

DISSENTING REPORT BY THE AUSTRALIAN GREENS

1.1 The crisis in the Murray-Darling Basin is real. It is a situation that has social, economic and environmental consequences that we cannot keep hiding from. Leading scientists are telling us and have been telling us for years that we must as a nation significantly reduce the amount of water being taken from the Basin. Without a healthy river system we will not have a healthy food bowl and basin communities will continue to suffer.

1.2 The majority report outlines the complicated history of regulation of the Murray-Darling Basin and the various interventions of the Commonwealth since Federation leading up to the passing of the *Water Act 2007* (Water Act). Prior to the Water Act it had become patently clear that the water resources of the Basin had been severely mismanaged for decades, with significant environmental consequences as well as damage to the future of productive uses of the Basin water and the future of Basin communities.

1.3 The Water Act is recognition that the Commonwealth must play a key role in the management of the Basin and it builds on the National Water Initiative to 'establish clear pathways to return all water sources to environmentally sustainable levels of extraction'. It is recognition that 'long term economic and social values associated with the Basin water resources depend on maintaining environmental values and achieving environmentally sustainable levels of water extraction'.¹

1.4 The issue before the committee in this inquiry is essentially a legal one that goes to the constitutional basis of the Water Act and the related parameters of developing the Basin Plan under the Act.

1.5 The external affairs power provides a key constitutional underpinning of the Act and the international conventions including, the Ramsar Convention and the Convention on Biological Diversity, are relied upon in this context. The Basin Plan must therefore be prepared to give effect to these conventions. The conventions themselves allow for the consideration of social and economic impacts.

1.6 The legal evidence to the inquiry is clear that, given the reliance on the external affairs power as well as the stated objects of the Water Act, the Murray-Darling Basin Authority (MDBA) and the Minister are required to give environmental considerations precedence in developing the Basin Plan. Social and economic factors

1 Joint Statement on the Water Act 2007 (Cth), *Submission 75*, p. 2.

must also be taken into account but the Act prioritises a scientific assessment of sustainable extraction.²

1.7 What is clearly apparent from the Guide to the Draft Basin Plan is that the MDBA did indeed take into consideration social and economic factors in developing the Guide. The best scientific evidence suggested a reduction of over 7000GL is needed to restore the environmental integrity of the Basin; however, after taking into account social and economic impacts, the Guide recommended reductions of only 3000 – 4000GL. As the Guide itself notes, reductions at the lower end will rely on wetter conditions to meet the environmental obligations of the Act.

1.8 The call for there to be a 'balance' or to 'give equal weighting' between environmental, social and economic considerations in setting sustainable diversion limits fails to acknowledge the reality that without a healthy environment there cannot be healthy communities or sustainable productive use from the Basin. Furthermore, as explained by the Australian Network of Environmental Defender's Offices, 'a requirement in legislation that a decision-maker "give equal weighting" to environmental, social and economic considerations means very little operationally. It will not assist the MDBA and the Government in achieving the purpose of the Act which is to achieve long term sustainable extraction levels in the Basin'.³

1.9 The Australian Greens do not support amendments to the Water Act that put its constitutionality in doubt or fundamentally changes its objectives in ensuring long-term sustainability of the Basin's water resources by setting appropriate scientifically-based diversion limits.

1.10 While the MDBA could have undertaken its responsibilities under the Act in developing the Guide to the Draft Basin Plan in a more consultative manner and better explained its process and intended outcomes, those problems were not a result of the Water Act.

Senator Sarah Hanson-Young

2 See Gilbert + Tobin Centre of Public Law, *Submission 15*; Joint Statement on the Water Act 2007 (Cth), *Submission 75*; and Australian Network of Environmental Defender's Offices, *Submission 16*.

3 Australian Network of Environmental Defender's Offices, *Submission 16*, p.7.