

The Senate

Standing Committee on
Rural and Regional Affairs
and Transport

Murray-Darling Basin Amendment
Bill 2006 [Provisions]

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Ms Jeanette Radcliffe, Secretary

Ms Kyriaki Mechanicos, Research Officer

Ms Rosalind McMahon, Executive Assistant

PO Box 6100

Parliament House, Canberra

Telephone: (02) 6277 3511

Facsimile (02) 6277 5811

Internet: www.aph.gov.au/senate

Email: rrat.sen@aph.gov.au

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Abbreviations

COAG	Council of Australian Governments
EM	Explanatory Memorandum
Ministerial Council	Murray-Darling Basin Ministerial Council
the Agreement	<i>Murray-Darling Basin Agreement 1992</i>
the Amending Agreement	Murray-Darling Basin Agreement Amending Agreement 2006
the Commission	Murray-Darling Basin Commission
RGA	Ricegrowers' Association of Australia Inc.

CHAPTER 1

Introduction

1.1 The Murray-Darling Basin Amendment Bill 2006 (the bill) was introduced into the House of Representatives on 7 December 2006. On this date, at the recommendation of the Senate Selection of Bills Committee, the provisions of the bill were referred to the Rural and Regional Affairs and Transport Committee (the committee) for inquiry and report by 26 February 2007.

1.2 The Selection of Bills Committee gave the following reason for referral:

The current water crisis facing the Murray Darling Basin and the need to fully investigate the implications of the bill in that context.¹

Conduct of the inquiry

1.3 The inquiry was advertised in *The Australian* on 12 December 2006, and the committee wrote to a number of relevant organisations and stakeholder groups, seeking their comments on the provisions of the bill. The committee received 5 submissions (see Appendix 1).

1.4 All the evidence presented to the committee is available on the committee's website at http://www.aph.gov.au/Senate/committee/rrat_ctte/index.htm

Acknowledgements

1.5 The committee appreciates the time and effort of all those who provided submissions to the inquiry. Their work has assisted the committee considerably in its inquiry and the committee thanks them for their contributions.

Background

1.6 The *Murray-Darling Basin Agreement 1992* (the Agreement) was made on 24 June 1992 between the Commonwealth, New South Wales, Victoria and South Australia, and was subsequently approved by the Parliament of each party to the Agreement. The purpose of the Agreement is to promote and co-ordinate effective planning and management for the equitable, efficient and sustainable use of the water, land and environmental resources of the Murray-Darling Basin.²

1.7 The Murray-Darling Basin Agreement Amending Agreement 2006 (the Amending Agreement) is in part a response by the Murray-Darling Basin Commission

1 Selection of Bills Committee, *Report No. 16 of 2006*, 7 December 2006, Appendix 15.

2 Explanatory Memorandum (EM), *Murray-Darling Basin Amendment Bill 2006*, p. 2.

(the Commission) to, and the amendments are consistent with, the Council of Australian Governments (COAG) Water Reform Framework of 1994.³

1.8 After several years of negotiations, the Murray-Darling Basin Ministerial Council (the Ministerial Council) endorsed the Amending Agreement, and it was signed by the First Ministers of the Commonwealth, Victoria, New South Wales, Queensland, South Australia and the Australian Capital Territory at the COAG meeting on 14 July 2006. However, the Amending Agreement will require the approval of all participating Parliaments before it comes into effect.⁴

1.9 On 25 January 2007 the Prime Minister announced a \$10 billion plan for national water management which includes provision for the Commonwealth to assume management of water resources in the Murray-Darling Basin. If implemented, this is likely to impact on the operation of the bill.⁵

Purpose of the bill

1.10 The bill amends the *Murray-Darling Basin Act 1993* to adopt and implement the Amending Agreement which itself amends the *Murray-Darling Basin Agreement 1992*.⁶

1.11 The main purpose of the Amending Agreement is to facilitate improved business practices for River Murray Water, the Commission's water business unit.⁷

1.12 The Amending Agreement:

- reduces fluctuations in the annual contributions of contracting governments, by allowing annual annuity contributions towards future capital and maintenance costs of River Murray Water;
- simplifies the identification of which costs the Commonwealth does and does not contribute to;
- allows the Commission to accumulate and invest annuity contributions;
- grants the Commission the power to borrow funds, with the approval of the Ministerial Council, where accumulated annuity contributions are insufficient to meet costs in any one year;
- enables the Ministerial Council to recover water business costs from state governments. These costs will be determined by the Ministerial

3 Second Reading Speech, *Murray-Darling Basin Amendment Bill 2006*, p. 1.

4 EM, *Murray-Darling Basin Amendment Bill 2006*, p. 4; Second Reading Speech, *Murray-Darling Basin Amendment Bill 2006*, pp 3 and 4.

5 Department of the Parliamentary Library, Bills Digest No. 72, 2006-07, p. 2.

6 EM, *Murray-Darling Basin Amendment Bill 2006*, p. 2.

7 EM, *Murray-Darling Basin Amendment Bill 2006*, p. 2; Second Reading Speech, *Murray-Darling Basin Amendment Bill 2006*, p. 1.

Council through a system similar to fee-for-service pricing, thereby eliminating cross-subsidies between states. The proportion of costs will be subject to review at least every five years;

- permits the Ministerial Council to allocate responsibility for River Murray Water structures from one constructing authority to another, subject to the agreement of the parties concerned;
- enables the Ministerial Council to alter financial thresholds set for specific Commission activities as it sees fit;
- grants the Ministerial Council the flexibility to appoint an auditor for the Commission, other than the Australian National Audit Office;
- clarifies that Queensland cannot be held liable for works and measures in which it is not directly involved;
- clarifies the annual estimates approval process and various definitions; and
- updates the list of works and measures in schedule C to the Agreement.⁸

Provisions of the bill

1.13 Clause 2 of the bill stipulates that the provisions of the Act, with the exception of schedule 1, will commence on Royal Assent.⁹

1.14 Schedule 1, however, will commence on a day to be fixed by Proclamation, because complementary legislation is required in each jurisdiction in order to give effect to the Amending Agreement. The commencement of the Act is intended to coincide with the commencement of the corresponding New South Wales, Victorian, Queensland, South Australian and Australian Capital Territory Acts. Therefore, no time limit has been placed on Proclamation.¹⁰

Schedule 1

1.15 Clauses 1 and 2 amend the definition of "Agreement" to include the Agreement as amended by the Amending Agreement 2006, and insert a definition of "Amending Agreement 2006".¹¹

1.16 Clause 3 provides that the Amending Agreement is approved by Parliament.¹²

8 EM, *Murray-Darling Basin Amendment Bill 2006*, pp 2-3 and 5; Second Reading Speech, *Murray-Darling Basin Amendment Bill 2006*, p. 2.

9 EM, *Murray-Darling Basin Amendment Bill 2006*, p. 4.

10 EM, *Murray-Darling Basin Amendment Bill 2006*, p. 4.

11 EM, *Murray-Darling Basin Amendment Bill 2006*, p. 4.

12 EM, *Murray-Darling Basin Amendment Bill 2006*, p. 4.

1.17 Clause 4 inserts a new schedule 3 to the *Murray-Darling Basin Act 1993*, which contains the text of the Murray-Darling Basin Agreement Amending Agreement 2006.¹³ The new schedule 3 provides that:

- Governments' may make annual annuity contributions, thereby reducing fluctuations that may occur in their annual contributions to the Commission. These annuity contributions will also give a clearer indication of the long-term costs of providing water business services. It is noted that the Commonwealth is responsible for 25 per cent of the investigation, construction and administration costs of the Commission's water business, however, the Commonwealth's annual annuity contributions cannot be used for related operation and maintenance expenses;
- The Ministerial Council may recover water business costs from state governments. The costs recovered from each contracting government will be in proportion to the services provided to it by River Murray Water. This will eliminate cross-subsidies between the states for such costs;
- The Ministerial Council has the authority to reallocate responsibility for the construction, operation and maintenance of works relating to River Murray Water structures between the contracting governments as necessary;
- The Ministerial Council may adjust the financial thresholds which apply to specific Commission activities, thereby accommodating inflation and price increases. Any finance which exceeds these thresholds must have Council approval; and
- Queensland will only contribute towards works and measures in which it is directly involved.¹⁴

Consideration by the Senate Scrutiny of Bills Committee

1.18 The Senate Standing Committee for the Scrutiny of Bills has a standing brief to consider all bills as to whether they trespass unduly on personal rights and liberties, and related matters.

1.19 The Scrutiny of Bills Committee queried the commencement provisions in the Murray-Darling Basin Amendment Bill 2006. The minister's advice was sought as to whether it would be possible to require the bill to commence within 12 months of Assent, and to provide that if no Proclamation is made by that time, the bill be automatically repealed.

13 EM, *Murray-Darling Basin Amendment Bill 2006*, p. 4.

14 EM, *Murray-Darling Basin Amendment Bill 2006*, pp 2 and 5; Second Reading Speech, *Murray-Darling Basin Amendment Bill 2006*, pp 2 and 3; Department of the Parliamentary Library, Bills Digest No. 72, 2006-07, p. 5.

CHAPTER 2

Issues

2.1 The majority of amendments contained in the bill are supported by relevant industry organisations, and several stakeholder groups indicated that they did not have any concerns with the bill. However, some submitters did recommend various modifications to enhance the bill, particularly emphasising the need for further transparency and public consultation.

Annual annuity contributions

2.2 Submitters welcomed the concept of annual annuity contributions, but did suggest that measures to ensure transparency should be provided for in the bill. Stakeholders would be more comfortable if the assessments and any other documents which formed the basis for calculating annuity contributions were available to the public. Likewise, stakeholders would take confidence if River Murray Water was required to report regularly and comprehensively on its performance, against specific business management benchmarks.¹

2.3 The NSW Irrigators' Council also proposed a regular review of annuity contribution levels and any consequent reserve levels to ensure any accumulation of reserve funds would remain minimal.²

2.4 The Ricegrowers' Association of Australia Inc. (RGA) queried how the annuity concept might affect the Ministerial Council's agreement of May 2006 to maintain jurisdiction contributions at 2006–07 levels for the following four years. The RGA was particularly concerned that if the annuity is set lower than the current contribution levels, or is decreased below these levels over time, contracting governments will be required to continue paying at the current level, thereby providing additional funds to the Commission. There is further concern that in some states this cost may be borne by irrigators, as Commission costs are handled differently by various states.³

2.5 The RGA also voiced their concern that the annuity initiative may be front-end loaded due to the difficulties in predicting long-term expenditure.⁴

1 Coleambally Irrigation Cooperative Limited, *Submission 1*, pp 1–2; NSW Irrigators' Council, *Submission 4*, pp 3–6; Ricegrowers' Association of Australia Inc. (RGA), *Submission 3*, pp 3–4.

2 *Submission 4*, p. 2.

3 *Submission 3*, pp 1–3.

4 *Submission 3*, p. 1.

Recovery of water business costs

2.6 The provision allowing the Ministerial Council to recover water business costs from contracting governments raised various concerns about the consequences of such a measure, particularly the potential impact this may have on irrigators in different states. Submitters advised that cost recovery should be consistent across all jurisdictions, and that the cost implications of these amendments for each jurisdiction should be made available so that the impact on stakeholders in different states is clear. This was an issue of particular importance as the majority of submitters noted that River Murray Water costs are handled very differently between states.⁵

2.7 Concerns were also raised about the process by which the Ministerial Council will determine cost proportions for each contracting government, and submitters recommended that the fee-for-service pricing concept be strengthened and clarified in the bill.⁶

2.8 Submitters supported a five-yearly review of the cost proportions, but believe that reviews should be conducted independently and should allow for public consultation.⁷

Responsibility for River Murray Water structures

2.9 The provision granting the Ministerial Council the authority to reallocate responsibility for the construction, operation, maintenance and works relating to River Murray Water structures was supported by submitters. However, they believe the bill should foster competition and should ensure the market testing of these services, thereby reducing the costs of construction and maintenance and encouraging efficient service delivery.⁸

Committee comments

2.10 The committee considers that concerns raised during this inquiry regarding the need for transparency and accountability in relation to annuity contributions and cost recovery should be given further consideration. The committee notes that the Commission is required to report annually to the Ministerial Council and that this report is publicly available.⁹ The committee considers that it would enhance existing reporting arrangements if the following information were incorporated into that annual report:

5 Coleambally Irrigation Cooperative Limited, *Submission 1*, p. 1; NSW Irrigators' Council, *Submission 4*, p. 2.

6 *Submission 1*, p. 2; RGA, *Submission 3*, p. 2.

7 *Submission 1*, p. 1; *Submission 4*, pp 4 and 6.

8 *Submission 4*, p. 3; *Submission 3*, p. 2.

9 *Murray-Darling Basin Act 1993*, schedule 1, clause 84.

- the basis for calculating annuity contributions and cost recovery proportions;
- any reviews of these contributions and proportions; and
- a more comprehensive report on River Murray Water's financial management and business operations.

2.11 The committee also considers that any reviews which take place should be conducted independently and incorporate public consultation processes.

2.12 Notwithstanding these comments, the committee notes that the Prime Minister's announcement on 25 January 2007 regarding national water management will impact on the operation of this bill. Therefore, the committee recommends that this bill not be proceeded with.

Recommendation

2.13 The committee recommends that the Murray-Darling Basin Amendment Bill 2006 not be proceeded with.

Senator the Hon. Bill Heffernan
Chair

APPENDIX 1

List of Submissions

- 1. Coleambally Irrigation Cooperative Limited (NSW)**
- 2. Murray-Darling Basin Commission (ACT)**
- 3. Ricegrower's Association of Australia Inc. (NSW)**
- 4. NSW Irrigators's Council (NSW)**
- 5. Murray Darling Association Inc. (SA)**

