



## **Environment Victoria submission to the Senate Inquiry into the Provisions of the Water Act 2007**

**March 2011**

Environment Victoria is the state's peak non-government, not-for-profit environment organisation. Our Healthy Rivers Campaign is dedicated to working with government, business and communities for the restoration and protection our state's great river systems. Our vision is for a future where healthy rivers sustain abundant life and prosperous communities, providing us with good food, clean water and places to love and enjoy.

Environment Victoria was involved in the development of the Commonwealth Water Act 2007 (the Water Act) and welcomes the opportunity to submit to this Inquiry.

**In our opinion the Water Act provides direction on how economic, social and environmental objectives should be achieved, while setting out a path to return extraction from rivers in the Murray-Darling Basin to sustainable levels. The Water Act is not in need of amendment to achieve its purpose or to fulfill its obligations.**

### **Consistency of the Water Act with previous government policy and agreements**

The key purpose of the Water Act is to return water extraction in the Murray-Darling Basin to long term sustainable levels and in doing so to support both the Basin's ecosystems and continued productive use of the Basin. The Water Act is based on recognition that long-term social and economic values are dependant upon good environmental health.

This approach is entirely consistent with previous water reform instigated by federal and state governments starting with the National Water Initiative (NWI) in 2004.

One of the founding principles of the NWI is the need to address over-allocation to protect the resource base for both environmental and productive uses. Clause 5 of the NWI states 'The Parties agree to implement this National Water Initiative (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 by establishing clear pathways to return all systems to environmentally sustainable levels of extraction. The objective of the Parties in

implementing this 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.<sup>1</sup>

The NWI intends to 'complete the return of all currently over-allocated systems to environmentally sustainable levels of extraction.'<sup>2</sup>

Rather than setting out to balance environmental, economic and social factors 'equally', the NWI establishes requirements that must be met for each. It sets out a pathway for achieving sustainable extraction limits while also recognising the efficient and productive use of water resources.<sup>3</sup> The Water Act 2007 follows and expands on this approach.

The policy basis for the Water Act was the National Plan for Water Security (NPWS) announced by the Howard government in 2007. The NPWS contained a 10 point plan for 'addressing once and for all over-allocation in the Murray –Darling Basin' and setting 'a sustainable cap on surface and ground water use in the Murray-Darling Basin'.<sup>4</sup> It committed to the development of a Commonwealth Water Act.

The development of the Water Act involved extensive consultation with state governments and other stakeholders, and the Bill that set it up was generally accepted as consistent with the NWI. The Act was finally passed by both the Howard and Rudd governments with bi-partisan support.

### **Optimising environmental, social and economic outcomes**

The key purpose of the Water Act is to return water extraction in the Murray-Darling Basin to long term sustainable levels and in doing so to support both the Basin's ecosystems and continued productive use of the Basin. This is to be achieved by the development of a Basin Plan that gives effect to the relevant international agreements, sets sustainable diversion limits (SDLs) based on best available science, and optimises social, economic and environmental outcomes.<sup>5</sup> The Water Act is based on the recognition that long-term social and economic values are dependent upon environmental health; it is designed to protect, amongst other things, 'the productive base of the water resource'.<sup>6</sup>

Consideration of the functions that support continued productive and recreational use of the Basin is built into the development of SDLs. For example SDLs must be set at levels that would, amongst other things, mitigate pollution and limit algal blooms, remove excess salinity from the Basin and reduce acidity. These are all functions critical for continued social and economic use of the Basin. The assertion that SDLs are to be set on purely environmental considerations is incorrect.

---

<sup>1</sup> National Water Initiative (2004) Clause 5

<sup>2</sup> National Water Initiative (2004) Clause 23 (iv)

<sup>3</sup> See ANEDO submission to the Inquiry for full referencing

<sup>4</sup> NPWS, p1 available at <http://www.nalwt.gov.au/key.aspx>

<sup>5</sup> Water Act 2007, ss 20, 21, 22

<sup>6</sup> Water Act 2007, s 4

The Act further requires the optimisation of social, economic and environmental factors in the development of the Basin Plan<sup>7</sup> and allows for considerable lead in time for the implementation of the SDLs through transitional water resource plans<sup>8</sup>, interim water resource plans<sup>9</sup> and the option of a temporary diversion limit for up to five years.<sup>10</sup> Coupled with Commonwealth government commitments to 'bridge the gap' between existing water use and the implementation of SDLs through the Basin Plan, there is little danger of social and economic factors being relegated to the bottom of the heap under environmental considerations.

Many commentators have suggested that the environment is being given priority in the establishment of long-term sustainable limits on water extraction. While the Water Act states that these limits should be based on best available science, the concept of sustainability is much broader than purely environmental. It picks up both natural ecosystem requirements *and* requirements to maintain productive and social use of the Basin. Contrary to the fears of the commentators, the consideration of economic and social factors is deeply entrenched in the Water Act.

### **'Equal weighting' of social, economic and environmental factors**

Over-allocation has been an accepted fact since the introduction of the Murray-Darling Basin Cap in the 1990s. It is the result of many previous decisions in which economic factors have been given precedence over social and environmental considerations.

Despite government commitments to a triple bottom line approach and ecologically sustainable development, most legislation at both state and federal levels contains directions to 'have regard to' or 'to assess' economic, social and environmental implications of decision making, but does not contain directions to 'equally balance' those factors because in practice it is not possible.

The calls for 'equal weighting' of the different factors are premised on the supposed over-emphasis on environmental considerations in the *Guide to the proposed Basin Plan*. They have little regard for what 'equal balancing' actually means or for the fact that any attempt at balance is a value judgment on the part of the decision-maker. Such an attempt might produce a radically different result from that which the proponents intend. Indeed, it was a value judgment on the part of the MDBA that led them to consider reductions in current diversions only in the 3-4,000 GL range.<sup>11</sup> Consideration of the full range of environmental, economic and social benefits - in other words 'equal balancing' - could lead to the return of a much larger volume of water to the environment.

---

<sup>7</sup> Water Act 2007, s 20

<sup>8</sup> Water Act 2007, s 241

<sup>9</sup> Water Act 2007 s 242

<sup>10</sup> Water Act 2007, ss 22 and 24

<sup>11</sup> MDBA (2010) Guide to the proposed Basin Plan, p 100

## **Conclusion**

**The Water Act provides direction on how economic, social and environmental objectives should be achieved, while setting out a path to return extraction from rivers in the Murray-Darling Basin to sustainable levels. The Water Act is not in need of amendment to achieve its purpose or to fulfill its obligations.**

Environment Victoria gratefully acknowledges the assistance of the Australian Network of Environmental Defender's Offices in the preparation of this submission.