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National Water Commission

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Chair

Ms S Dunstone
Committee Secretary
Senate Standing Committee on Environment and Communications
Parliament House
CANBERRA ACT 2600

By email: ec.sen@aph.gov.au

Dear Ms Dunstone

INQUIRY INTO THE WATER AMENDMENT (LONG TERM AVERAGE SUSTAINABLE DIVISION LIMIT ADJUSTMENT) BILL 2012

Thank you for your email dated 17 October 2012, which invited the National Water Commission to provide a submission to your inquiry into the Water Amendment (Long Term Average Sustainable Division Limit Adjustment) Bill 2012 (the Bill). The Commission is pleased to be able to respond.

The National Water Commission (the Commission)

The Commission is an independent statutory authority within the Sustainability, Environment, Water, Population and Communities portfolio that provides advice to the Council of Australian Governments (COAG) and the Australian Government on national water issues.

The Commission was formally established by the *National Water Commission Act 2004*, which was amended in June 2012 following an independent COAG Review of the Commission. Under the amended Act, the Commission has three core ongoing functions: monitoring, audit, and assessment. We are also empowered to undertake broader activities that promote national water reform objectives.

The Commission is primarily responsible for providing independent assurance of governments' progress on water reform under the Intergovernmental Agreement on a National Water Initiative (the NWI), and has two additional functions under other Commonwealth acts and regulations: the *Water Act 2007*, and the *Carbon Credits (Carbon Farming Initiative) Regulations 2011*.

Commentary in this submission is based on the Commission's responsibilities relating to the NWI. The Commission will not offer opinion on issues that might be seen as pre-empting its audit function under s87 of the *Water Act 2007* with respect to the Basin Plan.

The Intergovernmental Agreement on a National Water Initiative (the NWI)

The NWI represents a joint commitment by the Commonwealth Government and all State and Territory Governments (the Parties) to make the nation's water use more efficient and sustainable, leading to greater certainty for investors, producers, communities and the environment. It is Australia's blueprint for managing the nation's water.

The NWI states that the Parties agree to implement the NWI in recognition of the continuing national imperative to increase the productivity and efficiency of Australia's water use, the need

to service rural and urban communities, and to ensure the health of river and groundwater systems.

The objective of the Parties in implementing the Agreement is to provide greater certainty for investment and the environment, and underpin the capacity of Australia's water management regimes to deal with change responsively and fairly.

Under the NWI, governments have made commitments to:

- prepare water plans with provision for the environment
- deal with over-allocated or stressed water systems
- introduce registers of water rights and standards for water accounting
- expand the trade in water
- improve pricing for water storage and delivery
- manage connected surface and groundwater systems in an integrated manner
- meet and manage urban water demands

The overall objective of the National Water Initiative is to achieve “a nationally compatible market, regulatory and planning based system of managing surface and groundwater resources for rural and urban use that optimises economic, social and environmental outcomes” (paragraph 23, NWI).

Water plans are one of the mechanisms used to achieve a balance between environmental and consumptive uses in water management. Water plans ultimately are about the sharing of a resource, with a trade-off between competing uses in the plan. Trade-offs between competing outcomes for water systems will involve judgements informed by best available science, socio-economic analysis and community input. Transparency of process, inputs and decision making is crucial in this process.

Water Amendment (Long Term Average Sustainable Division Limit Adjustment) Bill 2012

The Commission notes that in introducing the Water Amendment (Long Term Average Sustainable Division Limit Adjustment) Bill 2012 (the Bill), the Government stated in the second reading speech that s23 of the *Water Act 2007* currently provides for the legal possibility of this type of SDL adjustment mechanism and this Bill is intended to further clarify those provisions, and in particular, to set limits on adjustments that can be made and to prescribe the process by which adjustments would occur.

Specifically, the Bill provides that any adjustment be limited to no more than 5% above or below the SDL that applies to Basin water resources at the time the adjustment is proposed, that the Basin Officials Committee should be consulted, and that the criteria by which adjustment proposals should be considered are to be included in the Basin Plan.

The second reading speech for the Bill also indicates an expectation that the criteria to be specified in the Basin plan are to “reflect the intention of the Basin Governments that the mechanism must operate on a no-detriment basis” in terms of social, economic and environmental outcomes contained in the Basin Plan.

The NWI (paragraph 25, sub paragraphs (iii) and (iv)¹) acknowledges that over time new information resulting from changes to a plan operating environment and activities such as plan

¹ NWI paragraph 25:

The Parties agree that...their water access entitlements and planning frameworks will:

- iii) be characterised by planning processes in which there is adequate opportunity for productive, environmental and other public benefit considerations to be identified and considered in an open and transparent way;
- iv) provide for adaptive management of surface and groundwater systems in order to meet productive, environmental and other public benefit outcomes;

monitoring and evaluation may mean that it is appropriate to adapt the management arrangements contained in a plan. It also contemplates that this adaptive management process does not necessarily mean that the full planning process must occur.

This Bill details a process for adaptive management that is capable of being consistent with the intent of the NWI. Critical to ensuring an adjustment to the Sustainable Diversion Limits maintains or improves the expected economic, social and environmental outcomes of a Basin Plan will be the criteria set out in that plan for consideration of proposed adjustments.

The Commission's Murray—Darling Basin audit function

The Commission has an ongoing Murray-Darling Basin audit function as a requirement set out in Part 3 of the *Water Act 2007*. The Commission is required to conduct its first audit of the effectiveness of the implementation of the Murray—Darling Basin Plan and associated water resource plans by March 2013 and subsequently at an interval of no greater than five years from the conduct of the previous audit.

Independent audits in the basin will be an important element of the Murray—Darling Basin governance arrangements. The Commission's audit role will provide independent oversight on the effectiveness of the implementation of the Basin Plan and associated water resource plans. In this context, our audit goal is to contribute to more effective management of water resources in the Murray—Darling Basin.

The Basin Plan audit must take place at least every five years. Early audits are expected to focus on mechanisms for implementation and foundational activities, and whether actions and strategies have been initiated. Later audits will investigate progress towards objectives and the achievement of intended outcomes.

In this context, the first report from the Commission under part 3 of the *Water Act 2007* will focus on the preparedness of the Commonwealth and state and territory governments to meet their obligations under the Murray—Darling Basin Plan. The Commission also intends to outline its expectations of what should be in place and what the Commission expects to examine in our next, and first full, audit. This is likely to include examination of the implementation aspects of the proposed adjustment mechanisms, should the Bill be passed by the Parliament.

The Commission's Chief Executive Officer, Mr James Cameron, is available to appear before the Committee to discuss the submission in more detail should the Committee wish.

Yours sincerely

The Hon Karlene Maywald
25 October 2012