



Document received by
 Ms Lynette Marlow
 Received by
 Adelaide David
 Date: 3/31/21
 Resolved to publish Yes No



Australian Government
 Department of Agriculture
 and Water Resources

Ref: MC19-003179

Aunty Lynette Marlow
 16 Old Highway
 NAROOMA NSW 2546

Via email: [redacted]

Dear Aunty Lynette Marlow

Thank you for your letter of 5 March 2019 to the Prime Minister, the Hon Scott Morrison MP, about water management in the Murray-Darling Basin and the Australian Constitution. Your letter was referred to the Hon David Littleproud MP as the matters raised fall within his portfolio responsibilities. As the Government is currently in an election period, I am responding on his behalf. Please note that this letter contains current Government policy and this policy could change after the election.

I understand your concerns regarding water allocation to Aboriginal and rural communities. In recognition of the need to improve outcomes for Basin Aboriginal communities, on 7 May 2018, a commitment was made as part of the deal between the Australian Government and the Federal Opposition to invest \$40 million in cultural and economic water entitlements and associated planning activities. The commitment acknowledges the importance of water to Indigenous cultures, societies and livelihoods in the Basin, by including \$20 million each for the northern and southern basins over four years. Updates on the progress of this initiative can be found at agriculture.gov.au/water/mbd/basin-plan/commitments.

The High Court has provided guidance on how section 100 of the Australian Constitution affects water management. In the *Commonwealth v Tasmania* [1983] HCA 21; (1983) 158 CLR 1 (also known as the "Tasmanian Dams") case, the High Court stated that, when read in conjunction with other sections in the Constitution, the drafting of section 100:

- Prevents the Commonwealth from making a law or regulation that abridges the rights of a State and its residents to the reasonable use of water; and
- Suggests that the intention is to safeguard the rights of a State and its residents to the use of waters in rivers used for interstate trade and commerce.

Australia has a federalist system, whereby the Constitution establishes and restricts Commonwealth legislative powers. Because no express power is included in the Constitution for water management, this means that this legislative power primarily rests with the Basin States. As distinct from creating liability, section 100 only restricts the ability for the Commonwealth to make legislation on these matters.

With respect to your comments regarding responsibility for water management, the *Water Act 2007* was made through powers in the Constitution, enabling the Commonwealth to manage water resources in the Murray-Darling Basin in the national interest, in conjunction with Basin States. In 2008, Basin States referred certain powers to the Commonwealth, through the *Intergovernmental Agreement on Murray-Darling Basin Reform* and enacting legislation. This means that today, Basin States have responsibility for decisions around water harvesting and allocations, and the Commonwealth is responsible for national coordination.

T +61 2 6272 3933
 F +61 2 6272 5161

18 Marcus Clarke Street
 Canberra City ACT 2601

GPO Box 858
 Canberra ACT 2601

#@kulture.gov.au
 ABN 24 113 085 695



20+

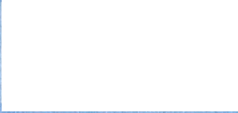


Under the *Basin Plan 2012* from 1 July 2019, extraction limits will reflect new sustainable diversion limits (SDLs). The SDLs aim to reset the balance between environmental and consumptive uses of water and establish a framework for sustainable resource management.

The Basin Plan was neither expected, nor intended, to deliver immediate results. It is not possible to repair over 100 years of damage to such a vast river system overnight. It is a 12-year reform and we are six years into its implementation. There is more to do, but it is important we continue to implement the Basin Plan to ensure we get the balance right.

I hope this information is of assistance. If you wish to raise your matters again, you should do so by contacting the incoming government.

Yours sincerely



Matthew Dadswell
Assistant Secretary
Murray-Darling Basin Policy Branch

15 May 2019

