



I N L A N D  
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N E T W O R K

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Wednesday 30 September 2020

**SUBMISSION**  
**Statutory Review - WaterNSW Act 2014**

The Inland Rivers Network (“IRN”) is a coalition of environment groups and individuals that has been advocating for healthy rivers, wetlands and groundwater in the Murray-Darling Basin since 1991.

IRN welcomes the opportunity to comment on the review of the effectiveness of the WaterNSW Act 2014 (the Act). We note that WaterNSW has a significant role in water management in NSW through the ownership and operation of the state’s bulk water storages.

As outlined in the issues paper ‘*WaterNSW owns and operates 42 dams across the state and supplies two thirds of the water used in NSW, supplying regional towns, irrigators, Sydney Water, environmental water holders and local council water utilities. To supply water to customers, WaterNSW maintains and, when required, constructs water storages and infrastructure.*’ (p12)

The health of NSW river systems has been significantly impacted over time by the detrimental effects of large instream bulk water storages. WaterNSW and the NSW Government need to consider other approaches to securing water supply for long-term sustainability.

The issues paper raises a number of key questions in regard to the adequacy of the policy objectives and functions of WaterNSW as outlined under the Act.

This submission will concentrate on answering those questions and the broader context of responsible water management in NSW.

## 1. Purpose of the Review

IRN notes that the issues paper outlines that this review may ‘*also contribute to the development of broader reforms in the water sector to improve the sector’s strategic planning, delivery of infrastructure and lift operational performance by the NSW Government, including the development of a NSW State Water Strategy.*’ (p ii)

We have significant concerns about current political announcements to fast-track large new instream storage construction outside the development of a State Water Strategy. These announcements have been a knee-jerk reaction to the most recent intensive drought that was exacerbated in many regional areas through poor management of water storages.

Dams are significant and long lasting infrastructure that take some time to build ie outside the urgency of a drought year. We need to be certain that they are a necessary investment and the most appropriate solution to water security before committing to their construction.

As noted by the recent report by the NSW Auditor General<sup>1</sup> the NSW *Water Management Act 2000* (WMA) made provision for a state-wide, strategic water plan almost 20 years ago.

The State Infrastructure Strategy 2018-2038 recommended release of a NSW Water Statement in 2019 and development of Regional Water Strategies. Neither of these have been completed. The process appears to be haphazard and inconsistent.

WaterNSW has been required to conduct fast-tracked community consultation, develop business plans and manage environmental impact assessments without a framework to operate under. The community is very disturbed by the way the process has been mismanaged.

Strategic planning must be undertaken before these large new dam projects are progressed. It is imperative for this planning approach to consider all options for securing regional water supply. It is also imperative that the current NSW water policy focus on one customer base, ie general security water entitlement holders, is not carried forward.

## 2. Principle Objectives

**Question 1:** Do the policy objectives of WaterNSW remain fit for purpose?

**Question 2:** Do the legislated principal and other objectives of WaterNSW need to be updated, amended or expanded to include any other matters?

The current principal objectives of WaterNSW under the Act are:

- (a) to capture, store and release water in an efficient, effective, safe and financially responsible manner, and
- (b) to supply water in compliance with appropriate standards of quality, and
- (c) to ensure that declared catchment areas and water management works in such areas are managed and protected so as to promote water quality, the protection of public health and public safety, and the protection of the environment, and

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<sup>1</sup> NSW Auditor General’s Report, 24 September 2020. Performance Audit. Support for regional town water infrastructure.

- (d) to provide for the planning, design, modelling and construction of water storages and other water management works, and
- (e) to maintain and operate the works of WaterNSW efficiently and economically and in accordance with sound commercial principles.

We note that the secondary principles include the notion of compliance with the principles of ecologically sustainable development (ESD). However, because all WaterNSW activities affect the environment of river and groundwater systems, the notion of ESD principles should have a primary focus within the objectives of the Act.

IRN recommends the amendment of these principal objectives to include environmental responsibility:

- (a) to capture, store and release water in an efficient, effective, safe, financially and **environmentally** responsible manner
- (b) to supply water in compliance with appropriate standards of quality for **both human and river health**, and
- (c) to ensure that declared catchment areas and water management works in such areas are managed and protected so as to promote water quality, the protection of public health and public safety, and the protection of the environment, and
- (d) to provide for the planning, design, modelling and construction of water storages and other water management works **under the principles of ecologically sustainable development**
- e) to maintain and operate the works of WaterNSW efficiently, economically and **in an environmentally sensitive manner** in accordance with sound commercial and **ecologically sustainable development** principles

### 3. Principle Functions

**Question 3:** Do the functions of WaterNSW need to be updated, amended or expanded to include any other matters?

**Question 4:** Are the legislative functions of WaterNSW adequately specified in the Act to enable WaterNSW to deliver its objectives?

The current principle functions of WaterNSW under the Act are to:

- capture and store water and to release water
- supply water to the Sydney Water Corporation and to local councils or county councils
- construct, maintain and operate water management works (including providing or constructing systems or services for supplying water)
- protect and enhance the quality and quantity of water in declared catchment areas
- manage and protect declared catchment areas and water management works vested in or under the control of WaterNSW that are used within or for the purposes of such areas
- undertake flood mitigation and management
- undertake research on catchments generally, and in particular on the health of declared catchment areas
- undertake an educative role within the community.

The issues paper notes that *‘WaterNSW has over 200 functions conferred on it in Schedule A of the WaterNSW Operating Licence, including functions under the WMA and associated regulations and instruments. Review of the conferred functions are not part of this review.’* (p7)

IRN considers that functions under the WMA including compliance with the rules within water sharing plans is a critical requirement of WaterNSW and should be reflected within the Act.

Both the following functions should include reference to rules in water sharing plans:

- capture and store water and to release water
- undertake flood mitigation and management

The function to protect and enhance water quality should be a requirement across all areas of WaterNSW operation, not just within declared catchment areas.

#### **4. Operation Performance Standards**

**Question 5:** Does the Act need to be more or less prescriptive about WaterNSW’s operations?

It is very important that the Act is more prescriptive in linking performance standards between the operating licence and the functions of the Act, the conferred functions, the purpose of the operating licence and the area of operations.

Performance standards must include standards for environmental performance.

The issues paper outlines that *‘the Act does not expressly specify the objectives or purpose of the operating licence.’*

Also that *‘The Act does not specify conditions or performance standards with respect to conferred functions, although a power to do so may be inferred. Currently the operating licence does not specify how those functions are to be performed or to what standard.’*(p 8)

IRN recommends amendments to the Act that specify objectives of the operating licence and link performance standards across all functions and operations of WaterNSW including environmental functions and performance standards.

#### **5. Economic Regulation**

**Question 7:** Are changes in the Act required to improve the economic regulation of WaterNSW?

The issues paper refers to the requirements under the Murray-Darling Basin Plan that subject WaterNSW to Commonwealth price regulation under various Acts and the Australian Competition and Consumer Commission (ACCC) Pricing Principles.

*‘Under the new Water Charge Rules that took effect on 1 July 2020, economic regulation of the MDB valleys will revert to ACCC regulation following WaterNSW’s transitional*

*determination, unless the ACCC determines that WaterNSW is no longer subject to Commonwealth legislation.’ (p 10)*

IRN recommends that the Act is amended to recognise the role of the Commonwealth economic regulation within Murray-Darling Basin valleys. These are a significant area of WaterNSW operations.

## **6. Performance and Reporting**

**Question 19:** Does the Act provide sufficient transparency through reporting and auditing arrangements?

The Act must specify reporting requirements including annual reporting on the achievement of environmental performance and standards set by the recommended changes to the principle objectives and functions.

Non-financial performance indicators must also include environmental performance.

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