

Submission 041 - First Nations Research Program, One Basin Cooperative Research Centre - National Water Reform 2026 - Public inquiry



1 May 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 First Nations Research Program Team, as part of the One Basin Cooperative Research Centre, welcome the opportunity to provide a submission to the Productivity Commission's National Water Reform 2026 Inquiry. This submission responds primarily to Part A: The assessment of progress under the National Water Initiative, with a focus on First Nations Peoples' involvement in water governance, decision making, and access within the Murray–Darling Basin.

Our submission draws on expertise in First Nations policy, governance, and water rights to highlight a central issue underpinning limited progress; the continued positioning of First Nations Peoples as stakeholders to be managed within water governance systems rather than inherent rights holders.

While there has been a maturation in policy, including increased emphasis on engagement, cultural values, and inclusion, these developments have not translated into structural change. Decision-making authority remains largely within centralised state-based systems, and First Nations managed participation continues to occur predominantly through advisory and consultative mechanisms.

This submission argues that meaningful reform requires a shift from procedural inclusion to systemic and structural transformation. Specifically, water governance must recognise, uphold, and operationalise First Nations Peoples' inherent rights, consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and commitments made under the *National Agreement on Closing the Gap* (CTG).

Summary of Recommendations

The Productivity Commission (the Commission) has been tasked with identifying actions to improve the effectiveness of the National Water Initiative (NWI). This submission recommends that reform must move beyond procedural inclusion and instead embed First Nations Peoples as rights holders within water governance systems.

Recommendation 1: Embed First Nations water rights through the operationalisation of UNDRIP

The Commission recommend the development of a nationally consistent framework that operationalises UNDRIP across water legislation, policy, and institutional practice. This should include the application of Free, Prior and Informed Consent (FPIC) and recognition of First Nations' governance structures as decision-making authorities.

Recommendation 2: Establish a statutory First Nations Water Governance Authority within the Murray–Darling Basin

The Commission recommend the establishment of a statutory Aboriginal Water Governance Authority to embed First Nations decision-making authority within Basin governance systems. This body should have defined roles in oversight, accountability, and participation in water planning and allocation, and be constituted on a Nation-by-Nation basis.

Recommendation 3: Create a structural pathway for First Nations water access and ownership

The Commission recommend reforms to establish a durable pathway for First Nations water access, including:

- Recognition of cultural flows as a distinct category within allocation frameworks
- The creation of a defined First Nations share of water entitlements
- Legal reform to recognise rivers and water systems as living entities with embedded First Nations custodial authority

Background of the One Basin CRC

The One Basin Cooperative Research Centre is a research and innovation partnership focused on water security, sustainability, and economic development across the Murray–Darling Basin. It brings together government, industry, and research institutions to address complex water challenges through applied, system-level interventions. Within this, the First Nations Research Program operates to embed First Nations authority and knowledge systems into Basin water research and policy. The program operates at the interface of governance, research, and engagement to shift how institutions understand and work with First Nations rights and responsibilities in relation to water.

A central mechanism within the Program is the First Nations Applied Management Advisory Committee (FNAMAC), an Elder-led governance body that provides independent advice on program direction, research design, and cultural and ethical integrity. FNAMAC ensures that First Nations perspectives are grounded in authority, not consultation, and plays a critical role in aligning research and policy activity with First Nations interests across the Basin.

1. Progress since the 2024 National Water Initiative Assessment

The National Water Initiative (NWI) is the overarching intergovernmental framework guiding water management in Australia, shaping policy, allocation, and planning across jurisdictions, including the Murray–Darling Basin. This submission assesses progress (positively or negatively) through the lens of First Nations rights, authority and participation within the Basin, noting that these conditions are broadly reflective of national trends.

1.1 Maturation in policy language and intent

Since the Commission's 2024 assessment, there has been a discernible maturation in policy language and institutional intent. Governments and Basin institutions have increased their recognition of First Nations cultural values, expanded engagement processes, and articulated stronger commitments to inclusion. These developments indicate a growing awareness of the historical and ongoing impacts of

dispossession and exclusion from water systems. However, these shifts have not translated into structural reform.

1.2 Persistence of existing governance settings

The Basin's governance architecture continues to be defined by technical, economic, and administrative logics, including hydrological modelling, water markets, and intergovernmental coordination. Instruments such as Sustainable Diversion Limits (SDL) determine how water is allocated, recovered, and traded, reinforcing a conception of water as a resource to be managed and quantified within existing structural parameters. These settings establish the epistemic boundaries of the system, determining what counts as valid knowledge and where decision-making authority resides. In doing so, they reinforce a path dependency that continues to privilege existing governance arrangements over alternative approaches grounded in First Nations law and custodial authority.

1.3 Limited translation into First Nations authority and control

Within the current structure, First Nations' rights and interests remain peripheral. While cultural values may be acknowledged, they are not embedded within the core mechanisms that determine allocation, governance, or control. As a result, First Nations knowledges systems and governance structures continue to be engaged in fragmented and extractive ways, rather than recognised and treated as authoritative systems in their own right. This structural positioning is reflected in legislative and policy outcomes.

Legislative and policy frameworks, including the *Water Act 2007*, and the *Basin Plan 2012*, continue to position First Nations Peoples as stakeholders to be consulted, rather than as inherent rights holders with unextinguished sovereignty and Custodial authority over water. Engagement processes, while more frequent, remain largely advisory and are inconsistently aligned with the principles of Free Prior and Informed Consent (FPIC). There now exists continuing evidence that such engagement has not translated into decision-making power, sustained water access, or shared system control.

1.4 Material outcomes: minimal change in access and ownership

Material outcomes reinforce this assessment. First Nations Peoples across the Basin hold less than 1% of water entitlements,¹ and there remains no formal recognition of cultural flows as a distinct and protected category within Basin Plan allocation frameworks.

These conditions persist despite policy commitments and repeated findings from national reviews, indicating that the constraint is not one of policy awareness, but of institutional structure.

1.5 Continuity across successive review

In 2024, the Commission's assessment of the NWI confirmed that progress against commitments to First Nations Peoples remains partial. The same core issues identified in the 2021 assessment (e.g., limited involvement in decision-making, inadequate access to water, and the absence of effective governance arrangements), remain largely unresolved.²

Recent consultation processes associated with the Basin Plan Review further reinforce this finding. First Nations participants consistently reported their rights are poorly recognised, involvement in water decision-making was limited, and that engagement processes lacked depth and accountability.³

1.6 Overall assessment: procedural progress without structural reform

The evidence suggests that progress since the 2024 assessment has been predominantly procedural rather than structural. Within the Basin context, there has been movement in how First Nations Peoples are engaged and recognised in policy language, but not how authority is constituted or exercised within

¹ <https://www.dcceew.gov.au/water/policy/first-nations>

² https://assets.pc.gov.au/2025-10/Water%20reform%20report.pdf?VersionId=ZzDTW0bcW2utNb_o2h_pAqD0fMclh.H0

³ <https://www.mdba.gov.au/sites/default/files/publications/2026-bains-plan-review-first-nations-discussion-snapshot.pdf>

water governance systems. This distinction is critical. Without structural reform, improvements in engagement will continue to operate within a system that is not designed to recognise or uphold First Nations' rights, thereby continuing to marginalise communities and their inherent rights to water.

The current water reform process therefore represents a critical juncture, providing an opportunity to move beyond procedural inclusion and to embed First Nations Peoples as inherent rights holders within water governance. This requires the operationalisation of existing instruments such as the UNDRIP and the CTG, as minimum and binding standards for the design, implementation, and evaluation of water legislation and policy.

2. Barriers and emerging risks

Progress towards equitable water governance for First Nations Peoples continues to be constrained by a set of interrelated structural barriers embedded within Australia's current legal, policy, legislative arrangements. These barriers are not discrete or technical in nature; they arise from the underlying design of the system, which excludes First Nations authority from the governance of land and water. Taken together, these barriers explain why improvements in engagement and policy recognition have not translated into material shifts in decision-making power, water access, or shared institutional control.

2.1 Governance and legal architecture: absence of rights recognition and authority

At the most fundamental level, existing water governance frameworks do not adequately recognise First Nations Peoples as rights holders with authority over water. In the absence of Treaty and Constitutional recognition, authority over water remains vested in centralised state-based systems, resulting in fragmented governance, inconsistent approaches across jurisdictions, and weak mechanisms for accountability. Legislative instruments such as the Water Act 2007, the Basin Plan 2012, and the CTG Priority Reforms (2020) provide for engagement with First Nations Peoples, including advisory structures and requirements to consider cultural values, but do not redistribute decision-making authority. As a result, First Nations participation is structurally positioned as consultative rather than determinative. This is further compounded by the scale and diversity of the Basin.

Without a clear legal and normative foundation recognising First Nations as rights holders, governance systems will continue to reproduce stakeholder-based engagement rather than structural authority.

2.2 Engagement practices and institutional capability

Current institutional arrangements do not provide mechanisms through which First Nations authority can be exercised within water governance systems. The Murray–Darling Basin encompasses more than 50 distinct Nations, each with their own laws, governance systems, and cultural responsibilities. Current institutional arrangements tend to aggregate these Nations into a single stakeholder category, thereby obscuring distinct rights and limiting the capacity for Nation-based governance to be recognised or operationalised.

Engagement with First Nations Peoples across the Basin remains inconsistent in quality, depth, and intent. While engagement is more frequently undertaken, it is often constrained by institutional practices that prioritise compliance over genuine partnership. This results in processes that are episodic, under-resourced, and insufficiently responsive to First Nations governance structures. In cases, engagement does not meet the minimum standards of FPIC. There is limited transparency regarding how input is used, and few mechanisms to ensure that participation influences decision-making outcomes. This contributes to a perception, and lived experience of First Nations community engagement, as procedural rather than substantive.

These conditions reflect broader limitations of institutional capability, including insufficient understanding of First Nations governance systems, inadequate or limited application of principles

including Indigenous Cultural and Intellectual Property (ICIP), and an absence of mechanisms to support shared or transferred authority. Without institutional reform, engagement will continue to occur without corresponding shifts in power, reinforcing low levels of trust and limiting the effectiveness of policy interventions.

2.3 Water allocation systems and market structures

Current water allocation systems and market structures constrain First Nations access to water ownership and economic participation. Licencing regimes, entitlement frameworks, and trading mechanisms are structured around existing users and require capital-intensive capability to enter and operate effectively. While programs such as the Australian Water Entitlements Program (\$100mil) represents a positive step toward increasing First Nations water holdings, this remains limited due to the program's reliance on market availability and voluntary trade constraints, scale, and impact. Fundamentally, the program does not alter the underlying distribution of water, nor does it provide a structural mechanism to ensure an enduring First Nations share of water resources, such as support for the development of community-controlled enterprise (CTG Priority Reform 2).

Moreover, existing frameworks recognise water primarily through consumptive and environmental categories. This binary limits the capacity to recognise cultural flows as a distinct and legitimate form of water use, grounded in First Nations law and custodial responsibility to Country. Without structural reform to water allocation systems and legal definitions of water, First Nations will remain marginal participants in systems that determine access to a critical economic and cultural resource.

2.4 Emerging risks and implications of structural conditions

The denial of meaningful access to water rights, and the corresponding inability to care for water Country in accordance with cultural obligations, produces a cascade of social, economic and health consequences. Connection to land and water is not symbolic; it is constitutive of identity, continuity, and wellbeing. Where this connection is constrained, the effects are observable in the erosion of cultural practice, the weakening of community structures, and the intensification of disadvantage across multiple indicators, as consistently evidenced from annual the CTG outcomes.

These risks are intensified under conditions of environmental stress, particularly drought. Limited access to water reduces the capacity to respond to changing conditions, exacerbates existing inequalities, and contributes to patterns of social and economic disadvantage across Basin communities. Outcomes directly at odds with the CTG objectives. Without structural reform to water governance, progress against targets related to economic participation, health, and community strength is likely to remain limited.

Failure to address structural barriers in water governance risks entrenching broader patterns of disadvantage across multiple policy domains. These barriers are structural in nature and cannot be addressed through incremental policy adjustment. They require targeted reform interventions that reconfigure how rights, authority, and access are constituted.

3. Forward reform priorities for the next three years

From a First Nations perspective, the next phase of water reform must move beyond incremental improvement and focus on targeted structural interventions that reconfigure how authority, access, and accountability are constituted. The following priorities are identified as those most likely to deliver material change within the next three years.

Priority 1: Embed First Nations water rights as structural foundations of water governance

A nationally consistent approach is required to recognise and operationalise First Nations Peoples' inherent rights to water. This must be achieved through the formal embedding of UNDRIP within water legislation and regulatory frameworks.

This reform shifts the system from recognising First Nations Peoples as stakeholders to rights holders with authority in decisions relating to water allocation, planning and management. It would establish a clear normative and legal standard, against which water governance arrangements are designed, implemented, and evaluated. Such reform would also require the application of FPIC, protection of Indigenous Data Sovereignty and ICIP, and recognition of First Nations governance structures as legitimate decision-making authorities.

Priority 2: Reconfigure water governance to embed First Nations Authority

Water reform must move beyond advisory participation and establish institutional mechanisms through which First Nations authority can be exercised. Within the Basin, this requires the establishment of a statutory Aboriginal Water Governance Authority, constituted on a Nation-by-Nation basis, with representatives drawn from each Basin Nation and structured to reflect culturally grounded governance, including appropriate gender balance in line with the division of cultural roles.

The Authority should be supported by an independent budget and have formal functions that include:

- Oversight and review of Basin water planning instruments, including Water Resource Plans
- Monitoring and evaluation of compliance with UNDRIP and CTG commitments
- Formal input into allocation frameworks, including cultural flows and entitlement settings
- Advisory and referral powers that require government response and justification

Within a three-year timeframe, this reform is achievable through staged development, beginning with legislative design and interim governance arrangements, followed by formal establishment and operationalisation.

Priority 3: Restructure water allocation systems to enable First Nations access, ownership, and control

Current water allocation and market systems do not provide a structural pathway for First Nations Peoples to access and manage water in accordance with cultural law, governance obligations and economic aspirations.

Reform must therefore restructure allocation frameworks to:

1. recognise cultural flows as a distinct and protected category,
2. establish a defined First Nations share of water entitlements, and
3. pursue legal reform to recognise rivers and connected water systems as living entities.

Taken together, these reforms move beyond procedural inclusion to establish the structural conditions required to embed First Nations authority, access, and accountability within Australia's water governance systems.

Conclusion

The National Water Initiative has now been in operation for over two decades. Across successive reviews, it has consistently failed to deliver equitable outcomes for First Nations Peoples. While policy language and intent have matured, this has not translated into structural change.

The evidence presented in this submission demonstrates that the central constraint is not recognition, but the absence of institutional arrangements that embed First Nations Peoples as rights holders with

authority over water. That First Nations Peoples continue to call for the realisation of basic rights in 2026, despite Australia's endorsement of UNDRIP and commitments under the CTG, reflects a systemic failure.

The current reform process presents a critical opportunity to address this. Now is the time to move beyond procedural inclusion and embed First Nations rights, authority, and access within the legal, regulatory, and institutional architecture of water governance.

Without such reform, existing conditions will persist. The task ahead is not refinement, but reconfiguration, aligning water governance with the rights and responsibilities that First Nations Peoples inherently hold in relation to water.

Kind regards,

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