

**Submission to the Senate Standing  
Committee on Environment and  
Communications**

***Inquiry into the Water Act Amendment  
(Long Term Sustainable Diversion  
Limit Adjustment) Bill 2012***

**121024**

## Introduction

NSW Irrigators' Council (NSWIC) represents more than 12,000 irrigation farmers across NSW. These irrigators access regulated, unregulated and groundwater systems. Our Members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries.

This document represents the views of the members of NSWIC. However each Member reserves the right to independent policy on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

## General Comments

Stakeholders - including NSWIC - were not consulted in the drafting of the Bill. We have always stood ready to assist with the development of policy and the mechanism by which to achieve it and hence were disappointed not to have been advised or consulted.

For the avoidance of doubt, **NSWIC supports the concept of an adjustment mechanism.**

We specifically note, however, that the detail of such mechanism - which we understand is contained within the current draft Basin Plan - has neither been made public nor shown to stakeholders.

It is *extremely difficult* for NSWIC - or any other entity - to provide meaningful advice to the Committee on a Bill that provides a means to implementing a mechanism to which we are not privy.

## Specific Concerns

NSWIC reserves its right to support the adjustment mechanism within the Draft Plan when we become privy to it. It may be the case that we support not only that mechanism, but the legislative change to accommodate it. At present, we are entirely unable to provide opinion on that matter.

The following specific concerns arise in the absence of specific information.

### *No Demonstration of Necessity*

There is an implicit argument in the published summary that the Bill is necessary to implement the adjustment mechanism. Such implication is ***simply not correct***. The Act contains a mechanism for amendment of the Basin Plan (Subdivision F, sections 45 to 49). This mechanism requires formal consultation (including with stakeholders), is subject to the review of the Minister and to the disallowance of Parliament.

For clarity, *an adjustment mechanism can be implemented under the current Act*. This is not an argument about the presence or otherwise of an adjustment mechanism.

#### *Removal of Stakeholder Consultation*

The Bill would operate such that the adjustment mechanism, which is yet to be finalised, would not require the formal input of stakeholders. We understand from the summary that the States have requested amendment such that their input is sought. This takes the form of "seek and consider the advice" rather than it being in any way influential or binding.

In any event, the formal capacity for stakeholder input has been removed - which is unacceptable. At very least, the Bill must be amended to require meaningful stakeholder consultation.

#### *Removal of Ministerial Oversight*

It is the role of the Minister to take responsibility for the Basin Plan. Pursuant to the *Act* as it stands, the Minister can direct the Authority and obviously can choose whether or not to take the Basin Plan to the Parliament. The Bill would remove this capacity and *require* the Minister to act at the discretion of the Authority in respect of resetting the SDL.

#### *Removal of Parliamentary Capacity to Disallow*

Under the current *Act*, an amendment to the Basin Plan is subject to the disallowance of Parliament. The Bill would remove this provision for the purpose of changing the SDL via an as yet unseen adjustment mechanism.

#### *Concentration of Power to MDBA*

By removing the power of the Minister and the Parliament to consider the appropriateness or otherwise of a key feature of the Basin Plan - the Sustainable Diversion Limit - the Bill would concentrate power to the Murray-Darling Basin Authority. Stakeholders have been rightly critical of this entity throughout the course of its existence. They believe - as does NSWIC - that meaningful engagement has not been achieved, that the social and economic impact work produced was significantly lacking in credibility (and has been roundly criticised) and that the MDBA was not at any stage designed to be a power unto itself (and nor should it become so).

Notwithstanding this, should the adjustment mechanism work such that the role of the MDBA is largely administrative rather than determinative, this may be acceptable to NSWIC.

### *No Protection of Resumption Mechanism*

With the announcement of the adjustment mechanism, NSWIC called on Minister Burke to immediately guarantee that all current programs and funding would be directed to the current "gap" and that any additional recovery would be solely through new programs with new funding. The Minister gave that guarantee - but the Bill *does nothing* to support the guarantee. Instead, it removes capacity from the donor of the guarantee (the Minister) to the Authority which have no capacity to direct funding or recovery mechanisms.

### *No Formal Social and Economic Criteria*

The summary suggests that a 'no detriment' test in the Basin Plan would provide some protection with respect to increases in environmental water coming only at negligible social and economic cost. Note that the summary says that the Basin Plan is 'expected to reflect the no detriment test'. NSWIC believes that expectation is vastly insufficient at this point. In the absence of a full understanding, the Bill should not be favourably viewed.

In any event, with sole decision-making capacity lying with the MDBA, NSWIC notes the significant criticism levelled by stakeholders and experts alike in respect of the social and economic analysis conducted in the preparation of the Basin Plan. We submit that granting *carte blanche* to the MDBA in determining "no detriment" will cause enormous stakeholder angst and lead to a rejection of the outcome.

### **Submission**

NSWIC submits that the Committee report to the Senate that the Bill cannot be properly considered in the absence of the current Draft of the Basin Plan. The Committee should therefore recommend that consideration of the Bill be deferred until such time as the current Draft Basin Plan is able to be considered by the Senate, stakeholders and the public.

ENDS