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Submission to the Northern Territory Government

Northern Territory Strategic Water Plan

Directions Paper

3 February 2022



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ACKNOWLEDGEMENT

The CLC acknowledges the input of the many Traditional Owners of Central Australia who have informed this submission and who are active stewards of the NT's water, and whose people have been stewards of Central Australia's water for tens of thousands of years.



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ABBREVIATIONS AND ACRONYMS

Aboriginal Land	Land granted as Aboriginal Land under the ALRA
ADWGs	Australian Drinking Water Guidelines
ALRA	<i>Aboriginal Land Rights (Northern Territory) Act (Cth) 1979</i>
ALT	Aboriginal Land Trust, a statutory land trust created under the ALRA.
ATSIHP Act	<i>Aboriginal and Torres Strait Islander Heritage Protection Act (Cth) 1994</i>
CLC	Central Land Council (ABN: 71 979 619 393)
Directions Paper	Northern Territory Strategic Water Plan Directions Paper dated September 2021
IES	Indigenous Essential Services
IPA	Indigenous Protected Area
Metering Code	Non-Urban Water Metering Code of Practice for Water Extraction Licences
Native Title Act	<i>Native Title Act (Cth) 1993</i>
Native Title Land	Land either subject to a registered native title claim or a determination that native title exists under the Native Title Act.
NT	Northern Territory
NTA	<i>Native Title Act (Cth) 1993</i>
NTRB or Native Title Representative Body	A body accredited as a Native Title Representative Body
NWI	National Water Initiative
PAWC	Power and Water Corporation
PBC or Prescribed Body Corporate	A prescribed body corporate (or registered native title body corporate) that holds native title in trust or as agent for the common law holders once a determination has been achieved under the Native Title Act.
SA Water Act	<i>Safe Drinking Water Act (SA) 2011</i>
SAWR	Strategic Aboriginal Water Reserve
Traditional Owners	Has the meaning given to the term 'traditional Aboriginal owner' in the ALRA and includes native title holders.
WAP	Water Allocation Plan
Water Act	<i>Water Act (NT) 1992</i>
Water Regulations	<i>Water Regulations (NT) 1992</i>
WSSA	Water Supply and Sewerage Services Act (2000) NT



RECOMMENDATIONS

Priorities

Recommendation: Priority Directions

The NT must commit the necessary resources (technical, administrative, human and financial) to ensuring all of the following priority 1 objectives are met:

- Environmental and cultural sustainability;
- Safe drinking water for all Territorians;
- Water use is governed well and fairly.
- Aboriginal people are empowered to continue their stewardship.

In the delivery of the priority 1 objectives, the NT must focus on the following building blocks:

- Adequate science;
- Aboriginal designed and led governance; and
- A conservative approach in relation to allocation decisions. This means that allocations of water for commercial use cannot occur until environmental, cultural and safe drinking water allocations have been made and the science is well understood and independently reviewed.

Work and funding allocations under the Directions should reflect these priorities.

Underlying Principles

Recommendation: Underlying Principle 1. The following should be added to Principle 1 'Safe and reliable':

Safe and reliable -- Drinking water for human health and wellbeing is prioritised. All Territorians (whether they live in the NT's major cities or remote communities) must be have equal access to safe and palatable drinking water.

Recommendation: Underlying Principle 3. The following should be added to Principle 3 'Sustainability'

Water policy, management and planning decisions will consider long-term environmental and cultural sustainability, intergenerational equity, and future risks and opportunities.

Recommendation: New Underlying Principle 7. The following additional principle should underpin the NT's water regulatory framework:



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Aboriginal Stewardship – Aboriginal Territorians have been stewards of the NT’s water for millennia. Around a third of Territorians are Aboriginal and around half of the NT is Aboriginal Land, with most of the rest of the NT subject to native title. Traditional owners should be involved in all levels of water planning, regulation, policy, administration and decision making, including design of appropriate representative structures through the existing processes for consultation involving Land Councils.

Direction 1

Recommendation 1.1: Addition to Pathway 1 under Direction 1:

Clarify the roles and improve co-ordination of Northern Territory Government agencies in areas of policy, regulation and service provision and create structures and procedures to ensure formal and integrated water planning and detailed public reporting.

Recommendation 1.2: Addition to Pathway 2 under Direction 1

Continue reforming the ~~Water Act 1992~~ legislative regime to manage water resources in the Northern Territory ~~effectively and efficiently~~ to ensure that the key objectives of: environmental and cultural sustainability; accessible and safe drinking water; good governance and formal Aboriginal stewardship; and robust, peer reviewed science are met, with success measured against these objectives as set out in the Northern Territory Strategic Water Plan.

Recommendation 1.3A: Amendment to pathway 3 under Direction 1

Reform the ~~economic~~ regulatory framework for water supply and sewerage services to improve transparency and accountability of service providers, and serve the long term and evolving interests of customers and communities, including by:

1. establishing appropriate service level standards and customer protections that apply to all Territory consumers;
2. ensuring that all water service providers are licenced and answerable to a regulator and customers, and transparent;
3. creating an independent economic regulator to set prices and ensure transparency about cost sharing between consumers and government; and
4. ensuring that commercial licence holders contribute to the costs of regulation, enforcement, monitoring and independent research.

Recommendation 1.3B: The CLC recommends that work under Pathway 3 of Direction 1 include the implementation of the NWI in relation to transparency.

Recommendation 1.3C: The CLC recommends that work under Pathway 3 of Direction 1 ensures:

- All water service providers in the NT are licenced;
- All water services providers in the NT are accountable to consumers and government, including through detailed and mandatory public reporting and transparency; and



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- There is no separate regulatory regime for remote area service providers.

Recommendation 1.4A: Pathway 4 under Direction 1 should be amended as follows:

The regulatory regime must be underpinned by the following principles:

- Government decision making must be split to avoid the concentration of power in one individual and any subsequent conflicts of interest;
- Bodies making policy must be separate from those administering it, whatever the level of government involved; and
- People or organisations who might benefit from government policies should be separate from those administering the policies.
- Government must allow independence of NTG scientists and academic institutions from decision-making bodies

Consider a separate entity or person to perform some or all of the roles and functions of Controller of Water Resources under the Water Act, particularly the decisions related to access to water resources.

Recommendation 1.4B: Work under Pathway 4 of Direction 1 should focus on designing and creating a new, well resourced, independent authority that oversees all water allocation decisions on the basis of legally enforceable (and reviewable) criteria, robust science and appropriate Traditional Owner input.

Recommendation 1.5: Addition to Pathway 5 under Direction 1:

Continue to proactively participate in the national water reform agenda and associated partnerships to support good governance. Audit the NT's compliance with existing NWI obligations and remediate any areas of non-compliance.

Direction 2

Recommendation 2.1: Amendment to Pathway 1 under Direction 2:

Explore options for safeguarding Safeguard public drinking water supplies, paying particular attention to the needs of remote Aboriginal communities, including through:

1. Making minimum quality standards for drinking water legally binding;
2. Creating a Safe Drinking Water Act to ensure consistent and non-fragmented approaches to water access, security and safety for all Territorians;
3. Enshrining a legislated guarantee to safe drinking water and ensuring drinking water is prioritised; and
4. Ensuring the NT Department of Health licences and regulates, monitors and publicly reports on drinking water providers and drinking water quality.



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Recommendation 2.2: Pathway 2 of Direction 2.

Work undertaken under Pathway 2 of Direction 2 must ensure that the NT government, in partnership with the Commonwealth provides a significant increase in funding for the repair, replacement and maintenance of ageing remote water infrastructure and installation of technological solutions to better utilise non-potable water in communities at risk.

Recommendation 2.3 / 2.4: Pathway 3 and 4 of Direction 2.

Work undertaken under Pathway 3 and 4 of Direction 2 must ensure that the NT government respects existing consultation processes and the involvement of Land Councils, and the decision-making authority of Traditional Owners.

Recommendation 2.5: Pathway 5 of Direction 2.

Work undertaken under Pathway 5 of Direction 2 requires the NT government to adequately fund science, including independent monitoring and review.

Recommendation 2.6: Pathway 6 of Direction 2.

Work undertaken under Pathway 6 of Direction 2 requires the NT government to adequately fund science, including independent monitoring and review.

Direction 3

Recommendation 3.1: Addition to Pathway 1 of Direction 3

Valuing and pricing water used by industry is the best way to incentivise industry to be water efficient. Work under Pathway 1 of Direction 3 should value and price water used by industry and collaborate with industry to identify ways to significantly improve water efficiency, recycling and reuse, develop appropriate policy and establish demonstration sites with early adopters.

Recommendation 3.2: Pathway 2 of Direction 3.

Work under Pathway 2 of Direction 3 should focus on obtaining a new remote infrastructure partnership to cover replacement investment of water supply infrastructure in remote areas.

Recommendation 3.4A: Pathway 4 of Direction 3

The CLC recommends that work undertaken under Pathway 4 of Direction 3 include scoping and implementing a cost recovery model for industry water licencing.

Recommendation 3.4B: Pathway 4 of Direction 3.



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Work undertaken under Pathway 4 of Direction 3 should include a metering audit to gain a true picture of the extent of current monitoring and metering. The NT must also enforce the Metering Code.

Recommendation 3.5: Delete Pathway 5 of Direction 3 and replace as follows:

Identify barriers, costs and benefits of water trading and publicly consult on whether water trading should be encouraged. In the event that water trading arrangements go ahead, ensure that they are consented to by Traditional Owners.

Recommendation 3.6: Pathway 6, Direction 3 should be amended as follows:

Pathway 6 – Investigate options for a water and sewerage services pricing framework for commercial users that is reflective of the cost of providing the services, including a pricing framework for extraction licences applicable to the Northern Territory that will support water security.

7. Additional non-market based efficiency regulations for non-compliant proponents

Direction 4

Recommendation 4.1: Pathway 1, Direction 4 should be amended as follows:

Water for economic development is dependent on establishing a scientifically robust and culturally appropriate estimated sustainable yield, and ensuring adequate allocations have been made for cultural and environmental sustainability and drinking water.

Once this has occurred in a region and the available allocation for industry is known, Audit expected water requirements for economic development by region and industry to help define infrastructure and investment priorities.

Recommendation 4.4: Pathway 4 Direction 4 should be amended:

Ensure that there is adequate water available for Strategic Aboriginal Water Reserves and ~~W~~work with holders of Strategic Aboriginal Water Reserves to ensure this water is used to create jobs and economic growth by providing advice, business support, resources and incentives.

Recommendation 4.5: Pathway 5 of Direction 4 should be amended as follows:

Accelerate a coordinated assessment and monitoring program to develop better base knowledge of our water resources to de-risk investment; and encourage sustainable development through co-location and shared infrastructure. Ensure that assessment, monitoring programs and data are independently peer reviewed.

Recommendation 4.6: Pathway 6 of Direction 4 should be amended as follows:



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Continue with policy and regulatory reforms to lengthen water licence tenures; Once comprehensive, independently peer reviewed and publicly available science is in place and allocations for drinking water and to ensure cultural and environmental sustainability have been made, invite expressions-of-interest to encourage investment; and deliver a surface water harvesting policy.

Recommendation 4.7: Pathway 7 of Direction 4 should be amended as follows:

Consider expanding the economic regulatory framework to include developer contributions and methodology for bulk water pricing in order to provide certainty to private sector investors and to cover regulatory costs as well as the costs of adequate, peer reviewed science and traditional owner involvement.

Direction 5

Recommendation 5.4: Pathway 4 Direction 5 should be amended as follows:

In addition to existing annual water quality reporting, ensure regular public reports on water security for identified priority population centres and all at-risk remote Aboriginal communities, including documenting reliability, sustainability, resilience to climate change and water efficiency achievements.

Direction 6

Recommendation 6.1: Pathway 1 of Direction 6 should be amended as follows:

Work with Land Councils to co-design and establish a forums for Traditional Owners and other Aboriginal Territorians to provide advice and make decisions on all aspects of water planning and implementation that impacts them, including:

- policy, plans and actions that deliver benefits from Aboriginal rights and interests in water;
- meaningful engagement with Aboriginal Territorians;
- how to best incorporate traditional knowledge into water-related matters; and
- making decisions about water allocation.

and fund Land Councils to complete comprehensive surveys to ensure cultural impacts are adequately addressed prior to commercial allocation decisions.

Recommendation 6.2A: Pathway 2 Direction 6 should be amended:

Where water-dependent cultural values may be impacted by water management decisions, partner with Traditional Owners (who are the custodians of cultural knowledge) and their Land Councils to co-design methods to identify and prioritise them and determine their water requirements. Develop agreed guidelines for determining cultural water requirements in relevant plans and



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monitoring programs with the input of Land Councils and Traditional Owner designed and led structures.

Recommendation 6.2B: Work undertaken under Pathway 2, Direction 6 should include consideration of how:

- Clear, measurable and well-informed cultural outcomes can be agreed in water plans. Monitoring and reporting arrangements that promote accountability and foster learning about what works should also be put in place.
- Cultural outcomes can be pursued through ensuring the environment has sufficient water where they are consistent with achieving agreed ecological objectives.
- Local catchment or land management authorities can establish long term relationships with the Land Councils and engage with the Land Councils on the management of cultural assets.

Recommendation 6.3: Pathway 3 Direction 6

Improve Aboriginal involvement in decision making, water investigations, water allocation planning and management. Support Aboriginal language groups to participate in Water Advisory Committees and Aboriginal Reference Groups, including through reinstating Water Advisory Committees to oversee the implementation of Water Allocation Plans (WAPs) and ensuring Aboriginal representation on them. These should supplement Aboriginal designed and led arrangements, created in consultation with Land Councils, which formally empower Traditional Owners to continue their stewardship role.

Recommendation 6.4: Amendment to Pathway 4 of Direction 6:

Create opportunities for Aboriginal people, especially Traditional Owners, to be involved in managing water resources including through jobs and services provided by Aboriginal business and ranger groups.

Direction 7

Recommendation 7.1: In relation to Pathway 1 of Direction 7:

The CLC recommends that the guidelines to be developed under Pathway 1 of Direction 7 include a requirement that natural resource managers develop long term relationships with Traditional Owners, through their Land Councils, around the management of Country.

Recommendation 7.2: Pathway 2, Direction 7 should be amended as follows:

Continue to develop better policy, legislation and regulations to ensure key water-dependent environmental values are protected, including through water allocation plans and licence conditions that are site-specific to reflect local values and threats. Ensure that it is a legislative requirement that environmental and cultural impacts are considered in allocation decisions and reflected in licence conditions. Where environmental approvals or sacred site clearances are



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required these approvals or clearances must be obtained before an application for a water licence can be made.

Recommendation 7.3/7.4: Pathway 3 and 4 of Direction 7.

Work under pathway 3 and 4 of Direction 7 should focus on ensuring long-term and adequate funding.

Recommendation 7.5: Pathway 5, Direction 7 should be amended as follows:

Develop water quality guidelines (non-drinking water) for high value and/or high risk waterways and aquifers, and embed these in legislative requirements for monitoring, management and reporting. Develop long-term funding sources to ensure long term, independent monitoring, management and public reporting requirements are met.

Direction 8

Recommendation 8.1A: Guidelines and trigger points to be developed under Pathway 1 of Direction 8 must be underpinned by scientific and technical models that are consistently applied across the NT, publicly available and peer reviewed, and supported by cultural knowledge.

Recommendation 8.1B: Guidelines should be developed under Pathway 1 of Direction 8 for application of adaptive management, including clear objectives and measurable performance indicators for management. The threats and processes that influence the objectives should be described, as well as how management actions are expected to achieve those objectives. A plan should be developed stating which management actions will be trialed and how they will be implemented, and effectiveness must be monitored. Monitoring data must then be analysed and the process must be updated. The data should also be used to inform management decisions. Adaptive management plans and data must be publicly available.

Recommendation 8.1C: If the legislative regime relies on estimated sustainable yield, this term must reflect that estimated sustainable yield is an estimate of the amount of water that can be sustainably harvested (harvested and replaced by complete recharge) based on:

- Rigorous up-to-date science that is independently peer reviewed; and
- conservative assumptions, to reflect unknowns such as changing rainfall patterns associated with climate change and out of date determinations of sustainable yield.

Recommendation 8.4: Pathway 4 of Direction 8.

Increase private sector and industry contributions to water-related investigations, robust, peer reviewed science, and the cost of traditional owner consultations through, for example, water extraction licence conditions or water pricing mechanisms.

Recommendation 8.5: Work with academic organisations such as Charles Darwin University to encourage independent post-graduate research on Territory water issues



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Direction 9

Recommendation 9.1, 9.2, 9.3 and 9.5.

Pathway 1: Develop a whole-of-government and community plan for Territorians to be leaders in water stewardship. Co-design regional water stewardship programs with Traditional Owners to respond to local needs and to reflect local and traditional knowledge.

Pathway 2: Better communicate water security and stewardship matters, for example by posting water security and stewardship news and linking this to peak body networks. Ensure that communications materials are culturally and linguistically appropriate for remote communities.

Pathway 3: Improve the effectiveness of community engagement by improving access to water information, improving the clarity of information and by supporting community water literacy, and ensure community engagement reflects two way knowledge sharing and that the special knowledge and interests of Traditional Owners are appropriately respected.

Pathway 5: Ensure Water Advisory Committees are well-informed, appropriately resourced with culturally and linguistically suitable resources, have independently peer reviewed science to base their decisions on, and have a tenure aligned with the planning cycle.

Direction 10

Recommendation 10.4: Work undertaken under pathway 4 of Direction 10 should include focus on improving interactions between legislation governing water, and:

- Planning law and processes;
- Environmental assessment law and processes; and
- Requirements to protect sacred sites.

to ensure that the key directions are met.

Recommendation 10.7: A seventh pathway should be added to Direction 10.

A conservative approach must be enshrined in legislation in relation to all water allocation decisions. This means that allocations for consumptive commercial use can only be made once:

- comprehensive, independently peer reviewed, and publicly available science is in place;
- Traditional Owners have had structured input regarding traditional knowledge and requirements through structures designed and led by Traditional Owners in consultation with their Land Councils; and
- allocations for drinking water and to ensure cultural and environmental sustainability have been made.



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BACKGROUND

"The drinking of water provided not only a means of sustaining life, but tangible evidence of a traditional spiritual connection with the dreamings present at various sites."

- Justice Gray. *Alcoota Land Claim*¹

"All water sources such as soaks, rock holes, springs and rivers play a major role in the social, spiritual and customary values of the traditional owners of the District."

- *Western Davenport Water Allocation Plan (WAP)*.²

1. The Aboriginal people of Central Australia have been stewards and caretakers of Central Australia's water for millennia. Water is life sustaining and provides spiritual sustenance for the Aboriginal people of Central Australia. However, in the NT water is regulated by a system that is inadequate for supporting the long-term health, well-being and aspirations of Territorians and does not formally empower Traditional Owners to continue their stewardship. The regulatory system must be reformed.
2. The Central Land Council (**CLC**) is a Commonwealth Statutory Authority established under the *Aboriginal Land Rights (Northern Territory) Act (Cth) 1976 (ALRA)*, with statutory responsibilities for approximately 780,000 square kilometres of land in the southern half of the Northern Territory (**NT**). The CLC has the function of ascertaining and expressing the wishes and the opinion of Aboriginal people living in its region as to appropriate legislation concerning their land.³ The CLC also administers a range of programs for the benefit of constituents in relation to environmental management, community development, governance, cultural heritage, and customary practices.
3. Ninety percent of the NT's water supply, including for nearly all remote Aboriginal communities, comes from groundwater aquifers accessed via bores.⁴ These are recharged by wet season rainfall, run-off and floods.⁵ Water quality problems persist in many Aboriginal

¹ Commonwealth (1999) *Alcoota Land Claim No 146 – Report and recommendation of the former Aboriginal Land Commissioner, Justice Gray, to the Minister for Families, Community Services and Indigenous Affairs and to the Administrator of the Northern Territory*, at 5.3.

² Northern Territory Government (2018) *Western Davenport Water Allocation Plan 2018-2021*. Department of Environment and Natural Resources: Northern Territory, Australia. Available at <https://depws.nt.gov.au/__data/assets/pdf_file/0011/624863/Western-Davenport-WAP-04012019.pdf> accessed 18 January 2021, at 5.2.2.

³ Section 23(1)(a) ALRA.

⁴ Grealy, L and Howey, K (2020) *Securing supply: governing drinking water in the Northern Territory*, Australian Geographer.

⁵ Grealy, L and Howey, K (2020) *Securing supply: governing drinking water in the Northern Territory*, Australian Geographer.



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communities with “chemical and biological contamination, palatability issues and water security concerns”.⁶

4. At the August 2021 meeting of the Full Council of the Central Land Council in Kalkarindji, the Council’s go delegates resolved to support the following statement with respect to water. The statement builds on critical historical documents including the Mary River Statement and articulates the critical importance of water to the future survival of Aboriginal people and their culture.

•Before whitefellas colonised Australia, all of the lands and waters in the Northern Territory were owned and looked after by Aboriginal people.

•Looking after our traditional lands, rivers, springs, soaks and waterholes also protects our dreaming stories, sacred sites and other cultural values connected to water.

•We do this for future generations. It is a very serious responsibility for us.

•Native Title Law says we have the right to visit and use our water places. If developments on native title land takes too much water then it will be harder for us to hold onto those rights like hunting, ceremony and collecting food and medicine.

•If our native title rights are taken away we should get proper compensation.

•Aboriginal people must also be able to use water from our country for livelihoods and jobs.

•Wherever we go, we never waste water – it has always been precious and is very scarce on our land.

⁶ Australian Government. *National Water Reform* (Productivity Commission Inquiry Report, no. 96, 28 May 2021) 1-257 (*‘Productivity Commission 2020’*). at 176.



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•As Aboriginal people we have our own ideas and knowledge about the best ways to look after and use the water from our country. This knowledge needs to be recognised and properly included in planning and decisions.

•We used to call on rain-makers to do a rain-dance – many of the rain-makers are gone.

•Whitefella laws about water need to be stronger to make sure cultural values are properly recorded by the right people and our knowledge of all of the plants and animals that need that water is used to look after them.

•We need to be supported by government to talk to everyone and make decisions about how to look after our water rights across our region.

•Government and other land users must talk with us properly about the ways that our country and our water is used. We need to be told about what is happening first, before we give permission.

5. The Council also called for the following actions to be implemented in line with the four Closing the Gap priority reforms. These underpin the key recommendations of this submission.

i. Make a commitment to designing important water policies and laws with Aboriginal people including a comprehensive Water Security Strategy

ii. Address gaps in water laws, including protections for safe drinking water and water infrastructure in all remote communities and homelands

iii. Make water planning stronger across the whole Northern Territory

iv. Set up a water regulator that is independent from government

v. Secure water for Aboriginal economic development

vi. Identify steps to return over-committed water systems to sustainable levels

vii. Ensure protection of Aboriginal people's cultural values, rights and interests in water planning and decision making into the future.

viii. Commit to being open and transparent by putting back important checks and balances including the re-establishment of a Legislative Scrutiny Committee.



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6. The CLC welcomes the NT Strategic Water Plan Directions Paper released in September 2021, and the Office of Water Security’s focus on the NT’s water issues. The Directions Paper marks the beginning of reforming the regulatory system to support the water needs of all Territorians. Reform is needed. The Directions Paper, and this submission, raise many issues.
7. The CLC welcomes further input into this reform process, and discussions with the Office of Water Security as required on any aspect of this submission.

PRIORITY DIRECTIONS

8. The Directions Paper asks which of the directions are most important. As will be clear in this submission and from the Full Council resolutions reproduced above, Direction 6 (Aboriginal Connections to water are valued), Direction 7 (Water dependent environmental values are protected) and Direction 2 (safe drinking water) are the most important. The NT’s performance against these four metrics is how the NT’s success or failure will be judged by Territorians, and the rest of the world.
9. The building blocks that are required to put this in place, and that are equally important, are adequate science (Direction 8), Aboriginal designed and led governance (Direction 6) and a conservative approach, to ensure that water for commercial use is not allocated before the other directions are achieved (relates to Direction 7). This is represented in the following diagram.



Recommendation A (Priority Directions): The NT must commit the necessary resources (technical, administrative, human and financial) to ensuring all of the following priority 1 objectives are met:

- Environmental and cultural sustainability;
- Safe drinking water for all Territorians;



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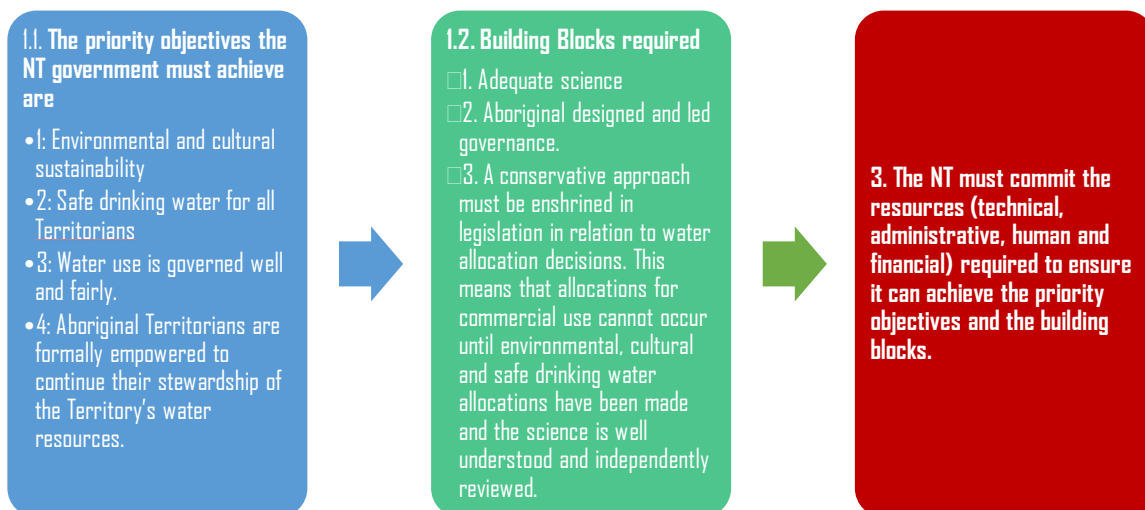
- Water use is governed well and fairly.
- Aboriginal people are empowered to continue their stewardship.

In the delivery of the priority 1 objectives, the NT must focus on the following building blocks:

- Adequate science;
- Aboriginal designed and led governance; and
- A conservative approach in relation to allocation decisions. This means that allocations of water for commercial use cannot occur until environmental, cultural and safe drinking water allocations have been made and the science is well understood and independently reviewed.

Work and funding allocations under the Directions should reflect these priorities.

10. This is represented in the diagram below.





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UNDERLYING PRINCIPLES

Recommendation: Underlying Principle 1. The following should be added to Principle 1 'Safe and reliable':

Safe and reliable -- Drinking water for human health and wellbeing is prioritised. All Territorians (whether they live in the NT's major cities or remote communities) must have equal access to safe and palatable drinking water.

11. The Directions Paper at page 4 states:

There is widespread expectation that the government should guarantee all communities have enough safe drinking water. But in some locations natural resources of freshwater are limited in size and quality, making the provision of adequate potable water a serious and expensive challenge. Mature community debate about how to address these circumstances will help determine future investment priorities.

12. Territorians living in remote communities should be afforded the same protections in relation to drinking water, as Territorians living in major towns and cities. This is further discussed in relation to Pathway 1 and 2 (below). If the NT does not support Territorians living in certain communities, then government must be transparent about that decision, the reasons and work collaboratively with Aboriginal communities and Traditional Owners to develop community designed and led solutions through existing consultation processes using Land Councils. The NT government must not simply provide a lesser standard of care, regulation or services.

Recommendation: Underlying Principle 3. The following should be added to Principle 3 'Sustainability'

Water policy, management and planning decisions will consider long-term environmental and cultural sustainability, intergenerational equity, and future risks and opportunities.

13. This is required to ensure that it is clear that both the social (cultural) and environmental pillars of sustainability are included.

Recommendation: New Underlying Principle 7. The following additional principle should underpin the NT's water regulatory framework:

Aboriginal Stewardship – Aboriginal Territorians have been stewards of the NT's water for millennia. Around a third of Territorians are Aboriginal and around half of the NT is Aboriginal Land, with most of the rest of the NT subject to native title. Traditional owners should be involved in all levels of water planning, regulation, policy, administration and decision making, including design of appropriate representative structures through the existing processes for consultation involving Land Councils.



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14. Despite the NT's Traditional Owners having been stewards of the NT's water for millennia, the proposed principles are silent about the role of Aboriginal people. This is in a context where over a third of Territorians are Aboriginal and around half of the NT is Aboriginal Land, with the vast majority of the rest of the NT subject to native title. Traditional owners and their Land Councils should be involved in all levels of water planning, regulation, policy, administration and decision making. Further information is provided under Direction 6 from paragraph [73] below.

DIRECTION 1 - WATER GOVERNANCE IS CONTEMPORARY AND COORDINATED

15. The CLC agrees that good governance is at the heart of ensuring water security for Territorians.

Direction 1, Pathway 1 - Lack of integrated planning

Recommendation 1.1: Addition to Pathway 1 under Direction 1:

Clarify the roles and improve co-ordination of Northern Territory Government agencies in areas of policy, regulation and service provision and create structures and procedures to ensure formal and integrated water planning and detailed public reporting.

16. The CLC supports Pathway 1 under Direction 1 as detailed in the Directions Paper and agrees that work should be undertaken to clarify the roles and improve co-ordination of government agencies in areas of policy, regulation and service provision. Good governance requires integrated and coordinated planning for water across government departments and utilities. In the NT, planning often occurs on an informal and occasional basis and, there is no formal requirement for utilities to publish comprehensive planning documents, which means that there is insufficient transparency.
17. The entities with a role in the current regulatory regime are set out in the **Annexure**. There are fundamental difficulties with this structure, including:
- the existing governance arrangements see government power concentrated on few individuals and organisations;
 - there is little accountability or oversight over the functions performed by them; and
 - there is a different level of accountability for drinking water services provided to cities and towns compared to Aboriginal communities.

These are discussed further below and must be reformed.

Direction 1, Pathway 2: Reforms

Recommendation 1.2: Addition to Pathway 2 under Direction 1



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Continue reforming the ~~Water Act 1992~~ legislative regime to manage water resources in the Northern Territory ~~effectively and efficiently~~ to ensure that the key objectives of: environmental and cultural sustainability; accessible and safe drinking water; good governance and formal Aboriginal stewardship; and robust, peer reviewed science are met, with success measured against these objectives as set out in the Northern Territory Strategic Water Plan.

18. The CLC has not yet formed a view on whether reforms to current legislation, such as the *Water Act* (NT) 1992 (**Water Act**) are preferred, or reform is better implemented through a wholesale replacement of the current legislation. Pathway 2 under Direction 1 should keep both options open.
19. The current regulatory regime is not fit for purpose. Problems include:
- **The most important uses of water are not prioritized.** Allocations for commercial uses have been prioritized at the expense of cultural and environmental sustainability and without adequate allowance for drinking water.
 - **The regulatory regime does not require sufficient reliance on science that is independent and peer reviewed.** The regulatory regime does not prescribe reliance on good quality, independent and peer reviewed science that is sufficiently applied and robust to support decision making.
 - **Traditional owners are not formally empowered to continue their stewardship.** A reformed regulatory regime must be consistent with frameworks already in place, including ALRA and the Native Title Act, but must go further to formally empower Aboriginal people to continue their stewardship of resources that have been actively protected for millennia. The NT government should work with Land Councils to develop Aboriginal designed and led structures for input into all levels of the regulatory regime. See Direction 6 – Aboriginal designed and led governance detailed below.
 - **There are no enforceable minimum water quality standards.** Instead the Australian drinking water guidelines (**ADWGs**) are “used as a peak reference” although this is not legally enforceable.⁷
 - **Government power concentrated on few individuals and organisations. There is no independent authority that oversees water allocation.** There should be a well resourced, independent authority that oversees all water allocation.
 - **Performance of public utilities is not transparent. There is little accountability or oversight of the functions performed by them.** An independent water licensing and regulatory authority must be established.
 - **Licensed water is not priced.** There is no pricing regime to licensed water that covers the cost of independent research, regulation, monitoring and compliance or even administration.

⁷ Dept of Health and PAWC MOU 2011 clause 4.



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- **Water does not follow jurisdictional borders.** The regulation of water needs to be coordinated with other jurisdictions when water bodies, aquifers and cultural connections are not confined within these borders.
- **Territorians are treated differently depending on where they live.** For example, the *Water Supply and Sewerage Services Act (2000) NT* (WSSA) extends the provision of water supply services to water supply licence areas which includes the 18 gazetted towns in the NT. These are serviced by Power and Water Corporation (**PAWC**), which is licenced under the WSSA and subject to regulatory oversight by the NT Utilities Commission, with direct accountability to the customer through a standard 'customer contract' published in the Gazette.⁸ By contrast, the 72 Aboriginal communities (and some outstations) not part of a water supply licence area are serviced by Indigenous Essential Services Pty Ltd (**IES**). IES does not hold a licence and is not overseen by the Utilities Commission or subject to any of the other checks and balances on PAWC imposed through the WSSA or its licence, including disclosure and transparency obligations. Around half the NT's Indigenous population live in these areas serviced by IES.⁹

Direction 1, Pathway 3: Reform the economic regulatory framework to improve transparency and accountability of service providers

Recommendation 1.3A: Amendment to pathway 3 under Direction 1

Reform the economic regulatory framework for water supply and sewerage services to improve transparency and accountability of service providers, and serve the long term and evolving interests of customers and communities, including by:

1. establishing appropriate service level standards and customer protections that apply to all Territory consumers;
2. ensuring that all water service providers are licenced and answerable to a regulator and customers, and transparent;
3. creating an independent economic regulator to set prices and ensure transparency about cost sharing between consumers and government; and
4. ensuring that commercial licence holders contribute to the costs of regulation, enforcement, monitoring and independent research.

Recommendation 1.3B: The CLC recommends that work under Pathway 3 of Direction 1 include the implementation of the NWI in relation to transparency.

⁸ Ibid s47.

⁹ Grealy, L and Howey, K (2020) *Securing supply: governing drinking water in the Northern Territory*, Australian Geographer. Page 6.



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Recommendation 1.3C: The CLC recommends that work under Pathway 3 of Direction 1 ensures:

- All water service providers in the NT are be licenced;
- All water services providers in the NT are accountable to consumers and government, including through detailed and mandatory public reporting and transparency; and
- There is no separate regulatory regime for remote area service providers.

20. There is no economic regulator for water supply services in the NT who sets prices for water provision. In addition, community service obligations are not applied transparently. This contravenes the requirements in the National Water Initiative (**NWI**) at clause 66(v).

21. IES is not licenced by nor accountable to any regulator. It and PAWC operate opaquely with reporting limited to annual reports that are high level. Neither entity is covered by freedom of information provisions.

Direction 1, Pathway 4: Controller of Water Resources

Recommendation 1.4A: Pathway 4 under Direction 1 should be amended as follows:

The regulatory regime must be underpinned by the following principles:

- Government decision making must be split to avoid the concentration of power in one individual and any subsequent conflicts of interest;
- Bodies making policy must be separate from those administering it, whatever the level of government involved; and
- People or organisations who might benefit from government policies should be separate from those administering the policies.

Consider a separate entity or person to perform some or all of the roles and functions of Controller of Water Resources under the Water Act, particularly the decisions related to access to water resources.

Recommendation 1.4B: Work under Pathway 4 of Direction 1 should focus on designing and creating a new, well resourced, independent authority that oversees all water allocation decisions on the basis of legally enforceable (and reviewable) criteria, robust science and appropriate Traditional Owner input.

22. The CLC welcomes creation of a new, independent authority to oversee all water allocation decisions. The CLC would be pleased to have input into the design of the new authority, including requirements for decision making and Traditional Owner input.



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23. Best practice water governance requires that:
- Government decision making be split to avoid the concentration of power in one individual and any subsequent conflicts of interest;
 - Bodies making policy should be separate from those administering it, whatever the level of government involved;¹⁰ and
 - Persons who might benefit from government policies should be separate from those administering the policies.
24. There is no institutional separation between policy-making and regulation with respect to water in the NT. One individual holds three conflicting roles, which are:
- The Water Controller;
 - CEO of the Department of Environment, Parks and Water Security; and
 - Board member of NT Land Corporation.

This creates a perception of conflict because of the functions of these roles.¹¹ This conflict should be addressed via structural reforms to ensure that these conflicting functions are not performed by one individual.¹²

Direction 1, Pathway 5: National Water Reform Agenda

Recommendation 1.5: Addition to Pathway 5 under Direction 1:

Continue to proactively participate in the national water reform agenda and associated partnerships to support good governance. Audit the NT's compliance with existing NWI obligations and remediate any areas of non-compliance.

25. As set out at paragraphs [25] and [26], the NT has not always complied with the NWI. Work should be undertaken under Pathway 5 to identify areas of non-compliance and remediate them.

DIRECTION 2 - SAFE DRINKING WATER

Direction 2, Pathway 1 - Options for safeguarding public drinking water supplies

Recommendation 2.1: Amendment to Pathway 1 under Direction 2:

¹⁰ Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments, Volume 1, April 2011 at 4.07.

¹¹ For example:

- The Water Controller is responsible for approving water licences and determining annual water allocations. This role has broad discretionary power under the Water Act and has the power to make decisions that are inconsistent with a WAP – for example, the Singleton Station licence.
- The Department of Environment, Parks and Water Security drafts and implements WAPs and other policy.
- The NT Land Corporation benefits from licensing decisions and the development and interpretation of WAPs.

¹² As an example, the "guideline document" that the Water Controller relied upon to avoid provisions of the WAP in allocating the Singleton Station licence was drafted by the Water Controller themselves in their capacity as CEO of the Department of Environment, Parks and Water Security.



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Explore options for safeguarding Safeguard public drinking water supplies, paying particular attention to the needs of remote Aboriginal communities, including through:

1. Making minimum quality standards for drinking water legally binding;
2. Creating a Safe Drinking Water Act to ensure consistent and non-fragmented approaches to water access, security and safety for all Territorians;
3. Enshrining a legislated guarantee to safe drinking water and ensuring drinking water is prioritised; and
4. Ensuring the NT Department of Health licences and regulates, monitors and publicly reports on drinking water providers and drinking water quality.

26. As conceded in the Directions Paper, water quality in the NT is not always adequate. In the CLC’s region, only Papunya is at a moderate risk rating. All remaining communities are at high, very high or extreme risk in relation to water safety and security.

Overall Risk Rating of CLC Communities ¹³			
Medium	High	Very High	Extreme
Papunya	Lajamanu	Kalkarindji	Wutungurra
	Canteen Creek	Imangara	Yuendumu
	Alpurrurulam	Wilora	Engawala
	Ali Curung	Yuelamu	Atitjere
	Ampilatwatja	Kaltukatjara	Imanpa
	Nturiya	Hermannsburg	
	Willowra	Titjikala	
	Nyirripi		
	Laramba		
	Kintore		
	Mount Liebig		
	Haasts Bluff		
	Areyonga		
	Wallace Rockhole		
	Santa Teresa		
	Finke		

27. Among the most important work of government is to ensure that all citizens have access to safe and palatable drinking water. The COVID-19 pandemic has made abundantly clear that the foundation of a healthy economy is healthy people. Without safe drinking water, other directions such as economic development, cannot occur. The NT government must allocate the necessary resources to ensuring this occurs.

¹³ Power and Water Corporation (2019) Water, Sewerage and Power Infrastructure Overview for 72 IES Remote Communities.



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28. It is disappointing that Pathway 1 of Direction 2 this is couched in the language of passively exploring options and does not reflect any commitment to reform. The current regulatory system is completely unsuitable to supporting the health of Territorians. The NT has no enforceable minimum quality standards for drinking water (World Health Organisation or Australian Drinking Water Guideline (**ADWG**) standards) or legislated guarantee to protect drinking water supply against other consumptive uses.
29. The NT government has the following powers to prescribe water quality standards:
- Section 45 WSSS Act – permits the Minister to specify minimum standards of service to customers that PAWC must meet.
 - Section 73 – Water Act – permits the Minister to specify minimum standards
 - Section 102 – Public and Environmental Health Act 2011 (NT) – permits the Minister to declare a document applies as a standard in the NT after consulting with the chief health officer.
30. As set out in the Directions Paper p. 7, no formal standards are set for areas served by PAWC or IES. Unlike in other Australian jurisdictions, the NT government has not set the minimum standards for water supply. Instead, the Department of Health and PAWC entered into a 2011 Memorandum of Understanding.¹⁴ This document is not enforceable.
31. Further information about the CLC's suggested reforms is set out below.

Creating a Safe Drinking Water Act

32. Safe water legislation exists in other Australian jurisdictions, such as South Australia (*Safe Drinking Water Act 2011*) (**SA Water Act**), Victoria (*Safe Drinking Water Act 2003*), New South Wales (*Water Industry Competition Act 2005*) and Queensland (*Water Supply [Safety and Reliability] Act 2008*).
33. The SA Water Act (which also covers remote communities) has four requirements which apply to all drinking water providers. These are:
- Drinking water providers must be registered;¹⁵
 - Drinking water providers must prepare and implement a risk management plan in relation to the supply of drinking water to the public, keep the plan under continuous review with a view to updating and improving it and revise any aspect of the plan that is found to need revision;¹⁶
 - Drinking water providers must make results of monitoring programs conducted under the risk management plan available to the public;¹⁷ and

¹⁴ *Drinking Water, Department of Health and Power and Water Corporation*, signed 28 July 2011 (Memorandum of Understanding).

¹⁵ *Safe Drinking Water Act (SA) 2011* s5(1).

¹⁶ *Ibid* s12(1).

¹⁷ *Ibid* s27(1).



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- The Chief Executive may by notice in the Gazette, determine that specified classes of drinking water providers will be subject to audits or inspections every year or every 2 years.¹⁸

Similar legislation should be enacted in the NT.

Enshrining a legislated guarantee to safe drinking water and ensuring drinking water is prioritized

34. Currently, there is no legislated guarantee in the NT to protect drinking water supply. The NT Water Regulatory Reform Process Directions Paper of October 2018,¹⁹ stated:

There is currently no specific power for the Minister or Controller of Water Resources to set aside water resources for future public water supplies outside of a water plan area, even in cases where there is an identified risk that the relevant water resource may be allocated to other consumptive users prior to an application being lodged by the relevant water utility. (p. 11)

35. Section 22 of the Water Act allows the Minister to declare a Water Control District and section 22B of the Water Act allows the Minister to declare Water Allocation Plans (**WAPs**) in respect of a Water Control District. WAPs set out how water will be allocated and shared. However, their reach is limited as WAPs only apply to around 28% of the NT.²⁰ Most other States and Territories have more than 80% of water use managed under water plans. Further, in the NT, there are no circumstances in which there is a legal requirement to create a WAP and no statutory timeframe for the declaration of WAPs. Progress on declaring WAPs is slow. The Tindall Limestone Aquifer, Mataranka to Daly Waters WAP has been in development since at least 2009. Northern Territory WAPs are not delegated statutory instruments, unlike in other jurisdictions. These flaws must be rectified if the WAP system is to be strengthened to protect drinking water. Further, in the NT, there are only cursory legal requirements about the content of WAPs (see section 22B Water Act). The result is that in the NT, WAPs are largely non-proscriptive. Unlike in other jurisdictions, there are few, if any extensive binding rules which govern water sharing and use. This means that drinking water is not properly prioritized.²¹

¹⁸ Ibid 520(1).

¹⁹ Northern Territory Government. *Northern Territory Water Regulatory Reform Directions Paper*, (Darwin, October 2018).

²⁰ Productivity Commission, *Draft Assessment of National Water Initiative (2017-2020)* (February 2021) at 20.

²¹ Licences have been issued that are inconsistent with the stated objectives of the WAP. The Singleton Station licence is one example. As set out by the EDO in its Executive Summary: Deficiencies in the existing water law and governance framework in the Northern Territory: *"When approving the 40,000 ML/year licence at Singleton Station this year, the Water Controller said that her decision was consistent with the WAP. However, in the same decision the Controller said that that she did not rely on the WAP's criteria for protecting groundwater dependent ecosystems. Instead, she relied on a "guideline document". In doing so the Water Controller avoided the WAP criteria that allowed a maximum drawdown of 15 metres and would have prevented her from approving the licence. Based on the NT Governments' own modelling the approved licence is expected to drawdown the aquifer by up to 50 meters."*



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36. Water use in the NT not covered under a WAP is governed by the “Water Allocation Planning Framework” document. This two-page document is from 2000, making it 21 years old. The only changes that have been made since 2000 were in 2020, when the NT government template was applied and headings were added and numbered.
37. The current regulatory regime over-prioritises commercial allocation. Amendments to the Water Act resulting from the TERC Bill have made it possible for a developer to obtain water licenses (without charge) on a speculative basis (without the need to specify extraction points or submit detailed development plans).²² The developer can then transfer the water licences to others for profit, locking the resource away from other consumers.²³ This should not be permissible particularly when adequate allocations have not been made for cultural and environmental sustainability and drinking water, or the science is not well understood and independently verified.
38. In 2011 the Strategy on Water and Wastewater Services in Remote (including Indigenous) Communities was created at COAG. The NT government developed an implementation plan for remote communities that outlined a plan for water security and aimed to ‘provide a level of service that meets regulatory standards that would apply to any other community of similar size and location.’²⁴ Approximately \$20 million in funding was allocated, none of which to communities in the CLC’s region.
39. Finally, the Water Act makes it an offence for the holder of a licence to take surface water or ground water or to contravene a term or condition of their licence. It would support enforcement efforts, and therefore the protection of water for drinking requirements (and environmental and cultural sustainability and) if:
- The Water Act expressly stated the circumstances in which water can be taken;
 - There were clear and binding licence conditions around water extraction;
 - There was accurate measurement and data collection around water take, so that alleged breaches of extraction conditions can be proven to the criminal standard; and
 - Offence provisions are supported through an independent, well resourced regulator that has a mandate to enforce the law. This has been demonstrated in NSW where a 2017 expose by Four Corners regarding water theft, inadequate resourcing and maladministration of water laws resulted in multiple inquiries and investigations²⁵ and the subsequent establishment of an independent water regulator. Since its establishment in

²² Water Act – Pt 6B

²³ Water Act s 71J

²⁴ Implementation Plan for COAG Strategy on Water and Wastewater in Remote Communities – Northern territory (2011) 1-5, C2.

²⁵ EDO Briefing Note: Deficiencies in the existing water law and governance framework in the Northern Territory (undated).



2018, that regulator has gone on to bring 30 prosecutions for breaches of the state's water laws.²⁶

Ensuring the NT Department of Health licences and regulates, monitors and publicly reports on drinking water providers and drinking water quality

40. There is no regulator of drinking water safety across the NT. The failure to have a clear health agency responsible for monitoring and enforcing performance against drinking water standards contradicts recommendation 4.7 of the Australian Infrastructure Plan, which calls for drinking water in all regional communities to meet the minimum standards of the ADWGs.²⁷

Direction 2, Pathway 2: Drinking water quality technology and investment

Recommendation 2.2. Pathway 2 of Direction 2.

Work undertaken under Pathway 2 of Direction 2 must ensure that the NT government, in partnership with the Commonwealth provides a significant increase in funding for the repair, replacement and maintenance of ageing remote water infrastructure and installation of technological solutions to better utilise non-potable water in communities at risk.

41. All Territorians, regardless of whether they live in cities or remote communities, must receive the necessary infrastructure, operations, and maintenance so that they have safe drinking water. The bulk of the current infrastructure servicing Aboriginal communities was funded by the Aboriginal and Torres Strait Islander Commission and is now old, causing water loss due to leakage and escalating repair costs.

42. The long-term under-funding of infrastructure in remote communities should be recognized in decision-making about current and future infrastructure funding and need. A greater investment in water resource investigation and infrastructure replacement is urgently needed.

Pathway 3 and 4: Involve the residents of remote communities on drinking water management plans and processes

Recommendation 2.3 / 2.4. Pathway 3 and 4 of Direction 2.

Work undertaken under Pathway 3 and 4 of Direction 2 must ensure that the NT government respects existing consultation processes and the involvement of Land Councils, and the decision-making authority of Traditional Owners.

43. Existing consultation processes through Land Councils must be utilised to involve Aboriginal communities in development and implementation of drinking water management plans or the

²⁶ Ibid.

²⁷ Infrastructure Australia, *Australian Infrastructure Plan* (Report, February 2016) at 74.



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development of Aboriginal designed and led structures for regular input, including by providing resources to the Land Councils to undertake consultations and respecting reasonable timeframes. Respect for the decision-making authority of Traditional Owners must be enshrined in all consultation processes.

Pathway 5: Ensure land use activities and practices in the recharge areas or catchments of public and community drinking water supplies protect water supplies from pollution.

Recommendation 2.5. Pathway 5 of Direction 2.

Work undertaken under Pathway 5 of Direction 2 requires the NT government to adequately fund science, including independent monitoring and review.

Pathway 6: Continue to invest in science that helps understand the incidence and risks of water borne diseases and other water-quality related health risks in the Northern Territory.

Recommendation 2.6. Pathway 6 of Direction 2.

Work undertaken under Pathway 6 of Direction 2 requires the NT government to adequately fund science, including independent monitoring and review.

DIRECTION 3 - WATER USE IS EFFICIENT AND PRODUCTIVE

Pathway 1: Industry water efficiency

Recommendation 3.1.: Addition to Pathway 1 of Direction 3

Valuing and pricing water used by industry is the best way to incentivise industry to be water efficient. Work under Pathway 1 of Direction 3 should value and price water used by industry and collaborate with industry to identify ways to significantly improve water efficiency, recycling and reuse, develop appropriate policy and establish demonstration sites with early adopters.

44. Until water is properly valued and priced for private development, there is little incentive for industry to improve water efficiency. In addition, all commercial use should require a water efficiency plan. Compliance must be independently monitored and should be a requirement of any increased allocation.

45. In the NT there is recent emphasis on Aboriginal communities and NT residents reducing water consumption. In the meantime, the NT government has granted licences for vast amounts of water (without charge) to private companies for economic development and private profit. It is not acceptable to apply pressure to remote and impoverished people to reduce individual



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consumption when those same people are provided with aging and inadequate infrastructure that is leaking, and large volumes of water are granted to industry without charge.

Pathway 2: Leak minimisation and water efficiency

Recommendation 3.2. Pathway 2 of Direction 3.

Work under Pathway 2 of Direction 3 should focus on obtaining a new remote infrastructure partnership to cover replacement investment of water supply infrastructure in remote areas.

46. Pathway 2 proposes that the NT should learn from successful programs elsewhere to deliver effective incentives for water efficiency, leak minimisation and improved water literacy. As discussed at paragraph [41], a new remote infrastructure partnership is needed with replacement investment in remote areas (including through the Commonwealth) to reduce water waste due to leakage and ongoing patching and repair costs.

Pathway 4: Reform water licencing

47. The CLC supports the inclusion of Pathway 4 of Direction 3 in the Directions Paper and recommends that two specific pieces of work be undertaken under that Pathway.

Recommendation 3.4A: Pathway 4 of Direction 3

The CLC recommends that work undertaken under Pathway 4 of Direction 3 include scoping and implementing a cost recovery model for industry water licencing.

48. New South Wales, Victoria and the ACT recover a substantial proportion (between 40% and 87%) of groundwater planning and management costs from users.²⁸ This can be contrasted with the NT where cost recovery for groundwater planning and management is minimal. A cost recovery model is supported, where industry is responsible for contributing the costs associated with managing and administering water licencing. Costs recovered should go beyond management and administration to contribute to costs of the science (including modelling) required to underpin decisions, and ensuring Traditional Owners are empowered to continue their stewardship and consulted in relation to cultural requirements. See also Pathway 4, Direction 8 at paragraph [105] which contemplates an increase to private sector and industry contributions to water-related investigations through, for example, water extraction licence conditions or water pricing mechanisms.

Recommendation 3.4B: Pathway 4 of Direction 3.

²⁸ "Cost recovery for groundwater planning and management in Australia." Frontier Economics and Sinclair Knight Merz Waterlines Report Series No 88, September 2012, p 9



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Work undertaken under Pathway 4 of Direction 3 should include a metering audit to gain a true picture of the extent of current monitoring and metering. The NT government must also enforce the Metering Code.

49. The Non-Urban Water Metering Code of Practice for Water Extraction Licences (***Metering Code***) was developed by the Department of Environment and Natural Resources. It is non-binding but recommends that meters installed after 30 June 2017 meet the requirements of the code. Installed meters should be replaced with compliant meters as soon as possible, but before 1 July 2027.

50. There is no reference to the Metering Code in the legislative regime. It is non-binding unless compliance with its terms is included as a condition in a water extraction licence. There is no public information regarding implementation or enforcement. This should be rectified.

Pathway 5: Encourage water trading by identifying and addressing barriers, and streamlining administration.

Recommendation 3.5: Delete Pathway 5 of Direction 3 and replace as follows:

Identify barriers, costs and benefits of water trading and publicly consult on whether water trading should be encouraged. In the event that water trading arrangements go ahead, ensure that they are consented to by Traditional Owners.

51. Water trading should not be 'encouraged' prior to barriers being identified. These barriers may indicate that water trading should not be encouraged (for example, if there was insufficient scientific evidence to underpin allocations that are tradeable to ensure sustainability). In accordance with traditional laws and customs that apply in the CLC's region, Traditional Owners are responsible for, and own, water. Before permitting water trading the agreement of Traditional Owners should be required.

Pathway 6: Options for a pricing framework

Recommendation 3.6: Pathway 6, Direction 3 should be amended as follows:

Pathway 6: Investigate options for a water and sewerage services pricing framework for commercial users that is reflective of the cost of providing the services, including a pricing framework for extraction licences applicable to the Northern Territory that will support water security.

52. Given the cost of providing water to remote communities, the Northern Territory cannot entertain a simple direct pass-through cost model for domestic users. That would be



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inequitable as it would cause primarily Aboriginal people in remote communities to pay significantly more for water than their (primarily non-Indigenous) city-based counterparts.

DIRECTION 4 - WATER SUPPORTS JOBS AND ECONOMIC GROWTH

53. Although this direction is important, it cannot be pursued at the expense of ensuring water use is sustainable (culturally and environmentally) and that palatable drinking water is provided. This is further discussed below under Direction 10.

Pathway 1: Audit requirements for economic development

Recommendation 4.1: Pathway 1, Direction 4 should be amended as follows:

Water for economic development is dependent on establishing a scientifically robust and culturally appropriate estimated sustainable yield, and ensuring adequate allocations have been made for cultural and environmental sustainability and drinking water.

Once this has occurred in a region and the available allocation for industry is known, Aaudit expected water requirements for economic development by region and industry to help define infrastructure and investment priorities.

54. A failure to understand that water for jobs and economic growth cannot come at the expense of human health and cultural and environmental sustainability is evident in Pathway 1 of Direction 4.
55. Available water must lead investment priorities, and industry must work within these constraints. Only once a scientifically robust and culturally appropriate estimated sustainable yield is established and cultural, environmental and drinking water allocations are made can a decision be made about water available for industry. It is this decision, underpinned by science and traditional knowledge, that determines the water available for economic development and must help define infrastructure and investment priorities.

Pathway 4: Strategic Aboriginal Water Reserves

Recommendation 4.4: Pathway 4 Direction 4 should be amended:

Ensure that there is adequate water available for Strategic Aboriginal Water Reserves and ~~W~~work with holders of Strategic Aboriginal Water Reserves to ensure this water is used to create jobs and economic growth by providing advice, business support, resources and incentives.

56. Although Strategic Aboriginal Water Reserves are a positive initiative in theory, in practice they have run into two major limitations. First, Strategic Aboriginal Water Reserves only take effect on the declaration of a WAP. This means they are not available in the majority of the NT which is not covered by WAPs. Second, there is an entrenched practice in the NT of granting water



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allocation to irrigators prior to the declaration of a WAP. This means that by the time the WAP is declared there is no or limited water allocation for Aboriginal people through the Aboriginal Water Reserve in that zone. The Ooloo WAP confirms that the northern groundwater management zone is overallocated and therefore the Strategic Aboriginal Water Reserve cannot be provisioned.

Pathway 5: Assessment and monitoring program

Recommendation 4.5: Pathway 5 of Direction 4 should be amended as follows:

Accelerate a coordinated assessment and monitoring program to develop better base knowledge of our water resources to de-risk investment; and encourage sustainable development through co-location and shared infrastructure. Ensure that assessment and monitoring programs and data is independently peer reviewed.

Pathway 6: Lengthening water licence tenures

Recommendation 4.6: Pathway 6 of Direction 4 should be amended as follows:

~~Continue with policy and regulatory reforms to lengthen water licence tenures;~~ Once comprehensive, independently peer reviewed and publicly available science is in place and allocations for drinking water and to ensure cultural and environmental sustainability have been made, invite expressions-of-interest to encourage investment; and deliver a surface water harvesting policy.

57. There should be no further regulatory reform to lengthen water licence tenures. Regulation for long water licence tenures should be strengthened to ensure long licences are only granted when appropriate., There must be adequate, independent and peer reviewed science regarding the implications of doing so, and allocations for environmental and cultural sustainability and drinking water have been made. It is only through ensuring that water allocation decisions are based on adequate, independent and peer reviewed science that industry can mitigate risk.

Pathway 7: Lengthening water licence tenures

Recommendation 4.7: Pathway 7 of Direction 4 should be amended as follows:

Consider expanding the economic regulatory framework to include developer contributions and methodology for bulk water pricing in order to provide certainty to private sector investors and to cover regulatory costs as well as the costs of adequate, peer reviewed science and traditional owner involvement.

58. See discussion at paragraph [105].



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DIRECTION 5 - CITIES, TOWNS AND COMMUNITIES USE THE WHOLE WATER CYCLE

Pathway 4: Public reporting

Recommendation 5.4: Pathway 4 Direction 5 should be amended as follows:

In addition to existing annual water quality reporting, ensure regular public reports on water security for identified priority population centres and all at-risk remote Aboriginal communities, including documenting reliability, sustainability, resilience to climate change and water efficiency achievements.

Pathway 4 should be amended to include regular public reports on water security, reliability and resilience to climate change in remote areas.

DIRECTION 6 - ABORIGINAL CONNECTIONS TO WATER ARE VALUED

59. The CLC welcomes the inclusion of Direction 6 in the Directions Paper. It contains many positive strategies for protecting Aboriginal cultural values. The CLC is keen to work with the Northern Territory Government to further this objective. The CLC makes several recommendations in relation to work undertaken under the various pathways.

Pathway 1: Establish a forum for Aboriginal Territorians

Recommendation 6.1: Pathway 1 of Direction 6 should be amended as follows:

Work with Land Councils to co-design and establish a forum for Traditional Owners and other Aboriginal Territorians to provide advice and make decisions on all aspects of water planning and implementation that impacts them, including:

- policy, plans and actions that deliver benefits from Aboriginal rights and interests in water;
- meaningful engagement with Aboriginal Territorians;
- how to best incorporate traditional knowledge into water-related matters; and
- making decisions about water allocation for commercial use on their land,

and fund Land Councils to complete comprehensive surveys to ensure cultural impacts are adequately addressed prior to commercial allocation decisions.

60. In 2009 Australia endorsed the United Nations Declarations on the Rights of Indigenous Peoples.²⁹ Article 25 recognises that Indigenous people have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned waters and to

²⁹ United Nations Declaration on the Rights of Indigenous Peoples, UN Doc A/RES/61/295 (adopted 13 September 2007)



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uphold their responsibilities to future generations in this regard.³⁰ Article 26 recognises that Indigenous peoples have the right to resources which they have traditionally owned and have the right to own, use, develop and control such resources. States must give legal recognition and protection to these resources.³¹

61. Traditional Owners are the custodians of cultural knowledge and have been stewards of the NT's water for tens of thousands of years. Water use in the NT must be congruent with Traditional Owners knowledge about their country and cultural aspirations.
62. The legislative and policy regime must make Traditional Owners voices heard. Land Councils are tasked with the responsibility of ascertaining and expressing the wishes of Aboriginal people who are their constituents, and should be involved in, and funded to, undertake consultations and assist to co-design representative structures where required for specific projects or Water Allocation Plans, and to ensure sacred sites are protected. Aboriginal people need to be formally empowered through Aboriginal designed and led structures to continue their stewardship of water resources and to ensure that impacts on culture and the environment are adequately considered in all water allocation decisions.
63. This proposal is consistent with the:
 - *Everyone Together - Aboriginal Affairs Strategy 2019-2029*, which seeks to "recognise the critical importance of language, culture and connection to country to Aboriginal Territorians."³²
 - 2017 COAG NWI Policy Guidelines for Water Planning Management on Engaging Indigenous Peoples in Water Planning and Management³³, which provide guidance in relation to: recognising Indigenous values and needs in relation to water resource planning and management, native title and Indigenous land rights; implications for water planning and management; options for improving Indigenous water access in water plans; and the importance of including Indigenous representation and partnerships in the water planning processes to provide a mechanism for Indigenous voices, values, knowledge, experience and priorities to be considered and incorporated in the water planning process;³⁴
 - The four priority reforms of the Closing the Gap Agreement that are reflected in the NT Closing the Gap Implementation Plan.³⁵ These include Priority Reform 1 - Developing

³⁰ Ibid article 25.

³¹ Ibid article 26.

³² Northern Territory Government (2019) *Everyone Together - Aboriginal Affairs Strategy 2019-2029*. Available at https://dcm.nt.gov.au/__data/assets/pdf_file/0010/799219/everyone-together-aa-strategy.pdf (accessed 23 January 2022).

³³ Australian Government, *Engaging Indigenous Peoples in Water Planning and Management*, (Module to the NWI Policy Guidelines for Water Planning and Management, 2017) 1-36 ('*Engaging Indigenous Peoples in Water Planning*').

³⁴ Ibid at 11; at 13.

³⁵ Available at < <https://coalitionofpeaks.org.au/download/national-agreement/> > Accessed 22 January 2021. The Closing the Gap Agreement includes several water-related commitments. These are:



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and strengthening structures to ensure the full involvement of Aboriginal and Torres Strait Islander peoples in shared decision making at the national, state and local or regional level and embedding their ownership, responsibility and expertise to close the gap.³⁶ See also Priority Reform 3 - Ensuring structural reform of government processes to improve accountability and respond to the needs of Aboriginal and Torres Strait Islander people and specifically JA3.31(b) - Developing a model to engage with Aboriginal people on new policies and legislation at the policy-design phase through to finalisation.

Pathway 2: Water dependent cultural values

Recommendation 6.2A: Pathway 2 Direction 6 should be amended:

Where water-dependent cultural values may be impacted by water management decisions, partner with Traditional Owners (who are the custodians of cultural knowledge) and their Land Councils to co-design methods to identify and prioritise them and determine their water requirements. Develop agreed guidelines for determining cultural water requirements in relevant plans and monitoring programs with the input of Land Councils and Traditional Owner designed and led structures.

Recommendation 6.2B: Work undertaken under Pathway 2, Direction 6 should include consideration of how:

- Clear, measurable and well-informed cultural outcomes can be agreed in water plans. Monitoring and reporting arrangements that promote accountability and foster learning about what works should also be put in place.
- Cultural outcomes can be pursued through ensuring the environment has sufficient water where they are consistent with achieving agreed ecological objectives.
- Local catchment or land management authorities can establish long term relationships with the Land Councils and engage with the Land Councils on the management of cultural assets.

64. Guidelines for determining cultural water requirements in relevant plans and monitoring programs should be developed with the input of the relevant Land Councils and should be enforceable. The CLC's extensive experience in the protection of sacred sites has shown that requirements of water dependent cultural values can only be properly assessed on a case by

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- Aboriginal people maintain a distinctive cultural, spiritual, physical, and economic relationship with their land and waters;
 - Inclusion of a new target to measure progress towards securing Indigenous interests in water bodies inland from the coastal zone under state and territory water rights regimes. This will include data development to identify a nationally consistent measure for water licences, water rights and water allocation plans.
 - Inclusion of a new target for service provision to communities.

³⁶ Ibid.



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case basis. Particularly over large areas, Traditional Owners are best able to undertake surveys to protect cultural values when they are provided with detailed information about the potential impacts. They also need to be assured that they can provide information on a confidential, and if necessary gender restricted, basis.

65. Before water allocation decisions can be made, the Land Councils should be provided with sufficient information to understand the potential water drawdown of the proposed licence and conduct an assessment of potential impact on water dependent cultural values. The results of this survey would be provided to the decision maker in a way that does not breach confidentiality requirements. All licences must have conditions that require the protection of water dependent sacred sites and other cultural values.
66. Securing cultural access to water and engaging Traditional Owners in natural resource management is a key avenue to recognize, maintain and strengthen culture.³⁷ It also provides an opportunity for Traditional Owners and land management or catchment authorities to partner in the management of cultural assets.³⁸

Pathway 3: Water Advisory Committees (WACs) and Aboriginal Reference Groups

Recommendation 6.3: Pathway 3 Direction 6

Improve Aboriginal involvement in decision making, water investigations, water allocation planning and management. Support Aboriginal language groups to participate in Water Advisory Committees and Aboriginal Reference Groups, including through reinstating Water Advisory Committees to oversee the implementation of Water Allocation Plans (WAPs) and ensuring Aboriginal membership of them. These should supplement Aboriginal designed and led arrangements created in consultation with Land Councils which formally empower Traditional Owners to continue their stewardship role.

67. Under s23 of the Water Act, the Minister may establish and appoint members to a water advisory committee for the NT, part of the NT or a WAP area. Section 23(1B) of the Water Act provides for Committees to '*advise the Controller on the effectiveness of the water allocation plan in maximising economic and social benefits within ecological constraints*'.
68. Water advisory committees are the only formal mechanism employed by the NT government for community stakeholder input into water allocation planning processes and the implementation of plans. But Traditional Owners are not ordinary stakeholders. Their Traditional Ownership of water and long history of stewardship renders their interests of higher importance.

³⁷ Supporting Paper D to the 2020 Productivity Commission Report – Securing Aboriginal and Torres Strait Islander people’s interests in water (Cultural access) at 19

³⁸ Ibid



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69. CLC supports the inclusion of Direction 9 in the Directions Paper and the pathways detailed to explore other ways for Territorians to participate in water stewardship. However, this should not be at the expense of supporting WACs. WACs are required to allow community (including Aboriginal community) participation on a local and regional basis.
70. WACs consist of 'such members as the Minister thinks fit and the members shall hold office at the Minister's pleasure' (s23(2)). The Water Act does not provide for any specific composition requirements, and does not specify that Aboriginal people must be part of water advisory committees. Traditional Owner representation on Water Advisory Committees must be a requirement. Resourcing of accessible planning information and use of interpreters must be factored into all processes and meaningfully applied.
71. While the majority of WACs were disbanded on the declaration of WAPs, the NLC has sought that Committees be continued or re-appointed to oversee the implementation of WAPs.³⁹ The CLC supports this submission. Rather than disbanding committees once a WAP is recognized, they should be maintained and consulted as management plans are implemented, the impacts of water extraction becomes apparent to traditional owners through monitoring, and 5 year reviews of WAPs conducted.
72. In addition, the NT government should fund Land Councils to assist with traditional owner designed and led governance arrangements to allow Traditional Owners to be formally empowered to continue their stewardship role. See further discussion at paragraph [62].

Pathway 4: Jobs and services provided by Aboriginal business and ranger groups

Recommendation 6.4: Amendment to Pathway 4 of Direction 6:

Create opportunities for Aboriginal people, especially Traditional Owners, to be involved in managing water resources including through jobs and services provided by Aboriginal business and ranger groups.

73. The CLC has significant land management expertise, as the employer of over 90 land and sea management rangers who are employed across twelve Indigenous ranger programs. These are the following, and operate on a variety of ALTs and Indigenous Protected Areas (*IPAs*):
- Anangu Rangers (Angas Downs IPA, Imanpa community);
 - Anangu Luritjiku Rangers (Papunya and surrounding Haasts Bluff ALT);
 - Anmatyerr Rangers (Ahakeye ALT (Ti Tree) and wider Anmatyerr region);
 - Arltarpilta Inelye Rangers (Atitjere, Harts Range region, Huckitta Station and surrounds);
 - Kaltukatjara Rangers (Dockers River and Katiti Petermann IPA);

³⁹ Northern Land Council – Submission to the Productivity Commission on National Water Reform 2020



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- Ltyentye Apurte Ranges (Santa Teresa ALT and surrounds);
 - Murnkurrumurnkurru Rangers (Daguragu ALT and surrounds);
 - Muru-warinyi Ankkul Rangers (Tennant Creek region);
 - North Tanami Rangers (Lajamanu and Northern Tanami IPA);
 - Tjuwanpa Rangers (Ntaria, Hermannsberg ALTs and adjoining national parks);
 - Warlpiri Rangers (Yuendumu, Willowra, Nyirripi and Southern Tanami IPA); and
 - Tjakuṛa Rangers (Mutitjulu).
74. Aboriginal Ranger groups have significant expertise in land and water management. In addition, they often bring cultural knowledge to their role. They are a significant untapped resource in the management of the NT's water reserves.
75. The CLC supports Pathway 4 of Direction 6, but requests that a focus on Traditional Owners is inserted given their significant cultural knowledge and important role as stewards.

DIRECTION 7 - WATER DEPENDENT ENVIRONMENTAL VALUES ARE PROTECTED

76. Direction 7 discusses the importance of protecting environmental values. The pathways are broad motherhood statements. All of these are important. In respect of each hydrological system, the Territory must have scientific understanding of sufficient standard that been peer reviewed before water is allocated.

Pathway 1: Environmental water requirements

Recommendation 7.1: In relation to Pathway 1 of Direction 7:

The CLC recommends that the guidelines to be developed under Pathway 1 of Direction 7 include a requirement that natural resource managers develop long term relationships with Traditional Owners, through their Land Councils, around the management of Country.

77. As pointed out in Productivity Commission Supporting Paper D,⁴⁰ cultural outcomes are often dependent on or aligned with environmental values. Environmental water management can support cultural outcomes. Securing Aboriginal people's interests in water (cultural access) and engaging Traditional Owners in natural resource management is a key avenue to recognize, maintain and strengthen culture.⁴¹ It also provides an opportunity for Traditional Owners and land management or catchment authorities to partner in the management of cultural assets.⁴² The CLC recommends that this link form part of the work undertaken under Pathway 1 of Direction 7.

Pathway 2: Environmental water requirements

⁴⁰ Supporting Paper D to the 2020 Productivity Commission Report – Securing Aboriginal and Torres Strait Islander people's interests in water (Cultural access).

⁴¹ Ibid at 19.

⁴² Ibid.



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Recommendation 7.2: Pathway 2, Direction 7 should be amended as follows:

Continue to develop better policy, legislation and regulations to ensure key water-dependent environmental values are protected, including through water allocation plans and licence conditions. Ensure that it is a legislative requirement that environmental and cultural impacts are considered in allocation decisions and reflected in licence conditions. Where environmental approvals or sacred site clearances are required these must be obtained before an application for a water licence can be made.

78. Currently there is no requirement under section 90 of the Water Act to consider cultural or environmental impacts. This should be rectified.
79. Environmental impacts of a project should be considered holistically, with assessment of water use, land clearing and other impacts under an environmental impact statement or public environment report process prior to any decision under a water licence. An application for a water licence should not be able to be made prior to other environmental approvals and sacred site clearances from Land Councils being obtained.

Recommendation 7.3/7.4: Work under pathway 3 and 4 of Direction 7 should focus on ensuring long-term and adequate funding.

80. The intention set out under pathways 3 and 4 of Direction 7 are supported. The NT government should prioritise ensuring adequate funding for these, possibly including through licence fees or water levies for commercial extraction.

Recommendation 7.5: Pathway 5, Direction 7 should be amended as follows:

Develop water quality guidelines (non-drinking water) for high value and/or high risk waterways and aquifers, and embed these in legislative requirements for monitoring, management and reporting. Develop long-term funding sources to ensure long term, independent monitoring, management and public reporting requirements are met.

81. This initiative is supported, but should be legally enforceable and funded.

DIRECTION 8 - WATER SCIENCE, KNOWLEDGE, SKILLS AND INNOVATION ARE ENHANCED

82. The description of Direction 8 of the Directions Paper notes that:

To support water security and maximise economic opportunities arising from water, investment is needed in water science, knowledge sharing, skills and innovation. (p. 16)



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83. Water science, knowledge sharing, skills and innovation should not solely be focused on water security and economic opportunities. An equally important focus is environmental and cultural aspects of water.

Pathway 1: Enhance scientific understanding and ensure allocations are based on an understanding of risk, and identify triggers for further scientific investigation and adaptive management.

Recommendation 8.1A: Guidelines and trigger points to be developed under Pathway 1 of Direction 8 must be underpinned by scientific and technical models that are consistently applied across the NT, publicly available and peer reviewed, and supported by cultural knowledge.

84. Ensuring that Territorians' needs are met requires agreed benchmarks for rigorous scientific investigation of water resources, comprehensive, transparent and inclusive planning processes and independent monitoring and decision-making. The NT's application of science in decision making about water must be more rigorously applied, and needs to meet an agreed benchmark of scientific understanding of the size of each water resource, and how and at what rate it is replenished and how it is currently used with larger or riskier projects requiring higher benchmarks. These metrics are critical to understanding how much water can be extracted without impacting environmental and cultural sustainability. Without a good understanding of hydrology and an agreed knowledge benchmark, even the best legal regulatory regime is vulnerable to poor water management through over-allocation.

85. As acknowledged in the Directions Paper and other NT government documents such as the Western Davenport Water Allocation Plan, the NT regulatory regime operates without adequate scientific knowledge and resources. There is insufficient scientific knowledge to support government decision making. If the NT government doesn't understand the hydrology, the nature and extent of the resource and how it is replenished, it cannot guard against overallocation.

86. The NT government also needs to understand the volume and sources of water currently being used by our communities and by industry. It needs to audit current licences and water use and ensure that water use is metered and properly monitored. Without understanding the volumes of water already being used, the NT government is using guess work to guard against overallocation.

Recommendation 8.1B: Guidelines should be developed under Pathway 1 of Direction 8 for application of adaptive management, including clear objectives and measurable performance indicators for management. The threats and processes that influence the objectives should be described, as well as how management actions are expected to achieve those objectives. A plan should be developed stating which management actions will be trialed, how they will be



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implemented and effectiveness must be monitored. Monitoring data must then be analysed and the process must be updated. The data should also be used to inform management decisions. Adaptive management plans and data must be publicly available.

87. Adaptive management only works when there is adequate knowledge of the water resource, so that there is a proper baseline. Yet rather than relying on agreed levels and standards of scientific knowledge to make licence decisions the NT government commits large allocations of water and seeks address future issues and knowledge gaps through staged licensing and adaptive management. Adaptive management plans and a monitoring framework are developed after a licence has been granted. These processes lack rigour. Adaptive management plans are also vulnerable to political interference to reduce impacts on significant investments.⁴³
88. Adaptive management should not be used to compensate for significant scientific knowledge gaps. If properly applied, adaptive management plans and monitoring plans should be developed prior to the grant of a licence. The plans themselves require clear objectives and measurable performance indicators for management. The threats and processes that influence the objectives should be described, as well as how management actions are expected to achieve those objectives. A plan should be developed stating which management actions will be trialed, how they will be implemented and effectiveness must be monitored. The plan should then be independently and scientifically peer reviewed and verified. Monitoring data must then be analysed and the process must be updated. The data should also be used to inform management decisions. Adaptive management should not applied in a manner approximating guess work.
89. Adaptive management should be used in a structured manner. Clear objectives and measurable performance indicators for management should be set out. The threats and processes that influence the objectives should be described, as well as how management actions are expected to achieve those objectives. A plan should be developed stating which management actions will be trialed, how they will be implemented and effectiveness must be monitored. Monitoring data must then be analysed and the process must be updated. The data should also be used to inform management decisions. The legislative regime must also set out processes for dealing with unexpected outcomes or new science must also be set out.
90. WAPs often refer to adaptive management. However, there are no legally binding objectives and measurable performance indicators for management in WAPs. There are no legally binding requirements for monitoring data or the Controller of Water Resources to impose conditions on licenses to address specific issues. These flaws must be rectified.

⁴³ For example where reduced extractions, borefield changes and removal of crops in response to environmental and/or cultural impacts that exceed set thresholds are required.



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Recommendation 8.1C: If the legislative regime relies on estimated sustainable yield, this term must reflect that estimated sustainable yield is an estimate of the amount of water that can be sustainably harvested (harvested and replaced by complete recharge) based on:

- rigorous science that is independently peer reviewed; and
- conservative assumptions, to reflect unknowns such as changing rainfall patterns associated with climate change.

91. The Water Act requires that WAPs allocate water “within the estimated sustainable yield”.⁴⁴ The term is not defined and no methodology for determining “estimated sustainable yield” is set out. Estimated sustainable yield is based on inconsistent methodologies with limited scientific and cultural input. An example is the estimated sustainable yield for Western Davenports which has changed over time.

92. Estimated Sustainable Yield constitutes an estimate of the amount of water that can be sustainably harvested (harvested and replaced by complete recharge). That estimate must be:

- based on rigorous science that is independently peer reviewed; and
- conservative, to reflect changing rainfall patterns associated with climate change.

Pathway 4: Private sector and industry contributions

Recommendation 8.4

Increase private sector and industry contributions to water-related investigations and robust, peer reviewed science, and the cost of traditional owner consultations through, for example, water extraction licence conditions or water pricing mechanisms.

93. Private sector and industry contributions for water-related investigations are supported, but private sector and industry contributions should also be used to ensure water allocation decisions are based on robust, peer reviewed science and that traditional owner consultations have occurred. Water allocations that are based on robust, peer reviewed science are likely to be more sustainable and confer less future risk for business.

DIRECTION 9 - TERRITORIANS ARE ENGAGED IN WATER STEWARDSHIP

Recommendation 9.1, 9.2, 9.3, 9.5: Pathways 1, 2, 3 and 5 in Direction 9 should be amended to reflect that Traditional Owners have significant water knowledge and have been engaged in stewardship of water resources for millennia. Suggestions are as follows:

⁴⁴ Water Act, section 22B(5)(a).



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Pathway 1: Develop a whole-of-government and community plan for Territorians to be leaders in water stewardship. Co-design regional water stewardship programs with Traditional Owners to respond to local needs and to reflect local and traditional knowledge.

Pathway 2: Better communicate water security and stewardship matters, for example by posting water security and stewardship news and linking this to peak body networks. Ensure that communications materials are culturally and linguistically appropriate for remote communities.

Pathway 3: Improve the effectiveness of community engagement by improving access to water information, improving the clarity of information and by supporting community water literacy, and ensure community engagement reflects two way knowledge sharing and that the special knowledge and interests of Traditional Owners are appropriately respected.

Pathway 5: Ensure Water Advisory Committees are well-informed, appropriately resourced with culturally and linguistically suitable resources and have independently peer reviewed science to base their decisions on, and have a tenure aligned with the planning cycle.

94. Direction 9 extolls the benefits of water stewardship.

All Territorians have a role to play in water security through water stewardship, which means being accountable for, and engaged in, using water resources wisely. Stewardship also includes participating in decisions on how water resources are planned, managed and protected, now and on behalf of future generations. (p. 17)

95. There are two parts to this definition of stewardship:

- Accountability and engagement with using water resources wisely; and
- Participating in decisions on how water resources are planned managed and protected.

96. Aboriginal Territorians have been accountable for, and engaged in, using water resources wisely for millennia. The following statement from the Directions Paper does not reflect this.

The Northern Territory Government has a clear duty to take the lead in water stewardship by demonstrating how water resources are sustainably consumed, managed and protected, and through encouraging stewardship by others. (p. 18)

97. The NT's Traditional Owners have been unreasonably excluded from participating in decisions on how water resources are planned managed and protected. This must be rectified. The CLC's recommendations are set out in response to Direction 6 Pathway 1 above.

DIRECTION 10 - WATER RESOURCE MANAGEMENT CAN ADAPT TO CHANGE

Recommendation 10.4: Work undertaken under pathway 4 of Direction 10 should include focus on improving interactions between legislation governing water, and:



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- Planning law and processes;
- Environmental assessment law and processes; and
- Requirements to protect sacred sites.

to ensure that the key directions are met.

See paragraphs [99] and [100] in relation to environmental assessment and [62] – [69] and [84] in relation to sacred sites.

Recommendation 10.7: A seventh pathway should be added to Direction 10.

A conservative approach must be enshrined in legislation in relation to all water allocation decisions. This means that allocations for consumptive commercial use can only be made once:

- comprehensive, independently peer reviewed, and publicly available science is in place;
- Traditional Owners have had structured input regarding traditional knowledge and requirements through structures designed and led by Traditional Owners in consultation with their Land Councils; and
- allocations for drinking water and to ensure cultural and environmental sustainability have been made.

98. Pathways 1 – 6 of Direction 10 are sensible and supportable. However, an additional pathway must be added. The NT Economic Reconstruction Commission has a blueprint to grow the value of the NT economy from \$26bn to \$40bn by 2030. It notes that secure, sustainable supplies of water can assist industry grow and help foster communities. However, water planning and allocations in the NT cannot be led by industry requirements or aspirations. Scientific knowledge about the size and rate of recharge of available hydrological resources and cultural knowledge must lead water planning and allocations.

99. In addition, industry cannot expect water to be allocated without having ensured water for human consumption and to meet the needs of water dependent cultural values, and the environment. Licences for commercial use should only be able to be granted in limited circumstances, which should be reflected in the legislation. These include:

- comprehensive, independently peer reviewed, and publicly available science is in place;
- Traditional Owners have had structured input regarding traditional knowledge and requirements through structures designed and led by Traditional Owners in consultation with their Land Councils; and
- allocations for drinking water and to ensure cultural and environmental sustainability have been made.

100. Without understanding the hydrology, governments risk over allocating water to industry, at the expense of human health and drinking requirements, cultural needs and sustainability. This has occurred in other parts of Australia (for example, the Murray-Darling basin) with poor



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results. Government needs to work with industry to understand the hydrology through a rigorous regime of pumping and testing rather than relying predominantly on abstract modelling, before commercial water allocations are made.

101. The NT government must commit the necessary resources to ensuring that water allocated for commercial use is sustainable, and does not threaten drinking water, cultural or environmental flows. The NT government must ensure caution in all water allocation decisions, particularly given knowledge gaps in our understanding of the NT's aquifers, their rate of replenishment and use, the impacts of their being drawn down, and the unknown impacts of climate change and changing rainfall patterns. **This means that the NT can only make allocations for consumptive commercial use allocations for cultural and environmental sustainability and drinking water have been made on the basis of adequate and independently reviewed science.**



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ANNEXURE – CURRENT STRUCTURE

