



Australian Government

Indigenous Land and Sea Corporation



The ILSC GROUP

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24 April 2026

Commissioner Joanne Chong
Associate Commissioner Dr Paul Wywroll
National Water Reform 2026 inquiry
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Commissioners

Re: National Water Reform 2026 inquiry

The Indigenous Land and Sea Corporation (ILSC) welcomes the opportunity to provide this submission to the Productivity Commission's (the Commission) National Water Reform 2026 inquiry. This submission is grounded in the ILSC's statutory mandate, operational experience, and the positions advanced in our submission to the 2024 inquiry and subsequent submissions to Commonwealth water reform processes.

The ILSC's primary assessment is that, from the perspective of First Nations water equity, very little has changed in the two years since the Commission's 2024 inquiry. The structural problems identified by the ILSC in its submission to that inquiry remain largely unresolved. The agency reiterates its full endorsement of the submission to the 2024 inquiry prepared by the Interim First Nations Water Working Group, and the 13 recommendations of the Outcomes Report on the National First Nations Water Roundtable held in May 2023.¹

This submission responds to the three information requests set out in Part A of the call for submissions, from the perspective of First Nations water equity which is an area the Commission has identified as a priority in successive inquiries.

Summary of recommendations

The Commission has a clear mandate from its terms of reference to make recommendations on actions that parties to the NWI might take to better achieve its objectives and outcomes. The ILSC urges the Commission to make findings and issue recommendations on the following matters.

Recommendation 1: The Commission should find the First Nations water entitlement gap to be an indicator of NWI implementation failure, and recommend:

- legislating an Indigenous Economic Water Fund and establishing the ILSC as a statutory national First Nations water holding body, via amendments to the *Water Act 2007* (Cth);
- funding the ILSC to exercise its existing mandate as a water holding body; and

¹ ANU, ILSC & NNTC Outcomes Report on the National First Nations Water Roundtable, 16-17 May 2023, Canberra, the Australian National University. <<https://services.anu.edu.au/files/2025-06/National%20First%20Nations%20Water%20Roundtable%20Outcomes%20Report.pdf>>

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- preferencing First Nations institutions as buyers in any future Commonwealth water acquisition program.

Recommendation 2: The Commission should recommend that progress on First Nations water entitlement acquisition be measured and reported through the Closing the Gap framework, including against the inland waters target.

Recommendation 3: The Commission should recommend the establishment of a national Indigenous Caring for Country Commissioner and peak body with a mandate explicitly covering inland water.

The ILSC's mandate and inland water strategy

The ILSC is a corporate Commonwealth entity established under the *Aboriginal and Torres Strait Islander Act 2005* (Cth). It acts as a strategic funder and facilitator, supporting First Nations peoples to access, use and Care for Country on their own terms.

The ILSC's National Indigenous Land and Sea Strategy (NILSS), developed through more than 1,000 hours of engagement with dozens of communities, is underpinned by three guiding principles: Caring for Country, self-determination, and partnership. The NILSS identifies inland water as one of five priority sectors where First Nations peoples seek greater influence and opportunity, alongside fisheries and aquaculture, carbon, environmental markets, and renewable energy.

The ILSC's mandate was expanded in 2019 to include freshwater and saltwater interests, reflecting the inseparable connection First Nations peoples hold to water Country. Under the NILSS, the ILSC has developed Future Industries Sector Leadership Initiatives to guide investment in freshwater to 2028.² The ability of the ILSC to purchase water interests remains significantly constrained because the 2019 mandate expansion has not been matched by dedicated funding.

1. Progress since the 2024 NWI assessment

The Commission's call for submissions asks what actions jurisdictions have taken in response to the 2024 NWI assessment, where progress has occurred, and where it has been limited or reversed.

1.1 Limited but genuine progress

Purchasing activity is now underway through the Aboriginal Water Entitlements Program (AWEP), following the Australian Government's welcome decision to increase AWEP funding from \$40 million to \$100 million. The ILSC acknowledges this as a meaningful, if interim, step. Purchased entitlements are currently held by the Australian Government on behalf of Basin First Nations, pending the establishment of a special trust as determined through a co-design process. The ILSC notes, however, that no further commitment has been made to ongoing funding for the acquisition of water rights and entitlements for First Nations communities in the Murray-Darling Basin (MDB).

The Committee on Aboriginal and Torres Strait Islander Water Interests (CAWI) has provided valuable advisory input to the National Water Reform Committee and the responsible Minister. The ILSC endorses the water values, principles and actions set out in CAWI's 2023 Insights Paper. The ILSC recognises the establishment of CAWI as a meaningful step toward elevating First Nations perspectives in national water policy processes. However, this is an advisory committee operating within a ministerial appointment framework and is not independent of government, does not have a legislated mandate, and could be abolished at any time without legislative constraint. An advisory capacity within the existing architecture is not the same as the independent, self-determined governance authority that First Nations water interests ultimately require.

1.2 Where progress has been absent or insufficient

Against the 2024 Commission finding that the Australian Government should articulate its strategic vision for national water policy, the ILSC notes that no integrated, First Nations-specific vision has been articulated. Reform processes currently underway such as the NWA development, the Basin Plan Review, and the *Water Act 2007* (Cth) review have proceeded concurrently but in an uncoordinated manner.

² <https://www.ilsc.gov.au/our-work/sector-leadership>



Most significantly, the First Nations water entitlement gap is not a residual problem awaiting resolution - it is widening. As reported in the May 2025 Review of The Living Murray Indigenous Partnership Program, the marketisation of water has exacerbated existing inequities, with Indigenous water holdings having decreased by 17 per cent over the preceding decade.³ First Nations peoples hold legal interests in more than 57 per cent of Australia's land mass but own less than 0.2 per cent of freshwater access entitlements nationally.⁴ The NWI's objectives have been materially undermined in this respect.

The 2024 Commission finding that a renewed NWI should increase Aboriginal and Torres Strait Islander involvement and influence in water resource management has not been translated into structural reform in the intervening period.

2. Barriers and emerging risks

The Commission asks what policy, legislative, regulatory, funding or governance barriers are affecting progress toward NWI outcomes, and what emerging risks could affect NWI objectives over the next three years.

The ILSC identifies four interconnected barriers that, taken together, explain why First Nations water equity has not materially improved despite more than two decades of NWI commitments.

2.1 The structural entitlement gap: a legislative and regulatory barrier

The NWI's water planning and management framework was not designed with First Nations ownership as an objective. Cultural flows are the predominant form of First Nations water entitlement, and they cannot be used for economic purposes, precluding wealth generation, self-determination, and the practical realisation of the connection to Country that the NWI nominally recognises.

AWEP addresses this at the margins, but it is a time-limited, one off funded program rather than a structural fix. Without legislative change to the *Water Act 2007* (Cth) to establish an enduring funding model and clear preferencing of First Nations institutions in water acquisition, the gap will persist regardless of program-level activity. The ILSC urges the Commission to recommend:

- that an enduring funding model, such as an Indigenous Economic Water Fund, be legislated via amendments to the *Water Act 2007*, to provide long-term resourcing for First Nations institutions to participate in water markets, engage in governance processes, undertake research, and facilitate community water governance;
- that a successor to AWEP be structured to enable First Nations institutions (including Land Councils and Prescribed Body Corporates) to hold and manage water access entitlements for economic benefit; and
- that any future Commonwealth water entitlement acquisitions in the Basin preference First Nations institutions as buyers, both as a matter of equity and as a practical mechanism for addressing the entitlement gap.

2.2 Absence of measurable accountability: a governance barrier

The NWI's objectives in relation to First Nations water interests have never been given a measurable, time-bound form. The Closing the Gap target on inland waters has been in development for years without resolution. The absence of an accountability framework means that jurisdictions face no meaningful consequence for inaction and no agreed basis for assessing improvement.

The Commission's own 2024 Review of the National Agreement on Closing the Gap was critical of governments' inability to implement the structural changes required to meet targets. In water, the problem is compounded by the fact that the inland waters target does not yet exist. The ILSC urges the Commission to recommend that progress on First Nations water entitlement acquisition be measured and reported through the Closing the Gap framework.

³ p 21, Review of The Living Murray Indigenous Partnership Program, Report No. 2025/03, May 2025, referring to Hartwig, L.D., Markham, F. and Jackson, S. (2021), 'Benchmarking Indigenous water holdings in the Murray-Darling Basin', *Australasian Journal of Water Resources*, 25(2), p. 98.

⁴ 18, ANU, ILSC & NNTC, *Outcomes Report on the National First Nations Water Roundtable*, 16–17 May 2023.





2.3 Fragmented and uncoordinated Commonwealth reform: a policy barrier

The Commonwealth is running concurrent reform processes across the NWI/NWA development, the Basin Plan Review, and the *Water Act 2007* (Cth) review, each with implications for First Nations water rights and without an evident coordination mechanism. The ILSC commends the appointment of Dr Teagan Shields as First Nations Advisor to the Reviewer of the Water Act, however this does not include a coordination role of engagements concurrently underway. The barrier to First Nations outcomes presented by this fragmentation has been identified by the ILSC in previous submissions.

The ILSC is also concerned about the status of the NWA itself. As of the date of this submission, while the Australian Government has signed the NWA, no state or territory has done so. Jurisdictions that are not party to the NWA remain subject to the 2004 NWI which is a framework now more than 20 years old and widely acknowledged to be inadequate for First Nations interests. If NWA uptake remains low, this represents an emerging governance risk of material significance.

2.4 Inadequate First Nations engagement: a process barrier

The ILSC participated in three NWA consultation workshops convened by DCCEEW during 2025: on 30 April (Draft Commonwealth Action Plan – Aboriginal and Torres Strait Islander peoples' water interests), 18 August (Engaging Aboriginal and Torres Strait Islander Peoples Joint Policy Roadmap Workshop), and 10 December (Commonwealth Action Plan Workshop – First Nations Water Partnership and Equity). The ILSC offers the following observations on those processes, noting that our perspective is that of an agency participant rather than a First Nations community, and that resources were rightly concentrated in community consultation.

Across all three workshops, the connectivity or progress between sessions was unclear, with minimal communications being shared about how feedback had shaped outcomes. The focus appeared to be on mapping existing programs to avoid duplication, rather than on identifying and advancing policy reforms. Consultation timelines were compressed; workshops were structured around commentary on draft text and documentation of existing programs, rather than genuine co-design. Workshops appeared to assume that participants had line-of-sight to how the broader work was progressing which, for agencies external to DCCEEW, was not the case. As of the date of this submission, the ILSC has not received any update on progress arising from those workshops.

The Commission has asked whether progress has been made on First Nations involvement and influence. If the ILSC's experience of the consultation process is in any way indicative of the accessibility experienced by First Nations communities, the ILSC's assessment is that the structural conditions for meaningful involvement have not improved.

3. Forward reform priorities for the next three years

The Commission asks what one to three water reform priorities would most improve outcomes over the next three years. The ILSC identifies three priorities, in order of urgency.


Priority 1: Close the First Nations water entitlement gap through structural legislative reform

The most consequential reform the Commission can recommend is the legislative embedding of First Nations water entitlement as a structural objective, and not a program-level aspiration of the national water framework. The entitlement gap has not narrowed in more than 20 years of NWI operation; it is widening. Addressing it requires both measurable accountability and an enduring institutional architecture capable of holding and managing entitlements in perpetuity.

The current approach to entitlements under AWEPP is explicitly interim. Deferral is not a neutral position: water prices fluctuate, market windows close, and entitlements held in trust by government do not generate the economic benefits, governance capacity, or self-determination outcomes that direct First Nations ownership would. The National First Nations Water Roundtable's Outcomes Report recommended the establishment of a statutory national First Nations water holding body and an Indigenous Economic Water Fund. The ILSC recognises this as a significant opportunity to undertake structural reforms to improve First Nations water equity in the national water agenda.

The ILSC submits that the Commission should recommend:

- legislating an Indigenous Economic Water Fund via amendments to the *Water Act 2007* (Cth); and

- 
- funding the ILSC to purchase water interests in alignment with its mandate expansion in 2019.

These two elements together would begin to constitute the enduring architecture that First Nations water justice requires.

Priority 2: Establish a Caring for Country Commissioner and national First Nations National body

The ILSC supports the establishment of a national Indigenous Caring for Country national body and a statutory Caring for Country Commissioner with a mandate explicitly covering inland water management. This proposal addresses a structural gap in national environmental and water governance that the NWI has never filled: the absence of an independent, Indigenous-led institution with authority spanning the full range of Country governance.

Such a body would: provide independent, authoritative advice to government on laws, policies, programs and investments affecting Country; deliver accountability mechanisms for government performance on Country. This would include water outcomes; address the coordination failure across concurrent reform processes by providing an authoritative First Nations voice on Country governance. The proposed body would also contribute to embedding First Nations Caring for Country as a productive economic system operating across cultural and natural resource management, state investment, and market activity.

The NWI assessment is an appropriate vehicle for the Commission to recommend that the Commonwealth progress the legislative architecture required to establish this institution.

Priority 3: Establish a single integrated engagement framework for concurrent Commonwealth water reforms

The fragmentation of concurrent Commonwealth water reform processes is itself a barrier to First Nations outcomes. The Commission should recommend that the Commonwealth establish a single, integrated engagement framework covering the NWA, Basin Plan Review, and *Water Act* review, with dedicated resourcing for First Nations communities and institutions to participate meaningfully across all processes. Coordination at the Commonwealth level is a precondition for genuine First Nations engagement that reflects the principles of Free, Prior, and Informed Consent.

Conclusion

The 2004 NWI is more than 20 years old. The Commission's successive assessments have found that it falls short on First Nations water interests. The 2024 inquiry recommended increased involvement and influence; the evidence before this inquiry is that the structural conditions for such involvement have not materially improved.

The Commission has an important role to play in holding governments to account on their NWI commitments. The ILSC urges the Commission to use this inquiry to name the structural problems plainly, assess the adequacy of consultation processes honestly, and recommend the legislative, institutional, and procedural reforms that will begin to close the gap between policy aspiration and First Nations water reality.

Should you or your staff require any further information regarding this submission, please contact Rebecca Hayden, General Manager Policy, Strategy and Performance,

Yours sincerely

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