



**CENTRAL  
LAND  
COUNCIL**

**Submission  
National Water Reform  
Productivity Commission**

**21 August 2020**

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## Executive Summary

The aim of this submission is to focus attention on a neglected dimension of the implementation of the National Water Initiative (NWI) in the Northern Territory (NT): drinking water supply and security.

In particular, this submission highlights that successive NT Governments have failed to deliver healthy, safe, and reliable water supplies uniformly across the NT in accordance with the requirements of the NWI or principles of transparent and equitable governance, particularly in remote Indigenous communities. In fact, the NT's regulatory frameworks detract from the likelihood of achieving this outcome.

Evaluations of NWI implementation in the NT have primarily focused on water allocation, pricing, and licensing regimes under the *Water Act* 1992 (NT), consistently finding that the NT has only partially complied with the NWI in these areas. Limited attention has been given to drinking water supply.

Adequate and safe drinking water is key to human health, life, and the viability of all communities. The provision of safe drinking water is a human right, and is vital for the self-determination of Indigenous communities across the NT. Yet this right is under threat from decades of government neglect, renewed calls for water-intensive development in northern Australia, and climate change. In this context, the CLC notes that the NWI compartmentalises Indigenous concerns with water to relate to matters of economic development and cultural flows. This has directed focus away from drinking water supply in remote contexts and has facilitated the exclusion of Indigenous stakeholders from planning and decision-making related to drinking water and drinking water infrastructure.

Inadequate consideration of remote drinking water security in the context of NWI implementation has arguably allowed the continuation of a racialised governance regime in the NT governing urban/regional water (described below) to the detriment of Indigenous people and communities. Drinking water security has been subordinated to other water concerns.

There are significant limits and gaps in the regulatory regime for drinking water in the NT. The result is a system that privileges certain (urban, predominantly non-Indigenous) populations over others (remote, predominantly Indigenous). In sum:

- (a) There is no general power to reserve water for drinking water supply against other uses in the *Water Act* (NT).
- (b) There are no mandated minimum standards set for drinking water quality across the NT. Instead, authorities use an unenforceable Memorandum of Understanding to guide testing, monitoring, and management regimes.

- (c) Different legal regimes govern how drinking water is supplied depending on the context in the NT. Specifically, the key legislation regulating the supply of drinking water, the *Water Supply and Sewerage Services Act* (NT) (WSSS Act), which requires water supply to be licensed (to Power and Water Corporation) and regulated by the Utilities Commission, only applies in the NT's 18 gazetted towns (including the major centres of Darwin, Katherine, Tennant Creek, and Alice Springs). In the 72 major Indigenous communities and some larger outstations, a private subsidiary of Power and Water Corporation (Indigenous Essential Services) provides water services with no legislative or regulatory oversight. This has resulted in a fragmented 'archipelago' of water governance in the NT, in which different standards apply to various jurisdictional 'islands'. These differences are racialised (see Appendix 4 showing a map of water regulation in the NT).

While not a primary focus of NWI reform efforts in the NT, there has been inadequate implementation of the requirements of the NWI with respect to urban/regional water supply. *'Mainstreaming' of drinking water service provision has not actually occurred.* These failings include:

- The NWI requires differentiation between water resource management, standard setting, and regulatory enforcement functions. This requirement presupposes the existence of regulatory frameworks for water provision. However, in the NT, there is no regulator of water supply outside the 18 towns (where the Utilities Commission provides limited oversight). There is no regulator of drinking water safety across the NT (the Department of Health instead oversees drinking water safety pursuant to an unenforceable Memorandum of Understanding with Power and Water Corporation). This does not meet the requirements of the NWI.
- The NT has failed to implement the requirements in the NWI for water subsidies to be transparent, including with respect to the payment of Community Service Obligations (CSOs) where full cost recovery is not achievable. Funding of water services in remote communities instead occurs via opaque recurrent grants from the NT Department of Local Government, Housing, and Community Development (DLGHCD) to IES.
- The policy of mainstreaming service provision involved the assumption of essential service provision by the state. However, the present arrangements do not meet the reforms required by the NWI or by good governance more generally. Numerous issues related to IES require further investigation and potential reform, related to: limited reporting; absent oversight; opaque funding arrangements; unclear service arrangements; opacity in infrastructure funding allocation; public accountability; and public transparency.

To summarise, the Northern Territory Government, as signatory to the NWI, has not met the agreed objective to provide 'healthy, safe and reliable water supplies'. Further, and with

regard to the terms of reference to assess the adequacy of the NWI to support government responses to current and emerging water management challenges, this submission contends that the focus of the NWI has thus far been inadequate to oversee and direct required reforms for remote drinking water security.

**The NWI reflects a long-term policy objective to ‘mainstream’ service provision that has had the effect of bracketing Indigenous water concerns to licensing for economic development and ‘cultural flows’. This has excluded Indigenous organisations and communities from input into planning and decision-making about drinking water infrastructure and service provision in the NT. The opportunity to participate in drinking water governance is largely at arm’s length or ‘reactive’, such as through submissions to reform processes, land councils’ involvement in leasing arrangements, and community responses to contamination or water scarcity events. Acknowledging these limitations of the NWI framework, the NT has nonetheless failed to implement numerous reforms recommended by the NWI. The result is drinking water provision in remote Indigenous communities that is largely unprotected, unregulated, and unaccountable. Urgent reforms are needed that embed the principles of safety and health, transparency, accountability, adequate resourcing, and Indigenous decision-making.**

## Recommendations

*Recommendation 1: The Productivity Commission must recommend the prioritisation of drinking water security in Indigenous communities as part of National Water Reform, including reflecting that it is:*

- *an issue of utmost importance for Indigenous peoples;*
- *essential for the viability and self-determination of their communities; and*
- *under threat from government neglect, water-intensive development, and climate change.*

*Recommendation 2: The Productivity Commission should recommend that the Northern Territory Government legislate a Safe Drinking Water Act to provide regulatory protection and accountability for the provision of safe and adequate drinking water for all Territorians.*

*Recommendation 3: The Northern Territory Government should amend the Water Act 1992 (NT) to include a power to specifically reserve water for future drinking water supply above other consumptive uses in the NT.*

*Recommendation 4: The Northern Territory Government should create enforceable minimum standards for drinking water quality under legislation for all Territorians.*

*Recommendation 5: The Northern Territory government should develop an overarching Water Security Strategy to protect our most precious resource.*

*Recommendation 6: The Productivity Commission should recommend the urgent development (in collaboration with Indigenous organisations and remote Indigenous residents) of national policy guidelines for ensuring drinking water security in Indigenous communities, and the involvement of Indigenous organisations and remote Indigenous residents in planning decision-making about drinking water supply and infrastructure in each jurisdiction.*

*Recommendation 7: The Productivity Commission should develop specific criteria for inclusion in the NWI that states and territories must meet on behalf of the provision of healthy, safe, and reliable water supplies.*

*Recommendation 8: The Productivity Commission should examine the institutional relationships between Power and Water Corporation (and its subsidiary Indigenous Essential Services), the Department of Health, and the Utilities Commission, on behalf of clarifying what reforms are required in the NT to meet NWI expectations related to institutional reform.*

*Recommendation 9: The Productivity Commission should seek clarification from the NT Government regarding the specific progress it has made under the NT Water Regulatory Reform Process, and outline this progress in its forthcoming Inquiry Report.*

*Recommendation 10: The Productivity Commission should seek an explanation from the NT Government regarding the absence of legal protections for minimum quality water standards or services in remote contexts.*

*Recommendation 11: The Productivity Commission should recommend that the Department of Health assume a regulatory role in relation to Power and Water Corporation and Indigenous Essential Services pursuant to legislation that replaces the existing MOU.*

*Recommendation 12: The Productivity Commission should clarify the information that is required in the transparent publication of a CSO.*

*Recommendation 13: The Productivity Commission should seek clarification from the Northern Territory Government regarding why Indigenous Essential Services is the utilities provider in 72 remote communities and 79 outstations, rather than Power and Water Corporation.*

*Recommendation 14: The Productivity Commission should investigate the reforms required for Indigenous Essential Services to satisfy the expectations of the NWI.*

*Recommendation 15: The Productivity Commission seek clarification from the Northern Territory Government as to why Power and Water Corporation is exempt from Freedom of Information requests, which is inconsistent with government-owned corporatised utility providers in other Australian jurisdictions.*

*Recommendation 16: The Productivity Commission should clarify the key funding streams for drinking water infrastructure, and the mechanisms by which new projects are approved.*

*Recommendation 17: The Northern Territory Government should demonstrate the processes it uses to ensure it meets NWI expectations that any new investment in water infrastructure must be transparent, ecologically sustainable, and subjected to a cost-benefit analysis.*

*Recommendation 18: The Northern Territory Government should clarify the criteria it employs to prioritise infrastructural projects in remote communities, including the*

*specific roles played by Power and Water Corporation and Indigenous Essential Services.*

*Recommendation 19: The Northern Territory Government and Power and Water Corporation should meaningfully involve land councils and relevant Indigenous organisations in planning and decision-making for infrastructural provision in remote Indigenous communities and on homelands.*

## Introduction

### About the Central Land Council

The CLC is a Commonwealth statutory authority established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA). It is also a native title representative body under the *Native Title Act 1993*. It is led by a representative body of 90 Aboriginal people elected from communities in the southern half of the Northern Territory, which covers almost 777,000 square kilometres and has an Aboriginal population of more than 24,000.

The CLC has statutory responsibilities to ascertain, represent, and protect the rights and interests of Aboriginal people living in the CLC region. It also has specific statutory functions with respect to Aboriginal land. One of the CLC's central roles is to protect the interests of Aboriginal people with an interest in Aboriginal land, by assisting constituents to make land claims, negotiate agreements with third parties, protect sacred sites, and utilise land and other financial resources for the benefit of their communities. Many Indigenous communities and outstations are located upon Aboriginal land owned under the ALRA, and thus the CLC has a direct interest in, and responsibility for, the administration of land in those communities and outstations.

In addition to these functions, the CLC administers a range of programs for the benefit of constituents in relation to environmental management, community development, governance, cultural heritage, and customary practices. The CLC also plays a strong role in advocating for the interests of our constituents, the majority of which reside in remote communities.

### Context

This submission focuses on drinking water security in the Northern Territory (NT), with particular attention given to central Australian communities in the CLC region. It is made in the context of calls for drinking water reform in the NT, including for a Safe Drinking Water Act.<sup>1</sup> As of 29 July, and in advance of the upcoming NT election on 22 August, the demand for a safe drinking water act has been made by all four NT land councils to the major NT political parties, who together administer over 50 per cent of land in the NT under the ALRA, upon which the vast majority of Indigenous communities and homelands are located.<sup>2</sup>

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<sup>1</sup>Grealy, L. and K. Howey, 'Submission: Northern Territory Water Regulatory Reform', Housing for Health Incubator, (30 March 2019).

<sup>2</sup> Central Land Council, 'NT Land Councils: Election must be a watershed for protection of remote drinking supply.' <https://www.clc.org.au/media-releases/article/nt-election-must-be-a-watershed-for-protection-of-remote-drinking-supply>

Drinking water security is essential for the viability, self-determination, and sustainability of Indigenous communities across the NT. Yet remote Indigenous communities face increasing challenges arising from threats to water resources in the NT. For Indigenous people, these challenges are five-fold: cultural, health-related, social, environmental, and economic.

- Cultural: connection to country (including water) is core to Indigenous peoples' identity and culture. Detrimental impacts on country negatively impact Indigenous identities and the continuity of culture.
- Health: water is key to human health, life, and the viability of all communities. The significance of water to culture means the denigration of country also has negative impacts on the physical and mental health of people.
- Social: a key priority for the CLC's constituents is living and maintaining connection to country. Limited water resources and poor infrastructure pose major barriers to sustainable living.
- Environmental: maintaining healthy water sources and related ecosystems is a key component of sustainable resource management.
- Economic: as the Strategic Aboriginal Water Reserves Policy recognises, access to water is critical to Aboriginal-led economic development activities in the region.

Despite the fundamental importance of drinking water security to Indigenous livelihoods, NT Indigenous communities are experiencing significant challenges in relation to the supply of adequate and safe drinking water. These challenges variously concern water supply, water quality, and drinking water infrastructure. Recent incidents include, but are not limited to:

- A toxic algal bloom in the water supply at Yuelamu in February 2016;
- The failure of water chlorination equipment at Yarralin in January 2017;
- The depletion of the bore water supply at Ngukurr in December 2017;
- The contamination of drinking water by lead and manganese at Borroloola town camps from April to June 2018;
- The groundwater supply to Yuendumu was reportedly at severe risk of total depletion in August 2019;
- Poor quality water infrastructure supplying 18 outstations under Iwupataka Aboriginal Land Trust, resulting in recurring leaks and high water bills;
- Delays exceeding nine years for the provision of production bores and associated water infrastructure to treat water at Lake Nash Station;
- The ongoing high rates of uranium in drinking water at Laramba.

Assessments from December 2019 on water source security by the NT utilities provider, Power and Water Corporation (PAWC), classify seven remote communities as 'extreme' risk and 14 remote communities as 'very high' risk. Forty-one communities are additionally classified as 'high' risk, signalling that water insecurity is the norm for most of the remote

NT. The water source capacity in a number of remote communities has been assessed as having ‘no existing capacity for remote development’, which is impacting the delivery of housing and other community infrastructure.

Water insecurity is likely to be exacerbated by the impacts of climate change in the NT. This will significantly impact the water resources of the Northern Territory, including from increased droughts, erratic rainfall (and recharge of aquifers) and extreme temperatures.<sup>3</sup> Climate change is also likely to exacerbate existing inequalities in health, infrastructure provision, lack of educational and employment opportunities, and income in Indigenous communities in northern Australia, raising questions about the viability of human habitation in these places without radical changes.<sup>4</sup>

The NT is also under renewed pressure to develop water-intensive industries, including via the Australian Government’s White Paper on Developing Northern Australia.<sup>5</sup> The Australian Government established a \$1.5 billion National Water Infrastructure Development Fund, with \$200m committed to facilitate investment in northern Australia. However, the Fund cannot support projects that are primarily intended to supply urban and potable water and necessarily prioritises water infrastructure for farmers and investors over drinking water security (including in remote Indigenous communities).

To summarise, drinking water security, and hence the very viability of remote Indigenous communities, is under threat in the NT from government neglect, renewed calls for water-intensive development in northern Australia, and climate change. However, drinking water supply is unprotected, unregulated, and unaccountable in the vast majority of remote Indigenous communities in the NT (explained in more detail further below in this submission). Urgent reform is needed, and this issue must be placed on the national agenda as part of the National Water Reforms.

***Recommendation 1: The Productivity Commission must recommend the prioritisation of drinking water security in Indigenous communities as part of National Water Reform, including reflecting that it is:***

- ***an issue of utmost importance for Indigenous peoples;***
- ***essential for the viability and self-determination of their communities; and***

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<sup>3</sup> W. Nikolakis, A. Nygaard, and R. Quentin Grafton, *Adapting to climate change for water resource management: issues for northern Australia*, Research Report No 108, Environmental Economics Research Hub Research Reports, Australian National University (Canberra, 2011).

<sup>4</sup> D. Green, S. Jackson and J. Morrison, *Risks from climate change to Indigenous communities in the tropical north of Australia*, Department of Climate Change and Energy Efficiency (Canberra, 2009).

<sup>5</sup> Australian Government, *Our North, Our Future: White Paper on Developing Northern Australia*, (Canberra, 2015): 1-192.

- ***under threat from government neglect, water-intensive development, and climate change.***

## Scope

The submission's purpose is to consider the regulatory system for drinking water supply in the NT, in relation to reforms recommended by the National Water Initiative (NWI) and other protections that are required. In the NT, the implementation of water reform under the NWI has focused predominantly on the allocation of water between various competing uses under the *Water Act 1992* (NT). Indigenous water needs and uses have been 'compartmentalised'<sup>6</sup> within this water allocation framework as either cultural or commercial. This has led to positive policy changes such as the implementation of the Strategic Indigenous Water Reserve policy by the NT Government in areas where water allocation plans apply. However, the issue of drinking water supply and regulation (particularly in Indigenous communities in the NT) has been comparatively neglected. The lack of protections of drinking water in the NT is not widely understood and is thus the chief focus here.

The main section of this submission is titled 'Key Issues with Respect to Implementation of the NWI'. It considers the implementation of the NWI in the NT according to the key issues of 'Indigenous Water Use', 'Water Services', 'Investment in New Infrastructure', with particular attention given to drinking water supply and security. As defined by the NWI's Intergovernmental Agreement of 2004, the focus of this submission concerns the key elements 'Urban Water Reform', 'Best Practice Water Pricing and Institutional Arrangements', and 'Community Partnerships and Adjustment' (Section 24). As categorised by the Productivity Commission Inquiry Report of 2017, this focus corresponds to the sections 'Urban Water', 'Government Investment in Infrastructure for Water', and 'Key Supporting Elements of the NWI'.

This submission does not offer extensive analysis of issues relating to water access entitlements and planning, water access and trading, and environmental water management. These are also key issues for water reform in the NT, which the CLC has addressed in prior recent submissions related to:

- The *Water Further Amendment Bill 2019* (September 2019)
- The NT Water Regulatory Reform Process (June 2018)
- The Draft Final report on the Scientific Inquiry into Hydraulic Fracturing in the NT (February 2018)

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<sup>6</sup> Jackson, S. 'Compartmentalising Culture: The Articulation and Consideration of Indigenous Values in Water Resource Management', *Australian Geographer* 37, no. 1 (2006): 19–31

- Environment protection legislation (jointly with the Northern Land Council [NLC], June 2017)
- The Strategic Aboriginal Reserve Policy (jointly with the NLC, April 2017)
- The NT Government's 'Our Water Future' discussion paper (July 2015)

These submissions can be accessed on the CLC's website.

In relation to these issues, and by way of summary in order to encourage submissions by other stakeholders that examine them in more detail, the Productivity Commission Inquiry Report of 2017 specified key priorities for NT reforms as including:

- Enacting legislation required to create secure, NWI-consistent water access entitlements;
- Progressing the development of water plans;
- Introducing independent economic regulation of the Power and Water Corporation.

In relation to water planning frameworks (including water licensing for consumptive uses), the reported failures against the NWI reforms are:

- The NT has not yet unbundled water licences from land;
- Water licences in the NT are granted for a limited term (usually 10 years), not in perpetuity, and are not NWI compliant in their current form;
- Water allocation plans are only in place for some catchments;
- Trading of water licences is very limited;
- The NT reports on consumptive use but reporting on environmental water use is limited;
- Historic and continued Indigenous exclusion from input into, and allocation from, water planning frameworks.

There are more water allocation plans now than at the time of the Productivity Commission Inquiry Report in 2017, however there has been limited change related to the other issues above.

From this point on this submission prioritises attention to drinking water. It is informed by feedback from constituents and staff involved in water planning and environmental assessment processes in the region, as well as previous CLC submissions. CLC acknowledges the research of Dr Liam Grealy and Kirsty Howey and their assistance with the preparation of this report.

## Drinking Water Regulation in the Northern Territory

This section summarises the legal protections for drinking water in the NT, in order to frame the recommendations that follow. This is necessary to highlight the gulf between certain key principles, elements, and expectations of the National Water Initiative (NWI) and existing legal and governance arrangements in this jurisdiction. Compared to other states and territories in Australia, the NT is an outlier when it comes to drinking water security. There is no legislated guarantee to protect drinking water supply against other uses. There are no minimum quality standards for drinking water that exist across the NT. Depending on where you live, there are different legal standards governing your drinking water.

### *The Water Act 1992 (NT)*

There are two key pieces of legislation that govern water in the NT: the *Water Act 1992 (NT)* and the *Water Supply and Sewerage Services Act 2000 (NT)*. The purpose of the *Water Act* is to allocate, manage, and assess water resources in the NT, supported by the Water Regulations, and other policy instruments. The *Water Act* has only a limited application to drinking water. Allocations for drinking water exist in areas that have been designated as ‘Water Control Districts’, where a ‘Water Allocation Plan’ has also been finalised.

As of July 2020, there are eight Water Control Districts (WCDs) in the NT and six Water Allocation Plans (WAPs), with three more in progress. These are represented in ‘Appendix 1: Northern Territory Declared Water Control Districts’ and ‘Appendix 2: NT Water Allocation Planning Areas’ respectively. WAPs are in place for Alice Springs, Berry Springs, Katherine Tindall Limestone, Western Davenport, Ti-Tree, and Ooloo Dolostone Aquifer, with in-progress plans for the Great Artesian Basin, Howard, and Mataranka Daly Waters. These plans predominantly apply to areas surrounding urban centres along the Stuart Highway. WAPs allocate water between various non-consumptive uses (environmental and cultural) and consumptive uses (including rural stock and public water supply, aquaculture, industry, and agriculture). Public water supply is one of many ‘consumptive uses’. There are generalised exemptions to the requirement to obtain water extraction licences across the NT (including in WCDs) for ‘stock and domestic purposes’ (*Water Act*, S14), and road construction and maintenance.

Public water supply services, or drinking water, is only protected or ‘allocated’ in the NT in areas both declared as a WCD and where a WAP applies. There is no general power in the *Water Act* to reserve water for current and future public water needs. This means that an adequate drinking water supply is not currently guaranteed to residents in the vast majority of the NT not covered by WAPs, including in most Indigenous communities. Groundwater in these places is neither reserved for public supply, nor is much of its extraction licensed or regulated against other uses.

## *The Water Supply and Sewerage Services Act 2000 (NT)*

The *Water Supply and Sewerage Services Act 2000* (NT) (WSSS Act) also regulates the provision of public water supply. The *WSSS Act* requires that provision of ‘water supply services’ in what are known as ‘water supply licence areas’ be licensed by the NT Utilities Commission, a government-established regulator which oversees essential services provision to NT consumers of water. Power and Water Corporation (PAWC) is the current and sole licensee under the *WSSS Act*, and it must ‘provide water supply or sewerage services to customers who own land with an authorised connection to [its] water supply or sewerage services infrastructure’ (Section 41[2]).

Other requirements are imposed on PAWC through the legislation and its licence, regarding asset management plans for water supply infrastructure (S48), licence compliance reports (S49), and service plans (S51). Direct accountability to the customer regarding these requirements is established in part via a mandated (S47) and standardised ‘customer contract’ published in the NT government gazette. Among other matters, this customer contract stipulates that PAWC will provide water at a pressure and flow-rate suitable for normal day-to-day usage.

Unlike other Australian jurisdictions in which a corporate entity is licensed to supply drinking water, the NT has not set minimum standards for water supply. Under the *WSSS Act*, the Minister can specify minimum standards that PAWC must meet (S45), and a similar power to prescribe minimum water quality standards exists in the *Water Act* (S73) and in the *Public and Environmental Health Act 2011* (NT) (S133). However, instead of enforceable standards, the Department of Health (2011) and PAWC have entered into a Memorandum of Understanding (MOU), which concedes that ‘no minimum standards for drinking water have been set’, although the *Australian Drinking Water Guidelines* (ADWG) ‘will be used as the peak reference’ (Department of Health 2011, Clause 4). The MOU allows the Department to vary the quality criteria drawn from the ADWG ‘in specific circumstances . . . as long as public health is not compromised’ (C4). The MOU contains criteria for the administration and implementation of the ADWG, the safe treatment of water, water testing regimes, responses to public health incidents and events, and annual public reporting of drinking water quality across the NT. However, in strict legal terms, despite the appearance of regulation of drinking water quality and a measure of public transparency, the MOU is unenforceable.

## *Discriminatory Water Governance?*

The protections that the *WSSA Act* does provide do not extend across the NT, applying only in ‘water supply license areas’. This includes the NT’s 18 gazetted towns (see Appendix 3: NT

Water Allocation Planning Areas). The 72 larger Indigenous communities and over 600 Indigenous homelands and outstations located on Aboriginal land owned under the *ALRA* and other forms of Indigenous-owned land, are not water supply licence areas and therefore the *WSSS Act* does not apply. These mostly regional and remote communities and 79 of the outstations – in which about half the NT’s Aboriginal population live – are instead serviced by Indigenous Essential Services Pty Ltd (IES).

IES is a not-for-profit subsidiary of PAWC established in 2003 and via the corporatisation of PAWC. While PAWC is overseen by the Utilities Commission, IES is a private proprietary limited company and its operational structure and legal obligations are opaque, with no legislation mandating licensing or particular levels of service or standards. Further, the standards, duties, accountability, and transparency mechanisms that do exist within the *WSSS Act*, licence, and customer contract do not apply to IES. The MOU between the Department of Health and PAWC referred to above does, however, apply in the communities that IES services, providing a framework (albeit unenforceable) for working cooperatively, including regular testing of drinking water in remote areas and the public reporting of results. Neither IES nor its parent company, PAWC, operate at all in the vast majority of outstations on Aboriginal land.

Across the NT, the legal regulation of both drinking water supply and quality is thus fragmented and unequal. There are at least six different ‘islands’ of drinking water governance. These are represented in the map produced by the Housing for Health Incubator, and included here as Appendix 4. These islands are:

1. Towns within WAP areas. The *Water Act* reserves public water supply and PAWC is licensed and regulated under the *WSSS Act*.
2. Towns outside WAP areas. Public water supply is not able to be reserved under the *Water Act*. PAWC is licensed and regulated under the *WSSS Act*.
3. Town camps within towns. PAWC is licensed and regulated under the *WSSS Act* but is not legally responsible for reticulated infrastructure beyond town camp bulk water meters.
4. Major Aboriginal communities located within WAP areas. The *Water Act* reserves public water supply. IES is an unregulated private entity owned by PAWC that provides services pursuant to an unenforceable MOU with the NT Department of Health.
5. Major Aboriginal communities on Aboriginal land (excepting category 4). Public water supply is not able to be reserved under the *Water Act*. IES provides services pursuant to an unenforceable MOU with the NT Department of Health.
6. Outstations and homelands on Aboriginal land. Public water supply is not guaranteed under the *Water Act*. Drinking water supply is privately managed and unregulated.

Drinking water regulation across the NT is thus fragmented and uneven. Given the absence of protections for water supply under the incomplete application of WCDs/WAPs and the similarly sparse license areas and related applicability of minimum standards, this situation is also potentially discriminatory under the *Racial Discrimination Act 1975* (Cth). This potential is compounded by the existence of IES as a utility provider in Indigenous communities only, operating to lesser standards than those that apply in urban contexts.

***Recommendation 2: The Productivity Commission should recommend that the Northern Territory Government legislate a Safe Drinking Water Act to provide regulatory protection and accountability for the provision of safe and adequate drinking water for all Territorians.***

***Recommendation 3: The Northern Territory Government should amend the Water Act 1992 (NT) to include a power to specifically reserve water for future drinking water supply above other consumptive uses in the NT.***

***Recommendation 4: The Northern Territory Government should create enforceable minimum standards for drinking water quality under legislation for all Territorians.***

***Recommendation 5: The Northern Territory government should develop an overarching Water Security Strategy to protect our most precious resource.***

## Key Issues with Respect to Implementation of the NWI

This section addresses the extent to which the NT has implemented the NWI, with a particular focus on drinking water security in NT Indigenous communities.

### 1. Indigenous Water Use

The NWI notes the importance of water planning frameworks that recognise ‘Indigenous needs in relation to water access and management’ (Clause 25[ix]). This objective has principally found expression in the setting aside of water in planning frameworks for Indigenous social, spiritual, and customary objectives and strategies (often referred to as cultural flows or Aboriginal water), or commercial purposes (see for example the NT’s policy of establishing a Strategic Indigenous Water Reserve for commercial use of water). Jackson has called this the ‘compartmentalisation’ of culture in water planning regimes across Australia. Consequently, little specific attention has been given to the issue of drinking water security, or water services infrastructure located in remote communities.

Over 50 per cent of land in the NT is owned as freehold under the ALRA, with the vast majority of the remainder being subject to native title rights and interests under the *Native Title Act*. Despite these extensive interests in land and water, Indigenous peoples in the NT have often been excluded from water planning/allocations implemented as part of the NWI. The CLC notes, in this context, that there has been considerable scholarship about how the NWI and water allocation legislation more broadly embeds ‘water colonialism’ that excludes or marginalises Indigenous perspectives and knowledges about water, and situates decisions about water allocation and planning in the state while simultaneously dispossessing Indigenous peoples of water allocations.<sup>7</sup> This scholarship questions the foundations of the NWI, including state-controlled water allocation frameworks and the decoupling of water licences from land. While valuable, this scholarship does not tend to consider drinking water supply and its regulation and is not the primary focus of this submission. Nonetheless, the CLC notes here that it holds considerable concerns about the water allocation and pricing frameworks being progressively implemented across Australia

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<sup>7</sup> For example, see L. Hartwig, S. Jackson, and N. Osborne, ‘Trends in Aboriginal water ownership in New South Wales, Australia: The continuities between colonial and neoliberal forms of dispossession’, *Land Use Policy* 99, (2020): n.p. P. Burdon, G. Drew, M. Stubbs, A. Webster, and M. Barber, ‘Decolonising Indigenous water “rights” in Australia: flow, difference and the limits of law’, *Settler Colonial Studies* 5, no. 4 (2015): 334-349; A. Poelina, K. Taylor and I. Perdrisat, ‘Martuwarra Fitzroy River Council: an Indigenous cultural approach to collaborative water governance’, *Australasian Journal of Environmental Management* 26, no. 3 (2019): 236-254; and K. Taylor, B. Moggridge, and A. Poelina, ‘Australian Indigenous water policy and the impacts of the ever-changing political cycle’, *Australasian Journal of Water Resources* 20, no. 2 (2016): 132-147.

as part of the NWI, including about how these may adversely affect Indigenous rights and interests in water in the NT.

Due to the way Indigenous rights in water have been categorised, the attention of Indigenous organisations, governments, policy-makers, and academic researchers has been primarily focused on the distributive justice of water planning regimes to ensure that Indigenous interests receive ‘fair allocation’. Important work in this regard has been undertaken by a number of Indigenous organisations in the NT, including the North Australian Indigenous Land and Sea Management Alliance (NAILSMA) and its former Indigenous Community Water Facilitator Network (ICWFN) and Indigenous Water Policy Group (IWPG).<sup>8</sup> This focus is also evident in, for example, the 2017 COAG NWI Policy Guidelines for Water Planning and Management on Engaging Indigenous Peoples in Water Planning and Management.<sup>9</sup> However, as described above, since Water Allocation Plans have only been declared in small discrete areas of the NT, these strategies have no application or traction across the vast majority of the jurisdiction. Moreover, the setting aside of water for Indigenous cultural and commercial purposes under the *Water Act* does not address drinking water security (generally supplied by water utilities) specifically, since this is governed by different legal regimes – as explained above, this involves the *Water Supply and Sewerage Services Act* in 18 NT towns, and a Memorandum of Understanding with no legal standing in IES communities. Thus, we highlight that simply declaring water allocation plans across the NT, while guaranteeing public supply as against other consumptive uses, would not resolve the issue of drinking water security in remote contexts.

While not acknowledging drinking water as an explicitly ‘Indigenous’ water need, interest or value (an omission considered below), the NWI does propose a number of reforms in the areas of urban, rural, and regional water supply, which apply in NT Indigenous communities (and indeed in all towns and communities across Australia).

In an early analysis of Indigenous responses to the NWI, Willis *et al.* interpreted the initiative against the contemporaneous policy shift to the ‘mainstreaming’ of services to Indigenous people across Australia.<sup>10</sup> Willis *et al.* suggest that this approach to Indigenous social policy

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<sup>8</sup> See S. Jackson and J. Altman, ‘Indigenous Rights and Water Policy: Perspectives from Tropical Northern Australia’, *Australian Indigenous Law Review* 13, no. 1 (2009): 27-48.

<sup>9</sup> Australian Government, *Module to the NWI Policy Guidelines for Water Planning and Management: Engaging Indigenous Peoples in Water Planning and Management*, (Canberra, 2017): 1-36.

<sup>10</sup> This was seen most evidently in the 2005 National Framework of Principles for Government Service Delivery to Indigenous Australians. This includes the following principles: sharing responsibility, harnessing the mainstream, streamlining service delivery, establishing transparency

underpinned the NWI, which provided ‘a clear policy injunction for Aboriginal communities to be serviced by mainstream providers, rather than Indigenous-specific providers’.<sup>11</sup> The CLC suggests this broader national policy shift in Indigenous affairs may explain why the NWI did not treat drinking water (as part of essential service provision) as a specifically ‘Indigenous’ issue – or an issue that might be subject to Indigenous consultation and/or governance – while compartmentalising other concerns as specifically racialised cultural categories. This point provides essential context to the NWI and its implementation. This framing might have contributed to the exclusion of Indigenous organisations and communities from planning and decision-making about the implementation of public water supply reforms as they were considered to fall firmly within the state’s domain. Given such exclusions, failures by the state to implement the NWI to achieve ‘mainstream’ standards across the NT are even more egregious.

Drinking water security should be prioritised as a fundamental concern for Indigenous peoples and communities as part of the National Water Reforms. The CLC refers to recommendation 1 in this regard.

To redress the marginalisation of Indigenous peoples from decisions about their drinking water security, Indigenous peoples should be actively involved in decision-making and governance of drinking water supply in their communities.

***Recommendation 6: The Productivity Commission should recommend the urgent development (in collaboration with Indigenous organisations and remote Indigenous residents) of national policy guidelines for ensuring drinking water security in Indigenous communities, and the involvement of Indigenous organisations and remote Indigenous residents in planning decision-making about drinking water supply and infrastructure in each jurisdiction.***

Noting the above limitations regarding how drinking water security is framed in the NWI, the extent to which the NT has complied with the urban, rural, and regional water supply objectives in the NWI is addressed in detail below.

## 2. Water Services

There are three key sections of the NWI that are relevant to the supply of water in NT Indigenous communities:

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and accountability, developing a learning framework and focusing on priority areas. The appendix does not pay specific attention to drinking water needs or priorities.

<sup>11</sup> E. Willis, M. Pearce, C. McCarthy, F. Ryan, B. Wadham, ‘Indigenous responses to water policymaking in Australia’, *Development* 51, (2008): 418-424, 419.

1. Urban Water Reform: the main objective is to '(i) provide healthy, safe and reliable water supplies' (Clause 90). The outcomes and actions that follow prioritise market-based mechanisms for improving water supply in major cities and towns (e.g. wastewater recycling, water trading between the urban and rural sectors, improved pricing), and do not appear to be directly relevant in remote NT contexts. Nonetheless, the CLC's view is that providing healthy, safe, and reliable water supplies should be an objective in all water services contexts, not just larger urban centres.
2. Rural and Regional Communities: while full cost recovery is the explicit objective for water supply/services in rural and regional communities, if this is not possible all subsidies must be transparent, including with respect to the payment of Community Service Obligations (CSOs) where services must be provided to fulfil government service obligations (Clause 66[v]). In most Indigenous communities in the NT, this sub-clause would apply. This requires a transparent and publicly reported CSO or CSOs to subsidise water supply in those areas.
3. Institutional arrangements: the roles of water resource management, standard setting and regulatory enforcement, and service provision should be separated institutionally (Clause 74).

The CLC submits that the NT has failed to implement or achieve these objectives in the context of water provision in remote Indigenous communities.

The 2017 Productivity Commission Inquiry Report highlighted some failures of the NT to meet NWI reforms in the area of urban, rural and regional water services. In the CLC's view, the Inquiry Report significantly understates or mischaracterises the structural and longstanding problems with respect to the supply of water services in NT Indigenous communities. Nonetheless, the CLC understands that the NT Government has failed to progress the resolution of even these limited concerns and issues. The Productivity Commission's key 2017 concerns in relation to the NT include:

- The Productivity Commission recommended the extension of independent price regulation to retailer-distributors, including PAWC (recommendation 6.4). As of August 2020, the NT still does not have an independent economic regulator which sets prices or revenues for major urban water services.
- In relation to the NWI Commitment of achieving safe and healthy water supplies, the Inquiry Report noted that 'compliance issues remain regarding water quality outcomes in the NT. 'In 2015-16, six of 72 remote communities did not comply with the ADWG's microbiological guidelines and seven did not comply with various chemical parameters, including nitrates, uranium, barium and fluoride.'<sup>12</sup> Later, the report states that 'some issues remain in . . . the Northern Territory, particularly in

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<sup>12</sup> Productivity Commission (2017), 463.

remote areas, but [the jurisdiction] is taking steps to address remaining concerns.’<sup>13</sup> It is not clear to the CLC what steps the Productivity Commission was referring to, and thus whether progress between 2017 and 2020 can be measured.

- The Inquiry Report notes the importance of integrated, coordinated planning for water across government departments and utilities, suggesting that in ‘the Northern Territory planning occurs on an informal and occasional basis and, while utilities have published comprehensive planning documents in the past, there is no formal requirement for them to do so. This creates risk as roles and responsibilities will not be sufficiently clear to support good planning practices, or that planning is occurring but is not transparent.’ Although the NT Government sought submissions to a Water Regulatory Reform process in early 2019, this has not resulted in reforms that have addressed this issue;
- The Inquiry Report identifies as a ‘Recent policy effort’ that ‘Indigenous Essential Services receives a significant annual CSO, in the order of \$80 million.’<sup>14</sup> As the NT government provides CSO payments for water and electricity services, it is not clear what component of that funding relates to water services. The Inquiry Report notes that ‘Transparently publishing the CSO for water would be consistent with the NWI.’<sup>15</sup> The CLC queries the characterisation of this payment as a CSO for the reasons given below, and notes that in any case, no progress has been made on improving the transparency of these payments.

This submission now moves to consider the extent of implementation of the NWI’s objectives with respect to urban, regional, and rural water supplies/services in the NT.

#### Healthy, safe and reliable drinking water supplies – the need for legislative reform

While the NWI aims to ensure the provision of ‘healthy, safe and reliable water supplies’, this has not occurred uniformly across the NT. In fact, the NT’s regulatory framework detracts from the likelihood of achieving this outcome.

As highlighted in the analysis above, there are no enforceable minimum drinking water quality standards across the NT, and the provision of water services in remote NT communities is unregulated. There are thus *no* NT government agencies that are directly accountable (via legislation) to the residents of Indigenous communities for the supply of water to them.

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<sup>13</sup> Productivity Commission (2017), 10; 467.

<sup>14</sup> Productivity Commission (2017), 463.

<sup>15</sup> Productivity Commission (2017), 400.

These longstanding structural issues require urgent reform before there is any prospect of the NT realising the NWI's aim of providing healthy, safe, and reliable drinking water.

The CLC notes that Infrastructure Australia has been critical of the NT's performance against minimum health standards. Infrastructure Australia identifies that in both WA and the NT, 'there is no clear health agency responsible for monitoring and enforcing performance against drinking water standards.'<sup>16</sup> This contradicts Recommendation 4.7 of the *Australian Infrastructure Plan*, which called for drinking water in all regional communities to meet the minimum standards of the ADWG, and health protections are further undermined through ambiguous lines of accountability. Infrastructure Australia is critical of this too, noting that 'in the Northern Territory, several government agencies share responsibility for the regulating [sic] the public health outcomes of urban water, including the Department of Health. However, it is the supplier, Power and Water Corporation, which holds primary responsibility for delivering services in line with health standards, and formal regulation of public health is ultimately undertaken through the Minister for Environment and Natural Resources. This means that the line of responsibility for maintaining public health through urban water lacks clarity and accountability.'<sup>17</sup> Infrastructure Australia has also recommended that the MOU that exists between the Department of Health and PAWC should be defined in legislation, along with a commitment to meet standards within the ADWG.

#### Community Service Obligations (CSOs) – the need for transparency

The Inquiry Report states that 'greater clarity on the use of CSO payments in the Northern Territory would improve consistency with the NWI'.<sup>18</sup> This is a significant understatement of the failure of the NT Government not only to comply with NWI expectations about CSO payments and reporting, but to use CSOs to fund a remote services regime subject to little legislative and regulatory oversight.

Further examination of the operation of CSOs in relation to water provision in the NT is required. It is not clear to the authors that the annual payments to IES (via a service level agreement) do in fact constitute a CSO as outlined by the Productivity Commission. PAWC itself reports these payments to IES as grants, rather than CSOs. It is possible these payments may comprise opaque grants or subsidies designed to disguise the true cost of delivering drinking water (similar to the Productivity Commission's criticism of NSW and Queensland's practices in similar situations). To be consistent with the NWI, these grants

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<sup>16</sup> Infrastructure Australia, *Reforming Urban Water: A National Pathway for Change*, (December 2017), 53.

<sup>17</sup> Infrastructure Australia, 55

<sup>18</sup> Productivity Commission (2017), 181.

should be replaced by CSOs, as was recommended by the Productivity Commission with respect to NSW and Queensland.

Even if these payments do constitute CSOs, an important component of the NWI's urban water reforms – which require CSOs to be identified, costed, and published to support accountability and transparency in government – appears to be absent in the NT. Indeed, one could argue that by funnelling grants to a private company with no regulatory oversight, the precise opposite of accountability and transparency has been facilitated. IES provides water, sewerage, and power services to 72 remote Indigenous communities and 79 outstations under an unpublished Service Level Agreement (SLA) with the Department of Local Government and Housing and Community Development (DLGHCD). The CLC has requested a copy of this SLA from the Department, but it has not yet been provided. In contrast to PAWC, IES operates according to the SLA guidelines while using the Indigenous Community Engineering Guidelines (ICEG) for infrastructure design.<sup>19</sup>

As explained previously, IES is a not-for-profit subsidiary of PAWC established in 2003. While PAWC is overseen by the Utilities Commission, IES is a private proprietary limited company and its operational structure and legal obligations are opaque, with no legislation mandating licensing or particular levels of service or standards. Further, the standards, duties, accountability, and transparency mechanisms that do exist within the *WSSS Act*, licence, and customer contract do not apply to IES. The MOU between the Department of Health and PAWC referred to above does, however, apply in the communities that IES services, providing a framework (albeit unenforceable) for working cooperatively, including regular testing of drinking water supplies in remote areas and public reporting of results. Neither IES nor PAWC operate at all in the vast majority of outstations on Aboriginal land.

There are a number of issues relating to the operation, accountability, and transparency of IES. Based on publicly available information, it is not possible to determine an adequate understanding of:

- The methodology for calculating the value of the CSO/grant to IES, and thus whether such calculations are appropriate or adequate;
- What proportion of the CSO/grant to IES is for water infrastructure and services, versus power infrastructure and services;
- The community and outstation breakdown of IES expenditure on water infrastructure and services, or the rationale for this breakdown;
- Whether funds are set aside for future asset refurbishment and/or upgrading of government supplied water infrastructure and, if so, how decisions are made to prioritise infrastructure provision in certain contexts above others;

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<sup>19</sup> Department of Housing and Community Development, *Indigenous Community Engineering Guidelines for Remote Communities in the NT*. Northern Territory Government (2017).

- The KPIs which IES must comply with in order to measure the effectiveness of its program and how it is meeting stated policy objectives;
- What monitoring, review, and evaluation is undertaken of IES by DLGHCD to ensure compliance with KPIs, service level standards, and grant terms and conditions;
- What drinking water monitoring program is undertaken by IES, including its regularity and whether it operates in relation to any particular standards;
- The policies applicable from time to time to IES (for example, PAWC's 2019-20 Statement of Corporate Intent refers to a Safe Water Strategy, which does not appear to be publicly available);
- What work is undertaken by IES rather than contracted out to PAWC or other external contractors (for example, we note that PAWC's 2019-20 Statement of Corporate Intent refers to supplying water supply services 'on behalf of' IES);
- How IES actually operates, including whether it employs staff directly, or whether it operates as a shell private entity to receive funding without oversight.

Reform of IES is needed in relation to the following matters:

- Limited reporting – while IES publishes an annual report, this is limited in terms of the detail it provides about the issues above;
- Absent oversight, including which regulator, if any, IES is answerable to if it fails to provide safe or adequate drinking water in remote contexts;
- Opaque funding arrangements, including contracts or agreements established between IES and the DLGHCD, and IES and PAWC, for payments, service provision, and sub-contracting;
- Unclear service arrangements, including what, if any, drinking water services IES is required to deliver to remote communities, and to what standards;
- No accountability to community members regarding drinking water service provision;
- Apparent avoidance of the usual mechanisms for government oversight of its operations, including the application of freedom of information legislation, scrutiny at NT Parliamentary estimates, or complaints to the NT Ombudsman.

### Institutional reform

The NWI requires differentiation between water resource management, standard setting, and regulatory enforcement functions. This requirement presupposes the existence of regulatory frameworks for water provision. However, in the NT, there is no regulator of water supply outside the 18 towns (where the Utilities Commission provides limited oversight). There is no regulator of drinking water safety across the NT (the Department of Health instead oversees drinking water safety pursuant to an unenforceable Memorandum of Understanding with Power and Water Corporation). This does not meet the requirements of the NWI.

The policy of mainstreaming service provision involved the assumption of essential service provision by the state. However, the present arrangements do not meet the reforms required by the NWI or by good governance more generally. As highlighted above, numerous issues related to IES require further investigation and potential reform, related to: limited reporting; absent oversight; opaque funding arrangements; unclear service arrangements; opacity in infrastructure funding allocation; public accountability; and public transparency. Urgent reform of these arrangements is needed.

To conclude this section, the CLC notes that the Issues Paper includes the following information requests:

- *Are the institutional arrangements for metropolitan water service providers fit-for-purpose (Information Request 8)?*
- *Do water service providers supply high-quality water services in regional and remote areas? Are there examples of poor water quality, service interruptions, or other issues? Have regional water service providers adequately planned for extreme events?*

As is evident from the preceding analysis, the answer to both these questions in the context of water provision in NT Indigenous communities is no.

***Recommendation 7: The Productivity Commission should develop specific criteria for inclusion in the NWI that states and territories must meet on behalf of the provision of healthy, safe, and reliable water supplies.***

***Recommendation 8: The Productivity Commission should examine the institutional relationships between Power and Water Corporation (and its subsidiary Indigenous Essential Services), the Department of Health, and the Utilities Commission, on behalf of clarifying what reforms are required in the NT to meet NWI expectations related to institutional reform.***

***Recommendation 9: The Productivity Commission should seek clarification from the NT Government regarding the specific progress it has made under the NT Water Regulatory Reform Process, and outline this progress in its forthcoming Inquiry Report.***

***Recommendation 10: The Productivity Commission should seek an explanation from the NT Government regarding the absence of legal protections for minimum quality water standards or services in remote contexts.***

***Recommendation 11: The Productivity Commission should recommend that the Department of Health assume a regulatory role in relation to Power and Water***

***Corporation and Indigenous Essential Services pursuant to legislation that replaces the existing MOU.***

***Recommendation 12: The Productivity Commission should clarify the information that is required in the transparent publication of a CSO.***

***Recommendation 13: The Productivity Commission should seek clarification from the Northern Territory Government regarding why Indigenous Essential Services is the utilities provider in 72 remote communities and 79 outstations, rather than Power and Water Corporation.***

***Recommendation 14: The Productivity Commission should investigate the reforms required for Indigenous Essential Services to satisfy the expectations of the NWI.***

***Recommendation 15: The Productivity Commission seek clarification from the Northern Territory Government as to why Power and Water Corporation is exempt from Freedom of Information requests, which is inconsistent with government-owned corporatised utility providers in other Australian jurisdictions.***

### 3. Investment in New Infrastructure

Under the NWI, any new investment in water infrastructure must be transparent, ecologically sustainable, and subjected to a cost-benefit analysis.

The Productivity Commission notes in relation to the NWI that governments seeking to provide funding for water infrastructure should ensure a number of safeguards are met. These include that 'NWI-consistent entitlement and planning frameworks are in place before any new infrastructure is considered' and that 'an independent analysis is completed and made available for public comment before any government announcement on new infrastructure is made', among others. The NWI prioritises the importance of establishing the economic viability of any new water infrastructure – this would appear to include not only drinking water infrastructure but also infrastructure for agricultural and other commercial purposes. The NWI provides a set of requirements for infrastructure investment, 'including that water recovery measures are subject to an assessment of costs and benefits fully cost recovered from beneficiaries'.

However, the NWI also recognised the need to subsidise water infrastructure in some contexts. This builds on recognition in the 1994 Framework of the cost of rural water supply, and that Framework's stipulation that funds should be set aside for future asset refurbishment and/or upgrading of government-supplied water infrastructure. Under the

NWI, 'The Parties agree to ensure that proposals for investment in new or refurbished water infrastructure continue to be assessed as economically viable and ecologically sustainable prior to the investment occurring (noting paragraph 66[v])'. This latter acknowledgement of clause 66(v) suggests that where infrastructural investment is concerned, there is not an expectation of full cost recovery or economic viability in certain contexts. This condition appears to apply to drinking water infrastructure investment in remote Indigenous communities, as well as for agricultural and other commercial water infrastructure. In the NT, justifications for what water infrastructure will be funded in which locations are often opaque. This lack of transparency exacerbates vulnerability that infrastructure spending might be influenced by political prerogatives, rather than obligations to meet adequate service requirements across the NT.

The CLC notes that water infrastructure projects in remote communities (and elsewhere) appear to have been funded in the NT without attendant or ongoing governance or regulatory arrangements that would create accountable, enforceable obligations for these assets or the supply of water using them. Further, it is not clear whether or not these investments underwent a cost/benefit analysis or assessments of ecological sustainability such as that required by the NWI. Central Australian Indigenous communities do not appear to have benefitted from these additional funding injections.

For example, following incidents of domestic water contamination at Borroloola, a pipeline has been constructed to extend the service area of town water infrastructure. In April 2018, precautionary advice was issued by the Department of Health advising residents of Garawa 1 and Garawa 2 town camps not to consume drinking water due to lead and manganese exceeding the safe levels specified by the ADWG. In 2009, \$15 million was allocated under the National Partnership Agreement on Remote Indigenous Housing (NPARIH) to construct new houses in Borroloola's town camps (Mara, Yanyula, Garawa 1, and Garawa 2), however by the time this water contamination occurred no houses had been built. Following this incident of domestic water contamination, a pipeline has been constructed to connect the Borroloola town water supply, supported by a water treatment facility opened in October 2018, to Garawa 1 and Garawa 2 camps (Mara and Yanyula camps are already included in this network). The extension of this pipeline across the McArthur River cost \$3 million, which the authors understand was reallocated from the funding allocated under NPARIH to construct houses at Borroloola. It is not clear that this infrastructure project met any of the analysis requirements recommended by the NWI, and if it did this process was not public. Nor is it clear whether any arrangements are in place for the planned maintenance of this pipeline or related network refurbishments, especially where components of this network are located within the boundaries of town camps and thus (due to the specificity of land tenure arrangements at Borroloola) only informally subject to the attention of PAWC.

Similarly, there is a lack of clarity over how and to what extent drinking water infrastructure is funded on homelands and outstations. Communities in central Australia have often had to source their own funding for essential water infrastructure, including from the Aboriginals Benefits Account (ABA) and traditional owners' lease payments. This has occurred in communities where Indigenous Essential Services is supposed to be the service provider. At Iwupataka, poor quality water infrastructure supplying 18 outstations under Iwupataka Aboriginal Land Trust has resulted in recurring leaks and high water bills, yet the Iwupataka Water Aboriginal Corporation has not received sufficient funding to complete the scoped works to upgrade infrastructure for more than four of those outstations. At Alpurrurulam on Lake Nash Station, the delays for the provision of production bores and an associated power line and water softening infrastructure has now exceeded nine years. On these occasions, the CLC and local Indigenous organisations have been unable to clarify the rationale for the funding of water infrastructure by the NT Government, despite numerous attempts to obtain clarity from either Power and Water Corporation and the Department of Local Government, Housing and Community Development. Communities are effectively being forced to cover the inadequate provision of water infrastructure where IES and/or the NT Government should have priority, without a clear understanding of how infrastructure is prioritised or funded.

The opacity of infrastructure funding arrangements can be exacerbated by occasional Commonwealth funding injections into remote communities. For example, the COAG *Strategy on Water and Wastewater Services in Remote (including Indigenous) Communities* was a separate 2011 strategy apparently entered into under the Water for the Future Initiative. The NT's Implementation Plan outlines a strategy for water security and climate change adaptation in remote communities, including safe water supplies, and aims to 'provide a level of service that meets regulatory standards that would apply to any other community of similar size and location.'<sup>20</sup> This strategy provided for the funding of approximately \$20m in water infrastructure to the communities of Galiwinku, Angurugu, Umbakumba, Nguiu, and Wadeye in the Top End of the NT. Noting that these communities have their services provided by IES, this funding appears to have been provided without the introduction of transparent regulatory arrangements governing these assets.<sup>21</sup> Central Australian Indigenous communities appear to have been excluded from this funding.

Across remote Indigenous communities in the NT, there is a serious absence of public clarity over which water infrastructure projects are funded over others, and for what reasons. The situation described above, in which the Department of Local Government, Housing, and Community Development provides recurrent grant funding to Indigenous Essential Services,

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<sup>20</sup> *Implementation Plan for COAG Strategy on Water and Wastewater in Remote Communities – Northern Territory* (2011): 1-5, C2.

<sup>21</sup> See [National Water Security Plan for Cities and Towns](#).

which itself appears to contract Power and Water Corporation to deliver its services in 72 remote communities and 79 outstations, further complicates the question of which authorities have the capacity to approve new water infrastructure and on what grounds. In the CLC's experience, while there is severe need of infrastructural replacement and refurbishment in numerous communities, there is often no apparent rhyme or reason as to what projects garner funding support. It is not an acceptable situation that the CLC does not have a clear line along which it can recommend specific projects as urgent priorities, where past experience has sometimes involved requests to PAWC, which represents itself as having to lobby for Ministerial approval. Indigenous organisations and remote community residents have been excluded from these planning and decision-making processes. In order that this might change, how infrastructural priorities are determined and how funding is allocated must be clear.

***Recommendation 16: The Productivity Commission should clarify the key funding streams for drinking water infrastructure, and the mechanisms by which new projects are approved.***

***Recommendation 17: The Northern Territory Government should demonstrate the processes it uses to ensure it meets NWI expectations that any new investment in water infrastructure must be transparent, ecologically sustainable, and subjected to a cost-benefit analysis.***

***Recommendation 18: The Northern Territory Government should clarify the criteria it employs to prioritise infrastructural projects in remote communities, including the specific roles played by the Department of Local Government, Housing and Community Development, Power and Water Corporation and Indigenous Essential Services.***

***Recommendation 19: The Northern Territory Government, Power and Water Corporation and the Department of Local Government, Housing and Community Development should meaningfully involve land councils and relevant Indigenous organisations in planning and decision-making for infrastructural provision in remote Indigenous communities and on homelands.***

## Guiding Principles for Drinking Water Reform in the NT

The NT has failed to deliver safe and adequate drinking water to its population, particularly residents located in remote Indigenous communities. The Productivity Commission should encourage urgent reform in this area.

Any drinking water reform in the NT must embed as foundational principles:

### 1. Safety and health

- a right to safe drinking water for all NT residents must be legislated in a Safe Drinking Water Act;
- a Safe Drinking Water Strategy must be developed in collaboration with land councils;
- safe drinking water must be prioritised above all other consumptive uses in the *Water Act*, both in legislation and plans, strategies, and policies;
- enforceable minimum standards must be legislated in accordance with the *Australian Drinking Water Guidelines (ADWG)*;
- drinking water providers in towns and major Indigenous communities and outstations (currently serviced by IES) should be licensed and regulated by the Department of Health under the Safe Drinking Water Act.

### 2. Transparency

- where cost recovery is not possible, water service and infrastructure funding must be made as a transparently reported community service obligation (CSO);
- CSO guidelines for water services and infrastructure in the NT must be developed in collaboration with land councils;
- decisions and the rationale about funding allocations for water services and infrastructure must be publicly reported and justified;
- policies and planning documentation with respect to the public supply of water must be made publicly available.

### 3. Accountability

- public water supply must be regulated by appropriate legislation;
- water suppliers must be auditable;
- water suppliers must be legislatively required to comply with the ADWG;
- water suppliers must be licensed and accountable to a regulator;
- water suppliers must be accountable to communities, residents, and landowners.

#### 4. Adequate resourcing

- adequate resourcing must be provided for infrastructure, operations, and maintenance, in order that water suppliers are able to meet requirements to provide safe and adequate drinking water;
- GST revenue received by the NT that is allocated on the basis of need should be expended on essential services provision where it is most required, in particular in remote Indigenous communities;
- the long-term under-funding of infrastructure in remote Indigenous communities should be recognised in decision-making about current and future infrastructure funding and need.

#### 5. Indigenous decision-making

- Drinking water security should be recognised as a fundamental concern of Indigenous people across the NT;
- Indigenous decision-making should be embedded in all decisions about water services and infrastructure on Aboriginal land;
- as services are delivered on Aboriginal land, land councils must have a meaningful say over where, when, and how these services are delivered and where infrastructure is built;
- policy should be developed to guide Indigenous involvement in urban/remote water planning;
- investment in local skills and training for water services is required.

# Appendix 1: NT Declared Water Control Districts

## NORTHERN TERRITORY DECLARED WATER CONTROL DISTRICTS



### NORTHERN TERRITORY OF AUSTRALIA

Water Control Districts are areas declared where there is a need for enhanced management for the sustainability of groundwater reserves and river flows.

Within a Water Control District a bore construction permit is required, water allocation plans can be developed and water extraction licences are required unless there is a specific exemption in place.

#### Water Control District Declaration

- Darwin Rural;** 2 June 1999
- Gove;** 18 September 2002
- Daly Roper Beetaloo;** 22 June 2018
- Tennant Creek;** 15 July 2009
- Western Davenport;** 15 July 2009
- Ti-Tree;** 21 October 2009
- Alice Springs;** 4 July 2007
- Great Artesian Basin;** 3 February 2010



For further information contact:  
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Web: nt.gov.au/water

Goyder Centre, Chung Wah Terrace  
Palmerston

#### LEGEND

- Primary road
- Secondary road
- Railway
- State Border
- Watercourse



Prepared July 2018  
File: NT\_Water-Control-Districts  
Drawing Ref: DENR2018053

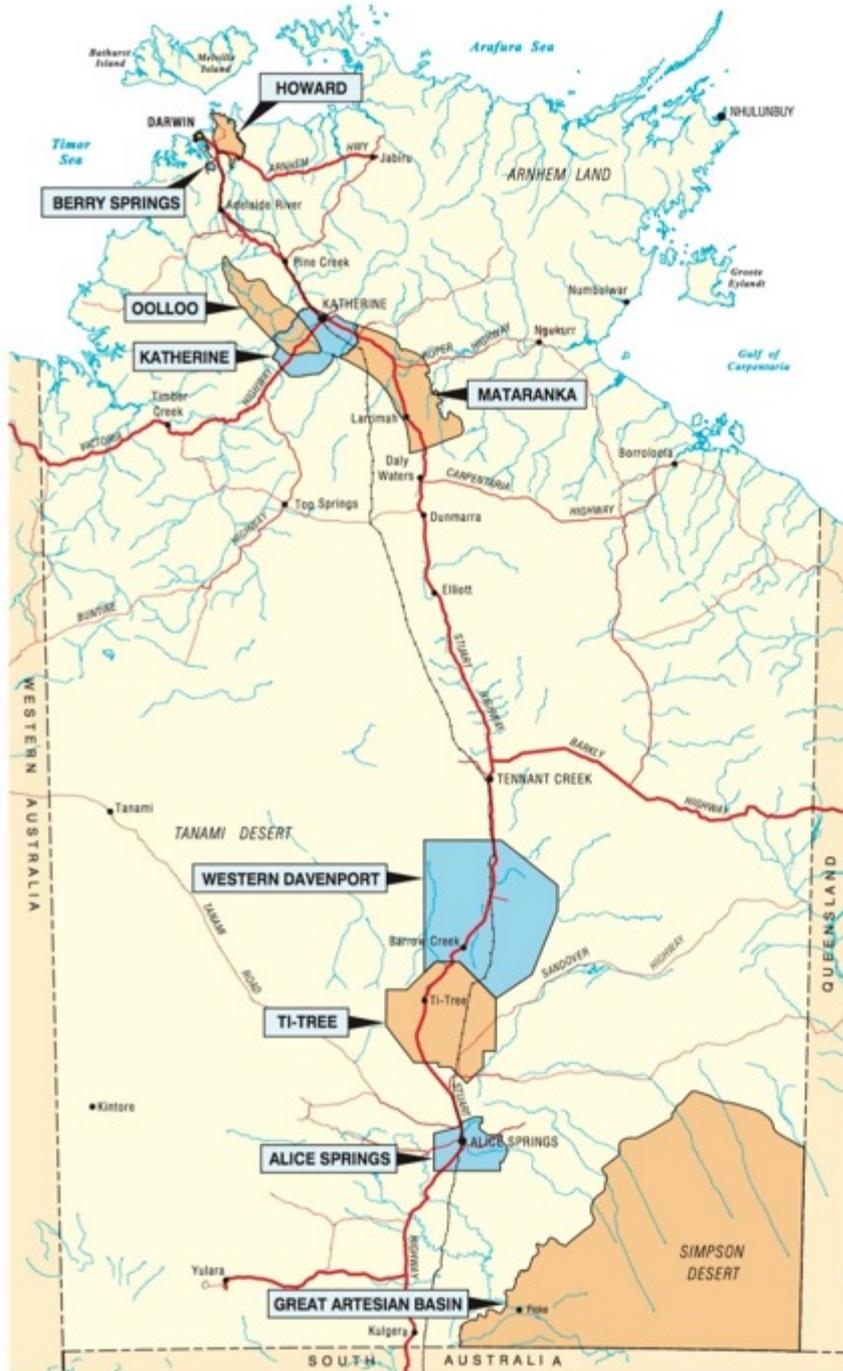
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If you do not agree to the terms and conditions you must not use the geospatial products.

kilometres 0 100 200 300 400 kilometres

Projection - Lambert's Conformal Conic  
Standard Parallels 23°20'00"S & 12°40'00"S  
Horizontal Datum GDA 94

# Appendix 2: NT Water Allocation Planning Areas

## NT WATER ALLOCATION PLANNING AREAS



### NORTHERN TERRITORY OF AUSTRALIA

Water Allocation Plans aim to ensure the equitable sharing of available water between users, to protect the environment and ensure the long term sustainability of the water resource.

They usually occur in regions where there are competing demands for water, there is risk from water use to significant environmental values or a need to manage the whole system (surface water and groundwater resources) due to their significant inter-connection.

**Declared Water Allocation Plans**

**Tindali Katherine:** 2016 - 2019

**Alice Springs:** 2016 - 2026

**Berry Springs:** 2016 - 2026

**Western Davenport:**  
2018 - 2021

**Water Allocation Plans In Progress**

**Howard:** In draft

**Ti Tree:** In draft

**Ooloo Dolostone Aquifer:** In draft

**Mataranka Tindali Limestone Aquifer:** In draft

**Great Artesian Basin:**  
In draft

For further information contact:  
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Goyder Centre, Chung Wah Terrace  
Palmerston, Northern Territory

#### LEGEND

- Primary road
- Secondary road
- Railway
- State Border
- Watercourse



March 2019  
File: NT\_Water-Allocation-Plans  
Drawing Ref: DENR2019075

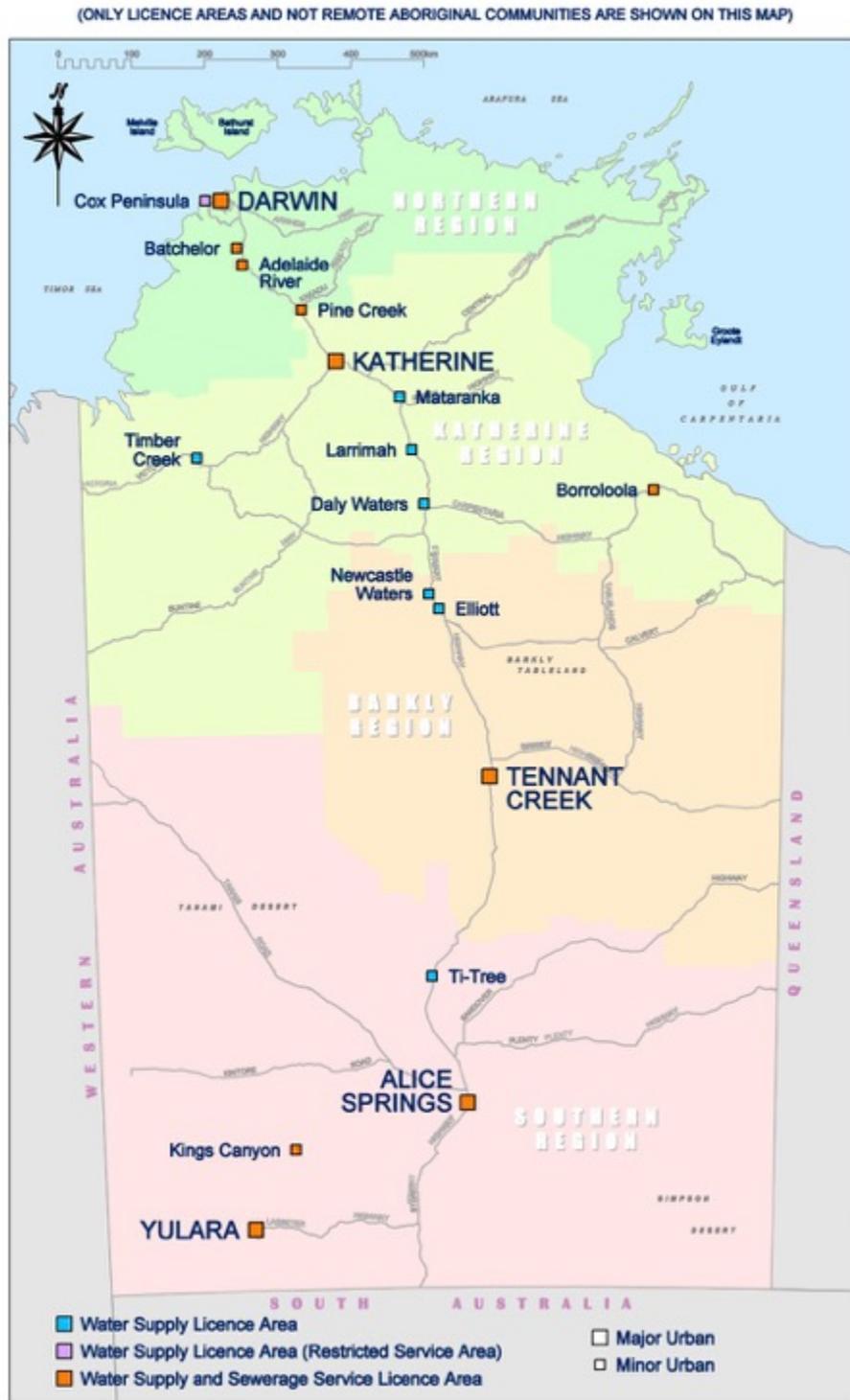
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<https://creativecommons.org/licenses/by/4.0/legalcode>  
Department of Environment and Natural Resources  
Northern Territory Government

kilometres 0 100 200 kilometres  
 Projection - Lambert Conformal Conic  
Standard Parallels 23°20'00"S & 12°40'00"S  
Horizontal Datum GDA 94



## Appendix 3: NT Water Supply and Sewerage Service Areas (PAWC)

### NT WATER SUPPLY AND SEWERAGE SERVICE AREAS



## Appendix 4: Drinking Water Regulation in the NT of Australia (Housing for Health Incubator)

