



Nature Conservation Council

The voice for nature in NSW

National Water Reform Inquiry Productivity Commission
GPO Box 1428
Canberra City, ACT, 2601
Online submissions: www.pc.gov.au/inquiries/current/water-reform

18 April, 2017

Dear Commissioners,

The Nature Conservation Council of NSW welcomes this opportunity to provide comments to the Productivity Commission's timely review of the National Water Initiative (NWI).

The Nature Conservation Council of NSW (NCC) is the peak body for environmental organisations in NSW. We represent 150 community based environmental organisations and have been a leading voice for environmental conservation throughout our 60-year history.

We are concerned that the reforms have stalled and the modest public benefits arising from institutional reforms and environmental gains that have been achieved through the investment of over \$15 billion of tax-payer funding, are now at risk of stalling or even being reversed.

We recognise that this review will be a significant test of the Productivity Commissioner's independence, given the extent to which Coalition Party members are actively undermining the reform process, to benefit extractive industries within their constituencies, over and above the short and long term, national public interest.

Whilst NCC has a wide range of observations concerning the implementation of the NWI and the ongoing delay in implementing a sustainable Basin Plan, we limit our comments to the following major issues that are or will significantly detract from the NWI's final implementation:

1. The micro-economic institutional governance reforms of the 1990's – specifically the separation of manager/regulator/operator roles and greater transparency in the policy development process – are reverting back to the arrangements of the 1980's which to some extent caused the current inefficiencies and unsustainable extraction levels. For example –
 - a. The managers and regulators of water have been captured by the infrastructure operators (public and private) and irrigation industry lobbyists, to the extent that Ministers and government agencies only consult with them on water sharing issues of national significance.
 - b. At the Federal and State levels the Ministers for Primary Industries (Agriculture and Mining) now have responsibility for managing water sustainably – but clearly have a distinct conflict of interest – in that the stated roles of the Agriculture and Mining portfolio's are the promotion of the industry not its sustainable contribution to the nation let alone equitable sharing within and between generations.

2. The localism that characterised the water allocation and management processes of the 1970's and 1980's, when many of the problems in water management arose, is being reinstated. The Murray-Darling Basin Authority and State water agencies are failing to consult beyond the local communities within the Murray-Darling Basin – despite the fact that they are making decisions concerning resources of national significance and their local advisory bodies frequently do not include any environmental advocate.

Albeit, we note with concern, that even the Productivity Commission now offers a “freecall” number for regional areas but not metropolitan ones.

3. The NWI requires that the water resource planning and allocation process to be adaptive to, and to accommodate, changes in climate regardless of the drivers of that change.

In NSW the link between climate and the allocation of water was removed in a poorly designed regulation several years ago. The regulation prescribes that the historical climate series used in the allocation process be limited to pre 2004 records. The effect of this includes, but is not limited to:

- a. Increases the risk that water will be over-allocated to General Security access licences within a season, and this results in a failure to supply higher security licences, or the need to suspend the prevailing water plan with the consequence that the environment does not receive its planned environmental flows;
- b. Distorts market prices by promoting unrealistic expectations regarding General Security and High Security reliability; and
- c. Inflates the underlying ‘cap factors’ that are used to estimate the extent to which water recovery targets have been achieved.

The NSW Government is currently proposing Water Resource Plans that would set this ‘legal fiction’ in stone until at least 2024.

Furthermore, we note that the Commonwealth Minister for Water – is on public record indicating that he does not believe in climate change nor that there is a problem with the extent to which water is extracted for irrigation purposes.

4. The Murray-Darling Basin Authority and NSW water agencies are deliberately inhibiting the efficient use of environmental water – quietly backing down on their public commitment to the two ‘Principal Policy Measures’ – firstly that environmental water that is not consumed at site can be shepherded (protected from irrigators extraction) and that environmental water that is returned to the river is credited back to its holders’ accounts.

Contrary to public statements that these ‘measures’ are not possible under NSW legislation or would result in third party impacts, the regulation for these things exists, or in the case of ‘shepherding’ could easily exist within the current regulatory framework, and the assessment of third party impacts must be symmetrical. It is not enough to simply say that irrigators will be affected when many irrigator decisions/actions have impacts on other users – be they extractive users or the environment.

We note that the reduced efficiency in environmental water use as a result of these artificial constraints to efficient environmental water use – is currently being used by the MDBA to justify

reducing SDLs in the Northern Basin – on the basis that if environmental targets can not be achieved within the interim SDLs the SDLs should be relaxed.

The NCC notes that the MDBA now has the modelling capabilities to test what SDL's are required from an environmental perspective prior to any 'socio-economic' considerations – but has not sought to answer this fundamental question.

5. The NWI removed the potential for Governments to recover water access without compensation.

The subsequent statutory banning of the market purchases of environmental water in NSW is excessive; it inhibits any future efficient market based adjustment of the portfolio – and reflects a knee jerk reaction to inflated community concerns regarding the recovery of environmental water.

NCC notes that the MDBA, contrary to the advice of many members of its Northern Basin Advisory committee, recommended the sale of environmental water in the Macquarie and the Gwydir regulated rivers despite the fact that such holdings would be very difficult to recover again using a purely 'efficiency investment' strategy – whereas the efficient recommendation (in the event that the surplus holding was true – which is unclear) would be for the environmental manager to sell any unused allocations until such time as it was definitively confident that the holdings were no longer required. The fact that such a recommendation has been made strongly suggests the relevant management team is either incompetent or subject to undue pressure from industry.

6. Despite the NWI's call for increased integration of the management of linked-related water sources (notably groundwater and surface water) – the States and Territories have either failed to undertake the required studies into these areas, or continue to ignore the linkages due to the perceived risk of net 'over allocation.'
7. Despite many commitments by the NSW Government and its water agencies over the past twenty years to ensuring that indigenous cultural and heritage flows are recognised in water plans – no genuine progress has been made in reflecting these needs in the suite of Water Resource Plans currently being developed.

It is now almost 20 years since the 'interim environmental flow rules' were implemented in NSW, and 13 years since the adoption of the NWI, and yet both State and Federal agencies continue to obfuscate so that no Basin Plan is implemented. If that is not a clear failure in the efficiency of public policy development – it is unclear what would reasonably meet that definition.

The NCC looks forward to your advice on the above issues. Should you require any further information on the issues raised above please feel free to contact Daisy Barham on ncc@nature.org.au

Yours sincerely,



Kate Smolski

CEO

Nature Conservation Council of NSW