



10 August 2007

**Submission to Environment, Communications,
Information Technology and the Arts Committee on
the Inquiry into Water Bill 2007**

The National Plan for Water Security (NPWS) was cautiously welcomed by conservation and farming groups alike when it was unveiled by the Prime Minister in January this year. Since then, the Water Bill, which is to give effect to the NPWS, has been rushed through several iterations and rounds of limited consultation with key stakeholders.

ACF and IRN remain supportive of the NPWS in principle. But the Water Bill requires significant amendment if it is to effectively achieve the objectives of the NPWS and the National Water Initiative, particularly restoring rivers and wetlands to healthy ecological condition. The gaps and inadequacies in the Bill call into question the environmental credibility of the overall plan as it currently stands, which itself could be improved on several fronts (see brief comments on page 4).

The following key areas require attention before the Bill is passed.

Murray-Darling Basin Authority must be independent as promised

from poor institutional arrangements in the past. If these arrangements must remain, changes must be made to the Commission to overcome parochial lowest-common denominator outcomes, such as those suggested by John Scanlon.

If the new governance arrangements are to avoid previous mistakes and weaknesses and fix the water problem once and for all, the Bill should be amended to provide for:

- An independent, skills based Authority that has the ability to develop the Basin plan and environmental watering plan, and set and enforce ecologically sustainable diversions limits on the basis of best available scientific evidence without Ministerial intervention.

A robust sustainable diversion limit is essential for an environmentally credible Water Act

Robust criteria to guide the development of the sustainable diversion limit will give the public greater confidence that the plan will indeed deliver on its commitment to tackle over-extraction and deliver a healthy system and will not be undermined by politics or vested interests.

The Bill should be amended to require the Authority to ensure the sustainable diversion limit:

- reflects an ecologically sustainable share of the total resource and is not based on volumetric limits;
- flexibly responds to wet periods and dry periods;
- protects the environment in critical low and medium flow years;
- takes into account climate change impacts to protect critical minimum environmental flows;
- uses median figures, which reflect the reality of flows in the system more effectively than long term averages; and
- takes into account the double accounting of surface water and groundwater.

The reference to “long term average” in regards to the sustainable diversion limit should also be removed.

Protection for internationally and nationally significant wetlands and threatened species

The Commonwealth has made it clear that they are relying on international commitments to wetlands and biodiversity to take the Water Bill forward. Hence they are clearly obligated to now begin to fulfil outstanding commitments and protect wetlands, principally by reducing extraction to ecologically sustainable levels in order to provide much needed environmental flow.

As well as promoting water security for irrigators, the Water Bill must protect high conservation value freshwater assets, including the integrity of Ramsar wetlands, threatened species and ecological communities. Currently the protection offered by the principal national legislative vehicle for conservation, the Environmental Protection and Biodiversity Conservation (EPBC) Act, is unable to either secure flow regimes for these assets, or to provide adequate protection for our wetlands and their wildlife.

Whilst not limiting the Authority, the Water Bill must spell out some requirements for the Authority to deliver on these international commitments, including:

- Ensure that plans and strategies developed under the EPBC Act are incorporated into the Basin Plan and environmental watering plan to give effect to them;
- Require Ramsar management plans to be mandatory and provide the Authority with the ability to prepare plans if agencies fail to do so;
- Require that the impact of *all* actions likely to have a significant impact on matters of national environmental significance be subject to assessment and approval under EPBC Act;
- Include an explicit requirement that investment through the National Plan for Water Security be directed by the Basin Plan, and;
- Include a requirement that the Basin Plan ensures that enough water is set aside to mitigate the impacts of climate change and other risks on key wetlands and threatened species.

The Darling River Basin – to be effectively integrated into the Water Bill

The Darling River Basin must be effectively integrated into the Water Bill – it is of critical importance to flows in the lower Murray River and its icon sites and to Adelaide's water supply. The Darling also has iconic and internationally significant wetlands of its own.

The Water Bill is centred on the Murray River Basin, which is quite different from the Darling River Basin in terms of geography, climate and the way water is extracted and used in irrigation. In particular most of the \$6 billion for modernising irrigation is unlikely to find its way to the Darling, leaving it with very little real investment to address its water woes.

The Water Bill should be amended to ensure it has:

- The explicit jurisdiction and capacity to protect environmental flows from diversion and theft; and
- The ability to regulate water extraction from river plains (floodplain harvesting) and associated development to address overextraction and development that inhibits the delivery of environmental water.
- These matters should be addressed through the legislation to ensure that they are enforceable, legally binding and water management processes transparent.

These elements have not been present in the draft legislation throughout its development – their absence is not simply a factor of Victoria's refusal to refer powers. If the Water Bill, and the National Plan on Water Security that it underpins, is to succeed in meeting the vision and commitments made by the Prime Minister in January 2007, it must be able to deal with all forms of water extraction and protect the public investment into regaining environmental water for the system. Significant volumes of water are taken via floodplain extraction, particularly in NSW and Queensland, and neither the problem of over extraction nor the protection of threatened species and Ramsar wetlands will be addressed or achieved if these issues are not addressed. It is clearly

within the Commonwealth's ability to deal with these matters in the course of giving effect to its various international commitments to wetlands and wildlife.

Floodplain harvesting and development remains a form of extraction that is yet to be audited, assessed or regulated, particularly in NSW. Currently large quantities of water are extracted from the system via these methods, to the detriment of the overall health of the rivers, wetlands, and other water users downstream. It remains a significant loophole in water management and reform, not least because it threatens the security and protection of environmental flows, as indicated by existing investigations in the theft of environmental water from the Macquarie Marshes, but because it has still not been brought under MDB Cap requirements that have now been outstanding for a decade.

It should be noted that restrictions on the powers of the Commonwealth over such matters as land use planning and pollution do not prevent the Commonwealth from addressing and regulating floodplain harvesting and development – at a State level, such as NSW, legislation has always clearly distinguished planning law from water extraction and management.

A robust environmental watering plan must include targets and timelines

Firm targets and timelines for water recovery would improve planning and accountability and increase the likelihood of the Water Bill achieving its objective of addressing over-extraction.

The Water Bill currently requires targets to be set to achieve the objectives of the Basin Plan. This is a start, but for the Water Act to be a robust and credible piece of legislation there should be:

- Explicit requirements for the environmental watering plan to include not only targets that specify quantities and outcomes, but also timelines or environmental water recovery, and benchmarks or annual milestones for environmental watering.

Clear prioritisation of the objects of the Act

The objects of the Act need to articulate how outcomes are to be prioritised and trade offs to be made between economic, social and environmental outcomes. Whilst these outcomes are not mutually exclusive trade offs will need to occur and environmental outcomes should be clearly prioritised to ensure that the vision of the National Plan for Water Security and international obligations are effectively met.

The Environmental Water Holder needs to be free from inappropriate limitations

The Commonwealth Environmental Water Holder should be free to acquire, hold and use water to most effectively achieve NPWS objectives and restore the environment. It should not be subject to limitations such as the 4 per cent limit on moving water out of a designated irrigation area or the 10 per cent limit Victoria has placed on water ownership by an entity that is not a landholder.

- The limited exemption of the Water Holder from limitations currently in the Water Bill is not enough – the section included in the first draft of the Water Bill (originally section 270) that ensures the Water Holder is not frustrated by arbitrary limitations at a state or regional scale should be reinstated.

Third party rights and public accountability

Currently the lack of an open standing provision greatly restricts the accountability of the Bill. The Bill should be amended so that it contains:

- Public standing provisions equivalent to those in the EPBC Act so the Authority and the Minister can be held accountable in exercising their public interest functions under the legislation and also assist in the enforcement of the legislation.

What else is needed for an environmentally credible National Plan for Water Security?

- 1 Clear timelines and targets for environmental water recovery to tackle over-allocation and over-use, including the return of at least 1,500 gigalitres to the Murray River by 2014.
- 2 Commitments to immediately finance the recovery of urgently needed environmental flows
- 3 A halt on all unfinalised planning processes (such as the Condamine Balonne ROP) until there is a full scientific assessment of the plan and the development and extraction existing and proposed in the area to ensure that no unsustainable plans are put in place.
- 4 A commitment to formally recognise and manage a broader suite of nationally significant High Conservation Value (HCV) freshwater areas
- 5 Commitments to mitigate the impacts of climate change on critical basic environmental water so that our river system, wetlands and wildlife are resilient to the changing climate.
- 6 Clear coordination between the Basin Plan and the \$10 billion NPWS investment packages to ensure cost efficient, effective water recovery to address overuse.
- 7 Independent chair for the Basin Community Committee.
- 8 Streamlined and efficient water management and decision-making for the MDB within one independent body the MDB Commission and MDB Authority with their own Ministerial Councils and advisory committees.

Related resources

Joint environment groups' comments on the 2nd draft of the Water Bill 2007:

www.acfonline.org.au/uploads/res_water_bill.pdf

Six Critical Tests for the Murray-Darling agreement:

www.acfonline.org.au/uploads/res_FINALWATERPLAN.pdf

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