present, our understanding is that whilst the Lachlan experienced a new drought of record post 2004 (2007-2010), and the Macquarie is currently facing a drought of record, the other northern valleys continue to maintain their 'drought of record' as severe droughts in the C20th. This Bill would thus most significantly impact the southern valleys which have had new record droughts since 2004.

Outcome

WSPs were amended to fix the drought of record as at the commencement of the original WSP, being 2004. This also then effectively preserved the bulk sharing rules between high security and general security as agreed to at the commencement of the first WSPs.

The intention was then to further assess the impacts of changing storage reserves incrementally for each valley and consider how sensitive general security allocations would be to various levels of change and how impacts might be shared between high security and general security (with stock & domestic, and towns still being guaranteed their full allocation).

It is important to note that the WSP (1 July 2004) drought of record is inclusive of some very low inflow periods.

Next Steps

The NSW Government has indicated that the Regional Water Strategies will address the need to incorporate more robust climate evidence. For example, "*we are preparing new regional water strategies that will bring together the best and latest climate evidence with a wide range of tools and solutions to plan and manage the water needs in each NSW region over the next 20 years*"³. These plans involve utilising paleoclimate data, with paleo-climate analysis of the last 10,000 years.

NSWIC is of the position that the Committee should await the final plans and recommendations of the Regional Water Strategies, as these will provide a more robust, detailed, valley-specific and evidence-based way forward to any modification of water management arrangements. Any changes in the water management framework that are not properly considered in detail, pose enormous risks to all water users, including the risk of not delivering the intended objectives.

A question for Government in developing the Regional Water Strategies is, firstly, whether it is necessary to manage for the worst-ever drought, and bear the costs of that every year, or whether it is acceptable to manage for a 1 in 100 year event? The secondary question is, if inflows do fall below that 1 in 100 year level, will water managers receive enough warning and have enough options available to manage for it?

NSWIC would argue that if inflows are worse than the basis on which the planning has been done, water managers do get plenty of warning because:

- a) The resource assessment is done each month, so trends emerge well in advance if inflows are lower than budgeted.
- b) Because the water management planning is for a 2 year period looking forward, a shortfall doesn't impact availability immediately.
- c) If inflows remain below the 1 in 100 year inflows for a prolonged period, it becomes clear there's a looming problem and there is time to put in place measures to ensure supply for high priority needs of LWU, S&D, and HS.

³ <https://www.industry.nsw.gov.au/water/plans-programs/regional-water-strategies>



- d) These savings may involve suspending delivery of some general security allocations and implementing river operational savings.

These issues will be thoroughly investigated as part of the Regional Water Strategies, to help ensure informed government decisions.

Status Quo: How water for towns is currently protected and how the water management framework responds to climate variations

- 1) Under the NSW Water Management Act, water for critical human needs and town water supplies is the highest priority. These needs must be satisfied before any water is made available to 'lower priority' needs (see above).
- 2) Water entitlement holders receive an allocation, which is a percentage of their water entitlement, depending on how much water is available in the system that year. In an exceptionally wet year, entitlement holders may receive their full allocation (e.g. 100%). In dry years, entitlement holders can only use a portion of their entitlements (e.g. 20%), or in extreme dry years allocations on their entitlement could be reduced to zero (e.g. 0%), and access to previously allocated water carried forward may also be suspended. In the current extreme drought, most general-security entitlements were/are on 0%, meaning farmers had/have no water. This continues in many areas of NSW.
- 3) To respond to drought, Government has put in place drought measures within the system. For example, multiple Drought Reserve Accounts have already established in the NSW Murray and Murrumbidgee valleys following the Millennium Drought, precisely to protect town water. This is in addition to implementing the Extreme Events Policy – the purpose of which is “*to secure critical human water needs*”. In the Southern Basin (where this Bill will have the most impact), town water supply (in the Murray and Murrumbidgee) is augmented by the Snowy Hydro Scheme, which provides very high guarantee of secure town water supply. The Snowy Scheme – post recovery from the Millennium Drought – now also has additional drought reserves.

Further, significant steps have been made since 2006/07 to prepare for extreme events, and to have orderly decision-making based on actual circumstances. There are concerns that this Bill would limit the Department’s ability to make judgments based on actual circumstances, which is contrary to the efforts of the past decade to move towards a more active style of management. It is preferable that the Department should be able to actively manage the system based on actual circumstances, rather than legislating WSP operation based on current drought of record.

Given the system already takes drought into account, the Bill will not improve the security of supply to towns but only damage regional economies by reducing the water available for production even in average and wet years, and reduce volumes allocated for specific environmental watering events.

3) Options to secure town water supply during drought

NSWIC is particularly concerned given this Bill purports to improve water security for towns, but this mechanism is very unlikely to do that (as aforementioned). The water security of towns is critically important. It was only months ago that we were fearing the ‘Day Zero’ when towns would run out of water – a very distressing situation. Even today, many towns remain on



severe water restrictions as the drought continues, and thus, any irrigation water for farming in most areas remains a distant dream.

The impacts of a warming, drying climate are incredibly concerning. This important matter, needs full and proper consideration by Government and all stakeholders. Government must take serious action to protect the water security of towns, particularly with a changing climate, but this must be considered and evidence-based action to achieve genuine outcomes.

We recommend the Committee seek to understand what this Bill can and cannot achieve, and invest its time in exploring options to address the core issue. Options include:

- Investing in other ways to provide greater security for high priority needs (i.e. towns), such as piping and/or groundwater access.
- Investing in river operational efficiencies that reduce delivery losses.

The cost of both options is likely to be significantly less than the reduced value of production from irrigated agriculture if more water is held back this year in case a severe drought emerges at an unknown time in the future. Alternatively, Government should also consider investing in new water conservation and storage infrastructure and technology. Approaches of these kinds would actually and genuinely improve the security of town water supply, and without the subsequent impacts on irrigated agriculture.

4) Government liabilities

NSWIC remind the Committee that water access entitlements are a property right, and Government cannot simply erode that property right.

As outlined in the Water Act 2007 (Cth), Schedule 3A:

Schedule 3A—Risk assignment framework

Note: See section 74A.

Part 1—Clauses 48 to 50 of the National Water Initiative

48. *Water access entitlement* holders are to bear the risks of any reduction or less reliable water allocation, under their *water access entitlements*, arising from reductions to the consumptive pool as a result of:
- (i) seasonal or long-term changes in climate; and
 - (ii) periodic natural events such as bushfires and drought.
49. The risks of any reduction or less reliable water allocation under a *water access entitlement*, arising as a result of bona fide improvements in the knowledge of water systems' capacity to sustain particular extraction levels are to be borne by users up to 2014. Risks arising under comprehensive *water plans* commencing or renewed after 2014 are to be shared over each ten year period in the following way:
- i) *water access entitlement* holders to bear the first 3% reduction in water allocation under a *water access entitlement*;
 - ii) State/Territory governments and the Commonwealth Government to share one-third and two-thirds respectively reductions in water allocation under *water access entitlements* of between 3% and 6%; and
 - iii) State/Territory and Commonwealth governments to equally share reductions in water allocation under *water access entitlements* greater than 6%.



50. Governments are to bear the risks of any reduction or less reliable water allocation that is not previously provided for, arising from changes in government policy (for example, new environmental objectives). In such cases, governments may recover this water in accordance with the principles for assessing the most efficient and cost effective measures for water recovery.

Under legislation, if changes in government policy result in reduced or less reliable water allocation, Government must bear that risk. The proposed Bill has not detailed how the Government will manage this risk, nor has it even quantified the impact on reliability for each valley, and the subsequent impact on Government expenditure.

NSWIC is strongly opposed to more water recovery from agriculture. Similarly, eroding reliability with no compensation is unjust.

If Government policy is changed, this must be accompanied by a full risk assessment of the impacts (e.g. reliability) consistent with provisions in the 2004 National Water Initiative and NSW legislation, and a proposal for how this will be managed.

Recommendation:

That the Committee does not support a Bill in which the impacts, risks, and likelihood of realising the intended objectives, have not been diligently assessed; does not recognise the objectives already embedded in the current water management frameworks to safeguard town water supplies and other high priority needs during droughts; and that duplicates the objectives of current/on-going government strategy development (Regional Water Strategies).

That the Committee refer the matter for consideration in the development of Regional Water Strategies. This detailed and evidence-based planning process is about to get underway, and will incorporate paleo-climatic data into our water management framework. This will allow Government to make informed decisions on managing water in a changing climate than a simple modelling update.



Part 2) Water ownership transparency and public information accessibility

Transparency is a key principle in decision-making. Government must find a balance between sufficient publicly available information for transparency, and the protection of privacy and personal/sensitive information.

The provisions of the Constitution Amendment (Water Accountability and Transparency) Bill 2020 (herein, Bill 1)

Summary of positions:

- NSWIC has no specific objections to this Bill, provided the regulations DO make appropriate provision for “*the restriction of access to personal information recorded in the Access Register for the purpose of protecting the privacy of that information*” and that it does not limit the application of the *Privacy and Personal Information Protection Act 1998* [as per 71H (4)(c) and (5) of this Bill].
- NSWIC supports Members of Parliament being subject to the same disclosure requirements for water holdings as for other forms of property.
- NSWIC agrees that simplified public access to water availability and trade information is sought in general by water market participants. However significantly more work is required to clearly identify the problem(s) and therefore the solution before the NSW governments progresses further development of a publicly searchable register.
- NSWIC believes is it premature for NSW to be legislating any changes to its registers while the ACCC water markets inquiry is in progress.

The provisions of the Water Management Amendment (Transparency of Water Rights) Bill 2020 (herein, Bill 2)

Summary of positions:

- NSWIC has major concerns that this Bill fails to provide appropriate protections for the privacy of personal information.
- This will have the greatest impact on the more vulnerable members of our irrigation community – small to medium farming families, and elderly demographics.
- NSWIC does not support this Bill, given the lack of privacy protections particularly for those more vulnerable. NSWIC cannot support a Bill that may threaten the safety or well-being of individuals and their families, or put them at either a real or perceived risk of harm.

1A) Disclosure of water interests by Members of Parliament

NSWIC strongly supports Members of Parliament being subject to the same disclosure requirements for water holdings as for other forms of property.

Given water entitlements are a form of property, it had been assumed that Members of Parliament should already have been required to be declare ownership, just like other forms of property. However, for the avoidance of any doubt, NSWIC supports this component of this Bill.

NSWIC notes that irrigation rights within an Irrigation Infrastructure Operator are equally important to declare. NSWIC are of the view that Bill 2 is inadequate in this respect, and that Bill 1 is more comprehensive as it importantly includes irrigation rights.



1B) Public access to information recorded in the Water Access Licence Register

NSWIC does not support providing *personal information* through the expansion of current registers (or development of new registers), as that information is sensitive, private, and confidential. This would expose particular vulnerable members of our irrigation community (e.g. small farms, or elderly demographics).

We strictly condemn any element of a Bill that violates the privacy or breaches the personal information protections of people, particularly where that violation may threaten the safety or well-being of individuals and their families, or put them at either a real or perceived risk of harm.

NSWIC notes that, under the status quo, there is currently the NSW Water Register (administered by WaterNSW) and the Water Access Licence Register (maintained by NSW Land Registry Services). These registers already provide significant publicly available information on water holdings, as detailed below. It is our view that these registers satisfy the needs for publicly accessible information, and any expansion on this would risk infringing on the privacy of individuals and make them vulnerable.

NSWIC is of the position that the NSW Water Access Licence Register largely satisfies the requirements of the National Water Initiative that:

[59] The States and Territories agree to have in place pathways by 2004, leading to full implementation by 2006, of compatible, publicly-accessible and reliable water registers of all water access entitlements and trades (both permanent and temporary) on a whole of basin or catchment basis, consistent with the principles in Schedule F. The Parties recognise that in some instances water service providers will be responsible for recording details of temporary trades.

SCHEDULE F: GUIDELINES FOR WATER REGISTRIES

The Parties agree that water registers will be established in each State and Territory and will:

1. contain records of all water access entitlements in that jurisdiction, and trades of those entitlements, including their location;
2. be of sufficient standard to achieve the characteristics of secure water access entitlements contained in the Agreement;
3. contain protocols for the protection of third party interests that:
 - (i) require the holder of a registered security interest to be notified prior to any proposed dealings in relation to the water entitlement, and requiring the consent of such interests to any proposed transfers;
 - (ii) allow only authorised dealings;
 - (iii) require the registration of permanent transfers of the water entitlement and encumbrances that affect the entitlement, such as mortgages and other security interests;
 - (iv) enable lenders to procure the registration of their interest independently of the holder of the entitlement (to ensure the rights of the entitlement-holder are sufficiently protected);
 - (v) prioritise competing dealings;
 - (vi) manage time lags between date of lodgement for registration and actual registration of dealings, as such time lags may affect priorities; and
 - (vii) allow for the discharge of the security interest, in conjunction with the transfer of the entitlement to a new registered holder;
 - (viii) ensure that lenders are only affected by a subsequently registered interest where the lender has consented to the subsequent dealing;



(ix)assist in the process of identifying water specific or unregistered interests.

4. be administered pursuant to certain procedures and protocols, based on land title office manuals and guidelines that exist in various States and Territories that seek to minimise transaction costs for market participants;

5. be publicly accessible, preferably over the internet, and include information such as the prices of trades and the identity of entitlement holders; and

6. enable resource managers to monitor and accumulate trade and water use volumes accrued under water entitlements in a separate water accounting system.

Where this Register falls short of meeting NWI commitments is in regards to “compatible systems for registering water access entitlements”, given Basin States have different types of entitlements and terminology. NSWIC would also raise concerns over time lags. These should be a greater area of focus.

Ultimately, NSWIC agrees that simplified public access to water availability and trade information is sought in general by water market participants. However significantly more work is required to clearly identify the problem(s) and therefore the solution before the NSW governments progresses further development of a publicly searchable register.

The issue and the solution need to be much more clearly described before costs are incurred by NSW, which will ultimately be passed on to water users. Any move to towards increased disclosure must have consistency with other states - this is where the focus should be. NSW making these changes without a consistent approach from other states will just disadvantage NSW irrigation farmers.

Comparison of Bills (1) and (2) regarding Public Access to Information

NSWIC understands that the key effective change arising from both Bills is that this information would be available through an electronic search facility on a publicly available website. At present, searches can be completed in person over the counter at NSW LRS or using an authorised Information Broker.

NSWIC has no objections to this, provided that the regulations do make genuine and appropriate provision for ‘*the restriction of access to personal information recorded in the Access Register for the purpose of protecting the privacy of that information*’ as suggested ‘may’ occur in 71H(4)(c) of Bill 1. NSWIC is of the view that this is a step towards the NWI guidelines for access to be “preferably over the internet”.

As a comparison, NSWIC notes that Bill 2, says (at 71J):

(6)	The regulations may make provision for or with respect to—	23
(a)	the authentication of searches of the Access Register, and	24
(b)	the certification of the results of those searches.	25

This is compared to Bill 1, which instead includes additional provisions to protect personal information and the privacy of that information:



(4)	The regulations may make provision for or with respect to—	15
(a)	the authentication of searches of the Access Register, and	16
(b)	the certification of the results of those searches, and	17
(c)	the restriction of access to personal information recorded in the Access Register for the purpose of protecting the privacy of that information.	18 19
(5)	This section does not limit the application of Part 6 of the <i>Privacy and Personal Information Protection Act 1998</i> to the Access Register.	20 21

NSWIC is highly concerned that these protections have been excluded from Bill 2.

We remind the Committee that privacy is recognised in the UN Declaration of Human Rights, and the International Covenant on Civil and Political Rights (ICCPR). In particular, Article 17 of the ICCPR states:

1. *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
2. *Everyone has the right to the protection of the law against such interference or attacks.*

Finding:

- 1) The *Water Management Amendment (Transparency of Water Rights) Bill 2020* does not provide adequate protection of the privacy of personal (sensitive and confidential) information.

Case Study: Aussie Farms

Last year there were significant concerns raised when ‘Aussie Farms’ publicised the personal information of farmers online. As a result, farmers were the subject of trespass, biosecurity breaches, damage to property, and those involved faced fear and anxiety of possible attacks on their homes, property, family and livelihoods.

We are concerned that the publication of personal information without appropriate privacy and protections would expose farmers to similar circumstances as what occurred during the ‘Aussie Farms’ scandal.

In particular, the Committee must consider that irrigation farming is poorly understood by the general public and is frequently the subject of vicious (misinformed) attacks (by both mainstream and social media) which has created undue tension towards the sector. This was revealed in the recent report by the Interim Inspector-General, which stated:

“Fuelled by uncertainty, misinformation, misperceptions or misappropriation of available information, the public debate around Basin management has become increasingly toxic.”⁴

Already, devastating new trends are evident of severe mental health impacts on water users from (unsubstantiated and misinformed) allegations towards the sector and particular farming communities. Water users have expressed genuine fears for their safety if their personal information was shared without adequate protection, given the hostile environment these farmers are now having to operate in.

Finding:

- 2) Irrigation farming now faces a ‘toxic’ operating environment, and water users have expressed genuine fears for their safety and well-being if their personal information is not properly protected.

⁴ https://www.igmdb.gov.au/sites/default/files/documents/iig_final_report.pdf [P 38].



Disadvantaging the vulnerable

NSWIC is very concerned that being able to search for water holdings by an individual's name, would not only have significant privacy breaches, but would expose the more vulnerable members of our irrigation community.

Most irrigation licences in NSW are held by small to medium businesses, and many are also held by senior citizens. Making these personal details of an individual publicly available through a search function would be most detrimental to small to medium farmers, as well as the elderly.

Given water is a scarce resource, and highly sought after in many areas, there is risk that these vulnerable members could be exploited. Increased disclosure is likely to lead to vexatious behaviours directed at private individuals and or exploitation of individuals circumstances by market participants. This is because it would allow a direct path for interested buyers to contact those with holdings, potentially by-passing formal requirements, proper processes and protections.

Finding:

- 3) Public access of personal information without proper protections of the privacy of that information would most significantly impact small-medium farms (typically family farms), and the elderly, who are made vulnerable and exposed.

ACCC Inquiry

We note that the ACCC Inquiry into Murray-Darling Basin Water Markets is investigating many of the matters subject to Bills (1) and (2), including:

- *The availability to the public of information on water market activities and tradeable water right holdings;*
- *The timeliness, accuracy, and completeness of public information released on water market activities and tradeable water right holdings, including true trade price reporting and the types of trade (for example, immediate purchases, forward contracts, leases);*

NSWIC would prefer for the aspects of these Bills relating to public information to be deferred until these final ACCC findings and recommendations are available, to ensure the most appropriate and evidence-based outcomes. NSWIC believes is it premature for NSW to be legislating any changes to its registers while the ACCC water markets inquiry is in progress.

Recommendation:

- i. Disallow the components of the *Water Management Amendment (Transparency of Water Rights) Bill 2020*, that regard making personally sensitive information publicly available, or that may cause real or perceived harm to an individual or business.
- ii. In relation to 71H of Bill 1 – change “the regulations may make provision for or with respect to”, to be “must”, for the purposes of 4(C).
- iii. Expand the Constitution Amendment (Water Accountability and Transparency) Bill 2020 to incorporate the development of a public water trade register that provides timely information on temporary and permanent trade at a valley-level (both within valleys and between valleys/zones).



Background: The status quo

NSW Water Register

“The NSW Water Register provides public access to information about water licences, approvals, water trading, water dealings, environmental water and other matters related to water entitlements in NSW.”

The register amalgamates information from several public registers maintained by WaterNSW as part of its statutory responsibility to record water entitlement and water market information.

The NSW Water Register is complemented by the Water Access Licence Register maintained by NSW Land Registry Services, which provides more detailed information about every water access licence in NSW.”

For more information, see [[HERE](#)].

Water Access Licence Register

The Water Access Licence Register was established on 1 July 2004 under the Water Management Act 2000. This “*provides an online record of every water access licence in New South Wales*”. This contains information for each Water Access Licence, such as:

- Share component (volume)
- Extraction component
- Water source
- Expiry date
- Conditions
- Current ownership details
- Mortgages, charges and related information, and
- A licence reference number.

Water Access Licence transactions are registered as ‘WAL dealings’.

This Register is publicly accessible, subject to a fee (same as the applicable fees for equivalent Torrens title searches). Searches can be completed in person over the counter at NSW LRS or using an authorised Information Broker⁵.

For more information, see [[HERE](#)].

Given these registers already exist, NSWIC are of the view that the problem needs to be more clearly articulated in order to develop effective (and cost-effective) solutions.

1C) Audit of the Access Register

NSWIC withhold expressing a formal position on an Audit of the Access Register until the findings from the ACCC Final Report are made publicly available. NSWIC is of the view that this report will deliver important findings and recommendations to guide Government and stakeholders alike on the most appropriate course of action.

Whilst NSWIC has no objections to an audit of the access register (if an audit is found to be required), we do hold the position that such an audit (if progressed) should be done completely independently of Government. Given the Natural Resources Commission is a Government body, we hold the position that it would not be the appropriate body to conduct such an audit.

⁵ <https://www.nswlrs.com.au/Information-Brokers>

***Recommendation:***

Await the Final Report by the ACCC to determine what the necessary pathway forward is.

Conclusion

Irrigation farmers in NSW are facing an extremely difficult time due to water reforms reducing water availability at the same time as climate change is taking its toll. Many irrigation farmers are now facing a third year without any water.

Water policy is complex, and all decision-making must be well-informed to ensure it achieves the intended objectives without unintended and perverse impacts.

As a fundamental principle, NSWIC is of the position that the best available data should inform decision-making, but this must be done properly with due-diligence, This has not occurred for *the Water Management Amendment (Water Allocations - Drought Information) Bill 2020*.

Also as a fundamental principle, NSWIC is of the position that transparency through public information access is important, but the privacy of personal information must be adequately protected.

NSWIC looks forward to speaking with the Committee at the hearing.

Kind regards,

NSW Irrigators' Council.