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

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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

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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

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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]

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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.