

Executive Summary: Deficiencies in the existing water law and governance framework in the Northern Territory

The EDO considers that water law and governance in the NT is amongst the poorest in the country. This Executive Summary highlights some of the key concerns in our briefing note “Deficiencies in the existing water law and governance framework in the Northern Territory” and should be read with that document.

1. Failures in water allocation

Water allocation plans (**WAPs**) set out how water in an area of the NT is to be shared. WAPs only apply to about 28% of the NT, compared to equivalent plans applying to more than 80% in most other states and territories. This means that water use in the rest of the NT is governed by a two-page policy from 2000. Also, unlike water sharing instruments in most of Australia, WAPs are not legally binding. This is mostly because the Water Act doesn't say enough about what WAPs should say and how they should be applied. This undermines the purpose of WAPs and creates many poor governance issues, including inconsistent and unfair water decision making.

2. Inconsistent water licensing decisions

The Water Controller is responsible for approving water licences and determining yearly water allocations. The Water Act gives the Water Controller very broad discretionary power about how these decisions are made. Further, the Water Controller is able to make decisions that are inconsistent with the relevant WAP. The Singleton Station case study is one such example.

Case Study: Singleton Station water licence

When approving the 40,000 ML/year licence at Singleton Station this year, the Water Controller said that her decision was consistent with the WAP. However, in the same decision the Controller said that she did not rely on the WAP's criteria for protecting groundwater dependent ecosystems. Instead, she relied on a “guideline document”. In doing so the Water Controller avoided the WAP criteria that allowed a maximum drawdown of 15 metres and would have prevented her from approving the licence. Based on the NT Governments' own modelling the approved licence is expected to drawdown the aquifer by up to 50 meters.

3. Poor compliance and enforcement

We cannot find anything online to suggest that the Department of Environment, Parks and Water Security has conducted any enforcement activities or prosecutions under the Water Act. This is not surprising given that, although the Water Act has several offence provisions, the language of the Act is unclear which makes it extremely difficult to prosecute any offence under the Act. Further, offence provisions are only effective if they are backed up by an independent, well-resourced and publicly respected regulator that has a mandate to enforce the law. This is currently lacking in the NT.

4. Too much power sits with one person

Best practice water governance requires that: government decision making be split to avoid the concentration of power in one individual and any subsequent conflicts of interest; and, that persons who might benefit from government policies should be separate from those administering the policies. Contrary to best or even good practice, in the NT one person holds three conflicting roles. The Water Controller (water allocation and licensing decision maker) is the CEO of the Department of Environment, Parks and Water Security (drafts and implements WAPs and other policy) and board member of NT Land Corporation (which benefits from licensing decisions and the development and interpretation of WAPs).