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Committee Secretary
Senate Standing Committees on Environment and Communications
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Parliament House
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Re: Submission to Inquiry into the Water Amendment Bill 2015

The Board of MLDRIN appreciated the opportunity to provide the following comments and responses to the to Inquiry into the Water Amendment Bill 2015.

About MLDRIN

The Murray Lower Darling Rivers Indigenous Nations (MLDRIN) is the peak representative body of Sovereign First Nations in the lower Southern part of the Murray Darling Basin. The group currently includes Delegates from 24 Nations across Victoria, NSW and South Australia.

Our core work includes:

- Advising the Murray Darling Basin Authority (MDBA) on all matters relevant to Traditional Owners and Aboriginal people in the Southern Murray Darling Basin, in particular, the implementation of the Basin Plan
- Having an active role in Natural Resource Management and water planning
- Providing a forum for our member nations to keep informed, deliberate on issues and provide feedback and advice to decision makers across all levels of Government
- Advocating for our member Nations' rights and interests in land and water, specifically to progress the recognition of Aboriginal water rights and Cultural Flows
- Providing leadership and capacity building for our member nations

Response to the *Water Amendment Bill 2015 (the Bill)*

Summary of key concerns

We have strong concerns about the Bill and its likely impacts on our members' rights and interests. Our key concerns are:

- 1) The Bill imposes a limitation on the Commonwealth that will significantly increase the cost of water recovery to meet SDLs, hence making implementation of the Basin Plan more expensive and more difficult.
- 2) The Bill directly impacts on the Commonwealth's ability to meet the Objects of the Water Act 2007
- 3) By imposing a limitation on water purchase in the Water Act 2007, the Bill could override the Commonwealth's obligations to achieve SDLs established in the Basin Plan.
- 4) Infrastructure investment and efficiency upgrades entail significant disturbance and impacts on Aboriginal cultural heritage and important cultural landscapes. Legislating to prioritise this approach to water recovery heightens the risk to cultural assets and undermines Traditional Owners' ability to care for their Country.

Comments on Context

Traditional Owners have a unique perspective on the implementation of the Basin Plan and water recovery targets. Our members live in and are part of regional communities and support strong rural economies. We recognise that water is the key to wealth generation in these areas and seek access to the water market and water entitlements for our members to pursue economic development. On the other hand, our deep, ancestral links to country means that our personal and social well-being are linked to the ecological health of the Basin and its river-dependent ecosystems.

The best available science tells us that SDLs and water recovery targets included in the Basin Plan represent a compromise and are insufficient to ensure the maintenance and recovery of key environmental assets and ecological processes. The health of these assets and processes is also critically important to support the cultural continuity and sustainability of over 40 unique Aboriginal Nations. Indeed, our very right to practice and sustain our culture is underpinned by the maintenance and recovery of the environment of the Basin. The Australian government is bound to recognise and give effect to those rights and interests through its ratification of both the United Nations Declaration on the Rights of Indigenous People (UNDRIP) and Convention on Biological Diversity (CBD).

Any amendment that makes it harder to recover water to meet the environmental objectives of the Basin Plan detrimentally impacts on the rights, interests and cultural obligations of our members.

We do not support the Water Amendment Bill 2015 in its current form because we believe it will impose impacts on our rights, interests and cultural obligations to enjoy and care for our Country.

Key Concerns

We cannot support the Bill in its current form for the following reasons:

- 1) The Bill imposes a limitation on the Commonwealth that will significantly increase the cost of water recovery to meet SDLs, hence making implementation of the Basin Plan more expensive and more difficult. Capping water buy-backs at 1500 GL will mean that, in order to reach the sustainable diversion limits under the Basin Plan, the only alternative to buying water entitlements will be to acquire water through infrastructure subsidies. Peer-reviewed studies in leading academic journals and research by the Australian Government's Productivity Commission demonstrate that water recovery through infrastructure is significantly more expensive, and offers less flexibility, than market-based water recovery from willing sellers. Subsidies to acquire water for the environment cost, on average, at least three times more per volume of water obtained.¹

The Government's own Commission of Audit has cautioned against over-reliance on infrastructure as the principal means of water recovery:

"The Commission considers that the Government should focus on maximising public benefits and achieving value for money in its water recovery, not on providing industry assistance. This means moving away from infrastructure funding, which is significantly more expensive and which provides substantial private benefits to landholders."²

This advice reflects the sporadic implementation of Government policy relating to public spending on environmental services. Government members claim that the Commonwealth Environmental Water Holder's (CEWH's) activities should not impose a cost on taxpayers³, yet will endorse unnecessary public spending on expensive infrastructure subsidies. While the CEWH's activities deliver a shared public benefit, infrastructure subsidies, it could be argued, provide direct benefits to select individuals and businesses. To acquire equivalent volumes of water (managed for the broader public good), taxpayers now have to subsidize expensive infrastructure upgrades, which create a private benefit for a limited group.

Peer-reviewed research also highlights significant undesirable outcomes and risks associated with an imposed reliance on infrastructure upgrades to achieve water recovery targets. Adamson and Lock (2014) found that

- Increasing farm technical efficiency via subsidies may expose prevailing irrigation capital to unacceptable risk.
- Rather than freeing water for environmental use, the proposed technical efficiency investment creates second-best options for the MDB environment if changes to return flow are ignored.
- During climate change or drought-induced water scarcity [the infrastructure

subsidies] approach results in significant reductions in the water supply available to achieve environmental, social and economic outcomes across the MDB.⁴

In combination, these sub-optimal outcomes and risks impose a negative impact on the environment of the Basin and on our members' rights and interests as Traditional Owners with obligations to care for country.

- 2) The Bill hampers the Commonwealth's ability to meet the objects of the Water Act 2007. By placing additional costs and restraints on the Commonwealth's ability to recover water for the environment, the Bill will severely hamper its ability to meet Water Act objects including '*3a) to enable the Commonwealth, in conjunction with the Basin States, to manage the Basin water resources in the national interest*'; and '*3b) to give effect to relevant international agreements*'. MLDRIN reiterates the detail provided by the Inland Rivers Network in their submission on this this point and stresses that, in hindering the achievement of the Water Act objects, this Bill also undermines our members' rights and obligations to manage cultural and environmental assets, including Ramsar listed wetlands within native title lands and National Parks under Joint Management.

'Relevant international agreements', under Object 3b) of the Water Act 2007 includes the Convention on Biological Diversity (CBD). The CBD establishes a requirement for States to "*respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.*" By jeopardizing the recovery of water to sustain ecological assets and processes, the Bill could directly impact on the viability and maintenance of traditional Aboriginal practices and Indigenous Ecological Knowledge that are supported by natural hydrological cycles.

In summary, by impeding the Commonwealth's ability to achieve the objects under the Water Act, the Bill could also undermine our customary and statutory rights and obligations to preserve and maintain our practices and knowledge and care for country.

- 3) By imposing a limitation on water purchase in the Water Act 2007, the Bill could override the Commonwealth's obligations to achieve SDLs established in the Basin Plan. Inclusion of the Buy-Back Cap provision in the Commonwealth Water Act 2007 itself means that it could override the SDLs which are included the Basin Plan (an instrument subordinate to the Act). If the Commonwealth finds that it is unable to meet the SDLs via infrastructure upgrades or efficiency measures because, for example, they get prohibitively expensive, it will not be able to use buy backs to recover the water required. By, in effect, overriding the Basin Plan, the Bill further limits Government's ability to recover water for the environment.

MLDRIN reiterates the concerns raised by Environmental Justice Australia, Australian Conservation Foundation and other environmental NGOs regarding the potential for this Bill to override obligations contained in the Basin Plan.

- 4) Infrastructure investment and efficiency upgrades entail significant disturbance and impacts on Aboriginal cultural heritage and important cultural landscapes. Legislating to prioritise this approach to water recovery heightens the risk to cultural assets and undermines Traditional Owners' ability to care for their Country. Our members have noted a number of instances of direct impacts on cultural heritage sites as a result of irrigation infrastructure upgrades and developments, including disturbance of burial sites.⁵ The large and dense historical Indigenous populations of the central Murray region in particular, mean that there is a high concentration of heritage sites⁶, often located in close proximity to water-courses. Construction, excavation and earth-moving activities undertaken as part of infrastructure upgrades are highly likely to impact on cultural heritage sites. Experience with the development of environmental works and measures in NSW, for example in the Koondrook/Perricoota forest, has demonstrated the significant time delays and increased costs associated with management of cultural heritage.

The key questions we pose here are: has this potential impact been accounted for in the Bridging the Cap program? Have the potential time delays and increased costs associated with cultural heritage surveys and unanticipated site discoveries been factored in to business-cases for infrastructure upgrades? Has there been consideration of the resource and capacity requirements of local Cultural Heritage Officers in dealing with these issues?

Our members are concerned that this Bill will put additional pressure on cultural heritage and on those responsible for assessing and conserving that heritage. Until these concerns are substantially addressed, we remain opposed to the Bill.

We would be happy to provide any additional information or to present to the Committee on these matters.

References:

¹ Grafton, Quentin R (2010) 'How to increase the Cost-Effectiveness of Water Reform and Productivity Commission, 2010, 'Market Mechanisms for Recovering Water in the Murray-Darling Basin', Productivity Commission Research report, Final report March, Productivity Commission: Melbourne.

² <http://www.ncoa.gov.au/report/phase-one/part-b/8-1-industry-assistance.html>

³ <http://www.abc.net.au/news/2015-04-27/murray-darling-environmental-water-sale-sharman-stone/6425782>

⁴ Adamson, David and Loch, Adam (2014), 'Possible negative feedbacks from 'gold-plating' irrigation infrastructure'. *Agricultural Water Management* 145 (2014) 134–144.

⁵ Hemphill, Peter. 'Harvard University found to have damaged aboriginal cultural sites' *The Weekly Times*. 25th March 2015.

<http://www.weeklytimesnow.com.au/news/national/harvard-university-found-to-have-damaged-aboriginal-cultural-sites/story-fnkfnspy-1227276312094>

⁶ Littleton, Judith and Allen, Harry (2007) 'Hunter-gatherer burials and the creation of persistent places in southeastern Australia' *Journal of Anthropological Archaeology* 26 (2007) 283–298