

The Senate

Rural and Regional Affairs
and Transport
Legislation Committee

Water Amendment Bill 2018 [Provisions]

June 2018

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Abbreviations

AI	The Australia Institute
Basin	Murray-Darling Basin
Basin Plan	Murray-Darling Basin Plan (2012)
BDL	Baseline Diversion Limit
Bill	Water Amendment Bill 2018
CA	Cotton Australia
Committee	Senate Rural and Regional Affairs and Transport Legislation Committee
DAWR	Department of Agriculture and Water Resources
EDOA	EDOs of Australia
EM	Explanatory Memorandum
GL	Gigalitres
IRN	Inland Rivers Network
Legislation Act	<i>Legislation Act 2003 (Cwlth)</i>
MDBA	Murray-Darling Basin Authority
NBR instrument	Basin Plan Amendment Instrument 2017 (No. 1)
NFF	National Farmers' Federation
NIC	National Irrigators' Council
NPANSW	National Parks Association of NSW
NSWDI	New South Wales Department of Industry
RLCAG	River Lakes and Coorong Action Group
Scrutiny of Bills committee	Senate Standing Committee for the Scrutiny of Bills
SDL	Sustainable Diversion Limit

Water Act	<i>Water Act 2007 (Cwlth)</i>
Water minister	Commonwealth Water Minister
WRP	Water Resource Plan

Chapter 1

Introduction and background

1.1 On 10 May 2018, the provisions of the Water Amendment Bill 2018 (bill) were referred to the Senate Rural and Regional Affairs and Transport Legislation Committee (committee) for inquiry and report by 12 June 2018.¹

1.2 The bill proposes changes to the *Water Act 2007*, which would enable amendments to the Murray-Darling Basin Plan. The bill will allow the Murray-Darling Basin Authority, under direction from the Minister for Agriculture and Water Resources, to prepare an amendment to the Basin Plan that is the same in effect as a Basin Plan amendment that has previously been disallowed by either House of Parliament.²

1.3 The Senate Standing Committee for the Selection of Bills, in its fifth report for 2018, recommended that the bill be referred to the committee, and that the committee give consideration to the impact of the bill's proposed amendments on the Murray-Darling Basin Plan and Murray-Darling River stakeholders.³

Conduct of the inquiry

1.4 Details of the inquiry, including links to the bill and associated documents, were made available on the committee's webpage. The committee also wrote to organisations and individuals likely to have an interest in the bill, seeking submissions by 25 May 2018.

1.5 The committee received 14 submissions which are listed at Appendix 1. Submissions were published on the committee's inquiry webpage.

Consideration of the bill by other committees

1.6 At the time of reporting, neither the Senate Standing Committee for the Scrutiny of Bills or the Parliamentary Joint Committee on Human Rights had yet considered the bill.

Structure of report

1.7 This chapter provides background information on the Murray-Darling Basin Plan (Basin Plan), Sustainable Diversion Limits (SDLs), and how amendments are

1 *Journals of the Senate*, No. 97, 10 May 2018, p. 3094.

2 Explanatory Memorandum, Water Amendment Bill 2018, p. 1.

3 Senate Standing Committee for the Selection of Bills, *Report No. 5 of 2018*, 10 May 2018, p. 2 and Appendix 8.

made to SDLs under the Plan. Chapter 2 provides detailed information on the significant provisions of the bill.

1.8 Chapter 3 considers the issues raised by submitters about the provisions of the bill, and also presents the committee's views and recommendation.

Background

1.9 Commencing on 3 September 2007, the *Water Act 2007* (Water Act) gave effect to the National Plan for Water Security, which provided \$10.05 billion to, among other things, modernise Australia's irrigation infrastructure, reform management of the Murray-Darling Basin (Basin) and address issues with the over-allocation of water in the Basin.⁴

1.10 The Water Act required that the Murray-Darling Basin Authority (MDBA) develop the Basin Plan, the primary objective of which was determining a sustainable limit of water extraction from the Basin.⁵

1.11 The Basin Plan was adopted as a legislative instrument in November 2012 and provides for the integrated management of the water resources in the Basin. The Basin Plan limits the amount of water that can be extracted or taken annually from the Basin for consumptive use, while leaving enough water for the environment. This amount is the SDL.⁶

Sustainable Diversion Limits

1.12 The SDLs in the Basin Plan act as an annual 'cap' on water use, with an SDL determined individually for each catchment and aquifer in the Basin. The SDLs aim to make more water available for the environment.⁷

1.13 Information published by the MDBA details how the SDLs under the Basin Plan were developed:

The first step in establishing the SDLs was a process to determine how much water was currently being used by industries and communities annually. It was estimated, on average, that 13,623 gigalitres per year of

4 Explanatory Memorandum, Water Bill 2007, p. 2.

5 Murray-Darling Basin Authority, *Developing the Basin Plan*, <https://www.mdba.gov.au/basin-plan/developing-basin-plan> (accessed 10 May 2018).

6 Murray-Darling Basin Authority, *What's in the Basin Plan?*, <https://www.mdba.gov.au/basin-plan/whats-basin-plan> (accessed 10 May 2018).

7 Murray-Darling Basin Authority, *What's in the Basin Plan?*, <https://www.mdba.gov.au/basin-plan/whats-basin-plan> (accessed 10 May 2018).

surface water was being taken from the system for consumptive use. This is now known as the baseline diversion limit (BDL).⁸

1.14 It was then determined by the MDBA that 2750 gigalitres (GL) would need to be recovered, per year (from 2019), from the BDL of 13 623GL in order to improve the health of the river system. This amount is known as the water recovery target, and is also a long-term average. The long-term average environmentally sustainable diversion limit for surface water across the Basin was therefore determined as 10 873 GL per year.⁹

1.15 The Basin Plan includes a seven-year transition period (2012 to 2019) to enable time for water users to adjust to the Plan and the reduced level of take via SDLs across the Basin. The Basin Plan provides opportunities for the Plan to be reviewed and improved during this implementation phase.

1.16 As of 1 July 2019, the SDLs for each aquifer and catchment in the Basin will come into effect, through the implementation of Basin state government water resource plans (WRPs).¹⁰ The WRPs are developed under Basin states' existing water planning frameworks and are a key mechanism by which each state will implement the Basin Plan.

1.17 There are 36 WRP areas across the Basin, incorporating groundwater and surface water areas. The WRPs outline how water resources will be managed to ensure consistency with the Basin Plan, and help to align Basin-wide and state-based water resource management. The WRPs detail, among other things, annual limits on water take for each area, how water will be managed during extreme events, and strategies to achieve water quality standards.¹¹

Sustainable Diversion Limit Adjustment Mechanism

1.18 The Basin Plan allows the SDLs to be adjusted. This adjustment mechanism is intended to provide greater flexibility in setting the final water recovery target.

1.19 During development of the Basin Plan, Basin water ministers requested that an adjustment mechanism be included in the Plan, to allow for flexibility in setting the SDLs. On 21 November 2012, amendments to the Water Act were agreed to and

8 Murray-Darling Basin Authority, *Sustainable diversion limits*, <https://www.mdba.gov.au/basin-plan-roll-out/sustainable-diversion-limits> (accessed 11 May 2018).

9 Murray-Darling Basin Authority, *What's in the Basin Plan?*, <https://www.mdba.gov.au/basin-plan/whats-basin-plan> (accessed 10 May 2018); *Sustainable diversion limits*, <https://www.mdba.gov.au/basin-plan-roll-out/sustainable-diversion-limits> (accessed 11 May 2018).

10 Murray-Darling Basin Authority, *Basin Plan timeline*, <https://www.mdba.gov.au/basin-plan/basin-plan-timeline>

11 Murray-Darling Basin Authority, *Water resource plans*, <https://www.mdba.gov.au/basin-plan-roll-out/water-resource-plans> (accessed 11 May 2018).

provided a mechanism to allow the Commonwealth Water Minister (water minister), on the advice of the MDBA, to 'adjust the SDL within defined limits to achieve equivalent or better environmental, social and economic outcomes'.¹²

1.20 Further explanation as to the reasons for including an adjustment mechanism in the Plan are provided on the MDBA's website:

Any change in the baseline diversion limit will result in a change to surface water sustainable diversion limits. The baseline diversion limit is likely to change as each water resource plan is accredited, as new information becomes available on previous water use patterns and usage.

Due to this new information, along with the Sustainable Diversion Limit Adjustment Mechanism, it is expected surface water sustainable diversion limits will continue to change over the coming years.

As water resource plans are developed, new information about water use and management will become available. It is expected through this process, that the estimate of the baseline diversion limit will change and this will then change the sustainable diversion limit.¹³

1.21 An adjustment could occur if Basin Plan environmental outcomes are reached with less water, resulting in more water remaining in the system for other uses (such as irrigation). Likewise, more efficient farming practices could result in more water being available for the environment. The adjustment mechanism in the Basin Plan allows for the recovery targets to be amended up or down, prior to 2019, but by no more than five per cent.¹⁴

Legislation for Basin Plan amendments

1.22 Section 23A of the Water Act allows for the proposal of adjustments to the long-term average SDL. This section of the Water Act allows the Basin Plan to give authority to the MDBA to propose an adjustment to the long-term average SDL for a particular WRP area, and subsequently an adjustment to the long-term average SDL for the Basin.¹⁵

1.23 Sections 46, 47 and 47A of the Water Act state that, in preparing an amendment, the MDBA must consult with the public, Basin states and their water

12 Commonwealth of Australia, Murray-Darling Basin Ministerial Council, *The Sustainable Diversion Limit Adjustment Mechanism: Joint Government Communications Booklet*, November 2014, p. 5, <http://www.agriculture.gov.au/SiteCollectionDocuments/water/sustainable-diversion-limit-adjustment-mechanism.pdf> (accessed 11 May 2018).

13 Murray-Darling Basin Authority, *Sustainable diversion limits*, <https://www.mdba.gov.au/basin-plan-roll-out/sustainable-diversion-limits> (accessed 11 May 2018).

14 Murray-Darling Basin Authority, *Sustainable Diversion Limit Adjustment Mechanism*, <https://www.mdba.gov.au/basin-plan-roll-out/sustainable-diversion-limits/sdlam> (accessed 10 May 2018).

15 *Water Act 2007*, s. 23A.

ministers, the Basin Officials Committee, the Basin Community Committee, and the Murray-Darling Basin Ministerial Council, and undertake any other appropriate consultation.¹⁶

1.24 Section 48 of the Water Act provides that within 12 weeks of the MDBA providing the water minister with an amendment to the Basin Plan, the water minister must consider the amendment and either adopt the amendment, in writing, or give the amendment back to the MDBA with suggestions for MDBA's consideration.¹⁷

1.25 The mechanism for the MDBA to propose adjustments to SDLs is provided for by Chapter 7 of the Basin Plan ('Adjustment of SDLs'). This part of the Plan allows SDLs to be adjusted 'to reflect the effects of measures that increase the supply of water or the efficiency of water use'.¹⁸

1.26 SDL adjustments adopted by the water minister are tabled in Parliament as a legislative instrument, and are subject to disallowance.¹⁹

Example of a proposed SDL amendment

1.27 In developing the Basin Plan, the MDBA acknowledged that there was capacity for improving the information available about the northern Basin, including the social and economic assessments of the northern Basin. Accordingly, as part of finalising the Basin Plan in 2012, governments agreed to a Northern Basin Review to improve the information available about the northern Basin, and to determine whether there was scope to change the northern Basin SDLs.²⁰

1.28 As a result of the Northern Basin Review, in 2016 the MDBA recommended that the water recovery target in the northern Basin be reduced from 390GL to 320GL, contingent on commitments from the Australian, Queensland and NSW governments to 'implement a number of toolkit measures to improve water management in the northern Basin'. The MDBA argued that the reduced target offered improved social and economic outcomes for some irrigation communities when compared to the

16 *Water Act 2007*, ss. 46, 47 and 47A.

17 *Water Act 2007*, s. 48.

18 Basin Plan 2012, Chapter 7, Part 2, s. 7.09.

19 Commonwealth of Australia, Murray-Darling Basin Ministerial Council, *The Sustainable Diversion Limit Adjustment Mechanism: Joint Government Communications Booklet*, November 2014, p. 14.

Disallowance of legislative instruments is provided for under section 42 of the *Legislation Act 2003*.

20 Murray-Darling Basin Authority, *The Northern Basin Review: Understanding the economic, social and environmental outcomes from water recovery in the northern basin*, November 2016, p. 10, <https://www.mdba.gov.au/sites/default/files/pubs/Northern-basin-review-report-FINAL.pdf> (accessed 11 May 2018).

390GL target. However, the MDBA also stated that the reduction would deliver 'slightly reduced' environmental outcomes when compared to the Basin Plan.²¹

1.29 Pursuant to the Water Act, on 9 November 2017 the MDBA made a recommendation to the water minister to reduce the northern Basin recovery target from 390GL to 320GL. The amendments were adopted by the water minister and tabled in the Senate on 14 November 2017, and in the House of Representatives on 4 December 2017, as the Basin Plan Amendment Instrument 2017 (No. 1) (sometimes referred to as the Northern Basin Review amendment, or NBR instrument).²²

1.30 On 14 February 2018, the Senate voted to disallow the NBR instrument.²³

Purpose of the bill

Overview of provisions

1.31 The bill will amend the Water Act to enable the water minister to direct the MDBA to prepare an amendment to the Basin Plan, that is the same in effect as a Basin Plan amendment that has previously been disallowed, or taken to have been disallowed, by either House of Parliament.²⁴

1.32 The provisions of the bill provide that any new amendment prepared under the proposed new power must be the same in effect as a disallowed amendment. As a result, the water minister and the MDBA will not be able to prepare or adopt any amendments 'that have not previously been subject to the detailed (including extensive consultation) process' required by the Water Act. The Explanatory Memorandum (EM) to the bill argues that this requirement will 'protect the integrity of the consultation process'.²⁵

1.33 The bill also proposes a time limit within which the water minister must direct the MDBA to prepare an amendment, being within 12 months from the day the original amendment was disallowed (or taken to be disallowed).²⁶

21 Murray-Darling Basin Authority, *The Northern Basin Review: Understanding the economic, social and environmental outcomes from water recovery in the northern basin*, November 2016, p. 11.

22 Murray-Darling Basin Authority, *Basin Plan amendments*, <https://www.mdba.gov.au/basin-plan-roll-out/basin-plan-amendments> (accessed 11 May 2018); Federal Register of Legislation, Legislative Instruments – No longer in force, Basin Plan Amendment Instrument 2017 (No. 1) (F2017L01462), <https://www.legislation.gov.au/Details/F2017L01462> (accessed 11 May 2018).

23 *Journals of the Senate*, No. 86, 14 February 2018, p. 2728.

24 Explanatory Memorandum, Water Amendment Bill 2018, p. 1.

25 Explanatory Memorandum, Water Amendment Bill 2018, p. 1.

26 Explanatory Memorandum, Water Amendment Bill 2018, p. 1.

1.34 In his second reading speech, the Minister for Agriculture and Water Resources, the Hon David Littleproud MP, stated that the bill 'seeks to rectify the uncertainties that remain' as a result of the disallowance of the NBR instrument. Minister Littleproud continued that:

The bill will amend the Water Act to enable the NBR instrument to be remade and tabled again before parliament as soon as possible.

...The February disallowance of the NBR instrument means we are facing increased time pressure to move forward with implementation of the plan. An instrument that gives effect to the outcomes of the NBR instrument could be prepared by the [MDBA] and adopted by the minister by mid-2018. This will provide certainty to basin states and communities as they prepare sustainable diversion limit (SDL) compliant water resource plans by 30 June 2019.²⁷

Acknowledgements

1.35 The committee thanks those individuals and organisations who made submissions to the inquiry.

27 The Hon David Littleproud MP, Minister for Agriculture and Water Resources, *House of Representatives Proof Hansard*, 10 May 2018, pp. 7-8.

Chapter 2

Key provisions

2.1 The bill, which contains one schedule of amendments, will insert a new section 49AA into subsection F of Division 1 of Part 2 of the Water Act, and make related amendments to other sections of the Water Act to give effect to the new section.

2.2 If passed, the provisions of the bill will allow the water minister to remake the NBR instrument. The Department of Agriculture and Water Resources (DAWR) noted that the disallowed NBR instrument amended the Basin Plan to implement changes arising from:

- the Northern Basin Review of SDLs;
- three groundwater reviews and a need for other technical groundwater amendments;
- the Australian Government response to the 2014 Water Act review; and
- a need for other technical amendments.¹

Amendment of the Basin Plan

Schedule 1 - new section 49AA

2.3 Item 2 of Schedule 1 of the bill inserts section 49AA in to the Water Act. According to the EM, this new section will 'provide an expedited process to remake a disallowed Basin Plan amendment', known as an 'earlier amendment'. Under this section, the Commonwealth Water Minister (water minister) will have authority to direct the MDBA to prepare an amendment to the Basin Plan, that will be the same in effect as an earlier amendment to the Basin Plan that has been disallowed by either House of the Parliament.²

2.4 Proposed subsection 49AA(1) gives the authority for the water minister to make the direction to the MDBA, with certain limitations. The limitations are that:

- the amendment must be the same in effect as the earlier, disallowed amendment;
- the earlier amendment was prepared in accordance with the detailed consultation requirements under Part 2 of the Water Act;³

1 Department of Agriculture and Water Resources, *Submission 13*, p. 2.

2 Explanatory Memorandum, Water Amendment Bill 2018, p. 5.

3 These requirements were described in Chapter 1.

- the direction to the MDBA is given within a 12 month period, beginning on the day that the earlier amendment was disallowed (or taken to be disallowed); and
- the earlier amendment must not have been one that was previously adopted under section 49AA.⁴

2.5 With regard to the last point, the EM states that if the water minister does not adopt an amendment, the minister could re-direct the MDBA to 'propose a further iteration of the amendment, provided that the direction was given within the same 12 month period'.⁵

2.6 The EM argues that the limitations listed above will:

...operate so that the [MDBA] cannot prepare an amendment that introduces new provisions that will deliver a different outcome to the earlier amendment that has not been subject to the extensive consultation process under the Water Act. There is also a 12 month limitation to ensure the previous consultation on the earlier amendment is relevant and valid.⁶

2.7 In its submission to the inquiry, DAWR reiterated this position, stating that the MDBA may not propose changes to the disallowed instrument that have not previously been subject to the detailed process (including extensive consultation) set out in sections 45 to 48 of the Water Act. This also ensures that the MDBA 'cannot include any new or different amendments, as these would not achieve the same effect as the disallowed amendment'.⁷

2.8 In his second reading speech, Minister Littleproud also made clear that the ministerial direction powers would only apply to disallowed instruments that were prepared under subdivision F of Division 1 of Part 2 of the Water Act. The new power provided by the bill may not necessarily apply if an amendment to adjust SDLs, made under section 23A and 23B of the Water Act, was disallowed.⁸

Other provisions

2.9 Under proposed subsection 49AA(2), the MDBA must comply with a direction made under subsection (1) by the water minister. The MDBA must prepare the amendment and give it to the water minister as soon as practicable.

4 Explanatory Memorandum, Water Amendment Bill 2018, pp. 5-6.

5 Explanatory Memorandum, Water Amendment Bill 2018, p. 6.

6 Explanatory Memorandum, Water Amendment Bill 2018, p. 6.

7 Department of Agriculture and Water Resources, *Submission 13*, pp. 1-2.

8 The Hon David Littleproud MP, Minister for Agriculture and Water Resources, *House of Representatives Proof Hansard*, 10 May 2018, p. 7.

2.10 Once the amendment is received by the water minister, subsection 49AA(3) provides that the minister must either adopt the amendment, in writing, or give notice to the MDBA of a decision not to adopt the amendment.

2.11 Subsection 49AA(4) is a clarifying provision, stating that sections 46 to 48 of the Water Act do not apply to a Basin Plan amendment that has been prepared, or prepared and adopted, under new section 49AA. These sections of the Water Act relate to consultations by the MDBA in preparing a Basin Plan amendment, the MDBA seeking submissions and comments on the proposed amendment, and ministerial adoption of the proposed Basin Plan amendment.

2.12 Subsection 49AA(6) also acts as a clarifying provision. This subsection provides that 'certain types of changes in an amendment will not be prevented from being taken to be the same in effect as a disallowed amendment'. The EM goes on to state that:

The clarification provided in subsection 49AA(6) is not intended to limit the kinds of amendments that will be the same in effect. Rather, this clarification is provided to remove any doubt about whether these kinds of amendments would be the same in effect.⁹

2.13 Subsection 49AA(6) details the changes that would not prevent an amendment being taken to be the same in effect as a disallowed amendment, including:

- a change that is required because another amendment to the Basin Plan has commenced after the commencement of the earlier amendment (for example, the Basin Plan Amendment (SDL Adjustments) Instrument 2017 which commenced in law after the commencement of the earlier amendment);
- a change that is required because a requirement under the Basin Plan has already occurred, or been met, after the commencement of the earlier amendment (for example, the 2017 SDL adjustment determination occurring in December 2017 after the commencement of the earlier amendment); and
- a change that causes the amendment to commence later than the earlier amendment (a change in commencement dates).¹⁰

2.14 Minor or non-substantive amendments would also not prevent the amendment from being the same in effect as the earlier disallowed amendment.¹¹

2.15 The bill also ensures that the water minister cannot delegate the functions of section 49AA to anyone else, and therefore the new directions power can only ever be exercised by the water minister (items 4 and 5 of the bill).¹²

9 Explanatory Memorandum, Water Amendment Bill 2018, p. 6.

10 Water Amendment Bill 2018, Item 2, subsection 49AA(6); Explanatory Memorandum, Water Amendment Bill 2018, pp. 6-7.

11 Explanatory Memorandum, Water Amendment Bill 2018, p. 6.

Transitional provisions – new Schedule 10

2.16 Item 7 of the bill inserts a new Schedule 10 into the Water Act, for transitional provisions relating to amendments made by Schedule 1 of the bill.

2.17 The transitional provisions state that any amendments made by Schedule 1 of the bill 'apply whether the earlier amendment of the Basin Plan was disallowed (or taken to have been disallowed)' under the relevant sections of the Legislation Act, before, at or after the commencement of that schedule.¹³ As noted by the EM, this means that any amendments made by Schedule 1 – being new section 49AA – 'apply regardless of when a previous amendment has been disallowed before [Schedule 10] has commenced in law'.¹⁴

2.18 Item 7 of the bill relates directly to the instrument disallowed on 14 February 2018 by the Senate, the NBR instrument (Basin Plan Amendment Instrument 2017 (No. 1)). The transitional provisions are to apply if the water minister gives a direction to the MDBA to prepare an amendment of the Basin Plan that is the same in effect as the NBR instrument.

2.19 The new subsection 2(2) of Part 1 of Schedule 10 sets out transitional provisions relating to the preparation of an amendment of the Basin Plan that is the same in effect as the disallowed NBR instrument. As detailed by the EM, subsection 2(2) states that one or more of the following changes does not prevent the amendment from being the same in effect as the disallowed amendment:

- a change to the definition of *re-allocation adjustment request* to enable a request to be made in anticipation of this provision being amended in the Basin Plan;
- a change in subsection 6.05(13) of the Basin Plan to provide that the MDBA must publish variations to the SDL resource unit shared reduction amounts on its website, even when there has not been an initial re-allocation adjustment requirement; and
- a change to section 7.14A of the Basin Plan that will reflect that the 2017 SDL adjustments have already occurred.¹⁵

Disallowance and sunseting

2.20 New subsection 49AA(5) proposed by the bill states that a direction made under subsection 49AA(1) is a legislative instrument. However, it is not subject to

12 Explanatory Memorandum, Water Amendment Bill 2018, p. 7.

13 Water Amendment Bill 2018, Item 7 – Schedule 10, Part 1, subsection 1.

14 Explanatory Memorandum, Water Amendment Bill 2018, p. 7.

15 Water Amendment Bill 2018, Item 7 – Schedule 10, Part 1, subsection 2; Explanatory Memorandum, Water Amendment Bill 2018, pp. 7-8.

section 42 of the *Legislation Act 2003* (Legislation Act), relating to disallowance, nor is it subject to the sunset provisions of the Legislation Act. The EM notes that:

Subsection 49AA(5) provides that a direction made under subsection 49AA(1) is a legislative instrument. However this direction is not a disallowable legislative instrument required under the *Legislation Act 2003* to be tabled in Parliament. The direction is also not subject to the sunset provisions for legislative instruments detailed in Part 4 of Chapter 3 of the *Legislation Act 2003*.¹⁶

Chapter 3

Issues

3.1 As detailed in this chapter, there was a mixed response to the bill, with some submitters strongly supporting the passage of the bill¹ and others expressing strong opposition to it.²

3.2 The committee notes that a number of submitters to this inquiry raised broader concerns with the management of the Basin, implementation of the Basin Plan, and the findings of the Northern Basin Review. In particular, submitters raised a number of concerns with the content of the disallowed NBR instrument, and with a later instrument concerning SDL adjustments in the Basin Plan, passed by the Senate on 9 May 2018.³

3.3 The committee appreciates that there are many perspectives on the management of the Basin and the implementation of both the Water Act and the Basin Plan, and that the bill before the committee interacts with other legislative mechanisms currently in place to manage the resources of the Basin. The committee is also alive to the fact that the management of the Murray-Darling Basin is currently a matter of robust public debate.

3.4 However, the committee has been tasked in this instance with inquiring only into the provisions of the bill. The committee therefore has not engaged with the broader concerns around management of the Basin, with the findings of the Northern Basin Review, or with the implementation of the review's recommendations, beyond where necessary to consider the provisions of the bill.

General comments

3.5 A number of submitters did not support the intent of the bill and suggested that the bill should not be passed.

3.6 The Inland Rivers Network (IRN) objected to the bill and saw it as an erosion of the intent of the Water Act. The IRN further contended that the bill would compromise both the independence of the MDBA, and the purpose of the Water Act

1 NSW Department of Industry, *Submission 3*; National Irrigators' Council, *Submission 7*; Cotton Australia, *Submission 8*; National Farmers' Federation, *Submission 11*;

2 Mr Bob Newman, *Submission 1*; Ms Melissa Gray, *Submission 2*; Mr Robert and Ms Katharine McBride, *Submission 5*; Inland Rivers Network, *Submission 6*; National Parks Association of NSW, *Submission 9*; EDOs of Australia, *Submission 10*; River Lakes and Coorong Action Group, *Submission 12*; The Australia Institute, *Submission 14*.

3 *Journals of the Senate*, No. 96, 9 May 2018, p. 3081.

'to achieve an Environmentally Sustainable Level of Take (ESLT) through the Basin Plan'.⁴

3.7 The River Lakes and Coorong Action Group (RLCAG) expressed its general concern with the bill, arguing that it represented an 'apparent shift in the implementation of the Basin Plan away from a focus on environmental outcomes'. RLCAG argued for the implementation of the Basin Plan in full, prior to making any adjustments to that Plan, and saw the 70GL reduction of the recovery target in the northern Basin as undermining the integrity of the Basin Plan.⁵

3.8 The Australia Institute (AI) did not support the bill, arguing that there had been no public consultation on fundamental changes to the Basin Plan. It suggested that future changes to the SDLs could be inconsistent with the Water Act and could be enacted outside of the parliamentary oversight process. AI further argued that the 'actual wording of the amendment to the Basin Plan' was either ambiguous or not provided.⁶

3.9 EDOs of Australia (EDOAs) were of the view that the bill 'appears to facilitate a series of legal exceptions, including in relation to the recently disallowed' NBR instrument.⁷

3.10 The National Parks Association of NSW (NPANSW) expressed its dismay over changes to water management legislation, which it felt had undermined the original intention of the Water Act. The NPANSW contended that the bill 'further diminishes the potential to restore the health of the rivers and wetlands'. It called for the bill to be rejected due to its 'seriously adverse implications'.⁸

3.11 However, those submitters who supported the bill encouraged its swift enactment, to allow the tabling of the new instrument and therefore the implementation of the findings of the Northern Basin Review as soon as possible.

3.12 The NSW Department of Industry (NSWDI) considered the amendments to be 'critical...for the timely and realistic delivery of the Basin Plan objectives'. NSWDI went on to argue that:

There is a level of urgency for the Federal Parliament to pass this Bill to allow the Northern Basin Review amendments to be promptly restored. This will provide certainty to Basin states and communities as they prepare

4 Inland Rivers Network, *Submission 6*, p. 1.

5 River Lakes and Coorong Action Group, *Submission 12*, pp. 2-3.

6 The Australia Institute, *Submission 14*, p. 5.

7 EDOs of Australia, *Submission 10*, p. 3.

8 National Parks Association of NSW, *Submission 9*.

SDL compliant water resource plans – a key commitment under the Basin Plan and statutory instrument under the *Water Act 2007*.⁹

3.13 NSWDI went on to argue that:

The bill ensures that critical planning and management decisions informing future amendments to the Basin Plan can continue to be informed by science and data, and that the integrity of the public consultation process is maintained to best balance environmental, economic and social objectives.¹⁰

3.14 The National Irrigators' Council (NIC) supported the bill, stating that the 'outcome of the Northern Basin Review should be able to be reintroduced without being subjected to a further period of review and consultation'. The NIC expressed to the committee its concerns over the disallowance of the earlier amendment:

The disallowance caused considerable dismay to irrigation communities in the Northern Basin. Many felt that they had been let down by the Parliament, having spent many years engaged in a demanding process. Given the extensive process and the constructive engagement of communities, it would not be fair (or a reasonable use of resources) to expect the communities to be subjected to the full process again.¹¹

3.15 Cotton Australia (CA) was also in support of the bill, and viewed the tabling of the bill in parliament as an 'extremely encouraging sign' that the Basin Plan would be implemented in full. CA argued that the bill provided certainty to communities that the Basin Plan could be implemented in a 'measured manner', consistent with the intent of the Water Act.¹²

3.16 In its submission, DAWR confirmed to the committee that the new directions power of the water minister, as provided by the bill, will allow for the outcomes of a new instrument to be given effect in a 'prompt manner', as opposed to the approximately eight month timeframe required by the provisions of the Water Act. The expedited process provided by the bill:

would enable a new amendment to be prepared by the Authority and adopted by the Minister by mid-2018. Preparing a new amendment under the proposed new directions power will provide certainty to Basin States and communities, as they prepare Basin Plan compliant water resource plans by 30 June 2019.¹³

9 NSW Department of Industry, *Submission 3*, pp.3-4.

10 NSW Department of Industry, *Submission 3*, p. 5.

11 National Irrigators' Council, *Submission 7*, pp. 1-2.

12 Cotton Australia, *Submission 8*, pp. 1-2.

13 Department of Agriculture and Water Resources, *Submission 13*, p. 2.

Implementation of northern Basin amendments

3.17 As was made clear in Minister Littleproud's second reading speech, the bill will allow the amendments proposed by the disallowed NBR instrument to be reintroduced to parliament, and thus – pending passage through the parliament – reduce the northern Basin recovery target from 390GL to 320GL.

3.18 The National Farmers' Federation (NFF) argued that the 70GL reduction provision was a 'key part of the Plan and should thus be implemented'. The NFF stated that:

the development of the 70 GL reduction was done through an independent consultative process and recommended to the government by the independent Murray Darling Basin Authority acting within the parameters of the Act and Plan legislation.¹⁴

3.19 CA stated that the Northern Basin Review provided for the better targeting of water acquisitions to achieve greater environmental outcomes. In light of this view, CA argued that it had:

been vocal that the amendment which was removed needed to be re-introduced into parliament for the Plan to be successfully implemented and achieve enhanced environmental outcomes while balancing the social and economic objectives. This Bill does that.¹⁵

Public consultation

3.20 It was the view of a number of submitters that the bill would remove the need for amendments to the Basin Plan to be subject to community consultation, as required by the Water Act.

3.21 Mr Bob Newman argued that the bill appeared to be 'specifically aimed at circumventing the community consultation requirements that were a key element of the Murray-Darling Basin Plan when it was initiated'. Further, Mr Newman was of the view that the bill was both unnecessary in light of existing legal processes, and 'deliberately designed to subjugate the consultation process associated with good water resource management'.¹⁶

3.22 The Ryde Hunters Hill Flora and Fauna Preservation Society suggested that the bill appeared to compromise transparent due process, and questioned whether the new instrument would be subject to another round of consultation.¹⁷

14 National Farmers' Federation, *Submission 11*.

15 Cotton Australia, *Submission 8*, p. 1.

16 Mr Bob Newman, *Submission 1*.

17 Ryde Hunters Hill Flora and Fauna Preservation Society, *Submission 4*.

3.23 Ms Melissa Gray also suggested that the bill was being used as a way to evade the community consultation requirements of the Water Act, by removing the need for the minimum one month of community consultation on an amendment instrument.¹⁸

3.24 That view was supported by the IRN, who argued that the current version of the NBR instrument (which was before parliament in 2017) had not been placed on public exhibition for a month, as required.¹⁹

3.25 AI argued that the bill would apply to any amendment, and was not restricted to addressing the disallowed NBR instrument. Therefore, AI contended that:

Any future amendment, from any future government, could be treated the same way with reduced transparency and public participation.²⁰

Consultation on disallowed instrument

3.26 It was put to the committee that the disallowed NBR instrument, as presented to the parliament in late 2017, was substantially different to the version that was subject to public consultation in 2016. This made some submitters particularly concerned about a potential lack of public consultation on forthcoming amendments, resulting from the passage of the bill.

3.27 Mr Robert and Ms Katharine McBride argued that the lack of further consultation on a new instrument was a 'direct contradiction' to government commitments to increased transparency regarding management of the Basin. The McBrides went on to state that:

The lack of further community consultation is of significant concern, given that the Instrument to be tabled varies from the consultation document release for public consultation in 2016. These changes are significant, in particular the provision for water recovered in one valley to count toward recovery requirements in another valley.²¹

3.28 It was the view of EDOA that the bill was tabled to circumvent the community consultation provisions provided for in the Water Act. The EDOA also raised concerns over the 2016 consultation on the earlier amendment instrument. The EDOA argued that the bill would:

overcome the need to place the [NBR instrument] on public exhibition for a minimum of eight weeks and for the MDBA to review and consider all submissions responding to that Instrument. This is particularly problematic

18 Ms Melissa Gray, *Submission 2*, p. 1.

19 Inland Rivers Network, *Submission 6*, p. 1.

20 The Australia Institute, *Submission 14*, p. 5.

21 Mr Robert and Ms Katharine McBride, *Submission 5*, p. 2.

as the version of the [NBR instrument] that was placed on public exhibition in late 2016 is different to the current version.²²

3.29 AI appreciated that the intent of the bill was to avoid 'repeating a consultation and submission process on an amendment that is substantially the same and has already been consulted on', and agreed that this approach was reasonable. However, AI contended that the disallowed NBR instrument contained changes that were 'never subject to a public consultation and submission process', with the changes included 'several months' after public consultation on the instrument had concluded.²³

Consultation on new instrument

3.30 While acknowledging the concerns detailed above, the committee notes that as any new amendment instrument must be the same in substance as the earlier (disallowed) amendment, the content of the new instrument should have already been subject to the required consultation process.

3.31 This view was confirmed by the EM, the water minister and by the submission of DAWR to the inquiry. In his second reading speech, Minister Littleproud stated that:

The Murray-Darling Basin Authority may not propose amendments to the previously disallowed instrument if they have not gone through the extensive consultation process under the Water Act.

...that power [to prepare a new instrument] is only available if the disallowed instrument has been through consultation requirements set out in the Water Act.

...These limitations will ensure that the integrity of the public consultation process is maintained to best balance environmental, economic and social objectives.²⁴

3.32 DAWR submitted to the committee that the bill contained safeguards to ensure that the ministerial power to direct the MDBA was not used inappropriately. DAWR argued that these limitations were:

paramount to ensure that the integrity of the consultation process conducted for the disallowed amendment is retained and that the Authority does not propose any amendments to the Basin Plan that have not been subject to the consultation already undertaken for the disallowed amendment.²⁵

22 EDOs of Australia, *Submission 10*, p. 2. The EDOs of Australia submission argues that clause 7.14A of the NBR instrument was not included in the version of the instrument placed on public exhibition as part of consultation; see p. 3.

23 The Australia Institute, *Submission 14*, pp. 6, 8.

24 The Hon David Littleproud, Minister for Agriculture and Water Resources, *House of Representatives Proof Hansard*, 10 May 2018, pp. 7-8.

25 Department of Agriculture and Water Resources, *Submission 13*, p. 1.

3.33 The submission of NSWDI noted that the water minister's powers under the bill would be restricted to disallowed instruments that have been through the consultation requirements of the Water Act. NSWDI argued that this would provide 'transparency and accountability', while fostering 'community confidence that their views will be brought into the decision-making process for the planning and delivery of the Basin Plan'.²⁶

Transitional provisions and retrospectivity

3.34 Amendments to section 6.05 of the Basin Plan were proposed by the NBR instrument, which would 'change the SDLs based on where water is recovered, after any amendments to the SDLs were considered by parliament'.²⁷

3.35 The transitional provision at Schedule 10, Part 1, section 2(a) of the bill provides for a change to the definition of a 're-allocation adjustment request' (in section 6.05 of the Basin Plan) to enable a request to be made in anticipation of this provision being amended in the Basin Plan.²⁸

3.36 The EDOA raised concerns over this provision of the bill, noting that the *Legislative Instruments Act 2003* (now the *Legislation Act*²⁹), at section 12, provides that an instrument cannot apply retrospectively if it would adversely affect rights or impose liabilities. The EDOA noted that this can be overcome 'if an enabling statute (such as the Water Act) expressly authorises the inclusion of such clauses in the subordinate instrument'. The EDOA argued that the bill:

includes transitional provisions that state that a request that has already been made by a Basin State under cl. 6.05 to reallocate water recovery from one valley to another is to be expressed as having been made in 'anticipation' of this new clause. In other words, a request that has already been made – despite the fact that the [NBR instrument] was disallowed and therefore could not have authorised such a request – will be retrospectively validated.

...Assuming the Bill is being table to overcome s. 12(2) of the *Legislative Instruments Act 2003* [sic], it is possible to conclude that this is being done despite the fact that it deviates significantly from legislative norms.³⁰

3.37 AI also raised concerns with the transitional provisions, arguing that the amendments:

26 NSW Department of Industry, *Submission 3*, p. 5.

27 The Australia Institute, *Submission 14*, p. 7.

28 Explanatory Memorandum, Water Amendment Bill 2018, p. 8.

29 The *Legislative Instruments Act 2003* became incorporated into the *Legislation Act 2003* on 5 March 2016. See Australian Government Office of Parliamentary Counsel, *Instruments Handbook*, version 3.2, March 2018, pp. ii, 2.

30 EDOs of Australia, *Submission 10*, pp. 2-3.

allow for changes to SDLs based on the location of water recovery and not based on any regard to ecologically sustainable development or any science.

...[the provision] enables water recovered before the amendment is made to retrospectively count towards the SDL.³¹

3.38 The IRN was likewise concerned that the bill would give retrospective validation to 'the reallocation of water recovery from one valley to another', and that the 'provision for water recovered or 'saved' in one valley to count toward recovery requirements in another valley has no scientific basis'. The IRN was also of the view that retrospectivity was not normal legislative practice.³²

3.39 With regard to the transitional provisions more broadly, AI submitted that it was unclear whether the wording of Schedule 10, Part 1, section 2 of the bill was intended to be the 'actual wording of the new amendment or a description of the changes in the new amendment'. AI put it to the committee that:

If Schedule 10, Part 1, Division 2 (2) (a), (b) and (c) are the actual wording of the new amendment, they are ambiguous and in particular, the changes to s7.14A are very unclear.

If Schedule 10, Part 1, Division 2 (2) (a), (b) and (c) are a description of the changes, then parliament is being asked to take on faith that the new amendment is the 'same in effect' as the original amendment, without seeing the actual wording.

s6.05 and 7.14A relate to changes to the SDLs, which are fundamental to the Basin Plan. It is therefore important that the wording of the amendment changes should be unambiguous and described fully.³³

Power of the minister and independence of the MDBA

3.40 Concerns were raised in evidence over the provisions of the bill which provide the water minister with the authority to direct the MDBA to prepare an amendment to the Basin Plan.

3.41 Submitters were particularly concerned that the use of such powers had the potential to compromise the independence of the MDBA. This position was taken by the IRN, who viewed the ministerial direction powers as 'interfering with the process of preparing amendments to the Basin Plan'.³⁴

3.42 The EDOA suggested that the ministerial direction powers of the bill differ 'considerably' from the existing provisions in the Water Act that apply to Basin Plan amendment proposals. The EDOA argued that:

31 The Australia Institute, *Submission 14*, p. 7.

32 Inland Rivers Network, *Submission 6*, pp. 1-2.

33 The Australia Institute, *Submission 14*, p. 9.

34 Inland Rivers Network, *Submission 6*, p. 2.

Specifically, under the relevant provisions of the Basin Plan, it is the MDBA – not the Minister – that decides that it will prepare an amendment to the Plan. This is in keeping with its status as an independent statutory authority.³⁵

3.43 Mr and Ms McBride were in agreement with this position. They suggested that the ministerial direction powers significantly compromised the MDBA and were in direct opposition to the provisions of the Water Act which establish the independence of the MDBA.³⁶

3.44 However, some submitters thought that the bill contained suitable limitations on the water minister's powers, and allowed the minister to act appropriately in the circumstances. For example, the NFF argued that:

The Bill provides a significant failsafe to ensure there are limits to the scope where a Minister can act unilaterally to direct the Authority to prepare an amendment under the plan. The Bill provides appropriate limitations on and in what circumstances the Minister can act and appropriate time limits on how quickly the Minister needs to act, specifically only in the case of a disallowed or deemed disallowed motion. NFF regards this as appropriate, consistent with the intent of the Act, consistent with the implementation of the Plan and necessary to assure particularly northern basin communities of certainty from a measured approach to environmental and consumptive water allocations.³⁷

3.45 The EM notes that the Water Act already contains ministerial direction powers, and this new power is an extension of the existing power held by the minister to give a direction.³⁸

3.46 In its submission, DAWR highlighted other areas of the Water Act that give the water minister the authority to direct the MDBA. DAWR gave the example of section 175 of the Water Act, which allows the minister to give a direction about the performance of the Authority's functions.³⁹

Disallowance provisions

3.47 Some submitters expressed concerns to the committee about the overall need for the bill, given the existing provisions of the Legislation Act in relation to disallowable instruments. It was put to the committee that the current provisions in the

35 EDOs of Australia, *Submission 10*, p. 3.

36 Mr Robert and Ms Katharine McBride, *Submission 5*, p. 3.

37 National Farmers' Federation, *Submission 11*.

38 Explanatory Memorandum, Water Amendment Bill 2018, p. 2.

39 Department of Agriculture and Water Resources, *Submission 13*, p. 1.

Legislation Act already allow a disallowed instrument to be reintroduced to parliament, in certain circumstances.⁴⁰

3.48 The EDOA drew attention to the provisions of the Legislation Act which already allow a legislative instrument that has been disallowed to be re-tabled in parliament. For this reason, it questioned why the bill was being used to facilitate reconsideration of the NBR instrument.⁴¹

Disallowance of new amendment instrument

3.49 The bill provides that while a new amendment to the Basin Plan made under section 49AA will be a legislative instrument, it will not be subject to disallowance.⁴²

3.50 The EDOA observed that an instrument resulting from a direction of the water minister, under the new provisions introduced by the bill, would be a non-disallowable instrument. The EDOA put it to the committee that:

By authorising the Minister to direct the MDBA by way of a non-disallowable instrument (i.e., no Parliamentary oversight) to prepare an amendment to the Basin Plan, the independence of the MDBA is significantly compromised.⁴³

3.51 The Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills committee) has long held the view that whenever Parliament delegates power to legislate, appropriate oversight of that power should be exercised. Provisions which insufficiently subject the exercise of legislative power to parliamentary scrutiny include those which enable a minister to issue legislative instruments, with no obligation that the instrument be tabled in Parliament or subject to disallowance.⁴⁴

3.52 The EM to the bill does not offer an explanation as to why a new amendment would not be subject to disallowance or to sunseting, as expected by the Scrutiny of

40 Section 48 of the *Legislation Act 2003* provides that a legislative instrument that has been disallowed cannot be remade within six months after the day of disallowance. A legislative instrument that is the same in substance to the disallowed instrument can be introduced within that six month period, if the relevant House of Parliament approves, by resolution, the making of an instrument or provision the same in substance as the disallowed instrument.

41 EDOs of Australia, *Submission 10*, p. 2. The same view was put forward by Ms Melissa Gray, *Submission 2*, p. 1.

42 There appeared to an understanding from some submitters that the new amendment instrument would be a disallowable instrument. See, for example: National Irrigators Council, *Submission 7*; Department of Agriculture and Water Resources, *Submission 13*.

43 EDOs of Australia, *Submission 10*, p. 3.

44 Senate Standing Committee for the Scrutiny of Bills, *Annual Report 2017*, Appendix 1, p. 45.

Bills committee.⁴⁵ The committee draws this to the attention of senators and leaves it to the Senate as a whole to consider the appropriateness of the provision.

Committee view

3.53 Concerns were raised in evidence about the consultation process for proposed amendments to the Basin Plan, via both the disallowed NBR instrument and the new amendment. The committee notes the advice provided by Minister Littleproud and by DAWR confirming that the new amendment instrument must be the same in substance as the disallowed amendment.

3.54 Therefore, any amendments proposed by the new amendment will have already been subject to the consultation requirements of the Water Act. The committee further acknowledges that this approach allows the parliament to expediently progress passage of the new amendment, which will be the same in substance as the previous instrument put before it. Where necessary, the parliament can consider the outcomes of the required consultation which occurred on the disallowed instrument.

3.55 The committee views the ministerial direction powers provided by the bill, allowing the minister to direct the MDBA to prepare an amendment, as appropriate. Not only does the Water Act already contain ministerial powers of direction, but the water minister will be directing the MDBA to prepare an amendment which will be the same in substance to the earlier disallowed instrument, and prepared under the relevant legislation. The 12-month time limit and the other restrictions placed on the ministerial direction will ensure the power is limited in scope and not open to misuse.

3.56 Overall, the bill will enact provisions in the Water Act that will only be used in limited and unique circumstances – that is, following the disallowance of a Basin Plan amendment instrument. The committee believes that this bill presents a reasonable way to progress with amendments to the Basin Plan in a timely manner and with appropriate limits on ministerial direction powers.

3.57 The committee commends the bill to the Senate.

Recommendation 1

3.58 The committee recommends that the Senate pass the Water Amendment Bill 2018.

45 Explanatory Memorandum, Water Amendment Bill 2018, p. 6; Senate Standing Committee for the Scrutiny of Bills, *Annual Report 2017*, Appendix 1, p. 45.

Senator Barry O'Sullivan
Chair

Dissenting Report by the Australian Greens

1.1 The level of haste with which this Bill has been treated has left no opportunity for public hearings. This is alarming.

1.2 The argument that this must be dealt with urgently is unjustified. While submitters such as the NSW Government may believe that urgency is required to allow for 'certainty', this certainty is not time-specific. Having a fixed period of public consultation does not in any way erode certainty. Indeed, by circumventing regular process in this way, there is no certainty in process anymore. Certainty is not the goal here. What is meant by certainty is speed. This is to the River's detriment.

1.3 This Bill is plainly designed to facilitate the immediate passage of the disallowed Northern Basin Instrument. This instrument was rightly disallowed. The message that this disallowance should have sent was that more work was necessary. Instead, this Bill seeks to bypass that work and simply force it through, all the same.

1.4 This Bill:

- overrides the requirements of the *Water Act 2007* that the Northern Basin Amendment be subject to public exhibition for a minimum of one month. The argument that this instrument has already been subjected to public exhibition ignores that the latest version is markedly different to the version placed on exhibition in late 2016, and that the facts on the ground are also different. For example, as outlined in Submission 10:

Some of these [differences] are significant, notably those set out in the newly inserted cl. 6.05(6) and cl. 7.14A, which provide for water recovered in one valley to count toward recovery requirements in another valley.

This is a clear violation of the requirement to base decisions on the best available science, as required by the *Water Act 2007*

- allows the Minister to direct the Murray Darling Basin Authority to prepare amendments to the Basin Plan. This violates the independence of the Murray Darling Basin Authority and interferes with its independent functioning. This has serious consequences for public confidence in the Authority and flow-on impacts on the public's trust in the Authority to offer independent advice

- flatly contradicts the Federal Government's proclaimed commitment to improving transparency and restoring public confidence. This commitment has failed at the first hurdle. This Bill allows for the disallowed instrument to be reconsidered without community consultation. This inquiry has been rushed to such an extent as to prevent public hearings. At every step, scrutiny has been avoided, not embraced.

1.5 As a result, the issues with the underlying Northern Basin Amendment remain unresolved.

1.6 There remains insufficient protection and consideration of the impacts on the Lower Darling catchment. As made clear in Submission 5:

The modelling conducted for the Northern Basin review is based on flows over the last 114 years. This requires the assumption that 'traditional' management of flows is applied. However, NSW and Queensland have altered management of flows... no modelling has been done which applies current management of flows.

1.7 Arguments made in some submissions are simply incorrect. Cotton Australia (Submission 8) mischaracterised the Northern Basin Review's conclusions that 'greater environmental outcomes could be achieved through the 320GL adjustment rather than the original 390GL.' This is inaccurate. One need not read beyond page 2 of the Northern Basin Review to learn that 'The Authority understands that by returning less water to the environment (as compared to the settings in the current Basin Plan), the ability to achieve the same environmental outcomes will be slightly reduced.'

1.8 This is the outcome that this Bill will achieve. It will take more from the environment at a time when the environment is critically stressed. There simply is not water to spare.

1.9 It is concerning that Cotton Australia, a key stakeholder in this area, does not support the total package of 'toolkit measures' the MDBA has advised require full support in order to recommend the Northern Basin Amendment.

1.10 Considering the influence that the cotton industry has on this debate, it is questionable if these toolkit measures will be employed. If they are not, then the environmental consequences are made more dire.

1.11 It is important to recognise that this Bill is being considered in the context of a South Australian Royal Commission into the Murray Darling Basin, which has raised serious and substantial questions over the legal construction of the Plan in general, and the Northern Basin Amendment in particular, as it relates to the *Water Act 2007*. As this Bill will allow for the reintroduction of the substance of the Northern Basin Amendment, it is premature to support this permanent change while there are questions over whether such a change is lawful.

1.12 Many of the submissions favouring the 70GL provision do so without reference to *how* the adjustment should occur, focusing instead on *whether* it should occur. The Australian Greens believe that the process matters, as does the outcome. The process currently being followed, which is opaque, and the recommendation itself as to how the adjustment should be linked to these 'toolkit measures', which have no statutory underpinning, is weak and likely to fail.

1.13 In summary, it is the view of the Australian Greens that passage of the bill be opposed.

1.14 The Australian Greens believe that the Senate should not consider the Bill any further until the Federal Government makes available its legal advice that what is being proposed with this Bill is compatible with the *Water Act 2007*.

**Senator Janet Rice
Australian Greens**

**Senator Sarah Hanson-Young
Australian Greens**

Appendix 1

Submissions received

Submission Number	Submitter
1	Mr Bob Newman
2	Ms Melissa Gray
3	NSW Department of Industry
4	Ryde Hunters Hill Flora and Fauna Preservation Society
5	Mr Robert and Ms Katharine McBride
6	Inland Rivers Network
7	National Irrigators' Council
8	Cotton Australia
9	National Parks Association of NSW
10	EDOs of Australia
11	National Farmers' Federation
12	River Lakes and Coorong Action Group
13	Department of Agriculture and Water Resources
14	The Australia Institute