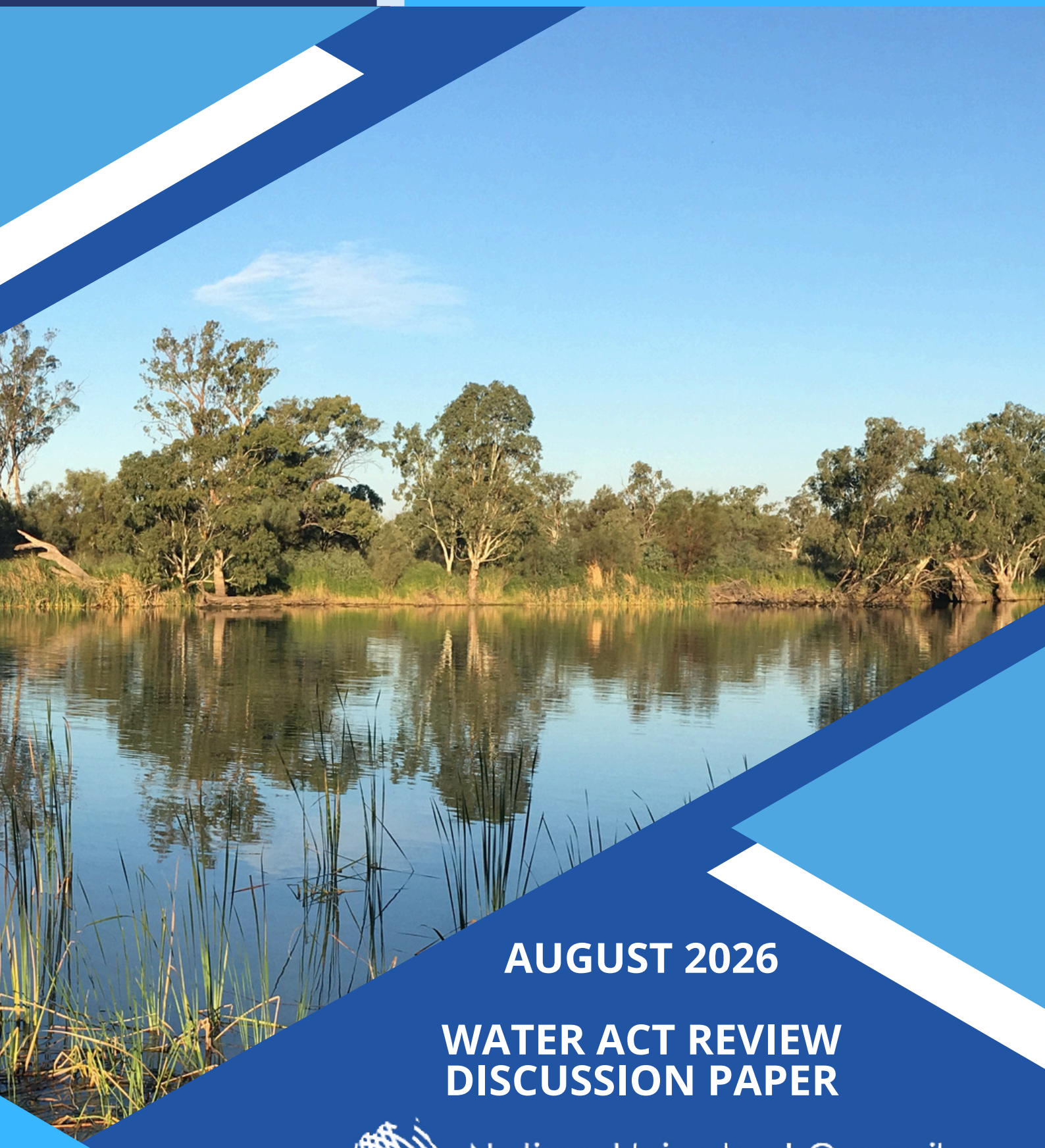
National Irrigators' Council

SUBMISSION: WATER ACT REVIEW



AUGUST 2026

WATER ACT REVIEW DISCUSSION PAPER

National Irrigators' Council

Food · Fibre · Future

Purpose

The National Irrigators' Council (NIC) provides this submission in response to the public consultation on the Independent Review of the Water Act 2007 (herein, the Review) – Discussion Paper.[1]

NIC has also provided a submission to the earlier consultation as part of this Review, in response to the paper "Strong Voices, Healthy Waters: upholding Aboriginal and Torres Strait Islander peoples' water rights through the review of the Water Act 2007".

NIC understands that submissions provided to the Basin Plan Review public consultation process will automatically be submitted to the Water Act Review, and refers to the comprehensive bodies of work completed by NIC:

- National Irrigators' Council - 'Moving Forward' Our Review of the Murray Darling Basin Plan
- National Irrigators' Council - Discussion Paper Submission

About us

The National Irrigators' Council (NIC) is the peak industry body for irrigated agriculture in Australia. NIC is the voice of irrigation entitlement holders, water delivery operators and industries involved in food and fibre production.

[1] Independent Review of the Water Act 2007 Discussion Paper July 2026

Executive Summary

This review of the Water Act 2007 (Cth) comes at a time of broader review of multiple water management instruments, include the 2026 Murray-Darling Basin Plan Review, renewal of the National Water Initiative (NWI) to a new National Water Agreement (NWA), Statutory Review of the Role of the Inspector-General of Water Compliance (IGWC), Menindee Lakes Review and more (as shown in Figure 1 below).

Figure 1: Concurrent Commonwealth Reviews, Inquiries or Strategies

While the outcomes of most of these reviews remain pending, the initial publications to date suggest the need for a clear shift to a more mature and sophisticated understanding of water resource management – one that recognises outcomes are more complex than "just adding water". A core focus of this review should be how the Water Act too can increase in sophistication to move towards being outcomes focused, not just water volumes.

The current Water Act was developed to oversee a significant reform agenda focused on 'addressing overallocation' centred on the Murray Darling Basin and the subsequent development of the Basin Plan, by establishing Sustainable Diversion Limits (SDLs), and processes for reducing diversions (i.e. water recovery). Large sections serve as an enabling instrument. Now with those objectives largely complete such as SDLs in effect with full compliance, and over 99% of water recovery to bridge the gap completed, there are learnings and new evidence on what is needed around the Basin. This is leading to a renewed priority shifting away from "just adding water", of which the role of the Water Act must also now move from one of 'enabling change' (i.e. implementation of the Basin Plan to achieve SDLs) to providing stability and certainty (i.e. ensuring ongoing compliance with the already established SDLs). This can be considered a natural progression of the Water Act, recognising the progress which has been achieved from over 30 years of reform.

Put simply, moving from a process of change to a framework of stability.

The future of the Water Act will heavily be influenced by the outcomes of the Basin Plan Review, and in turn, the decisions by the Federal Government on how they chose to respond. NIC has provided comprehensive and detailed submissions to the Basin Plan Review and has been advised those submissions will be considered as part of this review. Given the concurrent timing of these reviews, a process moving forwards for how Basin Plan matters (both with the current plan and any Basin Plan 2.0) will be incorporated into the Water Act is required for all stakeholders to have an opportunity for public consultation.

This submission addresses a range of matters, including direct responses to the questions in the Discussion Paper.

Two key questions central to all aspects of this review is:

1. ***What is the role of Commonwealth in managing water?***
2. ***What is the role of the Water Act 2007 (Cth)?***

Water management remains a power for the Australian States. This significantly limits the role and scope of the federal Water Act – and thus a core question when considering any of the matters raised in this review will be – is it a role for the Commonwealth? For the avoidance of doubt, NIC is not suggesting the roles of the Commonwealth or the States should change – rather – that as part of this review, the current Act and any proposed amendments remain within scope of these current existing power structures. There has been concern that the Commonwealth has in-effect sought to take a greater power over water management – such as by through prescriptive or rigid requirements for States to adhere to, which in effect, limits their ability to exercise their powers. Ensuring there is no jurisdictional-creep, eroding the powers of the States to manage their water resources in effect (directly or indirectly), is an important consideration.

It is important to note the complex and multi-layered architecture of water management instruments across State and Federal levels, and the specific role of the Water Act 2007. The Discussion Paper raised a broad range of water matters, many of which are not necessarily matters primarily for this instrument. The Water Act not addressing those matters does not mean they are absent from the broader water management framework because that is State responsibility (i.e. state-based instruments remain the primary instruments) and attempting to bring them into the Water Act risks duplication, additional complexity, and potential inconsistency. Keeping a specific focus to this instrument will be critical for this review.

For NIC, the greatest problem with the Water Act is the failure to properly assess and protect social and economic outcomes, particularly water for agriculture, and the flow-on impacts to communities dependent on it. The Water Act has served to govern a process to remove water from agriculture, shrinking the consumptive pool, in direct contradiction to its objects to "promote the use and management of the Basin water resources in a way that optimises economic, social and environmental

outcomes" and "to improve water security for all uses of Basin water resources". The Act has done the opposite: 1 in 3 litres of water has been removed from agriculture in the Basin, with diversions now just 28% of inflows. Moving forwards, creating stability via no further changes to SDLs (or removal of water from agriculture by any means) will be critical to ensuring the viability, profitability and diversity of irrigated agriculture in Australia. As shown by recent announcements by SunRice of large-scale redundancies directly attributed to water policy, the capacity for the industry to absorb continued reductions in water access has been reached. The ability for Australia to have agriculture capabilities is a core part of the national interest (note Object 1 to: "*enable the Commonwealth, in conjunction with the Basin States, to manage the Basin water resources in the national interest*", and greater attention is required to ensuring water resources are managed in a way that supports this.

While it is absolutely recognised that ensuring sustainable levels of diversions are a core part of water resource management – with SDLs now in effect with full compliance – the evidence is overwhelming showing that non-water drivers (which require complementary measures) are now the largest degradation driver. The Act attempts to consider this, with the Object that "Basin water resources takes into account the broader management of natural resources in the Murray Darling Basin", however, there remains few (and not coordinated or well-funded) initiatives to give effect to it. This similarly applies to institutions such as the MDBA whom currently have a limited water remit in the legislation to water, rather than broader natural resource management. Moving forwards, the Act must consider the institutional and governance frameworks to integrate water resource management with natural resource management more broadly.

While some stakeholders claim that SDLs may not reflect an Environmentally Sustainable Level of Take (ESLT) because of compromised outcomes for key assets or ecosystems – the evidence shows the key driver of those outcomes is non-water related - such as invasive species, lack of lateral floodplain connectivity due to constraints, and barriers to fish passage – and changes to diversion limits would not (and cannot) achieve the desired outcomes. The NIC Basin Plan Review Submission provides more detail. Greater recognition in the Act of these multiple drivers is critical, such as clarification that compromised outcomes to any components of the ESLT definition does not necessarily mean the SDL is wrong (or not reflective of an ESLT), if changing that SDL would not materially change outcomes.

This Review is an opportunity to shift from a process of change to a framework of stability. This is an important milestone to update the Act to reflect the significant change which has now occurred via the Basin Plan, incorporate lessons learned, and move forward to reflect todays prioritises for water management.

Key recommendations

Topic	Recommendation
Updating the Water Act to reflect Basin Plan implementation	Provide stability via no more changes to current SDLs (including SDLAM-adjusted SDLs), with no further reductions to the consumptive pool, nor any reductions to the reliability, availability or accessibility of water for all water access entitlement holders.
	Investment in a strategic and coordinated package of actions targeted to minimising risks to environmental outcomes - known as complementary measures.
	Re-prioritisation of funding away from any further water recovery (including both the recovery of additional HEW ('the 450GL'), and any SDLAM-shortfall) towards complementary measures and community-supported constraints programs. Remove legislative requirements to recover SDLAM shortfall, and ability to purchase an additional 450 GL, as the initial assessments show no or marginal improvements. The Water for Environment Special Account (WESA), which is due to expire, can now be repealed.
	Fund community-supported Constraints-Management-Projects to optimise the opportunity for delivery and environmental outcomes.
	Detach supply and constraints projects from volumetric-equivalent water-recovery fallbacks, to recognise their benefits which cannot be substituted by further water recovery.
	Provide clarity on processes going forward for 'unresolved issues' currently being considered in the Basin Plan Review, and beyond (such as SDLAM reconciliation) as part of the draft advice.
General updates to contemporise	NIC recommend stripping back the Water Act to remove the focus on recovery volumes and instead focus on the outcome – SDL compliance.
	Much of the legislation is effectively 'enabling' legislation – i.e. the processes for water recovery to reduce usage to reach SDLs. Where specified actions have been completed, they can now be repealed from the legislation (i.e. water recovery).
Outstanding NWI updates	NIC recommend the entitlement characteristics – as specified in the NWI (31-32) and NWA (7.1-7.4) - should be brought forward into the legislation, as they ultimately underpin the very foundations of the contemporary framework.
	Insert the NWI and NWA provisions (6.3) relating to where water recovery may need to occur for environmental or other public

	interest reasons, as a schedule to the Water Act. There is a role of the Commonwealth in protecting the integrity of this entitlement-based framework, as per the vision of the NWI, as has been agreed across jurisdictions.
	The Risk Assignment Framework is maintained as per the NWA within the Water Act.
Modernising ESLT to reflect more sophisticated understanding of water-related outcomes	NIC recommend a note is added to the definition of ESLT to clarify that environmental assets, ecosystem functions, the productive base or environmental outcomes being 'compromised' (i.e. having poor outcomes) does not necessarily mean the SDL is not reflective of an ESLT, recognising the diverse drivers on those outcomes beyond just diversion levels. For example: "*It is acknowledged there are multiple drivers that may contribute to any of (a) to (d) to be considered compromised, therefore poor performance of (a) to (d) does not necessarily mean the SDL does not reflect an ESLT*."
	NIC recommend inserting into the definition "… *to the extent that changing levels of take has the capability to meaningfully materially contribute to improving those outcomes*" and "*subject to the principles of 6.3 of the NWA*". This is to recognise that changes to the SDL may not necessarily improve those outcomes.
Objects of the Act	a) This objective should be removed, or significantly revised, to reflect the <u>actual</u> role of the Commonwealth. For example, to enable the Commonwealth in conjunction with the Basin States, to facilitate, coordinate and make contribution to the management of Basin water resources in the national interest (noting the Commonwealth does not have the powers to '*manage*').
	b) As part of the review, ensure that the Act in its current form, and any proposed amendments, are in-respect of this existing Constitutional framework, and don't seek to go beyond it (directly or indirectly).
	c) Expand 'relevant' agreements to take a broader scope to include Australia's international agreements relating to agricultural production, and other social and economic outcomes.
	(d)(i) requires amendment to recognise water resources are no longer overallocated, to shift from an enabling agreement (i.e. the process to move from BDL to SDL), to a long-term compliance, monitoring and accountability framework with these SDLs. Specifically, remove 'return to' and replace with 'maintain', and remove 'that are overallocated or overused'. (d)(iii) is crucial to be maintained, however, the Act must identify specific measures to meet this Object, or at least, not serve a fundamental purpose to its contrary.

	e) Maintain this Object, recognising that to give effect to it requires three complementary actions: • no further changes to SDLs or further water recovery; • water security for all users can be improved by providing stable policy, transparent and predictable settings; as well as; • ensuring future-ready infrastructure that includes ensures investment in current or new infrastructure and supply sources that improve overall water security rather than redistribute it.
	f) Maintain this Object and ensure the Act and implementation of it does more to meet this Object.
	g) Maintain this Object and ensure the Act and implementation of it does more to meet this Object.
	h) Maintain this Object and ensure the Act and implementation of it does more to meet this Object.
First Nations	• A transparent, coordinated, whole of Government approach should be enabled, rather than individual agencies, legislation or portfolio areas. •Opportunities for synergies and co-benefit outcomes need to be identified, rather than a purely siloed approach. • The role of both legislative and non-legislative pathways forward is explored, such as programs. • The current rights and arrangements across instruments (State and Federal) must be comprehensively documented in consultation materials and in the final review, to ensure the full extent of current arrangements are considered. • The specific issues with the status quo are documented (such as processes being timely or difficult to navigate, the ongoing expenses of entitlements, etc) to ensure the right problem-definition is established. • Any legislative amendments being contemplated are done so in a manner that is consistent with the current NWI water management framework (i.e. water entitlement framework, as per the NWI characteristics); which necessarily involves no third-party impacts on current water entitlements, their reliability, nor any legal or practical changes to entitlement characteristics. • Any legislative amendments or review recommendations intended to give effect to a renewed NWI / NWA only occur after the agreement of the States and Territories has been obtained, to continue the critically important legacy of state cooperation.

	• Incorporate definitions as per the NWA to clarify key terms (particularly, FPIC) within the context of water management and the proposed arrangements being sought. • Further public consultation seeks to identify specific targeted measures to address the diverse range of objectives sought, so stakeholders can be engaged on actual detailed proposals. • Public consultation materials and the final review must clarify specifically what cultural outcomes are being sought – and how these can be achieved. • Public consultation materials and the review also show the positive successes, including effective partnerships programs, to which there are many examples. • The review critically analyses whether the proportion of water entitlement ownership by First Nations is the right indicator to focus on, or what other indicators may better reflect the outcomes being sought by First Nations peoples. • The review undertakes fact-checking on the statistics being published by DCCEEW as part of the review – or at least - provides crucial methodological context. • Further work is required to ensure appropriate governance arrangements, to ensure realisation of objectives, and accountability for proper use of public funds. • As part of the ongoing public consultation, the outcomes of recent and ongoing work to improve First Nations engagement and representation is published.
IGWC	NIC recommend that this Review builds from the findings of the Statutory Review of the Role of the Inspector General of Water Compliance and engages further on the recommendations during consultation.
MDBA	Consider whether the role and scope of the MDBA will need to change, given the increasing emphasis on non-water components.
CEWH	Insert the below clause from the Intergovernmental Agreement on Implementing Water Reform in the Murray Darling Basin that: *"Except as otherwise agreed between the Commonwealth and the relevant State(s) to facilitate improved environmental watering, Basin States agree that the characteristics of licensed entitlements held for environmental use will not be enhanced or diminished relative to like entitlements held and used for other purposes. This includes that they will be subject to no less favourable conditions, including with respect to fees and charges, access to allocations,*

	capacity to use, trade, and carryover, than like entitlements held for other purposes. The Parties note that any agreement to change the characteristics of licensed entitlements held for environmental use should not impact on another state's water availability, rights or entitlements under the Murray-Darling Basin Agreement unless agreed to by the affected state." This is a key governance requirement to ensuring all water entitlements are treated as equal – critical to the integrity of the framework as a whole. This includes that irrespective of the holder of the entitlement, the same rules apply.
	Opportunities for the Review to provide greater protections to other entitlement holders from third-party impacts of the management of the CEWH portfolio should be considered.
	Review the current barriers to the CEWH to being more active in the water market and including specific and clear provisions to address these in the Water Act to allow entitlement trade back into the consumptive pool using the existing option to re-invest the proceeds towards projects to benefit the environment.
	For improved transparency, ongoing monitoring of measurement accuracy and means is undertaken on all forms of water, including environmental water is needed and can be included as part of this Review. Currently the focus is on metered take from groundwater or surface water, further work should occur to improve the transparency of environmental water use and measurement.
WRPs	The purpose and function of the WRP must be reconsidered, and the legislation updated to remove the prescriptive requirements and processes. Options presented by the MDBA should be explored, such as limiting the requirements an accredited WRP instrument must satisfy to those critical to Basin Plan implementation, as well as States would instead demonstrate consistency with Basin Plan criteria through standardised assurance reporting, rather than detailed WRP accreditation.
Environmental Water	Examine how complementary or non-flow measures can be best delivered alongside water management. Decoupling water-related outcomes from the need for Held Environmental Water (HEW) or volumetric equivalence, will provide important opportunity to achieve outcomes, rather than simply using water volumes as a proxy. Ensuring the appropriate governance arrangements for the strategic delivery, and funding of, complementary measures across the Basin – i.e. expanding the scope of the MDBA or the CEWH to

	oversee the delivery of complementary measures, and broader natural resource management.
Water Security	Resilient communities need certainty and stability in the rules to provide water for economic, social, environmental and cultural purposes and information to mitigate risks to plausible changes in water availability. The review should also recognise that water security depends also on the physical suitability of the infrastructure and supply sources that deliver water to users. This requires: (i) governments prioritising investment to address the current infrastructure funding shortfall, ahead of any further water recovery; (ii) a review of barriers to investment in, and use of, alternative and diversified water supply sources; and (iii) modelling of agricultural water availability and affordability under a range of future climate scenarios.
Climate change	The review to identify the multiple water policy mechanisms already in place to respond to climate change – such as water allocations at a state level, and Incident Response Guides at a Basin-level. Current policy settings are already adaptive and should be maintained including state-based allocations systems and Murray Darling Basin Incidence Response Guides, rather than replaced or supplemented with new Commonwealth climate powers or requirements. The Act should, however, support: (i) systematic, long-term tracking of entitlement reliability trends under a changing climate; (ii) periodic scenario-testing of current settings against a range of plausible future climate conditions, wetter and drier, acknowledging uncertainty; and (iii) the Commonwealth's role in maintaining consistent national water data and supporting investment in fit-for-purpose water infrastructure.
Socio-economics	NIC recommend "Basin-scale" be removed from socio-economic considerations in the Act. We recommend that multi-scale benchmarking occurs that considers the cumulative policy effects on communities, to inform programs and future decision making. Any future assessments should also include water market impacts which have been previously excluded. Reflect "Feeding Australia: A National Food Security Strategy" in the Water Act by ensuring adequate water security to meet requirements for the agricultural sector, for Australia's food security and to play Australia's role in global food security efforts. It will be important for the review to capture the role of irrigated agriculture and water for production, for rural social and economic outcomes which includes Indigenous outcomes.
Water quality	Including water quality as a clearer consideration in objectives for the planning and use of the CEWH portfolio is considered the best

	opportunity for the Water Act to consider water quality challenges in the Murray Darling Basin. Investment in complementary measures, such as facilitating improved land and water management options, carp control and improved integrated catchment management can contribute to improve water quality.
Water information	It is recommended that the BoM Water Information portal is revised to have an increased focus on the accessibility of user-friendly information, targeted to the sorts of information that users need to access.
	NIC recommend the Water Act require jurisdictions to track entitlement reliability over time, including accounting for any variations (i.e. whether due to climate, or changes in government policy), to ensure the ongoing integrity of the entitlement-based water management framework envisioned by the NWI. This should be included in reporting obligations similar to water take data for SDL compliance.

Contents

Part 1) Updating the Water Act to reflect the Basin Plan

Process

A substantial focus of the Water Act is to give effect to the Basin Plan. Given the ongoing Basin Plan Review and pending decisions to be made by the Federal Government on next steps, it is difficult to provide input into the flow-on ramifications for the Water Act at this point in time. Those outcomes are likely to have material impacts on the construction and operation of the Act itself, both in terms of amendments to the Act to reflect the status of the Basin Plan, as well as any "Basin Plan 2.0". In the absence of final outcomes from the Basin Plan Review, it is challenging for stakeholders to be comprehensively consulted on those aspects at this point in time.

Clarity on processes going forward for these 'unresolved issues' must be part of the draft advice including the proposed consultation approach to drafting and consulting on the updated legislation in 2027.

Incorporating updates from the Basin Plan Review

NIC understands that submissions provided to the Basin Plan Review will also be utilised for the Water Act Review consultation and therefore refers to the substantial matters raised in the NIC submission.

A summary of the key recommendations from the NIC Submission is shown below in box1 below (refer to full submission for further details).

No further changes to SDLs (including SDLAM-adjusted SDLs) are needed. This means no more water recovery, via any means.

After three decades of reform, now is the time for stability.

The MDB priorities have shifted to optimise the existing investment through complementary and integrated land and water management – as well as restoring confidence in water security for agriculture.

Basin Plan 2.0 - moving forwards involves:

- **Providing stability via no more changes to current SDLs** (including SDLAM-adjusted SDLs), with no further reductions to the consumptive pool, nor any reductions to the reliability, availability or accessibility of water for all water access entitlement holders.
- **Investment in a range of strategic and coordinated package of actions targeted to minimising risks to environmental outcomes - known as complementary measures**; including but not limited to:

- **Investment** in a coordinated, industry involved, MDB Native Fish Strategy focused on invasive species control, strategic fish passageway, government supported fish screening, practical cold water pollution measures, and riparian land management practices to support native fish;

- **Community-supported Constraints-Management-Projects**[2] **to optimise the opportunity for delivery and environmental outcomes** including:
  - Strong commitment to continue community supported projects under-way (New South Wales' Murrumbidgee Reconnecting River Country program and extend the Gwydir Reconnecting Watercourse Country program beyond December 2026); and
  - Further work with communities to undertake, participatory, local program for staged constraints programs and novel solutions in other areas (Goulburn and Murray) recognising and reflecting any changes to downstream environmental objectives;
- **Expand opportunities to optimise environmental outcomes through improved partnerships** including:
  - Direct investment in supporting landholders, industry and Irrigation Infrastructure Operators to undertake voluntary land and water management partnerships, based on current exemplars;
  - Enabling opportunities to strategically target environmental outcomes utilising novel, temporary market-based solutions such as lease or temporary purchase in partnership with water users; and
  - Fostering collaboration with First-Nations in the above, such as through Indigenous Caring for Country programs or projects like the Billabong Project.

Basin Plan 1.0 – must also move forward:

The evidence-base developed through the Basin Plan Review process must also be used to inform the remainder of Basin Plan 1.0 – specifically, the SDLAM shortfall, and potential further water purchases under the 450 GL of additional HEW.

Without change, the status quo will result in further water recovery of an estimated 635 GL, despite today's science showing water recovery is no longer the environmental priority (and with large cost, and socio-economic impacts). This requires:

- **Re-prioritisation of funding away from any further water recovery** (including both the recovery of additional HEW ('the 450GL'), and any SDLAM-shortfall) towards complementary measures and community-supported constraints programs.
- **Removing the ability to recover additional HEW**, and detaching supply and constraints projects from volumetric-equivalent water-recovery fallbacks, to

[2] National Irrigators' Council - Constraints Management Position Statement

recognise their benefits which cannot be substituted by further water recovery.

How do we move forwards?

Moving forward will necessarily require working together in partnership with Basin communities, landholders and industries – given the nature of issues to be addressed. This will need to involve further work to **develop detailed and targeted response options on a valley and local level**, particularly for those areas where environmental risks are identified.
It is unlikely that specific detailed options can be finalised, with proper community input, prior to required timeframes for a recommendation to the Minister on next steps. Lessons learnt from the Plan to date caution against rigid legislation with premature program design, or linking project delivery to threats of further recovery which erodes community trust.

NIC recommends the design of any Basin Plan 2.0 (as an integrated water management plan to optimise water recovered for the environment rather than a further water recovery plan) must be a process for empowering communities to be part of future solutions to achieve improved environmental outcomes whilst valuing their social, economic and cultural interests through co-design, and participatory processes – within a defined scope set of high-level programs, rather than the current inflexible, legislative outputs like SDLAM.

Further specific recommendations are contained in the NIC Submission to the Basin Plan Review.

Completed components

Much of the legislation is effectively 'enabling' legislation – i.e. the processes for water recovery to reduce usage to reach SDLs. Where specified actions have been completed, they can now be repealed from the legislation. For example, water recovery targets and the clauses relating to the Water for Environment Special Account, which is due to expire. This is part of shifting the Basin Plan from a plan of water recovery to an ongoing stable framework for water management.

Getting back to core functions

In our perspective, the core function of the legislation is the establishment of, and ensuring compliance with, SDLs.

The rigid requirements on 'how' to achieve those SDLs have been counter-productive, and distracted from the outcomes focus which should be the core issue – are SDLs in place and being complied with?

Recommendation: NIC recommend stripping back the Water Act to remove the focus on recovery volumes and instead focus on the outcome – SDL compliance and

progress towards environmental, social, economic and cultural outcomes around the Basin (see section on ESLT and SDL below).

ESLT and SDL

The Water Act requires that: "*A long-term average sustainable diversion limit must reflect an environmentally sustainable level of take*", which is defined in the Act as:

"*environmentally sustainable level of take for a water resource means the level at which water can be taken from that water resource which, if exceeded, would compromise:*

(a) key environmental assets of the water resource; or

(b) key ecosystem functions of the water resource; or

(c) the productive base of the water resource; or

(d) key environmental outcomes for the water resource."

Since the time the Water Act was initially drafted, there has been an increased sophistication in understanding the drivers of environmental health in the Basin, as more complex than levels of diversions alone.

The MDBA have said that:

"*When the Basin Plan commenced it was assumed that water for the environment to key sites would be sufficient to maintain ecological health across the Basin. We have learnt it is more complex and challenging than this…*"

With this deeper understanding of the complexities of achieving these outcomes, it will be important that the definition of ESLT and its interpretation in the Act, also reflects this matured perspective that water alone is not the sole determinant of compromising either the assets, functions, or productive base of outcomes as listed in the definition of ESLT.

The Object of the Act relating to taking "into account the broader management of natural resources in the Murray-Darling Basin" goes towards this broader interpretation of the diverse levers that are necessarily involved to determine compromised outcomes.

While it is agreed that the current definition of ESLT remains mostly sound in that level of diversions should not compromise those listed components – the Act must mature to also reflect the multiple drivers on those outcomes (not just diversions levels) – to ensure correct interpretation into the future.

Put simply, it is important to recognise that any one of the above (a – d) being compromised does not necessarily constitute the SDL not reflecting an ESLT, as there are a variety of drivers which determine key environmental assets, functions and outcomes.

As the natural resource management objective sits outside the core ESLT object, the adoption and consideration of NRM is often considered subsidiary and perceived to be in addition to achieving the ESLT, rather than a contribution to the similar outcomes

ESLT is also working to achieve. Given what we now know, it is worth considering the benefit of taking an outcomes approach, rather than considering these in isolation.

Recommendation: A note is added to this definition to clarify this, such as: "It is acknowledged there are multiple drivers that may contribute to any of (a) to (d) to be considered compromised, therefore poor performance of (a) to (d) does not necessarily mean the SDL does not reflect an ESLT."

Further, NIC recommend inserting into the definition "… to the extent that changing levels of take has the capability to materially contribute to improving those outcomes" and "subject to the principles of 6.3 of the NWA".

Part 2) Response to Questions

1. To what extent have the objects of the Water Act been achieved?

Overall, many of the Objects of the Act seem detached from what the Act serves to do in practice, and/or has the powers to give effect to. The Act itself has a relatively specific remit in terms of its function, whereas the Objects are broad, universal and very ambitious. This leads to the Act presenting as it has more Authority or influence over water management around Australia than what it legally does, particularly outside the Murray Darling Basin.

The below Table 1 goes through each of the Objects with NIC analysis and recommendations. The recommendations can be classified as:

- Object is sound and achieved
- Object is sound but not achieved
- Object is not sound / fit-for-purpose and requires amendment.

Object (a)

a) to enable the Commonwealth, in conjunction with the Basin States, to manage the Basin water resources in the national interest;

Recommendation: Object is <u>not</u> sound / fit-for-purpose and requires amendment.

This objective should be removed, or significantly revised, to reflect the <u>actual</u> role of the Commonwealth. For example, to enable the Commonwealth in conjunction with the Basin States, to facilitate and make contribution to the management of Basin water resources in the national interest.

Analysis:

Given the limited role of the Commonwealth in water management, where the States maintain powers for water resource management, this objective is not suited and cannot be delivered. Indeed, the Commonwealth cannot 'manage' Basin water resources, it at best can coordinate, support and guide the States in their management.

Commonwealth cannot 'manage' Basin water resources, it at best can coordinate, support and guide the States in their management.

As outlined in the Discussion Paper 3.1 it is the States who '*manage water resources in accordance with plans for overarching strategy*' and '*develop statutory and non-statutory water plans (for water sharing, floodplain management, water quality management, and catchment management)*' etc.

The only water available to the Commonwealth to '*manage*' is the portfolio of Held Environmental Water it has acquired, in accordance with the States to which those water entitlements are held, and the relevant management plans and arrangements.

Object (b)

(b) to give effect to relevant international agreements (to the extent to which those agreements are relevant to the use and management of the Basin water resources) and, in particular, to provide for special measures, in accordance with those agreements, to address the threats to the Basin water resources;

Recommendation: Object is <u>not</u> sound / fit-for-purpose and requires amendment.

As per the above, the constitutional grounds for the Commonwealths role in water resource management is a primary consideration. This is a critically important consideration in the validity of the legislation, as well as determining the scope and role.

Note: NIC is not suggesting the roles of the Commonwealth, or the States should change in terms of powers for water management– rather – that as part of this review, the current Act and any proposed amendments remain within scope of these current existing power structures. There has been concern that the Commonwealth has in-effect sought to take a greater power over water management – such as by setting prescriptive requirements for States to adhere to. Ensuring there is no jurisdictional-creep, eroding the powers of the States to manage their water resources in effect, is an important consideration.

Background:

Water remains a power for the Australian States – as a residual power – which was not granted to the Australian Parliament in the Australian Constitution (see s 51).

Therefore, for the Commonwealth to be involved in water management of the States, they need to find some of other form of power within the Constitution to rely on instead (or seek a referral of powers from the States).

In the drafting of the Water Act 2007, with the States not willing to refer full powers (noting some very specific and limited referrals on particular matters), the Australian Parliament largely relied upon their 'external affairs' powers of the Constitution instead (s 51). The claim was that to satisfy international agreements (such as the Ramsar Convention), the Australian Parliament was required to act to shape water policy and is thus an 'external affair'.

In short, this effectively serves as a work-around to otherwise requiring: (i) referral of powers from States, (ii) consensus building with the States via agreement to make changes via State Parliament or, (iii) a referendum to change the Constitution to give the Commonwealth more powers. Note – this is not proposed – this is simply explaining the current status quo of the options available if the Commonwealth sought to 'manage' water resources (which is an Object of the Act) which otherwise remains a State power.

Analysis:

As part of this Review, it will be important to ensure that the Act in its current form, and any proposed amendments, are in-respect of this existing Constitutional framework, and don't seek to go beyond it (directly or indirectly). Stakeholders have been concerned that the Commonwealth Government have been going beyond their

powers, such as via prescriptive requirements which dictate how States must manage water resources.

At its core, the history of water management in Australia has a long legacy based on collaboration and agreement between jurisdictions (albeit challenging at times), and it is crucial this consensus-based model continues rather than a move towards a Commonwealth dictated approach. A lot of the Water Act 2007 came from the National Water Initiative (NWI) which has served as a positive example of jurisdictions coming together to form an agreed national blueprint, including key matters for States to deliver. The lack of State agreement for the National Water Agreement (NWA), at this point in time (as well as frustrations reported by jurisdictions with the process) has created nervousness of a shift away from this consensus-model, and a more top-down approach of the Commonwealth.

The heavy reliance on international agreements in the Act, is seen as a way for the Commonwealth to go-around the current Constitutional structures, and in effect, serves as a power-creep.

Part of this review should consider whether relying upon 'international agreements':

- Is necessary, given the specific and very limited referral of some powers eventually provided from Basin states (e.g. relating to SDL compliance) which was uncertain at the initial time of drafting;
- Is a legitimate claim of 'external affairs' in the context of both the binding and non-binding international agreements it seeks to serve, such as going over and above Australia's obligations to ratifying those agreements (i.e. compared to the actions undertaken by other nations to ratify or support those agreements), and other possible pathways to give effect to agreements;
- Is consistent with best-practice (such as the legacy of state cooperation and consensus in water management), or whether a non-legislative pathway would be more conducive to best-practice (as well as constitutionally valid for the Commonwealth) - such as via an NWI-style instrument with state agreement to adopt the relevant measures into State legislative frameworks if agreed;
- Impacts the effectiveness of the Act – such as by tilting it towards those agreements deemed 'relevant' (such as Ramsar) rather than a more comprehensive view on Australia's water resource management, in a uniquely Australian context aligned with the national interest;
- Is helpful or a hindrance to the national interest (objective a);
- Has ongoing relevance after the implementation phase of the Basin Plan.
  This object should be reconsidered to determine its necessity and effect. Where the Commonwealth is needing to lean on the 'external affairs' powers likely shows a breakdown of jurisdictional relations, and multijurisdictional cooperation, and focus should instead be on reaching agreement with the States, not overriding them.

It is also important to note that if indeed the 'external affairs' claim stands, under normal rules of statutory interpretation a valid Commonwealth law overrides an inconsistent State law. With the delicate Constitutional architecture, clarification that

the Water Act 2007 is not intended to override State legislation is important. This clarification should be added to the Act.

Object (c)

(c) in giving effect to those agreements, to promote the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes;

Recommendation: Object is sound but not achieved, relevant agreements need broadening.

Expand 'relevant' agreements to take a broader scope to include Australia's international agreements relating to agricultural production, and other social and economic outcomes.

Analysis:

As per the above, one effect that the delicate Constitutional architecture has in relying on international agreements to enact the 'external affairs' powers of the Commonwealth is that the legislation (and thus its subordinates) becomes heavily tilted towards those international agreements, rather than what otherwise may be a more comprehensive broad set of objectives tailored to the unique Australian circumstances for water resource management and broader national interest.

The specific international agreements listed in the Act as 'relevant' are almost entirely environmentally or culturally focused. There is no specification of agreements relevant to agriculture, food security, economics, trade or rights of peoples in rural areas – despite these existing – and which are fundamentally relevant. Given this Object specifies giving effect to agreements "*in a way that optimises economic, social and environmental outcomes*", not specifying agreements relevant to these other outcomes means the Act is not serving to optimise social or economic outcomes, only environmental.

For example, the Basin Plan is heavily tilted towards objectives to satisfy the Ramsar Convention on Migratory Birds, to the detriment of broader consideration of social, economic and even Australia's national interest. As is explored later in this submission, there is very little in the Water Act 2007 to serve social and economic interests, nor Australia's national interest to maintain viable, productive and sustainable agricultural capabilities into the future. To the contrary, much of the Act is about reducing the amount of water in the consumptive pool of water for agriculture – directly and explicitly the opposite. The water security for Australia's agricultural sector is a vital part of Australia's broader national interests, including national security interests, which has no current consideration in the Act.

When looking at international agreements, to which Australia is signatory, there are many examples where managing water resources to give effect to those agreements is never intended to be at the detriment of food production or social and economic outcomes.

For example, Article 2 (1)(b) of the Paris Agreement states:

"This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by: … (b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, ***in a manner that does not threaten food production****".*

Finally, almost all of the international agreements identified in the Act have, to some extent, limitations on how they are intended to be applied in a domestic policy context – such as to enable them to be tailored to domestic conditions, as well as consideration of the role of humans in the environment too. For example, the Ramsar Convention begins by "*Recognising the interdependence of Man and his environment*". The Convention on Biological Diversity states: "*States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies…*". The way the Australian Government gives effect to those agreements must be in respect of the unique Australian context. Ex

In summary, this object cannot be met by the current Act which expressly seeks to remove water from productive use, with known and well-documented social and economic impacts.

Object (d)

d) without limiting paragraph (b) or (c):

> *(i) to ensure the return to environmentally sustainable levels of extraction for water resources that are overallocated or overused; and*
>
> *(ii) to protect, restore and provide for the ecological values and ecosystem services of the Murray-Darling Basin (taking into account, in particular, the impact that the taking of water has on the watercourses, lakes, wetlands, ground water and water-dependent ecosystems that are part of the Basin water resources and on associated biodiversity); and*
>
> *(iii) subject to subparagraphs (i) and (ii)—to maximise the net economic returns to the Australian community from the use and management of the Basin water resources; and*

Recommendation: Object is sound and achieved, minor amendment to modernise to reflect progress.

Object is sound and achieved – minor amendment to modernise to reflect progress.

Object (d)(i) requires amendment to recognise water resources are no longer overallocated, to shift from an enabling agreement (i.e. the process to move from BDL to SDL), to a long-term compliance, monitoring and accountability framework with these SDLs. Specifically, remove 'return to' and replace with 'maintain', and remove 'that are overallocated or overused'.

Object (d)(iii) is crucial to be maintained, however, the Act must identify specific measures to meet this Object, or at least, not serve a fundamental purpose to its contrary.

Analysis:

(i) This object has been achieved, as Sustainable Diversion Limits (SDLs) have come into effect, with compliance.

SDLs came into effect in 2019, and the latest SDL Compliance Reports and Registers of Take show full compliance in every water resource area.[3] The Compliance Statement by the Inspector-General of Water Compliance (IGWC) says: "*For the 2024-25 water accounting year, all 91 assessable SDL resource units were compliant*"[4].

Analysis by NIC, based on MDBA data, shows that this means 72% of water remains in rivers non-diverted, with only 28% available for diversion for a range of uses.[5] Analysis by the MDBA shows that further water recovery would not change most environmental indicators across the Basin, with 92% of environmental themes across the Basin not registering a modelled improvement if further water recovery was to occur.[6]

The initial SDL assessments by the MDBA found for surface water, 21 units confidently have an SDL set at an ESLT, with another 5 likely, and only 3 unable to be determined at the point of the initial assessments (noting publication of the final assessments are imminent). Likewise for groundwater, 77 units of 80 were found to be confidently reflect an ESLT, with our understanding that further work since provided by NSW has shown confidence of these remaining units. Analysis by NIC of this MDBA data found that for no unit, is water-sharing the problem.[7]

The Basin Plan has meant the 'over allocation' or 'overuse' problem-definition which was the focus of the NWI and therefore the Water Act at the time of its conception, is no longer the priority issue (if an issue at all). This is the product of the Basin Plan, and the recovery of nearly 1 in 3 litres of water from productive use.

Moving forwards, this means the Water Act itself can mature, to no longer be centred around the problem-definition of overallocation. In practice, this means the ongoing maintenance of SDLs which will remain an integral part of the Water Act. However, the object should be revised to shift from what is an enabling agreement (i.e. the process to reduce diversions to 'return' to sustainable levels), to one of the ongoing compliance with this limit.

iii) This object cannot be achieved by the Act in its current form.

The Act, in its current form, is focused around reducing the volume of water available for productive purposes, to increase water for environmental use. This is directly contradictory to the object of maximising net economic returns to the Australian community. Indeed, the Basin Plan has been shown to have both modelled and

[3] 2024-25 Sustainable Diversion Limit Accounts Registers of take
[4] Sustainable Diversion Limit Compliance Statement 2024-2025
[5] See the NIC submission to the Basin Plan Review for further details.
[6] See the NIC submission to the Basin Plan Review for further details.
[7] See the NIC submission to the Basin Plan Review for further details – Table 1, Page 15.

actual impacts on agricultural production, and flow-on impacts to both the local, regional, and macro economies.

There has been a series of socio-economic assessments undertaken to date, however, many have been flawed by poor data availability, or by being undertaken at a Basin-scale, smoothing over localised impacts to specific communities and industries.

The Southern Basin community profiles completed by the MDBA in 2017 showed very concerns changes at a community level.[8] Similarly, the Northern Basin social and economic analysis at a community level similarly produced concerning outcomes. NIC has drawn upon those outcomes, and included more recent Census data, to find the following:

- Wakool in Southern NSW has seen 38% of productive water removed, with a 57% decrease in employment, 66% decrease in agricultural employment, and 34% reduction in irrigated area.
- Berri in SA has seen 31% of productive water removed, with a 9% decrease in employment, 52% decrease in agricultural employment, and 25% reduction in irrigated area.
- Collarenebri in Northern NSW has seen 66% of water removed, with a 47% decrease in employment, 52% reduction in agricultural employment, and 66% decrease in irrigated area.
- Dirranbandi in QLD has seen 25% of productive water removed, with a 4% decrease in employment, 10% decrease in agricultural employment, and 25% reduction in irrigated area.[9]

Further, a report by Frontier Economics, commissioned by the Victorian Government, examined the social and economic impacts of Basin Plan water recovery in Victoria. It found:

> *"If an additional 760 GL in total (372 GL for 'Bridging the Gap' plus 388 GL for Efficiency Projects) were to be recovered via buyback, in line with the CEWH's existing portfolio, the average annual cost in foregone production would be over $850 million per year. It would also result in an extra 17,500 hectares of high-value horticulture being dried off in a repeat of the Millennium Drought. This is equivalent to more than the combined total of 12,640 hectares of irrigated perennial horticultural plantings in the First Mildura, Merbein, Red Cliffs, Robinvale, and Nyah Irrigation Districts in 2021."*[10]

A report by Ricardo, commissioned by Dairy Australia, also found: "*Milk production in the MDB has fallen by approximately 25% since 2012*" and further, "*overall, annual milk production in the sMDB could decline by between 3% (approximately 60 million litres) to 15% (approximately 270 million litres).*"[11]

These impacts are continuing to play out across Basin communities and industries. Just recently, SunRice announced major changes to Australian milling sites saying it was a direct result of slashed water for farming under the Basin Plan, putting hundreds of jobs

[8] Southern Basin community profiles | Murray–Darling Basin Authority
[9] National Irrigators' Council - Socio Economic
[10] Social and economic impacts of Basin Plan water recovery in Victoria
[11] Ricardo report template

at risk. The Government's own analysis highlighted significant risks to the rice industry from further water recovery but there is little evidence to how the Government has used this knowledge when implementing purchase programs. NIC analysis of the additional held environmental water purchased towards the 450GL program revealed that purchases have been concentrated in key valleys, including those in traditional rice growing regions (reference 450GL reports).

Given this, it is difficult to see how the Water Act could possibly serve to meet the Object to "*maximise the net economic returns to the Australian community from the use and management of the Basin water resources*", when a core purpose of the Act has been to give effect to the Basin Plan, which seeks directly to limit and reduce water for agriculture, with known economic impacts.

Object (e)

(e) to improve water security for all uses of Basin water resources;

Recommendation: Object is sound but not achieved.

Maintain this Object, recognising that to give effect to it requires three complementary actions:

- no further changes to SDLs or further water recovery;
- water security for all users can be improved by providing stable policy, transparent and predictable settings; as well as;
- ensuring future-ready infrastructure that ensures investment in current or new infrastructure and supply sources that improve overall water security rather than redistribute it

Analysis:

This Object was never possible to be achieved by the Act in its current form, as at its core, the Act and Governments policy responses, aimed to do the direct opposite for agricultural water security. In its current form, the Act by-design seeks to shift water-sharing arrangements, with a trade-off from the water security of one user (productive users such as farmers) to the environment.

At a conceptual level, water security cannot be improved for all users simultaneously through reallocation alone (the current focus of implementation of the Act); water moved to increase one user's security is, by definition, taken from another's. Genuine improvement in water security for all users requires a multi-faceted response that must include supply-type interventions, such as new and upgraded infrastructure and alternative water sources. This is not out of scope for this review, or for the Commonwealth altogether. NIC considers this as a key mechanism by which this Object can genuinely be progressed, rather than through further changes to SDLs or water recovery.

Moreover, with SDLs now established and in-effect, the opportunity to maintain and improve progress toward this Object is important, provided there is a focus on ensuring a stable share between users and optimisation of the use of each existing share of water. However, this is contingent on there being no further changes to SDLs, as that would come at the cost of water security to users such as farmers. The measures that

are now most needed to improve environmental outcomes (complementary measures) do not require impacting water security of any user, rather, can operate within the framework now established to optimise outcomes.

Furthermore, a focus on better information and ensuring infrastructure is fit for purpose in a changing climate, is critical to achieving this object. Broadening policy response to include supply-side and alternative-source investment, not just reallocation between users, is a clear mechanism that can improve security more broadly.

Another key consideration for this review is that water security, in the Australian context, is not to secure set volumes of water at all times, instead it's the confidence that water users, communities, industries and the environment can plan and invest with certainty in a climate that is inherently variable. It is achieved by ensuring the frameworks that govern access such as, entitlements and allocations and trading arrangements – are stable, transparent and predictably applied as conditions change. Although the long-term reliability of water allocations on a water access entitlement is a core measure of water security for irrigated agriculture (see relevant section below), this is used accepting that there is annual variation and fluctuation.

Water security for Australia cannot be about a fixed volume of water as it will at times fail. Our frameworks allow a risk-based system, but it is the responsibility of users (and governments on behalf of communities) to understand this risk and consider alternatives to mitigate changes in supply as droughts are inevitable. Australia's water security rests on the durability and integrity of the management settings that adapt the system to climate variability, rather than on insulating any one user from that variability altogether.

Water security in the Australian context must be deliberately explicit about what is and isn't being made certain. It is the rules, entitlements, allocation processes and risk-assignment settings that are stable and predictably applied – not the volume of water available in any given year, which will continue to vary with climate and seasonal conditions. Conflating the two, risks reading water security as a promise of fixed allocations, which the system neither delivers nor is designed to deliver. Equally, water security is not achieved solely through certainty for consumptive users: consistent with the UN-Water definition's inclusion of ecosystems and human wellbeing alongside livelihoods and economic development, the same stability and predictability must extend to environmental and social water outcomes. This is even more relevant given the investment in environmental entitlements to implement the Murray Darling Basin Plan.

Therefore, looking forward, stability of water policy settings (i.e. no further changes to SDLs or further water recovery), clarity and consistency of rule settings, as well as improved transparency on compliance, coupled with consideration of existing and future infrastructure needs, is required to give effect to this.

Object (f)

(f) to ensure that the management of the Basin water resources takes into account the broader management of natural resources in the Murray-Darling Basin;

***Recommendation:* Object is sound but not achieved.**

Maintain this Object and ensure the Act and implementation of it does more to meet this Object.

This may require amendment to other Objects to enable the integration of non-water measures into implementation as per Object (d).

Analysis:

Partly as a product of the Constitutional and legislative architecture, the Act takes a very siloed approach to water resource management.

Put simply, water volumes (such as water recovery and compliance with SDLs) are essentially the only tool or mechanism the Commonwealth has readily available (other than decisions to use the portfolio of water held by the Commonwealth), as powers for water management (and natural resource management more generally) are vested in the States.

Interestingly, there is increasing focus on the need for a more integrated water management or catchment management approach. This is because the leading and priority cause of environmental issues in the Basin are now no longer over-allocation, but issues such as the inability to deliver water onto floodplains, invasive species such as carp, habitat degradation, barriers to fish passage, water quality, cold water pollution, etc. These cannot be achieved by 'just adding water'.

The 2025 Basin Plan Evaluation said:

"*Water for the environment is essential, but on its own is likely not sufficient. Factors such as water quality, riparian and floodplain management, pest control, instream habitat, river operations, constraints and works, and environmental water portfolio management are also crucial to achieve environmental outcomes*."

"*When the Basin Plan commenced it was assumed that water for the environment to key sites would be sufficient to maintain ecological health across the Basin. We have learnt it is more complex and challenging than this…*"

To address these issues, will require the use of non-water levers, known as complementary measures.

However, as the MDBA identified in the Early Insights Paper: "*the Water Act limits the Basin Plan to matters relevant to the regulation of water resources*". The MDBA proposes "*The Authority could also exercise stronger leadership by proposing recommendations in the Review that incentivise Basin governments to take a more holistic approach to land and water management*."

Here, it is important to consider whether this requires a legislative or non-legislative solution? There is a clear need for public investment in a strategic and coordinated package of complementary measures across the Basin. Where there is a role for the Water Act, is likely in the governance arrangements for how a program could be administered to ensure the most effective and coordinated program across the States. For example, this may include consideration of the MDBAs role into the next iteration of the Basin Plan, with an expanded remit to provide advice to States to

oversee the delivery of Commonwealth investment in a strategic and coordinated package of complementary measures.

The Act in its current form does not enable this Object to be met, taking a siloed and narrow focus on water volumes rather than outcomes. In the context of the increasing priority of non-water mechanisms (complementary measures) which are required to address the contemporary environmental challenges in the Basin, the review should consider opportunities to give effect to broader catchment or integrated management, such as by establishing a public fund for complementary measures, as well as the necessary governance arrangements for their strategic and effective delivery across jurisdictions. These arranges can be within government or through potential non-government but supported, third parties.

Object (fa)

(fa) to ensure that the use and management of Basin water resources take into account spiritual, cultural, environmental, social and economic matters relevant to Indigenous people, including in relation to their knowledge, values, uses, traditions and customs;

Recommendation: Object is Sound and should be maintained.

Analysis:

There are a range of current rights and arrangements across many State and Federal instruments that all contribute to this Object and should be comprehensively documented and communicated, to ensure the full extent of current arrangements are considered.

It is important to note that to maintain the certainty and predictability of the water management frameworks, that actions taken to achieve this Object are done so in reference to the range of current rights and arrangements across many State and Federal instruments that already exist but also the foundations of the water management framework (i.e. water entitlement framework, as per the NWI characteristics); which necessarily involves no third-party impacts on current water entitlements, their reliability, nor any legal or practical changes to entitlement characteristics. This is critical to ensure that there remains one clear legal framework.

See the separate NIC submission provided in response to the earlier consultation on the paper "Strong Voices, Healthy Waters: upholding Aboriginal and Torres Strait Islander peoples' water rights through the review of the Water Act 2007" for a detailed response to this question.

Object (g)

(g) to achieve efficient and cost effective water management and administrative practices in relation to Basin water resources;

Recommendation: Object is sound but not met.

Maintain this Object and ensure the Act and implementation of it does more to meet this Object.

Analysis:

A major concern as always with operation and implementation of complex legislation is to avoid duplication and scope creep of the different organisations, and to ensure there is efficiencies in operation. There are eight agencies within the Water Act that have responsibilities. Given the limited role that the Commonwealth have in managing water, that is an incredible number. When you consider the role of the National Audit Office, the Treasurer in setting funding and the Australian Parliament, the number of players increase to 11.

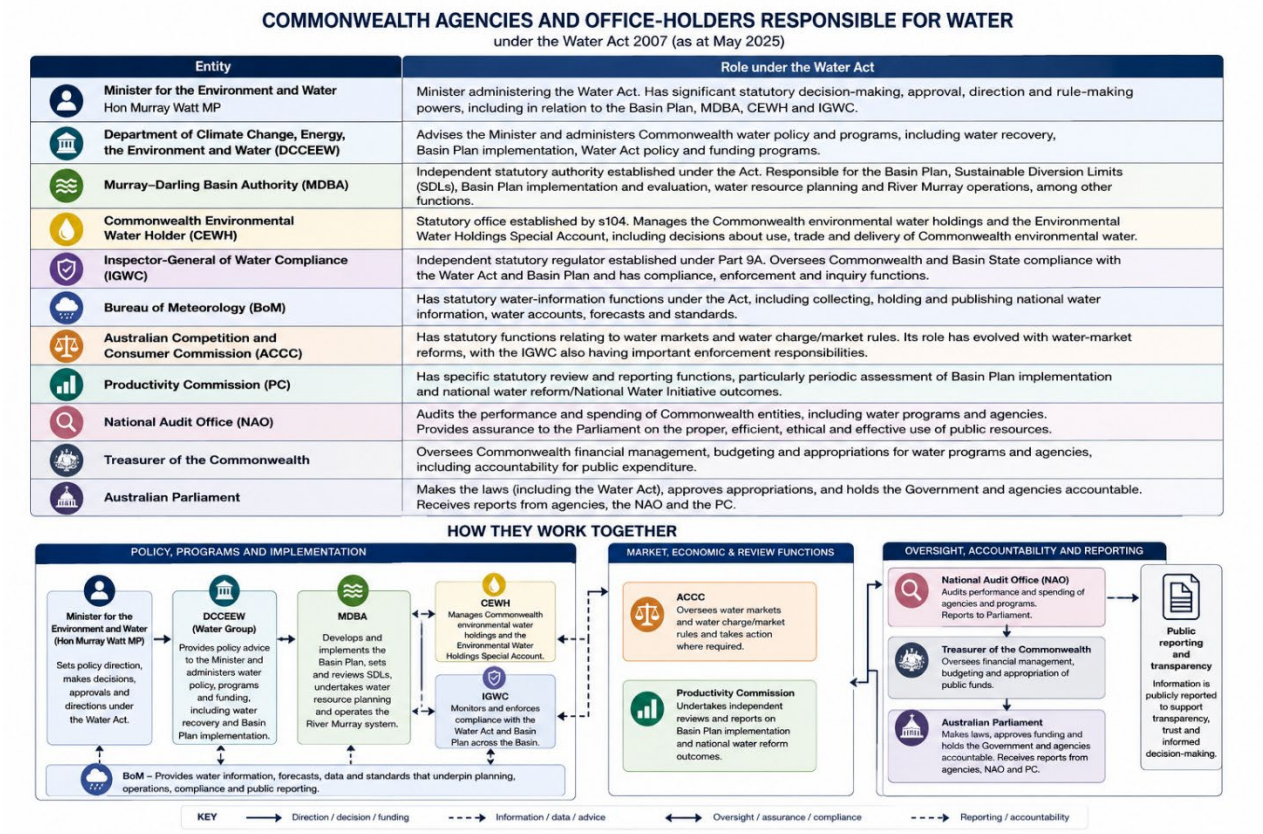


Figure 2: Commonwealth Agencies and Office-Holders within the Water Act

Given the scale and scope of the agencies involved, it is important for this review to consider the roles and responsibilities of each agency, any opportunities to avoid duplication and improve cost-effectiveness.

In addition to governance structure, the NIC has raised concerns previously about the policy options being chosen to implement key elements of this Act and whether decisions remain efficient and cost effective.

For example, a recent report by NIC focused on the additional HEW provisions of the Act, provided an updated assessment of the program against the Department of Climate Change, Energy, Environment and Water's (DCCEEW) Framework to Deliver enhanced environmental outcomes in the Murray Darling Basin[12]; the

[12] DCCEEW Framework for delivering the 450GL

Commonwealth Procurement Rules[13], and the practical ability of acquired water to deliver the intended environmental outcomes.

The findings of our report demonstrate that the program has continued despite increasing evidence that additional purchases are not aligned with the Government's own principles of effectiveness, value for money, and minimising socio-economic impacts, nor aligned with environmental priorities in the Basin.

The original $1.575 billion allocation has now been exhausted, with future expenditure occurring through budget measures not publicly disclosed. Previous estimates that at least an additional $1.3 billion would be required to complete the program are likely conservative. Yet, no public assessment has reconsidered whether this increasing investment remains justified, what environmental benefits are expected under the revised program, or whether those benefits outweigh the costs to the Australian economy.

The evidence presented indicates that continuing acquisitions are increasingly difficult to justify as value for money. A significant proportion of the water acquired cannot be physically delivered through the river system as intended, the environmental utility of additional water is diminishing, and the Government's own environmental assessments increasingly point to complementary measures and improved river management and water delivery as higher priorities for future investment.

The NIC raised similar concerns with the water market reforms through the Commonwealth Water Market Reform Roadmap[14], particularly as the regulations and standards were being developed.

Our concerns were raised in a series of submissions throughout the process that raised concerns (as with other stakeholders) that the , NIC and many the regulatory burden of the reforms, particularly given its scale and pace, was disproportionate to the perceived problem at hand, and the size and extent of water markets.

These concerns were largely ignored, despite the under-estimated cost to comply and no clear assessment of the potential negative consequences.

We asked for a final cost benefit analysis is completed prior to finalisation of the regulations (this one, as well as the collective suite of regulations that make up this reform) to provide the evidence base to ensure the final reform is proportionate, well-designed, well-targeted and fit for purpose, which was ignored. The reforms have never properly been tested against the Office of Impact Assessment guidelines, rather using estimates, prior to the formation of the legislation, regulation and standards as the case for change.

Hence, it is critical that whilst the Act object remains clear and should remain, processes alongside the Act must exist to evaluate and test the decisions and actions taken in implementing the Act, directly against these Objects from time to time.

[13] Commonwealth Procurement Rules 2025
[14] Commonwealth Water Market Reform Roadmap 2023

Object (ga)

(ga) to ensure that the governance of water markets and trading arrangements relating to Basin water resources is appropriate, and that governance measures promote integrity and transparency in water markets;

Recommendation: Object is sound and largely achieved.

Analysis:

Processes remain in place in response to the water reform roadmap, however, are not yet fully implanted and therefore an assessment of outcome is unknown.

However, as per above, the NIC have raised concerns regarding the if these actions taken to implement this object are indeed fit for purpose and cost-effectiveness. Is the need to objectively review the cost benefit of the water market reforms.

The NIC questions that the policy interventions chosen do not outweigh the potential risks or benefits. The Governance structure is not the issue, but the policy response chosen.

Another concern relating to the governance of water markets, is the participation of the Commonwealth Government as a water market participant as part of the water recovery programs. The issue is the Commonwealths market participation and conduct causing water market prices to substantially increase.

More specifically, this includes:

- The IGWC has raised probit concerns, recommending further controls and processes within the Department, regarding water buyback programs.
- Water users have raised water market concerns following Ministerial press releases[15] inflating the interest in water buybacks, artificially inflating water market prices. NIC said in a media release at the time:
    - "The last time Minister Plibersek announced a buyback tender round had been over-subscribed, the Government later rejected 72% of the offers, contracting only a small proportion of the reported offers (26 GL out of 90 GL), mostly due to value for money concerns".
- The Auditor-General found water purchases were detached from policy objectives, saying: *"The current evaluation framework requires revision to enable an accurate measurement of the program's impact on intended policy objectives, including in the context of broader evaluation activities planned for the Basin Plan."*[16]

Object (h)

(h) to provide for the collection, collation, analysis and dissemination of information about:

(i) Australia's water resources; and

(ii) the use and management of water in Australia.

[15] For example: More than 1,000 willing sellers respond to Basin tender towards 450 | Ministers

[16] https://www.aph.gov.au/Parliamentary_Business/Tabled_Documents/9337

Recommendation: Object is sound and not yet achieved.

Maintain this Object and ensure the Act and implementation of it does more to meet this Object.

Analysis:

This Object is important; however, implementation has not effectively occurred.

The water information collected and published as per the requirements of the Act, are generally not broadly utilised. NIC Members report to more commonly use state services such as WaterInsights by WaterNSW, which was overall said to be more informative, easy to use, with accessible and digestible information.

While these state services are more readily used – there likely remains a role for information management at a whole-of-Basin or national level. However, it needs to be up to the same standard as other platforms to be worthwhile. It is recommended that the BoM Water Information portal is revised to have an increased focus on the accessibility of user-friendly information, targeted to the sorts of information that users need to access.

2. What are the opportunities for the Water Act to improve the delivery of First Nations economic, environmental, social, spiritual and Cultural outcomes; and 3. What are the opportunities to promote the principles in UNDRIP?

This section should be read in conjunction with the relevant Object (fa) response as well as our separate NIC submission provided in response to the earlier consultation on the paper "Strong Voices, Healthy Waters: upholding Aboriginal and Torres Strait Islander peoples' water rights through the review of the Water Act 2007" for a detailed response to this question.

Key points in NIC Submission:

- NIC acknowledges the traditional owners of country; their deep connection with land and water, and the strong spiritual obligation of Aboriginal people to care for country.
- NIC supports the use, access and management of water for Cultural objectives, within the current water management framework.
- NIC is concerned that the public consultation documents to date are very high-level – for example, they do not identify the significant current arrangements for Indigenous rights at both a State and Commonwealth level, which may lead to a poor understanding of the status quo, issues and opportunities. They also do not explore what is being proposed in a practical sense, making it challenging for stakeholders to provide comment.
- NIC appreciates the technical complexity of the water management framework and calls on this review to provide the appropriate technical

resources to ensure the findings are factually accurate and reflective of this framework. Some of the statements in the materials to date are incorrect.

- The role and scope of the Water Act 2007 (Cth) within Australia's Constitution must be considered to determine the legislative capabilities to address many of the issues raised given water remains managed by the States. This is not to belittle any issues raised, rather, to ensure expectations do not exceed what this instrument can deliver. For this reason, it is important for the review to explore both statutory and non-statutory pathways, as a collective whole of government approach to promoting the principles of UNDRIP will be important (not just within one element, the Water Act).
- Any legislative amendments being contemplated must be done so in a manner that is consistent with the current NWI water management framework.
- There must be no third-party impacts on current water entitlements, their reliability, nor any legal or practical changes to entitlement characteristics, from any initiative or program - including Cultural and environmental flows.
- Any legislative amendments being considered to give effect to a renewed NWI / NWA can only occur after the agreement of the States and Territories has been obtained, to continue the critically important legacy of state cooperation. The focus of the renewed NWA on First Nations water is particularly relevant, including the feedback provided across stakeholders and state governments to DCCEEW on the most recent publicly-available version.

At the core, NIC supports the management of water to achieve cultural outcomes, provided it occurs within the existing water management framework (that is, the entitlement-based framework shaped by the NWI / NWA – rather than existing as a separate dual framework). This is now critically important consideration to improving First nations outcomes given the Government commitments first nations owned water (as part of the Aboriginal Water Entitlements Program) in additional to environmental water (as part of the Murray Darling Basin Plan), which fundamental relies now on this Framework.

This review presents a clear opportunity to consider expanding within the Act to further expand on cultural objectives to which HEW already owned by the CEWH can be used for, where there are overlaps or synergies between cultural and environmental outcomes. It is recognised that there are unique cultural objectives, separate from environmental objectives, while there are also areas of commonality where multiple objectives can be achieved. Since NIC provided our aforementioned submission, the publication of the final National Water Agreement has provided some important guidance on key issues. For example, the glossary of terms is important to clarify key concepts. Where those terms are currently used, or will be adopted into, the Act, it is important that the appropriate definitions are also updated or added.

For example, the term "Free, Prior and Informed Consent" has caused considerable confusion amongst stakeholders with varying interpretations of what this means. The clarification now provided in the NWA is very important: "*References to 'free, prior and informed consent' in the National Water Agreement context do not infer a right of veto over projects, legislation or policies being actioned by governments through*

this Agreement." This should be brought forward into the Act to avoid any confusion or mixed interpretations/ expectations to the meaning. However, there remain several terms still remaining unresolved and we seek further discussion and clarification on those as part of the review process, and their relevancy to be included in the Act or not.

Finally, it is important to also acknowledge that there are several complementary policy actions, outside this Act that are already contributing to programs and processes to improve the delivery of First Nations economic, environmental, social, spiritual and Cultural outcomes. As such, it is also imperative that any actions taken must be within the broader legislative and policy context and consistent, rather than siloed.

4. Are the institutional and governance arrangements under the Water Act effective in ensuring accountable, efficient and transparent decision-making? If not, how can they be improved?

Role of the Commonwealth

As the Discussion Paper outlines (see 3.1), "*primary responsibility for the management of water resources rests with state and territory governments*". The role of the Commonwealth is limited to only very specific referrals of powers (such as SDL compliance), and very specific (and often challenged) Constitutional arguments.

Key questions for this review will be:

- What is the role of the Commonwealth?
- What is the role of the Water Act?
- Is the Water Act – in current form, and any contemplated amendments – respecting that framework and boundaries of the State and Commonwealth roles?

There are significant concerns of scope-creep of the role of the Commonwealth – such as where the Act itself, or at least the interpretations of it – have put prescriptive or onerous requirements on States, above and beyond the role of the Commonwealth to do.

This is exemplified by the current WRP requirements (as discussed in this submission, see below) which arguably oversteps on the role of the Commonwealth, and some of the recommendations coming out the Basin Plan Review show a continued risk of power-creep. For example, one option being considered in the Basin Plan Review Discussion Paper is:

"Consider minimum water resource plan requirements for state-based extreme event water planning to ensure adequate consultation processes and that planning is underpinned by robust climate assumptions."

Putting arguments for or against this option aside – the key question for this review should be: is it indeed the role of the Commonwealth to impose minimum requirements on the States for their statutory water planning, such as the climate assumptions being used in those statutory plans? In our view, the answer is no - this is a matter for the States, and unless the States collectively agree, and expressly seek a role for the Commonwealth to coordinate or lead, it is beyond the jurisdiction of the Commonwealth. Further, it also must be contemplated whether many of these are indeed legislative matters, or more matters to be acted upon via programs.

To be clear, we are not suggesting any changes to current Constitutional settings. We are simply seeking to ensure that those arrangements are respected.

See question 1 for further details.

Effectiveness of institutions established by the Water Act

Inspector-General of Water Compliance

See the separate NIC submission provided in response to the Statutory Review of the Role of the Inspector General of Water Compliance (IGWC) in February 2026.[17]

Key points raised in that submission include (but are not limited to):

- NIC in-principle supports the intent of having separate functions for policy development, implementation and enforcement/compliance, as envisioned by the IGWC role. However, there are several issues important for consideration in this review.
- With the numerous agencies in the water sector, across both State and Federal levels, we are concerned that the role creates duplications and inefficiency. It also adds to the complexity of many water agencies.
    - For example, in reports of compliance with Sustainable Diversion Limits (SDLs), this data is provided by the Basin States to the MDBA to compile into Registers of Take and assess whether water take accounting was consistent with the method in the Basin Plan – which is then provided to the IGWC to report on. This is a minimum three-part process. Partly due to this process, there have been significant time delays in the publication of these reports after the water year to which they relate.
- There are questions regarding the extent to which the role of the IGWC can operate within the current legislative and constitutional framework, with water remaining a power of the States. The IGWC role has been created with an expectation to be a 'tough cop' on the States and public agencies, however, while States have agreed to frameworks, the power remains with the States. This questions the core purpose of the IGWC.
- It is noted that the IGWC was created at a time following the 4 Corners 'Pumped' episode, and strong public perception of water 'mismanagement'. While having the institutions in place to ensure mismanagement is not occurring is fundamental – it must also be asked - is 'mismanagement' occurring to the extent it was perceived to be at the time the role was established? Is the role justified to the extent and nature to which it has been established? To what

[17] NIC Submission to the Statutory Review into the role of IGWC, February 2026

extent could this be managed by other functions and agencies of the Commonwealth already established, with a broader remit than just water (such as the Auditor-General, amongst others)? Would this assist to reduce duplication and complexity in water management structures, and improve efficiency, compared to a dedicated water office? Note: This was similarly observed in the non-statutory review, stating: "*the use of 'tough cop on the beat' language – is a popular political device. This was understandable in the development phase of the IGWC, due to the circumstances in which the need for upgraded compliance efforts came to public attention via the 4 Corners program "Pumped", but today can create some misconceptions… The IGWC is in fact less a police officer and more an investigator*".[18]

- NIC is concerned that there is confusion regarding the role of the IGWC, as 'compliance' is typically used to refer to water users complying with water laws, which is separate to the compliance of Basin states and oversight of public agencies managing water. Clarity about the role of the IGWC – distinct from state agencies (such as the Natural Resources Access Regulatory in NSW) is important.
- It is noted in the Harris Review that "the IGWC has submitted that it is affected in exercising its independence by the administrative structure in which is set up."[19] We also note the concerns raised in that report regarding fully administering an independent entity would be expensive and beyond the control of the water portfolio. This is an important decision-point regarding the future role of the IGWC, and will require assessing the necessity, in the context of what current arrangements are able to deliver.
    - It is noted an original intention of the establishment of the MDBA was to be an independent authority, separate from the Department and Government of the day. There is a feeling of 'going in circles,' which will be a critical issue for this Review to consider.

We note the Inquiry Report has been released with several findings and recommendations, which include:

- Opportunities to streamline – particularly with SDL report which we support;
- Clarifications of the scope and resolving conflicting interpretations which are important to avoid duplication and scope-creep;
- Enable clearer accountability for SDL and WRPs which we support; and
- Further clarity on inquiry protocols and process which again, NIC would support if the IGWC considers further inquiries.

The NIC would be interested to understand the value of preliminary inquiry powers and what this would mean practically. Given it is clear from the Inquiry report that the IGWC role is not to test the policy assumptions but rather the process, why half test the process?

Furthermore, as NIC has found, there is no clear agency responsible to independently assess the decisions and actions made by agencies towards the key objects of the Act, particularly those pertaining to efficient and effective management of resources

[18] Final Report Independent Review of the Inspector General of Water Compliance.pdf
[19] Final Report Independent Review of the Inspector General of Water Compliance.pdf [36]

and administration. Whilst there are audits and inquiries, these are often concerned with the processes of implementation which are important but then fail to objectively consider if this is in the best interests of the nation, is cost-effective and efficient.

NIC recommend that this Review builds from the findings of the Statutory Review of the Role of the Inspector General of Water Compliance (IGWC) and engages further on the recommendations during consultation.

An area the Statutory Review did not consider was the role of the IGWC considering the current Government's commitment to re-establish the National Water Commission. Any changes to the role, establishment, or function of the IGWC should consider alignment with a future National Water Commission if one is to be established.

Murray-Darling Basin Authority (MDBA)

The independence of the MDBA remains crucial.

The role of the MDBA, and the Water Act and the institutions to which it governs, have a very specific and limited remit to water. This siloed approach may pose problems moving forwards, where increasingly, there is recognition of the need to manage water alongside interrelated components – such as through integrated catchment management or broader natural resource management, e.g. via complementary measures.

As part of the Early Insights Paper to the Basin Plan Review, the MDBA says:

"The Water Act limits the Basin Plan to matters relevant to the regulation of water resources. It does not extend to the regulation of land use or planning. We are grappling with how the Authority can ensure what we all know - that we get the best outcomes when rivers, land and water resources are managed together."

Moving forwards, it will be important to consider whether the role and scope of the MDBA will need to change, given the increasing emphasis on non-water components. This may involve providing strategic direction to jurisdictions to optimise public investment in complementary measures from a Basin-scale perspective, through coordinated and aligned efforts across jurisdictions.

For the avoidance of doubt, this is not intended as a criticism. Rather, this reflects the maturation of water reform from one focused on water rebalancing, to one that looks at optimising outcomes from the established water management framework, and the multiple levers (and policy portfolios) which are inherently related. These possible functions should not impact their responsibilities to implement joint operations.

In terms of the MDBA Board, appointments should be skills-based rather than purely representative-based. These skills should seek to cover the diverse matters addressed by the MDBA, including economic, agriculture, science, etc.

On a related matter, MinCo has observer positions for Indigenous and Local Government representatives, but not industry. Where stakeholders are participating in forums on a representative-basis, it is important to ensure all relevant stakeholders have seats at the table – including industry. Industry is being increasingly left out of these forums.

Commonwealth Environmental Water Holder (CEHW)

The establishment of the CEWH, and the concept of Held Environmental Water more broadly, is relatively new. Since the original Water Act, there is now maturation and growth in terms of the use and management of HEW for this purpose, and the functions of the CEWH. This has brought important learnings and opportunities for consideration in the Water Act.

All entitlements are equal

There has long been an understanding that water entitlements, irrespective of the owner, are subject to the same rules, requirements and responsibilities. This was a core part of the Intergovernmental Agreement on Implementing Water Reform in the Murray Darling Basin:

"Except as otherwise agreed between the Commonwealth and the relevant State(s) to facilitate improved environmental watering, Basin States agree that ***the characteristics of licensed entitlements held for environmental use will not be enhanced or diminished relative to like entitlements held and used for other purposes****. This includes that they will be subject to no less favourable conditions, including with respect to fees and charges, access to allocations, capacity to use, trade, and carryover, than like entitlements held for other purposes. The Parties note that any agreement to change the characteristics of licensed entitlements held for environmental use should not impact on another state's water availability, rights or entitlements under the Murray-Darling Basin Agreement unless agreed to by the affected state."*

It is recommended that this be brought forward into the Water Act, as a key governance requirement to ensuring all water entitlements are treated as equal – critical to the integrity of the framework as a whole. This includes that irrespective of the holder of the entitlement, the same rules apply.

Recommendation: Characteristics of licensed entitlements held for environmental use will not be enhanced or diminished relative to like entitlements held and used for other purposes, are incorporated into the Act.

Objectives for environmental water

There is opportunity to further expand on cultural objectives to which HEW already owned by the CEWH can be used for, where there are overlaps or synergies between cultural and environmental outcomes. It is recognised that there are unique cultural objectives, separate from environmental objectives, while there are also areas of commonality where multiple objectives can be achieved.

Similarly, objectives for the use of HEW should be expanded to be used to meet water quality objectives. While diluting water is generally seen as an inefficient mechanism to meet water quality targets – where that is desired – HEW should be able to be used for that purpose. This enables an entitlement-based approach to managing for water quality.

Measurement of environmental water

There are concerns regarding the measurement and reporting of environmental water.

Recent Metering Report Cards by the Inspector General of Water Compliance (IGWC) have highlighted a missing piece of information on how environmental water is measured throughout Basin jurisdictions.

Together the Murray Darling Basin Plan and the Water Act require the following reports to be prepared on Basin diversions (the extracted portion):

- Metering report card by the IGWC that assesses progress on measurement standards;
- A Sustainable Diversion Limit (SDL) register of take report by the Murray Darling Basin Authority;
- A SDL compliance assurance report by the IGWC.

However, there is not the same level of reporting and review for environmental water use nor is there an assessment or consideration of accuracy or any third-party impacts. This is despite more than 72 percent of river flows in the Basin being for the environment (which includes around seven percent of held water delivery) and the Commonwealth Environmental Water Holder having more than 2,100 gigalitres of registered entitlement to manage between a range of environmental water holders.

If we are to have full confidence in the system – an aim of the Basin Plan and other agreements like the 2018 Compliance Compact – we should improve the transparency and accountability of the delivery of all other water uses, including held environmental water.

There are many who see this as a growing inequity between different types of water users – with irrigators having to invest to be compliant with metering requirements, who were also told as part of Basin Plan implementation that entitlement characteristics/requirements would not change.

This is also a key governance question, given the significant public investment in the CEWHs large portfolio of HEW, as a significant public asset, and the need for appropriate measurement and reporting to ensure it is being best managed and delivering the optimal returns.

It is acknowledged that the measurement of environmental water will often require different methods to metering of water for irrigation. However, this is no reason to not have relevant and appropriate requirements in place for the use of that water and reporting against outcomes.

Recommendation: NIC recommendations that ongoing monitoring of measurement accuracy and means is undertaken on all forms of water, including environmental water. Currently the focus is on metered take from groundwater or surface water, further work should occur to improve the transparency of environmental water use and measurement.

Accountability for decision-making

Like any entitlement holder, the decisions made by the CEWH are made without perfect information on future conditions, and decisions need to be made with a reasonable degree of risk management to plan. Decisions need to seek to achieve

the optimal outcomes with the water available, based on the information available. This is the same decision-making faced by all holders of water entitlements, irrigators too.

If the CEWH makes decisions to use water in their accounts today, and next year, conditions turn dry and those accounts are empty – then there is a trade-off of the outcomes that could have been achieved next year. It will be important that appropriate governance and accountability frameworks are in place to ensure the right risk appetite is adopted to govern that decision-making.

A concern of water users is that if conditions are dry, and environmental outcomes are at risk, the government can (while highly contested) impose restrictions on other water users to achieve those environmental outcomes. This then means the risk appetite of the CEWH has tended to be less conservative than an irrigator, for example, who has no plan B option. In those instances, had the CEWH been more conservative with their use and maintained water in their accounts, the same restrictions may not have been required (or at least, not to the same extent or duration). Therefore, the management decisions of the CEWH can have real and material third-party impacts on other water entitlement holders.

Third-party impacts

As a major water holder – the largest single water entitlement holder – the decisions made by the CEWH for the use and management of their portfolio of water can, and do, impact others in the system. At present, there is poor recognition in the legislation of these potential impacts, and protections offered to other entitlement holders to mitigate these third-party impacts. Opportunities in the review to provide greater protections to other entitlement holders should be considered.

Cost effectiveness

A further matter relevant to whether the institutional and governance arrangements under the Water Act are effective in ensuring accountable, efficient and transparent decision-making – is in regard to water purchases.

A key finding of a recent report by NIC is that the continued recovery of additional HEW cannot be considered value for money, as per the Commonwealth Procurement Rules. Other findings include:

1. When including both the Southern and Northern Basin, the total percentage of water entitlements recovered under the program subject to major delivery restrictions is 77%. This significantly reduces environmental effectiveness.
2. The continued recovery of water beyond what is required for SDL compliance (i.e. additional HEW beyond 62 GL) is not commensurate with the *scale and scope* of Basin Plan implementation. The Federal Government has recovered more than double the minimum target and is now going beyond reasonable steps.

The budget, scope and purpose of the 450GL program have materially changed. Any new purchases towards the 450 GL after May 2026 are beyond the original budget of $1.575B for the Water for Environment Special Account and must now be funded from the budget items not for publication, significantly reducing transparency of total

expenditure. This is a material change to the program budget, that should require an updated assessment of whether this increasing investment remains justified, what environmental benefits are expected under the revised program, or whether those benefits outweigh the costs to the Australian economy.

The clauses relating to the Water for Environment Special Account (WESA), which is due to expire, can now be repealed. This is part of shifting the Basin Plan from a plan of water recovery to an ongoing stable framework for water management.

5. Is the role and administration of WRPs clear and fit for purpose?

Water Resource Plan (WRP) requirements are too prescriptive and onerous, and the process for accreditation (and re-accreditation) is inefficient, ineffective and resource-intensive. The time taken for NSW to progress through accreditations is clear evidence of failure of settings.

Most damning of all is that WRPs provide little or no added benefit to the operation of river systems in practice, or even compliance towards the Basin Plan, rather they are an administrative burden of limited value that duplicates state responsibilities in another format.

In our view, WRPs are not necessary, and are an additional complexity in the regulatory design that could be removed.

At the core, compliance with the SDL is the critical function for States to demonstrate compliance with the Basin Plan. This already occurs through SDL compliance reporting. Any other requirements must be questioned.

For other related matters, only where absolutely critical to Basin Plan requirements, a checklist (such as the existence of an Incident Response Guidance) could be developed, which does not require the development and accreditation of a rigid plan document. This checklist process could be included as part of annual SDL reporting.

Furthermore, the requirement for First Nations to approve a plan has proved problematic and is now preventing the final accreditation of remaining plans. This level of authority or veto power has been ineffective, particularly for an instrument that is essentially a guidebook. This is not to disregard the important role for First Nations, rather, that this decision-making process has not been effective, hasn't had appropriate resourcing, and has left remaining plans not accredited.

Is it necessary?

The WRP is not an operational instrument – in the sense that it is more a guide or reference point to communicate how water is managed by the State in that water source in a manner compliant with the Basin Plan. The need to create another instrument for this purpose creates additional complexity, as well as regulatory and resourcing burden to develop, update, and navigate. This is not necessary.

At its core, essentially there just needs to be a process to ensure the States (and the water sources within them) are being managed in a way that is compliant with the Basin Plan. The creation of a rigid document is not an effective way to do this. Rather, this could become an annual or regular *process*, such as a checklist, similar to how SDL compliance assessments occur.

Is it appropriate?

The extent to which the Commonwealth is required to accredit, and re-accredit, a WRP (i.e. whenever even small changes are made by a state) effectively infringes, in a practical sense, on the States powers to manage water resources by creating inflexibility and (at times) impenetrable requirements. This goes above and beyond the powers referred, and the intention of the Basin Plan.

Case study: Planned Environmental Water (PEW)

The biggest issue on this relates to the protection of Planned Environmental Water (PEW). At its core, the requirements for the protection of PEW were intended to ensure there were no 'backward steps' on environmental protections that were in place in a water source prior to the Basin Plans implementation. As the Act says:

"The Basin Plan must ensure that there is no net reduction in the protection of planned environmental water from the protection provided for under the State water management law of a Basin State immediately before the Basin Plan first takes effect."

This principle is not disputed – however – the interpretation of it, and the application to jurisdictions has been problematic and creating inefficiencies in operations and planning.

In some States, such as Victoria, this was a relatively simple process in WRP development of identifying the specific environmental rules in place prior to the Basin Plan. However, in NSW, this became much more complex as the State already had a term called 'Planned Environmental Water' in the *NSW Water Management Act 2000* – but not the same thing. In the NSW context, Planned Environmental Water has long been the term used for all water above the extraction limit. Because of the specific requirements around the protection of PEW, this has made it nearly impossible to make any changes to arrangements in NSW without – technically – impacting on PEW.

This rigidity has effectively led to a significant level of Commonwealth involvement in almost all water management decisions within a water source in NSW. This has created inflexibility, as well as additional steps which are timely, resource intensive and inefficient. Further, water users are concerned that this has also contributed to the erosion of consumptive water, and the reliability of water entitlements. This was never the intention – rather a byproduct of poorly drafted, or misinterpreted, legislation.

Through the Water Act review, it is an important opportunity to provide clarity and get this requirement 'back to basics' of the original intention – i.e. to ensure there are no 'backward steps' on environmental protections that were in place in a water source prior to the Basin Plans implementation. This would more closely resemble the arrangements which have been in place for Victoria, rather than the very rigid situation in NSW.

Is it effective?

The Basin Plan Review Discussion Paper says:

"Reforming WRPs is necessary. Without change, significant resources will be required to remake all existing 33 WRPs against all 55 requirements, involving enormous cost to communities, governments and Australian taxpayers for little gain. WRPs must focus on what matters most, to ensure that the Basin Plan regulatory framework works efficiently and effectively delivers outcomes."[20]

NIC agrees with this assessment. Further information is provided in the NIC submission to the Basin Plan Review Discussion Paper.

What's the way forward?

The Basin Plan Review is contemplating options for WRPs moving forwards, including:

- limiting the requirements an accredited WRP instrument must satisfy to those critical to Basin Plan implementation (option 1); and
- States would instead demonstrate consistency with Basin Plan criteria through standardised assurance reporting, rather than detailed WRP accreditation, for Basin states with mature and effective water planning arrangements (option 2).[21]

The Discussion Paper also says:

"Changes to the WRP provisions in the Water Act 2007 (Cth) would be needed to support both reform options."

"The Authority is also open to exploring alternative models for reforming WRPs that maintain significant Basin Plan elements such as SDL compliance, but which would reduce complexity and limit duplicative effort by Basin governments."[22]

The question will be – what are those core functions, to which States would need to demonstrate consistency with? The Basin Plan Review Discussion Paper outlines some of these, such as SDL compliance. In determining this, a firm frame of what is within State and Commonwealth powers is required, and a strict focus on the core components of the Basin Plan only.

In the view of NIC, the core of the Basin Plan is SDL compliance, and provided this is occurring, there is no additional scope for the Commonwealth to impose requirements on Basin States. Any further requirements could be included as a checklist for reporting, rather than as a full plan (a combination of Options 1 and 2 above).

Recommendation: The purpose and function of the WRP must be reconsidered, and the legislation updated to remove the prescriptive requirements and processes.

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[20] 2026 Murray–Darling Basin Plan Review Discussion Paper
[21] 2026 Murray–Darling Basin Plan Review Discussion Paper
[22] 2026 Murray–Darling Basin Plan Review Discussion Paper [P 78].

6. What are the opportunities for the Water Act to optimise the use of environmental water to achieve additional environmental outcomes, especially in the face of a changing climate?

A large limitation of the Act in current form is the focus on water-volumes, rather than broader outcomes that the Sustainable Diversion Limits was designed to achieve. Water volumes have become a proxy for environmental outcomes, and changes to water volumes (i.e. through the recovery of water or changes to SDLs) are the primary mechanism offered by the legislation. This siloed approach is becoming increasingly problematic, and the need for more integrated catchment management with more diverse non-water levers is clear.

The MDBA's Basin Plan Evaluation 2025 has pointed this out:

"When the Basin Plan commenced it was assumed that water for the environment to key sites would be sufficient to maintain ecological health across the Basin. We have learnt it is more complex and challenging than this…"[23]

"…deliveries of water for the environment alone are not sufficient. Other measures, such as water quality management, riparian and floodplain management, pest control, instream habitat, river operations, constraints and works, and environmental water portfolio management are crucial to the achievement of long-term environmental outcomes."[24]

Furthermore, NIC analysis of the initial Sustainable Diversion Limit assessment highlighted the limited improvement between the lines of enquiry, as represented below with only 8% of assessments for individual themes across all water source units, registering an improvement.

[23] P 4.
[24] P 42.

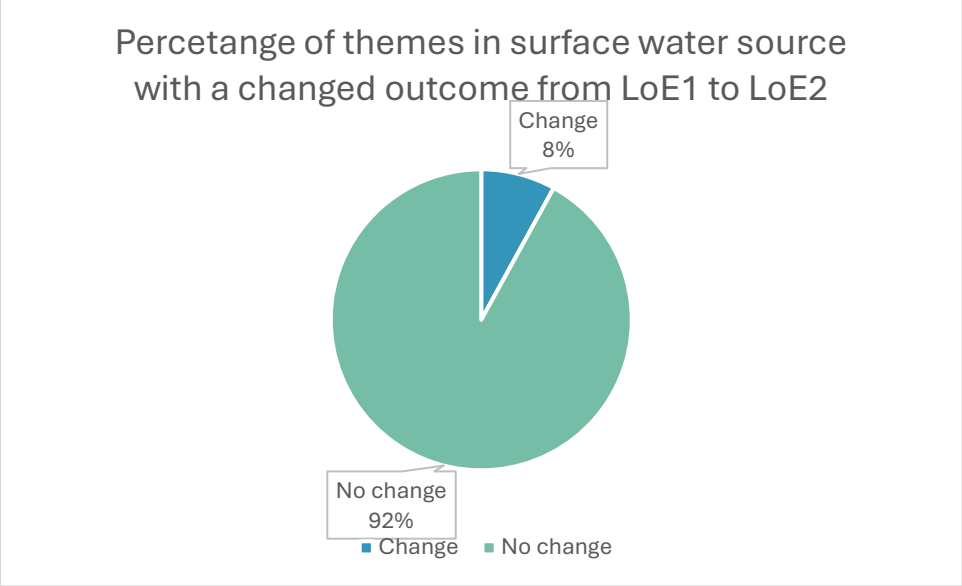


Figure 3: Assessment of Outcomes from Initial SDL Assessment (MDBA data)

Of the 8% of themes that did register an improvement:

- The change is often from a positive baseline (i.e. 'more likely than not') to 'likely';
- There is often low or medium confidence in that change occurring.
- Only 2 water sources had changed outcomes beyond a single-step (and as above, were already 'more likely than not',

This leads NIC to interpret the critical outcomes in the water source remained unchanged (as beyond what water volumes alone can achieve).

However, many of these non-water levers, while integral to achieving the environmental outcomes envisioned by the Act and Basin Plan, sit outside of what the legislation and its current institutions can deliver upon. The MDBA has stated: "*the Water Act limits the Basin Plan to matters relevant to the regulation of water resources*".

It will be important for this Review, given the findings coming out of the Basin Plan Review, to examine how these complementary or non-flow measures can be best delivered alongside water management. For example:

- Decoupling water-related outcomes from the need for Held Environmental Water (HEW) or volumetric equivalence, will provide important opportunity to achieve outcomes in their own right, rather than simply using water volumes as a proxy.
    - A lot of really beneficial proposals have been rejected simply because they do not generate a specific entitlement that can be transferred to the CEWH – irrespective of the environmental or other public interest merits that the proposal may have. Removing the volumetric, water-proxy focus of the Act will enable broader outcomes to be recognised and sought to be achieved. This will become increasingly important as focus shifts beyond 'just adding water'.

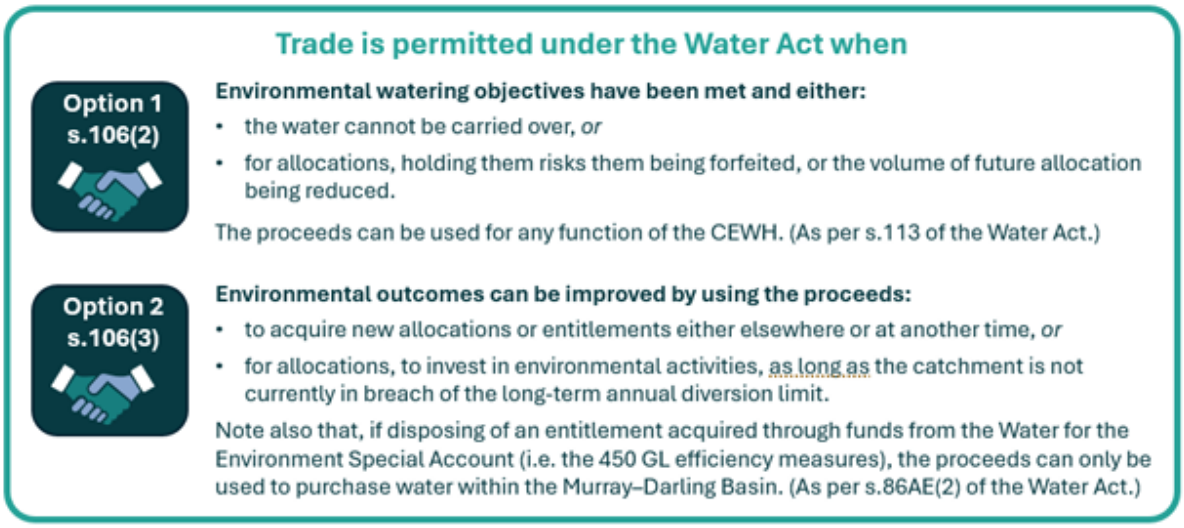
- Ensuring the appropriate governance arrangements for the strategic delivery, and funding of, complementary measures across the Basin – i.e. expanding the scope of the MDBA or the CEWH to oversee the delivery of complementary measures, and broader natural resource management.

See the NIC Submission to the Basin Plan Review, or NIC Basin Plan Review "Moving Forwards" Chapter on the Environment, for further details.

Ability for the CEWH to trade

The ability for the CEWH to trade water is an important opportunity to optimise outcomes for the Basin but is a critical climate response tool, well utilised by other water users already. However, the ability for the CEWH to be more active in the water market is constrained by the rules set out in the Act. In December 2025 a Trading Framework was published, with further details of the current arrangements.[25]

S 106 says that the CEWH can only sell (referred to as 'dispose of') environmental water holdings (entitlements and/or allocations) in limited circumstances.



This review should explore whether these limitations are indeed aligned with the Objects of the Act, and whether expanding the scope for the CEWH to trade water may produce better environmental outcomes.

In our view, expanding the opportunities for the CEHW to trade provides important opportunity for flexibility and responsive management. In years where there is ample water, the CEWH should be able to trade excess water, such as to be used for production. In dry years, the CEWH can still chose not to trade that water to be instead used for environmental outcomes or even seek to purchase further water temporarily.

From the perspective of irrigators, this is a substantially preferred approach to permanent water recovery, which impacts the irrigation sector every single year irrespective of wet or dry, whereas temporary trade of water can allow environmental outcomes to be met as needed without the same impacts on the irrigation sector every single year (wet or dry) with the permeant shrinking of the consumptive pool.

[25] Commonwealth Environmental Water Trading Framework December 2025

The development and maturation of temporary water markets have given rise for the opportunity to explore these market-based responses to optimise outcomes. This includes utilising a range of potential novel market-based solutions such as lease or temporary purchase in partnership with water users. It is important to ensure the Act does not create barriers to this. This includes, how the CEWH is established and that whether being within 'the Government' is limiting their ability to interact dynamically with the water market, which is needed to achieve the best outcomes.

This flexibility can be an important climate change response mechanism, as it gives the CEWH more options to manage their water and risks given the climate faced at the time. The water market is a key tool for enabling individuals to manage risk, this opportunity should be enabled and unhindered for all users, including environmental water holders.

There are already some great examples of temporary trading arrangements being well used in the Basin, and the removal of legislative and regulatory barriers to further expanding these measures should be explored by this review.

Further, the trade of water by the CEWH creates an important revenue source to fund the complementary measures required to optimise the environmental outcomes of the use and management of the HEW, as well as infrastructure. As explored in this submission, there is increasing emphasis on the need for complementary, or non-flow measures, to support the use of HEW (and PEW) to achieve the outcomes that 'just adding water' cannot achieve. One of the many barriers to current progress of complementary measures has been the cost. For example, fish passageways have been prohibitively expensive in many instances, with current funding arrangements requiring large cost-recovery from users, who are already facing large price increases for entitlement fees and charges. The Environmental Activities program of the CEWH is currently partly funded through trade, which includes measures such as fishways, building or upgrading infrastructure to deliver water to off-river wetlands, and implementing works that enhance connectivity, water retention, or habitat quality. The CEWH notes that:

"Demand currently exceeds available funding, highlighting a significant pipeline of projects to further improve the capacity of the Commonwealth's environmental water holdings to achieve enhanced outcomes."[26]

Expanding the trading opportunities for the CEWH could assist in creating funding streams to fund these measures, to complement environmental water delivery outcomes and infrastructure projects.

It is noted that the NWA now includes:

> 7.7. Water for environmental and other public benefit outcomes, if held as a water access entitlement, may be traded when not required to meet these outcomes, provided such trading is not in conflict with those outcomes.

In summary, NIC recommend reviewing the current barriers to the CEWH to being more active in the water market and including a specific and clear provisions to

[26] Environmental Activities - DCCEEW

address these in the Water Act to allow entitlement trade back into the consumptive pool using the existing option to re-invest the proceeds towards projects to benefit the environment It is recognised that SDL compliance would still be required as a necessary caveat. However, all other barriers should be removed.

The Act does not necessarily need to prescribe the specific functions for how this is to occur, rather, not create barriers.

Recommendation: Review the current barriers to the CEWH to being more active in the water market, and including a specific and clear provisions to address these in the Water Act to allow entitlement trade back into the consumptive pool using the existing option to re-invest the proceeds towards projects to benefit the environment.

Climate Change

There is an increasing body of work investigating possible scenarios for climate change impacts on water in Australia, particularly in the Murray-Darling Basin (MDB). While that work produces important insights into aspects such as rainfall, temperature, soil moisture, evaporation, runoff, etc. – the flow-on effects for how that then translates through existing water management settings into actual on-ground outcomes – is often overlooked.

For farmers (and environmental and cultural water holders alike), understanding how changes to water availability translates to changes in water allocations, is the missing piece of the puzzle.

It is critical to understand that the amount of water allocated to a water access entitlement varies, based on water availability, known as a 'water allocation' or 'Available Water Determination (AWD)'.[27] This is because a water access entitlement is to a defined share of the available water volume in a water year, not a fixed volume. Simply, a 10 ML general-security water access entitlement may be allocated 10 ML in a wet season where allocations are 100%, but in a drier season allocations may only be 20% (so 2 ML), or in a very dry season 0% (so 0 ML). This dynamic, climate-adjusting system means the volume of water used varies in relation to the amount of water available.

The AWD is calculated based on factors such as: (i) the condition of the catchment and river system river (wet/dry) and forecast inflows; (ii) dam storage levels, including how much unused water from previous years is carried over in public storages; (iii) the estimated volume required to run the river, including end of system flows, transmission losses and evaporation losses; and, (iv) other requirements, such as storage reserves and environmental water allowances.[28]

[27] Note: As this process occurs at a state-level, this paper will refer to NSW as a case study, noting similar processes in other state jurisdictions.
[28] NSW Government, 'Principles for allocating regulated river water in NSW' *Allocations and availability* (online, 2025)

Further, there are already requirements for Incidence response Guides (IRGs) which provide further guidance on how extreme water shortages will be addressed through Government responses. Given that "we can't make it rain," the legislative and regulatory framework already has considerable measures in place to be flexible, responsive and adaptive to climate variations and change. There is no need for prescriptive requirements from the Commonwealth onto States.

NIC advise that as explained above, our current policy settings are already adaptive to climate variability, through mechanisms such as water allocations set at a state level, and Incident Response Guides around the Murray Darling Basin. These are automatic climate response mechanisms – as water availability declines, allocations for lower-priority water access entitlements reduce (and can reach zero), while critical human needs and critical environmental needs remain protected ahead of consumptive use. NIC does not consider the Commonwealth needs new powers to prescribe or dictate state allocation policy in response to climate change; this would create additional regulatory complexity without solving the underlying question, which is one of evidence. It is also, in our view, outside the role of the Commonwealth of how water is allocated within the SDL.

The real question for both the 2026 Basin Plan Review, and 2027 Water Act Review is how current policy settings will perform under future climate scenarios (rather than just the scenarios themselves). Failure to properly evidence and inform this will risk:

- Poorly designed policy solutions that are not effective against the intended purpose;
- Pre-emptive, or unnecessary, policy reactions with the subsequent costs, trade-offs and impacts;
- Unnecessary tensions undermined social cohesion, or poor confidence in public water management, through poor water literacy.

Answering the current gaps includes two key steps. Firstly, tracking how current settings are actually performing over time – specifically, the long-term trend in reliability under a changing climate. Secondly, road-testing those settings against a range of plausible future climate scenarios – both wetter and drier, given the tendency for analysis to focus only on drought, rather than assuming past performance is a guide to the future.

The challenge is for this period of water-review and potential reform is not just identifying the possible scenarios for climate and water, but:

- Understanding how those scenarios will play out with current policy-settings;
- The role of various policy instruments; and
- To the extent that any policy changes are being considered by governments, the objectives being sought under climate change scenarios and understanding the trade-offs of those objectives.

NIC's recommended role for the Commonwealth in this space is not a new regulatory one. It is a role of appropriate data provision and consistency of data across different jurisdictions, and of ensuring funding is available to maintain water infrastructure so that it remains fit-for-purpose under future climate conditions. Read together, these recommendations should be understood as a call for better evidence and stress-testing of current settings – not as NIC dismissing climate change, nor as an invitation for new Commonwealth climate mandates.

Recommendation: Current policy settings are already adaptive and should be maintained including state-based allocations systems and Murray Darling Basin Incidence Response Guides, rather than replaced or supplemented with new Commonwealth climate powers or requirements. The Act should, however, support: (i) systematic, long-term tracking of entitlement reliability trends under a changing climate; (ii) periodic scenario-testing of current settings against a range of plausible future climate conditions, wetter and drier, acknowledging uncertainty; and (iii) the Commonwealth's role in maintaining consistent national water data and supporting investment in fit-for-purpose water infrastructure.

7. What are the opportunities for the Water Act to support social and economic outcomes, including for First Nations?

Triple (or quadruple) bottom line

NIC is concerned by the statements in the Discussion Paper that:

"alongside its primary environmental objectives, the Water Act includes a range of mechanisms to consider and influence social and economic impacts on communities, industries and First Nations peoples."

The Water Act seeks to serve a broad range of environmental, social, economic and other interests in a balanced manner. The Water Act was never envisioned to have environmental supremacy above all else, nor was it intended to take a siloed approach to the consideration of diverse interests and uses of water. The explanatory memorandum states:

"The Bill will enable water resources in the Murray-Darling Basin to be managed in the national interest, ***optimising*** *environmental, economic* ***and*** *social outcomes."*[29]

Regarding the Basin Plan, the explanatory memorandum says:

"In particular, the clause requires the Basin Plan to give effect to *relevant international agreements* (to the extent that those agreements are relevant to the use and management of Basin water resources) and to **balance** environmental, social **and**

[29] ParlInfo - Water Bill 2007

economic considerations as they relate to the integrated management of Basin water resources."

The language of this is clear that the intention was to balance the objectives.

Further, the explanatory memorandum states:

"The Bill has been informed by the *Intergovernmental Agreement on a National Water Initiative* (National *Water Initiative*)."

The NWI states in this regard:

"Decisions about water management involve ***balancing*** *sets of economic, environmental and other interests."*

"Governments have a responsibility to ensure that water is allocated and used to achieve socially and economically beneficial outcomes in a manner that is environmentally sustainable."

"Full implementation of this Agreement will result in 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…"*

For these reasons, it is our view that the Water Act does not have 'primary' environmental objectives above social and economic but rather seeks to balance these objectives and optimise outcomes. This requires clarification in the final report.

Effect on socio-economic outcomes

There have been a range of reports which have found significant socio-economic impacts because of the Basin Plan and water reform more broadly.[30]

The legislation currently requires socio-economic assessments as part of the Basin Plan Evaluation to occur at a Basin-scale, which smooths over the localised impacts in small communities and specific industries. This has resulted in socio-economic impact assessments as part of the Basin Plans Evaluations to not comprehensively capture the true extent or nature of impacts and often provide a very misleading indication. This was very telling in the 2025 Basin Plan Evaluation, which produced results contrary to most other studies.

Community profile analysis undertaken as part of the Basin Plan implementation highlighted the variability of impacts at different scales.

Case Study: Rice Industry
The experience of the rice industry and the Riverina communities of Leeton and Deniliquin under the additional 450GL recovery program is a direct, current and fully evidenced example of why the existing legislative framework and subsequent decision making of government has failed to properly balance social and economic considerations.

A risk that was modelled, warned of, and repeated - in advance

[30] National Irrigators' Council - Socio Economic

The risk to the rice industry specifically was neither hidden nor speculative. In June 2024, ABARES - the Australian Government's own agricultural research agency - modelled that, of all Basin industries, rice would face by far the steepest reduction in production from further water recovery: an estimated 8 per cent ($20 million per year) fall in production value under a 225GL recovery scenario, rising to an estimated 18 per cent decline in gross value under the full 450GL scenario - roughly double the impact modelled for any other irrigated industry.

In October 2024, SunRice's Chief Executive and Chair separately and publicly warned government that the buyback program "has not considered the impact of water recovery on the Basin food and fibre manufacturing workforce," and that continued purchases of general security water risked pushing the company's Riverina operations "offline."

In 2025, the National Irrigators' Council placed the same warning on the public record in relation to a specific targeted tender, stating that its footprint aligned with "the most vulnerable southern basin communities," and naming the Murray and Lower Murrumbidgee catchments as being at risk.

Where the water was recovered from

NIC's own tracking of Commonwealth water purchases confirms this was not a theoretical risk.

The Murrumbidgee and Murray- the catchments in which SunRice's Leeton and Deniliquin mills draw their supply and their workforce:

- Murrumbidgee accounted for 61.5 GL of this total, or 22 per cent, the single largest share of any individual catchment.
- NSW Murray – where rice is also largely grown and hence supplies the mills - accounted for a further 75.3 GL (27 per cent).

The outcome

On 8 July 2026, SunRice cut shifts at its Leeton and Deniliquin mills, reducing Leeton from 24-hour to 16-hour operation and Deniliquin from 24-hour to 8-hour operation, citing both drought and water recovery policy. On 12 August 2026, the company confirmed 78 positions had been made redundant - 10 in Leeton and 68 in Deniliquin - with a further 92 roles restructured, against the smallest rice crop since the 2019–20 drought. Leeton Shire Council's General Manager observed publicly that "the relentless pursuit of water buybacks had to catch up at some point."

Why this is a policy failure, not an unforeseeable outcome

This case demonstrates a clear and specific failure in the current framework's treatment of social and economic impacts. Government's own modelling identified the industry most at risk two years in advance. Industry and the Company repeated that warning directly to government. NIC placed the same warning on the public record, naming the catchments concerned. The socio-economic safeguard adopted specifically to prevent this outcome was withdrawn from public view rather than strengthened, monitored or enforced. And purchasing continued, and intensified, in precisely the catchments identified as most exposed. The resulting job losses in Leeton and Deniliquin were not an unforeseeable consequence of water recovery - they were a specifically forecast risk that the current legislative and policy

framework provided no mechanism to prevent, to pause, or even to track transparently in real time as it occurred.

One of the strengths of the community scale analysis, was the process, by which it was undertaken - working with communities to understand impacts. This process is just as valuable as the data as the end-product, as it gave communities a chance to feel heard, report their local experiences and observations, and to see genuine interest in authorities in understanding these impacts.

Hence it is ultimately recommended that this process be repeated with communities and incorporated into Water Act obligations. The previous data (as collected by the MDBA) is now over a decade old (in some case 15 years). Updates are required to see more recent impacts over this period – noting (i) further water recovery has occurred since this time, (ii) to identify the lag impacts, given many impacts take time to occur after the removal of water, and (iii) to replicate this process to see greater trends over time.

The cumulative impacts must also be considered. This includes from the Basin Plan, as well as a range of other water policy reforms. The current piecemeal approach underestimates the true impact facing communities when the combined effect is not considered.

Furthermore, water market impacts have also been excluded from being considered as a socio-economic impact. This is problematic as water market price changes have a direct impact on farm business decision-making, including profitability, employment and trends in crops and water use.

Recommendation: "Basin-scale" be removed from socio-economic considerations in the Act. We recommend that multi-scale benchmarking occurs that considers the cumulative policy effects on communities, to inform programs and future decision making. Assessments should also include water market impacts which have been previously excluded.

Link to First Nations socio-economic outcomes

It will be important to recognise the intersections between cultural and socio-economic outcomes, which includes the role of water for production (i.e. irrigated agriculture) to provide an economic base for rural communities, both Indigenous and non-Indigenous. The social and economic benefits from irrigated agriculture span from increased employment to increased service access such as healthcare and education.

The impacts from water reforms that seeks to remove water from production have seldom explored this reality of the impacts across all sectors of the community.

The Bourke Shire Council – a community with a relatively large Indigenous population - has said:

"The township of Bourke, and the surrounding Shire, is a community in the Basin that has been significantly impacted because of the implementation of the surface water

diversions Cap (the Cap) and from the water buy back. It has been estimated that up to 60% of the local economy has been impacted because of the implementation of the Cap process with a further 10% of the economy impacted through the water buyback process. Both these processes have resulted in both economic and social reduction."[31]

"Furthermore, after enduring further wealth loss through buybacks, the Bourke community stands to lose further social capital with the current Bridging the Gap voluntary buyback.

A further permanent reduction in water is likely to permanently constrain any economic and social recovery of Bourke and entrench and significantly worsen existing high levels of social disadvantage, particularly among its large indigenous population."[32]

It will be important for the review to capture this synergy, on the role of irrigated agriculture and water for production, for rural social and economic outcomes which includes Indigenous outcomes. Opportunities for synergies and co-benefit outcomes need to be identified, rather than a purely siloed approach.

Links to food security

The Federal Government is simultaneously developing "Feeding Australia: A National Food Security Strategy". A key component of ensuring national food security, is ensuring the water security of Australia's agriculture sector to produce that food.

Water security for agriculture refers to water availability (e.g. both the total size of the consumptive pool of water with respect to SDLs), the reliability of water (e.g. the reliability of water allocations on a water entitlement), the affordability of water (e.g. the price of water on the market), and the accessibility of water (e.g. relating to deliverability through the system to utilise the water when required).

It is important that the Water Act serves to support the objectives of the National Food Security Strategy. At present, the Act is inherently designed to do the opposite – to reduce the amount of water available to agriculture (1 in 3 litre reduction since the Millenium Drought).

Particularly with the current geopolitical climate, it is important that there is appropriate water security for viable, productive, diverse and sustainable agricultural industries in Australia. This is important for not just our domestic food security but contributing to global food security (as part of the UN SDGs), which also has important implications for Australia's national security. This is a core part of the national interest.

To do this – protections to ensure no further reductions to the consumptive pool of water are required, as well as protections to ensure there is no erosion to the reliability of water entitlements (such as via policy changes).

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[31] Submission 79 - Bourke Shire Council - Murray-Darling Basin Plan: Implementation Review 2023 - Public inquiry

[32] Submission 79 - Bourke Shire Council - Murray-Darling Basin Plan: Implementation Review 2023 - Public inquiry

Recommendation: Reflect "Feeding Australia: A National Food Security Strategy" in the Water Act by ensuring adequate water security to meet requirements for the agricultural sector, for Australia's food security and to play Australia's role in global food security efforts.

8. To what extent are arrangements under the Water Act appropriate to ensure resilient communities and provide water security?

As per the earlier section regarding Object (e) water security in the Australian context must be deliberately explicit about what is and isn't being made certain. It cannot be about fixed volumes of water. Rather it should be about the rules, entitlements, allocation processes and risk-assignment settings that are stable and predictably applied – not the volume of water available in any given year, which will continue to vary with climate and seasonal conditions.

The Water Acts role in providing water security is limited, this is largely state responsibilities who manage the frameworks.

Our established frameworks allow a risk-based system, but it is the responsibility of users (and governments on behalf of communities) to understand this risk and consider alternatives to mitigate changes in supply, as droughts are inevitable. This is why understanding the plausible impacts on water reliability is critical to inform judgements of risk. It is by the provision of information; the Water Act can be of assistance.

Enabling water users to plan and consider options to manage changes in water security, State governments would benefit from improved data on population, competition for water resources, pricing sustainability, plausible climate scenarios, infrastructure viability, new water sources and emerging technologies for water efficient infrastructure. Which does not need Water Act consideration but rather part of broader Government role to work collaboratively with states to ensure they have the best available information and are forward thinking in their planning.

A further dimension of water security is whether the physical infrastructure and supply sources that Basin communities and irrigated agriculture currently rely on remain fit-for-purpose under future conditions. NIC is concerned by evidence of ageing water infrastructure risk, as identified in the 2026 Basin Plan Review Discussion Paper: "*Much of this river infrastructure, including for town water treatment and supply, is near or passed its engineered life span and increasingly vulnerable to failure... Current capital expenditure is one-third to half the necessary level to sustain this important asset base over the long term.*"

Adequate, safe and well-maintained water infrastructure is the essential foundation of the entire water management system as we know it today. Traditional water supplies and storages that Basin communities and irrigated agriculture have relied on may not, on their own, provide the same reliability into the future. Building genuine water security will require governments to actively invest in a broader range of supply solutions that may include new infrastructure to more efficient store and deliver water

such as dams, weirs, pipelines, on-farm storage, and alternative sources such as water recycling, desalination and water-carting for high-priority town and community needs. These will need to be within current limits but must be explored working with local councils, who are primarily responsible for town water supply.

Australia's water security rests on the durability and integrity of the management settings that adapt the system to climate variability, rather than on insulating any one user from that variability altogether. This is particularly relevant when consider that for a community to be truly resilient they will need certainty around the rules to provide water for economic, social, environmental and cultural purposes, not just one or two potential users. This is why the UN-Water definition's inclusion of ecosystems and human wellbeing alongside livelihoods and economic development; all these purposes rely on the same system therefore stability and certainty benefits all.

Notwithstanding the above, by encouraging stable policy settings at the Commonwealth level will help to improve understanding and limitation of water security for all. The more than 30-years of policy reform in water is undermining the confidence in water security settings. This review presents an opportunity to stabilise these settings and therefore encouraging innovation via other means rather than policy response.

Recommendation: Resilient communities need certainty and stability in the rules to provide water for economic, social, environmental and cultural purposes and information to mitigate risks to plausible changes in water availability.

The review should also recognise that water security depends also on the physical suitability of the infrastructure and supply sources that deliver water to users. This requires: (i) governments prioritising investment to address the current infrastructure funding shortfall, ahead of any further water recovery; (ii) a review of barriers to investment in, and use of, alternative and diversified water supply sources; and (iii) modelling of agricultural water availability and affordability under a range of future climate scenarios.

9. To what extent are arrangements under the Water Act appropriate to address current and future challenges in relation to water quality?

Water quality has a complex regulatory system, between water, land and pollution management with a broad range of drivers that can be direct and non-direct influence. Any strategy must recognise the complex interplay and the bulk of the regulatory responsibility with States which limits the extent which the Water Act is responsible.

Whilst water quality can be considered, the interplay of various drivers means it cannot be mandated as there are range of factors some uncontrollable and never one single solution. For these reasons, including water quality as clearer consideration in objectives for the planning and use of the Commonwealth Environmental Water

Holder portfolio is considered the best opportunity for the Water Act to consider water quality challenges in the Murray Darling Basin.

In addition, recommendations to include non-water levers that can contribute to achieving environmental outcomes across the Basin such as facilitating improved land and water management options, carp control and improved integrated catchment management, can also contribute to improved water quality outcomes.

10. To what extent is water information management under the Water Act appropriate to inform current and future decision making, especially in the face of a changing climate?

Bureau of Meteorology

This question largely relates to the water information services provided by the Bureau of Meteorology (BoM).

NIC members have largely reported that they don't use the BoM website as the primary source of water information, if at all.

Members more commonly used state services such as WaterInsights by WaterNSW, which was overall said to be more informative, easy to use, with more accessible and digestible information. Members generally applauded WaterNSW for the development of WaterInsights which can offer an exemplar of a quality water information platform, with real-time information.

While these state services are more readily used – there likely remains a role for information management at a whole-of-Basin or national level. However, it needs to be up to the same standard as other platforms to be worthwhile.

Recommendation: It is recommended that the BoM Water Information portal is revised to have an increased focus on the accessibility of user-friendly information, targeted to the sorts of information that users need to access.

Reliability of water entitlements

A missing piece of information relates to trends in the reliability of water entitlements over time. Particularly with climate change, observing and recording trends of variations in the reliability of water allocations on water entitlements is an important piece of information, to inform both user decisions, as well as to inform public policy.

At present, there are no requirements in the Act for the BoM, or the States, to record, document, monitor or publish information on the reliability of water entitlements, nor to explain or account for those variations.

Such a requirement in our view would be an important part of ensuring jurisdictions comply with NWI commitments; as well as Basin Plan obligations, that serve to protect the reliability of entitlements or manage the risk where an impact is to occur (as per

the Risk Assignment Framework). In turn, this is vital to protecting the integrity of the NWI-style entitlement-based water management framework.

The lack of this information also creates opportunity for jurisdictions to subtly or incrementally erode entitlement reliability, without being held to account. This has been perceived to be occurring with rules-changes in WSPs, or changes in water allocation policies by states, that have not been subject to transparent and proper processes to identify impacts on reliability, identify the driver as per the Risk Assignment Framework of the NWI, and thus deal with those impacts aligned with NWI commitments. This erosion of the water property right effectively undermines the integrity of the entire framework.

Given the Commonwealth is also the largest single water entitlement holder in the Basin (via the CEWH), monitoring the reliability of entitlements, and accounting for any variations, is also a core due-diligence component of the ongoing maintenance of this public asset.

It is noted that variations in reliability due to climate, as direct impacts of increased or decreased water availability will occur over time. However, this must be accounted for, so that any impacts that are indeed a result of government policy changes can be transparently identified.

Recommendation: NIC recommend the Water Act require jurisdictions to track entitlement reliability over time, including accounting for any variations (i.e. whether due to climate, or changes in government policy), to ensure the ongoing integrity of the entitlement-based water management framework envisioned by the NWI. This should be included in reporting obligations similar to water take data for SDL compliance.

11. What are the opportunities for the Water Act to align with the objectives set out in the National Water Agreement?

NWA or NWI?

The final NWA has only just been released and therefore, not all objectives and principles have been reviewed.

Nonetheless as the NWA has not yet been signed by any other party, other than the Commonwealth. We consider that it is premature to ensure the Water Act must align as it is neither national, nor an agreement. There were several legitimate reasons why States have not signed the NWA, which to our knowledge have not yet been resolved.

Priority must first and foremost be working collaboratively with the States to reach agreement and working through the concerns raised during the consultation and drafting of the NWA.

Until such time as the States, across Australia, sign the NWA, it would be premature to seek to incorporate it into legislation. The NWI remains the blueprint, as has informed

the development of the Water Act in its current form. A core reason for the success of the NWI originally was the collaborative approach to its development, across jurisdictions and a broad range of stakeholders.

As the final NWA was published towards the end of this public consultation period. As such, NIC has not yet had a chance to undertake detailed review nor consult with members on a position on this latest version. NIC can provide further feedback on this latest version.

Embedding the NWI / NWA in the Water Act

While some parts of the NWI were directly inserted into the Water Act (such as the Risk Assignment Framework at Schedule 3A), NIC is of the position that many of the core components that ultimately lay the foundations or serve to underpin the entire entitlement-based framework of water management should similarly be brought forward into the legislation.

The clauses (outlined below) are the foundations that water users in the Murray-Darling Basin, and other areas where they are implemented, rely on as part of operating their businesses. As such, these foundations are critical to irrigation-dependent communities as well.

The recommendations within this section do not suggest extending the Commonwealth's role or powers. Rather, they reinforce principles that all jurisdictions agreed to in the National Water Initiative in 2004 and have been progressively implementing in state legislation and water plans in the two decades since. These are not new or contested obligations being sought by NIC – they are already the foundations that water users rely on in practice; bringing them into the Water Act simply gives Commonwealth legislative effect to a position the states have already accepted and are already acting on.

Entitlement characteristics

One of the core components of the original NWI (and copied to the NWA) was to create an entitlement-based system of water management. Specifically:

*"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."***Recommendation: NIC is of the position that these entitlement characteristics – as specified in the NWI and NWA - should also be brought forward into the legislation, as they ultimately underpin the very foundations of the contemporary framework.**

These are specifically listed as Clauses 31 and 32 of the NWI (excerpt below), or 7.1 – 7.4 of the NWA (excerpt below).

31. *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;

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).

32. *Water access entitlements* will also:

i) clearly indicate the responsibilities and obligations of the entitlement holder consistent with the *water plan* relevant to the source of the water;

ii) only be able to be cancelled at Ministerial and agency discretion where the responsibilities and obligations of the entitlement holder have clearly been breached;

iii) be able to be varied, for example to change extraction conditions, where mutually agreed between the government and the entitlement holder; and

iv) be subject to any provisions relating to access of water during emergencies, as specified by legislation in each jurisdiction.

Water access rights and markets

Outcome 7A – Water rights holders have confidence to use water access rights for a range of business purposes.

Principles

7.1. Consumptive use and allocation of water requires a water access entitlement or licence, consistent with the relevant water plan or legislative framework.

7.2. Water access entitlements and licences:

- 7.2.1. specify the essential characteristics of the water product
- 7.2.2. are exclusive
- 7.2.3. can be traded, given, bequeathed or leased
- 7.2.4. can be subdivided or amalgamated
- 7.2.5. can be used as collateral for accessing finance
- 7.2.6. are enforceable and enforced
- 7.2.7. clearly indicate the responsibilities and obligations of the entitlement holder consistent with the water plan or the jurisdiction's water legislation relevant to the source of the water
- 7.2.8. can only be cancelled at ministerial and agency discretion where the responsibilities and obligations of the entitlement and licence holder have clearly been breached
- 7.2.9. can be varied (for example, to change extraction conditions) by mutual agreement between the government and the entitlement and licence holder
- 7.2.10. are subject to any provisions relating to access to water during emergencies, as specified by legislation in each jurisdiction.

Addressing water recovery

The NWI – and NWA – have clear principles in place to deal with instances where water recovery may be required to address environmental and other public interest outcomes. While NIC does not support any further water recovery or reductions to the consumptive pool – if this is to occur – it must be done so via proper and transparent process – that maintains the integrity of the water entitlement framework.

The NWA (as inserted below) identifies that if this is to occur, it must include consideration of all options, assessment of costs and benefits, selection of measures based on optimising cost-effectiveness and managing socio-economic impacts, and early consideration of opportunities to integrate complementary, non-volumetric natural resource management measures.

6.3. Where it is necessary to recover water to achieve environmental and other public benefit outcomes, the following principles will be used for determining the most effective and efficient mix of water recovery measures:

6.3.1. consideration of all available options for water recovery, including:

6.3.1.1. investment in more efficient water infrastructure

6.3.1.2. purchase of water on the market, by tender or through other market-based mechanisms

6.3.1.3. investment in more efficient water management practices, including measurement

6.3.1.4. investment in behavioural change to reduce water consumption

6.3.2. assessment of the socio-economic costs and benefits of the most likely prospective options, including the impacts on downstream users and the implications for wider natural resource management outcomes (for example, hydrological and ecological consequences and impacts on water security, quality or salinity)

6.3.3. selection of measures based on optimising cost-effectiveness and with a view to managing socio-economic impacts

6.3.4. early consideration of opportunities to integrate complementary natural resource management measures and partnerships to achieve defined environmental outcomes.

For entitlement-holders, while buybacks of water are not supported, if recovery is to occur, this is the preferred mechanism (compared to rules-based changes, creation of new entitlements or other impacts to entitlement reliability). The reason for this is that the purchase of water on the market maintains the integrity of the water entitlement framework (i.e. respects the water property right), involves a willing seller and voluntary participation rather than socialised impacts to all parties, willing or not; and minimises third-party impacts (recognising that market impacts of water purchase do still result in third-party impacts).

We are concerned as water users are observing 'water recovery by stealth' with state governments using rules-changes, changes to allocation policies, or the creation of new licences, to address environmental or other public interest issues instead – which undermines entitlement reliability and the integrity of that entitlement framework – contrary to the NWI, and these measures.

We see a role of the Commonwealth in protecting the integrity of this entitlement-based framework, as per the vision of the NWI, as has been agreed across jurisdictions.

Recommendation: Insert the NWI / NWA provisions relating to where water recovery may need to occur for environmental or other public interest reasons, as a schedule to the Water Act.

Risk Assignment Framework

The Risk Assignment Framework (RAF) of the NWI is currently contained in Scheduled 3A of the Act. It is critical that this remains in place, as a core component of the secure foundations of the entitlement-based system. One of the most important parts of the RAF is the commitment that impacts to water access entitlements from changes in Government policy are 100% compensable by Government. This is critical to

protecting the integrity of the water entitlement framework, as the very foundations to which the entire system of water management is based.

There are concerns that States (particularly NSW) are not abiding by the RAF (which is in both the Federal and state legislation), by trying to avoid paying compensation for changes in Government policy for small impacts if less than 3%. In our view, this is a misinterpretation of the RAF to seek to avoid paying compensation. Maintaining the RAF in the Water Act is an important protection to all water entitlement holders (environmental, agricultural and all), as well as to maintain the integrity of the entitlement-based system itself. Many stakeholders are calling for the removal of the clause relating to 3% to prevent misinterpretation particularly in NSW. However, we note in the current version of the NWA that the 3% provision remains, whilst a preference for no threshold was clearly communicated throughout the consultation approach it has not resulted in change.

Nonetheless, maintaining the risk assignment which requires 100% compensation for impacts resulting from changes in Government policy - is critical.

The RAF is outlined at 48 – 51 of the NWI, or 7.26 – 7.27 of the NWA (excerpt below).

Risk assignment

Outcome 7E – Certainty for water rights holders is provided through clear provisions to allocate risk for reductions in water availability.

Principles

7.26. Risks arising from future changes in the availability of water for consumptive use are clearly assigned in legislation or publicly available policy, to help users understand and plan for long-term changes in water supply.

7.27. An effective risk assignment framework occurs in the context that the share-based water access entitlements framework has been established; water plans have been transparently developed to determine water allocation for the entitlements; regular reporting of progress in implementing plans is occurring; and a pathway for dealing with known overallocation and/or overuse has been agreed.

7.27.1. The *NWI risk assignment framework* below, which replicates NWI paragraphs 48 to 51, applies to any future reductions in the availability of water for consumptive use.

7.27.2. This framework applies to water reductions additional to those identified as required to address known overallocation and/or overuse in accordance with pathways agreed under National Competition Policy commitments.

NWI risk assignment framework

48. Water access entitlement holders are to bear the risks of any reduction or less reliable water allocation, under their water access entitlements, arising from reductions to the consumptive pool as a result of:

i. seasonal or long-term changes in climate; and
ii. periodic natural events such as bushfires and drought.

49. The risks of any reduction or less reliable water allocation under a water access entitlement, arising as a result of bona fide improvements[5] in the knowledge of water systems' capacity to sustain particular extraction levels are to be borne by users up to 2014. Risks arising under comprehensive water plans commencing or renewed after 2014 are to be shared over each ten year period in the following way:

i. water access entitlement holders to bear the first 3% reduction in water allocation under a water access entitlement;

ii. state/territory governments and the Commonwealth Government to share one-third and two-thirds respectively reductions in water allocation under water access entitlements of between 3% and 6%; and

iii. state/territory and Commonwealth governments to equally share reductions in water allocation under water access entitlements greater than 6%.

50. Governments are to bear the risks of any reduction or less reliable water allocation that is not previously provided for, arising from changes in government policy[6] (for example, new environmental objectives). In such cases, governments may recover this water in accordance with the principles for assessing the most efficient and cost effective measures for water recovery (paragraph 79 (ii) (a) refers).[7]

51. Alternatively, the Parties agree that where affected parties, including water access entitlement holders, environmental stakeholders and the relevant government agree, on a voluntary basis, to a different risk sharing formula to that proposed in paragraphs 48 – 50 above, that this will be an acceptable approach.

[5] Bona fide improvements in the knowledge of water systems: information that is added to or modifies existing models or theories accepted by water managers and implemented on this basis in legislation or regulation or otherwise given effect, other than knowledge relating to matters covered by NWI paragraph 48.

[6] Changes in government policy: change in legislation or regulatory measures made by government to address a specific problem, other than a reduction as described at NWI paragraphs 48 and 49.

[7] Principles to assess the most efficient and cost-effective measures for water recovery set out in paragraph 79(ii)(a) of the NWI are replicated in principle 6.3 of this Agreement.

Recommendation: The finalised NWA Risk Assignment Framework is maintained within the Water Act for consistency.

Conclusion

National Irrigators' Council welcome the opportunity to contribute to the Statutory Review of the Commonwealth Water Act.

This review runs concurrently with several other reviews of Commonwealth water management instruments, and its outcomes should be considered, and where appropriate aligned, with these parallel processes rather than developed in isolation from them.

Subject to that, the review offers a timely opportunity to move the Water Act from an instrument of change to a framework of stability. With Sustainable Diversion Limits now in effect and water recovery targets substantially complete, the Act's task is no longer to drive further structural reduction in the consumptive pool, but to provide durable certainty for water access entitlement holders that now include the environment and first nations, and long-term compliance oversight of the settings already achieved.

NIC's recommendations are unified by that shift. They call for no further reductions to entitlement reliability or availability; a redirection of effort and funding toward complementary measures that address the non-water drivers now recognised as the principal constraint on environmental outcomes in the Murray Darling Basin; and a modernised, more sophisticated definition of environmentally sustainable outcomes that no longer treats water volume as a sole proxy for success. They also call for the Act to operate clearly within the Commonwealth's constitutional role, to reinforce rather than erode the entitlement framework underpinning the National Water Initiative, to retire provisions that have served their enabling purpose, and to give the social and economic viability of irrigated agriculture and dependent communities – including First Nations communities engaged through genuine, whole-of-government consultation – equal standing with environmental objectives.

Together, these changes would consolidate three decades of reform into an Act fit for its next phase: simpler, outcomes-focused, and oriented toward stability rather than continued change. Critically, when a draft of the amended legislation is being prepared and released in 2027, it is essential that stakeholders are afforded a genuine and clear opportunity for public consultation on its specific provisions – given the complexity and significance of the matters this review will determine, this cannot be treated as a formality.

Please don't hesitate to contact NIC if you have any questions or would like to discuss the contents of this submission further.

Contact

Zara Lowien | CEO | National Irrigators' Council

E: ceo@irrigators.org.au

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Background on the Murray Darling Basin Review

Moving Forwards: NIC Review of the Murray Darling Basin Plan

Background on the Murray Darling Basin Plan

National Irrigators' Council
Food · Fibre · Future

02 6273 3637 |
admin@irrigators.org.au
@Nat_Irrigators
@Nat_Irrigators
@IrrigatorsCouncil
@national-irrigators-council

www.irrigators.org.au

Office 8 | Level 3 | 14-16 Brisbane Avenue | Barton ACT
PO Box 29 | Bellata | NSW | 2397