



Environmental
Defenders Office

Submission on the Draft Territory Water Plan

25 November 2022

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

www.edo.org.au

Submitted to:

Department of Environment, Parks and Water Security

Lodged by email: WaterSecurity.ntg@nt.gov.au

For further information on this submission, please contact:

Elanor Fenge
Managing Lawyer, NT
Healthy Environment and Justice
T: 08 8981 5883
E: elanor.fenge@edo.org.au

Acknowledgement of Country

EDO recognises and pays respect to First Nations Peoples. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present and emerging, and aspire to learn from traditional knowledge and customs that exist from First Laws so that together, we can protect our environment and First Nations' cultural heritage through Western law. We recognise that their countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonisation.

A Note on Language

We acknowledge that there is a legacy of writing about First Nations without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. Where possible, we have used specific references. More generally, we have chosen to use the term "First Nations". We acknowledge that not all Aboriginal and Torres Strait Islander peoples will identify with that term and that they may instead identify using other terms or with their immediate community or language group.

Contents

1. Introduction

2. Summary of Recommendations

3. The National Water Initiative

4. Priority Areas – Safety and Supply

- Water Security
- Safe drinking water legislation: Territory-wide standard
- Safe drinking water legislation: water quality monitoring

5. Priority Area – Trust and Confidence

- Territory voices in water security
- Metering

6. Priority Area – Sustainability

- Contemporary water resource management legislation
- Water planning
- Climate change

7. Conclusion

1. Introduction

The Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the Draft Territory Water Plan (**Draft Plan**).

EDO has over 30 years' experience advising on water law and policy across all Australian jurisdictions and have accordingly developed an in-depth understanding of best practice water law and governance. We have consistently argued for improved water resource management and the development of best practice regulatory frameworks.

EDO acknowledges and commends the Northern Territory Government's commitment to establishing a strategic framework "to guide all water management functions and activities"¹ across the Territory and we strongly support the Draft Plan's aim to "deliver water security for all Territorians, now and into the future."²

Through this Draft Plan, the NT Government has an opportunity to lay the groundwork for the implementation of its commitments under the *National Water Initiative* (**NWI**) and address the findings of the Productivity Commission's Inquiry Report into National Water Reform.

The NT Government's commitments within the Draft Plan to introduce stand-alone safe drinking water legislation by 2024, replace the *Water Act 1992* (NT) (**Water Act**) by 2026 and appoint a new and independent Controller of Water Resources are all steps in the right direction. However, EDO urges the NT Government to renew its commitments under the NWI and harness this opportunity to implement reforms that not only achieve water security for all Territorians, but also water justice.

Our submission does not comment on all 14 priority actions included in the Draft Plan. Instead, our submission comments on the identified priority areas (safety, supply, trust and confidence, and sustainability) against the actions identified with reference to the NT Government's commitments under the NWI.

Despite the NT Government's efforts to produce a comprehensive plan that can act as a roadmap or blueprint for water resource management and regulatory reform in the NT, the Draft Plan lacks detail and specificity in relation to the implementation of identified priority actions. Concerningly, in some areas where improved water law and governance is needed, the Draft Plan is silent.

We urge the NT Government to amend the Draft Plan – to reflect renewed and modernised commitments under the NWI that "reflect the importance of both sustainable water resource management and effective, equitable and efficient water service provision."³

¹ *Draft Territory Water Plan*, 11.

² *Ibid* 13.

³ Australian Government Productivity Commission, Assessment of National Water Initiative implementation progress (2017–2020), *Productivity Commission National Water Reform 2020 Inquiry Report* (May 2021), 7.

2. Summary of Recommendations

We recommend the following:

1. Renew the NT Government's commitments under the NWI.
2. Amend the definition of water security to ensure water equity within the Territory.
3. Commit to adopting the Australian Drinking Water Guidelines as an enforceable standard in the Territory.
4. Adopt a consistent Territory-wide approach to monitoring water quality.
5. Set out the requirements for establishing the Strategic Water Advisory Council in legislation, including:
 - that the creation of the Council must be mandatory;
 - membership of the Council and the appointment of members must be clearly outlined in legislation;
 - the Council should include an advisory role to the Minister for Water Security; and
 - the legislation establishing the Council should include clear requirements relating to the term of office for members, disclosure of conflict of interests, minute taking and decision-making protocols.
6. Commit to a Territory wide non-urban metering framework that is entrenched in legislation and requires the use of the best available technology.
7. Commit to the inclusion of the principles of ecologically sustainable development in new water resource management legislation. This legislation should also prioritise water management principles that protect and restore water sources, floodplains and dependent ecosystems.
8. Commit to water planning as a priority action.
9. Expand priority action 10 to explicitly state that due to climate change:
 - a precautionary approach should immediately be adopted at all levels of water management; and
 - the outcomes and findings of the 2024 climate risk assessment will underpin the development of the new water act.

3. The National Water Initiative

The NWI was agreed to by State and Territory governments in 2004 and represents the culmination of a series of earlier intergovernmental reform frameworks. It is a national water reform blueprint, providing a framework and principles for sustainable management of water resources.

Under the NWI, the NT Government committed to, amongst other things:

1. transparent, statutory-based water planning;
2. preparing water plans with provisions for the environment;
3. achieving sustainable water use in over-allocated or stressed water systems;
4. the application of the best available scientific knowledge and use of socio-economic analysis in water planning processes;
5. consulting with stakeholders within or downstream of plan areas, and ensuring the “inclusion of indigenous representation in water planning wherever possible”; and
6. providing a statutory basis for environmental and other public benefit outcomes in surface and groundwater systems to protect water sources and their dependent ecosystems.⁴

In 2017, the Productivity Commission assessed national water reform progress and found the NWI should be renewed and modernised to better account for changes in knowledge and technology and to address emerging challenges like climate change and population growth.⁵

In response, the Commonwealth Government committed to renewing the NWI and “drive continued national water reform and ensure that water issues of national significance have fit for purpose principles and policy to guide management.”⁶

The development of this Plan, which is intended to guide water resource reform in the NT, presents an opportunity for the NT Government to renew its’ commitments under the NWI.

Recommendation 1: Renew the NT Government’s commitments under the NWI.

4. Safety and Supply

The Draft Plan identifies safety and supply as two priority areas under which particular actions and reforms will be implemented including safe drinking water legislation, improved water security for remote communities, improved water outcomes for homelands and ensuring water supply meets customer needs.

Water Security

⁴ The Australian Government, Department of Climate Change, Energy, the Environment and Water, *The National Water Initiative* (‘NWI’), < <https://www.pc.gov.au/inquiries/completed/water-reform-2020/report/water-reform-2020-assessment.pdf>> A copy of the NWI is available here.

⁵ *Productivity Commission National Water Reform 2020 Inquiry Report* (n 3).

⁶ *NWI* (n 4).

The Draft Plan aims “to deliver water security for all Territorians, now and into the future.”⁷

Water security is defined in the Draft Plan as “having an acceptable quantity and quality of water for people, economic opportunities, cultural and environmental flows, now and into the future.”⁸

EDO supports the Draft Plan’s long-standing aim to deliver water security for all Territorians. However, we note it is vital that water security is supported and achieved for *all* individuals and communities *equally* across the Territory, irrespective of location.

Despite growing concerns regarding water security, there is limited guidance or definition of the concept in Australia⁹ and the term has rarely been adopted in Australian legislation.¹⁰ The United Nations Water Security and Global Agenda Report adopts the following working definition for water security:

“The capacity of a population to safeguard sustainable access to adequate quantities of and acceptable quality water for sustaining livelihoods, human well-being, and socio-economic development, for ensuring protection against water-borne pollution and water-related disasters, and for preserving ecosystems in a climate of peace and political stability.”¹¹

Although the Draft Plan’s definition of water security to safeguard an “acceptable” quantity and quality of water includes similar language to the UN’s working definition, the UN Definition is more specific in that it identifies what is to be secured and against what threats.

The Draft Plan’s definition of water security is too broad and open to interpretation, potentially undermining the Plan’s aim. EDO urges the NT Government to strengthen the definition of water security in reference to quality and quantity of water and adopt a human rights-based approach to water security in the Territory.

Recommendation 2: Amend the definition of water security to ensure water equity within the Territory.

Safe Drinking Water Legislation: Territory-wide standard

Access to safe drinking water is a basic human right.¹²

⁷ Northern Territory Government, Department of Environment, Parks and Water Security, *Draft Territory Water Plan* (October 2022)13.

⁸ Ibid.

⁹ Katherine Selena Taylor, *What does ‘water security’ mean for Australia* Kat Taylor, Summer Scholar Research Paper, Parliamentary Library, October 2019.

¹⁰ See *Water Supply (Safety and Reliability) Act 2008* (Qld) sch 3 definition of ‘water security’; *Water Supply (Safety and Reliability) Act 2008* (Qld) s 390(8); *Water Act 2007* (Cth) ss 3(e), 20(g).

¹¹ UN Water, *Water Security & the Global Water Agenda* (Report, 2013) 1.

¹² UN General Assembly, *The human right to water and sanitation: resolution / adopted by the General Assembly, 3 August 2010, A/RES/64/292.*

Recognising the lack of protections for drinking water in the Territory, EDO applauds the NT Government's commitment to implement stand-alone safe drinking water legislation by 2024.

It is imperative that this legislation protects the quantity and quality of drinking water *equally* for *all* Territorians across the Territory. Although the NT Government committed under the NWI to providing "healthy, safe and reliable water supplies"¹³ in relation to urban water reform, this proposed legislation is an opportunity for the NT Government to modernize its commitment to apply Territory-wide.

EDO urges the NT Government to adopt, both in the Plan and proposed safe drinking water legislation, the Australian Drinking Water Guidelines (**ADWG**) as an enforceable standard for water quality across the Territory.

Although the ADWG are non-mandatory guidelines, they can be implemented at the discretion of the NT Government. Noting the ADWG undergo regular revision, their adoption would ensure the Territory's drinking water is monitored against the most up-to-date scientific evidence.

The annual auditing of water quality against the ADWG, proposed in the Draft Plan, will not achieve any additional layer of protection unless the ADWG are adopted as an enforceable standard. Water quality is currently already monitored annually by Power and Water against the ADWG¹⁴ and the NT Government is aware of instances where the ADWG are not being met in communities across the Territory.¹⁵

For monitoring to be successful, it must be accompanied with compliance and enforcement measures, including statutory powers.

Although the development of stand-alone safe drinking water legislation is the first step towards protecting Territorians' access to this basic human right, the creation of this legislation without an enforceable standard by which water quality can be measured will result in non-existent protections.

Recommendation 3: Commit to adopting the Australian Drinking Water Guidelines as an enforceable standard in the Territory.

Safe Drinking Water Legislation: Water quality monitoring

Currently the Draft Plan proposes that water quality will be monitored against "agreed guideline values" through drinking water management plans outlining how water quality will be improved. EDO supports the development of water management plans with communities and applauds the Government's efforts to improve community consultation and engagement in vital decision-making processes. However, we are concerned with how drinking water quality will be monitored and the proposal to create tiered water management plans that will vary in detail and requirements depending on the size and complexity of the particular water supply.

¹³ NWI (n 4), s 90(i).

¹⁴ Productivity Commission National Water Reform 2020 Inquiry Report (n 3).

¹⁵ Northern Territory Government, Media Release: Office of the Chief Minister, *Improving water quality and supply in remote communities*, 22 April 2021 < <https://newsroom.nt.gov.au/article?id=34375> >

The ADWG should be the agreed guideline values by which water quality is monitored. The human right to safe drinking water must be protected Territory-wide. If a 'tiered' approach is adopted, it must expressly ensure that differentiated requirements do not compromise equitable access to safe drinking water for all Territorians.

Recommendation 4: Adopt a consistent Territory-wide approach to monitoring water quality.

5. Trust and Confidence

The Draft Plan also identifies Trust and Confidence as a priority area under which particular actions and reforms will be implemented including Government leadership in water efficiency, Territory voices in water security and the role of the Office of Water Security.

Territory Voices in Water Security

EDO applauds the NT Government's commitment to create a Strategic Water Advisory Council (**Council**) by 2023 to ensure Territorians have a voice on strategic water issues.

One of the core elements of the NWI is "community partnerships." This includes the "open and timely consultation with all stakeholders" in relation to "significant decisions that may affect the security of water access entitlements or the sustainability of water use."¹⁶ Relevant "actions" under this element include such things as the:

*"provision of accurate and timely information to all relevant stakeholders in relation to the progress of water plan implementation and other issues relevant to the security of water access entitlements"*¹⁷

Noting the Council will advise on the implementation of the Draft Plan including regulatory and legislative reforms,¹⁸ it is vital the Council is properly established under legislation.

The establishment of the Council should not reflect the establishment of a Water Advisory Committee (**WAC**) under the Water Act due to a number of issues with the relevant legislative provisions.

Firstly, the creation of the Council must be mandatory. Currently, the proposed creation of a WAC is entirely discretionary.

Secondly, membership of the Council and the appointment of members must be clearly outlined in legislation. In relation to a WAC, the Water Act states these committees are to "consist of such members as the Minister thinks fit and the members shall hold office at the Minister's pleasure." This means there

¹⁶ NWI(n 4), s 95.

¹⁷ Ibid, Schedule A.

¹⁸ Draft Territory Water Plan, 7.

is no guarantee of adequate representation from key stakeholders, including Traditional Owners and local community representatives.

Noting the Draft Plan further explains selection criteria and scope for the Council will be developed in consultation with key stakeholder groups, EDO submits it is imperative that representatives from identified key stakeholders are listed as members of the Council, thus requiring a representative to sit on the Council at all times.

Thirdly, the Council should include an advisory role to the Minister for Water Security, noting it is envisaged the Council will advise on the implementation of the Draft Plan.

In relation to a WAC, although established by the Minister, there is no legislative mechanism by which the advisory committee is actually required to brief or report to the Minister. Instead, the Water Act only requires that the WAC provides advice to the Water Controller.¹⁹

Fourthly, the legislation establishing the Council should include clear requirements relating to the term of office for members, disclosure of conflict of interests, minute taking and decision-making protocols.

Water resource legislation in both NSW and Victoria include clear provisions relating to the representation of committees and offer some useful guidance for the establishment of the Council. The *Water Management Act 2000* (NSW) (**NSW WMA**) includes express provisions with respect to some of these key issues, including membership of committees.²⁰ The *Water Act 1989* (VIC) includes provisions requiring that “all relevant interests are fairly represented”²¹ and outlines the specific parameters for advisory members²² on committees.

In its May 2021 assessment of the NWI implementation, the Productivity Commission pointed out that there had been a decline in the number of WACs, with some ceasing,²³ and noted that “*while water plans remain under development, community concern around the level of water extraction and the lack of community engagement is increasing.*”²⁴ The Commission noted that in 2017, 80 people were appointed to WACs in the NT, however as of March 2021 there were only 12.²⁵

The Commission also highlighted the importance of continued community consultation to contribute to the development of water allocation plans, which must include First Nations engagement on country to ensure community voices are heard and environmental and cultural values considered within water management plans.²⁶

¹⁹ *Water Act 1992* (NT), ss 23(1B) (a) & (3).

²⁰ *Water Management Act 2000* (NSW), ss 11-14; Schedule 6.

²¹ *Water Act 1989* (VIC), s 29(2)(a)(i).

²² *Water Act 1989* (VIC), s 29(2)(a)(b).

²³ *Productivity Commission National Water Reform 2020 Inquiry Report* (n 3) 37.

²⁴ *Ibid*, 27.

²⁵ *Productivity Commission National Water Reform 2020 Inquiry Report* (n 3), 208.

²⁶ *Ibid*, 37.

Active community engagement is vital to the successful implementation of the Plan and its reform agenda. A legislative basis for the Council, and the requirement for the Council to advise the Minister directly, will demonstrate to the community that Territory voices matter.

Recommendation 5: Set out the requirements for establishing the Strategic Water Advisory Council in legislation, including:

- **that the creation of the Council must be mandatory;**
- **membership of the Council and the appointment of members must be clearly outlined in legislation;**
- **the Council should include an advisory role to the Minister for Water Security; and**
- **the legislation establishing the Council should include clear requirements relating to the term of office for members, disclosure of conflict of interests, minute taking and decision-making protocols.**

Metering

The Draft Plan notes the Territory's aspirations for a growing population and an economy of \$40 billion by 2020. It is imperative that a robust metering framework is implemented as the use of the Territory's water resources increases. An effective water metering regime significantly assists government with improved water management and compliance, while also increasing trust among water users and the public generally.

We acknowledge the work done to date including the development of the My Meter App online portal, as mentioned in the Draft Plan. However, the Northern Territory Non-Urban Water Metering Code of Practice for Water Extraction Licences (**Metering Code**) is a non-binding code which requires, *inter alia*, new meters installed after 30 June 2017 to reflect the Code (while pre-existing metres have until 2027 to comply).²⁷ The Metering Code is not referenced in the Water Act or the Regulations and is only enforceable when compliance with its terms is included as a condition on new or renewed licences. It is unclear how many water licences in the NT include relevant metering conditions.

An effective metering framework should:

- mandate the use of meters for all water licences (above an appropriate threshold and subject to reasonable exemptions);
- ensure metering obligations are entrenched within legislation rather than just imposed as conditions on individual licences; and
- promote, and where appropriate require, the use of best available technologies such as smart meters and telemetry devices.

We note the Draft Plan includes a commitment to develop a water charging framework (which we acknowledge as a step forward in meeting commitments under the NWI). The development of a

²⁷ Department of Environment, Parks and Water Security, *Non-Urban Water Metering Code of Practice for Water Extraction Licences* <https://depws.nt.gov.au/__data/assets/pdf_file/0010/438580/factsheet-non-urban-water-metering-code-of-practice.pdf>

metering framework could be developed in conjunction with the water charging framework and assist in meeting priority 6 of putting a value on water.

Recommendation 6: Commit to establishing a Territory wide non-urban metering framework that is entrenched in legislation and requires the use of the best available technology.

6. Sustainability

The Draft Plan also identifies sustainability as a priority area under which particular actions and reforms will be implemented including placing a value on water, contemporary water resource management legislation, and climate resilience and adaptation for the water sector.

Contemporary Water Resource Management Legislation

EDO strongly commends the NT Government's commitment to replace the Water Act by 2026 with a regulatory regime that supports sustainable development through the adoption of best practice water resource management.

The new Water Act should adopt the principles of ecologically sustainable development (**ESD**).

The principles of ESD underpin most modern legislative frameworks dealing with natural resource management.²⁸ This concept is found in the legislation covering water management in NSW, Queensland and South Australia, and also within the Commonwealth's *Water Act 2007* (**Commonwealth Water Act**).²⁹

In many jurisdictions, water legislation not only integrates the principles of ESD, but also contains separate provisions establishing relevant duties on decision makers to consider and adopt the principles of ESD.

In addition to incorporating the principles of ESD, some jurisdictions explicitly prioritise water management principles that protect and restore water sources, floodplains and dependent ecosystems. For example, the water management principles in the NSW WMA are given effect by a separate provision which imposes a duty on all persons exercising functions under the Act to:

- “take all reasonable steps to do so in accordance with, and so as to promote, the water management principles of this Act”; and
- in relation to the sharing of water from a water source, give priority to water management principles, including to prioritise the protection of the water source and its dependent ecosystems.³⁰

²⁸ For further analysis of the application of ESD in Australian legislation see: Environmental Defenders Office (EDO), *What is Ecologically Sustainable Development (ESD)?* (February 2022), < <https://www.edo.org.au/wp-content/uploads/2022/02/220214-What-is-ESD.pdf> >

²⁹ See: WMA, s 3(1); *Water Act 2000* (Qld), s 2(2)(a); *Landscape South Australia Act 2019* (SA), s 7(1); *Water Act 2007* (Cth), s 21(4).

³⁰ *NSW Water Management Act*, ss 9(1)(a)-(b), 5(3)

That is, the NSW WMA very clearly identifies that social and economic benefits are only to be fostered through the environmentally sustainable use of water resources.³¹

The current Water Act contains no such duties and fails to ensure that the economic and social benefits of water extraction only occur within an environmentally sustainable framework.

Recommendation 7: Commit to the inclusion of the principles of ecologically sustainable development in new water resource management legislation. It should also prioritise water management principles that protect and restore water sources, floodplains and dependent ecosystems.

Water Planning

The Draft Plan does not include reference to water planning or the development of water allocation plans (**WAP**).

Water planning is an essential element of best practice water resource management and is the foundation of the NWI. One of the objectives of the NWI is “transparent, statutory-based water planning”.³²

Since water resources are highly variable and dependent upon local climatic conditions and terrain, the NWI requires the development of “water plans” (WAPs in the NT) at the regional or catchment scale.³³ The purpose of water plans is to assist governments and the community to determine water management and allocation decisions to meet productive, environmental and social objectives.

The fact that only approximately 5% of the NT is covered by a WAP is concerning.³⁴ It is imperative that the Draft Plan commits to increasing the coverage of WAPs as a priority action. Further, the existing priority actions included in the Draft Plan should be implemented through WAPs where appropriate.

As detailed in EDO’s [briefing note on deficiencies in water law and governance](#), the Water Act does not include an adequate framework for preparing and negotiating WAPs. Currently, the water planning process under the Water Act and WAPs, in particular, are deficient in several respects.

³¹ For a detailed discussion of the objects, water management principles and duties of the WMA, as well as the related applicability of the “triple bottom line approach”, see: NSW Independent Commission Against Corruption, *Final Report, investigation into complaints of corruption in the management of water in NSW and systemic non-compliance with the Water Management Act 2000* (November 2020), 30-35 <<https://www.icac.nsw.gov.au/investigations/past-investigations/2020/nsw-government>>

³² NWI, s 23(ii).

³³ NWI, s 36.

³⁴ Hansard, Legislative Assembly of the Northern Territory, Debates and Questions 16 October 2019, Water Further Amendment Bill, p 7323; William Nikolakis & R. Quentin Grafton (2022) “Law versus justice: the Strategic Aboriginal Water Reserve in the Northern Territory, Australia”, *International Journal of Water Resources Development*, 38:1, 11-29, DOI: [10.1080/07900627.2021.1882406](https://doi.org/10.1080/07900627.2021.1882406).

1. There is no legal requirement to create a WAP

Water planning in the Territory is governed by the Water Allocation Planning Framework, a non-legally binding policy document.

2. The Water Act imposes few requirements regarding the content of WAPs

Effective water legislation must set out, in a sufficient level of detail, the binding content of water plans for any given catchment. Section 22B of the Water Act contains few requirements regarding the content of WAPs.

3. The Water Act does not define an ‘estimated sustainable yield’

One of the most important features of any water legislation is a requirement to set limits on extraction for each water resource, and that this limit be based on the best-available science and evidence regarding environmental and cultural requirements within the catchment. The Water Act requires that WAPs allocate water “within the estimated sustainable yield” (ESY).³⁵ However, the Act does not:

- define ESY;
- include a methodology for determining the ESY;
- specify that it must be based on best-available scientific and cultural knowledge;
- or
- indicate that the ESY is legally enforceable.

4. There is no statutory timeframe for the declaration of WAPs

The delay in the introduction of WAPs means that water may already be allocated in excess of the sustainable limits within specific water sources.

It is imperative that the committed replacement of the Water Act with contemporary water resource management legislation addresses the above deficiencies. The NT Government has an opportunity to learn from other jurisdictions and adopt a best practice approach to water planning in the Territory that is legally binding, requires community consultation and is based on the best available science.

Recommendation 8: Commit to water planning as a priority action.

Climate change

We welcome the inclusion of priority action 10 and the commitment of a Territory-wide climate risk assessment and adaptation plan for water security by 2024 (**Climate Risk Assessment**). Managing and adapting to the impacts of climate change on water resources is enormously challenging. In part, this is because historical climate records, which have historically underpinned water management decisions, may no longer accurately represent future water availability.

In the absence of certainty as to future water availability, it is imperative that the Territory adopt a precautionary approach in making decisions on such things as extraction limits, consumptive pools, estimated sustainable yields and licensing decisions. Consideration of climate change, and a

³⁵ Water Act, s 22B(5)(a).

precautionary approach, must therefore pervade the entire water management framework and not be confined to adaptation projects tacked-on to the existing regulatory structure. These priorities should be adopted immediately, rather than waiting for the outcome of the Climate Risk Assessment or the introduction of the new Act in 2026.

The commitment of a new Water Act by 2026 provides the perfect opportunity to entrench climate change considerations, and appropriate precautionary approaches to water management, within the Territory's legislative framework. The Draft Plan acknowledges this at page 30, noting that the framework for allocation decisions set by the new Act must take into account the risks and impacts of climate change.

Recommendation 9: Extend priority action 10 to explicitly state that due to climate change:

- **a precautionary approach should immediately be adopted at all levels of water management; and**
- **the outcomes and findings of the 2024 climate risk assessment will underpin the development of the new water Act.**

7. Conclusion

The NT Government has an opportunity to address current deficiencies in water law and governance in the Territory and demonstrate its commitment to modernizing water resource management by renewing and updating its commitments under the NWI.

The Government's commitments under the NWI should drive the development of the Draft Plan and priority actions. The Draft Plan should include clear details of how the NT Government will meet its commitments under this initiative and how they will set a standard for other jurisdictions.