

Nature Conservation Council of NSW

Answer to written question on notice from Senator Thorpe

1. What would proper recognition of First Nations sovereign rights to manage water and their knowledge and expertise mean for the health of the rivers and First Peoples in the Basin?

It is important to recognise that each Nation has their own priorities and objectives. Further, First Nations have their own rights and obligations under Indigenous law and custom. This means the Commonwealth has an important role in acknowledging and resourcing governance arrangements that are responsive to the needs and aspirations of specific First Nations.

In terms of what this recognition, knowledge and expertise might mean for the river, the Committee has heard from First Nations peoples and entities how Indigenous principles for water management – which are more holistic, respectful and sophisticated than transactional notions of ‘highest value use’ – would lead to different outcomes than we have now. First Nations peoples have cared for the land and water of the Basin for tens of thousands of years. These relationships with ancestral landscapes and knowledge of how specific bioregions should be cared for are unparalleled.

While cultural knowledge would be invaluable for catchment management, it has been articulated clearly that ‘this willingness to share knowledge must be measured against a concern to control access and use of knowledge, including language.’ Further, that ‘Indigenous Nations seek to maintain the ownership of intellectual and cultural property.’ (see AIATSIS, ‘Indigenous Rights to Water in the Murray Darling Basin,’ 2004).

2. You’ve outlined a number of recommendations for changing water governance and returning water to Traditional Owners.

Why is it so important that these changes happen now, and not wait another 3-5 years for the Plan and statutory review to occur and be implemented?

What could the next few years look like for the rivers and First Peoples in the Basin if the amendments you and others have put forward around First Nations water rights are adopted?

Traditional Owners have called for involvement in policy and decision-making as well as direct involvement in the management of rivers and Country. It is critical to recognise that this is more than consultation – it means ensuring no decisions directly related to First Nations rights and interests are taken without their informed consent.

Several recommendations have been put before the Committee to help achieve that standard. For example, international instruments like the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) are a powerful way to ensure principles of free, prior, and informed consent inform law and practice.

Amendments recognising and promoting the rights of Traditional Owners, respecting the priorities of Traditional Owners and committing resources to ensure the principles of free, prior and informed consent can be realised are essential interventions that enable water justice. Moreover, it is critical to implement measures that respect territorial integrity, preventing serious and irreversible damage to land and water as well as the knowledges and ways of living sustained by ancestral landscapes.

But it is also important to recognise that the control of water is an expression of sovereignty, and while settler law asserts exclusive control of this power, designating First Nations as stakeholders rather than rights holders, it is not recognising First Nations sovereignty.

While rights should be acknowledged immediately, it may also be useful to initiate a process to understand and explore options for the delivery of cultural flows and water management in its broader cultural landscape.

This process must go deeper than consultation, or insisting First Nations adapt to and operate within colonial water management models. It will require time and resources – and must be Indigenous-led. This should progress as a priority, prior to the Basin Plan review and the review of the Water Act.

As with other objectives of the Act, there should be mechanisms in place – statutory milestones and measures – to ensure this work is undertaken. Further, there should be statutory requirements for non-Indigenous entities to build the capacity to develop relationships and participate in these conversations properly.

3. What can be done with this Bill to improve conditions for the Northern Basin?

Reverse the Northern Basin Amendments

The Northern Basin Review by the MDBA recommended reducing the Sustainable Diversion Limits (SDLs) in the Northern Basin by 70 GL.

This recommendation was taken after only consulting with irrigation and businesses, not the Traditional Owners, community members or floodplain graziers who would be impacted. There was no scientifically verifiable explanation as to how the environmental watering requirements would be met with 70 GL less water.

The decision was made in an untransparent manner. The South Australian Royal Commission in the Murray-Darling Basin found the amendment would likely be unlawful as the decision was not independently verifiable.

On Feb 14th 2018, the amendment to reduce the SDL's in the north was disallowed, with Labor saying there was evidence of maladministration and unresolved questions of water theft.

NSW and Victoria threatened to walk away from the Basin Plan, and much was made of the impact the reduction in SDL would supposedly have on the socioeconomics of the Northern Basin.

Claims of job losses in the Northern Basin being because of water recovery do not add up. The dominant crop grown under irrigation in the Northern Murray-Darling Basin is cotton. This industry, like any self-respecting industry will expand, streamline, cut overheads, minimise staff costs wherever possible. With new technology like roundup and pesticide ready genetically modified varieties, square bales and bankless irrigation, cotton businesses have slashed their workforces in recent years. There are many reasons why cotton employs only a small fraction of the workforce it used to.

This drastic reduction in work force has not impacted the size of cotton crops. With access to unlimited water off the floodplain on top of large entitlement to take from the river and the ground, cotton has had record-breaking crops in 2016-2017, the largest on record in 2022-2023, and are set to break those records again in 2023-2024.

Six weeks after the *Basin Plan Amendment Instrument (No. 1) 2018* was disallowed, the amendments were tacked onto another piece of legislation and voted through. The expectation was that there would be improved transparency, new auditing and compliance requirements and \$40 million of water would be purchased and transferred to First Nations communities in the Basin.

There has been no marked improvement in transparency, auditing and compliance, with NSW still not having submitted water resource plans that have been accredited, and of course the \$40 million

for First Nations has never eventuated. The deal made to push the Northern Basin Amendments through was never honoured.

Revert the SDL offset that arose after the Northern Basin Review to ensure three hundred and ninety gigalitres per annum is recovered in the Northern Basin.

Cancel the Menindee Lakes SDLAM offset project immediately and transfer the SDL shortfall to the north.

The Productivity Commission Report recommended cancelling SDLAM projects that are unlikely to get up immediately and begin recovering water to meet the SDL. The singled out the Menindee Lakes project as the clearest example of a project that won't be completed by 2026.

The Menindee Lakes water saving project has been resoundingly rejected by the community.

We are calling on the Commonwealth to remove the Menindee Lakes SDLAM project off the register of projects immediately. Transfer 180 GL of SDL shortfall to Northern Basin catchments and begin recovering that water immediately.

The Darling-Baaka River is an ecosystem in crisis. The volume of environmental water being managed by the Commonwealth is not enough to make up for the impact of:

- The licencing of environmentally unsustainable volumes of water off the floodplain (floodplain harvesting)
- A lack of flow targets in NSW water sharing plans that provide for enough water to meet the priority of use provisions in the NSW Water Management Act
- Long-term, large-scale water theft and a lack of adequate metering.
- Environmentally Sustainable Level of Take not being based on the river's environmental requirements.

Increase the SDLs in the north and recover the water now, ahead of the next drought.