



Australian Government
Department of the Environment

Senate Environment and Communications Legislation Committee Inquiry into the provisions of the Water Amendment Bill 2015

Submission by the Department of the Environment

Introduction

The Department of the Environment welcomes the opportunity to make a submission to the Environment and Communications Committee's inquiry into the provisions of the Water Amendment Bill 2015. The submission provides information on the measures contained in the Water Amendment Bill 2015 and how these give effect to the Government's policies.

The measures contained in this Bill amend the *Water Act 2007* to impose a duty on the Commonwealth not to exceed the 1500 gigalitre limit on surface water purchases in the Murray-Darling Basin at the time of entering into a water purchase contract, and amend the Murray-Darling Basin Plan 2012 to provide increased flexibility in the recovery of 450 gigalitres of water through efficiency measures funded under the Water for the Environment Special Account, established under Part 2AA of the Water Act.

This legislation gives effect to the Australian Government's 10 March 2015 announcement that it would enshrine in legislation its commitment to capping surface water purchases in the Murray-Darling basin at 1500 gigalitres. The Australian Government previously stated this commitment in its *Water Recovery Strategy for the Murray-Darling Basin Plan* released on 2 June 2014.

The legislated limit on surface water purchases will provide increased certainty for communities and businesses throughout the Basin that the Commonwealth will not exceed 1500 gigalitres of surface water purchases. This will provide assurance to agricultural sectors and rural communities that the potential social and economic impacts of open market surface water purchasing will be minimised.

The 1500 gigalitre legislated limit will form an integral part of the Australian Government's water recovery framework for managing the sustainable diversion limit reduction, which prioritises water recovery through infrastructure investment over purchasing.

The Basin Plan sets out sustainable diversion limits, which are the maximum long-term annual average quantities of water that can be extracted from surface and groundwater resources in the Basin to maintain the health of the Basin environment. The Basin-wide long-term average surface water sustainable diversion limit is 10,873 gigalitres a year. This represents a reduction of 2,750 gigalitres a year from the 2009 baseline diversion level ('the gap'). There is some flexibility for the size of the gap to be reduced under the Sustainable Diversion Limit Adjustment Mechanism in the Basin Plan through offsets achieved by supply measures. Supply measures are actions where equivalent environmental outcomes can be achieved with less water. For more detail about supply measures and the Sustainable Diversion Limit Adjustment Mechanism see:

<http://www.environment.gov.au/water/publications/mdb/sustainable-diversion-limit-adjustment-mechanism>. It should also be noted that a review of sustainable diversion limits in the Northern Basin is currently being undertaken by the Murray-Darling Basin Authority. This review may result in changes to sustainable diversion limits in relevant northern valleys.

To implement the sustainable diversion limit reduction without risks to property rights, successive Australian Governments have committed to 'bridge the gap' by securing water entitlements for environmental use. The Bill limits only one of a range of water recovery options available to the Government to bridge the gap. Over two thirds of the 2,750 gigalitre surface water recovery target to bridge the gap to the sustainable diversion limits has

already been recovered, through a combination of water purchases, contracted infrastructure investments, and other state and federal recoveries.

Water recovered for the environment through investment in infrastructure and from purchases to date, combined with the offsets expected to be delivered under the supply measures projects to reduce the size of the gap, provide a coherent context in which to legislate the 1500 gigalitre limit on surface water purchases.

While up to 1500 gigalitres will be recovered from purchases, more than 600 gigalitres is expected to be recovered through investment in infrastructure on and off-farm, and some also from State recoveries. Water recovered through infrastructure investment helps strengthen and develop Basin communities and industries while delivering the Basin Plan's environmental outcomes. The benefits from infrastructure investment are significant and include maintaining and increasing output, increasing ability for crop rotation, increasing crop diversification, improving soil management, reducing maintenance and reducing weed control requirements.

Well over 10,000 individual irrigators are already benefitting from improvements to off-farm water delivery systems. Increased farm productivity through higher yields from reduced water usage, and improved business opportunities through crop diversification and multiple cropping, in turn provide benefits to the Basin's local businesses and communities.

Additional 450 gigalitres for the environment through efficiency measures

The amendments to the Basin Plan will operate in conjunction with Part 2AA of the Water Act to afford greater flexibility in the recovery of 450 gigalitres of water for the environment through efficiency measures funded under the Water for the Environment Special Account. The 450 gigalitres is provided for with the operation of the sustainable diversion limit adjustment mechanism in 2016, and is in addition to water recovery required to bridge the gap. Efficiency measures are intended to pursue environmental outcomes set out under Schedule 5 of the Basin Plan by recovering additional water for the environment in ways that achieve neutral or improved social and economic outcomes. While there will continue to be a strong focus on on-farm efficiency measures, off-farm efficiency measures will also be eligible to receive funding. As well as benefiting the environment, these measures will provide valuable benefits to the irrigation sector through both on and off-farm infrastructure improvements.

The amendments to the Water Act and the Basin Plan will together support the Australian Government's commitment to sound water management through triple bottom line outcomes for the Murray-Darling Basin communities, businesses and the environment.

Schedule 1 – Part 1 – Amendments of the *Water Act 2007*

Operation of the limit

The Bill imposes a statutory obligation on the Commonwealth not to exceed 1500 gigalitres of surface water purchases in the Basin. It requires that the volume of water recovered from past purchases made before the introduction of the Bill is included in the 1500 gigalitre limit. The total volume recovered is determined by adding the long-term annual average quantity

of water that can be accessed under a water access entitlement purchased under a new contract to the total long-term annual average quantities of water that can be accessed from water access entitlements purchased under previous contracts.

Paragraphs 85C(3)(c) and (d) differentiate between two sub-categories of water purchases: contracts entered into prior to the commencement of the Basin Plan (para 85C(3)(c)) and those entered into on or after the commencement of the Basin Plan (para 85C(3)(d)). The Basin Plan commenced on 24 November 2012.

This approach is necessary because the limit relates to purchases that contribute to bridging the gap. While the “gap” did not exist at law until the sustainable diversion limit reduction was specified in the Basin Plan, the Commonwealth took steps to return the Basin to sustainable levels of extraction following the announcement of the Howard Government’s 2007 \$10 billion National Plan for Water Security. As at 30 June 2015, the Commonwealth has purchased 1162.3 gigalitres towards the limit, leaving 337.7 gigalitres of headroom for purchasing further gap-bridging surface water before reaching the 1500 gigalitre limit.

The limit on Commonwealth purchases operates at the Basin-wide scale as it relates to the Government’s commitment to bridge the 2,750 gigalitre gap to the Basin-wide sustainable diversion limits in the Basin Plan. Because the limit applies only to gap-bridging water, the limit does not restrict the Australian Government’s ability to purchase other water for other purposes, for example by the Department of Defence.

The 1500 gigalitre limit will apply until the Basin Plan is fully implemented, under subsection 85C(2) of the proposed legislation. This statutory timeframe aligns with the existing timeframes for Basin Plan implementation, and provides certainty for irrigators and rural communities, consistent with the Australian Government’s 10 March 2015 commitment.

The Bill will commence no later than six months after being enacted into law.

Validity of contracts

The Department will be accountable for compliance with the limit through the *Public Governance Performance and Accountability Act 2013* and the *Public Service Act 1999* which require, among other things, compliance with all applicable Australian laws and, in the case of accountable authorities (eg, the Secretary of the Department), to act in a way that is not inconsistent with government policy and to implement and maintain appropriate risk and internal control systems. The Department will continue to monitor and report its progress against the limit on its website to ensure compliance with this obligation.

There is protection for sellers of water access entitlements who have contracted with the Commonwealth in good faith; the validity of their contracts cannot be challenged in the event that there has been a breach of the cap. It is appropriate for the Department, rather than sellers of water access entitlements, to be accountable for compliance with the cap.

Water recovery that is not included in the limit

Consistent with the Water Recovery Strategy, the legislated limit will not include certain kinds of water recovery.

For example, the limit does not apply to water purchased in association with investment in infrastructure rationalisation and reconfiguration (subparagraph 85C(4)(a)). This paragraph operates prospectively from the commencement of the Act.

Similarly, water recovered through irrigation infrastructure investment under the Sustainable Rural Water Use and Infrastructure Program is not counted towards the limit (subparagraph 85C(4)(c)). This is because this water has been made accessible due to the Australian Government's investment in infrastructure upgrades, with water savings shared between the Australian Government and irrigators. More than \$2 billion is forecast to be spent over four years on these types of rural water use and infrastructure projects. This investment in infrastructure is exemplified by two new infrastructure funding rounds announced in southern NSW: \$100 million for Round 3 of the Private Irrigation Infrastructure Operators Program in New South Wales, for which applications closed on 12 May 2015, and in excess of \$125 million for Round 5 of the On-Farm Irrigation Efficiency Program, for which applications closed on 19 March 2015. The total amount of funding for the On-Farm Irrigation Efficiency Program will be up to \$575 million over five rounds.

Also consistent with the Water Recovery Strategy, the limit does not apply to purchases of water entitlements held by States (subparagraph 85C(4)(b)). This approach provides flexibility for the Australian Government to work with the States to consolidate water holdings to meet Basin Plan requirements to bridge the gap to sustainable diversion limits. Purchases from States are excluded from the 1500 gigalitre cap because these are not open market transactions.

The 1500 gigalitre limit does not apply to the activities of the Commonwealth Environmental Water Holder, which are governed by Part 6 of the Water Act (subparagraph 85C(4)(d)).

The disposal and purchase of water entitlements is a key tool available to the Commonwealth Environmental Water Holder to actively rebalance its environmental water holdings to maximise the environmental outcomes that can be achieved.

The Commonwealth Environmental Water Holder has, to date, not purchased any entitlements. Part 6 of the Water Act places conditions of when the Commonwealth Environmental Water Holder can dispose of entitlements and requirements on what the proceeds of the disposal must be used for, which includes the purchase of entitlements that improve the capacity of the Commonwealth Environmental Water Holder to meet its environmental objectives.

Water recovery funded through the Water for the Environment Special Account also does not count towards the 1500 gigalitre limit (paragraph 85C(4)(e)). This water, recovered through efficiency measures, is in addition to the water recovered for gap-bridging purposes. Furthermore, Part 2AA states that this additional water will not be recovered through open tender water purchase rounds. Instead the water will be recovered through efficiency projects that save water and achieve neutral or improved social and economic outcomes, with the saved water being returned to the environment.

Schedule 1 – Part 2 – Amendment of the Basin Plan 2012

The amendment to the Basin Plan will extend the scope of efficiency projects able to be funded from the Water for the Environment Special Account. Importantly, all projects funded

from the Water for the Environment Special Account will be constrained by the requirement that social and economic outcomes for Basin communities are maintained or improved.

Currently, the Australian Government can fund on-farm irrigation efficiency projects, and additional efficiency projects can be proposed by a Basin State, if assessed by a state as achieving water recovery with neutral or improved social and economic outcomes (see section 7.17 of the Basin Plan).

New subparagraph 7.17(2)(b)(ia) provides for additional projects to be brought forward to recover environmental water. These projects would recover non gap-bridging water through the participation by consumptive water users in projects that recover water through works to improve water use efficiency 'off-farm'. The approach of 'participation of off-farm consumptive water users' in projects to recover water being evidence of neutral or improved social and economic outcomes is consistent with the approach to evidence of neutral or improved social and economic outcomes as the Basin Plan requires for 'on-farm' water recovery projects.

The Department has for a number of years been funding off-farm irrigation infrastructure projects, and has been monitoring the outcomes from these projects. This monitoring is showing good outcomes for irrigation infrastructure operators and more broadly for irrigators in those regions. Based on experience to date, it is expected that further off-farm efficiency projects will have positive social and economic outcomes for the communities that participate in these projects.

The inclusion of off-farm water use efficiency projects has an array of benefits without detracting from the capacity of irrigators to access funding for on-farm irrigation efficiency projects. Off-farm efficiency measures will contribute to improved water delivery systems and greater control at the farm gate, which in turn can lead to crop diversity, increased rotations, and, in some cases, greater yields. Some examples of potential 'off-farm' efficiency measures would include reshaping and lining water delivery channels to reduce water losses through infiltration, replacement of water delivery channels with gravity pipeline systems, and installation of improved irrigation management systems and associated telemetry.

The inclusion of off-farm projects will enable the development of integrated off and on-farm water use efficiency projects whereby the irrigation network can be upgraded to operate more effectively and efficiently at lower water volumes while simultaneously upgrading the on-farm networks to more effectively work with those lower volumes while maintaining farm production. It will also enable a broad range of programmes to be designed that benefit different agricultural industries. Extending the scope of efficiency measures to include off-farm irrigation efficiency programs will not only serve to increase opportunities for irrigation infrastructure operators to upgrade their delivery systems, but will also increase the scope for an integrated approach to off and on-farm projects that maximise production benefits.

Based on preliminary results to date, the Department considers that off-farm efficiency upgrades will lead to more water being available for crops. Farmers with properties linked to upgraded channels will be able to more accurately order water when crops need it, as the networks will be better controlled and more flexible, and they will be able to deliver higher flow rates to crops through improved outlets. The improved ability to control water through a

flexible irrigation system should mean higher crop yields and therefore lead directly to increased revenue. The Department considers that these additional programmes will not reduce access to on-farm irrigation efficiency funding by irrigators. To date around 2,100 irrigators have been provided funding through Commonwealth funded programmes delivered as part of bridging the gap to the sustainable diversion limit. On average, around 80 megalitres of water per farm has been recovered for the environment from each project. Based on this number, more than 5,000 additional on-farm irrigation efficiency projects could be required to recover the additional 450 gigalitres of environment water. Under this approach, it can be expected that between one-third and one-half of all irrigation properties in the Murray Darling Basin would have participated in at least one of the Commonwealth funded on-farm programmes as a result of the Basin Plan.

The process outlined in the Water Act for Basin Plan amendments is extensive and lengthy and in this instance could delay the roll-out of these efficiency measures and potentially compromise the additional water recovery expectations of Basin State governments under the Sustainable Diversion Limit Adjustment Mechanism. While projects under the amendment could potentially be brought forward through the alternative arrangements proposed by a state, the broadening of types of efficiency projects has two distinct advantages. It enables the Commonwealth to equitably deliver programmes across the Basin that address this need rather than relying on individual states to bring forward separate proposals, and it provides for a consistent approach to delivering these programmes as well as collecting information that will enable the social and economic benefits from the projects to be recognised through the Murray-Darling Basin Authority's evaluation of the effectiveness and impacts of the Basin Plan.

A direct amendment to the Basin Plan is appropriate in this instance for three reasons: the amendment relates directly to the Department's role under the Water Act in administering the Water for the Environment Special Account through the delivery of efficiency measures programmes; the timely roll out of these efficiency measures programmes will enhance the prospects of meeting the additional water recovery expectations of Basin State governments under the Sustainable Diversion Limit Adjustment Mechanism; and the opportunity for further off-farm efficiencies, combined with an integrated approach to off and on-farm water efficiency initiatives promises better social and economic outcomes than may otherwise be the case.

Conclusion

The Bill will support the Australian Government's commitment to implementing the Basin Plan with a focus on triple bottom line outcomes for Murray-Darling Basin communities, businesses and the environment.