

Submission to the Terms of Reference

South Australian Royal Commission
into the implementation of the
Murray-Darling Basin Plan

South Australia announced a Royal Commission in response to findings from multiple independent reviews, which highlighted serious issues with the implementation of the \$13bn Murray-Darling Basin Plan. To restore public confidence, the Terms of Reference for that investigation should be broad enough to identify all issues that are compromising the delivery of the Basin Plan.

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Terms of Reference submission

The Australia Institute welcomes the opportunity to make a submission on the Terms of Reference (ToR) of South Australian Government's Royal Commission into the Murray-Darling Basin Plan.

Controversy has raged around Murray Darling Basin water issues since Four Corners aired allegations of large-scale water theft and the ability for irrigators to legally extract water purchased for the environment from the Barwon-Darling River.¹

The New South Wales and Commonwealth Governments reacted with several reviews, including:

- NSW Department of Industry: *Independent investigation into NSW water management and compliance* (the Matthews Report)²
- MDBA: *Basin-wide Compliance Review: Containing reports by the Murray-Darling Basin Authority and the Independent Review Panel*³
- ANAO: *Assurance Review – New South Wales' Protection and use of Environmental Water in the Murray-Darling Basin*⁴
- Senate Inquiry: *The integrity of the water market in the Murray-Darling Basin*⁵
- NSW Ombudsman: *Investigation into water compliance and enforcement 2007-17*⁶

¹ Besser (2017) *Pumped: Who's benefitting from the billions spent on the Murray-Darling?*, <http://www.abc.net.au/4corners/pumped/8727826>

² Matthews (2017) *Final Report: Independent investigation into NSW water management and compliance*, https://www.industry.nsw.gov.au/_data/assets/pdf_file/0019/131905/Matthews-final-report-NSW-water-management-and-compliance.pdf;

³ Murray-Darling Basin Authority (2017) *The Murray-Darling Basin Water Compliance Review* ; <https://www.mdba.gov.au/sites/default/files/pubs/MDB-Compliance-Review-Final-Report.pdf>

⁴ Australian National Audit Office (2017): Department of Agriculture and Water Resources' Assessment of New South Wales' Protection and use of Environmental Water under the National Partnership Agreement in Implementing Water Reform in the Murray-Darling Basin <https://www.anao.gov.au/work/assurance-review/dept-agriculture-water-resources-assessment-nsw-protection-use-environmental-water-mdb>

⁵ Senate Standing Committee on Rural and Regional Affairs and Transport Reference Committee (2017: Interim Report https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/MurrayDarlingPlan/Interim_Report

⁶ NSW Ombudsmen (2017): *Investigation into water compliance and enforcement 2007-17* https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0012/50133/Investigation-into-water-compliance-and-enforcement-2007-17.pdf

In response to these reviews, the South Australian Government announced a Royal Commission into the theft of water from the Murray-Darling Basin Plan.

The reviews and subsequent media reports suggest that a change in the political direction at the Commonwealth level and a capture of NSW and Commonwealth agencies by the irrigation sector is resulting in a general subversion of the intent of the Basin Plan.

The reviews initiated by Government Departments, (the Matthews Report and the MDBA compliance review), were very narrow in scope. However, those reports found serious problems which extend beyond theft and compliance. Some of the findings that have emerged are:

- The Basin Plan is in real jeopardy of not being delivered by 2019⁷
 - MDBA has been unable to assert its authority during the development of water resource plans⁸
 - The Commonwealth has demonstrated a lack of leadership⁹
 - Some states lack genuine commitment to the implementation of the Basin Plan¹⁰
 - There is a long term culture of poor compliance in NSW¹¹
 - The state of overall Basin Plan implementation and compliance is unclear¹²
 - The absence of any genuine action on protection of environmental water¹³.
 - The reviews and subsequent media reports imply the capture of New South Wales and Commonwealth government agencies by parts of the irrigation sector, resulting in a general subversion of the intent of the Basin Plan.^{14 15 16}
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⁷ Murray-Darling Basin Authority (2017)

⁸ Matthews (2017) , Murray-Darling Basin Authority (2017)

⁹ Murray Darling Basin Authority (2017)

¹⁰ Matthews (2017)

Murray-Darling Basin Authority (2017)

NSW Ombudsmen (2017)

¹¹ Murray-Darling Basin Authority (2017)

¹² Murray-Darling Basin Authority (2017)

¹³ Matthews (2017) , Murray-Darling Basin Authority (2017)

¹⁴Guardian (2017): *Barnaby Joyce says he gave water back to irrigators to stop 'greenies'*

<https://www.theguardian.com/australia-news/2017/jul/27/barnaby-joyce-says-he-gave-water-back-to-irrigators-to-stop-greenies>

¹⁵Guardian (2017): *Barnaby Joyce says he gave water back to irrigators to stop 'greenies'*

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¹⁶ Besser (2017)

¹⁷ Matthews (2017)

Given the narrow focus of the reviews to date; the gravity of the concerns raised by the independent reviewers; and the risk of sector capture; it would seem unlikely that all of the issues are limited to those disclosed to date.

The Basin Plan requires a co-operative partnership between the Commonwealth and State governments. MDBA has a role in both negotiating the finalisation of the Sustainable Diversion Limit and being the regulator of the Basin Plan implementation. The Basin Plan is complex and requires many aspects of implementation to be negotiated between the MDBA and the States. NSW appears to have sought to undermine the Basin Plan and the MDBA has been identified as an ineffective negotiator and regulator.¹⁸ Every element of the Basin Plan is at risk of being compromised by lack of government commitment or capacity, or captured by sector interests, against the policy intent of Basin Plan.

To restore public confidence in the reform, any further investigation should be sufficiently broad to ensure that all issues relating to Basin Plan implementation, have been identified.

In our view, the ToR should include examination of all matters which have been subject to negotiations between the Commonwealth, State partners and/or irrigation interests, since the Basin Plan came into effect. This includes, but is not limited to:

- Matters relating to the Sustainable Diversion Limits (SDL), including:
 - Changes to the Baseline Diversion Limits;
 - Whether the method proposed to monitor compliance with the SDL will provide a transparent and accountable assessment of growth in use;
 - The validity of recommended changes to the SDL through the Northern Basin Review;
 - The validity of recommended changes to the SDL adjustment mechanism;
 - Matters relating to the socio-economic assessment of the Efficiency Measures Target; and
 - Assessing compliance with the Cap and the transitional Cap.
- Meeting water recovery targets, including:
 - Cap factors (also known as Long Term Diversion Limits (LTDLS)) to achieve water recovery targets;
 - The validation of all water acquired through 'Bridging the Gap' and whether that water is genuine, particularly with reference to efficiency savings, 'Strategic Water Purchases' and recovery targets changed as a result of Cap Factors; and

¹⁸ Matthews (2017)

Murray-Darling Basin Authority (2017)

- The validation of water acquired or rebadged to meet the Efficiency Measure Targets (the 450GL of 'Up Water').
- Matters relating to the use of recovered water, including:
 - The interpretation and application of s6.14 of the Basin Plan (*Risks arising from other changes to the Basin Plan*);
 - Matters relating to the protection of environmental water, including s7.15 (*Contribution to adjustments from supply measures*), s10.27 (*Enabling environmental watering between connected water resources*) and s10.28 (*No net reduction in the protection of planned environmental water*) of the Basin Plan and the *National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin*; and
 - Considerations to limit the use of environmental water through policy measures.
- Matters relating to the reliability and the subsequent financial security, of water entitlements across the Murray-Darling Basin
- An examination of the process by which changes were made to the *Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources* (2012) following the period of public exhibition of the draft plan.

The Australia Institute is happy to elaborate on any points made in this submission or provide further information which have informed our concerns.