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Commissioner Joanne Chong and Assistant Commissioner Anne Poelina
National Water Reform Inquiry 2024
Productivity Commission
By email: water.reform.2024@pc.gov.au

Dear Commissioners Chong and Poelina

Productivity Commission's National Water Reform Inquiry 2024 Interim Report

The ACCC welcomes the opportunity to comment on the National Water Reform Inquiry 2024 Interim Report (2024 Interim Report).

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the competition, consumer protection, fair trading and product safety provisions of the Competition and Consumer Act 2010, regulate national infrastructure and undertake market studies.

The ACCC has specific water roles and functions under the Commonwealth *Water Act 2007* in relation to:

- the monitoring and regulation of rural water charges and transformation arrangements in the Murray-Darling Basin (the Basin)
- advising the Federal Minister for Water on the water market and water charge rules and the Murray-Darling Basin Authority on Basin Plan water trading rules, and
- new water market conduct and integrity related functions, following the passage of the *Water (Restoring Our Rivers) Amendment Act 2023* (Cth). The ACCC is preparing to enforce new water market integrity provisions and a water market intermediaries code of conduct within the Basin.

This submission draws on the ACCC's experience in water regulation in the Basin, and in its broader competition and regulatory roles. It builds on the ACCC submission to the 2024 National Water Reform call for submission¹ and on the ACCC submission to the Treasury's Competition Review², to offer comment on some key issues and priority areas for the

¹ ACCC, [ACCC Submission to the National Water Reform Inquiry 2024](#) (1 February 2024)

² ACCC, [Submission to Treasury Competition Review](#) (13 February 2024)

Productivity Commission to consider when finalising its Inquiry findings and recommendations.

Updating the 2004 National Water Initiative can help preserve the benefits of progress to date, and prepare Australia for an uncertain future.

The ACCC supports the Productivity Commission's finding that there has been substantial progress on the 2004 **National Water Initiative (NWI)** commitments over the last twenty years but there is now a need to modernise it to reflect the contemporary context and its challenges (renewal advice 3.1, 3.2).

The ACCC agrees that progress by parties to date has been significant. However, it will not adequately equip Australian governments to address future challenges. There is a need to adapt current approaches to support:

- a sustainable future for the natural systems we depend on
- water security for all Australians
- a coordinated, affordable, timely and least cost transition to net zero carbon emissions (which will impact water usage across Australia) and climate resilient water infrastructure
- better delivering on Australia's closing the gap targets, cultural outcomes and meaningful participation and integration of first nations' knowledge and values in water management.

A renewed NWI with updated objectives (renewal advices 3.1, 3.2, 3.3) would demonstrate shared commitment to delivering these outcomes. It can also strengthen the framework for the investment in knowledge and infrastructure necessary to support these outcomes.

It will be important for a renewed NWI to integrate with and be reflected in the plans and policy settings across the broader economy, including the closing the gap targets, net zero transition and sectoral plans and any updated settings resulting from the current reviews of the National Competition Policy and Principles. The ACCC recommends that the updated statement of interactions (renewal advice 3.6) be expanded to also refer to the framework for delivering the Government's emissions reduction targets, including relevant net zero transition plans and other climate adaptation policies with significant water implications. It may also be relevant to note the interaction with any updated National Competition Principles.

While modernising the NWI's objectives is important, the ACCC concurs with the Productivity Commission that the NWI's fundamental principles (and commitment to creating a nationally consistent planning, market and regulatory based system) remain sound and appropriate. The ACCC also concurs that introducing flexibility for parties to select which principles or objectives they agree to implement would represent a weaker commitment to the fundamental principles of the NWI. Flexibility to deliver fit-for-purpose policy and regulatory arrangements is desirable (renewal advice 5.1). Flexibility in commitment to outcomes and underlying principles belies the purpose of the agreement and risks undermining the benefits to all Australians from sustainable, efficient management and use of water resources.

Gaps in delivering the 2004 NWI undermine improved outcomes for all Australians and should be addressed in a renewed agreement.

The 2024 interim report notes important areas where progress on commitments has stalled or been undermined **including**:

- best practice investment, pricing and institutional arrangements, including decision-making frameworks for major water infrastructure, economic regulatory arrangements and cost-recovery, including for water planning and management (draft findings 6.1, 6.2)
- water planning and secure water entitlement frameworks (WA and NT have not implemented statutory perpetual rights)
- coordinated knowledge and capacity building to support water planning
- fit for purpose metering and measurement of surface water and groundwater take and reporting on use (renewal advice 10.1) including progress on metering installation commitments (draft finding 8.1) and
- monitoring and evaluation of community assistance programs.³

The ACCC considers the effect of progress stalling in these areas is significant because it is likely to reduce the effectiveness of price signals to water users, resulting in resources not moving to their highest value use, through:

- inefficient charging arrangements and non-transparent cross subsidies between water users
- inefficient decisions on planning and infrastructure investment, resource usage (including appropriate decisions on the use of environmental water) and trade, dampening the support for efficient production
- inadequate preparedness for future challenges, including higher average temperatures, increased water variability and an increase in extreme weather events due to climate change, and the transition to net zero carbon emissions
- Australians experiencing varying levels of service reliability and affordability, water security and quality, water market participation, poorly targeted community assistance programs and different regulatory protections and outcomes depending on where they are located.

Accordingly, the ACCC supports the Productivity Commission's recommendations and renewal advice for improvements to strengthen planning, investment, economic regulatory and governance frameworks, including that:

- water planning for climate change should focus on flooding, storms and bushfires, as well as droughts (draft recommendation 3.2, renewal advice 6.2)
- all Australian governments should collectively model and plan for changed water demand due to necessary climate change mitigation measures, and that findings should be integrated into both net zero strategies and sustainable water strategies to ensure sufficient water is available to enable Australia's transition to net zero emissions (draft recommendation 3.3)

³ The Productivity Commission also expressed concerns with the lack of progress on matters including First Nations' access to water, reporting on environmental watering outcomes and progress on the non-urban water meter rollout. 2024 Interim Report, pp.14-15.

- First Nations people’s interest in water should be elevated to the overarching goal of a renewed NWI and by including a dedicated objective and element (renewal advice 3.1, 9.1 and 9.2)
- in renegotiating the National Water Initiative, jurisdictions should develop an element to guide investment in water infrastructure (renewal advice 14.1, unchanged from 2021), and (updated renewal advice 14.2) as part of the new infrastructure element:
 - jurisdictions should agree to criteria on how major projects can demonstrate adherence to the NWI requirements for infrastructure.
 - costs should be recovered from users as the norm, with any government funding provided through a transparent subsidy.
- to better allow water users and the public to benefit from the improved AS4747 standard, jurisdictions should take steps to accelerate rollouts of compliant meters (draft recommendation 8.2).

As the irrigation sector evolves and water markets develop outside the Murray-Darling Basin, the NWI can ensure water users have the benefit of adequate protections and access to robust water market information.

The Productivity Commission notes irrigation schemes are developing around the country, including with the expansion of schemes in Tasmania and the emergence of cross-border water trade between Northern Territory and Western Australia. Draft finding 5.1 identifies that trade registers are improving, but there is still significant potential for further improvement to provide necessary information to market participants.

In the Murray-Darling Basin, under the Water Act framework, water users and market participants benefit from a range of legislated protections and transparency measures to facilitate the effective operation of markets. These include regulation of termination fees and other barriers to trade, and the monitoring of rural water charges. Water information and integrity protections for water users in the Basin have recently been strengthened, with work underway to implement a new market manipulation prohibition and to develop a mandatory code of conduct to apply to water market intermediaries operating in the Basin.⁴

A renewed NWI offers a framework for governments to commit to providing water users outside the Basin with market protections, access to information and trade approval standards equivalent to those applying in the Basin. This is important to support efficient charging and resource use, as irrigation activity and trade in water rights expand outside of the Basin. The ACCC supports explicitly recognising that water trading and markets are tools to increase efficiency within the water resource management framework (renewal advice 7.1) and recommends that the advice could explicitly refer to the principle that water market and trade arrangements will reflect and operate within regularly reviewed ecological tolerances and system limits.

The ACCC also supports the proposal to recommit and update the NWI water trading and market principles to provide stronger foundations for developing markets (renewal advice 7.2). Participants in emerging water markets have the same in-principle needs for robust, transparent trade information to inform trading decisions and price expectations as those in well-developed water markets, such as in the Southern Connected Basin. Specifically, we consider that the NWI water markets and trade objectives and principles could more clearly

⁴ Department of Climate Change, Energy, Environment and Water, [Australian Water Markets](#), accessed 24 April 2024.

identify the potential (and triggers) for extending trade information reporting obligations, including to the Bureau of Meteorology's data hub, to non-Basin markets.

Further, the Productivity Commission has observed (p.132) that 'ensuring efficient [trade] processing remains critical for transparent and effective water trading systems across the nation'. The ACCC considers that draft finding 5.1 could be expanded to explicitly recommend a renewed NWI provide a framework for the setting, reporting against and regular updating of trade approval standards over time. This would extend the current commitment under the MDB Water Reform Roadmap for Basin jurisdictions to report to the Bureau of Meteorology on compliance with existing standards.

A renewed NWI should strengthen existing commitments to more robust and transparent arrangements for infrastructure planning, assessment, and investment decisions.

The ACCC supports the Productivity Commission's call to strengthen the NWI elements concerning infrastructure and decision making, including:

- high-level requirements for all infrastructure to be assessed as economically viable and ecologically sustainable prior to the commitment of funding (renewal advice 14.1)
- that costs should be recovered from users as the norm, with any government funding provided through a transparent subsidy, and
- demonstrating that project benefits outweigh costs (or where they do not, providing transparent justification for proceeding) (updated renewal advice 14.2).

Providing a robust assessment and investment framework will support Australians to make the anticipated significant investment in new and refurbished infrastructure necessary to manage the transition to net zero (both by reducing emissions from water storage, treatment and reticulation, and by providing for the water needs of new energy technologies) and to adapt to greater variability in water availability. Better planning and assessment will enable a more orderly and timely transition at less cost, with flow on benefits to consumers of these services.

The modelling on climate impacts and water availability shows a more uncertain, highly variable future. Existing infrastructure is unlikely to be adequate to the task of delivering water and energy security for all Australians. Building adaptable, efficient and climate resilient water infrastructure will require significant investment by governments and private parties. Coordinated national planning and investment (supported by state, regional, sectoral and catchment level planning) will ensure Australians benefit from a lower cost, more affordable transition to net zero.

The ACCC concurs with the Productivity Commission's draft finding 6.2 that "some government decision making for major water infrastructure is not fully compliant with the NWI and that the [current] NWI requires governments to be satisfied that infrastructure investments are economically viable and ecologically sustainable."

The ACCC supports the PC's draft finding that "to be consistent with these principles, investments should be rigorously assessed, comparing all options available to meet identified needs. Ideally, this would also involve a transparent, independent assessment of proposals." The ACCC supports strengthening the roles of Infrastructure Australia and the National Water Grid Authority in infrastructure assessment frameworks, including prioritising the development of a framework for assessing climate adaptation impacts from water and other infrastructure projects that can be consistently applied across all states and territories.

The ACCC's recent submission to Treasury's Competition Review noted the importance of clarity on the split between government and user funding of infrastructure, and called for greater transparency of government policy decisions and a clear distinction between funding that is, and is not, expected to be paid for by users before it is allocated to the GBEs.⁵

The 2004 NWI commitments to best practice pricing, independent economic regulation and cost-recovery from users are at risk.

The ACCC concurs with the Productivity Commission's draft finding 6.1 that some governments have moved away from NWI commitments to deliver cost reflective and consumption-based pricing, and that this gives rise to risks, including the risk of inefficient or suboptimal consumption of water and inefficient investment in water assets.

Risks from these divergent pricing approaches identified by the Productivity Commission include increased opportunity costs, that water services will be more costly overall and that jurisdictions with less developed pricing frameworks will face reduced incentives to adopt reforms.

The ACCC considers that robust pricing and institutional arrangements, with transparent decision-making and reporting of subsidies for community service obligations, are important to support sustainable investment in infrastructure, deliver an affordable and timely transition to net zero and ensure that all Australians benefit from efficient investment and resource use.

Governance arrangements should provide transparency, accountability and adequate opportunities for consultation.

The Productivity Commission proposes that governance responsibility for a renewed NWI should rest with water ministers (who should convene periodically to oversee development of agreement, and to receive, consider and act upon advice that comes out of any periodic review) supported by the existing National Water Reform Committee process, which should be strengthened to provide for coordinating joint projects and sharing best practice water management in each action plan cycle (NWI updated renewal advice 4.1).

The ACCC has previously called for this role to be carried out by an independent National Water Commission. While acknowledging that the Productivity Commission's updated model reflects Ministerial accountability for policy decisions and seeks to manage the challenges of coordinating nationally led reform within Australia's federation, the ACCC considers that the proposal does not fully address the weaknesses of existing arrangements. Key issues under the current approach include a lack of transparency of process, meetings not taking place in accordance with a schedule or designated timetable, and limited opportunities for public consultation and input.

If this model is taken forward, consideration should be given to how the policy development and decision-making process will ensure timely decisions, be transparent and accountable to the Australian public, and provide opportunities for the input of expert research and advice and the ideas of the broader community.

Further consideration should also be given to how the NWRC model will ensure coordination with other government agencies on water policy and investment-related matters to ensure that water policy reflects, and is reflected in, net zero sectoral plans, infrastructure assessment and funding decisions.

⁵ ACCC. [Competition Review ACCC Submission](#), February 2024, p.7

We thank you for the opportunity to comment on the interim report and look forward to reading the final report in due course.

Yours sincerely

Mick Keogh
Deputy Chair