

Environment and Communications Legislation Committee

Inquiry into the Water Amendment Bill 2015

Supplementary Submission

1. The Department welcomes the opportunity to make a supplementary submission to the Senate Inquiry into the Water Amendment Bill to address issues raised in other submissions to the Inquiry.

ISSUES CONCERNING THE 1500 GIGALITRE LIMIT ON SURFACE WATER PURCHASES

Inconsistency with objects of the Water Act

2. This is not the effect of the amendment. The 1500 gigalitre limit is consistent with the objects of the Act. The Commonwealth is committed to the return to environmentally sustainable levels of extraction for the Basin's water resources (s3(d)(i)) by bridging the gap to the sustainable diversion limits through a combination of infrastructure investment and water purchase. Relevant objectives include:
 - 3(c) ... to promote the use and management of the Basin's water resources in a way that optimises economic, social and environmental outcomes; and
 - 3(d)(iii) ... to maximise the net economic returns to the Australian community from the use and management of the Basin water resources.

Concerns that the amendment would override the Basin Plan

3. This is not the effect of the amendment. The Bill may affect the means to achieve the objectives but does not damage these objectives nor the likelihood of achieving these objectives. The legislated 1500 gigalitre limit deals with how the gap will be bridged, not whether the gap will be bridged. Successive governments have committed to bridge the gap through a mix of investment in infrastructure and water purchase to deliver on the Commonwealth's statutory obligation to manage the reduction to the sustainable diversion limits.
4. The Commonwealth's obligation to comply with the 1500 gigalitre limit does not reduce its obligation to manage the reduction to the sustainable diversion limits because both of these obligations would be supported by the Water Act itself.
5. The Commonwealth's statutory obligation to manage the reduction to the sustainable diversion limit is set out at section 75 of the Water Act. Section 75 provides that the Basin Plan must specify the Commonwealth's share of reduction in the long term average sustainable diversion limit. In turn, subsection 6.13(6) of the Basin Plan provides that the Commonwealth's share of the reduction is 100 per cent. Section 76 of the Water Act provides that if the Basin Plan specifies the Commonwealth's share of the sustainable diversion limit reduction then the Commonwealth must manage its share of the reduction. The amendment does not change the relevant sections of the Water Act or the Basin Plan.

Whether the 1500 gigalitre water purchase limit may stop the Commonwealth from meeting its statutory obligation to bridge the gap

6. The Department is very confident that the Commonwealth will be able to fully bridge the gap without engaging the 1500 gigalitre limit. As at 31 July 2015, 1952.9 gigalitres (71%) in long term average annual yield terms has been contracted to recover towards the overall 2750 gigalitre sustainable diversion limit reduction under the Basin Plan. This leaves a remaining recovery task of around 797 gigalitres. Of the total 1952.9 gigalitres recovered to date, 1164.6 gigalitres has been purchased, leaving 335.4 gigalitres of 'headroom' before the 1500 gigalitre limit would be reached.
7. The adjustment mechanism was included in the Basin Plan at the request of Basin governments prior to its finalisation in 2012. The mechanism provides for flexibility in the size of the sustainable diversion limit reduction through supply measures, which are projects (such as environmental works on floodplains, or changed operating rules) that are capable of delivering Basin Plan environmental outcomes with less water.
8. At the Murray-Darling Basin Ministerial Council meeting on 29 May 2015, Ministers agreed to commission an independent Stocktake of progress on the development of the government projects to be considered in the adjustment process to help in securing the best possible environmental, social and economic outcomes under the mechanism.
9. The Independent Stocktake Report was released on 27 August 2015. The Stocktake has found that a supply contribution of 508 gigalitres is plausible, and that additional contributions could be obtained by further refinements. Basin Ministers consider it reasonable for them to continue to work towards a supply contribution of up to 650 gigalitres. This is based on the independent consultants' assessment of 36 projects under development or consideration by the NSW, Victorian and South Australian governments the states. Should an SDL supply contribution of between 500 and 650 gigalitres be achieved when the Adjustment Mechanism operates next year, the remaining gap to be bridged would be between 147 and 297 gigalitres, well short of the 335.4 gigalitres 'required' to reach the 1500 gigalitre limit.
10. The greater the supply contribution from the adjustment mechanism, the smaller the remaining water recovery task.
11. The stocktake provides further assurance that the Basin Plan gap can be bridged without reaching the 1500 gigalitre limit.
12. In addition the Stocktake reported that the efficiency measure programme can deliver on Basin Plan objectives in relation to enhanced environmental outcomes with further consultation to occur with basin states, industry and community groups on the design and implementation of the programme.

Financial implications of water recovery

13. Further information about available funding for water recovery is available in the Environment Portfolio Budget Statement available at [Budget 2015](#).

14. The department considers there is sufficient funding to bridge the gap to the sustainable diversion limits while limiting water purchase to 1500 gigalitre and prioritising water recovery through infrastructure investment. The total quantum and profile of funding to support water recovery to bridge the gap is underpinned by the department's estimates of water recovery returns from investment in on and off farm infrastructure and of supply measure offsets through the adjustment mechanism.

Apportionment of the limit across states and catchments

15. Consistent with the Government's commitment to impose a Basin-wide limit, the Bill does not require the limit to be apportioned to states or catchments. The focus of the remaining water purchase activity will be mainly on strategic purchases particularly where there remains a gap to bridge once the final sustainable diversion limits are determined following the adjustment in 2016, the Northern Basin Review and the apportionment of the supply contribution and the shared contribution.
16. The Commonwealth will continue to work closely with the Basin States on implementation of the water recovery strategy consistent with the 1500 gigalitre limit.

Water recovery that is not captured by the limit

17. The Bill will implement the 1500 gigalitre limit in a manner consistent with the policy announced in the Water Recovery Strategy released on 2 June 2014. The 1500 gigalitre cap is designed to limit open market surface water purchases, therefore it will not include prospective state recoveries, water recovered through irrigation infrastructure investment or water purchased in association with investment in infrastructure rationalisation and reconfiguration.
18. Consistent with the Water Recovery Strategy, paragraphs 85C(4)(a) and (b) exclude from the limit purchases integrated with infrastructure rationalisation and reconfiguration and purchases from States respectively. The rationale for these exemptions is that state initiatives and purchases aligned with infrastructure rationalisation should be exempt from the limitations applied to general 'open' tenders. The exemption for purchases from States is necessary to provide flexibility for the Commonwealth and States to work together, where necessary, to consolidate environmental water holdings to meet Basin Plan requirements to bridge the gap to the sustainable diversion limits. Questions concerning restrictions on state water recovery efforts are matters for the States to address.
19. Water recovered through irrigation infrastructure investment, for example, through Sustainable Rural Water Use and Infrastructure programmes is not included under the limit because this water is obtained through infrastructure savings rather than direct purchase. The Bill reflects this historical and ongoing policy position to enable the Commonwealth to bridge the gap through a priority focus on investment in irrigation infrastructure upgrades.
20. For clarity the Bill also states that the 1500 gigalitre limit does not apply to the activities of the Commonwealth Environmental Water Holder or water recovery funded through the Water for the Environment Special Account.

Historical purchases - para 85C3(c)

21. The Bill is only concerned with water purchase for the purposes of 'bridging the gap'.
22. The Bill differentiates between two categories of water purchase: purchases prior to the commencement of the Basin Plan (para 85C(3)(c)) and purchases 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 'gap' did not exist at law until the sustainable diversion limit reduction was specified in the Basin Plan.
23. The Department's first submission to the Senate Committee explained the 'pre-Basin Plan' purchases that will be included in the limit.
24. The Department's first submission also advised that as at 30 June 2015, the amount of surface water purchased by the Commonwealth and counting towards the limit was 1162.3 gegalitres. Since then, the amount has increased to 1164.6 gegalitres.
25. The Commonwealth has published this updated figure, providing certainty regarding the volume of water captured under the statutory limit. Tables setting out Purchases Secured under the 'Restoring the Balance' in the Murray-Darling Basin Program as at 31 July 2015 and Progress of Water Recovery towards Bridging the Gap to Surface Water SDLs as at 31 July 2015 can be found on the Department's website:

<http://www.environment.gov.au/water/basin-plan/progress-recovery>
26. Some submitters noted that the reported figures (as at 31 July 2015) for total water recovery (1952.9 gegalitre) and Commonwealth environmental water holdings (1640.2 gegalitre) were different. The reason for this is that the Department's water recovery figures include contracted water savings, for example through the Government's investment in irrigation infrastructure upgrades which are transferred progressively under contracted milestones and are not yet transferred to the Commonwealth.
27. These amounts will be reported as part of the Commonwealth's total environmental water holdings when actually transferred, in the form of entitlements, to the Commonwealth Environmental Water Holder.

Drafting matters

28. The Department does not consider it to be necessary to amend section 85B to include the word 'surface' before the word water, because the 'surface' criterion is covered by paragraph 85(3)(b), and it would be inappropriate to include this level of detail in the 'Simplified Outline' section.
29. In regard to questions about the duration of the 1500 gegalitre limit, under section 85(C)(2) the limit will cease when the Basin Plan is first reviewed under section 50 of the Water Act. Expiry at this time will provide certainty that the limit will be in place for the duration of the current Basin Plan. While the first review of the Basin Plan is currently scheduled in 2022, the Water Act Review recommended that it be deferred until 2026 on the basis that

this would provide time to consider the outcomes of the Basin Plan more fully, particularly given that the sustainable diversion limits will not be finally reconciled until 2024.

30. It was suggested an amendment be made to paragraph 85C(4)(b) to clarify that the entitlement transfer to the Commonwealth relating to infrastructure and reconfiguration for state programs are excluded from the 1500 gigalitre limit, paragraphs 85C(4)(a) and (b) are separate exceptions. Consistent with the Water Recovery Strategy, paragraphs 85C(4)(a) and (b) are intended to exclude from the limit post-Basin Plan purchases integrated with infrastructure rationalisation and reconfiguration and purchases from States respectively.

How will the Department calculate the yield of an entitlement?

31. The Water Act already includes the plain English concept of the long term annual average of water taken or accessed under an entitlement, for example, see section 22. The Department considers it is unnecessary to add complexity to the Water Act by introducing a technical term that has the same meaning.
32. The Department calculates the amount of water taken or accessed under purchased entitlements as Long Term Average Annual Yield (LTAAY) volumes at the time of purchase. The term LTAAY is used to translate entitlement volumes into long term diversion limit equivalents. It identifies the long term annual average volume of water permitted to be taken for consumptive use under a water access entitlement. Currently all LTAAY figures published by the Department are calculated using the long-term diversion limit equivalent factors agreed to by Ministerial Council in November 2011 for all catchments throughout the Basin (see the Murray-Darling Basin Ministers' Communiqué of 4 November 2011). The final factors used to determine whether the Commonwealth has bridged the necessary gap will be those factors in accredited in state water resource plans.

The 1500 gigalitre limit restricts free trade

33. The 1500 gigalitre limit does not restrict free trade. The Commonwealth like any other purchaser in the water market cannot be compelled to buy or sell water.

Links to Snowy system water issues

34. The Department does not consider there is any link between the Bill and any current Commonwealth commitments under the Snowy Water Inquiry Outcomes Implementation Deed.
35. The Bill only relates to water purchases undertaken to bridge the gap between baseline diversion limits and the long-term average sustainable diversion limits set out under the Basin Plan.

Indigenous rights and interests

36. The Department does not consider that the Bill affects Indigenous rights or interests. The 1500 gigalitre limit is applied to surface water purchases by the Commonwealth for the purposes of 'bridging the gap' to the sustainable diversion limits established in the Basin Plan.

37. The Department's Water Recovery Programmes require that projects minimise impacts on the surrounding area and have State government approvals, including Native Title checks in place. This requirement applies to the implementation of the government's water recovery programmes and is not affected by the Bill.

ISSUES CONCERNING EFFICIENCY MEASURES

Proposals that Part 2AA of the Act should be amended to include 'up to' 450 gigalitres

38. The delivery of an additional 450 gigalitre with neutral or improved social and economic outcomes was included in the Water Act as part of settling of the sustainable diversion limit adjustment mechanism in the Basin Plan. The adjustment mechanism allows equivalent environmental outcomes to be achieved with less water (through supply measures) and for the volume of water to be increased by 450 gigalitre with neutral or improved social and economic outcomes (through efficiency measure projects). This arrangement was a specific element of the inter-jurisdictional policy settlement of the Basin Plan. The Bill does not re-open that settlement.

Proposals that the 450 gigalitres should not be recovered until the Government has bridged the 2750 gigalitre gap to the sustainable diversion limits in 2019

39. Efficiency measure projects are due to roll out from 2015-16 starting with pilot projects. The timely rollout of these projects will support the effective operation of the adjustment mechanism. For example, due to the five percent limit on the total adjustment, at least 106 gigalitres of efficiency measure savings would be required to be delivered by 2019 if there was 650 gigalitres in supply measures. The Bill does not change this specific element of the Basin Plan. The Murray-Darling Basin Ministerial Council has agreed to continue to work towards a supply contribution of up to 650 gigalitres, and asked that the Department continue working with Basin states and industry bodies on the relationship between the gap bridging and efficiency measures programmes (Communique of 14 August 2015). The Communique also records the Commonwealth's commitment to consult with the states to ensure its efficiency measures programme complements state-led activities to bridge the gap.
40. This commitment includes proposed pilot programmes in 2015-16 in the Lachlan valley, with direct diverters in the Victorian Murray region and in the South Australian Murray.

Demand for efficiency measures

41. Based on the Department's experience running a number of programmes similar to efficiency measures, it is expected that there will be sufficient demand to deliver 450 gigalitres of water in this way. For example, the On Farm Infrastructure Efficiency Programme (OFIEP) has been substantially over-subscribed in each of its five rounds. In the most recent round, where \$125 million was the proposed amount of funding, applications were over four times the proposed amount.
42. Further, the Department has undertaken significant consultation with delivery partners and industry members which has provided strong indications of substantial un-met demand. Industry participants have expressed the view that irrigation efficiency upgrades

are now of general industry interest. The OFIEP program has proven increasing popular over its 8 year (to date) life with increased participation and value for money.

The socio-economic neutrality of efficiency measures

43. There are a number of studies that have found social and economic benefits are derived from on and off farm irrigation efficiency projects. These studies have found socio-economic benefits derive as much from the improved infrastructure and capacity to manage the irrigation infrastructure more effectively as from the benefits of any water retained by an irrigator. Hence efficiency measures projects will continue to benefit irrigation production even when all the saved water is returned to the environment.
44. In the making of the Basin Plan the MDBA prepared advice to the MDB Ministerial Council on the likely socio-economic impacts from the Basin Plan. This provides the benchmark for the impact. The MDBA have been progressively refining and extending the analysis to make the estimate more sensitive and robust.
45. Studies of the socio-economic effects of on farm and off farm irrigation efficiency projects have found that the benefits are significant, long lasting and have broad benefits to the community where the projects are occurring.
46. Studies include *Cost Benefit Analysis of Farm Irrigation Modernisation*, Final Report, Dairy Australia, May 2013, *On-Farm Irrigation Efficiency Program Case Studies for Binya, NSW, Goolgowi, NSW, Deniliquin, NSW*, Ricegrowers' Association of Australia Inc, published by Department of the Environment, 2014, *Camerons-Case-Study, Himba Case Stud and Stott Case Study - On Farm Irrigation Efficiency Program Murrumbidgee Valley Consortium*, Waterfind Case Study, On-Farm Irrigation Efficiency Program, parts 1 and 2, Waterfind, 2014.

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