



ECONOMICS AND INDUSTRY STANDING COMMITTEE

WATER LICENSING AND SERVICES

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in the 37th Parliament**

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Water Licensing and Services

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ECONOMICS AND INDUSTRY STANDING COMMITTEE

WATER LICENSING AND SERVICES

Report No. 9

Presented by:

Hon R.C. Kucera, APM JP MLA

Laid on the Table of the Legislative Assembly
on 28 February 2008

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COMMITTEE'S FUNCTIONS AND POWERS

The functions of the Committee are to review and report to the Assembly on:

- (a) the outcomes and administration of the departments within the Committee's portfolio responsibilities;
- (b) annual reports of government departments laid on the Table of the House;
- (c) the adequacy of legislation and regulations within its jurisdiction; and
- (d) any matters referred to it by the Assembly including a bill, motion, petition, vote or expenditure, other financial matter, report or paper.

At the commencement of each Parliament and as often thereafter as the Speaker considers necessary, the Speaker will determine and table a schedule showing the portfolio responsibilities for each committee. Annual reports of government departments and authorities tabled in the Assembly will stand referred to the relevant committee for any inquiry the committee may make.

Whenever a committee receives or determines for itself fresh or amended terms of reference, the committee will forward them to each standing and select committee of the Assembly and Joint Committee of the Assembly and Council. The Speaker will announce them to the Assembly at the next opportunity and arrange for them to be placed on the notice boards of the Assembly.

INQUIRY TERMS OF REFERENCE

On 24 October 2007 the Legislative Assembly referred the following terms of reference to the Economics and Industry Standing Committee to inquire into report by 28 February 2008:

1. the benefits to, cost to and imposts on irrigators, industry, community and environment of a licensing system for the taking of water from groundwater or stream flow;
2. the full cost incurred by the Department of Water for administration of the current water licence system;
3. the extent to which the water licence administration fees meet cost recovery requirements the National Water Initiative (NWI) places on the State with respect to services delivered to water users;
4. the penalty or cost that might be applied to Western Australia by the Commonwealth under the NWI, if there was minimal or no cost recovery for services provided to water users by the Department of Water;
5. whether water licences and/or licence administration fees should be required for taking water under arrangements that are currently exempt; for example, residential bores drawing from an unconfined aquifer;
6. what recognition needs to be given to the cost incurred by landholders in harvesting water, including dam construction costs; and
7. the extent to which the NWI provides for a range of different licensing systems.

CHAIR'S FOREWORD

I am pleased to present to the Legislative Assembly the 9th report of the Economics and Industry Standing Committee in the 37th Parliament. The report arose from debate and the 24 October 2007 direction of the Legislative Assembly that the Economic and Industry standing Committee report on seven terms of reference pertaining to the cost of water licensing in Western Australia, the extent to which the current licensing system complied with the National Water Initiative, and other related issues as defined.

Australia as a nation is facing the spectre of a drying climate, and an ever increasing demand for potable and commercial water. These pressures vary widely according to climatic conditions, rainfall, runoff, water quality and ultimately, water quantity. Successive governments at all levels have recognised the urgent need to identify and manage what is becoming an increasingly scarce and valuable commodity.

Toward this end, the Commonwealth, states and territories have entered into a broad, agreed course of action known as the “*National Water Initiative*”. This flows from a 1994 Council of Australian Governments report and aims at developing a nationwide framework that recognises the increasing demands, community expectations, and the economic and social value of water as a commodity. It also signals a clear need to work toward a consistent, Australia-wide, sustainable model of best-practice and governance in the planning, management, resourcing, financing and trading of this precious resource.

Western Australia is a signatory to this agreement, and with regard to it has developed a reform pathway that currently utilises existing state legislation and management structures. In the meantime, both a state water plan, and a blue-print for reform are being implemented in those areas of the state that have either been proclaimed as management areas or recognised as requiring the development of management regimes.

The plan recognises the need for reform and proposes legislation which will identify the various water catchments or water bodies across Western Australia, and develop individual Statutory Management Plans for each of the identified areas. Management areas already exist and operate under the current legislation, but have differing management regimes depending upon how they have developed and the use to which water is put in those areas. Some of these areas reflect the intentions of the National Water Initiative.

As an underpinning principle of developing models that reflect the National Water Initiative it is envisaged that water users, where appropriate, be licensed, and that the licence enshrine the right to an allocation of the resource. This right, and the water attached to it, will become tradeable, again where appropriate, and the costs of licensing and the subsequent management of the water resource will be borne by users on a cost recovery basis.

Since Western Australia became a signatory to the National Water Initiative, the Department of Water, utilising existing legislation and management structures, has introduced a licensing regime and associated fees in keeping with the requirement that reform include cost recovery. The implementation of licensing and the fees have been the subject of much debate, prompting a myriad of views and opinions depending on the impact on various stakeholders.

The Inquiry's terms of reference were very specific, and the reporting timeframe for such a complex subject extremely short. However, the Committee feels that within these limitations it has produced a report that clarifies the current situation in Western Australia, and highlights concerns, misconceptions and confusion about the implementation and calculation of licensing fees. It further recommends a separation of the elements of the current fee structure to dispel the apparent confusion, and also that even more emphasis be placed on the consultative process.

The findings and recommendations outline improvements and changes that should occur in relation to each term of reference, and demonstrate how these will assist in ensuring the establishment of appropriate transitional pathways in statutory management areas as envisaged by the National Water Initiative. These pathways will identify the need for all elements to be in place from the introduction of new legislation, the determination of the appropriate type of water entitlements, the identification of consumptive pools within statutory management areas, and the development of complementary plans.

These elements provide for the establishment of a licensing regime, and the cost recovery of appropriate fees, allocation of water resources to licensees, the trading of water and water rights, and the recovery of costs associated with water resource management.

This was an extremely complex inquiry. It is understandable, therefore, how difficult it must be for some water users to understand the logic behind the calculation of current fees. This is particularly relevant to those stakeholders who have built their own infrastructure as opposed to those supported by state government infrastructure.

It is patently clear that there is an enthusiasm for the development of a state-wide system of water resource management underpinned by legislation, plans specifically designed for local areas, and a licensing system that enshrines the right to be allocated use of, or trade in, this precious commodity. However, because of the confusion and misconceptions that abound, the Committee is of the view that this report will assist in regaining the pathway that appears to have been lost in those areas that have been and may be in future contention.

I would like to acknowledge the efforts of the Committee members whose work, particularly over the Christmas/New Year period, helped to ensure that the report would be delivered within the required time-frame.

Special thanks must go to the Committee's Principle Research Officer, Dr. Loraine Abernethie. Her capacity to cut through the complexities of this issue, and crystallize the nub of each term of reference has been exemplary. Thanks must also go to the Committee's Research Officer, Ms Vanessa Beckingham for her invaluable assistance and to Ms Farrah Martin for her administrative support. The Committee members are unanimous in commending the quality and detail of research and the resultant analysis.

HON R.C. KUCERA, APM JP MLA
CHAIR

ABBREVIATIONS AND ACRONYMS

ACWA	Aquaculture Council of Western Australia
Alliance	The Alliance of the Western Australian Farmers Federation (Inc), Potato Growers Association of WA (Inc), Vegetable Growers Association and WA Fruit Growers' Association (Inc)
<i>Blueprint</i>	<i>A Blueprint for Water Reform in Western Australia</i>
CME	Chamber of Minerals and Energy
COAG	Council of Australian Governments
CPI	Cost Price Index
CSIRO	Commonwealth Scientific and Industrial Research Organisation
DEC	Department of Environment and Conservation, Government of Western Australia
DNR	Department of Natural Resources, Government of Queensland
DTF	Department of Treasury and Finance, Government of Western Australia
DoW	Department of Water, Government of Western Australia
ERA	Economic Regulation Authority
GL	Gigalitre(s)
IAL-WA	Irrigation Australia - WA Region
IPART	Independent Pricing and Regulatory Tribunal
KL	Kilolitre(s)
MDB	Murray-Darling Basin
ML	Megalitre(s)
MLA	Member of the Legislative Assembly
MLC	Member of the Legislative Council
NCP	National Competition Policy
NRMMC	Natural Resource Management Ministerial Council
NWC	National Water Commission
NWI	Intergovernmental Agreement on a National Water Initiative

OIC	Ord Irrigation Cooperative Ltd.
REU	Resources Economic Unit
RTIO	Rio Tinto Iron Ore
RIWI ACT	<i>Rights in Water and Irrigation Act 1914 (WA)</i>
SAT	State Administration Tribunal, Western Australia
SWP	<i>State Water Plan 2007</i>
WALGA	Western Australian Local Government Association
WRC	Waters and Rivers Commission, Government of Western Australia
WSSD	World Summit on Sustainable Development

EXECUTIVE SUMMARY

The introduction of water licence administration fees in Western Australia has proven to be a particularly contentious issue. Following considerable debate in the Legislative Assembly, the Inquiry into Water Licensing and Services was referred to the Economics and Industry Standing Committee with the direction that it report to the House by 28 February 2008.

While the terms of reference for the Inquiry are extensive they quite specifically relate to water licensing and its relation to various aspects of the National Water Initiative (NWI). The Inquiry does not relate to the broader issue of water resource management although water licensing is necessarily one element of such management. The extensive nature of the terms of reference, particularly when combined with the relatively short reporting time, meant that the Committee was not able to undertake more extensive research to afford a comparative analysis of licensing practices in other states and countries. This proved particularly limiting in relation to the first term of reference concerning the costs, benefits and imposts associated with water licensing. Nevertheless, the evidence gathered through submissions to, and hearings before, the Committee has generated considerable data from a wide range of water users. It is clear from this evidence that water is a very important and emotive issue in the community. Perhaps because of this, evidence provided covered not only the specific terms of reference, but also issues relating more broadly to water resource management. The Committee also notes that there is a general combining of concern relating to water licence administration with the broader separate, though related, issue of water resource management. There appears to be considerable confusion and uncertainty in some parts of the community concerning the Department of Water's (DoW) plans and intentions in meeting its obligations under the NWI. While not able to include all concerns raised, in light of the wealth of information provided to the Committee, and the anxiety and confusion it signifies, the Committee has endeavoured where possible to include and address the issues raised.

A discussion of water licence systems, administration costs, fees, inclusions and exemptions is more meaningful when provided with a context. To this end, the first three chapters of this report provide background information concerning the referral of the Inquiry to the Committee, water resources in Western Australia and the development of the NWI. **Chapter 1** outlines the referral of the Inquiry to the Committee, describes the methodology employed and notes the limitations to the Inquiry.

Across Australia there is wide variability in climatic conditions, rainfall and runoff, as well as water quantity and quality. Coupled with severe drought conditions, increased demand for water, higher community expectations concerning the environment and increased recognition of the economic and social value of water, these factors signal a clear need for best-practice governance and management of water resources in Western Australia. In this state, governance of water is vested in the state government and rests within the water resources portfolio. While there are several state government agencies, government-owned organisations, local governments and irrigation cooperatives involved in the management of water resources in Western Australia, the DoW is responsible for the development of the *State Water Plan 2007 (SWP)* and *Western*

Australia's Implementation Plan for the National Water Initiative, two documents of signal importance to water resource management in the state.

The classification system described in the *SWP* divides the state's water resources into three major categories, namely groundwater divisions, surface water divisions and groundwater management areas. These divisions and areas are briefly described in **Chapter 2**. This chapter also acknowledges the potential impact of climate change on the state's water resources. In addition to this, it also acknowledges that accurate and timely data is essential to good management practices, and raises concerns about water resource data quality and availability.

While water reform has been on the political agenda since the Council of Australian Government's (COAG) 1994 strategic report on water resource policy, this report is concerned with the subsequent *Intergovernmental Agreement on a National Water Initiative* (NWI). **Chapter 3** outlines the development of the NWI, which was signed on 25 June 2004 by all state and territory governments with the exception of Western Australia and Tasmania. Western Australia signed the initiative on 6 April 2006; Tasmania on 2 June 2005.

In recognition that the need to improve the productivity, efficiency and security of water use is a national issue, the NWI outlines key objectives that provide for a nationally-compatible, statutory and planning based approach to water management. Key elements of the NWI include:

- the development of water access entitlements and planning frameworks, including statutory water plans;
- the development of efficient water markets and opportunities for water trading;
- best practice water pricing based on the principles of user-pays and pricing transparency;
- the recognition of and provision for environmental and other public benefit outcomes;
- the development of water accounting systems which are to be benchmarked on a national scale;
- the restructuring of urban water tariffs;
- the development of community partnerships to facilitate transparency and information sharing; and
- acknowledgement of the role of knowledge and capacity building in water management and the need to support the national effort toward improving water knowledge.

There is the perception in this state that the NWI is a one-size-fits-all approach to water management, one that was developed solely to address problems with the Murray-Darling Basin, and that elements of the agreement are not suitable for application in Western Australia. This aspect of the report is discussed in further detail in the chapter dealing with the flexibility of the NWI.

Throughout the Inquiry, as noted above, the Committee became aware of a high level of confusion and uncertainty in relation to the purpose of the water licensing regime being implemented by the DoW and its relation to the broader issue of water resource management as required by both the SWP and the NWI. Therefore, **Chapter 4** provides the Committee's understanding of the water resource management framework that currently exists in Western Australia and where water licence administration sits within that framework. It also details the Committee's views as to the best way to move forward constructively to the establishment of a transitional pathway to water access entitlements and water trading as anticipated under the NWI. This chapter also raises the issue of the costs borne by the community in the provision of potable water, particularly in relation to the loss of water for both amenity and commercial purposes.

Chapters 5 to 11 each address a particular term of reference. While there is considerable overlap in content applicable to individual terms of reference, the Committee has tried as much as possible to treat each term of reference as a discrete topic.

The first term of reference concerns the benefits to, cost to and imposts on irrigators, industry, community and environment of a licensing system for the taking of water from groundwater or stream flow. This is a particularly complex and all-encompassing term of reference. Time constraints did not allow the Committee to undertake extensive literature or field research or economic, social and environmental impact assessments that a comprehensive response to the term of reference dictates. Nor was it possible to inquire into and assess different models of licensing systems. Therefore, the approach taken to this term of reference was to confine discussion to the licensing system that currently exists in Western Australia and to the benefits, costs and imposts brought to the Committee's attention through submissions and hearings.

Chapter 5 outlines the current system of water licensing in Western Australia under the *Rights in Water and Irrigation Act 1914* (RIWI Act). As the driving force behind the Inquiry was the introduction of regulations containing a schedule of water licence administration fees, their subsequent disallowance and the introduction of new fees, a series of tables is provided to show the various fee schedules that were developed and/or gazetted.

While there is a general acknowledgement of, and support for, a water licensing system as part of improvements to water resource management in Western Australia, there is concern over the details of the plans, and a call for plans to be comprehensive and to account for all water users and uses. There is clear recognition of the benefits obtained through water licensing, including increased security to the environment, society in general and the economy; improved data availability and quality; regulation and control of water use; and water trading.

There is also a general acceptance that a licensing system necessarily attracts a cost. However, there is considerable concern in relation to the method of calculation of the fees, the need for cost minimisation and efficiency of service delivery, and the potential for fee-generated revenue to be incorporated into consolidated revenue rather than hypothecated to water licence administration activities of the DoW.

Evidence suggests a common belief that the general public, as beneficiaries of water resource management, should bear some of the costs of this management. While the idea that the community should bear some of the costs of water management is provided for under the NWI,

such calls appear to be based on the fusion or amalgamation of water licence administration costs and water resource management costs. The amalgamation of these two separate yet interlinked services is evident throughout submissions and evidence to the Inquiry and signifies a general confusion amongst key stakeholders as to the DoW's intentions and plans.

The separation of land and water rights has proven to be a contentious issue, with much anxiety and concern expressed in relation to the separation of titles and the impact this might have on property values, the environment and local planning. The separation of titles is intended to facilitate water trading and concerns over current plans appear to have overshadowed the fact that under the current RIWI Act there is already a separation of land and water titles allowed, and considerable trading takes place in Western Australia each year. Under the current legislation, water licences can only be issued to those with access to the land and a transfer can only be made to a person eligible to hold a licence. The NWI calls for a further unbundling of currently existing water rights and the key attributes and obligations of licensees. While the necessary legislation is yet to be enacted, the Committee understands that a key feature of this unbundling of water rights is that water rights will no longer be tied to land access. Instead, there will be three separate rights:

- a right to a water access entitlement as a portion of a consumptive pool;
- a right to extract water, including a works approval; and
- a right to use water, involving a site use approval.

While there are concerns relating to the separation of land and water titles, and water trading, there are also several factors that work to regulate the market, and provide for departmental scrutiny and approval of all water transactions. These include:

- the flexibility in the NWI with regards to determining the type of water entitlement within each localised statutory management plan;
- the continuance of the existing licence type in appropriate areas, complete with licence conditions and responsibilities;
- further separation of land and water titles occurring in areas governed by statutory management plans that require water access entitlements; and
- the requirement for water access entitlement holders to also have works and site use approvals.

The second term of reference directs the Committee to inquire into the full cost incurred by the DoW for administration of the current water licence system. Understandably, many submitters felt unable to address this term of reference. Therefore, discussion in **Chapter 6** draws largely from DoW submissions. For 2005-2006, the DoW estimated that the full costs associated with water licence administration totalled \$5,827,397. These costs incorporated:

- licensing, receipting and assessment of licence and permits;

- compliance, survey and enforcement activities;
- State Administrative Tribunal appeals against decisions;
- community input (education relating to water resources); and
- licensing support, involving data base administration and training.

The establishment of the DoW involved changes to the Department's management and mapping of budgets, and it currently is not able to provide a similar break-down of costs for subsequent years. In lieu of this, the DoW provided the costs on a per programme basis for the years 2006-2007 (\$6,253,966) and 2007-2008 (\$6,537,438).

The Economic Regulation Authority (ERA) has not been involved in the calculation of the DoW's costs in relation to water licence administration and, under the *Economic Regulation Authority Act 2003*, is not able to undertake a review of costs unless specifically directed to by the Treasurer. It is intended that a review of DoW costs will be conducted by the ERA within two years of the introduction of fees. In light of the level of concern and controversy surrounding the DoW's costs and the introduction of fees, earlier involvement of the ERA would be beneficial.

Term of reference three requires an investigation into the extent to which the water licence administration fees meet cost recovery requirements the NWI places on the state with respect to services delivered to water users, and this is the subject of **Chapter 7**. The NWI requires signatory jurisdictions to implement the principles of user-pays and pricing transparency for water storage and delivery in irrigation systems, and cost recovery for water planning and management. The NWI provides only broad principles to achieve consistency in water pricing, and does not specifically define what cost recovery frameworks should be implemented. Given that the NWI does not define full cost recovery nor prescribe methods of recovery, any attempt to recover costs from water users would signify compliance with the general cost recovery principles contained in the NWI. However, due to the complexity of the issues surrounding cost recovery and the level of concern expressed throughout the Inquiry, in considering the evidence the Committee drew on the overall purpose and spirit of the NWI.

Once again, there is general support for licence administration fees based on full cost recovery. Nevertheless, since the original fee schedule was developed based on 2005-2006 DoW costs, adjustments have been made to the licence class system and fee schedule which, in effect, reduce the licence administration revenue to approximately \$3.05 million. When compared with the estimated costs of \$6.2 million and \$6.5 million for 2006-2007 and 2007-2008 respectively, the scheduled fees fall a long way short of full cost recovery, with the deficit being met from consolidated revenue.

The original schedule of fees consisted of seven classes that the DoW decided best reflected the amount of effort to administer. For example, it calculated that, on average, a licence for an entitlement of between 100,000 KL and 500,000 KL would take 40 hours to administer. This per licence effort was then multiplied by the total number of licences in that class at the time. Repeating this calculation for all classes allowed the total number of hours required to administer all licences to be determined, as well as the proportion of each class in relation to the whole. This

percentage or proportion was used to apportion the total cost of \$5.8 million, including departmental overheads, to each class. Then, having determined the total cost for each class, this was divided by the total number of licences in that class to determine the per licence charge in each class in order to meet full cost recovery.

This method of calculation and the kilolitre-increments scale by which classes are categorised has proven confusing and led to claims of inequity and a lack of transparency. There is also considerable concern over which elements are included in the determination of departmental costs, most notably with the inclusion of assessment and appeals in the overall figure. In determining which elements to include in cost recovery of licence administration the DoW took legal advice and believes the inclusion of these items is appropriate. The DoW sees licensees as paying a proportion of administering an overall system, rather than a particular individual licence. The Committee considers the inclusion of appeals in the calculations to be an unusual course of action for a government agency in that most appellants, including government agencies, pay their own costs.

Also with respect to licence fee calculations many submitters believed that the fee schedule resulted in the subsidisation of one group by another. For example, it was suggested that small self-supply water users are subsidising large water users such as cooperatives. However, such claims have not sufficiently considered the administration costs that cooperatives incur and pass on to their members. Many of the claims relating to cross-subsidisation are based on volumetric calculations. While at first glance these calculations seem to point to great inequity, such calculations are not able to factor in the method by which corporate overheads and administration effort are averaged across and between the classes, and tend to be misleading. Closer comparison of the costs and revenue per region reveal that there may, in fact, be a subsidisation of one region by another, but not in the manner suggested to the Committee.

The timing of the introduction of the fees was a significant issue for submitters. While the idea of licence fees is not new, many stakeholders felt that the introduction of licence administration fees was premature. This was particularly so given that statutory water management plans have not yet been developed and the review of the state's water legislation is not complete. The introduction of fees, itself, is certainly in compliance with the NWI requirements. However, the NWI does not specify the timing of the introduction of fees. The NWI states that by the end of 2006 there should be cross-jurisdictional consistency in approach in relation to water pricing and the costing of water planning and management. Under the Water Smart Funding agreements, Western Australia must commence implementing cost recovery charging for water planning and management by December 2008. It seems that the July 2007 date for implementing water licence administration fees is a self-imposed DoW deadline.

In addition to the issue regarding the timing of water licence administration fees, some submitters were concerned that the ERA had not been involved in the development of the fees and would not review the fee schedule until two years after it was implemented. The involvement of the ERA in the development of the fees would have provided water users with the necessary transparency and clarity concerning the fee calculations and structure.

There is also confusion concerning the application fee, particularly now that annual licence fees for the two smallest licence classes are less than the \$200 application fee. Original advice from

the DoW was that licensees would be offered either a refund or a credit toward the next year's fees. However, later advice is that the refund only applies to Class 3 licences and above. This appears to be in contravention of regulation 20(2) of the 2000 Rights in Water and Irrigation Amendment Regulations which clearly states that the application fee is deductible from the annual fee.

The fourth term of reference, as discussed in **Chapter 8**, refers to the penalty or cost that might be applied to Western Australia by the Commonwealth under the NWI if there was minimal or no cost recovery for services provided to water users by the DoW. The user-pays and cost recovery principles are fundamental to the NWI, and all signatories to the agreement must commit to developing these national principles. Previously, water reform progress was linked to National Competition Policy (NCP) payments. However, water reform is no longer linked to the NCP and there are no progress payments or benefits payable for NWI compliance. However, while there are no financial benefits or penalties that directly accrue from compliance or otherwise with the NWI, there are other avenues through which Western Australia might be penalised for not meeting its cost recovery obligations. Western Australia is the recipient of four Water Smart Australia grants under the Australian Government Water Fund. To be eligible for these funds, recipients must be signatories to the NWI and must be complying with NWI principles, one of which is cost recovery. However, this condition is a general condition and is not tied to any specific payment. The commencement of cost recovery charging for water planning and management is a general funding condition in Schedule A of each funding deed. Should the state fail to meet its NWI cost recovery obligations it might be considered in breach of all four Water Smart Australia funding agreements. However, it is not clear what, if any, penalty would be applied by the Commonwealth for breach of this general funding condition. Each payment in each funding agreement is linked to the achievement of an agreed milestone. Should a recipient fail to meet a particular milestone, there is provision for a 15% penalty to apply. However, the agreement does stipulate that a test of reasonableness would be applied and attempts would be made to negotiate an arrangement prior to any punitive action being taken. Furthermore, the National Water Commission (NWC) suggests that the aim of the NWI is to encourage water reform rather than punish non-compliance. From this it is possible to conclude that the risk associated with financial penalty within the current agreements is relatively low. Nevertheless, defaulting on an agreement may damage the state's reputation and harm its potential to gain further funding.

To determine whether water licences and/or licence administration fees should be required for taking water under arrangements that are currently exempt, for example, residential bores drawing from an unconfined aquifer, is the fifth term of reference for the Inquiry. This was also a complex and emotive issue for submitters. The two main forms of water extraction brought to the Committee's attention were that by domestic bores and by plantations, and these are the subject of **Chapter 9**. Arguments were presented both for and against the licensing of domestic bores. These were based on notions of fairness and equity, and weighing up the costs and benefits to be gained from licensing, particularly in terms of the provision of better quality data and the costs of administration. Some suggested that the exemption of bore licensing was a political decision or a matter of political convenience, and represented cherry picking by the government. Those in favour of licensing domestic bores suggested that the metering and monitoring involved would provide valuable information that would assist in the government's allocation process. However, this was countered by arguments that the benefits of licensing bores would be outweighed by the

costs, and that the amount of water extracted from unconfined aquifers could be determined by sampling methods that continually monitor the aquifer.

The arguments around notions of equity demonstrate that a country/city divide remains in Western Australia. The general sentiment expressed in submissions is that if licensing applies to one water user, it should apply to all water users. However, while equity is an important consideration, licensing all users in the same way may not realise equitable economic, social or environmental outcomes, and may, in fact, lead to an increase in fees across the board. It is apparent that there are benefits that accrue from encouraging the use of domestic bores in some areas, and that the use of bores will need to be managed in relation to local circumstances.

The interception of water by plantations is a significant issue in Western Australia. The water extracted by plantations is neither calculated nor accounted for. While there is evidence to demonstrate the potential damage that plantations may do in a region, there is also evidence to suggest that the use of water by plantations may be useful in some circumstances. While there has been a general call for plantations to be licensed, this is not possible under current legislation. This anomaly must be remedied to enable plantations to be incorporated into statutory management plans. Local government is also concerned that they have to make planning decisions regarding the approval or otherwise of plantations. They suggest that plantations should be licensed by the DoW as this department has the expertise to assess the impact of plantations. Once plantations are incorporated into management plans, there would continue to be a planning role for local government.

The sixth term of reference directs the Committee to inquire into what recognition needs to be given to the cost incurred by landholders in harvesting water, including dam construction costs. The results of this aspect of the Inquiry are discussed in **Chapter 10**. It is clear that enormous expense is incurred in terms of water infrastructure on farms and mine sites in Western Australia. It has been suggested that imposing a licence fee on self-supply water users penalises them and fails to recognise the contribution made to the development of infrastructure in the state. Much of the argument for recognition of infrastructure costs is based on a call for recognition of the contribution this makes to water resource management. This, again, signifies a general confusion over the purpose of a water licence administration fee. Water harvesting expense by a self-supply water user does not reduce the DoW costs in water licence administration. If a landholder or resource company is undertaking water resource management work on behalf of the DoW, there would need to be a system of accreditation, and quality assurance and control implemented before recognition of this water resource management effort were possible. This, though, would not impact upon water licence administration fees. The Committee is also cognisant of the fact that commercial water users are able to claim a deduction for capital expenditure of water facilities, including the construction of dams, earth tanks, underground tanks and the like.

Term of reference number seven concerns the extent to which the NWI provides for a range of different licensing systems, and this is discussed in **Chapter 11**. As noted previously, there is the general perception that the NWI is a one-size-fits-all agreement based upon the Murray-Darling basin and not applicable to Western Australian conditions. However, the NWI is a high-level document containing general principles and providing a good deal of flexibility to allow jurisdictions to develop and implement plans to suit local conditions. This is not generally

realised in the community, and there appears to be a low level of awareness of the details of the *SWP*, the implementation of the plan and how it will impact on particular regions or catchments. It is evident that the *SWP* is also perceived as a one-size-fits-all plan, a perception based on the decision of the DoW to implement water licence administration fees calculated by averaging costs across the state. It is not clearly understood that the new system of water access entitlements will only be developed in statutory water management plans for those areas where the DoW has determined as suitable for this type of entitlement. It is also not generally realised that there is the flexibility in the DoW plans to accommodate the co-existence of three types of water entitlements, namely water licences in their current form, water access entitlements and riparian (stock and domestic) rights.

The DoW also recognises the benefits gained through local management of local water resources. In areas where this is working well it should be allowed to continue. There is also the possibility of developing and implementing further local management in statutory management plans.

FINDINGS

CHAPTER 2 WATER RESOURCES IN WESTERN AUSTRALIA

2.9 Data Quality

Page 34

Finding 1

That extensive research and analysis of existing water resources, and their use and management is needed in order to provide a solid basis for sustainable planning. This is also a requirement of the National Water Initiative.

CHAPTER 3 NATIONAL WATER INITIATIVE

3.5 Perceptions of the National Water Initiative

Page 54

Finding 2

There is considerable confusion regarding the National Water Initiative which is leading to anxiety concerning its suitability and adaptability for Western Australian conditions and circumstances.

Page 54

Finding 3

The National Water Commission could have articulated its intentions more effectively.

CHAPTER 5 BENEFITS, COSTS AND IMPOSTS OF A LICENSING SYSTEM

5.3 The Need for Licensing

Page 78

Finding 4

There is general recognition of the need for a water licensing regime in Western Australia to help manage the state's water resources more effectively.

5.4 Recognition of Benefits to Licensing

Page 81

Finding 5

There is general recognition that significant benefits accrue from water licensing.

5.7 Water Trading in Western Australia

Page 90

Finding 6

Water trading is already provided for under current legislation.

Page 93

Finding 7

Under current legislation the further separation of land and water titles as envisaged under the National Water Initiative is not possible in Western Australia.

Page 93

Finding 8

The framework envisaged by the National Water Initiative needs to be in place before trading of water access entitlements can begin.

Page 94

Finding 9

The co-existence of different types of water entitlements has not been clearly communicated to stakeholders.

5.8 Concerns About Water Trading in Western Australia

Page 96

Finding 10

The impact of water trading on land value appears to be a legitimate concern that must be addressed particularly in future planning processes.

Page 101

Finding 11

The further separation of land and water titles will only be possible in areas deemed appropriate under a statutory water management plan that allocates water via water access entitlements as a share in a consumptive pool.

Page 101

Finding 12

Water access entitlement trading should not commence until the appropriate conditions outlined are in place.

CHAPTER 6 DEPARTMENT OF WATER'S LICENCE ADMINISTRATION COSTS

6.3 Involvement of the Economic Regulation Authority

Page 111

Finding 13

An independent review of the Department of Water costs associated with water licence administration should be undertaken as a matter of urgency.

CHAPTER 7 COMPLIANCE WITH COST RECOVERY REQUIREMENTS OF THE NATIONAL WATER INITIATIVE

7.3 Cost Recovery and Licence Administration Fees

Page 117

Finding 14

The most recent change to the fee structure means that the Department of Water is operating at partial rather than full cost recovery.

Page 118

Finding 15

Partial cost recovery does not appear to put Western Australia in breach of the National Water Initiative.

Page 120

Finding 16

While the Department of Water's approach to the calculation of water licence administration fees appears logical it has not been subjected to rigorous independent analysis nor adequately communicated to those most affected.

7.7 Timing of Introduction of Fees

Page 144

Finding 17

There is sufficient time under the National Water Initiative to go through a full consultative process in conjunction with the Economic Regulation Authority before the introduction of full cost recovery through water resource management charges.

Page 147

Finding 18

The role that the Independent Pricing and Regulatory Tribunal plays in New South Wales is helpful in that state.

Page 147

Finding 19

The involvement of the Economic Regulation Authority would help Western Australia meet its National Water Initiative obligations in relation to reporting requirements.

7.8 Licence Application Fee

Page 149

Finding 20

There is considerable confusion surrounding the refund of application fees paid under the previous and current schedule of fees imposed by the regulations and subsequent amendments.

7.9 Consultation in Relation to the Schedule of Water Licence Administration Fees

Page 153

Finding 21

The consultation process has been less than satisfactory for many stakeholders. The basis upon which fees have been set and levied appears to have caused confusion, misconception and anger amongst certain stakeholders.

Page 153

Finding 22

The National Water Initiative shows quite clearly that the move toward water reform must include the development of a clear transitional pathway involving all stakeholders in each step.

CHAPTER 8 APPLICABLE PENALTIES UNDER THE NATIONAL WATER INITIATIVE

8.2 Accountability under the National Water Initiative costs borne by the community

Page 157

Finding 23

Cost recovery itself is simply a guiding principle of the National Water Initiative, rather than a list of specific requirements or activities that must be undertaken.

8.3 Penalties and Costs Under the National Water Initiative

Page 158

Finding 24

While there are no financial penalties directly resulting from non-compliance with the National Water Initiative, should the state not comply it risks losing credibility in relation to its management of water resources.

8.4 Water Smart Australia

Page 161

Finding 25

While there are limited financial penalties under Water Smart Australia for failing to comply with National Water Initiative cost recovery requirements, should the state not comply it risks losing credibility in relation to its management of water resources.

CHAPTER 9 LICENSING CURRENTLY EXEMPT ARRANGEMENTS

9.2 Domestic Bores

Page 173

Finding 26

The licensing of all domestic bores would not necessarily lead to improved monitoring and management of water resources in the state, or be sustainable in the long term.

Page 173

Finding 27

The indication is that the costs associated with the mandatory licensing of all domestic bores would far outweigh the benefits of this activity.

Page 173

Finding 28

In most circumstances, the use of domestic bores can be, and is, adequately managed by restriction and education.

Page 173

Finding 29

Licensing of all domestic bores will not necessarily achieve equitable social, environmental and economic outcomes.

Page 173

Finding 30

Because of the impact on the local resource certain parts of the state will require different approaches to the issue of licensing domestic bores.

Page 174

Finding 31

There are benefits in encouraging the use of domestic bores in certain areas, and the licensing of these bores may prove a disincentive to this practice.

9.3 Plantations

Page 179

Finding 32

Plantations intercept significant amounts of water. This may be beneficial in some circumstances, but detrimental in others.

Page 179

Finding 33

Current legislation does not allow the Department of Water to license plantations.

Page 180

Finding 34

Legislation under development needs to allow for appropriate management of water interception by plantations.

Page 180

Finding 35

Local government has, and should continue to have, a planning role in the establishment of plantations.

CHAPTER 10 WATER HARVESTING INFRASTRUCTURE COSTS

10.1 Landholders Infrastructure Costs

Page 187

Finding 36

Arguments for incorporating recognition of water harvesting costs into water licence administration fees confuse licence administration fees with water resource management charges.

Page 187

Finding 37

The committee recognises the considerable infrastructure investment that self suppliers, including those in the mining and resources sectors, often make.

Page 187

Finding 38

Construction of commercial water supply infrastructure is a business decision.

Page 188

Finding 39

Capital costs of water supply infrastructure constitute deductible expenditure under the *Income Tax Assessment Act 1997*.

CHAPTER 11 NATIONAL WATER INITIATIVE PROVISIONS FOR A RANGE OF LICENSING SYSTEMS

11.1 Provisions under the National Water Initiative

Page 192

Finding 40

There is sufficient flexibility within the National Water Initiative to allow Western Australia to develop a water resource management plan appropriate to conditions and circumstances in this state.

Page 192

Finding 41

Issues such as timing of implementation and knowledge of resources will impact on the state's ability to develop and implement water resource management plans appropriate to Western Australia.

Page 194

Finding 42

High level documents such as the National Water Initiative and the *State Water Plan 2007* do not provide a sufficient level of detail to allow key stakeholders to interpret their impact at a local level.

Page 196

Finding 43

The same degree of flexibility found in the National Water Initiative is also contained in the *State Water Plan 2007* in relation to current proclaimed areas or those areas covered by future statutory water management plans.

Page 199

Finding 44

Local management is both desirable and possible under the National Water Initiative and the *State Water Plan 2007*.

RECOMMENDATIONS

CHAPTER 2 WATER RESOURCES IN WESTERN AUSTRALIA

2.9 Data Quality

Page 34

Recommendation 1

That government makes further significant investment to ensure ongoing collection, analysis and use of quality data.

Page 34

Recommendation 2

Water data should be readily available to all stakeholders.

CHAPTER 3 NATIONAL WATER INITIATIVE

3.5 Perceptions of the National Water Initiative

Page 54

Recommendation 3

The Department of Water must increase its efforts to ensure that the community is better informed in relation to the National Water Initiative and its ramifications, especially its impact on local areas.

CHAPTER 4 STRUCTURING FEES AND CHARGES FOR CURRENT AND FUTURE WATER LICENCES AND WATER RESOURCE MANAGEMENT

4.1 The Separation of Water Resource Management from Water Licence Administration

Page 62

Recommendation 4

That there be a fixed licence administration fee that simply reflects the cost of administration of a licensing system.

Page 62

Recommendation 5

A fixed application fee should remain.

Page 63

Recommendation 6

That the status regarding the refund of application fees be clarified urgently.

Page 63

Recommendation 7

That water resource management charges be imposed separately, but not until statutory water management plans are in place.

4.3 HIGHEST VALUE USE OF WATER

Page 68

Recommendation 8

In the development of statutory water management plans, while the highest value use of water resources must be a consideration, community amenity also needs to be taken into account before the allocation of water resources.

CHAPTER 5 BENEFITS, COSTS AND IMPOSTS OF A LICENSING SYSTEM

5.5 Acceptance that a Licensing System Attracts a Cost

Page 84

Recommendation 9

Revenue from licence administration fees should be used for providing the licence administration service. The allocation of those costs should be transparent.

5.7 Water Trading in Western Australia

Page 93

Recommendation 10

The Department of Water should communicate clearly the requirements needed to be in place prior to trading of water access entitlements.

Page 93

Recommendation 11

Proposed legislation allowing water access entitlement trading needs to be carefully drafted following full community consultation.

Page 94

Recommendation 12

The Department of Water should communicate the co-existence of different types of water entitlements more clearly to stakeholders.

5.8 Concerns About Water Trading in Western Australia

Page 101

Recommendation 13

That the Department of Water ensures that water access entitlement trading does not commence until the framework that the National Water Initiative intends is in place.

**CHAPTER 6 DEPARTMENT OF WATER'S LICENCE
ADMINISTRATION COSTS**

6.3 Involvement of the Economic Regulation Authority

Page 111

Recommendation 14

That the Treasurer directs the Economic Regulation Authority to review the Department of Water's costs as a priority.

**CHAPTER 7 COMPLIANCE WITH COST RECOVERY
REQUIREMENTS OF THE NATIONAL WATER
INITIATIVE**

7.3 Cost Recovery and Licence Administration Fees

Page 120

Recommendation 15

The formula for calculating the licence fee be examined by the Economic Regulation Authority.

7.5 Foundation for Cost Recovery

Page 129

Recommendation 16

The cost of appeals should not be included in the calculation of the licence administration fee.

7.7 Timing of Introduction of Fees

Page 147

Recommendation 17

The Economic Regulation Authority independently review the water licence administration fees.

Page 147

Recommendation 18

The Economic Regulation Authority be involved from the beginning of the calculation of any water resource management charges to be imposed in the future.

7.8 Licence Application Fee

Page 149

Recommendation 19

The refund of application fees needs to be clarified as a matter of urgency.

7.9 Consultation in Relation to the Schedule of Water Licence Administration Fees

Page 153

Recommendation 20

That the Department of Water increase its efforts in relation to consultation.

CHAPTER 9 LICENSING CURRENTLY EXEMPT ARRANGEMENTS

9.3 Plantations

Page 179

Recommendation 21

The Department of Water develop a system of water accounting for plantations with a view to regulation and licensing.

Page 180

Recommendation 22

Plantations should be incorporated into statutory management plans for an area.

Page 180

Recommendation 23

As a matter of course, local government should be involved in the development of the statutory management plans.

CHAPTER 10 WATER HARVESTING INFRASTRUCTURE COSTS

10.1 Landholders Infrastructure Costs

Page 188

Recommendation 24

The costs incurred by landholders in harvesting water, including dam construction costs should:

- not be considered in the determination of the licence application fee;
- not be considered in the determination of the licence administration fee;
- but should be considered in applying future resource management charges.

Page 188

Recommendation 25

The Department of Water develop a means of valuing and acknowledging infrastructure investment.

MINISTERIAL RESPONSE

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Economics and Industry Standing Committee directs that the Minister for Water Resources and the Treasurer report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

CHAPTER 1 INTRODUCTION

1.1 Referral of the Inquiry

On 22 June 2007 the Government of Western Australia gazetted the Rights in Water and Irrigation Amendment Regulations 2007.¹ These regulations amended the Rights in Water and Irrigation Amendment Regulations 2000 and, amongst other things, included a schedule of fees for licences and permits.² The introduction of these licence administration fees proved to be particularly contentious and led to considerable debate in the Legislative Assembly.³ On 17 October 2007, the then Leader of the Opposition, the Hon. Paul Omodei MLA, moved that the government establish a parliamentary select committee to inquire into the state's policy on water supply and management in accordance with his proposed terms of reference, and report to the House by 30 June 2008.⁴ During the subsequent debate the Member for Stirling, Mr Terry Redman MLA, moved two amendments to the motion.⁵ Debate adjourned on that day and was resumed on 24 October 2007. During that debate the Minister for Water Resources, the Hon. John Kobelke MLA, moved to amend the motion so as to refer an inquiry into water licensing to the Economics and Industry Standing Committee, with that Committee to inquire into the terms of reference as noted on page vii above, and report by 28 February 2008.⁶ The question was put and passed, and the Inquiry into Water Licensing and Services was referred to the Economics and Industry Standing Committee.

It is important to note that this Inquiry has very specific terms of reference. These solely concern water licensing, and issues relating to the Department of Water's (DoW) cost of water licensing administration and the implementation of licence administration fees as a means to full cost recovery. The Inquiry does not explicitly address the broader topic of water resource management, although the institution of water licence administration fees is one aspect of water resource management.

¹ Government of Western Australia, *Government Gazette*, No. 127, 22 June 2007, pp2877-2883. Subsequent to the disallowance of these regulations, the government gazetted new regulations on 28 December 2007. See Government of Western Australia, *Government Gazette*, No. 268, 28 December 2007, pp6425-6431.

² See Appendix 5.

³ See, for example, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 12 June 2007, p2784c-2785a/1; Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 13 June 2007, p3005c; Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 13 June 2007, p3042c-3074a/1; and Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 15 September 2007, p 4862b.

⁴ Hon. P.D. Omodei, Leader of the Opposition, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 17 October 2007, pp6345-46.

⁵ Mr D.T. Redman, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 17 October 2007, p6354.

⁶ Hon. John Kobelke, Minister for Water Resources, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 24 October 2007, pp6733-34.

1.2 The Committee

The Economics and Industry Standing Committee was appointed on 7 April 2005. Pursuant to Legislative Assembly Standing Order 287(3), the portfolio responsibilities of the Committee are: Energy; Consumer and Employment Protection; Science; Agriculture and Forestry; Fisheries; Water Resources; Housing and Works; Heritage; Planning and Infrastructure; State Development; Land Information; Tourism; Small Business; Racing and Gaming; Regional Development; and the Regional Development portfolios of the Midwest and Wheatbelt; the Kimberley, Pilbara and Great Southern.

1.3 Conduct of the Inquiry

Advertisements calling for submissions to the inquiry were placed in *The West Australian* newspaper on 3 November 2007 and *Countryman* on 8 November 2007. Submissions were invited from a number of state and federal departments. The Committee received 45 written submissions which are available on the Parliament's website.⁷

The Committee conducted ten formal evidence hearings. Public hearings were noted on the Parliament's website and the subsequent transcripts made available by the same means. Those who provided formal evidence are listed in Appendix Two.

The Committee also received a series of briefings from state and federal agencies, including the National Water Commission (NWC), Canberra, and a member of the public with particular expertise in water policy and management. Although briefings to the Committee are not transcribed and made publicly available, a list of those who provided the briefings can be found in Appendix Three.

While not formally connected with this Inquiry, in December 2007 the Committee Chair travelled to Israel as a member of the Western Australian Parliamentary Study Group to Israel.⁸ This study tour included a water/environment day hosted by the Australia-Israel Chamber of Commerce during which the group visited, and were briefed on, innovative water recycling and dry-land farming projects in Negev.

1.4 Limitations to the Inquiry

The Inquiry was referred to the Committee on 24 October 2007 with the requirement that it report to the Legislative Assembly on 28 February 2008. This is a relatively short reporting time, particularly given the extensive scope of the terms of reference, the level of resourcing and personnel available and the unavoidable interruptions due to the timing of the Inquiry over

⁷ Submissions to the Inquiry are listed in Appendix One.

⁸ This study group was organised with the assistance of the Australia/Israel & Jewish Affairs Council, in conjunction with the Rambam Israel Fellowship Program.

December/January, a traditional holiday period. This gave rise to a number of factors that impacted upon the way in which the Committee conducted the Inquiry.

The Committee would generally allow at least six weeks for written submissions to be made to an Inquiry. However, the reporting timeline meant that only five weeks could be allowed for written submissions. This created a number of problems, not the least for local governments who meet monthly and need to meet to resolve to make a submission. This issue was raised on several occasions with the Committee's Principal Research Officer. Given the number of requests made, the Committee decided to accept late submissions on request from potential submitters.

Also, the reporting date provided to the Committee did not afford it the opportunity to travel throughout the state. Given that the issues concerning water licensing have statewide relevance, it would have been preferable for the Committee to visit a number of regions and perhaps hold hearings or receive briefings from interested parties in their local environs. In fact, the Committee received invitations to travel to the south west of the state for that purpose. However, the Committee decided that fairness dictate that if it did travel for this Inquiry it should visit a range of regions impacted by the newly introduced water regulations. Therefore, for time constraint and equity reasons, the Committee was unable to accept such invitations. The Committee is disappointed that some stakeholders from the south west declined an invitation to attend a hearing that would have afforded people the opportunity to speak to their submissions and provide further insight to the Committee.

Nevertheless, the Committee received evidence from a number of industry associations and action groups with local and statewide memberships, and feels confident that such organisations are representative and reflect the perspective of their members. Furthermore, the Committee appreciates the time and effort that these groups took to make submissions and to travel to Perth to provide evidence for this Inquiry.

Given the timeframe of the Inquiry, the Committee has generally confined itself to the submissions and evidence provided to it. While this has generated some excellent data and afforded considerable insight into the key issues, in an Inquiry of such importance to the state it also would have been preferable to undertake more extensive background research. This would have allowed the Committee to conduct a thorough comparative analysis of licensing practices in other states and countries with a view to determining world's best practice.

Following the announcement of the Inquiry the Committee received several letters expressing concerns that the introduction of new regulations by the government would pre-empt the inquiry. However, the Committee took the view that the terms of reference were all encompassing and not dependent upon the specific fees introduced. The gazetting of the Rights in Water and Irrigation Amendment Regulations (no. 3) 2007 did not adversely impact upon the ability of the Committee to execute an effective inquiry into water licensing and services in Western Australia.

As previously mentioned, this Inquiry's terms of reference relate specifically to water licensing in the context of the government regulations concerning water licence administration fees. While many submissions and evidence at hearings have raised important issues relating to the broader realm of water resource management and local-state government relations, the Committee has

been unable to address all of these in this report. Nevertheless, by making the submissions public documents the Committee is able to at least draw attention to, and raise awareness of, issues not directly relating to this Inquiry.

1.5 Fusion of Licence Administration and Water Resource Management Costs

Water is clearly an issue that elicits an emotional response from a broad spectrum of people. This is demonstrated by the level of debate that preceded this Inquiry, and by the depth of conviction evident in submissions received and hearings held throughout the Committee's investigations.

Early in the Inquiry it became clear to the Committee that there was considerable confusion in the community with regards to the purpose of the Inquiry and in its precise boundaries. Therefore, as well as discussing licence administration issues, many submissions also addressed the broader issues concerning water resource management in the state, raising matters that concern environmental and public benefit allocations and costs, and discussing this in relation to licensing in general. Furthermore, it became clear to the Committee that many people providing evidence were under the impression that all statutory water management plans would involve a system of water access entitlements and mandate water trading. The Committee saw that many water users were not aware that the DoW expects that the three main systems of water entitlement, namely water licences, water access entitlements, and basic common law and statutory rights, would be able to operate within an area's statutory water management plan, depending on the nature of the water resources being considered.

There was also considerable confusion over the government's water licence administration fees and what they were intended to cover. This resulted in submissions and evidence that conflated water licence administration with water resource management. For example, many submissions discussed the seeming unfairness of licence administration fees on the grounds that environmental and other public benefits came from the water resources in their areas. This suggests an imprecise understanding of the nature of the government's introduced fees and the costs they are intended to recover.

There are further examples of confusion and uncertainty over the government's plans and these will be raised throughout the report.

As a result of this confusion much of the information received by the Committee might not be considered valid under a very precise interpretation of the terms of reference for this Inquiry. However, the Committee has decided to include much of this material throughout the report, and has done so for two main reasons. First, the Committee believes it will be useful to the DoW and the Minister for Water Resources to be aware of the issues raised as this will provide further insight into the key stakeholders' understanding of, perspectives on, and confusion surrounding the matter of water licence administration in particular, and water resource management in general. Second, while the DoW may have become aware of these issues through their

consultation process in the development of the *State Water Plan 2007*,⁹ evidence to the Committee has raised sufficient concern that this may not be so. This report, then, will help to ensure that the DoW is cognisant of stakeholders' issues and concerns.

⁹ Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007.

CHAPTER 2 WATER RESOURCES IN WESTERN AUSTRALIA

2.1 INTRODUCTION

Australia has the lowest rainfall and runoff per unit area of any continent in the world,¹⁰ and the variability of runoff is significantly greater than any other continent.¹¹ Recently, Australia has also experienced severe and widespread droughts, increased demand for water and higher community expectations concerning the health of the environment.¹² Consequently, ‘water allocation and management is one of the most contentious issues facing Australians today’.¹³

Also, in contrast to many other regions throughout the world, the diversity of surface water resources in Australia is quite high, with wide variations in flow and quality.¹⁴ This has led to the development of dams and distribution systems representing investment of very large amounts of money.¹⁵ According to John Pigram of the Centre for Water Policy Research, University of New England:

*Australia stores more water per capita than any other country in the world and irrigated agriculture makes the heaviest demands on the resource, accounting for over 70% of all water used.*¹⁶

While water is viewed ‘as part of Australia’s natural capital, servicing a number of important productive, environmental and social objectives’,¹⁷ there is significant variability of both quality and quantity across the country. The level of development of water resources also varies ‘from heavily regulated working rivers and groundwater resources, through to rivers and aquifers in almost pristine condition’.¹⁸

¹⁰ Pigram, John J, *Australia’s Water Resources: From Use to Management*, CSIRO Publishing, Collingwood, Victoria, 2006, p19.

¹¹ National Water Commission, *Australian Water Resources 2005: A Baseline Assessment of Water Resources for the National Water Initiative - Key Findings of the Level 2 Assessment: Summary Results*, Commonwealth of Australia, Canberra, 2007, p1.

¹² Submission No. 37 from Mr J. Camkin, 20 December 2007, p2.

¹³ *ibid.*

¹⁴ Young, M.D. and McColl, J.C., ‘Robust Reform: The Case for a New Water Entitlement System for Australia’, *The Australian Economic Review*, vol. 36, no.2, May 27, 2003, p225.

¹⁵ *ibid.*

¹⁶ Pigram, John J., ‘Economic Instruments in the Management of Australia’s Water Resources: A Critical View’, *Water Resources Development*, vol. 15, no.4, 1999, p493.

¹⁷ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, p1. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

¹⁸ *ibid.*

At present, Western Australia is in a relatively fortunate position for a number of reasons:

- Despite the state's arid climate, significant water resources exist.¹⁹
- The state has experienced water resource pressures later than other parts of the country or the world.
- The allocation of water resources by water resource managers has generally been cautious.²⁰

Nevertheless, a number of factors indicate that there is no room for complacency in the governance and management of Western Australia's water resources. These include:

- a doubling of water use in Western Australia between 1985 and 2000;
- predictions that water use will double again by 2020;
- current use that 'is running ahead of predictions';
- a 10% to 15% decline in rainfall in the southwest over the past 30 years;
- a 40% to 50% decline in stream runoff;
- increased competition for water resources; and
- increased disputes over water.²¹

Furthermore, while Western Australia has significant water resources, these are not necessarily of useful quality²² or in proximity to their likely use.²³ As Churchill Fellow, Mr Jeff Camkin, notes:

*the total quantity of water available to Western Australia and other jurisdiction[s] is not a true indicator of the challenges faced. Water resources of suitable quality are often remote from demand centres and transporting water is expensive.*²⁴

¹⁹ Government of Western Australia, *State Water Plan 2007*, Department of the Premier and Cabinet, Perth, 2007, p25.

²⁰ Submission No. 37 from Mr J. Camkin, 20 December 2007, p2.

²¹ *ibid.*

²² Government of Western Australia, *State Water Plan 2007*, Department of the Premier and Cabinet, Perth, 2007, p25.

²³ National Water Commission, *Australian Water Resources 2005: A baseline assessment of water resources for the National Water Initiative - Key Findings of the Level 2 Assessment: Summary Results*, Commonwealth of Australia, Canberra, 2007, p19.

²⁴ Submission No. 37 from Mr J. Camkin, 20 December 2007, p5.

As in other parts of the country, due to the uneven distribution of water resources in Western Australia, engineering projects have also played an important role in bringing water to areas with insufficient water resources to meet the needs of this state.²⁵

While water resource management in this state is ‘relatively simple’ in that ‘few of the State’s water resources are significantly over-allocated, very few cross state borders, none cross international borders and the community is, in general, capable of paying for good management of its resources,’ the factors presently impacting upon our water resources suggests that ‘water management will become more complex, and more contentious’.²⁶

2.2 Water Governance and Management in Western Australia

The governance of water in Western Australia is vested in the state government under the Australian Constitution. However, in recent times:

*international issues, common jurisdictional concerns and Commonwealth leverage of Section 96 of the Australian Constitution (which allows the Commonwealth to grant financial assistance to any state on terms determined by the Commonwealth) have accelerated the development of a federal role in the national water policy.*²⁷

Commonwealth involvement is demonstrated by Council of Australian Governments (COAG) involvement in the states’ water reform agendas through the National Competition Policy in the 1990s, and more recently the development of the NWI with the states’ and territories’ obligation to perform under this agreement, and the Water Smart agreements.²⁸

Governance of water in Western Australia sits under the portfolio of Water Resources, with the Minister for Water Resources having responsibility for several government agencies including the Water Corporation. The minister is also able to establish committees to assist in the management of water resources. These can provide a formal and continuing interaction with the community and stakeholders.²⁹

The *State Water Plan 2007 (SWP)* lists a number of key government agencies in the governance of Western Australia’s water resources, as follows:

- Aqwest (Bunbury Water Board)

²⁵ Department of Water, *Western Australia’s Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p8.

²⁶ Submission No. 37 from Mr J. Camkin, 20 December 2007, p5.

²⁷ Turrall, Hugh and Fullagar, Imogen, ‘Institutional Directions in Groundwater Management in Australia’, in M. Giordano and K.G. Villholth (eds.), *The Agricultural Groundwater Revolution: Opportunities and Threats to Development*, CAB International, Oxforddale UK, 2007, p321.

²⁸ Chapter 3 explains the NWI in more detail; Chapter 8 details applicable penalties under the NWI and the Water Smart funding agreements.

²⁹ Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p12.

- Busselton Water Board
- Department of Environment and Conservation
- Department of Fisheries
- Department of Health
- Department of Water
- Economic Regulation Authority
- Environmental Protection Authority
- Local Government
- Water Corporation
- Western Australian Planning Commission³⁰

These organisations provide a framework from which the proper management of Western Australia's water resources is made possible. Good management of the state's water resources is essential for the continuance of the many water uses within the state as well as the maintenance of environmental standards. A brief overview of the role of the major agencies is given below. Also discussed is the role of irrigation cooperatives in Western Australia, which also play an important part in water governance.

(a) The Department of Water

Of the all agencies listed in the *SWP*, the Department of Water (DoW), established in 2005, is the key statutory agency. It is enabled by, and operates under, the *Rights in Water and Irrigation Act 1914*.³¹ A number of other Acts which have an effect on the operations of the DoW are currently being re-drafted along with the enabling Act to provide one piece of legislation that is modernised and simplified.³²

The DoW is 'responsible for water policy and planning and the overall management and regulation of water resources'.³³ The Minister of Water Resources is supported by this agency with accountabilities including:

- water resource assessment and investigation;

³⁰ *ibid.*, p8.

³¹ Submission No. 29 from Department of Water, 21 December 2007, p5.

³² *ibid.*

³³ *ibid.*

- catchment management;
- water source protection;
- drainage and floodplain management;
- providing for the security of water for the environment and the community, and
- licensing of water for use.³⁴

The Water Planning Framework outlined in the *SWP* outlines the various strategic plans that are primarily the responsibility of the DoW and which address the accountabilities listed above.³⁵ These plans:

*acknowledge the multiple objectives in water cycle management and potential and agreed tradeoffs between these objectives. Plans outline the actions, operating strategies and compliance practices to achieve agreed outcomes.*³⁶

Strategic water issue plans allow for action on specific issues and these may overlap with water user and community plans.³⁷ Also important are the regional water plans, including statutory water management plans, drinking water protection plans, drainage management plans and floodplain management plans. The Conservation Council of Western Australia Inc. views regional water plans as an ‘essential part’ of the *SWP*,³⁸ which will then lead into the development of statutory water management plans once the review of legislation is finalised.

(b) Water Corporation, Busselton Water Board and Aqwest

Along with the DoW, the Water Corporation, Aqwest (the Bunbury Water Board) and Busselton Water Board provide essential water services. The Minister for Water Resources is also responsible for these organisations.³⁹ These are government-owned organisations which are responsible for the provision of water to acceptable standards and for the planning of source development.⁴⁰

³⁴ Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p8; Submission No. 29 from Department of Water, 21 December 2007, p5.

³⁵ Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p49, 51, 53, 54 and 55.

³⁶ Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p49.

³⁷ *ibid.*, p49, 51, 53, 54, and 55.

³⁸ Mr Christopher Tallentire, Director, Conservation Council of Western Australia Inc., *Transcript of Evidence*, 31 January 2008, p2.

³⁹ Submission No. 29 from Department of Water, 21 December 2007, p5.

⁴⁰ Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p8.

(c) Economic Regulation Authority

Another key government agency with regards to water management in Western Australia is the Economic Regulation Authority (ERA). The ERA has a continuing role in the reviewing of water and wastewater charges and providing advice to government on these issues.⁴¹ While the government is ultimately responsible for setting water charges for the three major water storage and delivery providers, (the Water Corporation, Aqwest and the Busselton Water Board), charges 'are based, in part, on the recommendations of the Economic Regulation Authority (ERA)'.⁴²

The ERA has completed independent reports on water and wastewater pricing, conducts annual reviews of Water Corporation tariffs, and has reviewed private sector proposals.⁴³ It provides oversight, when referred by the Treasurer, and conducts inquiries into both urban and rural water and wastewater pricing as well as other matters.⁴⁴

The ERA also sets the quality of service delivery. Specific requirements set by the ERA relate to major areas such as drinking water quality, infrastructure performance and wastewater recycling.⁴⁵

In addition to these activities, the ERA 'licenses water service providers' and 'monitors compliance with licence service standards'.⁴⁶

The functions of the ERA in general inform Government pricing decisions on scheme water supplies and source options.⁴⁷

(d) Other Key Agencies

Other agencies involved in water management in Western Australia and relating more specifically to natural resources management are the Department of Environment and Conservation (DEC), which 'regulates wastewater discharges and promotes, protects and manages biodiversity,' and the

⁴¹ *ibid.*, p33.

⁴² NWI Steering Group on Water Charges, *Rural Water Charging Stocktake: Water Storage and Delivery Charges in the Rural Water Sector in Australia*, National Water Commission, Canberra, February 2007, p6. Available at: http://www.nwc.gov.au/nwi/docs/RuralWaterChargingStocktake_Feb%2021.pdf. Accessed on 14 February 2008.

⁴³ Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p64 and 84; Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p9.

⁴⁴ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p9; Department of Water, *State Water Plan*, Government of Western Australia, Perth, 2007, p8 and 10.

⁴⁵ Department of Water, *State Water Plan*, Government of Western Australia, Perth, 2007, p8.

⁴⁶ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p9.

⁴⁷ *ibid.*

Department of Fisheries which ‘conserves, manages and shares fish, marine and living aquatic resources’.⁴⁸

The Western Australian Planning Commission ‘plans for the protection and management of water resources as an integral component of land use planning’.⁴⁹

The Department of Health is involved in the development of guidelines for drinking water and monitoring compliance with regard to this.⁵⁰

(e) Local Government

Local government provides wastewater, drainage and sewerage work and services in some parts of the state.⁵¹ The need to work with local governments on water resource management and reform is acknowledged by the state government. It recognises the contribution from, and the consultation requirements with, these bodies in this area.⁵² For example, the *SWP* states:

*there is a need to engage with local government as many land use planning and approval processes occur at this level, within a context of statewide land planning policy. This is a challenge for water planning due to its largely centralised approach to development. Effective community engagement will assist in this regard.*⁵³

(f) Irrigation Cooperatives

Irrigation cooperatives such as Harvey Water, the Ord Irrigation Cooperative, the Gascoyne Irrigation Cooperative and the Preston Valley Irrigation Cooperative are bulk water users which are licensed under the current licensing regime administered by the DoW. These organisations were separated from the Water Corporation and transferred to local irrigator ownership as part of the Council of Australian Governments (COAG) water reforms and NCP policies.⁵⁴ They are licensed under the *Water Services Licensing Act 1995*. A key element of this transfer was the:

transfer via a bulk water licence to the principal Cooperative entity as the custodial body for the individual irrigator entitlements. Integral to this process was the acceptance by the Cooperatives that water administration functions and their cost in relation to individual

⁴⁸ Department of Water, *Western Australia’s Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p9; Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p8.

⁴⁹ Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p8.

⁵⁰ Department of Water, *Western Australia’s Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p9.

⁵¹ Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p8 and 84.

⁵² *ibid.*, p20, 53, 57, and 71.

⁵³ *ibid.*, p10.

⁵⁴ Submission No. 41 from Harvey Water, 16 January 2008, p10. Ownership has been in the hands of local irrigators since 1996 for Harvey, 1998 for Preston Valley, 2001 for Gascoyne and 2002 for Ord River.

*irrigator entitlements would become the responsibility of the Cooperatives and therefore their individual members.*⁵⁵

As a result of this, these organisations now provide their individual members with water resource management services such as licensing support, compliance functions, provision of information, representation and many more.⁵⁶

2.3 Future Direction for Governance

When COAG began to investigate water resources as a federal issue it found that much Australian water use was inefficient and that in spite of being the driest inhabited continent, there was abundant resources, meaning that '[m]ismanagement not shortage was the issue'.⁵⁷

For any territory, state or country, water is a vital resource. Apart from drinking water and water for domestic use, water is required for agriculture, industry and a variety of other uses. In particular, the environment is a recognised use of water.⁵⁸ It can be significantly impacted by the taking of water for other uses.⁵⁹

With regard to the resources available to provide for these uses, Western Australia has large areas with low and variable rainfall.⁶⁰ Heavier rainfall patterns exist in the south west regions and in the north of the state, where there are areas with abundant rainfall.⁶¹ Significant groundwater resources exist throughout the state; however, the quality of these resources can vary.⁶² Since water resources and the demand for their use are not evenly matched geographically throughout Western Australia, there is a need for careful management of these resources.⁶³

⁵⁵ Submission No. 41 from Harvey Water, 16 January 2008, p10.

⁵⁶ *ibid.*, pp4-11. This is discussed further in Chapter 7.

⁵⁷ Young M.D. and McColl J.C., 'Robust Reform: The Case for a New Water Entitlement System for Australia', *The Australian Economic Review*, vol. 36, no.2, May 27 2003, p225.

⁵⁸ Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p4.

⁵⁹ CSIRO Land and Water, 'Water in Australia - Rivers and Estuaries', 2005. Available at: http://www.clw.csiro.au/issues/water/rivers_estuaries/faq.html. Accessed on 11 February 2008.

⁶⁰ Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p26; Pigram, John J., *Australia's Water Resources: From Use to Management*, CSIRO Publishing, Collingwood, Victoria, 2006, p19 and 20.

⁶¹ Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p26; National Water Commission, *Australian Water Resources 2005: A Baseline Assessment of Water Resources for the National Water Initiative - Key Findings of the Level 2 Assessment: Summary Results*, Commonwealth of Australia, Canberra, 2007, p19.

⁶² Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p21,22 and 25.

⁶³ Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p22; Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p8.

While a considerable number of areas within Western Australia are not highly developed, there are many areas where water resources are under stress.⁶⁴ A growing population will continue to exert further pressures in this regard.⁶⁵ Good water management will be necessary to balance the competing uses of the state's water resources. As the Conservation Council of Western Australia Inc. states, '[s]tewardship of the common good of water is vital for the future sustainable development of Western Australia'.⁶⁶

While there are significant challenges facing Western Australia in the management of its water resources, there remains a 'window of opportunity', albeit one that is 'closing fast'.⁶⁷ In his 2003 Churchill Fellowship report, Mr Jeff Camkin found, amongst other things, that:

national and international experience provides major opportunities for learning; and

*isolated locations such as Western Australia need to make an extra effort to capture that experience.*⁶⁸

Mr Camkin sees major benefits in governance structures being developed in Western Australia, including government policy, modern water legislation and a state water plan documenting implementation.⁶⁹ He points to two world's best practice examples that Western Australia would be wise to follow, namely South Africa and Brazil, countries which have 'successfully undertaken major reform over the last ten years'.⁷⁰ Further information on the Agência Nacional de Águas – ANA, the federal entity charged with implementing the Brazilian National Water Resources Policy, can be found at Appendix Seven.⁷¹

The Committee considers it vital to the health and welfare of all Western Australians and the Western Australian economy that the state learns from the experiences of other jurisdictions in the country and throughout the world, and delivers a water resource management regime that best suits our social, environmental, cultural and economic needs.

⁶⁴ Australian Government, 'Australian Natural Resources Atlas: Water Resources - Overview -Western Australia', 2008. Available at: <http://www.anra.gov.au/topics/water/overview/wa/index.html>. Accessed on 11 February 2008; Marsden Jacob Associates, *Water Entitlements, Water Plans & Trading for Western Australia*, Marsden Jacob Associates Pty Ltd, Victoria, 2006, p70.

⁶⁵ Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p73.

⁶⁶ Submission No. 31 from Conservation Council of Western Australia Inc., 19 December 2007, p1.

⁶⁷ Submission No. 37 from Mr J. Camkin, 20 December 2007, p2.

⁶⁸ *ibid.*, p3.

⁶⁹ *ibid.*

⁷⁰ *ibid.*

⁷¹ Nacional de Águas – ANA, *Abstraction Charges in Practice: The Brazilian Experience*, November 2007, provided by Mr Jeff Camkin, *Email Correspondence*, 29 January 2008.

2.4 Water Resources in Western Australia

The *SWP*, which is based on an assessment in 2000, states that the total estimated sustainable yield for Western Australia is about 11,500 gegalitres (GL).⁷² In 2005 the National Water Commission (NWC) regarded the total sustainable yield for Western Australia to be 8,621 GL.⁷³ While acknowledging that ‘there is no standardised method across Australia for determining the sustainable yield’,⁷⁴ the NWC defines ‘sustainable yield’ as:

*the level of water extraction from a particular system that, if exceeded, would compromise key environmental assets, or ecosystem functions and the productive base of the resource. (NWI Schedule B).*⁷⁵

Sustainable yields are generally based on the average level of extractions and/or diversions over a number of years. Therefore, given that climate and water availability will vary on an annual basis, ‘diversions/extractions can be expected to be greater than the sustainable yield in some years and less than sustainable yield in others’.⁷⁶

While the Committee recognises that there are variations in definitions, and thus estimations, of sustainable yields, this chapter of the report draws on the sustainable yield figures provided in the *SWP* as they relate in detail to specific surface or groundwater divisions in Western Australia.

Furthermore, it should not generally be assumed that figures relating to sustainable yield such as those provided by the NWC or state agencies have taken into account the potential impact of climate change, unless this is specifically stated.⁷⁷

It is also important to note that while there can be considerable interconnectivity between surface and groundwater systems, information on surface-groundwater interactions is limited and, as such, the potential for double counting of water resources is high.⁷⁸

⁷² Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p22.

⁷³ National Water Commission, *Australian Water Resources 2005: A Baseline Assessment of Water Resources for the National Water Initiative - Key Findings of the Level 2 Assessment: Summary Results*, Commonwealth of Australia, Canberra, 2007, pxiv. This figure is based on long-term averages.

⁷⁴ *ibid.*, p58.

⁷⁵ *ibid.*

⁷⁶ *ibid.*

⁷⁷ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p22.

⁷⁸ National Water Commission, *Australian Water Resources 2005: A Baseline Assessment of Water Resources for the National Water Initiative - Level 2 Assessment: Water Availability Theme, National Perspective*, Commonwealth of Australia, Canberra, 2007, p5.

The balance of this chapter provides an overview of Western Australia's water resources. It is intended to provide an indication of the state's resources rather than a comprehensive guide or definitive statement as to their quantity or quality.⁷⁹

There are various ways in which geographic regions are classified in relation to water resources in Western Australia. Generally, the boundaries of these regions are chosen with regard to geological, climatic or other similarities within a region, or there may be classifications based on management regimes or criteria as required by various management authorities or agencies. Given that this report is concerned with the state government's licensing administration regime it draws on the classification system described in the *SWP*. This system is comprised of three major classifications, namely, 'groundwater divisions', 'surface water divisions', and 'groundwater management areas'.⁸⁰

Western Australia has seven groundwater divisions: Canning, Carnarvon, Kimberley, Officer - Eucla, Perth, Pilbara and Yilgarn (see *SWP map* p24).⁸¹ These are further subdivided into 174 groundwater management units.⁸²

There are four surface water divisions in Western Australia, namely Indian Ocean, South West, Timor Sea and Western Plateau (see *SWP map* p26).⁸³ These are further subdivided into 44 surface water management areas. The Timor Sea and Western Plateau Divisions cross state/territory boundaries.⁸⁴

Groundwater management areas under the *Rights in Water and Irrigation Act 1914 (WA)* (RIWI Act) are detailed in the Department of Water's map of groundwater management areas.⁸⁵ Some

⁷⁹ This report cannot provide a comprehensive overview of the literature available on the state's water resources. Readers are referred to such publications as: McFarlane, D.J., *Context Report on South West Water Resources for Expert Panel Examining Kimberley Water Supply Options*, Client Report to W.A. Government, CSIRO Water for a Healthy Country National Research Flagship, Canberra, March 2005; Department of Water, *South West Water Resources - Regional Overview*, Government of Western Australia, Perth, April 2007; Australian Government, Australian Natural Resources Atlas, *Western Australia Water Resources Assessment 2000 Report*, 2000. Available at: http://www.anra.gov.au/topics/water/pubs/state_overview/wa_ovpage.html. Accessed on 22 January 2008.

⁸⁰ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p24, 26 and 50.

⁸¹ *ibid.*, p24.

⁸² Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p142.

⁸³ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p26.

⁸⁴ *ibid.*

⁸⁵ Department of Water, Water Resources Use Division, MAP: Rights in Water and Irrigation Act, 1914 - Groundwater Management Areas 2007 (J:\Project\C_series\C2018\0001\mxd\RIWI_GWAs.mxd), Government of Western Australia, Perth, 2007.

parts of the south of the state (approximately 12%) are not covered by any groundwater management area and are referred to as unincorporated areas.⁸⁶

It is important to take care when referring to geographic areas by a particular name (for example, Pilbara), as the geographic area referred to by that name varies depending on the classification used. For example, the management area with that name may be vastly different from the surface or groundwater area of the same name.

For detailed information on some specific surface and groundwater areas of note, see Appendix A of the Department of Water's submission to this inquiry.⁸⁷

2.5 Groundwater

(a) Introduction and Overview

Western Australia's ground water varies from fresh (less than 500mg salt/litre) to Hypersaline (greater than 35,000 mg salt/litre).⁸⁸ These resources are also localised and fragmented.⁸⁹ The main types of aquifers are unconsolidated sediments or superficial deposits, sedimentary basins and fractured rocks.⁹⁰ Mean annual deep drainage to groundwater reserves is greatest in the Timor Sea and South West surface water divisions (15.5mm and 14.2mm respectively).⁹¹ The mean annual deep drainage to groundwater in the Indian Ocean and Western Plateau surface water divisions is 5.0mm and 4.9mm respectively.⁹²

The total estimated sustainable yield for groundwater resources in Western Australia is around 6,300 gigalitres (GL).⁹³ Approximately 3,300 GL of these resources are found in sedimentary

⁸⁶ Department of Water, MAP: Rights in Water and Irrigation Act, 1914 - Groundwater Management Areas 2007, Government of Western Australia, Perth, 2007; National Water Commission, *Australian Water Resources 2005: A Baseline Assessment of Water Resources for the National Water Initiative - Key Findings of the Level 2 Assessment: Summary Results*, Commonwealth of Australia, Canberra, 2007, p87.

⁸⁷ Submission No. 29 from Department of Water, 21 December 2007, Appendix A.

⁸⁸ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p21 and 25.

⁸⁹ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p8.

⁹⁰ Submission No. 29 from Department of Water, 21 December 2007, Appendix A.

⁹¹ National Water Commission, *Australian Water Resources 2005: A Baseline Assessment of Water Resources for the National Water Initiative - Key Findings of the Level 2 Assessment: Summary Results*, Commonwealth of Australia, Canberra, 2007, p21.

⁹² *ibid.*

⁹³ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p22.

basins (Canning, Carnarvon, Perth and Officer-Eucla) and around 3,000 GL in fractured rock provinces (Kimberley, Pilbara and Yilgarn).⁹⁴

Many of the resources in the fractured rock provinces of Kimberley, Pilbara and Yilgarn are relatively small and dispersed.⁹⁵ *Western Australia's Implementation Plan for the National Water Initiative* states that 'while they can be very significant to local mining and pastoral operations, they do not generally lend themselves to the development of large single resources'.⁹⁶

(b) Western Australia's Groundwater Divisions

(i) Canning

The sedimentary Canning Division is a significant groundwater resource⁹⁷ with a sustainable yield of 827 GL.⁹⁸ The Canning basin contains both fresh and brackish groundwater resources⁹⁹ which are mostly undeveloped.¹⁰⁰

(ii) Carnarvon

The sustainable yield for groundwater in the Carnarvon Division is 244 GL.¹⁰¹

The Gascoyne River's alluvial aquifer is the major fresh groundwater resource in this division,¹⁰² and the flow of the Gascoyne River recharges aquifers in this area.¹⁰³

⁹⁴ *ibid.*

⁹⁵ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p142.

⁹⁶ *ibid.*

⁹⁷ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p24.

⁹⁸ *ibid.*, p22.

⁹⁹ *ibid.*, p25.

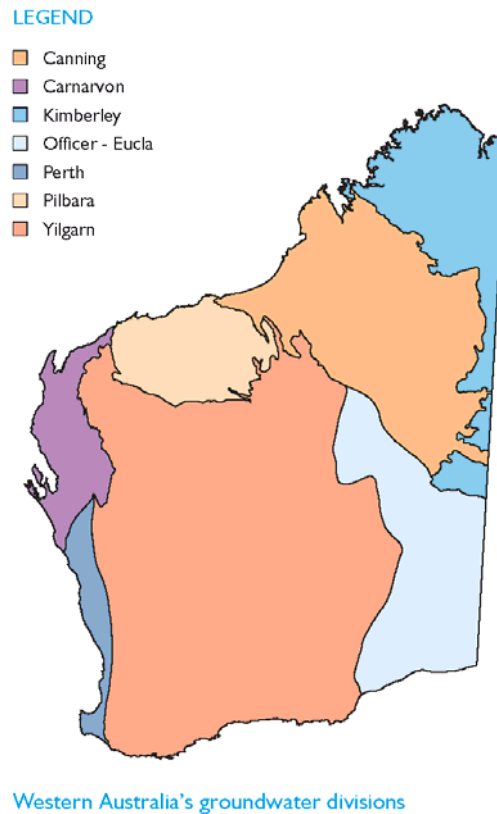
¹⁰⁰ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p142.

¹⁰¹ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p22.

¹⁰² Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p142.

¹⁰³ Irrigation Review Steering Committee (for Government of Western Australia), *State Water Strategy Irrigation Review Final Report*, Government of Western Australia, Perth, 2005, p64.

Western Australia's Groundwater Divisions¹⁰⁴



Groundwater recharge in this division is intermittent and, therefore, requires careful management.¹⁰⁵ Deep confined artesian aquifers offer limited supplies of brackish to saline groundwater.¹⁰⁶ Minor fresh groundwater resources in this division also exist near Kalbarri and Exmouth.¹⁰⁷

¹⁰⁴ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p24.

¹⁰⁵ *ibid.*, p13.

¹⁰⁶ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p142.

¹⁰⁷ *ibid.*

(iii) Kimberley

The sustainable yield for Kimberley groundwater is 813 GL.¹⁰⁸ The groundwater in this division is relatively unutilised for commercial or public water supply purposes.¹⁰⁹

(iv) Officer-Eucla

Some brackish and some fresh groundwater are found in the Officer-Eucla basin.¹¹⁰ The sustainable yield for groundwater is 271 GL.¹¹¹ At present, this groundwater is used by Aboriginal communities, and for pastoral purposes.¹¹²

(v) Perth

The sustainable yield for groundwater in the Perth division is 1,937 GL.¹¹³

According to the DoW, 'the Perth Basin has the largest fresh groundwater availability in the State'¹¹⁴ and 'is Western Australia's most important groundwater resource'.¹¹⁵

The Perth division also contains the Gngangara mound (located between Gingin and the Swan River¹¹⁶) which is the source of 60% of Perth's potable scheme water.¹¹⁷ The Superficial, Leederville and Yarragadee aquifers are the main groundwater deposits of the Gngangara mound and have in themselves been described as 'the most important water resources in Western Australia'.¹¹⁸ The Gngangara mound is under considerable stress due to a combination of reduced

¹⁰⁸ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p22.

¹⁰⁹ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p142.

¹¹⁰ *ibid.*, p144.

¹¹¹ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p22.

¹¹² Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p144.

¹¹³ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p22.

¹¹⁴ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p144.

¹¹⁵ Submission No. 29 from Department of Water, 21 December 2007, Appendix A.

¹¹⁶ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p148.

¹¹⁷ Irrigation Review Steering Committee (for Government of Western Australia), *State Water Strategy Irrigation Review Final Report*, Government of Western Australia, Perth, July 2005, p15.

¹¹⁸ *ibid.*

rainfall and demand pressures from a variety of uses.¹¹⁹ The quality of the water from this resource may also be decreasing.¹²⁰ The levels of groundwater across the Gngangara mound have lowered since the mid-1990s due to lower rainfall, changes in land use and increased abstraction.¹²¹

About 2,700 million cubic meters are also stored in the smaller Jandakot Mound, south of Perth.¹²² Professor Jorg Imberger has stated that significant resources also exist in the South West Yarragadee aquifer.¹²³

A variety of ecosystems including lakes, wetlands and caves are supported by the Perth Basin's superficial aquifers.¹²⁴ Nevertheless, agriculture and public water supply accounts for much of the usage of the resources in this basin.¹²⁵ Given that 'the Perth Basin is the most heavily populated area in the state',¹²⁶ this is hardly surprising. As at March 2005, the total of all Allocation Limits (ALs) for fresh water from groundwater areas on the Perth basin was 1,453GL per year, of which 52% was already licensed, 8% held in public reserves and another 11% was pending approval of application. This means that a potential 71% of available groundwater in the Perth basin had been allocated.¹²⁷ However, any interpretation or application of these figures must be taken with caution as, according to the Commonwealth Scientific and Industrial Research Organisation (CSIRO), there are several qualifications to be considered.¹²⁸

(vi) Pilbara

The sustainable yield for groundwater in the Pilbara is 472 GL.¹²⁹

Many of the fractured rock aquifers in this division contain freshwater.

¹¹⁹ ibid.

¹²⁰ ibid

¹²¹ Water and Rivers Commission, *Water and Rivers Commission Annual Report 2006 -07 (Number 12)*, Water and Rivers Commission, Perth, September 2007, p32.

¹²² Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p148.

¹²³ Imberger, Jorg, Professor, Centre for Water Research, University of Western Australia, *Transcript of Evidence*, Thursday, 20 December 2007, p2 and 4.

¹²⁴ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p144.

¹²⁵ ibid.

¹²⁶ ibid.

¹²⁷ CSIRO, *Context Report on South West Water Resources For: Expert Panel Examining Kimberley Water Supply Options*, Government of Western Australia, Perth, March 2005, p31.

¹²⁸ CSIRO, *Context Report on South West Water Resources For: Expert Panel Examining Kimberley Water Supply Options*, Government of Western Australia, Perth, March 2005, p31.

¹²⁹ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p22.

The area is prone to extended drought. Therefore, as well as having significant social and cultural value, groundwater in the Pilbara is very important to the maintenance of ecosystems.¹³⁰ Some of these resources have been developed for use at mine sites and as drinking water.¹³¹ This has been done as either scheme water plans or localised on-site development.¹³²

(vii) Yilgarn

The sustainable yield for groundwater in Yilgarn is 1,740 GL.¹³³

This division has a large volume of groundwater, a great deal of which is saline or hypersaline in fractured rock aquifers.¹³⁴ Mining accounts for most of the use of these resources.¹³⁵

2.6 Surface water

(a) Introduction and Overview

It is estimated that 90% of rainfall is either evaporated or used by plants, with the remaining 10% becoming runoff or groundwater recharge.¹³⁶

Drought and floods are a feature of the Australian landscape,¹³⁷ and consequently Australia's rivers are variable over time in respect to both runoff and stream flow.¹³⁸ This necessarily impacts on water quality, which also varies over time.¹³⁹

Runoff varies significantly across the state. While the Timor Sea surface water division (which is spread over the top of Western Australia and the Northern Territory) accounts, on average, for

¹³⁰ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p142.

¹³¹ *ibid.*

¹³² *ibid.*

¹³³ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p22.

¹³⁴ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p144.

¹³⁵ *ibid.*

¹³⁶ National Water Commission, *Australian Water Resources 2005: A Baseline Assessment of Water Resources for the National Water Initiative - Key Findings of the Level 2 Assessment: Summary Results*, Commonwealth of Australia, Canberra, 2007, pvii.

¹³⁷ Pigram, John J, *Australia's Water Resources: From Use to Management*, CSIRO Publishing, Collingwood, Victoria, 2006, p28.

¹³⁸ *ibid.*, p22.

¹³⁹ *ibid.*

22.1% of Australia's runoff, the South West, Western Plateau (also extending over state/territory boundaries) and Indian Ocean divisions receive 1.7%, 1.5% and 0.5% respectively.¹⁴⁰

The main seasonal rainfall zones of the state can be seen in the following map provided in the *SWP*.¹⁴¹

Wetlands, streams, rivers and man-made dams are all surface water systems and such systems 'support water dependent ecosystems'.¹⁴² The DoW reports that 'there are 44 surface water management areas in Western Australia', which are grouped into the four drainage divisions of Timor Sea, Indian Ocean, Western Plateau and South West.¹⁴³

The total sustainable yield for surface water in Western Australia is around 5,200 GL.¹⁴⁴ Surface waters in the north of the state tend to be more related to cyclone activity, while surface waters in the south are mostly ephemeral.¹⁴⁵ At February 2005 the total sustainable yield of fresh water from proclaimed rivers in the state was 4,878 GL per year, with 20% licensed and 13.5% being used.¹⁴⁶

In 2005, there were 48 large dams in Western Australia,¹⁴⁷ with a total capacity of 12,148 GL.¹⁴⁸ At that time the volume stored in those dams was 10,135 GL.¹⁴⁹ The vast majority of large dams are situated in the South West drainage division and the Timor Sea drainage division.¹⁵⁰ In June 2005, the storage levels for large dams in the South West drainage division was less than 40% of

¹⁴⁰ National Water Commission, *Australian Water Resources 2005: A Baseline Assessment of Water Resources for the National Water Initiative - Key Findings of the Level 2 Assessment: Summary Results*, Commonwealth of Australia, Canberra, 2007, p19.

¹⁴¹ Government of Western Australia, *State Water Plan 2007*, Department of the Premier and Cabinet, Perth, 2007, p18.

¹⁴² Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p144.

¹⁴³ *ibid.*

¹⁴⁴ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p22.

¹⁴⁵ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p8.

¹⁴⁶ CSIRO, *Context Report on South West Water Resources For: Expert Panel Examining Kimberley Water Supply Options*, Government of Western Australia, Perth, March 2005, p23.

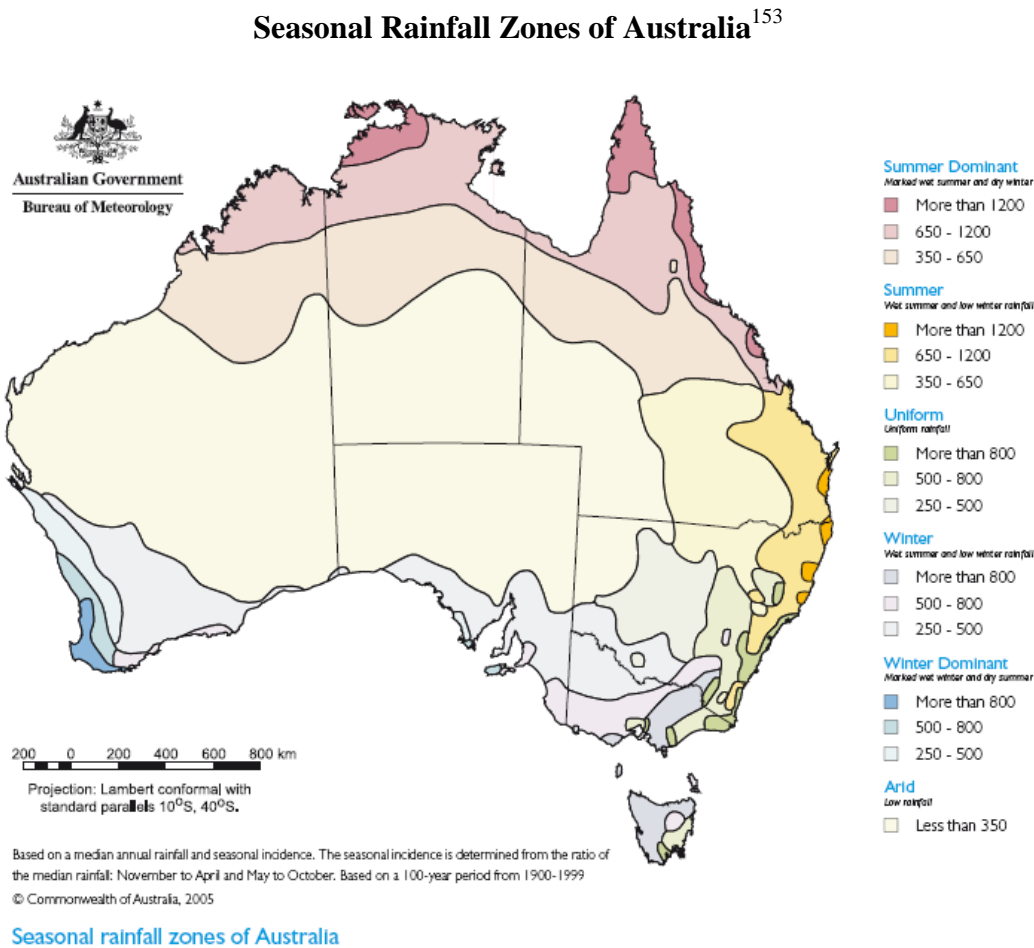
¹⁴⁷ Australian Bureau of Statistics, *Water Account Australia 2004-05*, Commonwealth of Australia, Canberra, 2006, p124.

¹⁴⁸ *ibid.*, p8.

¹⁴⁹ *ibid.*

¹⁵⁰ *ibid.*, p117.

capacity.¹⁵¹ In the Timor Sea drainage division at this time storage was more than 80% of capacity.¹⁵²



Irrigated farm dams in Western Australia have a storage capacity of 212 GL, or 7% of the Australian total for these dams.¹⁵⁴

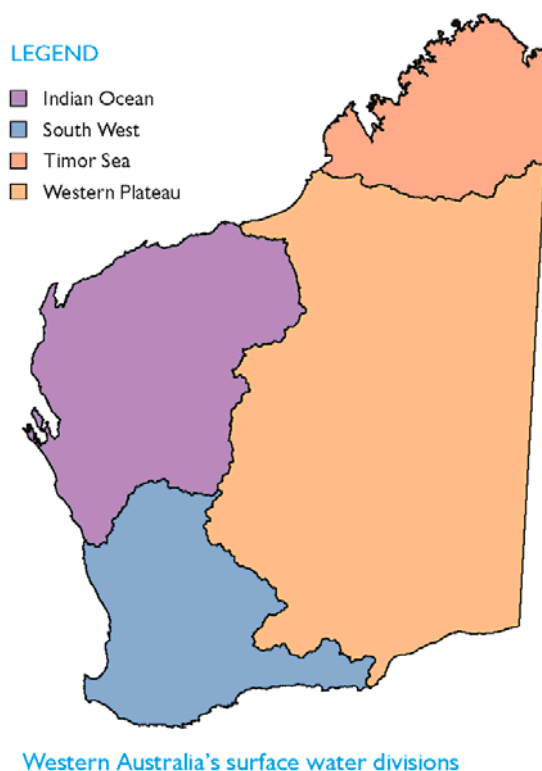
The NWC found that ‘farm dams appear to be a significant interceptor of runoff’.¹⁵⁵ Every megalitre of stored water may reduce stream flow by 0.84 ML and there have been estimates in Victoria that 70% of stored water is lost to evaporation.¹⁵⁶

¹⁵¹ ibid.

¹⁵² ibid.

¹⁵³ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p18.

¹⁵⁴ ibid., p124.

(b) Western Australia's Surface Water Divisions**Western Australia's Surface Water Divisions¹⁵⁷****(i) Indian Ocean**

This area has a low level of surface water resources,¹⁵⁸ with a sustainable yield of 440 GL.¹⁵⁹ Many rivers in the Indian Ocean drainage division are salty, with the exception of the Gascoyne River.¹⁶⁰

¹⁵⁵ National Water Commission, *Australian Water Resources 2005: A Baseline Assessment of Water Resources for the National Water Initiative - Key Findings of the Level 2 Assessment: Summary Results*, Commonwealth of Australia, Canberra, 2007, p23.

¹⁵⁶ *ibid.*

¹⁵⁷ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p26.

¹⁵⁸ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p145.

¹⁵⁹ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p22.

¹⁶⁰ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p145.

This division has a high variability in rainfall, with cyclones bringing much of the rain interspersed with long periods of little or no rain.¹⁶¹

The Harding Dam near Karratha is the division's main public water supply.¹⁶²

(ii) South West

The South West drainage division has the second highest rainfall in the state and includes 20 major river systems.¹⁶³ Its sustainable yield for surface water is 1,610 GL.¹⁶⁴ As at March 2005 the (then) current sustainable yield was 57% allocated and 28% used, which is higher than the State overall due to the demand created by population and development.¹⁶⁵

Dams, weirs and reservoirs have altered the flows of many of the river systems in the area. It contains the Harvey, Waroona and Preston Valley irrigation areas.¹⁶⁶

Although the South West division has in the past been more consistent in its rainfall than other parts of the state, climate change has negatively affected this pattern.¹⁶⁷

This division also contains the Swan Coastal Plain.¹⁶⁸ Development and land use changes have put substantial pressures on the wetlands of the Swan Coastal Plain.¹⁶⁹

(iii) Timor Sea

The Timor Sea drainage division has the greatest surface water resources in the state.¹⁷⁰ The climate in this division 'is tropical monsoonal with distinct wet and dry seasons, high average maximum temperatures and evaporation'.¹⁷¹ Infrastructure costs for the storing of water can be

¹⁶¹ *ibid.*

¹⁶² *ibid.*

¹⁶³ *ibid.*

¹⁶⁴ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p22.

¹⁶⁵ CSIRO, *Context Report on South West Water Resources For: Expert Panel Examining Kimberley Water Supply Options*, Government of Western Australia, Perth, March 2005, p23.

¹⁶⁶ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p145.

¹⁶⁷ *ibid.*

¹⁶⁸ *ibid.*

¹⁶⁹ *ibid.*

¹⁷⁰ *ibid.*, p144.

¹⁷¹ *ibid.*, p144.

high due to the high variability of river system flows.¹⁷² The sustainable yield for surface water is 3,160 GL.¹⁷³

The Ord and Fitzroy river systems are contained in this division.¹⁷⁴ The damming of the Ord River to form Lake Argyle has had a significant impact on the natural flows of the Ord River.¹⁷⁵ Many industries, including agriculture, diamond mining, hydroelectricity and tourism, are supported by these water resources.¹⁷⁶ The water in this region also has considerable Aboriginal cultural significance.¹⁷⁷

(iv) Western Plateau

This very large area is mostly desert and has virtually no surface water resources.¹⁷⁸ The sustainable yield for surface water in the Western Plateau drainage division is 1 GL.¹⁷⁹

2.7 Other Resources

Although the focus of this report is surface and ground waters, it is important to note that there are also other possibilities for the sourcing of water. These include, but are not limited to:

- the desalination plant currently operating in Kwinana, and a second plant also proposed for Binningup;¹⁸⁰ and
- the possibility of waste water recycling or direct aquifer recharge.¹⁸¹

Also, salinity management in Denmark, Kent, Collie, Warren and Helena catchments is demonstrating that significant reductions in salinity can be achieved in saline catchments, changing the nature of the resource.¹⁸²

¹⁷² ibid.

¹⁷³ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p22.

¹⁷⁴ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p144.

¹⁷⁵ ibid.

¹⁷⁶ ibid.

¹⁷⁷ ibid.

¹⁷⁸ ibid., p145.

¹⁷⁹ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p22.

¹⁸⁰ Water and Rivers Commission, *Water and Rivers Commission Annual Report 2006 -07 (Number 12)*, Water and Rivers Commission, Perth, September 2007, p7.

¹⁸¹ ibid.

¹⁸² ibid., pp24-26.

2.8 Climate Change

Throughout the world the potential impacts of climate change are becoming increasingly well recognised. If some of the predictions of climate change are realised, there may be regions of Australia that experience quite different rainfall regimes and the associated effects on the certainty of water supply.¹⁸³ The NWC states that ‘for determination of water availability, improved and consistent methods that take into account longer time sequences and future climate predictions are required’.¹⁸⁴

In Western Australia in recent years, the south of the state has been drier and the north wetter.¹⁸⁵ There has been a substantial reduction in rainfall in Perth over the last 25 years, and this is likely to continue.¹⁸⁶ This necessarily impacts upon the state’s water resources, and the annual inflow to integrated water supply dams in Western Australia has recently decreased substantially.¹⁸⁷ The average annual inflow into dams of 338 GL over the years 1911-1974 dropped to an average of 177 GL between 1975-1996, and fell to 114 GL between 1997-2005.¹⁸⁸

Professor Imberger of the University of Western Australia’s Centre for Water Research advised the Committee that, in relation to climate change, ‘the south west is the most severely impacted region in the world’.¹⁸⁹ Given this, it is imperative that any water plan considers the impact of climate change on the availability of water resources and its best possible use.

While the National Water Initiative (NWI) is outlined in detail in Chapter 3, at this stage it is useful to note that it recognises the risk that seasonal or long-term climate change poses to water resources, and includes a quantified risk assignment framework to apply to reductions in the availability of water for consumptive use.¹⁹⁰ When reductions to the consumptive pool occur, all users, including the environment and amenity users, bear the consequences. The recognition of

¹⁸³ Pigram, John J., *Australia’s Water Resources: From Use to Management*, CSIRO Publishing, Collingwood, Victoria, 2006, p38.

¹⁸⁴ National Water Commission, *Australian Water Resources 2005: A Baseline Assessment of Water Resources for the National Water Initiative - Key Findings of the Level 2 Assessment: Summary Results*, Commonwealth of Australia, Canberra, 2007, pxiv.

¹⁸⁵ Water and Rivers Commission, *Water and Rivers Commission Annual Report 2006 -07 (Number 12)*, Water and Rivers Commission, Perth, September 2007, p6.

¹⁸⁶ *ibid.*

¹⁸⁷ National Water Commission, *Australian Water Resources 2005: A Baseline Assessment of Water Resources for the National Water Initiative - Key Findings of the Level 2 Assessment: Summary Results*, Commonwealth of Australia, Canberra, 2007, p20.

¹⁸⁸ *ibid.*, p20.

¹⁸⁹ Imberger, Jorg, Professor, Centre for Water Research, University of Western Australia, *Transcript of Evidence*, Thursday, 20 December 2007, p2.

¹⁹⁰ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, p8. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

risks such as seasonal or long-term climate change and irregular natural occurrences such as bushfires and droughts has led to the requirement that water plans are effectively revised periodically to ensure allocations are made based on current knowledge of the consumptive pool.¹⁹¹

2.9 Data Quality

The principles of the NWI (outlined in Chapter 3) dictate sound and effective planning of water resources. Planning gives both people and government greater long-term security. As Irrigation Australia - WA Region (IAL-WA) stated, 'it also leads to a greater awareness of our water resources'.¹⁹² It is obvious that to be sound and effective, planning must be based on accurate and up-to-date data concerning the sustainable yield, the quality of water available, and its current use. This is recognised in the Auditor General's statement that:

*water resource investigation and assessment should be the basis for all of the planning, allocation and licensing work of the WRC [Water and Rivers Commission]. Without accurate information about the quality and quantity of water resources and a good understanding of the likely impacts of water use, the WRC is restricted in its capacity to effectively manage WA's water resources.*¹⁹³

Similarly, the DoW acknowledges that:

*an understanding of our water resources including catchments, river systems and groundwater is essential to their protection, informed planning, development, allocation and sustainable use.*¹⁹⁴

With respect to data quality, it should be noted that the NWC has recommended a number of possible improvements to the existing national water resources data sets.¹⁹⁵ With reference to its study of 51 groundwater management areas across Australia, the NWC states that these areas 'provide a baseline against which future changes can be assessed and an understanding of where data and information is lacking or uncertain'.¹⁹⁶

¹⁹¹ *ibid.*, pp8-9.

¹⁹² Mr Douglas Hall, Industry Development Officer, Irrigation Australia - WA Region, *Transcript of Evidence*, 15 January 2008, p2.

¹⁹³ Auditor General for Western Australia, *Second Public Sector Performance Report 2003*, Government of Western Australia, Perth, 2003, p7.

¹⁹⁴ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p69.

¹⁹⁵ National Water Commission, *Australian Water Resources 2005: A Baseline Assessment of Water Resources for the National Water Initiative - Key Findings of the Level 2 Assessment: Summary Results*, Commonwealth of Australia, Canberra, 2007, pxv.

¹⁹⁶ *ibid.*, pxiii.

During this Inquiry the Committee became concerned about both the amount of information available concerning Western Australia's water resources and the quality of that information. For example, the 2007 Department of Water report on water resources in the south west utilises statistics on surface water as per a CSIRO March 2005 report.¹⁹⁷ In turn, the CSIRO report is partially based on data from as far back as the Western Australia Water Assessment 2000, which formed part of the 2000 National Water Audit,¹⁹⁸ suggesting that a 2007 report is informed by 2000 or earlier statistics. In its 2006-2007 Annual Report, the WRC indicated that investigations into the state's water resources are ongoing.¹⁹⁹ According to Professor John Pigram of the University of New England, there are significant deficiencies in data relating to groundwater management in Australia, especially over the long term.²⁰⁰

While Professor Pigram's comments relate to national data, and the WRC 2006-2007 Annual Reports indicates that investigations into the state's water resources are ongoing,²⁰¹ it is not clear to the Committee whether present statistics and other data provide an accurate picture of the amount and quality of water in Western Australia. According to IAL-WA, not enough is presently known about water in this state to manage it well.²⁰² In discussing the potential for managing water resources via a system of allocations from consumptive pools, IAL-WA stated that:

*one of the problems with that approach is the reality of the idea that we now know exactly the size of our consumptive pool. We are unable to know the size of the pool because we are still learning what our actual water resources consist of; therefore, it is a consumptive pool with a fairly fuzzy edge.*²⁰³

According to the DoW's April 2007 report, *South West Water Resources - Regional Overview*, 'there is very little usage data available from the South West to confirm how much unlicensed use is occurring, or how much of licensed entitlements are actually being used at any given time'.²⁰⁴ This is also the position of the Collie Preston Water Action Group who suggested that:

¹⁹⁷ Department of Water, *South West Water Resources - Regional Overview*, Government of Western Australia, Perth, April 2007, p34.

¹⁹⁸ CSIRO, *Context Report on South West Water Resources For: Expert Panel Examining Kimberley Water Supply Options*, Government of Western Australia, Perth, March 2005, p91.

¹⁹⁹ Water and Rivers Commission, *Water and Rivers Commission Annual Report 2006 -07 (Number 12)*, Water and Rivers Commission, Perth, September 2007, px.

²⁰⁰ Pigram, John J., *Australia's Water Resources: From Use to Management*, CSIRO Publishing, Collingwood, Victoria, 2006, p26.

²⁰¹ Water and Rivers Commission, *Water and Rivers Commission Annual Report 2006 -07 (Number 12)*, Water and Rivers Commission, Perth, September 2007, px.

²⁰² Mr Douglas Hall, Industry Development Officer, Irrigation Australia - WA Region, *Transcript of Evidence*, 15 January 2008, p2.

²⁰³ Mr Douglas Hall, Industry Development Officer, Irrigation Australia - WA Region, *Transcript of Evidence*, 15 January 2008, p7.

²⁰⁴ Department of Water, *South West Water Resources - Regional Overview*, Government of Western Australia, Perth, April 2007, p34.

*it is like the argument currently going on with the Gnangara mound or Yarragadee, whether you use the water or not. I have tried to get information on what is actually used from Jorg Imberger from the Centre for Water Research. Everybody says, "We know that" but they do not really know. They have some global figures. I think the Department for Water was quite honest when it said that it did not have a clue how much water is used because there has never been a comprehensive approach to water. Industry uses water, mining uses water, it is used for power generation and farming, and people use water. But I have not seen a really comprehensive approach to it. It might exist but I doubt it.*²⁰⁵

The Shire of Manjimup also suggested that the modelling used by the DoW is necessarily based on information gathered, but that information:

*makes certain assumptions about land form - whether it is native vegetation or clear pasture and what the run-offs are, rainfalls and those sorts of things. It is largely all computer modelled ... [and] when we have inquired ourselves about the effect of water on a particular property, the response has been that the modelling tends to be on a catchment basis. It is not as refined as we would like to think it is. We cannot get down to finding out the effect on that immediate property or the neighbour.*²⁰⁶

The Committee was advised that systems in Australia, including Western Australia, have been allowed to run down. As Professor Jorg Imberger stated:

*if you look at the Water and Rivers Commission and the government agencies generally for monitoring, you see that the amount of money being spent on monitoring has been decreasing.*²⁰⁷

*You cannot really be talking about monitoring anything when in actual practice everything is being shut down stream monitoring, groundwater monitoring, everything - all sorts of monitoring. If you go and try to find long-term records, it is next to impossible these days.*²⁰⁸

*... also rainfall. Rain gauges have dropped amazingly.*²⁰⁹

It is this lack of data that, according to Professor Imberger, makes it difficult for the state to address problems concerning water.²¹⁰ The Conservation Council of Western Australia Inc. is particularly scathing in its criticism of the lack of monitoring data in the state. The Council

²⁰⁵ Mr Harry Ortheil, Farmer, Collie Preston Water Action Group, *Transcript of Evidence*, 8 January 2008, pp11-12.

²⁰⁶ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p8.

²⁰⁷ Professor Jorg Imberger, Director, Centre for Water Research, *Transcript of Evidence*, 20 December 2007, p2.

²⁰⁸ Professor Jorg Imberger, Director, Centre for Water Research, *Transcript of Evidence*, 20 December 2007, p3.

²⁰⁹ *ibid.*, p10.

²¹⁰ *ibid.*, p4.

advised the Committee that while the state ‘is in a fortunate situation relative to the other State jurisdictions - few water management areas are at a situation of over-allocation’, it believed that ‘the formal statewide identification is based on largely inadequate monitoring data’.²¹¹ The Committee is concerned that there is a significant amount of data available from sources such as the Centre for Water Resources, mining companies, water cooperatives and others that does not appear to be utilised.

In discussing the annual sustainable yield of groundwater resources in the state (6,300 GL) and the current allocation limit (3,800 GL), the *SWP* states that ‘this reflects relatively low levels of resource knowledge and use in most areas of the State and allows for water to be set aside to support the environment’.²¹²

The Auditor General’s 2003 *Second Public Sector Performance Report* on the management of water resources in Western Australia noted some major challenges facing the state at that time. Among these was the fact that:

*the State’s ground and surface water monitoring program has been progressively reduced. As a result, WRC [Waters and Rivers Commission] does not have the information needed to accurately determine the sustainable level of groundwater and surface water use in many areas of the State.*²¹³

Investment in the state’s water investigations programme has been reduced from approximately \$2 million in 1990 to approximately \$300,000 in 2002, or from \$2.8 million to \$314,000 when Consumer Price Index (CPI) adjustments are made. At that time, the WRC estimated that an additional \$3 million was necessary to allow it to maintain the network and undertake minimal groundwater investigations.²¹⁴

The evidence presented to the Committee suggests that data regarding the extent and quality of the state’s water resources is inadequate. However, the *SWP* states that ‘the identification of knowledge gaps will be addressed through research and development’.²¹⁵ The *SWP* also advises that:

the water resources knowledge base is being upgraded and information will be more transparent and accessible to the community. This includes information on water quality, water allocated to the environment, climatic changes, interactions between ground and

²¹¹ Submission No. 31 from Conservation Council of Western Australia Inc., 19 December 2007, p2.

²¹² Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p22.

²¹³ Auditor General for Western Australia, *Second Public Sector Performance Report 2003*, Government of Western Australia, Perth, 2003, p4.

²¹⁴ *ibid.*, p7.

²¹⁵ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p69. The *SWP* also notes that increased capacity of all sectors of the community will help address issues concerning knowledge gaps.

*surface water systems, registers of water entitlements and allocations, conditions, usage, compliance and trading.*²¹⁶

The implementation plan for the NWI outlines the Groundwater Investigation Program and the Surface Water Investigation Program, and the implementation timetable for the Knowledge and Capacity Building section of the report shows 2020 as the end date for the groundwater program.²¹⁷ The surface water program is not mentioned in the timetable. The DoW acknowledged that their investigations program had been improved through a:

*considerable increase in funds particularly with regard to groundwater investigations and the growing reliance in a lot of areas on groundwater. So there has been a significant groundwater investigation program established.*²¹⁸

Finding 1

That extensive research and analysis of existing water resources, and their use and management is needed in order to provide a solid basis for sustainable planning. This is also a requirement of the National Water Initiative.

Recommendation 1

That government makes further significant investment to ensure ongoing collection, analysis and use of quality data.

Recommendation 2

Water data should be readily available to all stakeholders.

²¹⁶ *ibid.*

²¹⁷ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, pp105-06.

²¹⁸ Mr John Ruprecht, Acting Director General, Department of Water, *Transcript of Evidence*, 24 January 2008, p21.

CHAPTER 3 NATIONAL WATER INITIATIVE

3.1 Background

In his introduction to the *State Water Plan 2007 (SWP)*, the Minister for Water Resources, the Hon. John Kobelke MLA, states that the government is introducing new approaches to water management, including ‘significant increases in metering and securing water for the environment and use through statutory water management plans and new forms of entitlement’.²¹⁹ By making a commitment to the National Water Initiative (NWI) the state obtains ‘access to policy, funding and joint research projects to improve the security of water for the environment and for use’.²²⁰ Legislation relating to water resource management and water services are also undergoing substantial review and amendment, with one object of this legislative reform being the implementation of the state’s water reform programme and the NWI.²²¹ The *SWP* also notes that water management cost recovery is required under the NWI.²²² Furthermore, the state’s water policy framework ‘facilitates the implementation of the National Water Initiative in a manner appropriate for Western Australia’.²²³ This Inquiry is concerned with the introduction of water licence administration fees by the government of Western Australia under the *SWP* as part of its new approach to water management, and ‘in conformity with the National Water Initiative’.²²⁴ Given that the state’s water reform programme is so closely linked with the NWI, the following aims to provide a brief background to the development of the NWI and its key elements as they relate to this Inquiry.

The sustainable management of water resources is a concern to governments around the world. This concern can be traced to the World Conservation Strategy and the Brundtland Commission of the 1980s, the subsequent United Nations Conference on Environment and Development in Rio de Janeiro in 1992, and the 2002 World Summit on Sustainable Development (WSSD) in Johannesburg, South Africa.²²⁵ In Australia, reform has also been driven by the 1992 Industry Commission report, *Water Resources and Waste Water Disposal*.²²⁶

²¹⁹ Department of Water, ‘Introduction from the Minister’, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p3.

²²⁰ Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p9.

²²¹ *ibid.*, p13.

²²² *ibid.*, p33.

²²³ *ibid.*, p48.

²²⁴ Hon John Kobelke, Minister for Water Resources, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 13 June 2007, p3060.

²²⁵ Pigram, John J., ‘Economic Instruments in the Management of Australia’s Water Resources: A Critical View’, *Water Resources Development*, vol. 15, no.4, 1999, p493; United Nations, Earth Summit Agenda 21. Available at: <http://www.un.org/esa/sustdev/documents/agenda21/index.htm>. Accessed on 16 January 2008.

²²⁶ Australian Industry Commission, *Water Resources and Waste Water Disposal*, Australian Industry Commission, Canberra, 1992.

Changing attitudes to water as a resource, coupled with demands that are often in competition, have led to new policies and planning initiatives, which, in turn, have required new organisational structures and been accompanied by a move toward improved efficiencies in the management of existing water resources.²²⁷ In Australia there has been a:

*greater reliance on market forces, linked to an enforceable system of property rights, [which] is seen as preferable to rule-based and often subsidized management of water resources.*²²⁸

A number of other factors are identified as drivers of water reform and policy change in Australia:

- changes in the perception of the role of government and the public sector in resource management generally;
- changes in public perception about water and its value;
- difficulties in identifying possible resources that can be harvested in a cost-effective manner;
- economic and financial constraints arising from increased competition for public funds;
- greater involvement of the private sector due to increased calls for smaller government and reduced public sector involvement;
- increased corporatisation and privatisation of water utilities and authorities; and
- the transfer of government-run irrigation schemes to private, irrigator-controlled management bodies.²²⁹

Such restructuring of water administration has led to the ‘transfer of financial responsibility and accountability to the new managers’ and required significant legislative review.²³⁰

In February 1994, the Council of Australian Governments (COAG) received a report from the Working Group on Water Resource Policy which had been commissioned in June 1993. The report noted in relation to the water industry the existence of the following:

- *approaches to charging that often result in commercial and industrial users of water services, in particular, paying more than the costs of service provision;*

²²⁷ Pigram, John J., ‘Economic Instruments in the Management of Australia’s Water Resources: A Critical View’, *Water Resources Development*, vol. 15, no.4, 1999, p493.

²²⁸ *ibid.*, p494.

²²⁹ *ibid.*, pp494-95.

²³⁰ *ibid.*, p495.

- *major asset refurbishment needs in rural areas for which, in general, adequate financial provision has not been made;*
- *impediments to irrigation water being transferred from low value broad-acre agriculture to higher value uses in horticulture, crop production and dairying;*
- *service delivery inefficiencies; and*
- *a lack of clear definition concerning the role and responsibilities of a number of institutions involved in the industry.*²³¹

The report also notes ‘widespread natural resource degradation which has an impact on the quality and/or quantity of the nation’s water resources’.²³²

(a) Strategic Framework

Following receipt of the Working Group’s report, and recognising that the management of Australia’s water resources needed ‘significant change’, COAG ‘developed a strategic framework for water reform encompassing economic, environmental and social objectives’.²³³

The COAG strategic framework and related agreements aim to:

- improve efficiency and effectiveness of urban and rural water supply, and wastewater industries; and
- institute water management planning to incorporate the effects of agricultural, industrial, household and environmental use.²³⁴

The framework is also based on:

- natural resource management;
- pricing that includes the reduction or elimination of cross-subsidies;
- making subsidies transparent;
- more rigorous approaches to future investment;

²³¹ National Competition Council, *Compendium of National Competition Policy Agreements*, 2nd edn, Commonwealth of Australia, Canberra, June 1998, p101.

²³² *ibid.*, p102.

²³³ National Competition Council, *The 2003 National Competition Policy Assessment Framework for Water Reform*, National Competition Council, Canberra, February 2003, p3. In 1995 COAG received a second report from the Steering Group reinforcing its adopted strategic framework.

²³⁴ National Competition Council, *The 2003 National Competition Policy Assessment Framework for Water Reform*, National Competition Council, Canberra, February 2003, p3.

- adoption of trading arrangements in water entitlements;
- clarification of property rights;
- allocation of water to the environment;
- institutional reform; and
- improved public consultation and participation.²³⁵

The framework requires states and territories to ‘adopt charges based on the principles of consumption-based pricing and full cost recovery by 1999, with full cost recovery in respect of rural water supply achieved by 2001’.²³⁶ There was recognition that states’ and territories’ ability to meet these targets was dependent on necessary financial resources.

(b) The National Water Initiative and National Competition Policy

In April 1995 COAG approved the introduction of a National Competition Policy (NCP) and, by agreement, the implementation of water industry reform was linked to NCP payments. The NCP reforms were aimed at:

- *the extension of the provisions of the Trade Practices Act 1974 prohibiting anti-competitive activities (such as the abuse of market power and market fixing) to all businesses. (Previously, most government owned and some private businesses were exempt)*
- *the introduction of competitive neutrality so privately owned businesses can compete with those owned by Government on an equal footing*
- *the review and reform of all laws that restrict competition unless it can be demonstrated that the restrictions are in the public interest*
- *the development of a national access regime to enable competing businesses to use nationally significant infrastructure (such as airports, electricity cables, gas pipelines and railway lines); and*
- *specific reforms to the gas, electricity, water and road transport industries.*²³⁷

NCP reform was not optional and the payments to the states were dependent upon the implementation of such reforms and the meeting of set milestones, including those attached to water reform. Commitments to water reform included national milestones in relation to surface

²³⁵ National Competition Council, *Compendium of National Competition Policy Agreements*, 2nd edn, Commonwealth of Australia, Canberra, June 1998, p99, and 102.

²³⁶ *ibid.*, p99, 102 and 103.

²³⁷ National Competition Council, ‘Overview of National Competition Policy,’ nd. Available at: <http://www.ncc.gov.au/articleZone.asp?articleZoneID=16>. Accessed on 16 January 2008.

water, groundwater, and urban and rural water systems and services, ensuring that ‘no sector of the water industry and no water agency or organization remain unaffected’.²³⁸

Although no water reform obligations were linked to the first round of payments, payments in the 1999-2000 round were dependent on states’ and territories’ effective implementation of the 1994 COAG framework, and third round payments (2001-02) required states and territories to give ‘full effect to, and continue[ing] to fully observe, all COAG agreements on water’.²³⁹

While the 2003 National Competition Council assessment of Western Australia’s progress in implementing water reforms notes that ‘the Australian Treasurer suspended 10 per cent of Western Australia’s 2003-04 competition payments, pending the state satisfactorily addressing its urban water and wastewater pricing obligations’,²⁴⁰ the Committee is aware that NCP provisions no longer apply, and has been given to understand that the \$4 million suspended has since been received from the Commonwealth.²⁴¹

3.2 The Development of the National Water Initiative

In Australia governments grant access to, and use of, water for irrigation, industrial use, mining, use in rural and urban communities, and amenity purposes. The allocation of water is accompanied by rights and responsibilities for both the granting body and water users. Water users have ‘a right to a share of the water made available for extraction at any particular time, and a responsibility to use this water in accordance with usage conditions set by government’.²⁴² The responsibility of governments granting access to water is ‘to ensure that water is allocated and used to achieve socially and economically beneficial outcomes in a manner that is environmentally sustainable’.²⁴³

²³⁸ Pigram, John J., ‘Economic Instruments in the Management of Australia’s Water Resources: A Critical View’, *Water Resources Development*, vol. 15, no.4, 1999, p497.

²³⁹ National Competition Council, *Compendium of National Competition Policy Agreements*, 2nd edn, Commonwealth of Australia, Canberra, June 1998, p99. See also: Council of Australian Governments, Meeting 11 April 1995, ‘Attachment A - Agreement to Implement the National Competition Policy and Relation Reforms’, 1995, pp2-3. Available at: http://www.coag.gov.au/meetings/110495/attachment_a.htm. Accessed on 22 November 2007.

²⁴⁰ National Competition Council, *Assessment of Governments’ Progress in Implementing the National Competition Policy and Related Reforms: 2004, Volume Two: Water*, Commonwealth of Australia, Canberra, pxiii.

²⁴¹ Department of Water, *Committee Briefing*, 6 December 2007.

²⁴² Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, p1. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

²⁴³ *ibid.*

Writing in 2003, Young and McColl noted COAG's increased attention on water resources, an attention they felt 'suggests that much Australian water use is inefficient'.²⁴⁴ They argued that while 'Australia may be the driest inhabited continent in the world ... from an economic perspective, the nation's water resources are abundant'.²⁴⁵ Drawing attention to a study on the role of water in the economy that revealed 'little to suggest that water is a constraint upon opportunities for economic growth', Young and McColl concluded that 'mismanagement not shortage is the issue'.²⁴⁶ At that time, Australia had 'a plethora of water-licensing systems onto which mechanisms for managing externalities, rationing scarcity and trading have been bolted'.²⁴⁷ Young and McColl suggested that there were two main policy challenges facing water resource and environmental managers:

- *the search for a robust set of institutional arrangements, defined in the broadest sense possible. to enable the efficient allocation and management of water resources and both consumptive and non-consumptive water use through time; and*
- *the search for an efficient and equitable transition pathway to such a set of institutional arrangements.*²⁴⁸

It was around this time, and against this backdrop, that the NWI was developed. Building on the 1994 COAG water reform framework, and its 1996 amendments, the NWI was developed and agreed to against an increased recognition of, and understanding that:

- water management is a national issue;
- demand for water has increased;
- water use productivity and efficiency needs to be improved;
- better management of water resources in Australia is necessary;
- there are regional and jurisdictional variations in progressing water reforms;
- service to rural and urban communities needs to be improved;
- river and groundwater systems need to be remediated to ensure environmentally sustainable extraction levels;

²⁴⁴ Young, M.D. and McColl, J.C., 'Robust Reform: The Case for a New Water Entitlement System for Australia', *The Australian Economic Review*, vol. 36, no.2, May 27, 2003, p225.

²⁴⁵ *ibid.*

²⁴⁶ *ibid.*

²⁴⁷ *ibid.*, p226.

²⁴⁸ *ibid.*, p228. Emphasis in original.

- the water management requirements of surface and groundwater systems need to include their interconnection;
- certainty of investment needs to be improved; and
- water markets need to be ‘effective and efficient’.²⁴⁹

The NWI was signed on 25 June 2004 by all state and territory governments with the exception of Western Australia and Tasmania. Western Australia signed the initiative on 6 April 2006;²⁵⁰ Tasmania on the 2 June 2005.²⁵¹ The Committee is unsure as to what impact, if any, the recent change of federal government will have on the National Water Initiative. The Committee was briefed by officers of the National Water Commission (NWC) in December 2007 and at this time it was too soon after the change in government for them to comment on the effect this may have on the NWI or if the NWI would remain in place.

The following discussion provides an outline of the main elements of the NWI in its current form, and that are relevant to the Economics and Industry Standing Committee Inquiry into Water Licensing and Services. It is important to note that it is not a summary of the entire Intergovernmental Agreement.

The NWI is intended to achieve:

*a nationally-compatible, market, regulatory and planning based system of managing surface and groundwater resources for rural and urban use that optimises economic, social and environmental outcomes.*²⁵²

Parties to the agreement committed to developing implementation plans within 12 months of signing and to making ‘substantial progress towards implementation of the Agreement by 2010’.²⁵³ States and territories that share water resources also committed to cooperating in the development of their respective plans and to ‘review existing cross-jurisdictional water sharing agreements to ensure their consistency with this Agreement [the NWI]’.²⁵⁴

²⁴⁹ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, p1. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

²⁵⁰ Department of Water, *Western Australia’s Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p6.

²⁵¹ Department of Primary Industries and Water, ‘National Water Initiative’, August 2007. Available at: <http://www.dpiw.tas.gov.au/inter.nsf/WebPages/JMUY-6G29UP?open>. Accessed on 19 November 2007.

²⁵² Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, p3. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

²⁵³ *ibid*, p2.

²⁵⁴ *ibid*.

Implementation plans were accredited by the NWC which was established specifically for this purpose under the NWI agreement. The Natural Resource Management Ministerial Council (NRMMC) is responsible for oversight of the NWI's implementation. A separate agreement, the MDB Intergovernmental Agreement, was developed to 'address the overallocation of water and achievement of environmental objectives' in the Murray-Darling Basin.²⁵⁵

The objectives of the NWI are to be achieved through:

- i) *clear and nationally-compatible characteristics for secure water access entitlements;*
- ii) *transparent, statutory-based water planning;*
- iii) *statutory provision for environmental and other public benefit outcomes, and improved environmental management practices;*
- iv) *complet[ing] the return of all currently overallocated or overused systems to environmentally-sustainable levels of extraction;*
- v) *progressive removal of barriers to trade in water and meeting other requirements to facilitate the broadening and deepening of the water market, with an open trading market to be in place;*
- vi) *clarity around the assignment of risk arising from future changes in the availability of water for the consumptive pool;*
- vii) *water accounting which is able to meet the information needs of different water systems in respect to planning, monitoring, trading, environmental management and on-farm management;*
- viii) *policy settings which facilitate water use efficiency and innovation in urban and rural areas;*
- ix) *addressing future adjustment issues that may impact on water users and communities; and*
- x) *recognition of the connectivity between surface and groundwater resources and connected systems managed as a single resource.*²⁵⁶

²⁵⁵ *ibid.* The MDB Agreement was signed by the Commonwealth Government and the Governments of New South Wales, Victoria, South Australia and the Australian Capital Territory.

²⁵⁶ *ibid.*, pp3-4. Emphasis in original.

(a) Key Elements of the Agreed National Water Initiative Outcomes and Commitments

The NWI is considered a best-practice framework that is based on the fundamental element of planning which, in turn, relies on a system for the identification of ground and surface water resources, and a commitment to undertake planning based on that information and to engage with the community to ensure water plans incorporate community values. There are eight key elements that form the basis of the agreed NWI outcomes and commitments to action.

(i) *Water Access Entitlements and Planning Framework*

One key outcome of water access entitlements and planning frameworks is to provide statutory specification of the nature of entitlements and a statutory basis for environmental and public benefit outcomes in the protection of water sources and dependent ecosystems.²⁵⁷ Amongst other things, frameworks are also to:

implement firm pathways and open processes for returning previously overallocated and/or overdrawn surface and groundwater systems to environmentally-sustainable levels of extraction; [and]

*protect the integrity of water access entitlements from unregulated growth in interception through land-use change.*²⁵⁸

States and territories agreed ‘to modify their respective legislations and administrative regimes ... to ensure that their water access entitlements and planning frameworks incorporate’²⁵⁹ the agreed actions concerning water access entitlements and planning.

The consumptive use of water requires a water access entitlement as a share of the consumptive pool of a specific water resource, as determined by and consistent with a water plan.²⁶⁰ Water access entitlements will:

- i) specify the essential characteristics of the water product;*
- ii) be exclusive;*
- iii) be able to be traded, given, bequeathed or leased;*
- iv) be able to be subdivided or amalgamated;*

²⁵⁷ *ibid.* p4.

²⁵⁸ *ibid.*, p5.

²⁵⁹ *ibid.*, p5.

²⁶⁰ *ibid.*, p6.

- v) *be mortgageable (and in this respect have similar status as freehold land when used as collateral for accessing finance);*
- vi) *be enforceable and enforced; and*
- vii) *be recorded in publicly-accessible reliable water registers that foster public confidence and state unambiguously who owns the entitlement, and the nature of any encumbrances on it (paragraph 59 refers).*

COAG stated that water allocation and entitlement systems must clearly separate water property rights from land title and provide clear specifications concerning ‘ownership, volume, reliability, transferability and, if appropriate, quality’.²⁶¹

Paragraph 33 (1) of the NWI states:

*fixed term or other types of entitlements such as annual licences will only be issued for consumptive use where this is demonstrably necessary, such as in Western Australia with poorly understood and/or less developed water resources, and/or where the access is contingent upon opportunistic allocations, and/or where the access is provided temporarily as part of an adjustment strategy, or where trading may otherwise not be appropriate. In some cases, a statutory right to extract water may be appropriate.*²⁶²

Governments are required to develop statutory water plans ‘for surface water and groundwater management units in which entitlements are issued’.²⁶³ Along with providing secure ecological outcomes, water plans are intended to ensure:

*resource security outcomes by determining the shares in the consumptive pool and the rules to allocate water during the life of the plan.*²⁶⁴

Water plans are to be prepared in accordance with NWI requirements and their performance outcomes monitored.

With regards to overallocated and/or overused systems, governments agreed to develop pathways to address any overallocation and/or overuse of systems while also meeting environmental and other public benefit outcomes. Substantial progress toward adjusting overallocated and/or overused systems is required to be made by 2010.²⁶⁵ The aim is to reduce stress on water systems

²⁶¹ National Competition Council, *Compendium of National Competition Policy Agreements*, 2nd edn, Commonwealth of Australia, Canberra, June 1998, p105.

²⁶² Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, p6. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

²⁶³ *ibid.*, p7.

²⁶⁴ *ibid.*

²⁶⁵ *ibid.*, p8.

and, as part of the environmental requirements of the NWI, improve and ‘maintain the health and viability of river systems and groundwater basins’.²⁶⁶

Risk of reductions to, or less reliable, water allocation under a water access entitlement is to be borne by the users up until 2014. Risks under water plans commencing or renewed after 2014 are shared between state/territory and federal governments over each ten year period, according to a risk sharing formula, with the water access entitlement holder bearing the first 3% reduction in water allocation.²⁶⁷ Governments must bear the risks arising from changes to government policy.

Indigenous access is to be provided for and planning should take into consideration the possible existence of native title rights to water.

The NWI recognises the potential for land use change activities to intercept significant volumes of water, both surface and ground water. Such activities include farm dams and bores, intercepting and storing overland flows, and large-scale plantation forestry, and such activities are currently performed without water access entitlement.²⁶⁸ In order to meet environmental objectives and to ensure the integrity of water access entitlements, such activities should be subjected to planning and regulation via the application of ‘appropriate planning, management and/or regulatory measures where necessary’.²⁶⁹

Parties to the NWI agreed that in fully allocated, overallocated or approaching fully allocated systems, significant interception activities should be recorded, possibly using a licensing system, and a ‘robust compliance monitoring regime’ would be implemented. Furthermore, ‘proposals for additional interception activities above an agreed threshold size, will require a *water access entitlement*’.²⁷⁰ For water systems either not yet fully allocated or not approaching full allocation, estimates of interception amounts should be made and monitored against a calculated threshold level. Once the threshold level is reached all further significant interception proposals will need a water access entitlement.²⁷¹

²⁶⁶ National Competition Council, *Compendium of National Competition Policy Agreements*, 2nd edn, Commonwealth of Australia, Canberra, June 1998, p105.

²⁶⁷ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, p9. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

²⁶⁸ *ibid.*

²⁶⁹ *ibid.*, pp9-10.

²⁷⁰ *ibid.*, p10.

²⁷¹ *ibid.*, p10.

(ii) Water Markets and Trading

It is intended that water use should ‘maximise its contribution to national income and welfare’.²⁷² Water markets and trading should aim to achieve:

- efficient water markets;
- opportunities for trading, inter and intra state/territory;
- minimum transaction costs on trades;
- an appropriate mix of water products based on tradeable access entitlements; and
- the protection of environmental and third-party interests.²⁷³

As well as agreeing to actions such as establishing ‘compatible institutional and regulatory arrangements’ and removing institutional barriers to trade, signatories to the NWI agreed to ‘the application of consistent pricing policies’.²⁷⁴

In the case of rural water services, a system of tradeable entitlements is intended to ‘allow water to flow to high value uses subject to social, physical and environmental constraints’.²⁷⁵

As part of its institutional reform agenda, COAG agreed that greater responsibility could be devolved to local bodies for the management of areas such as irrigation provided they were supported by ‘appropriate regulatory frameworks’.²⁷⁶

(iii) Best Practice Water Pricing and Institutional Arrangements

It is this section of the NWI that sets down the user-pays principle for water delivery. Paragraph 64 of the NWI states:

The Parties agree to implement water pricing and institutional arrangements which:

- i) promote economically efficient and sustainable use of:*

²⁷² National Competition Council, *Compendium of National Competition Policy Agreements*, 2nd edn, Commonwealth of Australia, Canberra, June 1998, p106.

²⁷³ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*. 25 June 2004, p11. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

²⁷⁴ *ibid.* See also: National Competition Council, *Compendium of National Competition Policy Agreements*, 2nd edn, Commonwealth of Australia, Canberra, June 1998, p106.

²⁷⁵ National Competition Council, *Compendium of National Competition Policy Agreements*, 2nd edn, Commonwealth of Australia, Canberra, June 1998, p102.

²⁷⁶ *ibid.*, p107.

- a) *water resources;*
- b) *water infrastructure assets; and*
- c) *government resources devoted to the management of water;*
- ii) *ensure sufficient revenue streams to allow efficient delivery of the required services;*
- iii) *facilitate the efficient functioning of water markets, including inter-jurisdictional water markets, and in both rural and urban settings;*
- iv) *give effect to the principles of user-pays and achieve pricing transparency in respect of water storage and delivery in irrigation systems and cost recovery for water planning and management;*
- v) *avoid perverse or unintended pricing outcomes; and*
- vi) *provide appropriate mechanisms for the release of unallocated water.*²⁷⁷

While the purpose of this report is not to analyse the NWI, there are a number of points that can be noted about these intended, and agreed to, outcomes. First, there is an emphasis on efficiency - efficiency of service provision and of market functioning. Second, revenue streams must be sufficient to allow such efficiency. Third, the user-pays principle is clearly stated in connection with cost recovery for water planning and management. However, there is no guarantee that the user-pays principle will result in sufficient revenue streams to allow efficiency of service delivery. Fourth, efficient water markets are to operate in rural and urban environments. Fifth, while the avoidance of perverse or unintended pricing is agreed to, there is no guarantee that the application of user-pays principles will result in pricing that is not perverse (however that might be defined) or that the pricing outcome attained will be as intended.

Actions taken to achieve outcomes for water storage and delivery must be in accordance with NCP commitments and include:

- i) *consumption based pricing;*
- ii) *full cost recovery for water services to ensure business viability and avoid monopoly rents, including recovery of environmental externalities, where feasible and practical; and*
- iii) *consistency in pricing policies across sectors and jurisdictions where entitlements are able to be traded.*²⁷⁸

²⁷⁷

Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, p13. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007. See also: National Competition Council, *Compendium of National Competition Policy Agreements*, 2nd edn, Commonwealth of Australia, Canberra, June 1998, p99 and 102.

In relation to cost recovery for planning and management, costing and pricing should involve the identification of ‘all costs associated with water planning and management,’ including ‘the provision of registers, accounting and measurement frameworks and performance monitoring and benchmarking’.²⁷⁹ It should also identify those costs that can be applied to water access entitlement holders. These costs should not include those applicable to government activities such as policy development. Charges for planning and management should also be ‘linked as closely as possible to the costs of activities or products’.²⁸⁰

The NWI requires all parties to report annually on cost recovery for water planning and management. Paragraph 68 states that these reports must include:

- i) *the total cost of water planning and management; and*
- ii) *the proportion of the total cost of water planning and management attributed to water access entitlement holders and the basis upon which this proportion is determined.*²⁸¹

Future releases of unallocated water should occur, where practically possible, through market based mechanisms and is justified only after the exploration of alternatives such as ‘water trading, making use of the unused parts of existing entitlements or by increasing water use efficiency’.²⁸²

Signatories agreed to examine the ‘feasibility of using market based mechanisms such as pricing to account for positive and negative environmental externalities associated with water use’, and where feasible, pricing should include externalities such as climate change and land use change.²⁸³

Benchmarking of pricing and service quality is to be reported independently, publicly and annually. Each jurisdiction will meet the costs of running their performance and benchmarking systems through recovery of water management costs.²⁸⁴

Independent bodies are to be used to set or review prices and price setting processes for water storage and delivery by government water service providers.

²⁷⁸ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, p13. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007. While water reform is no longer tied to NCP payments, the commitment to its principles remains.

²⁷⁹ *ibid.*, p14.

²⁸⁰ *ibid.*

²⁸¹ *ibid.*

²⁸² *ibid.*, p15.

²⁸³ *ibid.*

²⁸⁴ *ibid.*

(iv) Integrated Management of Environmental Water

Environmental and other public benefit outcomes are to be identified and the necessary management practices and institutional arrangements implemented. The NWI sets out the principles by which this can be achieved, including options for water recovery and the assessment of socio-economic costs and benefits.²⁸⁵

(v) Water Resource Accounting

Water resource accounting should result in ‘public and investor confidence in the amount of water being traded, extracted for consumptive use, and recovered and managed for *environmental and other public benefit outcomes*’.²⁸⁶ Water accounting systems are to be benchmarked on a national scale.

The NWI stipulates the circumstances under which metering should occur:

- i) *for categories of entitlements identified in a water planning process as requiring metering;*
- ii) *where water access entitlements are traded;*
- iii) *in an area where there are disputes over the sharing of available water;*
- iv) *where new entitlements are issued; or*
- v) *where there is a community demand.*²⁸⁷

National standards for meter specifications and installation, and for ‘ancillary data collection systems associated with meters’ are to be developed.²⁸⁸

(vi) Urban Water Reform

The NWI framework is intended to produce ‘a restructuring of water tariffs and reduced or eliminated cross-subsidies for metropolitan and town water services’.²⁸⁹ The impact of this

²⁸⁵ *ibid*, p17.

²⁸⁶ *ibid*.

²⁸⁷ *ibid*, pp18-19.

²⁸⁸ *ibid*, p19.

²⁸⁹ National Competition Council, *Compendium of National Competition Policy Agreements*, 2nd edn, Commonwealth of Australia, Canberra, June 1998, p102.

restructuring on domestic consumers is expected to be offset by cost savings resulting from ‘more efficient, customer-driven, service provision’.²⁹⁰

Signatories to the NWI agreed to the following outcomes for urban water reform:

- i) provide healthy, safe and reliable water supplies;*
- ii) increase water use efficiency in domestic and commercial settings;*
- iii) encourage the re-use and recycling of wastewater where cost effective;*
- iv) facilitate water trading between and within the urban and rural sectors;*
- v) encourage innovation in water supply sourcing, treatment, storage and discharge; and*
- vi) achieve improved pricing for metropolitan water (consistent with paragraph 66.i) to 66.iv)).²⁹¹*

The NWI sets out a number of actions required to achieve these outcomes, including the Water Efficiency Labelling Scheme and a ‘Smart Water Mark’ for household gardens.

(vii) Community Partnerships and Adjustment

In an effort to engage water users and other stakeholders, signatories to the NWI agreed upon outcomes such as transparency in decision making, ensuring available of information at key decision points, timely consultation with all stakeholders regarding review of water plans and other significant decisions.²⁹²

(viii) Knowledge and Capacity Building

The signatories agreed that knowledge and capacity building are required for the implementation of the NWI, and noted the significant national investment in these through institutions such as CSIRO Water Flagship, the cooperative research programme and Land and Water Australia, as well as various federal, state, territory and local government agencies.

²⁹⁰ *ibid*, p102. For a critique of urban water reform under the NWI refer, for example, to: Byrnes, Joel, Crase, Lin, and Dollery, Brian, ‘Regulation Versus Pricing in Urban Water Policy: The Case of the Australian National Water Initiative’, *The Australian Journal of Agricultural and Resource Economics*, vol. 50, 2006, p437; Crase, Lin and Dollery, Brian, ‘Water rights: A Comparison of the Impacts of Urban and Irrigation Reforms in Australia’, *The Australian Journal of Agricultural and Resource Economics*, vol. 50, 2006, p451.

²⁹¹ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, p19. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

²⁹² *ibid*, p20.

3.3 Pricing

Water pricing is a key area of reform under NWI as it calls for full cost recovery and user pays, consumption-based pricing.²⁹³ COAG agreed that a prescriptive, universally applicable approach to water pricing is not workable and that ‘to apply a rigid formula to cost recovery is likely to cause unintended consequences in pricing’.²⁹⁴ There would be a variety of circumstances particular to each state and territory to be considered in determining whether or not full cost recovery conditions have been met.²⁹⁵

Importantly, section v of *Schedule D: Principles for Regulatory Approvals for Water Use and Works* states that with regards to regulatory approvals, signatories to NWI will ‘minimise application and compliance costs for applicants’.²⁹⁶ *Schedule F: Guidelines for Water Registries*, section 4, also states that water registers will be administered in accordance with procedures that ‘seek to minimise transaction costs for market participants’.²⁹⁷

3.4 Amendment, Review and Implementation

The agreement can be amended at the request of one party provided that all parties agree. The NWC will undertake periodic reviews and assessments of progress of the NWI and state and territory implementation plans. NWC reports to COAG are publicly available.

COAG held that between five to seven years would be required for implementation of the NWI framework.²⁹⁸

3.5 Perceptions of the National Water Initiative

During the course of the Inquiry it became clear to the Committee that considerable confusion and misunderstanding exists with regard to the NWI, its objectives and provisions, and its applicability and suitability to Western Australia. Such misunderstandings necessarily impact upon perceptions of Western Australia’s *State Water Plan 2007* and its acceptance or otherwise in the community. This is discussed in detail in Chapter 11 in this report. The balance of this chapter outlines the general perception of the NWI as provided to the Committee.

²⁹³ National Competition Council, *Compendium of National Competition Policy Agreements*, 2nd edn, Commonwealth of Australia, Canberra, June 1998, p111.

²⁹⁴ *ibid.*

²⁹⁵ *ibid.*, p112.

²⁹⁶ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, p34. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

²⁹⁷ *ibid.*, p37.

²⁹⁸ National Competition Council, *Compendium of National Competition Policy Agreements*, 2nd edn, Commonwealth of Australia, Canberra, June 1998, p102.

By far the most frequent comment expressed in submissions regarding the NWI was that it was based solely on the Murray-Darling Basin and, therefore, not suitable for Western Australia. It is generally seen as a ‘one size fits all’ approach, and calls were made for the government to ensure that it was adapted to Western Australian conditions.

Harvey Water, for example, states:

*it is abundantly clear that they [NWI conditions] are formulated solely for the purpose of managing the Murray Darling Basin and they [NWC] are simply hopeful that Western Australia will comply without demur.*²⁹⁹

Harvey Water suggests that Western Australia needs to develop local solutions that conform to the intent of the NWI, not ‘slavishly conform to the letter’ of the NWI; Western Australia should ‘negotiate to obtain satisfactory solutions which suit our water management strategies, policies and practices’.³⁰⁰ While Harvey Water acknowledges that the NWI allows for the ‘unbundling’ of water rights into ‘separate rights [... including] the right to draw water, to transport water and to use water’ and, thus, applicable respective licences, the co-operative is ‘not sure that they have particular importance or relevance in WA, or at least for our situation and at this time’.³⁰¹ In discussing criticism of the NWI as a model for Western Australia, Harvey Water reiterated this point, saying that ‘we very much need to reflect the intent of the IGA [NWI], not the actual letter of the law’.³⁰² While agreeing that ‘the bones of it [NWI] are good [... and that] [T]here is no problem with the ideas and the concepts behind it’, Harvey Water argued that ‘we need to make it fit how we do things in Western Australia and make sure it fits with what the NWI wants us to do’.³⁰³

Irrigation Australia - WA Region (IAL-WA) submit that ‘elements of the NWI framework designed to address the needs of the Murray Darling and the Great Artesian Basins, will probably not be relevant or useful in WA’ and, therefore, the government may ‘need to develop mechanisms appropriate to WA that do not meet NWI requirements’.³⁰⁴ While Professor Jorg Imberger advised that he was ‘in favour of signing up to it [NWI]’, he also said that he was ‘in favour of maybe motivating some changes in that, because that is totally biased because of the Murray-Darling system’.³⁰⁵ Professor Imberger believes that the NWI is not based on sustainability and, therefore, its fundamental premise is flawed. Nevertheless, he agrees that it does provide a reasonable framework and suggests that:

²⁹⁹ Submission No. 16 from Harvey Water, 7 December 2007, p4.

³⁰⁰ *ibid.*

³⁰¹ *ibid.*, p6.

³⁰² Mr Geoff Calder, General Manager, Harvey Water, *Transcript of Evidence*, 8 January 2008, p8.

³⁰³ *ibid.*

³⁰⁴ Submission No. 19 from Irrigation Australia - WA Region, 11 December 2007, p4.

³⁰⁵ Professor Jorg Imberger, Director, Centre for Water Research, *Transcript of Evidence*, 20 December 2007, p5.

*obviously, we are one country and we ought to have one policy. That seems pretty obvious to me. However, we should not have one standard for everybody. We should have a discussion both ways. They would benefit enormously from this sort of thinking.*³⁰⁶

Salitage Wines Pemberton, too, submits that the national water policy is ‘flawed’ and ‘has no relevance here in the West. Essentially it was a “one size fits all” policy and a pre election diversion specifically designed for the severe drought conditions impacting upon the Murray Darling Basin’.³⁰⁷ Similarly, the Western Australian Fruit Growers’ Association asserts that the NWI:

*was aimed at the Murray ... and more of the cooperative type of water. It has suited them perfectly for the use of a single consumptive pool of water that is regulated and controlled and can be traded through that system.*³⁰⁸

vegetablesWA, an organisation opposed to Western Australia becoming a signatory to the NWI, argued that:

*there was a lot of pressure put on the state in the end to sign it, but the facts remain that a lot of the National Water Initiative rules were drawn up as a result of bad management in the Murray-Darling Basin and those rules were put in place to try to fix a real problem. In those days there was no flexibility from the National Water Initiative and they had a one-fits-all approach.*³⁰⁹

vegetablesWA suggested that Western Australia signed the NWI because of ‘COAG inducements’ and believes ‘that has been a failure to date. Our vegetable industry and potato industry have been very disappointed in that situation and where we are today. It is a real mess’.³¹⁰ The Shire of Manjimup advised the Committee that they did not have a clear understanding of the NWI, but did:

*understand that it is agreement between the states for which there is compensation, providing a certain regime or forms of regime are introduced to manage water resources. I understand it was predominantly driven by the challenges present in the Murray-Darling Basin. Perhaps part of our angst is that it seems that the proposed solutions better fit that model than our model.*³¹¹

³⁰⁶ *ibid.*, pp5-6.

³⁰⁷ Submission No. 4 from Salitage Wines Pemberton, 28 November 2007, p2.

³⁰⁸ Mr Chris Scott, Orchardist, Western Australian Fruit Growers’ Association, *Transcript of Evidence*, 8 January 2008, p3.

³⁰⁹ Mr Jim Turley, Executive Officer, vegetablesWA, *Transcript of Evidence*, 15 January 2008, p4.

³¹⁰ *ibid.*

³¹¹ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p2.

Furthermore, the Shire of Manjimup was critical of the NWI and stated that ‘it has been reported to us that there is not a lot of flexibility in the NWI’.³¹² These comments from the Shire of Manjimup are particularly telling and exemplify the considerable confusion that was demonstrated to the Committee concerning the NWI. While the issues raised above are discussed further in Chapters 7 and 11, it is apposite to mention at this point that there is no compensation directly attached to the NWI, and that the NWI affords considerable flexibility to the states in the adoption of the key principles and elements of the agreement.

The Committee formed the view that the key issue in proclaimed areas or those yet to be proclaimed is the establishment of what the NWI describes as a transitional pathway toward statutory management plans. These plans should be based on the sustainable management of the whole area and reflect its specific needs.

Finding 2

There is considerable confusion regarding the National Water Initiative which is leading to anxiety concerning its suitability and adaptability for Western Australian conditions and circumstances.

Finding 3

The National Water Commission could have articulated its intentions more effectively.

Recommendation 3

The Department of Water must increase its efforts to ensure that the community is better informed in relation to the National Water Initiative and its ramifications, especially its impact on local areas.

³¹²

ibid.

CHAPTER 4 STRUCTURING FEES AND CHARGES FOR CURRENT AND FUTURE WATER LICENCES AND WATER RESOURCE MANAGEMENT

Before presenting the evidence to the Inquiry in detail, the Committee believes the following observations will assist in reading the chapters that follow. The Inquiry has revealed that the issue of water is extremely important to the community - we are all affected by decisions concerning water and its use. It is understandable, therefore, that it raises a good deal of passionate debate, as demonstrated in evidence to this Inquiry. This has been particularly so in relation to the question of who should pay for water and its licensing. As Gascoyne Water Co-operative Ltd acknowledge, this question is one 'that seems to be affected by emotional rather than practical reasoning at present'.³¹³ Again, this level of passion and emotion signifies the importance of water, water charges and water management to the state, the economy and the community.

4.1 The Separation of Water Resource Management from Water Licence Administration

As will be demonstrated throughout the report, there is a very high level of confusion and uncertainty in the community as to the purpose of the water licence administration regime being implemented and its relation to the overall function of water resource management. Given this, the Committee believes it is beneficial at this point to map out the place of water licensing in the overall management of water resources and outline the nature of charges for water management in Western Australia.

Improved integrated management of the state's diverse water resources is one anticipated outcome of the water resource management and planning under the *State Water Plan 2007 (SWP)*.³¹⁴ The *SWP* also provides for water resource management to be 'integrate[d] with land use planning and natural resource management processes'.³¹⁵ Water resource management planning involves, but is not limited to, 'the measurement and monitoring of the broader resource through to allocation planning and technical resource assessment'.³¹⁶ It includes activities associated with 'stream gauging, groundwater monitoring and technical hydrogeological assessment and the allocation plans, regional water plans and broader policies'.³¹⁷ While this may be stating the obvious, water resource management is about technically investigating, measuring and assessing the water

³¹³ Submission No. 2 from Gascoyne Water Co-Operative Ltd, 27 November 2007, p1.

³¹⁴ Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p4 and 49.

³¹⁵ *ibid*, p10.

³¹⁶ Mr John Ruprecht, Acting Director General, Department of Water, *Transcript of Evidence*, 24 January 2008, p9.

³¹⁷ *ibid*.

resource.³¹⁸ Further, the Department of Water (DoW) advised that in relation to the broader resource management areas it:

spends in the order of \$5 million a year on groundwater monitoring, surface water monitoring, database management and the provision of information to a range of community stakeholders and industry. These are very large costs involved...³¹⁹.

Logically, recovery of water resource management costs would involve recovery of costs associated with the above water-resource related activities. The DoW advised that:

what the National Water Initiative envisages is that nationally there will be agreement about principles for cost recovery of water resource management and planning. That is much broader than just water licence administration fees. Therefore, it envisages national agreement about the principles. Individual jurisdictions will then decide how they are going to apply those locally.³²⁰

According to the SWP:

the Western Australian Government is participating in a national committee to review and develop structures for the cost recovery for water resource management. The introduction of water resource management charges is a requirement of the National Water Initiative.³²¹

At this point in time there is no cost recovery for the broader aspects of water resource management.³²² The cost recovery being implemented at present is for water **licence** administration only, rather than the broader management of the state's water resources. However, there is a very real misconception that some of these costs have been included in the formula used for the calculation of licence administration fees.

As the SWP states, 'water licensing is one aspect of managing the state's water resources, particularly its availability'.³²³ In Western Australia, 'the government has made a decision that it wishes to introduce water licence administration fees, and that is being done'.³²⁴ In evidence the DoW strongly argued that the fees being implemented reflect only the costs of those activities

³¹⁸ Ms Elizabeth Western, Manager, Water Licensing, Department of Water, *Transcript of Evidence*, 24 January 2008, p11.

³¹⁹ Mr John Ruprecht, Acting Director General, Department of Water, *Transcript of Evidence*, 24 January 2008, p10.

³²⁰ Mr Michale Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p19.

³²¹ Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p33.

³²² Mr Michale Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p19.

³²³ Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p23.

³²⁴ Mr Michale Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p19.

involved in licence administration and do not include any broader resource management and planning costs.

*The original intent of the licence fees was to cover the full cost of the administration of the licence fees, but it does not cover any of the broader water resource management planning costs -. Those broader costs are not included in that. The cost of administering the licence is included.*³²⁵

For the DoW, the licence administration fee is related to ‘assessing the licensee. It is requiring the licensees to conform with their licence and the licence conditions’.³²⁶

This may involve:

*assessment of monitoring reports that come back from the licensees. For example, the conditions of a licence may require a company to monitor the impacts and the amount of water that is being taken, to report on how the water is being used, and to report on water quality and a range of things. They may come back in an annual report. For example, a condition may be an annual report on all of those things. It is very common for very large licensees to have those types of annual reports as a condition of a licence. It is the assessment of those and the monitoring of reports that come back from licensees. It may be surveys carried out in the field to make sure that licensees are operating to their licence entitlements.*³²⁷

*It may mean requiring the licensees to supply information for an assessment of their licence and whether they are carrying it out and complying with their licence and their entitlement. It may mean for some licensees providing measuring information to make sure that they are actually taking the amount of water that they are entitled to. It may mean doing field surveys and checking that, for example, the water is being used over the area where they are entitled to use it. Licences have a volume, usually an annual period and usually a purpose, so licence surveys check that the licence is being used for the purpose for which it was provided. There are surveys carried out regularly through the regions to check and make sure that the water is being used according to the licence.*³²⁸

These activities are ‘not about the water resource [... they are] about monitoring the licences themselves to make sure the licensees are conforming to the conditions that have been assigned to them’.³²⁹

While the Committee understands that a water licence administration fee relates to monitoring for licensee conformance to licence conditions, it also considers that it is difficult to separate some of

³²⁵ Mr John Ruprecht, Acting Director General, Department of Water, *Transcript of Evidence*, 24 January 2008, p9.

³²⁶ Ms Elizabeth Western, Manager, Water Licensing, Department of Water, *Transcript of Evidence*, 24 January 2008, p11.

³²⁷ *ibid.*

³²⁸ *ibid.*

³²⁹ *ibid.*

the associated activities from water resource management activities. The two types of activities would seem to overlap or merge. Given that water licence administration is a sub-set of water resource management, this is not surprising. However, it does lead to confusion in relation to what costs are being recovered for what activity.

The DoW advised that ‘no decision has been taken in relation to what other form of cost recovery, if any, may apply into the future’.³³⁰ However, given the trend toward cost recovery in government generally, that cost recovery is a principle of the National Water Initiative (NWI) and that compliance with the NWI is a condition of Water Smart funding agreements, it is reasonable to suggest that water resource management charges will be developed and implemented in the future.

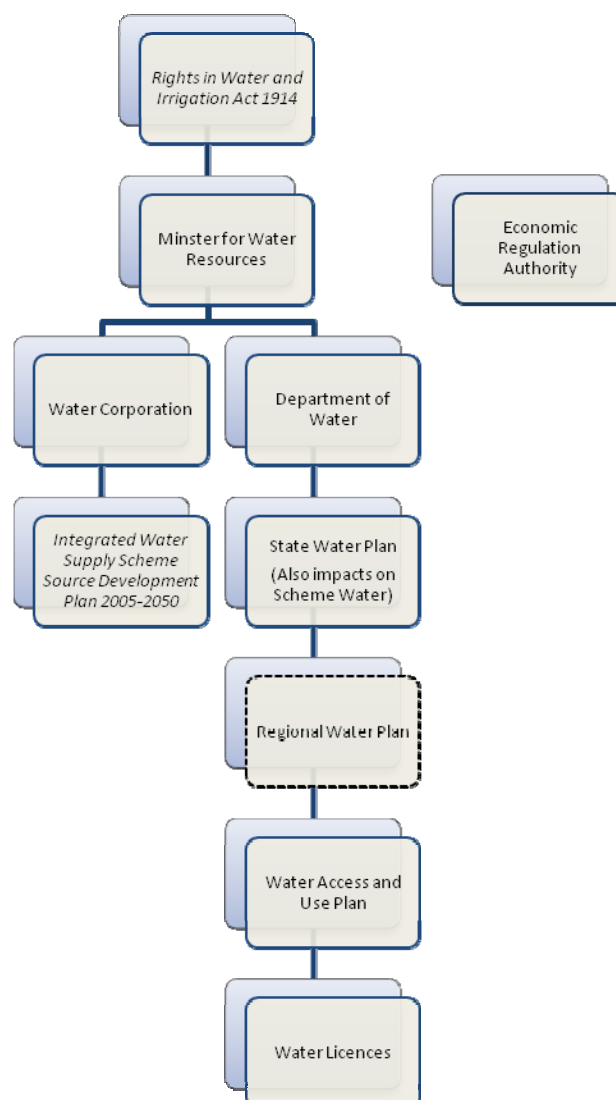
The NWI provides a total framework for water resource management. The Committee understands that the NWI framework is based on the fundamental element of planning. Good planning must be based on sound information concerning water resources, a commitment to plan in accordance with that information and in consultation with the community to ensure incorporation of community values into those plans. A key feature of the NWI is the establishment of statutory water management plans for regions to allow for the determination of consumptive pools and the allocation of water in the form of a water access entitlement as a share in those consumptive pools. There is also provision for other types of water entitlement such as the licensing that currently exists in Western Australia. It is important to note that the NWI provides for much longer term security of access to water entitlement. Environmental and other public benefits must also be accounted for in statutory management plans and possibly as part of a consumptive pool. As noted in the *SWP*, ‘statutory water management plans secure water for the environment and use, address issues of over use, set conditions to manage the resource and specify the form of water entitlements’.³³¹

While statutory management plans incorporating consumptive pools and water access entitlements are yet to be developed for this state, there are some areas that closely resemble that framework, for example, Harvey Water. However, in areas that are predominantly self-supply and there is limited connectivity between water users, this type of framework is problematic at present.

The following figure demonstrates the water management framework that currently exists in Western Australia.

³³⁰ Mr Michale Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p19.

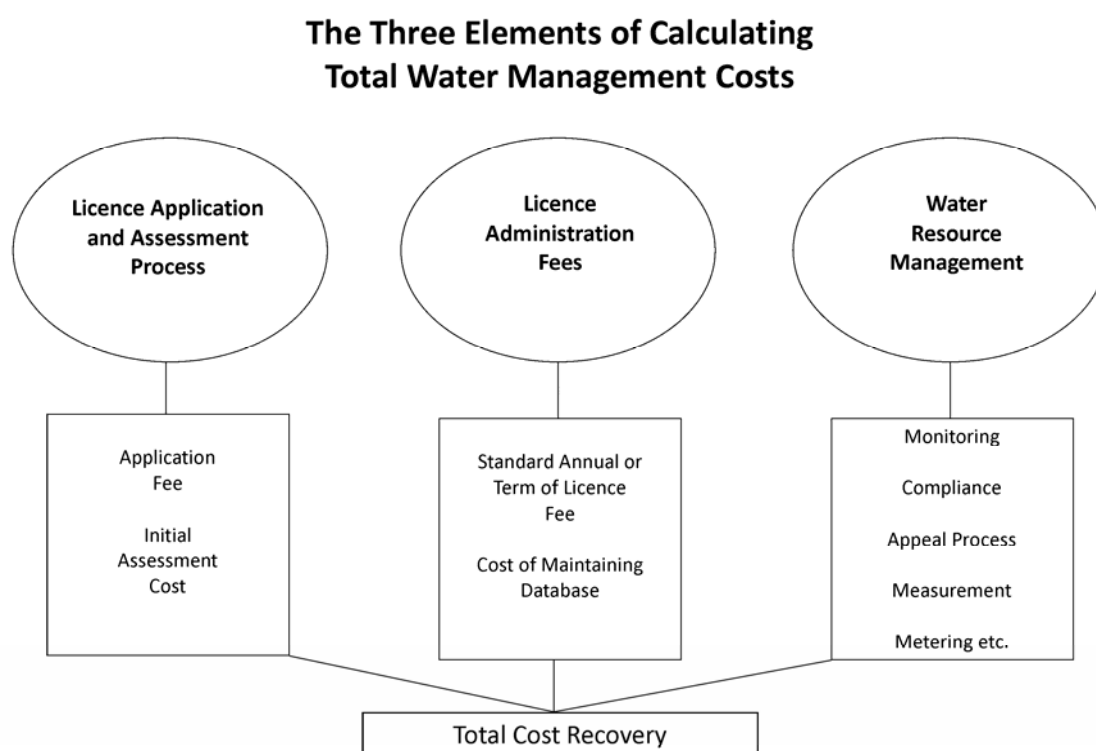
³³¹ Department of Water, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p77.

Figure 4.1: Current Water Management Framework

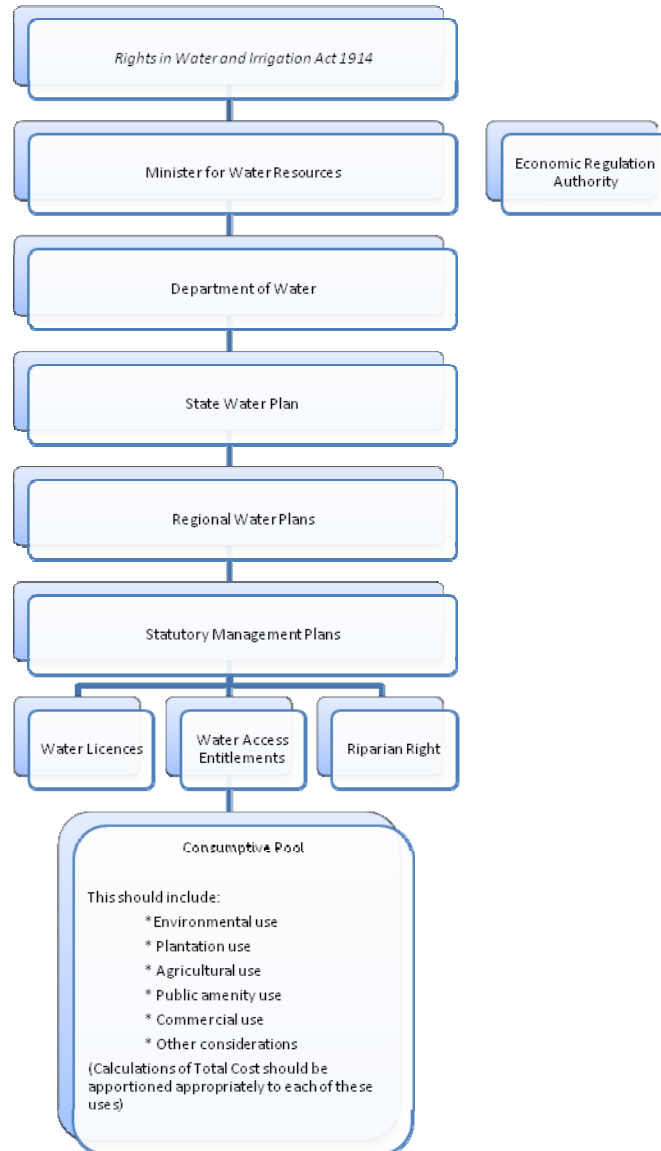
The Committee believes that the best way to understand the current situation and move forward constructively, particularly in those areas such as the south west, is to separate the total cost of water resource management into three elements:

1. the application and assessment process for licenses;
2. the registration and administration of these licences; and
3. the overall management of water resources, which would include the monitoring and compliance elements of licences issued.

It is the view of the committee that these three elements should be separated.

Figure 4.2: Three Elements of Water Resource Management

Further, the Committee has formulated a view as to what the framework may entail in light of its understanding of the NWI, the *SWP* and the evidence provided throughout the Inquiry. This is outlined in the following figure.

Figure 4.3: A Water Resource Management Framework

It is the Committee's view that, in the case of the Manjimup and Pemberton region, the lack of a statutory management plan or a management regime that reflects the style of management envisaged under the NWI has led to the existing misconception about the state's intention under the *SWP*. This view is based on the observation that in all areas where existing regimes already resemble the NWI framework water users are involved in the administration of their systems and appear to be happy with current arrangements. In self-supply areas there is a gap between the functions performed by self-supply licensees and those performed by the DoW, and a good deal of confusion surrounding that function gap. This is most clearly exemplified in misconception evident in the community that monitoring and measurement functions were part of the licensing function.

In light of this, in areas that: (1) are not yet proclaimed, and/or

(2) are for specific use such as mining, plantations etc and/or

(3) are self-supply areas with strong networks,

the Committee considers the development of statutory water management plans and the necessary legislation to implement these plans to be a matter of urgency. Only when all the necessary plans and legislation are in place can the necessary environmental and other assessments be made in relation to cost recovery. This will, in turn, allow the establishment of a transitional pathway to water access entitlements and water trading.

The Committee is of the view that the current licence administration fees, where categories of volume determine the level of fee, is confusing and has generated considerable angst and ill feeling in the community. Furthermore, the Committee believes there should be a fixed licence administration fee that simply reflects the registration and administration of a licensing system similar to that used in most government instrumentalities.

The current fixed application fee should remain. As noted in Chapter 7, the position in relation to refund of application fees is confused and needs to be addressed.

The Committee believes that some of the costs currently recovered, such as the cost of appeals, are not strictly part of the administration of a licence but rather are costs associated with total resource management. As such, they should not be included in the licence administration fee. They will, however, form part of the consideration of future water resource management charges.

Recommendation 4

That there be a fixed licence administration fee that simply reflects the cost of administration of a licensing system.

Recommendation 5

A fixed application fee should remain.

Recommendation 6

That the status regarding the refund of application fees be clarified urgently.

Recommendation 7

That water resource management charges be imposed separately, but not until statutory water management plans are in place.

4.2 Community Costs

Another observation from this Inquiry is the concern in the community that fees relating to water should be fair and equitable. Evidence of this is revealed throughout this report. At this point, though, it is worth noting that one particular equity-based concern raised has been that the community should bear its fair share of the costs and that producers alone should not pay for public benefit use of water. While certainly not alone in expressing this sentiment, the Marron Growers Association of Western Australia provides a typical example of this concern. This group suggests that existing farmers appear to be receiving inequitable treatment. They see the government's water licensing initiative as being 'for the benefit of the whole of the state and that all users including taxpayer consumers should share the cost'.³³²

With regard to the bearing of costs by the community, it must be recognised that the community bears significant additional, and not always visible, costs in the provision of potable water supply, none the least of which are the loss of amenity and the loss of water for commercial purposes. At this point, the government decision in November 2007 to disallow recreational use of Logue Brook Dam in the south west of the state. It was announced that Harvey Water would trade 5.3 GL of Logue Brook Dam water to the Water Corporation for use as a drinking water resource.³³³ The Minister for Water Resources, Hon John Kobelke MLA, recognised that the decision was contentious and acknowledged that the dam 'offers recreational opportunities for the

³³² Submission No. 10 from Marron Growers Association of Western Australia, 6 December 2007, p5.

³³³ Hon John. Kobelke MLA, (Minister for Water Resources) and Hon Mark McGowan MLA, (Minister for South West), *Logue Brook Decisions Helps Secure WA's Water Future*, Joint Media Statement, Government of Western Australia, 5 November 2007; Department of Water, 'Information Package for Dialogue Forum Participants', 22 July 2007. Available at: <http://portal.water.wa.gov.au/portal/page/portal/WaterManagement/Projects/LogueBrook>. Accessed on 11 February 2008.

community'.³³⁴ Mr Peter Monagle, President of the Shire of Harvey, in voicing his concerns over the significant impact of this decision on the area's tourism industry, stated:

*it'll be a big hit to our tourism industry because a lot of people come down from Perth and other places and use Logue Brooke Dam for water-skiing, marroning, kayak and all sorts of things like that.*³³⁵

The Shire of Manjimup also views the loss of dams for amenity use as problematic. The Shire drew attention to two similar situations in its district:

*The Quinninup Dam was originally for recreational use by people in the Quinninup estate. Now, all recreational use of that water has been prohibited because it is a water source. Big Brook Dam is proposed to go down a similar path.*³³⁶

The Shire is concerned about the replacement of the amenity and suggests that:

*it seems that a cheap solution [to the potable water problem] is to exclude amenity rather than putting in place infrastructure that can actually process and deal with the issue. I guess we are saying that it seems to be a very short-sighted strategy to simply exclude everyone from an area rather than putting in a better chlorination unit.*³³⁷

The decision to close Logue Brook Dam to recreational use was preceded by a community engagement process in 2006.³³⁸ A range of stakeholders such as state government and local government and community representatives formulated position statements for presentation at a Community Dialogue Forum in Harvey on 22 July 2007. Many of these noted the social, health and economic implications and impacts of a closure, and cited damage to the local tourism industry.³³⁹ While actual loss in financial terms is difficult to quantify, research conducted on tourism in the Murray-Darling Basin estimates that domestic tourists spend, on average, \$83 per night on overnight trips; for international tourist estimated expenditure is \$77. For a day trip the estimate is \$41.³⁴⁰ A 2004 study into the economic benefits of tourism in national parks, marine

³³⁴ Hon John Kobelke MLA, (Minister for Water Resources) and Hon Mark McGowan MLA, (Minister for South West), *Logue Brook Decisions Helps Secure WA's Water Future*, Joint Media Statement, Government of Western Australia, 5 November 2007.

³³⁵ ABC News, 'Government Set to Close Logue Brooke Dam', 5 November 2007. Available at: <http://www.abc.net.au/news/stories/2007/11/05/2082370.htm>. Accessed on 5 February 2008.

³³⁶ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p13.

³³⁷ *ibid.*

³³⁸ Department of Water, 'South West Water Catchment Management Logue Brook Dam', nd. Available at: <http://portal.water.wa.gov.au/portal/page/portal/WaterManagement/Projects/LogueBrook>. Accessed on 14 February 2008.

³³⁹ Department of Water, 'Information Package for Dialogue Forum Participants', 22 July 2007. Available at: <http://portal.water.wa.gov.au/portal/page/portal/WaterManagement/Projects/LogueBrook>. Accessed on 11 February 2008.

³⁴⁰ Murray-Darling Basin Commission, 'Tourism and Recreation', 12 February 2008. Available at: http://kids.mdbc.gov.au/encyclopedia/tourism_and_recreation. Accessed on 12 February 2008.

parks and forest regions in Western Australia revealed very substantial sums expended by tourists in regional areas of the state.³⁴¹ For example, visitors to the Gascoyne Coast region spend \$127 million per annum on marine and national park visits, while visitors to the forest region bordered by Manjimup, Pemberton, Northcliffe and Walpole spend approximately \$61.9 million per year. The Committee is aware that the Curtin University Sustainable Tourism Centre is currently conducting a literature and policy review of recreational use of water catchments. This study has been commissioned by the Department of Environment and Conservation (DEC) and, understandably, is focussed on the catchment areas rather than the water resources in those areas. The Committee understands that there is little or no research on the value of water used for amenity purposes. Nevertheless, it has been reported that approximately 30,000 people each year visit Logue Brook Dam,³⁴² and, if the rate of expenditure in areas of this state is similar to that spent per tourist per day elsewhere in the country, then the loss of this income from 30,000 visitors will be significant to this area. In addition to revenue lost, other social and health costs also must be considered and factored into any cost-benefit analysis of the loss of water for amenity purposes.

In justifying the closure of the dam, the Water Corporation provided the following costings for the water trade:

Collectively, the cost of this highly attractive and beneficial water trading option is \$0.60 cents per kilolitre – considerably less than the average value of alternative immediate sources that have been priced by the ERA in the range from \$0.82 cents to \$1.20.³⁴³

Therefore, the cost of water trading from various sources from Harvey Water at this time is between \$1 million to \$3 million a year cheaper than the average cost of alternative options. Under this scenario, sourcing the 5.3 gigalitres of water per year from Logue Brook Dam represents total savings to the State of up to \$50 million.³⁴⁴

In recognition of the loss of Logue Brook as a recreation facility, the Water Corporation is creating a \$10million trust account that will be used to develop alternative recreation facilities in the south west. The state government is also spending an additional \$3.29 million to enable Lake Kepwari, near Collie, to be opened as a public recreation area in 2008.³⁴⁵ The Minister for Water Resources claims that the Water Corporation will also begin negotiations with businesses directly

³⁴¹ Carlsen, Jack and Wood, David, *Assessment of the Economic Value of Recreation and Tourism in Western Australia's National Parks, Marine Parks and Forests*, Co-Operative Research Centre for Sustainable Tourism, Curtin University, Perth.

³⁴² Jerrard, Suellen, 'Growing Rage Over Leisure Spot Closure', *West Australian*, 19 January 2008, p71.

³⁴³ Department of Water, 'Information Package for Dialogue Forum Participants', 22 July 2007. Available at: <http://portal.water.wa.gov.au/portal/page/portal/WaterManagement/Projects/LogueBrook>. Accessed on 11 February 2008.

³⁴⁴ *ibid.*

³⁴⁵ Department of Water, 'South West Water Catchment Management Logue Brook Dam' 11 February 2008. Available at: <http://portal.water.wa.gov.au/portal/page/portal/WaterManagement/Projects/LogueBrook>. Accessed on 11 February 2008.

affected by the decision.³⁴⁶ However, according to local residents, the \$10 million pay-out ‘won’t cover loss to tourism’.³⁴⁷ Similar arguments have been mounted for a number of years in relation to the loss of white water activities in the Harvey area following the construction of the new dam.

While the market may move water around as intended under the NWI, the National Water Commission (NWC) also argues that there is still a role for government adjustments to be made in situations where people might be priced out of an area. This means that as well as considering the economic and environmental aspects of water, governments must also consider the public good.³⁴⁸

The Water Corporation, by offering compensation, has tacitly recognised that there is a cost incurred through the loss of amenity. However, what is less clear is whether the Water Corporation has factored environmental and other public benefits into its calculations or whether the Department of Water has considered these NWI principles in approving the water trade from the Harvey Water licence. As this issue is not directly related to any of the Committee’s seven terms of reference, it is not able to pursue this line of inquiry further at this stage. This example is intended to show that the community is already bearing significant cost.

4.3 HIGHEST VALUE USE OF WATER

One aim of the NWI is to allow water to move to its highest possible value use. For example, one outcome is that water might be used on permanent plantings rather than cotton or rice.³⁴⁹ This is to be achieved via the recognition of the value of water and the development of water markets and water trading, as discussed in detail in Chapter 5.

As also noted in Chapter 5, Harvey Water accepts that it is in a favourable position with regards to water trading and has been engaged in internal trading. Nevertheless, the cooperative is concerned about the repercussions of the possibility of external trading being forced upon them, something they feel would result in the collapse of the cooperative. Harvey Water questions whether trading water from their cooperative to the city water supply is making the highest value use of their water:

Is watering a lawn on someone’s home a higher value use than producing milk, grapes, oranges, fruit or other food? Is it a question of the capacity to pay, which we believe it is, compared with the high-value use? Because people in the city can pay a helluva lot more, particularly these days, they do not care. Where will you get your food from? Again, it becomes a governmental issue. Do you want an irrigation area that produces food for people who cannot produce their own when the city is expanding and all the food-producing areas are going to housing? Where will you get your food from? You must

³⁴⁶ Hon John Kobelke MLA, (Minister for Water Resources) and Hon Mark McGowan MLA, (Minister for South West), *Logue Brook Decisions Helps Secure WA’s Water Future*, Joint Media Statement, Government of Western Australia, 5 November 2007.

³⁴⁷ Gallo, Lee-Maree, ‘Community outcry over dam closure’, *Harvey Mail*, 21 November 2007, p1.

³⁴⁸ National Water Commission, *Committee Briefing*, 17 December 2007.

³⁴⁹ National Water Commission, *Committee Briefing*, 17 December 2007.

*think of those things. In our view it is the capacity to pay. People do not care. Only 10 per cent of the water they use is used for potable purposes. Ninety per cent of the water treated to potable standards is dumped on the ground in the garden, and that is not very good.*³⁵⁰

The issue of the highest value use of water is not only relevant to trading water for potable water. During evidence the Committee heard of wide variations in water use within the one industry. For example, during the Western Australian Fruit Growers' Association evidence the enormous difference in yield per quantity of water became evident. One grower reported that after looking at his 'yields and tonnes of water per kilo of peach' he found that he was 'using between 2.5 and five tonnes of water for a kilo of peaches'.³⁵¹ This grower advised that this 'four megalitres a hectare [...] is a damn sight lower than most other people'.³⁵² This four ML per hectare 'is well under the current allocation figures'.³⁵³ In comparison, another fruit grower noted that he used 'five litres per kilo'.³⁵⁴

The Manager of Western Australian Fruit Growers' Association, Mr Alan Hill, advised that:

*the association has an application to look at what is going on on the ground and assessing our water use and the quantity and value of fruit that is coming off these orchards. Because we are such a diverse industry, we want to try to come up with some pretty predictable, accurate and repeatable figures so we can go out and encourage proficiency in water use.*³⁵⁵

³⁵⁰ Mr Geoff Calder, General Manager, Harvey Water, *Transcript of Evidence*, 8 January 2008, p9.

³⁵¹ Mr Mark Wilkinson, Chairman, Summer Fruit, Western Australian Fruit Growers' Association, *Transcript of Evidence*, 8 January 2008, p14.

³⁵² Mr Mark Wilkinson, Chairman, Summer Fruit, Western Australian Fruit Growers' Association, *Transcript of Evidence*, 8 January 2008, p14.

³⁵³ Mr Alan Hill, Manager, Western Australian Fruit Growers' Association, *Transcript of Evidence*, 8 January 2008, p14.

³⁵⁴ Mr Chris Scott, Orchardist, Western Australian Fruit Growers' Association, *Transcript of Evidence*, 8 January 2008, p14.

³⁵⁵ Mr Alan Hill, Manager, Western Australian Fruit Growers' Association, *Transcript of Evidence*, 8 January 2008, p14.

Another consideration in relation to highest value use must be public use and public amenity, including recreational access to water bodies, as noted above.

Recommendation 8

In the development of statutory water management plans, while the highest value use of water resources must be a consideration, community amenity also needs to be taken into account before the allocation of water resources.

CHAPTER 5 BENEFITS, COSTS AND IMPOSTS OF A LICENSING SYSTEM

This chapter relates specifically to term of reference number 1, namely the benefits to, cost to and imposts on irrigators, industry, community and environment of a licensing system for the taking of water from groundwater or stream flow. There are two qualifications that must be made to the Committee's report on this term of reference. First, it has not been possible for the Committee to inquire into different models for licensing systems. This report is confined to discussing the benefits, costs and imposts associated with the licensing system that currently exists in Western Australia.

Second, the Committee was not able to conduct extensive literature or field research into the possible benefits, costs and imposts associated with the implementation of a water licensing system. Undertaking the economic, social and environmental impact assessments that would be required to meet this term of reference, particularly in relation to the community and the environment, was not possible due in large part to the reporting timeframe of this Inquiry. Consequently, no matter how desirable, the Committee has not been in a position to take up recommendations such as that from the Pilbara Regional Council to utilise:

*best practice techniques and technology and ... predictive and dynamic modelling [of] the impact of introducing water licenses (sic) on inflation, business continuity, community sustainability and the ability of residents of Western Australia to sustain the flow-on costs that industry and governments will have to pass on.*³⁵⁶

Therefore, this chapter of the report presents only those benefits, costs and imposts brought to the attention of the Committee through submissions and hearings. Given the nature of the issues raised in evidence, this report necessarily discusses the benefits, costs and imposts of a licensing system mostly in economic terms. It does not aim to provide a comprehensive account of all possible social, environmental and economic benefits, costs and imposts or the various perspectives that would be presented in other research sources. Before discussing this term of reference in more detail, it is useful to provide a brief outline of the current water licensing requirements in Western Australia.

5.1 Regulation and Licensing of Water in Western Australia

The Department of Water (DoW) recognises that 'water is critical for the wellbeing of people and the environment, and Western Australia's economic development'.³⁵⁷ The DoW argues that the 'importance of Western Australia's water resources to the wider community and the state's economic and social development was appreciated early in the state's history,'³⁵⁸ and cites the *Rights in Water and Irrigation Act 1914* (RIWI Act) as primary evidence of this. It is the system

³⁵⁶ Submission No. 40 from Pilbara Regional Council, 31 January 2008, p5.

³⁵⁷ Submission No. 29 from Department of Water, 21 December 2007, p8.

³⁵⁸ *ibid.*

of licensing the taking and using of water as provided for in the RIWI Act that is the concern of this report.

Division 1A of the RIWI Act addresses ownership and control of waters, and s5A vests natural waters in the Crown:

The right to the use and flow, and to control, of the water at any time in any —

(a) watercourse;

(b) wetland; or

(c) underground water source,

*vests in the Crown except as appropriated under this Act or another written law.*³⁵⁹

Section 5C(1) provides that the taking of water is prohibited unless authorised by specific provisions in the Act or by the granting of a licence.³⁶⁰ Sections 26A and 26B provide for the licensing of artesian and non-artesian wells, and licences for commencing or constructing artesian or non-artesian wells are provided for under s26D.³⁶¹ The obstruction or interference with a watercourse or wetland, or its bed or banks, is also prohibited under the RIWI Act unless permits are granted according to ss 11(2), 17(3) or 21A(2). Therefore, as the DoW states, under the RIWI Act:

*a licence is required to take groundwater from all artesian wells throughout the State, non-artesian wells located within groundwater areas proclaimed under the Act and the taking of surface water in proclaimed surface water areas, streams or irrigation districts. Licences to construct or alter wells and permits to interfere with the bed and banks of watercourses may be granted in addition to a licence to take water.*³⁶²

The DoW submission also outlines the circumstances under which farm dams must be licensed, stating that licensing is required when:

- *they are located within an area proclaimed under Part III of the Rights in Water and Irrigation Act, 1914 (a surface water area or irrigation district or just a single water course, e.g. Gingin Brook), and*
- *they are taking water from a natural water course either a dam on the water course or by direct pumping (sometimes into an off-stream dam), and*

³⁵⁹ s 5A, *Rights in Water and Irrigation Act 1914* (WA).

³⁶⁰ s 5C(1), *Rights in Water and Irrigation Act 1914* (WA).

³⁶¹ ss 26A, 26B, 26D, *Rights in Water and Irrigation Act 1914* (WA).

³⁶² Submission No. 29 from Department of Water, 21 December 2007, p8. See also s5C(2), *Rights in Water and Irrigation Act 1914* (WA).

- *the use of the water is non-riparian (riparian rights allow water to be taken for fire fighting, stock watering, household use and irrigation of up to 2 hectares associated with a dwelling).*³⁶³

The DoW also clearly states that licences are not required for ‘dams that collect water only from overland flow (often called turkey nest dams) or rainfall (excavations that do not intercept groundwater)’.³⁶⁴

Each licence comes with a set of conditions and obligations imposed on the licensed water user. These include requirements to:

- *comply with various license conditions, including for example, obligations to meter and report water use (for licenses of greater than 500000 kilolitres) or comply with a water use efficiency plan (local governments)*
- *periodically apply for a renewal of water licenses*
- *pay a water licence administration fee for those licences greater than 1500 kilolitres.*³⁶⁵

5.2 The Cost of a Water Licence

Following the development of *A Blueprint for Water Reform in Western Australia (Blueprint)*, the state government developed the schedule of fees as shown in Table 5.1 below to be implemented from 1 July 2007.³⁶⁶ Subsequent to the *Blueprint*, and prior to a schedule of fees being gazetted, there were two amendments made to this fee schedule. The first was to accommodate the concerns of licensed domestic water users and some licensed surface water users so that those ‘with a volumetric entitlement of less than 1501 kilolitres were excluded from paying a water licence administration fee’.³⁶⁷ The second involved revising the basis on which fees for farm dam licences were charged, that is, the fees would be calculated according to the ‘licensed use of water from the dam, rather than the licensed storage capacity of the dam’.³⁶⁸

³⁶³ Submission No. 29 from Department of Water, 21 December 2007, p9.

³⁶⁴ *ibid.*, p10.

³⁶⁵ *ibid.*, p11.

³⁶⁶ Government of Western Australia, *Western Australian Government Response to A Blueprint for Water Reform in Western Australia*, Government of Western Australia, Perth, February 2007, p20 and 31. The fees stipulated in the government response to the *Blueprint* differ from those put forward under recommendation 42 of the *Blueprint*. See Water Reform Implementation Committee, *A Blueprint for Water Reform in Western Australia. Final Advice to the Western Australian Government*, Government of Western Australia, Perth, December 2006, p47.

³⁶⁷ Submission No. 29 from Department of Water, 21 December 2007, p13.

³⁶⁸ *ibid.*

The incorporation of these two amendments resulted in the fee schedule shown in Table 5.2 below, and it is these fees that were gazetted on 22 June 2007 as part of the *Rights in Water and Irrigation Amendment Regulations 2007*.³⁶⁹ These fees were to take effect from 1 July 2007. Following three disallowance motions in the Legislative Council of Western Australia, on 22 November 2007 this schedule of fees was disallowed.³⁷⁰ On this day, Greens MLC Paul Llewellyn announced that he had negotiated a revised schedule with the Minister for Water Resources, and a new schedule of fees (see Table 5.3) was gazetted on 28 December 2007 for implementation from 1 January 2008.³⁷¹

Table 5.1: Water Licence Administration Fees Proposed February 2007³⁷²

LICENCE CLASS	ENTITLEMENT CLASS [KILOLITRES PER YEAR]	SUGGESTED FEE	FREQUENCY
	Application fee	\$200	On Application
1	0 - 5,000	\$200	Annual
2	5,001 - 50,000	\$325	Annual
3	50,001 - 100,000	\$600	Annual
4	100,001 - 500,000	\$1,200	Annual
5	500,001 - 1,000,000	\$1,800	Annual
6	1,000,001 - 5,000,000	\$2,400	Annual
7	>5,000,000	\$3,000	Annual

³⁶⁹ Government of Western Australia, *Government Gazette*, No. 127, 22 June 2007, pp2877-2883. Subsequent to the disallowance of these regulations, the government gazetted new regulations on 28 December 2007. See Government of Western Australia, *Government Gazette*, No. 268, 28 December 2007, pp6425-6431.

³⁷⁰ Hon Paul Llewellyn, MLC, Hon Barry House, MLC and Hon Ray Halligan, MLC moved to disallow the 2007 Regulations on 25 September 2007. See Western Australia, Legislative Council, Parliamentary Debates (Hansard), 25 September 2007, pp5569-70.

³⁷¹ Government of Western Australia, *Government Gazette*, No. 268, 28 December 2007, pp6425-6431.

³⁷² Government of Western Australia, *Western Australian Government Response to A Blueprint for Water Reform in Western Australia*, Government of Western Australia, Perth, February 2007, p20 and 31.

Table 5.2: Water Licence Administration Fees Gazetted June 2007³⁷³

LICENCE CLASS	ENTITLEMENT CLASS [KILOLITRES PER YEAR]	SUGGESTED FEE	FREQUENCY
	Application fee	\$200	On Application
	0 - 1,500	Free	
1	1,500 - 5,000	\$200	Annual
2	5,001 - 50,000	\$325	Annual
3	50,001 - 100,000	\$600	Annual
4	100,001 - 500,000	\$1200	Annual
5	500,001 - 1,000,000	\$2400	Annual
6	1,000,001 - 5,000,000	\$2400	Annual
7	> 5,000,000	\$3000	Annual

Table 5.3: Water Licence Administration Fees Gazetted December 2007³⁷⁴

LICENCE CLASS	ENTITLEMENT CLASS [KILOLITRES PER YEAR]	SUGGESTED FEE	FREQUENCY
	Application fee	\$200	On Application
	0 - 1,500	Free	
1	1,500 - 5,000	\$100	Annual
2	5,001 - 50,000	\$150	Annual
3	50,001 - 100,000	\$250	Annual
4	100,001 - 500,000	\$700	Annual
5	500,001 - 1,000,000	\$1600	Annual
6	1,000,001 - 5,000,000	\$2500	Annual
7	5,000,001 - 10,000,000	\$4000	Annual
8	> 10,000,000	\$6000	Annual

³⁷³ Submission No. 29 from Department of Water, 21 December 2007, p13.

³⁷⁴ Government of Western Australia, *Government Gazette*, No. 268, 28 December 2007, pp6425-6431; Submission No. 29 from Department of Water, 21 December 2007, p14.

5.3 The Need for Licensing

Any meaningful discussion of licensing must be situated in the context of water resource management and the recognised need for improved management of water resources in Australia, as evidenced by the development of the National Water Initiative (NWI) and, in Western Australia, the *Blueprint* and the *State Water Plan 2007 (SWP)*. According to Mr Jeff Camkin, ‘as the pressure on water resources in the state goes up - it has been - there is a need for much closer management and much better assessment of water resources, better planning, better policies and more accurate allocations of water’.³⁷⁵

Irrigation Australia - WA Region (IAL-WA) advises that:

*Historically, water in WA has been free or undervalued. This is a low base to start a process of change from. It is therefore expected that some water users and organizations will strongly resist the implementation of any licensing framework or charges.*³⁷⁶

One conclusion to draw from this observation is that the introduction of a licensing regime in Western Australia would be strongly resisted by those engaged in agriculture, horticulture and aquaculture activities. However, evidence to the Committee suggests that this may not be the case. In fact, recognition of the need for, and support of, the improvements to the management of water resources, including licensing, was generally iterated throughout the submissions and evidence provided to the Inquiry, as the following examples clearly demonstrate:

*A licensing system is just one tool or element of a modern evidence-based management system.*³⁷⁷

*It is our contention that any extraction of the State’s water resources should be licensed and an appropriate licence fee should be charged to recover the cost of administration.*³⁷⁸

*Ideally water license (sic) should be required for all groundwater extraction.*³⁷⁹

*DEC strongly supports the current licensing system for the taking of water from groundwater or stream flow which recognises that adequate water resources must be maintained to protect and conserve the environment.*³⁸⁰

*Harvey Water supports the licensing of major water users in Western Australia.*³⁸¹

³⁷⁵ Mr Jeff Camkin, Private Citizen, *Transcript of Evidence*, 20 December 2007, p2.

³⁷⁶ Submission No. 19 from Irrigation Australia - WA Region, 11 December 2007, p3.

³⁷⁷ Mr Douglas Hall, Industry Development Officer, Irrigation Australia - WA Region, *Transcript of Evidence*, 15 January 2008, p2.

³⁷⁸ Submission No. 2 from Gascoyne Water Co-Operative Ltd, 27 November 2007, p2.

³⁷⁹ Submission No. 5 from City of Geraldton-Greenough, 30 November 2007, p1.

³⁸⁰ Submission No. 8 from Department of Environment and Conservation, 5 December 2007, p1.

³⁸¹ Submission No. 16 from Harvey Water, 7 December 2007, p1.

*Water users recognise the need for registration and licensing of water harvesting dams in surface water catchments and groundwater use ... Water users support measurement and reporting of water use for both surface water and groundwater systems.*³⁸²

*IAL-WA believes that a properly developed, implemented and managed licensing system is an important component of a modern evidence-based management system for water.*³⁸³

*We [IAL-WA] believe that licensing should be used where it adds value to the overall management of water resources. For example, licensing will be absolutely necessary where competition for water is high or water is over-allocated. In other areas, where there is low competition for water or water is under-allocated, a licensing system may add little value and be very expensive to implement and manage.*³⁸⁴

*It is in the collective best interest of everyone in Western Australia to be fully aware of what is happening to our pool of water. The registering part of a licensing framework is the very best way to know that.*³⁸⁵

*RTIO [Rio Tinto Iron Ore] fully supports the State Government's endeavours to develop better ways to manage our water resources and is generally supportive of the directions it has outlined in this regard through the State Water Plan, and the Government's Response to the Blueprint on Water Reform in Western Australia. RTIO recognises the role of Government in regulating, planning and managing water resources in the interests of the community, the environment and the economy. The administration of licences to take water under the Rights in Water and Irrigation Act is an important element of this role.*³⁸⁶

*Effective regulation is essential to ensure markets operate efficiently and fairly, to protect the public and the environment.*³⁸⁷

*The South West Development Commission strongly supports the need for increased management of water resources in the South West Region.*³⁸⁸

*It is the Conservation Council's contention that all farm dams, irrigation bores, [and] domestic bores must be licenced (sic).*³⁸⁹

*If licenses (sic) are seen as the best way to manage and monitor the resource, then all who take water from whatever source should be licensed.*³⁹⁰

³⁸² Submission No. 18 from The Alliance, 7 December 2007, p3.

³⁸³ Submission No. 19 from Irrigation Australia - WA Region, 11 December 2007, p3.

³⁸⁴ *ibid.*

³⁸⁵ Mr Douglas Hall, Industry Development Officer, Irrigation Australia - WA Region, *Transcript of Evidence*, 15 January 2008, p4.

³⁸⁶ Submission No. 20 from Rio Tinto Iron Ore, 7 December 2007, p4.

³⁸⁷ Submission No. 21 from Aquaculture Council of Western Australia, 7 December 2007, p4.

³⁸⁸ Submission No. 22 from South West Development Commission, 10 December 2007, p1.

³⁸⁹ Submission No. 31 from Conservation Council of Western Australia Inc., 19 December, p2.

*Notwithstanding the absence of cost benefit analysis, to date, Manjimup and Pemberton Landowners support the water licensing provisions of the Rights in Waters and Irrigation Act 1914 and have been subject to those provisions for over 40 years since proclamation of the Warren and Donnelly River catchments ... the licensing system provides a framework for management of the resources that has been accepted by landowners.*³⁹¹

*There has to be proper water management and you have to measure. You have to have a licence system.*³⁹²

*We do not disagree that water in the state needs to be managed or that we should all be registered so the consumptive pool is quantifiable and so good management could then happen.*³⁹³

In discussing the general acceptance of a registration system, rather than an immediate move to licensing, IAL-WA suggested that this acceptance signifies a:

*clear acknowledgement that they [commodity groups] accepted that it is reasonable for everybody in the state to know that they had a certain amount of water and that they were using it for agriculture, horticulture, aquaculture or whatever.*³⁹⁴

The above examples bear witness to the DoW's claim that while the licensing of water 'is not universally accepted or welcomed ... increasingly, advisory groups and industry sectors are requesting more active water management by the Department of Water'.³⁹⁵ The DoW cite an example of this in the Margaret River Wine Region:

*The Margaret River Wine Industry Association and Whicher Water Resource Management Committee have both advocated that proclamation and licensing would benefit that industry by providing secure access to water entitlements. As a result, priority catchments in the region such as Wilyabrup have recently been proclaimed, so that the area can be actively managed through licensing.*³⁹⁶

As the DoW notes, recognition of the need for improved management and the accompanying fees was qualified. Submissions note that a licensing system should not be implemented 'simply to support government regulation',³⁹⁷ rather 'licensing systems need to be implemented and managed in a manner that minimizes compliance costs and maximizes practical benefits to irrigators and

³⁹⁰ Submission No. 2 from Gascoyne Water Co-Operative Ltd, 27 November 2007, p2.

³⁹¹ Submission No. 36 from Manjimup and Pemberton Landowners, 7 January 2008, p9.

³⁹² Mr Harry Ortheil, Collie Preston Water Action Group, *Transcript of Evidence*, 8 January 2008, p11.

³⁹³ Ms Diane Fry, Farmer, Western Australian Fruit Growers' Association, *Transcript of Evidence*, 8 January 2008, p16.

³⁹⁴ Mr Douglas Hall, Industry Development Officer, Irrigation Australia - WA Region, *Transcript of Evidence*, 15 January 2008, p4.

³⁹⁵ Submission No. 29 from Department of Water, 21 December 2007, p10.

³⁹⁶ *ibid.*

³⁹⁷ Submission No. 19 from Irrigation Australia - WA Region, 11 December 2007, p3.

supports the adoption of best practice and continual improvement'.³⁹⁸ Licensing systems, argues IAL-WA, 'should not be an end in themselves but a means of delivering effective price signals and sustainable resource management'.³⁹⁹

The Shire of Manjimup explained that it did not object to the idea of managing the area's water resources and had 'accepted that there is a need to do this. We also accept that it is not unreasonable to pay a fee for that service'.⁴⁰⁰ Unlike much of Western Australia, this region has 'been in a regulatory environment for water for the past 40 years' and, therefore, farmers in that area 'are very familiar with licensing'.⁴⁰¹ However, the Shire, along with many other submitters, took exception to the particular fees being charged, and this issue is addressed further in the report.

vegetablesWA also advised that while 'on the surface, we are not opposed to areas having management plans over them at all,' they were certainly concerned about 'the details underpinning those plans'.⁴⁰² Likewise, the Farmers Federation of Western Australia advised that while they had initially been supportive of Western Australia signing the NWI as they believed it would provide more, and longer-term, security for farmers, they were now concerned about the state's introduction of full cost recovery.⁴⁰³

While expressing doubt about the fees improving water management, the Collie Preston Water Action Group stated:

*You will always find farmers who think that there should not be any involvement by anyone in their farm dams, but the group acknowledges that water management is an important issue and we are not against water management per se.*⁴⁰⁴

This group 'do[es] not question the fact that we need water management. However there must be a comprehensive approach: one which takes into account all users of water and which allocates water based on all the users on all farms'.⁴⁰⁵

Similarly, the Western Australian Fruit Growers' Association agreed that 'we should all apply to have our dams registered so that the government knows where the water is and what is happening'.⁴⁰⁶

³⁹⁸ ibid.

³⁹⁹ ibid., p6.

⁴⁰⁰ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p3.

⁴⁰¹ ibid., p2.

⁴⁰² Mr Jim Turley, Executive Officer, vegetablesWA, *Transcript of Evidence*, 15 January 2008, p4.

⁴⁰³ Mr Stephen Dilley, Water Spokesman, WA Farmers Federation, *Transcript of Evidence*, 15 January 2008, p2.

⁴⁰⁴ Mr Harry Ortheil, Collie Preston Water Action Group, *Transcript of Evidence*, 8 January 2008, p3.

⁴⁰⁵ ibid., p6.

However, the Manjimup and Pemberton Landowners also suggests the development of a ‘licensing mindset’ in government, and submits that:

*a case could be made that licensing and associated Government regulatory action introduces undesirable distortions to water allocation in regions where water is neither over allocated or nearing over allocation, and unnecessarily consumes non-government and Government resources.*⁴⁰⁷

At this time it is not clear to the Committee how licensing and its associated processes and procedures would result in distortions to water allocations. The balance of evidence presented strongly favours the introduction of a water licensing regime in Western Australia. The Committee is of the view that a modern evidence-based management system requires a licensing regime.

Finding 4

There is general recognition of the need for a water licensing regime in Western Australia to help manage the state’s water resources more effectively.

5.4 Recognition of Benefits to Licensing

As well as recognising the need for water resource management, and for water licensing as one component of that management, there is a general recognition of several benefits obtained through licensing. However, as the following discussion of these shows, there was not always consensus as to the nature of these benefits.

Drawing on his international study tour experience, Mr Jeff Camkin suggested:

*that water use really needs to be viewed as a privilege and the use of a community asset and not a personal use of something that is owned by landholders or anybody else. Water use and management is both a responsibility of government and a responsibility of landholders and water users in the rest of the community. One of the things that licensing does is to provide a formal recognition of the rights and responsibilities that licensees have and what comes with that privilege.*⁴⁰⁸

In addition to this, water licensing, together with the water resource management system within which it operates, is deemed to provide greater security to water users. According to the Department of Agriculture and Food, security of supply and trading rights for water, which an accurate and reliable licensing system can provide, are important to the continued advancement of

⁴⁰⁶ Mr Chris Scott, Orchardist, Western Australian Fruit Growers’ Association, *Transcript of Evidence*, 8 January 2008, p6.

⁴⁰⁷ Submission No. 36 from Manjimup and Pemberton Landowners, 7 January 2008, p10.

⁴⁰⁸ Mr Jeff Camkin, Private Citizen, *Transcript of Evidence*, 20 December 2007, p2. See also p9.

sustainable agricultural production in Western Australia.⁴⁰⁹ The DoW also regards ‘ensuring licensed water users have secure access to an increasingly precious resource for which they derive a benefit’ as an advantage brought about by licensing.⁴¹⁰ As the following excerpts demonstrate, improved security is a generally recognised benefit to water licensing.

*The licencing system and water resource management that underpins it is designed to provide security to the environment, to water licence users and to society that water will remain available for ecological, social and economic benefit into the future.*⁴¹¹

*I guess there is clearly a benefit from a licensing system inasmuch as it gives greater security to people in terms of what water value they can plan for [... and] greater awareness of our water resources.*⁴¹²

*Water licences are a mechanism that can insure the security of water entitlement to land owners or users ...in order for agriculture to develop sustainably and efficiently into the future the security of water entitlement is required.*⁴¹³

A properly developed, implemented and managed licensing system would deliver the following benefits:

- *increased certainty over current and future access to available water - essential to give business and government the confidence to borrow and invest in water dependent projects*
- *a framework to adjust licensed allocations in a fair and equitable manner as overall availability of water fluctuates up or down, or when allocations are in excess of what the community judges to be sustainable.*⁴¹⁴

*The majority of self-supply water users in Western Australia ... realise that if they have a water licence, it is probably worth something to them and gives them security.*⁴¹⁵

The DoW also sees benefits to a licensing system which improve the security of supply to water users through:

⁴⁰⁹ Submission No. 15 from Department of Agriculture and Food, Government of Western Australia, 7 December 2007, p1.

⁴¹⁰ Submission No. 29 from Department of Water, 21 December 2007, p10.

⁴¹¹ Mr Jeff Camkin, Private Citizen, *Transcript of Evidence*, 20 December 2007, p2.

⁴¹² Mr Douglas Hall, Industry Development Officer, Irrigation Australia - WA Region, *Transcript of Evidence*, 15 January 2008, p2.

⁴¹³ Submission No. 15 from Department of Agriculture and Food, Government of Western Australia, 7 December 2007, p3.

⁴¹⁴ Submission No. 19 from Irrigation Australia - WA Region, 11 December 2007, p3.

⁴¹⁵ Mr Stephen Dilley, Water Spokesman, WA Farmers Federation, *Transcript of Evidence*, 15 January 2008, p5.

- *protecting current and future water users by reducing the risk of over allocation of water resources*
- *protecting existing licensed water users from unacceptable impacts from other water users*
- *allowing the Department of Water to ensure water allocations decisions are sustainable*
- *allowing the Department of Water to establish licence conditions that protect water sources and water quality and ensures water is used under the conditions required by local practice, relevant by-laws and relevant decisions of committees*
- *ensuring water use is consistent with land use planning instruments, policies of other government agencies and intergovernmental agreements*
- *ensuring sufficient water is available for public drinking supplies*⁴¹⁶

The provision of data is also widely acknowledged as a benefit to water licensing in that it will help improve water resource management:⁴¹⁷

*The benefit of a licensing system is that it provides valuable data to improve monitoring and management of the nation's ground water usage.*⁴¹⁸

*Additionally, water licensing also provides a methodology for accurately identifying and recording water resources allocated and used in a region.*⁴¹⁹

*IAL-WA believes that the information, regulation of water use and monitoring that flows from a licensing system will benefit all water users, including the environment.*⁴²⁰

These [objectives of the proposed licensing system] are particularly focussed on gathering sufficient data on actual use of the water to enable sustainable management of the resource and providing a framework for efficient water trading. The beneficiaries of these outcomes include;

- *future water users;*
- *current irrigators;*
- *industries developed on the basis of irrigated agriculture; and*

⁴¹⁶ Submission No. 29 from Department of Water, 21 December 2007, p10.

⁴¹⁷ Issues concerning water resource data are discussed in Chapter 2.

⁴¹⁸ Submission No. 5 from City of Geraldton-Greenough, 30 November 2007, p1.

⁴¹⁹ Submission No. 15 from Department of Agriculture and Food, Government of Western Australia, 7 December 2007, p3.

⁴²⁰ Submission No. 19 from Irrigation Australia - WA Region, 11 December 2007, p3.

- *the wider community reflecting the preservation of environmental values.*⁴²¹

Licensing is also seen by some as a means to regulate and control water use, and is favoured over self-regulation. In this regard, the City of Perth suggests that ‘the taking of water from an underground aquifer or stream flow needs to be controlled by a central body. Self regulation is insufficient’.⁴²² Similarly, Harvey Water advises that ‘it is understood that the purpose of licences is to ensure controls which regulate the particular industry or, in the case of water, the use of the resource.’⁴²³ The Conservation Council of Western Australia Inc. correlates licensing with the successful implementation of the *SWP*, and claims that:

*clearly an open, fair, equitable, transparent and independently administered licencing (sic) regime is crucial to the success of the first raft of implementation measures of the State Water Plan.*⁴²⁴

One other element that the Department of Water and others such as Harvey Water see as a positive outcome of licensing and the *SWP* is that licensing will afford the ‘trading of entitlements to occur, providing additional options for licensed water users in the management of their businesses’.⁴²⁵ For this to occur, though, there must be a separation of land and water titles. This has proven to be a contentious issue with those providing evidence, and is discussed in more detail later in this chapter.

Finding 5

There is general recognition that significant benefits accrue from water licensing.

5.5 Acceptance that a Licensing System Attracts a Cost

As will be shown in the discussion in Chapter 6 relating to the cost of licensing, there is considerable concern about the government’s schedule of fees, the elements included in the fees, the method of their calculation and the need for cost minimisation. Much of this concern comes from the south west of the state. For example, the Manjimup and Pemberton Landowners submit that ‘there has been no cost benefit analysis of water licensing in WA conducted and published by the State Government’.⁴²⁶ Further, it states that it is clear to them that ‘the “services” approach of

⁴²¹ Submission No. 32 from Western Australian Local Government Association, 21 December 2007, p3.

⁴²² Submission No. 12 from City of Perth, 6 December 2007, p2.

⁴²³ Submission No. 16 from Harvey Water, 7 December 2007, p1.

⁴²⁴ Submission No. 31 from Conservation Council of Western Australia Inc., 19 December 2007, p1.

⁴²⁵ Submission No. 29 from Department of Water, 21 December 2007, p10.

⁴²⁶ Submission No. 36 from Manjimup and Pemberton Landowners, 7 January 2008, p9, original emphasis.

the Department of Water is becoming increasingly bureaucratic, time consuming and costly for water licensee farmers'.⁴²⁷ The group argues that the regulated fees represent 'extra unnecessary regulatory intervention [that] also increases the cost to Government to administer the burgeoning Department of Water'.⁴²⁸

While the Aquaculture Council of Western Australia (ACWA) supports effective regulation, it states that 'the benefits must not be offset by unduly high compliance and implementation costs'.⁴²⁹ For ACWA, the state's 'ultimate goal is that WA water resource management creates true intergenerational equity, and at least cost'.⁴³⁰

Nevertheless, as the following demonstrate, there is a general acceptance that a licensing system necessarily comes at a cost:

*The cost of administering these licences must and will be paid for, one way or another, either indirectly through taxes or directly by fees.*⁴³¹

*Payment of a fee for a licence by the licence holder is normal practice in many other situations in which the beneficiary pays for some or all of the cost of administration. The right to drive, fish or conduct a wide range of trades or businesses is covered by licences for which a fee is payable.*⁴³²

*There is no doubt that administering licences is not only necessary but also can be expensive. The trick is always to find a balance between the benefit of administration and its cost.*⁴³³

Harvey Water also accepts that licensing comes with a cost and points to the need for full cost recovery under the NWI. According to Harvey Water:

*everyone has had licences for a very long time, and they are being administered. Whether you like it or not, there is a cost. You are going to pay for that cost either directly or through some government revenue raising, whatever it might be - the CSO, or whatever it is. But they are being done now, anyway. It is part of the NWI... Full transparent cost recovery.*⁴³⁴

⁴²⁷ *ibid.*, p10.

⁴²⁸ *ibid.*.

⁴²⁹ Submission No. 21 from Aquaculture Council of Western Australia, 7 December 2007, p4.

⁴³⁰ *ibid.*

⁴³¹ Submission No. 16 from Harvey Water, 7 December 2007, p1 and 2.

⁴³² *ibid.*, p1.

⁴³³ *ibid.*, p2.

⁴³⁴ Mr Geoff Calder, General Manager, Harvey Water, *Transcript of Evidence*, 8 January 2008, p13.

(a) Fees for Water Resource Management, Not Consolidated Revenue

While there is general acceptance of licensing and recognition that this must attract a cost, there is also considerable concern that licence administration fees might simply be a ‘revenue raiser’ or be ‘offset rather than necessary to implement controls’.⁴³⁵

Further, IAL-WA argues that ‘if full cost recovery is implemented, then it is essential that the funds raised stay within DOW and are only utilized for water management’.⁴³⁶ The Pastoralists and Graziers Association states that ‘any fee collected by the Department of Water through the water licensing regime in proclaimed catchment areas must be solely used to recover administration costs and not to consolidate revenue for other government interests’.⁴³⁷

A landowner in the Nannup area also argues that:

*monies that government receives from the co-operatives who purchase water such as Harvey Water should be used for the management of water rather than being placed in general government revenue. To do so would make the costs and profits from water use more transparent.*⁴³⁸

The Alliance of the Western Australian Farmers Federation (Inc), Potato Growers Association of WA (Inc), Vegetable Growers Association and WA Fruit Growers’ Association (Inc) (the Alliance) submits that ‘all fees collected in individual catchment/aquifers [...be] quarantined for water resource management expenditure back in the same catchment/aquifer they were collected from’.⁴³⁹

Similarly, the Western Australian Local Government Association (WALGA) submits that ‘all funds raised via licence charges be hypothecated to the appropriate section of the Department of Water’.⁴⁴⁰ The Pilbara Regional Council endorses this position and recommends that such hypothecation be done ‘in a transparent and auditable manner to remove any temptation by future Governments to siphon money back into consolidate[d] revenue accounts’.⁴⁴¹

RTIO argues that:

there needs to be appropriate accountabilities and controls placed upon the Department of Water to ensure the services that are to be covered by the water licence administration fees are:

⁴³⁵ Submission No. 16 from Harvey Water, 7 December 2007, p2.

⁴³⁶ Submission No. 19 from Irrigation Australia - WA Region, 11 December 2007, p4.

⁴³⁷ Submission No. 26 from Pastoralists and Graziers Association, 12 December 2007, p1.

⁴³⁸ Submission No. 9 from Mr D. Scott, 6 December 2007, p1.

⁴³⁹ Submission No. 18 from The Alliance, 7 December 2007, p9.

⁴⁴⁰ Submission No. 32 from Western Australian Local Government Association, 21 December 2007, p1 and 5.

⁴⁴¹ Submission No. 40 from Pilbara Regional Council, 31 January 2008, p3.

- *Delivered efficiently; and*
- *Delivered to a level that is appropriate to the water resource management needs of the catchment in question.*⁴⁴²

Recommendation 9

Revenue from licence administration fees should be used for providing the licence administration service. The allocation of those costs should be transparent.

(b) Community Cost Sharing?

Submissions note that the general public are beneficiaries of water resource management and argue that, as such, they should bear some of the cost of this management. The Chamber of Minerals and Energy (CME) argues that there are:

*a broad range of beneficiaries of water regulation. As such, CME contends that costs should not be borne solely by industrial consumers. Effective water resource management benefits the community generally, the environment, and future water users as well as current water users. The costs of the management regime should be shared among all beneficiaries and not placed solely on current users. On this basis, it is appropriate for the community to bear a proportion of the costs of providing this service and the long-term sustainable management of the resource.*⁴⁴³

RTIO recognises and supports the government's role in 'regulating, planning and managing water resources in the interest of the community, the environment and the economy' and advises that licence administration is 'an important element of this role'.⁴⁴⁴ Given this, RTIO suggests that the costs of water licence administration should be carried by all beneficiaries and that the proposed fee structure 'specifically targets licensees and does not seek to make the connection between the broader community benefit and the distribution of costs'.⁴⁴⁵ The company strongly argues that it should only pay for the government services it uses:

*RTIO considers that it should only bear its share of those costs associated with the services undertaken by the Government in relation to the better management of the water resources it uses.*⁴⁴⁶

⁴⁴² Submission No. 20 from Rio Tinto Iron Ore, 7 December 2007, p3 and 6.

⁴⁴³ Submission No. 30 from The Chamber of Minerals and Energy, 14 December 2007, pp1-2.

⁴⁴⁴ Submission No. 20 from Rio Tinto Iron Ore, 7 December 2007, p4.

⁴⁴⁵ *ibid.*, p3, 4 and 5.

⁴⁴⁶ Submission No. 20 from Rio Tinto Iron Ore, 7 December 2007, p4 and 5.

A landowner in Nannup suggests that costs recovered should be in proportion with the amount of water used:

*For example if water users only use 4% of the available water in a catchment then they should only incur 4% of the management costs for the catchment. The other 96% of the water is available for the environment which is for the public good and should be funded from the public purse.*⁴⁴⁷

WALGA argues that ‘water licence charges [... should be] waived or concessions applied where water drawn from a groundwater source or stream flow is for public benefit outcomes’.⁴⁴⁸ The Association states that ‘as a matter of principle, the beneficiaries should share the costs, according to the benefits they derive’, and includes the wider community in its list of beneficiaries.⁴⁴⁹ Drawing attention to paragraph 35 of the NWI, which requires statutory recognition of water provided to meet environmental and other public benefit needs, WALGA argues that providing water for public open space is a public benefit need, and:

*therefore it needs to be recognised that any impost or cost proposed, such as regulatory charges, changes to licensing fees or additional conditions placed on the existing licensing arrangements for local government all need to adequately recognise the public good of the consumptive water use.*⁴⁵⁰

It appears that such calls for the community to bear some costs associated with environmental and other public benefit water use is based on a misconception that there is a fusion of water licence administration costs and the broader water resource management costs.

Reiterating its belief that there should be a clear separation of different services, such as licence administration and water resource management charges, IAL-WA argues that ‘payment for any public or environmental service should be completely separate from any Licensing Administration Fee or Water Resource Management Charge transactions’.⁴⁵¹ This group, while supporting full cost recovery, believes that:

*where benefits are enjoyed by the broader community, or include the shifting of responsibility for the implementation of government policy and tasks to irrigators, then recognition and allowance for this should be reflected in the apportionment of costs. For example, if environmental benefits are derived from the activities of irrigation cooperatives and/or irrigators, this should be reflected in the cost of apportionment.*⁴⁵²

⁴⁴⁷ Submission No. 9 from Mr C. Scott, 6 December 2007, p1.

⁴⁴⁸ Submission No. 32 from Western Australian Local Government Association, 21 December 2007, p1.

⁴⁴⁹ *ibid.*, p3.

⁴⁵⁰ *ibid.*, p6.

⁴⁵¹ Submission No. 19 from Irrigation Australia - WA Region, 11 December 2007, p6.

⁴⁵² *ibid.*, p3.

As referred to in Chapter 4, the community already pays for water at some level. For example, no matter where you live in the state you bear a cost for clean drinking water. With increasing needs for water for a range of different uses there will increasing costs. In systems where water is fully allocated or approaching full allocation as well as paying for a water licence consideration needs to be given to how costs are apportioned.

5.6 Separation of Water Rights from Land Rights

According to the DoW, 'the notion of water trading is an important element of the National Water Initiative, not necessarily as an end in its own right but so that there is a better resource management outcome in the sense that people will value water more'.⁴⁵³ There is general understanding that water does not belong to individuals or corporations, but to the state. As the DoW advises, 'traditionally, licences have been closely linked to the land, by requiring licence holders to have legal access to the land where the water is taken from'.⁴⁵⁴ The Gascoyne Water Co-Operative Ltd recognises that water, 'be it rain, surface water or groundwater', is not owned by individuals; rather, water is vested in the Crown.⁴⁵⁵ Similarly, Harvey Water states that 'access to water is a precious right which is bestowed upon users by society as represented by government through its agencies'.⁴⁵⁶ The Shire of Manjimup believes that 'there is an acceptance that the water belongs to the state'.⁴⁵⁷

Paragraph 28 of the NWI requires water access entitlements to be separate from land:

*The consumptive use of water will require a water access entitlement, separate from land, to be described as a perpetual or open-ended share of the consumptive pool of a specified water resource, as determined by the relevant water plan (paragraphs 36 to 40 refer), subject to the provisions at paragraph 33.*⁴⁵⁸

Part of the rationale for this separation is to develop a market in water separate to land, which will, in turn, allow water trading and the concomitant movement of water to the highest value use.⁴⁵⁹ According to the *Blueprint for Water Reform in Western Australia*:

⁴⁵³ Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p14.

⁴⁵⁴ Submission No. 29 from Department of Water, 21 December 2007, p9.

⁴⁵⁵ Submission No. 2 from Gascoyne Water Co-Operative Ltd, 27 November 2007, p2.

⁴⁵⁶ Submission No. 16 from Harvey Water, 7 December 2007, p2.

⁴⁵⁷ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p2. Mr Hubble also noted that there was debate over whether private collectors of water should pay, and this is discussed elsewhere in this report.

⁴⁵⁸ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, paragraph 28, p5. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

⁴⁵⁹ Blueprint Water Reform Implementation Committee, *A Blueprint for Water Reform in Western Australia. Final Advice to the Western Australian Government*, Government of Western Australia, Perth, December 2006, p27.

*the separation of interests in water from interests in land enables water resources to be used more economically and efficiently because under these circumstances the movement of water towards a higher value use can occur more readily.*⁴⁶⁰

It is intended that this unbundling of rights will make for more economic trades as the associated transaction costs will be reduced.⁴⁶¹

According to Mr Jeff Camkin, ‘water trading is a useful tool. It is one of the tools in the water resource management tool kit, and wherever it is appropriate, you use it’.⁴⁶² For water trading to occur there must be something clearly tradeable and, under the NWI, it is a water access entitlement ‘to take a certain quantity of water under certain conditions’.⁴⁶³ Mr Camkin suggested that ‘Australia is leading the way there [with water trading] a fair bit’.⁴⁶⁴

Throughout the Inquiry concerns were expressed to the Committee regarding the separation of land and water titles and the impact this was might have on property values and the environment. The balance of this chapter outlines the concerns brought to the Committee’s attention. Water trading is another issue around which there appears to be considerable anxiety and confusion. Therefore, following a summary of the concerns raised to the Committee the chapter will explicate current arrangements for, and restrictions on, water trading, both under existing legislation and regulations and under legislation currently being drafted to incorporate NWI requirements.

5.7 Water Trading in Western Australia

In Western Australia, and in line with the *SWP*, there will be three types of entitlements possible, namely water licence entitlements, water access entitlements and riparian rights (stock and domestic use), and these entitlements will be able to co-exist. This co-existence is allowable under paragraph 33(i) of the NWI which clearly acknowledges that other types of entitlements might be necessary in Western Australia:

*fixed term or other types of entitlements such as annual licences will only be issued for consumptive use where this is demonstrably necessary, such as in Western Australia with poorly understood and/or less developed water resources.*⁴⁶⁵

⁴⁶⁰ *ibid.*

⁴⁶¹ *ibid.*

⁴⁶² Mr Jeff Camkin, Private Citizen, *Transcript of Evidence*, 20 December 2007, p9.

⁴⁶³ *ibid.*

⁴⁶⁴ *ibid.*

⁴⁶⁵ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, paragraph 33(i), p6. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

(a) Water Trading in Western Australia under Current Legislation

Water trading currently exists in Western Australia and has done so since the 2000 amendments to the RIWI Act provided for the separation of land and water rights. These amendments ‘introduced market mechanisms to the management of water resources’.⁴⁶⁶ Prior to the 2000 regulations water property rights did not exist. The separation of land and water titles allows for the rights to be acquired, disposed of or mortgaged separately.⁴⁶⁷ However, there are conditions that apply to this transferability of title that are intended to safeguard the taking and use of water.

Clause 3 of Schedule 1 of the RIWI Act sets out who is eligible to hold a licence. The most relevant section of this clause for the purpose of the Inquiry states that:

A person is eligible to hold a licence if-

(a) the person is an owner or occupier of the land to which the licence relates;

(b) the person does not come within paragraph (a) but satisfied the Commission -

(i) that the owner and any occupier of the land to which the licence relates have agreed in writing to the person-

(I) being on the land; and

(II) doing there the things that may be done under the licence

In other words, water licences can only be issued to those with legal access to the relevant land. When combined with the conditions that apply to each licence, this means that the right to take and use water is tied to the land. As the DoW stated, currently in Western Australia ‘a licence provides for the water and land to be held together in essence’.⁴⁶⁸

According to the DoW:

*this Section of the Act was put in place because the location at which water is taken is critical to its management (particularly for groundwater). It addressed issues such as people attempting to acquire a licence in an area before deciding where the water would be taken (making it impossible to determine impacts), or what would happen to a water licence if access to land (via a lease) was lost.*⁴⁶⁹

Furthermore, clause 29 of schedule 1 clearly links the transfer of water licences and entitlements to a person who is eligible under clause 3 of schedule 1:

⁴⁶⁶ Submission No. 43 from Department of Water, 7 February 2008, p9.

⁴⁶⁷ *ibid.*

⁴⁶⁸ Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p14.

⁴⁶⁹ Submission No. 43 from Department of Water, 7 February 2008, p9.

(1) Subject to this Division, the holder of a licence may transfer-

(a) the licence; or

(b) the licensee's water entitlement under the licence

to a person who holds, or is eligible in terms of clause 3 to hold, a licence of the same kind.

Subclause 29(2) also specifies that licence transfers may not be allowed to the extent that 'a relevant local by-law prohibits the transfer of licences, or water entitlements under licences, of that kind'.⁴⁷⁰

Water trades under the RIWI Act can involve the entire licence or a portion of the licence entitlement. Trades can also be permanent or temporary, with clause 30 of schedule 1 providing for limited period transfers.

The above are the current regulations relating to water trading in Western Australia as prescribed under the RIWI Act.⁴⁷¹ These regulations are supported by the 2001 Statewide Policy No.6, *Transferable (Tradeable) Water Entitlements for Western Australia*,⁴⁷² which sets out the policy principles that guide decision making in relation to water trading. These include principles regarding eligibility, water availability, environmental and resource management, consultation, security interests, speculation, administration and broking.⁴⁷³

In October 2007, the Resources Economic Unit (REU) prepared a report for the Economic Regulation Authority (ERA) inquiring into competition in water trading issues in the water and wastewater services sector. This report provided the following examples of 'the capacity to trade under existing legislation':⁴⁷⁴

The capacity of individual farmers to privately negotiate a price for the transfer of a license to take water;

The capacity of an irrigation cooperative to negotiate a water transfer to a water utility in exchange for a payment to be used for irrigation delivery system upgrades; and

The capacity of an irrigation cooperative to similarly transfer water to another user such as a large industrial undertaking.

⁴⁷⁰ Schedule 1, Division 7, *Rights in Water and Irrigation Act 1914* (WA).

⁴⁷¹ Section 4.7 (c) outlines the state's intentions in relation to water trading envisaged under the NWI and the SWP.

⁴⁷² Waters and Rivers Commission, *Transferable (Tradeable) Water Entitlements for Western Australia*, Statewide Policy No. 6, Government of Western Australia, Perth.

⁴⁷³ *ibid.*, pp2-6.

⁴⁷⁴ Resources Economic Unit, *Inquiry into Competition in the Water and Wastewater Services Sector: Water Trading Issues*, Prepared for the Economic Regulation Authority, 30 October 2007, p11, as cited in Submission No. 46 from Department of Water, 21 February 2008, p1.

Finding 6

Water trading is already provided for under current legislation.

(b) The Value of Water Trading under Current Regulations

The following provides data on the amount of water trading being conducted under the existing legislation, regulations and policy. Table 5.4 is extracted from data generated by the DoW to determine water trades between July 2002 and June 2007, excluding trades within irrigation cooperatives.⁴⁷⁵ While the amounts may not be particularly large, the trades involved represent significant dollar values.

Table 5.4: Water Trades 1 July 2002 to 30 June 2007⁴⁷⁶

Type of Resource	Total Number of Trades	Total Entitlement Traded (ML)	Average Trade over the 5 years
Permanent Groundwater	58	2,994	51.6
Temporary Groundwater	12	14,650	2,930 ¹
Permanent Surface Water	16	6,251 ²	na
Temporary Surface Water	8	19,217 ³	3,843

¹90% taken under 2 licences: 3940 in 2005-06 and 2006-07; and 1679 in 2002-03, 2003-04 and 2004-05.

²Dominated by three trades in the Harvey River Basin. ³Dominated by 5 trades in the Harvey River Basin.

The DoW advises that ‘the prices at which water entitlements have been traded have not been well documented’.⁴⁷⁷ Nevertheless, and in line with certain limitations that arise from this, the DoW is able to provide the following data with regards to the value of water trades in Western Australia. Where the price was reliably documented, the total value of permanent trades for 2005-2006 was \$159,500 and for 2006-07 was \$192,500.⁴⁷⁸ Surface water trades have understandably been dominated by trades between Harvey Water and the Water Corporation ‘where irrigation entitlements are being traded to public water supply entitlements over six years’.⁴⁷⁹ It is expected

⁴⁷⁵ Submission No. 46 from Department of Water, 21 February 2008, pp1-2.

⁴⁷⁶ Developed from information provided in Submission No. 46 from Department of Water, 21 February 2008, pp2-4.

⁴⁷⁷ *ibid.*, p5.

⁴⁷⁸ *ibid.*, p5.

⁴⁷⁹ *ibid.*, p6.

that the 17.1GL permanent trade will result in a total payment to Harvey Water of \$72 million, which is 'equivalent to a permanent trade price of \$4,210 per ML (or \$4.21/kl)'.⁴⁸⁰

(c) Water Trading in Western Australia under the National Water Initiative

The DoW advised that 'the notion of perpetual water access entitlements issued as a share of a consumptive pool' is something new that the state is being asked to consider.⁴⁸¹ Under the NWI there is the requirement that statutory water management plans be developed 'for surface water and groundwater management units in which entitlements are issued'.⁴⁸² In addition to this, the statutory water management plans must take into consideration environmental and other public benefit outcomes in calculations of the consumptive pool. In this way, water allocated to environmental and other public benefit outcomes is given statutory recognition and the same level of security as entitlements for consumptive use.⁴⁸³

Paragraphs 30, 31 and 32 of the NWI outline the characteristics of a water access entitlement and the principles under which they are approved.⁴⁸⁴ These include, but are not limited to, requirements that water access entitlements will:

specify the essential characteristics of the water product;

be able to be traded, given, bequeathed or leased;

be mortgageable;

clearly indicate the responsibilities and obligations of the entitlement holder consistent with the water plan relevant to the source of the water;

*be able to be varied, for example to change extraction conditions, where mutually agreed between the government and the entitlement holder.*⁴⁸⁵

In discussing the enhancement of water security the SWP notes that water trading is encouraged 'for economic use, to improve productivity and alleviate pressure on the environment'.⁴⁸⁶ The SWP is based upon the *Blueprint* in which it was recommended that:

⁴⁸⁰ *ibid.*

⁴⁸¹ Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p14.

⁴⁸² Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, paragraph 36, p7. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

⁴⁸³ *ibid.*, paragraph 35, p7.

⁴⁸⁴ *ibid.*, p6. See also Schedule D Principles for regulatory approvals for water use and works.

⁴⁸⁵ *ibid.*, paragraphs 31 and 32, p6.

⁴⁸⁶ Government of Western Australia, *State Water Plan 2007*, Department of the Premier and Cabinet, Perth, 2007, p77.

*water and land entitlements be further separated and that it not be necessary to hold or have access to land to hold a water access entitlement.*⁴⁸⁷

Water access entitlements will be perpetual and it will no longer be possible to simply issue annual licences for water access entitlements; a water property right must be separated from the land right.⁴⁸⁸ These entitlements ‘will be mortgageable (and in this respect have similar status as freehold land when used as collateral for accessing finance)’.⁴⁸⁹

The *Blueprint* recommended an ‘unbundling’ of the rights and approvals that exist under licences that exist under current legislation, such as those to take a volume or share of water, to construct and operate works at a specific stream location, to dispose of salt and/or to drain land.⁴⁹⁰ This unbundling ‘of key attributes and obligations’ is intended to ‘impact on regulatory effectiveness, trading of entitlements and, thereby, ultimately increase the contribution which water use makes to the economy’.⁴⁹¹

Therefore, while water rights are no longer tied to land access, ‘entitlement holders will still require regulator approval from the Department of Water to extract and use the water’.⁴⁹² This is in accordance with the *Blueprint* which recommended that:

*in order to take the water to which the water access entitlement applies, that it be made necessary to have a works approval to take water and a site use approval to use it.*⁴⁹³

Recommendation 21 of the *Blueprint* calls for statutory approvals to be unbundled from water access entitlements into three separate rights. It recommends rights to:

- (1) a water access entitlement as ‘an exclusive share of the consumptive pool’;
- (2) ‘extract or take water, including an extraction rate (works approval)’; and
- (3) ‘use water (site use approval)’.⁴⁹⁴

⁴⁸⁷ Water Reform Implementation Committee, *A Blueprint for Water Reform in Western Australia. Final Advice to the Western Australian Government*, Government of Western Australia, Perth, December 2006, p27.

⁴⁸⁸ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, paragraph 35, p7. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

⁴⁸⁹ *ibid.*, paragraph 31, p6.

⁴⁹⁰ Water Reform Implementation Committee, *A Blueprint for Water Reform in Western Australia. Final Advice to the Western Australian Government*, Government of Western Australia, Perth, December 2006, pp27-8.

⁴⁹¹ *ibid.*, p28.

⁴⁹² Submission No. 43 from Department of Water, 7 February 2008, p10.

⁴⁹³ Water Reform Implementation Committee, *A Blueprint for Water Reform in Western Australia. Final Advice to the Western Australian Government*, Government of Western Australia, Perth, December 2006, p27.

⁴⁹⁴ *ibid.*, p28.

There is an important point to be made with regards to the separation of land and water titles. At present in Western Australia there is no such separation because the necessary legislation is not yet in place. The Government of Western Australia gave in principle support for *Blueprint* recommendation numbers 21 and 22 regarding the separation of water and land entitlements. The Government Response indicated that new legislation would be required to implement these recommendations. It also indicated that this issue required ‘detailed consideration by the Department of Water in order to ensure the resultant system is administratively simple and streamlined’.⁴⁹⁵ The Committee understands that the Water Resource Management Bill, which provides for water access entitlements and the separation of land and water rights, is in preparation, and statutory water management plans that determine water access entitlements and a consumptive pool are not possible until such legislation is enacted.

Finding 7

Under current legislation the further separation of land and water titles as envisaged under the National Water Initiative is not possible in Western Australia.

Finding 8

The framework envisaged by the National Water Initiative needs to be in place before trading of water access entitlements can begin.

Recommendation 10

The Department of Water should communicate clearly the requirements needed to be in place prior to trading of water access entitlements.

Recommendation 11

Proposed legislation allowing water access entitlement trading needs to be carefully drafted following full community consultation.

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Government of Western Australia, *Western Australian Government Response to A Blueprint for Water Reform in Western Australia*, Government of Western Australia, Perth, February 2007, p13.

(d) Co-Existence of Entitlements

While new legislation is being drafted to provide for statutory water management plans and the unbundling of water and land rights, as noted above, there is also provision under Paragraph 33 of the NWI for a system of fixed term or other types of entitlements to remain as a form of water entitlement. Paragraph 25(viii) also demands that water access entitlements and planning frameworks will ‘reflect regional differences in the variability of water supply and the state of knowledge underpinning regional allocation decisions’.⁴⁹⁶

This allows for the current type of licence to continue and to co-exist with the other forms of water entitlements that might be available in the state. According to the DoW, the current form of licence:

*will be preserved into the future as well; it is just that we are offering another form of entitlement under which those things are unbundled. For much of Western Australia, the existing water licensing arrangement will continue.*⁴⁹⁷

The separation of land and water titles is:

*a tenet of the National Water Initiative as it applies to a particular form of entitlement ... and it will be up to a localised statutory water management plan in a given area to determine whether that form of water access entitlement and consumptive pool should exist there. Where that is determined, those titles will be separated. Where it does not make sense to do that, the existing licensing arrangement will continue.*⁴⁹⁸

Finding 9

The co-existence of different types of water entitlements has not been clearly communicated to stakeholders.

Recommendation 12

The Department of Water should communicate the co-existence of different types of water entitlements more clearly to stakeholders.

⁴⁹⁶ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, paragraph 25(viii), p5. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

⁴⁹⁷ Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p14.

⁴⁹⁸ *ibid.*, pp14-15.

5.8 Concerns About Water Trading in Western Australia

As noted above, the separation of water rights from land rights is intended to facilitate water trading, and that this is seen by some as a benefit accruing from water licensing. For example, Harvey Water sees the separation of land and water rights as ‘terrific’.⁴⁹⁹ According to Harvey Water, they ‘have been trading water in Harvey for 11 years, since we started. It is commonplace; farmers do it all the time very easily’.⁵⁰⁰ For this group of irrigators, trading:

*works wonderfully well. About 10 per cent of our water sales each year are temporary trades. It is the same as needing hay for a dairy farm. If you want more water, you buy more water from your neighbour. If you want more hay, you go and buy more hay. It is very simple.*⁵⁰¹

Not surprisingly, the DoW also sees significant benefits to water trading under the water access entitlements system. The DoW submits that this:

will provide more opportunity for water to be traded and is designed to give irrigators and businesses alike, greater flexibility in their operations. This is particularly the case for temporary trades, when for example, if an irrigator were to choose to plant a less water-intensive crop in one season.

*Even now, but more so under the proposed entitlement system, that irrigator will have the opportunity to temporarily trade that water and earn an income from the asset (the water entitlement) while he or she is not utilising that asset. Trading in this manner provides licence (or entitlement) holders the flexibility to manage their business and benefit from opportunistic trade. It is also worth noting that holding a water access entitlement will provide the business owner with a financially stronger asset than a licence.*⁵⁰²

Notwithstanding these positive positions, evidence gathered for this Inquiry indicates there is considerable concern in the community regarding the separation of land rights and water entitlements, and confusion over precisely what is being mandated with regards to water trading.

(a) Possible Impact on Land Value

First, it has been suggested that the separation would significantly devalue property assets.⁵⁰³ In response to this concern the DoW advises that:

⁴⁹⁹ Mr Geoff Calder, General Manager, Harvey Water, *Transcript of Evidence*, 8 January 2008, p10.

⁵⁰⁰ *ibid.*

⁵⁰¹ *ibid.*, p10.

⁵⁰² Submission No. 43 from Department of Water, 7 February 2008, pp9-10.

⁵⁰³ Submission No. 4 from Salitage Wines Pemberton, 28 November 2007, p2.

*the separation of land and water titles is not expected to detract from the sum value of the assets and in most instances will lead to an increase in the sum value as the water entitlement becomes more valuable as a separately tradeable commodity.*⁵⁰⁴

However, the potential for a reduction of land property value is also a concern expressed by local government regarding the effect that separating land and water rights would have on the rateability of property in their areas. WALGA submitted that local governments in this state derive, on average, more than '50% of their operating revenue from property rates, which are based on land valuations provided by the Valuer General's Office'.⁵⁰⁵ Therefore, local governments are concerned about the possible major impact the separation of titles will have on the land's property value and, thus, the land's rateability. This is particularly so for 'local governments with irrigated land within their boundaries,' with the impact being on their ability 'to raise sufficient revenue in the short term and on the distribution of the rate burden in the long term'.⁵⁰⁶ The Pilbara Regional Council has also expressed concern regarding the 'impact of segregating water access entitlements from land in terms of local government ability to rate properties'.⁵⁰⁷

In relation to this possibility, the DoW advises that:

*experiences in the Eastern States from the unbundling of water and land titles have shown that the net revenue base of the local councils is quite static over time. This is because while water may be traded from one property (which may experience a minor decrease in value), under the entitlements system that water is available to be traded to another property that may not have previously had access to water, which would then lead to an increase in its value. The net result is therefore expected to be minimal.*⁵⁰⁸

Finding 10

The impact of water trading on land value appears to be a legitimate concern that must be addressed particularly in future planning processes.

(b) Impact on Land Management and Local Planning

The Shire of Manjimup also argues that the separation is 'a serious mistake',⁵⁰⁹ and 'fraught with difficulties', particularly if water rights are 'bought and sold without regard for the proper

⁵⁰⁴ Submission No. 43 from Department of Water, 7 February 2008, p10.

⁵⁰⁵ Submission No. 32 from Western Australian Local Government Association, 21 December 2007, p8.

⁵⁰⁶ *ibid.*

⁵⁰⁷ Submission No. 40 from Pilbara Regional Council, 31 January 2008, p3.

⁵⁰⁸ Submission No. 43 from Department of Water, 7 February 2008, p10.

⁵⁰⁹ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p4.

management and use of the land upon which it is collected and stored'.⁵¹⁰ This would be exacerbated if 'the value of water is seen to be of significantly greater worth off-site than using it for the proper management of the land itself'.⁵¹¹ The Shire is concerned about 'the real possibility of productive land being rendered impotent due to water rights being traded'.⁵¹²

For the Shire of Manjimup, the issue of the possibility of water trading is also related to the issue of planning in that:

*the proposal to allow separation of titles appears to contradict state planning principles requiring local governments to identify and protect priority agricultural land. Priority agricultural land is identified as having good soil, a good and adequate water supply and good topography with access to transport etc. The Shire of Manjimup was one of the first shires to complete a local planning strategy under the new planning regime. We spent a lot of time and money identifying priority agricultural land. What is the point of identifying such land if it can become barren through a lack of water? We think one policy for the whole state does not make a lot of sense in an area where a dam is not interconnected.*⁵¹³

For water trading under the RIWI Act, where licence holders will pay a licence administration fee rather than a sum calculated for the value of the water taken, clauses 3 and 29, and the conditions under which each licence is granted provide for safeguards against the desertification of land through water trading. Under the proposed new water access entitlement system, the Committee recognises that the possibility of holding an access entitlement without access to the land may pose a risk of improper management. However, given that:

- (1) entitlement holders will require DoW approval to extract and use water;⁵¹⁴
- (2) buyers of the entitlement will pay for the water, which reasonably will be a substantial sum;
- (3) the 'lack of geographical continuance between most of the State's surface and groundwater areas'; and
- (4) the *Trade Practices Act 1974* (Cwlth) dictates against anti-competitive behaviour,

the risk of people speculating in and stockpiling water is greatly reduced.

The Shire of Manjimup is also concerned that because the separation of land and water titles will require statewide legislation, regulations and policy it will be antithetical to local management. It

⁵¹⁰ Submission No. 17 from Shire of Manjimup, 7 December 2007, p4.

⁵¹¹ *ibid.*

⁵¹² Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p4.

⁵¹³ *ibid.*

⁵¹⁴ Submission No. 43 from Department of Water, 7 February 2008, p10.

is generally unclear as to how this issue would be dealt with under a statutory management plan for a particular identified consumptive pool because, as the Shire of Manjimup suggests, ‘if there is a hierarchy of plans and the top plan suggested the separation of titles, it is very unlikely that a plan lower down in the hierarchy will say something different’.⁵¹⁵

However, the DoW advises that:

*the management of land will still remain subject to local council guidelines and building codes, environmental regulations and general land planning rules. This would be the case, with or without the separation of land and water titles.*⁵¹⁶

Furthermore, water trading ‘will be consistent with the Department of Water’s management planning, which will ensure the sustainability of regions’.⁵¹⁷

(c) Impact on the Resources Sector

The resources sector sees itself as subjected to various market limitations associated with its location.⁵¹⁸ It also uses water in a different way from primary producers in that it is largely involved in dewatering, which is the drainage or removal of water from the mine site. The CME states that ‘use by the mining sector in dewatering operations is a far different use from uses that consume water’.⁵¹⁹ RTIO advises that dewatering activities, particularly in sites where mining is carried out below the water table, ‘will generate excess water that is location and time specific, and which is not matched by demand external to RTIO’s mining operations’.⁵²⁰ The isolated location of their sites also means that participating in water markets and trading would be difficult, mainly due to the high cost of transporting surplus water to points of demand.⁵²¹ This restriction of trade as a function of remote mine locations is acknowledged by the DoW.⁵²² The DoW suggests that the remote location of mines and operational decisions around water lead to many mines using ‘dewatering water and hyper-saline water in their internal processes’.⁵²³ RTIO contends that it is factors such as these that ‘contribute to limitations on the operation of markets in the inland Pilbara, which may limit the market-driven reforms that constitute the primary thrust of reforms under the National Water Initiative (NWI)’.⁵²⁴

⁵¹⁵ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p4.

⁵¹⁶ Submission No. 43 from Department of Water, 7 February 2008, p10.

⁵¹⁷ *ibid.*

⁵¹⁸ Submission No. 20 from Rio Tinto Iron Ore, 7 December 2007, p2.

⁵¹⁹ Submission No. 30 from The Chamber of Minerals & Energy, 14 December 2007, p5.

⁵²⁰ Submission No. 20 from Rio Tinto Iron Ore, 7 December 2007, p2.

⁵²¹ *ibid.*

⁵²² Submission No. 43 from Department of Water, 7 February 2008, p10.

⁵²³ *ibid.*

⁵²⁴ Submission No. 20 from Rio Tinto Iron Ore, 7 December 2007, p2.

The CME supports this view. It sees the resources sector as experiencing ‘unique factors’ concerning water use. In addition to the remote location mentioned by RTIO, the CME points to the poor quality of water used in the sector and the lack of competition for this water. It also notes that water is accessed at each site for a ‘relatively short duration’ and that this is ‘due to short life-of-mine’.⁵²⁵ The Chamber suggests that paragraph 34 of the NWI allows for flexibility to incorporate the special conditions faced by the minerals and petroleum sectors. Indeed, paragraph 34 states that this sector ‘may require specific management arrangements outside the scope of this Agreement’.⁵²⁶

However, the DoW’s position refers back to the market in that it sees water trading as ‘an opportunistic market mechanism that will operate from time to time when the demand for and supply of water is varied in different locations (where transport is possible)’.⁵²⁷ Given this, it also states:

*if there was a situation where a mine site was deficient of water and wanted to purchase water from another mine site which had water surplus, then a commercial arrangement for a temporary or permanent trade could be brokered between the respective mine sites. In any event, under both the existing licensing system and the proposed entitlements system, the approval of the Department of Water would still be required for this trade under regulations governing the use of water and approvals to construct works.*⁵²⁸

The Pilbara Regional Council has quite specific concerns regarding paragraph 34 of the NWI. This Council argues that mining operations should not be exempt from licensing for dewatering, ‘particularly when non-potable water is discarded as unallocated water at the mine site and these companies then use Water Corporation potable water as dust suppression at their port sites’.⁵²⁹

(d) Access to Markets

The resources sector is not the only one to voice concerns about access to water trading opportunities. Self-supply water harvesters also advised that water trading was not readily and practically available in self-supply areas, and felt that this is more suited to co-operatives.⁵³⁰ On this point, the Shire of Manjimup argued that ‘water infrastructure in our area is not interconnected and therefore purported water trading cannot occur as perhaps has been

⁵²⁵ Submission No. 30 from The Chamber of Minerals & Energy, 14 December 2007, p4.

⁵²⁶ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, paragraph 34, pp6-7. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

⁵²⁷ Submission No. 43 from Department of Water, 7 February 2008, p10.

⁵²⁸ *ibid.*

⁵²⁹ Submission No. 40 from Pilbara Regional Council, 31 January 2008, p5.

⁵³⁰ Submission No. 7 from Scott River Growers Group, Margaret River Region, Inc., 3 December 2007, pp1-2; Submission No. 10 from Marron Growers Association of Western Australia, 6 December 2007, p6.

optimistically envisaged’.⁵³¹ Similarly, the Collie Preston Water Action Group suggested that the separation of land and water titles may make water a valuable commodity for some big irrigators, but ‘cannot see how the small farmer could do water trading’.⁵³² While the licence will certainly grant the right to trade water, the water may not be there to trade.⁵³³ Alternatively, trading would not occur in areas with relatively low allocations, and the opportunity for trade would only exist once an area becomes close to being fully allocated or overallocated.⁵³⁴

The Committee understands that not all water users will benefit from water trading largely due to regional geographic constraints. However, water trading remains an option to licence holders and will be an option for water access entitlement holders. It is important to note that ‘trading is and always will be an option available to licence holders and has never been mandatory’.⁵³⁵

(e) Conclusion

The DoW is also cognisant of the community’s concerns regarding the unbundling of land and water rights, and advised that under the NWI the determination of a consumptive pool and the allocation of water access entitlements as a share of that pool is required only ‘in those areas in which it makes sense to have those arrangements’.⁵³⁶ Furthermore, ‘in Western Australia, there may be relatively few of those areas compared with a preponderance of this situation in the eastern states’.⁵³⁷

While the Committee understands that there is considerable concern over the impact of the separation of titles and water trading, there are a number of factors that may serve to allay people’s concerns:

- (1) the flexibility in the NWI with regards to determining the type of water entitlement within each localised statutory management plan;
- (2) the continuance of the existing licence type in appropriate areas, complete with licence conditions and responsibilities;
- (3) further separation of land and water titles will only occur in areas governed by statutory management plans that require water access entitlements; and

⁵³¹ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p4.

⁵³² Mr Harry Ortheil, Farmer, Collie Preston Water Action Group, *Transcript of Evidence*, 8 January 2008, p4.

⁵³³ *ibid.*

⁵³⁴ *ibid.*

⁵³⁵ Submission No. 43 from Department of Water, 7 February 2008, p9.

⁵³⁶ Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p14.

⁵³⁷ *ibid.*

- (4) the requirement for water access entitlement holders to also have works and site use approvals.

Provided that appropriate and rigorous processes and entitlement conditions are in place, each trade should be subjected to scrutiny and a decision made as to whether or not it should be allowed. While there will be a market in water, this should not be unregulated in as much as the conditions that apply to a water entitlement, particularly as to its purpose, should not be amended without due consideration of the water management plan it which it is located.

It is of concern to the Committee that this is not clearly understood by water users.

Finding 11

The further separation of land and water titles will only be possible in areas deemed appropriate under a statutory water management plan that allocates water via water access entitlements as a share in a consumptive pool.

Finding 12

Water access entitlement trading should not commence until the appropriate conditions outlined are in place.

Recommendation 13

That the Department of Water ensures that water access entitlement trading does not commence until the framework that the National Water Initiative intends is in place.

CHAPTER 6 DEPARTMENT OF WATER'S LICENCE ADMINISTRATION COSTS

The second term of reference to this Inquiry directs the Committee to inquire into and report on the full cost incurred by the Department of Water (DoW) for the administration of the current water licence system. While establishing the costs incurred by the DoW in administering water licences is fundamental to the Inquiry, detailed information relating to departmental costs is not something that members of the general public could easily have accessed in order to respond to this term of reference. This is evident in the following comments contained in submissions:

*We are not in a position to question departmental costs.*⁵³⁸

*Insufficient information is provided as to the costs incurred by the Department of Water for the current water licence system, therefore, no comment is offered.*⁵³⁹

*CME [Chamber of Minerals and Energy] is not in a position to comment on the cost of administering the current water licence system.*⁵⁴⁰

*The information made available does not make it possible to comment on the cost incurred by the Department of Water for administration of the current water licence system and how this might relate to any proposed future system. It would appear, however, that a large proportion is required for assessments.*⁵⁴¹

Submissions such as that from Rio Tinto Iron Ore (RTIO) simply state 'no comment' to terms of reference 3, 4 and 5. Similarly, the Ord Irrigation Co-operative Ltd (OIC) states that 'it's not possible for the OIC to provide the detail required in these points [2, 3 and 4]'.⁵⁴²

Therefore, in this chapter the Committee necessarily draws largely upon information provided by the DoW both in submission and in response to questions at hearing. Issues concerning the actual water licence administration fees and the extent to which they meet National Water Initiative (NWI) full cost recovery requirements are discussed in Chapter 7 and it is in that chapter that stakeholders' views are explicated in detail.

It is important to note that while the original schedule of fees has been subject to revision, this does not impact upon the costs incurred, and therefore recoverable, by the DoW for licence administration. Again, the issue of the fees themselves is discussed more fully in Chapter 7.

6.1 Costs Associated with Water Licence Administration

A Blueprint for Water Reform in Western Australia (Blueprint) notes the costs associated with water licence administration total \$5,827,397 for 2005-2006.⁵⁴³ This figure is confirmed by the

⁵³⁸ Submission No. 10 from Marron Growers Association of Western Australia, 6 December 2007, p4.

⁵³⁹ Submission No. 12 from City of Perth, 6 December 2007, p2.

⁵⁴⁰ Submission No. 30 from Chamber of Minerals & Energy Western Australia, 14 December 2007, p2.

⁵⁴¹ Submission No. 32 from Western Australian Local Government Association, 21 December 2007, p5.

⁵⁴² Submission No. 24 from Ord Irrigation Cooperative Ltd, 12 December 2007, p2.

DoW in its evidence to the Committee.⁵⁴⁴ Table 6.1 which follows provides the breakdown of costs for 2005-2006 as contained in the *Blueprint*. These activities or functions relate to the administration of the licensing regime provided for under Part III of the *Rights in Water and Irrigation Act 1914*, that is, sections 5C, 26D, 11, 17 and 21A.⁵⁴⁵

Table 6.1: Costs Associated with Water Licensing for 2005-2006⁵⁴⁶

Activity	Cost
Licensing, receipting and assessment of licences and permits	\$4,145,918
Compliance, survey and enforcement actions under the <i>Rights in Water and Irrigation Act 1914</i>	\$812,875
State Administrative Tribunal; appeals against decisions	\$237,965
Community Input (Water Resource Management Committees); education in relation to water resources	\$243,653
Licensing Support; data base administration and training	\$386,986
Total	\$5,827,397

According to the DoW, this figure was determined through ‘a detailed analysis of the Department’s projects and budgets’ and does not include costs ‘associated with water resource management’.⁵⁴⁷ This was reiterated at hearing with the DoW stating that:

*to recover the full cost, there was an analysis done of the activities that were identified as administration activities carried out in the licensing process. It does not include measuring, monitoring, planning or groundwater investigations. None of those things are included in those costs.*⁵⁴⁸

The Committee was advised that costs for 2006-2007 and 2007-2008 are not available.⁵⁴⁹ According to the DoW:

⁵⁴³ Water Reform Implementation Committee, *A Blueprint for Water Reform in Western Australia. Final Advice to the Western Australian Government*, Government of Western Australia, Perth, December 2006, p47. Submission No. 43 from Department of Water, 7 February 2008, p1.

⁵⁴⁴ Submission No. 29 from Department of Water, 21 December 2007, p15; Submission No. 43 from Department of Water, 7 February 2008, p2; Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p10. See also Department of Water, *Transcript of Evidence*, 24 January 2008, pp11-13.

⁵⁴⁵ Submission No. 43 from Department of Water, 7 February 2008, p3; Ms Elizabeth Western, Manager, Water Licensing, Department of Water, *Transcript of Evidence*, 24 January 2008, p6.

⁵⁴⁶ Water Reform Implementation Committee, *A Blueprint for Water Reform in Western Australia. Final Advice to the Western Australian Government*, Government of Western Australia, Perth, December 2006, p47.

⁵⁴⁷ Submission No. 43 from Department of Water, 7 February 2008, p3.

⁵⁴⁸ Ms Elizabeth Western, Manager, Water Licensing, Department of Water, *Transcript of Evidence*, 24 January 2008, p6.

⁵⁴⁹ Submission No. 29 from Department of Water, 21 December 2007, p12; Submission No. 43 from Department of Water, 7 February 2008, p1.

*those figures were not available at the time we made this submission purely because it required a financial analysis of budgets, and projects within the organisation had changed since the original work was done in 2005-06 because of the changes in the department and changes in the way in which the project management system had been operating.*⁵⁵⁰

The DoW advises that since the time the costs had been calculated for the *Blueprint*:

*changes to the way the Department manages its budgets and projects, whereby activities are rolled up under a single project, does not effectively allow for costs to be attributed to the discreet activities in administering licences. Therefore the detailed analysis, similar to that undertaken for 2005-06 cannot be replicated for 2006-07 onwards.*⁵⁵¹

The changes to the DoW's management and mapping of budgets, programmes and projects are a function of the establishment of the department itself. Previous calculations (as per Table 6.1 above) that show the cost of each discrete aspect or element of licensing administration (licensing, appeals etc) were determined prior to the establishment of the DoW, that is, when these activities were performed by the Department of Environment.⁵⁵²

Nevertheless, as the following tables show, the DoW has provided information for 2006-2007 and 2007-2008 concerning the relevant projects and associated licence administration costs, including regional administration costs and estimates of corporate overheads. The DoW advises that the core licence administration activities that were:

*identified in the initial analysis that contributed to the calculations of costings for the licence fee classes in the schedule of fees, are now rolled up under a single cost centres (sic) for the regions and branches for the licensing function.*⁵⁵³

According to the DoW, the 'business areas undertaking the administration of water licences are each assigned one cost centre for budget management,' and the department has reassured the Committee that 'the activities undertaken within the water licensing business and assigned to these projects are the same as those identified in previous costing estimates used in the original calculations used in the *Blueprint for Water Reform*.'⁵⁵⁴

⁵⁵⁰ Ms Elizabeth Western, Manager, Water Licensing, Department of Water, *Transcript of Evidence*, 24 January 2008, p5.

⁵⁵¹ Submission No. 43 from Department of Water, 7 February 2008, p1.

⁵⁵² Submission No. 45 from Department of Water, 15 February 2008, p1.

⁵⁵³ *ibid.*, pp1-2.

⁵⁵⁴ *ibid.*, p2.

Table 6.2: Projects and Costs of Administering Water Licences for 2006-2007⁵⁵⁵

	Programme	Actual	Non Govt	Region Admin	Total
			91%	22%	
C1001	Pilbara Licensing and Compliance	\$216,212	\$196,753	\$43,286	\$240,038.56
C1002	South Coast Licensing and Compliance	\$109,833	\$99,948	\$21,989	\$121,936.60
C1004	Licensing and Compliance Swan Avon	\$1,252,676	\$1,139,935	\$250,786	\$1,390,720.90
C1005	Kwinana Peel Licensing and Compliance	\$366,751	\$333,743	\$73,424	\$407,166.96
C1006	Licensing and Compliance Goldfields	\$61,304	\$55,787	\$12,273	\$68,059.70
C1007	Mid West Licensing and Compliance	\$615,928	\$560,494	\$123,309	\$683,803.27
C1008	South West Licensing and Compliance	\$1,029,129	\$936,507	\$206,032	\$1,142,539.02
C1009	Kimberley Licensing and Compliance	\$137,644	\$125,256	\$27,556	\$152,812.37
C1301	Water Licensing and Support	\$403,387	\$367,082	\$0	\$367,082.17
C1302	Management Water Corporation	\$259,982	\$236,584	\$0	\$236,583.62
Total		\$4,452,846	\$4,052,090	\$758,653	\$4,810,743.16
	Pro rata Corporate Costs @ 30%				\$1,443,222.95
	Grand Total				\$6,253,966.10

Note: Totals may not add due to rounding.

In relation to government agency fees, the Auditor General's *Third Public Sector Performance Report 2004* states that:

*fees should reasonably reflect the cost of providing services unless there is some overriding economic or social policy objective. If the fee significantly exceeds cost then it may amount to a tax, and as such, the agency may lack the necessary legal authority. For this reason, agencies need to have reasonably accurate estimates of the cost of their services.*⁵⁵⁶

In relation to their budget calculations for the water licensing programme, the DoW states that it 'is confident' that they 'represent the current budget assigned to the licensing programme for the implementation of these core administrative activities, and is consistent with the costs identified through the original calculations undertaken to provide an understanding of the workload per licence class'.⁵⁵⁷ Furthermore, the DoW has complied with the annual certification process

⁵⁵⁵ *ibid.*, Attachment Table 1.

⁵⁵⁶ Auditor General for Western Australia, *Third Public Sector Performance Report 2004*, Government of Western Australia, Perth, September 2004, p11.

⁵⁵⁷ Submission No. 45 from Department of Water, 15 February 2008, p2.

required by the Department of Treasury and Finance (DTF) as part of its compliance procedures.⁵⁵⁸

Table 6.3: Projects and Costs of Administering Water Licences for 2007-2008⁵⁵⁹

	Programme	Actual	Non Govt	Region Admin	Total
			91%	22%	
C1001	Pilbara Licensing and Compliance	\$245,703	\$223,590	\$49,190	\$272,779
C1002	South Coast Licensing and Compliance	\$150,204	\$136,686	\$30,071	\$166,756
C1004	Swan Avon Licensing and Compliance	\$1,354,073	\$1,232,206	\$271,085	\$1,503,292
C1005	Kwinana Peel Licensing and Compliance	\$436,441	\$397,161	\$87,375	\$484,537
C1006	Goldfields Licensing and Compliance	\$61,000	\$55,510	\$12,212	\$67,722
C1007	Mid West Licensing and Compliance	\$630,926	\$574,143	\$126,311	\$700,454
C1008	South West Licensing and Compliance	\$1,176,517	\$1,070,630	\$235,539	\$1,306,169
C1009	Kimberley Licensing and Compliance	\$209,960	\$191,064	\$42,034	\$233,098
C1301	Water Licensing and Support	\$469,216	\$191,293	\$0	\$191,293
C1302	Water Corporation Licensing	\$299,282	\$102,698	\$0	\$102,698
Total		\$5,033,322	\$4,174,981	\$853,818	\$5,028,799
	Pro rata Corporate Costs @ 30%				\$1,508,640
	Grand Total				\$6,537,438

Note: Totals may not add due to rounding.

Nevertheless, and in view of the Auditor General's statement concerning fees, if the fee-generated revenue is significantly less than the DoW's licence administration costs it will fail to meet its full cost recovery obligations under the NWI. Therefore, the Committee is concerned that the scheduled fees have been calculated based on 2005-2006 data and may not accurately reflect the department's current costs. Similarly, given the amendments to the original schedule of fees, it would seem even more likely that the DoW can no longer be attaining full cost recovery as required under the NWI. This issue is returned to in Chapter 7.

6.2 Activities Associated with Water Licence Administration

In discussing the process by which they had determined what activities constituted licence administration, the DoW 'had economists involved' and 'took legal advice about what constituted an administrative activity'.⁵⁶⁰ It was on the basis of this legal advice that 'the activities of licensing/assessment, compliance and enforcement, State Administrative Tribunal [SAT],

⁵⁵⁸ ibid, p2. The issue of compliance with DTF requirements is discussed further in Chapter 6.

⁵⁵⁹ ibid, Attachment Table 2.

⁵⁶⁰ Ms Elizabeth Western, Manager, Water Licensing, Department of Water, *Transcript of Evidence*, 24 January 2008, p11; Submission No. 45 from Department of Water, 15 February 2008, p2.

community input and licensing support as they relate to Part III of the Rights in Water and Irrigation Act were defined directly related to the administration of water licences'.⁵⁶¹ According to the DoW, their analysis 'of activities that were identified as administration activities carried out in the licensing process'⁵⁶² revealed:

*those things that are related to assessment of a licence and application. That includes amendments, transfers, trades, bed and banks approvals and construction of wells, as well as the licence to take. Those activities were identified.*⁵⁶³

The following outlines the activities that the DoW advises comprise each of these functions:

Licensing:

*Refers to all receipting and assessment of applications for licences or permits. In undertaking the assessment the RIWI Act requires DoW to have regard to certain matters when assessing an application.*⁵⁶⁴

Assessment generally includes:

- *assessment of applications for a new, amendment or renewal of a water licence;*
- *the regular assessment of the impacts from the authorised use of a licence, in particular on other users and the water resource to ensure that the water is being equitably shared. This assessment often follows compliance and audit inspections; and*
- *irregular assessment of activities and water use in response to concerns or complaints.*⁵⁶⁵

Compliance and enforcement:

*There are costs associated with surveys and enforcement actions directly associated with water licences. These can be breaches of the terms and conditions of the licence. The very fact that compliance activities are undertaken necessarily generates the need to undertake enforcement. Both compliance and enforcement are necessary in order to maintain integrity of the licensing scheme. Accordingly there is no logical basis to distinguish between compliance and enforcement.*⁵⁶⁶

The compliance activity is intended:

to make sure that licensees conform to the conditions of their licences. Sometimes, on an annual basis, licensees provide monitoring data. There are assessments done on licensing conditions. There are also surveys undertaken regularly throughout the state in various

⁵⁶¹ Submission No. 45 from Department of Water, 15 February 2008, p2.

⁵⁶² Ms Elizabeth Western, Manager, Water Licensing, Department of Water, *Transcript of Evidence*, 24 January 2008, p6.

⁵⁶³ *ibid.*, p6.

⁵⁶⁴ Submission No. 43 from Department of Water, 7 February 2008, p3.

⁵⁶⁵ Submission No. 43 from Department of Water, 7 February 2008, p4. See also: Ms Elizabeth Western, Manager, Water Licensing, Department of Water, *Transcript of Evidence*, 24 January 2008, p6.

⁵⁶⁶ Submission No. 43 from Department of Water, 7 February 2008, p3.

*areas, sometimes in priority areas. If, for example, a particular resource is approaching full allocation, surveys are carried out to make sure that licensees are complying with the amount they are licensed to take and that they are meeting the conditions of their licenses. They happen regularly throughout the state.*⁵⁶⁷

State Administrative Tribunal (SAT):

*The right to seek a SAT review is found in Part III of the RIWI Act and therefore the defence of appeals is part of the administration of licences. These appeals are mostly related to assessment and issue/refusal of licences. A SAT review represented part of the decision making framework established under Part III of the RIWI Act. Accordingly expenses incurred in participating in such proceedings will represent expenses incurred in the administration of the scheme.*⁵⁶⁸

The Dow advised that they had ‘sought legal advice as to whether this [SAT] actually constituted an administration activity, and we were advised that it was those activities that contribute to a decision under part 3 of the act - a decision relating to the instrument’.⁵⁶⁹

Community Input:

*The cost (sic) incurred relate to Advisory Committees established under the Water and Rivers Commission Act 1995 and relate to expenses incurred in having Advisory Committees assist the Commission in the performance of its function under Part III of the RIWI Act.*⁵⁷⁰

Licensing Support:

*Licensing support includes costs for database maintenance and enhancements, including data validation and cleansing, delivery of training to regional licensing officers and providing supporting expertise for regional licensing staff.*⁵⁷¹

Evidence to the Committee shows that there is considerable concern in relation to the functions and activities included in the full cost calculations provided by the DoW. As these concerns also relate to the issue of full cost recovery under the NWI, the Committee’s discussion on these is contained in Chapter 7.

The DoW’s submissions note that ‘the cost of implementation and ongoing administration of the licence administration fee has not been quantified and therefore is not included in the above estimates’.⁵⁷² The Committee considers it reasonable that the cost of implementing a new system would not be included in costings relating to an annual fee, but is concerned that the ongoing administration had not been included. In response to questions put to the DoW relating to the non-inclusion of ongoing administration costs, the DoW advised that ‘one part of implementing the new

⁵⁶⁷ Ms Elizabeth Western, Manager, Water Licensing, Department of Water, *Transcript of Evidence*, 24 January 2008, p6.

⁵⁶⁸ Submission No. 43 from Department of Water, 7 February 2008, pp3-4.

⁵⁶⁹ Ms Elizabeth Western, Manager, Water Licensing, Department of Water, *Transcript of Evidence*, 24 January 2008, p6.

⁵⁷⁰ Submission No. 43 from Department of Water, 7 February 2008, p4.

⁵⁷¹ *ibid.*

⁵⁷² Submission No. 29 from Department of Water, 21 December 2007, p16; Submission No. 43 from Department of Water, 7 February 2008, p5.

licence fees will be to work through some of those costs involved in that total reform package'.⁵⁷³ However, in a supplementary submission, they reiterated that 'it was not appropriate to include the one off cost for the establishment of new systems and processes'.⁵⁷⁴ In addition to this, the DoW advises:

*once all systems are fully operational it would be appropriate that the on going cost of managing collection of the annual fee be include (sic) in any full cost recovery. This cost is not yet quantifiable.*⁵⁷⁵

This indicates that the full cost able to be attributed to the department's licence administration costs will increase and, consequently, under full cost recovery principles, so will the licence fees unless a political decision is made to further reduce the amount of costs recovered, that is, to reduce the proportion of 'full cost' recovery. This also is returned to in Chapter 7.

6.3 Involvement of the Economic Regulation Authority

The Committee's attempts to undertake a basic comparison of DoW costing data for consecutive years has revealed a problem arising when business functions are moved from one department to another or when new departments or agencies are created. The inability of the DoW to replicate calculations performed when activities were part of those performed by the Department of the Environment highlights a lack of uniformity across government.

The original schedule of fees was developed for the *Blueprint* by the then Department of the Environment. Due to changes in the way that the new DoW manages its budgets it is not able to replicate the breakdown of information previously provided. In correspondence with the Committee in relation to the issue of departmental costs, the DoW stated the corporate services area and executive managers:

*are of the opinion that it would be in the best interests of the Department and the Inquiry to have an independent investigation or audit to contribute to the ToR investigations relating to the full cost incurred by the Department of Water for administration of the current water licence system.*⁵⁷⁶

The DoW advised that the Economic Regulation Authority (ERA) was not involved in the calculation of the department's costs relating to water licence administration, stating that 'it is appropriate to conduct that review after we have applied the fees'.⁵⁷⁷ According to the DoW:

the ERA has been involved in discussions around the best approach for the review process and it has stated a preference that a review process would be more appropriate. ... it is a

⁵⁷³ Mr John Ruprecht, Acting Director General, Department of Water, *Transcript of Evidence*, 24 January 2008, p18.

⁵⁷⁴ Submission No. 43 from Department of Water, 7 February 2008, p5.

⁵⁷⁵ *ibid.*

⁵⁷⁶ Department of Water, *Electronic Mail*, 9 November 2007, p1.

⁵⁷⁷ Mr John Ruprecht, Acting Director General, Department of Water, *Transcript of Evidence*, 24 January 2008, p23.

*review process that the ERA undertakes rather than it being involved in the establishment phase of fees.*⁵⁷⁸

In undertaking its charter, the ERA 'is independent of direction or control by the State or any Minister or officer of the State'.⁵⁷⁹ Nevertheless, sections 28(2) and 28(3) of the *Economic Regulation Authority Act 2003*, provide for the relevant Minister to direct the ERA 'on administration and financial administration matters'.⁵⁸⁰ The relevant Minister at present is the Treasurer, the Hon. Eric Ripper BA DipEd MLA. It is the DoW's understanding that the ERA will act upon direction by the Treasurer 'so long as it is within the confines of its responsibility. Ultimately, it is a government policy decision as to at which point the ERA would be involved in a process such as this ... it all depends on the terms of reference that are issued to the ERA'.⁵⁸¹

In light of the DoW's wish for an independent audit or investigation, the Committee believes it would be beneficial for the ERA to be directed to undertake a review of the DoW's costs as soon as possible rather than wait until the planned 2 year review of fees.

Finding 13

An independent review of the Department of Water costs associated with water licence administration should be undertaken as a matter of urgency.

Recommendation 14

That the Treasurer directs the Economic Regulation Authority to review the Department of Water's costs as a priority.

CHAPTER 7 COMPLIANCE WITH COST RECOVERY REQUIREMENTS OF THE NATIONAL WATER INITIATIVE

This chapter explores the extent to which the water licence administration fees meet the cost recovery requirements placed upon Western Australia with respect to services delivered to water users. Because the concept of full cost recovery underpins the determination of the water licensing administration fees, this chapter also contains a discussion of the main issues raised in evidence concerning the foundation of full cost recovery.

⁵⁷⁸ Ms Elizabeth Western, Manager, Water Licensing, Department of Water, *Transcript of Evidence*, 24 January 2008, p24.

⁵⁷⁹ Economic Regulation Authority, 'About ERA - Responsible Minister', nd. Available at: http://www.era.wa.gov.au/2/549/1/responsible_min.pm. Accessed on 13 February 2008.

⁵⁸⁰ *ibid.*

⁵⁸¹ Mr Michael Rowe, Manager, Policy Coordination and Reform, *Transcript of Evidence*, 24 January 2008, p24.

7.1 Full Cost Recovery and the National Water Initiative

As demonstrated in Chapter 3, by signing the National Water Initiative (NWI), Western Australia has also agreed to implement a water resource management regime based on the principles of user-pays and full cost recovery. Paragraph 64 of the NWI sets out the best practice water pricing outcomes to be achieved. With particular regard to cost recovery, paragraph 64 (iv) states that water pricing and institutional arrangements are to:

*give full effect to the principles of user-pays and achieve pricing transparency in respect of water storage and delivery in irrigations systems and cost recovery for water planning and management.*⁵⁸²

In addition to this, arrangements should ‘avoid perverse or unintended pricing outcomes’.⁵⁸³ As part of the process of achieving best practice water pricing and institutional arrangements, paragraph 65 determines that in relation to water storage and delivery pricing, jurisdictions should use consumption based pricing, full cost recovery and pricing policy consistency across sectors and jurisdictions.⁵⁸⁴ Paragraph 67 relates specifically to cost recovery for planning and management, and states that jurisdictions under the agreement should ‘bring into effect consistent approaches to pricing and attributing costs of water planning and management’.⁵⁸⁵ This is to involve:

*the identification of all costs associated with water planning and management, including the costs of underpinning water markets such as the provision of registers, accounting and measurement frameworks and performance monitoring and benchmarking.*⁵⁸⁶

This makes it clear that water licensing fees should not include ‘activities undertaken for the Government’ such as the provision of Ministerial or Parliamentary services.⁵⁸⁷ The NWI also requires charges to be ‘linked as closely as possible to the costs of activities or products’.⁵⁸⁸

The Department of Water (DoW) acknowledges that the NWI ‘outline[s] a commitment to develop these national principles and frameworks for broader cost recovery’ and advises that the DoW is acting on the user-pays element of this in relation to water licence administration.⁵⁸⁹

However, the NWI does not go beyond these general principles and directions. It does not specifically define what full cost recovery frameworks the jurisdictions should implement. It is silent on the more detailed aspects of precisely how the total costs of water planning and management are to be carried by water users. This macro level approach is confirmed in the 2007

⁵⁸² Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, paragraph 64 v), p13. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

⁵⁸³ *ibid.*, paragraph 64, p13.

⁵⁸⁴ *ibid.*, paragraph 65, p14.

⁵⁸⁵ *ibid.*, paragraph 67, p14.

⁵⁸⁶ *ibid.*, paragraph 67 i), p14.

⁵⁸⁷ *ibid.*, paragraph 67 ii a), p14.

⁵⁸⁸ *ibid.*, paragraph 67 ii b), p14.

⁵⁸⁹ Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p24.

Water Planning and Management Stocktake Report prepared by the NWI Steering Group on Water Charges, which states that:

*a central tenet of these [NWI] reforms is to achieve consistency in water pricing policies across states and territories and sectors for water storage and delivery, and to achieve consistency in approaches to pricing, and attributing costs of water planning and management.*⁵⁹⁰

It is important to note that it is consistency in *approach*, rather than consistency in charges per se that is to be achieved. Following the determination of the costs associated with water licence administration, the next step jurisdictions should take is to ‘apportion these costs between water users and the government’.⁵⁹¹ This is generally achieved through the application of ‘a pre-determined formula or cost apportionment principle’⁵⁹² such as an impactor pays or user pays approach. The stocktake report also acknowledges the flexibility afforded each jurisdiction, noting that ‘the arrangements for identifying and apportioning these costs vary considerably’ across states and territories.⁵⁹³

In addition to these requirements, the NWI, through paragraph 68, also places certain reporting obligations on signatories, with annual water planning and management reporting to include:

i) the total cost of water planning and management

*ii) the proportion of the total cost of water planning and management attributed to water access entitlement holders and the basis upon which this proportion is determined.*⁵⁹⁴

The 2007 stocktake accepts that there are ‘a number of gaps’ in the report due to a lack of information from certain jurisdictions, and draws particular attention to the fact that ‘only limited information was available from Western Australia’.⁵⁹⁵ The DoW advised that this lack of information relating to Western Australia is due to the fact that:

*Western Australia, like all other jurisdictions in Australia, is awaiting guidance from the Commonwealth Government on the detailed reporting requirements of Paragraph 68 of the NWI. Consequently, no such reporting has been undertaken.*⁵⁹⁶

The Committee is not wholly convinced by this argument. All other signatories to the NWI are in the same position and have been able to undertake some reporting, even if incomplete. Given that the DoW has stated that ‘the obligation on the State to introduce licence administration fees originates from the 1994 Council Of Australian Governments Water Reform Agreement (and later

⁵⁹⁰ NWI Steering Group on Water Charges, *Water Planning and Management Stocktake: Cost Recovery for Water Planning and Management in Australia*, February 2007, National Water Commission, Canberra, p4.

⁵⁹¹ *ibid.*, p44.

⁵⁹² *ibid.*

⁵⁹³ *ibid.*

⁵⁹⁴ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, paragraph 68, p14. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

⁵⁹⁵ NWI Steering Group on Water Charges, *Water Planning and Management Stocktake: Cost Recovery for Water Planning and Management in Australia*, February 2007, National Water Commission, Canberra, p6.

⁵⁹⁶ Submission No. 43 from Department of Water, 7 February 2008, p1.

reaffirmed through the NWI)⁵⁹⁷ and that water licence administration fees have been part of DoW plans for some considerable time, the Committee believes that the DoW should have been in a position to provide more information to the NWI Steering Group on Water Charges.

The DoW sees the stocktake report as a useful document in that it highlights the ‘lack of progress made by Western Australia’ in the recovery of water planning and management costs in relation to other jurisdictions.⁵⁹⁸ However, the DoW also states that the reason that ‘information not available’ appears against the stocktake questions concerning the cost recovery status of Western Australia is that the stocktake report was prepared in February 2007, which is prior to the introduction of fees.⁵⁹⁹ The Committee accepts this position, particularly as the *State Water Plan 2007* and *Western Australia’s Implementation Plan for the National Water Initiative* were published after the stocktake report.

Given the above, together with the information provided by the DoW (and subject to the finding of Chapter 6), it is possible for the Committee to simply conclude that the water licence administration fees do meet the cost recovery requirements placed upon Western Australia under the NWI. However, given the complexity of the issues involved and the level of stakeholder concern surrounding the fees, as evidenced in submissions and hearings, this would be a rather simplistic and inadequate response. Therefore, before reaching any conclusions in relation to this term of reference, the Committee has looked further to the spirit and intent of the NWI to help it better address the issues raised throughout the Inquiry.

To this end, the balance of this chapter discusses the concepts of user-pays and full cost recovery in relation to the development of the schedule of fees gazetted on 28 December 2007.

7.2 Support for Full Cost Recovery

There was an overall recognition that costs would be incurred in a licensing system, and general support for fees and full cost recovery was evident across a broad spectrum of submissions including local governments, industry associations and water co-operatives.

Mr Jeff Camkin advised the Committee that he:

*has always held the view that a licence fee is an important first step and that it starts the process of licensed water users contributing to the meeting of costs. That is a really important first step. It does not matter so much what the quantum is; the important point is that they are contributing.*⁶⁰⁰

Landowners in the Manjimup and Pemberton areas, while opposing the proposed fees, argue that ‘the fee should have a rational basis and be fairly applied to all water users throughout WA’.⁶⁰¹ Similarly, the Shire of Manjimup ‘accept[s] that there should be a licensing regime and that we should pay something. Our barney is: how much and how should it be calculated’.⁶⁰² The

⁵⁹⁷ *ibid.*, p6.

⁵⁹⁸ *ibid.*, p2.

⁵⁹⁹ *ibid.*

⁶⁰⁰ Mr Jeff Camkin, Private Citizen, *Transcript of Evidence*, 20 December 2007, p4.

⁶⁰¹ Submission No. 3 from Manjimup and Pemberton Landowners, 28 November 2007, p2.

⁶⁰² Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p8.

Western Australian Fruit Growers' Association also do not oppose the principle of licence administration fees, having stated that they 'are not saying there should be no fees or no charges and to go away; we want it to be run properly'.⁶⁰³

Gascoyne Water Co-Operative Ltd submits that it 'generally supports the charging of licence administration fees as it recognises that costs are incurred by the licensing authority'.⁶⁰⁴ Such costs should be reasonable and 'recoverable from the holder of the licence (user pays)'.⁶⁰⁵ The cooperative states:

*charges for licensing, while supported by the major irrigation cooperatives of WA, must reflect a fair and reasonable fee for the cost recovery of administration, without becoming a cash cow for top heavy bureaucracy.*⁶⁰⁶

Furthermore, 'any extraction of the State's water resources should be licensed and an appropriate licence fee should be charged to recover the cost of administration'.⁶⁰⁷ The co-operative also advises that:

*we have to face the fact that the days of publicly funded services to all are gone and a user pays system has become the way of the future for almost all services provided by government and government owned service suppliers.*⁶⁰⁸

The City of Perth states that 'there is a strong argument that cost recovery for services to water users by the Department of Water should occur',⁶⁰⁹ but does not articulate any details of that argument. It further recognises that 'taking water from streams or rivers which have downstream user dependence needs to be adequately managed. Recovery of the management costs is reasonable'.⁶¹⁰

The Alliance advises that:

*self supply water users support a reasonable water licence fee and licence application fee, recognising the administrative cost in assessing applications and maintaining a licensing database. However Government has an obligation to ensure this administrative cost is justified and kept to a minimum, and has equity in application to all water users and costs with other licensing administration systems.*⁶¹¹

For Irrigation Australia - WA Region:

⁶⁰³ Mr Chris Scott, Orchardist, Western Australian Fruit Growers' Association, *Transcript of Evidence*, 8 January 2008, p21.

⁶⁰⁴ Submission No. 2 from Gascoyne Water Co-Operative Ltd, 27 November 2007, p1.

⁶⁰⁵ *ibid.*

⁶⁰⁶ *ibid.*

⁶⁰⁷ *ibid.*, p2.

⁶⁰⁸ *ibid.*, p3.

⁶⁰⁹ Submission No. 12 from City of Perth, 6 December 2007, p2.

⁶¹⁰ *ibid.*

⁶¹¹ Submission No. 18 from The Alliance, 7 December 2007, p2.

*full cost recovery for services sends transparent price and value signals to customers and the broader community ... [and] represents a strong driver for improving efficiency in service delivery.*⁶¹²

Furthermore, without the ‘clear market signals’ sent by full cost recovery, and the concomitant increase in the value of water as a commodity, ‘people are more likely to use that commodity unwisely or excessively or to make poor business decisions about what to use it to grow’.⁶¹³

As well as this in principle support for full cost recovery, Irrigation Australia - WA Region, provides a different and interesting perspective on this issue. It argues that ‘less than full cost recovery means that non-customers will be subsidizing a service that they may not benefit from’.⁶¹⁴ It also suggests that ‘any penalties or costs applied to WA by the Commonwealth for not meeting minimum NWI requirements would represent an additional subsidization by non-customers for the services in question’.⁶¹⁵ Furthermore, in relation to consideration for self-funded water infrastructure, Irrigation Australia states that ‘any financial consideration of “water harvesting” costs leading to a reduction in cost recovery would amount to subsidization of a business operation’.⁶¹⁶ Therefore, to avoid cross-subsidisations, Irrigation Australia argues that the state government must implement a cost recovery framework that meets the state’s NWI obligations.⁶¹⁷

7.3 Cost Recovery and Licence Administration Fees

As shown in Chapter 6 the government’s intention to introduce water licence administration fees has been clear since its response to the *Blueprint*. At that time, and as shown in Chapter 6, based on 2005-06 data, the costs the DoW associated with licence administration activities totalled \$5,827,397. The original schedule of fees was intended to recover the whole cost of licence administration.⁶¹⁸

(a) Less-Than-Full Cost Recovery

Since the original schedule of fees was developed for the *Blueprint*, and ‘as part of the implementation process leading up to the introduction of licence fees,’ the Minister for Water Resources ‘made adjustments to the way the fee was applied to those with domestic licences and surface water storage’.⁶¹⁹ Furthermore, as the DoW advises, these adjustments led to ‘an expected

⁶¹² Submission No. 19 from Irrigation Australia - WA Region, 11 December 2007, p4.

⁶¹³ Mr Douglas Hall, Industry Development Officer, Irrigation Australia - WA Region, *Transcript of Evidence*, 15 January 2008, p5.

⁶¹⁴ Submission No. 19 from Irrigation Australia - WA Region, 11 December 2007, p3.

⁶¹⁵ *ibid.*, p4.

⁶¹⁶ *ibid.*, p5.

⁶¹⁷ *ibid.*, p4.

⁶¹⁸ Submission No. 43 from Department of Water, 7 February 2008, p3; Mr John Ruprecht, Acting Director General, Department of Water, *Transcript of Evidence*, 24 January 2008, p9.

⁶¹⁹ Submission No. 45 from Department of Water, 15 February 2008, p4.

shortfall of cost recovered revenue to the Department,⁶²⁰ with the reduction in income estimated at \$540,000.⁶²¹ At that time:

*the fee structures were not adjusted, and there was no cross subsidisation imposed, as the Department was directed to cover the shortfalls within existing CF budget or to approach DTF for additional funding as part of the annual budgetary process.*⁶²²

Following the disallowance of the schedule of fees gazetted in June 2007, a further schedule of fees was gazetted in December 2007. As noted in Chapter 5, on 22 November 2007 an announcement was made in the Legislative Council concerning a revised schedule as negotiated between Greens MLC, Paul Llewellyn, and the Minister for Water Resources and gazetted in December 2007.⁶²³ Tables 5.1, 5.2 and 5.3 in Chapter 5 map the changes in fee schedules from those originally planned through to those currently being implemented.

These negotiations and the resultant schedule of fees mean that the DoW, under the December 2007 schedule, 'will raise \$3.05 million and therefore only partially recover the total cost in administering the water licensing regime'.⁶²⁴ As the following correspondence from Department of Treasury and Finance (DTF) shows, this represents a significant reduction to the DoW's cost recovery efforts:

In its submission of 22 January 2007, the Department of Water advised that it estimated that the annual administration fee for licenses issued under Section 5C of the Rights in Water and Irrigation Act 1914 would represent 100% cost recovery (i.e. recover 100% of costs of the service) in 2007/08.

*In its submission of 24 December 2007, the Department of Water advised that it estimated that the annual administration fee for licenses issued under Section 5C of the RIWI act would represent 47% cost recovery in 2008/09.*⁶²⁵

The difference between the DoW's costs and revenue associated with water licence administration will now be met by consolidated revenue, that is, the balance of the costs will be paid by the general taxpayer. The DoW stated that 'the Minister for Water has given an undertaking that the Government of Western Australia will address this shortfall in funding to the Department of Water'.⁶²⁶

Finding 14

The most recent change to the fee structure means that the Department of Water is operating at partial rather than full cost recovery.

⁶²⁰ *ibid.*

⁶²¹ Submission No. 29 from Department of Water, 21 December 2007, p13.

⁶²² Submission No. 45 from Department of Water, 15 February 2008, p4.

⁶²³ Government of Western Australia, *Government Gazette*, No. 268, 28 December 2007, pp6425-6431.

⁶²⁴ Submission No. 43 from Department of Water, 7 February 2008, p3.

⁶²⁵ Mr Sean Cameron, Director, Agency Resources, Department of Treasury and Finance, *Electronic Mail*, 12 February 2008, p1.

⁶²⁶ Submission No. 29 from Department of Water, 21 January 2007, p14.

Finding 15

Partial cost recovery does not appear to put Western Australia in breach of the National Water Initiative.

(b) Calculation of Licence Fees

Once the DoW had determined the total cost of administering water licences to be \$5.8 million it then developed a scale of licence classes. While the December version of fees is based on a system of eight licence classes, originally there were seven classes and it was this class scale that was developed and used to apportion the DoW's costs. The DoW advises that the fee per class was determined by calculating the 'amount of work hours required for the volume of water licenced (sic), the portion of the budget spent in that category and the licence support required'.⁶²⁷ Added to this were costs related to compliance and enforcement, community input and appeals, which were averaged across all classes.⁶²⁸

Table 7.1 below shows a description of assessment requirements and the estimate of hours needed for the administration of each of the seven licence classes. Table 7.2 shows the DoW's 2005-2006 budget calculations for each licence class.

Table 7.1: Description of Licence Class and Hours Required⁶²⁹

Entitlement class (KL)	Description	Hours/ licence
0-5,000	Fast track assessments - small domestic, non-commercial activities, hobby farms. Includes all 26D licences (new, renew, and amended) and all 5C licences for allocations less than 5,000 kL per annum (new, renew, amended, transfers, trades and agreements).	7
5000-50,000	Some fast track assessments for 5C licences - generally commercial, large scale domestic.	11
50,000-100,000	Moderate assessment requirements for 5C licences, no fast track assessments.	20
100,000-500,000	Moderate assessment requirements for 5C licences, compulsory advertising and review of submissions	40
500,000-1,000,000	Full assessment required for 5C licences, metering conditions, reporting requirements.	60
1,000,000-5,000,000	Full assessment required for 5C licences, operating strategies, hydrogeology reporting, metering.	80
>5,000,000	Full assessment required for 5C licences, operating strategies, hydrogeology report, metering, DoW modelling and hydrology work.	100+

⁶²⁷ *ibid.*

⁶²⁸ Submission No. 29 from Department of Water, 21 January 2007, p14; Submission No. 43 from Department of Water, 7 February 2008, p4.

⁶²⁹ Submission No. 29 from Department of Water, 21 December 2007, p15.

The DoW advises that these classes are those that ‘best represented the amount of effort required to administer licences with similar water entitlements’.⁶³⁰ This grouping of licences into seven classes was achieved through ‘consultation with the regions responsible for administering licences’.⁶³¹

Table 7.2: Budget Calculations (2005-2006) for Each Licence Class⁶³²

Category	Licences in force	Hours per licence	Total hours per category	Break down	Amount of budget required (\$)	Average cost per annum
1: 0-5,000	5,279	7	36,953	19%	\$1,098,644.43	\$ 208.12
2: 5,001-50,000	5,752	11	63,272	32%	\$1,881,130.90	\$ 327.04
3: 50,001-100,000	1,114	20	22,280	11%	\$ 662,403.54	\$ 594.62
4: 100,001-500,000	898	40	35,920	18%	\$1,067,932.45	\$1,189.23
5: 500,001-1,000,000	179	60	10,740	5%	\$ 319,309.42	\$1,783.85
6: 1,000,001-5,000,000	253	80	20,240	10%	\$ 601,752.58	\$2,378.47
7: >5,000,000	66	100	6,600	3%	\$ 196,223.67	\$2,973.09
Total	13,541		196,005	100%	\$5,827,397.00	

It is important to understand the way in which the fee per licence was calculated. The Committee’s understanding is that the DoW first determined its total cost incurred in the administration of water licences (that is, \$5.8 million). Next it calculated the number of hours required to administer a licence of a particular size (or category as per the schedule). Then it was able to multiply the number of licences in a particular category by the number of hours per licence in that class to obtain the total number of hours required for that class of licence at that particular time. From this it was able to determine the proportion of costs attributable to each licence class. For example, category one administration consumes 19% of the total, and this is spread over the 5279 licences in that class. This figure was then divided by the number of licences in that class to determine the per licence cost.

To work through one example, a class two licence takes 11 hours per licence to administer. There are 5,752 class two licences, which would take 63,272 hours of administration. This total number of hours represents 32% of the total number of hours to administer all 13541 licences. Thirty two percent of the total \$5.8 million is \$1,881,131, which represents the total DoW cost to administer all class two licences. This cost is then divided by the number of licences in class two, which is 5752, to arrive at the \$327.04 average cost per annum for a class two licence.

This was confirmed by the DoW when asked to explain the method used to apportion costs across licences. The DoW explained that:

The estimates obtained in table 6 on the hours of activity by the department per licence are transferred across to the licences in force at the time, which number 13 541. That proportion of the licences in that class are then apportioned across the total amount, which we know to be the amount that this activity cost the department - that is, \$5.8 million. That allowed us to arrive at the figures in the last column of an average cost per annum to that class of licence. The calculation was predicated on some assumptions about the total amount of effort by licence class that is required for a certain type of licence, and that was extrapolated against the total number of licences that exist in each of those

⁶³⁰ Submission No. 43 from Department of Water, 7 February 2008, p5.

⁶³¹ *ibid.*

⁶³² Submission No. 29 from Department of Water, 21 December 2007, p16.

*classes. That portion was then apportioned across the total cost to the department of \$5.8 million, which allowed us to come out with those licence fees.*⁶³³

In this way, ‘the full cost of that licence class was sought to be recovered from licence holders under an “impactor pays” approach of cost recovery for administration of water licences’.⁶³⁴ As the above shows, the costs of water licence administration, including applicable corporate overheads, are averaged across the class of licence to determine the full cost per class. This cost is then averaged over the class to determine the fee per licence. The DoW advises that ‘averaging the cost over all licences in a particular class is an approach that is consistent in the way in which most fees are levied’.⁶³⁵ Furthermore, the DoW suggests that averaging is ‘the most cost effective method’ used in both government and private enterprise, and that ‘it is unrealistic to identify costs associated with an individual’.⁶³⁶ The DoW cites examples of motor vehicle registration and electricity and water tariffs, stating that these fees for such services are the same for each unit (particular make of vehicle or home) regardless of the site (garage or suburb).⁶³⁷

Finding 16

While the Department of Water’s approach to the calculation of water licence administration fees appears logical it has not been subjected to rigorous independent analysis nor adequately communicated to those most affected.

Recommendation 15

The formula for calculating the licence fee be examined by the Economic Regulation Authority.

The information provided at Table 7.2 above has led some submitters to calculate an hourly rate of \$29.73 for water licence administration. While this is a valid calculation to make, it must be used with caution as it represents an average across all classes and the application of this to calculations relating to specific licences for specific volumes may yield misleading results. Section 7.6(b) of this chapter returns to the issue of calculations.

(c) Compliance with Government Costing and Pricing Guidelines

The Auditor General’s *Third Public Sector Performance Report 2004* report states that government agencies should:

prepare their own internal costing and pricing policies [...]

⁶³³ Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p12.

⁶³⁴ Submission No. 45 from Department of Water, 14 February 2008, p5.

⁶³⁵ Submission No. 43 from Department of Water, 7 February 2008, p4.

⁶³⁶ *ibid.*

⁶³⁷ *ibid.*

*ensure their fees are appropriately set and reasonably relate to the cost of providing the good or service*⁶³⁸ [and]

*have internal costing and pricing policies to ensure that their fee setting practices comply with management strategies and are consistent with, and supplement, Government policy.*⁶³⁹

At hearing, the Committee sought further information from the DoW on the content of their internal costing and pricing policies, and the ways in which the department ensured it met with the Auditor General's requirements of ensuring consistency with government policy. In its written response, the DoW advises that:

the Department's internal costing and pricing policies are consistent with the Government's guidelines on "Costing and Pricing Government Services", which recommend the achievement of full cost recovery where it is possible and takes account and maintains existing Government Policy.

*The Government Response to the Final Report of the Irrigation Review Steering Committee agreed that it is appropriate to recover the costs associated with the administration of water licensing.*⁶⁴⁰

The *Government Response to the Final Report of the Irrigation Review Steering Committee*⁶⁴¹ certainly does state that the recovery of costs associated with licensing and compliance should be the first step toward recovery of water resource management charges. However, this statement alone does not satisfy the Auditor General's or DTF requirements. Government agencies are provided with the DTF guidelines, *Costing and Pricing Government Services, Guidelines for Use by Agencies in the Western Australian Public Sector*.⁶⁴² These guidelines 'are intended to help agencies to better understand their costs and the factors that have the greatest influence on those costs (i.e. the cost drivers)'.⁶⁴³ The guidelines are designed particularly to assist in:

- *determining the full cost of services provided by public sector agencies to assist with resource allocation decisions and when seeking reimbursement from other government agencies; and*
- *setting appropriate prices for services that are to be sold.*⁶⁴⁴

The guidelines provide for a range of methods or models that agencies are able to adopt in calculating costs and prices, such as activity based (including usage or benefit approaches) or pro

⁶³⁸ Auditor General for Western Australia, *Third Public Sector Performance Report 2004*, Government of Western Australia, Perth, September 2004, p5.

⁶³⁹ *ibid*, p9.

⁶⁴⁰ Submission No. 43 from Department of Water, 7 February 2008, p2.

⁶⁴¹ Government of Western Australia, *Government Response to the Report of the Irrigation Review Steering Committee*, Government of Western Australia, Perth, September 2005, p16.

⁶⁴² Department of Treasury and Finance, *Costing and Pricing Government Services, Guidelines for Use by Agencies in the Western Australian Public Sector*, 5th edn, Government of Western Australia, Perth, April 2007.

⁶⁴³ *ibid.*, p3.

⁶⁴⁴ Department of Treasury and Finance, *Costing and Pricing Government Services, Guidelines for Use by Agencies in the Western Australian Public Sector*, 5th edn, Government of Western Australia, Perth, April 2007, p3.

rata models. The guidelines also recognise that ‘no single costing methodology can be applied universally’,⁶⁴⁵ and that ‘services of government agencies can range from those that are relatively easy to define and measure (such as registration of land titles, student places, police patrols, etc) to others that are of a more abstract nature (e.g. policy advice, administration of regulations, etc)’.⁶⁴⁶ Given this, the guidelines do not prescribe the particular method or model that agencies should adopt in calculating their costs or fees. The DoW advised that the water licence administration fees ‘were developed using a ground up approach whereby the individual costs are identified and collated in order to develop a cost base from which to recover from licensees’.⁶⁴⁷ Furthermore, the DoW has confirmed that:

*the licence administration fee model is consistent with these guidelines, and DTF has been involved in informal discussions and more formal budget negotiations around the implementation of the fees since 2006. DTF also contributed to the Government Response to the Blueprint.*⁶⁴⁸

According to the DoW, through the determination of the activities involved in licence administration and the total budget requirements for these activities within their relevant budget cost centre, the DoW ‘designed a simplistic user based fee structure (based on ranges of licence classes) to recover those costs’.⁶⁴⁹

As part of the budgetary process, government agencies annually submit to the DTF for review information in relation to their fees (including current, changes to current and new fees), revenue and cost recovery information.⁶⁵⁰ The DoW advises that, as part of its annual review process it is ‘required to provide a review to their Minister through a completed certificate indicating that a review had been completed’.⁶⁵¹ The DoW has confirmed that ‘it has complied with the Government certification requirements for tariffs, fees and charges for 2006-07, 2007-08 and 2008-09’,⁶⁵² and that it ‘did submit to the Department of Treasury and Finance a proposal outlining the new fee including the proposed extent of cost recovery’.⁶⁵³

Prior to receiving this information from DoW, the Committee received confirmation from DTF that DoW had provided this information, stating:

⁶⁴⁵ *ibid.*, p1.

⁶⁴⁶ *ibid.*, p6.

⁶⁴⁷ Submission No. 45 from Department of Water, 14 February 2008, p3.

⁶⁴⁸ *ibid.*

⁶⁴⁹ *ibid.*

⁶⁵⁰ Auditor General for Western Australia, *Third Public Sector Performance Report 2004*, Government of Western Australia, Perth, September 2004, p6; Department of Treasury and Finance, *Costing and Pricing Government Services, Guidelines for Use by Agencies in the Western Australian Public Sector*, 5th edn, Government of Western Australia, Perth, April 2007, p4.

⁶⁵¹ Submission No. 43 from Department of Water, 7 February 2008, p2.

⁶⁵² Submission No. 43 from Department of Water, 7 February 2008, p2; Submission No. 45 from Department of Water, 15 February 2008, p2.

⁶⁵³ Submission No. 43 from Department of Water, 7 February 2008, p2. The DoW has included copies of their Certification to the Department of Treasury and Finance in Respect of Tariffs, Fees and Charges for the three schedules of fees developed.

The then Water and Rivers Commission submitted Ministerially certified reviews of fees and charges to the DTF on 22 January 2007 for the 2007/08 budget process and on 24 December 2007 for the 2008/09 budget process. These certified reviews were submitted according to DTF guidelines and timeframes. The 22 January 2007 submission reflected the water licence administration fee structure gazetted in July 2007 and subsequently disallowed. The 22 December 2007 submission reflected the fee structure gazetted in December 2007. Both submissions certified that the methodology for costing of licence administration services and setting of fees was materially accurate. Details of the percentage of cost recovery implied by each of the fee structures were also provided.

In addition to this formal requirement, the Water and Rivers Commission (now Department of Water) has kept the DTF fully involved and informed in the process of introducing and amending water license administration fees.⁶⁵⁴

Some submissions to, and witnesses appearing before, the Committee suggest that the licensing fees have been introduced to make up a shortfall in the DoW's budget. For example, the Collie Preston Water Action Group understands that:

the fee is used to replace the \$5.8 million Mr Kobelke took away from the department; to run the licensing system. Essentially, what I gather from the press is that the budget of the Department of Water was cut and the licence fees are supposed to replace that money ... the way that it is introduced and structured is just an easy way for the bureaucracy to get this \$5.8 million back.⁶⁵⁵

However, the above demonstrates that rather than the DoW being advised by the DTF that the DoW budget would be reduced by \$5.8 and it then trying to claw back that revenue from licence holders, the DoW, via the above procedure, advised DTF of an estimated \$5.8 million water licence administration cost recovery. Subsequent to the DoW making this estimate, its 'global budget was reduced accordingly, so that the licence fees would recover those costs'.⁶⁵⁶

7.4 Transparency of Fee Calculations

Pricing transparency is a key element of the NWI.⁶⁵⁷ According to Mr Jeff Camkin transparency is important and advised that licensing can 'be used as a way of increasing the level of transparency of services provided, and provide mechanisms by which licensed users can become part of the negotiations and processes involved in setting licence fees'.⁶⁵⁸ Drawing on his knowledge of various models for fee structures throughout the world, Mr Camkin advised that 'it comes down to transparency and working your way through these things. There will never be a perfect answer'.⁶⁵⁹

⁶⁵⁴ Mr Sean Cameron, Director, Agency Resources, *Electronic Mail*, 11 February 2008, p1.

⁶⁵⁵ Mr Harry Ortheil, Collie Preston Water Action Group, *Transcript of Evidence*, 8 January 2008, p3.

⁶⁵⁶ Mr John Ruprecht, Acting Director General, Department of Water, *Transcript of Evidence*, 24 January 2008, p12.

⁶⁵⁷ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, p13. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

⁶⁵⁸ Mr Jeff Camkin, Private Citizen, *Transcript of Evidence*, 20 December 2008, p4.

⁶⁵⁹ *ibid.*, p8.

Gascoyne Water Co-Operative Ltd supports the user pays principle on condition that the ‘costs used to determine the fees are actually and transparently attributable to the cost of administering the licenses (sic)’.⁶⁶⁰ According to the Chamber of Minerals and Energy (CME), ‘it is incumbent upon the DoW to ensure that the fee setting is transparent and according to clear pricing policies’.⁶⁶¹ The CME is concerned that where ‘industry is paying for regulation, there is the potential for “gold plating” to occur and a lack of transparency in both fee setting and expenditure’.⁶⁶² Rio Tinto Iron Ore also supports transparency in fee setting, stating:

*in introducing a system of fees that is to be hypothecated to the water resource management services provided, it is essential that the agency responsible for both the fee setting and the expenditure on service delivery is transparent and accountable.*⁶⁶³

However, the Shire of Manjimup stated that ‘what is now being provided and the value of it are somewhat unclear. We are talking about a certain level of fees now, but the bigger picture is also of concern’.⁶⁶⁴ The WA Farmers Federation agreed with the contention that there was a lack of relevant data in relation to how the fees are set. One of the points this organisation made was that:

*there has been a lack of transparency on how the initial fee structure had come about and obviously, over time and pressure that we applied through our lobbying we found 71 percent of the annual licence administration fee was actually in the assessing of new licences.*⁶⁶⁵

The Manjimup and Pemberton Landowners assert that there is ‘inadequate disclosure of fee pricing policy,’ a ‘lack of transparency in the structure of the water licence administration fee’ and ‘confused and confusing explanation by Government’ regarding the pricing policy for the fee.⁶⁶⁶ This group argues that there is a ‘lack of performance indicators for services to be cost recovered,’ that is, for licensing, compliance, State Administrative Tribunal (SAT), community input and licensing support.⁶⁶⁷ It suggests that:

*it is reasonable that water licence holder customers have the opportunity to evaluate the efficacy of services they are required to pay for, and in this regard appropriate performance indicators for the services are essential.*⁶⁶⁸

Similarly, the Scott River Growers Group notes a lack of performance indicators and argues that without such performance indicators the inclusion of compliance, SAT and community input costs

⁶⁶⁰ Submission No. 2 from Gascoyne Water Co-Operative Ltd, 27 November 2007, p2.

⁶⁶¹ Submission No. 30 from The Chamber of Minerals & Energy, 14 December 2007, p3.

⁶⁶² *ibid.*, p2.

⁶⁶³ Submission No. 20 from Rio Tinto Iron Ore, 7 December 2007, p6.

⁶⁶⁴ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p4.

⁶⁶⁵ Mr Stephen Dilley, Water Spokesman, WA Farmers Federation, *Transcript of Evidence*, 15 January 2008, p11.

⁶⁶⁶ Submission No. 3 from Manjimup and Pemberton Landowners, 28 November 2007, p5.

⁶⁶⁷ Submission No. 3 from Manjimup and Pemberton Landowners, 28 November 2007, pp9-11; Submission No. 36 from Manjimup and Pemberton Landowners, 7 January 2008, Appendix p7-9.

⁶⁶⁸ Submission No. 3 from Manjimup and Pemberton Landowners, 28 November 2007, p9; Submission No. 36 from Manjimup and Pemberton Landowners, 7 January 2008, Appendix p7.

is not justified.⁶⁶⁹ This group argues that ‘the supporting regulations for the new scheduled fees for water licensing and administration have been rushed and are not transparent and have not been treated to the rigor of due process’.⁶⁷⁰

7.5 Foundation for Cost Recovery

In light of the above concerns in relation to transparency of calculations, the Committee requested supplementary information from the DoW concerning the calculation of fees and their relationship to full cost recovery. As noted in Chapter 6, the DoW has determined that particular functions or activities constitute water licence administration costs. The following extract from hearing evidence provides a useful reminder at this stage, and is therefore quoted at length:

To recover the full cost [of administration fees], there was an analysis done of the activities that were identified as administration activities carried out in the licensing process. It does not include measuring, monitoring, planning or groundwater investigations. None of those things are included in those costs. It is purely to do with those activities that are identified as carrying out the requirements under part 3 of the act, under which licensing decisions are made. It is those things that are related to assessment of a licence and application. That includes amendments, transfers, trades, bed and banks approvals and construction of wells, as well as the licence to take. Those activities were identified. They included the licensing assessment activity; the receipting and assessing of an application within the system and assessing it against those licences that might have already been a particular resource, to make sure that there will not be any impacts on other users. It is the compliance activity, to make sure that licensees conform to the conditions of their licences. Sometimes, on an annual basis, licensees provide monitoring data. There are assessments done on licensing conditions. There are also surveys undertaken regularly throughout the state in various areas, sometimes in priority areas. If, for example, a particular resource is approaching full allocation, surveys are carried out to make sure that licensees are complying with the amount they are licensed to take and that they are meeting the conditions of their licenses. They happen regularly throughout the state. There are activities related to the State Administrative Tribunal. It was also the advisory input into the [committees assisting the Waters and Rivers Commission].⁶⁷¹

Evidence presented to the Committee shows that people have different ideas as to what should be included in full cost recovery, that is, as to whether the fee should include the cost of the appeals process, data base management, community education and the like. There are also differences of opinion as to which type of water extraction should be included in cost recovery, and a call for regional and/or catchment flexibility.

Irrigation Australia - WA Region suggested that ‘it is very important that the actual elements of what we are charging are quite separate and discrete, are well defined and are not entangled in any way’.⁶⁷² For this group there are three separate components of, or aspects to, licensing:

⁶⁶⁹ Submission No. 7 from Scott River Growers Group Margaret River Region Inc., 3 December 2007, p2.

⁶⁷⁰ *ibid.*, p1.

⁶⁷¹ Ms Elizabeth Western, Manager, Water Licensing, Department of Water, *Transcript of Evidence*, 24 January 2008, p6.

⁶⁷² Mr Douglas Hall, Industry Development Officer, Irrigation Australia - WA Region, *Transcript of Evidence*, 15 January 2008, p3.

- a registering process, including the support structure for registration and verification of applications;
- a volumetric aspect; and
- a longer-term water management process of monitoring water use.⁶⁷³

As noted, the Conservation Council of Western Australia Inc. supports a licensing regime. It argues that ‘full environmental cost recovery must be applied for any withdrawal of water from the environment’.⁶⁷⁴ The Council argues that the application of the Precautionary Principle is of signal importance to the state’s sustainability and advises that accounting for water extraction from all sources must include ‘water management administration costs which must embody full environmental cost recovery’.⁶⁷⁵

Gascoyne Water Co-Operative Ltd states that the fee should be based on ‘the cost of administering the licences;’ such fees should not supplement water resource management charges.⁶⁷⁶ The Manjimup and Pemberton Landowners suggest that:

*farmers were prepared to pay rational and fair water licence fees based on a clear distinction between the cost of an application and assessment for a new dam or bore, and the subsequent cost to administer a licensing database over the 10 year duration of the licence.*⁶⁷⁷

The group argues that the fees provided for in the regulations ‘inappropriately transfer the bulk of this cost to pre-existing licence holders, inflating the “annual” licence fee’.⁶⁷⁸ The Alliance also has a position on what should be included in the fees:

*Self supply water users support a reasonable water licence fee and licence application fee, recognising the administrative cost in assessing applications and in maintaining a licensing database.*⁶⁷⁹

According to the Alliance, this cost should be ‘justified and kept to a minimum, and ha[ve] equity in application to all water users and costs with other licensing administration systems’.⁶⁸⁰

The position adopted by Irrigation Australia - WA Region is that fee calculations should only incorporate administration related costs:

- *License Administration Fees should cover the cost of administering licensing and not other activities;*

⁶⁷³ ibid.

⁶⁷⁴ Submission No. 31 from Conservation Council of Western Australia Inc., 19 December 2007, p1.

⁶⁷⁵ ibid., p2.

⁶⁷⁶ Submission No. 2 from Gascoyne Water Co-Operative Ltd, 27 November 2007, p1 and 2.

⁶⁷⁷ Submission No. 3 from Manjimup and Pemberton Landowners, 28 November 2007, p2.

⁶⁷⁸ Submission No. 36 from Manjimup and Pemberton Landowners, 7 January 2008, p4.

⁶⁷⁹ Submission No. 18 from The Alliance, 7 December 2007, p2.

⁶⁸⁰ ibid.

- *Water Resource Management Fees should cover the cost of managing water resources and not other activities.*⁶⁸¹

Irrigation Australia also suggests that the cost of implementing NWI policy and reporting requirements relate to ‘common good benefits’ and as such should not be fully borne by licence holders.⁶⁸²

The two most contentious inclusions in the list of elements incorporated into licence administration costs are assessment and appeals.

(a) Assessment

According to the Western Australian Fruit Growers’ Association, including the cost of assessments is not appropriate as this cost is related to water resource management.⁶⁸³ The Shire of Manjimup advised that while ‘how the fee will be recouped’ had been made clear, ‘what they [DoW] have not done is analyse what the fee is for. They have grouped “assessment” and “monitoring” into the one bucket and divided it among the users’.⁶⁸⁴ Citing information received from the DoW, the Shire advised that 70% of the administration fee is for assessment of licences, with the remaining 30% being for ongoing administration cost recovery.⁶⁸⁵ The Western Australian Farmers Federation has similar concerns about the ‘rolling [of] the cost of assessing a licence into the annual fee’, particularly when there is no annual assessment for each licence.⁶⁸⁶ The Federation’s understanding is that the cost of metering and monitoring is not included in the assessment fee. Rather, ‘that is actually in the annual administration fee’.⁶⁸⁷ According to the Federation:

*the current rationale is that the Department of Water is charging a flat \$200 application fee. That application fee is basically nothing more than a desk audit which checks that Mr Bob Kucera owns land and wants to draw water, and what he is going to grow. The actual cost of assessing the application to see whether or not they will grant you a licence is when they go out and look at your property, assess all the surrounding landholders, and there might be some advertising in there as well. The actual physical assessment of the licence, which constitutes 71 per cent of the administration fee, is currently rolled into the annual fee.*⁶⁸⁸

For the Shire of Manjimup, this ‘lumping together’ of assessment and administration and applying them across all licence holders ‘is inequitable because effectively what this is doing is charging small users, who are effectively subsidising the costs of processing applications for large licence

⁶⁸¹ Submission No. 19 from Irrigation Australia - WA Region, 11 December 2007, p4.

⁶⁸² *ibid.*

⁶⁸³ Ms Diane Fry, Farmer, Western Australian Fruit Growers’ Association, *Transcript of Evidence*, 8 January 2008, p16.

⁶⁸⁴ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p7.

⁶⁸⁵ *ibid.*

⁶⁸⁶ Mr Stephen Dilley, Water Spokesman, Western Australian Farmers Federation, *Transcript of Evidence*, 15 January 2008, p6.

⁶⁸⁷ *ibid.*

⁶⁸⁸ *ibid.*

facilities’.⁶⁸⁹ Similarly, the Farmers Federation argued that ‘in effect, what is happening is that the assessment cost of the new licence is loaded onto the 10 000 existing licence holders. Effectively, the existing licence holders are cross-subsidising the new licence applicants’.⁶⁹⁰ The Shire of Manjimup suggested that the DoW separate assessment from ongoing administration so that small farmers would not pay for assessment of applications for very large volumes of water.⁶⁹¹ Again, the Farmers Federation has a similar position, suggesting that after the DoW has carried out the initial assessment and knows how much water is being used, and for what purpose, what remains is the running of a database. However, it does concede that ‘there might be some compliance issues in there as well, maybe, depending on how often Department of Water officers have to come out and check you are not taking more water from your bore than you should be’.⁶⁹²

(b) Appeals

The inclusion of the cost of the defence of appeals is a particularly controversial inclusion in the licence administration cost calculations. The Scott River Growers Group argues that the cost of the appeals process should not be included in licence administration fees.⁶⁹³ This sentiment is echoed by a landowner in the Nannup area who submits that:

*money collected from water users should not fund the Department of Waters (sic) costs when fighting appeals by water users against decisions made by that department. If the water users payed for the departments (sic) appeals process it would not be following good governance principals as there would not be a financial imperative for the department to make good decisions.*⁶⁹⁴

This is also the position of the Western Australian Fruit Growers’ Association regarding the inclusion of appeals in the licence administration fee. The group argued that the cost of appeals against government decisions should not be applied to a licensee not involved in the appeal: ‘If the department makes a wrong decision and someone appeals it, I should not be funding the department’s appeal cost’.⁶⁹⁵

The DoW advised that they:

*sought legal advice as to whether this actually constituted an administration activity, and we were advised that it was those activities that contribute to a decision under part 3 of the act - a decision relating to the instrument.*⁶⁹⁶

⁶⁸⁹ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p7.

⁶⁹⁰ Mr Stephen Dilley, Water Spokesman, Western Australian Farmers Federation, *Transcript of Evidence*, 15 January 2008, p6.

⁶⁹¹ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p7.

⁶⁹² Mr Stephen Dilley, Water Spokesman, Western Australian Farmers Federation, *Transcript of Evidence*, 15 January 2008, p6.

⁶⁹³ Submission No. 7 from Scott River Growers Group Margaret River Region Inc., 3 December 2007, p2.

⁶⁹⁴ Submission No. 9 from Mr C. Scott, 6 December 2007, p1.

⁶⁹⁵ Mr Chris Scott, Orchardist, Western Australian Fruit Growers’ Association, *Transcript of Evidence*, 8 January 2008, p16.

⁶⁹⁶ Ms Elizabeth Western, Manager, Water Licensing, Department of Water, *Transcript of Evidence*, 24 January 2008, p6.

The Committee notes that this is an unusual course of action for a government agency as in most cases, the person appealing pays his or her costs and the agency defending pays its costs, or vice versa. However, when appeals are included in the calculations determining the average cost of administering the licensing system, the majority of licensees, who are never part of the appeals process, are actually paying a proportion of the costs for those licensees who are involved in appeals.

In response to Committee questions concerning the inclusion of appeals in the licensing costs, the DoW confirmed that these appeals ‘costs are spread across the licensing program’.⁶⁹⁷ In the DoW’s view, in paying a licence administration fee, a licensee is paying ‘a proportion of the costs of administering a licensing system, rather than administering a particular licence. It is the average cost of administering the licensing system’.⁶⁹⁸

The DoW also advised that:

*the State Administrative Tribunal costs are less than five per cent of the total licence fee administration costs, so they are a small component. Given that we are not looking at full cost recovery with new licences, although they are part of the original submission, there is certainly an argument that some of those costs are no longer covered by the new licence fees.*⁶⁹⁹

However, while the Committee notes, first, that the total costs of appeals is a relatively small component in the total administration costs and, second, that the revenue generated through the schedule of fees gazetted in December 2007 falls well below full cost recovery, it is the inclusion of appeals in the overall calculations that remains the issue. The Committee believes that this is a cost that should be borne by government.

Recommendation 16

The cost of appeals should not be included in the calculation of the licence administration fee.

7.6 Cross-Subsidisation

A number of submissions suggest that one sector of the community is cross-subsidising another, although there are variations as to the recipients and payers of the subsidy. Some of the cross-subsidies mentioned include large water allocations by self-supply farmers; city by country users; and those with access to trade in water by those without such access. The following discussion address those potential cross-subsidies not addressed elsewhere in the report.

The Shire of Manjimup expressed concern that water users in proclaimed areas were, in effect, subsidising users in non-proclaimed areas. The Shire argued that because ‘people in our area have been charged a fee whereas others have not, you automatically have an anticompetitive

⁶⁹⁷ ibid.

⁶⁹⁸ ibid.

⁶⁹⁹ Mr John Ruprecht, Acting Director General, Department of Water, *Transcript of Evidence*, 24 January 2008, p7.

environment, and the cost of production for a tonne of grapes in one area will be cheaper than in another'.⁷⁰⁰ The WA Farmers Federation suggested that the inclusion of assessment costs in the overall license administration fees results in the existing licence holders subsidising new licence applicants.⁷⁰¹

By far the greatest concern regarding possible cross-subsidisation was expressed in relation to the perceived subsidisation of large water users by smaller water users. This issue is considered in detail below.

(a) Cross-Subsidisation of Large Users by Small Users?

These types of concerns were generally expressed by, or on behalf of, the smaller users, the self-supply licensees, about the licences of larger users, which are mostly the irrigation cooperatives, but can also be mining operations or public bodies. Irrigation cooperatives are those such as Harvey Water, the Ord Irrigation Cooperative and the Gascoyne Irrigation Cooperative. These organisations are comprised of individual irrigators as members.

The Manjimup and Pemberton Landowners is one of those who strongly present this cross-subsidy argument. Basing its fee calculations on a dollar per megalitre basis, the group submit that there is a 'subsidisation of large water allocation licence fees by "self-supply" farmers, a cross subsidy it considers 'grossly unfair'.⁷⁰² It points towards this cross subsidy based on the amount of administrative effort required for larger licence holders, citing that:

*it appears the 12,548 water licence holders in Classes 1 to 5 paying greater than the average fee of \$2.27 a megalitre are cross subsidising the 320 licence holders in Classes 6 and 7 paying substantially less than \$2.27 a megalitre in licence fees.*⁷⁰³

This group also argues that one element of a cross-subsidy of large users by self-supply farmers is based on the assertion that a water licence is a valuable right to a tradeable asset. It states that the commercial value of the water is not reflected in the licence fees and because self-supply farmers do not have access to the water market, they subsidise those who do.⁷⁰⁴

Similarly the Shire of Manjimup felt that because approximately 70% of the DoW's costs were attributed to assessment of licences, which was included in the calculation of the fee schedule, small users 'were effectively subsidising the costs of processing applications for large licence facilities'.⁷⁰⁵

In discussing water supplied by irrigation schemes supported by government infrastructure, Mr Newbold from Manjimup advises that he:

⁷⁰⁰ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p6.

⁷⁰¹ Mr Stephen Dilley, Water Spokesman, WA Farmers Federation, *Transcript of Evidence*, 15 January 2008, p6.

⁷⁰² Submission No. 36 from Manjimup and Pemberton Landowners, 7 January 2008, p4.

⁷⁰³ Submission No. 3 from Manjimup and Pemberton Landowners, 28 November 2007, p7.

⁷⁰⁴ *ibid.*, p5. See also Submission No. 36 from Manjimup and Pemberton Landowners, 7 January 2008.

⁷⁰⁵ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p7.

*understand[s] that the cost recovery referred to is limited to the cost of licensing but it is unfair that the sector with the highest investment and lowest affordability should be paying most while the sector with the highest govt investment pays least.*⁷⁰⁶

Similarly, the Scott River Growers Group states that:

*private water user (sic) are treated very differently to public water suppliers in that co-ops and public water suppliers have fees for bulk water, which can be shared amongst the users. Private water suppliers must pay the single fee themselves. E.g. cost of water is \$101 a meg at Scott River and \$6meg at Harvey.*⁷⁰⁷

It is certainly true that cooperatives pay DoW licence fees according to their allocation on the DoW scale of fees and that these fees are shared amongst the individual water users or members within the cooperative. However, it must be remembered that these DoW fees are based only on the services provided by the DoW to the cooperative as a licence holder. Furthermore, cooperative members pay fees that include much more than just the licence fee paid by the cooperative to the DoW for the bulk water licence. Added to this are the other costs associated with functions performed by the cooperative on behalf of individual members, which include the licensing, compliance and data collection functions performed directly by the DoW for self-supply users. As previously documented, the DoW bases these costs on 5 categories or deliverables which are listed as those items to be recovered under Recommendation 42 of the *Blueprint*:

- assessment of applications and licence renewals;
- checking compliance with licence conditions;
- licence support, including database administration;
- management of appeals; and
- community awareness.⁷⁰⁸

In addition to the DoW's licensing service activities, irrigation cooperatives and other large users must also perform such functions, in a sense acting as a substitute body for the DoW. The cost of performing these internal functions is levied back onto the irrigator members. So, in the same way that the cooperatives pay the DoW direct for providing the licensing services, the individual members of cooperatives also pay for the additional internal functions performed via the cooperative.

The South West Development Commission recognises the additional work done by larger users, stating that:

it should be understood that larger licensees (e.g. mining, potable suppliers and cooperatives) are required, under their licence, to provide back to the State extensive monitoring, metering and measurement data that is not demanded from smaller users.

⁷⁰⁶ Submission No. 13 from Mr S. Newbold, 6 December 2007, p1.

⁷⁰⁷ Submission No. 7 from Scott River Growers Group Margaret River Region, Inc., 3 December 2007, p2.

⁷⁰⁸ Water Reform Implementation Committee, *A Blueprint for Water Reform in Western Australia. Final Advice to the Western Australian Government*, Government of Western Australia, Perth, December 2006, px.

Responsibility for undertaking such detailed work in aquifers and catchments where smaller licensees operate remains with DOW.⁷⁰⁹

The Western Australian Farmers Federation also acknowledged the work carried out by cooperatives in meeting the terms and conditions of their licences, stating:

once a licence has been granted, effectively, the Department of Water will have a requirement that, obviously, the licence complies with its conditions. Therefore, in the case of the irrigation cooperatives ... instead of the Department of Water checking compliance on their licence conditions, if you like, they actually do that role themselves. That is a significant cost to them and it is something that is easy to forget. It is easy to say, "Okay, well, the big water co-ops are only paying a few cents a megalitre" but you also need to recognise that they have significant costs; they have staff running around measuring, checking on meters and things like that as well. Therefore, that needs to be recognised in any kind of fee structure as well.⁷¹⁰

In discussing the debate around the equity of charges applied to 'individual small scale abstractors compared with irrigation co-operatives with much larger allocation that represent multiple growers,' the Ord Irrigation Cooperative states that, as a cooperative, it performs a 'significant component of the regulatory role that would otherwise be the role of the DoW and the Department of Environment and Conservation (DEC) if the growers within the co-operative had individual licences'.⁷¹¹

Using Harvey Water as an example, in addition to the licence administration work performed by the DoW, this cooperative performs the following licensing and compliance tasks:

- Applications and licence renewal for one or more collective licences on behalf of all irrigators (renewals every 5 years);
- Extensive annual reporting and supply of any information requested by the DoW;
- Management of environmental flows and the bearing of any costs associated with changes to this flow;
- Economic Regulation Authority (ERA) compliance functions and reporting requirements;
- Data collection from individual irrigators, which otherwise would be collected by the DoW;
- Management of transfers, trades and agreements to take water;
- Various studies and surveys necessary for water resource management;
- Contribution to wider research and nationally recognised external programs.⁷¹²

⁷⁰⁹ Submission No. 22 from South West Development Commission, 10 December 2007, p2.

⁷¹⁰ Mr Stephen Dilley, Water Spokesman, WA Farmers Federation, *Transcript of Evidence*, 15 January 2008, p11.

⁷¹¹ Submission No. 24 from Ord Irrigation Cooperative, 12 December 2007, p1.

⁷¹² Submission No. 41 from Harvey Water, 16 January 2008, pp5-6.

Another function performed by the DoW for smaller licensees is licensing support, which includes the maintenance of a licensing database and provision of staff training.⁷¹³ Whereas self-supply users must inform the DoW when water ownership details change:

*cooperative irrigators must inform the Cooperatives who administer ownership database records. Cooperatives are legally responsible to ensure the validity of these records. Cooperatives are now required to ensure that the water entitlement database they manage conforms with all NWI requirements to enable the WA State Government, to, in turn, conform with its NWI obligations...Failure to comply would see the Cooperatives' bulk water licence role reviewed and could be revoked.*⁷¹⁴

In addition to this, the function of dispute resolution is also largely borne by the cooperatives themselves. While individual irrigators within a cooperative can appeal to the Water Ombudsman for resolution of a dispute just as the smaller individual users do, this is very rare, and has not occurred within the Harvey Water cooperative over 11 years of operation.⁷¹⁵ Disputes are generally resolved within the group and collectively paid for by members, thus performing an important function of alleviating the increasing burden on the SAT. The cost of raising awareness is also borne by the cooperatives, with the cooperative disseminating information amongst members, keeping members updated on current issues, and liaising with external stakeholders.⁷¹⁶

In their submission Harvey Water estimates that the costs to carry out these administration functions for 770 irrigators is \$300,000 per year, this being a conservative estimate and dependent upon DoW requirements from year to year and any additional 'one off costs' that can also arise.⁷¹⁷ Crudely calculated, this amounts to an annual cost of around \$389 for each individual user within the cooperative. This would appear not to include the \$9,000 for the three DoW licenses.

As the DoW pointed out, should individuals in the Manjimup catchment area, for example, form a cooperative under three or four licenses similar to Harvey Water, they would:

*potentially have a much lower licence fee from the Department of Water. However, they would face internal cooperative costs that may in fact lead to them paying more as individual farmers than they do now. The cooperative may lead to a higher cost per farmer than if they had individual licences.*⁷¹⁸

Irrigation Australia advised that discussions with cooperatives who are members of their organisation have revealed that:

often some of the agriculture people do not really appreciate the co-ops' obligations and responsibilities. It is an outsourced management role from DOW. It is doing work for the state, but those costs are not transparent enough for the others outside the co-ops to realise that there is greater equity between what a member of a cooperative is paying as an

⁷¹³ *ibid.*, p7.

⁷¹⁴ *ibid.*, p7.

⁷¹⁵ *ibid.*, p8.

⁷¹⁶ *ibid.*, pp8-9.

⁷¹⁷ *ibid.*, p10.

⁷¹⁸ Mr John Ruprecht, Acting Director General, Department of Water, *Transcript of Evidence*, 24 January 2008, p22.

*irrigator versus someone who is outside that cooperative. That lack of transparency may have caused some unnecessary friction.*⁷¹⁹

The detailed information received from Harvey Water clearly demonstrates that bulk water licensees carry significant internal administration costs that are not borne by self-supply water users. Given this, and the problematic nature of fee per megalitre calculations, it is clear that there is no cross-subsidisation of large licence holders by smaller, self-supply licensees.

(b) Volumetric Calculations

Much of the argument concerning the cross-subsidisation of large water users by small users is based on dollar per kilolitre or gigalitre calculations using Table 7.2 data as provided by the DoW as evidence of its total licence administration costs. This type of volumetric calculation is made possible only by accepting the fee as a volumetric charge and then averaging the total revenue of the DoW for an area across the licence holders in that area. Thus the Manjimup and Pemberton Landowners argue that \$137,350 in licence fees will be paid by farmers in that area for 40 GL of water, while Harvey Water will pay \$18,000 for 153GL and the Ord Irrigation Cooperative will pay \$6,000 for 335GL.⁷²⁰ However, according to a table provided to the group by the DoW, there are 384 licences in the Manjimup and Pemberton region, one of whom will pay \$2,500. Harvey Water has three licences to obtain water and the Ord River Cooperative has one. Harvey Water confirms that it has three licences for 153 GL, but that it has recently traded 17GL, so is now licensed to take 136GL.⁷²¹ The Manjimup and Pemberton Landowners also makes comparisons between Alcoa's licence for a 2.5GL allocation at a cost of \$2,500 or \$1 per ML with a fruit grower in Manjimup with a 217ML allocation paying \$700 or \$3.22 per ML.⁷²²

At this point it is useful to repeat the principles used to develop the fee structure:

- *Full cost recovery for administration of licences (licence fee rather than a broader water resource management charge)*
- *Classes were defined by the average level of work for each class, estimated number of hours required, in assessing and maintaining a licence/permit.*
- *The portion of budget assigned to an entitlement class is calculated by:*
 - a. *'No of licences per class x hours of work = total hours of work per category;'*
 - b. *'Total hours of work per category / total hours of work = percentage; and'*
 - c. *'Total cost to recover per category = % of total work of category x total budget.'*⁷²³

This resulted in the calculations shown at Table 7.2. It is this table that has led to the type of comparative calculations shown above. However, the DoW and the Minister for Water Resources

⁷¹⁹ Mr Douglas Hall, Industry Development Officer, Irrigation Australia - WA Region, *Transcript of Evidence*, 15 January 2008, p4.

⁷²⁰ Submission No. 36 from Manjimup and Pemberton Landowners, 7 January 2008, p7.

⁷²¹ Mr Geoff Calder, General Manager, Harvey Water, *Transcript of Evidence*, 8 January 2008, p2.

⁷²² Submission No. 36 from Manjimup and Pemberton Landowners, 7 January 2008, p8.

⁷²³ Submission No. 45 from Department of Water, 14 February 2008, p3.

argue that the fees are not volumetric, but fee for service based on the amount of work required to administer licences and that this varies with the size of the allocation.⁷²⁴ The DoW advises that:

*at no time was the fee intended to be a volumetric charge (ie the amount of water used). The rationale was that the fee would be only for the services or activities relating to the administration of licences.*⁷²⁵

The kilolitre-per-year class schedule:

*purely relates as an indicator of the level of work required. So it is a surrogate for, sort of, the amount of work required. A larger licence like the cooperative will take more work than would a 1 500-kilolitre licence in Manjimup or wherever. So it is just an indication of the level of effort required, and it is unfortunate if it has given the impression of being volumetric, but is not intended. It is intended to be an indicator of effort.*⁷²⁶

Furthermore, the DoW argues that while ‘a volumetric-based fee was suggested to the Minister by interest groups as an alternative to the original fee structure,’ legal advice determined that such volumetric charges would not be legally possible and that the fee for service for the administration of licences ‘was the only cost recovery mechanism available’.⁷²⁷

According to Irrigation Australia - WA Region, this scale of fees based on kilolitre increments has ‘confused the issue’.⁷²⁸ While Irrigation Australia argued that ‘the cost needs to bear some proportionality to the volume,’ it also suggested that:

*the mention of volume has probably given some people the impression that it is a volumetric charge, whereas I suspect that that is not really what it is about; it is about the cost of verifying a large amount of infrastructure.*⁷²⁹

The Committee concurs with this view. It is indeed unfortunate that the fee schedule has used increments of kilolitre entitlements as its fee scale as this had led to cents/ML, cents/KL, cents/GL licence calculations that have muddled the waters. There is a general lack of understanding that the fees are administration fees only, not a charge for a licence to take and store or use a particular amount of water. It is calculations such as the above that lead to claims that small users are subsidising large users such as cooperatives and mining companies.

However, as Table 7.4 shows, the situation is more complex than simple volumetric calculations can reveal. For example, comparing revenue per region with the costs per region reveals a wide range of percentages of cost recovery, from 25.24% to 68.17%. These calculations reveal that the proportion of costs recovered for the Mid West, South West and South Coast regions is below that of the 48.82% of total costs recovered. Therefore, it could be argued that licencees in the North West, Swan Avon, and Kwinana Peel are subsidising those in other regions. As recommendation

⁷²⁴ Hon John Kobelke, Minister for Water Resources, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 13 June 2007, p3045.

⁷²⁵ Submission No. 45 from Department of Water, 14 February 2008, pp3-4.

⁷²⁶ Mr John Ruprecht, Acting Director General, Department of Water, *Transcript of Evidence*, 24 January 2008, p22.

⁷²⁷ Submission No. 45 from Department of Water, 14 February 2008, p3.

⁷²⁸ Mr Douglas Hall, Industry Development Officer, Irrigation Australia - WA Region, *Transcript of Evidence*, 15 January 2008, p3.

⁷²⁹ *ibid.*

15 states, this issue needs examination by the ERA. In particular, the use of a volumetric scale of licence administration fees needs to be examined as it appears that this, more than anything else, has created considerable confusion and misconception.

Table 7.3 LICENCES AND REVENUE BY LICENCE CLASS (FEE) AND REGION (INCLUDING WATER CORPORATION LICENCES)

Licence Class	North West		Mid West		Swan		Kwinana Peel		South West		South Coast		Total Licences	Total Revenue
	Licences	Revenue	Licences	Revenue	Licences	Revenue	Licences	Revenue	Licences	Revenue	Licences	Revenue		
1	129	\$12,900	69	\$6,900	879	\$87,900	281	\$28,100	275	\$27,500	51	\$5,100	1684	\$168,400
2	302	\$45,300	321	\$48,150	2,718	\$407,700	984	\$147,600	817	\$122,550	107	\$16,050	5249	\$787,350
3	63	\$15,750	218	\$54,500	415	\$103,750	124	\$31,000	238	\$59,500	14	\$3,500	1072	\$268,000
4	59	\$41,300	47	\$32,900	436	\$305,200	76	\$53,200	268	\$187,600	13	\$9,100	899	\$629,300
5	17	\$27,200	13	\$20,800	91	\$145,600	10	\$16,000	26	\$41,600	4	\$6,400	161	\$257,600
6	33	\$82,500	33	\$82,500	120	\$300,000	18	\$45,000	34	\$85,000	5	\$12,500	243	\$607,500
7	8	\$32,000	2	\$8,000	12	\$48,000	0	\$0	10	\$40,000	0	\$0	32	\$128,000
8	8	\$48,000	1	\$6,000	12	\$72,000	0	\$0	13	\$78,000	0	\$0	34	\$204,000
Total	619	\$304,950	704	\$259,750	4683	\$1,470,150	1493	\$320,900	1681	\$641,750	194	\$52,650	9374	\$3,050,150

SUBSET: WATER CORPORATION LICENCES BY LICENCE CLASS AND REGION															
1	\$100	0	\$0	0	\$0	1	\$100	2	\$200	0	\$0	0	\$0	3	\$300
2	\$150	1	\$150	8	\$1,200	5	\$750	2	\$300	8	\$1,200	2	\$300	26	\$3,900
3	\$250	2	\$500	4	\$1,000	5	\$1,250	1	\$250	4	\$1,000	2	\$500	18	\$4,500
4	\$700	3	\$2,100	17	\$11,900	13	\$9,100	3	\$2,100	11	\$7,700	4	\$2,800	51	\$35,700
5	\$1,600	4	\$6,400	6	\$9,600	8	\$12,800	1	\$1,600	7	\$11,200	5	\$8,000	31	\$49,600
6	\$2,500	3	\$7,500	0	\$0	12	\$30,000	0	\$0	7	\$17,500	3	\$7,500	25	\$62,500
7	\$4,000	3	\$12,000	1	\$4,000	5	\$20,000	1	\$4,000	1	\$4,000	0	\$0	11	\$44,000
8	\$6,000	2	\$12,000	1	\$6,000	7	\$42,000	3	\$18,000	4	\$24,000	0	\$0	17	\$102,000
Total		18	\$40,650	37	\$33,700	56	\$116,000	13	\$26,450	42	\$66,600	16	\$19,100	182	\$302,500

Note: In the majority, licences for the Water Corporation are for Public Water Supply purposes. However, there are a few licences issued for the reticulation of gardens around Corporation depots, for construction of a treatment plant and the supply of untreated reticulation water to an urban development within Perth.

Table 7.3 has been provided by the DoW and shows the revenue by licence class and region. This table has been used to generate the data shown in Table 7.4.

Table 7.4: Costs and Revenue by Region 2006-2007

Costs	North West ¹	Mid West	Swan ²	Kwinana Peel	South West	South Coast	Total
Programme Costs ³	392,851	683,803	1,458,781	407,167	1,142,539	121,937	4,207,078
Licensing and Support	34,278	59,664	127,284	35,527	99,690	10,639	367,082
Management Water Corporation	23,398	48,096	72,795	16,899	54,596	20,799	236,583
Sub-total	450,527	791,563	1,658,860	459,593	1,296,825	153,375	4,810,743
30% Corporate Costs	135,158	237,469	497,658	137,878	389,047	46,013	1,443,223
Total Cost	585,685	1,029,032	2,156,518	597,471	1,685,872	199,388	6,253,966
Revenue	304,950	259,750	1,470,150	320,900	644,950	52,650	3,053,350
Cost Not Recovered	280,735	769,282	686,368	276,571	1,040,922	146,738	3,200,616
% Cost Recovered	52.06	25.24	68.17	53.71	38.26	26.41	48.82
No. of Licences	619	704	4683	1493	1683	194	9376
Revenue per Licence	492.64	368.96	313.93	214.93	383.21	271.39	325.65
Cost per Licence	946.18	1461.69	460.5	400.18	1001.71	1027.77	667.02
Cost Per Licence Not Recovered	453.52	1092.73	146.56	185.24	618.49	756.38	341.36
% per licence	52.06	25.24	68.17	53.71	38.26	26.41	48.82

¹Pilbara and Kimberly Programmes ²Swan Avon and Goldfields Programmes ³As per Table 7.3

Note (a): Licensing and Support is apportioned according to % applied by DoW; Management Water Corporation is apportioned according to the number of Water Corporation licences in the region as per Table 7.3.

Note (b): Totals may not add due to rounding.

7.7 Timing of Introduction of Fees

While there is general acceptance of the concept of full cost recovery, many submissions hold that the introduction of fees was premature, that fees should not be charged until the legislation review is finalised, and the regional and statutory management plans are in place. For example, the Western Australian Fruit Growers' Association suggested that:

*once we have the state plan and the south west plan and we move them into the catchment plans, the department should decide whether to charge a fee to management water.*⁷³⁰

*The plans should be in place before charges happen. To me it is not good management, and the Department of Water has demonstrated that it does not have the capacity to manage this well.*⁷³¹

Irrigation Australia - WA Division suggested that while people were ‘more than happy to be put on a register’, the introduction of licensing was ‘a bridge too far at this stage’.⁷³²

The Shire of Manjimup agreed, stating:

of greatest concern is the uncertainty about where this may end. There is likely to also be additional fees for metering and management planning.

*people from our area are concerned that they are being levied with fees now, yet there is uncertainty about how regional water management will pan out. My earlier comment was that some basic principles are being set today that will be very difficult to override down the track.*⁷³³

The Manjimup and Pemberton Landowners argue that:

*the government should not have initiated changes on water licensing until the framework Water Resources Management Bill was enacted and Government should not have introduced annual water licence administration fees without publishing a cost benefit analysis to justify the fees and projected additional fees and charges related to licensing.*⁷³⁴

Furthermore, they argue that the analysis should be published prior to fees being introduced.⁷³⁵

In discussing what they see as a lack of consultation in the development of the state’s implementation plan for the NWI, the Farmers Federation of Western Australia used the introduction of the fees as an example, arguing that the introduction of the licence administration fees on 1 July 2007 was not an imperative of the NWI, but a DoW deadline.⁷³⁶

⁷³⁰ Mr Chris Scott, Orchardist, Western Australian Fruit Growers’ Association, *Transcript of Evidence*, 8 January 2008, p6.

⁷³¹ Ms Diane Fry, Farmer, Western Australian Fruit Growers’ Association, *Transcript of Evidence*, 8 January 2008, p16.

⁷³² Mr Douglas Hall, Industry Development Officer, Irrigation Australia - WA Region, *Transcript of Evidence*, 15 January 2008, p4.

⁷³³ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, pp4-5.

⁷³⁴ Submission No. 36 from Manjimup and Pemberton Landowners, 7 January 2008, p10.

⁷³⁵ *ibid.*

⁷³⁶ Mr Stephen Dilley, Water Spokesman, WA Farmers Federation, *Transcript of Evidence*, 15 January 2008, p3.

The DoW advised that while the NWI ‘is certainly a lot more specific about the expectations it has about governments across Australia to undertake a form of cost recovery,’ the concept of cost recovery is contained in the earlier 1994 COAG agreement.⁷³⁷ It is certainly not a new concept to Western Australia. The DoW’s assessment was:

*that water licence administration fees, even though we are some years off from having a consumptive pool setting, are still a reasonable undertaking for a government to make, consistent with the requirement that water users should pay a portion of the costs associated with the management of the resource.*⁷³⁸

The DoW justified the introduction of the fees under the NWI in the following way:

*specifically, it is in the way that all states and territories respond to the water initiative that gives us confidence that we are acting in accordance with the NWI requirements by virtue of our water administration fees. By that I mean that upon signing the National Water Initiative the first act of any jurisdiction, by agreement, is to develop an implementation plan as to how that state is going to apply the National Water Initiative principles and objectives in that jurisdiction. In the case of the Western Australian implementation plan, the government made it quite clear that it intended to introduce water licence administration fees consistent with the principles of cost recovery for water resources management planning. That has, of course, been confirmed by the funding conditions that I have already alluded to that the National Water Commission has placed on the Department of Water to progress cost recovery in this state. By virtue of all those directions, our assessment is that we are complying with the intention of the National Water Initiative.*⁷³⁹

By introducing licensing fees, the DoW is certainly complying with the intent of the NWI. However, the timing of the introduction of cost recovery under the NWI appears to be reasonably flexible as the cost recovery and user pays references in the NWI do not include any date specific timeframe.⁷⁴⁰ The July 2007 date for beginning the implementation of water administration fees is indeed a DoW deadline.⁷⁴¹ The DoW has identified licence administration fees and the July 2007 commencement as a ‘possible “first-step”’ towards meeting the obligations imposed under the NWI and earlier COAG agreements.⁷⁴²

⁷³⁷ Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p16.

⁷³⁸ *ibid.*

⁷³⁹ *ibid.*, p24.

⁷⁴⁰ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, p13. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

⁷⁴¹ Department of Water, *Western Australia’s Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, pp56-57.

⁷⁴² Submission No. 43 from Department of Water, 7 February 2008, p7.

The only concrete deadline given in the NWI document itself is that, by the end of 2006, there be consistency in *approach* in regards to water pricing and attributing costs of water planning and management across the states and territories (discussed earlier in this chapter).⁷⁴³ This deadline appears to have been met, although with some ‘gaps’ identified in the stocktake of information compiled by the National Water Commission (NWC) at the end of 2006.⁷⁴⁴ However, this kind of analysis and provision of information could have been progressed without immediate introduction of a water administration licensing regime.

As discussed further in Chapter 8, there is a deadline imposed on the state for cost recovery in the Water Smart funding deeds. This states, as one of the general funding conditions across all four funding deeds, that Western Australia must:

*commence implementing cost recovery charging for water planning and management by December 2008, with further charging elements to be in place by July 2009.*⁷⁴⁵

The kind of cost recovery considered here is broader than just the licence administration fees, and the DoW again argued that the adoption of these licence administration fees was ‘in itself commencement of cost recovery’.⁷⁴⁶ However, even with the December 2008 deadline for commencement of cost recovery, it is the view of the Committee that at this stage it is appropriate to charge a small licence administration fee that registers licensed users. Under Water Smart and NWI intentions there is sufficient time to complete the legislative review and develop the structure of regional and statutory water plans before the introduction of the full cost recovery through water resource management fees. There needs to be a very clear delineation between water licence administration fees and water resource management fees.

Professor Jorg Imberger has reservations about the speed at which the implementation of the reforms prescribed under the NWI, including the cost recovery aspects, are progressing in Western Australia. He claimed that more investigation needs to be done before signing off on a particular model, which could possibly be 10 years away. He points out that once something is in place or promised it is difficult to change.⁷⁴⁷

In a similar vein, the WA Farmers Federation was concerned about ‘bringing in the full cost recovery for water administration fees when there are positives like local water management - so

⁷⁴³ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, p14 and 26. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

⁷⁴⁴ National Water Commission, *Executive Summary: Water Storage and Delivery Charges and Water Planning and Management Costs in the Rural and Urban Water Sectors in Australia*, February 2007, p2. Available at: http://www.nwc.gov.au/nwi/docs/ExecutivSummary_Feb21.pdf. Accessed on 19 February 2008.

⁷⁴⁵ Submission No. 29 from Department of Water, 21 December 2007, Addendum A, p33; Addendum 29B, p37; Addendum 29C, p35; Addendum 29D, p35.

⁷⁴⁶ Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p25.

⁷⁴⁷ Professor Jorg Imberger, Director, Centre for Water Research, *Transcript of Evidence*, 20 December 2007, pp5-8.

longer-term licence security is still some years down the track'.⁷⁴⁸ This organisation suggested that 'the sequence of implementation has been very poor and has been very unfair and, unfortunately, that is seen by water users, certainly self-supply water users, as a betrayal of goodwill'.⁷⁴⁹ Professor Imberger confirmed this sense of betrayal, claiming that there is a lot of 'bad will' in the south west due to the perceived change of direction in water management policy, stating:

*the thing about the farmers, as with any family, is if you suddenly change the rules, people really have a problem. If, on the other hand, you say to them, "We're going to measure it for a while. Then we're going to solicit your input, get in the terms of reference, and then we're going to teach you about what's going to happen to climate", you will not find any resistance from farmers.*⁷⁵⁰

The WA Farmers Federation also attacked the process of implementation, particularly as few of the state's surface water areas are proclaimed, and argued that:

*the sequence of initiating the National Water Initiative involved putting the nasties up front - the water fees were brought in first. The positives, such as local water management groups, statutory water management plans and all those things, are still some years down the track. We have said in very strong terms that in the interests of procedural fairness to water reform in Western Australia, the minister and the department should wait 12 months, because we believe that the Department of Water intends to proclaim the whole state once the legislation goes through in the next 12 to 18 months, and then everybody will be licensed. There will then be some fairness.*⁷⁵¹

On balance, the DoW uses the justification that Western Australia is behind in terms of what is being done elsewhere in Australia, because:

*all jurisdictions, with the exception of Western Australia and the Northern Territory, had a form of cost recovery in place at the time of signing the National Water Initiative, so these national principles are in many cases building on well-established activity that is already happening in other jurisdictions.*⁷⁵²

⁷⁴⁸ Mr Stephen Dilley, Water Spokesman, WA Farmers Federation, *Transcript of Evidence*, 15 January 2008, pp2-3.

⁷⁴⁹ *ibid.*

⁷⁵⁰ Professor Jorg Imberger, Director, Centre for Water Research, *Transcript of Evidence*, 20 December 2007, p6.

⁷⁵¹ Mr Stephen Dilley, Water Spokesman, WA Farmers Federation, *Transcript of Evidence*, 15 January 2008, p8 and 9.

⁷⁵² Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p25.

*most other jurisdictions already have some cost recovery arrangements for water resource management and planning in place, although they vary considerably in their application and scope and in the way that they are set.*⁷⁵³

While a full analysis of the implementation of cost recovery arrangements in other jurisdictions has not been undertaken due to time constraints, a preliminary review of the status of other jurisdictions' progress, as contained in documents such as DoW submissions and the NWC's *Water Planning and Management Stock Take Report*, demonstrates that there are indeed variations in application and scope, and that several jurisdictions are also experiencing challenges in implementation.⁷⁵⁴ It then becomes somewhat problematic to justify the imposition of fees at this time through a comparison of Western Australia's progress in terms of cost recovery with that of other jurisdictions.

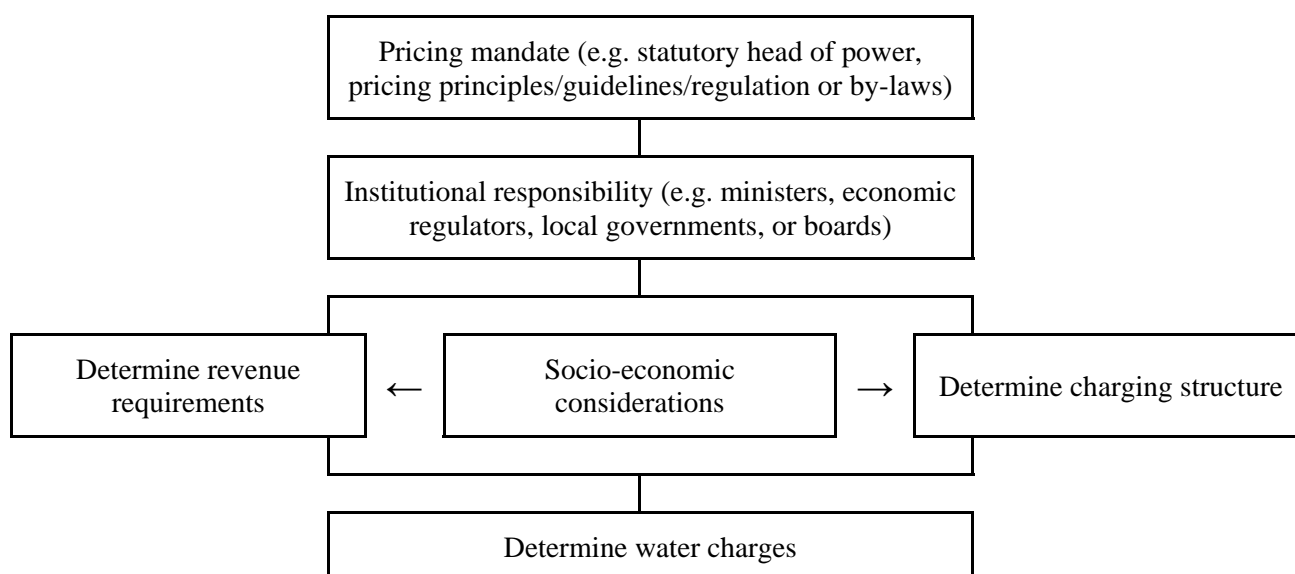
The NWC highlights the need for an adequate regulatory structure with basic components in place in order to carry out water charging practices in any jurisdiction, stating:

*there is significant diversity within the Australian water sector, both in terms of the mandate under which water charges are set and the decision makers involved...The context within which water charges are set is important to understanding the differences in charging approaches across jurisdictions. The key steps in the process of determining water charges, and the institutional and regulatory environment in which water charges are determined, are outlined in Figure 1.*⁷⁵⁵

⁷⁵³ Submission No. 29 from Department of Water, 21 December 2007, p18.

⁷⁵⁴ National Water Commission, *Executive Summary: Water Storage and Delivery Charges and Water Planning and Management Costs in the Rural and Urban Water Sectors in Australia*, February 2007, p1-18. Available at: http://www.nwc.gov.au/nwi/docs/ExecutivSummary_Feb21.pdf. Accessed on 19 February 2008; Submission No. 29 from Department of Water, 21 December 2007, p18-19.

⁷⁵⁵ National Water Commission, *Executive Summary: Water Storage and Delivery Charges and Water Planning and Management Costs in the Rural and Urban Water Sectors in Australia*, February 2007, p3. Available at: http://www.nwc.gov.au/nwi/docs/ExecutivSummary_Feb21.pdf. Accessed on 19 February 2008.

Figure 7.1: Institutional and regulatory framework⁷⁵⁶**Finding 17**

There is sufficient time under the National Water Initiative to go through a full consultative process in conjunction with the Economic Regulation Authority before the introduction of full cost recovery through water resource management charges.

(a) Independent Review of Fees

The issue of the independent review of the water licence administration costs incurred by the DoW has been discussed in Chapter 6. A number of submissions also suggest that the schedule of fees should be reviewed regularly by the ERA. The Western Australian Local Government Association (WALGA) submits that 'the Economic Regulation Authority reviews the licence charges within two years and provides advice concerning the efficiency and equity of the arrangements'.⁷⁵⁷ Harvey Water notes that its fees recently had doubled, but signals a willingness to accept this cost provided that:

⁷⁵⁶ *ibid.*, p4. Available at: http://www.nwc.gov.au/nwi/docs/ExecutivSummary_Feb21.pdf. Accessed on 19 February 2008.

⁷⁵⁷ Submission No. 32 from Western Australian Local Government Association, 21 December 2007, p1.

*the issue and cost of license (sic) fees should be reviewed by an independent body such as the Economic Regulation Authority within a reasonable time frame which we nominally put at 2 years.*⁷⁵⁸

Rio Tinto Iron Ore also recommends involving the ERA in an:

*independent review [of] the structure and amount of the water licence administration fee on a regular basis. This review process will need to ensure that efficient delivery of services covered by the fees is also closely scrutinised.*⁷⁵⁹

The Gascoyne Water Co-Operative Ltd states that:

*Just as Water Service Providers have to submit their annual pricing regimes to the ERA for scrutiny and a fairness test before approval, licensing fees which are closely related to water services should perhaps, also be examined and approved by the ERA.*⁷⁶⁰

The ERA is aware of the introduction of the water licence administration fees and the government's support of the recommendation in the *Blueprint* for the ERA to 'independently review the structure and amount of such a fee within two years of its introduction and regularly thereafter'.⁷⁶¹ The ERA advises that:

*as part of any such review, it is likely that the Authority would be required to consider the requirements of the National Water Initiative, including the requirement to identify any costs attributable to water access entitlement holders and to ensure that any charges are linked as closely as possible to the costs of activities.*⁷⁶²

The DoW advised that it was not aware of any consideration given to involving the ERA in calculating the current fee structure. According to the DoW:

*it is appropriate to conduct that review after we have applied the fees. The ERA does have a very strong view on cost recovery. Given the rigour of the process that we have gone through in determining the calculations -and I know it is only partial cost recovery -I think having the fees in place and then having the review in two years will add value. I certainly look forward to the ERA review.*⁷⁶³

The Committee has not been able to undertake a comparative analysis of the involvement of independent regulatory bodies in other jurisdictions in relation to water licence fees. However, in discussions with the NWC the Committee was advised that New South Wales provides a good

⁷⁵⁸ Submission No. 16 from Harvey Water, 7 December 2007, p3 and 5.

⁷⁵⁹ Submission No. 20 from Rio Tinto Iron Ore, 7 December 2007, p6.

⁷⁶⁰ Submission No. 2 from Gascoyne Water Co-Operative Ltd, 27 November 2007, p2.

⁷⁶¹ Submission No. 23 from Economic Regulation Authority, 10 December 2007, p1.

⁷⁶² *ibid.*

⁷⁶³ Mr John Ruprecht, Acting Director General, Department of Water, *Transcript of Evidence*, 24 January 2008, pp23-24.

example of the strong presence of the economic regulator, the Independent Pricing and Regulatory Tribunal (IPART).⁷⁶⁴

The NWC also noted the importance of having discussions regarding pricing via an independent regulator.⁷⁶⁵ The Committee also understands that IPART is involved in both rural and metropolitan water pricing and that New South Wales has catchment accounts for regional water accounting.⁷⁶⁶ This allows for charges to be cost reflective of each river system separately.

The Committee is of the view that the early establishment of a sound regulatory framework is essential to ensure the appropriate system is implemented from the outset. The involvement of the ERA is considered necessary to the development of such a system. The Committee's position is based upon its understanding of the situation in other states where their economic regulator does not have a strong presence in water pricing. For example, in Queensland the Department of Natural Resources (DNR) is largely responsible for the implementation of the NWI, with some input from Treasury. The Queensland Competition Authority does not have a direct role in the setting of water prices; this is carried out by the DNR.⁷⁶⁷ In outlining the cost recovery arrangements in other states, the DoW advises that:

*Queensland has an interim annual licence fee, an interim annual volumetric charge for some self-supply users and various fixed and volumetric charges for groundwater in some declared management areas.*⁷⁶⁸

The February 2007 *Water Planning and Management Stocktake Water Planning and Management Stocktake* notes that the involvement of independent consultants in the development of a 2004 discussion paper on water resource charges.⁷⁶⁹ However, in 2006, following the voicing of stakeholder concerns when the new charges were implemented, the Queensland Government decided 'to suspend the implementation of the new water charges pending the outcome of an independent analysis of the original report'.⁷⁷⁰ The significant problems experience in Queensland is acknowledged by the DoW who note that 'implementation of a new system of charges was suspended pending review, and have (sic) still not been implemented'.⁷⁷¹

It is the Committee's view that the involvement of the ERA in the development of water resource management costing and pricing, including that of water licence administration fees, will help

⁷⁶⁴ National Water Commission, *Committee Briefing*, 17 December 2007.

⁷⁶⁵ *ibid.*

⁷⁶⁶ *ibid.*

⁷⁶⁷ Project Officer, Water Legislation Policy and Pricing, Department of Natural Resources, Telephone Communication, January 2008.

⁷⁶⁸ Submission No. 29 from Department of Water, 21 December 2007, p19.

⁷⁶⁹ NWI Steering Group on Water Charges, *Water Planning and Management Stocktake: Cost Recovery for Water Planning and Management in Australia*, February 2007, National Water Commission, Canberra, p61.

⁷⁷⁰ *ibid.*

⁷⁷¹ Submission No. 29 from Department of Water, 21 December 2007, p19.

provide water consumers confidence, clarify confusion and ensure that Western Australia does not find itself in a position similar to Queensland. ERA involvement would also assist the state in meeting its NWI reporting requirements, which include the public reporting of water planning and management cost recovery.

Finding 18

The role that the Independent Pricing and Regulatory Tribunal plays in New South Wales is helpful in that state.

Finding 19

The involvement of the Economic Regulation Authority would help Western Australia meet its National Water Initiative obligations in relation to reporting requirements.

Recommendation 17

The Economic Regulation Authority independently review the water licence administration fees.

Recommendation 18

The Economic Regulation Authority be involved from the beginning of the calculation of any water resource management charges to be imposed in the future.

7.8 Licence Application Fee

Under Regulation 18 of the *Rights in Water and Irrigation Amendment Regulations 2007*, all applications for new licences under s5C and for the amendment of a s5C licence attract a \$200 fee as set down in Division 1(2). Regulation 20(2) of the *Rights in Water and Irrigation Regulations 2000* states that the annual fee payable for a licence is that shown at 'Schedule 1 Division 1 item 3 for the water entitlement under the licence, *less the amount already paid by way of the relevant*

application fee'.⁷⁷² Under the June 2007 amendments, the lowest licence fee was for \$200 for a Class 1 licence. This meant that following the granting of a class 1 licence no additional payment was required; for a class 2 licence, for which the annual fee is \$325, an additional \$125 was payable.

Regulation 18 of the *Rights in Water and Irrigation Amendment Regulations (No. 3) 2007* also provides for a \$200 application fee. The Committee noted that under the new regulation amendments the provision for a refund had not altered and that Regulation 20(2) remains intact. Given that some of the new fees are less than the \$200 application fee (class 1 is \$100 and class 2 is \$150), the Committee inquired as to whether licence holders would get a refund or would they remain in credit until the following year's annual payment was due. The DoW advised that either was possible, that 'licensees are being offered the option of being given either a credit or a refund'.⁷⁷³

However, in a subsequent submission the DoW advises that 'the \$200 application fee will be deducted from the licence payable and will only have an impact where the licence fee for a licence in Class 2, \$250 fee, or above'.⁷⁷⁴ The DoW states that 'no refund or credit of the difference' will be made when the licence fee is less than the application fee.⁷⁷⁵ In these circumstances:

the application fee is non refundable and is set at a level that reflects the initial effort required to process, assess and create a new or amended licence.

*The lowest licence fee, unlike its equivalent in the disallowed regulations, does not reflect the effort required or real cost recovery.*⁷⁷⁶

While the Committee accepts that the Class 1 and Class 2 licence fees (and possibly others) do not reflect the full cost of the service provided, it is concerned about the DoW's lack of clarity in this regard and wonders if this issue was considered in the negotiations surrounding the new fees. The Committee is also concerned that the position adopted by the DoW in its submission may be in contravention of the regulations. The Committee's reading of the *Rights in Water and Irrigation Regulations 2000* did not reveal anything that it believes would impact upon Regulation 20(2) or suggest that this particular regulation no longer applied.

⁷⁷² Regulation 20(2) *Rights in Water and Irrigation Regulations 2000* (Western Australia). Emphasis added.

⁷⁷³ Ms Elizabeth Western, Manager, Water Licensing, Department of Water, *Transcript of Evidence*, 24 January 2008, p13.

⁷⁷⁴ Submission No. 43 from Department of Water, 7 February 2008, p5.

⁷⁷⁵ *ibid.*

⁷⁷⁶ *ibid.*

Finding 20

There is considerable confusion surrounding the refund of application fees paid under the previous and current schedule of fees imposed by the regulations and subsequent amendments.

Recommendation 19

The refund of application fees needs to be clarified as a matter of urgency.

7.9 Consultation in Relation to the Schedule of Water Licence Administration Fees

The DoW claimed that consultation on water reform has occurred throughout the state. This occurred from the 2002 Water Forums (on the sustainable management of water resources and other water related issues) onwards. They advise that:

*there has been considerable consultation on the forms of water administration licence fees through the various committees that have looked at some of these water reform issues. Although that may not be exactly on the fees that we have now in terms of the specific dollars, there has been significant consultation about licence administration fees during the irrigation reform through to the blueprint and the government response to the blueprint. In broad terms, there has been quite a bit of consultation and awareness of water licence fees at least.*⁷⁷⁷

The DoW argued that they undertook ‘very public consultation’ during the compilation of the fee schedule,⁷⁷⁸ and that consultation regarding water licence administration fees was extended to mining companies and other major stakeholders involving state water forums, regional forums and specific forums.⁷⁷⁹

According to the *State Water Plan 2007 (SWP)*, public consultation also:

⁷⁷⁷ Mr John Ruprecht, Acting Director General, Department of Water, *Transcript of Evidence*, 24 January 2008, p33.

⁷⁷⁸ Ms Elizabeth Western, Manager, Water Licensing, Department of Water, *Transcript of Evidence*, 24 January 2008, p12.

⁷⁷⁹ Mr John Ruprecht, Acting Director General, Department of Water, *Transcript of Evidence*, 24 January 2008, p33.

included direct engagement with key water users and other interest groups, visits to regional areas, community workshops and public submission periods on the following documents:

- *Draft Water Policy Framework (April 2006)*
- *Draft Blueprint for Water Reform in Western Australia (July 2006)*
- *Draft State Water Plan (October 2006).*⁷⁸⁰

The SWP claims that ‘over 25 community workshops were held and over 160 submissions were received during this period of extensive consultation’.⁷⁸¹

Harvey Water supported the position of the DoW, advising that it maintained a proactive position, and became involved in consultations at the national and state level in order to ‘stay in close touch’ with the issues. This organisation argued that the ‘consultations were very good’ and that:

*a lot of this stuff about licences and licence fees was raised at that time ... the Department of Water, as we understand it, tried to cost how much it cost it to do all its activities, of which licensing was one. We believe that was done fairly and well. We had no reason to believe otherwise. The department then internally worked it out.*⁷⁸²

Harvey Water advises ‘that license (sic) fees were discussed at length and in depth’ over the development period for the State Water Strategy.⁷⁸³ Furthermore, it maintains that ‘it is therefore disappointing that this has been raised again at this very late stage and has received attention beyond that which is warranted’.⁷⁸⁴

However, submissions and evidence highlight problems in the consultation process, or in the community’s perception of the process, which could explain some of this ongoing attention. There was evidence received by the Committee demonstrating that although consultation was carried out by the DoW, and that there was an awareness of the need for water licence administration fees at some point, certain groups did not feel that the consultation resulted in the representation of their views or their needs.

For example, the WA Farmers Federation and vegetablesWA, like Harvey Water, claimed they also have been involved in consultation for several years, beginning at the first water symposium in 2002. However, they felt that two-way communication broke down when the interests or views of self-supply water users were not adequately represented in subsequent forums:

⁷⁸⁰ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007; p9.

⁷⁸¹ *ibid.*

⁷⁸² Mr Geoff Calder, General Manager, Harvey Water, *Transcript of Evidence*, 8 January 2008, p6.

⁷⁸³ Submission No. 16 from Harvey Water, 7 December 2007, p3.

⁷⁸⁴ *ibid.*

I do not think there was anyone representing self-supply water users. One of the recommendations of the irrigation review was that the Department of Water and/or the subsequent implementation committee develop a fee structure to recover some of the costs associated with water licensing and administration. That happened between the time that the irrigation review was completed and the water implementation committee was formed in 2006...Once again, self-supply water users were not represented on that committee. Unfortunately, from the perspective of WA Farmers Federation and the alliance with vegetablesWA, on both those committees the real focus was on the big water cooperatives - Ord, Harvey and, to a lesser extent, Gascoyne and the Preston irrigation co-op. Although they are using two-thirds of the state's irrigated water, another third is used by thousands of family farms from their own water supplies. We believe they were not adequately represented on those two committees. That is why we believe that we have probably got to the point that we have now. Obviously, part of the job of the implementation committee was to come up with a draft blueprint, which it did early in 2006. Then it went through a fairly extensive consultation process right across the state. I remember it started in Albany and finished in Kununurra. Two of the meetings that were probably the best attended and were quite vocal and quite emotional were the Donnybrook and Manjimup meetings, probably as a result of the fact that that is where a lot of the self-supply water users are, in particular the ones who built their own surface water dams. There were some quite strong feelings at those meetings in about July 2006.⁷⁸⁵

It was around this time that the NWI was signed. The breakdown of communication is demonstrated by the lack of understanding of what the NWI would mean for members of the Farmers Federation and other self-suppliers. The Farmers Federation stated that they would not have supported signing the NWI if they realised how they were to be subsequently treated; that is, an earlier introduction of the licence fee, with the other benefits such as longer term licence security 'still some years down the track'⁷⁸⁶:

we were obviously aware at the time that part of the NWI required full cost recovery for water administration and those types of things, but we believed that the positive [i.e. perpetual water entitlements] would probably outweigh the negatives

when industry got to see the government response to the blueprint...we were actually quite shocked by how little the final blueprint, if you like, had changed from the draft blueprint. There was a real feeling there that yes, the consultation process was just a real ruse and there was very little that actually changed. That sadly is something which is still a view strongly held by a lot of self-supply water users.⁷⁸⁷

The Farmers Federation claimed they had no input into implementation plan, with the DoW deciding upon the implementation date for the licensing fees:

unfortunately, industry had absolutely no input into that implementation plan, and that is something that industry is very disappointed in. We would have thought that something

⁷⁸⁵ Mr Stephen Dilley, Water Spokesman, WA Farmers Federation, *Transcript of Evidence*, 15 January 2008, p2.

⁷⁸⁶ *ibid.*, p3.

⁷⁸⁷ *ibid.*

*which has got far-reaching implications for water users, be they corporate, agricultural or whatever they may be, and the general public, meant that there would be some stakeholder input into how the Department of Water in WA would implement the National Water Initiative. In particular - if we could just pick on the point of the licence administration fees - it was actually the Department of Water which nominated the 1 July deadline to implement the fees.*⁷⁸⁸

The WA Fruit Growers' Association also feels that while they were involved from the start of the process, in particular with Ross Kelly before the NWI,⁷⁸⁹ the DoW did not seem to listen:

*getting back to the consultation, I have been to practically every meeting now for eight years. I am told at each meeting what they intend to do. The consultation has been as good as nil.*⁷⁹⁰

They also pointed to regular staff changes within the DoW making the liaison process more difficult, stating that:

*the other sad part about it is that the people within the department change at every meeting we go to. We try to liaise with people and they change every time. I found that so frustrating.*⁷⁹¹

In a similar vein, the Collie Preston Water Action Group stated that the licensing fees were 'developed without proper consultation'.⁷⁹²

Given the issues with the consultation process so far, it may not bode well for future consultation. Future consultation is promised by the DoW on other aspects of SWP implementation. For example, the DoW undertook to consult with local communities about what kind of entitlements should exist in that area using Manjimup as a case in point.⁷⁹³ Furthermore, in terms of general consultation, the DoW stated, in line with the Implementation Plan, that further cost recovery will occur once:

*there has been significant additional consultation, when new legislation and the statutory plans are in place, and when new forms of water access entitlement are rolled out.*⁷⁹⁴

⁷⁸⁸ *ibid.*

⁷⁸⁹ Mr Chris Scott, Orchardist, Western Australian Fruit Growers' Association, *Transcript of Evidence*, 8 January 2008, p12; Mrs Diane Fry, Farmer, Western Australian Fruit Growers' Association, *Transcript of Evidence*, 8 January 2008, p12.

⁷⁹⁰ Mr Chris Scott, Orchardist, Western Australian Fruit Growers' Association, *Transcript of Evidence*, 8 January 2008, p12.

⁷⁹¹ *ibid.*

⁷⁹² Mr Harry Ortheil, Farmer, Collie Preston Water Action Group, *Transcript of Evidence*, 8 January 2008, p2.

⁷⁹³ Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p20.

⁷⁹⁴ *ibid.* p32.

In conclusion, the problem seems to be not so much a lack of consultation, but rather the effectiveness of the consultative process for both the government and stakeholders. The Committee notes that much of the concern around the suggested lack of consultation comes from the south west of the state, and in particular the self-supply water users.

Finding 21

The consultation process has been less than satisfactory for many stakeholders. The basis upon which fees have been set and levied appears to have caused confusion, misconception and anger amongst certain stakeholders.

Recommendation 20

That the Department of Water increase its efforts in relation to consultation.

Finding 22

The National Water Initiative shows quite clearly that the move toward water reform must include the development of a clear transitional pathway involving all stakeholders in each step.

CHAPTER 8 APPLICABLE PENALTIES UNDER THE NATIONAL WATER INITIATIVE

8.1 Cost Recovery Requirements of the National Water Initiative

Term of reference number four directs the Committee to inquire into the penalty or cost that might be applied to Western Australia by the Commonwealth under the National Water Initiative (NWI) if there was minimal or no cost recovery for services provided to water users by the Department of Water (DoW).

In order to address this issue, a clear indication is required as to the level of (in)action that would constitute a breach of the NWI cost recovery requirements and thus allow the Commonwealth to invoke a penalty or cost.⁷⁹⁵ One of fundamental aspects of the NWI in relation to best practice water pricing, and the institutional arrangements to facilitate it, is the user-pays principle, and this is to be achieved through the implementation of full cost recovery for water services.⁷⁹⁶ Paragraphs 64 and 65 of the NWI outline the outcomes and actions agreed to in relation to these principles. Paragraph 67(ii) of the NWI sets out the cost recovery conditions and states that signatories must identify ‘the proportion of costs that can be attributed to water access entitlement holders’.⁷⁹⁷ It also states that these costs must not include those associated with policy development or ministerial or parliamentary services, and that charges must be ‘linked as closely as possible to the costs of activities or products’.⁷⁹⁸ All parties to the agreement must make a ‘commitment to develop these national principles and frameworks for broader cost recovery’.⁷⁹⁹

Under Schedule A of the NWI, the first action for any signatory is to develop an implementation plan. As the DoW advised:

*upon signing the National Water Initiative the first act of any jurisdiction, by agreement, is to develop an implementation plan as to how that state is going to apply the National Water Initiative principles and objectives in that jurisdiction.*⁸⁰⁰

In Western Australia, the main instruments involved in the DoW’s implementation of the NWI and, therefore, its user-pays and full cost recovery principles, are the *State Water Plan 2007*

⁷⁹⁵ See Chapter 7 for more detail on the state’s compliance with full cost recovery requirements.

⁷⁹⁶ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, paragraph 64 and 65, p13. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

⁷⁹⁷ *ibid.*, paragraph 67, p14.

⁷⁹⁸ *ibid.*

⁷⁹⁹ Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p24.

⁸⁰⁰ *ibid.*

(SWP) and *Western Australia's Implementation Plan for the National Water Initiative*.⁸⁰¹ Western Australia's implementation plan was supplied to, and ratified by, the National Water Commission⁸⁰² and the balance of this chapter considers the potential for penalties and costs to be applied by the Commonwealth to the state for non-performance in relation to this document.

8.2 Accountability under the National Water Initiative costs borne by the community

The main requirement under the NWI is that all states and territories develop a water access entitlements and planning framework, including implementation plans. As a part of this, consistent approaches to pricing and attributing costs of water management and planning were required by 2006. It should be noted here that Western Australia only joined the NWI in 2006,⁸⁰³ and the federal government 'was very keen for Western Australia to catch up with other jurisdictions. In comparison we were a long way behind in cost recovery for water resources management and planning'.⁸⁰⁴ Cost recovery must be reported to the National Water Commission (NWC), with paragraph 68 of the NWI providing that:

[t]he states and territories agree to report publicly on cost recovery for water planning and management as part of annual reporting requirements, including:

- i) the total cost of water planning and management; and*
- ii) the proportion of the total cost of water planning and management attributed to water access entitlement holders and the basis upon which this proportion is determined.*⁸⁰⁵

The NWC is required to report to the Council of Australian Governments (COAG) every two years on the implementation of water management plans throughout Australia. It is important to note also that cost recovery itself is simply a guiding principle of the NWI, rather than a list of specific requirements or activities that must be undertaken.⁸⁰⁶ Furthermore, unlike previous assessments linked to the National Competition Policy (NCP), the NWI biennial assessment is not

⁸⁰¹ Government of Western Australia, *State Water Plan 2007*, Government of Western Australia, Perth, 2007; Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007.

⁸⁰² National Water Commission, *Committee Briefing*, 17 December 2007.

⁸⁰³ Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p8.

⁸⁰⁴ *ibid.*, p26.

⁸⁰⁵ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, p14. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

⁸⁰⁶ See Chapter 7 for more detail.

a report on compliance. Rather, it is an assessment of whether actions undertaken by governments to date are likely to lead to the outcomes and objectives of the NWI.⁸⁰⁷

Finding 23

Cost recovery itself is simply a guiding principle of the National Water Initiative, rather than a list of specific requirements or activities that must be undertaken.

8.3 Penalties and Costs Under the National Water Initiative

As outlined in Chapter 3, previous water industry reform has been linked to National Competition Policy payments to the states and territories. As the DoW noted:

*the previous COAG agreement from 1994 was part of the then national competition policy arrangement whereby our compliance across a whole range of commonwealth-state agreements was assessed annually; based on our compliance, we would receive progress payments.*⁸⁰⁸

As the DoW also noted, ‘that is not the case under the National Water Initiative’.⁸⁰⁹ There are no payments attached to the NWI. Given the absence of progress payments or payments for compliance, there can be no temporary suspension or permanent withholding of funds. In briefing the Committee, the NWC advised that rather than penalise signatories for non-compliance, the NWI and its reporting requirements are designed to recognise progress on the implementation of water reform plans.⁸¹⁰ If a state experiences difficulties in achieving a particular milestone there would be no ‘black mark’ per se against it. However, one effect of the NWI’s reporting requirements and processes is that jurisdictions that fail to achieve agreed timelines would be named in the public report, in effect constituting a ‘name and shame’ penalty.

It should be noted that in practice it appears that there is still some way to go in the area of reporting on cost recovery, with relevant nationally agreed performance indicators yet to be confirmed. Consequently, as the DoW asserts, Western Australia, like other jurisdictions in Australia, is awaiting information from the NWC on reporting requirements before it reports in compliance with paragraph 68 of the NWI.⁸¹¹

⁸⁰⁷ National Water Commission, ‘First Biennial Assessment of the National Water Initiative’. Available at: http://www.nwc.gov.au/nwi/biennial_assessment/index.cfm. Accessed on 30 January 2008.

⁸⁰⁸ Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p23.

⁸⁰⁹ *ibid.*, p23.

⁸¹⁰ National Water Commission, *Committee Briefing*, 17 December 2007.

⁸¹¹ Submission No. 43 from Department of Water, 7 February 2008, p1-2. This is also addressed in Chapter 7.

The only assessment that has occurred so far under the NWI is a biennial assessment of progress against the NWI in 2007, which did not include cost recovery and its proportions.⁸¹² According to the DoW, this omission was due to the fact that the report was produced in February 2007, before the introduction of the licence administration fees in this state.⁸¹³ Regarding this, the DoW states that:

*in fact, the report is useful in highlighting the lack of progress made by Western Australia when compared to that made by other jurisdictions in the recovery of costs for water resource management and planning (including licence administration).*⁸¹⁴

Finding 24

While there are no financial penalties directly resulting from non-compliance with the National Water Initiative, should the state not comply it risks losing credibility in relation to its management of water resources.

8.4 Water Smart Australia

While there are no financial penalties directly attached to the NWI, there are other avenues through which Western Australia might be penalised. Presently, the greatest possible risk of financial penalty for the state in terms of water management and reform is in connection with the Water Smart Australia program under the Australian Government Water Fund. This Commonwealth initiative ‘aims to accelerate the development and uptake of smart technologies and practices in water use across Australia’.⁸¹⁵ In order to do this, the \$1.6 billion programme has funding over five years until 2010 with a maximum four year funding duration and a minimum funding level of \$1 million for any one project or activity.⁸¹⁶ To be eligible for funding for Water Smart projects, ‘a State or Territory government must have signed, and be actively implementing, the NWI,’⁸¹⁷ which necessarily includes cost recovery principles.

⁸¹² Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p5.

⁸¹³ Submission No. 43 from Department of Water, 7 February 2008, p2.

⁸¹⁴ *ibid.*

⁸¹⁵ National Water Commission, ‘About Water Smart Australia’. Available at: <http://www.nwc.gov.au/agwf/wsa/index.cfm>. Accessed on 30 January 2008.

⁸¹⁶ *ibid.*

⁸¹⁷ Submission No. 29 from Department of Water, 21 December 2007, Addendum 1, p1.

There are four Western Australian projects receiving grants totalling \$14.9 million, which ‘cover water planning activities in discrete areas of the state,’⁸¹⁸ namely the Pilbara, Gnangara, Collie and South West groundwater areas. Each funding agreement has both general and milestone-specific conditions and requirements which must be met before progress payments are made.

A general funding condition across the four projects, and expressed in each of the funding deeds, is compliance with the NWI.⁸¹⁹ However, this general funding condition is not tied to any specific payment and in addition, no payment in any of these deeds is explicitly tied to cost recovery.⁸²⁰ Cost recovery is one of the more general funding conditions contained in Schedule A of each funding deed, which outlines the term, programme and project details. Clause A10(i) contains project management requirements including:

*To commence implementing cost recovery charging for water planning and management by December 2008, with further charging elements to be in place by July 2009.*⁸²¹

For the DoW:

*it is questionable as to whether these general funding conditions are considered milestones in the same way that the deed construes milestones as being progress against individual projects.*⁸²²

Should the state fail to comply with the NWI by not implementing cost recovery charging for water planning and management, it would, in fact, be in breach of all four of the Water Smart agreements. However, the DoW stated that, while they ‘are aiming to achieve the broader general funding conditions, of which cost recovery is one’ should cost recovery not be achieved it is unclear how the Commonwealth would apply a penalty.⁸²³ However, in a later submission from the DoW, slightly different advice is given, stating:

*failure to meet one of the broader funding requirements (introduction of further charging element and development of a bore metering policy) can invoke a penalty from the Commonwealth of 15% of the entire project funding.*⁸²⁴

⁸¹⁸ Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p26.

⁸¹⁹ *ibid.*

⁸²⁰ Submission No. 29 from Department of Water, 21 December 2007, Addendum A, p36-37; Addendum B, p40-42; Addendum C, p38-40; Addendum D p37-39.

⁸²¹ Submission No. 29 Addendum A, p33; Addendum B, p37; Addendum C, p35; Addendum D, p35.

⁸²² Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p27.

⁸²³ *ibid.*, p26.

⁸²⁴ Submission No. 43 from Department of Water, 7 February 2008, p8.

The conclusion of this Committee is that it is unclear what penalty, if any, applies to a breach of the general conditions of the funding deeds. Breaches of the project milestones are more straightforward, as outlined below.

The schedule of payments for each funding deed is tied to the satisfactory completion of each of the milestones. However, should a grant recipient fail to meet a milestone, the funding deed provides for a 15% penalty as outlined in the following excerpt:

By the due date of each Milestone, if Milestone/s are to be delayed, You must provide Us with a report outlining the reasons for any delays to Milestones, and upon our reasonable consideration we may reduce the payment for delayed Milestones, upon their completion by up to 15%.⁸²⁵

To take the funding deed for the Collie catchment area as an example, there are seven payments with most payments tied to the completion of one or more milestones. For example, for satisfactory completion of milestone 1.1 (Completion of the Collie Model Upgrade and Scenario Runs) the Commonwealth will pay the state \$207,500 excluding GST. Should Western Australia fail to meet this milestone, potentially the Commonwealth could withhold \$31,125.

In addition to this 15% clause, conditions of payment attached to the milestones include compliance with reporting requirements, meeting budget requirements, adherence to project scope and general performance satisfaction.⁸²⁶

The DoW's understanding of the payments and potential for penalties is that:

there is system of progress payments attached to individual projects ... The milestone payments referred to in the deeds concern the progress that individual projects will make in delivering activities. There is a general funding condition that applies across all four projects, expressed in each of the funding deeds, which talks about cost recovery more generally. Our interpretation is that ... the commonwealth (sic) government is holding us to account over our progress on individual projects [... and] individual milestones within those projects.⁸²⁷

For example, if one of the milestones was not achieved, it would be 15 per cent against that milestone payment which might be levied. I emphasise "might", because there is a process of negotiation.⁸²⁸

The DoW interpretation regarding negotiation is that should the state government not meet the funding conditions, the NWC would negotiate the implications of the breach with the recipient,⁸²⁹

⁸²⁵ Submission No. 29 from Department of Water, 21 December 2007, Addendum A, p37; Addendum B, p42; Addendum C, p40; Addendum D, p39.

⁸²⁶ Submission No. 29 Addendum A, from Department of Water, 21 December 2007, pp36-37.

⁸²⁷ Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p26.

⁸²⁸ *ibid.* p27.

and that ‘in the event of any form of delay, it would attempt to negotiate an arrangement before it took any punitive action’.⁸³⁰ This is supported by the funding deed which states:

*we would apply a test of reasonableness when considering the delay and any reduced payment. The test would include recognition of effort undertaken to address delays and consideration that some aspects are beyond the control of the project managers.*⁸³¹

In briefing the Committee the NWC reinforced the notion of reasonableness in relation to the application of penalties. One conclusion to be drawn from the NWC’s stated willingness to negotiate is that the risk associated with financial penalty within the current agreements is low, although the level of ambiguity around the general funding requirements, which includes cost recovery, creates some confusion.

As far as future funding is concerned, the DoW has warned that complacency is not advised, particularly given that:

*one could argue that [a breach of the funding agreement] could place at risk any future grants if we were seen not to be delivering on existing proposals. That is probably a point of concern.*⁸³²

Finding 25

While there are limited financial penalties under Water Smart Australia for failing to comply with National Water Initiative cost recovery requirements, should the state not comply it risks losing credibility in relation to its management of water resources.

In relation to cost recovery, it is highly unlikely that penalties would be imposed providing the state is working toward the proposed models of sustainability provided for in the NWI.

⁸²⁹ Submission No. 29 from Department of Water, 21 December 2007, p24.

⁸³⁰ Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p27.

⁸³¹ Submission No. 29 from Department of Water, 21 December 2007, Addendum A, p37; Addendum B, p42; Addendum C, p40; Addendum D, p39.

⁸³² Mr John Ruprecht, Acting Director General, Department of Water, *Transcript of Evidence*, 24 January 2008, p27.

Regardless of the question of penalties under the NWI or Water Smart Australia, the Committee is of the view that sustainable management of the state's water resources is of profound significance. Therefore, it would be foolhardy of the state not to comply with the NWI which itself is underpinned by the notion of sustainability.

CHAPTER 9 LICENSING CURRENTLY EXEMPT ARRANGEMENTS

9.1 Introduction

Under existing licensing arrangements, certain water usage activities are exempt from licensing and therefore not subject to a water licence administration fee. These types of activities include:

- water used for livestock and domestic purposes state-wide;
- water taken by way of a riparian right;
- domestic garden bores in metropolitan Perth; and
- de-watering activities with limited impact, for example, construction.⁸³³

Concerns were raised in relation to the allocation, monitoring and management of water resources where state agreements apply. The Committee believes that consideration should be given to clarifying the place of state agreements in future statutory management plans. While this matter is outside the specific terms of reference for this Inquiry, the Committee intends to write to the Minister for Water Resources raising this issue.

The balance of this chapter discusses in detail the two types of exempt water extraction activities specifically brought to the Committee's attention, namely plantations and domestic bores.

9.2 Domestic Bores

The high profile of domestic bores in the discussion on water licensing was demonstrated early in the debate, as evidence by its coverage in debate in the Legislative Assembly. The Member for Capel, Dr S.C. Thomas MLA, expressed concern that his constituents would be unfairly discriminated against should they be charged a licence fee while metropolitan bore owners, who have access to scheme water, were not charged at all. He stated, 'if we do not charge licence fees in metropolitan Perth, we have no moral right to charge licence fees in areas outside metropolitan Perth'.⁸³⁴ He referred to the 2004-2005 and 2005-2006 annual reports of the Environmental Protection Agency which claim that management of water in the Gnangara and Jandakot mounds, where bore use is prevalent, was not sound.⁸³⁵

⁸³³ Submission No. 29 from Department of Water, 21 December 2007, p25.

⁸³⁴ Mr S.C. Thomas, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 13 June 2007, p3070.

⁸³⁵ *ibid.*, p3069.

This focus led the Member for Stirling, Mr D. T. Redman MLA, to propose an amendment to the Member for Warren-Blackwood's motion proposing a Parliamentary Select Committee Inquiry into water supply and management in the state. Mr Redman's amendment called for immediate licensing of metropolitan bores in order for the state 'to be consistent with the principles of the National Water Initiative ... and current domestic bore licences in Albany and Exmouth'.⁸³⁶ While the motion as amended was not passed, the later motion introduced by the Minister for Water Resources referring this inquiry to the Economics and Industry Standing Committee acknowledged the importance of the issue by specifically including the issue of domestic bores as a term of reference.⁸³⁷

The Department of Water (DoW) determines from various statistical sources that there are over 170,000 residential bores in the State, with some 155,000 of these located in the Perth metropolitan area. The DoW thus calculates that around 30 per cent of households in Perth have access to a garden bore. It states that 'these bores pump some 120 gigalitres of groundwater per year from the shallow unconfined aquifer, equivalent to around a fourth of all groundwater taken for all purposes in the Perth region'.⁸³⁸

Most evidence and submissions that addressed the issue of licensing currently exempt arrangements were concerned about domestic bores. As would be expected, evidence to the Committee can be divided into those who support the licensing of domestic bores and those who oppose it, and these divisions generally occur along an urban/rural divide. The Conservation Council of Western Australia 'understand[s] that there is a certain city-country divide in terms of metropolitan unlicensed bore usage'.⁸³⁹ The urban versus rural debate is well illustrated in the Perth basin as increasing population in the metropolitan area creates demand for additional water, particularly potable water, which must then be sourced from the same groundwater systems that provide water to rural areas.⁸⁴⁰ This water is often that which is used by the rural areas for development, tourism and recreation purposes.

The submissions from either position base their arguments on two main issues. The first concerns the relationship between licensing domestic bores and improved monitoring and, thus, more accurate calculation and management of water resources. The second centres on the issue of fee equity and non-discrimination, with varying positions on what constitutes equity.

⁸³⁶ Mr D.T. Redman, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 17 October 2007, p6354.

⁸³⁷ Hon John Kobelke, Minister for Water Resources, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 24 October 2007, pp6733-34.

⁸³⁸ Submission No. 29 from Department of Water, 21 December 2007, p25.

⁸³⁹ Mr Steven McKiernan, Water Policy Officer, Conservation Council of Western Australia Inc., *Transcript of Evidence*, 31 January 2008, p6.

⁸⁴⁰ CSIRO, *Context Report on South West Water Resources for: Expert Panel Examining Kimberley Water Supply Options*, Government of Western Australia, Perth, March 2005, p77.

(a) Monitoring and Management of Domestic Bore Extractions

As stated, the first argument around domestic bores concerns the relationship between licensing domestic bores and improved monitoring and management of water resources, and in a larger context, sustainability.

A common sentiment expressed is that the exemption of domestic bores is political. The Gascoyne Water Co-Operative Ltd strongly supports the licensing of domestic bores and the application of licensing charges. It states that ‘if domestic bores are not licensed they should be’ and that ‘it is very hard to view the failure to apply licensing charges to residential bores as anything other than a political decision when a licence must attract a cost to administer’.⁸⁴¹

Similarly, another regional stakeholder, the Shire of Manjimup suggested that ‘cherry picking’ who is to be licensed and charged reflects ‘political convenience, and not any rational or logical reason, why non-productive uses, which are some three times greater than the sum of our commercial uses are exempt’.⁸⁴²

Another argument centres around the impact on potable water, or lack of, as the perception may be. The Gascoyne Water Co-operative argues that the increase in private and uncontrolled bores in the Perth metropolitan area has been driven by the Water Corporation to ‘take the pressure off their inadequate drinking water infrastructure’.⁸⁴³ The basis of this argument is not necessarily refuted by urban stakeholders. For example, the City of Perth does indeed acknowledge that ‘the use of unconfined aquifers for domestic irrigation purposes reduces the draw-down on main supplied potable water’.⁸⁴⁴ The DoW partially bases its argument for the exemption of domestic bores on this premise, claiming that a licensing regime would potentially:

*reduce the number of additional garden bores being installed in suitable areas, and thereby increase the demand on potable scheme water supplies at a time when those supplies are stretched due to changing climatic conditions.*⁸⁴⁵

Like the DoW, Harvey Water also argues that the water used by residential bores is non-potable water, and to require licensing of domestic bores would discourage people from having bores and encourage them to turn to the scheme water for domestic irrigation purposes. This, then, would not be best or highest value use of the potable water, and Harvey Water questioned why anyone would want to stop people from using non-potable water. The cooperative argued that a lot of the

⁸⁴¹ Submission No. 2 from Gascoyne Water Co-Operative Ltd, 27 November 2007, p1.

⁸⁴² Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p11.

⁸⁴³ Submission No. 2 from Gascoyne Water Co-Operative Ltd, 27 November 2007, p2.

⁸⁴⁴ Submission No. 12 from City of Perth, 6 December 2007, p2.

⁸⁴⁵ Submission No. 29 from Department of Water, 21 December 2007, p25.

domestic bore water used ‘in that sandy soil is recycled. You do not have to treat it; you do not have to deliver it. It is a good deal and should be encouraged more’.⁸⁴⁶

Similar arguments are mounted around the amount of water used by domestic bores. Again, Harvey Water argues that:

*backyard bores use relatively tiny volumes of water; they use untreated groundwater not high quality potable water which comes through the Water Corporation system and a lot of the water simply recycles through the sandy soil into the superficial aquifer and then is re-pumped.*⁸⁴⁷

However, this is an argument not accepted by some. The Gascoyne Water Co-operative, for example, suggests that:

*claiming that each residential bore takes only a minute fraction of the sustainable draw from the Perth aquifers is a patent nonsense when considered in the context of the total estimated (but unknown) volumes extracted from the unconfined aquifers.*⁸⁴⁸

Similarly, for the Conservation Council of Western Australia Inc., the amount of water used and also the locations of bores are important for resource management.

*Given the recent government rebates for domestic garden bores, I hope that a record of domestic bore locations is being kept...Particularly in some areas where there are environmental values nearby in which the cumulative impact of unlicensed domestic bores is the largest taker of water from the groundwater resource. We feel that to improve the value of our water resource management, we need to know the locations of the bores.*⁸⁴⁹

While these arguments relate to the larger issue of sustainability, where decisions must be based upon knowledge gained by the measurement and monitoring of water resources, it is appropriate to consider whether the licensing and monitoring of all bores will deliver the desired outcomes in terms of sustainability.⁸⁵⁰

Opinions are again divided on this issue. For the Aquaculture Council of Western Australia (ACWA), the issue of bores licences and/or administration fees centres around this:

*To achieve the ultimate goal of sustainable freshwater resource we must measure and monitor all users, in the at risk catchments.*⁸⁵¹

⁸⁴⁶ Mr Geoff Calder, General Manager, Harvey Water, *Transcript of Evidence*, 8 January 2008, p7.

⁸⁴⁷ Submission No. 16 from Harvey Water, 7 December 2007, p5.

⁸⁴⁸ Submission No. 2 from Gascoyne Water Co-Operative Ltd, 27 November 2007, p2.

⁸⁴⁹ Mr Steven McKiernan, Water Policy Officer, Conservation Council of WA, *Transcript of Evidence*, 31 January 2008, p6.

⁸⁵⁰ Chapter 2 discusses data collection and quality in more detail.

⁸⁵¹ Submission No. 21 from Aquaculture Council of Western Australia, 7 December 2007, p5.

The Pastoralists and Graziers Association also sees a need to meter and monitor Perth metropolitan bores and:

*supports the mandatory metering of all metropolitan domestic bores to encourage compliance and efficiency, and discourage overuse.*⁸⁵²

The Association believes that the quantity of water drawn from metropolitan bores without a licence or fees ‘is resulting in the unsustainable extraction of the Gnangara and Leederville aquifers’.⁸⁵³ The Association’s submission is silent on the issue of licensing bores in major urban centres in the regions, such as Bunbury, Albany or Geraldton.

The City of Bunbury argues there is a lack of quantitative data on non-licensed extraction of water and that this means that this is not accounted for in the government’s allocation process. Further, the City believes that the ‘non-licensed usage of water in the South West is significant, especially in areas where scheme water is presently unavailable’.⁸⁵⁴ It suggests that:

*licensing of all water users, including those currently exempt, will provide for improved decision-making through the associated collection of data and is an important step in improving the management of water in Western Australia.*⁸⁵⁵

However, while not denying the need for the collection and monitoring of data, other submissions argue that the benefits of collecting this data from domestic bores would be outweighed by the cost. Harvey Water pointed out that to have government employees assessing, approving and monitoring throughout the state the domestic bores that extract up to 150 kL per annum would take significant government resources and asked: ‘[W]hat is the point of that? What are you going to do with all that data and all that administration? Is it worth it?’⁸⁵⁶ In their view it is not necessary for the whereabouts of every bore to be known; nor is it necessary to know how much each bore owner is using. Such information could be obtained by effective sampling methods.⁸⁵⁷ If the government monitors bore use it needs to ensure that it has the capacity to process the data and the resources to make use of it, rather than simply gathering data for its own sake, or, perhaps worse still, gathering it and not using it.

Similar views are expressed by Irrigation Australia - WA Region, who stated that while licensing is important, ‘we must also be practical about it because there is a cost-benefit consideration’.⁸⁵⁸ To put a meter on every bore would constitute an ‘extreme response’, particularly given that an urban user consumes approximately 150 KL annually, and the smallest volume of water licensed

⁸⁵² Submission No. 26 from Pastoralists and Graziers Association, 12 December 2007, p2.

⁸⁵³ *ibid.*

⁸⁵⁴ Submission No. 27 from City of Bunbury, 14 December 2007, p1.

⁸⁵⁵ *ibid.*

⁸⁵⁶ Mr Geoff Calder, General Manager, Harvey Water, *Transcript of Evidence*, 8 January 2008, p6.

⁸⁵⁷ *ibid.* p7.

⁸⁵⁸ Mr Douglas Hall, Industry Development Officer, Irrigation Australia - WA Region, *Transcript of Evidence*, 15 January 2008, p8.

for commercial use is 1501 KL, a ratio of ten to one.⁸⁵⁹ Therefore, while ‘support[ing] an evidence-based approach to restricting the consumption of groundwater,’ Irrigation Australia - WA Region accepted that to licence every domestic urban bore would result in a prohibitive cost.⁸⁶⁰ The DoW estimated average urban use to be approximately 800kL for each backyard bore.⁸⁶¹ These figures indicate that domestic urban bore use, whether per person or per domestic bore, is well below the licensing threshold and, therefore, the licence fee would be nil under the current schedule of fees. With due consideration to costs and benefits of licensing bores, this would indicate that costs for licensing domestic bores would outweigh benefits. The DoW thus advises against the licensing of residential bores drawing from an unconfined aquifer because to do so would:

*significantly increase the resources required to licence and police over 170,000 garden bores across the State (an additional \$30 million may be required annually)...[and would] be unlikely to provide better management outcomes.*⁸⁶²

The DoW is of the view that the use of residential bores is better managed by regulating with restrictions, rebate schemes which monitor the impact and suitability of installation, and improving community education and awareness.⁸⁶³ It claims it has developed a management approach to residential bores that incorporates:

- *identifying the areas that are not suitable for the installation of more garden bores and discouraging the drilling of garden bores in those areas*
- *encouraging the drilling of more garden bores in suitable areas through a rebate scheme*
- *controlling the overwatering habits of garden bore owners by restricting the times and days of watering*
- *continually monitoring the unconfined aquifer being tapped by garden bores*
- *accounting for the water used by garden bores*
- *undertaking information and awareness campaigns on the proper use of garden bores*
- *undertaking surveys to understand and quantify the community’s attitudes to garden bores and their watering habits*

⁸⁵⁹ *ibid.* p9.

⁸⁶⁰ Mr Douglas Hall, Industry Development Officer, Irrigation Australia - WA Region, *Transcript of Evidence*, 15 January 2008, pp8-9.

⁸⁶¹ Ms Elizabeth Western, Manager, Water Licensing, Department of Water, *Transcript of Evidence*, 24 January 2008, p13.

⁸⁶² Submission No. 29 from Department of Water, 21 December 2007, p25.

⁸⁶³ *ibid.* p26.

- giving consideration to a possible register of garden bores.⁸⁶⁴

In order to further manage bore installation, the DoW advises that ‘it is proposed that the garden bore rebate will not be available in areas identified as unsuitable for additional garden bores. It will not prevent the sinking of more bores in these areas but it is a disincentive’.⁸⁶⁵

The DoW’s policy on bore management appears to be based largely upon recent studies of the status of Perth’s groundwater conducted by the DoW. These studies conclude that the garden bore extraction is not a major factor influencing the groundwater table levels in the Perth metropolitan area. Rather, the major factors are climate change (i.e. reduced rainfall), location and the depth of drains, and plantations.⁸⁶⁶

(b) Fee Equity and Non-Discrimination

The second main issue raised in the Inquiry with regards to the licensing of domestic bores was the perceived equity (or otherwise) of charging some users and not others. While the arguments around equity are valid and must be stated, it is important to remember, as noted in the comment from Irrigation Australia - WA Region above, that any volume of annual water use under 1500 kL is not required to be licensed, and that domestic bore use by the average domestic bore owner would be substantially less than this amount.

Again, the argument is at times along the urban/rural divide. The Shire of Manjimup submits that the proposed system will produce inequities ‘between those in country districts and those in Metropolitan areas’.⁸⁶⁷ There is feeling that metropolitan bore users are cross-subsidised because ‘country land owners use water from dams they have constructed at their own expense’ whereas water users in metropolitan areas ‘are subsidised by Government ... to construct bores to reticulate private gardens with water that is neither regulated, nor any charge levied so as to reduce the use of reticulated water from mains’ supply’.⁸⁶⁸

This country/city divide is also evident in the Alliance’s submission. This group suggests that:

if the State government is in fact committed to the principle of “fair and equitable management for all users” then access at no cost to the unconfined aquifer needs to be addressed, given the environmental pressures faced in this area.

⁸⁶⁴ Submission No. 29 from Department of Water, 21 December 2007, p27.

⁸⁶⁵ Submission No. 43 from Department of Water, 7 February 2008, p8.

⁸⁶⁶ Submission No. 43 from Department of Water, 7 February 2008, Attachment 5; Department of Water, *Water Level Monitoring Results for the Superficial Aquifer in the Perth Urban Area*, Government of Western Australia, Perth, September 2004, p25; Department of Water, *Assessment of the Declining Groundwater Levels in the Gnangara Groundwater Mound - Hydrogeological Record Series, Report HG14*, Government of Western Australia, Perth, January 2008, p26.

⁸⁶⁷ Submission No. 17 from Shire of Manjimup, 7 December 2007, p2.

⁸⁶⁸ *ibid.*

*Clearly there will be pricing issues involved in this, given that each residence will be using 650 kL/year (average figure) however the current system clearly creates a differential between city and country, which we believe is inequitable.*⁸⁶⁹

The Pastoralists and Graziers Association also sees the subsidy provided to metropolitan users for putting in bores as ‘another inequity between rural and metropolitan water users’.⁸⁷⁰ The Shire of Manjimup supports the licensing of domestic bores because ‘water is an issue affecting all’ and ‘if there is to be a licence regime, it should apply to all. It is either all in, or it is not’.⁸⁷¹

The Alliance also argues that residential bore owners and other previously exempt water users should be licensed and pay a fee because:

*it is simply inequitable that farmers be solely responsible for the funding of a licensing system that will benefit the entire community.*⁸⁷²

Similarly, the Scott River Growers Group suggests that:

*The proposed fees are discriminatory in that they are not applicable to all bore or dam owners. Metropolitan and non-commercial users are exempt.*⁸⁷³

The Marron Growers Association argues that:

*it is difficult for farmers to accept that a quarter acre block is permitted to take unlimited water at no cost for unproductive use when they must pay a license (sic). The concept that the urban bore owners are somehow “good” for the environment and rural water users are “evil” is also difficult to accept. Equity would be served if all had to pay.*⁸⁷⁴

However, Harvey Water contends that basing arguments for the licensing of urban backyard bores on ‘some form of equity between small rural water users and urban users’ is not really ‘a rational basis for licensing and in a sense equates to the radio licenses that used to exist and for which people can reasonably ask “Why?”’.⁸⁷⁵ Rather than using water for economic benefit, urban water users generally use their bores to water their garden and other domestic purposes. Furthermore, ‘because the volumes used are relatively small’, domestic bore owners do not compete with their neighbours for the water supply in the same way that rural users do.⁸⁷⁶ Harvey Water suggests

⁸⁶⁹ Submission No. 18 from The Alliance, 7 December 2007, p8.

⁸⁷⁰ Submission No. 26 from Pastoralists and Graziers Association, 12 December 2007, p2.

⁸⁷¹ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p11.

⁸⁷² Submission No. 18 from The Alliance, 7 December 2007, p7.

⁸⁷³ Submission No. 7 from Scott River Growers Group, Margaret River Region, Inc., 3 December 2007, p2.

⁸⁷⁴ Submission No. 10 from Marron Growers Association of Western Australia, 6 December 2007, p5.

⁸⁷⁵ Submission No. 16 from Harvey Water, 7 December 2007, pp4-5.

⁸⁷⁶ *ibid.*, p5.

that if all urban bores were licensed, ‘then for equity reasons you would also have to license just about every water user in the state and that is just plainly silly’.⁸⁷⁷

The arguments against the introduction of licensing of currently exempt bores based upon a notion of equity are essentially the same as those raised in the previous section on good management and sustainability. As Irrigation Australia - WA Region states:

*While some individuals and organizations have argued for licensing of all residential bore owners, the associated cost and bureaucratic complexity would be debilitating especially when we face a skills shortage in the water sector.*⁸⁷⁸

This organisation suggests that the rationale for licensing should be the adding of value to the management of water resources and that it should be only introduced where it makes sense on a triple bottom line basis.⁸⁷⁹

The South West Development Commission supports the exemption from licensing of ‘small “backyard” non-commercial bore holders’.⁸⁸⁰ The Commission maintains that licensing such bore holders ‘would impact upon many water licence users within the South West who primarily use water for stock and garden purposes’⁸⁸¹ which, in itself, could also be seen to pose another set of problems.

The Co-operative submits that consideration for licensing of currently exempt arrangements should be given ‘where there is a genuine need for some form of ongoing regulation’.⁸⁸²

The Committee is of the view that adequate resourcing of monitoring should be ensured. In addition, the Committee believes that any dramatic change in climate or other factors such as salinity increases should lead to reassessment of the situation.

(c) Summary of Rationale for Exemption of Certain Bores

In essence, the rationale for the licensing of water is to enable the DoW to ‘actively manage the resource and ensure the ongoing, sustainable use of the resource over time’.⁸⁸³ Therefore, domestic (and stock watering) bores are not licensed for the reasons listed below.

- The estimated use of water by bores is minimal, with estimates able to be calculated by means other than metering (i.e. surveys).⁸⁸⁴

⁸⁷⁷ ibid.

⁸⁷⁸ Submission No. 19 from Irrigation Australia - WA Region, 11 December 2007, p5.

⁸⁷⁹ ibid.

⁸⁸⁰ Submission No. 22 from South West Development Corporation, 10 December 2007, p4.

⁸⁸¹ ibid.

⁸⁸² Submission No. 24 from Ord River Co-operative Ltd, 12 December 2007, p2.

⁸⁸³ Submission No. 43 from Department of Water, 7 February 2008, p13.

- These bores are ‘scattered’ state-wide and the administrative burden involved in licensing is not considered cost-effective, as impact from use is relatively minimal.⁸⁸⁵
- The cost of monitoring all 155,000 currently exempt domestic bores in Perth is estimated at \$30 million, and these charges would have to be borne by the taxpayer or the bore owner and would be ‘prohibitively expensive’.⁸⁸⁶
- The state government is managing the use of domestic garden bores with other mechanisms, such as restrictions.⁸⁸⁷
- Domestic bores are not competing with commercial users and thus their impact is not a major concern from a resource management perspective.⁸⁸⁸ In fact, they reduce the demand on the potable scheme water supply and offset the need for developing new water supply schemes.⁸⁸⁹
- Water from domestic bores is untreated and of lower value, providing environmental benefits and also use water fit for a purpose (for example, untreated groundwater rather than highly treated and expensive potable scheme water used for watering lawns and gardens).⁸⁹⁰
- Bores have a balancing effect, acting as a stormwater recycling system, reducing drainage requirements around many areas of Perth and counteracting water level rises (during average rainfall years) following urbanisation that could potentially harm the local environment.⁸⁹¹

The arguments provided by the DoW are generally supported by Irrigation Australia - WA Region, which argues that the risk posed by residential bores to the environment is low if they are ‘managed responsibly’ and that residential bores can provide positive benefits such as:

- *allowing use of ‘second class water for irrigation of lawns and gardens;*
- *use excess run-off resulting from urbanisation;*
- *reduced cost of Water Corporation infrastructure;*
- *reduced demand for potable water.*⁸⁹²

⁸⁸⁴ ibid., p8 and 13.

⁸⁸⁵ ibid., p13.

⁸⁸⁶ ibid., p8 and 13.

⁸⁸⁷ ibid., p13.

⁸⁸⁸ ibid., p13.

⁸⁸⁹ Submission No. 29 from Department of Water, 21 December 2007, p26.

⁸⁹⁰ Submission No. 43 from Department of Water, 7 February 2008, p13; Submission No. 29 from Department of Water, 21 December 2007, p26.

⁸⁹¹ Submission No. 29 from, Department of Water, 21 December 2007, p26.

⁸⁹² Submission No. 19 from Irrigation Australia - WA Region, 11 December 2007, p5.

Nevertheless, the DoW does specify that not all areas are suited to the installation of garden bores due to environmental, hydro-geological and social issues.⁸⁹³ Therefore, as discussed above, the installation of bores is only encouraged in those locations where the DoW considers bores to be viable and appropriate.

Finding 26

The licensing of all domestic bores would not necessarily lead to improved monitoring and management of water resources in the state, or be sustainable in the long term.

Finding 27

The indication is that the costs associated with the mandatory licensing of all domestic bores would far outweigh the benefits of this activity.

Finding 28

In most circumstances, the use of domestic bores can be, and is, adequately managed by restriction and education.

Finding 29

Licensing of all domestic bores will not necessarily achieve equitable social, environmental and economic outcomes.

Finding 30

Because of the impact on the local resource certain parts of the state will require different approaches to the issue of licensing domestic bores.

⁸⁹³

Submission No. 29 from Department of Water, 21 December 2007, p26.

Finding 31

There are benefits in encouraging the use of domestic bores in certain areas, and the licensing of these bores may prove a disincentive to this practice.

9.3 Plantations

The issue of large-scale plantations was another form of currently non-licensed water use that submissions to the Inquiry focussed upon. Many noted that plantations, such as the blue gum plantations in the south west, are causing significant loss of catchment area and ground water, and consuming huge quantities of water.⁸⁹⁴ Submissions suggest that the interception and consumption of water by plantations, which is not accounted for or calculated, is greater than that of natural vegetation and, thus, depletes supplies.⁸⁹⁵

According to the Shire of Manjimup, plantations may:

*intercept some 30% of the water running off the property on which it is established with predictions in some instances that plantations use most if not all of the water that penetrates the ground leaving little if any water to recharge underground water bodies.*⁸⁹⁶

Similar concern was also expressed in evidence during hearings. For example, the Collie Preston Water Action Group argued that:

*certain massive water users are not even considered because, technically, they do not have dams and do not draw water from the aquifer. These are the large blue gum plantations and they use an enormous amount of water.*⁸⁹⁷

Furthermore, the group suggested that:

*if you look at which user is restricting runoff of water down the riverbed, it is mainly the blue gum plantations. No farmer can pump as much water as these blue gums chew up. That is why it is said that Australia is virtually exporting water by drawing the blue gums and shipping them off to Japan.*⁸⁹⁸

⁸⁹⁴ Submission No. 1 from Mr G.S. Waugh, 26 November 2007, p1; Submission No. 10 from Marron Growers Association of Western Australia, 6 December 2007, p2 and 4; Submission No. 26 from Pastoralists and Graziers Association, 12 December 2007, p2; Submission No. 17 from Shire of Manjimup, 7 December 2007, p3.

⁸⁹⁵ Submission No. 1 from Mr G.S. Waugh, 26 November 2007, p1; Submission No. 10 from Marron Growers Association of Western Australia, 6 December 2007, p2 and 4; Submission No. 26 from Pastoralists and Graziers Association, 12 December 2007, p2; Submission No. 17 from Shire of Manjimup, 7 December 2007, p3.

⁸⁹⁶ Submission No. 17 from Shire of Manjimup, 7 December 2007, p3.

⁸⁹⁷ Mr Harry Ortheil, Farmer, Collie Preston Water Action Group, *Transcript of Evidence*, 8 January 2008, p4.

⁸⁹⁸ *ibid.*, p12.

Similarly, Harvey Water acknowledged that the issue of plantation water consumption is:

*an issue that is Australia wide and very important. They suck up a lot of water. It is rather like the regeneration of the land Alcoa has mined and regenerated. It is very proud of its regeneration, but it covers catchment areas for our dams. They create tremendous regeneration but it stops the flow of water over the land into our dams. We have had discussions with them about the consequence for us. They have done a job, but like everything, nothing exists in isolation; so many things are interlinked.*⁸⁹⁹

This is also the position of the Shire of Manjimup:

*Our position is clear. Compared with an open paddock, a plantation will reduce the water flow by about 30 per cent. I got that figure from a Department of Water document. Plantations consume a lot of the groundwater, so there is a drying out effect as well. You do not get a recharge, although the research that I have seen suggests that it does not go into the groundwater system. It goes down only 20 or 30 feet. What is happening is that it is drying that out so that when it rains heavily, all of that water is just soaked up again and you do not get run-off. This is having a profound effect on downstream water quantity. No-one will debate or argue at our end that plantations do not address salinity and water quality; they do. However, they are affecting water quantity.*⁹⁰⁰

Submissions argue that as large, silent users of water, with potentially huge impact on the availability of water for other users, plantations should be licensed.⁹⁰¹ A landholder in the Gingin area suggests that:

*where there are agricultural tax schemes for tree farms and massive olive orchards, sandalwood plantations, almond orchards or any scheme which is tax rebate funded, they should all pay a license (sic) fee because they use a lot of water and not always wisely.*⁹⁰²

Similarly, the Shire of Manjimup stated that:

*they [plantations] should be licensed. If a downstream dam is licensed and a plantation is going to be plumped upstream - [...] They should go through a licensing system. If the downstream dam's water licence cannot be satisfied because of the plantation going in, then that plantation should be refused.*⁹⁰³

⁸⁹⁹ Mr Geoff Calder, General Manager, Harvey Water, *Transcript of Evidence*, 8 January 2008, p11.

⁹⁰⁰ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p12.

⁹⁰¹ Mr Harry Ortheil, Farmer, Collie Preston Water Action Group, *Transcript of Evidence*, 8 January 2008, p10; Submission No. 1 from Mr G.S. Waugh, 26 November 2007, p1.

⁹⁰² Submission No. 6 from David W. Robinson, 3 December 2007, p2.

⁹⁰³ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p12.

The Collie Preston Water Action Group also argued that, as large users of water, blue gum plantations should be licensed, particularly as small users are not, and stated that they ‘wonder about the current situation whereby the very small user is levied and the big one is not’.⁹⁰⁴

The Pastoralists and Graziers Association suggests that if the licensing fees implemented were ‘not fair’ they would force farmers out of primary produce farming and into plantations where no fees are payable.⁹⁰⁵ Should this eventuate, the capacity for such plantations to extract water would have an enormous impact on the water resources of an area. The Shire of Manjimup also expressed concern about blue gum plantations in this regard as it requires the Shire to make a planning decision in approving plantations:

There seems to be a gap in the water planning fabric. We deal with it at the coalface. I have a thick file on one property. The owners of the property had a water licence for their property, but a plantation went in upstream and they are now not getting water through to their dam [...]

*Every time they go to anyone, they are turned away and told that it is bad luck and that plantations do not require a water licence. We are being asked to make planning decisions in approving plantations. We do not have the in-house expertise to model what the effect could be. There is a department called the Department of Water that does have that expertise, yet it does not get involved with plantations - it refuses to get involved.*⁹⁰⁶

The Conservation Council pointed out that plantations are useful in certain circumstances where their establishment is a result of ‘good catchment management planning’.⁹⁰⁷ Therefore, whereas plantations such as the pines in Gngangara are damaging and stop infiltration of water almost entirely, the Conservation Council hoped that with good planning ‘the majority of blue gum plantations would be in areas where groundwater table rises are such that the plantation is actually having a beneficial or equilibrating impact on the whole catchment’.⁹⁰⁸

While being critical of planning decisions that have led to the establishment of plantations in the south west, the Collie Preston water action group also recognises that there are some areas in which blue gum plantations play an important role in lowering the water table, although this is ‘not the case in large areas of the south west’.⁹⁰⁹

⁹⁰⁴ Mr Harry Ortheil, Farmer, Collie Preston Water Action Group, *Transcript of Evidence*, 8 January 2008, p10.

⁹⁰⁵ Submission No. 26 from Pastoralists and Graziers Association, 12 December 2007, p2.

⁹⁰⁶ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p12.

⁹⁰⁷ Mr Christopher Tallentire, Director, Conservation Council of Western Australia Inc., *Transcript of Evidence*, 31 January 2008, p3.

⁹⁰⁸ *ibid.*

⁹⁰⁹ Mr Harry Ortheil, Farmer, Collie Preston Water Action Group, *Transcript of Evidence*, 8 January 2008, p5.

The issue of plantations is expressly mentioned in the National Water Initiative (NWI) which states that plantations and their impact should be recognised and taken into account. The NWI directs that parties to the agreement should:

*recognise that a number of land use change activities have potential to intercept significant volumes of surface and/or ground water now and in the future...activities that are of concern, many of which are currently undertaken without a water access entitlement, include...large-scale plantation forestry...[and] if these activities are not subject to some form of planning and regulation, they present a risk to the future integrity of water access entitlements and the achievement of environmental objectives for water systems. The intention is therefore to assess the significance of such activities on catchments and aquifers, based on an understanding of the total water cycle, the economic and environmental costs and benefits of the activities of concern, and to apply appropriate planning, management and/or regulatory measures where necessary to protect the integrity of the water access entitlements system and the achievement of environmental objectives.*⁹¹⁰

The need for research and co-ordination under the NWI was recognised in 2005, in part, by the formation of the Plantations and Water Roundtable, which was an industry response by Tree Plantations Australia to the identification in the NWI of ‘large-scale plantation forestry as a land use change that has the potential to intercept significant volumes of surface and/or groundwater now and in the future,’ and the emphasis placed in the NWI on planning and management of such water use.⁹¹¹

Amongst other actions, the industry group formed out of the roundtable resolved to recommend to the jurisdictions drafting their implementation plans under the NWI that:

*a simple approach is taken at the present time. That is, plantation forestry is treated in accordance with the principles and objectives of the National Water Initiative (NWI) and there needs to be a clear recognition of the environmental benefits that can be provided by plantations.*⁹¹²

In-depth research has been conducted in recent years in regards to plantations and their use of water. While too detailed to be discussed fully in this report, research such as this should be considered for future discussion and planning.⁹¹³ To take a relevant example, CSIRO scientist Dr Richard Benyon found that while trees over a shallow water table tap into groundwater reserves, this is not the case for trees over deep water tables. There are region specific findings establishing

⁹¹⁰ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, p9-10. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

⁹¹¹ Tree Plantations Australia, ‘Plantations and Water Roundtable Summary’, April 2005. Available at: <http://www.nafi.com.au/waterroundtable.html>. Accessed on 5 February 2008.

⁹¹² *ibid.*

⁹¹³ For further detail see the list of references supplied in: Submission No. 42 from Shire of Manjimup, 4 February 2008.

‘that groundwater usage by plantation trees varies greatly depending on conditions’.⁹¹⁴ Plantation and water use research also appears to be coordinated across state and federal governments and industry; for example, there are studies conducted under the *Plantations 2020 Vision Strategy*, an initiative that involves community, industry and environment.⁹¹⁵

The Conservation Council argued that highlighting the issue of plantations in a Council of Australian Governments (COAG) level document such as the NWI ‘demonstrates the need for a broader-scale strategic approach to the usage of blue gum or other large-scale plantations across Western Australia’.⁹¹⁶ As stated above, what may be appropriate as determined by good management in one area may not be such in another, and thus to simply state that all plantations should be licensed would expose the state to the dangers of adopting a ‘one size fits all’ approach in relation to plantations.

It appears to the Committee that planning and recognition of water use by plantations, rather than the existence of large scale plantations themselves, is where the issue lies. Currently, the biggest barrier to licensing plantations is that, unlike domestic bores which are intentionally exempt from current licensing practices, if the DoW wanted to license plantations it is not legally able to. The *Rights in Water and Irrigation Act 1914* (RIWI Act) is the current legislation governing water licensing in the Western Australia. Part III of this Act, and in particular sections 5C, 26D, 11, 17, and 21A, have application to the establishment of a water resource management scheme and licensing. While this Act shows great foresight on behalf of the legislators of the time, plantations understandably are not expressly considered therein. Thus plantations cannot be regulated under the current licensing regulations as these relate only to the RIW Act. The Committee is aware of the water-related legislation review and reform that is currently underway in Western Australia. However, at this stage it is unclear to the Committee what may be contained in the new legislation specifically in relation to plantations. Nevertheless, regardless of whether plantations are managed under a licensed entitlement or a water access entitlement to a share in the consumptive pool covered by a particular statutory management plan, provision needs to be made in legislation to allow appropriate management of this particular type of water interception.

The DoW advises that it is working on an approach to incorporate plantations into water management decisions, while recognising the complexity of some of the issues involved. It also advises that the lack of scope in the current legislation is being addressed in the new Water Resources Management Bill.⁹¹⁷

⁹¹⁴ CSIRO, ‘Measuring the Water Use of Plantation Trees’, nd. Available at: <http://www.csiro.au/science/ps9p.html#B2>. Accessed on 6 February 2008.

⁹¹⁵ Plantations 2020, ‘The 2020 Vision’, Available at: <http://www.plantations2020.com.au/vision/index.html>. Accessed on 6 February 2008.

⁹¹⁶ Mr Steven McKiernan, Water Policy Officer, Conservation Council of Western Australia Inc., *Transcript of Evidence*, 31 January 2008, p3.

⁹¹⁷ Submission No. 43 from Department of Water, 7 February 2008, pp8-9.

Western Australia's Implementation Plan for the National Water Initiative does address interception activities such as plantations.⁹¹⁸ The implementation plan specifically mentions plantations as one of the water interception activities that will be assessed, along with changes in land use, drainage issues and others. It states that:

interception in a water management area will be assessed as part of the planning program, with local rules for interception in the area set through that process.

*It is anticipated that at the time of the formation of the consumptive pool during the planning process, the effects of all existing forms of water interceptions would be accounted for, and interception thresholds set for each type of substantial interception activity.*⁹¹⁹

This suggests that plantations, as an existing form of water interception, will be accounted for and factored into the development of statutory management plans on an area by area basis. NWI principles also mean that the principle of cost recovery would apply to plantations and their use of water, whether this occurs under a licensing system or a consumptive pool situation within a statutory management plan.

Finding 32

Plantations intercept significant amounts of water. This may be beneficial in some circumstances, but detrimental in others.

Finding 33

Current legislation does not allow the Department of Water to license plantations.

Recommendation 21

The Department of Water develop a system of water accounting for plantations with a view to regulation and licensing.

⁹¹⁸ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p36-40.

⁹¹⁹ *ibid.*, p38.

Recommendation 22

Plantations should be incorporated into statutory management plans for an area.

Finding 34

Legislation under development needs to allow for appropriate management of water interception by plantations.

Finding 35

Local government has, and should continue to have, a planning role in the establishment of plantations.

Recommendation 23

As a matter of course, local government should be involved in the development of the statutory management plans.

CHAPTER 10 WATER HARVESTING INFRASTRUCTURE COSTS

It is clear that landholders in Western Australia expend significant sums of money in developing water supply infrastructure on their properties. According to the Manjimup and Pemberton Landowners, ‘there is approximately \$100 million privately invested in “farm dam” infrastructure vital to over \$150 million in annual agricultural production which is the major employment base in the Manjimup and Pemberton area’.⁹²⁰ A landholder in the Nannup area also draws attention to the amount of money invested in farm dam capital costs, stating that his ‘dam and infrastructure has been a capital cost in excess of \$100,000. On going maintenance and depreciation of the infrastructure costs about \$5000 per year’.⁹²¹ The Western Australian Fruit Growers’ Association also advised that self-supply water users ‘have had to put up big sums of money’ to put their bores and dams in place.⁹²² The 200 licence holders in the Pemberton management district have endeavoured to ‘maximise the on-farm storage of dams’ in an effort to drought-proof their properties and to increase their crop options. The Western Australian Fruit Growers’ Association suggested that:

*the cost of those dams is between \$150 million and \$200 million. Those 200 landowners and horticulturalists expended between \$150 million and \$200 million of their own money to put those structures in place to deem that they had drought-proofed themselves. They had sufficient water to reduce the risk of running out of water.*⁹²³

The resources sector also draws attention to their investment in water supply development, stating that a 2004 regional minerals programme study estimated that ‘investment in water supply development by the industry is in excess of \$700 million, with annual operating and management costs exceeding \$100 million’.⁹²⁴

Part of this Inquiry is to determine what recognition needs to be given to the cost incurred by landholders in harvesting water, including dam construct costs.

10.1 Landholders Infrastructure Costs

Throughout evidence to the Inquiry there were calls for recognition of landholders’ water harvesting infrastructure costs on the basis that a license fee penalises those self-supply landholders who have already invested in water infrastructure and that such investment is not recognised in the licensing regime.

⁹²⁰ Submission No. 3 from Manjimup and Pemberton Landowners, 28 November 2007, p3.

⁹²¹ Submission No. 9 from The Scott Family, 6 December 2007, p1.

⁹²² Mr Chris Scott, Orchardist, Western Australian Fruit Growers’ Association, *Transcript of Evidence*, 8 January 2008, p3.

⁹²³ Ms Diane Fry, Farmer, Western Australian Fruit Growers’ Association, *Transcript of Evidence*, 8 January 2008, p4.

⁹²⁴ Submission No. 30 from Chamber of Minerals and Energy, 14 December 2007, p3.

A number of submitters believe simply that all fees penalise producers or do not recognise the contribution self-supply water users make to infrastructure. For example, the Scott River Growers Group argue:

*there is no distinction between the lodgement of the fees on public and private infrastructure. Private water suppliers have put millions of dollars into infrastructure whereas taxpayers have paid for public infrastructure.*⁹²⁵

Similarly, the Marron Growers Association of Western Australia submitted that marron growers ‘have invested substantially in private infrastructure to ensure a secure water resource’.⁹²⁶ This association asserts self-supply producers are, in fact, ‘self providers’ of ‘privately held national assets for water storage’.⁹²⁷ They further argue that growers ‘in the industry that provide their own infrastructure for water have difficulty accepting the terminology “services provided to water users”’.⁹²⁸ They suggest that ‘self funded providers of water infrastructure have the value of this private investment recognized within any licensing regime’ and that ‘the licence charges imposed on privately funded water resources should reflect the value of the private investment’.⁹²⁹ The Aquaculture Council of Western Australia ‘concurs with the MGA submission’ in this regard.⁹³⁰

A landholder in the Manjimup area submits that:

*property owners in high rainfall areas have paid a large premium to obtain land that included the water asset and then made additional substantial investments in infrastructure to harvest water. Any additional cost would be grossly unfair in these circumstances and would amount to being charged for the rain that falls on private property.*⁹³¹

This landholder recognises that licensing would be appropriate where ‘water originates from outside the property and infrastructure is supplied by the property owner’.⁹³² In this circumstance, he suggests that:

*the water should be regarded as public property and licensing would be appropriate, however the cost should be kept to a minimum in recognition of the investment made to harvest the water and the contribution to the economy resulting from the activities undertaken with the water.*⁹³³

⁹²⁵ Submission No. 7 from Scott River Growers Group Margaret River Region, Inc., 3 December 2007, p2.

⁹²⁶ Submission No. 10 from Marron Growers Association of Western Australia, 6 December 2007, p3.

⁹²⁷ *ibid.*

⁹²⁸ *ibid.*, p5.

⁹²⁹ *ibid.*, p3 and 6.

⁹³⁰ Submission No. 21 from Aquaculture Council of Western Australia, 7 December 2007, p6.

⁹³¹ Submission No. 13 from Mr S. Newbold, 6 December 2007, p1.

⁹³² *ibid.*

⁹³³ *ibid.*

This person feels that very few farmers ‘are against water control in principle and most will support a system that is fair and recognises private investment at a reasonable cost’.⁹³⁴

In addressing the issue of recognition of landholders’ water harvesting costs, the Department of Agriculture and Food acknowledges that such costs vary significantly across regions and according to the nature of the activity conducted. It argues that ‘producers who have invested in the security of supply for their own water supply should not be penalised for their investments’,⁹³⁵ the implication being that fees would constitute a penalty.

The Shire of Boddington also opposes the application of fees to self-supply water users:

*Council believes it would be inequitable for primary producers, who have constructed dams on their properties, to need licensing and to pay for the privilege of having a dam, despite its size.*⁹³⁶

Similarly, the Pastoralists and Graziers Association opposes the payment of fees for properties with privately funded infrastructure. The Association advises that ‘it is unreasonable for rural landholders to face paying fees after they have self financed this infrastructure’.⁹³⁷

The Shire of Yilgarn submits that broad acre landholders should be exempt from licences (and fees) for self-supply catchment dams and for the extraction of water via bores as the ‘majority of these are not drawing water from aquifers’.⁹³⁸

The resources sector, which presents with different circumstances and issues, also call for recognition of their contribution to investment in water resource management. Rio Tinto Iron Ore submits that it:

*often undertakes significant investment in its own water resource exploration, investigations and sustainable management practises (sic). There is no recognition in the structure of the annual administration fee proposed by the Government of this ongoing investment in water resource management.*⁹³⁹

It is important to Rio Tinto Iron Ore that ‘water licence administration fees are reflective of the specific water resource management needs and costs faced by the mining industry in the Pilbara’.⁹⁴⁰ The Chamber of Minerals and Energy (CME) submission states that the resources sector makes significant contributions to water resource exploration and management and cites a

⁹³⁴ *ibid.*

⁹³⁵ Submission No. 15 from Department of Agriculture and Food, Government of Western Australia, 7 December 2007, p3.

⁹³⁶ Submission No. 25 from Shire of Boddington, 11 December 2007, p1.

⁹³⁷ Submission No. 26 from Pastoralists and Graziers Association, 12 December 2007, p3.

⁹³⁸ Submission No. 35 from Shire of Yilgarn, 7 January 2008, p1.

⁹³⁹ Submission No. 20 from Rio Tinto Iron Ore, 7 December 2007, p7.

⁹⁴⁰ *ibid.*

2004 regional minerals programme study that estimated that the industry invested over \$700 million in water supply development, incurring costs of over \$100 million.⁹⁴¹ Drawing attention to resource sector's large investment in water supply development, the Chamber argues that the sector is already operating on a user pays basis because:

*this expenditure extends to the exploration and quantification of the resources the industry needs, as well as substantial investment in infrastructure required to obtain the water and various investments in sustainable water resource management practices.*⁹⁴²

The Chamber recognises that in some cases the sector does extract water from a shared resource but argues that in such cases 'more intensive monitoring and management by mining industry users already subsidises adjacent users in the broader management of the resource'.⁹⁴³ Furthermore, it suggests that due to the remote locations of those in the resources sector, service delivery by government is 'relatively limited, and is unrelated to the volume of water allocated to those operations'.⁹⁴⁴ It therefore calls for 'recognition that some private sector users are actually contributing to the store of knowledge about a resource. There needs to be credit for this explicit in the charge system'.⁹⁴⁵

While there is no doubt that considerable private investment is made in water supply infrastructure, the arguments for this investment to be recognised in the licence administration fees indicates a general confusion around the purpose of the fee. Submissions, generally, call for recognition of water resource management costs in a schedule of fees that specifically relates only to the administration of licences to take water in accordance with the *Rights in Water and Irrigation Act 1914* (RIWI Act). As the Department of Water (DoW) states:

*water licence administration fees only contribute towards the cost of administering the water licensing system. Expenditure by licensees on harvesting water does not reduce the cost of the licensing system. It would be inappropriate for the amount of a licence fee to be reduced because of funds spend by a landholder in harvesting water.*⁹⁴⁶

On this issue, Mr Jeff Camkin, who has been involved in past debates regarding recognition of water harvesting costs, advised that:

these sorts of costs of the bores, pipes and dams of self-suppliers are equivalent to the costs incurred by water service providers in building bores, pumps and dams. In the case of water service providers, they are the costs of providing them to towns or individuals. Those costs of water service provision are recovered through the water service charges that we all get sent. In self-supplying situations, they are paid for by individuals through

⁹⁴¹ Submission No. 30 from The Chamber of Minerals and Energy, 14 December 2007, p3.

⁹⁴² *ibid.*

⁹⁴³ *ibid.*

⁹⁴⁴ *ibid.*

⁹⁴⁵ *ibid.*, p5.

⁹⁴⁶ Submission No. 29 from Department of Water, 21 December 2007, p28.

*their own investment. They are just the costs of capturing and moving water; they are not the costs of water resource management. The two are very different. In some ways, it is a bit of a furphy to tangle them up. It is better to keep those costs separate; that is, the costs of moving and putting water where you want it, as opposed to the costs of supporting the ability to do that through good water resource management.*⁹⁴⁷

Given that the schedule of fees that is the subject of this Inquiry are for the administration of licences, it would not be appropriate for a water resource management cost to be recognised in fees intended to recover only those costs. However, the Committee is mindful of the water resource management work that is undertaken by some water users on behalf of the DoW and the costs that these licensees incur. For example, as Mr Camkin suggested:

*a large mining company, for example, might be required to investigate the water resource of an area in the Pilbara or wherever, whereas a small licence applicant in, say, Gingin may not be required to do the same sort of work. There might be a better understanding of water that the small licensee is applying for that has been gathered over the years through monitoring and reporting. There are some considerations there as to what you include in the cost structure and whether you recognise the contributions that some of those big companies make to understanding the water resources of the state.*⁹⁴⁸

Similarly, while Irrigation Australia does not support the financial recognition of the costs of water harvesting, it does recognise that some landholders, during the course of their business activities, incur water resource management costs such as the collection of essential water management data, and deliver a public and/or environmental benefit.⁹⁴⁹ This organisation suggests that if these landholders are DoW approved and accredited, they should be given a ‘realistic monetary value’ and treated as an outsourcing of a portion of water management.⁹⁵⁰ It is suggested that this allows for the clear separation of licence administration fees and water resource management charges.⁹⁵¹

While this issue generated calls for the recognition of water infrastructure costs, it also elicited responses voicing strong opposition to any such recognition. For example, Harvey Water submits that ‘it is hard to think why self-supply land owners should receive recognition for costs involved in harvesting water’.⁹⁵² The cooperative argues that:

every licensed user pays a cost of this kind. For example bores and their operating costs are of the same ilk as dam construction costs. Irrigation utilities such as Harvey Water pay a cost for the service it obtains from storing its water in the dams, all of which are owned by Water Corporation. Harvey Water pays a fee for the operating costs of the dams

⁹⁴⁷ Mr Jeff Camkin, Private Citizen, *Transcript of Evidence*, 20 December 2007, p9.

⁹⁴⁸ *ibid.*

⁹⁴⁹ Mr Douglas Hall, Industry Development Officer, Irrigation Australia, *Transcript of Evidence*, 15 January 2008, p7; Submission No. 19 from Irrigation Australia - WA Region, 11 December 2007, p5.

⁹⁵⁰ Submission No. 19 from Irrigation Australia - WA Region, 11 December 2007, p5.

⁹⁵¹ *ibid.*, p6.

⁹⁵² Submission No. 16 from Harvey Water, 7 December 2007, p5.

*and also for the maintenance of dams in a safe operating condition, consistent with the other risks and costs borne by society in general.*⁹⁵³

Harvey Water does 'not see that people who are self-storers need to benefit because they built the dam, or somebody who has a bore has to pay the cost of the bore',⁹⁵⁴ and suggests that it is not equitable to recognise the costs of some water users and not others such as the Water Corporation which 'must pay for the dams they build and operate'.⁹⁵⁵

Irrigation Australia - WA Region is similarly adamant on the non-recognition of such costs. It submits that:

*IAL-WA does not believe that costs incurred by landholders in harvesting water should be taken into consideration. These are business decisions taken by landholders in how they will operate their business. These choices could be sound business decisions or otherwise.*⁹⁵⁶

This position is also adopted by the DoW:

*The licensee also derives a benefit, in many cases a financial gain, from the works utilising water vested in the Crown and it is therefore reasonable to expect that they should contribute to the costs of licence administration.*⁹⁵⁷

In evidence, Irrigation Australia -WA Region suggested that 'infrastructure costs of collecting water' were associated with some of the arguments concerning fees, but advised that their position was that 'the infrastructure costs of collecting water are a business activity'.⁹⁵⁸ Irrigation Australia suggests that to recognise water harvesting costs via financial consideration may actually reduce cost recovery and this 'would amount to subsidization of a business operation'.⁹⁵⁹ Therefore, to avoid such cross-subsidisations, Irrigation Australia argues that the state government must implement a cost recovery framework that meets the state's National Water Initiative (NWI) obligations.⁹⁶⁰

While the City of Perth argues that no licence fee should apply to landholders who harvest water, it does acknowledge that 'the construction of farm dams should be recoverable through the

⁹⁵³ *ibid.*

⁹⁵⁴ Mr Geoff Calder, General Manager, Harvey Water, *Transcript of Evidence*, 8 January 2008, p11.

⁹⁵⁵ Submission No. 16 from Harvey Water, 7 December 2007, p6.

⁹⁵⁶ Submission No. 19 from Irrigation Australia - WA Region, 11 December 2007, p5.

⁹⁵⁷ Submission No. 29 from Department of Water, 21 December 2007, p28.

⁹⁵⁸ Mr Douglas Hall, Industry Development Officer, Irrigation Australia - WA Region, *Transcript of Evidence*, 15 January 2008, p6.

⁹⁵⁹ Submission No. 19 from Irrigation Australia - WA Region, 11 December 2007, p5.

⁹⁶⁰ *ibid.*, p4.

taxation system as it enhances the productivity of agricultural land and the growing of food for the Australian population’.⁹⁶¹

As reference to the *Income Tax Assessment Act 1997* reveals, ‘primary producers may claim a deduction for capital expenditure of water facilities’.⁹⁶² This deduction, which is allowed over three years, applies to expenditure:

*on the construction, manufacture, acquisition or installation of “plant” (¶17-040) or a structural improvement for the purpose of conserving or conveying water for use in carrying on a primary production business conducted by the taxpayer on land in Australia. ... Water facilities also include dams, earth tanks, underground tanks, concrete or metal tanks, tank stands, bores, wells, irrigation channels or similar improvements, pipes, pumps, water towers and windmills or extension to any of these.*⁹⁶³

Finding 36

Arguments for incorporating recognition of water harvesting costs into water licence administration fees confuse licence administration fees with water resource management charges.

Finding 37

The committee recognises the considerable infrastructure investment that self suppliers, including those in the mining and resources sectors, often make.

Finding 38

Construction of commercial water supply infrastructure is a business decision.

⁹⁶¹ Submission No. 12 from City of Perth, 6 December 2007, p2.

⁹⁶² Sections 40-515 to 40-575 *Income Tax Assessment Act 1997* (Cwlth), C2008C00004 (No. 38, 1997). See also: ‘Primary Production Concessions’ Chapter 18, *2007 Master Tax Guide*, CCH Australia Ltd.

⁹⁶³ ‘Primary Production Concessions’ Chapter 18, *2007 Master Tax Guide*, CCH Australia Ltd, ¶18-080.

Finding 39

Capital costs of water supply infrastructure constitute deductible expenditure under the *Income Tax Assessment Act 1997*.

Recommendation 24

The costs incurred by landholders in harvesting water, including dam construction costs should:

- not be considered in the determination of the licence application fee;
- not be considered in the determination of the licence administration fee;
- but should be considered in applying future resource management charges.

Recommendation 25

The Department of Water develop a means of valuing and acknowledging infrastructure investment.

CHAPTER 11 NATIONAL WATER INITIATIVE PROVISIONS FOR A RANGE OF LICENSING SYSTEMS

Term of reference seven of this Inquiry directs the Committee to report on the extent to which the National Water Initiative (NWI) provides for a range of different licensing systems. There has been some concern expressed in various submissions and evidence that both the NWI and the *State Water Plan 2007 (SWP)* do not allow for the range of options necessary in a state as diverse and unique as Western Australia. In particular, some existing cooperatives are concerned that the implementation of the NWI in Western Australia will adversely affect what is currently a functional system for them in terms of water access entitlements. In addition to this, some submissions ask that consideration be given to local management in a similar arrangement to that enjoyed by cooperatives. This Chapter documents these issues and concerns, and explores the range of options possible under the NWI and the *SWP*.

11.1 Provisions under the National Water Initiative

The NWI is a high level document intended to provide signatories with a best-practice framework for managing water resources based upon good planning, and to optimise triple bottom line outcomes. It lists eight key elements that form the basis of outcomes to be achieved under the NWI.⁹⁶⁴ One of these outcomes is to provide a framework for water entitlements that achieves:

*effective and sustainable resource management, improved environmental outcomes, providing greater certainty to water users, and an equitable share of water consistent with its availability.*⁹⁶⁵

The NWI is not prescriptive in relation to how the states and territories achieve these desired outcomes. While the Commonwealth government will assist the signatories, the implementation of the NWI is left up to the individual jurisdictions. This is evident in paragraphs 20 and 22, as follows:

20. The States and Territories are responsible for implementing this Agreement within their respective jurisdictions, consistent with their implementation plans (paragraph 9 refers).

*22. The Commonwealth Government will assist in implementation of this Agreement by working with the States and Territories.*⁹⁶⁶

⁹⁶⁴ For more detail on the National Water Initiative see Chapter 3.

⁹⁶⁵ Department of Water, *Western Australia's Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p17.

⁹⁶⁶ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, p3. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

This provides for enormous flexibility as any type of licensing and water access entitlement system is able to be designed and implemented provided it complies with NWI principles. That is, jurisdictions' water management regimes must be based on good planning; they must identify the amount of water that exists and the property rights of the environment and other users; and, once identified, they must register those property rights.⁹⁶⁷

The primary form of water entitlement envisaged under the NWI is the water access entitlement as a share of a consumptive pool.⁹⁶⁸ However, a system of water access entitlements is not the only type of system contemplated.⁹⁶⁹ With specific mention to Western Australia, paragraph 33 of the NWI provides that the water entitlement provisions outlined therein are subject to the following qualifications:

i) fixed term or other types of entitlements such as annual licences will only be issued for consumptive use where this is demonstrably necessary, such as in Western Australia with poorly understood and/or less developed water resources, and/or where the access is contingent upon opportunistic allocations, and/or where the access is provided temporarily as part of an adjustment strategy, or where trading may otherwise not be appropriate. In some cases, a statutory right to extract water may be appropriate; and

*ii) an ongoing process will be in place to assess the risks of expected development and demand on resources in poorly understood or undeveloped areas, with a view to moving these areas to a full entitlement framework when this becomes appropriate for their efficient management.*⁹⁷⁰

As mentioned previously, in effect this means that in some areas of the state, where it makes sense to do so, 'existing water licensing arrangements will continue'.⁹⁷¹

Evidence suggests that people are generally unaware of this flexibility inherent in the NWI. As demonstrated in section 5 of Chapter 3, a strong theme of concern emerging from submissions and evidence was that the NWI is based around the Murray-Darling Basin and, therefore, not suited to application in Western Australia. This concern was voiced, for example, by Harvey Water, Irrigation Australia - WA Region, Salitage Wines, the Western Australian Fruit Growers' Association, vegetablesWA, and the Shire of Manjimup. In summary, these organisations felt that the NWI is a one-size-fits-all framework that would not necessarily be suitable for implementation in Western Australia, and that the government should ensure that its plans are appropriate for this state.

⁹⁶⁷ *ibid.*, paragraph 23, pp3-4.

⁹⁶⁸ *ibid.*, pp5-6.

⁹⁶⁹ Submission No. 29 from Department of Water, 21 December 2007, p29.

⁹⁷⁰ Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, p6. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

⁹⁷¹ Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p14.

However, there is some recognition of the possible flexibility under the NWI in determining state regimes. The South West Development Commission notes that the NWI does not prescribe a definitive regime, but ‘allow[s] some scope for flexibility’.⁹⁷² The Commission states that while the NWI sets out key principles to be met (‘sound accounting of all water used, robust measurement and monitoring systems, clear plans for water sharing, compliance, metering, water use efficiency and overall data collection’⁹⁷³), it provides for licensing regimes to be ‘designed to fit the given circumstances of the particular source being managed’.⁹⁷⁴

The Department of Water (DoW) states:

*The NWI is sufficiently flexible to provide for a range of water licensing and entitlements systems. This flexibility, together with the expectation that statutory water management (allocation) plans will also recognise localised water management issues and responses, ensures that Western Australia does not have to adopt a ‘one size fits all’ approach to the future roll-out of water planning and licensing arrangements.*⁹⁷⁵

The NWI’s flexibility is also noted with regards to the resources sector. The Chamber of Minerals and Energy makes particular mention of paragraph 34 of the NWI which notes the ‘unique requirements of the resources sector’.⁹⁷⁶ Parties to the NWI agree that the minerals and petroleum sectors experience ‘special circumstances’ that ‘need to be addressed by policies and measures beyond the scope of this Agreement’.⁹⁷⁷ In Western Australia, these include the poor quality of the water used (often so hypersaline that there is no alternative use), the regional and remote location of operations and the relatively short duration of the life of operations and, therefore, water use.⁹⁷⁸

The fact that the NWI specifically mentions Western Australia, and more generally recognises that there are circumstances which will require tailoring of the NWI to suit regional needs, demonstrates the intended flexibility of this agreement. It would then appear to be up to those implementing the NWI to ensure that this implementation is adequately structured to suit those special circumstances.

Along these lines, Professor Jorg Imberger, Director of the Centre for Water Research, acknowledged that the NWI was developed with the Murray-Darling Basin in mind, but does not

⁹⁷² Submission No. 22 from South West Development Commission, 10 December 2007, p5.

⁹⁷³ *ibid.*

⁹⁷⁴ *ibid.*

⁹⁷⁵ Submission No. 29 from Department of Water, 21 December, p30.

⁹⁷⁶ Submission No. 30 from Chamber of Minerals & Energy Western Australia, 14 December 2007, p4.

⁹⁷⁷ Submission No. 30 from Chamber of Minerals & Energy Western Australia, 14 December 2007, p4; Council of Australian Governments, *Intergovernmental Agreement on a National Water Initiative*, 25 June 2004, paragraph 34, pp6-7. Available at: http://www.coag.gov.au/meetings/250604/iga_national_water_initiative.rtf. Accessed on 1 November 2007.

⁹⁷⁸ Submission No. 30 from Chamber of Minerals & Energy Western Australia, 14 December 2007, p4.

disagree with the fact that the NWI can be a useful framework for Western Australia, as long as it is adapted for use in Western Australia.⁹⁷⁹

Professor Imberger argues that the timing of implementation, and better monitoring and measurement of resources are the issues for Western Australia, rather than the amount of flexibility allowed under the NWI. He stated that the NWI is ‘a good model 10 years down the track, provided you put the resources into the first three aspects,’ namely knowing how much water there is, the terms of reference, and world changes.⁹⁸⁰ He argued that we need to take more time to establish catchment plans through upgrading monitoring, considering trends in climate change and determining what type of industry the state wants to support. While this will take 10 years, Professor Imberger argued that it will allow Western Australia to obtain its desired outcomes and principles.⁹⁸¹ Data quality was raised as an issue in Chapter 2, with findings there supporting Professor Imberger’s concerns over availability of sound data.

Finding 40

There is sufficient flexibility within the National Water Initiative to allow Western Australia to develop a water resource management plan appropriate to conditions and circumstances in this state.

Finding 41

Issues such as timing of implementation and knowledge of resources will impact on the state’s ability to develop and implement water resource management plans appropriate to Western Australia.

(a) The State Water Plan 2007: What is it?

The *State Water Plan 2007 (SWP)* was developed by the state government to outline the way forward for water management and reform in the state. This incorporated the signing of the NWI in 2006 and new approaches to water management, with ‘significant increases in metering and securing water for the environment and use through statutory water management plans and new

⁹⁷⁹ Professor Jorg Imberger, Centre for Water Research, University of Western Australia, *Transcript of Evidence*, Thursday, 20 December 2007, p5.

⁹⁸⁰ *ibid.*, p6.

⁹⁸¹ *ibid.*, p9.

forms of entitlement’.⁹⁸² It is not an action plan in itself, but rather a high level policy document encapsulating the government’s vision for water management reform.

Actions arising out of the SWP and the NWI are set out in *Western Australia’s Implementation Plan for the National Water Initiative*. As outlined by the Minister for Water Resources in the foreword of the implementation plan, this plan:

*shows how the national reform agenda will be applied in Western Australia and sets out the key timeframes we have for delivery. It is a plan that draws and expands upon...the State Water Strategy, the State Water Plan, and A Blueprint for Water Reform in Western Australia.*⁹⁸³

These key documents comprise the foundation of the state’s plan and reform agenda for water management.

The implementation of the statutory water management plans and new forms of entitlement envisaged under the NWI and the SWP is wholly dependent upon a statutory framework. As the Minister for Water Resources states:

*implementation of the National Water Initiative in Western Australia will be underpinned by the legislative reform program. This program will involve a major review of water legislation in Western Australia and will deliver a streamlined set of legislation for more effective and efficient water management.*⁹⁸⁴

Until such time as the legislative process is finalised, it is unclear to many concerned stakeholders exactly how their water entitlement and usage will be affected. The Pilbara Regional Council captures this situation in their very relevant comment:

*[a]t present, there is a high level of uncertainty surrounding the proposed future management of water. It is not clear if the Pilbara region is a trading zone within the definition of the NWI or who holds what water access entitlements in the region. The PRC also has limited resources; accordingly, comments provided...are provided from an organization (sic) on a steep learning curve regarding the future management of water.*⁹⁸⁵

It is unfortunate in some respects that comment received by the Committee based upon an often misguided perception of precisely how the roll-out of these principles and actions will occur in Western Australia. This is largely due to a lack of available detailed information, and the ‘steep learning curve’ referred to by the Council above.

⁹⁸² Department of Water, ‘Introduction from the Minister’, *State Water Plan 2007*, Government of Western Australia, Perth, 2007, p3.

⁹⁸³ Department of Water, *Western Australia’s Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p1.

⁹⁸⁴ *ibid.*

⁹⁸⁵ Submission No. 40 from Pilbara Regional Council, 31 January 2007, p2.

The following comment from Irrigation Australia - WA Region articulates this point extremely well, while also recognising the time factor as identified by Professor Imberger noted above:

*One of the concerns that I have expressed through the whole process, which you have picked up, is that documents like the blueprint and the state water plan are high-level and strategic documents. They refer to implementation, but there is a big gap when it comes to implementing a particular aspect; namely, a licensing framework and its detail. The problem that people on the ground are having - you hear this from all the major commodity groups at every state water forum - is that they do not have enough detail. When people do not have enough detail about what is going to happen, they start to read things into what may or may not happen. Do not get me wrong - we are supportive of what DOW is doing and how it is doing it. However, given what is expected of it, it is under-resourced and that, of course, is related to the time frame. The drivers are driving this very fast. DOW is under the pump. The more detail that they can present to the stakeholders, the fewer problems we will have in terms of the implementation and a resistance to the changes that are being proposed.*⁹⁸⁶

In summary, the SWP has identified the way forward for the state in compliance with the NWI, but has not identified in sufficient detail particular aspects such as the development of water access entitlements, the impact on existing licences, licensing arrangements for either form of entitlement, and the practical ways in which resource management around these will occur.

Finding 42

High level documents such as the National Water Initiative and the *State Water Plan 2007* do not provide a sufficient level of detail to allow key stakeholders to interpret their impact at a local level.

(b) The State Water Plan 2007: One Size Fits All?

As noted above, the SWP and its implementation plan are high level documents. Furthermore, to date, Western Australia has not precisely articulated how the SWP will be applied in detail under the legislation currently being drafted. It is perhaps this lack of information at the detailed level that had led to a perception that the SWP is, itself, a 'one size fits all' approach to water resource management. In recognition of this concern in relation to existing licence arrangements, and in an attempt to allay some of the fears that exist, the DoW has reassured the Committee that:

the current situation,...will be preserved into the future as well; it is just that we are offering another form of entitlement under which those things [water and land] are unbundled. For much of Western Australia, the existing water licensing arrangement will continue. The new bit that the National Water Initiative asks us to contemplate is the

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Mr Douglas Hall, Industry Development Officer, Irrigation Australia, *Transcript of Evidence*, 15 January 2008, p3.

*notion of perpetual water access entitlements issued as a share of a consumptive pool in those areas in which it makes sense to have those arrangements. In Western Australia, there may be relatively few of those areas compared with a preponderance of this situation in the eastern states.*⁹⁸⁷

The one size all perception of the SWP appears to be largely influenced by the actions of the DoW in relation to its implementation of the licensing fee schedule in general. This is clearly the view of the Collie Preston Water Action Group which suggests that ‘the impression that the one-size-fits-all strategy is used mainly comes about because that is how the Department of Water comes across’.⁹⁸⁸ Of particular concern to submitters is the uniform application of the fee schedule across the state and the averaging of fees across licensees within each licence class.⁹⁸⁹ For example, the Western Australian Local Government Association (WALGA) argues that it is inequitable that the licensing regime penalises ‘those who are optimising their investment in extracting maximum value from the resource, as much as those users who are not’.⁹⁹⁰ The Association sees this as a ‘one size fits’ approach that ‘appears inequitable, creates perverse incentives and fails to recognise the considerable financial and technical investment made by Local Government and expected by the community in the provision of public open space’.⁹⁹¹

The Shire of Manjimup is dissatisfied with the lack of variation between approaches currently taken in the Manjimup area and the rest of the state where conditions are ‘significantly different’, and argues that:

*such a one-size-fits-all approach fails to recognise significant variations in catchment characteristics in different parts of that Region [South West Land Division] and is far too broad to be realistic in the approach to be taken. [...] characteristics distinctive to variations between catchments, higher rainfall districts and the like should be separated for different treatments.*⁹⁹²

The Shire of Manjimup also argued that ‘one policy for the whole state does not make a lot of sense in an area where a dam is not interconnected’.⁹⁹³

vegetablesWA, while acknowledging that the NWI allowed for the creation of rules and regulations specific to particular areas, is concerned about the adoption of a one-size-fits-all approach in Western Australia, stating that ‘in some areas it is “one fixes all”, but they have kind

⁹⁸⁷ Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January 2008, p14.

⁹⁸⁸ Mr Harry Ortheil, Farmer, Collie Preston Water Action Group, *Transcript of Evidence*, 8 January 2008, p13.

⁹⁸⁹ See Chapter 7 for more detail on perceptions of the licensing schedule.

⁹⁹⁰ Submission No. 32 from Western Australian Local Government Association, 21 December 2007, p7.

⁹⁹¹ *ibid.*

⁹⁹² Submission No. 17 from Shire of Manjimup, 7 December 2007, p2 and 3.

⁹⁹³ Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p4.

of abandoned one fixes all, and recognised that one fixes all does not work throughout Australia. Certainly in Western Australia it does not work'.⁹⁹⁴

The Alliance argues that 'a one size fits all approach to water policy and management will adversely impact on individual self-supply water users, mostly farming families'.⁹⁹⁵ Water management and policies need to be provided in a flexible framework, one that can recognise 'the different characteristics of water resource systems and the unique needs of the three agricultural water use and irrigation sectors', namely irrigation co-operatives, surface/groundwater and river users and on stream farm dams.⁹⁹⁶ It should also accommodate the different types of resources available, that is, shared water resources and contained water resources.⁹⁹⁷

In light of the concern that the NWI is focussed on the Murray-Darling Basin and the lack of information concerning the finer detail of the implementation of the SWP under the proposed legislation, some concern by stakeholders is understandable. Given the flexibility allowed under the NWI, much of this concern should be allayed when the detail is finally publicly known, providing the resulting system is sufficiently flexible and transparent. That is, the DoW needs to ensure that the community is well informed and at a sufficient level of detail. As Jeff Camkin advised:

*In my travels, I have picked up a couple of things relating to this that improve the acceptability of these things; namely, open, transparent demonstration of the costs - in this case the cost of licensing and also the broader costs of management; and a commitment to the building of understanding of water resource management services. What are the things the department and others are currently doing in water resource management? It is a matter of gradually building the understanding of the community, in particular water users, about what actually happens. It is not just licensing; it is a much broader range of services.*⁹⁹⁸

Finding 43

The same degree of flexibility found in the National Water Initiative is also contained in the *State Water Plan 2007* in relation to current proclaimed areas or those areas covered by future statutory water management plans.

⁹⁹⁴ Jim Turley, Executive Officer, vegetablesWA, *Transcript of Evidence*, 15 January 2008, p7.

⁹⁹⁵ Submission No. 18 from The Alliance, 7 December 2007, p2.

⁹⁹⁶ *ibid.*

⁹⁹⁷ *ibid.*, p3.

⁹⁹⁸ Mr Jeff Camkin, Private Citizen, *Transcript of Evidence*, 20 December 2007, p4.

(c) Local Management under the National Water Initiative and the State Water Plan 2007

The argument for a flexible system in Western Australia is well documented and necessarily includes some local management of water access entitlement regimes. A report by the Irrigation Review Steering Committee, which was commissioned by the State Government in 2003 to report into irrigation practices, found that:

*opportunities and mechanisms for extending the self-management of water resources in areas of high-density irrigated agriculture should be investigated. The creation of irrigation cooperatives appears to have greatly improved the prospects for efficient water resource management as well as benefiting irrigators in each of the four irrigation areas.*⁹⁹⁹

The Government response to this recommendation acknowledged the effectiveness of irrigation cooperatives to date, with a view to investigating further what types of cooperative arrangements that could be used in other areas, as well as ‘mechanisms for extending self-management of water’.¹⁰⁰⁰

Recent information from the DoW seems to support this direction, with allowance under the *Implementation Plan* for three forms of water entitlements to co-exist to varying degrees, depending on the nature of the water resource system. These are:

- water licenses such as those that are currently in place;
- water access entitlements under consumptive pool arrangements; and
- basic rights such as riparian, livestock and non-scheme domestic use.¹⁰⁰¹

Evidence presented to the Committee suggests that there is recognition that the local management groups or cooperatives appear to be working well at the present time. For example, the Shire of Manjimup supports local management of local resources, and believes its own current management arrangements to be effective. The Shire also believes that the state government’s commendation of its arrangements reinforces its view ‘that it can be left to operate as it does at present without any of the administrative superstructure that is proposed in the models now being put forward’.¹⁰⁰² The Shire may well be reassured on this point by the following comment from the DoW:

⁹⁹⁹ Government of Western Australia, *Government Response to the Report of the Irrigation Review Steering Committee*, Government of Western Australia, Perth, September 2005, p11.

¹⁰⁰⁰ *ibid.*, p11.

¹⁰⁰¹ Department of Water, *Western Australia’s Implementation Plan for the National Water Initiative*, Government of Western Australia, Perth, April 2007, p17; Submission No. 29 from Department of Water, 21 December 2007, p30.

¹⁰⁰² Submission No. 17 from Shire of Manjimup, 7 December 2007, p3.

*in the case of Manjimup, assuming the new legislation is through and assuming the state has an ability to issue water access entitlements...it would still be the case that the Department of Water, in consultation with the local community and ultimately the government, would need to decide what form of entitlements should exist in the Manjimup area. At the moment...we understand that the Manjimup community are largely quite happy with their existing licensing water arrangements and...it might well be the case that a consumptive pool does not work for the surface water in the Manjimup area. It might well be a preservation of the existing arrangement; in other words licences will continue instead of water access entitlements being issued.*¹⁰⁰³

The example set by current locally managed groups, such as that in Manjimup, is referred to favourably by other submitters who also call for self management. For example, the Western Australian Farmers Federation supports local management, stating that:

*there are a lot of groups like the Warren Water Management Area Advisory Committee in the Manjimup area. A new Capel River water user group has also just started in the Capel catchment, which runs into the back of the Shire of Donnybrook-Balingup as well. There is a really strong desire from the local community and water users to take over the management of those water licences as well. The local management groups would look after the compliance of licence conditions. The Department of Water would do the assessment of whether a new licence would be granted and then effectively hand over-*¹⁰⁰⁴

Local management of water resources is very strongly advocated by the Western Australian Fruit Growers' Association. They argued that they 'have been pushing strongly that we have a local management group, such as the Warren-Lefroy and Preston groups. ... Each group should have a group of people, who in conjunction with the department, manage that system'.¹⁰⁰⁵ While acknowledging that in some catchments it is more complicated, such as where water is in 'fairly confined areas', the Association suggested that 'a management group should run that water under the guidance and strict rules and direction of the Department of Water and in conjunction with volunteers. Volunteers have been involved in the Preston and Warren-Lefroy groups'.¹⁰⁰⁶

There is clearly a strong desire for local involvement in water management, with recognition that a partnership with the DoW in the management of local water resources would be beneficial to all parties concerned. This is supported by Mr Jeff Camkin's advice provided in relation to local management, and based on his knowledge of systems in South Africa and Brazil. For Mr Camkin, it is 'very much about establishing a structure whereby it is very clear what decisions are made at the national level and what decisions are made at the state level and the catchment level'.¹⁰⁰⁷

¹⁰⁰³ Mr Michael Rowe, Manager, Policy Coordination and Reform, Department of Water, *Transcript of Evidence*, 24 January, p20.

¹⁰⁰⁴ Mr Stephen Dilley, Water Spokesman, Farmers Federation of Western Australia, *Transcript of Evidence*, 15 January 2008, p9.

¹⁰⁰⁵ Mr Chris Scott, Orchardist, Western Australian Fruit Growers' Association, *Transcript of Evidence*, 8 January 2008, p6.

¹⁰⁰⁶ *ibid.*

¹⁰⁰⁷ Mr Jeff Camkin, Private Citizen, *Transcript of Evidence*, 20 December 2007, p7.

Similarly, Irrigation Australia - WA Region suggested there is, perhaps, a ‘need [for] more flexibility in the way we solve regional problems’.¹⁰⁰⁸ Furthermore:

*generalisations are fine but at the end of the day you need to make assessments on a regional and local basis because the consumptive pressures will be different; therefore, the preparedness of the people in that area to bear extra cost, if that is what we need to do to sort out competition, is going to be different. At the moment it is just a blanket approach which is not able to take that sort of mosaic into account, I guess.*¹⁰⁰⁹

Arguably, local management would allow region sensitive issues such as domestic bores, plantations, licencing and metering to be addressed within each local area, with decisions made based upon what is suitable for that area. As revealed in Chapter 9, the licensing and management of plantations and bore usage, for example, will require quite diverse approaches depending upon the characteristics of the local catchment area. In some areas bores or plantations may be encouraged for the overall positive effect they have on the water source, while in other areas they will not be advisable. Therefore, under local management, types of water interception such as these could be licensed and monitored, or even disallowed.

An example of this is provided by the Shire of Wyndham-East Kimberley, which, while not discussing local management per se, does hold that licensing for the taking ground water should consider the actual ground water aquifer concerned. The Shire notes that ‘in some parts of the state there are rising ground water tables, despite existing bore use and licences’, and queries the justification for claims to full allocation of ground water when an ‘aquifer has a rising water table, not a static level’; this is the situation in the Ord Irrigation Area at present.¹⁰¹⁰ The Shire argues that licensing and fees may discourage, rather than encourage, use of water in such aquifers and may ‘ultimately cause water logging and salinity problems’.¹⁰¹¹

Finding 44

Local management is both desirable and possible under the National Water Initiative and the *State Water Plan 2007*.

(d) Local Management of Fees

In addition to the argument presented above for self management of catchment areas by local groups, there is underlying sentiment that management of fees are better suited to local management and determination, with differing applications depending on the area. There is a

¹⁰⁰⁸ Mr Douglas Hall, industry Development Officer, Irrigation Australia - WA Region, *Transcript of Evidence*, 15 January 2008, p8.

¹⁰⁰⁹ *ibid.*, p6.

¹⁰¹⁰ Submission No. 34 from Shire of Wyndham-East Kimberley, 7 January 2008, p1.

¹⁰¹¹ *ibid.*

concern, as previously mentioned above, that the schedule of fees is a state-wide schedule, with the Shire of Manjimup reporting that the ‘angst is about how that has been determined and who has decided it is a fair and equitable way of allocating’.¹⁰¹² Submissions also discuss the fee costings with regard to the types of water extraction involved. The Gascoyne Water Co-Operative is against what it sees as a ‘a one size fits all approach to licensing’ and suggests that licence administration fees ‘should fit the type of licence issued and this would be reflected in the type of installation licensed, the purposes for which the water is used and the capacity to pay’.¹⁰¹³

The Scott River Growers Group suggests that fees should be directed toward local management of local water. Again, referring to some local management already in place, ‘Warren Lefroy, Capel and Scott River are proposed or already established. Farmers on the Scott Coastal Plains are already metered and read their own meters’.¹⁰¹⁴ The Alliance also suggests that ‘self supply areas desire the same opportunity as irrigation cooperatives to collectively manage water at a local level within an appropriate structure’.¹⁰¹⁵ Furthermore, it asserts that ‘self management drives efficiency and is strongly supported by water users and the broader community’.¹⁰¹⁶

A number of submissions call for recognition of differences between regions, catchments and aquifers, and for the difference in management costs in each area. There was also a call for recognition of the limitations of some licences and specific water resource needs in mining areas. The Gascoyne Water Co-Operative Ltd believes that water resource management charges ‘should reflect the cost of management within a catchment and may vary widely from catchment to catchment dependant upon the fragility of the resource in each area managed’.¹⁰¹⁷ The Alliance suggests that fees should ‘recognize the differing management requirements/costs between individual catchments and aquifers’.¹⁰¹⁸ Similarly, the South West Development Commission ‘supports the position that all commercial water users should contribute to meet these costs [overarching catchment/aquifer planning of water resources and licensing] based upon the costs incurred as they relate to their given aquifer or catchment area’.¹⁰¹⁹ What these submissions may be addressing are water resource management costs and fees, rather than current licensing administration fees, which are the subject of this report. Water licence administration fees necessarily cover the costs of administering the licence, not water resource management.

When looking at management, whether locally or at a state level, it is important to differentiate between the current licensing fees and potential future water resource management fees. The

¹⁰¹² Mr Jeremy Hubble, Chief Executive Officer, Shire of Manjimup, *Transcript of Evidence*, 15 January 2008, p10.

¹⁰¹³ Submission No. 2 from Gascoyne Water Co-Operative Ltd, 27 November 2007, p3.

¹⁰¹⁴ Submission No. 7 from Scott River Growers Group Margaret River Region, Inc., 3 December 2007, p3.

¹⁰¹⁵ Submission No. 18 from The Alliance, 7 December 2007, p8.

¹⁰¹⁶ *ibid.*

¹⁰¹⁷ Submission No. 2 from Gascoyne Water Co-Operative Ltd, 27 November 2007, p1.

¹⁰¹⁸ Submission No. 18 from The Alliance, 7 December 2007, p8.

¹⁰¹⁹ Submission No. 22 from South West Development Commission, 10 December 2007, p5.

DoW implies that fee flexibility will be more likely in place for water resource management and planning, rather than for licensing, stating that:

*variable charging on the grounds of water use and catchment location is more of (sic) relevant for water resource management and planning rather than the administration of the licensing regime, where there can exist a considerable difference in the management requirements. For simplicity purposes and to minimise the costs to licence holders it was considered appropriate to introduce a standard charge for licence administration fees across the State.*¹⁰²⁰

While the DoW does not accept that licence administration fees should reflect local conditions, the above suggests that the DoW does envisage a system of variable water resource management fees.

These issues are addressed in the recommendations in chapter 4, namely that:

- there be a fixed licence administration fee that simply reflects the cost of administration of a licensing system; and
- water resource management charges be imposed separately, but not until statutory water management plans are in place.

¹⁰²⁰

Submission No. 43 from Department of Water, 7 February 2008, p11.

APPENDIX ONE

SUBMISSIONS RECEIVED

List of Submissions received for the inquiry.

	Date Received	Name	Position	Organisation
1	26 November 2007	Mr Graeme S. Waugh		Private Citizen
2	27 November 2007	Mr Edward Garrett	Chief Executive Officer	Gascoyne Water Co-Operative Ltd
3	28 November 2007	Mr Neil Bartholomaeus	Spokesperson	Manjimup and Pemberton Landowners
4	28 November 2007	John and Jenny Horgan	Owners	Salitage Wines Pemberton
5	30 November 2007	Mr Geoff Shoemark	Director Technical Services	City of Geraldton-Greenough
6	3 December 2007	Mr David W. Robinson		Private Citizen
7	3 December 2007	Ms Barbara Dunnet	Chairman	Scott River Growers Group, Margaret River Region, Inc.
8	5 December 2007	Mr Keiran McNamara	Director General	Department of Environment and Conservation, Government of Western Australia
9	6 December 2007	The Scott Family		Private Citizens
10	6 December 2007	Mr Ron Robertson	President	Marron Growers Association of Western Australia
11	6 December 2007	Mr Louie Scibilia		Private Citizen
12	6 December 2007	Mr Doug Forster	Director Business Units	City of Perth
13	6 December 2007	Mr Steve Newbold		Private Citizen
14	6 December 2007	Mr Greg Page		Private Citizen
15	7 December 2007	Mr Ian Longson	Director General	Department of Agriculture and Food, Government of Western Australia
16	7 December 2007	Mr Geoff Calder	General Manager	Harvey Water

ECONOMICS AND INDUSTRY STANDING COMMITTEE

	Date Received	Name	Position	Organisation
17	7 December 2007	Mr Jeremy Hubble	Chief Executive Officer	Shire of Manjimup
18	7 December 2007	Mr Andy McMillan	Director of Policy, Western Australian Farmers Federation (Inc.)	The Alliance of: The Western Australian Farmers Federation (Inc); Potato Growers Assn of WA (Inc); Vegetable Growers Assn; and WA Fruit Growers' Assn (Inc).
19	11 December 2007	Mr Greg Stewart Mr Doug Hall	Chair Industry Development Officer	Irrigation Australia - WA Region
20	7 December 2007	Mr Dennis B. Gibson	General Manager Water Resources	Rio Tinto Iron Ore
21	7 December 2007	Mr Dan Machin	Executive Officer	Aquaculture Council of Western Australia Inc.
22	10 December 2007	Mr Don Punch	Chief Executive Officer	South West Development Commission, Government of Western Australia
23	10 December 2007	Mr Lyndon Rowe	Chairman	Economic Regulation Authority Western Australia
24	12 December 2007	Mr Tony Chafer	Chief Executive Officer	Ord Irrigation Cooperative Ltd
25	11 December 2007	Mr Peter Bradbrook	Chief Executive Officer	Shire of Boddington
26	12 December 2007	Mr Ben Thunder	Policy Director, Private Property & Resources	Pastoralists and Graziers Association of WA (Inc)
27	14 December 2007	Mr Ben Deeley	Environmental Officer	City of Bunbury
28	13 December 2007	Mr Paul Nenke	Chair	Yabby Producers Association Inc.
29	14 December 2007	Mr J. Ruprecht	A/Director General	Department of Water, Government of Western Australia
30	14 December 2007	Mr Reg Howard-Smith	Chief Executive	The Chamber of Minerals and Energy of Western Australia
31	19 December 2007	Mr Chris Tallentire	Director	Conservation Council of Western Australia Inc.
32	21 December 2007			Western Australian Local Government Association
33	3 January 2008	F.B. Ludovico	Chief Executive Officer	Shire of Merredin

ECONOMICS AND INDUSTRY STANDING COMMITTEE

	Date Received	Name	Position	Organisation
34	7 January 2008	Mr Peter Stubbs	Chief Executive Officer	Shire of Wyndham-East Kimberley
35	7 January 2008	Mr Peter Clarke	Chief Executive Officer	Shire of Yilgarn
36	7 January 2008	Mr Neil Bartholomaeus		Manjimup and Pemberton Landowners
37	14 January 2008	Mr Jeff Camkin		Private Citizen
38	16 January 2008	Mr Clem Kerp	Chief Executive Officer	Shire of Goomalling
39	25 January 2008	Mr Terry J. Dodds	Director of Engineering Services	Town of Port Hedland
40	31 January 2008	Mr Adrian Ellson	Executive Officer	Pilbara Regional Council
41	16 January 2008	Mr Geoff Calder	General Manager	Harvey Water
42	4 February 2008	Mr Jeremy Hubble	Chief Executive Officer	Shire of Manjimup
43	7 February 2008	Mr J. Ruprecht	A/Director General	Department of Water, Government of Western Australia
44	8 February 2008	Mr Steven McKiernan	Water Policy Officer	Conservation Council of Western Australia Inc.
45	15 February 2008	Mr J. Ruprecht	A/Director General	Department of Water, Government of Western Australia
45	21 February 2008	Mr J. Ruprecht	A/Director General	Department of Water, Government of Western Australia

APPENDIX TWO

HEARINGS

List of hearings for the inquiry.

Date	Name	Position	Organisation
20 December 2007	Mr J. Camkin		Private Citizen
20 December 2007	Professor J. Imberger	Director	Centre for Water Research, University of Western Australia
8 January 2008	Mr Harry Ortheil	Farmer	Collie Preston Water Action Group
8 January 2008	Mr Geoff Calder	General Manager	Harvey Water
8 January 2008	Mr Mark Wilkinson	Chairman, Summer Fruit	Western Australian Fruit Growers' Association
	Mr Alan Hill	Manager	Western Australian Fruit Growers' Association
	Ms Diane Fry	Farmer	Western Australian Fruit Growers' Association
	Mr Chris Scott	Orchardist	Western Australian Fruit Growers' Association
15 January 2008	Mr Jeremy Hubble	Chief Executive Officer	Shire of Manjimup
15 January 2008	Mr Douglas Hall	Industry Development Officer	Irrigation Australia - WA Division
15 January 2008	Mr Stephen Dilley	Water Spokesman	WA Farmers Federation
	Mr Jim Turley	Executive Officer	vegetablesWA

ECONOMICS AND INDUSTRY STANDING COMMITTEE

Date	Name	Position	Organisation
25 January 2008	Mr Edward Roberts	Project Director - Water Law Reform	Department of Water
	Ms Elizabeth Weston	Manager, Water Licensing	Department of Water
	Mr John Ruprecht	Acting Director General	Department of Water
	Mr Michael Rowe	Manager, Policy Coordination and Reform	Department of Water
31 January 2008	Mr Chris Tallentire	Director	Conservation Council of Western Australia Inc
	Mr Steven McKiernan	Water Policy Officer	Conservation Council of Western Australia Inc

APPENDIX THREE

BRIEFINGS

Date	Name	Position	Organisation
28 November 2007	Mr Rob Hammond	A/Director General	Department of Water
	Mr Wayne Tingey	A/Director, Water Resource Use	Department of Water
	Mr Mike Rowe	Manager, Policy Coordination and Reform	Department of Water
6 December 2007	Mr Mike Rowe	Manager, Policy Coordination and Reform	Department of Water
	Mr Chris Ryan	A/Manager, Strategic Projects	Department of Water
	Ms Liz Western	Manager, Water Licensing	Department of Water
	Mr Andrew McTaggart	Team Leader, Salinity Recovery	Department of Water
17 December 2007	Ms Kerry Olssen	General Manager, Water Reform Group	National Water Commission
	Mr Kumar Rasia	Team Leader, Water Market Pricing	National Water Commission
	Mr Rodney Coulton	Water Market Pricing Officer	National Water Commission
20 December 2007	Dr W. Cox		Private Citizen

APPENDIX FOUR

LEGISLATION

List of Legislation (or other relevant information) used in the inquiry.

Example:

Legislation	State (or Country)
Income Tax Assessment Act 1997	Commonwealth
Trade Practices Act 1974	Commonwealth
Rights in Water and Irrigation Act 1914	Western Australia
Rights in Water and Irrigation Amendment Regulations 2000	Western Australia
Rights in Water and Irrigation Amendment Regulations 2007 (Gazetted 22 June 2007)	Western Australia
Rights in Water and Irrigation Amendment Regulations (No. 3) (Gazetted 28 December 2007)	Western Australia
Economic Regulation Authority Act 2003	Western Australia
Water Services Licensing Act 1995	Western Australia

APPENDIX FIVE

SCHEDULE OF FEES GAZETTED 22 JUNE 2007

Rights in Water and Irrigation Regulations 2000 Amendments June 2007

Schedule 1 — Fees

Division 1 — Fees for licences and permits

[Heading inserted in Gazette 22 Jun 2007 p. 2882.]

		(\$)
1.	Application for a permit (r. 4(1)(c)) or for amendment of a permit (r. 11)	200
2.	Application for a licence under s. 5C (r. 19(1)) or for amendment of a licence under s. 5C (r. 19(2)) ...	200
3.	Annual fee for a licence under s. 5C (r. 20(2), (3), (5)) —	
	Class Water entitlement kL each year	Fee (\$)
	1. 1 501 — 5 000	200
	2. 5 001 — 50 000	325
	3. 50 001 — 100 000	600
	4. 100 001 — 500 000	1 200
	5. 500 001 — 1 000 000	1 800
	6. 1 000 001 — 5 000 000	2 400
	7. more than 5 000 000	3 000
4.	Late fee for annual licence fee (r. 20(6))	200
5.	Fee for duplicate licence (r. 22(1))	50
6.	Application for approval of transfer of a licence, water entitlement or agreement referred to in the Act Sch. 1 cl. 30 (r. 28(1a))	200
7.	Application for a licence under s. 26D (r. 33(2)(d)) or for an amended licence under s. 26D (r. 40(d))	200
8.	Maximum amount for meter test (r. 44(4))	500

[Division 1 inserted in Gazette 22 Jun 2007 p. 2882-3.]

APPENDIX SIX

SCHEDULE OF FEES GAZETTED 28 DECEMBER 2007

Rights in Water and Irrigation Regulations 2000 Amendments December 2007

Schedule 1 — Fees

Division 1 — Fees for licences and permits

[Heading inserted in Gazette 28 Dec 2007 p. 6430.]

		(\$)
1.	Application for a permit (r. 4(1)(c)) or for amendment of a permit (r. 11)	200
2.	Application for a licence under s. 5C (r. 19(1)) or for amendment of a licence under s. 5C (r. 19(2)) ...	200
3.	Annual fee for a licence under s. 5C until 3 years after the day on which the <i>Rights in Water and Irrigation Amendment Regulations (No. 3) 2007</i> r. 18 comes into operation (r. 20(2), (3), (5)) —	
Class	Water entitlement kL each year	Fee (\$)
1.	1 501 — 5 000	100
2.	5 001 — 50 000	150
3.	50 001 — 100 000	250
4.	100 001 — 500 000	700
5.	500 001 — 1 000 000	1 600
6.	1 000 001 — 5 000 000	2 500
7.	5 000 001 — 10 000 000	4 000
8.	more than 10 000 000	6 000
4.	Late fee for annual licence fee (r. 20(6))	200
5.	Fee for duplicate licence (r. 22(1))	50
6.	Application for approval of transfer of a licence, water entitlement or agreement referred to in the Act Sch. 1 cl. 30 (r. 28(1a))	200
7.	Application for a licence under s. 26D (r. 33(2)(d)) or for an amended licence under s. 26D (r. 40(d))	200
8.	Maximum amount for meter test (r. 44(4))	500

[Division 1 inserted in Gazette 28 Dec 2007 p. 6430-1.]

APPENDIX SEVEN

ABSTRACTION CHARGES IN PRACTICE: THE BRAZILIAN EXPERIENCE

Note: In the electronic version of this report, Appendix Seven appears as a separate document.