

Senate Committee

Senate Standing Committee on Environment and Communications

Oil and gas exploration in the Beetaloo Basin

Environment Centre NT – Answers to questions on notice

1. **Senator Larissa Waters – Could you please take on notice how many of those Pepper recommendations require action from the Commonwealth. And, if you could provide your views on whether the Commonwealth has acted on any of those and the state of progress?**

The recommendations of the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory for which the Australian Government has some responsibility are:

- Recommendation 7.3 – That the Australian Government amends the EPBC Act to apply the ‘water trigger’ to onshore shale gas development.

The Environment Centre NT (ECNT) refers to its submission to this Inquiry dated 7 July 2021 and evidence to this Inquiry on 28 July 2021 indicating ECNT’s view that this recommendation remains unimplemented.

ECNT refers to evidence given by Ms Farrant of the Department of Agriculture, Water and the Environment on 2 August 2021 as follows:

“... you would be aware that the EPBC Act is currently under review at the moment. The officers who are responsible for that matter aren’t available today and aren’t with us. In a general sense, the outcome of the Samuel review indicated that the government’s first port of call in terms of reviewing the EPBC Act was to keep MNES as protected matters under the act the same. At this stage the water trigger is not the subject of that review.” (p 34)

ECNT **attaches** the latest report of the Independent Officer charged with overseeing implementation of the Pepper Inquiry recommendations dated 21 May 2021. In relation to recommendation 7.3, this report states:

“Discussions are afoot between the Territory and Commonwealth governments about implementing the Inquiry’s recommendation that any onshore shale gas development that may have a significant impact on a natural water source must be approved in accordance with the Commonwealth *Environment Protection and Biodiversity Conservation Act*.”

ECNT’s observation is that the position expressed by Ms Farrant to this Inquiry, and that expressed in the report attached appear to be inconsistent.

- Recommendation 9.8 – That the NT and Australian governments seek to ensure that there is no net increase in the life cycle GHG emissions emitted in Australia from any onshore shale gas produced in the NT.

ECNT refers to its submission to this Inquiry dated 7 July 2021 and evidence to this Inquiry on 28 July 2021 indicating that ECNT’s view is that this recommendation remains unimplemented.

ECNT refers to evidence given by Ms Bennett of the Department of Agriculture, Water and the Environment on 2 August 2021 as follows:

[in relation to the proposed emissions reduction agreement between the NT and Australian Governments] “The draft agreement text is still under negotiation with the Northern Territory Government ... the NT agreement is going to be a high level document focusing on areas of mutual interest. So, in the broad, it will cover energy and emissions reduction.” (p 33)

“it’s the Northern Territory government that has committed to offsetting the life cycle emissions from the Beetaloo Basin.” (p 38)

ECNT **attaches** the latest report of the Independent Officer charged with overseeing implementation of the Pepper Inquiry recommendations dated 21 May 2021. In relation to recommendation 9.8, this report states:

“Negotiations are continuing over a Bilateral Agreement on energy and emissions reduction with the Commonwealth Government that includes meeting this recommendation: “that the NT and Australian Government that includes meeting the recommendation: “that the NT and Australian Governments seek to ensure that there is no net increase in the life cycle GHG emitted in Australia from any onshore gas produced in the NT.”

ECNT’s observation is that the position expressed by Ms Farrant to this Inquiry, and that expressed in the report attached appear to be inconsistent. As suggested in ECNT’s submission, ECNT suggests that this inconsistency could be resolved via the production of all drafts of the emissions reduction agreement to date negotiated between the Commonwealth and the Northern Territory.

2. Senator Samantha McMahon

- (a) which aquifers in the Northern Territory do you say came close to running dry and what actual evidence do you have of this?**
- (b) What Indigenous communities have experienced water contamination and what evidence do you have of this?**

Reports by the Northern Territory’s water utilities provider, Power and Water, on drinking water quality across the Northern Territory, including remote communities, can be found here:

<https://www.powerwater.com.au/about/what-we-do/water-supply/drinking-water-quality/past-drinking-water-quality-reports>.

ECNT also **attaches** the following:

- Submission by the Central Land Council to the National Water Reform Productivity Commission dated 21 August 2020 which relevantly states:

“Despite the fundamental importance of drinking water security to Indigenous livelihoods, NT Indigenous communities are experiencing significant challenges in relation to the supply of adequate and safe drinking water. These challenges variously concern water supply, water quality, and drinking water infrastructure. Recent incidents include, but are not limited to:

 - A toxic algal bloom in the water supply at Yuelamu in February 2016;

- The failure of water chlorination equipment at Yarralin in January 2017;
- The depletion of the bore water supply at Ngukurr in December 2017;
- The contamination of drinking water by lead and manganese at Borroloola town camps from April to June 2018;
- The groundwater supply to Yuendumu was reportedly at severe risk of total depletion in August 2019;
- Poor quality water infrastructure supplying 18 outstations under Iwupataka Aboriginal Land Trust, resulting in recurring leaks and high water bills;
- Delays exceeding nine years for the provision of production bores and associated water infrastructure to treat water at Lake Nash Station;
- The ongoing high rates of uranium in drinking water at Laramba.

Assessments from December 2019 on water source security by the NT utilities provider, Power and Water Corporation (PAWC), classify seven remote communities as 'extreme' risk and 14 remote communities as 'very high' risk. Forty-one communities are additionally classified as 'high' risk, signalling that water insecurity is the norm for most of the remote NT. The water source capacity in a number of remote communities has been assessed as having 'no existing capacity for remote development', which is impacting the delivery of housing and other community infrastructure."

- Article by K. Howey and L. Grealy entitled "Drinking water security: the neglected dimension of Australian water reform" in *Australasian Journal of Water Resources* (2021).
- The following selection of news items detailing water supply and contamination issues in remote Indigenous communities in the Northern Territory over the last five years:
 - T. Maddocks, ABC, "Aboriginal community of Yuelamu fears town's only water supply may run dry", dated 28 June 2016;
 - J. Bardon, ABC, "Authorities say Borroloola drinking water is safe – but many residents don't trust them" dated 10 August 2018;
 - K. Beavan, ABC, "Yuendumu in Central Australia at 'severe risk' of running out of water, dated 13 August 2019;
 - J. Gibson, ABC, "Milingimbi water concerns stall future developments in Arnhem Land", dated 10 November 2019;
 - K. Beaven and H. Zwart, ABC, "Residents of remote NT community of Laramba lose legal battle over uranium in water", dated 14 July 2020;
 - L. Grealy, ABC, "Coloured Water: Why Uranium is Allowed in the Water of NT Indigenous Communities" dated 30 October 2020.

21 May 2021

The Hon Michael Gunner MLA
Chief Minister of the Northern Territory
GPO Box 3146
DARWIN NT 0801

Dear Chief Minister

**RE: PROGRESS ON THE IMPLEMENTATION OF RECOMMENDATIONS FROM
THE FINAL REPORT OF THE HYDRAULIC FRACTURING INQUIRY - 1
DECEMBER 2020 TO 30 APRIL 2021**

General overview

Field work postponed last dry season has now resumed. This includes exploration activities by the gas industry, work on the Strategic Regional Environmental and Baseline Assessment (SREBA) and consultations with Aboriginal landowners by the Aboriginal Areas Protection Authority (AAPA).

Within this context, implementation of the recommendations continues in accordance with the Inquiry's findings.

This report is to be read in conjunction with the specific recommendation updates available publicly on the website and summary update provided through the community bulletin on progress as at 30 April 2021.

SREBA

The SREBA has been designed to close gaps in our knowledge about critical natural systems including ground and surface water, and to understand issues concerning people and communities affected by the industry. This requires on-ground field work and establishing a relationship with people and communities, based on trust.

Field work is taking place this dry season on these components of the SREBA:

- water (ground & surface)
- terrestrial ecosystems
- aquatic ecosystems, including stygofauna and subterranean ecosystems
- methane and greenhouse gases
- economic, cultural and social aspects of the environment.

The scope of work for the environmental health component is being finalised and is due to be completed next month.

Aboriginal Information Program & Cultural Impact Assessment

The broad objective of the cultural impact component of the SREBA is to give Aboriginal people an opportunity to understand ways the gas industry may affect maintenance of cultural traditions; how potential harm can be mitigated and any benefits realised. This critical work only started this month and must be expedited this Dry if it is to be completed by the end of next year.

The Aboriginal Information Program is a central component of the cultural impact assessment. Its purpose is to provide independently verified, objective advice about the onshore gas industry - delivered in a culturally appropriate manner.

It has taken much longer than anticipated for the working group (NT Government, AAPA, Land Councils and APPEA) to finalise this program. To ensure this delay does not affect work on the SREBA, CSIRO have been engaged to deliver the Information Program. This includes the capability to provide information in a culturally appropriate manner and to respond to specific requests from communities (e.g. requests arising from the engagement required for the SREBA).

Statutory Land Access Agreements

From 1 January this year, petroleum companies proposing to start regulated exploration activities on a pastoral lease must have first entered into an agreement (which includes the minimum protections recommended by the Inquiry) with the leaseholder that mandates the terms of entry. This requirement is given effect through the Petroleum Regulations made under the *Petroleum Act* (as amended in June 2020).

EBPC Act amendments

Discussions are afoot between the Territory and Commonwealth Governments about implementing the Inquiry's recommendation that any onshore shale gas development that may have a significant impact on a natural water source must be approved in accordance with the Commonwealth *Environment Protection and Biodiversity Act* (EPBC Act).

Cost recovery

Consultation on a proposed cost recovery system is scheduled to take place with industry and stakeholders in the second half of this year.

Merits Review & Financial Assurance Framework

Amendments to the *Petroleum Act* are being developed to give effect to:

- merits review for decisions under the petroleum legislation with third-party standing;
- a non-refundable levy for the long term-monitoring, management and remediation of abandoned wells;
- development of a financial assurance framework to enable regulations that require an environmental bond or security for onshore petroleum activities;
- a broader range of powers to sanction under the legislation.

Life cycle GHG emissions (R 9.8)

Negotiations are continuing over a Bilateral Agreement on energy and emissions reduction with the Commonwealth Government that includes meeting the recommendation: "that the NT and Australian governments seek to ensure that there is no net increase in the life cycle GHG emitted in Australia from any onshore shale gas produced in the NT."

Ensuring regional communities' benefit

To a large extent, implementation of the Inquiry's recommendations designed to ensure that the communities in the Beetaloo Sub-Basin benefit from any shale gas industry in their region will depend on the information gained from the affected communities through the social and cultural impact studies within the SREBA.

The Onshore Gas Supply Chain Working Group, has focussed on capturing information on local procurement and targeted activities including: an Aboriginal Economic Development Strategy for the Beetaloo, “Barkly Futures” – a forum to identify development opportunities in the Barkly region, “Juno Jobs” – a pilot apprenticeships program specific to the Barkly region and a Regional Workforce Strategy specific to the Barkly Region.

The Beetaloo Regional Reference Group (BRRG) has been established as a consultative forum for community views regarding, and providing input into, the SREBA studies within the Beetaloo Region. The BRRG were briefed on upcoming work on the SREBA at their meeting in Katherine on 23rd March.

Concluding remarks

As foreshadowed, emphasis on the percentage of recommendations completed invites the risk of underestimating the complexity of, and hence the capabilities and resources necessary to successfully complete the Implementation Plan. Success depends on retaining and fostering the energy and spirit of collaboration between officers across the accountable agencies that, thus far, has enabled the plan to be successfully implemented. This in turn requires that agencies keep focussed on creating systems that are reflexive and adaptive and hence continually improving.

I see evidence that this is now occurring. In March, DEPWS conducted a series of workshops with all current holders of petroleum interests in the Beetaloo Sub-Basin and regulators to improve the way critical information is presented in Environmental Management Plans (EMPs). This included how to ensure transparency around how well integrity, specifically the relationship between EMPs and Well Operation Management Plans (WOMPs) in the regulatory and approval process. This work focussed on risks assessed as “low probability/high consequence” and initiated a revision of the way EMPs are assessed. A new EMP assessment framework is being developed and will be made publicly available.

The most important body of work still to be completed is the SREBA. The aspect of the SREBA involving the establishment of relationships based on mutual understanding with the people and communities affected by the onshore gas industry, must be given the highest priority if it is to be completed by the end of 2022.

I am in regular contact with the Hydraulic Fracturing Inquiry Chief Executive Officer’s Steering Group, Onshore Shale Gas Community Business Reference Group (CBRG) members, Senior Officers from across the accountable agencies, members of industry, Protect Country Alliance, other NGOs, and the broader community who have an interest in this work.

This has informed my opinion that implementation continues in accordance with the Inquiry’s findings.

Yours sincerely

DR DAVID RITCHIE
21 May 2021



**CENTRAL
LAND
COUNCIL**

**Submission
National Water Reform
Productivity Commission**

21 August 2020

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Executive Summary

The aim of this submission is to focus attention on a neglected dimension of the implementation of the National Water Initiative (NWI) in the Northern Territory (NT): drinking water supply and security.

In particular, this submission highlights that successive NT Governments have failed to deliver healthy, safe, and reliable water supplies uniformly across the NT in accordance with the requirements of the NWI or principles of transparent and equitable governance, particularly in remote Indigenous communities. In fact, the NT's regulatory frameworks detract from the likelihood of achieving this outcome.

Evaluations of NWI implementation in the NT have primarily focused on water allocation, pricing, and licensing regimes under the *Water Act* 1992 (NT), consistently finding that the NT has only partially complied with the NWI in these areas. Limited attention has been given to drinking water supply.

Adequate and safe drinking water is key to human health, life, and the viability of all communities. The provision of safe drinking water is a human right, and is vital for the self-determination of Indigenous communities across the NT. Yet this right is under threat from decades of government neglect, renewed calls for water-intensive development in northern Australia, and climate change. In this context, the CLC notes that the NWI compartmentalises Indigenous concerns with water to relate to matters of economic development and cultural flows. This has directed focus away from drinking water supply in remote contexts and has facilitated the exclusion of Indigenous stakeholders from planning and decision-making related to drinking water and drinking water infrastructure.

Inadequate consideration of remote drinking water security in the context of NWI implementation has arguably allowed the continuation of a racialised governance regime in the NT governing urban/regional water (described below) to the detriment of Indigenous people and communities. Drinking water security has been subordinated to other water concerns.

There are significant limits and gaps in the regulatory regime for drinking water in the NT. The result is a system that privileges certain (urban, predominantly non-Indigenous) populations over others (remote, predominantly Indigenous). In sum:

- (a) There is no general power to reserve water for drinking water supply against other uses in the *Water Act* (NT).
- (b) There are no mandated minimum standards set for drinking water quality across the NT. Instead, authorities use an unenforceable Memorandum of Understanding to guide testing, monitoring, and management regimes.

- (c) Different legal regimes govern how drinking water is supplied depending on the context in the NT. Specifically, the key legislation regulating the supply of drinking water, the *Water Supply and Sewerage Services Act* (NT) (WSSS Act), which requires water supply to be licensed (to Power and Water Corporation) and regulated by the Utilities Commission, only applies in the NT's 18 gazetted towns (including the major centres of Darwin, Katherine, Tennant Creek, and Alice Springs). In the 72 major Indigenous communities and some larger outstations, a private subsidiary of Power and Water Corporation (Indigenous Essential Services) provides water services with no legislative or regulatory oversight. This has resulted in a fragmented 'archipelago' of water governance in the NT, in which different standards apply to various jurisdictional 'islands'. These differences are racialised (see Appendix 4 showing a map of water regulation in the NT).

While not a primary focus of NWI reform efforts in the NT, there has been inadequate implementation of the requirements of the NWI with respect to urban/regional water supply. *'Mainstreaming' of drinking water service provision has not actually occurred.* These failings include:

- The NWI requires differentiation between water resource management, standard setting, and regulatory enforcement functions. This requirement presupposes the existence of regulatory frameworks for water provision. However, in the NT, there is no regulator of water supply outside the 18 towns (where the Utilities Commission provides limited oversight). There is no regulator of drinking water safety across the NT (the Department of Health instead oversees drinking water safety pursuant to an unenforceable Memorandum of Understanding with Power and Water Corporation). This does not meet the requirements of the NWI.
- The NT has failed to implement the requirements in the NWI for water subsidies to be transparent, including with respect to the payment of Community Service Obligations (CSOs) where full cost recovery is not achievable. Funding of water services in remote communities instead occurs via opaque recurrent grants from the NT Department of Local Government, Housing, and Community Development (DLGHCD) to IES.
- The policy of mainstreaming service provision involved the assumption of essential service provision by the state. However, the present arrangements do not meet the reforms required by the NWI or by good governance more generally. Numerous issues related to IES require further investigation and potential reform, related to: limited reporting; absent oversight; opaque funding arrangements; unclear service arrangements; opacity in infrastructure funding allocation; public accountability; and public transparency.

To summarise, the Northern Territory Government, as signatory to the NWI, has not met the agreed objective to provide 'healthy, safe and reliable water supplies'. Further, and with

regard to the terms of reference to assess the adequacy of the NWI to support government responses to current and emerging water management challenges, this submission contends that the focus of the NWI has thus far been inadequate to oversee and direct required reforms for remote drinking water security.

The NWI reflects a long-term policy objective to ‘mainstream’ service provision that has had the effect of bracketing Indigenous water concerns to licensing for economic development and ‘cultural flows’. This has excluded Indigenous organisations and communities from input into planning and decision-making about drinking water infrastructure and service provision in the NT. The opportunity to participate in drinking water governance is largely at arm’s length or ‘reactive’, such as through submissions to reform processes, land councils’ involvement in leasing arrangements, and community responses to contamination or water scarcity events. Acknowledging these limitations of the NWI framework, the NT has nonetheless failed to implement numerous reforms recommended by the NWI. The result is drinking water provision in remote Indigenous communities that is largely unprotected, unregulated, and unaccountable. Urgent reforms are needed that embed the principles of safety and health, transparency, accountability, adequate resourcing, and Indigenous decision-making.

Recommendations

Recommendation 1: The Productivity Commission must recommend the prioritisation of drinking water security in Indigenous communities as part of National Water Reform, including reflecting that it is:

- *an issue of utmost importance for Indigenous peoples;*
- *essential for the viability and self-determination of their communities; and*
- *under threat from government neglect, water-intensive development, and climate change.*

Recommendation 2: The Productivity Commission should recommend that the Northern Territory Government legislate a Safe Drinking Water Act to provide regulatory protection and accountability for the provision of safe and adequate drinking water for all Territorians.

Recommendation 3: The Northern Territory Government should amend the Water Act 1992 (NT) to include a power to specifically reserve water for future drinking water supply above other consumptive uses in the NT.

Recommendation 4: The Northern Territory Government should create enforceable minimum standards for drinking water quality under legislation for all Territorians.

Recommendation 5: The Northern Territory government should develop an overarching Water Security Strategy to protect our most precious resource.

Recommendation 6: The Productivity Commission should recommend the urgent development (in collaboration with Indigenous organisations and remote Indigenous residents) of national policy guidelines for ensuring drinking water security in Indigenous communities, and the involvement of Indigenous organisations and remote Indigenous residents in planning decision-making about drinking water supply and infrastructure in each jurisdiction.

Recommendation 7: The Productivity Commission should develop specific criteria for inclusion in the NWI that states and territories must meet on behalf of the provision of healthy, safe, and reliable water supplies.

Recommendation 8: The Productivity Commission should examine the institutional relationships between Power and Water Corporation (and its subsidiary Indigenous Essential Services), the Department of Health, and the Utilities Commission, on behalf of clarifying what reforms are required in the NT to meet NWI expectations related to institutional reform.

Recommendation 9: The Productivity Commission should seek clarification from the NT Government regarding the specific progress it has made under the NT Water Regulatory Reform Process, and outline this progress in its forthcoming Inquiry Report.

Recommendation 10: The Productivity Commission should seek an explanation from the NT Government regarding the absence of legal protections for minimum quality water standards or services in remote contexts.

Recommendation 11: The Productivity Commission should recommend that the Department of Health assume a regulatory role in relation to Power and Water Corporation and Indigenous Essential Services pursuant to legislation that replaces the existing MOU.

Recommendation 12: The Productivity Commission should clarify the information that is required in the transparent publication of a CSO.

Recommendation 13: The Productivity Commission should seek clarification from the Northern Territory Government regarding why Indigenous Essential Services is the utilities provider in 72 remote communities and 79 outstations, rather than Power and Water Corporation.

Recommendation 14: The Productivity Commission should investigate the reforms required for Indigenous Essential Services to satisfy the expectations of the NWI.

Recommendation 15: The Productivity Commission seek clarification from the Northern Territory Government as to why Power and Water Corporation is exempt from Freedom of Information requests, which is inconsistent with government-owned corporatised utility providers in other Australian jurisdictions.

Recommendation 16: The Productivity Commission should clarify the key funding streams for drinking water infrastructure, and the mechanisms by which new projects are approved.

Recommendation 17: The Northern Territory Government should demonstrate the processes it uses to ensure it meets NWI expectations that any new investment in water infrastructure must be transparent, ecologically sustainable, and subjected to a cost-benefit analysis.

Recommendation 18: The Northern Territory Government should clarify the criteria it employs to prioritise infrastructural projects in remote communities, including the

specific roles played by Power and Water Corporation and Indigenous Essential Services.

Recommendation 19: The Northern Territory Government and Power and Water Corporation should meaningfully involve land councils and relevant Indigenous organisations in planning and decision-making for infrastructural provision in remote Indigenous communities and on homelands.

Introduction

About the Central Land Council

The CLC is a Commonwealth statutory authority established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA). It is also a native title representative body under the *Native Title Act 1993*. It is led by a representative body of 90 Aboriginal people elected from communities in the southern half of the Northern Territory, which covers almost 777,000 square kilometres and has an Aboriginal population of more than 24,000.

The CLC has statutory responsibilities to ascertain, represent, and protect the rights and interests of Aboriginal people living in the CLC region. It also has specific statutory functions with respect to Aboriginal land. One of the CLC's central roles is to protect the interests of Aboriginal people with an interest in Aboriginal land, by assisting constituents to make land claims, negotiate agreements with third parties, protect sacred sites, and utilise land and other financial resources for the benefit of their communities. Many Indigenous communities and outstations are located upon Aboriginal land owned under the ALRA, and thus the CLC has a direct interest in, and responsibility for, the administration of land in those communities and outstations.

In addition to these functions, the CLC administers a range of programs for the benefit of constituents in relation to environmental management, community development, governance, cultural heritage, and customary practices. The CLC also plays a strong role in advocating for the interests of our constituents, the majority of which reside in remote communities.

Context

This submission focuses on drinking water security in the Northern Territory (NT), with particular attention given to central Australian communities in the CLC region. It is made in the context of calls for drinking water reform in the NT, including for a Safe Drinking Water Act.¹ As of 29 July, and in advance of the upcoming NT election on 22 August, the demand for a safe drinking water act has been made by all four NT land councils to the major NT political parties, who together administer over 50 per cent of land in the NT under the ALRA, upon which the vast majority of Indigenous communities and homelands are located.²

¹Grealy, L. and K. Howey, 'Submission: Northern Territory Water Regulatory Reform', Housing for Health Incubator, (30 March 2019).

² Central Land Council, 'NT Land Councils: Election must be a watershed for protection of remote drinking supply.' <https://www.clc.org.au/media-releases/article/nt-election-must-be-a-watershed-for-protection-of-remote-drinking-supply>

Drinking water security is essential for the viability, self-determination, and sustainability of Indigenous communities across the NT. Yet remote Indigenous communities face increasing challenges arising from threats to water resources in the NT. For Indigenous people, these challenges are five-fold: cultural, health-related, social, environmental, and economic.

- Cultural: connection to country (including water) is core to Indigenous peoples' identity and culture. Detrimental impacts on country negatively impact Indigenous identities and the continuity of culture.
- Health: water is key to human health, life, and the viability of all communities. The significance of water to culture means the denigration of country also has negative impacts on the physical and mental health of people.
- Social: a key priority for the CLC's constituents is living and maintaining connection to country. Limited water resources and poor infrastructure pose major barriers to sustainable living.
- Environmental: maintaining healthy water sources and related ecosystems is a key component of sustainable resource management.
- Economic: as the Strategic Aboriginal Water Reserves Policy recognises, access to water is critical to Aboriginal-led economic development activities in the region.

Despite the fundamental importance of drinking water security to Indigenous livelihoods, NT Indigenous communities are experiencing significant challenges in relation to the supply of adequate and safe drinking water. These challenges variously concern water supply, water quality, and drinking water infrastructure. Recent incidents include, but are not limited to:

- A toxic algal bloom in the water supply at Yuelamu in February 2016;
- The failure of water chlorination equipment at Yarralin in January 2017;
- The depletion of the bore water supply at Ngukurr in December 2017;
- The contamination of drinking water by lead and manganese at Borroloola town camps from April to June 2018;
- The groundwater supply to Yuendumu was reportedly at severe risk of total depletion in August 2019;
- Poor quality water infrastructure supplying 18 outstations under Iwupataka Aboriginal Land Trust, resulting in recurring leaks and high water bills;
- Delays exceeding nine years for the provision of production bores and associated water infrastructure to treat water at Lake Nash Station;
- The ongoing high rates of uranium in drinking water at Laramba.

Assessments from December 2019 on water source security by the NT utilities provider, Power and Water Corporation (PAWC), classify seven remote communities as 'extreme' risk and 14 remote communities as 'very high' risk. Forty-one communities are additionally classified as 'high' risk, signalling that water insecurity is the norm for most of the remote

NT. The water source capacity in a number of remote communities has been assessed as having ‘no existing capacity for remote development’, which is impacting the delivery of housing and other community infrastructure.

Water insecurity is likely to be exacerbated by the impacts of climate change in the NT. This will significantly impact the water resources of the Northern Territory, including from increased droughts, erratic rainfall (and recharge of aquifers) and extreme temperatures.³ Climate change is also likely to exacerbate existing inequalities in health, infrastructure provision, lack of educational and employment opportunities, and income in Indigenous communities in northern Australia, raising questions about the viability of human habitation in these places without radical changes.⁴

The NT is also under renewed pressure to develop water-intensive industries, including via the Australian Government’s White Paper on Developing Northern Australia.⁵ The Australian Government established a \$1.5 billion National Water Infrastructure Development Fund, with \$200m committed to facilitate investment in northern Australia. However, the Fund cannot support projects that are primarily intended to supply urban and potable water and necessarily prioritises water infrastructure for farmers and investors over drinking water security (including in remote Indigenous communities).

To summarise, drinking water security, and hence the very viability of remote Indigenous communities, is under threat in the NT from government neglect, renewed calls for water-intensive development in northern Australia, and climate change. However, drinking water supply is unprotected, unregulated, and unaccountable in the vast majority of remote Indigenous communities in the NT (explained in more detail further below in this submission). Urgent reform is needed, and this issue must be placed on the national agenda as part of the National Water Reforms.

Recommendation 1: The Productivity Commission must recommend the prioritisation of drinking water security in Indigenous communities as part of National Water Reform, including reflecting that it is:

- ***an issue of utmost importance for Indigenous peoples;***
- ***essential for the viability and self-determination of their communities; and***

³ W. Nikolakis, A. Nygaard, and R. Quentin Grafton, *Adapting to climate change for water resource management: issues for northern Australia*, Research Report No 108, Environmental Economics Research Hub Research Reports, Australian National University (Canberra, 2011).

⁴ D. Green, S. Jackson and J. Morrison, *Risks from climate change to Indigenous communities in the tropical north of Australia*, Department of Climate Change and Energy Efficiency (Canberra, 2009).

⁵ Australian Government, *Our North, Our Future: White Paper on Developing Northern Australia*, (Canberra, 2015): 1-192.

- ***under threat from government neglect, water-intensive development, and climate change.***

Scope

The submission's purpose is to consider the regulatory system for drinking water supply in the NT, in relation to reforms recommended by the National Water Initiative (NWI) and other protections that are required. In the NT, the implementation of water reform under the NWI has focused predominantly on the allocation of water between various competing uses under the *Water Act 1992* (NT). Indigenous water needs and uses have been 'compartmentalised'⁶ within this water allocation framework as either cultural or commercial. This has led to positive policy changes such as the implementation of the Strategic Indigenous Water Reserve policy by the NT Government in areas where water allocation plans apply. However, the issue of drinking water supply and regulation (particularly in Indigenous communities in the NT) has been comparatively neglected. The lack of protections of drinking water in the NT is not widely understood and is thus the chief focus here.

The main section of this submission is titled 'Key Issues with Respect to Implementation of the NWI'. It considers the implementation of the NWI in the NT according to the key issues of 'Indigenous Water Use', 'Water Services', 'Investment in New Infrastructure', with particular attention given to drinking water supply and security. As defined by the NWI's Intergovernmental Agreement of 2004, the focus of this submission concerns the key elements 'Urban Water Reform', 'Best Practice Water Pricing and Institutional Arrangements', and 'Community Partnerships and Adjustment' (Section 24). As categorised by the Productivity Commission Inquiry Report of 2017, this focus corresponds to the sections 'Urban Water', 'Government Investment in Infrastructure for Water', and 'Key Supporting Elements of the NWI'.

This submission does not offer extensive analysis of issues relating to water access entitlements and planning, water access and trading, and environmental water management. These are also key issues for water reform in the NT, which the CLC has addressed in prior recent submissions related to:

- The *Water Further Amendment Bill 2019* (September 2019)
- The NT Water Regulatory Reform Process (June 2018)
- The Draft Final report on the Scientific Inquiry into Hydraulic Fracturing in the NT (February 2018)

⁶ Jackson, S. 'Compartmentalising Culture: The Articulation and Consideration of Indigenous Values in Water Resource Management', *Australian Geographer* 37, no. 1 (2006): 19–31

- Environment protection legislation (jointly with the Northern Land Council [NLC], June 2017)
- The Strategic Aboriginal Reserve Policy (jointly with the NLC, April 2017)
- The NT Government's 'Our Water Future' discussion paper (July 2015)

These submissions can be accessed on the CLC's website.

In relation to these issues, and by way of summary in order to encourage submissions by other stakeholders that examine them in more detail, the Productivity Commission Inquiry Report of 2017 specified key priorities for NT reforms as including:

- Enacting legislation required to create secure, NWI-consistent water access entitlements;
- Progressing the development of water plans;
- Introducing independent economic regulation of the Power and Water Corporation.

In relation to water planning frameworks (including water licensing for consumptive uses), the reported failures against the NWI reforms are:

- The NT has not yet unbundled water licences from land;
- Water licences in the NT are granted for a limited term (usually 10 years), not in perpetuity, and are not NWI compliant in their current form;
- Water allocation plans are only in place for some catchments;
- Trading of water licences is very limited;
- The NT reports on consumptive use but reporting on environmental water use is limited;
- Historic and continued Indigenous exclusion from input into, and allocation from, water planning frameworks.

There are more water allocation plans now than at the time of the Productivity Commission Inquiry Report in 2017, however there has been limited change related to the other issues above.

From this point on this submission prioritises attention to drinking water. It is informed by feedback from constituents and staff involved in water planning and environmental assessment processes in the region, as well as previous CLC submissions. CLC acknowledges the research of Dr Liam Grealy and Kirsty Howey and their assistance with the preparation of this report.

Drinking Water Regulation in the Northern Territory

This section summarises the legal protections for drinking water in the NT, in order to frame the recommendations that follow. This is necessary to highlight the gulf between certain key principles, elements, and expectations of the National Water Initiative (NWI) and existing legal and governance arrangements in this jurisdiction. Compared to other states and territories in Australia, the NT is an outlier when it comes to drinking water security. There is no legislated guarantee to protect drinking water supply against other uses. There are no minimum quality standards for drinking water that exist across the NT. Depending on where you live, there are different legal standards governing your drinking water.

The Water Act 1992 (NT)

There are two key pieces of legislation that govern water in the NT: the *Water Act 1992* (NT) and the *Water Supply and Sewerage Services Act 2000* (NT). The purpose of the *Water Act* is to allocate, manage, and assess water resources in the NT, supported by the Water Regulations, and other policy instruments. The *Water Act* has only a limited application to drinking water. Allocations for drinking water exist in areas that have been designated as ‘Water Control Districts’, where a ‘Water Allocation Plan’ has also been finalised.

As of July 2020, there are eight Water Control Districts (WCDs) in the NT and six Water Allocation Plans (WAPs), with three more in progress. These are represented in ‘Appendix 1: Northern Territory Declared Water Control Districts’ and ‘Appendix 2: NT Water Allocation Planning Areas’ respectively. WAPs are in place for Alice Springs, Berry Springs, Katherine Tindall Limestone, Western Davenport, Ti-Tree, and Ooloo Dolostone Aquifer, with in-progress plans for the Great Artesian Basin, Howard, and Mataranka Daly Waters. These plans predominantly apply to areas surrounding urban centres along the Stuart Highway. WAPs allocate water between various non-consumptive uses (environmental and cultural) and consumptive uses (including rural stock and public water supply, aquaculture, industry, and agriculture). Public water supply is one of many ‘consumptive uses’. There are generalised exemptions to the requirement to obtain water extraction licences across the NT (including in WCDs) for ‘stock and domestic purposes’ (*Water Act*, S14), and road construction and maintenance.

Public water supply services, or drinking water, is only protected or ‘allocated’ in the NT in areas both declared as a WCD and where a WAP applies. There is no general power in the *Water Act* to reserve water for current and future public water needs. This means that an adequate drinking water supply is not currently guaranteed to residents in the vast majority of the NT not covered by WAPs, including in most Indigenous communities. Groundwater in these places is neither reserved for public supply, nor is much of its extraction licensed or regulated against other uses.

The Water Supply and Sewerage Services Act 2000 (NT)

The *Water Supply and Sewerage Services Act 2000* (NT) (WSSS Act) also regulates the provision of public water supply. The *WSSS Act* requires that provision of ‘water supply services’ in what are known as ‘water supply licence areas’ be licensed by the NT Utilities Commission, a government-established regulator which oversees essential services provision to NT consumers of water. Power and Water Corporation (PAWC) is the current and sole licensee under the *WSSS Act*, and it must ‘provide water supply or sewerage services to customers who own land with an authorised connection to [its] water supply or sewerage services infrastructure’ (Section 41[2]).

Other requirements are imposed on PAWC through the legislation and its licence, regarding asset management plans for water supply infrastructure (S48), licence compliance reports (S49), and service plans (S51). Direct accountability to the customer regarding these requirements is established in part via a mandated (S47) and standardised ‘customer contract’ published in the NT government gazette. Among other matters, this customer contract stipulates that PAWC will provide water at a pressure and flow-rate suitable for normal day-to-day usage.

Unlike other Australian jurisdictions in which a corporate entity is licensed to supply drinking water, the NT has not set minimum standards for water supply. Under the *WSSS Act*, the Minister can specify minimum standards that PAWC must meet (S45), and a similar power to prescribe minimum water quality standards exists in the *Water Act* (S73) and in the *Public and Environmental Health Act 2011* (NT) (S133). However, instead of enforceable standards, the Department of Health (2011) and PAWC have entered into a Memorandum of Understanding (MOU), which concedes that ‘no minimum standards for drinking water have been set’, although the *Australian Drinking Water Guidelines* (ADWG) ‘will be used as the peak reference’ (Department of Health 2011, Clause 4). The MOU allows the Department to vary the quality criteria drawn from the ADWG ‘in specific circumstances . . . as long as public health is not compromised’ (C4). The MOU contains criteria for the administration and implementation of the ADWG, the safe treatment of water, water testing regimes, responses to public health incidents and events, and annual public reporting of drinking water quality across the NT. However, in strict legal terms, despite the appearance of regulation of drinking water quality and a measure of public transparency, the MOU is unenforceable.

Discriminatory Water Governance?

The protections that the *WSSA Act* does provide do not extend across the NT, applying only in ‘water supply license areas’. This includes the NT’s 18 gazetted towns (see Appendix 3: NT

Water Allocation Planning Areas). The 72 larger Indigenous communities and over 600 Indigenous homelands and outstations located on Aboriginal land owned under the *ALRA* and other forms of Indigenous-owned land, are not water supply licence areas and therefore the *WSSS Act* does not apply. These mostly regional and remote communities and 79 of the outstations – in which about half the NT’s Aboriginal population live – are instead serviced by Indigenous Essential Services Pty Ltd (IES).

IES is a not-for-profit subsidiary of PAWC established in 2003 and via the corporatisation of PAWC. While PAWC is overseen by the Utilities Commission, IES is a private proprietary limited company and its operational structure and legal obligations are opaque, with no legislation mandating licensing or particular levels of service or standards. Further, the standards, duties, accountability, and transparency mechanisms that do exist within the *WSSS Act*, licence, and customer contract do not apply to IES. The MOU between the Department of Health and PAWC referred to above does, however, apply in the communities that IES services, providing a framework (albeit unenforceable) for working cooperatively, including regular testing of drinking water in remote areas and the public reporting of results. Neither IES nor its parent company, PAWC, operate at all in the vast majority of outstations on Aboriginal land.

Across the NT, the legal regulation of both drinking water supply and quality is thus fragmented and unequal. There are at least six different ‘islands’ of drinking water governance. These are represented in the map produced by the Housing for Health Incubator, and included here as Appendix 4. These islands are:

1. Towns within WAP areas. The *Water Act* reserves public water supply and PAWC is licensed and regulated under the *WSSS Act*.
2. Towns outside WAP areas. Public water supply is not able to be reserved under the *Water Act*. PAWC is licensed and regulated under the *WSSS Act*.
3. Town camps within towns. PAWC is licensed and regulated under the *WSSS Act* but is not legally responsible for reticulated infrastructure beyond town camp bulk water meters.
4. Major Aboriginal communities located within WAP areas. The *Water Act* reserves public water supply. IES is an unregulated private entity owned by PAWC that provides services pursuant to an unenforceable MOU with the NT Department of Health.
5. Major Aboriginal communities on Aboriginal land (excepting category 4). Public water supply is not able to be reserved under the *Water Act*. IES provides services pursuant to an unenforceable MOU with the NT Department of Health.
6. Outstations and homelands on Aboriginal land. Public water supply is not guaranteed under the *Water Act*. Drinking water supply is privately managed and unregulated.

Drinking water regulation across the NT is thus fragmented and uneven. Given the absence of protections for water supply under the incomplete application of WCDs/WAPs and the similarly sparse license areas and related applicability of minimum standards, this situation is also potentially discriminatory under the *Racial Discrimination Act 1975* (Cth). This potential is compounded by the existence of IES as a utility provider in Indigenous communities only, operating to lesser standards than those that apply in urban contexts.

Recommendation 2: The Productivity Commission should recommend that the Northern Territory Government legislate a Safe Drinking Water Act to provide regulatory protection and accountability for the provision of safe and adequate drinking water for all Territorians.

Recommendation 3: The Northern Territory Government should amend the Water Act 1992 (NT) to include a power to specifically reserve water for future drinking water supply above other consumptive uses in the NT.

Recommendation 4: The Northern Territory Government should create enforceable minimum standards for drinking water quality under legislation for all Territorians.

Recommendation 5: The Northern Territory government should develop an overarching Water Security Strategy to protect our most precious resource.

Key Issues with Respect to Implementation of the NWI

This section addresses the extent to which the NT has implemented the NWI, with a particular focus on drinking water security in NT Indigenous communities.

1. Indigenous Water Use

The NWI notes the importance of water planning frameworks that recognise ‘Indigenous needs in relation to water access and management’ (Clause 25[ix]). This objective has principally found expression in the setting aside of water in planning frameworks for Indigenous social, spiritual, and customary objectives and strategies (often referred to as cultural flows or Aboriginal water), or commercial purposes (see for example the NT’s policy of establishing a Strategic Indigenous Water Reserve for commercial use of water). Jackson has called this the ‘compartmentalisation’ of culture in water planning regimes across Australia. Consequently, little specific attention has been given to the issue of drinking water security, or water services infrastructure located in remote communities.

Over 50 per cent of land in the NT is owned as freehold under the ALRA, with the vast majority of the remainder being subject to native title rights and interests under the *Native Title Act*. Despite these extensive interests in land and water, Indigenous peoples in the NT have often been excluded from water planning/allocations implemented as part of the NWI. The CLC notes, in this context, that there has been considerable scholarship about how the NWI and water allocation legislation more broadly embeds ‘water colonialism’ that excludes or marginalises Indigenous perspectives and knowledges about water, and situates decisions about water allocation and planning in the state while simultaneously dispossessing Indigenous peoples of water allocations.⁷ This scholarship questions the foundations of the NWI, including state-controlled water allocation frameworks and the decoupling of water licences from land. While valuable, this scholarship does not tend to consider drinking water supply and its regulation and is not the primary focus of this submission. Nonetheless, the CLC notes here that it holds considerable concerns about the water allocation and pricing frameworks being progressively implemented across Australia

⁷ For example, see L. Hartwig, S. Jackson, and N. Osborne, ‘Trends in Aboriginal water ownership in New South Wales, Australia: The continuities between colonial and neoliberal forms of dispossession’, *Land Use Policy* 99, (2020): n.p. P. Burdon, G. Drew, M. Stubbs, A. Webster, and M. Barber, ‘Decolonising Indigenous water “rights” in Australia: flow, difference and the limits of law’, *Settler Colonial Studies* 5, no. 4 (2015): 334-349; A. Poelina, K. Taylor and I. Perdrisat, ‘Martuwarra Fitzroy River Council: an Indigenous cultural approach to collaborative water governance’, *Australasian Journal of Environmental Management* 26, no. 3 (2019): 236-254; and K. Taylor, B. Moggridge, and A. Poelina, ‘Australian Indigenous water policy and the impacts of the ever-changing political cycle’, *Australasian Journal of Water Resources* 20, no. 2 (2016): 132-147.

as part of the NWI, including about how these may adversely affect Indigenous rights and interests in water in the NT.

Due to the way Indigenous rights in water have been categorised, the attention of Indigenous organisations, governments, policy-makers, and academic researchers has been primarily focused on the distributive justice of water planning regimes to ensure that Indigenous interests receive ‘fair allocation’. Important work in this regard has been undertaken by a number of Indigenous organisations in the NT, including the North Australian Indigenous Land and Sea Management Alliance (NAILSMA) and its former Indigenous Community Water Facilitator Network (ICWFN) and Indigenous Water Policy Group (IWPG).⁸ This focus is also evident in, for example, the 2017 COAG NWI Policy Guidelines for Water Planning and Management on Engaging Indigenous Peoples in Water Planning and Management.⁹ However, as described above, since Water Allocation Plans have only been declared in small discrete areas of the NT, these strategies have no application or traction across the vast majority of the jurisdiction. Moreover, the setting aside of water for Indigenous cultural and commercial purposes under the *Water Act* does not address drinking water security (generally supplied by water utilities) specifically, since this is governed by different legal regimes – as explained above, this involves the *Water Supply and Sewerage Services Act* in 18 NT towns, and a Memorandum of Understanding with no legal standing in IES communities. Thus, we highlight that simply declaring water allocation plans across the NT, while guaranteeing public supply as against other consumptive uses, would not resolve the issue of drinking water security in remote contexts.

While not acknowledging drinking water as an explicitly ‘Indigenous’ water need, interest or value (an omission considered below), the NWI does propose a number of reforms in the areas of urban, rural, and regional water supply, which apply in NT Indigenous communities (and indeed in all towns and communities across Australia).

In an early analysis of Indigenous responses to the NWI, Willis *et al.* interpreted the initiative against the contemporaneous policy shift to the ‘mainstreaming’ of services to Indigenous people across Australia.¹⁰ Willis *et al.* suggest that this approach to Indigenous social policy

⁸ See S. Jackson and J. Altman, ‘Indigenous Rights and Water Policy: Perspectives from Tropical Northern Australia’, *Australian Indigenous Law Review* 13, no. 1 (2009): 27-48.

⁹ Australian Government, Module to the NWI Policy Guidelines for Water Planning and Management: Engaging Indigenous Peoples in Water Planning and Management, (Canberra, 2017): 1-36.

¹⁰ This was seen most evidently in the 2005 National Framework of Principles for Government Service Delivery to Indigenous Australians. This includes the following principles: sharing responsibility, harnessing the mainstream, streamlining service delivery, establishing transparency

underpinned the NWI, which provided ‘a clear policy injunction for Aboriginal communities to be serviced by mainstream providers, rather than Indigenous-specific providers’.¹¹ The CLC suggests this broader national policy shift in Indigenous affairs may explain why the NWI did not treat drinking water (as part of essential service provision) as a specifically ‘Indigenous’ issue – or an issue that might be subject to Indigenous consultation and/or governance – while compartmentalising other concerns as specifically racialised cultural categories. This point provides essential context to the NWI and its implementation. This framing might have contributed to the exclusion of Indigenous organisations and communities from planning and decision-making about the implementation of public water supply reforms as they were considered to fall firmly within the state’s domain. Given such exclusions, failures by the state to implement the NWI to achieve ‘mainstream’ standards across the NT are even more egregious.

Drinking water security should be prioritised as a fundamental concern for Indigenous peoples and communities as part of the National Water Reforms. The CLC refers to recommendation 1 in this regard.

To redress the marginalisation of Indigenous peoples from decisions about their drinking water security, Indigenous peoples should be actively involved in decision-making and governance of drinking water supply in their communities.

Recommendation 6: The Productivity Commission should recommend the urgent development (in collaboration with Indigenous organisations and remote Indigenous residents) of national policy guidelines for ensuring drinking water security in Indigenous communities, and the involvement of Indigenous organisations and remote Indigenous residents in planning decision-making about drinking water supply and infrastructure in each jurisdiction.

Noting the above limitations regarding how drinking water security is framed in the NWI, the extent to which the NT has complied with the urban, rural, and regional water supply objectives in the NWI is addressed in detail below.

2. Water Services

There are three key sections of the NWI that are relevant to the supply of water in NT Indigenous communities:

and accountability, developing a learning framework and focusing on priority areas. The appendix does not pay specific attention to drinking water needs or priorities.

¹¹ E. Willis, M. Pearce, C. McCarthy, F. Ryan, B. Wadham, ‘Indigenous responses to water policymaking in Australia’, *Development* 51, (2008): 418-424, 419.

1. Urban Water Reform: the main objective is to '(i) provide healthy, safe and reliable water supplies' (Clause 90). The outcomes and actions that follow prioritise market-based mechanisms for improving water supply in major cities and towns (e.g. wastewater recycling, water trading between the urban and rural sectors, improved pricing), and do not appear to be directly relevant in remote NT contexts. Nonetheless, the CLC's view is that providing healthy, safe, and reliable water supplies should be an objective in all water services contexts, not just larger urban centres.
2. Rural and Regional Communities: while full cost recovery is the explicit objective for water supply/services in rural and regional communities, if this is not possible all subsidies must be transparent, including with respect to the payment of Community Service Obligations (CSOs) where services must be provided to fulfil government service obligations (Clause 66[v]). In most Indigenous communities in the NT, this sub-clause would apply. This requires a transparent and publicly reported CSO or CSOs to subsidise water supply in those areas.
3. Institutional arrangements: the roles of water resource management, standard setting and regulatory enforcement, and service provision should be separated institutionally (Clause 74).

The CLC submits that the NT has failed to implement or achieve these objectives in the context of water provision in remote Indigenous communities.

The 2017 Productivity Commission Inquiry Report highlighted some failures of the NT to meet NWI reforms in the area of urban, rural and regional water services. In the CLC's view, the Inquiry Report significantly understates or mischaracterises the structural and longstanding problems with respect to the supply of water services in NT Indigenous communities. Nonetheless, the CLC understands that the NT Government has failed to progress the resolution of even these limited concerns and issues. The Productivity Commission's key 2017 concerns in relation to the NT include:

- The Productivity Commission recommended the extension of independent price regulation to retailer-distributors, including PAWC (recommendation 6.4). As of August 2020, the NT still does not have an independent economic regulator which sets prices or revenues for major urban water services.
- In relation to the NWI Commitment of achieving safe and healthy water supplies, the Inquiry Report noted that 'compliance issues remain regarding water quality outcomes in the NT. 'In 2015-16, six of 72 remote communities did not comply with the ADWG's microbiological guidelines and seven did not comply with various chemical parameters, including nitrates, uranium, barium and fluoride.'¹² Later, the report states that 'some issues remain in . . . the Northern Territory, particularly in

¹² Productivity Commission (2017), 463.

remote areas, but [the jurisdiction] is taking steps to address remaining concerns.’¹³ It is not clear to the CLC what steps the Productivity Commission was referring to, and thus whether progress between 2017 and 2020 can be measured.

- The Inquiry Report notes the importance of integrated, coordinated planning for water across government departments and utilities, suggesting that in ‘the Northern Territory planning occurs on an informal and occasional basis and, while utilities have published comprehensive planning documents in the past, there is no formal requirement for them to do so. This creates risk as roles and responsibilities will not be sufficiently clear to support good planning practices, or that planning is occurring but is not transparent.’ Although the NT Government sought submissions to a Water Regulatory Reform process in early 2019, this has not resulted in reforms that have addressed this issue;
- The Inquiry Report identifies as a ‘Recent policy effort’ that ‘Indigenous Essential Services receives a significant annual CSO, in the order of \$80 million.’¹⁴ As the NT government provides CSO payments for water and electricity services, it is not clear what component of that funding relates to water services. The Inquiry Report notes that ‘Transparently publishing the CSO for water would be consistent with the NWI.’¹⁵ The CLC queries the characterisation of this payment as a CSO for the reasons given below, and notes that in any case, no progress has been made on improving the transparency of these payments.

This submission now moves to consider the extent of implementation of the NWI’s objectives with respect to urban, regional, and rural water supplies/services in the NT.

Healthy, safe and reliable drinking water supplies – the need for legislative reform

While the NWI aims to ensure the provision of ‘healthy, safe and reliable water supplies’, this has not occurred uniformly across the NT. In fact, the NT’s regulatory framework detracts from the likelihood of achieving this outcome.

As highlighted in the analysis above, there are no enforceable minimum drinking water quality standards across the NT, and the provision of water services in remote NT communities is unregulated. There are thus *no* NT government agencies that are directly accountable (via legislation) to the residents of Indigenous communities for the supply of water to them.

¹³ Productivity Commission (2017), 10; 467.

¹⁴ Productivity Commission (2017), 463.

¹⁵ Productivity Commission (2017), 400.

These longstanding structural issues require urgent reform before there is any prospect of the NT realising the NWI's aim of providing healthy, safe, and reliable drinking water.

The CLC notes that Infrastructure Australia has been critical of the NT's performance against minimum health standards. Infrastructure Australia identifies that in both WA and the NT, 'there is no clear health agency responsible for monitoring and enforcing performance against drinking water standards.'¹⁶ This contradicts Recommendation 4.7 of the *Australian Infrastructure Plan*, which called for drinking water in all regional communities to meet the minimum standards of the ADWG, and health protections are further undermined through ambiguous lines of accountability. Infrastructure Australia is critical of this too, noting that

'in the Northern Territory, several government agencies share responsibility for the regulating [sic] the public health outcomes of urban water, including the Department of Health. However, it is the supplier, Power and Water Corporation, which holds primary responsibility for delivering services in line with health standards, and formal regulation of public health is ultimately undertaken through the Minister for Environment and Natural Resources. This means that the line of responsibility for maintaining public health through urban water lacks clarity and accountability.'¹⁷

Infrastructure Australia has also recommended that the MOU that exists between the Department of Health and PAWC should be defined in legislation, along with a commitment to meet standards within the ADWG.

Community Service Obligations (CSOs) – the need for transparency

The Inquiry Report states that 'greater clarity on the use of CSO payments in the Northern Territory would improve consistency with the NWI'.¹⁸ This is a significant understatement of the failure of the NT Government not only to comply with NWI expectations about CSO payments and reporting, but to use CSOs to fund a remote services regime subject to little legislative and regulatory oversight.

Further examination of the operation of CSOs in relation to water provision in the NT is required. It is not clear to the authors that the annual payments to IES (via a service level agreement) do in fact constitute a CSO as outlined by the Productivity Commission. PAWC itself reports these payments to IES as grants, rather than CSOs. It is possible these payments may comprise opaque grants or subsidies designed to disguise the true cost of delivering drinking water (similar to the Productivity Commission's criticism of NSW and Queensland's practices in similar situations). To be consistent with the NWI, these grants

¹⁶ Infrastructure Australia, *Reforming Urban Water: A National Pathway for Change*, (December 2017), 53.

¹⁷ Infrastructure Australia, 55

¹⁸ Productivity Commission (2017), 181.

should be replaced by CSOs, as was recommended by the Productivity Commission with respect to NSW and Queensland.

Even if these payments do constitute CSOs, an important component of the NWI's urban water reforms – which require CSOs to be identified, costed, and published to support accountability and transparency in government – appears to be absent in the NT. Indeed, one could argue that by funnelling grants to a private company with no regulatory oversight, the precise opposite of accountability and transparency has been facilitated. IES provides water, sewerage, and power services to 72 remote Indigenous communities and 79 outstations under an unpublished Service Level Agreement (SLA) with the Department of Local Government and Housing and Community Development (DLGHCD). The CLC has requested a copy of this SLA from the Department, but it has not yet been provided. In contrast to PAWC, IES operates according to the SLA guidelines while using the Indigenous Community Engineering Guidelines (ICEG) for infrastructure design.¹⁹

As explained previously, IES is a not-for-profit subsidiary of PAWC established in 2003. While PAWC is overseen by the Utilities Commission, IES is a private proprietary limited company and its operational structure and legal obligations are opaque, with no legislation mandating licensing or particular levels of service or standards. Further, the standards, duties, accountability, and transparency mechanisms that do exist within the *WSSS Act*, licence, and customer contract do not apply to IES. The MOU between the Department of Health and PAWC referred to above does, however, apply in the communities that IES services, providing a framework (albeit unenforceable) for working cooperatively, including regular testing of drinking water supplies in remote areas and public reporting of results. Neither IES nor PAWC operate at all in the vast majority of outstations on Aboriginal land.

There are a number of issues relating to the operation, accountability, and transparency of IES. Based on publicly available information, it is not possible to determine an adequate understanding of:

- The methodology for calculating the value of the CSO/grant to IES, and thus whether such calculations are appropriate or adequate;
- What proportion of the CSO/grant to IES is for water infrastructure and services, versus power infrastructure and services;
- The community and outstation breakdown of IES expenditure on water infrastructure and services, or the rationale for this breakdown;
- Whether funds are set aside for future asset refurbishment and/or upgrading of government supplied water infrastructure and, if so, how decisions are made to prioritise infrastructure provision in certain contexts above others;

¹⁹ Department of Housing and Community Development, *Indigenous Community Engineering Guidelines for Remote Communities in the NT*. Northern Territory Government (2017).

- The KPIs which IES must comply with in order to measure the effectiveness of its program and how it is meeting stated policy objectives;
- What monitoring, review, and evaluation is undertaken of IES by DLGHCD to ensure compliance with KPIs, service level standards, and grant terms and conditions;
- What drinking water monitoring program is undertaken by IES, including its regularity and whether it operates in relation to any particular standards;
- The policies applicable from time to time to IES (for example, PAWC's 2019-20 Statement of Corporate Intent refers to a Safe Water Strategy, which does not appear to be publicly available);
- What work is undertaken by IES rather than contracted out to PAWC or other external contractors (for example, we note that PAWC's 2019-20 Statement of Corporate Intent refers to supplying water supply services 'on behalf of' IES);
- How IES actually operates, including whether it employs staff directly, or whether it operates as a shell private entity to receive funding without oversight.

Reform of IES is needed in relation to the following matters:

- Limited reporting – while IES publishes an annual report, this is limited in terms of the detail it provides about the issues above;
- Absent oversight, including which regulator, if any, IES is answerable to if it fails to provide safe or adequate drinking water in remote contexts;
- Opaque funding arrangements, including contracts or agreements established between IES and the DLGHCD, and IES and PAWC, for payments, service provision, and sub-contracting;
- Unclear service arrangements, including what, if any, drinking water services IES is required to deliver to remote communities, and to what standards;
- No accountability to community members regarding drinking water service provision;
- Apparent avoidance of the usual mechanisms for government oversight of its operations, including the application of freedom of information legislation, scrutiny at NT Parliamentary estimates, or complaints to the NT Ombudsman.

Institutional reform

The NWI requires differentiation between water resource management, standard setting, and regulatory enforcement functions. This requirement presupposes the existence of regulatory frameworks for water provision. However, in the NT, there is no regulator of water supply outside the 18 towns (where the Utilities Commission provides limited oversight). There is no regulator of drinking water safety across the NT (the Department of Health instead oversees drinking water safety pursuant to an unenforceable Memorandum of Understanding with Power and Water Corporation). This does not meet the requirements of the NWI.

The policy of mainstreaming service provision involved the assumption of essential service provision by the state. However, the present arrangements do not meet the reforms required by the NWI or by good governance more generally. As highlighted above, numerous issues related to IES require further investigation and potential reform, related to: limited reporting; absent oversight; opaque funding arrangements; unclear service arrangements; opacity in infrastructure funding allocation; public accountability; and public transparency. Urgent reform of these arrangements is needed.

To conclude this section, the CLC notes that the Issues Paper includes the following information requests:

- *Are the institutional arrangements for metropolitan water service providers fit-for-purpose (Information Request 8)?*
- *Do water service providers supply high-quality water services in regional and remote areas? Are there examples of poor water quality, service interruptions, or other issues? Have regional water service providers adequately planned for extreme events?*

As is evident from the preceding analysis, the answer to both these questions in the context of water provision in NT Indigenous communities is no.

Recommendation 7: The Productivity Commission should develop specific criteria for inclusion in the NWI that states and territories must meet on behalf of the provision of healthy, safe, and reliable water supplies.

Recommendation 8: The Productivity Commission should examine the institutional relationships between Power and Water Corporation (and its subsidiary Indigenous Essential Services), the Department of Health, and the Utilities Commission, on behalf of clarifying what reforms are required in the NT to meet NWI expectations related to institutional reform.

Recommendation 9: The Productivity Commission should seek clarification from the NT Government regarding the specific progress it has made under the NT Water Regulatory Reform Process, and outline this progress in its forthcoming Inquiry Report.

Recommendation 10: The Productivity Commission should seek an explanation from the NT Government regarding the absence of legal protections for minimum quality water standards or services in remote contexts.

Recommendation 11: The Productivity Commission should recommend that the Department of Health assume a regulatory role in relation to Power and Water

Corporation and Indigenous Essential Services pursuant to legislation that replaces the existing MOU.

Recommendation 12: The Productivity Commission should clarify the information that is required in the transparent publication of a CSO.

Recommendation 13: The Productivity Commission should seek clarification from the Northern Territory Government regarding why Indigenous Essential Services is the utilities provider in 72 remote communities and 79 outstations, rather than Power and Water Corporation.

Recommendation 14: The Productivity Commission should investigate the reforms required for Indigenous Essential Services to satisfy the expectations of the NWI.

Recommendation 15: The Productivity Commission seek clarification from the Northern Territory Government as to why Power and Water Corporation is exempt from Freedom of Information requests, which is inconsistent with government-owned corporatised utility providers in other Australian jurisdictions.

3. Investment in New Infrastructure

Under the NWI, any new investment in water infrastructure must be transparent, ecologically sustainable, and subjected to a cost-benefit analysis.

The Productivity Commission notes in relation to the NWI that governments seeking to provide funding for water infrastructure should ensure a number of safeguards are met. These include that ‘NWI-consistent entitlement and planning frameworks are in place before any new infrastructure is considered’ and that ‘an independent analysis is completed and made available for public comment before any government announcement on new infrastructure is made’, among others. The NWI prioritises the importance of establishing the economic viability of any new water infrastructure – this would appear to include not only drinking water infrastructure but also infrastructure for agricultural and other commercial purposes. The NWI provides a set of requirements for infrastructure investment, ‘including that water recovery measures are subject to an assessment of costs and benefits fully cost recovered from beneficiaries’.

However, the NWI also recognised the need to subsidise water infrastructure in some contexts. This builds on recognition in the 1994 Framework of the cost of rural water supply, and that Framework’s stipulation that funds should be set aside for future asset refurbishment and/or upgrading of government-supplied water infrastructure. Under the

NWI, 'The Parties agree to ensure that proposals for investment in new or refurbished water infrastructure continue to be assessed as economically viable and ecologically sustainable prior to the investment occurring (noting paragraph 66[v])'. This latter acknowledgement of clause 66(v) suggests that where infrastructural investment is concerned, there is not an expectation of full cost recovery or economic viability in certain contexts. This condition appears to apply to drinking water infrastructure investment in remote Indigenous communities, as well as for agricultural and other commercial water infrastructure. In the NT, justifications for what water infrastructure will be funded in which locations are often opaque. This lack of transparency exacerbates vulnerability that infrastructure spending might be influenced by political prerogatives, rather than obligations to meet adequate service requirements across the NT.

The CLC notes that water infrastructure projects in remote communities (and elsewhere) appear to have been funded in the NT without attendant or ongoing governance or regulatory arrangements that would create accountable, enforceable obligations for these assets or the supply of water using them. Further, it is not clear whether or not these investments underwent a cost/benefit analysis or assessments of ecological sustainability such as that required by the NWI. Central Australian Indigenous communities do not appear to have benefitted from these additional funding injections.

For example, following incidents of domestic water contamination at Borroloola, a pipeline has been constructed to extend the service area of town water infrastructure. In April 2018, precautionary advice was issued by the Department of Health advising residents of Garawa 1 and Garawa 2 town camps not to consume drinking water due to lead and manganese exceeding the safe levels specified by the ADWG. In 2009, \$15 million was allocated under the National Partnership Agreement on Remote Indigenous Housing (NPARIH) to construct new houses in Borroloola's town camps (Mara, Yanyula, Garawa 1, and Garawa 2), however by the time this water contamination occurred no houses had been built. Following this incident of domestic water contamination, a pipeline has been constructed to connect the Borroloola town water supply, supported by a water treatment facility opened in October 2018, to Garawa 1 and Garawa 2 camps (Mara and Yanyula camps are already included in this network). The extension of this pipeline across the McArthur River cost \$3 million, which the authors understand was reallocated from the funding allocated under NPARIH to construct houses at Borroloola. It is not clear that this infrastructure project met any of the analysis requirements recommended by the NWI, and if it did this process was not public. Nor is it clear whether any arrangements are in place for the planned maintenance of this pipeline or related network refurbishments, especially where components of this network are located within the boundaries of town camps and thus (due to the specificity of land tenure arrangements at Borroloola) only informally subject to the attention of PAWC.

Similarly, there is a lack of clarity over how and to what extent drinking water infrastructure is funded on homelands and outstations. Communities in central Australia have often had to source their own funding for essential water infrastructure, including from the Aboriginals Benefits Account (ABA) and traditional owners' lease payments. This has occurred in communities where Indigenous Essential Services is supposed to be the service provider. At Iwupataka, poor quality water infrastructure supplying 18 outstations under Iwupataka Aboriginal Land Trust has resulted in recurring leaks and high water bills, yet the Iwupataka Water Aboriginal Corporation has not received sufficient funding to complete the scoped works to upgrade infrastructure for more than four of those outstations. At Alpurrurulam on Lake Nash Station, the delays for the provision of production bores and an associated power line and water softening infrastructure has now exceeded nine years. On these occasions, the CLC and local Indigenous organisations have been unable to clarify the rationale for the funding of water infrastructure by the NT Government, despite numerous attempts to obtain clarity from either Power and Water Corporation and the Department of Local Government, Housing and Community Development. Communities are effectively being forced to cover the inadequate provision of water infrastructure where IES and/or the NT Government should have priority, without a clear understanding of how infrastructure is prioritised or funded.

The opacity of infrastructure funding arrangements can be exacerbated by occasional Commonwealth funding injections into remote communities. For example, the COAG *Strategy on Water and Wastewater Services in Remote (including Indigenous) Communities* was a separate 2011 strategy apparently entered into under the Water for the Future Initiative. The NT's Implementation Plan outlines a strategy for water security and climate change adaptation in remote communities, including safe water supplies, and aims to 'provide a level of service that meets regulatory standards that would apply to any other community of similar size and location.'²⁰ This strategy provided for the funding of approximately \$20m in water infrastructure to the communities of Galiwinku, Angurugu, Umbakumba, Nguiu, and Wadeye in the Top End of the NT. Noting that these communities have their services provided by IES, this funding appears to have been provided without the introduction of transparent regulatory arrangements governing these assets.²¹ Central Australian Indigenous communities appear to have been excluded from this funding.

Across remote Indigenous communities in the NT, there is a serious absence of public clarity over which water infrastructure projects are funded over others, and for what reasons. The situation described above, in which the Department of Local Government, Housing, and Community Development provides recurrent grant funding to Indigenous Essential Services,

²⁰ *Implementation Plan for COAG Strategy on Water and Wastewater in Remote Communities – Northern Territory* (2011): 1-5, C2.

²¹ See [National Water Security Plan for Cities and Towns](#).

which itself appears to contract Power and Water Corporation to deliver its services in 72 remote communities and 79 outstations, further complicates the question of which authorities have the capacity to approve new water infrastructure and on what grounds. In the CLC's experience, while there is severe need of infrastructural replacement and refurbishment in numerous communities, there is often no apparent rhyme or reason as to what projects garner funding support. It is not an acceptable situation that the CLC does not have a clear line along which it can recommend specific projects as urgent priorities, where past experience has sometimes involved requests to PAWC, which represents itself as having to lobby for Ministerial approval. Indigenous organisations and remote community residents have been excluded from these planning and decision-making processes. In order that this might change, how infrastructural priorities are determined and how funding is allocated must be clear.

Recommendation 16: The Productivity Commission should clarify the key funding streams for drinking water infrastructure, and the mechanisms by which new projects are approved.

Recommendation 17: The Northern Territory Government should demonstrate the processes it uses to ensure it meets NWI expectations that any new investment in water infrastructure must be transparent, ecologically sustainable, and subjected to a cost-benefit analysis.

Recommendation 18: The Northern Territory Government should clarify the criteria it employs to prioritise infrastructural projects in remote communities, including the specific roles played by the Department of Local Government, Housing and Community Development, Power and Water Corporation and Indigenous Essential Services.

Recommendation 19: The Northern Territory Government, Power and Water Corporation and the Department of Local Government, Housing and Community Development should meaningfully involve land councils and relevant Indigenous organisations in planning and decision-making for infrastructural provision in remote Indigenous communities and on homelands.

Guiding Principles for Drinking Water Reform in the NT

The NT has failed to deliver safe and adequate drinking water to its population, particularly residents located in remote Indigenous communities. The Productivity Commission should encourage urgent reform in this area.

Any drinking water reform in the NT must embed as foundational principles:

1. Safety and health

- a right to safe drinking water for all NT residents must be legislated in a Safe Drinking Water Act;
- a Safe Drinking Water Strategy must be developed in collaboration with land councils;
- safe drinking water must be prioritised above all other consumptive uses in the *Water Act*, both in legislation and plans, strategies, and policies;
- enforceable minimum standards must be legislated in accordance with the *Australian Drinking Water Guidelines* (ADWG);
- drinking water providers in towns and major Indigenous communities and outstations (currently serviced by IES) should be licensed and regulated by the Department of Health under the Safe Drinking Water Act.

2. Transparency

- where cost recovery is not possible, water service and infrastructure funding must be made as a transparently reported community service obligation (CSO);
- CSO guidelines for water services and infrastructure in the NT must be developed in collaboration with land councils;
- decisions and the rationale about funding allocations for water services and infrastructure must be publicly reported and justified;
- policies and planning documentation with respect to the public supply of water must be made publicly available.

3. Accountability

- public water supply must be regulated by appropriate legislation;
- water suppliers must be auditable;
- water suppliers must be legislatively required to comply with the ADWG;
- water suppliers must be licensed and accountable to a regulator;
- water suppliers must be accountable to communities, residents, and landowners.

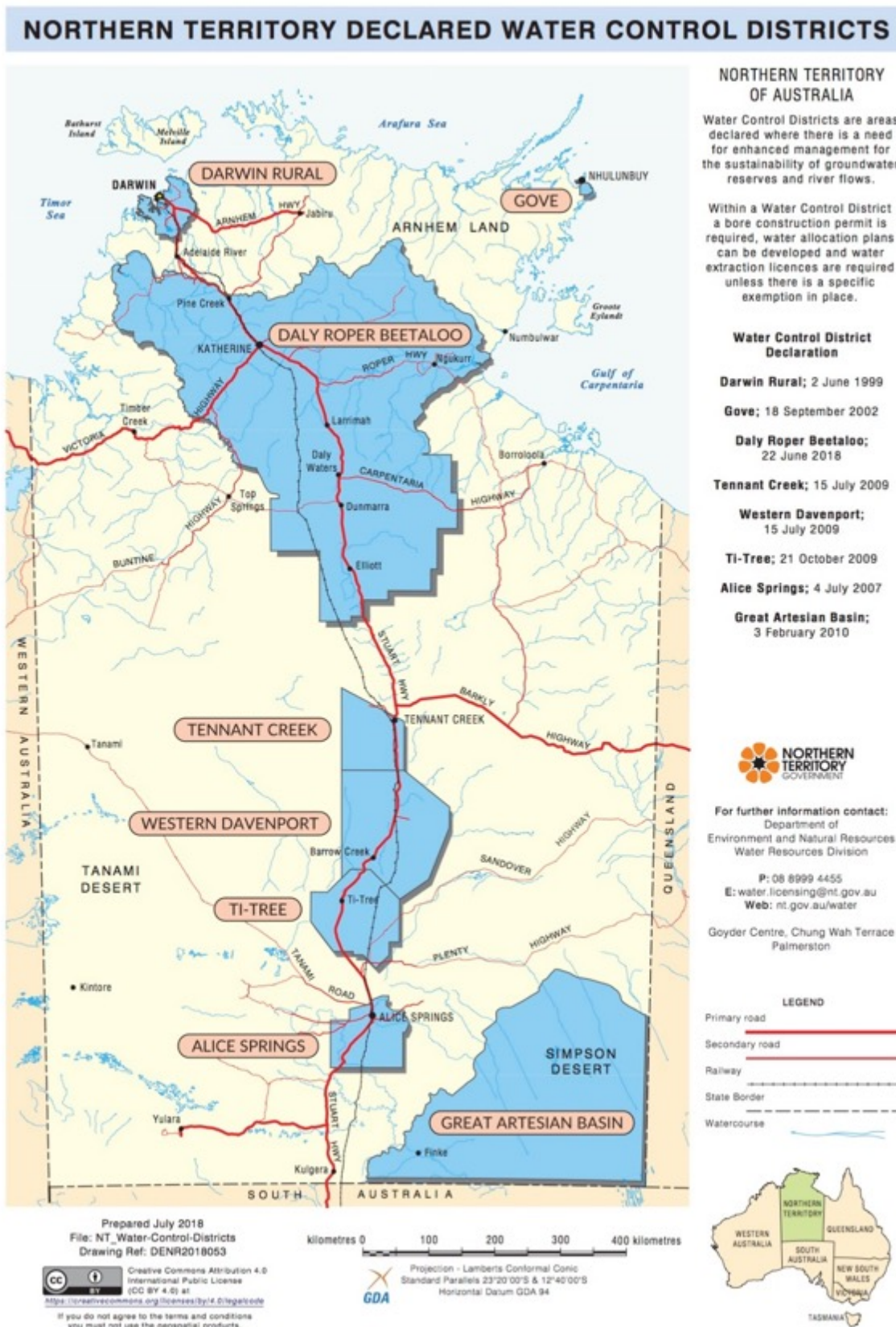
4. Adequate resourcing

- adequate resourcing must be provided for infrastructure, operations, and maintenance, in order that water suppliers are able to meet requirements to provide safe and adequate drinking water;
- GST revenue received by the NT that is allocated on the basis of need should be expended on essential services provision where it is most required, in particular in remote Indigenous communities;
- the long-term under-funding of infrastructure in remote Indigenous communities should be recognised in decision-making about current and future infrastructure funding and need.

5. Indigenous decision-making

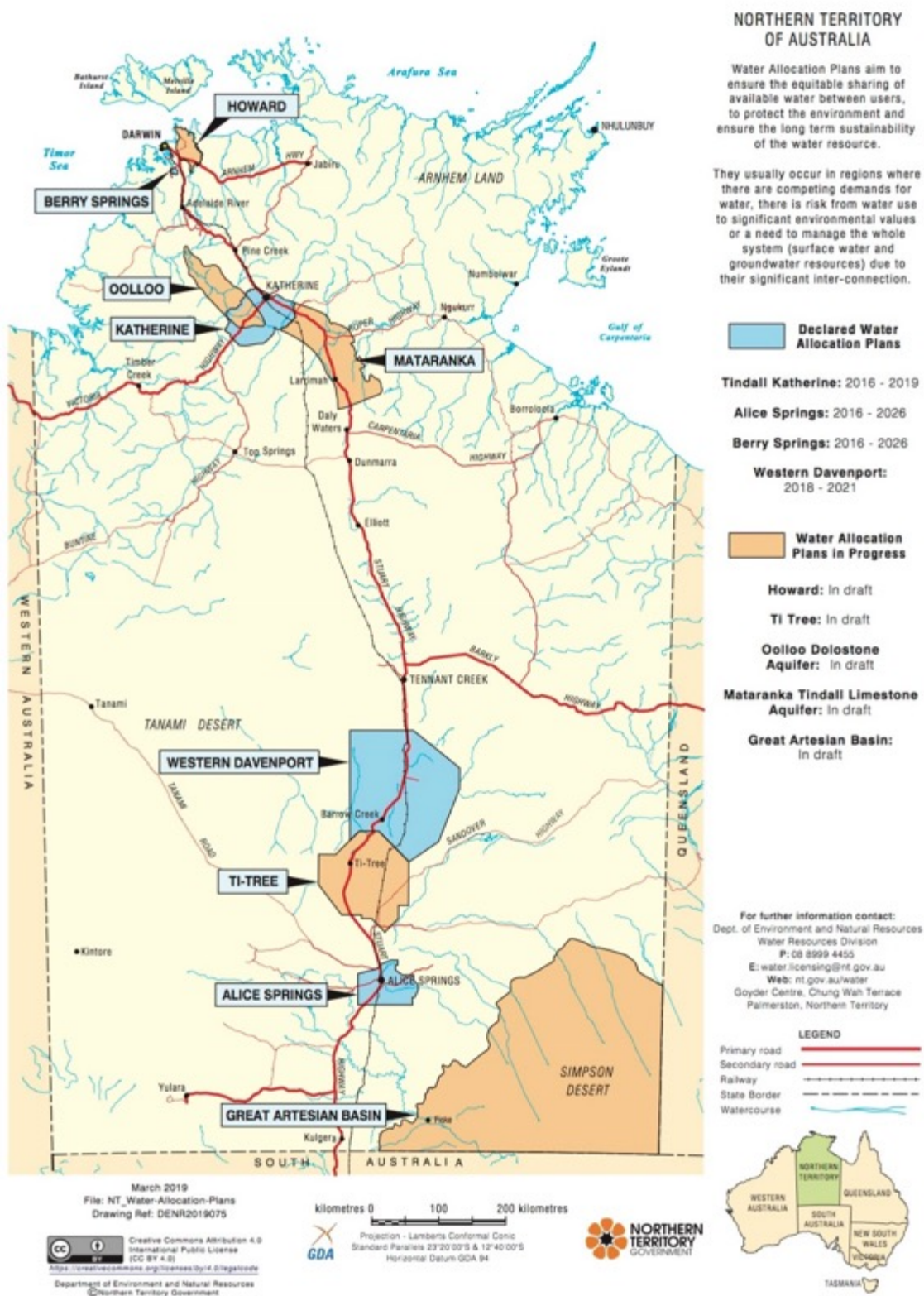
- Drinking water security should be recognised as a fundamental concern of Indigenous people across the NT;
- Indigenous decision-making should be embedded in all decisions about water services and infrastructure on Aboriginal land;
- as services are delivered on Aboriginal land, land councils must have a meaningful say over where, when, and how these services are delivered and where infrastructure is built;
- policy should be developed to guide Indigenous involvement in urban/remote water planning;
- investment in local skills and training for water services is required.

Appendix 1: NT Declared Water Control Districts



Appendix 2: NT Water Allocation Planning Areas

NT WATER ALLOCATION PLANNING AREAS

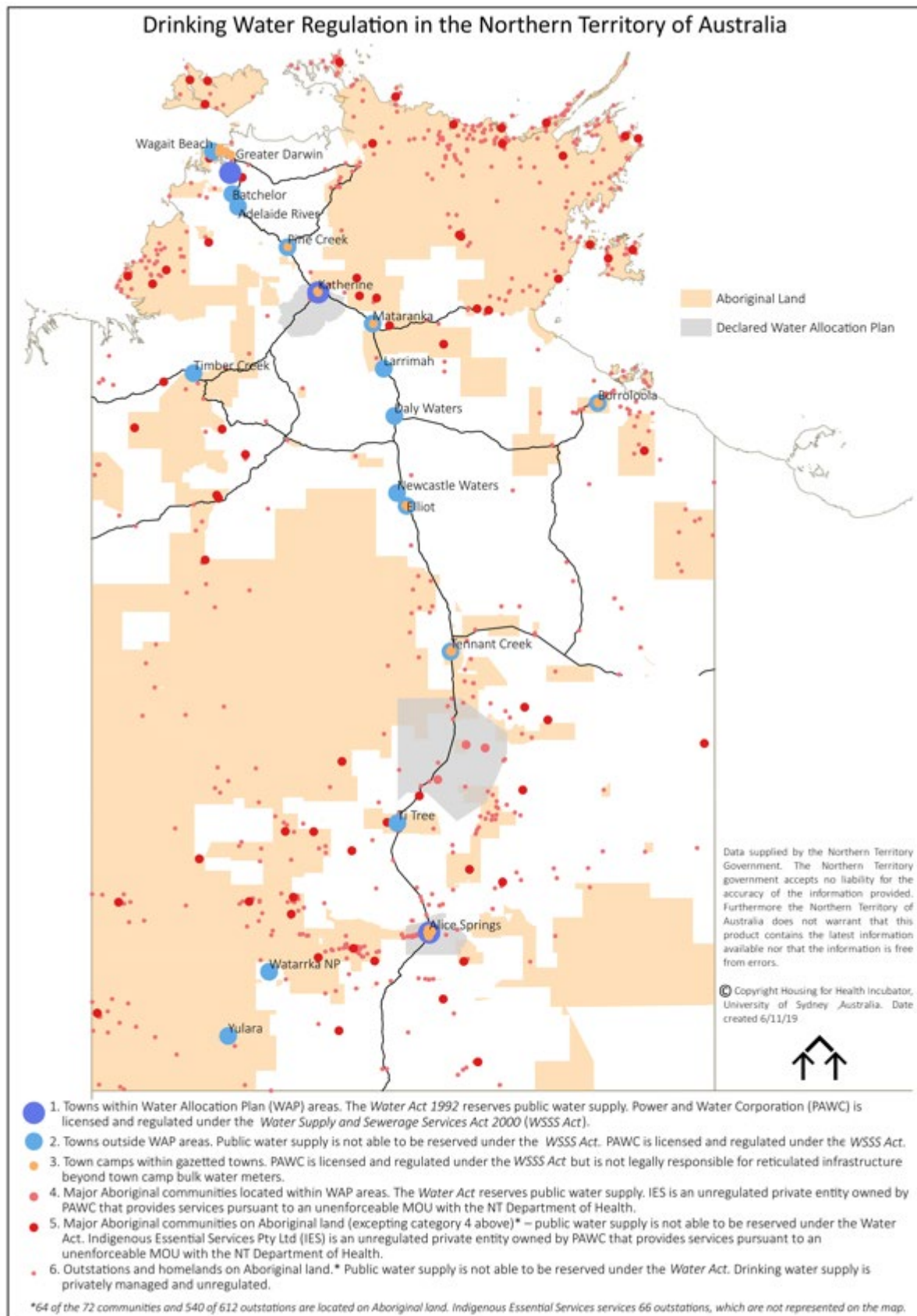


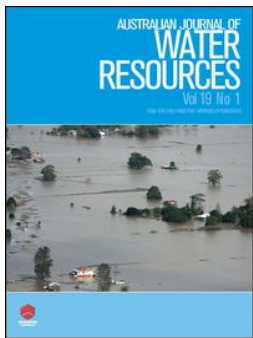
Appendix 3: NT Water Supply and Sewerage Service Areas (PAWC)

NT WATER SUPPLY AND SEWERAGE SERVICE AREAS



Appendix 4: Drinking Water Regulation in the NT of Australia (Housing for Health Incubator)





Drinking water security: the neglected dimension of Australian water reform

Kirsty Howey & Liam Greal

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ARTICLE



Drinking water security: the neglected dimension of Australian water reform

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ABSTRACT

Drinking water security has been a neglected issue in Australian water reform. This article considers Australia's chief water policy of the past two decades, the National Water Initiative, and its aim to provide healthy, safe, and reliable water supplies. Taking the Northern Territory as a case study, we describe how despite significant policy and research attention, the NWI has failed to ensure drinking water security in Indigenous communities in the NT, where water supply remains largely unregulated. The article describes shortcomings of legislated drinking water protections, the recent history of Commonwealth water policy, and areas where national reforms have not been satisfactorily undertaken in the NT. We aim to highlight key regulatory areas that require greater attention in NT water research and, more specifically, in the Productivity Commission's ongoing inquiry process.

ARTICLE HISTORY

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KEYWORDS

Drinking water; National Water Initiative; Indigenous water rights; Northern Territory

1. Introduction

Adequate and safe drinking water is key to human life and health and is vital for the self-determination of Indigenous communities. In the Northern Territory (NT), drinking water security for remote communities is under threat from government neglect (Kurmellovs 2020), renewed calls for water-intensive development in northern Australia (Allam 2020), and climate change (Allam, Evershed, and Bowers 2019). This article examines Australia's most significant national water reform of the past two decades, the National Water Initiative (NWI), in relation to drinking water regulation in the NT. Specifically, it considers how despite significant policy and research attention, the NWI has failed to ensure drinking water security in Indigenous communities in the NT, where drinking water remains largely unprotected and water services unregulated.

Legacy decisions in the domains of Indigenous affairs and water policy have led to this outcome. We suggest that by 'compartmentalising' (Jackson 2006) Indigenous rights and interests in water to matters of economic development and 'cultural flows' within centralised water allocation planning systems, the NWI has directed focus away from drinking water in remote contexts and has facilitated the exclusion of Indigenous stakeholders from planning and decision-making related to drinking water services and infrastructure. The Australian Government's 2005 reforms towards the 'mainstreaming' of Indigenous essential and other services (so that the state formally assumed responsibility for service provision) have also

contributed to this outcome (Willis et al. 2008; Altman and Russell 2012). In the NT, this has allowed the continuation of a racialised governance regime that privileges urban, predominantly non-Indigenous communities, over remote Indigenous communities (Grealy and Howey 2020, 2019a). Acknowledging these limitations of the NWI, we show how the NT has nonetheless failed to implement numerous NWI reforms. Put another way, the terms of the NWI have been inadequate but a reformed attention to regulating drinking water is one important means of ensuring amenity in remote Indigenous contexts.

This article summarises the priorities of past reforms under the NWI and the failure of the NT to develop protections for drinking water according to NWI requirements. We commence section two by sketching contemporary threats to water security in the NT and the differentiated regulatory protections for drinking water that do exist. Section three provides a brief description of our methods, while section four provides an overview of national water reform priorities in Australia since the 1990s. Section five offers substantive analysis of the failure of NWI reforms to be properly implemented in the NT, in relation to Indigenous water use, urban water services, community service obligations, and drinking water infrastructure.¹ In conclusion, we argue that urgent legal and policy reform is needed to redress water security issues in the NT, and that such reform must attend to the details of funding, accountability, and institutional arrangements in ways that prior analyses have failed to do.

2. Background

2.1. Context and threats

The NT comprises approximately one sixth of Australia's landmass, yet is the least populous jurisdiction, with approximately 230,000 residents of whom one quarter are Indigenous. Half of NT land is owned as freehold by Indigenous people under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth). Much of the remainder is subject to native title rights and interests under the *Native Title Act 1993* (Cth). Nearly all Indigenous communities are located upon Aboriginal land owned under the *Land Rights Act*.

NT Indigenous communities are experiencing significant challenges in relation to adequate and safe drinking water, concerning water supply, water quality, and drinking water infrastructure. Issues undermining water security range from intermittent algal blooms (Maddocks 2016), failing chlorination equipment (McLennan 2017), bore depletion (Beavan 2019), contamination by heavy metals (Kurmelovs 2020; Grealy 2020), and delays in infrastructural delivery and refurbishment. The impact of climate change on water security is already underway, but this is likely to accelerate in the NT – where 90 per cent of the consumptive water supply comes from groundwater – through increased droughts, erratic rainfall (and aquifer recharge), and extreme temperatures (Northern Territory Government 2020; Nikolakis, Nygaard, and Grafton 2011). Climate change is also likely to exacerbate existing inequalities in health, infrastructure provision, lack of educational and employment opportunities, and income for remote residents, prompting political questions about the viability of human habitation in remote communities (Lea, Grealy, and Cornell 2018; Green, Jackson, and Morrison 2009). The NT is also under renewed pressure to develop water-intensive industries, including as a consequence of the Australian Government (2015) 'White Paper on Developing Northern Australia' (Allam 2020). Water security is thus precarious in the NT, yet drinking water supply is largely unprotected and water services unregulated and unaccountable in the majority of remote contexts.

2.2. Drinking water regulation in the NT

Despite the legal recognition of native title rights and interests in water by the Commonwealth, and extensive Indigenous landholdings under the *Land Rights Act* where Indigenous communities in the NT are generally located, ownership (and control) of water is vested in the Crown in right of the Northern Territory (O'Donnell 2013; O'Neill et al. 2016). The human right to adequate and safe drinking water is not enshrined in legislation (Good 2011). Instead, water is governed by various NT laws and policies,

including the *Water Act 1992* (NT) and the *Water Supply and Sewerage Services Act 2003* (NT). This legislation fails to protect drinking water supply against other uses and does not establish minimum quality standards for drinking water across the NT. The following description of these laws demonstrates how weak laws and regulations, combined with ongoing consultation efforts and the publication of policy papers, can create the illusion of an effective regulatory regime for drinking water. The detail is necessary to convey the features and limits of the existing regime, which have been largely neglected from the scrutiny of prior national water reform processes. Such detail must be understood in order to advocate for strengthened protections through specific reforms.

The purpose of the *Water Act* is to allocate, manage, and assess water resources in the NT. Under the *Water Act*, allocations for drinking water exist in areas that have been designated as 'Water Control Districts', where a 'Water Allocation Plan' has also been finalised. There are eight Water Control Districts (WCDs) in the NT and six Water Allocation Plans (WAPs). WAPs predominantly apply to areas surrounding urban centres with comparatively dense human populations. They allocate water between various non-consumptive uses (environmental and cultural) and consumptive uses (including rural stock and public water supply, aquaculture, industry, and agriculture). Public water supply is one of many consumptive uses.

Public water supply services, or drinking water, is only protected or 'allocated' in the NT in areas both declared as a WCD and where a WAP applies. There is no general power in the *Water Act* to reserve water for current and future public water needs. This means that an adequate drinking water supply is not currently guaranteed to residents in the vast majority of the NT not covered by WAPs, including in most Indigenous communities. Groundwater in these places is neither reserved for public supply, nor is much of its extraction licenced or regulated against other uses.

The *Water Supply and Sewerage Services Act* (WSSS Act) also regulates the provision of public water supply. It requires that provision of 'water supply services' in 'water supply licence areas' be licenced by the NT Utilities Commission, a regulator which oversees essential services provision to NT consumers of water. Power and Water Corporation (PAWC) is the current and sole licensee under the WSSS Act, and must 'provide water supply or sewerage services to customers who own land with an authorised connection to [its] water supply or sewerage services infrastructure' (S41[2]). Other requirements are imposed on PAWC through the legislation and its licence, regarding asset management plans for water supply infrastructure (S48), licence compliance reports (S49), and service plans (S51). Accountability to the

The NT has not set minimum standards for water quality. Under the *WSSS Act*, the Minister can specify minimum standards that PAWC must meet (S45), and a similar power to prescribe water quality standards exists in the *Water Act* (S73) and in the *Public and Environmental Health Act 2011* (NT) (S133). However, instead of enforceable standards, the Department of Health (2011) and PAWC have entered into a memorandum of understanding (MOU), which concedes that ‘no minimum standards for drinking water have been set’, although the *Australian Drinking Water Guidelines* (ADWG) ‘will be used as the peak reference’ (Department of Health 2011, Clause 4). Despite the appearance of regulation and a measure of public transparency, the MOU is legally unenforceable.

For the 72 larger remote Indigenous communities on Aboriginal land, and 79 of the outstations, water services are managed by Indigenous Essential Services Pty Ltd (IES). IES is a not-for-profit subsidiary of PAWC established in 2003. While PAWC is overseen by the Utilities Commission, IES is a private proprietary limited company and its operational structure and legal obligations are opaque, with no legislation mandating licencing or service standards. The standards, duties, accountability, and transparency mechanisms that do exist within the WSSS *Act*, licence, and customer contract do not apply to IES (discussed further in section five). Given the lack of protections for drinking water supply and water services under existing laws in such remote contexts, one might expect the NT regulatory regime to have been the subject of sustained critique by NWI inquiries and academic research alike. Yet such shortcomings have only ever been identified in broad terms, with limited attention to geographic distinctions, and with commentary based on assurances by the NT government that reforms to meet NWI standards were underway (Productivity Commission 2017). The emphases of reform processes and related academic commentaries have instead been skewed towards water trading, licencing, and pricing (Hart, O'Donnell, and Horne 2020; O'Donnell 2013).

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consideration of drinking water supply, services, standards, governance, and infrastructure. Similarly, we have analysed academic literature across the same period to determine the dominant objects and foci of research on the NWI and water in remote Indigenous contexts more generally. This analysis found that a disproportionate focus on the establishment of water markets and the regulation of water pricing has diverted scholarly attention paid to drinking water (O'Donnell 2013; Taylor, Moggridge, and Poelina 2016). Where drinking water is considered, this tends to be through a public or environmental health framework, with limited consideration given to the wider regulatory and infrastructural networks required to improve householders' health outcomes (Torzillo et al. 2008; Hall, Barbosa, and Currie et al. 2017).

The Issues Paper for the current National Water Reform process frames 'Water Services', and in particular 'Safe and reliable water supply', in a way that notably attributes these issues greater significance than past NWI reviews (Productivity Commission 2020). Our discursive approach to documentary analysis has situated NT regulations in the broader Australian context, to compare jurisdictional approaches to managing drinking water security – a task pursued by the NWI Inquiry itself, under the issue heading of urban water reform. Collectively, these methods underpin our aim to ensure that future reforms are appropriately briefed on the limitations of past assessments and contemporary regulations.

4. National water reform

The complex history of Australian water management between federal and state jurisdictions is outside this article's remit (though see Kildea 2010; McKay 2005). This section considers how the 1994 COAG Water Reform Framework and the 2004 National Water Initiative (NWI) have fundamentally reshaped Australian water management, recognised as comprising 'the most significant water law reform for a century' (Gardner 2009, p. 26). As such, primary focus is given to settler water management frameworks, as distinct from Indigenous knowledge and laws regarding water. The following analysis prioritises consideration of COAG and NWI recommendations for water regulation, and the extent to which such reforms have been undertaken in the NT in particular.

4.1. The 1994 Council of Australian Governments water reform framework

The Council of Australian Governments (COAG) Water Reform Framework Agreement (COAG 1994 Framework) recognised that urgent and united action

was needed to arrest widespread natural resource degradation through unsustainable use across states and territories. Reform was driven by '[t]he combined issues of infrastructure debt, poor pricing for water services, service delivery challenges and environmental degradation' (Australian Water Partnership 2016, p. 7). The 1994 Framework recognised that water users were often paying more than the cost of water provision, that refurbishment of rural water infrastructure was required, and that institutions required refined clarity regarding their responsibilities. It sought to 'implement a strategic framework to achieve an efficient and sustainable water industry' (COAG 1994, p. 1). This tranche of recommendations included:

- the conversion of existing water access rights into tradeable property entitlements separate from land title;
- the introduction of water pricing reform based on principles of consumption-based pricing and full cost recovery;
- the reduction of subsidies to promote efficient use of water resources and assets, and to increase the transparency of remaining subsidies; and
- the allocation of sufficient water for environmental purposes by treating the environment as a user of water with rights.

While led by the Commonwealth, most reforms proposed by the NWI require implementation by states and territories, which have jurisdiction over water resources. Indigenous needs and interests in water were not specifically mentioned in the 1994 Framework.

In relation to drinking water (as 'urban water services' and 'rural water supply'), the 1994 Framework proposed that the introduction of marketised water pricing reform would reduce existing subsidies for urban and rural water services. The impact of removing subsidies on domestic consumers was anticipated to be 'offset by cost reductions achieved by more efficient, customer-driven, service provision' (COAG 1994, p. 2). The 1994 Framework was intended to generate the financial resources to maintain water supply systems. However, it also recognised that it would not always be possible to recoup the costs through customer payments, due to factors including remoteness, small populations, maintenance expenses, and inadequate competition in water supply. The 1994 Framework thus specified that:

where service deliverers are required to provide water services to classes of customer at less than full cost, the cost of this be fully disclosed and ideally be paid to the service deliverer as a community service obligation. (COAG 1994, p. 3)

The use of community service obligation (CSO) payments as a form of government subsidisation is

important to remote water services in the NT today. As a funding mechanism, community service obligations (CSOs) are arrangements whereby governments provide non-commercial funding to a service provider, where the service provider cannot achieve full cost recovery through user charges. The aim of categorising and subsidising service delivery in this way is to highlight the cost of such services, as a justified cost given the nature of the service and the factors involved in its provision. Emphasis is placed on making CSO payments transparent, in contrast to the former ad hoc provision of government grants to service providers, or the cross-subsidisation of higher-cost users by lower-cost users. For our purposes, the key point is that the 1994 Framework introduced a marketised approach to water that aimed to remove existing inefficient government subsidisation of water services. It also required that, where costs cannot be met via pricing mechanisms and subsidisation is necessary, subsidies must be made transparent as a CSO.

4.2. The Intergovernmental agreement on a National water initiative 2004

The National Water Initiative (NWI) extended the 1994 Framework agenda for national water reform. It aimed to achieve a 'nationally-compatible, market, regulatory and planning based system of managing surface and groundwater resources for rural and urban use that optimises economic, social and environmental outcomes' (COAG 2004, Intergovernmental Agreement clause 3). Under the Intergovernmental Agreement, Australian state and territory governments committed to:

- prepare comprehensive water sharing plans;
- achieve sustainable water use in over-allocated or stressed water systems;
- introduce registers of water rights and standards for water accounting;
- expand the trade in water rights;
- improve pricing for water storage and delivery; and
- better manage urban water demands.

The National Water Commission was established as an independent statutory authority by the *National Water Act 2004* to assess implementation of the NWI and related national water reform objectives, advising COAG and reporting to the Department of Sustainability, Water, Population and Communities. The National Water Commission was abolished in 2014 and its triennial reporting functions transferred to the Productivity Commission. Federal legislative reform has also occurred as a consequence of the NWI. The *Water Act 2007* (Cth) establishes a detailed regime for the use and management of

water resources in the Murray Darling Basin, leading to the development of the Murray Darling Basin Plan. The NT is not affected by this.

4.3. Indigenous water use and national water reform

Unlike the 1994 Framework, the NWI notes the importance of water planning frameworks that recognise 'Indigenous needs in relation to water access and management' (C25[xi]). This objective has principally found expression in the setting aside of water in planning frameworks for Indigenous social, spiritual, and customary objectives and strategies (often referred to as 'cultural flows' and sometimes as 'Aboriginal water') or commercial purposes.

There is considerable scholarship about how the NWI and water allocation legislation more broadly embeds 'water colonialism' that marginalises Indigenous knowledges of water, and situates decisions about water allocation and planning in the state (see Burdon et al. 2015; Hartwig, Jackson, and Osborne 2020; Poelina, Taylor, and Perdrisat 2019; Taylor, Moggridge, and Poelina 2016). This scholarship questions the NWI's foundations, including state-controlled water allocation frameworks, the market-based approach, and the decoupling of water licences from land.

However, both this critical scholarship and scholarship more invested in reforming national water policy has paid limited attention to drinking water security as an Indigenous issue. To take one recent analysis of the extent of compliance by northern Australian jurisdictions with the NWI, Indigenous interests in water are described thus:

Generally, Indigenous communities seek both *cultural water* – non-consumptive water reserved for cultural purposes (eg ceremony and protection of sacred sites) – and *consumptive water* for their economic use. (Hart, O'Donnell, and Horne 2020, p. 12)

Jackson (2006) describes this as the 'compartmentalisation' of culture in Australian water governance, where Indigenous interests in water are treated as one of multiple uses of a consumptive pool. Important work in this regard has been undertaken by a number of Indigenous organisations, including the North Australian Indigenous Land and Sea Management Alliance and its former Indigenous Community Water Facilitator Network (ICWFN) and Indigenous Water Policy Group (IWPG) (Altman 2009; O'Donnell 2011). This focus is also evident in, for example, the 2017 COAG NWI *Policy Guidelines for Water Planning and Management on Engaging Indigenous Peoples in Water Planning and Management* (Australian Government 2017). We suggest that the framing of Indigenous interests in water

in this way has diverted scholarly attention from sustained analyses of drinking water security.

A study by Eileen Willis *et al.* is exceptional in the literature in its consideration of early Indigenous responses to the NWI. This study interpreted the NWI against the contemporaneous policy shift to the 'mainstreaming' of services to Indigenous people across Australia, as outlined in the 2005 National Framework of Principles for Government Service Delivery to Indigenous Australians. Willis *et al.* stated that the NWI represented 'a clear policy injunction for Aboriginal communities to be serviced by mainstream providers, rather than Indigenous-specific providers' (Willis *et al.* 2008, p. 419). We suggest this broader national policy shift in Indigenous policy may explain why the NWI did not treat drinking water (as part of essential service provision) as a specifically 'Indigenous' issue – or an issue that might be subject to Indigenous governance – while compartmentalising other concerns as specifically racialised cultural categories. This point provides essential context to NWI implementation, including the exclusion of Indigenous organisations and communities from drinking water governance, as such reforms were considered the domain of the state (Central Land Council 2020a). Given such exclusions, failures by consecutive governments to implement the NWI to achieve 'mainstream' standards across the NT are even more significant.

5. National water reform in the NT

In its most recent Inquiry report on the implementation of the NWI, in 2017, the Productivity Commission found a number of failures against the NWI recommendations. These include that:

- the NT has not yet unbundled water licences from land;
- water licences are granted for a limited term (usually ten years), not in perpetuity, and are not NWI compliant in their current form;
- water allocation plans are only in place for some catchments;
- trading of water licences is very limited;
- reporting on environmental water use is limited;
- there is Indigenous exclusion from input into, and allocation from, water planning frameworks.

This section does not offer extensive analysis of issues relating to water access entitlements and planning, water access and trading, and environmental water management. Instead, there are four key sections of the NWI that are relevant to the supply of water in NT Indigenous communities:

- (1) Urban Water Reform, where the main objective is to '(i) provide healthy, safe and reliable water supplies' (clause 90).
- (2) Rural and Regional Communities, where full cost recovery (while the explicit objective) may not be possible. In these circumstances all subsidies must be transparently reported, including with respect to the payment of Community Service Obligations (CSOs) (C66 [v]). In most Indigenous communities in the NT, this sub-clause would apply.
- (3) Institutional arrangements, where the roles of water resource management, standard setting and regulatory enforcement, and service provision should be institutionally separated (C74).
- (4) Investment in water infrastructure, where principles and safeguards for determining the provision of new water infrastructure are established (C69).

These are considered below as 'Healthy, safe, and reliable water supplies', 'Community Service Obligations', 'Institutional reform', and 'Investment in new infrastructure'.

5.1. Healthy, safe, and reliable water supplies

The 2017 Inquiry Report highlighted some failures of the NT to meet NWI reforms in the provision of drinking water in remote Indigenous communities. However, the Productivity Commission significantly understates the structural and longstanding problems with respect to water services in remote Indigenous communities. In relation to the NWI commitment of achieving safe and healthy water supplies, the Commission noted that

compliance issues remain regarding water quality outcomes in the NT. In 2015-16, six of 72 remote communities did not comply with the ADWG's microbiological guidelines and seven did not comply with various chemical parameters, including nitrates, uranium, barium and fluoride (2017, p. 463).

Later, the report states that 'some issues remain in . . . the Northern Territory, particularly in remote areas, but [the jurisdiction] is taking steps to address remaining concerns' (2017, pp. 10, 467).

The NWI aims to ensure the provision of 'healthy, safe and reliable water supplies' across the NT. However, the Productivity Commission fails to consider how the NT's regulatory framework detracts from the likelihood of achieving this outcome. The above analysis highlights that there are no enforceable minimum drinking water quality standards across the NT, and the provision of water services in remote NT communities is unregulated. There are thus no NT

government agencies that are legally accountable to the residents of Indigenous communities for the supply of drinking water to them.

5.2. Community Service Obligations (CSOs)

The Productivity Commission also noted as a ‘Recent policy effort’ that ‘Indigenous Essential Services receives a significant annual CSO, in the order of \$80 million’ (2017, p. 463). The Inquiry Report states that ‘greater clarity on the use of CSO payments in the Northern Territory would improve consistency with the NWI’ (Productivity Commission 2017, p. 181). For the reasons given in the following paragraphs, this is a significant understatement of the failure of the NT Government not only to comply with NWI expectations about CSO payments and reporting, but to use CSOs to fund a remote services regime subject to little legislative and regulatory oversight.

It is not clear that the annual payments to IES do in fact constitute a CSO as outlined by the Productivity Commission. Power and Water Corporation (Power and Water Corporation 2019) itself reports these payments to IES as grants, rather than CSOs (which are a separate line item). There are no publicly available policies in the NT guiding the development of CSOs as part of social policy, as exist elsewhere (see New South Wales Treasury 2019). It is possible these payments may comprise opaque grants or subsidies designed to disguise the true cost of delivering drinking water.

Even if payments to IES do constitute CSOs, there are significant issues with its role as a water service provider. IES provides water, sewerage, and power services to 72 remote Indigenous communities and 79 outstations under an unpublished Service Level Agreement (SLA) with the Department of Local Government and Housing and Community Development (DLGHCD). As described above, IES is a private proprietary limited company with an opaque operational structure; it shares a board with PAWC and it is unclear whether it has direct employees and if so how many. IES is also subject to no legislation mandating licencing or particular levels of service or standards. The standards, duties, accountability, and transparency mechanisms that do exist within the NT WSSS Act, licence, and customer contract do not apply to IES. There are numerous issues relating to the operation, accountability, and transparency of IES that have not been identified by the Productivity Commission or prior research. Based on publicly available information, it is not possible to determine an adequate understanding of:

- the methodology for calculating the CSO/grant to IES, and thus whether such calculations are appropriate or adequate;

- what proportion of the CSO/grant to IES is for water infrastructure and services, versus power infrastructure and services;
- the community and outstation breakdown of IES expenditure on water infrastructure and services, or the rationale for this breakdown;
- whether funds are set aside for future asset refurbishment and/or upgrading of government supplied water infrastructure and, if so, how decisions are made to prioritise infrastructure provision in certain contexts above others;
- the performance indicators that IES must comply with to measure the effectiveness of its program and how it is meeting stated policy objectives;
- what drinking water monitoring program is undertaken by IES, including its regularity and whether it operates to any particular standards;
- the policies applicable to IES;
- how IES actually operates, including whether it employs staff directly, or whether it operates as a shell private entity to receive government funding and then sub-contract its operations to PAWC.

Indeed, one could argue that by funnelling grants to a private company with no regulatory oversight, the precise opposite of accountability and transparency has been facilitated by the funding of IES through CSO payments. That this has not been identified as a severe shortcoming of transparent governance by prior NWI reviews highlights the need to investigate the details of water service operations across the NT, rather than to seek assurances regarding steps being taken by PAWC to address regulatory concerns.

5.3. Institutional reform

The NWI requires differentiation between water resource management, standard setting, and regulatory enforcement functions. This presupposes the existence of regulatory frameworks for water provision. However, in the NT, there is no regulator of water supply outside the 18 towns where the Utilities Commission provides limited oversight. There is also no regulator of drinking water safety across the NT – the Department of Health instead oversees drinking water safety pursuant to an unenforceable MOU with PAWC. The policy of mainstreaming Indigenous service provision involved the assumption of essential service provision by the state. Simply put, present arrangements do not meet the reforms required by the NWI or by good governance more generally.

5.4. Investment in new infrastructure

The Productivity Commission notes in relation to the NWI that governments seeking to provide funding for

water infrastructure should ensure a number of safeguards are met. These include that 'NWI-consistent entitlement and planning frameworks are in place before any new infrastructure is considered' and that 'an independent analysis is completed and made available for public comment before any government announcement on new infrastructure is made' (Productivity Commission 2017, p. 23). Under the NWI, 'The Parties agree to ensure that proposals for investment in new or refurbished water infrastructure continue to be assessed as economically viable and ecologically sustainable prior to the investment occurring (noting paragraph 66[v])' (C69). However, in the NT, justifications for what water infrastructure is funded in which locations are often opaque. This lack of transparency exacerbates vulnerability that infrastructure spending might be influenced by political prerogatives, rather than obligations to meet adequate service requirements.

Water infrastructure projects in remote communities appear to have been funded in the NT without attendant or ongoing governance arrangements that would create accountable, enforceable obligations for these assets. It is also unclear whether these investments have undergone cost/benefit analyses or assessments of ecological sustainability, as required by the NWI (Grealley and Howey 2020). The opacity of infrastructure funding arrangements can be exacerbated by sporadic Commonwealth funding injections into remote communities. For example, the *Strategy on Water and Wastewater Services in Remote (including Indigenous) Communities* was a separate 2011 strategy entered into by the NT Government under the COAG Water for the Future Initiative. The NT Government's (Northern Territory Government 2011, p. 1) Implementation Plan outlines a strategy for water security and climate change adaptation in remote communities, including safe water supplies, and aims to 'provide a level of service that meets regulatory standards that would apply to any other community of similar size and location.' This strategy provided for the funding of approximately \$20 million in water infrastructure to some remote NT communities. Noting that these communities are serviced by IES, this funding has been provided without transparent regulatory arrangements governing these assets.

Across the NT, there is thus a serious absence of public clarity about which water infrastructure projects are funded and why. The situation described above – in which the Department of Local Government, Housing, and Community Development provides recurrent grant funding to IES, which itself appears to contract PAWC to deliver its services in 72 remote communities and 79 outstations – further complicates the question of which authorities have the capacity to approve new water infrastructure and on what grounds. While there is

severe need of infrastructural replacement and refurbishment in numerous communities (Beavan 2019; Kurmelovs 2020), there is often no clear rationale for what projects garner funding support. Indigenous organisations and remote community residents have been excluded from these planning and decision-making processes, which demands further academic attention.

6. Conclusion

Drinking water governance in the Northern Territory is fragmented and inequitable, and threatens the viability and self-determination of Indigenous communities. The implementation of the most significant national water reform in Australian history, the National Water Initiative, has failed to rectify, or even detect, the structural inequalities embedded in the laws governing drinking water in the NT. This article has argued that the selective focus of Indigenous water use in the NWI (limited to 'cultural' or 'economic' allocations) can be seen as a product of the policy emphasis on 'mainstreaming' essential service provision to Indigenous communities. This has led to the exclusion of Indigenous organisations and communities from planning and decision-making about the provision of drinking water across the NT. The inadequate consideration of remote drinking water security as part of NWI reform efforts has also facilitated the continuation of a racialised regime governing urban/regional water to the detriment of Indigenous people in remote contexts. Drinking water security for Indigenous communities has been subordinated to other water concerns, and is the neglected dimension of reform under the NWI.

While the NWI aims to ensure the provision of 'healthy, safe and reliable water supplies', this has not occurred uniformly in the NT. The conceptual foundation of the NWI, which characterises water as a commodity, may not be appropriate to achieve this outcome. Other policy domains, including public and environmental health, Indigenous affairs, housing, and climate change adaptation must also be integrated with water policy to achieve safe and adequate drinking water in remote contexts. These are policy domains to which the marketised approach underpinning the NWI cannot be readily applied.

In the context of ongoing policy and regulatory reform, we note that the four land councils in the NT recently mobilised to demand safe drinking water legislation for all residents of the NT (Council 2020b). Such legislation should at a minimum require registration of drinking water providers with the Department of Health, necessitate approval of risk management plans that are compliant with the *Australian Drinking Water Guidelines*, and contain strong complaint, compliance, monitoring and

enforcement provisions. However, as highlighted in this article, the operations, funding, and governance of water service delivery and infrastructure in remote communities are opaque to those outside the NT Government and its agencies. The Central Land Council (2020) has thus called for extensive and urgent reforms to implement core components of the NWI (as they apply to drinking water security) and for such reforms to embed the principles of safety and health, transparency, accountability, adequate resourcing, and Indigenous decision-making. We suggest that governments collaboratively partner with land councils (and other appropriate Indigenous organisations, depending on context), and adopt a strategic, transparent, and risk-based approach to water infrastructure and service provision across the NT that incorporates these core principles.

Note

1. Urban water services references the NWI category 'Urban Water Reform' (Intergovernmental Agreement 2004), which encompasses drinking water reforms in 'urban' and 'regional' contexts and does not imply any distinction between towns and remote communities in the NT.

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Aboriginal community of Yuelamu fears town's only water supply may run dry

By [Tom Maddocks](#)

Posted Tue 28 Jun 2016 at 1:09pm, updated Tue 28 Jun 2016 at 7:03pm



Water from the bore is the only source of safe water in Yuelamu. (ABC News: Rick Hind)

A remote Indigenous community in Central Australia fears a bore they have been relying on may run dry, after an outbreak of toxic blue-green algae last year made its main water supply unfit to drink.

About 300 residents at Yuelamu, 300 kilometres north-west of Alice Springs, have been carrying their drinking and cooking water in jerry cans from the single tap at the bore to their homes since October last year.

They have relied on the bore since an algal bloom last year made water unfit to drink from a local dam that had been their primary water source.

Central Desert Regional Council chief executive Cathryn Hutton said the bore was now in danger of running dry.

"Unfortunately because of the additional pressure on that bore — because now it's feeding the entire community — that bore is actually starting to look like it's suffering," Ms Hutton said.

Key points:

- 300 people live in remote community
- Authorities forecast algae to dissipate in cooler weather but that has not happened
- Saltiness in bore feeding entire community is increasing

"The saltiness in the bore is increasing and there is some talk about whether or not that bore is actually refilling appropriately.

"So the water situation in Yuelamu is pretty dire."

Authorities looking for permanent solution

The NT's Power and Water Corporation forecast the algae would dissipate in the winter months but the cooler weather has made no difference.

People can still shower and wash clothes with the algae-contaminated water but they cannot boil or filter the water to make it clean.

In a statement, Power and Water said the algal bloom had not reduced and they were still looking for a permanent solution.

"Ongoing testing has confirmed that there is no improvement in dam water quality," the statement read.

"Power and Water is ensuring that there is adequate drinking water available for the residents of Yuelamu and acknowledges the ongoing inconvenience to residents."

It added the Department of Local Government and Community Services was looking into potential funding options.

General manager for Power and Water's remote regions Len Griffiths said "all options are on the table" but there would not be a quick solution to the problem.

"We're not discounting any ideas and particularly from local people," Mr Griffiths said.

"We're putting a lot of effort into identifying local water sources, sources that might be up to a number of kilometres away."

'People are frustrated'

Ms Hutton said a long-term solution was desperately needed.

"People are incredibly frustrated," she said.

"One of the things that I think we need to be mindful of is that this is a community that is exceedingly remote, slightly off the radar, and I think and their voices are not really being heard.

"I think one of the biggest concerns that we as a council have is that the (Northern Territory) budget for 2016/17 has been announced and there has been no allocation for any funding to solve the Yuelamu water issue."

Minister for Essential Services Peter Chandler said he was not an expert on drilling water or maintaining water in remote communities.

"You do rely on the experts, you rely on the people who work for power and water, so we're waiting for them to come up with that solution," Mr Chandler said.

The Member for the local electorate of Stuart, Bess Price, has been contacted for comment.

A water quality specialist determined the algal bloom in October last year was likely caused by migrating bird life.

Authorities say Borroloola drinking water is safe — but many residents don't trust them

By [Jane Bardon](#)

Posted Fri 10 Aug 2018 at 6:12am



Borroloola residents Nancy McDinny and Gadrian Hoosan protested outside Glencore's Sydney office on Wednesday. *(Supplied: Jason de Santolo)*

Indigenous residents living in the Northern Territory mining town of Borroloola said they do not believe assurances from the Health Department that water they were warned not to drink in April is now safe.

[The Territory Government's Power and Water Corporation found elevated lead and manganese levels](#) during routine sampling in the Garawa 1 and Garawa 2 town camps.

After more testing, the corporation has said the water bore supplying Garawa 1 and 2 camps does not contain lead or manganese, and "it is suspected that legacy infrastructure within Garawa contributed to the elevated levels of lead".

It suspected corroded plumbing fittings in the town camps had raised lead levels, so it replaced some of them, and flushed the system.

Key points:

- Borroloola residents do not believe drinking water is safe, despite the lifting of a recent warning
- Glencore rejects any responsibility for lead in drinking water
- Testing did not conclusively find the source of the contamination in April

The corporation said two tests of the drinking water supply in the town camps in May and June returned readings for lead and manganese below Australian Drinking Water Guidelines.

The NT Health Department lifted its advice not to drink the water in June.

But residents are concerned the Power and Water Corporation was not able to say conclusively that aging infrastructure caused the contamination.

"How can so much lead and manganese come out of one silly pipe? We still don't trust drinking that water," Garawa 1 resident Gadrian Hoosan said.



Borroloola residents held a protest outside Glencore's Sydney office on Wednesday, accusing it of causing the drinking water contamination. (Supplied: Jason de Santolo)

'Our people were drinking that water'

He and other Borroloola residents held a protest outside Glencore's Sydney office on Wednesday, accusing it of causing the drinking water contamination.

The company has contaminated fish in McArthur River tributaries since 2014.

"Our people were drinking that toxic water, we're still worrying about it," Borroloola resident Nancy McDinny said.

"I don't believe it's the lead pipe. I think it's coming from the river."

Residents' concerns about the mine were also raised in 2014 when it was revealed Glencore had underestimated the amount of reactive pyritic rock it was mining out, and its waste rock dump was spontaneously burning.

The company has tried to smother the waste rock fire, but it was still smouldering in some areas when the ABC visited the site in May 2017.

After the lead was found in the Garawa town camp's drinking water, Glencore said there was no evidence "this incident is in any way related to McArthur River Mining's operations".

"McArthur River Mining undertakes monthly water quality testing in a number of locations in and around the site, including from the McArthur River near the Borrooloola community," the company said.

"These results have consistently shown lead levels to be significantly below the Australian Drinking Water Guidelines."



Glencore said there was no evidence that lead in the water was in any way related to McArthur River Mining's operations. (ABC: Jane Bardon)

'No requirement to test residents'

The Health Department told the ABC it thinks blood tests are not needed for the Garawa camp residents.

"The risk to the 110 residents at Garawa is considered low, due to historical sampling results indicating that the community's water supply complied with Australian Drinking Water Guidelines," it said.

"Given the considered low risk of this incident, there is no requirement to test residents for lead levels in their blood."

Speaking at the protest outside Glencore's office, Borroloola resident Scott McDinny said no-one was taking responsibility for health risks to the community.

"We don't know how long our water was contaminated. Power Water told us at a meeting that we can let the water run for five minutes before drinking it," he said.

A spokeswoman for Power and Water Corporation said it will be up to the NT Housing Department, which has responsibility for essential services in Indigenous communities, whether water systems to the town camps can be upgraded.



Glencore is in the process of applying to expand its mine. (ABC News: Jane Bardon)

Governments still considering mine expansion

The residents also appealed to the Northern Territory and federal governments not to approve [Glencore's plan to double the size of the mine](#).

In its Environmental Impact Statement application in March last year, the company outlined a plan to leave more than half a billion tonnes of reactive waste rock on the McArthur River bank in perpetuity, rather than returning it to the mine pit.

The company also said it planned to flood the mine pit, once mining was complete, and reconnect it to the McArthur River.

"We want that Glencore mine to be stopped. That's why we are here, nobody has been listening to us," Nancy McDinny said at the protest outside Glencore's office.

"Because of the big dollar sign, they want to keep on mining. We are very angry about that."

The NT and federal governments will decide whether to approve the expansion based on the Environmental Impact Statement Supplement report Glencore submits in response to comments on its EIS.

Yuendumu in Central Australia at 'severe risk' of running out of water

By [Katrina Beavan](#)

Posted Tue 13 Aug 2019 at 7:31am, updated Tue 13 Aug 2019 at 8:27am



The remote community of Yuendumu in Central Australia. (ABC News: Hamish Harty)

The largest remote Aboriginal community in Central Australia is rapidly running out of drinking water. And as the quality of what remains deteriorates, locals say authorities are dragging their feet in finding a solution.

Traditional Owner Robin Japanangka Granites is extremely passionate about the community of Yuendumu where he grew up, almost 300 kilometres north-west of Alice Springs, but he's concerned about its future and what will happen when the water runs out.

"It is a matter of urgency," Mr Granites said.

"We need the Government to come out and talk to us and tell us the truth, when are we going to get them

Key points:

- Yuendumu is concerned about plans for what will happen when drinking water runs out
- The Northern Territory Government has put a halt on new construction in the community
- Water supplier says current supplies are compliant with national

to come and drill [for water]."

guidelines

Robin Japanangka Granites says he is concerned about future plans for Yuendumu's drinking water. (*ABC News: Katrina Beavan*)

Jimmy Langdon, co-chairperson at Warlpiri Youth Development Aboriginal Corporation (WYDAC) in Yuendumu, said he was concerned about the quality of the water, which he said appeared to be increasingly saline as aquifer levels dropped.

"The water that's in Yuendumu is not good sometimes ... when we open the tap in the morning it's white," Mr Langdon said.

Yuendumu's water problems began well before the rain stopped falling as a result of the current drought.

The community draws its water from an underground aquifer that typically receives very little replenishment and it's just one of many remote Aboriginal communities in Central Australia that's been struggling with finite groundwater supplies for many years.

NT Minister for Essential Services Dale Wakefield said she was aware of water quality issues in Yuendumu, but has declared the community's water to be safe and passing all health standards.

"We have had some comments about the taste changing as we do drill deeper into the current resource, however we feel that will be fixed when we move the production bores further and deeper into the resource," Ms Wakefield said.

Construction halt in remote community

Locals say the community of Yuendumu, with a population of roughly 900 people, desperately needs new infrastructure.

WYDAC had contracted a local company to build new housing for staff to be based in the community, including a National Disability Insurance Scheme (NDIS) representative.

But the Northern Territory Government did not give approval for the building because it's put a halt on new construction in the community to prevent added pressure on the dwindling potable water supply.

Jimmy Langdon says the water in Yuendumu seems to be increasingly saline. (ABC News: Katrina Beavan)

"It is very important to have the NDIS, because they work with the community's disabled [people], and they work with old people on pensions," Mr Langdon said.

One local construction company told the ABC, with no new houses being built, it's had to lay off six local workers, which was a blow for a community where jobs are hard to come by.

During this time, Ms Wakefield said the Government had been trying to locate a long-term sustainable water supply in Yuendumu.

"We've also had to do due diligence and see if there were any other more affordable, more accessible water resources," Ms Wakefield said.

Community labelled as a 'severe risk'

Power and Water, the NT Government-owned utility, said it did not expect it would need to truck water to Yuendumu and said the quality of water currently supplied complies with national guidelines.

However, a letter from the Ms Wakefield to the local Independent MLA Scott McConnell sent in May this year, said Yuendumu was listed as a community at "severe risk" in relation to its water supply.

"Numerous bores have been drilled over many years in the Yuendumu region to improve the capacity of the water supply, but as an extremely arid region, the complexity and costs of finding new water sources has made that task challenging," the letter stated.

Power and Water said in 2002 when the most recent bore field was made, it was estimated to last until 2012 at the longest.

Since 2014 it has spent millions on water saving campaigns and drilling for potential new water sources, but no new suitable drinking supplies have been found.

It also said another \$1 million had been set aside for a drilling program to happen sometime this financial year.

It said some high salinity bores had been constructed and were ready to be used if no better supply options were sourced.

While a desalination plant is another back-up option if no water is found, the Minister's letter estimates that could cost up to 10 times more than that of the current sources.

Yuendumu may be at risk of running out of drinkable water following a drought in Central Australia. *(ABC News: Katrina Beavan)*

Frustrated residents said the Government was not treating the issue as urgent, and communication with locals about potential plans had been poor.

"They didn't even bother come and ask us where we can look for water,"
Walpiri elder Harry Jakamarra Nelson said.

However, Power and Water said local knowledge often identified 'near-surface groundwater resources', which were of poor quality and not sustainable.

Widespread problems

The NT Government said it was also working with Geoscience Australia to investigate regional groundwater systems surrounding several Central Australian communities that were experiencing water stress including Imanpa and Engawala and the Barkly community of Wutunungurra.

In Imanpa, a community with about 200 residents to the south of Yuendumu, Power and Water is scoping for future water sources.

The community has seen decades of decline in groundwater levels due to lack of rainfall and over-extraction for use by the community and nearby cattle stations.

Independent ground water engineer Graham Ride, who's worked in the region for decades, said the communities under water stress all had long-running difficulties finding new water sources that weren't a limited supply.

"It's just unfortunate that so many of the main communities were constructed where there were depots or missionaries in the early days, [but] where there was very little water," Mr Ride said.

The remote community of Yuendumu is in the midst of a water crisis. (*ABC News: Hamish Harty*)

When the water runs out

Though all solutions seem costly, Independent member for Stuart, Scott McConnell, said the Northern Territory Government had an obligation to spend what was needed to fix the problem so Aboriginal people could remain living on their traditional lands.

"We don't get a lot of special federal grants and significant return on GST ... because it's hard to deliver services in Palmerston and Darwin, we get that because it's hard to deliver services in remote communities," Mr McConnell said.

"People are describing it as a crisis, people are telling me that their families are moving to town, people are telling me that the quality of

water is causing people to go."

Kirsty Howey, a Darwin-based researcher for the Housing for Health Incubator at the University of Sydney, said the legislation aimed at governing drinking water did not apply to remote communities in the NT and she said change was needed.

Independent member for Stuart, Scott McConnell, says the Northern Territory Government has an obligation to spend what is needed to fix the problem. (*ABC News: Isabella Higgins*)

She said part of the problem was that Power and Water provided services to remote parts of the NT through its subsidiary Indigenous Essential Services, a private company.

"It is not a licensed entity and it is not required to comply with any particular legislation governing drinking water in the NT," she said.

"We would argue that the NT should consider adopting a safe drinking water act ... that requires all drink water suppliers, including Indigenous Essential Services, to be licensed and directly accountable to residents in those places."

Ms Wakefield, however, would not be drawn on whether the NT needed to adopt a safe drinking water act, insisting the Government was working on a "long-term sustainable plan" for future supplies in Yuendumu.

"We know there is a water resource available to us in Yuendumu that can provide sustainable water into the future — however, we need to access it," Ms Wakefield said.

Milingimbi water concerns stall future developments in Arnhem Land

By [Jano Gibson](#)

Posted Sun 10 Nov 2019 at 8:08am



Keith Lapulang Dhamarrandji is an Indigenous liaison officer with the East Arnhem Regional Council. (ABC News: Jano Gibson)

Water security concerns in the Arnhem Land community of Milingimbi are stalling the development of vital infrastructure, frustrated leaders and residents say.

"It's all come to a grinding halt," said Yingiya Guyula, who represents the region in the Northern Territory Parliament.

"No business is being started up again because of [the] water supply."

In one case, a multi-million-dollar plan to build new accommodation for nurses has been blocked.

"We've got \$2.5 million from the Commonwealth, which we had two years ago, and we haven't been

Key points:

- Service providers say new housing is being blocked because of water security concerns
- A \$2.5 million nurse accommodation project at Milingimbi has not gone ahead
- The NT Government has been searching for a solution to increase water supplies

able to build the [nurse triplex]," Miwatj Health chief executive Eddie Mulholland said.

"We are frustrated with the water security in Milingimbi at the moment."

Around 1,200 residents live at Milingimbi, a small island off the Arnhem Land coast, 450 kilometres east of Darwin.

The community has water supplies at present, but the NT Government has long been concerned that the island's aquifer may not be sufficient to meet the future demands of the growing population.

A desalination plant, or a water pipeline from the mainland, have previously been floated as potential solutions — both of which would come at significant expense.

In the meantime, to avoid the risk of supplies running low, new developments that use water are only allowed under certain conditions.



Yingiya Guyula represents the north-east Arnhem Land electorate of Nhulunbuy. *(Supplied: Yingiya Mark Guyula)*



Miwatj Health CEO Eddie Mulholland says his organisation has been unable to build new nursing accommodation because of the water security issues at Milingimbi. *(ABC News: Michael Donnelly)*

A policy which 'stifled development'

"If you want to put a new water point in one building, you've got to delete another one from another building, so that basically we are water neutral," explained Rulku Lodge manager Ian Chamberlain.

As an example, the lodge recently had to decommission several communal toilets and showers that were still functional before it could install new rooms with ensuites.

"[The policy has] stifled development," Mr Chamberlain said.

The East Arnhem Regional Council said water supply issues at Milingimbi were affecting the provision of public toilets, dust mitigation, tree plantings for shade, irrigation for the football oval and even water bubblers.

"The situation is urgent for the NT Government to consider," the council's chief executive, Dale Keehne, said.

Rulku Lodge manager Ian Chamberlain says development has stalled in Milingimbi because of the need to reduce the demand for water.

(ABC News: Jano Gibson)

"Milingimbi cannot attract a permanent presence of other regulatory and service agencies due to housing and commercial premises being in critical short supply, with further development restricted because of an inadequate water supply for new buildings and dwellings."

Milingimbi residents want the development restrictions eased so that additional houses can be built to reduce overcrowding.

"There are 25 people living in my house," local ranger Solodi Buthungguliwuy said.

"How can family member(s) live like that?"

Solodi Buthungguliwuy says the community urgently needs new housing because of significant overcrowding. *(ABC Darwin: Jano Gibson.)*

A need for sustainability

The NT Government acknowledged the need for new accommodation, but said it had to first ensure that water supplies were sustainable into the future.

"We need to make sure we have got all the pieces of the puzzle lined up to ensure that that investment is sustainable," Essential Services Minister Dale Wakefield said.

"Until we have got that set up, we have had to constrain development. That is about responsible governance."

The Power and Water Corporation said water-saving initiatives, including leak detection and smart meters, have reduced the community's consumption by 45 per cent since 2012.

Over the past few years, the utility has engaged researchers and local rangers to collect data about the future viability of the island's aquifer.

Around 1,200 people live at Milingimbi, a small island off the Arnhem Land coast, 450 kilometres east of Darwin. *(ABC News: Jano Gibson)*

A community 'left in the dark'

Keith Lapulang Dhamarrandji, a liaison officer with the East Arnhem Regional Council, said the community was still waiting to find out the results of the research.

"We want them to engage and find a solution," said Mr Dhamarrandji, a liaison officer with the East Arnhem Regional Council.

"There are demands and great needs for people in Milingimbi to start going forward, because we have been left in the dark."

Ms Wakefield said the research, which would be shared with the community, showed there was more water in the aquifer than previously known.

She said that meant the options of building a desalination plant or a water pipeline to the mainland could be avoided.

Instead, if traditional owners support the plan, new bores could be drilled to better target the aquifer's water supplies.

Essential Services Minister Dale Wakefield said there was more water in the aquifer than previously known. *(ABC News: Lucy Marks)*

"Making sure we've got more accurate bores that are drilling into the most productive part of the aquifer will solve the problem without needing to go to desalination," Ms Wakefield said.

It is not yet known how much the additional bores would cost, or when the project would be completed.

Residents of remote NT community of Laramba lose legal battle over uranium in water

By [Katrina Beavan](#) and [Henry Zwartz](#)

Posted Tue 14 Jul 2020 at 3:46pm, updated Tue 14 Jul 2020 at 5:40pm



Uranium levels in the community's drinking water were close to three times safe levels, according to the NT's Power and Water Corporation. (*ABC News: Isabella Higgins*)

Residents of the remote central Australian community of Laramba have lost a case against the Northern Territory Government over high levels of uranium in their drinking water.

Data compiled by the NT's [Power and Water Corporation](#) had shown there were 0.046 milligrams of uranium per litre (mg/L) in the town's water supply — close to three times the level recommended in national guidelines.

According to Australia's national guideline, published by the [National Health and Medical Council](#), uranium levels in drinking water should not exceed 0.017 milligrams per litre.

Residents of Laramba, north-west of Alice Springs, lodged a legal case against the landlord, which in this case is the NT's Department of Housing.

Key points:

- The tribunal ruled drinking water uranium levels were not the housing department's responsibility
- The residents were seeking compensation over the contamination and also tap filters to bring their water in line with guidelines
- The tribunal has called for further submissions relating to claims

The case was submitted to the NT Civil and Administrative Tribunal (NCAT) in November last year, highlighting problems with not only residents' drinking water but also housing repairs and conditions in the town. about housing conditions and repairs

Residents sought compensation over the uranium contamination and also asked for a filter system on at least one tap in their household kitchens to bring uranium levels in line within Australia's drinking water guidelines.

But in the NTCAT's ruling against the residents, the tribunal member Mark O'Reilly said the uranium in the water was not the responsibility of the landlord.

"In my view the landlord's obligation for habitability is limited to the premises themselves," the decision read.

"[Landlords' obligations] do not extend to external factors that might be considered an "act of God" or a "force majeure".

"If the water supply in Central Australia simply dried up completely it would not be the responsibility of the various landlords of Alice Springs to provide a remedy or compensation."

Mr O'Reilly said the Residential Tenancies Act did not place responsibility on the landlord in the circumstances of this case and NTCAT "had no jurisdiction" to impose responsibility.

"In my view there is an essential flaw in the applicants' assertion that the only water made available by the landlord at the premises contains nearly three times the maximum safe level for ingestion of uranium," he said.

"In reality the landlord does not make water available at the premises at all ... The landlord's responsibility is to provide safe and functioning infrastructure to facilitate the supply of water by the service provider."



Santa Teresa residents won a legal case against the NT Department of Housing last year.

(ABC News: Greg Nelson)

Other community residents have fought housing department

The case is not the first time a remote community has taken the housing department to court over the state of housing conditions.

Last year [residents of Santa Teresa took a case](#) over delayed housing repairs to NTCAT and won.

Australian Lawyers for Remote Aboriginal Rights, which represented the Laramba residents in their case, used examples from the Santa Teresa case in their submissions to NTCAT, but those examples were not entirely accepted by the tribunal.

In regards to water in the Laramba case, Mr O'Reilly said landlords only needed to supply the infrastructure to supply water to the premises.

"In my view the landlord's responsibility to ensure that the premises are habitable does not necessarily encompass regulating water quality.

"For example, if concentrations of lead in water are a result of corroding lead piping within the premises or unpotable water is provided from a tank that forms part of the premises or ancillary premises the landlord is likely to have responsibility under the act," he said.

Appeal of NTCAT decision 'likely'

Daniel Kelly, lawyer assisting for Australian Lawyers for Remote Aboriginal Rights said the result was disappointing and an appeal was likely.

"We're in the process of speaking to our clients, but our view is — and the views that we've been able to garner from our clients are — that we should seek to have this decision reviewed," Mr Kelly said.

"The decision leaves the question well who is responsible? Because these people have been exposed to uranium in the drinking water for over 10 years."

"The Department of Housing is doing nothing about it, Power and Water is doing nothing about it and the Northern Territory Government is doing nothing about it."

In a statement to the ABC, the NT Department of Housing said it would not be providing comment as proceedings were ongoing.

In relation to the rest of the Laramba case, involving housing conditions and repairs, the tribunal has called for further submissions.

Right Now – Human Rights in Australia

News

Coloured Water: Why Uranium is Allowed in the Water of NT Indigenous Communities

BY LIAM GREALLY



In the remote Indigenous community of Laramba in the Northern Territory (NT), drinking water contains almost [three times the maximum safe level](#) of uranium recommended by the [Australian Drinking Water Guidelines](#).

On 1 July 2020, the Northern Territory Civil and Administrative Tribunal (NTCAT) [found against](#) applicants from Laramba in a case about domestic water provision.

Represented by Australian Lawyers for Remote Aboriginal Rights, residents sought compensation for the domestic provision of contaminated water, as well as filters to improve the safety of their water in the future. NTCAT presiding member Mark O'Reilly found that the landlord – the Department of Local Government, Housing, and Community Development – is not required under the Residential Tenancies Act 1999 (NT) (RTA) to provide safe or adequate water to householders.

The landlord's obligations under the Residential Tenancy Act were found to apply to physical water infrastructure – domestic pipes, faucets, sinks, and so on – but not to water supply or quality. O'Reilly determined that “the landlord's obligation for habitability is limited to the premises themselves. It does not extend to external factors that might be considered an ‘act of God’ or a ‘force majeure’.”

One way to understand this failure to provide safe water is as a matter of racial discrimination.

This separation of housing and water issues is typical of legal and policy frameworks, and it highlights the need to consider them together. Housing is permeated by water in deliberate and unpredictable ways. Safe and healthy housing requires the properly constructed entry and exit of water, but water's presence can just as easily contribute to disrepair and uninhabitability. The need to understand housing as permeable is especially true for the remote communities in central Australia in which [government housing construction is being delayed](#) by water security concerns.

One way to understand this failure to provide safe water is as a matter of racial discrimination. Government services in urban Australian contexts rarely contend with the issues seen at Laramba. If urban contexts do face challenges related to drinking water potability, governance and technological solutions are typically put in place.

Section 13 of the Racial Discrimination Act 1975 (Cth) establishes that it is unlawful to refuse or fail to supply goods or services, including supplying on less favourable terms, by reason of race.

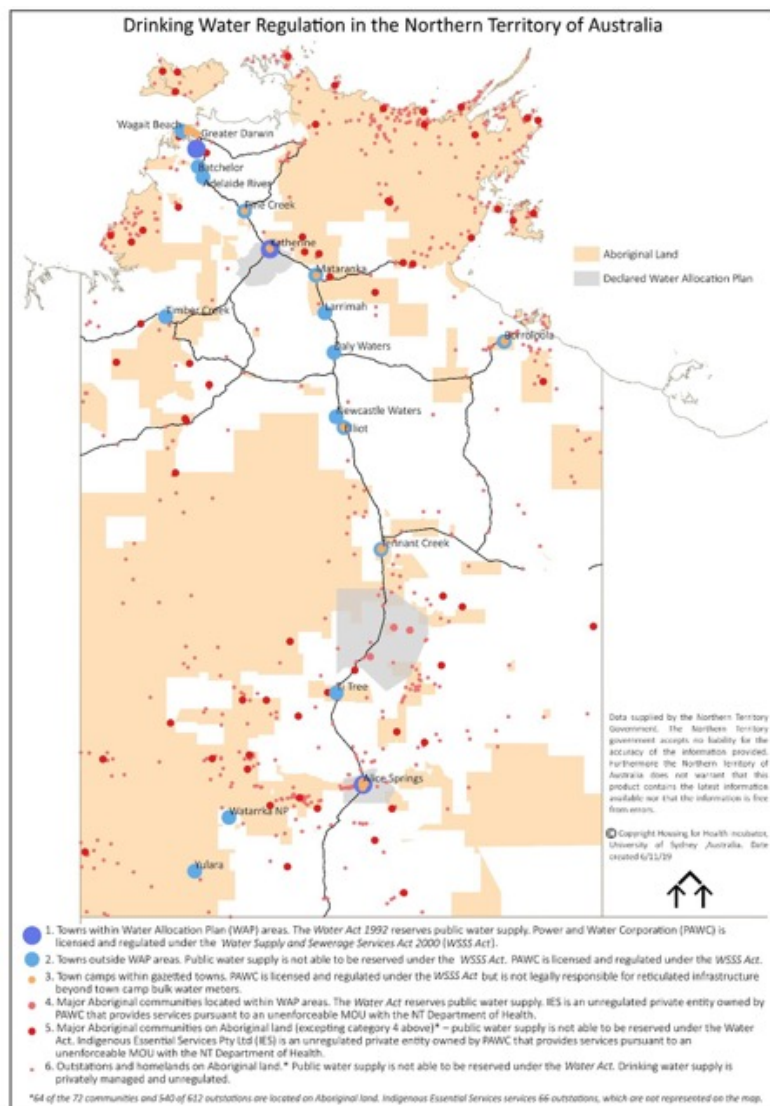
It may be difficult to prove in court that substandard government service provision is attributable to the fact that most Laramba residents are Aboriginal, rather than due to the challenges of remote infrastructure provision and the naturally occurring uranium in the water source. However, section 18 offers some promise for the application of the Racial Discrimination Act. It states that where an act is done for two or more reasons, and race is one of those, 'the act is taken to be done for that reason.'

The case for racial discrimination is even stronger if Laramba is considered in the broader context of NT water regulation. [Research](#) has shown that protections for safe drinking water vary significantly across NT communities.

In the NT, the Water Supply and Sewerage Services Act 2001 (NT) regulates drinking water. It requires that "water supply services" in "water supply licence areas" are licensed by the NT Utilities Commission. The government-owned Power and Water Corporation (PowerWater) is the current and sole licensee, and is subject to a range of service requirements, including asset management planning, licence compliance reporting, and service planning.

However, the NT has [not set minimum standards](#) for water supply, including water quality. Instead, the Department of Health and PowerWater have a [memorandum of understanding](#) (MOU) that describes criteria for the safe treatment of water, water testing regimes, responses to public health incidents, public reporting, and so on. Regarding the absence of legal minimum standards, the MOU simply says that the [Australian Drinking Water Guidelines](#) "will be used as the peak reference" for water quality. Further, the Water Supply and Sewerage Services Act only applies where water supply licenses exist, namely in the 18 major towns where the vast majority of the NT's non-Indigenous population lives.

In 72 remote Indigenous communities and 79 outstations, Indigenous Essential Services (IES), a not-for-profit arm of PowerWater, provides water services. In those contexts, drinking water supply is [neither licensed or regulated](#).



To summarise, this means that at Laramba there are no protections against uranium in the drinking water in the Residential Tenancies Act. There are also no minimum standards for water quality under the Water Supply and Sewerage Services Act. IES functions in unlicensed contexts where even the aspirational and unenforceable MOU between the Department of Health and PowerWater does not apply.

This apparent gap between housing and water laws is muddled by the funding and service arrangements that exist between relevant government authorities. IES is funded by the Department of Local Government, Housing and Community Development. IES, in turn, pays PowerWater to deliver water and power services in various remote communities.

This lack of accountability highlights the importance of the recent call by [all four NT land councils](#) for the introduction of a Safe Drinking Water Act, to protect drinking water for all NT residents.

The Department, which is the landlord of public housing at Laramba, funds the utility provider responsible for delivering drinking water with high levels of uranium into homes. IES operates without a license and without the protections for water quality that exist in contexts where PowerWater is the licensee. This arrangement should be restated, as it shields the Department and PowerWater from responsibility for failing to provide safe drinking water to households.

The key point here is that in the remote communities serviced by IES, there are no legal protections for safe drinking water. This situation is unequal in its outcomes, and there is potential to explore whether it is discriminatory under law.

It is not an acceptable situation that both the landlord and the utility provider are able to hold at arm's length the responsibility to supply safe drinking water to remote Indigenous households. It is likely that this separation between housing and water responsibilities will be tested again through [appeal](#).

This lack of accountability highlights the importance of the recent call by [all four NT land councils](#) for the introduction of a Safe Drinking Water Act, to protect drinking water for all NT residents.

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