



# SUBMISSION

**Productivity Commission —  
National Water Reform 2026: Preliminary Assessment**  
*Response to the Interim Update*



**Submitted by:**

Border Rivers Food & Fibre,  
on behalf of Border Rivers irrigators



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## 1. Introduction

Border Rivers Food & Fibre (BRFF) welcomes the opportunity to respond to the Productivity Commission's interim update on the National Water Reform 2026 inquiry, released in July 2026. This submission builds on BRFF's original submission to the inquiry (sub. 47, April 2026), much of which is directly cited throughout the interim update, and should be read alongside it.

BRFF notes that submissions on the interim update close on 24 July 2026, three weeks after its release, and that this response follows the Commission's earlier public consultation round on the inquiry more broadly. This submission accordingly focuses on developments, evidence and positions that have emerged or changed since BRFF's original submission, rather than restating matters already addressed there.

This submission responds to the Commission's Information Requests 1 and 2, following the structure of the interim update. Where relevant, we identify where BRFF's position aligns with, or diverges from, the draft response prepared by the NSW Irrigators' Council (NSWIC), the state-wide peak body for NSW irrigators, whose views frequently align with BRFF's on matters affecting Border Rivers water users. Where the interim update has cited BRFF's original submission, we confirm whether our position has changed and provide updated evidence where available.

## 2. Executive summary

BRFF's overarching position remains as set out in our April 2026 submission: the core architecture of national water reform is now in place, and the priority for the next assessment period should be stability, consolidation and rigorous implementation — not further structural change. The interim update's finding that national assessment ratings are largely unchanged since 2024 is consistent with this view, but BRFF is concerned that the ratings understate the erosion occurring beneath several 'largely achieved' and 'achieved' categories, particularly in relation to rules-based changes to water access, and the practical, on-ground implementation of the floodplain harvesting framework.

BRFF also notes the Commission's own description of its remit — as the Australian Government's independent advisory body on economic, social and environmental issues affecting the welfare of Australians. BRFF's recommendations in this response are grounded in that same balance: the entitlement security and market-based mechanisms we advocate for are not only legal or equity concerns, but productivity concerns. Regulatory and reliability uncertainty of the kind documented below directly affects the willingness of irrigators to invest in efficient water use and productive capacity, and the value of entitlements as a bankable asset.

### Primary recommendations

- The Commission should revisit the 'largely achieved' rating for interception activities (table 1) to more clearly reflect that floodplain harvesting licensing, while substantially rolled out, has not resolved the underlying legal and system-level uncertainty affecting water users' ability to rely on their entitlements.
- The Commission should recommend that jurisdictions maintain a public, cumulative reliability impacts register and adopt mandatory pre-amendment notification for rules-based changes affecting the consumptive pool, consistent with NWI paragraph 40(iii), and should characterise reliability-reducing rules-based changes as Clause 50 policy-change events under the Risk Assignment Framework (Schedule 1, Water Act 2007 (Cth)), so that entitlement holders and the Commission itself can assess whether compensation thresholds have been triggered.
- The Commission should recommend cumulative impact assessment and project-level regulatory impact statements for concurrent water reform initiatives affecting the same water users, in every jurisdiction — assessed annually to capture the effect of ongoing policy and rules-based change, and at each statutory Basin Plan review to capture the

cumulative effect of science-driven change to sustainable diversion limits — and should itself audit these assessments as part of its own periodic review cycle, given the inherent conflict of interest in agencies self-assessing the cumulative impact of their own reform initiatives.

- The final report should reaffirm the Commission's support for a detailed, enforceable renewed NWI (or equivalent instrument) rather than a higher-level National Water Agreement, consistent with the concerns raised in appendix C of the interim update.
- The Commission should note that the transition benchmark set by its own Terms of Reference — jurisdictions becoming party to the National Water Agreement by 28 May 2026 — has passed with no state or territory signature recorded, and should treat this as a substantive matter for direct comment in the final report.
- Should "free, prior and informed consent" be carried from its current review-consideration role under section 50 of the Water Act 2007 (Cth) into an operative requirement in any future instrument, the Commission should recommend this be accompanied by express statutory or instrument-level drafting that puts its intended meaning beyond doubt, rather than relying on non-binding explanatory material.
- The Commission should recommend that Border Rivers entitlement holders with cross-jurisdictional (NSW–Queensland) interests be excluded from the proposed attestation and attribution obligations under the NSW Metering and Records Regulation until an agreed apportionment methodology between the two jurisdictions has been developed and consulted upon.
- The Commission should recommend that jurisdictions close the availability of non-consultative pathways — such as section 45(1) of the Water Management Act 2000 (NSW) — for substantive, reliability-affecting water sharing plan amendments, so that the same consultation standard applies regardless of which statutory provision is used to make the change.

### 3. Overall feedback (Information Request 1)

#### Reference questions (PC interim update)

- Are there any other important developments, reforms or outcomes since 2024 that should inform the final assessment?
- What has your experience been with the key updates provided by jurisdictions, and what outcomes have been achieved?

BRFF agrees with the Commission's overall finding that progress since 2024 has been incremental and has not been extensive enough to shift the national assessment ratings. However, incremental progress in some areas has occurred alongside incremental regression in others — most notably the continued use of rules-based administrative mechanisms (rather than the water market) to alter water access, reliability and entitlement value in NSW. Because these changes typically fall below the level that would prompt a change in the Commission's national rating, their cumulative effect is at real risk of going unrecorded in an assessment framework built around discrete jurisdictional milestones. This is a productivity issue as much as a compliance one: entitlement holders price sovereign and regulatory risk into investment decisions, and an assessment framework that does not capture cumulative rules-based erosion will systematically understate the economic cost of that risk to the sector.

BRFF's own submission was developed against the backdrop of over three decades of continuous water reform, set out in detail in section 3 of our April submission. Since then, the pace of concurrent reform affecting Border Rivers irrigators has, if anything, intensified. In the period since our original submission, BRFF has been actively engaged in: the MDBA's 2026 Basin Plan Review; the Commonwealth Water Act Review (with a national discussion paper released 17 July 2026, with submissions due by 31 August 2026); the NSW Non-Urban Water

Metering Regulation (submission lodged 15 June 2026); the Long-term Average Annual Extraction Limit (LTAAEL) numeric conversion consultation for nine inland unregulated valleys including the Border Rivers; the Northern Basin Connectivity Program; and IPART's final determination on WaterNSW bulk water pricing. Several of these processes are proceeding on overlapping timeframes with little visible sequencing or coordination between the responsible agencies.

Cotton Australia's own response to the interim update identifies a further, Queensland-side layer of concurrent reform directly relevant to Border Rivers' cross-border position: a current Queensland Competition Authority review of Regulated Asset Base versus annuity-based funding for water infrastructure renewals, ongoing Regional Water Assessments, and continuing reviews of Queensland Water Resource Plans. BRFF notes this Queensland-side activity sits alongside, rather than within, the NSW- and Commonwealth-focused list above, and submits the Commission's assessment of cumulative reform burden for cross-border catchments such as the Border Rivers should account for concurrent state-based reform on both sides of the border, not only in NSW.

BRFF supports NSWIC's recommendation, in its own response to the interim update, that NSW perform annual cumulative impact assessments and project-level regulatory impact statements to quantify the combined effect of concurrent reforms on water users. Consistent with Cotton Australia's own recommendation that this practice extend to other jurisdictions, and with the Queensland-side reform activity identified above, BRFF submits this should apply nationally, in every Basin state, and should extend to Commonwealth-led processes where they run concurrently with state reforms affecting the same water users — as is currently the case for Border Rivers irrigators managing the Basin Plan Review, the Water Act Review, and reform processes in both NSW and Queensland simultaneously.

BRFF's call for cumulative impact assessment is no longer solely an industry ask. The NSW Auditor-General's June 2026 performance audit of water management and regulation independently reaches the same conclusion, finding that DCCEEW has never assessed the cumulative environmental, social and economic impact of the reform agenda since 2017, relying instead on piecemeal, case-by-case regulatory impact assessments of individual measures. Recommendation 2 of that audit requires DCCEEW, in collaboration with WaterNSW and NRAR, to conduct and publish a review of the post-2017 reform agenda by June 2027, evaluating cumulative impacts and identifying lessons learned to guide future priorities. BRFF submits the Commission should endorse this recommendation directly in its final report, and should recommend that any equivalent Commonwealth review extend to processes running concurrently with the state reform agenda — including the Basin Plan Review and the Water Act Review — given the compounding effect on the same water users identified throughout this submission.

BRFF submits this cumulative assessment should operate on two distinct timeframes, reflecting the two forms of risk addressed in section 4.2 below: an annual assessment, to capture the incremental effect of discretionary policy and rules-based change (Clause 50-type events, which can occur at any time); and an assessment aligned with each statutory Basin Plan review cycle — currently ten years — to capture the cumulative effect of science-driven reductions to sustainable diversion limits (Clause 49-type events), which are properly realised, and can only be meaningfully assessed, at that longer interval. An annual assessment alone risks understating decadal-scale cumulative change of exactly the kind the current Basin Plan review is itself designed to capture.

BRFF further submits that responsibility for conducting these assessments should not rest solely with the agencies whose own reform initiatives are under review. DCCEEW, the MDBA and other implementing agencies each have a direct interest in the outcome of any assessment of the cumulative impact of their own reform agenda, creating an inherent risk that self-assessment will understate that impact. Consistent with the Commission's own description of its role as the Australian Government's independent advisory body on economic, social and environmental issues affecting the welfare of Australians, BRFF submits the Commission should audit these agency-produced assessments as part of its own periodic National Water Reform review cycle, rather than conducting the underlying assessments itself. Agencies would remain responsible for

producing the annual and Basin Plan-cycle assessments recommended above; the Commission's role would be to review the accumulated record — potentially covering several years of assessments in a single review — against its own findings and any independent evidence available to it. This does not require the Commission to audit annually: the deterrent value of the function does not depend on annual review, since certainty that agency-produced assessments will eventually be examined, even retrospectively across multiple years, is itself sufficient incentive for agencies to produce them accurately in the first instance.

BRFF considers this recommendation satisfies the threshold test BRFF proposes elsewhere in this submission for expanding any Basin institution's remit — that systemic failure be demonstrably established, that existing oversight mechanisms have proven inadequate, and that additional powers would materially improve outcomes rather than duplicate existing layers. Systemic failure is demonstrably established: the NSW Auditor-General's June 2026 audit confirms DCCEEW has never assessed the cumulative impact of the post-2017 reform agenda, relying instead on piecemeal, case-by-case assessments. Existing oversight is inadequate: no mechanism currently subjects agency-produced cumulative impact assessments, or their absence, to independent external review. And the proposed function would materially improve rather than duplicate existing arrangements: an audit role adds independent verification without displacing agencies' own responsibility to produce the underlying assessments, and requires no new data collection function of its own.

The MDBA's own June 2026 What We Heard report on the Basin Plan Review provides further, independent corroboration of this concern outside the NSW context. It records recurring submitter calls, including from national bodies such as the National Farmers' Federation, for stronger socio-economic testing capable of identifying cumulative — not only direct — impacts on entitlement holders and communities before further water recovery or policy change is progressed.

The 2026 Water Sharing Plans Omnibus Amendment Order, discussed in detail in section 4.2 below, is a current illustration of this pattern. It proposes substantive, reliability-affecting amendments across all Border Rivers plans without any consultation process, on the basis that the enabling provision (section 45(1) of the Water Management Act 2000) does not legally require one. BRFF notes that DCCEEW ran conventional public consultation on other water instruments in the same period, which indicates this was a discretionary choice rather than a legal constraint. BRFF submits the Commission should treat the availability of a non-consultative pathway for substantive reform as itself a matter the final report should address, separately from whether any given jurisdiction has technically complied with its NWI consultation commitments.

BRFF also notes that the version of the National Water Agreement signed by the Australian Government remains unavailable to the public as at the date of this submission, consistent with the concerns other participants have raised in appendix C of the interim update. This lack of transparency compounds the difficulty water users face in understanding the cumulative direction of reform.

## 4. Water access entitlements and planning frameworks (section 3)

### Reference questions (PC interim update)

- Which jurisdictions have developed clear triggers for rebalancing environmental and consumptive uses?
- What improvements to monitoring and evaluation of and reporting on water plans are needed to support adaptive management?
- Have jurisdictions taken effective actions to address the overallocation or overuse of water systems and meet environmental and other public benefit outcomes?
- What major interception activities are not licensed or adequately recorded?

## 4.1 Rebalancing and overallocation

BRFF's position, consistent with our April submission, is that Sustainable Diversion Limits are now established and substantially met, and that the core task of rebalancing the consumptive pool has been completed. We note NSWIC's draft response similarly submits that NSW no longer needs to 'rebalance' water between environmental and consumptive uses. BRFF supports the Commission recording this consolidation clearly in its final assessment, so that the focus of the next reform period shifts to optimising the use of water already allocated to each purpose — including by environmental water holders — rather than further volumetric recovery.

This is not merely an assertion. NSWIC's response to the interim update, cited in turn by Cotton Australia's own submission, records that the Basin Plan will have delivered at least 2,530GL by April 2026 on conservative assumptions, with likely outcomes exceeding 2,700GL once pre-Basin Plan reforms are included — around one in three litres previously used for irrigation. The original 2,075GL Sustainable Diversion Limit (excluding SDLAM offsets) is reported as 99 per cent delivered, with groundwater recovery over 92 per cent complete against its 38.45GL target. BRFF submits these figures should inform the Commission's assessment of where the balance of any further adjustment should now fall.

BRFF reiterates its opposition, shared with the Australian Dairy Industry Council in their submission to this inquiry, to further water buybacks, and supports investment in infrastructure efficiency and optimisation of existing environmental water holdings in preference to further acquisition.

BRFF also submits that, to the extent any perception of unresolved overallocation or non-compliance persists in the Northern Basin, the Commission should look first to the condition of measurement and regulatory infrastructure rather than to entitlement holders. As set out in section 4.4 below, the technical systems (DAS and iWAS) that record and transmit metered take have experienced sustained reliability failures, and the NSW Auditor-General's June 2026 audit identifies broader compliance and enforcement data quality gaps affecting the Northern Basin specifically. These are failures of government-funded infrastructure and regulatory capacity that have been repeatedly identified, including by BRFF, and remain unresolved. BRFF submits it would be inequitable for Northern Basin irrigators to bear further volumetric recovery, tighter rules-based restriction, or an increased compliance burden as a substitute for government addressing its own failure to fund and maintain functioning measurement and regulatory infrastructure.

## 4.2 Risk assignment and rules-based change

This remains BRFF's most significant concern in this element of the NWI. The interim update records that only NSW and Queensland have adopted the NWI risk-sharing framework, and that jurisdictions have provided no update on progress toward implementable, effective risk assignment since 2024. BRFF's original submission, cited at table 1 of the interim update, raised concern that jurisdictions are undermining the integrity of the Risk Assignment Framework through rule changes used as a de facto form of water recovery. That concern remains current.

BRFF notes that the Commission reached a materially similar conclusion in its own 2024 National Water Reform Inquiry report, finding that several jurisdictions do not have a clear, legislatively defined risk assignment framework to guide potential future reductions in the availability of water for consumptive use, and that this negatively affects investor confidence and risks inequitable outcomes. BRFF further notes that, even where a Basin State's water resource plan is accredited, application of the Risk Assignment Framework to reductions in a long-term average sustainable diversion limit is not automatic: under clause 10.1.3 of the 2008 Agreement on Murray-Darling Basin Reform, it applies only to those Basin States that choose to apply it. BRFF submits the Commission's final report should recommend that risk assignment framework adoption be made a mandatory, rather than optional, element of water resource plan accreditation, so that entitlement holders in every jurisdiction and every Basin State retain equivalent protection.

BRFF is directly placed to speak to this dynamic through our own May 2026 submission to the Menindee Lakes Review. That submission addressed the 2026 Water Sharing Plans Omnibus Amendment Order, which raised the active storage trigger governing floodplain harvesting take from 195GL to 250GL. The NSW Natural Resources Commission's own 2024 Expert Panel found this trigger is not directly related to connectivity needs and is based on outdated assumptions, yet the increase was made without published analysis, without consultation, and without compensation. BRFF's Menindee submission also establishes, against the Review's own Technical Report, that evaporation at the Lakes is a structural feature of a semi-arid system managed deliberately to protect more efficient upstream storages, not a governance failure — a distinction the Commission should bear in mind if the final report's environmental-outcomes framing treats Menindee losses as evidence of mismanagement rather than climate-driven variability. BRFF considers the trigger increase the most immediate and concrete example of the rules-based reliability risk raised throughout this submission.

BRFF's Basin Plan Review submission sets out the legal basis for treating changes of this kind as Clause 50 events — government policy changes attracting the full government compensation obligation under Schedule 1 of the Water Act 2007 (Cth) — rather than Clause 49 events, which attract only a shared-risk obligation triggered by new scientific knowledge. The Menindee trigger increase was a discretionary administrative decision, not a response to new science, and BRFF submits the Commission should adopt this Clause 50 characterisation when assessing risk assignment progress in the final report. To operationalise this distinction, BRFF's Basin Plan Review submission proposes two linked mechanisms: a publicly accessible reliability impacts register, tracking the cumulative reliability effect of water sharing plan and operating rule changes across Basin states and updated annually; and mandatory pre-amendment notification, under which any water sharing plan or operating rule change with a measurable reliability impact would be assessed against Risk Assignment Framework obligations before it takes effect, rather than after. BRFF recommends the Commission adopt both mechanisms in its final report; this proposal is consistent with, and more fully developed than, the general public register recommended in section 6 below. Consistent with the two-timeframe cumulative assessment recommended in section 3 above, BRFF submits the reliability impacts register should be understood as the annual, Clause 50-facing mechanism, while cumulative Clause 49 risk — arising from new scientific knowledge about sustainable extraction levels — should be assessed at each statutory Basin Plan review, so that both forms of risk are captured at the timeframe appropriate to how each actually arises.

The Menindee trigger increase does not stand alone. BRFF's independent analysis of gauge data at Mungindi — the critical end-of-system trigger site for Border Rivers connectivity rules — found that actual recorded flows run on average 18 per cent below the modelled base case relied on in the Northern Basin Connectivity Program's own assessment, with the base case overstating baseflow days in the majority of the 34 modelled years. Taken together with the Menindee trigger change and the Commonwealth's continuing 450GL recovery program, this represents a single cumulative pattern of sub-threshold reliability loss operating across three concurrent processes, none of which individually crosses the threshold that would prompt compensation or a change in the Commission's national rating, but which in combination materially reduce the reliability of Border Rivers entitlements. BRFF submits the Commission's assessment framework should be capable of recognising this kind of cumulative, cross-program effect, not only discrete single-instrument changes.

This pattern of rules-based change proceeding without a prior government decision is not confined to the Northern Basin Connectivity Program. BRFF's May 2026 submission to DCCEE on the Connectivity Expert Panel process identified that the Department's own Hydrologic Modelling Assessment states the Panel's recommendations "are not government policy" and that the analytical package released for consultation does not represent a government response to those recommendations — yet the entire assessment has been structured around them, without the formal options paper, statement of objectives, or ministerial decision that would ordinarily precede analysis of this kind. Read together with the non-consultative pathway BRFF identifies in the 2026 Water Sharing Plans Omnibus Amendment Order at section 4.3 below, BRFF submits this reflects a recurring governance deficiency across

concurrent NSW water reform processes: substantive, reliability-affecting analysis and rule development proceeding ahead of, rather than following from, a formal government decision about what is actually being pursued.

The same submission identified a further, more fundamental problem with the evidentiary base for the Northern Basin Connectivity Program. DCCEEW's own Hydrologic Modelling Assessment discloses that water entitlements held by the Commonwealth Environmental Water Holder and the Living Murray program are "represented as irrigation nodes in the model that extracts the water from the river." Rather than simply omitting held environmental water from the baseline, the model actively misrepresents connectivity-positive environmental water management as connectivity-negative consumptive extraction, so that every connectivity deficit and marginal benefit calculation in the analytical package is built on this counterfactual, systematically inflating the apparent case for further rule-based intervention. BRFF submits this is a further, concrete illustration of the evidentiary standard concern raised throughout this submission: that assessment frameworks supporting proposed reliability-affecting change are not consistently held to the standard of accurately representing the system as it currently operates.

The same submission also identified a structural limitation specific to the Border Rivers cross-border context. Approximately 95 per cent of water flowing in the Barwon-Darling system at any time originates outside NSW, predominantly from Queensland's Border Rivers and tributary systems, over which NSW has no regulatory authority. During the 2019–2020 drought cited as a primary justification for the Northern Basin Connectivity reform, the Barwon-Darling ceased principally because of absent Queensland inflows, not NSW extraction — a point DCCEEW's own representatives acknowledged when it was put to them directly, conceding the proposed end-of-system flow rules would not have made a material difference during that drought. DCCEEW's Hydrologic Modelling Assessment further acknowledges that additional flows from Queensland arising from Basin Plan water recovery are not yet represented in the river system models, meaning the modelled connectivity deficit omits environmental water management occurring on both sides of the border. BRFF submits that rule changes directed solely at NSW users cannot address a connectivity problem that is substantially a function of upstream Queensland conditions, and that the Commission should have regard to this cross-border structural limitation when assessing the adequacy of state-based connectivity and compliance frameworks more generally.

BRFF's concern in this respect is not raised in isolation. The MDBA's own June 2026 What We Heard report on the Basin Plan Review — released since BRFF's original submission — records widespread submitter concern that northern Basin rule changes affecting entitlement reliability amount to acquiring water 'by stealth', including from Cotton Australia, which opposed rules-based reforms that shift risk onto existing entitlement holders without prior Basin-wide hydrological assessment. The same report records recurring submitter concern, including from irrigator and regional bodies, that northern Basin rivers are naturally intermittent and should not be managed to a continuous-connectivity standard drawn from the southern connected system. BRFF submits this independent, Basin-wide consultation evidence corroborates the concerns raised throughout this section, and recommends the Commission have regard to it alongside BRFF's own analysis.

BRFF's continuing engagement with the LTAAEL numeric conversion process for the Border Rivers and eight other inland unregulated valleys reinforces this concern. Converting long-term extraction limits from definitional to numeric form has direct implications for how future rule changes will be assessed against the consumptive pool, and BRFF has sought assurance from DCCEEW that this conversion process will not itself become a vehicle for an unannounced reduction in reliability.

BRFF notes that, at the date of this submission, the 2026 Water Sharing Plans Omnibus Amendment Order remains in draft form: DCCEEW's own fact sheet, published in December 2025 and updated January 2026, refers throughout to 'the draft order' and 'proposing' amendments, and BRFF is not aware of it having since been made. The draft order is proposed under section 45(1) of the Water Management Act 2000, which allows the Minister for Water, with the concurrence of the Minister for the Environment, to amend water sharing plans without

any legislated requirement for public exhibition or consultation. BRFF was not consulted on the package, despite it applying substantive amendments to all three Border Rivers plans (regulated, unregulated and alluvial groundwater). BRFF notes that DCCEEW ran conventional public consultation processes on other water instruments over the same period — including the WaterNSW regulation remake and the Water Markets Data Standards — which indicates the absence of consultation on this package was a matter of departmental choice rather than legal necessity. BRFF submits this is a clear, current example of the pattern raised throughout this submission: substantive reliability-affecting change proceeding through instruments that fall outside consultation requirements applied to comparable reforms.

The draft order's content confirms and sharpens concerns raised elsewhere in this submission. For the Border Rivers regulated plan, it proposes a formal review of the modelled LTAAEL to determine whether it represents a sustainable level of take by 1 July 2028; for the unregulated plan, an equivalent review by 1 July 2030; in both cases with power to amend the plan if the LTAAEL is judged unsustainable. For the unregulated system specifically, the numeric LTAAEL is to be calculated using harvestable rights based on the 'level of development at plan commencement' — a formulation BRFF considers likely to freeze historical on-farm storage practice rather than recognise development that has occurred lawfully since plan commencement, including works approvals granted after that date. BRFF recommends the Commission treat these review dates and the harvestable-rights formulation as concrete illustrations of the reliability uncertainty raised in this submission, and recommends that any such review be conducted through a properly consulted process rather than under the same instrument that introduced it.

### 4.3 Water sharing plan reviews — process and transparency

BRFF supports NSWIC's recommendation for extended and more structured public consultation on water sharing plan reviews, including early and repeated engagement, clear tracked-changes documentation, and a regulatory impact statement for each plan remake. BRFF's own experience — including through the unregulated water sharing plan issues in 2024–2025 referenced in NSWIC's submission, and through BRFF's engagement on the NSW Metering Regulation — is that consultation timeframes are frequently compressed relative to the complexity of the technical material released.

### 4.4 Interception — floodplain harvesting

BRFF welcomes the interim update's finding that the planned rollout of floodplain harvesting licences in NSW is now complete apart from the Namoi regulated system, and BRFF's own submission is cited in the interim update in this context. However, BRFF maintains that a completed licensing rollout is not the same as a functioning framework. As set out in our April submission, FPH licences are not valid until associated works approvals are registered, and the technical systems (DAS and iWAS) that record and transmit metered take have experienced sustained reliability failures. Multiple FPH events occurred across northern NSW in 2025 during which the legality of water take remained unresolved due to ongoing legal proceedings and an extended appeal timeframe.

This legal uncertainty is compounded by a specific legislative choice made since BRFF's original submission: in 2022, NSW amended section 87AA of the Water Management Act 2000 to remove the entitlement of floodplain harvesting access licence holders to compensation for certain reductions in water allocations, and to extinguish any existing entitlements of that kind. Unlike other entitlement categories in NSW, which retain the protection of the State's own legislated risk assignment framework under Division 9 of the Water Management Act 2000, floodplain harvesting licence holders have been affirmatively excluded from it. BRFF submits this is a further, concrete illustration of the reliability erosion described throughout this section: not administrative or technical uncertainty alone, but a specific legislative removal of the compensation pathway available to other Border Rivers entitlement holders.

BRFF has reviewed NSWIC's more favourable characterisation of this element, which notes NRAR compliance figures of 63% fully compliant and 13% in progress, and frames FPH take

overall as licensed and consistent with the SDL. BRFF does not dispute NRAR's published compliance statistics, but considers that a compliance rate alone does not capture the legal uncertainty that has affected water users' ability to rely on the take permitted during flood events, nor the system-level technical failures that have made compliance difficult to achieve even for willing users. Both perspectives are, in BRFF's view, correct but partial; the Commission's final assessment would benefit from distinguishing between administrative completion of licensing (which is real progress) and operational and legal certainty for entitlement holders (which is not yet achieved).

BRFF's review of the NSW Auditor-General's June 2026 performance audit of water management and regulation provides further, independent substantiation of this uncertainty. The audit confirms that in June 2025 the Land and Environment Court effectively overturned six floodplain harvesting water access licences that the then Department of Planning, Industry and Environment had claimed to have issued in 2022 to Border Rivers water users, finding that the department had not followed the process required to issue them; the audit notes that, at the time of writing, it remained unclear how the matter would be resolved. BRFF submits that this kind of prolonged, unresolved legal uncertainty — arising from the department's own failure to follow proper process — is itself a significant regulatory harm, independent of how the matter is ultimately resolved: it leaves entitlement holders unable to rely on the validity of licences they hold in good faith, and is not a productive basis for administering a licensing framework. This is a concrete, adjudicated instance of the legal uncertainty BRFF describes above, not merely an anticipated risk.

On 24 July 2026, a fresh summons was filed in the Land and Environment Court (*Emu Rider Pty Ltd ATF Griffiths Investment Trust and Others v Minister administering the Water Management Act 2000*) by 34 applicants, all of whom are BRFF members — a substantial expansion from the six landholders whose licences were set aside in the June 2025 judgment. The summons seeks, among other relief, an extension of time to commence proceedings, declarations that the replacement floodplain harvesting access licences that took effect on 21 February 2022 are invalid for all 34 applicants, and a permanent order restraining the Minister from taking any action against the applicants based on those licences. BRFF makes no submission on the merits of this proceeding, which remains before the Court and is subject to an application to extend time. BRFF submits, without comment on the likely outcome, that the scale of this filing — six times the applicant number in the 2025 judgment, and directly naming BRFF members — confirms the concern raised above: the legal uncertainty following the 2022 issuing process is not confined to the six licences already set aside, and now directly affects a substantial proportion of BRFF's own membership.

The audit also finds that NRAR's own enforcement data shows the Northern Basin — where Border Rivers sits — receives penalty notices in only 10 per cent of enforcement actions, compared with 17 per cent on the Coast and 18 per cent in the Southern Basin, and official cautions in 6 per cent of cases, compared with 4 per cent on the Coast and 10 per cent in the Southern Basin; for unlawful water take specifically, penalties and cautions combined were applied in 33 per cent of Northern Basin cases, against 28 per cent on the Coast and 54 per cent in the Southern Basin. The Auditor-General's own assessment is that the penalty/caution variation 'does not appear to be material' once the different mix of matters across regions is considered, and that further analysis is needed to explain the larger disparity in unlawful water take outcomes. BRFF does not read this data as evidence of harsher treatment of the Northern Basin, but considers it relevant to the Commission's assessment either way — as a data point the Auditor-General itself flags as warranting further monitoring, and as further evidence of the compliance and enforcement data quality gaps the audit identifies more broadly.

## 4.5 Water resource plan accreditation

BRFF notes the interim update's confirmation that four Murray–Darling Basin water resource plans remain unaccredited in NSW. Two of these — the Namoi and Gwydir surface water and alluvium plans — are directly downstream of and hydrologically connected to the Border Rivers system, and their continued non-accreditation, now extending beyond seven years since last formal consultation, compounds governance uncertainty for Border Rivers irrigators who operate

within a connected northern Basin planning environment. This figure is independently confirmed by the Commonwealth's own Water Act Review discussion paper, released 17 July 2026, which records that four NSW water resource plans remained incomplete as of June 2026, and notes that SDL compliance cannot be formally assessed, nor contraventions enforced, in areas without an accredited plan — underscoring that this is a structural gap in government-administered planning machinery, not a matter of entitlement holder non-compliance. BRFF repeats its April recommendation that NSW-DCCEEW publish a transparent, time-bound accreditation plan with regular public reporting.

## 5. Integrated management of water for environmental and other public benefit outcomes (section 6)

### Reference questions (PC interim update)

- Are the environmental and other public benefit outcomes set out in existing water plans consistent with community expectations of the planning process?
- Are environmental and other public benefit outcomes effectively specified to facilitate accountability in water management?

BRFF's central concern in this element is transparency around rules-based changes to environmental water delivery, and the accountability of environmental water managers more broadly. The interim update records ongoing participant concern — including from BRFF, NIC and NSWIC — about the lack of transparency around rules-based changes to water allocations for irrigation, and BRFF reaffirms this concern.

BRFF made its own submission to the statutory review of the Inspector-General of Water Compliance (IGWC) on 25 February 2026, proposing a standing SDL Modelling Transparency Panel as a constructive safeguard — conditional on IGWC retaining its SDL audit functions — to bring independent hydrological expertise, formal stakeholder technical input, and open-source modelling methodologies to compliance reporting. BRFF's separate analysis of IGWC's own subsequent submission to the MDBA's Basin Plan Review identified several further, more developed instances of the 'mission creep' risk raised in BRFF's Basin Plan Review submission (Recommendation 2.3). These include: IGWC's recommendation to replace the existing 20 per cent SDL compliance threshold with IGWC discretion; IGWC's request for direct reporting and unilateral guideline-setting power over compliance data, which would deepen IGWC's own embedding in SDL mechanics rather than clarify the boundary between compliance oversight and environmental outcome evaluation that BRFF's submission called for; and IGWC's proposed Basin Plan Implementation Committee, comprising DCCEEW and the MDBA with IGWC overseeing its performance, which BRFF considers a further step toward the kind of open-ended Commonwealth centralisation BRFF's statutory review submission cautioned against. Taken together, these proposals represent the clearest live instance of the environmental-performance-audit mission creep BRFF's submission warned would arise if the Government's response to the Harris Review left Recommendation 2.3 open, as it did. BRFF recommends the Commission have regard to this dynamic, and to IGWC's specific proposals, when assessing accountability arrangements for environmental water managers.

BRFF's statutory review submission proposes a structured threshold test that BRFF submits is equally relevant to how the Commission assesses accountability reform more broadly: before any compliance regulator's remit is expanded, the Commission should ask whether systemic and ongoing non-compliance has been demonstrably established; whether existing oversight mechanisms have proven inadequate; and whether there is evidence that additional powers would materially improve compliance outcomes, rather than duplicate existing layers. BRFF submits that expansion driven by precautionary logic, rather than demonstrated necessity, risks becoming self-reinforcing in a politically sensitive domain, and recommends the Commission apply an equivalent discipline when assessing proposals to expand any Basin institution's remit, not IGWC's alone.

BRFF's statutory review submission also draws a distinction BRFF considers relevant to the Commission's assessment of environmental water accountability arrangements generally: between lawful exercise of a water access entitlement in accordance with statutory conditions, and dissatisfaction with environmental outcomes under the Basin Plan. Where an entitlement holder operates strictly within licence conditions and announced rules, BRFF submits that compliance and performance reporting should not implicitly recharacterise that lawful activity as environmentally inadequate; environmental performance concerns are properly addressed through legislative amendment, SDL adjustment or policy reform, not through indirect reframing in compliance reporting mechanisms. BRFF recommends the Commission affirm this distinction in its assessment of accountability arrangements for environmental water managers, to protect both legal certainty for entitlement holders and institutional clarity in reporting.

BRFF supports NSWIC's recommendation that NSW develop and publish a regulatory impact statement for each water sharing plan remake, to ensure decision-makers — and the water users affected — can properly weigh the environmental, social, cultural and economic consequences of proposed changes before they are finalised, rather than after the fact.

## 6. Water resource accounting (section 7)

### Reference questions (PC interim update)

- Is information about how to access water allocations provided in a timely, transparent and easy to understand way?
- What additional information about planned or rules-based environmental water would increase public and investor confidence?

BRFF's position on this element is set out in detail in section 4.2 above: NSW and other jurisdictions should be required to maintain a publicly accessible reliability impacts register, tracking the cumulative reliability effect of water sharing plan and operating rule changes, updated annually, together with mandatory pre-amendment notification and assessment of any prospective rule change against Risk Assignment Framework obligations before it takes effect. This directly reflects NWI paragraph 40(iii), which requires reporting timed to give early indication of possible changes to the consumptive pool — an obligation BRFF's own submissions have consistently found is not being met in practice. BRFF notes this proposal is consistent with NSWIC's parallel recommendation in its response to the interim update.

Without such a register, neither water users nor the Commission can readily determine whether the cumulative effect of successive rule changes has crossed the reliability thresholds that would trigger a compensation obligation under the Risk Assignment Framework. This is a foundational transparency gap that affects the Commission's ability to assess progress against several NWI elements simultaneously, not only water resource accounting.

On metering and measurement, BRFF's most significant and distinctive concern — identified through our NSW Metering Regulation submission and not addressed in the interim update — is the Queensland–NSW commingling problem. Where Border Rivers irrigators hold water entitlements in both NSW and Queensland drawn from a single pump, current metering and attestation requirements in each jurisdiction are legally unworkable in combination, because neither state's framework accounts for the other's entitlement and reporting regime. BRFF recommends the Commission draw attention to this cross-border measurement gap as a distinct and unresolved barrier to reliable water resource accounting in connected catchments such as the Border Rivers, separate from the general AS4747 non-urban metering rollout discussed in table 5 of the interim update.

BRFF is directly placed to speak to this dynamic through our own June 2026 submission to the public exhibition of the draft Water Management (General) Amendment (Metering and Records) Regulation 2026, which closed 15 June 2026. That submission establishes that the proposed attestation obligation (s.105B) and attribution framework (ss.25A–25E) contain no apportionment rule for holders who extract from a single pump against both a NSW access licence and a

Queensland water licence — a structural gap affecting a significant proportion of Border Rivers irrigators. When this gap was raised with DCCEEW representatives directly on 29 May 2026, the department was unable to provide any answer. BRFF submits that this is not a gap that guidance or a ministerial determination can fill; it requires formal inter-governmental engagement between NSW and Queensland, and potentially the Murray–Darling Basin Authority, before the amendments can lawfully be applied to this cohort. BRFF's submission recommends that Border Rivers holders with cross-jurisdictional entitlements be excluded from both obligations until an agreed apportionment methodology has been developed and consulted upon. As at the date of this submission, BRFF understands the Regulation has not yet been made; DCCEEW's own published timeline anticipates amendment in the first quarter of the 2026–27 water year, with a What We Heard report to follow later in 2026.

BRFF's submission also traces a sequencing problem in how the self-incrimination dimension of attestation has been handled. The removal of self-incrimination as a ground for refusing to give an attestation was embedded in the Water Management Legislation Amendment (Stronger Enforcement and Penalties) Act 2025, assented to in November 2025 — before any consultation on whether attestation should be required at all. The decision to impose an attestation obligation is a regulatory policy choice made by NRAR and DCCEEW under the draft Regulation now being finalised, not something Parliament itself directed; Parliament's amendment addressed only the availability of a self-incrimination defence once attestation is imposed. Water users therefore had no opportunity to engage on the underlying policy decision before Parliament removed a legal protection that assumed its existence. BRFF's own consultation on this point found strong opposition in principle: 73.3 per cent of respondents to DCCEEW's engagement opposed attestation in any form, with only 26.7 per cent supporting even a simple attestation process. The NSW Auditor-General's June 2026 audit independently corroborates the underlying concern, finding that DCCEEW's Water Administration Ministerial Corporation CEOs endorsed a trial of attestation in May 2025 before completing a detailed assessment of alternative interventions. BRFF submits that a self-incrimination-based attestation requirement is a particularly poor fit for the Queensland–NSW commingling problem described above, where compliance may be a physical and jurisdictional impossibility rather than a matter of a water user's diligence, and recommends the Commission draw both BRFF's and the Auditor-General's findings on attestation design to the Commonwealth's attention.

BRFF also draws the Commission's attention to the LTAAEL numeric conversion process, currently underway for the Border Rivers among nine inland unregulated valleys. This process will materially affect how future extraction limits are set and measured, and BRFF submits that the outcomes of this process should be publicly reported with the same transparency the Commission recommends for other resource accounting reforms.

BRFF also draws the Commission's attention to a further metering concern raised in Cotton Australia's response to the interim update: that AS4747 compliance itself may not be the appropriate benchmark for non-urban metering. Cotton Australia submits that any meter proven accurate to within plus or minus 5 per cent, fitted with a data logger and capable of telemetry, should be eligible regardless of AS4747 certification, and that AS4747-compliant meters are costly and have a record of physical failure in Australian operating conditions, requiring costly replacement. BRFF does not hold independent evidence on meter failure rates, but considers this consistent with the technical reliability failures BRFF has identified in the DAS and iWAS systems at section 4.4 above, and supports Cotton Australia's recommendation that the Commission back an independent review of the appropriateness of basing Australia's non-urban metering requirements on AS4747, and consider alternative performance-based standards.

## 7. Best practice pricing and institutional arrangements (section 5)

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BRFF's April submission raised concerns that rural bulk water pricing in NSW requires irrigators to fund activities properly attributable to the public interest, and welcomed IPART's April 2026 proposal for a Government Service Activity funded entirely by government, recommending it be set at a minimum of 10 per cent of WaterNSW's efficient operating expenditure, consistent with NSWIC's position.

Since our original submission, IPART has released its final determination on WaterNSW regional and rural bulk water pricing (June 2026). Under that determination, Border Rivers general security bills rise by 46.2 per cent over four years, with no plateau in the pricing path. This outcome illustrates, in concrete economic terms, the productivity cost of the cost-attribution failure BRFF raised in its original submission: costs properly attributable to the public interest are instead being recovered from irrigators' operating margins, directly reducing the productive capacity of Border Rivers irrigated agriculture. IPART's own Final Report recommends a NSW Government-led review of sector funding arrangements — a recommendation BRFF considers directly supports the causal cost-attribution principle argued for in our original submission, and BRFF urges the Commission to endorse this recommendation nationally in its final report. BRFF's preference, consistent with our council-facing advocacy on this determination, is that any claims made to government about the pricing outcome be traceable directly to IPART's own Final Report language, rather than secondary characterisations of it.

BRFF reiterates its recommendation that regulatory compliance and pricing review processes be proportionate to the size and activity of the market in question, and that the same intensity of regulatory process applied to the southern Basin market should not be applied uniformly to the smaller, less liquid northern Basin market in which Border Rivers irrigators trade.

## **8. Knowledge and capacity building, and water interests of Aboriginal and Torres Strait Islander people (sections 9 and 11)**

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BRFF supports the continued incorporation of Aboriginal and Torres Strait Islander knowledge and cultural objectives into water planning, and supports partnership-based models that build genuine collaboration between Traditional Owners and irrigation communities without displacing the existing entitlement framework.

Consistent with NSWIC's draft response, BRFF submits that any expansion of First Nations water access should occur through transparent market-based mechanisms drawing on existing entitlement pools, rather than through rules-based changes or new allocation pools that reduce reliability for existing entitlement holders without compensation. There is no additional water available for allocation; any reallocation to new purposes must occur within the existing consumptive pool, consistent with the market primacy principle set out in section 4.2 of our April submission.

BRFF also maintains the position set out in our original submission regarding Free, Prior and Informed Consent (FPIC). BRFF supports genuine, early, well-resourced and culturally appropriate engagement with Traditional Owners in water planning, but submits that the Commission should provide clear guidance distinguishing this engagement obligation from a right of veto over water management decisions that carry broader public interest responsibilities. BRFF's rolling analysis of the Commonwealth Water Act Review — including the First Nations consultation paper and NIC's member brief on UNDRIP — continues to inform our view that this distinction requires explicit national-level clarification, given the compressed timeframe for that Review's own consultation (submissions close 31 August 2026).

This concern is not speculative. The Water Amendment (Restoring Our Rivers) Act 2023 inserted the term "free, prior and informed consent" into section 50 of the Water Act 2007 (Cth), which requires the current statutory Basin Plan review to consider the extent to which the Basin Plan supports Indigenous participation opportunities that incorporate the principle. The term does not appear in the Act's operative objects (section 3(fa)) or in the Basin Plan's purpose provisions (section 20(da)), both of which use the more established formulation of "spiritual, cultural, environmental, social and economic matters relevant to Indigenous people" rather than "consent." BRFF notes the term is therefore already part of Commonwealth statute, but only as a matter this review must consider — it remains undefined, and no operative legal consequence currently attaches to it.

BRFF submits this matters for how the Commission frames its final report. Should "free, prior and informed consent" be carried from a review-consideration duty into an operative requirement in a

future instrument — for example, a water resource plan content requirement — its meaning would ultimately be settled through ordinary principles of statutory interpretation and, if contested, by a court. A policy assurance in a discussion paper glossary has no binding effect on that process. BRFF's reading on this point is independently reinforced by NIC's own July 2026 submission on the Water Act Review's First Nations discussion paper, which welcomes DCCEE's glossary clarification that consent does not confer a veto, while cautioning that stakeholders are nonetheless likely to read it that way. BRFF recommends the Commission's final report call for any future operationalisation of the term to be accompanied by express statutory or instrument-level drafting that puts its intended meaning beyond doubt, rather than relying on non-binding explanatory material to do that work.

## 9. The draft National Water Agreement

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BRFF's position, recorded in appendix C of the interim update, is that the draft National Water Agreement risks weakening the detailed, enforceable commitments of the 2004 NWI without replacing them with equally robust provisions. BRFF has not seen evidence since April 2026 that resolves this concern, and notes that the signed version of the Agreement remains unavailable for public scrutiny while it is with state and territory governments for consideration. BRFF asks the Commission to reaffirm, in its final report, the importance of a renewed water reform framework retaining detailed objectives, actions and accountability mechanisms equivalent to those in the current NWI, rather than a higher-level statement of principles.

BRFF further notes that, notwithstanding the Australian Government's own signature, no state or territory government had signed the National Water Agreement as at the date of this submission — some 19 months after the draft was first publicly released in December 2024. This is independently confirmed by the Commonwealth's own Water Act Review discussion paper, released 17 July 2026, which records that only the Commonwealth has signed the Agreement and that, as at 15 July 2026, states and territories have yet to do so. BRFF submits that this extended absence of state and territory sign-on is itself informative: it indicates the Agreement remains a genuinely contested document within the Federation, not a settled successor to the NWI. Combined with the fact that the signed text remains unavailable for public scrutiny, BRFF considers the draft NWA an unsuitable foundation on which to build the next iteration of the Water Act, including through the Commonwealth Water Act Review currently underway, and recommends the Commission's final report caution against treating the NWA as settled architecture — for either governments or entitlement holders — until it has been made public and secured the agreement of all Basin states and territories.

BRFF notes this is a materially significant gap against the Commission's own point of reference. The Inquiry's Terms of Reference, issued 27 March 2026, record that jurisdictions party to the National Water Agreement by 28 May 2026 would enter the successor framework to the NWI "with updated objectives" — implying that others would remain under the existing NWI in the interim. That date has now passed with no state or territory signature recorded. BRFF submits the transition mechanism the Terms of Reference themselves anticipated has not activated for a single jurisdiction, and that this warrants direct comment in the Commission's final report rather than treatment as a peripheral procedural detail.

## 10. Conclusion

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BRFF thanks the Commission for the opportunity to respond to the interim update, and reiterates the willingness expressed in our original submission to discuss any aspect of this response further. The core message of this submission is consistent with our April 2026 submission: the national reform architecture is substantially complete, and the priority for the final report should be to entrench market-based mechanisms as the default pathway for any change to water access or reliability, to require transparent public reporting of cumulative rules-based changes to the consumptive pool, and to allow the sector the stability needed to consolidate three decades of reform before further structural change is contemplated.

BRFF notes that the positions set out in this submission are independently corroborated by Cotton Australia's own response to the interim update, which reaches materially the same conclusions on market primacy, mandatory Risk Assignment Framework adoption, cumulative impact assessment, and water resource plan accreditation gaps. BRFF considers this convergence across a regional catchment body and a national commodity body relevant to the weight the Commission should give these shared positions in its final report.

BRFF is available to discuss any aspect of this submission with the Commission at the contact details provided on the cover page.