

The Senate

Rural and Regional Affairs
and Transport
Legislation Committee

Water Amendment (Review Implementation
and Other Measures) Bill 2015 [Provisions]

March 2016

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Chapter 1

Conduct of the inquiry

1.1 On 4 February 2016, the Senate referred the Water Amendment (Review Implementation and Other Measures) Bill 2015 (the bill) to the Senate Rural and Regional Affairs and Transport Legislation Committee (the committee) for inquiry and report by 10 March 2016.

The bill

1.2 The purpose of the bill is to make the legislative amendments required to implement the Government's response to the *Report of the Independent Review of the Water Act 2007* (the Water Act Review). The bill also makes a number of minor administrative or technical amendments unrelated to the Water Act Review.

1.3 More specifically, the bill includes provisions to:

- provide for five-yearly reviews of the social and economic impacts of the Basin Plan 2012 (the Basin Plan) and streamline and postpone some Basin Plan reviews;
- clarify arrangements for accreditation of first generation state water resource plans (expected by 1 July 2019) and provide for future accreditation to be linked to Basin Plan review outcomes;
- provide increased flexibility for the Commonwealth Environmental Water Holder to trade by allowing investment in other non-water environmental activities and in circumstances where water allocations may be reduced or foregone in continuous accounting water systems;
- provide for greater incorporation of Indigenous expertise and knowledge in the governance of the Basin's water resources;
- repeal Part 5 of the Water Act, removing the power for the Murray-Darling Basin Authority (MDBA) to establish a Water Rights Information Service, which was never utilised;
- make clarifying amendments to definitions relating to irrigation operators;
- allow the water charge rules to provide that the Australian Competition and Consumer Commission (ACCC) can extend the period of effect of a determination or approval of regulated water charges; and
- make minor administrative and technical amendments.¹

1 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 3.

Conduct of the inquiry

1.4 The Selection of Bills Committee noted the reasons for referral and principal issues for consideration as:

... changes under Item 27 (Section 106) which allows trade revenue to be used for 'environmental activities' instead of being limited to buying more water for the Murray Darling Basin. There is also no clarity on how projects would be defined as an environmental activity and on what basis a decision is made as to whether a project adheres to that classification.²

1.5 The committee advertised the inquiry on its webpage, calling for submissions to be lodged by 25 February 2016. The committee also wrote directly to a number of stakeholders – including environmental groups, scientific organisations, Indigenous organisations and Commonwealth departments – seeking their comments on the provisions of the bill. The committee received 15 written submissions. A list of submissions is provided at Appendix 1.

1.6 The committee considered the referral of the inquiry at a private meeting. Following discussion, the committee determined not to hold a public hearing in relation to the bill, but to prepare its report based on the background information provided in the EM and the Bills Digest and the issues raised by submissions to the inquiry.

Structure of the report

1.7 Chapter 2 of the report provides the background to the bill, including the key provisions of the bill.

1.8 Chapter 3 describes the key issues raised by submitters to this inquiry, including: review and reporting requirements, accreditation of water resource plans, indigenous engagement and the changes proposed under Item 27 (Section 106) in relation to water trading by the CEWH.

Acknowledgements

1.9 The committee appreciates the time and effort of all those who provided submissions. Their work has assisted the committee considerably in its inquiry.

A note on references

1.10 References in this report are to individual submissions as received by the committee, not to a bound volume.

2 Selection of Bills Committee, *Report No. 1 of 2016*, 4 February 2016, Appendix 5.

Chapter 2

Background

2.1 The Explanatory Memorandum (EM) to the bill notes that the bill's primary purpose is to make the legislative amendments necessary to implement the Government's response to the *Report of the Independent Review of the Water Act 2007* (the Water Act Review).¹

The Water Act Review

2.2 The *Water Act 2007* (the Water Act) provides the legislative framework for managing Australia's largest water resource – the Murray-Darling Basin – 'in the national interest, as well as for providing information on Australia's water resources'.² Under Section 253 of the Water Act, an independent review of the operation of the Act (and the extent to which it has achieved its objectives) was required to be conducted prior to the end of 2014.

2.3 The Water Act Review was conducted by a panel of experts – including Mr Peter Anderson, Dr Steve Morton and Mr Gavin McMahon – and was chaired by Mr Eamonn Moran, PSM QC. The panel undertook consultation with representatives of all state and territory governments, as well as stakeholders across the irrigation, indigenous, environment and community sectors.³

2.4 The panel's report, which was tabled on 19 December 2014, made 23 recommendations to amend the Water Act 'and to amend or review its subordinate instruments, in ways that improve its effective operation'.⁴ The Government's response accepted the majority of recommendations made in the panel's report – with Recommendations 9 and 21 being agreed to in part.⁵

1 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 3.

2 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 3.

3 Water Amendment (Review Implementation and Other Measures) Bill 2015, Bills Digest No. 79, 2015-16, Parliamentary Library, 5 February 2016, p. 5 and The Hon. Barnaby Joyce, MP, Minister for Agriculture and Water Resources, Second Reading Speech, Water Amendment (Review Implementation and Other Measures) Bill 2015, *House of Representatives Hansard*, 3 December 2015, p. 14620.

4 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 3.

5 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 3.

Amendments to the Water Act proposed by the bill

2.5 The bill contains a large number of amendments – not all of which propose major changes to the Water Act. The following chapter provides an outline of the proposed amendments. Additional information is provided in relation to some of the more significant amendments proposed by the bill and those about which submitters have raised concerns. These issues are discussed in more detail in the following chapter.

Schedule 1 – Amendments arising from review of the *Water Act 2007*

Part 1 – Reviews and reporting requirements

2.6 Under **Part 1 of Schedule 1** of the bill, it is proposed to amend a number of the review and reporting requirements under the Water Act.⁶ The amendments proposed would:

- postpone the first five yearly reviews from 2017 to 2020 (**Items 1 and 2**);
- postpone the first ten year review of the Basin Plan by the MDBA to 2026 instead of 2022 (**Items 3 and 4**);
- provide for a further review of the Water Act, to be conducted in 2024 (**Item 7**) and give the Minister – in consultation with the states – discretion to determine the terms of reference for the review (**Item 8**);
- remove the requirement for the MDBA to include an analysis of the Basin Plan's effectiveness in its annual report and allow the analysis to be contained in a separate report (**Items 5 and 6**); and
- add the requirement for the five yearly reviews of the impacts of the Basin Plan to consider the social and economic impacts of the Basin Plan (in addition to water and salinity targets and the Environmental Water Plan) (**Item 1**).

Part 2 – Accrediting water resource plans

2.7 **Part 2 of Schedule 1** of the bill proposes amendments to the provisions of the Water Act relating to the accreditation of water resource plans.⁷

6 The following section is based on information contained in Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, pp 7-10 and the Water Amendment (Review Implementation and Other Measures) Bill 2015 Bills Digest No. 79, 2015-16, Parliamentary Library, 5 February 2016, pp 8-11.

7 The following section is based on information contained in Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, pp 10-14 and the Water Amendment (Review Implementation and Other Measures) Bill 2015 Bills Digest No. 79, 2015-16, Parliamentary Library, 5 February 2016, pp 11-14.

2.8 The EM indicates that the proposed amendments contained in **Items 10 to 20** are designed to align the accreditation cycle of water resource plans with the 10-yearly cycle of Section 50 reviews.

2.9 It is noted that Section 50 reviews are undertaken in accordance with the *Water Act 2007*, which requires that the MDBA must:

- (a) review the Basin Plan during the tenth year of the period that starts when the Basin Plan first takes effect if the Authority has not reviewed the Basin Plan under subsection (2), and given the Minister a report of that review, before the start of that year; and
- (b) review the Basin Plan during the tenth year of the period (the *post-report period*) that starts when the Authority gives the Minister a report of a review of the Basin Plan under paragraph 5(b) if the Authority has not reviewed the Basin Plan under subsection (2), and given the Minister a report of that review, after the start of the post-report period and before the start of that year.⁸

2.10 The proposed changes are consequential to Recommendation 4(a) of the Water Act Review, which recommended that the first Section 50 review of the Basin Plan be postponed until 2026. It is argued that this would provide sufficient opportunity to ensure that the outcomes of the implementation of the Basin Plan can be adequately analysed and evaluated.

2.11 The EM notes that the proposed changes are necessary because under the current accreditation arrangements, the 2026 review (and any subsequent amendments) are unlikely to be complete before many water resource plans require remaking. The EM lists the likely benefits of the proposed new arrangements as follows:

- Water resource plans will only need to be remade when there have been changes to the Basin Plan as a result of a Section 50 review. This will reduce the regulatory burden associated with having to reaccredit water resource plans simply because they are older than 10 years, even though they remain consistent with the Basin Plan and relevant for state water management purposes.
- All water resource plans will be accredited against the same version of the Basin Plan. This will improve the consistency of water management approaches across the Murray-Darling Basin.
- Changes to the Basin Plan as a result of Section 50 reviews will be adopted by all water resource plans within three years. This means that changes to Basin Plan water management approaches will be reflected in

8 *Water Act 2007*, Part 2, Division 1, Subdivision G, Section 50, p. 85.

Basin State water management plans in a timely manner, consistent with adaptive management principles.⁹

2.12 It is further noted that the proposed new arrangements incorporate Recommendation 5 of the Water Act Review which recommends that the Water Act allow flexibility for Basin States to nominate a more recent version of the Basin Plan to be used when accrediting a water resource plan other than that specified in Section 56.

2.13 It is proposed that, under **Item 10**, definitions of 'notifiable instrument' and what 'affects water resource plan accreditations' would be inserted to assist with the operation of new subsection 48(8). It is noted that these new terms have been included to clarify the process the Minister needs to observe following a Section 50 review, and subsequent amendment of the Basin Plan.¹⁰

2.14 In addition, it is proposed that, under **Item 11** the new subsection would compel the Minister to provide notification that an amendment to the Basin Plan affects water resource plans if the amendment has been prepared by the MDBA as a result of a Section 50 review of the Basin Plan. Under the proposed amendment, the Minister would be required to provide this notification by 'notifiable instrument' – as defined in new subsection 4(1).

2.15 It is noted that the making of a notifiable instrument makes it clear that an amendment has been made as a result of a Section 50 review and will cause all water resource plan accreditations to expire after a period of three years. This item also includes a note which provides clarification that existing water resource plans will generally cease to have effect three years after the Minister has issued a notifiable instrument determining that an amendment 'affects water resource plan accreditations'.¹¹

2.16 Under **Item 15**, it is proposed to repeal subsection 56(2) and replace it with new subsections 56(2) and (2A):

- Subsection 56(2) clarifies that, subject to subsection 56(2A) the version of the Basin Plan to be applied by the Authority and the Minister when accrediting and making water resource plans is the Basin Plan in effect when the plan is accredited or made.

9 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, pp 10 and 11.

10 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 11.

11 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 11.

- New subsection 56(2A) sets out four specific scenarios and specifies which version of the Basin Plan is to apply in each case.¹²

2.17 The table included in the EM sets out the four specific scenarios (which specify the particular version of the Basin Plan that would apply in each case) as follows:

- **Scenario One** – the proposed water resource plan is provided to the Minister before the first ten year review of the Basin Plan. In this case, the Basin Plan to be applied is the version that was in effect two years before the proposed water resource plan is given to the Minister, unless the Basin State makes a nomination which is covered under scenario four (described below). This represents a continuation of the current approach.
- **Scenario Two** – the proposed water resource plan is provided to the Minister after the first ten year review of the Basin Plan and an amendment of the Basin Plan that affects water resource plan accreditations came into effect within three years before the proposed water resource plan was given to the Minister. In this case, the Basin Plan to be applied would be the version that was in effect immediately after that amendment, unless the Basin State makes a nomination under scenario four (described below). This scenario reflects amendments in **Items 17-20** which would mean that water resource plan accreditations expire three years after an amendment to the Basin Plan that affects water resource plan accreditations.
- **Scenario Three** – the proposed water resource plan is provided to the Minister after the first ten year review of the Basin Plan and within three years of a ten year review report and no amendment to the Basin Plan has been made as a result of that review. In this case, the Basin Plan to be applied is the version that was in effect immediately before the report was given to the Minister unless the Basin State makes a nomination which is covered by scenario four.

Scenario Four – the Basin State nominates a version of the Basin Plan to be applied. In this case, the nominated version of the Basin Plan applies provided that the version is not older than the version that would apply under scenarios one, two or three. This gives effect to Recommendation 5 of the Water Act Review, by providing flexibility for Basin States to nominate a more recent version of the Basin Plan to be applied.¹³

12 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 12.

13 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, pp 12-13 and the Water Amendment (Review Implementation and Other Measures) Bill 2015 Bills Digest No. 79, 2015-16, Parliamentary Library, 5 February 2016, pp 13-14.

2.18 According to the EM, Scenario Three recognises that (even in the absence of an amendment that affects water resource plans) "Basin States may nevertheless wish to review and revise some or all of their water resource plans".¹⁴

2.19 The EM also notes that the arrangements applying in each of the four scenarios set out in the bill recognise that water resource plans take a period of time to prepare and the Basin Plan may change during that time. It is also suggested that specifying a version of the Basin Plan that will apply in these scenarios "provides certainty for Basin States, subject to the water resource plan being submitted within a specified period".¹⁵

2.20 It is proposed, under **Item 17**, to replace subsection 64(1) with a new subsection that provides that water resource plans are accredited until three years after an amendment to the Basin Plan (that affects water resource plan accreditation)¹⁶ or until the plan ceases to have effect under the state water management law, whichever is the earlier.¹⁷

Part 3 – Indigenous matters relevant to Basin water resources

2.21 **Part 3 of Schedule 1** of the bill proposes to amend the Water Act to provide for "greater incorporation of indigenous expertise in the governance of the Basin's water resources".¹⁸

2.22 The Bills Digest notes that there are existing provisions in the Water Act and in the Basin Plan which incorporate indigenous involvement or require indigenous matters to be considered. The amendments proposed would, however, facilitate greater recognition of indigenous interests in the Water Act and the management of Basin water resources.¹⁹

2.23 Subsection 22(1) of the Water Act includes a table which lists specific matters that must be included in the content of the Basin Plan. Subsection 22(3) then lists a number of requirements for water resource plans. **Item 22** proposes to amend

14 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 13.

15 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 12.

16 An amendment to the Basin Plan that affects water resource plan accreditation is any amendment made as a result of a Section 50 review of the Basin Plan (as defined in new subsection 48(8)).

17 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 12.

18 Water Amendment (Review Implementation and Other Measures) Bill 2015 Bills Digest No. 79, 2015-16, Parliamentary Library, 5 February 2016, p. 14.

19 Water Amendment (Review Implementation and Other Measures) Bill 2015 Bills Digest No. 79, 2015-16, Parliamentary Library, 5 February 2016, pp 14-15.

subsection 22(3) to add a new paragraph – 22(3)(ca) – which would require water resource plans to have regard to 'social, spiritual and cultural matters relevant to indigenous people in relation to the water resources of the water resource plan area in the preparation of the water resource plan'.²⁰

2.24 Section 172 of the Water Act sets out the functions of the MDBA. There is a proposed amendment under **Item 23** to insert a new paragraph – 172(1)(ia) – which would add a new function for the MDBA to engage the indigenous community on the use and management of Basin water resources.²¹

2.25 Subsection 178(3) lists fields relevant to the MDBA's functions. **Item 24** proposes to amend this list to add 'Indigenous matters relevant to Basin water resources' as a field relevant to the MDBA's functions.²²

2.26 Section 202 of the Water Act relates to the Basin Community Committee (BCC). The BCC, which was set up to advise the MDBA about the performance of its functions, consists of a Chair and up to 16 other members. Currently, under subsection 202(5), the BCC's membership must include:

- at least one MDBA member;
- at least eight individuals who are water users or representatives of one or more water users; and
- an individual with expertise in indigenous matters relevant to the Basin's water resources.

2.27 Under **Item 25** of the bill, the last requirement (dot-point three above) would be amended to require at least two indigenous people with 'expertise in Indigenous matters relevant to the Basin's water resources' be included on the BCC. **Item 21** proposes a definition of the term 'Indigenous person' be included in the definitions contained in subsection 4(1) of the Water Act.²³

2.28 The EM suggests that the amendments under **Items 21 and 25** would increase the requirement for 'members with expertise in Indigenous matters' from one to two and it would also mean that these members must now be indigenous.²⁴

20 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 14 and the Water Amendment (Review Implementation and Other Measures) Bill 2015 Bills Digest No. 79, 2015-16, Parliamentary Library, 5 February 2016, p.15.

21 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 12.

22 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 15.

23 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 14.

24 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, pp 14 and 15.

Part 4 – Trading by Commonwealth Environmental Water Holder

2.29 The functions of the Commonwealth Environmental Water Holder (CEWH) – which primarily involve managing the Commonwealth environmental water holdings²⁵ – are set out in Section 105 of the Water Act.

2.30 Under the Water Act, the CEWH is charged with performing its functions for the purpose of protecting or restoring the environmental assets of the Murray-Darling Basin and giving effect to relevant international agreements. The CEWH is also required to manage the Commonwealth environmental water holdings in accordance with particular planning documents – including the MDB environmental watering plan, which is set out in Chapter 8 of the Basin Plan.

2.31 Commonwealth environmental water holdings are actively managed, which means that water may be:

- delivered to meet current environmental needs;
- carried over to future years to meet future environmental needs; or
- traded (disposed of or acquired).²⁶

2.32 Currently, however, Section 106 of the Water Act limits the disposal of Commonwealth environmental water holdings. The CEWH may only dispose of water which is not currently required to meet objectives of the environmental watering plan or any applicable environmental water schedules and would otherwise be forfeited. The Bills Digest notes that the reason for imposing the limitation was to ensure that the CEWH operates to meet environmental objectives rather than as a profit making enterprise. It is further noted that the limitation does not apply in circumstances where proceeds from the sale can be used by the CEWH to acquire other water or water holdings which will better protect or restore environmental assets.²⁷

2.33 The EM notes that Section 86AE(2) provides that the relevant purposes and objectives for managing and disposing of Commonwealth environmental water holdings that were acquired with amounts debited from the Special Account (established by Part 2AA of the Water Act) are those of the environmental watering plan; not objectives that relate to areas outside the Murray-Darling Basin.²⁸

25 Commonwealth environmental water holdings is water (in the form of water rights) recovered by the Commonwealth to protect and restore environmental assets such as rivers, wetlands and floodplains.

26 Water Amendment (Review Implementation and Other Measures) Bill 2015, Bills Digest No. 79, 2015-16, Parliamentary Library, 5 February 2016, p. 16.

27 Water Amendment (Review Implementation and Other Measures) Bill 2015, Bills Digest No. 79, 2015-16, Parliamentary Library, 5 February 2016, p. 17.

28 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 15.

2.34 In order to amend the limits on disposal of water by the CEWH, it is proposed, under **Item 27**, to repeal and replace Section 106. These amendments reflect Recommendations 15 and 16 of the Water Act Review.²⁹

2.35 Proposed new **subsection 106(3)** in **Item 27** would enable the CEWH to dispose of water (or Commonwealth environmental water holdings) if the organisation uses the proceeds of the disposal for acquiring water or Commonwealth environmental water holdings. In the case of a water allocation,³⁰ the CEWH would be permitted to use the proceeds for environmental activities – provided the long-term annual diversion limit has been complied with in relation to the disposal.

2.36 It is noted that, in terms of the new **subsection 106(3)** that the CEWH must reasonably believe, at the time of the disposal, that using the proceeds would improve the capacity of the Commonwealth environmental water holdings to be applied to meet the objectives of relevant plans, including the Murray-Darling Basin environmental watering plan.

2.37 It is proposed under **subsection 106(3)(b)** that the proceeds from a sale of water allocations may only be used for environmental activities if the CEWH is satisfied that the long-term annual diversion limit has been complied with in the resource unit where the disposal is to take place.

2.38 The EM notes that determining that the long-term annual sustainable diversion limit has been complied with the (for purposes of subsection **106(3)(b)**) is a decision that the CEWH must make based on information published by the MDBA prior to the disposal. It is also noted that under the Basin Plan, the MDBA is required to publish registers of take³¹ that record any difference between annual take and annual permitted take as well as a cumulative balance for each sustainable diversion limit resource unit.

29 The following section is based on information contained in Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, pp 15-19 and the Water Amendment (Review Implementation and Other Measures) Bill 2015 Bills Digest No. 79, 2015-16, Parliamentary Library, 5 February 2016, pp 17-19.

30 Note: under the *Water Act 2007*, a 'water access entitlement' is a perpetual or ongoing entitlement, by or under a law of a State, to exclusive access to a share of the water resources of a water resource plan area. The term 'water allocation' relates to the specific volume of water allocated to water access entitlements in a given water accounting period.

31 To 'take' water for a water resource means to remove water from, or to reduce the flow of water in or into, the water resource including by any of the following means:

- (a) pumping or siphoning water from the water resource;
- (b) stopping, impeding or diverting the flow of water in or into the water resource;
- (c) releasing water from the water resource if the water resource is a wetland or lake;
- (d) permitting water to flow from the water resource if the water resource is a well or watercourse.

It also includes storing water as part of, or in a way that is ancillary to, any of the processes or activities referred to in paragraphs (a) to (d).

2.39 The amendments proposed under **subsection 106(4)**, **Item 27**, clarify that proceeds of trade under **subsection 106(3)** cannot be used to pay fees and charges for holding and delivering Commonwealth environmental water. The EM notes that this subsection is intended to support the environmental objects of the Water Act and Basin Plan by ensuring that they are not compromised as a result of water that has been acquired (for the purpose of meeting environmental objectives) being sold to meet non-discretionary fees and charges associated with operating costs.

2.40 The EM also confirms, that under **subsection 106(4)** it is intended that the CEWH will continue to pay all fees and charges for the holding and delivery of environmental water from appropriations made to the Special Account, and not from trade proceeds.

2.41 Proposed new **subsection 106(6)** provides that the condition relating to long-term sustainable diversion limits in **new subsection 106(5)** does not restrict the use of the proceeds of trade under **subsection 106(3)** prior to the sustainable diversion limits coming into effect and the registers of take being published by the MDBA.

2.42 The amendment included under **Item 28** proposes the promotion of transparency and accountability by requiring the CEWH to publish information on the trade of water and Commonwealth environmental water holdings – and the purposes for which proceeds from trades are used – in its annual report. This amendment gives effect to the Government's response to Recommendation 17 of the Water Act Review.

2.43 The amendment included under **Item 29** is designed to ensure that the reporting requirement included by **Item 28** does not compel the CEWH to amend previous annual reports. The amendment proposed under **Item 28** will take effect on or after the day the amendments commence (the day after Royal Assent).

Part 5 – Murray-Darling Basin Water Rights Information Service³²

2.44 The EM notes that Part 5 of the Water Act provides that the MDBA may establish an information service – the Water Rights Information Service – which would provide access to registrable water rights information for the Basin.

2.45 **Item 30** proposes to repeal the definition of registrable rights in **subsection 4(1)** of the Act. This item is consequential to the repeal of Part 5 of the Act.

2.46 **Item 31 of Schedule 1** proposes to repeal Part 5 of the Water Act (the Murray-Darling Basin Water Rights Information Service). **Item 32** consequentially repeals a reference to Part 5 and the Water Rights Information Service in the list of the MDBA's functions.

32 The following section is based on information contained in Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, pp 19 and 20 and the Water Amendment (Review Implementation and Other Measures) Bill 2015 Bills Digest No. 79, 2015-16, Parliamentary Library, 5 February 2016, pp 19 and 21.

2.47 The EM notes that the Water Rights Information Service has not been established, that there are no plans to establish it in the future, and indicates that prime responsibility for water access rights information, including responsibility for keeping information up to date, has and will continue to rest with Basin States. It is further noted that the Commonwealth has taken steps to initiate systems which provide for water rights information to be available, including:

- the Basin Plan water trading rules – these require certain information to be made publicly available in a central location – via the MDBA – to facilitate the operation of efficient water markets and opportunities for trading; and
- water market information collected by the Bureau of Meteorology which is made publicly available through regular web-based water market reports.

Part 6 – Miscellaneous amendments³³

2.48 **Item 33** proposes a minor amendment to the definition of 'bulk water charge'.

2.49 **Item 34** proposes a minor amendment to an existing provision relating to the definition of infrastructure operators and water service infrastructure.

2.50 **Item 35** proposes a minor amendment to an existing provision relating to the definition of irrigation infrastructure operator and irrigation networks.

2.51 **Item 36** proposes to amend Section 74 of the Water Act, which sets out a simplified outline of the provisions relating to 'risks arising from reductions in diversion limits'.

2.52 **Item 36** also proposes to replace **subsection 74(4)** to clarify that the Commonwealth may make a payment in certain circumstances if there is a reduction in, or change in reliability of, a water entitlement holder's allocations.

2.53 **Item 37** proposes to repeal existing **subsection 92(4)** and substitute a new subsection. New **subsection 92(4)(a)** retains the existing provision for the water charge rules to specify the effect and period of effect (previously referred to as 'duration') of a determination or approval of regulated water charges. New **subsection 92(4)(b)** provides new flexibility for the ACCC (or an accredited State agency) to extend the period of effect that applies to a determination or approval of regulated water charges as necessary (beyond the period of effect referred to in rule 3 of the Water Charge Infrastructure Rules 2010).

33 The following section is based on information contained in Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, pp 20 and 21 and the Water Amendment (Review Implementation and Other Measures) Bill 2015 Bills Digest No. 79, 2015-16, Parliamentary Library, 5 February 2016, pp 21 and 22.

Schedule 2 – Technical amendments

2.54 **Schedule 2** of the bill contains a number of minor technical amendments³⁴. Part 1 relates to technical amendments affecting the definition of referring State and Part 2 relates to Amendments consequential on the *Acts and Instruments (Framework Reform) Act 2015*.

2.55 The minor technical amendments proposed under **Schedule 2** include amendments to the definition of 'referring state' to align with Basin State legislation and the repeal of spent provisions (relating to the application of the Water Act before the Basin Plan came into effect).

34 The following section is based on information contained in Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 22 and the Water Amendment (Review Implementation and Other Measures) Bill 2015 Bills Digest No. 79, 2015-16, Parliamentary Library, 5 February 2016, pp 22-24.

Chapter 3

Issues

3.1 As noted in the previous chapter, the *Water Act 2007* was recently the subject of a review undertaken by an expert panel chaired by Mr Eamonn Moran, PSM QC. In addition to calling for submissions, the panel's review involved consultation with a large number of key stakeholder groups.¹

3.2 The panel's report, which was tabled on 19 December 2014, made 23 recommendations. The recommendations proposed amendments to the Water Act and amendments (or review) of the Act's subordinate instruments. The Government's response accepted the majority of recommendations made in the panel's report – with Recommendations 9 and 21 being agreed to in part.²

3.3 Not all of the amendments contained in the bill propose substantial changes to the Water Act. The committee received submissions from a number of key stakeholder groups which raised concerns about specific amendments. Primarily, the key issues raised by submitters relate to review and reporting requirements, accreditation of water resource plans, indigenous issues and the changes proposed under Item 27 (Section 106) in relation to water trading by the CEWH.

Key issues raised

Review and reporting requirements

3.4 The issue of review and reporting requirements did raise some level of concern – particularly in relation to the proposed timing of major reviews.

3.5 The Water Act currently contains various review and reporting requirements, including:

- that annual reports prepared by the MDBA include an analysis of the effectiveness of the Basin Plan;
- that the MDBA be required to give advice to the MDB Ministerial Council on the impacts of the Basin Plan (five years after it takes effect);
- that five-yearly reviews be conducted of the water quality and salinity management plan targets and the environmental watering plan; and

1 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 3.

2 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 3.

- that ten-yearly reviews of the Basin Plan are undertaken.³

3.6 The amendments proposed in Part 1 of Schedule 1 relate primarily to a number of recommendations made in the Water Act Review. It was argued that rephrasing and re-aligning the review requirements in relation to the Water Act would prove a simpler and more effective approach. Specifically, the review found that the required ten-yearly reviews of the Basin Plan should be informed by the five-yearly evaluations (and that these evaluations should be undertaken in the year immediately prior to the ten yearly reviews). The Water Act Review also suggested that by delaying the commencement of these activities for several years, the results would be more meaningful; particularly given that full implementation of the Basin Plan will not be achieved until 2019, or – in the case of sustainable diversion limit adjustment measures – 2024.⁴

3.7 The Minister for Agriculture and Water Resources, in his second reading speech argued in relation to these amendments that:

In line with the review panel's recommendations, a further review of the Water Act will be conducted in 2024. Furthermore, the first legislated review of the Basin Plan previously set for 2022, will now take place in 2026, with 10-yearly reviews thereafter. This strikes the appropriate balance between regulatory certainty and allowing the Basin Plan to be reviewed when its outcomes can be better assessed.⁵

3.8 The Australian Network of Environmental Defenders Offices (EDO) noted that the Water Act currently requires the MDBA to conduct a review ten years after the Basin Plan takes effect – essentially in the year following November 2022. The organisation further noted that the amendments proposed by the bill would require the MDBA to review the Basin Plan in 2026 – and then provide the Minister with a report of that review – effectively postponing the review date by four years.⁶

3.9 EDOA told the committee that whilst it understood the logic of the amendment it did remain concerned that it would result in:

... approximately 14 years passing before the Basin Plan is reviewed. This is particularly problematic in light of the fact that the sustainable diversion limits (SDLs) in the Plan do not take into account future climate change.

3 *Water Act 2007 and Water Amendment (Review Implementation and Other Measures) Bill 2015*, Bills Digest No. 79, 2015-16, Parliamentary Library, 5 February 2016, p. 7.

4 Report of the Independent Review of the *Water Act 2007*, Commonwealth of Australia, November 2014, p. 30.

5 The Hon. Barnaby Joyce, MP, Minister for Agriculture and Water Resources, Second Reading Speech, *Water Amendment (Review Implementation and Other Measures) Bill 2015*, *House of Representatives Hansard*, 3 December 2015, p. 14623.

6 The Australian Network of Environmental Defenders Offices, *Submission 6*, p. 4.

This may prove to be catastrophic when the next significant drought hits South Eastern Australia.⁷

3.10 EDOA also recommended that the SDLs in the Basin Plan "should be reviewed before 2022 for the express purpose of determining if they are consistent with current knowledge on projected impacts of climate change".⁸

Accreditation of water resource plans

3.11 The EDOA also raised concerns in relation to accreditation of water resource plans, which would be amended by Part 2 of Schedule 1 of the bill.

3.12 Under Section 54 of the Water Act, water resource plans are required to be prepared for each water resource plan area in the Basin. There are 36 water resource plans areas defined in the Basin Plan, which largely correspond with existing Basin state water management areas. Water resource plans are required to be consistent with the Basin Plan and the relevant long-term annual diversion limit⁹ for the particular area.¹⁰

3.13 The Water Act (Sections 45 to 49) sets out the process for amending the Basin Plan. In summary, the MDBA may – following consultation – prepare an amendment to the Basin Plan and provide it to the Minister for adoption. One proposed amendment (Item 11) would add new subsection 48(8) which would provide that if an amendment to the Basin Plan is prepared by the MDBA (as a result of a ten year review of the plan under Section 50) then the Minister must, by notifiable instrument, determine that the amendment 'affects water resource plan accreditations'.¹¹

3.14 EDOA submitted that while the Water Act Review recommended streamlining the accreditation process, the amendments proposed in the bill actually introduce a high degree of flexibility regarding accreditation of water resource plans. Further, the group argued that this flexibility would "allow Basin States to choose which version of the Basin Plan is relevant for accreditation purposes (assuming certain conditions are met)".¹² EDOA suggested that this "is no doubt intended to

7 The Australian Network of Environmental Defenders Offices, *Submission 6*, pp 4 and 5.

8 The Australian Network of Environmental Defenders Offices, *Submission 6*, p. 5.

9 The annual diversion limit refers to the maximum quantity of water that can be taken for consumptive purposes.

10 *Water Act 2007* and Water Amendment (Review Implementation and Other Measures) Bill 2015, Bills Digest No. 79, 2015-16, Parliamentary Library, 5 February 2016, p. 11.

11 *Water Act 2007* and Water Amendment (Review Implementation and Other Measures) Bill 2015, Bills Digest No. 79, 2015-16, Parliamentary Library, 5 February 2016, p. 11.

12 The Australian Network of Environmental Defenders Offices, *Submission 6*, p. 5.

account for the adjustments to the SDLs that will likely occur in 2016 and 2024 (which will in turn result in amendments to the Basin Plan)."¹³

3.15 The group further argued that this amendment would result in Basin States being able to choose the version of the Basin Plan with the highest SDLs, "that is, the version that allows the highest consumptive use in the relevant water resource or resources".¹⁴

3.16 The EDOA told the committee that while it is not opposed to the adaptive management approach that underpins the Basin Plan, the amendments would not "facilitate an adaptive approach for the purposes of mitigating the impacts of climate change",¹⁵ and:

... furthermore, the proposed amendments are highly complex and to that extent inaccessible to the vast majority of people and groups with an interest in the management of Basin water resources. This is in itself problematic as it all but eliminates the possibility of meaningful engagement across the Basin.¹⁶

Indigenous matters

3.17 The committee received several submissions in relation to the amendments designed to increase indigenous involvement and engagement in the Basin's water management.

3.18 During the Water Act Review, a number of indigenous and environmental groups argued that there was a need for greater recognition of 'Indigenous interests' in the Water Act. The review panel expressed general support for the idea of greater indigenous involvement and indicated general support for amendments to the Water Act which would enable there to be a more active incorporation of indigenous interests and expertise in the planning and management framework of the Water Act.¹⁷

3.19 The EDOA noted that whilst the Water Act currently does not adequately acknowledge indigenous knowledge or provide for cultural water, the group recognised that proposed amendments "partly address this significant oversight."¹⁸

13 The Australian Network of Environmental Defenders Offices, *Submission 6*, p. 7.

14 The Australian Network of Environmental Defenders Offices, *Submission 6*, p. 7.

15 The Australian Network of Environmental Defenders Offices, *Submission 6*, p. 7.

16 The Australian Network of Environmental Defenders Offices, *Submission 6*, p. 7.

17 Report of the Independent Review of the *Water Act 2007*, Commonwealth of Australia, November 2014, pp. 5-6.

18 The Australian Network of Environmental Defenders Offices, *Submission 6*, p. 7.

3.20 While strongly supportive of the amendments, the group also submitted that further amendments to the Act are required to properly provide for indigenous participation in water management in the Basin, including:

- an appropriately worded object to the Act;
- a requirement that water resource plans set aside a certain percentage of water for cultural use; and
- a requirement that the Water Act and Basin Plan give effect to the United Nations Declaration on the Rights of Indigenous Peoples.¹⁹

3.21 The New South Wales Aboriginal Land Council (NSWALC) noted that the management of water in the Murray-Darling Basin is of critical importance to Aboriginal people who live in those regions, and argued that "water is central to the cultural, social and economic prosperity of Aboriginal people".²⁰

3.22 The NSWALC told the committee that it was prepared to give conditional support to the bill, and noted that the bill contained some positive amendments in terms of increased indigenous representation on the MDBA and the BCC. The group indicated that it was strongly supportive of these provisions and viewed them as a "small but positive step toward better recognition of Indigenous interests in the Murray-Darling Basin management framework".²¹

3.23 However, the organisation also indicated that it had some concerns regarding the risk that environmental outcomes would be compromised, and the potential impacts on Aboriginal culture and heritage.²² The organisation told the committee that it was strongly against any changes which would compromise environmental flows:

... environmental flows are strongly tied to Aboriginal social, cultural and economic interests in water in the Murray-Darling Basin area.²³

3.24 Similar views were expressed by Murray Lower Darling Rivers Indigenous Nations (MLDRIN). MLDRIN noted that it had participated in, and provided information to, the Water Act Review and was generally supportive of the changes included in Part 3 of the bill – in that they constitute minor, but valuable improvements.²⁴

3.25 However, MLDRIN also told the committee that the Water Act Review and the bill have:

19 The Australian Network of Environmental Defenders Offices, *Submission 6*, p. 8.

20 New South Wales Aboriginal Land Council, *Submission 10*, p. 1.

21 New South Wales Aboriginal Land Council, *Submission 10*, p. 2.

22 New South Wales Aboriginal Land Council, *Submission 10*, p. 1.

23 New South Wales Aboriginal Land Council, *Submission 10*, p. 3.

24 Murray Lower Darling Rivers Indigenous Nations, *Submission 12*, [p. 2].

... both fallen short of acting on a number of key recommendations put forward consistently by Aboriginal organisations throughout the review process and in subsequent discussions with Government. ... We reiterate our position that further reform is needed to address the fundamental inequity of water entitlement frameworks in the Basin, which have been established and operated in the absence of genuine Aboriginal engagement and participation.²⁵

Amendments proposed under Item 27 (Section 106)

3.26 Overwhelmingly, the primary issue of concern to submitters was water trading by the CEWH, and the related amendments proposed under Item 27 (Section 106) of the bill.

3.27 As noted previously, the Water Act provides that water may be delivered to meet current environmental needs or carried over to future years to meet future environmental needs, or traded, in order to actively manage Commonwealth environmental water holdings.²⁶

3.28 This issue was discussed in the Water Act Review which noted that:

Trade of Commonwealth environmental water, either allocations or entitlements, is one of the management tools that enhance the capacity of the portfolio to meet environmental watering requirements. For example, trade can be used to manage variability in water availability and environmental water demand across the Basin by selling allocations in one catchment where environmental watering needs have largely been met and purchasing in another catchment or at a later time when additional environmental water would provide a net improvement in environmental outcomes. It can also be used to re-balance the portfolio of entitlements based on improvements in knowledge of environmental watering requirements.²⁷

3.29 As outlined in the previous chapter, amendments proposed under Item 27 would enable the CEWH to dispose of water or Commonwealth environmental water holdings if it uses the proceeds of the disposal for acquiring water or Commonwealth environmental water holdings. In relation to water allocation, the CEHW would be able to use the proceeds for environmental activities, provided the long-term annual diversion limit has been complied with.

3.30 In its submission, the Wentworth Group of Concerned Scientists (WGCC) told the committee that it did not support the amendments proposed under Item 27

25 Murray Lower Darling Rivers Indigenous Nations, *Submission 12*, [p. 2].

26 *Water Act 2007* and Water Amendment (Review Implementation and Other Measures) Bill 2015, Bills Digest No. 79, 2015-16, Parliamentary Library, 5 February 2016, p. 16.

27 Report of the Independent Review of the *Water Act 2007*, Commonwealth of Australia, November 2014, p. 75.

(Section 106) to "allow trade revenue to be used for 'environmental activities' instead of buying water for the Murray-Darling Basin".²⁸ Further, the WGCC indicated that:

We are concerned ongoing investment in environmental activities would lead to a long term reduction in environmental flows. We are also concerned that important environmental activities may be cost-shifted to the CEWH, and that the safeguards may be vulnerable to misuse.²⁹

3.31 The WGCC set out its specific concerns about the proposed amendments as follows:

- The amendments would likely reduce reinvestment in environmental water allocations and consequently leave less environmental flows in rivers in the long term. As it currently stands, the 2,750GL Basin Plan recovery target is the 'minimum amount of water that will enable the achievement of ... Basin-wide environmental objectives' and to date there has not been enough water acquired to meet this minimum target.
- The *Water Act 2007* states that CEWH's functions are specifically related to water holdings, and the *Environmental Water Holdings Special Account* was set up for this purpose. The proposed amendments would broaden CEWH's responsibilities beyond those which were intended in the *Water Act 2007* and may encourage cost-shifting whereby CEWH's funds are used to subsidise environmental programs that should be funded from other sources.
- Safeguards in the proposed amendments were difficult to enforce and may leave Commonwealth environmental water funds vulnerable to misuse. The SDL safeguard does not limit the volume of water allocations that can be disposed of, nor the amount of money that can be reinvested in environmental activities.³⁰

3.32 WWF-Australia noted that it was supportive of existing legislation, which provided the CEWH with flexibility to trade water "provided that the trade will improve the capacity of CEWH's water holdings to be applied to meet environmental water objectives".³¹

3.33 WWF-Australia indicated that it recognised the importance of water trading, and the fact that it provided flexibility in relation to water management. However, the organisation told the committee that it fully supported the concerns raised by the WGCC and that it "does not support the amendments under Item 27 (Section 106) to

28 Wentworth Group of Concerned Scientists, *Submission 5*, [p. 1].

29 Wentworth Group of Concerned Scientists, *Submission 5*, [p. 1].

30 Wentworth Group of Concerned Scientists, *Submission 5*, [p. 2].

31 WWF-Australia, *Submission 1*, p. 1.

allow trade revenue to be used for 'environmental activities' instead of buying water for the Murray-Darling Basin".³²

3.34 The committee notes that the stated objective of proposed new subsection 106(3) is to provide increased flexibility for the CEWH. Specifically, to enable the CEWH to sell water allocations and use the proceeds for other activities which meet environmental objectives – in addition to the purchase of other water or water holdings.³³

3.35 In his second reading speech, Minister Joyce indicated that in terms of subsection 106(3):

The flexibility will enable the Commonwealth Environmental Water Holder to get the best environmental outcomes possible, as efficiently as possible, whilst also assisting in the socioeconomic requirements of Basin communities.

This recognises that achieving environmental outcomes in the Basin will often require both water and complementary environmental activities. We know it is not just about adding water, because the lack of environmental works and measures, such as fish ladders and carp screens, can be a real barrier to maximising environmental outcomes.³⁴

3.36 The EDOA submitted that it "is highly unusual not to define terminology such as 'environmental activities' in legislation".³⁵ The organisation indicated that while it understood the value of adopting a flexible approach (which would provide the CEHW with the ability to undertake a range of activities that may augment the environmental outcomes they can achieve with their water) the organisation is concerned that bill does not contain sufficient checks and balances in this area.³⁶

3.37 The CEWH noted in its submission that while the bill did not explicitly define environmental activities:

... an environmental activity is one which "... would improve the capacity of the Commonwealth environmental water holdings to be applied to meet the objectives of the environmental watering plan" (section 106(3)(c) of the Bill). This makes it clear that the activities need to be: (a) directly

32 WWF-Australia, *Submission 1*, p. 1

33 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 16 and the Water Amendment (Review Implementation and Other Measures) Bill 2015 Bills Digest No. 79, 2015-16, Parliamentary Library, 5 February 2016, p. 17.

34 The Hon. Barnaby Joyce, MP, Minister for Agriculture and Water Resources, Second Reading Speech, Water Amendment (Review Implementation and Other Measures) Bill 2015, *House of Representatives Hansard*, 3 December 2015, p. 14621.

35 The Australian Network of Environmental Defenders Offices, *Submission 6*, p. 3.

36 The Australian Network of Environmental Defenders Offices, *Submission 6*, p. 3.

linked to and improve the use of Commonwealth environmental water: and (b) of a kind that would help that water achieve the objectives of the environmental watering plan."³⁷

3.38 The CEWH further noted that investments in environmental activities must also be consistent with the broader functions of the CEWH, including that the holdings relating to water in the MDB must be managed in accordance with the Basin Plan's environmental watering place, and be consistent with the Basin-wide environmental watering strategy.³⁸

3.39 WWF-Australia noted that while it was supportive of investment in environmental water and environmental activities that promoted the long-term health of river systems (including measures to treat cold-water pollution and construct fish ladders and carp exclusion devices) the organisation was concerned that ongoing investment in environmental activities could lead to a long-term reduction in environmental flows.³⁹

3.40 The Australian Conservation Foundation (ACF) and Environment Victoria provided a joint submission which argued that the change proposed under Item 27 (Section 106) "will not bring any additional environmental benefit to the Murray-Darling Basin and is an unnecessary amendment to the Water Act".⁴⁰

3.41 However, the ACF and Environment Victoria also submitted that regardless of their views in relation to environmental benefits – given the primacy of Section 105 – they were satisfied that the changes proposed under Section 106 posed minimal risk to the environment, provided the following conditions are met:

- 'Reasonable belief' should be an objective test based on best available science and the circumstances at the time. The key test is that both the decision to dispose of environmental water and how to use the proceeds must comply with Section 106(3)(c) so that it would improve the capacity of the Commonwealth environmental water holdings to be applied to meet the objectives of the environmental watering plan.
- Any disposal of water must not impact on the SDL in the catchment – as outlined in Section 106(5).
- The ability to engage in other environmental activities allows the CEWH greater flexibility to perform its functions and achieve its objectives. However any such activities must be in accordance with the environmental watering plan and must be demonstrated to improve the

37 Commonwealth Environmental Water Holder, *Submission 3*, p. 4.

38 Commonwealth Environmental Water Holder, *Submission 3*, p. 4.

39 WWF-Australia, *Submission 1*, pp 1 and 2.

40 Australian Conservation Foundation and Environment Victoria, *Submission 8*, [p. 1]

environmental outcomes of environment watering conducted by the CEWH.

- Item 28 of the bill amends the CEWH's annual reporting requirements. The CEWH will have to report on the 'purpose for which the proceeds of disposals of water or Commonwealth environmental water holdings have been used during the year'. The annual report should include details of how spending on environmental activities improved the CEWH's capacity to meet the objectives of the environmental watering plan.⁴¹

3.42 Murray Irrigation told the committee that, while it was of the view that the amendments "do not go far enough to ensure the *Water Act 2007* delivers triple bottom line outcomes", it does support the intent of the bill.⁴² In particular, it commended the proposed amendment to Section 106 of the Water Act to enable the CEWH to "consider more than volume and flows when looking for solutions to environmental water delivery to maximise the benefits achieved from the volumes held".⁴³

3.43 The Ricegrowers' Association of Australia (RGA) indicated that it supported the CEWH being able to use the proceeds of the disposal of water allocation for the purpose of environmental activities. The RGA argued that the CEWH should be "provided with flexibility in the use of any funds generated by trade, provided these funds are used for the purpose of improving environmental outcomes".⁴⁴

3.44 However, the RGA also noted that under the current NSW cost sharing framework for water infrastructure, all water entitlement holders are required to contribute equally to the cost of operating the water infrastructure managed by the NSW Government. The RGA therefore recommended that Item 27 of the Bill should be amended:

... to include an additional provision within the replacement section 106 which ensures that the Commonwealth Environmental Water Holder will be responsible for all future costs associated with any such 'environmental activity'.⁴⁵

3.45 The Australian Dairy Industry Council (ADIC) expressed strong support for the Section 106 amendments, and noted that it has long called for increased flexibility for the CEWH in trading.⁴⁶

41 Australian Conservation Foundation and Environment Victoria, *Submission 8*, [p. 1]

42 Murray Irrigation, *Submission 9*, p. 4.

43 Murray Irrigation, *Submission 9*, p. 2.

44 The Ricegrowers' Association of Australia, *Submission 4*, p. 3.

45 The Ricegrowers' Association of Australia, *Submission 4*, p. 3.

46 Australian Dairy Industry Council (ADIC), *Submission 7*, [p. 1].

3.46 Further, ADIC argued:

Proceeds from environmental water trades should be able to be used on projects that bring improved environmental outcomes for the Murray Darling Basin in addition to purchase of water for environmental use. It is appropriate for the Act to provide more flexibility for environmental water to be temporarily traded regardless of whether it can be carried over the next season. These amendments provide for environmental outcomes through projects such as riparian management, pest control or support for state projects such as more efficient flood management. At the same time, water not needed for environmental flows can be returned to the irrigation pool for use by farmers.⁴⁷

3.47 Cotton Australia argued that the current limitation which prevents the sale of Commonwealth water "unless it can be demonstrated that it cannot be carried over into the next water year" is at odds with other water users "where irrigators situated within the Gwydir Valley are continually reviewing and changing water management to deliver the best commercial outcomes".⁴⁸

3.48 Cotton Australia also indicated that it is supportive of the proposed amendments to Section 106, and argued that the changes would enhance the CEWH's ability to manage the water resources at its disposal and maximise environmental outcomes.⁴⁹

3.49 Cotton Australia further argued that "those who are concerned that these changes to Section 106 may somehow take away from the integrity of the Plan, should take comfort in the fact that the Bill provides significant safeguards," which include:

protections that ensure the revenue from sale of Commonwealth Environmental Entitlements can only be used to purchase other entitlements;

the revenue from sales of both entitlements and allocations cannot be used to pay fees and charges; and

sales can only occur if the Long-Term Average Diversion Limit conditions have been met.⁵⁰

Payment of fees and charges

3.50 Several submitters commented on the issue of the proceeds of trade being used to pay fees and charges.

47 Australian Dairy Industry Council (ADIC), *Submission 7*, [p. 1].

48 Cotton Australia Limited, *Submission 2*, [p. 2].

49 Cotton Australia Limited, *Submission 2*, [p. 1].

50 Cotton Australia Limited, *Submission 2*, [p. 3].

3.51 Under the amendments proposed by subsection 106(4) the proceeds of trade could not be used to pay fees and charges for holding and delivering Commonwealth environmental water.

3.52 The amendment, which is consistent with Recommendation 15 of the Water Act Review, is designed to ensure that the CEWH's operating costs continue to be met from Commonwealth consolidated revenue, rather than from the sale of Commonwealth environmental water holdings.⁵¹

3.53 The CEWH's submission noted that the bill clarifies that 'environmental activities' do not include statutory fees and charges for holding and delivering water. Further, CEWH told the committee that:

Fees and charges are recurring, non-discretionary and a large ongoing expense. Selling water to cover these fees would require the sale of large volumes of allocations without reciprocal environmental benefits. This would reduce the capacity to meet the environmental objectives of the Water Act and Basin Plan.

It would also require the Commonwealth Environmental Water Holder to approach the water market with the objective of raising significant amounts of revenue, which due to the scale of the requirement would be likely to cause negative impacts for some market participants.

Importantly, the Commonwealth Environmental Water Holder will continue to pay the same fees and charges as other water holders, consistent with existing arrangements.⁵²

3.54 The RGA submitted that the CEWH should be provided with the flexibility to use trade proceeds to fund the water charges it incurs. It was noted that these charges are currently funded by tax payers, and it was argued that providing the CEWH with the flexibility to use the funds for its water charges:

... would mean that the Commonwealth government is able to divert these tax payer funds to another purpose if need be. This prospect may be important for the Commonwealth in a tight fiscal year.⁵³

Committee comment

3.55 The committee notes that – under Section 253 of the *Water Act* 2007, an independent review of the operation of the Water Act (and the extent to which it has achieved its objectives) has been conducted.

51 Explanatory Memorandum, Water Amendment (Review Implementation and Other Measures) Bill 2015, p. 18.

52 Commonwealth Environmental Water Holder, *Submission 3*, p. 4.

53 The Ricegrowers' Association of Australia, *Submission 4*, p. 3.

3.56 The committee also notes that in conducting the Water Act Review, the panel consulted with a large number of stakeholders. The committee is aware that the panel received more than 70 submissions over the course of its review and consulted with a large number of key stakeholders – including state and territory governments, and organisations across the irrigation, environment, community and indigenous sectors.

3.57 The committee sees as significant the fact that the Water Act Review made 23 recommendations – the majority of which were accepted in the Government's response – with Recommendations 9 and 21 being agreed to in part.

3.58 Finally, the committee notes that a number of the organisations which submitted to its inquiry into the bill indicated that they had both been consulted and were actively involved during the Water Act Review.

3.59 The committee specifically notes the concerns raised by a number of organisations in relation to the amendments proposed under Item 27 (Section 106). However, the committee also notes the safeguards that have been included in Section 105 of the bill and concludes that they will be sufficient to protect the interests of all stakeholders.

3.60 The committee therefore recommends that the bill be passed.

Recommendation 1

3.61 The committee recommends that the Senate pass the Water Amendment (Review Implementation and other Measures) Bill 2015.

Senator the Hon. Bill Heffernan
Chair

Australian Greens Dissenting Report

Water Amendment (Review Implementation and Other Measures) Bill 2015

1.1 The Senate Inquiry into the *Water Amendment (Review Implementation and Other Measures) Bill 2015* received 15 written submissions. A number of these submissions raised serious concerns regarding some of the proposed changes to the Water Act outlined in this Bill.

1.2 Despite the evidence provided by these experts the Chair's report has recommended that the Bill be passed without any amendments addressing these concerns. The Australian Greens believe that this response is not sufficient and provide two recommendations that differ from the committee's report.

Issue One – Expanding the function of the Commonwealth Environmental Water Holder to include environmental activities

1.3 As indicated in the Chair's report the primary issue of concern to submitters was water trading by the Commonwealth Environmental Water Holder (CEWH) and the related amendments proposed under Item 27 (Section 106) of the bill.

1.4 These changes would allow trade revenue to be used for 'environmental activities'. This raises two primary concerns:

- (1) The use of trade revenue for funding environmental programs could result in cost-shifting whereby CEWH's funds are used to subsidise environmental programs that should be funded from other sources.
- (2) The term 'environmental activities' is vague and does not outline how an objective assessment would be made to determine whether an environmental activity actually improves the CEWH's ability to meet the objectives of the environmental watering plan.

1.5 Some safeguards are in place for these changes (e.g. Section 106(5) stating that the disposal of water must not impact on the SDLs in the catchment), however they do not directly address the above concerns. The current legislation limits the CEWH to only disposing of water which is not currently required to meet the objectives of the environmental watering plan or any applicable environmental water schedules and would otherwise be forfeited. This structure has provided positive outcomes for the health of the Murray Darling Basin and the Bills Digest notes that this limitation was imposed to ensure that the CEWH operates to meet environmental objectives.

Recommendation 1

1.6 That this Bill is amended to remove the amendment under Item 27 which would allow trade revenue to be used on 'environmental activities'.

Issue Two – Review and reporting requirements

1.7 Section 50 of the *Water Act 2007* outlines that ten-yearly reviews of the Basin Plan must be undertaken by the Murray Darling Basin Authority. If the *Water Amendment (Review Implementation and Other Measures) Bill 2015* is adopted in its current form there would be no review of the Basin Plan for about 14 years. This is particularly concerning as the current Murray Darling Basin Plan does not account for any changes in water flows due to climate change and the impact this would have on the Sustainable Diversion Limits (SDLs). Scientific literature predicts that there will be substantial changes to Australia's weather due to climate change. If a prolonged drought were to occur before the proposed review of the Basin Plan in 2026 this could have a substantial impact on the health of the Murray Darling system as the current plan does not account for climate change.

1.8 Last year Professor R. Quentin Grafton, Professor John Williams and Associate Professor Jamie Pittock published an article in the academic journal *Water*. These three highly regarded water scientists outlined that failing to use current scientific knowledge on climate change to model the Basin Plan's SDLs, or provisions for systematic adjustment into the future "significantly increases the risks to the health of the river systems". Failing to account for climate change in the SDLs also "increases the uncertainty to communities, who now have no clear policy setting or process to manage the anticipated changes in water availability into the future".

Recommendation 2

1.9 That the Sustainable Diversion Limits in the Murray Darling Basin Plan are reviewed in 2017 to determine if they adequately account for the projected impacts of climate change.

1.10 The Australian Greens do not support the Bill in its current form. The Australian Greens recommend that this Bill only be passed with amendments that address the two recommendations outlined in this report.

Senator Robert Simms
Australian Greens Senator for South Australia

Appendix 1

Submissions received

Submission Number	Submitter
1	WWF-Australia
2	Cotton Australia
3	Commonwealth Environmental Water Holder
4	Ricegrowers Association of Australia
5	Wentworth Group of Concerned Scientists
6	EDO Australia
7	Australian Dairy Industry Council
8	Australian Conservation Foundation & Environment Victoria
9	Murray Irrigation
10	NSW Aboriginal Land Council
11	Department of Agriculture and Water Resources
12	Murray Lower Darling Rivers Indigenous Nations
13	Victorian Farmers Federation
14	National Farmers Federation
15	New South Wales Irrigators' Council

