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Submission - Water Act 2007(Cwlth) Review

Healthy Rivers Dubbo is a grassroots community group providing a strong voice for the rivers and communities of inland NSW. We pay our respects to the Traditional Owners, past and present, of the lands we work, live and play on and acknowledge that sovereignty was never ceded.

We welcome the opportunity to make a submission to the review of the Water Act 2007 (Cwlth).

The Water Act 2007 (Cwlth) and the Murray-Darling Basin Plan 2012 are world first across borders river management legal instruments with environmental focus. Australia could lead the world out of water bankruptcy - an extremely dire and increasingly likely future facing the children whose future we are responsible for unless we act now.

The implementation of the Water Act and its legal instruments has been sabotaged by powerful multi-national corporations with support from within Australia's weakening political system, and the livability of 14% of Australia's landmass is at stake.

Table of Recommendations

End Aqua Nullius • Enact the United Nations declaration on the Rights of Indigenous People in the Water Act and all its legal instruments • Legally define Cultural Flows and mechanisms to deliver Cultural Flows to each Aboriginal Traditional Owner group in the Basin
Strengthen the environmental focus of the Water Act objectives • Budget for and recover the full 3,200 GL required by the 2012 Basin Plan as high reliability water entitlements • No more 'offset' adjustment projects • Include a target to protect and restore at least 60% of wetlands in the Murray-Darling Basin
Tighten the definition of the Environmentally Sustainable Level of Take • Reassess current sustainable diversion limits which do not represent a sustainable level of take • Consistently define and protect planned environmental water across the Basin • Ensure climate change impacts are incorporated in the process of setting extraction limits
Improve Data Integrity • Adopt double-entry water accounting • All hydrological models operated by the states to be independently audited annually and accredited

End Aqua Nullius

Enact the United Nations declaration on the rights of Indigenous People in the Water Act and all its legal instruments.

Healthy Rivers Dubbo endorses the suggested mechanisms for enacting the articles of the United Nations Declaration of the Rights of Indigenous Peoples that are listed in the [*Submission to the Review of Commonwealth Water Act 2007 Gamilaroi Water Carriers 27 July 2026*](#).

Define and deliver Cultural Flows to each Aboriginal Traditional Owner group in the Basin.

Aqua Nullius is the illegal and immoral foundation upholding the status quo, where Aboriginal people own just 0.17% of available surface water entitlements and 0.02% of total available groundwater entitlements in the Murray-Darling Basin¹.

Include in the Water Act legal definitions of:

- Cultural flows - water held and managed by Aboriginal people according to their own values and knowledge
- Mechanisms for delivery for Cultural Flows to each Traditional Owner group that have been developed within the framework of Free Prior and Informed Consent

Strengthen the environmental focus of the Water Act objectives

Budget for and recover the full 3,200 GL required by the 2012 Basin Plan as high reliability water entitlements.

Parallel to the review of the Water Act and Basin Plan, it is critical that money in the federal budget be allocated to ensure the entire 3,200 GL of water recovery required under the 2012 Basin Plan is complete as soon as possible.

The health of the Basin is in rapid decline, with the Lower Murray including the Coorong Lakes declared critically endangered and the Macquarie Marshes listed as endangered. Only more entitlements, of the highest reliability possible, in the Commonwealth's environmental water accounts will get the Coorong through the next big drought.

¹ Hartwig, L.D., Markham, F. and Jackson, S. (2021). 'Benchmarking Indigenous water holdings in the Murray-Darling Basin: a crucial step towards developing water rights targets for Australia', *Australasian Journal of Water Resources*, 25(2), p. 98

No more ‘offset’ adjustment projects.

The Sustainable Diversion Adjustment Mechanism (SDLAM) projects that sought to ‘offset’ environmental outcomes have on the whole failed. Healthy Rivers Dubbo recommends:

- Scrap all SDLAM water offset projects
- Fund the constraints relaxation projects in a stand alone framework
- Buy back the entire SDLAM shortfall
- Transfer the SDLAM shortfall from the cancelled Menindee Lakes Water Savings Project to the northern Basin tributaries of the Darling/Baaka River
- No water offset SDLAM projects to be allowed in a revised Basin Plan

Include a target to protect and restore at least 60% of wetlands in the Murray-Darling Basin.

Currently only 8% of Basin wetlands are protected, and only 4% are receiving enough water to maintain healthy ecological function under the Water Act and the Basin Plan².

Wetland health in the Basin is vital for:

- Aboriginal communities to protect and continue their cultural heritage
- Waterbird habitat, especially with the onset of bird flu
- Other wildlife and native fish
- Water quality
- Tourism
- Meeting Australia’s legal obligations under international agreements such as the Ramsar convention
- Aligning with Australia’s commitments under the Global Biodiversity Framework

Tighten the definition of the Environmentally Sustainable Level of Take

Reassess current sustainable diversion limits which do not represent a sustainable level of take.

The Murray-Darling Basin Royal Commission Report 2019 found that the setting of the current sustainable diversion limits was a political fix that was not based on science and therefore not lawful.

² Chen Y, Colloff MJ, Doherty MD, Pittock J. (2025) A consistent vegetation classification for wetland conservation and management in the Murray–Darling Basin, Australia. *Marine & Freshwater Research* 76, MF24205.

The ecological modelling that underpins the sustainable diversion limits has not been updated since 2011. In the intervening 15 years, we have experienced the millennium and tinderbox droughts, significant changes in climate patterns, and widespread shortfalls in meeting ecological water requirements. Only 26% of all assessed environmental flow requirements have been achieved since the Basin Plan was enacted in 2012.

Consistently define and protect planned environmental water across the Basin
Healthy Rivers Dubbo has long been urgently calling for the tightening of the definitions and protection of planned environmental water across the Basin, especially in NSW.

The problem with the way planned environmental water is defined in the Water Act is clearly explained by Dr Emma Carmody³:

Planned environmental water - the non-licensed share of water available for the environment under water sharing plan rules – constitutes the bulk of environmental water in our rivers and is the ‘baseline water’ upon which the Basin Plan is built. Insufficient guardrails under the Water Act, Basin Plan and state water laws (in particular in NSW – as well as Victoria) leave PEW vulnerable to surreptitious erosion which in turn undermines the intent of the Water Act: to implement Australia’s international obligations under the Ramsar Convention and Convention on Biological Diversity, and to reinstate an ESLT.

At the heart of this problem lies the inter-relationship between two provisions of the Water Act:

- 1. The expansive definition of PEW in the Act fails to adequately constrain how this concept is defined in state legislation. [...] Loose definitions of planned environmental water under state legislation which do not guarantee that planned environmental water is protected in all circumstances – as is the case in NSW – are effectively validated by the Water Act.*
- 2. Section 21(5) of the Act provides that the ‘Basin Plan must ensure that there is no net reduction in the protection of planned environmental water from the protection provided for under the State water management law of a Basin State immediately before the Basin Plan first takes effect.’ However, if the level of protection under these state laws immediately prior to the Basin Plan’s adoption was sub-optimal, then ongoing protection under the Basin Plan will also be sub-optimal.*

³ Submission Responding to the 2026 Murray-Darling Basin Plan Review Discussion Paper, By Emma Carmody, Commissioner for the River Murray – South Australia, 1 May 2026, page 20.

One example of how the ambiguous definition and lack of protection of planned environmental water in NSW has led to a crisis is the licencing of floodplain harvesting.

Evidence shows that floodplain harvesting infrastructure in the NSW northern Basin has increased by a factor of 2.5 in the last 20 years, when there has been a cap on irrigation development in place⁴. Most of this water, vast volumes, was considered planned environmental water in 1995 when the cap on irrigation development was established. The licencing of floodplain harvesting in NSW, and the increase of the Basin Plan extraction limits to allow for the additional water to be extracted has shifted an enormous volume of water from the environmental side of the ledger, to the extraction side.

A crisis now exists in NSW, where the outcome of two court cases brought and won by floodplain harvesting irrigators has shown the regulatory system is unenforceable. If the state of NSW cannot prevent the theft of planned environmental water from floodplains, it must ban the practice.

Ensure climate change impacts are incorporated in the process of setting extraction limits

The Water Act section 22 (3)(b) requires that the Basin Plan include ‘an identification of the risks to the condition, or continued availability, of the Basin water resources’, including ‘the effects of climate change’. This section must be strengthened so that observed climate impacts and the latest climate change projections must be incorporated when the environmentally sustainable level of take, and sustainable diversion limits are established.

Healthy Rivers Dubbo recommends the Water Act enforce end-of-system flow targets that pause upstream water allocation and access when flows fall below critical thresholds or as environmental crises unfold to protect ecosystem health in a drying

Climate. The NSW Connectivity Expert Panel Report 2024 provides a complete blueprint for establishing those rules in NSW.

The process of water allocation in NSW should be based on a debit accounting system, where only water that is physically in public dams is allocated.

⁴ Brown, P., Colloff, M. J., Slattery, M., Johnson, W., & Guarino, F. (2022). An unsustainable level of take: on-farm storages and floodplain water harvesting in the northern Murray–Darling Basin, Australia. *Australasian Journal of Water Resources*, 26(1), 43–58.

Improve Data Integrity

Adopt double-entry water accounting

The Water Act should require the adoption of double-entry water accounting that compares modelled and actual river flows and diversions.

All hydrological models operated by the states to be independently audited annually and accredited

State based hydrological models and their inputs cannot be independently scrutinised. In NSW floodplain harvesting diversions are estimated only, and large volumes of rainfall runoff capture are exempt from licencing and accounting all together. There is an unacceptable risk that modelling assumptions can be adjusted in ways that influence reported outcomes, rather than providing an accurate account of actual water extraction.

One proven example of the inaccuracy of NSW's Integrated Quality and Quantity Model (IQQM) is given in a peer reviewed scientific paper⁵. The report compares actual flows in the Wambuu-Macquarie River with results from the government's IQQM system. The report shows that the IQQM model considerably underestimates large flows in the unregulated river, and overestimates flows in the regulated river. This has led to the government claiming there is a 22% reduction in flow due to regulation, when the observed data shows there is a 43% reduction in flow.

Section E of the Water Act requires all hydrological models operated by the states to be independently audited annually and accredited be enabled, however this Section is currently inactive. Healthy Rivers Dubbo recommends reactivating Section E of the Water Act.

Thank you for the opportunity to provide comment on the review of the Water Act 2007 (Cwlth).

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⁵ Statistically Integrated Flow and Flood Modelling Compared to Hydrologically Integrated Quantity and Quality Model for Annual Flows in the Regulated Macquarie River in Arid Australia, Shiquan Ren & Richard T. Kingsford, 17 November 2011