

**Submission  
No 30**

**IMPACTS OF THE WATER AMENDMENT (RESTORING OUR RIVERS) ACT  
2023 ON NSW REGIONAL COMMUNITIES**

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The Inquiry into the impacts of the Water Amendment  
(Restoring Our Rivers) Act 2023 on NSW regional communities

***a) the social, economic and environmental impact of repealing limits to the cap on Commonwealth water purchases***

**Response to a) -**

Small communities along some of our inland rivers basically provide a workforce and supply capability to large and corporate irrigators that profit greatly from the use of river flows. If half the profits made from cotton for instance, were to go to the main street, they'd be paved with gold.

To extract water from any river system at volumes that compromise or even stop connectivity within the riverine ecosystem is to harm the future. This would fall well within the official definition of "Ecocide", which means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.

For the purpose of the previous statement on ecocide:

- "Wanton" means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated;
- "Severe" means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources;
- "Widespread" means damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings;
- "Long-term" means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time;
- "Environment" means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space.

***b) the risks to the effective implementation of the Federal Water Amendment (Restoring Our Rivers) Act 2023 including unlicensed take of water and options to address these risks such as rules for floodplain harvesting***

**Response to b) -**

The adequate funding and staffing of the National Resource Access Regulator would do much to counter illegal or unlicensed water take. Also increased and appropriate penalties that reflect the seriousness and potential impacts of unlicensed and illegal water extraction on our ecosystem would discourage even wealthy corporate potential offenders.

***c) the impact of Planned Environmental Water rules on the reliability of water allocations in NSW and the Commonwealth's environmental water holdings***

**Response to c) -**

In the end, there is only so much fresh water available to share. And it seems that the Earth's fresh water is actually becoming rarer, as the atmospheric temperature rises, and water vapour is more able to be suspended in the air away from the land. To allow the use of this rare and diminishing element (water) to simply make monetary profits, at the cost of our ecosystem is stupid and dangerous. There are changes needed to the way we allow water to be used, and to what our fresh water is used for.

The profiteers have already made plenty by pumping our inland waterways to a standstill. The true cost of these behaviours, these 'industries', will be borne by future generations of Australians, and by the suffering and diminished wildlife and ecosystems left behind.

And remember, reader, these ecosystems and this biodiverse wildlife will need to be restored and protected if life as we know it is to continue on our Earth. That job, that burden, will be left behind by the profiteers, without consideration, to the newly-born babies of today to organise.

***d) the impact of rules-based changes on the reliability of water allocations in NSW, including their impact on different water license categories***

**Response to d) -**

The irrigators/Licence Holders/Extractionists/Farmers, call them what you like, have had quite too much water over the past 30 years. The altered climate of the Western Division of NSW is testament to that. The over-allocation of water for corporate and private profiteering at the expense of First Nations Peoples and Cultures, as well as the ecosystem that had supported them over millennia, is a shame and a blot on Australian agricultural history.

Now it is the reconnection and restoration/regeneration of our riparian and riverine ecosystems that must take priority. To fail at this would generate misfortune for all generations of Australians to come.

***e) the effectiveness and impacts of past water reforms, including community-based water reduction adjustment programs such as the Strengthening Basin Communities program and Murray-Darling Basin Economic Development Program***

**Response to e) -**

The Murray/Darling Basin Plan sprang from a well-perceived and understood need to protect the entire Murray-Darling Basin ecosystem from abuse and exploitation by unbridled capitalism. But it has failed. Instead, The Murray-Darling Basin Authority became a sympathetic apologist for big banks and big investors, quickening the acceleration of land-clearing, over-extraction, floodplain harvesting and widespread renegade short-term capitalist profiteering; and the MURDER of one of Australia's greatest natural assets. We must get it back into balance, or perish with it.

***f) options to improve future community-based reduction adjustment programs including next rounds of the Sustainable Communities Program***

**Response to f) -** The following is an extract from the "2019 Citizens Inquiry into the Health of the Barka / Darling River and Menindee Lakes", of which I was a part. The 233-page report made sixteen strong and clear Findings, and fifty strong and sensitive Recommendations. When released in 2020 it took its place on top of a knee-high stack of reports and inquiries, all saying basically the same thing: the Murray-Darling Basin Authority had failed to deliver even a semblance of The Murray-Darling Basin Plan, as it was supposed to do. And in the process almost completely ignored The Water Act and the environment.

Extract begins here -

## **8.1 URGENT ACTION REQUIRED TO RESTORE THE RIVER SYSTEM AND COMMUNITY HEALTH**

**FINDING 1:** The Barka/Darling River system is an ancient, complex, interconnected, living system that has supported human and non-human communities for millennia. Since European colonisation, this precious interconnected living system has been mismanaged, and unsustainable use of its land and waters has brought it to the brink of collapse.

**FINDING 2:** Evidence provided by community members along the Barka/Darling River system shows that the health of the river system has been in decline for decades. Immediate emergency actions are required, to restore river health, to restore human health for community members living along the river, and to prevent the ongoing degradation of ecosystems in the region.

**FINDING 3:** The current legal system has not been adequate to Care for Country or sustainably manage the Barka/Darling River system and major governance reform, built around First Nations peoples' leadership and community ecological governance, is required if the river system is to be saved and restored.

### **8.1.1 Immediate emergency actions to restore river health The Panel makes the following recommendations to address the urgent need to restore river health:**

**RECOMMENDATION 1:** Basin States immediately provide funding for First Nations peoples and local communities along the Barka/Darling River to collaboratively design and implement an Emergency Community River Restoration Plan. The Plan should focus on ensuring healthy river flows, restoring the Menindee Lakes and guaranteeing that sufficient volumes of clean, healthy water will always remain in the Barka/ Darling River during drought, as it used to in the past.

**RECOMMENDATION 2:** Basin States immediately provide funding for a River Ecological Restoration Fund, that will be used to implement the Emergency Community River Restoration Plan.

**RECOMMENDATION 3:** Basin States take immediate action to end water trading in Australia, including an immediate moratorium on water trading and a transition plan to repeal relevant legislation.

**RECOMMENDATION 4:** Basin States place a moratorium on the granting of any new water licences that would allow water extraction from the Barka/Darling River catchment and headwaters until the Emergency Community River Restoration Plan is created and implemented.

**RECOMMENDATION 5:** Basin States impose an immediate ban on all floodplain harvesting and introduce new laws to remove existing floodplain harvesting structures throughout the Barka/Darling River system.

**RECOMMENDATION 6:** Basin States place a moratorium on all groundwater extraction from the Barka/Darling River catchment until the Emergency Community River Restoration Plan is created and implemented.

**RECOMMENDATION 7:** Basin States place a moratorium on all new dams in the Barka/ Darling River catchment and review existing dams, with a view to reducing the number of dams and the amount of water taken from the river for large scale irrigation purposes. The replacement weir downstream from Wilcannia should proceed.

**RECOMMENDATION 8:** Basin States ban all future large-scale extraction from the Barka/ Darling River system and fund a transition plan to phase out all existing large-scale extraction from the Barka/Darling River system, in accordance with the Emergency Community River Restoration Plan.

RECOMMENDATION 9: That there should be a moratorium on further land clearing in southern Queensland and western New South Wales.

RECOMMENDATION 10: All Basin States should coordinate investment in large scale land regeneration projects (including re-vegetation and re-forestation) along the Barka/Darling River system

### **8.1.2 Immediate emergency actions to restore human health**

The Panel makes the following recommendations to address the urgent need to restore human health for community members:

RECOMMENDATION 11: Basin States create and fund an Emergency Barka/Darling River Community Health Fund that will be administered in compliance with the priorities identified by affected communities.

RECOMMENDATION 12: Basin States work with affected communities, to use the Emergency Barka/Darling River Community Health Fund to pay for and organise the immediate provision of clean, safe and free potable water to all affected communities, for as long as it takes to restore the health of the river system and ensure a safe water supply for river communities.

RECOMMENDATION 13: Basin States immediately fund an investigation into motor-neurone disease and other health problems (including skin rashes and other skin problems) suspected of being caused by people having to use poor quality water in Menindee, Wilcannia and other affected communities.

RECOMMENDATION 14: the NSW government provide financing for improved health care facilities — mental, physical and dental — for the towns along the Barka/Darling River Basin within NSW.

### **8.1.3 Immediate action to ensure First Nations peoples play a leadership role in the management of the Barka/ Darling River system**

The Citizens' Inquiry heard First Nations peoples and non-indigenous people along the entire Darling River system, state that any governance systems created to care for country and care for the rivers, should be led by First Nations peoples.

*This Tribunal does not have the authority to make recommendations on behalf of the First Nations peoples of the Barka/Darling River, however in response to the testimony by First Nations peoples and non-indigenous people in the region, our key recommendation is that:*

RECOMMENDATION 15: First Nations peoples along the Barka/Darling River system should be invited by Basin Governments – and paid by Basin Governments – to develop their own long-term governance structure, that will enable First Nations peoples to lead all future river care and river restoration programs for the Barka/Darling River system. In addition, laws should be enacted making it mandatory for all elements of existing Barka/Darling River governance structures – at the federal, state and local Levels - to seek advice from and take recommendations from, the First Nations peoples connected to the Barka/Darling River.

## **8.2 GOVERNMENTS HAVE BREACHED LEGAL OBLIGATIONS UNDER STATE, FEDERAL AND INTERNATIONAL LAW**

### **8.2.1 Legal Obligations under State and Federal Law The Water Act 2007 (Cth)**

Around the time of the Inquiry, all towns from Wentworth to Brewarrina reported that there was a ‘no flow’ of water in the Darling River. In December 2018 and January 2019 three significant fish kill events occurred near Menindee NSW with estimates of around one million fish and higher.

The law relating to water rights in Australia can primarily be found in the Commonwealth Water Act 2007 as amended by the Water Amendment Act 2008. Amongst other things, the Water Act requires the development of a Basin Plan for the integrated management of water in the Murray-Darling Basin. The Murray-Darling Basin Plan, passed in 2012, is a legislative instrument that sits under the Water Act.

The Water Act 2007 was legislated to provide the legal basis for the control of the Murray-Darling Basin resources to enable the Commonwealth, in conjunction with the Basin States, to manage the Basin water resources in the national interest (s3a).

The Commonwealth head of power is claimed under Section 51(xxix) of the Australian Constitution which gives the Commonwealth Parliament of Australia the right to legislate with respect to ‘external affairs’ of the Australian Constitution with regards to its international treaty obligations.

The objects of section 3 of the Water Act 2007 states;  
the Commonwealth, in conjunction with the Basin States, to manage the Basin water resources in the national interest; and to give effect to relevant international agreements (to the extent to which those agreements are relevant to the use and management of the Basin water resources) and,

in particular, to provide for special measures, in accordance with those agreements, to address the threats to the Basin water resources; and (c) in giving effect to those agreements, to promote the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes.

The Water Act 2007 under s4 lists the relevant international Agreements and Treaties. Relevant “international agreements” include the following: (i) the Ramsar Convention 1971 (RAMSAR); (ii) the Biodiversity Convention (CBD); (iii) the Desertification Convention; (viii) the Climate Change Convention 1992. These treaties are reflected in the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.

Obligations under the Water Act 2007 (Cth) relating to human needs

Part 2A of the Water Act contains provisions related to ‘critical human needs’ including the following:  
86A Critical human water needs to be taken into account in developing Basin Plan (1)[full stop?]  
Without limiting section 21, the Basin Plan must be prepared having regard to the fact that the Commonwealth and the Basin States have agreed:

(a) that critical human water needs are the highest priority water use for communities who are dependent on Basin water resources; and

(b) in particular that, to give effect to this priority in the River Murray System, conveyance water will receive first priority from the water available in the system.

(2) Critical human water needs are the needs for a minimum amount of water, that can only reasonably be provided from Basin water resources, required to meet:

(a) core human consumption requirements in urban and rural areas; and (b) those non human consumption requirements that a failure to meet would cause prohibitively high social, economic or national security costs.

The Water Act approaches the task of ensuring the Basin Plan meets critical human water needs by stipulating a risk management approach to implementing the Plan. The Basin Plan is required, for example, to:

- Include a statement of the amount of total water and conveyance water required in each Basin State to meet the critical human water needs of the communities in the State;<sup>141</sup>
- Specify water quality trigger points and salinity trigger points at which water in the River Murray System becomes unsuitable for meeting critical human water needs;<sup>142</sup>
- Specify arrangements for monitoring matters relevant to critical human water needs;<sup>143</sup>
- Specify the risk management approach for inter annual planning relating to arrangements for critical human water needs in future years.<sup>144</sup>
- The Plan must also address the possibility that there will be insufficient water to meet these critical needs. This includes duties to specify conditions for the commencement of Tier 2 or Tier 3 water sharing arrangements in place of Tier 1 water sharing arrangements among Basin States.<sup>145</sup>

As can be ascertained from this, the approach taken by the Water Act insofar as critical human needs are concerned is to mandate its consideration by decision makers and water managers acting pursuant to the Basin Plan. Critical needs are met in accordance with the arrangements contained within the Act, the Basin Plan, the MDB Agreement and the water sharing schedule that is part of the Agreement.

The Water Act does provide a framework by which compliance with the various provisions of the Act can be measured, and in some circumstances, enforced. With respect to critical human needs, the Water Act provides two separate sets of compliance regimes:

— The MDBA Authority and other agencies of the Commonwealth must perform their functions, and exercise their powers, consistently with, and in a manner that gives effect to, the matters included in Part 2A;<sup>146</sup>

— Other agencies and persons, including public and private sector organisations, are only required to act in a manner which is not inconsistent with the matters contained in Part 2A. <sup>147</sup>

The effect of this second limb is that other agencies and persons are not required to ‘give effect’ to the provisions in Part 2A, only to act in a manner which is not inconsistent with it. If an act was found to contravene either of these compliance mechanisms then a limited number of enforcement mechanisms are available to an applicant in Court.<sup>148</sup>

*The Water Act does not provide any relevant enforcement mechanisms beyond ensuring that administrators, water managers and others act in accordance with the Basin Plan. If the Basin Plan itself was drafted ineffectively then the Water Act would not be able to provide any further means of enforcement. The Water Act does not create a legally enforceable overarching personal or community right to water.*

### **Obligations under the Water Act 2007 (Cth) relating to environmental protection**

Water law expert Dr Carmody, EDO, has said: “If I were to distil the purpose of Water Act and the Basin Plan in one single element, it would be to reinstate an environmentally sustainable level of [water] take.”

The Water Act 2007 is one of the only legislative instruments in the world that gives legislative priority to the environment above all other considerations. The Water Act goes on to spell out the underlying principles of sustainability. Specifically, s.3A Principles of ecologically sustainable development states that ecologically sustainable administration of water resources is:

(a) decision making processes should effectively integrate both long term and short term economic, environmental, social and equitable considerations;

- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (c) the principle of inter-generational equity— that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision making;

### **The Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act)**

The EPBC Act is the Australian Government's central piece of environmental legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places.

The Objects of the EPBC Act (1) The objects of the EPBC Act are:

- (a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and
- (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and
- (c) to promote the conservation of biodiversity; and (ca) to provide for the protection and conservation of heritage; and
- (d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land holders and Indigenous peoples; and
- (e) to assist in the co-operative implementation of Australia's international environmental responsibilities; and
- (f) to recognise the role of Indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and
- (g) to promote the use of Indigenous peoples' knowledge of biodiversity with the involvement of, and in co operation with, the owners of the knowledge.

(2) In order to achieve its objects, the Act:

- (a) recognises an appropriate role for the Commonwealth in relation to the environment by focussing Commonwealth involvement on matters of national environmental significance and on Commonwealth actions and Commonwealth areas; and
- (b) strengthens intergovernmental co operation, and minimises duplication, through bilateral agreements; and
- (c) provides for the intergovernmental accreditation of environmental assessment and approval processes; and
- (d) adopts an efficient and timely Commonwealth environmental assessment and approval process that will ensure activities that are likely to have significant impacts on the environment are properly assessed; and



(e) enhances Australia's capacity to ensure the conservation of its biodiversity by including provisions to:

(i) protect native species (and in particular prevent the extinction, and promote the recovery, of threatened species) and

(ii) ensure the conservation of migratory species; and

(iii) protect ecosystems by means that include the establishment and management of reserves, the recognition and protection of ecological communities and the promotion of off-reserve conservation measures; and

(iv) identify processes that threaten all **levels of biodiversity** and implement plans to address these processes; and

(f) includes provisions to enhance the protection, conservation and presentation of world heritage properties and the conservation and wise use of Ramsar wetlands of international importance; and

(fa) includes provisions to identify places for inclusion in the National Heritage List and Commonwealth Heritage List and to enhance the protection, conservation and presentation of those places; and

(g) promotes a partnership approach to environmental protection and biodiversity conservation through:  
(i) bilateral agreements with States and Territories; and

(ii) conservation agreements with land holders; and

(iii) recognising and promoting Indigenous peoples' role in, and knowledge of, the conservation and ecologically sustainable use of biodiversity; and (iv) the involvement of the community in management planning.

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***g) any other related matter.***

**Response to g) -**

*Government ministers and agencies can be held responsible for damage to the future. Governments and ministers have mandates and real obligations to fulfill.*

*As members of a dynamic and democratic society, we are all needed to encourage, support and hold to account our governments and ministers to enforce all statutes and regulations designed and written to protect our Habitat and our collective futures from reckless exploitation and ruin.*

Clearly industry lobbyists are able to bend governments behaviours and priorities to benefit themselves. These actions are allowing bad corporate and individual behaviours to be overlooked and even ignored, resulting in pollution and destruction of our life-supporting ecosystems.

It is time for Australian Ministers in Government to stand up for their grandchildren, to begin a change, a transition in values and practice. It is time for political and community leaders to speak loudly about the massive changes that we are bound to confront, and what processes and strategies can be engaged to avoid the many terrible outcomes that our good scientists are telling us to expect in our near and distant futures.

Observations of school students over the past five years indicate clearly, they are not going to stand by while our collective futures are trashed by business and politics as usual, and flushed down the toilet of capitalism.

Young adults and the younger need to see that the powers that be, their own elected government officials, are interested and active in repairing and protecting our Habitat and the future for all societies.

*There are many examples from all around our planet where peoples and governmental engagement are turning the tide of habitat damage. Rivers have been undammed and made safe to fish and swim in. Forests and wetlands have been regenerated and recharged for wildlife and the future's benefit. Extractive industries have been better controlled and managed to better associate with sustainable practices.*

As we all get closer and look with squinting eyes to the future, we can see that practices and behaviours of governments, industries and human cultures have and are impacting it before we get there. Generally, we understand how this happened, but there are many responsibilities, tasks and obligations of elected representatives that have been disregarded and unfulfilled. Many of those responsible are still alive or in office, and therefore can be held to account, and perused under existing national and international statutes.

In time it may be these very same state and federal representatives that will be taken to the High Court of Australia and even the International Criminal Court, charged with complicity to ecocide, corruption, and failure to maintain their essential duty of care; held to account for allowing the future of our one and only Earth, our nation and our ecosystems to be compromised and spoiled, while they had the means, the mandate and existing laws and regulations to prevent the harm done.

I expect some of the readers of this document will think it is all wrong, but it is not! Some will think it makes sense, but there is much work to be done if Australia is ever going to reclaim the future.

Many people living today don't even understand that the future already exists, but I do.  
The children of destiny will share or fight over whatever they get after us.

I recommend that you, the reader obtain and read The Australian Peoples Tribunal for Community and Nature's Rights - 2019 Citizens' Inquiry into the Health of the Barka/Darling and Menindee Lakes, released on September 30, 2020. It would be likely to change your life, when you understand the truth of the human suffering and cultural loss (modern and ancient) endured along our Darling River and Menindee Lakes. The deathly impact on the ecology and even the geology, clearly evident as a result of the irrigation pumps having been very suspiciously approved to actually pump the river backwards and to fatally even disappear.

***Below is a copy and paste link to a digital copy of it. I hope it works for you.***

[https://tribunal.org.au/wp-content/uploads/2020/10/2019CitizensInquiry\\_BarkaDarlingMenindee-201017-02.pdf](https://tribunal.org.au/wp-content/uploads/2020/10/2019CitizensInquiry_BarkaDarlingMenindee-201017-02.pdf)

*Postscript: European countries are right now trying to burry nuclear waste in vaults that must not be disturbed for twenty-thousand-plus years. It is feared that in that time languages used today may not exist, so an iconography is being developed to warn of certain death and misery should the vaults be disturbed. This is just one of the burdens our babies will face in a very damaged future.*

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