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*PO Box 379
Ceduna, SA 5690
Email: admin@australianenvironment.org*

ABN: 22 112 894 872

SUBMISSION TO

**ENVIRONMENT, NATURAL RESOURCES AND
REGIONAL DEVELOPMENT COMMITTEE**

OF THE PARLIAMENT OF VICTORIA

**COMMITTEE INQUIRY INTO MANAGEMENT, GOVERNANCE AND
USE OF ENVIRONMENTAL WATER**

Prepared by the

Australian Environment Foundtion

Reported Failures in Water Management in Murray-Darling Basin

On 24 July 2017 ABC *Four Corners* reported that billions of litres of water, which the Commonwealth had purchased to benefit the environment, were being **diverted by downstream irrigators** to grow cotton.

In 2007 the Howard Government committed \$10 billion to get NSW, Victoria, Queensland and SA to reduce their over-allocation of water licenses in the Murray-Darling Basin and return water to the environment.

The end-result was the 2012 Murray-Darling Basin Plan. Under that Plan the Commonwealth would recover 2,750 gigalitres of water for the environment by purchasing water licences and funding improvements to irrigation infrastructure. In return for making farms more water-efficient, irrigators would surrender the water that was saved as a consequence for environmental use.

Four Corners has reported that large volumes of environmental water, which the Commonwealth had recovered in Queensland, were being diverted by downstream irrigators to grow cotton in the Barwon-Darling catchment, just over the NSW border. While some of the alleged diversions were, on the one hand, due to irrigators tampering with water meters and failures by state regulators to enforce the terms and conditions of their water licences, others were completely lawful under the relevant NSW legislation.

Both sets of revelations by the ABC have been greeted with shock and dismay.

Nevertheless the legal diversion of recovered water is not as shocking as it might seem, given how incredibly complex water management is in the Murray-Darling Basin.

Water rights vary enormously across the Basin. In catchments with large public storages, such as the Murray, the water rights almost guarantee access. In contrast, in catchments with limited public storage, such as the Barwon-Darling, the water rights tend to be more 'opportunistic'. When the river runs high, irrigators may extract water but not when it runs low. Such rights generally have volumetric limits attached to them; holders have to meter their usage and stay within their limits.

To ensure that a given volume of water actually benefits the environment, State water managers need to be able to 'wrangle' it through the Basin's complicated web of water and other property rights, while fully respecting those rights. This is far more difficult to do than it might seem.

If there are irreconcilable conflicts between their environmental objectives and these property rights, the relevant governments should fully compensate the rights-holders for any economic losses that they suffer as a consequence of any curtailment of their rights. As the benefits of environmental water accrue to the community as a whole, it is right that it should bear the cost of any compensation.

At present the institutional and organisational arrangements that the Commonwealth and the Basin States have in place are simply not up to such a challenging assignment. This is a clear case of government failure. The Commonwealth and the four Basin States have failed to explain to the public the scale and complexity of the environmental challenge in the Basin. They have also failed to craft the suite of institutions and organisations that are necessary and sufficient to manage that challenge.

Calls for Inquiry into ABC Allegations

There have been numerous calls for an inquiry into the allegations of illegal water use, non-compliance and failure to enforce compliance in the Barwon-Darling catchment of the Basin, which were aired on [ABC Four Corners](#) on 24 July 2017.

As yet there is no consensus on the form or focus of such an inquiry. Indeed there is much confusion on these matters.

On 25 July 2017 the [Water Division of the NSW Department of Primary Industries](#) (DPI-Water) undertook to cross-check the allegations of non-compliance, as well as any issues regarding the Barwon-Darling catchment and implementation of the Murray-Darling Basin Plan. In doing so, it rejected claims it had 'lost its appetite for compliance' and stated it prosecutes 'where adverse activities are detected and proven'.

On 27 July 2017 the NSW Minister for Regional Water, Niall Blair, announced that Ken Matthews would conduct an independent investigation into the revelations. Mr Matthews is a former Commonwealth Departmental Head with significant experience in water management. His inquiry will address all allegations involving DPI-Water or any of its employees.

In the meantime, the proposals started coming thick and fast. The SA Water Minister, [Ian Hunter](#), proposed a judicial inquiry. [Senator Nick Xenophon](#) wanted the NSW Independent Commission Against Corruption (ICAC) to conduct the inquiry but he also joined SA Greens [Senator Sarah Hanson-Young](#) in calling for a Senate inquiry with full parliamentary privilege to protect witnesses who would give evidence to it. The distinction between the two proposals is not clear.

The [Murray Lower Darling Rivers Indigenous Nations](#) (MLDRIN) agreed that NSW ICAC should conduct the inquiry. They also proposed that water planning in NSW should be overhauled and that the National Party relinquish the water portfolio in the NSW Government.

For its part, the Commonwealth has proposed an [independent inquiry into compliance with and enforcement of the Murray-Darling Basin Plan](#). It wants NSW, Victoria, Queensland and SA to agree to the Murray-Darling Basin Authority conducting the review and reporting by December.

The Victorian Water Minister, [Lisa Neville](#), has already rejected the iCommonwealth's idea of using the Murray-Darling Basin Authority. She wants the inquiry to be able to compel witnesses to give evidence.

Finally, even the [Commonwealth Auditor-General is getting involved](#). He has decided to extend his effectiveness audit of certain agreements on specific purpose grants to the States to include those under the Basin Plan.

Conclusion

None of these approaches are likely to get to the nub of the problem. While illegal diversion of water, non-compliance with water licence rules and non-enforcement of those rules are not trivial issues, they are symptomatic of more fundamental issues.

Neither the Basin Plan nor the institutional and organisational arrangements, which the Commonwealth and the four Basin Governments have put in place to implement it, are capable of delivering what is expected of those arrangements.