

2 May 2024

Joanne Chong
Commissioner
Productivity Commission

via email

Dear Commissioner Chong,

RE: Productivity Commission Interim Report for its inquiry into National Water Reform 2024

Thank you for the opportunity to provide feedback on the Productivity Commission's Interim Report. We acknowledge that this inquiry is taking place within a short timeframe and appreciate the opportunities that have been made for public input. Given the time available, this correspondence focuses on specific areas of interest for WaterNSW and does not constitute a comprehensive review of or provide commentary on all aspects of the full-length Interim Report.

There are several key findings in the Interim Report that appear to align with WaterNSW's submission to the Commission's National Water Reform 2024 inquiry (February 2024) and that we would like to acknowledge our in-principle support for, including:

- the report's general recommendations to retain, improve and expand on the existing National Water Initiative (NWI), modernise some of its objectives and the need to update action plans
- recognition that climate change impacts should be considered within adaptive planning processes
- acknowledgement that water quality issues should be considered as part of water security planning, not just water quantity
- recognition of First Nations people's reverence and cultural responsibility for water and the need for continued involvement of First Nations people in water management.

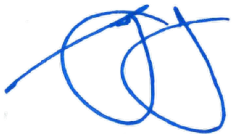
We would also like to support the Commission's previous advice relating to the need for the development of an agreed definition of a "basic" or minimum level of service.

An area that we consider may not have been adequately captured in the Interim Report is the need for guidance on the application of cost reflective and consumption-based pricing, especially in the context of the expanding nature of services being delivered by the water sector.

We also consider there to be opportunity for a renewed NWI to include further guidance for other areas. While we acknowledge a national level agreement, by its nature, needs to remain relatively high-level, we also consider that one of the challenges in implementing the NWI to-date could stem from the need for further guidance on how to apply its principles in practice.

More detailed comments on the points noted above are included at Attachment 1. We would be happy to discuss any of the issues we have raised with the Commission. Please contact Rob O'Neill, Manager Regulatory Strategy on rob.oneill@waternsw.com.au, for any further information.

Yours sincerely,

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.

Andrew George
Chief Executive Officer

Attachment 1 – WaterNSW comments on Interim Report

Modernising objectives and updating actions

We generally agree with the need to modernise the objectives and outcomes in the NWI, and to update its actions. Most of the actions in the 2004 agreement were attached to timeframes that have now been superseded by many years.

Climate change and water planning

We agree with the Interim Report's key finding that planning for water security should be a greater focus for a renewed NWI, in the face of an increasingly variable and changing climate. However, to help implement this commitment, a renewed NWI could include an action to develop further guidance on what that planning should consider and cover. This guidance could be in the form of a water security framework, as recommended by the Water Services Association of Australia.

As noted in our previous submission, we support an 'all options on the table' approach to water planning, with these options being subject to a rigorous, transparent and consistent assessment of costs and benefits.

We appreciate the Interim Report acknowledging that climate change creates "threats to water quality", as well as water availability (page 2), and that both aspects should be incorporated into water planning (as per NWI Renewal Advice 6.2).

Recognition of First Nations people and their ongoing contribution to water management planning

We strongly support the inclusion of a new objective and element in the NWI to encourage the continued and increasing involvement of First Nations people in water management. We also support the Commission's efforts in seeking advice from First Nations people on how that can best be achieved.

Defining and providing a "basic level of service" to all communities

The Interim Report includes several findings relating to the provision of water services in regional areas, where supply does not always meet Australian Drinking Water Guidelines (ADWG), and the desire for all communities to receive a "basic level of service".

We support a renewed NWI defining, and committing to provide access to, a "basic level of water services" (NWI renewal advice 12.2, page 44), which we agree should include, at a minimum, safe and reliable drinking water in line with the ADWG requirements. There can be times when water may meet the ADWG, but still not align with community desires or expectations (for example, around taste). A renewed NWI could consider whether there are any other issues that are outside the scope of the ADWG but could be considered for guidance through the NWI itself.

Establishing greater clarity around what a “basic” or “minimum” level of service looks like may also help to distinguish between the delivery of ‘core’ water services, and the delivery of services or activities that go above and beyond basic or minimum requirements, and that, therefore, would need to be aligned with customer preferences around willingness to pay or funded via other mechanisms.

The NSW Productivity Commission has been requested by the NSW Minister for Water to investigate funding options to help reduce service risk for local water utilities and provide advice to the NSW Government on a future direction. The Terms of Reference for this investigation require the Commission to consider minimum levels of service. The Commission released an Issues Paper in February 2024. A renewed NWI could consider the outcomes of this investigation and could potentially coordinate the development of a common view of what minimum levels of service are across jurisdictions.

It is highly likely that continued and sustained action will be needed to achieve this objective.¹ A renewed NWI committing to provide a minimum level of service to all communities may need to be supplemented by state-based consideration of the most effective way to provide this level of service to remote and regional areas.

The need for further guidance around the application of pricing principles

There have been significant regulatory reforms since the 2004 NWI was established. Water access entitlement holders (our customers) have increasingly borne the impact of this additional regulatory burden and have been increasingly expected to fund these reforms. There is a question relating to: “At what point is the additional regulatory burden going above and beyond what is reasonable to expect the water access entitlement holders to fund?”. The NWI doesn't address this issue and guidance to stakeholders, including pricing regulators in jurisdictions where they are established, is warranted.

In that regard, the Interim Report includes no key findings relating to pricing, and no changes to the previous 2021 renewal advice on pricing, which was limited to recommendations around stormwater pricing and developer charges (page 43). A renewed NWI provides an opportunity for improved guidance on the application of cost reflective and consumption-based pricing, especially in the context of the additional regulatory burden and the expanding nature of services being demanded of and delivered by the water sector.

¹ The need for “sustained effort and resourcing being required to achieve its longer-term outcomes” has been acknowledged by the NSW Government in its commitment to the Town Water Risk Reduction Program. See the evaluation of Phase 1 of the Program at <https://water.dpie.nsw.gov.au/our-work/local-water-utilities/funding-and-other-programs/completed-programs>

In our ongoing customer engagement program to support our upcoming pricing submissions, we have heard feedback from customers who have questioned why water access entitlement holders should fund, or fund the majority of, expenditure relating to activities that they see as being driven by factors other than water access / delivery to entitlement holders. For example, to deliver improved fish passage, some aspects of water quality, provide recreational access to assets or facilities, dam safety compliance, or for agencies to meet net zero targets or improve climate change resilience. Some customers have noted that while they may support the delivery of these types of activities as a member of the community or citizen, they do not support them being funded by water access entitlement holders alone.

The 2004 NWI pricing principles create an ambiguity on this issue by referring to both “users” and “water access entitlement holders”. The use of both descriptors suggests that there can be other water service users beyond water access entitlement holders. The 2004 NWI also acknowledges that in rural or remote areas there may always be a need for Government subsidisation of some water services.

It would be helpful for a renewed NWI to include further guidance material on how to apply cost reflective pricing to different types of activities. This material could be helpful for multiple parties, including water utilities, governments, pricing regulators, and customers or citizens participating in regulatory processes such as price determinations.

Guidance could be especially helpful for emerging or increased activities relating to environmental outcomes, recreational use of water assets or where there may be a disconnect between the minimum level of service required to meet customer needs and broader community or Government expectations. For example, where an activity is not clearly related to water delivery, how should the ‘user’ be defined distinctly to the water access entitlement holders?

This material could also include further detail on a methodology or additional principles to help apportion costs where there are multiple ‘users’, for example, between water access entitlement holders, the environment, and the wider community, or where the collection of costs from water access entitlement holders alone is determined to be unaffordable. The 2004 NWI does not directly address the issue of affordability, apart from the recognition that Community Service Obligation (CSO) funding may be required in some circumstances.

The 2004 NWI also refers to avoiding “monopoly rents” in clause 65 ii). However, the wording is ambiguous and open to multiple interpretations, including one where the recovery of environmental externalities could be viewed as an instance of monopoly rents. It would be helpful for a renewed NWI to clarify that cost reflective pricing, by definition, would not be considered to lead to monopoly rents, and to provide further guidance or examples of situations that would be

considered to cross the line into monopoly rents. Further consideration and guidance around cost sharing for the broad range of activities that are now delivered by water utilities, as proposed above, should also help in this regard.