



# **Principles for a National Water Agreement**

**The Productivity Commission acknowledges the Traditional Owners of Country throughout Australia and their continuing connection to land, waters and community. We pay our respects to their Cultures, Country and Elders past and present.**

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## Introduction

The Productivity Commission (PC) welcomes the opportunity to provide feedback on the discussion paper *Consultation on the draft principles of a National Water Agreement* (NWA) (the Principles discussion paper), published on 20 August 2024 (Australian Department of Climate Change, Energy, the Environment and Water 2024a).

The PC has previously provided advice to governments on the potential content and structure of a new NWA (PC 2017, 2021, 2024). This submission draws on that advice.

The 2004 National Water Initiative (NWI) has served Australia well as a foundation for water management. However, growing water security challenges call for a renewed and updated national agreement.

- Climate change is making rainfall as a water source increasingly less reliable.
- Demand for water is growing and changing.
- Changing community expectations are placing pressure on urban water service providers, necessitating changes to business-as-usual water service provision.

A robust and enduring NWA would:

- guide the nation and its communities to navigate these water security challenges
- formally recognise First Nations peoples' reverence and cultural responsibility for water and continue to expand the involvement and participation of First Nations peoples in water management
- improve and expand on the NWI while retaining its foundations – a recommitment to the core commitments of the NWI would provide a consistent authorising environment for jurisdictions to implement and continue to improve on best practice
- reflect the importance of both sustainable water resource management and effective, equitable and efficient water service provision.

## A small set of overarching principles would better support best practice

In 2021 and 2024, the PC advised governments that much of the intent and framework of the NWI remained relevant and should be retained. By drafting new content, reframing some areas and refocusing the agreement to deal with future challenges, governments could develop an enduring agreement fit for the next 10 to 15 years and beyond.

Figure 1 presents a summary comparison of the architecture for the 2004 NWI, the PC's 2021 advice for a renewed agreement, and what we understand to be the proposed architecture for a new NWA.

The architecture proposed for a new agreement through the Principles discussion paper and the previously released *National Water Reform Outcomes Framework* discussion paper on outcomes and objectives published on 28 June 2024 on behalf of the Water Ministerial Council (Australian Department of Climate Change, Energy, the Environment and Water 2024b) departs from the framework of the NWI and PC's 2021 advice.

**Figure 1 – Comparing the NWI, the PC’s 2021 advice and the proposed NWA architecture**

NWI 2004	PC NWR 2021	NWA 2024 (proposed)
Overarching objective 10 detailed objectives	Overarching objective 13 detailed objectives 7 water resource management 6 water service provision	7 high-level objectives
8 key elements	6 overarching principles	62 outcomes
37 outcomes	10 key elements	173 principles
110 actions	Agreed outcomes	
Jurisdictional implementation plans	Jurisdictional rolling implementation plans (setting out planned actions against outcomes)	Jurisdictional action plans

Of particular note is that the PC in 2021 proposed six overarching principles, intended to operate as a set, to underpin a new agreement. These were designed to transparently align with and support the agreement’s objectives and outcomes. Applied across all key areas of water policy, planning and operation, this set of principles would support the adoption of best practice approaches to achieving the intent of a renewed NWI.

The principles (reiterated in the PC’s 2024 advice on the NWI) are:

- Capacity to contend with droughts, floods and shocks, and to adapt to a changing climate, is strong.
- Regulation, governance and management are fit-for-purpose.
- All decisions are based on the best available evidence and information.
- Innovation and continuous improvement are encouraged and adaptive management is required.
- Communities are engaged effectively before decisions that impact them are made.
- Communities are provided with sufficient information to enable effective engagement.

A principle can be defined as a fundamental proposition that guides actions or activities. To serve this purpose, a principle should be clear, high level and applicable across a range of contexts. It should go to the ‘what’ of an issue, not the ‘how’.

It is difficult to discern these characteristics in many of the 173 principles included in the Principles discussion paper. As crafted, there is a risk that they will not sufficiently drive best-practice approaches to achieving the intent of the new agreement – putting at risk achievement of the agreement’s objectives and outcomes.

In its 2021 report, the PC advised that a renewed NWI should:

- limit the use of prescriptive one-size-fits-all ‘implementation actions’, and instead set out principles for best-practice approaches to achieving desired outcomes

- be drafted and communicated in a clear and transparent manner that builds community understanding of, and confidence in, its objectives and intended outcomes.

To achieve this outcome, the draft principles would need to be recast. A set of no more than 10 high-level statements would serve better to guide the development of actions aimed at achieving the intent of the new agreement.

In addition, while the Principles discussion paper maps the draft content of the NWA to its corresponding NWI clause/s, it does not identify NWI content that is *not proposed to be* reflected in the NWA. This omission may give rise to uncertainty as the status of any NWI clauses in this category, in particular for the development and implementation of jurisdictional action plans and the periodic assessment of jurisdictional implementation progress. For improved clarity and transparency, the NWA should (in its final form):

- define its connection to and continuity from the 2004 NWI
- clearly explain not only which parts of the 2004 NWI are retained within the NWA (and how they are retained and given effect), but also what parts will not be included in the new NWA and why this decision has been taken.

## **At a minimum, steps should be taken to improve the value of the principles**

If the principles are not recast, their value would be enhanced by greater clarity about their role, purpose and intended longevity and by clear obligations on jurisdictions to apply them.

### **The purpose, role and intended longevity of any principles should be clarified**

To improve public understanding and acceptance, a Role Statement that articulates the purpose and intended longevity of the principles would assist states and territories in applying them. In particular, the Statement could make clear whether the draft principles are:

- drafting suggestions to guide jurisdictions in preparing their action plans or
- intended to have a more enduring role and purpose as policy principles that represent a shared understanding about the fundamental propositions that should guide the development of approaches to achieving effective, equitable and efficient conduct of sustainable water resource management and water service provision.

From an agreement architecture perspective, the latter is preferable. Principles of this kind would play an essential role in linking the NWA's proposed objectives and outcomes to each jurisdiction's NWA action plan, and through this ongoing connection inform the development, accreditation, implementation and ongoing assessment of those plans.

### **Stronger obligations should be placed on jurisdictions to adhere to all elements of the Agreement**

In its NWR 2021 and 2024 advice, the PC supported the use of a fit-for-purpose approach in a renewed NWI to 'provide all parties to the agreement with sufficient discretion to implement actions that are fit for purpose in delivering agreed outcomes within their jurisdiction'. The intent of this advice was to enable a jurisdiction to exercise discretion on how best to achieve an outcome (given local circumstances), but not to allow discretion as to whether or not to apply a principle or implement an action at all.

The degree of obligation on jurisdictions to apply the draft principles when preparing their respective action plans is unclear. The word ‘consider’ in the requirement that ‘jurisdictions must consider these [principles] when developing and delivering action plans’ (p. 2) implies that a jurisdiction will be able to exercise discretion about whether the principle will be applied. There also does not appear to be any obligation on a jurisdiction to explain the reason(s) for not applying a principle, if it chose this course of action.

Limited obligation would diminish the strength of an NWA by opening the door for jurisdictions to select which principles to apply. Such an outcome would be detrimental to the conduct of water management in Australia if this creates a perception that long held foundations of best-practice water management – such as statutory based water planning, secure defined entitlements for all uses, cost reflective pricing, independent economic regulation of water pricing and ecologically sustainable, economically viable and culturally responsive water infrastructure – are discretionary considerations.

The consequences of a shift in this direction should be considered deeply by all governments and their communities. It is in no one’s interest to inadvertently weaken current national water policy settings such that a door is opened to possible scenarios of:

- taxpayer burden and bill rises for future water customers not commensurate with improvements in water security
- reduced certainty for business investment
- irreversible harm to water environments and ecosystems, that sustain ecological and human health, and productive value from the use of the nation’s water resources.

Bearing this in mind, the new agreement will be more effective in supporting attainment of governments’ shared objectives if:

- the section dealing with guiding principles uses language that conveys a clear sense of obligation on jurisdictions to adhere to them when developing and implementing their action plans
- the agreement includes a requirement for a jurisdiction to provide a transparent explanation where it does not apply one or more of the principles in the making, and implementation, of its action plan.

## **The principles need to support independent assessment**

Independent assessment was a feature of the governance architecture of both the 2004 NWI and the 1994 COAG Water Reform Framework, and played a key role in holding governments to account for their performance against agreed commitments.

In its NWR 2021 and NWR 2024 advice to Australian governments, the PC advised that it is critical to retain independent assessment of jurisdictional implementation progress in a renewed agreement. This sentiment was supported by many of the participants to the two inquiries.

Independent assessment is vital to sustaining trust in governments by constituents, businesses and all Australians with an interest in water. It also supports an authorising environment for Australian governments to reform, when necessary, elements of their water management practice. The risk of governments losing the trust of customers, communities and industries is pronounced given the anticipated scale of challenges posed by climate change and increasing demand, and the investment in management and service delivery required to respond to these challenges and meet changing community and industry expectations.

Up to now, material released by the Australian Government for public consultation has not provided much guidance on the potential scope and conduct of performance assessment requirements in an NWA.

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The standing and rigour of the proposed NWA would be enhanced by ensuring that the agreement supports independent assessment of jurisdictional performance in implementing their respective action plans. A clearer and more concise set of principles would greatly assist the performance assessment task, and through this, maintain the power of future assessments to promote accountability and transparency.

## In summary

Addressing the matters raised in this submission will enhance the strength and guiding value of the proposed NWA to a level similar to its predecessors, and, through this, sustain the long-held shared commitment amongst Australian governments to the goals of efficient, productive and sustainable use and management of the nation's water resources.

The PC notes that National Water Ministers at their 28 June 2024 meeting discussed a pathway for finalising an NWA. It is critical that this pathway leads to an agreement that delivers a clear and strong national water reform blueprint, in which all Australian governments make clear the national interest sought to be served by the NWA, and that contains the transparent commitment of all governments to the conduct of best-practice water management in all its forms.

## References

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