

Chapter 1

Introduction

1.1 On 16 June 2015, the Senate, on the recommendation of the Selection of Bills Committee, referred the provisions of the Water Amendment Bill 2015 (the bill) to the Senate Environment and Communications Legislation Committee for inquiry and report by 8 September 2015.

Conduct of the inquiry

1.2 In accordance with usual practice, the committee advertised the inquiry on its website and wrote to relevant organisations inviting submissions by 31 July 2015.

1.3 The committee received 30 submissions relating to the bill and these are listed at Appendix 1. The submissions may be accessed through the committee's website at:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Water_Amendment_Bill_2015

1.4 The committee held a public hearing in Canberra on 24 August 2015 and in Adelaide on 27 August 2015. A list of witnesses who appeared at the hearings may be found at Appendix 2.

1.5 The committee would like to thank all the organisations and individuals that contributed to the inquiry and the witnesses who attended the public hearing.

Background

1.6 In 1994, the Council of Australian Governments agreed to a water reform framework in recognition that management of Australia's water resources was a national issue that would require cooperation between the Commonwealth and Basin States. The Intergovernmental Agreement on a National Water Initiative was finalised in 2004.

1.7 In response to the millennium drought and the continuing over-allocation of water in the Murray-Darling Basin by the States, in 2007 the then Prime Minister, the Hon John Howard, proposed a \$10 billion 10-year *National Plan for Water Security*. The Prime Minister called on the Basin States to transfer their powers to enable the Commonwealth to oversee the management of the Murray-Darling Basin. Following failure to reach agreement with all the States, the Commonwealth sought to achieve its aims through the use of its constitutional powers.¹

1 Water Bill 2007, Revised Explanatory Memorandum, p. 1.

1.8 The *Water Act 2007* (Water Act) was passed by both Houses of the Parliament in August 2007. The Act aimed to manage the water resources in the Murray-Darling Basin in the national interest, optimising environmental, economic and social outcomes.² The Act established the Murray-Darling Basin Authority (MDBA). The MDBA was to develop and implement a Basin Plan. The Act established mandatory content for the Basin Plan, including:

- long-term annual average sustainable diversion limits (SDLs) for the amount of surface water and groundwater that can be taken from Basin water resources;
- requirements that state water resource plans must comply with if they are to be accredited under the Act;
- an environmental watering plan to optimise environmental outcomes for the Basin;
- a water quality and salinity management plan for the Basin; and
- rules about water trading.³

1.9 In 2008, a second intergovernmental agreement on water reform was ratified by the Commonwealth and the Basin States. Under this agreement, all Basin States agreed to refer their powers to the Commonwealth to enact certain measures and the Water Act was amended accordingly.⁴

1.10 The MDBA released a *Guide to the Proposed Basin Plan* in October 2010. The first proposed Basin Plan was released in November 2011, a revised draft was released in May 2012 and a further revision was provided in August 2012. In the August 2012 plan, the MDBA estimated that the long-term annual average sustainable diversion limit for all surface water SDL to be 10,873 gigalitres (GL) per year. This reflected a reduction of 2750 GL per year on the MDBA's estimate of the baseline diversion limit for all surface water SDL resource units. Separate SDLs were set for groundwater resources.⁵

1.11 On 26 October 2012, the then Prime Minister announced a government commitment to recover a further 450 GL per year of environmental water, primarily

2 Water Bill 2007, Revised Explanatory Memorandum, p. 1.

3 *Water Act 2007*, s. 22.

4 Water Amendment Bill 2008, Revised Explanatory Memorandum, p. 1.

5 Senate Environment and Communications Legislation Committee, *Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Bill 2012 and Water Amendment (Water for the Environment Special Account) Bill 2012*, November 2012, p. 3.

through farm efficiency projects, on top of the 2750 GL per year environmental water recovery in the proposed Basin Plan.⁶

1.12 The Basin Plan 2012, agreed to by the Australian Parliament in November 2012, specifies the sustainable level of diversions and extractions from surface and ground water resources. These limits represent the maximum long-term annual average quantities of water that can be extracted from surface water and groundwater resources in the Basin while maintaining the health of the Basin environment.⁷

1.13 The Basin Plan requires that diversions and extractions be reduced to sustainable levels by 2019.⁸ The Basin-wide long-term average SDLs reflected those contained in the August 2012 draft plan, that is, 10,873 GL per year with 2750 GL per year of water for environmental use recovered by the Commonwealth. This latter amount is referred to as 'the gap' between the 2009 Baseline Diversion Limit (BDL) and the SDL.⁹

1.14 There is flexibility for the size of the gap to be reduced under the Sustainable Diversion Limit Adjustment Mechanism (SDLAM) in the Basin Plan through offsets achieved by supply measures. Supply measures are actions where equivalent environmental outcomes can be achieved with less water.¹⁰

1.15 The *Water Amendment (Water for the Environment Special Account) Act 2013* amended the Water Act to establish the Water for the Environment Special Account and provided for \$1.77 billion to be deposited over ten years from 2014–15 to fund water recovery projects. This funding was designated for projects to acquire the additional 450 GL per year of environmental water as announced by the Government in October 2012.¹¹

1.16 On 27 February 2014, the Prime Minister announced that the Premiers of New South Wales and Queensland had signed the Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin and an amended National Partnership Agreement. The Prime Minister stated that 'a commitment to cap water purchases at 1500 gigalitres and prioritising water infrastructure programmes were key components in bringing the two states on board'. Victoria, South Australia and the

6 Prime Minister and Minister for the Environment, 'Returning the Murray-Darling Basin to Health', *Media Release*, 26 October 2012, <http://www.mdba.gov.au/media-pubs/mr/returning-murray-darling-basin-health>.

7 Department of the Environment, *Submission 24*, p. 2.

8 Department of the Environment, *Water Recovery Strategy for the Murray-Darling Basin*, June 2014, p. 3, <http://www.environment.gov.au/system/files/resources/4ccb1c76-655b-4380-8e94-419185d5c777/files/water-recovery-strategy-mdb2.pdf> (accessed 29 June 2015).

9 Explanatory Memorandum, p. 2.

10 Department of the Environment, *Submission 24*, p. 2.

11 Water Amendment (Water for the Environment Special Account) Bill 2012, Revised Explanatory Memorandum, p. 1.

Australian Capital Territory also signed the amended National Partnership Agreement.¹²

1.17 On 2 June 2014, the Commonwealth released the *Water Recovery Strategy for the Murray-Darling Basin* (the Strategy). The Strategy outlined the Commonwealth's strategy for the recovery of water necessary to bridge the gap to the SDLs in the Basin Plan. In particular, the Strategy outlined that the Government was prioritising infrastructure investment over water buyback, and announced that a 1500 GL per year limit would be placed on surface water purchases across the Basin. On 10 March 2015, the Commonwealth announced its intention to enshrine in legislation both the 1500 GL per year limit, and the commitment to infrastructure investment.¹³

Sustainable diversion limit adjustment mechanism

1.18 To optimise the outcomes achieved by the Basin Plan, an SDLAM was developed, to make sure all water is used efficiently, and to its full effect. For example, if ways can be found to achieve the Basin Plan's environmental outcomes with less water (actions known as 'supply measures') the volume of water recovery could be reduced. Similarly, if further investment can make water delivery systems for irrigation even more efficient (actions known as 'efficiency measures') more water could be recovered for the environment. The third type of SDLAM investment is for constraints measures, to make environmental water delivery more effective in the future. The MDBA, in conjunction with Basin state governments will assess potential supply measures, and in 2016 adjust the SDL up or down to reflect the net effect of the combined 'package of supply and efficiency measures'.¹⁴

1.19 Supply measures can mean that equivalent environmental outcomes can be achieved with less than 2750 GL per year, and if social and economic outcomes are the same, the SDL may be increased to reflect this revised amount. Supply measures usually involve building or changing water management structures so environmental water can be delivered more effectively, and improving the way rivers are managed to get the most out of the water available.¹⁵

12 The Hon Tony Abbott, Prime Minister, 'States agree to implement Murray-Basin water reform, *Media Release*, 27 February 2014, <https://www.pm.gov.au/media/2014-02-27/states-agree-implement-murray-darling-basin-water-reform>.

13 Explanatory Memorandum, p. 2. See also, *Water Recovery Strategy for the Murray-Darling Basin*, June 2014, p. 3.

14 Murray-Darling Basin Authority, *The SDL adjustment assessment framework for supply measures*, 2015, p. 2, <http://www.mdba.gov.au/sites/default/files/pubs/SDL-adjustment-assessment-framework.pdf> (accessed 27 August 2015).

15 Murray-Darling Basin Authority, *The SDL adjustment assessment framework for supply measures*, 2015, p. 2, <http://www.mdba.gov.au/sites/default/files/pubs/SDL-adjustment-assessment-framework.pdf> (accessed 27 August 2015).

1.20 Similarly, efficiency measures can mean that more than 2750 GL per year is recovered for the environment, without changing the volume of water available for communities. If the social and economic outcomes are neutral or beneficial, then the SDL may be decreased to reflect this additional amount. Efficiency measures are projects involving on-farm efficiencies such as improved irrigation methods, and off-farm projects such as reducing evaporation and seepage from water delivery channels.¹⁶

1.21 Governments also agreed that the MDBA would perform this calculation using the 'SDL adjustment assessment framework'. This is a model-based framework that includes an independently-developed, science-based and peer-reviewed test for environmental equivalence.¹⁷

Water recovery through purchase

1.22 Under the Restoring the Balance in the Murray-Darling Basin programme (RtB), the Australian Government has committed \$3.2 billion to purchase water for the environment. This program is part of the Sustainable Rural Water Use and Infrastructure Program. The aim of the RtB programme is to provide more water for the environment. Water buybacks obtain water for the environment from irrigators who wish to offer their water entitlement for sale.¹⁸

1.23 The Commonwealth reported that as at 31 July 2015, 1952.9 GL in long term average annual yield has been contracted to recover towards the overall 2750 GL per year SDL reduction under the Basin Plan. Of the 1952.9 GL recovered, 1164.6 GL has been purchased under the RtB programme.¹⁹

Overview of the Bill

Schedule 1 – Part 1 – 1500 gegalitres per year limit on water purchases

1.24 Part 1 of Schedule 1 to the bill proposes to amend the Water Act to impose a duty on the Commonwealth not to exceed a 1500 GL per year limit on surface water purchases in the Basin when entering into a water purchase contract.

16 Murray-Darling Basin Authority, *The SDL adjustment assessment framework for supply measures*, 2015, p. 2, <http://www.mdba.gov.au/sites/default/files/pubs/SDL-adjustment-assessment-framework.pdf> (accessed 27 August 2015).

17 Murray-Darling Basin Authority, *The SDL adjustment assessment framework for supply measures*, 2015, p. 2, <http://www.mdba.gov.au/sites/default/files/pubs/SDL-adjustment-assessment-framework.pdf> (accessed 27 August 2015).

18 Murray-Darling Basin Authority, <http://www.environment.gov.au/water/rural-water/restoring-balance-murray-darling-basin/progress-water-recovery> (accessed 1 September 2015).

19 Murray-Darling Basin Authority, <http://www.environment.gov.au/water/rural-water/restoring-balance-murray-darling-basin/progress-water-recovery> (accessed 1 September 2015).

1.25 Specifically, the bill proposes to insert new subsection 85C(1) to impose a duty on the Commonwealth which prevents it from entering a water purchase contract if the long-term annual average quantity of water available under the contract, combined with the total of long-term annual average quantities of water purchased under water access entitlements since 2 February 2008, exceeded 1500 GL per year.

1.26 This limit would operate until a report is completed following the first ten-year review of the Basin Plan conducted by the MDBA.²⁰

1.27 The criteria for a contract to be considered a 'water purchase contract' are that:

- it must be a contract entered into by the Commonwealth to purchase water access entitlement to surface water; and
- that it must either be a contract that existed prior to the Basin Plan (between 2 February 2008 and 24 November 2012), or if it was entered into post-Basin Plan commencement, it is for the purpose of achieving the Commonwealth's share of sustainable diversion limits.²¹

1.28 Proposed subsection 85(4) details the water purchase contracts that would not be counted towards the limit, including:

- purchases associated or integrated with infrastructure rationalisation and reconfiguration after the commencement of the new section;
- purchases from Basin state governments after the commencement of the new section;
- water recovered through Commonwealth funded activities relating to water infrastructure (for example contracts entered into under the Sustainable Rural Water Use and Infrastructure Program);
- purchases made under Part 6 of the Water Act; or
- water recovered through the Water for the Environment Special Account.²²

1.29 The limit would not restrict the Commonwealth's ability to purchase water for other purposes, for example by the Department of Defence.²³

1.30 The Department of the Environment would be accountable for compliance with the limit as required under the *Public Governance Performance and Accountability Act 2013* and the *Public Service Act 1999*. In the event of a breach of the cap, it would be the Department, rather than the sellers of water access entitlements, who are accountable. The bill would provide protection for the sellers of

20 Proposed subsection 85C(2).

21 Proposed subsection 85(3).

22 Proposed subsection 85(4).

23 Explanatory Memorandum, p. 7. See also Department of the Environment, *Submission 24*, p. 5.

water access entitlements and the validity of their contracts could not be challenged in the event of a breach.²⁴

Schedule 1 – Part 2 – Amendment of the Basin Plan 2012

1.31 Part 2 of Schedule 1 to the bill proposes to amend the Basin Plan 2012. The amendment would operate in conjunction with Part 2AA of the Water Act to afford greater flexibility in the recovery of 450 GL per year of water for the environment through efficiency measures funded under the Water for the Environment Special Account.²⁵ The 450 GL per year are provided for with the operation of the SDLAM in 2016, and are in addition to water recovery required to bridge the gap.²⁶

1.32 All projects funded from this account are constrained by the requirement that social and economic outcomes for Basin communities are maintained or improved.²⁷

1.33 The proposed amendment would allow for the participation of consumptive water users in projects that recover water through works to improve water use efficiency off-farm, as evidence of neutral or improved socio-economic outcomes. This approach is consistent with the approach for on-farm recovery projects.²⁸

1.34 Previously, projects that were off-farm needed to be proposed by Basin States for funding by the Commonwealth; however this amendment would allow the Commonwealth to deliver funding across the Basin, and enable the funding of integrated off and on-farm irrigation efficiency projects.²⁹

1.35 The types of off-farm efficiency projects that would qualify as efficiency measures under this amendment include: reshaping and lining water delivery channels to reduce water losses through infiltration, or installation of improved irrigation management system and associated telemetry.³⁰

1.36 In his second reading speech, the Parliamentary Secretary to the Minister for the Environment, the Hon Bob Baldwin, stated that:

This legislation delivers a triple bottom line outcome for basin communities. The Abbott government is listening to all stakeholders and there is now an opportunity for the opposition to work with us and support this bill to ensure our basin communities get the win-win outcomes to ensure environmental and community sustainability. We will continue to

24 Explanatory Memorandum, p. 8. See also Department of the Environment, *Submission 24*, p. 4.

25 Department of the Environment, *Submission 24*, p. 3.

26 Department of the Environment, *Submission 24*, p. 6.

27 Department of the Environment, *Submission 24*, p. 6.

28 Department of the Environment, *Submission 24*, p. 6.

29 Department of the Environment, *Submission 24*, p. 6.

30 Explanatory Memorandum, p. 9.

work with all states to deliver the outcomes of the Basin Plan to the fullest extent possible.

The Abbott government is strongly committed to the Basin Plan and the substantial water reform agenda and we will implement the plan in a manner that ensures we can have healthy communities and productive farms working alongside a healthy river system.

The bill delivers on our commitment to deliver a Basin Plan that addresses the social, economic and environmental needs of the basin.³¹

31 Parliamentary Secretary to the Minister for the Environment, the Hon Bob Baldwin, *House of Representatives Hansard*, 28 May 2015, p. 13.