

National Water Reform 2020  
Productivity Commission  
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MELBOURNE VICTORIA 8003

Via email: [water.reform.2020@pc.gov.au](mailto:water.reform.2020@pc.gov.au)



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To the Productivity Commission,

### National Water Reform – Issues Paper May 2020

The NSW Aboriginal Land Council (**NSWALC**) welcomes the opportunity to provide comment on the Productivity Commission's *National Water Reform – Issues Paper*.

NSWALC and the network of 120 Local Aboriginal Land Councils (**LALCs**) represent over 23,000 Aboriginal people in NSW. We are a democratically elected voice of Aboriginal peoples, and we strive for a future in which the Aboriginal peoples of NSW can live their lives to their full potential.

#### Aboriginal water rights

Land and water rights remain central to Aboriginal peoples. Reacquiring our lands and waters is at the heart of our future. Through the NSW *Aboriginal Land Rights Act (ALRA) 1983*, Aboriginal people have successfully seen thousands of hectares of land returned across NSW with much land still under claim. However, our ownership of water is miniscule by comparison. For example, while Aboriginal people in the Murray Darling Basin constitute nearly 10 % of the total population, Aboriginal organisations hold only 0.2 % of the available surface water <sup>1</sup> and 0.1% across the state. Also, Aboriginal water holdings between 2009 and 2018 indicate a new wave of dispossession. Almost one fifth of Aboriginal water holdings by volume were lost during this time<sup>2</sup>.

This is despite the Australian government, in 2009, endorsing the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**), which recognises Aboriginal peoples' rights, including rights to water:

**Article 25** of the UNDRIP states that Indigenous peoples have the right to maintain their *spiritual relationship with their traditional lands, territories, waters and coastal seas and the right to uphold their responsibilities in this regard*.

**Article 26** of the UNDRIP states that *Indigenous peoples have rights to their traditional lands and waters, to own, to use, develop and control these resources and that States shall give legal recognition and protection to the same*.

<sup>1</sup> Trends in Aboriginal water ownership in New South Wales, Australia: The continuities between colonial and neoliberal forms of dispossession Lana D. Hartwig, Sue Jackson, Natalie Osborne 2020

<sup>2</sup> Trends in Aboriginal water ownership in New South Wales, Australia: The continuities between colonial and neoliberal forms of dispossession Lana D. Hartwig, Sue Jackson, Natalie Osborne 2020

# ALWAYS WAS ALWAYS WILL BE ABORIGINAL LAND

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Maintaining spiritual and cultural relationships with land, water and Country are crucial for Aboriginal people. The right to economically develop natural resources, consistent with cultural obligations, is also of significant importance. Furthermore, Aboriginal communities in NSW have experienced insecure access to clean, safe drinking water. Access to rivers, lakes, wetlands, cultural sites, or cultural flows has also decreased. In much of Western NSW, the dire health of our river systems contributes to poor health outcomes for our communities. The over allocation of water, poor management, poor compliance, and over extraction of water has led to dry riverbeds and unreliable access to drinking water for our people during droughts.

We provide the following brief comments on the following two information requests, and would be happy to provide further information.

### **NSW Government progress and reporting on Indigenous cultural values in water plans**

Water across NSW is managed by various Government agencies, authorities, or utilities. While there are some limited provisions relating to Aboriginal water in various legislation and policy, at present they remain severely deficient. There are limited opportunities for Aboriginal people to influence water management and there are regulatory and resourcing barriers to Aboriginal people accessing and owning water.

Additionally, there is no cohesive policy or strategic plan that sets clear expectations and accountabilities of the NSW Government in supporting Aboriginal water rights. A state-wide Aboriginal water strategy is needed, developed in partnership with peak Aboriginal community-controlled organisations and communities. This strategy needs to clearly articulate how the NSW government will support Aboriginal water rights and deliver social, cultural, economic and environmental outcomes for Aboriginal people.

In this regard, we note the NSW Government has committed to developing an Aboriginal water policy. We look forward to working in partnership to develop this. In the interim further work is needed to ensure Aboriginal people's rights and interests are included in water planning.

There are also opportunities for the NSW Government to improve recognition and support for Aboriginal rights and interests by amending water sharing plans and in the development of regional water strategies across NSW. Water sharing plans should make additional provision for Aboriginal water access licences for social, cultural, economic and environmental purposes and remove barriers.

In terms of Regional Water Strategies, to date only one has been developed for the Greater Hunter region which fails to incorporate and support Aboriginal rights and interests.<sup>3</sup> This is a missed opportunity and the plan should be reviewed to ensure support for Aboriginal water rights. The remainder of the regional water strategies are largely in the early stages of development. As such, it is too early to report on their progress. However, if developed and implemented in genuine partnership, and if they include genuine mechanisms to support Aboriginal water rights, they provide an important opportunity for the NSW Government to deliver improved outcomes. It is important to note that regional water strategies are only be one element of the reforms needed and additional measures, including legislative reforms to ensure Aboriginal people's ownership of water, are needed.

We also note that Aboriginal people's rights and interests in water is not limited to cultural values, and should not be compartmentalised or separated out into only one element of water management. Aboriginal people's rights and interests must be recognised more comprehensively in water planning. This should extend to major infrastructure such as dams and weirs. Engagement with Aboriginal

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<sup>3</sup> <https://www.industry.nsw.gov.au/water/plans-programs/regional-water-strategies/greater-hunter-region>

people upstream and downstream of these proposals is needed, consistent with *Akwé: Kon guidelines*<sup>4</sup>.

In relation to NSW Government reporting on Aboriginal water rights, this is not currently addressed in a consistent, comprehensive, accessible or transparent manner. Improved arrangements are needed.

#### **Recommendations**

That the Productivity Commission support the development of robust state-wide Aboriginal water strategies that includes the following;

- a. Are developed in partnership with peak Aboriginal community controlled organisations and Aboriginal communities;
- b. Are developed in line with all government's commitments to Closing the Gap;
- c. Ensures all water policies or programs deliver social, cultural, economic and environmental outcomes for Aboriginal people;
- d. Are funded by government and invest in by Aboriginal community controlled organisations;
- e. Supports increased Aboriginal ownership of water;
- f. Supports increased roles and decision making for Aboriginal people in water planning and management;
- g. Promotes improved reporting water management overall, and measures to support Aboriginal water rights.

#### ***A refreshed NWI to help Indigenous Australians realise their aspirations for access to water, including cultural and economic uses***

We note that all governments have committed to increasing Aboriginal water rights through a specific target in the national Closing the Gap agreement, as well as implementing four priority reforms:

- Shared decision making
- Building the Aboriginal community sector
- Transforming mainstream institutions
- Data sharing<sup>5</sup>.

The priority reforms must be a key focus of any refreshed NWI and, in line with government commitments to Closing the Gap, a refreshed NWI should specifically include:

- Measures to Aboriginal ownership of water entitlements for social, cultural, economic and environmental outcomes
- Measures to ensure decision making and roles for Aboriginal people in water governance and management.

Currently in NSW there are some measures, including Aboriginal water licences, that could be strengthened and expanded to better support Aboriginal water rights. Aboriginal community controlled organisations, and Local Aboriginal Land Councils (LALCs) in NSW, provide a key vehicle for governments to deliver improvements and outcomes to Aboriginal communities, and ensure involvement in water governance.

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<sup>4</sup> Convention on Biological Diversity, <https://www.cbd.int/traditional/guidelines.shtml>

<sup>5</sup> National Agreement on Closing the Gap, July 2020, <https://www.closingthegap.gov.au/targets>

**Recommendations**

That the Productivity Commission:

1. Requires governments to partner with peak Aboriginal community-controlled organisations in water management;
2. Supports roles for Aboriginal community-controlled organisations in water governance;
3. Supports improved accountability and transparency in water governance and management;
4. Supports increased allocations for Aboriginal water licenses for cultural, community, commercial and environmental purposes;
5. Supports resourcing for Aboriginal community-controlled organisations to deliver social, cultural, economic and environmental outcomes in water. This should include specific funds to protect and preserve cultural sites, artefacts, fish traps etc from water degradation and erosion.

Should you require further information, please contact the NSWALC Strategy and Policy Unit (02 - 9689 4444 or via e-mail: [policy@alc.org.au](mailto:policy@alc.org.au)) at your convenience.

Sincerely,

**James Christian PSM**

Chief Executive Officer

NSW Aboriginal Land Council

Date: 9 September 2020