

Submission on the Productivity Commission's draft report on National Water Reform

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More information

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Introduction

This NSW submission provides comment on the draft report on National Water Reform prepared by the Productivity Commission.

While the draft report highlights some of the many successes achieved through NSW water reforms since the Intergovernmental Agreement on a National Water Initiative (NWI), there are several areas where the reform program or the achievements are not fully described or represented. This submission addresses those matters to inform the final report.

NSW remains fully committed to the principles of the NWI. The objectives and outcomes of the NWI should to be realised via pragmatic pathways that account for the multiple layers of policy and legislation that need to be satisfied in delivering on this and many other commitments.

In addition, outcomes sought need to be commensurate with available resourcing, take into account current priorities and be realistic about the timeframes needed to deliver meaningful reform.

Continued reform - building on lessons learnt

In relation to draft findings 2.1 and 3.1, NSW has taken a proactive approach to improving our decision making methodology, incorporating best practice approaches that improve transparency and accountability, support meaningful future evaluation, and allow for adaptive management. Some of these initiatives, which target NWI principles, are described below.

Regional Water Strategies

Regional water security assessments are being conducted as part of the Regional Water Strategies that are being developed across the State. The strategies will identify the highest regional needs, address issues that cannot be solved within individual water sharing plans, establish how a region's short and long term water needs will be secured for industry and community needs, and will facilitate consistent and coordinated water planning. They are non-statutory, risk and evidence based with regional boundaries based on one or more catchments. The intention of the strategies is to:

- draw together analysis and advise the NSW Government on approaches, strategies and investment plans to maintain water supply security for forecast growth in the respective regions;
- inform the statutory water sharing plans/ water resource plans that are being reviewed and prepared for water sources in NSW; and
- address water security by assessing risk to water security from drought and identifying potential market, infrastructure, water use efficiency and statutory options.

The Catchment Needs Assessment Framework is one of the key tools that underpins the needs assessment and prioritisation for the Strategies. Indices are used to formulate new measures to provide insight into future water management issues and solutions in NSW. These indices provide a broad scale assessment of water supply needs by evaluating risk to current water demands (e.g. irrigation, town water supplies) and regions of opportunity to source water.

Water sharing and water resource planning

Following the millennium drought, amendments were made to the *Water Management Act 2000* to allow greater flexibility to manage water resources through extreme dry periods. Amendment provisions in water sharing plans also allow for future innovations in meeting demand supply, such as accommodating for new inter-valley transfers.

Additionally, as per the requirements of the Basin Plan for extreme event management, NSW is preparing Incident Response Plans for each water resource plan (WRP) area. These address issues that may have caused NSW to suspend plans in the past, such as drought and water quality matters like algal blooms and black water events.

The NSW WRP risk assessment also specifically assesses future risks associated with climate change. The methodology is repeatable and can be reassessed to inform future evaluations and/or when new information becomes available.

NSW has also significantly improved its approach to the development and evaluation of water planning objectives. During the review of early water sharing plans it became apparent that some objectives could not be fully evaluated as their links into the plan strategies and rules were not clear, and some supporting documentation was not readily available. A program logic has been developed which provides clear description of what plans are aiming to achieve, a roadmap to achieve them, and a framework for the evaluation of plan success or effectiveness. To enable meaningful evaluations, the development of plan objectives will show clear links between what a plan can control via water management strategies and the desired economic, social / cultural or environmental outcomes for the plan area. Applying this program logic has already commenced in the development of WRPs. NSW has found this to be an effective way to embed adaptive management into planning processes.

Indigenous Access to Water Resources

NSW supports the Commission's findings around the importance of Indigenous access to water resources (Rec 3.2 and 3.3) and engagement with Aboriginal communities is taken very seriously in NSW to ensure that Aboriginal cultural and economic requirements are identified and built into water planning processes.

All water sharing plans (WSPs) in NSW allow for the granting of cultural access licences, which can be used by Aboriginal communities for drinking, food preparation, washing, watering domestic gardens and many other cultural purposes. These access licences, active for the life of the cultural purpose, are capped at 10 megalitres per year per application and cannot be traded. There are two active cultural access licences in NSW.

Aboriginal community development licences are also available under a number of WSPs to support commercial enterprises owned by Aboriginal people in coastal unregulated or groundwater systems.

The Murray-Darling Basin Plan requires the preparation of water resource plans in the Murray-Darling Basin. The Basin Plan specifies that water resource plans must:

- identify the objectives and outcomes of Aboriginal people for the management of water in the water resource plan area,
- give regard to the social, spiritual and cultural values that relate to the water sources in that area, as determined through consultation with representative bodies, and
- give regard to the views of Aboriginal people with respect to cultural flows.

The water resource planning process is progressing and NSW is working with Aboriginal stakeholders to increase formal and informal engagement. Aboriginal stakeholders are represented on the Stakeholder Advisory Panels that have been established to date, and a process initiated to co-design the engagement model for more direct, detailed consultation.

Both the Department of Industry - Crown Lands and Water - and the Office of Environment and Heritage have consulted with the peak representative Nation groups of Murray Lower Darling Rivers Indigenous Nations (MLDRIN) and the Northern Basin Aboriginal Nations (NBAN) on the development of Water Resource Plans and the Long Term Environmental Watering Plans with a view to incorporating the objectives and outcomes of Aboriginal people.

Environmental Management

NSW supports the Commission's recommendation to ensure that policy frameworks provide for the efficient and effective use of environmental water to maximise outcomes for the environment and provide community benefit (Rec 5.1). In NSW, Water Sharing Plans (WSPs) provide the framework within which all water use is

planned and coordinated. WSPs specifically share the water resource in each valley, including a proportion of water to support the environmental needs of NSW riverine and wetland systems.

The NSW Department of Industry is responsible for ensuring the rules in WSPs that provide water for the environment (i.e. planned environmental water) are applied. The *Water Act 2007* (Cth) requires that the planning and management of environmental water in NSW must be consistent with the Basin Plan.

The NSW Office of Environment and Heritage (OEH) manages environmental water, including environmental water licences held by the NSW Government and planned environmental water under water sharing plans. OEH works with the Commonwealth Environmental Water Holder on the management of environmental water held by the Commonwealth Government.

Environmental water includes:

- planned environmental water allowances (or environmental contingency allowances) accrued through the regulated river WSPs; and
- environmental water licences arising from the purchase of entitlements by governments and the recovery of water savings from infrastructure projects.

Water is made available to planned environmental water allowances by rules described in the WSP relevant to that valley. These valley specific allowances have various size limits and rules on how and where they can be used, which are also specified in the relevant WSP.

The NSW Government commissioned an independent investigation into the allegations about the misuse of environmental water. The interim report of the Matthews Investigation notes the complexity surrounding the management of environmental water and the need for a cooperative approach to solutions. The NSW Minister for Regional Water has already agreed to further investigate key recommendations of the interim report, including the creation of a new Natural Resource Asset Division and a new independent Natural Resource Access Regulator. The legislation that will enable the full operation of the new regulator was introduced to the NSW Parliament on 19 October 2017.

The Minister has also announced that installation of water meters for all large users in NSW will be a priority, and that he will commence discussions with stakeholder groups, other Basin states, the Commonwealth and the Murray Darling Basin Authority (MDBA) on the policy and structural recommendations proposed for Basin-wide reforms.

The Commission suggests devolving the management of held environmental water to the lowest practical level where possible (draft rec 5.5). It is NSW's view that held environmental water is most effectively managed when a strategic approach is implemented at a catchment and basin scale. NSW supports engaging with local level stakeholders and system operators to inform environmental watering priorities and strategies; however devolving responsibility for management of held environmental water to a local level may reduce efficiencies and result in decisions and actions that do not achieve broader objectives, such as those set by the Basin Plan.

NSW uses Environmental Water Advisory Groups (EWAGs) to ensure local knowledge and expertise informs catchment scale environmental watering priorities and strategies. There may be opportunities to devolve responsibility to a local level for actions associated with water delivery to a specific asset, where the decision to allocate the water has been made in a strategic context and an appropriate level of expertise exists for delivery of environmental water. This would need to be supported by robust governance and reporting frameworks.

NSW is pleased to see that the Commission is considering how the independence of the Commonwealth Environmental Water Holder (CEWH) could be improved (draft rec 5.3). Given the recommendations of the report, the CEWHs direct involvement in formal decision making forums should be reviewed.

Due to the current complexity of the arrangements around the Living Murray (draft rec 5.4), NSW would support a review of the program, however considers that it is premature to recommend disbandment without further detail. Potential disbandment would need to consider possible flow on effects on other existing arrangements, particularly in relation to operations and maintenance funding, and efficiency in the coordination of the environmental water delivery to optimise outcomes.

Investment in water recovery

The draft report's comments about "cost effectiveness" of water recovery may not fully recognise how the context has changed since the advent of the NWI. The impact of water recovery on communities is becoming better understood through work such as the Northern Basin Review. The final report could better recognise that reducing the amount of water required to be purchased from the open market mitigates against social and economic impacts, and a simplistic dollar per megalitre calculation fails to take into account the broader social and economic impacts. These projects which are subject to an extensive assessment process must provide demonstrable environmental outcomes, value for money, and evidence that risks to third parties are identified and mitigated.

The Commission is critical of the lack of thought given to recovery of capital costs associated with infrastructure projects whereby irrigators are the main beneficiary. The Sustain the Basin Integrated Farm Modernisation (STBIFM) project is an on-farm irrigation modernisation program, and therefore targets privately owned infrastructure in the northern NSW Murray-Darling Basin. While private benefit is secured through upgraded infrastructure that addresses losses from existing irrigation systems, there is significant public benefit derived from the permanent recovery of water for the environment via the transfer of targeted entitlement types to the CEWH. This permanent transfer of entitlement assists the Australian government in meeting the SDL targets set by the Basin Plan. As such NSW considers that these investments in NSW are consistent with the intent of draft recommendation 7.3, and considers that the report could be strengthened by considering that publicly funded projects can justifiably lead to both public and private benefits.

NSW is committed to implementing the Basin Plan in a way that puts communities first – and water recovery programs and investment should consider outcomes of the program not only for the individual participant but also the broader community, and the NSW Government supports the independent analysis of efficiency measures currently being undertaken by EY.

Urban Water

The NSW Government has long been a leader in urban water reform in Australia. It was among the first jurisdictions to introduce independent economic regulation of water utilities, user pays pricing and long run marginal cost pricing, to develop detailed principles for recycled water pricing and to enact legislation to support competition in the urban water sector.

In particular NSW is supportive of the report's recommendation that calls for State and Territory Governments to ensure that decentralised integrated water cycle management (IWCM) approaches are considered on an equal footing alongside other water supply and management approaches, particularly in the planning of new developments to support growth (draft rec 6.4). However, NSW acknowledges that further work is required in developing place-based IWCM plans for major growth corridors and infill developments to ensure that decentralised options are considered alongside conventional centralised options.

This reflects and supports the approach being taken in the Greater Sydney Region through the NSW Government's 2017 Metropolitan Water Plan (the Plan). The Plan includes actions to establish the WaterSmart Cities Program, investigate barriers and enablers to cost-effective water recycling and establish partnerships and collaborative arrangements.

Regarding comments that there is evidence of under-pricing in regional NSW (draft finding 6.1), the 2015-16 NSW Water Supply and Sewerage Performance Monitoring report shows that the regional NSW Local Water Utilities (LWUs) have "largely achieved" the NWI pricing requirements.

In 2015/16 Regional NSW LWUs generally achieved lower bound pricing with a few exceptions.

- 48 LWUs out of 50 with above 4,000 connected properties have achieved positive Economic Real Rate of Return (ERRR) for water supply.
- Out of 36 LWUs with under 4,000 connected properties, 26 have achieved positive ERRR.
- All LWUs with negative ERRR have increased prices with an aim to obtain positive ERRR next year.

The draft report also comments that the NSW definition of full cost recovery is not consistent with the requirements of the NWI to achieve lower bound pricing (draft finding 6.2). NSW's principles encourage regional LWUs to seek to recover operational, maintenance and administrative cost, externalities and tax equivalents as well as make provision for the cost of asset consumption. This is consistent with the NWI lower bound pricing.

The NWI sets out that regional LWUs are generally considered to have achieved full cost recovery if a positive 'return on capital (ROA)' or positive 'economic real rate of return' is demonstrated. A small number of LWUs that have not achieved this measure have adjusted prices to increase revenue with an aim to achieve full cost recovery. NSW considers these deemed to comply on an outcome basis. This however, does not change the NSW principle of full cost recovery to achieve lower bound pricing.

Regarding draft recommendation 6.2 (b) that qualified independent bodies review financial performance, it should be noted that regional NSW's local water utility financial reports are independently audited annually along with local government financial reports. The key indicators from the audited financial reports are reported in the annual NSW Water Supply and Sewerage Performance Monitoring Reports.

The NSW Government has had successful funding programs to provide water infrastructure to regional communities such as the Country Towns Water Supply and Sewerage Project and the Safe and Secure Water Program (SSWP).

SSWP is established as part of Restart NSW to fund eligible water and sewerage projects that will deliver public health, environmental and/or social benefits to regional communities which in turn support economic growth and productivity in the State.

SSWP is designed to target water and sewerage projects in regional NSW to ensure infrastructure meets contemporary standards. The program will contribute funding to different stages of a project's lifecycle and is designed to assist local water utilities to effectively plan and deliver appropriate water and sewerage services for their communities.

Potential future reforms

NSW is supportive of calls by the Productivity Commission for a renewed NWI (Rec 9.1). However, the proposed timeframe of 2020 may be overly ambitious given the considerable amount of work that Basin states will need to undertake through to 2024 on implementing the Murray-Darling Basin Plan. A more flexible timeframe would make it more likely that meaningful achievements would be made through a renewed NWI.

NSW would support considering the inclusion of extractive industries as part of this renewed NWI. (Rec 9.1b). Extractive industries in NSW are explicitly incorporated in the same entitlement and planning framework as other water users and are required to be licensed just like any other consumptive water user.

Conclusion

NSW continues to lead the way in implementing reforms to fully recognise its commitments to the NWI. Meaningful reform takes time, appropriate resourcing and consideration of potential perverse outcomes where there are obligations to satisfying a range of regulatory and policy commitments, as well as responding to the changing needs and issues of stakeholders. NSW is a leader in water reform, not just in Australia, but globally, and will continue to innovate, develop and maintain best practice in this area.