

Environment and Communications Legislation
Answers to questions on notice
Climate Change, Energy, the Environment and Water Portfolio

Inquiry: Inquiry into the Water Amendment (Restoring Our Rivers) Bill 2023
Question No: IQ23-000276
Division/Agency: Water Reform Division
Topic: Water markets
Question Date: 10 October 2023
Question Type: Written

The Environment and Communications Legislation Committee asked:

1. Some submissions have raised the need to consider the social and environmental impacts of water markets. How will these be considered as the water market reforms are further developed?
2. Has the Department undertaken any analysis to date of the regulatory costs associated with the introduction of the water market reform measures, including the Water Market Intermediaries Code? What are the likely estimated costs of these different measures, and its impact on different water market participants?
3. What consultation will occur with Murray-Darling Basin water users, including First Nations, and other stakeholders as the water market reform regulations are developed?
4. What guidance will be provided to water market users and other stakeholders to assist them to transition to these new requirements, including to understand their obligations and their failure to comply?

Answer:

1. Some submissions have raised the need to consider the social and environmental impacts of water markets. How will these be considered as the water market reforms are further developed?

The current water market reforms will deliver greater confidence, integrity and transparency for Basin water markets. This will improve the efficiency and productivity of Basin water markets, in turn delivering significant benefits to users and Basin communities.

Basin states are otherwise responsible for regulating and managing water markets.

2. Has the Department undertaken any analysis to date of the regulatory costs associated with the introduction of the water market reform measures, including the Water Markets Intermediaries Code? What are the likely estimated costs of these different measures, and its impact on different water market participants?

Yes. The Department of Climate Change, Energy, the Environment and Water commissioned a cost-benefit analysis of the recommendations from the Roadmap which found that the expected benefits outweighed the costs with a ratio of 1.75 to 1. The cost-benefit analysis is summarised in Appendix D of the Roadmap.

3. What consultation will occur with Murray-Darling Basin water users, including First Nations, and other stakeholders as the water market reform regulations are developed?

Subject to the passage of the Bill, further consultation will be undertaken in the development of the regulations, including the Water Markets Intermediaries Code (the Code) and the Water Market Data Standards, to assess the impacts and to minimise costs where possible.

Consultation on the Code will be led by the department, in collaboration with the Australian Competition and Consumer Commission. Consultation on regulations related to water markets information and water markets decisions will also be led by the department. The Bureau of Meteorology will lead consultation in relation to the Water Markets Data Standards.

The department will work with the Committee on Aboriginal Water Interests as standards and regulations are developed to ensure our engagement and approach is culturally sensitive and captures water markets information relevant to First Nations communities.

4. What guidance will be provided to water market users and other stakeholders to assist them to transition to these new requirements, including to understand their obligations and their failure to comply.

The department is working with the Bureau, the Australian Competition and Consumer Commission (ACCC) and the Inspector-General of Water Compliance to ensure water market participants are provided with timely information, guidance and support to assist them to comply with proposed reforms.

Further to the answer to question 15 and subject to the passage of the Bill:

The department will provide education materials on the changes to the Water Act and further tailored education materials as regulations are developed and made, including the the Code.

Upon finalisation of the Code, the ACCC will prepare more detailed guidance to help intermediaries understand their obligations.

The ACCC will also prepare guidance on insider trading and market manipulation prohibitions and water markets decisions obligations when these changes to the Water Act commence.

The Bureau, as the lead agency developing and implementing the Water Market Data Standards and the development of the new Water Data Hub, will continue to work with all data providers to develop a fit-for-purpose framework for collecting and reporting water markets data.

Commencement of the various provisions under the reforms will be staggered to allow time for participants to understand and prepare for the reforms.

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Inquiry: Inquiry into the *Water Amendment (Restoring Our Rivers) Bill 2023*
Question No: IQ23-000277
Division/Agency: Water Policy Division
Topic: First Nations
Question Date: 10 October 2023
Question Type: Written

The Environment and Communications Legislation Committee asked:

1. First Nations have consistently raised concerns regarding Basin Plan consultation processes, including lack of time to prepare and inadequate cultural engagement. What mechanisms has DCCEEW implemented in response to these concerns?
 - a. How did the Department engage with First Nations in the lead up to the Water Amendment Bill?
2. What is the status of the \$40 million in funding to assist First Nations communities in the Murray-Darling Basin to invest in water for cultural and economic water entitlements and associated planning activities, through the Aboriginal Water Entitlements Program (AWEP)? What are the next steps with respect to the AWEP?
3. How will First Nations be impacted by extending the timelines for statutory review of the Water Act until 2027?
4. What impact is the Murray-Darling Basin Indigenous River Rangers program having, and will the funding be extended beyond 2025-2026?
5. First Nations own just 0.2% of available surface water in the Basin. In some regions, water ownership has decreased since the Basin Plan was legislated. How is the department supporting First Nations engagement in the water market?

Answer:

1. First Nations have consistently raised concerns regarding Basin Plan consultation processes, including lack of time to prepare and inadequate cultural engagement. What mechanisms has DCCEEW implemented in response to these concerns?

- The Department of Climate Change, Energy, the Environment and Water is aware of First Nations concerns about Basin Plan consultation processes.
- The Basin Plan 2012 sets out requirements for consultation generally and with First Nations. This includes for the preparation of water resource plans, the Basin-wide environmental watering strategy and environmental watering priorities. The Basin Plan does not prescribe what consultation processes must be used. In most cases the responsibility to undertake consultation lies with the Basin States.
- The Murray–Darling Basin Authority (MDBA) has identified First Nations as one of four key themes for the 2026 Basin Plan Review. The MDBA will investigate opportunities to recognise and, where possible, support the outcomes desired by First Nations people. The MDBA will work with First Nations people to appropriately incorporate their knowledge into the evidence base which is used for the review. See further – Roadmap to the 2026 Basin Plan Review | Murray–Darling Basin Authority (mdba.gov.au).
- The Water Act review will provide an opportunity to review the operation of the Act.

1a. How did the Department engage with First Nations in the lead up to the Water Amendment Bill?

- The department held a five-week public consultation from 29 May to 3 July 2023 seeking ideas to deliver the Murray–Darling Basin Plan in full. Targeted online workshops were held with key stakeholder groups including with First Nations groups.
- The department briefed the Committee on Aboriginal and Torres Strait Islander Water Interests (CAWI) on the water markets legislation amendments and invited feedback in July 2023.
- The department also briefed CAWI on the changes proposed in the Bill before it was introduced.
- For the Water Market Reforms, targeted consultation was undertaken on an exposure draft, with relevant Commonwealth agencies, Basin state and territory governments, the Committee on Aboriginal and Torres Strait Islander Water Interests, irrigation infrastructure operators, exchanges and brokers represented by the Australian Water Brokers Association.
- The department is working with Basin States on the design of programs to deliver the Basin Plan in full, including land and water packages, consistent with the Agreement of Murray–Darling Basin Ministers to Deliver the Basin Plan – 22 Aug 2023.
- In addition, the department is working with First Nations and peak stakeholder groups, on the design of programs to deliver the Basin Plan in full.
- This will be followed by further public consultation in 2024, subject to passage of the Bill.
- The department recognises the role of Aboriginal peoples as the traditional custodians of the Murray–Darling Basin and we are working to improve the inclusion of Aboriginal communities in all aspects of water management.
- The department is working directly with Aboriginal and Torres Strait Islander peoples around Australia to ensure their cultural authority, deep knowledge, and expertise are better incorporated into water decisions.

2. What is the status of the \$40 million in funding to assist First Nations communities in the Murray-Darling Basin to invest in water for cultural and economic water entitlements and associated planning activities, through the Aboriginal Water Entitlements Program (AWEP)? What are the next steps with respect to the AWEP?

- To progress the delivery of the Aboriginal Water Entitlement Program in 2023, the department hosted a series of gatherings with representatives of First Nations in the Murray–Darling Basin in July and August 2023. This approach was in response to the initial ‘What we heard report’ on the program which was published in April 2023 on the department’s website.
- A consistent message throughout the gatherings was for the government to progress the implementation of the program but in doing so, needed to engage further with Basin First Nations Peoples to get it right.
- The department is taking the following steps to deliver the program in 2023-24:
 1. October/November 2023 – Outcomes from the gatherings will be incorporated into a final “What we Heard” report, published on the department’s website.

2. November 2023 – At the request of Basin First Nations, the department will convene a Basin-wide First Nations Gathering. This will include the presentation of options for water entitlement portfolios and interim governance arrangements to Basin First Nation representatives.
3. December 2023 – Finalise preferred purchasing portfolio and interim governance arrangements to manage the water entitlements once purchased ahead of the permanent governance model being developed and established. Three purchasing portfolio options have been identified based on feedback from First Nations: wealth / economic creation; geographic equity based; and usability based.
4. First quarter 2024 – Commence the purchase phase of the AWEF, set up interim governance. Purchase will be based on the portfolio identified at the November 2023 gathering and the interim governance arrangement will be dependent upon the portfolio selected.
5. First and second quarter 2024 – Commence consultation with First Nations on permanent AWEF holding governance arrangements. The permanent holding governance arrangement will be based on a trust, fund or holding arrangement. These were the 3 models identified as part of the consultation undertaken to date.

3. How will First Nations be impacted by extending the timelines for statutory review of the Water Act until 2027?

- The department is aware of a range of First Nations Peoples' concerns regarding the operation and implementation of the Basin Plan and Water Act, especially in relation to water resource plans.
- The extension of time will enable the Water Act Review to consider the findings and outcomes as they relate to First Nations interests of the renewal of the National Water Initiative and the Basin Plan Review.

4. What impact is the Murray-Darling Basin Indigenous River Rangers program having, and will the funding be extended beyond 2025-2026?

- The National Indigenous Australians Agency is responsible for this program and have been referred the question.

5. First Nations own just 0.2% of available surface water in the Basin. In some regions, water ownership has decreased since the Basin Plan was legislated. How is the department supporting First Nations engagement in the water market?

- The department is addressing barriers faced by First Nations communities in entering water markets in the Basin by:
 - Delivering the Aboriginal Water Entitlements Program
 - Engaging with First Nations Peoples on a potential world-leading and enduring mechanism to hold water entitlements through a national approach
 - Developing water market fact sheets and resources for each catchment in the Basin to address information barriers.