



Committee Secretary

Senate Standing Committee on Rural and Regional Affairs and Transport

Parliament House

Canberra ACT

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17 November 2021

Dear Committee,

RE: Submission to the Senate Rural and Regional Affairs and Transport Committee Inquiry into the Water Legislation Amendment (Inspector General and Other Measures) Act 2021

Supplementary Submission

Thank you for the opportunity to present to the Committee hearing on 18th November, we are pleased to present this supplementary Statement in writing for the benefit of the committee.

Healthy Rivers Lower Murray is an independent group representing concerned communities in Adelaide and along the river corridor from Mildura to the Murray Mouth. Nevertheless, our members are concerned with the health of the whole basin and have been alarmed at some outcomes across the whole Basin. Our group works collaboratively with other organisations around the Basin which will also be presenting today.

In our original submission we made the following recommendations:

- *The office of the Inspector General be moved to a separate and independent compliance and enforcement agency in order to avoid any real or perceived conflicts of interest*
- *Adding a positive duty to act consistently with, and so as to promote international treaties which underpin the Water Act*
- *Stronger penalties instated for individuals and companies that are found to be non-compliant. For example, penalties of three times the benefit obtained by committing the offence.*

We note these recommendations are consistent with those of a number of other submissions including those from irrigator bodies. On the other hand, we differ with some other recommendations. We now wish to add further detail to our recommendations.

We are particularly concerned that many Basin Plan commitments have slipped to the extent that the Basin Plan will reach its sunset with inadequate outcomes and no remaining funds.

Support for the Basin Plan and the Water Amendment Legislation Act 2021

Our group strongly supports the Murray-Darling Basin Plan (2012) but has been concerned that its progress has been frustrated by a lack of commitment to effective and efficient implementation by most jurisdictions. When announcing the Interim Inspector-General in 2019 Minister Littleproud announced the position would be “a new tough cop on the beat across the Murray-Darling, with the powers needed to ensure integrity in delivery of the Basin Plan¹”. The Inspector-General will be required to hold the MDBA, Commonwealth and all basin states to account.

We note that there have been many inquiries (around 40?) that have reviewed elements of the Plan. These mostly support the basic elements of the Plan but have been critical of the implementation of various aspects.

Critically, we note the findings and recommendations of the Productivity Commission M-D Basin Plan 5 year assessment (2018):

- “The Plan sets environmental and other objectives for the Basin and establishes new, lower sustainable extraction limits to achieve them. It outlines the key actions, processes and timeframes that Governments are to adopt to implement the Plan.²”
- “The MDBA should be split into two separate institutions the Murray-Darling Basin Agency and the Basin Plan Regulator.”

We note specifically that the Basin Plan is a ‘water management plan’ with a focus on the environmental health of the whole river system to sustain communities and industries across the basin. It sets out specifically to address historic over-allocation and recover water rights and re-allocate them through effective and efficient delivery of environment water. It is not a regional industry restructuring plan.

Our group welcomes the Water Amendment Legislation Act. The Act establishes the Inspector-General for Water Compliance (IG) as a statutory entity to monitor and provide independent oversight of

- the performance of functions and exercise of powers by Commonwealth and Basin State agencies under the Water Act and regulations, the Basin Plan and water resource plans;
- the implementation of a range of MDB intergovernmental agreements.

We are concerned that recent investment decisions have diverged from these primary objectives moving the focus towards supporting communities rather than river health. Whilst that is an important objective, it should fall under regional development and attract funding from other sources. An important function of the Inspector General will be to maintain the original priority as set out in the Water Act and the Basin Plan. In that context it should be independent of and scrutinize decisions of the Department of Agriculture and Water. It should not be located within that Department.

This recommendation has found support from many other submissions.

The effectiveness of this role will depend on a number of factors including; how the Inspector General maintains its independence to exercise discretion and whether the office is appropriately resourced to conduct in-depth investigations and assessments.

¹ <https://minister.awe.gov.au/littleproud/media-releases/new-inspector-general-basin>

² <https://www.pc.gov.au/inquiries/completed/basin-plan#report> p61

Basin Plan Implementation

The Basin Plan has established a credible but complex suite of actions and obligations. Importantly, these need to act in concert with each other. To date, Governments appear to have cherry picked some and practically ignored others! These have been highlighted by the Government's own inquiries. Examples include:

- little progress on reducing water delivery constraints; this potentially limits the delivery of environmental water,
- tolerance of slipping timeframes eg SDLAM projects including constraints relaxation
- lack of assessment of the ecological equivalence of SDLAM supply measures
- inadequate public scrutiny of investment decisions in terms of value for money and justification of water recovery volumes
- introducing impediments to delivering water recovery outcomes
- lack of commitment to recovering the agreed full 3200 GL/a (ie only 1% Of the final 450 GL/a), noting this is of benefit across the whole Basin not just SA as is so often claimed.
- Lack of assessment of the growth in floodplain harvesting in the Northern Basin
- Lack of commitment to cultural water delivery
- Lack of protection of held environmental water as it travels downstream
- Slippages in routine reporting obligations such as the overdue WESA review and SDL reporting
- Confusion in publications between terminology such as annual water rights in any one year versus LTAAY (114 year record)
- Lack of connectivity obligations particularly in the Northern Basin
- Lack of implementation of the recommendations of past inquiries

We acknowledge that there has been much pain across the Basin in recent years, particularly through the Millennium drought and beyond. It could be argued that drought is the new norm and good years are the anomalies, which is consistent with the normal variations in Australian climate that is now exacerbated by the ongoing impacts of climate change. However, it is also noted that much of the socio-economic pain can be attributed to matters beyond water and the Basin Plan, such as commodity markets, droughts, and individual decisions to trade water in the anticipation of balancing with temporary trade, that has become unaffordable for some. Nevertheless, at the same time improved water use efficiency has increased agricultural productivity for many sectors. An often-neglected bright spot is the increasing value of tourism across the Basin. This relies on healthy rivers and landscapes.

Unfortunately, most water rights were allocated and developed in the good years of the 1950's to the 1990's. Variations in Basin State's historic approaches to water rights have been recognised meaning that some sectors suffer more pain than others. The Basin Plan has not attempted to remedy that aspect of history albeit it often gets the blame, eg in the 'Can the Plan' campaign.

It is noteworthy that the report by the Interim inspector General in April 2020 provided much clarity in that debate. It was pleasing to see the plain English commentary. Hopefully the new IGWC will continue with the same transparency. That report identified a need for improved water literacy and its pleasing to see the MDBA and CEWH responding with regional staff, webinars and a much improved web-site and news releases.

We are concerned about pressures to 'change the goal posts'. For example, we noted a recent media comment attributed to *"National Irrigators Council chairman Jeremy Morton said it was sensible to 'tweak the model' to allow complementary measures to be converted into SDLAM volumes, including everything from fencing off riparian zones, to curbing cold water pollution and fishways."*

Further Recommendations to improve the Act (in addition to the three set out previously):

1. The Inspector General should review all decisions against the criteria set out in the Basin Plan; this should include:
 - The process for adoption of statutory plans
 - Investment decisions - value for money and water recovery
 - Progress of commitments against agreed timelines
2. The Inspector General should investigate all declared grievances associated with water management and determine whether they fall under the Basin Plan and where responsibility lies?
3. The Inspector General should also look beyond the irrigator / environment tensions and have capacity to comment on other socio-economic matters including cultural flows and not least the value of tourism
4. The office requires a broad range of skills but particularly ecologic expertise as that is the essence of the Basin Plan.
5. The Office must have the capacity to investigate all aspects of water management including the obligations of State and federal agencies. This must have teeth across all levels of decision making
6. The Inspector General should monitor and report on scientific efforts to refocus on the health of the Basin including those from sources outside of agency science and engaged consultants
7. The Inspector General should work to an agreed regular program including transparent annual reporting, providing inputs to improved water literacy
8. The Inspector General should encourage a more transparent real-time reporting of water flow / irrigation and allocations/ environmental flows and anticipated benefits and constraints. (Noting some good progress has already been made recently)

Thank you again for the opportunity to submit to the committee's inquiry. You will note that despite being at the downstream end of the Basin we have not dwelt upon the Lower Lakes, Coorong and Murray Mouth which rely so heavily on the outcomes of the Basin Plan implementation.

If you require further information, please contact me at

Yours sincerely,

Bob Newman on behalf of HEALTHY RIVERS LOWER MURRAY

PS

I am reminded of a Ministerial Council commitment from the early 2000's:

"We, the community and governments of the Murray-Darling Basin, commit ourselves to do all that needs to be done, to manage and use the resources of the Basin in a way that is ecologically sustainable"
ICM Policy Statement 2001

"Our ultimate challenge is to make our rivers and lakes the report card of our civilisation"
Don Blackmore 2003