

# NSW Government submission on the Water Amendment (Restoring Our Rivers) Bill 2023

## Environment and Communications Legislation Committee

The NSW Government welcomes the opportunity to make this submission on the *Water Amendment (Restoring Our Rivers) Bill 2023* to the Environment and Communications Legislation Committee.

### The NSW Government supports the delivery of the Basin Plan

The NSW Government supports the commitment of the Australian Government to deliver the Basin Plan in full.

Progressing the Basin Plan is our best shot at protecting our rivers and groundwater sources and supporting the communities and economies that rely on them. It is our shared responsibility to support the health of our rivers and enable our regional communities to thrive into the future.

We want to work constructively and robustly with the Australian Government and our Basin State counterparts to chart a new path to complete the job and secure a more sustainable future for the Murray-Darling Basin.

We know there have been delays in progressing the Basin Plan over the last decade and there is a significant amount of work to do to implement the Basin Plan in full.

Even with more time and more flexibility, delivering the Basin Plan will be challenging but we do not want to give up. It is our best chance of having sustainable rivers and supporting sustainable communities.

### The NSW Government does not support buybacks

In implementing the Basin Plan, we have a shared responsibility to limit the impacts on regional communities across the Basin. While the NSW Government supports delivery of the Basin Plan in full, we do not support water buybacks. Major socio-economic impacts from large scale buybacks must be avoided by the Australian Government in pursuing delivery of the Basin Plan.

The NSW Government will continue to advocate for water recovery through other means, including investment in infrastructure and water efficiency projects.

With this in mind, it is imperative that we keep the Basin Plan moving forward. We expect that the Australian Government will make decisions in a timely manner to support the implementation of projects in NSW to minimise the risk of buybacks.

We look forward to working with the Australian Government on progressing these projects if this legislation is supported.

### The NSW Government supports more time to deliver state-led projects

Numerous reviews, including the Productivity Commission's 2018 review of Basin Plan implementation, have highlighted the need for realistic timeframes and greater flexibility in how certain elements of the Basin Plan are delivered. While we have made good progress on Bridging the Gap water recovery and improving ecological outcomes, full delivery of other elements of the Basin Plan are not possible by current statutory deadlines.

Without an extension to timeframes, Sustainable Diversion Limit Adjustment Mechanism (SDLAM) projects that could not be in operation by 30 June 2024 would need to be withdrawn, increasing the volume of buybacks in NSW.

The proposed extension of time for delivery of supply and constraints projects under the SDLAM is a recognition that NSW is not on track to deliver on its commitments under the Basin Plan, and an opportunity for us to recommit to the Plan. We have made every effort to keep these projects alive. We remain determined to finish these important projects and will do everything we can to meet the new 31 December 2026 deadline set out in the Amendment Bill.

We support the opportunity for States to bring forward new SDLAM projects and we will be putting forward projects for the Australian Government to consider based on the ideas that stakeholders in NSW have proposed in good faith. We look forward to working with the Australian Government and other Basin governments in a timely manner to develop and progress ideas that will contribute to the 605 GL offset.

We note that the Amendment Bill proposes a change in the methodology for assessing SDLAM outcomes which is not required for implementation of the Agreement with the Australian Water Minister and removes the decision-making role of the Basin Officials Committee (BOC). NSW considers that the Amendment Bill would be strengthened by the recognition that the existing BOC decision-making processes ensures multi-jurisdictional scrutiny of MDBA decision-making tools and recommendations. Retaining BOC decision-making over how any changes to this methodology are incorporated is an important part of joint government processes.

## Constraints measures

Constraints projects are essential for connecting the Basin's rivers to its floodplains with water recovered under the Basin Plan. Without constraints measures being implemented, the Australian Government will be unable to effectively use the portfolio of environmental water it has acquired to achieve the outcomes intended under the Basin Plan. Failure to implement constraints measures will undermine the justification for recovering the volumes of water the Australian Government has committed to.

To fully deliver our constraints relaxation projects in the Murray and Murrumbidgee through our Reconnecting River Country Program, we need more time beyond the Amendment Bill's 31 December 2026 deadline. NSW is committed to bring forward no-regrets opportunities for acceleration of project elements that can be delivered with community support within this timeframe and with funding made available by the Australian Government.

As set out in the Agreement with the Australian Water Minister, the future of these projects and their ability to contribute to water recovery will be considered as part of the 2026 Basin Plan Review. For NSW, it is imperative that protection of the SDL offset for these projects is considered as part of that review.

The Amendment Bill provides for a constraints relaxation implementation roadmap to be developed by the MDBA in consultation with Basin States by 31 December 2024. The development of this roadmap cannot result in a situation where the acceleration of constraints is 'put on hold' until the roadmap is completed as this will impede NSW progress and delivery of these important projects. The development of the roadmap does not appear to address longer-term delivery which is arguably where this work could provide the most benefit.

Ultimately what can be delivered by NSW on the Murray depends on the progression of projects by Victoria and common target flows. NSW remains committed to ongoing collaboration with Victoria to set a pathway forward which maximises the outcomes possible for our rivers, floodplains, wetlands and their dependent communities.

## The Australian Government must make timely decisions

We have a clear expectation that the Australian Government must also be accountable and deliver on its own responsibilities. We expect the Australian Government to make timely decisions on funding proposals and

projects to allow NSW to get on with the job of implementing this important work that will reduce the potential for and volume of buybacks in NSW.

We strongly urge the Australian Government to enter into funding agreements with NSW as soon as possible to enable these projects to progress and be implemented within the revised timelines. There is a real and significant risk that further delays to this will place at risk the ability to implement projects within the extended timeframes.

NSW does not want to see unreasonable administrative delays in assessing and approving projects result in the Australian Government pursuing further water buybacks.

## NSW advocates for projects rather than purchases to deliver the 450 GL

The Basin Plan currently provides that water recovered towards the 450 GL of additional environmental water is to come through efficiency measures that have neutral or positive socioeconomic outcomes. This is strongly supported by many in our community.

Honouring this intent, NSW seeks that the Australian Government continue to prioritise meeting this target through ongoing investment in projects, programs and infrastructure that deliver the environmental outcomes intended while avoiding negative impacts on communities.

We expect the Australian Government to fully explore all options to achieve the 450 GL of additional environmental water, noting that NSW does not support buybacks being used towards this target. NSW is supportive of recovery towards the 450 GL target coming from across the northern and southern Murray-Darling Basin, and from all Basin jurisdictions.

NSW will put forward a plan to the Australian Government on the projects that we believe should be considered to meet the 450 GL target. We believe that proactively putting forward these projects is the best way to provide certainty to NSW communities. We already have several off-farm efficiency projects ready to progress as soon as the Australian Government can consider and accept applications for projects that will be delivered after 30 June 2024 and are aware of other potential projects that, with further investigation, will inform new and additional project proposals.

There are knowledgeable and engaged stakeholders in NSW that have been proactively scoping proposals that will deliver water savings and improved environmental outcomes without needing the Australian Government to resort to further water buybacks. The NSW Government intends to work closely with the Australian Government to ensure such projects are implemented where supported.

The 31 December 2027 deadline set out in the Amendment Bill will allow more time for this to be achieved.

The Amendment Bill must however ensure that any water recovered by the Australian Government beyond the 450 GL target does not lead to a reduction in sustainable diversion limit (SDLs) and water available in the consumptive pool.

## Rules based projects should be considered in the 450 GL target

The Amendment Bill allows for a new and broader range of measures to contribute to the 450 GL target and clarifies that project outcomes sought include furthering the objects of the *Water Act 2007*. NSW is seeking that the new measures considered are broader than just volumes of entitlement recovered by also including rule-based changes or other projects that enhance connectivity in the northern Basin in the non-exhaustive list of activities funded by the Water for the Environment Special Account (WESA).

Rules based changes arguably provide greater environmental protections than purchasing licences. In combination with rule changes, there are broader projects such as changing infrastructure to support fish movement that will help reduce the extent of major environmental disasters like the recent mass fish deaths at Menindee.

As part of their recent inquiry, the NSW Chief Scientist and Engineer found that substantive change to regulatory approaches, paired with investment in people, data and infrastructure is all needed in combination to avoid further environmental degradation and recurrence of such events. Allowing for these projects to contribute to the 450 GL target would also provide an avenue for the Australian Water Minister to enhance connectivity and improve environmental outcomes and deliver on the Agreement.

## Socio-economic impacts must be minimised

While NSW does not support the use of water buybacks by the Australian Government to meet the 450 GL target, if this ends up being pursued then we believe the Australian Government has a responsibility to avoid any negative social and economic impact on affected communities. Within that context, the provision of funding from WESA and other Australian Government sources to invest in Basin communities impacted by further water recovery will be essential.

NSW also argues that the Australian Government must incorporate safeguards in any future strategic water recovery program to protect our communities and address adverse impacts to water markets. This could include limitations on the volume of buybacks per year and a pause and review period to assess program outcomes and impacts. An ability to revisit the amount of funding available to address any detrimental social or economic impacts will be required if the impacts of water recovery are greater than anticipated.

## New accountability measures

NSW is committed to public transparency and accountability in all areas of water management. We will continue to work with the Inspector General of Water Compliance (IGWC) to ensure we comply with our legislative responsibilities.

It is important that consultation with Basin States is maintained in the development of guidelines by the IGWC that Basin States must have regard to when preparing action plans for any non-compliance with SDLs. Inclusion of an appeals pathway into a determination of whether a Basin State has a reasonable excuse for non-compliance with SDLs would reduce the possibility of conflict between the IGWC guidelines and Basin States legislative requirements and/or policy positions.

## Water market reform

The NSW Government is committed to transparent, trusted and accessible water markets throughout the Murray-Darling Basin and NSW. We know that accurate, timely and accessible information is critical to an effective trade market and to give confidence in our water management systems.

NSW was an active participant in the Australian Competition and Consumer Commission's (ACCC) inquiry into markets for tradeable water rights in the Murray-Darling Basin and the body of work cumulating in our in-principle support of the recommendations set out in the Water Market Reform: Final Roadmap Report.

Ongoing implementation of the full suite of the roadmap's recommendations must represent practical and cost-effective measures that will improve confidence in water markets in the Basin. There will be significant costs on NSW to implement these Australian Government led reforms which are not reflected in the Financial Impact Assessment. Implementation will also affect and require the cooperation of non-government agencies, such as

Irrigation Infrastructure Operators. Support (financial or otherwise) will be required, to assist these parties adapt to proposed changes. These costs should be borne by the Australian Government and not be passed onto NSW water users. As changes are introduced, affected parties will need reasonable timeframes to implement and adjust their practices.

The Amendment Bill requires the establishment of a Code (and related Trust accounting obligations) that will apply to water market intermediaries. Despite the specific intent to exclude government owned corporations (known as State Owned Corporations in NSW, including WaterNSW) from the definition of water market intermediaries, the current definition which includes ‘a constitutional corporation’ as an intermediary could be interpreted to capture a state-owned corporation because it is a trading corporation formed under a state government act within the limits of the Australian Government (as per the definition in the Constitution).

Furthermore, an intermediary is anyone who provides services including a ‘trading platform’ which could be interpreted to include WaterNSW. An amendment to the definition is required for this provision to achieve its intended outcome. A potential solution would be if a water market intermediary was defined to exclude a ‘water market authority.’

NSW looks forward to close and ongoing engagement with the Australian Government and Bureau of Meteorology (BoM) during the development of the regulations and Water Market Data Standards referenced in the Amendment Bill. The Amendment Bill contains a consultation requirement for data standards; however the Amendment Bill could be strengthened by including minimum consultation requirements for any regulation being made or amended - particularly with respect to water markets decisions and announcements.

Requirements with respect to water announcements need to be carefully considered so as not to impact the ability of water managers to manage the resource in real time, impose an unreasonable administrative burden, impede effective environmental water management, or inadvertently make it harder for water users to access relevant information. Carefully crafted regulations informed by Basin State input will facilitate the seamless interaction between Federal and State legislation and avoid significant unintended consequences.