



Australian Government

Commonwealth Environmental Water Office

# **INQUIRY INTO THE WATER AMENDMENT (REVIEW IMPLEMENTATION AND OTHER MEASURES) BILL 2015**

**Submission by the  
Commonwealth Environmental Water Holder**



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## **Water Amendment (Review Implementation and Other Measures) Bill 2015**

The Commonwealth Environmental Water Holder 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 (Review Implementation and Other Measures) Bill 2015 ('the Bill').

The Bill implements the Australian Government's response to the independent review of the Water Act. This review was conducted by a panel of experts in fields ranging from irrigated agriculture, business regulation, law and science. The panel received 73 written submissions to the review and held meetings with peak bodies and all states and territories, as well as interactive roundtable discussions. The Australian Government's response, which was tabled on 3 December 2015, accepted all 23 recommendations made by the Panel in full or in part. This included accepting in full all three recommendations related to Part 6 of the *Water Act 2007*, which relate to the functions of the Commonwealth Environmental Water Holder.

This submission focuses only on the amendments in the Bill that relate to the Commonwealth Environmental Water Holder.

### **The Commonwealth Environmental Water Holder**

The Commonwealth Environmental Water Holder is a statutory position established under the *Water Act 2007* and is responsible for managing the Commonwealth's environmental water holdings. This water must be managed to protect and restore the rivers, wetlands and floodplains (and the native animals and plants they support) of the Murray-Darling Basin.

Mr David Papps is the current Commonwealth Environmental Water Holder. He is supported by staff of the Commonwealth Environmental Water Office, a division in the Australian Government Department of the Environment. The Office includes six local engagement officers who live and work in regional centres across the Murray-Darling Basin.

The Commonwealth Environmental Water Holder is governed by the *Water Act 2007* and the Murray-Darling Basin Plan.

### **Selling Commonwealth environmental water**

The *Water Act 2007* currently limits the Commonwealth Environmental Water Holder to selling water if one of two conditions are met:

- 1) water can be sold if it is not required to meet environmental objectives and cannot be carried over for use in the next water year
- 2) water can be sold if the proceeds from the sale can be used to buy water that improves the capacity to achieve environmental objectives (for example, buying water at another time or in another catchment where environmental needs are greater).

The Bill seeks to amend both these conditions to provide increased flexibility for the Commonwealth Environmental Water Holder to sell water and use the proceeds to improve environmental outcomes.

### **Selling water when it is not required and will reduce future allocations**

The Bill enables the Commonwealth Environmental Water Holder to sell a water allocation that is not required during the water year to meet environmental objectives if the Commonwealth Environmental Water Holder reasonably believes that retaining the water would result in future allocations being reduced (that is, water is likely to be forgone). This is in addition to the existing provision that allows water to be sold if it is not required and cannot be carried over to the next water year (that is, the water will be forfeited).

This additional flexibility is particularly relevant in catchments with continuous accounting arrangements<sup>1</sup>. In such catchments, water allocations can always be carried over to the next water year and so the current provision never applies. However, carrying over water that is not required can result in missing out on new allocations if the account limit has been reached. With the amendment, it would be possible to sell water that is not required for environmental objectives in the accounting period and re-invest the revenue to improve environmental outcomes, while also receiving new water allocations in the next year that would have otherwise been forgone.

### **Selling water and using the proceeds to improve the capacity to achieve environmental objectives**

Maximising environmental outcomes in the Basin requires both water and complementary environmental works and activities. The absence of such activities can be a key barrier to achieving environmental outcomes from the use of environmental water.

The Bill enables the Commonwealth Environmental Water Holder to sell water allocations and use the proceeds to buy water and/or invest in environmental activities that improve the capacity of the Commonwealth environmental water holdings to achieve environmental objectives. This provides the Commonwealth Environmental Water Holder with additional flexibility in how the environmental water portfolio can be managed to maximise environmental outcomes.

#### *What are environmental activities?*

The role and functions of the Commonwealth Environmental Water Holder are defined and constrained by the *Water Act 2007* and Chapter 8 of the Basin Plan. Environmental activities must fit within the scope of existing legislative requirements.

While the Bill does not explicitly define environmental activities, an environmental activity is one which "...would improve the capacity of the Commonwealth environmental water holdings to be applied to meet the objectives of...the environmental watering plan" (section 106(3)(c) of the Bill). This makes it clear that the activities need to be: (a) directly linked to and improve the use of Commonwealth environmental water; and (b) of a kind that would help that water to achieve the objectives of the environmental watering plan (Chapter 8 of the Basin Plan).

Investments in environmental activities must also be consistent with the broader functions of the Commonwealth Environmental Water Holder, including the requirement that the holdings that relate to water in the Murray-Darling Basin must be managed (including disposal) in accordance with the Basin Plan's environmental watering plan and consistent with the Basin-wide environmental watering strategy. Further, revenue from trade would go into the Environmental Water Holdings

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<sup>1</sup> Continuous accounting occurs under water sharing plans in the Lachlan, lower Namoi, Gwydir and NSW Border Rivers. For more detail on carryover in continuous accounting systems see: <http://www.environment.gov.au/water/cewo/publications/carryover-cew-2012-13-2013-14-northern-nsw>

Special Account, and therefore could only be used for costs incurred in the performance of the Commonwealth Environmental Water Holder's functions.

Within these limitations, the scope of potential environmental activities is appropriately broad. This provides flexibility to respond to changing priorities and circumstances over time, rather than restricting what is considered important based on current needs that may require further amendments down the track. Some examples of potential environmental activities are:

- regulators that enable a wetland to be watered during drier times, or can use less water to reach a wetland
- fishways that enable native fish to move to and from a wetland or along a river as required during different stages of their life cycle
- carp exclusion screens that reduce the number of carp that damage native vegetation and compete with native fish in a wetland.

#### *Exclusions*

The Bill clarifies that 'environmental activities' do not include statutory fees and charges for holding and delivering water. Fees and charges are recurring, non-discretionary and a large ongoing expense. Selling water to cover these fees would require the sale of large volumes of allocations without reciprocal environmental benefits. This would reduce the capacity to meet the environmental objectives of the Water Act and Basin Plan.

It would also require the Commonwealth Environmental Water Holder to approach the water market with the objective of raising significant amounts of revenue, which due to the scale of the requirement would be likely to cause negative impacts for some market participants.

Importantly, the Commonwealth Environmental Water Holder will continue to pay the same fees and charges as other water holders, consistent with existing arrangements.

#### *Risk of substituting for or duplicating existing programmes*

There is no guarantee that priority activities that support Commonwealth environmental watering will be undertaken under existing programmes. The amendment enables the Commonwealth Environmental Water Holder to invest in activities that may fall outside the scope, priorities or objectives of Commonwealth and state natural resource management programmes. It also enables innovative co-investment between the Commonwealth Environmental Water Holder and Basin states, local government and the private sector to leverage better outcomes.

As identified in the Explanatory Memorandum, this provision is "intended to enable additional targeted activities that complement, rather than duplicate or replace, natural resource management programmes implemented by other entities." Further, in forming a reasonable belief that the investment in an environmental activity will improve the capacity to achieve environmental objectives, the Commonwealth Environmental Water Holder would need to consider whether or not the funding would be substituting or duplicating existing programmes. It would be difficult to justify an 'improved' outcome, if that were the case.

### *Identifying and assessing environmental activities*

Any decision to invest in an environmental activity would be made by the Commonwealth Environmental Water Holder, based on his obligation to get the best environmental outcomes in accordance with the *Water Act 2007* and the Basin Plan. The Commonwealth Environmental Water Holder is already required to make decisions on how the environmental water portfolio can be best deployed to maximise outcomes, be it through delivery of water to rivers and wetlands, carrying over water for use in future years, or trading water. These decisions reflect a judgement taking into account the environmental watering plan objectives, Basin-wide annual environmental watering priorities, and long-term planning to match water supply with environmental demands, and are guided by published frameworks, such as the Commonwealth Environmental Water Portfolio Management Framework<sup>2</sup>. Similar judgement would also be exercised and required to take those considerations into account in any decision to sell water and invest the proceeds in environmental activities.

The Australian Government response to the Independent Review of the *Water Act 2007* committed the Commonwealth Environmental Water Holder to undertaking public consultation on “how the greater flexibility in the use of trade revenue will be exercised.” Policies for identifying and assessing investments will be developed and consulted on as soon as practical after the amendments come into effect. Considerations could potentially include:

- whether the investment will provide environmental benefits in one year or over multiple years
- whether, without the investment, there is a risk of irreversible decline in the condition of an environmental asset or ecological function
- whether the investment supports one of the Basin-wide annual environmental watering priorities identified by the Murray-Darling Basin Authority or the expected outcomes identified in the Basin-wide environmental watering strategy
- the possibility that another entity could or should fund the environmental activity or provide the water required.

### *Avoiding impacts on the sustainable diversion limits*

The Basin Plan specifies long-term sustainable diversion limits which take effect on 1 July 2019.<sup>3</sup> Several elements of the amendment aim to ensure that trade by the Commonwealth Environmental Water Holder will not contribute to the undermining of the Basin Plan long-term sustainable diversion limits, including:

- Only proceeds from the sale of temporary water—allocations—can be used for environmental activities. Proceeds from the permanent rights to receive water each year—entitlements—must be used for water purchases. This avoids a permanent rebalancing of the amount of water set aside for the environment under the Basin Plan.
- Only proceeds from allocation sales in catchments that are shown to have complied with their sustainable diversion limit can be used for environmental activities.

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<sup>2</sup> Available from: <http://www.environment.gov.au/water/cewo/publications/managing-commonwealth-environmental-water-portfolio>

<sup>3</sup> Chapter 6 Basin Plan 2012.

- Environmental activities must be reasonably expected to improve the effectiveness of Commonwealth environmental water and the environmental benefits must be greater than—not just equal to—the benefits of keeping the allocations.

*Trading to cover fees and charges or for social and economic outcomes*

Submissions to the Independent Review of the *Water Act 2007* supported providing greater flexibility in how environmental water can be traded. This included using the revenue to fund the Commonwealth Environmental Water Holder's operational costs or trading for the primary purpose of achieving social or economic outcomes. The Expert Panel considered these proposals and did not support them, commenting that such changes would represent a significant variation to the functions of the Commonwealth Environmental Water Holder and would significantly compromise the achievement of the Act's objects.

As noted above, if the Commonwealth Environmental Water Holder were required to meet its operational costs (including fees and charges from the use of its water) from the proceeds of water trade, significant and regular trades to the consumptive pool would be required. This would result in reduced volumes being available for the environment and increase consumptive use over time, conflicting with the object of the Act to ensure the return to environmentally sustainable levels of extraction for water resources that are over-allocated or overused.

While environmental outcomes must be the primary reason for the sale of Commonwealth environmental water, there are opportunities to provide complementary social and economic outcomes. For example, in January 2014, 10 GL of Commonwealth environmental water allocations were sold in the Gwydir catchment of northern New South Wales. Conditions for a sale of temporary water allocations in the Gwydir were favourable at the time because:

- the needs of the environment had largely been met and there was sufficient environmental water to sell some allocation without affecting the ability to meet current and foreseeable environmental requirements
- there was strong demand for water from irrigators due to drier than normal conditions.

The Commonwealth Environmental Water Holder accepted offers from 16 bidders, which were from a range of primary industries including cotton, beef, wheat and pulse crops. The sale of the water generated a return of \$3.217 million. The sale enabled producers to buy water when temperatures were high and rainfall was low, allowing them to either finish off their crops or to improve crop quality or yield.

In addition, the Commonwealth Environmental Water Holder has also committed, through its Trading Framework, to consider the social and economic impacts of any trading action on the market. Trading decisions aim to minimise any negative third party impacts and ensure that the market is not disrupted through significant unexpected fluctuations in price.

### **Reporting on trading activities**

The Bill requires the Commonwealth Environmental Water Holder to publish information on the trade of water and Commonwealth environmental water holdings, and the purposes for which proceeds from trades are used, in its annual report. This promotes transparency and accountability in how the new trading flexibility will be exercised.

Currently there is no legal obligation to provide this information, although the Commonwealth Environmental Water Holder has already and will continue to publish this information, consistent with its Trading Framework.