

WENTWORTH GROUP

OF CONCERNED SCIENTISTS

Dr Emma Carmody, Prof Tim Flannery FAA, Mr Mike Grundy, Dr Terry Hillman AM, Prof Lesley Hughes, Ms Teagan Shields, Prof David Karoly FAA, Prof Richard Kingsford, Prof Martine Maron, A/Prof Bradley Moggridge, Prof Jamie Pittock, Mr Robert Purves AM, Prof Fran Sheldon, Prof Bruce Thom AM, Mr Martijn Wilder AM.

Senate Inquiry – Water Amendment (Restoring Our Rivers) Bill

Questions on Notice - Senator Thorpe

- 1. You've put forward a number of recommendations and proposed amendments relating to First Nations water rights. Can you please give some background on the consultations and legal expertise that have gone into these? Following decades of consultations and advocacy around this issue, what kind of substantive amendments and policy changes could be implemented now, rather than waiting another 3-4 years? What would be the impact on the health of rivers and First Peoples if these were implemented now, rather than in 4 years' time?*

Along with Climate Change Adaptation, we see the lack Indigenous Water Rights as a key missing major elements of the current Water Act 2007 and Basin Plan 2012. Governments and Commonwealth agencies acknowledge the issues but continue to propose postponing necessary and immediate actions until following the now further delayed reviews of the Basin Plan until 2026 and Water Act to 2027.

The recommendations and proposed amendment put forward in the Wentworth Group submission to the Senate Inquiry relating to First Nations water rights were developed by Wentworth Group, Water Group Members¹ including the First Nations Members Assoc. Prof. Brad Moggridge, Kamilaroi, Indigenous Water Science, University of Canberra and Ms Teagan Shields, Arabanna, PhD candidate in empowering Indigenous biodiversity conservation, University of Melbourne, in consultation Indigenous experts and organisations including Murray Lower Darling Indigenous Nations (MLDRIN) and legal experts from the Wentworth Group and Environment Justice Australia. We defer to Indigenous nations as the primary source of advice on the necessary reforms.

It is our view that there are a number of possible amendments and additions that could readily and immediately be made to address the fundamental inadequacies of the current Water Act 2007 and Basin Plan 2012 such as:

- Formal recognition of the Indigenous water rights and cultural interests of Basin Indigenous Nations in the objects of the Act.
- A requirement that water management decisions in the Basin must be made in accordance with Indigenous water rights and cultural interests of Basin Indigenous Nations.
- A requirement that cultural objectives are optimised in the release and use of environmental water.
- Provisions to give / recognise Basin Indigenous Nations ownership, control, self-determination and decision-making powers over the ownership, allocation and use water entitlements and allocations under the entitlements acquired by the Commonwealth for Basin Indigenous Nations.

¹ See attached for Water Group member details and backgrounds.

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There has already been substantial discussion and consultation around Indigenous Water Rights over many years but a lack of progress in water laws. This needs to be resolved. Ongoing discussions between Basin First Nations and with Commonwealth and State governments on Indigenous Water Rights should continue, but law reform cannot wait and can complement the ongoing consultation process. First Nations should not have to rely on Federal Court action (such as that recently taken by MLDRIN) to make governments abide by and enforce the existing Water Act and Basin Plan.

If First Peoples knowledge and concerns could be built into the Water Act, the Basin Plan and State Water Resource Plans and assist to expedite the endorsement of the latter, it could only improve the management and transparency of planning, decision making and implementation of the Basin Plan. It would begin to address First Nations concerns about the management of Country. Complementary programmatic proposals, like funding an expansion of the River Rangers Program, would support young people to look after Country and develop relationships and understanding with their immediate and broader communities.

The River Rangers Program is also a great bottom-up approach to managing and improving the health of our rivers providing the government commits adequate resources to underpin long-term programs. It may form part of any agreement or possible treaty with First Nations on the future management and care of the Murray-Darling Basin.

2. If the WESA funds were to be made available to First Nations and communities impacted by climate change and poor water quality, what sort of assurances would need to be in place (legislatively and otherwise) to ensure that community transitional funding does not come at the expense of water recovery?

The recent Productivity Commission Interim Report on the implementation of the Basin Plan² concludes that additional (possibly substantial) funding will be required to implement the remainder of the Basin Plan in full due to the likely increasing future cost of water acquisition, the likely need for the Commonwealth to pursue further voluntary water buybacks in the face of a possible El Nino event and the ongoing impacts of climate change and expansion of permanent horticulture.

Therefore, the key assurance needed is sufficient funding will be available in WESA to cover all proposed expanded objectives of the WESA account, including the 450GL water recovery target, constraints relaxation, First Nations outcomes and support impacted communities.

² Productivity Commission, Murray-Darling Basin Plan Implementation Review, Interim Report, 30 October 2023.

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3. What would reinstatement of an independent Basin Sustainable Rivers Audit do for the management of invasive species and health of waterway ecologies?

Reinstatement of an independent Basin Sustainable Rivers Audit could provide an ongoing measure of the effectiveness or otherwise of the implementation of the Basin Plan and its various measures.

The previous, independent Sustainable Rivers Audit program ended in 2012 when states withdraw their funding contributions. Subsequently the Commonwealth Environmental Water Office established a monitoring program now known as Flow-MER: <https://flow-mer.org.au/> This is a valuable program but is very limited in its scope in only monitoring the ecological impacts of tranches of Commonwealth-owned environmental water released on seven selected river areas (of around 18 major river valleys in the Basin). The Wentworth Group believes that the Australian public deserve independent monitoring, evaluation, and research of the outcomes of the \$13 billion Basin water reforms on environmental, economic, cultural, and social values across the Basin.

The Commonwealth Government made an election commitment to reinstate the Sustainable Rivers Audit however this is not a legislative requirement and is not guaranteed as a permanent program. Legislative changes are needed to ensure the program is undertaken regularly and made publicly available.

If such an audit found concerns, it could trigger a review of Basin Plan implementation, for example, the adequacy of the volume or application of available environmental water and the need for modified or additional management actions and where they need to occur.

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Water Group members

Prof Jamie Pittock, (chair) environmental scientist, Fenner School of Environment and Society, Australian National University.

Dr Emma Carmody, International environmental lawyer, Co-founder and Director of Legal and Partnerships, Restore Blue, Comité Scientifique, Observatoire sur l'Agenda 2030 des Nations Unies, Université du Québec à Montréal.

Prof Fran Sheldon, ecologist, Member, Australian Rivers Institute, Griffith University.

A/Prof Bradley Moggridge, Kamilaroi, Indigenous Water Science, University of Canberra · President, Australian Freshwater Science Society.

Dr Terry Hillman AM, ecologist, former Member, Murray–Darling Basin Sustainable Rivers Audit.

Prof Richard Kingsford, Ecologist, Director, Centre for Ecosystem Science, UNSW Sydney.

In Association with

Dr Matt Colloff, Associate of the Water Group of the Wentworth Group of Concerned Scientists, Honorary Senior Lecturer, Fenner School of Environment and Society, Australian National University.

Secretariat

Dr Celine Steinfeld – Director, Adjunct Lecturer at the University of NSW. Dr Celine Steinfeld is a geographer specialising in natural resource policy and management in Australia. She was awarded the University Medal in 2008 for research on floodplain development in the internationally significant Macquarie Marshes in the Murray-Darling Basin. Celine has worked in policy implementation at the Murray-Darling Basin Authority. She joined the Wentworth Group in 2015 with a passion for using scientific evidence to advance water reform and landscape conservation in a changing climate.

Mr Michael Vanderzee – Water Policy Analyst, Honorary Lecturer, Fenner School of Environment and Society, Australian National University. Michael joined the Wentworth Group in 2022 and provides policy and intergovernmental advice on the implementation of the Murray-Darling Basin Plan, with a particular focus on constraints relaxation. Michael expertise is in national and Murray-Darling Basin water reform including restoration of Snowy River environmental flows, the Living Murray Initiative, and the introduction of the Commonwealth Water Act. He was formerly a Director of Strategy and Policy and Senior Policy Adviser – Intergovernmental with the Victorian Office of Water.

Mr David Miller – Water Policy Analyst, David's expertise is in water policy and water sharing plans in NSW. He has twenty years' experience in NSW NRM agencies, specialising in water sharing plans. He has worked in every river in NSW and each of the main groundwater systems. He has extensive knowledge of water allocation including legislative and policy requirements, extraction limits and water licensing. He is currently working for the Wentworth Group as a consultant.

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