

30 July 2026

Our ref: [WD: W&A: FNLP]

National Water Reform 2026 inquiry
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

By email: [REDACTED]

Dear Commissioners

National Water Reform 2026 — Interim Update 2: Preliminary assessment

Thank you for the opportunity to provide feedback on the Productivity Commission's (Commission) *National Water Reform 2026: Interim Update 2: Preliminary assessment (Interim Update 2)*.

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law and help protect the rights of individuals and consumers. QLS also assists the public by advising government on improvements to laws affecting the community and working to improve their access to the law.

This response has been prepared with input from the QLS Water & Agribusiness Committee and the First Nations Legal Policy Committee, whose members have substantial expertise in this area.

We have responded to the information requests the Commission has raised in connection with section 9 (Knowledge and capacity building) and section 11 (Water interests of Aboriginal and Torres Strait Islander people) of the Preliminary Assessment. These comments are confined to matters directly evidenced in relation to Queensland.

The QLS submission on Interim Update 1 (Water Services Reform Directions) briefly addressed First Nations issues, in the context of collaborative service-delivery models (Information Request 4) and workforce and institutional capability in regional, remote and First Nations communities (Information Request 8). The Interim Update 2: Preliminary Assessment contains more specific evidence about Queensland's own arrangements.

1. Distinguish representation from shared decision-making

The Commission notes that progress on Aboriginal and Torres Strait Islander representation in water planning in Queensland has occurred through representation on Queensland's Water Engagement Forum and the Great Artesian Basin (GAB) advisory council (PC 2026, p. 23). The Commission rates every commitment under section 11 nationally as only 'partially achieved',

and records broader participant feedback that engagement activity ‘has not shifted underlying governance settings’, with participation remaining ‘framed largely through advisory and consultative mechanisms rather than shared authority’ (PC 2026, p. 24).

The Water Engagement Forum and the GAB advisory council are consultative bodies. QLS considers representation on a forum or advisory council is analytically distinct from holding a decision right in relation to an entitlement, allocation or licensing outcome, and that the final report should not treat the two as equivalent measures of progress.

Queensland’s recent Ministerial performance assessment reports provide further context for that distinction. The Cape York report refers to the establishment of a First Nations engagement team, development of a First Nations Water Strategy, a proposed cultural-values assessment and a project intended to build the capacity of Aboriginal Corporations to access and understand water licences issued under the Cape York water plan. The Cooper Creek report similarly refers to the engagement team, Strategy and proposed future cultural values assessment.¹

Recommendation

The final report should ask Queensland (and other jurisdictions) to state, for each nominated body, whether it is

- (a) advisory or consultative only, or
- (b) attached to an actual decision right (for example, a statutory consent function, a seat on an entitlement-granting body, or an enforceable co-management arrangement). QLS suggests progress toward ‘shared decision-making’ should be assessed only against mechanisms of the second kind.

2. Finalise, publish and fund Queensland’s First Nations Water Strategy

The Commission records that Queensland has engaged with specific Aboriginal and Torres Strait Islander groups to include their objectives in water plans as those plans are reviewed (PC 2026, p. 24).

It is noted qldwater has advised the Commission that the Queensland Government should publish and implement its First Nations Water Strategy, with funded actions addressing training needs (PC 2026, p. 21), and separately that the Strategy ‘has not yet been finalised or publicly released’ (PC 2026, p. 24).

This is a concrete and readily fixed gap between stated intent and delivery. It also raises the broader point that including Aboriginal and Torres Strait Islander objectives in a water plan achieves little unless the objective is linked to an operative mechanism (an allocation rule, a licence condition or another enforceable instrument) rather than left as a statement of policy.

Queensland’s Ministerial performance assessment reports provide primary evidence that implementation remains incomplete in a number of plan areas. Reports published during 2024 record that:

¹ Queensland Government, *Minister’s Performance Assessment Report: Water Plan (Cape York) 2019* (June 2024) 9, 18, 23, 25, 28–31; Queensland Government, *Minister’s Performance Assessment Report for the Water Plan (Cooper Creek) 2011* (August 2024) v, 5–6, 10, 16.

- in the Baffle Creek Basin, an outcome could not be assessed because further engagement was required to understand and report on water-related cultural values;
- in the Condamine and Balonne, an outcome concerning water made available to support Aboriginal economic and social aspirations was assessed as medium risk and partially achieved, with no water released from the relevant reserve and cultural-values mapping remaining incomplete;
- in Cooper Creek, an outcome concerning First Nations economic, social and cultural values could not be fully assessed because of insufficient information;
- in the Burnett Basin, further work was identified to understand water demand, cultural values and the flows associated with relevant cultural outcomes; and
- in the Wet Tropics, three outcomes relating to First Nations cultural values and economic or social aspirations could not be fully assessed.²

These findings do not establish that the relevant outcomes have no legal or administrative effect. They demonstrate, however, that including an outcome in a statutory water plan does not, of itself, establish:

- the actions or measures through which the outcome will be implemented;
- the institution responsible for implementation;
- the information required to assess performance;
- the process for reporting progress; or
- the response where the outcome cannot be assessed or is only partly achieved.

QLS acknowledges that the reports also identify positive developments. In addition to the First Nations engagement team and development of the Strategy, the Cape York and Cooper Creek reports refer to proposed cultural-values assessments and further engagement to inform future water-plan reviews. The Cape York report also identifies the Activating Indigenous Peoples Water Rights Under the Cape York Water Plan project, which is intended to assist Aboriginal Corporations to access and understand how their water licences may be used or leased.³

These are relevant implementation and capacity-building measures. They do not remove the need for the Strategy to identify actions, responsibility, timeframes, funding and reporting arrangements.

² Queensland Government, *Minister's Performance Assessment Report: Water Plan (Baffle Creek Basin) 2010* (February 2024) i-iii, 6, 17–20; Queensland Government, *Minister's Performance Assessment Report: Water Plan (Condamine and Balonne) 2019* (February 2024) ii, 18, 39, 41, 55; Queensland Government, *Minister's Performance Assessment Report for the Water Plan (Cooper Creek) 2011* (August 2024) v, 5-6, 10, 16; Queensland Government, *Minister's Performance Assessment Report: Water Plan (Burnett Basin) 2014* (December 2024) ii-iii, 4, 13, 25, 33–34; Queensland Government, *Minister's Performance Assessment Report: Water Plan (Wet Tropics) 2013* (June 2024) 2–3, 18.

³ Queensland Government, *Minister's Performance Assessment Report: Water Plan (Cape York) 2019* (June 2024) 9, 18, 23, 25, 28–31; Queensland Government, *Minister's Performance Assessment Report for the Water Plan (Cooper Creek) 2011* (August 2024) 5-6, 10, 16–17.

The QLS submission responding to Interim Update 1 already argued, in a different context, that pricing and planning frameworks should distinguish clearly between matters that are merely stated as policy and matters that carry legal consequence. QLS considers the same discipline should apply here.

QLS does not suggest that cultural outcomes should be reduced to uniform national indicators or that culturally restricted information should be publicly disclosed. The approach to assessment and reporting must be developed with the relevant Aboriginal and Torres Strait Islander peoples, including persons with authority to speak for Country, and must appropriately protect Indigenous Cultural and Intellectual Property and culturally restricted knowledge.

Recommendation

The final report should recommend that the Queensland Government finalise, publicly release and adequately fund its First Nations Water Strategy, including the training and capacity-building actions qldwater has identified.

Where a Queensland water plan includes an Aboriginal or Torres Strait Islander cultural, social or economic outcome, the plan or associated implementation material should identify:

- the intended legal or administrative effect of the outcome;
- whether, and in what manner, it is relevant to subsequent allocation, licensing or management decisions;
- the instrument or process through which it will be implemented;
- the institution responsible for implementation; and
- the agreed approach to assessment and reporting.

This does not require every outcome to operate as a directly enforceable condition on every subsequent decision. It requires the intended effect and implementation pathway to be stated clearly.

3. Close the mining water-take exemption, accounting for cultural and environmental water interests

The Commission's assessment records that Queensland is the only remaining jurisdiction providing an exemption for mining industries from the requirement that water access entitlements apply to all major consumptive water uses (PC 2026, p. 4). No update on this position has been reported since 2024.

An exemption of this kind is a gap in the entitlement and accounting framework generally, and QLS makes no submission here as to the merits of the exemption itself. However, any reform to close the gap has a direct bearing on the water available for cultural and environmental purposes, and on the reliability of water accounting more broadly.

In QLS's view this consequence should be explicitly considered as part of any reform, rather than addressed only as an afterthought to a decision made on other grounds.

Recommendation

The final report should recommend that, if and when Queensland brings mining-related associated water take within the standard entitlement framework, the reform expressly consider the resulting effect on water available for cultural and environmental outcomes, and be accompanied by the metering, monitoring and reporting arrangements that already apply to other major consumptive uses.

4. A proportionate response to identified risks and information gaps

Queensland law already provides a mandatory statutory consequence where the Minister is satisfied that a water plan no longer advances the matters mentioned in section 41 of the *Water Act 2000* (Qld): the Minister must amend or replace the plan.⁴ That statutory threshold should not be conflated with every adverse monitoring result, medium-risk rating or identified knowledge gap.

The appropriate response will depend on the nature, significance and cause of the finding. It may involve further engagement or investigation, additional monitoring, an operational or licensing response, compliance action, amendment of a water management protocol, or scheduled review and replacement of the water plan. Some risks may also arise partly from matters outside the water-planning framework. For example, the Condamine and Balonne Ministerial performance assessment report records that risks to waterholes are partly attributable to sedimentation and landscape practices, while identifying further monitoring and research to inform the next plan review.⁵

This distinction is also relevant where an Aboriginal or Torres Strait Islander cultural, social or economic outcome cannot be assessed. Insufficient information does not, without more, establish that the outcome has failed or that the water plan no longer advances sustainable water management. However, repeated inability to assess an outcome raises a legitimate accountability issue.

On each material finding, the Ministerial performance assessment report or associated review material should identify:

- the proposed response, including whether it involves further engagement or investigation, operational action, amendment of an administrative instrument, compliance activity, plan amendment or scheduled replacement;
- the institution responsible for implementing the response;
- the relevant timeframe;
- any implementation and funding responsibility; and
- the reasons for the selected response, including where no immediate corrective action is proposed.

⁴ *Water Act 2000* (Qld) ss 41, 50(2).

⁵ Queensland Government, Minister's Performance Assessment Report: Water Plan (Condamine and Balonne) 2019 (February 2024) ii, 10, 41, 61.

This information can be provided through the existing Queensland reporting framework. Consistent with QLS's submission on Interim Update 1, any nationally consistent reporting principles should adopt a 'report once, use many times' approach and avoid establishing a duplicative Commonwealth reporting regime.

Recommendation

The final report should recognise that the appropriate response to an adverse finding or information gap will depend on its nature, significance and cause. Where a material outcome is not achieved, is only partly achieved or cannot be assessed, the relevant jurisdiction should identify the proposed response, responsible institution, timeframe, implementation and funding responsibility, and reasons where no immediate corrective action is proposed.

5. A national issue with Queensland relevance

The Commission's assessment separately records a native title argument raised in relation to the Northern Territory - that water extraction licensing decisions may engage the 'future act' provisions of the *Native Title Act 1993 (Cth)* (NTA), triggering procedural rights not currently recognised in that jurisdiction's licensing process (PC 2026, p. 25).

QLS takes no position on that jurisdiction-specific dispute, but notes the underlying legal question is a national one, and its resolution may also bear on how Queensland's own water licensing framework interacts with native title under Subdivision H of the NTA. QLS suggests the Commission consider whether national clarity on this question would assist all jurisdictions, including Queensland.

Summary of recommendations

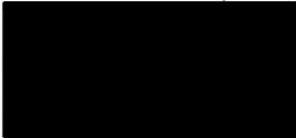
- Require Queensland (and other jurisdictions) to distinguish advisory/consultative bodies from mechanisms carrying an actual decision right when reporting on Aboriginal and Torres Strait Islander representation and shared decision-making.
- Recommend the Queensland Government finalise, publish and fund its First Nations Water Strategy, and require water plans to state which Aboriginal and Torres Strait Islander objectives are binding and by what mechanism.
- Require Queensland water plans or associated implementation material to identify the intended legal or administrative effect of Aboriginal and Torres Strait Islander cultural, social and economic outcomes, the mechanism and institution responsible for implementation, and the agreed approach to assessment and reporting.
- Recognise that an adverse finding, medium-risk rating or inability to assess an outcome does not necessarily require immediate amendment of a water plan. Where a material outcome is not achieved, is only partly achieved or cannot be assessed, the relevant jurisdiction should identify the proposed response, responsible institution, timeframe, implementation and funding responsibility, and reasons where no immediate corrective action is proposed.

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- Consider whether national legal clarity on the *Native Title Act 1993 (Cth)* future act question would assist all jurisdictions, including Queensland.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [REDACTED] [REDACTED].

Yours faithfully



Peter Jolly
President