



Inquiry into the Water Amendment (Restoring Our Rivers) Bill 2023

Submission to the Environment and Communications Legislation Committee – September 2023

Executive Summary

NSW Irrigators' Council (NSWIC) strongly opposes the Water Amendment (Restoring Our Rivers) Bill 2023 in its current form, as it:

1. **Substantially departs from Labor's original 2012 Murray-Darling Basin Plan** as agreed with federal bipartisan support and by all Basin States, and with community understanding of the limits of negative socioeconomic impact.
2. **Establishes a "free-falling" SDL** by removing all the checks and balances in how SDLs are set and adjusted (i.e. the formal processes and structures), with unknown and unlimited impacts, beyond the intended agreement by Basin States.
3. **Is inconsistent with the "Agreement of Murray-Darling Basin Ministers to Deliver the Basin Plan in Full"** (August Agreement), even going beyond what was agreed by States. The lack of State support – i.e. NSW formally not supporting buybacks in the Agreement, and Victoria not signing up - leaves unresolved policy, legal and practical questions, with concerns for multi-jurisdictional cooperation.
4. **Effectively exempts the Government from its own laws** to prevent water market manipulation and insider trading. Market reforms are in this Bill but do not come into effect until mid-2026, giving the Government time to engage in the exact kind of anti-competitive and manipulative market activity for buybacks that the Bill seeks to stop others doing.
5. **Legally decouples water recovery from environmental outcomes**, by (i) changing the objects from specified environmental outcomes to water recovery as an end in itself, and (ii) no longer requiring the objects to be achieved by easing and removing river constraints, so enabling buybacks even if the water cannot be used to achieve environmental outcomes.
6. **Effectively takes all other options off the table, except buybacks**, and does not allow for the options put forward by communities at public consultation to progress.
7. **Removes the socio-economic protection** of the 1500 GL Cap on Water Recovery, exposing Basin communities to an unknown and indefinite volume of water buybacks.
8. **Removes** the 2012 Labor Government's **conditions** that water recovered towards the extra 450 GL is conditional on the means having only neutral or improved socio-economic outcomes, and that the water not come from buybacks. The Bill thereby does not deliver the 2012 Plan "in full", just selective parts of it.
9. **Lacks a Regulatory Impact Statement**, despite a very significant change of policy, meaning the impacts of the regulation have not been properly assessed.
10. **Does not address the key degradation drivers**, with scientists now urging a shift from simple 'water volumes' to directly targeting invasive species such as carp, habitat degradation, barriers to fish passage, lack of fish screens on pumps, cold water pollution, etc. You can't "just add water" to fix these.
11. **Puts significant upward pressure on water prices**, due to Federal Government intervention in the water market, with flow-on impacts to every farmer in the Southern Connected System. Increased water prices means increased input costs, which then drives upward pressure on food prices, amidst the cost of living crisis.
12. **Is unnecessary**. The Basin Plan's objective to implement Sustainable Diversion Limits (SDLs) is now already in place, and being complied with. This is the result of 98% of water recovery targets completed (and open tenders underway for the remaining 2% within current legislation and timeframes). Water recovery was only a means to SDLs, not the end in itself.

13. The amendments to allow **more time and flexibility** for SDLAM supply projects are a step in the right direction, but **not sufficient** based on official review recommendations – setting this program up for future failure.

The ***Water Amendment (Restoring Our Rivers) Bill 2023*** is the most radical departure from best-practice water management in Australian history, moving away from a long (albeit delicate) history of bipartisanship, multijurisdictional cooperation, and evidence-based policy.

The 2012 Basin Plan was centred on achieving Sustainable Diversion Limits (SDLs) through the recovery of specified volumes of water. That has now been achieved with SDLs in place, and being complied with. This is a result of 98% of water recovery targets completed (and open tenders underway for the remaining 2% within current legislation and timeframes).

Therefore, this Bill is not about delivering the previous Labor Government's 2012 Basin Plan in full and as intended – this Bill is about rewriting and fundamentally changing the 2012 Basin Plan.

Most concerning is the introduction of “free-falling” SDLs with no conditions or limits, such as consideration of socio-economic impacts or environmental utility. This unwinds decades of scientific and calculated reform to achieve SDLs, and strips away the due diligence, formal processes and checks and balances critical to good water management in the Basin and providing certainty for farmers on water availability and compliance.

Recommendations

1. Maintain the 1500 GL cap on water recovery – as the Basin Plan can be delivered ‘in full’ without the need for more water recovery.
2. Maintain the current requirement that prevents buybacks being used for the 450 GL.
3. Maintain the current requirement that the 450 GL is conditional on improved or neutral social and economic outcomes, irrespective of recovery measure.
4. Enable ‘complementary measures’ and rules changes to count towards the 450 GL, to ensure key degradation drivers are targeted, and key initiatives put forward by communities during public consultation can be implemented.
5. Remove the changes which effectively cause a “free-falling” SDL - beyond the Basin Plan requirements, structures and processes, and beyond State agreement – and instead, maintain these important checks and balances.

With the above amendments, the Bill may, in-principle, be supported by the NSWIC.

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1. If buybacks will be used for the 450 GL (not supported) – amend the Bill so buybacks are also subject to the requirement for only neutral or improved social and economic outcomes (including third-party and water market impacts).
 2. If buybacks will be used for the 450 GL (not supported) – buybacks must be contingent on constraints management in order to achieve environmental outcomes from that water.
 3. If buybacks will be used for the 450 GL (not supported) – amend the Bill so buybacks are only a ‘last resort’ option – and subject to a strict criterium requiring demonstration that:
 - a. The environmental water can in practice be used to optimal effect and be physically deliverable to meet intended environmental objectives (i.e., river constraints can be managed);

- b. There are no perverse negative environmental impacts in the delivery of the water to meet the objective, such as riverbank erosion;
- c. Alternative measures, such as complementary measures and rules changes, have been fully exhausted to achieve environmental objectives, and to optimise outcomes; and,
- d. There is reasonable evidence to suggest an issue of persistent SDL non-compliance in that valley that requires buybacks to bridge the gap to SDL compliance.

“The rule is it can only happen through methods that have no downside, social or economic. So that’s the rule.

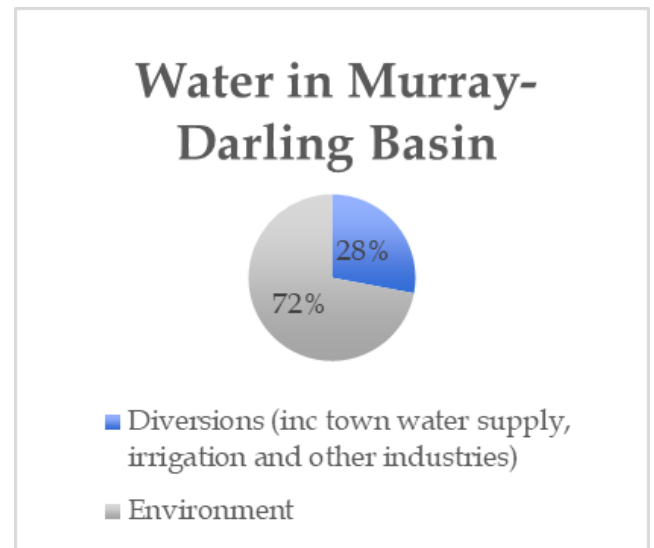
And that’s why none of this money could be used for general tender buyback rounds or anything like that, because the Authority’s reached a very strong conclusion that if you did it through a general buyback, you do get downsides for the local community.”

- Former ALP Federal Water Minister Tony Burke, re the 450GL promise to South Australia, speaking on ABC Country Hour in October 2012.

Background

The Basin Plan

- The Murray-Darling Basin Plan so far has recovered more than 2107 GL of water (more than four Sydney Harbors), for the environment – exceeding the total Basin-wide, SDLAM-adjusted water recovery target of 2075 GL.
- While some valleys still are nominally under-recovered (46 GL in total, currently being addressed through Bridging the Gap buybacks), it must be recognised that 98% of surface water recovery and 92% of groundwater recovery against the Bridging the Gap target across the Basin is complete.



- To put the scale of water recovery into perspective, 1 in 3 litres of irrigation water has been redirected to the environment since the turn of the century, when combined with 875 GL recovered in pre-Basin Plan water reforms.
- As a result, total diversions for agriculture, towns and industry have been reduced to just 28% of Basin inflows.
- This means the environment now receives 72% of water, which remains in rivers. This is well within global standards for acceptable levels of water diversions as presented at the MDBA's River Reflections conference, and is a diversion ratio envied around the world.
- The Basin Plan's central purpose is setting and achieving compliance with Sustainable Diversion Limits (SDLs). This has now occurred (as of 2019), assuming the full SDLAM 605 GL supply measures are delivered for the southern Valleys.
- Not only are SDLs already being complied with, but trends show diversions significantly below these limits. The most recent MDBA Register of Take shows NSW is overall 2% below SDLs. Significantly, the NSW Murray is now 579 GL or 38% below the SDL. There is absolutely no justification for further buybacks to achieve the SDLs agreed in the Basin Plan.

Why we need to go Beyond Buybacks

Socio-Economics

- *Proposed water recovery is a substantial proportion of the remaining water available to grow food and fibre.*
 - The NSW portion of the 450 GL is the equivalent of nearly half (44%) of the remaining high-security consumptive water (LTDLE) in the NSW Southern Connected Systems.¹
 - Overall, the 450 GL is removing 10% of water accessible in the Southern Basin.
- *Water recovery from farmers costs jobs in Basin communities.*
 - 30% (3261) of 10,801.5 FTE jobs lost across 40 southern MDB communities from 2001 to 2016 attributed to water recovery for the environment.
 - Job losses due to water recovery as proportion of total jobs lost by State: NSW 21% (648 FTE); Victoria 30% (1684 FTE); South Australia 45% (929 FTE)².
- *Water recovery has large production impacts.*
 - 450 GL = \$500 million a year in lost production in southern MDB.
 - 760 GL (450GL + SDLAM shortfall) = \$900 million a year forgone³.

Financial Implications & Water markets

- *Farmers cannot afford to pay market allocation prices this high, this often.*
 - Buybacks have driven allocation prices up an average \$72/ML
 - = Prices higher than \$200/ML in three out of 10 years.
 - Another 450GL from the sMDB pool.
 - = Prices higher than \$200/ML in eight out of 10 years⁴.
- Higher water prices for farmers logically flows on to higher prices for consumers grocery bills, amidst the cost-of-living crisis.
- Buybacks are not cheap - entitlement prices have almost quadrupled since the last buyback tenders more than a decade ago, from around \$2200/ML to \$6000-\$9500/ML.
- The southern Basin water market has shrunk. Less than 100 GL a year in entitlements is now commercially traded a year. Even if the Commonwealth spread out buybacks over several years, its intervention would still inevitably distort the market, driving up prices and breaching ACCC recommended reforms to stop market participants capturing or distorting the market.

Ecological

- The 2018 Productivity Commission 5-year Basin Plan Implementation Review⁵ found that unless river constraints are addressed, more water could be recovered from farmers but it could be unusable.
- With diversions down to just 28% of inflows, the MDB is within international thresholds.
- Leading degradation drivers – invasive species (carp); habitat degradation; water quality; fish passageways – require more than just adding water. Until these are addressed, just adding more water is only tinkering at the edges of the major environmental degradation drivers.
- 93% of the wetlands in the Basin are on private property. Achieving landscape level change requires partnerships with private landholders.

¹ [Inquiry report - Murray-Darling Basin Plan: Five-year assessment - Productivity Commission \(pc.gov.au\)](#)

² [Southern Basin community profiles | Murray-Darling Basin Authority \(mdba.gov.au\)](#)

³ 2022 Frontiers Report for Victorian Government https://www.water.vic.gov.au/_data/assets/pdf_file/0023/600719/Fact-sheet-Socio-economic-impacts-of-Basin-Plan-water-recovery-in-Victoria.pdf

⁴ ABARES 2020 <https://www.agriculture.gov.au/abares/products/insights/economic-effects-of-water-recovery-in-murray-darling-basin>

⁵ [Inquiry report - Murray-Darling Basin Plan: Five-year assessment - Productivity Commission \(pc.gov.au\)](#) [Page 22]

- 1) **Substantially departs from Labor’s original 2012 Murray-Darling Basin Plan** as agreed with federal bipartisan support and by all Basin States, and with community understanding of the limits of negative socioeconomic impact.

(i) Enables buybacks (previously not permitted)

Currently the Murray-Darling Basin Plan excludes buybacks for the 450 GL. The provisions excluding buybacks will be deleted under the Bill.

Current legislation (Part 2AA, s86AD):

Note 2: Under this Part, the Commonwealth will not conduct open tender rounds that are available to all water access entitlement holders in a water resource plan area to purchase water access rights.

Water Amendment (Restoring Our Rivers) Bill 2023:

Repealed.

This goes well beyond the 2012 Basin Plan - effectively adding an additional 450 GL of direct buybacks that was never envisaged in the original Basin Plan.

(ii) Removes the socio-economic conditions (previously required)

Currently legislation is written in a way that the 450 GL through efficiency measures is conditional, such as requiring socio-economic impact neutrality. This has the effect of limiting the 450 GL in practice, due to these conditions, rather than it being a mandatory recovery target.

The new Bill, however, removes these conditions if buybacks are used for the 450 GL. NSWIC legal advice on the Bill says:

“There are no socio-economic considerations when determining whether to acquire water, to specify additional HEW entitlements or making adjustments to the SDL as a consequence of purchasing water.”

“... additional HEW entitlements are to be disregarded when the Authority has to determine whether proposed adjustments to the long-term average sustainable diversion limits can be made (s.7.17(1) of the Basin Plan) so that socio-economic matters do not have to be considered.”

(iii) Leaves unresolved technical questions in regard to the operation of the SDL Adjustment Mechanism, particularly the limits of change.

Currently, the 450 GL is integrated with the broader SDL Adjustment Mechanism, tied to the limits of change (+/- 5%), based on supply, constraints, and efficiency measures. Neither this Bill, nor the supportive documents, explain how the changes to the 450 GL will impact on the other side of the SDLAM equation, being the 605 GL in supply measures. This is a significant unresolved policy question.

Further, the SDLAM is a southern Basin mechanism, leaving unresolved questions regarding SDL adjustment if water recovery counted towards the 450 GL occurs elsewhere in the Basin.

This signals a single-minded pursuit of buybacks to meet a political promise to South Australian politicians, without consideration or technical understanding of the policy dynamics on how the Basin Plan operates and functions.

2) Establishes a “free-falling” SDL by removing all the checks and balances in how SDLs are set and adjusted (i.e. the formal processes and structures), with unknown and unlimited impacts, beyond the intended agreement by Basin States.

Currently, set formal processes are in place for the determination, adjustment and reconciliation of SDLs. These formal processes are critically important as due diligence, to ensure checks and balances, and to provide certainty to all stakeholders (including State Governments).

It also provides assurances to State Governments and water users on the nature and extent of SDL changes. This ensures SDLs are not flippantly changed, but are the subject of robust, evidence-based decision-making, including public consultation, through the MDBA 10-year Basin Plan implementation and planning framework.

The ***Water Amendment (Restoring Our Rivers) Bill 2023*** moves away from these set formal processes and instead enables a much more dynamic system whereby SDLs can simply be adjusted “from time to time” – effectively at the Federal Minister’s discretion - without these processes and structures.

This is a significant departure from current structures, and a sneaky transfer of powers.

NSWIC legal advice says:

“The changes in the Bill potentially bypass the existing safeguards that previously existed in the adjustment mechanism.

The notification of additional HEW entitlements will automatically flow through to the SDL in the Basin Plan and from there onto the accredited water resource plans.

New South Wales will have to respond by amending relevant water sharing plans to accommodate the change or risk being in breach of the Water Act.

This allows for a more dynamic system, that is capable of faster changes than the processes that existed prior to the Bill.”

3) Is inconsistent with the “Agreement of Murray-Darling Basin Ministers to Deliver the Basin Plan in Full” (August Agreement), even going beyond what was agreed by States. The lack of State support – i.e. NSW formally not supporting buybacks in the Agreement, and Victoria not signing up - leaves unresolved policy, legal and practical questions, with concerns for multi-jurisdictional cooperation.

- The ‘*Agreement of Murray-Darling Basin Ministers to Deliver the Basin Plan in Full*’ (22 August 2023) is clear that:

“The NSW government does not support water purchases”

However, water purchases are the sole mechanism to deliver the Basin Plan in full (and beyond) under this Bill – a mechanism not supported by NSW, nor Victoria.

This unravels a long, albeit delicate, history of multijurisdictional cooperation on water management, which should be of major concern to all.

- Further, the August Agreement with Basin States (excluding Victoria) says:
 6. The Commonwealth will work with communities on the design and delivery of water recovery programs towards the 450 gigalitre target with all options on the table, including water purchase.

However, the current drafting of the Bill is so narrow that it excludes all other options on the table, except water purchases (see 7 above). This tears up the August agreement with Basin States, including NSW, who have been seriously misled if this Bill progresses in current form.

This also means that the vast majority of 'innovative ideas' put forward by communities during recent public consultation cannot be included (see 6).

4) Effectively exempts the Government from its own laws to prevent water market manipulation and insider trading. Market reforms are in this Bill but do not come into effect until mid-2026, giving the Government time to engage in the exact kind of anti-competitive and manipulative market activity for buybacks that the Bill seeks to stop others doing.

For example, the *Water Amendment (Restoring Our Rivers) Bill 2023* includes:

Division 4A—Market manipulation

101JG Market manipulation

A person must not take part in, or carry out (whether directly or indirectly) a trade or transfer of an eligible tradeable water right that has, or is likely to have, the effect of:

- (a) creating an artificial price for eligible tradeable water rights; or
- (b) maintaining at a level that is artificial (whether or not it was previously artificial) a price for eligible tradeable water rights.

101JH False trading and market rigging—creating a false or misleading appearance of active trading etc.

- (1) A person must not engage in conduct that has or is likely to have the effect of creating, or causing the creation of, a false or misleading appearance:
 - (a) of active trading in a market for eligible tradeable water rights; or
 - (b) with respect to the market for, or the price for trading in, eligible tradeable water rights.

Civil penalty: For an individual—2,000 penalty units.
 For a body corporate—see section 101K.

These provisions would be completely violated by what the Federal Government is doing regarding buybacks, and how they have gone about it (i.e. the impacts of previous round of buybacks on water prices is clear).

It appears deliberate that these sections do not commence until 1 July 2026. See:

6. Schedule 3, Part 3 A day to be fixed by Proclamation.
A Proclamation must not specify a day that occurs before the commencement of the provisions covered by table item 5.
However, if the provisions do not commence before 1 July 2026, they commence on that day.
If the provisions covered by table item 5 commence on the same day as the provisions covered by this table item, the provisions covered by this table item commence immediately after the commencement of the provisions covered by table item 5.

The hypocrisy of the Federal Government is laid bare in seeking to provide more integrity and scrutiny to the water market – whilst simultaneously, as the largest water market participant, undertaking a mass violation of these provisions first.

5) Legally decouples water recovery from environmental outcomes, by (i) changing the objects from specified environmental outcomes to water recovery as an end in itself, and (ii) no longer requiring the objects to be achieved by easing and removing river constraints, so enabling buybacks even if the water cannot be used to achieve environmental outcomes.

Current legislation has the WESA funding directly tied to specified environmental outcomes indicated in Schedule 5.

The **Water Amendment (Restoring Our Rivers) Bill 2023** removes this, by delinking from 86AA. Specifically, the Bill says:

(2A) To avoid doubt, a project mentioned in subsection (2) may contribute to the integrated management of the Basin water resources in a way that promotes the objects of this Act, and has a substantial aim of furthering the object of this Part, whether the project satisfies both, or only one of, paragraphs 86AA(3)(a) and (b).

I.e. rather than needing to achieve an actual environmental outcome, the water recovery is merely an end in itself.

Further, the Bill decouples water recovery towards the 450 GL from the management of river constraints in order to achieve the object of Part 2AA Water for the Environment Special Account. I.e. there is no requirement for the water to be deliverable to achieve an actual environmental outcomes, as required in Part 2AA s86AA (3):

The object of this Part is to be achieved by:

(a) easing or removing constraints on the capacity to deliver environmental water to the environmental assets of the Murray-Darling Basin; and,

(b) increasing the volume of the Basin water resources that is available for environment use by 4540 gigalitres.

6) Effectively takes all other options off the table, except buybacks, and does not allow for the options put forward by communities at public consultation to progress.

- The vast majority of critically important ecological measures put forward through the recent public consultation on delivering the Basin Plan cannot be delivered under this legislation, because it is written so narrowly that only measures involving the transfer of a water entitlement can be considered.
- The ‘What We Heard’ document published by DCCEEW categorises these ideas, with the most critical ecological measures (such as fish passageways, fish screening, rehabilitating waterways, cold water pollution, and partnerships with landowners) listed as ‘category 3’ – which are effectively ruled out as they do not come with a volumetric ‘number’ to contribute to the Labor Government’s political promise to give South Australia another 450 GL.
- The ***Water Amendment (Restoring Our Rivers) Bill 2023*** should be amended to enable the full range of these valuable community-led environmental projects to be considered (i.e. the category 3 projects), which could achieve significantly greater environmental outcomes across the Basin, backed by communities. The DCCEEW public consultation outcomes document describes these category 3 projects as “will not contribute to Basin Plan water recovery targets but improves social, economic, cultural or environmental outcomes in the Basin”. To do this, the Bill would need to remove the requirement for the additional 450 GL to require the transfer of a water entitlement, and rather be focused on the outcomes.
- As a case study, the Commonwealth Environmental Water Holder has recently said in a media release (28 September 2023) titled “Partnerships play crucial role in health of Murray-Darling Basin” – that “Our partnership with the irrigation sector has allowed us to deliver water to wetlands and creeks that we would otherwise not been able to access, while it has helped irrigations corporations increase their customer base”. However, doing more of these sorts of measures – despite enhancing the environmental utility of environmental water in a cost-effective (and positive socio-economic) way, are excluded from this Bill.
- It is dishonest for the Government and the Water Minister to claim they have consulted with communities and industry, when the Government has tabled amendments that in practice rule out all the ideas communities and industry put forward.

7) Removes the socio-economic protection of the 1500 GL Cap on Water Recovery (legislated with bipartisan support in 2015), exposing Basin communities to an unknown and indefinite volume of water buybacks.

Current legislation (Part 2, Division 5: 1500 gigalitre limit on water purchases)

Part 2, Division 5, 85B: Simplified outline of this Division

There is a 1,500 gigalitre limit on water purchased under water purchase contracts.

Part 2, Division 5, 85C 1,500 gigalitre limit on water purchases

(1) *The Commonwealth must not enter into a water purchase contract at a particular time if doing so would result in the sum of:*

(a) *the long-term annual average quantity of water that can be accessed under the water access entitlement purchased under the contract; and*

(b) *the total of the long-term annual average quantities of water that can be accessed under water access entitlements purchased under water purchase contracts entered into before that time; exceeding 1,500 gigalitres.*

[Continued]

Water Amendment (Restoring Our Rivers) Bill 2023:

Repealed.

The Water Minister has framed the Cap as an impediment to water recovery. However, it must be noted that this Cap has not been reached, with a substantial 270 GL still remaining available.

The proposal to remove this Cap sends a signal to Basin communities (and the water market) of an intention to recover more than 270 GL. If the Minister is serious about still having “all options on the table” as signaled in the Second Reading Speech, and included in the August Agreement with Basin States, it is highly questionable if removal of the Cap is necessary.

If the Minister is serious about pursuing other options to make up the 450 GL, there would be no need to remove this Cap. Keeping this Cap would hold the Government to account on its commitment to continue to look at alternative options to direct buybacks. It would also contribute to alleviating some of the significant market distortions that result from an unknown, boundless volume of Government-intervention in the market.

8) Removes the 2012 Labor Government’s **conditions** that water recovered towards the extra 450 GL is conditional on the means having only neutral or improved socio-economic outcomes, and that the water not come from buybacks. The Bill thereby does not deliver the 2012 Plan “in full”, just selective parts of it.

Current legislation:

“The efficiency contributions to the proposed adjustments achieve neutral or improved socio-economic outcomes” (Chapter 7, Division 4 – 7.17, 2(b)).

Water Amendment (Restoring Our Rivers) Bill 2023:

The relevant section on ‘additional HEW entitlements’ (i.e. buybacks) has been separated from the criteria that applies to SDLAM supply and efficiency measures – i.e. the criteria that requires neutral or improved socio-economic outcomes. Further, for the avoidance of doubt, the new legislation specifically says:

“disregarding the additional HEW entitlements mentioned” in regards to satisfying the criteria.

This means buybacks are not subject to this socio-economic criteria.

Note: Yellow highlighted text is new, red is repealed.

section 7.13.

7.16A Contribution to adjustments from additional HEW entitlements

- (1) For a determination for the purpose of section 7.11, and subject to this Division, the *additional HEW contribution* of the additional HEW entitlements for each affected unit at a particular time is a decrease in the SDL for the unit equal to the quantity of water, in GL per year, that is registered as being available under additional HEW entitlements for the unit.

Note 1: The additional HEW contributions are expected to vary over time as relevant water access entitlements are acquired.

Note 2: The Authority will use long-term diversion limit equivalent factors to convert water access entitlements into a common unit for the purpose of the determinations.

- (2) In this section, *registered* means shown on the register maintained under section 7.13.

7.17 Ensuring that criteria for amounts of adjustments are satisfied

- (1) If, after calculating the total supply and efficiency contributions under sections 7.15 and 7.16, the Authority is not satisfied that a determination of proposed adjustments based on those amounts *disregarding the additional HEW entitlements mentioned in paragraph 7.11(1)(d), could ~~ean~~ be made* under this Division that satisfies the criteria below, the Authority may reduce the total supply contribution, or the efficiency contribution for any affected unit, to a level at which such a determination *could ~~ean~~ be made*.
- (2) The applicable criteria are the following:

Equivalent environmental outcomes

- (a) The supply contributions to the proposed adjustments achieve equivalent environmental outcomes compared with the benchmark environmental outcomes.

Neutral or improved socio-economic outcomes

- (b) The efficiency contributions to the proposed adjustments achieve neutral or improved socio-economic outcomes compared with the outcomes under benchmark conditions of development as evidenced by:

9) Lacks a Regulatory Impact Statement, despite a very significant change of policy, meaning the impacts of the regulation have not been properly assessed.

The original Basin Plan was subjected to a Regulation Impact Statement⁶, where the economic costs were calculated based on the expected effects on production in 2019 based on the proposed recovery of the Plan's benchmark 2750 GL target (i.e. excluding the 450 GL).

The *Water Amendment (Restoring Our Rivers) Bill* proposes to recover an additional 450 GL, which is a substantial shift from the original Basin Plan and the core premises of the original RIS. However, this Bill has not been the subject of a RIS, despite this significant change.

The 2012 RIS identified:

"If all water were recovered through buybacks, the model estimated a loss of profit of 8.2 per cent (around \$160 million per annum) relative to baseline".

"the gross value of irrigated agricultural production is estimated to be reduced by \$764 million per annum, agricultural production by \$733 million per annum and the regional economy by \$721 million per annum in 2019 relative to baseline."

⁶ <https://oia.pmc.gov.au/sites/default/files/posts/2012/11/03-Murray-Darling-Basin-Plan-RIS.pdf>

The Bill fundamentally changes the assumptions on which these impacts are considered, such as through the inclusion of an additional 450 GL to be recovered, shifting from a 2750 GL Plan to a 3200 GL Plan.

There is little detail at this stage on the cost of recovering such a large proportion of the water left in the remaining pool for growing food and fibre (i.e. 10% of the total water left for farming in the southern connected Basin), which some estimates value at more than \$10 billion. This is to be achieved with an undisclosed amount of funding, secured through the last budgetary process.

NSWIC is also not aware of any Government assessment to-date on the impact that removing a further 450 gigalitres of water from irrigation production will have on the Australian agricultural sector, the national food supply (including food prices), the national economy (including GDP, unemployment, and our balance of trade), as well as local economies (i.e. job losses and the social security increases required from significant job losses both in the agriculture sector and rippling out into service industries, local food processing, and small businesses).

Since the last time the Government intervened in the water market with buybacks a decade ago, the impacts have become known and widely documented, which must also be the subject of a future RIS. In particular, this must look at the impacts on water prices to water remaining on the market, and the contravention of other regulations, such as on market manipulation and insider trading.

NSWIC is also not aware of any environmental assessment to date that demonstrates that another 450 GL is able to meet the intended environmental outcomes. To the contrary, NSWIC is aware of numerous official reviews and inquiries (such as the 2018 5-yearly statutory review of the Plan's implementation) which have found further water recovery cannot achieve the objectives linked to the 450 GL until other policy interventions occur, such as addressing system constraints.

Given the unknown quantum of these impacts to the economy and outcomes of the regulation, there is a clear need to update the RIS so that the Federal Parliament can make an objective and informed decision about how to finalise the Basin Plan.

NSWIC recommends that the Office of Impact Analysis is requested to assess the cumulative regulatory impact of the Water Amendment (Restoring our Rivers) Bill 2023 and report to the Federal Parliament as part of this inquiry.

10) Does not address the key degradation drivers, with scientists now urging a shift from simple 'water volumes' to directly targeting invasive species such as carp, habitat degradation, barriers to fish passage, lack of fish screens on pumps, cold water pollution, etc. You can't "just add water" to fix these.

- The NSW Chief Scientist recommended in his review into the Menindee Fish Deaths, immediate measures to apply technical fish passage solutions (0-12 months), as well as mid-term strategies to construct the fishways identified in the NSW Fish Passage Strategy and a national invasive species management strategy (1-5 years).
 - The [Water Amendment \(Restoring Our Rivers\) Bill 2023](#) does not enable these measures at all; rather these measures are being kicked into the effective never-never beyond 2027, after buybacks drain the Basin Plan budget.
- Scientists are increasingly calling for a focus on 'complementary measures' alongside environmental water – i.e. *"we argue that while recovering water will provide good outcomes,*

as a sole intervention, it is not enough to deliver the desired environmental benefits of the reform...”⁷

- Neither the 2012 Basin Plan, nor these amendments, include complementary measures. The objectives of the 450 GL were intended to see enhanced environmental outcomes, above the Basin Plan’s 2750 GL water recovery benchmark. Complementary measures would be the ideal way to do this.
- Responses to these key degradation drivers (i.e. fish passage, fish screening, cold water pollution technologies, fish restocking, land rehabilitation) are also what Basin communities have been calling for, as seen in the DCCEEW ‘What we heard’ document, because these are the environmental concerns seen by those living in these areas. However, as above, these solutions have been shifted into category 3 and cannot be included due to the rigid requirements of this Bill.
- More information is available in the NSWIC Report ‘*Beyond Buybacks – Why we need more than “just add water”*’.⁸

11) Puts significant upward pressure on water prices, due to Federal Government intervention in the water market, with flow-on impacts to every farmer in the Southern Connected System. Increased water prices means increased input costs, which then drives upward pressure on food prices, amidst the cost of living crisis.

- ABARES estimates that water buybacks have already driven water allocation prices above \$200/ML in three out of 10 years.
- ABARES says taking another 450 GL from farmers means water allocation prices above \$200/ML in eight out of 10 years.⁹
- Most farmers cannot afford to grow food and fibre with water prices that high, that often.
- More information is available in the NSWIC Report ‘*450 GL UpWater: What it means for consumptive water in the Southern Connected Basin*’¹⁰

12) Is unnecessary. The Basin Plan’s objective to implement Sustainable Diversion Limits (SDLs) – is now already in place, and being complied with. This is the result of 98% of water recovery targets completed (and open tenders underway for the remaining 2% within current legislation and timeframes). Water recovery was only a means to SDLs, not the end in itself.

- The centerpiece purpose of the Basin Plan was to implement, and ensure compliance with, the Sustainable Diversion Limits (SDLs). This occurred in 2019.
- Data from the most recent MDBA Register of Take Report shows NSW is overall 2% BELOW the SDLs.¹¹

⁷ <https://onlinelibrary.wiley.com/doi/abs/10.1002/rra.3438>

⁸ https://mcusercontent.com/c6e5c2d75b14461767c095feb/files/a5b591bb-6d1a-9475-a5e5-119d75679d5d/2023_01_31_Beyond_buybacks_Campaign.pdf

⁹ <https://www.agriculture.gov.au/abares/research-topics/water/future-scenarios-smdb-independent-assessment-social-economic-conditions>

¹⁰ <https://www.nswic.org.au/wp-content/uploads/2022/08/2022-08-01-450-Report-FINAL.pdf>

¹¹ Note: the valleys shown as above SDL are noted in the report to be due to modelling and meter calibration issues, not over-extraction.

- To use the NSW Murray as a case study:
 - 2021-22: 579.3 GL or 38% BELOW the SDL.
 - 2020-21: 322.7 GL or 21% BELOW the SDL.
 - 2019-20: 117.4 GL or 8% BELOW the SDL.
- For the other Basin States, the Inspector-General of Water Compliance indicates “all 55 SDL resource units in the registers of take are compliant”.
- Water recovery was only ever the *means* to the *end* point of SDL compliance. Now SDL compliance has clearly been achieved, there is no need for further buybacks.

13) The amendments to allow **more time and flexibility** for SDLAM supply projects is a step in the right direction, but **not sufficient** based on official review recommendations – setting this program up for future failure.

Several official reviews and inquiries have recommended timeframe extensions, and flexibility for new and amended notified projects for the SDLAM. For example, the statutory 5-yearly Assessment of the Plan’s implementation said:

“The 2024 deadline for a number of these projects (particularly the constraints projects) is highly ambitious, if not unrealistic.

“Strictly enforcing the 2024 deadline could lead to the abandonment of worthwhile projects. 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 progressing projects with milestones that just cannot be met”¹².

Further, the Review of the Water for the Environment Special Account (WESA) said:

“Past experiences in negotiating similar outcomes suggests that reaching these agreements will require more time than the less than 4.5 years available to 30 June 2024, particularly given the large number of landholders involved.”

For example, the Productivity Commission noted that negotiations in the 2000s to secure the right to release 25,000 ML/day from Hume Dam took almost 8 years to complete. These negotiations involved establishing easements on property title with only 103 landholders from Hume to Yarrowonga (PC 2018).”¹³

The constraints measure projects under the Basin Plan require securing agreements with more than 6000 landowners in southern NSW and northern Victoria. Using previous case studies, it is estimated to take well over 10 years to fully implement the constraints measure projects.

¹² <https://www.pc.gov.au/inquiries/completed/basin-plan/report/basin-plan-overview.pdf> [P 19].

¹³ <https://www.dccew.gov.au/water/policy/mdb/policy/wesa-review>

Therefore, while positive that the Bill enables more time (and some flexibility), it is not sufficient, and will inevitably lead to a similar situation of incomplete projects even under the new timeframes. This is simply a repeat of past mistakes of setting highly ambitious – and unrealistic – timeframes, lacking an evidence-based approach of identifying the necessary required time.

There are several risks of again setting unrealistic timeframes. Firstly, it undermines confidence as the Productivity Commission identified in their 2018 review:

“Projects with unrealistic milestones will likely further erode community confidence that projects are achievable and worth doing”

Secondly, unrealistic timeframes risk worthwhile projects not progressing, as the Productivity Commission also identified in their 2018 review:

“...being open to legitimate extensions of time avoids rejecting worthwhile projects or progressing projects with milestones that just cannot be met.”

This is concerning as these projects are important environmentally, such as to ensure water bought back from farmers can actually be delivered to optimized effect – e.g. to reach key riparian areas and adjacent floodplains. This is not substitutable by simply buying back more water. This requires recognising projects are not just an offset to further water recovery, but an important environmental component of the Plan to realise outcomes, and they need to be completed.

Finally, the threat of further buybacks if timeframes are not met is a significant driver of community frustrations and anxiety. This is problematic as it risks communities having to bear the risks of (i) unrealistic timeframes, and (ii) delays from Governments in delivering these projects.

The Bill does nothing to recognise the importance of these projects being delivered, such as by establishing realistic and achievable timeframes, or removing the threat of further buybacks even when buybacks are recognised as not being a substitute for the types of measures needed.

Basin communities are fearful that even with the new timeframes in the Bill, when projects are inevitably not operational on time, the Government will simply undertake water purchases instead (or other forms of reductions, such as to SDLs) – with serious community impact, as well as forgone environmental opportunity. This is a lose-lose situation that should not be tolerated.

Furthermore, the industry firmly rejects comments by the Water Minister that timeframe extensions and flexibility for SDLAM have been done in the interest of industry. These projects are important environmental components of the Plan. Delivering the Plan in full means getting these done, with recommendations coming from official statutory reviews of the Plan.

The Government has taken the recommendations of official statutory reviews, and bundled them with non-scientific and political bargaining chips. The irrigation industry was not consulted on having these necessary changes bundled in with other severe and unnecessary changes to other components of the Plan, such as enabling buybacks for the 450 GL. In fact, under all measures, the Bill overall provides a far worse situation for the irrigation industry than the status quo, even when these SDLAM changes are considered.

Conclusion

The 2012 Basin Plan is a complex and intricately crafted policy to balance triple-bottom line objectives.

The ***Water Amendment (Restoring Our Rivers) Bill 2023*** moves away from the carefully crafted, evidence-based, and agreed upon reform to support a purely political commitment. This election

commitment is divorced from achieving the Basin Plan's desired environment outcomes balanced against the socioeconomic impacts on Basin communities and an \$8 billion-a-year irrigated agricultural sector generating jobs and income to keep small towns alive.

This Bill is devastating to Basin communities, whilst not even advancing the Basin's environmental health.

It is merely a desperate attempt to make good on a decade-old, last-minute political promise to a single State, at the expense of even that State's Basin communities.

The original Basin Plan – while also devastating to industry and communities – is so close to completion. The sensible, evidence-based changes needed to finalise the last steps (as recommended consistently in multiple official reviews) are being weaponised into political bargaining chips.

This is not delivering the 2012 Plan 'in full' and 'as intended', as claimed by the Water Minister. It is stripping the 2012 Plan of all its socio-economic impact protections, which were important conditions, and adding new measures beyond what was required regardless of whether they actually deliver any environmental benefit. This is an entirely new Plan.

The **Water Amendment (Restoring Our Rivers) Bill 2023** is the most radical departure from best-practice water management in Australian history, moving away from a long (albeit delicate) history of bipartisanship, multijurisdictional cooperation, and evidence-based policy.

Key NSWIC Resources

- NSWIC "Guide to Fixing the Basin Plan - Submission to the Productivity Commission Murray-Darling Basin Plan 10-Year Implementation Review" see: <https://www.nswic.org.au/wp-content/uploads/2023/07/2023-07-28-NSWIC-Submission-PC-10yr-Review-Basin-Plan-1.pdf>
- NSWIC "Delivering the Basin Plan - Submission to Australian Government public consultation on innovative ideas to deliver the Murray–Darling Basin Plan" see: <https://www.nswic.org.au/wp-content/uploads/2023/07/2023-06-30-NSWIC-Submission-Basin-Plan-Options.pdf>
- NSWIC Report – "Where's the Gap: A Report into Water Recovery Targets Against SDLs", see: <https://www.nswic.org.au/wp-content/uploads/2023/03/2023-03-21-Wheres-the-Gap-FINAL.pdf>
- NSWIC Report - "450 GL UpWater – What it means for consumptive water in the Southern Connected Basin", see: <https://www.nswic.org.au/wp-content/uploads/2022/08/2022-08-01-450-Report-FINAL.pdf>
- NSWIC Report - "Job Impacts – From Water Recovery for the Environment in the Southern Murray-Darling Basin", see: <https://www.nswic.org.au/wp-content/uploads/2023/04/2023-04-19-Jobs-impacts-socio-economic-report.pdf>
- NSWIC Beyond Buybacks Campaign, see: https://mcusercontent.com/c6e5c2d75b14461767c095feb/files/a5b591bb-6d1a-9475-a5e5-119d75679d5d/2023_01_31_Beyond_buybacks_Campaign.pdf
- Journal Article by Freak et al "Contemporising best practice water management: lessons from the Murray-Darling Basin on participatory water management in a mosaiced landscape" see: <https://www.tandfonline.com/doi/abs/10.1080/13241583.2022.2097365>
- UN Water Action Agenda SDG Action 50827 by NSWIC "Boost partnerships with irrigation sector for environmental water delivery, to public and private lands", see: <https://sdgs.un.org/partnerships/boost-partnerships-irrigation-sector-environmental-water-delivery-public-and-private>

- NSWIC Working Together Campaign, see: <https://www.nswic.org.au/wp-content/uploads/2022/11/Working-together.pdf>

About NSWIC

The NSW Irrigators' Council (NSWIC) is the peak body representing irrigators and irrigation communities in NSW. NSWIC has member organisations in every Murray-Darling Basin valley of NSW, and several coastal valleys, representing over 12,000 water access licence holders.

NSWIC is a leader in sustainable and productive water policy solutions, and advocates for and advises on best-practice water management. Our vision is for the secure, sustainable and productive management of water resources in NSW.

Further information on NSWIC is available here: <https://www.nswic.org.au/>

About 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"*¹⁴

*"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."*¹⁵

Our water management legislation prioritises all other users before agriculture (critical human needs, stock and domestic, and the environment with water to keep rivers flowing), 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.

¹⁴ <https://www.agriculture.gov.au/ag-farm-food/crops/cotton>

¹⁵ <https://www.agriculture.gov.au/ag-farm-food/crops/rice>