

## **Water Amendment (Water for the Environment Special Account) Bill 2012**

- 1.1 On 1 November 2012, the House of Representatives Selection Committee referred the Water Amendment (Water for the Environment Special Account) Bill 2012 to the Standing Committee on Regional Australia for inquiry.
- 1.2 The reason for the referral was:

The bill commits future parliaments to appropriate \$1.77 billion. This is an unusual approach which deserves scrutiny by the committee given its impact on the budget.<sup>1</sup>
- 1.3 The Committee received 17 submissions and undertook a public hearing on Tuesday 20 November 2012 in Sydney. A list of submissions is included at Appendix A and a list of witnesses at Appendix B.

### **Intent of the bill**

- 1.4 The Water Amendment (Water for the Environment Special Account) Bill (the Bill) amends the *Water Act 2007* (the Water Act) to establish the Water for the Environment Special Account (the Special Account).
- 1.5 The Bill provides an incremental funding stream of \$1.77 billion over 10 years starting from FY2014-15. Funds are to be dedicated to projects and programs that 'improve environmental outcomes over and above that in the proposed 2,750 GL benchmark' proposed under the draft Murray-

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1 House of Representative Selection Committee, *Report No. 72, Consideration of Bills*, 1 November 2012, p. 3.

Darling Basin Plan (the Basin Plan).<sup>2</sup> This shall be achieved by ‘increasing the volume of the Basin water resources that is available for environmental use by up to 450 gigalitres’ (subclause 86AA(3)(b)).

- 1.6 The Bill fulfils a recommendation previously made by this Committee in its report, *Of drought and flooding rains: Inquiry into the impact of the Guide to the Murray-Darling Basin Plan*. In that report, the Committee recommended that the Commonwealth Government focus greater investment in on- and off-farm water saving projects.<sup>3</sup> The Committee further reiterated this recommendation in its July 2012 report *Report on Certain matters relating to the proposed Murray-Darling Basin Plan*.<sup>4</sup>

### Special accounts

- 1.7 A special account is an appropriation mechanism that allocates an amount within the Consolidated Revenue Fund to be expended for a specific purpose. Section 21 of the *Financial Management and Accountability Act 1997* provides that a special account may be established by legislation, with monies expended only for specified purposes as outlined in the originating legislation. The Bill sets out the specific purpose for the account in clause 86AD.
- 1.8 The Bill specifies that amounts shall be credited incrementally each financial year from 2014-15 to 2023-24 (clause 86AG). Moneys that are appropriated under the Bill will roll over into subsequent years if the actual expenditure is less than the amount appropriated.<sup>5</sup>
- 1.9 The Department is required to provide an Annual Report for presentation to the Parliament (clause 86AI), including details on the objectives and priorities of funded projects, efficiencies gained and the subsequent increases in the Commonwealth’s water holdings (subclause 86AI(2)).
- 1.10 The Bill also provides for Basin States to contribute to the Account under an agreement reached with the Commonwealth (subclause 86AC(1)(b)).
- 1.11 The balance of the Special Account will revert back to the Consolidated Revenue Fund as at 1 July 2024 (clause 86AH).

2 The Hon. Mr Tony Burke, Minister for Sustainability, Environment, Water, Population and Communities, Second Reading Speech, Water Amendment (Water for the Environment Special Account) Bill 2012, *House of Representatives Hansard*, 31 October 2012, p. 12740.

3 House of Representatives Standing Committee on Regional Australia, *Of drought and flooding rains: Inquiry into the impact of the Guide to the Murray-Darling Basin Plan*, May 2011, Recommendation 9.

4 House of Representatives Standing Committee on Regional Australia, *Report on Certain matters relating to the proposed Murray-Darling Basin Plan*, July 2012, Recommendation 4.

5 Mr David Parker, Deputy Secretary, Water Group, Department of Sustainability, Environment, Water, Population and Communities (SEWPAC), *Proof transcript of evidence*, Sydney, 20 November 2012, p. 30.

## Specified purpose of the Special Account

- 1.12 The Special Account may only be debited for the specified purposes under the Bill (clause 86AD). Broadly, the Special Account may be debited for projects or programs such as infrastructure works, purchasing water access rights and offsetting detrimental socio-economic impacts caused by these works.

## Infrastructure and constraints-removal projects

- 1.13 The Bill provides for the funding of improvements in on-farm and off-farm infrastructure projects. It also establishes a funding stream for the removal of constraints identified by the Murray-Darling Basin Authority (the Authority).<sup>6</sup>
- 1.14 More specifically the Bill provides funding for projects and programs that:
- improve infrastructure which lead to greater water efficiency within the Basin (subclause 86AD(2)(a)(i)-(iii));
  - increasing the capacity of dams and storages to deliver environmental water to the environmental assets of the Basin (subclause 86AD(2)(a)(iv));
  - entering agreements to acquire an interest in land (including easements) to facilitate environmental watering of the environmental assets (subclause 86AD(2)(a)(v)); and
  - improving the rules, policies, practices and procedures in relation to the use and management of resources (subclause 86AD(2)(a)(vi)).
- 1.15 The Explanatory Memorandum identifies that funds may be used to remove constraints to 'facilitate delivery of the additional environmental water recovery and achieve improved environmental outcomes'.<sup>7</sup>
- 1.16 The Authority has identified a range of river constraints throughout the Basin which, if addressed, could maximise the environmental benefits from implementation of the Basin Plan. The Department of Sustainability, Environment, Water, Population and Communities advised that the Authority's modelling identified the following constraints projects:
- for the Murray: the rate of permissible flow downstream from Hume to Yarrawonga and also downstream of Yarrawonga;

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6 Water Amendment (Water for the Environment Special Account) Bill 2012 Explanatory Memorandum, p. 4.

7 Water Amendment (Water for the Environment Special Account) Bill 2012 Explanatory Memorandum, p. 4.

- for the Darling: to increase flow rates out of the Menindee storage and limit water flow into the Darling anabranch so that water would pulse down the Lower Darling mainstream into the Murray; and
  - in the Murrumbidgee, relaxing constraints at Gundagai and Balranald would allow for a higher pulse flow out of the Murrumbidgee and then subsequently into the Darling.<sup>8</sup>
- 1.17 The Second Reading Speech also lists some of the constraints-removal projects that the Special Account will fund.<sup>9</sup> Similarly, the Explanatory Memorandum lists such projects that might remove these constraints (acquisition of flood easements, provision of access works and changed watering regimes) but neither specifies how these projects will be assessed or prioritised.
- 1.18 When announcing the Special Account, the Minister for Sustainability, Environment, Water, Population and Communities (the Minister) commented:
- Once the [Basin] plan's in place, one of the things the Authority has said needs to happen is that over the course of around 12 months there needs to be a constraints management strategy in place. That will identify the constraints that need to be removed. For the first couple of years, the funding is for the removal of those constraints. Once those constraints are removed, we then move to the significant infrastructure programs which allow the additional environmental water to be taken on.<sup>10</sup>
- 1.19 The Bill also provides that monies may be debited to address 'detrimental social or economic impacts on the wellbeing of any community in the Murray-Darling Basin' that may result from the projects funded by the Special Account (subclause 86AD(2)(c)(ii)).

## Purchasing water access rights

- 1.20 In addition to funding specific projects, the Special Account may be debited to purchase water access rights ((subclause 86AD(2)(b)). The access rights acquired under this clause form part of the Commonwealth's environmental water holdings (subclause 86AE(1)).

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8 Mr Parker, SEWPAC, *Proof transcript of evidence*, Sydney, 20 November 2012, p. 30.

9 The Hon. Mr Tony Burke, Minister for Sustainability, Environment, Water, Population and Communities, Second Reading Speech, Water Amendment (Water for the Environment Special Account) Bill 2012, *House of Representatives Hansard*, 31 October 2012, p. 12740.

10 The Hon. Tony Burke MP, Minister for Sustainability, Environment, Water, Population and Communities, Transcript of Joint Press Conference with the Prime Minister and Premier of South Australia, Goolwa, South Australia, 26 October 2012.

- 1.21 It was not clear from the Bill or the Explanatory Memorandum whether this clause limits Commonwealth purchase to the efficiencies which are gained through improving infrastructure, or if these acquisitions are in addition to the ongoing buyback. At a recent press conference, the Minister stated:
- the extra 450 gigalitres is acquired through the sorts of on-farm infrastructure projects that we've run to date.<sup>11</sup>
- 1.22 On the interpretation of subclause 86AD(2)(b), Mr David Parker, Deputy Secretary of the Department of Sustainability, Environment, Water, Population and Communities (SEWPAC) stated that the intent of the subclause is clarified by subclause 86AD(4) and other statutory amendments. Mr Parker commented:
- As you have said, the bill, on its face, does not provide the complete picture. [There] is the Basin Plan itself [and] the Water Amendment (SDL Adjustment) Bill, which has been through the House of Representatives and is headed to the Senate.<sup>12</sup> Another part of that picture is the water fund bill – the subject of this inquiry. ... Clause 86AD(4) ... makes reference to amounts only being used from this fund where it is related to an SDL adjustment. ... So if you put all of these parts together it becomes clear.<sup>13</sup>
- 1.23 Subclause 86AD(4) specifies that all amounts debited from the Special Account for the purchase of water access rights must relate to:
- an adjustment of a long-term average sustainable diversion limit for the water resources of a particular water resource plan area under s 23A of the Water Act 2007.
- 1.24 The Committee heard of broad concerns in the community about this clause and its ambiguity. These concerns are detailed below.

## Community concerns

- 1.25 As the Committee has reported previously, there appears to be broad-based support from improving infrastructure to achieve greater water

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11 The Hon. Tony Burke MP, Minister for Sustainability, Environment, Water, Population and Communities, Transcript of Joint Press Conference with the Prime Minister and Premier of South Australia, Goolwa, South Australia, 26 October 2012.

12 The Water Amendment (Sustainable Diversion Limit) Bill 2012 passed the Senate on 21 November 2012.

13 Mr Parker, SEWPAC, *Proof transcript of evidence*, Sydney, 20 November 2012, p. 28.

efficiency in the Basin.<sup>14</sup> Concerns with respect to infrastructure works focus on the third-party and general community outcomes of these efficiency works.<sup>15</sup>

- 1.26 The primary area of concern about the Bill was with respect to the Commonwealth purchase of water access rights. Other concerns, including bridging the water recovery gap, potential for downstream flooding, and the timing of the Bill were also raised by stakeholders. These are addressed below.

### **Commonwealth purchase of water access rights**

- 1.27 The primary concern of stakeholders participating in the inquiry related to the Commonwealth's purchase of water access rights under subclause 86AD(2)(b). Subclause 86AD(2)(b) provides:

(2) Amounts standing to the credit of the Water for the Environment Special Account may be debited for any of the following purposes:

...

purchasing water access rights in relation to Basin water resources for the purpose of furthering the object of this Part.<sup>16</sup>

- 1.28 The National Farmers' Federation (NFF), the Australian Dairy Industry Council (ADIC) and irrigators called for the subclause to be removed.<sup>17</sup>

- 1.29 At the public hearing, SEWPAC sought to clarify:

It is not envisaged under this program that there would be general buybacks in the standard tender type model. ... It would be first and foremost a program of infrastructure works using the On-Farm Irrigation Efficiency Program as a framework. ... This program is envisaged to build on that model, and this has been agreed amongst all jurisdictions, by saying, 'In addition to the water that is directly returned in return for the infrastructure

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14 Ms Deborah Kerr, Manager, National Resource Management, National Farmers' Federation (NFF), *Proof transcript of evidence*, Sydney, 20 November 2012, p. 3; Mr Jonathan La Nauze, Healthy Rivers Campaigner, Australian Conservation Foundation (ACF), *Proof transcript of evidence*, Sydney, 20 November 2012, p. 25.

15 Mr Noel Graham, Chairman, Murray Irrigation (MI), *Proof transcript of evidence*, Sydney, 20 November 2012, p. 7.

16 Water Amendment (Water for the Environment Special Account) Bill 2012.

17 National Farmers' Federation (NFF), *Submission 1*, p. 1; Australian Dairy Industry Council (ADIC), *Submission 14*, p. 2; National Irrigators' Council (NIC), *Submission 13*, p. 3; New South Wales Irrigators' Council (NSWIC), *Submission 10*, p. 3; Murrumbidgee Private Irrigators Incorporated (MPII) and Yanco Creek and Tributaries Advisory Council (YACTAC), *Submission 12*, p. 3; Murray Irrigators (MI), *Submission 6*, p. 11.

investment, there would be an associated purchase from the farmer to the Commonwealth – a direct at the farm gate link – of the remaining water saving'.<sup>18</sup>

1.30 The National Irrigators' Council (NIC) were in support of limited Commonwealth purchases where it formed 'part of an infrastructure projects' and 'had the support of local communities and where it could be proven that there will be no detrimental social or economic impacts'.<sup>19</sup>

1.31 Similarly, the NFF proposes an amendment to address stakeholder concerns:

I think that the way to solve it – and what we suggested in our submission – is, where it does refer to the acquisition, to add some additional words that that purchase occur only in conjunction with or in relation to an infrastructure project. That would actually tighten it up.<sup>20</sup>

1.32 As discussed above, it is not intended that the Special Account fund general buybacks, rather that efficiencies gained from infrastructure works will be purchased to form part of the environmental water holdings of the Commonwealth. However, these concerns reflect the ambiguity of the clause as currently drafted.

1.33 SEWPAC also provided evidence to the Committee that the Bill envisages the possibility for the State governments to deliver similar water-efficiency savings programs. Mr Parker stated:

there can be alternative arrangements proposed by a state, with assessment by that state that the projects that they propose will achieve neutral or improved socioeconomic outcomes. Essentially, this is to provide an option where, if a state wished to do this in a way that was different to the on-farm and connected purchase arrangement, which I have explained, then that would be open for agreement between the Commonwealth and the state. One could not rule out the possibility that there was a purchase element in that if, for example, a state had surplus water entitlements which it wished to sell as part of this program.<sup>21</sup>

1.34 Mr Parker clarified that the purchase of water access rights by states must be done so in a socio-economically neutral way as required by clause 86AD(4).<sup>22</sup>

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18 Mr Parker, SEWPAC, *Proof transcript of evidence*, Sydney, 20 November 2012, p. 27.

19 NIC, *Submission 13*, p. 3.

20 Ms Kerr, NFF, *Proof transcript of evidence*, Sydney, 20 November 2012, p. 2.

21 Mr Parker, SEWPAC, *Proof transcript of evidence*, Sydney, 20 November 2012, p. 28.

22 Mr Parker, SEWPAC, *Proof transcript of evidence*, Sydney, 20 November 2012, p. 27.

## Bridging the water recovery 'gap'

- 1.35 At a press conference announcing the Special Account, the Minister explained that the 450GL recovery target established by the Bill will contribute to closing the 'gap' between the original 2,750GL recovery target and the recently announced 3,200GL target.<sup>23</sup>
- 1.36 The Australian Conservation Foundation (ACF) argued:
- The first issue is clarification in the bill that water required under this part is in addition to water recovered as a result of the initial SDLs mandated in the Basin Plan and the government's existing commitment to bridge the gap. A suitable term there is probably 'in addition to the basin reference limit' or some such term in consistency with the SDL adjustment bill.<sup>24</sup>
- 1.37 However, stakeholders expressed concern that the total 2750GL is yet to be fully obtained, and therefore called for the 2750GL target to be reached, and its environmental impact assessed, prior to committing to further targets.
- 1.38 The NFF proposed an amendment that 'will ensure that recovery of water entitlements against the objectives of this Bill ... ought only to occur once the gap has been closed against the 2750GL sustainable diversion limit'.<sup>25</sup> The ADIC made similar comments.<sup>26</sup>

## Socio-economic impacts

- 1.39 The Bill provides for the Special Account to be debited to offset detrimental socio-economic impacts experienced by communities as a result of the projects and other works funded by the Special Account (subclause 86AD(2)(c)(ii)).
- 1.40 However, farmers and irrigators raised concerns that the Bill is not drafted in a way that balances and optimises 'social, economic and environmental outcomes',<sup>27</sup> arguing that the Bill does not reflect the triple bottom line approach, and concentrates solely on environmental outcomes.<sup>28</sup>

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23 The Hon. Julia Gillard MP, Prime Minister, the Hon. Jay Weatherill MP, Premier of South Australia, and the Hon. Tony Burke MP, Minister for Sustainability, Environment, Water, Population and Communities, Transcript of Joint Press Conference, Goolwa, South Australia, 26 October 2012.

24 Mr La Nauze, ACF, *Proof transcript of evidence*, Sydney, 20 November 2012, p. 21.

25 NFF, *Submission 1*, p. 2

26 ADIC, *Submission 14*, pp. 3-4.

27 Australian Dairy Industry Council (ADIC), *Submission 14*, p. 2.

28 NIC, *Submission 13*, p. 4, NSWIC, *Submission 10*, p. 3; MPIO and YACTAC, *Submission 12*, p. 2

- 1.41 In contrast, the environment groups did not support the use of funds to offset socio-economic impacts of water recovery, and called for subclause 86AD(2)(c)(ii) to be deleted, arguing that funds and initiatives to achieve this should be provided separately.<sup>29</sup> Alternatively, the ACF recommended that the language of the subclause be tightened so that the Bill 'restricts expenditure to offsetting an impact for which there is a demonstrable, direct causal link with the project or purchase'.<sup>30</sup>
- 1.42 The committee strongly believes that detrimental social and economic impacts of the Bill's objective should be offset, and therefore supports the inclusion of subclause 86AD(2)(c)(ii). The triple bottom line approach is an important balance that must be achieved so that the biodiversity and productivity of the Basin is protected whilst ensuring its communities are also supported.

### Timing of the Bill

- 1.43 Stakeholders also expressed concern about the timing of the Bill on two different grounds. First, there was concern that public funds were being used prior to the Basin Plan to being implemented and its success measured. Murray Irrigators argued:

We believe that the bill currently before the committee is premature and effectively predetermines the outcome of the sustainable diversion limit adjustment mechanism that may be included in the final Basin Plan. ... The Basin Plan should be completed, the constraints management strategy developed and costed, and the adjustment mechanism implemented to see if there is either a need or capacity to deliver further recovery of water before taxpayers commit more money.<sup>31</sup>

...

it is all well and good to commit future generations to come up with another great swag of money in an appropriation bill going forward; we are not arguing against the methods and the mechanisms for getting the water, but we are just wondering why you would put yourself in a position to go and get more water now before you have even used the first bit.<sup>32</sup>

- 1.44 Secondly, there were concerns about public consultation of the Bill prior to the presentation of the Basin Plan in the Parliament.

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29 Australian Conservation Foundation (ACF), *Submission 5*, p. 1; EVic, *Submission 4*, p. 2.

30 ACF, *Submission 5*, p. 2.

31 Mr Graham, MI, *Proof transcript of evidence*, Sydney, 20 November 2012, p. 6.

32 Mr Graham, MI, *Proof transcript of evidence*, Sydney, 20 November 2012, p. 8.

- 1.45 The NIC submitted that ‘it is impossible for the NIC to provide an endorsement of the proposed Bill until we have seen the final Basin Plan, the water recovery strategy document, the Intergovernmental Agreement, and the regulatory impact statement’.<sup>33</sup> New South Wales Irrigators’ Council argued that, in the absence of a finalised Basin Plan, the Bill ‘cannot be properly considered’.<sup>34</sup> Similar comments were made by Murrumbidgee Private Irrigators as well as the ADIC.<sup>35</sup>
- 1.46 Addressing some of these concerns, SEWPAC stated that the Bill is ‘necessary for it to come in now because it is part of the broader picture’.<sup>36</sup>
- 1.47 The Basin Plan was adopted by the Minister on 22 November 2012, so the Bill may now be considered in the context of the final Basin Plan.<sup>37</sup>

## Flooding

- 1.48 Another concern raised was the possibility of flooding in low-lying plains as a result of constraints removal projects. The National Farmers’ Federation stated:

In looking at that along river systems – and we are primarily talking about the southern connected system here, in terms of constraints – removing constraints may also lead to additional flooding along the river systems. Whilst I know there was a report released about flood plain irrigation and the benefits that that delivers to flood plain pasture producers, in areas of the southern connected system where you have grazing and private land and towns which have low-lying areas that will get flooded – houses and industrial areas – you are looking at some significant impacts. If we are looking at removing constraints, we have to look at the whole picture and we have to look realistically at where the impacts are going to be.<sup>38</sup>

- 1.49 Both the ACF and EVic commented on the ability for constraints removal to result in flooding. The ACF commented on the concern:

there has been some ... genuine concern that the Environmental Water Holder's role will mean that there will be more water kept

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33 NIC, *Submission 13*, p. 4.

34 NSWIC, *Submission 10*, p. 4.

35 MPII and YACTAC, *Submission 12*, p. 2; ADIC, *Submission 14*, p. 4; Mr Daryl Hoey, Basin Taskforce Chair, Australian Dairy Industry Council, *Proof transcript of evidence*, Sydney, 20 November 2012, p. 32.

36 Mr Parker, SEWPAC, *Proof transcript of evidence*, Sydney, 20 November 2012, p. 29.

37 Murray Darling Basin Authority, *Basin Plan*, <[mdba.gov.au/basin-plan](http://mdba.gov.au/basin-plan)>, accessed 22 November 2012.

38 Ms Kerr, NFF, *Proof transcript of evidence*, Sydney, 20 November 2012, p. 2.

in the dams and that they will exercise their rights to carry over to a greater degree, thereby increasing the risk of unplanned flooding or decreasing access to carryover for the rest of the end users. That data shows very clearly that, if the Environmental Water Holder had not purchased that water, less of it would have been used and more of it would have been carried over.<sup>39</sup>

1.50 Similarly, EVic stated:

it is a matter of the long-term averages. No environmental manager in their right mind is trying to create huge floods like those we have had in the last couple of years. There is never going to be enough environmental water to do something like that.<sup>40</sup>

1.51 The Committee notes that the Constraints Management Strategy must evaluate the risks to communities from constraints removal, including flood mitigation strategies.<sup>41</sup>

## **Mandatory water recovery targets**

1.52 The Bill establishes the water recovery target of 'up to 450 gigalitres' (subclause 86AA(3)(b)). This is not a mandatory target to be achieved over the ten year life of the Special Account.

1.53 The ACF expressed concern that the Bill does not guarantee the recovery of any specific volume of environmental water and argues that 'it is essential that the Bill require the recovery of at least 450GL of environmental water'.<sup>42</sup> Consequently, the ACF recommended that the Bill provide a mandatory total water recovery target of at least 450GL.<sup>43</sup>

1.54 The ACF also called for a schedule of annual water recovery targets to be included, or at least, be developed and adopted within six months of commencement.<sup>44</sup> Similarly, Environment Victoria (EVic) also expressed concerns that although the Bill sets out the financial amounts to be credited to the Special Account each year, it does not set out a parallel schedule for water recovery. EVic acknowledged that although it may be difficult to develop annual targets, the Bill 'should as a minimum provide

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39 Mr La Nauze, ACF, *Proof transcript of evidence*, Sydney, 20 November 2012, p. 23.

40 Ms La Feuvre, EVic, *Proof transcript of evidence*, Sydney, 20 November 2012, p. 24.

41 Department of Sustainability, Environment, Water, Population and Communities, *Submission 17*, p. 1.

42 ACF, *Submission 5*, p. 1.

43 ACF, *Submission 5*, p. 2.

44 ACF, *Submission 5*, p. 2.

for developing a schedule within 12 months and having it adopted as a regulation'.<sup>45</sup>

### **Senate Committee recommendation**

- 1.55 On Monday 19 November 2012, the Senate Environment and Communications Legislation Committee tabled its report into the Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Bill 2012 [Provisions] and the Water Amendment (Water for the Environment Special Account) Bill 2012 [Provisions].<sup>46</sup> As the Special Account Bill has yet to be considered by the House, the Senate Committee's report presupposes the outcome of this Committee's inquiry and consideration of the Bill in the House of Representatives.
- 1.56 The Senate Committee recommended that the words 'up to' be removed from subclause 86AA(3)(b). This recommendation would require 450GL to be recovered over the lifetime of the Special Account.
- 1.57 The Committee held a public hearing the day after this recommendation was tabled in the Senate. At the public hearing, the NFF commented on the effect of the Senate's recommendation on the Commonwealth's ability under the Bill to purchase water access rights:
- if that recommendation goes through both houses of parliament and becomes law, this clause [subclause 86AD(2)(b)] becomes even more important. It actually gives the capacity for the government of the day to acquire water to meet the gap of any amount as a minimum of 450 gegalitres. The Senate inquiry's report last night put greater focus on these particular words and we are strongly recommending that that particular provision be amended and linked directly to an infrastructure project for any purchases that occur under this bill.<sup>47</sup>
- 1.58 The Committee's comments on the purchase of water access rights and the Senate's recommendation are included below.

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45 Environment Victoria, *Submission 4*, p. 2.

46 Senate Environment and Communications Legislation Committee, Report on the Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Bill 2012 [Provisions] and Water Amendment (Water for the Environment Special Account) Bill 2012 [Provisions], November 2012.

47 Ms Kerr, NFF, *Proof transcript of evidence*, Sydney, 20 November 2012, p. 2.

## Committee Comment

### Commonwealth purchase of water access rights

- 1.59 Although the Prime Minister and the Minister have implied that the Special Account will fund the Commonwealth purchase of the efficiencies gained from infrastructure works this intent is not clear in the Bill.
- 1.60 The Committee doubts whether the interpretive aids, the Explanatory Memorandum and the Second Reading Speech, clarify the intent of subclause 86AD(2)(b) to the extent implied in public statements by the Prime Minister and Minister.
- 1.61 Further, the Committee is unconvinced that the clarification of the intent of subclause 86AD(2)(b) is achieved by subclause 86AD(4) as asserted by SEWPAC.
- 1.62 Responding to a question on notice to clarify the interaction of the two clauses, SEWPAC advised:
- The Government intends to acquire the water primarily through investment in on-farm irrigation efficiency projects. Unlike the on-farm irrigation efficiency programs rolled out under the Sustainable Rural Water Use and Infrastructure Program (SWRUIP) where a proportion of the water saved through improved infrastructure is retained, the proposed program would see all savings being transferred to the Commonwealth: half being recovered through an infrastructure investment and the other half through a linked water purchase at market rates. Thus, all the water savings saved from an individual farm will be returned to the environment, but the productive capacity of the farm will not be diminished. This ensures the social and economic neutrality of the investment.<sup>48</sup>
- 1.63 Again, the Committee is disappointed with the ambiguity and lack of precision in this statement. The answer provided by SEWPAC indicates that the 450GL of water recovery will be acquired 'primarily' through infrastructure projects with 'all [water efficiency] savings transferred to the Commonwealth'.<sup>49</sup> Importantly, this meaning is not clear from the Bill as currently drafted.
- 1.64 The Committee expressly asked for advice on how the two provisions interacted so as to seek reassurance that the interpretation of these clauses

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48 Department of Sustainability, Environment, Water, Population and Communities, *Submission 17*, p. 3.

49 Department of Sustainability, Environment, Water, Population and Communities, *Submission 17*, p. 3.

would mirror the Prime Minister's and the Minister's statements of the intent of the Bill.<sup>50</sup>

- 1.65 The concerns expressed by stakeholders implored the Committee to ensure that this provision was expressed clearly and mirroring the intent of the Bill as expressed by the Prime Minister and the Minister upon announcing the Special Account.
- 1.66 The Committee finds the clause lacks clarity and notes the importance of certainty in this area for all stakeholders. Further, the Committee considers the current ambiguity risks the interpretation of the Bill needing to be tested. This would result in unacceptable uncertainty and delays.
- 1.67 Accordingly, the Committee recommends that the Bill be amended to provide clarity and certainty to the stakeholders.

### **Recommendation 1**

- 1.68 **The Committee recommends that the Government introduce amendment to subclause 86AD(4) to provide greater clarity of the limitation it places on subclause 86AD(2)(b), specifically, that the Special Account will not be used by the Commonwealth to fund general water buybacks.**

### **Mandatory recovery target**

- 1.69 The Committee does not agree with the recommendation made by the Senate Committee to amend subclause 86AA(3)(b) to establish a mandatory recovery target of 450GL.
- 1.70 The program established by the Special Account is entirely voluntary. To establish a mandatory recovery target of 450GL as recommended by the Senate would establish a quasi-compulsory program which the Committee is strongly opposed to.
- 1.71 The Committee strongly believes that the Government should continue to work with irrigators to achieve environmental outcomes for a healthy Basin, and consequently supports subclause 86AA(3)(b) as currently drafted.

### **Communication**

- 1.72 The Committee has previously made comment on the strategies employed by the Government when engaging with communities in the Murray-

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50 Mr Tony Windsor MP, Chair, *Proof transcript of evidence*, Sydney, 20 November 2012, p. 30.

Darling. Previous announcements about the Basin Plan and associated programs have contributed to an atmosphere of anxiety, fear and uncertainty within these communities. In such an environment, it is particularly important for the intent and objective of government programs to be unambiguous.

- 1.73 Statements of the Prime Minister and the Minister imply that the intention of the Government is for the Special Account to purchase the efficiencies gained from infrastructure works. SEWPAC also indicated that these works would be done in a socio-economically neutral way.
- 1.74 Yet these intentions and objectives are not clearly established in the text of the Bill, particularly clause 86AA or its interpretative aids.
- 1.75 The Committee notes that the Senate Environment and Communications Legislation Committee made similar comments in its report tabled on 19 November 2012.<sup>51</sup>

### **Recommendation 2**

- 1.76 **The Committee recommends that the Government amend clause 86AA to clarify the objective and intent of the Bill.**
- 1.77 Subject to the recommendations proposed in this Report, the Committee recommends that the Bill be passed.

### **Recommendation 3**

- 1.78 **The Committee recommends, subject to the amendments outlined in this Report, that the House of Representatives pass the Water Amendment (Water for the Environment Special Account) Bill 2012.**

**Tony Windsor MP**  
Chair  
27 November 2012

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51 Senate Environment and Communications Legislation Committee, Report on the Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Bill 2012 [Provisions] and Water Amendment (Water for the Environment Special Account) Bill 2012 [Provisions], November 2012, Recommendation 2, p. 31.

