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SUBMISSION

Rural and Regional Affairs and Transport References Committee Inquiry

Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021

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NSW Irrigators' Council

The NSW Irrigators' Council (NSWIC) is the peak body representing irrigation farmers and the irrigation farming industry in NSW. NSWIC has member organisations in every inland valley of NSW, and several coastal valleys. Through our members, NSWIC represents over 12,000 water access licence holders in NSW who access regulated, unregulated and groundwater systems.

NSWIC members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton and horticultural industries. NSWIC engages in advocacy and policy development on behalf of the irrigation farming sector. As an apolitical entity, the Council provides advice to all stakeholders and decision makers.

NSWIC welcomes this opportunity to provide a submission to the References Committee Inquiry on *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021*.

NSWIC sees this as a valuable opportunity to provide expertise from our membership to inform the response. Each member reserves the right to independent policy on issues that directly relate to their areas of operation, expertise or any other issues that they deem relevant.

NSW Irrigation Farming

Irrigation provides more than 90% of Australia's fruit, nuts and grapes; more than 76% of vegetables; 100% of rice and more than 50% of dairy and sugar (2018-19).

Irrigation farmers in Australia are recognised as world leaders in water efficiency. For example, according to the Australian Government Department of Agriculture, Water and the Environment:

> *"Australian cotton growers are now recognised as the most water-use efficient in the world and three times more efficient than the global average"*[1]

> *"The Australian rice industry leads the world in water use efficiency. From paddock to plate, Australian grown rice uses 50% less water than the global average."*[2]

Our water management legislation prioritises all other users before agriculture (critical human needs, stock and domestic, and the environment), meaning our industry only has water access when all other needs are satisfied. Our industry supports and respects this order of prioritisation. Many common crops we produce are annual/seasonal crops that can be grown in wet years, and not grown in dry periods, in tune with Australia's variable climate.

Irrigation farming in Australia is also subject to strict regulations to ensure sustainable and responsible water use. This includes all extractions being capped at a sustainable level, a hierarchy of water access priorities, and strict measurement requirements.

[1] https://www.agriculture.gov.au/ag-farm-food/crops/cotton
[2] https://www.agriculture.gov.au/ag-farm-food/crops/rice

NSW Irrigators' Council's Guiding Principles

Integrity	Leadership	Evidence	Collaboration
Environmental health and sustainable resource access is integral to a successful irrigation industry.	Irrigation farmers in NSW and Australia are world leaders in water-efficient production with high ethical and environmental standards.	Evidence-based policy is essential. Research must be on-going, and include review mechanisms, to ensure the best-available data can inform best-practice policy through adaptive processes.	Irrigation farmers are stewards of tremendous knowledge in water management, and extensive consultation is needed to utilise this knowledge.
Water property rights (including accessibility, reliability and their fundamental characteristics) must be protected regardless of ownership.	Developing leadership will strengthen the sector and ensure competitiveness globally.	Innovation is fostered through research and development.	Government and industry must work together to ensure communication is informative, timely, and accessible.
Certainty and stability is fundamental for all water users.	Industry has zero tolerance for water theft.	Decision-making must ensure no negative unmitigated third-party impacts, including understanding cumulative and socio-economic impacts.	Irrigation farmers respect the prioritisation of water in the allocation framework.
All water (agricultural, environmental, cultural and industrial) must be measured, and used efficiently and effectively.			Collaboration with indigenous nations improves water management.

Introduction

NSWIC welcomes this inquiry as an important opportunity for informed and constructive discussion on "*any potential further amendments to improve the operation of the Act, and any related matters*".

This submission will focus on necessary legislative amendments to improve implementation of the Murray-Darling Basin Plan (herein, Plan).

NSWIC supports a healthy Murray-Darling Basin. Basin Plan policy is required to balance economic, social and environmental objectives. Whilst NSWIC historically (pre-2012) opposed the Basin Plan, since it has become implemented as law (post-2012), NSWIC works to ensure optimal implementation of the key individual elements.[3]

The recommended legislative amendments provided in this submission are based on the recommendations from more than 40 reviews of the Basin Plan, which have provided a substantial evidence base to improve the Plan's implementation.

Any reform on the ambitious scale of the Basin Plan inevitably has unintended, unforeseen and perverse impacts and outcomes. The Plan is supposed to be an adaptive management plan, capable of adjusting to address unintended and perverse impacts and lessons learned from implementation. Unfortunately, the Plan in practice is too inflexible, and is instead compounding the issues raised in multiple reviews.

Future implementation must acknowledge the impact of the Plan so far on communities and our capacity to produce food and fibre, as well as addressing some unintended environmental degradation caused by trying to deliver more environmental and consumptive water downstream. The key principles of this submission seek to ensure that going forward, implementation is responsive and adaptive, and values the importance of irrigated agriculture and rural communities to Australians.

History of Water Reform

Water reform in recent decades has fundamentally changed the trajectory of Basin communities and irrigated agriculture. These reforms have continually and repeatedly reduced the water available for farming, to now reach its lowest ever levels since development.

The Productivity Commission says:

"Almost 20 per cent of the water that was available a decade ago for consumptive uses such as irrigated agriculture is now dedicated to the environment and arrangements for managing this water are in place."[4]

Combined with earlier water recovery programs, the environment now owns 28% of irrigation entitlements on issue (in addition to river flows) in the southern Basin, making the Commonwealth Environmental Water Holder the largest *irrigator* in the Basin.

This reform journey has included:

- 1995 – The Murray Darling Basin Cap (the Cap) on diversions which limited surface water extractions in each valley.

- 2000s – The Living Murray (TLM) Program and the Water for Rivers (Snowy) investments recovered 782GL (500GL TLM and 282GL Snowy) from the southern Basin. This represented approximately a seven percent reduction in diversions below the Cap.

[3] NSWIC Policy Positions: https://www.nswic.org.au/policy/
[4] https://www.pc.gov.au/inquiries/completed/basin-plan/report/basin-plan-overview.pdf [P 9].

- 2000s – NSW Water Sharing Plan limits, 241GL reduction below the Cap.

- 2004 – Basin State governments signed the Intergovernmental Agreement on a National Water Initiative which has become the blueprint for water reform in Australia.

- 2007 – The Commonwealth Water Act 2007 was passed, to develop and implement the Murray-Darling Basin Plan.

- 2008 – Water recovery for the Murray-Darling Basin Plan commenced.

- 2012 – The Murray-Darling Basin Plan 2012 was enacted with sustainable diversion limits (SDLs) to further reduce water of water take across the Basin down from the Baseline Diversion Levels (BDL – the level of diversions at 2009). The SDL came into effect from 1 July 2019. Meeting the SDL involves purchasing water licences (also known as entitlements) from farmers and transferring them to the environment, in each valley. The target water recovery is an annual average 2,680 GL.

In addition to the reducing number of licences for farming, there is also a trend of reducing reliability of water being allocated to the licences. For example, NSW Murray General Security licence holders were allocated, on average, 81% of their licence volume before the Millennium Drought. Their licence reliability is now around 48%. In the Namoi valley in the northern Basin, General Security reliability has similarly declined from 77% to around 39%.

This trend of decreasing water licence reliability is a result of many factors, including multiple cumulative policy drivers. Importantly, it is also an automatic response to climate change built into current water sharing systems, as water allocations against licences are directly linked to water availability. Irrigators are last in line for water, so are the first to face restrictions (or even loss of access entirely) when conditions turn dry.

As background, the hierarchy of water access in NSW is:

• Town supply
• Environment (water to ensure that rivers run to supply critical human needs)
• Stock and domestic
• Irrigators[5] (this includes water allocated to irrigator licences now owned by the environment)

This means during dry times irrigators face significantly reduced water access, and in many instances (like the previous 3 years), no water access at all.

There are thus legitimate concerns within irrigation communities about water policy, given the continual reduction of water access through policy reform, as well as the automatic reductions in response to climate change.

For our irrigation farmers to continue growing food and fibre, there must be a fundamental paradigm shift to recognise that:

- It requires water to grow food and fibre;
- The environment and town water supply is already prioritised above irrigation in existing water sharing arrangements (which leads to irrigated agriculture often missing out), so continuing to take water out of irrigation is not a socio-economically sustainable solution;
- Water allocations are based on water availability, and are automatically adjusted to respond to the warming, drying trends of climate change;
- Basin communities are exhausted by decades of reform;
- There is a need to recognise the remaining elements of the Plan present significant challenges and require increased flexibility in implementation, and greater adaptive management that acknowledges the issues facing the irrigation sector and communities.

[5] See NSW Water Management Act, S 60: https://legislation.nsw.gov.au/view/html/inforce/current/act-2000-092#sec.60

Politics of water reform

Water management has a proud history of **bipartisanship**, and it is critical this continues as water management is, and must be, above politics.

NSWIC is deeply concerned that in recent history (despite a substantial evidence base and a Plan intended for adaptive management), any prospect of changes in the Plan becomes hyper-partisan, inflammatory, ill-informed, and not constructive. This has resulted in necessary changes not occurring (despite numerous official inquiries recommending changes). The legislation has now become part of the problem as a barrier to actually achieving policy objectives. This is not helpful to any stakeholder, nor is it in the national interest.

NSWIC calls for calm, level-headed and informed conversations about what legislative changes are needed to enhance water management in Australia, and particularly in the ongoing implementation of the Plan. It is widely documented that changes are required, which was always intended as part of adaptive management, and we need politics put aside to make these reasonable, evidence-based changes happen.

The current trend of inaction carries significant risks. This is documented by the Productivity Commission, stating:

"*the potential costs of inaction are massive*".

These costs include:

- *"the future cost of resetting the balance could be in excess of $564 million higher (the cost of having to make good by acquiring water entitlements plus any cost of wasted expenditure on failed projects)*
- *lower environmental outcomes as the anticipated benefits of projects are either delayed or do not eventuate*
- *community trust and confidence in the Plan and Basin Governments will be reduced further, particularly if there is a perception that money is being wasted as Governments are unaware of issues, or unwilling to confront them*
- *there will be shortcomings in key arrangements that will have potentially significant implications for how water is managed for the environment and to meet users' needs."*[6]

The Productivity Commission continues to say:

> *"It has been a real achievement for Basin Governments to get this far, but without the recommended changes, the implementation of the Plan is at risk."*[7]

As background, under the Water Act 2007 (Cth), the Productivity Commission is required to undertake five-yearly assessments of the effectiveness of the implementation of the Basin Plan and water resource plans. The most recent report is available [HERE].[8] The Productivity Commission has made a number of recommendations to improve implementation of the Basin Plan, but to date, these have not been progressed (and some require legislative amendments).

As noted in the Independent Assessment of Social and Economic Conditions in the Basin (Sefton Inquiry):

> *"There have been over 40 reviews into the Basin Plan or Basin water management since the Plan was legislated in 2012 and we heard frustration over perceived lack of action in response to these reviews."*[9]

There is now an overwhelmingly large evidence-base providing informed, detailed and necessary recommendations to improve implementation of the Basin Plan, and NSWIC

6 https://www.pc.gov.au/inquiries/completed/basin-plan/report/basin-plan-overview.pdf [P 31].
7 https://www.pc.gov.au/inquiries/completed/basin-plan/report/basin-plan-overview.pdf [P 32].
8 https://www.pc.gov.au/inquiries/completed/basin-plan#report
9 https://www.mdba.gov.au/sites/default/files/pubs/seftons-report-september-2020_0.pdf [P 11].

encourages the References Committee to act on the available evidence to see what amendments are necessary to improve operation of the Act.

Overview

NSWIC recommends:

- Legislative amendments to provide flexibility to ensure **fit-for-purpose timeframes** to implement the Plan (based on MinCo advice), linked to improved implementation arrangements to meet progress milestones.
- Legislative amendments to allow for **new and improved SDLAM projects**.
- Legislative amendment to **remove the requirement for buybacks** if SDLAM project shortfalls exist in 2024 (which is now inevitable), in order to achieve best possible environmental outcomes with minimal social/economic harm, and to prevent communities from being penalised for no fault of their own.
- The legislated **cap on buybacks** must remain in place to protect Basin communities.
- The MDBA conducts a business case on investing the funding allocated for the 450GL in **complementary measures**, including comparison of the environmental outcomes. Legislation should be amended to allow for such a package of complementary measures, should greater environmental outcomes be demonstrated.

NSWIC notes the bipartisan support to establish the Inspector-General of Water Compliance, and supports legislation formally establishing that position.

Submission

1) Timeframes for Basin Plan implementation

1.1 It has been widely acknowledged that the legislated Basin Plan timeframes will not be met, including by Basin State governments that have indicated they cannot deliver key Sustainable Diversion Limit Adjustment Mechanism (SDLAM) supply projects delivering environmental benefits equivalent to or better than recovering another 605 GL from irrigators, by the June 2024 deadline. The Productivity Commission in its statutory review made a number of points, including that:

"Governments need to confront the reality that some projects may require more time"[10]*;*

"Strictly enforcing the 2024 deadline could lead to the abandonment of worthwhile projects"[11]*;*

"To enable worthwhile projects to be implemented in realistic timeframes, Basin Governments should be open to the possibility of extending the 30 June 2024 deadline and make this clear to project proponents prior to detailed business cases being completed. This should not be interpreted as scope for a blanket extension for all projects or a reason for Basin States to procrastinate. Nor is it a reason to avoid making good if projects fall short. But being open to legitimate extensions of time avoids rejecting worthwhile projects or

[10] https://www.pc.gov.au/inquiries/completed/basin-plan/report/basin-plan-overview.pdf [P 10].
[11] Ibid.

progressing projects with milestones that just cannot be met. Projects with unrealistic milestones will likely further erode community confidence that projects are achievable and worth doing."[12]

The Productivity Commission report also shows that progress on key elements of the Plan is not on track, and at risk of not meeting objectives, including supply and efficiency measures (see Figure 1).

Figure 1: Image from Productivity Commission 5 yearly assessment of the effectiveness of the implementation of the Basin Plan and water resource plans[13]

Table 1 **Summary of progress in implementing the Basin Plan**

Element	*On schedule*	*Risk to meeting its objectives*	*Nature of risks*
Resetting the balance			
Water recovery	✗	Low	The 2019 target is unlikely to be met. However the consequences are minor as the gap is less than five per cent of the target.
Supply measures	✗	High	Compressed timelines for implementation, with a range of issues to resolve. 2024 deadline is highly ambitious, if not unrealistic for some projects. As individual projects are further developed there is no transparent process for assessing whether the project is worthwhile and provides value for money. Risk to budget is hundreds of millions of dollars.
Efficiency measures	✗	High	The design of the efficiency measures program is contested. Enhanced environmental outcomes from additional water recovery are unknown as key assumptions (including dependence on easing constraints) have changed. Material risk that costs are significantly larger than anticipated.
Northern Basin Toolkit	n/a	Medium	No firm deadlines for implementation. Not subject to the same checks and balances as supply measures (such as oversight by the MDBA).

This concern was also raised in the Sefton Inquiry, stating:

"The Panel is concerned that SDLAM will not be achieved by the 2024 legislative deadline given the current lack of progress and COVID-19 causing delays to consultation around SDLAM projects."[14]

1.2 Constraints management is a key SDLAM supply project. It requires voluntary flood easements agreed with 3300 landowners. Without the easements, most environmental water already purchased under the Basin Plan cannot be delivered to wetland targets due to private land blocking the way between rivers and floodplains.[15,16]

[12] Ibid.
[13] https://www.pc.gov.au/inquiries/completed/basin-plan/report/basin-plan-overview.pdf [P 14].
[14] https://www.mdba.gov.au/sites/default/files/pubs/seftons-summary-report-september-2020_1.pdf [P 17].
[15] Water from Murray-Darling Basin plan not being delivered to wetlands, Australian-first report finds - ABC News
[16] 'A trickle, not a flood: environmental watering in the Murray–Darling Basin, Australia.' *Marine and Freshwater Research*, 19 November 2020. https://doi.org/10.1071/MF20172

While NSW and Victoria have made little progress on easements since 2012, the Basin Plan's 2024 deadline to negotiate agreements with 3300 landholders is manifestly unrealistic.

The Productivity Commission in 2018[17] put the scale of the task in perspective: in the early 2000s, negotiations with 103 landholders to secure easements to release 25,000 ML/day from Hume Dam took almost eight years. The negotiations are still not fully resolved, and these easements will need to be renegotiated to accommodate Basin Plan settings.

These projects, also known as constraints measures or constraints relaxation, represent up to 220 billion litres of the SDLAM supply measures' 605 billion litres. Under the Basin Plan as it stands, failure to deliver by 2024 means more buybacks to make up the shortfall. Buybacks mean less water for growing food and fibre, and higher prices on the water market reducing the capacity to make a return on farming. It also means buying back even more water that cannot be delivered to best environment benefit unless constraints are managed.

This means Basin communities and the irrigation industry will be penalised through no fault of their own, but because State governments have failed to meet unrealistic deadlines to administer and deliver projects.

1.3 The Plan originally was intended to recover water for the environment by investing in water-saving infrastructure (on and off farm), with buybacks only to be used strategically to support infrastructure upgrades[18]. Resorting to buybacks where infrastructure projects are not in place by an arbitrary timeframe is completely at odds with the actual intent of the Plan.

1.4 The rigid and unachievable timeframes also place increased stress and anxiety on Basin communities who feel threatened by the potential for more buybacks. Communities have participated in this significant reform in good-faith, and it is not reasonable for communities to carry the burden of State government failures to deliver projects.

1.5 It must be noted that there has been a lack of oversight and accountability for State governments in delivering SDLAM projects, and significant administrative process problems. NSWIC agrees with concerns that we don't want projects simply 'kicked down the road' and further delayed to excuse this lack of accountability. However, given the risks to both communities and the environment of rigid and unachievable timeframes (and the risk to the Plan itself), flexibility (tied to improved implementation arrangements) is necessary.

1.6 A further problem with current legislation is that it does not recognize progress towards achieving equivalent environmental outcomes, and thus a 95% completed SDLAM project in 2024 will be considered incomplete and count for nothing towards meeting the 605GL target. NSWIC is concerned that as States approach 2024, if a project is unlikely to be 100% in place on time, there is no incentive for States to continue progressing the project as much as feasible. NSWIC thus recommends that the Plan is amended to allow demonstrated progress to be recognized and accounted for in the 2024 reconciliation.

1.7 NSWIC is also concerned that rigid timeframes will not allow State governments the opportunity to adequately work through project concerns with communities to meet community expectations. There are concerns this will lead to projects that are not community-supported being pushed through without resolution. This is particularly problematic for NSW, with two significant projects facing strong community opposition.

1.8 Multiple reviews and inquiries have recommended flexibility for Basin Plan timeframes to be extended in order to achieve best possible outcomes. For example, the Sefton Inquiry recommends:

[17] 'Murray-Darling Basin Plan: Five-year assessment'. Productivity Commission Inquiry Report, No. 90, 19 December 2018
[18] Former Prime Minister and Water Minister, Malcolm Turnbull: https://thenewdaily.com.au/news/politics/australian-politics/2021/07/25/malcolm-turnbull-murray-darling-basin/

"Given COVID-19, the progress status of key SDLAM projects, and the need for community consultation to not be rushed or superficial, timeframes for SDLAM measures should be extended to deliver an equivalent value of 605 GL."[19]

Recommendation:
NSWIC recommends that:
i) Ministerial Council to advise the MDBA on appropriate timeframes for remaining Basin Plan obligations. The MDBA shall consider the advice, and recommend legislative amendments regarding fit-for-purpose and appropriate timeframes.

ii) Legislation is amended to allow discretion to be applied, based on Ministerial Council advice, in instances where there is a reasonable excuse for timeframes to not be met. Examples of reasonable excuses are instances where progress is demonstrated, and clear pathways to resolve issues and reach finalization are in place.

2) 450GL

2.1 NSWIC does not support the 450GL of efficiency measures, noting this was added to the Basin Plan at the last minute in 2012 as a political deal after community consultation had ended. NSWIC does not believe an additional 450GL of water can be recovered in a way that is consistent with the social and economic criteria agreed by the Ministerial Council in December 2018.[20]

2.2 NSWIC emphasises the importance of the social and economic criteria agreed by the Ministerial Council in December 2018, as a critical check and balance to ensure the projects are achieving intended outcomes. This criteria includes making projects public and transparent, ensuring projects do not negatively impact social and environmental outcomes, requiring that projects support regional economies and contribute to the viability of irrigation districts, do not have negative third-party impacts or impact the price of water, and involve community engagement. It is paramount that this criteria is strictly upheld.

2.3 NSWIC notes the program to recover 450GL is a voluntary participation program, and is of the understanding that farmer interest in participating is negligible; NSWIC thus expects the 450GL to be undeliverable. Buybacks are not an option to make up the shortfall under the Basin Plan, unless States come forward with community-initiated proposals. NSWIC notes that the 'First Review of the Water for the Environment Special Account' (WESA Review) in March 2020 found:

"*The volume of water recovered through efficiency measures programs and transferred to the Commonwealth at 30 June 2024 will be well short of 450 GL*";

"*Only 1.9 GL, or less than 1% of the required volume, has been recovered to date (as at February 2020)*"[21].

2.4 NSWIC only supports progressing water recovery through efficiency measures as far as required to meet the Basin Plan's ±5% SDLAM limits, which equates to about 62GL of the 450GL), and this recovery should be outside of agriculture, for example, conveyance. This is consistent with the Sefton Inquiry recommendation:

"Where possible, off-farm recovery should be a preferred approach for recovering water when it reduces the impact on the consumptive pool. Where off-farm recovery occurs, it

[19] https://www.mdba.gov.au/sites/default/files/pubs/seftons-summary-report-september-2020_1.pdf [P 17].
[20] https://haveyoursay.awe.gov.au/40641/documents/95243
[21] https://www.agriculture.gov.au/sites/default/files/documents/first-review-water-for-the-environment-special-account.pdf [P 2].

should be cost-effective and underpinned by appropriate and transparent infrastructure pricing and service provision frameworks that align the long term needs of users and their capacity to maintain the off-farm infrastructure."[22]

2.5 Any water recovery measure (including the 450GL) must demonstrate the scientific basis for achieving enhanced environmental outcomes, and the delivery potential to actually achieve these outcomes. It must be remembered that *"The purpose of efficiency measures is to achieve enhanced environmental outcomes while maintaining or improving socioeconomic outcomes"*[23]. The Productivity Commission has found that:

"*Recovering water through efficiency measures has become increasingly divorced from the environmental outcomes it is meant to achieve*"[24].

It is also important to note that the Productivity Commission has indicated:

"*Basin Governments and the MDBA need to do more work to provide greater confidence that the enhanced environmental outcomes can be achieved*"[25].

NSWIC understands that greater environmental outcomes could be achieved through other means, named 'complementary measures' (i.e. habitat restoration, fish passageways, feral species control/eradication, cold water pollution management, etc).

The Committee should also note that key Basin Plan KPIs for the lower lakes are already being achieved with the volume of water already recovered. Put to the stress test in the last severe drought in 2019-20, with conditions similar to the end of the Millennium Drought a decade earlier, the environmental water already recovered was enough to keep the lower lakes fresh and above sea level, consistent with the Plan's KPIs.

NSWIC encourages the Committee to adopt an 'outcomes-based' approach, rather than the current 'volumetric focus' that incorrectly assumes you can 'just add water' to get better environmental outcomes.

2.6 There is also a very practical concern regarding whether any additional water recovery could actually be delivered. As the Productivity Commission says:

"If constraints projects are not implemented as expected, rushing to recover the full 450 GL by 2024 would risk the Australian Government spending hundreds of millions of dollars for an asset that (potentially) cannot be used for some time. Aligning water recovery with progress in lifting constraints could potentially save the Australian Government up to $203 million."[26]

This is also reflected in the WESA Review which says:

"The constraints measures program will not be delivered by 30 June 2024". [27]

2.7 There is significant funding available in the WESA ($1.8 billion) for the 450GL efficiency measures. It is paramount that these public funds are spent on measures that can actually demonstrate achieving environmental outcomes. The WESA review notes that:

"*Because the volume recovered by 30 June 2024 will be well short of 450 GL, the Special Account allocation of $1.575 billion will not be fully expended at this date*"[28].

[22] https://www.mdba.gov.au/sites/default/files/pubs/seftons-summary-report-september-2020_1.pdf [P 16].
[23] https://www.pc.gov.au/inquiries/completed/basin-plan/report/basin-plan-overview.pdf [P 21].
[24] https://www.pc.gov.au/inquiries/completed/basin-plan/report/basin-plan-overview.pdf [P 22].
[25] Ibid.
[26] https://www.pc.gov.au/inquiries/completed/basin-plan/report/basin-plan-overview.pdf [P 22].
[27] https://www.agriculture.gov.au/sites/default/files/documents/first-review-water-for-the-environment-special-account.pdf [P 2].
[28] https://www.agriculture.gov.au/sites/default/files/documents/first-review-water-for-the-environment-special-account.pdf [P 2].

Given it is known that it will not be possible to progress the 450GL, it would be logical to reinvest this money at the earliest opportunity in measures that could actually start delivering environmental outcomes.

NSWIC recommends that the MDBA conducts a business case on investing the funding allocated for the 450GL in complementary measures, including comparison of the environmental outcomes. It is expected that a complementary measures program would deliver greater environmental benefits than progressing with the 450GL. Such an alternative program would be in the interest of the environment, and communities across the Basin.

This recommendation is consistent with recommendations from the Sefton Inquiry:

"*The Panel considers complementary measures should count towards Basin outcomes and reduce water recovery targets where the complementary measure delivers equivalent or better target environmental outcomes than water recovery*"[29].

Recommendation:
NSWIC recommends that the MDBA conducts a business case on investing the funding allocated for the 450GL in complementary measures, including comparison of the environmental outcomes.

3) SDLAM Projects

3.1 The SDLAM is crucial to minimising the social and economic impacts of the Basin Plan in the southern Basin. NSWIC strongly supports well-designed and locally supported SDLAM projects to achieve the equivalent of 605GL of water recovery as the most critical component to future implementation of the Plan, providing the lowest risk to communities, and realising targeted environmental outcomes.

3.2 Flexibility and adaptability for new and improved projects is essential to success. At present, a number of projects (including key ones) are highly problematic, as they are not supported by local communities, and were designed with little or no community involvement.

The problem is that legislation is very rigid and does not allow flexibility for new projects, even though it can overwhelmingly be demonstrated that other options would provide better environmental outcomes and have community support. Communities, water user groups and irrigation infrastructure operators have proposed community-supported alternatives to achieve environmental outcomes, but the Basin Plan as currently worded is blocking this change.

3.3 Communities feel caught in a catch-22, in which projects must progress to avoid buybacks in 2024 (which would have devastating outcomes for communities), but, since specific projects were poorly designed with little community involvement, the actual projects cannot be supported. As above, the combination of legislated hard-wired timeframes linked to a threat of buybacks, and the rigidity for no flexibility for new or improved projects, is highly problematic. The Sefton Inquiry articulates:

"*Basin communities cannot afford additional water recovery from the consumptive pool if the SDLAM projects are not delivered*"[30].

3.4 NSWIC is concerned that without change, there is risk of Basin governments progressing poorly designed projects. This is identified by the Productivity Commission, that"

[29] https://www.mdba.gov.au/sites/default/files/pubs/seftons-summary-report-september-2020_1.pdf [P 18].
[30] https://www.mdba.gov.au/sites/default/files/pubs/seftons-summary-report-september-2020_1.pdf [P 17].

"There are also potential environmental losses from implementing poor projects"[31].

3.5 There are also financial reasons to ensure SDLAM projects are successful (rather than resorting to buybacks). As the Productivity Commission indicates:

- *"The package of agreed supply measures is potentially more cost-effective than recovering 605 GL of water entitlements to achieve the environmental outcomes."*[32]
- *"The changes recommended by the Commission would maximise the likelihood of supply measures succeeding in meeting their objectives and could potentially reduce the cost to taxpayers of meeting SDLs by hundreds of millions of dollars."*[33]
- *"The additional costs to the taxpayer would be higher again if the Government had already invested money in a supply project, but then had to abandon the project and make good."*[34]

3.6 The legislation at present produces sub-optimal outcomes for both the environment and for local communities. It is thus clear that the legislation requires amendment to allow for new and improved projects. This is also recommended by the Sefton Inquiry:

"If the existing SDLAM projects do not deliver the anticipated 605 GL, there should be flexibility to allow new or other existing projects to close the SDLAM gap. The 605 GL must be achieved through SDLAM."[35]

Recommendation:
NSWIC recommends legislative amendments to allow for new and improved projects.

4) Buybacks

4.1 It is the policy position of NSWIC that future implementation of the Basin Plan must involve no additional water recovery through buybacks[36]. This is because:

- Buybacks have the most significant socio-economic impacts on communities - given the permanent reduction in the consumptive pool, and because (whilst the entitlement holder gets compensated) there is no support for the employees and dependent-industries who lose jobs or income as a result of the forgone production.
- Buybacks reduce the size of the consumptive pool, which drives the price of water upwards (through basic economics of a reduced supply of productive water and increases in demand). This is already causing problems for farmers struggling to afford high water prices. In turn, this is driving structural changes in the nature of water use (e.g crop type), with farmers having to turn to higher value crops to remain profitable which is significantly impacting some sectors (i.e. dairy, rice, etc).
- Buybacks exploit vulnerable farmers particularly at times where communities are still recovering from severe drought and low allocations and are facing financial hardship.
- Greater environmental outcomes could be achieved through other means (i.e. complementary measures).
- Unless delivery constraints can be addressed, there is no point in buying back more water that cannot physically be delivered through the system.

[31] https://www.pc.gov.au/inquiries/completed/basin-plan/report/basin-plan-overview.pdf [P 21].
[32] https://www.pc.gov.au/inquiries/completed/basin-plan/report/basin-plan-overview.pdf [P 16].
[33] https://www.pc.gov.au/inquiries/completed/basin-plan/report/basin-plan-overview.pdf [P 20].
[34] Ibid.
[35] https://www.mdba.gov.au/sites/default/files/pubs/seftons-summary-report-september-2020_1.pdf [P 17].
[36] Unless part of community led strategic buy back and retirement.

4.2 For these reasons, NSWIC strongly supports the legislated Cap on buybacks, and sees this as critically important to providing a level of protection to Basin communities, and restoring confidence in the future of irrigation in these regions.

4.3 For these reasons, NSWIC also strongly recommends removing buybacks as a fallback should SDLAM supply projects not be implemented by 2024 (see above).

4.4 NSWIC also notes that the aforementioned reductions in licence reliability also impact the licences purchased by government for the environment (i.e. Held Environmental Water). With decreasing reliability, this means decreasing utility of buybacks as an effective environmental measure into the future and decreasing value of tax-payers investment. It must be remembered that during dry periods, allocations against licences are reduced, and in extreme cases receive 0% allocations (i.e. they are effectively switched off). With climate change, and longer drought periods, these licences are forecast to be allocated less and less water. Looking into the future, governments will need to find new environmental management mechanisms as buybacks will be increasingly less effective.

4.5 NSWIC also notes that water licences are a property right, and this must be respected. Just like other forms of property (i.e. houses), water licences for many people in regional communities represent a significant part of their wealth (i.e. for some, water licences form their superannuation). NSWIC is deeply concerned about measures (such as river operation rule changes) that reduce reliability and erode the property right by stealth. Measures of that kind are seen as bad faith, and deeply concerning to many individuals/businesses/communities. They also reduce the asset value for taxpayers of the water licences bought from irrigators for the environment.

4.6 NSWIC notes the current Government's commitment to no more buybacks, however, this is not reflected in legislation. The gap between government policy and actual legislation must be closed.

4.7 It must be called out, that rhetoric by some that depicts the Plan as a failure in order to call for more water recovery from farmers is misleading. Of note, "*Basin Governments have delivered about 2000 GL of water to environmental water holders*"[37] - that is, **4 times the volume of water held in Sydney Harbor** has already been transferred from irrigators to the environment within a decade. This is a very significant reform, and has come at a huge cost to regional communities in the Basin who relied on that water for their livelihoods and community foundations.

However, that water is already showing positive outcomes for the environment, seen in recent media reports from South Australia that "*Efforts to provide greater water flows to the river has led to an increase in their [critically endangered Murray hardyhead] populations, with recent monitoring identifying a record number of the species*"[38].

Recommendation:
The legislated cap on buybacks must remain in place to protect Basin communities.

The legislated requirement for buybacks if SDLAM project shortfalls exist in 2024 (which is now inevitable) must be removed in order to achieve best possible environmental outcomes with minimal social/economic harm, and to prevent communities from being penalised for no fault of their own.

Conclusion

[37] https://www.pc.gov.au/inquiries/completed/basin-plan/report/basin-plan-overview.pdf [P 9].
[38] https://www.abc.net.au/news/2021-07-27/murray-hardyhead-booms-in-sa-riverland/100313956

NSWIC emphasises that there is a pressing need for an open, honest, level-headed and constructive conversation about the remaining implementation of the Basin Plan.

It is broadly documented across an extensive evidence base that changes are required to achieve the best possible outcomes for all parties, and this was always the intent of an adaptive management plan. It is paramount that our leaders come together, in bipartisanship, to identify reasonable, sensible and necessary changes to fix the future implementation of the plan. That is in the interests of all stakeholders, and the nation.

Kind regards,

NSW Irrigators' Council.