



**Constitution Amendment (Water Accountability and Transparency) Bill 2020, Water Management Amendment (Transparency of Water Rights) Bill 2020 and Water Management Amendment (Water Allocations - Drought Information) Bill 2020**

Report 44

July 2020

4





Portfolio Committee No. 4 - Industry

**Constitution Amendment  
(Water Accountability and  
Transparency) Bill 2020, Water  
Management Amendment  
(Transparency of Water  
Rights) Bill 2020 and Water  
Management Amendment  
(Water Allocations - Drought  
Information) Bill 2020**

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## Terms of reference

1. That Portfolio Committee No. 4 – Industry inquire and report on:
  - (a) the provisions of the Constitution Amendment (Water Accountability and Transparency) Bill 2020,
  - (b) the Water Management Amendment (Transparency of Water Rights) Bill 2020, and
  - (c) the Water Management Amendment (Water Allocations—Drought Information) Bill 2020.
2. That the committee report by Friday 31 July 2020.

The terms of reference were referred to the committee by the Legislative Council on 16 June 2020.<sup>1</sup>

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<sup>1</sup> *Minutes*, NSW Legislative Council, 16 June 2020, pp 1035-1036.

## Committee details

### Committee membership

<b>The Hon. Mark Banasiak MLC</b>	Shooter, Fishers and Farmers Party	<i>Chair</i>
<b>The Hon Catherine Cusack MLC</b>	Liberal Party	
<b>The Hon Sam Farrow MLC</b>	The Nationals	
<b>Mr Justin Field MLC*</b>	Independent	
<b>The Hon Trevor Khan MLC **</b>	The Nationals	
<b>The Hon Peter Primrose MLC</b>	Australian Labor Party	
<b>The Hon Mick Veitch MLC</b>	Australian Labor Party	

\* Mr Justin Field MLC replaced the Hon Emma Hurst MLC from 17 June 2020 for the duration of the inquiry

\*\* The Hon Trevor Khan MLC replaced the Hon Lou Amato MLC from 9 July 2020 for the duration of the inquiry

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## Chair's foreword

This inquiry differed from most in that it delved into the provisions of three water bills: the Constitution Amendment (Water Accountability and Transparency) Bill 2020; the Water Management Amendment (Transparency of Water Rights) Bill 2020; and the Water Management Amendment (Water Allocations - Drought Information) Bill 2020.

Two of the bills looked specifically into water transparency and disclosure of water ownership by members of Parliament. The third looked at the incorporation of specific information with regards to creating water sharing plans.

The Water Management Amendment (Water Allocations - Drought Information) Bill 2020, tabled by the Opposition, differs from the other two. However, it was deemed prudent that all three bills be investigated together, given that potential stakeholders would be the same. In addition, given that a concurrent inquiry through the Regulation Committee is investigating other water management matters, stakeholder fatigue was considered a concern.

I want to thank the committee secretariat for their professionalism in managing an inquiry that differed from the norm. I also want to thank all committee members in how they conducted themselves during the inquiry.

This inquiry saw a wide range of opinions on the subject of water. Almost all participants supported a need to improve the level of transparency around water ownership, how that can be achieved, and the level of detail provided in that transparency.

It is worth noting that those that expressed concern towards the level of detail proposed in the Shooters, Fishers and Farmers' Water Management Amendment (Transparency of Water Rights) Bill used almost identical wording to that of the Government's critique of the bill. A question remains as to who was influencing who with regards to this.

Witnesses mentioned the National Water Initiative (NWI) from 2004, which states in explicit detail how a state water register should function, and noted that the current NSW water register does not remotely meet this standard. It is unclear, given 16 years have passed since the NWI, whether the agreement is binding or if it is just another example of an intergovernmental talkfest that contributes little towards water transparency and ownership in this state.

When investigating the Opposition's bill, many witnesses cited modelling completed on the drought of record that subsequently informed water sharing plans as a reason to oppose the bill. Two of these witnesses included former water ministers Katrina Hodgkinson and Kevin Humphries; however, neither could admit they had sighted this modelling, nor could they provide a copy – a situation that then extended to the current water minister and two of her most senior bureaucrats.

The inability of any of the former ministers or current minister to produce this modelling highlights why the public has concerns around the transparency of water management in this state – a fact accentuated by responses from former ministers that can best be described as 'word salad'.

While such tactics may serve the interests of governing parties, it does not serve the interests of the people of this state nor do anything to alleviate people's concerns about the openness and transparency of government.

The public expects politicians to make decisions based on facts and evidence. I would urge the Minister to make this modelling available (if it exists) to all members before the Opposition bill is debated in the Legislative Council.



Hon Mark Banasiak MLC  
**Committee Chair**

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## Recommendations

**Recommendation 1****17**

That the Legislative Council proceed to debate the Constitution Amendment (Water Accountability and Transparency) Bill 2020, and the committee comments and concerns identified by stakeholders as set out in this report be addressed during debate in the House.

**Recommendation 2****17**

That the Legislative Council proceed to debate the Water Management Amendment (Transparency of Water Rights) Bill 2020, and the committee comments and concerns identified by stakeholders as set out in this report be addressed during debate in the House.

**Recommendation 3****31**

That the Legislative Council proceed to debate the Water Management Amendment (Water Allocations – Drought Information) Bill 2020, and that the committee comments and concerns identified by stakeholders as set out in this report be addressed during debate in the House.

## Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 16 June 2020.

The committee received 19 submissions and 1 supplementary submission. An online questionnaire was also conducted which received 29 responses.

The committee held two public hearings at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, and tabled documents.

# Chapter 1      **Constitution Amendment (Water Accountability and Transparency) Bill 2020 and Water Management Amendment (Transparency of Water Rights) Bill 2020**

This chapter documents the background and purpose of the Constitution Amendment (Water Accountability and Transparency) Bill 2020 and Water Management Amendment (Transparency of Water Rights) Bill 2020. It then explores the key issues to emerge from the written and oral evidence gathered by the committee in respect of the two key elements of both bills: enhanced provisions for disclosure of water interests by members of Parliament; and enhancements to the public register of water holdings.

## References

- 1.1      The Constitution Amendment (Water Accountability and Transparency) Bill 2020, was introduced into the Legislative Assembly on 3 June 2020 by the Hon Melinda Pavey MP, Minister for Water, Property and Housing.<sup>2</sup>
- 1.2      The Water Management Amendment (Transparency of Water Rights) Bill 2020 was introduced into the Legislative Council on 3 June 2020 by the Hon Mark Banasiak MLC, representing the Shooters, Fishers and Farmers Party.<sup>3</sup> It was almost identical to that introduced into the Legislative Assembly by Ms Helen Dalton MP, Member for Murray.
- 1.3      On 16 June 2020, the Legislative Council resolved, on the recommendation of the Selection of Bills Committee, that both bills be referred Portfolio Committee No. 4 – Industry for inquiry and report by 31 July 2020.<sup>4</sup>
- 1.4      Hereafter the two bills are referred to as the Government bill and the Shooters, Fishers and Farmers (SFF) bill, respectively.
- 1.5      A third bill, the Water Management Amendment (Water Allocations – Drought Information) Bill 2020 was referred by the Council to the committee on 17 June 2020.<sup>5</sup> That bill is examined in the following chapter.

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<sup>2</sup>      *Votes and Proceedings*, NSW Legislative Assembly, 3 June 2020, p 665.

<sup>3</sup>      *Minutes*, NSW Legislative Council, 3 June 2020, p 999.

<sup>4</sup>      *Minutes*, NSW Legislative Council, 16 June 2020, pp 1035-1036. In respect of the Water Management Amendment (Transparency of Water Rights) Bill, the reference pertained to the provisions of the Bill. Upon receipt of the message from the Legislative Assembly by the Legislative Council on 17 June 2020, the Constitution Amendment (Water Accountability and Transparency) Bill was referred to the committee. See *Minutes*, NSW Legislative Council, 17 June 2020, p 1056.

<sup>5</sup>      *Minutes*, NSW Legislative Council, 17 June 2020, p 1063.

## Constitution Amendment (Water Accountability and Transparency) Bill 2020

### Background and purpose of the bill

- 1.6 The Government bill seeks to amend the *Water Management Act 2000* with respect to public access to information recorded in the Water Access Licence Register, and the *Constitution (Disclosures by Members) Regulation 1983* to require members of Parliament to disclose certain water interests held by members and certain water trading activities by members.<sup>6</sup>
- 1.7 When introduced, the Government bill only included provisions in respect of disclosures by members of Parliament. It was amended by the Legislative Assembly, on the motion of the Minister, to include the provisions in respect of the Water Access License Register.<sup>7</sup>
- 1.8 In her second reading speech, the Hon Melinda Pavey MP, Minister for Water, Property and Housing, stated that the bill will strengthen the transparency and accountability of parliamentary disclosure requirements by including water assets as a form of pecuniary interest requiring disclosure.<sup>8</sup>
- 1.9 The Minister observed that water is one of the state's most valuable assets and the NSW Government has a responsibility to ensure that it is managed equitably and with transparency. She noted that parliamentarians have a responsibility to the people of the state to report all pecuniary interests, consistent with the Constitution (Disclosures by Members) Regulation 1983. The Minister stated that by amending the regulation, the bill will clarify that members of Parliament are required to disclose their interest in water assets.<sup>9,10</sup>

### Overview of the bill's provisions

- 1.10 The objects of the Government bill, as set out in the explanatory note are:
- (a) to require Members of Parliament to publicly disclose their interests in water access licences, share components of water access licences and contractual rights to receive water from irrigation corporations,
  - (b) to require Members of Parliament to publicly lodge returns disclosing water trading activity within 14 days of becoming a party to the activity,
  - (c) to provide for the compilation and maintenance of registers of water trading returns by the Clerks of the Legislative Council and the Legislative Assembly,

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<sup>6</sup> Constitution Amendment (Water Accountability and Transparency) Bill 2020, Second Print, p 1.

<sup>7</sup> *Votes and Proceedings*, Legislative Assembly, 17 June 2020, pp 686-692.

<sup>8</sup> Melinda Pavey, Second reading speech: Constitution Amendment (Water Accountability and Transparency Bill) 2020, 3 June 2020.

<sup>9</sup> Melinda Pavey, Second reading speech: Constitution Amendment (Water Accountability and Transparency Bill) 2020, 3 June 2020.

<sup>10</sup> Melinda Pavey, Second reading speech: Constitution Amendment (Water Accountability and Transparency Bill) 2020, 3 June 2020.

(d) to make consequential amendments.<sup>11</sup>

- 1.11** Specifically, the bill will require MPs to disclose licence number and share component of any water access licence, or a contractual right to receive water from an irrigation corporation, and the water entitlements associated with that right in which they had an interest at any time during the primary and/or ordinary return period, and the nature of the interest in the water licence.
- 1.12** The bill will further require that any relevant Australian Business Number (ABN) is to be attached to each water licence or right, and that members notify the Parliament via their pecuniary interest register within 14 days of trading water for any purpose, including any moneys made and the change to the net impact of their water holdings.<sup>12</sup>
- 1.13** Exclusions from the bill's requirements for declaration by MPs include:
- water rights held by a minister on behalf of the Crown
  - rights that are held only by a member acting in their capacity as the executor or administrator of a deceased estate where they are not the beneficiary under the will or intestacy
  - where a member is acting on their capacity as a trustee, where the member acquired the interest in the ordinary course of any occupation which is not related to his or her duties as a member.<sup>13</sup>
- 1.14** The amended bill's provisions in respect of the Water Access Licence Register would amend section 71H of the Water Management Act 2000 No 92, as follows:

**71H Public access to information in Access Register**

- (1) The Minister is to make the information recorded in the Access Register available to members of the public in accordance with this section.
- (2) The information is to be made available through an electronic search facility on a publicly accessible website.
- (3) The information is to be made available on payment of the fee (if any) approved by the Minister.
- (4) The regulations may make provision for or with respect to—
  - (a) the authentication of searches of the Access Register, and
  - (b) the certification of the results of those searches, and
  - (c) the restriction of access to personal information recorded in the Access Register for the purpose of protecting the privacy of that information.

<sup>11</sup> Constitution Amendment (Water Accountability and Transparency Bill) 2020, First Print, Explanatory Note, p 1.

<sup>12</sup> Melinda Pavey, Second reading speech: Constitution Amendment (Water Accountability and Transparency Bill) 2020, 3 June 2020.

<sup>13</sup> Melinda Pavey, Second reading speech: Constitution Amendment (Water Accountability and Transparency Bill) 2020, 3 June 2020.

- (5) This section does not limit the application of Part 6 of the Privacy and Personal Information Protection Act 1998 to the Access Register.<sup>14</sup>

## Water Management Amendment (Transparency of Water Rights) Bill 2020

### Background and purpose of the bill

**1.15** The SFF bill seeks to amend the *Water Management Act 2000* with respect to the provision, maintenance and accessibility of information relating to water access licences.<sup>15</sup>

**1.16** In introducing the bill, the Hon Mark Banasiak MLC stated that its purpose is to 'end the secrecy around water ownership in this state', and address the 'many issues around registering and providing public transparency on water ownership'. He observed:

In the current climate, water is a commodity. It is an asset to be traded. In times of drought it is arguably the most important asset, the demand of which can send prices skyrocketing. A lot of money can be made if you have water entitlements.<sup>16</sup>

**1.17** Mr Banasiak suggested that within the context in which it is very easy to purchase water entitlements, safeguards are required. In addition transparency is needed to address the significant lack of trust in the integrity of the water market:

The secrecy behind water ownership has contributed to much of the bad decision-making around water and now it also has exacerbated the impact of drought. For over 20 years there have been allegations of corruption, mismanagement, insider trading, conflicts of interest, market manipulation, misuse of environmental allocations, water theft and over-extraction.<sup>17</sup>

**1.18** Mr Banasiak identified three key provisions in the bill that are intended to prevent exploitation of the water trading system, stating that the bill will:

- change the pecuniary interest form for members of the NSW Parliament to require them to declare any water they or their spouse may have owned over the past five years
- amend the application process for gaining a water licence so that people are unable to hide their identity when they apply, including by requiring information such as the major shareholders and directors of companies who apply for a water licence

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<sup>14</sup> Constitution Amendment (Water Accountability and Transparency) Bill 2020, Second Print, Schedule 1, p 3.

<sup>15</sup> Water Management Amendment (Transparency of Water Rights) Bill 2020, Explanatory Note, First Print p 1.

<sup>16</sup> Mark Banasiak, Second reading speech: Water Management Amendment (Transparency of Water Rights) Bill 2020, 3 June 2020.

<sup>17</sup> Mark Banasiak, Second reading speech: Water Management Amendment (Transparency of Water Rights) Bill 2020, 3 June 2020.



- alter the state's online water register to allow people to search for the water holdings of people, companies and government departments, rather than by licence number, as is currently the case.<sup>18</sup>

### Overview of the bill's provisions

**1.19** The objects of the bill, as set out in the explanatory note, are:

- to facilitate public access to information relating to water access licences (within the meaning of the Act) and recorded in the Water Access Licence Register established by the Act (the Access Register),
- to impose requirements relating to maintaining and updating the Access Register,
- to provide for the independent audit of the Access Register,
- to impose requirements relating to the information to be provided in applications for water access licences,
- to require the public disclosure of interests in water access licences held by Members of Parliament and the spouses of Members of Parliament,
- to make other consequential amendments,
- to insert provisions of a transitional nature consequent on the enactment of the proposed Act.<sup>19</sup>

**1.20** Schedule 1 sets out six separate amendments to the Water Management Act 2000 in respect of the Water Access Register.

**1.21** Schedule 2 makes three amendments to the Water Regulation in respect of water access licences. In addition, it makes two changes to legislation in respect of MPs disclosures:

**Schedule 2.1[1]** inserts proposed section 14A(1A) in the Constitution Act 1902. The proposed subsection clarifies that a regulation made under section 14A(1) of that Act may require the disclosure of pecuniary interests or other matters held by or relating to spouses of Members of either House of Parliament. **Schedule 2.1[2]** makes a consequential amendment.

**Schedule 2.2[3]** inserts proposed clause 8A in the Constitution (Disclosures by Members) Regulation 1983. The proposed clause requires a Member of Parliament to disclose, with limited exceptions, the water access licence number of each water access licence in which the Member or the Member's spouse (if any) has an interest (or had an interest at any time during the period of 5 years ending on the date on which the Member takes the pledge of loyalty) and the nature of that interest. **Schedule 2.2[1], [2] and [4]–[11]** make consequential amendments.<sup>20</sup>

<sup>18</sup> Mark Banasiak, Second reading speech: Water Management Amendment (Transparency of Water Rights) Bill 2020, 3 June 2020.

<sup>19</sup> Water Management Amendment (Transparency of Water Rights) Bill 2020, Explanatory Note, First Print, p 1.

<sup>20</sup> Water Management Amendment (Transparency of Water Rights) Bill 2020, Explanatory Note, First Print, p 2.

## Differences between the bills

1.22 While the amended Government bill and SFF bill have similar aims, their differences have been summarised as follows:

- The Government bill, as amended, deals with both the Water Access Licence Register under the *Water Management Act 2000* and the disclosure requirement for members under the Constitution (Disclosures by Members) Regulation 1983. Specifically in relation to the latter, it provides for the establishment of a new Register of Water Trading Returns of Members compiled and maintained by the Clerks of each House of Parliament, and makes explicit the disclosure requirements under the existing registers of interests in respect of water interests.
- The SFF bill deals with the Water Access Licence Register established under the *Water Management Act 2000* as well as making explicit the disclosure requirements under the existing registers of interests in respect of water interests, but also requires the disclosure of such interests held by a member's spouse and including interests held at any time during the period of five years prior to a member taking the Pledge of Loyalty.<sup>21</sup>

## Key issues

1.23 This section documents the key issues that the committee explored with inquiry participants in respect of the two bills. First it briefly notes stakeholders' views in respect of the underlying principle of transparency in water holdings. Next it documents participants' views in respect of enhanced disclosures by Members of Parliament. It then explores their views in respect of each bills' provisions regarding the Water Access Licence Register.

### Transparency

1.24 There was widespread support among inquiry participants for greater transparency as a principle underpinning both bills. Examples of participants' views included:

- 'As a principle we are very supportive of more transparency; we think that is essential to good governance and trust. We know that confidence in information is fundamental to a functioning market and that there is wide distrust with regards to water management at both the State and Federal level ...'<sup>22</sup>
- 'Full transparency and disclosure of water interests ... are critical for public confidence in decisions ... [and] to re-establish public trust in government processes.'<sup>23</sup>
- '[The Australian Floodplain Association] is strongly in favour of greater transparency in all aspects of water management. It is our view that trust in governments' management of water is at a very low ebb and cannot be rebuilt without transparent decision-making processes being implemented across all levels of government.'<sup>24</sup>

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<sup>21</sup> Submission 14, Clerk of the Parliaments, p 3.

<sup>22</sup> Evidence, Ms Maryanne Slattery, Director, Slattery and Johnson, 13 July 2020, p 26.

<sup>23</sup> Submission 5a, Murray Valley Private Diverters, p 5; See also Ms Louise Burge, Executive Officer, Murray Valley Private Diverters, 14 July 2020, p 20.

<sup>24</sup> Submission 7, Australian Floodplain Association, p 2.

## Disclosures by members of Parliament

1.25 Inquiry participants expressed unanimous support for members of Parliament being subject to the same disclosure requirements for their water holdings as for their other assets.<sup>25</sup> For example, the following views were expressed:

- 'Amendments ... that require MPs to declare water access licences they own or have interest in and to declare any water trading activity within 14 days seem fair and reasonable ...'<sup>26</sup>
- 'Transparency is a key principle in decision making. Therefore, we support members of Parliament being subject to the same disclosure requirements for water holdings as for other forms of property.'<sup>27</sup>
- 'The public expects that holders of public office at all tiers of government be accountable. Whenever policy or legislation is debated or new planning decisions are made, it is a vital function of our democracy that declaration of interests provides transparency. The community deserves certainty that decisions are being made in their best interests.'<sup>28</sup>
- 'With water (its ownership, allocation and management) being such a vexed issue in rural communities, it is absolutely necessary that members of Parliament are completely transparent in their dealings with this valuable and limited resource.'<sup>29</sup>
- 'Community expectation as outlined within the *Constitution Act 1902* and the subsequent *Constitution (Disclosure by Members) Regulation 1983* indicates that members of Parliament should declare interests that are either, perceived to or may affect their ability to make an unbiased decision in the best interests of New South Wales. For that reason, we support and recommend that improved clarity in this area as well as consistency in how declarations are made (as with other property interests) is adopted.'<sup>30</sup>

1.26 Similarly, a respondent to the online questionnaire stated:

It is in the interests of Members of Parliament to have their water investments made public ... transparency concerning politicians' water holdings will improve public trust, currently at an all-time low concerning water matters.<sup>31</sup>

<sup>25</sup> See for example Evidence, Mr Tony Quigley, Chairman, Macquarie River Food and Fibre, 13 July 2020, p 32; Submission 16, Ricegrowers' Association of Australia, p 2; Submission 12, Namoi Water, p 1; Submission 3, Griffith City Council, p 1; Evidence, Ms Burge, 14 July 2020, p 20; Evidence, Cr John Dal Broi, Mayor, Griffith City Council, 14 July 2020, p 8; Submission 11, Christian Democratic Party, p 1; Submission 1, Mr Brian Stevens, p 1; Submission 6, Environmental Defenders Office, p 5; Submission 17, NSW Farmers' Association, p 2; Submission 13, Pauline Hanson's One Nation, p 2; Submission 19, NSW Irrigators' Council, p 5.

<sup>26</sup> Submission 2, Lachlan Shire Council, p 3.

<sup>27</sup> Submission 17, NSW Farmers' Association, p 2.

<sup>28</sup> Submission 15, Nature Conservation Council of NSW, p 3.

<sup>29</sup> Submission 13, Pauline Hanson's One Nation, p 2.

<sup>30</sup> Submission 18, Gwydir Valley Irrigators Association, p 3.

<sup>31</sup> Portfolio Committee No. 4 – Industry, NSW Legislative Council, Report on the online questionnaire: *Inquiry into Constitution Amendment (Water Accountability and Transparency) Bill 2020, the provisions of the Water Management Amendment (Transparency of Water Rights) Bill 2020 and the Water Management Amendment (Water Allocations – Drought Information) Bill 2020*, 15 July 2020, p 2.

- 1.27** Beyond such statements in favour of transparency, many stakeholders made no detailed comments on either bill's proposal in respect of member disclosures. However, there was some discussion at the margins of specific elements such as whether the declarations should apply to an MP's spouse as proposed by the SFF bill. The Nature Conservation Council supported inclusion of spouses and dependent children, as well as 'ABN and director details of any businesses that hold water access licences, allocation or the ability to trade in water.'<sup>32</sup> Pauline Hanson's One Nation supported the SFF bill's inclusion of spouses,<sup>33</sup> as did the Christian Democratic Party, which further called for declaration requirements to include all family members up to at least five generations, that is, the member's grandparents, parents, spouse, children and grandchildren.<sup>34</sup>
- 1.28** On the other hand, stakeholders such as Griffith City Council and the Gwyder Valley Irrigators Association opposed the inclusion of the member's spouse's water interests, consistent with existing disclosure requirements in respect of other financial interests.<sup>35</sup> Councillor John Dal Broi, Mayor of Giffith City Council, further objected on the basis of the personal and financial autonomy of the spouse or other family member:
- I would not support a spouse being involved. Certainly in today's age, a spouse has a right to have interests in businesses without having to declare it. I think the member of Parliament should have the interest, not the spouse, nor the sons and daughters. Surely they are individuals and should not be subjected to having to declare interests just because the ... member of Parliament is having to declare.<sup>36</sup>
- 1.29** Those who explicitly supported the inclusion of trusts in members' declarations of water interests included Mr Brett Stonestreet, General Manager of Griffith City Council, again on the basis of consistency with their existing obligations.<sup>37</sup>
- 1.30** There was apparent support for the 14 day timeframe for disclosures, with Councillor John Medcalf, Mayor of Lachlan Shire Council explicitly endorsing this as reasonable.<sup>38</sup>
- 1.31** On the issue of retrospectivity, few stakeholders addressed the SFF bill's provision for 5 years' retrospectivity; while the Murray Valley Private Diverters (MVPD) argued for it, in the interests of maximum transparency,<sup>39</sup> Councillor Dal Broi argued in principle against it.<sup>40</sup>

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The online questionnaire was not a statistically valid, random survey. Respondents were self-selected in choosing to participate (in the same way that submission authors are self-selected) and should not be considered a representative sample of the population.

<sup>32</sup> Submission 15, Nature Conservation Council, p 3.

<sup>33</sup> Submission 13, Pauline Hanson's One Nation, p 2.

<sup>34</sup> Submission 11, Christian Democratic Party, p 1.

<sup>35</sup> Submission 3, Griffith City Council, p 1; Submission 18, Gwydir Valley Irrigators Association, p 3.

<sup>36</sup> Evidence, Cr Dal Broi, 14 July 2020, p 9; see also p 14.

<sup>37</sup> Evidence, Mr Brett Stonestreet, General Manager, Griffith City Council, 14 July 2020, p 9; see also Submission 3, Griffith City Council, p 1.

<sup>38</sup> Evidence, Cr John Medcalf, Mayor, Lachlan Shire Council, 14 July 2020, p 13; see also Submission 2, Lachlan Shire Council, p 3.

<sup>39</sup> Submission 5a, Murray Valley Private Diverters, p 5.

<sup>40</sup> Evidence, Cr Dal Broi, 14 July 2020, p 13.

*Disclosures by government officials and contractors*

- 1.32 Beyond members of Parliament, MVPD called for greater transparency in respect of both government officials and contractors in order to protect against 'process failures' and the 'inequitable application of policy', which Ms Burge expanded upon in her evidence.<sup>41</sup> MVPD suggested that the Government bill may not go far enough in requiring transparency for all parties connected with decisions on water matters, calling for the bill to 'be extended to encompass all Government related entities and/or consultants involved in water related decisions' in the disclosure regime.<sup>42</sup> The committee subsequently took up with the Minister and Department of Planning, Industry and Environment representatives the concern about the adequacy of the disclosure requirements on government officials and contractors, who explained the current requirements.<sup>43</sup>

*Administration of a new register*

- 1.33 The Clerk of the Parliaments, who as noted above would be charged with responsibility for administering the Register of Water Trading Returns of Members proposed in the Government bill in respect of Members of the Legislative Council, drew three technical drafting issues to the attention of the committee:

- In relation to the Government bill there appears to be no new form to assist with preparation of disclosures under the new Register of Water Trading Returns, while there are detailed forms in both bills for the existing register including amendments to reflect the new disclosure requirements.
- Likewise, there is no indication in the Government bill as to whether the new Register of Water Trading Returns is to be tabled in the House.
- There may be scope for confusion as to whether income from water interests still needs to be disclosed as a source of income, and whether dispositions of property now defined to include water licences and rights are to be separately disclosed as dispositions.<sup>44</sup>

- 1.34 In addition, the Clerk foreshadowed risks for individual members arising from the additional complexity flowing from the provisions in the Government bill, such that he would 'almost always' recommend that members seek independent legal advice on their disclosure requirements:

Moreover, due to the technical nature of the various definitions of water rights, I draw the attention of the Committee to the potential for the new disclosure requirements to add a level of additional complexity that could have the unintended consequence of resulting in a Member inadvertently failing to comply with the new disclosure requirements. Further, whilst as set out above I am always happy to try to assist

<sup>41</sup> Submission 5a, Murray Valley Private Diverters, p 5; see also Evidence, Ms Burge, 14 July 2020, pp 24-25.

<sup>42</sup> Submission 5a, Murray Valley Private Diverters, p 5.

<sup>43</sup> Evidence, Mr Mitchell Isaacs, Director, Office of the Deputy and Strategic Relations, Department of Planning, Industry and Environment, and Mr Jim Bentley, Chief Executive Officer, NSW Water Sector and Deputy Secretary – Water, Department of Planning, Industry and Environment, 14 July 2020, pp 38-39.

<sup>44</sup> Submission 14, Clerk of the Parliaments, p 3.

Members by giving my best possible advice in response to their questions about their disclosure requirements, I envisage that in relation to these new disclosure requirements I will almost always need to advise Members to seek their own legal advice.<sup>45</sup>

**1.35** The Clerk further noted that while both bills assumed the continuation of the current regime of primary, ordinary and supplementary pecuniary disclosures, they presented an opportunity for members to consider the simplification of disclosure requirements, as recommended by the Legislative Council Privileges Committee in its 2018 review of the Members Code of Conduct, to a process of an annual return by members, together with exception reporting required within 30 days.<sup>46</sup>

**1.36** Asked about the Clerk's concerns in the hearing, the Minister emphasised her confidence in the Government bill and that any technical issues could be addressed following discussion with the Clerk. She indicated that the bill's provisions in respect of water disclosures are intended to be administered in tandem with the current rules of disclosure.<sup>47</sup>

### **Enhancements to the Water Access Register**

**1.37** Aside from the issue of disclosures by members of Parliament, some stakeholders expressed in principle support for greater transparency specifically in respect of water holders and trades, in the interests of building trust in the water market and ensuring its integrity. For example, the following views were expressed:

- '[The Ricegrowers' Association of Australia (RGA)] supports the development of a public water trade register that provides timely information on temporary and permanent trade both within valleys and between valleys/zones ... This information could help inform future water policy decision making and provide water users and the broader public with confidence that the water market is not being manipulated by speculators.'<sup>48</sup>
- 'Also in the interests of public trust, there should be an up-to-date register of water ownership, readily accessible to the public. Why should water ownership be secret? Secrecy only breeds suspicion and rumour.'<sup>49</sup>

**1.38** Similar views were communicated via the committee's online questionnaire. One participant stated, for example:

'Making ownership of water transparent will assist through public pressure to identify who is profiting from water trade and who is genuinely using water to benefit agriculture.'<sup>50</sup>

**1.39** Two other respondents went further, stating:

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<sup>45</sup> Submission 14, Clerk of the Parliaments, pp 3-4.

<sup>46</sup> Submission 14, Clerk of the Parliaments, p 4.

<sup>47</sup> Evidence, Hon Melinda Pavey MP, Minister for Water, 14 July 2020, p 33.

<sup>48</sup> Submission 16, Ricegrowers' Association of Australia Inc, p 2.

<sup>49</sup> Submission 1, Mr Brian Stevens, p 1.

<sup>50</sup> Portfolio Committee No. 4 – Industry, NSW Legislative Council, Report on the online questionnaire: *Inquiry into Constitution Amendment (Water Accountability and Transparency) Bill 2020, the provisions of the Water Management Amendment (Transparency of Water Rights) Bill 2020 and the Water Management Amendment (Water Allocations – Drought Information) Bill 2020*, 15 July 2020, p 3.

'All licences held by non-farming entities [should] be rescinded.'

'The public needs to know which foreign entities own water rights in Australia with a view to making foreign ownership illegal.'<sup>51</sup>

- 1.40** Mr Clayton Barr MP, Shadow Minister for Water, observed that the concerns about lack of transparency in water holdings and trades sits against a background of broader concerns about water being traded for profit:

I think that there are a number of submissions ... that deal with the fact that there is a broader general concern about water trading at large, and regardless of who owns them, just whether or not water trading for the purpose of profit—not for growing food and fibre but simply for the purpose of profit—whether or not that is a good outcome, and I would agree wholeheartedly with that. It is my view that water should be used for the purpose of growing food and fibre and the productivity of our nation as a whole, as opposed to profit-making on a share trade scenario.<sup>52</sup>

### *Enabling searches by name*

- 1.41** Numerous participants explicitly supported the SFF bill's provision to enable searches of the Water Access Register by individual or company name.
- 1.42** The Speak Up Campaign, which is seeking a national water register and a royal commission on the Murray Darling Basin Plan, acknowledged the Government bill as a 'positive step forward' but saw the SFF bill as offering 'the protection, accountability and transparency attributes' that its petition signatories desire. In doing so, it highlighted the SFF bill's provisions in respect of the public register of water interests.<sup>53</sup>
- 1.43** In the same vein, the Australian Floodplain Association preferred the SFF bill over that of the Government on the basis that the latter excludes personal information from the water register,<sup>54</sup> while Griffith City Council expressed support for a register that is searchable by name, not simply water licence number.<sup>55</sup> Similarly, Mr John Medcalf, Mayor of Lachlan Shire Council, told the committee:

I think that transparency is a pretty important thing when it comes down to actually knowing exactly where the water is going and what area it is going into. We do definitely support that it is by name and anyone who is actually doing water trading and that sort of thing should be able to follow who is doing what.<sup>56</sup>

- 1.44** The Environmental Defenders Office expressed support for the SFF Bill in the interests of transparency in water management, and specifically its 'proposal to improve the public's ability to access accurate information regarding ownership of water access licences ... and related

<sup>51</sup> Portfolio Committee No. 4 – Industry, NSW Legislative Council, Report on the online questionnaire: *Inquiry into Constitution Amendment (Water Accountability and Transparency) Bill 2020, the provisions of the Water Management Amendment (Transparency of Water Rights) Bill 2020 and the Water Management Amendment (Water Allocations – Drought Information) Bill 2020*, 15 July 2020, p 3.

<sup>52</sup> Evidence, Mr Clayton Barr MP, Shadow Minister for Water, 13 July 2020, p 17.

<sup>53</sup> Submission 9, Speak Up Campaign Inc, pp 1-2.

<sup>54</sup> Submission 7, Australian Floodplain Association, p 2.

<sup>55</sup> Submission 3, Griffith City Council, p 2.

<sup>56</sup> Evidence, Cr John Medcalf, Mayor, Lachlan Shire Council, p 8.

matters ... and trading data.<sup>157</sup> Accordingly, it supported the provisions set out in Schedule 1 and 2 of the bill.<sup>58</sup>

**1.45** Mr Brian Stevens stated, '[A]ll of the owners of bulk water should be public information. At present it is easy for extremists to whip up fear and create rumours about the ownership of water in the Murray Darling Basin. This is very damaging to social cohesion and to trust in Government and the secrecy may be hiding some genuine corruption.'<sup>59</sup>

**1.46** Southern Riverina Irrigators (SRI) argued that the requirements of the 2004 National Water Initiative agreed by all jurisdictions and the subsequent Commonwealth *Water Act 2007* – which provided that water access entitlements be recorded in publicly accessible registers that state unambiguously who owns the entitlement, and include all entitlements and trades (both permanent and temporary) along with the prices of trades – have never been fully implemented in New South Wales.<sup>60</sup> Mr Darcy Hare, Vice Chair, contended that had this occurred, much of the mistrust among water users that currently exists could have been avoided.<sup>61</sup>

**1.47** SRI further argued that the current water registry in New South Wales is 'deliberately opaque', citing the example of one licence holder with 1800 customers whose identity is not known.<sup>62</sup> Asked whether the two step process of the current register satisfies the National Water Initiative principles in his mind, Mr Hare responded:

Not even remotely. You cannot get a WAL number and access without first of all having an account. You have got to pay for that information inquiry to start with. You have got to know the individual WAL number. To me, that does not foster any public confidence. It is ambiguous, not unambiguous.<sup>63</sup>

**1.48** Consistent with this view, SRI held that the Government bill's proposed changes to section 71H of the *Water Management Act* in respect of public access to information in the Access Register were also inconsistent with the National Water Initiative and *Water Act*, which it strongly advocated be fully implemented.<sup>64</sup> In his evidence, Mr Hare underscored that in his view, the SFF bill goes closest to achieving the objectives of a publicly accessible register as envisaged by the National Water Initiative.<sup>65</sup>

### *Privacy of small holders*

**1.49** Protecting the privacy of smaller water holders emerged as a strong concern among numerous inquiry participants.

**1.50** The NSW Irrigators' Council emphasised the fundamental difference between large and small holders, and the risk that having 'mums and dads' holders' information publicly available left

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<sup>57</sup> Submission 6, Environmental Defenders Office, p 3.

<sup>58</sup> Submission 6, Environmental Defenders Office, pp 3-4.

<sup>59</sup> Submission 1, Mr Brian Stevens, p 2.

<sup>60</sup> National Water Initiative 2004 and Schedule 3, *Water Act 2007* (Cth), cited in Submission 4, Southern Riverina Irrigators, pp 4-6.

<sup>61</sup> Evidence, Mr Darcy Hare, Vice Chair, Southern Riverina Irrigators, 14 July 2020, p 25.

<sup>62</sup> Submission 4, Southern Riverina Irrigators, p 6.

<sup>63</sup> Evidence, Mr Hare, 14 July 2020, p 23.

<sup>64</sup> Submission 4, Southern Riverina Irrigators, p 6.

<sup>65</sup> Evidence, Mr Hare, 14 July 2020, p 24.



them open to inappropriate targeting by others in the market. Ms Claire Miller, Interim Chief Executive Officer, stated:

But there is a very material difference between very large operators that own relatively large volumes of water and just your mums and dads who are just getting by. They might be using it for superannuation purposes or are in fact using it for their family farm, obviously. The risk there is that they start getting letters and pressure in the mail from brokers and others wanting them to sell their water, as they are able to visibly see how much water they have, so starting to put pressure on them or holding back prices and things—there is a huge capacity for that ... as a principle we do not agree with anyone and everyone's details being out there.<sup>66</sup>

**1.51** Several participants including the NSW Irrigators' Council,<sup>67</sup> Gwyder Valley Irrigators Association (GVIA)<sup>68</sup> and NSW Farmers' Association<sup>69</sup> voiced a related concern that small holders, if identifiable, would be vulnerable to targeting by malicious actors, as occurred in the recent 'Aussie Farmers' events. NSW Farmers explained:

We do not support any element of a bill that violates the privacy of personal information, particularly where that violation may threaten the safety or well-being of individuals and their families, or put them at either a real or perceived risk of harm. The farming community is especially sensitive to these risks following 'Aussie Farms' publishing personal information online last year. This resulted in significant concerns in the farming community. Farmers were subjected to trespass, biosecurity breaches, damage to property, and faced fear and anxiety of possible attacks on their homes, property, family and livelihoods. NSW Farmers is concerned that the publication of personal information without appropriate privacy protections would expose irrigation farmers to similar circumstances.<sup>70</sup>

**1.52** The GVIA was similarly concerned that broadening the publicly available information via searches risked users 'going fishing' with malevolent intent.<sup>71</sup> In its view the Government bill provides a greater level of protection of privacy, while 'transparency would be undermined rather than improved if the two search engines were combined and fees rendered, as we understand [the SFF] bill suggests.'<sup>72</sup> Ms Zara Lowein, Executive Officer, further contended that numerous proposals in the SFF bill already exist and questioned its functionality.<sup>73</sup>

**1.53** Others who expressed concern about the privacy of small water holders were as follows:

- Mr Quigley of Macquarie River Food and Fibre: '[W]e do not agree that the public register should be made so open that it is searchable by individual names or individual Australian business numbers [ABNs]. Most of that information is available on the current water

<sup>66</sup> Evidence, Ms Claire Miller, Interim Chief Executive Officer, NSW Irrigators' Council, 13 July 2020, p 18.

<sup>67</sup> Evidence, Ms Christine Freak, A/Policy Manager, NSW Irrigators' Council, pp 24-25.

<sup>68</sup> Submission 18, Gwydir Valley Irrigators Association, p 4.

<sup>69</sup> Submission 17, NSW Farmers' Association, p 2.

<sup>70</sup> Submission 17, NSW Farmers' Association, p 2.

<sup>71</sup> Submission 14, Gwydir Valley Irrigators Association, p 4; see also Evidence, Ms Zara Lowein, Executive Officer, Gwydir Valley Irrigators Association, 13 July 2020, p 39.

<sup>72</sup> Submission 14, Gwydir Valley Irrigators Association, p 3.

<sup>73</sup> Evidence, Ms Lowein, 13 July 2020, p 39; see also Submission 14, Gwydir Valley Irrigators Association, p 3.

register now if people have a need to find it, but we think that from the point of view of our individual members they feel quite threatened by that breach of privacy, that anyone in the general public can search their own private financial details, including who their mortgage provider might be, which we think is probably a step further than any other asset class can be searched.<sup>174</sup>

- The Ricegrowers Association: 'The RGA does not support the development of a register of water holdings that discloses individual water users' personal details or water holdings. This information is private and confidential, and all things taken into account, the RGA believes that the disclosure of this information would be detrimental to the many small to medium irrigation businesses we represent.'<sup>175</sup>
- Lachlan Shire Council: 'Amendments that require greater visibility of information on the NSW Water Register [are] not necessary and could be used to the detriment of licence holders.'<sup>176</sup>
- Ms Burge of the MVDP: 'But there is one aspect that I think the privacy of water should be maintained, and that is in relation to farmers holding a water licence entitlement and where there are government regulatory conditions that oversee individual water accounting and its use. This is important to avoid any personal harassment that may occur where the public can obtain incorrect data or make public nuisance with incorrect data and/or other commercial entities harass individual farmers. The point on that is the actual water accounting balance annually should remain private.'<sup>177</sup>
- Namoi Water, who considered the current water register to be appropriate and highlighted the sensitivity of the information and the potential for perverse outcomes.<sup>178</sup>

**1.54** Minister Pavey also expressed a strong concern to protect the privacy of small holders in her evidence to the committee, whilst recognising the need for transparency in respect of foreign ownership and larger holders:

Small business-type family farmers are very private people; they do not want their neighbour, let alone someone 10 kilometres up the road or 100 kilometres across the river, knowing exactly what they have because that can create some peculiarities.

Even a survey by the Victorian Government showed that the small family farms do not want to be part of that. But I do agree that there is a component in relation to international interests that need to be declared and, quite similarly to the Australian Stock Exchange, if you have and own 5 per cent of shares in any Australian company you are registered ... But I will, and my party and our Government will defend the rights of the small family farm from having their names, their water allocations available to the general community and to the public because that is not what they want, but they do want some better water transparency for the bigger players and the corporations.<sup>179</sup>

**1.55** On the other hand, the Environmental Defenders Office explicitly objected to the Government bill's proposal to enable the Minister to restrict access to personal information recorded in the

<sup>74</sup> Evidence, Mr Quigley, 13 July 2020, p 32.

<sup>75</sup> Submission 16, Ricegrowers' Association of Australia, p 2.

<sup>76</sup> Submission 2, Lachlan Shire Council, p 3.

<sup>77</sup> Evidence, Ms Burge 14 July 2020, p 20.

<sup>78</sup> Submission 12, Namoi Water, p 2.

<sup>79</sup> Evidence, Minister Pavey, 14 July 2020, p 37.

Access Register for the purpose of protecting the privacy of that information, on the basis that this 'could be used to reduce transparency (and because it is, in any case, inconsistent [with] clause 7(i) of the *Privacy and Personal Information Protection Regulation 2019*).'<sup>80</sup>

- 1.56** Some participants expressed a preference for transparency at the valley level as a middle ground on transparency. For example, Ms Christine Freak, A/Policy Manager for the NSW Irrigators' Council, stated:

It is certainly the view among market participants that there does need to be improvements in transparency of both temporary and permanent trade, and that is why part of our submission was calling for the need for a public water trade register at a valley level to provide that information. We feel that having it at a valley level would address those transparency concerns but without making farmers vulnerable in the process. ... My understanding is that that would be aggregated at the valley scale and then that coupled with more information on trade being readily available and being brought together so it is more easily accessible.<sup>81</sup>

- 1.57** Similarly, Ms Rachel Kelly, Policy Manager for the Ricegrowers' Association of Australia, told the committee:

We have long advocated for a public register of water trade and, in particular, the disclosure of information around water movement and trade across valleys and zones, including trade between zones that are not in New South Wales. We think this information is very important for future policy decision-making but also provides water users with a level footing in terms of making decisions about how to manage their water resource and the broader public with confidence about how the water market is operating and whether or not there are speculators within the system.<sup>82</sup>

### *Australian Competition and Consumer Commission inquiry*

- 1.58** Some inquiry participants noted that the issues intended to be addressed by a searchable register may be addressed in the forthcoming reports of the Australian Competition and Consumer Commission (ACCC) inquiry into markets for tradeable water rights in the Murray-Darling Basin.<sup>83</sup> The ACCC was tasked with recommending options to enhance markets for tradeable water rights, including options to enhance their operations, transparency, regulation, competitiveness and efficiency. At the time of writing, its interim report is expected to be released imminently, and its final report is due to be handed down on 30 November 2020.<sup>84</sup> NSW Farmers noted that as part of its inquiry the ACCC is investigating:

- the availability to the public of information on water market activities and tradeable water right holdings

<sup>80</sup> Submission 6, Environmental Defenders Office, p 5.

<sup>81</sup> Evidence, Ms Freak, 13 July 2020, p 25.

<sup>82</sup> Evidence, Ms Rachel Kelly, Policy Manager, Ricegrowers' Association of Australia, 14 July 2020, p 5.

<sup>83</sup> Submission 19, NSW Irrigators' Council, p 5; Evidence, Ms Lowein, 13 July 2020, p 40; Evidence, Mr Jim Cush, Chair, NSW Irrigators' Council, 13 July 2020, p 23; Evidence, Ms Miller, 13 July 2020, p 23.

<sup>84</sup> Australian Competition and Consumer Commission, *Murray-Darling Basin water markets inquiry: project overview*, <https://www.accc.gov.au/focus-areas/inquiries-ongoing/murray-darling-basin-water-markets-inquiry>.

- the timeliness, accuracy, and completeness of public information released on water market activities and tradeable water right holdings, including true trade price reporting and the types of trade (for example, immediate purchases, forward contracts, leases).<sup>85</sup>

1.59 Accordingly, both NSW Farmers and the NSW Irrigators' Council called for policymakers to await the ACCC's final report before finalising the aspects of the bills relating to public information.<sup>86</sup>

1.60 Minister Pavey advised the committee that the Government bill 'has the capacity to adopt some more flexibility around what we have in a public register' and that the Government was intending to incorporate changes informed by the ACCC, which it was expecting to hear back from by the end of July. She further pointed to the value of a national approach across all States and jurisdictions to these issues.<sup>87</sup> The Minister suggested that, '[W]e need to include a register that has information relevant to Victoria, South Australia and Queensland and for whatever the ACT may trade. That is important to a register that has the confidence of the Australian community. It needs to be all in and in that way we get a register that tells the whole truth.'<sup>88</sup>

### *Thresholds*

1.61 Like the Minister, some stakeholders pointed to thresholds in respect of the size of trades as an alternative means to enhance transparency. Ms Kelly of the RGA told the committee:

[W]e have discussed, and we would consider, some requirement for larger trades to be disclosed, similar to what happens with the Australian Stock Exchange. If an individual or organisation purchases more than a particular percentage holding in a company, then there is a requirement that they be disclosed. We would consider provisions similar to that, so if someone holds or trades more than 5 per cent or 10 per cent of entitlement or allocation in a particular zone or valley, then possibly they should be subject to particular disclosure requirements. So that kind of thing we would be willing to consider.<sup>89</sup>

### *Foreign ownership and larger corporations*

1.62 Minister Pavey acknowledged concerns about foreign ownership whilst noting that water, as with agriculture, is part of the international marketplace:

We do play within the international markets; that is a hallmark of the foundation of our economy—70 per cent of what we grow on our farms is exported. We do need to be able to participate in the international marketplace, but our communities are demanding some more transparency around who owns that water and how it is traded and we will be happy to participate in that but also keep the privacy of our small family farm operations just that—private.<sup>90</sup>

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<sup>85</sup> Submission 17, NSW Farmers' Association, p 2.

<sup>86</sup> Submission 17, NSW Farmers' Association, p 3; Submission 19, NSW Irrigators' Council, p 5; see also Evidence, Ms Lowein, 13 July 2020, p 40.

<sup>87</sup> Evidence, Minister Pavey, 14 July 2020, p 36.

<sup>88</sup> Evidence, Minister Pavey, 14 July 2020, p 37.

<sup>89</sup> Evidence, Ms Kelly, 14 July, p 5; see also p 6.

<sup>90</sup> Evidence, Minister Pavey, 14 July 2020, p 37.

- 1.63 In respect of larger corporate and international interests, Minister Pavey indicated that she considered it important to introduce greater transparency stating, 'my bill leaves provision for that to happen when we can take a national approach for that.'<sup>91</sup>

### Committee comment

- 1.64 The committee notes broad support among inquiry participants for greater transparency in respect of water ownership and trades, both for members of Parliament as well as in the information able to be obtained from the Water Access Licence Register.
- 1.65 There was unanimous agreement that in principle, members of Parliament should disclose their water interests, consistent with their other pecuniary interest disclosures. There was some discussion at the margins with respect to spouses, trusts and retrospectivity as provided under the SFF bill.
- 1.66 The committee notes the concerns of the Clerk of the Parliaments with regard to administration of the new register proposed under the Government bill. It will be important for the Parliament to consider these concerns order to address the risk that members inadvertently fail to adequately disclose their interests, and also to prevent the situation where members routinely require independent legal advice regarding their disclosures.
- 1.67 The committee acknowledges the tension between transparency and privacy that emerged in the evidence on enhancements to the Public Access Register. While numerous participants supported the SFF bill's proposal to enable searches by individual and company name, protecting the privacy of small holders was a significant concern for others, who consequently preferred the Government bill. Ultimately it will be up to the Parliament to determine how the privacy issue is to be managed. We acknowledge that the forthcoming ACCC interim and final reports on its inquiry into markets for tradeable water rights in the Murray-Darling Basin will be important to informing the way forward.
- 1.68 The committee recommends that debate on both the Constitution Amendment (Water Accountability and Transparency) Bill 2020 and Water Management Amendment (Transparency of Water Rights) Bill 2020 proceed taking into account the committee comments documented in this report and the concerns raised by stakeholders during this inquiry.

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#### Recommendation 1

That the Legislative Council proceed to debate the Constitution Amendment (Water Accountability and Transparency) Bill 2020, and the committee comments and concerns identified by stakeholders as set out in this report be addressed during debate in the House.

#### Recommendation 2

That the Legislative Council proceed to debate the Water Management Amendment (Transparency of Water Rights) Bill 2020, and the committee comments and concerns identified by stakeholders as set out in this report be addressed during debate in the House.

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<sup>91</sup> Evidence, Minister Pavey, 14 July 2020, p 37.

Constitution Amendment (Water Accountability and Transparency) Bill 2020, Water Management Amendment (Transparency of Water Rights) Bill 2020 and Water Management (Water Allocations – Drought Information) Bill 2020

## Chapter 2      **Water Management Amendment (Water Allocations – Drought Information) Bill 2020**

This chapter outlines the background and purpose of the Water Management Amendment (Water Allocations – Drought Information) Bill 2020, and provides an overview of the bill's provisions. It then explores the key issues to emerge from the written and oral evidence: whether the proposed inclusion of the 'drought of record' in water sharing plans would address water security issues, or whether it would lead to potential impacts and/or unintended consequences.

### Reference

- 2.1**      The Water Management Amendment (Water Allocations – Drought Information) Bill 2020, was introduced into the Legislative Council on 3 June 2020 by the Hon Mick Veitch MLC, representing the Australian Labor Party.<sup>92</sup>
- 2.2**      On 17 June 2020, during the second reading debate, the Legislative Council resolved on the motion of the Hon Mark Banasiak MLC of the Shooters, Fishers and Farmers Party to refer the bill to Portfolio Committee No. 4 – Industry for inquiry and report by 31 July 2020.<sup>93</sup>

### Background and purpose of the bill

- 2.3**      The Water Management Amendment (Water Allocations – Drought Information) Bill 2020 seeks to include data on the period of lowest inflows into a water source (known as the 'drought of record') at any given time in history within water sharing plans.<sup>94</sup>
- 2.4**      The Hon Mick Veitch MLC, in his second reading speech, said '[i]t is absolutely critical that we plan for water with all of the available evidence and science factored in. At the moment we do not.'<sup>95</sup> He added that:

Any plan on how we use our water, how we allocate our water, what is available for use on any given day and what needs to be held back for the tomorrows needs to be based on the long-term averages of rain, river flows and climate. These long-term averages need to be based on the facts, the data.<sup>96</sup>

<sup>92</sup> *Minutes*, NSW Legislative Council, 3 June 2020, p 1000.

<sup>93</sup> *Hansard*, NSW Legislative Council, 17 June 2020, p 62.

<sup>94</sup> See Water Management Amendment (Water Allocations – Drought Information) Bill 2020, Explanatory Note, First Print, p 1; Mick Veitch, Second reading speech: Water Management Amendment (Water Allocations – Drought Information) Bill 2020, 3 June 2020, pp 9-11.

<sup>95</sup> Mick Veitch, Second reading speech: Water Management Amendment (Water Allocations – Drought Information) Bill 2020, 3 June 2020, p 10.

<sup>96</sup> Mick Veitch, Second reading speech: Water Management Amendment (Water Allocations – Drought Information) Bill 2020, 3 June 2020, p 9.

- 2.5** Mr Veitch stated that in 2014, the NSW Parliament passed amendments to 13 water sharing plans to prevent the inclusion of 'any data [regarding the worst period of inflows] beyond when the first water sharing plans were made – generally between 2002 and 2004 for some of the most contentious river systems'.<sup>97</sup>
- 2.6** As a result, Mr Veitch explained that 'the drought of record became a fixed drought that needed to be pre-2002 to 2004. No new realities of drought events after 2002 to 2004, which were painfully experienced by the people of New South Wales ... could be considered in how we would plan for and share our water going forward'.<sup>98</sup>
- 2.7** Mr Veitch expressed the view that the bill would '...correct a very, very obvious error of legislation'.<sup>99</sup>

## Overview of the bill's provisions

- 2.8** The object of the bill, as set out in the explanatory note, is to provide that the determination of the lowest inflows into a water source under a management plan made under the *Water Management Act 2000* is to refer to all flow information held by the Department of Planning, Industry and Environment, and not merely flow information held by the Department on the making of the management plan (or at any other particular time).<sup>100</sup>
- 2.9** Schedule 2 to the *Water Management Amendment Act 2014* made amendments to the provisions of several management plans to limit the information to which reference could be made in such a determination, and this bill reverses the effect of those amendments.<sup>101</sup>

## Key issues

- 2.10** This section examines the varying viewpoints put forward by stakeholders on the bill. Stakeholders questioned whether the proposed inclusion of a single drought of record in water sharing plans is an effective means to address water security issues in valleys across the state, and outlined potential impacts and/or unintended consequences of the bill. Other stakeholders, however, contended that including the drought of record in water sharing plans would improve water management by enabling decisions to be based on the best available evidence.

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<sup>97</sup> Mick Veitch, Second reading speech: Water Management Amendment (Water Allocations – Drought Information) Bill 2020, 3 June 2020, p 10.

<sup>98</sup> Mick Veitch, Second reading speech: Water Management Amendment (Water Allocations – Drought Information) Bill 2020, 3 June 2020, p 10.

<sup>99</sup> Mick Veitch, Second reading speech: Water Management Amendment (Water Allocations – Drought Information) Bill 2020, 3 June 2020, p 11.

<sup>100</sup> Water Management Amendment (Water Allocations – Drought Information) Bill 2020, Explanatory Note, First Print, p 1.

<sup>101</sup> Water Management Amendment (Water Allocations – Drought Information) Bill 2020, Explanatory Note, First Print, p 1.



### Is the bill an effective means to address water security in valleys across the state?

- 2.11** A number of inquiry participants did not support the bill arguing it was a 'blanket'<sup>102</sup> proposal, and a 'one-size-fits-all approach',<sup>103</sup> that would negatively impact water management for most valleys across the state.<sup>104</sup> For example, the following views were expressed:
- 'the landscape, rainfall intensity, rules for take, storages and population vary heavily from region to region and indicate a more "individual" regional approach is required'.<sup>105</sup>
  - '[the] ... bill is seeking to solve an important but very complex problem, across of range of different water sources and unknown scenarios with a single solution. Its implementation is likely to have perverse outcomes in some regions and not address the problem in others ...'.<sup>106</sup>
  - 'The current proposed bill demonstrates insufficient understanding of the differences between water management in the Northern Basin and those that occur in the regulated Southern Basin'.<sup>107</sup>
  - '... it is only going to help some communities. It will probably have a perverse outcome in those where it is not required, yet it is a blanket approach for all of New South Wales'.<sup>108</sup>
- 2.12** Both the Ricegrowers Association of Australia and NSW Farmers' Association claimed the bill did not understand or consider the 'complex nature of water policy and the unique characteristics'<sup>109</sup> of each valley, with similar sentiments shared by a number of stakeholders.<sup>110</sup>

<sup>102</sup> See Submission 4, Southern Riverina Irrigators, p 7; Submission 5, Murray Valley Private Diverters (Inc), p 2; Submission 9, Speak Up Campaign, p 4; Submission 16, Ricegrowers' Association of Australia, p 3; Submission 17, NSW Farmers' Association, p 1; Submission 18, Gwydir Valley Irrigations Association, p 6; Submission 19, NSW Irrigators' Council, p 6; Evidence, Ms Zara Lowien, Executive Officer, Gwydir Valley Irrigations Association, 13 July 2020, p 34; Evidence, Mr Darcy Hare, Vice Chair, Southern Riverina Irrigators', 14 July 2020, pp 20-21.

<sup>103</sup> Submission 19, NSW Irrigators' Council, p 8; Evidence, Ms Claire Miller, Interim Chief Executive Officer, NSW Irrigators' Council, 13 July 2020, p 19.

<sup>104</sup> Submission 4, Southern Riverina Irrigators, p 7; Submission 5, Murray Valley Private Diverters (Inc), p 2; Submission 9, Speak Up Campaign, p 4; Submission 16, Ricegrowers' Association of Australia, p 3; Submission 17, NSW Farmers' Association, p 1; Submission 19, NSW Irrigators' Council, p 8.

<sup>105</sup> Submission 4, Southern Riverina Irrigators, p 7.

<sup>106</sup> Submission 18, Gwydir Valley Irrigators Association, p 6.

<sup>107</sup> Submission 5, Murray Valley Private Diverters (Inc), p 5.

<sup>108</sup> Evidence, Ms Lowien, 13 July 2020, p 34.

<sup>109</sup> Submission 16, Ricegrowers' Association of Australia, p 3; Submission 17, NSW Farmers' Association, p 1.

<sup>110</sup> Submission 5, Murray Valley Private Diverters (Inc), p 5; Submission 18, Gwydir Valley Irrigators Association, p 5; Submission 19, NSW Irrigators' Council, p 19; Evidence, Ms Christine Freak, Acting Policy Manager, NSW Irrigators' Council, 13 July 2020, pp 18 and 21.

- 2.13** On a related issue, some inquiry participants contended that the purpose of the bill was to address a specific issue in one region of the state that was not similarly experienced by other regions.<sup>111</sup> For example:
- '[the bill is] ... reactionary to a Northern Basin town water supply issue, but is attempting to make blanket and unnecessary additional "drought" measures in the Southern Basin regulated system'.<sup>112</sup>
  - 'this Bill will not deliver its objective to improve the security of town water supplies, because critical human need is already the highest priority in the legislated water access hierarchy'.<sup>113</sup>
  - 'this Bill is misinformed and appears to be based on a misunderstanding of the water management framework ... The New South Wales Government has already acted to improve town water security through additional augmentation projects in response to the extreme drought'.<sup>114</sup>
  - '[there is] ... no evidence to support that the amendment of the drought of record to "reference all flow information" will provide more water for any of the towns who most recently ran out of water ... mostly because the headwater dams that this bill relates, do not supply many of the towns that were at risk of running out of water'.<sup>115</sup>
- 2.14** The NSW Farmers' Association concluded that '... introducing new drought of record figures is unlikely to address the issues with water security that some towns such as Tamworth and Dubbo experienced through the recent drought period'.<sup>116</sup>
- 2.15** As former Minister for Primary Industries, the Hon Katrina Hodgkinson observed, 'every change that you make prescriptively through legislation has a different impact on the different communities'.<sup>117</sup>
- 2.16** Asked what the NSW Government would do without the provisions of the bill in place should a worse drought occur (using the example of Dubbo's water supply needs), the Hon Melinda Pavey MP, Minister for Water offered alternative measures:

We suspend water sharing plans completely if we are at risk. We can build extra infrastructure, which is what we have done on Burrendong Dam so we have got a deeper outlet to be able to get water. We deal with council and council has taken some of Dubbo's recycled water to put on pasture and property. Some of the farmers have given back to Dubbo city council water that was good for drinking, and they've swapped

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<sup>111</sup> See Submission 16, Ricegrowers' Association of Australia, p 3; Submission 9, Speak Up Campaign, p 4, Submission 5, Murray Valley Private Diverters (Inc), p 2; Submission 19, NSW Irrigators' Council, p 6; Submission 17, NSW Farmers' Association, p 2.

<sup>112</sup> Submission 5, Murray Valley Private Diverters (Inc), p 2.

<sup>113</sup> Submission 19, NSW Irrigators' Council, p 6.

<sup>114</sup> Submission 17, NSW Farmers' Association, p 2.

<sup>115</sup> Submission 18, Gwydir Valley Irrigators Association, p 6.

<sup>116</sup> Submission 17, NSW Farmers' Association, p 2.

<sup>117</sup> Evidence, Ms Katrina Hodgkinson, former Minister for Primary Industries, 13 July 2020, p 2.

those around. They are some of the measures we can take into account in an emergency situation, which we've done.<sup>118</sup>

- 2.17 In response, Mr Clayton Barr MP – who in his submission to the inquiry noted that the bill had been introduced on his behalf and was in essence "his bill" – countered the bill was an instrument to establish 'a set of rules, which can then be used and interpreted and enacted by the individual water sharing plans in a way that they deem fit ... as it applies to their valley. They do not all have to deal with it in the same way'.<sup>119</sup>

*Drought of record – an appropriate measure?*

- 2.18 During the inquiry, a number of participants questioned if the drought of record was an appropriate measure to be included in all water sharing plans.
- 2.19 For example, Ms Claire Miller, Interim Chief Executive Officer, NSW Irrigators' Council, explained that the drought of record 'would have the effect of every single year, water would be held aside in reserve just in case in the next year we are straight into the worst possible drought of record'.<sup>120</sup>
- 2.20 In his evidence, Mr Tony Quigley, Chairman, Macquarie River Food and Fibre objected to the proposition that one single drought of record was the best way to identify risk in relation to water allocation:

To suggest that the one outlier or the worst one should be the one picked that we take the risk profile from, we are better informed by a group of trend lines than one—that is, singling out the absolute worst. Going forward, there needs to be some objective information about how an amalgamation of those lines gives us a better picture about what may happen.<sup>121</sup>

- 2.21 A respondent to the online questionnaire questioned the inclusion of the drought of record in determining water sharing plans, instead advocating risk management strategies as a better management tool:

We don't plan for a health pandemic every month, so why plan for a record drought every month? Better to have risk management strategies, policies and infrastructure in place that help reduce and manage the risk if and when it is realised.<sup>122</sup>

<sup>118</sup> Evidence, Hon Melinda Pavey MP, Minister for Water, 14 July 2020, p 39.

<sup>119</sup> Evidence, Mr Clayton Barr MP, Member for Cessnock, Shadow Minister for Water, Shadow Minister for Innovation, Science and Tertiary Education, Shadow Minister for the Hunter, 13 July 2020, pp 11-12; Submission 8, Mr Clayton Barr MP, p 1.

<sup>120</sup> Evidence, Ms Miller, 13 July 2020, p 19.

<sup>121</sup> Evidence, Mr Tony Quigley, Chairman, Macquarie River Food and Fibre, 13 July 2020, p 38.

<sup>122</sup> Portfolio Committee No. 4 – Industry, NSW Legislative Council, Report on the online questionnaire: *Inquiry into Constitution Amendment (Water Accountability and Transparency) Bill 2020, Water Management Amendment (Transparency of Water Rights) Bill 2020 and the Water Management Amendment (Water Allocations – Drought Information) Bill 2020*, 15 July 2020, p 5.

The online questionnaire was not a statistically valid, random survey. Respondents were self-selected in choosing to participate (in the same way that submission authors are self-selected) and should not be considered a representative sample of the population.

- 2.22** Some evidence presented to the committee supported drought of record as an appropriate measure. The Environmental Defenders Office submission indicated that 'good water governance and risk management require drought reserves to be based on best available evidence regarding lowest inflows'.<sup>123</sup>
- 2.23** Mr Bill Johnson, Director, Slattery and Johnson gave evidence to the committee cynically responding to the 2014 changes to the drought of record:
- The drought of record was appropriate until there was a worse one and all of a sudden it was no longer appropriate to use it. In essence we are running our rivers based on our memories of a wetter time and those times have been past for 20 years. If we continue doing that, the events that we have had in the last 10 years will keep recurring. You cannot escape your responsibility of tomorrow by evading it today. It will come eventually.<sup>124</sup>
- 2.24** Mr Bruce Logan, Director—Water and Waste, Tamworth Regional Council supported the bill and gave evidence at the hearing that council had requested the NSW Water Minister update the relevant water sharing plan to update the drought of record, effectively implementing the measures in the bill in the Peel Valley. Under questioning, Mr Logan confirmed that the NSW Government had not agreed to making those changes. Mr Logan explained the consequences of that decision:
- this decision means that, according to the Government, the inflow into Chaffey over the last three years or lack thereof never happened, it will not happen again and if it did then applying exactly the same rules would somehow see a different result. I do not believe any of these arguments can be reasonably sustained and, what happens if there is a worse level of inflow for the city of Tamworth?<sup>125</sup>
- 2.25** Other stakeholders acknowledged that a drought of record provision exists within current water sharing plans even if they didn't support the provision of the bill to consider more recent droughts. The NSW Department of Planning, Industry and Environment acknowledged that 2014 bill changes did not remove drought of record provisions but backdated them.
- 2.26** Mr Isaacs from the Department of Planning, Industry and Environment indicated that:
- Prior to the amendments in 2014 the water sharing plans required the calculation for the purpose of setting available water determinations to be "the worst period of low inflows" from historical "flow information held by the department". The addition to the water sharing plans made in 2014 was to add "when this plan commenced" at the end of that statement.<sup>126</sup>
- 2.27** Under questioning, the Southern Riverina Irrigators and Rice Growers Association of Australia acknowledged current water sharing plans included drought of record provisions but indicated

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<sup>123</sup> Submission 6, Environmental Defenders Office, p 2.

<sup>124</sup> Evidence, Mr Bill Johnson, Director, Slattery and Johnson, 13 July 2020, p 29.

<sup>125</sup> Evidence, Mr Bruce Logan, Director—Water and Waste, Tamworth Regional Council, 14 July 2020, p 15.

<sup>126</sup> Evidence, Mr Mitchell Isaacs, Director, Office of the Deputy and Strategic Relations, Department of Planning, Industry and Environment, 14 July 2020, p 28.

that alternative arrangements were also in place in southern valleys to address town water security needs.<sup>127</sup>

**2.28** A document tabled by the Department of Planning, Industry and Environment stated that the current arrangements strike 'the appropriate balance between productive use of water and drought security ... [by] lock[ing] in the allocation risk as that taken at the start of the first water sharing plans, rather than moving to a new drought of record'.<sup>128</sup>

**2.29** Other inquiry participants referred to the 2014 Department of Primary Industries – Water assessment of the Lachlan Valley as a case study of the effect of changing the drought of record following the Millennium drought.<sup>129</sup> It was noted that in 2014 the Millennium drought was a new drought of record for the southern valleys only.<sup>130</sup> For these participants, the findings of the case study confirmed that caution should be shown towards consideration of including a drought of record in water sharing plans.<sup>131</sup> Witnesses were unable to quantify the impact for each valley.

**2.30** According to the Department of Planning, Industry and Environment, the modelling from the Lachlan Valley case study indicated that:

... using the Millennium drought as the drought of record would require a significant increase in storage reserves to continue to guarantee high-priority licenses and demands in severe drought years. This in turn would significantly reduce the water allocations for general security licenses in all years.<sup>132</sup>

**2.31** It is unfortunate that the Department failed to provide the Lachlan Valley case study despite requests from the committee.

**2.32** Further, some inquiry participants suggested that elements of the bill be considered as part of the Department of Planning, Industry and Environment's regional water strategies process.<sup>133</sup> This suggestion was based on the rationale that the regional water strategies would offer a

<sup>127</sup> Evidence, Ms Rachel Kelly, Policy Manager, Ricegrowers' Association of Australia, 14 July 2020, pp 3-4; Evidence, Mr Hare, 14 July 2020, p 21.

<sup>128</sup> Tabled document, Department of Planning, Industry and Environment, *Water sharing plans and water resource plans: Community consultation – what we heard*, July 2020, pp 14-15.

<sup>129</sup> Submission 17, NSW Farmers' Association, p 2; Submission 12, Namoi Water, pp 2-3; Submission 19, NSW Irrigators' Council, p 8; Evidence, Ms Freak, 13 July 2020, pp 18 and 20; Evidence, Ms Lowien, 13 July 2020, p 35.

<sup>130</sup> Submission 12, Namoi Water, p 2; Submission 17, NSW Farmers' Association, p 2; Submission 19, NSW Irrigators' Council, p 6.

<sup>131</sup> Submission 17, NSW Farmers' Association, p 2; Submission 12, Namoi Water, pp 2-3; Evidence, Ms Freak, 13 July 2020, p 20; Evidence, Ms Lowien, 13 July 2020, p 35.

<sup>132</sup> Tabled document, *Water sharing plans and water resource plans: Community consultation – what we heard*, July 2020, p 15.

<sup>133</sup> Submission 12, Namoi Water, p 3; Submission 17, NSW Farmers' Association, p 2; Evidence, Ms Lowien, 13 July 2020, p 37; Submission 19, NSW Irrigators' Council, pp 5 and 9; Evidence, Ms Miller, 13 July 2020, p 20.

thorough assessment of water supply issues in each valley and provide an understanding of the impacts.<sup>134</sup>

- 2.33** On this point, Ms Christine Freak, Acting Policy Manager, NSW Irrigators' Council commented that the issues the bill was trying to address were actually 'being dealt with through the development of regional water strategies' currently underway. Ms Freak expressed the view that because the strategies 'incorporat[ed] 10,000 years of paleoclimatic data into our water management framework' this was a 'much more robust and evidence-based way of updating our water management framework for drought conditions' than the bill.<sup>135</sup>
- 2.34** In his evidence, Mr Mitchell Isaacs, Director, Office of the Deputy and Strategic Relations, Department of Planning, Industry and Environment confirmed that the regional water strategies would 'include more detailed analysis of drought and water security risks and include modelling to examine the severity and duration of drought beyond the current period of record'.<sup>136</sup>
- 2.35** The Department and the Minister advised that they hoped to have three more regional water strategies for the Lachlan, the Macquarie and the Gwydir finalised by the end of 2020 for the second stage of public engagement.<sup>137</sup>
- 2.36** However, the Department and Minister acknowledged that the regional water strategies would be advisory only and any changes would need to be made through amendments to water sharing plans.
- 2.37** Minister Pavey indicated, in regard to the regional water strategies, that:

They will sit as another important piece of information that will give us historical context and future context around water. Water sharing plans can be amended. If we do get data and information that points to changes that need to be made we will take those under advisement and consideration, as we would do.<sup>138</sup>

## Committee comment

- 2.38** No evidence was provided to the committee as to how often a region comes close to the drought of record, without exceeding it. While testimony was given by Mr Jim Cush of the NSW Irrigators' Council that '[t]he drought of record ... is a one-in-a-hundred-year event, very similar to this coronavirus that we are suffering at the moment',<sup>139</sup> the committee was not informed of how frequently a certain valley or region came close to the drought of record during any given time span. For example in a period such as 100 years it may well be that a region was within 10 per cent of the drought of record on 15 or 20 occasions. During events like these 15 or 20

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<sup>134</sup> Evidence, Ms Miller, 13 July 2020, p 20; Submission 18, Gwydir Valley Irrigators Association, p 6; Submission 19, NSW Irrigators' Council, p 5.

<sup>135</sup> Evidence, Ms Freak, 13 July 2020, p 18.

<sup>136</sup> Evidence, Mr Isaacs, 14 July 2020, p 27.

<sup>137</sup> Evidence, Mr Jim Bentley, Chief Executive Officer, NSW Water Sector and Deputy Secretary—Water, Department of Planning, Industry and Environment, 14 July 2020, p 29; Evidence, Minister Pavey, 14 July 2020, p 33.

<sup>138</sup> Evidence, Minister Pavey, 14 July 2020, p 30.

<sup>139</sup> Evidence, Mr Jim Cush, Chair, NSW Irrigators' Council, 13 July 2020, p 18.

instances it would be crucial for that valley to be holding sufficient water for critical human need as they went through these extreme droughts that went close, but did not exceed, the drought of record.

- 2.39** The Department of Planning, Industry and Environment did not table evidence that gives effect to this statement noted in 2.28. When asked for any such modelling the Department was unable to be precise about its whereabouts or accessibility. When directly asked by the committee to provide a copy of the 2014 modelling of the Lachlan River, a report that allegedly already exists, both the Minister and the CEO of NSW Water Sector were unable to provide any such copy during their 75 minute testimony, however at the end of the hearing Minister Pavey did say that she would provide a copy. Such a copy has not been forthcoming.
- 2.40** Written evidence and testimony were given by various stakeholders that they had not seen, could not access and did not have a copy of the alleged 2014 Lachlan River modelling of impacts of using up to date records of drought.<sup>140</sup>
- 2.41** The existence of a Lachlan River modelling study remains uncertain. It may well not exist. The current legislation in New South Wales is underpinned by this alleged document that remains unsighted.
- 2.42** Therefore it remains unclear on what grounds the Department of Planning, Industry and Environment would claim to have struck “the appropriate balance” referred to in 2.28. It also remains unclear on what grounds Minister Humphries, in his 2014 amendment, claimed that updating drought of record data would have an impact on water availability for irrigators. And finally, it remains unclear on what grounds Minister Pavey declared to the committee, in her testimony, that the impact of using up to date drought of record information would result in '5 per cent less general security water.'<sup>141</sup>

### **Potential impacts and/or unintended consequences of the bill**

- 2.43** Concerns were raised about the potential impacts and in turn, unintended consequences of the bill.<sup>142</sup> For example, stakeholders told the committee:
- '[it is] ... highly inappropriate for this Bill to even be considered without the appropriate information on the actual impacts (intended and unintended) on all valleys. No two river valleys are the same in terms of their climate and inflows catchment, and what might make sense in one valley will have unintended, perverse impacts if applied in another'.<sup>143</sup>
  - '[the bill would result in] ... a much more conservative approach to water distribution in the future, compounding an already conservative method, along with a significant

<sup>140</sup> Submission 19, NSW Irrigators' Council, p 8; Evidence, Cr John Medcalf, Mayor, Lachlan Shire Council, 14 July 2020, p 14.

<sup>141</sup> Evidence, Minister Pavey, 14 July 2020, p 31.

<sup>142</sup> Submission 2, Lachlan Shire Council, pp 1-2; Submission 18, Gwydir Valley Irrigators Association, p 6; Submission 16, Ricegrowers' Association of Australia, p 3; Submission 17, NSW Farmers' Association, p 2; Submission 19, NSW Irrigators' Council, pp 5-6; Submission 5, Murray Valley Private Diverters (Inc), p 6; Evidence, Ms Miller, 13 July 2020, p 21; Evidence, Ms Freak, 13 July 2020, p 21; Evidence, Mr Isaacs, 14 July 2020, pp 26-27.

<sup>143</sup> Submission 19, NSW Irrigators' Council, p 8.

negative financial impact on our farming community, who rely on early allocations to make important farming decisions for the season ahead'.<sup>144</sup>

- 2.44** In response to stakeholder concerns, Mr Clayton Barr MP admitted that '[i]t is not currently known what impact, if any, using drought of record information would have on WSP's [water sharing plans] ...'<sup>145</sup>
- 2.45** A key cause for concern was that the bill would impact general security water license holders by further reducing their water allocations.<sup>146</sup> For example, the following views were expressed:
- '[the bill] ... would result in permanent reductions of total general security water availability and delay allocation announcements necessary for farm management decisions (e.g. sowing a summer crop) ... For the New South Wales economy, this would mean a significant loss in the value of irrigated agricultural production'.<sup>147</sup>
  - 'As the last water to be allocated, the more conservative inflow position proposed in this Bill will mean reduced allocations for general-security farmers in every year, for the purpose of setting aside larger reserves for the one year where inflows are worse than experienced before 2004'.<sup>148</sup>
  - 'So we are going to get high-security users much higher security than they have now and those on general security, which are the irrigation farmers and the environment, will take less security. So there is one winner and one loser here, I guess'.<sup>149</sup>
- 2.46** Witnesses were unable to quantify the likelihood or otherwise of these concerns.
- 2.47** In his evidence, Mr Mitchell Isaacs, Director, Office of the Deputy and Strategic Relations, Department of Planning, Industry and Environment, indicated that the bill would 'immediately make a significant reduction in allocations made to general security licence holders in the Murray, Murrumbidgee and Lachlan valleys'.<sup>150</sup> The Department was unable to quantify the precise impact on general security licence holders.
- 2.48** This was supported by Lachlan Shire Council, whose submission stated that if the worst-ever drought up to 2020 was used, it would mean managing for a longer drought (around three years) and that:

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<sup>144</sup> Submission 4, Southern Riverina Irrigators, p 7.

<sup>145</sup> Submission 8, Mr Clayton Barr MP, p 2.

<sup>146</sup> See Submission 5, Murray Valley Private Diverters (Inc), p 3; Submission 16, Ricegrowers' Association of Australia, p 4; Submission 17, NSW Farmers' Association, p 2; Submission 19, NSW Irrigators' Council, p 5; Evidence, Ms Kelly, 14 July 2020, p 3; Evidence, Mr Hare, 14 July 2020, p 20; Evidence, Mr Joe Martin, Board Member, Namoi Water, 13 July 2020, p 36; Evidence, Ms Lowien, 13 July 2020, p 36.

<sup>147</sup> Submission 17, NSW Farmers' Association, p 2.

<sup>148</sup> Submission 19, NSW Irrigators' Council, p 8.

<sup>149</sup> Evidence, Mr Quigley, 13 July 2020, p 33.

<sup>150</sup> Evidence, Mr Isaacs, 14 July 2020, p 27.



more storage reserve was required and therefore GS [General Security] licenses would have less access to water and lower reliability. This would have a flow-on effect for the valley in terms of less production, less economic benefit to the wider community.<sup>151</sup>

**2.49** When questioned as to how the bill would impact on each valley in terms of changes to general security allocations, Mr Clayton Barr MP responded: 'No, I do not and, as I talk to stakeholders, the stakeholders do not know either'.<sup>152</sup>

**2.50** However, it was noted by stakeholders that in the southern valleys alternative strategies to ensure security of town water supplies had already been put in place that effectively take into account the worst drought of record and have already reduced general security allocations.

**2.51** The submission from the Southern Riverina Irrigators indicates:

Allocation determinations and a tiered approach go above and beyond millennium drought factors which are already included in the Murray Rivers resource assessments. These minimum inflow determinations were introduced in 2007 and have delivered 100 percent allocation to conveyance, critical human needs all the way from Dartmouth to Lake Alexandrina before allocations move off zero.<sup>153</sup>

### **Does the bill provide for the inclusion of the best available information?**

**2.52** The committee also received evidence in support of the bill which contended that it provides for inclusion of the best available information in water sharing plans. Environmental advocacy groups told the committee:

- 'good water governance and risk management require drought reserves to be based on best available evidence regarding lowest inflows. Deliberately omitting this information from water sharing plans in order to maintain historic levels of reliability for certain licences is not sustainable, and invariably diminishes the volume of water set aside for use during periods of drought'<sup>154</sup>
- '[r]ecent events have underscored the need for transparent rules underpinning an open, accountable and evidence-based process to determine an appropriate drought reserve allocation'<sup>155</sup>
- 'This Bill will allow the most current, up-to-date data to be utilised in water management ... Up-to-date data can be used to model projections more reliably and based on best available science'.<sup>156</sup>

**2.53** A respondent to the online questionnaire rejected concerns about general security licence

<sup>151</sup> Submission 2, Lachlan Shire Council, p 2.

<sup>152</sup> Evidence, Mr Clayton Barr MP, 13 July 2020, p 9.

<sup>153</sup> Submission 4, Southern Riverina Irrigators, p 8.

<sup>154</sup> Submission 6, Environmental Defenders Office, p 2.

<sup>155</sup> Submission 7, Australian Floodplain Association, p 1.

<sup>156</sup> Submission 15, Nature Conservation Council of NSW, pp 2-3.

holders receiving less water, asserting that:

If general security (licence) holders get less water, that is because there is less water ... if general security users are the priority, do something to redress the balance, but do not pretend that the droughts between 2004 and 2020 did not happen.<sup>157</sup>

- 2.54** Tamworth Regional Council also supported the bill in seeking to update the drought of record information in water sharing plans across the State.<sup>158</sup>
- 2.55** Mr Bruce Logan, Director—Water and Waste, Tamworth Regional Council, told the committee that the council had asked the government 'to consider [changing] the arbitrary decision to only consider historical inflow records, in the case of the Peel water sharing plan prior to 30 June 2010. The Government, at this stage, has not agreed to change that'.<sup>159</sup>
- 2.56** Mr Logan explained that without this change, the water sharing plans for the Peel and Namoi will exclude all inflows or lack thereof after 30 June 2004, meaning the effects of the Millennium drought and the current drought were not considered.<sup>160</sup>

## Committee comment

- 2.57** The committee notes that it remains unclear how the drought of record arrangements introduced in 2014 impacted town water security or altered general security water allocations in the recent drought as no modelling seems to be available.
- 2.58** We acknowledge the cautious views of some inquiry participants towards the proposal to include a drought of record in water sharing plans. Alternative suggestions put forward to the committee included drawing upon a collection of drought data to make determinations regarding water allocation rather than relying on a single 'outlier' drought, and relying on the government's regional water strategies process to consider aspects of what is proposed in the bill.
- 2.59** The committee acknowledges that the government is currently conducting historical modelling work as part of its regional water strategies. This process may go some way in identifying what are alternative measures for considering the impact of climate change in the determination of water allocations in each region.
- 2.60** The committee recognises the fears of general security license holders who could be affected by reductions in water allocations as a result of using the most up to date drought of record in water sharing plans.

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<sup>157</sup> Portfolio Committee No. 4 – Industry, NSW Legislative Council, Report on the online questionnaire: *Inquiry into Constitution Amendment (Water Accountability and Transparency) Bill 2020, the provisions of the Water Management Amendment (Transparency of Water Rights) Bill 2020 and the Water Management Amendment (Water Allocations – Drought Information) Bill 2020*, 15 July 2020, p 4.

<sup>158</sup> Evidence, Mr Logan, 14 July 2020, p 15.

<sup>159</sup> Evidence, Mr Logan, 14 July 2020, p 15.

<sup>160</sup> Evidence, Mr Logan, 14 July 2020, p 15.

- 2.61** The committee also recognises the concerns of some stakeholders who consider using out of date drought data as problematic.
- 2.62** Based on the evidence received, the committee is concerned that the potential impacts of the bill – economic, environmental or social – have not been fully investigated. We do, however, acknowledge that some inquiry participants supported the bill on the basis that it would provide appropriate determinations for drought reserves.
- 2.63** The committee recommends that debate on the Water Management Amendment (Water Allocations – Drought Information) Bill 2020 proceed taking into account the committee comments documented in this report and the concerns raised by stakeholders during this inquiry.

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**Recommendation 3**

That the Legislative Council proceed to debate the Water Management Amendment (Water Allocations – Drought Information) Bill 2020, and that the committee comments and concerns identified by stakeholders as set out in this report be addressed during debate in the House.

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Constitution Amendment (Water Accountability and Transparency) Bill 2020, Water Management Amendment (Transparency of Water Rights) Bill 2020 and Water Management (Water Allocations – Drought Information) Bill 2020

## Appendix 1 Submissions

No.	Author
1	Mr Brian Stevens
2	Lachlan Shire Council
3	Griffith City Council
4	Southern Riverina Irrigators
5	Murray Valley Private Diverters (Inc)
5a	Murray Valley Private Diverters (Inc)
6	Environmental Defenders Office
7	Australian Floodplain Association
8	Mr Clayton Barr MP
9	Speak Up Campaign Inc
10	Confidential
11	Christian Democratic Party (CDP)
12	Namoi Water
13	Pauline Hanson's One Nation NSW
14	Clerk of the Parliaments
15	Nature Conservation Council of NSW
16	Ricegrowers' Association of Australia Inc
17	NSW Farmers' Association
18	Gwydir Valley Irrigators Association (GVIA)
19	NSW Irrigators' Council (NSWIC)

## Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
<b>Monday 13 July 2020</b> <b>Macquarie Room,</b> <b>Parliament House, Sydney</b>	Hon Katrina Hodgkinson	Former Minister for Primary Industries
	Mr Jim Cush <i>(via teleconference)</i>	Chair, NSW Irrigators' Council
	Ms Claire Miller <i>(via teleconference)</i>	Interim CEO, NSW Irrigators' Council
	Ms Christine Freak <i>(via teleconference)</i>	A/Policy Manager, NSW Irrigators' Council
	Ms Maryanne Slattery <i>(via teleconference)</i>	Director, Slattery and Johnson
	Mr Bill Johnson <i>(via teleconference)</i>	Director, Slattery and Johnson
	Ms Zara Lowien <i>(via teleconference)</i>	Executive Officer, Gwydir Valley Irrigators Association
	Mr Joe Martin <i>(via teleconference)</i>	Board Member, Namoi Water
<b>Tuesday 14 July 2020</b> <b>Preston Stanley Room</b> <b>Parliament House, Sydney</b>	Mr Tony Quigley <i>(via teleconference)</i>	Chairman, Macquarie River Food and Fibre
	Hon Kevin Humphries	Former Minister for Water
	Ms Rachel Kelly <i>(via teleconference)</i>	Policy Manager, Ricegrowers' Association of Australia
	Cr John Medcalf <i>(via teleconference)</i>	Mayor, Lachlan Shire Council
	Cr John Dal Broi <i>(via teleconference)</i>	Mayor, Griffith City Council
	Mr Brett Stonestreet <i>(via teleconference)</i>	General Manager, Griffith City Council
	Mr Bruce Logan <i>(via teleconference)</i>	Director - Water and Waste, Tamworth Regional Council
	Mr Darcy Hare <i>(via teleconference)</i>	Vice Chair, Southern Riverina Irrigators
Ms Louise Burge <i>(via teleconference)</i>	Executive Officer, Murray Valley Private Diverters	

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<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Hon Melinda Pavey MP	Minister for Water
	Mr Jim Bentley	Chief Executive Officer, NSW Water Sector and Deputy Secretary – Water, Department of Planning, Industry and Environment
	Mr Mitchell Isaacs	Director, Office of the Deputy and Strategic Relations, Department of Planning, Industry and Environment

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## Appendix 3 Minutes

### Minutes no. 23

Thursday 18 June 2020

Portfolio Committee No. 4 – Industry

Room 1136, Parliament House, Sydney at 1.35 pm

#### 1. Members present

Mr Banasiak, *Chair*

Mr Amato

Ms Cusack

Mr Farraway

Mr Field (substituting for Ms Hurst for the water bills inquiry, until 1.52 pm)

Mr Primrose

Mr Veitch

#### 2. Apologies

Ms Hurst

#### 3. Correspondence

The Committee noted the following items of correspondence:

##### *Received*

- 17 June 2020 – Email from the Office of the Hon. Emma Hurst MLC, to the secretariat, advising that Mr Justin Field MLC will substitute for the duration of the inquiry into the Constitution Amendment (Water Accountability and Transparency) Bill 2020 and Water Management Amendment (Transparency of Water Rights) Bill 2020.

#### 4. Inquiry into the provisions of the Constitution Amendment (Water Accountability and Transparency) Bill 2020, Water Management Amendment (Transparency of Water Rights) Bill 2020 and Water Management Amendment (Water Allocations—Drought Information) Bill 2020

##### 4.1 Terms of reference

The committee noted the referral on 16 June 2020 of the following terms of reference:

That:

- (a) the provisions of the Constitution Amendment (Water Accountability and Transparency) Bill 2020 be referred to Portfolio Committee No. 4 – Industry for inquiry and report,
- (b) the Constitution Amendment (Water Accountability and Transparency) Bill 2020 be referred to the committee upon receipt of the message from the Legislative Assembly,
- (c) the Water Management Amendment (Transparency of Water Rights) Bill 2020 be referred to Portfolio Committee No. 4 – Industry for inquiry and report,
- (d) the resumption of the second reading debate on the Water Management Amendment (Transparency of Water Rights) Bill 2020 not proceed until the tabling of the committee report,
- (e) the committee report by Friday 31 July 2020, and
- (f) on the report being tabled a motion may be moved immediately for the first reading and printing of the Constitution Amendment (Water Accountability and Transparency) Bill 2020.

The committee noted the referral on 17 June 2020 of the following terms of reference: That the Water Management Amendment (Water Allocations—Drought Information) Bill 2020 be referred to Portfolio Committee No. 4 – Industry for inquiry and report by Friday 31 July 2020.



Resolved, on the motion of Mr Veitch: That all three bills be examined concurrently with one report, and that the terms of reference be incorporated into one, as follows:

1. That Portfolio Committee No. 4 – Industry inquire and report on:
  - (a) the provisions of the Constitution Amendment (Water Accountability and Transparency) Bill 2020,
  - (b) the Water Management Amendment (Transparency of Water Rights) Bill 2020, and
  - (c) the Water Management Amendment (Water Allocations—Drought Information) Bill 2020.
2. That the committee report by Friday 31 July 2020.

#### 4.2 Proposed timeline

Resolved, on the motion of Ms Cusack: That the committee adopt the following timeline for the administration of the inquiry:

- Sunday 5 July 2020 – closing date for submissions and online questionnaire (2 weeks)
- Monday 13 July and Tuesday 14 July – 2 hearings
- Friday 24 July – circulation of chair's draft report (Note: this will allow less than seven days to consider the chair's draft report, in variance to the sessional order)
- Wednesday 29 July – report deliberative
- Friday 31 July – report tabled.

#### 4.3 Physically distanced hearing

Resolved, on the motion of Mr Farraway: That the committee hold a physically distanced hearing.

#### 4.4 Submissions, online questionnaire and proformas

Resolved, on the motion of Mr Veitch:

- That the committee accept submissions from nominated stakeholders and organisations/experts in the field who apply to make a submission and are approved by the chair.
- That the committee not issue an open call for submissions through the website.
- That the committee not accept any proformas.
- That the committee conduct an online questionnaire to close on the same date as submissions.
- That the wording for the website be as follows:

##### Submissions

- Individuals are invited to submit their comments on the bill/s here [hyperlink to online questionnaire]. This is a new way for individuals to participate in inquiries and it means we will no longer accept proformas.
- If you are an organisation or have specialist knowledge in the field and you would like to make a more detailed submission, please contact the secretariat before [submission closing date].

#### 4.5 Online questionnaire and summary report

Resolved, on the motion of Mr Veitch: That the questions for the online questionnaire be as follows:

- What is your position on the Constitution Amendment (Water Accountability and Transparency) Bill 2020? Select one of these options: support, oppose, neutral/undecided
- What is your position on the Water Management Amendment (Transparency of Water Rights) Bill 2020? Select one of these options: support, oppose, neutral/undecided
- What is your position on the Water Management Amendment (Water Allocations—Drought Information) Bill 2020? Select one of these options: support, oppose, neutral/undecided
- In relation to the previous question, please explain your position on the bill/s (500 word text box)
- Do you have any other comments on the bill/s? (250 word text box)

Resolved, on the motion of Mr Veitch: That the secretariat prepare a summary report of responses to the online questionnaire for publication on the website and use in the report, and that:

- the committee agree to publication of the report via email, unless a member raises any concerns
- individual responses be kept confidential on tabling.

#### **4.6 Submission invitations**

Resolved, on the motion of Mr Faraway: That the following stakeholders be invited to make a submission, and members be given 24 hours to nominate additional stakeholders:

- Political parties represented in the NSW Parliament, independent members of NSW Parliament
- Minister for Water, Hon Melinda Pavey MP
- Former Water Ministers Blair, Humphries and Hodgkinson
- Department of Planning, Industry and Environment – Water
- Murray Darling Basin Authority
- National Resources Access Regulator
- Farmer/irrigator bodies – NSW Farmers' Association, NSW Irrigators Council, Namoi Water, Gwydir Valley Irrigators' Association, Border Rivers Food and Fibre, Southern Riverina Irrigators, Speak Up 4 Water
- Environmental groups – Environmental Defenders Office, Inland Rivers Network, Australian Floodplain Association
- Clerks of NSW Legislative Assembly and Legislative Council
- Independent Commission Against Corruption
- Parliamentary Ethics Advisor.

#### **4.7 Witness list**

Resolved, on the motion of Mr Faraway: That the following stakeholders be invited to appear as witnesses, with consideration given to additional witnesses from among the stakeholders nominated by members:

- Political parties represented in the NSW Parliament
- Minister for Water, Hon Melinda Pavey MP
- Former Water Ministers Blair, Humphries and Hodgkinson
- Department of Planning, Industry and Environment – Water
- NSW Farmers' Association
- NSW Irrigators Council
- Speak up 4 Water.

#### **4.8 Questions on notice and supplementary questions**

Resolved, on the motion of Ms Cusack: That there be no questions taken on notice at the public hearing or supplementary questions from members.

#### **4.9 Advertising**

Resolved, on the motion of Ms Cusack: That in addition to the inquiry being advertised via social media, stakeholder emails and a media release distributed to all media outlets in New South Wales, the secretariat investigate the costs of advertising the inquiry in regional newspapers and advise the committee.

Mr Field left the meeting.

5. \*\*\*

6. \*\*\*

**7. Adjournment**

The committee adjourned at 1.57 pm until Monday 13 July 2020.

Madeleine Foley  
Committee Clerk

**Minutes no. 24**

Monday 13 July 2020

Portfolio Committee No. 4 – Industry

Macquarie Room, Parliament House, Sydney at 9.22 am

**1. Members present**

Mr Banasiak, *Chair*

Ms Cusack (*via teleconference*) (*until 10.54 pm, and from 11.46 am until 1.00 pm*)

Mr Farraway

Mr Field

Mr Khan

Mr Mookhey (*until 9.25 am*)

Mr Primrose

**2. Election of Deputy Chair for duration of public hearings for inquiry into the water bills**

The Chair called for nominations for the Deputy Chair for the duration of public hearings for the inquiry into the water bills.

Mr Mookhey moved: That the Hon Peter Primrose MLC be elected Deputy Chair.

There being no further nominations, the Chair declared Mr Primrose elected Deputy Chair for the duration of public hearings for the inquiry into the water bills.

**3. Minutes**

Resolved, on the motion of Mr Farraway: That draft minutes no. 23 be confirmed.

**4. Correspondence**

The Committee noted the following items of correspondence:

***Received:***

- 22 June 2020 – Email from the office of the Opposition Whip advising that the Hon Daniel Mookhey MLC will be substituting for the Hon Mick Veitch MLC for the water bills inquiry hearings on 13 and 14 July 2020
- 25 June 2020 – Email from Ms Tess Vickery for Mr Pearson advising that Hon Mark Pearson will be substituting for Hon Emma Hurst for the duration of the inquiry into the Prevention of Cruelty to Animals Amendment (Restrictions on Stock Animal Procedures) Bill 2019
- 27 June 2020 – Email from Mrs Jan Koperberg, to Chair, advising on behalf of Mr Phil Koperberg, that he is not well enough to make a contribution to the inquiry
- 30 June 2020 – Email from the Hon Niall Blair to secretariat, declining the invitation to give evidence to the inquiry
- 1 July 2020 – Email from Hon Katrina Hodgkinson to secretariat, advising she is unavailable to attend on either hearing date
- 1 July 2020 – Email from Louise Ward, Director, Animal Justice Party NSW branch to secretariat, declining invitation to give evidence to the inquiry
- 3 July 2020 – Email from Mr Chris Stone, NSW Liberal Party to secretariat, declining invitation to give evidence or make a submission to the water bills inquiry.

- 3 July 2020 – Email from Ms Cate Faehrmann, NSW Greens to secretariat, declining invitation to give evidence or make a submission
- 6 July 2020 – Email from Senada Bjelic, Shooters Fishers and Farmer Party to secretariat, declining invitation to give evidence or make a submission
- 6 July 2020 – Email from Kate Schouten, Pauline Hanson's One Nation, to secretariat, advising that One Nation will make a submission
- 6 July 2020 – Email from Courtney Dillon, NSW Farmers, to secretariat, advising NSW Farmers will not participate in a hearing but will make a submission
- 7 July 2020 – Email from Dr Emma Carmody, Environmental Defenders Office to secretariat, advising that representatives are unavailable to attend on either hearing date
- 8 July 2020 – Email from Hon Niall Blair to committee, declining second invitation to give evidence to the inquiry and reasons for declining
- 8 July 2020 – Text message from Shelley Scoullar, Speak Up Campaign, to secretariat, advising that representatives are unavailable on the hearing dates
- 9 July 2020 – Email from Mary McDermott, Administration Officer – CEO, Dubbo Regional Council to secretariat, advising that Dubbo Regional Council will not be attending the hearing on 14 July 2020
- 9 July 2020 – Letter from Hon Natasha Maclaren-Jones MLC, Government Whip to secretariat, advising that Hon Trevor Khan MLC will be substituting for Hon Lou Amato MLC for the duration of the inquiry.

***Sent:***

- 6 July 2020 – Letter from Chair, to Hon Niall Blair, asking that he reconsider the invitation to give evidence at a hearing
- 6 July 2020 – Letter from Chair, to the Hon Katrina Hodgkinson, asking that she reconsider the invitation to give evidence at a hearing.

## 5. **Inquiry into the provisions of the Constitution Amendment (Water Accountability and Transparency) Bill 2020, Water Management Amendment (Transparency of Water Rights) Bill 2020 and Water Management Amendment (Water Allocations—Drought Information) Bill 2020**

### 5.1 **Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-9 and 11-15.

Resolved, on the motion of Mr Khan: That the committee authorise the publication of submission nos. 5a and 16-19.

### 5.2 **Confidential submissions**

Resolved on the motion of Mr Khan: That the committee keep submission no. 10 confidential, as per the request of the author.

### 5.3 **Online questionnaire and summary report**

The committee noted that it had previously agreed via email to reopen the online questionnaire with a new closing date of 9 July 2020.

Resolved, on the motion of Mr Primrose: That the committee authorise the publication of the online questionnaire report.

### 5.4 **Publication of hearing footage**

The committee noted that it was previously agreed via email to publish the hearing footage on the inquiry website, following the hearing.

### 5.5 **Camera operator arrangements for committee hearings**

Members noted that the new three-year funding from Treasury has enabled the Parliament to extend its existing camera operator arrangements to cover committee hearings. Since 2018 the Parliament has had the equipment necessary to operate the cameras in the Jubilee and Macquarie Rooms from the broadcast control room on Level 6, but has been unable to utilise the capacity due to funding constraints.

The new arrangements mean that the footage will now provide for a wide shot of members when questions are being asked, and then revert to a wide shot of the witness table during answers. Camera operators will make adjustments for each group of witnesses. The existing Broadcast Guidelines for the filming of committee hearings will continue to apply.

The committee secretariat present in the hearing room will continue to control the broadcast modes of 'Broadcast', 'Off', 'Deliberative' and 'In Camera'.

#### **5.6 Declaration**

Mr Khan declared a potential conflict of interest in that his wife is a part owner of a farm machinery business.

#### **5.7 Public hearing**

The committee noted that it had previously resolved that there will be no questions taken on notice or supplementary questions.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters. The Chair noted that members of Parliament swear an oath to their office, and therefore do not need to be sworn prior to giving evidence before a committee.

The following witness was sworn and examined via teleconference:

- The Hon Katrina Hodgkinson, former Minister for Primary Industries.

The evidence concluded and the witness withdrew.

The following witness was examined:

- Mr Clayton Barr MP, Shadow Minister for Water.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined via teleconference:

- Mr Jim Cush, Chair, NSW Irrigators' Council
- Ms Claire Miller, Interim CEO, NSW Irrigators' Council
- Ms Christine Freak, A/Policy Manager, NSW Irrigators' Council.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined via teleconference:

- Ms Maryanne Slattery, Director, Slattery and Johnson
- Mr Bill Johnson, Director, Slattery and Johnson.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined via teleconference:

- Ms Zara Lowien, Executive Officer, Gwydir Valley Irrigators Association
- Mr Joe Martin, Board Member, Namoi Water
- Mr Tony Quigley, Chairman, Macquarie River Food and Fibre.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Kevin Humphries, former Minister for Water.

Mr Humphries tendered the following documents:

- Opening statement
- Water in New South Wales: Regional water strategies, NSW Department of Planning, Industry and Environment.

The evidence concluded and the witness withdrew.

The public hearing concluded at 4.15 pm.

### 5.8 Tendered documents

Resolved on the motion of Mr Khan: That the committee accept and publish the following documents tendered during the public hearing:

- Opening statement, tendered by Mr Kevin Humphries, former Minister for Water.
- Water in New South Wales: Regional water strategies, NSW Department of Planning, Industry and Environment, tendered by Mr Kevin Humphries, former Minister for Water.

## 6. Adjournment

The committee adjourned at 4.22 pm until Tuesday 14 July 2020, 9.45 am, Preston Stanley Room, Parliament House (public hearing).

Merrin Thompson  
**Committee Clerk**

## Minutes no. 25

Tuesday 14 July 2020

Portfolio Committee No. 4 - Industry

Preston Stanley Room, Parliament House, 9.45 am

### 1. Members present

Mr Banasiak, *Chair*

Mr Khan

Ms Cusack (*via teleconference*)

Mr Faraway

Mr Field

Mr Primrose

### 2. Inquiry into the provisions of the Constitution Amendment (Water Accountability and Transparency) Bill 2020, Water Management Amendment (Transparency of Water Rights) Bill 2020 and Water Management Amendment (Water Allocations—Drought Information) Bill 2020

#### 2.1 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined via teleconference:

- Ms Rachel Kelly, Policy Manager, Ricegrowers' Association of Australia.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined via teleconference:

- Cr John Medcalf, Mayor, Lachlan Shire Council
- Cr John Dal Broi, Mayor, Griffith City Council

- Mr Brett Stonestreet, General Manager, Griffith City Council.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined via teleconference:

- Mr Bruce Logan, Director – Water and Waste, Tamworth Regional Council.

Mr Khan declared that he is a resident of Tamworth and knows Mr Logan personally.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined via teleconference:

- Mr Darcy Hare, Vice Chair, Southern Riverina Irrigators
- Ms Louise Burge, Executive Officer, Murray Valley Private Diverters.

The evidence concluded and the witnesses withdrew.

The Chair noted that Members of Parliament swear an oath to their office, and therefore do not need to be sworn prior to giving evidence before a committee.

The Hon Melinda Pavey MP, Minister for Water was admitted and examined.

The following witnesses were sworn and examined:

- Mr Jim Bentley, Chief Executive Officer, NSW Water Sector and Deputy Secretary – Water, Department of Planning, Industry and Environment
- Mr Mitchell Issacs, Director, Office of the Deputy and Strategic Relations, Department of Planning, Industry and Environment.

Mr Issacs tendered the following document:

- Water sharing plans and water resource plans, Community consultation - What we heard July 2020.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.46 pm.

## **2.2 Tendered documents**

Resolved, on the motion of Mr Farraway: That the committee accept and publish the following document tendered during the public hearing:

- Water sharing plans and water resource plans, Community consultation - What we heard July 2020, tendered by Mr Mitchell Isaacs, Director, Office of the Deputy and Strategic Relations, Department of Planning, Industry and Environment.

## **3. Adjournment**

The committee adjourned at 3.50 pm, until Wednesday 29 July 2020, 10.00am, McKell Room, Parliament House (report deliberative water bills inquiry).

Emma Rogerson  
Committee Clerk

## Minutes no. 26

Wednesday 29 July 2020

Portfolio Committee No. 4 - Industry

Preston Stanley Room, Parliament House, 10.05 am

### 1. Members present

Mr Banasiak, *Chair*

Ms Cusack (*via Webex*)

Mr Farraway

Mr Field (*via Webex*)

Mr Khan

Mr Primrose

Mr Veitch

### 2. Previous minutes

Resolved, on the motion of Mr Khan: That draft minutes nos. 24 and 25 be confirmed.

### 3. Electronic participation

Resolved, on the motion of Mr Primrose: That the draft minutes for meeting no. 26 be circulated to members electronically and be confirmed by members 24 hours after receipt of the draft minutes by agreement via email.

### 4. \*\*\*

## 5. Inquiry into the provisions of the Constitution Amendment (Water Accountability and Transparency) Bill 2020, Water Management Amendment (Transparency of Water Rights) Bill 2020 and Water Management Amendment (Water Allocations—Drought Information) Bill 2020

### 5.1 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Constitution Amendment (Water Accountability and Transparency) Bill 2020, Water Management Amendment (Transparency of Water Rights) Bill 2020 and Water Management Amendment (Water Allocations—Drought Information) Bill 2020*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Field: That the following new paragraph be inserted after paragraph 2.15:

'Asked what the NSW Government would do without the provisions of the bill in place should a worse drought occur (using the example of Dubbo's water supply needs), the Minister offered alternative measures:

"We suspend water sharing plans completely if we are at risk. We can build extra infrastructure, which is what we have done on Burrendong Dam so we have got a deeper outlet to be able to get water. We deal with council and council has taken some of Dubbo's recycled water to put on pasture and property. Some of the farmers have given back to Dubbo city council water that was good for drinking, and they've swapped those around. They are some of the measures we can take into account in an emergency situation, which we've done." [FOOTNOTE: Evidence, Hon Melinda Pavey MP, Minister for Water, Property and Housing, 14 July 2020, p 39.]

Resolved, on the motion Mr Field: That the following new paragraph be inserted after paragraph 2.20:

'Some evidence presented to the committee supported drought of record as an appropriate measure. The Environmental Defenders Office submission indicated that "good water governance and risk management require drought reserves to be based on best available evidence regarding lowest inflows." [FOOTNOTE: Submission 6, Environmental Defenders Office, p 2.]

Mr Bill Johnson gave evidence to the committee cynically responding to the 2014 changes to the drought of record:



"The drought of record was appropriate until there was a worse one and all of a sudden it was no longer appropriate to use it. In essence we are running our rivers based on our memories of a wetter time and those times have been past for 20 years. If we continue doing that, the events that we have had in the last 10 years will keep recurring. You cannot escape your responsibility of tomorrow by evading it today. It will come eventually." [FOOTNOTE: Evidence, Mr Bill Johnson, Director, Slattery and Johnson, 13 July 2020, p 29.]

Resolved, on the motion of Mr Field: That the following new paragraph be inserted after paragraph 2.20: 'Mr Logan from Tamworth City Council supported the bill and gave evidence at the hearing that council had requested the NSW Water Minister update the relevant water sharing plan to update the drought of record, effectively implementing the measures in the bill in the Peel Valley. Under questioning, Mr Logan confirmed that the NSW Government had not agreed to making those changes. Mr Logan explained the consequences of that decision:

"this decision means that, according to the Government, the inflow into Chaffey over the last three years or lack thereof never happened, it will not happen again and if it did then applying exactly the same rules would somehow see a different result. I do not believe any of these arguments can be reasonably sustained and, what happens if there is a worse level of inflow for the city of Tamworth?" [FOOTNOTE: Evidence, Mr Bruce Logan, Director—Water and Waste, Tamworth Regional Council, 14 July 2020, p 15.]

Resolved, on the motion of Mr Field: That the following new paragraph be inserted after paragraph 2.20: 'Other stakeholders acknowledged that a drought of record provision exists within current water sharing plans even if they didn't support the provision of the bill to consider more recent droughts. The NSW Department of Planning, Industry and Environment acknowledged that 2014 bill changes did not remove drought of record provisions but backdated them.

Mr Isaacs from the Department of Planning, Industry and Environment indicated that: "Prior to the amendments in 2014 the water sharing plans required the calculation for the purpose of setting available water determinations to be "the worst period of low inflows" from historical "flow information held by the department". The addition to the water sharing plans made in 2014 was to add "when this plan commenced" at the end of that statement". [FOOTNOTE: Evidence, Mr Mitchell Isaacs, Director, Office of the Deputy and Strategic Relations, Department of Planning, Industry and Environment, 14 July 2020, p 28.]

Under questioning, the Southern Riverina Irrigators and Rice Growers Association of Australia acknowledged current water sharing plans included drought of record provisions but indicated that alternative arrangements were also in place in southern valleys to address town water security needs.' [FOOTNOTE: Evidence, Ms Rachel Kelly, Policy Manager, Ricegrowers' Association of Australia, 14 July 2020, pp 3-4; Evidence, Mr Darcy Hare, Vice Chair, Southern Riverina Irrigators, 14 July 2020, p 21.]

Resolved, on the motion of Mr Veitch: That paragraph 2.22 be amended by inserting at the end: 'Witnesses were unable to quantify the impact for each valley'.

Resolved, on the motion of Mr Field: That the following new paragraph be inserted after paragraph 2.23: 'It is unfortunate that the Department failed to provide the Lachlan Valley case study despite requests from the committee'.

Resolved, on the motion of Mr Field: That the following new paragraph be inserted after paragraph 2.27: 'However, the Department and Minister acknowledged that the regional water strategies would be advisory only and any changes would need to be made through amendments to water sharing plans.

Minister Pavey indicated, in regard to the regional water strategies, that: "They will sit as another important piece of information that will give us historical context and future context around water. Water sharing plans can be amended. If we do get data and information that points to changes that need to be made we will take those under advisement and consideration, as we would do."

[FOOTNOTE: Evidence, Hon Melinda Pavey MP, Minister for Water, Property and Housing, 14 July 2020, p 30.]

Resolved, on the motion of Mr Veitch: That the following new committee comment be inserted after paragraph 2.27:

**'Committee comment**

No evidence was provided to the committee as to how often a region comes close to the drought of record, without exceeding it. While testimony was given by Mr Jim Cush of the NSW Irrigators' Council that "[t]he drought of record ... is a one-in-a-hundred-year event, very similar to this coronavirus that we are suffering at the moment", the committee was not informed of how frequently a certain valley or region came close to the drought of record during any given time span. For example in a period such as 100 years it may well be that a region was within 10 per cent of the drought of record on 15 or 20 occasions. During events like these 15 or 20 instances it would be crucial for that valley to be holding sufficient water for critical human need as they went through these extreme droughts that went close, but did not exceed, the drought of record.' [FOOTNOTE: Evidence, Mr Jim Cush, Chair, NSW Irrigators' Council, 13 July 2020, p 18.]

Resolved, on the motion of Mr Veitch: That the following new committee comment be inserted after paragraph 2.27:

**'Committee comment**

The Department of Planning, Industry and Environment did not table evidence that gives effect to this statement noted in 2.21. When asked for any such modelling the Department was unable to be precise about its whereabouts or accessibility. When directly asked by the committee to provide a copy of the 2014 modelling of the Lachlan River, a report that allegedly already exists, both the Minister and the CEO of NSW Water Sector were unable to provide any such copy during their 75 minute testimony, however at the end of the hearing Minister Pavey did say that she would provide a copy. Such a copy has not been forthcoming.

Written evidence and testimony were given by various stakeholders that they had not seen, could not access and did not have a copy of the alleged 2014 Lachlan River modelling of impacts of using up to date records of drought. [FOOTNOTE: Submission 19, NSW Irrigators' Council, p 8; Evidence, Cr John Medcalf, Mayor, Lachlan Shire Council, 14 July 2020, p 14.]

The existence of a Lachlan River modelling study remains uncertain. It may well not exist. The current legislation in New South Wales is underpinned by this alleged document that remains unsighted.

Therefore it remains unclear on what grounds the Department of Planning, Industry and Environment would claim to have struck "the appropriate balance" referred to in 2.21. It also remains unclear on what grounds Minister Humphries, in his 2014 amendment, claimed that updating drought of record data would have an impact on water availability for irrigators. And finally, it remains unclear on what grounds Minister Pavey declared to the committee, in her testimony, that the impact of using up to date drought of record information would result in "5 per cent less general security water" [FOOTNOTE: Evidence, Hon Melinda Pavey MP, Minister for Water, Property and Housing, 14 July 2020, p 31.]

Resolved, on the motion of Mr Veitch: That paragraph 2.30 be amended by omitting 'significantly' before 'impact general security water license holders'.

Resolved, on the motion of Mr Veitch: That the following new paragraph be inserted after paragraph 2.30: 'Witnesses were unable to quantify the likelihood or otherwise of these concerns'.

Resolved, on the motion of Mr Veitch: That paragraph 2.31 be amended by inserting at the end: 'The Department was unable to quantify the precise impact on general security licence holders'.

Mr Veitch moved: That paragraph 2.32 be amended by inserting at the end: 'The committee was provided with no evidence however that supported this claim'.

Question put.

The committee divided.

Ayes: Mr Field, Mr Primrose, Mr Veitch.

Noes: Mr Banasiak, Ms Cusack, Mr Farraway, Mr Khan.

Question resolved in the negative.

Resolved, on the motion of Mr Field: That the following new paragraph be inserted after paragraph 2.33: 'However, it was noted by stakeholders that in the southern valleys alternative strategies to ensure security of town water supplies had already been put in place that effectively take into account the worst drought of record and have already reduced general security allocations.

The submission from the Southern Riverina Irrigators indicates:

"Allocation determinations and a tiered approach go above and beyond millennium drought factors which are already included in the Murray Rivers resource assessments. These minimum inflow determinations were introduced in 2007 and have delivered 100 percent allocation to conveyance, critical human needs all the way from Dartmouth to Lake Alexandrina before allocations move off zero." [FOOTNOTE: Submission 4, Southern Riverina Irrigators, p 8.]

Mr Field moved: That the following paragraph 2.39 be omitted: 'The committee notes the reasoning put forward by a number of stakeholders as to why they view the bill as a blanket proposal or one-size-fits-all approach, without consideration of the unique characteristics of valleys across the state and the differences in water management in the Northern and Southern basins' and the following new paragraph be inserted instead:

'The committee notes that it remains unclear how the drought of record arrangements introduced in 2014 impacted town water security or altered general security water allocations in the recent drought as no modelling seems to be available.'

Question put.

The committee divided.

Ayes: Mr Banasiak, Mr Field, Mr Primrose, Mr Veitch.

Noes: Ms Cusack, Mr Farraway, Mr Khan.

Question resolved in the affirmative.

Resolved, on the motion of Mr Field: That the following paragraph 2.41 be omitted: 'The committee acknowledges that the government is currently conducting modelling work as part of its regional water strategies. This process will go some way in identifying what is the most appropriate measure for the determination of water allocations in each region', and the following new paragraph be inserted instead:

'The committee acknowledges that the government is currently conducting historical modelling work as part of its regional water strategies. This process may go some way in identifying what are alternative measures for considering the impact of climate change in the determination of water allocations in each region.'

Resolved, on the motion of Mr Field: That paragraph 2.42 be amended by:

- a) omitting 'also' after 'The committee'
- b) omitting 'the inclusion of the' before 'drought of record in water sharing plans' and
- c) inserting instead 'using the most up to date'.

Resolved, on the motion of Mr Field: That the following new paragraph be inserted after paragraph 2.42:

**'Committee comment**

The committee also recognises the concerns of some stakeholders who consider using out of date drought data as problematic.'

Resolved, on the motion of Mr Field: That:

- a) the draft report as amended be the report of the committee and that the committee present the report to the House;
- b) the transcripts of evidence, submissions, tabled documents, responses to the online questionnaire and summary report of these responses, and correspondence relating to the inquiry be tabled in the House with the report;
- c) upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- d) upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, responses to the online questionnaire and summary report of these responses, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- e) the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- f) the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- g) dissenting statements be provided to the secretariat by 4.00 pm, Thursday 30 July 2020;
- h) the secretariat is tabling the report at 12 pm, Friday 31 July 2020;
- i) the Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

**6. Adjournment**

The committee adjourned at 10.53 am, until Tuesday 11 August 2020, TBC, Macquarie Room, Parliament House (public hearing - Mulesing inquiry).

Emma Rogerson  
**Committee Clerk**



