

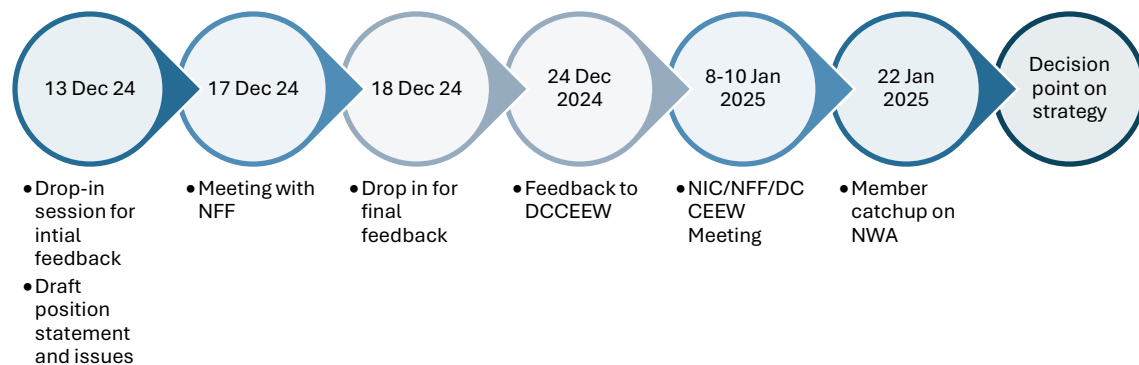


13 December 2024

Briefing note: Update on National Water Agreement and feedback from Members on next steps

For: NIC Members

Action: Members are to provide feedback on this strategy and key messages by next Wednesday 18th December to inform our next steps.



Update:

The updated draft version of the NWA was released.

This new version was analysed against the National Water Initiative document with assessment of improvements, or issues compared between the two documents.

Overall, the new draft is much better than both the original NWI and previous NWA (despite some concerns remaining – see below).

The new version has been provided to States to 'undertake their own processes to prepare for signing'. Any changes now will be driven by states.

Our external position, if asked, is: "The NWA has come along way, it's now up to the States to choose what to do with it, which is the detail we don't have and means we cannot say if it will be best practice or not".

NIC will prepare some detailed background notes to guide your engagement with state agencies if asked.

Two drop-in sessions have been held to discuss the initial and more detailed assessment of the NWA. These presentation provide additional detail and are available on the website.

Assessment of the new version against the original NWI:

Findings		Key			
		Improved	Decline	Neutral	
		Discuss			
No.	Objective	Comparison to NWI	Comparison to NWA	Acceptable	Points to consider
1	Safe and secure supply of sufficient water quality and quantity to sustain communities, culture, natural environments and economic prosperity				Greater recognition of the importance of drinking water supply, as well as CSO, where cost-recovery is not viable. No major issues that weren't already in the NWI.
2	Investment in major water infrastructure that is effective, strategic and transparent				This Objective is largely new, compared to the NWI. There is risk that it is prescriptive for infrastructure processes, however, it is also very high-level and many of these processes are BAU already.
3	Water management that recognises and protects Aboriginal and Torres Strait Islander water interests and values			Note 3.12	Still have consideration of unallocated water being made available, but note section on this in O7 which addresses many concerns.
4	Evidence-based decision making in water management that is underpinned by robust and coordinated use of science, data and cultural knowledge			Note 4.3	This Objective is relatively new compared to the NWI. There remains one point of concern relating to the precautionary principle, however, this has been significantly clarified since the first draft. The clauses relating to First Nations have also changed considerably since the first draft.
5	Sustained community trust and confidence in government, water agencies, water managers and water users			Note 5.13	Improvements since NWI are positive, with more detail on community engagement. 5.13 relates to structural adjustment (this is in NWI), but key changes.
6	Environmentally sustainable water planning and management that is interconnected, adaptive and responsive to climate change and other circumstances	Very mixed (see notes). TBC (pending update to Schedule E)		Very mixed, but on balance, the changes to 6.3.4 and 6.14 could make this a net-improvement (but need to carefully consider other items).	It is difficult to assess these principles, as many will come down to what will be in the new Schedule E, which is not yet updated. However, points to note/check at this stage include: * 6.3.1.4 - removal of 'unfair' for behavioural change as a way to reduce usage * 6.3.4 - noting inclusion of complementary measures and stronger language on 'optimising' socio economics * 6.9 - re triggering reconsideration of plan rules * 6.14 positive language on climate change * 6.15.4 - noting expansion to "other public interest benefits" * 6.20.3 - more detailed section on managing interceptions * New sections on 'co-produced water' * New section on Groundwater
7	Water management frameworks that facilitate judicious and efficient use of water				Still have the 3% in the RAF, but need to assess strategic risk/return in progressing this, given other improvements.
OVERALL				DISCUSS	

Key Issues	Compared to NWI	Compared to NWA (v1)	Key
Property Rights	Maintained		Improved
Risk assignment framework	Link to improved water recovery clause, but ideally strengthen further		Decline
Water recovery	WIN!		Mixed
Climate Change	WIN!		Neutral
First Nations			
Unallocated water	Now mentions impacts on other users, but also a clause re First Nations		
Value of Irrigated Ag	Ideally strengthen further		

Considerations:

We must be strategic given the timing of the upcoming election.

We must manage our desire for further changes, against the risk that we lose the positive changes, if the signing becomes more political and becomes an election issue.

Many of the key wins are in areas that are high risk for the industry in the next few year – climate change and water recovery.

The draft internal messages are:

- This is a significant improvement on both the NWI and the former versions of the NWA
- We have had great wins on priority issues, which will better place the industry for future challenges, particularly climate change and water recovery



- NIC will be raising some specific issues to agencies for potential further changes, but this will be done with a considerable degree of caution to manage risks, since this version is a better outcome than the current NWI
- This is a unique opportunity to further strengthen water property rights which must not be ignored, but most important is that the status quo is maintained
- NWA has several internal inconsistencies (risk assignment, pricing and climate change) which may provide opportunity to exploit later if needed.

The draft external messages are

(note: the objective is to balance our desire for change, against the risks from delays in signing):

- **NWA has come a long way, but devil will be in the detail**
- **Impossible to have a position** as states will choose their own adventure in how they action the principles, and which ones, in their action plans
- **Agriculture still missing** in action, and the importance of water for farming, for Australia's food security
- Governments must be transparent in further developments, such as new or amended schedules
- Clarity still needed on new principles and definitions

Possible strategy:

Our focus will be a direct strategy to **quietly** pursue minor changes consistent with overall messaging, focusing on:

- i. Risk assignment framework (RAF):
 - i. Remove the "3% provision" in which compensation is not payable
 - ii. Link back to the "entitlement characteristics" section (the reason being that this requires any variation to an entitlement to have "mutual agreement" with the entitlement holder, which is contrary to how the RAF has typically functioned).
- ii. Free, Prior and Informed Consent (FPIC):
 - i. Seek for definition to provide more clarity on what it means - noting it says what it is not (e.g. not consent / veto power), but it does not say what it is.
 - ii. Note: this is an existing term in the Water Act 2007 and other instruments, so it is not a term that will likely go away, so we are best to define it appropriately - it is a big win to have it defined in the NWA to explicitly not mean consent - however, members felt further clarification is needed.



iii. Recognition of agriculture:

- i. Particularly relating to food security, and national security.

While these are highly desirable, and will be carefully pursued, we emphasise that the current draft (i.e. without these changes) remains an improvement on the NWI, and **if it comes to it, we do not feel the above warrants stalling signing**. We will continue to monitor this situation.

Next Steps:

- Seek member feedback on the above, and write to DCCEEW to pursue minor changes outlined above.
- Develop a brief for members, containing: key messages, key questions to be engaging with your state agencies with (as they will be wanting to undertake stakeholder engagement prior to signing).
- Drop in session next Wednesday for further feedback.
- Schedule a meeting in January 2025 to provide NIC and state updates on engagements. The National Water Initiative (NWI) has been the blueprint for water reform in Australia, and was signed as an intergovernmental agreement in 2004. The NWI has underpinned major reforms and legislation at state and federal levels, such as the Water Act 2007 (Cth), Murray-Darling Basin Plan, metering reforms, water planning frameworks and pricing decisions.

Ends.

