

Recommendations for the Review of the National Water Initiative



Above: A blue coffin for the death of the river was left in the Ngamaay River after a community mourning ceremony and protest was held in Walgett, March 2019. The town's drinking and other water supply is usually extracted from the Namoi River 500m downstream of where this photo was taken from the Marjorie Phyllis Walford Bridge. This photo shows the devastation caused by current management of the Murray Darling Basin. Walgett's drinking water, water for gardens and green spaces, source of river food and experiences shared on the river by generations - were wiped out for months in 2018 and 2019.

A submission to the Productivity Commission
Review of the National Water Initiative from
Dharriwaa Elders Group
and
Walgett Aboriginal Medical Service
11 September 2020

This submission is made to the Commission from a small majority-Aboriginal community in remote NSW, but we know that the issues that challenge our community are shared by many around Australia. Our Aboriginal Community Controlled Organisations are prioritising water advocacy and thank the Commission for its invitation to provide advice regarding how the National Water Initiative (NWI) could be improved.

Context and History

The National Water Initiative (2004) was the first formal national policy to recognise First Nations interests in water although there are no explicit obligations on parties to engage with or include the rights of First Nations people. The NWI only suggests that States should 'wherever possible' (NWI 2004:9) engage with Indigenous peoples, but 'fails to advance substantive reforms or properly include First Peoples views' (Taylor et al 2016:133). In principle, the inclusion of provisions to engage Indigenous people in water planning in the NWI was an important milestone in water reform, however given the discretionary nature of Indigenous references it has only narrowly provided opportunities for First Nations people to shape water planning and policy in a substantial way.

Addressing water insecurity in Australia demands a considered response that privileges an Aboriginal paradigm of health and culture, including the continued connection between people and Country that has existed over many thousands of years.

Background

Walgett Aboriginal Medical Service Limited (WAMS) is a fully accredited Aboriginal Community Controlled Health Organisation (ACCHO) that has been in operation for over 30 years. It offers an extensive range of outreach, centre-based and Quality Accredited Primary Health Care and Family services to Aboriginal and non-Aboriginal people living in Walgett, Brewarrina and surrounding communities. These services include General Practitioner, Dental and Allied Health services. WAMS remains committed to realising its Vision: To be the most successful Aboriginal Medical Service in the state of New South Wales. Its Mission is to improve: "Not just the physical well-being of the individual, but the social, emotional, and cultural well-being of the whole community."

The Dharriwaa Elders Group (DEG) was born 20 November 2000 after Elders had worked together on projects since 1998. The Group took its name from one of its sacred sites – the Ramsar-listed Dharriwaa (common meeting place) otherwise known as "*Narran Lakes*" and its full members are Aboriginal people over 60 who live in Walgett. DEG is an Aboriginal owned organisation governed by Elders. With the aid of partners, governments, donors and volunteers, the organisation has worked to support Aboriginal Elders to resume leadership roles in Walgett; keep active and healthy; promote local Aboriginal cultural knowledge and identity; and develop the Walgett Aboriginal community. It has a long history of protecting, preserving and managing Aboriginal Cultural Values (ACV) and heritage and Elders continue to carry inter-generational knowledge on the environment and its needs.

Since 2015 DEG established a partnership with UNSW that will, over 10 years build greater Aboriginal community control and capacity, increase the numbers of young Aboriginal people in training, education and employment, reduce the number of Aboriginal people in contact with the criminal justice system, improve social determinants of health, redirect government funds to community led initiatives and increased sustainable management of Country (land and water).

Approaches to securing water rights – How might rights be improved via a new NWI?

NWI must consider the threats of food and water security of communities. In Walgett we are deeply affected by the lack of fairness in the way water is shared in the Murray Darling Basin. The failure of the NWI to meet the health, wellbeing, food and drinking water needs of communities must be remediated.

It is imperative that the NWI not use discretionary language for engaging and incorporating the rights and needs of First Nations people and that governments consult with and incorporate Indigenous water interests as a matter of course. This includes acknowledging and understanding the links between water and First Nations' health and wellbeing. And the links between health and wellbeing and economic development of rural and remote communities. Currently there are insufficient First Nations representatives working with policy secretariat and researchers to provide informed advocacy and to negotiate with governments regarding water matters.

The requirements for healthy waters are well understood by First Nations people, based on their knowledge of Country. The research of Western science provides absolute support and confirmation of First Nations knowledge. First Nations knowledge and Western science also knows and agrees on what is needed and how to rehabilitate the Murray Darling Basin and connected groundwaters. Catastrophic events caused by failures of governments managing Australia's water resources highlight that action is critical. The problem is that governments know, and are ignoring this knowledge. We need the State and Federal Government to better consider the environment when making water policy decisions.

Now that water is a market commodity, the water economy is failing to meet the food and water needs of a lot of regional, remote and river communities. The damaging effects seem to disproportionately fall on First Nations people. Furthermore, Indigenous peoples are excluded from the market, owning only 0.2% of the water market in the NSW portion of the Murray-Darling Basin.¹

It is clear that remedial legislation and actions are required to ensure surface and groundwaters are protected for ALL living interests. The Barwon and Namoi Rivers were allowed to run dry for MONTHS. Urgent remedial actions are required to repair the damage done to the Murray Darling Basin, and restore systems dependent on good water quality. This would involve addressing the threat from invasive species, action to save the Narran Lakes wetland system and other wetlands in the area, and reparation of the rivers that ran dry in 2018 and 2019.

The Santos Narrabri Gas Project looks set to be approved despite impacts on groundwaters and surface waters not being understood. Where they are understood, the concerns are overlooked or overridden. This shows us that something is seriously flawed with the legal architecture of water management.

Commonwealth funds for improving environmental flows have been used to divert water away from the environment and communities by Floodplain Harvesting. This is a perverse

¹ This figure refers to available surface water (<https://www.sciencedirect.com/science/article/pii/S0264837719319799>)

outcome of the efficiency scheme and water recovery. This further shows that urgent remediation actions are required.

DEG and WAMS advise that First Nations water allocations be provided to local First Nations people and groups for cultural flows for for-profit and not-for-profit, economic and non-economic purposes and outcomes. Using targets for the provision of First Nations water allocation would allow Commonwealth and State agencies to plan for and ensure such targets are met.

We believe that First Nations water allocations and water for the health of the rivers and groundwaters should be prioritised before non-First Nations irrigators and other industries. This might require that the Commonwealth and states purchase, confiscate licences or otherwise acquire water in order to provide First Nations 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.

Another issue for the Walgett Aboriginal community is continuing access to the rivers and other waterways. Increasingly access is blocked by landholders by threat of trespassing and locked gates. It is vital that First Nations communities have legislated access to all waters so that cultural and healing practices can continue.

Approaches to increasing influence and inclusion – How might First Nations people’s influence be increased through a new NWI?

There is an opportunity for the NWI to establish projects for local First Nations water ACCOs that support and resource them (including to undertake the community education and negotiations, policy development and scientific and technical work required) to:

- identify their water rights and requirements including the cultural flows to be kept in, or given back to the environment, or extracted or consumed.
- identify the requirements for the maintenance of health of the water and the human and other ecosystems reliant on the water.
- identify the cultural flows required for community, family and individual cultural, health, social and economic benefits and outcomes.
- plan and acquire First Nations water allocations for commercial and non-commercial outcomes.
- produce community and individual benefits from First Nations water allocations.
- develop local First Nations workforce in water governance and management, including on-the-job training provision.
- develop enterprises for undertaking economic and non-economic activities using First Nations water allocations.
- produce other NWI outcomes – including managing river health, increasing First Nations community knowledge and participation in water governance and management, researching surface and groundwaters, monitoring flows and compliance and other on-ground tasks.
- form and resource state and national representative First Nations water peak organisations that provide representative advocacy to governments, agencies and the public, instructed by their local First Nations water ACCOs.

First Nations 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 First Nations communities aren't further disenfranchised from the policy space.

How might First Nations peoples be most effectively included in the development of a new NWI?

We recommend that appropriately resourced state and national peak representatives of local water ACCOs undertake 6-monthly NWI review and program planning activities and negotiate the new NWI.

First Nations people haven't been adequately consulted in the NWI. Engagement by DEG has occurred with the Murray Darling Basin Authority and there are lessons and processes to be learnt. There is a body of literature and advice from Indigenous water academics who could lead a consultative process with Indigenous communities and their peak body representatives to ascertain water needs. This would be more effective engagement than through a Federal Government Agency.

The creation of the position of a NWI-funded First Nations Water Ombudsman would be key to review the roll-out of NWI and troubleshoot, investigate, clear red-tape, advocate for local First Nations water ACCOs (like the old 2009 - 2014 Coordinator-General for Remote Indigenous Services position²) and evaluate, monitor and report progress from First Nations communities, on the implementation of the NWI to parliament regularly so that information is publicly accessible.

Linking National Water Reform and Closing the Gap – How might linkages best be achieved in a new NWI?

We propose 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.

It is important that the NWI acknowledges and actively supports holistic, community-led approaches to Closing the Gap by prioritising the delivery of First Nations water allocations and the resources, and the capability to use them. Likewise, that it supports research undertaken in collaboration with First Nations water ACCOs that understands the contribution to, and impacts on, Closing the Gap targets from water planning and management - both of economic and non-economic cultural flows but also environmental water and the extraction of water to industries. This would include research that understands the links between drinking water management and chronic disease.

² <https://www.legislation.gov.au/Details/C2012C00052>

The NWI must support research and infrastructure that examines and supports Climate Change resilience for First Nations communities (e.g. water saving, recycling, RO systems, food security measures, disaster preparedness etc.).

An updated NWI would specify a framework and mechanisms that support each First Nations community in Australia to undertake self-determined governance and management of First Nations water and environmental water activities. It would preference local First Nations water ACCOs as suppliers to undertake NWI projects for local monitoring and compliance, and management of national estate activities, supported by partners contracted by them to provide research and other skills to collaborate alongside in two-way learning.

The revised NWI could strengthen Closing the Gap by including 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.

Water service provision and water quality in remote communities – What is the current situation? What data and other information could we draw on?

Walgett's recently built water treatment plant and new Namoi and Gingie Village water and sewerage infrastructure were built by The NSW Aboriginal Communities Water and Sewerage Program (ACWSP)³ with the National Water Security Plan for Cities and Towns⁴ under the COAG National Partnership on Water for the Future – COAG Strategy on Water and Wastewater in Remote Communities – Walgett – **part of the National Water Initiative**.⁵

An RO system was installed in Walgett – after significant advocacy from Dharriwaa Elders Group and Walgett Aboriginal Medical Service – using the expert advice of Dr Jacqui Webster and Dr Greg Leslie from UNSW. We doubt if we would have been listened to without that expert support. All AMSs should have access to independent experts in order to provide evidence re the situation, that often NSW Health is ignoring or hiding from us.

Walgett is still being supplied 100% Great Artesian Bore Water – i.e. “emergency water supply” and 6 water test results from 25 May 2020 – 3 June 2020 indicate the following:

- Sodium levels have been cut by half from 230 - 300 mg/L to 119 – 150 mg/L, because Council has decided to provide a 50/50 “shandy mix” between influent water (water straight out of the bore) and the “product water” (water that has been stripped of elements by the Reverse Osmosis system).
- Fluoride levels from the bore water have been cut in half also i.e. from 0.8 mg/L to 0.4 mg/L.

³ <https://www.industry.nsw.gov.au/water/water-utilities/infrastructure-programs/aboriginal-communities> (Zoom into the interactive map and you will see specific information regarding the work done for Walgett's Gingie and Namoi Villages)

⁴ <http://www.agriculture.gov.au/water/urban/completed-programmes/national-water-security-plan>

⁵ See page 8

http://www.federalfinancialrelations.gov.au/content/npa/environment/nationalpartnership/past/COAG_strategy_water_NSW_IP_2014.pdf.

In late September Walgett is to be switched back to sourcing its drinking water from the river. However, management of the rivers that prioritises other water users upstream of Walgett has severely impacted the quality of river water. The Namoi and Barwon Rivers were dry for most of 2019, and we believe have not been restored to good health.

The Walgett community has lost confidence in the drinking water and are relying on buying or donated packaged water – with consequent plastic waste problem, and too much consumption of sugary drinks. There is also a lack of information - Council has not promoted to the community whether drinking water is good to drink since the Reverse Osmosis system was installed so our organisations are preparing to think how we need to advocate for community education programs to promote drinking water. For a community with high levels of chronic disease and hypertension, we know that sodium levels over 20 mg/L are concerning. Walgett AMS and Dharriwaa Elders Group are currently obtaining expert advice from partners in UNSW regarding whether it is responsible to promote drinking tap water to the community with levels of sodium reduced to 150 mg/L.

Walgett AMS and Dharriwaa Elders Group are currently developing a water efficient community garden, and advocating for Council to plan for Climate Change and develop a Waste Water Recycling Plan.

We would like to raise the following points regarding data and information sharing – including the importance of capturing key data and a current lack of transparency around certain data:

- The Council will be doing weekly microbe samples testing for coliforms and e-coli and twice a year a chemistry analysis is done looking at 25 parameters. These are done NSW-wide under the “Drinking Water Monitoring Program”. A NSW Health one-off program will be soon looking at 6 x monthly water samples for levels of pesticides in the river water.
- Walgett Shire Council refuses to release drinking water analysis results to WAMS or DEG. So we go to NSW Health Public Health Unit to request. Currently they have chosen to give to us. This is reliant on relationships. **Data should be publicly available and fully transparent.**
- Drinking water should be regularly tested in all Australian communities for chemistry including sodium levels, and this information should be publicly available. Climate Change will increase the need for communities to be reducing sodium in drinking water.
- Drinking water should be regularly tested for pesticides and chlorine by-products in Australian communities and this information should be publicly available. Australian Drinking Water Standards must contain health standards for sodium.

We are concerned that recent and impending NSW Government decisions approving coal and unconventional gas projects upstream of Walgett that will be using large quantities of ground water will impact the water available for towns and communities. Also that impending approval of CSG in the Pilliga (Narrabri Gas Project) could impact on the Great Artesian Basin and alluvial reservoirs that our towns in NW NSW are increasingly relying upon when the rivers are not running.

Particular challenges in delivering services to remote communities – What are the key challenges? – How might they be addressed in a new NWI?

There are challenges for Walgett Shire Council and other Councils across western NSW to attract and retain water engineering capability. It's great that Walgett's water infrastructure was renewed under the National Water Initiative – but we need guaranteed Walgett Shire Council capability and staff succession planning. A new NWI could fund the provision of this expertise, skills training and water infrastructure capability mapping and succession planning to eliminate risk of losing key personnel. A new National Water Initiative could also incentivise councils to better value by increasing remuneration of council staff responsible for drinking water provision.

We recognise challenges for existing water staff of Walgett Shire Council to pass the Fluoride training and so therefore Walgett remains unfluoridated, despite incorporating new fluoridation works into the new water treatment plant that was funded by the NSW Government under the Fluoridation Capital Works Program under the NSW Oral Health Capital Strategy.⁶ A new National Water Initiative could insist on fluoride provision and incentivise councils and state governments to fluoridate drinking water.

DEG with UNSW partnership is trying to establish a pipeline of engineering graduates and establish a recruitment program. Need accommodation and project management, induction program etc. A new NWI could support partnerships between universities and Councils – prioritising councils with water infrastructure and capability vulnerability (i.e. all western NSW councils at least!).

We would like to draw attention to the Orana Water Utilities Alliance – a regional group of Council water utilities supporting each other. Currently Mid-Western Council based out of Mudgee is providing the secretariat to this grouping of Councils. Groupings like this need to be resourced with the water infrastructure management expertise required by councils. Councils could then share this expertise and gradually build capabilities. A new National Water Initiative could provide the support needed for councils around Australia to share expertise located in regional alliances or groupings like this – regional water utilities. Note also that the Joint Organisation of Western Councils seems to have no role in water utilities – but could have?

The National Water Initiative could recognise the Universal Service Obligation to provide Australian citizens with good drinking water that is safe to drink. The cost of providing good drinking water is greater for remote councils and communities – so must be subsidised by the National Water Initiative.

The new NWI should fund the research required to establish Australian Drinking Water Standards for sodium levels in drinking water that are based on contributions of sodium to health **i.e. that take into account health impacts not just palatability of sodium**. First Nations households are already likely to be consuming more salt and they definitely have higher levels of hypertension. Many don't know they have hypertension, so how can GPs advise them of

⁶ https://www.health.nsw.gov.au/oralhealth/Pages/water_fluoridation.aspx

how to lower sodium in their diets (as in the Guidelines) if they don't know - and they are drinking high sodium drinking water?

Recommendations

- First Nations water allocations and water for the health of the rivers and groundwaters should be prioritised before non-First Nations irrigators and other industries.
- This might require that the Commonwealth and states purchase, confiscate licences or otherwise acquire water in order to provide First Nations 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.
- That the NWI establish projects for local First Nations 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 First Nations water allocations for commercial and non-commercial purposes for the benefit of the community in social, cultural, economic, health and environmental terms.
- First Nations 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 First Nations communities aren't further disenfranchised from the policy space.
- The creation of the position of a NWI-funded First Nations Water Ombudsman to review the roll-out of NWI and troubleshoot, investigate, clear red-tape, advocate for local First Nations water ACCOs (like the Coordinator-General for Remote Indigenous Services) and evaluate, monitor and report progress from First Nations communities, on the implementation of the NWI to parliament regularly so that information is publicly accessible.
- 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.
- The NWI must support research and infrastructure that examines and supports Climate Change resilience for First Nations communities (e.g. water saving, recycling, RO systems, food security measures, disaster preparedness etc.).
- A framework and mechanisms that support each First Nations community in Australia to undertake self-determined governance and management of First Nations water and environmental water activities. It would preference local First Nations water ACCOs as suppliers to undertake NWI projects for local monitoring and compliance, and management of national estate activities.
- 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.
- Drinking water should be regularly tested in all Australian communities for chemistry including sodium levels, pesticides and chlorine by-products, and this information should be publicly available.
- Australian Drinking Water Standards must contain health standards for sodium.

- Fluoride provision and incentivisation of councils and state governments to fluoridate drinking water.
- 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.
- Support partnerships between universities and Councils – prioritising councils with water infrastructure and capability vulnerability.
- 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.

In closing, 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.

Dharriwaa Elders Group, Walgett Aboriginal Medical Service, 11 September 2020.

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