



NEW SOUTH WALES ABORIGINAL LAND COUNCIL

ABN 82 726 507 500

Committee Secretary
Senate Rural and Regional Affairs and Transport References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Via email at rrat.sen@aph.gov.au

Submission to the Inquiry into the Water Amendment (Review Implementation and Other Measures) Bill 2015 [Provisions]

Dear Sirs and/or Madams,

The NSW Aboriginal Land Council (**NSWALC**) thanks you for the opportunity to submit comments regarding the *Water Amendment (Review Implementation and Other Measures) Bill 2015 (Cth) (the Bill)*.

NSWALC is the peak body representing Aboriginal peoples in NSW and with over 23,000 members, is the largest Aboriginal member based organisation in Australia. NSWALC is a self-funded statutory corporation created under the *Aboriginal Land Rights Act 1983 (NSW) (ALRA)*, and has a legislated objective to improve, protect and foster the best interests of Aboriginal peoples in NSW. NSWALC also provides support to the network of 120 autonomous Local Aboriginal Land Councils (**LALCs**) across the state, the overwhelming majority of which fall within the Murray-Darling Basin region. LALCs have similar statutory objectives to NSWALC in regards to their own local communities.

Management of water in the Murray-Darling Basin is of critical importance to Aboriginal people who live in those regions; water is central to the cultural, social and economic prosperity of Aboriginal people and is fundamental to the individual and collective rights and aspirations of Aboriginal people. Aboriginal people have rights and obligations to Care for Country arising from their traditional custodianship of land and waters; as well as possessing unique Traditional Ecological Knowledge (**TEK**) of water management derived from millennia of natural resource management in Australia. As such, Aboriginal people and the Land Councils that represent them are key stakeholders in discussions regarding the management of water in the Murray-Darling Basin.

NSWALC makes this brief submission in order to note our conditional support for the Bill. The Bill contains some positive amendments in terms of increasing engagement with and representation of Aboriginal people, of which we are strongly in favour. However, we also note concerns regarding the Bill's provisions regarding trading by the Commonwealth Environmental Water Holder (**CEWH**), including the risk that environmental outcomes will be compromised and potential impacts on Aboriginal culture and heritage. As such, we support the Bill conditionally on the provision that evidence suggests that the amendments will not jeopardise the aims of the Murray-Darling Basin Plan and negatively affect environmental flows.

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NSWALC makes the following comments with regard to the Bill:

- We strongly support the Schedule 1 Part 3 amendments in the Bill regarding Indigenous engagement and expertise;
- We conditionally support the Bill, conditional on whether evidence indicates that the Schedule 1 Part 4 amendments will not compromise the environmental objectives of the framework; and
- We note that the Murray-Darling Basin Plan and *Water Act 2007* (Cth) require substantial improvements in order to adequately account for the interests of Aboriginal people in the Basin region.

1. Strongly support provisions regarding Aboriginal Australians

As you are aware, the Bill is seeking to implement a series of recommendations that arose from the *Independent Review of the Water Act 2007*, which was tabled in Parliament in December 2014.

The scope of the Independent Panel's review related broadly to a wide range of issues regarding the operation of the *Water Act 2007* (Cth) and the Murray-Darling Basin Plan. However, two key recommendations were made proposing amendments that would improve Aboriginal engagement and representation in implementing the Basin Plan. These recommendations were wholly accepted by the Federal Government and are accordingly proposed in Schedule 1 Part 3 of the Bill.

Arising from Recommendation 1, the Federal Government has asked the Murray-Darling Basin Authority to prepare guidelines drawing from the *Convention of Biological Diversity's Akwé: Kon Guidelines* to assist State governments to develop water resource plans in accordance with the Basin Plan water resource plan requirements relating to Indigenous values and uses. Additionally, the Bill seeks to add paragraph 22(3)(ca), which will require water resource plans to have regard to 'social, spiritual and cultural matters relevant to Indigenous people in relation to the water resources of the water resource plan area in the preparation of the water resource plan.'

Arising from Recommendation 20, several amendments are proposed to sections 178(3), 172(1) and 202(5) of the *Water Act 2007* (Cth) to provide for increased Indigenous representation on the Murray-Darling Basin Authority and the Basin Community Committee, and to provide that expertise in Indigenous matters relevant to management of the Basin's water resources is a field relevant to the Authority's functions.

NSWALC strongly support these provisions, and view them as a small but positive step towards better recognition of Indigenous interests in the Murray-Darling Basin management framework. While outside of the scope of the current Inquiry, we briefly note the unresolved and on-going failure of the Murray-Darling Basin regulatory framework to provide for Indigenous interests in water in the Basin area, particularly the need to provide water allocations for cultural flows for Aboriginal people's cultural, social and economic wellbeing in the region. NSWALC and a range of other Aboriginal representative

organisations have previously and continue to make submissions highlighting these issues in detail¹. As such, we view the current amendments proposed in Schedule 1 Part 3 of the Bill as slight improvements on the current regulatory framework.

2. Support for the Bill conditional on provisions not compromising environmental objectives

Also being introduced in the Bill are changes to the operation of the CEWH, particular with regard to how the entity deals with water savings and provides for environmental objectives. These amendments are contained in Schedule 1, Part 4 of the Bill.

As you are aware, the CEWH is tasked under the regulatory framework with managing the environmental water holdings recovered by the Commonwealth, in order to restore environmental assets including rivers, wetlands and floodplains. Such water holdings are sourced from purchases of entitlements in the form of water rights, along with investment in efficient water-saving infrastructure throughout the Murray-Darling Basin.

The CEWH manages water in accordance with the provisions of the *Water Act 2007* (Cth) and the Murray-Darling Basin Plan's Environment Watering Plan. Schedule 1, Part 4 of the current Bill essentially proposes to remove restrictions on the CEWH's disposal of water allocations. The CEWH will be enabled to sell allocations and use proceeds for activities to meet environmental objectives, such as investing in works and other measures, as opposed to directly purchasing additional water to meet Sustainable Diversion Limits.

These amendments, paired with other recent changes to the Murray-Darling Basin regulatory framework such as the 1500GL cap on water purchases, indicate a policy shift towards incentivising meeting Sustainable Diversion Limits through water-saving activities such as investment in infrastructure. This raises concerns for our network for a number of reasons.

Firstly, a number of stakeholders have highlighted the risk that such a policy shift may jeopardise the environmental objectives underpinning the Murray-Darling Basin regulatory framework². It is beyond the scope of our submission to repeat these arguments here, save to say that NSWALC is strongly against any changes which would compromise environmental flows. As outlined above, environmental flows are strongly tied to Aboriginal social, cultural and economic interests in water in the Murray-Darling Basin area. Ensuring the objectives of the Murray-Darling Basin Plan are met in terms of providing for the environmental health of rivers and wetlands in the region is of critical importance to

¹ See, for example: NSWALC, *Comments for the Murray-Darling Basin Authority on the Guide to the Proposed (Murray-Darling) Basin Plan*, November 2010, Murray Lower Darling Rivers Indigenous Nations, *Submission to Select Committee on the Murray-Darling Basin Plan*, September 2015.

² See, for example: Australian Conservation Foundation, Environment Victoria and Environmental Justice Australia, *Submission to the Senate Standing Committee on Environment and Communications, Inquiry into the Water Amendment Bill 2015*, July 2015.

our network.

Secondly, we question whether it is appropriate to shift the functions of the CEWH to promote the subsidizing of infrastructure that primarily benefits a select group of stakeholders, as opposed to directly funding water allocations which have broad-scale public benefits.

Thirdly, increasing the rate of infrastructure developments in the Murray-Darling Basin may have unforeseen negative impacts on Aboriginal culture and heritage. Construction and excavation associated with water-related infrastructure development and construction can cause significant disturbances Aboriginal culture and heritage – including sites and objects of significance, along with broadly impacting intangible cultural values associated with traditional landscapes. The Murray Lower Darling Rivers Indigenous Nations has previously submitted that Aboriginal residents in the Murray-Darling Basin have noted direct impacts on culture and heritage within the Basin area as a direct result of irrigation infrastructure upgrades and developments³; especially given the correlation between historic Aboriginal populations and concentrations of heritage sites along watercourses.

Overall, NSWALC has broad concerns with a policy shift which would preference water savings via investment in activities such as infrastructure construction, at the expense of direct water purchases for environmental flows, for the reasons outlined above. However, we note that both the *Water Act 2007* (Cth), the Murray Darling Basin Plan and further amendments being introduced in the Bill contain a range of safeguards both with regard to the CEWH's functions and with regard to meeting environmental objectives under these frameworks. As such, we give our conditional support to the Bill, qualified on whether evidence submitted to the Inquiry indicates that environmental objectives will not be compromised.

We thank you for the opportunity to make comments to the Inquiry. If you have questions or comments regarding the content of this submission, please contact Julia Martignoni (Policy Officer) on (02) 9689 4444 or julia.martignoni@alc.org.au.

Yours sincerely,

Clare McHugh
Executive Director Policy & Programs
Date: 25/2/16

³ Murray Lower Darling Rivers Indigenous Nations, *Submission to the Senate Standing Committee on Environment and Communications, Inquiry into the Water Amendment Bill 2015*, July 2015.