

Chapter 3

Implementation of the Basin Plan and water sharing arrangements

Introduction

3.1 This chapter discusses the adequacy of current arrangements in relation to the implementation of the Basin Plan and water sharing arrangements. The focus of the inquiry in this respect was on the timelines for the development and implementation of the Basin Plan and the transition arrangements from existing water resource plans.

Implementation of the Basin Plan

3.2 The Basin Plan is a strategic plan for the integrated and sustainable management of water resources in the Murray-Darling Basin (MDB or Basin).¹ The *Water Act 2007* (Water Act) sets out the mandatory content of the Basin Plan, including:

- limits on the amount of water that can be taken from Basin water resources on a sustainable basis – known as long-term average sustainable diversion limits. These limits will be set for Basin water resources as a whole and for individual water resources;
- identification of risks to Basin water resources, such as climate change, and strategies to manage those risks;
- an environmental watering plan to optimise environmental outcomes for the Basin;
- a water quality and salinity management plan;
- rules about trading of water rights in relation to Basin water resources; and
- the provision of conveyance water to enable the provision of critical human water needs.²

3.3 As noted previously, the Murray-Darling Basin Authority (the Authority) is responsible for the preparation, implementation and monitoring of the Basin Plan. In preparing the Basin Plan, the Authority must consult with the Basin States, the Basin Officials Committee and the Basin Community Committee. The Authority may also undertake such other consultation, and publish such information to facilitate consultation, as it considers appropriate.³

1 Explanatory Memorandum, Water Bill 2007, p. 3.

2 *Water Act 2007*, s.22 and s.86B.

3 *Water Act 2007*, s.42.

3.4 Once the Authority has prepared a proposed Basin Plan it must provide a copy to the Basin States. The Basin States will have at least 16 weeks to make submissions to the Authority on the proposed Basin Plan. The Water Act also provides that there will be at least a 16 week period of public consultation on the proposed Basin Plan. The Authority must consider any submissions it receives as part of these consultations and may alter the Basin Plan as a result of its consideration of these consultations.⁴

3.5 The Authority must then provide a copy of the proposed Basin Plan (with any amendments resulting from the consultations) to the Ministerial Council. The Ministerial Council then has a period of six weeks to:

- (a) make any comments on the proposed Basin Plan; or
- (b) indicate that one or more of the Ministerial Council disagrees with the sustainable diversion limits in the proposed Basin Plan or other parts of the proposed plan.

3.6 Following the consultation with the Ministerial Council, the Authority must consider the matter raised by the Ministerial Council and undertake any further consultations in relation to the matters raised by the Ministerial Council that the Authority considers necessary or appropriate. The Authority must then either confirm the proposed Basin Plan or alter the proposed Basin Plan.

3.7 In the event that the Authority alters the proposed Basin Plan, the amended Plan must again be provided to the Ministerial Council. The Ministerial Council then has three weeks to provide further comment on the amended Basin Plan, or indicate the disagreement of one or more of its members to the sustainable diversion limits or other parts of the amended plan.⁵

3.8 The proposed Basin Plan (or the amended Basin Plan) is then provided to the Minister. The Minister has 12 weeks to consider the Basin Plan, after which the Minister may either adopt the Basin Plan, or return it to the Authority with suggestions for consideration.

3.9 If the Minister returns the Basin Plan to the Authority, the Authority must consider the Minister's suggestions and undertake consultations in relation to the Minister's suggestions as the Authority considers necessary or appropriate. The Authority may amend the Basin Plan following these consultations. The Authority then provides the Minister with the Basin Plan.

3.10 The Minister then has three weeks in which to consider the Basin Plan, and either:

- (a) adopt the Basin Plan; or

4 *Water Act 2007*, s.43.

5 *Water Act 2007*, s.43A.

- (b) direct the Authority to make modifications to the Plan and give it to the Minister for adoption.⁶

3.11 The Intergovernmental Agreement on Murray-Darling Basin Reform provides that the first Basin Plan will be made in early 2011.⁷ According to the Department of the Environment, Water, Heritage and the Arts' (DEWHA) submission this timeline reflects the 'comprehensive nature and complexity of the Basin Plan'.⁸ In evidence to the committee in September 2008, Mr Rob Freeman, Chief Executive of the Authority, indicated that the Authority is working to the 2011 date for the release of the Basin Plan.⁹

Adequacy of Basin Plan implementation

3.12 Dr Arlene Buchan of the Australian Conservation Foundation described the government as being 'on the right track' with the Basin Plan:

...we need to fix the problems of the entire basin. So I think that the broad government plan is on the right track. It is a whole-of-basin plan. It is seeking to look on a valley-by-valley basis to establish sustainable extraction limits, to establish environmental watering plans to meet the needs of those assets and of course to maintain the natural resource base upon which all our agricultural industries rely.¹⁰

3.13 However, the committee received a number of submissions expressing the view that a start date of 2011 for the Basin Plan does not reflect the urgency of the situation facing the MDB. For example:

...the first Basin Plan is not likely to come into operation until 2011. This is far too late for many wetlands in the Basin and in particular the Ramsar listed Coorong and Lakes Alexandrina and Albert.¹¹

3.14 Professor Mike Young expressed frustration at the complexity and timelines for the preparation of the Basin Plan under the Water Act:

The act which was passed in 2007 prescribes a very long, complicated plan with lots of detail. This nation needs a plan yesterday. In fact, it needed a plan months ago to move forward. We still do not have a plan. That needs to be short and it needs to be focused.¹²

6 *Water Act 2007*, s.44.

7 Intergovernmental Agreement on Murray-Darling Basin Reform (IGA), clause 11.1.

8 *Submission 1A*, Part 1 of the inquiry, p. 5.

9 *Committee Hansard*, 26 September 2008, p. 75.

10 *Committee Hansard*, 26 September 2008, p. 23.

11 The Australian Network of Environmental Defender's Offices, *Submission 11*, p. 2. See also: Professor Diane Bell, *Submission 46*, Part 1 of the inquiry, p. 6; Coorong, Lakes and Murray Waterkeeper, *Submission 57*, Part 1 of the inquiry, p. 9.

12 *Committee Hansard*, 10 September 2008, p. 21.

3.15 Professor Young noted the experience of previous water initiatives in which timelines had expanded despite the urgency of the situation:

It is important to realise the extent of the government's crisis. The previous intergovernmental agreement, called a National Water Initiative, promised that we would have a plan in place for every river system in Australia to solve the overallocation problem by 2005 and that we would have a new sharing regime in place by 2006. It is now nearly the end of 2008. Need I say more?¹³

3.16 The committee was also told that the current timing of the Basin Plan would not deliver results fast enough for irrigators and many were now seeing the Basin Plan purely as an exit strategy.¹⁴

3.17 The committee received a number of submissions which highlighted that the preparation of a Basin Plan, to be ready for operation in 2011, would be a significant undertaking. For example, the National Farmers' Federation (NFF) said:

In many cases, it has taken up to five years to develop individual water sharing plans for water sources. This is because of the need to develop a shared understanding of the complex water management and environmental issues, and develop and agree to the tradeoffs required. Therefore, the time to develop the Basin Plan will be needed to undertake this significant task across the entire Basin.¹⁵

3.18 Ms Sarah Moles, a riparian landholder and stock and domestic water user in the headwaters of the Condamine catchment in Queensland, stated that, given the complexity of the task, the time-frame for development of the Basin Plan seems 'unrealistic...especially if the community is to be consulted on the draft'.¹⁶

3.19 The Wentworth Group of Concerned Scientists (Wentworth Group) notes the initiatives of governments to manage water more sustainably, including the Basin Plan. However, the Wentworth Group call for the acceleration of reforms through an interim Basin Plan, which would set long-term goals for the environmental health of the Basin, establish how much water is needed to achieve these goals, and put in place a mechanism to accelerate the buyback of water for environmental purposes.¹⁷

13 *Committee Hansard*, 10 September 2008, pp 21-22.

14 Mr Stewart Ellis, Murray Irrigation Ltd, *Committee Hansard*, 19 September 2008, p. 16.

15 *Submission 13*, p. 7. See also: Cotton Australia, *Submission 50*, Part 1 of the inquiry, p. 5; Mr Andrew Gregson, NSW Irrigators Council, *Committee Hansard*, 9 September 2008, p. 33.

16 *Submission 1*, p. 2.

17 *Submission 71*, Part 1 of the inquiry, p. 8. See also: Conservation Council of South Australia, *Submission 14*, p. 7; Dr Arlene Buchan, Australian Conservation Foundation, *Committee Hansard*, 26 September 2008, pp 18-19.

3.20 According to the Wentworth Group an Interim Basin Plan could be prepared in a matter of weeks and 'would give important signals to the market and all users of the Basin on which to begin to plan for the future that confronts us all'.¹⁸

3.21 Ms Moles suggested a compromise arrangement to put in place a high level Basin Plan within 2 years with more details to be added later:

I believe it is feasible and desirable to get the foundation principles right and for the community to agree to these within 2 years...The more detailed aspects of the basin-wide Plan should be developed thereafter and in consultation with the regional communities who will have to live with the Plan as implemented at a regional or catchment level.¹⁹

3.22 Mr Freeman told the committee that it is 'fair to say that you can develop a Basin Plan in any time frame'. However, Mr Freeman went on to state that the amount of time will determine the quality of the Plan. Mr Freeman also acknowledged that 'clearly we have a need for a Basin Plan sooner rather than later'.²⁰

3.23 On the specific issue of an interim Basin Plan, Mr Freeman told the committee it is difficult to see how an interim plan could have any real effect, given that it would not be able to affect state water resource plans until 2014 for South Australia, Queensland and New South Wales, and 2019 for Victoria.²¹

Transitional arrangements for existing water resource plans

3.24 The Basin Plan and the new sustainable diversion limits will take effect through water resource plans made by the Basin States. As existing water resource plans expire, they will be subject to a review process established by States. The new plans will have to be compliant with the Basin Plan and will be subject to accreditation by the Commonwealth Minister. Once the sustainable diversion limits have been incorporated into the water resource plans of a State, the State must ensure that water taken is consistent with the sustainable diversion limits.²²

3.25 Some concern was expressed that allowing existing water resource plans to run to completion is delaying the implementation of the Basin Plan. For example, Mr Terence Korn, of the Australian Floodplain Association, said:

The fact is that, under the terms of agreement between the Commonwealth and basin states, existing water-sharing plans must complete their term

18 *Submission 71*, Part 1 of the inquiry, p. 18.

19 *Submission 1*, p. 2.

20 *Committee Hansard*, 26 September 2008, p. 75.

21 *Committee Hansard*, 13 March 2009, pp 52-53.

22 *Submission 1A*, Part 1 of the inquiry, p. 6. See also: Queensland Department of Natural Resources and Water, *Submission 12*, pp 2-3.

before the basin plan, which has yet to be drafted let alone agreed to, is implemented.

The earliest plans terminate in 2014 and some as late as 2017. This means business as usual for the management of water by the basin states for at least the next five to six years or up to 10 years. We are certain that the general community is not aware of this time lag and, in terms of environmental health, what it means for the basin.²³

3.26 Mr Freeman noted that Schedule 1 to the Water Act outlines the time frame within which the water resource plans must comply. Mr Freeman acknowledged that the Victorian plans did have a longer date until expiration. However, Mr Freeman stated that the Victorian plans must comply with the basic Plan.²⁴

3.27 The committee sought Mr Freeman's views on the value of a Basin Plan being prepared for 2011, if it would not be implemented in some areas until 2019:

The issue is that the basin plan will have coverage over more than half of the basin in 2014. I agree with you that it does not have complete coverage until Victoria is included, but more than half the water resources for the Murray-Darling Basin will be covered, with those plans in Queensland, New South Wales and South Australia being compliant in 2014. Historically, water resource planning in states, on average, takes about five years, although the planning time is variable, because these water resource plans can be both broad in scope and sophistication, or relatively minor for some of these very small groundwater resources, for instance. Water resource planning is very much a bottom-up-driven process. It is about: given an amount of water that is defined, how can we best use that? That has been a community-driven process. By introducing a basin plan in 2011, those states will have to condense that water resource planning into three years, and some of them significantly less than that.²⁵

3.28 Representatives of DEWHA denied that the transitional arrangements would delay the results of the Basin Plan for five to ten years. A DEWHA representative emphasised that the Basin Plan was only part of the solution to the problems in the MDB:

The basin plan aims to deal with problems in the medium and longer term. ...we believe that that is a serious and difficult task that must be done properly. In the shorter term we are administering programs for the government to recover water from consumptive users for application to the environment. In the immediate term we are working actively with South Australia and the [Murray-Darling Basin Commission] to develop management options for the Lower Lakes for governments to consider. We

23 *Committee Hansard*, 10 March 2009, p. 39. See also: Dr Arlene Buchan, Australian Conservation Foundation, *Committee Hansard*, 26 September 2008, pp 18-19.

24 *Committee Hansard*, 26 September 2008, p. 59.

25 *Committee Hansard*, 13 March 2009, p. 53.

are doing all those things for the long term, the medium term and the short term.²⁶

3.29 The NFF's submission comments on suggestions that the transitional arrangements will delay the implementation of the Basin Plan until the as late as 2014:

Many have commented that the Basin Plan will not really take effect until the transitional water sharing plans have ceased (many are due in 2014). However, the Water Act 2007 states that water sharing plans, many of which are due to be reviewed in 2009, are required to **not** be less consistent than the Basin Plan. The reality is that these reviews in 2009 will more likely pre-date the Basin Plan, leaving a window of less than three years before most water sharing plans will be adjusted to take into account the Basin Plan.²⁷

3.30 Cotton Australia did not support any change being made to shorten the transition period:

Cotton Australia believes if these arrangements are for some reason hastened in order to provide respite to the existing situation in the Lower Lakes [then] this would jeopardise the integrity of the State water sharing plans as well as put such an overburdening layer of economic uncertainty on the sector as to potentially risk the very significant base upon which investment in irrigated agriculture exists.²⁸

3.31 Similarly, a representative of the New South Wales Department of Water and Energy foreshadowed the issue of liability for reduction in water availability as a potential problem in bringing forward the implementation of the Basin Plan:

Our view is that we have just completed very comprehensive water sharing plans for all of our regulated river valleys and we are completing water sharing plans for our unregulated river valleys, proposed by 2011. They define the environmental share within the particular water source from which you can then articulate the security of supply for water for consumptive use. We have already legislated in New South Wales that after the terms of those plans the first three per cent reduction will be borne by irrigators. Of the next three per cent, two thirds will be borne by the Commonwealth – one-third by New South Wales – and for anything over that six per cent, which is a liability that will be realised in 2014, the cost of any further reductions in water availability will be borne fifty-fifty by the state and the Commonwealth. We have legislated for that, and in the development of the intergovernmental agreement through the Murray-Darling Basin reform we have asked that the Commonwealth, that will now be preparing the basin-wide plan which will establish how much water is to be recovered, should bear all of that liability. I am certain that if an interim

26 Mr Tony Slatyer, DEWHA, *Committee Hansard*, 19 September 2008, pp 74-75. See also: Mr Rob Freeman, Murray-Darling Basin Authority, *Committee Hansard*, 13 March 2009, p. 57.

27 *Submission 13*, p. 7 (emphasis in original).

28 *Submission 50*, Part 1 of the inquiry, p. 5.

basin plan were to be developed then that issue of liability would have to be considered.²⁹

Committee view

3.32 There are no quick fixes available for the Murray-Darling Basin. Winding back overallocation and over use of water resources which have been taking place for the better part of a century will take time. The committee notes the views of the Chief Executive of the Murray Darling Basin Authority, Mr Rob Freeman, that using the Basin Plan as a short term measure would detract from its role in the longer term management of the Basin:

...while the Basin Plan aims to be more adaptive than the current state plans and better placed to deal with the current drought, climate change and the legacy of past decisions, there are risks of it becoming the mechanism for delivery of short-term tactical responses to assist in the Coorong and Lower Lakes. Addressing these issues would direct attention from the strategic objectives of the Basin Plan.³⁰

3.33 It takes time to develop a water resource management plan, to consult on a plan and to implement a plan. The committee notes the views put forward during the course of the inquiry that an interim Basin Plan could be developed in a reasonably short time frame. However, the committee notes further views of Mr Freeman that the amount of time taken to develop the Basin Plan will determine the quality of the Basin Plan.

3.34 The committee believes that the Authority is well aware of the competing pressures on it – the need for a Basin Plan sooner rather than later, but that such a plan is complex and shortening timelines will impact on the quality of the Plan.

3.35 The committee notes the concern expressed during the course of the inquiry that the transitional arrangements will delay the implementation of the Basin Plan. The committee also notes the arguments against shortening the transition period for implementing State water resource plans which are consistent with the Basin Plan.

29 Mr David Harriss, New South Wales Department of Water and Energy, *Committee Hansard*, 18 September 2008, p. 31.

30 *Committee Hansard*, 26 September 2008, p. 57.

3.36 The committee recognises that the Basin Plan is not intended as a short-term solution to the problems of the Murray-Darling Basin. It is a medium- to long-term sustainable management plan for the Basin. For that reason, the committee recommends that the Basin Plan should be implemented as set out in the Water Act, and be made available by early 2011, as provided for in the IGA.

Recommendation 2

3.37 The committee recommends that the Basin Plan be implemented as set out in the Water Act, and made available by early 2011, as provided for in the IGA but also pursue all options with states to expedite the end of transitional arrangements and application of the Basin Plan at the earliest opportunity possible.

