

The Senate

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Standing Committee on  
Environment, Communications,  
Information Technology and the Arts

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Water Bill 2007 [Provisions]

Water (Consequential Amendments) Bill 2007  
[Provisions]

August 2007

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## Abbreviations

ACCC	Australian Competition and Consumer Commission
AFA	Australian Floodplain Association
ANEDO	Australian Network of Environmental Defender's Offices
CEWH	Commonwealth Environmental Water Holder
COAG	Council of Australian Governments
DEW	Department of the Environment and Water Resources
EDO	Environmental Defender's Office
EPBC Act	<i>Environmental Protection and Biodiversity Conservation Act 1999</i>
IGA	Intergovernmental Agreement
MCBA	Murray-Darling Basin Authority
MDBC	Murray-Darling Basin Commission
MDB	Murray-Darling Basin
MLDRIN	Murray Lower Darling Rivers Indigenous Nations
NFF	National Farmers' Federation
NWI	National Water Initiative
QFF	Queensland Farmers' Federation
VFF	Victorian Farmers Federation



# Chapter 1

## Introduction

### Referral to the committee

1.1 On 9 August 2007, the Senate referred the Water Bill 2007 (hereafter 'the bill') and the Water (Consequential Amendments) Bill 2007 to the Senate Environment, Communications, Information Technology and the Arts (ECITA) Committee for inquiry and report by 14 August 2007.

1.2 The committee directly contacted a number of relevant organisations and individuals to invite submissions by 10 August 2007. Due to the tight reporting timeframe it was not possible to advertise the inquiry in the press.

1.3 Submissions were received from 12 organisations and individuals, as listed in Appendix 1. The committee also held a public hearing in Canberra on Friday, 10 August 2007. A list of those who gave evidence at this hearing is at Appendix 2.

### *Acknowledgments*

1.4 The committee thanks all those who contributed to its inquiry by preparing written submissions and appearing at the public hearing, especially in light of the tight reporting timeframe established for the inquiry. Their work has been of considerable value to the committee.

### Background – water policy initiatives

1.5 Under the Constitution, the management of water resources in Australia is a state responsibility.<sup>1</sup> However, Commonwealth involvement in water management issues has a long history. In 1915, the Commonwealth became involved as a facilitator in the negotiations and signing of the River Murray Waters Agreement between NSW, Victoria, South Australia and the Commonwealth. That Agreement evolved into the Murray-Darling Basin Agreement signed by the same parties initially in 1987 and again, as a new Agreement, in 1992. Queensland joined the original signatories in 1996 and the ACT joined in 1998.

1.6 The 1992 Agreement established the Murray-Darling Basin Ministerial Council and the Murray-Darling Basin Commission (MDBC), which replaced the River Murray Commission. The MDBC advises the Ministerial Council and implements its decisions. The Agreement aims to promote and coordinate effective

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1 By virtue of section 107 of the Constitution, and the fact that section 51 of the Constitution does not grant the Commonwealth express power over water or river systems.

planning and management for the equitable, efficient and sustainable use of the water, land and other environmental resources of the Murray-Darling Basin.

1.7 In the 1980s, increasing environmental awareness led to a recognition that there was a need for a national approach to environmental issues generally. The Council of Australian Governments (COAG) became the key policy forum on natural resource issues, including the management of water. In 1992, COAG adopted the National Strategy for Ecologically Sustainable Development, which established natural resource development and management on a national basis. In 1994, COAG announced its water reform agenda that included the National Water Quality Strategy. A joint Commonwealth, states and territories initiative, the strategy consists of a number of guideline documents for managing key elements of the water cycle.<sup>2</sup>

### ***National Water Initiative***

1.8 The National Water Initiative (NWI) was signed by the Commonwealth and all states and territories on 25 June 2004 (except Tasmania and Western Australia which signed in June 2005 and April 2006 respectively). The NWI represents the Commonwealth government and state and territory governments' shared commitment to water reform. It built on the previous COAG's framework for water reform that had operated since 1994. In December 2004, the National Water Commission, now an independent statutory body in the Environment and Water Resources portfolio, was established to implement the national water reform agenda and to provide advice to COAG on national water issues.<sup>3</sup> The principal goals of the NWI are to increase the productivity and efficiency of Australia's water use for the benefit of urban and rural users and to ensure the health of river and groundwater systems.<sup>4</sup>

### **A National Plan for Water Security**

1.9 On 25 January 2007 the Prime Minister announced a National Plan for Water Security (the Plan) in response to the protracted drought and the prospect of long-term climate change. The Plan recognised the need for a radical change in Australia's water management practices and aims to ensure that rural water use is placed on a sustainable footing within the next decade. The Commonwealth announced its intention to invest \$10 billion over ten years to significantly improve water management across the nation, with a special focus on the Murray-Darling Basin (MDB), where the bulk of the nation's agricultural water use takes place.<sup>5</sup>

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2 Standing Committee on Rural and Regional Affairs and Transport, *Water Policy Initiatives: Final Report*, December 2006, p. 5.

3 *Water Policy Initiatives*, pp 5–6.

4 <http://www.nwc.gov.au/nwi/index.cfm>; accessed July 2007.

5 The Prime Minister, the Hon John Howard MP, *A National Plan for Water Security*, January 2007 (National Plan), pp 1–4.

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1.10 The Plan includes:

- a nationwide investment in Australia's irrigation infrastructure to line and pipe major delivery channels;
- a nationwide programme to improve on-farm irrigation technology and metering;
- the sharing of water savings on a 50:50 basis between irrigators and the Commonwealth government to ensure greater water security and increased environmental flows;
- addressing water over-allocation in the MDB;
- a new set of governance arrangements for the MDB;
- a sustainable cap on surface and groundwater use in the MDB;
- major engineering works at key sites in the MDB;
- expanding the role of the Bureau of Meteorology to provide the water data necessary for improved decision making by governments and industry;
- a Taskforce to explore future land and water development in northern Australia; and
- completion of the restoration of the Great Artesian Basin.<sup>6</sup>

The key features of the Plan are discussed below.

***Modernising irrigation***

1.11 A major element of the Plan is a commitment of almost \$6 billion over ten years to modernise irrigation infrastructure both on-and off-farm to save water and increase efficiency of water use. While national in scope, the prime focus will be the MDB, where 85 per cent of irrigation takes place. The aim is to achieve efficiency gains of approximately 25 per cent of total irrigation water use.<sup>7</sup>

1.12 The main features include:

- improved delivery system efficiency – piping or lining channels and adoption of more efficient watering methods to achieve on-and off-farm efficiency gains;
- the adoption of more accurate water meters to improve measurement; and
- improving river operations and storage management, for example, by reducing evaporation at some storages in the lower MDB.

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6 National Plan, p. 1.

7 National Plan, pp 4, 7–9.

### ***Addressing over-allocation***

1.13 Water resources of a number of catchments and aquifers within the MDB are seriously over-allocated and over-used. 'Over-allocation' refers to situations where more entitlements have been issued in a system that can be sustained. 'Over-use' is where more water is allocated to irrigators or other users within a given period that can be sustained. This situation has arisen as a result of past decisions to issue more entitlements than can be delivered by water systems, and by a failure of water sharing plans to set the pool of water available for consumption at sustainable levels.

1.14 Water availability to irrigators in the MDB is also declining because of climate change and the unregulated growth in farm dams, bores and reforestation. These changes have eroded the security of water entitlements, making it harder for irrigators to manage their enterprises in times of drought.<sup>8</sup>

1.15 The Commonwealth government announced it would invest up to \$3 billion over ten years to address over-allocation in the MDB. Planned in conjunction with the modernisation programme, this is to be achieved by providing assistance to irrigation districts to reconfigure irrigation systems and retire non-viable areas.

1.16 Assistance will be provided to help relocate non-viable or inefficient irrigators, or help them with exiting the industry. Where necessary, the Commonwealth will also purchase entitlements on the market. Water that accrues to the Commonwealth government through these measures will be managed to restore the health of the rivers and wetlands in the MDB.<sup>9</sup>

### ***New governance arrangements in the MDB***

1.17 The Commonwealth suggested that new governance arrangements are needed to improve water management in the MDB:

Existing arrangements centring on the MDB Agreement and the MDB Ministerial Council are unwieldy and not capable of yielding the best possible Basin-wide outcomes. One government needs to take control and be responsible for water management in the MDB to ensure key Basin-wide outcomes are realised.<sup>10</sup>

1.18 The existing mechanism for the management of the Basin is the Murray-Darling Basin Commission (MDBC). The National Plan document stated that decisions taken by the MDBC often reflect 'parochial interests and do not reflect the best interest of the Basin as a whole'.<sup>11</sup>

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8 National Plan, p. 10.

9 National Plan, pp 4, 10–11.

10 National Plan, p. 12.

11 National Plan, p. 12.

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1.19 Under the Plan, the Commonwealth government aims to reconstitute the MDBC as a Commonwealth government agency reporting to a single minister. The new Commission would have responsibility for setting a sustainable cap on the extraction of surface and ground water within the Basin, and accrediting catchment and aquifer water plans to ensure they comply with that cap. The new arrangements were expected to cost an additional \$600 million over ten years.

1.20 A new strategic plan for the Basin will be established, incorporating a revised cap on diversions, taking into account groundwater use and other factors that will reduce river flows in the Basin in the future. The Plan will be informed by the 2007 MDB Sustainable Yields Assessment being undertaken by the CSIRO, which will report on the current and future water availability in the MDB, based on a number of scenarios.<sup>12</sup>

1.21 These arrangements were contingent on the referral of state and territory powers in relation to the MDBC to enable the Commonwealth government to have oversight of water management in the MDB. The governments of NSW, Queensland, and South Australia agreed to the transfer of powers. Victoria, however, did not. Subsequently, the Commonwealth announced its intention to use Commonwealth powers under the Constitution to introduce a revised Plan, including the establishment of a Murray-Darling Basin Authority, which is discussed later in the chapter.

### *Upgrading water information*

1.22 The National Plan identifies the need for improved water data and forecasting services to provide the basis for informed policy decisions. Inadequacies in the current water information base means that it is not possible to accurately measure and monitor the resource and its use.

1.23 The Plan envisages improvements in the coverage, quality and utility of Australia's water information base. The role of the Bureau of Meteorology (the Bureau) will be extended to perform the following functions:

- hold and manage all of Australia's water data;
- report on the status of Australia's water resources, patterns of water use and forecasts of future water availability;
- maintain a comprehensive set of water accounts for the nation;
- set national standards for water use metering and hydrologic measurements;
- influence and support state-based investments in water monitoring and water use metering programs; and
- commission strategic investigations and procure special data sets to improve our understanding of Australia's water resources.<sup>13</sup>

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12 National Plan, pp 5, 12–13.

13 National Plan, p. 15.

1.24 The Commonwealth government announced funding of \$400 million over the next ten years to enable the Bureau to undertake these new functions. Over the next five years, it will also provide an additional \$80 million to enable water data collecting agencies to modernise and extend their water resource monitoring systems.<sup>14</sup>

### ***Northern Australia***

1.25 The Commonwealth government has established a Taskforce chaired by Senator the Hon Bill Heffernan to examine the potential for further land and water development in northern Australia.<sup>15</sup>

### ***Great Artesian Basin***

1.26 The Commonwealth government has announced that it will fund the third and final phase of the bore-capping and piping program in the Great Artesian Basin. It intends to seek ongoing commitments from participating state and territory governments and pastoral bore owners. This proposal will cost around \$85 million over ten years.<sup>16</sup>

## **National Plan for Water Security – Commonwealth-only model**

1.27 Following the Prime Minister's initial announcement on 25 January 2007, the Commonwealth government worked with states and territories to negotiate a referral of powers to ensure implementation of the Plan. As noted above, all MDB states other than Victoria agreed to a referral of constitutional powers.

1.28 On 21 February 2007, the Victorian government published a paper outlining its alternative proposal for national water reform, critical of the Commonwealth's approach.<sup>17</sup> The Victorian government model would be implemented through an Intergovernmental Agreement, rather than a referral of constitutional powers.

1.29 On 24 July 2007, the Prime Minister announced the Commonwealth government's decision to proceed with legislation giving effect to the National Plan for Water Security using the Commonwealth's powers under the Constitution after negotiations with the Victorian government failed. The government announced its continued commitment to the \$10 billion funding for the Plan.<sup>18</sup>

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14 National Plan, pp 16–17.

15 National Plan, p. 6.

16 National Plan, p. 6.

17 *National Water Reform: A Comprehensive and Balanced National Water Reform Plan – A Proposal of the State Government of Victoria*, February 2007, p. 15.

18 A National Plan for Water Security: The Commonwealth-only model – Questions and Answers, p. 4.

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## **The Water Bill 2007 and related bill**

1.30 The Water Bill 2007 (the bill) gives effect to a number of key elements of the Commonwealth government's \$10.05 billion National Plan for Water Security, announced by the Prime Minister on 25 January 2007. The bill relies solely on the Commonwealth's constitutional powers, which is discussed later in the chapter.<sup>19</sup> The bill has been informed by the *Intergovernmental Agreement on a National Water Initiative*.

1.31 The principal elements of the bill include:

- establishment of a Murray-Darling Basin Authority;
- establishment of Basin-wide planning through a Basin Plan;
- a role for the ACCC in water trading and pricing; and
- the expansion of the Bureau of Meteorology's functions in relation to water information and standards.

1.32 The Water (Consequential Amendments) Bill 2007, deals with consequential amendments to the *Meteorology Act 1955*, the *National Water Commission Act 2004* and the *Trade Practices Act 1974* to provide for the functions of the Bureau of Meteorology, the National Water Commission and the Australian Competition and Consumer Commission.

1.33 Key elements of the Water Bill 2007 are outlined below.

### ***Murray-Darling Basin Authority***

1.34 The bill establishes an independent Murray-Darling Basin Authority with the functions and powers, including enforcement powers, needed to ensure that Basin water resources are managed in an integrated and sustainable way.

1.35 The Second Reading Speech stated that:

For the first time in the Basin's history, one Basin-wide institution will be responsible for planning the Basin's water resources – requiring planning decisions to be made in the interests of the Basin as a whole and not along state lines.<sup>20</sup>

1.36 Key functions of the Authority include:

- preparing a Basin Plan for adoption by the Minister, including setting sustainable limits on water that can be taken from surface and groundwater systems across the Basin;
- advising the Minister on the accreditation of state water resource plans;

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19 Explanatory Memorandum, p. 2; Second Reading Speech, p. 4.

20 Second Reading Speech, p. 5.

- developing a water rights information service which facilitates water trading across the Murray-Darling Basin;
- measuring and monitoring water resources in the Basin;
- gathering information and undertaking research; and
- engaging the community in the management of the Basin's resources.<sup>21</sup>

1.37 The Authority will report to the Commonwealth Minister for the Environment and Water Resources and will be comprised of a full-time Chair and four part-time members. The Authority members must have significant relevant expertise to be eligible for appointment, for example in fields such as water resource management, hydrology, freshwater ecology, resource economics, irrigated agriculture, public sector governance and financial management.

### ***The Basin Plan***

1.38 The bill requires the Authority to prepare a strategic plan for the integrated and sustainable management of water resources in the Murray-Darling Basin. This plan is referred to as the Basin Plan.

1.39 The bill establishes mandatory content for the Basin Plan, including:

- limits on the amount of water that can be taken from Basin water resources on a sustainable basis – known as long-term average sustainable diversion limits. These limits will be set for Basin water resources as a whole and for individual water resources;
- identification of risks to Basin water resources, such as climate change, and strategies to manage those risks;
- requirements that a water resource plan will need to comply with if it is to be accredited under this bill;
- an environmental watering plan to optimise environmental outcomes for the Basin by specifying environmental objectives, watering priorities and targets for Basin water resources;
- a water quality and salinity management plan which may include targets; and
- rules about trading of water rights in relation to Basin water resources.<sup>22</sup>

1.40 The Basin Plan will be complemented through water resource plans prepared by Basin states and provided to the Commonwealth Minister for accreditation. The Authority will provide advice to the Minister on whether to accredit such plans. Water resource plans will only be accredited if they are consistent with the Basin Plan, including the long-term average sustainable diversion limits.

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21 Explanatory Memorandum, p. 2.

22 Explanatory Memorandum, p. 3.

1.41 The Basin Plan will also play a key role in identifying responsibilities for managing risks associated with reductions in water availability and changes in reliability. Where the Basin Plan specifies a reduction in the long-term average sustainable diversion limit, the Basin Plan will also identify the percentage of that reduction for which the Commonwealth is responsible. This percentage relates to the risk sharing arrangements set out in the bill, which are modelled on those agreed through the National Water Initiative in June 2004.

1.42 The Commonwealth government has made a commitment to respect water sharing arrangements that are provided for in existing water resource plans. This commitment is implemented through the transitional arrangements set out in the bill.

1.43 The Basin Plan will be prepared in consultation with Basin States and communities. It is intended that the first Basin Plan will be completed within two years of the Authority being established.

### ***Commonwealth Environmental Water Holder***

1.44 The bill establishes a Commonwealth Environmental Water Holder. Water recovered through the roll-out of the irrigation efficiency programme and the structural adjustment programme of the National Plan will be used for environmental water purposes across Australia. The Commonwealth Environmental Water Holder will manage the Commonwealth's environmental water to protect and restore the environmental assets of the Murray-Darling Basin, and outside the Basin where the Commonwealth owns water.<sup>23</sup>

1.45 The Commonwealth government's water holdings will include the Commonwealth's share of water savings made through the National Plan.

### ***Australian Competition and Consumer Commission (ACCC)***

1.46 The bill provides the ACCC with a key role in developing and enforcing water charge and water market rules along the lines agreed in the National Water Initiative. The aim of these new functions is to ensure that water markets are able to operate freely across state boundaries and that perverse outcomes from inconsistent water charging arrangements are avoided.

1.47 The Second Reading Speech stated that:

The ACCC will monitor and enforce water charges and market rules in the Basin. The rules will reflect the water charging and trading principles in the National Water Initiative, ensuring that the water market in the Basin works efficiently and that there are no inappropriate barriers to trade.<sup>24</sup>

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23 Second Reading Speech, pp 7–8; Explanatory Memorandum, p. 4.

24 Second Reading Speech, p. 8.

### ***Bureau of Meteorology***

1.48 The bill gives the Bureau of Meteorology water information functions that are in addition to its existing functions under the *Meteorology Act 1955*. The Bureau will be authorised to collect and publish high-quality water information. The publications will include a National Water Account and periodic reports on water resource use and availability. The Bureau will also be empowered to set and implement national standards for water information.<sup>25</sup>

### ***Other aspects***

The \$10.05 billion of funding under the National Plan is not specifically addressed in the bill. However, the funding is integral to the overall package and includes funding for modernising Australia's irrigation infrastructure; addressing over-allocation in the Murray-Darling Basin; reforming management of the Murray-Darling Basin; and new investments in water information.<sup>26</sup>

1.49 As noted above, the Commonwealth indicated that it will honour its commitment to existing state water plans for the life of those plans (which will conclude in 2010 for South Australia, 2014 for NSW, Queensland and the ACT, and 2019 for Victoria).<sup>27</sup> The current state water shares under the Murray-Darling Basin Agreement will also be maintained. The Murray Darling Basin Commission will remain although it will need to abide by decisions of the Murray-Darling Basin Authority.

1.50 The principal difference between the new proposal and the original one is that the Commonwealth government will not be able to get involved in individual river operations or seasonal allocations of water. However, the new Murray-Darling Basin Authority will still set Basin-wide caps on water, develop salinity plans and accredit individual water plans in catchments.<sup>28</sup>

1.51 Under the revised arrangements the role of the MDB Authority will differ from the MDB Commission:

The two bodies have clearly different roles. The new MDB Authority will prepare the Basin Plan in consultation with the Basin States and the wider community. The Plan will cover the new cap on diversions, water quality and salinity targets, and the environmental watering plan. The MDB Authority will also accredit state water resource plans to ensure they will

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25 Explanatory Memorandum, p. 4.

26 Explanatory Memorandum, p. 2.

27 'Murray-Darling aid will be slow to flow', *The Australian Financial Review*, 8 August 2007.

28 Laura Tingle, 'Powers to be used for water control', *The Australian Financial Review*, 25 July 2007.

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deliver on the Basin Plan, and ensure there is compliance. These have never been roles of the Commission.<sup>29</sup>

1.52 The MDB Commission will continue to run the River Murray, coordinate the management of salinity interception works, and undertake its natural resource management activities including the Living Murray Initiative. The Commonwealth will continue to be a member of the MDBC and, through its contribution in these arrangements, will aim to ensure consistency in the actions of the MDBA and MDBC. The Commonwealth stated that the new MDBA will fulfil a strategic water planning role considering the Basin as a whole – work that is not currently being done – 'accordingly, the new arrangements will add capacity to water management in an area that requires increased attention'.<sup>30</sup>

### ***The Water Bill – constitutional basis***

1.53 As discussed previously, the management of water resources in Australia has historically been a state responsibility. Nonetheless, the Commonwealth has had considerable involvement in the management of water resources.

1.54 In his second reading speech the Minister for Environment and Water Resources, the Hon. Malcolm Turnbull MP, outlined the constitutional basis for the bill:

This Water Bill relies on a range of powers which are provided to the Commonwealth under the Constitution. These comprise powers in relation to external affairs, interstate trade and commerce, corporations and powers to collect information and statistics.<sup>31</sup>

1.55 Mr Turnbull explained that as agreement had not been reached on a referral of power from the state governments, the original 'comprehensive' water bill had been modified to fit within the Commonwealth's existing constitutional powers:

The Water Bill 2007 bill draws heavily on the comprehensive water bill that had been negotiated with most states in the basin over the past five months. The new bill reflects these negotiations in relation to the parts of the comprehensive bill for which the Commonwealth has constitutional power. Thus, a referral of powers from the states is not required for this bill, as was proposed for the comprehensive water bill.<sup>32</sup>

1.56 The Explanatory Memorandum reiterates this point:

This Bill relies solely on the Commonwealth's constitutional powers. The Commonwealth's original intention was that the Bill would address a broader range of issues, and would in respect of that broader coverage be

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29 Questions and Answers, p. 3.

30 Questions and Answers, p. 3.

31 Second Reading Speech, p. 4.

32 Second Reading Speech, p. 4.

reliant on referrals of power from Basin states. However, agreement could not be reached, in particular with the State of Victoria, on referral arrangements to allow the Commonwealth Parliament to enact the full range of measures.<sup>33</sup>

1.57 The bill includes a mechanism to allow for the scope of the bill to be broadened to what was originally envisaged when the Plan was announced, in the event of future referral of state powers by New South Wales, Victoria, Queensland and South Australia.<sup>34</sup> In the absence of a referral of power from the states, the Commonwealth is relying on a number of express Commonwealth powers that are outlined in clause 9 of the bill.

1.58 The constitutional basis for the bill can be broadly divided into two categories: water resource management; and water monitoring and data collection. In relation to the management of basin water resources (including the development of the Basin Plan, the water resource plans, and the water charge and market rules) the following five constitutional powers are relied on:

- trade and commerce – paragraph 51(i);
- postal, telegraphic, telephonic and other like services – paragraph 51(v);
- corporations – paragraph 51(xx);
- external affairs – paragraph 51(xxix); and
- territories power – section 122.

1.59 Regarding water monitoring and data collection, clause 119 sets out the following six constitutional bases: meteorological observations under paragraph 51(viii); census and statistics under paragraph 51(xi); and weights and measures under paragraph 51(xv); corporations under paragraph 51(xx); external affairs under paragraph 51(xxix); and the Commonwealth's implied power to make laws with respect to nationhood.

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33 Explanatory Memorandum, p. 2. See also Clause 9.

34 Explanatory Memorandum, p. 5. Referral from the ACT is not necessary as the Commonwealth is able to rely on the territories power under section 122 of the Constitution.

# Chapter 2

## Main Issues

### Support for the bill

2.1 The committee heard broad support for a water reform package that involved national leadership in managing the water resources of the Murray-Darling Basin.

2.2 The South Australian government supported 'a national approach to the management of the Murray-Darling Basin (MDB) through an independent, expert-based authority, consistent with the agreement reached between the First Ministers...in February 2007'.<sup>1</sup> Other states, while concerned about various aspects of the proposal, appeared supportive of the broad approach.<sup>2</sup> Victoria was the only state which indicated it would not provide in-principle support for the bill.<sup>3</sup>

2.3 The Wentworth Group of Concerned Scientists, which had supported the National Water Initiative in 2004, suggested that the bill addresses the deficiencies and limitations of that process.<sup>4</sup>

2.4 The Queensland Farmers Federation believed the bill broadly reflects their preferred model of water policy,<sup>5</sup> while the NFF and other producer organisations were positive about both the bill and the process leading up to it:

Mr Arthur— ...The NFF has been involved since early February and we were given undertakings by the federal government that we would be fully engaged in the process. The NFF set up an industry working group. That has been a totally inclusive group. Anybody who wanted to engage in that group has been able to. That has included the state farmer organisations, all the commodity groups of the NFF and all of the major irrigation groups. For example, the New South Wales Irrigators Council, the South Australian Murray Irrigators, the Queensland Irrigators Council, Irrigators Australia Limited, and also all of the major irrigation corporations, such as Murray irrigation and Murrumbidgee Irrigation. We certainly supported the principles announced by the Prime Minister in his speech on the 25th, and we are committed to work with the federal government on the detail. I believe the government's undertaking to engage us fully in the development of the bill was carried through and the vast majority of the issues we put before the government and the legal drafters in the various iterations of the

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1 SA government, *Submission 9*, p. 1.

2 Mrs Debbie Best, Queensland government, *Proof Committee Hansard*, 10 August 2007, p. 21; Mr Paul Elton, NSW government, *Proof Committee Hansard*, 10 August 2007, p. 20.

3 Mr Peter Harris, Victorian government, *Proof Committee Hansard*, 10 August 2007, p. 23.

4 Statement from Wentworth Group of Concerned Scientists, tabled 10 August 2007.

5 QFF, *Submission 3*, p. 2.

bill eventually have been brought forward. I will hand over to Robert Poole, who will make a very short statement on how he sees the bill in relation to the IGA.

Mr Poole—As to the constitutional powers that we felt were necessary and we supported as part of the Prime Minister’s statement to enforce the cap and the processes needed to manage the basin as a whole, we think that the bill can achieve those outcomes as a first stage to water reform. We are confident at this stage that most of the issues that the NFF has raised have been addressed and that the bill can achieve some of the major outcomes in terms of enforcing the cap.<sup>6</sup>

2.5 Environmental stakeholder groups indicated their disappointment that there was not greater progress, and in particular that the original referral of powers model had not been successful. Further, they expressed regret that the Intergovernmental Agreement (the IGA) was neither released nor agreed. Nevertheless, they suggested the bill should proceed.<sup>7</sup>

2.6 Most parties also indicated that crucial matters remaining to be resolved were not contained in the bills but would be a matter for the IGA currently being prepared and discussed (see also below).<sup>8</sup> It was indicated that a draft of this was expected to be released by the Commonwealth to the states in the coming week.<sup>9</sup>

### **Issues with the bill**

2.7 The majority of debate about the bill concerned the allocation of responsibility for compensation if water availability is reduced; and other costs to the states.

#### ***Compensation for reductions in water availability***

2.8 The bill makes provision for the allocation of responsibility for compensation to water entitlement holders in the event of reductions in water availability (see clauses 74 to 79 of the bill). The Basin Plan will set:

...limits on the amount of water that can be taken from Basin water resources on a sustainable basis – known as long-term average sustainable

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6 *Proof Committee Hansard*, 10 August 2007, pp 1–2.

7 Dr Arlene Buchan, ACF, *Proof Committee Hansard*, 10 August 2007, p. 58; Mr Brendan Sydes, EDO, *Proof Committee Hansard*, 10 August 2007, p. 58; Mr Peter Cosier, Wentworth Group, *Proof Committee Hansard*, 10 August 2007, p. 56; Professor Peter Cullen, Wentworth Group, *Proof Committee Hansard*, 10 August 2007, p. 58.

8 See, for example, Mr Robert Poole, Australian Dairy Farmers, *Proof Committee Hansard*, 10 August 2007, p. 7; Mr Richard Anderson, VFF, *Proof Committee Hansard*, 10 August 2007, p. 10.

9 Mrs Debbie Best, Queensland government, *Proof Committee Hansard*, 10 August 2007, p. 21.

diversion limits. These limits will be set for Basin water resources as a whole and for individual water resources.<sup>10</sup>

2.9 It is possible that the long-term average sustainable diversion limit for water resources in water resource plan areas will need to be reduced. In these circumstances, water entitlement holders will experience a reduction in their entitlement. In these circumstances, the entitlement holder may receive some compensation for this reduction. Clause 77 sets out the way in which liability for that compensation will be distributed. In simple terms, the distribution of responsibility is as follows:<sup>11</sup>

<b>Reduction</b>	<b>Water access entitlement holder share</b>	<b>State share</b>	<b>Commonwealth share</b>
0 to 3%	All of the reduction	Nil	Nil
3 to 6%	All of the reduction to 3%	1/3 of any reduction from 3 to 6%	2/3 of any reduction from 3 to 6%
More than 6%	All of the reduction to 3%	1/3 of any reduction from 3 to 6%, plus 1/2 of any reduction from 6% and above	2/3 of any reduction from 3 to 6%, plus 1/2 of any reduction from 6% and above

2.10 Some state government representatives objected to these provisions. They argued that this was a change from the agreement under which they had originally supported water policy reform. New South Wales for example argued:

In the earlier Bill to which the Prime Minister sought State agreement, the Commonwealth was to take up all compensation liability for reductions arising from changes in Commonwealth government policy or improved knowledge above the first 3% that is borne by users.

The Commonwealth's new position is unacceptable. Through the new Bill and its Basin Plan, the Commonwealth would have the ability to impose reductions attributable to changes in knowledge and therefore trigger a NSW liability.<sup>12</sup>

2.11 Queensland made a similar point:

Contrary to Queensland's understanding of the package of measures agreed by first Ministers, there is now a real risk the Commonwealth could require changes to Queensland's water resource plans through implementing the Commonwealth's Basin Plan, resulting in a compensation liability for Queensland, without Queensland having agreed to refer its powers or

10 Explanatory Memorandum, p. 3.

11 Explanatory Memorandum, p. 21.

12 NSW government, *Submission 6*, p. 2.

having settled outstanding issues, and now ultimately a matter beyond Queensland's control.<sup>13</sup>

2.12 The Commonwealth's position was that:

The provisions of the bill have been developed to ensure that the Commonwealth meets its full obligations under the National Water Initiative. Where the long-term average sustainable diversion limit for the water resource plan area is reduced, the basin plan must specify the amount of that reduction for which the Commonwealth is responsible. In line with the National Water Initiative, the Commonwealth will be responsible for all reductions that arise from a change in Commonwealth government policy. Where reductions arise from new knowledge and take effect after 1 January 2015, the Commonwealth will be responsible for two-thirds of the reduction between three and six per cent and half the reductions beyond that. This requirement is completely in line with the National Water Initiative. If all basin states sign up for full referral of powers, as was the original proposal back in February, the Commonwealth will take on the liabilities of states in this regard. This is the position that was agreed in the previous, what I will call, comprehensive Water Bill that was under consideration for about five months, and on which the Commonwealth and three states reached a very large amount of agreement, and which was the Commonwealth's preferred position.<sup>14</sup>

2.13 Thus, while the bill implements the same compensation arrangements as currently operating under the National Water Initiative (NWI), the Commonwealth is continuing to offer more comprehensive undertakings on responsibility for compensation, if all jurisdictions reach agreement on referral of powers.

***Costs to the states***

2.14 A related objection from some states was that a previous guarantee – that states would not face any net increase in costs as a result of the new arrangements – appeared to have been weakened under the new arrangements.

2.15 Queensland observed:

Commonwealth officials have advised that it is only once all states have referred their powers, the Commonwealth will assume the compensation liability to be borne by the States under the NWI and ensure that States will not be responsible for any net real increase in costs arising from implementing the later comprehensive Commonwealth Water Act and NPWS.<sup>15</sup>

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13 Queensland government, *Submission 7*, p. 2.

14 Dr James Horne, DEW, *Proof Committee Hansard*, 10 August 2007, pp 60–61.

15 Queensland government, *Submission 7*, p. 2.

2.16 This was echoed by South Australia, which was concerned about the implementation costs arising from increased information provision requirements, and potentially increased bureaucratic complexity, owing in part to the existence of two basin organisations at the Commonwealth level having to operate in parallel with already-existing state agencies.<sup>16</sup>

2.17 Mr Anderson of the Victorian Farmers Federation (VFF) also raised this:

We certainly have some concerns now about creating the bureaucracy that is now being created under this bill. We mean, we have got the Murray-Darling Basin Authority; we have still got the Murray-Darling Basin Commission, we have got two ministerial councils, the community consultative council and an officials committee.

Senator Ian Macdonald—The national water commission.

Mr Anderson—Yes. I am just a bit concerned that at the end of the day somebody pays for all that bureaucracy and it might well be irrigators wearing a fair bit of that cost.<sup>17</sup>

2.18 Murrumbidgee Private Irrigators wanted reassurance that increased bureaucratic costs would be borne by governments and not passed on to irrigators.<sup>18</sup>

2.19 The Commonwealth's view was that the commitment to no net increase in state costs remains in place if states refer their powers:

The government made a commitment in February this year that there would be no net increase in real terms in individual basin state costs as a result of the National Plan for Water Security. Some state governments have questioned this commitment. The commitment was made on the basis that all basin states would refer their powers for water management in the Murray-Darling Basin. The government intends to honour this commitment. If all the basin states refer their powers as originally proposed, the government will ensure that the states do not bear any net real increase in costs. These issues will be set out in an intergovernmental agreement, which will be shortly put to the states.<sup>19</sup>

### ***Victoria's position***

2.20 Victoria, in contrast to other states, has indicated longstanding concerns with the Commonwealth's proposals for further water policy reform. On 21 February 2007, the Victorian government published a paper outlining its alternative proposal for national water reform, critical of the Commonwealth's approach.

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16 SA government, *Submission 9*, p. 3.

17 *Proof Committee Hansard*, 10 August 2007, p. 11.

18 Murrumbidgee Private Irrigators, *Submission 11*, p. 2.

19 Dr James Horne, DEW, *Proof Committee Hansard*, 10 August 2007, p. 60.

2.21 The Victorian government argued that the Commonwealth plan created complex governance arrangements and increased 'red tape'; lacked clarity with respect to how and where funding would be allocated; failed to provide detail on the role and importance of water markets, and placed at risk the NWI commitment to the expansion of water markets.<sup>20</sup> The Victorian government argued that the Commonwealth's proposal for water management in the MDB, in particular, was 'under-developed and carries significant risks for ongoing water management'.<sup>21</sup>

2.22 The Victorian government indicated it preferred a model involving implementation through an intergovernmental agreement, rather than a referral of constitutional powers.

2.23 During this inquiry Mr Peter Harris, representing the Victorian government, explained the basis for the rejection of a transfer of powers:

Victoria has rejected complete transfer of powers to the Commonwealth over our water sources because we have a very reliable water allocation system. Victoria's irrigators and environmental groups agreed with the government that the certainty with which we had endowed their entitlements in negotiations over water reform between 2002 and 2004 was to be preferred to an unknown system of Commonwealth control. The Victorian water allocation system is a reflection of Victoria's agriculture and relatively dense urban concentration within the basin.<sup>22</sup>

2.24 The Victorian government also raised particular concerns with the current bill. These included:

- Clause 35, being a new provision purporting to enable the Commonwealth minister to prosecute individual farmers for acting inconsistently with the Basin Plan – 'This seems to us to be complete overkill'.
- Clause 172, duplicating the objectives of the Murray-Darling Basin Authority and the Murray-Darling Basin Commission.
- Clauses 97 to 100, which are new and purport to allow the Commonwealth minister to unilaterally change trading rules within the Basin – 'Trading rules are crucial to investment decisions. To my knowledge, in no other market in Australia can the federal minister alter the terms of trading in this way'.
- The use of the treaties power of the constitution, of which Victoria remarked 'there are some quite unique definitional approaches in this legislation'.<sup>23</sup>

2.25 Mr Harris further stated that:

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20 *National Water Reform: A Comprehensive and Balanced National Water Reform Plan – A Proposal of the State Government of Victoria*, February 2007 (Victorian Plan), p. 15.

21 Victorian Plan, p. 2.

22 *Proof Committee Hansard*, 10 August 2007, p. 23.

23 Mr Peter Harris, *Proof Committee Hansard*, 10 August 2007, p. 23.

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As a result of this, we believe that the proposals put in front of the Senate are incomplete, will create a confusion of governance, add additional complexity and red tape and will lead to uncertainty in investment within the basin.<sup>24</sup>

2.26 Commonwealth representatives explained the concern with the Victorian approach:

Senator O'BRIEN—In relation to the approach to the legislation, we heard evidence that the Victorian government had proposed a model whereby they would legislatively enact equivalent state legislation to give effect to arrangements entered into in any intergovernmental agreement. Could you explain why that proposal is not acceptable to the Commonwealth?

Dr Horne—Yes, I think I can explain that for you. Victoria put a proposition forward that said it did not want to be party to arrangements that all the other states and the Commonwealth had agreed, but would agree to do certain things. But in agreeing to do those certain things it said, 'But we'll look at it, anyway, and if we don't agree with it we'll withdraw the agreement to do those certain things.' That did not strike us as being a proposition that, firstly, other states would agree to, and certainly the Commonwealth was unable to agree to that sort of proposition.

...

Senator O'BRIEN—In terms of their proposition, you are saying that they put forward a proposal that did not give certainty about what they really intended to do?

Dr Horne—That is right. For example, Victoria proposed that it only agree to three of the 16 mandatory elements of the basin plan.<sup>25</sup>

***The importance of the Intergovernmental Agreement (IGA)***

2.27 While not directly related to the provisions of the bill, most stakeholders indicated that the yet-to-be-released IGA would be critical to the effectiveness of the water package. The South Australian government representatives commented:

Mr Freeman— ...Like all the other parties, we are relying heavily on an IGA that we cannot see. We understand why those issues cannot be in this bill because of the constitutional powers that the Commonwealth is relying on for the foundation of the bill. However, taken in good faith, we believe a lot of those other issues should be addressed in the yet unforeseen IGA. Perhaps I can defer to my colleague, Mr Ashby.

Mr Ashby—I would add one other point. New South Wales put the case around risk and cost associated with the new schema. We completely agree with the position that they put earlier. It is something that does not come out strongly in our written submission. However, until we see the IGA we

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24 *Proof Committee Hansard*, 10 August 2007, p. 24.

25 *Proof Committee Hansard*, 10 August 2007, p. 67.

are not really sure exactly how this issue will be dealt with. In the prior schema with the comprehensive bill and associated IGA we were much more comfortable with the issues of risks and cost sharing. Now it is a wait and see.<sup>26</sup>

2.28 Mr Poole from Australian Dairy Farmers observed:

Certainly we have not been privy to the IGA and we are keen to have that go forward because obviously the critical next step for the irrigator groups is to have the \$10 billion investment into the irrigation system in Australia. One of the key messages from us today is that we want to see that investment money flow. That is critical to the future management of the basin and irrigation broadly in Australia. The critical next step for us in seeing that IGA and making that work.<sup>27</sup>

2.29 Likewise Mr Anderson from the VFF said:

Mr Anderson—It gets down to the intergovernmental agreement. The detail will now be in the intergovernmental agreement. We have not had the opportunity to view that to make sure that irrigators' rights not just in Victoria but across the whole of the basin are protected under that agreement. That agreement now becomes a very important document. I understand that all of the states must sign up to that agreement to share in the funding, and certainly with respect to the off-farm investment. We will await it with interest just to make sure that irrigators' rights are protected.

Senator IAN MACDONALD—What you are both saying is that you are hopeful that the IGA, which none of us has seen, will make up for the absence of the referral of the powers?

Mr Anderson—In the original draft of the bill a whole host of areas were not acceptable from the irrigation community's point of view and certainly Victoria's. In terms of dictating seasonal allocations at the local/state level, we always had a view that the only powers that needed to be referred were really the control of the cap and adherence to the cap by the states. Those powers needed to be transferred but it really became a basin operation. From a Victorian perspective it is no different from the NFF or the other states. We have always given in-principle support to the basin plan approach.<sup>28</sup>

### ***Compulsory acquisition of water entitlements***

2.30 The second reading speech emphasised the government's position that there would not be compulsory acquisition of water entitlements:

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26 *Proof Committee Hansard*, 10 August 2007, p. 25.

27 *Proof Committee Hansard*, 10 August 2007, p. 7.

28 *Proof Committee Hansard*, 10 August 2007, p. 12.

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Let me reiterate the Commonwealth's commitment—clearly stated in the bill—that we will not compulsorily acquire water entitlements. Entitlements will only be purchased from willing sellers.<sup>29</sup>

This is reflected in Clause 255 of the bill and was re-iterated in the hearing.<sup>30</sup>

2.31 Murrumbidgee Private Irrigators welcomed the fact that compulsory acquisitions would not take place, reasoning that 'compulsory acquisitions will force the price of water up and provide a climate of uncertainty for investment decisions in regional communities'.<sup>31</sup> The National Farmers' Federation (NFF) and Industry Water Group representative stated:

I would like to point out that the NFF is totally opposed to compulsory acquisition. We stand behind the position of this program and certainly the acquisition proportion of it. The \$3 billion acquisition of licence is for willing sellers. As to compulsory acquisition, many of our farmers have fully developed their farms. As to the notion that they wake up tomorrow to hear that they have lost 30 per cent of their entitlements and then forced back into an immature market along with the other five or six government entities that are trialling it at the moment, there is no support from the NFF for compulsory acquisition.<sup>32</sup>

2.32 At the same time, the NFF pointed out that there is an established mechanism under the NWI for addressing necessary reductions in water entitlements. It supported that mechanism, pointing out that 'prior to [the NWI] process and prior to the adjustment of state bills, the ministers could just with the stroke of a pen remove irrigators' rights totally'.<sup>33</sup>

2.33 Others, while generally seeing compulsory acquisition as a last resort, did not think it should be ruled out. The Australian Floodplain Association, representing dryland farmers and graziers, supported buyback in particular circumstances:

- Buy back of licences should only be for improving stressed rivers and providing environmental flows.
- The AFA supports buy-back including compulsory buy back if necessary.
- There should be a key strategy for buy back.<sup>34</sup>

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29 Second Reading Speech, p. 7.

30 Dr James Horne, DEW, *Proof Committee Hansard*, 10 August 2007, p. 65.

31 Murrumbidgee Private Irrigators, *Submission 11*, p. 3.

32 Mr Laurie Arthur, NFF, *Proof Committee Hansard*, 10 August 2007, p. 18.

33 Mr Laurie Arthur, NFF, *Proof Committee Hansard*, 10 August 2007, p. 4.

34 Australian Floodplain Association, *Submission 5*, p. 4.

2.34 Professor Michael Young of the Wentworth Group was of the view that the bill should explicitly allow compulsory acquisition on just terms.<sup>35</sup> Mr Sydes of the EDO suggested that compulsory acquisition should be a last resort:

However, I think to exclude it and to basically tie one hand behind the back in negotiations about voluntary acquisition is an unwise move and it should be there on the table.<sup>36</sup>

2.35 Professor Young pointed out that to some extent the mechanism under clause 77, which allows compensation for reductions in entitlements made under the Basin Plan, was in effect a form of compulsory acquisition in any case.

Under compulsory acquisition arrangements there is special legislation that deals with compulsory acquisition that are different, and that sorts out a whole pile of income taxation arrangements. In the second reading speech, even with section 77, where we are talking about payment for essentially a legislated reduction, which is the same as a compulsory acquisition, the payment is only for actually the reduction in the value.<sup>37</sup>

2.36 The committee notes that ruling out compulsory acquisition is not ruling out acquisition from willing sellers. This is part of the function of the Commonwealth Environmental Water Holder (CEWH), established under the new bill. The functions of this body are performed 'for the purpose of protecting or restoring the environmental assets' of the Murray-Darling Basin and other Commonwealth water holdings.<sup>38</sup> Part of the \$3 billion allocated to address over-allocation and overuse of the Basin will be used to buy out 'unviable or inefficient irrigators'.<sup>39</sup>

### ***Queensland's water planning regime***

2.37 The Queensland Farmers Federation (QFF) noted the Commonwealth minister's statements indicating there would be recognition of existing water resource plans, and recommended a range of amendments to ensure that the bill reflected this commitment, taking particular account of differences between the way water planning is conducted in Queensland and how it is arranged in other states.

2.38 The QFF proposed a number of amendments. These related mainly to the definition of entitlements under the risk assignment provisions of the bill (clauses 74, and 77-83).<sup>40</sup> The QFF also proposed an amendment to the bill to implement suitable

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35 Statement by Professor Young, tabled 10 August 2007, p. 3; *Proof Committee Hansard*, 10 August 2007, p. 17.

36 *Proof Committee Hansard*, 10 August 2007, p. 55.

37 *Proof Committee Hansard*, 10 August 2007, p. 17.

38 Water Bill, Clause 105(3).

39 Second Reading Speech.

40 QFF, *Submission 3*, pp 4–6. See QFF proposed amendments 1–2 and 6.

transitional arrangements prior to the start of the risk assignment provisions in the NWI:

The risk assignment provisions in the National Water Initiative kick in in 2015. One of the concerns we have with this legislation, and on which we have suggested an amendment, is that there is a gap between the date on which our plans in Queensland finalise—in around September 2014—and when the Commonwealth assumes full responsibility and the risk assignment provisions of the NWI click in, which is 1 January 2015. We are trying to get that closed. It is a technical issue that state and federal governments can resolve and we would like to have it resolved.<sup>41</sup>

2.39 Dr Horne of the Department of Environment and Water Resources (DEW) responded to several of these concerns in the following terms:

There is an issue of recognising the different types of water rights in Queensland. Part 2 division 4 of the bill is modelled on the provisions of the National Water Initiative. The National Water Initiative uses the term 'water access entitlements' and it provides a very clear definition of what that means. This definition has been adopted in clause 4 of the bill. Under the National Water Initiative states agreed to transition their different types of water rights into water access entitlements by 2006. Thus, for the risk-sharing provisions to cover those people whose water rights are not NWI consistent, all that is required is for states to meet their NWI commitments by the end of existing plans. In Queensland's case, it is September 2014. They indicated that for NWI purposes they were to do it by 2006 but if they get it done by September 2014 there will not be anybody disadvantaged. Clause 77(8) of the bill recognises that the conversion of earlier water rights into bill access entitlements should be occurring.<sup>42</sup>

### ***Recognition of Indigenous interests in the bill***

2.40 The Murray Lower Darling Rivers Indigenous Nations (MLDRIN) expressed concern about the lack of recognition of Indigenous interests in the bill. They indicated that recognition would be consistent with the Memorandum of Understanding between them and the MDBC signed in March 2006.<sup>43</sup>

2.41 The Commonwealth indicated that Indigenous interests are recognised in the bill. In Clause 21(4), it is mandatory for the MDBA and the Minister to take account of 'social, cultural, Indigenous and other public benefit issues' in preparing the Basin Plan. Furthermore, Clause 22 requires the Plan to include a description of the uses of Basin water 'including by Indigenous people'.<sup>44</sup>

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41 Mr John Cherry, QFF, *Proof Committee Hansard*, 10 August 2007, p. 5.

42 *Proof Committee Hansard*, 10 August 2007, p. 64.

43 MLDRIN, *Submission 2*, p. 1.

44 Mr Russell James, DEW, *Proof Committee Hansard*, 10 August 2007, p. 73.

### *Environmental flows and other environmental matters*

2.42 The South Australian government and Professor Mike Young suggested amendments to Clauses 20 and/or 22, relating to flow matters. The South Australian government considered that Clause 22 should be amended to require the Basin Plan to include 'an end of River Murray health and maintenance flow target'.<sup>45</sup> Clause 20 lists the goals of the Basin Plan. Professor Young suggested that this list be expanded to include 'a requirement to consider the downstream consequences and ensure the water flows through the entire system'.<sup>46</sup>

2.43 Dr Horne of DEW stated that the bill provides for the setting of flow targets by the Murray-Darling Basin Authority:

The bill does provide for flow targets to be set as part of developing the environmental watering plan, but this is a job really for the proposed independent Murray-Darling Basin Authority...We are of the view that, if it is independent, it does not make too much sense deciding all the important things beforehand and telling the independent authority what it ought to do, and we should leave some of those things to that independent authority to work through with the new information when it becomes available to settle on.<sup>47</sup>

2.44 The Australian Network of Environmental Defenders Office (ANEDO) raised six issues with the bill, summarised below:

- The need for greater independence from the minister for the new Murray Darling Basin Authority (MDBA). ANEDO argued that an independent, expert based Authority was 'essential to the development, implementation and enforcement of the bill' and that the possibility of ministerial intervention might lead to expectations by interest groups that 'powers of ministerial intervention will be utilised, leading to a politicisation of the basin planning process'.<sup>48</sup>
- A lack of coordination between the Basin Plan and investment under the National Plan for Water Security. ANEDO pointed out that priorities for investment in irrigation infrastructure versus entitlement buybacks had been stated as important elements to be included in the Basin Plan in a letter written by the Minister for Environment and Water to the Australian Conservation Foundation (ACF) on 12 June 2007. ANEDO was concerned that recognition

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45 SA government, *Submission 9*, p. 2.

46 Statement from Professor Michael Young, tabled 10 August 2007.

47 *Proof Committee Hansard*, 10 August 2007, p. 65. See also *Proof Committee Hansard*, 10 August 2007, p. 23.

48 ANEDO, *Submission 8*, p. 4.

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of the need for such investment to be informed by the Basin Plan was not evidenced in the bill.<sup>49</sup>

- Improved integration with the operation of the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act). ANEDO argued that the bill might be improved if it was amended to ensure that basin planning gave effect to international agreements relevant to basin water resources, and that it was also consistent with 'plans and strategies developed for implementing those commitments under the EPBC Act'.<sup>50</sup>
- Implementation of commitments under the Climate Change Convention. While ANEDO recognised that the United Nations Framework Convention on Climate Change was included in the list of international agreements implemented by the bill, it pointed out that the bill gave no mention on how the Basin Plan could actually give effect to this convention.<sup>51</sup>
- Removal of restrictions on the Commonwealth Environmental Water Holder. ANEDO pointed out that state laws such as the *Victorian Water Act 1989* placed limits on the ability of 'non water users' to hold water access entitlements, and that these laws potentially inhibited the Commonwealth Environmental Water Holder (CEWH) from both holding *and* utilising water entitlements. Clause 110 of the bill provides that state laws will not prevent the CEWH from using water on land that it does not own 'in relation to watering of Ramsar wetlands or water dependent ecosystems that support listed threatened species, communities or migratory species'. However, ANEDO argued that clause 110 needed to be amended, not only to prevent state laws from inhibiting CEWH use of water access rights, but also ensuring there are no such impediments to the CEWH owning or holding such rights.<sup>52</sup>
- Improvement of enforcement provisions. ANEDO raised concerns that under Part 8 of the bill, the ensuing Act would only allow injunctions to be brought about by the 'appropriate enforcement agency for contraventions', namely the Authority, the ACCC or the Minister. ANEDO argued this that this should be broadened to 'provide avenues for interested parties to bring proceedings for breaches of the Act, regulation or rules'.<sup>53</sup>

2.45 In relation to ANEDO's concerns about the need for a more independent authority, the Department explained that there would be more transparency under the bill, and the new arrangements for both the Murray Darling Basin Authority and the

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49 ANEDO, *Submission 8*, p. 6.

50 ANEDO, *Submission 8*, p. 7.

51 ANEDO, *Submission 8*, p. 8.

52 ANEDO, *Submission 8*, p. 9.

53 ANEDO, *Submission 8*, p. 10.

Bureau of Meteorology filled two critical, important gaps. DEW argued that together they would:

...provide us with a much more transparent framework where governments, businesses and groups that have concern for the environment will be able to go to a shared source of information that we do not have today to see how things are emerging and unfolding. We can get this very important basin back on to a sustainable footing.<sup>54</sup>

2.46 Further, in relation to ANEDO's concerns regarding the lack of recognition in the bill of investment in irrigation infrastructure, DEW did point out that while the \$10 billion funding program under the National Plan for Water Security was not specifically addressed in the bill, the funding was an integral component of the overall package and included support for modernising irrigation throughout Australia, along with addressing over-allocation in the Murray-Darling Basin, reforming water governance in the Murray-Darling Basin and new investments in water information.<sup>55</sup>

2.47 The lack of provision in the bill to give effect to the United Nations Framework Convention on Climate Change was also discussed by the Department at the hearings. DEW explained that the Commonwealth's bill was:

...based in part on the external affairs power, which is a power that enables the Commonwealth to make laws that implement and give effect to international obligations. The particular relevant international obligations are set out in clause 4 of the bill, which provide for a definition of 'relevant international agreement'.... The senator is correct in saying there is a range of other conventions that also provide for relevant obligations. One of them is the climate change convention, which the senator referred to. I have not brought that convention with me, but there are obligations under that convention to provide for planning in relation to water in order to address climate change issues.... there are certainly provisions in the climate change convention under which states—and Australia is one of them—have undertaken to provide for planning of resources, including water resources, to deal with those issues.<sup>56</sup>

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54 Dr James Horne, DEW, *Proof Committee Hansard*, 10 August 2007, p. 64.

55 Dr James Horne, DEW, *Proof Committee Hansard*, 10 August 2007, p. 61.

56 Dr James Horne, DEW, *Proof Committee Hansard*, 10 August 2007, p. 70.

## **Conclusion**

2.48 The committee recognises both the broad support for the bill, the preference of most stakeholders for the original referral of powers model and the concerns raised by parties about various aspects of the bills. It also recognises that the IGA will be critical to the form and success of this water policy initiative. It thanks all parties for the efforts to which they went to examine the bill in the short time available. The committee commends all submissions and suggestions it received to the Commonwealth for careful examination.

## **Recommendation 1**

2.49 **The committee recommends that the bill be passed.**

**Senator Alan Eggleston**  
**Chair**



## **Additional comments by Labor Senators**

Labor has consistently supported greater national leadership in water policy and water reform. In fact, national water reform began with the historic COAG Agreement in 1992 led by the Keating Labor Government and the *Murray Darling Basin Act 1992*.

Labor believes the water reform process must be led by the national Government and be ongoing so we properly fix the over-allocation of water licences in the Murray Darling Basin, ensure harmony between the environment and consumptive use, and help address the impact of drought and climate change on water supply.

Climate change will have a significant impact on water supply generally and the health of the Murray Darling Basin in particular, and we note that the CSIRO will provide an important report in late 2007 on the hydrology of the Basin and what the sustainable extraction levels are for the Basin.

The Commonwealth's *Water Bill 2007* is a step towards fixing some of the Murray Darling Basin's long-term problems. It gives the Commonwealth greater control over water planning for the Basin and should help deliver greater water security.

Nevertheless, it is regrettable that, despite clear warning signals about the health of the river system, it has taken 15 more years to see the next stage of Commonwealth action to address the problems of the Murray Darling Basin.

It is critical that all levels of Government work together in the national interest, and Labor deplores the Government's failure to consult in good faith with State Governments and other stakeholders over the final version of the water bill which had changed significantly, and the related Intergovernmental Agreement.

We are concerned that because of the haste of its development in an election year, the *Water Bill 2007* represents a second best solution on national water reform.

A yet-to-be-released and, we are advised, legally unenforceable Intergovernmental Agreement (IGA) will guide federal and state relations, direct investment and ensure water plans function properly. Nevertheless, its development is critical to the effectiveness of the Basin Plan and future water management in the Basin.

Labor Senators are very concerned that the Prime Minister refused to provide the proposed IGA to the Committee, State Governments or any stakeholders in the Basin.

Further, we are concerned that, as a result of unilateral changes foreshadowed by the Howard Government regarding the operation of the IGA, the effectiveness of the Basin Plan and future water management in the Basin may be unnecessarily affected.

In any case we believe that water security and planning must improve, while at the same time steps are taken to help water users adapt to less water and climate change.

Most witnesses canvassed the possibility that the long-term average sustainable water diversion limit or cap for the water resource plan will have to be reduced. In the event that that occurs there will be compulsory water entitlement reductions under Clause 77. Labor Senators question how this will be different to compulsory acquisition. Under clause 77 of the Bill, when that cap is reduced it appears that the water entitlement holder may receive compensation for that reduction. Clause 77 sets out the way in which the liability for that compensation will be distributed.

We note that clause 255 of the legislation does not authorise the compulsory acquisition of water entitlements. On the other hand Clause 77 sets up a mechanism for paying out irrigators for a legislated reduction in their water entitlement. Labor Senators believe that that is a distinction without a real difference and that clause 77 may in effect be a mechanism for the compulsory acquisition of water entitlements.

While the Bill is a step forward, there is confusion and doubt over several key issues:

- Why do we have both a Murray Darling Basin Authority, and a Murray Darling Basin Commission?
- How will compulsory water entitlement reductions under section 77 work, and how are they different to compulsory acquisition?
- When will the Government circulate the all important Inter-Governmental Agreement?
- What will the risk sharing arrangements be with States, and why should the States carry more risk than was agreed to with the Prime Minister in early July?
- And why aren't the water needs for towns and cities in the Basin and the other down-stream consequences of water planning dealt with in the Bill?

To date the Government has not adequately addressed these issues of concern.

Labor Senators believe that the following approach is needed for ongoing national water reform:

- a) A cooperative and constructive approach with State Governments to assist water reform and investment in urban and rural water infrastructure;
- b) Full implementation of the National Water Initiative principles agreed to in 2004;

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- c) Fixing of the over-allocation of water licences once and for all, and establishing coherent, streamlined rules which ensure the problem of over-allocation never recurs;
  - d) Recognition that economic instruments including water trading are necessary to address the fact that water has been over-allocated, undervalued and misdirected;
  - e) Proper consultation with key stakeholders in the Murray Darling Basin, including all water users, farmers, water scientists, environment groups and the broader community to ensure the adoption and consistent use of efficient agricultural practices;
  - f) Returning sufficient water to the rivers in the Murray Darling Basin to ensure the long term health of all rivers, wetlands and all connected groundwater systems in the Basin and, as a result, ensure the health of the communities and businesses that rely on the health of those rivers; and
  - g) Measures to ensure industrial and urban water users adapt to maximise water efficiency.

**Senator Ruth Webber**  
**ALP, Western Australia**

**Senator Dana Wortley**  
**ALP, South Australia**

**Senator Kerry O'Brien**  
**ALP, Tasmania**



## Additional comments

### Senator Andrew Bartlett, Queensland Democrat

Effective legislation to ensure the restoration and protection of the Murray Darling Basin is crucial and long overdue. Unfortunately, the Senate is faced with a choice. Should it proceed with second-best legislation in the hope that it will provide the pathway to best practice in the near future, or defer passage of the legislation until a best practice model can be agreed on? This would delay reform, but could avoid the risk of locking in an inferior model that is less likely to produce the effective water management that is required.

On balance, it is probably best to proceed with the current legislation, despite the haphazard arrangements that will then apply, and maintain the public and political pressure to continue to improve and strengthen it into the future.

However, whilst these institutional arrangements can probably not be avoided in the short-term, the legislation could still be significantly strengthened from its current form.

It is unfortunate that the Senate Committee was only effectively given one day to examine the legislation. There is no good reason why the Committee could not have had a month to examine the legislation and consult more fully with affected stakeholders and experts, and reported back to the Senate in time to pass it in the first sitting week in September. The inadequate time frame has reduced the opportunity to strengthen the effectiveness of the current legislation.

Whilst maintaining the economic and social viability of communities and enterprises that depend on the water in the Murray Darling Basin is important, in the long-term this will not be able to be achieved unless the environmental health of the Basin is also maintained. Many of the recommendations put forward in evidence and submissions by the environment organisations and the Wentworth Group of Concerned Scientists are worthy of further consideration.

In particular, I support the recommendation from the Environmental Defender's Offices (EDO) that the legislation be amended to "contain public standing provisions equivalent to those in the *Environment Protection & Biodiversity Conservation Act 1999* (EPBC Act) so that the Authority and the Minister can be held accountable in exercising their public interest functions under the legislation."<sup>1</sup>

The EPBC Act provides a strong framework for enforcement of environmental values, which would accord with the international environmental conventions which this

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<sup>1</sup> *Submission 8*, Australian Network of Environmental Defender's Offices – paragraph 31

legislation draws upon, in part, for its constitutional authority. Consideration should also be given to the other suggestions by the EDOs to improve the integration of this legislation with the strong powers under the EPBC Act.

**Senator Andrew Bartlett**  
**Deputy Chair**

# **Minority Report from the Australian Greens**

## **Senator Rachel Siewert**

### **Introduction**

The issue of the management of Australia's shared water resources is one of utmost importance - one that is made all the more crucial by the problems presented by over-allocation and over-use, and of overlapping jurisdictions and complex and varied systems of water allocations and rights in the face of significant reductions to available water in a drying climate.

Water governance within the Murray Darling Basin has always been a difficult and complex issue with the river system involving four states and one territory all of whom have overlapping and competing interests together with different priorities and institutional arrangements. While there has been recognition of the problems facing the Murray Darling system for decades, governance arrangements under the Murray Darling Basin Ministerial Council have been characterised by inertia and a lowest-common-denominator approach to resolving conflict.

The agreement of the National Water Initiative in 2004 represented a major conceptual step in characterising both the nature of the problem and the kinds of steps that needed to be taken. This conceptual leap was not however matched by the necessary progress in reforming water management, and Basin governance continued to be dominated by parochial interests and held back by state veto powers.

The announcement of the National Plan for Water Security by the Prime Minister in January 2007 represented both a recognition of the seriousness of the issue (with the commitment of \$10 Billion and the opportunities for reform that entailed) and another disappointing example of the continuing politicisation of the issue (coming without consultation and with strings attached in the lead up to a Federal election).

Given the importance of these issues taken together with the significant amount of funds at stake it is particularly disappointing that so little time was afforded for proper consultation over these bills, that the committee inquiry was so short and that the committee's report is perfunctory and does not address the serious issues at stake in the debate to protect and secure our nation's shared water resources.

### **Positive Aspects of the Bill**

While these comments necessarily focus on a number of concerns with and shortcomings of the Water Bill 2007, the Australian Greens wish to acknowledge that there are a number of positive aspects of both the Bill and the NPWS which offer

some progress on addressing the problems of Basin governance and sustainable water use.

These include:

- commitment to determine sustainable extraction levels,
- commitment to a shared planning framework and a whole of basin perspective
- realising the promises of the NWI,
- creating greater water security for all stakeholders,
- an opportunity to overcome the inertia and infighting that has characterised Basin governance,
- meeting international commitments (using treaties power),

Some concerns still remain on a number of aspects of these issues - including the manner in which sustainable extraction levels are determined ... and whether the provisions of the Bill are effectively enacting our commitments to international conventions (rather than simply using them as a justification for applying the commonwealth's external affairs powers). Nevertheless, a wide range of stakeholders from farmers organisations to environmental advocates have welcomed the opportunity offered by the National Plan for Water Security to move forward on industry reform and sustainable water use.

### **Weaknesses in the Bill**

The Australian Greens are concerned that the Water Bill 2007 in its current form has a number of key weaknesses. These weaknesses need to be addressed either through legislative amendment or in some cases could be handled through careful and consultative management. Nevertheless, given the manner in which this legislation has been rushed through the Senate together with the way in which several key water management issues have been politicised, we remain concerned that these issues could undermine and derail the reform process as envisaged by the NWI.

These risks include:

- The long lead time before the Basin Plan effectively comes into operation brought about by the decision to recognise existing state-based catchment plans for the lifetime of those plans (mostly until 2014 and 2019 in the case of Victoria)
- Lack of clear environmental targets and timelines. Taken together with the delays in effectively instituting the Basin cap there is a real risk that the return of environmental flows could be too late to prevent irretrievable damage to some ecosystems.
- The creation of another large bureaucracy and the complexity of having multiple agencies and institutions with overlapping jurisdictions [MDBA + MDBC + 2 Ministerial councils + NWC ...]
- The lack of independence of the new Murray Darling Basin Authority and the provisions to allow Ministerial direction in setting the sustainable diversion limit and in developing the environmental watering plan.
- The risk that institutional arrangements within the Bills might effectively 'freeze' reforms and possibly delay them for many years

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- The extent to which many of the reforms are now dependent on the content of the Intergovernmental Agreement [IGA], with the possibility the agreement reaching process could drag out and blow timelines.
  - The lack of community consultation and engagement in the legislative process and in the IGA
  - The lack of consultation with Indigenous stakeholders
  - The manner in which the debate has become politicised, particularly in relation to compulsory acquisition provisions and the risk that investment decisions could be strongly influenced by political considerations

### **Will the response be quick enough?**

The Australian Greens are particularly concerned by the timeframe of the proposed interventions. On the one hand the government is arguing that the pressing urgency of this issue is the reason that these Bills need to be pushed through the legislative process with insufficient time for scrutiny. However, on the other hand the decision to recognise and protect existing (state level) catchment plans effectively means that little change may be seen in the Basin until after 2014. For many of our threatened ecosystems and for rural communities in which farmers are struggling with uncertain seasonal water allocations this delay could mean action is too late to preserve our precious environmental assets and to protect irrigation industries.

In theory the Prime Minister has already committed to spend \$6 Billion on improving irrigation infrastructure and \$3 Billion to address over-allocation and buy back environmental water. In practice, however, this investment was made contingent on State parties referring their powers. With the failure of Victoria to agree to refer its powers, most of it is now contingent on all state parties signing up to the IGA, which could see considerable delays in undertaking needed water reform and returning environmental flows.

**The Australian Greens support the calls for the Commonwealth government to immediately begin buying water from willing sellers to increase the amount of environmental water available and to increase the certainty of existing water entitlements by reducing the extent of over-allocation.**

It is important to appreciate that we are discussing two distinct but inter-related issues here. Simply buying back water allocations to address the problem of over-allocation within a region (that is, where more water has been allocated than is actually likely to be available within a given system) does not necessarily return any water back to the system - it simply increases the certainty of existing entitlements by reducing the extent to which available water will not be sufficient to meet the remaining entitlements. The purchase and return of water to environmental flows needs to be addressed urgently, as the combined impacts of extended drought and over-allocation is severely threatening the resilience<sup>1</sup> of many of our iconic ecosystems, and there is a

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1 Professor Peter Cullen, *Proof Committee Hansard*, 10 August 2007, p. 47 – discussed in more detail below.

real risk that we may soon pass thresholds beyond which these systems cannot bounce back.

As Professor Mike Young said in evidence to the inquiry:

The dams are now empty. The concern I have is, if we have only a 25 per cent chance of having it better and a 75 per cent chance of having it worse, how are we going to speedily resolve this issue. That requires the investment to be made very quickly and it requires a very dynamic market. Because of that I have suggested that, if we want to keep entitlement reliability, there might be sense and wisdom in retaining a mechanism where you can acquire water on just terms in a quick process, so we can start that adjustment that is going to be needed.<sup>2</sup>

The government needs to be cautious about the manner in which it enters the market, and there are a suite of market-based instruments that could be judiciously applied without resulting in rising prices, market distortions or stranded assets (these issues will be discussed in detail below).

**The Australian Greens are particularly concerned that there is nothing within the legislation which guarantees speedy action in implementing the Basin Cap and the environmental watering plan.**

As the Wentworth Group of Concerned Scientists stated:

We are concerned that if existing plans are protected then little change will be seen within the Basin until after 2014, by which time many of the environmental assets and the rural wealth of irrigation could be destroyed. This task is urgent.<sup>3</sup>

We note that in evidence to the inquiry the Victorian Government indicated that its recently revised plans, which it expects the Commonwealth to honour, will run through to 2019, and that the VFF want the 4% cap on trading water out of a district retained until at least 2014. As Professor Cullen noted:

My concern is that earlier in the bill there are transitional arrangements to get back to the sustainable levels of extraction within a five year period. I am concerned that some of these do not kick in until 2014. There is a timing issue that is a bit of a worry. The system is perhaps changing more quickly than this timetable envisages.<sup>4</sup>

**The Australian Greens are also concerned that there is nothing within Bill to ensure that the first plan is completed within 2 years of establishment of the Murray Darling Basin Authority (MDBA).**

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2 Professor Michael Young, *Proof Committee Hansard*, 10 August 2007, p. 8.

3 Wentworth Group, Tabled document, 10 August 2007, p. 4.

4 Professor Peter Cullen, *Proof Committee Hansard*, 10 August 2007, p. 54.

In relation to the issue of the timing of the first MDBA plan, we note the comments made by DEW:

**Dr Horne**— The third issue was the proposition that the first basin plan should be completed within two years. This is the government's intention and the minister said as much in his second reading speech. The second reading speech can be given additional authority through the minister making a written direction to the authority. This is our preferred approach because, if this was a real deadline, there is a legal risk that, if the first plan happened to be approved even a day later than the two years, it could be open to challenge on that basis. If the requirement were drafted so as to avoid invalidity of the plan, this would be a weaker proposition and therefore does not seem to be of much benefit to include it in the bill. Nonetheless, I would say it is something that we think is an important issue. The minister has said it is an important issue in the second reading speech and he is quite prepared to make a direction to the authority that this be given high priority and completed within two years.<sup>5</sup>

We appreciate the concerns raised by Dr Horne relating to a potential legal challenge to the plan if a legislative deadline was set, but we believe that this issue is sufficiently pressing that we would like a firm commitment from the government that the first plan will be delivered on time.

**Recommendation: that the government addresses the issue of the timeline of the Basin Plan in the committee stage of the Bill and gives an undertaking that the Minister will issue a directive to the Murray Darling Basin Authority that it finalise its first Basin Plan within two years of its establishment.**

### **Consultation & Indigenous rights**

The Australian Greens are concerned about the lack of recognition of indigenous rights and interests in the Bill.

We share indigenous concerns that the *Water Bill 2007* should include an explicit recognition of Traditional Owner inherent rights to land and water and provide a consistent legislative approach for Indigenous engagement and participation in natural resource management.

We also believe that the legislation should include provisions of water for cultural purposes, which is an allocation for traditional owners to decide where and when water is used, based on their own cultural-economic aspirations and spiritual beliefs.

### **Environmental water**

#### ***Sustainable diversion limit***

While the Objects of the Act are very clear in relation to its responsibility to "...return to environmentally sustainable levels of extraction..." "...to protect, restore and

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5 Dr Horne, DEW, *Proof Committee Hansard*, 10 August 2007, p. 63.

provide the ecological values and ecosystem services..." and "to take into account the broader management of natural resources..." the Bill does not of itself guarantee any environmental outcomes.

The Australian Greens are concerned by the lack of environmental goals and timelines within the Bill and with its failure to require end of basin and end of valley targets. While we acknowledge that the detail of the specifics of these targets and how they will be achieved is a matter for the MDBA (in consultation with Basin catchment management organisations, natural resource managers and other key stakeholders) the very failure to stipulate that there should be such environmental targets and indication of the principles upon which such targets and plans should be reached is a major shortcoming.

We do acknowledge that the Basin Plan include long term sustainable diversion limits and temporary diversion limits (clause 22(1), item 4) and maximum long-term annual average quantities of water that can be taken, at the level of the Basin and at the level of each water resource plan area (item 6), and also appreciate that there must also be water quality and salinity targets set (clause 25).

Amy Hankinson noted:

...we see the great value in having a robust sustainable diversion limit where the bill is amended to include a number of provisos to ensure that the diversion limit is sustainable. For instance, protecting the environment in critical low or medium flow years, taking into account climate change impacts and use of low and medium figures to get us away from misleading long term averages.<sup>6</sup>

**The Australian Greens believe that the Bill needs to directly address the need for a robust ecologically sustainable diversion limit for the Basin, its catchments and sub-catchments by specifying that such a limit (or limits) is essential and by outlining robust criteria to guide the development of those limits.**

To this end we support the submission of the Inland Rivers Network and the Australian Conservation Foundation in stating that:

The Bill should be amended to require the Authority to ensure the sustainable diversion limit:

- reflects an ecologically sustainable share of the total resource and is not based on volumetric limits;
- flexibly responds to wet periods and dry periods;
- protects the environment in critical low and medium flow years;
- takes into account climate change impacts to protect critical minimum environmental flows;
- uses median figures, which reflect the reality of flows in the system more effectively than long term averages; and

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6 Amy Hankinson, *Proof Committee Hansard*, 10 August 2007, p. 48.

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- takes into account the double accounting of surface water and groundwater.<sup>7</sup>

**To this end we will be moving and amendment to require the setting of a robust ecologically sustainable diversion limit.**

### *End-of-system flow regime*

The Australian Greens are concerned that the Bill does not stipulate that an end-of-system flow regime should be determined by the MDBA. The South Australian Government comment on this issue during the committee inquiry, indicating in evidence that:

**Senator WORTLEY**—You have raised concerns that the bill fails to provide a guarantee on environmental returns to the River Murray. I am wondering how you think this can be addressed and how significant it is in relation to the Water Bill 2007?

**Mr Freeman**—As I outlined, it could be addressed through an amendment to the mandatory content of the basin plan. The basin plan at the moment does not require an end-of-river system target. In talking previously about how we might divide up the off-farm infrastructure, one of our concerns is that this does become splitting up a pie amongst jurisdictions, when really it should be about basin-wide solutions; whether money is spent in one jurisdiction or another is irrelevant. We need to restore health to the river system and the way that we will measure that is a target at the mouth.<sup>8</sup>

These concerns were echoed by environmental groups, with WWF also saying:

I noticed earlier that the South Australian government was calling for a guaranteed end-of-system flow, and certainly that is something that the WWF would support. We ask that such an end-of-system flow would be sufficient to maintain the integrity of the Coorong Ramsar site. I came across some interesting science from the South Australian government in their ecological character description from the Coorong. I think that would be a useful document for the committee to consider because, apart from determining the ecological character of the Coorong site, it also sets out a framework for aligning management responses to benchmarks for condition, and it may be useful for thinking more closely on how exactly we draw the line on sustainable limits. I would like to submit that document for the committee's reference.<sup>9</sup>

While the Australian Greens note that the Department of Environment and Water Resources (DEW) suggested during the inquiry that this is an issue best left up to the MDBA as part of the environmental watering plan, we disagree that this is either necessary or sufficient. While we believe that the specific details of the end-of-system flow levels and the plan by which those levels would be achieved is indeed a matter for the MDBA, we believe that the legislation is deficient to the extent that it does not

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7 IRN and ACF, *Submission 10*, p. 2.

8 *Proof Committee Hansard*, 10 August 2007, p. 45.

9 Ms Bones, *Proof Committee Hansard*, 10 August 2007, p. 51.

stipulate that such a target should be set nor give criteria for determining what counts as a robust end-of-system flow regime.

To this end the Greens will be moving an amendment to require the setting of an end of system flow regime.

### *Use of long-term averages*

The Australian Greens are concerned with the reference to the use in the Bill of long-term averages for determining sustainable diversion limits in Part 2 Division 1B (23), Part 2 Division 4A (75) as defined in Subsection 22(1) item 6 (p41).

We believe that the decision to use long term averages to determine sustainable diversion limits reflects a southern basin-centric bias in the approach to sustainable water management that does not adequately take into account the high level of variability in the event-driven and often ephemeral systems of the northern basin. To this end we would prefer the use of long-term median values or some other statistical regime that gave greater account for system variability and offered more opportunity for the adaptive management of the sustainable use of the systems of the northern basin.

Similar concerns were raised by the Wentworth Group, ACF, IRN, WWF and QFF.

### **The Australian Greens will be seeking to amend the Bill to alter the references to long-term averages.**

The issue of the high degree of variability within parts of the system is also matched by an emerging issue of increased basin-wide variability and uncertainty of rainfall events, surface water runoff and overland flows in the face of climate change. The reduction in flows and increased systemic variability was characterised by Professor Cullen in evidence to the inquiry:

**Prof. Cullen**—... I fear that the inflows into the Murray-Darling have dropped by about 40 per cent over what has been the reasonably long-term average. When you look at the climatic record, the period 1950 to 1990 has been an unusually wet period and we are now back somewhat drier than the period 1900 to 1950. A lot of our understandings of the Murray-Darling, the agriculture and the environment it can support have been made during a reasonably unusual wet period. I believe we need to adjust to this water scarcity and learn to live without a number of wet years. It is probably more serious in that we have now run all the storages to empty and it is quite possible that some of those storages will not refill without a run of quite unusually wet years. They will not fill in average years. We are not dealing with a stable system. We are dealing with one that has quite a lot less water and which might be continuing to decline.

When we look at the Perth story, the weather patterns have slipped down to the south and in Perth it seems to be getting drier again. There has been a series of step changes. I hope that is not what we are seeing on the east coast, but I fear it might well be. We deal with two weather patterns in the Murray-Darling Basin. We have the westerlies that impact Perth, Adelaide

and Melbourne. They appear to have slipped south and we appear to be getting much less rain because of it. In the northern part of the basin we are dealing with the cyclonic systems, and we have seen one that has just hit the coast, which produced a lot of water into Sydney. It brought the Sydney storages back from 30 per cent to 50 per cent. We just do not know how frequent those events, with the climate change predictions, are going to be. Traditionally in Sydney they have been about every eight or so years. If they go out, then we have more troubles in the north. The cyclonic activity that hit the coast did not hit the northern part of the Murray-Darling Basin so we did not get a pulse of water going through that. We do appear to be dealing with a different climate.<sup>10</sup>

It is important to note that increasing climactic variability can mean an increased likelihood of extreme events - both droughts and floods.

Professor Cullen's evidence, along with recent report from the CSIRO entitled *Climate change and Australia's water resources: first risk assessment and gap analysis*<sup>11</sup> raise the serious question of how do we protect the environment in critical flow years? We believe that there are two critical issues that need to be considered, firstly how we manage to protect and enhance the resilience of our riverine, floodplain, wetland and estuarine ecosystems (which indicates a need for better science and more work on adaptive management), and secondly whether the proposed governance systems and water sharing arrangements are flexible enough to deal with the requirements for ecosystem survival in low flow and critical flow years - particularly with the prospect of a 40% reduction in available surface water as indicated by Professor Cullen:

We have to accelerate the implementation of the National Water Initiative, because that still gives us the best possible framework for dealing with uncertainty and declining water. It has been agreed by the Prime Minister and the Premiers. We have to get on and do it perhaps a bit quicker than we have been planning to do it. Secondly, we need to improve the governance of the Murray-Darling Basin. I know that is one of the issues concerning the government. A lowest common denominator governance model might get you by during wet periods, but it is certainly not going to get us through the water scarcity that we are now facing.<sup>12</sup>

**To this end the Australian Greens recommend**

- 1. that the Government commit to funding the best possible science with an aim to understanding how to maintain & enhance the resilience of our river systems and associated ecosystems to deal with climate shift and increased climactic variability.**

10 *Proof Committee Hansard*, 10 August 2007, p. 46.

11 *Climate change and Australia's water resources: first risk assessment and gap analysis*. 2007 Roger Jones *et. al.* Jointly commissioned by the Australian Greenhouse Office and the National Water Commission.

12 *Proof Committee Hansard*, 10 August 2007, p. 46.

2. **that water sharing arrangements be reviewed on the basis of the best possible science to ensure arrangements are compatible with the requirements for managing resilience for key environmental assets within the Basin**

**The Australian Greens will be moving amendments to require information gathering on ecosystem health and resilience by the MDBA and to add consideration of these issues to the Objects of the Act.**

### ***River health monitoring***

In evidence to the committee Professor Cullen suggested that there was a pressing need to ensure regular systematic collection of data on indicators of river health.

Prof. Cullen - As to the mission in the document, there are a lot of good requirements for water information, and I strongly support all of that. But there is no requirement for regular information on the health of the rivers, and yet we are doing all of this to restore river health. I believe the bill would be better if we could include in it a commitment to accelerate and to report regularly on the sustainable rivers audit that the Murray-Darling Basin Commission has been doing. We need to get a routine, regular, systematic measure of river health so we can see whether we are getting on with the task.<sup>13</sup>

The Australian Greens are concerned that as it stands the CSIRO study into sustainable extraction levels is effectively focused primarily on hydrology - only providing half the data needed to set the cap. Determination of the level of sustainable extraction (cap) is based on knowledge of total available water (i.e. the hydrology) plus a determination of what is required for ecosystem health. We remain concerned that there seems to be an assumption the cap will be a 'magic' fixed figure, whereas we believe it likely that the requirements of adaptive management to maintain and enhance resilience will mean this figure is likely to vary.

## **Allocation issues**

### ***Seasonal Allocations***

We have tended to manage our water allocation systems and to attempt to secure environmental flows through a system which is focused on maintaining flows and delivering minimum ecosystem requirements, which in effect seeks to average out the variability in the system. In practice this has meant fighting to secure environmental flows during critical flow periods and allowing other users to access their full entitlements during high flow events.

However, given the emerging knowledge on the resilience of drought-adapted ecosystems, it now seems likely that there may be an environmental requirement that after a big drought it may be necessary to get a high flow 'flushing' event onto the floodplains and through the wetlands to ensure recovery and restore resilience.

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13 *Proof Committee Hansard*, 10 August 2007, p. 47.

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**Prof. Cullen**—Australian aquatic ecosystems and terrestrial ecosystems are adapted to drought. Therefore, they have the capacity to bounce back from a drought. We term that ecological resilience as the ability to recover. What seems to me important as we go into this uncertainty is to try to understand what are the critical factors that allow those systems to recover and make sure we do not inadvertently lose them. The obvious example is that fish hang on in waterholes. Even when the river has ceased to flow you have still got waterholes and fish can hang on in there and then recolonise. We obviously see this in the Lake Eyre Basin where some of the waterholes hold fish that have measured at 18 years old. They hang on and they can breed. There are a whole lot of other, what we call, refuges by which animals and organisms hang on and then recolonise. That is the first point, understanding what those refuges are and making sure we protect them so the system can bounce back.

The second thing is trying to understand these thresholds. How frequently do we need to get water on the floodplain for the trees, into the wetlands for the wetlands, for the waterbirds and for fish? I am trying to get some of the science now marshalled to let us know what existing knowledge tells us about those various thresholds. We then start to rethink some of the thinking. In the past it has been the view that in a wet period you could harvest as much water as you wanted for irrigation and in a dry period we would fight over it between irrigators and the environment. When you start thinking this way and you look at, say, the red gum story, it may well be that after a run of dry years and you do get some water, what is important is that the high flow gets out onto the floodplain for the environment. Rethinking a bit about when it is reasonable to harvest floodplains and when we should not be doing that seems to me to be part of living with that drying environmental side of it. I think that is where some of the science is taking us, the idea of maintaining the resilience, understanding its thresholds and then letting that feed into the management of our water so that the environment gets its share when it really needs it.<sup>14</sup>

It is worth noting that under these circumstances much of this water is not 'consumed' or 'wasted' by the ecosystems in question, but rather becomes available to other users downstream, including irrigators, urban users and other ecosystems.

This raises a number of important issues pertaining to the relationship between seasonal allocations (as set by states) and the overall basin cap on extraction levels (as set by the MDBA).

It is unclear within the Bill who will make periodic announcements to irrigators of seasonal entitlements? The assumption might be that the announcement of seasonal allocations continues to be the responsibility of state agencies, but as the Bill is silent on this issue we believe that there is a need for greater certainty and **recommend that the Minister should address this issue during the committee phase of the Bill.**

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14 *Proof Committee Hansard*, 10 August 2007, p. 49.

As alluded to previously in relation to both the issue of ecosystem resilience and of end-of-system flows, the requirements of ecosystem health relate to a flow regime within the environmental watering plan which reflects emerging environmental requirements, rather than to the setting of a simple flow target.

As Professor Cullen puts it:

**Prof. Cullen**—This is one of the really tricky bits. From what I have read of the bill, there is an implication that we just need to set a long-term sustainable level of extraction. I am just a bit worried that implies there is a magic figure such that, if we can operate within that, we will be okay. I think the rainfall has certainly declined and it may still be declining as it has in Perth. The sustainable level of extraction may not be a fixed figure, it might be a variable figure, and we are going to have to learn to manage within that. There is still the critical question: once we have a sustainable level of extraction, someone has to make periodic announcements to the irrigation community as to how much the seasonal allocations are. At the moment that is not referred to in the bill. That will be a state responsibility. I see a difficult connect between the limits on diversion, the sustainable level of extraction, which might be varying somewhat, and then the second set of decisions within that for the periodic announcements of seasonal allocations. That is the crunch. If we got those seasonal allocations right we would not have had a problem now. In my view, traditionally we have not got them right, and I am still worried about the disconnect particularly between the multiple players. We have the new Murray-Darling Authority. We have the Murray-Darling Basin Commission and we have each of the state agencies. My understanding is that each of the state agencies will be doing those seasonal allocations. Making sure that is realistically within the sustainable levels is going to be the tricky part, and it is not clear from the bill how that is going to be done.<sup>15</sup>

## **MDBA Independence and responsibilities**

### ***Independence of the MDBA***

The Australian Greens are particularly concerned by the issues relating to the independence of the MDBA and the proposed powers of Ministerial oversight and direction. We are concerned that, as the Bill stands, the Minister can direct the MDBA in setting both (1) the sustainable extraction level (2) the environmental water plan.

### **The Greens will be putting forward amendments to address these issues**

We also remain concerned that there are no requirements for open consultation with key stakeholders on these key issues - including States, Indigenous interests, farmers, urban users and environmental groups.

The Greens are also concerned that there is no requirement consult with states before amending the Water Act, given that this has potential knock-on effects to both the content of the likely Intergovernmental Agreement and future enabling Acts at the state level.

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15 *Proof Committee Hansard*, 10 August 2007, p. 49.

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The Greens also believe that the Commonwealth environmental water holder needs to be free from inappropriate limits

### ***Ministerial Powers***

The extent of the powers of the Minister to intervene with respect to the contents of the Basin Plan, the exercise of the MDBA's functions, and to create exemptions to the Basin Plan by regulation, compromise the MDBA's independence and authority. The Greens will be moving amendments to limit these powers of the Minister to ensure the independence of the MDBA and to limit the politicisation of the Basin planning process. .

### ***Responsibilities of the MDBA for the environment***

The Australian Greens support the comments of the Wentworth group in relation to the need to ensure that the MDBA is explicitly given responsibility for ensuring that the environmental objectives contained within the Objects of the Act:

**Prof. Young**—... One thing the Wentworth Group has been very supportive of in the bill at the moment is the objects of the act. There is a very important issue there: the objects of the act require this to be considered very carefully and that the science be done properly.

I recommend that the committee consider changing the responsibilities and functions of the authority to include a responsibility to pursue the objectives of the act. We are going through a very difficult stage, and one of the things that I do think is important is that the authority when it is set up is given a broad mandate to really address these issues and is told squarely that it has a function to pursue the objectives of the act.<sup>16</sup>

The Australian Greens will be seeking to amend the Bill to ensure that MDBA is given responsibility for meeting the Objects of the Act (Division 1, Section 3)

The Australian Greens also note the suggestion by the Wentworth Group that Part 5 of the Bill should be amended to direct the MDBA to progressively establish a central secure Basin register of water entitlements **and will be seeking to amend Section 103 of the Bill to give effect to this recommendation:**

The commonwealth should build a top class water registry system for surface and groundwater systems, with appropriate guarantees. All commonwealth water should be on such a registry, and irrigators should have the opportunity to migrate to this registry if they wish to have greater certainty as to titles.<sup>17</sup>

### ***International Commitments***

The Australian Greens welcome the recognition within the Bill of Australia's commitments to a number of international conventions - including the Ramsar convention on wetlands of international importance, the convention on biological diversity, and the migratory bird conventions.

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16 *Proof Committee Hansard*, 10 August 2007, p. 9.

17 Wentworth Group of Concerned Scientists, Tabled statement, 10 August 2007, p. 4.

We are concerned however, that the legislation should not merely be consistent with these international obligations, but should be truly seeking to give effect to them. In seeking to use Australia's commitments to these international conventions as a way of invoking the Commonwealth's external affairs powers it is incumbent on the Commonwealth to ensure that it is fully implementing its commitments under these conventions.

In particular, the Australian Greens believe that the Basin Plan and Water Resource Plans need not only be consistent with and give effect to relevant international agreements, but also to plans and strategies developed for implementing those commitments under the EPBC Act. We also believe that Water Resource Plans should be required to implement relevant Ramsar management or recovery and threat abatement plans.

**The Greens will be moving an amendment to ensure that the Basin Plan and Water Resource Plans give effect to relevant plans and strategies developed for implementing our commitments under the EPBC Act.**

### ***Climate Change Convention***

The Greens also believe that the Bill should specifically implement important and relevant elements of the Climate Change Convention and will be moving amendments to put this into effect.

### ***Public Standing Provisions***

The Greens believe that to ensure that the Authority and Minister can be held accountable in exercising their public interest functions under the legislation, the Water Bill should be amended to provide for public standing provisions equivalent to those in the *Environment Protection and Biodiversity Conservation Act 1999*. The EPBC Act provides for "interested persons" to be able to assist in the enforcement of the Bill by applying for injunctions if a person has engaged, is engaging or is proposing to engage in conduct that would constitute a contravention of the Act. Further, the EPBC Act provides for "interested persons" to be able to apply for a review of administrative decision under the Act. The extended standing provisions in the EPBC Act have not led to a deluge of frivolous cases. These are important provisions that should be included in the Water Bill to ensure the credibility and legitimacy of the federal water regime.

### **Market Mechanisms**

The Australian Greens believe that it is best to have a package of various mechanisms and market based instruments for purchasing environmental water available, and to seek to use the most cost efficient mechanisms first. The open tender model used by River Bank in NSW is a good example of a way in which a government can effectively enter into the market to purchase environmental water without distorting existing markets. The system is based on an open tender model in which farmers are

asked to specify how much water they might consider selling at what cost, and then the least-cost options are purchased to meet a given water target.

Professor Mike Young pointed out some of the potential dangers of governments entering into water markets, particularly in relation to the mismatch between the size of existing markets and the amount of money the government has indicated it has available for purchasing environmental water and addressing over-allocation:

Prof. Young—At the moment the size of the market that the farmers have built as they adjust in the southern system has risen to about 100 gegalitres of water entitlements per year in the southern connected River Murray system. That is what farmers need to do, the structural adjustment that they are doing. When the government enters in and comes on top of that, if you doubled the size of the market and kept the structural adjustment going you would get about 200 gegalitres a year. \$3 billion will buy, at current market prices, about 1,500 gegalitres of high-security water, and depending on how you mix it with other types of water it changes the algebra. We are talking about very different sums.<sup>18</sup>

The NFF also raised concerns with the manner in which the government might distort water markets and indicated the need for a cautious approach:

Mr Arthur—If the government were to almost seamlessly enter the market over an extended period I do not think there would be a market explosion. Obviously if the government were to enter into the market over a period of two years and say it is going to spend \$3 billion in the water market over two years, I would say you would get some sort of property explosion, which would be totally unhelpful to all of us. Under the rollout of water reform in Australia, farmers are very much looking to the water market for us to restructure our businesses in response to a lot of the threats that Mr Cosier and Professor Young have talked about. We need to make sure that the market is accessible to governments to acquire water for environmental flows but that it is also accessible to farmers to readjust their businesses in the light of commodity prices, climate change and all the risks that we face.<sup>19</sup>

### ***Compulsory acquisition***

The Australian Greens support the contention of the Wentworth Group that the option of compulsory acquisition needs to be kept on the table as an option of last resort.

Senator O'BRIEN—Professor Young, I asked a question about your views on acquiring water. I take it you are aware that section 255 of the act states that the act does not authorise compulsory acquisition of water access rights. I was seeking to draw your attention to that earlier, but I did not refer to that provision. I take it you are aware of that. How is that consistent with what you have said to us so far?

Prof. Young—If I had my way I would delete that section. I think that all options should be on the table. The Wentworth Group has consistently said that all options should be on the table. People do not like the words

18 *Proof Committee Hansard*, 10 August 2007, p. 18.

19 *Proof Committee Hansard*, 10 August 2007, p. 18.

‘compulsory acquisition’, but it does enable the government to pay well above marketplace and to play with just terms and it does require a government to give advance notice. The processes are very well established of giving people long notice of a change that is coming, giving them payment up front so they have time to invest, and it has a very important concept in there about paying justly and dealing with people equitably. Ruling out that surprises me. I understand the concern, but I would not put it in legislation.

Senator HEFFERNAN—In that so-called scenario that you have just described one of the catches for farmers is when they discover that money is taxable.

Prof. Young—Yes. Under compulsory acquisition arrangements there is special legislation that deals with compulsory acquisition that are different, and that sorts out a whole pile of income taxation arrangements. In the second reading speech, even with section 77, where we are talking about payment for essentially a legislated reduction, which is the same as a compulsory acquisition, the payment is only for actually the reduction in the value.<sup>20</sup>

These concerns were also debated by others during the inquiry

Mr Sydes—Compulsory acquisition should be a last resort. From a basic civil liberties perspective, there are very good reasons for that and there are very reasons for the constitutional protection that we have with respect to property rights. However, I think to exclude it and to basically tie one hand behind the back in negotiations about voluntary acquisition is an unwise move and it should be there on the table.

Dr Buchan—It would be a worst case scenario to envisage governments just turning up at someone’s farm gate and saying, ‘We are having your water. You are out.’ That is ridiculous and extremely unfair. Realistically, we need to go through an enormous process of change across the basin. If that process of change is done well with good consultation with communities and gives them the information that they need to envisage where they are likely to be in 10, 20 or 50 years time, compulsory acquisition can be a useful tool in the toolkit. There are advantages with that. You are exempt from capital gains tax and you can gain greater than market value for your water. Whilst I do not think anybody was thinking that it would be a tool of first choice and to be used heavy-handedly, which would be very unfair, it just seems ridiculous to tie the government’s hand and remove an important potential tool from the toolkit.

Prof. Cullen—I would like to support that. I think it is a mistake to rule it out. I do not imagine it would be used all that frequently, but you can see a situation where perhaps 80 per cent of the water had gone out of a particular area and the remaining 20 per cent would have to carry a huge burden if they were to carry the management costs of keeping that infrastructure operating. In that situation a compulsory acquisition might well have significant advantages, as I understand it, from the point of view of capital gains tax to those farmers. I think you need to look at the tax situation in terms of a straight purchase versus an acquisition. There might be situations

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where the farming community would prefer compulsory acquisitions. It would be silly to rule it out, but I would not imagine it would be used all that frequently.<sup>21</sup>

The Australian Greens believe that we need a mechanism to allow acquisition of water on 'just terms', and that ruling out compulsory acquisition as last resort may not be in farmer's interests when they are faced with a need to relocate or restructure. Compulsory acquisition offers the possibility of compensation on just terms (ie more than market value) and exemption from capital gains tax.

The Australian Greens will be moving to strike out Section 255 to enable compulsory acquisitions as an option of last resort.

**Senator Rachel Siewert**

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21 *Proof Committee Hansard*, 10 August 2007, p. 53.



# **Appendix 1**

## **Submissions & Tabled Documents**

### **Submissions**

1. Dr Deb Foskey, Member for Molonglo, ACT Assembly
2. Murray Lower Darling Rivers Indigenous Nations
3. Queensland Farmers' Federation
4. Water Services Association of Australia
5. Australian Floodplain Association
6. Department of Premier and Cabinet and Department of Energy and Water, New South Wales Government
7. Department of Natural Resources and Water, Queensland Government
8. Australian Network of Environmental Defender's Offices Inc (ANEDO)
9. Department of Water, Land and Biodiversity Conservation, Government of South Australia
10. Australian Conservation Foundation and Inland Rivers Network
11. Murrumbidgee Private Irrigators
12. NSW Irrigators' Council

### **Tabled Documents**

Suggested amendments to Water Bill 2007 prepared by Professor Mike Young and tabled by Professor Mike Young, Research Chair in Water Economics and Management, University of Adelaide, 10 August 2007.

Draft Agreement on Water in the Murray-Darling Basin, tabled by Mr Paul Elton, New South Wales Government, 10 August 2007.

Five letters between the Prime Minister and the Premier of New South Wales, tabled by Mr Paul Elton, New South Wales Government, 10 August 2007.

Further Queensland comments on draft Commonwealth Water Bill 3 August 2007 and a copy of two letters from the Premier of Queensland to the Prime Minister, tabled by Mrs Debbie Best, Queensland Government, 10 August 2007

Victorian Terms Sheet for Murray-Darling Basin Water Reform, tabled by the Victorian Government, 10 August 2007.

Introductory comments, tabled by Professor Peter Cullen, Member, Wentworth Group of Concerned Scientists, 10 August 2007.

# **Appendix 2**

## **Public Hearings**

*Friday, 10 August 2007 – Canberra*

### **National Farmers' Federation and Industry Water Group**

Mr Laurie Arthur, Chair National Farmers' Federation Water Taskforce and Chair, Industry Water Group

Mr Robert Poole, Deputy Chief Executive Officer, Australian Dairy Farmers

Mr John Cherry, Chief Executive Officer, Queensland Farmers Federation (by teleconference)

Mr Brett Tucker, Managing Director, Murrumbidgee Irrigation

Mr Richard Anderson, Water Chairman, Victorian Farmers Federation

### **Wentworth Group of Concerned Scientists**

Professor Mike Young, Member

Mr Peter Cosier, Member

### **Australian Floodplain Association (by teleconference)**

Mr Hamish Holcombe, President

Mr Terry Korn, Association Coordinator

### **Victorian State Government**

Mr Peter Harris, Secretary, Department of Sustainability & Environment

Mr Ron Ben-David, Deputy Secretary, Climate Change & Resources, Department of Premier & Cabinet

### **South Australian State Government**

Mr Rob Freeman, Chief Executive, Department of Water, Land & Biodiversity Conservation

Mr Scott Ashby, Deputy Chief Executive, Departmental Affairs, Department of Premier and Cabinet

**Queensland State Government**

Mrs Debbie Best, Deputy Director-General, Department of Natural Resources and Water

Mr Greg Claydon, Executive Director, Strategic Water Initiatives, Department of Natural Resources and Water

**New South Wales Government**

Mr Paul Elton, Acting Deputy Director-General, Economic Development and Natural Resources Policy, Department of Premier and Cabinet

Mr David Harriss, Deputy Director-General, Water Management Division, Department of Water and Energy

**ACT Government**

Mr David Butt, Director, Department of Territory and Municipal Services

Mr Stewart Chapman, Senior Manager, Water Policy, Department of Territory and Municipal Services

**Wentworth Group of Concerned Scientists**

Professor Peter Cullen, Member

Mr Peter Cosier, Member

**Australian Conservation Foundation (by teleconference)**

Dr Arlene Buchan, Healthy Rivers Campaigner

**Inland Rivers Network**

Ms Amy Hankinson, Coordinator

**WWF Australia (by teleconference)**

Ms Averil Bones, Freshwater Policy Manager

**Australian Network of Environmental Defender's Offices Inc**

Mr Brendan Sydes, Principal Solicitor

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**Department of the Environment and Water Resources & Bureau of Meteorology**

Dr James Horne, Deputy Secretary (Acting)

Mr Russell James, Assistant Secretary, Water Policy Branch, Water Resources Division

Dr Tony McLeod, Assistant Secretary, Murray Darling Basin Reform Branch, Water Assets and Natural Resources Division

Mr Robert Orr QC, Deputy General Counsel, Australian Government Solicitor

Ms Robyn Briese, Client Counsel to the Department of Environment and Water Resources, Australian Government Solicitor

Dr Louise Minty, Special Advisor (Water Information), Bureau of Meteorology

