

# **NSW Irrigators' Council**

## **comments on**

## **2003 NCP Assessment Framework for Water Reform**

### **Preamble**

NSW Irrigators' Council (NSWIC) represents approximately 10,020 irrigation businesses across NSW. Our members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries.

NSWIC supports a vision for a future in which we achieve from our natural resources the greatest possible long-term social, economic and environmental benefits for all Australians.

NSWIC welcomes the opportunity to provide some constructive input into the 2003 National Competition Policy assessment process.

### **Assessment Issues**

#### ***Institutional reform arrangements***

In essence, there has been no change structurally from previous assessments. At this point in time the following issues remain unresolved:

- finalisation of State Water (SW) Operating Authority
- finalisation of SW Access Authority
- development and implementation of service agreements
- effective ring fencing of SW's operations from DLWC
- finalisation of SW Customer Service Charter

#### **Recent developments:**

- (i). State Water has formed a small working group (consisting of customer representatives) to assist in the preparation of the next pricing submission to IPaRT.
- (ii). The previous Minister for Land & Water Conservation announced a review of State Water prior to the NSW election (26 March 2003).
- (iii). Responsibility for State Water now rests with the Minister for Energy and Utilities.

#### ***Water "allocation" & property rights commitments for NSW against the timetable published in 2001 NCP assessment***

- *new access licence system*
- *regulations under the WMA 2000 to establish the renewal system for water access licenses*
- *the new registry system of water entitlements to be established*

#### ***Background concerns***

NSWIC notes NCC comments on previous irrigation industry concerns with the robustness of the property rights regime established in NSW however those concerns are still valid and worth repeating.



From NSWIC's perspective the use of the term "allocation" in its current context is somewhat misleading. In NSW, the annual allocation is the percentage of licensed entitlement that is available for use in each water year and this is based on climatic conditions and community agreed water sharing rules (established through the NSW water sharing plans) the licensed entitlement having been previously granted by government. Irrigators are not seeking 100% of their entitlement 100% of the time.

The NSW Government, in implementing the NSW Water Management Act 2000 ("The Act") has adopted the view that the issue of "property rights" has been adequately dealt with through the provision of compensation clauses, the specification of greater detail in regards to the licensing system (categories, share of the resource and extended tenure) and the proposed register of licensed entitlements. This view has been reinforced in the NSW Government's response to the NCC on various aspects of its requirements on water reform under National Competition Policy.

Despite the NCC's qualified endorsement, there has been significant controversy surrounding the implementation of The Act and in particular the transition to the new regime of water sharing plans in each valley.

There remain a number of unresolved issues with the NSW system and these include:

- Security is linked to the WSP but the tenure of the WSPs is not sufficient to allow long-term capital investment or investment in environmental improvement;
- The strength of the right within the ten year planning period is undefined and untested either in law or in practice ("compensation is claimable");
- Before and after each ten year planning period complete uncertainty exists regarding the value of water rights;
- The current approach of linking compensation to the WSPs is not the best option for effective environmental management. This approach elevates the antagonism between stakeholder groups because it places the need for "adaptive environmental management" in direct conflict with the need for "long term investment security";
- Innovative solutions are discouraged and whilst the payment of compensation is one means of achieving security for investment it does not adequately address the flow-on impacts to regional communities. Other options such as investment in system savings and structured voluntary buy-back schemes have not been explored; and
- The Act provides significant flexibility for the Minister to use administrative powers and in so doing attenuate (further) the right as currently defined.

The concerns about resource security have coincided with the implementation of the CoAG strategic water reform agenda – the separation of land title from water title and moves to facilitate transfer and tradability of the resource. NSWIC is not arguing against this principle but merely highlighting the importance of clearly defining and securing the new "property right". The ten year planning cycle and the implementation of (non-guaranteed) register of title are not in themselves enough to adequately deal with the resource security issue.

#### *Developments against 2001 assessment timetable*

The new registry for water access licences in NSW is not yet operational. Amendments to the Water Management Act (2000) and the establishment of dealings principles in November and December 2002 provided more detail regarding the operation of the register, and requirements for different types of transactions.



Essentially there are two broad categories of “dealings”, those that require approval under the Water Management Act (such as the consolidation of a licence, or a change in category from general to high security) and those that don’t (eg the registration of a mortgage or lease).

For those dealings that do not require approval, application is direct to Land and Property Information NSW (LPINSW). Recent previews of the process of such a registration, indicates that this process will reflect closely the Torrens Title System for land (with the exception of provisions for historical title search as the register is not guaranteed). The preview indicates that systems, forms and staff training are well advanced at LPINSW to enable the successful operation of the water access licence register.

NSWIC maintains reservations regarding those dealings requiring approval. As yet, there are no formal processes (manual or electronic) for information to be transferred from the consent authority (DLWC or its successor) to LPINSW. Furthermore, the process for applying and assessing these types of dealings is still in the early development stages, and as yet has not undergone rigorous stakeholder consultation.

NSWIC has serious concerns regarding the process of populating the new register. Transitional issues, such as the transfer of existing mortgages and other interests are as yet to be resolved, and are unlikely to be resolved by the 1 July 2003 start date for the register that Government continues to work towards. In relation to the transfer of existing interests, NSWIC and the Australian Bankers Association developed an agreed position to ensure that the process is fair and transparent. This agreed position was accepted by former Minister Aquilina in March 2003, yet now the Department are reneging on this agreement, citing the 1<sup>st</sup> of July timeframe as too tight to implement such a process.

NSWIC maintains the view that for there to be confidence in the operation of the new register, we need to resolve outstanding transitional and administrative issues before converting to the new regime. Discussions are continuing on this approach and the implications for other implementation aspects of the legislation.

### ***Intrastate trading arrangements***

Recent amendments to the Water Management Act 2000 have provided for the inclusion of “dealings principles” (Division 4 – Dealings with access licenses) that are aimed at clarifying the administrative processes for intrastate and interstate transfers. NSWIC did have a limited opportunity to comment on these principles before gazettal. In addition, a number of water sharing plans have also established trading rules that are relevant to specific physical and environmental constraints within each valley.

## ***Water quality reforms under the National Water Quality Management Strategy and Integrated Catchment Management***

### **Integrated Catchment Management**

NSW Irrigators’ Council sees integrated catchment management as more than simply defining a relationship, and then managing natural resources such as vegetation, water, soils and biodiversity holistically. Truly integrated catchment management should also encompass strong linkages to urban and development planning, covering in addition to resource management, issues such as industry and regional development, transport, community service delivery, and waste management. As a basic principle, community ownership of planning and implementation is fundamental.



*Integrated catchment management is a process through which people can develop a vision, agree on shared values and behaviours, make informed decisions and act together to manage the natural resources of their catchment. Their decisions on the use of land, water and other environmental resources are made by considering the effect of that use on all those resources and on all people within the catchment.*<sup>1</sup>

NSWIC has identified 4 key planks for the foundation of integrated catchment management:

- Implementation of the necessary linkages to ensure an integrated approach to natural resource and catchment management (further explanation of linkages explained below)
- A meaningful and worthwhile community engagement process
- A scientifically robust assessment process (environmental, economic and social) for determining environmental objectives and achieving (and monitoring) outcomes; and
- Agreement and documentation of funding commitments and proper cost sharing arrangements – how to deal with the change management process and the equity shift.

Any approach to integrated resource management must have its basis in the community. There is no question that the irrigation industry supports a cooperative approach to ensure multiple-level outcomes BUT the key to this approach is empowering local communities to decide their own future as part of a long-term and integrated vision.

Unfortunately in NSW we have taken a very difficult path and one that in many cases has left community decisions and trade-offs compromised by bureaucratic interference post the community planning and public consultation process, a focus on a numbers game (where it seems the bigger the percentage reduction in irrigation water then the more successful the outcome) and political trade-offs in the lead up to the NSW election.

Bureaucratic intervention may be appropriate for legal and policy purposes and to ensure compliance with the relevant legislation. However, to ignore two or three years of difficult and frustrating consensus decision-making by the community is fraught with danger. Not only for the implementation of new water sharing arrangements but for longer term natural resource management issues.

There is little hope for attitudes and practices to change if the primary stakeholders (i.e. those who will bear the brunt of the impacts) are not constructively engaged in the development, adoption and implementation of natural resource management plans.

Professor Gary Jones from the CRC for Freshwater Ecology has also argued correctly that the ultimate acceptability of environmental flow options & outcomes is up to the community and not a group of well-intentioned river scientists. “The validity of the (risk assessment) framework should always be considered on a case by case basis using a combination of the best available scientific data and knowledge, and community experience and judgement”<sup>2</sup>

The Macquarie Marshes Agreement is a good example of demonstrated community & government cooperation that continues to deliver tangible and measurable environmental outcomes and sustainable regional communities.

Under the Agreement, the environment has been granted a general security allocation with an entitlement based on maintaining a long term average flow to the Marshes each year. This environmental water allows the maintenance and improvement of natural reed beds, which are

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<sup>1</sup> Integrated Catchment Management in the Murray-Darling Basin 2001 – 2010, Murray-Darling Basin Ministerial Council, June 2001.

<sup>2</sup> Garry Jones, *Setting environmental flows to sustain a healthy working river*, Watershed February 2002, p.2



important wetland bird breeding sites. At the same time, graziers are also assisted, as the native pasture growth is also stimulated by the releases.

The water has been specifically reserved for the Marshes under a long standing agreement between Government, environment groups, irrigators and graziers in the Marshes area.

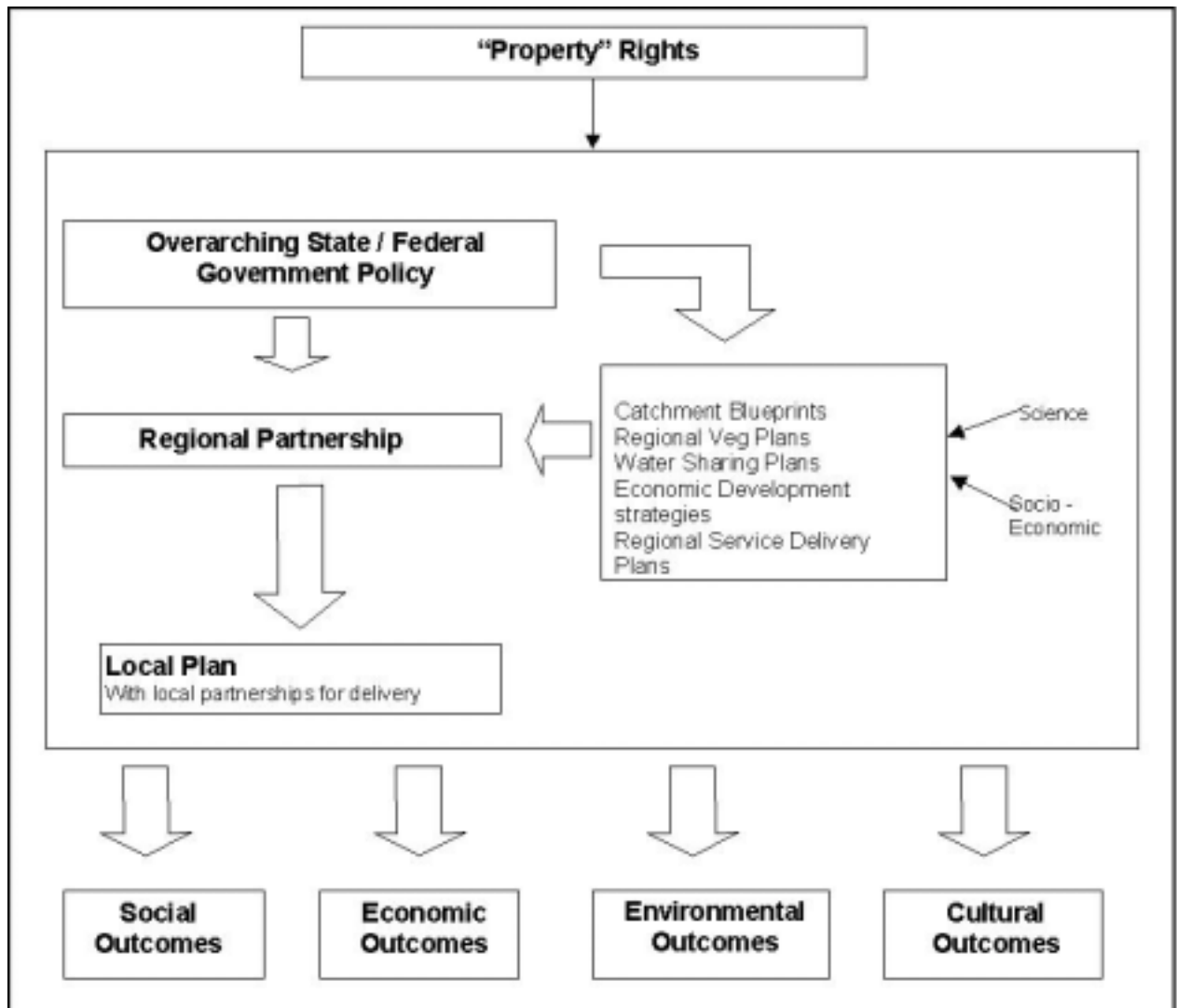
The process is delivering a clear environmental outcome that at a local level has instilled a sense of pride and achievement amongst the community members and has allowed a focus on management rather than a debate about volume. Incidentally the improved management of the Macquarie Marshes has allowed Australia to deliver against its international obligations under the Ramsar Agreement.

Based on the foundations outlined above, NSWIC sees five key requirements for integrated resource management:

- **Property Rights** clearly defined and protected in law – the first piece of the puzzle but fundamental to moving forward (includes water access rights)
- **Overarching government policy** to provide the strategic direction, funding and include NAP, NHT, State Water Management Outcomes Plan & NSW Native Vegetation Strategy
- **Resource specific planning processes** (water management plans, catchment blueprints etc) to be developed by local committees with common objectives and strategies and consistent with legislative and policy requirements. Underpinned by sound and credible science but balanced against socio-economic impacts.
- **Regional partnership** perhaps a representative and accountable body charged with setting overarching regional vision and resolving inconsistencies in other regional plans. Also have a range of tools focussed on market based mechanisms to shift equity (“Public Benefits Test”).
- **Local plans** possibly drawn up by local councils (funding will be required) with objectives that are consistent with objectives and strategies of regional level plans and overarching State and/or Federal policies.

How these components fit together is expressed diagrammatically on the following page:





#### *The Situation in NSW*

Catchment management in NSW has been ad-hoc, and opportunistic. There is no clear relationship between the catchment blueprints and resource specific management plans, such as water sharing plans. Indeed, some Regional Vegetation Management Plans and the major Water Sharing Plans were finalised prior to the finalisation of Catchment Blueprints. Furthermore, there is no linkage (statutory or otherwise) between the Catchment Blueprints and urban and development planning processes.

From the perspective of NSW Irrigators' Council, the imperative for the preparation of the Blueprints has not been integrated catchment management but on meeting requirements demanded by the Commonwealth Government for funding under programs such as the National Action Plan for Salinity and Water Quality (NAP).

#### *Community involvement*

The overarching coordinating body for catchment management in NSW is the State Catchment Management Coordinating Committee (SCMCC). The SCMCC is made up of 20 members, of which at least 12 are bureaucrats nominated by relevant Ministers. Only 2 of the 20 must be landholders, although there is no requirement for the Minister to accept nominations from peak bodies. Water users are not represented directly on the Committee. Other members of the Committee include representatives from Coastal, Urban and Inland



Catchment Management Boards, and a person with an interest in the environment. Indigenous people have no clearly identified statutory position on the Committee.

Catchment Blueprints were drafted by Catchment Boards consisting of a range of stakeholders, including land managers, indigenous communities, environmental representatives, local government and well as government agencies. As with the development of other resource management plans, the development of Blueprints was highly bureaucratic, with agencies making up considerable numbers on boards. It was not until after the drafting stages of the Blueprints that it became apparent that the plans were to be investment plans. Committees were encouraged to be brave and visionary, and set a range of targets and priorities. This is evident when the Blueprints are assessed in detail. For the 9 inland blueprints, nearly 800 management actions are identified as priorities. In the Murray Catchment, for example, 149 actions are considered as priority activities over the next 10 years.

The imperative for accreditation with the Commonwealth for NAP funding meant that the finalisation of the Blueprints, and setting of priorities for immediate funding were undertaken outside the Board process. Despite the Blueprints ranking actions, those activities that received funding in the first round were did not align with the highest priorities as established by the Boards.

#### *Legislative frameworks*

The Catchment Management Act (1989) is outdated. Two recent attempts to amend the legislation have been shelved by Government, despite a willingness from stakeholders to proceed with the reform. Indeed, the current Catchment Management Boards and Blueprints have no basis in the Catchment Management Act but creatively established and supported by the Catchment Management Regulation.

In addition to the deficiencies of the Catchment Management Act, there is no clear legislative relationship between natural resource management and regional development plans. When asked to clarify the legislative hierarchy of natural resource management legislation (such as the Water Management Act, Catchment management Act, Fisheries Management Act and the Threatened Species Conservation Act, then Minister Aquilina simply responded that “*each of the natural resource Acts are intended to complement others*”.

#### *Cost sharing arrangements*

The NSW Government will attest to their significant investment in natural resource management, and sharing the costs of landscape change. It is pertinent at this time, as we anticipate major administrative reforms in NSW, to look at the NSW Government’s commitments in greater detail.

Catchment Blueprints identify priorities for investment, and provide indicative costs for implementation. Some Blueprints, such as that for the Border Rivers separate out what costs are borne by landholders and “community” and what funding (from Governments) might be required. For the inland catchments, the total estimated cost of implementing each of the priority actions is close to \$11.5 billion.



<b>Catchment</b>	<b>Total Estimated cost of implementation (\$)</b>
Border Rivers	\$217.3 million
Gwydir	\$199 million.
Namoi	\$221 million
Central West	\$3,461 – \$4,214 million
Lachlan	\$4,609 million
Murrumbidgee	\$1,749 million
Murray	\$641.01 million
Lower Darling	\$161.28 million
Western	\$234.7 million
<b>TOTAL</b>	<b>\$11493.3 million</b>

#### National Action Plan

The NSW and Commonwealth Governments signed the bi-lateral agreement for the National Action Plan for Salinity and Water Quality in May 2002. Under the agreement, the NSW and Commonwealth Governments have committed approximately \$396 million over 5 years to 9 priority catchments in inland NSW.

The 2002/03 State Budget featured \$46 million (of which \$33 million is the NSW contribution<sup>3</sup>) in joint State-Commonwealth funding for the NAP, the spending of which, when announced by Minister Aquilina in June 2002, was to be guided by the Catchment Blueprints<sup>4</sup>.

Translating funding promises to on the ground funding for integrated natural resource management is an issue in NSW. In September 2002<sup>5</sup>, \$5.6 million over 2 years was directed to priority actions in the 9 targeted catchments, as well as specific activities for the National Parks and Wildlife Service, State Forests and NSW Agriculture. Of this \$5.6 million these agencies directly received \$1.9 million. Interestingly, the priority actions that received first round funding did not necessarily align with the top order priorities identified in the Catchment Blueprints.

Instead of funding new initiatives with new dollars, the NSW Government has diverted funding from the NAP pot. As an example, the Namoi Groundwater Structural Adjustment package is to cost the NSW Government \$20 million, which is to be met through NAP funds.

#### Environmental services investment scheme

As part of the NSW Government salinity strategy launched in August 2000, \$20 million of new investment was flagged for trailing environmental services. This initiative was re-announced by the Minister for Land and Water Conservation in June 2002, when expressions of interest in the trial were announced. Despite an anticipated start date of December 2002, there has been no further progress.

<sup>3</sup> NSW Treasury Budget paper no. 3, 2002-03 Budget Estimates, Minister for Land and Water Conservation, June 2002.

<sup>4</sup> Press Release "Half Billion Dollar Budget To Better Manage Natural Resources", Minister Aquilina 4 June 2002.

<sup>5</sup> Press Release "NSW gets \$5.6 million for salinity and water quality plans" Joint Release from Warren Truss, Federal Minister for Agriculture, Fisheries and Forestry, David Kemp, Federal Minister for the Environment and Heritage and Bob Carr, Premier of NSW. 26<sup>th</sup> September 2002.



### Native Vegetation Management Fund

In the 2002/03, funding devoted to the Native Vegetation Management Fund decreased from \$5,000,000 in 01/02 to \$2,500,000 in 02/03<sup>6</sup>.

### Water Use Efficiency Scheme

The \$25 million NSW Water Use Efficiency Scheme, coordinated by NSW Agriculture has had extremely poor uptake by irrigators. The narrow eligibility criterion for the scheme means that irrigators within the areas of operation of the five Irrigation Corporations cannot access the funding. The Scheme has 4 types of grants including:

1. A grant of 80% of the cost of an irrigation and drainage management plan (IDMP), to a maximum of \$12,000 per enterprise.
2. A grant of 50% of the cost of the completed works, to a maximum of \$15,000, for those works which achieve a significant gain in the irrigation water use efficiency of an irrigation system as identified in an IDMP.
3. A grant of 50% of the cost of the works and/or services for crop water use monitoring, to a maximum of \$2,000.
4. A grant of 50% on the cost of an approved off-river storage - up to a maximum of \$15,000

In 2001/02 the scheme was given a \$6 million budget, which was subsequently revised to \$200,000, perhaps a good indication of the failure of the Scheme to encourage uptake<sup>7</sup>.

### ***Public consultation & education on the above issues***

There were a series of major deficiencies with the public consultation process of the draft water sharing plans during 2002. While public meetings were well attended, and a significant number of submissions were made (in the major irrigation areas, approximately 1500 submissions were received) the process for considering these submissions was less than satisfactory. Government gave committees limited opportunity to take public submissions into account. Members of some committees were not given copies of the submissions made, and had to rely on departmental interpretations. In others, Committee members were given limited meeting time to work through the submissions.

Of submissions received, those from individuals or groups identifying themselves as representatives of irrigators accounted for more than 65%. In some valleys, this was as high as 82%. A number of final Minister's plans (Eg Namoi, Lachlan and Gwydir Regulated Rivers) were significantly different from the committee-developed plans, despite enormous community support (75%, 39% and 62% of all submissions) for the Committee developed position.

Once plans were finalised by the Government, there was a significant lag between announcement and gazettal. For example, the Lower Lachlan Groundwater Sharing Plan was announced as finalised on the 20<sup>th</sup> December, but was not gazetted until the 26<sup>th</sup> February. Still now, the plans are only available electronically on the DLWC website and hard copies have not been produced, and nor have plain English versions or guides to the plan.

NSWIC has made numerous representations and submissions about the inadequacy of the community engagement process. There has been no indication that this will change.

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<sup>6</sup> NSW Treasury Budget paper no. 3, 2002-03 Budget Estimates, Minister for Land and Water Conservation, June 2002.

<sup>7</sup> NSW Treasury Budget paper no. 3, 2002-03 Budget Estimates, Minister for Agriculture, June 2002.



## **Progress Report Issues**

*Progress in converting existing “allocations” to new property rights systems and the establishment of registry systems*

Refer previous comments under Assessment Report issues.

### ***Interstate trading arrangements by the MDBC***

The NCC should be aware of the MDBC Pilot Interstate Water Trading Project.

One of the key requirements of a successful marketplace is access to information and clearly articulated trading rules and requirements – work is continuing on these aspects. However, without greater clarity over the property right and security of the product being traded the market will struggle to deliver what the economists are seeking.

One of the key concerns expressed by some communities with regards to permanent water trade is the potential “transfer of wealth” and the subsequent social implications. Change management cannot be delivered by the market alone and this issue requires further discussion. Trading should also not be seen as a substitute for structural adjustment.

We are yet to have the necessary dialogue and engagement on the water trade issue. Governments are seeking the free market to deliver a changed process that will ultimately see the movement of water from low value use to that of high value crops. A sound economic principle but one that requires water users to be more closely involved in the policy development and implementation of trading regimes.

Given the current status of both the MDBC Pilot Project and the status of the NSW register it is difficult for NSWIC to provide an evaluation of the accessibility of information.

