



9 December 2024

Briefing Note: National Water Agreement

For: NIC Members

Action: For your information.

Overview: The Federal Government has quietly published an updated draft National Water Agreement (NWA). This is not the 'final' agreement, as DCCEEW says that will be finalised with jurisdictions. We are, overall, pleased with this updated draft (based on our preliminary assessment).

Strategy: NIC will be distributing a Media Release, recognising the improvements at a high-level, but not showing our cards on some of the more sensitive changes as we do not want to bring those to attention and risk having the changes undone.

Resources: [The new National Water Agreement - DCCEEW](#)

Key Considerations:

- This is an updated draft, and “is not the final agreement”.
- DCCEEW says the updates are focused on making this version: *simpler, shorter* (removed 52 provisions), *responsive and clear* (new glossary of terms).
- We have had many of our recommendations adopted, particularly:
 - a. Water property rights (**to an extent**)
 - b. Risk assignment framework (**to an extent**) noting original NWI maintained, but our further suggestions not fully adopted
 - c. First Nations water
 - d. Unallocated water
 - e. Climate change
 - f. Complementary measures
 - g. Maintaining entitlement characteristics
- Other areas require further work, such as:
 - a. Our further recommendations to the risk assignment framework, to reinforce property rights
 - b. Uncertainty created by the 'discretion' with the details in the actions plans and schedules
- The next steps will involve negotiations with jurisdictions to sign, who will then have 2 years to develop action plans.
- The commentary from DCCEEW now has a large focus on the length of the process to renew the NWI since 2016, likely in response to our commentary that it is a rushed process.

NIC will be undertaking a more comprehensive detailed assessment in coming days, but our preliminary assessment of key issues is contained in Table 1. It is anticipated that more issues will come to light when we undertake a line-by-line assessment, and thus we are withholding more specific commentary, particularly publicly, until we undertake full assessment.

Table 1: preliminary assessment of updated draft NWA (Dec 2024)

Issue	Status	Commentary
Water Property Rights	<p>Maintained original NWI.</p> <p>NIC recs partially progressed (but not to full extent sought)</p>	<ul style="list-style-type: none"> The section specifying entitlement characteristics (i.e. to establish the water property right) has been maintained (now 7.2). A new outcome: “Outcome 7A – Water rights holders have confidence to use water access rights for a range of business purposes. Partial strengthening of the risk assignment framework (see below), but not to full extent sought.
Risk assignment framework (RAF)	<p>Reversed changes in draft 1 of NWA to original NWI.</p> <p>One positive amendment to NWI.</p>	<ul style="list-style-type: none"> The concerning amendments in draft 1 (which softened the application of the RAF compared to the original) have been reversed, to the original NWI wording. The section relating to risks resulting from changes to government policy now links to an updated section on the ‘principles for assessing the most efficient and cost-effective measures for water recovery’ (6.3), which has a new focus on complementary measures.
	<p>Further changes sought (from original NWI).</p>	<ul style="list-style-type: none"> NIC sought further changes, which were not addressed, such as to remove the 3% threshold to which compensation is not payable.
Water recovery & Complementary Measures	<p>Significant positive change from original NWI</p> <p>Note – this is linked to the RAF above to be applied when a change in</p>	<p>6.3 <i>Where it is necessary to recover water to achieve environmental and other public benefit outcomes, the following principles will be used for determining the most effective and efficient mix of water recovery measures:</i></p> <p>6.3.1. <i>consideration of all available options for water recovery, including:</i></p> <p>6.3.1.1. <i>investment in more efficient water infrastructure</i></p> <p>6.3.1.2. <i>purchase of water on the market, by tender or through other market-based mechanisms</i></p> <p>6.3.1.3. <i>investment in more efficient water management practices, including measurement</i></p>

	government policy.	<p>6.3.1.4. investment in behavioural change to reduce water consumption</p> <p>6.3.2. assessment of the socio-economic costs and benefits of the most likely prospective options, including the impacts on downstream users and the implications for wider natural resource management outcomes (for example hydrological and ecological consequences and impacts on water security, quality or salinity)</p> <p>6.3.3. selection of measures based on optimising cost-effectiveness and with a view to managing socio-economic impacts</p> <p><u>6.3.4. early consideration of opportunities to integrate complementary, non-volumetric natural resource management measures and partnerships to achieve defined environmental outcomes.</u></p>
First Nations Water	Significantly revised from draft 1	<ul style="list-style-type: none"> • Removal of principles relating to land and water never being ceded • Removal of principle on recognising water as a living entity - this is now said as part of the definition of 'cultural waters': "refers to Aboriginal and Torres Strait Islander peoples' kinship with water as a living entity, as defined by lore/law, custom, custodial responsibilities and knowledge sharing and which may have a range of applications as determined by the beliefs, values and aspirations of Aboriginal and Torres Strait Islander peoples, including restoring Country, preserving water landscapes, establishing economic opportunities and protecting sacred sites." • 'Free, prior and informed consent' has been defined in the glossary to clarify that 'consent' does not mean 'veto' powers – specifically: "principles that safeguard against actions that may impact Aboriginal and Torres Strait Islander peoples' cultural rights and interests, contained in the United Nations Declaration on the Rights of Indigenous Peoples and implemented as best practice in other international and national instruments. For the purposes of the National Water Agreement, governments will support self-determination practices consistent with the National Agreement on Closing the Gap priority

		<p>reforms. References to 'free, prior and informed consent' in the National Water Agreement context <u>do not infer a right of veto</u> over projects, legislation or policies being actioned by governments through this Agreement."</p> <ul style="list-style-type: none"> • Amendment to principles relating to First Nations knowledge – now says "Aboriginal and Torres Strait Islander peoples have the opportunity to contribute their knowledge, science and research to water management frameworks, decisions, plans and actions."
Unallocated water	Significantly revised from draft 1	<ul style="list-style-type: none"> • The new wording is: "Alternative ways of meeting water demand, such as water trading, water rights holders using the unused parts of existing water access rights, or increasing water use efficiency, are fully explored before unallocated water is released."
Climate change	Significantly revised from draft 1	<p>The section on climate change - 6.14 "Water planning and management processes prepare for a future climate in which variability is expected to exceed historical records by" – does the following:</p> <ul style="list-style-type: none"> • Recognises that everyone needs to take a share of the impacts of climate change at 6.14.1 "factoring impacts on future water availability into environmental and cultural water requirements and consumptive pools". • Recognises that water allocations address climate change: "6.14.3 using flexible water allocations where appropriate that are informed by seasonal and inter annual water availability as climate conditions continue to evolve"
Other		
Governance	Improved but not fully addressed	<p>"The Water Ministerial Council, made up of Commonwealth, state and territory water ministers, will oversee implementation of this agreement. The Water Ministerial Council will note parties' completed action plans and parties will be required to report annually to the Water Ministerial Council on progress against these action plans, with the reports to be made public.</p>

		<p>The parties' implementation of this agreement, and progress towards achieving its objectives and outcomes within the timelines set out in action plans, will be subject to independent assessment every 3 to 5 years. These reviews will be conducted as required under relevant legislation. This is a statutory role currently undertaken by the Productivity Commission."</p>
Binding	Still uses the technicality that it is not binding	<ul style="list-style-type: none"> • "An intergovernmental agreement is made between the Commonwealth and state and territory governments. Intergovernmental agreements are not legally binding. They express the commitment of governments to work together on certain objectives or goals." • "For parties to the National Water Agreement (NWA), the agreement replaces the NWI for that jurisdiction. The NWI will continue to apply in states and territories that are not parties to the NWA but are signatories to the NWI."
Certainty	Not resolved	<ul style="list-style-type: none"> • This remains an updated draft, not a final agreement. • Action Plans will be developed by jurisdictions within 2 years, and updated 5-yearly. • Re the NWI Schedules – "The current schedules of the NWI are not being amended at this time. Relevant schedules will be carried across to the new agreement and updated."