

Inquiry into the Water Amendment (Restoring our Rivers) 2023 by the Senate Standing Committee on Environment and Communications



Photo taken on the Ngamaay (Namoi River) 19 September 2023 by Dharriwaa Elders Group's Senior River Ranger Ernest Sands at location -30.01936 148.12243. It was included in a report sent to environmental water managers, NSW DPI Fisheries and others in DEG's science network. Blooming algae can clearly be seen. The rivers at Walgett have consistently been a soupy green colour since the 2022 floodwaters receded.

**Submission from Dharriwaa Elders Group
Walgett 13 October 2023**

Introduction

The Senate referred the Water Amendment (Restoring Our Rivers) Bill 2023 to the Environment and Communications Legislation Committee for inquiry and report.

Dharriwaa Elders Group welcomes the opportunity to contribute to the Inquiry into the Water Amendment (Restoring our Rivers) Bill 2023

The Water Amendment (Restoring Our Rivers) Bill 2023 seeks to amend the *Water Act 2007* and *Basin Plan 2012* to:

- expand the type of projects that can deliver the Basin Plan target of 450 gigalitres (GL) of additional environmental water;
- repeal the statutory 1,500 GL cap on Commonwealth water purchases;
- enable funds from the Water for the Environment Special Account to be used to enhance environmental outcomes in the Basin;
- provide additional time for Basin States to deliver Sustainable Diversion Limit (SDL) Adjustment Mechanism projects;
- enable the Inspector-General of Water Compliance to determine SDL compliance and require action plans;
- provide for a roadmap for the delivery of constraints relaxation projects across the Southern Basin;
- delay the review of the Act from 2024 until 2027;
- and implement recommendations of the *Water market reform: final roadmap report* in relation to water markets and water management in the Basin.

It also amends the *Water Act 2007* to make technical amendments in relation to First Ministers' Council; and makes consequential amendments to the *Water Act 2007* and *Competition and Consumer Act 2010*.

Dharriwaa Elders Group Walgett

Dharriwaa Elders Group ("DEG") is an association of Aboriginal Elders who live in Walgett, a river town of about 2,100 people, the majority Aboriginal.

Walgett is where the Baawan (Barwon) and Ngamaay (Namoi) Rivers meet, upstream of the town of Bourke. Walgett is in Gamilaraay Country, close to the borders of Yuwaalaraay, Ngiyambaa and Wayilwan Countries, and is now home to Gamilaraay, Yuwaalaraay, Ngiyambaa and Wayilwan Aboriginal Nations, as well other Aboriginal and non-Aboriginal people.

Rivers have always been, and remain central, to Walgett culture and life. Rivers provide drinking water and food (particularly regular fish meals), healing activities, water for birds and animals, gardens and food security. For Aboriginal people the health of the river and the wellbeing of people come first.

In recent times Walgett's Aboriginal community has suffered from drought, climate change and the river drying up. The lack of water and food security is of great concern to Elders.

We know from what we see with our own eyes and taste the salty water from the groundwater we are forced to drink when the rivers are dry. Our nutrition suffers because we have lost our regular fish and river foods, and our wellbeing suffers when we can no longer revive our spirits down on the riverbanks.

With the Walgett Aboriginal Medical Service and our Yuwaya Ngarrali partners at UNSW¹, we have undertaken rigorous research to provide evidence of the extent of our community's water and food insecurity² and are in regular correspondence with responsible ministers to advocate for solutions³.

It's our belief that Walgett's current situation is due to the way water is managed, and that irrigators upstream of Walgett have been favoured, over people downstream. It is a failure of the water management system of NSW.

Response to the amendment

Expand the type of projects that can deliver the Basin Plan target of 450 gigalitres (GL) of additional environmental water

DEG supports this proposal, provided that the projects **deliver actual water**. The types of projects need to be identified. The implementation of the Basin Plan has seen wasted expenditure (the Kia Ora purchase at St George) and manipulation of numbers, both of which overstate the real volume of water recovered. Examples in our region include the false concept of 'over-recovery' in the Macquarie and Gwydir, based on under-estimating environmental requirements and using reliability factors roughly twice the real ones.

DEG supports purchase of **reliable water in the Northern Basin**, including General Security shares.

DEG supports **end of system flow guarantees for the tributaries of the Baawan-Baaka**. However, we stress that these must be genuine, meaning flowing into the Baawan-Baaka. They must not be so-called 'end of system flows' that do not reach the end of the system. We note with concern that **NSW Water Sharing Plans do not have requirements to deliver end of system flows**.

We also note that the **'rules-based' flows are an extremely risky proposition** when administered and managed by **water agencies that routinely flout those rules**. The rivers at Walgett are dying. Risks like this must be eliminated. DEG's trust in water management agencies has been reduced to rubble in recent years and has not been restored.

Repeal the statutory 1,500 GL cap on Commonwealth water purchases

DEG supports this amendment.

Enable funds from the Water for the Environment Special Account to be used to enhance environmental outcomes in the Basin

Walgett suffers from the poor condition of the Ngamaay and Baawan rivers because of over-extraction of water upstream. DEG believes that the best way to spend the funds from the WESA account is the purchase of water.

WESA should not just go to communities who say they've suffered from lost irrigation water. **WESA should go to communities like Walgett that have suffered from irrigation.**

DEG understands that funds from the WESA account will be used to provide financial support to communities that believe they suffer from buybacks.

¹ <https://www.dharriwaaeldersgroup.org.au/index.php/yuwayangarrali>

² https://dharriwaaeldersgroup.org.au/images/downloads/WalgettReport_A130223b_web.pdf

³ https://dharriwaaeldersgroup.org.au/images/downloads/130423_MEDIA_RELEASE_Walgett_Water.pdf
<https://dharriwaaeldersgroup.org.au/images/FinalDEGNSWWaterManagementStatementApril2023.pdf>

While DEG has sympathy for such claims, where real, it observes that **the shocking effects of over-extraction on towns like Walgett are over-looked**. Most people in Walgett now have to buy bottled water, as the town water supply often cannot be delivered from Keepit Dam, and the water quality in the river is so bad it is mostly beyond the capacity of the town treatment plant.

Every purchase of bottled water in Walgett is a cost to the community imposed by the cotton industry of the Northern Basin.

The loss of river foods and the consequent impacts on our community's nutrition is a cost to the community imposed by the cotton industry of the Northern Basin.

The loss of river pastimes and the consequent impacts on our community's mental health and wellbeing is a cost to the community imposed by the cotton industry of the Northern Basin.

Costs from these impacts of over-extraction on the Walgett community DEG also believes would be impacting on costs for delivering infrastructure, justice, health, local government and other government services to meet our community's needs. One example is the additional infrastructure Walgett needs now to install and maintain a fit-for-purpose Reverse Osmosis system to treat the sodium in the Great Artesian Basin water we are forced to rely upon now that the town cannot draw on the rivers as its primary water source.

The effects of over-extraction on our community must become a part of the public discussion, to balance the claims by the irrigation industry. These effects are all costs to the public – ways that our community and taxpayers are expected to subsidise the irrigators. Aboriginal river communities don't have well paid lobbyists who walk the halls of Parliament or communications agencies who can counter the false narratives of irrigators. So DEG asks that senators each seek to understand impacts on communities when determining how equity and the public benefit will be served by your decisions. DEG hopes that the Voice and Closing the Gap processes with our peak bodies in the Coalition of Aboriginal Peaks will work to reduce the current gaps in understanding brought from the unfair advantages the irrigation industry has to influence both decision-makers and the public.

Enable the Inspector-General of Water Compliance to determine SDL compliance and require action plans

DEG supports and applauds increases in the responsibilities of the power of the Inspector-General of Water Compliance.

Response to Adam Bandt second reading amendment

(2) a guarantee is required to ensure delivery of the 450GL from the Southern Basin in full and on time.

DEG has great confidence in NSW Greens MLCs Cate Faerhmann and Sue Higginson, both strong advocates for the Northern Basin. Therefore, it is with great disappointment that we see the amendment from the Australian Greens to recover the entire 450 gegalitres from the Southern Basin. We believe that it has its origins in **the campaign of misinformation about the Baawan - Baaka that has been run for several years by the Northern Basin irrigation industry**, the National Party state and federally, and sections of some government water agencies.

As much as possible of the 450 gegalitres should be purchased in the Northern Basin, where it will bring the greatest environmental, cultural and social benefits.

If the additional water recovery comes from the Southern Basin an opportunity will be missed to restore flows from the Northern Basin, leading to continued decline of the entire system. There

will be recurring water shortages, poor water quality, and system-level deaths of fish and mussels, leading sooner, rather than later, to the ecological collapse of the Baawan-Baaka.

Annexure A

Selected findings and recommendations of the Chief Scientist and Engineer's Executive Summary of the review into the 2023 fish deaths at Menindee

Finding 3:

Mass fish deaths are symptomatic of degradation of the broader river ecosystem over many years. Changes to flow regime and fish passage from water infrastructure and altered water use in the Northern Basin are likely key factors in decreasing water quality and the decline of native species.

Finding 4:

The health and wellbeing of the local community is inherently linked to the health of the river. Consecutive mass fish deaths have had a profound, ongoing community impact: social, cultural, mental health, and economic.

Finding 5:

Explicit environmental protections in existing water management legislation are neither enforced nor reflected in current policy and operations. Water policy and operations focus largely on water volume, not water quality. This failure in policy implementation is the root cause of the decline in the river ecosystem and the consequent fish deaths.

Finding 10:

Communication of ongoing river operations and during the emergency are/were inconsistent, not timely and did not always consider local/regional accessibility. Trusted voices within specific communities and Aboriginal groups were not engaged. Local and Traditional knowledge and experience was rarely used by agencies to inform management actions.

Finding 11:

The local community feel that their knowledge, insights and experience of the river, lakes and broader environment are not given appropriate consideration in water policy, operations, environmental protection, and emergency management.

Recommendation 1:

Regulatory environmental protections must be enforced The regulatory framework must be upgraded to include legally enforceable obligations and powers to give effect to environmental protections and whole of catchment ecosystem health, as expressed in the objects of water, environmental and biodiversity legislation. Changes should:

- a. draw on scientific, cultural and local community insights and be developed in partnership with these knowledge communities
- b. address risks to the Lower Darling-Baaka and its water-dependent ecosystems
- c. Be informed by an independent review of existing water rights, water accounting systems, exercise of rules and operational parameters, and their impact on riverine catchment health. This includes provisions in Water Sharing Plans to improve water flow across the system

d. be based on much improved real-time data and monitoring of the whole river system

Recommendation 4:

Long-term, ongoing strategies including “coordinated and systemic ecosystem regeneration strategies, inclusion of Aboriginal people’s knowledge, including R&D and scale up of refugia for fish, invertebrate and other species”.

Annexure B

Selected findings and recommendations of the Select Committee on Floodplain Harvesting

Finding 4:

That floodplain harvesting has had a significant impact on downstream flows and river health, particularly to the Darling Baaka River, Menindee Lakes and Ramsar listed wetlands, leading to numerous economic, social, cultural and environmental impacts, and that to properly understand any and all impacts improvement in real time monitoring through increased river gauges is required.

Finding 5:

That there has been insufficient assessment of the cumulative impacts of floodplain harvesting to date, and that the only way to further improve assessments of the cumulative impacts of floodplain harvesting is through accurate metering of take during floodplain harvesting events.

Finding 6:

Floodplain harvesting has contributed to a reduction in downstream flows which has had a profound impact on the culture and traditions of First Nations peoples.

Finding 7:

That engagement with First Nations peoples on the development of floodplain harvesting policy has been inadequate and, at times, culturally inappropriate.

Finding 10:

That the process the NSW Government is undertaking to amend the Sustainable Diversion Limit as described by the NSW Department of Planning, Industry and Environment has the potential to be unlawful.

Finding 11:

That the NSW Government has failed to meet its obligations under the Murray-Darling Basin Agreement by allowing the unchecked growth of unregulated floodplain harvesting extraction to volumes well in excess of the 1994 Murray-Darling Basin Cap.

Recommendation 1:

That the NSW Government conduct a thorough review of low and cease-to flow data, as well as an assessment of downstream economic, social, cultural and environmental impacts and needs prior to finalising the volume of floodplain harvesting entitlements in each valley identified in the NSW Floodplain Harvesting Policy, and this includes detailed locations of any proposed new river gauges and real time monitoring infrastructure.

Recommendation 2:

That the NSW Government urgently prioritise regular and genuine involvement of First Nations peoples in the management of floodplain harvesting, including cultural flows.

Recommendation 3:

That the NSW Government's modelling of floodplain harvesting volumes use the best available projections to evaluate the impact of climate change on entitlement reliability, downstream outcomes and environmental impacts.

Recommendation 4:

That the NSW Government establish an independent expert panel coordinated by the Natural Resources Commission to:

- assess and accredit the models used in Water Sharing Plans and produce a public report on the accreditation that includes the standard and mean error of models
- assess the floodplain harvesting 'Cap Scenario' reports for compliance with the Murray Darling Basin Cap and publish assessment reports
- Annually audit the Sustainable Diversion Limit and Murray-Darling Basin Plan Limit, publishing audit reports that separately identifies the annual Cap or Sustainable Diversion Limit target, and diversions for licence and extraction type.

Recommendation 5:

That the Department of Planning, Industry and Environment ensure that model run number and long-term average extraction limits for the Baseline Diversion Limit, the Murray-Darling Basin Cap, and the Plan Limits must be included in water sharing plans for each valley.

Recommendation 6:

That, if the NSW Government intends to amend the Sustainable Diversion Limits, the NSW Government must specify the legal pathway through which they intend to do so.

Recommendation 7:

That the NSW Government ensure that any allocation of floodplain harvesting volumes and entitlements must be within existing Sustainable Diversion Limits.

Recommendation 9:

That the NSW Government urgently ensure all floodplain harvesting is metered and measured, including flows that enter and bypass storages, before issuing floodplain harvesting licences to ensure the accuracy of volumes and long-term extraction limits.

Recommendation 17:

That the NSW Government develop clearly defined and enforceable access rules based on within-valley and downstream flow triggers based on minimum flow targets needed to maintain or improve outcomes for environmental, cultural and basic landholder requirements, with floodplain harvesting take only permitted under the access rules when these targets are met, and that these access rules must be implemented before any floodplain harvesting licences or entitlements are allocated.

Recommendation 18:

That the NSW Government work urgently to engage First Nations communities to ensure that cultural flow targets are established and met as part of the regulatory framework on floodplain harvesting.