

**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: Gwydir Valley Irrigators Association (GVIA)

Date Received: 10 July 2020



NSW Parliament - Portfolio Committee No. 4 - Industry

Inquiry into the 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.

Terms of Reference:

That Portfolio Committee No. 4 – Industry inquire and report on:

- a) the provisions of the Constitution Amendment (Water Accountability and Transparency) Bill 2020,
- b) the provisions of the Water Management Amendment (Transparency of Water Rights) Bill 2020, and
- c) the Water Management Amendment (Water Allocations—Drought Information) Bill 2020.

Introduction

The Gwydir Valley Irrigators Association (GVIA) thank the Committee for the invitation to comment and present on the three pieces of legislation under inquiry. Each of these matters have been highly politicised and are divisive amongst those with divergent views. We hope our experience in water policy matters can provide valuable insight into ensuring that parliament continue to focus on the key matters for NSW.

To streamline our submission, we have separated our responses into three parts focusing on the amendments in relation to:

1. *Constitution Act 1902* and associated regulation in relation to disclosures by members of parliament contained within Constitution Amendment (Water Accountability and Transparency) Bill 2020 and the Water Management Amendment (Transparency of Water Rights) Bill 2020.
2. *Water Management Act 2000* in relation to the water access licence register contained within Constitution Amendment (Water Accountability and Transparency) Bill 2020 and the Water Management Amendment (Transparency of Water Rights) Bill 2020.
3. *Water Management Act 2000* in relation to drought information contained within Water Management Amendment (Water Allocations—Drought Information) Bill 2020.

We have made four recommendations to the committee to consider as part of this Inquiry.

We look forward to presenting to the committee and discussing these matters further at the upcoming hearing.

About our organisation and the region:

The Gwydir Valley Irrigators Association (GVIA) represents more than 450 water entitlement holders in the Gwydir Valley, centred around the town of Moree in North-West New South Wales. GVIA members hold entitlements within the Gwydir regulated and un-regulated surface water areas, in addition to groundwater resources. All of which are managed through water sharing plans, which have been progressively developed since early 2000.

Our mission is to build a secure future for members, the environment and the Gwydir Valley community through irrigated agriculture we can do this together by making every drop count in the river or the aquifer, on-farm, for the environment, or for our community¹. We are a voluntary funded organisation by a nominal levy, cents/megalitre on regulated, unregulated and groundwater irrigation entitlement.

Much of the activity of the association revolves around negotiating with government at a Federal, State and Local level to ensure the rights of irrigators are maintained and respected. While the core activities of the Association are funded entirely through the voluntary levy, the Association does also undertake programs to maintain and improve the sustainability of members on-farm activities and from time to time, undertakes special projects, which can be funded by government or research corporations.

The Association is managed by a committee of a minimum 11 irrigators and employs a full-time executive officer and a part-time administrative assistant, as well as hosting a Project Officer funded through the Cotton Research and Development Corporation, the Gwydir Valley Cotton Growers Association and the GVIA.

The GVIA and its members, are members of both the National Irrigators Council and the NSW Irrigators Council.

Our region is highly dependent on agriculture and irrigated agriculture for economic activity. In the Moree Plains Shire alone agriculture contributes over 72% of the value of gross domestic product (cotton is around 60%), employing 20-30% of the population and accounting for almost 90% of exports from the Shire². The region generates an estimated 7.83% of NSW's total agricultural production from a 1,040,021Ha principally used for agricultural crops³.

The Gwydir is characterised as having low water reliability with most water held as general security water with a reliability of 36% (that means irrigators could expect in the long-term just over a third of their entitlement can be accessed). Supplementary water entitlement is somewhat more reliable with 55% but accounts for less than a quarter of the total volume. Groundwater reliability is considered 100% but there is less than 30,000ML available.

Amendments relating to disclosures of members of NSW Parliament.

A review of the pertinent sections of the Constitution Amendment (Water Accountability and Transparency) Bill 2020 and the Water Management Amendment (Transparency of Water Rights) Bill 2020, reveal minor subtle differences in relation to the disclosures that are being suggested. For example, Constitution Amendment (Water Accountability and Transparency)

¹ For more information, see our corporate video on <https://vimeo.com/177148006>

² Cotton Catchment Communities CRC Communities and People Series 2009

³ 2010 2011 Agricultural Census Report – agdata cubes, 71210D0005-201011 Agricultural Commodities, Australia

Bill 2020 requires reporting requirement on income derived from the trading of any water interests whereas the Water Management Amendment (Transparency of Water Rights) Bill 2020 does not.

Both bills essentially aim to clarify the requirement of members of parliament, to declare their water interests. The Constitution Amendment (Water Accountability and Transparency) Bill 2020 also requires any income derived from the sale (either permanent or temporary) from these water interests to be declared. It could be assumed that the property disclosure section may already address such a requirement, however for additional clarity either option is supported and welcomed.

Community expectation as outlined within the *Constitution Act 1902* and the subsequent *Constitution (Disclosure by Members) Regulation 1983* indicates that members of parliament should declare interests that are either, perceived to or may affect their ability to make an unbiased decision in the best interests of New South Wales. For that reason, we support and recommend that improved clarity in this area as well as consistency in how declarations are made (as with other property interests) is adopted.

We recommend that improved clarity in ensuring water interests of members of parliament are declared as pecuniary interests in a manner consistent with other property interests is adopted.

We note that inclusion of declarations of interests of “spouses” within the Water Management Amendment (Transparency of Water Rights) Bill 2020 is inconsistent with Part 3 the existing pecuniary interest etc to be disclosed in *Constitution (Disclosure by Members) Regulation 1983*. Unless members are looking to expand all other declarations to include spouses, which is not currently before this inquiry. For this reason, we consider the Constitution Amendment (Water Accountability and Transparency) Bill 2020 as a more consistent approach to provide clarity on water interests.

[Amendments relating to the water access licence register](#)

A review of the pertinent sections of the Constitution Amendment (Water Accountability and Transparency) Bill 2020 and the Water Management Amendment (Transparency of Water Rights) Bill 2020 highlight a contrasting approach to personal privacy in relation to water rights in the public domain, as well as an inconsistency with the information currently available for other forms of property in NSW.

The key difference in these bills is that the Constitution Amendment (Water Accountability and Transparency) Bill 2020 clearly clarifies the protection of individual’s privacy as part of the *Privacy and Personal Information Protection Act 1998*, whereas the Water Management Amendment (Transparency of Water Rights) Bill 2020 ignores these protections and in an attempt to streamline access also appears to make information that is currently freely available at a cost. Our organisation regularly undertakes searches of the general register via WaterNSW to track water allocation and use within the valley and water sharing plan to provide communication information to the broader community. We believe transparency would be undermined rather than improved, if the two search engines were combined and fees rendered, as we understand this bill suggests.

Furthermore, many of the proposals within the Water Management Amendment (Transparency of Water Rights) Bill 2020 already currently exist and the functionality of the bill is questionable. For example, you can currently undertake a free water register search via WaterNSW to retrieve information on an individual water access licence conditions or approvals, or valley scale water usage and allocations. The bill suggests that this may be

changed to be made available at set cost which will effectively make data less available. You can also currently search the conditions, interests and encumbrances as well as details of ownership (as with property searches), via the NSW Land Registry Services for \$12.50 fee.

Our interpretation is that the Water Management Amendment (Transparency of Water Rights) Bill 2020 is not making any more information more transparent, than currently available, other than broadening the search terms but potentially asking for free searches to be at a cost. We contend that the risk of broadening the publicly available searches for users to “go fishing” with names (either a business or an individual) and Australian Business Numbers on expanded unrestricted information, allows for an Aussie farms style manipulation of data. It could also lead to perverse outcomes in terms of water trading and financial providers and may endanger some of our most vulnerable water licence holders. The safety of individuals and their right to hold water or sell it, store water and use water as they choose – provided it is within their licence conditions to do so, should be considered paramount. Hence, we support the clarity provided by the Constitution Amendment (Water Accountability and Transparency) Bill 2020 clearly clarifies the protection of individual’s privacy.

It’s important to note there is water access licence information available now via a two-step search (as outlined above) but that the database is restricted to not reveal specific water account information or additional private information (other than name of the owner of the water access licence). This provides water access licence holders the same assurances to privacy that general property holders have in regard to their personal information, details of their co-holders and mortgages being freely accessible by typing in a name to a government database. We are unaware on Parliament’s intentions to considering a broadening of the access availability to the property information database in a consistent manner as proposed by the Water Management Amendment (Transparency of Water Rights) Bill 2020. We therefore support the adoption of the changes proposed within schedule 1 of the Constitution Amendment (Water Accountability and Transparency) Bill 2020.

Recommendation to support the Constitution Amendment (Water Accountability and Transparency) Bill 2020 proposals in schedule 1, in regards to amendments to the Water Access Register as a means to ensure privacy of water access licence holders is consistently maintained with other property rights.

We do note that neither bill recognises that the water access licence register does not represent all water within NSW; either used or traded as it excludes, the individual shareholders within irrigation corporations in NSW. If transparency is the driver for these proposed amendments, then surely a first step would be to establish equity in information currently available around the state before making consequential amendments that unfairly target a select few. It is then also important to ensure there is equity between states, particularly in the connected systems as to ensure NSW isn’t unfairly exposing their water access licence holders while other states continue to protect their water licence holder's privacy.

We suggest that the committee could consider a review of licence information currently available within NSW for water and property, as well as between states particularly, where water sources are connected, to assess if consistency of information is currently available. This review could assess if there are information gaps that could be addressed that would be of benefit to the public without having perverse impacts to personal privacy.

Amendments relating to information on drought

The preparation of towns, industries and communities for drought is undertaken through a range of planning processes contained within the *NSW Water Management Act 2000* and NSW obligations as part of the *Murray Darling Basin Plan 2012* including an Extreme Events Policy and local Incident Response Guidelines as well as, operational plans for bulk water operators, not just water sharing plans. All these approaches provide NSW a range of tools to plan for and manage, the risks associated with drought. The lowest inflow sequence is one small component of a larger, much more complex arrangement of assumptions and tools to manage and predict water supply in NSW.

For context after the Millennium Drought, the Department reviewed the climatic sequence information (which it updates models with annually) and assessed the impact of amendments to the drought of record. Our understanding that this impacted on the southern valleys only, with some of those Water Sharing Plans temporarily suspended to manage the lower than expected inflows. The drought of record for the northern regions were not impacted and in fact, the Gwydir's drought of record remains unchanged even after the most recent protracted drought (which may not be finished).

Given the higher proportion of high security to other entitlements in the southern systems, the impacts to lower priority allocations like general security were significant. Meaning a higher volume of water would be held back to ensure supply of domestic and stock, local water utilities and high security for full allocations, regardless of the actual climatic sequence. This would result in long-delays in water being made available despite it being in storage and superfluous to requirements but held as future risk mitigating tool. A contemporary policy comparison would be how NSW has managed the risks associated with the Covid-19 pandemic. Essentially the assessment of lowest inflow sequences would mean for some valleys that NSW would permanently implement allocation restrictions for drought similar to lockdown restrictions we experienced in April-June this year to prevent a pandemic at significant cost to social liberties and the economy, rather than assessing risk and implementing restrictions and rules matched to the changing risk, in the event of a pandemic (or in terms of water allocation, drought) occurring. The result of the assessment and the consideration of risk at the time, resulted in the drought of record being fixed as at the commencement of the first WSP.

The Department progressed alternate policies to manage the residual risk of the decision and provide a more dynamic response to changes in water availability. Subsequently the NSW Government also established the Water Security for Regions Program and later the Safe and Secure Town Water Supply program with a \$1 billion budget in addition to the Country Towns program all to focus on more reliable water for towns. The Basin Pipes funding was available for stock and domestic supplies providing more reliable and efficient supplies.

With the finalisation of the Murray Darling Basin Plan in 2012, NSW worked on the Extreme Events Policy finalised in 2018⁴ which set the state-wide policy for managing events, such as drought. Local implementation of this policy was developed and consulted as part of Water Resource Plans with the detail contained within valley-based Incident Response Guidelines⁵. It's also understood, Regional Water Strategies when released should focus on any other gaps particular future planning arrangements as identified through the Water Augmentation Inquiry in 2016-2018. The Department website indicates:

⁴ https://www.industry.nsw.gov.au/_data/assets/pdf_file/0008/187703/Extreme-Events-policy.pdf

⁵ See the Gwydir's https://www.industry.nsw.gov.au/_data/assets/pdf_file/0008/178775/gwydir-surface-schedule-g-incident-response-guide.pdf

“The regional water strategies will integrate and align with other NSW Government programs such as the State Water Strategy (in development) the whole of government drought response, long term land use plans for regional NSW, water resource plans, long term watering plans and the Safe and Secure Water Program which provides options to address local-level issues.”⁶

NSW has clearly adopted a broad range of policies and tools available to manage water supply risks especially in extreme events.

The Water Management Amendment (Water Allocations—Drought Information) Bill 2020 proposes amendments to one aspect of this approach without considering the other measures that are likely more effective at meeting the desired outcome of being better prepared for drought. There was also no evidence to support that the amendment of the drought of record to “reference all flow information” will provide more water for any of the towns who most recently ran out of water, for example in the broader region of and around the Gwydir Valley; Guyra, Tenterfield, Mungindi or Collarenebri, mostly because the headwater dams that this bill relates, do not supply many of the towns that were at risk of running out of water. Hence, we suggest that while the bill identifies a pertinent issue for NSW; on how they plan and manage water supply during a variable climate and in drought and how they communicate those arrangements, it falls short of adequately addressing the core issue.

Unfortunately, it appears Water Management Amendment (Water Allocations—Drought Information) Bill 2020 bill is seeking to solve an important but very complex problem, across of range of different water sources and unknown scenarios with a single solution. Its implementation is likely to have perverse outcomes in some regions and not address the problem in others, as per the Department’s earlier assessments. For these reasons we do not support the adoption of this bill but rather consider further assessment of the problem the bill has identified and brought attention to after this drought.

We recommend that a thorough assessment of water supply issues at a regional/valley scale is undertaken, when this drought is over, rather than an immediate adoption of “all flow information” without fully understanding the problem.

We recommend the fast-tracking of regional water strategies and the continuation of programs to identify and secure reliable water supplies for at risk towns and further work is undertaken to understand the future risk to stock and domestic supplies and use, as a critical priority.

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Submission ends.

⁶ <https://www.industry.nsw.gov.au/water/plans-programs/regional-water-strategies>