



Submission to Senate Legal and Constitutional Affairs Committee Provisions of the Water Act 2007

Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Email: legcon.sen@aph.gov.au



Introduction

The Riverina citrus industry is Australia's largest citrus growing region, producing approximately 30% of Australia's citrus products creating more than 1,500 jobs, with 8,500 hectares of orchards over 690 farms. There are over 800 jobs on farm, 400 jobs in packing sheds, 100 in juicing plus more throughout the supply chain and at retail level. The Riverina citrus industry creates approximately \$75m farm gate value and downstream value adding creates substantial economic activity.

Riverina Citrus represents citrus growers and would like to take this opportunity to highlight for the committee issues in relation to the Water Act 2007.

Terms of Reference

(a) any ambiguities or constraints in the Act which would prevent a Basin Plan from being developed on an equally weighted consideration of economic, social and environmental factors;

There are conflicting reports whether the Act has a requirement to deliver an equal social, economic and environmental outcome. Rather it appears that it can be achieved at the discretion of the sitting Minister. Previous Chairman of the Authority, Mike Taylor clearly believed from his legal advice that the Act is not obligated to deliver a triple bottom line. Further to this, advice released from the Hon. Tony Burke MP states that he can if he chooses to, deliver these outcomes but is not obligated to.

Previous Minister Malcolm Turnbull weighed into the debate in an article in the Sydney Morning Herald in October 2010, his argument was;

"Finalisation of the Basin Plan inevitably involves balancing the claims of the environment against the requirements of agriculture and other water users in the basin. That is why, contrary to the claims of Simon Crean and Tony Burke, the 2007 Water Act expressly requires the authority and minister to "act on the basis of the best available scientific knowledge and socio-economic analysis" and consider "the consumptive and other economic uses of basin water resources".

However, comments from the Australian Farm Institute point out that this does not seem to be an accurate interpretation of what the legislation actually states is required of the MDBA in the preparation of the Plan. The legislation does mention consideration of social and economic factors, but this is **subject to** having first met environmental requirements. That is, the MDBA can consider these issues, once it has met environmental requirements. In addition, while Sections 44 - 48 of the legislation provides the Minister with powers to seek amendments to the draft plan, it limits the basis on which the Minister can seek changes, and does not allow the Minister to seek changes to matters (such as the sustainable diversion limits) that are based on 'factual or scientific matters'

Riverina Citrus believes that the discretion of a Minister needs to be addressed and replaced with a clear directive to deliver an equally weighted triple bottom line. This minimizes the chance of politics intervening to appease the interests of any one particular interest group.

(b) the differences in legal interpretations of the Act;

We are fully supportive of the position of the NSWIC's submission that environmental considerations receive primacy.

“Section 21 is clear in stating that these environmental considerations take precedence and that local economic and other concerns must be taken into account “subject to” them.”

Former Chair of the Murray Darling Basin Authority, Mike Taylor, constitutional law expert Professor George Williams and Professor Judith Sloan all agree that the environment takes primacy under the *Water Act 2007*.

(c) the constitutional power of the Commonwealth to legislate in the area of water;

Power over water supply and delivery rests with the states, in our case the New South Wales government. It appears that the Commonwealth Government via the *Act* is attempting to intervene with the supply of water to existing users. By their own admission the *Act* will be legislated through the Commonwealth but left to the States to implement.

The Committee should consider whether the *Act* is compliant with the Constitution. Many communities and those that we represent are concerned with an *Act* whose ultimate implementation will be with the States.

Does the Commonwealth have sufficient constitutional power to implement such agreements?

(d) the role of relevant international agreements and the effect of those on the parts of the Act which direct the Basin Plan to give effect to those agreements, and their effect on the Act more generally;

The RAMSAR treaty appears to be the principal driver for change in the water debate.

From the www.ramsar.org website, the RAMSAR mission proclaims;

“the conservation and wise use of all wetlands through local and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world”.

Furthermore, the website goes on to say;

The Convention uses a broad definition of the types of wetlands covered in its mission, including lakes and rivers, swamps and marshes, wet grasslands and peatlands, oases, estuaries, deltas and tidal flats, near-shore marine areas, mangroves and coral reefs, and human-made sites such as fish ponds, rice paddies, reservoirs, and salt pans.

Interestingly,

At the centre of the Ramsar philosophy is the “wise use” concept. The wise use of wetlands is defined as “the maintenance of their ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development”. “Wise use” therefore has at its heart the conservation and sustainable use of wetlands and their resources, for the benefit of humankind.

Our question therefore is; How relevant is an international treaty that does not adopt the “wise use” concept?

To date there has been no environmental management plan and therefore the “wise use” concept cannot be scrutinized. Further to this, Section 4 of the Act refers to several other international agreements all weighted heavily towards a biased environmental outcome such as CAMBA, JAMBA, ROKAMBA etc.

(e) any amendments that would be required to ensure that economic, social and environmental factors are given equally weighted consideration in developing the Basin Plan; and

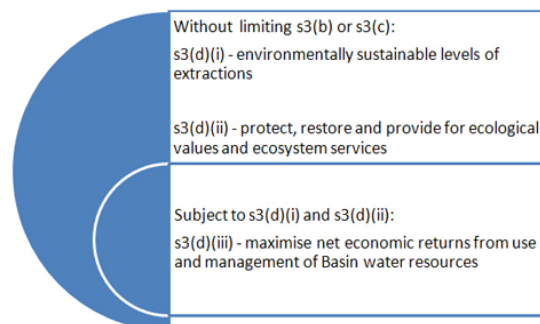
The countless briefings and meetings members of Riverina Citrus have been involved with, has lead us to support the position of the NSWIC that the Act ought to revert back to Version 61 of the *Bill*. This was the last iteration that stakeholders had input into. Version 61 was significantly altered before being adopted by parliament and becoming the Act.

Another point to consider is the advice from the Murray Darling Basin. The following extract is from their website.

“..the object of the Act to maximise net economic returns (para 3(d)(iii)) is expressed to be subject to the object of ensuring the return to environmentally sustainable levels of extraction and protecting, restoring and providing for the ecological and ecosystem services of the Basin (paras 3(d)(i) and (ii)). The Basin Plan therefore needs to pursue the object of maximising net economic returns to the Australian community from the use and management of the Basin water resources, but only to the extent that this does not interfere with the objects set out in paras 3(d)(i) and (ii)”.

This is shown diagrammatically in figure 2 below.

Fig. 2 – Internal relationship between objects 3 (d)(i), (ii) and (iii)



(f) any other related matter.

The media statement that the Hon. Tony Burke MP released on the 25th October 2010 states;

“...The key challenge before Parliament is for this to be the term in which action is taken across the Basin to restore the system to health. We need to do this in a way which delivers three core outcomes:

- *healthy rivers*
- *strong communities and*
- *Food production*

These priorities do not need to be in competition with each other. Sensible reform will find a way to provide all three.”

Basin communities are already being impacted upon, that impact commenced on the 8th October when the *Guide to a Draft* was released. In our region we have seen house prices fall, development interest decline and community confidence shattered.

As the minister states sensible reform is needed, but to date many who live in the basin are highly skeptical of any government who uses terms such as;

“...gives effect to relevant international agreements, provides for the establishment of environmentally sustainable limits, provides for the use of the Basin waters resources in a way that optimizes economic, social and environmental outcomes”. (Ministers press release 25/10/2010)

What we respectfully ask the committee, is to investigate the language that is used. Ambiguity must be removed and replaced with terminology that gives certainty and provides the reform process which minimizes political interference and interpretation. Legal interpretation varies and until there is consensus in the interpretation of the *Act* there will always be challenges and uncertainty.

According to the *Backlash in the Basin* story aired by ABC TV on the 7th March 2011, Dr Arlene Harriss-Buchan (Australian Conservation Foundation) summed up her position by stating that, “...it won't comply with the water *Act*.” The it, she was talking about was the quantity of water to be returned to the environment.

Regards,

Dominic Testoni
Chief Executive Officer