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Environment and Communications Legislation Committee Secretariat
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Submission to the Inquiry into the Water Amendment Bill 2015

The Australian Conservation Foundation, Environment Victoria and Environmental Justice Australia welcome the opportunity to comment on the Water Amendment Bill 2015 that proposes to cap Commonwealth surface water purchases in the Murray-Darling Basin (MDB) at 1,500 GL and to increase the flexibility in water recovery mechanisms funded under the Water for the Environment Special Account.

We have very serious concerns about the proposed legislated cap on water purchase and its impact on the implementation of the sustainable diversion limits (SDLs) set through the Murray-Darling Basin Plan. Water purchase from willing sellers has been repeatedly identified as the most cost-effective and efficient means of environmental water recovery¹ and the Government's own Commission of Audit has cautioned against over-reliance on infrastructure as the principal means of water recovery.²

Imposing a legislated limit on water purchase has the potential to severely compromise the government's ability to 'bridge the gap' to the SDLs. This submission explains why this is the case and makes suggestions for amendments to the Bill that would mitigate its negative impacts.

At ACF's request, Environmental Justice Australia (EJA) has provided a 'plain English' legal analysis of the Bill insofar as it promotes or constrains the ability of the Commonwealth to bridge the gap to Sustainable Diversion Limits (SDLs) in full, on time and within budget. EJA's briefing note is attached to this submission for ease of reference. Drawing on the points raised in the briefing note, questions and concerns arising from the *Water Amendment Bill* are as follows:

1. Our primary concern with the Bill is that the cap will be in the Water Act itself. Since the Water Act takes precedence as a legal instrument over the Basin Plan, honouring the cap will take precedence over honouring the SDLs. In other words, since the Commonwealth is 100% responsible for achieving the SDLs under the current Basin Plan, if it finds it can't meet them via infrastructure upgrades or efficiency measures because, for example, they get prohibitively expensive, or they simply do not deliver the amount of water required, it will not be able to use buy backs to bridge the gap. The cap could therefore prevent the SDLs from being achieved. There is significant confusion within the Commonwealth Government

¹ Productivity Commission (2010) *Market Mechanisms for Recovering Water in the Murray-Darling Basin*. Findings 6.3 and 6.4

² <http://www.ncoa.gov.au/report/phase-one/part-b/8-1-industry-assistance.html>



as to what the effect would be if the Commonwealth were not able to meet its obligations to bridge 100% of the gap to meet the SDLs because of this buy back cap. The Commonwealth must be required to clarify this before the Bill is supported. It appears that clause 6.12 of the Basin Plan would be activated, allowing States a reasonable excuse not to meet the SDLs, resulting in no liability on any party to meet the SDLs. This result is unacceptable and if so this Bill should not be supported.

We are of the view that the Bill should not be supported without amendment to ensure that if the cap is reached, the Commonwealth is not relieved of its obligation to bridge the gap to the SDLs by other means. The decision to cap buy backs is a policy and political decision and would not normally be a matter that is included in legislation. However if the Bill proceeds, a clause that tries to address this conflict should be included. Possible wording suggested below:

- To be included in new s 85C- *Subsection (1) ceases to have effect if, due to financial constraints or difficulty in securing water via other means, the Commonwealth is unable to meet its obligation to achieve the sustainable diversion limits as set out in the Basin Plan without the use of water purchase contracts. OR In the event of any inconsistency, the Commonwealth's obligation to meet the sustainable diversion limits as set out in the Basin Plan takes precedence over subsection (1).*

Nor should the Bill be supported until comprehensive answers to the following questions are forthcoming.

- a. What does the government plan on doing if the current budget is exhausted by costly infrastructure projects that fail to bridge the gap to the SDLs?
- b. What evidence does the government have that the remaining budget, deployed consistent with this cap, will bridge the gap between current extractions and the SDLs as per the Basin Plan?
- c. What work has been done or is in place on a valley or regional basis to ascertain how much water might be reasonably recovered by cost efficient infrastructure investments and efficiency measures, how much this would cost, and the extent to which SDLs will be met in each valley or region?
- d. What is the relationship between the proposed cap and supply measures to be brought forward for consideration under the SDL adjustment mechanism? Does the cap mean that a greater volume of water recovery will need to be offset through the SDL adjustment process?

Whilst we support increasing the flexibility of measures allowed to be funded under the Water for the Environment Special Account we suspect it is driven by awareness that the focus on SDL adjustment mechanisms will absorb cost-efficient water efficiency investment opportunities and make them increasingly difficult to realise within the current budget.



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Current on farm efficiency programs³ that contribute to 'bridging the gap' allow participating irrigators to keep up to 50% of the water savings achieved through efficiency gains. Future programs funded by the Special Account will require irrigators to surrender all water savings to the Commonwealth. While this is highly desirable from environmental and value for money perspectives, we understand from irrigators that demand for such programs is likely to be much lower than under current arrangements. Due to the rising value of water, demand for government funded efficiency programs is already falling as it becomes more cost-effective for irrigators to fund their own efficiency projects.

- e. What modelling or other evidence does the government have that there are enough cost efficient and effective water efficiency opportunities, accompanied by sufficient demand from the irrigation sector, both on and off farm, to provide 450 GL under the Water for the Environment program, bearing in mind that on-farm efficiency projects are now a major component of water recovery to 'bridge the gap' to the initial SDLs?
 - f. What happens if there is insufficient demand from the irrigation sector for such efficiency projects that will deliver enough water to the environment within the current budget?
2. Our second key concern is around the definition of water which has already been bought and the impact this might have on the remaining opportunities to purchase water for the environment in a strategic and cost effective manner. If the definition is broadened to include water that is currently not considered 'bought' it might mean that the cap has already been reached, or will shortly be reached and that no further buy backs can occur. This is because new s85C(1)(a) states that the actual amount of water the Commonwealth will use to calculate the figures is the 'long term annual average quantity of water that can be accessed' under the entitlement yet there is no definition of this in the Bill or in the Water Act.
- a. Is the definition 'long term annual average quantity of water that can be accessed' under the entitlement in new s85C(1)(a) the same as the Department of Environment's definition of long term average annual yield as advised in the MDB Ministers' Communique of 4 November 2011?
 - i. If yes, the Bill should be amended to reflect this. If not, a full explanation of the methodology should be provided and the Bill should not be supported until the implications are understood.
 - b. Exactly how much water has already been recovered by purchases that are included in the cap? The Department of Environment's website currently lists this as 1162GL – is this correct? Is this 'to date' figure subject to any change based on definitions introduced by the Bill?
3. Again on the definitional issue, the cap will cover all contracts the Commonwealth has entered into to purchase water for any purpose in the Basin from 2 Feb 2008 to 23 Nov 2012 (new s85C(3)(c) and (d)) and it's worth establishing how significant this might be.

³ For example the Commonwealth's On Farm Irrigation Efficiency Program (OFIEP) or the Victorian Farm Modernisation Project (VFMP)



- a. Did the Commonwealth purchase any water between 2008 to 2012 other than for the environment, for example for mining, critical human needs or an environmental emergency purposes such as diluting salt or flushing blue-green algae that would count towards the cap? Does this alter the stated figure of 1162 GL purchased to date on the Department of Environment's website and if so by how much?
4. The exemption outlined in new s85C(4)(a) means that if a buy back is made in conjunction with a rationalisation or reconfiguration project after commencement of the Bill the water bought will not contribute to the cap.
 - a. This means that all buy backs associated with rationalisation and reconfiguration before the commencement of the Bill will count towards the cap. If this is not the intent this should be clarified by explicit mention. If it is the intent, what volume does this account for? Is this amount already included in the 1162 GL figure today on the Department of Environment website? Is this 'redefining' water purchased? How does this alter the figure of 1162 GL listed on the Department of Environment's website as purchased water? What is the status of water purchase that is yet to occur under existing Commonwealth funded modernisation contracts such as Goulburn-Murray Connections?
 - b. If the Commonwealth provides funding for an irrigation upgrade and in return acquires water as a result of the savings made from the upgrade (i.e. not as a result of a direct purchase of an entitlement but as a result of funding for the upgrade) it is unclear from the Bill whether this will fit into the definition of a 'water purchase contract'. Does the government consider that this situation fits into the definition of a 'water purchase contract'?
5. The exemption outlined in new s85C(4)(b) states that an entitlement bought from a state government after commencement will not contribute to the cap.
 - a. Has the Commonwealth bought any entitlements from Basin states before commencement that will contribute towards the cap? If so for what volume and for what purpose? Are these purchases already included in the figure of 1162 GL listed on the Department of Environment's website as purchased water?

Our organisations welcome the opportunity to further engage with the Committee on this or any other water, rivers or Basin Plan related matter.

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