



National
Irrigators'
Council

SUBMISSION: WATER ACT REVIEW



JULY 2026

FIRST NATIONS 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 document "*Strong Voices, Healthy Waters: upholding Aboriginal and Torres Strait Islander peoples' water rights through the review of the Water Act 2007*"¹, published by DCCEEW in May 2026. This forms part of the broader statutory 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](#)

In XX, the NIC also updated our Position Statement XXX as further context and background for this submission.

NIC notes that public consultation on a broader range of topic areas will also be occurring in July-August and November this year, to which NIC will be participating.

In accordance with section 253 of the Act:

*The review must also identify opportunities under this Act to promote the principles set out in the **United Nations Declaration on the Rights of Indigenous Peoples**, being the Resolution adopted by the General Assembly of the United Nations on 13 September 2007.*

This submission seeks to directly provide input to this statutory requirement.

Overview

Key points raised in this submission include:

- 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,

¹ [Strong Voices, Healthy Waters: upholding Aboriginal and Torres Strait Islander peoples' water rights through the review of the Water Act 2007 \(Cth\).](#)



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.

Key Recommendations

- 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.
- The final version of the NWA is published for transparency, to inform this public consultation.
- Further public consultation includes definitions to clarify key terms (particularly, consent and self-determination) within the context of water management and the proposed arrangements being sought.
- The review seeks to discern what falls within the scope of the water portfolio, and what requires much broader whole-of-government reform, to properly address.
- 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. As well as acknowledge, other programs maybe responsible for monitoring such targets.
- 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.

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.

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Collaboration not separation

NIC acknowledge 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, recognises and values Cultural objectives in water planning and management.

NIC supports the use, access and management of water for Cultural objectives, within the current water management framework and market systems.

By working together, we believe better outcomes are possible. We believe there are ways forward that can realise real, practical, and meaningful outcomes for First Nations peoples in our communities – without creating tensions or divisions. We are proud of the positive relationships our sector has with First Nations.

NIC seeks to engage in this process in a constructive, respectful and informed manner. We offer our knowledge and expertise of the water management and planning frameworks, to look for opportunities to create mutually-agreeable ways forward.

NIC notes the positive examples of our sector working with First Nations in our communities to advance outcomes and seeks that this process expands on that collaborative and constructive basis. A process based on including all stakeholders, recognising a willingness for practical outcomes, and shared understandings, will enable working together to achieve meaningful outcomes with shared support.

Water reform framework must be adhered to

Water reform in Australia has faced three-decades of reform. The blueprint for this reform journey was the National Water Initiative (NWI), which laid the foundations for the key regulatory instruments and approaches – such as sustainable extraction limits, water entitlements separate to land and allocation systems that provide a share of the available resource, all detailed within all detailed within statutory water plans – to name a few. These regulatory tools are now broadly established around Australia, with multiple iterations in place in regions like the Murray Darling Basin. This has given governments the ability to manage and control water as a distinct resource, recover water if deemed non-sustainable, and impose responsibilities.

Any future reform must consistently work with this foundational blueprint.

Part of the vision in the NWI was not to have siloed approaches to different stakeholders. For example, Schedule E 'Guidelines for Water Plans and Planning Processes' emphasises: *'adequate opportunity for consumptive use, environmental, cultural, and other public benefit issues to be identified and considered in an open and transparent way'*.

Key positions:

- NIC supports the use, access and management of water for Cultural objectives, **within** the **current** water management framework and market systems.



- 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.

NIC recommend that:

- 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.

National Water Agreement

NIC also notes that the NWI is currently being renewed into a new National Water Agreement (NWA). At this point in time, there has been no transparency to stakeholders on the final version, and it is understood that many states have not signed the new version (only the Commonwealth Minister). If this review seeks to incorporate those new articles of the NWA into legislation, it will be critical to first ensure that the state jurisdictions are supportive (i.e. that they become signatories) in order to maintain the same cooperative foundations (which will almost certainly require proper process to ensure transparency of the final version), and that this process takes place prior to legislative amendments. Put simply – it is not a National Water Agreement, if no states have agreed – and it would be premature to rely on it for this review, or progress to legislative amendments, without such agreement.

The public consultation on the drafting of the NWA included themes relevant to First Nations. To the extent that this review looks to those NWA articles, it will be important for this review to incorporate the learnings and feedback from that process also. At this point, many of the issues raised by stakeholders during that NWA process are not reflected in the consultation materials. NIC recommends this review also considers the submissions provided by a broad range of stakeholders relating to those themes in the NWA. The NIC has included our most recent feedback on the NWA for transparency and reference to areas of concern (see appendix 1).

NIC recommend that:

- The final version of the NWA is published for transparency, to inform this public consultation.
- 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.

The role of the Water Act 2007 (Cth) given state powers

The regulatory architecture for water management is complex, and the role of the Water Act 2007, and the Australian Government more broadly, must be considered in this review. A proper understanding of this regulatory architecture is needed to inform an understanding of the status quo, identify the challenges and opportunities, and possible ways forward.

A complexity for this review is that the Water Act 2007 (Cth) is the federal legislation, whereas water is managed by the States (as per the Australian Constitution). Where 'water rights' are being considered - the relevant instruments to give effect to Aboriginal rights and interests would typically fall mostly within state legislation and instruments. It would not be typical for the Water Act 2007 (Cth) to be the instrument to create statutory rights – similarly – rights of water access for irrigation are issued by the States.



Looking at only federal instruments – for a portfolio which is fundamentally managed by the States – will fail to recognise the current landscape.

NIC recommend that as part of further consultation:

- The scope and role of the Water Act 2007 in this domain is clearly identified, specifically, what is within scope of Commonwealth legislation, and that of state legislation and regulations.

In assessing scope, it will also be important to look at the role of legislation, versus non-statutory approaches. Many of the issues raised appear to be not necessarily those requiring a legislative solution – rather improved delivery on existing legislation, improvements or expansion of programs, increased funding to programs, or greater involvement.

NIC recommend that as part of further consultation:

- The role of both legislative and non-legislative pathways forward is explored, such as programs.

Further, as part of this, is ensuring there is no duplication, in recommendations that may already exist. As further explored below, most states have been working towards similar objectives since at least 2004, with many rights, entitlements and programs in place. We are concerned these initiatives are not adequately recognised between jurisdictions as likely contributing to national objectives – see next sections.

Status of indigenous water rights

NIC was disappointed to see the Discussion Paper failed to accurately describe the status and nature of Indigenous rights to water. This is not to say that there is no space for improvements, rather, that any change must be built on an evidence-based and factual understanding of the status quo, and an accurately identified problem-definition.

The Discussion Paper says: *“When the Water Act was developed, it did not take into account Aboriginal and Torres Strait Islander peoples’ water rights or interests in the management of water.”* This is not correct.

In our understanding, the issue is not that the legislation does not take this into account, it is:

- The primary instruments to give effect to Aboriginal rights and interests in water is mostly within State legislation and instruments – as water is managed by States (as per the Australian Constitution), and any rights or entitlements (to any party) are issued by the States;
- There has not been the same degree of investment in programs to deliver upon or implement the objects of the legislation – for example, as a case study, focus of the multi-billion dollar Basin Plan has been recovering water volumes from the consumptive pool for the Commonwealth Environmental Water Holder (CEWH), with a significantly lesser focus on targeted cultural programs (they have existed but to a much lesser extent, and only recently increased in focus). This reflects the focus of that period of reform being the issue of sustainability;
- There have been several challenges with established First Nations representative / governance arrangements and models which has understandably led to dissatisfaction (as explored later).

It is appreciated that many First Nations peoples feel implementation has not addressed their rights or interests – these points are not to dismiss that – rather, to emphasise that properly understanding the status quo is critical to moving forwards in a way that realises actual improvements.



The below section seeks to capture some (not all), of the current arrangements – at both a commonwealth and state level – to assist in reflecting this status quo.

Indigenous water rights and interests at the Commonwealth level

This section outlines some of the current arrangements in place at a Commonwealth level.

National Water Initiative

25 “The Parties agree that, once initiated, their water access entitlements and planning frameworks will: ... recognise indigenous needs in relation to water access and management”.

Indigenous Access

52. The Parties will provide for indigenous access to water resources, in accordance with relevant Commonwealth, State and Territory legislation, through planning processes that ensure: i) ii) inclusion of indigenous representation in water planning wherever possible; and water plans will incorporate indigenous social, spiritual and customary objectives and strategies for achieving these objectives wherever they can be developed.

53. Water planning processes will take account of the possible existence of native title rights to water in the catchment or aquifer area. The Parties note that plans may need to allocate water to native title holders following the recognition of native title rights in water under the Commonwealth Native Title Act 1993.

54. Water allocated to native title holders for traditional cultural purposes will be accounted for.

Water Act 2007 (Cth)

(fa) to ensure that the use and management of Basin water resources takes into account spiritual, cultural, environmental, social and economic matters relevant to Indigenous people, including in relation to their knowledge, values, uses, traditions and customs; and Subdivision B (2) (da) the use and management of Basin water resources that takes into account spiritual, cultural, environmental, social and economic matters relevant to Indigenous people;

The BCC also requires at least 2 Indigenous persons with expertise in Indigenous matters relevant to the Basin's water resources.

There are further provisions in the Basin Plan and Water Resource Plans.



Part 14—Indigenous values and uses

Note: If a water resource plan is prepared by a Basin State, it is expected that the Authority will consult with relevant Indigenous organisations in relation to whether the requirements of this Part have been met, for the purposes of paragraph 63(3)(b) of the Act.

10.52 Objectives and outcomes based on Indigenous values and uses

- (1) A water resource plan must identify:
 - (a) the objectives of Indigenous people in relation to managing the water resources of the water resource plan area; and
 - (b) the outcomes for the management of the water resources of the water resource plan area that are desired by Indigenous people.
- (2) In identifying the matters set out in subsection (1), regard must be had to:
 - (a) the social, spiritual and cultural values of Indigenous people that relate to the water resources of the water resource plan area (*Indigenous values*); and
 - (b) the social, spiritual and cultural uses of the water resources of the water resource plan area by Indigenous people (*Indigenous uses*);as determined through consultation with relevant Indigenous organisations, including (where appropriate) the Murray Lower Darling Rivers Indigenous Nations and the Northern Murray-Darling Basin Aboriginal Nations.
- (3) A person or body preparing a water resource plan may identify opportunities to strengthen the protection of Indigenous values and Indigenous uses in accordance with the objectives and outcomes identified under subsection (1), in which case the opportunities must be specified in the water resource plan.

10.53 Consultation and preparation of water resource plan

- (1) A water resource plan must be prepared having regard to the views of relevant Indigenous organisations with respect to the matters identified under section 10.52 and the following matters:
 - (a) native title rights, native title claims and Indigenous Land Use Agreements provided for by the *Native Title Act 1993* in relation to the water resources of the water resource plan area;
 - (b) registered Aboriginal heritage relating to the water resources of the water resource plan area;
 - (c) inclusion of Indigenous representation in the preparation and implementation of the plan;
 - (d) Indigenous social, cultural, spiritual and customary objectives, and strategies for achieving these objectives;
 - (e) encouragement of active and informed participation of Indigenous people;
 - (f) risks to Indigenous values and Indigenous uses arising from the use and management of the water resources of the water resource plan area.

Note: For examples of the principles that may be applied in relation to the participation of Indigenous people, see the document titled 'MLDRIN and NBAN Principles of Indigenous Engagement in the Murray-Darling Basin'.
- (2) In this section, *registered Aboriginal heritage* means Aboriginal heritage registered or listed under a law of a Basin State or the Commonwealth that deals with the registration or listing of Aboriginal heritage (regardless of whether the law deals with the listing of other heritage).

10.54 Cultural flows

A water resource plan must be prepared having regard to the views of Indigenous people with respect to cultural flows.

10.55 Retention of current protection

A water resource plan must provide at least the same level of protection of Indigenous values and Indigenous uses as provided in:

- (a) a transitional water resource plan for the water resource plan area; or
- (b) an interim water resource plan for the water resource plan area.

Indigenous water rights and interests at the State level

This section outlines some of the current arrangements in place at a State level. This varies between jurisdictions. NSW is used below as a case study.

In the NSW Water Management Act 2000:

3 – Objects

(c) to recognise and foster the significant social and economic benefits to the State that result from the sustainable and efficient use of water, including—

- (i) benefits to the environment, and
- (ii) benefits to urban communities, agriculture, fisheries, industry and recreation, and
- (iii) benefits to culture and heritage, and
- (iv) benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water,

Native titles rights are also established:



Division 3 Native title rights

55 Native title rights

(1) A native title holder is entitled, without the need for an access licence, water supply work approval or water use approval, to take and use water in the exercise of native title rights.

(2) This section does not authorise a native title holder—

(a) to construct a dam or water bore without a water supply work approval, or

(b) to construct or use a water supply work otherwise than on land that he or she owns.

(3) The maximum amount of water that can be taken or used by a native title holder in any one year for domestic and traditional purposes is the amount prescribed by the regulations.

**** native title rights** means non-exclusive rights to take and use water for personal, domestic and non-commercial communal purposes (including the purposes of drinking, food preparation, washing, manufacturing traditional artefacts, watering domestic gardens, hunting, fishing and gathering and recreation, cultural and ceremonial purposes).

These rights and objectives are further explored via Water Sharing Plans (WSPs). For example, below is a case study from the Water Sharing Plan for the New South Wales Murray and Lower Darling Regulated Rivers Water Sources 2016:

10 Aboriginal cultural objectives

(1) The broad Aboriginal cultural objective of this Plan is to maintain, and where possible improve, the spiritual, social, customary and economic values and uses of water by Aboriginal people.

(2) The targeted Aboriginal cultural objectives of this Plan are as follows—

(a) to provide access to water in the exercise of native title rights,

(b) to provide access to water for Aboriginal cultural use,

(c) to protect and, where possible enhance, identified water-dependent culturally significant areas, including important riparian vegetation communities,

(d) to maintain water quality within target ranges to ensure suitability of water for Aboriginal cultural use.

(3) The strategies for achieving the Aboriginal cultural objectives of this Plan are as follows—

(a) manage access to water consistent with the exercise of native title rights,

(b) provide for water associated with Aboriginal cultural values and uses,

Note. The provisions in Part 7 provide opportunities for Aboriginal people to access water by allowing for the granting of an access licence of the subcategory "Aboriginal cultural".

(c) reserve a share of water to partially mitigate alterations to natural flow regimes in the water sources,

Note. The provisions in Division 1 and 2 of Part 10 partially mitigate alterations to natural flow regimes.

(d) reserve a share of water to maintain longitudinal and lateral connectivity within and between water sources.

(4) The performance indicator used to measure the success of the strategies for achieving the broad Aboriginal cultural objective in subclause (1) is an evaluation of the extent to which the combined outcomes of the targeted Aboriginal cultural objectives in subclause (2) have contributed to achieving the broad objective.



(5) The performance indicators used to measure the success of the strategies for achieving the targeted Aboriginal cultural objectives in subclause (2) are the changes or trends in Aboriginal cultural benefits during the term of this Plan as assessed using one or more of the following—

- (a) the use of water by Aboriginal people by measuring factors including—
 - (i) the extent to which native title rights are able to be exercised, consistently with any determination of native title or indigenous land use agreement, and
 - (ii) the extent to which access to water has contributed to achieving Aboriginal cultural outcomes,
- (b) the recorded range or extent of target populations of native fish,
- (c) the recorded range or condition of target populations of riparian vegetation,
- (d) the recorded values of water quality measurements including salinity, harmful algal blooms, total nitrogen, total phosphorus, pH, water temperature and dissolved oxygen.

(6) In evaluating the effectiveness of the strategies in meeting the objectives of this clause, the following will be relevant—

- (a) the extent to which the strategies in subclause (3) and provisions in this Plan have been implemented and complied with,
- (b) the extent to which changes in the performance indicators can be attributed to the strategies in subclause (3) and provisions in this Plan,
- (c) the extent to which the strategies in subclause (3) support achievement of the Aboriginal cultural objectives,
- (d) the water made available for Aboriginal cultural values and uses during the term of this Plan through available water determinations and the granting of new access licences,
- (e) the extent to which external influences on surface water-dependent Aboriginal cultural activities during the term of this Plan have affected progress towards achieving the Aboriginal cultural objectives.

This includes the ability for the Minister to grant access licences for Aboriginal cultural purposes.

41 Specific purpose access licences

(2) A person may make an application for a **regulated river (high security) (Aboriginal cultural) access licence** only if the share component of the proposed access licence is no greater than 10 ML/year.

(3) The Minister may only grant a regulated river (high security) (Aboriginal cultural) access licence if—

(a) the licence is primarily for the taking of water by an Aboriginal person or Aboriginal community for personal, domestic or communal purposes, including the following—

- (i) drinking and food preparation,
- (ii) washing,
- (iii) manufacturing traditional artefacts,
- (iv) watering domestic gardens,
- (v) cultural teaching,
- (vi) hunting, fishing and gathering,
- (vii) traditional food production
- (viii) purposes to achieve environmental outcomes,
- (ix) recreational, cultural and ceremonial purposes, and



These Aboriginal cultural licences receive a 100% water allocation, making them one of the highest security water licences. It is acknowledged that the processes for seeking these licences have been challenging.

This is not to say that no change is needed – evidently First Nations people are not satisfied by current arrangements. However, a proper understanding of the status quo is crucial to identify the right problem-definition and thus ways forward.

NIC recommend that as part of further consultation:

- The current rights and arrangements across instruments (State and Federal) are comprehensively documented in consultation materials;
- 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.

Need for a solutions-focus

NIC emphasises the importance of further consultation materials articulating what the nature of proposed solutions are for the issues raised. This will be essential for all stakeholders to provide comment and to ensure procedural fairness with any possible changes between stakeholders.

For example, the consultation materials say:

"The Water Act does not clearly reflect key principles from the UNDRIP, such as self-determination and Free, Prior and Informed Consent."

"Aboriginal and Torres Strait Islander peoples are seeking a more complete and connected approach to water—one that:

- *Recognises rights and self-determination.*
- *Respects Free, Prior and Informed Consent in decisions affecting water and Country.*
- *Acknowledges Cultural, social, spiritual, economic and environmental values.*
- *Acknowledges the deep connections between land, water, sky and wellbeing."*

Further information is required on what this is intended to look like in a practical sense, 'how' this is proposed to occur, and what the pathway forward is intended to be.

Clarification of key terms is crucial

NIC is concerned that there are varying interpretations of key terms, which risks varied expectations of what changes are being sought and/or agreed to. As part of further public consultation, it will be important to provide definitions and explanations of what these terms mean in the context of water management in Australia, what they include and do not include within scope in a practical sense, and where applicable, have those definitions included in relevant instruments. This will ensure all stakeholders, and decision-makers, are on the same level of understanding – in both the public consultation phase, but also, in the legislation and implementation phase.

This is particularly relevant if the definition of the term in this context is different to what a common or dictionary definition of that term may be. For example, the phrase 'consent' in many contexts would mean a veto power, however, we have been informed that this is not what is intended here.

Key terms which NIC believes require formal definitions to describe in practical terms what these terms mean and do not mean, as part of further consultations:



- Consent – in the context of free, prior and informed consent
- Authority
- Water rights
- Living Entity
- Self-determination.

It is recognised that these terms may already be defined in some state jurisdictions, and these will not necessarily be the same between States, or with the Commonwealth. The recommendations of this section are to ensure they are defined for the purposes of the instrument to which they apply, and not necessarily to ensure consistency between jurisdictions, as they may take different meaning for different purposes in different contexts, and that must be respected.

NIC recommend that:

- Further public consultation includes definitions to clarify key terms (particularly, consent and self-determination) within the context of water management and the proposed arrangements being sought.
- All stakeholders are equally and fairly engaged. It is important to consider appropriate procedural fairness in any legislative changes to incorporate the views and rights of all stakeholders.

Issues beyond water management

It must be noted that UNDRIP is a comprehensive international instrument that goes beyond the scope of just water resource management.

While it provides guidance for considering Indigenous rights to water (amongst other things) its full and effective implementation sparks a broader set of constitutional, institutional, and governance considerations and processes. For this reason, there needs to be a broader, whole of Government discussion on how UNDRIP can be considered and reflected rather than the focus here within only the Water Act.

A key challenge in identifying opportunities to promote UNDRIP within the Water Act is that the realisation of many of its articles requires systemic reforms that extend beyond the scope of a single portfolio. While portfolio-specific legislation such as the Water Act can play an important role in promoting some articles, it operates within a wider institutional framework that ultimately shapes how the legislation is operated and implemented.

These matters necessarily involve complex, whole-of-government considerations and, if constitutional change is contemplated, established democratic processes such as referendum and broad public engagement across all Australian communities. Consideration of UNDRIP in isolation from these broader governance settings may risk creating expectations that exceed the practical or legal capacity of individual statutory instruments and may also lead to fragmented or inconsistent policy outcomes, and poor public acceptance.

Recent efforts to progress certain aspects of constitutional or structural reform relating to Indigenous recognition have not been successful at referendum. This historical context shows the importance of carefully considering both the scope and sequencing of reform, as well as ensuring that any proposals are developed through inclusive and durable processes that have broad public legitimacy.

For the avoidance of doubt, we are not noting this to frustrate the process – rather – to note a very legitimate challenge in terms of progressing Indigenous rights at a portfolio level, in the absence of broader institutions and structures. This is not intended to detract from or diminish the importance of advancing Indigenous rights and interests. Rather, it highlights the



complexity involved in translating international declarations such as UNDRIP into domestic law and policy at the portfolio level, in the absence of overarching reforms across the broader governance system.

It is noted that in the preamble of UNDRIP, it says:

*"The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, **democracy**, respect for human rights, **equality**, non-discrimination, good governance and good faith."*

*"Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and **regional particularities and various historical and cultural backgrounds should be taken into consideration...**"*

Again, for the avoidance of doubt, this is no reason to not promote UNDRIP in legislation. Rather, it reflects the practical challenges in doing so, and need for careful and well-considered mechanisms, sequencing of reforms and public engagement. Failure to do so may risk delivering only tokenistic change that does not meet the expectations of First Nations peoples, or reform that is not accepted or supported by broader democratic institutions.

Put simply, there is a need for a coordinated, whole of government response, not just the Water Act. Those overarching reforms are a necessary precondition to creating the regulatory frameworks for many of the water-specific issues being raised.

NIC recommend that:

- The review seeks to discern what falls within the scope of the water portfolio, and what requires much broader reform, to properly address.
- A transparent whole of Government approach should be enabled, rather than individual agencies, legislation or areas of Government to be considered and consistent.

Recognising the diversity of Indigenous interests

It is important to acknowledge in this process the diversity of Indigenous interests.

As the Basin Plan legislation notes: *"Indigenous use includes for cultural, social, environmental, spiritual and economic purposes."*

There is likely not one solution to address all these areas – rather – various tools to promote better outcomes across these areas.

It is also appreciated that Indigenous views are not homogenous, as per any population, and understanding the diversity of perspectives is important.

NIC recommend that:

- Further public consultation seeks to identify specific targeted measures to address the diverse range of objectives sought and the various measures available not just legislative pathways.

Exploring Synergies

Cultural and environmental

It is recognised that cultural and environmental objectives are unique. However, there are also many synergies in these objectives, where programs and measures can deliver co-benefits.



NIC supports inclusive processes and partnerships that explore synergies between environmental, socio-economic, critical human needs and Cultural objectives to optimise outcomes for all.

It is noted that the First Nations Environmental Water Guidance Project was established in 2019-20. The MDBA says:

"water for the environment, aimed at improving river health, can also provide tangible benefits for First Nations people".

"Through this project NBAN and MLDRIN worked with First Nations to develop environmental watering objectives that describe tangible benefits experienced by First Nations people from the delivery of environmental water on Country."

*"This traditional ecological knowledge was used to develop the Basin-wide annual environmental watering priorities."*²

The outcomes that are being achieved via the delivery of HEW (and PEW) on Country are important to identify, as well as what other supporting measures could further outcomes (such as Caring for Country programs, and complementary measures).

Further, the Victorian Environmental Water Holder has examples of how these synergies can be explored:

"The VEWH from 2023-25 worked with several Traditional Owner groups to conduct trials on Country to inform new Traditional Owner-led seasonal watering proposal guidelines."

*The Traditional Owner-led seasonal watering proposal guidelines have been shared with Victorian Nations, and aim to help contribute to the Water is Life outcome to increase the role Traditional Owners have in determining how environmental water is used for the purpose of healing Country."*³

There is also the National Cultural Flows Research Project⁴ which provides information on cultural flows, including identification of both unique and shared objectives with environmental water.

Cultural and socio-economic

NIC agree with the statement in the independent assessment of social and economic conditions in the Murray–Darling Basin:

*"Our hearts sink when we observe the current circumstances of First Nations peoples in the Basin and we call for urgent change to improve their social and economic circumstances."*⁵

It will be important to recognise the intersections between cultural and socio-economic outcomes too, 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.

² [First Nations environmental water guidance | Murray–Darling Basin Authority](#)

³ [Working with Traditional Owners](#)

⁴ [National Cultural Flows - Home](#)

⁵ [seftons-report-september-2020.pdf](#)



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 as a result 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."*⁶

"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."⁷

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.

NIC recommend that:

- Public consultation materials must do a better job of clarifying specifically what cultural outcomes are being sought – and how these can be achieved;
- Opportunities for synergies and co-benefit outcomes need to be identified, rather than a purely siloed approach.

Building on successes

There are many positive examples of First Nations Partnerships and successes, across the Basin and Australia, which show what is possible. This includes the Living Murray Indigenous Partnerships Program⁸ as well as projects such as Gayini Nimmie-Caira Project, and many others.

The MDBA has collated 'Stories of First Nations delivering benefits to Country and communities' with an extensive collection of examples now published.^{9 10}

⁶ [Submission 79 - Bourke Shire Council - Murray-Darling Basin Plan: Implementation Review 2023 - Public inquiry](#)

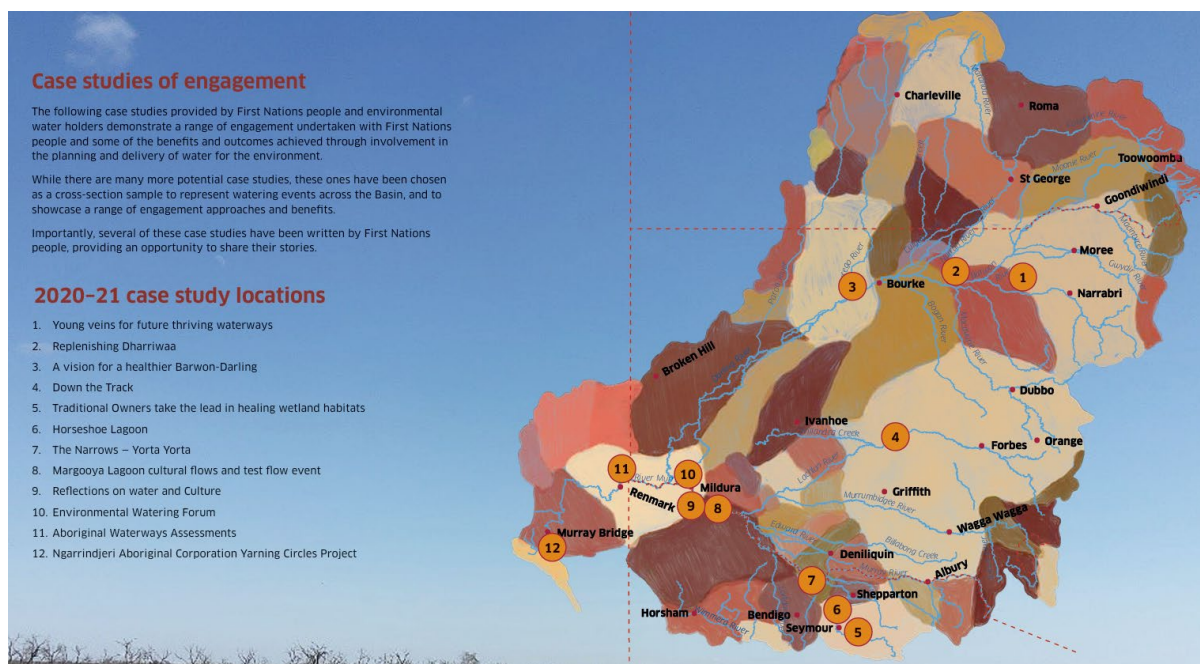
⁷ [Submission 79 - Bourke Shire Council - Murray-Darling Basin Plan: Implementation Review 2023 - Public inquiry](#)

⁸ [Indigenous Partnerships Program | Murray–Darling Basin Authority](#); [The Living Murray story | Murray–Darling Basin Authority](#)

⁹ [Stories of First Nations delivering benefits to Country and communities | Murray–Darling Basin Authority](#)

¹⁰ [rivers-the-veins-of-our-country-2020-21.pdf](#)





The 'Rivers, the veins of our Country' report says:

*"Across all jurisdictions there are current examples of First Nations people influencing or participating in all stages of environmental water management, which would not have been the case ten or even five years ago."*¹¹

It will be important to share these positive successes as part of this review, as well as lessons learnt.

Further to this, as explored early, is looking at the role of the Federal Government, given the largely state-based nature of these arrangements, including these positive examples.

NIC recommend that:

- Public consultation materials also show the positive successes, including effective partnerships programs.

Entitlements

Clarifying the baseline

There is a figure claimed of 0.2% of water entitlements are owned by First Nations. This is queried.

Further work is required to validate that statistic before heavily relying upon it. For example, methodological concerns (as largely acknowledged by the authors of the statistic) include:

- This statistic is "focused on water held by Indigenous organisations and entities, referred to here as 'Indigenous holdings' because data on the water holdings of individuals identifying as Indigenous is not readily available". Put simply, this does not include water held by people who identify as Indigenous – as most states do not collect information on if the owner identifies as Aboriginal or not.
- The statistic: "focused only on water entitlements, which are issued by State and Territory Governments and grant holders' permission to take, extract and use water

¹¹ [rivers-the-veins-of-our-country-2020-21.pdf](#)



from a specified surface water source (e.g. rivers and creeks) or groundwater source (e.g. aquifers). We did not consider other statutory rights to access water that do not require an entitlement, including water use rights associated with land occupation such as stock and domestic basic rights and native title rights". Put simply, this does not include major forms of water rights for First Nations, such as Native Title Rights.

- Does not include water that is managed for multiple purposes, such as entitlements owned by the CEWH or state environmental water holders and used to serve multiple objectives including cultural objectives identified in Long Term Water Plans.
- Does not include the broader management of the resource, including in the use and management of Planned Environmental Water (PEW) which (name aside) is the large volume of water above extraction limits (i.e. not on a water entitlement) that is managed for various uses as identified in each Water Sharing Plan, which includes cultural objectives.
- Does not include temporary trading of water.

NIC is concerned that DCCEEW is making statements on their website, such as: *"First Nations People hold rights to about 40% of Australian land through native title. Yet, First Nations Peoples own less than 0.2 percent of surface water entitlements"*¹² when the authors specifically point out that they exclude Native Title from their methodology, so this is not a comprehensive, nor equal, comparison. We are concerned that this has created a misleading, and skewed focus, more reflective of a political agenda - and removed from many of the cultural objectives being sought by First Nations people.

This aside, it is cautioned to focus too heavily on water entitlement ownership, as that siloed approach is unlikely to serve the broader and diverse outcomes being sought by First Nations people. Is the 'ownership' of a water entitlement the necessary or most appropriate vehicle to achieve the desired objectives?

NIC is concerned that there is a narrow focus on only water access entitlements. We are concerned that this singular lever will not lead to the realisation of broader cultural objectives sought, and in turn, creates further barriers.

NIC recommend that:

- 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.

Aboriginal Water Entitlements Program

In 2024 the Australian Government progressed its Aboriginal Water Entitlements Program (AWEPP), releasing the Strategic Purchasing Framework for the program with its increased budget of \$100 million (increased in late 2023 from \$40 million). The programs focus is the Murray Darling Basin with a prioritization of location and entitlements provided in Table 1 and Table 2, with the following program objectives:

- Acquire surface water entitlements to enhance water security for Basin First Nations Peoples.
- Ensure purchases align with the principle of connectivity, underpinned by wealth generation.
- Achieve value for money for Basin First Nations Peoples and the Australian Government.

¹² <https://www.dcceew.gov.au/water/policy/first-nations/aboriginal-water-entitlements-program>



- Maintain high standards of probity, transparency, and accountability.

The AWEF is aimed at contributing to the National Closing the Gap strategy and targets. Currently there is no specific volumetric national inland waters target, each jurisdiction plans to establish their own.

NIC strongly supported that:
“All water entitlements purchased through the program will remain in the consumptive pool. Entitlement characteristics will not change with a change of ownership.”

This is a key part of respecting the NWI-style water framework.

Interim governance arrangements were established with targeted purchases towards the program beginning in 2025. The outcome of these purchases is unknown, but extracts from the Strategic Purchasing Framework are below.

Table 1: Priority 1 for the Strategic Purchasing Framework for AWEF

Priority 1

The following entitlements will be prioritised for purchasing. Securing these licenses would align more strongly with the investment principle ‘connectivity underpinned by wealth generation’.

Catchment	Estimated gigalitres	License types
Barwon-Darling	2	Unregulated B Class
Border Rivers	2	GS A, GS B, WSS
Goulburn Broken	7	HRWS, LRWS
Gwydir	3	GS
Lachlan	8.5	GS
Lower Darling	0.5	HS
Macquarie	4.5	GS
Murrumbidgee	7.5	HS, GS
Namoi	2	GS
NSW Murray	3.5	GS, HS
SA Murray	1.5	HS
VIC Murray	5	HRWS, LRWS



Table 2: Priority 2 for the Strategic Purchasing Framework for AWEF

Priority 2

The program will evaluate proposed purchases against the investment principle connectivity underpinned by wealth generation. If the proposed purchase aligns with this principle, the following licenses may be purchased as a second priority.

Catchment	Estimated gigalitres	License types
Border Rivers	0.1	unregulated
Campaspe	2.0	HRWS, LRWS, unregulated
Castlereagh	0.2	unregulated
Condamine-Balonne	0.2	WSS, unregulated
Goulburn Broken	0.1	unregulated
Gwydir	0.2	unregulated
Kiewa	0.1	unregulated
Leichian	0.2	HS, unregulated, other
Loddon	2.0	HRWS, LRWS, unregulated
Lower Darling	0.2	GS, unregulated
Macquarie	0.6	unregulated
Mitta Mitta	0.1	unregulated
Moone	0.2	unregulated
Murrumbidgee	1.0	unregulated
Namoi	2.0	unregulated
Nebine	0.2	unregulated
NSW Murray	0.6	unregulated
Ovens	0.2	HRWS, unregulated
Paroo	0.1	unregulated
SA Murray	0.2	unregulated
VIC Murray	0.6	unregulated
Warrego	0.2	WSS, unregulated
Wimmera	0.1	Regulated (21A), unregulated

Temporary trade

NIC supports the approach of looking at temporary trading opportunities.¹³

Temporary water trading allows the use of water entitlements in a flexible way, to respond to opportunities that arise through seasonal water availability, market prices and demands.¹⁴

Governance

NIC is of the position that enduring, transparent and accountable governance frameworks must be in place prior to use of public funds to purchase entitlements for any purpose - including Cultural or environmental.

At this point in time, interim governance arrangements have been established, and enduring water holding arrangements are under development. It is understood that interim arrangements include an advisory group and a directorate.¹⁵

In terms of enduring arrangements, NIC notes that:

¹³ <https://www.dcceew.gov.au/water/policy/first-nations/aboriginal-water-entitlements-program/temporary-water-trading>

¹⁴ <https://www.dcceew.gov.au/sites/default/files/documents/awep-temporary-trading-strategy.pdf>

¹⁵ [Interim governance of the Murray–Darling Basin Aboriginal Water Entitlements Program - DCCEEW](#)



*“Based on the outcomes and benefits identified by Basin First Nations through extensive co-design, a **Charitable Trust** has been identified as the proposed model. The Government will continue to work with Basin First Nations Peoples to co-design the Charitable Trust.”*

NIC is concerned by the direction of these governance arrangements, for the reasons identified in the interim report of draft governance models.¹⁶ For example:

“A private trust model, while independent of government, would lack the accountability and transparency mechanisms built into the statutory trust model and make it harder for individuals to raise concerns and obtain government review or action. For an individual Basin First Nation or First Nation Person, it could be difficult to enforce the terms of the Trust Deed. This could be managed to some extent by nominating appointors in the Trust Deed – however, there would never be the broad rights available in the statutory trust model.”

Appropriate governance arrangements, particularly where public funds are involved, where there is an objective of wealth transfer, and likely strategic commercial opportunities being sought, is critical to get right. There must be robust oversight and audit mechanisms in place, including with skill in technical water matters.

It is noted that many states already have arrangements in place for this, and it is not suggested that the federal legislation creates specific obligations on all jurisdictions for what this may look like, as the specific arrangements will be unique for each jurisdiction and their legislative framework.

NIC recommend that:

- Further work is required to ensure appropriate governance arrangements, to ensure realisation of objectives, and accountability for proper use of public funds.

Decision-making

NIC notes the Northern Basin Aboriginal Nations (NBAN) and Murray Lower-Darling Indigenous Nations (MLDRIN) were established to address many of the issues raised in the Discussion Paper.

As part of the public consultation, and the issues raised, it will be important to evaluate these models' effectiveness.

NIC notes that NBAN, for example, was recently disbanded, with the MDBA saying:

“In recent times, NBAN has been unable to deliver on its contractual commitments, and we are now in the process of finalising these arrangements.”¹⁷

It is understood further work has since been occurring to look to strengthen First Nations engagement and representation. NIC notes that the outcomes of that work were not included in the consultation materials. To the extent that it may have legislative implications, the outcomes from that work should be published and included in the public consultation.

NIC recommend that:

- As part of the ongoing public consultation, the outcomes of recent and ongoing work to improve First Nations engagement and representation is published.

¹⁶ [Interim Report: Draft Governance Models](#)

¹⁷ [Murray-Darling Basin Authority ends contracts with First Nations advisory in northern basin - ABC News](#)



Conclusion

This public consultation comes at a time of significant review of many aspects of water management. NIC is concerned by looking at the available consultation materials that insufficient consideration has gone into understanding the legislative context, the nature of the issues, and exploring solutions. It will be critical that future rounds of public consultation provide stakeholders with sufficient information on the issues, as well as begin canvassing practical solutions to detail what is being proposed. NIC is concerned given timeframes that poorly considered or rushed proposals will be put forward, which is not in the interests of any stakeholder.

Further, we consider that the establishment of a dedicated First Nations advisor mechanism without an equivalent skillset for industry represents a clear imbalance in how expertise is being valued and incorporated into the Water Act Review. Given the central role of agriculture in water-use and regional economies, a more balanced representation of expertise is required. This omission is notable given that the 2014 Review was supported by an Expert Panel with specific expertise across agriculture, science, and Local Government, providing a balanced foundation for consultation and advice. We would seek that be remedied and at least an agricultural sector advisor be appointed. Should this not be agreed then the Productivity Commission model of a Stakeholder Advisory Committee should be established.

The quiet nature of this consultation, which was not broadly advertised by DCCEEW, is a concern, reflecting a non-inclusive process. The matters raised are important for all stakeholders. While we understand further consultation will be occurring in coming months, it is important all stakeholders are at the table. Approaches to consultation that seek to take a siloed-approach, to divide stakeholders, is not in the interest of coming together to create policy responses that meet objectives while having public support.

NIC hopes this review is an opportunity to find practical and mutually-agreeable ways forward, and particularly for the purposes of this consultation, both First Nations communities and all stakeholders.

Contact

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E: ceo@irrigators.org.au

Appendix 1:

Copy of correspondence on to the Water Minister on the public draft National Water Agreement.



9 January 2025

Department of Climate Change, Energy, Environment and Water
Water Policy Division
nwi@dcceew.gov.au

Sent Via Electronic Mail

RE: Feedback on Version 0.2 of New National Water Agreement – January 2025

Thank you for the opportunity to provide input into the latest draft of the National Water Agreement (NWA), renewing and updating the National Water Initiative (NWI).

We acknowledge the work of the Department to consider feedback throughout the drafting of the Agreement. Whilst the process is resource intensive for stakeholders, the opportunity for engagement and feedback from all stakeholders is critical to shape the future of water management across Australia.

Our firm view is that the NWA must remain as a highly regarded and respected roadmap to best-practice water management in Australia. A replacement version should not be executed until we have it right. While the NWI is a couple of decades old, it is not broken, and appropriate time should be taken to get it right, not get it done on a political timetable. The initial NWI development was a much more inclusive and considered process, we expect the same, or better. It is noted that signing up one jurisdiction does not demonstrate a collegiate approach or meet our expectations of a national agreed blueprint. At least the majority of jurisdictions must formally engage for the IGA to have proper standing. Whilst we appreciate the work undertaken to improve the NWA, there are several areas of concern which we consider critical to address. These are categorised as follows:

- Requesting processes for governance, accountability, and transparency aimed to improve confidence and trust in future implementation.
- Drafting refinements to further streamline and reduce principles.
- Further enhancing the value and roles of irrigated agriculture for national security and food security, within the principles and included as part of the preamble.
- Ensuring consultation principles are fair and equitable for all stakeholders.
- Providing due processes for international agreements and their considerations by jurisdictions.
- Improvements to the risk assignment framework to recognise the value of water property rights as established by the NWI.
- Improvements to water recovery methods for clarity.
- Further suggestions for context, clarity, and avoiding duplication of principles for Aboriginal and Torres Strait Islanders peoples.

These issues and our nineteen recommendations are outlined below.

Governance, accountability, and transparency: As we raised, an ongoing gap is understanding how the Agreement will be implemented by states and what evidence the Federal Government and jurisdictions may need to demonstrate they've actioned a principle or decided not to implement one. Key issues include:

- How will the phrase 'consider' be interpreted in assessing compliance – i.e. what counts as having considered a principle?
- What principles will be implemented and what principles will not be?
- Are any principles non-negotiable or mandatory?
- Who approves the reason(s) for a jurisdiction not adopting a principle as reasonable and with what evidence?

- In an audit and compliance context, what guidance/scope will there be for allowing reviewers to accept a unilateral choice by a jurisdiction to 'not adopt' a principle?
- What will jurisdictional action plans, including the Commonwealth's plan look like, will they be consistent or locally determined?

Guidance and commentary in both our Phase 3 submission and a review of submissions from other stakeholders also highlights that governance and implementation is an issue amongst many stakeholders. No further clarity has been provided on these issues in the next version.

Following our recent discussions, it has been made clearer that Objective and Outcomes are all agreeable elements and that jurisdictions may provide evidence to not adopt a principle, provided their actions can still meet the Objective and Outcome. If this is indeed the correct assumption, then this must be clear prior to the Agreement being signed and form part of the Agreement, roles and responsibilities itself.

Suggestions that this implementation detail will be in jurisdictional 'Action Plan' development, post execution of this Agreement does not provide sufficient clarity, confidence, or certainty for stakeholders and jurisdictions about what happens next. Without understanding the intended implementation processes, jurisdictions are being asked to trust in the Australian Government.

Recommendation 1: Insert a section on Implementation, Commencement, Interpretation, and Roles and Responsibilities in the NWA, as was in the original NWI (clauses 8 – 22). If it will be the case that (some) principles are optional, this section must outline the processes for how that is to occur, what evidence is needed, and who has the role of determining if that is appropriate or not, as well as how plans will be monitored.

Recommendation 2: Insert a preamble to the Agreement, like the introductory narrative of the original NWI, as a blueprint to Australia's water management, requiring jurisdictions to undertake best endeavours to implement the Agreement and outlining the process of accepting Objectives and Outcomes.

Recommendation 3: Provide the amended schedules as well as the proposed Action Plan template for consideration and comment.

Number of principles: Whilst efforts have been taken to reduce the number of Outcomes and principles, we still consider the Agreement long, overly prescriptive, and with some internal inconsistency. This will make it difficult, and time consuming for jurisdictions to implement, decide priorities and will create confusion as to what occurs to the extent of any inconsistency between principles. Further refinement to address duplication and potential inconsistencies is needed. Key areas of duplication relate to engagement, evidence, and unallocated water, with specific examples below.

For example:

- Unallocated water is addressed in Outcome 7F and the subsequent principles 7.32-7.34, yet principle 3.12 relates to considering making unallocated water available for Aboriginal and Torres Strait Islander peoples. These clauses are inconsistent. It is recommended to delete 3.12 to avoid this inconsistency and given it is already captured (i.e. it is duplicated) in 3.9 – 3.11 that relate to good faith efforts to improve water access, management, and ownership.
- Principle 5.7 states that communities are informed of and provided with suitable opportunities to shape the design of water planning and management activities. It is



our understanding that this is intended to apply to all peoples, irrespective of ethnicity. A range of other principles have similar effect (i.e. duplicate) but are specific to only Aboriginal and Torres Strait Islander peoples (e.g. 4.13 and 3.2-3.4, and 3.13-3.14). It is our recommendation that the same engagement principles apply to all stakeholders, rather than having a separate duplicate section specific to one group.

Recommendation 4: Remove duplication, particularly amalgamating where the same principles are written to apply in the general case (i.e. all peoples), and then specifically to Aboriginal and Torres Islander peoples.

Recognition of irrigated agriculture for national security and food security: We note that agriculture now occurs six times in the new Agreement (mostly in the glossary). However, we do not believe the value of irrigated agriculture, and the role of the water management framework to underpin water access for Australian's and Australian agriculture (also including stock and domestic rights and use), is appropriately reflected in the Agreement. The original NWI established a water entitlement system to enhance Australia's use of water for economic prosperity that optimised economic, social, and environmental outcomes, with agriculture and irrigation-water dependent communities a major beneficiary as well as Australians. This Agreement must recognise and value the earlier outcomes and look to maintain and enhance how consumptive water is optimised for the future prosperity of Australians and provide overall balance to the new blueprint.

The Agreement therefore must include stronger references within the principles but also within the preamble to ensure balance of perspectives and outcomes and clarity of intent and purpose of the Agreement.

Recommendation 5: Insert a section titled "Consumptive Water" (equivalent to "environmental and other public benefit outcomes (NWI, Clause 35) and "Environmental Water" (NWA, 6E)". This should specify how water management frameworks support the use of water for agriculture, to meet food security, national security, macroeconomic and socio-economic outcomes.

Recommendation 6: Insert in the preamble to the Agreement, statements which highlights how that this Agreement continues the legacy of the National Water Initiative to ensure water use is optimised for economic, social and environmental outcomes for the ongoing prosperity of Australians and that implementation of the Agreement will maintain and enhance water management planning systems that are foundational pillars of our nation; our industries including agriculture, communities, culture and critical to our future growth and resilience, and food security.

International Agreements: We have ongoing concerns relating to the high reliance on international agreements in the NWA and seek for those to be removed. Their inclusion provides a means for the Federal Government to subvert state powers or compel states to take actions they otherwise may not, in the name of the "external affairs" powers. To our knowledge, there are no formal processes for states (who have powers over water) to engage with the Australian Government prior to 'signing an international agreement.' If the Federal Government, would like to pursue greater power over water management and decisions, it should do so on a transparent case by case basis rather than a broad non-transparent approach which is suggested by the inclusions of these principles.

Recommendation 7: Remove references to international agreements, such as 1.3 and 3.1.



Purpose of the Risk Assignment Framework: We acknowledge the work undertaken to return the risk assignment principles to those drafted in the original NWI. It is our understanding that the risk assignment framework is intended to be read in conjunction with Clauses 31-32 in the original NWI (Principles 7.2.1-7.2.10 in NWA – Version 2) which describe the characteristics and functions of a water access entitlement.

This risk assignment framework of the NWI was drafted to refer to instances where 'new share-based water access entitlements framework has been established,' which has now largely occurred. Given this, rather than removing this language, it should continue to reflect this framework, by reference to the entitlement framework established in Principles 7.2.1-7.2.10, as to contemporise the language rather than remove it.

While a minor change, linking back to these provisions describing the entitlement characteristics will alleviate concerns that the risk assignment framework could otherwise change those characteristics which are subject to misinterpretation but also reinforces the foundational elements of the NWI consistently throughout the NWA.

Recommendation 8: Insert the below point of clarification in the NWA to link back to the entitlement framework (see blue font).

Specifically, based on Principle 7.27 of the new NWA:

Where a water access entitlements framework has been established, *and consistent with those essential characteristics outlined at 7.2*, the risk assignment framework at principles 7.28 – 7.31 apply to any future reductions in the availability of water for consumptive use

Based on Clause 47 (original NWI):

47. The Parties agree that an effective risk assignment framework occurs in the context that: the new share-based water access entitlements framework has been established; occurs in conjunction with those provisions outlined in 31-32; water plans have been transparently developed to determine water allocation for the entitlements; regular reporting of progress with implementing plans is occurring; and a pathway for dealing with known overallocation and/or overuse has been agreed,

Issue with the Risk Assignment Framework (RAF): We do not support the RAF clause that requires water access entitlement holders to bear the first 3% reduction in water allocation that arises from bona fide improvements in the knowledge of water systems' capacity to sustain extraction levels (7.29.1). This enables incremental erosion of the water property right, without consent or compensation, contrary to the core design of the water entitlement framework established by the NWI (and reinforced within the NWA version 2). We have seen jurisdictions exploit this clause to bypass compensation, subsequently undermining water property rights. We are concerned about potential implications from the way that financial institutions may view and value water rights.

Recommendation 9: Remove this clause to address this loophole. Water allocations on an entitlement can be varied (as the NWA/NWI recognise), but any variation to the entitlement itself must be fully compensable, as per other property rights and the clear principles outlined Principles 7.2.1-7.2.10.



Water recovery methods: We support the positive changes to 6.3, which outlines the principles that will be used *where it is necessary to recover water* to achieve environmental and other public benefit outcomes (i.e. the addition of 6.3.4 for early consideration of complementary measures, as well as stronger language on managing socio-economic impacts). One additional principle which we consider an omission from this list is the consideration of avoiding third-party impacts.

The main example of where this has become a problem is rules changes in water plans that serve to reduce the consumptive pool, but by doing so, has a socialised impact across all water users, irrespective of their voluntary or willing participation (contrary to the essential entitlement characteristics in 7.2). This is compared to other methods, such as market-based measures, where participation is based on voluntary participation from willing sellers. While we do not support water recovery, where it is necessary or will occur (as per 6.3), selection of measures respecting the voluntary and willing participation must be a key principle to be considered and is consistent with what has occurred through reforms such as the Basin Plan.

Recommendation 10: Add to 6.3.3 "and avoiding third party impacts".

Specifically, based on Principle 6.3.3 of the new NWA, insert the blue text:

6.3.3. selection of measures based on optimising cost-effectiveness and with a view to managing socio-economic impacts and *avoiding third party impacts wherever possible.*

Recognition and protection of Aboriginal and Torres Strait Islander water interests and values (Objective 3):

It has been established through regular consultation that there is support for the modernisation of the NWI to address contemporary challenges (as highlighted by the Productivity Commission). We recognise that there was considerable feedback from many stakeholders on the original drafting of this Objective and understand a legal and constitutional review has contributed to some of the amendments in this latest version. While there is significantly more clarity provided than in the previous version, our Members are still concerned by the intent of some of the principles, their consistency within Government programs and existing processes and how they may be actioned by jurisdictions.

Further, it is apparent that much of this narrative is predicated on a closing the gap target which is at best opaque and at least poorly defined or articulated. We seek clarity on what the inland waters closing the gap target is, including references to intergovernmental decisions. We also seek clarity on how the target whatever it is, if it formally exists, and how it is measured for example, what is the baseline information, is it a total target or a growth target. Noting our experience is identifying options for indigenous water in the Murray Darling Basin (which is at or near at fully allocated already) means providing additional water entitlement has the effect of undermining existing rights. We do not want to apply similar tensions to developing catchments.

The Objective states:

This Objective provides Outcomes and principles that are foundational to Aboriginal and Torres Strait Islander peoples' water interests and values and apply across the Agreement. For the purposes of this Objective, water 'interests and values' means 'cultural, spiritual, social, economic, and environmental water interests and values.



Aboriginal and Torres Strait Islander peoples consider that waters in all their forms are interconnected with lands and move freely between water landscapes, including upstream, downstream and between surface water and groundwater.

This Agreement recognises the value of Aboriginal and Torres Strait Islander peoples' involvement, knowledge and contributions to land and water management.

Governments across Australia are working to integrate Aboriginal and Torres Strait Islander peoples' interests and values into water planning and management.

The first Outcome states:

Outcome 3A – Aboriginal and Torres Strait Islander peoples are recognised as custodians and knowledge holders of the lands and waters of Australia.

The two phrases underlined above, and the broader context of this narrative continue to cause concern given the practical and legal implications. There are still formal and recognised processes for determination of native title for land (not water, though water is impliedly captured by land), care should be taken to ensure language does not reach beyond those well-established principles and the recognition within the Constitution that jurisdictions have authority over water.

We are also concerned that wording unintentionally suggests that Aboriginal and Torres Strait Islander peoples are the **only** custodians and knowledge holders of lands and waters in Australia, which is not the case. As such the key phrases should be reconsidered to ensure inclusivity.

We, also, seek further clarification on the interaction between existing Constitutional arrangements, Native Title and the principles and Outcomes expected within Objective 3 of this draft Agreement.

Recommendation 11: For transparency and to satisfy the legal uncertainty of this largely new Objective, we recommend the Australian Government provide legal response on the following areas (noting that legal advice is not available for publication):

- a) Are the draft principles consistent with other Australian Government Laws and policies?*
- b) What does 'apply across the Agreement' mean? Does this provide a hierarchy of Aboriginal and Torres Strait Islander people's rights/value over others?*
- c) Does Outcome 3A – 'Aboriginal and Torres Strait Islander peoples are recognised as custodians and knowledge holders of lands and waters of Australia', impact the knowledge and rights of other non-Aboriginal and Torres Strait Islander stakeholders? Do any Objectives, Outcomes or Principles in this Agreement suggest that Native Title applies or should apply to water?*
- e) If implemented by a jurisdiction, do any Objectives, Outcomes or Principles change the current level of power a jurisdiction may have over water or title to it within their boundary.*

Furthermore, clarification in the glossary that Free, Prior, and Informed Consent (FPIC) does not mean a veto power is welcomed clarification. However, we are concerned that many stakeholders will see FPIC as this anyway, which may lead to confusion or false expectations. There are also a range of international interpretations of this principle, which adds to the broader confusion.

We believe as well as saying what FPIC is not, it needs to also say what it is intended for jurisdiction to consider implementing as part of overall engagement principles with



stakeholders. We believe this already occurs through some of the principles relating to engagement and consultation (of all peoples, including Aboriginal peoples) and therefore, question the purpose of its specific inclusion for one group of stakeholders.

Recommendation 12: Amend the definition of Free, Prior, and Informed Consent (FPIC) in the glossary, to expand it to specify what it is intended to capture and what expectations may result.

In revising the definition, we also recommend considering how these principles of FPIC should apply to all impacted stakeholders.

Further, and as above, principle 3.12 is inconsistent with Outcome 7F and the later principles 7.32-7.34. We believe the core of this principle is already captured in the above principles (3.9-3.11) and is therefore duplication anyway. These principles already provide guidance to jurisdictions to meet this Outcome without prescribing the mechanism, which is inconsistent with the other NWA provisions, and may not be the most appropriate anyway.

Recommendation 13: Remove principle 3.12 (as already captured by 3.9-3.11, and inconsistent with 7F).

Other drafting suggestions:

- In Objective 6, there are multiple references to 'connectivity', being surface water and groundwater, rivers, and floodplains as well as land and rivers for example, the preamble discusses the need for planning across "connected systems". However, there is no clarity on what this means in practical terms, the level, reliability and frequency and extent of 'connectivity' or 'connected catchments' which can vary considerably in Australian river systems and whether these considerations allow for a proportional response and consideration in planning arrangements. We therefore recommend that definitions for distinct types of connectivity are provided, with consideration to the natural limitations of Australian river systems in achieving these outcomes to manage expectations, particularly in unregulated river systems. We also recommend removing language such as "strong" and "firm" to recognise these natural limitations and manage expectations of when and how connectivity can be planned for and achieved.
 - *Recommendation 14: Provide definitions to provide consistency for how connectivity is described and its natural constraints of reliability and frequency and extent.*
 - *Recommendation 15: Amend principle 6.1.13 to – "maintain ~~strong~~ longitudinal and latitudinal waterway connectivity".*
- Principles 6.1.5 sets a hierarchy of uses that serves the greatest public interest, this should be clarified to provide 'critical' needs for both humans and the environment.
 - *Recommendation 16: Amend principle 6.1.5 to insert critical with environmental sustainability".*
 - Specifically, based on Principle 6.1.5 of the new NWA, insert the blue text:

6.1.5. set out a hierarchy of uses that serves the greatest public interest, prioritising critical human water needs and critical environmental sustainability

- Principle 6.1.9 – this currently specifically refers to Aboriginal and Torres Strait Islander people's rights and interests, this should be reframed to refer to all property rights and water users, which includes Aboriginal and Torres Strait Islander peoples as clearly articulated in



Objective 3. It should not specifically reference one group of users by removing the following strike-through sections and referring to all water users.

- *Recommendation 17: Amend 6.1.9 to – “respect the property rights and interests of ~~Aboriginal and Torres Strait Islander peoples~~ water users in a water resource area, this can include but is not limited to including Aboriginal and Torres Strait Islander peoples and holders of native title”*
- *Specifically, based on Principles 6.1.9 of the new NWA should remove the strike through and insert the blue text and read:*

6.1.9 respect the rights and interest of *water users* in a water resource area, *this can include but is not limited to include* Aboriginal and Torres Strait Islander peoples and holders of native title.

- Principle 6.9 – currently reads: water policies, strategies and/or legislative frameworks clearly and transparently identify circumstances that trigger reconsideration of existing water-sharing arrangements under a water plan. It is recommended that this be reframed to provide more certainty.
 - *Recommendation 18: Amend 6.9 to establish regular review periods noting most water plans are for 10-years.*
 - *Specifically, based on Principle 6.9 of the new NWA, insert the blue text:*

6.9 water policies, strategies and/or legislative frameworks clearly and transparently identify *regular review periods for* existing water-sharing arrangements under a water plan

- Definition of upper and lower bound pricing, are as drafted with the NWI but in practice it is our experience that lower bound pricing has been considered by jurisdictions to be the minimum recovery cost of fees and charges for maintaining infrastructure and therefore, does not include externalities or dividends. As a result of this practice, the definition should be amended with the words deleted as proposed by the strike through text.
 - *Recommendation 19: Lower bound pricing definition is amended to – “the level at which to be viable, a water business should recover, at least, the operational, maintenance and administrative costs, ~~externalities~~, taxes or tax equivalent regimes (not including income tax), the interest cost on debt, ~~dividends (if any)~~ and make provision for future asset refurbishment/replacement. ~~Dividends should be set at a level that reflects commercial realities and stimulates a competitive market.~~”*

We thank you for the opportunity to provide this additional feedback and would welcome the opportunity to meet and discuss solutions to these issues with you.

Please feel free to contact either of us, to discuss further. Thank you for your attention to this matter.

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**Background on the
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