

Independent Pricing and Regulatory Tribunal

Via email: water@IPART.nsw.gov.au



**New South Wales
Aboriginal Land Council**

ABN: 82 726 507 500

Re: IPART – Pricing Review WAMC and WaterNSW

The NSW Aboriginal Land Council (NSWALC) welcomes the opportunity to provide comments on IPART’s Issues Paper regarding the review of prices for the Water Administration Ministerial Corporation (WAMC) and WaterNSW.

NSWALC is the largest member based Aboriginal organisation in NSW and is the State’s peak representative body for Aboriginal affairs. We aim to protect the interests and further the aspirations of our 30,000 members and the broader Aboriginal community. NSWALC, and the network of Local Aboriginal Land Councils (**LALCs**) across NSW, work to improve, protect and foster the best interests of all Aboriginal peoples in NSW.

For Aboriginal peoples, lands and waters are central to our spiritual, social, cultural, and economic well-being. However, the historical dispossession of these resources has created significant distress and challenges for our communities. NSWALC strongly believes that water pricing frameworks must address these inequities and support Aboriginal peoples’ access to water for cultural, social, and economic purposes. We are concerned by the significant proposed price increases and the negative impacts of this on Local Aboriginal Land Councils (LALCs) and Aboriginal communities.

This submission responds to key questions raised in the Issues Paper, focusing on First Nations priorities, including:

- what First Nations priorities should be considered in IPART’s determination
- the adequacy of consultation with Aboriginal peoples
- the impacts of proposed pricing changes and specific recommendations to ensure fair and equitable outcomes.

The Aboriginal Land Rights Act 1983 (NSW), Aboriginal Water Rights and Exemptions

The ALRA was passed by the NSW Parliament to facilitate the return of land in NSW to Aboriginal peoples through a process of lodging claims for unused Crown land, as compensation for historic dispossession and in recognition of the ongoing disadvantage suffered by Aboriginal communities.

A key intention of the land rights system was to enable ‘*Vast tracks of Crown land (to) be available for claim (to) go some way to redress the injustices of dispossession...*’.¹ Aboriginal Land Councils were established to acquire and manage land as an economic base for Aboriginal communities. When introducing the *Aboriginal Land Rights Bill 1983* into the NSW Parliament, the then Minister for Aboriginal Affairs, the Hon. Frank Walker, stated that ‘*...land rights has a dual purpose – cultural and economic*’ and that land rights ‘*lay the basis for improving Aboriginal self-sufficiency and economic wellbeing*’.²

Furthermore, the preamble of the ALRA highlights the multifaceted significance of land to Aboriginal peoples:

(1) *Land and waters in the State of New South Wales were traditionally owned and occupied by Aboriginal persons—*

(2) *Land and waters are of spiritual, social, cultural and economic importance to Aboriginal persons—*

¹ New South Wales, *Parliamentary Debates*, Legislative Assembly, 24 March 1983, p.5095 (The Hon. Frank Walker) [Hansard & House Papers by Date](#) (nsw.gov.au)

² *ibid* p.5089

(3) *It is fitting to acknowledge the importance land and waters have for Aboriginal persons and the need of Aboriginal persons for land and waters—*

(4) *It is accepted that as a result of past Government decisions the amount of land and waters set aside for Aboriginal persons has been progressively reduced without compensation—³*

While the ALRA is (slowly) facilitating the return of lands to Aboriginal peoples in NSW, mechanisms to support our ownership of, and decision-making in relation to water are not similarly recognised. In 1994, water rights were decoupled from land ownership, and we have consistently advocated for Aboriginal peoples' rights to water to be recognised since. The dispossession of Aboriginal peoples' rights over water contradicts the intent of the ALRA. Our rights and interests were not acknowledged until another decade later when in 2004 the National Water Initiative (the **NWI**) was agreed to. However, progress on commitments made under this initiative have been hindered and we fully support a reimagined NWI that reflects our aspirations and leads to real and genuine outcomes for our communities.

First Nations Priorities to be Considered in IPART's Determination

NSWALC urges IPART to prioritise the unique cultural and economic needs of Aboriginal peoples in its determination. We note that the consultation report states that 'Access to water for First Nations people for cultural and economic needs' has been identified as a key priority. In line with this, we do not support fees or charges for Aboriginal Cultural Specific Purpose Access Licenses (**SPALs**). Exemptions must be guaranteed and extended to include Aboriginal Community Development and Environmental SPALs to protect cultural and environmental values without financial barriers.

Similarly, we oppose fees and charges for Aboriginal-owned General Water Access Licenses (**WALs**). All associated water use fees and consent transaction charges should be waived to address the historical dispossession of water rights. These exemptions are essential to enable Aboriginal organisations and communities to build economic self-sufficiency through water resources.

Pricing reviews must take into account the commitments that the NSW Government has already made under its NSW Aboriginal Water Strategy and the Closing the Gap National Agreement. The NSW Aboriginal Water Strategy identifies ways to increase water rights and ensure Aboriginal people are empowered to contribute to water management and planning decisions. NSWALC, as a member of NSW Coalition of Aboriginal Peak Organisations (CAPO) is partnering with the NSW Government to design and deliver the Closing the Gap Framework in NSW.

Our ownership of water is minuscule and has been going backwards. For example, while Aboriginal people in the Murray Darling Basin constitute nearly 10 % of the total population, Aboriginal organisations hold only 0.2 % of the available surface water in the Basin and 0.1% across the state. Aboriginal water holdings between 2009 and 2018 indicate a new wave of dispossession. Almost one-fifth of Aboriginal water holdings by volume were lost during this time.⁴ We support mechanisms that increase Aboriginal ownership of and access to water in line with work committed to under Closing the Gap Target 15c – Inland Waters. This aligns with the original intent of the ALRA to provide cultural and economic opportunities for Aboriginal communities.

Additionally, the NSW Government's commitments under the Closing the Gap Socio-Economic Target 9b must guide pricing decisions to ensure *"all Aboriginal and Torres Strait Islander households within discrete Aboriginal and Torres Strait Islander communities receive essential services that meet or exceed the relevant jurisdictional standard"*. Equity in water access is not optional but a fundamental right.

Consultation with Aboriginal Communities

³ [Aboriginal Land Rights Act 1983 No 42 - NSW Legislation](#)

⁴ Hartwig, Jackson & Osborne (2020) Trends in Aboriginal water ownership in New South Wales, Australia: The continuities between colonial and neoliberal forms of dispossession.

Consultation and engagement with Aboriginal peoples must provide adequate notice, incorporate the principles of ‘free, prior and informed consent’ (FPIC), and actively seek Aboriginal people’s views. Initiatives to engage and partner with Aboriginal peoples in the management of land, waters and climate must not be undertaken in isolation or on a ‘one off’ basis. A lack of genuine consultation and disregard for the principles of FPIC continues to perpetuate a history of marginalisation of Aboriginal people regarding water legislation and will result in further mistrust of the government. Ask community if and how they want to be consulted or represented and resource communities appropriately.

Additionally, we urge government departments to better coordinate their consultation efforts and ensure they report back to communities. This feedback loop is critical to building trust and ensuring that the outcomes of consultations reflect the priorities and needs of the communities they aim to serve. We expect governments to work with Aboriginal communities genuine partnership, and ensure accountability and transparency are strengthened.

Impacts of proposed pricing increases on Aboriginal Communities

The proposed increases in water prices will disproportionately negatively affect Aboriginal communities and Local Aboriginal Land Councils (LALCs) and therefore such increases are not supported. IPART needs to take into consideration the negative social impacts of price increases. Additional measures are needed to provide fee-relief and exemptions from any unfair water prices affecting LALCs and Aboriginal communities. Furthermore, we are concerned that many of the ‘justifications’ provided by WAMC and Water NSW for increased prices are in fact unjustified. WAMC and Water NSW should be required to further justify proposed price increases, provide further details regarding efficiency measures, and seek alternative funding streams or direct government funding for any additional costs where appropriate.

LALCs are volunteer-led community run organisations that already experience significant financial pressures given the wide range of community programs and supports they provide. This is further exacerbated by the current cost of living crisis. The significant proposed increased water prices will place undue hardship and pressure on our communities. The proposed cost increases, particularly those caused by the failure of WAMC and Water NSW to adequately plan or invest in water infrastructure, or to undertake basic regulatory requirements, should not be borne by our communities.

Water quality concerns

Access to safe drinking water remains a critical issue, as identified in the consultation report. For example, many Aboriginal communities rely on bore water during droughts or when river water becomes unsuitable. Disappointingly, however, the Australian Water Guidelines do not provide for health guidelines around sodium levels, Australia is considered a ‘first world’ country and it is shocking that many communities across NSW do not have access to clean, safe drinking and domestic-use water. Using the example of Walgett, town water supply relies on Artesian Basin bore water in times of drought or when water quality of the river deems it unpotable. The quality of Artesian Basin bore water is questionable and extremely high in sodium. People with chronic health conditions (renal, heart, diabetes etc) are particularly vulnerable.⁵ Disappointingly, the Australian Water Guidelines do not provide for health guidelines around sodium levels, only ‘palatability’. Technically, according to NSW Health, the water is safe to drink. A reverse osmosis (desalination) plant was installed in May 2020 and closed in September that year – as it was considered to be “unsustainable due to poor planning and local consultation resulting in unsustainable disposal of concentrate wastes”⁶.

The issues in Walgett are not an isolated example, water quality is an issue in many communities across NSW. Many communities tap into the Artesian bore water when they cannot use river water and have unsafe drinking water as a result (for example, Narrandera, Moama, Dubbo etc.). An audit report in 2020 found the NSW Government had “not effectively supported or overseen town water infrastructure planning in regional NSW

⁵ [Walgett’s Drinking Water \(unsw.edu.au\)](https://www.unsw.edu.au)

⁶ Rosewarne E, H.C., Bennett-Brook K, Coombes J, Corby C, Feeny E, Leslie G, McCausland R, McKenzie B, Webster J and Spencer W. 2021. A community in action: How Walgett is redefining food systems. The George Institute for Global Health

since at least 2014”.⁷ Additionally, we have heard feedback from communities that ‘boil water notices’ are often announced with little time for people to inform the community and that some community controlled organisations that have purchased drinking water for their communities during this time have not been reimbursed for the costs. In addition, LALCs should be afforded the same exemptions as all Public Benevolent Institutions regarding local water rates.

While we note issues with economies of scale in small and isolated communities, this must not be an excuse for providing poor and unsafe services. All people have a right to clean, fresh, healthy drinking water. The government needs to recognise that in order to ensure equity there will be an extra cost burden servicing regional and remote areas and appropriately subsidize this. Extra costs due to price increases for local water utility providers should not be passed on to consumers who are often the most disadvantaged people in NSW. NSWALC recommends the introduction of basic minimum standards and greater accountability for local water utilities to ensure all communities receive equitable services. These standards should reflect the NSW Government’s commitments under Closing the Gap, ensuring that all communities, including remote and small communities, have access to safe and reliable water services.

Water-related Offences

Widely publicised allegations of significant water theft have plagued the NSW Government and agricultural industry. We note the minimal financial penalties given to prominent irrigators and horticulturalists and that such insignificant penalties are unlikely to deter irrigators from further theft.⁸ A recent paper highlighted: “*Fines and costs in the Land and Environment Court typically remain lower than the value of the water taken unlawfully, lessening the incentive for compliance. Under the Water Management Act 2000 (NSW), the Minister for Water has the power to cancel the water licence of a person convicted of an offence. We could find no record of any such cancellation.*”⁹ The current penalty system is an insufficient deterrent.

Governments should prioritise Aboriginal people’s rights as First Peoples and identify opportunities to compensate Aboriginal peoples for dispossession. For instance, rather than fining irrigators for water theft or water pollution offences, their water access licences should be confiscated and given to Aboriginal organisations to enable the cultural and environmental protection of water and as a form of compensation. Additionally, the Natural Resources Access Regulator (NRAR) should consider transferring fine revenue to Aboriginal people in order to support increased water access and ownership.

Ineffective Management of River Country

NSWALC notes that one of the reasons given for the proposed cost increases is due to the additional water management activities required to be undertaken. NSWALC supports efforts to improve the health of waterways and Country in NSW. However, the costs for developing Water Sharing Plans, responding to climate risks and developing an Aboriginal Water Strategy should not be absorbed by Aboriginal water users or licence holders, who have repeatedly raised concerns about the impact of decades of mismanagement and over extraction of water on the environment and Aboriginal cultural sites.

IPART’s 3Cs Framework

NSWALC suggests that IPART’s commitment to the 3Cs framework—Customers, Costs, and Credibility—incorporate the following perspectives:

1. Customer Value:

- Prioritise Aboriginal needs by ensuring water pricing frameworks address historical inequities and support cultural, social, and economic outcomes.

⁷ <https://www.audit.nsw.gov.au/sites/default/files/documents/FINAL - Support for regional town water infrastructure.pdf>

⁸ [NSW irrigators to pay more than \\$500,000 after illegally taking nearly 2bn litres of water from river | Water | The Guardian](#)

⁹ Colloff MJ et al. (2024) Murky waters running clearer? Monitoring, reporting and evaluation of the state of the Murray–Darling Basin after more than three decades of policy reform. *Marine and Freshwater Research* 75, MF24193. doi:10.1071/MF24193

2. Cost Efficiency:

- Recognise that exemptions for Aboriginal-specific licenses and equitable services in remote areas represent long-term investments in fairness and reconciliation.

3. Credibility:

- Build trust through culturally respectful decision-making processes that involve Aboriginal communities as genuine partners.

NSWALC urges IPART to incorporate these recommendations to ensure pricing frameworks are fair, equitable,

Recommendation 1: NSW Government must ensure that Aboriginal communities and organisations are not negatively impacted by pricing changes. The Government must recognise the historic dispossession of Aboriginal lands and waters and ensure they are adequately compensated, rather than liable, for an increase in water-related pricing.

Recommendation 2: Water-related regulations, policies and frameworks must not work in contradiction with objects and operations of the *Aboriginal Land Rights Act 1983*. Existing legislative frameworks, including the ALRA should be harnessed as vehicles for the return of waters to Aboriginal people.

Recommendation 3: Guarantee exemptions for Aboriginal Cultural SPALs and extend these to Aboriginal Community Development and Environmental SPALs.

Recommendation 4: Waive fees for Aboriginal-owned General WALs, including water use and consent transaction fees.

Recommendation 5: Address inequities in water quality, ensuring all Aboriginal communities have access to safe drinking water.

Recommendation 6: Introduce minimum service standards for local water utilities, aligned with Closing the Gap targets.

Recommendation 7: The NSW Government must adequately resource Aboriginal organisations and community representatives, ensuring they can meaningfully engage and contribute to water management. NSW must work in genuine partnership to develop legal frameworks, policies and processes to ensure the principles of free, prior and informed consent are upheld and respected.

Recommendation 8: Any pricing changes must reflect the NSW Government's commitments under Closing the Gap to genuine partnerships with Aboriginal people that promote shared decision-making, identify ways to increase water rights and ensure Aboriginal people are empowered to contribute to water management and planning decisions.

Recommendation 9: NSW must explore innovative ways to deter water-related offending and leverage penalties that can benefit Aboriginal people through transfer of licenses and fine monies to Aboriginal people.

and supportive of Aboriginal communities. Water is not merely a resource but a vital element of Aboriginal cultural and community well-being.

Should you require further information, please contact the NSWALC Strategy and Policy Unit on 02 - 9689 4444 or via e-mail: policy.research@alc.org.au.

Sincerely,

[Redacted signature]

[Redacted name]

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