



# **Victorian Farmers** Federation

**SUBMISSION  
TO**

**THE SENATE LEGAL AND CONSTITUTIONAL AFFAIRS  
COMMITTEE INQUIRY INTO**

**PROVISION OF THE WATER ACT 2007**

**MARCH 2011**

## **Foreword**

The Victorian Farmers Federation is Australia's largest state farmer organisation, and the only recognised, consistent voice on issues affecting rural Victoria.

The VFF consists of an elected Board of Directors, a member representative Policy Council to set policy and eight commodity groups representing dairy, grains, livestock, horticulture, chicken meat, pigs, flowers and egg industries.

Farmers are elected by their peers to direct each of the commodity groups and are supported by Melbourne-based staff.

Each VFF member is represented locally by one of the 230 VFF branches across the state and through their commodity representatives at local, district, state and national levels. The VFF also represents farmers' views on hundreds of industry and government forums.

Andrew Broad

President

## Introduction

The Victorian Farmers Federation provides this submission as a summary of views and legal advice on the requirements of the Water Act 2007 (the Act) that have been put forward. There is no doubt that the consensus view of stakeholders, environmental groups, irrigator groups, community groups, independent experts, the Murray Darling Basin Authority and the Federal Minister is that the Act places the environmental needs of the Basin at a primacy to the socio-economic needs of the Australian community.

A general point to be made is related to the political issues that shaped the development of the Act. Because of the difficulty the then Howard Government had in convincing the Victorian Government to cede powers over the Basin resources to the Commonwealth, a 'clever trick' was used. This led to the Act obtaining influence over the States' management of water resources by invoking the external affairs powers in the Constitution.

*It must be noted that the Commonwealth is only proceeding with the implementation of this plan on the basis of its own constitutional powers because the Victorian Labor state government refused to cooperate with the referral of powers sought by the Commonwealth.<sup>1</sup>*

This sets the first clauses of the Objects of the Act on a basis that could be contradictory.

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; and
- (b) to give effect to relevant international agreements (to the extent to which those agreements are relevant to the use and management of the Basin water resources) and, in particular, to provide for special measures, in accordance with those agreements, to address the threats to the Basin water resources;

This seems to work on a premise that the national interest is always served by 'giving effect to relevant international agreements'; the VFF would question whether this is a sensible platform on which to launch a significant resource reform process. Whilst it could be argued that Australia would not enter into international agreement that was not in the national interest, it cannot be guaranteed that over time these interests will remain in alignment.

A better approach to aligning the national interest to international agreements would have been to align the States' and the National interests in managing water reform. This was done in the past with the establishment of the National Water Initiative (NWI), a process that whilst not perfect, was addressing problems in managing the Basin's water resources.

However, no reform process would have been able to address the impact of a drought of the severity and duration of that experienced across the Basin in the period 1997 to 2010. The formation of the Act would appear to be based on a view that the 13 year drought was in fact the new climate. The level of rainfall experienced in 2011 across the Basin must give some pause to reconsider this pessimistic view of possible changes in climate.

## Balanced Outcome

Much emphasis has been placed by some on clauses (c) and (d) sub clause (iii), of Section 3 as indications that the Act will provide adequate consideration of the socio-economic impacts in developing a Basin Plan. The VFF would argue that neither achieves this purpose.

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<sup>1</sup> M Turnbull (2007) Second Reading Speech Water Bill 2007

## *Part 1*

### *3 Objects*

*(c) in giving effect to those agreements, to promote the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes; and*

*(d) without limiting paragraph (b) or (c):*

*(i) to ensure the return to environmentally sustainable levels of extraction for water resources that are overallocated or overused; and*

*(ii) to protect, restore and provide for the ecological values and ecosystem services of the Murray-Darling Basin (taking into account, in particular, the impact that the taking of water has on the watercourses, lakes, wetlands, ground water and water-dependent ecosystems that are part of the Basin water resources and on associated biodiversity); and*

*(iii) subject to subparagraphs (i) and (ii)—to maximise the net economic returns to the Australian community from the use and management of the Basin water resources;*

Clause (c) speaks of promoting the use of water resources in a way that optimises outcomes; but this is based in relation to giving effect to the international agreements and not as a basis for balancing the optimal outcomes for the economic, social and environmental factors.

Clause (d) (iii) places the net economic returns to the Australian community as subservient to the environmental needs, and not balanced against the environmental needs.

### **Environmentally Sustainable Level of Take**

Under definitions in Part 1 Section 4 of the Act the environmentally sustainable level of take is listed as:

*Environmentally sustainable level of take for a water resource means the level at which water can be taken from that water resource which, if exceeded, would compromise:*

*(a) key environmental assets of the water resource; or*

*(b) key ecosystem functions of the water resource; or*

*(c) the productive base of the water resource; or*

*(d) key environmental outcomes for the water resource.*

This definition sets a high emphasis on the environmental outcomes and gives no clarity on how to identify or measure the 'key' factors. Taken in a literal sense the use of any water resources to any marked degree would lead to some level of compromise if measured against a pristine environment.

The practicality of the Basin is that the rivers are no longer pristine; there are structures that regulate flows from the lower lakes to the top of the catchments; communities rely on water for domestic and industrial needs- including communities outside of the Basin; and the management of land for food production and human settlement has changed both the volumes and quality of water entering the rivers and waterways. Undoing these developments is not possible. The definition of sustainable take does not allow consideration that the Basin waterways are now in the main working waterways servicing a range of purposes. In other words the definition fails to balance the reality of uses.

## Socio-Economic Weighting

The debate around the Act is whether it requires a Basin plan that balances the socio-economic needs of the Basin community with the environmental needs. It would appear that consensus of advice that has been sought and made public on the requirements of the Act is that the environmental needs have primacy in setting the sustainable level of take (SDL). Socio-economic considerations are secondary factors to be addressed only in managing the implementation of reductions in SDL's.

A submission to the Windsor inquiry into the impact of the Murray Darling Basin Plan in Regional Australia from the Australian Network of Environmental Defender's Offices (ANEDO) summarised their views of the requirements of the Act as

- *Current suggestions that social, economic and environmental considerations are to be balanced against each other in the Basin Plan are incorrect and not supported by the Water Act.*
- *Social and economic impacts are important considerations under the Water Act; however rather than being part of the decision of what is environmentally sustainable extraction, economic and social considerations are properly part of the decision of how best to deliver that environmentally sustainable extraction outcome and what transitional assistance is needed to achieve this outcome.<sup>2</sup>*

Professor John Briscoe was a member of an expert panel that provided a review of the Guide to the Draft Murray Darling Basin Plan. In a submission to the Windsor Inquiry, Professor Briscoe has cited the panel as stating that

*"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 the social and economic spheres required to "do the best they can" with whatever is left once environmental needs are addressed.*

Minister for Sustainability, Environment, Water, Population and Communities, The Hon Tony Burke made in a statement to Parliament on tabling advice he had received from the Australian Government Solicitor on the Act said

*It is clear from this advice that environmental, economic and social considerations are central to the Water Act and that the Basin Plan can appropriately take these into account.<sup>3</sup>*

The concern for the VFF is that the Minister's view is that the Act can *appropriately* deal with the environmental, economic and social considerations, not that they are dealt with in a way that is balanced or weighted equally.

ANEDO comment on this issue by saying the Act

*.... requires the MDBA and the Minister to meet the environmental requirements of the Act. They cannot favour social and economic considerations if to do so would mean they are not meeting the environmental requirements of the Act. However, provided the environmental requirements are met, they must consider how to meet them in a*

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<sup>2</sup> The Australian Network of Environmental Defender's Offices. Submission Number 248 p 2

<sup>3</sup> The Hon Tony Burke, Minister for Sustainability, Environment, Water, Population and Communities Ministerial statement: Murray Darling Basin Reform - Interpretation of the Water Act 2007

*way that optimises social, economic and environmental outcomes. This does not mean that all three are balanced against each other right from the start, it means that in meeting the environmental outcomes in the Act, they must do it in a way that minimises negative social and economic impacts.<sup>4</sup>*

The National Productivity Commission in a 2010 research report, Market Mechanisms for Recovering Water in the Murray-Darling Basin also found that the Act places a pre-eminence on environmental outcomes.

*The Commission's interpretation of the Water Act 2007 (Cwlth) is that it requires the Murray-Darling Basin Authority to determine environmental watering needs based on scientific information, but precludes consideration of economic and social costs in deciding the extent to which these needs should be met. This means that the overall proportion of water allocated to the environment is to be determined without explicitly taking into account the Australian community's environmental preferences, the opportunity cost of foregone irrigation or the role of other inputs such as land management. There is a risk that this approach will impose unnecessarily high social and economic costs.<sup>5</sup>*

## **Conclusion**

In conclusion the VFF argues that the Water Act 2007 is fundamentally flawed and biased against socio-economic considerations in establishing sustainable diversion limits. This view is widely supported. All evidence and expert opinion that has been tabled by interested groups including environmentalists, irrigators, community organisations and independent experts has a consensus view that the Water Act 2007 requires that first and foremost sustainable diversion limits are established on the basis of environmental needs. Socio-economic needs are subservient to the environmental requirements.

A cause of the problem was the Water Act being based on utilisation of the Commonwealth's external powers as the mechanism to gain control of water management issues. This factor may in the medium term lead to conflicts with the objects of the Act.

In addition the Act fails to provide sufficient rigor on a number of important elements. The Act places all solutions to problems in the Basin as being solvable by moving water from consumptive uses to environmental flows. This is a short sighted and narrow view that has been superseded in Victoria by application of integrated and consultative water management frameworks.

The VFF advocates that the Water Act 2007 requires amendments to necessitate a more balanced weighing of socio-economic considerations, and an approach that is not solely reliant on moving water away from consumption to resolve environmental issues.

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<sup>4</sup> The Australian Network of Environmental Defender's Offices. Submission Number 248 p4

<sup>5</sup> National Productivity Commission (2010) Market Mechanisms for Recovering Water in the Murray-Darling Basin Research Report