

Draft LGNSW Submission on *Draft NSW Water Strategy*



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1. Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the state.

NSW councils are responsible for providing water and sewerage services to more than 1.8 million people in NSW outside the areas covered by the Sydney and Hunter water corporations. These services are provided by 89 council-owned and operated local water utilities (LWUs).

LGNSW provides support and advice to member councils on water policy and industry best practice, as well as representing the views of members to the State and Federal Governments and other key stakeholders. LGNSW welcomes the opportunity to make a submission to the Draft NSW Water Strategy (the Draft Strategy).

This is a draft submission awaiting review by the LGNSW Board. Any revisions made by the Board will be forwarded to the Committee in the form of an updated submission.

2. Background

The Draft Strategy aims to improve the resilience of the state's water resources over the next 20 years. The Draft Strategy will address key challenges and opportunities for water management and service delivery across the state and set the strategic direction for the NSW water sector over the long-term.

The Draft Strategy will:

- guide water service delivery and resource management across NSW
- build on the progress made from previous reforms and set the direction to keep improving
- identify key challenges, opportunities, strategic priorities, and actions for the whole of NSW
- clearly articulate the water resource management and service delivery framework and policy context for NSW, including how the Murray-Darling Basin Plan and state-wide, regional, metropolitan, and local strategic water policy and planning frameworks work together.

The Draft Strategy sits above the 12 regional and two metropolitan water strategies which set out the approach to maintaining and building the resilience of the State's water resources, including in response to climate variability and change.

3. Executive Summary

The LGNSW Submission makes the following key points about the Draft Strategy:

- Infrastructure and its maintenance, augmentation and renewal should be listed as a strategic priority
- A review of water management regulations and legislation should be listed as a strategic priority

- The addition of dates and timeframes for the implementation of actions would strengthen their intent
- The articulated action related to Priority 7 would be strengthened by adopting a more proactive stance in relation to bolstering water sector workforce capability
- It should directly address the Auditor-General Report findings and what DPIE is doing to respond
- The development of a Memorandum of Understanding between state agencies should be a planned action
- More detail on the roles and responsibilities of all the agencies responsible for water legislation and management is needed
- The Draft Strategy should be clearly linked to the National Water Initiative in more detail
- Greater urgency should be shown with the plans to share data and modelling in adopting the NSW Government Open Data Policy
- Greater outreach to regional areas by DPIE should be a planned action
- The Draft Strategy should include a timeframe for its measurement, review, and evaluation.

4. LGNSW Advocacy Priorities

This submission is aligned with current LGNSW Advocacy Priorities.

The LGNSW Policy Platform (April 2020)¹ – which consolidates the voices of councils across NSW, reflecting the collective positions of local government on issues of importance to the sector – details six Position Statements relevant to this submission. These are:

- Position Statement 1 (Drought) - which calls for improved planning and preparedness for effectively mitigating against the impacts of drought improving the mechanisms for responding to prolonged severe drought. With climate change likely to lead to an increase in the frequency and duration of droughts and impact communities not previously susceptible to drought, LGNSW calls on the State and Commonwealth Government to commit to the substantial investment required to implement drought proofing and water security measures listing them and identifying the triggers for when these measures will be activated. Better and more transparent demand management of river systems and water catchments is also needed to ensure the best possible social, economic and environmental outcomes are achieved, particularly during drought.
- Position Statement 4 (Services in Rural Communities) - which calls on the State and Commonwealth Governments to accept that rural councils will never be able to fund the basic standard of infrastructure and public services to which all Australians are entitled from its own source revenue. Councils also call for new models for rural and regional infrastructure and service delivery that are built on close collaboration between local, state and federal government.

¹ https://www.lgnsw.org.au/files/imce-uploads/581/LGNSW_Policy_Platform_-_April_2020.pdf

- Position Statement 6 (Infrastructure) - calls for increased funding for infrastructure through Commonwealth and state revenue sharing and grants programs that is also equitable and directed to the areas of greatest need.
- Position Statement 8 (Biodiversity) - calls on the NSW Government to review the cumulative impacts of legislation governing land, water and natural resource management and act to ensure the protection of biodiversity, threatened iconic species, water security, native forests and food security throughout NSW.
- Position Statement 10 (Climate Change) - calls on the State and Commonwealth Governments to take urgent action to address the climate emergency in a bipartisan manner to make clear, effective, and unambiguous steps to avert a climate crisis in NSW. It also calls on the state and Commonwealth governments to work with councils to build climate resilience in their communities and introduce a range of funding mechanisms that would allow councils to build climate resilience in their communities.
- Position Statement 11 (Sustainability) - calls for closer coordination between state and local government authorities to ensure all decisions made by these two spheres of government are in harmony and take into account the views of residents and the long term environmental, economic and social impact. It also calls for ambitious but realistic policies and practices that promote council, community, industry and government commitment to environmental protection, natural resource management and resource efficiency.

LGNSW responses

5. Draft vision

The NSW Government has developed the draft NSW Water Strategy as part of a suite of long-term strategies to maintain the resilience of the state's water services and resources over the coming decades. The proposed vision for the draft NSW Water Strategy is sustainable water resources for thriving people, places and ecosystems, both now and for future generations.

Which aspects of water management are most important to you and your local community?

Under normal circumstances, local water utilities perform very well in providing safe, secure and affordable water services in regional NSW. Performance reports of LWUs compiled by the former Department of Primary Industries up to 2015-16 support this view, with customer satisfaction in line with water utilities across Australia. Water quality standards have also been very high. However, in January 2020, more than 50 town water supply schemes in regional NSW were at high risk of failure. Communities that had previously thought that they were secure from the worst effects of drought found that this was not the case and clearly, we do not want to find ourselves in a similar position in the future.

Regional NSW only managed to avoid the worst effects of the drought through various emergency government assistance schemes including the NSW Government's Emergency Water Infrastructure Projects fund which totalled some \$87.8m and delivering over 30 urgent water infrastructure projects for drought affected communities. This made it clear that there has been systemic underinvestment by successive governments. It also made it clear that

ongoing investment is essential to prepare water infrastructure across the state to ensure it is resilient to the effects of a changing climate.

Climate change predictions indicate that Australia will experience more severe and prolonged droughts. Yet, despite scientific evidence pointing to the increased likelihood of such events, our experience over the past three years demonstrates that there was little genuine preparedness for such a serious and severe drought event. The lack of urgency to act was costly, not only in terms of the short-term investment needed to mitigate against the worst effects of drought but also as a handbrake on the economic and social development. Farms went out of business ruining livelihoods and the cost of food increased due to failed crops and the loss of cattle. LGNSW hopes that the lessons learnt over the past three years will result in real action to ensure water security for our communities in the years to come.

There is an urgent need to develop a coordinated whole of government approach to ensuring water security for all communities as the drought has revealed systemic issues in all aspects of water management and planning. This whole of government approach, while touched on in the Strategy is not as well articulated as it could be. There is little detail in the Strategy about how the agencies will work more closely together to coordinate and better align their roles and responsibilities to ensure we do not see a repeat of the critical water security issues experienced in the past three years.

Developing the Strategy provides an ideal opportunity to help enable safe, secure, and sustainable water supplies to our communities that are more resilient to the effects of drought and a changing climate. LGNSW is of the view that this can be achieved by:

- developing a memorandum of understanding between the various state agencies responsible for managing various aspects of water in NSW to lay the foundation for better relationships with water utilities throughout the state
- creating comprehensive, integrated, and funded emergency plans that are developed in partnership with councils and Aboriginal communities, ready to be triggered in the event of the next severe drought
- developing longer term (30-40 year) water supply strategies for catchments throughout the state to mitigate the risks from future droughts and the predicted impact of climate change to help ensure population and economic growth targets can be achieved and supported
- delivering plans to accelerate water infrastructure projects and identify new infrastructure projects and related investment that will assist in providing long term water security
- providing financial assistance to councils to help bring forward planned council projects for infrastructure, water conservation and demand management
- creating provisions for town water security coordinator positions that are activated in times of severe drought
- assisting councils and LWUs in securing water supplies by diversifying water sources including creating off-river storage facilities and improved groundwater access, as well as moving to purifying recycled water to replenish drinking water supplies
- increasing provision of financial and mental health support for communities impacted during times of natural disasters including drought, fire, and flood
- state and federal governments agreeing to extend the DRFA to include local water utility infrastructure.

Do you support the proposed vision for the draft NSW Water Strategy?

The recent severe drought in NSW has heightened community awareness of the water supplies need to be made more safe and secure. This is in addition to being sustainable. As such, LGNSW is of the view that the vision be adjusted to include the words “safe” and “secure”:

“The proposed vision for the draft NSW Water Strategy is safe, secure and sustainable water resources for thriving people, places and ecosystems, both now and for future generations”.

6. Draft objectives

The draft NSW Water Strategy sets high level objectives and principles to guide water service delivery and resource management across NSW. We have identified six core objectives which underpin the draft strategy. These are based on the Water Management Act 2000.

They are:

- protecting public health and safety*
- liveable and vibrant towns and cities*
- water sources, floodplains and ecosystems protected*
- cultural values respected and protected*
- orderly, fair and equitable sharing of water*
- contribute to a strong economy.*

Which objectives are most important to you? Please rank the objectives from most important to least important (where 1 is most important and 6 is least important).

From the perspective of LGNSW, all the draft objectives are important. We represent a diverse council base and views about the relative ranked priority of these objectives will vary amongst our membership.

Do you have any comments on any of the proposed objectives?

LGNSW supports the objectives of the Draft Water Strategy.

7. Draft guiding principles

The draft strategy also proposes seven principles to guide the long-term strategic planning for water resource management in NSW. These principles work in tandem with the draft objectives to guide development and implementation of actions.

The guiding principles are:

- healthy environments sustain social and economic outcomes*
- water is a limited (although recyclable) resource*
- systems thinking to optimise outcomes*
- data-enabled planning and decision-making*
- transparency and accountability to engender community trust*
- forward thinking to build preparedness and resilience*
- giving effect to Aboriginal rights and access to water.*

Which principles are most important to you? Please rank the principles from most important to least important (where 1 is most important and 7 is least important).

All of the guiding principles are important. As with our response to the question of ranking the objectives, LGNSW has a diverse membership base and councils will have differing views on the ranking order of each principle.

Do you have any comments on any of the guiding principles?

LGNSW supports the guiding principles of the Draft Strategy.

8. Opportunities, challenges, and actions for improved state-wide water management

The draft NSW Water Strategy outlines seven strategic priorities for action, focused on meeting the core objectives based on the NSW Water Management Act 2000.

These strategic priorities are:

- 1. Build community confidence and capacity through engagement, transparency, and accountability*
- 2. Recognise Aboriginal rights and values and increase access to and ownership of water for cultural and economic purposes*
- 3. Improve river, floodplain and aquifer ecosystem health, and system connectivity*
- 4. Increase resilience to changes in water availability (variability and climate change)*
- 5. Support economic growth and resilient industries within a capped system*
- 6. Support resilient, prosperous, and liveable cities and towns*
- 7. Enable a future focused, capable, and innovative water sector.*

Under each priority the draft strategy identifies several opportunities and challenges, and a total of 41 proposed actions to improve water management across the state.

Do you have any comments on the seven strategic priorities identified?

Infrastructure and its maintenance, augmentation and renewal should be listed as a strategic priority

Water infrastructure is the lynchpin of the water sector in NSW, and it is somewhat surprising that this is not currently listed as one of the strategic priorities (although it is listed as an Action 5.4 under Priority 5). The latest Infrastructure Australia Priority List calls out water infrastructure as one of its top priorities for government investment and lists a number of projects planned for NSW. Similarly, a renewed NWI will also place infrastructure as a high-level priority. Although the Draft Strategy discusses infrastructure at different times throughout the document, it gives the impression that this is not a focus of the strategy or the NSW Government. The Draft Strategy would be strengthened by making infrastructure one of the strategic priorities and detailing more of the governments plans to build new water infrastructure and help fund the maintenance of existing infrastructure. This will give both communities and business increased confidence that the NSW Government is effectively planning for the future and is not trying to skirt around the issue because it involves significant monetary investment.

A review of water management regulations and legislation should be listed as a strategic priority

The legislation and regulations governing water in NSW have become unwieldy impeding the ability to manage water efficiently and effectively in NSW. The development of the NSW Water Strategy is an opportune time undertake a strategic review of the legislation, regulation, and governance arrangements for managing water in NSW. With water management and conservation shaping as a pivotal issue over the coming decades with predicted rainfalls expected to decline and water demand set to increase, we need to ensure that legislation, regulation, and governance arrangements are fit for purpose. As it stands, this does not appear to be the case as identified in the recent Auditor-General report. At present, the sprawling nature of the current legislation and regulation of water in NSW is an impediment to the efficient operation and function of water utilities across the state. The NSW Government's Guide to Better Regulation is a useful instrument to help with the process of modernising the way the legislation and regulations are written and applied.

Do you have any comments on any of the proposed actions identified?

The addition of dates and timeframes for the implementation of actions would strengthen the intent of the Draft Strategy

The actions listed in the Draft Strategy appear appropriate and are aimed at the areas widely agreed need to be targeted. However, although meant to be somewhat general in nature, there is an opportunity to add a little more specificity to them, even though they are meant to be high-level. Many, for example, could be made more meaningful if they were accompanied with dates and timeframes. Currently, they are too open-ended which has the effect of undermining its credibility. The addition of dates and timeframes to the proposed actions would make them much more purposeful and meaningful and would underscore the Department's commitment to take real action on the areas of greatest need in the water sector.

The development of a Memorandum of Understanding between state agencies should be a planned action

While streamlining and simplifying the legislation and regulation is the preferred option for councils and LWUs, a memorandum of understanding between the various agencies that oversee the legislation and regulation affecting LWUs would be a good starting point. Under the current regime councils and LWUs are constantly grappling with multiple agencies in a way that lacks coordination and integration.

A memorandum of understanding between the agencies that plotted a clear pathway to developing an integrated and coordinated approach to engagement with councils and LWUs could help lay the foundation to improved governance of the sector. The Draft Strategy is an opportunity to announce plans to establish a memorandum of understanding as a pathway towards providing clarity around the roles and responsibilities of the agencies overseeing the sector and the way the legislation and regulation is applied to councils and LWUs.

A recent anecdote from a council highlights this:

Wagga's PFAS - Stalemate between NSW EPA and NSW DPIE of who's responsible and accountable to ensure the safety and reliability of Wagga's drinking ground water source at the end of the day? For example, DPIE regards EPA as the lead agency to deal with the "pollution incident", but EPA are not able to direct the Commonwealth (Defence) in a manner they would otherwise if Defence was a NSW

based agency/organisation. DPIE are the natural resource managers sitting on the sidelines and watching this playing out whilst the threat of PFAS is getting closer to Riverina Water's groundwater sources.... this scenario will test both DPIE's and EPA's guiding principles as well as highlighting consistent themes of lack of inter/intra coordination of State/Commonwealth agencies...

This is but one example of the lack of coordination, cooperation and integration between government agencies that poses major challenges daily to councils and LWUs.

Greater outreach to regional areas by DPIE should be a planned action

Councils and LWUs have been calling for the reintroduction of regional managers to improve access to senior managers. However, it was disappointing to learn recently that DPIE will not be adopting this approach even though it has proved very effective for other government departments like the former RMS (now TfNSW) which continues to have teams based across the regions. This has created strong stakeholder engagement and better outcomes for road projects across the State. We understand DPIE is looking at alternative means of giving stakeholders improved access to senior managers, but consideration should also be given to giving councils and LWUs greater access to DPIE's scientists and researchers so that their knowledge and insights are more widely available. With skills shortages in expertise regionally, DPIE outreach could be vital in filling any voids and providing additional support.

Are there any additional opportunities, risks and challenges that should be considered in the draft strategy?

Strengthen the articulated action related to Priority 7 to adopt a more proactive stance in relation to bolstering water sector workforce capability

A significant risk and challenge, that could also present an opportunity, is the issue of the skills shortage facing the water workforce. Of course, this shortage does not just affect the water sector in regional NSW, but all skilled jobs in councils and across the private sector. Although this is acknowledged in the Draft Strategy, there is no clear strategic approach as to how this systemic issue can be properly resolved. There is an opportunity for DPIE to partner closely with Vocational Education and Training to proactively address this matter and to ensure that any investment promised in the Draft Strategy is properly targeted.

To this extent, more needs to be done to address the acute shortage of Registered Training Organisations (RTO)s and trainers to deliver the vocational education and training (VET) programs required by water utilities, particularly in regional and remote areas. To support a 'thin' but critical market like the water industry, greater flexibility is required in the Australian Skills Quality Authority (ASQA)'s rules on trainer requirements to allow more industry-based trainers to work with RTOs. Additionally, more financial incentives are needed to encourage RTOs to deliver water training programs to small markets, such as funding national training resources that are accessible to all training providers. With an ageing water industry workforce, building the skills and capability of a new generation of employees is critical. The current training system is unprepared and inadequate to do this, particularly in regional NSW

9. Other comments

Do you have any other comments on the draft NSW Water Strategy?

Directly address the Auditor-General Report findings and what DPIE is doing to respond.

While the Draft Strategy mentions the Auditor-General report on *Support for regional town water infrastructure*, the Strategy would be strengthened by more directly addressing the report with all the actions that DPIE will be taking to address the findings of the report. As written, the Draft Strategy alludes to potential solutions to recommendations made in the report, but this is not always made explicitly clear. LWUs have repeatedly raised concerns about the lack of clarity and consistency around regulatory matters and governance arrangements. The Draft Report acknowledges that the legislation has been criticised for being too prescriptive and not sufficiently outcomes focused. The Draft Strategy does not outline any clear plans to address these concerns by outlining a timeline for reviewing the legislation and regulation with a view to simplifying it.

Currently (and in addition to Federal legislation) councils and LWUs in NSW must traverse these pieces of water utility related legislation:

Water Management Act 2000, Water Act 1912, Protection of the Environment Operations Act 1997, Independent Pricing and Regulatory Tribunal Act 1992, Environmental Planning and Assessment Act 1979, State Owned Corporations Act 1989, Dams Safety Act 2015, Local Government Act 1993, Fisheries Management Act 1994, Public Health Act 2010, Fluoridation of Public Water Supplies Act 1957, Work Health and Safety Act 2011, Public Finance and Audit Act 1983, Water Industry Competition Act 2006, Hunter Water Act 1991, Sydney Water Act 1994, and the WaterNSW Act 2014.

This is undeniably a highly complex legislative and regulatory environment that has been developed separately over many decades. It is past time to review the legislation governing water in NSW and streamline it, especially if the government is serious about focusing on delivering outcomes, and not implementing red tape.

More detail on the roles and responsibilities of all the agencies responsible for water legislation and management

Although the Draft Strategy provides an overarching framework of the various roles and responsibilities of the government agencies responsible for managing water, it does not provide very much detail on how this works on a practical everyday level. This is true for councils and LWUs, but also ordinary citizens who might read the Draft Strategy seeking to get a better understanding of how water is legislated, regulated, and managed. Although there are occasional references to the legislation governing water management in NSW, it does not address all the relevant legislation, or even list it in an appendix with supporting notes. The Draft Strategy is an opportunity to strengthen these relationships, or at the very least, promise to work towards better interagency cooperation and coordination.

The Draft Strategy should be clearly linked to the National Water Initiative

Although the National Water Initiative (NWI) is meant to sit above the Draft Strategy as it acknowledges, there is little if any mention of the NWI and the linkages between it and the Draft Strategy – this is left to be implied by the reader. The Draft Strategy should explicitly address the NWI and its guiding elements in the documentation, and then update it when the renewed NWI is ratified by the State and Territory ministers. This can be achieved in several ways but could be accommodated in Figure 15 on pp. 14-15. The governance of water from a national, to State and Regional level needs to be tightly integrated and this should be reflected in the documentation in more depth and detail than it is expressed currently in the Draft

Strategy. Similarly, the Regional Water Strategies should reflect clear and strong linkages to the NSW Water Strategy and the NWI to demonstrate a clear, consistent, and cohesive approach to the management of water across the State.

Greater urgency should be shown with the plans to share data and modelling in adopting the NSW Government Open Data Policy

It is pleasing to see the Draft Strategy acknowledge the NSW Government has an Open Data Policy and indicate a willingness to adopt the principles of open, transparent, and easy to find data. However, it is disappointing that this is only being addressed for the first time by DPIE in the Draft Strategy when other government agencies, like Transport for NSW for example, have been enabling open data projects for several years. Data and modelling undertaken by DPIE must be made available to councils, LWUs (and the wider public) as a matter of urgency. This information can be very costly for councils and LWUs to generate individually. The sooner it is made available to freely access, the sooner councils and LWUs will be able to put their comparatively limited resources to alternative uses. It will also help establish a single source of truth which is vital to helping councils and LWUs develop Integrated Water Cycle Management (IWCM) plans. Councils and LWUs would also benefit from DPIE technical support and outreach to help analyse the data and its implications.

The Draft Strategy should include a timeframe for its measurement, review, and evaluation

The Draft Strategy does not provide any clear plans to measure its own success, review its ongoing relevance and alignment to the water needs of NSW or any evaluation plans. By comparison, the Australian Government Productivity Commission has been instructed to undertake three-yearly reviews of the National Water Initiative. Thus far, this has proven to be a very effective approach to ensuring the NWI is responsive to changing circumstances. For example, in the intervening period between the last review of the NWI in 2017 and now, many parts of the country suffered from extreme drought conditions. These subsequent lessons learned have helped inform the realignment of the NWI to current circumstances as reflected in the Commission's recent Draft Report which recommends a number of enhancements to the existing NWI. This will help to ensure it remains fit-for-purpose.

10. Conclusion

The Draft Strategy aims to plug a long overdue gap in the strategic approach to the management of water in NSW and from this perspective it is warmly welcomed. Broadly speaking, the Draft Strategy's core objectives, priorities and actions address the areas of the greatest need and should find strong support from stakeholders. DPIE has demonstrated that it has been closely engaging with and listening to stakeholders about their concerns about the management of water in NSW in the past. However, there are areas that could be further strengthened or elevated in terms of importance as this submission identifies. We look forward to seeing our feedback reflected in the final Strategy and believe that if it is, it will be both strengthened and provide much needed assurance that DPIE will be actively engaged in delivering on its promises.

For further information in relation to this submission, please contact Sanjiv Sathiah, Senior Policy LGNSW, on 02 9242 4073 or sanjiv.sathiah@lgnsw.org.au