



I N L A N D
R I V E R S
N E T W O R K

Submission to the
Senate Legal and Constitutional Committees
Inquiry into the Provisions of the *Water Act 2007*

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About Inland Rivers Network

The Inland Rivers Network (IRN)¹ is a coalition of environment groups and individuals concerned about the degradation of the rivers, wetlands and groundwaters of the Murray-Darling Basin. Member groups of IRN include: the Australian Conservation Foundation; the Nature Conservation Council of NSW; the National Parks Association of NSW; the Central West Environment Council; Friends of the Earth; The Wilderness Society, Sydney Branch and the Coast and Wetlands Society.

IRN has been advocating for the health of rivers, wetlands and groundwater within the Murray-Darling Basin since 1991. Accordingly, IRN welcomed bipartisan moves to improve water management, specifically the development of an overarching Basin wide approach to the management of interconnected water sources. The provisions of the *Water Act 2007*² ("the Act") follow similarly the aims and objectives of the broad community based group of IRN. As such IRN believes that the Act, as it stands holds an important place in the move towards an ecologically sustainable future for the Murray-Darling Basin and should not be amended.

Introduction

IRN appreciates the opportunity to provide a submission to the Inquiry into the Provisions of the *Water Act 2007*.

IRN is of the opinion that the objectives and requirements of the bipartisan Commonwealth *Water Act 2007* provide a strong framework for the development of a Basin Plan that is scientifically robust and environmentally sound. The long term sustainability of the Basin is essential for the health and resilience of the communities that depend on the river system and for the wider Australian economy. IRN believes that the Basin Plan exists as the best opportunity available to restore the health of the highly degraded inland river and wetland systems of the Murray-Darling Basin (the Basin).

Key points

IRN submits that:

- . The *Water Act 2007* gets the balance right and does not need to be amended;
- . The *Water Act 2007* importantly recognises the need to return extraction to long-term sustainable levels and this must remain its focus;
- . The *Water Act 2007* correctly prioritises the need to reduce water extraction and return water to the environment in order to support both the ecosystems and the communities that depend on them;

¹ For more information see website at www.irnsw.org.au

² *Water Act 2007* (Cwlth)

- The balance of water use in the Basin has been heavily weighted towards extraction for irrigation for too long, leading to highly stressed river systems. The *Water Act 2007* was introduced in order to address this imbalance and return water to the environment.
- The *Water Act 2007* correctly acknowledges the need to base decisions about sustainable water extraction levels on the best available science. Any call to base decisions on a different ‘balance’ of social, environmental and environmental considerations will rely on politics and not scientific understanding.
- Healthy communities depend upon healthy rivers, and the provisions of the *Water Act 2007* importantly build on such an understanding; and
- The only alternative to environmentally sustainable extraction levels is unsustainable extraction levels – a fundamental concept upon which the National Water Initiative, and thus the *Water Act 2007* is based.

Comprehensive development of the Water Act 2007

The context of the development of the *Water Act 2007* is also a relevant matter³ to discuss in order to better understand where the provisions in the Act were derived from.

The National Water Initiative and the Water Act 2007 importantly acknowledge that long term economic and social sustainability in the Basin depends on the health of river systems.

The process that led to the development of the *Water Act 2007* centred around the National Water Initiative (NWI) of 2004 at the COAG level, and the National Plan for Water Security (2007)⁴ at the policy level. The NWI, to which all Basin states and the Commonwealth are party to, has been the guiding instrument for water reform in Australia since it’s development.

The NWI is premised on the realisation that the sustainability of the productive base of the Basin for both environmental and human uses requires over-allocation and over-extraction to be assessed as a priority and a foundational issue. Following on from this, the *Water Act 2007* is also based on the recognition that long term social and economic values depend on environmental health.

As such IRN believes that the Act correctly prioritises the need to reduce water extraction and return water to the environment in order to support both the ecosystems and the communities that depend upon them.

It is very clear that the Act, through the development of sustainable diversion limits as part of the Basin Plan process, is consistent with the NWI objective to ‘complete the return of all currently over-allocated or overused systems to environmentally sustainable levels of

³ As per Terms of Reference at 1(f) ‘any other related matter’.

⁴ National Plan for Water Security (<http://www.nalwt.gov.au/kep.aspx>)

extraction’.⁵ This consistency with the NWI reinforces the appropriateness of the Water Act 2007 as it currently stands.

The Water Act 2007 importantly provides for a desperately needed national approach to the management of Basin water resources

Another matter of relevance⁶ for the Committee to consider is the important role that the Act has in providing for the Commonwealth to oversee matters of water resource management across the Basin, which has previously been managed on a state by state basis. New South Wales, has been undergoing various elements of water reform for over a decade. While this has been driven by the NWI, the NSW responses, including the development of Water Sharing Plans, have not gone far enough to arrest the decline in health of the States inland river systems. Such responses have also not adequately met what was agreed to in the NWI and other COAG agreements on water reform.

As NSW remains the largest source of extraction in the Murray-Darling Basin and contains the largest area of the Basin, the direction of water reform in the state is critical for the whole of the Basin. Through the *Water Act 2007* and the development of the Basin Plan, the Commonwealth has the power to inform the next iteration of NSW Water Sharing Plans. This influence is a critical step in returning the river systems in NSW, and those in the rest of the Basin, to health.

The long history of independent, state based management of the interconnected water resources of the Murray-Darling Basin has resulted in highly degraded rivers throughout the entire basin. The *Water Act 2007* importantly provides for the necessary Commonwealth power to manage a complex transboundary issue in a holistic way.⁷ Any amendment to the *Water Act 2007* away from it’s current form may compromise the ability for the Commonwealth to carry out such an important role and thus compromise the outcome of water reform in this country.

Response to Inquiry Terms of Reference:

(1)The provisions of the Water Act 2007 (the Act), with particular reference to the direction it provides for the development of a Basin Plan, including:

The Act provides for the development of a Basin Plan that is scientifically robust and environmentally sound, that takes into account socio-economic analysis

The Act requires the Murray Darling Basin Authority (MDBA) to develop a Basin Plan based on the best available science and socio-economic analysis to provide for the use and management

⁵ National Water Initiative, clause 23 (iv).

⁶ As per Terms of Reference at 1(f).

⁷ Water Act 2007 (Cwlth), at Section 3(a) “The objects of this Act are: (a) to enable the Commonwealth, in conjunction with the Basin States, to manage the Basin water resources in the national interest;”.

of the Basin water resources in a way that optimises economic, social and environmental outcomes (as well as a range of other considerations).⁸

The Act does not inhibit in any way opportunities for broad economic diversification across Basin communities. This is extremely important for the long term sustainability of the social and economic functions of regional Australia.

The rivers systems and wetlands of the Murray-Darling Basin are suffering after decades of over-allocation and over-extraction of water resources. Already the Basin has lost 90% of floodplain wetlands in the Basin, 80% of the waterbird populations that used to live there, 90% of native fish populations and 80% of our River Red Gum wetland forests.

The Murray-Darling Basin Plan is the best, and perhaps the last, opportunity we have to restore the health to the precious river and wetland systems of the Basin, which support us all. Setting up this Basin Plan process is one of the key components of the Act.

The *Water Act 2007* was written, and passed, with the purpose of ensuring that extraction of water resources is returned to environmentally sustainable levels in order to protect, restore and provide for the ecological values and ecosystem services of the Murray-Darling Basin including improved water quality for extractive and recreational uses.

The Environmental Water Quality and Salinity Management Plan is an integral part of the Basin Plan process as prescribed by the Act. Arresting the declining water quality problems in the Basin will have significant economic and social benefits.

(a) any ambiguities or constraints in the Act which would prevent a Basin Plan from being developed on an equally weighted consideration of economic, social and environmental factors;

The Act is based on a recognition that long term social and economic values depend on environmental health.

The Act provides for a return to a balanced consideration of economic, social and environmental factors. A continuation of unsustainable extraction levels will severely constrain the future of economic, social and environmental values in the Basin.

There are no ambiguities or constraints in the Act which prevents the Basin Plan from delivering positive outcomes for communities and natural assets.

(b) the differences in legal interpretations of the Act;

IRN does not support the notion that there has been a significant difference in the legal interpretations of the Act. Based on all material available to IRN on the matter, it is apparent that all credible legal interpretations of the Act have been consistent.

⁸ Water Act 2007 ss 20 and 21

(c) the constitutional power of the Commonwealth to legislate in the area of water;

As outlined in the earlier discussion around the NWI as context for the development of the Act emerged as the next step forward in terms of a national approach to water reform. The Act relies on a number of Constitutional heads of power as well as a referral from the Basin States.⁹ IRN notes that all Basin States, both Federal major political parties and a vast majority of stakeholders agreed that the Commonwealth should have a role in managing the water resources of the entire Murray-Darling Basin.

It is also worth noting that whilst the Act was in its Bill stage, a Senate inquiry was held in which there was found to be 'broad support' for the Bill amongst stakeholders. The only stakeholder, not supportive at the time was the state of Victoria, which has since referred its power to the Commonwealth in this area.

(d) the role of relevant international agreements and the effect of those on the parts of the Act which direct the Basin Plan to give effect to those agreements and their effect on the Act more generally;

Australia has already committed under international law to protect water dependent ecosystems, migratory waterbird species and their habitat and Australia's unique biodiversity.

The relevance of the international agreements within the Act is giving effect to these commitments. This assists in maintaining Australia's international standing, by honouring existing international commitments under law as a responsible manager of natural assets.

(e) any amendments that would be required to ensure that economic, social and environmental factors are given equally weighted consideration in developing the Basin Plan; and

It is a false assumption that there is a conflict between environmental, social and economic outcomes. By returning the river health of the Basin and improving water quality, economic and social factors will benefit along with environmental factors.

The Act does not require amendment. The Act as it currently stands allows a Basin Plan to give due consideration to socio-economic and environmental factors.

⁹ The Constitutional heads of power are trade and commerce; postal, telegraphic and telephonic; astronomical and meteorological observations; census and statistics; weights and measures; corporations power; external affairs; incidental powers; and governing of territories.

(f) any other related matter.

See pages 3 to 4 above.

(2) That in conducting its inquiry, the committee should consult those with particular legal expertise in the area of water.

We trust that lawyers with expertise in environmental water management are included in this consultation.

To conclude

IRN would be happy to provide further information or comment upon request.