

Submission to the Productivity National Water Reform 2026

Introduction

1. The Territory Rivers Alliance (Territory Rivers), led by the Environment Centre NT (ECNT) and the Pew Charitable Trusts, welcomes the opportunity to comment on the Productivity Commission's inquiry into National Water Reform 2026. We welcome any opportunities to participate in public hearings and/or the stakeholder working groups.
2. Territory Rivers is an alliance of non-government organisations including The Pew Charitable Trusts and the Environment Centre NT. We work with local communities, scientists, stakeholders and government to safeguard the health of Top End rivers, securing the Territory's treasured way of life, and unique natural environment.
3. Territory Rivers recognises the ongoing custodianship, care and governance of Northern Territory waterways by Traditional Owners and acknowledges that their sovereignty was never ceded.
4. This submission addresses:
 - a. the National Water Initiative,
 - b. key priorities of Governments, and
 - c. water policy and regulatory settings to support long-term sustainability.
5. The Murray-Darling Basin example demonstrates that unsustainable water extraction is impossible to halt or reverse. The Northern Territory's legislation will not prevent either over extraction or dispossession of Traditional Owners from water. Commonwealth intervention is necessary to provide at least the same protection for Traditional Owners and the environment, as is required under Australia's international obligations.
6. The following should be considered as part of this submission to the National Water Reform 2026:
 - a. *Submission to the Northern Territory Strategic Water Plan Directions Paper by ECNT, 4 February 2022*¹,
 - b. *Submission in relation to the Productivity Commission National Water Inquiry – National Water Reform 2024, 23 February 2024*,²
 - c. *Submission to the Department of Climate Change, Energy, the Environment and Water on the future National Water Agreement Discussion Paper by the Northern Conservation Alliance, Submitted 26 May 2024*,³
 - d. *Submission of Environment Centre NT National Water Agreement Principles, 18 September 2024*.⁴

Recommendation 1 That the Productivity Commission adopts all ECNT/ Territory Rivers Alliance recommendations from submissions to: Northern Territory Strategic Water Plan Directions Paper (to the extent relevant to the NWI), National Water Reform 2024, future National Water Agreement Discussion Paper, and National Water Agreement Principles.

Recommendations

Recommendation 1 That the Productivity Commission adopts all ECNT/ Territory Rivers Alliance recommendations from submissions to: Northern Territory Strategic Water Plan Directions Paper (to the extent relevant to the NWI), National Water Reform 2024, future National Water Agreement Discussion Paper, and National Water Agreement Principles.

Recommendation 2 A moratorium be placed on new or expanded industrial water take rights until: i) water legislation in the Northern Territory safeguards Traditional Owners, the environment and future generations; ii) statutory water plans are in place; iii) a statutory mechanism is in place that allows free-flowing rivers to be declared as being of highly significant cultural and/or natural value and protected from major alteration iv) arrangements are in place for comprehensive gauging, modelling, robust monitoring and compliance; v) there is transparency around governance and decision making; and vi) a regulatory regime is in place which includes an independent regulator paid for by the licensing fees for water allocation.

Recommendation 3 That a Regulatory Impact Assessment is undertaken for the use of water for irrigation, mining and tourism, based on the Commonwealth best-practice regulatory framework.

Recommendation 4 That economic development policies address all relevant considerations including all aspects of water reform, best-practice regulatory framework and consideration of Australia's international obligations.

Recommendation 5 That Traditional Owner knowledge, science and governance structures be given legal effect and integrated into water management.

Recommendation 6 That the Closing the Gap target in the Northern Territory is reassessed to recognise the unique nature of the Northern Territory Traditional Owner proportion of the population.

Recommendation 7 That the Water Act is amended to apply to water management nationally, and to give effect to international obligations as they relate to the use and management of water resources.

Northern Territory Context

7. The Northern Territory's rivers and aquifers are exceptional on a national and global scale. Australia's Far North has one of the world's largest concentrations of free-flowing rivers. A primary reason why these rivers remain intact is the ongoing stewardship by Traditional Owners.
8. Approximately 48 percent of the Northern Territory's land mass and 80 percent of its coastline is Traditional Owner land subject to the Land Rights Act. The majority of the remaining land and waters are, or are likely to be, subject to Native Title.⁵
9. More than 30 percent of the Northern Territory population are Traditional Owners, living mostly in outer regional or remote communities. This compares with three percent of the total Australian population, two-thirds of whom reside in major cities or inner regional communities.⁶
10. Many Traditional Owners maintain strong connection to Country, with cultural practices tied to land, water, ceremony, kinship, hunting, fishing, and gathering bush foods, continuing over 60,000 years of heritage. For Traditional Owners, water and country are inseparable from culture. As described by Traditional Owners of the Roper River:

Water is life.

All our songlines follow the water. We are all connected. If you take our water, you kill our culture. If you kill our culture, you kill our people.⁷

11. The Northern Territory and Commonwealth governments are seeking to exploit the Northern Territory's rivers by making water available for industrial-scale irrigation and mining.^{8,9} This is discussed further in the section *Repeating the mistakes of the Murray-Darling Basin*.

National Water Initiative

12. The National Water Initiative (NWI) was established in 2004 in response to severe drought and over-allocated water resources. It was created to provide a national framework for sustainable water management, focusing on increasing efficiency, environmental health, and security of investment.
13. The NWI has been implemented partially and poorly in the Territory.^{10,11} Despite the mistakes of the Murray-Darling Basin being well understood, the Northern Territory is repeating them.

The mistakes of the Murray-Darling Basin

14. From the late nineteenth and early twentieth centuries, Australian governments promoted and supported irrigation development in the Southern Murray-Darling Basin. They financed and constructed public dams, irrigation schemes, factories, and, in some cases, irrigation towns. Together with the British Government, they actively encouraged migration into newly formed irrigation colonies in the Southern Basin.¹²
15. Since the 1960's, Australian governments have encouraged cotton development in the Northern Basin, including continuous co-funding of cotton research.¹³ As irrigated cotton expanded, the cotton industry successfully lobbied for major policy changes that have transformed small scale mixed farming into industrial-scale irrigation.^{14, 15, 16}
16. The water legislation in place during the development of irrigation in the Murray-Darling Basin contained insufficient safeguards to require proper consideration of how much water was available and the effects of granting licences on downstream users and the environment. This was coupled with little or no monitoring and compliance of licences. Consideration of Traditional Owners was entirely absent throughout the granting of licences and they were largely ineligible to receive licences.^{17, 18, 19}
17. As a consequence, by the 1970's and 1980's, it had become apparent that too much water was being extracted for irrigation, salinity was threatening agriculture, and extractions upstream were damaging downstream users and aquatic eco-systems.²⁰ In 1994, the Council of Australian Governments agreed:

...that action needs to be taken to arrest widespread natural resource degradation in all jurisdictions occasioned, in part, by water use and that a package of measures is required to address the economic, environmental and social implications of future water reform.²¹

18. Throughout this period, and without any legal justification, water bureaucrats treated extraction licences as a property right.²² This became the dominant philosophical and theoretical framework through which water reform was viewed. Consequently, efforts to move to sustainable water management have failed.²³ Since the 1980s governments have taken steps to reverse the degradation arising from over extraction in the Murray-Darling Basin through:
 - a. an agreement to limit irrigation development to the levels that existed in 1994 (the Murray-Darling Cap),
 - b. the NWI agreement in 2004,
 - c. purchasing 500 gigalitres of water for the environment in the Southern Basin as part of The Living Murray program,
 - d. enacting the Commonwealth Water Act in 2007,

- e. acquiring over 2,000 gigalitres of water for the environment since 2007 through water purchases and in exchange for improving irrigation infrastructure, and
 - f. implementing the Basin Plan in 2012 to reduce irrigation to a scientifically based Environmentally Sustainable Level of Take.
19. The cost of these measures to the Commonwealth government alone is at least thirteen billion dollars since 2007.²⁴
 20. In parallel, the same governments have implemented policies and taken steps that undermine these efforts. There is a clear difference between the stated policies of governments and their actions. These actions include changes to the methods of calculating Sustainable Diversion Limits, failure to ensure metering and measuring of take, licensing floodplain harvesting, and overseeing ineffective legislation.^{25, 26} Consequently, large river-systems, like the Barwon-Darling/Baaka, that rarely stopped flowing prior to industrial irrigation, now frequently dry up.²⁷
 21. Governments now incorrectly describe rivers in the Northern Murray-Darling Basin as ephemeral, instead of acknowledging the damage caused by irrigation.²⁸
 22. Rivers in the Murray-Darling Basin are contaminated with agricultural chemicals and heavy metals. Some communities can no longer source drinking water from rivers because of insufficient flows and turbidity.^{29, 30} Groundwater that is used to supply town water is increasingly found to be contaminated with PFAS.^{31, 32}
 23. Approximately half of the Basin's 50 native fish species are now listed as rare or threatened, and numbers continue to fall.³³ Many freshwater species that were once abundant are now extinct in parts of the Basin.³⁴ Waterbird breeding has declined, and waterbird populations have declined since monitoring first began in 1983.³⁵
 24. These water reforms have been described as a *\$13 billion, 30-year flop*.³⁶

Repeating the mistakes of the Murray-Darling Basin

25. The Northern Territory Government is proceeding with plans for industrial scale irrigation expansion across the Northern Territory.³⁷ The Northern Territory Government is preparing for a large-scale unconventional gas industry in the Beetaloo Basin.
26. These plans rely on access to billions of litres of the Northern Territory's surface and groundwater (notably, the Cambrian Limestone Aquifer, which sustains the flows of the Roper and Daly systems) and risk significant contamination from hydraulic fracturing fluids, wastewater and spills.
27. In doing this, the mistakes of the Murray-Darling Basin are being repeated. The Northern Territory Government is issuing water licences without:
 - a. water legislation that adequately safeguards Traditional Owners, the environment and future generations (discussed under *Legal framework*),
 - b. statutory water plans,³⁸
 - c. an adequate understanding of water resource availability due to inadequate gauging and modelling,³⁹
 - d. adequate measuring, monitoring and compliance arrangements.⁴⁰

Legal framework

28. The Water Act 1992 (the NT Water Act), the primary legislation applying to water use in the Northern Territory, facilitates water extraction. It does not meet environmental protection standards set in the Commonwealth's Water Act 2007, designed to meet Australia's international obligations (see below in *Traditional Owners*).
29. Northern Territory water law has been described as "amongst the poorest in the country". It fails to properly acknowledge, let alone advance or protect, the water rights, values and interests of Traditional Owners.⁴¹ Water management in the Northern Territory has long been subject to governance failings and alleged bias towards industry.^{42, 43}

30. In 2025, two laws were passed which further weaken protection of water sources. The Territory Coordinator Act 2025, which permits statutory processes and decisions under key planning and approval laws to be bypassed to fast-track projects determined to have a significant economic impact.
31. Similarly, the Petroleum, Planning and Water Amendment Act 2025 abolishes third party merits-based reviews of planning decisions under the NT Water Act while retaining the right of project proponents to seek a merits review.
32. That the Northern Territory Government has a resource exploitation approach to water is most clearly demonstrated by the fact that these amendments to the NT Water Act make it easier to grant water use rights based upon economic imperatives, and a corresponding failure to include provisions which would either protect or enhance Traditional Owner rights to water, or protect the environment.
33. We refer you to the thorough analysis of the Northern Territory water management legal framework in the ECNT's *Northern Territory Strategic Water Plan Directions Paper*.⁴⁴ In particular, as explained in that submission, regulation should be independent and should be paid for by extractive water users.
34. ***Recommendation 2 A moratorium be placed on new or expanded industrial water take rights until: i) water legislation in the Northern Territory safeguards Traditional Owners, the environment and future generations; ii) statutory water plans are in place; iii) a statutory mechanism is on place that allows free-flowing rivers to be declared as being of highly significant cultural and/or natural value and protected from major alteration iv) arrangements are in place for comprehensive gauging, modelling, robust monitoring and compliance; v) there is transparency around governance and decision making; and vi) a regulatory regime is in place which includes an independent regulator paid for by the licensing fees for water allocation.***

Key priorities of Governments

35. Three key priorities of the Territory and Commonwealth governments are:
 - a. economic returns,
 - b. Traditional Owners, and
 - c. Closing the Gap.

Economic returns

36. Much economic development in the Northern Territory is unviable without government assistance and investment.^{45, 46, 47}
37. The Northern Territory Economic Strategy for 2025-2028 sets out an annual target to exceed national economic growth.⁴⁸ Agriculture, mining, and tourism are listed as three of the five priority sectors to drive this growth. Exploitation of water for mining and agriculture under current Northern Territory water laws will impose a cost on tourism. Based upon independent analysis, mining and agriculture do not generate a net economic benefit to the Northern Territory.⁴⁹
38. Cotton has been promoted *as the cornerstone crop going forward in NT plant-based agricultural and horticultural crop developments*.⁵⁰ The Northern Territory Government and industry groups maintain that 80 percent of the cotton will not require irrigation (dryland or rainfed cotton). However, it is not profitable to grow dryland cotton in the Northern Territory.^{51, 52} Cotton growing in the Northern Territory must be irrigated to be viable.

39. The cotton industry requires few employees compared to other agricultural industries. It also rarely makes substantial company tax payments.⁵³ An analysis of the economic contribution of cotton to the Northern Territory demonstrates that industry forecasts are not credible.⁵⁴ An economic analysis of the Northern Development Program found:

*that many proposed irrigated agriculture projects not only fail to meet environmental and social objectives, but also fail on standard economic and financial performance expectations for public investment programs.*⁵⁵

40. Despite claims by industry,⁵⁶ it is not financially viable to grow dryland cotton in the Northern Territory.^{57, 58}

41. Research by The Australia Institute shows that:

- a. the Northern Territory receives no tax or royalties from 37 billion dollars of gas exports each year, forgoing 3.4 billion dollars of revenue,⁵⁹
- b. the claimed economic benefits from the Beetaloo Basin development are nine times higher than the independently assessed benefits over 25 years,⁶⁰
- c. the claimed number of jobs from the Beetaloo Basin development are 25 times higher than the independently assessed number of jobs,⁶¹
- d. the Northern Territory government subsidises onshore oil and gas industries.⁶²
- e. without these subsidies, the onshore gas industry in the Northern Territory would not be commercially viable.⁶³

42. The Commonwealth Government best practice guidelines for costing environmental impacts recommend:

*For environmental considerations to be fully accounted for in broader policy development, the environmental impacts of policy proposals need to be described clearly, and in a manner that allows them to be compared with other types of impacts on the community.*⁶⁴

43. Independent assessments of the cotton and onshore gas industries show that this process has not been followed.

Recommendation 2 That a Regulatory Impact Assessment is undertaken for the use of water for irrigation, mining and tourism, based on the Commonwealth best-practice regulatory framework.

Recommendation 3 That economic development policies address all relevant considerations including all aspects of water reform, best-practice regulatory framework and consideration of Australia's international obligations.

Traditional Owners

44. Water policies in Australia have created enduring rights, interests and structural advantages for irrigation and mining. Traditional Owners have been progressively dispossessed of water through these processes. Environmental degradation has also imposed profound social, cultural and economic costs on Traditional Owner communities. This history and its continuing effects have been described as aqua nullius or water colonialism.⁶⁵

45. Australia is bound by various international treaties, conventions and declarations, which bear directly upon the rights and interests of Traditional Owners in relation to land, water, culture and self-determination and in relation to the environment. The Native Title Report 2008 stated:

*The Australian Government has ratified a number of international human rights instruments...As a result, the Australian Government has an obligation to its citizens, including Indigenous Australians, to respect, protect and fulfil the rights contained within them.*⁶⁶

46. Australia cannot rely upon deficiencies in its own laws as justification of its failure to meet its international obligations.⁶⁷ Domestic laws should mirror international obligations to protect the rights of Traditional Owners.
47. In its General Comment No. 23, the United Nations Human Rights Committee observed that the culture protected by Article 27 of the International Covenant on Civil and Political⁶⁸ may include:

*a particular way of life associated with the use of land resources, especially in the case of Indigenous peoples...The enjoyment of those rights may require positive legal measures of protection.*⁶⁹

48. The relationship between Traditional Owners, culture and water is also in the *Convention on Biological Diversity*,⁷⁰ the *Ramsar Convention on Wetlands of International Importance*,⁷¹ the *International Covenant on Economic, Social and Cultural Rights*,⁷² the *United Nations Declaration on the Rights of Indigenous Peoples*,⁷³ *Agenda 21* and the *Rio Declaration*,⁷⁴ and the *International Convention on the Elimination of all Forms of Racial Discrimination*.⁷⁵
49. The Updated Draft National Water Agreement (NWA), the proposed successor to the NWI, contains stronger language on Traditional Owner water access than the NWI, creating an objective of:

Water management that recognises and protects Aboriginal and Torres Strait Islander water interests and values.

50. However, the NWA does not create legal rights, nor does it establish a national framework for translating Traditional Owner water rights into legally enforceable allocations. The gap between the NWA's commitments and the actual water security of Traditional Owners is growing.
51. Water policy in Australia is premised on the separation of water and land. This is problematic for Traditional Owners:

The Aboriginal concept of cultural water use is 'bound to Aboriginal peoples' relationship with the Aboriginal environment (lands and waters of Australia) based upon the founding Aboriginal principle of the inseparability of land from water'. The Commonwealth water legislation such as the Water Act 2007 (Cth) 'decouples Aboriginal ontological water concepts (Aboriginal norms) from its statutory provisions'. Aboriginal water values, law and cultural expressions are not separate from environmental water flows; in fact, Aboriginal cultural flows and Aboriginal cultural activities in water inform on maintaining the health of Australia's Aboriginal environment.⁷⁶

52. The failure to properly recognise Traditional Owner rights, interests and cultural science, and to include them in a meaningful way in water governance is not an accident. It is a feature of the Australian water management legal framework.⁷⁷

Recommendation 4 That Traditional Owner knowledge, science and governance structures be given legal effect and integrated into water management.

Closing the Gap

53. Closing the Gap Target 15 seeks a 15 per cent increase in Traditional Owners' legal rights or interests in land and waters by 2030. A draft target of ownership of three per cent of water rights by Traditional Owners has been developed, subject to finalisation by the Joint Council on Closing the Gap.⁷⁸
54. This is profoundly inadequate when considered against both Traditional Owner populations in regions such as the Northern Territory and the nature of Traditional Owner relationships to land and water systems. The proposed target of three per cent of water rights would further embed structural inequity rather than remedying it.

55. The Northern Territory government, like other state and territory governments, has begun to create, expand and legally protect valuable statutory water rights for comparatively small groups of consumptive water users, particularly irrigators. The proposition that Traditional Owners, who constitute more than 30 per cent of the Northern Territory population, and whose relationships with rivers, floodplains and groundwater systems existed for thousands of years before colonisation, should collectively hold only a marginal share of legally recognised water rights is contradictory to the stated objectives of Closing the Gap.
56. State and Territory governments have had more than two decades to give practical effect to the commitments embodied in the NWI. Even if the NWA were adopted immediately and in full in the Northern Territory, it is inadequate to secure Australia's stated commitments under international human rights and environmental agreements.
57. Commonwealth intervention is necessary to ensure that Australia gives effect to its international obligations, addresses Traditional Owner dispossession, and preserves the pristine water sources in the Northern Territory.
58. The failure to establish and enforce domestic obligations mirroring Australia's international obligations is both legally untenable and practically damaging.

Recommendation 5 That the Closing the Gap target in the Northern Territory is reassessed to recognise the unique nature of the Northern Territory Traditional Owner proportion of the population.

Water policy and regulatory settings to support long-term sustainability

59. The Northern Territory's rivers and groundwater systems should be preserved. The experience of the Murray-Darling Basin demonstrates that it is not possible to restore rivers once converted to large-scale extractive systems.
60. The Northern Territory's water laws are inadequate and cannot preserve and protect the Northern Territory's rivers and groundwater systems.
61. More than twenty years after its commencement, the NWI has still not been properly implemented.⁷⁹ The NWI has failed to deliver sustainable, equitable, or ecologically sound water management in the Northern Territory.
62. The Commonwealth Government enacted the Water Act 2007 and the Basin Plan 2012 because the NWI alone was insufficient for states to manage water on a sustainable basis. The same Commonwealth intervention is urgently required in the Northern Territory.
63. Three key things must be legislated to avoid the mistakes made in the Murray-Darling Basin, and ensure the implementation of the NWA and Australia's international obligations:
 - a. structural recognition and inclusion of Traditional Owner water rights and cultural science;
 - b. environmental protections which are clear, contain enforceable compliance mechanisms, and are based upon an environmentally sustainable level of take;
 - c. a regulatory framework which ensures accountability, contains measurable environmental and governance outcomes and properly funded, expert independent oversight.
64. The constitutional basis of the Water Act was found to be sound by Bret Walker SC in the South Australian Royal Commission.⁸⁰ While large parts deal with the Murray-Darling Basin, the Water Act provides a principles-based framework, allied with enforceable obligations, for nationally cohesive water management. It is sensible to amend the Water Act so that it applies to water management nationally.

65. The failings in the Murray-Darling Basin since the introduction of the Water Act arise in part due to a lack of proper regulatory oversight.⁸¹ The amended Water Act will need to ensure the obligations arising in it are enforceable and that there is a regulator to enforce those obligations.

Recommendation 6 That the Water Act is amended to apply to water management nationally, and to give effect to international obligations as they relate to the use and management of water resources.

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