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Committee Secretary
Senate Standing Committees on
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Dear Committee Secretary

Re: Murray-Darling Basin Commission of Inquiry Bill 2019

The National Irrigators' Council (NIC) is pleased to provide a response relating to the detail in the Murray-Darling Basin Commission of Inquiry Bill 2019.

We recommend:

- 1. the Committee recommend that the Senate reject the bill,**
- 2. the Committee note that the Productivity Commission has completed a comprehensive five-year review of the Basin Plan and note that it provides a sound base for implementation of the remainder of the Plan; and**
- 3. the Committee ensures that appropriately qualified witnesses are called from each state jurisdiction to discuss and explain to the Committee in detail the implementation and operation of the Murray Darling Basin Plan and its complex moving parts.**

In responding to the proposed bill, NIC draws to the committee's attention the large number of detailed submissions we have provided to Parliamentary and other inquiries into the Basin Plan (listed in the appendix to this submission). These submissions provide more detail on many of the aspects of the Plan's implementation not able to be covered in this submission.

In this submission we outline our reasons for recommending rejection of the Bill and make some more general comments on the Basin Plan overall.

Reasons for recommending rejection of the Murray-Darling Commission of Inquiry Bill 2019

Implementation of the Basin Plan to date has been difficult and challenging for irrigation communities and the irrigation sector. Nevertheless, we recognise that the Basin Plan was a compromise and that it provides the only avenue for some certainty on the way to achieving an outcome we support, healthy rivers, healthy communities and a continuing capacity to produce food and fibre.

At best, establishing a commission of inquiry would be a very expensive duplication of work that has already been undertaken. Extensive work to identify the many challenges remaining in Basin Plan implementation, to ensure full compliance on water use, measurable environmental outcomes and effective use of a limited resource. Establishing a Commission of Inquiry is also likely to delay or slow down implementation of the Plan meaning its positive outcomes are unlikely to be achieved.

The Basin Plan is seven years in, to a twelve year implementation, and during that period there have already been 37 inquiries or studies into the Plan.

Recently the Productivity Commission released a comprehensive five-year review of the Basin Plan; it provided a balanced and independent, 'warts and all' review of the Plan and charted a way forward on some very challenging issues. We have also seen the Vertessy Report into the fish kills, along with work now being undertaken by an independent panel on socio economic impacts. The basis is already established now to move forward with the Plan and a new Commission of Inquiry would be a costly duplication of effort.

NIC notes the second reading speech outlining the justification for this bill.

Unfortunately, the speech fails to acknowledge the huge amount of work that has been done by Basin State Governments and others to respond to and address concerns identified and publically raised over the last few years, including many inquiries and audits.

This statement ignores that much of the water recovery task has been achieved. As at 31 May 2019, the Commonwealth environmental water holdings total 2830GL of registered entitlements with a long term average annual yield of 1937GL. And, as at 31 March 2019, contracted surface water recovery in the Basin is at 2082.0 GL per year towards the target of 2750GL.

Recently the Environmental Water Holder confirmed that since the Basin Plan was commenced, more than 9,000GL of water has been used for environmental watering events.

While the effort is producing early positive environmental benefits, it must also be recognised that current drought conditions are putting pressure on all elements of the Basin Plan, including the capacity for environmental flows to achieve desired outcomes. The Plan establishes a framework for environmental recovery, but it may (and was always expected to) take many years to show its full benefit.

It is important for the Committee to note that the Basin Plan was never a solution for drought – that is just not possible.

It is disappointing that in the midst of the current drought across large parts of eastern Australia, which is putting enormous stress on the agriculture sector and on communities, we continue to see unbalanced, ill-informed and selective debate around the Basin Plan. This reaction fundamentally fails to understand the operation of the Basin Plan and the water market and reflects little knowledge of the effort by the irrigated agriculture sector over the past twenty years, as part of a massive water reform process, which has resulted in significant efficiencies delivered across many industries. The reforms have also seen the irrigated agriculture sector working in partnership with the Commonwealth Environmental Water Holder for the benefit of a number of local and regional environmental assets.

We also note that the findings of the South Australian Royal Commission are used as partial justification for this Bill. NIC contests many of the Commissioner's findings and we have noted they appear to be predominantly based on the evidence of a very small number of well-known Basin Plan critics. The Commissioner contended that the Basin Plan is illegal because in the commissioner's view it does not set an appropriate sustainable diversion limit, and unfortunately many of the Commissioner's recommendations emerge from that finding. The finding is an opinion not supported by the legal advice provided by the Commonwealth and, in the absence of any court decision, it remains only an opinion.

We note that in making its findings the Commission did not hear from the large number of well-respected scientists who have had a significant involvement with the Basin Plan, and who are recognised academics conducting their work independently in research institutions.

It is also important to note that many other independent inquiries, including most recently the expert panel looking into fish deaths and the Productivity Commission Five Year Assessment of the Basin Plan, did not agree with the Royal Commissioner's view.

NIC consistently acknowledges that the remaining implementation of the Basin Plan includes huge challenges for Government, community and industry. We are by no means uncritical supporters of the Basin Plan; we see the problems and we want action to have them addressed. NIC's view however is that these issues are best addressed by using the comprehensive Productivity Commission report as the basis for action.

Our strong recommendation is that the committee recommend rejection of the bill and explicitly note the importance of the Productivity Commission report as a basis for action.

Proposed Commission of Inquiry terms of reference

Below is a brief comment on each of the points the Commission of Inquiry is proposed to investigate. NIC would be happy to elaborate if required.

Misconduct

Over the past two years, Basin Governments have undertaken a major revamp of compliance including meter and measuring standards for take, resourcing and auditing. There have been a number of independent reviews and oversight structures put in place. On water purchase via direct buyback and efficiency programs, we have seen audit by the ANAO along with a range of independent audit bodies. Administration of buyback programs has also been subject to audit and review.

Legislative and administrative framework for implementing, managing, and enforcing the Basin Plan

The recent Productivity Commission inquiry dealt extensively with the administrative framework around the Basin Plan, including the structure of the MDBA and the separation of management and compliance functions. Government needs to respond to these recommendations not have action deferred by further inquiry that is unlikely to add anything new.

NIC notes that an opinion was provided by the South Australian Royal Commission around an interpretation of the Water Act, however this opinion is not consistent with the legal advice provided to the Commonwealth. NIC does not agree with the SA Royal Commission interpretation, however, even if it was valid it would not be resolved by a Commission of Inquiry – which would again only provide an opinion; if there are people who feel the SA Royal Commission view is valid then they can only test that in an appropriate court.

Impact of its implementation on the environment, agriculture, and river communities

A large number of the 37 existing reviews or studies of the Basin Plan deal with these points. In particular the five-year reviews undertook in depth research on environmental impacts of the plan to date. Currently an independent panel is undertaking further work on impacts on communities.

There is substantial community by community evidence of the impacts of the Basin Plan. A commission of inquiry will only duplicate that work.

Adverse effects of the legislative and administrative framework on water management

This is an ill-defined point. It is assumed that it refers to the management and allocation of water by state and federal water managers. If so, it needs to be clear that these issues go

well beyond the Basin Plan. Drought, water market impacts, constraints and many other issues mean the water management system does face big challenges. These require expert solutions unable to be provided by the proposed Commission of Inquiry.

Some, like delivery issues and losses, are currently being addressed by authorities. NIC hopes solutions will be found, however we can be confident that a Commission of Inquiry dealing with this will only delay resolution and is unlikely to have the river management expertise to actually propose detailed technical solutions.

Allocation of funds to implement the Basin Plan, and their impact on environmental watering

This very broad point would result in the proposed inquiry examining all expenditure on, and proposed for, the Basin Plan. Similarly this would duplicate a range of other reviews and audits that have already been undertaken. It could also delay implementation of the critical remaining elements of the Plan, including the 605GL of supply measures that are critical to achieving environmental outcomes without removing more productive water. It could also delay progress on the 450GL of so called 'up-water' via efficiency measures designed to meet additional environmental outcomes mainly in South Australia.

Impact of climate change on Basin water resources and adaptation measures

Climate change impacts on Basin catchments are acknowledged and the Basin Plan, along with water allocation frameworks, already ensure climate variability is built in. NIC is aware that the MDBA is undertaking further work on climate change impacts. We suggest to the committee that expert analysis is the only avenue to provide long term answers in this area.

Murray Darling Basin Plan

NIC strongly supports the full implementation of the Basin Plan; it is a unique and historic agreement between the Basin States and the commonwealth. It represents world leading reform, it is complex and challenging, and it will not succeed without continued bipartisan and inter-jurisdictional cooperation. It would be an error at this time to change course when the Basin Plan is but half way through implementation.

The 2017 Basin Plan evaluation completed by the Murray Darling Basin Authority noted the difficult and challenging work ahead to recognise the benefits of the Basin Plan. The evaluation recognised *that the Basin Plan is a shared responsibility and Basin governments need to be fully committed and work together to implement the Basin Plan on time and in full.*

After many decades of debate and argument, a bipartisan Basin Plan was agreed in 2012. This represented significant sacrifice for the irrigated agriculture sector and major social and economic pain for Basin communities. But it also held the prospect of providing some certainty for Australia's most important food and fibre production area and the opportunity to reverse and repair damage to the environment.

NIC has long argued the case for a balance between social, environmental and economic (triple bottom line) outcomes to ensure the Basin Plan is fair and workable. This relates directly to the confidence the irrigated agriculture sector and the dependent communities have in the Plan. For over a decade, irrigated agriculture along with other groups, have worked together in the development and implementation of the Basin Plan, to support the Plan's objectives. Our commitment remains to a viable, productive irrigated agriculture sector in Australia and improved environmental outcomes across the Basin.

Under the Basin Plan, around 20% of water extraction has now been directed back to the environment and we know it is delivering some significant early environmental benefits.

In the midst of the current drought where the irrigated agriculture sector is experiencing devastating impacts with loss of production, loss of income and increasing levels of debt, we know only too well what this means for community wellbeing and the mental health of individuals. And against the backdrop of public debate around climate issues, many farming families feel they are unfairly blamed for environmental problems caused by drought, which further undermines community wellbeing.

It is critical that the raft of recent and current inquiries into Basin Plan and water issues do not impede progress on the rollout of the Basin Plan to continue to meet its statutory requirements. Irrigated agriculture industries and dependent communities must be afforded certainty and a clear space that enable the Plan to continue under its many and sometimes complex moving parts.

Ongoing cooperation between Basin states is critical in managing the Basin's water resources and providing much needed certainty for the agriculture sector to enable the sector to continue to provide food and fibre and to meet the sector's forecast growth to \$84 billion by 2030 (ABS 2017). Communities and the environment also need that certainty.

The complexity of some of the remaining implementation of the Basin Plan continues to cause concern for NIC. We have previously highlighted these concerns in our detailed submissions to the Productivity Commission.

We do remain concerned about progress on a number of aspects of the Plan, in particular the supply projects as part of the Sustainable Diversion Limit (SDL) Adjustment Measures. It should be noted that currently in the Southern Basin water recovery targets have been met, that means there is effectively a pause on further recovery. However, that is based on achieving an equivalent environmental benefit of 605GL from the supply measures.

NIC remains concerned that these measures are at high risk of not producing the outcomes and that this could see water recovery recommence across the Basin. We believe that anything that stops progress on these measures – potentially including a Commission of Inquiry – will exacerbate that risk for irrigation communities.

As our other submissions outlined, we also have concerns about implementation of a number of other aspects including the so called 'up-water' efficiency projects.

It is also opportune to reiterate the importance of complementary measures (also known in the Northern Basin as toolkit measures). NIC has consistently advocated the importance of non-flow measures to achieve environmental outcomes.

Our strong position on these measures has been endorsed by the recent Vertessy report and the Productivity Commission.

NIC has consistently pointed out that actual environmental outcomes depend improving the rivers as habitat for native species and that flow is only a part of that picture. We have advocated measures that would improve the river as a habitat for native fish species, restore fish passage for breeding purposes, support the eradication of feral species, and other measures. These measures were also recommended by the Productivity Commission as part of the inquiry report on the Five-Year Assessment of the Murray Darling Basin Plan (*Rec 11.7, Dec 2018*):

Basin States should manage the risks to achieving the environmental watering objectives set out in long-term watering plans by delivering complementary waterway and natural resource management measures (such as habitat restoration or weed and pest control).

Our long held view is that a suite of complementary or non-flow measures could well achieve better environmental outcomes than recovering further water. A dedicated focus on non-flow measures underpinned by rigorous science and embedded as part of the Basin Plan will support connectivity

and habitat for native fish, enable concerted action on terrestrial and aquatic animal and plant pest species, and to address cold water pollution.

Complementary Measures (also known as toolkit measures in the Northern Basin) facilitate:

- delivering equivalent ecological outcomes required to meet Basin Plan objectives that will not be met through existing water recovery measures
- supporting the rehabilitation of native fish species
- improving productivity within aquatic ecosystems
- increasing the resilience of threatened species
- improving social and economic prosperity from aquatic resources
- contributing to the achievement of cultural water objectives

These are critical measures designed to underpin short, medium and long term outcomes to ensure that native species have the greatest opportunity to thrive. This approach will deliver the Basin Plan's environmental objectives over time without additional collateral damage to regional communities. Such measures fall into two categories, fundamental interventions or actions required to achieve improved ecological outcomes in our river systems, or new opportunities for operation and management of environmental resources.

These non-flow measures include:

- a) Carp control through the release of the Carp Herpes virus
- b) appropriate management of cold water pollution
- c) improvement of fish migration through fishways along the Barwon-Darling & tributary catchments
- d) restoration of native fish habitat
- e) feral animal control in wetlands such as the Narran Lakes, Gwydir Wetlands and Macquarie Marshes.
- f) Riparian land management
- g) Weeds

As indicated above, the Basin Plan is by no means perfect, but it is world leading in its scope and ambition and it is the only framework that has a chance of producing healthy rivers, healthy communities and a continuing capacity to produce food and fibre.

Its continuing implementation will be challenging and difficult, however its chances of achieving positive outcomes will not be assisted by simply repeating over and over again inquiries into the same issues. Rather, irrigated agriculture communities will be better served by political representatives and decision makers getting on with the difficult job of implementing the Plan, utilising the extensive reporting and expert analysis already available.

I commend these comments to your Committee for consideration.

Yours sincerely

Steve Whan
CEO
National Irrigators Council

Appendix 1 – NIC Basin Plan submissions

- [April 2019 – Submission to Senate Committee inquiry into Cotton Export Ban](#)
- [March 2019 – Response to the Productivity Commission five year review of the Basin Plan](#)
- [March 2019 – submission to Senate Environment and Communications committee on Water Act \(Purchase Limit Repeal\) Bill 2019](#)
- [November 2018 – Murray Darling Basin Plan efficiency measures additional criteria discussion paper – submission to Department of Agriculture and Water Resources](#)
- [September 2018 – NIC response to draft Productivity Commission five year review of the Murray Darling Basin Plan](#)
- [April 2018 – Productivity Commission’s five year review of the Murray Darling Basin Plan](#)
- [April 2018 – House of Representatives Inquiry into the management and use of environmental water](#)
- [April 2018 – South Australian Royal Commission Murray Darling Basin Plan](#)
- [Commonwealth Environmental Water Holder Framework for Investing in Environmental Activities](#)
- [NIC comment on MDBA SDL adjustments assessment](#)
- [NIC response to Productivity Commission Interim report on National Water Reform](#)
- [National Irrigators Council submission to Senate Rural and Regional Affairs Committee](#)
- [Productivity Commission Inquiry into National Water Reform](#)
- [Submission to the House of Representatives’ Inquiry into water use efficiency in Australian agriculture](#)
- [Northern Basin Review – Proposed Basin Plan amendments](#)