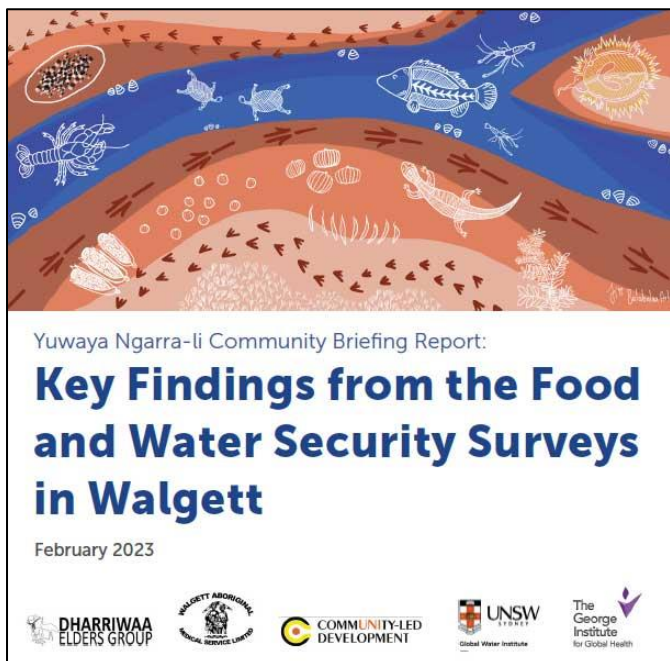


Productivity Commission Inquiry into the National Water Initiative



Walgett's Aboriginal Community-Controlled Organisations have done the hard work with DEG's Yuwaya Ngarrali partners UNSW, to tell the real story of the Commonwealth and NSW governments' management of water in the Northern Murray Darling Basin. Dharriwaa Elders Group asks that these governments implement the water management solutions urgently required for our community and the public interest.

Submission from Dharriwaa Elders Group
Walgett 16 February 2024

Dharriwaa Elders Group (“DEG”) thanks the Productivity Commission for the opportunity to contribute information to Inquiry and provide our perspective and experience as a long-standing Aboriginal Community Controlled Organisation (“ACCO”) in Walgett, NSW. We see this as an important opportunity to have our voices heard on the Commonwealth and NSW State Governments’ implementation and delivery of the National Water Initiative (“NWI”).

The DEG is an Aboriginal cultural organisation which works to support Elders wellbeing, protect Aboriginal cultural heritage and knowledge and promote Aboriginal cultural values. The organisation also works for community development and promoting relationships between Aboriginal Elders and other generations of the Walgett Aboriginal community.

DEG works closely with the Walgett Aboriginal Medical Service (WAMS) and other organisations in Walgett to improve wellbeing and outcomes for Aboriginal people in Walgett.

Walgett is a remote town in a large Northern Murray-Darling Basin floodplain where the Namoi meets the Barwon River and surrounded by other ground and surface waters – some that have been recognised by the Ramsar convention. Walgett has a large, mostly young, Aboriginal population and is a geographically diverse place with three Aboriginal language groups. The DEG has a close knowledge of the Walgett Aboriginal community; it is in touch via its directors, members and staff with community in the town of Walgett and the nearby Gingie and Namoi villages who can identify what works and what doesn’t work for them in terms of policy and programs.

Since 2016, DEG has been working in a community-led partnership with UNSW, Yuwaya Ngarra-li, the goals of which are:

1. Greater Aboriginal community control and capacity
2. Increased numbers of Aboriginal young people in education, training, and employment
3. Reduced numbers of Aboriginal people in contact with the criminal justice system
4. Improved social determinants of health and wellbeing amongst Aboriginal people
5. Increased sustainable management of water and Country
6. Redirection of funding towards strengths-based, holistic, community-led initiatives

We refer you to our publications that are of relevance to this submission:

<https://www.dharriwaaeldersgroup.org.au/index.php/reports>.

Government water organisations must change

Firstly, we provide our responses to the Minister’s request that the Commission should consider “the perspectives and cultural rights of First Nations Australians”.

In water policy and management, the Labor Governments in NSW and the Commonwealth have created positions in departments managing water, with a focus on Aboriginal-identified positions. The DEG has invested considerable effort and resources into becoming a key stakeholder and thought leader in the Northern Murray Darling Basin, and therefore new staff in these agencies want to engage with the DEG.

Many staff in government water agencies do not have the long-term water policy or ecological knowledge DEG has, nor the power needed to effect change – yet they have been tasked with progressing the governments’ priorities to engage Aboriginal communities.

Some are respectful senior public servants who are very knowledgeable, however they are not routinely building into their processes the time and resources to allow DEG and other ACCOs to respond or contribute to policy. Too often, the attitude is that if we can’t meet their timeframes and paradigms our solutions are not considered.

We continue to see government creating more positions in departments as the means to achieve greater engagement with Aboriginal communities as if the lack of these positions is the cause of government failure to achieve improved outcomes in water management. However, this does nothing to address the structural and systemic changes that are needed to make or improve government accountability to communities.

DEG now has an extra layer of government relations to navigate and educate to progress DEG’s water priorities. We worry that over-extraction in the Northern Basin continues, degrading rather than improving the health of the waters in the Basin. Meanwhile water management practices that preference irrigators are slow to change, if they change at all.

Trust in government agencies that work with ACCOs is low. Until it is restored, and we witness genuine long-term work to provide safer drinking water and repair river and floodplain health side-by-side with water ACCOs such as DEG, we will continue having to devote hard-won community resources to work for river health, fighting corruption and misinformation about “drought”, how “communities suffer from water buybacks for the environment” and “rivers that were always dry”.

Some ways that government water representatives could change their practice.

- undertaking cultural awareness training both before they contact Aboriginal communities, commissioned from the local ACCOs they wish to work with,
- regular on-site visits to rivers, wetlands and towns,
- understanding the whole of government policy framework, including the policy instruments and inter-governmental agreed by governments outside water, such as:
 - Closing the Gap National Agreement¹, Targets and outcomes and Reform Priorities
 - Best Practice Regulatory Framework,²
 - Intergovernmental agreement on data sharing,³
 - Northern Australia Indigenous Development Accord,⁴
 - Intergovernmental Agreement on Competition and Productivity-enhancing Reforms⁵
- Engagement is genuine and two-way,
- Governments engage honestly, inclusively, respectfully and transparently,

¹ <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap>

² The Office of Impact Analysis. (2023), *Developing the evidence base for decision making*.
<https://oia.pmc.gov.au/>

- Communities are provided with sufficient information and time to enable effective and timely policy development,
- Governments communicate clearly in plain English and avoid jargon or bureaucratese.

An overarching response to implementing the NWI

While much progress has been made, DEG believes that the NWI has not been implemented consistently between jurisdictions, or across objectives.

In the Murray-Darling Basin there has been good or reasonable progress towards the following objectives:

- a statutory planning framework, although transparency remains poor
- improved environmental water management
- removing barriers to trade, and
- improved water management efficiency.

There has been unsatisfactory progress in the following areas:

- transparency is poor in many water management processes, not only in planning
- progress has been slow in returning some systems to environmentally sustainable levels of extraction
- water accounting does not meet the needs of water users and the environment as well as it needs to, and
- recognition of the links between surface and groundwater remains inadequate.

In the Murray-Darling Basin, populations of waterbirds, fish and other aquatic species continue to decline, and fish kills and algal blooms are now commonplace. Water quality in Walgett, on the confluence of the Barwon and Namoi Rivers in Northern NSW, is amongst the worst in the world. DEG has seen no innovative government strategies in our area of interest that will promote river health.

The Northern Territory is an example of poor implementation of the NWI. The language of protecting rivers has been adopted. However, recent developments suggest that lessons from the Murray-Darling Basin have not been learnt.

For some objectives incremental changes to the NWI will be enough. However, where objectives have consistently not been met much greater changes will be needed.

When the NWI was introduced in 2004 its intent was explicit. Since then, poor progress towards objectives has been accompanied by the dismantling of the NWI's associated governance arrangements. For objectives where little progress has been made the difference between ostensible policies and actual policies is now significant.

Unimplemented NWI commitments

The elements of the NWI that have not been implemented include:

- inclusion of Aboriginal and Torres Strait Islander people in the management of water. Employing a few individuals in departments or appointing a few people onto advisory committees is not the way to do this,
- statutory recognition of Aboriginal and Torres Strait Islander peoples' access to water.
- proper consideration of climate change,

- water accounting that meets the information needs of users, that is publicly available and audited,
- acceptable drinking water for all regional and remote communities. DEG has specific solutions to offer for Walgett,
- measurement, monitoring and regulation of all interceptions,
- most of the NWI for Western Australia and the Northern Territory.

Best practice principles that must be embedded in NWI

- Return overallocated or overused systems to environmentally sustainable levels of extraction
 - Statutory Water Sharing Plans must include the volumetric extraction limit and the model run number used to derive that limit.
 - Statutory Water Sharing Plans must prioritise the flow rates necessary for base flows before water is allocated to water users.
- Communication and engagement (see our detailed recommendations above in “Some ways that government water officials could change their practices”).
- Water information
 - is available to all stakeholders equally,
 - that is in the public interest is publicly available. The public interest overrides a desire for non-disclosure because of privacy or commercial-in-confidence
 - meets the information needs of stakeholders,
 - discloses all data sources and methods so it is repeatable and able to be verified by interested parties,
 - has a quality rating that is publicly available,
 - is subject to independent review. The nature of an independent review has a quality rating that is publicly available. For example, a review commissioned and edited by government has a low-quality rating, a double-blind academic peer review has a high-quality rating,
 - includes annual reporting of what is grown from irrigation in each valley and how much water was used.
- Review of implementation
 - Policy outcomes should be reviewed, not just the actions intended to achieve the policy. For example, the policy outcome of the NWI was to maximise the net benefit to the nation by moving water to its highest value use. Actions to achieve that are the separation of water from land, issuing water entitlements, creating a water market, etc. Reviews of the NWI assess the actions, but not if the policy outcome has been achieved,
 - The implementation of policies are reviewed before similar policies are pursued. For example, savings from the Basin Plan on-farm efficiency projects should be reviewed before proceeding with new irrigation efficiency projects,
 - Report against the ecological characteristics of Ramsar sites, and
 - Report against United Nations Sustainable Development Goal 6.

- Best available science
 - Best available science is western science and Aboriginal and Torres Strait Islander knowledge, and
 - The evidence base that informs claims of best available science is disclosed.
- Infrastructure investment
 - That all policy options are considered and a cost-benefit analysis is undertaken for each option. All costs and benefits are substantiated. This should be made publicly available
 - Business cases are published in the public interest. The public interest overrides a desire for non-disclosure because of privacy or commercial-in-confidence

Implementing the NWI

Establish (or re-establish) governance structures to oversee a renewed NWI.

The National Water Commission, and the National Water Initiative Committee and its sub-committees, should be re-established.

The National Water Initiative Committee:

- was chaired by the Australian Government
- included representatives from each jurisdiction
- apportioned responsibility for reform areas to an Australian Government department
- included a sub-committee for each reform area which reported to the National Water Initiative Committee

The committee allowed regular and consistent scrutiny of the implementation of the NWI.

Establish a statutory position (National Water Commissioner) to oversee a renewed NWI.

There is no avenue of appeal for communities affected by poor water policy and planning. Recent proposals to enlarge and build new dams and weirs in NSW and Queensland were not consistent with either the NWI or the Basin Plan. DEG is at present working hard to get information about the raising of Gunidgera Weir on the Lower Namoi. This consumes considerable resources and adds to anxiety in the community.

The powers of a statutory National Water Commissioner could include:

- powers to investigate and compel the provision of information from water agencies, jurisdictions, companies and individuals, and
- the ability to reference any relevant Intergovernmental Agreements.

Most of the recommendations made by the DEG to the 2020 Productivity Commission Review of National Water Initiative and to the Productivity Commission Review of Implementation of MDB Plan 2023, are yet to be implemented and so we repeat them here for renewed consideration of the Commission.

Recommendations from Dharriwaa Elders Group (“DEG”) and Walgett Aboriginal Medical Service (“WAMS”) submission to Productivity Commission Review of National Water Initiative 2020³

1. Aboriginal Water allocations and water for the health of the rivers and groundwaters should be prioritised before non-Aboriginal-controlled irrigators and other industries.
2. This might require that the Commonwealth and states purchase, confiscate licences or otherwise acquire water in order to provide Aboriginal Water and Environmental Water allocations. Where the health of the river has the highest legal right, for example the NSW Water Management Act 2000, the law should be enforced.
3. That the NWI establish projects for local Aboriginal Water ACCOs that support and resource them (including to undertake the community education and negotiations, policy development and scientific and technical work) to identify water rights and requirements, acquire and manage Aboriginal Water allocations for commercial and non-commercial purposes for the benefit of the community in social, cultural, economic, health and environmental terms.
4. Aboriginal Water ACCO representatives must be resourced with policy secretariat and researchers to provide informed advocacy and negotiations with governments re water rights and planning. These representatives must also provide community education and support to ensure Aboriginal communities aren’t further disenfranchised from water policy.
5. The creation of the position of a NWI-funded Aboriginal Water Ombudsman to review the roll-out of NWI and troubleshoot, investigate, clear red-tape, advocate for local Aboriginal Water ACCOs (like the (now defunct) Coordinator-General for Remote Indigenous Services⁴) and evaluate, monitor and report progress from Aboriginal communities, on the implementation of the NWI to parliament regularly so that information is publicly accessible.
6. An audit of the NWI to see how NWI initiatives and targets will best support Closing the Gap targets, and determine NWI priorities accordingly, using the degree to which they support the Closing the Gap targets as a high-level criteria for prioritising.
7. The NWI must support research and infrastructure that examines and supports Climate Change resilience for Aboriginal communities (e.g. water saving, recycling, RO systems, food security measures, disaster preparedness etc.).
8. A framework and mechanisms that support each Aboriginal community in Australia to undertake self-determined governance and management of Aboriginal Water and environmental water activities. It would preference local Aboriginal Water ACCOs as suppliers to undertake NWI projects for local monitoring and compliance, and management of national estate activities.

³ https://dharriwaaeldersgroup.org.au/images/downloads/Productivity_Commission_Submission_-_SEPTEMBER_2020.pdf

⁴ This mechanism was explained here in the context of overseeing implementation of Closing the Gap reforms: <https://dharriwaaeldersgroup.org.au/images/downloads/DEG%20submission%20to%20PC%20review%20of%20CTG%20draft%20report%20Oct%202023.pdf>

9. Measurable outcomes that outline a specific water target, and water quality target, together with a measurement to support Closing the Gap for safe drinking water, water security and native foods (including river foods) security.
10. Drinking water should be regularly tested in all Australian communities for chemistry including sodium levels, pesticides, herbicides and chlorine by-products, and this information should be publicly available.
11. Australian Drinking Water Standards must contain health standards for sodium.
12. Fluoride provision and incentivisation of councils and state governments to fluoridate drinking water.
13. A new NWI could fund the provision of water engineering expertise, skills training and water infrastructure capability mapping and succession planning to eliminate risk of losing key expert personnel in remote areas.
14. Support partnerships between universities and Councils – prioritising councils with water infrastructure and capability vulnerability.
15. Implement subsidies that take into account that the cost of fulfilling the Universal Service Obligation to provide Australian citizens with good drinking water is greater for remote councils and communities.

We ask that the Commission recognises and supports the already substantial efforts of Walgett ACCOs to identify and propose solutions for issues surrounding water security and quality, with the aim of improving our community's wellbeing and that of other remote communities that are similarly impacted.

Recommendations from DEG's submission to Productivity Commission Review of Implementation of MDB Plan 2023 ⁵

Greater benefits will accrue to the Walgett Aboriginal community if NSW and Commonwealth water decisionmakers:

1. Correct the failures of governance that have made the situation where Walgett despite its location on two major rivers of the MDB cannot access river pastimes, river foods and safe drinking water
2. Fix the internal cultures and corruption risks within government water departments
3. Seek to build trust with Aboriginal communities and ACCOs to enable more effective engagement
4. Understand ACCOs as valued stakeholders and not a minor interest group or customers
5. Respect ACCOs by understanding that it is not appropriate to expect them to participate in "consultations" or "engagement" processes that have no purpose other than to give agency representatives an experience meeting Aboriginal people or the appearance of engagement
6. Recognise and affirm the interests and rights of Aboriginal communities and nation groups in water governance

⁵

<https://dharriwaaeldersgroup.org.au/images/downloads/DEGSubProductivityCommissionMDBPlanImplementationReview11August23.pdf>

7. Ensure legislation and policy enables unimpeded and safe access to waterways for Aboriginal people
8. Ensure legislation and policy prioritises critical human water needs and water and food security
9. Ensure legislation and policy provides access to safe, low sodium drinking water for all Australian communities
10. Reduce the amounts of water irrigators and mining interests take from surface and groundwaters to lawful limits
11. Repair the health of the waters of the Murray Darling Basin
12. Manage rivers and water according to the Principles of the NSW Water Management Act 2000
13. Change the Water Act to broaden the Commonwealth Environmental Water Holder's role to include management of water for Aboriginal needs and uses.
14. Establish an ACCO body with the specific role of overseeing Aboriginal interests and involvement in water management.