

**INQUIRY INTO CONSTITUTION AMENDMENT (WATER  
ACCOUNTABILITY AND TRANSPARENCY) BILL 2020  
AND THE PROVISIONS OF THE WATER MANAGEMENT  
AMENDMENT (TRANSPARENCY OF WATER RIGHTS)  
BILL 2020 AND THE WATER MANAGEMENT  
AMENDMENT (WATER ALLOCATIONS - DROUGHT  
INFORMATION) BILL 2020**

**Organisation:** Southern Rivers Irrigators

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## Background

Southern Riverina Irrigators (SRI) is a peak irrigation advocacy group representing five landholder associations in the Southern Riverina of NSW. Since the building of Hume Dam in the 1930's and the consequent arrival of irrigation, our region has grown to produce many of the countries food staples including rice, wheat, corn, dairy, barley, canola, oats, peas, beans, beef, lamb and various horticultural enterprises – our region is a significant contributor to the only manufacturing industry we have left in Australia, agriculture.

SRI irrigators access water through Murray Irrigation Limited (MIL), which has a footprint of 7418,000 hectares across 1200 hardworking farming families.

SRI irrigators need to operate their business with confidence and water reliability to remain viable. The draft WRP puts extra protection in place for environmental water at the expense and reliability of the core of what irrigators need to survive and prosper, and that is productive water.

Confidence in basin governments, especially the NSW government, around water policy is paramount if we are to have a sustainable, productive and economically strong future not only for irrigators but for the country.

### **SRI Submission into the inquiries of;**

- **Constitution Amendment (Water Accountability and Transparency) Bill 2020**
- **Provisions of the Water Management Amendment (Transparency of Water Rights) Bill 2020**
- **Water Management Amendment (Water Allocations - Drought Information) Bill 2020**



## Opening Statement

Southern Riverina Irrigators welcome the chance to provide insight on these critical natural resource management legislative amendment proposals.

The state's water management practices are in absolute disarray as a result of consecutive government not listening to stakeholders. Refusing to listen to a group of people, many of whom have a lifetime of intimate knowledge in the water sector, has resulted in implementation of legislation that is severely impacting the future of irrigation.

The Water Act 2007 was described as legislation to balance social, economic and environmental factors for water management in the Murray Darling Basin and perhaps more importantly to act in the national interest of Australia.

While the objectives of the Act acknowledge these values, the body of the Act does not. Implementation of the Murray Darling Basin Plan (MDBP) and 110 plus reviews to date indicate monumental failings as evidenced by continued calls to call the plan and hold a royal commission into the MDBP and the Murray-Darling Basin Authority (MDBA).

Meanwhile the decimation of regional communities continues unabated.

The MDBA Regulatory Impact Statement (RIS 2012) severely underestimated the social and economic consequence of the basin plan. This is in part related to how the plan produces economic inequities in geographical areas but also how the social and economic impacts for regions are reported.

There has been no feasibility assessment of the consequences of the Water Act 2007 or Basin Plan – the impacts of removing impediments to trade, or enacting the Constraints Management Strategy to achieve higher basin plan flow volume targets for the Murray River, measured at the Coorong, Lower Lakes, Murray Mouth (CLLMM) in South Australia.

The Water Act 2007 utilised Section 51 of the Australian constitution enabling the Federal Government to use international environmental agreements as a mechanism to obtain new powers over water from the states, however the plan continues to deliver inequitable environmental outcomes across the entire basin while continuing to ignore the many positive environmental outcomes irrigation brings on-farm.

The MDBA was established as an independent authority although documented decisions indicate decisions have never been truly independent, nor consistent with a 'whole of basin' approach, reflective of achieving the objectives of the Water Act 2007 - A balance of social, economic and environmental outcomes.



The Water Act 2007 and current Basin Plan has instead ensured a concentration of physical water recovery for the 'environment' in the southern basin, primarily in the Murray system (NSW/Vic), the Goulburn River (Vic) and the Lower Darling.

Social and economic impacts are not just confined to a reduction in irrigation entitlements used for regional agriculture. Impacts extend to third party influence, pricing and supply of water markets, stranded assets in irrigation regions and how the Murray River system is operated in the future.

Basin water policy is influenced by the Murray-Darling Basin Agreement, internal state water management decisions, the Water Act 2007 and the MDBP.

Both the Murray-Darling Basin Agreement and the Murray Darling Basin Plan have led to major inequities in water management, particularly in the Southern Basin. NSW Murray Valley General Security (GS) has incurred increased negative impacts because of basin agreement requirements to South Australia and changes to inflows from the Northern Basin.

## **Constitution amendment (Water availability and Transparency) Bill 2020**

Section 71H poses a multitude of inconsistencies with the NWI 2004, the Water Act 2007, MDB Plan and Water Resource Plans. Ironically even in the Privacy and Personal Information Protection Act which the bill attempts to use to justify not disclosing any personal details by highlighting the section that outlines if the overarching Act that mandated the register, which in this case is the Federal Water Act 2007, detailed that certain pieces of personal information, such as identity of private or company related need to be made publicly available, then it is legal.

It is important to note that the Water Act 2007 takes precedence over the Water Management Act Amendment 2000 as per section 109 of the Australian Constitution that conflicts with the intent of this section of the bill to restrict personal information - "109. Inconsistency of laws when a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid"

### **Section 71H Public access to information in Access Register**

*"4(c) the restriction of access to personal information recorded in the Access Register for the purpose of protecting the privacy of that information"*

&

*"(5) This section does not limit the application of Part 6 of the Privacy and Personal Information Protection Act 1998 to the Access Register."*



Part 6 deals with the issue raised within 5(c) in the below:

***“57 Disclosure of personal information contained in public registers***

*(1) The public sector agency responsible for keeping a public register must not disclose any personal information kept in the register unless the agency is satisfied that it is to be used for a purpose relating to the purpose of the register or the Act under which the register is kept.”*  
[1]

Whilst protecting the privacy of individual information including address or contact details is paramount and indeed not required for transparency in water information, it is critical irrigation communities have full confidence in the ownership of this scarce resource. The resource must be held in the right hands to ensure distortions are not made to the market for financial gain which negatively impacts the triple bottom line of irrigation communities, a key objective of the Water Act 2007 and Water Management Act 2000. The obligations of NSW Government detailed below, do not require addresses or contact details to be publicly recorded, this is a poor misdirection attempt to politicise to charge a preconceived agenda.

The agreement that the NSW Government made under the National Water Initiative that permeated through to statutory obligations within the Water Act 2007, The Murray-Darling Basin Plan and Water Resource/Sharing Plans are detailed below

**The NWI 2004 [2]:**

**1) “31. Water access entitlements will:**

*vii) Be recorded in publicly-accessible reliable water registers that foster public confidence and state unambiguously who owns the entitlement, and the nature of any encumbrances on it (paragraph 59 refers).”*

**2) “Water Markets and Trading**

*Actions*

*59. The States and Territories agree to have in place pathways by 2004, leading to full implementation by 2006, of compatible, publicly-accessible and reliable water registers of all water access entitlements and trades (both permanent and temporary) on a whole of basin or catchment basis, consistent with the principles in Schedule F. The Parties recognise that in some instances water service providers will be responsible for recording details of temporary trades.”*

**3) “SCHEDULE F: GUIDELINES FOR WATER REGISTRIES**

*The Parties agree that water registers will be established in each State and Territory and will:*



1. *contain records of all water access entitlements in that jurisdiction, and trades of those entitlements, including their location;*
2. *be of sufficient standard to achieve the characteristics of secure water access entitlements contained in the Agreement;*
3. *contain protocols for the protection of third-party interests that:*
  - (i) require the holder of a registered security interest to be notified prior to any proposed dealings in relation to the water entitlement, and requiring the consent of such interests to any proposed transfers;*
  - (ii) allow only authorised dealings;*
  - (iii) require the registration of permanent transfers of the water entitlement and encumbrances that affect the entitlement, such as mortgages and other security interests;*
  - (iv) enable lenders to procure the registration of their interest independently of the holder of the entitlement (to ensure the rights of the entitlement-holder are sufficiently protected);*
  - (v) prioritise competing dealings;*
  - (vi) manage time lags between date of lodgement for registration and actual registration of dealings, as such time lags may affect priorities; and*
  - (vii) allow for the discharge of the security interest, in conjunction with the transfer of the entitlement to a new registered holder;*
  - (viii) ensure that lenders are only affected by a subsequently registered interest where the lender has consented to the subsequent dealing;*
  - (ix) assist in the process of identifying water specific or unregistered interests.*
4. *be administered pursuant to certain procedures and protocols, based on land title office manuals and guidelines that exist in various States and Territories that seek to minimise transaction costs for market participants;*
5. *be publicly accessible, preferably over the internet, and include information such as the prices of trades and the identity of entitlement holders; and*
6. *enable resource managers to monitor and accumulate trade and water use volumes accrued under water entitlements in a separate water accounting system.”*



## **Water Act 2007 inconsistencies:**

*“Schedule 3—Basin water market and trading objectives and principles*

*4 Basin water market and trading principles*

*(3) All trades should be recorded on a water register. Registers will be compatible, publicly accessible and reliable, recording information on a whole of catchment basis, consistent with the National Water Initiative.” [3]*

The critical point here is “consistent with the National Water Initiative” which states the above and gives a timeline of 2006, of which the NSW Government is 14 years behind and states “be publicly accessible, preferably over the internet, and include information such as the prices of trades and the identity of entitlement holders”

The current water register in NSW, online within WaterNSW is deliberately opaque. You cannot access details around ownership without first knowing the exact Water Access License (WAL) number or being a registered broker and paying a fee per information request. The critical point here is WAL numbers do not directly say who owns water, a fact at odds with the governing legislation, i.e. MIL has 1 WAL for its 1800 customers.

## **Schedule 2 Amendment of Constitution (Disclosures by Members) Regulation 1983,**

If the government were to implement what was agreed to in 2004 to be in force by 2006, as detailed above with extracts from the NWI 2004 and Water Act 2007 “be publicly accessible, preferably over the internet, and include information such as the prices of trades and the identity of entitlement holders” this schedule would be obsolete and covered off by the register itself with information collected and recorded online. This schedule appears to have a nuanced reasoning for inclusion, targeting members which according to current legislation should be subject to the same level of scrutiny and transparency as any water owner, trader or user. If the advisors who drafted this on behalf of Minister Pavey were across current legislation, they would see it is already agreed and simply needs implementation - responsible Ministers and their departments must get on with the task of full, transparent implementation and discontinue contravening their own policy.

## **Provisions of the Water Management Amendment (Transparency of Water Rights) Bill 2020**

At risk of repetition in advice on the two legislative amendments attempting to deliver on the same overarching issue, the position of SRI remains as detailed above with the information provided around Constitution amendment (Water availability and Transparency) Bill 2020 section of this submission: Namely full implementation of the NWI 2004 principles and methodologies agreed to by; QLD, NSW, ACT, VIC and SA State Governments and the



Federal Government consistent with the timeline of implementation in Schedule A of this agreement, namely for the purpose of this committees review [2].

It is worth noting the NWI 2004 is reviewed every 3 years by the Federally sanctioned Productivity Commission, another review will be tabled by the end of 2020. Which begs the question, why isn't there the political will to deliver agreed to legislation?

### **Water Management Amendment (Water Allocations - Drought Information) Bill 2020**

SRI strongly rejects the blanket proposal of this Bill.

The landscape, rainfall intensity, rules for take, storages and population vary heavily from region to region and indicate a more 'individual' regional approach is required.

Critical human needs in the Murray do not need adjustment. Allocation determinations and a tiered approach go above and beyond millennium drought factors which are already included in the Murray Rivers resource assessments. These minimum inflow determinations were introduced in 2007 and have delivered 100 percent allocation to conveyance, critical human needs all the way from Dartmouth to Lake Alexandrina before allocations move off zero. This has happened without failure, since 1936 - the construction of Hume Dam, of which storages were then bolstered by Dartmouth, totalling a mammoth - 6863GL a total storage amount, publicly metered, measured, compliant and of particular note, is unrivalled anywhere North of Menindee Lakes. Even across the 2 years July 2017 to July 2019 when the Darling was offline, the Murray system, with current resource assessment practices, fully delivered all conveyance and critical human needs.

If this Bill is adopted across NSW without tailoring it region by region, there will be a much more conservative approach to water distribution in the future, compounding an already conservative method, along with a significant negative financial impact on our farming community, who rely on early allocations to make important farming decisions for the season ahead.

Specifically, this includes:

1. **Later Allocation-** More conservative inflow modelling will mean less anticipated water brought forward and allocations will start at comparatively lower percentages at the start of each season (e.g. August to October) - a critical decision-making time for our farmers.
2. **Lower allocation-** More volume of water will be placed aside for "reserves" which means ultimately this volume will not be placed into the General Security Water Entitlement bucket for allocation.
3. **More carryover-** Allocations occurring later in the season are less likely to be used and result in more carry over- which can mean less overall water use due to loss from spills and greater storage space used up. The cumulative regional financial impact of under usage is likely to be significant.



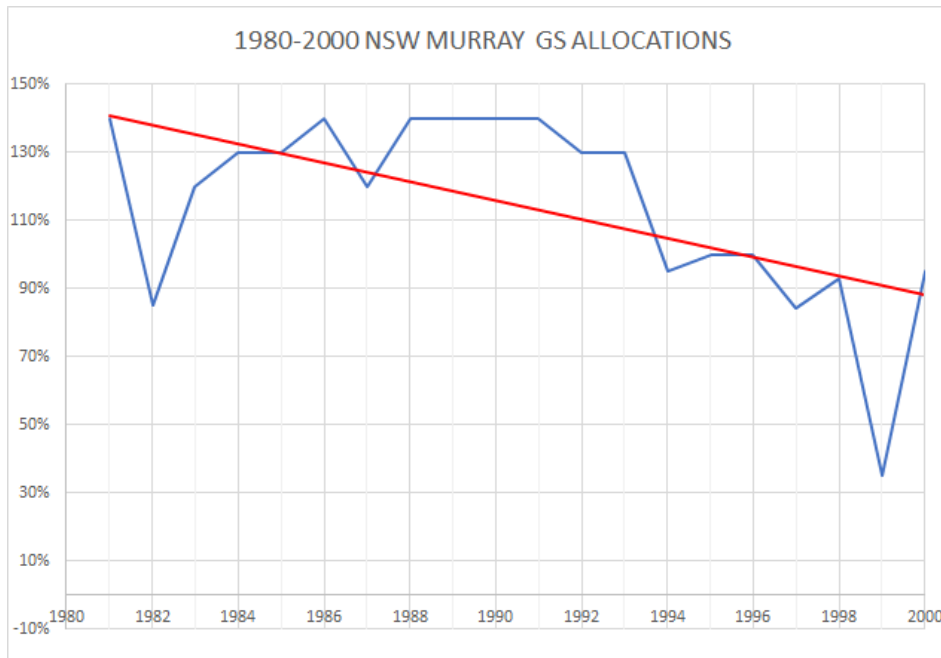


Figure 1 Water NSW [4]

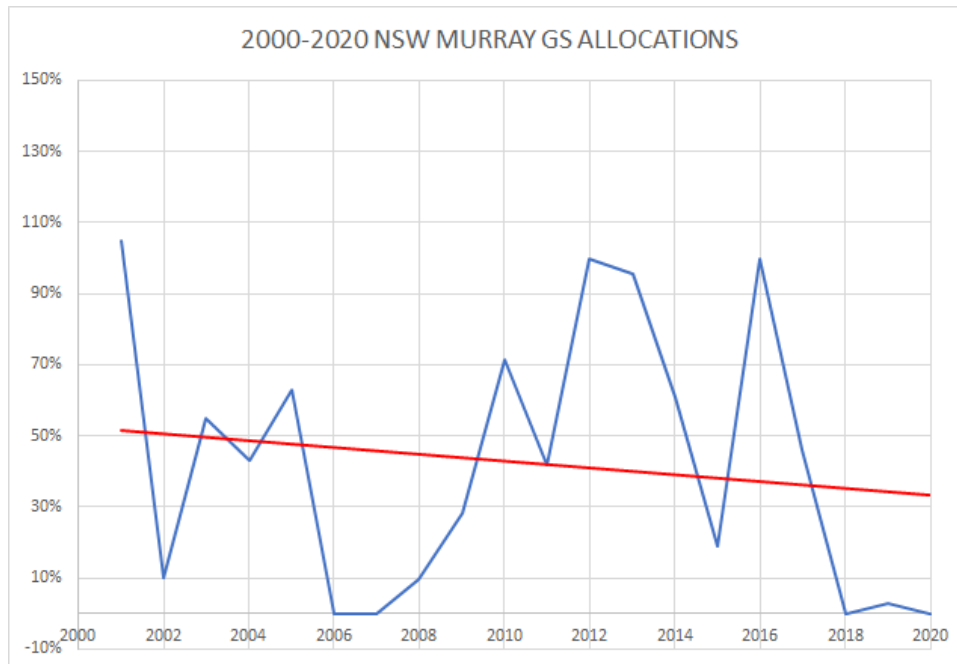


Figure 2 Water NSW [4]

Shown in Figure 1 & 2 above, the NSW Murray general security allocation has fallen to a 20-year average of 52 percent, a stark contrast to the previous 20-year average of 115 percent.

In NSW Murray there are 1674GL general security entitlements.

On 3/7/2020, 391GL was owned by the Commonwealth Environmental Water Holder - this represents a 23 percent ownership of water and coupled with the reduction in reliability with buybacks in the Murray Valley, means there is now only 31percent of general security entitlement available to irrigation communities, in this 20 year period in Figure 2 vs the previous 20 year period from 1980-2000.

Figure 3 - MDBA 2020 [5]

## System needs vs state allocations

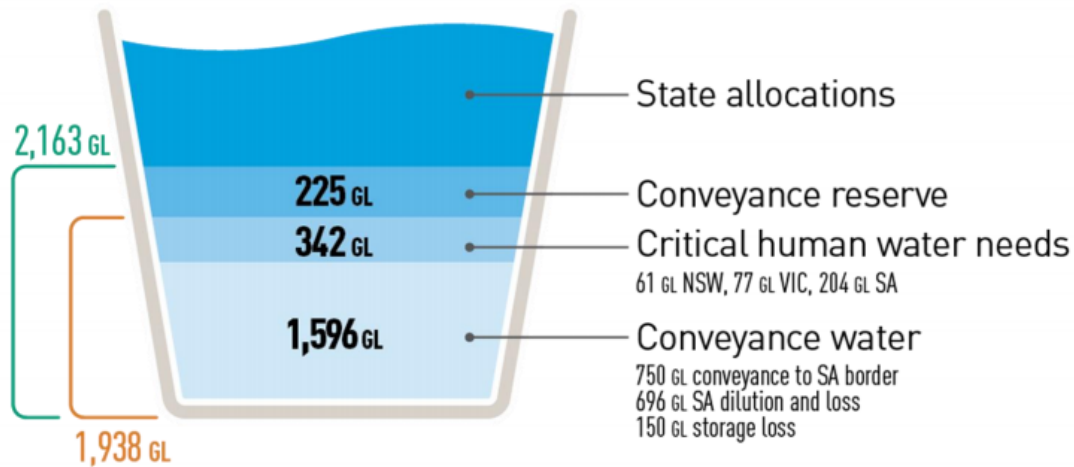


Figure 3 is a simplified version of how water is allocated in the Murray system for VIC, NSW and SA. MDBA states “*The highest priority water in the River Murray System is conveyance water, the amount of water needed to ensure the CHWN volume gets to where it is needed without evaporating or seeping into the riverbed.*” [5]

All conveyance and critical human needs must be met, including the 225GL conveyance reserve for the following year to mitigate an incoming dry year before an allocation is derived on the Murray River for the current water year. This process has remained the same despite increasing conveyance losses from a poorly managed system with as many as ~ 140 days and ~165 days of over bank deliveries in the 17/18 and 18/19 respectively in the Murray River, which is eating into the allocable volume against general security licenses.

In 2011 the SA and Federal Government completed the construction of a desalination plant. The construction was to ensure Adelaide's freshwater supply on the back of the millennium drought. Despite far cheaper options such as a Lock Zero, the desal plant has basically been idle, running at 21 per cent capacity of 100GL per annum - it has the potential to deliver 5 times the current volume, which would free up 100GL of water annually for whatever purposes deemed necessary by the Basin Officials Committee for example[6].

Localised storages are kept topped up year-round in case river levels reach critically low points, (which wasn't even used in the millennium drought of 2007) – e.g. Moulamein Lake in Southern NSW holds 230MI at any one time. The towns' license is 150MI and they only use around half annually.

Further to this, the millennium drought and various other measures to reduce the productive sector have been happening in the NSW Murray and Lower Darling since the 1993/94 cap was introduced, some made sense but a lot have led to perverse socioeconomic outcomes in the Murray Valley of NSW [7];



1994: Cap benchmark for NSW and Vic - 30 June 1994 levels of development. NSW Murray has never breached this "sustainable" line in the sand. Critically long-term cap is calculated over a different period to Basin Diversion Limits (BDL) and Sustainable Diversion Limits (SDL). BDL and SDL are inclusive of the millennium drought year, so BDL tends to be lower than the cap.

1994: Announced allocations set to a maximum of 100%, down from 130%

1997: Cap compliance commences

1997: Changes to reduce over allocation (questionable) and halve off-allocation volumetric limits. Supplementary entitlements introduced

1998: Rules allowing overdraw ceased. Carryover rules commenced and were adjusted over time. Works programs started to quantify and control unregulated usage while farm dam policy restricted growth.

2004: NSW Murray-Darling WSP agreed. Carryover rules settled at 50% of entitlements. Use limit increased to 110%

2006: Trade expanded across the southern connected Basin, which to date no government has introduced all the agreed to terms in the National Water Initiative of 2004, which has permeated largely through to the Water Act 2007, yet still remain idle and not implemented.

2006-2010: Millennium drought NSW Murray-Darling WSP suspended in 2006 (recommenced July 2011)

2007: Inflows used in bulk assessment process revised (reduced) to use new minimum historical inflow data (carryover limits reduced at an interim level to deter hoarding)

2009: Basin Plan BDL defined – generally as State water management law as at 30 June 2009

2011: A further 225GL is set aside or the equivalent of 181 per cent of the full critical human needs for both Victoria and NSW (Southern Connected Murray including Hume and Dartmouth).

2019: 1 July 2019 SDL compliance commences



## **References:**

[1] NSW Government. NSW Legislation. Privacy and Personal Information Protection Act 1998 No 133. 2020. <https://www.legislation.nsw.gov.au/#/view/act/1998/133/whole#/part6>

[2] Australian Government: Department of Agriculture, Water and the Environment. 2020 INTERGOVERNMENTAL AGREEMENT ON A NATIONAL WATER INITIATIVE Between the Commonwealth of Australia and the Governments of New South Wales, Victoria, Queensland, South Australia, the Australian Capital Territory and the Northern Territory  
<https://www.agriculture.gov.au/sites/default/files/sitecollectiondocuments/water/Intergovernmental-Agreement-on-a-national-water-initiative.pdf>

[3] Australian Government. Federal Register of Legislation. Water Act 2007. 2020.  
<https://www.legislation.gov.au/Details/C2007A00137>

[4] Water NSW. NSW Water Register. 2020. <https://waterregister.watarnsw.com.au/water-register-frame>

[5] Australian Government - Murray-Darling Basin Authority. 2020. River Murray system Water sharing in the River Murray Critical human water needs.  
<https://www.mdba.gov.au/river-information/water-sharing/critical-human-water-needs>

[6] SA Water. Water and the environment/ South Australia's water sources/Seawater. 2020  
<https://www.sawater.com.au/water-and-the-environment/south-australias-water-sources/seawater>

[7] Australian Government. Murray-Darling Basin Authority. 2020. Trends in water use relative to the Sustainable Diversion Limit in the southern Murray-Darling Basin.