

**Submission**  
**Murray Darling Basin Royal Commission**

May 2018

## GENERAL

### NSW Irrigators Council

NSW Irrigators Council is the peak irrigation sector body in NSW representing the interests of over 12,000 Water Access Licence Holders. The 26 Members of NSWIC are commodity groups in the cotton, rice, dairy and horticulture sectors, the NSW Farmers Association, valley-based irrigator representative bodies or food & fibre producer organisations, and irrigation corporations.

While NSW Irrigators Council expresses the collective view of the Council, individual Members reserve the right to express their own views on specific policies or areas of interest and expertise.

### Murray Darling Basin Plan

NSWIC opposed the introduction of the Murray Darling Basin Plan in its current form because the Council believes it is flawed and will have significant negative impacts on irrigators and Basin communities through the recovery of water for the environment out of productive irrigated agriculture. However, NSWIC accepts that the Basin Plan is supported by both sides of politics in the Federal Parliament and therefore the Council is now focussed on ensuring that its implementation has minimal impact on irrigators and Basin communities; that any 3<sup>rd</sup> party impacts are mitigated; and that the recovered environmental water is deployed as efficiently and effectively as possible.

NSWIC holds the following views on the Basin Plan:

- The Plan must be implemented to achieve a balance between its environmental objectives and the social and economic wellbeing of Basin communities – and for the avoidance of doubt the *Water Act 2007 (Cth)* should be amended to make this requirement for triple bottom line accounting of the impacts of the Plan irrefutable.
- The Basin Plan must be focussed on achieving its environmental objectives – not simply on achieving the recovery of a set volume of water based on a belief that the deployment of flood level flows will, of themselves, achieve the objectives of the Plan.
- As with the community expectations in regard to irrigation water, environmental water should also be deployed as effectively and efficiently as possible.
- The Basin Plan has environmental objectives throughout the Basin and its success should not be measured by additional flows to South Australia and the condition of the Lower Lakes, Coorong and Murray Mouth alone.

## SPECIFIC RESPONSES TO THE ROYAL COMMISSION – ISSUES PAPER # 1

NSWIC provides the following responses to the questions raised in the Commission Issues Paper # 1 on matters of particular interest to the Royal Commission:

### a) Process Used to Determine the Environmentally Sustainable Level of Take.

- It is difficult to provide a complete response to the Royal Commission because the Murray Darling Basin Authority (MDBA) has not provided all the detailed assumptions that underpin its modelling. Nevertheless, it has become apparent over time that the Authority has used modelling assumptions that do not reflect 'real world' water deployment scenarios. However, the extensive work done by the NSW Government as the basis of valley by valley caps applied since 1996, and on sustainable levels of take that underpinned Water Sharing Plans (WSPs) from 2000, has provided a benchmark

against which the MDBA sustainable take modelling can be assessed. We note that the MDBA's model was peer reviewed and assessed by CSIRO as appropriate and has since had a further review of the methodology as required by and endorsed by the Ministerial Council of Basin Governments (MINCO).

- NSWIC holds the view that the MDBA has used the results of modelling as too much of an absolute. The MDBA has been too bound by often highly theoretical modelling (as only one of the decision making inputs), and with too great a focus on achieving end-of-system flows through passing large aggregated flows through the Basin that may be theoretically possible, but impossible to achieve without significant 3<sup>rd</sup> party impacts.
- NSWIC believes that in all but two valleys – the Gwydir and Macquarie – the cap factors that form the basis of sustainable extraction limits are 'within the ballpark' compared with previous NSW Government figures (as accepted by the NSW irrigation sector). While these two valleys should have their cap factors reviewed, NSWIC rejects as unnecessary any further review and adjustment of the current cap factors and the associated extraction limit sustainable level of take for other NSW Basin valleys.
- NSWIC notes that in many valleys the WSP limits total water take to the extent that it is impossible for irrigators to extract to the full cap value (eg Lachlan). We also note that the current balance of take over the long term has created 17,000GL of 'cap credits' across the Basin - further underpinning the fact that there has been historic extraction well below the Basin extraction limits.

#### **b) Supply Measure Projects**

- NSWIC contends that there is no technical dispute over the 36 supply measure projects presented by the Basin States to the MDBA for assessment under the Sustainable Diversion Limit Adjustment Mechanism (SDLAM) provisions, as agreed by the MINCO. MINCO has approved the 36 projects for MDBA assessment, and endorsed the Authority's assessment of the likely levels of water savings offsets. The Victorian and NSW Governments also launched a parallel expert assessment of the likely levels of SDL Project water savings offsets, with the advice from that panel that a similar quantum of offsets was feasible. The MDBA projection, as assessed against the Project Feasibility Studies presented by the Basin States, was determined as 605GL against a Plan established offset figure of 650GL. In any case, any shortfall in achieving the projected savings will be weighed against demonstrated savings at the time of the full implementation of the Plan in 2024, and any remaining gap identified – at which time the Commonwealth may require the States to bridge that gap or it may re-enter the water market to make good the recovery volumes.
- NSWIC is aware of recent media coverage questioning the 605GL of water recovery offsets, but we contend that the basis of this opposition to the SDLAM provisions is largely political – driven by a desire in some quarters to see the Plan rewritten to achieve a higher total volume of water recovery for the environment.

#### **c) Recovery of 450GL for Enhanced Environmental Outcomes**

- NSWIC has serious doubts whether the full 450GL of Additional Environmental Water can be recovered under the provisions governing its recovery within the *Water Act 2007 (Cth)* ie that this can only be done if the outcome of the recovery is positive or neutral. NSWIC submits that the Northern Basin Review socio-economic impact assessment and the preliminary results of the MDBA Southern Basin Review have proven deeper than anticipated negative impacts on a significant

number of Basin communities from the water recovery to date. This is why NSWIC supports a position of no further water recovery from irrigated agriculture as on-farm water recovery. However, as identified in the EY Report on potential water recovery from efficiency measures, off-farm recovery and urban and industrial recovery show potential to provide significant volumes for the environment that will not impact on the future availability of water to irrigators through the water market.

- Nevertheless, NSWIC remains confident that up to 450GL of additional environmental water recovery is possible, through recovering water from existing pools not included in the Plan baseline and through other targeted recovery measures.
- NSWIC acknowledges that the EY Report found that the recovery of the 450GL is technically feasible if the Commonwealth utilises the 6 recommended recovery pathways in full. However, NSWIC has concerns with the EY assessment methodology and its assumptions on water recovery volumes potentially available -in particular, the projected recovery from over-recovered valleys including the Lachlan, Macquarie, Namoi, Gwydir and Barwon Darling, and the extent to which water can be recovered through on-farm efficiency programs without having a significant economic impact on Basin communities, unless very significant additional funding is available to ameliorate those impacts. NSWIC submits that the long-term impacts of loss of regional employment through removal of water from productive use is exceedingly difficult to replace through short term development programs within regional communities – and to that extent the basis of the EY Report assumptions must be approached with caution in any assessment of up- water recovery program feasibility.

#### **d) Water Recovery to Date**

- NSWIC understands that the water recovery to date of 2106GL, as booked by the Department of Agriculture & Water Resources, includes water recovered through purchases and via shared water recovery from efficiency measures, or as contracted water recovery volumes not yet fully delivered. NSWIC accepts that some infrastructure investments have not yet been run long enough or been fully commissioned to allow an assessment of whether the recovered volumes will match the volume estimates. Seasonal conditions over a number of years may impact on how readily these recovery volumes can be assessed. However, the recovery volumes are not nominal, but actual, in regard to the contracted volumes to be returned to the Commonwealth. Therefore, the risk of lower than anticipated recovery volumes lies with the project proponents and is subject to make good provisions. We also note that the Plan recovery totals are subject to a final reconciliation at the Plan's completion date in 2024.
- NSWIC has no reason to doubt the Department of Agriculture and Water Resources accounting of the recovered or prospective recovery volumes.

#### **e) Northern Basin Review**

- NSWIC supports the Northern Basin Review (NBR) recommendations from the MDBA, including the reduction of the Northern Basin Recovery target by 70GL to 320GL, and the Council was highly critical of the Plan amendments being voted down by the Senate in February 2018. The decision to reduce the Northern Basin recovery target by 70GL was recommended by the MDBA after an extensive review of the science around Northern Basin water recovery and deployment of that water, as well as the social and economic impacts of existing and further water recovery on Basin communities in the Northern Basin. That review found that the reduced recovery volume would

only have a marginal impact on environmental watering outcomes and ironically would result in one additional environmental target being met. It was a win-win for the environment and for Northern Basin communities.

- the voting down of the NBR recommendations also removed from play the 'toolkit' measures of non-flow related complementary environmental measures in the NBR package -including works to reduce cold water pollution, riparian vegetation improvements and feral pest control, and to allow for the shepherding of environmental flows through the system.

#### **f) Views of Indigenous People**

- The view that the indigenous communities of the Basin have not been consulted on Basin Plan implementation and management ignores the fact that Murray Lower Darling Rivers Indigenous Nations and Northern Basin Aboriginal Nations are invited to MDBA Peak Bodies briefings and that Indigenous representatives are also engaged in the Stakeholder Advisory Panels established by the NSW Government to advise on valley specific Water Resource Plans (WRPs). The WRPs include a separate management stream for the sharing of water resources with Aboriginal communities to meet their cultural water objectives.
- NSWIC acknowledges the essential need to ensure that Aboriginal communities are consulted on Cultural Water matters to identify and prioritise sites that require water for cultural purposes – allowing for the targeted deployment of Commonwealth water holdings to meet these objectives.
- NSWIC emphasises the need to separate the needs of Aboriginal communities in the Basin to have water deployed for cultural purposes vs the desire to have entitlements to water for the economic benefit of those communities. The distinction between cultural and economic water needs to be made.
- The NSWIC position on Cultural Water and Indigenous ownership of water entitlements is as follows:
  - NSWIC does not accept that Aboriginal communities have an inherent right to ownership of water entitlements for economic purposes – as described in the 'Echuca Declaration'.
  - NSWIC believes that should Aboriginal communities wish to beneficially own water entitlements for economic purposes, these entitlements should be acquired via the water market, in line with other commercial water acquisitions.
  - Cultural water deployments must be managed as part of the Basin watering strategies by utilising water held by the Commonwealth to meet cultural as well as environmental outcomes identified in annual watering plans.

#### **g) Illegal Take**

- The recent focus on illegal take of water in the Basin, and particularly in the Barwon Darling system, has arisen from the allegations aired on the ABC 4 Corners 'Pumped' programme aired in July 2017. This programme asserted widespread illegal take of water in the Barwon Darling. NSWIC submits that the allegations aired on the ABC 4 Corners program should not be accepted as fact, due to a number of unfounded assertions contained in the program. Specifically:

- While two subsequent prosecution actions by WaterNSW alleging illegal take of water are currently before the NSW Land and Environment Court, these allegations are, as yet, unproven.
  - The ABC program alleged that an irrigator was extracting water on the Barwon Darling in October 2015 when not allowed. This allegation relied on hearsay and is untrue, as water flows in the system at that time allowed extraction by A Class water licence holders in accordance with the Barwon Darling WSP.
  - The ABC program alleged that 75% of the water in the Barwon Darling was controlled by two A Class irrigators. This claim was incorrect, as the total A Class extraction licenced on the Barwon Darling is less than 10GL of an average total annual flow through the system of 3500GL. In fact, the environment's share of the average annual flow in the Barwon Darling is 95% - meaning total licenced extractions in the system are only 5%.
  - The ABC program alleged no metering by a number of large irrigators on the Barwon Darling, when in fact all large irrigators on the Barwon Darling are metered.
  - The ABC program alleged meter tampering on the Barwon Darling, but used vision of a meter in another valley that had a retrofitted with a 'time of use' datalogger, rather than an impeller - the illegal removal of which was incorrectly alleged.
  - The ABC program alleged that environmental water bought by the Commonwealth was illegally pumped by irrigators on the Barwon Darling, however WaterNSW subsequently confirmed that there was no planned environmental water flow in the river system at the time alleged, so no water for the environment paid for by the Commonwealth had been extracted.
- NSWIC has publicly expressed its concerns arising from the ABC 4 Corners programme allegations; that the reporting on alleged water theft on the Barwon Darling relied heavily on hearsay and not on established facts; and that the programme reflected significant bias against irrigators and the cotton industry, and therefore lacked editorial balance.
  - Nevertheless, NSWIC does not resile from fact that a number of irrigators across NSW have in the past been cautioned and required to 'make good', fined, or prosecuted for unlicensed extractions. Past NSW Office of Water and DPI Water statistics clearly show these actions have occurred. However, the statistics also support the NSWIC contention that all but a tiny minority of irrigators in NSW abide by the provisions of their water licences, and in the context of over 20,000 Water Access Licences (WALs) the level of offending has been very small.
  - NSWIC maintains a 'zero tolerance' position on illegal water take and expects that the NSW Government's water take compliance provisions will be stringently applied, and when necessary the very heavy penalties pertaining to illegal water extraction in NSW will be applied to the full extent of the law. We note that NSW has the heaviest penalties applying to illegal take of water of any Basin State.
  - NSWIC welcomes the findings of the raft of Inquiries into water take compliance in NSW that followed the airing of the 4 Corners program allegations, including - the Matthews Inquiry, the NSW Ombudsman's Report, and the Reports by the MDBA and a parallel Independent Inquiry into compliance across the Basin. The Council acknowledges the serious breakdown of the NSW water

compliance system uncovered by the programme – and has publicly expressed its concern that the stringent compliance system that it thought was being implemented in line with irrigator expectations (as the group which pays for compliance functions), was not being effectively managed. The consequence has been a loss of community confidence that irrigation water is being effectively measured and audited in NSW.

- NSWIC supports the NSW Government’s subsequent legislation to establish an independent water access regulator, NRAR, which will police WAL provisions at arm’s length from the water policy, planning and the licensing management agencies of Government. The Council also supports the Government’s launch of the Water Reform Action Plan (WRAP) to ensure all water extraction can be measured and audited. It does not, however, believe that the Matthews Report mantra of ‘No Meter, No Pump’ is realistic in all water extraction scenarios, because it relies on installation of AS4747 accredited meters that are not widely available and are too expensive to justify in ephemeral unregulated systems, small scale water extraction sites, and where metering is not able to be applied - such as in large irrigation canal offtakes and in flood plain harvesting. The key must be flow measurement standards and recording of extractions that are able to be audited by the regulator. The WRAP provisions will allow for this.
- In summary. NSWIC believes that consequent to the breakdown of the NSW water extraction compliance system, the NSW Government response will ensure that the NSW system will be world leading, and also establish a new benchmark for measurement and metering amongst the Basin States to ensure accurate measurement and regular audit of water extractions.

#### **h) Irrigated Crops**

- NSWIC is aware of the views expressed by some in the community who believe that irrigated agriculture is extracting too much water; that this percentage of available water is increasing; and the current level of water extraction for irrigated agriculture is not sustainable. NSWIC contends that these beliefs are based on some fundamental misconceptions:
  - That cotton and rice production are heavy users of water that cannot be justified in the Basin. In fact, both industries are world leaders in water use efficiency, and the cotton industry, in particular, has reduced its water use by 40% over the last 15 years. In any case NSWIC maintains that crop use should not be dictated by regulation, but by the market, which will be driven by the returns per ML of water utilised for each end use. Irrigators have property rights in water (licenced water entitlements), and they should be able to determine the type of food or fibre production they expend their water on. Unless the end use of water is illegal, there should be no interference by Government in an irrigator’s right to use that water for their desired crop or pasture production end-use.
  - Water use for agriculture in the NSW Basin areas has been capped since 1996, and the Basin Plan will limit the water available for productive use by up to a further 3200GL across the Basin by the time of full its full implementation in 2024. In reality, the environment’s share of available water has been increasing since 2000 – not decreasing. Including pre-Basin Plan State water recovery for the environment programs, the water recovered from productive use to date is in excess of 4000GL over the last 17 years.
  - There is also a widespread misconception that irrigators in NSW fully draw the maximum volume of their licences each year. All water extractions are subject to annual resource availability determinations and water entitlement held against each licence class is only

made available if the resource is available to be allocated. So, if inflows are low, allocated volumes will also be limited. Unlike SA and Victoria where the whole (SA) or a large percentage of water rights (Vic) are High Reliability and will be allocated at high percentages of licenced volumes in most years, in NSW 90% of licences are General Security or Low Reliability, which means take for irrigation is very closely linked to seasonal resource availability and irrigation allocations can be highly variable – even in regulated systems.

- Valley by valley caps are conservative – the reason why 17,000GL in cap credits have been accrued across the Basin. In other words, irrigators have historically drawn far below their entitlement volumes. Very few reaches of rivers or groundwater systems are able to achieve any growth in water use under their WSP provisions, and most are operating far inside their valley or aquifer caps.
- NSWIC emphasises that water extraction for irrigation is not a free-for-all. Every WAL holder must have a licence and must abide by their extraction limits. To do otherwise is to risk heavy fines or the suspension of that licence in the case of repeat offending.

#### **i) Constitutional Basis for the Water Act**

- The NSWIC position on the constitutional rights regarding water is that the States retain their residual powers over water under the Constitution. The Basin States have agreed to implement the Basin Plan under the provisions of the *Water Act 2007 (Cth)*, but have not given up the primacy of their constitutional right to manage the water resources of their State/s. NSWIC supports this position and would not support a further delegation of rights over the management of water to the Commonwealth or its agencies.

#### **j) Darling River and Menindee Lakes**

- NSWIC acknowledges that there have been misconceptions that have led to the criticism of upstream irrigators on the Barwon Darling and its tributaries, and the 2012 Barwon Darling WSP over the recent instances of low volumes in the Menindee Lakes and of no-flow conditions along the Darling - including the Lower Darling below Menindee. Views have been expressed that illegal over extraction of water is the base cause of low flows in the Darling, and this issue has been covered in the section of this submission on Illegal Water Take. However, there are a number of additional points that need to be made in regard to the Darling River and the Menindee Lakes:

##### Barwon Darling

- The Barwon Darling river system is an unregulated system, into which water flows from a number of both regulated and unregulated tributaries. It is highly variable in flow regime, particularly when its summer dominant annual rainfall season fails, and 4% of the time since records began the Darling has ceased to flow.
- The Barwon Darling is a very long system of 1600 kms with 14 separate river reach management zones. Average annual flows are 3500GL, 5% or 189GL of which is extracted across 4 classes of Water Access licence – Urban and Domestic & Stock, A, B and C Class licences. Reflecting the high degree of variability of system flows, extraction of water is governed by flow rates at gauging points along the river with each class of irrigation



extraction licence (A, B and C) governed by river flow rates that dictate when pumping is allowed.

- Water extraction on the Barwon Darling is governed by the 2012 WSP which resulted from an intensive consultation over 4 months with stakeholders along the river above Menindee. Extractions under the Barwon Darling WSP reflect the large reductions in overall take under the Barwon Darling Cap Management Strategy which preceded the WSP. This strategy resulted in a 64% reduction in licence entitlement volume on the Barwon Darling – dropping the total licenced entitlements from 523GL to 189GL. The MDBA has recently reviewed the history of extractions on the Barwon Darling and confirmed that the cap on extractions has never been breached.
- The transformation of B Class licences to A Class licences at the time of the implementation of the 2012 WSP reflected the large drop in entitlement volumes and provided an offset to irrigators who had lost significant potential access to higher volumes of water for irrigation. A Class licence volume on the Barwon Darling has halved from 20GL to 10GL, with pumping allowed at flow rate of 390ML per day at Bourke, compared with 350ML per day before, and B Class licenced pumping can only occur at flow rates of 1250ML compared to 390ML a day at Bourke previously.
- Another criticism levelled at Barwon Darling irrigators is that the daily extraction by irrigators has increased due to the lifting of pump volume limits under the WSP – which has affected low flow events. The higher flow thresholds at which pumping can commence as detailed above runs counter to this claim, as does the fact that compared with pumping capacity pre and post the 2012 WSP there is 850ML net volume per day less pumping capacity now in place. This is due to the retirement of licences and sale of water to the Commonwealth. It is notable that the Commonwealth has significantly over-recovered water for the environment on the Barwon Darling. Against an MDBA nominated recovery target of 6GL on the system 32.6GL has been recovered to date – significantly reducing the potential for higher extractions for irrigation.

#### Menindee Lakes

- The Menindee Lakes storage system captures flows down the Darling to provide water security for Broken Hill and allow water to be deployed downstream to the Murray and into Lake Victoria and SA via the Lower Darling under the water sharing arrangements between NSW, Victoria and SA detailed in the Murray Darling Basin Agreement, with the Commonwealth managing river operations for the Murray (and in part the Murrumbidgee) through the MDBA. As such the Menindee system forms part of the Southern Connected System, and not part of the Barwon Darling system, which is considered part of the Northern Basin. The Darling moves from an unregulated river above Menindee to a re-regulated river below Weir 32 at Menindee. The MDBA maintains management control over the Lakes whenever the volume reaches 620GL, with NSW resuming control over the system once the storage volume falls below 480GL. These thresholds are likely to change under the SDLAM Project at Menindee.
- Evaporation rates at Menindee are very high with on average 450GL per year lost. To assure water supply to Broken Hill over 320GL of water must be kept in storage to cover a minimum 22 months of urban water supply of approximately 10GL/year, effectively a

storage requirement of 32ML to provide 1ML. At 3% efficiency, this arrangement has long been criticised as one of the least efficient town water supplies in the world.

- A combination of the installation of new inter-lake regulators, increased outflow infrastructure and the building of an alternative water supply pipeline from the Murray at Wentworth to Broken Hill will allow water to be moved through Menindee more rapidly because it will not be necessary to hold such large volumes and incur the associated high evaporation losses to underwrite Broken Hill's water needs. This is estimated by the NSW Government to generate water savings of 106GL per year.
- Additional environmental flows down the Darling due to environmental water recovery are estimated to generate 150GL per year of extra water reaching Menindee on average, with higher net flows through the Lower Darling in most years. However, projections also show that there is likely to be low-flow or no-flow conditions in the Lower Darling in one more year in 100 – increasing from 5% of years to 6%. Therefore, the reliability of water supply to irrigators downstream of Menindee but located above the Murray weir pool upstream of Wentworth will be impacted.
- Because of this reduction in water supply reliability NSWIC supports the Commonwealth purchase of high security water rights from irrigators who have permanent horticultural plantings that require assured annual water supply along the Lower Darling above the Murray weir pool. NSWIC also supported the purchase of the Tandou water entitlements by the Commonwealth because it recovered more than 20GL of High and General Security water without 3<sup>rd</sup> party impacts, but also retired 110GL of Murray - Lower Darling carryover entitlement in the Menindee Lakes, and will allow the holding of more water in the upper Lakes system to avoid water losses in Lake Cawndilla from which Tandou drew most of its water. These purchases will allow the Menindee system to be more acutely managed to maximise downstream flows to SA and reduce evaporation losses by a large proportion.
- NSWIC supports the status quo of the Menindee Lakes and Lower Darling as forming part of the Southern Connected System within the Murray – Lower Darling WSP zone; separated from the Northern Basin and the Darling above Menindee once water flows into the Menindee system. NSWIC does not believe that management of the entire length of the Barwon and Darling rivers as a single connected river system above the Murray weir pool in the Lower Darling is climatically or administratively feasible, as continuous connectivity of the system is impossible to achieve because of the high degree of variability in flows. The required renegotiation of the Murray Darling Basin Agreement to achieve this end introduces an additional complexity in changing the status of the Menindee Lakes and the Lower Darling.

#### **k) Deadline for Water Resource Plans**

- It is difficult to accurately assess whether NSW will be able to deliver 22 accredited Basin WRPs by the deadline of July 2019. Shortfalls in planning capacity to achieve this significant task, plus upheavals in the development of the WRPs due to a number of rounds of management changes in water administration in NSW, have impacted the already tight deadline for WRP completion and accreditation. The transition over the last four years from the NSW Office of Water to DPI Water to the Department of Industry – Water, plus the shifting of some management responsibilities from the Departments to WaterNSW (such as compliance and licencing functions) has significantly impacted progress with WSP reviews and WRP development. It is likely that most (but perhaps not all) WRPs for the NSW Basin will be finished and accredited by the 2019 deadline. This reflects the

size of the task confronting planners in the NSW Government agencies, and the loss or severe shortage of planner resources because of the inherent inertia that results from major organisational restructures, management changes, loss of experienced staff, and redefinition of responsibilities between water agencies.

- It is also increasingly likely that irrigators in Inland NSW will not have their substantive issues with existing WSPs dealt with satisfactorily due to the tight completion deadline for inclusion of the WSPs as the principle component of the new Water Resource Plans. The Stakeholder Advisory Panels in each WRP zone have continued to meet to discuss valley by valley issues with WRP draft documents, but a hiatus in moving the WRP development process forward has put the WRP deadlines under further pressure while progress with Basin Plan implementation slowed between February and May 2018 due to Basin Plan related Disallowance Motions in the Senate.
- A significant unknown in the finalisation of WRPs in the NSW Basin zones is how effectively the MDBA accreditation process can be streamlined to allow for the rapid approval of the WRPs presented by the Basin States. Despite the MDBA having planners embedded with the NSW Department of Industry – Water, the existence of 55 guiding principles and assessment points for MDBA WRP approval also raises questions as to whether sufficient planning resources are available to the Authority to complete the accreditation task by deadline. As at May 2018 the first NSW WRP was yet to be accredited and most, if not all, NSW WRPs will need to be lodged with the MDBA by the end of 2018.
- NSWIC notes that the hard-wired deadlines for each major Basin Plan component, including the WRPs, were developed without a realistic assessment of the size of the task and time required for what is proving a very difficult and complex planning, consultation and approval process. NSWIC remains deeply concerned that the hard deadline for WRP accreditation will ultimately deliver sub-optimal Plans.

#### **l) Environmental and Ecological Health of the Murray Darling Basin**

- NSWIC notes some claims that there has been no progress to date in achieving improvements in the environment across the Basin but rejects them as incorrect. The Council also notes the rejection of these claims by the MDBA and Commonwealth Environmental Water Office (CEWO) and cites numerous reports by both these agencies reporting early and progressive improvements in achieving improved environmental health at key sites across the Basin.
- In particular NSWIC points the Royal Commission to the CEWO reports on results from annual environmental watering programs, and a number of MDBA reports on progress made in achieving environmental targets – including the recent five year review of Basin Plan progress. There have been 750 environmental events over the last 5 years – with improvements noted in stream and wetlands connectivity, the health of riparian vegetation, native fish breeding and mobility, and bird breeding events. Despite recent criticism reported in the media that there has been no improvement in the condition of the Coorong at the end of the system, the MDBA assessment has shown progress with fish movement, water quality and water grass regeneration, begging the question of whether additional flows are actually the answer required or if the real solution lies in additional ‘non-flow’ measures.
- NSWIC submits that it is unreasonable to expect significant change to environmental assets and the ecology of the Basin over a very short run timeframe of only five years. Nevertheless, positive change is beginning to happen. Previous views expressed by the CEWH and MDBA support a more

reasonable time for assessment of progress at Basin-wide scale of ten years – understanding that the Basin Plan is not yet fully implemented, water recovery for the environment is not yet completed and complementary measures remain un-resourced. However, It is far more reasonable to assess environmental impacts on a Basin-wide scale over a number of decades, rather than over the initial five establishment years of the Plan – as the extent of the Basin, river system complexity, and inherent climatic variability of the Murray Darling Basin will require long term evaluation of environmental improvement over many years.

## **SPECIFIC RESPONSES TO THE ROYAL COMMISSION – ISSUES PAPER # 2**

NSWIC appreciates the opportunity to make a submission on the Royal Commission Issues Paper #2, however the Council does not intend providing an extensive response due to the issues raised being significant matters of Constitutional Law.

NSWIC does, however, make the following points:

- While the States have residual powers in the Australian Constitution relating to water, the Basin States have agreed to implement the Basin Plan through signing two Inter-Governmental Agreements and also through the parallel provisions of the Murray Darling Basin Agreement between the Commonwealth, Victoria, South Australia and NSW. The practical effect of these Agreements is to bind the Basin States to the provisions of the *Water Act 2007 (Cth)*.
- The *Independent Review of the Water Act 2007 (2014)* fielded submissions from NSWIC and other organisations regarding the need to make the requirement for triple bottom line assessment of the impacts of the Basin Plan absolutely clear in the Act – to ensure the achievement of balance between the environmental, social and economic outcomes of the Basin Plan - as a guiding principle of the legislation. The Independent Panel – Chaired by Eamonn Moran PSM QC – specifically referred to this matter at the Melbourne Hearing of the Review; stating that the Water Act already made it clear that the triple bottom line assessment of Plan impacts must be applied and a balance between the three achieved.
- NSWIC submits that if the Royal Commission agrees with the view of the *Independent Review of the Water Act 2007*, the Environmentally Sustainable Diversion Limit must also be bound to the triple bottom line assessment principle contained in the Act.
- NSWIC acknowledges that – to the extent that the triple bottom line assessment principle applies to the Basin Plan – this may call the constitutional validity of the *Water Act 2007* and therefore the legislative underpinning of the Basin Plan into question, because the need to achieve environmental outcomes formed the basis of the Commonwealth’s use of its external powers to enforce international environmental covenants to which Australia is a signatory (eg RAMSAR Agreements).

For Further Information Regarding this Submission:

Mark McKenzie  
CEO – NSW Irrigators Council