



THE HON TANYA PLIBERSEK MP
MINISTER FOR THE ENVIRONMENT AND WATER

MC23-033922

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Dear Senator Van

Thank you for your correspondence of 16 November 2023 about the *Water Amendment (Restoring Our Rivers) Bill 2023* currently before the Senate.

I am prepared to make a series of commitments to you in this letter in response to the questions you have raised and your requirements to enable your support of the Bill.

The Bill provides more time, more options, more funding and more accountability to deliver the Basin Plan and remaining water recovery targets. The Bill also removes restrictions, including the statutory 1500 GL cap on water purchases and funding constraints for the Water for the Environment Special Account, which limit the Australian Government's ability to deliver on the Basin Plan.

The agreement I reached with Basin Ministers in August reflects the many differing positions across the Basin. It is a compromise, underpinned by a shared commitment to deliver the Plan in full, and to maintain a healthy basin for all who depend upon it.

At the outset I wish to place on record my thanks for you bringing forward the issue of leasing of water and for your proposals around requiring the Minister to consult, consider and report on socio-economic impacts when purchasing water.

Leasing arrangements

Thank you for your helpful suggestions around leasing water. I am pleased to confirm that the amendments proposed in the Bill enable a range of commercial arrangements to be entered into to deliver the 450 GL of additional environmental water.

I confirm the Commonwealth Environmental Water Holder can lease water. Water can be leased as an alternative to purchase. Alternatively, the government might also enter into a lease-back arrangement where the government purchases a water right and then leases the water back for a period of time. Leased water may contribute to Basin Plan targets for the term of the lease period. I am advised that leased water will only count if an entitlement is

transferred to the Commonwealth and the water is contracted before the 31 December 2027 deadline. Such a leasing arrangement is only available under the Bill – were the Bill not to pass, the Australian government would not have this option for the 450 GL of additional environmental water.

The water recovery targets set out in the Murray-Darling Plan represent the scientific advice on what are the environmentally sustainable levels of extraction to protect, restore and provide for the ecological values and ecosystem services of the Murray-Darling Basin. While leasing might assist in reaching those targets, the Plan does require the Commonwealth Environment Water Holder (CEWH) to “hold” the entitlements, which can be purchased or might include leased water on an enduring basis.

In response to your requirements, I have instructed my department to actively consider leasing water as part of the 450 GL – both to and from entitlement holders. As a result of your prompting, this will now form a mandatory part of the draft framework for delivery of the 450 GL that my department will consult on once the Bill is passed. I have also instructed my department to ensure that they have gathered sufficient evidence to allow for leasing of water to be considered as part of the Basin Plan Review due in 2026. I have also instructed the department to engage with stakeholders around the potential benefits of leasing and the levels of interest, were it to be put forward as an option. The Government has been largely inactive in the open water market over the last ten years so this represents a good opportunity to test new and novel ways of undertaking water recovery.

This will form part of the “tools” in our toolkit along with on-farm and off-farm efficiency projects, unsolicited water purchases, land and water purchase, rules changes and purchase by way of market tender. The decisions on which tools to utilise will be based on expert advice from the CEWH, the MDBA, and my department and informed by consultation including with affected communities. Consistent with my previous statements, all options to recover water (including now leasing) are on the table and I will not be expressing a preference for one method or prioritising one over another.

Socio-economic considerations

While water recovery may have flow-on impacts, numerous reports have shown that water recovery has not had the scale of impacts claimed by the Victorian Government. For example, the highest level of water recovery was in the 2011/12 financial year when 493 GL of water was bought. In that same year, the price of food and drinks dropped by 3.2 per cent. We are not proposing to recover even close to that amount in any annual purchase during this program.

Many factors contribute to the price of our food and fibre – rain, drought, fuel prices, energy, labour shortages and transportation, to name a few. Yet it is pleasing that the agriculture sector continues to prosper with record production of \$90 billion, record exports of \$75 billion and high farm incomes across a range of industries.

Notwithstanding this recent success, the Australian Government recognises the potential for some negative socio-economic impacts on communities through voluntary water purchase. That is why we have committed to work with communities and industries on the design and

delivery of the water recovery and community adjustment assistance programs to minimise any impacts.

As you note in your letter, the August agreement between Ministers committed to minimising the socio-economic impact on communities, yet currently there is no provision within the Bill reflecting this.

I understand that you propose moving an amendment to the Bill requiring the Minister to consider the social and economic impact of any water purchase program on communities in the Murray-Darling Basin. I also understand you will move an amendment to the amendment moved in the House, requiring that the Minister provide an annual report to Parliament on how the consideration of social and economic impact has been undertaken.

In response to your request for further clarification I can advise that in assessing socio-economic impacts the major components we will consider are:

1. The relative vulnerability of each local government area (LGA) to further water recovery programs. Relative vulnerability is a function of the dependence and adaptive capacity of each LGA. It is an indicator of how well each LGA is likely to be able to handle changes in water availability, and
2. The changes to the irrigated agriculture sector from water recovery programs. This includes likely changes to water allocation prices and irrigated agriculture production and gross value by sector and region.

Based on the draft of the amendments I have seen, I confirm that the Government will support your amendments.

I also confirm the Government's understanding of the effect of your amendments. This means that, when the Government is developing its plan around water programs, it must consider all options open to it and weight them on the basis of their socio-economic impact, value for money and environmental utility. This includes water leasing. The Government must consult on those (see below). The Minister must then report on those considerations on the basis of your proposed amendment. In addition to the commitment contained within this letter, I would be happy for the Minister representing me in the Senate to confirm this on the Senate floor in debate.

Public Implementation Schedule and consultation

In response to your request, I confirm that I will publish a public implementation schedule for recovery of the 450 GL by 30 June 2024. This will set out how the Government intends to reach the 450 GL goal including any interim targets along the way. The department will track progress against this schedule on a publicly available website and the Bill provides that the Minister will table an annual report on progress in the Parliament. This commitment also addresses Recommendation 1 of the Senate's Environment and Communications Legislation Committee into the Bill.

This will include public information on how lessons from previous community assistance programs will inform the current package, as well as information on what will trigger a community assistance package and how it will be implemented.

The community assistance package will be based on community adjustment principles including place-based and focused investment, proportionality to the water purchased, focused on reducing irrigation dependence and job creation, and underpinned by evidence and data.

In response to your request, I have also instructed my department to undertake to consult with affected stakeholders to enable their engagement in the process that will lead to the mandatory consideration of socio-economic impact by the Minister. Along with the changes you have proposed in your amendment this effectively requires the Minister to consult, consider and then report on socio-economic impacts of water programs.

Further, as you are aware, the Victorian government has failed to agree to the arrangements around the Murray Darling Basin that all other states and territories agreed in August 2023. This means that the Victorian government, unless they alter their position, will not be responsible for managing the roll out of any community adjustment program. In response to your request, I confirm that in Victoria the roll out of community adjustment will instead be undertaken in consultation with local communities, particularly local councils.

Supply and constraints projects

The Water Act provides for the funding of projects that will achieve equivalent environmental outcomes with less water, known as supply and constraints projects. These projects provide an alternative pathway to delivering environmental outcomes that do not require water to be purchased. As you are aware, supply and constraints projects are managed by state governments with Australian Government funding. I share your view that progress on the bulk of these projects has been too slow.

I am pleased to advise that as part of my agreement with state and territory governments struck in August 2023, I provided for an extension of time to allow feasible projects to be completed and allow states to bring forward new or revised projects. However, the scale of the task is significant. The projects are complex and their delivery has been impacted by the pandemic and recent floods.

Constraints projects enable water in the river to connect to lower parts of the floodplain by removing barriers to the natural flow, such as access roads and pumps. However, this involves complex flow modelling and detailed consultation with thousands of landholders along the river. That is why the Bill provides for a Constraints Relaxation Implementation Roadmap to be prepared by 31 December 2024. The roadmap will enable closer alignment between the Basin states on their approaches to stakeholder negotiations, community consultation and consideration of impacts on third parties. It will also strengthen program leadership and support its progressive implementation.

The new independent constraints facilitator I announced in Parliament on 18 October 2023 will ensure better community and landholder consultation into the future. The long-term

constraints work program will be considered again by the Murray Darling Basin Authority when the Basin Plan review concludes in 2026.

Cap on buybacks

I appreciate the concerns you have raised around the removal of the cap on buybacks. As discussed in our meeting, I am not prepared to delete the provision of the Bill that removes the cap. The 1500 GL cap on water buybacks limits the Australian Government's ability to deliver on the Basin Plan. We are looking for more options, not more restrictions.

As I stated in our meeting, voluntary water purchases are not my first choice to deliver the Basin Plan and I am keen to explore other options before water purchases, including on-farm water efficiency programs that were rejected by the previous government. In response to your requirements, I have also now indicated that we will consider the feasibility of leasing water as well. However, if the government is serious about delivering on the Plan, we need to be able to retain all options.

Northern Basin

I share your concerns about the Northern Basin and the Darling-Baaka including your thoughtful comments about the effect of fish kills. In the August agreement, Basin ministers committed to further strengthen arrangements to improve connectivity in the Northern Basin to support environmental outcomes.

I am pleased to confirm that the Bill provides the flexibility to implement arrangements that allow additional water recovery in the Northern Basin. This flexibility does not exist under the current provisions to meet the 450 GL target. Your support for this Bill will enhance water recovery in the Northern Basin.

The NSW government has already put in place some rules to protect environmental water flows into the Darling-Baaka River from some NSW rivers and the Queensland cross-border Rivers. NSW is now working on expanded protections for ecologically significant rain-fed flows to enable better connectivity throughout the Northern Basin which, if the Bill is passed, could contribute towards the 450GL target.

In practice, this would involve the NSW government codifying 'embargoes', or restrictions on water extraction, for irrigators in the Northern Basin, into their statutory water sharing plans. The triggers would be based on agreed ecological flow thresholds which, when met, would protect inflows from irrigation extraction throughout the Barwon-Darling River and its connected tributaries as far as Menindee Lakes. These rules would ensure that more water remains within Basin rivers, less is being extracted and critically important environmental outcomes are being achieved.

For this rules-based approach to be credited towards Basin Plan water recovery targets, the Bill requires a decrease in the amount of water taken for consumptive use, an increase in the volume of water for environmental use, and for the Minister to be satisfied that this water enhances environmental outcomes as mentioned in subsection 86AA(1), including but not limited to outcomes set out in Schedule 5 of the Basin Plan. In particular, this would involve the relevant water resource plans being accredited by the Australian Government,

creation of additional held environmental water entitlements, and a reduction in the sustainable diversion limits. No amendments to the current Bill are needed, but the NSW government will need to work with the Australian government to fulfill these requirements.

Basin governments are also working together on a trial to protect environmental flows through Menindee Lakes. In recent years, increasing volumes of environmental water from the Northern Basin have been arriving as inflows to the Lakes. Under the existing Murray-Darling Basin Agreement however, these inflows are re-allocated to NSW and Victoria for water delivery in the Southern Basin. Basin governments have agreed to continue strengthening arrangements to improve connectivity in the northern basin to support environmental outcomes, including protecting Commonwealth environmental water to achieve environmental outcomes throughout the basin.

Any water recovered from the Northern Basin will deliver environmental outcomes that will have multiple benefits – for protecting and restoring iconic environment assets along the Darling-Baaka, and for improving the resilience of Northern Basin communities – and for the entire Basin.

The Australian Government is also working with the New South Wales and Queensland governments to implement a suite of environmental works and measures in the northern Basin, collectively referred to as the Northern Basin Toolkit.

Environmental water in times of drought

The Commonwealth Environmental Water Holder (CEWH) holds water entitlements under the same terms and conditions as any other entitlement holder. Each Basin state has its own rules for allocating water based on a range of factors, including water availability.

This means that in times of drought, the CEWH will also have lower allocations. When dams are full and allocations are high, the CEWH uses these opportunities to boost ecological health, particularly when natural flooding occurs less frequently than in the past. The ability to carry over water from one year to the next is another critical tool to manage the risks of low allocations in future years and to allow winter-spring watering early in the new year.

The CEWH already has the ability to temporarily sell water, so long as he can demonstrate equal or greater environmental benefit from the sale. Details of past trades are available on the CEWH website: <https://www.dcceew.gov.au/water/cewo/trade/trading-outcomes>. The CEWH is subject to stringent accountability and oversight, and we are increasing accountability with this Bill.

Engagement with affected industries

I am pleased to be able to commit to you that there will be extensive engagement with potentially affected industries as the implementation roadmap is prepared. In response to your representations, I have instructed my department to pay particular attention to the milk processing industry in Victoria. Those discussions will be critical in my department providing advice on how to minimise the socio-economic impact of voluntary water purchases on communities.

In response to your representations, I met with members of the rice industry on Friday, 24 November. This enabled me to repeat to them directly the commitment I have made to you to them directly. I will, of course, in future be able to acknowledge your role in making those representations to me.

I am pleased to have received your indication that you are minded to support the Bill and trust that my undertakings and statements address any concerns or questions you might have.

Subject to agreement over your proposed amendment I would be grateful for your confirmation that you will be supporting the *Water Amendment (Restoring Our Rivers) Bill 2023* when it comes before the Senate.

I look forward to hearing from you shortly.

Yours sincerely

A handwritten signature in black ink that reads "Tanya Plibersek". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

TANYA PLIBERSEK

28.11.23