



**New South Wales
Aboriginal Land Council**
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Ria Pryce
Director State Water Strategy
Water Group
Department of Planning, Industry and Environment

Via email: nsw.waterstrategy@dpi.nsw.gov.au

Dear Ms. Pryce,

Draft NSW Water Strategy February 2021

Thank you for the opportunity to comment on the Department of Planning, Industry and Environment (DPIE) Draft NSW Water Strategy (Strategy).

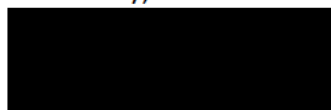
The NSW Aboriginal Land Council (NSWALC) welcomes priority 2 of the Strategy to recognise Aboriginal rights and values, and increase access to and ownership of water for cultural and economic purposes. This is a positive starting point. We look forward to working in partnership with the NSW Government to further develop and implement actions to support this priority in line with Aboriginal people's rights, interests and aspirations.

We broadly support the intent of priority 1 (building community confidence and capacity through engagement, transparency and accountability) and priority 3 (improve river, floodplain and aquifer ecosystem health, and ecosystem connectivity); however some further work is needed to ensure Aboriginal people's rights and interests are actively addressed and incorporated.

We note priorities to increase resilience (priority 4), support economic growth (priority 5), support towns and cities (priority 6), and ensure a future focused water sector (priority 7). We would like to see further work undertaken in partnership with us and the Aboriginal Water Coalition (AWC) to ensure all priorities and actions take into account and are aligned to delivering social, cultural and economic outcomes for Aboriginal people. We seek to ensure that actions under these priorities do not detrimentally affect Aboriginal people's rights and interests, for example, infrastructure proposals that may impact Aboriginal cultural heritage.

Overall, working to achieve Aboriginal outcomes must be a focus of all NSW water initiatives. There are opportunities to improve the draft Strategy to ensure stronger action and alignment by government to deliver social, cultural and economic outcomes for Aboriginal people. We look forward to working with the NSW Government and our AWC partners to ensure the NSW Water Strategy advances these goals. Enclosed are additional comments on the draft Strategy.

Sincerely,



NSW Aboriginal Land Council

ALWAYS WAS ALWAYS WILL BE ABORIGINAL LAND

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NSWALC Submission to the NSW Department of Planning, Industry and Environment

Draft NSW Water Strategy February 2021

Introduction

The NSW Aboriginal Land Council (**NSWALC**) is the peak Aboriginal representative body in NSW. Securing the return of land and waters to Aboriginal people is at the heart of our future. As Aboriginal people, our lands and waters are central to our being, and are essential to the spiritual, social, cultural and economic survival of our communities. NSWALC, and the network of 120 Local Aboriginal Land Councils (**LALCs**) across NSW, work to improve, protect and foster the best interests of all Aboriginal peoples in NSW.

NSWALC, LALCs and Aboriginal people have long called for improved water management practices, involvement of Aboriginal people in water governance and decision-making, increased access to and ownership of water for Aboriginal people for cultural and economic purposes, and improved accountability, transparency and compliance.

Maintaining spiritual and cultural relationships with land, water and Country are intertwined for Aboriginal people. The right to economically develop natural resources, consistent with cultural obligations, is also of significant importance.

The right to water is a human right that is protected in a wide range of international instruments, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the United Nations *Declaration on the Rights of Indigenous Peoples* (**UNDRIP**). In 2009, Australia endorsed the UNDRIP, which recognises Aboriginal peoples' rights, including rights to water:

- **Article 25** of the UNDRIP states that Indigenous peoples have the right to maintain their spiritual relationship with their traditional lands, territories, waters and coastal seas and the right to uphold their responsibilities in this regard.
- **Article 26** of the UNDRIP states that Indigenous peoples have rights to their traditional lands and waters, to own, to use, develop and control these resources and that States shall give legal recognition and protection to the same.

In NSW, the *Aboriginal Land Rights Act 1983 (NSW)* (**ALRA**) is facilitating the return of lands to Aboriginal peoples in NSW. However, mechanisms to support our ownership of, and decision making in relation to water, are not similarly recognised. Our ownership of water is miniscule and has been going backwards. For example, while Aboriginal people in the Murray Darling Basin constitute nearly 10 % of the total population, Aboriginal organisations hold only 0.2 % of the available surface water¹ in the Basin and 0.1% across the state. Aboriginal water holdings between 2009 and 2018 indicate a new wave of dispossession. Almost one fifth of Aboriginal water holdings by volume were lost during this time.²

¹ Trends in Aboriginal water ownership in New South Wales, Australia: The continuities between colonial and neoliberal forms of dispossession Lana D. Hartwig, Sue Jackson, Natalie Osborne 2020

² Trends in Aboriginal water ownership in New South Wales, Australia: The continuities between colonial and neoliberal forms of dispossession Lana D. Hartwig, Sue Jackson, Natalie Osborne 2020

The Productivity Commission³ has highlighted the lack of progress by governments to date in delivering water outcomes to Aboriginal people. They have signalled the need for governments to work with First Nations peoples to secure Aboriginal and Torres Strait Islander people's interests in water.

The National Agreement on Closing the Gap Agreement provides an important framework for governments to work in partnership with us to ensure Aboriginal people maintain distinctive cultural, spiritual, physical and economic relationships with water, and advance Aboriginal people's rights and interests in water.

NSWALC is committed to working with the NSW Government, partners and Aboriginal communities to empower and advance water rights for all Aboriginal people.

Priority 1 – Build community confidence and capacity through engagement, transparency and accountability

We welcome the draft Strategy's recognition of the significant ongoing problems related to the lack of engagement, transparency and accountability in water management.

Actions to improve engagement, collaboration, and accountability are urgently needed, and it is positive that the draft Strategy includes some measures to address this.

It will be important that the measures are expanded to specifically address and include Aboriginal people.

Recommendations

Priority 1 should include:

1. Formal roles for Aboriginal people and Aboriginal Land Councils in water governance, planning and management, including involvement in decision-making, implementation and oversight of the NSW Water Strategy and Regional Water Strategies;
2. Improved accountability and transparency in water governance and management, including reports to Aboriginal communities about water decisions;
3. Additional mechanisms to increase accountability including regular reports to the NSW Parliament on management of water in NSW and related strategies, including the NSW Water Strategy, increased monitoring and compliance mechanisms, ongoing auditing of decisions about water;
4. Additional measures designed in partnership with us and the Aboriginal Water Coalition (AWC) to ensure appropriate engagement and consultation with Aboriginal people; including in water compliance and enforcement systems.
5. Processes to address concerns raised by Aboriginal people in relation to floodplain harvesting reforms.

Priority 2 - Recognise Aboriginal rights and values and increase access to and ownership of water for cultural and economic purposes

³ <https://www.pc.gov.au/inquiries/current/water-reform-2020/draft/water-reform-2020-draft.pdf>

Overall, we welcome this priority as a positive starting point. We look forward to working in partnership with the NSW Government to further develop and implement actions to support this priority in line with Aboriginal people's rights, interests and aspirations.

This priority would benefit from stronger accountability mechanisms to ensure the NSW Government keeps its commitments and works to develop and implement appropriate solutions in partnership with us.

Action 2.1 *Establish a partnership agreement with the Aboriginal Water Coalition*

We welcome this commitment and seek to ensure it enshrines genuine partnership and shared decision making in line with the NSW Government's commitments under the National Agreement on Closing the Gap.

We look forward to participating in this partnership as a mechanism to enhance roles for our Aboriginal community-controlled organisations and Aboriginal communities in decisions about water. It is important to note the partnership will not replace engagement with Aboriginal communities across NSW but is intended to enhance more effective engagement and partnerships with Aboriginal communities across the State.

Action 2.2 *Strengthen the role of First Nations in water planning and management*

We strongly support this initiative and its recognition of self-determination and free, prior and informed consent. We seek to ensure that the roles of Aboriginal Land Councils, native title groups and Aboriginal communities are recognised in these design and implementation of this action.

We welcome the commitment to ensuring water policies and programs deliver social, cultural, economic and environmental outcomes for Aboriginal people.

We look forward to further developing reforms to achieve this action, including legislative reforms to enshrine the role of First Nations in water planning and management.

Action 2.3 *Develop a state-wide Aboriginal water strategy*

We support this proposal and welcome the NSW Government's commitments to:

- develop the strategy in partnership with Aboriginal people
- a robust engagement process with Aboriginal people
- the need for legislative reforms to enable Aboriginal rights, interests and ownership of water
- revising existing, and developing new, water policy and planning approaches
- securing sustainable funding and resourcing
- building the organisational capacity of First Nations and Aboriginal communities to enable self-determination and sustained participation in projects relevant to water interests.

We seek guarantees that decisions regarding funding and resourcing will not detriment any existing positive initiatives.

Action 2.4 *Provide Aboriginal ownership of and access to water for cultural and economic purposes*

NSWALC strongly supports Aboriginal ownership of and access to water for cultural and economic purposes.

In addition to the actions flagged in the Strategy, we seek strengthened commitments to recognise and provide for Aboriginal Land Councils and Aboriginal people's rights and interests in water sharing plans and related instruments. This includes increased allocations, and more secure allocations for Aboriginal people and Aboriginal Land Councils.

In line with previous recommendations by the Australian Human Rights Commission⁴, we seek assurances that the NSW Government give higher priority to ensuring that the rights, values and interests of Aboriginal peoples are explicitly included and provided for in all water plans and instruments.

This will support the NSW government to achieve its commitments under the National Agreement on Closing the Gap.

We would welcome the opportunity to design appropriate mechanisms to achieve this action, in line with the NSW Government's partnership with the AWC.

We note that in November 2020, the Victorian Government allocated 2 billion litres of water to Aboriginal people and invested \$5 million to support Aboriginal people's economic interests.⁵ The NSW Government, through our partnership, should explore more ambitious mechanisms and commitments.

Action 2.5 *Work with First Nations to improve shared water knowledge*

We support this action in-principle but seek additional safeguards to ensure the protection of Aboriginal people's intellectual property rights and interests and ensure this action genuinely promotes Aboriginal people's rights, interests and aspirations.

We suggest that this action include the following in particular:

- Enshrine mechanisms to ensure the protection of Aboriginal people's intellectual property rights and interests, in line with international human rights instruments⁶, including guarantees that:
 - 'Free, prior and informed consent' is embedded
 - Aboriginal people have control over any Aboriginal knowledge and how it is used
 - Measures are in place to prevent unauthorised use of Aboriginal people's knowledge and sanctions are imposed if there is any misappropriation
 - Aboriginal people are recognised as the owners of Aboriginal knowledge
 - Aboriginal people's ownership of Aboriginal knowledge and the cultural protocols associated must be respected.
 - The Government accepts that not all Aboriginal knowledge can be shared
- Set employment and procurement targets to support Aboriginal people to maintain land, rivers and wetlands.
- Recognise traditional and contemporary Aboriginal knowledges and understandings of caring for country
- NSWALC and the AWC are central to giving advice on policy and program design
- Recognition that mapping cultural sites and recording cultural water practices may not be appropriate

Action 2.6 *Work with Aboriginal people to maintain and preserve water-related cultural sites and landscapes*

NSWALC supports this action. In addition to the measures noted in the draft Strategy, protecting Aboriginal Cultural Heritage will require legislative reform that is long overdue. Current laws are inadequate and fail Aboriginal people.

⁴ Page 209 https://humanrights.gov.au/sites/default/files/content/social_justice/nt_report/ntreport08/pdf/chap6.pdf

⁵ <https://www.premier.vic.gov.au/water-traditional-owners-victorian-first>

⁶ The Universal Declaration of Human Rights Article 27, The International Covenant on Economic, Social and Cultural Rights Article 15, paragraph 1 (c), The International Covenant on Civil and Political Rights Article 27, The Convention on Biological Diversity Article 8 (j), The International Labour Organisation Convention No.169 concerning Indigenous and Tribal Peoples in Independent Countries Articles 13, 15, 23, Agenda 21 Paragraph 26.1, The Rio Declaration on Environment and Development Principle 22, The Declaration on the Rights of Indigenous Peoples Articles 11 and 31

Recommendations

Priority 2 should include:

1. Commitments to further develop and implement actions in partnership with us, AWC, the Aboriginal Land Rights network and Aboriginal communities, in line with Aboriginal people's rights, interests and aspirations;
2. Clear accountability mechanisms in place to ensure the NSW Government delivers on its commitments, and that all water agencies are accountable; this should include:
 - The establishment of clear targets to monitor and report on progress towards achieving Priority 2,
 - Appropriate, independent, Aboriginal-led monitoring, review and evaluation mechanisms are implemented for Priority 2 and the Water Strategy more broadly.
3. Stronger commitments by the NSW Government to uphold and support Aboriginal people's rights and interests;
4. Ensuring funding is allocated to support genuine involvement of Aboriginal Land Councils and Aboriginal communities in water governance and management processes.

Priority 3 – Improve river, floodplain and aquifer ecosystem health and system connectivity

Actions in the draft strategy to improve river and catchment health, improve water quality, invest in more effective monitoring, evaluation and research and address threats to native species are important.

Recommendations:

Priority 3 should include:

1. the development of additional measures to support the sustainability of our river and groundwater systems;
2. commitments to design and deliver actions in partnership with us, AWC and Aboriginal communities.

Priority 4 – Increase resilience to changes in water availability (variability and climate change)

Priority 5 – Support economic growth and resilient industries within a capped system

Priority 6 – Support resilient, prosperous and liveable cities and towns

Priority 7 – Enable a future focused, capable and innovative water sector

We would like to see further work undertaken in partnership with us and the AWC to ensure all priorities and actions take into account and are aligned to delivering social, cultural and economic outcomes for Aboriginal people.

Recommendations:

Priorities 4, 5, 6, & 7 should include:

1. Additional actions to work with AWC, Aboriginal Land Councils and Aboriginal communities to develop appropriate measures to build resilience to drought, extreme weather and ensure safe, clean access to water;
2. Commitments to ensure that all actions are aligned to delivering social, cultural and economic outcomes for Aboriginal people;
3. Additional actions to advance Aboriginal people's rights and interests, for example, infrastructure proposals that may impact Aboriginal cultural heritage.

Thank you for your consideration of this submission.

For further information please contact the NSWALC Strategy and Policy Unit on 02 9689 4479 or policy@alc.org.au.