



Dissenting report –Michael McCormack MP, Sharman Stone MP, Dan Tehan MP

1. This Bill amends the Water Act 2007 such that a Sustainable Diversion Limit (SDL) can be adjusted, give or take five per cent, without any formal notification to the community or Parliament.
2. This could/would be done by the Murray-Darling Basin Authority under certain provisos:
 1. Reference to the Basin Officials Committee (yet able to override that committee's consideration or recommendations either way);
 2. Without the necessity of amending the Basin Plan as part of the Water Act; and
 3. By notifying the relevant Minister who would then adopt the MDBA's adjustment and table it before Parliament as a non-disallowable instrument.
3. We the undersigned are strongly opposed to the inquiry conclusions of the House of Representatives Standing Committee on Regional Australia following the private meeting held in Parliament House, Canberra, on 4 October, 2012.
4. In particular we are extremely concerned with the cursory attention paid by the inquiry to a request (which was denied) for proper consultation and input from relevant stakeholders in the preparation of the report.

5. The contents, consultation and adjustment processes for the future Murray-Darling Basin Plan are of critical importance for the 3.4 million people living in the basin; for its economic and hence social wellbeing and environmental sustainability.
6. As stated in the report of the first inquiry by this committee into the impact of the Guide to the Murray-Darling Basin Plan (May 2011), the release of the proposed Basin Plan “sent shock waves through regional communities” and “Unfortunately, the way the MDBA went about developing and communicating this document and the scale of the reductions it proposed invoked a high degree of anger and bewilderment in Basin communities” (p. viii)
7. In the second Report made by the House of Representatives Standing Committee on Regional Australia (July 2012), the committee stated that ...
1.9 “... this report recommends a number of areas where the Committee believes that information needs to be provided before the Plan is put before Parliament to give Members, Senators and the community a level of certainty regarding both the planning process and science necessary prior to the Plan’s finalisation.” (p. 2)
8. While we support the concept of a Sustainable Diversion Limit adjustment mechanism which takes into account environmental works and measures and other savings, this Bill does not identify the processes or safeguards, and sits in the vacuum created by the fact that there is still no information on a final SDL.
9. It is quite inexplicable why this small, inadequate and disembodied element was rushed into Parliament in this way.
10. For example, paragraph 1.16 in the second Committee report of July 2012 stated “The Committee considers that a water recovery strategy is an essential planning tool for all stakeholders and the fact that it has not been developed to date is of serious concern. The Committee considers that it should be released as a matter of priority and well in advance of the introduction of the Plan to the Parliament.” (p. 3)
11. Despite these urgings, nothing further has been put into the public domain prior to the Minister for Sustainability, Environment, Water, Population and Communities tabling the Amendment Bill and on 20 September 2012 rushing the Water Amendment (Long Term Average Sustainable Diversion Limit Adjustment) Bill 2012 into Parliament.

12. The Bill deals with the issue of parliamentary scrutiny of any amendments to SDLs which it states can be adjusted up or down by 5%. These adjustments are to be made by the MDBA, with the Minister merely informed of the decision.
13. Para 1.8 of this report makes it clear that there is still Basin Ministerial Council uncertainty about “(b).the construction and implementation of adjustment measures,” and how to “(c) account for situations where adjustment measures do not proceed as planned ...”.
14. This work should have been completed as part of the overarching MDBA plan and in close consultation with stakeholders. The introduction of this Bill at this time again raises concerns about the competency of the Federal Government in dealing with this issue, the inadequacy of the planning process and consultation and the consequent lack of proper attention to critical detail.
15. We therefore cannot accept the recommendation of this report.
16. The following details our specific concerns:
17. We, the undersigned, as members of the House of Representatives Standing Committee on Regional Australia who participated in the Inquiry into the impact of the Guide to the Murray-Darling Basin Plan (report released May 2011) and subsequent Report on certain matters relating to the proposed Murray-Darling Basin Plan (July 2012), oppose this Water Amendment Bill.
18. We do so on the following grounds:
 1. The Bill states that the MDBA can suggest adjustments to the SDL in a range of plus or minus 5%. At this stage we do not know what the final figure will be. So it is unclear what volume the 5% will relate to? Taking the current size of the environmental water holding, a 5% increase could represent a volume equivalent to all of the water allocated to South Australia.
 2. There has been a lack of effective consultation and transparency throughout this whole process. If it is so important, why was there such haste to have this amendment agreed to and why such a reluctance to even have it considered by the Regional Australia Committee. We the undersigned remain critical that the Bill only received a cursory glance at the single meeting lasting just 27 minutes. As stated no evidence was called, no stakeholders consulted.

3. The Regional Australia Committee Chair maintains the Amendment was in fact one of the four recommendations the committee made in its latest report. In fact recommendation 3 does not make any mention of an adjustment percentage or MDBA involvement. Nor did we recommend that parliamentary scrutiny of an adjustment SDL be denied.
4. It is said that the Bill is needed to implement the adjustment mechanism. Such implication is not, however, correct. The Act contains a mechanism for amendment of the Basin Plan (Subdivision F, sections 45-49). This mechanism requires formal consultation (including with stakeholders) and is subject to the review of the Minister and to the disallowance of Parliament.
5. The adjustment mechanism can, in fact, be implemented under the current Act.
6. The removal of the ability of stakeholders to have input into the adjustable mechanism is totally unacceptable.
7. The Minister's role and parliamentary scrutiny should not be usurped by the MDBA and that is what this Bill allows. It is the role of the Minister to take responsibility for the Basin Plan. Pursuant to the Act as it stands, the Minister can direct the Authority and can choose whether or not to take the Basin Plan to the Parliament. The Bill would remove this capacity and require the Minister to simply notify parliament of a MDBA action.
8. Under the current Act, an amendment to the Basin Plan is subject to the disallowance of Parliament. The Bill would remove this provision in the instance of the adjustment mechanism operation. That is, the elected representatives would not have the capacity to review the critical element of the Basin Plan. We do not agree with this.
9. By taking away the power of the Minister and the Parliament to consider the appropriateness or otherwise of a key feature of the Basin Plan. The SDL, which is of critical importance to the achievement of a triple bottom line outcome. The Bill would give unprecedented and unfettered power to the MDBA. The Regional Australia Committee in previous reports as well as stakeholders has been rightly critical of this entity throughout the course of the plan's development. It has proven incapable of meaningful engagement, has produced social and economic impact work which has been roundly criticised. It has not used the science

appropriately and was not at any stage designed to be a power unto itself. (Refer Report of Drought and Flooding Rains 3.83 It is clear the MDBA has, in coming to a position on the proposed SDLs made a number of poor assumptions using what is otherwise sound science. In addition, the logic for applying three per cent for climate change appears flawed and clearly needs to be given serious reconsideration (also refer Report *Of Drought and Flooding Rains*, 7.12 p. 165).

10. There are no protections in this Bill for an adjustment weakening economic or social outcomes. In section 23A(3)(b) it states clearly that any adjustments must “reflect an environmentally sustainable level of take”. Why doesn’t this Bill provide the same references to protections for economic and social outcomes?
 11. We are concerned that we have no evidence that legal advice has been taken as to whether such economic or social outcomes are already provided for or should be included in the Bill.
 12. The Bill does not clarify whether any extra water for the environment could or should come from irrigation efficiency upgrades and how will the MDBA determine the viability or impacts of irrigation efficiency upgrades when it has never been responsible for assessing these types of projects before?
 13. There is no reference in this Bill to a process of dispute resolution should a State disagree with an adjustment? How will the MDBA manage this?
19. This Regional Australia report also argues that it could take up to 6 months to go through a consultation process of adjusting an SDL. We argue that a significant adjustment that was not time critical could be allowed to take that long, however using the format of a disallowable instrument significantly reduces that time, but still allows proper parliamentary scrutiny.

20. We now strongly urge the appropriate Senate Committee to consult and consider this Bill in order to compensate for its rushed and inadequate treatment by the House of Representatives Standing Committee on Regional Australia.

Mr Michael McCormack MP
Federal Member for Riverina

Dr Sharman Stone MP
Federal Member for Murray

Mr Dan Tehan MP
Federal Member for Wannon

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