



**The Honourable Melinda Pavey MP**  
Minister for Water, Property and Housing

MF19/2221

Senator Slade Brockman  
Chair  
Senate Select Committee on the  
Multi-jurisdictional Management and Execution  
of the Murray Darling Basin Plan  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Senator

Thank you for your letter dated 8 August 2019 to the Hon Gladys Berejiklian MP, inviting the NSW Government to provide a written submission addressing the terms of reference for the Select Committee on the Multi-jurisdictional Management and Execution of the Murray-Darling Basin Plan.

The NSW Premier has asked me to respond on her behalf and I am pleased to provide a brief submission to inform the Committee's development of an issues paper.

Significant reform has been made in NSW in key areas that relate to the nature of this inquiry, particularly regarding the improved coordination with other Basin stewards, and in the areas of measuring, monitoring, compliance and enforcement.

There have been many recent reviews undertaken on implementation, compliance and governance of the Murray Darling Basin Plan. These reviews instigated by the Commonwealth Government, NSW, other Basin states, or through a joint interjurisdictional approach have considered impacts to NSW and at a Basin-wide scale. The NSW Government will continue to consider any relevant recommendations from reviews or investigations, and implement the Basin Plan in a way that genuinely balances social, economic, environmental and cultural outcomes.

The NSW Government asks that the Committee conducts the inquiry considering drought as a contextual factor in this review. Persistently dry conditions have coincided with record high temperatures across NSW since 2017. Low rainfall and high temperatures have continued this winter with NSW experiencing the fourth-lowest rainfall totals on record and the lowest since 1982. The extent of this drought places additional pressure on community's resilience and ability to cope with the pace and extent of reform that the Basin Plan represents.

Inflexible timeframes associated with the implementation of the Basin Plan have contributed to a strain on limited technical resources available to NSW to help respond to the drought, and our state has sought to meet challenging deadlines coupled with a major drought response.

### **Management and administration**

The Productivity Commission has responsibility for assessing the effectiveness of the implementation of the Basin Plan and associated Water Resource Plans (WRPs) every five years. The joint government response to the Productivity Commission's first report, *Murray-Darling Basin Plan: Five-year assessment* has now been published and can be found at <https://www.pc.gov.au/inquiries/completed/basin-plan#report>. Included in the joint response is

a list of actions being undertaken, or proposed to be undertaken, by governments in response to the recommendations.

Progress on implementing the agreed responses to the Productivity Commission recommendations will be reported back to the Murray-Darling Basin Ministerial Council.

A cornerstone of the strategy for managing water resources in the Basin is adaptive management, achieved through the trialling of techniques, monitoring subsequent outcomes, and making changes as needed.

Adaptive management allows governments and communities to adjust their approach in response to current climatic conditions, new information and local knowledge when planning for the future. The features of this approach are planning, management, monitoring and evaluation. Adaptation can happen at any one of these stages.

### **Openness and transparency**

The NSW Government recognises that transparency is essential to giving stakeholders confidence that this precious resource is being managed appropriately.

In December 2017, the NSW Government released the Water Reform Action Plan (WRAP) in response to the Independent investigation into NSW water management and compliance, conducted by Ken Matthews, AO and the Murray–Darling Basin Water Compliance Review.

The WRAP outlines four goals to reform water management in NSW; introducing best practice water management; ensuring transparency in how we share, allocate and manage water; building a compliance and enforcement regime that ensures strong and certain regulation; and building capability to support implementation of water reforms.

These goals will be achieved through 40 discrete actions that the NSW Government committed to undertaking to ensure an equitable and transparent approach to the management of water in NSW. To date, 36 of these actions have been delivered.

The Murray-Darling Basin Compliance Compact was endorsed by ministers in June 2018, and approved by First Ministers in December 2018. Under the Compact, Basin states, including NSW, committed to publish a work program for improving transparency of water-related information by 30 June 2019. The NSW Government has published its work program on the Department of Planning, Industry and Environment's website at <https://www.industry.nsw.gov.au/water-reform>

The Compact represents a commitment by Basin governments to address the serious issues identified in a number of reviews into compliance and the integrity of water management in the Basin.

The *Murray-Darling Basin Compliance Compact Interim Assurance Report 2018* was released in December 2018. This report noted the NSW Government has made significant progress in largely completing the Compact actions due to be delivered in 2018, and is progressing well to achieving its forward commitments, in particular around the implementation of new metering arrangements and addressing the backlog of allegations of noncompliance in NSW.

It should be noted that NSW has the most robust and rigorous compliance and enforcement framework in the Murray-Darling Basin, and that the maximum penalties available in NSW far exceed those available in other jurisdictions.

The NSW Government is also committed to effective and genuine engagement with stakeholders and the broader community, recognising this leads to better public policy outcomes, improved service delivery and enhanced customer satisfaction.

The NSW Department of Planning, Industry and Environment – Water has held over 280 external stakeholder and community engagement activities in the last 12 months, including Nation-by-Nation consultation.

The NSW Government recognises the role of Aboriginal peoples as the traditional custodians of the Murray–Darling Basin and has undertaken Nation-by-Nation consultation with 29 Aboriginal nations—covering the entire NSW area of the Murray–Darling Basin—to incorporate specific Nation's values and objectives for water in individual Water Resource Plans.

The NSW Government appointed Mr Jock Laurie as the NSW Drought Coordinator to oversee the implementation of NSW drought relief measures and ensure the right assistance is reaching those most in need.

Mr James McTavish was appointed as the NSW Regional Town Water Supply Co-ordinator, to oversee the work being done to ensure water supply and quality in towns and communities across the state. Mr McTavish works closely with local councils on issues of concern.

The NSW Government has committed to transparent and meaningful engagement with communities as it develops Sustainable Diversion Limit Adjustment Mechanism (SDLAM) projects. The NSW Government has established governance arrangements that guarantee community and stakeholder representatives a seat at the table to provide input to the design of projects within their communities and regions.

As part of the NSW Government response to the NSW Natural Resources Commission's review of the Barwon-Darling Water Sharing Plan and the Independent Assessment of the 2018–19 fish deaths in the Lower Darling (the Vertessy Report), we have committed to work with key agencies involved in NSW water management and Aboriginal groups to explore options for an Aboriginal water policy, with the aim of improving the representation of Aboriginal cultural interests and values in water management.

### **Compliance and enforcement**

A key action in the WRAP was to create a new independent water regulator with strong regulatory powers. The Natural Resources Access Regulator (NRAR) was established by legislation in 2017 to be an independent, transparent and effective water regulator with total responsibility for the compliance and enforcement of water laws in NSW.

NRAR releases annual progress reports to inform stakeholders and community of the regulator's intentions, activities and outcomes. These reports represent the independent voice of the regulator and are delivered direct from the NRAR Board to the public.

The establishment of NRAR has meant more compliance boots on the ground, and since it commenced operations on 30 April 2018, NRAR has conducted 462 property inspections to date. Ten prosecutions have also commenced since NRAR's establishment, with three of these prosecutions finalised and their results published on NRAR's transparent public register.

The NSW Government has welcomed Minister Littleproud's recent announcement to establish an Inspector-General for the Murray-Darling Basin to build community confidence in water management, Basin Plan implementation and compliance across the whole Basin.

### **Measuring and monitoring**

The NSW Government is implementing some of the most rigorous non-urban water metering rules in Australia. This is a key commitment in the Water Reform Action Plan. The new rules will ensure that more than 95 per cent of licensed non-urban water infrastructure capacity has an accurate, auditable and tamper-proof meter. This will result in real and positive change for water management in NSW.

The new metering framework became law in November 2018 and the NSW Government is implementing the rules in stages over five years, with an initial focus on large water users. This staged rollout gives water users and the meter market time to get ready.

The NSW Government is currently consulting on a package of measures to improve management of environmental water. The package includes:

- Active management of environmental water in the Barwon-Darling, Macquarie and Gwydir unregulated water sources – to protect environmental water so it can remain in-stream for environmental purposes.
- Individual Daily Extraction Limits (IDELs) in the Barwon-Darling – to set a daily limit on the amount of take when flow is above the commence to pump/cease to pump thresholds.
- Rules to protect the resumption of flows in the Barwon-Darling River – to allow the first flows after an extended dry period to pass downstream without extraction to provide important social, cultural and environmental outcomes.

The NSW Government is undertaking work to better understand northern connectivity to inform how we can improve the management of environmental water across the northern Basin. An analysis of how current water sharing plan rules in the northern Basin contribute to hydrological connectivity is being prepared.

An environmental water hub has been established that collates information from across NSW agency websites on environmental water. The hub can be found at <https://www.industry.nsw.gov.au/water/environmental-water-hub>.

Further information on these environmental water reforms can be found at <https://www.industry.nsw.gov.au/water-reform/better-management-of-environmental-water>.

A NSW Modelling and Monitoring Hub (MaMH) led by a state-wide representative working group has delivered two foundational projects to help coordinate and aid information sharing across government agencies and state-owned corporations in relation to water modelling and monitoring. The MaMH can be found at <http://www.mamh.nsw.gov.au/> and foundational projects summary reports at <http://www.mamh.nsw.gov.au/Publications.html>.

### **Cross jurisdictional collaboration**

NSW, with more than half of the Murray-Darling Basin, and sharing water resources with each state and territory, has played a lead role in bringing together jurisdictions, and works closely with each jurisdiction on a range of wide and varied issues. We have helped lead the way in compliance reforms, as well as bringing together diverse views to allow the Murray-Darling Basin Ministerial Council to reach agreement on a set of robust socioeconomic criteria for efficiency measure projects.

We are strong and active participants in intergovernmental groups on Basin water management, drought, environmental water, and other relevant topics.

As part of the NSW Government's WRAP, an Interagency Working Group (IWG) was established in February 2018. The IWG comprises representatives from NSW and Commonwealth agencies with expertise in aspects of environmental water management. The IWG works collaboratively with the Water Renewal Taskforce to guide the delivery of better management of environmental water, and has recommended a package of interim and enduring solutions.

The NSW and Queensland governments have agreed to establish a stronger governance and coordination framework to improve the coordination, connectivity and management of water in the northern Basin.

Improved cooperation between Basin governments in the delivery of water for the environment was demonstrated in mid-2018 when 32 gigalitres of water was delivered over an unprecedented distance, flowing over 2,000 km from the northern tributaries of the Barwon-Darling River to the Menindee Lakes. As it flowed from storages in the north through Bourke and Wilcannia, this water refreshed waterholes and provided connectivity for native fish.

The NSW Government applied temporary water restrictions to protect the water from being pumped as it flowed down the rivers. This event was so successful that a second event of this kind, called the Northern Fish Flow Event, ran from April to June 2019 to support the health of the Dumaresq, Macintyre, Mehi and Barwon river systems.

The NSW Government is also working in collaboration with the Queensland Government and MDBA to create a Best Practice Guideline to ensure a consistent approach to floodplain harvesting.

Implementing the NSW Floodplain Harvesting Policy is critical to being able to protect downstream users and the environment from the effects of unconstrained floodplain harvesting and to ensure that water-sharing rules for floodplain harvesting are transparent and publicly consulted on, for improved economic, social and environmental outcomes.

More than \$15 million has been invested in improved data collection and modelling to implement this policy. Some of this work is cutting-edge. The NSW Government is taking unprecedented steps forward in terms of the accuracy of our modelling and monitoring to support the effective regulation of floodplain harvesting.

### **River operations**

The issue of a potential delivery shortfall downstream of Barmah Choke has existed in the River Murray System since the early 2000s. Delivery shortfalls occur when water demands are higher than what can be delivered within the existing River Murray channel capacity.

Demand patterns (consumptive and environmental) have substantially changed in recent years, and continue to change the timing and distribution of demands. What has not changed to date, however, are any limits on trade to manage delivery or the fundamental design of the system including the physical constraints within the system.

Due to the large volume of regulated water being delivered through the Barmah Choke there are now a number of environmental issues at play. For example, the erosion of a number of river reaches including the Barham Choke, the upper Edward River and lower Goulburn River. NSW is concerned about the impacts to, and the diminishing capacity of, the Barmah Choke, which has been evident over a number of years.

In the 1980s, the capacity of the Murray downstream of Yarrawonga was considered to be 11,500 ML/day without the forest flooding. This had reduced to 10,300 ML/day by the early 2000s, and the MDBA currently considers the capacity is 9,500 ML/day.

At the last Murray-Darling Basin Ministerial Council meeting in August 2019, Basin ministers agreed to appoint an independent panel of experts to peer review this issue. Additional modelling and analysis, led by the Murray-Darling Basin Authority, will also be undertaken by December 2019 to further investigate compounding factors such as the role of Inter Valley Trade, the Barmah Choke's capacity and climate extremes.

The NSW and Victorian governments have also commissioned an additional independent review of the MDBA's modelling that underpins higher environmental flow delivery in the southern-connected Basin, in order to understand how proposed constraints relaxation

projects can be delivered in a real-world context, to create transparency and confirm ecological outcomes.

### **Looking forward**

A review into the governance arrangements of the Murray-Darling Basin was conducted in 2018 by Mr Greg Claydon who was appointed by the Murray–Darling Basin Ministerial Council at its June 2018 meeting. The NSW Government is keen to see progress on the improvements suggested as an outcome of that review, with an aim to improve efficiencies and effectiveness of decision-making in the Murray-Darling Basin.

Improvements are required in funding negotiations between states and the Commonwealth to expedite processes and enable states to effectively deliver their requirements under the Basin Plan. The development of flexible funding arrangements which share risk between states and the Commonwealth for Joint Works and Basin Plan program implementation needs further consideration.

The NSW Government is currently supporting regional communities, businesses and workers experiencing the effects of drought. The current focus is on extending water for critical human needs, restarting flow in the rivers and meeting other high priority water needs. This will continue to be a high priority until greater rainfall and inflows to storages turn improves water availability across the State.

The NSW Government appreciates the opportunity to provide this submission.

Yours sincerely



1 NOV 2019

 **The Hon Melinda Pavey MP**  
**Minister for Water, Property and Housing**