

Evaluation framework for the review
of water sharing plans under Section
43A of the *Water Management Act*
2000

December 2022

Enquiries

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Acknowledgement of Country

The Natural Resources Commission acknowledges and pays respect to traditional owners and Aboriginal peoples. The Commission recognises and acknowledges that traditional owners have a deep cultural, social, environmental, spiritual and economic connection to their lands and waters. We value and respect their knowledge in natural resource management and the contributions of many generations, including Elders, to this understanding and connection.

List of acronyms

DPE-EHG	Department of Planning and Environment – Environment & Heritage Group
DPE-Water	Department of Planning and Environment – Water
DPI-Fisheries	Department of Primary Industries – Fisheries
NRAR	Natural Resources Access Regulator

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1 Water sharing plan reviews – purpose and objectives

This document sets out the Commission’s overall approach to reviewing water sharing plans in an efficient and effective way. The Commission will periodically review this framework.

Water sharing plans are statutory instruments under the *Water Management Act 2000* (the Act). They prescribe how water is managed to support sustainable environmental, social, cultural, and economic outcomes. They intend to provide certainty regarding rules for water sharing for water users over the life of the water sharing plan, which is typically 10 years, unless it is extended.

The Commission has a role under Section 43A of the Act to review water sharing plans within the last five years of a plan (prior to its expiry) and report to the Minister responsible for the Act (currently the Minister for Lands and Water, Hospitality and Racing) on:

- the extent that the plan’s water sharing provisions have materially contributed to the achievement of, or failure to achieve, environmental, social, and economic outcomes
- if changes to plan provisions are warranted.

The Commission may recommend to the Minister that the plan be extended without change for 10 years or that it be replaced, depending on its review findings. The Minister responsible for the Act may extend a plan for up to two years if a decision is made to replace the plan. The Minister responsible for the Act must get concurrence from the Minister for the Environment for any replacement plan, but not if the plan is extended as is. Note, plans may be amended at any time during the regular life of a plan, which also requires concurrence from the Minister for the Environment.

The Commission provides an independent review of the plan and makes recommendations on improving plan performance where appropriate. These recommendations are non-binding. The Act only requires that the Minister consider the Commission’s review. The Commission does not have a role in the actual revision of a plan if it is replaced – this process is led by the agency responsible for implementing the Act (namely the Department of Planning and Environment (DPE) – Water).

In undertaking its review, the Commission is required to call for and consider public submissions.¹ The Commission must consider any other relevant state-wide and regional government policies or agreements relevant to the plan area.²

Section 43A(3A) of the Act also requires the Commission to consider some potential compensation requirements resulting from recommended changes to water sharing plans.

In reviewing water sharing plans, the Commission aims to contribute to improved and more transparent water management by:

- evaluating key risks to plan outcomes under current plan provisions, based on a review of evidence, submissions, and stakeholder insights
- independently assessing plan performance, including achievement of environmental, social (including cultural) and economic outcomes, and alignment with the objects, principles and priorities of the Act

¹ Section 43A, Clause 4a of the Act.

² Section 43A, Clause 4b of the Act.

- identifying areas where water sharing plan provisions can be improved to better achieve outcomes
- identifying new evidence and good practices to improve plan design and performance.

1.1 Roles and responsibilities for water management

Water management in NSW is undertaken by several agencies and organisations. As **Figure 1** shows, the Commission has responsibilities for independent review of water sharing plans, but it is not responsible for plan development, implementation or replacement, operation of water systems, or individual licence monitoring or pricing.

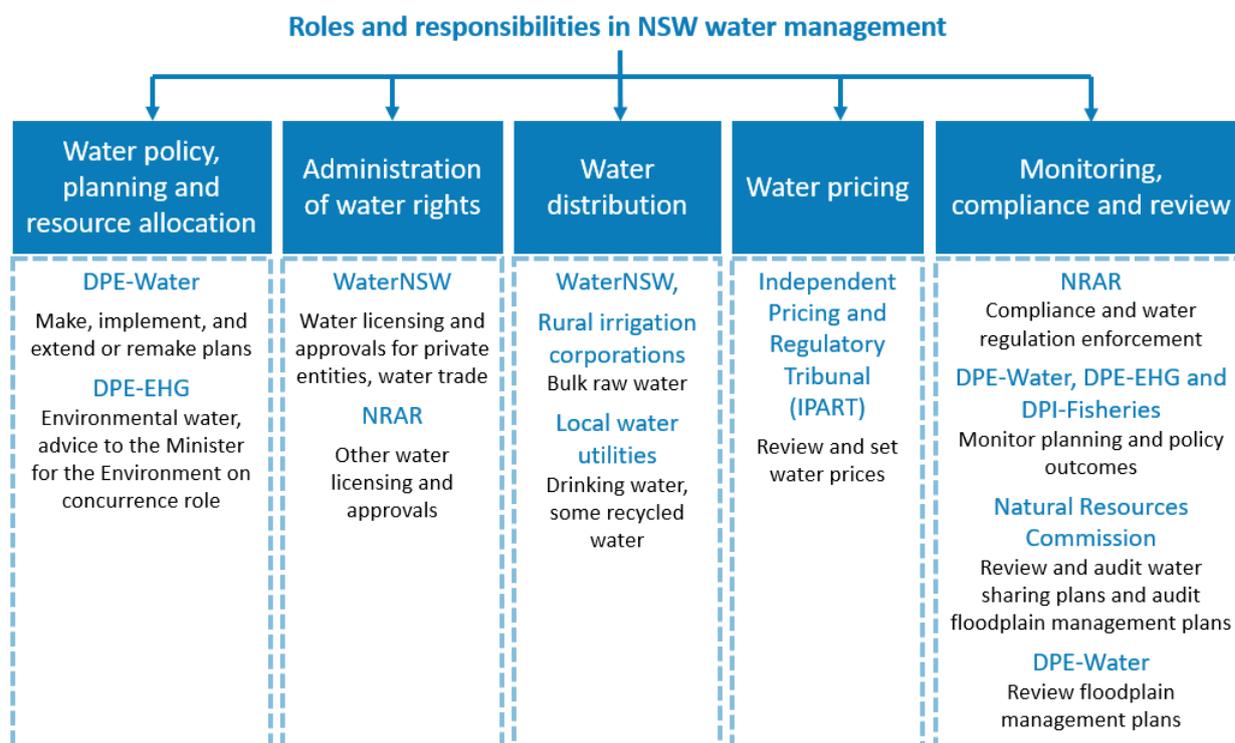


Figure 1: Roles and responsibilities in water management

1.2 Review standards and principles

Reviews are conducted in accordance with the standards issued by the NSW Department of Premier and Cabinet. The *NSW Program Evaluation Guidelines*³ set out how evaluations should be planned, performed and documented to maintain a high level of confidence in the assurance provided to report users.

Reviews are designed to uphold guideline principles, including:

- applying best practice methodologies to suit the review size, significance and risk
- considering resources and time to evaluate and support recommendations
- using the right expertise and independence
- ensuring proper governance and oversight

³ NSW Premier and Cabinet (2016) [NSW Government Program Evaluation Guidelines](#)

- ethical design and conduct
- involving relevant stakeholders
- meaningful consideration of data
- ensuring transparency and openness to scrutiny.

The Commission values all stakeholders as important knowledge holders who have a right to participate in government decisions and the design and delivery of independent advice. The Commission's key engagement principles are based on the International Association for Public Participation Quality Assurance Standard.⁴ These standards guide all engagement activities and are supplemented by further principles specific to Aboriginal engagement.

1.3 Outcome and process evaluation principles

The Commission draws on both outcome and process evaluation principles outlined in the NSW Premier and Cabinet Evaluation guidelines⁵ where possible to undertake reviews. In summary:

- **Outcome evaluations** seek to verify the causal link between actions (in this case, the implementation of plan provisions) and outcomes. Outcome evaluations look at issues such as whether outcomes have changed due to implementation of the plan, whether things changed as expected, what the benefits of the plan were and to who, and if there were any unintended outcomes, including consequences that require consideration.
- **Process evaluations** look at if the plan was implemented as intended, describing its current operating conditions, and identifying any processes hindering the success of achieving plan outcomes. Note that Section 44 audits examine in detail whether the plan provisions have been implemented as intended. These audits inform plan reviews and help to identify where implementation issues, rather than limitations of plan provisions are impacting outcomes. They help to determine where changes to provisions may not be needed and inform where plan provisions warrant change.

While reviews focus predominantly on outcomes, it is also important to identify where issues associated with implementation are the primary factor in driving outcomes rather than the plan rules, to identify appropriate recommendations.

It is also important to note that the reviews can be both summative (assessing what has been accomplished to date), and formative (informing what is and is not working and should therefore be changed). The Commission's reviews are predominantly focused on formative evaluation – what needs to stay or change in the plan to improve outcomes in the future, based on assessment of the extent to which the plan is achieving intended outcomes.

⁴ International Association for Public Participation (2015) [Quality Assurance Standard for Community and Stakeholder Engagement](#)

⁵ NSW Premier and Cabinet (2016) [NSW Government Program Evaluation Guidelines](#)

2 Scope and approach for review program

2.1 Risk-based planning for reviews

The Commission's review role under Section 43A of the Act is ongoing and covers all water sharing plans in NSW. There are currently approximately 58 water sharing plans, but this may change as plans are merged and separated from time to time. For example, the development of water resource plans to support implementation of the Basin Plan resulted in changes to water sharing plans in 2020, including removal of alluvial water sources from unregulated water sharing plans into separate groundwater plans.⁶ The Commission engages regularly with DPE-Water to understand any changes in relation to new plans, plan amendments, plan amalgamations, or plan replacements and how this affects our review scope.

The Commission is required to complete reviews in the five years before a plan expires, and typically completes the review within the last year or two of a plan's period. The Commission aims for reviews to be completed six months or more before their expiry to allow DPE-Water time to extend the plans if necessary, so that recommendations can be considered before replacement. Where this is not possible due to resource constraints or other limitations, the Commission ensures the plan review is completed before expiry, as required by the legislation. Given the number of plan reviews, and the timing and resourcing available, the Commission's reviews are generally carried out over a period of 4-5 months.

In consultation with DPE-Water's planning team, the Commission generally prioritises the sequence of reviews based on risk and expiry date. For example, plan areas where significant or complex issues are expected to be identified are prioritised. This ensures there is adequate time for a comprehensive review and consultation, as well as for DPE-Water to replace plans where warranted. A forward plan of upcoming reviews is published on the Commission's [website](#).

Similarly, the Commission takes a risk-based approach to allocating resources to the plan reviews. The team considers the level of risk for each plan and may adjust the level of analysis and engagement accordingly. The team continues to refine the risk assessment approach. In determining risk, the team considers factors such as:

- plan type and complexity (for example, regulated, unregulated, groundwater plans)
- identified critical risks for the plan area (for example, from departmental risk assessments and Section 44 audits)
- issues raised by stakeholders in public submissions and in past engagement (for example, during water resource plan development)
- relevant policies and agreements
- likelihood and potential consequences of known risks, including the potential extent and severity of consequences
- time until the plan expires.

⁶ Water resource plans are a requirement of the Australian Government's Basin Plan. They set out rules for how water is used in each water resource plan area to ensure Basin Plan requirements are met.

2.2 Review scope

The scope of the reviews as outlined in the Act is provided in **Chapter 1**. To meet the legislated requirements, the Commission seeks to evaluate the performance of each plan against:

- the principles (Section 2.2.1), objects (Section 2.2.2) and priorities (sections 2.2.1 and 2.2.3) of the Act
- the plan's stated objectives, strategies and performance indicators, which are linked to each of the broader outcome categories required as part of the review (environmental, social, cultural and economic outcomes).

The Commission must also consider stakeholder submissions and relevant policies and agreements (**Section 2.2.4**).

In general, the Commission considers evidence from the life of the plan (generally 10 years), including any new information generated during that period that may be relevant for improving outcomes. Where available and appropriate, evidence from before plan implementation may be examined – for instance, to assess the impact of implementing the plan. The Commission also considers evidence of future projections to determine material risks and pressures on the plan area when assessing the likelihood that the plan will support intended outcomes in the coming decade including future impacts of climate change (during the term of a replacement plan).

The Commission must rely upon the data and information that is available at the time of the review. Often in the complex space of water management, data to inform an understanding of the effectiveness of water sharing plan provisions, such as monitoring data, is limited. In the reviews, the Commission outlines what information was relied upon and highlights where additional data is needed to inform better water sharing decisions and support adaptive management in the future.

Prior to 2020, the objectives, strategies, and indicators of water sharing plans were not specific or measurable. Links between objectives, strategies and associated outcomes in plans continue to be unclear. As such, the Commission's reviews typically focus on consistency with the objects and principles of the Act most relevant to each outcome area. For example, where there are no specific environmental outcomes specified in the plan the review will identify information around the extent to which water sources, floodplains and dependent ecosystems are protected and restored consistent with the first principle of the Act. The team also assesses and comments on how the links in the plan objectives, strategies and associated outcomes can be strengthened.

2.2.1 Principles of the Act

The Act states:

- '(1) It is the duty of all persons exercising functions under this Act:*
- (a) to take all reasonable steps to do so in accordance with, and so as to promote, the water management principles of this Act, and*
 - (b) as between the principles for water sharing set out in section 5 (3), to give priority to those principles in the order in which they are set out in that subsection.'*⁷

⁷ Section 9 of the [Act](#)

The Commission's reviews must consider the water management principles, including the water sharing principles, of the Act, which are:

Generally--

- (a) water sources, floodplains and dependent ecosystems (including groundwater and wetlands) should be protected and restored and, where possible, land should not be degraded, and*
- (b) habitats, animals and plants that benefit from water or are potentially affected by managed activities should be protected and (in the case of habitats) restored, and*
- (c) the water quality of all water sources should be protected and, wherever possible, enhanced, and*
- (d) the cumulative impacts of water management licences and approvals and other activities on water sources and their dependent ecosystems, should be considered and minimised, and*
- (e) geographical and other features of Aboriginal significance should be protected, and*
- (f) geographical and other features of major cultural, heritage or spiritual significance should be protected, and*
- (g) the social and economic benefits to the community should be maximised, and*
- (h) the principles of adaptive management should be applied, which should be responsive to monitoring and improvements in understanding of ecological water requirements.*

In relation to water sharing--

- (a) sharing of water from a water source must protect the water source and its dependent ecosystems, and*
- (b) sharing of water from a water source must protect basic landholder rights, and*
- (c) sharing or extraction of water under any other right must not prejudice the principles set out in paragraphs (a) and (b).⁸*

2.2.2 Objects of the Act

The Commission considers the extent to which the plan provisions are consistent with the objects of the Act, which are:

' to provide for the sustainable and integrated management of the water sources of the State for the benefit of both present and future generations and, in particular--

- (a) to apply the principles of ecologically sustainable development, and*
- (b) to protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity and their water quality, and*
- (c) to recognise and foster the significant social and economic benefits to the State that result from the sustainable and efficient use of water, including--*
 - (i) benefits to the environment, and*
 - (ii) benefits to urban communities, agriculture, fisheries, industry and recreation, and*
 - (iii) benefits to culture and heritage, and*
 - (iv) benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water,*
- (d) to recognise the role of the community, as a partner with government, in resolving issues relating to the management of water sources,*
- (e) to provide for the orderly, efficient and equitable sharing of water from water sources,*

⁸ Section 5 of the [Act](#)

- (f) to integrate the management of water sources with the management of other aspects of the environment, including the land, its soil, its native vegetation and its native fauna,*
- (g) to encourage the sharing of responsibility for the sustainable and efficient use of water between the Government and water users,*
- (h) to encourage best practice in the management and use of water.’⁹*

The principles of ecologically sustainable development include the following:

- **The precautionary principle:** ‘that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation’. In applying the precautionary principle, public (and private) decisions should be guided by careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, as well as an assessment of the risk-weighted consequences of various options.
- **Inter-generational equity:** ‘that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations’.
- **Conservation of biological diversity and ecological integrity:** ‘that conservation of biological diversity and ecological integrity should be a fundamental consideration’.¹⁰

2.2.3 Licence priorities under the Act

The Commission considers whether the plan supports the prioritisation between different types of water access licence:

- ‘(1) For the purposes of this Act, the following priorities are to be observed in relation to access licences—*
 - (a) local water utility access licences, major utility access licences and domestic and stock access licences have priority over all other access licences,*
 - (b) regulated river (high security) access licences have priority over all other access licences (other than those referred to in paragraph (a)),*
 - (c) access licences (other than those referred to in paragraphs (a), (b) and (d)) have priority between themselves as prescribed by the regulations,*
 - (d) supplementary water access licences have priority below all other licences.*
- (2) If one access licence (the higher priority licence) has priority over another access licence (the lower priority licence), then if the water allocations under them have to be diminished, the water allocations of the higher priority licence are to be diminished at a lesser rate than the water allocations of the lower priority licence.*
- (3) In relation to the water management area or water source to which it applies, a management plan may provide for different rules of priority to those established by subsection (1).*
- (4) If a management plan so provides for different rules of priority, those different rules are taken to have been established by this section.’¹¹*

2.2.4 Public submissions and relevant policies and agreements

The Commission is required under the Act to consider public submissions (**Section 2.5**) and relevant state-wide and regional policies or agreements. Relevant state-wide and regional policies and agreements are identified on a plan-by-plan basis during review planning. Examples of policies and agreements commonly considered include:

⁹ Section 3 of the [Act](#)

¹⁰ Section 6 of the [Protection of the Environment Administration Act 1991 \(NSW\)](#)

¹¹ Section 58 of the [Act](#)

- [the NSW Water Strategy](#) – a 20-year strategy providing an overarching vision for 12 regional and two metropolitan water strategies
- [regional water strategies](#) – long-term strategies to understand each region’s future water needs and prioritise actions to manage risks
- [long-term water plans](#) – which guide the management of environmental water for nine inland NSW catchments
- state-wide policies, for example, the NSW pools policy¹²
- the NSW Aboriginal water strategy and groundwater strategy (in development)
- intergovernmental agreements
- [the Basin Plan 2012](#) – which sets the amount of water that can be taken from the Murray-Darling Basin each year
- DPE-Water’s [Extreme Events Policy](#) – which establishes the principles for managing extreme events for each major water source in the NSW Murray-Darling Basin.

While a detailed review of alignment between the plan and each relevant policy or agreement is beyond the Commission’s scope and resources, the Commission identifies where there are any key discrepancies between the plan and the relevant policies and agreements and may make recommendations regarding how they can be better aligned.

2.3 Limits of the scope

As **Figure 1** in **Chapter 1** shows, water management in NSW is undertaken by several agencies and organisations. The Commission has responsibilities for independent review of water sharing plans, but it is not responsible for plan development, implementation or replacement, operation of water systems, or individual licence monitoring or pricing, which impacts on scope.

The Commission reviews are focused on fulfilling its requirements under the Act and recommending improvements to plan provisions to better achieve outcomes, within the timeframes and resources available to the Commission. There are several factors that determine what is out of scope for reviews, including that:

- given the timeframes available for reviews, they do not examine in detail every provision of the plan, or concern or issue raised – instead, reviews focus on the issues the Commission considers the most material for improving outcomes and addressing significant risks, based on initial analysis and risk assessment
- recommendations focus on changes that can be made to plans to improve outcomes – while reports may recognise other influences or drivers outside of plan provisions, recommendations related to these are out of scope
- the Commission relies on evidence and data available at the time of the review and relies on other government organisations to undertake monitoring and provide available data and analysis where appropriate
- the Commission does not have a role in the review or approval of the water resource plans, which are a requirement of the Basin Plan, or the Basin Plan itself¹³

¹² NSW Office of Water (2011) [Access and trading rules for pools in unregulated rivers: access and trading rules for pools](#)

¹³ Parts of the water sharing plans form a significant portion of the water resource plans. The Commission does not have a role in the review or approval of water resource plans but assesses where requirements of the Basin Plan have been brought into a water sharing plan. For example, where an extraction limit for the Basin Plan is a requirement of a water sharing plan.

- the Commission does not assess individual compliance with licences within the plan areas – that is the Natural Resources Access Regulator’s (NRAR’s) role
- revision and replacement of the Plan is the responsibility of DPE-Water – its process for revising plans can be found at [Planning process - Water in New South Wales \(nsw.gov.au\)](https://www.nsw.gov.au/planning-process-water-in-new-south-wales).

2.4 Evaluation questions

The Commission examines key questions aligned with the scope for the Commission’s review specified in Section 43A of the Act to examine environmental, social and economic outcomes. As outlined in **Section 2.2.1** reviews must consider the water management principles, including the water sharing principles of the Act. In line with outcomes and process evaluation guidelines, the Commission examines a set of key questions and considers where provisions can be improved to better achieve outcomes, through examination of various lines of inquiry.

Indicative evaluation questions and lines of inquiry are provided below. These questions and lines of inquiry are periodically reviewed and may vary depending on the type and geographic location of water sources found in the plan area. For example, the Commission will consider whether the plan is inland or coastal, surface water or groundwater or both, unregulated or regulated and may adjust the assessment accordingly to customise the review to ensure the Plan context is reflected appropriately in the review.

Key Question 1: To what extent has the plan contributed to the achievement of environmental outcomes? This assessment may consider:

- the extent to which environmental water requirements and risks to water dependent ecosystems are identified either within the plan or other documents when not present in the plan
- rules in place to meet environmental water requirements and protect water sources and their water dependent ecosystems, and how these rules are implemented
- rules in place to protect groundwater dependent ecosystems (where applicable)
- rules in place to support maintenance or improvement of water quality
- evidence regarding condition of the water dependent ecosystems and any significant changes during the life of the plan or predicted in the future
- rules in place to meet government obligations such as protection of Ramsar sites
- the extent to which rules provide for adequate management of water under historical and future predicted climate variability
- whether rules in the context of climate change, may pose a threat of serious or irreversible environmental damage
- if rules adequately maintain or enhance environmental assets for future generations
- how the plan manages and supports connectivity¹⁴ within and between water sources (including surface and groundwater) – this also includes how the plan interacts with adjacent plans
- how drought and climate change are managed by the plan
- new or more accurate knowledge of environmental outcomes and environmental water requirements.

Key Question 2: To what extent has the plan contributed to the achievement of social outcomes (including cultural outcomes)? This assessment may consider:

¹⁴ Including instream linkage of aquatic environments, connectivity with floodplains, surface-groundwater connectivity, and vertical connectivity within groundwater sources.

- the extent to which basic landholder rights (domestic and stock rights, native title rights and harvestable rights) have been met and the rules in place protect them
- risks to basic landholder rights and if rules in place are adequate to address these
- how Aboriginal water rights, interests, knowledge and values are considered and provided for
- the extent to which town water supply needs have been met
- the extent to which the plan has provided for local industry as intended (for example, agriculture)
- the extent to which the plan reflects engagement with stakeholders
- risks to security of supply and what rules are in place to address these
- future demands of town water supply and likelihood they can be met under plan rules
- water-based wellbeing, amenity and tourism values in the plan area and risks to these values
- rules in place to support maintenance or improvement of water quality
- new or more accurate knowledge of social and cultural outcomes and associated water requirements.

Key Question 3: To what extent has the plan contributed to the achievement of Aboriginal cultural outcomes? This assessment may consider:

- how Aboriginal cultural water needs, values and places are identified either within the plan, or other documents when not present in the plan
- how the Aboriginal community has been engaged in the development of the plan
- the extent to which the plan reflects engagement with the Aboriginal community
- rules in place to protect cultural water needs and protect water dependent cultural values, uses and places, and how these rules are implemented
- rules in place to allow for allocation of water for Aboriginal communities for use as they deem fit
- how the plan acknowledges native title claims and determinations
- new or more accurate knowledge of Aboriginal cultural outcomes and associated water requirements.

Key Question 4: To what extent has the plan contributed to the achievement of economic outcomes? This assessment may consider:

- the types of water-dependent economic outcomes identified in the plan
- the extent water-dependent economic value and priorities have been supported in the plan area (for example, agricultural extraction, non-extractive use, and town water value)
- the extent to which licence holders had access to water as intended by the plan
- the extent to which rules provide certainty for users regarding access rights and any risks to allocations are clearly identified
- the extent to which the rules provide clear direction for the operation of system
- the adequacy and appropriateness of market-based trading opportunities in the plan including evidence of outcomes associated with trade opportunities
- how Aboriginal water rights and values are considered and provided for

- rules in place to support maintenance or improvement of water quality¹⁵
- new or more accurate knowledge of economic outcomes and associated water requirements.

Key Question 5: To what extent does the plan promote equitable sharing consistent with the objects and principles of the Act? (Note: this relates to social, environmental and economic outcomes). This assessment may consider:

- how rules establish access in line with prioritisation of the Act
- how plan rules provide for water to be shared equitably between licence holders
- how the plan has been implemented and how this has affected outcomes
- how adaptive management has been applied and new information incorporated over the plan period
- the extent to which climate change and climate variability are considered and addressed in the plan to ensure the plan can operate under a variety of scenarios
- how adaptive management is built into the plan to allow response to potential future changes and impacts
- consistency (where appropriate) with relevant adjacent plan rules and equity between the plan and adjacent plans
- how environmental values and basic landholder rights are protected from the impacts of trade.

2.5 Stakeholder engagement approach

The Commission values all stakeholders both internal and external to government as important knowledge holders who have a right to participate in government decisions and the design and delivery of independent advice. The Commission's key engagement principles are based on the *International Association for Public Participation Quality Assurance Standard*.¹⁶ These standards guide all engagement activities and Commission staff have had cultural and ethical training to ensure that respectful Aboriginal engagement is undertaken for reviews.¹⁷

A tailored stakeholder approach is developed for each review, taking into consideration the Commission's strategy, best practice engagement standards and available resources. The Commission's goals in engagement for reviews are to:¹⁸

- understand the diversity of stakeholder views and local knowledge, and identify potential solutions to inform more robust and rigorous advice on key issues
- improve transparency, public confidence in, and acceptance and ownership of advice
- reduce conflicts and improve effectiveness of communication through open and transparent communication and better understanding stakeholders' values and needs.

For each review, the Commission considers if there are any other engagement processes underway and aims to be sensitive to local engagement needs (for example, concurrent consultation processes and accounting for major events in farming production cycles). Where

¹⁵ Noting that other complementary measures such as land management practices and riparian rehabilitation also influence water quality.

¹⁶ International Association for Public Participation (2015) [Quality Assurance Standard for Community and Stakeholder Engagement](#)

¹⁷ Natural Resources Commission (2020) *Natural Resources Commission: Cultural Competency and Stakeholder Engagement Action Plan* (internal document).

¹⁸ Natural Resources Commission (2021) *Natural Resources Commission: Stakeholder Engagement Strategy* (internal document).

appropriate and possible, the Commission undertakes field trips for interviews to meet key stakeholders in person. All stakeholders consulted, and their role and contact details are recorded and kept up to date. The Commission keeps all personal details confidential in line with ethical standards.

For reviews, the Commission's principles for engagement are to be:

- **well-defined and balanced** – key stakeholder groups are identified and engaged individually; stakeholder groups are reflective of the broad range of views.
- **transparent and consistent** – the Commission's approach is clearly articulated, key stakeholders are engaged as appropriate at key points in the review process.
- **proactive to meet outcomes** – key stakeholders are identified and engaged early, key concerns are considered early.
- **based on co-design principles** – where appropriate, stakeholders, particularly end users of water sharing plans, are engaged early and all feedback is given due consideration in the review.

Key opportunities for stakeholders to be involved in the review process include but are not limited to:

- invitation to make a submission through the NSW Government's 'Have Your Say' process (all identified stakeholders and licence holders in the Plan area receive written notification and public advertisements are placed to announce call for submissions)
- agency and technical expert contact interviews
- targeted key and local stakeholder interviews.

Once a review report is approved by the Minister, the Commission notifies all identified stakeholders by email of the report being available on the Commission's [website](#).

2.5.1 Aboriginal stakeholder engagement

The Commission has developed an Aboriginal engagement strategy that is available on its [website](#). Aboriginal communities have much to contribute to natural resource management, with ongoing diverse and deep connections to lands and waters – commonly captured in the phrase 'Caring for Country'. Caring for Country represents a holistic approach to sustainable land management that goes beyond an individual site or landscape and encompasses all living things, spirituality and culture, and the communities connected to Country, including socioeconomic and wellbeing outcomes. Meaningfully including Aboriginal people in effective water management, leadership and action helps to improve the health of all people and Country.¹⁹

The Commission continues to identify critical issues in plans relating to Aboriginal water rights and protection of cultural values across its reviews and supports engagement with Aboriginal people as part of its water sharing plan reviews. The Commission welcomes state-wide Aboriginal organisations, advocacy groups (and their nation delegates) and local Aboriginal Groups (see **Section 2.5.2**) relevant to Plan review areas to make a submission and participate in interviews. Interviews and submissions from Aboriginal stakeholders provide opportunities for Aboriginal people to contribute to the Commission's reviews and improve the quality of our advice with Aboriginal knowledge, culture, and experience.

It is important to note that the Commission's review timeframes are short (4-5 months), which limits the time and opportunity available to develop recommendations in partnership with

¹⁹ Natural Resources Commission (2020) [Aboriginal Engagement Strategy](#)

Aboriginal peoples. As such, the Commission's advice is focused on identifying issues of concern to Aboriginal peoples and desired outcomes within the review limitations.

The Commission acknowledges that we often rely on key stakeholder groups to provide advice regarding Aboriginal community concerns. We actively seek input and advice in each plan area from key stakeholder groups and local experts where possible, but acknowledge that sometimes time constraints limit the input that we receive.

Given this, the Commission encourages DPE-Water – who are responsible for the plan replacement process – to meaningfully engage with Aboriginal peoples to co-develop responses to relevant recommendations, which fully consider Aboriginal values, needs and perspectives. This is critical in the path towards improving outcomes for Aboriginal peoples.

The Commission's commitment

The Commission respects Aboriginal peoples' custodianship and obligations to Country and values the role of cultural knowledge in effective natural resource management.

While the Commission recognises the limitations in its ability to fully engage with the Aboriginal community (outlined above), it endeavours to adhere to the following principles in engagement, which draw on several international and national guidelines:²⁰

- value and integrate cultural knowledge
- respect Aboriginal custodianship and connection to Country
- acknowledge the impacts of past and ongoing trauma
- support beneficial relationships
- recognise the diversity of culture, knowledge, protocols and obligations
- take the time to plan and deliver meaningful and respectful engagement
- seek advice and feedback and evaluate engagement.²¹

2.5.2 Key stakeholders involved

The primary audience for the Commission's reports are the Minister responsible for Water, as well as the Minister responsible for the Environment, who is responsible for concurrence if a water sharing plan is remade or amended.

The Commission engages most closely throughout reviews with the DPE-Water planning group, as the developer of the water sharing plans. This includes requesting data and conducting interviews with planners knowledgeable about the plan area. The Commission's senior management meets monthly with DPE-Water senior management to discuss the forward plan for reviews and any emerging issues.

Key stakeholder groups include but are not limited to:

- town water suppliers (local councils)
- basic landholder rights and native title users

²⁰ United Nations (2007) *Declaration on the Rights of Indigenous Peoples*; Secretariat of the Convention on Biological Diversity (2004) *Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities*; Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) (2019) *Code of Ethics for Aboriginal and Torres Strait Islander Research*.

²¹ Natural Resources Commission (2020) [Aboriginal Engagement Strategy](#)

- water licence holders (for example, irrigated agriculture, mining and associated industry groups)
- other water dependent groups (floodplain graziers and croppers and aquaculture)
- industries such as tourism and recreational fishing
- community stakeholders with an interest in protecting local environmental, amenity or recreational values.
- **State-wide Aboriginal organisations**, including:
 - Aboriginal Affairs NSW
 - NSW Aboriginal Land Council
 - Indigenous Land and Sea Council
 - Native Title Services Corporation
 - Murray Lower Darling Rivers Indigenous Nations
 - Northern Basin Aboriginal Nations
- **Local Aboriginal groups**, including:
 - native title holders and applicants
 - Nation groups
 - local Aboriginal land councils
- **Key agencies:** Several NSW and Australian government organisations are consistently involved in Commission reviews, where relevant, including:²²
 - DPE-Water
 - WaterNSW
 - NRAR
 - DPE-EHG
 - Department of Primary Industries (DPI)-Fisheries
 - Local Land Services
 - Commonwealth Environmental Water Holder
 - Murray-Darling Basin Authority
- **Regional organisations and other non-government organisations**, including:
 - environment and river groups
 - regional development organisations
 - research groups.

The team undertakes interviews with these groups and agencies and may request any relevant data or reports identified from these agencies.

2.6 Review approach

The Commission undertakes its reviews using a range of inputs and an iterative approach, as outlined in **Figure 2**.

²² These interviews are classified as technical/implementation interviews, which inform the Commission's findings and recommendations at key stages of the review process outlined in **Figure 2**.



2.6.1 Evidence

How much evidence is needed to develop recommendations will be a matter for the review team's professional judgement and will depend on the sources and types of available information, as well as level of risk identified in the plan area. To reduce duplication of effort existing data sources are drawn on where possible. The team uses the good practice principles of evaluation when gathering evidence to ensure that findings are validated with sufficient evidence and properly documented.

Types of evidence might include but not be limited to:

- the water sharing plan
- background document
- relevant risk assessments (for example, those generated for the water resource plans)
- long term water plans or other environmental watering plans
- public submissions (including, where relevant, submissions from previous government processes such as development of water resource plans)
- interview transcripts
- new or more accurate data
- academic literature
- monitoring and evaluation data
- modelling data
- water usage data
- evidence provided by agencies²³

²³ Clause 16(3) of the *Natural Resources Commission Act 2003* states that 'The Commission may, for the purposes of exercising its functions, direct a government agency to provide the Commission with any relevant information held by the agency, and the agency must (subject to subsection (4)) comply with the direction'.

- Section 44 audits (5-year implementation audits of water sharing plans carried out by the Commission).

Review procedures may include:

- document review (including agency documents and academic literature)
- interviews with relevant agencies including DPE-Water's planning, utilities and science groups, DPI-Fisheries, DPE-EHG, WaterNSW, NRAR and local councils
- interviews with other stakeholders as identified in the stakeholder engagement plan.

Interviews follow an interview guide, and a separate transcript is saved for each interview. Interviewees are advised that all interviews are to be documented. While all findings and observations are reported at the organisation level, no individuals are identified.

2.6.2 Early issues identification

A public call for submissions is typically made three to six months before the start of the plan review. This allows time for submissions to be made and for the Commission to consider issues raised in early analysis. Stakeholders may be advised of the call for submissions in several ways, including:

- stakeholders who have been asked to be notified of any call for submissions, or who the team has identified as potentially interested in the call for submissions receive an email
- advertisements may be placed in local papers
- an email is sent to all licence holders – the Commission coordinates with WaterNSW to send a notification letter to all licence holders in a Plan area. Licence holder information remains confidential in this process in line with privacy requirements.

As part of the initial analysis, the Commission reviews key documents such as the plan itself, the background document, risk assessments available from other agencies, and long-term water plans or other environmental watering plans and relevant policies and agreements.

The Commission also undertakes preliminary interviews with key agency contacts to provide technical insights and identify key issues that arose during the plan period. Where appropriate, the Commission may also interview key external stakeholders at this stage.

2.6.3 Targeted analysis of key issues

Once issues have been identified, the team undertakes more in-depth issues analysis. This involves additional interviews with internal and external stakeholders, as well as review of additional evidence such as academic literature, monitoring and evaluation data, and reports from agencies. The Commission develops a stakeholder engagement plan for each review informed by the issues identification process. This stage is iterative and new issues may be added if identified through additional document review or interviews as new information comes to light.

The Commission considers, to the extent possible, spatial variability in the plan area and seeks to make recommendations at the most appropriate scale to address identified issues.

When undertaking analysis and describing findings in our report, the Commission considers the '5Cs':

- **Criteria** (what is expected to occur – this would be the outcomes the Commission identifies as expected to be achieved).
- **Condition** (what is actually occurring in relation to the criteria).

- **Cause** (why is an issue or finding occurring) so that an appropriate recommendation is made relevant to the underlying cause if it can be determined rather than just the symptom.
- **Consequence** (impact of an issue or finding) so that appropriate recommendations can be made that are appropriate in nature and scale and priority. Note that while the Commission considers consequences, including potential magnitude of the consequences, it is not resourced to undertake full cost benefit analyses of recommendations.
- link clearly to the **corrective action** (recommendation).

2.6.4 Recommendations

Where the Commission identifies that plan provisions could be materially improved, it makes recommendations for improvement. These recommendations:

- focus on key issues for the plan area
- directly relate to findings and issues within a plan and the scope of the review
- consider new or more accurate data since plan development
- are forward looking – addressing risks likely to materialise during the life of the Plan
- identify where additional evaluation of information (for example, climate change projections) is required due to a material risks of serious or irreversible harm
- identify where additional evidence may be required to understand impacts any proposed changes may have on water users and community
- are designed to be feasible to implement
- consider the net benefit of adopting those recommendations
- identify who is responsible for implementation for each recommendation
- are evidence-based (within the limitations of data available)
- focus on the outcome that is intended to be achieved.

The Commission notes that it provides an independent review and recommendations. These recommendations are non-binding – the Act only requires that the Minister consider the Commission’s review.

2.7 Reporting

The Commission presents its analysis of key issues and recommendations in a review report. These reports aim to:

- provide independent assessment of the plans
- identify areas of good practice where provisions are being given effect to and areas for improvement in plan implementation
- be balanced and objective
- clearly communicate issues – while the key evaluation questions are divided based on environmental, social and economic outcomes, many identified issues cut across these outcomes. As such, reports are structured to focus on issues and do not necessarily reflect the structure of the key evaluation questions.

The draft report is shared with relevant government organisations for comment, including DPE-Water’s planning group, WaterNSW, NRAR, DPE-EHG and DPI-Fisheries. The Commission

aims to provide four weeks for agency review of the draft. Agencies are requested to identify any concerns regarding accuracy or the Commission's findings or concerns regarding the recommendations. Issues raised in the agency review are considered by the Commission in preparing the final report.

A final report is provided to the Minister responsible for Water, in addition to the Minister for the Environment who must provide concurrence on any remade or amended plan. The Minister is required under the Act to consider the Commission's report prior to deciding whether to extend the plan as is or replace the plan. The Commission's advice is non-binding. The Minister may extend the plan for up to two years to allow for it to be replaced without concurrence of the Minister for the Environment.

In accordance with the Act, the Commission publishes its reports when a response is received from the Minister or within six months, whichever comes first. Reports are published on the Commission's [website](#). Stakeholders may register to receive notification when reports are published.

2.8 Plan replacement

The Commission does not have a legislated role in plan replacements. Once the Commission's report has been completed, the Minister and DPE-Water are responsible for considering the recommendations and revising or replacing plans.

2.9 Consideration of compensation

Once the recommendations of the review are finalised, the Commission assesses if any of the recommendations would require compensation as per Section 43A(3A) of the Act.²⁴ Under the Act, compensation is payable by the State to access licence holders only in certain circumstances²⁵ where water allocations under a water sharing plan are reduced. Specifically, the Act states:

'(3A) If a report of the Natural Resources Commission under subsection (3) recommends changes to a management plan that will result in a reduction of water allocations in relation to which compensation might be payable under section 87AA, the Commission is to state in the report whether the purpose of the proposed change is:

- *(a) to restore water to the environment because of natural reductions in inflow to the relevant water source, including but not limited to changes resulting from climate change, drought or bushfires, or*
- *(b) to provide additional water to the environment because of more accurate scientific knowledge that demonstrates that the amount previously allocated to the environment is inadequate.'*

²⁴ If a Commission report recommends changes to a plan that will reduce water allocations in relation to which compensation might be payable under Section 87AA of the Act, the Commission is to state in the report if the purpose of the proposed changes is: (a) to restore water to the environment because of natural reductions in inflow to the relevant water source, including changes from climate change or drought or (b) to provide additional water to the environment because of more accurate scientific knowledge demonstrating the amount previously allocated to the environment is inadequate.

²⁵ As set out in sections 87 and 87AA of the Act. Section 87 states that compensation applies for certain reductions in water allocations arising during the initial (10-year) period of a water sharing plan, only where amendments are not already contemplated in that plan. Section 87AA makes clear that compensation applies to amendments to the plan after its 10-year term. In addition, the Minister has an overriding discretion under Section 87 (but not under Section 87AA) to determine if compensation should be paid and, if so, the amount of any such compensation and the manner and timing of any payments.

Section 87AA outlines the specifics of when compensation is and is not payable. For example, compensation is not payable if a change is made to a water sharing plan to restore water to the environment because of natural reductions in inflow to the relevant water source, including but not limited to changes resulting from climate change, drought or bushfires. However, compensation may be payable where changes are due to other drivers such as more accurate scientific knowledge. Compensation is not payable where the Plan allows for a change to occur such as through an amendment provision.

The Commission includes a discussion of the compensation assessment at the conclusion of each water sharing plan review report. Whether compensation may be payable is a complex issue and is often dependent upon the way a recommendation is implemented. The Commission does not seek or provide any legal advice regarding compensation. It is expected that DPE-Water would seek legal advice where appropriate.

3 Document control

Date approved	Annual
Review period	Every 2 years
Next revision	
Responsible Officer	Executive Director
Approving Officer	Commissioner
Changes made during the last revision	N/A