



public interest
ADVOCACY CENTRE

National Water Reform 2020

Productivity Commission Draft Report

24 March 2021

About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in Sydney.

Established in 1982, PIAC tackles barriers to justice and fairness experienced by people who are vulnerable or facing disadvantage. We ensure basic rights are enjoyed across the community through legal assistance and strategic litigation, public policy development, communication and training.

Energy and Water Consumers' Advocacy Program

The Energy and Water Consumers' Advocacy Program (EWCAP) represents the interests of low-income and other residential consumers of electricity, gas and water in New South Wales. The program develops policy and advocates in the interests of low-income and other residential consumers in the NSW energy and water markets. PIAC receives input from a community-based reference group whose members include:

- NSW Council of Social Service;
- Combined Pensioners and Superannuants Association of NSW;
- Ethnic Communities Council NSW;
- Salvation Army;
- Physical Disability Council NSW;
- Anglicare;
- Good Shepherd Microfinance;
- Financial Rights Legal Centre;
- Affiliated Residential Park Residents Association NSW;
- Tenants Union;
- The Sydney Alliance; and
- Mission Australia.

Contact

Douglas McCloskey
Public Interest Advocacy Centre
Level 5, 175 Liverpool St
Sydney NSW 2000

T: 02 8898 6534

Website: www.piac.asn.au



Public Interest Advocacy Centre



@PIACnews

The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

Contents

Introduction	1
Responses to Draft Report elements	1
2. Progress against the NWI and the case for continuing reform.....	1
3. NWI renewal: a refreshed intent	1
Draft NWI renewal advice 3.1: a modernised goal	2
Draft NWI renewal advice 3.2: Modernised overarching objectives.....	2
Draft NWI renewal advice 3.3 Modernised objectives	2
Draft NWI renewal advice 3.4: Overarching principles.....	2
Draft NWI renewal advice 3.5: Elements of a renewed agreement	3
4. Building in good governance for a renewed NWI	3
Draft recommendation 4.1.....	3
Draft NWI renewal advice 4.1: Governance arrangements for a renewed NWI	3
5. Water resource management – a fit-for-purpose framework	4
Draft NWI renewal advice 5.1: Fit-for-purpose water resource management.....	4
6. Water entitlements and planning	5
Draft NWI renewal advice 6.1: Managing water use under the entitlement's framework.....	5
Draft NWI renewal advice 6.2: Water planning.....	5
7. Water trading and markets.....	6
Draft NWI renewal advice 7.1: The role and application of water trading and markets	7
Draft finding 7.1	7
Draft NWI renewal advice 7.2: Leading practice governance, regulatory and operational arrangements.	7
Draft NWI renewal advice 7.3: Information to support efficient water markets	7
8. Environmental management	8
Draft NWI renewal advice 8.1: Best-practice environmental objectives and outcomes.....	8
Draft NWI renewal advice 8.2: Integrated management	8
Draft NWI renewal advice 8.4: Review processes for outcomes	8
Draft NWI renewal advice 8.6: Transparent trade strategies	9
Draft NWI renewal advice 8.7: Innovative market approaches	9
Draft NWI renewal advice 8.8: Capacity to vary entitlement portfolio	9
Draft NWI renewal advice 8.10: Independent managers and auditing	9
Draft NWI renewal advice 8.12: Commitment to adaptive management	10
9. Securing Aboriginal and Torres Strait Islander peoples' interests in water	10
Draft NWI renewal advice 9.1: A new co-designed element.....	10
Draft NWI renewal advice 9.2: Improving cultural outcomes using existing frameworks	10
Draft NWI renewal advice 9.3: Improving access for economic development.....	10
10. Ensuring the integrity of water resource management.....	11
Draft renewal advice 10.1: Building system integrity through a renewed element	11
Draft NWI renewal advice 10.2: Ensuring the integrity of water use.....	11
Draft NWI renewal advice 10.3: Ensuring the integrity of water system management.....	11

11.	Urban water services.....	11
	Draft NWI renewal advice 11.1: Best-practice urban water system planning.....	12
	Draft NWI renewal advice 11.2: Principles for best-practice independent economic regulation	12
	Draft NWI renewal advice 11.3: Improving pricing and service outcomes.....	13
	Draft NWI renewal advice 11.4: Improving pricing and service outcomes.....	13
	Draft NWI renewal advice 11.5: Improving pricing and service outcomes.....	13
	Draft NWI renewal advice 11.6: Ensuring access to a basic level of service	14
	Draft NWI renewal advice 11.7: Governance of regional and remote services ...	14
	Draft NWI renewal advice 11.8: Monitoring and reporting on regional and remote service quality.....	14
12.	Water reform in rural Australia	14
	Draft NWI renewal advice 12.1: Helping communities deal with adjustment pressures.....	15
13.	Government investment in major water infrastructure.....	15
	Draft NWI renewal advice 13.1: A new water infrastructure element.....	15
	Draft NWI renewal advice 13.2: Assessment criteria for water infrastructure.....	16
14.	Community engagement.....	16
	Draft NWI renewal advice 14.1: Community engagement framework	16
15.	Knowledge, capacity and capability building	17
	Draft NWI renewal advice 15.1: Effective knowledge generation	17
	Continued engagement.....	17

Introduction

PIAC welcomes the opportunity to respond to the Productivity Commission's Draft Report on National Water Reform 2020 (the Draft) as a vital opportunity to refocus and reinvigorate the reform process to ensure more sustainable, resilient and equitable access to water resources and services.

Significant progress has been made since the initial National Water Initiative (NWI) agreement in 2004. Historic overallocation of water entitlements and unsustainable extractions have been reduced, and there has been a greater focus on efficiency, cost-reflectivity and increasing the sustainability of water systems and their surrounding environments. Progress has been inconsistent however, and in many cases has been stalled, or even reversed, by policies and interventions as a result of short term political and economic pragmatism.

The recent period of extreme scarcity on the east coast and mounting climate change impacts on water system sustainability are stark indicators of the urgent need for continued reform of water policy, planning and management practices. Failing to respond to these challenges invites unacceptable risk to the sustainability and viability of communities, environments and producers across the country.

This submission provides detailed input in response to sections of the draft report and a number of its draft advices and recommendations.

Responses to Draft Report elements

2. Progress against the NWI and the case for continuing reform

PIAC supports the conclusion there is a pressing need for renewed and refocussed reform across water policy, governance, planning and processes.

Though the NWI has informed significant progress to date, this has been inconsistent within and between jurisdictions. In many cases implementation of NWI-informed reforms has been compromised, and failed to deliver on the intent and objectives of the NWI. In some cases positive reforms, such as those in governance and oversight, have been actively unwound.

3. NWI renewal: a refreshed intent

There are many lessons in the experience of the past 17 years. This process is an opportunity to incorporate those lessons, recommit to the NWI and expand its focus.

Recognition of climate change, and adaptation to it, must be a central element of ongoing water policy, planning and management. The historic neglect of the rights and needs of Aboriginal and Torres Strait Islander Peoples and communities must also be addressed.

Draft NWI renewal advice 3.1: a modernised goal

The goal of a renewed NWI should be expanded to reflect the need to address climate change and recognition of Aboriginal and Torres Strait Islander peoples. PIAC supports the general intent of the suggested wording of an updated goal, but recommends a number of changes to ensure intent is effectively conveyed. Specifically:

The parties commit to this renewed National Water Initiative in recognition of the continuing national imperative to increase the productivity, efficiency and long term sustainability of Australians' water use, to service the changing needs of rural, urban and remote communities, and to ensure the resilience and health of river and groundwater systems and the environment they sustain, while adapting to and managing the risks of a changing climate. In recommitting to implementation of this agreement, the parties acknowledge the place of Aboriginal and Torres Strait Islander peoples and their need to participate in all processes and decisions informed by this initiative.

Draft NWI renewal advice 3.2: Modernised overarching objectives

PIAC supports the proposed additional focus on water service provision in the overarching objective of a renewed NWI, but suggests the following amendments:

- 'In the process this will provide certainty for investment, the environment, water users, the community, and Aboriginal and Torres Strait Islander peoples'
- 'Enable entitlement holders, communities and the environment to be resilient and adapt to a changing climate'
- 'Ensure effective, efficient, sustainable and equitable provision of water services that meet the needs of communities, the environment and water users in a changing climate'

Draft NWI renewal advice 3.3 Modernised objectives

PIAC broadly supports the identified objectives to be included in a renewed NWI agreement, with the following comments on specific objectives:

- Objective A5 refers to the capacity to trade water to promote its 'highest value'. Value, in this context should not be limited to the value of the return available to the individual user in the short term, but should also include scope for consideration of the highest value use to the community over time. For instance, the highest value use for water may not be sustainable in the long term, or may invite community and economic risk through unsustainable dependence upon a single use.
- Objective B1 should refer to equity of access to safe, reliable and healthy drinking water in remote communities.
- Objective B2 should refer to clear objectives for the level and quality of water services that reflect community expectations and preferences.

Draft NWI renewal advice 3.4: Overarching principles

PIAC broadly supports the intent of the overarching principles identified, but questions whether they are expressed in a way capable of being applied by governments. PIAC recommends the following changes to better reflect the intent as principles:

- Water policy, planning, systems and operations are resilient and capable of responding and adapting to a changing climate, droughts, floods and other shocks.
- All decisions are transparent and based upon the best available evidence and information.
- Regulation, governance and management are fit for purpose.
- Policies, regulation and management processes adapt and are continuously improved, informed by the overarching objectives of the NWI.
- All decisions that impact communities are made only after meaningful engagement with those communities.
- Community understanding and capacity is supported through transparent processes and information provision, to aid effective engagement.

Draft NWI renewal advice 3.5: Elements of a renewed agreement

PIAC broadly supports the additional elements included in the renewed NWI agreement.

4. Building in good governance for a renewed NWI

The NWI has not made progress in the area of governance. As the Draft report highlights, governance structures have been dismantled, fragmented and disempowered. PIAC strongly supports recommendations to restore and strengthen transparent governance architecture that can drive the implementation of ongoing water reform measures of the renewed NWI. Structures should be made more durable against the kind of political changes that undermined governance architecture previously implemented as part of the NWI.

Draft recommendation 4.1

PIAC supports the recommendation for regular water minister meetings to oversee the ongoing implementation and assessment of a renewed NWI. These meetings must be subject to a transparent and deliberative decision-making process, informed by the objectives and principles of the NWI.

The recommended entity responsible for periodic assessment of implementation progress of all aspects of the NWI should report publicly to these meetings, ensuring a transparent link between implementation, oversight and governance.

Draft NWI renewal advice 4.1: Governance arrangements for a renewed NWI

A renewed NWI requires refocussed, more durable governance architecture to ensure effective implementation and oversight. PIAC supports the identified aspects of governance the Commission recommends for inclusion in a renewed NWI. In particular PIAC supports an agreement:

- that clearly links desired outcomes and objectives, and focusses on implementing measures that meet principles of best practice to achieve those outcomes;
- that is independently and transparently monitored, assessed and reported on by a body with sufficient powers and resources to oversee, report and advise on implementation of the agreement;
- that is transparently overseen by regular meetings of water ministers, informed by independent assessment of the development and implementation of the renewed NWI; and
- that is required to be comprehensively reviewed no less than once every 10 years, with rolling three-year implementation work program assessments undertaken by jurisdictions.

5. Water resource management – a fit-for-purpose framework

While PIAC supports the elevated prioritisation of fit-for-purpose water resource management in a renewed NWI, we are concerned the recommendations in the draft report may be unreasonably biased towards development of water resources, and invite unnecessary risk to less developed water systems.

The conceptual framework in the Draft Report presents ‘relatively undeveloped’ and ‘developing’ water systems as having lower consumptive demand and lower risk to associated ecosystems. The Draft recommends water resource management in these systems should be less resource intensive and burdensome, and should be ‘enabling’ of development. PIAC considers this out of step with the issues identified in the Draft Report, particularly those related to the risks of climate change, and the deficiency of knowledge and understanding regarding the current state of many systems, their interactions and interdependencies and the level of risk to their sustainability.

In presenting the proposed framework for water resource management, the Draft Report makes an equivalence between ‘undeveloped’ systems and systems that should be further developed. The assumption is that effort and resources need not be committed to water resource management in less developed systems on the basis they are not yet likely to be at risk of overallocation or damage. This does not recognise that development of any kind, and extraction at any level, impacts the sustainability of water systems.

The Draft Report recommends each system have resource management regimes set according to analysis and evaluation of the characteristics of the system. PIAC considers such an assessment, with material financial implications for development and ongoing returns from water use, carries risk of compromise and politicisation, particularly at the point of initial assessment and any prospective ‘trigger point’ suggested in the Draft.

The uniform application of water resource management principles across all systems reduces this risk, while also ensuring any lack of understanding at the point of analysis does not increase the risk of overburdening water systems. PIAC considers the resources involved in undertaking such a process universally, and the costs related to it, a necessary and reasonable measure.

Draft NWI renewal advice 5.1: Fit-for-purpose water resource management

PIAC supports a higher priority role for water resource management in a renewed NWI, but recommends implementation of principles-driven water resource management regimes should not be qualified by the level of development of the water system.

Interception activities must be accounted for by a new water resource management framework, and PIAC welcomes the recognition of the cumulative impact interceptions can have on water availability across systems. However, the nature of interception structures and activities mean they are not easily identified and quantified. More problematically, they are not easily unwound once implemented. Interception activities are a key example why water resource management regimes cannot be easily ‘ratcheted up’ in stages, and should be applied consistently, transparently and predictably from the outset, across all water systems.

6 Water entitlements and planning

Consistent implementation of water access entitlements and reform of the scope of their application will be a crucial element in a more sustainable framework for water resource planning management.

Draft NWI renewal advice 6.1: Managing water use under the entitlement's framework

PIAC supports a renewed NWI agreement that includes a strong recommitment to outcomes and actions related to water access entitlements frameworks. PIAC regards the recommended improvements to the entitlement's framework as crucial elements of a renewed NWI agreement.

Draft NWI renewal advice 6.2: Water planning

While PIAC agrees a renewed NWI agreement should ensure water planning provisions are maintained and enhanced, we have concerns with some of the assumptions and details underpinning the priorities and principles, specifically:

- Explanations of the requirement for fit-for-purpose water planning appear to have an implicit development bias. The explanations assume the 'minimum sustainability requirement' for any water system is the point at which all aspects of water planning and management would be required, and up to this point water planning should enable and accommodate further development. The existence of overallocated or 'fully allocated' systems should not mean that 'full allocation' is used as the baseline for the application of planning and management.
- The discussion of better recognition of the rights and needs of Aboriginal and Torres Strait Islander peoples continues to treat cultural and economic uses of water as separate and distinct. The current conception of 'cultural use' unreasonably excludes economic uses, and does not recognise uses with economic value and return are a fundamental and indistinguishable aspect of cultural sustainability, support and expression. Options for better recognition of the rights and needs of Aboriginal and Torres Strait Islander communities should consider frameworks that do not artificially restrict cultural use.
- The setting and specifying of environmental objectives and outcomes must be transparent and based upon the best available scientific evidence and information. These should not be qualified by any other consideration.
- Discussion of trade-offs appears to suggest environmental outcomes can be subject to trade-offs against social or economic factors. This is not appropriate, and has been the source of significant failure in the Murray Darling Basin. Environmental outcomes must be set according to objective understanding of the sustainability requirements of water systems and the surrounding eco-systems. Trade-offs should only relate to decisions regarding how the remaining consumptive water resources should be shared, according to the expressed values and preferences of the community.
- While provisions to deal with periods of extreme scarcity are necessary, PIAC recommends consideration should be given to moving away from a framework based on averages or norms, and exceptions or drought. These ideas may be inherent sources of weakness in water

planning where shares and uses are planned and develop according to ‘averages’ that are increasingly difficult to predict and less reliably accurate. Where periods of extreme scarcity can result in shares below what can sustain any or all users, a planning framework that considers scarcity, with the ability to adapt to periodic ‘expansion’ in periods of higher availability, may be more sustainable in the long-term.

- Water quality considerations should not be limited to periods of extreme scarcity, but be part of relevant planning and resource management decisions at all times. Upstream developments, infrastructure expansions, interceptions and releases can have material impacts – that are exacerbated in times of extreme scarcity, but not restricted to them – on downstream (and groundwater) water quality.
- Continuous adjustment should be given priority consideration as the most appropriate means of implementing an effective framework for the timely review and resetting of water plans.

7. Water trading and markets

The NWI has identified markets as an important tool in achieving more productive, efficient and valuable use of water resources. Water trading and markets have been variously applied across jurisdictions and have had significant impacts on the way water is shared and used. Renewal of the NWI represents an opportunity to properly assess the impact of markets, and what the role of water trading and markets should be. The impact of water markets and trading should be assessed against the renewed objectives and principles of the NWI, as part of consideration of where water trading and markets can contribute to improved outcomes.

The Draft Report highlights the benefits water trading and markets have delivered, focusing on the volume and value of trades and the proportion of total irrigated farm assets that water represents. Though necessary for transparency, these measures do not indicate the contribution of markets to the objectives and outcomes of the NWI and are more accurately characterised as measures of activity.

More substantive indicators of the progress of markets in contributing to NWI objectives would include :

- The alignment between market parameters and the sustainable physical parameters of water systems,
- the diversity of water users (particularly productive water users),
- the productivity of water users,
- the profitability of water-using producers, and
- the health and sustainability of the system.

Quantity of trading should not be regarded as an inherent benefit, where many interactions with the water market may have been undertaken reluctantly, and resulted in sub-optimal outcomes for those involved. PIAC cautions against assuming any opportunity for benefit to some market participants is evidence of a generalised benefit.

Draft NWI renewal advice 7.1: The role and application of water trading and markets

The renewed NWI should strengthen the objectives and principles that guide the implementation of water trading and markets, where and how they should best be employed, and how they should be regulated.

PIAC supports water trading and markets being treated as tools of water resource management frameworks in renewal of the NWI. As tools, they should be optimised to make a positive contribution to the overall objectives of the NWI rather than regarded as an intrinsic good and maximised. Consideration should be given to the cumulative impact of water markets and trading, the alignment between water markets and the physical parameters of the system, and the risk of unintended negative outcomes resulting from the inappropriate operation of water markets (for instance the unsustainable development of water-dependant monocultures in certain water systems).

Draft finding 7.1

PIAC agrees monitoring of water trade should be linked to system-level resource management, used by jurisdictions to make broader social-economic assessments of the performance of markets in contributing to the overall objectives of the NWI, and other policies related to resource and regional sustainability. PIAC suggests this may involve developing a wider concept of 'value' in assessing the performance of the market, that extends beyond the short-term return realised from a unit of water to look at the contribution to diverse, sustainable, resilient and productive communities.

Draft NWI renewal advice 7.2: Leading practice governance, regulatory and operational arrangements.

PIAC broadly agrees with this renewal advice. We recommend recommitment to water market and trading principles focus on how markets can contribute most effectively to the overall objective of the NWI rather than more narrowly on the efficient operation of markets.

PIAC strongly supports the criteria that markets and trade are employed and regulated to maximise overall community benefit. We recommend this consider sustainability, productivity and resilience as well as efficiency of outcomes.

We do not agree market access should necessarily be open to all participants. Speculative interest, where profits, in a resource-limited system, may come at the cost of productive and consumptive uses, should be limited or excluded altogether. PIAC considers market access should be limited to a defined group of entities that includes producers, irrigators, Indigenous communities and their representatives, environmental water holders and water utilities. Consideration of additional market access should be justified only where it contributes to outcomes outlined in the renewed NWI.

Draft NWI renewal advice 7.3: Information to support efficient water markets

PIAC strongly supports a renewed NWI with strengthened provisions for more consistent, comprehensive, transparent and timely information being made available to the market, water system operators, governments and the community. This is as a crucial foundation for efficient market operation, and community trust in water resource management.

8. Environmental management

More sustainable and effective environmental management is arguably the primary requirement for a renewed NWI. While water reform has made some improvement in realigning water resource management and utilisation with the physical capacity of water systems, progress has not been significant or fast enough and has often been compromised.

The impacts of a changing climate have highlighted the catastrophic risks of continuing with business as usual, and demonstrated the physical realities of water systems must be better understood and adapted to in order to ensure the long-term sustainability, productivity and resilience of our communities.

Draft NWI renewal advice 8.1: Best-practice environmental objectives and outcomes

PIAC supports the best practice environmental objectives and outcomes, framed by identification of key environmental assets, being developed and implemented according to the criteria and principles recommended. We contend it is not always appropriate for environmental outcomes to be determined subject to community views or values, which have a more appropriate role in the determination of how outcomes should be achieved. Additionally, PIAC recommends the following changes to advice 8.1:

- Waterways and water-dependant ecosystems should be considered a high environmental priority where they are critical for the health or the sustainability of the system and its surrounds.
- Environmental objectives and outcomes must be objective and science-based, determined by baselines for the sustainability of water systems and surrounding or dependant eco-systems. These baselines and outcomes must not be subject to trade-offs. Trade-offs according to community preferences and values should form the basis of decisions regarding how to deal with the restrictions imposed by baselines, not how those baselines are determined.

Draft NWI renewal advice 8.2: Integrated management

PIAC supports an integrated approach to the management of environmental water linked to waterway management. We consider land-use planning and resource development regimes should also be integrated to ensure their processes recognise the objectives and principles of water management. Land-use and resource development decisions with potential impacts on environmental water and water management should trigger consideration of water impacts and the impact on the achievement of the objectives and outcomes of environmental water and water management.

Draft NWI renewal advice 8.4: Review processes for outcomes

PIAC supports processes to review environmental outcomes being included in the renewed NWI. However, these processes must not be allowed to introduce the risk that environmental outcomes are traded-off against other short-term considerations. Accordingly, PIAC recommends the following parameters for any processes reviewing environmental outcomes:

- They are undertaken independently and transparently, based upon objective indicators of environmental health, and the best available science.

- They are limited in scope and not used as a secondary mechanism for increasing the availability of water for consumptive use: any variation of outcomes should trigger a parallel review of water entitlements and sharing plans.

Draft NWI renewal advice 8.6: Transparent trade strategies

PIAC supports requiring environmental water holders to have transparent and publicly reported trading and use strategies for entitlements and allocations. These strategies must show how they link to overall objectives, what outcomes they seek to achieve and what the indicators of performance against those outcomes are.

PIAC agrees any revenue from trading should be ring-fenced and held or used only for defined purposes, with that revenue and use transparently reported. PIAC makes the following recommendations:

- Trading revenue use should be limited to expenditure that directly contributes to the objective of the Environmental Water Holder. Accordingly, it should not include core funded functions of the Environmental Water Holder or administration costs.
- Trading costs should not be deemed an allowable use of trading revenue.
- Research and development are a core function underpinning the operations of the Environmental Water Holder and should not be an allowable use of trading revenue.
- Monitoring outcomes is a core function of the Environmental Water holder and should not be an allowable use of trading income.

Draft NWI renewal advice 8.7: Innovative market approaches

PIAC does not support an explicit direction for Environmental Water Holders to pursue ‘innovative market approaches’. The potential role of market approaches must be subject to a transparent assessment of their likely contribution to the overall objectives and environmental outcomes. Environmental Water Holders have independent scope to pursue environmental outcomes in line with the stated objectives of the NWI and other relevant policy instruments, and it is neither necessary nor appropriate to direct them to take any particular approach.

Draft NWI renewal advice 8.8: Capacity to vary entitlement portfolio

PIAC does not support a renewed NWI including provisions for Environmental Water Holders to sell water entitlements. This would invite unacceptable risk decisions that would be politically compromised. There is sufficient scope to use variations in allocations, providing Environmental Water Holders with adequate management flexibility. PIAC strongly recommends this draft advice be removed from the final recommendations.

Draft NWI renewal advice 8.10: Independent managers and auditing

PIAC agrees managers and auditors of environmental water must be independent bodies with transparent decision-making processes that align with the updated principles and objectives of the NWI. Objective indicators of the health and sustainability of water systems and surrounding and dependant eco-systems must be the central to any independent audit process.

Draft NWI renewal advice 8.12: Commitment to adaptive management

PIAC supports a commitment to continuous adaptation in water management and environmental water systems. Effective monitoring, evaluation, data collection and reporting is vital to efficient water resource management, and ensuring a dynamic response to the impacts of a changing climate.

It is not appropriate that effective monitoring and evaluation, and the adaptive management it supports, only applies to developed or fully allocated systems. Monitoring and evaluation is a key function in the understanding and management of risk, including in systems that may be subject to less extraction. The changing risks resulting from climate change mean effective monitoring and evaluation of systems should be applied universally on principle.

9. Securing Aboriginal and Torres Strait Islander peoples' interests in water

Recognition of the rights and needs of Aboriginal and Torres Strait Islander peoples remains one of the greatest failures of water reform to date. PIAC supports the finding in the draft report that a dedicated objective and new elements specifically focussed on addressing the needs of Traditional owners and First Nations communities, must be included in a renewed NWI agreement.

Draft NWI renewal advice 9.1: A new co-designed element

PIAC strongly supports the recommendation to include a dedicated objective and element addressing the rights and needs of Aboriginal and Torres Strait Islander peoples in a renewed NWI. We welcome the recognition that these processes must be centred around Aboriginal and Torres Strait Islander community representation, be shaped by them and implement ongoing structures and processes that involve and respond to them.

Draft NWI renewal advice 9.2: Improving cultural outcomes using existing frameworks

Development of a new NWI element focussed on the rights and needs of Aboriginal and Torres Strait Islander peoples should include the identified content areas to be considered by the prospective 'Committee on Aboriginal Water Interests'. PIAC recommends this process address the artificial limitation of 'cultural outcomes', and recognise cultural outcomes for Aboriginal and Torres Strait Islander peoples must be able to include access rights to economic uses of water.

Economic sustainability and opportunity are a fundamental aspect of cultural expression and sustainability. While specific provisions to enable economic use are recommended, consideration must also be given to a more wholistic concept of cultural use and outcomes that allow for an economic dimension.

Draft NWI renewal advice 9.3: Improving access for economic development

PIAC supports consideration of measures to enable access to water as a means of improving the economic development and opportunity available to Aboriginal and Torres Strait Islander peoples. However, we do not consider it appropriate that jurisdictional governments be left to determine the role water access plays in supporting economic development. The rights and needs of Aboriginal and Torres Strait Islander communities and peoples should be determined by them, and the role of water access and the means and scope of improving water access, should be shaped by them.

10. Ensuring the integrity of water resource management

The failure to maintain and demonstrate the integrity of water resource management has destroyed community trust, and been a significant contributor to the overall failure of NWI reforms to deliver many of their expected benefits. Restoring and maintaining the integrity of water resource management should be a priority for a renewed NWI agreement, and will be crucial in navigating the difficult transitions and trade-offs that will be required to establish more efficient and sustainable water systems.

Draft renewal advice 10.1: Building system integrity through a renewed element

PIAC supports the inclusion of a renewed and broadened element in the NWI that seeks to ensure the integrity of water resource management.

Draft NWI renewal advice 10.2: Ensuring the integrity of water use

PIAC strongly supports the strengthened elements relating to measuring, monitoring and enforcement in water use, as foundational requirements of improved system integrity. We agree part of the renewed focus on monitoring and compliance should be funding for better engagement and outreach between enforcement entities and communities, to build understanding of the laws, how and why monitoring is undertaken, and how to comply.

Draft NWI renewal advice 10.3: Ensuring the integrity of water system management

PIAC supports improving measures to ensure the integrity of water system management. We broadly agree with the requirements recommended for water system managers, but we disagree that the development of systems understanding and information collection should be determined solely on a narrow risk-based assessment.

Many systems are not well understood and in many cases the level of information regarding the system, and the impact of usage, development or climate change, are not sufficient to make a reasonable assessment of risk to that system. The costs related to the development of databases and models of floodplain harvesting (\$37 million) were cited as unreasonably significant, and used to justify taking a risk-based approach to the development of data required for water system management.

PIAC does not consider cost alone a sufficient limiting factor in this case and strongly recommends a consistent approach to comprehensive data collection and information management is taken across all water systems.

11. Urban water services

Progress has been made in implementing NWI reforms to the provision of urban water services, with more cost-reflective, usage-based pricing. However, these reforms are not complete and have not been consistently implemented across smaller regional urban utilities. In addition, the governance, regulatory, policy and operational reforms required to support pricing reform have been inadequately and inconsistently delivered.

The increasing impacts of climate change have been inadequately recognised, and opportunities to reform practices, pricing and regulation to improve efficiency, sustainability and resilience of urban water systems have not been taken.

While pricing is becoming more reflective of costs, there is insufficient reflection of the value of different forms and uses of water. Better reflecting these would support more informed community engagement on conservation, recycling, and more sustainable and efficient use of all water resources.

The renewed NWI is an opportunity to refocus attention on reforms urgently needed to ensure affordable, sustainable access to essential water services in all urban centres.

Draft NWI renewal advice 11.1: Best-practice urban water system planning

PIAC supports updating the National Urban Water Planning Principles and embedding them in a renewed NWI. We support the principles identified for inclusion, with the following additional comments:

- The delivery of safe, reliable drinking water that meets a consistent quality standard must be a priority for urban water service providers and other processes that may impact upon water sources used for drinking downstream. For instance, extraction allowances, development permissions, interception arrangements and new infrastructure decisions.
- Best practice in responding to identified needs in urban water service provision should involve a transparent process testing alternative solutions. This should include assessment of a range of investment, operational and demand-management responses to determine the most efficient, affordable and sustainable response that addresses the identified need, in line with community preferences. For instance, such a process may preference demand reduction, conservation measures or upstream entitlement purchase above new infrastructure investment.

Draft NWI renewal advice 11.2: Principles for best-practice independent economic regulation

PIAC supports the introduction of national best practice principles in independent regulation of the urban water sector, and broadly agrees with the identified principles, with the following additional comments:

- Best practice independent regulation should be expanded to encompass 'best practice expert regulation of urban water service providers', rather than narrowly defined as economic regulation. Many of the considerations that will be required of regulators go beyond economic regulation to encompass aspects of health, sustainability, community values and well-being. The most effective responses are unlikely to be reached through more limited economic regulatory frameworks.
- Best practice in pricing should reflect efficient costs and incorporate the value of various water resources and uses to the community. Cross-subsidies and other 'inefficient' or non-reflective pricing mechanisms can be employed where they are a transparent response to expressed community preferences and ensure that pricing supports community preferences and policy objectives regarding sustainability, resilience, equity, affordability and fairness.

- Best practice regulation should promote operation of urban water services in the long-term interests of the community (rather than customers), with respect to affordability, sustainability, resilience, equity and fairness.
- Best practice regulatory processes do not need to facilitate effective competition and this should not be a priority. They should allow for effective competition where it has an identified benefit in furthering the overall objective of urban water service delivery.
- Best practice governance structures and institutional support for regulators should eliminate or limit the scope for ad hoc interventions that interfere with the objectives of regulation, undermine the principles of regulation or contradict the impact of regulations to the detriment of the community. For example, government decisions to set developer charges to zero undermined principles of efficient cost recovery and distorted the potential pricing signals favouring recycling and conservation schemes.

Draft NWI renewal advice 11.3: Improving pricing and service outcomes

PIAC supports the inclusion of a framework to guide the application of regulatory oversight across urban water service providers in a range of circumstances. However, PIAC considers this framework should operate on an assumption that applies best practice regulation to all entities. The framework should set out specific circumstances where a particular entity may not be subject to aspects of regulation. The framework should describe several ‘stepdowns’ in the intensity of regulatory oversight and the circumstances in which each would be appropriate. To the greatest degree possible, there should be a simple, transparent, objective set of criteria that determines the degree of regulatory oversight an entity is subject to.

PIAC strongly disagrees with the blanket recommendation all regional entities be subject to light touch regulation. Most regional entities have a higher profile of risks related to water resource security and quality, and greater risks related to resource inadequacy. All regional water service providers should have their level of regulatory oversight determined, transparently, according to the assessment framework implemented through a renewed NWI.

Draft NWI renewal advice 11.4: Improving pricing and service outcomes

PIAC broadly supports cost reflective pricing remaining a core principle. However, community values and preferences should determine the degree to which prices are determined by cost-reflectivity and efficiency. Priority should be given to better integrating wastewater and storm water as important and valuable water resources, with pricing structures that support their efficient utilisation.

We strongly disagree with pursuing nodal and flexible pricing approaches where they are consistently and strongly rejected by the community, on the basis they do not reflect community values of fairness, simplicity and equity.

Draft NWI renewal advice 11.5: Improving pricing and service outcomes

All urban water service providers must be subject to consistent requirements for public reporting and independent monitoring, oversight and audit. PIAC supports an updated NWI including this commitment, along with a framework setting out what the parameters of reporting should be, how

the reports should be presented and used, and how this reporting should link to progress assessments of NWI implementation.

Draft NWI renewal advice 11.6: Ensuring access to a basic level of service

All residents and communities in Australia have a right to expect a safe, secure, affordable access to healthy water services. PIAC supports a renewed NWI reflecting this, but is concerned with the characterisation as access to 'a basic level of service'. Governments should ensure equity of outcomes for all communities and the cost of delivering appropriate water services should not be an acceptable reason for delivery of water that does not meet acceptable standards of health, safety and quality. This approach currently leads to remote communities with water services that would not be deemed acceptable in larger urban areas.

Renewed NWI principles should include a guide to inform effective CSO payments to water service providers where meeting the acceptable level (rather than basic level) of service provision is not economically feasible for the water service provider.

Draft NWI renewal advice 11.7: Governance of regional and remote services

PIAC supports a renewed NWI containing principles for governance of regional and remote water services. Effective financial and executive separation should be maintained to ensure investment and operational decisions are not compromised or subordinated to the needs of the parent entity, or subject to short-term political imperatives. Governance principles should encourage co-operation on a catchment level, to match water service operations and investments with physical water systems, to the greatest degree possible.

Draft NWI renewal advice 11.8: Monitoring and reporting on regional and remote service quality

PIAC supports consistent, transparent, independent monitoring of water quality and service outcomes in Aboriginal and Torres Strait Islander communities. This monitoring should be directly connected to decision-making processes that may impact upon water service delivery and quality in these communities (such as upstream developments or interceptions), and should be a key consideration informing those decisions.

12. Water reform in rural Australia

Renewed water reform processes, in conjunction with rapidly a changing climate, will significantly impact many rural communities. Some communities will face seismic shifts in production and industry mix, water resource availability, and employment and community health and sustainability as a result. While effective water reform seeks to minimise the scope of negative impacts by maximising availability of water, bolstering the sustainability of water systems and improving efficiency and productivity, this will involve significant ongoing adjustment impacts in many rural communities.

The renewed NWI should put in place measures to identify community impacts early, and set out a range of government responses to assist communities to remain viable, productive, sustainable and resilient in the face of reform and climate induced changes.

Draft NWI renewal advice 12.1: Helping communities deal with adjustment pressures

PIAC welcomes inclusion of principles guiding government responses to reform and climate-induced adjustment impacts in rural communities. Early identification and detailed understanding of impacts will be crucial, and will require effective assessment of the socio-economic impacts of previous actions, as well as prospective reforms. There is already a significant base of evidence of rapid shifts in production mix exerting pressure on the viability of communities. The severity, nature and cause of these impacts must be assessed.

PIAC considers catchment-based socio-economic assessments, undertaken in parallel to assessments of the sustainability of the water resources and eco-systems in the catchment, should form the basis of policy measures to assist communities to adjust to ongoing change.

13. Government investment in major water infrastructure

Infrastructure investment decisions initiated outside of properly structured and assessed planning and regulatory frameworks are a material source of inefficiency and risk in the implementation of water reform. As the Draft Report highlights, many current investment decisions have not been made transparently according to objective, independent assessments of established benefit, risk and impacts.

Water infrastructure investment has immediate, material impacts upon costs and access for consumers, and can have significant, long-term flow-on effects to downstream systems and communities. Impacts on interdependent systems can result in unacceptable risks to the security, sustainability and health of community access to water. A priority of a renewed NWI must be to ensure decisions regarding government investment in water infrastructure are undertaken transparently, subject to objective and independent assessment of risk, cost and benefit, and with appropriate consideration of impacts on related systems and communities over the long term.

Draft NWI renewal advice 13.1: A new water infrastructure element

PIAC strongly supports the recommendation a renewed NWI include a new element to direct jurisdictional investment in water infrastructure. We highlight the following for consideration in the development of this element:

- Investment decisions that rely on government subsidy, or which will effectively result in a government subsidy, must only be made subject to structured, transparent engagement with community stakeholders to ensure the decision accords with the preferences and values of the wider community (that is that the community consents to sustaining the subsidy through the government budget).
- Investment decisions must only commence subject to clear identification of the problem or issue to be addressed by the investment. This should be a first step in a transparent process to assess all alternative options and responses (this should include demand management, industry adjustment, conservation and buybacks) according to objective criteria considering benefits, risks and costs.
- Investment decision-making processes must consider the potential cumulative, downstream and long-term impacts of all options. Particular consideration must be given to the potential for

any particular investment decision to contradict the principles or undermine the objectives of water policy elsewhere. For instance, where the construction of a dam to improve water security for entitlement holders in one area impacts upon the availability, security and quality of water downstream.

- The National Water Grid Authority (NWGA) in its current form, should not be regarded as an appropriately independent institution for assessing water infrastructure projects. Its objectives and principles are not aligned with those of the renewed NWI, and its decision-making processes are not robust, independent or transparent enough to meet the needs of a new water infrastructure element in the NWI.
- Option selection criteria for water infrastructure investment must require a positive net benefit.

Draft NWI renewal advice 13.2: Assessment criteria for water infrastructure

PIAC supports a new infrastructure element that includes a framework and criteria for decision-making and determining projects to adhere to the principles, objectives and requirements of the NWI. We highlight the following additional considerations in relation to the development of these criteria:

- Economic viability and cost-benefit analyses must include robust estimates of social and distributional impacts, including impacts on downstream interdependent communities.
- Expected social, economic and cultural outcomes sought from water plans should also include an assessment of the risks (and contributors to those risks) that outcomes will not be realised.
- Defined reliability of water rights set out in plans, which account for the likely impacts of climate change should also be used to 'qualify' the expected benefits included in any assessment.

14. Community engagement

The inadequacy and inconsistency of community and stakeholder engagement, and the lack of transparent processes linking engagement with outcomes, has been a major cause of the lack of trust that characterises water policy and planning. Too often community and stakeholder engagement are, if undertaken at all, used as a tool of public information, validation or as part of a process justifying decisions after the fact.

Policy, planning and management decisions regarding water often involve zero-sum decisions and difficult trade-offs between a range of interests. The impacts of decisions in water often differ across interest, and over time, involving complex interactions that may not be immediately apparent. Engagement should be an enduring aspect of governance, decision making and business operations, not process based. Engagement must be representative and deliberative, dedicating the time and resources required to build the capacity of community stakeholders to understand the nature of decisions and provide an informed expression of their preferences and expectations.

Draft NWI renewal advice 14.1: Community engagement framework

PIAC supports the engagement framework proposed in the Draft, and the characteristics highlighted as integral to best practice.

15. Knowledge, capacity and capability building

The Draft Report highlights the substantial knowledge gaps identified by stakeholders, and asserts the importance of better understanding of water systems and climate impacts as key to the objectives of a renewed NWI. Evidence-based policy relies upon the development and adaptation of research and systems knowledge.

Draft NWI renewal advice 15.1: Effective knowledge generation

The evidence and understanding required to underpin effective decision making must be made available through adequately funded and objective-focussed research and knowledge development. PIAC supports the inclusions of the identified principles in a renewed NWI. Knowledge development should be a priority for the NWI, and research, evidence collection and capacity building should be directly linked to the objectives and outcomes of the NWI and where possible, explicitly funded as part of the NWI agreement.

Continued engagement

PIAC would welcome the opportunity to meet with the Productivity Commission and other stakeholders to discuss these issues in more depth.