

**SUBMISSION TO THE SENATE ENVIRONMENT,  
COMMUNICATIONS AND THE ARTS REFERENCE  
COMMITTEE - INQUIRY INTO WATER LICENCES  
AND RIGHTS  
OCTOBER 2009**

Queensland Farmers' Federation (QFF) is the peak body representing and uniting 16 of Queensland's rural industry organisations who work on behalf of primary producers across the state. QFF's mission is to secure a sustainable future for Queensland primary producers within a favourable social, economic and political environment by representing the common interests of its member organisations'. QFF's core business centres on resource security; water resources; environment and natural resources; industry development; economics; quarantine and trade.

Our goal is to secure a sustainable and profitable future for our members, as a core growth sector of the economy. Our members include:

- Australian Prawn Farmers' Association,
- CANEGROWERS,
- Cotton Australia,
- Growcom,
- Nursery and Garden Industry Queensland,
- Queensland Chicken Growers Association,
- Queensland Dairyfarmer's Organisation,
- Queensland Chicken Meat Council,
- Flower Association of Queensland Inc.,
- Pork Queensland Inc.,
- Biological Farmers of Australia
- Fitzroy Food and Fibre Association,
- Pioneer Valley Water Co-operative Limited,
- Central Downs Irrigators Limited, and
- Burdekin River Irrigators Association

### **QFF Submission to the Senate Environment, Communications and the Arts Reference Committee - Inquiry into Water Licences and Rights**

QFF submits that the National Water Initiative Agreement (NWI) and the Commonwealth Water Act and State water legislation which implement the NWI, provide adequate frameworks for the Commonwealth to sustainably manage water resources in the national interest across state borders. These frameworks recognise that water users have rights to take water that were conferred by licences under past water legislation. These frameworks also recognise the need to sustainably manage water resources in accordance with a statutory catchment management planning process to provide for a sustainable level of extraction of water and the sharing of that water among water users. Statutory water resource plans have effect in all Qld Murray-Darling catchments and these plans continue to have effect under the provisions of the Commonwealth Water Act 2007 until September 2014.

#### **Response to specific issues raised in the terms of reference**

##### ***a. The issuing and sustainability of water licences under any government draft resource plans and water resource plans.***

Water resource planning is conducted in Qld in accordance with the requirements of the Water Act 2000 which provides the legislative framework for sustainable management of water. The legislation provides for a two stage planning process to define the availability and security of water and the conversion of existing water entitlements to water allocations that have a separate title to land and can be bought and sold. The water

resource plans (WRP) (first stage) define catchment water resources and determine how these resources will be shared to protect the environment and support consumptive needs. These plans are enacted as subordinate legislation and operate for ten years when they must be reviewed. Resource operations plans (ROP) (second stage) give operational effect to WRPs and define how the provisions of the WRP are to be implemented. For example ROPs include conversion of identified existing water entitlements to tradeable allocations, granting of new allocations, rules for operating water infrastructure and managing water, trading rules, water sharing rules and monitoring and reporting.

The water resource plans in the Qld Murray Darling Basin as in other parts of the state define environmental flow objectives and water allocation security objectives for water users. To achieve these objectives, the plans impose flow based rules which stipulate environmental flow releases from storages for supplemented water (regulated systems) and restrictions on the take of water in different flow conditions (high and low flows) for unsupplemented water (unregulated systems). Monitoring is conducted to determine whether objectives are being met over the ten year term of the plan. This flow based approach is well suited to ephemeral nature of stream flows in the Qld MDB. 75% of water consumed in these catchments is extracted from natural flows. The Basin Plan will have to take into account this flow based approach in setting an environmentally sustainable level of take.

Once the ROP takes effect, water entitlements that are to be converted are expired and allocations are granted to the holders of these expired entitlements and are recorded on the water allocations register. A majority of entitlements are converted however some entitlements may remain attached to land and continue because further time is required to define tradeable water allocations.

In all Qld MDB water resource plans, except the Condamine Balonne WRP, all existing licences which had been created under previous water legislation were treated equally whether works had been installed to activate the take of water under the licence or not. Transitional arrangements were provided for in the Border Rivers WRP to take account of the impact that activation of sleeper dozer licences would have on active licences but still achieve plan objectives for environmental flows and consumptive take. However, the Condamine Balonne WRP plan provided for small reductions on conversions of non-sleeper allocations to provide for the conversion and activation of sleeper licences and to meet the requirements of the plan for no growth in the take of water.

The Water Act 2000 provided for the State to regulate the taking of overland flow in areas where this take could put the achievement of plan outcomes at risk. Overland flow take could not be regulated under previous water legislation. The process for regulation of overland flow in Qld MDB catchments and in other parts of the state has initially involved the Department authorising the take of overland flow using existing works subject to landowners providing details of these works to the Department. In the Lower Balonne it is proposed to take the next step to licence and measure the take of overland flow under the proposed ROP. The decision to undertake this conversion has already been made in the Condamine and Balonne WRP. This WRP is compliant with the National Water Initiative and is considered to be a transitional plan under the Commonwealth

*Water Act 2007*. This licensing and management of overland flow take is the most advanced system to be introduced in Australia.

To summarise, the water resource plans completed in all Qld MDB catchments define environmental flow and water allocation security objectives to be achieved to balance the needs of the environment and security for water users. The ROPs to implement conditions of the WRPs have been completed in all except the Lower Balonne. These ROPs provide for three types of entitlements other than temporary or seasonal approvals to take water for construction and like temporary purposes:

- Tradable water allocations for the majority of entitlements
- Licences attached to land title
- Authorised overland flow works

***b. The effect of relevant agreements and Commonwealth environmental legislation on the issuing of water licences, trading rights or further extraction of water from river systems.***

*National Water Initiative (NWI)*

Substantive progress has been made with the completion of WRPs and the conduct of ROPs across Qld catchments to meet commitments to the achievement of the water planning objectives of the NWI (see NWI Clause 23). The plans are of a good standard and are well suited to address the requirements in the NWI regarding environmental flow conditions, interception activity and conversion to tradable entitlements and registering of these entitlements to facilitate trade. However, there is a significant program of groundwater planning to address across the state over the coming years which will require time and resources to define the resource including environmental requirements and decide how the resource is to be shared among users where there are defined over allocation problems. The water resource planning process is critical to the implementation of outcomes for water access entitlements and planning frameworks (see NWI Clause 25) and the delivery of secure property right (see NWI Clause 28).

*Murray Darling Basin Cap*

The valley caps to be applied to Queensland are determined following the completion of the water planning process for each of Queensland's valleys in the Murray Darling Basin. Queensland's diversion caps are developed and implemented as part of the monitoring, auditing and reporting provisions of the Resource Operations Plan for each valley.

Resource operations plans for the Moonie, Warrego, Paroo and the Nebine valleys have been finalised. The diversion caps for these valleys have been set and in May 2007, were approved by the MDB Ministerial Council. The cap proposal for the Border Rivers valley has been endorsed by the MDBA following finalisation of the ROP for that valley.

Schedule F of the Murray Daring Basin Agreement requires the Independent Audit Group of the Murray Darling Basin Commission to audit the performance of each State and Territory in their efforts to implement their caps.

It is expected that once the Lower Balonne ROP is finalised, the Qld Government will submit the cap for the Condamine and Balonne valley to the Independent Audit Group of the MDBA for approval.

### Commonwealth Water Act 2007

The provisions of the National Water Initiative have, in effect, been 'codified' in the Commonwealth Water Act 2007. The following references are provided of relevance to the terms of reference of the Inquiry:

- Definition of water access: The Supplementary Explanatory Memorandum stated - *'This definition is consistent with the National Water Initiative and provides that a water access entitlement is a perpetual or ongoing entitlement, by or under a law of the State, to exclusive access to a share of the water resources of a water resource plan area. An ongoing entitlement includes for example an entitlement that has no defined expiry date or an entitlement that is granted in accordance with a water resource plan with a defined term, but where there is a right of renewal or an understanding that the entitlement will be renewed under subsequent water resource plans.'*
- Definition of planned environmental water to encompass 'rules based' environmental water: The Explanatory Memorandum provides an example to clarify - *'planned environmental water may be delivered through flow rules which specify flows that must be released from storages for environmental purposes. It may also be delivered or retained through restrictions upon the taking of water. Planned environmental water may replicate natural flow patterns taking into account the timing, frequency and variability of flows. Planned environmental water may seek to achieve specific environmental outcomes such as maintaining the success of bird breeding events in specific wetlands, or may be aimed at maintaining general river health through passing flows or end-of-system flow targets.'*
- The provisions in the Act in regard to the allocation of risks in relation to reductions in water availability recognises the NWI principles of risk assignment applying to both reductions in water allocations and to less reliable water. The following issues of allocation of risk were also addressed in the legislation:
  - Clarification about reductions in allocations attributable to Commonwealth Government policy changes: The Explanatory Memorandum (Item 146) states that *'adoption of new environmental objectives, but not implementing existing environmental objectives, by the Commonwealth Government would qualify as a change of Commonwealth policy. The Commonwealth share of the reduction includes all of this component.'*
  - Clarification about reductions in allocations attributable to improvements in knowledge: The Act provides that reductions in allocations is attributable to improvements in knowledge about the environmentally sustainable level of take for the water resources of a water resource plan area not because the improvements in knowledge have demonstrated that the level of water previously provided for the purposes of environmental watering was inadequate.
  - Clarification of the definition of water access entitlements: The Act provides that water access entitlements may be created by authorisation, as well as by grant or issue, and provide for payments to water access entitlement holders where entitlements are so authorised (see Supplementary Explanatory Memorandum Item 2)

The Commonwealth Water Act also recognises all the Qld MDB WRPs that came into effect before 25<sup>th</sup> January 2007 as transitional plans that continue to have effect for their remaining terms. This recognition includes any instruments made for the purposes of the WRPs such as ROPs whether they were made before or after 25<sup>th</sup> January 2007. The Act provides for transitional water resource plans to be taken to be accredited by the Minister and should not be required to be consistent with the Basin Plan. The Minister is also required to accredit an amendment to a water resource plan if the amendment would make the plan *'no less consistent with the Basin Plan.'*

#### Commonwealth Water Act Amendment 2008

This amendment gave effect to the Intergovernmental Agreement on Murray-Darling Basin Reform signed at COAG on 3<sup>rd</sup> July. Schedule 2 provided for the Commonwealth to take on a greater share of the risks relating to future reductions in water allocations in the Murray-Darling Basin (ie risk arising from a reduction of the long-term sustainable diversion limit exceeding 3% in any 10 year period as a result of 'new knowledge' but not from a change in water reliability resulting from seasonal or long term changes in climate and natural events such as drought). Provision was also made to bring forward the date on which the new knowledge component of that risk becomes a Commonwealth responsibility where water resource plans expire before the beginning of January 2015. This applies to Qld MDB WRPs which are to be reviewed by September 2014. Amendments have been made to the Qld Water Act to refer required constitutional powers to the Commonwealth Parliament and to amend the Border, Moonie and Warrego WRPs to implement the Qld Governments decision to gift unallocated water in these plans to the Commonwealth. This means that there is no water left unallocated in the Qld MDB catchments that can be made available for the grant of additional new licences. Further amendments are required to the Qld Act to accept the risk sharing arrangement provided in the Commonwealth legislative amendment.

#### **c. The collection, collation and analysis and dissemination of information about Australia's water resources, and the use of such information in the granting of water rights**

The Commonwealth Water Act gives the Bureau of Meteorology (the Bureau) specific powers to collect and publish water information as well as conducting regular national water resource assessments, publishing an Annual National Water Account and providing regular water availability forecasts. The current development program provides for the information system to be developed in stages. The Annual National Water Account is aiming to provide information on water availability in different parts of the country, entitlements to use the water and how much is being used, trading of water, provision of water for the environment, interception of water by farm dams and land management and the quality of water in rivers and aquifers.

The gifting of unallocated water to the Commonwealth means that the implementation of all of the Qld MDB water resource plans for their current terms must ensure that there is not an increase in the average amount of water authorised to be taken in the plan areas. This means that any applications for water entitlements that would result in an increase in the water authorised to be taken would be refused. Exemptions to this rule include the taking of water for stock and domestic use in accordance with departmental guidelines, licence renewals or replacements, temporary permits to access water eg for construction works and granting of water entitlements for town water

supply that were in existence before a moratorium was put in place to provide for the preparation of the WRPs in each catchment.

In other words, it is the Qld MDB water resource plans that address control over the grant of water rights until these plans cease to have effect in September 2014. The Bureau will provide the Murray Darling Basin Authority and state planning departments with a flow of information and analysis that will help these agencies assess progress with the implementation of water resource plans and the performance of the plans in achieving defined objectives. The Commonwealth Water Act and the Qld Water Act define steps that need to be taken if a water resource plan has to be reviewed and, if necessary, amended. The Qld MDB WRPs and ROPs are subject to mid-term assessments which have been completed for all but the Condamine Balonne WRP.

**d. The issuing of water rights by the states in the light of Commonwealth purchases of water rights**

The ROPs have been completed for all Qld MDB catchments except the Lower Balonne which has been delayed due to legal case. As outlined above, the Commonwealth Water Act recognises all the Qld MDB WRPs including the Condamine Balonne WRP as transitional plans that continue to have effect for their remaining terms. This recognition includes the ROPs. The resource operations plan for the Lower Balonne needs to be finalised as soon as possible to allow the Commonwealth water purchasing program to proceed. The Commonwealth must ensure that the buyback program is implemented in a fair and just way across all catchments in the Basin and must ensure that the program continues until this outcome is achieved.

**e. Any other related matters**

No further comments