



29 September 2023

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: ec.sen@aph.gov.au

Dear Secretariat,

RE: Water Amendment (Restoring Our Rivers) Bill 2023 (Bill)

The National Farmers' Federation (NFF) was established in 1979 and is the authoritative voice of the Australian agriculture industry. The NFF serves as the national peak body representing the broad interests of farmers across geographical and commodity borders. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations in turn form the NFF. As a general principle, the NFF seeks to ensure that any legislative reform does not have a perverse or adverse impact on agricultural productivity.

Overview

The NFF does not support this Bill in its current form. It should be withdrawn. We do not support buybacks due to the already evident impacts on regions and communities. While the complexity of the Bill is still being digested, there are significant concerns with the way the Bill recasts the Murray Darling Basin legislative framework.

The contemplation of this Bill points to unravelling the existing bipartisan support base for water reform as well as the multilateral (States) alignment. The Federal Coalition seem opposed to this tranche of reforms and Victoria have declined to agree to the reforms. Separately and together, this undermines certainty for farmers. As does the proposed removal of the buyback cap, which on the most pessimistic interpretation could see the Commonwealth seek to acquire the purchase, and commensurate transfer of entitlement to approximately 750 GL of water.



Less water available for consumptive use means less agricultural production. Less production increases pressure on food and fibre prices. Less production impacts on and off farm jobs. Less production erodes economic activity in regional towns and undermines the socio-economic resilience of communities.

Buybacks of water by the Commonwealth, ostensibly as environmental water do not correlate to environmental outcomes. The current complexity in delivery of the plan has identified that a substantive suite of complementary measures is required to underpin environmental outcomes. For example, the most recent report of the NSW Government Chief Scientist into Menindee fish deaths has found that the key contributors were water quality and lack of mobility for fish (e.g., the need for fish passage/ladder reforms).

Buybacks are not required, there is a major body of proposals already before the Commonwealth that deserve comprehensive assessment and consultation BEFORE any discussion about buybacks ought to occur.

Buybacks

The NFF is concerned that buybacks have become this Government's solution to achieving environmental outcomes within the Basin. However, buybacks are a blunt instrument, and there is no direct link between buybacks and environmental gains. They also fail to take into account the significant progress which has been made by our irrigation sector to increase the efficiency of consumptive water use and the work of many farmers, at their own cost, to conserve and maintain on farm environmental assets.

Should buybacks occur at the scale contemplated, then what understanding has been established about how that transfer to alternate use will occur? Transference and deliverability (pathway and timing) will impact storage levels including carry over, flexibility of delivery and indeed whether it is possible to effectively deliver the water, let alone achieve environmental benefits (and potential for inherent environmental damage to the infrastructure). For clarity, there is an ongoing concern that implementation of constraints measures and/or delivery of water will contribute to unnecessary flooding or inundation especially in the Southern basin. These issues may be exacerbated if substantial buybacks redefine water delivery pathways.

Farmers are also concerned that there will be significant market distortions during and after any buyback program. First, due to increased competition in a confined



and diminishing market (the consumptive pool) which may be further exacerbated by geographic limitations on the target buyback cohort depending on the success or otherwise of already proposed amendments. Second, a significant buyback program will permanently diminish the available consumptive pool thus driving inflation of water prices to consistently higher pricing especially for supplementary water ongoing.

It is fallacious to promote the argument that a buybacks program provides an option for willing sellers to sell their water. That option exists now with the existing mature water market for consumptive water. All buybacks achieve is removal of water from the consumptive pool which drives commensurate increases in water pricing.

The Bill, and its associated justification, does a poor job of outlining the rationale for how efficiency measures will be delivered, furthermore there appears to be an inherent assumption that buybacks are not only inevitable but are the best bet option. This assumption must be challenged and discussed with stakeholders given there are 130 ideas/submissions on the table which are still to be assessed.

In addition, given the poor articulation of the pathway or roadmap to 605 GL measures (for example constraints are expected to be dealt with inside two years and they have failed to progress to date) which consigns the residual 605 GL target to the dustbin of buybacks.

Ultimately, the NFF believes focusing on buybacks to achieve environmental outcomes in the Basin fails to recognise the sustainability of our irrigation sector and the progress which is being made by farmers as they invest in and adopt new technology and practices which increase the efficiency of consumptive water use across a range of commodities.

Farmers value the environmental assets on their farms with many using their own consumptive water to provide on farm and complementary environmental outcomes. Such as watering on farm wetlands, and actively monitoring for frog breeding and diversity or fencing and permanently revegetating riparian zones on major water courses. This is at the same time as Sustainable Diversion Limits (SDLs) being set, and the irrigation Allowed Annual Take being below the SDLs for at least the last three reporting periods. As the name suggests the SDL has set limits of take and those limits have been abided with. Farmers are delivering outcomes in spades.



Proposed Measures Opposed by NFF

There are several proposed measures in the Bill which are unacceptable and are opposed by the NFF. They are:

- The proposal to allow buybacks for 450 GL. Such a proposal has NEVER been contemplated, including by the then water Minister, the Hon Tony Burke, in 2012. At that time, he stated that buybacks were not allowed because of their downsides. He was right then, and he is right today. That test simply has not changed. Yet this Bill contemplates not only allowing buybacks, but also subverting the existing limitations by way of circumventing socio-economic tests which have been agreed to by all jurisdictions, for the purpose of enabling the 450 GL of buybacks. Furthermore, the Government's language has changed from limiting the socio-economic tests to *'neutral or positive'* to *'should any negative socio-economic impacts be identified, the Commonwealth supports **minimising** these impacts on communities'* (emphasis added).
- The removal of the 1500 GL buyback cap would allow the Commonwealth unfettered access to buybacks. Unfettered by either the MinCo socio-economic test or seemingly any real limitations or commitment to alternate pathways. Without removing the buyback cap, some 225 GL of buybacks are still available, to be clear the NFF do not support the exercising of this buyback option. Given the total residual recovery is around 700 GL (605 and 450 tasks combined), that would see one third able to be bought back. Removal of the cap could allow the full 700 GL to be purchased.
- Establishment of a "free-falling" SDL by removing all checks and balances in the way SDLs are set and adjusted (i.e., the formal processes and structures) with unknown and unlimited impacts, beyond the intended agreement by Basin States. This is achieved by providing seemingly unfettered power to unilaterally adjust SDLs, it is an unjust and unnecessary transfer of powers to the Commonwealth. The existing formal processes to judiciously review SDLs seem to have been flipped in the Bill.

Proposed Measures Supported by NFF

The Bill proposes the extension of timeframes for delivery for the 605 GL and 450 GL by two and three years respectively. These are welcome proposals that are



consistent with industry representations. These representations have been made mindful of:

- Significant dry and wet periods over the course of the plan;
- Difficulties in progressing key Sustainable Diversion Limit Adjustment Mechanism (SDLAM) projects especially including constraints;
- Unanticipated constraints (sand slug) compromising water delivery through the choke;
- Emerging concern that the already achieved environmental water could not effectively and efficiently be delivered to key environmental assets due to lack of resolution of constraints projects, or the identification of viable alternatives; and
- Failure to utilise the identified gateway process recommended by the Productivity Commission.

Core Issues and Concerns

NFF believes that the Bill is not fit for purpose. Neither for agriculture nor for the communities which it supports. There will be less food produced and it will be more expensive. Jobs will be lost and communities will suffer. Historically, efforts to provide effective structural adjustment (measured in sustainability of resilience of communities, facilities, population and jobs) required to support persistent or ongoing economic activity, have proved extraordinary difficult.

The Bill is also not fit for purpose for the environment. The Water for Environment Special Account is currently tied to specified environmental outcomes. The Bill removes this by delinking water recovery (prioritised buybacks) from environmental outcomes. The environment is being thrown under the same bus as vulnerable communities and food security.

ABARES advises that water recovery to date has pushed water prices above \$200/ML in three out of ten years. Removing a further 450 GL could see this threshold being met in 8 of 10 years. This is an important indicator. A number of commodity producers have an aversion level which caps paying over \$200/ML to grow a crop, breaking this price will negatively impact the motivation to produce crops, generating additional impact on production beyond the lack of available water. Industry reports that this might be quite conservative and could be as much as double these estimates.



Industry is concerned that the pathway is unclear, they have no confidence that alternatives to buybacks are being meaningfully considered or prioritised. While the advice is ‘all options are on the table’ the inherent structure of the Bill and the apparent disposition of the Government focusses very heavily on buybacks as being the preferred path.

In addition, there is no articulated process for how buybacks would be rolled out, this is problematic and creates anxiety and uncertainty for businesses and families who rely on consumptive water use for their livelihoods. While NFF’s position is clear opposition to buybacks, if the Government is intent on pursuing buybacks, industry requires certainty and clarity about how this mechanism would work, including assurances that a strategic approach will be taken. There is no framework for this articulated by the Government.

Questions which remain unanswered for industry:

- Will there be a mechanism for requiring sustainable job performance measures to be met for areas impacted by buybacks?
- What ongoing monitoring and future adjustment measures will exist, or will communities continue to suffer as they do now from the consequences of the initial buybacks which are continuing to flow through?
- Will this approach be against a robust matrix on environmental need and achievability?

NFF believes that these questions must be answered PRIOR to changing the legislation which allows open slather on buybacks. We cannot allow more communities to be destroyed on the altar of buybacks which doubtfully promise environmental outcomes.

Proposed Amendments

NFF proposes that the following amendments are made to the Bill:

- Omit the deletion (retain the division) of Division 5, 1500 GL limit on water purchases;
- Omit proposed amendments to 86AD Purposes of the Water for Environment Special Account;
- Omit any measures (especially in Chapter 7 – sections 7.08A and 7.08B) that require any buybacks to be held environmental water (HEW), this



undermines any intent to take best efforts to find alternative pathways to buybacks;

- As per below, Division 4A addresses prospective market manipulation. While these measures are supported, and are consistent with recent ACCC reforms, they DO NOT appear to bind the Crown during the proposed buyback period as they DO NOT require proclamation until 1 July 2026. The NFF proposes that these provisions take effect immediately and that they immediately bind the Crown, such an amendment will provide some semblance of integrity to the process. We can otherwise only believe that the Commonwealth are hell bent on acquiring water through whatever means without either due process nor commitment to community vibrancy.

Division 4A—Market manipulation

101JG Market manipulation

A person must not take part in, or carry out (whether directly or indirectly) a trade or transfer of an eligible tradeable water right that has, or is likely to have, the effect of:

- (a) creating an artificial price for eligible tradeable water rights; or
- (b) maintaining at a level that is artificial (whether or not it was previously artificial) a price for eligible tradeable water rights.

101JH False trading and market rigging—creating a false or misleading appearance of active trading etc.

- (1) A person must not engage in conduct that has or is likely to have the effect of creating, or causing the creation of, a false or misleading appearance:
 - (a) of active trading in a market for eligible tradeable water rights; or
 - (b) with respect to the market for, or the price for trading in, eligible tradeable water rights.

Civil penalty: For an individual—2,000 penalty units.
 For a body corporate—see section 101K.



Recommendations

Embedded throughout this submission are a range of broad concerns articulated by NFF for industry. In the context of the Bill, they can be summarised as the following recommendations:

- 1.** Maintain the 1500 GL cap on water recovery – as the Basin Plan can be delivered ‘in full’ without the need for more water recovery.
- 2.** Maintain the current requirement that prevents buybacks being used for the 450 GL.
- 3.** Maintain the current requirement that the 450 GL is conditional on improved or neutral social and economic outcomes, irrespective of recovery measure.
- 4.** Enable ‘complementary measures’ to count towards the 450 GL, to ensure key degradation drivers are targeted, and key initiatives put forward by communities during public consultation can be implemented.
- 5.** Remove the changes which effectively cause a “free-falling” SDL - beyond the Basin Plan requirements, structures, and processes, and beyond State agreement – and instead, maintain these important checks and balances.

Conclusion

The NFF will continue to consider the impact of this Bill. The Bill as drafted proposes such comprehensive change, with so many unknown and undeveloped impacts, that it is at best poor process. Repeated calls for the release the Bill as an exposure draft have been ignored, leaving industry and communities little time to consider and give feedback on its implications.

The Commonwealth Water Minister seems determined to take almost absolute control of the Basin Plan by exercising unfettered market power, running a buyback program that circumvents the socio-economic test (in spite of assurances from Ministerial predecessors that sit around the current Cabinet table), and redefining how SDLs will be adjusted. This is unacceptable to the NFF.

NFF is also significantly concerned by the lack of material detail on structural adjustment measures, what will trigger them, how they will be implemented, and how they will be audited and managed in an ongoing manner. Throwing guilt money at communities to compensate for buybacks that are unlikely to have commensurate environmental gains, is simply folly.



The NFF will provide further input and engagement in this process through the evidentiary mechanisms of this committee, having further considered the issues.

Please contact General Manager NRM, Warwick Ragg, WRagg@nff.org.au for further engagement.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Tony Mahar', written in a cursive style.

TONY MAHAR
Chief Executive Officer