



The Hon. David Littleproud MP

Minister for Agriculture and Water Resources
Federal Member for Maranoa

Ref: MS18-0001223

25 JUN 2018

Senator Helen Polley
Chair of Senate Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

Dear Senator

I am writing in response to the request from the Senate Standing Committee for the Scrutiny of Bills regarding the *Water Amendment Bill 2018* (the Bill), to justify disapplying the consultation requirements in sections 46 – 48 of the *Water Act 2007* for amendments to the *Basin Plan 2012* (Basin Plan) prepared pursuant to a ministerial direction under proposed section 49AA.

The Bill proposes to amend the Water Act to enable the Minister for Water to direct the Murray-Darling Basin Authority (the Authority) to prepare an amendment that will be the same in effect as a Basin Plan amendment that has been previously disallowed by the Federal Parliament, without having to undertake the consultation process requirements set out in the Water Act (Subdivision F of Division 1 of Part 2 of the Water Act). This power cannot be delegated to an executive or employee of my department.

There are a number of limitations on the proposed directions power to ensure that it is not used inappropriately.

For any Basin Plan amendment prepared by the Authority under this power, it must be the same in effect as the disallowed amendment. In this regard the Bill specifies certain minor or technical changes will not prevent a new amendment from being the same in effect as a disallowed amendment. This safeguard ensures that the Authority cannot propose changes to the disallowed amendment that have not previously been subject to the detailed process in the Water Act, including the Authority's consultations with the Basin Officials Committee, Basin Community Committee, the Basin States, the Murray-Darling Basin Ministerial Council and the public.

The proposed directions power is limited to amendments which have been disallowed in the previous 12 months. This limitation ensures that the issues raised through all consultations (including public consultation) undertaken by the Authority on the disallowed amendment under sections 46 to 48 of the Water Act remain both relevant and timely. In preparing the disallowed amendment, the Authority was required to take the issues raised during consultation into account.

In this light, the proposed directions power avoids duplication of the extensive consultation process undertaken for the disallowed instrument, thereby preserving and respecting the integrity of the original process.

I intend to use this proposed directions power to ensure the disallowed Basin Plan Amendment Instrument 2017 (No. 1) is re-made as soon as possible, thereby restoring certainty to northern Basin communities and states. In this regard I am mindful that Basin Plan compliant water resource plans must be prepared by Basin states in consultation with relevant Basin communities, for accreditation by me by 30 June 2019. In the absence of the changes proposed in this Bill, the task of restoring the outcomes of the disallowed amendment via the processes set out in sections 46 to 48 of the Water Act can be expected to take at least eight months.

Any amendment prepared under this proposed new power is required to be tabled in both Houses of Parliament and is subject to disallowance. This provides for the same parliamentary scrutiny of the Basin Plan amendment as for the disallowed amendment. If any new amendment were subsequently disallowed (that is, disallowed a second time), the Minister will not be able to direct the Authority to prepare a further amendment under proposed section 49AA.

Thank you for bringing this to my attention, and I trust the information in this letter addresses the Committee's concerns.

Yours sincerely

DAVID LITTLEPROUD MP