

Additional comments from Coalition senators

The Coalition is committed to Murray-Darling Basin reform, indeed it was under the Coalition that this reform was started with the passing of the Water Act in 2007. We support the need to return more water to the environment, however, believe it should be done so in a way that balances this objective with the need to provide for robust rural communities and for the Basin to remain Australia's food bowl.

The triple bottom line consideration of social, economic and environmental factors is essential to deliver reform in a way that minimises the cost to communities of reduced water availability and ensures we improve the efficiency of both river systems and irrigation communities.

The triple bottom line approach was a core part of the Howard Government's water reform strategy, however, sadly, since 2007 this approach has not been followed and we have seen an ad-hoc approach to buybacks and systemic underspending on water saving infrastructure projects.

In excess of \$500 million of the funds set aside by the Howard Government for water saving infrastructure projects has been spent on administrative functions, and even advertising campaigns. Further funds have been spent in infrastructure projects that do not save any water. By treating this funding pool as a general purpose pool of funds, Labor has undermined our ability to ensure reform is delivered at least cost to communities in the Basin.

Progress to date shows the disparity in outcomes under the buyback program compared to the infrastructure program. In excess of 1031GL has been secured through buybacks yet just 284GL has been secured or is under contract through the infrastructure program.

The non-strategic approach to this reform is compounded by the endless delays and uncertainty inflicted upon communities by the Government's inability to meet deadlines and deliver on commitments. More than \$100 million has been spent by the Murray-Darling Basin Authority on developing the Basin Plan, which does not include the extensive engagement by communities and stakeholders in endless discussions over the five years this process has been underway, much of which they feel has been of little impact on the outcomes or proposals.

Murray Valley Winegrowers Inc Chief Executive, Mr McKenzie, highlighted the ad hoc process being applied, the effect this uncertainty is having on their ability to assess the Basin Plan and the impact it will have on their community:

We do not have the capacity to fully assess the plan at this point for a couple of reasons. One is that we do not have a water recovery strategy and we do not have an environmental watering plan in final form. They are still works in progress... From our perspective, we have always held that it would be better to do the work first rather than push on with a target which, with respect, is a political target, not a

target to deliver a plan which the whole community in the basin can sign off on. That said, we are fatigued and we need certainty.¹

These two Bills, especially the rushed way in which they have been introduced into and debated within the parliament with limited prior consultation on their content, have compounded concerns about the management of this reform process from a number of groups and stakeholders, such as the Australian Dairy Industry Council Inc:

The dairy industry is uncomfortable with the Water Act being amended to give effect to a Basin Plan and IGA that no one has yet seen, on a 'trust us' basis that the Plan and IGA will contain the appropriate safeguards.²

The Coalition believes that angst in river communities should be reduced by not just providing certainty to communities about how much water is to be recovered but also giving certainty that it will be recovered by delivering on promises to prioritise water saving infrastructure investments and environmental works and measures, while limiting remaining buybacks wherever possible.

Further, the Coalition believes that where safeguards are being promised by the government, such as the further recovery of water being subject to a 'no socio-economic disadvantage test', they should be enshrined in legislation. Communities have lost trust with the government and much of the process surrounding Murray-Darling reform. They should not be asked to simply take on trust commitments to safeguard their future when such commitments could easily be enshrined into the Bills under consideration.

Water Amendment (Long Term Average Sustainable Diversion Limit Adjustment) Bill 2012 [Provisions]

The Coalition supports the principle of the adjustment mechanism and welcomes its adoption as a sign of constructive engagement in the Basin plan process by all of the Basin States.

However, the Coalition held deep concerns when this Bill was introduced as it sought to remove ministerial and parliamentary oversight of potentially significant changes to Sustainable Diversion Limits across the Basin.

The MDBA outlined the magnitude of the changes possible which under the Bill as originally proposed it would have responsibility for:

In the current draft of the Basin Plan, the net effect of any proposed SDL adjustments cannot exceed plus or minus 5 per cent of the proposed surface

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<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommsen%2Fb08783e6-bd80-4ec5-bb48-f689f4435e91%2F0004;query=Id%3A%22committees%2Fcommsen%2Fb08783e6-bd80-4ec5-bb48-f689f4435e91%2F0000%22>

² <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=b8d5a548-8ea7-4274-957b-3cfa55d832e9>

water SDL for the Basin of 10,873 GL/Year, which equates to approximately 540 GL.³

The Coalition notes that there are plans and expectations that the adjustment mechanism will be applied in both directions. The *Water Amendment (Water for the Environment Special Account) Bill 2012* provides for the recovery of more water for the environment under the adjustment mechanism, while the Victorian Farmers' Federation highlighted the potential to use the adjustment mechanism to achieve the same environmental outcomes under the 2750GL base figure in the Basin Plan with less actual held entitlement:

... there are about 650 gigs of works and measures, so we could get away with 2100 gigs of actual held entitlement to give 2,750 of environmental outcomes. I think this is an example of it not being about the amount of entitlement being held; it is about the environmental outcomes that can be achieved with a smaller volume of actual held entitlements.⁴

The potential for such significant changes without any oversight caused concerns amongst both irrigators and environmentalists. The National Farmers' Federation stated that:

...it is the view of many agricultural stakeholders that the MDBA is incapable of listening and hearing community concerns and incorporating these into subsequent iterations. Consequently, the NFF supports that the Minister or the MDB Ministerial Council retains oversight powers over the SDL adjustment mechanism.⁵

The River, Lakes and Coorong Action Group expressed concerns arising for different reasons:

The implementation of a Murray Darling Basin Plan is a new process with many unknown factors, not all predictable. It is desirable that there should be the utmost transparency and reflection at all stages of implementation. The ongoing oversight of the Minister is also necessary to protect the Murray Darling Basin Authority from undue influence from any one sector.⁶

The Coalition is pleased that the Government has listened to concerns raised by both us and various stakeholder groups and agreed to amend this Bill to restore Ministerial and Parliamentary oversight. The Coalition appreciates the cooperative approach taken by the Government in providing such amendments.

³ <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=6bd0bfba-1902-46e8-b9a1-f8519102ede0>

⁴ http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/b08783e6-bd80-4ec5-bb48-f689f4435e91/toc_pdf/Environment%20and%20Communications%20Legislation%20Committee_2012_11_08_1525.pdf;fileType=application%2Fpdf#search=%22committees/commsen/b08783e6-bd80-4ec5-bb48-f689f4435e91/0000%22

⁵ <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=6b171774-4b57-4f72-aec8-7ecc3d411c33>

⁶ <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=1a64f290-c0eb-4d02-8f74-f84c6b15710d>

Water Amendment (Water for the Environment Special Account) Bill 2012

The Coalition is concerned that this Bill appears to have been hastily put together, poorly thought out, or both. This Bill was announced with much fanfare by the Prime Minister seeking to gain as much political capital as possible in South Australia.

However, time and scrutiny have proven what is so often the case with the Prime Minister's announcements – words and reality are miles apart. The Australian Conservation Foundation states that:

Despite statements by the Prime Minister and the Water Minister that the Special Account will provide for the recovery of 450 GL of environmental water and the achievement of the environmental outcomes associated with a total recovery of 3,200 GL, the Bill fails to guarantee the recovery of any specific volume of environmental water.⁷

Meanwhile, many irrigators are concerned that the Bill allows for further buybacks despite contrary promises made at the time of the Bill's announcement:

The Federal Minister responsible for the Basin Plan has made it clear that there are 'downsides for local communities' from buybacks and has clearly stated that this Bill is designed to ensure that any water recovered from Basin communities above 2750 GL/y be refined to on-farm infrastructure, yet clause 86AD 2(b) makes it very clear that large scale water buybacks are still very much on the agenda.

While there is much concern of the content of this Bill, it is also puzzling why this Bill has been introduced prior to the finalisation of the Basin Plan. Coalition Senators cannot see any reason, other than politics, why a Bill that aims to recover water over and above that recovered by the Basin Plan has been introduced ahead of the Basin Plan. Murray Valley Winegrowers Inc. viewed this situation as:

In broad terms, we would describe the process as cart before the horse, as we have worked through. It has been extremely difficult, I have to say, in defence of the MDBA, to play catch-up all the way through this process in some ways. The process has been galloping ahead of them constantly.

Many stakeholder groups expressed deep concerns that the Bill fails to provide the guarantees of social and economic outcomes the Prime Minister made when announcing the so-called 3200GL target. The National Irrigators Council believes:

Despite the Government's stated intentions 'that the additional 450GL of environmental water to be obtained through projects funded by this Bill to ensure there is no social and economic downside for communities' there is nothing in the Bill which specifically guarantees the 'upward movement' will not cause social and economic downsides for communities.

⁷ <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=baaa290d-0382-4b93-a8c7-625aa0713f77>

The Bill should be amended so that it specifically states that all projects funded under the provisions of this Bill are subjected to a ‘no detriment’ economic and social impact test before being approved.⁸

The Victorian Farmers’ Federation further states that:

To ‘enhance environmental outcomes’ by the method suggested in the Bill (86AA (1)), there will undoubtedly be a socio-economic impact. This must be addressed within the framework of the Bill. It is simply unacceptable to relegate this to a few dot points where the literal use of the money is outlined at 86AD, Purposes of the Water for the Environment Special Account. This leaves the VFF with the view that government is of the belief that simply providing money towards socio-economic issues which arise will solve them. This is simply not the case.

The Australian Conservation Foundation also acknowledged the need to assess the wide range of social and economic impacts alongside environmental impacts and to do so based on robust evidence:

...decisions should be made on the basis of credible and robust social, economic and environmental cost-benefit criteria which incorporates the interests of all affected stakeholders, not just large consumptive water users. This includes business, recreational, environmental, indigenous, local government and community interests.⁹

The concerns of irrigation communities about the potential impacts of further water recovery have been exacerbated by the non-strategic approach to water recovery to date, which was highlighted earlier in these comments. The effects of excess non-strategic buyback and limited delivery of water saving infrastructure projects threaten the viability of some irrigation schemes and communities, as highlighted by Murray Valley Winegrowers:

We believe we are at a tipping point ... the water authorities – Lower Murray Water in Victoria and Western Murray Water on the New South Wales side – are at a point where their capacity to deliver reasonably economically priced water which is not going to push those irrigators out of business through water charges is at a tipping point.¹⁰

Considering the commitments made by the Government to protect communities against socio-economic detriment the Coalition believes amendments reflecting these commitments are warranted to ensure water recovery occurs via means that deliver socio-economic equivalence or better.

The Coalition have noted statements indicating such guarantees *may* be embedded in the Plan, such as this request made by Minister Burke to the MDBA:

⁸ <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=164df72e-b655-438e-b110-7c71dca48eda>

⁹ <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=3162c0fe-cf95-4249-a198-77f74dc21d28>

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<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22committees/comm%20sen/b08783e6-bd80-4ec5-bb48-f689f4435e91/0000%22>

The Basin Plan should include criteria for determining adjustments to surface water SDLs due to ‘efficiency measures’ so that water recovery projects giving rise to an adjustment which reduces the SDL (i.e. for improved environmental outcomes) do not worsen social and economic impacts compared with 2750 impacts. This should be evidenced by the participation of farmers in programs providing investment in water efficiency and recovery projects on their farms, or, in the case of alternative arrangements proposed by a State, assessment by that State that the project(s) they propose will achieve neutral or improved socio-economic outcomes.¹¹

Minister Burke’s second reading speech for this Bill also highlights his belief that a ‘no socio-economic disadvantage’ test applies in practice to these reforms, if not in this actual Bill:

Importantly, the plan being proposed by the Murray-Darling Basin Authority stipulates that additional water beyond the benchmark should only be acquired through methods that deliver additional water for the environment without negative social and economic consequences such as infrastructure.¹²

However, the Coalition believes that as we have not seen the final Plan it would be prudent to embed these commitments, or something similar, in this legislation to remove all doubt about the actual delivery of the Government’s commitment to avoid socio-economic detriment. This point was also made by the National Irrigators Council:

...if it is a triple-bottom line approach then put it into the Act and make that very clear in the Act. Let us not pretend that a legislative instrument is the Act. It is not. It is subordinate to that. So put it in the Act.¹³

The Coalition also notes that implicit in the commitments being made by the minister is a reliance on infrastructure measures to recover the additional water rather than further buybacks. However, numerous submitters such as the National Farmers Federation and Murray Valley Winegrowers expressed concerns that this Bill in paragraph 86AD(2)(b) still appears to allow for further buybacks, in contrast to the Ministers assurances.

In response to questioning about this paragraph the Department sought to reassure those concerned by explaining the inclusion of paragraph 86AD(2)(b) as follows:

¹¹ Letter from Minister Burke to the Hon Craig Knowles of November 1 2012.

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[http://parlinfo.parlInfo/search/display/display.w3p;query=BillId_Phrase%3Ar4925%20Title%3A%22second%20reading%22%20Content%3A%22I%20move%22%7C%22and%20move%22%20Content%3A%22be%20now%20read%20a%20second%20time%22%20\(Dataset%3Ahansards\);rec=0](http://parlinfo.parlInfo/search/display/display.w3p;query=BillId_Phrase%3Ar4925%20Title%3A%22second%20reading%22%20Content%3A%22I%20move%22%7C%22and%20move%22%20Content%3A%22be%20now%20read%20a%20second%20time%22%20(Dataset%3Ahansards);rec=0)

¹³ http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/fb44fcc2-8e47-4d27-8c73-34d41190e456/toc_pdf/Environment%20and%20Communications%20Legislation%20Committee_2012_11_12_1527.pdf;fileType=application%2Fpdf#search=%22committees/commsen/fb44fcc2-8e47-4d27-8c73-34d41190e456/0000%22

Essentially this clause is there because there is a consensus among basin jurisdictions...that in addition to the actual infrastructure investment on-farm, which traditionally has involved the spending of the cost of the infrastructure in return for half of the water recovery, these projects under this program would do that; there would be an investment in infrastructure in return for half of the water saving but it would have an associated linked purchase at the farm level for the remainder of the water saving...This would mean that the farmer would get the return on the infrastructure and additional water saving, which would then be sold at market price...It is not imagined in that particular provision of the bill that there would be a standard water buyback associated with that 450 gigalitres.¹⁴

Once again, as with the 'no socio-economic detriment' test, Coalition Senators believe the legislation should be amended to reflect the assurances being given by the Government that general buybacks will not occur under the funding appropriated in this Bill.

Environmental groups expressed a different concern that the promises of the Prime Minister's announcement do not match the reality of the legislation. Many groups feel this legislation represents a betrayal of the commitment given by the Prime Minister to achieve a 3200GL reduction, including Environment Victoria who stated:

The Bill does not commit to recovering 450 GL of environmental water for the Murray as announced by Prime Minister Gillard, instead it aims to increase 'the volume of the Basin water resources that is available for environmental use by up to 450 gigalitres' (86AA (3)(b)). This is a central flaw in the Bill. The clause requires amendment to read 'by at least 450 gigalitres' to make good on the Prime Minister's commitment.¹⁵

The Conservation Council of SA and the Wilderness Society similarly thought that:

[The Bill] does not afford sufficient priority or guarantees with respect to the 450 GL additional water resource promised by the Prime Minister.¹⁶

This evidence clearly shows that the Prime Minister has been caught out embellishing the fact to suit her political ends and again demonstrates that the Prime Minister places securing media headlines ahead of presenting the facts of the matter in an even handed manner.

The Coalition nonetheless understands the arguments made by the Department of Sustainability, Environment, Water, Population and Communities' that the capacity of the Bill is limited by the constraints within the SDL adjustment mechanism and other factors:

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<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22committees/comm sen/fb44fcc2-8e47-4d27-8c73-34d41190e456/0000%22>

¹⁵ <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=3a386b1c-b39a-4d51-9a89-373b00a29404>

¹⁶ <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=ced8a389-0cf1-48bd-9463-27eba61508a0>

Essentially, for that slice of water above the 2,750 the bill creates the legal framework, including the special appropriations, so that there is clarity and certainty around the appropriation of those monies because it is not until a substantially later point in time that the SDL adjustment mechanism kicks in and triggers other consequences... It provides a special appropriation and a fund to provide a framework with a given amount of money to recover water. The actual water recovery obviously depends on the vagaries of the future, including future prices and so forth. It is a commitment to money which we expect to progressively translate to water over time as the projects are committed and come into actuality.

Coalition Senators oppose the last minute amendment proposed by Government Senators in the majority report to delete the words "up to" from paragraph 86AA(3)(b). Given the structure of this legislation, which appropriates a fixed amount of funds, and the advice provided by the department to the committee, the proposed amendment is clearly unworkable, unachievable and unacceptable.

The Coalition notes the unusual step taken in this Bill to appropriate funds so far in advance. We are particularly concerned by what appears to be a lack of work done to justify the amounts being appropriated and their adequacy to meet the stated objectives of this Bill.

The Coalition is especially concerned about the costs associated with addressing the constraints within the system that would require removal under a 3200GL scenario. How a figure of \$200m for constraints removal was identified is unclear, as are the ramifications if this funding pool is insufficient to remove all constraints necessary or what compensation may be forthcoming to those potentially affected by such constraints removal.

The practical implications of constraints removal are real and come with various costs, as demonstrated by the example of McCoys Bridge given by the Victorian Farmers' Federation:

If you go to the Goulburn Broken Catchment Management Authority and look at their Lower Goulburn floodplain risk assessment, it is a nonsense to say that you can put 40,000 megalitres a day passed McCoys Bridge without causing serious flooding of not only public property but also private property.¹⁷

Senator McKenzie expanded further, stating:

If you look at the Goulburn Broken Catchment Management Authority's environmental flow hydraulic study, it says that if you had that much water at McCoys Bridge, you would flood 100 buildings, you would flood 250

¹⁷ http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/b08783e6-bd80-4ec5-bb48-f689f4435e91/toc_pdf/Environment%20and%20Communications%20Legislation%20Committ ee_2012_11_08_1525.pdf;fileType=application%2Fpdf#search=%22committees/commsen/b08783e6-bd80-4ec5-bb48-f689f4435e91/0000%22

kilometres of road, you would flood 8000 hectares of dryland agriculture and you would flood 1000 hectares of irrigated agriculture.¹⁸

The coalition senators are also concerned that the ambiguity of legal liability of flooding events and the affect that flooding events could have on both public, private and environmental assets.

Many groups are concerned about the consequences for this Barmah Forest, where the largest eucalypt red gum forest in the world cannot physically cope with the volumes of water being proposed and will suffer tremendous damage. These concerns have been inadequately addressed. These concerns have been inadequately addressed. Mr McKenzie of the Murray Valley Wine Growers articulated this at the hearing, saying in relation Barmah Forest that ‘it will drown’.¹⁹

The Wilderness Society and South Australian Conservation Council noted that:

Flooding of flood plains can bring positive benefits as well as problems for farmers and irrigators. The costs, benefits and risks need to be assessed²⁰

ANEDO and Environment Victoria expressed concerns that CEWH’s liability was unclear, stating:

They could be held liable under the private flooding provisions of the *Water Act 1989* (Vic),⁴ or under the common law of nuisance or negligence, for causing water to flow onto private property in a way that causes personal injury, property damage or economic loss.²¹

The National Farmers Federation and The MDBA also acknowledged the difficulties of addressing constraints, as well as the potential benefits, all of which point to the complexities in knowing whether the funding provided for their relaxation is adequate:

...if relaxation of constraints can lead to a better environmental outcome without social and economic harm, I think people would say that that is a positive way to look at it. But we should not think we can just click our fingers and that all constraints would be gone and there would be no further third-party impacts from doing that. I think that is why we are saying that

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http://environmentvictoria.org.au/newsite/sites/default/files/useruploads/EDO%20and%20EV_Submission_Audit%20of%20CEWH.pdf

they require careful examination as to the potential risks which go with the relaxation of constraints as well as the potential benefits.²²

One of the objectives of returning water to the environment is to reinstate some of the natural flooding events that used to happen. There is development now on some of the floodplain areas, so there is a risk, if there are floods in the future, that private property would be affected ... There is a fundamental tension between the issue of increasing water on the floodplain and the incidence of private property, and it is an issue that the authority and particular river operators are very aware of.²³

It is clear that far more work will need to be done to determine the actual cost and implications of removing constraints than has been undertaken to date, which will clearly impact on the effectiveness of this legislation to recover the environmental water it targets under the terms required by the adjustment mechanism.

Coalition Senators hope the Government will address the numerous concerns outlined herein before a vote on this Bill is taken and especially expects that such a vote should not proceed until the final Basin Plan, Water Recovery Strategy and Intergovernmental agreement are released.

Coalition Senators also recommend that, for the sake of clarity and to avoid all doubt, this Bill be amended to explicitly enshrine a 'no detriment socio-economic test' and prohibit use of the funds appropriated under this Bill for general or open buybacks, as per the commitments given by the Minister on these matters.

Senator Simon Birmingham

Senator Bridget McKenzie

Senator Anne Ruston

²² http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/fb44fcc2-8e47-4d27-8c73-34d41190e456/toc_pdf/Environment%20and%20Communications%20Legislation%20Committ ee_2012_11_12_1527.pdf;fileType=application%2Fpdf#search=%22committees/commsen/fb44fcc2-8e47-4d27-8c73-34d41190e456/0000%22

²³ http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/fb44fcc2-8e47-4d27-8c73-34d41190e456/toc_pdf/Environment%20and%20Communications%20Legislation%20Committ ee_2012_11_12_1527.pdf;fileType=application%2Fpdf#search=%22committees/commsen/fb44fcc2-8e47-4d27-8c73-34d41190e456/0000%22