

SUBMISSION TO THE SOUTH AUSTRALIAN MURRAY-DARLING BASIN ROYAL COMMISSION

PREPARED ON BEHALF OF THE STATE OF NSW

22 MAY 2018

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Attachments

A	NSW Water Reform Action Plan (December 2017)
B	Exposure Bill - Water Management Amendment Bill 2018
C	Exposure Bill - Fact Sheet
D	Consultation Paper - Better management of environmental water
E	Consultation Paper - Water take measurement and metering
F	Consultation Paper - Transparency measures
G	WRAP Progress report (April 2018)

Submission

Thank you for your invitation to make a submission and agreeing to the State of NSW to responding by 22 May 2018.

This submission provides the State of NSW's high level comments on some issues raised by the Royal Commission of relevance to NSW. Importantly, it also highlights the work that the State of NSW is doing in relation to water reform in NSW and reinforces the NSW government's commitment to transparency and accountability in delivering those reforms.

Response to Issue Papers

By letter dated 16 May 2018, the State of NSW has been invited to provide information about a number of matters the subject of focus in Issues Paper 1.

The State of NSW considers that in providing that information, the State of NSW will convey its views which would otherwise have been captured in this submission.

The State of NSW has no submissions to make in relation to those areas of focus in Issues Paper 1 which concern matters relying upon expert opinion.

The State of NSW does not intend to make a submission in response to Issues Paper 2. It is noted that Issues Paper 2 expands upon paragraph 28(a) of Issues Paper 1.

NSW commitment to water reform

The NSW government recognises that water is one of our most valuable natural assets. Every community in this State, including businesses and Aboriginal communities, and the environment rely on water.

The NSW Government has a responsibility to the people of NSW to ensure an equitable and transparent approach is taken in the management of our water now and for future generations.

The NSW Government's current water reforms are aimed at strengthening water management in NSW and restoring public confidence by placing a greater focus on compliance and enforcement, transparency and best practice management. A key component of the reforms is improving environmental water management in NSW, including working with the Commonwealth Environmental Water Office (CEWO) to ensure proposed changes enhance and assist the optimal use of water held by NSW and the CEWO. Information about the current NSW water reforms is provided below.

NSW Water Reforms

In December 2017, the NSW Government released the NSW Water Reform Action Plan (WRAP) (**Attachment A**) in response to the Independent investigation into NSW water management and compliance, conducted by Ken Matthews, AO (the Matthews' report) and the Murray Darling-Basin Water Compliance Review (MDBA Review). The WRAP sets out the NSW government's commitment to ensure that there is an equitable and transparent approach to the management of water now and for future generations. A key component is ensuring transparency in how we share, allocate and manage water.

The Government is dedicated to ensuring the reform program is high quality, enduring and developed in close consultation with stakeholders. It has recently sought public feedback on the key components of the WRAP, including the proposed measures for the interim environmental

water solutions package, alongside an Exposure Bill (exhibition closed on 15 April 2018) (**Attachments B and C**).

Three consultation papers have been released for community input on:

1. Better management of environmental water (**Attachment D**);
2. Water take measurement and metering (**Attachment E**); and
3. Transparency measures (**Attachment F**).

Analysis of the submissions and feedback received following the consultation process is underway. The views received are helping to shape the policy settings and legislation that will be introduced in NSW.

NSW is committed to ensuring environmental water, including water entitlements purchased or recovered through efficiency projects by the Commonwealth and NSW to maintain and enhance the health of our river systems, can be used for its intended purpose.

NSW Government agencies play an important role in managing and supporting the delivery of environmental outcomes from environmental water in NSW through:

- the development and application of state legislation and science-based policy;
- undertaking compliance and enforcement activities; and
- the management of held environmental water.

Both the Matthews' Investigation and the MDBA Review highlighted some of the problems and complexities of managing environmental water and stated the need for greater protections. A key component of the WRAP is the development of both interim and enduring solutions to better manage environmental water in NSW. This work is being undertaken by an interagency working group consisting of representatives from a range of disciplines from relevant NSW Government agencies, the Commonwealth and the CEWO.

Proposed options include measures to protect the use of environmental water held by both the Commonwealth and the State. Further information on the development of the interim solutions is outlined in the Better Management of Environmental Water, Consultation paper (see **Attachment D**). The options being considered are intended to enable the better management of environmental water so that the outcomes for environmental water can be maximised.

Enduring solutions will be developed over time as part of the water resource planning process. Under the WRAP, NSW has also committed to improving transparency in how we share, allocate and manage water and is in the process of developing a robust water measurement and metering framework to bolster compliance and enforcement around water take. These initiatives are aimed at improving public and industry awareness, engagement and confidence in water management by improving the quality and availability of water information and in turn, increasing voluntary compliance.

Increased voluntary compliance will support the success of new measures to protect environmental water under the WRAP, including held environmental water. Part of the environmental water work under the WRAP will include publishing further explanatory material for the public about how environmental water is managed. The NSW Government has committed to providing this explanatory material by the first quarter of 2019 and is continuing to work towards this target.

The first progress report on the WRAP was released in April 2018 (**Attachment G**). It demonstrates that the government has delivered on key objectives in the plan for the first quarter of 2018 as well as delivering many of the objectives outlined for the second quarter.

Key achievements include the establishment of the Natural Resources Access Regulator (NRAR), which commenced operation on 30 April 2018, and the establishment of the Lands and Water

Division within the Department of Industry, which is focused solely on the management of land and water resources.

A further example of the NSW Government's commitment to the reform program is its current collaboration with the Commonwealth Environmental Water Holder as well as the local communities and irrigator groups to deliver the Northern Basin connectivity event.

The CEWH has recognised the significant support that NSW has provided to enable this flow to be protected through the use of a section 324 Order to prohibit take. This current event is being treated as a pilot for how more active management of environmental water may occur in the future.

The Government will introduce a package of amendments to the *Water Management Act 2000* this session of Parliament that delivers on its commitment to the reform program. The Exposure Bill consulted on earlier this year included new tools for the implementation of more robust metering across the State and for the better protection of environmental water.

These tools include the ability to impose mandatory conditions through regulation and enabling section 324 water restrictions to be imposed specifically for environmental purposes. Improved evidentiary certificates in the Exposure Bill will also help facilitate NRAR in its compliance role and the strengthened transparency provisions will provide greater accessibility and understanding of water entitlements and use.

Further information on the NSW water reforms is available on the following website:
<https://www.industry.nsw.gov.au/water-reform>

Natural Resources Access Regulator (NRAR)

The NRAR was also established following the Matthews' report and commenced operation on 30 April 2018. The NRAR is an independent regulator established under the *Natural Resources Access Regulator Act 2017*. The current regulatory focus for the NRAR is water regulation. The principal objectives of the NRAR are to ensure effective, efficient, transparent and accountable compliance and enforcement measures and to maintain public confidence in the enforcement of the natural resources management legislation.

The NRAR has an independent board that is responsible for decisions relating to the regulator's compliance and enforcement functions. More information can be found on the NRAR website:
<https://www.industry.nsw.gov.au/natural-resources-access-regulator>

Murray-Darling Basin Plan (MDBP)

The management of environmental water across the MDB is a difficult and complex issue. Resolving these issues will be central to the ongoing success of the MDB Plan and requires action across the whole MDB.

In NSW, Water Sharing Plans (WSPs) provide the framework within which all water use is planned and coordinated. WSPs specifically share the water resource in each valley, including a proportion of water to support the environmental needs of NSW riverine and wetland systems.

The NSW Department of Industry is responsible for ensuring the rules in WSPs that provide water for the environment (i.e. planned environmental water) are applied. The *Water Act 2007 (Cth)* requires that the planning and management of environmental water in NSW must be consistent with the Basin Plan.

The NSW Office of Environment and Heritage (OEH) manages held environmental water, including environmental water licences held by the NSW Government and planned environmental water allocations made under water sharing plans. OEH works with the Commonwealth Environmental Water Holder on the management of environmental water held by the Commonwealth

Government. Information on the management of held environmental water by OEH is available at <http://www.environment.nsw.gov.au/topics/water/water-for-the-environment>.

Held environmental water includes:

- planned environmental water allowances (or environmental contingency allowances) accrued through the regulated river WSPs; and
- environmental water licences arising from the purchase of entitlements by governments and the recovery of water savings from infrastructure projects.

Water is made available to planned environmental water allowances by rules described in the WSP relevant to that valley. These valley specific allowances have various size limits and rules on how and where they can be used, which are also specified in the relevant WSP.

The Matthews' report draws attention to the complexity surrounding the management of environmental water and the need for a cooperative approach to solutions.

The Premier has written to the Chair of the MDB Authority to highlight the recommendations in the report, and reinforce the State's commitment to working with the MDB Authority and member states to improve the management of water resources.

Thank you again for the opportunity to make this submission. Responses to the matters requested in recent correspondence from the Commission are in preparation.