

NSW Irrigators' Council Aboriginal Water Policy



November 2024

**NSW Irrigators' Council
Aboriginal Water Policy**



**NEW SOUTH WALES
IRRIGATORS'
COUNCIL**

About us

NSW Irrigators' Council

The NSW Irrigators' Council (NSWIC) is the peak body representing irrigation farmers and irrigation communities in NSW. NSWIC has member organisations in every Murray-Darling Basin (MDB) valley of NSW, and several coastal valleys, representing the people holding more than 38,000 water access licences.

NSWIC is a leader in sustainable and productive water policy solutions, and advocates for and advises on best-practice water management. Our vision is the **secure, sustainable** and **productive** management of NSW water resources.

Irrigated Agriculture

Irrigated agriculture provides more than 90% of Australia's fruit, nuts and grapes; more than 76% of vegetables; 100% of rice and more than 50% of dairy and sugar.¹ The Gross Value of Irrigated Agriculture Production in NSW is more than \$4 billion a year.²

Australian farmers are globally recognised as the world's most water-use efficient, producing more crop per drop than any other nation. For example, Australian cotton is three times more water efficient than the global average³, and Australian rice uses 50% less water than the global average⁴.

Our farmers are leaders in environmental initiatives, including water efficiency, wildlife conservation, carbon management, biodiversity and habitat restoration.

¹ <https://www.abs.gov.au/statistics/environment/environmental-management/water-account-australia>

² <https://www.abs.gov.au/statistics/environment/environmental-management/water-account-australia/2020-21>

³ <https://www.agriculture.gov.au/ag-farm-food/crops/cotton>

⁴ <https://www.agriculture.gov.au/ag-farm-food/crops/rice>

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NSWIC Aboriginal Water Policies - Summary

1. Any water recovered for Aboriginal people for economic, social and cultural purposes should not have a negative impact on any other licence holders.
2. Water entitlements for economic purposes should be acquired from the existing consumptive pool.
3. There must be no new entitlements or forms of access created via rules changes
4. All water licences must retain their original associated rights, obligations and rules and be subject to the same measurement and enforcement requirements.
5. Water access for Aboriginal cultural purposes should be provided through genuine Aboriginal involvement in agency and departmental decisions on the management and planning of water outside the consumptive pool.
6. Aboriginal outcomes should be developed and delivered within existing management frameworks and in partnership with all stakeholders.
7. The views of all stakeholders in water governance should be considered on their merits.
8. All stakeholder knowledge must be assessed on its own evidential merits, regardless of who provided it.

Introduction

Water plays a central role in the cultural identity of Aboriginal Australians and Aboriginal access to water is an increasingly important component of State and Federal water policy. Given the prominence of Aboriginal water issues in recent policy discussions, NSWIC's 20 members have developed eight policies on Aboriginal water.

Despite efforts to Close the Gap, there remains a large disparity between Aboriginal and non-Aboriginal Australians on key health, education and economic indicators. Governments see access to and ownership of water for Aboriginal communities, groups or individuals as a potential means to close this gap.

Numerous state and national programs are seeking to improve Aboriginal involvement in water management and policy, increase Aboriginal ownership of water entitlements and incorporate traditional Aboriginal knowledge into water planning. These are outlined in the section 'Current Aboriginal Water Programs'.

NSWIC believes Governments should take a holistic and coordinated approach when developing and implementing Aboriginal water programs, to avoid disjointed programs and strategies delivering suboptimal outcomes for Aboriginal people and a high risk of unnecessary conflict with existing water property rights.

Through experience, NSWIC has learned the best approach is to scope-up and deliver outcomes within the parameters of existing frameworks. Multi-benefit approaches are typically only sustainable and successful when they're truly co-designed in partnership with all stakeholders.

NSWIC welcomes collaboration with Aboriginal groups in delivering water projects that provide benefits to the community, as evidenced by NSWIC's [Billabong Restoration Project](#). The project is based on an award-winning 2006 pilot by the Ngemba Billabong Restoration and Landcare group at the Old Brewarrina Mission Wetland. It aims to create culturally appropriate employment for Aboriginal people, improve waterway health and increase collaboration between Aboriginal people and irrigators.

Many communities in NSW with irrigated agriculture as a primary economic base also have a high proportion of the population identifying as Aboriginal. We therefore have a shared vision to see improved socio-economic outcomes for our communities. NSWIC hopes to find ways to contribute to improving outcomes for Aboriginal people.

Current Government Aboriginal Water Programs

NSW Department of Planning and Environment, Draft Aboriginal Water Strategy

The Draft NSW Aboriginal Water Strategy is being developed by the NSW Department of Planning and Environment to ‘identify ways of increasing water rights and ensure that First Nations/Aboriginal people are empowered to contribute to water management and planning decisions’⁵. This document has four objectives:

1. Strengthen the role of Aboriginal people in water planning and management.
2. Provide Aboriginal ownership of and access to water for cultural and economic purposes.
3. Work with Aboriginal people to improve shared water knowledge and capacity.
4. Work with Aboriginal people to maintain and preserve water-related cultural sites and landscapes.⁶

The Draft Strategy is set to be finalised in late 2024 with an expected release in early 2025. NSWIC provided feedback on these objectives as part of the consultation process.

NSW Department of Planning and Environment, NSW Water Strategy: Towards 2050

The NSW Water Strategy is a 20-year strategy being implemented by the NSW Department of Planning and Environment to ‘improve the security, reliability and quality of the state’s water resources over the coming decades’. The seven priorities included in the NSW Water Strategy aim to meet core objectives based on the *NSW Water Management Act 2000*.

Priority 2 aims to ‘recognise First Nations/Aboriginal People’s right and values and increase access to and ownership of water for cultural and economic purposes’. Water for

⁵ Consultation paper for draft NSW Aboriginal Water Strategy and Action Plan (2024) NSW Government, Department of Climate Change, Energy, the Environment and Water <
https://water.dpie.nsw.gov.au/_data/assets/pdf_file/0003/616431/aws-consultation-paper.pdf>

⁶ Consultation paper for draft NSW Aboriginal Water Strategy and Action Plan (2024) NSW Government, Department of Climate Change, Energy, the Environment and Water <
https://water.dpie.nsw.gov.au/_data/assets/pdf_file/0003/616431/aws-consultation-paper.pdf>

economic benefit is specified in action 2.3 which aims to ‘provide Aboriginal ownership of and access to water for cultural and economic purposes’⁷.

National Water Agreement

Objective 3 in the current draft of the National Water Agreement (NWA) focuses on ‘recognising the importance and value of Indigenous traditions, knowledge, customary law and contributions to land care’⁸.

The 17 draft principles in Objective 3 state a proposed water management framework that ‘actively prioritises’ Aboriginal and Torres Strait Islander Peoples’ involvement and influence in water management. The scope and potential consequences of the 17 proposed principles are far reaching. While the NWA is yet to be signed by the States and Territories, the NWA draft proposals have influenced NSWIC’s policies.

Aboriginal Water Entitlements Program

The federal Aboriginal Water Entitlements Program (AWEP) has set aside \$100M to purchase water for Aboriginal groups in the Murray-Darling Basin. According to the Strategic Purchasing Framework, 47GL of primarily high and general security water is to be purchased ‘from the consumptive pool and remain in the consumptive pool’.⁹

This is just one of many concurrent water recovery programs being driven by the Federal Government that will have implications for water licence holders and rural communities. The concurrent buyback programs also have implications for the Aboriginal Water Entitlement Program, as they are driving prices up by at least 20-30 per cent and thereby reducing volume of entitlements that can be bought for \$100M.

⁷ NSW Water Strategy: Towards 2050, NSW Department of Planning, Industry and Environment

⁸ Consultation on the draft principles of a National Water Agreement: Discussion Paper (2024) Australian Government Department of Climate Change, Energy, the Environment and Water
<https://storage.googleapis.com/files-au-climate/climate-au/prj2fa2784c86d615a7de3bf/page/Consultation_draft_principles_NWA_5_WEB.pdf>

⁹ Aboriginal Water Entitlements Program: Strategic Purchasing Framework (2024) Australian Government Department of Climate Change, Energy, the Environment and Water <<https://www.dcceew.gov.au/sites/default/files/documents/aboriginal-water-entitlements-program-strategic-purchasing-framework.pdf>>

Specific Purpose Access Licence

Specific Purpose Access Licences (SPAL) are 10ML water allocations that can be applied for by an Aboriginal person or community organisation in NSW. These licences cannot be used for economic purposes, but only for any personal, domestic or communal purpose, including drinking, food preparation, washing, manufacturing traditional artefacts, watering domestic gardens, cultural teaching, hunting, fishing, gathering and for recreational, cultural and ceremonial purposes.

The maximum allocation is 10ML per applicant and multiple licences can be granted to the same group or individual assuming that each licence is for different cultural purposes and at a different site or water source. Uptake has been low, with only seven licences ever allocated and just two currently in place. SPALs are considered to be high security in the NSW hierarchy of water use, at the same level as Basic Landholder Rights. If many SPALs representing a collectively high volume were issued in a catchment, this may affect the reliability of lower-priority licences such as General Security.

Murray-Darling Basin Plan

Murray-Darling Basin water resource plans (WRP) under the Murray-Darling Basin Plan must also have regard to:

1. Indigenous values: the social, spiritual and cultural values of First Nations peoples that relate to the relevant water resources of the WRP area.
2. Indigenous uses: the social, spiritual and cultural uses of the relevant water resources of the WRP area by First Nations peoples.
3. The views of First Nations peoples with respect to cultural flows.
4. The views of relevant Indigenous organisations on a range of other matters, including native title rights and Indigenous Land Use Agreements (ILUAs).

The Murray-Darling Basin Authority engages with Aboriginal people ‘in line with the principles of Free, Prior and Informed Consent’¹⁰ through different Aboriginal bodies.

¹⁰ Working with First Nations. www.mdba.gov.au/about-us/who-we-work/partnerships-and-engagement/working-first-nations

NSWIC Aboriginal Water Policy

The NSWIC Aboriginal water policy has been developed by our 20 members across NSW. We understand the importance of having a clear policy stance on Aboriginal water affairs, given the shared interest in water management between irrigators and Aboriginal people. The recent emphasis on water use for economic development in Aboriginal communities also means that Aboriginal purchase programs may have impacts on water markets.

NSWIC considers Aboriginal water for cultural use and economic use to be two separate categories. While some Aboriginal groups may not always make this distinction, in this document we have treated economic and cultural water separately. While cultural water can come from held environmental water (HEW) or planned environmental water (PEW), licences for economic use can only come from the entitlement pool and may therefore have potential implications for water licence holders.

Guiding principles on Aboriginal water policy

- The property rights of existing entitlement holders and the reliability of existing entitlements must be maintained.
- The views of all stakeholders in water policy, management and governance should be considered on their merits.

Aboriginal water ownership

Two programs currently aim to increase the share of water entitlements owned by Aboriginal people in NSW. These are the federal Aboriginal Water Entitlements Program (AWEP) and the NSW Specific Purpose Access Licences (SPAL). While SPALs cannot be used for economic purposes, the water purchased under the AWEP will support 'economic needs' of Aboriginal peoples.¹¹

NSWIC is of the view that Aboriginal water entitlements used for economic purposes should only be acquired from the existing entitlement pool. As such, the NSW Government should not create new entitlements for Aboriginal economic purposes that in any way diminish the property rights of existing water entitlement holders or the reliability of their entitlements.

¹¹ Aboriginal Water Entitlements Program: Strategic Purchasing Framework (2024) Australian Government Department of Climate Change, Energy, the Environment and Water <
<https://www.dcceew.gov.au/sites/default/files/documents/aboriginal-water-entitlements-program-strategic-purchasing-framework.pdf>>

NSWIC also does not support any policy that creates new entitlements via rules changes thereby reducing the reliability of water allocations for existing entitlements. Any water entitlements acquired by or for Aboriginal groups must be done so voluntarily, transparently and consensually through the water market.

Finally, NSWIC views that if water licences are acquired for Aboriginal groups, they should retain the same associated rights, obligations and rules. This means that water licences should be able to be traded or sold permanently on the market, if so desired.

These licences should also have the same rules attached to them as any other licence, meaning water take must be measured and subject to the same enforcement rules as other licence holders.

Aboriginal water ownership policies

1. Any water recovered for Aboriginal people for economic, social and cultural purposes should not have a negative impact on any other licence holders.
2. Water entitlements for economic purposes should be acquired from the existing consumptive pool.
3. There must be no new entitlements or forms of access created via rules changes.
4. All water licences must retain their original associated rights, obligations and rules and be subject to the same measurement and enforcement requirements.

Cultural water

Water plays a central role in the cultural identity of Aboriginal Australians. Access to water for cultural purposes and outcomes is therefore integral to Aboriginal involvement in water management and planning.

The vast majority of water in Australian river systems is not diverted for consumptive purposes, but rather managed to sustain ecosystem health. In the Murray-Darling Basin, for example, the Murray-Darling Basin Plan and earlier reforms mean only 28 per cent of annual average inflows are now diverted for consumptive use, well within international

sustainability benchmark.¹² This leaves 72 per cent of inflows in rivers; the proportion is higher in NSW coastal rivers.

In NSW, most of the undiverted water is specifically identified as Planned Environmental Water (PEW) in water sharing plans across the State. PEW water management is augmented by large Held Environmental Water (HEW) holdings owned by NSW and by the Commonwealth Environmental Water Holder in the Murray-Darling Basin.

Managing water for environmental outcomes is not necessarily the same as managing water for Aboriginal cultural outcomes, but the two purposes can be integrated through genuine Aboriginal involvement in the management and planning of the vast bulk of water that is not diverted for consumptive purposes.

For clarity, NSWIC does not support:

- Creating new entitlements drawing on the existing consumptive pool for Aboriginal cultural purposes.
- Purchase of entitlements from the existing consumptive pool for Aboriginal cultural purposes.
- Rules changes that reduce the reliability of existing entitlements to provide water for Aboriginal cultural purposes.

Aboriginal cultural water policy

5. Water access for Aboriginal cultural purposes should be provided through genuine Aboriginal involvement in agency and departmental decisions on the management and planning of water outside the consumptive pool.

Aboriginal water governance

Aboriginal people play an important role in designing and managing water plans across NSW, alongside other stakeholders. It is important that all voices are heard in water planning and we support Aboriginal groups or individuals being meaningfully engaged.

To this end, NSWIC believes decisions should be made openly and collaboratively with all stakeholders at the same table. We therefore believe that Aboriginal decision-making

¹² Poff et al (2010) The ecological limits of hydrologic alteration (ELOHA): a new framework for developing regional environmental flow standards, *Freshwater Biology*, Vol. 55, pp. 147-170

should always be done within existing institutions and processes to ensure collaboration with other stakeholders.

Processes that work in parallel to and separate from other groups do not lend themselves to consensus or trust. NSWIC believes that all parties should be involved in water management decisions.

We maintain that the views of Aboriginal people should not take precedence over another group, but instead emphasise cooperation between all parties.

Aboriginal water governance policies

6. Aboriginal outcomes should be developed and delivered within existing management frameworks and in partnership with all stakeholders.
7. The views of all stakeholders in water governance should be considered on their merits.

Aboriginal knowledge in water planning

Both irrigators and Aboriginal people have lived on Australian waterways for generations. Aboriginal people bring traditional knowledge that can provide valuable insights in developing water management plans and NSWIC supports efforts to include Aboriginal perspectives.

While Aboriginal culture has been closely intertwined with Australian ecosystems for thousands of years, this does not however mean that Aboriginal knowledge should be given greater weight in water management decisions than other sources of knowledge. NSWIC views that all scientific knowledge must be assessed according to its evidential merits, regardless of who provided it.

Aboriginal knowledge in water management policy

8. All stakeholder knowledge must be assessed on its own evidential merits, regardless of who provided it.

Conclusion

NSWIC views the eight policies outlined above as its guiding stance on Aboriginal water. This document was written in direct consultation with our 20 member organisations and was passed without opposition at the Annual General Meeting on 7 November 2024.