



Friday, 18 March 2011

Committee Secretary,
Senate legal and Constitutional Committees,
PO Box 6100,
Parliament House,
CANBERRA ACT 2600

Dear Sir,

Senate Inquiry into the 2007 Commonwealth Water Act

The Riverina and Murray Regional Organisation of Councils (RAMROC) welcomes the opportunity to present this submission in response to the announcement in February 2011 of a Senate Inquiry into the provisions of the Commonwealth Water Act 2007.

RAMROC represents the interests of eighteen Member councils located within the Murray, Lower Murray/Darling, Murrumbidgee and Lower Lachlan catchments of the southern Murray Darling Basin. The RAMROC region has a population of some 165,000 over an area in excess of 126,000 sq km, and is a major food producing region of Australia.

RAMROC Councils and their communities have of course been deeply concerned about the Murray Darling Basin Plan Guide which was released in October 2010. Comprehensive submissions have already been made to the House of Representatives House Standing Committee on Regional Australia (i.e. the Windsor Inquiry) and to the Senate Standing Committee on Rural Affairs and Transport (i.e. the Heffernan Inquiry)

In the submissions to both of those Inquiries, specific reference was made to the difficulties being encountered as a result of varying interpretations of the Water Act. RAMROC's comments in those submissions were as follows:-

"The Commonwealth Water Act 2007 – Interpretation of provisions relating to Economic, Social and Environmental Outcomes

The Guide to the draft MDB Plan has clearly been predicated on the basis of an interpretation of the Water Act that gives virtually total priority and emphasis to environmental watering requirements, with the issues of economic and social considerations very much secondary.

This has resulted in the calculation of proposed Sustainable Diversion Limits (SDLs), which are the quantities of water available for consumptive purposes (drinking water, industry, irrigated agriculture etc), being based on the amount of water available in the system, but only after all environmental needs have been satisfied.

MDBA's interpretation of the Water Act in formulating the Guide has meant that consideration of the outcomes of socio-economic studies undertaken to date have merely been a sub-set of the determination of the proposed SDLs. In other words, the socio economic studies are a product of the SDLs process, rather than a key contributor to the up-front calculation of SDLs.

The Commonwealth Water Minister the Hon Tony Burke MP has recently obtained legal advice from the Australian Solicitor General in this matter. As a result, the Minister has taken the position that the Water Act 2007, which was initially passed with bi-partisan support of both the Government and Coalition Opposition parties, does in fact enable full and equal consideration to be given to economic and social issues.

Minister Burke has indicated on a number of recent occasions that the Government and Coalition agree that the Water Act 2007 provisions allow for a triple bottom line approach. The Government is adamant that this interpretation falls within the current structure of the Act provisions and therefore the Act does not require any amendments.

However, following the early December 2010 resignation of the MDBA Chairman Mike Taylor, there remains a great deal of uncertainty regarding the varying legal opinions and interpretations of the Water Act provisions.

So much so, that the Liberal and Nationals Coalition are now calling for the Water Act to be reviewed and appropriately amended, in order to remove these uncertainties and to ensure that in the longer term the Murray Darling Basin Plan is not vulnerable to legal challenges.

RAMROC is deeply concerned that unless this issue is fully resolved once and for all, MDBA will continue to finalise the Basin Plan in accordance with its interpretation of the Water Act provisions and the latest advice it has apparently received from the Australian Solicitor General, that being that MDBA "cannot compromise the minimum level of water required to restore the system's environment on social or economic grounds".

Under these circumstances, there would be a real danger that any Basin Plan developed along those lines will forever be "an elephant in the room", regardless of what conflicting political decisions the current or any future Government might take in the matter.

RAMROC is strongly of the view that that the final MDB Plan must be prepared on the basis of equal weighting being given to environmental, economic and social considerations, with these considerations being determined individually for each of the Basin regions, because relevant factors will almost certainly vary from catchment to catchment."

RAMROC's comments remain very applicable today. The difficulty is that the current situation of varying interpretations gives rise to an extreme deal of uncertainty amongst Governments and stakeholders across Australia, which in turn may well lead to a most undesirable outcome, whereby legal challenges may well be made to the draft or final Murray Darling Basin Plan.

One submission which has already been lodged to your Senate Inquiry by Professor John Briscoe, former Senior Adviser to the World Bank and currently Professor of Environmental Engineering at Harvard University and who has extensive experience and involvement in Australian water reform, has a conclusion which generally reflects RAMROC's concerns about the current dilemma.

Professor Briscoe's conclusion states inter alia:-

"My conclusion is stark. I believe that the Water Act of 2007 was founded on a political deception and that the original sin is responsible for most of the detour on which Australian water management now finds itself. I am well aware that unpredictability is an enemy and that there are large environmental, social and economic costs of uncertainty. But I also believe that Australia cannot find its way in water management if this Act is the guide. I would urge the Government to start again, to re-define principles, to engage all who have a stake in this vital issue and to produce, as rapidly as possible, a new Act which can serve Australia for generations to come. And which can put Australia back in a world leadership position in modern water management"

At the present time, it appears that both the Gillard Labor Government and the Liberal /Nationals Coalition agree that the Murray Darling Basin Plan should be developed on the basis of giving equal balance between economic, social and environmental factors. This is a sensible and critically important premise towards achieving a comprehensive and well balanced Basin Plan which will serve the overall best interests and benefits for this nation for a very long time.

On the other hand, that pragmatic objective is most likely not the political position of the Greens and it is difficult to know what exactly is the position of the individual Independents.

What is essential of course for long term certainty is that there must be harmony between the provisions of the Water Act and the Basin Plan. It is absolutely vital that they be homogeneous.

The Federal Government is therefore in a difficult position from a legislative point of view at the present time, particularly under the fragile minority government arrangements that currently exist, which will no doubt be carried forward and be encountered to a larger extent when the new Senate numbers come into effect as from 1st July 2011, notably with the increased influence of the Greens.

Most importantly, the issue of certainty is required from all sectors. Farmers need certainty to maintain their food production and family businesses, other agricultural industries and businesses need certainty, councils and their communities need certainty, small local businesses and homeowners need certainty, government services and facilities need certainty, environmental assets and healthy rivers need certainty.

And it is imperative that this much desired certainty must come quickly. Already the serious damage caused by the flawed and dictatorial processes of the Murray Darling Basin Authority and its Basin Plan Guide document have resulted in horrendous financial, social and human damage to communities, farmers, businesses and property owners, the impacts of which will likely be long lasting and perhaps irreversible.

Logic would generally dictate that the Water Act is the foundation stone on which a Basin Plan must subsequently be developed. But if that foundation stone is not on solid ground and is shaky and uncertain, then the resultant Basin Plan will obviously and undoubtedly become an instrument doomed to conflict, challenge and eventual failure.

Furthermore, a short term Parliamentary "fix" to the problem, which in good faith may reflect the intentions of Governments and Oppositions, but which is actually in contradiction of the relevant water legislation, is equally untenable and would no doubt provide fertile grounds for legal challenge. In other words, it is certainly not a long term solution and will only add to the dilemma of uncertainty.

So if there is a pragmatic Parliamentary "fix" adopted to overcome the problem, then extremely urgent action must be taken to either develop a new Water Act, or appropriately amend the existing Water Act, so that the two components become homogenised at the earliest possible time.

The RAMROC Executive Committee would be pleased to add further to this submission if required by your Senate Inquiry

Yours faithfully,

Cr Terry Hogan AM – RAMROC Chairman

Ray Stubbs – RAMROC Executive Officer