

Chapter 4

Emergency Water (Murray-Darling Basin Rescue) Bill 2008

Introduction

4.1 On 28 August 2008, the Senate, on the motion of Senator Nick Xenophon, referred the Emergency Water (Murray-Darling Basin Rescue) Bill 2008 (the bill) to the committee for inquiry and report by 30 September 2008, in conjunction with the inquiry into water management in the Coorong and Lower Lakes.

Provisions of the bill

4.2 The purpose of this bill is to ensure the environmental and economic sustainability of the Murray-Darling Basin by empowering the minister and the Murray-Darling Basin Authority to establish an Interim Basin Plan as an emergency measure, until such time that a Basin Plan is adopted under the *Water Act 2007*.¹

Powers of the minister in relation to management of Basin water resources

4.3 Part 2 of the bill gives the minister the power to direct the Murray-Darling Basin Authority to prepare an Interim Basin Plan and to make decisions about how best to allocate water, and to share, manage and allocate the Basin water resources as well as manage all processes that may adversely affect them.

In this respect, the Minister will also be responsible for determining the share of water that is needed to maintain essential system functions and water quality, the share of the remaining non-flood water to which a Basin State is entitled and, the share, if any, to be granted to the environment as a clearly identifiable and inalienable entitlement to a water allocation in the water resource plan area.²

4.4 The bill prohibits persons or agencies of states from limiting or impeding the transfer or sale and purchase of water access entitlements, water access rights and water allocations among Basin states. It also proscribes any state or territory from acting in a manner inconsistent with an Interim Basin Plan or a determination made under the bill.

4.5 Thirdly, the bill prohibits constitutional corporations from undertaking activities that impede the flow of water from the Murray-Darling or taking part in activities that divert or significantly intercept water from the system.

1 Explanatory Memorandum, Emergency Water (Murray-Darling Basin Rescue) Bill 2008, p. 2.

2 Second Reading Speech, Emergency Water (Murray-Darling Basin Rescue) Bill 2008.

4.6 Fourthly, the bill allows the minister to acquire, on just terms, a proportion or all of a water access entitlement or a water access right in a water resource plan area, or any land associated with an acquired water access entitlement or an acquired water access right if appropriate.

4.7 Fifthly, the bill addresses the issue of taxation schemes that are detrimental to the management of Basin water resources by requiring the ACCC to inquire into the effects of arrangements in the *Income Tax Assessment Act 1997* on the water market, and on the nature of irrigation practice and investment.

4.8 The bill also addresses the issue of states that fail to comply with an Interim Basin Plan by reducing their share in the Basin water resources by ten times the quantitative effect of that failure to comply. It also enables the minister to apply an injunction against a Basin state that continues to fail to comply.³

Issues raised by the bill

Interim plan

4.9 The *Water Act 2007* has already established the Murray-Darling Basin Authority (MDBA, the Authority), reporting to the Minister for Climate Change and Water and requires it to prepare a strategic plan for the integrated and sustainable management of water resources in the Murray-Darling Basin. This plan is referred to as the Basin Plan and will be available in 2011, and a draft plan will be out at the beginning of 2009.⁴

4.10 The committee is not persuaded that an additional act is necessary to direct the Authority to prepare an interim plan, given that a draft of the final plan will be completed soon and that accelerating such a complex process is not likely to result in a useful document. The head of the MDBA outlined the current timeframe for a draft plan and the complexity of the task:

To satisfy the statutory requirements of the Water Act, we will need to have a draft plan out by the end of next year in order to meet the 2011 date. There are 16 weeks of public consultation; there is statutory consultation with states et cetera. We will have a draft plan to meet that 2011 date developed by 2009. It is the issue about tactics versus strategy, isn't it? There is clearly a crisis in the Lower Lakes clearly, and we need to be able to respond. The Basin Plan is a strategic document which is trying to make quite explicit those trade-offs between social, economic and environmental assets. That has never been done explicitly. At the moment, we are seeing environmental assets deteriorate and communities implode. We need to make some hard decisions on whether we can sustain all the environment or whether we can sustain all the economy that is currently reliant on that river

3 Second Reading Speech, Emergency Water (Murray-Darling Basin Rescue) Bill 2008.

4 Mr Robert Freeman, Murray Darling Basin Authority (MBDA), *Committee Hansard*, 26 September 2008, p. 75.

system. That is why it is such a long-run issue. To identify in a year all the social, economic and environmental assets of the basin, the water requirements that are necessary to sustain those and then have quite an explicit trade-off process, not only within classes that say, ‘This bit of the environment is more important than another bit of the environment,’ but across classes—between the environment and economic classes, for instance. That is what the Basin Plan is on about. I think it is fair to say that it is a planning task that has never been undertaken at that level of complexity in the world.⁵

4.11 The NSW Irrigators Council expressed their opinion of the feasibility of the proposed interim plan:

In terms of the preparation of a basin plan within 30 days, the time frame is absolutely outrageous at best. It is simply not possible to engage in the level of scientific, social and economic work needed to prepare a plan for managing water across the basin in that time frame. I think that is recognised by the process that the current Water Act sets out, requiring a basin plan to be in place, I understand, by 2012. That time frame, in and of itself, is reasonably short to achieve the massive ends that the Water Act sets out. We do believe it is achievable, but it certainly cannot be done within 30 days.⁶

4.12 The committee also heard that the MDBC has the authority to take action in the short term to deal with immediate environmental issues.⁷

Acquisition of rights and entitlements

4.13 The government is already acquiring water entitlements on the open market under the guise of the Commonwealth Environmental Water Holder. The bill would extend this power to allow compulsory acquisition.

4.14 Attitudes to compulsory acquisition differed among farming groups, with some opposed and others feeling it would depend on the terms offered.

The New South Wales Irrigators Council is unanimously opposed to compulsory acquisition and notes the position of the national irrigators council, which is also unanimously opposed to compulsory acquisition. We do not believe that compulsory acquisition will provide any solutions that market activity cannot.⁸

We are certainly opposed to compulsory acquisition. Irrigators have a property right to water entitlements. There is a market and trade there. The

5 Mr Robert Freeman, MDBA, *Committee Hansard*, 26 September 2008, p. 75.

6 Mr Andrew Gregson, New South Wales Irrigators Council, *Committee Hansard*, 9 September 2008, p. 33.

7 Dr Wendy Craik, MDBC, *Committee Hansard*, 26 September 2008, p. 75.

8 Mr Gregson, *Committee Hansard*, 9 September 2008, p. 33.

devastation of having carryover water suspended in New South Wales—it was 52 per cent of our carryover water in 2006—was caused by government interference in the market. That water was carried over water or water that people had gone out in the market and bought to set up their own drought management strategy. To have the government then pull the rug out from under them really did interfere with that market and the confidence people had that they could manage their own risk and security by entering the market.⁹

It depends on equity in compensation for people and it has to be a good outcome. It has to be more than feel-good....but it is about getting good outcomes. No farmer wants to be sold up or compulsorily acquired. The reality is, and it has happened in the South-East, that industries fail and one way or another people are given an opportunity to get out of industries with some dignity. It happened in the South-East with the MIS schemes which we bitterly opposed, but there were good outcomes from them.¹⁰

4.15 The issue of assessing 'just terms' in the context of water rights appears to need greater clarification. The loss of a water right is likely to affect property values and the viability of local communities in far reaching ways. Any proposal to compulsorily acquire water rights would need to take these impacts into account.

4.16 The committee also notes that the bill would not, in its current form, allow acquisition of current allocations or physical water in storages. As a result the exercise of this power might not have the intended effect of returning water to the system immediately.

4.17 The committee agrees that a more efficient water market would be of considerable benefit in terms of managing the basin.

Failure to comply

4.18 The committee regards the bill's proposed mechanism to ensure compliance – reducing a state's share of basin water resources by ten times the quantitative effect – is problematic. The end result of such an act would potentially be to punish water end-users in a devastating way, for an action by a state government which is beyond their control. The bill also proposes punishing state governments for failing to comply with an interim plan, however, the bill does not allow or require consultation with or approval by those state governments.

9 Mr Stewart Ellis, Murray River Irrigation, *Committee Hansard*, 19 September 2008, p. 15.

10 Mr Kent Martin, South Australian Farmers Federation, *Committee Hansard*, 10 September 2008, pp 88,89, (MIS – Managed Investment Scheme).