

Australian Government – Productivity Commission

Via online: [Productivity Commission](#)



Re: NSWALC Submission – National Water Reform 2024 - Interim Report

Thank you for the opportunity to comment on the National Water Reform 2024 - Interim Report (the **Interim Report**). The NSW Aboriginal Land Council (**NSWALC**) is the largest member-based Aboriginal organisation in Australia, with a network of 121 Local Aboriginal Land Councils (**LALCs**) and over 30,000 members. We are the peak-elected Aboriginal community-controlled representative body for the 280,000 Aboriginal people in NSW, Australia's largest Aboriginal population.

NSWALC strongly supports a renewed National Water Initiative (**NWI**) that commits to cross-jurisdictional cooperation for water management in the face of an increasingly changing climate. Most importantly, we support efforts for the new agreement to adequately recognise and embed First Nations' water rights, not solely interests, while supporting and safeguarding cultural values and knowledges.

NSWALC consistently advocates for Aboriginal ownership of, and access to, water for cultural and economic purposes. We seek strengthened commitments to recognise and provide for Aboriginal rights, interests and values in water sharing plans, water resource plans, environmental watering plans and related instruments. This includes increased water access entitlements and more secure and reliable water allocations for Aboriginal people and Aboriginal Land Councils.

A refreshed and enhanced NWI is a prime opportunity for the Commonwealth and Australian jurisdictions to honour their commitments under the Closing the Gap National Agreement, specifically Priority Reform One – working in genuine partnership with Aboriginal and Torres Strait Islander People and Socio-Economic Target 15 – Aboriginal and Torres Strait Islander people maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters.

Comments on interim recommendations and findings

NSWALC supports, in principle, the draft recommendations and findings put forward by the Productivity Commission (the **Commission**) in the Interim Report. We offer additional comments and recommendations below. We also refer the Commission to our recent submissions regarding the Murray Darling Basin Plan and associated legislation and frameworks and continue to reiterate the recommendations outlined in these submissions.¹²

Improved Recognition of First Nations Peoples

- NSWALC welcomes the proposed overarching and specific objectives of “Improved recognition of First Nations people’s aspirations, desire to participate and engage in water management and their cultural

¹ NSWALC submissions [101](#) and [144](#) to the Productivity Commission Public Inquiry – Murray Darling Basin Plan: Implementation Review 2023

² NSWALC submission [64](#) to the Senate Standing Committee on Environment and Communications Inquiry into the Water Amendment (Restoring our Rivers) Bill 2023

responsibility for rivers and groundwater systems.” In particular, “where cultural outcomes may be inclusive of economic development outcomes”.

- We reiterate that Governments must go beyond reliance on ‘cultural flows’ as a means of increasing Aboriginal people’s access to and ownership of water and recognise that it is Aboriginal people’s inherent right as First Peoples to have water entitlements of a sufficient and adequate quality to enable cultural, social, environmental and economic outcomes as outlined in the Echuca Declaration.
- NSWALC also supports the introduction of a new element around Aboriginal and Torres Strait Islander people’s interests in water. However, NSWALC is concerned that much of the language focuses on First Nations water ‘interests’ in water. We stress the importance of recognising and strengthening First Nations inherent rights to their waters. Increasing ownership of, and access to, waters is key.
- Similarly, the notion of ‘co-design’ does not uphold the commitments under the National Agreement on Closing the Gap. ‘Co-design’ is not shared or equal decision-making. Governments need to shift from the use of such language and ensure water-related planning and management is underpinned by genuine partnership and co-governance arrangements, to ensure meaningful outcomes for First Nations people.
- NSWALC recommends that to successfully achieve genuine shared decision-making, the Australian government should first implement formal roles and partnerships in the NWI for Aboriginal and Torres Strait Islander people and stakeholders in water governance and management. Particularly at the ‘development of jurisdictional action plans’ stage of the new agreement.
- As the Commission has highlighted, decades of consultation have resulted in little positive change and all jurisdictions must improve in this area. Holding governments accountable to report on these activities is vital moving forward. NSWALC calls on improved accountability and transparency through the development of monitoring and reporting frameworks around government engagement with First Nations people. Consultation must not be paternalistic and must be underpinned by Aboriginal self-determination and be community-led. Relevant Local Aboriginal Land Councils and Basin Nations must be involved in every stage of decision-making in water management frameworks.
- Consultation and engagement with Aboriginal peoples must provide adequate notice, incorporate the principles of ‘free, prior and informed consent’ (FPIC), and actively seek Aboriginal people’s views. Initiatives to engage and partner with Aboriginal peoples in the management of land, waters and climate must not be undertaken in isolation or on a ‘one off’ basis.
- A lack of genuine consultation and disregard for the principles of FPIC continues to perpetuate a history of marginalisation of Aboriginal people regarding water legislation and will result in further mistrust of the government. This process must begin with asking community if and how they want to be consulted or represented and resource communities appropriately.
- NSWALC welcomes the Productivity Commission’s emphasis that all governments must underpin water-related policies, projects and procedures with the commitments outlined in the National Agreement on Closing the Gap. We fully support any improvement to the way governments work with Aboriginal communities, especially in NSW, and that genuine partnership, accountability and transparency are strengthened. The development of any new monitoring and reporting frameworks must be First Nations-led and contributors must be fully resourced for their time and input.
- The Commonwealth and jurisdictions must work to ensure all water and related policies and projects are undertaken in a coordinated fashion. Community is fatigued by ongoing consultation for myriad policies and programs that are uncoordinated, and duplicative and lead to little positive outcomes on the ground. Trust in the government has waned and attempts to engage the community often present themselves as bureaucratic box-ticking exercises. NSW DCCEEW in particular needs to urgently address decades of shortfall and should look to successes in other jurisdictions, such as Victoria, where meaningful partnerships have delivered tangible outcomes for First Nations water rights.

Communities and Aboriginal community-controlled organisations (**ACCOs**) with interests in waters need to be resourced appropriately so they can engage independent advice and capacity building to meaningfully participate in water policy and water market discussions.

- NSWALC supports the development of shared water-related definitions across jurisdictions and the Commonwealth. Reaching a shared understanding of water security and water related terms support a whole of government approach to water management, climate change and meeting the CTG inland water targets.
- NSWALC agrees that “There is limited and inconsistent reporting, monitoring and transparent accounting for environmental water outcomes in most jurisdictions.” We reiterate the importance of improving the effectiveness of environmental watering strategies and delivering shared benefits from the use of ‘environmental water’. All governments and the Commonwealth Environmental Water Holder (**CEWH**) must prioritise partnerships with First Nations communities to ensure environmental water programs deliver on cultural outcomes. Aboriginal participation and the incorporation of TEK must be increased at all levels of water management planning across the entire Basin Area. Governments must address community concerns around the testing and monitoring of environmental water quality downstream; whether these flows are capable of restoring rivers and riparian environments and look to resourcing capacity building for First Nations involvement in further research, monitoring and compliance.
- It is vital that the refreshed NWI commits governments to embed climate change research, science and targets moving forward. As we have discussed in previous submissions, Aboriginal people have been stewards of Country for millennia and it is imperative that their knowledge is incorporated along with western science. As always, the principles of free, prior and informed consent must be respected, consensual and upheld.
- NSWALC argues that underpinning national and international human rights declarations is not enough to ensure Aboriginal and Torres Strait Islander water interests and values are upheld. NSWALC urges the Australian government to implement tangible structures at a state and federal level, to increase water allocations to Aboriginal Land Councils for social, cultural, and economic purposes. As the Interim Report notes, Aboriginal people in many jurisdictions have difficulty accessing water. The Strategic Aboriginal Water Reserves available in some jurisdictions (NT, WA and QLD) do not secure water access entitlements or licences, and the legal protection for Indigenous water reserves varies between jurisdictions.
- Finally, we note the interim report touches on native title and water rights yet does not acknowledge the *Aboriginal Land Rights Act* in NSW (**ALRA**) and the important role that Aboriginal Land Councils play in managing land and waters in NSW. Aboriginal Land Rights must be seen as a public outcome in itself and as a way to deliver broader public benefits, including water security and climate change resilience. There should be an increased focus by all levels of government to return both land and waters to Aboriginal peoples, and to Aboriginal Land Councils in NSW. Returning land and waters to Aboriginal peoples will:
 - provide environmental protection and climate change resilience
 - contribute to sustainable land and water management, the nourishment of culture and improved quality of life
 - support economic development initiatives, stimulating local and regional economies, and provide jobs and training opportunities.

Furthermore, the preamble of the ALRA highlights the multifaceted significance of land to Aboriginal peoples:

(1) Land and waters in the State of New South Wales were traditionally owned and occupied by Aboriginal persons—

(2) Land and waters are of spiritual, social, cultural and economic importance to Aboriginal persons—

(3) It is fitting to acknowledge the importance land and waters have for Aboriginal persons and the need of Aboriginal persons for land and waters—

(4) It is accepted that as a result of past Government decisions the amount of land and waters set aside for Aboriginal persons has been progressively reduced without compensation—³

While the return of lands to Aboriginal peoples in NSW is slowly occurring, mechanisms to support our ownership of, and decision-making in relation to water are not similarly recognised. In 1994, water rights were decoupled from land ownership, and we have consistently advocated for compensation for this legislative change, which contradicts the initial intent of the ALRA. This is a prime opportunity for the reimagined NWI to reflect our aspirations per our legislated framework.

Despite decades advocacy, and the countless submissions, meetings, hearings, consultations, reports and inquiries NSWALC and the LALC network have been involved in relating to water policy – there has been little to no change for our people. It has been exhausting and resource-intensive for peak bodies but most importantly, for the communities and ACCOs on Country who are suffering the most. We genuinely hope state and federal governments finally commit to tangible actions to advance First Nations water rights moving forward. Overall, working to achieve Aboriginal outcomes must be a focus of all state and Commonwealth water initiatives. There are opportunities to improve water management, governance and associated legislation to ensure stronger action and alignment by governments to deliver social, cultural and economic outcomes for Aboriginal people.

³ [Aboriginal Land Rights Act 1983 No 42 - NSW Legislation](#)

NSWALC's Recommendations:

Recommendation 1: The Commonwealth and NSW governments must commit to a **genuine partnership approach with NSWALC, LALCs and Aboriginal communities** regarding environmental, planning and water-related legislation and management, in line with the National Agreement on Closing the Gap and relevant international instruments.

Recommendation 2: The National Water Initiative must refer to the important role that Aboriginal Land Councils play in managing land and waters in NSW.

Recommendation 3: Governments must go beyond reliance on 'cultural flows' as a means of increasing Aboriginal people's access to and ownership of water and recognise that it is Aboriginal people's inherent right as First Peoples to have water entitlements of a sufficient and adequate quality to enable **cultural, social, environmental and economic outcomes as outlined in the Echuca Declaration**.

Recommendation 4: The language used in the Commissions advice should go beyond reference to 'interests' and include Aboriginal **rights and values** in relation to water.

Recommendation 5: Governments must go beyond the term 'co-design' and support the implementation of co-governance arrangements that support shared and equal decision-making in line with the National Agreement on Closing the Gap. Formal roles and partnerships for Aboriginal stakeholders should be imbedded in jurisdictional action plans.

Recommendation 6: Representatives of the Aboriginal Land Rights Network and the broader Aboriginal community should be included at every stage of **implementation, monitoring and review of water management activities**.

Recommendation 7: Federal and state governments must work in partnership to develop legal frameworks, policies and processes to **ensure the principles of free, prior and informed consent are upheld and respected**.

Recommendation 8: **Genuine social, cultural and economic opportunities for Local Aboriginal Land Councils and Aboriginal landholders** should be further explored, developed and supported in partnership with NSWALC and peak Aboriginal organisations.

Recommendation 9: The Commonwealth and State Governments must commit to **addressing the economic development aspirations of Aboriginal landowners that require access to and ownership of water**.

Recommendation 10: All water-related regulations, policies and frameworks must work to **realise the rights aspirations of Aboriginal people and LALCs in relation to the return of their lands and waters**.

Recommendation 11: Governments must improve/ develop **legal frameworks that codify and protect Aboriginal and Torres Strait Islander water rights, ensuring they are enforceable and respected by all stakeholders**.

Recommendation 12: The Commonwealth and jurisdictions must work to ensure all water and related policies and projects are undertaken in a coordinated fashion. Communities and Aboriginal community-controlled organisations (**ACCOS**) with interests in waters need to be **resourced appropriately** so they can engage independent advice and capacity building to meaningfully participate in water policy and water market discussions.

Recommendation 13: Governments must develop a shared understanding of water security and water related terms to support water management across jurisdictions.

Recommendation 14: The Commonwealth Environmental Water Holder and jurisdictional environmental water holders must **prioritise partnerships with First Nations communities** to ensure environmental water programs deliver on cultural outcomes. Aboriginal participation and the incorporation of traditional ecological knowledge must be increased at all levels of water management planning across Australia.

Recommendation 15: Environmental flows and associated regulations, policies, frameworks and mechanisms **must be capable of achieving targeted environmental gains.**

Recommendation 16: Governments must **address community concerns** around the testing and monitoring of environmental water quality downstream; whether these flows are capable of restoring rivers and riparian environments and look to resourcing capacity building for First Nations involvement in further research, monitoring and compliance.

Recommendation 17: Governments must consider and embed **Aboriginal Traditional Ecological Knowledge, perspectives and cultural practices** in work to manage waters and climate change, while ensuring Intellectual Property of this knowledge is respected, principled and consensual.

Recommendation 18: Provisions of all water-related strategies, including the Plan, **must be in accordance with international instruments**, including the *United Nations Declaration on the Rights of Indigenous Peoples*, the *Ramsar Convention*, the *Nagoya Protocol* and the *Kunming-Montreal Global Biodiversity Framework*. NSWALC urges the Governments to implement tangible structures at a state and federal level, to increase water allocations to Aboriginal Land Councils for social, cultural, and economic purposes.

Recommendation 19: Existing legislative frameworks, including the ***Aboriginal Land Rights Act 1983 (NSW)***, should be harnessed as vehicles for the return of waters to Aboriginal people.

We look forward to working in genuine partnership with governments on the national water reform in line with Aboriginal people's rights, interests and aspirations.

Should you require further information, please contact the NSWALC Strategy and Policy Unit on 02 - 9689 4444 or via e-mail: policy@alc.org.au.

Sincerely,

Yuseph Deen

Chief Executive Officer

NSW Aboriginal Land Council

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ALWAYS WAS. ALWAYS WILL BE.

alc.org.au