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Answers to Questions on Notice.

With regard to the interpretation of our obligations under these international treaties, how much flexibility do you think there is for the government in how they interpret and apply those treaties?

International treaties are a result of negotiations between states. There are competing interests at play. Developing nations have very different considerations to developed nations. The compromise that results means the terms of the treaties are usually fairly flexible. [i]

For example, the RAMSAR Convention itself is drafted in quite vague terms. This was because the participating nation states would not accept a convention that infringed their sovereign rights to deal with their own natural resources. [ii] Even the concept of "wise use" is a flexible one and arguably is not one that requires complete preservation of the wetland. The concept talks in terms of "sustainable utilisation" which is defined as:

> 'human use of a wetland so that it may yield the greatest continuous benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations".

The official UN website dedicated to RAMSAR includes amongst its publications several legal articles, including one by MJ Bowman, "The Ramsar Convention Comes of Age". The author points out that

> "... it was far from clear that it would have been desirable to establish a uniform system of strict preservation of wetland sites, so as to guarantee their complete freedom from human attention, since modern conservation policy tends to reassert the practical, utilitarian value of the earth's natural resources and to emphasize the need for their rational and sustainable utilisation, rather than to advocate what has been described as a 'hands-off' approach.

Resolution VIII.34 (Agriculture, wetlands and water resource management[iii]) of the Ramsar Contracting Parties contains as its opening paragraph recognition of the fundamental importance of agricultural to society and calls upon Contracting Parties not to scale back agriculture or to eliminate it from wetland areas but to encourage agricultural practices and policies that are compatible with wetland conservation and sustainable use goals. Arguably, compliance with RAMSAR can be as much achieved through investment and research into better agricultural systems as it is can through environmental legislation. As stated in item 12 of the Resolution:

> "..in conformity with the Ramsar 'wise use' concept...concerted efforts are required to achieve a mutually beneficial balance between agriculture and the conservation and sustainable use of wetlands.."

In terms of section 22, the content of the basin plan of the Water Act, item 6 makes reference to the maximum long-term average quantities of water that can be taken on a sustainable basis from a) the basin water resource has a whole and b) particular parts of the water resources of each water resource plan area. How do you see this working in the context of not just the entire basin but for each water resource plan where one area has done more by way of early adoption of water efficiency measures than another area, for instance? How do you deal with the equity aspects of that compared to another area that has the benefit to a much larger extent of the $5.8billion Water Efficiency Plan?

This is a particularly difficult issue for policy makers. There is no doubt that some water resource areas have already invested heavily in water efficiency measures using their own financial resources. Furthermore, individual irrigators within water resource areas have themselves invested substantial sums in water efficiency measures. The approach taken to date in water resource planning has generally been an across the board cut to meet diversion limits or targets. The question of how to deal with the farmer or group of farmers who are already using their water for the highest value use, using the most efficient technology available is difficult.

Policy makers in this area also need to be cognisant of the reasons why individual irrigators or water resource areas have not implemented water efficiency measures or diversified into higher value crops. There are areas in the Basin where the last 10 years have been so badly affected by drought or trading conditions that those irrigators simply have not had the capital available to them. They have had to borrow to their limits simply to survive and do not have excess borrowing capacity. Furthermore, not all areas are suitable for certain types of technology or crops.

In New South Wales when the Water Management Act was implemented, some water sharing plans did make allowances for individual water use patterns. Those farmers who had been actually using their full entitlements were provided with a longer period over which their entitlements were reduced. The WSP recognised that those farmers who were using their full entitlements had generally made significant investment in irrigation and were worthy of special consideration. Certainly the Water Act would seem to allow similar considerations be given.

Arguably, what planning under the Act can do is, after it sets an SDL for a water resource area, take into account the socio-economic impact on different water users ie, those who have already invested in water efficiency measures and those who have not and make appropriate allowances.

What the planning under Act cannot do, is look at a particular water resource area and in setting the SDL take into account the fact that all or the majority of the irrigators in that area are as efficient as technology will allow.

Ultimately the investments to be made by Government under any water efficiency measures or purchases of water are a matter of policy for Government and generally stand outside the Act. It is desirable that in making its decisions the Government takes into account as wide as possible socio-economic considerations. It would also be desirable that the Government takes such considerations into account when making water purchasing decisions.

Clarification of evidence – first question by Senator Crossin as to the background of the rural issues committee

The committee is comprised of private practitioners who volunteer their time to the committee. Members are selected by the Law Society of New South Wales. The committee reviews legislation and changes to law in so far as they affect practitioners practising in rural and regional areas and their clients. The committee does not provide legal advice nor does it intervene in matters. The committee does have a role in lobbying for legislative change and a role in commenting on proposed legislation. This is the first time the Committee has been invited to comment on the Water Act itself. The Committee has played an active role in the implementation and introduction of the Water Management Act in New South Wales and has been invited to participate in the introduction of a national water register. Individual members of the Committee have provided advice to individual clients in their roles as private practitioners.

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[i] Bruch, Carl, "Is International Environmental Law Really "Law"?:An analysis of application in domestic courts", Pace Environmental Law Review [vol 23, 2006], p 424

[ii] *International Conference on the Conservation of Wetlands and Waterfowl,* Final Act and Summary Record (Ramsar), 1971 pp 5- 6.

[iii] 8th Meeting of the Conference of the Contracting Parties to the Convention on Wetlands, Valencia, Spain, 18-26 November 2002