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Senate Standing Committees on Rural and Regional Affairs and Transport  
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Canberra ACT 2600

***Submission to the Senate Inquiry into the integrity of the water market in the Murray-Darling Basin***

***About ACF***

ACF is Australia's peak environmental organisation. We represent a community of more than 400,000 people who are committed to achieving a healthy environment for all Australians. For more than 50 years ACF has been a strong advocate for Australia's forests, rivers, people and wildlife. We work with community leaders, social movements, Indigenous people, economists, businesses, governments and ordinary Australians. ACF is proudly independent, non-partisan and funded by donations from our community.

***The Basin Plan***

The Basin Plan is at a critical juncture. A healthy Murray-Darling Basin (MDB) is critical to the prosperity of all those who depend on it. The basin's wetlands – 16 of which are recognised as being internationally significant – provide habitat and essential ecosystem services such as water filtration, flood mitigation, pollination and more, which have been estimated to be worth up to \$2.1 billion. Successful implementation of the Basin Plan is vitally important to Australia. Combined with the many river health initiatives that pre-date it, the Basin Plan is essential to redressing the damage done to rivers, wetlands and floodplains through a century of unsustainable water extraction.

With investment in the basin now exceeding \$13 billion the Basin Plan is the largest natural resource management investment and irrigation infrastructure improvement program in Australia's history. A healthy MDB will play a critical role in enabling our nation to cope with and adapt to the risks that accompany climate change. Failure to implement the Basin Plan properly and restore the balance will have dire consequences –for our environment, our communities and in the long run, our economy.

Whilst there is stated multi-partisan support for the Basin Plan's implementation "on time and in full", this commitment appears to be wavering. This is especially the case in relation to the delivery of water for the health of the rivers, providing for stable and healthy inflows to Menindee Lakes and the lower Darling and delivering the required 450 GL of water for the environment through improved efficiency measures as part of the SDL adjustment process.

These commitments are further undermined by the lack of serious action by state and federal authorities to address both the lawful and allegedly unlawful take of environmental water for irrigation purposes, particularly in northern NSW.

***Summary of recommendations in this submission***

1. *Require mandatory, tamper-proof and automatic metering on all pumps in the MDB, especially in the Barwon-Darling.*
2. *Invest in and utilise remote sensing technology as compliance tool to ensure water users are only taking their allocation.*
3. *Ensure that the MDBA has adequate resources and authority to undertake requisite compliance and investigations unit.*
4. *Mandate a minimum level of experience in freshwater ecology and/or environmental science/policy by a least three of the members of the MDBA.*
5. *Establish an independent national Environment Protection Agency to transparently conduct investigations, undertake compliance for Australia's national natural resource and environment laws.*
6. *Establish a national judicial inquiry into the compliance and enforcement of the Basin Plan.*
7. *Strengthen Chapter 10 of the Basin Plan to ensure all Water Resource Plans have provisions that adequately protect environmental water entitlements.*
8. *Amend the Water Act to ensure the Commonwealth Environmental Water Holder is consulted on:*
  - a. *the security of all water acquired through purchase or infrastructure investments; and*
  - b. *the adequacy and appropriateness of mechanisms within Water Sharing Plans for safeguarding environmental water prior to endorsement by the MDBA*
9. *The Basin Plan and Water Act should be amended to set minimum standards and criteria for the assessment and approval of floodplain harvesting infrastructure within the Basin.*
10. *That the Commonwealth lead the development, with consultation with other basin states, of mechanisms to secure the full 450 GL of up-water to be legislated through the SDL adjustment process;*
11. *That the Commonwealth government establish a Federal anti-corruption body to investigate the standards, ethics, conduct and legality of action of public officials.*

### ***Allegations of theft and corruption in the management of Murray-Darling Water resources***

In July the ABC Four Corners program aired serious allegations of water theft and misconduct by NSW public officials. Following from this there were numerous media reports that highlighted the take of environmental water, questionable dealings and decisions by the NSW state government and the failure of relevant authorities to act.

These variously included issues such as:

- Allegations and evidence of meter tampering along the Barwon-Darling Rivers<sup>1</sup>;
- The harvesting of environmental water based on last minute changes to the Barwon Darling Water sharing plan rushed through in 2012 prior to the signing of the Basin Plan<sup>2</sup>;
- Allegations of the unlawful pumping of environmental water holdings for irrigation purposes in the Barwon-Darling<sup>3</sup>;
- Anomalies in relation to pump size and license conversion in the Barwon-Darling, in apparent breach of the Water Sharing Plan<sup>4</sup>;
- The development of private infrastructure for floodplain harvesting of overbank flows without approval<sup>5</sup>; and
- The retrospective approval of water diversion works on the floodplains in NSW<sup>6</sup>.

The four corners program also highlighted the failure of state and federal authorities to adequately investigate the above matters. As pointed out by the 4 corners story, NSW discontinued its active investigation into meter tampering and unlawful take of environmental (which was subsequently been further evaluated in the Ken Matthews review – discussed further below).

Subsequent information obtained by the NSW EDO on behalf of ACF highlight that the Murray Darling Basin Authority had knowledge and evidence potential unlawful take of environmental water in July 2016 via the ‘data cube’ project, but failed to take serious, meaningful action. More alarmingly from ACF’s perspective has been the secrecy in releasing

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<sup>1</sup> ABC, Four Corners – Pumped 26 July 2017 <http://www.abc.net.au/4corners/pumped/8727826>

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> SMH – 6 August 2017 - <http://www.smh.com.au/environment/more-claims-of-excess-water-extraction-by-nsw-irrigators-surface-20170805-gxq2jh.html>

<sup>5</sup> ABC – 1 September 2017 <http://www.abc.net.au/news/2017-08-31/murray-darling-basin-plan-failure-farmers-claim-water-backed-up/8859412>

<sup>6</sup> Daily Telegraph – 3 August 2017 <http://www.dailytelegraph.com.au/news/nsw/barwon-darling-water-sharing-plan-minister-niall-blairs-water-woes-continue-with-laws-to-pardon-illegal-flood-works/news-story/4a325b044f05a401bc0251f1d3f9a6dc>

final assessments of the data cube projects and the lack of reference to these findings in the production of the final report for the project.

As reported by the Guardian:

*“Data Cube was initially intended not as a compliance-monitoring program but a scientific one, tracking the effects of environmental flows on the river and wetlands.*

*But when experts from the MDBA and Geosciences Australia examined satellite imagery (showing where water was in the landscape) and flow gauges in the river, the data suggested water bought for the environment upstream was disappearing before it reached the downstream gauge.”<sup>7</sup>*

Further documents obtained by the Guardian highlighted that

*“the MDBA had gathered and synthesised evidence to support allegations of water theft at least as early as July 2016 and that all members of the authority’s board were informed of the evidence.”<sup>8</sup>*

The MDBA has provided conflicting information as to what it did with the data cube information. Telling ABC four corners that it had not passed the information on, whilst telling the Guardian that it had.

The failure of NSW and the MDBA to ensure compliance with even the most basic elements of the Basin Plan and the Barwon-Darling Water Sharing Plan is of significant concern. Notably, meaningful action on the above allegations by both regulators has only commenced since the ABC four corners program went to air, despite knowledge of these issues well before such matters was made public.

In 2018/19 a significant number of Water Sharing Plans from across basin states will need to be assessed and accredited by the MDBA. This is the primary mechanism through which the MDBA will ensure compliance with the Basin Plan. Questions need to be raised as to the capacity of the MDBA to effectively accredit the number of water resource plans in a manner that will ensure they meet the requirements and intentions of the *Basin Plan 2012* and *Water Act 2007* and that will safeguard environmental outcomes and flows in the long term.

Report of recent proposed appointments to the board of the MDBA of individuals with very close ties to the irrigation sector have also been cause for concern. Whilst it is appropriate for people with skills and experience in a particular area that is of relevance to the authority, without appropriate safeguards, there is potential for the governance to be skewed to favour one sector or interest over another.

### *Recommendations*

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<sup>7</sup> Guardian – 27 September 2017 <https://www.theguardian.com/australia-news/2017/sep/27/murray-darling-basin-authority-knew-of-allegations-of-water-theft-a-year-before-abc-report>

<sup>8</sup> [Ibid](#)

1. *Require mandatory, tamper-proof and automatic metering on all pumps in the MDB, especially in the Barwon-Darling.*
2. *Invest in and utilise remote sensing technology as compliance tool to ensure water users are only taking their allocation*
3. *Ensure that the MDBA has adequate resources and authority to undertake requisite compliance and investigations unit.*
4. *Strengthen section 178 of the Water Act 2007 to mandate a minimum level of experience in freshwater ecology and/or environmental science/policy and Indigenous cultural management by at least three of the members of the MDBA.*

### **National Environmental Institutional Reform**

The abolition of water reform oversight institutions, such as the National Water Commission, (which was abolished in 2015), has also contributed to the decline in audit and oversight of water reform nationally. Whilst the NWC lacked strong compliance powers, its capacity to shine a light on water reform matters should not be understated.

Australia requires strong national leadership on environment protection and restoration if we are to be a healthy and vibrant community in the decades to come. The challenge of climate change, water scarcity and biodiversity loss are all very significant issues that are highlighted in the most recent independent State of Environment Report released by the federal government.

Failure to ensure compliance with the Basin Plan sits alongside other national environmental compliance failures. For example the federal environment department's recent failure to address widespread land-clearing of threatened species habitats in Queensland.<sup>9</sup>

The compliance failures have been a key aspect of audits completed by the Australian National Audit Office, which found that:

*"[the Department's] regulation of approved controlled actions—particularly in relation to compliance monitoring—does not instill confidence that the environmental protection measures considered necessary as part of the approval of controlled actions have received sufficient oversight over an extended period of time".<sup>10</sup>*

There is a clear need for an independent national institution, such as a national Environment Protection Agency, with sufficient authority to conduct investigative auditing and compliance with the Basin Plan and Water Act, as well as other natural resource management and environmental legislation.

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<sup>9</sup> <https://www.theguardian.com/environment/2017/oct/06/queensland-tree-clearing-wipes-out-federal-emissions-gains>

<sup>10</sup> <https://www.anao.gov.au/work/performance-audit/managing-compliance-environment-protection-and-biodiversity-conservation-act>

### *Recommendation*

5. *Establish an independent national Environment Protection Agency to transparently conduct investigations, undertake compliance for Australia's national natural resource and environment laws.*

### ***Jurisdictional responses and investigations***

There is a clear pattern emerging of certain Basin States – notably NSW – undertaking actions that are not in the interest of implementing the Basin Plan. This was manifest in the recording of a meeting between NSW government officials and irrigation lobbyists aired on the ABC's Four Corner's program. In the recordings, senior NSW officials can be heard offering classified government documents to irrigation lobbyists and also discussing the option to walk away from the Basin Plan – referred to as Plan B.

In response to the allegations raised on four corners, the NSW Government established a independent review being led by Ken Matthews. The interim report was released by the review on 8 September 2017.

Whilst ACF was critical of the establishment of the Matthews review, it is our position that the interim-report released by the review has been deliberative and even-handed in its assessment. As such, ACF supports the interim findings of the review.

The principle findings of the Matthews interim report was:

*“that water-related compliance and enforcement arrangements in NSW have been ineffectual and require significant and urgent improvement. Specifically:*

- *The overall standard of NSW compliance and enforcement work has been poor.*
- *Arrangements for metering, monitoring and measurement of water extractions, especially in the Barwon–Darling river system, are not at the standard required for sound water management and expected by the community.*
- *Certain individual cases of alleged non-compliance have remained unresolved for far too long.*
- *There is little transparency to members of the public of water regulation arrangements in NSW, including the compliance and enforcement arrangements which should underpin public confidence. But it is constrained in what it can and cannot do.”*<sup>11</sup>

In response to the allegation on Four Corners the Federal Government established the compliance review by the Murray Darling Basin Authority. Whilst the compliance review is

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<sup>11</sup> <https://www.industry.nsw.gov.au/about/our-business/independent-review-water-management-and-compliance>

ongoing and yet to be finalised, ACF has raised concerns with the MDBA in relation to the exclusion of certain stakeholders from the review and its advisory body, notably experts with detailed knowledge of compliance matters as they relate to the Basin Plan.

Since the airing of the four corners episode, ACF has undertaken a number of town hall meetings across the Basin. Community forums were held in eleven towns from Broken Hill in NSW down to Goolwa in SA. At these forums community members expressed strong support for healthy rivers and communities, and there was a strong support for a national judicial review or Royal Commission into the implementation of the Basin Plan. Through the course of these forums a number of potential non-compliance issues have also been raised.

Notwithstanding the current suite of reviews, including the investigation currently being undertaken by the ANAO and NSW and this inquiry, ACF supports and recommends a national judicial inquiry into the implementation and compliance with the Basin Plan.

#### *Recommendation*

6. *The Commonwealth should establish a national judicial inquiry into the compliance and enforcement of the Basin Plan*

#### ***Use of environmental water for irrigation purposes***

The benefits of the water recovered for the environment to date have been undermined by insufficient protection of environmental flows. These were also key concerns highlighted in the Matthews interim report, which noted:

*“The Four Corners program also raised significant public concerns about the protection of water purchased by taxpayers for the environment. In the time available for this interim report it has not been possible to deal conclusively with this issue. However it is my strong view that action is vital and solutions need to be found as a matter of urgency. A threshold requirement is to deal with any illegal diversions from environmental entitlements. However, a lasting solution to the problem needs to also deal with water extractions that are within the present rules. The longer term solution needs to be transparent, simple, and understandable by an interested member of the public. As far as possible there should be common arrangements across the Murray–Darling basin. Arrangements need to be readily audited and amenable to compliance and enforcement.”*

and

*“The program has prompted significant public concern that water purchased at taxpayers’ expense for the environment is not being successfully managed for that purpose, and instead, is being accessed by certain irrigators either because of perceived inadequacies in the rules, or outside the rules entirely. This issue applies not only in the Barwon–Darling water system but elsewhere in NSW and the wider Murray–Darling Basin. Solving the problem will be critical to the success of the*

*Murray–Darling Basin Plan. It is a pre-condition if the anticipated environmental benefits of the plan are to be delivered. The issue is not new. Regrettably, it has continued without resolution for years. Considerable work has been initiated in attempting to deal with it. The MDBA and the Commonwealth Environmental Water holder as well as the major basin states have all committed to work on the problem. But an enduring solution has not yet been found.”<sup>12</sup>*

It is clear that current water sharing plans especially the Barwon Darling WSP, do not effectively protect environmental water entitlements through the system. In fact it has been clear that under some water sharing plans environmental flows may trigger pumping for irrigation. The simple fact is that enabling the legal pumping of environmental water purchased with taxpayer funds undermines the integrity of the Basin Plan.

Private floodplain harvesting is also of significant concern in this regard. It contributes to, and exacerbate losses from the take of held environmental water. Managing the movement of water across a range of tenures remains a significant challenge for state authorities and the MDBA. The management of constraints in the MDB has failed to effectively tackle this issue. It is clear no new private floodplain harvesting should be authorised until it is assessed for its impacts on downstream users and the inflows in the basin. The fact that these impact assessments are either inadequate or lacking, especially in relation to the Barwon-Darling system is of significant concern.

Protecting tax payer funded environmental water and ensuring it reaches its desired end point, such as a wetland or floodplain, is key to realising the benefits and intent of the Basin Plan. The failure to do so will undermine the Basin Plan and guarantee that it will not be successful in restoring health to our rivers, wetlands and floodplains. It will also further undermine community confidence in the plan and its administrators. A primary reform for all basin states must be to safeguard environmental water across both the northern and southern basin.

#### *Recommendations*

- 7. Strengthen Chapter 10 of the Basin Plan to ensure all Water Resource Plans have provisions that adequately protect environmental water entitlements.*
- 8. There be legislative requirements for the Commonwealth Environmental Water Holder to be consulted on:*
  - a. the security of all water acquired through purchase or infrastructure*
  - b. The appropriateness of mechanisms within Water Sharing Plans for safeguarding environmental water prior to endorsement by the MDBA*

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<sup>12</sup> <https://www.industry.nsw.gov.au/about/our-business/independent-review-water-management-and-compliance>

9. *The Basin Plan and Water Act should be amended to set minimum standards and criteria for the assessment and approval of floodplain harvesting infrastructure within the Basin.*

### **Water for the Environment Special Account**

ACF strongly supports the most effective and efficient use of funds to acquire water for the environment – and evidence clearly demonstrates that this is achieved through direct intervention to purchase entitlement from willing sellers on the market. The cap on buy-backs and prioritising the investment in infrastructure on private property to deliver water entitlements is one of the least efficient mechanisms to acquire water entitlements. As noted by the Productivity Commission:

*Purchasing water from willing sellers (at appropriate prices) is a cost-effective way of meeting the Government's liability for policy-induced changes in water availability. Subsidising infrastructure is rarely cost effective in obtaining water for the environment, nor is it likely to be the best way of sustaining irrigation communities.*<sup>13</sup>

The drawback of this approach is two-fold:

- Infrastructure investments are more expensive than purchasing water off the market and will run down the available funds for water recovery more quickly. This means they represent the least efficient value for taxpayers, whilst maximizing benefits for those individual irrigators participating in the program.
- As more efficiency projects are used to bridge the gap toward the SDL, it will decrease availability of cost-effective irrigation infrastructure projects that would have otherwise been available to deliver the full 450 GL of SDL adjustment “efficiency projects” (up-water) through the Water for the Environment Special Account. That is to say by limiting the strategic buy back of water, projects that would have otherwise been funded and resourced through the operation of the special account are funded through the bridging the gap projects.

Over the longer term this approach will likely drive up the cost and/or reduce the availability of future efficiency projects. It is conceivable that there would not be sufficient funds to deliver the full 450 GL of efficiency projects.

There is \$1.77 billion allocated in the Water for the environment special account. The primary intention of the account was to deliver on the full 450 GL of water anticipated in the SDL adjustment process and address constraints.

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<sup>13</sup> <https://www.pc.gov.au/inquiries/completed/murray-darling-water-recovery/report>

Whilst there has been significant emphasis by the states and commonwealth on designing and developing supply measure projects to reduce the amount of SDL, the same level of enthusiasm or impetus could not be witnessed for designing and developing efficiency measure projects. To-date there has been minimal progress on behalf of the Basin states, including the Commonwealth, in the development and delivery of programs and projects that will deliver the full 450 GL of water for the environment through efficiency projects.

The failure to secure in legislation the full suite of efficiency measures through the SDL adjustment process, whilst proposing to lock in 605 GL of supply measure projects that will take water from the environment, will be a significant blow to the integrity of the Basin Plan.

It is recommended that the Commonwealth lead the development, with other basin states, of mechanisms to secure the full 450 GL and that these be mandated through the SDL adjustment process in 2017/18.

#### *Recommendations*

- 10. The Commonwealth lead the development, with consultation with other basin states, of mechanisms to secure the full 450 GL of up-water and that this be legislated through the SDL adjustment process.*

#### ***Need for integrity in public office***

The matters addressed in this submission and by this inquiry were brought into the public light not through robust and trusted public institutions implementing the law effectively, but via the persistent actions of NGO's, individuals and journalists. It was through the work of groups like ACF and the NSW EDO via Freedom of Information laws, the courage of whistleblowers and investigative journalism that unearthed serious allegations of misconduct and brought these matters into the national spotlight.

Rather than the NGO sector and the media highlighting serious compliance failures of government agencies, there should be public sector watchdogs that oversee the conduct and behavior of public officials and that are arm's length from political interference. The need for such institutions nationally is evidenced by the fact that the NSW ICAC is now investigating the matters raised on four corners in that state. As such ACF supports the establishment of a national Independent Commission Against Corruption.

It is also worth noting that the Government is currently moving to restrict the voice of environmental advocacy and legal representation. The Treasury is finalising a discussion paper that would aim to mandate environment groups prioritise environmental remediation over legal aid, advocacy or research. If such measures were already in place it is less likely that the issues that have been aired in relation to the Barwon-Darling would have come to light.

*Recommendations*

- 11. That the Commonwealth government establish a Federal anti-corruption body to investigate the standards, ethics, conduct and legality of action of public officials.*