



Environmental
Defenders Office

**Submission to the Independent Review of the *Water Act*
2007 (Cth)**

31 August 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.

www.edo.org.au

Submitted to:

Water Act Review Secretariat
By email: wateractreview@dcceew.gov.au

For further information on this submission, please contact:

Emily Long
Special Counsel
E: emily.long@edo.org.au

Nadja Zimmermann
Senior Solicitor
E: nadja.zimmermann@edo.org.au

Revel Pointon
Managing Lawyer – Policy and Law Reform
T: 0424 313 627
E: revel.pointon@edo.org.au

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, present and emerging, 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 the beginning of colonisation.

EDO recognises self-determination as a person's right to freely determine their own political status and freely pursue their economic, social and cultural development. EDO respects all First Nations' right to be self-determined, which 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 First Nations. We acknowledge that not all First Nations 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.

Contents

Executive Summary	5
Summary of Recommendations	6
Introduction	3
Advancing First Nations Water Justice	14
The need to consider climate change throughout implementation of the Act	18
Strengthening the Water Act to support implementation and outcomes in the Murray-Darling Basin	19
In advance of an Environmentally Sustainable Level of Take and diversion limits that are environmentally sustainable	20
Strengthening the role of Water Resource Plans and ensuring they are consistent with the Basin Plan	22
Conjunctive management to effectively manage an interconnected system: groundwater-surface water connectivity	26
Critical human water needs must be protected and prioritised	29
Governance and third party review mechanisms must be strengthened	34
Broadening the Act to support improved water management across Australia	37
Avoiding and mitigating the risks of data centres to Australia's water resources	45

Executive Summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to provide submissions in response to the Discussion Paper for the independent review of the *Water Act 2007* (Cth) (**the Act**) (**the Review**).

On paper, the Act is a strong and much needed piece of environmental legislation. Unfortunately, implementation has fallen far short of both what the law requires and what is necessary to sustain healthy Basin ecosystems and, ultimately, communities. Further, the Act has potential to play a useful role in guiding consistent, quality and sustainable water management across Australia, yet this role is not provided for in the legislation currently. This Review is an important and much needed opportunity to strengthen the Act, so that it is better set up to achieve its core objectives and to play an important and much needed role in improving water management across Australia.

This submission offers preliminary recommendations in relation to several key issues we have identified as important to this Review, highlighting the following:

- The critical importance of advancing First Nations water justice through legislative amendments to the Act.
- Opportunities to strengthen the Act so that it is better set up to achieve its core objectives. These opportunities and our associated recommendations respond to the following matters:
 - the need for water management to account for and respond to climate change impacts;
 - the importance of ensuring extraction is in fact sustainable (the Environmentally Sustainable Level of Take (**ESLT**) and Sustainable Diversion Limits (**SDLs**));
 - weaknesses in the way water resource plans (**WRPs**) are made;
 - a general failure to account for groundwater-surface water connectivity in water management under the Act;
 - the failure to adequately safeguard critical human water needs; and
 - weaknesses in the institutional and governance arrangements, including issues of transparency and the need for a stronger division between scientific and political responsibilities.
- The opportunity to expand the scope of the Act nationally to support better outcomes in water management across all jurisdictions, in line with the draft National Water Agreement (**NWA**).

The submission should be read in conjunction with our submission to the Murray Darling Basin Authority's 2026 Basin Plan Review (**Basin Plan Review**).¹

EDO looks forward to reviewing the Review's draft report later this year and the opportunity to provide feedback before a final report is provided to the Minister.

Summary of Recommendations

Advancing First Nations water justice

1. The Review must adopt processes that accord with the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), including that Free, Prior, and Informed Consent (FPIC) is adopted by the Review throughout its entire course. This should include ensuring that First Nations are given sufficient opportunity, time and resourcing to engage, including once the draft report is published later this year. Given the complexity of the legal framework, this should allow for First Nations to receive the support of independent legal advice, including about implementing the principles in UNDRIP.
2. In the event the Review forms an opinion that there is a constitutional impediment to implementing the principles of UNDRIP in the Act, it must:
 - a. publish any legal advice that expresses and explains this position; and
 - b. identify in its final report ways to address those impediments.

The Review's final report and any recommendations on this point should be informed by independent legal advice.

3. The Review should investigate opportunities to, and make recommendations about, the following:
 - a. Amending the objects of the Act to strengthen the recognition and importance of First Nations water rights in the Basin – and more broadly across Australia if the Act is broadened – including by prescribing UNDRIP as a relevant international agreement.
 - b. Amending the Act to recognise and promote the provision and protection of cultural flows. We refer to EDO's submission to the Basin Plan Review (pp 42-44), with respect to the Basin. We also note this can be extended to recognise and protect cultural flow provisions across all of Australia. To this end we recommend that the Act be amended to:
 - i. recognise the importance of cultural flows;
 - ii. include requirements that the Basin Plan, and all water management frameworks, recognise and protect cultural flows;² and

¹ [EDO Submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026).

² Subject to the direct input of First Nations Peoples, we comment and support the proposal of the South Australian Commission for the River Murray that the Water Act be amended to require the inclusion of a new chapter in the Basin Plan to address the gaping hole in the Basin Plan when it comes to First Nations water rights: Commissioner for the River Murray – South Australia: *Submission Responding to the 2026 Murray-Darling Basin Plan Review Discussion Paper* (1 May 2026) pp 39-40 (available at [here](#)).

- iii. incorporate mechanisms to establish cultural flow entitlements and cultural flow recovery targets.
- c. Amending the Act to elevate First Nations from stakeholders to Traditional Owners with an important role in co-design and co-management of water resources. We refer to our Basin Plan submission at pp 44-48 and recommend that the Act more broadly:
 - i. mandate minimum standards that apply to First Nations participation and engagement and that these embed the principles of UNDRIP and FPIC;³
 - ii. recognises First Nations as more than mere stakeholders but creates the right and opportunity for First Nations to play a key role in the conservation and protection of Basin ecosystems; and
 - iii. embeds substantive rights in addition to procedural rights.
- d. Amending the Act to meaningfully recognise and incorporate Cultural Knowledge. The Act does not specifically recognise the value or importance of Cultural Knowledge, nor is there an express requirement that decision makers take Cultural Knowledge into consideration (e.g., when determining Sustainable Diversion Limits and the Environmentally Sustainable Level of Take). Any such provisions must ensure First Nations maintain choice over whether and when such information is shared and incorporate protections of Indigenous Cultural and Intellectual Property.

We also refer further below to our recommendations specifically in relation to water resource plans (**WRPs**).

The need to consider climate change throughout implementation of the Act

- 4. In addition to issue-specific amendments identified elsewhere in this submission, the Review should consider legislative amendments to clearly identify climate change as a relevant and important factor to be accounted for in the management of Basin water resources – along with all water resources across Australia if the Act is broadened as suggested in this submission. This could include an amendment to the objects of the Act.

³ Including specifically in relation to engagement for the purpose of preparing water resource plans, noting that this process has been thoroughly criticised in particular by First Nations peoples in NSW. This is mentioned in: EDO, *Submission to the Special Rapporteur on the Rights of Indigenous Peoples* (4 April 2026), see p 24 (available here: <https://www.edo.org.au/wp-content/uploads/2026/04/EDO-Submission-UN-Special-Rapporteur-on-Indigenous-Rights-4-April-2026-.pdf>), which refers to an example report setting out concerns available here: https://www.mdba.gov.au/sites/default/files/publications/attachment-d-nsw-murray-and-lower-darling-wrp-first-nation-advice-redacted_0.pdf

Strengthening the Water Act to support implementation and outcomes in the Murray-Darling Basin

In advance of an Environmentally Sustainable Level of Take and diversion limits that are environmentally sustainable

5. The Review should investigate opportunities to, and make recommendations about, legislative amendments to achieve the following:
 - a. To clarify beyond any doubt that primacy is to be given to environmental priorities when determining the environmentally sustainable level of take (**ESLT**) and sustainable diversion limits (**SDLs**).⁴
 - b. To incorporate additional procedural scaffolding around ESLT and SDL assessments, including to strengthen the existing requirement that decisions are made in accordance with the best available scientific knowledge. Amendments could include the following:
 - i. Including a list of matters that must be considered when determining and reviewing the ESLT and SDLs (an obvious example of which could be the current and future projected impacts of climate change). Any such list of matters should be developed with the assistance of subject matter scientific experts and be the subject of further consultation.
 - ii. Including a list of matters that must *not* be considered when determining and reviewing the ESLT and SDLs. (E.g. The optimisation of social or economic outcomes. While these matters are certainly important and valid considerations, they necessarily become so *after* and *subject to* the determined baseline environmental requirements).
 - c. To embed regular, mandatory SDL reviews. These could be triggered by the passage of time (e.g. at least once every five years) in addition to event-based triggers that are designed to capture changing environmental conditions or circumstances, for example:
 - i. the receipt of a recommendation from an independent review panel charged with this duty;
 - ii. a specific set of outcomes-based triggers in water resource plan areas that are designed to respond to low flows that are associated with ecosystem harm;
 - iii. a decision that lists ecological communities within the Basin as threatened under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth);
 - iv. severe and/or prolonged water shortages; and/or
 - v. projections of prolonged dry conditions by the Bureau of Meteorology.Any such triggers should be developed with the assistance of subject matter scientific experts and be the subject of further consultation.
 - d. To confirm beyond doubt that it is unlawful to modify SDLs without a rigorous scientific assessment of whether such changes accord with the requirements that

extraction reflects an ESLT and is determined on the basis of the best available scientific knowledge.

Strengthening the role of Water Resource Plans and ensuring they are consistent with the Basin Plan

6. The Review should investigate opportunities to, and make recommendations about, the following:
 - a. Amending the Act to add certainty to the requirement that WRPs be “consistent with” the Basin Plan, including:
 - i. considering whether WRPs should be required to address a suite of core matters that the Act and/or the Basin Plan expressly lists in a single location (rather than being woven throughout the Basin Plan);
 - ii. considering whether there are some WRP obligations that should attract an objective test for compliance (e.g. compliance with extraction limits); and
 - iii. opportunities to clearly identify all core WRP content requirements and facilitate WRPs that are easy to understand and, by extension, enforce.
 - b. Inserting procedural requirements into the Act that would strengthen the transparency and credibility of the WRP assessment and accreditation processes, such as
 - i. mandatory relevant considerations;
 - ii. unambiguously requiring the Murray Darling Basin Authority (**Authority**) to form a view about whether WRPs are or are not consistent with the Basin Plan, including specific core elements; and
 - iii. clearer provisions that confirm what the Minister must be satisfied of before the power to accredit a WRP is enlivened.
 - c. Inserting provisions in the Act to require that WRPs to be developed and assessed on the basis of the best available scientific knowledge and socio-economic analysis – for example, by:
 - i. requiring Basin States to act on the basis of the best available scientific knowledge and socio-economic analysis when developing WRPs; and
 - ii. requiring the Authority and the Minister to be satisfied that a WRP has been developed on the basis of the best available scientific knowledge and socio-economic analysis as a precondition to the Minister accrediting a WRP. The same requirement would also need to apply to cases where the Authority steps in and prepares a WRP on behalf of a Basin State.
 - d. Introducing minimum legislated standards for First Nations consultation for the purpose of WRP development that:
 - i. are co-designed with First Nations Peoples and representative organisations; and

⁴ For a discussion of the importance also of ensuring that the SDL mechanism is more able to embody adaptive management, see [EDO Submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026), pp 31, 33, 35-36 and Recommendations 11, 13.

- ii. embed the principles of UNDRIP, including FPIC.
- e. Introducing a requirement that WRPs incorporate measures that give effect to the principles of UNDRIP, for example by:
 - i. establishing a framework for First Nations to operate as co-managers of water resources that flow through a Nation's Country;
 - ii. empowering and supporting First Nations to play a key role in the conservation and protection of Basin ecosystems within each Nation's Country; and
 - iii. empowering First Nations to self-determine who speaks for Country, and how.

Conjunctive management to effectively manage an interconnected system: Groundwater-surface water connectivity

7. This Review should investigate opportunities to, and make recommendations about, amendments to the Act to achieve the following:
 - a. Explicitly acknowledge surface-groundwater connectivity and require the Basin Plan to account for it.
 - b. Require sustainable diversion limits to explicitly account for surface-groundwater connectivity.

The above are likely to require flow through amendments to the Basin Plan, including in relation to water resource plan (**WRP**) requirements. Independent scientific advice and review should be obtained in relation to specific proposals.

- c. Advance improved data collection to quantify groundwater-surface water connectivity – for example by amending the list of the Authority's functions
8. In relation to managed aquifer recharge, this Review should:
 - a. consider opportunities to amend the policy and legal framework to advance managed aquifer recharge research and implementation; and
 - b. identify legislative amendments that may ultimately be necessary to support managed aquifer recharge, such as mechanisms to 'bank' stored entitlements.

Critical human water needs must be protected and prioritised

9. The Review should investigate opportunities and make recommendations to amend the Act (specifically Part 2A, with amendments to other associated parts as needed) to ensure the consistent and strengthened protection of critical human water needs across the Basin, including by:
 - a. elevating water quality targets so that they are binding and enforceable; and
 - b. ensuring that critical human water needs are prioritised, and that this prioritisation is enforceable.

10. In support of **Recommendation 9**, above, the Review should consider the Commonwealth's power to regulate critical human water needs. In the event the Review forms an opinion that there is a constitutional impediment to the Commonwealth regulating to protect critical human water needs, it must:
- a. publish the opinion and any advice in support of it; and
 - b. identify in its final report ways to address those impediments (e.g. by expanding the definition of 'relevant international agreement' to capture international human rights treaties that Australia is a party to).

Governance and third party review mechanisms must be strengthened

11. This Review should consider opportunities to improve governance including the following:
- a. Amendments to the Act to clarify and strengthen the role of the Authority as a politically disinterested specialist scientific and public education agency. This includes **Recommendations 5 and 6** in relation to procedural scaffolding around the assessment of SDLs the ESLT, and the accreditation of WRPs.
 - b. Building into the Act a system of independent specialist advice or peer review, for example, through an independent scientific panel. This could support the duties of the Authority and Minister to act on the best available scientific knowledge, particularly in relation to matters that rely on highly specialised expertise.
 - c. Whether the newly established Federal Environment Information Australia should have a role in the collation and publication of the best available scientific information about the Basin.
12. This Review should consider amendments to the Act that would require greater data and modelling transparency to improve public trust and accountability, along with improving the quality of public interest decisions under the Act.
13. This Review should consider amendments to the Act to include open, or "extended" standing provisions that would provide third parties a clear pathway to enforcing breaches of the Act and Basin Plan. This would assist in ensuring quality decisions are made under the Act in the public interest.

Broadening the Act to support improved water management across Australia

14. Introduce the National Water Agreement National Water Objectives into the Act to provide guidance for water management across Australia
15. Broaden the objects of the Act to reflect a broader focus of sustainable water management across Australia.
16. Amend the Act to require the Productivity Commission to undertake regular, independent public reporting on the performance of states and territories against the National Water Objectives.

Avoiding and mitigating the risks of data centres to Australia's water resources

17. The Review should consider the impacts of data centres on Australia's water resources, and ensure recommendations made assist in protecting against impacts to Australia's water resources from data centres.
18. Consider revising the National Water Agreement to address the risks of data centres to water resources.

Introduction

This submission and its recommendations are informed by our expertise as public interest environmental lawyers, through advising a diverse range of clients, including First Nations peoples, irrigators, floodplain graziers, conservation groups and community groups across Australia. Our submission is also informed by our long history of engagement with the implementation and evolution of the *Water Act 2007* (Cth) (**the Act**) and the *Basin Plan 2012* (Cth) (**the Basin Plan**) and reform of other water regulation instruments at a national and subnational level.

EDO is a non-Indigenous community legal centre that works alongside First Nations peoples around Australia and the Torres Strait Islands in their efforts to protect their Countries and cultural heritage from damage and destruction. EDO has and continues to work with First Nations clients who have interacted with western laws, including litigation and engaging in western law reform processes.

Out of respect for First Nations self-determination, EDO has provided high-level key recommendations for western law reform to empower First Nations to protect their Countries and cultural heritage. These high-level recommendations comply with Australia's obligations under international law and provide respectful and effective protection of First Nations' Countries and cultural heritage.

This submission builds on, and should be read together with, [EDO's submission](#) in relation to the Basin Plan Review from May 2026.

The Act and the Basin Plan were developed in response to a long history of unsustainable overextraction in the Basin and recognition that this posed a serious threat to Basin-dependent ecosystems.

The Commonwealth's legislative authority to enact the Water Act derived principally from the external affairs power in the Constitution. As such, the Act implements Australia's obligations under certain identified international environmental agreements. For the Act to fulfil its constitutional purpose it must give primacy to the environment.⁵ Further, since Australia has endorsed the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**), the Act can play an important role in entrenching the principles of UNDRIP in water management, where water is significant spiritually, culturally and economically to First Nations.

For the Basin, this primacy for environmentally sustainable management is clear in the terms of the Act – chiefly through the objects of the Act, its central purpose of reducing water extraction to environmentally sustainable levels, and through its core regulatory lever, the sustainable diversion limit mechanism. However, as described in EDO's submission to the Basin Plan Review and further below, implementation has fallen short.

⁵ SA Murray Darling Basin Royal Commission, *Murray Darling Basin Royal Commission Report*, (29 January 2019), 194, citing Professor George Williams. Available online at: Murray-Darling Basin Royal Commission Report.

This Review represents a critical opportunity to strengthen the Act so that it can achieve its objectives and facilitate a course correction in the development of water law and policy in the Basin.

The Review also represents a valuable opportunity to align Commonwealth water legislation with the national scope of Australia's water management challenges, by modestly expanding the reach of the Act across all jurisdictions and providing guiding legislative benchmarks against which state and territory water management can be analysed. This is also timely, noting that this Review is occurring alongside the negotiation of a new National Water Agreement.

Advancing First Nations water justice

This is a critical opportunity to update the Water Act and advance First Nations water justice

In its current form the Act fails to recognise and honour the relationship between First Nations Peoples and cultures and freshwater systems across the Basin, and across Australia more broadly.⁶ Under the current Act, critical issues faced by First Nations across the Basin include, in particular:⁷

- water dispossession;
- a lack of meaningful participation opportunities;
- failure to provide for cultural flows; and
- failure to ensure access to clean drinking water for all.

This Review is an indispensable opportunity to update the Act to advance First Nations water rights by embedding the rights and principles of the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*. Those that are particularly relevant to this Review, and that could be advanced by way of substantive amendments to the Act, include (for example):

- the right to self-determination (Arts 3, 4, 5);
- the right to participate in decision-making through self-chosen representatives in matters which would affect rights (Art 18);
- an equal right to enjoy the highest attainable standard of physical and mental health (Art 24);
- the right to lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired (Art 26);
- the right to redress for lands, territories and resources that have been taken, occupied used or damaged without Free, Prior and Informed Consent (FPIC) (Art 28); and
- the right to conservation and protection of the environment (Art 29).

⁶ As we have highlighted previously: Environmental Defenders Office, *Submission to the Special Rapporteur on the Rights of Indigenous Peoples* (4 April 2026), see pp 8-9, 15-16, 24-26 (available [here](#)).

⁷⁷ As we have highlighted recently: [EDO Submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026), [17].

Embedding the principles of UNDRIP raises complex legal and policy matters; First Nations peoples must be adequately supported and resourced to lead and review proposals

It goes without saying that the Act and Basin Plan comprise a complex regulatory framework. The process of identifying and proposing specific amendments raises complex matters of law and policy, including questions of international and constitutional law and analysis as to how proposed amendments will interact with the existing framework.

It would be contrary to the principles of Free, Prior and Informed Consent (**FPIC**) to conclude this Review without meaningfully resourcing First Nations peoples to co-design the amendments required to bring the Act into line with international standards. This is particularly important for proposed amendments to the regulation and management of the Basin regulation, which is of clear interest to many First Nations. In our opinion, doing so requires:

- a. First, enabling First Nations the time and resourcing to obtain independent expert legal advice. Such advice might be sought by individual Nations, Nation representative groups and/or a collective. It should provide detailed analysis and drafting proposals for consideration by the Review.
- b. Second, enabling First Nations the opportunity to engage with the Review process in an iterative way over time as it develops about such proposals, rather than once or twice at set points in the process under tight time constraints.

Establishing a process for First Nations specific consultation - led by Ms Teagan Shields - has been rightly commended. However, the complexity of the legislation and settling on appropriate reforms demands an iterative process. Although broad town hall discussions created an opportunity to identify important issues and themes, First Nations must be resourced and supported to participate throughout the process, including when and after the draft Review report is published. This is to enable First Nations to interrogate any proposed mechanisms and amendments, including the opportunity to propose specific approaches to address and translate the identified issues and themes into law and policy.

An observation about constitutional power and UNDRIP

The external affairs power⁸ includes a power to make laws with respect to matters of international concern, of which we suggest UNDRIP is one.⁹ In addition to this, we note the following:¹⁰

⁸ Australian Constitution s 51(xxix).

⁹ *Commonwealth v Tasmania (Dam Case)* (1983) 158 CLR at 132, 132 per Mason J; 171 per Murphy J; at 220 per Brennan J; at 258 per Deane J. Also *Koowarta v Bjelke-Peterson* (1982) 153 CLR 168 at 220 per Stephen J. See also e.g. Dr Katie O'Bryan, Ass Prof Kate Galloway, Ass Prof M Caston and S Walker, Castan Centre Submission to the Inquiry into the Application of the UNDRIP (June 2022) available [here](#). Noting also that UNDRIP was adopted by the General Assembly in 2007 with 143 states in favour, 4 against and 11 abstentions, with the four states that voted against having since reversed their position (see UNDRIP Web Page [here](#)).

¹⁰ These matters are also helpfully articulated in the submission of the Commissioner for the River Murray – South Australia: *Submission Responding to the 2026 Murray-Darling Basin Plan Review Discussion Paper* (1 May 2026) p 38 (available at [here](#)).

- The Convention on Biological Diversity (**CBD**) is one of two principal treaties on which the Act relied when passed, the Act being primarily a law with respect to external affairs.¹¹ Notably:

- o CBD Article 8(j) specifically provides that:

Each Contracting Party shall, as far as possible and as appropriate:

...

(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders or such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices

- Target 22 of the Kunming Montreal Global Biodiversity Framework¹² (adopted by the CBD at the 15th Conference of the Parties) reads as follows:

Ensure the full, equitable, inclusive, effective and gender-responsive representation and participation in decision-making, and access to justice and information related to biodiversity by indigenous peoples and local communities, respecting their cultures and their rights over lands, territories, resources, and traditional knowledge, as well as by women and girls, children and youth, and persons with disabilities and ensure the full protection of environmental human rights defenders

- At the 7th CBD COP, the parties adopted the Akwé: Kon Guidelines,¹³ voluntary guidelines that relate to the conduct of cultural environmental and social impact assessments in relation to proposed developments on, or likely to impact, lands and waters traditionally occupied or used by First Nations Peoples.

Should the Review form an opinion that there is a constitutional impediment to implementing the principles of UNDRIP in the Act, it is imperative that:

- such a position only be formed in reliance on independent legal advice;
- any such supporting legal advice be published; and
- the Review also identify how those impediments can be addressed (again, by reference to independent, publicly available legal advice).

¹¹ See e.g. SA Murray Darling Basin Royal Commission, *Murray Darling Basin Royal Commission Report*, (29 January 2019, p 107.

¹² *Convention on Biological Diversity* (2022) Kunming–Montreal Global Biodiversity Framework. (CBD/COP/DEC/15/4), available [here](#).

¹³ Secretariat of the Convention on Biological Diversity (2004) Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities Montreal (CBD Guidelines Series), available [here](#).

Highlighting some key issues for reform

In the recommendations below, we identify several matters that we recommend should be addressed by amendments to the Act. Doing so would offer opportunities to deliver First Nations economic, environmental, social, spiritual and cultural outcomes. These are based on our experience working with and supporting First Nations in the Basin. They are not intended to be exhaustive and we emphasise the importance of ensuring First Nations representative bodies are given the opportunity to lead the process of identifying key reform requirements and appropriate mechanisms.

Recommendations:

1. The Review must adopt processes that accord with the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), including that Free, Prior, and Informed Consent (**FPIC**) is adopted by the Review throughout its entire course. This should include ensuring that First Nations are given sufficient opportunity, time and resourcing to engage, including once the draft report is published later this year. Given the complexity of the legal framework, this should allow for First Nations to receive the support of independent legal advice, including about implementing the principles in UNDRIP.
2. In the event the Review forms an opinion that there is a constitutional impediment to implementing the principles of UNDRIP in the Act, it must:
 - a. publish any legal advice that expresses and explains this position; and
 - b. identify in its final report ways to address those impediments.

The Review's final report and any recommendations on this point should be informed by independent legal advice.

3. The Review should investigate opportunities to, and make recommendations about, the following:
 - a. Amending the objects of the Act to strengthen the recognition and importance of First Nations water rights in the Basin – and more broadly across Australia if the Act is broadened – including by prescribing UNDRIP as a relevant international agreement.
 - b. Amending the Act to recognise and promote the provision and protection of cultural flows. We refer to EDO's submission to the Basin Plan Review (pp 42-44), with respect to the Basin. We also note this can be extended to recognise and protect cultural flow provisions across all of Australia. To this end we recommend that the Act be amended to:
 - i. recognise the importance of cultural flows;
 - ii. include requirements that the Basin Plan, and all water management frameworks, recognise and protect cultural flows;¹⁴ and

14

Subject to the direct input of First Nations Peoples, we comment and support the proposal of the South Australian Commission for the River Murray that the Water Act be amended to require the inclusion of a new chapter in the Basin Plan to address the gaping hole in the Basin Plan when it comes to First Nations water rights: Commissioner for the River Murray – South Australia: *Submission Responding to the 2026 Murray-Darling Basin Plan Review Discussion Paper* (1 May 2026) pp 39-40 (available at [here](#)).

- iii. incorporate mechanisms to establish cultural flow entitlements and cultural flow recovery targets.
- c. Amending the Act to elevate First Nations from stakeholders to Traditional Owners with an important role in co-design and co-management of water resources. We refer to our Basin Plan submission at pp 44-48 and recommend that the Act more broadly:
 - i. mandate minimum standards that apply to First Nations participation and engagement and that these embed the principles of UNDRIP and FPIC;¹⁵
 - ii. recognises First Nations as more than mere stakeholders but creates the right and opportunity for First Nations to play a key role in the conservation and protection of Basin ecosystems; and
 - iii. embeds substantive rights in addition to procedural rights.
- d. Amending the Act to meaningfully recognise and incorporate Cultural Knowledge. The Act does not specifically recognise the value or importance of Cultural Knowledge, nor is there an express requirement that decision makers take Cultural Knowledge into consideration (e.g., when determining Sustainable Diversion Limits and the Environmentally Sustainable Level of Take). Any such provisions must ensure First Nations maintain choice over whether and when such information is shared and incorporate protections of Indigenous Cultural and Intellectual Property.

We also refer further below to our recommendations specifically in relation to water resource plans (**WRPs**).

The need to consider climate change throughout implementation of the Act

The 2025 Australian National Climate Risk Assessment found:¹⁶

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

¹⁵ Including specifically in relation to engagement for the purpose of preparing water resource plans, noting that this process has been thoroughly criticised in particular by First Nations peoples in NSW. This is mentioned in: EDO, *Submission to the Special Rapporteur on the Rights of Indigenous Peoples* (4 April 2026), see p 24 (available here: <https://www.edo.org.au/wp-content/uploads/2026/04/EDO-Submission-UN-Special-Rapporteur-on-Indigenous-Rights-4-April-2026-.pdf>), which refers to an example report setting out concerns available here: https://www.mdba.gov.au/sites/default/files/publications/attachment-d-nsw-murray-and-lower-darling-wrp-first-nation-advice-redacted_0.pdf

¹⁶ Commonwealth Government, *Australia's National Climate Risk Assessment*, (Webpage, 2025), available [here](#).

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.

As described in our submission to the Basin Plan Review, climate change is already affecting the Basin.¹⁷ Climate change is also impacted water resources throughout Australia. Rising temperatures, prolonged droughts, and extreme weather events caused by climate change will continue to harm the Basin and all water resources. This will make it increasingly difficult to restore and protect water sources and their dependent ecosystems.

Unfortunately, despite climate change being recognised as an important influence on water availability in the Basin from the outset,¹⁸ climate change remains poorly accounted for in the implementation of the Act. This began with the original ESLT and SDL determinations, which failed to account for climate change.¹⁹ Concerningly, and as discuss further below, thus far the Murray Darling Basin Authority (**Authority**) is proposing to continue along the same trajectory for the purposes of the current Basin Plan Review.

This Review is a critical opportunity to strengthen the Act to ensure water management is in fact responsive to the impacts of climate change, in the Basin and across Australia.

Recommendations:

4. In addition to issue-specific amendments identified elsewhere in this submission, the Review should consider legislative amendments to clearly identify climate change as a relevant and important factor to be accounted for in the management of Basin water resources – along with all water resources across Australia if the Act is broadened as suggested in this submission. This could include an amendment to the objects of the Act.

Strengthening the Water Act to support implementation and outcomes in the Murray-Darling Basin

This part of our submission identifies several issues that we recommend should be considered and addressed in the course of this Review. These issues include:

1. An Environmentally Sustainable Level of Take and the Sustainable Diversion Limits
2. Strengthening the role of water resource plans (**WRPs**) and ensuring they are consistent with the Basin Plan
3. Conjunctive management of groundwater-surface water connectivity needed
4. Critical human water needs must be protected and prioritised

¹⁷ [EDO Submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026), p 28 onwards.

¹⁸ Commonwealth, *Hansard*, House of Representatives, 8 August 1007, p 4 (Malcolm Turnbull MP, then Minister for the Environment and Water Resources).

¹⁹ See our discussion in [EDO Submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026), p 29, citing the SA Murray Darling Basin Royal Commission, *Murray Darling Basin Royal Commission Report*, (29 January 2019).

5. Governance and third-party review mechanisms must be strengthened

In identifying these issues, we are guided by the core objectives of the Act. We note that the issues and recommendations included below do not represent an exhaustive list. We also refer to our submission to the Basin Plan Review.²⁰

In advance of an Environmentally Sustainable Level of Take and diversion limits that are environmentally sustainable

Legal form vs implementation to the severe detriment of Basin ecosystems

There are many reasons to celebrate the Act and the Basin Plan, in particular because the Act is strong, environment-first legislation. Unfortunately, implementation has fallen far short of both what the law requires and what is necessary to sustain healthy Basin ecosystems and, ultimately, communities.

In 2018, the Act was the subject of a detailed legal analysis by one of Australia's most highly regarded lawyers.²¹ The analysis found that the original ESLT and SDL assessments were unlawful.²² Among other things, the Authority had failed to act on the best available scientific knowledge, including by failing to consider the impacts of climate change. This issue has never been brought before a Court and is unfortunately still treated by some as a matter of ambiguity. This is not just a matter of legal construction; it boils down to whether the legislation is administered so that it can and does in fact protect and restore Basin ecosystems.

The serious environmental decline in the Basin, its origins in a long history of over-extraction, and the compounding effects of climate change are canvassed in our submission to the Basin Plan Review.²³ There is an increasingly urgent need to grapple with enduring legal and scientific criticism of the original Basin-wide assessments of the ESLT and the SDLs.²⁴

Unfortunately, the Authority's conduct of "initial SDL assessments" and its responses proposed so far in the course of the Basin Plan Review suggest more of the same, but in a worsening environmental context. Glaringly, the Authority says it is not proposing changes to the SDLs to respond to the projected impacts of climate change. To quote the South Australian Commissioner for the River Murray:

... if the Millenium Drought was eclipsed in severity in the Northern Basin by a drought that occurred within 5 years of the Basin Plan's adoption; if we have been gathering evidence for decades about the impacts of climate change in the Basin; and if 2050 is only 24 years away –

²⁰ [EDO Submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026).

²¹ SA Murray Darling Basin Royal Commission, *Murray Darling Basin Royal Commission Report*, (29 January 2019).

²² SA Murray Darling Basin Royal Commission, *Murray Darling Basin Royal Commission Report*, (29 January 2019), as summarised at [5.5], [6.5]-[6.6], [6.11].

²³ See generally, [EDO Submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026).

²⁴ As discussed as Keystone Issue One and Two in [EDO Submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026), pp 7-37.

*when will be the right time to bring extraction limits into line with the reality of global warming?*²⁵

It is further concerning that the Chief Executive of the Authority is recently on the record as saying that “we have to move beyond water recovery”, “we’re well beyond that point now... its about using what we have well”.²⁶ This comment was made well before the Review process has concluded, and in a context where there is a *substantial anticipated shortfall in water recovery* under the Basin Plan (to the tune of 300GL/yr due to issues with SDLAM).

In this context, there is clear value in taking this opportunity to clarify beyond any doubt the legal obligations that apply to the determination of the ESLT and SDLs and, more broadly, the obligations of the Authority and the Minister. This is to ensure that the Act is implemented in such a way that will *in fact* protect and restore Basin ecosystems, and to support public understanding and confidence in the Authority’s decisions.²⁷

Broadly, we recommend that this Review investigate opportunities to amend the Act to clarify the primacy of environmentally sustainable extraction, and, ultimately, to protect and restore Basin ecosystems.

In addition to the foundational issues with the ESLT and SDL calculations,²⁸ in recent years there have been amendments made to SDLs on the basis of a recalculation of the “Baseline Diversion Limits”, particularly in areas where floodplain harvesting occurs. Ultimately, this means that Basin States, and NSW in particular, have increased the amount of water that can be extracted for consumptive use in those resource units. These adjustments have been controversial, informal and arguably unlawful. They have not triggered reassessments of SDLs to reconsider environmental sustainability.

Recommendations:

5. The Review should investigate opportunities to, and make recommendations about, legislative amendments to achieve the following:
 - a. To clarify beyond any doubt that primacy it to be given to environmental priorities when determining the environmentally sustainable level of take (**ESLT**) and sustainable diversion limits (**SDLs**).²⁹
 - b. To incorporate additional procedural scaffolding around ESLT and SDL assessments, including to strengthen the existing requirement that decisions are

²⁵ Commissioner for the River Murray – South Australia: *Submission Responding to the 2026 Murray-Darling Basin Plan Review Discussion Paper* (1 May 2026) p 5 (available at [here](#)).

²⁶ Zac Braxton-Smith, “Move beyond water recovery”: MDBA chief says water buybacks won’t help now’, *Stock Journal* (6 August 2026, version as updated at 6.14pm).

²⁷ The matter of public confidence and good governance is also addressed elsewhere in this submission.

²⁸ As raised in [EDO Submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026).

²⁹ For a discussion of the importance also of ensuring that the SDL mechanism is more able to embody adaptive management, see [EDO Submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026), pp 31, 33, 35-36 and Recommendations 11, 13.

made in accordance with the best available scientific knowledge. Amendments could include the following:

- i. Including a list of matters that must be considered when determining and reviewing the ESLT and SDLs (an obvious example of which could be the current and future projected impacts of climate change). Any such list of matters should be developed with the assistance of subject matter scientific experts and be the subject of further consultation.
 - ii. Including a list of matters that must *not* be considered when determining and reviewing the ESLT and SDLs. (E.g. The optimisation of social or economic outcomes. While these matters are certainly important and valid considerations, they necessarily become so *after* and *subject to* the determined baseline environmental requirements).
- c. To embed regular, mandatory SDL reviews. These could be triggered by the passage of time (e.g. at least once every five years) in addition to event-based triggers that are designed to capture changing environmental conditions or circumstances, for example:
 - i. the receipt of a recommendation from an independent review panel charged with this duty;
 - ii. a specific set of outcomes-based triggers in water resource plan areas that are designed to respond to low flows that are associated with ecosystem harm;
 - iii. a decision that lists ecological communities within the Basin as threatened under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth);
 - iv. severe and/or prolonged water shortages; and/or
 - v. projections of prolonged dry conditions by the Bureau of Meteorology.Any such triggers should be developed with the assistance of subject matter scientific experts and be the subject of further consultation.
- d. To confirm beyond doubt that it is unlawful to modify SDLs without a rigorous scientific assessment of whether such changes accord with the requirements that extraction reflects an ESLT and is determined on the basis of the best available scientific knowledge.

Strengthening the role of Water Resource Plans and ensuring they are consistent with the Basin Plan

The Act requires Basin States to prepare Water Resource Plans (**WRPs**) for WRP Areas.³⁰ WRPs set out rules for managing Basin water resources at a local or catchment level. They are prepared by Basin States, assessed by the Murray Darling Basin Authority (**Authority**), and then accredited by the Commonwealth Water Minister. Commissioner Walker SC identified the development and

³⁰ There is also a mechanism for the Authority to step in and prepare a WRP: see *Water Act 2007* (Cth) s 68. This submission does not address this power but notes there may be scope for considering a mechanism that sits between Basin State responsibility and a full step-in power.

accreditation of WRPs as “the most significant obligation” under the Act directed to Basin state governments.³¹

Below we identify several issues that we consider important for this Review to address, followed by our preliminary recommendations.

Key issues

First, s 55(2) of the Act states that a WRP “must be consistent with the relevant Basin Plan”. The apparent simplicity of the provision is apt to deceive; the Federal Court has recently confirmed that the Act does not require a WRP to be objectively consistent with the Basin Plan in order for the Minister to accredit it.³² Instead, the Minister must simply be *satisfied* that a WRP is consistent with the Basin Plan.³³ What is necessary in order to be satisfied of ‘consistency’ with the Basin Plan has not been tested. There are no mandatory relevant considerations listed in the Act and no specifically identified matters the Minister must be satisfied of.

Commissioner Walker SC observed in relation to s 35 of the Act (which prohibits an agency of a Basin State (among others) from acting in contravention of the Basin Plan, or failing to act consistently with it) that there would inevitably be some “forensic difficulty” in “enforcing a broadly stated prohibition with respect to a complex regulatory regime”.³⁴ Noting the similarly broadly stated requirement of consistency in s 55(2) and the absence of any further guidance, a similar difficulty arguably arises from this provision; if correct, this would undermine the enforcement provisions in the Act, the credibility and force of WRPs and - by extension - the Basin Plan.

Second, in relation to the Authority’s role of making recommendations to the Minister about WRP accreditation (ss 63(1), (3), (4)), the Federal Court recently found that there is no requirement that the Authority be *satisfied* that a WRP is “consistent” with the Basin Plan before recommending accreditation. In fact, it is not even strictly necessary for the Authority to advise the Minister *whether* a WRP is consistent with the Basin Plan.³⁵ In addition, as with the Minister’s accreditation decision, there are no mandatory considerations that the Authority must turn its mind to. This throws into question the purpose and effect of the Authority’s role in the assessment and recommendation process.

Third, WRPs are long, complex and comprise bits and pieces from a suite of documents. The result is that it can be practically impossible to deduce what actually comprises the *accredited WRP*.³⁶ This has at least two consequences:

³¹ SA Murray Darling Basin Royal Commission, *Murray Darling Basin Royal Commission Report*, (29 January 2019) p 648.

³² *Murray Lower Darling Rivers Indigenous Nations v Commonwealth* [2025] FCA 1029 at [93]-[96].

³³ *Murray Lower Darling Rivers Indigenous Nations v Commonwealth* [2025] FCA 1029 at [96].

³⁴ SA Murray Darling Basin Royal Commission, *Murray Darling Basin Royal Commission Report*, (29 January 2019) p 113.

³⁵ *Murray Lower Darling Rivers Indigenous Nations v Commonwealth* [2025] FCA 1029 at [97].

³⁶ See, as one example, the NSW Border Rivers Surface Water Resource Plan, [here](#). Page 7 explains that the WRP body does three things: contains explanatory text and narrative; contains items intended for accreditation; and refers to schedules and appendices. The WRP body document is extensive, but only ‘blue

- a. it throws into question how the Minister can be satisfied that a WRP is consistent with the Basin Plan in the first place, undermining the credibility of the entire assessment and accreditation process; and
- b. it creates a further challenge or vulnerability when it comes to enforcement.

Fourth, s 21(4)(b) of the Act requires the Authority and the Minister to “act on the basis of the best available scientific knowledge and socio-economic analysis” when exercising their powers and performing their functions under Division 1 (‘Basin Plan’), Part 2 (‘Management of Basin water resources’) of the Act. This obligation is not extended to apply to WRP development and accreditation, despite their central importance in the regulatory regime.

Fifth, as we have expressed in our submission to the Basin Plan Review,³⁷ the requirements to consult with First Nations peoples for the purpose of WRP development (see Chapter 10 Part 14 of the Basin Plan) are wholly inadequate – both in rendering engagement to mere consultation, and also in terms of minimum standards for engagement. Further, there are no mechanisms for ongoing participation of Basin Nations in water resource management, nor measures to ensure that participation will actually influence the final form of WRPs (or other aspects of implementing the Basin Plan).

Sixth, as noted elsewhere in this submission, third party standing enforcement provisions would improve the Act broadly, including specifically with respect to WRP development and implementation.

Finally, reiterating the position stated in our submission to the Basin Plan Review, EDO would strongly oppose any reform that would water down the WRP accreditation requirements.³⁸

Recommendations:

6. The Review should investigate opportunities to, and make recommendations about, the following:
 - a. Amending the Act to add certainty to the requirement that WRPs be “consistent with” the Basin Plan, including:
 - i. considering whether WRPs should be required to address a suite of core matters that the Act and/or the Basin Plan expressly lists in a single location (rather than being woven throughout the Basin Plan);
 - ii. considering whether there are some WRP obligations that should attract an objective test for compliance (e.g. compliance with extraction limits); and

boxed text’ are ‘items to be assessed by the MDBA for accreditation’, but the ‘blue boxed text’ ‘may [also] refer to all or part of an attached schedule, and in these instance, that schedule or part thereof is also to be assessed by the MDBA for accreditation’. Attempts at digesting the text in the blue boxes quickly reveal how complex it is to determine what actually comprises the “accredited WRP”.

³⁷ [EDO Submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026) in Keystone Issue Three; see in particular pp 38, 40, 46-48.

³⁸ [EDO Submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026) in Keystone Issue Three; see in particular p 48, Recommendation 17.

- iii. opportunities to clearly identify all core WRP content requirements and facilitate WRPs that are easy to understand and, by extension, enforce.
- b. Inserting procedural requirements into the Act that would strengthen the transparency and credibility of the WRP assessment and accreditation processes, such as
 - i. mandatory relevant considerations;
 - ii. unambiguously requiring the Murray Darling Basin Authority (**Authority**) to form a view about whether WRPs are or are not consistent with the Basin Plan, including specific core elements; and
 - iii. clearer provisions that confirm what the Minister must be satisfied of before the power to accredit a WRP is enlivened.
- c. Inserting provisions in the Act to require that WRPs to be developed and assessed on the basis of the best available scientific knowledge and socio-economic analysis – for example, by:
 - i. requiring Basin States to act on the basis of the best available scientific knowledge and socio-economic analysis when developing WRPs; and
 - ii. requiring the Authority and the Minister to be satisfied that a WRP has been developed on the basis of the best available scientific knowledge and socio-economic analysis as a precondition to the Minister accrediting a WRP. The same requirement would also need to apply to cases where the Authority steps in and prepares a WRP on behalf of a Basin State.
- d. Introducing minimum legislated standards for First Nations consultation for the purpose of WRP development that:
 - i. are co-designed with First Nations Peoples and representative organisations; and
 - ii. embed the principles of UNDRIP, including FPIC.
- e. Introducing a requirement that WRPs incorporate measures that give effect to the principles of UNDRIP, for example by:
 - i. establishing a framework for First Nations to operate as co-managers of water resources that flow through a Nation's Country;
 - ii. empowering and supporting First Nations to play a key role in the conservation and protection of Basin ecosystems within each Nation's Country; and
 - iii. empowering First Nations to self-determine who speaks for Country, and how.

Conjunctive management to effectively manage an interconnected system: groundwater-surface water connectivity

Groundwater aquifers are hydrologically connected to rivers and streams across much of the Murray Darling Basin.³⁹ The movement of water between rivers and aquifers slows the passage of water through the Basin, which maximises water retention in soils and aquifers and serves to sustain ecosystems through dry periods.⁴⁰

Managing interconnected systems separately undermines the integrity of the water management system and its ability to achieve its intended objectives. Yet, to a significant extent, this is what the current system of separate groundwater and surface water SDLs, weak consideration of cross impacts, and lack of investment in groundwater storage options does. The significance of these gaps is compounded by the escalating impacts of climate change and the underlying complexity of systems we don't have enough data or modelling capability to make confident predictions about. Both of these demand a precautionary approach to groundwater extraction.

Managing connected systems together is not a new idea. Conjunctive water management,⁴¹ including managed aquifer recharge, has been practiced successfully by many cultures and across geographical contexts for over 2000 years, primarily to increase water supply security for agriculture.^{42,43} In Australia, there are highly successful examples of managed aquifer recharge being used to improve town water supply security and harvest storm water.⁴⁴ It was recognised as important nationally in the National Water Initiative in [2004]⁴⁵ and this is carried through to the draft National Water Agreement.^{46,47} The Act itself states that the purpose of the Basin Plan is to “provide for the integrated management of Basin water resources”.⁴⁸ However, despite its potential to improve water management, true integration of surface and groundwater management in the Basin is still in its infancy.⁴⁹

³⁹ Stewardson, M. J., Walker, G., & Coleman, M. (2021). Chapter 3 - Hydrology of the Murray–Darling Basin. In B. T. Hart, N. R. Bond, & M. J. Stewardson (Eds.), *Murray-Darling Basin, Australia: Its Future Management* (pp. 47–73). [ScienceDirect](#).

⁴⁰ Ibid.

⁴¹ For an explanation of conjunctive management see, e.g., Andrew Ross, ‘Speeding the transition towards integrated groundwater and surface water management in Australia’ (2018) 567(3) *Journal of Hydrology*, e1-e10; <https://gw-project.org/books/conjunctive-water-management/>.

⁴² Ranjeet Sabale, Venkatesh Basappa and Mathew Jose, ‘Sustainable Water Resource Management through Conjunctive Use of Groundwater and Surface Water: A Review’ (2022) 8(1) [Innovative Infrastructure Solutions](#)

⁴³ Heng Zhang, Yongxin Xu and Thokozani Kanyerere, ‘A Review of the Managed Aquifer Recharge: Historical Development, Current Situation and Perspectives’ (2020) 118–119 *Physics and Chemistry of the Earth, Parts A/B/C* 102887, 1

⁴⁴ Peter Dillon, ‘Australian Progress in Managed Aquifer Recharge and the Water Banking Frontier’ (2015) 42(6) *Water: Journal of the Australian Water Association* 53

⁴⁵ National Water Initiative, cl 24(x) [Intergovernmental Agreement on a National Water Initiative](#).

⁴⁶ Outcome 6A, principle 6.1.12.

⁴⁷ National Water Agreement Outcome 1C Principle 1.8.

⁴⁸ Section 20. Integrated management of water management is also identified as of importance in the 2008 Murray-Darling Basin Intergovernmental Agreement (cl ##) and NSW⁴⁸ and Victorian legislation [insert ref to legislation].

⁴⁹ Andres Ross & John Williams, ‘Surface water and groundwater connectivity in the Murray-Darling Basin: Integrated management of connected resources’ (2024).

Advancing integrated management in the Basin to achieve better water security, ecosystem protection, flexibility in storage, water quality management, and reduce evaporative losses is becoming increasingly important. Extraction of groundwater is projected to increase by up to 16% under the drying trend induced by climate change.⁵⁰ This projected growth in groundwater extraction is estimated to cause a reduction of 100–400 GL per year in surface water flows over a 40-year period as a result of declining contributions of groundwater to rivers.⁵¹

At the same time, groundwater recharge is projected to decline, particularly in the southern Basin.⁵² These declines in groundwater levels and resultant further declines in river discharge will negatively impact groundwater-dependent ecosystems, including riverine ecosystems.⁵³ All of this is on the back of groundwater levels already declining in many of the alluvial aquifers of the Basin since the 1970s.⁵⁴

In addition to the above, there is also high uncertainty in many aspects of our ability to precisely predict the impact of future changes in rainfall and runoff on groundwater recharge, and impacts of groundwater extraction on groundwater dependent ecosystems and river flows. This uncertainty is in large part due to substantial gaps in data and modelling. We have not yet undertaken the research necessary to understand movement of water between groundwater and surface water systems under the range of conditions encountered in the Basin (e.g. how much baseflow to a particular river system does groundwater provide at different flow levels?). This was recognised as an issue in the Authority’s “initial SDL assessments”.⁵⁵ Further research of this type is critical to ensure we understand the systems as they currently interact, and then to project what will happen under climate change conditions.

One important way to advance integrated management would be to have more rigorous requirements for SDL determinations to account for movement of water between ground and surface water systems. This could also be supported by improved monitoring and data collection.

⁵⁰ Clark, S. R., Gonzalez, D., Fu, G., & Janardhanan, S. (2025). Machine learning insights into groundwater demand under changing surface water availability: Murray-Darling Basin, Australia. *Journal of Hydrology: Regional Studies*, 62, 102772. <https://doi.org/10.1016/j.ejrh.2025.102772>

⁵¹ Glen R Walker et al, ‘Potential Cumulative Impacts on River Flow Volume from Increased Groundwater Extraction under the Murray-Darling Basin Plan’ (2020) 24(2) *Australasian Journal of Water Resources* 123, 125.

⁵² Murray–Darling Basin Authority (2025) *The future of climate and water availability in the Murray–Darling Basin: Sustainable Yields report*, Murray–Darling Basin Authority, Canberra. Available at: <https://www.mdba.gov.au> (Accessed:

⁵³ Rebecca Doble et al, ‘An overview of groundwater response to a changing climate in the Murray-Darling Basin, Australia: potential implications for the basin system and opportunities for management’ (2024) 32(1) *Hydrogeology Journal* 59

⁵⁴ Fu, G.; Clark, S.R.; Gonzalez, D.; Rojas, R.; Janardhanan, S. Spatial and Temporal Patterns of Groundwater Levels: A Case Study of Alluvial Aquifers in the Murray–Darling Basin, Australia. *Sustainability* 2023, 15, 16295 (available [here](#)).

⁵⁵ In the technical methods used to inform the groundwater SDL assessment for the 2026 Basin Plan Review, there was sufficient data to constrain only one component of the three types of recharge that replenish groundwater systems.⁵⁵ The SDL assessments were (and, without further research, will continue to be) hampered by this lack of ability to confidently predict two key forms of recharge (in-stream, and floodplain). In the technical methods, it is also stated that there were “no ‘fit for purpose’ groundwater models available at the time of the assessment to evaluate the impact of full use of the SDL”. See: The SDL Assessment: Groundwater Technical Methods, Murray–Darling Basin Authority Canberra, 2026. CC BY 4.0, p 1.

This also links to **Recommendation 5** in relation to introducing SDL reviews – that is, by incorporating triggers in surface or groundwater levels that mandate a halt or decline in extraction from connected resources to prevent water levels in both systems falling below critical environmental thresholds.

Managed aquifer recharge is one of a range of available tools in conjunctive management. It involves storing water in aquifers underground, which can then be extracted when required. Where hydrogeologically favourable, managed aquifer recharge can provide a superior alternative to surface water storage due to factors such as lower evaporation rates, reducing over-extraction from rivers during drought, naturally filtering storm or wastewater for future re-use, and maintaining water levels in aquifers that support groundwater dependent ecosystems.⁵⁶

To provide context, a volume of water in the order of 3000 GL per year can evaporate from surface water in the MDB, with dams constituting a major source of the evaporation.^{57,58} An average of 1,247 GL/year of surface water taken for irrigated cotton farming has evaporated since 1987, representing 39% of water taken in cotton farming catchments.⁵⁹ Despite research demonstrating approximately 4000 GL of potential underground storage capacity in the Basin,⁶⁰ less than 1% of the \$13 billion spent on Basin reform has been directed towards developing underground storage.⁶¹ This Review is a timely opportunity to consider the value of advancing managed aquifer recharge research as well as legislative and policy changes that might ultimately be required to support it (e.g. mechanisms to enable 'banking' of stored entitlements).

An increasing body of evidence demonstrates that conjunctive, integrated management is required to achieve the objects of the Act. True conjunctive management of groundwater and surface water systems in the Basin could maximise water use efficiency and security for environmental and human water needs, and allow improved water quality management.⁶² The Review offers a critical and timely opportunity to consider and make recommendations about opportunities to achieve objects of the Act into the future by advancing conjunctive, integrated management.

⁵⁶ Andrew Ross and Peter Dillon, 'Benefits and Costs of Managed Aquifer Recharge: Further Evidence' (2022) 14(20) *Water* 3257.

⁵⁷ Bureau of Meteorology, Murray-Darling Basin: Evaporation from surface water, (Web Page, accessed 29/8/2026), available [here](#).

⁵⁸ D L McJannet et al, *Estimating Open Water Evaporation for the Murray Darling Basin* (Report to the Australian Government from the CSIRO Murray-Darling Basin Sustainable Yields Project, CSIRO, 2008)

⁵⁹ Matthew J Colloff et al, 'Just Another Form of Take: Evaporation from Irrigation Storages and Channels in the Northern Murray–Darling Basin and the Implications for Water Policy Reform' (2026) (Early Access) *Australasian Journal of Water Resources*.

⁶⁰ D.W. Page, D. Gonzalez, T. Clune, Y. Colton & G.D. Bonnett (2022): Water banking in aquifers as a tool for drought resilience in the Murray Darling Basin, *Australasian Journal of Water Resources*, DOI: 10.1080/13241583.2022.2144115

⁶¹ Ibid.

⁶² Ross, A., & Williams, J. (2024). Surface water and groundwater connectivity in the Murray-Darling Basin: Integrated management of connected resources.

Recommendations:

7. This Review should investigate opportunities to, and make recommendations about, amendments to the Act to achieve the following:
 - a. Explicitly acknowledge surface-groundwater connectivity and require the Basin Plan to account for it.
 - b. Require sustainable diversion limits to explicitly account for surface-groundwater connectivity.

The above are likely to require flow through amendments to the Basin Plan, including in relation to water resource plan (**WRP**) requirements. Independent scientific advice and review should be obtained in relation to specific proposals.

- c. Advance improved data collection to quantify groundwater-surface water connectivity – for example by amending the list of the Authority’s functions
8. In relation to managed aquifer recharge, this Review should:
 - a. consider opportunities to amend the policy and legal framework to advance managed aquifer recharge research and implementation; and
 - b. identify legislative amendments that may ultimately be necessary to support managed aquifer recharge, such as mechanisms to ‘bank’ stored entitlements.

Critical human water needs must be protected and prioritised

The analysis and recommendations in this section build on, and should be read together with EDO’s submission to the Basin Plan Review.⁶³ That submission recommends that the Authority consider and propose amendments to the Basin Plan to ensure:

- critical human water needs are given the highest priority water use in both the northern and southern Basin;
- critical human water needs are always protected; and
- there is a compliance framework that establishes an enforceable duty to ensure that critical human water needs are satisfied.

This Review should identify changes to the Act that will be necessary to implement the above recommendations.

Discussion Paper recognises water security as a growing issue of concern

The Act includes the object of improving water security for all uses of Basin water Resources.⁶⁴ Accordingly water security is an important feature of this review.

⁶³ [EDO submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026), pp 53-59.

⁶⁴ *Water Act 2007* (Cth), s 3(e).

It is encouraging to see that the Review Discussion Paper recognises that water security is a growing issue of concern, including due to the impacts of climate change. Water security relates to both water quantity and water quality.⁶⁵

The Discussion Paper refers to the United Nations Sustainable Development Goals (**SDGs**), specifically SDG 6, which seeks to “*ensure safe drinking water and sanitation for all, focusing on the sustainable management of water resources, wastewater and ecosystems, and acknowledging the importance of an enabling environment*”.⁶⁶

The Discussion Paper also cites the 2025 Australian Climate Service’s water security report. That report says the climate risk to Australia’s water security is currently high and predicts that risk rising to very high by 2050 and to severe by 2090.⁶⁷

Current arrangements are inadequate to ensure adequate quality and quantities of water for water security

While the current provisions in the Act relating to critical human water needs were introduced approximately a year after the Act came into force,⁶⁸ the issue of critical human water needs has been central since the inception of the Act.⁶⁹ In light of the intensifying risks to water security that the Discussion Paper identifies, this Review must take the opportunity to strengthen the Act’s existing role in facilitating the robust management of critical human water needs to ensure water security for communities who rely on Basin water resources, including for core human consumption requirements.⁷⁰ Specifically, the Review should consider how the Act can be amended to ensure there are adequate quantities and quality of water to safeguard water security.

Adequate water quantity

The Act says the Commonwealth and Basin States have agreed that critical human water needs are the “highest priority water use for communities who are dependent on Basin water resources”.⁷¹ However, the Act fails to follow through by ensuring critical human water needs are prioritised across the Basin. EDO’s submission to the Basin Plan Review highlights how water extraction for consumptive use impacts water availability and has thereby compromised access to safe drinking water in the Northern Basin.⁷²

⁶⁵ Department of Climate Change, Energy, the Environment and Water, Independent Review of the Water Act 2007, Discussion Paper (July 2026), p 48.

⁶⁶ Ibid.

⁶⁷ Australian Climate Service, *Water Security A technical report for the National Climate Risk Assessment* (September 2025), p 1.

⁶⁸ *Water Amendment Bill 2008* (Cth).

⁶⁹ Chris Guest, *Sharing the Water 100 Years of River Murray Politics* (Murray Darling Basin Authority, 2016), 198; John Howard (Prime Minister) and Malcolm Turnbull (Minister for the Environment and Water Resources), Press Conference Transcript, 19 April 2007: <https://pmtranscripts.pmc.gov.au/release/transcript-15638>.

⁷⁰ *Water Act 2007* (Cth), s 86A(2).

⁷¹ *Water Act 2007* (Cth), s 86A.

⁷² [EDO submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026), [275]-[283].

This demonstrates that the current arrangements under the Act are not adequate to ensure that there is enough water to ensure water security and resilient communities.

Adequate water quality

Water security also depends on adequate water quality. The Act already provides for the management of water quality. However, water quality objectives comprise non-binding targets which means compliance is not enforceable.⁷³

This Review should consider elevating water quality targets in the Act to make them binding and enforceable. EDO recognises that improving water quality in the Basin requires complementary action by Basin States, including in areas extending beyond the Act's remit (for example, in relation to the management of pollution and land clearing).⁷⁴ However, the Act can and should be designed to play a stronger role in the advancement of its objects, in particular in relation to water security.

Protections for critical human water needs to be consistent across the Basin

Legal framework for the protection of critical human water needs are not consistent across the Basin (specifically when comparing the River Murray System⁷⁵ with elsewhere in the Basin).

The provisions protecting critical human water needs in the River Murray System are more robust than the remainder of the Basin. The Act requires a certain amount of water to be in the River Murray System at all times for the purpose of delivering critical human water needs. This minimum amount is called conveyance water.⁷⁶ The Act also requires the Basin Plan to specify water quality trigger points and salinity trigger points at which water in the River Murray System becomes unsuitable for meeting critical human water needs.⁷⁷ No equivalent provisions apply outside of the River Murray System. This discrepancy should be addressed.

Outside of the River Murray System, critical human water needs are regulated through the WRP accreditation process. However, as EDO's submission to the Basin Plan Review pointed out, the Basin Plan does not require WRPs to ensure that critical human water needs are met.⁷⁸

This Review should consider how critical human water needs regulation can be applied more consistently across the Basin to ensure all Basin communities enjoy protection of critical human water needs. This is particularly important in the context of the escalating impacts of climate change on water security, noted above.⁷⁹

Whilst the naturally higher variability in climate and river flows in the northern basin (i.e. outside of the River Murray system) requires a different approach, this is not a reason to avoid taking an

⁷³ *Water Act 2007* (Cth), s 25, *Basin Plan 2012* (Cth), ch 9 (see eg s 9.11) and ch 10.

⁷⁴ Murray Darling Basin Authority, 2026 Murray Darling Basin Plan Review Discussion Paper, (5 February 2026), pp 64-67.

⁷⁵ *Water Act 2007* (Cth), s 86A(3).

⁷⁶ *Water Act 2007* (Cth), s 86A(3)(4).

⁷⁷ *Water Act 2007* (Cth), s 86B.

⁷⁸ [EDO Submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026), [272].

⁷⁹ Australian Climate Service, *Water Security A technical report for the National Climate Risk Assessment* (September 2025), p 1.

approach altogether – it is an additional imperative. The advice from the NSW Connectivity Expert Panel demonstrates that changes to water sharing rules would definitely improve the proportion of time that critical human water needs are met (amongst other benefits) and that “the evidence indicates that the current rules are jeopardising social and environmental needs, not just during dry times, but at all times”.⁸⁰

A stable footing for the protection of critical human water needs: relevant international agreements ratified in the Act should include human rights treaties

The power to regulate critical human water needs is supported by Basin States referring their power to the Commonwealth.⁸¹ If the Commonwealth sought to make amendments to the Act in relation to critical human water needs, it is not guaranteed that the current referral would endure.

It is important that the Commonwealth continue to exercise political leadership when it comes to water security in this transboundary river system. The Commonwealth could do this by seeking to obtain an extended referral of the power to regulate critical human water needs. However, this may not be forthcoming and could always be revoked.

Given the need for bolstered protection of water quantity and quality to meet critical human water needs, and the desirability for consistency across Basin, this Review should consider and make recommendations based on the scope of the Commonwealth’s constitutional powers to regulate critical human water needs. As discussed below, we suggest that such a power may arise under the external affairs power supported by international human rights treaties and norms.

A human right to water

Australia is a party to various international treaties in relation to human rights, including the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*. UN Committees linked to these treaties have found that the right to water is a derivative of, and necessary to, specific rights articulated in each of these covenant.⁸² For example, the right to life,⁸³ the right to an adequate standard of living,⁸⁴ and the right to the highest attainable standard of health.⁸⁵

⁸⁰ New South Wales, Department of Climate Change, Energy, the Environment and Water and Connectivity Expert Panel, *Connectivity Expert Panel Final Report* (July 2024), p v.

⁸¹ *Water Act 2007* (Cth) s 9A(1)(a); see for example, *Waters (Commonwealth Power) Act 2008* (NSW), ss 3, 4(1)(a); *Water (Commonwealth Powers) Act 2008* (Vic) ss 3, 4(1)(b).

⁸² UN Committee on Economic, Social, and Cultural Rights (29th sess) [General Comment No. 15: The Right to Water](#) (E/C.12/2002/11, 20 January 2003), [2]–[6]. The Committee emphasised that these articles gave rise to a derivative human right to access drinking water; Un Human Rights Committee of the UN International Covenant on Civil and Political Rights [General Comment No. 36 on article 6: right to life \(2018\)](#), [25].

⁸³ *International Covenant on Civil and Political Rights*, (opened for signature 19 December 1966) (entered into force 23 March 1976), Article 6.

⁸⁴ *International Covenant on Economic, Social and Cultural Rights*, (opened for signature, 16 December 1966) (entered into force 3 January 1976) Article 11.

⁸⁵ *Ibid*, Article 12

The right to water involves an entitlement to a ‘system of water supply and management that provides equality of opportunity for people to enjoy the right to water.’⁸⁶ It also includes the right to take part in cultural life and practices for Aboriginal communities.⁸⁷ The right to water requires that priority in the allocation of water is to be given to the right to water for personal or domestic use.⁸⁸

The right to a healthy environment has been recognised as a standalone human right by the United Nations (UN) Human Rights Council.⁸⁹ More recently, the International Court of Justice found that a clean, healthy and sustainable environment is a precondition for the enjoyment of many human rights⁹⁰ and therefore inherent and essential in the enjoyment of these human rights.⁹¹

This supports the proposition that Commonwealth regulation of critical human water needs falls within the scope of the Commonwealth’s external affairs power.

Recommendations:

9. The Review should investigate opportunities and make recommendations to amend the Act (specifically Part 2A, with amendments to other associated parts as needed) to ensure the consistent and strengthened protection of critical human water needs across the Basin, including by:
 - a. elevating water quality targets so that they are binding and enforceable; and
 - b. ensuring that critical human water needs are prioritised, and that this prioritisation is enforceable.
10. In support of **Recommendation 9**, above, the Review should consider the Commonwealth’s power to regulate critical human water needs. In the event the Review forms an opinion that there is a constitutional impediment to the Commonwealth regulating to protect critical human water needs, it must:
 - a. publish the opinion and any advice in support of it; and
 - b. identify in its final report ways to address those impediments (e.g. by expanding the definition of ‘relevant international agreement’ to capture international human rights treaties that Australia is a party to).

⁸⁶ UN Committee on Economic, Social and Cultural Rights, (29th sess) [General Comment No 15: The Right to Water](#) (E/C.12/2002/11, 20 January 2003), [10].

⁸⁷ Ibid, [6]: ‘Water is essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life).’

⁸⁸ Ibid, [6]: ‘... priority in the allocation of water must be given to the right to water for personal and domestic uses. Priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenant rights.’

⁸⁹ UN Human Rights Council, (48th sess) [Adopted Resolution 48/13: The human right to a clean healthy and sustainable environment](#) (8 October 2021). At the time Australia was not an active member of the Council.

⁹⁰ Including, the right to life, the right to health and the right to an adequate standard of living, including access to water, food and housing.

⁹¹ International Court of Justice, *Obligations of States in Respect of Climate Change*, Advisory Opinion (23 July 2025), available [here](#).

Governance and third party review mechanisms must be strengthened

Institutional and governance arrangements have been identified as a focus area for this Review. Specifically, the Review will consider whether the institutional and governance arrangements under the Act are effective in ensuring accountable, efficient and transparent decision-making and, if not, how they can be improved.

This section identifies key questions we recommend the Review consider in developing its final recommendations to improve institutional and governance arrangements under the Act.

First Nations governance institutions must be based on the principles of UNDRIP

EDO's submission to the Basin Plan Review recommended that the Basin Plan could be amended to establish a framework for First Nations to operate as co-managers of water resources and to empower and support Basin Nations to play a key role in the conservation and protection of Basin ecosystems within each Nation's Country.⁹² Such a framework could be embedded in the Act through appropriate governance institutions.

Any such governance institution must be based on the principles of UNDRIP in their development and implementation, including to ensure that:

- First Nations in the Basin have the agency to determine representation and design of any governance framework in the Act; and
- the arrangements provide for partnership and shared decision making.

We otherwise refer to our recommendations above about embedding the principles of UNDRIP in the Act.

Institutional governance arrangements should ensure the separation of science and politics

The politicisation of water management in the Basin has been well documented.⁹³ It is evident in the media⁹⁴ as well in the actions of scientific agencies used to support policy decisions under the Act.⁹⁵

The design of the Act envisages or at least implies an intention to separate technical, scientific expertise from politics. For example, when making the Basin Plan, the Act expressly prohibits the Minister from directing the Authority in a matter that is of a factual or scientific nature.⁹⁶ The same

⁹² [EDO Submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026), p 5.

⁹³ Kate Chipperfield & Jason Alexandra (2022): *Water governance, the rule of law and regulating risks to the Murray-Darling basin*, Australasian Journal of Water Resources, p 6.

⁹⁴ Wheeler S. et al, The Propensity for negative media reporting of the Murray Darling Basin Plan in Australia.

⁹⁵ Kate Chipperfield & Jason Alexandra (2022): *Water governance, the rule of law and regulating risks to the Murray-Darling basin*, Australasian Journal of Water Resources, p 6, [4.4].

⁹⁶ *Water Act 2007* (Cth), s 44 (5)(a). This also applied to the Minister's power to make a modification of the Basin Plan, and the Minister's power to adopt a Water Resource Plan under the Commonwealth's water resource plan step in powers.

prohibition applies when amending the Basin Plan,⁹⁷ and also when the Minister exercises their power to adopt a WRP under the Commonwealth's WRP step in powers.⁹⁸

The Discussion Paper helpfully sets out the roles of the various governance bodies under the Act,⁹⁹ reinforcing the Authority's role as a scientific agency, with a political decision sitting with, for example, the Murray Darling Basin Ministerial, the Basin officials Committee and the Minister.

Any politicisation of the Authority's scientific functions is contrary to good governance by eroding public trust and confidence, blurring roles and responsibilities, and undermining efficient and effective policy implementation.¹⁰⁰

Recommendations:

11. This Review should consider opportunities to improve governance including the following:

- a. Amendments to the Act to clarify and strengthen the role of the Authority as a politically disinterested specialist scientific and public education agency. This includes **Recommendations 5 and 6** in relation to procedural scaffolding around the assessment of SDLs the ESLT, and the accreditation of WRPs.
- b. Building into the Act a system of independent specialist advice or peer review, for example, through an independent scientific panel. This could support the duties of the Authority and Minister to act on the best available scientific knowledge, particularly in relation to matters that rely on highly specialised expertise.
- c. Whether the newly established Federal Environment Information Australia should have a role in the collation and publication of the best available scientific information about the Basin.

Information asymmetry and a lack of transparency erodes public trust and democratic accountability

Transparency is another important feature of good governance. [EDO's submission](#) to the Basin Plan Review raised concerns that the Authority's efforts in monitoring and data collection have not been adequate.¹⁰¹ This has undermined the Authority's ability to properly perform its legislated role in the pursuit of the Act's core objectives.

⁹⁷ *Water Act 2007* (Cth), s 48(5).

⁹⁸ *Water Act 2007* (Cth), s 69(5). Where water resource plans are prepared by a Basin State, the Minister has no power to give an equivalent direction to the Authority but must simply determine whether the WRP is consistent with the Basin Plan, in reliance on the Authority's advice.

⁹⁹ Murray Darling Basin Authority, 2026 Murray Darling Basin Plan Review Discussion Paper, (5 February 2026), p 28.

¹⁰⁰ Kate Chipperfield & Jason Alexandra (2022): *Water governance, the rule of law and regulating risks to the Murray–Darling basin*, Australasian Journal of Water Resources, p 6.

¹⁰¹ [EDO Submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026), p 7, 17, 23-24 [144]-[148], 26.

Where the Authority has performed its scientific functions, issues of transparency are persistent.¹⁰²

For example, the lack of standardised, appropriate metrics in the assessments of Basin ecosystem health prevents stakeholders and the public from understanding how the ecosystem is tracking. For the Basin Plan Review, the Authority used a baseline that incorporates the impacts of European colonisation and subsequent development across the Basin. In comparison, for previous sustainable rivers audits, a pre-European, pre-development baseline was used. The issue of changing baselines is discussed in more detail in our submission to the MDB Plan review.¹⁰³

Information asymmetry, including of the data and modelling undertaken by the Authority, prevents constructive public engagement and erodes public trust and accountability.¹⁰⁴ Lack of transparency also risks projecting a culture of secrecy which would be inappropriate for a publicly funded water resource agency.¹⁰⁵ As discussed in the 2019 SA Royal Commission Report, transparency and peer review are also critical elements of complying with the duty act on the best available scientific information.¹⁰⁶

Recommendation:

12. This Review should consider amendments to the Act that would require greater data and modelling transparency to improve public trust and accountability, along with improving the quality of public interest decisions under the Act.

Third party review rights improve compliance and accountability

[EDO's submission](#) to the Basin Plan Review emphasises the important role of the Inspector General for Water Compliance to provide independent oversight of compliance with the Basin Plan.¹⁰⁷ In particular, because of the complex and contested nature of water regulation and allocation across the Basin.¹⁰⁸

Rights for third parties (i.e. parties other than the regulator) to seek civil enforcement can provide an important additional mechanism to enforce any breaches of the law.

¹⁰² Ibid, p 18-19 [119]-[121]; See also, for example: SA Murray Darling Basin Royal Commission, *Murray Darling Basin Royal Commission Report*, (29 January 2019), pp 213-215.

¹⁰³ [EDO Submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026), [128]-[131].

¹⁰⁴ Kate Chipperfield & Jason Alexandra (2022): *Water governance, the rule of law and regulating risks to the Murray-Darling basin*, Australasian Journal of Water Resources p, p 7 [4.5].

¹⁰⁵ Kate Chipperfield & Jason Alexandra (2022): *Water governance, the rule of law and regulating risks to the Murray-Darling basin*, Australasian Journal of Water Resources p, p 7 [4.5].

¹⁰⁶ SA Murray Darling Basin Royal Commission, *Murray Darling Basin Royal Commission Report*, (29 January 2019), p 152.

¹⁰⁷ [EDO Submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026), [303]-[305].

¹⁰⁸ [EDO Submission](#) to the Murray Darling Basin Authority in response to the Murray Darling Basin Plan Review Discussion Paper, (1 May 2026), [304].

The Act does not currently establish third party review rights. We recommend that the contested nature of the Basin Plan and the extraordinary public value of water resources in the Basin warrants robust public law recourse mechanisms.¹⁰⁹

Third Party standing and review rights are a feature of a mature regulatory regime¹¹⁰ and essential for climate ready water laws.¹¹¹ They provide an effective additional mechanism to enforce breaches of water laws, and can strengthen water governance by improving compliance and accountability.

Recommendation:

13. This Review should consider amendments to the Act to include open, or “extended” standing provisions that would provide third parties a clear pathway to enforcing breaches of the Act and Basin Plan. This would assist in ensuring quality decisions are made under the Act in the public interest.

Broadening the Act to support improved water management across Australia

The Act review presents a timely opportunity to reconsider the scope and orientation of the Act to ensure it is meeting the needs for sustainable water management in Australia. It is particularly timely where the Commonwealth, states and territories are simultaneously negotiating a new draft National Water Agreement (**draft NWA**) to replace the 2004 National Water Initiative (**NWI**).

We note that the NWA is still awaiting the states and territories agreement, however the NWA was developed in collaboration between the federal government and state and territory governments over many years, along with moving through three rounds of public consultation.¹¹² Once the NWA is signed by all state and territory governments it will replace the old NWI.

The Act was enacted in 2007, in the aftermath of the Millennium Drought, which led to a primary focus of the Act on the Murray–Darling Basin. Its object clause, governance architecture and reporting mechanisms remain substantially oriented to Basin water resources, notwithstanding that water security, allocation and management are matters of national significance extending well beyond the Murray-Darling Basin's boundaries. The Act is well placed to be broadened so that it operates as a source of national statutory guidance for water management across all Australian jurisdictions, while continuing to perform its existing Basin-specific functions.

¹⁰⁹ Kate Chipperfield & Jason Alexandra (2022): *Water governance, the rule of law and regulating risks to the Murray–Darling basin*, Australasian Journal of Water Resources, p 7 [4.5].

¹¹⁰ EDOA Submission to the Inquiry into water use by the extractive industry (19 December 2017), fn 8.

¹¹¹ Environmental Defenders Office, [Analysis: are our water laws climate ready?](#) (Blog post, 19 December 2019).

¹¹² DCCEEW, *National Water Agreement*, (Web Page, updated 21 August 2026) viewed 31 August 2026, linked [here](#).

Regulation of water at a state and territory level is frequently not leading to sustainable water management of commercial demands, supporting First Nations rights and providing for environmental requirements.

Examples abound particularly across Western Australia, the Northern Territory and Queensland of inadequate water regulation, outlined **below**, demonstrating a real benefit that can come from national guidance to improve the standard of water management across Australia. We **enclose** also in the appendix to this submission reports outlining the failings of the Northern Territory and Western Australian government's management of water to date and case study examples.

Examples of failures of subnational water regulation

Below are examples specific to key failings of water regulation at a state and territory level, particularly with respect to fundamental issues such as provision of safe drinking water, and sustainable water mining regulation.

Failure to protect basic right of safe drinking water

Although the right to water is a basic human right, safe drinking water is not protected nation-wide. Again, there is a jurisdiction-based approach to the protection of drinking water. Some states like Victoria and South Australia have stand-alone legislation providing for safe drinking water, while others such as the Northern Territory and Western Australia have no protections or appropriate regulations. The Australian Drinking Water Guidelines (**ADWG**)¹¹³ provide a helpful starting point for the assessment of the quality of drinking water in Australia, but it is non-binding.

Water reform is needed across Australia, to centre First Nations voices, acknowledge First Nations cultural connection to water, achieve equitable access and ownership of water, and ensure the human right to water is upheld.¹¹⁴ The case studies below demonstrate the wide-reaching issues faced particularly by First Nations communities across Australia in relation to water.

Case Study: Lack of safe drinking water in remote Northern Territory communities

Residents in remote communities in the NT are suffering serious health issues and are denied the basic human right to access safe drinking water as a result of the NT Government's failure to implement a statutory framework for the provision of safe drinking water.¹¹⁵ In 2024, drinking water in each of 72 remote communities in the NT contained levels of contaminants which exceeded the ADWG in some way.¹¹⁶ The former NT Government committed to a standalone Safe Drinking Water Act. We understand this Act was drafted by the Department of Health but the

¹¹³ The Australian Drinking Water Guidelines are published by the National Health and Medical Research Council under the *National Health and Medical Research Council Act 1992* (Cth) and available here: [Australian Drinking Water Guidelines | NHMRC](#).

¹¹⁴ Objective 1 of the NWA addresses the issue of potable water: Objective 1 requires: (a) Safe and secure supply of sufficient water quality and quantity to sustain communities, culture, natural environments and economic prosperity ... (to meet) Aboriginal and Torres Strait Islander peoples' water interests and values.

¹¹⁵ Water Services of Australia and Central Land Council, '[The Struggle for Good Quality Drinking Water in Alpururulam](#)' (November 2022) (**Alpururulam Drinking Water Report**).

¹¹⁶ Power and Water, 'Annual Drinking Water Quality Report 2024' (undated) p.160-161 <[Annual Drinking Water Quality Report 2024](#)>.

current Government has confirmed they are not committed to implementing safe drinking water legislation.¹¹⁷

Alpurrurulam is a remote community in the Barkly region, home to almost 400 Alyawarre people. Residents of Alpurrurulam have been feeling the effects of the toxic drinking water since the 1990s. Since 2009, Power and Water have consistently reported that the drinking water in Alpurrurulam contains levels of fluoride, chloride, hardness and total dissolved solids which significantly exceed the ADWG.¹¹⁸ Elevated levels of fluoride can have detrimental effects on the brain development of children and in 2024, the Chief Health Officer declared the drinking water in Alpurrurulam unsuitable for children 12 years and under and pregnant women.¹¹⁹

Without a statutory framework for safe drinking water, there is no requirement for the NT Government to provide the residents of Alpurrurulam with safe drinking water.¹²⁰ Instead, the community and the Central Land Council have been working tirelessly to fund the essential service themselves since 2012.¹²¹ The community has located an alternative safe water source and estimates the cost of developing necessary infrastructure at over \$5 million. However, the NT Government has repeatedly refused to progress the project because it is not regarded as a 'high priority'.¹²² In the absence of support from the NT Government, the Central Land Council has secured \$8 million from the National Indigenous Australians Agency to complete work to protect the residents from the toxic drinking water.¹²³

Unsustainable water regulation of mining and licensing

Water mining in Australia refers to the extraction of groundwater for commercial purposes, often for agriculture or bottled water production. There are many examples where water mining operations are unsustainable and inadequately regulated. The examples below highlight key tensions in Australian water law between economic development, environmental protection, and Indigenous rights.

Case studies: unsustainable groundwater extraction permitted in Perth Hills, WA, Singleton Station, NT and Burrigan/Springbrook, Qld

Coca Cola's water extraction in the Perth Hills

In May 2024, residents in the Perth Hills raised concerns that Coca-Cola Europacific Partners had, for more than three decades, been extracting hundreds of thousands of litres of water per week for

¹¹⁷ Northern Territory, Parliamentary Debates, Legislative Assembly, 12 February 2025, 829-830.

¹¹⁸ Alpurrurulam Drinking Water Report, 6; Power and Water Corporation, '[2009 Indigenous Communities of the Northern Territory Drinking Water Quality Annual Report](#)' (undated), 45.

¹¹⁹ Power and Water, 'Annual Drinking Water Quality Report 2024' (undated) p. 51 <[Annual Drinking Water Quality Report 2024](#)>. In 2024, the levels of fluoride in the drinking water at Alpurrurulam exceeded the ADWG levels by 0.2 mg/L, the chloride levels in the communities drinking water exceeded the ADWG maximum guidelines by 0.5 mg/L, the level of hardness in the drinking water exceeded the ADWG maximum levels by 300 mg/L and the total dissolved solids in the communities drinking water exceeded the ADWG levels by 300 mg/L (p. 164).

¹²⁰ This is despite the Office of the Commissioner for Human Rights [General Comment No. 15: The Right to Water](#) (Articles 11 and 12 of the Covenant), [3].

¹²¹ Alpurrurulam Drinking Water Report, 7.

¹²² Alpurrurulam Drinking Water Report, 7.

¹²³ Indigenous Essential Services Pty Ltd, '[Annual Report 2024-25](#)' (30 September 2025), p 16.

free from a private bore.¹²⁴ At the time the news broke, Perth was experiencing the driest nine-month period in its recorded history, with local orchardists and community members were raising concerns about declining water tables.¹²⁵

The bore was located in an unproclaimed groundwater area, meaning extracting water from the bore did not require a licence under the *Rights in Water and Irrigation Act 1914* (WA) nor, therefore, do they incur licensing fees.¹²⁶ The company said it was subject to a maximum annual draw limit, which it did not disclose.¹²⁷

Minister for Water Simone McGurk acknowledged the arrangement ‘doesn’t pass the pub test’ and committed to undertaking a review of the situation, including potentially proclaiming the area for licensing under the *Rights in Water and Irrigation Act 1914* (WA) Act.¹²⁸ Later that month, the Minister announced Coca-Cola had agreed to pause extracting water from the bore, to allow for replenishment of the aquifer.¹²⁹

Singleton Station¹³⁰

Located on Kaytetye Country, south of Tennant Creek in the arid zone of Central Australia, the Singleton Station groundwater licence is one of the largest in Australia. Granted in 2021 to Fortune Agribusiness, it allows extraction of up to 40,000 megalitres of groundwater per year, over 30 years, to support a large-scale intensive horticulture project growing melons and avocados primarily for export.

Native title holders of Singleton Station have been challenging the grant of this licence for five years. Mpwerempwer Aboriginal Corporation, represented by the Central Land Council, argued that the licence risks lowering groundwater levels and potentially damaging groundwater dependent cultural values, springs, soaks and sacred sites. After losing their challenge in the NT Supreme Court and appeal in the NT Court of Appeal, native title holders took their case to the High Court of Australia in an historic appeal heard in February 2026.

The High Court ordered¹³¹ that the Singleton water licence be quashed after finding that the delegate Minister failed to discharge her statutory function (at [73]) and failed to afford Traditional Owners procedural fairness when granting the water licence under the *Water Act 1992* (NT) (at [94]). This further exemplifies the NT’s failure to comply with their obligations under the NWI and the need to implement the principles of UNDRIP to water management across Australia.

¹²⁴ Damian Smitt and Emma Wynne, [Perth Residents Question Use of Groundwater by Coca-Cola Bottled Water Maker](#), ABC News (online, 1 May 2024).

¹²⁵ As above.

¹²⁶ *Rights in Water and Irrigation Act 1914* (WA), s 5C and Pt III.

¹²⁷ Damian Smitt and Emma Wynne, [Perth Residents Question Use of Groundwater by Coca-Cola Bottled Water Maker](#), ABC News (online, 1 May 2024).

¹²⁸ Emma Wynne, [Coca-Cola's free access to Perth Hills groundwater for bottled water to be reassessed by minister](#), ABC News (online, 4 May 2024).

¹²⁹ Emma Wynne, [Coca-Cola to temporarily cease taking groundwater in Perth Hills after minister intervenes](#), ABC News (online, 31 May 2024).

¹³⁰ Central Land Council, ‘[High Court to Hear First Aboriginal Groundwater Rights Case](#)’.

¹³¹ *Mpwerempwer Aboriginal Corporation RNTBC v Minister for Territory Families and Urban Housing as delegate of the Minister for the Environment* [2026] HCA 23, available [here](#).

Burrigan/Springbrook

Groundwater is being extracted from aquifers in and around World Heritage-listed Gondwana Rainforests at Springbrook National Park in Queensland. The rainforest ecosystems of this area are highly dependent on groundwater and vulnerable to impacts from climate change reducing the availability of rainfall and cloud cover to recharge aquifers. There are many water mines surrounding the World Heritage area, often with no cap on water take (even throughout drought periods) and no fees required for the water extracted. Extracting millions of litres of groundwater for bottling threatens local biodiversity and endangered species.

The **above** and **enclosed** examples highlight the limitations of Australia's existing subnational water regulation, particularly the need for stronger, enforceable water plans, improved regulation of groundwater impacts and scientific understanding of aquifers, and greater recognition of Indigenous water rights in governance and decision-making.

To encourage a higher standard of water regulation across Australia, we recommend:

1. That the Act be broadened to provide statutory guidance for water management across Australia, including by incorporating the objectives of the most recent National Water Agreement (national water objectives); and
2. That the objects of the Act (section 3) be updated to expressly recognise a broadened, national focus;
3. That the Act require the Productivity Commission to undertake regular, independent public reporting on the performance of states and territories against the national water objectives.

Each recommendation is addressed in turn below.

Entrenching the NWA objectives into the Water Act to improve water management across Australia

National consistency in water management objectives has historically been pursued through non-statutory intergovernmental agreement – first the 1994 Council of Australian Governments (**COAG**) water reform framework,¹³² and then the 2004 NWI.¹³³ The Productivity Commission's 2024 National Water Reform Inquiry found that this non-statutory model, while valuable, has produced uneven implementation across jurisdictions and lacks durable mechanisms for accountability.¹³⁴ That inquiry informed the current negotiation of a new National Water Agreement,¹³⁵ which is intended to modernise the NWI's objectives, including in relation to climate change, First Nations water justice, and adaptive water security.

A new national water agreement of this kind, however, will remain a non-statutory intergovernmental instrument. Its objectives bind participating governments only as a matter of

¹³² Council of Australian Governments, Water Reform Framework (Report, 25 February 1994).

¹³³ Council of Australian Governments, Intergovernmental Agreement on a National Water Initiative (Agreement, 25 June 2004), available [here](#).

¹³⁴ Productivity Commission 2024, National Water Reform 2024, Inquiry Report, no. 105, Canberra, available [here](#).

¹³⁵ Australian Government, Updated Draft National Water Agreement, (December 2024) available [here](#).

policy commitment, and its implementation depends on the ordinary machinery of intergovernmental cooperation rather than on Commonwealth statute providing more entrenched guidance. This Review is an important opportunity to explore and identify legislative amendments that would give the objectives of the new National Water Agreement a firmer, complementary statutory footing, without displacing the states' and territories' primary management responsibility, or the intergovernmental character of the National Water Agreement.

Importantly, the Act can be broadened in the ways proposed in this submission without the degree of intervention or various regulatory elements provided for the Basin. Rather, we propose the Act formally incorporate – by reference or by scheduling – the objectives of the most recent draft National Water Agreement as a statutory statement of the outcomes that national water management is intended to achieve.

This approach would have several benefits:

- It would give the objectives negotiated through the National Water Agreement process a stable statutory anchor, reducing the risk that they lapse or are diluted with changes of government, as has occurred at points during the life of the NWI.
- It could extend the national water-information and reporting functions the Act already performs into a coherent framework connected to substantive, statutorily entrenched national objectives.

The precise legislative mechanism – whether by inserting a new part of the Act dealing with national water management objectives, by scheduling the National Water Agreement, or by a standalone incorporation clause – is a matter for further drafting consideration, but the principle recommended here is that the objectives agreed nationally should be given statutory recognition in the Act.

In developing specific drafting, thought will need to be given to confirm the necessary relationship between specific National Water Objectives and the source and scope of the Commonwealth's legislative powers. For the purposes of this submission, we note the following, by way of general support for the Commonwealth's power to legislate in support of National Water Objectives:

- The Act in its current form is predominantly a law with respect to external affairs; key treaties are the Ramsar Convention and the Convention on Biological Diversity.¹³⁶
- As noted elsewhere in this submission, the external affairs power extends beyond treaties to matters of international concern, of which we propose UNDRIP is one.
- There is also consensus at an international level that the protection of the environment is a precondition for the enjoyment of most human rights.¹³⁷ The right to a healthy

¹³⁶ For a detailed discussion of the Constitutional basis of the Act, SA Murray Darling Basin Royal Commission, *Murray Darling Basin Royal Commission Report*, (29 January 2019), pp 107-112.

¹³⁷ International Court of Justice, *Obligations of States in Respect of Climate Change*, Advisory Opinion (23 July 2025), [393] (available [here](#)).

environment is generally understood to include the right to (among other things) access to safe water and healthy biodiversity and ecosystems.¹³⁸

Recommendation:

14. Introduce the National Water Agreement National Water Objectives into the Act to provide guidance for water management across Australia.

Update the objects of the Act to recognise its broadened national focus

Section 3 of the Act currently sets out objects directed almost exclusively at the Murray–Darling Basin: the implementation of intergovernmental agreements relating to the Basin, the return to environmentally sustainable extraction levels in the Basin, the protection of Basin ecological values, and the optimisation of economic, social and environmental outcomes for Basin water resources. If the Act is broadened as proposed, its objects clause will no longer accurately describe the full scope of the Act and should be updated accordingly.

It is recommended that section 3 be amended to include an additional, clearly delineated set of objects recognising the Act's national water management function, distinct from but complementary to its existing Basin-specific objects. This updated objects clause should:

- a) expressly state that the Act provides statutory guidance for water management across Australia, in addition to its specific functions in relation to the Murray–Darling Basin;
- b) reflect the substantive content of the national water objectives incorporated as recommended, including environmentally sustainable and climate-resilient water management, water security, the recognition of First Nations water rights and interests, evidence-based decision making underpinned by robust use of science, data and cultural knowledge; and community trust and confidence in government, water agencies, water managers and water users;
- c) provide for a reporting and accountability framework that advances nationally agreed water objectives; and
- d) preserve the existing Basin-specific objects without diminishing their operation.

Objects clauses inform statutory interpretation and the exercise of discretionary powers under the Act. Broadening the Act's operative provisions without a corresponding update to section 3 would create a mismatch between the Act's stated purpose and its actual scope, and could create interpretive uncertainty for decision-makers and courts.

Recommendation:

15. Broaden the objects of the Act to reflect a broader focus of sustainable water management across Australia.

¹³⁸ Office of the High Commissioner for Human Rights and the United Nations Environment Program, What is the Right to a Healthy Environment? Information Note, p 9 (available [here](#)).

Require the Productivity Commission to undertake regular reporting on federal, state and territory performance against the national water objectives

It is recommended that the Act require the Productivity Commission to prepare regular, independent public reports assessing the performance of each state and territory as well as the Commonwealth against the national water objectives incorporated as recommended.

This recommendation builds on the existing practice provided under Part 3 of the Act and section 88 particularly, rather than proposing an entirely new function. Under Part 3, the Productivity Commission already conducts periodic independent reviews of national water reform, including its 2024 National Water Reform Inquiry. Current proposals for the new National Water Agreement contemplate annual self-reporting by states and territories on their performance.¹³⁹ There is benefit in this reporting role being entrenched in statute, for the reporting function and its regularity and independence to be guaranteed rather than dependent on the continuation of intergovernmental goodwill.

It is recommended that any statutory reporting function include the following features:

- a) A fixed reporting cycle (for example, every three to five years, consistent with the cycle contemplated for the National Water Agreement) so that reporting is predictable and cannot be deferred indefinitely.
- b) A requirement that reports assess each jurisdiction's progress against the specific national water objectives incorporated in the Act, rather than a general review of water policy, so that reporting is directly tied to the statutory objectives and provides a meaningful accountability mechanism.
- c) A requirement that reports be tabled in Parliament and published within a certain time period of finalisation, to ensure transparency and public accessibility.
- d) Appropriate information-gathering powers, or a duty on jurisdictions to cooperate with the Commission's inquiries, to ensure the Commission can obtain the data needed for robust assessment.

Placing this reporting function on a statutory footing would strengthen national accountability for water reform outcomes, complement the annual self-reporting arrangements contemplated under the new National Water Agreement, and ensure that independent scrutiny of jurisdictional performance continues irrespective of changes to intergovernmental arrangements over time.

¹³⁹ Australian Government, Updated Draft National Water Agreement, (December 2024) available [here](#).

Recommendation:

16. Amend the Act to require the Productivity Commission to undertake regular, independent public reporting on the performance of states and territories against the National Water Objectives.

Avoiding and mitigating the risks of data centres to Australia's water resources

A burgeoning risk to water resource is posed by the pressure to develop large-scale data centres around Australia.

Increasing demand for, and use of, artificial intelligence (**AI**) has led to an influx of investment in data centres globally and Australia is rapidly emerging as a data centre hotspot.¹⁴⁰ In 2024, Australia was second only to the United States of America for highest capital investment globally in data centres.¹⁴¹

Rapid development of data centres could have extensive implications for Australia's environment, particularly due to substantial energy and water needs. It is estimated that water demand from data centres could increase from 5.5 GL in 2025 to 17 GL by 2030 across Australia.¹⁴²

EDO is preparing Principles of Data Centre Development as well as a submission to the Senate Environment and Communications References Committee inquiry into artificial intelligence and data centres. We will send these two documents to the Review team once finalised for consideration as part of the Water Act Review process.

Recommendations:

17. The Review should consider the impacts of data centres on Australia's water resources, and ensure recommendations made assist in protecting against impacts to Australia's water resources from data centres.
18. Consider revising the National Water Agreement to address the risks of data centres to water resources.

Conclusion

The current statutory review of the Act, occurring alongside the negotiation of a new National Water Agreement, presents a valuable opportunity to align Commonwealth water legislation with the national scope of Australia's water management challenges. Broadening the Act to incorporate

¹⁴⁰ Department of Industry, Science and Resources, *National AI Plan* (2 December 2025) 6. Available here: <https://www.industry.gov.au/publications/national-ai-plan>. (**National AI Plan**).

¹⁴¹ Baringa and Clean Energy Finance Commission, *Getting the balance right: data centre growth and the energy transition* (December 2025) 4 (available here: <https://www.cefc.com.au/media/hs5ner3s/getting-the-balance-right-data-centres-and-the-energy-transition-full-report.pdf>) (**Baringa CEFC Report**).

¹⁴² Mandala, 'Data Centres as Enabling Infrastructure' (Report, November 2025) 9 (available at: <https://mandalapartners.com/uploads/Data-Centres-as-Enabling-Infrastructure.pdf>).

national water objectives, updating its objects clause to reflect that broadened focus, and establishing a statutory basis for regular, independent Productivity Commission reporting against those objectives would together strengthen the durability, transparency and accountability of water reform beyond the Murray-Darling Basin.

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



Key Issues and Recommendations: Water law and governance framework in the Northern Territory

March 2026

The EDO considers water law and governance in the Northern Territory (**NT**) to be amongst the poorest in the country based on an assessment of the *Water Act 1992* (NT) (**Water Act**), various policy documents and decision-making processes and outcomes. Water law and governance in the NT falls far short of reflecting the Core Elements for Protecting Australia's Water Resources and advancing First Nations water justice identified by the EDO. Even though the Northern Territory is a party to the National Water Initiative (**NWI**), the jurisdiction continues to fail to meet its obligations under the NWI, to the detriment of the community and environment of the NT. In 2023, the NT Government acknowledged the statutory framework fails to provide the necessary mechanisms for best practice water management and promised to develop and implement a revised regulatory regime by 2026.¹ However, since a change in government in 2024, the already failing statutory framework is in further decline following the removal of review rights, the granting of excessive water licences and the development and declaration of inadequate water allocation plans. The NT Government's commitment to accelerate economic growth by prioritising industrial and agricultural projects and gas developments in the NT underscores the urgent need for a modern, sustainable and best practice informed regulatory framework to manage water resources in the NT.

Key Issues

1. Failure to genuinely consult

Under the NWI, parties agree to ensure open and timely consultation with all stakeholders in relation to water entitlement decisions and water planning with a particular emphasis on the importance of involving indigenous representation in water planning processes.²

a. Lack of engagement with Aboriginal stakeholders

The NWI requires parties to provide indigenous access to water resources by including indigenous representation in water planning and incorporating indigenous social, spiritual and customary objectives into water planning.³ In the NT, a water allocation plan (**WAP**) must allocate water for a beneficial use, one of which is Aboriginal economic development.⁴ However, in the absence of a statutory requirement to consult with Aboriginal stakeholders or to involve them in water planning processes at all, the NT has repeatedly failed to meet its NWI obligations. During the development of the Mataranka Water Allocation Plan (discussed below in Case Study 1), the Mataranka Tindall Water Advisory Committee acknowledged that Traditional Owners consistently raised concerns that they were not being listened to. The Committee themselves also raised concerns about the

¹ Northern Territory Government, [Territory Water Plan](#) (June 2023), p. 34.

² National Water Initiative 2014 (**NWI**), cl 50, 95, Sch E, cl 6.

³ NWI, cl 52.

⁴ *Water Act 1992* (NT) (**Water Act**) ss 22A(2)(b), 22B(5).

T 1800 626 239

E darwin@edo.org.au W edo.org.au

Office: 2/98 Woods St, Darwin NT 0800

Mail: GPO Box 4289, Darwin NT 0801

ABN: 72002 880 864

challenges in understanding the technically complex material provided by the Department.⁵ Subsequently, three of the Traditional Owners resigned from the committee and were not replaced.

Recommendation 1(a): Undertake community engagement that is accessible and culturally appropriate and facilitates Aboriginal involvement in water planning, according to the principles of Free, Prior and Informed Consent.

b. Issues with Water Advisory Committees

Under the NWI, parties agree that the development of statutory water plans will be informed by the best available science, socio-economic analysis and community input.⁶ In the NT, a Water Advisory Committee (**WAC**) is only appointed at the discretion of the Minister of Lands, Planning and Environment (**Minister**).⁷ The Water Act contains no statutory requirement to appoint a WAC and fails to mandate any of the following:

- the duration of the WAC,
- term of office for committee members,
- filling of vacancies on the committee,
- requirement for scientific or cultural expertise to be represented,
- disclosure of conflicts of interest among WAC members,
- record keeping requirements of the WAC; or
- any general procedures, such as meeting frequency or decision-making protocols.

If a WAC is appointed, its members consist of such members that the Minister thinks fit and the members shall hold office at the Minister's pleasure.⁸ One of the few statutory functions of the WAC is to advise the Minister of the effectiveness of the WAP in maximising economic and social benefits within ecological constraints.⁹ However, in reality, once a WAP is declared, the relevant WAC is dissolved, removing any ongoing advisory role for the WACs. In the absence of any statutory guidance, WACs are often inconsistent in their practices and there have been a number of occasions where a WAC has failed to develop a WAP after years of planning.¹⁰

In contrast, in New South Wales the *Water Management Act 2000* (NSW) mandates express requirements with respect to its equivalent committees including: terms of office, disclosure of pecuniary interests, meeting procedures, recording requirements and decision making processes.¹¹ In Victoria, section 29 of the *Water Act 1989* (Vic) enforces a statutory requirement that, following the

⁵ Department of Environment, Parks and Water Security, 'Mataranka Tindal Water Advisory Committee: Meeting 15 Minutes' (28 September 2023) p. 11. Available here: [Mataranka Tindall Water Advisory Committee: Meeting 15 Minutes](#)

⁶ NWI, cl 36.

⁷ Water Act s 23(1).

⁸ Water Act s 23(2).

⁹ Water Act s 23(1B)(a).

¹⁰ For instance, the Howard Springs WAC operated for nine years before dispersing without declaring a WAP for the region. Productivity Commission, Australian Government, *Assessment of national Water Initiative implementation progress (2017-2020)* (Implementation report No 96, 28 May 2021 (**NWI Implementation Report**), p. 37. See Case Study 1 in relation to the establishment, dispersal and re-establishment of the Mataranka Water Advisory Committee.

¹¹ *Water Management Act 2000* (NSW), Sch 6.

declaration of a water supply protection area, the Minister appoint a consultative committee which fairly represents all relevant interests including Aboriginal parties in the area.

Recommendation 1(b): Amend the Water Act to mandate the requirement for Water Advisory Committees in water planning processes and include a statutory framework which addresses criteria for: the duration of the WAC, the term of office for members, filling vacancies on the committee, requirements for the WAC to include members with scientific and cultural expertise, First Nations representation, disclosure of conflicts of interest, reporting and record keeping requirements, general procedures such as meeting frequency and decision making protocols and review mechanisms following the publication of a WAP.

c. Inadequate public consultation in decision-making processes

The Water Act fails to provide for adequate notice requirements when decisions are made under the Act. In fact, there is no requirement to notify the public when a WAP is made or when a WAC is established. In relation to water extraction licensing, section 71B of the Water Act requires the Water Controller to notify the public of an intention to make a decision to grant, amend or modify a water extraction licence. However, the Water Act fails to explain where and how the notices will be published, merely that the *‘Water Controller must publish a notice in the manner the Controller considers appropriate’*.¹² If a member of the public is able to locate a notice of intention to make a water licensing decision, they are only given 20 business days to submit written comments in response to the application for a water extraction licence.¹³ Commonly, notices are published on the Water notices online portal and water licence decisions are published online and in a newspaper, however this is not required under the Act. Unreliable access to the internet and electricity are common issues throughout the NT and create barriers for the public to regularly access notices, meaning members of the public could be denied the opportunity to comment on water extraction licensing decisions which may affect them.

In compliance with best practice consultation principles, consultation should be conducted early and involve stakeholders from the earliest possible stages to promote transparent and comprehensive participation.¹⁴ First Nations engagement protocols should be co-designed with First Peoples. Consultation should also provide accessible and easy to understand information and it is best practice for consultation periods to last for a minimum of 30 days.¹⁵ For example, in New South Wales, the Minister for Water is required to notify the public of draft water management plans and allow 40 days for the public to make submissions on the draft water management plan.¹⁶

Recommendation 1(c): Amend the Water Act to include a requirement that the public be notified of draft WAPs and allow the public a minimum of 30 business days to submit comments (including written, audio and visual) in response to a draft WAP.

Recommendation 1(d): Amend section 71B of the Water Act to clearly identify where the notices of an intention to make a water extraction licence decision will be published and increase the submission period to a minimum of 30 days.

¹² Water Act s 71B(2).

¹³ Water Act s 71B(4).

¹⁴ Australian Government Department of Prime Minister and Cabinet, ‘Best Practice Consultation’ (July 2023), p. 3.

¹⁵ Ibid, p. 7.

¹⁶ *Water Management Act 2000* (NSW) s 38(2)(b).

2. Issues with the Water Act 1992 (NT)

a. Lack of legislative objects

Numerous pieces of Australian legislation include specific “objects” sections which set out a purpose and function to provide overarching principles to guide application and interpretation in respect of the regulatory framework. “Objects” clauses are fundamental in resolving uncertainty and ambiguity among other provisions of a statute and often guide decision making under the Act.¹⁷ The Water Act does not include an ‘objects’ clause, nor any provisions regarding its purpose and therefore fails to provide foundational principles for the development of an adequate water management framework. As a result, WAPs are frequently varied, are inconsistent and there is often uncertainty in relation to whether a WAP is even lawful. Additionally, the Court is often left to rely on the long title of the Water Act to resolve matters of statutory interpretation.¹⁸

By comparison, the *Water Management Act 2000* (NSW) includes a detailed objects section as well as a separate section which comprehensively sets out ‘water management principles’ under eight subsections with varying levels of detail.¹⁹ Similarly, the *Water Act 1989* (Vic) begins with a ‘purposes’ section which distinctly sets out the 14 purposes of the legislation.²⁰

b. Failure to acknowledge ecologically sustainable development principles

The principles of ecologically sustainable development underpin most statutory frameworks which deal with natural resource management in Australia and are often embedded within the relevant objects clause.²¹ The principles of ecologically sustainable development are contained in legislation covering water management in New South Wales, Queensland, South Australia and the Commonwealth *Water Act 2007* (Cth).²²

This is not an unknown concept in the NT. The *Waste Management and Pollution Control Act 1998* (NT), the *Petroleum Act 1984* (NT) and the *Environment Protection Act 2019* (NT) all expressly refer to the principles of ecologically sustainable development in their objects clauses.²³ It is therefore unclear why the Water Act fails to acknowledge the principles of ecologically sustainable development. In the absence of a statutory acknowledgement of the principles of ecologically sustainable development, WAPs often attempt to include similar principles in disparate and confusing manners.²⁴ The use of such terms within a WAP - a non-statutory instrument - rather than in the Water Act itself undermines the effectiveness of the principles of ecologically sustainable development and ensures they have little applicability to decision-makers exercising various statutory functions under the Water Act.

¹⁷ Australian Law Reform Commission, *For your information: Australian Privacy Law and Practice* (Report No. 108, August 2010) [5.90].

¹⁸ *Mpwerempwer Aboriginal Corporation RNTBC v Minister for Territory Families & Urban Housing as Delegate of the Minister for Environment & Anor* [2025] NTCA 6 at [16]-[17].

¹⁹ *Water Management Act 2000* (NSW) ss 3, 5.

²⁰ *Water Act 1989* (Vic) s 1.

²¹ For example, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 3(1)(b).

²² *Water Management Act 2000* (NSW) s 3(a), *Water Act 2000* (Qld) s 2(2)(a), *Landscape South Australia Act 2019* (SA) s 7(1), *Water Act 2007* (Cth) s4(2).

²³ *Waste Management and Pollution Control Act 1998* (NT) s 5(b), *Petroleum Act 1984* (NT) s 3(1)(c), *Environment Protection Act 2019* (NT) s 3(b).

²⁴ For example, a principle objective of the Katherine Tindall Limestone Aquifer Water Allocation Plan 2024-2026 is to ‘provide fair access to water to support ecologically sustainable regional economic development’ (p. 10). The Berry Springs Water Allocation Plan explains that ‘The Plan will help to ensure that regional development proceeds on an ecologically, culturally and economically sustainable basis (p.6).

Recommendation 2(a): Amend the Water Act to provide for clear legislative purposes and objectives, including an acknowledgement of the principles of ecologically sustainable development similar to section 3 of the *Environment Protection Act 2019* (NT).

c. Removing consultation mechanism for Aboriginal water reserves

Under the current Water Act, WAPs must include an allocation of water to an Aboriginal water reserve within the estimated sustainable yield.²⁵ Previously, the Minister was required to consult with the relevant Aboriginal Land Council prior to designating land for the purpose of an Aboriginal Water Reserve.²⁶ Under section 71BA of the current Water Act, the Water Controller is prohibited from granting a licence in relation to an Aboriginal water reserve without the consent of a prescribed group of Aboriginal persons. This provision is however inoperable because the *Water Regulations 1992* (NT) (**Water Regulations**) have failed to prescribe the group of Aboriginal persons for the purpose of section 71BA.

In 2025, the Water Act was amended to exclude Land Councils from decisions relating to Aboriginal water reserves in WAPs and instead to empower the Department, in preparing the WAP, to designate eligible land in respect of an Aboriginal water reserve.²⁷ The current Water Act also provides that water licences in relation to an Aboriginal water reserve may only be granted on application from, or with the consent of, eligible Aboriginal persons. However, the Water Act fails to explain how an eligible Aboriginal person is determined, except to qualify that the eligible Aboriginal person must have a legal entitlement to access water resources in the eligible land. The Water Act also fails to include any requirement to consult affected Aboriginal communities.²⁸ Through these amendments, the NT Government has failed to meet its obligations under the NWI to include indigenous representation in water planning processes and has removed the important usual oversight and scrutiny function that is provided by Land Councils during agreement making processes.²⁹ These failures are exemplified in the draft Alice Springs Water Allocation Plan 2026-2036, which includes a prescribed list of eligible Aboriginal people that was determined by the NT Government based on ‘a systematic review of the Northern Territory Government’s land database, and the National Native Title register’³⁰, rather than on the basis of Free, Prior and Informed Consent.

Recommendation 2(b): Amend the Water Act to require effective engagement with relevant First Nations communities prior to designating eligible Aboriginal land under a WAP and when identifying eligible Aboriginal persons for the purpose of section 71BA. Such reform should recognise First Nations peoples as more than stakeholders, but as Traditional Owners with cultural obligations and authority to manage water resources.

²⁵ Water Act s 22B(7).

²⁶ Water Act s 22C(2) (as in force until 7 April 2025).

²⁷ Water Act s 22C(1).

²⁸ Water Act s 4, 71BA.

²⁹ Central Land Council and Northern Land Council, ‘[Territory government strips water rights, puts conflict, corruption and chaos above certainty](#)’ (Joint media release, 1 April 2025) 1.

³⁰ Northern Territory Government (2026), ‘[Draft Alice Springs water allocation plan 2026-2036](#)’. Sch G.

3. Issues with Water Allocation Planning

*Water Planning in the NT is highly complex, taking into account two distinct zones characterised by annual rainfall of greater than and less than 600 mm of wet season rainfall and regular and infrequent groundwater recharge in arid regions. In the NT, a Water Allocation Plan (**WAP**) is a document which regulates how water in a particular water resource is to be shared.*

a. Failure to provide adequate statutory framework for WAPs

Under the NWI, all parties agreed to prepare statutory water plans for surface and groundwater management where water entitlements are issued.³¹ Unsurprisingly, and in contrast to every other jurisdiction in Australia, there is no statutory requirement to develop and implement a WAP in the NT. Instead, the Water Act provides the Minister with control over the entire WAP planning process, from the declaration of a water control district to the decision of the Minister with unfettered discretion, to declare a WAP for all or part of a water control district.³²

The Water Act and Water Regulations are silent in relation to the planning process and fail to set out, in a sufficient level of detail, the requirements for the content of a WAP. The Water Act only requires that a WAP allocate water within the estimated sustainable yield and ensure that water use for beneficial uses be less than the sum of the allocations to each beneficial use and cover water resource management costs through licensing fees.³³ In comparison, the *Water Management Act 2000* (NSW) contains mandatory requirements for statutory water management plans to include, amongst other requirements, core provisions which establish environmental water rules, identify requirements for water extraction licences, and establish a regime which recognises and mandates consistency with limits to the availability of water in the region, establishes licensing rules and recognises climatic variability.³⁴

In the absence of an adequate statutory water planning framework, WAPs in the NT often fail to provide clear, quantifiable, consistent and legally binding criteria and targets. At the time of writing this report, there are currently 8 declared water control districts; there is no WAP proposed for two of the water control districts and less than 20% of the NT is covered by a WAP. By comparison, according to the Productivity Commission, by 2021 most jurisdictions had more than 80% of water use managed under water plans.³⁵

Recommendation 3(a): Amend the Water Act to require the development and declaration of a WAP, and to include clear and binding statutory criteria for the content of a WAP.

b. Failure to define ‘estimated sustainable yield’

A fundamental feature of any water management legislation is a requirement to set limits on extraction for each water resource and provide a mechanism to determine this limit based on the best-available science and evidence regarding environmental and cultural requirements within the catchment. Accordingly, the Water Act requires that WAPs are to ensure that water is allocated within the estimated sustainable yield to beneficial uses.³⁶ However, the Water Act fails to: define

³¹ NWI, cl 36.

³² Water Act ss 22, 22B.

³³ Water Act s 22B(5).

³⁴ *Water Management Act 2000* (NSW) s 20.

³⁵ Productivity Commission, [National Water Reform 2020, Inquiry Report No. 96](#), (28 May 2021) p. 27.

³⁶ Water Act s 22B(5)(a).

the term ‘estimated sustainable yield’ (**ESY**), include a methodology for determining the ESY, dictate that the ESY be based on best-available scientific and cultural knowledge or indicate that the ESY is legally enforceable. It is therefore unsurprising that ESYs contained in non-statutory WAPs, are inconsistently defined and based on inconsistent (and often questionable) methodologies.³⁷

There is little objective evidence that the inconsistently defined and calculated ESYs in the NT are indeed sustainable or capable of protecting environmental assets, ecosystem functions or cultural values into the future. In fact, the Katherine Tindall Limestone Aquifer Water Allocation Plan 2024-2026 acknowledges that the WAP is declared despite insufficient monitoring to determine water requirements which would ensure cultural and environmental values are not compromised.³⁸

In contrast, the *Water Act 2007* (Cth) clearly defines the environmentally sustainable level of take to mean ‘the level at which water can be taken from that water resource, which, if exceeded, would compromise:

- (a) key environmental assets of the water resource; or
- (b) key ecosystem functions of the water resource; or
- (c) the productive base of the water resources; or
- (d) key environmental outcomes for the water resource.’³⁹

Additionally, as a result of failing to mandate a framework for water planning, the NT has failed to comply with its NWI obligation to prepare water plans informed by the best available science.⁴⁰ For example, the Ooloo Dolostone Aquifer Water Allocation Plan 2019-2029 acknowledges the expected changes to the hydrology of the catchment predicted by the CSIRO in climate change projection reports published in 2009 and again in 2015, yet disregards these findings when concluding that ‘the best available guide to future water availability in the Katherine-Daly Region are climate, groundwater levels and river flow observations from the past’.⁴¹

Recommendation 3(b): Amend the Water Act to adopt a statutory definition of estimated sustainable yield in accordance with the definition of ‘environmentally sustainable level of take’ in section 4 of the *Water Act 2007* (Cth).

c. Questionable statutory context of WAPs

The NWI requires Parties to develop water plans which provide statutory recognition to water that meets environmental and public benefit outcomes to the same level of statutory recognition given

³⁷ Compare the definition of ESY in the Georgina Wiso Water Allocation Plan 2023-2031 with the definition of ESY in the Katherine Tindall Limestone Aquifer Water Allocation Plan 2024-2026 declared the following year. In the absence of a statutory definition, the former defines ESY as ‘the amount of water that can be allocated from the water resource to support declared beneficial uses that is sustainable’ (p. 7) while the latter defines the ESY to be ‘commonly understood’ as ‘the amount of water that can be taken from the water resource to support declared beneficial uses without compromising key cultural and environmental values, or ecosystem functions or the productive base of the resource or declared water quality standards, criteria or objectives’ without providing any reference to this common understanding.(p. 50).

³⁸ Department of Environment, Parks and Water Security, [Katherine Tindall Limestone Aquifer Water Allocation Plan 2024-2026](#), p. 50.

³⁹ *Water Act 2007* (Cth), s 4.

⁴⁰ NWI cl 36.

⁴¹ Department of Environment and Natural Resources, [Ooloo Dolostone Aquifer Water Allocation Plan 2019-2029](#), p. 28.

to water access entitlements.⁴² In the NT, the Water Act recognises water access entitlements through statutory based water extraction licences.⁴³ The Water Act also contains offence provisions for contravention of water extraction licence conditions.⁴⁴ WAPs in the NT are not provided the same statutory recognition and there is no requirement that a water extraction licence comply with the relevant WAP, only that a decision maker take a WAP into account when making a water extraction licence decision.⁴⁵

In 2021, both the Arid Lands Environment Centre and the Mpwerempwer Aboriginal Corporation commenced appeal proceedings in the Northern Territory Supreme Court challenging the decision to grant a groundwater extraction licence to Fortune Agribusiness Funds Management Pty Ltd on the basis that the Minister failed to properly consider the water allocation plan for the region.⁴⁶ Justice Barr concluded that there is no requirement, under the Water Act that a water extraction licence accord with the Water Allocation Plan applying to the area, nor a statutory obligation for the decision maker to take the WAP into consideration.⁴⁷ The decision was upheld on appeal, and is the subject of current High Court proceedings.⁴⁸ Regardless of the outcome of these proceedings, this case demonstrates that the NT has failed to comply with the obligation under the NWI to establish statutory water plans which have the same degree of security as water access entitlements.

By comparison, water plans in Queensland are instruments of subordinate legislation and are made available on the States legislation website.⁴⁹

Reliance on legally unenforceable WAPs compromises the objective of implementing a statutory water allocation planning system and results in inconsistencies in both drafting and the application of key concepts.

Recommendation 3(c): Amend the Water Act to include a statutory requirement that decision-makers must comply with WAPs when making decisions in relation to water extraction licences.

d. Issues with the contingent Water Allocation Planning Framework

Approximately 64% of the NT is not covered by a water control district. Areas of the NT that are not subject to a WAP are regulated by the Water Allocation Planning Framework (**Framework**). The Framework, which is a mere two pages long, has not been updated in over a quarter of a century and the scientific basis for the Framework is unclear.

The Framework divides the NT into two main zones with separate contingent allocation rules in each zone for rivers ('surface water') and aquifers ('ground water'). The quantification of allowable

⁴² NWI cl 35(i).

⁴³ Water Act ss 45, 60.

⁴⁴ Water Act ss 46, 61.

⁴⁵ Water Act s 90(1)(ab).

⁴⁶ *Mpwerempwer Aboriginal Corporation RNTBC v Minister for Territory Families & Urban Housing as Delegate of the Minister for Environment & Anor and Arid Lands Environment Centre Inc v Minister for Environment & Anor* [2024] NTSC 4 at [13]-[14].

⁴⁷ *Mpwerempwer Aboriginal Corporation RNTBC v Minister for Territory Families & Urban Housing as Delegate of the Minister for Environment & Anor and Arid Lands Environment Centre Inc v Minister for Environment & Anor* [2024] NTSC 4 at [47]-[59].

⁴⁸ *Mpwerempwer Aboriginal Corporation RNTBC v Minister for Territory & Urban Housing as delegate of the Minister for the Environment & Anor* [2025] NTCA 6 at [136].

⁴⁹ For example, *Water Plan (Burnett Basin) 2014* (Qld) available [here](#).

water take under the Framework based on water storage, rather than water flow, has been repeatedly criticised as ecologically unsustainable.⁵⁰ In addition to the Framework, the non-statutory ‘Surface water take – wet season flow policy’ (**Policy**) establishes rules for determining availability of surface water for allocation from rivers in the Top End region during the wet season. The Policy fails to meet NWI obligations for water planning because, much like the Framework, the Policy does not apply the best available scientific knowledge. Further its failed to identify and consider environmental, cultural and other public benefit issues in an open and transparent way during its development.⁵¹

Reliance on legally unenforceable and non-statutory policies which fail to comply with the NWI obligations for water planning processes exposes the NT to a risk of committing to unsustainable levels of extraction which would ultimately destroy precious ecological and cultural values.

Recommendation 3(d): Reduce reliance on legally unenforceable and non-statutory policies to regulate water allocation in the NT. In the alternative, develop an adequate framework which is informed by best available science and is undertaken on the basis of co-design and engagement with relevant First Nations stakeholders to properly inform environmental and cultural values in regions.

4. Failure to implement safe drinking water standards in the NT

The first objective of the draft National Water Agreement is an agreement to provide access to safe, secure and accessible water supplies to support the wellbeing of Australians. In the NT, reliable access to safe drinking water is a significant and long-standing issue for many remote communities.

a. Failure to legislate safe drinking water.

Consistently with the NT Government’s approach to its obligations under the NWI, the obligation to provide healthy, safe and reliable drinking water is reflected in a non-statutory, legally unenforceable Memorandum of Understanding between the NT Government and Power and Water Corporation.⁵² The *Water Supply and Sewerage Services Act 2000* (NT) (**Water Supply Act**) provides the Minister for Treasury and Finance with the discretion to specify minimum water quality standards that water supply licensees’ must meet.⁵³ However, the Water Supply Act only applies to 18 water supply licence areas in the NT and fails to regulate what constitutes minimum water quality standards.⁵⁴ The *Public and Environmental Health Act 2011* (NT) provides the Minister for Health with the power to declare standards (which could include water quality standards).⁵⁵ However, as of June

⁵⁰ Justice Rachel Pepper, [Scientific Inquiry into Hydraulic Fracturing in the NT, Final Report, Water](#) (17 March 2012), p. 137, Professor Matthew Currell, Sue Jackson and Dr Christopher Ndehedehe, ‘[Risks in the current groundwater regulation approach in the Beetaloo region, Northern Territory, Australia](#)’ (2024), *Australian Journal of Water Resources* 1, 11-12)

⁵¹ NWI cl 25(iii), sch E, cl 6.

⁵² [Memorandum of Understanding between the Department of Health and Power and Water Corporation and Indigenous Essential Services Pty Ltd for Drinking Water](#), signed on 2 November 2022, (Memorandum of Understanding) cl 5.

⁵³ *Water Supply and Sewerage Services Act 2000* (NT) s 45.

⁵⁴ [Water Supply Services Licence Issued to Power and Water Corporation](#) (28 January 2009) Sch 2.

⁵⁵ *Public and Environmental Health Act 2011* (NT) s 102

2026, no standards have been declared and the obligation to provide safe drinking water remains reflected in a non-binding MOU.⁵⁶

As a result of the NT Government's failure to implement a statutory framework for the provision of safe drinking water residents in remote communities in the NT are suffering serious health issues and are denied the basic human right to access safe drinking water..⁵⁷ In 2024, drinking water in each of the 72 remote communities contained levels of contaminants which exceeded the Australian Drinking Water Guidelines (**ADWG**) in one way or another.⁵⁸ The former NT Government committed to a standalone Safe Drinking Water Act. We understand this Act was drafted by the Department of Health, yet the current Government has confirmed it is not committed to implementing safe drinking water legislation.⁵⁹ Case Study 3 exemplifies the serious consequences of a failure to implement a Safe Drinking Water Act experienced in Alpururulam.

By comparison, the *Safe Drinking Water Act 2003* (Vic) provides a statutory requirement for water suppliers to ensure that water supplied complies with the health guideline values set out in the ADWG.⁶⁰

Recommendation 4: Introduce a legally enforceable obligation for licenced water service suppliers to provide clean, safe, reliable and ADWG compliant drinking water. This should be achieved by the introduction of a Safe Drinking Water Act or alternatively, through either an amendment to the Water Act, the Water Supply Act, or the *Public and Environmental Health Act 2011* (NT).

5. Lack of review mechanism

Parties to the NWI agreed to provide avenues for appealing regulatory approval decisions (Sch D, clause 1(vii)). In 2025, the Petroleum, Planning and Water Legislation Act 2025 (NT) removed the ability for third parties to apply for merits review of decisions under the Water Act. This represented a further significant regression in the NT's compliance with the NWI.

a. Removal of merits review rights

Third party merits review provides an important opportunity for community members affected by administrative decisions, such as landholders and First Nations communities, to participate in the decision-making process and ensure accountability and transparency to regulatory processes.

In the NT, only applicants for permits and licences under the Water Act have the right to apply for a review of a specific list of decisions in the Northern Territory Civil and Administrative Tribunal.⁶¹ The only remaining avenue for a person affected by a decision made under the Water Act, such as to grant a water extraction licence, to appeal that decision is through judicial review in the Northern

⁵⁶ Utilities Commission of the Northern Territory, '[Annual Report 2024-25](#)' (16 September 2025), p. 43. [Memorandum of Understanding between the Department of Health and Power and Water Corporation and Indigenous Essential Services Pty Ltd for Drinking Water](#), signed on 2 November 2022, (Memorandum of Understanding) cl 5.

⁵⁷ Office of the Commissioner for Human Rights General Comment No. 15: The Right to Water (Articles 11 and 12 of the Covenant) at par 3. Retrieved from [General Comment No. 15: The Right to Water \(Arts. 11 and 12 of the Covenant\)](#) | Refworld.

⁵⁸ Power and Water Corporation, [Annual Drinking Water Quality Report 2024](#), pp. 160-161.

⁵⁹ Northern Territory, Parliamentary Debates, Legislative Assembly, 12 February 2025, 829-830.

⁶⁰ *Safe Drinking Water Act 2003* (Vic) s 17(1); *Safe Drinking Water Regulations 2025* (Vic) reg 16.

⁶¹ *Water Act* s 105D, Sch 2.

Territory Supreme Court. Judicial review proceedings in the Supreme Court are inaccessible to community members who are not legally represented; they are lengthy, expensive and attract significant financial risks which community members and community organisations often cannot assume.

In removing an avenue for third party merits reviews, the NT Government has taken away a significant access to justice safeguard which protects vulnerable communities and the environment. The case of the Larrimah Licence, discussed below in Case Study 2, exemplifies the need for avenues to appeal approval decisions and the important function of merits review in providing transparent and accountable government decisions. Such processes ensure decisions are made which achieve socially and economically beneficial outcomes in a manner that is environmentally sustainable.⁶²

Recommendation 5(a): Re-introduce third party merits review for decisions made under the Water Act.

b. Effect of *Territory Coordinator Act 2025* (NT)

The *Territory Coordinator Act 2025* (NT) (**TC Act**) established the role of the Territory Coordinator, an independent, unelected official with the power to exercise decision - making functions for the purpose of streamlining assessment processes and fast-tracking major investments in the NT.⁶³ Relevantly, the TC Act empowers the Territory Coordinator with the power to step in to statutory decision-making roles under the Water Act which relate to significant projects, works projects, infrastructure coordination activities or activities in designated Territory development areas.⁶⁴ The TC Act also provides the Territory Coordinator with the power to modify the application of a Territory law, including application of the provisions of the Water Act, in relation to a significant project, works project, infrastructure coordination activities or activities in designated Territory development areas.⁶⁵ When making decisions, the Territory Coordinator must consider the primary objective of driving economic development for the Territory and the potential social and environmental outcomes for the Territory.⁶⁶ Section 95 of the TC Act expressly excludes any person from applying for merits review or appeal of any decision made by the Territory Coordinator. In consequence, as stated above, the only avenue to appeal approval decisions of the Territory Coordinator under the Water Act is through costly and time-consuming judicial review proceedings.

Relevantly, decisions and statutory processes under the Water Act and Water Supply Act are vulnerable to interference by the Territory Coordinator.⁶⁷ Effectively, the Territory Coordinator has the power to make a decision under the Water Act applying different criteria than is provided under the Water Act and to impose entirely different conditions from those imposed by the Controller of Water Resources in pursuit of the primary objectives of the TC Act.⁶⁸ For example, if the Minister designated an agricultural project to be a 'significant project' because of its economic significance to the Territory, the Territory Coordinator could exempt the agricultural project from the requirement to obtain a water extraction licence or modify public notification requirements for a

⁶² NWI Preamble at [2], Sch D cl 1(viii).

⁶³ Northern Territory, Parliamentary Debates, Legislative Assembly, 12 February 2025, 829-830.

⁶⁴ *Territory Coordinator Act 2025* (NT), ss 3, 68 and sch.

⁶⁵ *Territory Coordinator Act 2025* (NT) s 77(1).

⁶⁶ *Territory Coordinator Act 2025* (NT) s 8.

⁶⁷ *Territory Coordinator Act 2025* (NT) s 7, sch.

⁶⁸ *Territory Coordinator Act 2025* (NT) s 73.

water licence and determine public submissions are no longer required to be considered for a water extraction licence decision to be made.⁶⁹

Interference by the Territory Coordinator has the potential to completely disregard the NT Government's NWI commitments, particularly Schedule D which requires water extraction licences to: be consistent with water legislation and relevant water plans, take into account environmental, social and economic impacts of use, allow for applications to be assessed to a level of detail commensurate with the level of potential impact of the proposed activity, have transparent and contestable processes in place to establish whether a proposed activity is to be approved and have avenues for appealing approval decisions.⁷⁰

Recommendation 5(b): Amend the *Territory Coordinator Act 2025* (NT) to remove the power to issue step in notices, exemption notices and condition variation notices from the Territory Coordinator.

Case Studies

1. Mataranka Water Allocation Plan

The development and implementation of the Mataranka Water Allocation Plan (**Mataranka WAP**) has faced significant opposition from Traditional Owners and environmental groups and exemplifies the impacts of the NT Government's failure to implement an NWI compliant statutory framework for water management in the NT. The EDO acknowledges that judicial review proceedings are currently on foot in the NT Supreme Court challenging the validity of the Mataranka WAP and the below case study is confined to what is already in the public knowledge.

Planning of the Mataranka WAP began in 2009 and by 2012, a draft WAP had been developed and the Mataranka Water Advisory Committee (**Mataranka WAC**) ceased operation.⁷¹ By 2017, the Mataranka WAP remained undeclared and the Mataranka WAC was re-established. While the Mataranka WAP remained under development, water licence decisions in the region continued to rely on the Water Allocation Framework. As a result, by 2021 the Mataranka Tindall Aquifer was considered to be overallocated and a number of water licence decisions were subject to review.⁷²

By 2023, the Mataranka WAP remained undeclared and issues with community engagement emerged following the resignation of Traditional Owners from the WAC after they had expressed concerns that they were not listened to in the planning process.⁷³

In 2024, a draft Mataranka WAP was released for public consultation which received widespread criticism. The Northern Land Council raised concerns that the draft Mataranka WAP failed to meet the requirements of the NWI on the basis that cultural values were not adequately protected and that the draft Plan failed to consider cultural values and sites prior to determining the consumptive

⁶⁹ *Territory Coordinator Act 2025* (NT) ss 23, 77.

⁷⁰ NWI sch D cl 1.

⁷¹ Northern Land Council, '[Submission to the Productivity Commission on the National Water Reform 2020](#)' (March 2021) p. 11.

⁷² Northern Land Council, '[Submission to the Productivity Commission on the National Water Reform 2020](#)' (March 2021) p. 12.

⁷³ Department of Environment, Parks and Water Security, '[Mataranka Tindal Water Advisory Committee: Meeting 15 Minutes](#)' (28 September 2023) p. 11.

pool.⁷⁴ The Northern Land Council also identified the NT Government's failure to include indigenous representation in the water planning process, submitting '*Additionally, the NLC actively sought a meaningful role in the development of the WAP, and would have preferred to have an opportunity to contribute to developing a strong and robust Plan, rather than having to highlight to the Minister through this public submission process, the major failings of this draft plan*'.⁷⁵ Other concerns raised included:

- The Environment Centre NT raised concerns that the draft Mataranka Plan failed to allocate water within the estimated sustainable yield to beneficial uses, relying on the definition of 'environmentally sustainable level of extraction' in the NWI in the absence of a statutory definition of estimated sustainable yield.⁷⁶
- Keep Top End Coasts Healthy also highlighted significant shortcomings in relation to NWI compliance, on the basis that the draft Mataranka WAP's reliance on unsustainable extraction rates, based on insufficient scientific understanding, poses a significant threat to the ecosystem.⁷⁷
- Retired hydrogeologist Dr Ross Brodie commented that the draft Mataranka WAP fails to review the negative environmental effects of existing use and entitlements in breach of clause 41 of the NWI.⁷⁸

In December 2024, the Mataranka WAP was declared and in early 2025 judicial review proceedings in the NT Supreme Court commenced. The development of the Mataranka WAP exemplifies the consequences of the NT Government's failure to provide an adequate statutory framework for WAPs and WACs. Implementing an NWI compliant framework into the Water Act may have avoided the issues experienced in the development of the Mataranka WAP including the significant delay in finalising the draft WAP, the failure to adequately consult the community, the risk of over allocating the Aquifer, numerous merits reviews for erroneous licensing decisions and the judicial review proceedings currently before the Northern Territory Supreme Court.

2. Larrimah Farms water licence

In 2020, the Water Controller granted NT Land Corporation a licence to extract 10,000 megalitres of water from the Tindall Limestone Aquifer in the Daly Roper Beetaloo Water Control District (**Larrimah Licence**).⁷⁹ At the time the decision was made, there was no WAP declared for the region and the decision to grant the licence relied on the inadequate and outdated Water Allocation Planning Framework discussed) above. Both the Northern Land Council, on behalf of Aboriginal Land Trusts in the region, and the Environment Centre NT applied to the Minister for a review of the decision under the now repealed, third party merits review mechanism contained in the Water Act.⁸⁰ Each applicant listed numerous grounds in support of their applications for review. In summary, both applicants sought review on the basis that the decision to grant the licence: was inconsistent with the Framework and other decisions made in relation to the aquifer, failed to take into account

⁷⁴ Northern Land Council, '[Submission to the Northern Territory Government on Draft Mataranka Water Allocation Plan 2024 for public consultation. Draft Mataranka Implementation Actions 2024 – For public consultation, Draft Mataranka Background Report 2024 – For public consultation](#)' (3 June 2024) p. 6.

⁷⁵ Ibid.

⁷⁶ Environment Centre NT, '[Submission on draft Mataranka Tindall Water Allocation Plan](#)' (3 June 2024), p. 4.

⁷⁷ Keep Top End Coasts Healthy, '[Submission to Draft Mataranka Tindall Water Allocation Plan](#)', (17 July 2024).

⁷⁸ Dr Ross Brodie, '[The Draft Mataranka Water Allocation Plan 2024-2034 Compendium](#)' (7 August 2024) p. 67.

⁷⁹ Water Resources Review Panel, '[Re: Controllers Decision to Grant Groundwater Extraction Licence TLAM10002](#)' (**Review Panel Report**) p. 1.

⁸⁰ *Water Act 1992* (NT) s 30 (as in force between 29/9/21-3/3/23).

the Aboriginal Water Reserve and failed to apply all scientific research directly related to the environment and other public benefit requirements to the water resource.⁸¹

The Minister for Environment referred the decision to be reviewed by the Water Resources Review Panel (**Review Panel**) and requested the Review Panel provide advice on what action the Minister should take.⁸² During the review process, all parties were afforded the opportunity to make representations and be heard on the matter.⁸³ As a result of third party merits review, the Review Panel found that the decision to grant the licence: failed to accord procedural fairness under the Water Act, failed to adopt a precautionary approach to water allocation in the aquifer, failed to take into account the impact of climate change, applied different allocation criteria and incorrectly assessed the impacts on the Strategic Aboriginal Water Reserve.⁸⁴ Accordingly, the Panel advised the Minister for Environment to set aside the Larrimah Licence and substitute a decision refusing to grant the Larrimah Licence. The Minister adopted the advice of the Review Panel and decided not to grant the Larrimah Licence.⁸⁵

In February 2024, Larrimah Farms Pty Ltd applied for a licence to extract water identical to the application for the Larrimah Licence, including for the same volume of water from the same water source, for the same period of time and over the same project area.⁸⁶ At the time the new application was submitted, the WAP for the region remained in draft form and the Water Controller remained reliant on the Water Allocation Planning Framework. On 8 April 2025, the *Petroleum, Planning and Water Legislation Amendment Act 2025* (NT) commenced, removing avenues for third parties to seek merits review of a decision under the Water Act. Less than ten days later, on 17 April 2025, the Water Controller granted the groundwater extraction licence to Larrimah Farms Pty Ltd despite the recommendation of the Review Panel to refuse an identical groundwater extraction licence in 2021 and in the face of substantial community opposition to the licence.⁸⁷

3. Toxic drinking water in Alpururulam

Alpururulam is a remote community in the Barkly region, home to almost 400 Alyawarre people. Residents of Alpururulam have been feeling the effects of the toxic drinking water since the 1990's. Residents report feeling sick from drinking the water, having itchy skin from showers and baths, damage to household appliances and hot water systems as a result of the poor quality water and an increased need for community members to undergo dialysis.⁸⁸ Since 2009, Power and Water have consistently reported that the drinking water in Alpururulam contains levels of fluoride, chloride, hardness and total dissolved solids which significantly exceed the ADWG.⁸⁹ Elevated levels of fluoride can have detrimental effects on the brain development of children and in 2024, the Chief

⁸¹ Review Panel Report at [16]-[17].

⁸² Review Panel Report at [1].

⁸³ Review Panel Report at [2].

⁸⁴ Review Panel Report at [66].

⁸⁵ Environment Centre NT, '[Larrimah Farms Pty Ltd – application for a water extraction licence – comments](#)' (19 July 2024) (**ECNT Larrimah Licence Submissions**) p. 3.

⁸⁶ ECNT Larrimah Licence Submissions p.3-4.

⁸⁷ Controller of Water Resources, 'Water Extraction Licence Decision: Larrimah Farms Pty Ltd' (17 April 2025) pp. 11-16. A copy of the licence and reasons for decision can be found here: [Water Licenses in the NT Portal](#).

⁸⁸ Water Services of Australia and Central Land Council, '[The Struggle for Good Quality Drinking Water in Alpururulam](#)' (November 2022) (**Alpururulam Drinking Water Report**), p. 5.

⁸⁹ Alpururulam Drinking Water Report, p 6; Power and Water Corporation, '[2009 Indigenous Communities of the Northern Territory Drinking Water Quality Annual Report](#)' (undated) p. 45.

Health Officer declared the drinking water in Alpururulam unsuitable for children 12 years and under and pregnant women.⁹⁰

In 2024, the levels of fluoride in the drinking water at Alpururulam exceeded the ADWG levels by 0.2 mg/L, the chloride levels in the communities drinking water exceeded the AWDG maximum guidelines by 0.5 mg/L, the level of hardness in the drinking water exceeded the ADWG maximum levels by 300 mg/L and the total dissolved solids in the communities drinking water exceeded the ADWG levels by 300 mg/L.⁹¹

Without a statutory framework for safe drinking water there is no requirement for the NT government to provide the residents of Alpururulam with safe drinking water. Instead, the community and the Central Land Council have been tirelessly working to fund the essential service themselves since 2012.⁹² The community have located an alternative safe water source and estimated that developing infrastructure to access the safe water source would cost over \$5 million, however the NT Government has repeatedly refused to progress the project because it is not regarded as a 'high priority'.⁹³ In the absence of support from the NT government, the Central Land Council have secured \$8 million of funding from the National Indigenous Australians Agency to complete work to protect the residents from the toxic drinking water.⁹⁴ During the 2025 Parliamentary Estimates, and as noted above the Minister for Health confirmed that the NT government are not committed to tabling a safe Drinking Water Act, a change in policy from the former Government who committed to a stand-alone safe drinking water act.⁹⁵

⁹⁰ Power and Water, '[Annual Drinking Water Quality Report 2024](#)' (undated) (**2024 Water Quality Report**) p. 51.

⁹¹ 2024 Water Quality Report, p. 164.

⁹² Alpururulam Drinking Water Report, p. 7.

⁹³ Alpururulam Drinking Water Report, p. 7.

⁹⁴ Indigenous Essential Services Pty Ltd, '[Annual Report 2024-25](#)' (30 September 2025), p. 16.

⁹⁵ Evidence to NT Parliamentary Estimates Committee, on [Minister Edgington's Portfolio's](#), Darwin, 17 June 2025, p. 26.



Key Issues and Recommendations: Water law and governance framework in Western Australia

February 2026

WA's water regulation framework

The *Rights in Water and Irrigation Act 1914* (WA) (**RIWI Act**) is WA's principal water legislation.¹ Its objects include to:²

- provide for the management of water resources, in particular their sustainable use and development, and protection of their ecosystems and environments;
- promote the orderly, equitable and efficient use of water resources; and
- enable participation of local communities in the administration of laws and policies.

The WA Department of Water and Environmental Regulation (**DWER**) is the primary government agency responsible for the application and enforcement of the RIWI Act.³

The WA Government has recognised significant legislative reform is needed to improve management of water resources.⁴ However, previously planned reforms have been abandoned,⁵ meaning WA's water planning 'continues to be based on out-of-date, 110-year-old legislation'.⁶

In practice, WA's current water law and governance framework has severe limitations, including in relation to its capacity to effectively allocate and monitor water resources and enforce against non-compliance.⁷ Below, we identify key issues and recommendations for reform to meet the objects of the RIWI Act, the WA Government's commitments under the National Water Initiative (**NWI**), the

¹ Five other pieces of legislation regulate water in WA, being the *Water Agencies (Powers) Act 1984* (WA); *Metropolitan Arterial Drainage Act 1982* (WA); *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* (WA); *Country Areas Water Supply Act 1947* (WA); and *Waterways Conservation Act 1976* (WA).

² RIWI Act, s 4.

³ Other relevant agencies include the Environmental Protection Authority, the Department of Mines, Petroleum and Exploration, and the Department of Planning, Lands and Heritage.

⁴ Department of Water, *Securing Western Australia's water future*, Position paper - reforming water resource management (September 2013) (**2013 Position Paper**), p 4.

⁵ Minister for Water, [Water priorities reset to focus on practical measures](#) (Media statement, 21 December 2023).

⁶ [National Water Reform Inquiry Report 2024 \(2024 Inquiry Report\)](#), pp 17, 56.

⁷ Dr M Hartley, 'Watertight or watered down? An update on water law reform in Western Australia' (2016) 30(8) *Australian Environment Review* 208.



Environmental Defenders Office

National Water Agreement currently being developed,⁸ the National Agreement on Closing the Gap,⁹ and Australia's international human rights obligations.¹⁰

Key issues

1. Water plans are non-statutory

Water plans set out how particular water resources are to be used and shared. Under the NWI, the WA Government has committed to preparing statutory water plans,¹¹ which are an 'important mechanism' to assist decisions around water management and allocation.¹² However, statutory water plans cannot be created in WA because the RIWI Act requires the Minister for Water to consult the Water Resources Council before water plans are finalised,¹³ and the Council has not been formed.¹⁴

WA is the only Australian jurisdiction without statutory water plans.¹⁵ The Productivity Commission has found this 'reduces confidence, increases transaction costs and investment risk, threatens environmental outcomes and risks political interference in decision making'.¹⁶

Even if statutory water plans were created in WA, the RIWI only requires DWER consider (and not be bound by) statutory water plans in its decision-making,¹⁷ which could undermine the effectiveness of plans in promoting successful management and protection of WA's water resources.¹⁸

⁸ See generally [The new National Water Agreement - DCCEEW](#). The Australian Government has signed the National Water Agreement, which has not been released publicly: Nikki Sorbello and Tayla Larsen, [States urged to sign National Water Agreement even though users unaware what's in final version](#), *ABC News* (online, 10 February 2026). We are not aware of any states or territories that have signed the Agreement.

⁹ See Intergovernmental Agreement on a National Water Initiative (25 June 2004); Department of Climate Change, Energy, the Environment and Water (**DCCEEW**), [National Water Initiative](#); DCCEEW, [The new National Water Agreement](#) (last updated 15 December 2025); Closing the Gap, [National Agreement on Closing the Gap](#).

¹⁰ See, for example, *Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment*, David R. Boyd, A/HRC/58/59/Add.1 (30 December 2024) [8]; *Obligations of States in respect of climate change* (Advisory Opinion) [2025] ICJ General List No. 87, p 109 [373].

¹¹ NWI at [36]-[40], Schedule E.

¹² NWI at [36]; Dr M Hartley, 'Watertight or watered down? An update on water law reform in Western Australia' (2016) 30(8) *Australian Environment Review* 208.

¹³ RIWI Act, ss 26GV(1), 26GZE.

¹⁴ Alex Gardner et al, *Water Resources Law* (LexisNexis Butterworths, 2nd ed, 2018) ch 15.2.

¹⁵ 2024 Inquiry Report, p 123-4.

¹⁶ 2024 Inquiry Report, p 14.

¹⁷ RIWI Act, Sch 1, cl 7(1)(g)(iii).

¹⁸ See discussion in 2024 Inquiry Report, pp 124, 136, 139. Language elsewhere in the Act is unlikely to impose mandatory considerations on decision-makers; for example, ss 26GW(2), 26GX(2) and 2GGY(2) of the RIWI 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.



Recommendation 1(a): Form the Water Resources Council and implement statutory water plans in WA.

Recommendation 1(b): Amend the RIWI Act to ensure provisions relating to statutory water plans are specific and legally binding.

In the absence of statutory water plans, DWER uses non-statutory Surface/Groundwater Management Area Plans (**WA Water Plans**),¹⁹ which set out how much water can be licensed for abstraction and DWER's approach to managing water resources within the area of a plan.

However, WA Water Plans are not consistent with WA's commitments under the NWI,²⁰ or sufficient to promote sustainable management of WA's water resources, including because they are not binding or enforceable on decision makers,²¹ or sufficiently specific, including in relation to monitoring requirements. Further, water resources in some areas of WA are overallocated,²² suggesting plans are not appropriately managing water resources.

Recommendation 1(c): In lieu of statutory water plans, ensure non-statutory water plans are sufficiently specific and allocate water resources appropriately. This includes detailed commitments around how decisions on licence applications are to be made under non-statutory plans, including mandatory considerations for decision makers.

2. Licensing requirements are incomplete and insufficient

Water extraction in WA is managed through licenses issued under the RIWI Act.²³ However, licences are only required for extraction from some water resources;²⁴ there remain large parts of WA, including much of the south-west and some drought-affected regions, where extraction of water is not regulated through licences.

When assessing whether to grant a water licence, DWER must consider various factors, including whether the proposed taking and use of water is in the public interest, ecologically sustainable, and environmentally acceptable.²⁵ However, DWER is not required to consider key considerations such as

¹⁹ Department of Water, [Water allocation planning in Western Australia - A guide to our process](#) (2011); 2024 Inquiry Report, p 134.

²⁰ See 2020 Inquiry Report; 2024 Inquiry Report.

²¹ 2024 Inquiry Report, p 134.

²² As of January 2024, 15.8% of resources with an allocation limit were considered overallocated, with 9% of these exceeding the limit by more than 90%: 2024 Inquiry Report, pp 124, 141.

²³ RIWI Act ss 5C, 26D.

²⁴ Water licences are required for extraction from artesian (underground well) water sources; and may be required for use of water in areas 'proclaimed' under the RIWI Act, depending on the intended use and volume of water to be extracted.

²⁵ RIWI Act, Sch 1 cl 7(2)(a)-(c).



the cultural interests of First Nations people and climate change,²⁶ despite these considerations being relevant and essential to achieving the objects of the RIWI Act and the NWI.

Recommendation 2(a): Conduct a review of unproclaimed areas under the RIWI Act, to ensure that licences are required in all areas where they should be required.

Recommendation 2(b): Conduct a review of the RIWI Act to ensure all relevant factors are properly defined and included as mandatory considerations in licensing decisions.

3. Inadequate focus on First Nations water access, management and ownership

Under the NWI, the WA Government has committed to implementing water access entitlements and planning frameworks that recognise Indigenous needs in relation to water access and management, and statutory water plans that incorporate Indigenous social, spiritual and customary objectives.²⁷

Even if statutory water plans were developed in WA, legislation does not promote consultation with and involvement of Traditional Owners in their development and implementation. While other Australian jurisdictions impose requirements in relation to cultural outcomes, for example that water plans contain cultural outcomes and that the Minister for Water considers First Nations interests in relation to water resources,²⁸ the RIWI Act does not impose similar requirements.

Further, WA Water Plans, and other mechanisms like Indigenous Land Use Agreements (**ILUAs**), are not sufficient to protect and promote the cultural water interests of First Nations peoples. While these interests are considered in the development of allocation plans, no water allocation plans specifically address cultural water outcomes,²⁹ and ILUAs ‘are not a substitute for, or adjunct to, formal recognition of the existence of inherent Indigenous water rights’.³⁰

The WA Government has sought to introduce Aboriginal water reserves, to promote access to water for economic development for Aboriginal people, into several WA Water Plans.³¹ It is essential that these reserves are developed with First Nations peoples, and that First Nations peoples are adequately resourced to participate in any decisions made around water holdings and reserves.

²⁶ The cultural interests of First Nations people are excluded from the definition of ‘public interest’ in Sch 1, cl 1 of the RIWI Act.

²⁷ NWI at [25](ix)] and [52].

²⁸ See, for example, *Water Act 2000* (Qld), ss 43(1)(b), 45(2)(h).

²⁹ 2024 Inquiry Report, p 79.

³⁰ Martuwarra Fitzroy River Council, submission to Productivity Commission titled ‘[National Water Reform 2024](#)’ (submission no. 75, 24 April 2024).

³¹ See for example DWER, [Derby groundwater allocation plan for public comment](#), Water Resource Allocation and Planning Report series, Report no. 69 (November 2020).



Recommendation 3: Prioritise First Nations water access, management and ownership in the development and implementation of water management frameworks and water plans, including by prioritising meaningful engagement with First Nations peoples.

4. Compliance and enforcement

Compliance and enforcement form the backbone of effective regulatory frameworks. Under the NWI, the WA Government has committed to ensuring water access entitlements in WA are able to be enforced, and are enforced in practice.³²

It is an offence under the RIWI Act to take water without authority to do so.³³ However, unlike all other jurisdictions in Australia,³⁴ it is not an offence under the RIWI Act to fail to comply with most other licence conditions (besides some related to metering).³⁵ This limits DWER's powers to enforce licence conditions, and does not incentivise compliance from licensees.

In practice, it is not common for regulators to prosecute offences under the RIWI Act.³⁶ Even where offences are prosecuted, penalties in the RIWI Act do not encourage compliance; maximum penalties in the Act are low compared to those in other environmental legislation in WA and water legislation elsewhere in Australia, and penalties imposed in practice are even lower.³⁷ The WA Government recognised this as an issue before the RIWI Act reforms were scrapped.³⁸

To enhance DWER's efficiency and enforcement outcomes, the RIWI Act could be amended to introduce civil penalties, which require a lower evidentiary burden than criminal penalties,³⁹ or tiered penalty schemes, which are used in environmental legislation to impose stricter penalties for higher levels of wrongdoing (e.g. where someone has acted with criminal intent or negligence).⁴⁰

³²NWI at [31(vi)].

³³ RIWI Act, s 5C(1)(a).

³⁴ 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.

³⁵ It is an offence to not comply with a direction issued by the Minister for Water: RIWI Act, sch 1 cls 18(1), 18(3)(a). However, we are not aware of any prosecutions brought in WA in relation this offence.

³⁶ For example, from FY2013-14 to FY2024-25, DWER has identified nine prosecutions for breaches of the RIWI Act, all related to the offence under s 5C of the RIWI Act: see DWER, [Environmental enforcement](#) (last updated 13 March 2026).

³⁷ See, for example, *Water Management Act 2000* (NSW), s 60A; *Environmental Protection Act 1986* (WA), ss 49(2)-(3), 51C.

³⁸ 2013 Position Paper, p 23.

³⁹ B Grigg, 'Environmental Civil Penalties in Australia: Towards Deterrence?' (2011) 28 *Environmental and Planning Law Journal* 36, 38. See, for example, *Environmental Protection and Biodiversity Act 1999* (Cth), s 481; *Environment Protection Act 1993* (SA), s 104A.

⁴⁰ See, for example, *Environmental Protection Act 1986* (WA), ss 49(2)-(3), 51C; *Water Management Act 2000* (NSW), s 60A.



Recommendation 4(a): Amend the RIWI Act to:

- introduce offences for breaching a licence condition;
- increase potential penalties; and
- introduce civil penalties and/or tiered penalties.

DWER conducts compliance activities to detect and investigate non-compliance with the RIWI Act, and enforcement activities to respond to confirmed non-compliances.⁴¹ In 2025, the Auditor General concluded from their audit of DWER's regulation of water licences that DWER's activities are not sufficient to protect WA's water resources, and DWER cannot be confident that licence holders are meeting their licence conditions or water is being extracted appropriately.⁴²

DWER is not adequately resourced to undertake any meaningful level of compliance and enforcement work across WA. The Auditor General reported DWER only had seven dedicated compliance officers (who spent much of their time performing other tasks), and licencing staff conducted enforcement work when their other duties permitted.⁴³ By contrast, NSW's independent Natural Resources Access Regulator performs a range of compliance and enforcement functions with more than 100 staff,⁴⁴ including having brought 42 prosecutions since it began operating in 2018.⁴⁵

Recommendation 4(b): Prioritise DWER's compliance and enforcement functions by increasing resources for these functions, and consider establishing an independent water regulator.

5. Limited opportunities for public participation, review and enforcement

Third party involvement in compliance and enforcement activities can be an important mechanism for effective implementation of laws and policies. However, WA's water framework does not provide sufficient opportunities for third parties to seek review of decisions or enforce laws.

Unlike some other jurisdictions in Australia,⁴⁶ the RIWI Act does not allow interested and affected members of the community to seek review of decisions to grant or amend water licences and permits.⁴⁷ If a third party wants to challenge such a decision, they can only seek judicial review, which

⁴¹ Compliance activities include inspections, water meter audits, desktop water use surveys, and reviews of submitted compliance reports; and enforcement activities include issue of non-statutory notices, Ministerial directions, infringement notices, and prosecutions.

⁴² AG Report, pp 9, 12.

⁴³ AG Report, pp 12, 14.

⁴⁴ NSW Legislative Assembly, [894 - Natural Resources Access Regulator](#) (5 September 2019).

⁴⁵ See NSW Natural Resources Access Regulator, [How we ensure compliance; Prosecutions](#).

⁴⁶ See, for example, *Water Act 1992* (NT), s 30(1); *Water Management Act 2000* (NSW), ss 62(1), 368(1)(b).

⁴⁷ Review rights 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: RIWI Act, Sch 7, cl 30(1).



Environmental Defenders Office

is limited in scope, and can be a difficult, expensive and time-consuming process, particularly when water licence applications and decisions aren't published.

Similarly, unlike most other Australian jurisdictions,⁴⁸ third parties generally cannot apply to courts to restrain or remedy breaches of the RIWI Act,⁴⁹ and may only pursue breaches through the WA Supreme Court's equitable jurisdiction (which comes with other considerations and challenges).⁵⁰ Even where parties can initiate proceedings, they may run into other difficulties.⁵¹

Recommendation 5: Amend the RIWI Act to allow interested and affected parties to seek review of water licensing and permit decisions; and apply to courts to remedy or restrain breaches of the RIWI Act and licence conditions.

6. Lack of transparency

Transparency and oversight are essential principles in enabling sustained public trust and confidence in a regulatory system.

While DWER's [Water Register](#) provides some licensing information, it does not publish applications and decisions for permits and licences, conditions on licences, or results of metering required under certain licences. More broadly, the WA Government does not regularly report on the conditions of waterways (unlike most other jurisdictions) or review environmental outcomes and management arrangements, or publish annual compliance reports for most WA Water Plans.⁵²

A lack of provision of such information means, for example, that the public cannot see what water licences conditions are, the results of any monitoring that is performed in relation to conditions, or information to understand how DWER uses those results. This limits DWER's accountability in relation to the performance of its compliance and enforcement functions, and the ways in which the public can participate and take actions to protect their rights.⁵³

Recommendation 6(a): Publish more information related to water licences and permits in WA, including licence applications, decisions and conditions, water metering results, and information on DWER's compliance and enforcement activities.

⁴⁸ See *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; and *Water Act 2000* (Qld), s 784.

⁴⁹ See RIWI Act, s 5E. EDO is not aware of any reported cases where parties have tried to enforce water access rights under this provision.

⁵⁰ See discussion in Susannah Connor, 'Improving enforcement of water access rights in Western Australia: enhancing civil enforcement' (2016) 30(8) *Australian Environment Review* 214, 214-215.

⁵¹ For example, in *Crossley v English* [2024] WASC 268, the Court held the applicants had standing to bring the proceedings and there had been a breach of the applicants' rights under the RIWI Act, but the applicants had not commenced their claim in time. However, on appeal, the Court held the applicants did not have standing to bring the proceedings: *Crossley v English* [2025] WASCA 141 at [192].

⁵² 2024 Inquiry Report, p 188, 200-201.

⁵³ 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.



Recommendation 6(b): Conduct reviews of and report on the conditions of waterways, environmental outcomes, management arrangements, and compliance with WA Water Plans.

7. Lack of community consultation

The NWI includes requirements for ‘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.’⁵⁴

Historically, government processes have focused on traditional, ‘quick and easy’ consultation methods, leading to poor engagement with First Nations and other interested communities.⁵⁵ Effective community consultation should be genuine and occur at all stages of water resource management. In relation to First Nations communities, consultation must be in accordance with cultural protocols and the principles of free, prior and informed consent.⁵⁶

In WA:

- water licence applications only need to be advertised for public comment in certain circumstances, including for groundwater licences with an annual entitlement of more than 100,000kL a year or where the regulator considers a licence will have a significant impact on the water resource.⁵⁷
- where a water licence is published for comment, the time for comments is usually 14 days.⁵⁸ This short timeframe is inadequate in ensuring sufficient time for the community to get across material and provide meaningful submissions, particularly given water licensing decisions are often based on complex science.

The RIWI Act provides for the establishment of water resource management committees to provide assistance, advice or submissions to the Minister for Water, consult on statutory water plans (noting none currently exist in WA), and ensure the Minister is informed of, and has access to, community views.⁵⁹ However, these committees are not mandatory and are not being established in practice. These committees should be established, with First Nations representatives.

⁵⁴ NWI at [95].

⁵⁵ Cameron Holley, ‘Future Water: Improving Planning, Markets, Enforcement and Learning’ in *New Directions for Law in Australia: Essays in Contemporary Law Reform* (ANU Press, 2017), accessible [here](#), p 256.

⁵⁶ FPIC requires consultation to be: autonomously guided by the community from which consent is being sought (free); in advance meaning during the development of the plan whilst respecting the time requirements of indigenous consultation and consensus processes (prior); accessible, culturally relevant and easily understandable (informed); and conducted to facilitating the collective judgement by the whole community and arrived at through the customary decision-making procedures of the relevant peoples and communities (consent).

⁵⁷ *Rights in Water and Irrigation Regulations 2000* (WA) (**RIWI Regulations**), reg 23(2)-(3).

⁵⁸ Licences must be published for at least 14 days: RIWI Regulations, reg 23(4)(d).

⁵⁹ RIWI Act, ss 26GM(1)(a); 26GM(1)(a); 26N; 26GZ.



Recommendation 7(a): Amend the RIWI Act to strengthen requirements for genuine and meaningful consultation, which is in accordance with cultural protocols and the principles of free, prior and informed consent.

Recommendation 7(b): Amend the RIWI Act to promote public comment periods for smaller annual entitlements, and increase the minimum timeframe for public comment periods.

Recommendation 7(c): Form water resource management committees in relation to areas subject to WA Water Plans, with First Nations representation.

Case Studies

1. Water licensing: Limitations on public participation and involvement in WA

At a recent forum on water law and regulation for First Nations representative bodies, various WA Government Department representatives attended to discuss their role in water regulation. A recurring theme raised by the host, a representative organisation, and attendees, was lack of transparency, and limitations around participation, relating to water licensing in WA.

At the forum, attendees raised the difficulties in understanding the roles of different Departments in advertising water licence applications and engaging with the public, particularly where multiple Departments have responsibilities in one process (for example, water licences associated with mining).

Further, it was raised that a timeframe for comments of only 14 days is burdensome for First Nations representative organisations, which are often under-resourced and unable to provide genuine comments in that timeframe. In its recommendations for the Fitzroy-Derby Water Plan (out for public comment until 30 June 2026), the Kimberley Land Council recommends the incorporation in the Plan of a best-practice consultation process for licence applicants and holders to follow when consulting with Traditional Owners.⁶⁰

Finally, attendees noted that where First Nations organisations have been able to comment on a water licence, they were then not aware of how these comments have been taken into account in the decision-making process.

2. Coca Cola's water extraction in the Perth Hills

In May 2024, residents in the Perth Hills raised concerns that Coca-Cola Europacific Partners had, for more than three decades, been extracting hundreds of thousands of litres of water per week for

⁶⁰ Kimberley Land Council, [Kimberley Traditional Owners Release Recommendations For Fitzroy-Derby Water Planning](#) (online, 31 March 2026).



Environmental Defenders Office

free from a private bore.⁶¹ At the time the news broke, Perth was experiencing the driest nine-month period in its recorded history, with local orchardists and community members were raising concerns about declining water tables.⁶²

The bore was located in an unproclaimed groundwater area, meaning extracting water from the bore did not require a licence under the RIWI Act or, therefore, incur licensing fees.⁶³ The company said it was subject to a maximum annual draw limit, which it did not disclose.⁶⁴

Minister for Water Simone McGurk acknowledged the arrangement ‘doesn’t pass the pub test’ and committed to undertaking a review of the situation, including potentially proclaiming the area for licensing under the RIWI Act.⁶⁵ Later that month, the Minister announced Coca-Cola had agreed to pause extracting water from the bore, to allow for replenishment of the aquifer.⁶⁶

This case demonstrated limitations of WA’s water management framework.

⁶¹ Damian Smitt and Emma Wynne, [Perth Residents Question Use of Groundwater by Coca-Cola Bottled Water Maker](#), ABC News (online, 1 May 2024).

⁶² As above.

⁶³ RIWI Act, s 5C and Pt III.

⁶⁴ Damian Smitt and Emma Wynne, [Perth Residents Question Use of Groundwater by Coca-Cola Bottled Water Maker](#), ABC News (online, 1 May 2024).

⁶⁵ Emma Wynne, [Coca-Cola's free access to Perth Hills groundwater for bottled water to be reassessed by minister](#), ABC News (online, 4 May 2024).

⁶⁶ Emma Wynne, [Coca-Cola to temporarily cease taking groundwater in Perth Hills after minister intervenes](#), ABC News (online, 31 May 2024).