

Chapter 1

Introduction

Referral to the committee

1.1 The Water Amendment (Saving the Goulburn and Murray Rivers) Bill 2008 (hereafter 'the bill') was introduced into the Senate on 3 December 2008. On 4 December 2008, the Senate referred the bill to the Senate Environment, Communications and the Arts Committee for inquiry and report by 27 March 2009. On 17 March 2009 the Senate agreed to extend the reporting date to 7 May 2009.

1.2 The committee advertised the inquiry in *The Australian*, the *Mildura Sunraysia Daily*, the *Shepparton News* and the *Seymour Telegraph* newspapers on 17, 20, 22 and 24 December 2008 respectively, and placed details of the inquiry on the committee's website. The committee also wrote to a number of organisations and stakeholder groups inviting written submissions by 30 January 2009.

1.3 The committee received submissions from 34 individuals, groups and organisations, as listed in Appendix 1. The committee held public hearings in Shepparton on 14 April 2009 and in Canberra on 15 April 2009. A list of those who gave evidence at these hearings is at Appendix 2. The committee thanks all those who assisted with its inquiry.

Background to the bill

Recent Water Policy Initiatives

1.4 In recent years, there have been a number of intergovernmental efforts to improve water management in the Murray-Darling Basin, as well as Commonwealth, state and territory government projects within the Basin, which are relevant to this bill.

Living Murray Initiative

1.5 In 2002, the Murray-Darling Basin Ministerial Council agreed to the Living Murray First Step program. The program was jointly funded by the Commonwealth Government and the governments of New South Wales, Victoria, South Australia and the Australian Capital Territory. The Living Murray program was formalised via the Intergovernmental Agreement on Addressing Water Overallocation and Achieving Environmental Objectives in the Murray-Darling Basin, agreed 25 June 2004 and amended 14 July 2006.

1.6 The program aims to recover 500 gigalitres of water for the River Murray by June 2009 as an environmental flow, with a focus on six 'icon' sites. The initial funding for the plan was \$500 million over five years.¹

National Water Initiative

1.7 The National Water Initiative (NWI) was signed by the Commonwealth Government and the governments of New South Wales, Victoria, Queensland, South Australia, the Northern Territory and the Australian Capital Territory on 25 June 2004. Tasmania signed in June 2005, Western Australia signed in April 2006. The NWI built on earlier Council of Australian Governments (COAG) agreements. According to the National Water Commission (NWC), the overall objective of the NWI is 'to achieve a nationally compatible market, regulatory and planning based system of managing surface and groundwater resources for rural and urban use that optimises economic, social and environmental outcomes'.²

1.8 The NWC summarised the commitments of governments under the NWI as to:

- prepare water plans with provision for the environment;
- deal with over-allocated or stressed water systems;
- introduce registers of water rights and standards for water accounting;
- expand the trade in water;
- improve pricing for water storage and delivery; and
- meet and manage urban water demands.

Water Act 2007

1.9 The *Water Act 2007* ('the Act') received Royal Assent on 3 September 2007. The Act gave effect to the National Plan for Water Security, announced by the former Prime Minister, the Hon John Howard, on 25 January 2007.

1.10 The initial proposal by the Commonwealth was for the states of the Murray-Darling Basin to refer constitutional powers to the Commonwealth. New South Wales, South Australia and Queensland agreed to refer their powers, but Victoria did not. The subsequent *Water Act 2007* relied solely on the constitutional powers of the Commonwealth.

1.11 The Act provided for the establishment of a Murray-Darling Basin Authority (MDBA), which is responsible for the development of a Basin-wide Basin Plan. The Plan will set 'limits on the quantity of water that may be taken from the Basin water

1 <http://thelivingmurray.mdbc.gov.au/>, accessed 3 March 2009

2 National Water Commission website, <http://www.nwc.gov.au/www/html/117-national-water-initiative.asp>, accessed 2 March 2009

resources as a whole and from the water resources of each water resource program area'.³ The Basin Plan is a legislative instrument and is binding on the MDBA, Commonwealth agencies, state government agencies and holders of water access rights (although in the absence of a referral from the states there were limits on the extent to which this was binding on non-constitutional corporations).

1.12 The Act provided a greater role for the Australian Competition and Consumer Commission in water trading and pricing; and a greater role for the Bureau of Meteorology in relation to water information and standards. The Act also created a Commonwealth Environmental Water Holder to hold and manage water recovered through efficiency programs and structural readjustment for environmental purposes.⁴

Water Amendment Act 2008

1.13 On 26 March 2008, the Commonwealth and Basin state and territory governments signed a Memorandum of Understanding (MOU) on Murray-Darling Basin Reform. The MOU was implemented through the signing of a new Intergovernmental Agreement (IGA) on Murray-Darling Basin Reform on 3 July 2008.

1.14 The *Water Amendment Act 2008*, which received Royal Assent on 8 December 2008, gave effect to the IGA, and included the referral of powers by Basin states to the Commonwealth. The Amendment Act provided for the transfer of powers and functions from the old Murray-Darling Basin Commission to the Murray-Darling Basin Authority, strengthened the role of the ACCC and enabled the Basin Plan to provide for critical human water needs. The Amendments also incorporated the revised Murray-Darling Basin Agreement as a Schedule to the Act.

1.15 Of particular relevance to the current bill were changes made to the content and governance arrangements surrounding the Basin Plan. In particular, the Act confirmed that the Basin Plan is developed by the MBDA with the Commonwealth Minister being the final decision maker (although the other Basin states represented on the Murray-Darling Ministerial Council are able to request changes). The amendments also expanded the mandatory content of the Basin Plan to include arrangements for critical human needs for communities dependent on the waters of the Basin.⁵

Water for Rivers

1.16 Water for Rivers, referred to in the bill, is a public company established by the governments of the Commonwealth, New South Wales and Victoria with a charter to

3 *National Water Act 2007*, subsection 19(2)

4 Senate Standing Committee on Rural and Regional Affairs and Transport, *Water Amendment Bill 2008*, November 2008

5 Explanatory Memorandum, Water Amendment Bill 2008, pp. 3-4; Daniel Connell and R Q Grafton, 'Planning for Water Security in the Murray-Darling Basin', *Public Policy*, Vol. 3, No. 1, pp 70-71.

achieve targets for water savings, with the objective of enabling savings to be provided for increased environmental water flows for the Snowy River and the River Murray system. It was established in December 2003 following agreements between the three governments to increase environmental flows in those systems.⁶

Food Bowl Modernisation Project and Sugarloaf Pipeline

1.17 In introducing the bill, Senator Birmingham made particular reference to the Victorian Government's Northern Victoria Irrigation Renewal Project (NVIRP), also known as the Food Bowl Modernisation Project.

1.18 In 2007, the Victorian Government released the strategy document *Our Water Our Future: the Next Stage of the Government's Water Plan*. Stage 1 of the project is estimated to secure savings of up to 225 gigalitres of water annually. The Victorian Government intends that savings will be 'shared equally with irrigators, the environment and Melbourne'.⁷ Stage 1 is wholly funded by Victorian agencies: \$600 million from the Victorian government, \$300 million from Melbourne Water and \$100 million from Goulburn Murray Water.⁸

1.19 From 2010-11, Melbourne will receive 75 gigalitres of water from the project via the 70 kilometre Sugarloaf Pipeline (currently under construction). This will transfer water from the Goulburn River (extracted from a point near Yea) to the Sugarloaf Reservoir near Yarra Glen.⁹

1.20 On 12 September 2008, the construction of the pipeline was approved by the Commonwealth Minister for the Environment, Heritage and the Arts, the Hon Peter Garrett MP, under the *Environment Protection and Heritage Conservation Act 2007*, subject to conditions, including that water transported is acquired from savings achieved through the Food Bowl Modernisation Project.¹⁰

6 <http://www.waterforrivers.org.au/>, accessed 2 March 2009.

7 Victorian Government, *Our Water Our Future: The next stage of the government's water plan*, http://www.ourwater.vic.gov.au/_data/assets/pdf_file/0015/366/The-Next-Stage-of-the-Governments-Water-Plan-2007.pdf, p. 4, (accessed 3 March 2009).

8 Victorian Government, Northern Victoria Irrigation Renewal Project: Frequently Asked Questions', http://www.ourwater.vic.gov.au/_data/assets/pdf_file/0012/13611/NVIRP_FAQ.pdf (accessed 30 March 2009).

9 Victorian Government, 'Northern Victoria Irrigation Renewal Project: Frequently Asked Questions', http://www.ourwater.vic.gov.au/_data/assets/pdf_file/0012/13611/NVIRP_FAQ.pdf, p. 3, (accessed 3 March 2009).

10 Dr James Horne, Department of the Environment, Water, Heritage and the Arts, 13 November 2008, cited in the Senate Standing Committee on Rural and Regional Affairs and Transport inquiry into the Water Amendment Bill [Provisions], November 2008, p. 12.

The provisions of the bill

1.21 The provisions of the bill are the same as amendments passed by the Senate during debate on the Water Amendment Bill 2008. These amendments were rejected by the House of Representatives on 1 December 2008 and were not insisted on by the Senate when the bill was reconsidered on 2 December 2008.

Impact on Living Murray Initiative

1.22 Item 2 of the bill requires independent audits of water savings programs undertaken by the governments of New South Wales, Victoria and South Australia. Until increased water flows as required by the Living Murray Initiative are achieved, the bill provides that water saved by such programs must be allocated to the Living Murray Initiative as soon as it becomes available and may not be used for any other purpose.

Prohibition on taking water outside the Murray-Darling Basin

1.23 Item 3 of the bill introduces a requirement that the Basin Plan may not allow water resources to be taken for use outside the Murray-Darling Basin. Item 4 of the bill introduces a prohibition on the construction or operation of *water infrastructure* or work in the nature of a *river flow control work* by an *infrastructure operator* if the purpose of that construction, operation or work is to enable water to be taken for use outside the Murray-Darling Basin.

1.24 The definition of 'river flow control work' is amended for the purposes of the proposed provisions. Under paragraph 8(2)(b) of the Act, works which are 'operated primarily to deliver water for urban retail supply' are specifically excluded from the definition of 'river control work.' By removing this exclusion, works aimed primarily to deliver water for urban water supply outside the Murray-Darling basin will not be allowable under the Basin Plan and may not be built.

1.25 Water resources which would have been taken prior to 3 July 2008 (the date the IGA was agreed) will not be covered by the provisions. A further exception is provided for Water for Rivers (see below).

Impact on Water for Rivers

1.26 In introducing the bill, Senator Birmingham noted that 'out of an abundance of caution, this bill ensures that these provisions protect other efforts under the Water for Rivers program to save the Snowy River are in no way impacted'.¹¹

1.27 Item 1 defines 'Water for Rivers' for the purposes of the bill. Item 3 clarifies the interaction between the new provisions inserted by the bill and Water for Rivers.

11 Senator Simon Birmingham, *Senate Hansard*, 3 December 2008, p. 8050.

In summary, these provide that the delivery to, taking of water for, or construction of infrastructure related to Water for Rivers initiatives will continue to be allowed.