



New South Wales

Inquiry into Water Bill 2007

Senate Standing Committee on the Environment, Communications, Information Technology and the Arts

Following the two water summits held in February this year, there has been an intensive and productive effort made jointly by Commonwealth and State and Territory officials to develop the proposed Commonwealth Water Bill and the draft *Agreement on Water in the Murray-Darling Basin*.

NSW was the first State to indicate its willingness to refer powers to the Commonwealth. NSW has adopted a cooperative approach throughout this exercise and NSW officials have made a significant contribution to the development of a more effective legislative scheme.

On 26 February 2007, Premier Iemma wrote to the Prime Minister to confirm his understanding of the agreement that had been reached through the water summits. The Premier's letter set out six policy positions that formed the basis of NSW's in-principle agreement to refer powers to the Commonwealth. Two of these pre-conditions were:

- that the Commonwealth take up and protect the value of existing water access entitlements and assume responsibility for all compensation liability which might arise; and
- that the implementation of the Plan will result in no net increase in the NSW Budget allocation for water management in the Murray-Darling Basin.

On 10 March 2007, the Prime Minister wrote to Premier Iemma setting out his agreement to these policy requirements.

On 9 July 2007, the Prime Minister wrote seeking NSW's commitment to sign the inter-governmental agreement and an undertaking to seek a referral from the NSW Parliament of the powers required to implement the Water Bill.

The draft Bill and inter-governmental agreement (IGA) that was provided by the Commonwealth met each of NSW's high-level policy requirements. It had been Premier Iemma's intention therefore to write to the Prime Minister to indicate that NSW was willing to enter into the IGA, subject to some technical drafting issues.

On 24 July 2007, the Prime Minister announced that the Commonwealth Government would, in the absence of agreement from Victoria, proceed to establish a new Murray-Darling Basin Authority and take control of water management in the Basin without needing to rely on a referral of powers from the States; and that revised legislation would be prepared.

On 2 August 2007, Commonwealth officials met with NSW officials to provide a briefing on the Commonwealth's proposed new approach. Commonwealth officials tabled a document setting out the approach being taken in the revised draft IGA. This document indicated that the Commonwealth would only assume responsibility

for compensation liability and would only honour the principle of no net increase in State costs if all Basin States have referred their powers. This is a major departure from two of the essential policy features of the scheme agreed to by the Prime Minister in his letter of 10 March 2007.

On 7 August, Premier Iemma wrote to the Prime Minister indicating that NSW will only be able to continue to contemplate supporting the Commonwealth's endeavour and enter into the IGA if two preconditions are met, namely:

- that the compensation liability provisions previously agreed to by the Commonwealth are contained in the Bill that the Commonwealth intends to introduce into Parliament; and
- that the agreement in relation to no net increase in State costs is applied to a jurisdiction as soon as it signs the IGA, and is not conditional on the agreement of all States.

On 7 August, the Prime Minister wrote to Premier Iemma advising that in order to provide the appropriate incentives to fully operationalise the National Plan for Water Security, some of the Commonwealth's commitments must be contingent on the eventual and full referral of powers. The Prime Minister also suggested that it was not reasonable that the Commonwealth be expected to take on full liabilities for the management of Basin resources over which it does not have full control.

This is an unacceptable shift from the position previously agreed to by the Commonwealth. In the earlier Bill to which the Prime Minister sought State agreement, the Commonwealth was to take up all compensation liability for reductions arising from changes in Commonwealth Government policy or improved knowledge above the first 3% that is borne by users.

The Commonwealth's new position is unacceptable. Through the new Bill and its Basin Plan, the Commonwealth would have the ability to impose reductions attributable to changes in knowledge and therefore trigger a NSW liability.

The NSW Government's position is that the Commonwealth must accept this liability at the time that it legislates.