



Australian Government
Department of Agriculture
and Water Resources

Ref: MS18-000934

Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
PO BOX 6100
Parliament House
Canberra ACT 2600

Dear Secretary,

The Department of Agriculture and Water Resources welcomes the opportunity to provide the attached submission on the Water Amendment Bill 2018 to the Rural and Regional Affairs and Transport Legislation Committee.

I trust that the information in this submission will assist the committee with its inquiry into the provisions of the Water Amendment Bill 2018 and its impacts on the Murray-Darling Basin Plan and relevant stakeholders.

Should the committee require any further information about this submission, the department's contact office is Tim Fisher, Assistant Secretary of the Murray-Darling Basin Policy Branch in the Water Division (ph: 02 6272 3206).

Yours sincerely

Malcolm Thompson

Deputy Secretary
Department of Agriculture and Water Resources

18 May 2018

Inquiry into the Water Amendment Bill 2018

Senate Standing Committee on Rural and Regional Affairs and Transport

Submission by the Department of Agriculture and Water Resources

Water Amendment Bill 2018

The Department of Agriculture and Water Resources welcomes the opportunity to make a submission to the Rural and Regional Affairs and Transport Legislation Committee's inquiry into the provisions of the Water Amendment Bill 2018 (the Bill).

The Bill will amend the *Water Act 2007* (the Water Act) by adding a new section 49AA which will enable the Commonwealth Water Minister (the Minister) to direct the Murray-Darling Basin Authority (the Authority) to prepare an amendment to the *Basin Plan 2012* (the Basin Plan) that is the same in effect as a Basin Plan amendment that has been previously disallowed (the disallowed amendment), or taken to have been disallowed, by either House of Parliament. For any Basin Plan amendment prepared by the Authority under this proposed power, it must be the same in effect as the disallowed amendment. The Authority may not propose changes to the disallowed amendment that have not previously been subject to the detailed process (including extensive consultation) set out in sections 45 to 48 of the Water Act.

The Minister already has the power to direct the Authority in other circumstances set out in the Water Act. For instance, section 175 allows the Minister to give a direction about the performance of the Authority's functions. Also, subparagraphs 44(3)(b)(ii) and 48(3)(b)(ii) enable the Minister to give directions in respect of a proposal to make or amend the Basin Plan. This Bill will extend the existing powers of the Minister to direct the Authority under the Water Act.

The Senate Selection of Bills Committee referred the Bill to the Senate Standing Committee on Rural and Regional Affairs and Transport Legislation to consider the following key concerns:

- the impact of the Bill on the Murray-Darling Basin Plan; and
- the impact of the Bill on stakeholders.

Impact of the Bill on the Basin Plan

The Bill will amend the Water Act and will not directly amend the Basin Plan. The Bill will enable the Minister to direct the Authority to prepare an amendment to the Basin Plan that is the same in effect as a disallowed amendment to the Basin Plan. The Minister can then either adopt or not adopt the amendment prepared by the Authority.

The Bill provides that the power to give a direction to the Authority to prepare another Basin Plan amendment is subject to limitations to ensure it is not used inappropriately. These limitations are paramount to ensure that the integrity of the consultation process conducted for the disallowed amendment is retained and that the Authority does not propose any amendments to the Basin Plan that have not been subject to the consultation already undertaken for the disallowed amendment. The extensive consultation process for a Basin Plan amendment requires consultation with the Basin Officials Committee, Basin Community Committee, the Basin States, the Murray-Darling Basin Ministerial Council and the public.

The limitations on the Minister's power to direct the Authority under proposed section 49AA are as follows:

- an amendment prepared under the Minister's direction must be the same in effect as a disallowed amendment which was originally prepared under Subdivision F of Division 1 of Part 2 of the Water Act (that is, in accordance with the consultation requirements set out in sections 45 to 48 of the Water Act). This limitation ensures that the amendments have already been subject to the consultation requirements of the Water Act and the Authority cannot include any new or different amendments, as these would not achieve the same effect as the disallowed amendment.
- the proposed directions power is limited to amendments which have been disallowed in the previous 12 months. This limitation ensures that the public consultation that took place on the disallowed amendment is still relevant and timely.
- the Minister's proposed power to direct the Authority cannot be delegated to an executive or officer of the department. This means that the power can only be exercised by the Minister.
- an amendment prepared under this proposed new power is still required to be tabled in both Houses of Parliament for 15 sitting days as a disallowable legislative instrument. This provides for the same parliamentary scrutiny of the Basin Plan amendment as for the disallowed amendment, which means that the amendment prepared under the new power could also be disallowed. If the amendment is subsequently disallowed (that is, disallowed a second time), the Minister will not be able to direct the Authority to prepare another amendment under proposed section 49AA.

These limitations mean that the integrity of the consultation process that a disallowed amendment has been through is preserved.

Impact of the Bill on stakeholders

The department anticipates that the Minister will use this proposed new directions power to remake the *Basin Plan Amendment Instrument 2017 (No.1)* (the Amendment Instrument), which was disallowed by the Senate on 14 February 2018. The Amendment Instrument amended the Basin Plan to implement changes arising from:

- the Northern Basin Review of sustainable diversion limits (SDLs);
- three groundwater reviews and a need for other technical groundwater amendments;
- the Australian Government Response to the 2014 independent review of the Water Act; and
- a need for other technical amendments (for instance, changes to the method for determining compliance with groundwater SDLs from 2028).

The Authority will be required to comply with a direction made by the Minister, and to prepare a new amendment, the same in effect as the Amendment Instrument, as soon as practicable after receipt of the direction. The new amendment will then be provided to the Minister for consideration and possible adoption.

If the Minister chooses to use this proposed new directions power to remake the disallowed Amendment Instrument, this means that the outcomes of this instrument will be given effect in a prompt manner. The Basin Plan amendment process set out in sections 45 to 48 of the Water Act is estimated to take at least eight months.

Using this expedited process as proposed by the Bill would enable a new amendment to be prepared by the Authority and adopted by the Minister by mid-2018. Preparing a new amendment under the proposed new directions power will provide certainty to Basin States and communities, as they prepare Basin Plan compliant water resource plans by 30 June 2019.

The Basin Plan sets out SDLs for surface water and groundwater water resource planning areas. As Basin States prepare their Basin Plan compliant water resource plans they are required to have rules to demonstrate how they will meet the SDLs. Due to the Amendment Instrument being disallowed, the SDLs in the Basin Plan do not reflect the amendments to the surface water and groundwater SDLs recommended by the Authority.

The limitations detailed above mean that the Authority cannot make any new or different amendments to the Basin Plan that have not already been subject to public scrutiny and the extensive consultation process set out in the Water Act.

The amendments in the disallowed Amendment Instrument were based on the best available science and data. They were recommended by the independent Authority following a series of extensive reviews (the Northern Basin Review, reviews of the SDLs in three groundwater areas, and the 2014 independent review into the Water Act). Each of these review processes involved significant consultation with relevant community members, businesses and community organisations.

In addition and throughout the process of preparing the disallowed Amendment Instrument, the Authority consulted at length with the Basin Officials Committee, the Basin Community Committee, Basin States, members of the public, including Indigenous groups, individuals, businesses and community groups. The Authority was required to consider their views in developing the disallowed Amendment Instrument.

The limitations contained in proposed section 49AA of this Bill ensure that the integrity of the consultation process that has already been undertaken for any disallowed amendment is maintained.