

25th February 2016



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Committee Secretary
Senate Rural and Regional Affairs and Transport
References Committee PO Box 6100
Parliament House Canberra ACT
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Re. Submission to Inquiry into the Water Amendment (Review Implementation and Other Measures) Bill 2015 [Provisions]

The Murray Lower Darling Rivers Indigenous Nations (MLDRIN) appreciates the opportunity to assist the Senate Standing Committees on Rural and Regional Affairs and Transport (**Committee**) with its inquiry into the *Water Amendment (Review Implementation and other Measures) Bill 2015 (Water Amendment Bill)*.

About MLDRIN

The Murray Lower Darling Rivers Indigenous Nations (MLDRIN) is a confederation of Sovereign First Nations from the lower Southern part of the Murray Darling Basin. The group currently includes Delegates from 24 Nations across Victoria, NSW and South Australia.

Our core work includes:

- Advising the Murray Darling Basin Authority (MDBA) on all matters relevant to Traditional Owners and Aboriginal people in the Southern Murray Darling Basin, in particular, the implementation of the Basin Plan
- Having an active role in Natural Resource Management and water planning
- Providing a forum for our member nations to keep informed, deliberate on issues and provide feedback and advice to decision makers across all levels of Government
- Advocating for our member Nations' rights and interests in land and water, specifically to progress the recognition of Aboriginal water rights and Cultural Flows
- Providing leadership and capacity building for our member nations.

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Summary:

MLDRIN participated in and provided information to the Independent Review of the Water Act 2007 (Cth) (**the Act**) throughout 2014. The Water Amendment Bill implements all the recommendations put forward by the Review, relating to Indigenous participation and inclusion of Indigenous values and interests in water planning.

MLDRIN is generally supportive of those changes (listed in Part 3 of the Bill). They constitute minor, but valuable, improvements.

We suggest some further minor amendments to the Bill to strengthen these provisions. We also wish to raise some concerns and suggestions relating to reviews and reporting requirements and trading by the Commonwealth Environmental Water Holder.

We note that the *Report of the Independent Review of the Water At 2007 (Cth)* and the Water Amendment Bill have both fallen short of acting on a number of key recommendations put forward consistently by Aboriginal organisations throughout the review process and in subsequent discussions with Government. These are highlighted below.

We reiterate our position that further reform is needed to address the fundamental inequity of water entitlement frameworks in the Basin, which have been established and operated in the absence of genuine Aboriginal engagement and participation.

Reviews and reporting requirements

5 yearly reviews of the Basin Plan

MLDRIN sees no problem with adding an assessment of ‘the social and economic impacts of the Basin Plan’ as a special requirement for the 5 yearly reviews of the Plan (Subsection 22(1)). However, we argue for the specific inclusion of a requirement to assess the impacts of the Plan on socio-economic outcomes for the Aboriginal population of the Basin.

Aboriginal people remain among the most disadvantaged social groups within the Basin, with low levels of ownership of land and water resources.¹ However, the Aboriginal population of the Basin is growing at a faster rate than the non-Indigenous population.² The Basin Plan constitutes a significant investment in the lives and well-being of Basin communities. Therefore it is vital that we understand its impact on

¹ Arthur, W.S (Bill) (2010), *The Murray–Darling Basin Regional and Basin plans: Indigenous water and land data*. Murray–Darling Basin Authority. Canberra.

² Taylor, J and Biddle, N. (2004), *Indigenous People in the Murray-Darling Basin: A Statistical Profile*. Centre For Aboriginal Economic Policy Research: Discussion Paper No. 264/2004. Australian National University, Canberra, 2004.

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socio-economic outcomes for some of the Basin's most disadvantaged residents. There is very limited statistical information, specific to the Basin, documenting outcomes for Aboriginal people.

MLDRIN proposes that, any change to Subsection 22(1) should specifically include a requirement to report on socio-economic outcomes for Aboriginal people, in the program for monitoring and evaluating the effectiveness of the Basin Plan. Such reporting would align with Government policy in Indigenous affairs as well as augmenting the proposed additional function of the MDBA, to engage the Indigenous community.

We also endorse the Australian Network of Environmental Defenders Offices proposal that a 'climate change review' of the SDLs be undertaken in 2017, as part of the five yearly review of the Basin Plan.

Review of the Water Act

As a result of the need for evolution and improvement in the Act's recognition of Indigenous rights and interests, we are concerned about the removal of mandatory terms of reference for the Statutory Review of the Act, required every ten years.

The proposal to replace Subsection 253(2) with a provision allowing the Minister to determine the terms of reference in consultation with the States allows future reviews to be guided by the political interests of the day. This can mean that important matters are not given due consideration.

MLDRIN would like to see mandatory terms of reference that provide opportunity for ongoing improvement of the Act's recognition of Aboriginal rights and interests.

Mandatory Terms of Reference should be retained and should include:

- An assessment as to whether Australia is meeting its international obligations under the 'relevant environmental treaties' specified in the Water Act
- An assessment of how the Act is supporting and enacting National Water Initiative reforms, especially those relating to Indigenous access and participation in water management.

Indigenous matters

MLDRIN is supportive of the proposed, minor, amendments contained in the current Bill. These go some way to provide for enhanced participation and representation of Aboriginal people in Basin water management.

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Trading by the CEWH

MLDRIN recognises that there is broad community concern regarding cost-shifting to the CEWH. There must be appropriate checks and balances in place to govern use of the proceeds of sale of environmental water.

MLDRIN strongly urges that the proceeds of sale of allocations held by the CEWH should also be made available to undertake activities that support Aboriginal cultural outcomes *where these are consistent with the Environmental Watering Plan (EWP) in the Basin Plan.*

There is a requirement that all watering conducted under the Basin Plan should be undertaken in a way that has 'regard to Indigenous values and uses'. Allowing funds from the sale of allocations held by the CEWH to be used for complimentary cultural activities would be a way to practically support Indigenous values and uses, while maintaining environmental benefits.

Examples may be:

- Supporting the collection and integration of Traditional Ecological Knowledge to facilitate improved watering outcomes
- Undertaking fencing or revegetation of cultural sites to enhance shared benefits from watering activities
- Acquiring water for use by Traditional Owners and Aboriginal organisations to support capacity building and enhance Aboriginal Environmental Outcomes

We stress that any such activities would have to be consistent with the EWP. The 'principles to be applied in environmental watering' outlined in Division 6 of the EWP include the principle that 'environmental watering is to be undertaken in a way that maximises its benefits and effectiveness by: (...) (iii) utilising local knowledge and experience; and (iv) having regard to Indigenous values.'

We propose that the CEWH be allowed to utilise proceeds from the disposal of allocations for activities that improve cultural outcomes, consistent with the EWP and the principles contained in Division 6 of Part 8 of the Basin Plan.

Specifically, the language "and Aboriginal cultural' could be added after 'environmental' in Subsection 106 (3)(a)(ii).

Other matters

There were a number of other amendments that Aboriginal organisations and community members have advocated throughout the Review and consultation for the Bill.

We strongly urge the Committee to give these matters due consideration. In particular, MLDRIN would like to reiterate the following proposed improvements to the Act:

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- Acknowledge Indigenous rights and interests in the Objects of the Water Act. The current objects include to optimise economic, social and environmental outcomes. MLDRIN argues that these categories do not account for the specific, unique rights and interests of the Basin's Indigenous Nations.
- Including the United Nations Declaration on the Rights of Indigenous People (UNDRIP) as a relevant international agreement in the Act. For Aboriginal people, the UNDRIP is an agreement 'relevant to the use and management of Basin water resources'. The UNDRIP should be identified as a relevant international agreement in the Regulations under the Act.
- Inclusion of specific provisions in the act to give affect to Article 8(J) of the Convention on Biological Diversity (CBD). Special measures are needed to address impacts on Indigenous cultural values as a result of unsustainable water extraction.
- Inclusion of mandatory Indigenous Reserves within Basin water resource plans. This aligns with the National water Initiative and National Water Commission advice on improving Indigenous access to water. It would support equitable outcomes and greater participation of Aboriginal people in regional economies.

We would be happy to elaborate on any of these proposed amendments.

Yours Sincerely,

Darren Perry
Ngintait Nation
Chair, Murray Lower Darling Rivers Indigenous Nations (MLDRIN)