



Submission to Senate Legal and Constitutional Affairs Committee

Provisions of the Water Act 2007

Submission by High Security Irrigators – Murrumbidgee

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Introduction:

High Security Irrigators – Murrumbidgee (HSI-M) represents more than 1,000 irrigation farmers and food producers throughout the Murrumbidgee Valley. Our members include many commodity groups that include citrus, prune, wine grape growers and food and fibre groups.

This document represents the views of the members of High Security Irrigators - Murrumbidgee. However, each member reserves the right to independent policy on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

General Comments:

High Security Irrigators – Murrumbidgee, are the peak body for High Security Entitlement Holders within the Murrumbidgee Valley, we have accepted change many times as this it is part of farming and in particular horticultural enterprises. The acceptance of change is a part of any farming enterprise.

High Security Irrigators – Murrumbidgee, we have voting rights with both the New South Wales Irrigation Council and the National Irrigators Council, we broadly endorse the submissions made by both organisations to this Senate Inquiry.

In the submission of High Security Irrigators – Murrumbidgee, we will affirm our position, that the Water Act 2007, gives primacy to the environment, that leaves the social-economic impacts on farmers and the communities they live disseminated, and that the Water Act 2007 gives little regard to the National Water Initiative (NWI) for which it is to be aligned too.

A negotiated outcome between both the States and Federal government is the best way forward, to abandon this process and therefore the underlying principle of the triple bottom line affect for social, economic and environment, will disemate the rural communities within the Murray Darling Basin.

The Water Act 2007, gives power to the Federal Government under external powers of international treaties and conventions, to construct and deliver legislation that has in effect disenfranchises the states of the Commonwealth and their ability to for which was given to the states under the Australia Constitution, powers of water and the delivery.

Terms of Reference

- (a) Any ambiguities and 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 National productivity Commission's report into the interpretation of the Water Act 2007 stated the following remark; ***"it requires the Murray-Darling Basin Authority to determine environmental water needs based on scientific information, but precludes the consideration of economic and social costs in deciding the extent to which these needs should be met".(1)***

The Water Act 2007 has the primary objective in the protection of the environment and environmental sites under the "Ramsar Treaties". If the objective of the Act is to protect these "Ramsar" sites throughout the Murray Darling Basin, and these site are referred to as environmental sites which by the very natural of the guise of which the Act is written, will have an environmental slant.

While High Security Irrigators – Murrumbidgee has no capacity to interpret or seek legal advice on this matter, we have formed an opinion that the clear direction of the Water Act is to look after the environment first, second and third.

John Briscoe, states in his submission to the Standing Committee on Legal and Constitutional Affairs of the Senate, that the High –Level Review Panel for which he was member stated ***"The driving value of the Act is that a triple-bottom-line approach (environment, economic, social) is replaced by one in which environment becomes the overriding objective, with social and economic spheres required to 'do the best they can' with whatever is left once environments needs are addresses" (2)***

The National Water Initiative (NWI) – 2004 which has been the overarching basis of all water reform within the Murray Darling Basin over the last seven years is not aligned within the Water Act 2007. This is clearly asked for within the Act. The Water Act broadly mentions the alignment between itself and the NWI. Fact, there is little regard to the NWI within the Water Act 2007, as the NWI states very clearly within its objectives, viz; ***"triple – bottom line" of economic, social and environmental factors must be weighted equally". (3)***

- (b) The differences in legal interpretation of the Act;

We have no capacity, nor should anyone theorise to have capacity to interpret the legal opinions that have been expressed by the Australian General Solicitor. Because they do not exist in the public domain, we may have a theory or we may assume to what this interpretation is, but we as the Australian public are ignorant of the exact interpretation delivered to both the MDBA and to the Minister.

The differences in legal interpretation of the Water Act are obscure and difficult to evaluate, as all parties, such as the Murray Darling Basin Authority under the stewardship of the former Chairman Mike Taylor. The former Chairman, felt so strongly that the advice provide to the Authority was to protect the environmental assets within the Basin, which he resigned.

The Minister Tony Burke has advised the Australian public that he is able to deliver a triple bottom line to the Water Act. But as a side point all Ministers within the Government of the day have the discretion to change or ask for change within legislation before the parliament.

“The Minister may adopt the Basin Plan without modifications or direct the Authority to modify the amendments.”(4).

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

The major challenge for the government of the day was how to wrestle water from the states, as under the Australian Constitution, power over water supply and delivery rests with the states.

The primary author of the Water Act 2007, the Honourable Malcolm Turnbull stated that;

“In the 1890’s our founding fathers missed a big opportunity when they drafted our Constitution in not putting the management of interstate waters under federal jurisdiction. In 2007 we rectified that mistake with the Water Act” (5).

It is very clear from the former Minister of the day, the Honourable Malcolm Turnbull’s desire to remove powers that were vested into the states of the Commonwealth under the Constitution were to be receded. Not by Constitutional change where by the people of Australia would have to vote and agree with the position of the Government, but by using Australia’s willingness to be a signatory to international conventions and treaties.

This is government policy by deception, and relies on external factors and international treaties to delivery powers to the Federal Government, for which they have no justification and are bound in the Australian Constitution.

(d) The role of relevant international agreements and the effects 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;

The Water Act 2007 is only relevant to international agreements for which the government of the day has signed, primarily the Water Act relies on the Ramsar Convention and Treaties to establish its control of wetlands, water courses etc.

Any other international convention to which Australia is a party (6)

To give primacy of Australian legislation to foreign treaties and conventions is a substantial change in government direction and misguided. The fabric of Australian society would be aghast at the thought that Australia’s policy direction been driven by international treaties.

- (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;**

High Security Irrigators – Murrumbidgee’s recommendation to this inquiry insert the following statement as the overarching objective of the Water Act.

“The overarching objective of the Water Act 2007 is to deliver social, economic and environmental benefits to all parties within the Murray Darling Basin. Notwithstanding that compromises are to be made, all parties are to be treated equally and fairly.”

- (f) **Any other related matters;**

The primary objective of the Act is to protect environmental assets. If you start with the premise to protect the environment with little or no regard for other external factors, that’s where you will end up. Protecting the environment.

If the primary objective of the legislation was to deliver a triple bottom line, therefore to protect the environment, and the social and economic regions within the Murray Darling Basin, that’s where the Act would have ended.

High Security Irrigators - Murrumbidgee conclusion is stark. The Act has an initial starting point with the environment; therefore the conclusion will also be the environment. The principles within the Act relate to environment factors and not social or economic factors. There are two million people living within the within the Murray Darling Basin, without water, economic contraction will occur. Economic contraction will have other social impacts, not only on the communities, but also the local governments that support these communities with services. Local governments will have constraints on their services that they provide, they will be unable to rise rates due to falling land prices. The follow on effects are enormous and devastating to farmers, local communities, the business sector and the future of rural Australia.

References:

1. Productivity Commission 2010, Market Mechanisms for Recovering Water in the Murray Darling Basin
2. John Briscoe Submission to the Standing Committee on Legal and Constitutional Affairs of the Senate
3. Ibid, paragraph 23
4. Section 4, Water Act 2007
5. <http://www.malcomturnbull.com.au/blogs/the-water-act-and-the-basin-plan/>
6. Section 4, Water Act 2007

END OF SUBMISSION