



Deficiencies in the existing water law and governance framework in Western Australia

Introduction

The Environmental Defenders Office (**EDO**) is the largest public interest environmental law firm in the southern hemisphere. We have over 30 years' experience advising on water law and policy in WA and other Australian jurisdictions and have accordingly developed an in-depth understanding of best practice water law and governance. For general information on WA's water framework, please see EDO's factsheet on [Water Planning and Licensing in WA](#).

EDO considers water law and governance in WA to be amongst the poorest in the country, based on our analysis of WA's water legislation, allocation plans, policy documents, and decision-making processes and outcomes. Reform of WA's water regulation framework is needed to ensure the framework aligns with current science and protects WA's water resources, particularly in the face of significant threats such as climate change and significant extraction from activities such as mining, agriculture and data centres operation. It is also needed for the WA Government to meet its existing and future commitments under the National Water Initiative (**NWI**),¹ the new National Water Agreement (**NWA**),² the National Agreement on Closing the Gap,³ and international law.

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1. Background

This section outlines WA's abandoned legislative reforms, the current commitments of the WA Government, and emerging threats to WA's water resources.

a. Legislative reform is needed

The [Rights in Water and Irrigation Act 1914 \(WA\)](#) (**RIWI Act**) is WA's principal water legislation.⁴ Its objects include to:⁵

- 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 administration of laws and policies.

¹ [Intergovernmental Agreement on the National Water Initiative](#) (25 June 2004).

² See Department of Climate Change, Energy, the Environment and Water (**DCCEEW**), [The new National Water Agreement](#) (last updated 15 December 2025).

³ Closing the Gap, [National Agreement on Closing the Gap](#) (**National Agreement on Closing the Gap**).

⁴ 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).

⁵ RIWI Act, s 4.

On paper, the objects in the RIWI Act seem sufficient to guide the community on environmentally sustainable water resources regulation in WA. However, in practice, the RIWI Act has severe limitations, including in relation to its capacity to facilitate effective allocation and monitoring of water resources and enforcement against non-compliance.⁶

The WA Government has recognised significant legislative reform is needed to improve management of water resources,⁷ approving the drafting of new laws in 2015.⁸ The package of proposed water reform legislation was expected to have made water licensing and planning activities in WA consistent with its commitments under the NWI.⁹

However, in 2023, the WA Minister for Water (**Minister**) announced the reforms would not proceed, ‘following stakeholder feedback’ that ‘many of the existing and long-standing arrangements are suitable’.¹⁰ The Minister did not explain how deficiencies in existing water laws identified by both the WA Government and stakeholders, including those relating to environmental protection and First Nations water injustice, would (if at all) be addressed.

Recommendation 1a: The WA Government must prioritise reform of WA’s water laws.

b. WA must meet its NWI commitments

The NWI provides a framework and principles for the sustainable management of water resources across Australia.¹¹ Under the NWI, the WA Government’s commitments include:¹²

- **preparing water plans** with provisions for the environment;
- **achieving sustainable water use** in over-allocated or stressed water systems; and
- **introducing registers of water rights** and standards for water accounting.

WA is lagging on meeting its NWI commitments;¹³ the Australian Productivity Commission noted in 2024 that the WA Government’s withdrawal of the proposed reforms in 2023 means WA ‘lacks statutory water entitlements and plans, and water planning [...] continues to be based on out-of-date, 110-year-old legislation’, with clear opportunity costs borne by communities as a result.¹⁴ The Productivity Commission recommended WA introduce NWI-consistent water legislation in the next three-year assessment period.¹⁵

Recommendation 1b: The WA Government must prioritise meeting its NWI commitments.

⁶ Dr M Hartley, ‘Watertight or watered down? An update on water law reform in Western Australia’ (2016) 30(8) *Australian Environment Review* 208.

⁷ Department of Water, ‘Securing Western Australia’s water future, Position paper - reforming water resource management’ (September 2013) (**2013 Position Paper**), p 4.

⁸ Department of Water, Information sheet – New water resources laws (Water law series); WA Government, [Water reform agenda moves ahead](#) (13 March 2015).

⁹ [National Water Reform Inquiry Report 2024 \(2024 Inquiry Report\)](#), pp 17, 127.

¹⁰ Minister for Water, [Water priorities reset to focus on practical measures](#) (Media statement, 21 December 2023).

¹¹ NWI at [23(i)], [23(iii)]; DCCEEW, [National Water Initiative](#).

¹² DCCEEW, [National Water Initiative](#).

¹³ Australian Productivity Commission, [Inquiry report - National Water Reform 2020 \(2020 Inquiry Report\)](#), pp 27-28; 2024 Inquiry Report, pp 2, 14.

¹⁴ 2024 Inquiry Report, pp 17, 56.

¹⁵ 2024 Inquiry Report, p 17.

c. WA must commit to the new National Water Agreement

Following consultation with states and territories in 2024, the Federal Government has signed an updated draft NWA, which includes and builds on provisions of the NWI.

It is now up to state and territory governments to endorse the new agreement, which would replace the NWI in those jurisdictions.

Recommendation 1c: To demonstrate its commitment to best practice management of water resources, the WA Government must sign onto, and prioritise meeting its commitments under, the NWA.

d. WA water regulation needs to entrench, and not compromise, human rights

Australian governments have obligations under international law to prevent significant harm to the environment.¹⁶ Specifically, the United Nations recognises human rights to water,¹⁷ and to a clean, healthy and sustainable environment,¹⁸ including healthy ecosystems and biodiversity and access to safe and sufficient water.¹⁹ This right is also a precondition for the enjoyment of other human rights, such as the rights to life and health.²⁰ Australian governments must also respect, protect and uphold human rights recognised in instruments to which Australia has agreed.

Specifically, although a basic human right, too many Australians do not have access to safe drinking water, particularly in remote and regional communities.²¹ Unlike some other jurisdictions, WA does not have stand-alone legislation or regulations providing for safe drinking water.²²

Recommendation 1e: The WA Government must ensure water laws and their implementation work to entrench, and not compromise, Australia's human rights commitments, including by ensuring access to safe drinking water.

e. WA must take steps to advance First Nations water justice, including by meeting its commitments to Closing the Gap

First Nations are the Traditional Owners of lands and waters across Western Australia and have cared for Country for tens of thousands of years. Yet Australian water law is built on the legal fiction

¹⁶ See, for example, discussions in *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Reports 2010 (I), pp 55-56 [101]; *Obligations of States in respect of climate change* (Advisory Opinion) [2025] ICJ General List No. 87, p 50 [135].

¹⁷ UN Economic and Social Council, *General Comment No. 15: The Right to Water (Articles 11 and 12 of the Covenant)* E/C.12/2002/11 CESCR (20 January 2003) [3].

¹⁸ *Resolution adopted by the General Assembly on 28 July 2022, A/RES/76/300* (1 August 2022) [1].

¹⁹ *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].

²⁰ *Obligations of States in respect of climate change* (Advisory Opinion) [2025] ICJ General List No. 87, p 109 [373].

²¹ Recent research has found that Australians in more than 400 remote or regional communities lack access to good-quality drinking water. Further, 40% of all locations with reported health-based non-compliances were remote Indigenous communities: Australian National University, [‘Remote Australians lack access to quality drinking water’](#) (21 July 2022).

²² See, for example, *Safe Drinking Water Act 2003* (Vic); *Safe Drinking Water Act 2011* (SA).

of aqua nullius.²³ Aqua nullius is the incorrect assumption that water belonged to no-one at the time of European colonisation. This foundational flaw continues to impact the rights, responsibilities and opportunities of First Nations peoples across WA. Without substantive reform of WA's water laws, First Nations peoples will continue to be excluded from meaningful participation in decision-making about and control over water.

WA's legal framework in relation to water use and management falls well short of the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**), including the right of First Nations peoples to self-determination and the obligation on states to secure their Free, Prior and Informed Consent (**FPIC**).²⁴ UNDRIP was endorsed by the Australian Government in 2009 and was described recently by the Federal Court of Australia as 'solemn objectives that Australia has committed to in international forums'.²⁵

The National Agreement on Closing the Gap is an agreement between a coalition of Aboriginal and Torres Strait Islander community-controlled peak organisations across Australia, the Australian Government, and all State and Territory governments. The Agreement includes outcomes and targets focused on transforming the way governments work with and for Aboriginal and Torres Strait Islander peoples to improve outcomes, including outcomes relating to water.²⁶

The WA Government has committed to developing a target to measure progress towards securing Aboriginal and Torres Strait Islander interests in inland waters under WA's water rights regime, to present to the Joint Council on Closing the Gap by the end of 2026.²⁷

In 2023, in its implementation plan for the Agreement, the WA Government stated it was supporting drafting of new water resources legislation to support and promote recognition of Aboriginal peoples' water interests and spiritual, social, customary, and economic needs, which was likely to be considered by Parliament later that year.²⁸ No such legislation has been introduced.

Sections 3, 5 and 6 of this briefing note go into greater detail about discrepancies in WA's regulatory framework in advancing First Nations water justice in WA, and recommendations for improvement.

²³ See, for example, Sarah Bourke, Bradley Moggridge, Clint Hansen, Margaret Shanafield, [How the myth of 'aqua nullius' still guides Australia's approach to groundwater](#) (*The Conversation*, 17 December 2025).

²⁴ *United Nations Declaration on the Rights of Indigenous Peoples* (2 October 2007, adopted 13 September 2007), art 3 (re rights); and arts 10, 19, 32 (re FPIC). 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).

²⁵ Regarding the importance of this endorsement for Australia's domestic jurisdiction, see *Sampi v State of Western Australia (No 5)* [2026] FCA 517, [45]-[48]. Mortimer CJ refers to these rights as "solemn objectives that Australia has committed to".

²⁶ For example, target 9b (p 30), by 2031 all households in discrete communities and in or near to towns will receive essential services (including water) that meet or exceed relevant standards; target 15a, by 2030 there will be a 15% increase in Australia's landmass subject to Aboriginal and Torres Strait Islander people's legal rights or interests; target 15b, there will be a 15% increase in areas covered by Aboriginal and Torres Strait Islander people's legal rights or interests in the sea. New target 15c seeks to increase Aboriginal and Torres Strait Islander legal rights and interests in inland water bodies: see [Fourteenth meeting of the Joint Council on Closing the Gap](#) (20 June 2025), p 2.

²⁷ For more information, see National Agreement on Closing the Gap at [87]; DCCEEW, [First Nations water policy](#) (accessed 2 September 2026); [Fourteenth meeting of the Joint Council on Closing the Gap](#) (20 June 2025), p 2.

²⁸ [WA Government Closing the Gap Implementation Plan 2023-2025](#), p 131.

Recommendation 1e: The WA Government must focus on:

- a. reforming water legislation to align with and embed principles of UNDRIP and FPIC, and to more broadly advance First Nations water justice in WA; and
- b. meeting its Closing the Gap commitments, including by developing clear and appropriate targets and indicators to measure progress towards securing Aboriginal and Torres Strait Islander interests in inland waters, based on consultation with Aboriginal and Torres Strait Islander representative organisations and peoples.

f. WA must consider climate change impacts in planning and decision making

Climate change is impacting, and will increasingly impact, water resources and dependent ecosystems and communities across WA. The 2025 Australian National Climate Risk Assessment found:²⁹

- 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 on freshwater ecosystems.
- Climate change is threatening First Nations peoples' ability to connect with Country and practise culture, and threatens physical, mental, community, and cultural health and wellbeing. First Nations peoples are directly and disproportionately impacted by hazards that compromise natural environments and services, particularly in remote communities.

WA is forecast to experience some of the most significant changes in rainfall, river flows, and groundwater recharge as a result of climate change. Southwestern WA is forecast to experience severe reductions in rainfall under all warming scenarios.³⁰ In the north of WA, modelling projects an increase in interannual variability of rainfall, which would amplify multi-year droughts.³¹

These emerging risks and impacts mean it is more critical than ever for WA to have an effective water management framework. Achieving the objectives of the RIWI Act will require climate change to be a core consideration in planning, decision making and implementation.

Recommendation 1f: The WA Government must consider climate change risks and impacts in water planning and regulation, including when making decisions about legislative reforms, and in decision making on water allocation, licensing, and compliance and enforcement.

²⁹ Australian Government, [Australia's National Climate Risk Assessment Report](#) (2025).

³⁰ Climate information in Australia: Climate information, projections, tools and data. 'Future climate scenarios – Rainfall change – Australian annual rainfall' (accessed 11 September 2026), available at: [Rainfall Change - Climate Change in Australia](#). The median projection from the latest generation of climate models is a 47% reduction in mean annual runoff, with a plausible range of a -66% to -29% reduction for 2046–2075 relative to 1976–2005 runoff: Hongxing Cheng et al. (2024), '[Projections of future streamflow for Australia informed by CMIP6 and previous generations or global climate models](#)' 636 *Journal of Hydrology*, p 6.

³¹ Hongxing Cheng et al. (2024), above n 30, p 1.

2. Water plans

Water plans set out how particular water resources are to be used and shared.

a. WA does not have statutory water plans

The WA Government has committed to preparing statutory water plans under the NWI,³² but is not doing so in practice, and has shown no indication of doing so.

Statutory water plans are an ‘important mechanism’ to assist decisions around water management and allocation ‘to meet productive, environmental and social objectives’.³³ They can promote administrative efficiency and reliability in future water resource planning.³⁴

Statutory water plans *can* be created under the RIWI Act, after the Minister has consulted with the Water Resources Council on draft plans.³⁵ However, the Water Resources Council has not been formed, which means statutory water plans cannot be approved in WA, and the RIWI Act’s water plan provisions have not been used since their introduction over 20 years ago.³⁶

WA is the only jurisdiction in Australia without statutory water plans.³⁷ WA’s lack of statutory water planning ‘reduces confidence, increases transaction costs and investment risk, threatens environmental outcomes and risks political interference in decision making’.³⁸

Recommendation 2a: To meet its NWI commitments, the WA Government must form the Water Resources Council and develop and implement statutory water plans.

b. Statutory water plans, if implemented, are unlikely to be binding

Even if statutory water plans are created under the RIWI Act, existing deficiencies in the legal framework could limit their effectiveness. Specifically, the RIWI Act only states the Department of Water and Environmental Regulation (**DWER**) must consider (but is not bound by) statutory water plans in its decision-making,³⁹ meaning that the regulator may not be legally obliged to make a decision consistent with the statutory water plan. Language elsewhere in the Act could be argued not to impose mandatory considerations on decision-makers.⁴⁰

The Productivity Commission has stated that the non-binding nature of statutory water plans in the Northern Territory undermines their effectiveness in providing secure water access and promoting environmental, cultural and other public benefit outcomes, and does not support consistency with the NWI.⁴¹ The same could be said for WA’s water plans.

³² NWI at [36]-[40], Schedule E.

³³ NWI at [36].

³⁴ Hartley, n 5.

³⁵ RIWI Act, ss s 26GV(1), 26GZE.

³⁶ Alex Gardner, Richard Bartlett, Janice Gray and Rebecca Nelson, *Water Resources Law* (Lexis Nexis Butterworths, 2nd ed, 2018), ch 15.2.

³⁷ 2024 Inquiry Report, p 123-124. See pp 103-131 for more on water plan coverage in each jurisdiction.

³⁸ 2024 Inquiry Report, p 14.

³⁹ RIWI Act, Sch 1, cl 7(1)(g)(iii).

⁴⁰ 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.

⁴¹ 2024 Inquiry Report, pp 124, 136, 139.

Recommendation 2b: For statutory water plans in WA to be effective in allocating and conserving water resources in WA, the WA Government must amend the RIWI Act to ensure that provisions of these plans are specific and legally binding.

c. Non-statutory water plans are not sufficient to protect water resources

In the absence of statutory water plans, DWER prepares and implements non-statutory water allocation plans, called ‘Surface/Groundwater Management Area Plans’ (**WA Water Plans**).⁴² WA Water Plans set out how much water can be licensed for abstraction and DWER’s approach to managing water resources within the area of the plan.

WA Water Plans are not sufficient to promote sustainable management of WA’s water resources. First, WA Water Plans are guidelines only, and are not binding or enforceable.⁴³ While DWER states that it bases its licensing decisions on the limits and policies that are set out in a WA Water Plan,⁴⁴ the law does not compel it to do so. WA Water Plans are also not sufficiently specific; any monitoring requirements are usually general, often summarising DWER’s practices rather than prescribing specific monitoring to be done, or accounting for uniqueness of the areas covered by a plan.

Further, overallocation of water resources is a problem in some areas of WA. 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%.⁴⁵ While WA Water Plans for overallocated systems include actions to reduce extraction to within sustainable levels, such significant overallocations suggest plans are not appropriately managing water resources. Preventing overallocation in the first place is better than seeking to retrospectively correct it.

While DWER says the planning processes and the components of WA Water Plans reflect the RIWI Act and are ‘closely aligned’ with the water reform taking place under the NWI,⁴⁶ these plans are not consistent with WA’s commitments under the NWI; the Productivity Commission has consistently found WA’s implementation of its commitments under the NWI is lacking.⁴⁷

Without clear, binding water allocation planning, communities cannot be confident that WA Water Plans, and their implementation by DWER, are sufficient to protect WA’s water resources.

Recommendation 2c: Until such time as the WA Government implements statutory water plans, the WA Government must impose clear mandatory considerations on DWER’s decision making, which promote the objects of the RIWI Act and NWI, by including such considerations in:

- a. the RIWI Act;
- b. DWER’s policy guidance; and/or
- c. non-statutory water plans.

Recommendation 2d: WA Water Plans must ensure water extraction is capped at, or returned to, environmentally sustainable levels that are determined based on the best available scientific information. Plans must also ensure water quality is protected.

⁴² Department of Water (2011), [Water allocation planning in Western Australia \(2011 Guide\)](#).

⁴³ 2024 Inquiry Report, p 134.

⁴⁴ 2011 Guide, p 5.

⁴⁵ 2024 Inquiry Report, pp 124, 141.

⁴⁶ 2011 Guide, p 5.

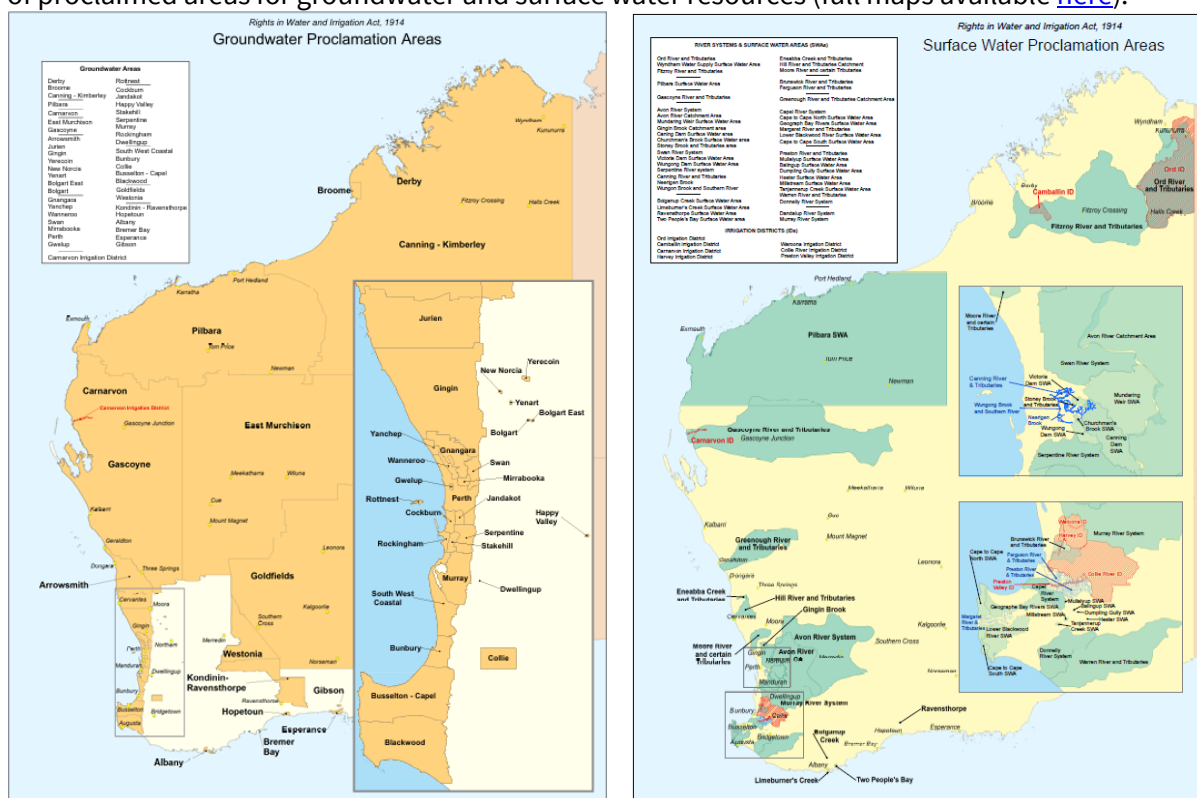
⁴⁷ See 2020 Inquiry Report; 2024 Inquiry Report.

3. Licensing

Water extraction in WA is managed through issuing licences under the RIWI Act.

a. Licences only required for some water resources

Under the RIWI Act, water licences are required for extraction from artesian underground 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.⁴⁸ DWER has published the following maps of proclaimed areas for groundwater and surface water resources (full maps available [here](#)):



Left: ‘Groundwater Proclamation Areas’ map, with proclaimed areas in orange

Right: ‘Surface Water Proclamation Areas’ map, with proclaimed areas in green

As can be seen in these maps, there remain parts of WA that aren’t ‘proclaimed’ for licensing, meaning extraction of water is not regulated through licences in these areas. This leaves extraction of water from some of WA’s water resources unregulated by DWER. This includes much of the south-west of WA, which has experienced significant droughts in recent years and, as discussed, is going to be severely impacted by climate change.

More generally, a key objective of the NWI is the ‘recognition of the connectivity between surface and groundwater resources and connected systems managed as a single resource’.⁴⁹ This is because surface and ground water systems are, over variable time scales, almost always coupled and need to be managed conjunctively.⁵⁰ Water law and policy must require and facilitate groundwater and surface water to be managed conjunctively in order to optimise management objectives.

⁴⁸ RIWI Act, s 5C.

⁴⁹ NWI, cl 23(x).

⁵⁰ For further explanation of conjunctive management see, for example, Andrew Ross, ‘[Speeding the transition towards integrated groundwater and surface water management in Australia](#)’ (2018) 567(3) *Journal of Hydrology*, e1-e10 [1].

Recommendation 3a: The WA Government should conduct a review of unproclaimed areas to ensure that all areas that should be proclaimed are proclaimed under the RIWI Act. This should include consideration of surface water and groundwater resources as connected resources.

b. Mandatory considerations in making licensing decisions

When assessing whether to grant a water licence, DWER is required to consider various factors, including whether the proposed taking and use of water are in the public interest, ecologically sustainable, and environmentally acceptable.⁵¹ However, key considerations are omitted from or not clearly included in the mandatory considerations, for example:

- the definition of ‘public interest’ does not expressly refer to the interests of First Nations peoples;⁵²
- there is no requirement that reflects the importance of FPIC; and
- cumulative, emerging and increasing threats to water resources, including climate change impacts and activities requiring significant water extraction like the operation of data centres, agriculture, and extractive industries.

Such considerations are relevant and essential to achieving the objects of the RIWI Act and NWI.

Further, key terms such as ‘ecologically sustainable’ and ‘environmentally acceptable’ are not defined in the RIWI Act,⁵³ which undermines their utility as mandatory considerations.

Recommendation 3b: The WA Government must conduct a public review of the RIWI Act and licensing activities to ensure all relevant factors are properly defined and included as mandatory considerations in licensing decisions. In doing so, the Government must engage with First Nations people including through their chosen representative organisations to determine appropriate amendments.

Mandatory considerations should include (among others):

- a. the interests of First Nations peoples;
- b. a requirement that licence applicants have consulted with relevant First Nations peoples and representative organisations or people in accordance with the principles of FPIC; and
- c. cumulative, emerging and increasing threats to water resources relevant to the application area.

Recommendation 3c: The WA Government should define key terms such as ‘ecologically sustainable’ and ‘environmentally acceptable’ in the RIWI Act.

c. Lack of transparency

DWER’s [Water Register](#) provides some information about licences, including whether a property has a current licence associated with it, licence numbers, and whether licensees hold a licence. However, applications and decisions for water permits and licences, any conditions on licences, and results of water metering required under certain licences, are not published.

⁵¹ RIWI Act, Sch 1 cl 7(2)(a)-(c).

⁵² These interests are excluded from the definition of ‘public interest’ in Sch 1, cl 1 of the RIWI Act.

⁵³ RIWI Act, Sch 1 cl 7(2)(a)-(c).

Transparency and oversight are essential principles in enabling sustained public trust and confidence in a regulatory system. DWER's lack of transparency regarding permits and licences erodes public trust in the WA Government's management of water resources, limits DWER's accountability in performing its allocation, compliance and enforcement functions, and limits ways the public can participate and take measures to protect their rights, including by initiating legal proceedings.

More broadly, there are issues with the WA Government's transparency in relation to its water regime. For example, the Productivity Commission has identified that the WA Government does not report on the conditions of waterways at regular intervals (unlike most other jurisdictions), does not conduct regular statewide review and auditing of environmental outcomes and the adequacy of management arrangements, and does not publish annual environmental compliance reports, or otherwise report on outcomes achieved, in relation to most WA Water Plans.⁵⁴

Recommendation 3d: The WA Government should:

- publish information related to water licences and permits in WA, including but not limited to licence conditions, results of water metering, licence ownership details, licence holders' compliance with conditions, and compliance and enforcement activities; and
- conduct regular statewide review and auditing of environmental outcomes and the adequacy of management arrangements.

4. Metering and monitoring

Metering requirements are common in licences in WA; as of 30 June 2026, water licences representing 97% of all water licensed across WA were subject to metering and alternative measurement requirements under the [Rights in Water and Irrigation Regulations 2000 \(WA\) \(RIWI Regulations\)](#).⁵⁵ However, key deficiencies remain in relation to metering. The WA Government must ensure metering requirements are clear, enforceable and aligned with best practice, and should publish information related to water metering to ensure transparency and accountability.

a. Metering requirements are insufficient

The RIWI Regulations specify that a licence is subject to metering conditions, requiring a licensee to install a meter, maintain a meter in good condition, record the meter reading at the end of each month, and provide metering data to the Minister.⁵⁶ Non-compliance is an offence. However, this only applies to certain licences, generally for those with an annual water entitlement of 10,000 kilolitres (10 megalitres) or more.⁵⁷ Breaches of other licence conditions related to water metering, and of these conditions for licensees with smaller water entitlements, are only legally enforceable if the Minister issues a direction, and the licensee fails to comply with that direction.

In 2019, the WA Government conducted a trial of telemetric technology, the most reliable method of confirming compliance with licence conditions and other relevant laws. The government stated if the trial was successful, it would 'roll out groundwater monitoring telemetry in priority areas across the state'.⁵⁸ We have not found any updated information on whether this trial was successful, or if technology has been implemented. We understand that the use of telemetric technology

⁵⁴ 2024 Inquiry Report, p 188, 200-201.

⁵⁵ DWER, [Annual Report 2025-26](#), p 58.

⁵⁶ RIWI Regulations, reg 41C.

⁵⁷ RIWI Regulations, re 41B.

⁵⁸ See WA Government, [Groundwater telemetry trial](#) (last updated 26 July 2022).

remains non-existent amongst private water users, with self-reading and reporting of metering data (which is widely considered to be poor practice) the norm.

Recommendation 4a: The WA Government should amend the RIWI Act to include an offence for breaching a licence condition.

Recommendation 4b: The WA Government should review how water data is being collected and used and consider legal and policy changes to ensure consistency with best practice.

b. WA does not provide information on metering

Under the NWI, the WA Government has agreed to:⁵⁹

- comply with the National Framework for Non-Urban Water Metering (**Metering Framework**), with all meters to be compliant with the national standard by July 2020;
- develop implementation plans with priorities and targets for water metering; and
- publicly report on the implementation of the Metering Framework every two years.

Despite these commitments, the WA Government does not report on metering progress at all, including in relation to its implementation of the Metering Framework.⁶⁰ This has meant the Productivity Commission cannot assess progress of WA's water metering and measuring activities,⁶¹ and it also remains difficult for us to comment on the efficacy of WA's water metering systems.

While DWER says measurement is required for almost all water licensed across the state, DWER does not release the conditions of water licences, so the public cannot see what those conditions are or require. The public also cannot access the results of that monitoring, or information to understand how DWER uses the results of monitoring data.

Recommendation 4c: The WA Government should report on its implementation of the Metering Framework, and publish information on water licences and monitoring results.

5. Community consultation

One of the core elements of the NWI is 'community partnerships', which includes '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.'⁶² Community engagement is a focus of the draft National Water Agreement.⁶³

Historically, government-designed planning processes have focused on traditional, quick and easy consultation methods (e.g. community meetings or panels), leading to poor engagement with First Nations and other interested communities (e.g. environmental and local farmers).⁶⁴

⁵⁹ NWI at [88]-[89]; 2024 Inquiry Report, p 223. See also DCCEEW, [Non-urban water metering framework](#).

⁶⁰ 2024 Inquiry Report, p 225.

⁶¹ See 2024 Inquiry Report, pp 223-230.

⁶² NWI at [95].

⁶³ See DCCEEW, [Updated Draft National Water Agreement](#) (December 2024), p 14.

⁶⁴ 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.

Community consultation should be genuine and occur at all stages of water resource management. Consultation processes for water management decisions should be enshrined in legislation with appropriate timeframes for genuine consultation, participation and co-design.

Water law must recognise First Nations peoples as rightsholders with cultural obligations and authority to manage water resources. First Nations consultation protocols must be co-designed with relevant First Nations peoples and their representative organisations, and in accordance with the principles of FPIC.

FPIC reflects the inherent collective right of First Nations peoples to participate in decision-making processes on issues and laws that affect their lives, lands, waters, skies and resources, and to grant or withhold consent where decisions affect them.⁶⁵ First Nations peoples must also be adequately resourced to enable meaningful participation, including by ensuring enough time and resources for First Nations governance arrangements. Also essential to the development of trust and identification of cultural outcomes in consultation with First Nations is prioritisation of cultural safety, and protection of and respect for First Nations Knowledges.⁶⁶

The RIWI Act provides for the establishment of water resource management committees to provide assistance, advice or submissions to the Minister, consult on statutory water plans (noting none exist in WA), and ensure the Minister is informed of, and has access to, community views on matters relating to water resources.⁶⁷

However, these committees are not mandatory and are not being established in practice. For example, DWER noted in the Carnarvon Artesian Basin Water Management Plan that, notwithstanding the provisions of the RIWI Act, there was no committee for general licensing or management advice in the Gascoyne Groundwater Area.⁶⁸ Instead, DWER established the ‘Carnarvon Artesian Basin Rehabilitation Group’, which included three pastoralists, one resource user, one community representative, and officers from two WA Government departments. There is no express mention of whether First Nations are represented on this body.

It is also difficult to identify existing committees. While the Minister is required to publish the creation of the committee in WA Government Gazettes,⁶⁹ this is an inaccessible record of information that hinders transparency and accountability in the water management system.

Recommendation 5: The WA Government must strengthen WA’s regulatory framework with regards to community consultation, including by making amendments to provide for:

- mandatory water resource management committees;
- ongoing First Nations co-design and co-management of water resources, where consultation protocols are also co-designed with relevant First Nations peoples and their representative organisations, and in line with the principles of FPIC;
- committee meetings to be recorded; and
- membership lists, minutes, and recommendations to be published.

⁶⁵ ANTAR, [Factsheet: Free, Prior and Informed Consent](#) (2012).

⁶⁶ Cultural Knowledge refers to the knowledge resulting from intellectual activity in a traditional context, and includes know-how, practices, skills and innovations: Terri Janke and Company, [Indigenous Knowledge: Issues for protection and management: discussion paper](#) (2018), p 17.

⁶⁷ RIWI Act, ss 26GM(1)(a); 26GM(1)(a); 26N; 26GZ.

⁶⁸ Department of Water, Carnarvon Artesian Basin Water Management Plan (December 2007), p 28.

⁶⁹ RIWI Act, s 26GK(6); see WA Government Gazettes [here](#).

Recommendation 5 (cont): In relation to ensuring ongoing First Nations co-design and co-management of water resources, the WA Government should consult with First Nations peoples and their representative organisations to identify suitable mechanisms. Such a mechanism could be similar to and sit alongside water resource management committees, or these committees could include First Nations representation. In the meantime, and at a minimum, water resource management committees must include at least one First Nations representative from the relevant area.

6. 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 providing for Indigenous access to water resources through planning processes that ensure inclusion of Indigenous representation in water planning wherever possible, and statutory water plans that incorporate Indigenous social, spiritual and customary objectives.⁷⁰ However, the Productivity Commission has noted that ‘the NWI has limited focus on the water interests and rights of First Nations Australians’.⁷¹

In 2024, the Productivity Commission found that engagement by governments is often perceived as not meaningful and has been criticised as a box ticking exercise, characterised by short notice and insufficient provision of necessary preparatory materials to allow for considered involvement by First Nations peoples in water planning and management decision-making processes.⁷² In relation to WA, the Commission identified that no water allocation plans specifically address cultural water outcomes.⁷³ Instead, cultural water interests are considered in the development of allocation plans, and, where possible, water can be reserved for the economic development of First Nations communities. It stated water reserves are being implemented on a local scale, through allocation plans or negotiated settlement outcomes as part of Indigenous Land Use Agreements (**ILUAs**), to ensure they are designed to achieve economic development outcomes.⁷⁴

Further, the future act provisions of the *Native Title Act 1993* (Cth) in relation to water licences are wholly inadequate, providing only for a right to be notified and an opportunity to comment – with no consequences if the procedure is not followed.⁷⁵

DWER’s guidance on water allocation planning makes no provision for First Nations access to water, cultural flows,⁷⁶ or Aboriginal water reserves.⁷⁷ However, the WA Government has sought to introduce Aboriginal water reserves into several of its non-statutory WA Water Plans. For example, the 2020 draft Derby groundwater allocation plan proposed to introduce a water reserve to ‘ensure

⁷⁰ NWI at [25](ix)] and [52].

⁷¹ 2024 Inquiry Report, p 67.

⁷² Ibid, p 71.

⁷³ Ibid, p 79.

⁷⁴ Ibid, p 87.

⁷⁵ In particular, see *Native Title Act 1993* (Cth), s 24HA. For further discussion see: Australian Law Reform Commission, [Fulfilling the promise of Mabo: Reforming the Future Acts regime in the Native Title Act 1993 \(Cth\)](#) (ARLC Report 144, March 2026), p 274, 344ff.

⁷⁶ Cultural flows are described by the Murray Lower Darling Rivers Indigenous Nations (**MLDRIN**) as ‘water entitlements that are legally and beneficially owned by the Nations of a sufficient and adequate quantity and quality to improve the spiritual, cultural, natural, environmental, social and economic conditions of those Nations’: MLDRIN, [Echucha Declaration](#) (19 May 2010). MLDRIN has already achieved some success in their efforts to have Australian governments recognise cultural flows, with the Murray Darling Basin Plan requiring governments to take account of First Nations’ views about cultural flows.

⁷⁷ 2011 Guide, p 5.

water is available for Derby native title holders to use for economic development on their native title lands when they are ready to do so'.⁷⁸ We note that the establishment of the water reserve is not an undertaking to grant a water licence, nor does it confer a water right to any person.

First Nations and non-Indigenous academics have raised concerns about Aboriginal water reserves, including because focus on commercial purposes may come at the expense of other important issues, such as ensuring sufficient water for Country and to maintain ecosystem health.⁷⁹ Rights to access and use water is only one aspect of justice, with the 'bigger picture problem' being that decision-making power over water remains with governments and is not shared with Indigenous people.⁸⁰ First Nations led organisations have emphasised that ILUAs 'are not a substitute for, or adjunct to, formal recognition of the existence of inherent Indigenous water rights'.⁸¹

The NWI states water plans and processes should include adequate opportunity for cultural issues to be identified and considered;⁸² the RIWI Act does not do this, nor does it embed mechanisms that could support this (such as through the development of consultation protocols described earlier).

In the meantime, these measures must be applied in relation to non-statutory water plans.

Recommendation 6: The WA Government must prioritise First Nations water access, management and ownership in its water management frameworks and water plans, including by focusing on meaningful and ongoing engagement with First Nations peoples in processes such as the development, monitoring and implementation of water plans.

WA legislation must be amended to require statutory water plans (as recommended earlier). When doing so, statutory water planning requirements must facilitate substantive recognition and promotion of First Nations access to, interests and rights in, and self-determined desired outcomes for, the water resources to which the plans apply. This must include by providing for:

- a. recognition of First Nations peoples as more than stakeholders, but as rights holders with cultural obligations and authority to manage water resources;
- b. meaningful and ongoing involvement of Traditional Owners in the development, monitoring and implementation of a plan;
- c. requirements for Indigenous Reserves or other arrangements that will provide water for cultural flows, in order to achieve self-determined outcomes in plan areas and allocate water fairly, transparently and equitably;
- d. identification and protection of, and access to, culturally significant sites;
- e. identification and protection of culturally significant species; and
- f. transparent and accountable objectives, strategies and performance indicators for the achievement of self-determined First Nations priority outcomes.

Mechanisms and procedures must recognise and reflect First Nations peoples as more than stakeholders, but as rightsholders with cultural obligations and authority to manage water resources. It is essential that the WA Government co-design water regulation frameworks with WA First Nations representative organisations, including incorporation of Traditional Knowledges into its frameworks for the management of water in the State.

⁷⁸ DWER, [Derby groundwater allocation plan for public comment](#), Water Resource Allocation and Planning Report series, Report No. 69 (November 2020).

⁷⁹ Kat Taylor, Anne Poelina and Quention Grafton, [The lie of aqua nullius, 'nobody's water', prevails in Australia. Indigenous water reserves are not enough to deliver justice](#), *The Conversation* (23 December 2022).

⁸⁰ Ibid.

⁸¹ Martuwarra Fitzroy River Council, submission to Productivity Commission titled '[National Water Reform 2024](#)', Submission No. 75 (24 April 2024).

⁸² NWI, Schedule E, item 6(iii).

7. Compliance and enforcement

Compliance and enforcement form the backbone of effective regulatory frameworks. An effective compliance monitoring and enforcement system will be vital to meet WA's commitments under the NWI, which states that water access entitlements must be 'enforceable and enforced'.⁸³

a. Offence provisions do not deter non-compliance

It is an offence under the RIWI Act to take water without authority to do so.⁸⁴ It is difficult to prosecute such offences, including because criminal offences have to be proved beyond reasonable doubt, and there are obstacles in obtaining admissible water consumption data (because DWER does not publish data it collects, it is unclear how accurate it is and whether it is suitable for criminal prosecution). These difficulties are evident in practice, where it is rare for regulators to prosecute offences under the RIWI Act.⁸⁵

Unlike all other jurisdictions in Australia,⁸⁶ it is not an offence under the RIWI Act to fail to comply with most other licence conditions (besides some related to metering). Instead, the Minister can issue directions ordering the licensee to comply with their licence, and it is an offence under the RIWI Act to not comply with that direction.⁸⁷ This process limits DWER's powers to enforce licence conditions and does not incentivise compliance from licensees. The offence is also not prosecuted in practice. While DWER issues some statutory directions,⁸⁸ we are not aware of any prosecutions brought in WA in relation to a breach of a Ministerial direction under the RIWI Act.

Even where offences are prosecuted, the maximum penalties in the RIWI Act are low, and the penalties imposed in practice are even lower. Penalties are noticeably lower than those in other environmental protection legislation in WA, and water legislation in other Australian jurisdictions.⁸⁹ Low penalties do not encourage compliance. In fact, the WA Government recognised penalties in the RIWI Act needed to be increased before the reforms to the RIWI Act were abandoned.⁹⁰

The introduction of civil penalties, which require a lower evidentiary burden than criminal penalties, could enhance efficiency and increase enforcement activities.⁹¹ Tiered penalty schemes, which are used in other environmental legislation to impose stricter penalties for higher levels of wrongdoing (e.g. where an offender has acted with criminal intent or negligence),⁹² may also be effective.

⁸³ NWI at [31(vi)].

⁸⁴ RIWI Act, s 5C(1)(a).

⁸⁵ For example, from FY2013-14 to FY2026-27, DWER has conducted 10 prosecutions for breaches of the RIWI Act, all related to the offence under s 5C of the RIWI Act: DWER, [Environmental enforcement](#) (last updated 26 October 2026).

⁸⁶ 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.

⁸⁷ RIWI Act, sch 1 cls 18(1), 18(3)(a).

⁸⁸ DWER issued 33 statutory directions in FY2025-26; 18 in FY2024-25, four in FY2023-24, three in FY2022-23, and 32 in FY2021-22: DWER's Annual Reports are available [here](#).

⁸⁹ For example, compare *Water Management Act 2000* (NSW), s 60A with *Environmental Protection Act 1986* (WA), ss 49(2)-(3), 51C.

⁹⁰ 2013 Position Paper, p 23.

⁹¹ 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.

⁹² See, for example, *Environmental Protection Act 1986* (WA), ss 49(2)-(3), 51C; *Water Management Act 2000* (NSW), s 60A.

Recommendation 7a: To ensure the RIWI Act is effective and enforceable, and aligned with other water legislation in Australia, the WA Government must:

- amend the RIWI Act to introduce offences for breaching a licence condition (consistent with other jurisdictions),¹ and increase potential penalties; and
- consider introducing civil penalties and/or tiered penalties under the RIWI Act.

b. DWER's must increase compliance and enforcement activities

DWER conducts compliance activities to detect and investigate non-compliance with the RIWI Act, and enforcement activities to respond to confirmed non-compliances.⁹³ While DWER reports on the activities it undertakes,⁹⁴ it does not provide details of any outcomes of these activities, which makes it difficult to evaluate their efficacy. At a high level, it is concerning that DWER's compliance and enforcement activities appear to be decreasing.⁹⁵

The Auditor General has concluded DWER's compliance and enforcement activities, which are often reactive and ad hoc, 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.⁹⁶ In particular, it was found that DWER did not investigate most potential non-compliances with licence conditions and did not conduct enough on-ground inspections.

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 licensing staff typically did enforcement work when their other duties permitted (which did not occur often).⁹⁷ By contrast, NSW's independent Natural Resources Access Regulator, which is responsible for the enforcement of water laws in NSW, has more than 100 staff.⁹⁸ Since its establishment in 2018, the Regulator has been effective in performing a range of compliance and enforcement functions, including bringing 49 prosecutions for breaches of water laws.⁹⁹

Recommendation 7b: To promote effective compliance with and enforcement of the RIWI Act, the WA Government must prioritise DWER's compliance and enforcement functions, including by increasing resources, and potentially establishing an independent regulator.

c. Lack of third party rights to seek review; and limited enforcement rights

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.

⁹³ 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.

⁹⁴ DWER's Annual Reports are available [here](#).

⁹⁵ Office of the Auditor General, '[Regulation of Water Licences](#)' (Report 20: 2024-25), 11 June 2025 (**AG Report**), pp 5, 9; DWER's Annual Reports for FY2025-26 to FY2021-22, available [here](#).

⁹⁶ AG Report, pp 9, 12.

⁹⁷ AG Report, pp 12, 14.

⁹⁸ NSW Legislative Assembly, [894 - Natural Resources Access Regulator](#) (5 September 2019).

⁹⁹ See NSW Natural Resources Access Regulator, [How we ensure compliance](#); [Prosecutions](#).

Unlike some other jurisdictions in Australia,¹⁰⁰ the RIWI Act does not allow interested and affected members of the community to seek review of decisions to grant or amend water licences – in WA, only people with particular rights in relation to a licence are able to seek review of a licence decision with the State Administrative Tribunal (**SAT**).¹⁰¹ If a third party wants to challenge such a decision, they can only seek judicial review, which is limited to where a legal error is alleged to have been made in the decision-making process. Judicial review can be a difficult, expensive and time-consuming process. The lack of publication of water licence applications and decisions also makes it difficult for third parties to consider whether a legal error may have been made.

In some jurisdictions in Australia, any person can apply to the court to restrain or remedy breaches of water planning legislation, regardless of whether they have been directly affected by the breach.¹⁰² In WA, however, only someone who has been ‘directly affected’ by degradation of a water resource may make such an application. Other third parties may only pursue breaches through the WA Supreme Court’s equitable jurisdiction (which comes with other considerations and challenges). Even where parties can initiate proceedings, they may run into other difficulties.¹⁰³

Some of these challenges could be addressed by extending the SAT’s jurisdiction in relation to water-related decisions and disputes. While the SAT currently reviews a variety of government decisions and determines disputes across a range of areas, these functions in relation to the RIWI Act are confined to reviews of licence decisions brought by particular rights-holders. The SAT’s jurisdiction could be extended to allow interested and affected members of the community to seek review of licence decisions and enforcement of breaches of the RIWI Act.

Recommendation 7c: To assist individuals wishing to enforce their private rights, promote enforcement of the RIWI Act, and bring legislation in line with other jurisdictions, the WA Government should amend the Act to allow interested and affected parties to:

- a. seek review of water licensing and permit decisions;
- b. apply to courts to remedy or restrain breaches of the RIWI Act and licence conditions;
- c. apply to the State Administrative Tribunal to seek review of decisions made under the RIWI Act, and to remedy or restrain breaches of the Act.

8. Conclusion

With climate change set to significantly impact WA’s already stressed water resources, it’s vital the WA Government focuses on reform of WA’s water laws, and prioritises implementation of laws and policies in practice. Significant changes are needed for the WA Government to meet its commitments under the NWI and protect WA’s water.

As a priority, the voices and knowledges of First Nations must be elevated in reform and existing planning processes. Co-design is essential to ensure our water is protected for future generations.

For more information, please contact perth@edo.org.au.

¹⁰⁰ See, for example, *Water Act 1992* (NT), s 30(1); *Water Management Act 2000* (NSW), ss 62(1), 368(1)(b); *Water Act 1989* (Vic), s 64.

¹⁰¹ Specifically, someone may only seek review of a licence decision if they are a licence applicant, are entitled to have the licence transferred to them, or have an agreement to take the licensed water: RIWI Act, s 26GC.

¹⁰² See, for example, *Water Management Act 2000* (NSW), s 336; *Water Management Act 1999* (Tas), s 264; *Water Act 2000* (Qld), s 784.

¹⁰³ For example, see *Crossley v English* [2024] WASC 268 and *Crossley v English* [2025] WASCA 141 at [192].