

# National Water Reform Triennial Review/ Inquiry

## Context

The National Water Initiative (NWI) is the 2004 “blueprint” for water reform across Australia. In 2017, the Productivity Commission is conducting an inquiry into the NWI. The inquiry looks back at how the States/ Territories are implementing the NWI. It also looks forward to improve the NWI. The review is an opportunity to comment on ‘substantive and nationally relevant’ water policy issues.

## SUBMISSION

National Water Reform inquiry  
Productivity Commission  
GPO Box 1428  
Canberra City ACT 2601

17th April 2017

### **RE: National Water Reform Inquiry 2017**

Madjulla Association see our website: [www.majala.com.au](http://www.majala.com.au)

Our vision is to adopt the world's best practice in environmental and agricultural sustainability and provide social and material prosperity to Nyikina riverside communities. As Traditional Owners, we have the responsibility to manage and act as guardians for our lands and waters, including the lower reaches of the Mardoowarra (Fitzroy River).

We are responding to your request for information on the topics listed below.

### ***How can the interests and needs of Indigenous people be better accommodated and represented in water planning processes? (Issues paper, pg. 14)***

The interest and needs of Indigenous people could be better accommodated and represented in water planning processes by adopting and investing in these Guiding Principles. *"Water and land cannot be separated. We look and care for country together, not separate...."* Mary River Statement 2009.

1. Land, water and people are inextricably connected, which means unity of land, water and Indigenous people.
2. Water management and use includes all of cultural uses, environmental flows, consumptive and commercial uses; and all freshwater systems whether on the mainland or on sea country, on the surface or underground.
3. Adhering to a balanced revised ‘Triple Bottom Line’ (social and cultural, ecological and economic) to include the fourth element, political sustainability.
4. Water dealings are based on the free, prior, and informed consent, decisions and engagement of Indigenous communities. This means representative bodies, Indigenous

communities and Traditional Owners on the ground be fully informed and participate in all associated processes.

5. Principles of International Law (e.g. UNDRIP, Ramsar) are implemented and guide the engagement of Indigenous water resource management in water reform processes.
6. Water allocation be linked with best practice, sustainable, efficient use and accurate and current information about environmental flows and conditions.
7. Indigenous people across north Australia are united in dealing with water issues and accordingly recognise that:
  - Indigenous peoples have cultural and kinship responsibilities and obligations under customary law to look after water;
  - Traditional Owners have a right to be involved in the management and decision making over water use;
  - Indigenous people need to be the primary interface in the planning and proposed development and regulation of water use; and,
  - Water is part of native title through cultural and ceremonial practices that are part of the birds, animals, plants and people.

The IWPG adopted these principles from the [Mary River Statement](#) in October 2009. The IWPG launched its [Indigenous Water Policy Statement](#) in March 2010.

**Indigenous people in north Australia remain on the margins of government plans for national water reform. There is much work to do to close this gap.**

Much could be done, particularly in W.A. Strong political commitment is needed. For direction, please see:

- **Indigenous Water Policy Group (IWPG) | NAILSMA**  
<https://www.nailsma.org.au/water-resource-management/indigenous-water-policy-group-iwpg.htm>The Indigenous Water Policy Group (IWPG) was initiated in 2006.
- The First People's Water Engagement Council's 2012, *Advice to the National Water Commission*  
[http://content.webarchive.nla.gov.au/gov/wayback/20160615062343/http://www.nwc.gov.au/\\_data/assets/pdf\\_file/0004/22576/FPWEC-Advice-to-NWC-May-2012.pdf](http://content.webarchive.nla.gov.au/gov/wayback/20160615062343/http://www.nwc.gov.au/_data/assets/pdf_file/0004/22576/FPWEC-Advice-to-NWC-May-2012.pdf)
- *The United Nations Declaration on the Rights of Indigenous Peoples (2007)*  
<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>
- The National Water Commission's 2012 *Position Statement on Indigenous Access to Water Resources*  
<http://webarchive.nla.gov.au/gov/20160615060726/http://www.nwc.gov.au/nwi/position-statements/indigenous-access>
- The NAILSMA Policy paper, *Indigenous people's right to the commercial use and management of water on their traditional territories(2013)*  
[http://www.nailsma.org.au/sites/default/files/publications/KS%200172013%20SIR%20Policy%20Paper\\_110313.pdf#overlay-context=hub/resources/publication/indigenous-peoples-right-commercial-use-and-management-water-policy](http://www.nailsma.org.au/sites/default/files/publications/KS%200172013%20SIR%20Policy%20Paper_110313.pdf#overlay-context=hub/resources/publication/indigenous-peoples-right-commercial-use-and-management-water-policy)
- The Fitzroy River Declaration, 2016, <http://www.klc.org.au/news-media/newsroom/news-detail/2016/11/18/native-title-at-heart-of-fitzroy-river-declaration>

The final item, The Fitzroy River Declaration, was issued last year by Traditional Owners who are guardians of the Fitzroy River Catchment. The Fitzroy River is a living ancestral being and has a right to life. In response to increasing development pressure, we have pledged to work together to protect and manage the Fitzroy River and its tributaries, one of the most iconic wild rivers in Western Australia. The 'Fitzroy River Declaration' aims to protect the traditional and environmental values that underpin the river's National Heritage Listing. It calls for the Fitzroy River to be managed jointly by the Traditional Owners of the river. Please see our most recent film.

- Here is the link to the updated version of *Mardoowarra's Right to Life*:  
<https://vimeo.com/211153521>  
Password: Kimberley

The National reform agenda must support Traditional Owners to manage water for current and future generations by providing legal mechanisms for First Nations people to have control over decisions about water. First Law ("customary law") must be recognised. This includes at the individual Prescribed Body Corporate (PBC) level and also by supporting the joint decision making processes of PBCs across catchments.

- Also see upcoming article in the legal journal the *Australian Environmental Review*, Lim, Poelina & Bagnall, 2017, *Can the Fitzroy River Declaration Ensure the Realisation of the First Law of the River and Secure Sustainable and Equitable Futures for the West Kimberley?*

A final point, we note that the Western Australian Department of Water's current working group on Water Reform did not contain any members from Indigenous representative bodies. It is difficult to see how WA's First Nations peoples' interests can be represented when we are not at the table for high level water reform discussions.

***Do water and wastewater services delivered to regional and remote communities, including Indigenous communities, comply with relevant public health, safety and environmental regulations? If not, what policy remedies might improve performance? (Issues paper, page 25)***

No. Please refer to:

- RAESP report, 2015, *Delivering essential services to remote Aboriginal communities*  
[https://audit.wa.gov.au/wp-content/uploads/2015/05/report2015\\_08-AbServices.pdf](https://audit.wa.gov.au/wp-content/uploads/2015/05/report2015_08-AbServices.pdf)

Poor quality water directly effects health and wellbeing in our communities. For example, 14 WA communities have nitrates that exceed the levels recommended by the Australian Drinking Water Guidelines. Uranium and bacteria also exceed guidelines in many communities. Pandanus Park is a community in the Nyikina Mangala area with excess nitrate levels. It has caused worry, costs and stress to residents.

Furthermore, the WA government plans to withdraw service delivery to small remote communities- traditionally a Federal government responsibility- causing great distress.

***What are the guiding principles for 'best practice' management of environmental water? Are the institutional and governance arrangements for held environmental water working well? (issues paper, page 19) Are the policies that affect the health of water systems sufficiently integrated?***

Your issues paper (pg. 3) lists characteristics of the water "development era" prior to reform:

- relatively unconstrained release of water entitlements to develop agriculture and industry

- substantial government investment in rural and urban water infrastructure to satisfy growing water demand

Your paper notes that this contributed to a range of environmental problems in the Murray Darling Basin. As far as we can tell, the current WA and Federal approach to water is still stuck in the “development era” mentality. There is no accountability mechanism to make sure policy is in line with the NWI, especially since the NWC was scrapped.

We recommend an independent authority be established.

***Should further water reform be pursued through an improved NWI? (issues paper page 26)***

Yes. Further reform is needed to address the issues noted above, and the right to life of rivers. In general, the NWI does not adequately reflect the needs, interests, rights and responsibilities of First Nations people. The measures that do exist are very weak. The current NWI’s conception of Indigenous values as “other public benefit outcomes” places the sovereign rights of First Nations people in the same category as picnic facilities. The NWI is outdated and National action is needed to recognise the imperative for First Nations people to deal with contemporary water management issues on our own terms.

If you have further questions or are interested in further information to assist your inquiry, please contact Dr Anne Poelina, (Nyikina Warrwa Traditional Custodian and Inaugural Chair of the First People’s Water engagement council)

Yours sincerely,

Dr Anne Poelina

Managing Director

Madjulla Association

