

# Submission to the Fitzroy-Derby water resources management plan

## 1 Forward

The Kimberley – Like Nowhere Else Alliance, welcomes the opportunity to comment on the draft Fitzroy-Derby water resources management plan. The Kimberley – Like Nowhere Else is an alliance of non-government organisations, led by Environs Kimberley and The Pew Charitable Trusts. We work with Traditional Owners and Aboriginal representative organisations, local communities, scientists, stakeholders and government to safeguard the health of the Kimberley waterways, protect the region's treasured way of life, and conserve its unique natural environment.

The Kimberley – Like Nowhere Else Alliance recognises the ongoing custodianship, care and governance of Kimberley waterways by Traditional Owners and acknowledges that their sovereignty was never ceded.

Protecting the rare cultural and environmental integrity of the Martuwarra Fitzroy River is an imperative. The importance of preserving the Martuwarra Fitzroy River will only increase as other rivers and aquifers continue to be degraded and fail to be protected and restored. The pressure to make water available for irrigation development will only increase as other systems are over-exploited, and regulation is tightened and enforced.

Western Australia's water legislation is designed to licence water use, not to manage water sustainably, or protect rivers, groundwaters, and their dependent ecosystems. Successive governments have recognised the need for water reform in Western Australia for more than 30 years. Several attempts to do so have failed, most recently in 2023.<sup>1, 2</sup> Western Australia became a signatory to the intergovernmental National Water Initiative (NWI) in 2006. However, it has still not met most of the NWI commitments, either in legislation or in practise.

The Western Australia Auditor-General has reported that the regulation of water licensing:

*...is not doing anywhere near enough to adequately protect our water resources, and does not understand if conditions are complied with or how much water is actually being used.<sup>3</sup>*

This means the current legislative and regulatory frameworks alone cannot mitigate the risks that irrigation development poses to the Martuwarra Fitzroy River and its people.

This submission identifies some of those risks, informed by the management of the Murray-Darling Basin. For the Fitzroy-Derby water resources management plan, we recommend strategies that can mitigate risks within the existing legislative framework. Beyond that, there is a need for Government to make clear commitments to deliver further policy change needed to protect the Martuwarra Fitzroy River for the long-term.

## 2 Recommendations

### 2.1.1 Water for Traditional Owners

Recommendation 1: That all of the 2025 Traditional Owner recommendations, as developed by the Traditional Owner Working Group, endorsed by the PBC representatives and shared by the Kimberley Land Council, are adopted.

Recommendation 2: That the Water Resource Management plan explicitly recognises that cultural use and environmental needs must be the highest priority before water is made available for irrigation.

### 2.1.2 Statutory Committees

Recommendation 3: That a Local water resource management committee be established and is provided adequate resources to fulfil its obligations.

Recommendation 4: That at least 50 percent of the membership of the Local water resource management committee represent Traditional Owners.

Recommendation 5: That the Local water resource management committee has delegated decision-making for the approval of the Water Resource Management Plan, granting water licences and agreeing licence conditions.

Recommendation 6: That the Water Minister establishes the Water Resource Council and that Council is provided adequate resources to fulfil its obligations.

Recommendation 7: That at least 50 percent of the membership of the Water Resource Council be Traditional Owners.

Recommendation 8: That the Water Resource Management Plan is referred to the Water Resource Council for its consideration before it is finalised.

### 2.1.3 Water licensing

Recommendation 9: That the local licensing policy includes that:

- a) the Water Minister does not issue any water licences in excess of the total volume provided for by the Water Resource Plan,
- b) water licences cannot be issued to persons, or associated entities, that have criminal prosecutions relating to water in any Australian jurisdiction,
- c) exceeding annual take permitted under licence conditions results in licence suspension without compensation,
- d) an appropriate Traditional Owner entity or governance body must consent to all water licences.

Recommendation 10: That water licence conditions are standardised.

Recommendation 11: That the water register publishes; water licence conditions, aggregate water licences, aggregate permitted take and aggregate actual take.

## 2.1.4 No new dams and no further surface water policy and floodplain harvesting

Recommendation 12: That the no new dams and no further surface water policy and the prohibition of floodplain harvesting is legislated.

Recommendation 13: That the policies on water allocation planning in the Fitzroy is updated to explicitly prohibit floodplain harvesting.

Recommendation 14: That the Water Resource Management Plan prohibits floodplain harvesting.

Recommendation 15: That any structure, including on-farm storages, roads, air-strips and flood works, that can alter water flows in an area designated as a river, tributary, watercourse, wetland, swamp, foreshore flat, or land subject to inundation, should be considered to potentially have a significant effect on the environment.

Recommendation 16: That any structure that can potentially have a significant effect on the environment should be referred to the Environmental Protection Agency for a public environmental review.

Recommendation 17: That all Section 11,17 and 21A surface water permits require approval from the local water resources management committee.

Recommendation 18: That any structure that can alter water flows:

- a) require a works approval,
- b) are published in the the water register, including the descriptions of works (capacity, dimensions, GPS co-ordinates).

Recommendation 19: That the volume of water displaced by works approvals is reported on the works approval and monitored annually.

## 2.1.5 Enforcing licence conditions

Recommendation 20: That all water take is required to be monitored with telemetric, tamper-proof meters.

Recommendation 21: That water licence holders are required to prepare on-farm water balances, each year, and these are publicly available.

Recommendation 22: On-farm water balances should disclose: water in individual storages, water use, transfer between storages, evaporation and crop yields.

Recommendation 23: That satellite imaging of sufficient resolution to detect water volumes in on-farm storages and channels and evapotranspiration is publicly available and free to users.

Recommendation 24: That an appropriate Traditional Owner Entity or governance body is contracted to monitor water licence use, including the audit of on-farm water balances, for the life of all licences issued; and is fully resourced to undertake that role.

Recommendation 25: That a transparent mechanism for concerns about water licencing, use and works approvals, is created and related assessments are publicly reported within a specified timeframe.

## 2.1.6 National water reform

Recommendation 26: That Western Australia becomes a signatory to the Updated Draft National Water Agreement and undertakes a work program to implement it.

Recommendation 27: That the Water Resource Plan is a best-practise case study in implementation of the Updated Draft National Water Agreement.

Recommendation 28: That Western Australia endorses a national Water Act 2007 (Cth).

Recommendation 29: That the Water Resource Plan explicitly commits to reflecting rights identified in UNDRIP.

# 3 Background

## 3.1 Kimberley region

Western Australia's Kimberley region is an area of spectacular natural beauty, with landscapes and wildlife like nowhere else on earth. Few marine and coastal environments left on Earth are as biologically diverse, physically remote, or stunningly beautiful as the Kimberley.

The Kimberley is the only region on the Australian mainland to have had no extinctions of species, and is a refuge for marsupial species now found nowhere else. Its intact and bio-diverse tropical savannahs are part of the northern Australian biome, which retains the largest remaining savannah left on Earth. The region's outstanding scenery makes it a tourist icon for lovers of wild places.

The Kimberley has outstanding cultural values, with Traditional Owners' connections to their country continuing to the present day. This culture is expressed in vast and largely unexplored rock art galleries across the region, many with paintings that are tens of thousands of years old. The Martuwarra Fitzroy River and Derby region is more than 97% native title determinations with an Aboriginal population of over 80 percent in the area.

## 3.2 Pressure for irrigation development

Northern Australia has long been viewed as an untapped opportunity for large-scale irrigation.<sup>4, 5</sup> Agricultural interests frequently call for increased access to what they claim is wasted water. For example, the Pastoralists and Graziers Association of WA president Digby Stretch said:

*I don't think we've thought carefully enough about how we allow people to make intelligent use of extra surface water, or surplus water, in really big wets where we can hold some of that for using later on while still respecting environmental flow.<sup>6</sup>*

Gina Rinehart, the Executive Chairman of Hancock Prospecting (owner of Hancock Agriculture), has said that the Western Australian Government's water licensing rules were holding back development in the north:

*The [WA] Government only allows one water licence to access water from the Fitzroy River for Liveringa in the Kimberley's and guess how much water the Government permits to be taken? Six gegalitres....*

*This leaves 99.9991 per cent of the water to run out uselessly into the Indian Ocean.*

*Think of it this way, the Fitzroy could fill 14 times the huge Sydney Harbour.<sup>7</sup>*

Hancock Agriculture and associated entities have three properties in the Fitzroy and proposed to swap land at Fitzroy Crossing for a 325 gegalitre water licence.<sup>8</sup> The owner of Gogo Station lease made plans for nearly 50 gegalitres of on-farm storage in 2017.<sup>9</sup> The proposal points out that growing cotton would only be viable if there was a nearby cotton gin. The nearest cotton gin to Gogo station is in Kununurra, 650 kilometres away. Industry research identifies the optimal distance from a cotton farm to a gin to be 350 kilometres. Any more than that is not economically viable in the medium term.<sup>10</sup> To be viable a gin needs to process a minimum of 80,000 to 100,000 bales per season.<sup>11</sup> A feasibility study into cotton development in North Queensland says:

*The long-term sustainability of the industry is predicated on the growth of irrigated production, which is intrinsically linked to the establishment of large-scale water infrastructure in the region...<sup>12</sup>*

### 3.3 Water management framework

Water resource management in Western Australia is through the Rights in Water and Irrigation Act 1914. That Act primarily deals with water licensing, without safeguards for water for Traditional Owners or the environment. The current water legislation is widely criticised.<sup>13</sup> The Productivity Commission says:

*Western Australia lacks statutory water entitlements and plans, and water planning in the state continues to be based on out-of-date, 110-year-old legislation.<sup>14</sup>*

The Western Australian Government began drafting modernised legislation to replace the *Rights in Water and Irrigation Act 1914* in the late 1990's:<sup>15, 16</sup> Organised grower and irrigation-sector bodies resisted reform that would redefine water rights or shift them into a more centralised, environment-focused regime, framing consolidation as "unacceptable risk" to their economic base.<sup>17</sup> As a result, the *Rights in Water and Irrigation Act 1914* was not replaced at that time. It was amended in 2000 to partially address the commitments under the national reform agenda, but it does not explicitly address sustainable development.<sup>18</sup> Plans to reform Western Australian's legislation were abandoned again in 2023 in response to stakeholder pressure:<sup>19, 20</sup>

Accordingly, this Water Resource Management Plan is being made within an out-of-date legislative framework. However, there are opportunities to improve protections for Traditional Owners and the environment within the existing legislation (see Section 5).

Water Resource Management Plans in Western Australia are policy documents. They are not statutory instruments.

The Western Australian Government announced its policies on water allocation planning in the Fitzroy in 2023:<sup>21</sup>

1. The State Government will not allow the Fitzroy River or its tributaries to be dammed (see *Section 5.4: No new dams policy, no further surface water policy and Floodplain Harvesting*).
1. The State Government supports the licensed take of groundwater only where it is shown to be sustainable.
2. The State government will restrict access to Alluvial and Devonian Reef aquifers.
3. The State Government confirms that no additional surface water will be licensed.
4. The State Government will establish a Fitzroy Aboriginal Water Reserve.
5. The State Government supports a process that enables Traditional Owners to exercise their water-related cultural heritage and Native Title rights and provide advice to water planning and licensing.
6. The State Government expects developments to avoid or minimise impacts on ecological, cultural and social values.
7. The State Government supports aligning water licensing requirements with other regulatory decisions in a transparent way.
8. The State Government supports a considered approach to water developments.
9. The State Government remains committed to establishing an advisory group.

Whilst these policy positions are broadly positive, they are not well articulated in the Water Resource Management Plan and require further development as per other recommendations contained in this submission.

Risks, and mitigation strategies to achieving these policy positions are discussed at *Section 5: Opportunities to mitigate risks*.

## 4 The Murray-Darling Basin experience

Australian federal, state and territory governments have agreed to a national water reform agenda since the 1990's. This was in response to the over-allocation of water for irrigation in the Murray-Darling Basin, which has caused dispossession of Traditional Owners, ecological damage and collapse, and endangerment and local extinctions of species and communities.

The experience in the Murray-Darling Basin demonstrates that it is very difficult to correct over-extraction for irrigation once it has occurred.

The Western Australia government must make every effort to avoid the mistakes of the Murray-Darling Basin by understanding those mistakes; adopting strategies to mitigate risks; and regular evaluation of mitigation strategies. This submission summarises the mistakes of the Murray-Darling Basin to inform opportunities to mitigate those risks (outlined at Section 5).

## 4.1 Failure of water reforms in the Murray-Darling Basin

The need for reform of water management in the Basin has been recognised since the 1970s, when the consequences of over-extraction were becoming widely apparent. In NSW the Water Resources Commission (WRC) was abolished in 1987, after a water administration audit;

*...found the WRC was ineffective in management of the State's water resources, having difficulty in moving beyond its former role of rural supply authority. Broad water needs of the whole community, including the needs of the natural environment, were residual considerations to irrigation development and operations...The new Department of Water will be required to address cultural, scientific and aesthetic values as legitimate community needs in terms of water management.*

Despite this effort, and many since, including the Murray Darling Basin Cap, state legislation, the Commonwealth Water Act and the Basin Plan, the condition of the rivers of the Basin, overall, is worse than ever. The decline has been reported on, especially in the Northern Basin. Irrigation development in the Northern Basin is most similar to the planned development in the Martuwarra Fitzroy catchment. Reasons include:

- water legislation that was designed to promote irrigation, not sustainable water management, and certainly not the broad water needs of the whole community.
- poor understanding of the water resource available before water licences were issued,
- failure to control over-extraction:
  - inadequate metering and monitoring,
  - not accounting for, or regulating, all forms of take, including floodplain harvesting and rainfall run-off,
  - water licence conditions that allow:
    - take in excess of the water licence volume,
    - inequitable water access across all water users,
- making water licences a property right, compensable when water availability is altered,
- not properly regulating irrigation infrastructure on floodplains:
  - no public records of on-farm storages capacity or their growth,
  - no measurement of floodplain harvesting,
  - ignoring structures that divert water, such as roads, air-strips and flood works (to prevent flooding) as irrigation infrastructure,
- issuing new water licences to entities that have previously found guilty of water theft,

- relying on unsubstantiated claims of importance of irrigation to local communities,
- ignoring Aboriginal Cultural science and knowledge,
- misrepresenting the natural conditions of water in the landscape.

To avoid furthering dispossession of Traditional Owners, ecological damage and collapse, and endangerment and local extinctions of species and communities, all these features of water administration and management in the Basin must be guarded against.

## 4.2 Dispossession of Aboriginal people

The Australian Government acknowledges that in the Murray–Darling Basin:

- water is essential for connection to Country and every part of the lives for Aboriginal people,
- water management has contributed to the dispossession of Aboriginal people,<sup>22</sup>
- the lack of water ownership and exclusion in meaningful decisions around water contributes to the ongoing disparity between Aboriginal people and other water owners,<sup>23</sup>
- that Aboriginal people and organisations hold less than 0.2 percent of water across the Basin.<sup>24</sup>

However, its position is that:

*Achieving the restoration of Aboriginal and Torres Strait Islander people's traditional rights to water would require fundamental change to current property rights regimes and the way water is currently managed. This would have profound flow-on impacts on other entitlement holders, communities and individuals.*<sup>25</sup>

Remedies to redress that now are limited mostly to aspirations for Aboriginal participation in environmental water management and monitoring, without any funding commitments.<sup>26, 27</sup> This submission suggests strategies in Section 5 to guard against this happening in the Martuwarra Fitzroy River.

## 4.3 Severe environmental damage

Water management in the NSW Murray–Darling Basin is ostensibly protected under a range of legislative safeguards for the environment, including: limiting irrigation extraction to an Environmental Sustainable Level of Take,<sup>28</sup> managing water for the environment in accordance with relevant international obligations,<sup>29</sup> prioritising the environment's share of water first and irrigation's share of water last,<sup>30</sup> and using a sustainable and long-term adaptive management framework.<sup>31</sup> However, these safeguards have failed to halt continued increased irrigation and subsequent environmental degradation. The state of the Barwon–Darling/Baaka is an example of how environmental safeguards have failed.

The Barwon–Darling/Baaka is a large river connecting the Northern and Southern Basins. Its tributaries rise west of the Great Dividing Range in Queensland and New South Wales. It joins the River Murray just upstream of the South Australian border. Prior to industrial irrigation, the river rarely stopped flowing, and never dried up. This is supported by early settler accounts and the use of the river for transportation by paddle–steamers in the 1800’s and early 1900’s. Its original ecology was a flowing river ecology.<sup>32</sup>

Since large–scale irrigation developed in the Northern Basin the Barwon–Darling/Baaka frequently stops flowing, and hundreds of kilometres completely dry up. Governments now incorrectly describe rivers in the Northern Murray–Darling Basin as ephemeral, instead of acknowledging the damage caused by irrigation.<sup>33</sup>

Rivers are contaminated with agricultural chemicals and heavy metals. Blue–green algae blooms have become common. Some communities can no longer source drinking water from rivers because of insufficient flows and turbidity.<sup>34, 35</sup> Groundwater used to supply town water is increasingly found to be contaminated with PFAS.<sup>36, 37</sup>

Approximately half of the Basin’s 50 native fish species are now listed as rare or threatened, and numbers continue to fall.<sup>38</sup> Many freshwater species that were once abundant are now extinct in parts of the Basin.<sup>39</sup> Waterbird breeding has declined, and waterbird populations have declined since monitoring first began in 1983.<sup>40</sup>

It is unlikely that the Water Resource Management Plan in its current form and within the existing legislative framework will prevent the type of environmental degradation experienced in the Murray–Darling Basin. The Western Australian Government must implement every possible measure to mitigate against the risks posed by large–scale irrigation development. Suggested mitigation strategies are discussed further in Section 5.

## 5 Opportunities to mitigate risks

### 5.1 Water for Traditional Owners

The draft Water resource Management Plan provides 25 gigalitres in a Fitzroy–Derby Aboriginal water holding.

For an Aboriginal Water Holding to work Traditional owners must be central to water governance and decision–making across the catchment. This is more than simply acknowledging connection to Country and undertakings for greater involvement in decision making. The Traditional Owner Working Group, endorsed by the PBC representatives and shared by the Kimberley Land Council, are adopted.<sup>41</sup> This includes high–level positions of:

1. *The protection, health and wellbeing of Country is a high priority. First Law and First People still stand.*
2. *All stakeholders should shape what development looks like for the future of the Kimberley.*
3. *Water is fundamental to life, Country and Aboriginal law and culture. It connects all Kimberley groups and should be managed collectively for the good of all.*
4. *Sustainable business and economic development is supported, provided that:*

- *Traditional Owners co-design all economic development in the Kimberley;*
  - *a precautionary approach is adopted that considers climate change;*
  - *Country and Aboriginal cultural heritage are protected;*
  - *Traditional Owners' expertise and cultural authority are respected; and*
  - *Traditional Owners have equal economic opportunities from water use.*
5. *Aboriginal cultural heritage must be protected by water planning, whether sites are registered or not. Aboriginal cultural heritage may only be defined and assessed by Traditional Owners.*

Cultural use and environmental needs must be protected by the whole plan as the highest priority before water is made available for irrigation. It cannot be assumed that any proportion of water in a reserve for Traditional Owners will achieve cultural and environmental uses.

The Western Australian Government's Aboriginal Empowerment Strategy 2021 – 2029 sets out key principles and requirements that policy decisions with significant impacts on Aboriginal people be undertaken through 'partnership and/or shared decision-making'.<sup>42</sup> Strategy Element D: Partnerships, Shared decision-making and engagement provides clear guidance and standards that this draft plan can meet by increasing and strengthening formal shared decision-making with Traditional Owners across environmental, economic and governance matters that can be improved in the final plan.

The allocation of 25 GL into a single "holding", managed under the same rights-based framework as irrigation and pastoral-use licences, does not reflect First Law, Living Waters concepts or the precautionary-principled based management necessary for a culturally and ecologically sustainable river system.

The holding is not a substitute for self-determination or shared governance of the Martuwarra Fitzroy River's waters. It continues to treat Aboriginal water-values as an add-on, rather than a central organising principle of the plan.

The volume is set aside for economic development and is not adequate for cultural and intergenerational water needs across the Martuwarra Fitzroy River catchment. It is already small compared to the volumes flagged for irrigation and pastoral use, and will become relatively smaller as other use grows.

These criticisms are amplified given that more than 97 percent of the region is declared Native Title and 80 percent of the Fitzroy Valley population are Aboriginal people.

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**Recommendation 1:**      ***That all of the 2025 Traditional Owner recommendations, as developed by the Traditional Owner Working Group, endorsed by the PBC representatives and shared by the Kimberley Land Council, are adopted.***

**Recommendation 2:**      ***That the Water Resource Management plan explicitly recognises that cultural use and environmental needs must be the highest priority before water is made available for irrigation.***

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## 5.2 Statutory committees

There are two opportunities to create statutory committees under the existing legislative framework:

1. Local water resources management committees, and
2. Water Resource Council.

### 5.2.1 Local water resource management committees

The Rights in Water and Irrigation Act 1914 provides for the establishment of Local water resource management committees (Section 26GK).

The Minister may delegate to the committee any function conferred to the Minister under the Rights in Water and Irrigation Act 1914 (Section 26GP). A function performed by the committee as delegate of the Minister is taken to be performed by the Minister.

The membership of the local water resource management committee is to be substantially made up of persons who are residents of, or employed in, or operate a business in the area relevant to the area. Membership can also include Departmental officers (Section 26GL).

At least 50 percent of the membership of the Local water resource management committee should represent Traditional Owners. This is a mechanism to achieve shared decision-making within the existing legislative framework around the approval of the Water Resource Management Plan, as well as granting licences and establishing licence conditions.

A local water resource management is preferable to the Water Advisory Committee established under the Water Agencies (Powers) Act 1984, suggested in the Water Resource Management Plan. A Water Advisory Committee has no delegated or decision-making authority.

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**Recommendation 3:**      *That a Local water resource management committee be established and is provided adequate resources to fulfil its obligations.*

**Recommendation 4:**      *That at least 50 percent of the membership of the Local water resource management committee represent Traditional Owners.*

**Recommendation 5:**      *That the Local water resource management committee has delegated decision-making for the approval of the Water Resource Management Plan, granting water licences and agreeing licence conditions.*

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### 5.2.2 Water Resource Council

The Water Agencies (Powers) Act 1984 provides for the establishment of the Water Resources Council (Section 16). The functions of the Water Resources Council are:

- advising the Minister in relation to the management of water resources generally and on any matter that the Minister refers to it for advice;

- consulting with persons, or bodies, having functions under, or related to the purposes of, a water resources Act; and
- advising the Minister on whether the objectives of each water resources Act are being achieved (Section 18).

The membership of the Water Resource Council must be between six to eight people, which covers or includes expertise or experience in: water resources management; conservation, economic development; community interests; law (in the natural resources field), mining; agriculture; and an Indigenous person; and a person who lives in regional Western Australia (Section 17).

The Water Resource Council has not been created. However, the Water Minister can create the Water Resource Council without legislative change, and it should do so to provide an additional oversight role. At least 50 percent of the membership should represent Traditional Owners.

The Rights in Water and Irrigation Act 1914 contains provisions that allow for the Water Resources Council to have an advisory role in the making of water plans, including submitting to the Water Minister a report indicating its opinion about the Plan and recommendations about modifying or approving the plan (Section 23GZF).

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**Recommendation 6:**      ***That the Water Minister establishes the Water Resource Council and that Council is provided adequate resources to fulfil its obligations.***

**Recommendation 7:**      ***That at least 50 percent of the membership of the Water Resource Council represent Traditional Owners.***

**Recommendation 8:**      ***That the Water Resource Management Plan is referred to the Water Resource Council for its consideration before it is finalised.***

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## 5.3 Water licensing<sup>43</sup>

Water extractions are managed through individual water licences, with Water Resource Management Plans nominating out how much water can be extracted from the planning area.<sup>44</sup>

Water licences are issued under section 5C of the Rights in Water and Irrigation Act 1914. The water licence includes a water entitlement, which is the quantity of water that a person is entitled to take under a licence.<sup>i</sup>

Water licences contain terms and conditions that detail the licensee's responsibilities and specify the volume of water they may take in any given year.<sup>ii</sup> Licence conditions are made by the Minister and are not set out in the *Rights in Water and Irrigation Act 1914* or the *Rights in Water and Irrigation Regulations 2000*. The licence conditions are not publicly available.

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<sup>i</sup> Section 17(4) *Rights in Water and Irrigation Act 1914*

<sup>ii</sup> Section 26M(d) *Rights in Water and Irrigation Act 1914*

Operating Strategies are required for licences that are considered a risk of causing medium to high impacts on water resources, other water users, or the environment. This is developed between the licence holder and the Department. An Operating Strategy to a water licence is a condition on the water licence. The operating strategies are not publicly available, except under a Freedom of Information request.<sup>45</sup> The Department advises licence holders:

*Applicants and licensees should know that because an approved operating strategy forms part of the terms and conditions of a licence to take water, the public may be able to access it, using freedom of information law. Applicants or licensees must try to ensure their strategy does not include commercially sensitive information.*<sup>46</sup>

In other states, licence conditions commonly include the ability to take more than the entitlement volume in a year. For example, in New South Wales, most floodplain harvesting licences allow take of 500 percent of an entitlement volume in any year. The remaining licences allow 300 percent take in any year.<sup>47</sup>

It is possible to search the Western Australian water register for individual licence information, but not the licence conditions. The aggregate of water licences on issue is not available on the State water register. It is also not possible for a person outside government to know how much water may be taken in a year in any area because licence conditions are not public. There is no publicly available data on water use by licence, area or state.

The Water Minister, when making decisions about water licences, only has to have regard to the water plan (Clause 7(2)(g)(iii), Schedule 1). That is, the volume of water licensed in a Water Resource Plan area may not be the same as the volume specified the Water Resource Plan for that area.

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**Recommendation 9:**      ***That the local licensing policy includes that: a) the Water Minister does not issue any water licences in excess of the total volume provided for by the Water Resource Plan, b) water licences cannot be issued to persons, or associated entities, that have criminal prosecutions relating to water in any Australian jurisdiction, c) exceeding annual take permitted under licence conditions results in licence suspension without compensation, d) an appropriate Traditional Owner entity or governance body must consent to all water licences.***

**Recommendation 10:**      ***That water licence conditions are standardised.***

**Recommendation 11:**      ***That the water register publishes; water licence conditions, aggregate water licences, aggregate permitted take and aggregate actual take.***

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## 5.4 The no new dams, no further surface water take policy and floodplain harvesting

It is State Government policy that there will be no new dams and no further surface water take in the Martuwarra Fitzroy River or its tributaries. This is policy, not legislation.

The no new dams policy should be legislated to provide enduring protection of the Martuwarra Fitzroy River and its catchment.

Without improvements, it is unlikely that the no new dams policy will be effective in stopping floodplain harvesting.

The Rights in Water and Irrigation Act 1914 provides for the licensing of surface water and groundwater. Officers from the Department of Water and Environmental Regulation have stated that floodplain harvesting is not a regulated form of take under the Rights in Water and Irrigation Act 1914. This is a major risk for the Martuwarra Fitzroy River.

The growth in extractions in the Murray–Darling Basin in the last 30 years is mostly due to floodplain harvesting. The capacity to harvest water off floodplains in the Northern Murray–Darling Basin grew five-fold, to 3,300 gigalitres, in that period.<sup>48</sup>

### 5.4.1 Where the no new dams policy applies

Where the no new dams policy applies is ambiguous.

The Water Resource Management Plan states that there will be:

*No damming of the Fitzroy River or its tributaries and only in-channel infrastructure consistent with the local licensing policies.*

The Water Resource Management Plan does not define tributaries, or where the no new dams policy applies. However, the Western Australian Government website says:

*The Consultation draft – Fitzroy–Derby water resources management plan: policy and guidance establishes defined waterways where the ‘no dams’ policy applies. Defined waterways in the proclaimed Fitzroy River and Tributaries surface water area are depicted in the defined waterways map.<sup>49</sup>*

The Defined Waterways map in the Water Resource management Plan is based on the National Surface Hydrology Database, Geoscience Australia mapping layers – surface hydrology lines. That includes areas adjacent to rivers that are defined as: ‘swamp’, ‘foreshore flat’, or ‘land subject to inundation’. Irrigators in the Northern Murray–Darling Basin extensively exploit these types of areas for floodplain harvesting.

The policy refers to no new dams in rivers or tributaries. It is silent on turkey nest dams on the floodplain. Floodplain harvesting in New South Wales and Queensland is typically stored in turkey nest dams.

An area on Gogo Station proposed for on-farm storages, totalling 49 gigalitres,<sup>50</sup> is classified as ‘Land subject to inundation’. It is likely that the no new dam policy does not apply to this area. This highlights the risks of not defining the areas captured by this policy.

### 5.4.2 Interfering with or obstructing a watercourse

The Water Resource Management Plan allows for the:

*The Department [to] grant a permit to interfere with or obstruct a watercourse (a section 11,17 or 21A surface water permit) in the Fitzroy River catchment for infrastructure that spans a defined waterway...if the purpose is for bridges, road*

*crossings, pipelines, cables and other structures that are needed for public, pastoral or Aboriginal community purposes. Any approved infrastructure must be constructed so that it does not substantially interfere with the flow of water.*

It is common for roads, airstrips and bridges to divert or capture water for floodplain harvesting in New South Wales and Queensland.<sup>51, 52</sup> This issue arises, in part, because the officers responsible for approving the structures are unaware of the policy, legislative and regulatory frameworks relating to water.<sup>53</sup>

It is not appropriate for an approval of a works that could be used for floodplain harvesting to be approved at a Departmental level when there is no corresponding requirement to have a licence to harvest water.

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**Recommendation 12:**      *That the no new dams and no further surface water policy and the prohibition of floodplain harvesting is legislated.*

**Recommendation 13:**      *That the policies on water allocation planning in the Fitzroy is updated to explicitly prohibit floodplain harvesting.*

**Recommendation 14:**      *That the Water Resource Management Plan prohibits floodplain harvesting.*

**Recommendation 15:**      *That any structure, including including on-farm storages, roads, air-strips and flood works, that can alter water flows in an area designated as a river, tributary, watercourse, wetland, swamp, foreshore flat, or land subject to inundation, should be considered to potentially have a significant effect on the environment.*

**Recommendation 16:**      *That any structure that can potentially have a a significant effect on the environment should be referred to the Environmental Protection Agency for a public environmental review.*

**Recommendation 17:**      *That all Section 11,17 and 21A surface water permits require approval from the local water resources management committee.*

**Recommendation 18:**      *That any structure that can alter water flows: a) require a works approval, b) are published in the the water register, including the descriptions of works (capacity, dimensions, GPS co-ordinates).*

**Recommendation 19:**      *That the volume of water displaced by works approvals is reported on the works approval and monitored annually.*

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## 5.5 Enforcing licence conditions

The Department of Water and Environmental Regulation (DWER) is responsible for monitoring and enforcing compliance with licence conditions.

The Western Australian Auditor-General audited the regulation of water licences in 2025 and found that DWER:

*...does not effectively monitor or enforce the conditions on the more than 12,000 water licences in the State. Its current activities provide a limited understanding of actual compliance and do little to deter licence holders from breaching their conditions in the future.*

*...is not doing anywhere near enough to adequately protect our water resources, and does not understand if conditions are complied with or how much water is actually being used.*

*...has not adequately planned its monitoring activities. Compliance activities in recent years have been reactive, ad hoc and have decreased in number. We found DWER's on-ground inspection programs are not planned and do not adequately reflect the risks to the State's water resources or the distribution of licences.<sup>54</sup>*

These findings describe a failed regulatory system, identified in previous audits. The:

- 2003 audit *Management of Water Resources in Western Australia*,<sup>55</sup> and the follow up in 2009,<sup>56</sup> found compliance and monitoring programs were not being approached systematically and entities were not doing enough to address known risks.<sup>57</sup>
- 2022 audit, *Compliance with Mining Environmental Conditions*,<sup>58</sup> found DWER was not fully effective in its regulatory role. DWER relied heavily on self-reported information with minimal independent verification and as a result, it had a limited understanding of compliance.<sup>59</sup>

It is irresponsible for a government to issue water licences anywhere if it does not have the capacity or will to regulate compliance with the licence conditions.

Western Australia charges costs to set up water take, such as application fees, scientific investigations, and installation of equipment. However, it does not charge on-going fees for water extraction.<sup>60</sup> Pricing water for full-cost recovery on a user-pays basis could allow the Western Australian Government to properly resource compliance activities.<sup>61</sup>

Over many years, community members and Traditional Owners have raised concerns about large-scale pumping from Uralla Creek (often referred to locally as Snake Creek) associated with irrigation development at Liveringa Station pastoral lease. Traditional Owners reported observed changes in water levels, ecological condition and cultural values and called for the Government to Act.<sup>62</sup> Despite these concerns being raised through observed on-ground changes and lived experience, timely action and clear reporting did not occur. Subsequently, significant environmental impacts, including fish kills emerged. This has underscored the need for transparent reporting mechanisms, defined response timeframes and demonstrate the need for accountability in addressing identified issues by community members and/or rangers in the catchment.

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**Recommendation 20: That all water take is required to be monitored with telemetric, tamper-proof meters.**

**Recommendation 21:** *That water licence holders are required to prepare on-farm water balances, each year, and these are publicly available.*

**Recommendation 22:** *On-farm water balances should disclose: water in individual storages, water use, transfer between storages, evaporation and crop yields.*

**Recommendation 23:** *That satellite imaging of sufficient resolution to detect water volumes in on-farm storages and channels and evapotranspiration is publicly available and free to users.*

**Recommendation 24:** *That an appropriate Traditional Owner Entity or governance body is contracted to monitor water licence use, including the audit of on-farm water balances, for the life of all licences issued; and is fully resourced to undertake that role.*

**Recommendation 25:** *That a transparent mechanism for concerns about water licencing, use and works approvals, is created and related assessments are publicly reported within a specified timeframe.*

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## 5.6 National Water Reform

The current national water reform includes:

- an Updated Draft National Water Agreement,
- review of the Water Act 2007 (Cth).

These provide the Western Australian Government to mitigate risks of irrigation development in the Martuwarra Fitzroy River catchment.

National water reform has been a commitment of all governments since 1994. This is not a theoretical, aspirational framework, nor is it 'green tape'.<sup>63</sup> It was considered necessary to remedy past policy failings for overallocated systems and to establish pre-requisites for managing water sustainably for jurisdictions with emerging irrigation development (such as Western Australia).

### 5.6.1 Updated Draft National Water Agreement

In 2024, the Productivity Commission recommended that the National Water Initiative be updated to included reference to mitigation of and adaptation to climate change, and recognition of the importance of water in the lives of First Nations peoples.<sup>64</sup>

The Australian Government drafted an Updated Draft National Water Agreement in 2024 in consultation with State Governments.<sup>65</sup> The objectives of the Updated Draft National Water Agreement are:

- *Safe and secure supply of sufficient water quality and quantity to sustain communities, culture, natural environments and economic prosperity,*
- *Investment in major water infrastructure that is effective, strategic and transparent,*

- *Water management that recognises and protects Aboriginal and Torres Strait Islander water interests and values,*
- *Evidence-based decision making in water management that is underpinned by robust and coordinated use of science, data and cultural knowledge,*
- *Sustained community trust and confidence in government, water agencies, water managers and water users,*
- *Environmentally sustainable water planning and management that is interconnected, adaptive and responsive to climate change and other circumstances,*

Water management frameworks that facilitate judicious and efficient use of water.<sup>66</sup>

At the time of writing, the Australian Government is the only signatory to the Agreement. It is seeking for other jurisdictions to sign it. Western Australia should become a signatory to demonstrate its commitment to modern water reform. The management of the Martuwarra Fitzroy River could become a best-practise case study on the implementation of the Updated Draft National Water Agreement.

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**Recommendation 26:**      ***That Western Australia becomes a signatory to the Updated Draft National Water Agreement and undertakes a work program to implement it.***

**Recommendation 27:**      ***That the Water Resource Plan is a best-practise case study in the implementation of the Updated Draft National Water Agreement.***

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## 5.6.2 Review of the Water Act 2007 (Cth)

There is currently an independent, statutory review of the Commonwealth Water Act.

Apart from provisions relating to water information, the Water Act 2007 (Cth) currently relates to water management in the Murray–Darling Basin. However, consultation on the review is nation-wide. The Commonwealth Department of Climate Change, Energy, the Environment and Water says that the Water Act review is:

*...an opportunity to propose changes to the Water Act so that it recognises and respects the enduring water interests of Aboriginal and Torres Strait Islander peoples. This review is an opportunity to explore how Traditional Knowledge systems and Cultural responsibilities for Country can contribute meaningfully to the health and management of Australia's inland waters.*<sup>67</sup>

The review of the Water Act 2007 must:

- identify opportunities to promote the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (Section 253, Water Act),
- report on opportunities to deliver nationally on Aboriginal and Torres Strait Islander peoples' economic, environmental, social, spiritual and Cultural outcomes,<sup>68</sup> and
- opportunities to align the Water Act with the objectives set out in the National Water Agreement.<sup>69</sup>

UNDRIP is a framework for recognising, protecting and promoting the rights of Indigenous peoples.<sup>70</sup> Adopted by the UN General Assembly in 2007, the declaration sets a universal framework for respecting, protecting and fulfilling the rights of Indigenous peoples. Australia formally announced its support for UNDRIP on 3 April 2009. UNDRIP has not been formally incorporated into Australian domestic law.<sup>71</sup>

UNDRIP contains 46 human rights, categorised into four principles; self-determination, participation in decision-making, respect for and protection of Culture, and equality and non-discrimination.

The review of the Water Act is due to the Water Minister in February 2027. Amendments to the Water Act 2007 (Cth) are expected to be tabled in Parliament the first quarter of 2027.

A national Water Act that includes the principles set out in UNDRIP can add an additional safeguard to the rights of Traditional Owners in the Martuwarra Fitzroy River.

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**Recommendation 28:**      ***That Western Australia endorses a national Water Act 2007 (Cth).***

**Recommendation 29:**      ***That the Water Resource Plan explicitly commits to reflecting rights identified in UNDRIP.***

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<sup>68</sup> Department of Climate Change, Energy, the Environment and Water. (2026). *Second Statutory Review of the Water Act 2007: Terms of Reference*.<https://www.dcceew.gov.au/sites/default/files/documents/second-review-water-act-terms-reference.pdf>

<sup>69</sup> Department of Climate Change, Energy, the Environment and Water. (2026). *Second Statutory Review of the Water Act 2007: Terms of Reference*.<https://www.dcceew.gov.au/sites/default/files/documents/second-review-water-act-terms-reference.pdf>

<sup>70</sup> United Nations. (2007). *United Nations Declaration on the Rights of Indigenous Peoples*.  
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