



**National Competition Council**

**2002 National Competition Policy Assessment Framework for  
Water Reform**

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**A Submission by**

**World Wide Fund for Nature**

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## **Introduction:**

This submission to the NCC has been prepared by the Murray Darling Basin Program of WWF Australia. Although WWF has an interest in all aspects of the MDB, the emphasis of WWF's MDB Program is on Queensland, NSW, the MDBC, and to a lesser extent, Victoria. This submission is mostly focussed on NSW, with some coverage of MDBC and Victorian issues. A second submission on Queensland will follow.

WWF acknowledges the assessment criteria are designed very much to focus the 2002 Assessment on particular details. In the main, this is accepted, however WWF has some concerns over the narrowness of the approach taken. From this perspective, the first part of this submission will briefly cover some general issues. The second part will provide specific comments on the 2002 assessment issues.

### Part One: General Comments

WWF, as with its submission to the 2001 Assessment, is concerned that the focus of the assessment is too narrow. WWF commends the NCC on undertaking a significant step in assessing the implementation of the Water Resources Policy in 2001. The extent of investigation and the significance of the information presented makes the assessment an excellent resource regarding water resource management in Australia.

Now that we have seen the results of the 2001 assessment, we make the following general observations and recommendations:

#### a) A broader perspective.

The assessment focuses quite specifically on aspects of the Water Resources Policy, and progress on each element of the reforms in each state. However, what may be needed now is a "step back" approach to consider the overall picture of the reforms, and a discussion of the interrelationship between the various components of reform.

WWF would agree that this is the role of debate for CoAG in updating the water resources policy in the light of developments in Australia and elsewhere (for example the World Commission on Dams report). However, we believe the NCC is in a unique position to prepare a special report or analysis from this broader perspective which could both inform the CoAG deliberations, as well as provide a basis for community discussion.

We recommend the NCC prepare an analysis in parallel to the formal assessment in 2002. This analysis should provide an opportunity for the NCC to set up a constructive basis for dialogue on the progression of the water reform process.

The basis for this suggestion is that the assessment is focusing on the specific components of the reform, there is nothing as yet which assesses whether the combination of the components is achieving the outcomes of the reform. States have provided evidence of putting processes in place, and in general, the NCC has accepted this as appropriate progress. WWF is concerned this could be a case of losing sight of the forest for the trees. It is unreasonable to expect the outcomes of the reforms to be fully realised when the process is clearly incomplete. However, the current state of inland waters in Australia, broadly recognised to be deteriorating, may have a major bearing on the pace of reform, and the combination of the reform components (See Attachment One for a summary of the State of the Environment Report 2001 conclusions on inland waters). While the reform agenda cannot necessarily ensure immediate improvement, it must be expected to at least halt decline. On what basis would the NCC consider that the entire combination of reforms is on track to halting decline, and leading to on-ground improvement?

b) Comparison between states

Different parts of different states appear to have a completely different level of knowledge, skills and resources to be able to address the reform agenda. The assessment approach seems to have the result of forcing the States to drive a “lowest common denominator” approach. The NCC would be in a position to consider, without affecting the specific assessments, what may be successful and not successful from the assessment process, from the experience of conducting the assessments.

Prior to the 2001 Assessment, WWF was in agreement with the perspective that each State should be assessed on its own merits, and comparison between states is not an explicit purpose of the assessments. We were actively involved in the NSW water pricing process, and as we have explained previously, consider there are major shortfalls in the NSW approach. We were concerned at the time that because NSW was considered a leader in pricing reform, the lack of performance of other states might warrant a lenient approach to the NSW shortfalls.

From that experience, we are now of the view that some comparison between states on the specific components should be an essential part of the reform. We consider the approach of allowing each State flexibility in meeting the reform agenda according to their particular circumstances has been taken too far. WWF considers that the States and NCC have used this to ignore potential improvements to their systems, and have not had to reach an acceptable minimal standard in some areas. The lack of progress by Victoria in providing transparent pricing arrangements and including externalities in water prices is a case in point. The fact that Queensland, and NSW in the Barwon-Darling River, have failed to commit to the Murray Darling Basin Cap is another.

WWF recommends an improved balance between assessing each State on its own merits and using the combined wisdom and learning of the experiences of each State to improve water management as a whole. An acceptable minimum standard should be set for each of the assessment criteria.

c) It is a major concern that the water reform agenda will be considered complete in 2005. Considering the importance of some of the unresolved issues, this is clearly unacceptable. For example, most water management plans and catchment plans are in draft stage, or soon to be signed of, and will have a life of 10 years. They will not be reviewed in most cases prior to the “end” of the water reform process, even though they are recognised within the plans themselves as being a “first step”. Another example is in the case of incorporating externalities into water pricing. The draft guidelines suggest that this process will not be in place until 2010, well after the conclusion of the assessment processes.

### **General recommendations to NCC:**

WWF requests NCC to:

- a) Publish a candid, “non-binding” report on the overall Water Reform Process and potential improvements to the assessment process, for consideration of CoAG and the broader public, highlighting the shortfalls and positive aspects of the process;
- b) Develop an assessment process which encourages comparison between jurisdictions as well as for each jurisdiction individually based on acceptable minimum standards for the assessment criteria;
- c) Encourage the Government to develop a process that ensures the ongoing implementation of the natural resources reform process beyond the formal assessment period ending 2005.

### **Specific issues:**

The following specific issues relate to the 2002 assessment criteria:

#### **Full cost recovery, consumption based pricing, CSOs and cross-subsidies:**

General:

As noted above, the NSW process appears to be significantly more transparent than the other states. The NCC should require that other states institute more transparent and accessible processes to the broader community. This would allow improved consistency in treating issues such as externalities in the future.

NSW:

While NSW is to be commended for instituting an advanced process, WWF continues to have concerns about the NSW approach to water pricing.

The major elements of the water pricing process still need improved resolution. In summary, price paths for achieving full cost recovery should be completed. Full costs should include an appropriate return to capital and an allowance for dividend payments. Those valleys not expected to be able to recover costs should be identified and level of

subsidisation computed. Continued supply of water to these valleys should be justified based on a cost/benefit analysis including externalities.

WWFs involvement in the NSW process has led us to conclude that there are important pricing issues that are “falling through the cracks”. It has become clear that there is an urgent need to clarify the meaning of pricing principles. NSW has been engaged in a major discussion of these principles, and there is still confusion and disagreement among the major stakeholders. The confusion between the use of beneficiary pays or impacter pays principles (given they are interpreted very differently by different stakeholders) is not trivial from the point of cost-recovery. For example, in NSW, there was a debate relating to who should pay for flood protection modifications to water infrastructure. Water users argued, on the basis of a modified impacter pays principle, that those who generate the need for a change are “impacters” and should pay. Further, under the beneficiary pays principle, the community benefits, so the community should pay. Therefore, the broader community, rather than water users per se, have caused the change and benefit, and should pay for increasing the height of the dam. However, we argued that another way to provide the same level of flood safety was for the storage level of the dam to be lowered to safe levels, which would suggest water users become the beneficiaries of the flood safety program. The end result of these debates was a 50% share of the cost of such flood mitigation measures.

This example is provided to suggest that the concept of full-cost recovery and its application is extremely sensitive to different approaches and assumptions. To assist better implementation of water pricing according to CoAG definitions, including pricing of externalities, it would be helpful for the NCC to document the use of these principles by the different states. If it is not possible to assess states on the basis of differences in the use of the principles, recommendations could be put forward as to how differences should be resolved.

WWF provided IPART with recommendations on future issues requiring attention. We consider these of sufficient importance to warrant NCC assessing the progress of NSW and other states in implementing these.

- The appropriate level of resource management costs for DLWC’s bulk water management costs needs to be determined based on the best scientific knowledge and in consultation with environmental groups.
- Further progress needs to be made in the development of a methodology to allocate an appropriate share of water resource management costs to users.
- A method to incorporate water resource management costs of other agencies into the cost base for pricing decisions needs to be explored.
- Socio-economic studies should be undertaken to gain an improved understanding of the impact of increased water prices on the community and structural adjustment necessary to reduce these impacts.
- The potential for using revenue generated by an environmental tax on water to fund structural adjustment in light of full cost pricing should be investigated.

NCC noted that the rural pricing commitments, on the basis of the DLWC submission would bring the cost-recovery to 82% by 2003-4. The final determination by IPART ended up as 73%. Further, the confusion over the inclusion of externalities means that the cost-recovery percentage is probably in reality even lower. IPART commissioned a consultancy to determine the costs that would need to be incurred to produce a sustainable environmental outcome, however the consultant was unable to answer the question. They suggested the current costs would be considered an underestimate. Further, as there are restrictions on including resource management costs incurred by other agencies, research and monitoring costs are insufficient, and compliance systems are not in place, the 73% is an overestimate. The NCC should explore these issues, and ensure that a NSW price path must determine a full cost recovery path that includes such factors.

WWF considers a major problem with the NCC assessment methodology to be that it cannot determine whether the costs provided are sufficient to generate the intended outcomes. WWF believes that the Department of Land and Water Conservation/State Water are not requesting sufficient funds to manage environmental aspects of water resource management effectively. Given the NSW State of the Environment Report (2000) suggests rivers in NSW are generally in declining condition, and the majority are in poor or worse condition, it is likely insufficient effort is being applied to reducing impacts from water use. The NCC is assessing the process NSW undergoes to determine prices charged on the basis of the costs put forward, and thus there is no emphasis on whether the costs are at a sufficient level to be able to produce the desired outcomes.

It is also an anomaly that state owned and operated dams are exempt from licencing conditions which would apply to private structures. For example, State Water still does not have an operating licence in place from DLWC that regulates the standards for dam operations and the supply of water. As there appears to be no operating licence in place, compliance with set standards seems to be non-existent. This lack of compliance with environmental standards has a significant impact on the estimated costs of providing water services. In reality it is seriously under-estimating the true cost of supplying bulk water in NSW.

WWF is also concerned that the methods of socio-economic assessment are inadequate. In general terms, there is very little transparency in decisions related to determining acceptable levels of price impact.

Victoria:

WWF also considers that the situation in other states is particularly poor, on the basis of the NCC 2001 assessment. WWF recommends that the NCC place more emphasis on improving the transparency of pricing issues, and ensuring that externalities are incorporated. It is particularly difficult for non-government organisations to develop a position on water pricing in Victoria, given the disaggregated nature of data, the MDBC cost structure is complicated, and there is no formalised, transparent process for public input. However, the NCC assessment for Victoria suggests there is inadequate

performance in areas of externalities and infrastructure charges. WWF considers the NCC has too easily accepted the approach held up by Victoria, and this should be reconsidered in this assessment.

### **New rural schemes:**

The NCC should specify that all new developments should be justified by a full cost/benefit analysis including the impact of externalities. This analysis should be reviewed by council to determine whether developments are economically viable and ecologically sustainable. It is particularly important that the World Commission on Dams (WCD) recommendations be considered by States in decisions related to new infrastructure. WWF would suggest that all dams be assessed to determine their performance against criteria used by the WCD, and on the broader set of cost-benefit issues now readily identified with dams, such as social and environmental factors.

The NCC has made it clear that until budgets have been approved for new infrastructure, no action would be taken for breaches of NCP requirements. WWF considers that this is not a constructive approach as it is far too late in the planning and assessment process. There needs to be a process for States to determine at an early stage whether proposed storages are likely to be able to meet criteria or not. Significant public and private resources are invested in developing proposals which could be avoided by an “early warning” system. Further, WWF has concerns as to the process for challenging unsustainable water infrastructure projects beyond 2005.

This section of the water reforms includes modification to existing infrastructure. It is imperative that states comply with the recommendations of the WCD by ensuring that, in deciding to modify a dam, all options for modification of the dam, including decommissioning, are taken into consideration.

### **Institutional reform:**

In NSW, WWF continues to have concerns about the close relationship between DLWC and State Water. It is our view that the arrangement is leading to large gaps in expenditure and efforts in management of water resources. Firstly, other government agencies in NSW incur expenditure and develop programs related to providing water services. These agency costs are excluded by the current arrangements because those agencies are unable to “invoice” State Water directly.

Secondly, the relationship can lead to a reluctance to undertake expenditure which may be needed to protect the environment. For example, as State Water would not be a profitable business, if it were operating in the open market, in effect it has to be underwritten by DLWC. DLWC can be expected to place pressure on State Water to cut costs in order to reduce the level of loss. DLWC, rather than seeking to require SW to increase environmental standards and expenditure may be actively working against this goal. Further, WWF is concerned that DLWC/SW do not request prices that would enable them to meet the full cost of water provision. State Water is not required to bring

their full costs to IPART, and in fact presentations to IPART continue to be made by DLWC and SW in conjunction, acting as one entity.

Thirdly, and most importantly, responsibility for particular issues does not appear to be adequately demarcated between the two organisations, which can lead to neither organisation taking responsibility. Further, there is no independent arbiter to ensure that the appropriate management actions are taken. An example is the approach taken to ensuring compliance of water users. Additional compliance issues are dealt with in relation to water allocation and property rights issues below.

### **Devolution of irrigation scheme management:**

WWF is concerned that the NCC considers this requirement to be satisfied by NSW, and request NCC reconsiders this assessment.

WWF considers the appropriate regulatory frameworks to ensure that devolved irrigation scheme management meet environmental requirements are not in place. Further, as transitional arrangements for licences under the Water Management Act 2000 (WMA) are not in place until 1 July 2004, there is insufficient time for the NCC to assess this requirement fully by the end of the assessments in 2005.

Bulk licences for irrigation areas are exempt by the WMA for environmental assessment under the Environmental Planning and Assessment Act (1979). Individual licences within the irrigation management area are not reviewed until the transitional arrangements take effect in 2003. A review of the environmental impacts of an irrigation management area bulk licence is likely to be very different from consideration of the impact of an individual licence. A bulk licence would need to consider cumulative impacts of the use of individual licences, and emphasise impacts on wetlands, threatened species habitat, riparian zones and overall water extraction impacts. In the absence of catchment and water management plans, the appropriate frameworks for devolution of responsibility are not in place. Further, unless the water and catchment management plans are demonstrated to be fully scientifically valid, they are unlikely to meet the requirements of environmental assessment under the environmental planning legislation.

A further problem with this devolution has been highlighted by the inadequacy of the Land and Water Management Planning process. As there are few and dubious overall environmental requirements associated with Bulk Water Licences for Irrigation Management Areas, the Land and Water Management Plans are the main mechanism to ensure these environmental requirements are taken into account in irrigation management areas. Land and Water Management Plans are voluntary, focussed predominantly on production and have "lowest common denominator" targets, and thus are inadequate to meet what should be the true environmental objectives for an irrigation management area. Further, while environment groups have in the past two years invited to participate in two Land and Water Management Plan review processes, there has been little or no resourcing of such involvement, and little access to publicly available information to assess. From 1 January 2003, every water user will be required to have a water use



approval under the WMA in order to use water. It would be an environmental problem if the new water use approvals merely duplicated what is contained by way of standards in the LWMPs.

Further, there are indications in some areas that irrigation corporations are actively seeking to ensure water is used for irrigation, and are making it difficult for other industries to gain access to water allocations. This goes against the concept of having water go to the highest value uses. Such decisions should be associated with catchment bodies, and not irrigation area management.

WWF has previously made the point that water users have an inordinate power in decision making affecting the use of water resources. WWF considers that water users have a strong role to play in determining how their water allocations are operated and delivered, but in terms of overall outcomes they have no more important role than anyone else in the community. Devolution needs to take these two aspects into account. From the point of view of consultation water users are more consulted than any other group. This is obvious and acceptable from the point of view that customers of a service have every right to have an involvement in that service, and put forward their expectations. However, State Water considers the environment to be a customer, however there is no systematic consultation process for consulting the environment as a customer, either within Customer Service Committees, or within irrigation management areas.

### **Water allocations and property rights:**

General:

WWF considers that the federal process not well established and there are insufficient guarantees regarding environmental sustainability. That is, the constraints and conditions to be applied to water allocations and property rights are not well identified. Native title issues are not resolved or fully understood. WWF recommends that more options for environmental water provision are trialed and developed.

NSW:

Progress appears to be slow in developing the register of access licences and other approvals in NSW and the deadline for Nov 2001 has not been met. There are some catchments, for example in the Barwon-Darling River and many unregulated inland areas, where entitlements are still up to 400% of what they physically should be (the long term average diversion). This is not even taking into consideration environmental needs.

This topic is extremely important given the over allocation of water in NSW. WWF does not support a register which codifies and clarifies property rights at this stage. What is most necessary is a register outlining who owns what right at present. This information needs to be matched with information on the sustainable water requirements (quantity and timing). This will allow the reduction of water rights to sustainable levels in the most efficient manner. Codifying rights at existing, overallocated levels in the registry

will be disastrous. Victoria has had experience in this regard, as described in the recent Water Inquiry. The report of the inquiry states as finding 4.10 that “[t]he bulk entitlement conversion process is achieving its purpose of converting pre-existing, poorly defined entitlements of authorities to water to well-defined entitlements. Generally it does not, nor does it aim to, increase water for the environment”. It is of major concern that the approach to codifying water property rights in the register may lead to this same mistake.

WWF is of the view, along the lines of Binning and Young, that water rights entail rights and responsibilities. It is essential that water is used by individual water users in ways which satisfy broader social requirements. It is irresponsible of governments to give rights to water use that do not entail these responsibilities adequately. This is why the SWMOP and Catchment Management Plans are considered to have such high importance by WWF. WWF does not believe that property rights should be fully conferred in the absence of overarching policy and planning frameworks aimed at sustainability. Further, if water property rights are going to be implemented in overallocated systems, then a clearly defined mechanism needs to be put in place prior to the definition of those rights, which will indicate the changes required (and process to achieve those changes). Without such a process, mistakes of the past will be repeated by locking in a system which is outdated and in need of change from the moment it is put in place.

WWF has made the point previously that licence compliance is a totally neglected aspect of the water reforms in NSW. WWF has also made this point to IPART, however it is not being appropriately considered. NSW has focussed on the compliance costs in making water assets and management operations comply with performance requirements. However, this has ignored the other definition of compliance, that of ensuring that water users are complying with licence requirements. There remains no effective system in place where compliance is actually occurring on the ground in the form of property and licence audits. It is expected a compliance system, like any other management system, requires a policy, plans including resources, implementation, auditing and review. NSW has only patchy elements of such a system in place. Despite NSW Government rhetoric about strengthening compliance systems for natural resources management, no water compliance policy or strategy has yet been released. WWF believes that to strengthen property rights without an effective and transparent system of compliance is irresponsible. There is an increasing reluctance among government agencies to focus on compliance responsibilities, given a preference for partnership building and devolving responsibility to local actors. WWF supports cooperative approaches, however these will only be effective if stronger measures can be brought in where necessary.

The NCC notes that NSW disputes whether entitlements are overallocated. WWF has grave concerns if the NCC accepts such a position. While this is a complicated issue, the information in the National Land and Water Resources Audit seems to indicate overallocation. Entitlements are considered above usage levels, and current usage levels are assumed to be sustainable yield. Given the state of the environment reports indicating declining river conditions, this is unlikely.

WWF is also very concerned if the NCC finds it acceptable for NSW not to commit to the MDB cap in the Barwon-Darling because it is balanced by being under cap in the Lower Darling. These are hydrologically distinct areas, influenced heavily by the Menindee Lakes. Recently, low flow rules were determined for the Barwon-Darling, however mid and high flow rules are still undefined. The mid-flow rules are of particular concern as increased pumping at the end of a flood, when the water is in-channel, can have a major impact on the duration of wetland inundation.

**Provision for the environment:**

NSW:

The Council has indicated that if Water Sharing Plans (NSW) do not meet environmental objectives they should be changed within the 10-year life of the plan if the change is significant. WWF considers that a stronger position on meeting environmental objectives and modification of plans for all jurisdictions needs to be taken by the Council. Significant environmental damage may be caused by plans allowing water use that results in a failure to meet environmental objectives. Adaptive management of environmental impacts and adoption of the precautionary principle, imply that plans need to be reviewed periodically and be modified in cases where there is the potential of significant environmental harm.

WWF is concerned about the timing of the various components of the planning process. The catchment blueprints and State Water Management Outcomes Plan (SWMOP) are as yet to be finalised. Water Sharing Plans (WSP) are required to meet targets in those plans. Given that the SWMOP is going to last for 5 years, yet the WSPs for 10, it is imperative that the review processes are coordinated. WWF is concerned that WSPs could be finalised before the SWMOP. WWF recommends that lower level plans must remain interim until higher level plans are finalised.

WWF is concerned that the NCC has considered NSW's interim environmental flow rules as acceptable. Of major concern is whether the Water Sharing Plans comply with the principles of providing water for the environment (previous or revised). Given the nature of dissenting reports by environment representatives for the Murrumbidgee and Gwydir Water Sharing Plans, this should be a high priority matter for NCC consideration. Until the WSPs are released for public comment, WWF will not be able to fully develop a position on this matter.

WWF is concerned about the approach taken by NSW in the SWMOP, restricting allocations to 200% of the long term average diversion limit. It appears that NSW wants to revise even this inadequate target to allow for even higher overallocations. These figures are too high (environment groups have requested 150%) and are not well justified. As the SWMOP is only interim, WWF is concerned there will be pressure in some areas to move away from even this target. For example, in the Barwon-Darling, and the Lachlan and Gwydir unregulated catchments, where there is a high proportion of

inactive licences, and allocations are up to 400% of the long-term average diversion limit this will potentially be a problem.

Victoria:

WWF considers the approach taken by Victoria to the River Health Strategy is inadequate and requires close consideration by the NCC. Victoria has been unable to implement its action plan under existing water management budgets in the past. Given that the NCC has been concerned by this lack of action in the 2001 assessment, and there appears to be no funding commitment to the action plan for the RHS, WWF urges the NCC to strongly consider penalising Victoria.

### **Water trading:**

The NCC should ensure that Water Sharing Plans (NSW) and water resource management plans prepared by other states, adequately consider the environmental impact of trades. They must define procedures to monitor impacts based on good science and be enforced when there are breaches. As noted by in the 2001 assessment, trades have ambiguous net environmental impacts, even under relatively low volumes traded. Expanding traded volumes should be undertaken with consideration of the precautionary principle.

In the Murray-Darling Basin, trades should not be allowed in regions that have not committed to the Cap. Trading should not increase the total level of extractions from the river system.

### **Integrated Catchment Management:**

WWF takes the view that trying to assess all catchments at the same standard may be counter productive and encourage a lowest common denominator approach. WWF recommends the approach taken by the States and the NCC recognises these differences. It is likely to be more productive to have stepwise stages for catchment management plans to be accredited.

Although catchment management plans have been developed, there are enormous differences in their scope and adequacy. In most jurisdictions this is poorly recognised, and little is done to assist catchments to build the required knowledge base as required. WWF believes that each jurisdiction should provide clear pathways to enable each catchment planning region to progress from patchy or inadequate knowledge bases to the ability to implement targeted and effective management activities.

## **Attachment One:**

### **State of the Environment Report 2001 (released March 2002)**

The SOE 2001 was referred to above, and it is worth highlighting the major conclusions of that report regarding Inland Waters. The State of the Environment Report NSW (2000), the National Land and Water Resources Audit (2000) and just released Australian Bureau of Statistics report Measuring Australia's Progress (2002), all reinforce the conclusion that the state of inland waters in Australia is deteriorating.

The SOE 2001 report does not paint a comforting picture regarding the state of the inland waters of Australia. The report states "Some appropriate Government responses to management of water resources have been adopted, but implementation is patchy, and the controls may not be sufficient". It is concerning that this is the "favourable news". Unfavourable news included increasing pressures to extract surface and groundwater resources leading to continuing deterioration of water body health; management of cross border issues is hampering effective management; management systems are often inadequate to address complex catchment management and water issues; rapid water use increases over a 12 year period and increasing salinity levels in rivers. Most importantly, the uncertain news states "[I]t is difficult to assess the state of inland waters nationally, because of poor data availability, patchy water quality and stream flow data in some jurisdictions". (SOE, 2001; p6/7 and 57-69)

The SOE report continues by stating: "more research and data are required urgently to assess the sustainability of current and future water extractions, the water requirements of the environment and the best ways to manage the needs of the environment while providing for human uses". This information is an extremely important issue for a water reform process which is considered to be highly advanced, with only 3 years more to run. Important decisions, with long lasting impacts, are being made largely in the absence of this information. Decisions have been devolved to local decision making bodies with insufficient support, information and leadership to be equipped to make decisions in the interests of all stakeholders. And, most importantly, decisions are not being made in accordance with the precautionary principle, which is relevant in such situations of the lack of scientific uncertainty.