



Environmental
Defenders Office

**Submission on the consultation draft of the Fitzroy-
Derby Water Resources Management Plan (Draft Report
No. 80, April 2026)**

2 July 2026

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 40 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.

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Submitted to:

WA Department of Water and Environmental Regulation

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Acknowledgement of Country

The EDO recognises and pays respect to the First Nations peoples of the lands, seas and rivers of Australia. We pay our respects to the First Nations Elders past and present, and aspire to learn from traditional knowledges and customs that exist from and within First Laws so that together, we can protect our environment and First Nations cultural heritage through both First and Western laws. We recognise that First Nations Countries were never ceded and express our remorse for the injustices and inequities that have been and continue to be endured by the First Nations of Australia and the Torres Strait Islands since colonisation.

EDO recognises the right to self-determination of First Nations peoples, including their right to freely determine their own political status and freely pursue their economic, social and cultural development. This extends to recognising the many different First Nations within Australia and the Torres Strait Islands, as well as the multitude of languages, cultures, protocols and First Laws.

First Laws are the laws that existed prior to colonisation and continue to exist today within all First Nations. It refers to the learning and transmission of customs, traditions, kinship and heritage. First Laws are a way of living and interacting with Country that balances human needs and environmental needs to ensure the environment and ecosystems that nurture, support and sustain human life are also nurtured, supported and sustained. Country is sacred and spiritual, with culture, First Laws, spirituality, social obligations and kinship all stemming from relationships to and with the land.

A note on language

We acknowledge there is a legacy of writing about First Nations peoples without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. For the purpose of this submission, we have chosen to use the term Traditional Owners. We acknowledge that not all Traditional Owners will identify with that term and that they may instead identify using other terms or with their immediate community or language group.

First Laws is a term used to describe the laws that exist within First Nations. It is not intended to diminish the importance or status of the customs, traditions, kinship and heritage of First Nations in Australia. The EDO respects all First Laws and values their inherent and immeasurable worth. EDO recognises there are many different terms used throughout First Nations for what is understood in the Western world as First Laws.

Executive Summary

The Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the consultation draft of the Fitzroy-Derby Water Resources Management Plan (**Plan**).

EDO supports the development and implementation of the Plan. We make the following recommendations to strengthen the Plan and its implementation, to achieve the Plan's objectives.

Summary of Recommendations

a. Overarching principles for Plan development

1. The Plan must be developed and implemented in accordance with the:
 - a. precautionary principle; and
 - b. best available science, including climate science and First Nations knowledge (with consent, in accordance with cultural protocols, and with protection of ICIP).
2. Climate change impacts must be considered and accounted for when developing and implementing the Plan, and in the exercise of all relevant functions by decision-makers.

b. Allocation limits

Precautionary approach and accounting for uncertainties

3. The Plan must ensure allocation limits reflect a precautionary approach, including by:
 - a. setting conservative limits where information (for example regarding recharge rates, saline intrusion, or the role of regional aquifers in sustaining surface waters and groundwater dependent ecosystems) is unclear or uncertain;
 - b. setting limits that account for relevant impacts, including climate change impacts;
 - c. providing for monitoring and data collection in the Plan's implementation;
 - d. incorporating adaptive management mechanisms and reviews of allocation limits that consider results of monitoring and data collection.
4. The Plan must set allocation limits for the Greater Derby Wallal and Erskine resources, and Fitzroy Wallal and Grant Poole resources, to a lower proportion of estimated annual recharge.
5. The following further data must be obtained to inform the Plan:
 - a. coupled groundwater-surface water monitoring sites to understand groundwater-surface water gradients and interactions;
 - b. nested monitoring bores to constrain hydraulic gradients between aquifers;
 - c. further hydrochemistry sampling programs of rivers, groundwater, and springs to constrain groundwater discharge; and
 - d. remotely sensed and field data collection for groundwater dependent ecosystem mapping and characterisation.

6. Where relevant information is unavailable or uncertain, the Plan must explain why this is the case, and how relevant information will be obtained and used in the future to review and implement the Plan.
7. Allocation limits must be underpinned by the best available science.

Aboriginal Water Holding

8. The Plan must outline how the Aboriginal Water Holding will be accessed, and governance arrangements and funding for Prescribed Bodies Corporate will operate. These processes must be co-designed with Traditional Owners.
9. The Plan must outline how the Aboriginal Water Holding will be prioritised to ensure that it is not impacted or reduced.

c. Licensing

Decisions on licence applications

10. The Plan must include mandatory considerations in the assessment of an application for a water licence, including:
 - a. Traditional Owners' water related interests, including cultural values and interests, and Aboriginal Cultural Heritage;
 - b. native title rights and interests; and
 - c. the impacts of climate change (including future projections).
11. The Plan must include mandatory requirements in relation to consultation between licence applicants and affected native title parties (including affected native title holders beyond the proposed project location) that reflect FPIC principles.
12. The Plan must impose thresholds for action by a decision maker, rather than applying an unguided discretion.

Metering requirements

13. The Plan must provide more detail about what conditions are to be included for licences granted in the Plan area, for example:
 - a. details about the frequencies, methodologies and technologies to be used for water metering, which are consistent with the Metering Framework;
 - b. requirements for monitoring of cultural indicators used by Traditional Owners to monitor the impacts of water take on Country and cultural values; and
 - c. triggers for additional investigation and reporting of impacts to DWER, where monitoring indicates potential harms to water resources and/or cultural values.
14. The Plan must require monitoring to be undertaken consistent with any agreements with Traditional Owners.

d. Monitoring

Monitoring of Plan implementation

15. The Plan must detail:

- a. the monitoring DWER will undertake, including where and how frequently monitoring will take place, and technologies to be used (e.g. telemetry, real-time monitoring of aquifer recharge, reliance on existing meters);
- b. the metrics DWER will use to determine how effective and appropriate the Plan is, including parameters for evaluation, ecological baselines, targets and thresholds for unacceptability; and
- c. how DWER will account for and address existing issues with water data collection and review in WA in the Plan's implementation;
- d. how DWER will review the Plan (including allocation limits) over time, including ongoing engagement with Traditional Owners and incorporation of First Nations knowledge (with consent, in accordance with cultural protocols, and with the protection of Indigenous Cultural and Intellectual Property).

16. The Plan must outline how DWER will seek and utilise independent scientific input to enhance monitoring and water outcomes.

Monitoring compliance with licences

17. The Plan must include more information about how DWER will investigate and respond to non-compliance, including:

- a. targets for funding, staff and time to be dedicated to its compliance and enforcement functions; and
- b. targets for the proportion of flagged non-compliances are to be investigated, and the number of on-ground inspections to be completed across the Plan area; and
- c. mandatory triggers in response to which DWER will investigate potential non-compliance, and pursue enforcement action in response to non-compliances.

e. Water Advisory Committee

18. Establish the committee as a local water resource management committee under the Water Act.

19. Establish the committee before the Plan is finalised, so the committee can provide input on the Plan.

20. Release the proposed terms of reference and membership requirements of the committee for public consultation.

21. The terms of reference (or, if these are not released for public comment ahead of the Plan being finalised, the Plan) should prescribe that:

- a. at least 50 percent of committee members must be Traditional Owners;

- b. the committee must include members with knowledge of and experience in the management, development and sustainable use of water resources and conservation of ecosystems; and
- c. the committee be consulted on decisions under the Plan.

f. Regulation of floodplain harvesting and fracking

Regulation of floodplain harvesting

- 22. The Plan should prohibit floodplain harvesting in the Plan area.
- 23. If/where floodplain harvesting is not prohibited in the Plan:
 - a. allocation limits must account for floodplain harvesting; and
 - b. floodplain harvesting must be regulated, including requiring licences for take and limiting extraction (i.e. no further growth, or reduced if necessary). This should be subject to best practice measurement and monitoring requirements, including principles articulated by the Commonwealth Environmental Water Holder.
- 24. To the extent there is concern that floodplain harvesting cannot be regulated under the Water Act, the Minister (or committee established under the Act) must make by-laws to regulate floodplain harvesting.
- 25. DWER should conduct research to estimate the current take occurring through floodplain harvesting in the Plan area, to inform implementation of the Plan.

Regulation of mining and fracking

- 26. The Plan must account for impacts of fracking, including by adopting precautionary approaches to setting allocation limits where data or risks are uncertain.
- 27. DWER should work with the Department of Mines, Petroleum and Exploration to produce a collective policy position regarding the interaction between fracking and water in WA, in line with a precautionary approach.

g. Engagement with Traditional Owners

- 28. The Plan must require a licence applicant to:
 - a. provide further information regarding how an application may affect Traditional Owners' water-related rights, interests, cultural values and heritage, including evidence that they consulted with the relevant native title parties; and
 - b. respect FPIC principles. This includes early engagement with the relevant native title parties at the project planning stage and before submitting a water licence or permit application, and compliance with best-practice engagement, among other matters outlined on page 25 of the Plan.
- 29. The Plan must:
 - a. require DWER to inform relevant native title parties and the Kimberley Land Council about a licence or permit application or amendment;

- b. require DWER to consider relevant comments from the native title parties, and relevant information provided by any interested person who makes a submission on an application, before deciding on the application; and
 - c. extend the minimum 30-day period for comments, following engagement with native title parties.
30. Amend the phrase “water licence, permit application or licence amendment” to promote clarity and avoid confusion.

h. Transparency

31. The Plan must require:
- a. licensees to share reporting with relevant native title parties;
 - b. DWER to report on the implementation of the Plan every five years;
 - c. DWER to publish information related to licence applications and decisions; licence conditions; its metering and monitoring activities, including data collected; its compliance and enforcement activities; and licensees’ compliance with licence conditions; and
 - d. the committee to record committee meetings, and publish membership lists, meeting minutes, and recommendations.
32. The Plan must include mechanisms by which the public can access information related to the Plan and its implementation.
33. If DWER maintains its current position that particular information relating to the Plan cannot be released, DWER must identify and explain the legislative or other basis for this constraint.

We include additional recommendations for policy and legislative reform in the second section of this submission.

Introduction

WA's *Rights in Water Irrigation Act 1914* (**Water Act**) has severe limitations, including in relation to its capacity to effectively allocate and monitor water resources and enforce against non-compliance.¹

The WA Government previously recognised significant reform was needed, and was developing a package of proposed reforms to the Water Act.² However, the WA Minister for Water (**Minister**) announced in 2023 that the reforms would not proceed, stating “legislative change is not required when there are other immediate, practical avenues to improve water security”.³ The Productivity Commission has noted the withdrawal of the reforms means “water planning [...] continues to be based on out-of-date, 110-year-old legislation”, with communities bearing clear opportunity costs as a result.⁴

Further, the WA Auditor General has found that the Department of Water and Environmental Regulation (**DWER**) is not adequately resourced to effectively monitor and enforce compliance with water licences in WA.⁵

Legislative and policy reforms are essential to adequately protect WA's water resources. In the absence of reform, the WA Government has an opportunity to draft its water plans in a way that provides an ‘immediate, practical avenue’ to improve water regulation in the State.

Water plans can and must assist in addressing WA's water regulation challenges. Front-loading the WA Government's commitments to effective water allocation, licensing, monitoring, transparency, and compliance and enforcement in the Plan will help to protect water and achieve the objectives of the Plan.

The recommendations in this submission draw on EDO's expertise in water law, policy and regulation.

¹ Dr M Hartley, ‘Watertight or watered down? An update on water law reform in Western Australia’ (2016) 30(8) *Australian Environment Review* 208.

² Department of Water, Securing Western Australia's water future, Position paper - reforming water resource management (September 2013) (**2013 Position Paper**), p 4. Drafting of new water laws was approved in 2015: Department of Water, Information sheet – New water resources laws (Water law series). The proposed water reform legislation was expected to have made water licensing and planning activities in WA consistent with its commitments under the National Water Initiative: Australian Productivity Commission, [National Water Reform Inquiry Report 2024](#) (**2024 Inquiry Report**), pp 17, 127.

³ Minister for Water, [Water priorities reset to focus on practical measures](#) (Media statement, 21 December 2023).

⁴ 2024 Inquiry Report, pp 17, 56.

⁵ Office of the Auditor General, [Regulation of Water Licences](#) (11 June 2025) (**AG Report**).

Recommendations for the Plan

EDO is a non-Indigenous community legal centre that works on behalf of First Nations peoples around Australia and the Torres Strait Islands in their efforts to protect their Country and Cultural Heritage. The Plan must facilitate substantive recognition and promotion of First Nations access to, interests and rights in, and self-determined outcomes for, the water resources to which the Plan applies. It is essential that there is meaningful and ongoing engagement with Traditional Owners via their chosen representative organisations in the development, monitoring and implementation of the Plan.

EDO supports the development and implementation of a water plan for water resources in the Fitzroy-Derby area. We make the following recommendations to strengthen the Plan and its implementation, to achieve the Plan's objectives.

a. Overarching principles for Plan development

The Plan must be prepared and implemented in accordance with the following, which represent core elements for protecting water resources in the Plan area.

1. The Plan must be prepared in accordance with the precautionary principle

The precautionary principle states that where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.⁶ To achieve the objectives of the Plan, the Plan must set allocation limits and outline management outcomes and measures in accordance with a precautionary approach.

2. Climate change must be accounted for in the Plan

Climate change is impacting, and will increasingly impact, water resources and dependent ecosystems and communities across Australia, including in the Plan area. The 2025 Australian National Climate Risk Assessment found:⁷

- Freshwater ecosystems are highly exposed to climate change pressures, particularly water security issues.

⁶ See, for example, *Environmental Protection Act 1986* (WA), s 4A; *Water Act 2007* (Cth) s 4(2).

⁷ Commonwealth Government, *Australia's National Climate Risk Assessment*, (Webpage, 2025) <https://climateservice.maps.arcgis.com/sharing/rest/content/items/9d4850b2d64d47e28407c04681b0eeca/data>.

- Increased variability in rainfall, changes in temperature, and more frequent droughts are having devastating impacts on freshwater ecosystems. These changes affect water availability, leading to increased competition over water resources.
- Future increases in intense rainfall events, increases in temperature, and more frequent and prolonged droughts will further strain freshwater ecosystems.
- Climate change is threatening First Nations peoples' ability to connect with Country, practice culture, and threatens physical, mental, community, and cultural health and wellbeing. First Nations peoples are directly impacted by hazards that compromise natural environments and services, particularly in remote communities.

Water extraction limits must be based on the best available science, which must account for climate change impacts and projections.

Climate change is a key consideration in the application of the precautionary approach and best available science (including, for example, climate projections). It is essential that decision-makers are required to consider climate change when making decisions under or related to the Plan.

Recommendations

1. The Plan must be developed and implemented in accordance with the:
 - a. precautionary principle; and
 - b. best available science, including climate science and First Nations knowledge (with consent, in accordance with cultural protocols, and with protection of ICIP).
2. Climate change impacts must be considered and accounted for when developing and implementing the Plan, and in the exercise of all relevant functions by decision-makers.

b. Allocation limits

EDO supports allocation limits on groundwater and surface water take in the Plan area, and the incorporation of a consultation process to inform such limits. We support this consultation process to the extent that it has been conducted in accordance with cultural protocols and the principles of Free, Prior and Informed Consent (**FPIC**),⁸ as discussed below.

EDO supports allocation limits founded on consultation and environmental protection, with licensed take restricted for the Fitzroy river and its tributaries and the Alluvial resources in the

⁸ *United Nations Declaration on the Rights of Indigenous Peoples* (A/RES/61/295FPIC), arts. 18, 19, 32.

Greater Derby and Fitzroy subareas.⁹ EDO also supports that the allocation limit for the Wallal and Erskine aquifers on the Derby Peninsula reflect Derby's water needs with no further extraction permitted, but notes that improved characterisation is needed of the freshwater seeps of the mudflats and the mangrove ecosystems near King Sound that may be impacted.¹⁰

We make some recommendations below in relation to the implementation of the precautionary principle in response to information gaps and uncertainties, and in respect of the Aboriginal Water Holding, in the Plan.

Precautionary approach and accounting for uncertainties

The Plan expressly acknowledges that there are gaps and uncertainties in the information relied on. We understand these gaps and uncertainties can be a reality of water planning and regulation, particularly in the face of resourcing constraints. However, the Plan can and should provide clarity about how these uncertainties and gaps have been accounted for and will be addressed in its implementation.

The Plan identifies that factors such as limited monitoring data, complex hydrogeology and climate change increase uncertainties about potential impacts on water resources, and support “a precautionary, risk-based and adaptive approach to water management”,¹¹ and that the Plan “reflects a precautionary approach to setting allocation limits for groundwater resources”.¹²

The Plan also includes statements such as:¹³

- “surface water use is variable, and we don't have a method available to estimate it”;
- “[s]ite-specific assessments are required to understand local water availability”;
- allocation limits were not set “[w]here water availability is highly variable or poorly understood”; and
- industry-specific outcomes or management strategies could not be developed where “water demand for a future mining industry in the plan area is unclear”.

It is not consistent with a precautionary approach to exclude particular kinds of take where scientific evidence is uncertain or incomplete. In the case of uncertainties, the Plan must adopt conservative allocation limits and strategies to mitigate harms to the water resources that are the

⁹ DWER, ‘Consultation draft – Fitzroy–Derby water resources management plan: Methods’ (**Methods Report**), pp 47-49.

¹⁰ Methods Report, pp 54, 58.

¹¹ Methods Report, p 9.

¹² Plan, p 3; Methods Report, pp 2, 5.

¹³ Methods Report, pp 1, 2, 31, 36.

subject of the Plan. It is also critical to development outcome and strategies in advance, even if these require review and updates as demand changes. Available measures to reduce harms should be considered and included in the Plan where appropriate.

Additionally, relevant impacts on water resources are not included in the modelling and other calculations used to set allocation limits in the Plan. For example, impacts of climate change and uncertainties were not considered when calculating rainfall recharge estimates.¹⁴ Water planning must rely on climate projections rather than historical data. In the Murray-Darling Basin, climate change projections were not accounted for in determining the environmentally sustainable level of take.¹⁵ Recent research in the Darling-Baaka River found that approximately 30 per cent of flow reduction over the study period was attributable to climate change.¹⁶ This is one illustration of why allocation limits and management mechanisms in the Plan must be based on the best available science, including climate projections. Where sufficient data is not available, limits must be conservative, consistent with the precautionary principle.

Specifically, EDO is concerned that the 40 per cent allocation limit that is proposed for the Greater Derby Wallal and Erskine resources, and Fitzroy Wallal and Grant Poole resources, does not reflect a precautionary approach. This allocation limit is too high for the following reasons:

- Any extraction from the Greater Derby Wallal and Erskine resources (aquifers) will reduce aquifer pressure and throughflow. This will likely accelerate migration of the saltwater interface inland, impact groundwater dependent ecosystems reliant on groundwater discharge from the aquifer, and may result in salinisation of Derby water supply bores.¹⁷ These include persistent river pools and floodplain wetlands on the May River, the Martuwarra Fitzroy River, and mangroves and saltmarshes in the intertidal zone and the salt flats in the supra-tidal zone of King Sound.¹⁸
- The possibility of increased extraction is particularly concerning given the saltwater interface is already known to have migrated landwards in the Wallal aquifer in the Derby Peninsula region, and is likely to be migrating in the Erskine aquifer, given current water supply needs and extraction for Derby are already higher than estimated aquifer throughflow.¹⁹

¹⁴ The Plan states DWER used “long-term historical rainfall records to calculate rainfall recharge estimates to inform water allocation limits”: Methods Report, p 14.

¹⁵ South Australian Law Reform Commission, *Murray Darling Basin Royal Commission Report* (Report, January 2019) 267.

¹⁶ R Quentin Grafton et al, 'Resilience to Hydrological Droughts in the Northern Murray-Darling Basin, Australia' (2022) 380 *Philosophical Transactions of the Royal Society A* 20210296.

¹⁷ Methods Report, pp 78, 92, 102.

¹⁸ Methods Report, p 25.

¹⁹ Methods Report, pp 25, 58.

- Uncertainty in future recharge is high due to the small number of samples available to estimate recharge, the uncertainty in recharge area, rate, and mechanisms, inherent limitations of the methods available to estimate groundwater recharge,²⁰ and uncertainty in how climate change will impact rainfall and recharge.²¹ EDO commends the efforts to constrain recharge, recognising that multiple methods have been applied, with repeat sampling of some bores. We also acknowledge the limited spatial coverage in bores available to sample the aquifers. The following particular observations are made in respect of the recharge calculations presented in the 'Consultation draft – Fitzroy–Derby water resources management plan: Methods' (**Methods Report**),²² which have bearing on the uncertainty:
 - It has been assumed that recharge is entirely through the process of rainfall infiltration.²³ The implications of focused recharge or recharge from flood waters for the results are not considered. Given the Fitzroy catchment and hydrogeological units contain multiple major fault zones²⁴ and areas of flood inundation, it seems plausible that these recharge mechanisms occur. We acknowledge it is very difficult to measure and constrain these forms of recharge, but believe this uncertainty highlights the need for a more precautionary approach.
 - There are a small number of samples available for some of the aquifers with limited spatial distribution. In the Derby Peninsula region, two samples were available for the Wallal aquifer and four for the Erskine sandstone. For the Grant and Poole aquifers, a total of 13 sites were considered suitable for the Chloride mass balance method.²⁵
 - One of the bores shows significant inter-sample variability (1-04 Camballin), with a near 30 per cent difference between estimated recharge rates from two repeat samples.²⁶
 - The variability in the recharges rates calculated using both the Chloride mass balance and Radiocarbon methods is high. For the Grant Group, recharge rates calculated using Chloride mass balance method vary by a factor of 20 (range 0.69-15.94). For the Poole sandstone, recharge rates calculated using CMB vary by a factor of 3 (range 2.33-6.33 mm/year).

²⁰ Scanlon, B.R., Healy, R.W. & Cook, P.G. Choosing appropriate techniques for quantifying groundwater recharge. *Hydrogeology Journal* 10, 18–39 (2002). <https://doi.org/10.1007/s10040-001-0176-2>

²¹ Zheng, H., Chiew, F., Post, D., Robertson, D., Charles, S., & Potter, N. (2024). Projections of future streamflow for Australia informed by CMIP6 and previous generations of global climate models. *Journal of Hydrology*, 636, 131286. <https://doi.org/10.1016/j.jhydrol.2024.131286>.

²² Methods Report, Appendix B.

²³ Ibid.

²⁴ Ibid, Figure 11, p 69.

²⁵ Ibid, p 93-95.

²⁶ Ibid, Table 21, p 94.

- There is significant uncertainty in many elements of the hydrogeological characterisation, including groundwater-surface water connectivity, how aquifers will respond to abstraction, how aquifers support groundwater dependent ecosystems, preferential flow paths, and the volumes of water each aquifer contributes to river baseflow.²⁷ All aquifers considered in the Plan are known to provide baseflow to surface tributaries and in some cases, springs, which support culturally and ecologically significant sites and ecosystems. A forty per cent reduction in water storage in these aquifers could have irreversible and unacceptable impacts.
- Future rainfall and groundwater recharge resulting from climate change in northern Australia, including the Fitzroy-Derby catchment, is highly uncertain.²⁸ Whilst the median predictions are for close to no change, the uncertainty (represented by the 10th and 90th percentile model predictions) in mean annual runoff for northern Australia is -25 per cent to 33 per cent deviation from current levels. Uncertainty in mean annual rainfall is -8 per cent to 13 per cent deviation, with increased severity and duration of hydrological droughts predicted due to greater inter-annual variability and higher temperatures.²⁹

EDO recognises the resourcing constraints faced by research, regulation, and planning organisations tasked with water management, and commends efforts to improve characterisation of the groundwater-surface water systems of the Fitzroy-Derby. EDO recommends the further data collection outlined below should be resourced to inform design of the Plan. Where information gaps and uncertainties remain, the Plan should explain why this information cannot currently be obtained, and how DWER intends to obtain this information in the future, to provide greater certainty and confidence in how the Plan will be implemented and improved over time.

In short, to be sustainable, extraction limits must be underpinned by the best available science, including climate science and First Nations knowledge (with consent, in accordance with cultural protocols, and with the protection of Indigenous Cultural and Intellectual Property (ICIP)).

Recommendations

3. The Plan must ensure allocation limits reflect a precautionary approach, including by:
 - a. setting conservative limits where information (for example regarding recharge rates, saline intrusion, or the role of regional aquifers in sustaining surface waters and groundwater dependent ecosystems) is unclear or uncertain;

²⁷ Ibid, pp 22-23, 59, 61, 63.

²⁸ Zheng, H., Chiew, F., Post, D., Robertson, D., Charles, S., & Potter, N. (2024). Projections of future streamflow for Australia informed by CMIP6 and previous generations of global climate models. *Journal of Hydrology*, 636, 131286. <https://doi.org/10.1016/j.jhydrol.2024.131286>.

²⁹ Ibid.

- b. setting limits that account for relevant impacts, including climate change impacts;
 - c. providing for monitoring and data collection in the Plan's implementation;
 - d. incorporating adaptive management mechanisms and reviews of allocation limits that consider results of monitoring and data collection.
4. The Plan must set allocation limits for the Greater Derby Wallal and Erskine resources, and Fitzroy Wallal and Grant Poole resources, to a lower proportion of estimated annual recharge.
5. The following further data must be obtained to inform the Plan:
 - a. coupled groundwater-surface water monitoring sites to understand groundwater-surface water gradients and interactions;
 - b. nested monitoring bores to constrain hydraulic gradients between aquifers;
 - c. further hydrochemistry sampling programs of rivers, groundwater, and springs to constrain groundwater discharge; and
 - d. remotely sensed and field data collection for groundwater dependent ecosystem mapping and characterisation.
6. Where relevant information is unavailable or uncertain, the Plan must explain why this is the case, and how relevant information will be obtained and used in the future to review and implement the Plan.
7. Allocation limits must be underpinned by the best available science.

Aboriginal Water Holding

EDO supports the allocation of water for an Aboriginal Water Holding, as far as this allocation is aligned with the feedback and needs of Traditional Owners. We defer to submissions of relevant Traditional Owners as to whether the quantity and nature of the proposed Holding are appropriate and sufficient for cultural use, economic development and intergenerational water needs. We note the quantity of the Aboriginal Water Holding proposed in the Plan appears to be smaller than the quantity recommended by the Kimberley Land Council, which is "50 per cent of the general component".³⁰

³⁰ Kimberley Land Council, [Kimberley Traditional Owners Release Recommendations For Fitzroy-Derby Water Planning](#) (31 March 2026).

The Plan does not outline how the Aboriginal Water Holding will be accessed, or how governance arrangements and funding for Prescribed Bodies Corporate will operate. These procedures must be developed in consultation with Traditional Owners, and should be included in the Plan. If not, the Plan must at a minimum outline how these procedures will be developed.

It is imperative that the Aboriginal Water Holding is not impacted by overallocation, unsustainable use, and/or lack of regulation of the general pool. We recommend outlining in the Plan how the Aboriginal Water Holding will be prioritised to ensure it is not reduced in the future.

Recommendations

8. The Plan must outline how the Aboriginal Water Holding will be accessed, and governance arrangements and funding for Prescribed Bodies Corporate will operate. These processes must be co-designed with Traditional Owners.
9. The Plan must outline how the Aboriginal Water Holding will be prioritised to ensure that it is not impacted or reduced.

c. Licensing

The Water Act includes some details about the matters DWER must consider when determining licence applications and what conditions should apply to licences, but is not particularly prescriptive. In the absence of legislative reform, the Plan can be amended to impose additional requirements on decision makers, to promote the objectives of the Plan and provide greater certainty to licence applicants and the public.

Decisions on licence applications

As discussed later in this submission, the Water Act is limited in the mandatory considerations it imposes on decision makers when determining the outcome of water licence applications. The Plan should impose more prescriptive requirements on decision makers, as recommended below. We address engagement with Traditional Owners on this issue further below at page 29.

Language in the Plan should also be strengthened to impose thresholds for action, rather than leaving it to a decision maker's discretion about whether particular actions should be taken. For example, the Plan provides that DWER “*may seek specialist advice during licence or permit assessments if impacts from the take and use of water are likely*” (our emphasis).³¹ We submit that DWER *must* be required to seek specialist advice where there is insufficient information to make an

³¹ Plan, p 24.

informed decision. This could be further strengthened by clarifying when information is likely to be insufficient.

For example, page 24 of the Plan could be updated to include the following clause:

1.2 The Department must seek specialist advice if, after considering the information available, the Department considers there is insufficient information to make an informed decision on the acceptability of the impacts from the take and use of water under the licence or permit.

Recommendations

10. The Plan must include mandatory considerations in the assessment of an application for a water licence, including:
 - a. Traditional Owners' water related interests, including cultural values and interests, and Aboriginal Cultural Heritage;³²
 - b. native title rights and interests; and
 - c. the impacts of climate change (including future projections).
11. The Plan must include mandatory requirements in relation to consultation between licence applicants and affected native title parties (including affected native title holders beyond the proposed project location) that reflect FPIC principles.
12. The Plan must impose thresholds for action by a decision maker, rather than applying an unguided discretion.

Metering requirements

There are key deficiencies in relation to metering in WA. There is a lack of compliance with the National Framework for Non-Urban Water Metering (**Metering Framework**), despite the WA Government's commitment under the National Water Initiative (**NWI**) to implement it,³³ and we understand that the use of telemetric technology remains non-existent amongst private water users.

³² Currently, the Water Act requires DWER to consider the public interest when making licensing decisions: Water Act, Sch 1 cl 7(2). However, the cultural interests of First Nations people are not included in the definition of 'public interest' in Sch 1, cl 1 of the Water Act.

³³ [Intergovernmental Agreement on a National Water Initiative](#) at [88]-[89]; 2024 Inquiry Report, p 223. See also DCCEEW, [Non-urban water metering framework](#).

The Plan must promote stronger metering outcomes by specifying conditions that must be applied to water licences issued under the Plan, as recommended below.

Other parts of the Plan contain vague statements of what licensees “should” do, rather than “must” do. The Plan should be amended to include clear requirements for licence holders, which can be included as conditions on licences issued consistently with the Plan.

For example, the Plan states that if DWER “requires an applicant to undertake monitoring, this should be undertaken in a manner that is consistent with any agreement/s with Traditional Owners”.³⁴ This clause should be amended to provide that monitoring “must” be undertaken consistent with any agreements. This would promote compliance by enabling non-compliance to be enforced, and ensure licence holders are aware of their obligations (as they are more likely to be closely familiar with each of their licence conditions than they are individual sections of the Plan).

Recommendations

13. The Plan must provide more detail about what conditions are to be included for licences granted in the Plan area, for example:
 - a. details about the frequencies, methodologies and technologies to be used for water metering, which are consistent with the Metering Framework;
 - b. requirements for monitoring of cultural indicators used by Traditional Owners to monitor the impacts of water take on Country and cultural values; and
 - c. triggers for additional investigation and reporting of impacts to DWER, where monitoring indicates potential harms to water resources and/or cultural values.
14. The Plan must require monitoring to be undertaken consistent with any agreements with Traditional Owners.

³⁴ Plan, p 26.

d. Monitoring

An effective compliance monitoring and enforcement system is vital to achieving the objectives of the Plan. This is particularly important given existing issues that have been identified with water data collection and review in WA, discussed later in this submission.

In the absence of more comprehensive reforms to compliance monitoring and enforcement, including increased resourcing for DWER, the Plan must detail how DWER will monitor compliance with the Plan, including licences.

Monitoring of Plan implementation

There is limited detail in the Plan about how it will be rolled out and monitored over time. For example, the Plan states:³⁵

- “[g]roundwater use should increase gradually so that monitoring can detect any unacceptable impacts early”;
- DWER “will monitor and evaluate how well this Plan is working over time”; and
- DWER will “develop a more detailed scientific understanding of the water resources and the effects of water use, and ... may use this new knowledge to review allocation limits and management over time”.

It is not clear how these commitments will operate in practice.

The Plan must detail how DWER will monitor Plan implementation and impacts on water resources to provide certainty to decision-makers, licensees and the public. Our recommendations represent some best practice monitoring arrangements. If such details are not included, the Plan must explain why they have been omitted.

A best practice approach to evaluating the Plan’s implementation involves independent scientific oversight and ongoing engagement with Traditional Owners, with recommendations made for implementation by DWER. Water management must incorporate First Nations knowledge, with consent, in accordance with cultural protocols, and with the protection of ICIP (see our Recommendation 11 above).

³⁵ Plan, pp 4, 29; Methods Report, p 64.

Recommendations

15. The Plan must detail:

- a. the monitoring DWER will undertake, including where and how frequently monitoring will take place, and technologies to be used (e.g. telemetry, real-time monitoring of aquifer recharge, reliance on existing meters);
- b. the metrics DWER will use to determine how effective and appropriate the Plan is, including parameters for evaluation, ecological baselines, targets and thresholds for unacceptability;
- c. how DWER will account for and address existing issues with water data collection and review in WA in the Plan's implementation; and
- d. how DWER will review the Plan (including allocation limits) over time, including ongoing engagement with Traditional Owners and incorporation of First Nations knowledge (with consent, in accordance with cultural protocols, and with the protection of Indigenous Cultural and Intellectual Property).

16. The Plan must outline how DWER will seek and utilise independent scientific input to enhance monitoring and water outcomes.

Monitoring compliance with licences

To achieve the objectives of the Plan, DWER must be able to make sure that licensees are meeting their obligations regarding the quantities of water they are allowed to take, and the metering data they are required to collect and report to DWER.

In 2024, the Auditor General identified that DWER's compliance and enforcement activities are not sufficient to protect WA's water resources. This was due in part to a lack of investigation of potential non-compliances with licence conditions, and limited on-ground inspections.³⁶ We understand that DWER is not adequately resourced to undertake compliance and enforcement work across WA, and recognise figures in DWER's annual reports indicate some increases in compliance and enforcement activities since the period of the audit.

The Plan provides limited information about how DWER intends to monitor and enforce compliance with conditions, including around extraction limits and metering, consistent with the objectives of the Plan.

³⁶ AG Report, pp 9-12.

While information is contained in DWER’s Compliance and Enforcement Strategy, it would be useful for the Plan to include more detail on how compliance and enforcement activities will be conducted in the Plan area, in response to the approach to water allocation and licensing set out in the Plan. This should include detail as to the role of Traditional Owners in monitoring the Plan, and resourcing support for such roles.

Including these details in the Plan could encourage timely and appropriate action, improve compliance and enforcement outcomes in the Plan area, and improve community confidence in DWER’s activities until policy and legislative reforms can be implemented.

Recommendations

17. The Plan must include more information about how DWER will investigate and respond to non-compliance, including:
 - a. targets for funding, staff and time to be dedicated to its compliance and enforcement functions; and
 - b. targets for the proportion of flagged non-compliances are to be investigated, and the number of on-ground inspections to be completed across the Plan area; and
 - c. mandatory triggers in response to which DWER will investigate potential non-compliance, and pursue enforcement action in response to non-compliances.

e. Water Advisory Committee

The Plan proposes to establish a Water Advisory Committee under the *Water Agencies (Powers) Act 1984* (WA).³⁷ It states:³⁸

- the terms of reference and membership of the proposed committee have not been decided, but will be developed using feedback from the public consultation on the Plan;
- the Minister will appoint committee members, with membership “likely to be made up of people representing Traditional Owners, government, industry and the community”; and
- the committee will advise the Minister on water management, planning or policy matters relevant to water in the Plan area and implementing the final version of the Plan.

³⁷ Plan, p 4.

³⁸ Plan, p 4.

EDO supports the establishment of an advisory committee in relation to the Plan. The committee's expertise would be useful not only in the implementation of the Plan, but also in its development. Therefore, we recommend the committee is formed before the Plan is finalised, so the committee can have input on and lend their expertise to its development.

The terms of reference and membership requirements of the proposed committee must be released for public consultation. If these are not released in full, the Plan must at least be updated to include additional parameters around the membership and role of the committee (which should be released for another public comment period).

EDO supports the statement in the Plan that proposed membership will represent Traditional Owners, industry, and the community. The membership should include:

- 50 per cent Traditional Owners (consistent with the position of the Kimberley Land Council);³⁹ and
- members with knowledge of and experience in the management, development and sustainable use of water resources and conservation of ecosystems.⁴⁰

The committee as proposed would provide needed expertise and resources to assist in the Plan's implementation, particularly where DWER is under resourced. The committee as proposed would have limited authority under the *Water Agencies (Powers) Act 1984* (WA).⁴¹ The committee should instead be established under the Water Act, to exercise additional powers under that Act, including performing delegated functions and ensuring the Minister is informed of community views on matters relating to water resources.⁴²

Even where the committee is established under the Water Act, it would not have decision-making authority unless delegated by the Minister. The committee should also be consulted on decisions under the Plan, such as licence applications.

³⁹ Kimberley Land Council, [Kimberley Traditional Owners Release Recommendations For Fitzroy-Derby Water Planning](#) (31 March 2026).

⁴⁰ A water resource management committee established under the Water Act specifies that members of the committee should as far as practicable collectively have knowledge of and experience in the management or development of water resources or other natural resources; the use of water resources; conservation of ecosystems; and local government: Water Act, 26GL(2).

⁴¹ *Water Agencies (Powers) Act 1984* (WA), s 109.

⁴² Water Act, ss 26GP, 26GM.

Recommendations

18. Establish the committee as a local water resource management committee under the Water Act.
19. Establish the committee before the Plan is finalised, so the committee can provide input on the Plan.
20. Release the proposed terms of reference and membership requirements of the committee for public consultation.
21. The terms of reference (or, if these are not released for public comment ahead of the Plan being finalised, the Plan) should prescribe that:
 - a. at least 50 percent of committee members must be Traditional Owners;
 - b. the committee must include members with knowledge of and experience in the management, development and sustainable use of water resources and conservation of ecosystems; and
 - c. the committee be consulted on decisions under the Plan.

f. Regulation of floodplain harvesting and fracking

The Plan does not seek to regulate, or even consider the impacts of, floodplain harvesting and fracking on the water resources in the Plan area. These activities can and must be regulated to ensure that extraction in the Plan area is sustainable.

Regulation of floodplain harvesting

Various governments in Australia have recognised the importance of regulating floodplain harvesting, recognising unlicensed and unmanaged floodplain harvesting “has significant negative impacts on the health of our waterways and the communities that rely upon them”.⁴³

⁴³ Australian Government, Commonwealth Environmental Water Office, Submission No. 68 to NSW Select Committee Inquiry into Floodplain Harvesting: Attachment letter, available [here](#). The NSW Select Committee Inquiry into Floodplain Harvesting found “floodplain harvesting has had a significant impact on downstream flows and river health [...] leading to numerous economic, social, cultural and environmental impacts”: [Report no. 1 - Floodplain harvesting](#) (December 2021). See also NSW Government, [NSW Floodplain Harvesting Policy](#) (September 2018), p 3.

A 2021 analysis found that floodplain harvesting in the northern Murray Darling Basin diverts an average of 778GL/year from the Darling Baaka River and its tributaries.⁴⁴ This has directly contributed to the mass fish kills and, in combination with other consumptive use and climate change, to severe deterioration in environmental health in the Darling/Baaka.⁴⁵

Floodplain harvesting developed rapidly in the northern Murray Darling Basin, with an increase in off river storage capacity in the northern basin from 574 GL in 1988 to 1395 GL in 2021.⁴⁶ In recent years, licences have since been issued for floodplain harvesting despite ongoing concerns that this extraction exceeds both environmentally sustainable levels and Commonwealth extraction limits. Because regulation of floodplain harvesting has lagged behind the development of large scale floodplain harvesting, regulation to address associated concerns – including overextraction – has proven very difficult.

Acknowledging that the Martuwarra Fitzroy River is a different system to the Murray Darling Basin, there is still transferability and these lessons from the Murray Darling should be heeded.

We understand that floodplain harvesting is likely to be a source of surface water take in the Plan area.⁴⁷ Floodplain inundation in the Plan area supports wetland and riparian ecosystems by supporting aquatic ecosystems, providing habitat, maintaining biodiversity, and recharging underlying aquifers.⁴⁸

Under climate change, the Martuwarra Fitzroy system will experience higher temperatures and evaporation, and may experience significantly more inter-annual rainfall variability and lower rainfall,⁴⁹ meaning that planning for protection of wet season flood pulses, which are likely to provide recharge to aquifers sustaining river baseflow and GDEs, is critical.

⁴⁴ Fenner School of Environment and Society Australian National University, and Slattery and Johnson, 'Inquiry into Floodplain Harvesting' (30 August 2021), 1. Available online at: [0285_Fenner_School_of_Environment_and_Society, ANU and Slattery and Johnson.pdf](#)

⁴⁵ Professor Fran Sheldon, Australian Rivers Institute, Griffith University, report prepared for NSW Natural Resources Commission, 'Technical Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012' (August 2019). Available online at: [Technical Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012](#).

⁴⁶ Slattery and Johnson, 2021. Floodplain water harvesting in the northern New South Wales Muray Darling Basin, [21022-fph-final-report.pdf](#)

⁴⁷ RiverOfLife, M., Poelina, A., Butterly, L., Carmody, E., Perdrisat, M., Taylor, K., Manero, A., Grafton, Q., Williams, J. (2021) Submission in response to: Managing Water in the Fitzroy River Catchment: Discussion Paper For Stakeholder Consultation. DOI: 10.6084/m9.figshare.15088404

⁴⁸ Plan, pp 29, 47.

⁴⁹ Zheng, H., Chiew, F., Post, D., Robertson, D., Charles, S., & Potter, N. (2024). Projections of future streamflow for Australia informed by CMIP6 and previous generations of global climate models. *Journal of Hydrology*, 636, 131286. <https://doi.org/10.1016/j.jhydrol.2024.131286>.

The Plan articulates the WA Government policy position that:⁵⁰

No further water is available from surface water resources or the Alluvial and Devonian Reef aquifers, unless it is essential or in the public interest. This is intended to protect the Fitzroy River and its tributaries and the ecological, cultural, heritage and social values that depend on the river and aquifers – which are of state and national significance.

If floodplain harvesting is allowed in the Plan area, the WA Government may struggle to fulfill its policy commitment above or achieve the objectives of the Plan. Based on the experiences in the Murray Darling Basin, we recommend that floodplain harvesting not be permitted in the Plan area. The WA Government should adopt this as a policy position and implement it in the text of the Plan.

If the WA Government does not do so, floodplain harvesting must be regulated. As a matter of general principle, a precautionary approach must be applied so that allocation limits and management approaches err on the side of protection of resources over risks of overextraction and resource degradation.

The Commonwealth Environmental Water Holder (**CEWH**) has stated it “wants the following key principles adopted and incorporated into arrangements developed by water agencies to manage floodplain harvesting”, which “are considered prerequisites to any licencing arrangements”:⁵¹

Key principles

- *Take restricted to long term limits within each valley*
- *Floodplain harvesting regulations must integrate with effective rules to protect downstream outcomes, consistent with legislated priorities of access, thus reducing the potential complexity of management and compliance*
- *Strong measurement, monitoring, compliance, and public reporting*
- *Ecologically important locations protected*
- *Ecologically important flow events protected all the way through the Basin*
- *Regular monitoring and transparent reviews of effectiveness.*

These concepts elaborated further in the CEWH’s full statement.⁵² EDO supports the application of these principles in WA, in accordance with the best available science and local conditions to ensure that floodplain harvesting, if permitted, is appropriately managed.

⁵⁰ Plan, p 3.

⁵¹ Australian Government, Commonwealth Environmental Water Office, Submission No. 68 to NSW Select Committee Inquiry into Floodplain Harvesting: Attachment letter, available [here](#).

⁵² Australian Government, Commonwealth Environmental Water Office, Submission No. 68 to NSW Select Committee Inquiry into Floodplain Harvesting: Attachment letter, available [here](#).

To the extent there is any ambiguity around whether floodplain harvesting can be regulated under s 3 of the Water Act, the Minister must make by-laws that clarify that floodplain harvesting can be regulated.⁵³ If a local water resources management committee was formed under the Water Act (as we have recommended above), the Minister could also delegate powers to make by-laws to the committee.⁵⁴

Recommendations

22. The Plan should prohibit floodplain harvesting in the Plan area.
23. If/where floodplain harvesting is not prohibited in the Plan:
 - a. allocation limits must account for floodplain harvesting; and
 - b. floodplain harvesting must be regulated, including requiring licences for take and limiting extraction (i.e. no further growth, or reduced if necessary). This should be subject to best practice measurement and monitoring requirements, including principles articulated by the Commonwealth Environmental Water Holder.
24. To the extent there is concern that floodplain harvesting cannot be regulated under the Water Act, the Minister (or committee established under the Act) must make by-laws to regulate floodplain harvesting.
25. DWER should conduct research to estimate the current take occurring through floodplain harvesting in the Plan area, to inform implementation of the Plan.

Regulation of mining and fracking

Potential impacts from mining and industry are not considered in the Plan, despite the Methods Report acknowledging “[m]ining tenements cover a significant portion of the Plan area and have potential for the extraction of resources”, and stating:⁵⁵

Our consultation with industry stakeholders indicated that water demand for a future mining industry in the plan area is unclear. Without a clear picture as to where, or how much water will be needed for future exploration, mining or processing activities, we cannot develop industry-specific plan outcomes or management strategies.

This approach is inadequate to protect water resources in the Plan area.

⁵³ Water Act, ss 26L.

⁵⁴ Water Act, s 26GP.

⁵⁵ Methods Report, pp 35-36.

Mining and fracking activities can have significant impacts on water resources, including on availability and quality of surface water and groundwater. These impacts will be disproportionately experienced by Traditional Owners in and around the Plan area.

While fracking is primarily regulated under different legislation, the Water Act regulates the extraction and protection of water resources in the Plan area. It is illogical not to account for proposed and potential mining and fracking activities in the Plan, when the Plan is meant to guide decision-making around water extraction.

The impacts of fracking and mining activities can and must be considered in the Plan. There is information available about planned activities, including mining tenements and current proposals, such as the Valhalla Gas Exploration and Appraisal Program.⁵⁶

If these impacts aren't provided for in the Plan, it is difficult to understand how the Plan will achieve its objectives of protecting water resources. Where information is limited or uncertain, the Plan must be conservative to account for potential impacts, and include industry-specific outcomes and management strategies to promote effective implementation.

Due to the potentially significant impacts of fracking on water resources in WA, we recommend that the WA Government adopt a holistic approach; DWER should work with the Department of Mines, Petroleum and Exploration and Traditional Owners to co-design a collective policy position regarding the interaction between fracking and water, and how the WA Government intends to protect and manage risks to these water resources.

Recommendations

26. The Plan must account for impacts of fracking, including by adopting precautionary approaches to setting allocation limits where data or risks are uncertain.
27. DWER should work with the Department of Mines, Petroleum and Exploration to produce a collective policy position regarding the interaction between fracking and water in WA, in line with a precautionary approach.

⁵⁶ See Bennett Resources, 'Valhalla Gas Exploration and Appraisal Program EPBC Act Preliminary Documentation 2024/10006' (May 2026), available from: <https://blackmountainenergy.com/preliminary-documentation/>. The proposal has been recommended for approval under the *Environmental Protection Act 1986* (WA) and is currently under assessment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

g. Engagement with Traditional Owners

EDO supports DWER's consultation with Traditional Owners in the development of the Plan. This consultation, and any engagement with Traditional Owners envisaged in the Plan, must be in accordance with cultural protocols and the principles of FPIC, including by allocating sufficient time and resources to support consultation.

The Plan states that "[a]ll watercourses, wetlands and springs are likely Aboriginal heritage as defined by the Aboriginal Heritage Act 1972 ... unless advised otherwise by the Department of Planning, Lands and Heritage".⁵⁷ While we strongly support the first half of this sentence, we do not agree with the qualification. Only Traditional Owners can and should determine what is or is not cultural heritage.

As noted above (and reflected in Recommendation 11), other parts of the Plan do not impose sufficiently prescriptive requirements on licence applicants with regards to effective engagement with Traditional Owners. The Plan states DWER:⁵⁸

- *may* require a licence applicant to provide further information regarding how their application may affect Traditional Owners' water-related rights, interests, cultural values and heritage, including evidence they consulted with the relevant native title parties; and
- *encourages* a water licence applicant to respect free, prior and information consent principles, start consulting with the relevant native title parties at the project planning stage, and apply best-practice engagement, among other matters.

EDO supports the recommendation for applicants to start consulting with native title parties early in planning processes. However, the Plan should be strengthened to *require* applicants to engage early and provide supporting information.

The Plan states DWER *may* if a water licence, permit application or licence amendment has been advertised, inform the relevant native title parties and the Kimberley Land Council, and consider "relevant comments" made.⁵⁹ The Plan must be amended to *require* DWER to inform relevant native title parties and the Kimberley Land Council, and to consider comments received. The Plan further states DWER may give at least 30 days for the native title parties to respond (and more if requested).⁶⁰ This minimum 30-day period is insufficient and places an undue burden on native title parties – this should be extended.

⁵⁷ Plan, p 16.

⁵⁸ Plan, pp 17, 25.

⁵⁹ Plan, p 25.

⁶⁰ Plan, p 25.

Additionally, the phrasing of “water licence, permit application or licence amendment” is confusing and ambiguous. We suggest this be clarified, for example by reference to an “application for a water licence or permit, or for an amendment to a water licence or permit has been advertised”.

Recommendations

28. The Plan must require a licence applicant to:

- a. provide further information regarding how an application may affect Traditional Owners’ water-related rights, interests, cultural values and heritage, including evidence that they consulted with the relevant native title parties; and
- b. respect FPIC principles. This includes early engagement with the relevant native title parties at the project planning stage and before submitting a water licence or permit application, and compliance with best-practice engagement, among other matters outlined on page 25 of the Plan.

29. The Plan must:

- a. require DWER to inform relevant native title parties and the Kimberley Land Council about a licence or permit application or amendment;
- b. require DWER to consider relevant comments from the native title parties, and relevant information provided by any interested person who makes a submission on an application, before deciding on the application; and
- c. extend the minimum 30-day period for comments, following engagement with native title parties.

30. Amend the phrase “water licence, permit application or licence amendment” to promote clarity and avoid confusion.

h. Transparency

DWER's Water Register provides some information about licences, including whether a property has a current licence associated with it, licence numbers, and whether licensees hold a licence.⁶¹ However, other information provided by DWER is limited. Other regulators publish more information; for example, the public can use the NSW Public Water Register to access information about licence applications and issued licences, including licence conditions.⁶² NSW's water regulator also provides more detail about its compliance and enforcement activities.⁶³

The Productivity Commission has identified there is little transparency from DWER in relation to water regulation, including because monitoring data is rarely made public. It found the WA Government does not report on the conditions of waterways at regular intervals (unlike most other jurisdictions), does not conduct regular reviews and auditing of environmental outcomes and the adequacy of management arrangements, and does not publish annual compliance reports or otherwise report on outcomes achieved in relation to most water plans in WA.⁶⁴

Transparency and oversight are essential principles in enabling sustained public trust and confidence in a regulatory system. A lack of transparency in relation to water regulation undermines public trust and accountability, reduces social pressure for licensees to comply with licences, and limits how the public can participate and take measures to protect their rights.⁶⁵

Wide-scale legislative and policy reform is needed to improve transparency in water regulation in WA. In the interim, more stringent requirements should be included in the Plan to promote greater transparency in its implementation.

First, wording in the Plan can be strengthened to provide more clarity. For example, the Plan:⁶⁶

- “encourages licensees to share reporting associated with their water licence with any relevant native title party/ies”; and
- states DWER “will consider the need to report on implementation of this [P]lan and its monitoring and evaluation results five years after the final plan is published”.

⁶¹ See [Water Register](#).

⁶² See [NSW Public Water Register](#).

⁶³ See [Metering compliance reports | NSW Natural Resources Access Regulator](#). In WA, DWER publishes high-level figures in annual reports (see WA Government, [Publications](#)); and information on prosecutions (see DWER, [Environmental enforcement](#)).

⁶⁴ 2024 Inquiry Report, p 188, 200-201.

⁶⁵ AG Report, p 15; A Gardner, ‘The Legal Basis for the Emerging Value of Water Licences – Property Rights or Tenuous Permissions’ (2003) 10 *Australian Property Law Journal* 1, 18.

⁶⁶ Plan, pp 27, 29.

This language must be strengthened to require, respectively, licensees to share reporting with native title parties, and DWER to report on the implementation of the Plan every five years.

More broadly, the Plan should be amended to include:

- requirements to publish information about:
 - licence applications and decisions, including licence conditions;
 - results of water metering;
 - results of DWER's metering and monitoring activities;
 - licensees' compliance with licence conditions;
 - DWER's compliance and enforcement activities; and
- requirements to record committee meetings, and publish membership lists, meeting minutes, and recommendations.

DWER has articulated its aim to make information available to the public as soon as possible and at the least possible cost, including outside of processes under the *Freedom of Information Act 1992* (WA) whenever possible.⁶⁷ To reduce the burden on DWER's resources, as well as the public, we recommend considering other mechanisms by which information related to the Plan can be accessed.

DWER has previously asserted that it cannot publish particular information, including licence conditions, data collected by DWER, and information provided by water licensees such as environmental impact assessments, monitoring data and scientific reports.

We have been unable to identify any legislative provision in the Water Act or other legislation preventing DWER from notifying proponents that their information will be made public, and releasing that information. We are aware of information on assessments under the *Environmental Protection Act 1986* (WA) being published for public comment, and other information being published in relation to water regulation in other jurisdictions. At a minimum, licence conditions should be published.⁶⁸

There is significant public interest in publishing information related to water licences issued under the Water Act. Where DWER maintains information cannot be released, we request DWER to explain the reasons and/or requirements it is relying on to justify this position.

⁶⁷ DWER, [Information statement and Freedom of Information](#) [webpage], accessed 24 June 2026.

⁶⁸ For example, the [NSW Public Water Register](#) provides information on licences.

Recommendations

31. The Plan must require:
 - a. licensees to share reporting with relevant native title parties;
 - b. DWER to report on the implementation of the Plan every five years;
 - c. DWER to publish information related to licence applications and decisions; licence conditions; its metering and monitoring activities, including data collected; its compliance and enforcement activities; and licensees' compliance with licence conditions; and
 - d. the committee to record committee meetings, and publish membership lists, meeting minutes, and recommendations.
32. The Plan must include mechanisms by which the public can access information related to the Plan and its implementation.
33. If DWER maintains its current position that particular information relating to the Plan cannot be released, DWER must identify and explain the legislative or other basis for this constraint.

Recommendations for policy and law reform

Improvements must be made to the Plan to ensure it is as effective as possible at protecting WA's water resources. However, the Plan is being developed and will be implemented within WA's broader water regulatory framework, which has severe limitations.

The WA Government must act on opportunities to improve provisions of the Water Act, and the way it administers these laws, to protect WA's resources and respond to emerging risks.

a. Policy reform and implementation

Implementing the following recommendations to reform water management policies, and how they are implemented in practice, will strengthen WA's regulatory regime and water outcomes.

Recommendations

1. The WA Government has committed to making statutory water plans,⁶⁹ but remains the only jurisdiction in Australia to not do so.⁷⁰ The WA Government must form the Water Resources Council in order to make water plans under the Water Act,⁷¹ and develop and implement statutory water plans in practice.
2. The Plan notes challenges with insufficient data in some areas. The WA Government must conduct a review of water data that is being collected and used across the State, and consider legal and/or policy changes to ensure consistency with best practice.
3. DWER is not currently adequately resourced to undertake meaningful levels of work across WA.⁷² The WA Government must prioritise DWER's compliance and enforcement functions, including by increasing resources dedicated to these functions.

b. Legislative reform

EDO supports an overhaul of WA's water regulation framework to ensure legislation is aligned with current science and sufficient to protect water resources, particularly in the face of significant threats such as climate change. Reform is also necessary for the WA Government to meet its existing

⁶⁹ NWI at [36]-[40], see also Schedule E.

⁷⁰ 2024 Inquiry Report, pp 14, 123-124.

⁷¹ Statutory water plans can be created under the Water Act, after the Minister has consulted with the Water Resources Council on draft plans: Water Act, ss s 26GV(1), 26GZE.

⁷² AG Report, pp 9, 12, 14.

and future commitments under the NWI,⁷³ the new National Water Agreement (**NWA**),⁷⁴ and the National Agreement on Closing the Gap.⁷⁵

Until substantial overhauls of the Water Act can be implemented, various amendments to the Act can be made to improve water outcomes in WA. We recommend some such amendments below.

Recommendations

4. The precautionary principle is a foundational concept in Australian environmental law, and a fundamental and relevant consideration for the WA Government in administering the Water Act. The Water Act should be amended so that it expressly refers to the precautionary principle in the objects of the Act.⁷⁶
5. Even if statutory water plans were created in WA, deficiencies in provisions of the Water Act would likely undermine their effectiveness.⁷⁷ Specifically, DWER would not be bound by statutory water plans in its decision-making,⁷⁸ and the Act is otherwise unlikely to impose binding considerations on decision-makers in making licensing decisions.⁷⁹ There is no role for First Nations in planning, allocation and management of water, and limited opportunities for public participation more generally. The Water Act must be amended to ensure that:
 - a. provisions of statutory water plans are specific and legally binding;
 - b. relevant factors for decision-making are clearly defined;⁸⁰

⁷³ [Intergovernmental Agreement on the National Water Initiative](#) (25 June 2004).

⁷⁴ See Department of Climate Change, Energy, the Environment and Water (**DCCEEW**), [The new National Water Agreement](#) (last updated 15 December 2025).

⁷⁵ The WA Government has committed to developing a target to measure progress towards securing Aboriginal and Torres Strait Islander interests in inland waters under WA's water rights regime, to present the Joint Council on Closing the Gap by the end of 2026: National Agreement on Closing the Gap at [87]; [Fourteenth meeting of the Joint Council](#) (20 June 2025), p 2. In 2023, the WA Government stated it was supporting drafting of new water legislation to support and promote recognition of Aboriginal people's water interests and spiritual, social, customary, and economic needs, which was likely to be considered by Parliament later that year: [Closing the Gap Implementation Plan 2023-2025](#), p 131. No such legislation has been introduced.

⁷⁶ See, for example, *Environmental Protection Act 1986* (WA), s 4A: the precautionary principle dictates that a lack of full scientific certainty should not be used as a reason to postpone measures to prevent environmental degradation when there are threats of serious or irreversible damage.

⁷⁷ The Productivity Commission has stated the non-binding nature of statutory water plans in the Northern Territory undermines their effectiveness: 2024 Inquiry Report, pp 124, 136, 139.

⁷⁸ Water Act, Sch 1, cl 7(1)(g)(iii).

⁷⁹ For example, ss 26GW(2), 26GX(2) and 26GY(2) of the Water Act state the purpose of each plan is to set out "matters that are to guide the management [...] of water resources" in the area where the plan applies.

⁸⁰ For example, the terms "ecologically sustainable" and "environmentally acceptable" are not currently defined: Water Act, Sch 1 cl 7(2)(a)-(c).

- c. the principle of FPIC is reflected across all aspects of water planning and management;
 - d. mandatory considerations reflect current water risks and the rights and interests of First Nations, including:
 - i. impacts from climate change (including future projections); and
 - ii. Traditional Owners' water related interests and cultural values; and
 - e. there are sufficient opportunities for public participation in decision making, including by lowering thresholds for publishing of licence applications, and increasing minimum timeframes for public comments.
6. As discussed earlier, floodplain harvesting can have significant impacts on water resources and ecosystems, and must be measured and regulated. To reduce any ambiguities, the Water Act must be amended to state that its scope includes the regulation of floodplain harvesting.
 7. As discussed earlier, WA has committed to implementing the Metering Framework.⁸¹ The Water Act should be amended to impose more prescriptive requirements around water metering, which are aligned with the Metering Framework.
 8. Offence provisions in the Water Act are not sufficient to promote compliance.⁸² To ensure the Water Act is effective and enforceable, and aligned with other water legislation in Australia, the WA Government should:
 - a. amend the Water Act to introduce offences for breaching a licence condition;⁸³
 - b. amend the Water Act to increase potential penalties for offences;⁸⁴ and
 - c. consider introducing civil penalties and/or tiered penalties under the Water Act, to enhance efficiencies and improve compliance with provisions of the Act.⁸⁵

⁸¹ NWI at [88]-[89]; 2024 Inquiry Report, p 223. See also DCCEEW, [Non-urban water metering framework](#).

⁸² Offences are rarely prosecuted in practice. For example, from FY2013-14 to FY2024-25, DWER has identified nine prosecutions for breaches of the Water Act: DWER, [Environmental enforcement](#) (updated 13 March 2026).

⁸³ See, for example, *Water Resources Act 2007* (ACT), s 77F; *Water Act 2000* (Qld) s 812; *Water Management Act 2000* (NSW) s 91G; *Water Act 1992* (NT), s 46; *National Resources Management Act 2004* (SA), s 127(6)(ab); *Water Management Act 1999* (TAS), s 82(1)(b); *Water Act 1989* (Vic), s 64AF.

⁸⁴ Penalties are currently lower than those in the *Environmental Protection Act 1986* (WA) (e.g. ss 49(2)-(3), 51C), and water legislation in other jurisdictions, e.g. *Water Management Act 2000* (NSW), s 60A. the WA Government has previously recognised penalties needed to be increased: 2013 Position Paper, p 23.

⁸⁵ For civil penalties, see, for example, *Environmental Protection and Biodiversity Act 1999* (Cth), s 481; *Environment Protection Act 1993* (SA), s 104A. For tiered penalties, see, for example, *Environmental Protection Act 1986* (WA), ss 49(2)-(3), 51C; *Water Management Act 2000* (NSW), s 60A.

9. Rights of third parties under legislation to seek review of decisions made and to enforce breaches can assist with its effective implementation. Currently, there are limited opportunities for third parties to enforce their rights under the Water Act.⁸⁶ The Water Act should be amended to allow interested and affected parties to:
- a. seek review of decisions to grant or amend water licences and permits;⁸⁷ and
 - b. apply to courts to remedy or restrain breaches of the Water Act.⁸⁸

*Thank you for the opportunity to make this submission.
Please do not hesitate to contact our office should you have further enquiries.*

⁸⁶ Currently, rights to seek review of a decision are limited to licence applicants, a person who is entitled to have the licence transferred to them, or a person who has an agreement to take the licensed water: Water Act, Sch 7, cl 30(1). Third parties can only challenge a decision by seeking judicial review. Only particular people can bring an action to remedy or restrain a breach of the Water Act, in limited circumstances: see s 5E.

⁸⁷ See for example *Water Act 1992* (NT), s 30(1); *Water Management Act 2000* (NSW), ss 62(1), 368(1)(b).

⁸⁸ See for example *Water Management Act 2000* (NSW), s 336, 338; *Water Act 1989* (Vic), s 64; *Water Management Act 1999* (Tas), s 264; *Natural Resources Management Act 2004* (SA), s 201; *Water Act 2000* (Qld), s 784.