



# Submission to the Murray-Darling Basin Plan Review

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# Submission to the Basin Plan Review

River Integrity Project is focused on the failed implementation of water policy and law in Australia. Our purpose is to hold governments and institutions to the laws by which they should be bound.

This is a submission to the Basin Plan Review. Where relevant, it should also be considered for the Water Act Review and the Menindee Lakes Review.

## Recommendations

Recommendation 1. That a Basin Plan Review be undertaken which is independent of the MDBA and includes an assessment of whether the Basin Plan and the MDBA are achieving their statutory purpose (Independent Basin Plan Review).

Recommendation 2. That the Water Act is amended to require a five-yearly review independent of the MDBA which examines whether the Basin Plan and the MDBA are achieving their statutory purpose.

Recommendation 3. That the Independent Basin Plan Review should assess the extent to which the Basin Plan has given effect to relevant international agreements.

Recommendation 4. That the Basin Plan be amended so that its definition of Sustainable Diversion Limits is consistent with the Water Act definition of Sustainable Diversion Limits.

Recommendation 5. That all forms of take are included in the assessment of compliance with the annual Sustainable Diversion Limit.

Recommendation 6. That an independent analysis is undertaken of the net economic return to the Australian economy from the use and management of the Basin water resources.

Recommendation 7. That an independent analysis is undertaken of the impact of the Basin Plan on water security for all uses of Basin water resources.

Recommendation 8. The Independent Basin Plan Review should describe how the principles of ecologically sustainable development have been taken into account in making and implementing the Basin Plan.

Recommendation 9. That 'best available scientific knowledge' explicitly includes Cultural science.

Recommendation 10. That the Independent Basin Plan Review is based upon best available scientific knowledge, including Cultural science.

Recommendation 11. That the Independent Basin Plan Review should be accompanied by complete modelling reports.

Recommendation 12. That the results from the Expert Elicitation process should be set aside.

Recommendation 13. That the Independent Basin Plan Review should include a full explanation of how climate change risks and vulnerabilities were included in the assessment of the Sustainable Diversion Limits.

Recommendation 14. That the Independent Basin Plan Review should describe how water was managed to improve the spiritual, environmental, cultural, social and economic conditions of Aboriginal people, and to recognise and protect the interests of Aboriginal people.

Recommendation 15. That the Independent Basin Plan Review should demonstrate how the MDBA has considered the management of climate change risks, particularly with respect to the principles of ecologically sustainable development.

Recommendation 16. That an independent stocktake is undertaken of all independent reviews into water management and the extent to which the recommendations of those reviews have been implemented.

Recommendation 17. That the Independent Basin Plan Review should give full consideration to all relevant independent reviews.

Recommendation 18. That a regulatory framework be established that gives effect to the statutory purposes of the Water Act.

Recommendation 19. That the Inspector-General of Water Compliance should be fully independent and have necessary funding, capacity and powers to secure the Objects of the Water Act.

## Legislative Purpose of Water Act

1. It is incontrovertible that the Water Act was enacted to deal with obvious and damaging over-extraction in the Murray-Darling Basin. It was announced by the then Prime Minister Howard in the following terms:

*As well as improving water efficiency, we need to confront head on and in a comprehensive way, the over-allocation of water in the Murray-Darling Basin. We must strike a sustainable balance between the demands of agriculture, industry and towns on the one hand and the needs of the environment on the other.....This is the Commonwealth assuming responsibility for a problem created by the states. We are willing to address the chronic over-allocation of water in the Basin and to carry the entire cost of doing so.<sup>1</sup>*

2. In his second reading speech of the Water Bill 2007, the then-Water Minister, Malcolm Turnbull said:

*The Water Bill and the national plan build on the 2004 National Water Initiative agreement, signed by all governments. The key objectives of the National Water Initiative are to improve the efficiency of water use and establish clear pathways to return all water sources to environmentally sustainable levels of extraction. These are the objectives of the Water Bill and the National Plan for Water Security.<sup>2</sup>*

3. The South Australian Royal Commission Report (Royal Commission) into the Murray-Darling Basin Plan stated:

*...the Water Act, properly defined, requires environmental considerations to be paramount, and that economic and social outcomes are irrelevant to the determination of the Environmentally Sustainable Level of Take.<sup>3</sup>*

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<sup>1</sup> Howard. (2007). Address to the National Press Club Great Hall, 25 January 2007, Parliament House. <https://pmtranscripts.pmc.gov.au/release/transcript-15149>

<sup>2</sup> Turnbull. (2007). Water Bill 2007, Second Reading Speech, Wednesday 8 August 2007. <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2007-08-08%2F0016%22>

<sup>3</sup> Walker. (2019). Murray-Darling Basin Royal Commission Report. <https://cdn.environment.sa.gov.au/environment/docs/murray-darling-basin-royal-commission-report.pdf>

4. The MDBA did not prepare the Basin Plan based upon this interpretation. The MDBA retreated from the science-based targets in the Guide to the Basin Plan, published in 2010. Since then, the MDBA has ceased to be an institution which can be relied upon to “use best available science”. As the Royal Commission said:

*Every subsequent step based on a false foundation is a misstep.*<sup>4</sup>

5. As is clear from our analysis below, the first misstep continues to contaminate the MDBA decision-making, including the Review.

## Basin Plan Review Process

6. The MDBA is required to undertake a review of the Basin Plan (the Review) by the Water Act.<sup>5</sup> In undertaking this review, the MDBA has discretion as to how it should do so. When a discretionary statutory power is granted, it must be exercised reasonably and for a proper purpose:

*... identifying a wrong issue, asking a wrong question, ignoring relevant material or relying on irrelevant material in a way that affects the exercise of the power is to make an error of law.*<sup>6</sup>
7. The clear intention in undertaking a statutory review of the Basin Plan is to determine whether the Basin Plan is fulfilling its purpose.
8. The process to review the Basin Plan includes the MDBA:
  - 8.1. consulting with the Basin States, the Basin Officials Committee, the Basin Community Committee, in preparing a Discussion Paper,
  - 8.2. preparing a Discussion Paper that sets out issues to be addressed in the Review,
  - 8.3. inviting public submissions on the Discussion Paper for at least 12 weeks,
  - 8.4. considering any submissions it receives.
9. After having undertaken the Review the Authority may determine that the Basin Plan should be amended.
10. It follows that the scope of the Review must mirror the scope in the Discussion Paper. The approach to the Review must be identified in the Discussion Paper and the evidence used in the Review must be the same evidence used in the Discussion Paper.
11. This being the case, deficiencies in the scope, approach or evidence base of the Discussion Paper will be repeated in the Review. Any subsequent amendment may suffer from having identified a wrong issue, asked the wrong question, ignored relevant material or relied upon irrelevant material.
12. As we will describe below, the way in which the MDBA has undertaken the Review, of which the Discussion Paper is a product, falls so short of a proper deliberative process that the power of review conferred by the Water Act has been improperly exercised.

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<sup>4</sup> Walker. (2019). *Murray-Darling Basin Royal Commission Report*, Page 25.

<https://cdn.environment.sa.gov.au/environment/docs/murray-darling-basin-royal-commission-report.pdf>

<sup>5</sup> Part 1, Division 1, Subdivision G, Water Act

<sup>6</sup> Minister for Immigration and Multicultural Affairs v Yusuf (2001) 206 CLR 323 at [82]

# The statutory framework to conduct the Review

13. As stated above, the clear intention for undertaking the Review is to determine whether the Basin Plan is fulfilling its statutory purpose. This must inform the method and process of the Review.
14. The Water Act grants some discretion to the MDBA in undertaking the Review. However, a review of the Basin Plan must be a proper deliberative process which measures the effectiveness of both the MDBA and the Basin Plan against the Objects and other statutory requirements.
15. The MDBA is undertaking a review of the Basin Plan which it drafted and is tasked with implementing. This is an obvious conflict of interest. The MDBA should be disqualified from undertaking the Review. This is a structural flaw of the Water Act. However, in circumstances where a conflict of interest exists, it is incumbent upon the MDBA to avoid actual and perceived conflicts. The MDBA has not addressed this conflict.

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**Recommendation 1. That a Basin Plan Review be undertaken which is independent of the MDBA and includes an assessment of whether the Basin Plan and the MDBA are achieving their statutory purpose (Independent Basin Plan Review).**

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16. The Royal Commission made clear that parts, at least, of the Basin Plan were unlawful. As subordinate legislation, the Basin Plan is lawful only to the extent that it is consistent with the Water Act.
17. The Water Act intends the Basin Plan and the MDBA to be the means by which its Objects will be achieved. Any proper review therefore should include both the instrument (the Basin Plan) and the agency (the MDBA).
18. The Discussion Paper illustrates that the MDBA has acted unreasonably in not properly, or at all, addressing or considering the statutory requirements under the Water Act or Basin Plan in undertaking the Review.

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**Recommendation 2. That the Water Act is amended to require a five-yearly review independent of the MDBA which examines whether the Basin Plan and the MDBA are achieving their statutory purpose.**

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## Considerations for the Review

19. The Murray-Darling Basin Authority, and the Basin Plan, were created to “promote the objects” of the Water Act.<sup>7,8</sup>
20. Any review of the Basin Plan must include an analysis of outcomes against the:
  - 20.1. Objects of the Water Act,<sup>9</sup>

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<sup>7</sup> Section 20 of the Water Act 2007

<sup>8</sup> Section 172, Water Act 2007

<sup>9</sup> Section 3, Water Act 2007

- 20.2. Objects and Outcomes of the Basin Plan,<sup>10</sup>
  - 20.3. basis upon which the Basin Plan should be developed, reviewed and amended,<sup>11</sup>
  - 20.4. specific matters identified in the Water Act to be considered in the review (section 50(4A)).
21. This analysis should be undertaken in consideration of the:
    - 21.1. purpose of the Basin Plan,<sup>12</sup> and
    - 21.2. powers and functions of the MDBA set out in the Water Act.<sup>13</sup>
  22. The Discussion Paper fails to meet these criteria.
  23. The Discussion Paper limits the scope of the Review to:
    - 23.1. the specific obligations under section 50 (4A) of the Water Act, and
    - 23.2. a list of issues identified by MDBA.
  24. It is not our role to undertake the thorough statutory review required by the Water Act. Nevertheless, in the section below, we have evaluated whether the Discussion Paper considers the Objects and statutory basis of the Basin Plan.

## Objects of the Water Act

### National Interest

25. Section 3(a) of the Water Act states the Objects are:

*To enable the Commonwealth, in conjunction with the Basin States, to manage the Basin water resources in the national interest.*
26. To the best of our knowledge, “the national interest” has not been defined in water legislation.
27. In this Discussion Paper, there has been no assessment of whether the Basin Plan has enabled the Commonwealth, in conjunction with the Basin States, to manage the Basin water resources in the national interest.
28. In the absence of a clear definition of “in the national interest”, it is easier to identify what is not in the national interest:
  - 28.1. that a government, acting by its agencies, fails to maintain the rule of law,
  - 28.2. that water inequality is increasing,
  - 28.3. to sacrifice environmental assets by prioritising water for irrigation, or
  - 28.4. to diminish, ignore or selectively use science.
29. The Independent Basin Plan Review should include an analysis of how the Basin water resources are managed in the national interest.

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<sup>10</sup> Chapter 5, Basin Plan 2012

<sup>11</sup> Section 21, Water Act 2007

<sup>12</sup> Section 20, Water Act 2007

<sup>13</sup> Section 172, Water Act 2007

## International agreements

30. Section 3(b) of the Water Act states that the Objects are:

*To give effect to relevant international agreements (to the extent to which those agreements are relevant to the use and management of the Basin water resources) and, in particular, to provide for special measures, in accordance with those agreements, to address the threats to the Basin water resources.*

31. The Discussion Paper refers to only one of the relevant international agreements, the Ramsar Convention on Wetlands of International Importance (Ramsar Convention). There is no acknowledgement of the obligations arising under the Ramsar Convention.

32. The Discussion Paper incorrectly asserts that the ecological condition of the Ramsar-listed Macquarie Marshes is improving. In fact, the Macquarie Marshes is listed as a threatened ecological community under the Environmental Protection and Biodiversity Conservation Act.<sup>14</sup>

33. The Australian Government is bound by several international agreements relevant to water and Aboriginal people's rights to water. These agreements impose an obligation upon the Australian Government to respect, protect, and fulfill the rights contained therein.<sup>15</sup>

34. The international agreements most relevant to Aboriginal people are the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention of the Elimination of all forms of Racial Discrimination (CERD). The Australian Government has also endorsed the United Nations Declaration on the Rights of Indigenous Peoples (United Nations Declaration on the Rights of Indigenous Peoples).

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**Recommendation 3. That the Independent Basin Plan Review should assess the extent to which the Basin Plan has given effect to relevant international agreements.**

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## Optimising economic, social and environmental outcomes

35. Section 3(c) of the Water Act states that the Objects are:

*In giving effect to those [international] agreements, to promote the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes.*

36. This Object was considered at length by the South Australian Royal Commission.<sup>16</sup> (See the section *South Australian Royal Commission into the Basin Plan*).

## Environmentally Sustainable Level of Take

37. Section 3(d) of the Water Act states that the Objects are:

(i) *To ensure the return to environmentally sustainable levels of extraction for water resources that are overallocated and overused;*

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<sup>14</sup> DCCEEW. (2026). *Guide to the Wetlands and inner floodplains of the Macquarie Marshes threatened ecological community*. <https://www.dcceew.gov.au/sites/default/files/documents/guide-wetlands-inner-floodplains-macquarie-marshes-threatened-ec.pdf>

<sup>15</sup> Australian Human Rights Commission. (2008). *Native Title Report*. [https://humanrights.gov.au/\\_data/assets/file/0024/77730/Ntr2008.pdf](https://humanrights.gov.au/_data/assets/file/0024/77730/Ntr2008.pdf)

<sup>16</sup> Walker. (2019). *Murray-Darling Basin Royal Commission Report*. <https://cdn.environment.sa.gov.au/environment/docs/murray-darling-basin-royal-commission-report.pdf>

- (ii) *To protect, restore and provide for the ecological values and ecosystems of the Murray-Darling Basin (taking into account, in particular, the impact that the taking of water has had on the watercourses, lakes, wetlands, groundwater and water dependent ecosystems that are part of the Basin water resources and on associated biodiversity).*
38. The Water Act's overarching legislative purpose is to return Basin water resources to Environmentally Sustainable Levels of Take. The mechanism to achieve this purpose is a Sustainable Diversion Limit.<sup>17</sup> However, the Sustainable Diversion Limits were not environmentally sustainable when they were set and have grown unlawfully since then.<sup>18, 19</sup>
39. Properly setting the long-term average Sustainable Diversion Limit, and compliance with an annual Sustainable Diversion Limit, is critical for a return to an Environmentally Sustainable Level of Take.
40. The Basin Plan has had no net effect in Northern New South Wales. Sustainable Diversion Limits in Northern New South Wales are now 2,342 gigalitres, higher than irrigation take of 2,307 gigalitres when the Basin Plan was made.<sup>20</sup> The Object of returning to an Environmentally Sustainable Level of Take has not been met. This has not been addressed in the Discussion Paper.
41. All forms of water take needs to be measured and included in the Sustainable Diversion Limit to return Basin water resources to Environmentally Sustainable Levels of Take.<sup>21</sup> However, floodplain harvesting and other interceptions are not included in the annual Sustainable Diversion Limit compliance assessment.<sup>22, 23</sup>
42. The MDBA has an obligation to measure and monitor all forms of take but has failed to do so.<sup>24</sup> In New South Wales, more than a quarter of floodplain harvesting remains exempt from regulation, licensing, measurement or monitoring.<sup>25</sup>
43. The Water Act requires the Basin Plan to set a Sustainable Diversion Limit and for the MDBA to enforce compliance by the states with that Sustainable Diversion Limit. Instead, annual compliance with SDL reporting has become a negotiation between the MDBA and the states.<sup>26, 27, 28</sup>
44. There can be no confidence in the Sustainable Diversion Limits or the annual Sustainable Diversion Limit compliance process while there are negotiated increases to the long-term average Sustainable Diversion Limits and the annual compliance of Sustainable Diversion Limits.

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<sup>17</sup> Section 23, Water Act 2007

<sup>18</sup> Walker. (2019). *Murray-Darling Basin Royal Commission Report*. <https://cdn.environment.sa.gov.au/environment/docs/murray-darling-basin-royal-commission-report.pdf>

<sup>19</sup> Walker and Hartford-Davis. (2021). *Joint memorandum of advice, electronic page 17*. <https://www.parliament.nsw.gov.au/lcdocs/submissions/76500/Southern%20Riverina%20Irrigators.pdf>

<sup>20</sup> MDBA. (2025). *Current diversion limits for the Basin*. <https://www.mdba.gov.au/water-use/water-limits/current-diversion-limits-basin>

<sup>21</sup> Section 10.10, Basin Plan 2012

<sup>22</sup> Section 6.08G, Basin Plan 2012

<sup>23</sup> Inspector General of Water Compliance. (2025). *Sustainable Diversion Limit Compliance Statement for 2023-2024, page 4*. <https://www.igwc.gov.au/sites/default/files/documents/2025-08/sustainable-diversion-limit-compliance-statement-2023-2024.pdf>

<sup>24</sup> Section 172, Water Act 2007.

<sup>25</sup> Connectivity Expert Panel. (2024). *Connectivity Expert Panel Final Report, Page x*.

<https://www.water.nsw.gov.au/sites/default/files/2025-08/connectivity-expert-panel-final-report-july-2024.pdf>

<sup>26</sup> Inspector-General of Water Compliance. (2025). *Sustainable Diversion Limit Compliance Statement for 2023-24*.

<https://www.igwc.gov.au/sites/default/files/documents/2025-08/sustainable-diversion-limit-compliance-statement-2023-2024.pdf>

<sup>27</sup> Inspector-General of Water Compliance. (2025). *Sustainable Diversion Limit Compliance Report for 2023-2024, Table 2*.

<https://www.igwc.gov.au/sites/default/files/documents/2025-08/sustainable-diversion-limit-compliance-report-2023-2024.pdf>

<sup>28</sup> Section 6.08F, Basin Plan

45. The MDBA has demonstrated it should not be responsible for the setting of the long-term average Sustainable Diversion Limits or have a role in the annual Sustainable Diversion Limit compliance process.
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**Recommendation 4. That the Basin Plan be amended so that its definition of Sustainable Diversion Limits is consistent with the Water Act definition of Sustainable Diversion Limits.**

**Recommendation 5. That all forms of take are included in the assessment of compliance with the annual Sustainable Diversion Limit.**

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### Maximising net economic returns to the Australian People

46. Section 3(d) (iii) of the Water Act says the Objects are:

*subject to Section 3(d) (i) and (ii) – to maximise the net economic returns to the Australian community from the use and management of the Basin water resources.*

47. While the Basin Plan has clearly taken steps to “*maximise the net economic returns*” of irrigation, there is little evidence of active steps or consideration of other industries. In particular, the Discussion paper is silent on the:

- 47.1. exclusion of Aboriginal people from the water economy,
  - 47.2. economic benefit to water-dependent businesses such as tourism, and commercial inland fishing. These industries contribute nearly an equal amount to the Basin economy as irrigation,<sup>29</sup>
  - 47.3. economic costs that increased irrigation in the Northern Basin has on communities and downstream water users,
  - 47.4. economic costs of the net export of non-environmental water out of regions, through allocation trades, particularly the New South Wales Murray and the Goulburn regions,
  - 47.5. economic costs of increased conveyance water due to trade moving water downstream in the Southern Basin, and
  - 47.6. economic benefits of one-off adjustments to Sustainable Diversion Limit cumulative credits.
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**Recommendation 6. That an independent analysis is undertaken of the net economic return to the Australian economy from the use and management of the Basin water resources.**

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### Improve water security for all uses of Basin water resources

48. Section 3(e) of the Water Act says that the Objects are:

*To improve water security for all uses of Basin water resources.*

49. The Discussion Paper does not demonstrate that the MDBA has considered how to improve water security for all uses of Basin water resources.

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<sup>29</sup> Department of Climate Change, Energy, the Environment, and Water. (2024). *Addendum to the 2012 Basin Plan Regulation Impact Statement*. <https://oia.pmc.gov.au/sites/default/files/posts/2024/06/Addendum.pdf>

50. Inflows into Menindee have halved this decade. There is a growing body of research that demonstrates that about half of that decline is caused by increased irrigation in the Northern Basin. The Menindee Review Technical Report includes a summary of this evidence.
  51. Increased irrigation in the Northern Basin has affected the water security of:
    - 51.1. Aboriginal people,
    - 51.2. town water supply,
    - 51.3. riparian communities and dryland farmers,
    - 51.4. downstream water holders,
    - 51.5. Victoria and South Australia,
    - 51.6. water dependent businesses, such as tourism and in-land commercial fishing.
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**Recommendation 7. That an independent analysis is undertaken of the impact of the Basin Plan on water security for all uses of Basin water resources.**

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## Basis on which the Basin Plan is made, reviewed, and amended

52. There are a number of specific requirements of the Basin Plan contained within the Water Act. We address these here only to the extent they have not been addressed above.

### Principles of ecologically sustainable development

53. Section 21(4) states that:

*...the Authority and the Minister must...take into account the principles of ecologically sustainable development.*

54. The Discussion Paper is silent on the principles of ecologically sustainable development.
  55. The way in which principles of ecologically sustainable development are not adhered to is discussed elsewhere in this submission.
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**Recommendation 8. The Independent Basin Plan Review should describe how the principles of ecologically sustainable development have been taken into account in making and implementing the Basin Plan.**

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### Best available scientific knowledge

56. Section 21(4)(b) require the Minister and the Murray-Darling Basin Authority, when making, amending, or reviewing the Basin Plan, to:

*act on the basis of the best available scientific knowledge and socio-economic analysis.*

*Note 1: ...best available scientific knowledge includes the best available systems for accounting for water resources.*

57. Claims that the Discussion Paper is based on best available scientific knowledge are implausible. There are many examples where best available scientific knowledge has not been applied, including:
  - 57.1. failing to incorporate cultural science,
  - 57.2. describing Northern rivers as ephemeral, inconsistently with its scientific definition and accepted usage,

- 57.3. attributing issues relating to connectivity, deteriorating floodplain and wetland health, native fish decline, poor water quality, poor town drinking water to 'ephemeral' rivers rather than increased irrigation in the Northern Basin,
  - 57.4. the assessment that the Sustainable Diversion Limits reflect an Environmentally Sustainable Level of Take,
  - 57.5. the failure to account for all forms of take.
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**Recommendation 9. That 'best available scientific knowledge' explicitly includes Cultural science.**

**Recommendation 10. That the Independent Basin Plan Review is based upon best available scientific knowledge, including Cultural science.**

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### Sustainable Diversion Limit assessment is not scientific

58. The MDBA has not demonstrated that it has applied any acceptable level of scientific knowledge in its assessments that the Sustainable Diversion Limits reflect Environmentally Sustainable Levels of Take.
  59. The Discussion Paper lists three lines of inquiry to determine whether the Sustainable Diversion Limits reflect an Environmentally Sustainable Level of Take:
    - 59.1. Hydrological modelling,
    - 59.2. Expert Elicitation, and
    - 59.3. Assessments of future climate change risks and vulnerabilities.
  60. No modelling reports were published with the Discussion Paper. Either the modelling was not finished, is not documented, or the MDBA has chosen not to publish the modelling reports. If this modelling is a line of evidence, it is not defensible to exclude it from public, technical, or scientific scrutiny.
  61. The Expert Elicitation process described by the MDBA is not a robust scientific assessment and does not use best available scientific knowledge. It was:
    - 61.1. not independent, as it was undertaken by seven internal MDBA staff,
    - 61.2. not undertaken by subject-matter experts,
    - 61.3. based on five years of observations during a wet period.
  62. Using Expert Elicitation is appropriate when: the research is exhausted; when there are subject-matter experts; and when there are large gaps in the data. None of these conditions apply to the Basin Plan.
  63. The Discussion Paper does not describe how the assessment of the Sustainable Diversion Limits included an assessment of future climate change risks and vulnerabilities. This process must include a modelling exercise. No modelling has been described or reported.
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**Recommendation 11. That the Independent Basin Plan Review should be accompanied by complete modelling reports.**

**Recommendation 12. That the results from the Expert Elicitation process should be set aside.**

**Recommendation 13. That the Independent Basin Plan Review should include a full explanation of how climate change risks and vulnerabilities were included in the assessment of the Sustainable Diversion Limits.**

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## Section 50 (4A) of the Water Act

### Review to consider matters relevant to Aboriginal people

64. Section 50(4A) of the Water Act states:

*In reviewing the Basin Plan under subsection (1) or (2), the Authority must consider ... and report on ...*

*(a) matters relevant to Indigenous people in relation to the management of Basin water resources including, but not limited to, the extent to which Basin water resources could be managed so as to improve the spiritual, environmental, cultural, social and economic conditions of Indigenous people;*

*(b) the extent to which the Basin Plan, including requirements relating to water resource plans:*

*(i) recognises and protects the interests of Indigenous people; and*

*(ii) supports opportunities for Indigenous people to participate in determining and developing priorities and strategies for the development or use of Basin water resources, including opportunities for participation that incorporates free, prior and informed consent;*

65. The Discussion Paper omits any description that the MDBA has done anything to meet its obligations under this section. Instead, it makes commitments for future consultation and inclusion of Aboriginal people in water planning and monitoring.

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**Recommendation 14. That the Independent Basin Plan Review should describe how water was managed to improve the spiritual, environmental, cultural, social and economic conditions of Aboriginal people, and to recognise and protect the interests of Aboriginal people.**

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## Climate Change

66. The legislative framework requires the Basin Plan to address climate change by reference to:

66.1. the Climate Change Convention, which is one of the international agreements to which the Water Act and Basin Plan must give effect,

66.2. the objectives of the Basin Plan relevant to environmental outcomes,<sup>30</sup>

66.3. the basis on which the Basin Plan was made, whereby it is required to take into account the principles of ecologically sustainable development (discussed at Section: *Principles of ecologically sustainable development*).<sup>31</sup>

67. The MDBA has been widely criticised for not addressing climate change when making the Basin Plan. The Royal Commission considered climate change in detail.<sup>32</sup> Bret Walker SC said:

*And so the organization responsible for the Basin Plan has:*

- ignored climate change projections for its modelling of the Basin Plan and hence not based it on the best available scientific knowledge, and*
- not bothered to review climate change for the Basin — ever.*

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<sup>30</sup> Section 5.03(1), Basin Plan 2012

<sup>31</sup> Section 21(4)(a), Water Act 2007

<sup>32</sup> Walker. (2019). *Murray-Darling Basin Royal Commission Report*. <https://cdn.environment.sa.gov.au/environment/docs/murray-darling-basin-royal-commission-report.pdf>

*There is to be a review of the Basin Plan in 2026, but the threats to the Basin do not permit inaction until sometime after a 2026 review before we start attempts to find solutions to climate change degradation of its national social and economic resource.*

68. The 2025 Basin Plan Evaluation Report states:

*Chapter 10 of the Plan allows for the management of risks associated with a changing climate, but the requirements contain very little direction and guidance about how climate change risks should be incorporated into WRPs. Therefore, the framework does not appear to be highly robust in the context of managing water resources under a changing climate.<sup>33</sup>*

69. The Water Act was amended in 2023 for climate change to be specifically considered in the review of the Basin Plan under Section 50(4A) whereby “...the Authority must consider ...and report on ...the management of climate change risks”.

70. There was a comprehensive summary of the impact of climate change outlined in the Regulatory Impact Statement prepared for the Water Amendment (Restoring Our Rivers) Act 2023.<sup>34</sup> This summary was concluded with:

*The Restoring Our Rivers Act amendments include new requirements that the Basin Plan review in 2026 will consider the management of climate change risks. Future changes to the Basin Plan will need to consider adapting to climate change.*

71. The Discussion Paper is silent on the specific obligations of the MDBA under the Climate Change Convention and the principles of ecologically sustainable development as they pertain to climate change.

72. The Discussion Paper acknowledges that climate change requires adaptation:

*Under future conditions not all Basin Plan outcomes will be achievable, and not all environmental assets will be able to be protected to the same extent. Initial assessments of SDLs show some environmental outcomes may not be achievable now and under some plausible future climate scenarios*

73. However, its response is to sacrifice environmental assets, rather than to reduce extraction:

*The Authority has considered climate change. Given the wide range of plausible climate futures, the Authority is not proposing changes to the SDLs in response to climate change in 2050 through this review.*

74. This position is in direct conflict with the principles of ecologically sustainable development, particularly:

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<sup>33</sup> MDBA. (2025). *2025 Basin Plan Evaluation*. <https://www.mdba.gov.au/sites/default/files/publications/2025-basin-plan-evaluation-report.pdf>

<sup>34</sup> Department of Climate Change, Energy, Environment and Water. (2024). *Addendum to the Basin Plan Regulation Impact Statement*. <https://oia.pmc.gov.au/sites/default/files/posts/2024/06/Addendum.pdf>

- 74.1. decision-making that integrates long-term and short-term considerations for economic, environmental and equitable considerations,
  - 74.2. applying the precautionary principle,
  - 74.3. the principle of inter-generational equity, and
  - 74.4. the conservation of biodiversity and ecological integrity as a fundamental consideration in decision-making.<sup>35</sup>
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**Recommendation 15. That the Independent Basin Plan Review should demonstrate how the MDBA has considered the management of climate change risks, particularly with respect to the principles of ecologically sustainable development.**

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## Consideration to relevant reviews into water management

### South Australian Royal Commission into the Basin Plan

75. The South Australian Royal Commission is the most comprehensive review of the Basin Plan to date. It was undertaken by one of Australia's leading constitutional lawyers. The MDBA did not engage with the Royal Commission, refusing to allow its employees to give evidence, and has not addressed the findings in the Discussion Paper.
76. As the Royal Commission makes clear, the adoption of a methodology that purports to simultaneously optimise environmental, social and economic outcomes is not an exercise of the power conferred by the Water Act but a departure from it.
77. Neither the Royal Commission, its findings or its recommendations are mentioned in the Discussion Paper.

### Other relevant reviews of water management

78. There have been multiple reviews into the management of water since 2012, including:
    - 78.1. the Connectivity Expert Panel Review,<sup>36</sup>
    - 78.2. various independent reviews into fish kills at Menindee,<sup>37, 38</sup> and
    - 78.3. Natural Resource Commission reviews into New South Wales Water Sharing Plans,<sup>39</sup>
  79. The recommendations from these reviews have been partially implemented, at best.
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**Recommendation 16. That an independent stocktake is undertaken of all independent reviews into water management and the extent to which the recommendations of those reviews have been implemented.**

**Recommendation 17. That the Independent Basin Plan Review should give full consideration to all relevant independent reviews.**

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<sup>35</sup> Section 4(2), Water Act 2007

<sup>36</sup> Connectivity Expert Panel. (2024). *Connectivity Expert Panel Final Report, Page x.*

<https://www.water.nsw.gov.au/sites/default/files/2025-08/connectivity-expert-panel-final-report-july-2024.pdf>

<sup>37</sup> Australian Academy of Science. (2019). *Investigation of the causes of mass fish kills in the Menindee Region New South Wales over the summer of 2018-2019.* <https://science.org.au/our-work/resources-reports/reports-publications/investigation-causes-mass-fish-kills-menindee-region-nsw-over-summer-2018-2019>

<sup>38</sup> New South Wales Chief Scientist & Engineer. (2023). *Independent review into the 2023 fish deaths in the Darling-Baaka River at Menindee.* [https://www.chiefscientist.nsw.gov.au/\\_data/assets/pdf\\_file/0015/1671/Menindee\\_Report\\_Dec-2023.pdf](https://www.chiefscientist.nsw.gov.au/_data/assets/pdf_file/0015/1671/Menindee_Report_Dec-2023.pdf)

<sup>39</sup> Natural Resource Commission. (2026). *Water sharing Plan reviews.* <https://www.nrc.nsw.gov.au/water/wsp-reviews/home>

# Regulatory framework

80. In the Explanatory Memorandum to the National Environmental Protection Agency Bill 2025, the Water Minister, Murray Watt stated:

*An independent environmental regulator is central to an Australia which is focused on environmental protection, and the restoration of public accountability and trust... to better protect and restore Australia's unique environment.*<sup>40</sup>

81. These principles of environmental regulation apply equally to water.
82. The Discussion Paper proposes less regulatory oversight by the Commonwealth. This is inconsistent with the principles of environmental regulation described by Minister Watt.
83. A regulatory framework must address the underlying problems of:
- 83.1. State and Commonwealth Governments not abiding by their own legislation,<sup>41, 42, 43, 44</sup>
- 83.2. The failure of the MDBA to compel States, particularly New South Wales, to adhere to the Basin Plan
- 83.3. Increasing take and incomplete reporting of take.
84. This is a failure of regulatory design and implementation.

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**Recommendation 18. That a regulatory framework be established that gives effect to the statutory purposes of the Water Act.**

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## Inspector-General of Water Compliance

85. In the short term, and prior to the independent review contained in the section *The statutory framework to conduct the Review*, the Inspector-General of Water Compliance should:
- 85.1. be made fully independent of the Water Minister and water portfolio,
- 85.2. have necessary and secure funding and capacity,
- 85.3. have powers to sanction the MDBA, Commonwealth and state governments for non-compliance with the Water Act or Basin Plan.

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**Recommendation 19. That the Inspector-General of Water Compliance should be fully independent and have necessary funding, capacity and powers to secure the Objects of the Water Act.**

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<sup>40</sup> Watt. (2025). National Environmental Protection Agency Bill 2025: Explanatory Memorandum. [https://classic.austlii.edu.au/au/legis/cth/bill\\_em/nepab2025432/memo\\_0.html](https://classic.austlii.edu.au/au/legis/cth/bill_em/nepab2025432/memo_0.html)

<sup>41</sup> Matthews. (2017). *Independent investigation into NSW Water Management and Compliance (Interim report)*. [https://publications.water.nsw.gov.au/watergroupjspui/bitstream/100/570/1/Independent\\_investigation\\_into\\_NSW\\_water\\_management\\_and\\_compliance\\_-\\_Interim\\_Report.pdf](https://publications.water.nsw.gov.au/watergroupjspui/bitstream/100/570/1/Independent_investigation_into_NSW_water_management_and_compliance_-_Interim_Report.pdf)

<sup>42</sup> Independent Commission Against Corruption. (2020). *Investigation into complaints of corruption in the management of water in NSW and systematic non-compliance with the Water Management Act 2000*.

<sup>43</sup> Natural Resource Commission. (2019). *Final Report Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012*. <https://www.nrc.nsw.gov.au/Barwon-Darling%20-%20Final%20report.pdf>

<sup>44</sup> Walker. (2019). *Murray-Darling Basin Royal Commission Report*. <https://cdn.environment.sa.gov.au/environment/docs/murray-darling-basin-royal-commission-report.pdf>