MACQUARIE RIVER FOOD & FIBRE

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Professor Parry,
Chairman, IPART
L 2, 44 Market St,
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Dear Professor Parry,

Macquarie River Food and Fibre appreciates the opportunity to have input into the determination process, by making comment on IPART's draft determination. However we note concerns expressed in this submission and in our previous submission on the ACIL and PWC consultancies, that the timeframe and technical complexity of issues have meant the quality of our input has been reduced. We feel this is an issue of major concern and have made some suggestions for solutions in this document. We also urge IPART to accept as part of its role, the need to ensure stakeholders have opportunity to have effective input into the determination process and work to solve this current problem in the process.

In this submission we have focussed on the principles adopted for cost allocation and cost sharing in the draft determination, due to the insufficient timeframe available to make a comprehensive submission. We add that our comments on the new principles to be adopted are not fully developed and may at times be confused or poorly expressed. Again this is a result of timeframes, as well as the technical complexity of these issues and the substantial uncertainty about how the principles will be interpreted and the ultimate impact on extractive users in the future.

Requirement Separation of State Water from DLWC:

IPART report p7, DLWC 'still had significant work to do to effectively separate State Water's role and responsibilities as a bulk water supplier from DLWC's broader water management and regulator role.

Re ring fencing State Water from DLWC, p8: … to ensure that State Water operates in an independent and clearly separate way from DLWC and is assessed in relation to its performance against financial and commercial targets. IPART states in response to DLWC's assertions that it retains some concerns about the degree of separation achieved… it will monitor he effectiveness of the current arrangements over the determination period.. We believe it is appropriate for IPART to specify the list of outcomes/ criteria that must be monitored that will demonstrate the effective separation of State Water and DLWC. Otherwise it is too loose a statement to commit to monitoring the general effectiveness. This list would include independent auditing, State Water submission of its own report on future pricing determinations, the dot points under 3.1.1, 3.1.3. Irrigators are not comforted by IPART's statements in this report that whilst the full requirements set out in the last determination have not been met – progress has been made towards them. There needs to be a deadline with a

consequence – ie specific requirements, with no consideration of further price increases till the requirements have been met.

From 3.2.1, p9, DLWC believes an independent audit cannot be carried out…. The Tribunal…considers that future work needs to be done to ensure the integrity of the cost database. Again it is crucial that IPART avoids loopholes created by such wording – IPART needs to specify what work needs to be done, on the basis of having determined what the requirement is. So if this requirement is that financial accounts be independently audited, then state this requirement and set a deadline.

With reference to 3.2.2 the TAMP: The Tribunal has also had concerns about what has been an uncertain and varying cost base… We urge IPART to suggest a process to resolve any concerns it has – as otherwise there is no real means of achieving resolution. We acknowledge IPART anticipates ' a greater degree of certainty following the PWC opex and capex review'. However this gives irrigators no certainty that the 'greater degree of certainty' will be adequate. Again IPART needs to set a target – requirements and ensure the process is transparent.

For instance there is still no effective input from the CSC's on TAMP – both due to lateness of figures presented and the flaws in the process. We also acknowledge the 'Tribunal expects that in meeting the obligations set out in its Operating Authority and Access Authority, State Water will better manage its consultation with CSC's in the period up to the next determination. We suggest IPART takes a much stronger stance on those issues that must be resolved by the next determination. We feel a bit betrayed that fundamental issues such as role and responsibilities and customer's input are still not resolved and that IPART must now put a deadline on the resolution of these issues, to give us some faith in IPART's ability to effectively fulfil its own role. For instance on p11 IPAART notes 'that DLWC has not conducted a customer survey since 1999, but intends to do so in October 2001'. If IPART considers the survey relevant to an outcome, it needs to determine whether the survey has occurred, if it hasn't when it must be undertaken by, what outcomes are expected as a result of the survey and what are the implications for DLWC if the survey is not undertaken by the specified date.

From p16: 4.2.1 WRM costs considered for this determination, the Tribunal states it has accepted ACIL's definition of WRM costs 'as any costs that are:

- Made necessary as a consequence of extractive water use activities, including construction and operation of dams, weirs, pumps etc
- Concerned directly with the hydrology of the NSW surface and groundwater systems
- Not justified by the benefits they provide to current and future extractive users alone.

The first dot point of the above definition assumes that activities such as construction and operation of dams, weirs, pumps etc has occurred solely due to the needs of extractive users. This means there must be acknowledgement of the purpose infrastructure items were constructed for, prior to July 1997 and if they were constructed for other purposes, as well as for extractive use, then the above definition does not apply (refer to earlier Macquarie submissions specifying the purpose of construction of Burrendong dam as having significant flood mitigation benefits and the break-up of current beneficiaries of the dam) any WRM costs associated with this infrastructure must be treated as legacy costs.

Return on Assets:

We remind IPART that a positive Rate of Return is not a requirement of CoAG and therefore we oppose its inclusion in any form in the pricing determination.

4.3.3 Return on Assets, p25, The Tribunal has previously stated its intention to allow a return on assets for refurbishment and replacement expenditure undertaken by DLWC since 1 July 1997.

If IPART is going to include a Rate of return, it should follow through its own logic regarding the line in the sand at and rule that irrigators are only responsible for paying a rate of return on that portion of the asset, which they are responsible for funding the refurbishment and replacement of. This figure is zero, as IPART proposed for those assets constructed prior to July 1997 and should be determined based on cost sharing ratios for assets post July 1997.

Impactor Pays:

Is the change to impactor pays, a result of attempts to find an easier, appropriate means of sharing costs or is it a result of a shift in the principles behind who should pay? We are concerned that whether IPART explicitly seeks this outcome or not, impactor pays will lead to a greater share of costs being borne by extractive users than under an effectively implemented beneficiary pays system (one where all major beneficiaries are identified and built into the cost structure). One way of protecting against this occurrence is to benchmark the impactor pays ratio's against beneficiary pays ratios for a representative selection of cost items.

From a philosophical approach, we believe beneficiary pays is more appropriate for sharing the costs associated with operating and managing water infrastructure. This relates back to our belief that the debate needs to be centred on the line in the sand approach that legacy costs brings. Part of the legacy cost approach must be acknowledgement that all infrastructure in place at July 1997

IPART report p2, *It proposed to adopt the 'impactor pays' approach to cost allocation because it believes that this approach – which was recommended by ACIL Consulting after careful examination of DLWC' s water resource management expenditure at a 'sub-product' level – significantly reduces the risk of inappropriate cost allocation*.

As noted in the introduction, the application of impactor pays and its implications are not clearly defined by ACIl or IPART. In contrast to the above statement, we believe there is greater risk of inappropriate cost allocation via impactor pays, based on the DLWC's poor track record of providing insufficient information to IPART to apply beneficiary pays principle. The result will be no better with impactor pays, as this approach even more so enables DLWC to target extractive users and single them out as responsible for costs.

The Productivity Commission in a staff research paper released in 2000 stated that the clarification of property rights is an important step in determining whether the 'impactor pays' or 'beneficiary pays' principle should be adopted as the basis for cost sharing.

If property rights are well-defined – such that individuals have a responsibility to ensure a certain environmental standard – failure to meet that standard breaches this responsibility and may be considered to impose external costs on the community. In principle, the 'impactor pays' principle should be adopted to internalise external costs and promote efficient outcomes.

Adoption of the 'impactor pays' principle in this case effectively implies a change in property rights.

While the 'impactor pays' principle can be used to internalise the costs of biodiversity loss, governments may choose not to apply it in all cases because:

- *it may not be technically possible or cost effective to identify and charge impactors…*
- *adoption of the 'impactor pays' principle is considered to impose excessive burdens on resource users*

Impactor versus beneficiary, p30: Based on the definition of Impactor, being 'individuals whose activities generate the cost or a justifiable need to incur the costs that are to be allocated', WRM costs and other costs associated with existence of assets constructed prior to July 1997 should not be borne by extractive users, but funded by the whole community. It is only those O&M costs and new asset construction costs directly related to providing bulk water to extractive users that should fall under their share of the impactor pays distribution of costs. We are seeking clarification from IPART as to whether it agrees with this position.

We are opposed to the concept of impactor pays and refute some of the arguments IPART has provided as to why impactor pays is preferable to beneficiary pays – p32

- 'Retaining the current ratios is problematic in that there are no clear underlying principles on which these ratios are based. The current ratios apply to the broad product level and may no longer be relevant to the underlying DLWC activities which have changed over time.'

We disagree with the above statement – there are in fact clear underlying principles on which beneficiary pays ratios should be based – these are the beneficiary pays principles. The flaws in the beneficiary pays application have been more to do with IPART's lack of information and DLWC's lack of commitment to defining any other beneficiaries apart from extractive users. The transition to impactor pays approach provides even less incentive (in our opinion) for DLWC to search for other users / impactors than with the beneficiary pays principle (see quotes from Productivity Commission report)

- The impactor pays approach is more likely to send appropriate economic signals for minimising overall future costs, bearing in mind the consensus based approach to river management inherent in the new Water Management Act.

We refute the above assumption, for several reasons:

1) as outlined above impactor pays is even easier to manipulate than beneficiary pays in terms of loading extractive users with inappropriate costs.

2) we have found the River Management Committees to be dictated largely by Government policy, presented by DLWC staff and Committee's have generally adopted policy advice, often against stakeholder wishes, in order to be more likely to receive the Minister's approval for their plans.

3) River management Committees have been given no funds and limited time to assess the costs and impacts of undertaking their different planning objectives – its as though the costs are not an important element of the plans as these are to be borne by extractive users. We strongly believe only when Government has a significant budgetary commitment to funding activities, will there be adequate attention given to minimising costs.

- The impactor pays approach is more straight forward to apply in practice than the beneficiary pays approach. Formally assessing the benefits to different stakeholder groups to determine the cost shares is likely to be much more difficult.

From the above comment, does IPART mean that the distribution of costs will be different (ie more skewed to extractive users) with the impactor pays principle? If IPART doesn't intend this to be the outcome, then the impactor pays approach requires the same degree of research into indirect 'users / impactors' and will be no more straight forward than beneficiary pays.

Legacy Costs:

Legacy versus forward looking costs, p31: We agree with the separate treatment of costs pre and post July 1997, but feel the logic is not fully implemented through the system of allocating costs. It is stated in the last sentence of this section that bulk water users will be charged for 'new structures's built for their needs that impacts on access of fish, as whilst the community as a whole benefits from the fish ladder it would not have been needed other than or the impact of the dam built for extractors.

We agree with the above logic and argue that in addition to the above, it must be stated:

- all WRM costs identified, post July 1997 are the result of changing community standards, and therefore not the responsibility of extractive users.
- All WRM costs identified in the future associated with assets built prior to July 1997, must be shared across the whole community, where the documentation indicates that the asset was constructed for more than just meeting extractive use requirements.

(One could use duty of care principles to say that extractive users responsibilities as at July 1997 is the point from which all future costs must be assessed. Therefore, if the item wasn't part of the extractive user's responsibility in July 1997, then it must be apportioned to the whole of the community to fund. This approach to dealing with future, unknown increases in costs is similar to IPART's adoption of legacy cost principles and will avoid the need for IPART to have to assess future new cost items on an individual basis.

Stakeholder input into IPART determinations:

> From p32, the Tribunal acknowledges the limited responses to the ACIL consultancies. We reiterate the concerns we expressed in our submission on the ACIL consultancy, that lack of resources to employ technical expertise and the complexity of the issues were major reasons, along with timeframe for comment, for the limited responses. The complexity of issues and irrigator group's lack of resources available to undertake their own consultancies and impact analysis etc mean this problem will only increase in the future, as the stakes get higher

We think this is a serious issue, as IPART is adopting new principles for cost sharing on the basis of the ACIL consultancy. Therefore we suggest several points to be considered by IPART in adopting the ACIL principles:

- That it is the role of the CSC's and therefore they should have some funding / assistance available and a process established to review such information as that provided in the ACIL consultancy.
- Specify as part of the current determination that the new principles of a combined legacy / impactor pays approach to cost sharing are being trialled and will be reviewed in comparison to a combined legacy / beneficiary pays principle at the time of the next determination.
- A consultation process between State Water, CSC representative group – NSWIC and IPART to find resolutions prior to the next determination (as requested in NSWIC submission).

Impacts of Price Increases

From 6.2.1: Impacts on farmers using regulated water, p39, the Tribunal has stated its assumption that regulated water users are likely to be most severely affected by large price increases…. Because the costs related to regulated water are significantly higher than those for unregulated water and groundwater in most valleys. We accept that regulated water use costs are likely to be higher than unregulated water use costs, however we dispute the assumption that regulated costs will be higher than groundwater costs.

This is incorrect and is evidenced in the Macquarie by the fact that any irrigators with both regulated and groundwater entitlements always prefer to access regulated water first, due to the substantially higher costs of accessing groundwater (pumping, diesel or electricity, bore maintenance etc). Due to time constraints, no comprehensive data collect on the average costs of access to groundwater versus regulated water was possible. However several individuals contacted have quoted figures that range between $50 - $70/ML to access groundwater versus around $12/ML to access regulated water.

Therefore in contrast to IPART's assumption and consequent capping of price increases, in 6.3.1 we believe especially those irrigators with access to groundwater only, will suffer most severely from large price increases and hence should have a much lower cap than 20%.

Also on p39, the Tribunal states that 'a farm's level of profitability was the main indicator of its ability to absorb the required price increases'. We believe this section is incomplete as there is no discussion of the impacts on profitability of price increases.

Section 6.3, provides justification for why the Tribunal is not placing too much weight on the impacts of price increases in its pricing decisions. We are referred to Section 9 on other avenues available to irrigators whose profitability is affected by water pricing increases. We accept this justification, but believe IPART should provide more specific information about impacts and likely affected areas, as well as recommendations for the availability of some other form of assistance, if it is not going to be responsive to impacts in its own determination. This would provide some form of continuity and direction to those assessing applications for assistance through some other program. We also refer IPART to the option as specified in CoAG, of transparent subsides, where it is not desirable for the public interest to charge full cost recovery to extractive users. We believe IPART should take a much stronger position on this issue, given the knowledge of the impacts of its decision. For instance IPART should recommend either a transparent subsidy for valleys such as the Peel, or that affected users be eligible for some other form of assistance.

We thank IPART again for the opportunity to comment and apologise for the less than clear comments in some cases in this report. We urge IPART to address the lack of meaningful input that has taken place in this last round of submissions from irrigators, by acting on the recommendations for further consultation in both this and the NSWIC report.

Yours sincerely,
Macquarie River Food & Fibre

Michelle Ward
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