



Environmental
Defenders Office

**Submission on the 'Future National Water Agreement'
Discussion Paper**

10 May 2024

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

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Acknowledgement of Country

EDO recognises and pays respect to the First Nations peoples of the lands, seas and rivers of Australia. We pay our respects to the First Nations Elders past, present and emerging, and aspire to learn from traditional knowledges and customs that exist from and within First Laws so that together, we can protect our environment and First Nations cultural heritage through both First and Western laws. We recognise that First Nations Countries were never ceded and express our remorse for the injustices and inequities that have been and continue to be endured by the First Nations of Australia and the Torres Strait Islands since the beginning of colonisation.

EDO recognises self-determination as a person's right to freely determine their own political status and freely pursue their economic, social and cultural development. EDO respects all First Nations' right to be self-determined, which extends to recognising the many different First Nations within Australia and the Torres Strait Islands, as well as the multitude of languages, cultures, protocols and First Laws.

First Laws are the laws that existed prior to colonisation and continue to exist today within all First Nations. It refers to the learning and transmission of customs, traditions, kinship and heritage. First Laws are a way of living and interacting with Country that balances human and environmental needs to ensure the environment and ecosystems that nurture, support, and sustain human life are also nurtured, supported, and sustained. Country is sacred and spiritual, with culture, First Laws, spirituality, social obligations and kinship all stemming from relationships to and with the land.

A note on language

EDO is a non-Indigenous community legal centre that works alongside First Nations peoples around Australia and the Torres Strait Islands in their efforts to protect their Countries and cultural heritage from damage and destruction. In making our submission, we note that EDO represents First Nations peoples across Australia. Our clients have vastly different Country and waters, and they experience water laws in different ways across jurisdictions.

Out of respect for First Nations self-determination, EDO has provided high-level recommendations for western law reform to empower First Nations to protect their Countries and cultural heritage. These high-level recommendations comply with Australia's obligations under international law and provide respectful and effective protection of First Nations' Countries and cultural heritage.

We acknowledge there is a legacy of writing about First Nations peoples without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. For the purpose of this submission, we have chosen to use the term First Nations. We acknowledge that not all First Nations people will identify with that term and that they may instead identify using other terms or with their immediate community or language group.

First Laws is a term used to describe the laws that exist within First Nations. It is not intended to diminish the importance or status of the customs, traditions, kinship and heritage of First Nations in Australia. The EDO respects all First Laws and values their inherit and immeasurable worth. EDO recognises there are many different terms used throughout First Nations for what is understood in the Western world as First Laws.

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Introduction

Environmental Defenders Office (EDO) welcomes the opportunity to provide a submission to the Department of Climate Change, Energy, the Environment and Water (DCCEEW) on its *Discussion paper – Seeking views on a future national water agreement* (March 2024) (**Discussion Paper**).

EDO strongly supports the modernisation of the National Water Initiative (NWI). The Discussion Paper raises urgent and relevant issues such as a changing climate, increasing demand, First Nations' water interests, a need for effective water management and global commitments and sustainability.

We agree with the recent findings of the Productivity Commission in its Interim Report on National Water Reform 2024 (**PC Interim Report**), that there are 'compelling reasons' to update the NWI now, in the face of declining rainfall and demand for water growing and changing.¹

In this submission, we address the 7 objectives for a renewed National Water Initiative (**Renewed Agreement**) outlined in the Discussion Paper, as well as those key areas of the NWI we think should be retained and strengthened in a Renewed Agreement. For the most part, we are generally supportive of the objectives and associated outcomes under each objective, although we make recommendations around re-organisation and prioritisation. This submission focuses on particular gaps or opportunities we have identified, including opportunities to strengthen the objectives or outcomes. Given the limited timeframe for contribution and the request for commentary on a Renewed Agreement at a high level (i.e. without the detail of jurisdictional action/implementation plans), our comments are not exhaustive.

In addition to the findings of the PC Interim Report, we have considered the recommendations in the Productivity Commission's Assessment of National Water Initiative implementation progress report (2017–2020) (**NWI Implementation Report**)² and the National Water Reform 2020 Inquiry Report (**NWI Inquiry Report**)³. We incorporate relevant findings and recommendations from those reports into this submission.

Where EDO has made a submission to the Productivity Commission, either in its 2020 assessment or the 2024 Inquiry, and EDO's position and/or recommendations remain relevant and unchanged, we endorse the recommendations in those submissions and ask that the Department read and consider them in full.⁴

¹ Productivity Commission, National Water Reform 2024, [Interim Report](#) (April 2024) (**PC Interim Report**) 4-5.

² Productivity Commission, Australian Government, [Assessment of the National Water Initiative implementation progress \(2017-2020\)](#) (No 96, 28 May 2021) (**NWI Implementation Report**).

³ Productivity Commission, Australian Government, [National Water Reform 2020, Inquiry Report](#) (No 96, 28 May 2021) (**NWI Inquiry Report**).

⁴ For a list of recommendations from EDO's submissions in 2020 and 2021, see Environmental Defenders Office, [Submission to the Productivity Commission National Water Reform 2024 - Call for submissions](#) (21 February 2024) 42-45. A summary of the 2024 recommendations is at pages 39-41.

Preliminary comments

Learning from experiences under the NWI and improving governance and enforcement arrangements

A Renewed Agreement must be informed by experiences under the existing NWI, including past performance. While we support a Renewed Agreement that contains ambitious objectives, it is essential that it builds upon the NWI. In particular, a Renewed Agreement must require the continuation and in some instances implementation of the original NWI commitments. Areas that can and should be carried through and strengthened in a Renewed Agreement, as discussed further in this submission and previous related EDO submissions,⁵ include the following:

- Underpinning the Renewed Agreement with a commitment to environmentally sustainable levels of extraction (discussed further below).
- Strengthening and clarifying commitments to improve First Nations access to water – including for commercial/economic purposes – and addressing water dispossession and the inequitable allocation of water and, more broadly, the ongoing effects of colonisation on water governance.
- Providing for and strengthening water allocation planning processes, including by ensuring the prioritisation of allocation of water for the environment and for First Nations water needs.
- A focus on genuine and meaningful consultation with interested parties, including consultation underpinned by the principle of free, prior and informed consent. Consultation must be structured in a way that allows interested parties time to consider detailed information and to feed into water decision-making.

It is also essential the Renewed Agreement contains provisions and establishes requirements that are enforceable.

Notably, jurisdictions such as the Northern Territory and Western Australia are yet to implement several provisions from the current NWI. The Productivity Commission found, both in 2021 and 2024, that the NT and WA were non-compliant. We support the following observations made in the PC Interim Report:⁶

A renewed NWI weaker than the existing one would leave no driver for jurisdictions that have not yet met their NWI commitments 20 years on, to do so in the future. For example, in December 2023, the Western Australian Government walked back its commitment to introduce new water management legislation [...] There are clear opportunity costs borne by the communities in a jurisdiction (such as Western Australia, for example) with a government that does not adopt NWI-

⁵ Environmental Defenders Office, [Submission to the Productivity Commission on the National Water Reform Inquiry](#) (21 August 2020); Environmental Defenders Office, [Submission on the Productivity Commission Draft Report: National Water Reform 2020](#) (1 April 2021); Environmental Defenders Office, [Submission to the Productivity Commission National Water Reform 2024 - Call for submissions](#) (21 February 2024).

⁶ Interim Report, 54.

consistent water entitlement and planning mechanisms or lacks fully independent economic regulation of water services.

The Productivity Commission's proposal for clear and transparent governance arrangements⁷ is of equal importance when determining the objectives and outcomes. The PC Interim Report explained that 'robust governance arrangements were a central driver of progress, including by ensuring that governments remained focused on delivering their commitments and guiding reform'.⁸ It noted that the disbandment of the ministerial council responsible for water and abolishment of the National Water Commission deprioritised the importance of water reform.

We agree with the Productivity Commission's suggestion that the following governance structures should be implemented to ensure ownership, accountability, and transparency in a Renewed Agreement:⁹

- Ongoing leadership by ministers through the water ministerial council.
- Rolling three-year action plans that are drafted and communicated in a clear and transparent manner that builds community understanding of, and confidence in, its objectives and intended outcomes, and include a transparent performance reporting framework.
- Independent and transparent assessment of progress.
- Clear roles and responsibilities for oversight, management and renewal of the agreement, potentially via a reinvigorated National Water Reform Committee (NWRC) process, and specific responsibilities for the Commonwealth.
- The incorporation of First Nations' interests directly into the governance of the agreement (though in our view the PC Interim Report does not go far enough in this respect. See our discussion further below, previous EDO submissions and, in particular, the voices of First Nations peoples and organisations).
- Greater coordination of joint work in areas of collective interest.

In the updated renewal advice, the Productivity Commission recommends that the new agreement clearly link desired outcomes to objectives, and limit prescriptive actions. It is the three-year rolling action plans that set out how jurisdictions intend to achieve the outcomes set out in the agreement. This appears to be the model which DCCEEW is adopting in developing the Renewed Agreement. The Productivity Commission further recommends that there continues to be three-yearly assessment of the adequacy of jurisdictional action plans, with public reporting of jurisdictional progress, adequacy in implementing the outcomes of the agreement and the effectiveness of the agreement itself.¹⁰

⁷ Interim Report, 9.

⁸ Interim Report, 54.

⁹ Interim Report, 9, 54 – 58.

¹⁰ Interim Report, 27 [Updated Recommendation 4.1].

Given this, it is especially vital that jurisdictional action plans contain clear, prescriptive and enforceable actions which jurisdictions must undertake in order to comply with the Renewed Agreement.

Clarifying the objectives

EDO is generally supportive of the matters raised in the proposed objectives. However, we have some concerns about the drafting. This is particularly so with respect to Objectives 1-3.

In our view, ensuring environmentally sustainable levels of take must be a centerpiece of the Renewed Agreement (as discussed in more detail further below). Sitting alongside this are what we would say are other core objectives:

- Ensuring that the Renewed Agreement reflects, and is underpinned by, human rights principles. In particular, a Renewed Agreement must meaningfully recognise, protect and strengthen First Nations' rights and access to water, and must enable a 'coordinated, enduring and self determined approach'¹¹ to participation in water governance that is underpinned by free, prior and informed consent.
- Ensuring that all people have access to safe drinking water.
- Equitably optimising social and economic prosperity. This must be approached from the starting point of ensuring environmentally sustainable limits on extraction and, ultimately, healthy ecosystems and water sources.

As drafted, Objectives 1-3 appear to represent core or foundational objectives, whereas Objectives 4-7 are suggestive of pathways towards, or necessary conditions for, achieving those Objectives. If so, we recommend the Objectives are presented to clearly reflect this.

As drafted, we think Objective 1 bundles several objectives into one. In doing so it creates confusion as to the relationship between each. Is there a hierarchy? We are particularly concerned that, as drafted, Objective 1 risks repetition of the problematic 'triple bottom line' approach that has been applied within the Murray Darling Basin (see further below). This drafting issue is also apparent when reviewing the proposed 'outcomes' identified under Objective 1. In particular:

- Outcome 3 straddles two separate issues and should be split (and, we suggest, may be better suited to separate core objectives).
- Outcome 4 identifies the need to ensure adequate water supply and quality for "productive use and essential economic activities". The language is ambiguous, lacks practical meaning and further highlights the difficulties of bundling environmental, cultural, economic, social and community outcomes into a single objective.

More generally, we think that clearer organisation of the Objectives and associated outcomes will support certainty, transparency, accountability and enforceability.

¹¹ Committee on Aboriginal and Torres Strait Islander Water Interests, *Insights Paper: Pathway to enduring recognition of Aboriginal and Torres Strait Islander Peoples' water interests in national water reform initiatives* (December 2023) (**Insights Paper**) 10.

For these reasons, we recommend the following:

- The objectives should be reorganised to ensure that:
 - the purpose and role of each objective is clear and, insofar as is practical, singular; and
 - any potential hierarchy between the objectives is identified and clarified.
- In doing so, the following should be considered:
 - Are there several core objectives that represent the foundations of water regulation and management?
 - Are there supplementary objectives that are pathways or prerequisites to identified the core objectives?
 - Do the outcomes under each objectives support clarity and focus for each objective or do they risk confusion and ambiguity?
- The objectives should clearly place environmentally sustainable levels of take at the core of a Renewed Agreement. Ambiguity as to whether the Agreement adopts a ‘triple bottom line’ approach should be removed.

Environmentally sustainable levels of take as a core objective

The concept of an environmentally sustainable level of take (**ESLT**) is embedded in the NWI.¹² The NWI acknowledged the need to ‘return all systems to environmentally sustainable levels of extraction’ (**ESLT**)¹³ and included returning ‘all currently overallocated or overused systems to environmentally-sustainable levels of extraction’ as an objective.¹⁴

Unfortunately, the experience in the Murray Darling Basin (**MDB**) – as chronicled in the Murray-Darling Basin Royal Commission Report¹⁵ – is that implementation has fallen seriously short. The *Water Act 2007* (Cth) requires that long-term sustainable diversion limits (SDLs) are set which reflect the ESLT. Amongst other things, the Royal Commission was heavily critical of the use of a “triple bottom line” approach when implementing the Murray Darling Basin Plan. The “triple bottom line” approach refers to an approach that seeks to give equal weight to economic, social and environmental considerations, which the commissioner found were, at last partially, incommensurable considerations.¹⁶ The Royal Commission emphasised that the Commonwealth Water Act does not provide for a “triple bottom line” but requires the environment to be prioritised.¹⁷

¹² Defined in the NWI as “the level of water extraction from a particular system which, if exceeded, would compromise key environmental assets, or ecosystem functions and the productive base of the resource”, [Schedule B] 29.

¹³ NWI, 1[5].

¹⁴ NWI, 4[23.iv)]; 4 [25(ii)]; 5[25(v)].

¹⁵ Bret Walker SC, *Murray-Darling Basin Royal Commission Report* (29 January 2019).

¹⁶ Bret Walker SC, *Murray-Darling Basin Royal Commission Report* (29 January 2019), 20.

¹⁷ Bret Walker SC, *Murray-Darling Basin Royal Commission Report* (29 January 2019), 130-132.

The NSW Government was also criticised, in 2020, for applying a “triple bottom line” approach to developing water sharing plans. The NSW Independent Commission against Corruption concluded that the NSW legislation does not provide any scope for this approach.¹⁸

EDO’s position is that a Renewed Agreement must carry forward and strengthen the foundational importance of capping or reducing extraction to an ESLT. It is vital that an ESLT is identified and assessed, based on the best available scientific knowledge, for a water resource, and that the flows required to maintain the water resource and its dependent ecosystem systems are protected from consumptive allocation. This ties in with our recommendations regarding Objective 1, which we are concerned could currently be interpreted to suggest an equal prioritisation between all water users and uses rather than protecting environmental water needs.

Determination of an ESLT in any system must also recognise and prioritise First Nations knowledges, rights and ownership over water and ensure First Nations cultural flows are protected when First Nations require it.¹⁹

As we discuss in further detail in relation to Objective 2, First Nations communities hold a deep cultural, customary and spiritual connection to water.²⁰ This spiritual significance extends to conferring rights, responsibilities, and obligations in accordance with customary laws, traditions and protocols, including to protect, conserve and maintain the environment and ecosystems so as to ensure the sustainability of the whole environment. Recognition of First Nations rights and ownership over water includes recognition of the right to First Nations economic self-determination. Cultural flows, as defined by two large confederations of First Nations in the MDB, involve First Nations ownership over water of “a sufficient and adequate quantity and quality to improve the spiritual, cultural, environmental, social and economic conditions” of First Nations²¹ – notably, the concept of cultural flows captures a broad range of uses and supports self determination.

We further note that scientific knowledge said to underpin the setting of the ESLT (as well as other water management decision-making), including modelling and any other data and calculations, must be clearly documented, so that it can be tested, reviewed and critiqued. We discuss this in greater detail in relation to Objective 4. The approach should also be precautionary in nature and actively address the effects of climate change (see further discussion in relation to Objective 3).

We acknowledge that jurisdictions are in different situations when it comes to water extraction – for example, contention over setting ESLT and SDLs in the Murray Darling Basin arises in a context where water must be returned to an already over-extracted river system, whilst Australia’s tropical north contains free-flowing rivers and interconnected aquifer systems which, to date, have not

¹⁸ NSW Independent Commission Against Corruption, *Investigation into Complaints of Corruption in the Management of Water in NSW and Systemic Non-Compliance with the Water Management Act 2000* (Nov 2020) accessible [here](#).

¹⁹ See Insights Paper (December 2023); Murray Lower Darling Rivers Indigenous Nations, [Echuca Declaration](#) (2007).

²⁰ Tony McAvoy, ‘[Water - Fluid Perceptions](#)’ (2006) 1(2) *Transforming Cultures eJournal* 97, 97-98.

²¹ Murray Lower Darling Rivers Indigenous Nations, [Echuca Declaration](#) (2007) 2.

been subject to extensive development. Ultimately, however, the core concern is the same – that extraction must be returned to, or capped at, an environmentally sustainable level.

Application of First Nations cultural heritage principles

We draw the Department’s attention to the following suite of First Nations cultural heritage principles. We recommend that the final Renewed Agreement, in both form and implementation, reflect and accord with these insofar as they are applicable.²² We make further comments that support the application of these principles in direct response to the proposed Objectives and associated outcomes.

First Nations cultural heritage principles

International obligations

- Australia’s cultural heritage legislation must be consistent with its international obligations under the UN Declaration on the Rights of Indigenous Peoples.
- State and territory laws must be compatible with Australia’s international obligations on racial discrimination, in particular the International Convention on the Elimination of All Forms of Racial Discrimination.

Primacy of First Nation’s cultural and heritage expertise

- First Nations peoples are the experts in First Nations heritage and their position on such matters overrides positions asserted by Western scientists.

The right to define First Nations heritage

- Only First Nations peoples can legitimately determine what constitutes First Nations heritage, its significance, and the level of protection it requires.
- The right of First Nations peoples to designate First Nations heritage must be enshrined in law at all levels of government in Australia.

The right to control and consent regarding impacts on First Nations heritage

- First Nations must give their free, prior and informed consent in relation to decisions that impact their heritage.

First Nations decision-making processes

²² For further detail about these principles, see: Environmental Defenders Office, *Submission to the Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia* (14 August 2020) accessible [here](#); Environmental Defenders Office, *Implementing effective independent Environmental Protection Agencies in Australia: Best practice environmental governance for environmental justice* (January 2022) accessible [here](#).

- Respectful, productive relationships between First Nations peoples and non-Indigenous people and entities must be based on First Nations decision-making processes and protocols, which must be respected, supported and adequately resourced.

Recommendations (Preliminary comments)

A Renewed Agreement must:

1. Be informed by, build on, and learn from experiences under the NWI. This includes past performance – including where jurisdictions such as the Northern Territory and Western Australia are yet to implement some provisions of the NWI.
2. Implement the governance structures proposed in the PC Interim Report.
3. Provide for jurisdictional action plans that contain clear, prescriptive actions that are developed through a consultative process and subject to independent review.
4. Contain Objectives in a way that ensures core or foundational objectives can be clearly identified. In particular, we recommend redrafting Objective 1 which currently bundles several objectives into one and risks repeating the ‘triple bottom line’ approach that has been applied within the Murray Darling Basin and can undermine core environmental outcomes.
5. Carry forward and strengthen the foundational importance of capping or reducing extractions to an ESLT. ESLTs must be determined based on the best available scientific knowledge. Determining ESLTs must also recognise and prioritise First Nations knowledges, rights and ownership and ensure First Nations cultural flows are protected when required by First Nations. Data and processes used to calculate ESLTs must be publicly available to enable peer review and critique.
6. Reflect and accord with First Nations cultural heritage principles identified in this submission, in both form and implementation.

1. Securing water for all uses

Proposed Objective 1: *The safe and secure supply of sufficient water quality and quantity to sustain our natural environments, Culture, economic prosperity and communities.*

We refer to our discussion above about the objectives in general and our concerns about Objective 1 in particular.

However, EDO supports the intention to expand the NWI to include water quality (noting the lack of protections across Australia) by including an Objective that clearly prioritises the safe and secure supply of water.

The right to water is one of the most fundamental conditions for survival.²³ Adequate and appropriately managed water services reduce exposure to preventable health risks.²⁴

Although a basic human right, many Australians do not have access to safe drinking water.²⁵ Recent research undertaken by ANU found that Australians in more than 400 remote or regional communities lack access to good-quality drinking water and 40% of all locations with reported health-based non-compliances were remote First Nations communities.²⁶

The NWI Inquiry Report noted that issues with drinking water quality remain in some regional and remote communities. The report found:²⁷

“Safe and reliable drinking water can be more challenging and costly to supply to regional and remote communities than to major cities. Drought, bushfires and COVID-19 have brought service delivery issues into sharp relief, including water security challenges in regional New South Wales and Queensland, and drinking water quality issues in some remote communities.”

We note the NWI Inquiry Report suggested new objectives for the NWI that explicitly include access to safe and reliable drinking water.²⁸ It is clear from this draft objective that the recommendation has been adopted.

The NWI Inquiry Report also recommended that a renewed NWI should ensure that State and Territory Governments commit to defining what is a ‘basic level of service’ (i.e. the minimum standard of key aspects of service provision, including the provision of safe drinking water) and ensuring access to that level of service. Funding to local government-owned providers should be targeted at ensuring this basic level of service in high-cost areas where such service provision would otherwise be considered unaffordable.²⁹

The Productivity Commission acknowledged that a definition of “safe” water should align with existing health guidelines under the Australian Drinking Water Guidelines (**ADWG**).³⁰ The ADWG provide guidance to water regulators and suppliers on monitoring and managing drinking water quality, including listing recommended maximum values for contaminants.³¹ However, implementation of the ADWG is haphazard, and the ADWG is not legally binding.

The ADWG also lacks a health-based guideline for sodium content. Based on the experience in Walgett, NSW, this is an important gap with potential adverse health consequences.

²³ Office of the Commissioner for Human Rights General Comment No. 15: The Right to Water (Articles 11 and 12 of the Covenant) at par 3. Accessible [here](#).

²⁴ World Health Organisation (2023) *Drinking-water*. Accessible [here](#).

²⁵ ANU (2022) Remote Australians lack access to quality drinking water. Accessible [here](#).

²⁶ Ibid.

²⁷ NWI Inquiry Report, 159.

²⁸ NWI Inquiry Report, 7.

²⁹ NWI Implementation Report, 159.

³⁰ NWI Inquiry Report, 172.

³¹ National Health and Medical Research Council, Australian Drinking Water Guidelines (2011), accessible [here](#).

Case study: The ADWG, sodium content and the Western NSW town of Walgett

Walgett is situated at the junction of two significant rivers, the Namoi and the Barwon. Historically, the Namoi and Barwon Rivers have been the primary source of drinking water for the Walgett Community. When there is insufficient water in the Barwon and Namoi Rivers, Walgett uses bore water as alternative sources of drinking water.

Although the Walgett Shire Council has a high security town water supply licence for the provision of drinking water, the town has had to switch to bore water for drinking water at times of low inflows. This happened for example in 2018 (between 2017 and late 2020 the Namoi Valley experienced its lowest inflows on record since 1918).³²

The Dharriwaa Elders Group (**DEG**) is a group of Aboriginal Elders who live in Walgett and is a longstanding client of the EDO. The DEG became seriously concerned about the reliability and quality of the town drinking water in 2018 and sought expert advice from (then) Associate Professor Jacqui Webster, Director of the WHO Collaborating Centre on Salt Reduction. The DEG published an excerpt from Professor Webster's opinion, which included the following observations:³³

“The sodium levels in the Walgett water supplies are concerning. 300mg/Litre is much higher than the Australian Drinking Water guideline of 180mg/L - and this guideline is based on palatability, not health. No health-based guideline value is proposed for sodium. However, the guideline does state that *“Medical practitioners treating people with severe hypertension or congestive heart failure should be aware if the sodium concentration in the patient’s drinking water exceeds 20 mg/L”*. The sodium content of the Walgett tap water is 15 times this amount.

If this is the community's main source of water or they are drinking it for prolonged periods of time, it could be a health risk in one of two ways. Firstly, people who consume adequate amounts of water would be ingesting a substantial amount of salt from this source – 2 Litres of water containing 300mg/L sodium equates to 1.5grams of salt per day which is a considerable proportion of the WHO 5 gram per day recommended amount for salt from food and drinks. Lack of availability of fresh foods in the community also means that people are eating large amounts of salty tinned and packaged foods, resulting in higher salt intake. High salt intake can lead to a number of adverse health outcomes but most notably high blood pressure which in turn is one of the biggest contributors to premature death from heart disease and stroke. Diabetics also have high blood pressure and so a high salt diet further increases their risks. High salt diets also damage the kidneys and can exacerbate the long terms effects of kidney disease. Aboriginal communities suffer disproportionately high rates of heart disease, stroke, diabetes and kidney disease and poor diets are the key risk factor that needs to be addressed.

³² 'Upper and Lower Namoi Valley snapshot', *NSW Department of Planning, Industry and Environment, Allocations and Availability* (Fact Sheet, Sept 2021) accessible [here](#).

³³ Dharriwaa Elders Group, Statement of the Elders Council dated 30 Nov 2018, accessible [here](#).

Alternatively, the fact that the water would taste salty means that people may not drink enough, including potentially substituting for sugary soft drinks which is another concerning dietary risk for the community.”

This case study highlights the need for the ADWG to address all relevant health issues, as well as the importance of State based laws *in fact* delivering on critical human water needs.

Notably, the Productivity Commission’s International Benchmarking Report: Arrangements for Setting Drinking Water Standards³⁴ found:

- relatively little resources are devoted to regulatory development and enforcement activities in Australia;
- benefit-cost analysis is rarely used in developing standards;
- there is a scarcity of information on the quality of drinking water in different parts of Australia and the accompanying risk levels; and
- an increase in standards is likely to require significant additional investment in water treatment infrastructure.

More than 20 years later, these issues persist.

Further, that report noted that there is institutional fragmentation within jurisdictions in promulgating and enforcing standards in Australia. Health departments, water resources departments and water suppliers are all involved. This sharing of responsibility potentially lessens accountability for public health outcomes.³⁵ An example of this was in Western Australia, where the Department of Communities was responsible for delivering water services to remote communities up until the end of 2023. This resulted in a lack of transparency in relation to service levels for communities, communities remaining at risk from unsafe water, and a lack of public reporting about decision-making and performance of essential services.³⁶

Effective implementation of this objective requires legislative reform across Australia in relation to the provision of and access to safe drinking water. In particular:

- State and Territory Governments should enshrine the legally binding right to water, including safe drinking water, as a basic human right in accordance with the 2010 declaration of the UN General Assembly.
- In line with the Productivity Commission recommendations, access to a basic level of service, based on safe and reliable drinking water, should then be ensured.
- To ensure consistency of water quality standards, State and Territory laws should adopt the ADWG as the minimum, enforceable standard.

³⁴ Productivity Commission (2000) [Arrangements for Setting Drinking Water](#).

³⁵ Ibid, p xxx.

³⁶ See Office of the Auditor General Western Australia, Delivering Essential Services to Remote Aboriginal Communities – Follow up (Report 25, June 2021) accessible [here](#).

- Noting the experience reported in Walgett in Western NSW, consideration should be given to updating the ADWG to capture health risks associated with higher sodium content in drinking water.
- Delivery on these standards should be regularly monitored and reported by the responsible department in publicly available registers. This reform would ensure accountability, transparency and public participation in relation to access to safe drinking water.

We make the following additional comments in relation to the outcomes identified for Objective 1 that are specific to water quality:

- We agree with the proposed outcome that ***all** Australians, including regional and remote communities, have reliable access to clean, safe, accessible and affordable water for drinking and sanitation.* It is imperative that the jurisdictional action plans are consistent in the protections and level of service provided. There should not be a difference in what qualifies as “safe” drinking water within or between jurisdictions.
- Water providers should be required to publish accessible and transparent results from water quality monitoring. Transparency and the publication of water quality monitoring is an essential aspect of the safe and secure supply of water for all uses.

Recommendations for Objective 1 (Securing water for all uses)

A Renewed Agreement must:

7. Identify as a core objective the right to water, and access to safe drinking water for all Australians. EDO supports the proposed expansion of the NWI to include water quality.
8. Allow for effective implementation of the water quality objective through legislative reform across Australian jurisdictions, including to:
 - a. enshrine the legally binding right to water, including safe drinking water, as a basic human right;
 - b. require definition of and commitment to delivering a ‘basic level of service’ for the provision of safe and reliable drinking water;
 - c. adopt the ADWG as the minimum, enforceable standard (noting the recommendation to consider whether the ADWG should be supplemented with a health-based sodium guideline);
 - d. require regular monitoring and reporting on the delivery of the applicable standards.

2. Supporting Aboriginal and Torres Strait Islander Peoples' water interests and values

Proposed Objective 2: *A water management framework, underpinned by national and international human rights principles, which recognises and protects Aboriginal and Torres Strait Islander Peoples' Cultural, spiritual, social, environmental and economic water interests and values.*

First Nations communities hold a deep cultural, customary and spiritual connection to water (both surface water and groundwater), a relationship that is unique from the Anglo-Australian paradigm of water ownership and extraction.³⁷ This spiritual significance extends to conferring rights, responsibilities, and obligations in accordance with customary laws, traditions and protocols. These include to protect, conserve and maintain the environment and ecosystems so as to ensure the sustainability of the whole environment.³⁸

First Nations people are also leading the conversation about First Nations water rights policy in Australia,³⁹ including through various statements and initiatives of their own. In 2017, leading academics published a key article titled "Australian Indigenous Water Policy and the impacts of the ever-changing political cycle". The article provides a detailed analysis of contemporary First Nations water policy documents and public statements, explaining the value of First Nations' water policy and initiatives, and why they are often overlooked in the literature and de-prioritised against government priorities. Key reflections from this analysis include:

- Water policy amongst First Nations in Australia is not homogenous,⁴⁰ meaning views and priorities may be different amongst First Nations peoples.
- First Nations' water policies are underrepresented in the Australian water management literature for many reasons, including that First Nations use non-written forms of knowledge transfer which is seen by the western academy as inferior to written texts.⁴¹
- It is important to consider and implement First Nations' water policy because:
 - issues that concern First Nations peoples should be addressed by First Nations peoples, as a matter of principle;⁴²
 - First Nations peoples' perspectives as Traditional Owners and long-term land managers can provide unique insights into national water management policy development;
 - a substantial proportion of land is managed by First Nations peoples and communities (in 2015, Native Title was determined to exist over 28% of land in Australia); and

³⁷ Tony McAvoy, '[Water - Fluid Perceptions](#)' (2006) 1(2) *Transforming Cultures eJournal* 97, 97-98.

³⁸ North Australian Indigenous Land and Sea Management Alliance, '[The Mary River Statement](#)' (28 January 2020).

³⁹ Katherine Selena Taylor, Bradley J Moggridge and Anne Poelina, '[Australian Indigenous Water Policy and the impacts of the ever-changing political cycle](#)' (2016) 20(2) *Australasian Journal of Water Resources* 132.

⁴⁰ Ibid.

⁴¹ Ibid 133, 134.

⁴² See also, '[National Agreement on Closing the Gap](#)' (July 2020), clause 19(a): "Aboriginal and Torres Strait Islander people have been saying for a long time that they need to have a much greater say in how programs and services are delivered to their people, in their own places and on their own country".

- First Nations’ water policy is cutting edge, highly cognisant of colonial biases, and grounded in the contemporary context.⁴³

Adding to the analysis set out above, we note:

- First Nations’ views on water are holistic and beneficial to every person and organisation who relies on water sources or systems.
- First Nations’ water policies are underrepresented in the Australian water management literature due to the prioritisation of Western science over First Nations’ knowledges and perspectives, and inequities in the ability of First Nations peoples to pursue educational opportunities that allow the publication of knowledge in written literature.
- Notwithstanding that Native Title exists over a significant portion of land, it does not provide rights to own and manage land and water in the way that freehold ownership does.

While the NWI identifies the need for First Nations “water access”, it conceives of water access in a narrow way (see further below) and fails to provide the foundation for substantial reforms. One of the key findings in the PC Interim Report was that a Renewed Agreement should include both an objective and a new element, recognising First Nations peoples’ reverence and cultural responsibility for water and the continued involvement and participation of First Nations people in water management.⁴⁴ We strongly agree with this finding and are supportive of Objective 2 in principle. However, we think that Objective 2 must go further than recognition. We note in particular that:

- For too long First Nations voices and perspectives have been underrepresented, despite these views being holistic and beneficial to all water users. First Nations contributions should be elevated beyond recognition and prioritised in water management.
- There is a distinct lack of reference or commitment to supporting and protecting First Nations’ rights to water, including for economic purposes.
- The current NWI focuses on and incorporates a narrow definition of ‘water access’ which doesn’t adequately provide for genuine and meaningful consultation, proper resourcing that ensures inclusion of First Nations voices, and the incorporation and centering of First Nations water policies. It also does not refer to access to water for economic purposes.

We also raise the following concerns about the language and framing of Objective 2:

- The language of “protecting” First Nations’ water interests should be amended. This language is inappropriate when describing regulatory frameworks imposed by government. We note the risk for and possible implied endorsement of regulatory action and decisions that impose decisions on First Nations communities and fail to comply with the principles of free, prior and informed consent.
- The language used in Objective 2 is inconsistent with the language used in the Discussion Paper to describe it (p 13). Specifically, Objective 2 proposes ‘a water management

⁴³ Katherine Selena Taylor, Bradley J Moggridge and Anne Poelina, ‘Australian Indigenous Water Policy and the impacts of the ever-changing political cycle’ (2016) 20(2) *Australasian Journal of Water Resources* 134.

⁴⁴ Interim Report, p 2.

framework ... which recognises and protects Aboriginal and Torres Strait Islander Peoples' ... water interests and values'. The discussion that follows goes further than this and states that a Renewed Agreement 'prioritises Aboriginal and Torres Strait Islander Peoples' decision making, involvement and influence in water management and planning...'.

- We support the prioritisation of First Nations' decision making, involvement and influence in water management and planning and strongly recommend that this intention is captured within the terms of the Objective itself. It could also be captured in the Outcomes – for example, Outcome 1 of Objective 2 could read:

Aboriginal and Torres Strait Islander Peoples are recognised and respected as the custodians and knowledge holders of the lands and waters of Australia, and their knowledge of those lands and waters is prioritised in decision-making.

- We note that this proposed prioritisation would mitigate the risk of government agencies speaking and acting *for* First Nations communities in externally determined 'best interests' and enable frameworks that allow First Nations communities to speak in their own interests.

We endorse the Insights Paper,⁴⁵ and agree that national water reform initiatives should incorporate the water values, principles and actions set out by the Committee.⁴⁶

Ultimately, First Nations peoples should lead ongoing discussions about First Nations water policy,⁴⁷ in accordance with the concept 'nothing about us without us' which is premised on principles of self-determination, self-respect and self-management.⁴⁸ It is critical that First Nations peoples and communities are properly resourced to enable full participation and to recognise these critical contributions.

Case Study: First Nations water dispossession in the NSW Murray Darling Basin

As at 2018, research found that Aboriginal entities held only 0.2%, or 12.1GL, of the available surface water in the NSW Murray Darling Basin (where Aboriginal people represent 9.3% of the population). What's more, Aboriginal water holdings *decreased* in the period 2009 to 2018 – by 17%.⁴⁹ That is, during the life of the NWI.

⁴⁵ Committee on Aboriginal and Torres Strait Islander Water Interests, [Insights Paper](#): Pathway to enduring recognition of Aboriginal and Torres Strait Islander Peoples' water interests in national water reform initiatives (December 2023).

⁴⁶ Insights Paper (December 2023), 7-8.

⁴⁷ See Anne Poelina, [Lawful but Awful, and A Declaration for Peace](#) (2022) Submission to the United Nations Special Rapporteur on the Rights of Indigenous Peoples.

⁴⁸ Australian Water Association, ["Nothing about us, without us": call for deeper Indigenous involvement in water catchment management](#) (24 August 2020).

⁴⁹ Hartwig, Jackson and Osborne, 'Trends in Aboriginal water ownership in New South Wales, Australia: The continuities between colonial and neoliberal forms of dispossession' (2020) 99 *Land Use Policy* 104869, p 9; see also Moggridge and Thompson, 'Indigenous engagement to support resilience: A case study from

It is also notable that of the 12.1GL, very little of that water is held in the form of high reliability licences (where, put simply, lower reliability licences offer less opportunities).

In other words – First Nations people hold licences for a pitiful volume of water in the NSW MDB, research indicates the holdings decreased during the life of the NWI, and the licences that are held are mostly lower reliability.⁵⁰

In 2018 the Australian Government announced \$40m in funding to assist First Nations communities in the Murray Darling Basin to invest in water for cultural and economic water entitlements through the Aboriginal Water Entitlements Program (**AWEP**). Progress in implementation was extremely slow; by late 2023 there had still been no funding allocations or purchases under the Program. Serious concerns were raised about the implications of the delay: the price of water had materially increased since the announcement was first made but the funding allocation remained the same.

In late 2024 the funding for AWEP was increased to \$100m. Although this is a positive development, the total amount allocated still represents a very small potential volume of water. By way of comparison, in February 2024 the Commonwealth Government determined to spend \$205m on purchasing 26GL per year in an initial round of water purchases towards environmental water targets in the MDB. This would suggest that even after full expenditure of the \$100m AWEP funds – if confined to expenditure within NSW – the total volume owned as a proportion of volumes available across the NSW MDB will remain painfully low.

It is clear that the NSW and Commonwealth Governments are yet to meaningfully tackle the enduring effects of colonisation and water dispossession on Aboriginal water ownership in the NSW MDB. A Renewed Agreement must be responsive to this substantial unresolved issue.

International human rights principles

Objective 2 expressly states that a water management framework should be ‘underpinned by national and international human rights principles’. The introductory material in the Discussion Paper similarly emphasises one of the purposes of the new agreement as being to “strengthen Australia’s commitment to international obligations”, including, amongst other things, Sustainable Development Goal 6 (**SDG6**) and Articles 19, 25, 26, 27 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**).⁵¹

Whilst Australia has ratified the key international instruments referred to in the Discussion Paper, they have not all been incorporated into Australian domestic law. Amongst other things, there is no legally enforceable right to safe drinking water, consistent with SDG6, which requires Member

Kamilaroi Country (NSW, Australia’ in Thoms and Fuller (ed), *Resilience and Riverine Landscapes* (2023) 363 - 387.

⁵⁰ Hartwig, Jackson and Osborne, ‘Trends in Aboriginal water ownership in New South Wales, Australia: The continuities between colonial and neoliberal forms of dispossession’ (2020) 99 *Land Use Policy* 104869, pp 8-9.

⁵¹ Discussion Paper, p 7.

States to “ensure availability and sustainable management of water and sanitation for all”.⁵² To date, Australia has also treated UNDRIP as a “non-legally binding document”⁵³ including the requirement for free, prior and informed consent in Article 32. A Renewed Agreement and its associated jurisdictional action plans should include requirements to expressly incorporate key international obligations and human rights framework commitments into domestic law, including to ensure that First Nations rights and interests are upheld and protected.

This also extends to strengthening existing frameworks in domestic laws giving effect to international obligations, including the Ramsar Convention on Wetlands of International Importance (**Ramsar Convention**).⁵⁴

Proposed outcomes and additional comments

EDO supports the proposed outcomes and makes the following additional comments.

- First Nations voices must be centred and prioritised in a Renewed Agreement and heard at all stages of water planning. Many of the proposed objectives and outcomes will require genuine, well-resourced engagement with First Nations communities that is ongoing, two-way and collaborative.
- As noted earlier, Outcome 1 should be amended to clearly capture the commitment to *prioritising* First Nations knowledge in decision making.
- Outcomes 3 and 4 can be strengthened by incorporating scope to acknowledge and develop legal and governance frameworks which directly reflect First Nations epistemologies (ways of knowing) and ontologies (ways of being) – in circumstances as deemed appropriate by First Nations people. This includes support, resourcing and prioritisation of First Nations-led and co-governance models of water resources. This may include the recognition of bodies of water as a living being or entity, and the attachment of rights to those beings or entities.⁵⁵
- Outcome 5 can be strengthened through a commitment to incorporate, rather than consider, Aboriginal First Laws and Torres Strait Islander Peoples’ Ailan Kastom after genuine consultation with First Nations peoples whose Country is the subject of water management decision-making.
- In relation to Outcome 6, as part of the implementation of the Renewed Agreement, Australia should commit to domestic implementation of UNDRIP and there should be concomitant obligations on jurisdictions, through both action plans and legislative change, to do so. The

⁵² General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, GA Res 70/1, UN Doc A/RES/70/1 (21 October 2015, adopted 25 September 2015) 14, 18.

⁵³ Attorney-General’s Department, *International human rights system* (Web Page) accessible [here](#).

⁵⁴ As referred to in the Discussion Paper, p 13 (footnote). Ramsar listed Wetlands are a matter of Matter of National Environmental Significance in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). The Ramsar Convention is also one of the “relevant international agreements” identified in the *Water Act 2007* (Cth) that the Basin Plan is required to give effect to, and is one of the international agreements from which the *Water Act 2007* (Cth) derives its constitutional authority from.

⁵⁵ See for example Murray Lower Darling Rivers Indigenous Nations, [Echuca Declaration](#) (14 November 2007); Insights Paper (December 2023); [Martuwarra Fitzroy River Declaration](#).

rights of First Nations people with respect to water must be embedded within policy and legislation and provide enforceable rights. For example:⁵⁶

Article 34 of the UNDRIP expresses the ‘rights [of Indigenous peoples] to promote, develop and maintain their institutional structures, customs, procedures, among other things’. The recognition of the Indigenous rule of law into Australian water laws and policies elevates the status of Indigenous peoples as ‘First Peoples’ and not stakeholders.

- Outcome 6 would be strengthened by acknowledging that in order to genuinely engage and partner with First Nations peoples, there must be commitments to:
 - not only seek but then act on the views of First Nations peoples; and
 - ensure that engagement is undertaken with sufficient time, information and resourcing to enable First Nations people and communities to fully understand proposals and express their viewpoints. Facilitating genuine participation also requires a commitment to providing financial and other resourcing support.

Recommendations for Objective 2 (Supporting Aboriginal and Torres Strait Islander Peoples’ water interests and values)

A Renewed Agreement must:

9. Recognise and prioritise First Nations peoples’ reverence and cultural responsibility for water and provide for the continued involvement and participation of First Nations people in water management.
10. Centre First Nations voices and prioritise consultation that is guided by First Nations, properly resourced and underpinned by free, prior and informed consent.
11. Include a commitment to supporting and protecting First Nations rights to water, including for economic purposes.
12. Incorporate the water values, principles and actions set out by the Committee on Aboriginal and Torres Strait Islander Water Interests.
13. Include requirements to expressly incorporate key international obligations and human rights framework commitments into domestic law, including to ensure that First Nations can uphold and protect their rights and interests.

⁵⁶ Virginia Marshall, ‘Overturning Aqua Nullius: Pathways to National Law Reform’ in *New Directions for Law in Australia: Essays in Contemporary Law Reform* (ANU Press, 2017) 227, accessible [here](#).

3. Climate resilient water management

Proposed Objective 3: *Environmentally sustainable water planning and management that is interconnected, adaptive and responsive to climate change and other circumstances.*

The Discussion Paper correctly recognises a changing climate as one of the driving factors behind the necessity of water reform. The PC Interim Report:⁵⁷

- identified that climate change poses a major threat to the access, use and management of water across Australia; and
- found that the NWI can be further enhanced to better support water security planning in the face of a changing climate, noting that forms of extreme weather events including storms, flooding and bushfires, in addition to drought, should be considered in water planning.

We agree that there is a critical need for water management that is flexible, interconnected, sustainable and climate resilient and are generally supportive of Objective 3.⁵⁸

Examples of specific opportunities to better embed climate considerations into water management include to:

- Establish adaptive water allocation schemes with an embedded climate projection signal.
- In regulated river systems, manage public storages on the basis of climate projections, not historic climate data.
- Introduce legislative provisions that require climate change to be considered in the preparation of plans, regulations and in the exercise of relevant functions by decision-makers including the granting of licences.
- Incorporate an evidence-based cap on extractions at catchment and basin scales which is informed by climate projections.
- Include clear duties to, for example, act on the basis of best-available evidence and protect water resources from over-extraction.

Conversations about the interaction between climate change and environmental water (and all water management) should be informed by First Nations perspectives and voices. As stated in a recent article:⁵⁹

Climate change impacts are already happening due to [the Martuwarra's] geographic location and vulnerable environment. From an Indigenous perspective, the climate change space and discussions are currently highly dominated by Western science and politics. Unfortunately, the progress in understanding Indigenous culture and cultural needs has not advanced to a point where socio-ecological knowledge and primacy in ontological theory or rationale have been

⁵⁷ Interim Report, 83.

⁵⁸ Discussion Paper, 14.

⁵⁹ Martuwarra, RiverOfLife et al, 'Martuwarra Fitzroy River Watershed: One society, one river law' (2023) 2(9) Public Library of Science (PLOS) Water (online) 13.

injected into the debate. Now more than ever, it is time to listen to the voices and wisdom of Indigenous people for the paradigm shift.

We endorse this view.

The principles outlined below provide a useful guide for assessing the climate-readiness of water legislation. EDO recommends best practice water law should include these important elements.

These elements should be incorporated when developing the Renewed Agreement outcomes and jurisdictional action plans.

Key elements of climate-ready water laws:⁶⁰

- an evidence-based cap on extractions at catchment and basin scales that is informed by climate projections;
- an adaptive water allocation scheme with an embedded climate projection signal;
- protecting environmental flows from extraction, which requires catchment-based legal instruments to speak to one another;
- protecting different components of the flow regime (from no flows to overbank flows), each of which is required to maintain ecosystem function;
- promotion of longitudinal and latitudinal connectivity;
- in regulated river systems, managing public storages on the basis of climate projections, not historic climate data;
- accurately measuring and reporting water extractions (noting the difficulty of enforcing the law at the licence holder and catchment levels in the absence of reliable evidence);
- fulsome monitoring of groundwater resources, and appropriate limits on extractions that take into account connectivity with surface water, as well as the tendency to shift to consumption from aquifers during periods of water scarcity;
- accurate water accounting that takes into account return flows, water theft and unmetered take of water ;
- appropriate governance arrangements for subsidised irrigation modernisation projects, including a requirement to demonstrate that they are actually saving water;
- a requirement to ensure modelling with transparent and communicable inputs and assumptions;
- the inclusion of clear duties to, for example, act on the basis of best-available evidence and protect water resources from over-extraction;
- appropriately drafted civil and criminal offence provisions supported by an independent regulator, such as the NSW Natural Resources Access Regulator;
- third party standing (this is particularly important given the virtual impossibility of obtaining a writ of mandamus compelling the government to enforce its own laws); and
- more generally, provisions that are justiciable. While there is a clear need for decision makers to have some discretion, broadly drafted powers can make it all but impossible

⁶⁰ Environmental Defenders Office, Submission to the Productivity Commission on the National Water Reform Inquiry (21 August 2020) 15 accessible [here](#).

for community members to challenge problematic decisions. There should be scope for seeking judicial review of decisions that are environmentally harmful and, for example, appear to contradict or be inconsistent with the stated objectives or goals of a regulatory framework.

Outcomes

Page 14 of the Discussion Paper notes that, in relation to planning, ‘a precautionary approach is needed, incorporating climate change into the management of water, including for relatively undeveloped systems’. We strongly support the incorporation of the precautionary principle into the outcomes and suggest that reference to a precautionary approach could also be incorporated directly into Objective 3.

The outcomes should be strengthened by identifying some core mechanisms for effectively applying the precautionary principle, for example:⁶¹

- explicitly incorporating the precautionary principle into legislation and policy;
- committing to and adequately resourcing risk and uncertainty analysis;
- identifying and assessing options, including various courses of action and inaction, and their likely consequences (including any potential risks);
- ensuring equity in the distribution of economic and social costs; and
- applying adaptive management principles, involving monitoring, research, periodic evaluation and review, and efficient and effective compliance.

A precautionary approach is particularly essential in areas that will be disproportionately affected by climate change, such as Northern Australia. Water management and decision-making must consider and account for these impacts while also seeking to prevent their exacerbation through appropriate policy decisions around water.

Recommendations for Objective 3 (Climate resilient water management)

A Renewed Agreement must:

14. Incorporate and reflect best-practice principles for climate-ready water laws.
15. Ensure adequate avenues for listening to the voices and wisdom of First Nations people in water management, particularly in relation to climate change.
16. Implement a precautionary approach to water management, particularly in areas that will be disproportionately affected by climate change. This should be achieved through expressly committing to a precautionary approach.

⁶¹ See, e.g. the suite of principles identified and discussed by Deborah C Peterson, Productivity Commission, ‘[Precaution: principles and practice in Australian environmental and natural resource management](#)’ (Conference Paper, Australian Agricultural and Resource Economics Society, 8 – 10 February 2006). See also, [Guidelines for applying the precautionary principle to biodiversity conservation and natural resource management](#).

4. Ensuring evidence-based decision making

Proposed Objective 4: *The robust and coordinated use of science, data and Cultural knowledge underpins evidence-based decision-making in water management.*

The implementation of Objective 4 should have a particular focus on providing water resources decisions that:

- prioritise, centre and resource First Nations Knowledges and Cultural Science;⁶² and
- are underpinned not only by the best available science, but in a manner that is transparent, enforceable, and inclusive.

Application of best available science

Two recent scientific reviews of the state of river science and groundwater management in Australia, which were prepared by a wide range of relevant experts in these fields, identify knowledge gaps and emerging needs. This includes in relation to the scientific understanding of the hydrology and ecology of non-perennial rivers and identifying water requirements of groundwater dependent ecosystems.⁶³

We urge the Department to consider the recommendations made in these recent reviews when developing and implementing the Renewed Agreement. This would align with proposed Outcome 1.

We also note in particular that the surface water review specifically identifies a strong and immediate need for effectively including First Nations stakeholders in decision-making for surface water management. There are a growing number of examples of how this can work successfully; however, these examples are still the exception rather than the norm.⁶⁴

In this submission we have touched on the historical exclusion of First Nations science in the management of resources. We are supportive of an objective that elevates the knowledge and expertise of First Nations in water resources management.

Impacts of climate change

Understanding and accounting for the impacts of climate change on water resources will be a key aspect for management and protection of water resources:

⁶² Anne Poelina, Final Keynote Address (Speech, Connected by Water Conference, 6 March 2024) accessible [here](#).

⁶³ Shanafield et al, 'Australian non-perennial rivers: Global lessons and research opportunities' (2024) 634 *Journal of Hydrology* 130939, accessible [here](#); Cook et al, 'Sustainable management of groundwater extraction: An Australian perspective on current challenges.' (2022) 44 *Journal of Hydrology: Regional Studies* 101262, accessible [here](#).

⁶⁴ Discussion of these examples can be found in this article: Shanafield et al, 'Australian non-perennial rivers: Global lessons and research opportunities' (2024) 634 *Journal of Hydrology* 130939, accessible [here](#).

- Surface water resources can manifest the impacts of climate change quickly, and impacts can and have been occurring before they become apparent in the relatively short period of instrumental record. Water temperatures will be affected (and therefore aquatic ecosystems) even in the absence of demonstrable alteration of streamflow volume. This creates a risk where action to address and plan for climate change impacts is delayed. Water allocation plans must consider climate change impacts immediately and, in circumstances where it is challenging to employ physical climate models to determine allocations, should account and plan for worst case scenarios.
 - In particular, there are several approaches to anticipating and responding to climate change impacts. Where the climate data is not supportive of responding using particular modelling approaches, other options should be pursued.
- Groundwater resources are more buffered by interannual variations; however, climate change is still a significant barrier to groundwater management. Climate change introduces uncertainty in modelling, impacts groundwater recharge, changes the volume of agricultural water withdrawals, and also the types of crops planted. These changes can be tricky to incorporate in decision-making, but are no less important.

Clear and transparent decision-making

As highlighted in the Discussion Paper, active and effective data and information sharing is key to positive water resources outcomes. However, water monitoring data collected by industry is rarely shared publicly, making it difficult to adequately assess the impacts of industry on water resources and draw upon past experiences in assessing future projects. Increased information sharing would therefore promote social license and transparency in decision-making.

The Discussion Paper does not identify the fact that there is no scientific consensus on the definition of ‘effective’ restoration of surface waters. This point again highlights the need for clear and transparent decision-making that identifies the sensitive receptors to be protected, focuses on a meta-community approach, and includes input from First Nations.

Data and modelling

Decision-making must also be based on the most up to date modelling and data. For example, groundwater models form the decision-making tool for most developments (such as coal, gas, and water allocation plans), but the Australian Groundwater Modelling Guidelines are now 12 years old and widely acknowledged to be out of date given the advancements in both science and computing power over the last decade.

Strong baseline data is imperative for understanding the impacts of any development on both surface and groundwater resources. Yet in many areas where water allocation plans are being established, there is a dearth of baseline data to support sustainable diversion or extraction limits. Thus, clear language around the requirements for baseline data are needed.

Once extraction limits are set, compliance and enforcement of water regulation remains a key barrier to sustainable water management – which links Objective 4 to Objective 6, discussed further below. As discussed in in the article *Sustainable management of groundwater extraction: An*

Australian perspective on current challenges,⁶⁵ there is currently wide variation in how regional extraction limits to protect groundwater resources, groundwater-dependent ecosystems and existing groundwater users are determined and monitored. Lack of transparency and science in both the development and monitoring of extraction, as well as clear formulation of regulations that are enforceable, stymies efforts to maintain sustainable water resources.

Further comments on outcomes

In addition to our comments above, we note the following:

- Outcome 1 can be strengthened by the incorporation of the words ‘Western’ before ‘Science’, ‘First Nations’ before ‘knowledge’ and ‘knowledges’ as a plural so that it reads ‘Western Science and First Nations knowledges provide a basis for decision making [...]’. It is evident that this Objective 4 is intended to incorporate First Nations knowledges, and the outcomes should reflect this. ‘Knowledges’ should be used to recognise that there are multiple First Nations knowledges, not one homogenous knowledge.
- The outcomes appear to prioritise accurate, active and effective data, information sharing and access to information on water management practices. As discussed above, these are essential concepts that underpin evidence-based decision making, and transparency and access to information should be incorporated into the principles for Objective 4 and the jurisdictional plans.
- Transparency principles should also apply to the collection and use of modelling and data to inform government water management decisions. It is not sufficient for water management policies to assert their scientific basis without the underlying basis being documented, so it can be tested, reviewed and critiqued. For example, EDO has raised concerns with the NT government’s recently finalised Surface Water Take – Wet Season Flows Policy, which fails to clearly articulate its scientific basis, acknowledge uncertainties in data and modelling or define key sensitive receptors for protection, which is imperative to consider the impacts of water extraction on ecological and cultural values.⁶⁶
- We note that the application of transparency principles in relation to First Nations information must be underpinned by Indigenous Cultural and Intellectual Property considerations (**ICIP**). The practical effect of these considerations is that certain information shared or transferred during First Nations water rights engagement remains the ICIP of First Nations communities, and it may not be appropriate for public dissemination. For further information on this matter please see Terri Janke and Company, *Submission to the Productivity Commission Inquiry on the 2004 Intergovernmental Agreement on a National Water Initiative*.⁶⁷

⁶⁵ Cook et al, ‘Sustainable management of groundwater extraction: An Australian perspective on current challenges.’ (2022) 44 *Journal of Hydrology: Regional Studies* 101262, accessible [here](#).

⁶⁶ Environmental Defenders Office, *Submission to the Productivity Commission National Water Reform 2024 – Interim Report* (24 April 2024) 8-9 accessible [here](#).

⁶⁷ Prepared by Terri Janke and Company, *Submission to the Productivity Commission Inquiry on the 2004 Intergovernmental Agreement on a National Water Initiative* (February 2024) accessible [here](#); see also Terri Janke, *True Tracks: Indigenous Cultural and Intellectual Property Principles for putting Self-Determination into practice* (Thesis, Australian National University, 2019).

Recommendations for Objective 4 (Ensuring evidence based decision making)

A Renewed Agreement must:

17. Allow for the implementation of Objective 4 with a focus on providing water resources decisions that:
 - a. prioritise, centre and resource First Nations Knowledges and Cultural Science;
 - b. are underpinned not only by the best available science but in a manner that is transparent, enforceable, and inclusive.
18. Acknowledge that a key aspect of managing and protecting water resources is understanding and accounting for the impacts of climate change. It should provide avenues for practical implementation of this understanding, including in circumstances where it is challenging to employ physical climate models to determine allocations.
19. Mandate increased sharing of data and information, including water monitoring data collected by industry, to foster social license and transparency in decision-making.
20. Provide for decision-making underpinned by current and accurate data.
21. Apply transparency principles to the collection and use of modelling and data to inform government water management decisions.
22. Provide flexibility for the consideration and implementation of ICIP principles.

5. Transparent, strategic water infrastructure investment

Proposed Objective 5: Investment in major water infrastructure that is effective, strategic and transparent.

The PC Interim Report found that a significant proportion of major infrastructure developments funded by governments since 2021 have not been subject to a transparent assessment of the costs and benefits of the proposal, or to independent scrutiny. Further, it found that a number of successfully funded investment projects were funded even where the assessed costs of the project outweighed the measured benefits to the community.⁶⁸

The implementation of Objective 5 should have a particular focus on investing in appropriate infrastructure in communities that do not have access to safe drinking water. Outcome 1 refers to investment in infrastructure being *at the right scale, place and time to provide safe and reliable water for communities, access to essential town water supplies, and generate public benefit through productive use*. This outcome should require prioritisation of infrastructure investment, particularly in remote places, directed towards ensuring the right to safe, clean and reliable drinking water is guaranteed for all.

We welcome the reference to transparency and accountability in decision-making around water infrastructure. However, as we discuss further in relation to Objectives 4 and 6, robust

⁶⁸ Interim Report, 18.

accountability and transparency measures are necessary for all water planning and management decision-making. This is essential to building and maintaining community trust and confidence.

Outcome 4 requires governments to demonstrate that, amongst other things, *infrastructure developments are culturally responsive by incorporating effective engagement with the recognised Traditional Owners of potentially affected areas and taking into account impacts on cultural heritage in affected areas*. We think this outcome can be improved and clarified.

For one, the outcome should require engagement with First Nations peoples in respect of infrastructure development to embed the principle of free, prior and informed consent, consistent with Objective 2, as well as co-design and management of infrastructure. The use of the term “recognised Traditional Owners” should also be removed or clarified – in our view, engagement with affected First Nations peoples should not be limited, for example, to those who have recognised exclusive native title rights or land rights under the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*.

Finally, the consideration of, investment in and roll-out of major water infrastructure must be done in a way which promotes, and is consistent with, the other objectives of a Renewed Agreement. As we note in our preliminary comments, the Renewed Agreement would benefit from clarification of the interplay between different Objectives. This could include whether Objective 5 is intended as a pathway or necessary condition to achieve Objectives 1-3.

Recommendations for Objective 5 (Transparent, strategic water infrastructure investment)

A Renewed Agreement must:

23. Allow for implementation that prioritises investment in infrastructure in communities which do not have access to safe drinking water.
24. Ensure robust accountability and transparency measures for all water management and planning decisions.
25. Embed the principle of free, prior and informed consent when engaging with First Nations people in respect of infrastructure development and to ensure that engagement is not limited to those with exclusive native title rights or land rights.

6. Sustained community trust

Proposed Objective 6: *Sustained community trust and confidence in government, water agencies, water managers and users.*

We agree that sustained community trust and confidence is an essential building block in a water management regime. The PC Interim Report lists the views of several participants in relation to

engagement processes.⁶⁹ Many of the participants described inadequate engagement and consultation processes.

A Renewed Agreement should focus first on building, and then on sustaining, community trust and confidence in any decisions made relating to water.

EDO supports the proposed outcomes and makes the following additional comments.

Outcome 1 – consultation

Outcome 1 can be strengthened to ensure communities are provided with sufficient information and *sufficient time* to consider that information, better enabling them to engage in the process.

Historically, government-designed planning processes have focused on traditional, quick and easy consultation methods (e.g. community meetings or panels), leading to First Nations' and many other interests (e.g. environmental and local farmers) being poorly engaged.⁷⁰ Consultation processes for water management decisions should be enshrined in legislation with appropriate timeframes for genuine consultation and co-design. First Nations should decide what constitutes appropriate consultation and engagement for their communities, which may include materials being provided in language and processes taking place on Country. It is not sufficient for a government department to post a lengthy, detailed document online and say that consultation has been properly undertaken. As noted earlier in relation to Objective 2, genuine engagement with First Nations communities also requires a commitment to providing financial and other resourcing support to enable and properly recognise engagement.

Outcome 3 – access to information and transparency

Outcome 3 relates to access to information and transparency, which are essential principles in a Renewed Agreement. Trust and confidence are built through transparency and accountability. Mandatory publication of relevant documents – such as reasons for decision-making around licences and water plans as well as water quality monitoring reports – is essential.

There are presently inconsistencies across jurisdictions in relation to the accessibility of documents. For example, Power and Water Corporation in the NT publishes annual reports with water quality monitoring. While this level of transparency is a good starting point, further information cannot be sought as Power and Water Corporation is expressly exempted from access to government information applications under the *Information Act 2002* (NT). In addition, whilst Power and Water Corporation publish quality data in relation to 72 remote communities serviced by wholly owned subsidiary Indigenous Essential Services, no data is published in relation to the outstations and homelands it provides services to. Hundreds of further remote communities and homelands sit outside of Power and Water Corporation's purview and quality data does not

⁶⁹ Interim Report, 200.

⁷⁰ Cameron Holley, 'Future Water: Improving Planning, Markets, Enforcement and Learning' in *New Directions for Law in Australia: Essays in Contemporary Law Reform* (ANU Press, 2017) 256 accessible [here](#).

appear to be published. Some, but not all, of these communities are funded to receive essential services.⁷¹

In WA, Water Corporation publishes general water quality monitoring data in its annual reports. South Australia has an accessible online system where all relevant data is published and easy to access. Jurisdictions should be subject to consistent, mandatory reporting requirements.

It is also not sufficient for jurisdictions to rely on Freedom of Information legislation as a means of fulfilling obligations for providing “access to information”. In EDO’s experience working across multiple jurisdictions, there have been ongoing issues with the operation of such schemes as an effective and timely means of accessing information.

For example, we have found freedom of information processes in the Northern Territory to be time consuming and costly, with the legislation giving scope to agencies to extend the 30-day decision time period for almost indefinite periods of time.⁷² There is a backlog for external review processes stretching across multiple years. The scheme is currently being reviewed by NT’s Information Commissioner due to widespread issues.⁷³ EDO has also reported extensively on failings with the Tasmanian scheme, due to high refusal rates, legal errors and unacceptably slow review times.⁷⁴ There have also been ongoing criticisms raised with the Commonwealth scheme.⁷⁵

A Renewed Agreement should ensure that information is made accessible in a timely and comprehensive manner rather than relying on individuals and organisations to go through freedom of information schemes, which are themselves in need of comprehensive reform.

Outcome 8 – compliance and enforcement

Outcome 8 can be strengthened. The Renewed Agreement should emphasise the importance of adequate measurement, monitoring, compliance and reporting systems to ensure public trust and confidence. This includes having an appropriately resourced regulator and robust metering requirements, including for groundwater bores. We acknowledge this is referred to in the outcomes to Objective 7 and discuss these elements in greater detail below.

The Discussion Paper does not make reference to accountability through the public’s right to challenge water licensing or planning decisions. Both the NT and WA are deficient in this area:

⁷¹ According to Aboriginal Housing Northern Territory, there are more than 500 recognised homelands in the NT, of which 394 are currently funded to receive essential services: <https://ahnt.org.au/country/homelands/>.

⁷² Section 26(2)(c) of the *Information Act 2002* (NT) allows an organisation to extend the processing time beyond the 30 days required because complying with that period would “unreasonably interfere with the conduct of the operations of the organisation”. In our experience this provision has been used to extend timeframes by many months even when the scope of an application is relatively narrow.

⁷³ Public comment has not been sought to our knowledge, however. See Thomas Morgan and Matt Garrick, “[NT’s Freedom of Information system under scrutiny over delays, refusals and redactions](#)”, 18 January 2024 (ABC News, online).

⁷⁴ Environmental Defenders Office, *Transparent failure – Tasmanian Government is the most secretive in Australia* (5 July 2023, Web Page) accessible [here](#).

⁷⁵ See, most recently, the Senate Standing Committee on Legal Constitutional Affairs, *Report into the Operation of Commonwealth Freedom of Information Laws*.

- In the Northern Territory, there is a publicly available register of surface and groundwater extraction licences,⁷⁶ applications for surface and groundwater extraction licences are advertised and subject to public comment, decisions must be published, and there is a third party merits review process on decisions to grant such licences.⁷⁷ However, the NT does not mandate the publication of applications for, or decisions on, other types of licences and permits under the NT *Water Act*, such as permits to interfere with a waterway, or include provision for public comment on the application process.⁷⁸
- Water allocation plans in the NT are published online, and the usual process has been to include public consultation on those plans. However, the consultation process is not statutory, nor are Water Advisory Committees required in each instance whether a water allocation plan is being developed. EDO has observed on several occasions that WAPs in the NT do not take the form of delegated statutory instruments and often fail to provide clear, quantifiable, consistent and legally binding criteria and targets, such that they are arguably incapable of facilitating sustainable and equitable management of a vital, contested and increasingly constrained resource.⁷⁹
- In Western Australia, community members have little to no opportunity to engage with decisions about water extraction that is said to be guided by non-statutory water allocation plans. This is because water licence applications, determined by the Department of Water and Environmental Regulation, cannot be reviewed by third parties⁸⁰ and there is no merits review process available under the RIWI Act. Third parties are therefore left with only judicial review as a method of intervention – made more difficult because licence applications and decisions are not published.

The objectives, outcomes and principles do not raise third party review as an issue, and this is a matter that must be incorporated into a Renewed Agreement.

Recommendations for Objective 6 (Sustained community trust)

A Renewed Agreement must:

26. Ensure consultation processes for water management decisions are enshrined in legislation with appropriate timeframes for genuine consultation and co-design.

⁷⁶ Northern Territory Government, *Water Licensing Portal* (Web Page) accessible [here](#); see also Northern Territory Government, *Approved water extraction licences* (Web Page) accessible [here](#).

⁷⁷ NT *Water Act* s 30 and Pt 6A.

⁷⁸ Part 6A of the NT *Water Act*, which provides for public notification of applications and decisions, only applies to “*water extraction licence decisions*”, being applications for surface water extraction licences and groundwater extraction licences: see s 71A(1)-(2) and definition of “*water extraction licence*” in s 4.

⁷⁹ Environmental Defenders Office, *Deficiencies in the existing water law and governance framework in the Northern Territory* (October 2022) accessible [here](#); Environmental Defenders Office, *Deficiencies in the existing water law and governance framework in the Northern Territory* (August 2021) accessible [here](#); Environmental Defenders Office, *Submission to the Productivity Commission National Water Reform 2024* (21 February 2024) accessible [here](#).

⁸⁰ Instead, review rights are limited to licence applicants, a who is entitled to have the licence transferred to them, or a person who is a ‘third-party agreement holder’ – someone who has entered an agreement with the licence holder for the taking of water under the licence for a limited period: RIWI Act Sch 7 cl 30(1).

27. Enable First Nations to decide what constitutes appropriate consultation and engagement for their communities.
28. Include mandatory requirements for publication of relevant documents including reasons for decision for water licences and water plans as well as water quality monitoring data. It is not sufficient for jurisdictions to rely on Freedom of Information legislation as means of providing access to information.
29. Include a focus on third party review rights for water management decisions, including in relation to water plans and licences.

7. The efficient use of water

Proposed Objective 7: Water management frameworks that facilitate the efficient use of water.

Generally speaking, we agree that water management frameworks should facilitate the efficient use of water and involve adequate and effective measurement, monitoring, compliance and reporting systems. This is imperative in light of competing demands and pressures on the resource, and the need to secure environmentally sustainable levels of take and prioritise First Nations water justice.

Without commenting exhaustively on the outcomes for this objective, we urge caution around the promotion of water markets within a Renewed Agreement. The NWI renewal process should involve reconsideration of one of the core objectives of the NWI, namely the “progressive removal of barriers to trade in water and meeting other requirements to facilitate the broadening and deepening of the water market, with an open trading market to be in place...”⁸¹

First Nations water dispossession, exacerbated through existing water markets (see MDB case study above at p 19-20), is concerning in and of itself and requires urgent reform. However, as EDO has argued previously,⁸² this should also inform a broader discussion about the appropriateness of water markets, their impact on what we call “water justice” and the assumption that moving water to its “highest value use” (as measured in economic terms) is inherently beneficial – and the best way to manage water in conditions of scarcity. This is particularly pertinent in jurisdictions which do not yet have well-developed water markets. Put differently, a fulsome evaluation of the advantages and disadvantages of markets should be undertaken before any further steps are taken in said jurisdictions.

More generally, it is important for dialogue and subsequent reform to properly acknowledge that viewing water through an economic lens is merely one of many ways to ascribe meaning to rivers, aquifers and wetlands. Other values – spiritual, recreational, aesthetic, ecological (to name but a few) – also need to be properly acknowledged and adequately protected by law.

⁸¹ NWI, cl 23(v).

⁸² Environmental Defenders Office, *Submission to the Productivity Commission on the National Water Reform Inquiry* (21 August 2021) 18-19 accessible [here](#).

To that end, we draw attention to and re-iterate our recommendations made to the 2020 PC Inquiry, namely that a Renewed Agreement should emphasise the need for careful:

- analysis of the advantages and disadvantages of water markets, including proper consideration of perverse impacts on First Nations peoples; and
- consideration of the different values associated with rivers, wetlands and aquifers when developing water management laws and policies (and consideration of the impact of water markets on these values).

We also comment specifically about Outcome 6, which refers to measurement, monitoring, compliance and reporting. These are central elements of an efficient, effective system which the public has confidence in.

The Renewed Agreement should emphasise the need for a strong compliance and enforcement culture, including appropriately resourced, independent water regulators (modelled on the NSW Natural Resources Access Regulator) underpinned by appropriate governance arrangements. Jurisdictional provisions around unauthorised water take are also unlikely to be of great utility unless there are clear and binding licence conditions around water extraction, there is accurate measurement and data around water take (so breaches can be proven to a criminal standard) and there is an effective regulator.

An effective water metering regime significantly assists governments with improved water management and compliance, while also increasing trust among water users and the public generally. States and Territories have long committed to implementing consistent non-urban metering standards.⁸³ Yet this has not been rolled out across all jurisdictions – the Northern Territory, for example, relies on a non-binding code of practice, which gives meters installed prior to 30 June 2017 until 2027 to comply with that code.⁸⁴ We see a Renewed Agreement as an important opportunity to re-iterate and strengthen uniform metering requirements across Australia. This should include:⁸⁵

- mandatory use of meters for all water licences (above an appropriate threshold and subject to reasonable exemptions);
- ensuring metering obligations are entrenched within legislation rather than just imposed as conditions on individual licences; and
- promoting, and where appropriate, requiring, the use of best available technologies such as smart metres and telemetry devices.

⁸³ Department of Climate Change, Energy, the Environment and Water, *Non-urban water metering framework and guidelines* (Web Page) accessible [here](#); and see Department of Climate Change, Energy, the Environment and Water, *Metrolological Assurance Framework 2: Rules and guidance for the use and regulation of non-urban water meters* (July 2021) 1 accessible [here](#).

⁸⁴ Department of Environment and Natural Resources Northern Territory, *Non-Urban Water Metering Code of Practice for Water Extraction Licences* (17 May 2017).

⁸⁵ See, for example, Environmental Defenders Office, *Submission on the Draft Territory Water Plan* (25 November 2022) 9-10 accessible [here](#).

Recommendations for Objective 7 (The efficient use of water)

A Renewed Agreement must:

30. Apply a more cautious approach to the use of water markets
31. Emphasise the need for careful:
 - a. analysis of the advantages and disadvantages of water markets, including proper consideration of perverse impacts on First Nations people; and
 - b. consideration of the different values associated with rivers, wetlands and aquifers when developing water management laws and policies (and consideration of the impact of water markets on these values).
32. Emphasise the need for a strong compliance and enforcement culture, including appropriately resourced, independent water regulators underpinned by appropriate governance arrangements;
33. Reiterate and strengthen uniform metering requirements across Australia, to assist governments with improved water management and compliance and increase trust amongst water users and the public. This should include:
 - a. mandatory use of meters for all water licences (above an appropriate threshold and subject to reasonable exemptions);
 - b. ensuring metering obligations are entrenched within legislation rather than just imposed as conditions on individual licences; and
 - c. promoting, and where appropriate, requiring, the use of best available technologies such as smart metres and telemetry devices.

*Thank you for the opportunity to make this submission.
Please do not hesitate to contact our office should you have further enquiries.*

Annexure A – List of Recommendations

Recommendations (Preliminary comments)

A Renewed Agreement must:

1. Be informed by, build on, and learn from experiences under the NWI. This includes past performance – including where jurisdictions such as the Northern Territory and Western Australia are yet to implement some provisions of the NWI.
2. Implement the governance structures proposed in the PC Interim Report.
3. Provide for jurisdictional action plans that contain clear, prescriptive actions that are developed through a consultative process and subject to independent review.
4. Contain Objectives in a way that ensures core or foundational objectives can be clearly identified. In particular, we recommend redrafting Objective 1 which currently bundles several objectives into one and risks repeating the ‘triple bottom line’ approach that has been applied within the Murray Darling Basin and can undermine core environmental outcomes.
5. Carry forward and strengthen the foundational importance of capping or reducing extractions to an ESLT. ESLTs must be determined based on the best available scientific knowledge. Determining ESLTs must also recognise and prioritise First Nations knowledges, rights and ownership and ensure First Nations cultural flows are protected when required by First Nations. Data and processes used to calculate ESLTs must be publicly available to enable peer review and critique.
6. Reflect and accord with First Nations cultural heritage principles identified in this submission, in both form and implementation.

Recommendations for Objective 1 (Securing water for all uses)

A Renewed Agreement must:

7. Identify as a core objective the right to water, and access to safe drinking water for all Australians. EDO supports the proposed expansion of the NWI to include water quality.
8. Allow for effective implementation of the water quality objective through legislative reform across Australian jurisdictions, including to:
 - a. enshrine the legally binding right to water, including safe drinking water, as a basic human right;
 - b. require definition of and commitment to delivering a ‘basic level of service’ for the provision of safe and reliable drinking water;
 - c. adopt the ADWG as the minimum, enforceable standard (noting the recommendation to consider whether the ADWG should be supplemented with a health-based sodium guideline);
 - d. require regular monitoring and reporting on the delivery of the applicable standards.

Recommendations for Objective 2 (Supporting Aboriginal and Torres Strait Islander Peoples' water interests and values)

A Renewed Agreement must:

9. Recognise and prioritise First Nations peoples' reverence and cultural responsibility for water and provide for the continued involvement and participation of First Nations people in water management.
10. Centre First Nations voices and prioritise consultation that is guided by First Nations, properly resourced and underpinned by free, prior and informed consent.
11. Include a commitment to supporting and protecting First Nations rights to water, including for economic purposes.
12. Incorporate the water values, principles and actions set out by the Committee on Aboriginal and Torres Strait Islander Water Interests.
13. Include requirements to expressly incorporate key international obligations and human rights framework commitments into domestic law, including to ensure that First Nations can uphold and protect their rights and interests.

Recommendations for Objective 3 (Climate resilient water management)

A Renewed Agreement must:

14. Incorporate and reflect best-practice principles for climate-ready water laws.
15. Ensure adequate avenues for listening to the voices and wisdom of First Nations people in water management, particularly in relation to climate change.
16. Implement a precautionary approach to water management, particularly in areas that will be disproportionately affected by climate change. This should be achieved through expressly committing to a precautionary approach.

Recommendations for Objective 4 (Ensuring evidence based decision making)

A Renewed Agreement must:

17. Allow for the implementation of Objective 4 with a focus on providing water resources decisions that:
 - a. prioritise, centre and resource First Nations Knowledges and Cultural Science;
 - b. are underpinned not only by the best available science but in a manner that is transparent, enforceable, and inclusive.
18. Acknowledge that a key aspect of managing and protecting water resources is understanding and accounting for the impacts of climate change. It should provide avenues for practical implementation of this understanding, including in circumstances where it is challenging to employ physical climate models to determine allocations.
19. Mandate increased sharing of data and information, including water monitoring data collected by industry, to foster social license and transparency in decision-making.
20. Provide for decision-making underpinned by current and accurate data.

21. Apply transparency principles to the collection and use of modelling and data to inform government water management decisions.
22. Provide flexibility for the consideration and implementation of ICIP principles.

Recommendations for Objective 5 (Transparent, strategic water infrastructure investment)

A Renewed Agreement must:

23. Allow for implementation that prioritises investment in infrastructure in communities which do not have access to safe drinking water.
24. Ensure robust accountability and transparency measures for all water management and planning decisions.
25. Embed the principle of free, prior and informed consent when engaging with First Nations people in respect of infrastructure development and to ensure that engagement is not limited to those with exclusive native title rights or land rights.

Recommendations for Objective 6 (Sustained community trust)

A Renewed Agreement must:

26. Ensure consultation processes for water management decisions are enshrined in legislation with appropriate timeframes for genuine consultation and co-design.
27. Enable First Nations to decide what constitutes appropriate consultation and engagement for their communities.
28. Include mandatory requirements for publication of relevant documents including reasons for decision for water licences and water plans as well as water quality monitoring data. It is not sufficient for jurisdictions to rely on Freedom of Information legislation as means of providing access to information.
29. Include a focus on third party review rights for water management decisions, including in relation to water plans and licences.

Recommendations for Objective 7 (The efficient use of water)

A Renewed Agreement must:

30. Apply a more cautious approach to the use of water markets
31. Emphasise the need for careful:
 - a. analysis of the advantages and disadvantages of water markets, including proper consideration of perverse impacts on First Nations people; and
 - b. consideration of the different values associated with rivers, wetlands and aquifers when developing water management laws and policies (and consideration of the impact of water markets on these values).
32. Emphasise the need for a strong compliance and enforcement culture, including appropriately resourced, independent water regulators underpinned by appropriate governance arrangements;

33. Reiterate and strengthen uniform metering requirements across Australia, to assist governments with improved water management and compliance and increase trust amongst water users and the public. This should include:
- a. mandatory use of meters for all water licences (above an appropriate threshold and subject to reasonable exemptions);
 - b. ensuring metering obligations are entrenched within legislation rather than just imposed as conditions on individual licences; and
 - c. promoting, and where appropriate, requiring, the use of best available technologies such as smart metres and telemetry devices.