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SUBMISSION

Consultation on the draft principles of a National Water Agreement

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Introduction

This NSW Irrigators' Council (NSWIC) submission provides feedback to the Commonwealth Government and Federal Department of Climate Change, Energy, the Environment, and Water (DCCEEW) Consultation paper on *Draft principles of a National Water Agreement: Discussion Paper*.

NSWIC has serious concerns about the development, consultation, practical and financial impact of many principles proposed within this discussion paper.

The 2004 National Water Initiative (NWI) has been instrumental to water management reform in Australia. Within NSW, the NWI has led to the implementation of reforms such as the Murray-Darling Basin Plan, the NSW non-urban water metering policy, Water Sharing Plans, separation of operator from policy, independent water pricing, and the risk assignment framework, all of which have impacted the operations of irrigators across NSW.

The development of the 2004 NWI was a significant process over a ten-year period. State governments and stakeholders were central in the process of developing specific actions to shape water management. The NWI was understood as binding for signatories, and States recognised the compliance mechanisms in place.

The proposed National Water Agreement (NWA) has been described as non-binding and non-enforceable, despite the need for States to commit to its objectives, outcomes and principles. Should a State choose not to commit to the new NWA, this will cause uncertainty and call into question the jurisdictions commitment to water management foundations developed over the last 20 years.

Consultation has been brief and high-level and there has been confusion over the role of State governments in its development. State-based peak bodies have been excluded from roundtable meetings on the NWA principles despite their members being most affected by the outcomes.

While some foundational NWI actions have been directly translated into NWA principles, many have been altered in ways that will weaken the secure, sustainable and productive use of water resources for agricultural water users in NSW. The addition of new principles has also weakened water planning and management. Knowledge gaps in current understanding and high-level concepts with unclear interpretations may lead to unforeseen and detrimental impacts. Many principles are in effect value judgements with the potential for serious legal implications.

To understand the Intergovernmental National Water Agreement, NSWIC calls on the Commonwealth Government to release the full document with objectives, outcomes, principles and schedules to transparently communicate what States are being asked to sign onto and develop jurisdictional action plans to achieve. The NWA as it stands would impose a substantial resource and financial burden on the States.

We call for further consultation on this Agreement led by both the Commonwealth and States. This must occur before States sign on to the NWA; it is not acceptable to consult with State stakeholders on jurisdictional action plans after States may have already committed to deliver principles that weaken the secure, sustainable and productive use of water.



We also call for information on funding arrangements to implement this Agreement, before States sign on to the NWA. In NSW, where 80-100 per cent of water management costs, an NWA that adds to these costs is unacceptable.

NSWIC recommends that the NSW Government not sign this agreement before the issues listed above are resolved.

Summary of Recommendations

- Commonwealth Government to publicly release the full NWA document with objectives, outcomes, principles and schedules.
- For further consultation led by both Commonwealth and States, prior to the States signing on to the NWA.
- Release of information on funding arrangements to implement this Agreement, prior to the States signing on to the NWA.
- NSW Government to not sign on to the NWA until issues listed within this submission are resolved.

Water pricing

- Retain NWI clause 66 v regarding regional full cost recovery.
- Retain NWA outcome 1.K.6 to give effect to the principle of user pays.

First Nations in water planning and management

- Withdraw NWA principle 3.2 and conduct discussion in a national forum.
- Withdraw NWA principle 3.3 and conduct a full assessment of the legal and operational effects of this principle.
- Principles referring to First Nations are made consistent with the broader style and syntax of the NWA principles document.
- First Nations engagement occurs within existing processes in collaboration with other stakeholders.
- Provide clarity on the Commonwealth's intentions by including references to international declarations.
- Amend NWA principle 3.5 to "*Aboriginal and Torres Strait Islander Peoples have access to, management and/or ownership of water for Cultural, spiritual, social, environmental and economic purposes in line with the National Agreement on Closing the Gap.*"
- Amend NWA principle 3.7 to: *Water management recognises and incorporates Aboriginal and Torres Strait Islander Peoples' Cultural interests in water management, ownership and governance.*



Evidence passed decision making

- Amend NWA principle 4.1 to include consumptive water users in recognition of their knowledge and experience.
- Knowledge is assessed and incorporated according to its scientific and evidentiary merits, not who has provided it.

Building trust with stakeholders

- Amend NWA Objective 5 to require jurisdictions to demonstrate actions to build community trust.
- Engagement principles require a balanced, complementary approach.
- Retain NWI clause 96 i.
- Consider principles that clarify government response to community adjustment pressures.

Water planning and management frameworks

- Amend NWA principle 6.1.1 to include increased climate variability and non-volumetric solutions.
- Amend NWA principle 4.8 and 6.5 to include risk-appetite of those likely impacted by decision-making.
- Define the precautionary principle and provide clear guidance on its interpretation and application.
- Define connectivity and address knowledge gaps and modelling issues.
- Integrate unallocated water availability with existing planning, and entitlement frameworks within a jurisdiction.
- New entitlements are not created where they have the effect of reducing the reliability and property right of existing entitlements.
- Amend NWA principle 6.23 to be less prescriptive through removal of words “water recovery”.

Productive and sustainable use of water

- Retain NWI Clause 46-51 wording on risk assignment framework.
- Provide more detail on process by which new water entitlements can be created.



Principles of concern to be addressed by the Commonwealth

Water pricing

Full cost recovery

NWA principle 1.18 states “*In small urban and rural water systems, pricing achieves full cost recovery, recognising that there are some small regional and remote services that will never be economically sustainable but need to be maintained to meet social and public health obligations.*”

NSWIC requests this to be reverted to NWI clause 66 v), “*services that will never be economically viable but need to be maintained.*” In regions along the NSW Coast, IPART has recognised that full cost recovery is likely to be unattainable due to rural water system customers capacity to pay. As public-interest cost-drivers continue to grow, and land use changes continue throughout coastal regions, the number of water users continues to decline. It is essential that this is recognised, and that pricing systems are fit-for-purpose to respond.

User pays model

NSWIC supports all jurisdictions adopting the principles of the user pays water pricing model (NWA outcome 1.K.6). Identifying the proportion of costs that can be attributed to water access entitlement or licence holders must align with user pays principles (NWA principle 1.22). These costs must have full transparency and be publicly reported, so that the extent and reason for continually increasing costs can be understood.

User pays is generally defined as a person who uses a particular service or resource should bear the associated costs. For water users, this would mean paying for the service of delivering water and its associated costs in the maintenance, operation and replacement of infrastructure, and for water planning and management only to the extent needed to deliver the water.

When water planning, management and infrastructure expands beyond what is required for water storage and delivery systems, additional costs should be borne by the public beneficiaries of those additional services, not just water users. This includes climate change adaptation, fish passageways, environmental flow management, recreation and other public good services.

Case Study: Fish Passage in NSW

The NSW Fish Passage Strategy is in development under the NSW Water Strategy Priority 3. This 20-year plan aims to undertake works on 165 high priority weirs to create unimpeded fish passage. These projects do not require additional water to deliver benefits to asset owners, the community and environment.

NSW’s impactor-pays, rather than user-pays, approach to pricing means the costs of building fish passages are largely recovered from water customers (primarily farmers). The prohibitively expensive cost recovery from water users through annual bulk water charges is why the implementation of this positive strategy is progressing very slowly.



Recommendations:

- Retain NWA clause 66 v regarding regional full cost recovery.
- Retain NWA outcome 1.K.6 to give effect to the principle of user pays.

First Nations in water planning and management

Historical indigenous water rights

Principle 3.2 states there must be *'acknowledgement that Aboriginal and Torres Strait Islander Peoples never ceded lands and waters ownership and holistically managed lands and waters for more than 65,000 years, including during dynamic ever-changing climate challenges'*.

We make no comment for or against this principle, but rather recommend its withdrawal from the Agreement on the grounds that this principle is too significant to be hidden among several hundred principles outlined in the NWA.

This principle goes beyond the remit of this Agreement and into much larger Constitutional, institutional and legal reform - which to date has not occurred. If the Australian Government wishes to make this acknowledgement (with legal effect, as this Agreement attempts to), it needs to be done through the appropriate democratic instruments, the relevant proper national processes for amending those instruments, and with transparency to the Australian people.

Water acknowledged as Living Entities

NWA principle 3.3 states *"water in all their forms are acknowledged to be living entities..."* NSWIC considers this newly introduced principle to be a significant and high-risk change to the NWA, and suggest its withdrawal due to knowledge gaps that will impact jurisdictional implementation.

Recognising a river as a 'living entity' is generally associated with a change to the legal framework, as it can be recognised as 'legal personhood' (therefore capable of bearing rights and duties). However, there are no frameworks that outline what these rights and duties would be. This principle is not a mere symbolic gesture. If retained in the NWA, States will need to legislate this novel concept into effect, which will have consequences affecting government, agency decision makers, First Nations, environment, community and industry.

Unresolved questions include what rights, powers and duties that living entity would have, who would be selected or elected to represent the entity, how this arrangement will apply (river by river) and how this would change existing entitlement and planning frameworks. Further detail is required before industry, communities and Governments can properly consider this concept with transparency to the Australian people.

NSWIC recommends this principle be removed from the NWA, and that full assessment of the legal and operational implications of this principle is conducted prior to its inclusion.



Water planning and management

Significant knowledge gaps exist regarding First Nations governance of water resources. For example, the cultural and traditional rules, rights and responsibilities that are associated with First Nations water planning and management are largely unknown¹. This leads to questions of how the current water governance systems in Australia would complement, intersect or potentially be in conflict with First Nations processes.

NSWIC supports meaningful engagement with First Nations in water planning and management. We, however, request that Indigenous-led decision-making structures and processes are not created in parallel and separate from other structures and processes. Rather, First Nations should continue to sit at the same table working with other stakeholders within existing institutions and frameworks.

Proposed NWA principles direct that First Nations involvement in water planning and management should involve; *“shared decision making”*, *“meaningful consultation”*, *“considered an equal part of the evidence”*, *“designed to maximise opportunities... to lead processes that affect their Country and community”*, and *“effectively engage, strategise, lead and negotiate with water managers”*.

As such, the principles intentionally prescribe water management and engagement with First Nations using unique language that is easily contrasted with descriptions of engagement with other stakeholders. This furthers concerns about the NWA intending to confer greater weight on First Nations involvement and direction on water management than feedback through consultation and engagement with other stakeholders. Ultimately, this elevation of First Nations involvement could lead to effective indigenous veto powers over water sharing, allocations and water-related infrastructure.

NSWIC recommends that language referring to Aboriginal and Torres Strait Islander Peoples' be made consistent with style and syntax of the wider principles discussion paper. Water planning and management engagement, and decision-making processes must also be made as open and collaborative as possible, so as to avoid division or competition between stakeholders, particularly at a State level. While we acknowledge that the interests of irrigators and Aboriginal and Torres Strait Peoples' do not always align, we believe that the only way forward is through working together openly and honestly.

External affairs powers

NSWIC does not support references to international declarations (NWA principles 3.5, 3.7 and 3.9). There is no express legislative power of the Commonwealth to enact a law providing for regulation of water usage' in Australia. Therefore, this appears to instigate a mechanism whereby the Commonwealth seeks to subvert the Constitutional rights of the States.

We recommend the removal of these references and seek clarity on the impact principles referring to international agreements will have on the power of the States to manage water, and whether the Australian Government intends to use the NWA to exercise external affairs powers under the Constitution to gain greater water management powers from the States.

¹ Jackson, Sue. (2007). Indigenous perspectives in water management, reforms and implementation. Griffith University.



NSWIC suggests amending NWA principle 3.5 to, “*Aboriginal and Torres Strait Islander Peoples have access to, management and/or ownership of water for Cultural, spiritual, social, environmental and economic purposes in line with the National Agreement on Closing the Gap.*”

Free, prior and informed consent

NSWIC is concerned about NWA principle 3.7 asserting that the recognition of First Nations cultural rights and interests ... be “*underpinned by declarations at a national and international level, and has regard to the principles of free, prior, and informed consent*”.

We have articulated our concerns in the section above about NWA references to declarations at an international level in NWA principles 3.5, 3.7 and 3.9 and have recommended that the references be removed to avoid the potential for the Commonwealth to exercise external powers to override the States on water management.

The reference to cultural rights in principle 3.7, is also concerning, as it is unclear whether this implicitly confers a legal right, particularly when read in conjunction with the principle’s second sentence regarding international declarations and free, prior and informed consent. We recommend removal of the word ‘rights’ from this principle.

We are concerned that the inclusion of free, prior and informed consent (FPIC) in this principle will potentially conflict with existing water property rights, especially in contexts where different legal systems (such as State law and Indigenous customary law) or land tenure arrangements overlap or conflict.

In the context of Australian water rights, FPIC could introduce significant complexities, particularly given the country’s unique history of land and resource rights involving indigenous peoples, property owners, and government regulations. It must also be acknowledged that consent can be withdrawn at any time, creating additional uncertainty.

Potential legal and regulatory conflicts include:

- **Indigenous water rights vs. existing allocations.** Some indigenous groups might demand FPIC for any changes in water management or usage, potentially opposing projects or water extraction by non-indigenous property holders.
- **Water markets and property rights.** A farmer with a legal water entitlement could seek to sell or transfer their water. However, if an indigenous group asserts FPIC, arguing that such transactions affect their access to clean water or cultural sites, it could lead to legal or regulatory challenges.
- **Cultural and environmental water flows.** A project that plans to divert water for irrigation or industry might face opposition if an indigenous group insists on maintaining river flows for traditional fishing, ceremonies, or environmental protection. Even if water has been legally allocated to the project, FPIC could complicate or halt its progress.
- **Government-led water sharing, allocation and management plans.** An indigenous group might demand FPIC to ensure that their water needs and rights are prioritised in water sharing, annual allocation and management decisions. This could conflict with existing water property holders who depend on those allocations for economic activities, such as irrigation.



- **Increased regulatory, legal and investment uncertainty.** A company with a legal water entitlement may face opposition to development proposals if an indigenous group asserts FPIC, arguing the proposal affects their access to water for cultural or other purposes. This could lead to delays, project cancellations, lawsuits and conflicts about who can make decisions regarding how water is used.
- **Compensation issues.** A State may be liable to pay compensation to indigenous people to undertake water infrastructure and development projects, as part of obtaining FPIC.

Introducing indigenous FPIC to water management would require changes to State legal frameworks, increased collaboration between Indigenous communities and other stakeholders, and careful management of competing water demands.

States should not be asked to commit to the FPIC principle without clear legal frameworks being developed first to reconcile water property laws with indigenous rights, including legal certainty about the extent and limits of FPIC. Otherwise, the NWA bakes in an implicit right of indigenous veto that will create legal uncertainty, along with conflict and division within indigenous communities, and the broader communities in which they live. There is also a real danger of political manipulation of these divisions for political gain.

Given that free, prior and informed consent has substantial legal and financial implications, particularly when read in conjunction to declarations at an international level, we recommend its removal from principle 3.7.

Recommendations:

- Withdraw NWA principle 3.2 and conduct discussion in a national forum.
- Withdraw NWA principle 3.3 and conduct a full assessment of the legal and operational effects of this principle.
- Principles referring to First Nations are made consistent with the broader style and syntax of the NWA principles document.
- First Nations engagement occurs within existing processes in collaboration with other stakeholders.
- Remove reference to international declarations and provide clarity on the Commonwealth's intentions by including references to international declarations.
- Amend NWA principle 3.5 to: *“Aboriginal and Torres Strait Islander Peoples have access to, management and/or ownership of water for Cultural, spiritual, social, environmental and economic purposes in line with the National Agreement on Closing the Gap.”*
- Amend NWA principle 3.7 to: *“Water management recognises and incorporates Aboriginal and Torres Strait Islander Peoples’ Cultural interests in water management, ownership and governance.”*

Evidence based decision making

Science and knowledge

NWA principle 4.1 refers to a broad range of stakeholders, however, no mention is made of consumptive water users. Irrigation farmers are stewards of tremendous local, operational



and practical knowledge in water management. Participatory decision making and extensive consultation ensure this knowledge can be incorporated into best-practice, evidence-based policy. NSWIC recommends that consumptive water users are included in principle 4.1.2, rather than being considered just a part of “the broader community”.

Indigenous knowledge

NSWIC is concerned by significant knowledge gaps regarding First Nations governance of water resources. As noted above, cultural and traditional rules, rights and responsibilities that are associated with First Nations water planning and management are largely unknown.

NWA principle 4.14 proposes that *“Aboriginal and Torres Strait Islander Peoples’ knowledge and traditional knowledge systems are brought together with other information and considered an equal part of the evidence base in decision making.”*

While we support consideration of First Nations knowledge in water management, NSWIC seeks clarification on the meaning of “equal part of the evidence base”, and how this will be measured. Best-practice decision making assesses each piece of evidence on its own merits and does not attribute greater weighting based on who provides the information.

Knowledge and evidence provided to decision making processes must be factual and evidence based. It is also important that it is current, accounting for the development of water catchments around the nation. Decision making should not be made with data benchmarked against pre-development environmental conditions.

Recommendations:

- Amend NWA principle 4.1 to include consumptive water users in recognition of their knowledge and experience.
- Knowledge is assessed and incorporated according to its scientific and evidentiary merits, not who has provided it.

Building trust with stakeholders

Engagement

NSWIC supports amending Objective 5 to, *“Jurisdictions must demonstrate sustained community trust and confidence in government, water agencies, water managers and users.”* Robust evidence of actions to achieve this objective are critical to form community trust in the long-term.

We support the proposal of a framework for effective engagement with stakeholders. Values expressed in principle 5.1 should also require a balanced approach, noting that all stakeholders are complementary participants who should be engaged and consulted in the same manner, without preferential treatment or separate processes.

Community adjustment

The rapid pace of reforms (particularly in the Murray-Darling Basin) creates instability and uncertainty for communities, removing confidence and trust. Communities are experiencing



reform-fatigue, consultation-fatigue and are struggling to keep pace with constant new decisions and reforms generated by State and federal departments and governments.

In addition to the implementation of the values expressed in principle 5.1, to build trust with water users and their communities, NSWIC supports retaining NWI clause 96 i) *“States and Territories agree to provide accurate and timely information to all relevant stakeholders regarding: i) progress with the implementation of water plans, including the achievement of objectives and likely future trends regarding the size of the consumptive pool.”*

Principles addressing structure and community adjustment should also clarify how governments can respond to any significant community adjustment pressures resulting from policy-induced reductions in water availability.

Recommendations:


- Amend NWA Objective 5 to require jurisdictions to demonstrate actions to build community trust.
- Engagement principles require a balanced, complementary approach.
- Retain NWI clause 96 i.
- Consider principles that clarify government response to community adjustment pressures.

Water planning and management frameworks

Climate change

NSWIC takes the threat of climate change seriously, knowing that irrigators will be first to have taps shut off in times of water scarcity. We support water planning and management processes that account for climate variability, are adaptive, and are evidence based. Fit-for-purpose frameworks should set out rules for water allocation, management of a range of climactic conditions, and secure ecological outcomes.

The decline of water reliability presents uncertainty and a lack of confidence for all water users (i.e., consumptive and the environment). The hierarchy of priority of water users outlined in the NSW Water Management Act 2000 states the order in which water is allocated:

Priority	Extreme events	Normal Circumstances
Highest	Critical human water needs	Needs of environment
High 	Needs of the environment	Basic landholder rights
	Stock	Local water utility access licences
	High security licences	Major utility access licences
	Commercial and industrial activities authorised by local water utility	Stock and domestic access licences
	Water for electricity generation on a major utility licence	
	Conveyance in supply water for any priority 3 take	
	General security licences	Regulated river (high security) access licences
	Supplementary licences	All other forms of access licences
Low		Supplementary access licences



Source: Based on priorities table in Macquarie-Castlereagh Surface Water Resource Plan: Schedule G – Macquarie-Castlereagh Incident Response Guide

Under this mechanism, 're-balancing between environmental and consumptive uses' (NWA principle 6.1.1) is ineffective as licences at the bottom of the priority hierarchy only receive water once other higher priority needs are met. In times of water scarcity, consumptive licences are likely to have no water allocation.

Rebalancing could also imply further water recovery for the environment which NSWIC does not support. While farmers have accepted reduced water allocations during dry years, this does not mean that projected changes in climate can justify permanently reducing the consumptive pool overall. Climate change impacts must be shared among all water users, including the environment. It must also be accepted climate change will have different impacts in different regions, with some becoming wetter rather than drier.

NSWIC agrees that the climate variability should be accounted for across a planning period, with 10 years as the norm. We support that climate models should be adaptive, and modelling be region specific (principle 6.1.2 and 6.3). We, however, ask that determinations are made according to short-term climate projections, not long-term climate change models. Long-term projections are incapable of accurately predicting year-to-year fluctuations in climate and as such, are not appropriate for determining annual water allocations.

While NWA principles address managing the risk of lower water availability, direction is not provided for managing opportunities during higher water availability, which are also a characteristic of Australia's climate. Processes of opportunistic water take with requirements for recording and reporting for accountability should be further explored to ensure management tools achieve resilience and adaptive water systems.

We suggest amending NWA principle 6.1.1 to, "*Manage the risks and opportunities of increased climate variability for both environmental and consumptive uses, recognising that 'non-volumetric' solutions are valid and appropriate.*"

Precautionary Principle

NSWIC is concerned that interpretation of the precautionary principle will place the needs of the environment ahead of industry without consideration of negative social and economic impacts. The precautionary approach is suggested when allocating resources with uncertainty (principle 4.8 and 6.5) and managing interceptions (principle 6.35.2).

It is often the case that complete and accurate data and modelling is unavailable, which introduces uncertainty and risk into decision-making processes. In these situations, decision makers act in anticipation of potential environmental harm and choose the cautious option (i.e. the one that is likely to cause less environmental harm). This often comes at the cost of consumptive water users water entitlement reliability, drought resilience, and climate adaptability.

When implementing the precautionary principle, decision makers should question how does one determine what a high degree of uncertainty is? How are the trade-offs in terms of lost agricultural production and economic activity balanced against the environmental outcomes, without sufficient data? How would applying the precautionary principle change the way existing allocations are made? How could water users be confident that decision-makers under



pressure from activists are not just weaponizing the precautionary principle against agricultural water users?

NSWIC suggests that NWA principle 4.8 is amended to, *“The application of science and data is precautionary in line with the level of inherent uncertainty, and the risk appetite of those likely to impacted by any associated decision-making.”* This addition acknowledges that consumptive water users may have a different risk-appetite to government and provides opportunity for on-ground evidence to be considered prior to decision making. This addition should also be made to NWA principle 6.5.

NSWIC also requests that the precautionary principle is clearly defined in the Agreement for clear understanding of how this principle is to be interpreted and applied.

Case study: Precautionary Approach and NSW Coastal Harvestable Rights

In NSW, coastal landholders have a basic landholder right which permits them to collect a certain percentage of rainfall runoff from their property in a harvestable rights dam.

In September 2023, the NSW Government changed the coastal harvestable right limit from 30% to 10% of rainfall runoff. In a letter to NSW Irrigators' Council, the Minister for Water said, *“I have taken a precautionary approach to ensure that unquantified impacts on downstream water users, town water supplies, and the environment are reduced”*.

However, the HARC Modelling used in the Coastal Catchment Review of Harvestable Rights² reveals that an increase to 30% would have negligible impact on Long Term Average Annual Extraction Limits in the five coastal water sharing plans (WSPs) that currently include harvestable rights in their LTAAELs (Figure 5-5).

The result of the application of the precautionary principle in this instance has resulted in poorer drought resilience and fire-preparedness for coastal water users.

Connectivity

Principles 6.7.4 and 7.8 state that water planning and management should consider connectivity and the interaction between different water areas. Connectivity is a contested and poorly defined concept in the Murray-Darling Basin as evidenced by the ongoing review into Connectivity between the Northern and Southern Basins.

In principle, accounting for connectivity is sensible when managing water sources. However, there are practical challenges in understanding connectivity that remain unresolved. For example, connectivity can refer to lateral, longitudinal, and between ground-surface water and this should be specified in the wording of principle 7.8 to ensure correct interpretation of this principle.

Many Australian rivers are non-perennial, and certain types of connectivity are achieved only during extreme flooding. While there is evidence that connectivity occurred prior to the introduction of regulation, these events have become more common since. Questions remain on how this principle should be implemented in unregulated and highly variable river systems.

² https://www.industry.nsw.gov.au/__data/assets/pdf_file/0004/341536/harc-modelling-report.pdf



The unique nature of river systems, particularly those that are ephemeral, must be recognised and considered before making prescriptions in the NWA.

Knowledge-gaps in data and modelling related to connectivity must be overcome. NSWIC urges that until significant knowledge gaps are understood and modelling completed, the Commonwealth do not make recommendations on jurisdictional connectivity requirements.

Unallocated water availability

In the case of the release of unallocated water (principle 1.25), water made available through infrastructure (principle 2.7), and new water rights in undeveloped systems (principle 6.13), jurisdictions are directed: *“Consideration is given to making unallocated water available for Aboriginal and Torres Strait Islander Peoples...”*

NSWIC support the intent behind Close the Gap efforts and believe that collaboration between irrigators and Aboriginal and Torres Strait Islander People’ is vital to achieve its goals. However, additional unallocated water availability should not present a risk to the reliability of water allocations of existing entitlement holders. A separate mechanism should also not be created for individual groups of water users, rather needs should be aligned with existing planning and entitlement frameworks in the jurisdiction.

In NSW Murray-Darling Basin surface water sources, water is fully allocated. Where above the extraction limits, water is used for fundamental ecosystem health such as Planned Environmental Water in NSW which is protected under Basin Plan Provisions. In full allocated systems any adjustment should only be via the market mechanism.

In some instances, NSW Basin water sources have been over-recovered, exceeding targets set by the Murray Darling Basin Plan Bridging the Gap targets. These basin communities recognise the negative impact this over-recovery has on production, local employment, and pressure on wider community services like schools and medical services; these impacts on employment and services equally affect the Indigenous population in their communities.

Along the NSW coast, the Coastal Sustainable Extraction project seeks to quantify sustainable levels of take across coastal regulated and unregulated systems to ensure sustainable management of water access. An outcome of this project is to improve rights and access for Aboriginal people.³ Where allocation of unassigned water is determined, this must occur within existing entitlement frameworks to maintain reliability of water allocations for existing water entitlement holders. New entitlements should not be created where they have the effect of reducing the reliability and property right of existing entitlements.

Environmental water management

NWA principle 6.23 refers to water recovery measures as effective and efficient means of achieving environmental outcomes. This is followed by principle 6.24 which suggests *“water planning considers opportunities to integrate complementary natural resource management measures.”*

³ water.nsw.gov.au/__data/assets/pdf_file/0007/583342/Sustainable-extraction-in-coastal-catchments-fact-sheet.pdf



This weakened language towards complementary natural resource management treats these measures as an afterthought and creates a prescriptive hierarchy for the way jurisdictions are to go about improving environmental outcomes. Water recovery is not the stand alone, nor more effective and efficient, means of achieving environmental outcomes.

NSWIC suggests that NWA principle 6.23 be amended to *“The most effective and efficient mix of solutions to achieve environmental outcomes is determined through measures including...”*

Recommendations:

- Amend NWA principle 6.1.1 to include increased climate variability and non-volumetric solutions.
- Amend NWA principle 4.8 and 6.5 to include risk-appetite of those likely impacted by decision-making.
- Define the precautionary principle and provide clear guidance on its interpretation and application.
- Define connectivity and address knowledge gaps and modelling issues.
- Integrate unallocated water availability with existing planning, and entitlement frameworks within a jurisdiction.
- New entitlements not be created where they have the effect of reducing the reliability and property right of existing entitlements.
- Amend NWA principle 6.23 to be less prescriptive through removal of words “water recovery”.

Productive and sustainable use of water

Irrigated agriculture requires clearly defined rules for water use and certainty in entitlements. Annual water allocations are a central tool for decision making by irrigators. NSWIC supports statutory arrangements that allow for assurances in long-term allocation availability while still allowing for year-to-year adjustments, in line with climatic conditions. While we accept the current risk assignment framework, we have growing concerns that the language in the proposed NWA may significantly weaken legal water protections.

Assigning risks for changes to water availability

NSWIC does not support further reductions in the consumptive pool through impacts to entitlement reliability, or reductions to the size of the consumptive pool, without mitigation and compensation to those affected.

We support retaining the current risk assignment framework (NWI clause 46-51), as this provides certainty to irrigators that any changes in policy that reduces water licence volumes will receive proper compensation. We do not support the NWA proposed wording changes.

Current policy settings mean that irrigators are hit first and hardest by climate variability. The Commonwealth Water Act 2007 states, *“water access entitlement holders are to bear the risks of any reduction or less reliable water allocation... as a result of seasonal or long-term changes in climate; and periodic natural events such as bushfires and drought”*.



Irrigators have a high level of concern about the impacts of climate change and reduced inflows on entitlement reliability. Consequently, the change of wording of principles regarding the risk assessment framework (NWI clauses 46-51) is cause for alarm, particularly that property protections for water entitlement holders will be weakened.

The word 'any' from NWI clause 46 has been removed, so NWA principle 7.12 now reads, *"The following risk assignment framework is intended to apply to future reductions in the availability of water for consumptive use, that are additional to those identified for the purpose of addressing known overallocation and/or overuse"*. This change weakens the risk assignment framework and give more discretion to Governments to avoid compensation. NSWIC recommends retaining the original wording of NWI clause 46.

NSWIC does not support the proposed wording of NWA principle 7.16, *"When a government makes a permanent reduction or has not previously provided for a water allocation which becomes less reliable, the government is to bear the risks arising from changes in government policy."*

The inclusion of the word "permanent", suggests that allocations may be reduced within a regional Water Sharing Plan (WSP), but may not be considered 'permanent' as WSPs are reviewed every ten years. While a water user may have reduced allocations due to policy reform, they may be ineligible for compensation because the government claims the reduction is not a 'permanent' reduction.

Instead, NSWIC supports retaining the original NWI clause 50, *"Governments are to bear the risks of any reduction or less reliable water allocation that is not previously provided for, arising from changes in government policy (for example, new environmental objectives). In such cases, governments may recover this water in accordance with the principles for assessing the most efficient and cost-effective measures for water recovery."*

NSWIC notes that NWA principle 7.17 now reads *"alternatively, the Parties agree that where affected parties, including water access entitlement or licence holders, environmental stakeholders and/or the relevant government/s agree, on a voluntary basis, to a different risk sharing formula to that proposed in 7.14-7.16, that this will be an acceptable approach."*

Previously, all parties were required to agree. However, the inclusion of "or" now implies that there no longer needs to be consensus for a risk sharing formula to be adopted. NSWIC views the original wording (NWI clause 51) as fairer as it clearly outlines that consensus is required before a different risk sharing formula is agreed to.

The cumulative impact of these changes represents a significant weakening of the risk assignment framework. Farmers already bear the risk of the first 3% in reductions to allocations without compensation and NSWIC seeks assurance that water rights will be protected. As part of the Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin, 'it is intended that no water entitlements will be eroded or compulsorily acquired as a result of the Basin Plan'.⁴

⁴ Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin (2013)



NSWIC believes that the risk of reductions or less reliable water allocations due to climate change needs to be shared among all water users, including the environment, not just burden entitlement owners.

Water access entitlements

The establishment of a clearly defined regime of water property rights to underpin water reform in Australia is a core tenet of the NWI. Clearly specifying the statutory nature of entitlements is fundamentally important to the integrity of the water management framework. Additionally, establishing clearly defined water property rights is also a necessary prerequisite to effective water markets and trading.

It is essential that the NWA uphold existing water rights and provide a water property right framework that is a secure, robust and compatible. This is to ensure that water can continue to be managed effectively to produce food and fibre within jurisdictions and across the nation.

NWA principle 7.6.1 states that licences may be issued for consumptive use where this is 'demonstrably necessary', including 'where community and stakeholders support the establishment of a licencing regime'. NSWIC seeks clarification on the interpretation of this principle so stakeholders know how this principle will be applied. Specifically, we ask that detail is provided about how 'community and stakeholder support' will be established, such as which stakeholder groups will be involved, how consensus will be found, how support will be measured and whether all parties will be given equal power in discussions.

Recommendations:

- Retain NWI Clause 46-51 wording on risk assignment framework.
- More detail provided on process by which new water entitlements can be created.



Conclusion

NSWIC is concerned by many of the principles in the current National Water Agreement discussion paper and view them as a significant departure from the previous National Water Initiative.

For one, NSWIC feels there has been poor consultation with stakeholders in NSW on the impact's frontline. Secondly, very little time has been allowed for consultation on the current draft – not even ten months when the NWI was the product of 10 years of thorough and genuine consultation and engagement with all interested parties. There have also been mixed messages between State and Federal Governments on whether this document is binding.

We have highlighted a number of issues in the current draft, including: weakening of the risk assignment framework; granting of personhood to rivers without a proper understanding of its implications; climate models being inappropriately applied to justify the reduction of the consumptive pool and water allocations; the precautionary approach being be weaponised to override legitimate concerns about water reforms; undefined connectivity references; unbalanced consultation processes; and, the Commonwealth using external powers under international declarations to assert more control over State water management.

The highly prescriptive nature of some principles throughout the NWA would commit the States to shouldering the high costs of developing and implementing very detailed action plans. Departments would require higher budgets to pay for more staff to do the work, for technical modelling and ground-truthing.

In NSW, these costs would be passed through to water licence holders under the current rural pricing model. Given NSW water users are already facing 15 per cent plus CPI year on year increases in their water bills in the 2025-2030 pricing determination period, additional costs imposed through the Commonwealth NWA would be unacceptable.

We urge the Commonwealth Government to proceed slowly with this draft document and consult directly with state-based stakeholders. Many of the proposals in this document will have material impacts on water users in NSW and the legal implications of many of the proposed principles are unknown. Proposed principles with unclear policy implications have no place in the NWA. Proposed principles with unclear policy, legal and regulatory implications have no place in the NWA.

NSWIC and our members are available at your convenience if you have any questions or would like any further information.

Kind regards,

NSW Irrigators' Council



NSW Irrigators' Council

The NSW Irrigators' Council (NSWIC) is the peak body representing irrigation farmers and the irrigation farming industry in NSW. Our members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton and horticultural industries.

Through our members, NSWIC represents over 12,000 water access licence holders in NSW who access regulated, unregulated and groundwater systems. NSWIC engages in advocacy and policy development on behalf of the irrigation farming sector. As an apolitical entity, the Council provides advice to all stakeholders and decision makers.

Irrigation farmers are stewards of tremendous local, operational and practical knowledge in water management. With more than 12,000 irrigation farmers in NSW, a wealth of knowledge is available. Participatory decision making and extensive consultation ensure this knowledge can be incorporated into best-practice, evidence-based policy.

NSWIC and our members are a valuable way for Governments and agencies to access this knowledge. NSWIC offers the expertise from our network of irrigation farmers and organisations to ensure water management is practical, community-minded, sustainable and follows participatory process.

NSWIC sees this consultation as a valuable opportunity to provide expertise from our membership. Each member reserves the right to independent policy on issues that directly relate to their areas of operation, expertise or any other issues that they deem relevant.

NSW Irrigation Farming

Irrigation farmers in Australia are recognised as world leaders in water efficiency. For example, according to the Australian Government Department of Agriculture, Water and the Environment:

“Australian cotton growers are now recognised as the most water-use efficient in the world and three times more efficient than the global average”⁵

“The Australian rice industry leads the world in water use efficiency. From paddock to plate, Australian grown rice uses 50% less water than the global average.”⁶

Our water management legislation prioritises all other users before agriculture (critical human needs, stock and domestic, and the environment), meaning our industry only has water access when all other needs are satisfied. Our industry supports and respects this order of prioritisation. Many common crops we produce are annual/seasonal crops that can be grown in wet years, and not grown in dry periods, in tune with Australia's variable climate.

Irrigation farming in Australia is also subject to strict regulations to ensure sustainable and responsible water use. This includes all extractions being capped at a sustainable level, a hierarchy of water access priorities, and strict measurement requirements.

⁵ <https://www.agriculture.gov.au/ag-farm-food/crops/cotton>

⁶ <https://www.agriculture.gov.au/ag-farm-food/crops/rice>