

14-4-2018

NSW Government Water Reform Action Plan Submission Transparency Measures

Dear Department of Industry Lands and Water,

Introduction

Cotton Australia is the key representative body for Australia's cotton growing industry. We welcome the opportunity to speak on behalf of NSW cotton growers in regards to the overall NSW Government Water Reform Package and in particular the Transparency measures.

Cotton Australia is an active member of NSW Irrigators Council and endorses its submission. Further, in developing this response, Cotton Australia engaged extensively with irrigator representatives from across the Northern Inland Valleys of NSW, and has drawn heavily on this collaborative work in preparing this submission.

While Cotton Australia believes there will be a high degree of consistency in the submissions prepared by these various groups, there will also be some valley specific differences and these need to be recognised.

General Comments

Cotton Australia recognises that our growers who hold water licences issued by the NSW Government have a range of very important rights and responsibilities. As an industry, we are very supportive of the general thrust of the NSW Government's Water Reform Action Plan.

As an industry, our position is, and always has been, that effective water management must have an effective water compliance regime.

It is clear that for a wide variety of reasons, even though irrigators have paid millions of dollars in charges for compliance, NSW does not currently have a water compliance regime that meets the expectation of the public, industry or government.

We could spend a lot of time forensically examining the failure, and allocating blame, however, it is more useful to focus on the future, and ensure that NSW has in place the robust water management and compliance regime that is expected and required.

While as an industry we recognise the system and culture of water compliance in the last 20 years has been far from perfect in NSW. We do not believe it is anywhere near the level of criticism recent commentary and media would suggest.

NSW has almost 40,000 water licences, with over half in the Murray-Darling Basin. While as an industry we have zero tolerance for deliberate water theft, there is only a tiny fraction of water licences subject to active complaints and investigations.

The irrigation industry is no different to any cross-section of the Australian society, where the vast majority of people are doing the right thing.

While Cotton Australia does support this robust system, it cannot be implemented at “any cost”. It is absolutely essential that all parties work towards the implementation of an effective system, which is cost effective.

Specific Comments - Transparency Measures

In considering the reforms needed in this area, the NSW Government should very clearly ask itself what information around water use and regulation will genuinely be required for robust compliance and public confidence in the system. While some information may be of some interest to the members of the general public, does it provide real practical benefit. It needs to also consider what information is actually needed and not needed for good compliance.

Cotton Australia believes some of the information being proposed in this paper to be made transparent, falls very much into the second category.

) ***Is the information already available on the NSW Water Register and Water Access Licence Register enough to provide greater transparency of water use? If not, what else is needed and why?***

As the consultation paper points out there is considerable information already available to the general public regarding water entitlements and its use.

Cotton Australia is generally comfortable with the current level of information available. It agrees that it can be somewhat difficult to access in its current state.

Information not discussed in the consultation paper, but which should be available include:

- Valley/Catchment scale information on the size of the total water resource;
- Valley/Catchment scale information on breakdown of the general make-up of the water resource eg: total entitlements used for extractive use, total entitlements used for environmental use, total planned environmental water, total held environmental water;
- Valley/Catchment scale information on annual compliance against the Murray-Darling Basin Plan Sustainable Diversion limits;
- Valley/Catchment scale information on water resource availability and current access conditions ie: Is there supplementary or unregulated access event underway.

To make much of the information truly useful, it would be valuable to make the linking of the information on the WAL Register to the information on the Water Register easier.

Cotton Australia is supportive of maintaining the fee associated with searching the WAL Register. However, would argue that if a GIS Mapping search portal was utilised, it should be relatively easy to establish a link that would facilitate searching the WAL register for any WALs associated with a particular works.

) ***Is the currently available information too complicated and difficult to access?***

The information currently available is not necessarily too complex. It is although relatively difficult to access. A GIS based system could allow State, Catchment/Valley and individual data to be accessed via zooming in on specific sites.

While, the information is not overly complex, it needs to be recognised that a member of the general public, with little to no understanding of water management would find it very difficult to make real sense of the information provide.

This will significantly increase the risk of both genuine misunderstandings and vexatious complaints. The NSW Government will need to provide resourcing to ensuring that these issues have no negative impacts on entitlement holders.

There will be a challenge where multiple WALs are linked to multiple works. How this information is best made available in a transparent manner will require careful consideration. This is a very important issue, possibly more so on the unregulated systems than the regulated systems.

On regulated systems all take needs to be “ordered” even supplementary take, therefore, allocated by the owner/manager against a WAL. However, as it stands on the unregulated systems, no ordering is required. As Cotton Australia understands, at some point after the take occurs, there is some reconciliation as to which WAL should be debited.

Cotton Australia, understands that this has led to issues in the past, where entitlement holders with multiple WALs have had ample total water in their accounts, but due to the wrong WAL being debited, they have technically being taking water from an account with a negative balance.

The situation is further complicated on a system such as the Barwon-Darling Unregulated where licence holders may have “A”, “B” and “C” class licences, which all pointed to the same works. The present system does not allow the meter reader/regulator to accurately identify under some flow events which licence should be debited.

As we move more towards a real-time or near to real-time system, it is absolutely critical that systems are in place to identify which WAL is being debited. It is important for all involved to have complete confidence in the accuracy of that system.

This will require changes in both the way the entitlement holder reports use and how the regulator records use.

Cotton Australia, is very concerned that unless this issue is addressed in the most comprehensive manner, there is a high likelihood of incorrect accusations being made. As a result of the system being inadequate to track the correct WAL for debiting.

) ***How could it be simplified?***

The careful development of a GIS map platform should allow for information to be made available in a logical manner.

) **What information should be prioritised for access?**

Non-individual scale information should be made available first. This should include information on:

- Valley/Catchment scale information on the size of the total water resource;
- Valley/Catchment scale information on breakdown of the general make-up of the water resource eg: total entitlements used for extractive use, total entitlements used for environmental use, total planned environmental water, total held environmental water;
- Valley/Catchment scale information on annual compliance against the Murray-Darling Basin Plan Sustainable Diversion limits;
- Valley/Catchment scale information on water resource availability, and whether access conditions exist.

As noted earlier, there is already considerable information on individual's licences and conditions available. This should be relatively easy to be transferred to a more accessible web-based tool.

However, before an individual's information is made available, it must be double and triple checked for accuracy.

) **Are there categories of information that should not be made public? What are they and why?**

As discussed in our response to the water measurement paper. Cotton Australia is very supportive of a fairly rapid move to telemetry provision of near or real-time water take data for all large sites (which in a practical sense is likely to be almost universal coverage of cotton producers).

However, we accept that it is neither practical, nor economically feasible to move to full telemetry reading of all sites in NSW in the near or even medium term.

This will of course mean that the regulator will have access to data at different levels of time scales, largely dependent on how often and in what form data is received.

Cotton Australia is strongly opposed to the public provision of both real (or near to real-time) meter readings and account balances.

This opposition is based on both practical limitations on the universal provision of this information, and commercial-in-confidence reasons.

It is important to emphasise that industry does not believe this opposition, should in anyway diminish the effectiveness of water management and compliance. It is absolutely imperative that the regulator has access to all the information it requires for compliance. For example, the regulator must, within the constraints of when and how often water take information is provided, have the data available to readily determine whether the take is within the rules.

Firstly, Practical Limitations;

As noted above, the reality will be that not all sites will be able to provide real-time or near to real-time data, and Cotton Australia believes that this necessary inequity in data availability, would only exacerbate the Commercial-in-Confidence issues that will be discussed next.

Commercial-in-Confidence

Irrigators in NSW have a legal obligation to only extract water when they have positive account balances. It is critical that the regulator is able to ascertain in the most expedient way possible, that an irrigator is meeting that requirement.

However, it is strictly a business decision as to what balance an irrigator maintains whether it be a 1 megalitre account balance or a 10,000 megalitre balance.

Public access to this information will have a disruptive effect on the water market, and it may well have negative impacts on other aspects of an irrigators business.

For example, an irrigator may have enough water at the start of a season to comfortably grow 100ha of a crop. However, if the irrigator is comfortable with a risk appetite that allows the planting of 140ha, when the expectation that in season rain will either provide adequate soil moisture or generate additional availability of irrigation water. The irrigator's banker may not be comfortable with that same risk appetite. This may have negative impacts for the irrigator if the banker chose to access this data.

Another example, would be the irrigator is holding more towards the end of the season, than what they can keep for the new season, under carry-over rules. Other irrigators or a water broker, could use this information to pressure the irrigator to sell water at a lower rate than what otherwise might they might have been able to achieve.

An inverse example, would be an irrigator requiring additional water to finish a crop. If a water broker new how short of water the irrigator was, the broker could artificially inflate the price.

The provision of actual meter reading data, either directly or by default account balances is a perfect example of where transparency does not add any additional genuine confidence to the general public. It will however have significant commercial impacts and indeed be an invasion of an irrigators business privacy (this is regardless of whether the law might allow for the provision of this information).

If and when there is a high degree of confidence in data provision, timing and management, there may be an argument for a simple "Green Light/Red Light" system. This could indicate to the public that an account has a negative or positive balance.

) ***Are there ways that sensitive information can be managed and still made public? For example, by publishing account balances quarterly?***

Cotton Australia would be very wary of any provision of account balance information. However, total water uses through a works, or water use debited through a WAL, could be reported on, if required, on a historical basis.

Cotton Australia, would suggest the minimum period between use and report, should be six months after the close of the water year. At that point, the information would have little or no commercial value. Earlier reporting could still provide material information that has the potential of influencing the water market, to the detriment of the licence holder.

To be clear, if adopted the information supplied could be total water use for the previous water year for each WAL. However, it would not be made public till six months into the new water year.

) ***How would you like to be able to search for details and/or data in a public register of water information?***

As mentioned above a GIS Mapping based search engine would appear to be a way of providing information through a logical and geographically appropriate platform.

There is no doubt numerous examples of these platforms exist and are in use. One example, is the NSW Environmental Data Portal SEED (Sharing and Enabling Environmental Data) <https://www.resourcesandenergy.nsw.gov.au/miners-and-explorers/programs-and-initiatives/nsw-environmental-data-portal> . It appears this portal could be readily adapted or enhanced to provide a simple one-stop-shop for water data.

) *What issues should be considered in developing a single source of authority on when take of water is permitted and how could those issues be managed? For example, how would this operate in areas with limited internet coverage?*

Cotton Australia concedes a robust single source of authority on when water take is permitted would be ideal. In a perfect world information as to whether take is permitted through any work at any particular time or date would be ideal. It would be able to give everyone confidence that a work or site did or did not have a right to pump at that time.

However, Cotton Australia thinks this should be considered aspirational at this point in time. There is too much risk that unless the systems and data management are perfect, incorrect conclusions may be drawn and people's legal rights will be impinged and potentially reputations damaged.

For the system to work it would have to be able to manage and co-ordinate information that included, but not limited to active water orders on regulated systems, supplementary events, and unregulated commence and cease to pump thresholds.

This is not a reason not to work towards such an information site. However, government and the public must be realistic about its implementation.

It must be acknowledged that while internet access is almost universal in Australia, it is not universal and secondary, parallel systems would be required to ensure entitlement holders are readily able to ascertain when they are legally able to pump.

Additional Section – Publishing Compliance Information

While the paper does formally seek feedback on the publishing of Compliance Information Cotton Australia is supportive of the full reporting of convictions under Natural Resource legislation.

It is also generally supportive of publishing information on other, finalised compliance actions including Penalty Infringement Notices and Stop Work Orders.

However, it does have concern around the potential for mis-reporting, or the reporting of actions that are subsequently overturned due to a review, appeal or similar types of actions.

There have been instances where stop work orders have been wrongly applied. It would be untenable for entitlement holders to have their reputation damaged due to the mistakes of others.

Cotton Australia recommends that serious attention be given to how this risk is best managed, including a suitable gap between a compliance action being taken, and it being publicly reported, so as to eliminate the risk of a false report.

Cotton Australia would also recommend that the Regulator publicly reports in a non-identifiable way, regional/valley level data on:

-) Complaints received;
-) Average time to investigate and resolve complaints;
-) Detail on how complaints were resolved eg; prosecution, PIN, stop work order, letter or complaint dismissed;
-) Compliance activity statistics (including but not limited to);
 - o Site inspection undertaken;
 - o Account audits.
-) Information on regulatory staffing.

Concerns with the Draft Exposure Bill

There are specific concerns Cotton Australia has with the delivery of a Draft Exposure Bill in conjunction with the consultation papers. It possibly suggests that the amendments within the Draft Exposure Bill provide more than a strong indication of the way the NSW Government will legislate regardless of the feedback received. Cotton Australia hopes this is not the case and that all feedback received will be processed and considered. It is also anticipated that more consultation will be needed and requested regarding the final Draft Exposure Bill.

Amendments [19]

The proposed inclusion of section 391B which allows regulations to be made that disclose information that may otherwise be subject to the *Privacy and Personal Information Protection Act 1998* is vehemently opposed. Allowing commercially sensitive information that has been purposely provided legislative protection is inappropriate and irresponsible.

Conclusion

Cotton Australia shares with the Australian people and the Federal and New South Wales government an expectation of a transparent and robust compliance system.

Our principal concern, and divergence from the recommendations of the Matthew's Inquiry, is the suggestion to make meter readings and account balance information publicly available, in a time period where it is commercially sensitive. Further, we do not believe that the provision of this information would play a genuine role in enhancing the public's confidence in the water compliance system.

Cotton Australia is willing to work with the NSW Government to ensure that we quickly progress to a world leading, transparent and robust water compliance system.



Advancing Australian Cotton

For further information on the submission, or the Cotton Australia's view on water reform in general, please contact Cotton Australia General Manager Michael Murray – 0427 707868 or michaelm@cotton.org.au.

Yours sincerely,

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