

**Senate Standing Committee on Environment
and Communications:
Water Amendment (Long Term Average
Sustainable Diversion Limit Adjustment) Bill 2012**

Summary

1. ACF supports the intent of the Bill, to the extent that it enables an adaptive Basin Plan that can respond to and harness innovation and new knowledge.
2. We welcome the requirement that any sustainable diversion limit (SDL) adjustment must be based on criteria included in the Basin Plan and that the Water Act definition of environmentally sustainable level of take (ESLT) retains its primacy.
3. Further, we welcome the added transparency provided for in requiring that the Murray-Darling Basin Authority (the Authority) provide a notice outlining the material on which it has based its decision to adjust water extraction limits.
4. However, we are concerned that the Bill would prevent effective Ministerial or Parliamentary oversight of such adjustments. The Minister would be obliged to adopt amendments to the Plan without having satisfied themselves that the amendment is in accordance with the Act, and the Parliament would have no power of disallowance. At the least, Ministerial oversight should be reinstated.
5. Further, we are concerned that the principle of public participation already enshrined in the Act should be maintained. The Bill provides no guarantee of public participation in the development of SDL adjustments.
6. Nothing in this submission should be read as an endorsement of the adjustment mechanism criteria proposed in the latest version of the Proposed Basin Plan (August 2012). As we stated to the Senate Standing Committees on Rural and Regional Affairs and Transport in September, the proposed mechanism would result in significant public investment in infrastructure to increase water availability for irrigation instead of for the environment, even in situations where the Authority's scientific analysis shows that additional water is required to achieve a healthy river.

Specific recommendations

7. **Ministerial oversight.** Proposed s.23B(6) should be amended to require that the Minister only adopt a proposed adjustment if s/he is satisfied that it would result in SDLs continuing to reflect ESLT. The clause could read approximately "As soon as practicable after receiving the amendment, if the Minister is satisfied that the amendment would result in SDLs reflecting ESLT, the Minister must adopt, in writing, the amendment."
8. **Public participation.** Proposed s.23A(1) should include an additional provision to the effect that if the Basin Plan provides for an adjustment mechanism, minimum stakeholder participation requirements must be adhered to in relation to the mechanism, including:
 - a. that the Authority should make draft proposals and background information available for public comment for a minimum specified period;

- b. that the notice and amendment referred to in proposed s.23B(5) should be put on public exhibition for a minimum time period prior to the Minister adopting the amendment under proposed s.23B(6)
 - c. an additional subsection under proposed s23A: “For any adjustment proposed by the Authority under paragraph 1(a) or 1(b), all information relied on by it in formulating the proposed adjustment must be made available to the public upon request”
9. **Clarification.** When read in conjunction with the definition of ‘Basin water resources’ in the existing s.4, it would appear that the 5% limit on adjustments specified in proposed s.23A(4) is in fact 5% of the combined surface and groundwater diversion limits. This is contrary to understanding amongst stakeholders of the effect of this clause and we believe it would be of benefit for the Committee to clarify the intent and effect of this clause.

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