

## Introduction

The NSW Government welcomes the inquiry into National Water Reform 2020 by the Productivity Commission and its advice on future national reform directions.

This submission responds to the Productivity Commission's *National Water Reform 2020 Draft Report* (hereafter referred to as the 'Draft Report') and advises where the current water reform agenda in NSW closely aligns with the findings, recommendations and renewal advice provided by the Productivity Commission. This submission also includes feedback on specific chapters in the Draft Report, the draft recommendations and information requests.

Additionally, this submission refers to comments made in relation to the assessment of NSW progress in achieving the objectives of the current National Water initiative (NWI), as detailed in the *Draft assessment of National Water Initiative implementation progress 2017-2020* ('Draft Assessment Report').

The NWI has been instrumental in guiding significant water reforms across Australia since it was first agreed by governments in 2004. The NWI has brought jurisdictions together and created a common understanding of the importance of water reform and the focal areas to improve the management of water resources across Australia.

Consistent with the NWI, NSW has implemented water planning and entitlement frameworks that have provided the foundations for the efficient and sustainable management of water resources. The development of statutory water sharing plans in NSW has provided a transparent process for deciding how water in a system is shared between consumptive users and the environment.

The creation of water access licences that are separate from land ownership have provided a clear and secure long-term property right for water and enabled the development of sophisticated water markets that operate across the Murray-Darling Basin. These markets have brought substantial benefits and facilitated the transfer of water to its highest value use.

However, given that it has now been seventeen years since the NWI was established, and many of the commitments made by jurisdictions have been achieved, NSW considers that it is appropriate to reflect on the lessons learnt from these important reforms, to identify the current gaps where further work is still required, and consider the directions for future reform priorities.

Overall, NSW welcomes the insights provided by the Productivity Commission in its Draft Report and considers this valuable advice to governments on future priorities for water reform. NSW supports the general direction of the suggestions on renewing the NWI and recognise that further work will be required by the Productivity Commission to refine and clarify the scope of their advice in developing the Final Report.

In its Draft Report, the Productivity Commission identifies a range of emerging challenges for water resource management in Australia. This includes the impacts climate change will have on water availability, changes associated with a growing and increasingly urban population and providing meaningful recognition of Aboriginal and Torres Strait Islander rights to water.

Many of the reform priorities identified in the Draft Report align with the work NSW has been implementing in recent years as part of our Water Reform Action Plan. It also aligns with commitments NSW proposes to make through both our NSW Water Strategy, which is currently draft and out for public consultation, and the Regional and Metropolitan Water strategies which are in various stages of development and implementation.

Recognition by the Productivity Commission that a one-size fits all approach is not appropriate in a reformed NWI is supported by NSW. Commentary around providing jurisdictions with discretion to

implement actions that are fit for purpose in delivering agreed outcomes within their jurisdiction is a significant improvement. Provision of Commonwealth funding to maintain momentum and incentivise jurisdictions in the implementation of a common reform framework is also supported.

NSW appreciates the acknowledgement in the Draft Report that implementation of reforms in the Murray Darling Basin provide an example of best practice. Over the past three years and longer, NSW has been at the cutting edge of many areas of this reform.

An overview of the key water policies, programs, and projects underway in NSW was provided in the earlier NSW Government submission to the Issues Paper. This submission to the Draft Report includes further details and updates on this work where relevant to the advice, findings and recommendations made by the Productivity Commission.

NSW looks forward to working with the Productivity Commission in developing its Final Report and to engaging with other jurisdictions to implement any recommendations that will be made to inform the development of a renewed NWI that will be better focused on proactively dealing with the emerging challenges for water management in Australia.

## 1. NSW is developing strategies to address future water management challenges

### 1.1 NSW Water Strategy

On 15 February 2021, NSW released its draft state-wide NSW Water Strategy for public consultation. The NSW Water Strategy will set the strategic direction for the NSW water sector over the next 20 years and aims to improve resilience of water resources in NSW and address key challenges and opportunities for water management and service delivery across the state.

Public submissions on the draft strategy are being sought, with submissions closing on 28 March 2021. The NSW Government intends to publish its final strategy and implementation plan by August 2021.

The draft strategy proposes more than 40 actions across seven priority areas, focused on improving the security, reliability, quality and resilience of water resources in NSW and aligned with the *Water Management Act 2000*. A number of these actions align closely with the opportunities and challenges identified by the Productivity Commission in its Draft Report including:

- commitments to work with Aboriginal communities to increase their access to water for cultural and economic purposes and ensure greater involvement in water planning and management
- fresh approaches to reduce risks to town water services, use water more efficiently and increase resilience to a changing climate in cities and towns
- actions at the landscape and catchment scale to improve waterway and ecosystem health
- support to pilot new technologies and innovative solutions to increase water supply options; and
- commitments to ensure the water workforce across NSW has the skills and capabilities it needs to meet future challenges, especially in regional NSW.

A copy of the draft NSW Water Strategy and further information can be found at:

<https://www.industry.nsw.gov.au/water/plans-programs/strategy>

## 1.2 Regional Water Strategies

The NSW Water Strategy works in tandem with a suite of 12 Regional Water Strategies and two Metropolitan Water Strategies. The Regional Water Strategies will bring together the best and latest climate evidence with a wide range of tools and solutions to plan for and manage the water needs in each NSW region over the next 20-40 years.

The strategies will consider the challenges and opportunities faced by each region and look at ways to:

- deliver and manage water for local communities
- enable economic prosperity
- recognise and protect Aboriginal water rights, interests and access to water
- protect and enhance the environment
- identify least cost policy and infrastructure options.

The strategies will identify the most appropriate mix of water related policy, planning and infrastructure options in each region to address these challenges and opportunities. This may include investment in infrastructure, adjustments to surface water and groundwater management arrangements, training and capacity building programs, initiatives to better use water sources, through recycling and re-use, investing in data and analysis, as well as further policy changes and reforms.

The intent of this work aligns closely with the need identified by the Productivity Commission in its Draft Report for a renewed NWI to help communities proactively deal with drought, and adapt to a changing climate and greater uncertainty. This is discussed further below.

## 1.3 Metropolitan Water Strategies

The Greater Sydney Water Strategy will replace the existing Metropolitan Water Plan 2017 and provide confidence in the security of water supply for Greater Sydney to 2040 to support economic growth, environmental protection and community wellbeing.

The strategy will support delivery of the Greater Sydney District Plan and identify the best value investments to deliver the desired outcomes for the community. It will be based on an integrated water cycle management approach, consistent with the NWI, and identify any policy or regulatory changes required for implementation.

The Lower Hunter Water Security Plan will also be consistent with the NWI and include a portfolio of supply and demand measures to ensure there is enough water to supply homes, businesses and industry in the region for the future and during drought.

The development of both strategies is being guided by customer feedback with public exhibition and consultation planned for late 2021.

## 2. National Water Reform 2020 Draft Report

In recognition of the timeframe provided by the Productivity Commission for submissions to be made on the Draft Report, NSW has focused its comments on:

- the proposed new goal, objectives and elements;
- responding to commentary in the Draft Report on NSW performance, activities or progress;

- correcting factual errors or providing additional context where required;
- the recommendations; and
- providing a response to requests for further information.

## 2.1 Renewed National Water Initiative

NSW supports the renewal of the NWI and further development of the framework of water reforms supporting this work. Additionally, NSW is committed to working with other governments to implement arrangements for further reforms that are risk-based and match management actions and oversight to this risk within, and across, jurisdictions. The proposed preparation of implementation plans as part of improvements to governance arrangements would be an appropriate vehicle to facilitate this.

NSW supports the proposal to revise the goal of the NWI to include a reference to climate change adaptation and recognition of the importance of water in the lives of Aboriginal and Torres Strait Islander people. Noting this, further clarity and agreement will be required between governments on how the actions underpinning this goal will be achieved.

NSW also supports the modernisation of the overarching objective of the NWI to reflect both water resource management and water service provision with access to safe and reliable drinking water at its heart. These must be fit for purpose and based on best practice principles.

Further, NSW supports the addition of two new elements to recognise the interests of Aboriginal and Torres Strait Islander people in water resource management and to add a framework for major water infrastructure development, as well as an increased emphasis on water service provision.

The proposed governance arrangements in the Draft Report, including the continuation of the National Water Reform Committee, implementation plans and periodic external scrutiny of these and public reporting, aligns with the NSW government position on improving transparency, accountability and confidence in all aspects of water management. Care will be required however to ensure that governance arrangements are appropriately focused, efficient, and adequately funded by the Commonwealth Government to support State and Territory efforts.

## 2.2 Climate change

The Draft Report acknowledges that climate change and population growth present significant risks to the security of water resources in Australia. NSW is already experiencing trends of higher average temperatures and reduced cool season rainfall, and there are indications from climate models that drought conditions may become more frequent and severe, and last longer.

As such, NSW is supportive of the renewed NWI having an increased focus on adaptation to climate change, noting that this will have an impact on the development of future water-related policy, planning and infrastructure options.

The draft NSW Water Strategy identifies increasing resilience to changes in water availability due to climate change and variability as a priority. Through this strategy, NSW will be looking to improve capacity across the state to cope with climate variability and change through expanding climate independent water sources, such as wastewater reuse and recycling, and desalination for water supply augmentation. These actions, together with promoting and improving Integrated Water Cycle Management (IWCM) and adopting adaptive frameworks for allocating water will allow NSW to better prepare for future droughts.

As part of the development of our Regional Water Strategies, NSW has invested in new modelling methods and datasets to develop a better understanding of both historical climate variability and likely future climate scenarios. This involves using new scientific methods that augment the

observed historical record with paleoclimatic data and climate change projections and greatly improves the ability to identify plausible climate conditions and how these may affect river flows, groundwater resources and the supply of water for communities, towns and cities, industry and environment. Analysis of this new climate data will underpin analysis of options identified through the Regional Water Strategies and inform ongoing adaptive management in water resource management frameworks to improve system operation in a changing climate.

The benefits of adopting similar methods and datasets across the Murray-Darling Basin are being explored with Basin governments, acknowledging that coordinated planning requires an agreed basis for climate change scenarios and joint and individual governmental responses to this. A further extension of this across Australia could ensure that new knowledge and shared experiences could be achieved more efficiently (in support of the NWI knowledge, capacity and capability building principle).

The Draft Report suggests that water plans should include provisions to deal with water scarcity arising from drought, incorporating priorities for water sharing and actions relating to meeting critical human and environmental needs. In NSW, the [NSW Extreme Events Policy](#) provides a transparent decision-making framework for managing extreme events. The policy provides for a staged approach and outlines a range of measures for water managers to deploy as conditions deteriorate. The policy proposes timely interventions to extend the likely period during which water will be available for the highest priority uses through each extreme event.

Incident Response Guides have been developed as part of each NSW Water Resource Plan and support application of the NSW Extreme Events Policy by identifying measures specific to each water source and the provisions of the respective water sharing plan. NSW considers that our application of this framework during the recent drought provides a leading example of how issues of water scarcity can be managed through a water planning process.

NSW also suggests that the renewed NWI needs to maintain its focus on groundwater reform and explicitly consider the implications of climate change on this important resource as part of the proposed new objectives. Consideration of climate change and shifting water quality and flow characteristics for coastal water resources is also required.

Finally, NSW notes that our current investigations into a range of infrastructure options including dams, bores, pipelines and delivery of projects in regional NSW under the Safe and Secure program aim to improve water security in the face of increasing climatic extremes. The importance of secondary water supplies such as bores and pipelines was highlighted during our recent severe and extended drought and will form a critical part of our forward strategy for addressing climate change.

## 2.3 Environmental management

NSW is committed to making the best use of environmental water to achieve environmental outcomes and to ongoing adaptive management for all aspects of water management, including the environment. NSW also looks forward to working with other jurisdictions in enhancing the framework for this, noting that monitoring and additional technical input to underpin this will require a commitment to ongoing funding.

NSW supports the enhancements proposed to the environmental management provisions of the NWI and is already actively exploring or implementing many of the elements flagged by the Productivity Commission.

Most notably, we now have Long Term Water Plans in place in the Murray Darling Basin which identify key environmental assets, ecosystem functions and environmental water requirements that inform outcomes and long-term annual watering priorities. These plans include natural resource

management activities designed to complement and enhance environmental watering outcomes and are supported by well-established review processes for watering events and annual plans which consider climate condition and involve stakeholder advice, including First Nations people.

Our efforts are also not just limited to regulated rivers, as our water sharing plans for unregulated rivers and groundwater provide clear objectives and rules for environmental outcomes. NSW notes that the Draft Report tends to overlook these important water sources.

NSW is committed to building on recent experiences in managing coordinated watering events in the northern Murray-Darling Basin which focused on implementing first flush rules to enable connectivity between river systems following extended drought conditions. In particular, NSW has recently included provisions in statutory water sharing plans that protect held environmental water from extraction between water sources in the northern Basin.

The Draft Assessment Report raises questions about the trading of environmental water held by NSW during the drought. These comments are misleading without acknowledging the full context for this trade.

Decisions on water use, trade or carryover are made by any environmental water holder based on the total water and the total funding available. Environmental water managers in NSW routinely trade a proportion of annual water allocations to assist with the payment of water charges and to balance water availability and environmental demand across valleys and seasons, noting that trade decisions in NSW must be made to maximise long term environmental benefits which prevents allocations being primarily used to raise revenue. In this regard, being too restrictive around the use of water or funds will prevent actions to optimise environmental benefits.

In 2018/19, approximately 630 gegalitres (GL) of environmental water was delivered in NSW, which helped maintained the health of rivers and important wetland areas, such as the Gwydir wetlands, Macquarie Marshes, Millewa wetlands, Yanga National Park and the anabranch creeks of the mid Lachlan River to protect these important reserves and refuges during drought. During the same period, 15 GL was traded to assist with drought relief for farmers and the environment.

The proceeds from these trades were used to support drought related projects that had environmental benefits, such as installing fish screens on irrigation pumps to prevent the loss of small-bodied fish during pumping when water levels are low, weed and feral pest controls, and installation of infrastructure to improve the delivery of environmental water to Tuppal Creek.

Nonetheless, NSW supports the proposal made by the Productivity Commission that it should review current governance arrangements for environmental water management to ensure independence in decision-making, and is already considering potential options.

The NSW Environmental Water Program is also subject to periodic independent reviews and audits and all recommendations made through these processes have been implemented through an independent Audit and Risk Committee to provide transparency and confidence in decision making for environmental water management.

Questions about the need for a mechanism for adapting environmental management objectives as changes in climate necessitate are covered in our response to the request for further information on how this might be achieved (see Section 4).

## **2.4 Water management for Aboriginal and Torres Strait Islander people**

NSW strongly supports the focus the Productivity Commission has given to discussing Aboriginal and Torres Strait Islander people's interest in water in the Draft Report and agrees that this requires a focus in the revised NWI.

NSW also welcomes the establishment of the Committee on Aboriginal Water Interests to develop the new NWI element covering Aboriginal and Torres Strait Islander people's interests in water and supports the proposal that the Committee report directly to Water Ministers to ensure that the renewed NWI can align with the inland water target currently being developed under the National Agreement on Closing the Gap.

NSW is committing to strengthening the role of First Nations in water planning and management, including through adopting more appropriate and inclusive approaches to engagement and consultation, and ensuring existing water governance and decision-making processes provide for First Nations representation. NSW will also ensure water policies and programs deliver social, cultural, economic and environmental outcomes for Aboriginal people.

Many of the suggestions made by the Productivity Commission align with commitments the NSW Government has proposed in its draft NSW Water Strategy. In particular, the strategy makes recognising Aboriginal rights and values, and increasing access to and ownership of water for cultural and economic purposes, a priority.

The objective of this priority is to reach a point where water for Aboriginal people is embedded within the water planning and management regime in NSW, delivering cultural, spiritual, social, environmental and economic benefit to communities.

The draft NSW Water Strategy includes specific actions to help achieve this objective, including:

- Establishing a partnership agreement with the Aboriginal Water Coalition
- Strengthening the role of First Nations in water planning and management
- Developing a state-wide Aboriginal Water Strategy
- Providing Aboriginal ownership of, and access to, water for cultural and economic purposes
- Working with First Nations to improve shared water knowledge
- Working with Aboriginal people to maintain and preserve water related cultural sites and landscapes

NSW has been working with the Aboriginal Water Coalition <sup>1</sup> since 2019 to deliver reforms that will improve Aboriginal water access and ownership in NSW and empower Aboriginal people in water governance and management. Establishing a partnership agreement will set out clearly how the NSW water sector and peak Aboriginal groups will work together on critical state-wide water strategies, policies, and issues, including the development of a state-wide Aboriginal Water Strategy.

The Aboriginal Water Strategy will identify a program of measures to deliver on First Nations' water rights and interests in water management. This will involve:

- reviewing and identifying required amendments to the water management legislative framework to enable Aboriginal rights, interests and ownership of water
- revising existing, and developing new, water policy and planning approaches
- designing programs to deliver outcomes
- securing sustainable funding and resourcing

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<sup>1</sup> The Aboriginal Water Coalition involves the NSW Aboriginal Land Council (NSWALC), Native Title Service Provider for Aboriginal Traditional Owners in New South Wales and the ACT (NTSCORP), Murray-Lower Darling Indigenous Nations (MLDRIN) and the Northern Basin Aboriginal Nations (NBAN)

- building the organisational capacity of First Nations and Aboriginal communities to enable self-determination and sustained participation in projects relevant to water interests

The Draft Report notes that submissions to its inquiry suggest cultural values for water should also include the potential for economic development and suggests there is a need for water entitlements to be made available to Aboriginal and Torres Strait Islander people for community and economic development.

NSW recognises the aspiration of Aboriginal people for greater participation in managing water and is committed to increasing water available for cultural purposes as well as increasing water entitlements in Aboriginal ownership.

## 2.5 Urban water service delivery

Water is our most vital resource and is essential to our health and wellbeing. Every person in NSW—wherever they live—has a right to safe drinking water at home and a secure water supply in their communities to build successful industries, support jobs growth and make our cities, towns and regions attractive places to live.

The importance of communities having access to safe drinking water is recognised in the NSW *Public Health Act 2010* which introduced requirements for water suppliers to take a quality systems approach to drinking water quality management, in line with the Australian Drinking Water Guidelines. This approach requires utilities to understand risks to water quality, and take steps to manage, monitor and respond to these risks to protect the public health of the community. The NSW Government has been working with water utilities since 2010 to support implementation of these requirements.

NSW recognises the importance of ensuring that water service delivery can enable urban water services to respond to the challenges of climate change, population growth and changing community expectations and ensure a basic, affordable level of service can be provided to regional and remote communities.

There is a strong alignment between the new objectives proposed for inclusion in the revised NWI and work already underway in NSW. In particular, the draft NSW Water Strategy includes a priority on supporting resilient, prosperous and liveable cities and towns and proposes a series of key actions, including:

- Increasing resilience to changes in climate and water availability in Greater Sydney and the Lower Hunter
- Working collaboratively with local water utilities (LWUs) to reduce risks to town water supply service provision, with the aim of achieving the following outcomes:
  - Safe, secure and sustainable water supply and sewerage services, managed by LWUs in an efficient and customer-focused manner
  - Reaffirmed commitment to council management and ownership of water supply and sewerage service provision
  - Clarity on the sharing of risks between council LWUs and the NSW Government
  - Improving and supporting councils' ability to manage strategic urban water priorities and risk
- Continuing to deliver the Safe and Secure Water Program that co-funds solutions to high priority urban water service risks and strategic urban water service planning



- Implementing a two-year Town Water Risk Reduction Program in partnership with councils and their local water utilities to help reduce water service risks in town water systems in regional NSW by mitigating the fundamental barriers to performance (e.g. scale and remoteness, skills shortages, sub-optimal strategic planning and coordination, inadequate regulatory and support mechanisms, and inefficiently targeted funding).
- Supporting water utilities to diversify sources of water including groundwater, stormwater harvesting and recycling. This will include progressing relevant regulatory reform and community acceptance campaigns to help increase the uptake of diverse water sources with the potential to increase water security and resilience for towns and communities.
- Promoting IWCM through the NSW planning system and through water management arrangements, including ensuring regional and metropolitan water strategies are developed based on an IWCM approach.

Importantly for regional NSW, the Town Water Risk Reduction Program will work collaboratively with LWUs to develop and implement a new approach of working together that enables utilities to manage risks and priorities in town water systems more strategically and effectively, and as a result, reduce urban water quality, water security and environmental impact risks over time and address the increasing challenges of population growth and climate variability.

The program will focus on designing improved systems and mechanisms to enhance LWUs and their partners capabilities, better support and coordinate with LWUs, regulate LWUs more effectively and fund them more appropriately.

The program will:

- amend the regulatory and support framework for local water utilities to be more outcomes-focused, proportionate, transparent and accountable
- enhance local water utility performance, risk and maturity monitoring to inform proportionate regulation and support a better performance culture
- develop a more effective framework for coordinating intelligence, regulatory activities and policy between the department and its co-regulators and continue to improve coordination and alignment between local water utility strategic service planning and the NSW Government's regional water strategies
- implement strategies to help address skills shortages in the sector
- look at the pros and cons of a needs-based community service obligation funding model
- encourage a greater focus on joint and regional solutions in utility strategic planning—including exploring where local water utilities could benefit from support provided by state-owned water corporations—and improved knowledge sharing between utilities and agencies.

NSW supports updating the National Urban Water Planning Principles and formally embedding them within the NWI to help provide best practice guidance to water utilities on managing trade-offs between risk, cost, and service standards in water planning.

In Greater Sydney, NSW is adopting best-practice approaches, in line with the Draft Report's recommendations to establish levels of service objectives; adopt an integrated approach across water supply and wastewater; ensuring that all options for securing water are on the table; and set out clear roles and responsibilities for government, utilities, and regulators.

In regional NSW, under the NSW Government's Best Practice Management Framework LWUs are expected to undertake strategic urban water service planning applying an integrated water cycle management approach. This includes the setting of levels of service for water security, drinking

water quality and wastewater management within regulatory requirements and consideration of all supply and demand management options and associated costs in consultation with the community/customers.

The NSW Government has since 2008, supported the improvement of water and sewerage services to eligible Aboriginal communities in NSW through the Aboriginal Communities Water and Sewerage Program. The joint initiative of the NSW Government and the NSW Aboriginal Land Council (NSWALC) is investing more than \$200 million over a 25-year period for the maintenance, operation and repair of water supply and sewerage systems in 62 eligible Aboriginal communities. The program has markedly improved the standards of water and sewerage services.

NSW is also supportive of the principles proposed by the Productivity Commission to improve independent economic regulation in the urban water sector, noting strong alignment with existing practice in metropolitan NSW.

The NSW Productivity Commission recently completed an [Infrastructure Contributions Review](#) which recommended the removal of zero developer charges for water, wastewater and stormwater services for Sydney Water and Hunter Water. NSW is currently reviewing the recommendations and will consider the views of stakeholders in developing a roadmap to implement the reforms by early 2021.

## 2.6 Government investment in major water infrastructure

The discussion of government investment in major water infrastructure in the Draft Report expresses concern with recent government decisions, particularly in NSW.

NSW recognises the need to invest in long-term water security to build resilience in regional communities, improve water availability and increase water reliability. One of the main drivers for developing our Regional Water Strategies is to identify the infrastructure and operational management options required in each region to improve reliability for all water users and the environment.

Through the development of these strategies, a portfolio of complementary infrastructure and non--infrastructure measures will be subject to economic, environmental and cultural evaluation to maximise the benefits and ensure the best outcomes from any infrastructure investment. In certain locations, this may potentially include consideration of new or expanded dams.

In parallel, NSW is investigating a range of infrastructure investment options, including

- Dungowan Dam and Pipeline Project
- raising the dam wall at Wyangala Dam
- a new Mole River Dam
- the Lstock Dam to Glennies Creek Dam Two-way Pipeline
- replacement of the existing Wilcannia Weir
- additional or upgraded weirs on the Barwon Darling and Lower Darling rivers in western NSW
- the Lake Rowlands to Carcoar Dam Pipeline
- Macquarie River Reregulating Storage Project.

These projects are still in either the early investigation or preliminary planning stage which includes detailed concept design, environmental fieldwork, cultural heritage studies and technical

investigations. As part of this stage, business cases will be developed and cost estimates will be refined.

## ***Business cases for water infrastructure projects***

The Draft Report discusses various matters relating to the business case development process in NSW, in particular, relating to the Dungowan Dam and pipeline project. NSW has stringent processes in place to guide business case development. In line with NSW Treasury Business Case Guidelines, business cases for capital projects must include:

- consideration of a range of infrastructure and non-infrastructure options which go to addressing the service need
- a cost-benefit analysis
- assessment of distributional impacts
- a quantitative and qualitative assessment of the environmental and social impacts.

The decision to progress with the business case phases of these projects, in parallel with developing the Regional Water Strategies, was a deliberate decision, in response to the severe and widespread impacts of the recent drought and the need to plan ahead to ensure better preparedness for future drought events whilst also acknowledging the time it takes to plan and deliver infrastructure.

A final business case for the Dungowan Dam and Pipeline project is currently underway. As a result, the cost of the government's proposed new dam at Dungowan has not yet been finalised and is subject to a final business case analysis. The commentary in the Draft Report fails to recognise that the announced costs are for not just for Dungowan Dam but also the pipeline which, like the existing dam, is aged and requires replacing. It also fails to address that if NSW did not build a new dam, an investment would still be required for a safety upgrade of the existing dam, thereby becoming an avoided cost.

The Dungowan Dam and Pipeline project is another critical piece of infrastructure that will safeguard and improve the community's current water supply. In addition, and noting that NSW must operate within a capped system, greater protection will be given to industry during times of drought as an increase in water storage will facilitate general security allocations being made.

It is therefore premature to be making accurate 'dollar per gigalitre' estimations or comment on the benefit cost ratio. These matters will all be borne out by the final business case, which is due in late 2021. Additionally, price impacts for all water users will ultimately be subject to IPART determination – a process which has yet to begin.

NSW has several mechanisms in place to guide investment in water infrastructure:

- All infrastructure projects within NSW must comply with the Infrastructure NSW [Infrastructure Investment Assurance Framework](#), including those developed by State Owned Corporations (as specified in the [Major Projects Policy for NSW Government Businesses](#), TPP18-05)
- Business cases must be developed ahead of investment decisions being made on whether to proceed with projects, and all business cases must comply with the [NSW Government Business Case Guidelines](#) (TPP18-06)

- The Infrastructure Investment Assurance Framework requires that business cases developed for higher risk projects are reviewed through an independent Gateway Review process prior to investment decision
- All projects with an estimated total cost of over \$100 million for which NSW receives Commonwealth Government funding must also comply with the Infrastructure Australia assurance requirements.

NSW is of the firm view that its existing processes, policies and requirements satisfy the Productivity Commission's advice that all infrastructure is to be assessed as economically viable and environmentally sustainable prior to the commitment of funding. NSW considers that any new framework in a revised NWI to guide government investment in major water infrastructure should not duplicate existing frameworks.

Given the stringent processes already in place in NSW to guide investment decisions, NSW supports revising the NWI to include requirements around cost-benefit and options analysis, as well as consideration of social and distributional impacts.

Business cases are not typically published in NSW as a matter of course as it raises public interest and commercial concerns given business cases typically include Cabinet and commercially sensitive information.

With regards to the Productivity Commission's suggestion that businesses cases are reviewed by a qualified independent body, NSW notes the Infrastructure Investment Assurance Framework already requires that business cases developed for higher risk projects are reviewed through an independent Gateway Review process prior to investment decision.

### ***Cost recovery of water infrastructure***

The Draft Report recommends the costs of infrastructure construction be borne by users and user charges should be set to achieve full cost recovery of capital expenditure. In principle, NSW supports cost recovery as an important mechanism to improve the efficiency by which government funds are allocated. However, NSW recognises that regional water infrastructure projects often have a range of broader economic and social benefits that justify investment, but which cannot be recovered from regional communities that may have a limited capacity to pay. These benefits include flood mitigation, regional economic growth, climate change resilience, recreational and tourism benefits and drought protection. NSW considers it is important that the revised NWI acknowledges these realities.

The ultimate cost of infrastructure projects for water users in NSW is determined by the Independent Pricing and Regulatory Tribunal (IPART), that is asked to ensure that the share of the actual cost borne by water users is fair and affordable. The process IPART uses to make a price determination involves an extensive consultation and review process, allowing ample opportunity for local issues and concerns to be raised and addressed. The IPART price determination will typically consider:

- the cost sharing arrangements between users and the Government,
- any grant funding arrangements,
- any agreements or arrangements for the ownership of the assets, and
- where relevant, any costs recovery arrangements negotiated directly with the customers.

### ***Assessment of environmental impacts***

All major water infrastructure projects in NSW must comply with the requirements for environmental assessments and planning approvals as set out in the *NSW Environmental Planning and Assessments Act 1979* and *Environmental Planning and Assessment Regulation 2000*.

In 2019, the NSW Government passed the *Water Supply (Critical Needs) Act 2019* which creates a temporary pathway for the Minister for Water to authorise critical water infrastructure developments which are urgently needed to secure water supplies for regional towns recovering from the recent drought. While certain major infrastructure projects have been declared Critical State Significant Infrastructure under this Act and will receive streamlined assessments and approvals, fast tracking these projects does not circumvent any environmental assessments or approval processes required under Federal or State laws.

The Environmental Impact Statement (EIS) for the Wilcannia Weir project is expected to go on public exhibition around April 2021, and the EIS for the Dungowan Dam and Pipeline project and the Wyangala Dam Wall Raising project is expected to be publicly exhibited later in 2021.

### **Stakeholder consultation on project development**

The Productivity Commission highlighted concerns raised by the NSW Aboriginal Land Council in relation to the consultation processes for the Wyangala Dam Wall Raising project. NSW acknowledges there have been numerous challenges with community and stakeholder engagement during the COVID-19 pandemic, and while we have been quick to adapt and innovate in how we have engaged with communities during this time, engagement with communities with limited internet network coverage has hampered meaningful engagement. Now that travel restrictions and constraints on in-person gatherings have eased, more active consultation with community and stakeholders, including Aboriginal stakeholders, will occur for all major infrastructure projects in development.

The Productivity Commission also highlighted, in Supporting paper J, a submission that stated that stakeholder consultation on WaterNSW's 20-year options study was limited to a single meeting. This is incorrect. WaterNSW undertook 101 meetings with customers and stakeholders through the three iterations of the project (2016 to 2019).

Where possible, NSW seeks to identify opportunities for projects to deliver additional community outcomes. As part of the Wilcannia Weir project for example, training opportunities are being provided for the local community under the Aboriginal Participation in Construction Policy. The NSW Government is working with TAFE NSW, the Regional Economic Development Institute and Murdi Paaki Regional Assembly to deliver this training program.

## **2.7 Information, data and community engagement**

NSW supports draft NWI renewal advice to recommit to best-practice, cost-effective engagement with communities on all water matters.

NSW further acknowledges that the success of future reform in all aspects of water resource management, water services provision and delivery of projects in communities will rely on the ability of governments to effectively and thoroughly engage communities and ensure their views are heard. In this regard, NSW continues to make genuine attempts to improve community consultation and engagement activities, and takes seriously its commitments to improve transparency and accountability and rebuild stakeholders' trust in water administration in NSW.

NSW has committed to ensuring more data and information is made publicly available – and can be understood by customers, stakeholders and the broader community - to assist in better understanding how water is managed in NSW and how water management policies and decisions are made.

NSW has undertaken significant work to improve access and transparency of water market information, through the development of targeted and specific information platforms, such as the [Water Information Dashboards](#) and the [WaterInsights Portal](#). These are in addition to the existing [NSW Water Register](#), the [NSW Water Access Licence Register](#), and the [Environmental Water Register](#).

The Department of Planning, Industry and Environment recently undertook public consultation on these water information platforms to understand what information should be published and how the accessibility of these platforms could be improved.

The draft NSW Water Strategy will seek to further improve how the NSW water sector engages with communities about water management and make it easier for water users and the broader community to engage with and understand water management and how decisions are made. This will include improving coordination between water sector agencies on engagement activities to reduce overlap, confusion and consultation fatigue, as well as seeking to work with communities to explore new ways to increase confidence about water management decisions.

## 3. Response to draft recommendations

### Draft Recommendation 4.1 – Governance arrangements

NSW supports the draft recommendation that Water Ministers meet periodically to provide the level of leadership that ongoing water reforms require. This work should be supported by the National Water Reform Committee and reflect the recommendations of the *Review of COAG Councils and Ministerial Forums (2020)* to ensure that there is an appropriate balance between efficient governance, oversight and transparency in water management decisions.

### Draft Recommendation 8.1 – Integrated Natural Resource Management Initiatives

NSW supports the draft recommendation that that natural resource management (NRM) programs should give priority to the key environmental assets identified in water planning processes, provide funding, and undertake the required works to protect those assets.

Environmental water planning in NSW already takes a holistic system scale approach to achieve the objectives outlined in water planning processes including Water Resource Plans, Water Sharing Plans and Long-Term Water Plans. Annual water planning considers a matrix of antecedent conditions and water availability to help guide planning decisions and priority setting to support the priority assets and the objectives sought from the strategic plans. NSW is also guided by the Murray-Darling Basin Authority's [Basin-wide Environmental Watering Strategy](#). For example, under very dry and dry scenarios, priorities include:

- Avoid irretrievable loss of, or damage to, environmental assets
- Avoid critical loss of species, communities, and ecosystems
- Maintain critical refuges
- Avoid irretrievable damage or catastrophic events
- Allow drying to occur, where appropriate, but relieve severe unnaturally prolonged dry periods
- Ensure environmental assets maintain their basic functions and resilience
- Support the survival and viability of threatened species and communities
- Maintain environmental assets and ecosystem functions, including by allowing drying to occur consistent with natural wetting-drying cycles; and

- Maintain refuges.

Strategic planning and greater coordination of activities within river reaches, supported by enhanced funding, is required to realise the opportunities for ecosystem resilience that the Productivity Commission is seeking via this recommendation.

The draft NSW Water Strategy includes a commitment to identify specific priorities and target programs towards improving land use and land management practices in catchments where these are major contributors to a decline in river and catchment health as an action to contribute to the overarching priority of improving river, floodplain and aquifer ecosystem health, and system connectivity.

NSW considers that this work is of relevance to further considerations the Productivity Commission may give to refining this recommendation in the Final Report.

## **Draft Recommendation 11.1 – National Performance Report**

NSW provides in-principle support for the recommendation to require urban water service providers to report a financial return metric consistent with the NWI Pricing Principles. In particular, the NSW [Best Practice Management of Water Supply and Sewerage Guidelines](#) that apply to LWUs in regional NSW set comprehensive strategic planning and pricing requirements for LWUs that promote consistency with, and address the requirements of, the NWI Pricing Principles.

In parallel to its existing Economic Real Rate of Return (ERRR) metrics on LWUs, NSW publishes an ERRR metric that excludes developer charges and developer provided assets and is thus more closely aligned with the NWI pricing principles (as part of its LWU Performance Reporting Dashboard). The annual pricing data of LWUs is collected through the online portal of the NSW Performance Monitoring System. Financial data is sourced from the annual financial reports from the relevant Councils and annual financial data returns submitted to the Department of Planning, Industry and Environment. NSW will investigate cost recovery and rate of return metrics as part of the Town Water Risk Reduction Program as well as the review of the indicators that make up the National Performance Report (NPR), currently being undertaken by the Bureau of Meteorology. NSW considers that the advice from the Productivity Commission should be an important consideration for this review.

## **Draft Recommendation 13.1 – Remit of the National Water Grid Authority**

NSW strongly supports the recommendation that the National Water Grid Authority broaden its Investment Policy Framework to allow funding of a broader suite of water infrastructure projects where government involvement may be warranted.

NSW considers this should include consideration of urban water projects, such as wastewater recycling and stormwater capture and reuse, in recognition that urban areas will have the greatest future population pressure as well as opportunity to increase water efficiency. Support for such projects is likely to arise in NSW associated with the development of the Regional Water Strategies and Metropolitan Water Strategies, or as part of forward infrastructure planning.

## **4. Response to Information Requests**

### **Information Request 6.1 – Triggers for rebalancing environmental and consumptive shares in the context of climate change**

*The Productivity Commission is seeking feedback on suitable triggers for rebalancing environmental and consumptive shares in the context of climate change.*

The Draft Report notes that there may be a need to reassess the balance between environmental and consumptive uses in the event of significant reductions in water availability due to climate change. While triggers may provide a means to inform such considerations, the ability to set or identify these is difficult at this time as data is not yet available to enable informed decisions to be made.

The new climate modelling methods and datasets that NSW has developed as part of its Regional Water Strategies to provide a better understanding of both historical climate variability and likely future climate scenarios should assist in informing future decision making regarding potential triggers.

Noting this, it is important to recognise that a significant proportion of licensed entitlement in many NSW valleys is used for environmental purposes and these licences are subject to the same water allocation announcements as other licences in the same category. The wording in the Draft Report suggests that the licence shares held by the environment need to be rebalanced in response to climate change against the shares held by consumptive uses. Attempting to rebalance between these licence holders on the basis of use (consumptive or environmental) is not supported by NSW due to the impacts this would have on the water entitlement framework in NSW, which aims to provide certainty for all water users.

Water management in NSW provides for a number of different types of environmental water. Water access licences used for environmental purposes are referred to as 'held environmental water', whereas 'planned environmental water' refers to water provided to the environment through rules in water sharing plans, such as end of system flow targets or minimum releases from storages, and includes water not allocated for consumptive uses.

There are potential detrimental impacts to planned environmental water arising from climate change. While some elements of planned environmental water (such as end of system targets, dam release rules and contingency allowances) are provided prior to water being allocated to licence holders, and are likely to remain secure under reduced water availability, other elements, such as the water volumes in excess of extraction limits, may be undermined. NSW considers that the issue that the Productivity Commission should be considering is the balance between planned environmental water and water allocated to licence holders, in the context of climate change.

In relation to setting potential triggers, there are two components which require consideration. The first involves identifying when a threshold has been reached, which should be informed by relevant data. The second is to define what the objective of 'rebalancing' is, and this must include consultation with affected communities. Any rebalancing would also need to consider the whole suite of water management objectives (environmental, social, cultural and economic) as trade-offs between these would need to be fully understood.

## **Information Request 13.1 – Traditional Owners and infrastructure investments**

*The Productivity Commission is seeking feedback on:*

- *How could a refreshed NWI ensure that major water infrastructure investments most effectively promote the aspirations of Traditional Owners and protect Aboriginal and Torres Strait Islander people's heritage and cultural values?*
- *Should the principle guiding new infrastructure be amended to ensure that planning processes for developments are culturally responsive (in addition to those developments being environmentally sustainable and economically viable)?*

NSW is committed to supporting close involvement and participation of Aboriginal people in water infrastructure, research and management. There is much to learn from the perspectives,



knowledge, relationships, cultural practices and environmental protocols that are alive and vibrant in Aboriginal communities.

High quality engagement with Aboriginal and Torres Strait Islander people at a culturally appropriate pace is an essential first step to ensuring infrastructure investments promote their aspirations and protect their heritage and cultural values. NSW supports amendment of the principle guiding new infrastructure to ensure that planning processes for developments are culturally appropriate. During Nation-by-Nation engagement with Aboriginal people in the Murray-Darling Basin as part of developing water resource plans, actions that were consistently called for include:

1. Establish and enhance cultural flows by:
  - recognising and providing for the cultural dimensions of water for Aboriginal people
  - providing economic opportunities derived from water and access to water entitlements
  - seeking shared benefits by using water allocated for environmental and consumptive purposes to deliver cultural benefits where synergies exist.
2. Acknowledge that water is critical to the health and wellbeing of communities.
3. Enable access to Country to maintain healthy waterways and engage in cultural practices.
4. Embed culturally appropriate Aboriginal participation, partnerships and knowledge transfer into water management and government decision-making.

The actions proposed in the water strategies being developed in NSW are being guided by these requests for action and could be taken into consideration in renewing the NWI.

## 5. Draft Assessment of National Water Initiative Implementation Progress (2017-2020)

NSW is pleased to see that the information provided in our earlier submission has been reflected in the Draft Assessment Report, and that the Productivity Commission acknowledges the progress and achievements NSW has made in implementing water reform during this period. This report notes that NSW has:

- Strengthened compliance and enforcement
- Submitted Water Resource Plans for assessment by the Murray-Darling Basin Authority
- Revised water sharing plans to provide greater security for environmental water
- Included Aboriginal cultural objectives in certain water sharing plans
- Revised trade application forms to improve the capture of market-relevant information in the NSW Water Register
- Commenced consultation with stakeholders on the NSW Water Register to improve transparency
- Developed an online trade dashboard and water information portals
- Adopted the risk sharing framework specified in the NWI.

As stated above, NSW is working hard to improve transparency and accountability and rebuild stakeholders' trust in water administration in NSW. In addition to actions taken to increase the publication of data, information and water management decisions and compliance and

# Submission to the Draft Report

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enforcement activities, NSW has processes in place for independent reviews to be undertaken to provide advice and recommendations to government on future actions (e.g. statutory reviews of water sharing plans by the Natural Resources Commission) and we have commissioned a number of our own independent assessments in response to specific events (e.g. the 2020 northern Murray-Darling Basin first flush event).

In addition, the pace and magnitude of water reform undertaken by the NSW Government has led to a large number of engagement opportunities for communities to have their voices heard. Our reform agenda has also resulted in infrastructure solutions to be tested. Together, these activities have resulted in extensive information, being made publicly available and open to scrutiny. Alternatively, if nothing is done, there is nothing to see.

Because NSW has actively taken steps to be transparent in its decision-making processes and make more information publicly available, the Productivity Commission appears to provide a greater level of commentary and scrutiny of NSW performance compared to other jurisdictions. As such, NSW encourages the Productivity Commission when finalising its report and assessment to provide a more balanced commentary of the progress each jurisdiction has made in implementing their water reform commitments and priorities for future action.