

Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Bill 2012

- 1.1 On 20 September 2012, the House of Representatives Selection Committee referred the Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Bill 2012 (the Bill) to the Committee for inquiry and report.
- 1.2 The reason for referral/principal issues for consideration given were:
- This bill gives the Murray-Darling Basin Authority authority to make adjustments to the Basin Plan without ministerial or parliamentary approval.¹

Intent of the bill

- 1.3 The Bill amends the *Water Act 2007* (the Water Act) 'to allow the long-term average sustainable diversion limit (SDL) set by the Murray Darling Basin Plan (Basin Plan) to be adjusted ... without invoking the formal Basin Plan Amendment process.'²
- 1.4 Section 23 of the Water Act sets out how the long-term average SDL will be specified. The Explanatory Memorandum (EM) to the Bill states that this section currently creates the legal possibility of an adjustment mechanism. However, no adjustment mechanism is currently specified.³

1 Selection Committee, *Report No. 66*, p. 4.

2 Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Bill 2012 Explanatory Memorandum (EM), p. 2.

3 EM, p. 2.

- 1.5 If s23 provides a legal possibility of an adjustment mechanism, this means that the SDL can be adjusted without any formal notification to the community or Parliament. The Bill proposes a mechanism whereby any adjustment must undertake a formal notification process.
- 1.6 The proposed adjustment process provides that the Murray Darling Basin Authority (MDBA) may propose an adjustment of the SDL by no more than plus or minus five percent:
- with reference to the Basin Officials Committee;
 - without preparing an amendment to the Basin Plan under Subdivision F of the Water Act;
 - with notice to the Minister, who must then adopt the adjustment and table the adjustment before Parliament as a non-disallowable instrument under section 38 of the *Legislative Instruments Act 2003*.⁴
- 1.7 Adjustments will be determined through savings or offsets found through environmental works and measures projects.⁵ The existing process for selecting and implementing environmental works and measures will not be amended as a result of this proposal. Proposed projects will still be required to undergo stakeholder consultation processes as set out by Basin State water resource planning processes prior to the MDBA's consideration of their inclusion in any SDL adjustment.
- 1.8 In addition, the Basin Ministerial Council has stated that it is their expectation that the SDL adjustment mechanism will operate as follows:
- To ensure stakeholders confidence and facilitate the preparation of water resource plans, Council requests that the SDL adjustment mechanism and associated provisions in the Basin Plan:
- a. simplify the operation of the mechanism such that the SDLs determined by the operation of the mechanism in 2016 are adopted in the Basin Plan at that time, to take effect from 2019;
 - b. allow for the construction and implementation of adjustment measures to be finalised in a specified timeframe and confirm the Commonwealth's responsibility to continue to bridge the gap over this period;
 - c. account for situations where adjustment measures do not proceed as planned;
-

4 Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Bill 2012, pp. 5-9.

5 EM, p. 2.

d. enable state water resource plans to account for the time taken to complete adjustment measures, particularly through the use of 'reasonable excuse' or 'permitted take' provisions or the incorporation of formula based SDLs in state water resource plans; and

e. clarify how any formula-based SDLs in state water resource plans should operate to reflect progress in SDL adjustment initiatives from 2019.⁶

- 1.9 It is also worth noting that the Ministerial Council has agreed that environmental works and measures should include any further modelling of works under the Living Murray Program.⁷
- 1.10 The Committee is satisfied that the processes already in place for community and stakeholder consultation as specified in state water resources plans should adequately address any concerns about adjustments being subject to community consultation.
- 1.11 The Committee is further satisfied that consensus view of the Murray Darling Basin Ministerial Council, as outlined above, outlines the clear intent of the Basin States to ensure that all stakeholders will be involved in any processes they put in place to determine projects to be considered in the proposed SDL adjustment mechanism.

Reason for the proposed amendment

- 1.12 An SDL adjustment mechanism to respond to efficiencies gained in environmental works and measures was recommended by this Committee in its July 2012 report on certain matters relating to the Murray-Darling Basin Plan.⁸
- 1.13 In addition, the Murray-Darling Basin Ministerial Council, representing the Commonwealth and all Basin State governments, recommended that an SDL adjustment mechanism be included in the Basin Plan 'through

6 Notice by Murray-Darling Basin Ministerial Council under Section 43A(7) of the *Water Act 2007*: Views of the Council as a Whole, consensus view, 27 August 2012, p. 3.

7 Notice by Murray-Darling Basin Ministerial Council under Section 43A(7) of the *Water Act 2007*: Views of the Council as a Whole, consensus view, 27 August 2012, p. 3

8 Standing Committee on Regional Australia, *Report on certain matters relating to the Murray-Darling Basin Plan*, July 2012, p. 6.

which environmental works and measures could be counted as reductions against held water'.⁹

Impact of the proposed amendment

- 1.14 The proposed amendment relates solely to parliamentary scrutiny of amendments to SDLs.
- 1.15 Under the Water Act as it currently stands, if the SDL is expressed as a quantity of water in the Basin Plan, to adjust the SDL the MDBA must comply with Subdivision F. Section 47 of this subdivision sets out the consultation process for an amendment to the Basin Plan which includes:
- a public consultation period of at least eight weeks, followed by;
 - a six week consultation with the Murray-Darling Basin Ministerial Council, followed by;
 - an allowance of 12 weeks for the Minister to consider the amendment and table it in Parliament, followed by;
 - Parliament's consideration of the amendment for a period of 20 sitting days as a disallowable instrument.
- 1.16 This means that any amendment to the SDLs could potentially be delayed for over six months.
- 1.17 Through both inquiries that this Committee has conducted into the Murray-Darling Basin Plan it has been clear that the community wants the MDBA to have more capacity to react in a timely and effective manner to changes in environmental conditions and river management.
- 1.18 The Bill gives some extra responsibility to the MDBA, as unanimously recommended by this Committee. Therefore the Committee considers that it will give the MDBA the capacity to appropriately react to proposals in a timely manner and on a valley-by-valley basis.
- 1.19 In addition, as SDL adjustments will be in response to environmental works and measures put forward by Basin States, the Committee is confident that due diligence will be adequately followed and all stakeholders appropriately consulted.
- 1.20 Finally, the MDBA will be limited in any SDL adjustment by a percentage amount of plus or minus five percent and the Parliament must be

9 Murray-Darling Basin Authority, *Communiqué: Murray-Darling Basin Water Ministers meet in Canberra to consider draft Basin Plan*, 29 June 2012.

informed through a non-disallowable instrument. Proposed adjustments of greater than this amount will invoke Subdivision F of the Water Act as outlined above. Therefore, the Committee is confident that these safeguards are appropriate.

Committee comment

- 1.21 The Committee is confident that the proposed amendment strikes an appropriate balance between allowing the MDBA the capacity to act in a timely manner when making SDL adjustments and continued Parliamentary oversight.
- 1.22 Given that the scope and intent of this bill is limited to governance issues and is in direct response to a House Committee report, the Committee recommends that the Bill be passed.

Recommendation 1

The Committee recommends that the House of Representatives pass the Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Bill 2012.

Tony Windsor MP
Chair
4 October 2012