

Chapter 8

Other issues

Introduction

- 8.1 This chapter considers two of the inquiry's Terms of Reference:
- (a) the ability of the Commonwealth to bind state and territory governments to meet their obligations under the *National Water Initiative*; and
 - (b) the adequacy of state and territory water and natural resource management legislation and enforcement arrangements.

8.2 The committee received very little information on the Term of Reference in relation to the *National Water Initiative* (NWI). This chapter discusses the progress of the implementation of the NWI. The discussion concludes with a brief overview of the evidence that the committee received on the implementation of the NWI and the appropriateness of these reforms to the current situation in the Murray-Darling Basin (MDB or Basin).

8.3 A range of issues were raised with the committee with respect to state and territory water and natural resource legislation and enforcement arrangements. The discussion in this chapter is in the context of the inadequacies of state and territory natural resource management and water legislation and enforcement in relation to the impacts on the MDB. Some of these issues are covered in greater depth and in a broader context in other areas of the report and are therefore only briefly mentioned here.

Progress in implementing National Water Initiative reforms

8.4 In 2007 the National Water Commission released its First Biennial Assessment of the Progress in Implementation of the National Water Initiative. That report summarised the progress of the NWI saying:

...the NWI remains the primary and enduring national blueprint for water reform in Australia. The implementation of the NWI is delivering real improvements in the management, use and understanding of water in Australia. Despite considerable change in Australia's water circumstances since signature of the NWI, the NWI's policy prescriptions continue to be widely accepted as the right ones for Australia.

However the [National Water] Commission urges governments to avoid complacency. There is much that needs to be done, and much that needs to be done faster.¹

1 National Water Commission, *National Water Initiative: First Biennial Assessment of Progress in Implementation*, 2007, p. 3.

8.5 Overall, the National Water Commission found that governments had made considerable progress in the implementation of the NWI over the first two years of its operation. The National Water Commission highlighted the following areas as requiring more work to improve and accelerate the implementation of NWI reforms:

- overallocation of water resources;
- groundwater and surface water interaction;
- interception of water from land use change;
- integrated management of environmental water;
- water accounting, measurement and compliance; and
- urban water management.²

8.6 In February 2008, the National Water Commission provided an update on the implementation of water reform under the NWI to the Council of Australian Governments (COAG). That updated noted that the NWI continued to be the 'primary and enduring national blueprint for water reform'. Further, despite considerable change in Australia's water circumstances in the four years since the NWI was first signed, its policy prescriptions continue to be widely accepted as the right ones for Australia:

The implementation of water reform is delivering real improvements in the management, use and understanding of water. Significant progress has and continues to be made across a broad range of areas of water reform. Much of this progress can be attributed to the shared commitment by the Australian Government and state and territory governments under the NWI.³

8.7 The National Water Commission did highlight a number of barriers to the 'full and timely' implementation of water reforms, including:

- a serious and growing shortage of skilled water resource professionals to support water reforms and the necessary investments;
- 'policy bans' by some governments on certain urban water supply options; and
- in some cases a lack of clarity on the specific reforms required and the accountability for delivering them.⁴

2 National Water Commission, *National Water Initiative: First Biennial Assessment of Progress in Implementation*, 2007, p. 7.

3 National Water Commission, *Update of progress in water reform: Input into the water subgroup stocktake report* (NWC Update on Water Reform), 15 February 2008, p. 19. Available at: <http://www.nwc.gov.au/www/html/692-coag-update-report-on-water-reform.asp?intSiteID=1>.

4 NWC Update on Water Reform, p. 20.

Discussion

8.8 The committee heard a range of views and opinions on the implementation of the NWI and the applicability and appropriateness of its principles to the current situation in the MDB.

8.9 The Queensland Department of Natural Resources and Water noted in its submission that the Queensland Government has allocated substantial resources to progress various elements of the NWI. The Queensland Department of Natural Resources and Water stated that, overall, it is progressing well towards fulfilling the requirements of the NWI, however, there are some issues which have caused delays to the implementation of the NWI:

Queensland like all jurisdictions is facing resourcing challenges and delays in delivering on some parts of the NWI caused by extended drought conditions in many parts of the State and competition for limited skilled staff. Some NWI actions by their nature require national co-ordination and collaboration to ensure consistency between the states and territories. Queensland has representatives on the working groups that have been set up to progress these initiatives.⁵

8.10 Mr Peter Cosier of the Wentworth Group of Concerned Scientists (Wentworth Group) noted that in 2004 that organisation described the NWI as a 'historic reform' for water reform and that the principles in the NWI were 'superb'. However, Mr Cosier went on:

What has happened since 2004 is the subtle gain between agencies at various states who then fling one example back as to why their state is better than the other. Here we are sitting for the umpteenth inquiry into why water reform [in] Australia has failed because we will not address the fundamental issue that we have grossly over-allocated the system. Until policy and governments of all levels confront that issue, we will be back here next year and the year after and the year after having the same debates.⁶

8.11 Dr John Williams of the Wentworth Group told the committee that in getting water reform issues to reflect the principles in the NWI is 'still very much ahead of us'. In particular, Dr Williams highlighted the lack of progress that has been made in reducing consumptive water use and establishing a formal entitlement for the environment.⁷

5 *Submission 12*, p. 5.

6 *Committee Hansard*, 10 March 2009, p. 51.

7 *Committee Hansard*, 10 March 2009, pp 47-48. See also: Professor Mike Young, *Committee Hansard*, 10 September 2008, p. 21.

8.12 The National Farmers' Federation (NFF) expressed concern over the priority that States had given commitments under the NWI:

The agricultural sector noted that the original water reforms were implemented according to what the State Governments saw as their achievements. These were not necessarily aligned with the expectations of entitlements holders.

More recently, NFF lobbied strongly that the implementation of the NWI was proceeding at a level that prioritised State Government objectives at the disadvantage of agriculture.⁸

Committee view

8.13 The committee notes the concluding comments of the National Water Commission in its update to COAG in 2008:

Full and timely implementation of the NWI reforms is required to deliver a nationally consistent framework capable of meeting Australia's water challenges. Each element of the NWI is an integral and complementary part of the overall reform blueprint and further progress in implementation is required across the board to achieve the broad objectives of the NWI. In addition, with respect to urban water, the NWI needs to be supplemented with an additional set of reform commitments.

In light of the significant change to the context of water reforms since the NWI was agreed, and capacity constraints across jurisdictions, there is a strong case for improving implementation by clarifying roles and responsibilities across governments and service delivery entities, and reviewing timelines and priorities for implementation and associated resourcing requirements.⁹

8.14 It is the committee's view that the focus should not be on the Commonwealth's ability to bind states and territories to their obligations under the NWI. The committee is satisfied, given the reports of the National Water Commission that the NWI is still the appropriate blueprint for water reform, and that in a number of areas good progress is being made.

8.15 The committee believes that the focus should instead be on how the Commonwealth can better assist States and Territories to meet their obligations under the NWI. The committee notes that this may involve some amendment to, and clarification of, roles and responsibilities of the parties to the NWI.

8 *Submission 13*, p. 9.

9 NWC Update on Water Reform, p. 20.

State and territory water and natural resource management legislation and enforcement arrangements

Natural resource management

8.16 Two significant inadequacies were highlighted in the inquiry in respect of natural resource management arrangements:

- a lack of harmonisation and integration of natural resource management within and between governments of the Basin; and
- a lack of consultation between catchment management authorities (or equivalent bodies) and key stakeholders.

8.17 Some specific concerns in relation to the operation of catchment management authorities in New South Wales were also raised with the committee and those concerns are set out in this section as well.

Harmonisation and integration of natural resource management

8.18 The lack of harmonisation within and between governments in the planning and implementation of natural resource management strategies was a significant inadequacy that was highlighted to the committee. For example, the submission of Mainstream Environmental Consulting and RiverSmart Australia provided the committee with the following damning assessment of the inadequacies of natural resource management in the MDB:

...at the Federal level it appears there has been a failure to harmonise programs and policy between the Murray-Darling Basin Commission (MDBC) and the national programs rolling out funds for natural resource management (NRM). Programs such as the Natural Heritage Trust, National Action Plan for Salinity and Water Quality, National Landcare Program and the National Water Initiative's elements, have not been sufficiently integrated in their delivery, and the relationship between them the [Basin Plan] is unclear. It makes a mockery of the term 'integrated natural resource management' to allow these programs to continue operating in virtual isolation, largely as a consequence of history and institutional arrangements.

When this same situation is replicated at State level, and made worse by more government agencies being involved, it is little wonder the Catchment Management Authorities are struggling and landholders are frustrated and deeply suspicious of government initiatives.¹⁰

10 MainStream Environmental Consulting and RiverSmart Australia, *Submission 12*, Part 1 of the inquiry, p. 4. See also: Ms Sarah Moles, *Submission 1*, p. 1.

8.19 A further example of this issue was highlighted by Mr Bruce Brown, General Manager of the Namoi Catchment Authority who noted that there is no association between catchment management authorities and the Murray-Darling Basin Authority:

I think I am on the record that it would be better for the catchment management authorities in the Murray Darling Basin to become in some way associated with the Murray Darling Basin Authority and/or the Australian government. It is clear, simple management that I think would make everybody's job a hell of a lot easier...

If the Murray-Darling Basin is under Commonwealth government control, and I am a catchment management entity that is in one of those catchments, does it make sense to be a statutory entity under a state government? I will not say any more.¹¹

8.20 Dr Don Blackmore, a former Chief Executive Officer of the Murray-Darling Basin Commission, described for the committee the vision of how natural resource management in the Murray-Darling Basin was initially intended to operate in concert with other aspects of planning:

The original version for integrated catchment management in the basin was to line up planning, to get natural resource planning integrated with town planning, state planning and the like. In some areas that has been successful, and Victoria has been more successful at it than anybody else. But I see the next 10 years as challenging this mightily, simply because, even when we go back into a wetter cycle, the scale of change we are going to see means that we are going to have to support our communities with the best planning we can give them...it would be better if they were working as a unit, however you put that together; that, to me, is a very important outcome.¹²

8.21 Dr Blackmore predicts that eventually planning, including natural resource management, would be aligned because 'inevitably we will not be able to afford four levels of government...'.¹³

Consultation with stakeholders

8.22 Another important issue that was raised with the committee in relation to natural resource management is the role of stakeholders and their contribution, or lack thereof, to natural resource management:

...there is a serious problem with different treatment of various stakeholders that results in perverse environmental outcomes and a waste of

11 *Committee Hansard*, 10 March 2009, p. 26.

12 *Committee Hansard*, 9 September 2008, p. 100.

13 *Committee Hansard*, 9 September 2008, p. 96.

taxpayers money and community investment in the development and implementation of on-ground NRM projects.¹⁴

8.23 Ms Sarah Moles gave the example of mining and energy resource companies not having a strong history of engagement with Catchment Management Authorities and regional NRM bodies yet their activities have significant implications for accredited NRM plans:

Applications for mining, coal seam gas and petroleum exploration permits is accelerating in the northern MDB (and elsewhere). Many developments are designated 'projects of state significance' and receive special treatment under State Planning Policies (eg. For the protection of high quality agricultural land), and state legislation (eg. Queensland's Vegetation Management Act 1999.) The corporations are allowed to undertake activities such as broad scale clearing that other landholders are not permitted to do. Much development occurred during a policy vacuum and there is no requirement to comply with new regulations – particularly those covering the management of associated water- retrospectively.¹⁵

Specific issues in relation to New South Wales

8.24 The committee also received a submission from the National Parks Association of NSW which raised some specific concerns that organisation has in relation to the operation of Catchment Management Authorities in NSW. Those concerns included:

- that the constraints on land-clearing in the MDB in NSW are inadequate. Extensive land-clearing is still occurring throughout the Basin through approved clearing, and through loopholes such as 'invasive native species', 'change of regrowth date' and 'routine agricultural management activities'.
- that current levels of baseline terrestrial environmental data and planning in the MDB region are totally inadequate, and far worse than information available in other parts of the state.
- that responsibility for forcing NSW government agencies to abide by environmental laws is being borne by the community. The National Parks Association cited legal action it has taken against Forest NSW in relation to the logging of River Red Gum State Forests as an example of this issue.
- that there are a number of inadequacies in the Catchment Management Plans for certain catchments in the Murray-Darling Basin.¹⁶

14 Ms Sarah Moles, *Submission 1*, p. 6.

15 *Submission 1*, p. 6. See also Environment and Property Protection Association, *Submission 7*.

16 *Submission 10*, pp 6-10.

Water management, monitoring and enforcement

8.25 One of the issues highlighted in relation to the state and territory water management was the inadequacies in current water sharing plans. Specifically, overallocation of water resources across the Basin, and the impact that this has on the environment.

8.26 The lack of monitoring and enforcement of water legislation was also raised during the course of the inquiry, specifically in relation to floodwater harvesting. This issue is dealt with in Chapter 7 of this report.

Water Reform

8.27 The issue of overallocation is recognised as a problem throughout the MDB. The Commonwealth, States and Territories are taking steps, through the NWI and the Intergovernmental Agreement on Murray-Darling Basin Reform to implement water reform. However, despite these initiatives, the committee was provided numerous examples throughout the inquiry of inadequacies in States and Territories implementing water reform initiatives.

8.28 Victoria's four per cent annual cap on trading water out of irrigation areas (the four per cent cap) and 10 per cent cap on the amount of water shares in any water supply system that can be owned without being associated with land (the 10 per cent cap), was the subject of much discussion in this regard. For example, Dr John Williams, of the Wentworth Group of Concern Scientists, discussed the four per cent cap as an impediment to restructuring of the irrigation industry:

The market has to be freed up so it works. So this issue of four per cent caps on trading out of irrigation companies has to be addressed. The issue of states putting legislation in that restricts trade with water and land has got to be addressed. When you have efficient markets, that will be a very powerful driver for innovation and change coupled with a structural adjustment approach that makes sure we generate the maximum wealth and resilience from the water we can afford to take out of the system.¹⁷

8.29 These Victorian caps were also discussed in the context of the impacts that they would have on the purchase of water for the environment.¹⁸

17 *Committee Hansard*, 19 September 2008, p. 22; see also Ms Amy Hankinson, Inland Rivers Network, *Committee Hansard*, 18 September 2008, p. 17.

18 See for example: Professor Mike Young, Wentworth Group of Concerned Scientists, *Committee Hansard*, 19 September 2008, p. 30; Dr Arlene Buchan, Australian Conservation Foundation, *Committee Hansard*, 10 March 2009, p. 32. This issue is discussed further in Chapter 5 of this report.

8.30 The committee also heard some support for the four per cent cap in Victoria. For example, Mr Richard Anderson of the Victorian Farmers Federation responded to questioning by the committee on the economic impact of the four per cent cap:

It may well have stopped the permanent trade, but that did not stop the water from trading to other areas. There is a temporary market and a lot of water has traded on that temporary market, so I think that [it] is drawing a long bow, that it stopped that level of production because that permanent water was not traded out. I think the other thing that people tend to forget is that the four per cent applies only to the gravity districts and the pumped pipe districts; it does not apply to diverters direct from rivers. That is why 8,000 megs of high security Victorian water were actually purchased in that first buyback.¹⁹

8.31 Mrs Deborah Kerr of the NFF noted that all States were 'flouting' the principle of competitive neutrality:

Competitive neutrality literally means that one jurisdiction should not have an advantage over another jurisdiction or its irrigators in whatever way. At the moment, we have all jurisdictions flouting it. You have South Australia, whose irrigators do not pay for water, so when they are operating in a marketplace they are literally not paying for the delivery and the water management that other states charge their irrigators. They pay a \$3 per megalitre levy at the Murray. They pay within their trust for the water that they apply. You have states that are providing money to their irrigators to allay the costs of water charges; Victoria is an example of that. You also have the South Australian government in the market, purchasing water for basically its permanent planting irrigators to underpin survival water planting. It is providing an unfair advantage, compared to other irrigators. It is not just one area. Premier Rann quite literally has laid this at the feet of Victoria, being the four per cent cap, but what we are saying is that all jurisdictions are flouting that competitive neutrality principle, not just one.²⁰

8.32 During the course of the inquiry, the South Australian Government indicated its intention to investigate a constitutional challenge against upstream States to secure South Australia's rights to water from the Murray. In making this announcement, Premier Rann made specific mention of Victoria's four per cent cap as a barrier to a long term solution for the River Murray.²¹

8.33 The committee questioned a number of witnesses on their views of a High Court challenge by South Australia. Dr Arlene Buchan, of the Australian Conservation Foundation, expressed concern that a High Court challenge may delay

19 *Committee Hansard*, 26 September 2008, p. 93.

20 *Committee Hansard*, 13 March 2009, p. 5.

21 See: The Hon. Mr Mike Rann, Premier, South Australia, Ministerial Statement, *House of Assembly Hansard*, 5 March 2009, pp 1885-1887.

work towards fixing the problems of the MDB.²² Mrs Kerr of the NFF believed that the challenge would do more harm than good, and there is a role for the Council of Australian Governments to resolve the issue in a better way.²³

8.34 The Victorian Government was not the only State criticised for its lack of action on water reform. For example, Mr John Clements of Namoi Water expressed his concerns that while New South Wales has been engaging in water reform for a decade, other States had not been as proactive. Mr Clements singled out South Australia for criticism in this respect, specifically the use of 'shallow, inappropriate lakes' for town water infrastructure and the use of barrages to keep sea water out of Lakes Alexandrina and Albert:

The disaster is a lack of infrastructure and an avoidance by South Australia of getting into water reform and into infrastructure expenditure. It is called concrete. The concrete that is inappropriate is eight kilometres of concrete that holds the ocean out at Lake Albert and Lake Alexandrina. The concrete that would be appropriate would be some deep storages somewhere to store water deep so it does not evaporate and does not create salty residues; to actually get some infrastructure for this state so it ceases to demand that the system be run 24/7 so there is always water running past their pumps.²⁴

8.35 Mr Clements suggested that South Australia should spend money on 'appropriate' infrastructure like a desalination plant or deeper storages with less evaporation.²⁵

8.36 Mr James Danenburg, of the Conservation Council of SA, also thought that there was more that South Australia could be doing to reduce the water that it needs to take from the MDB:

In the first instance, [Adelaide has] got the most underutilised resource in terms of stormwater; approximately 1.8 times our annual take on the Murray in the average year goes out to the gulf in terms of stormwater outflow each year. Even in a dry year it is still about one-third of our annual consumption of Murray River water. It is an absolute tragedy and travesty that this resource is not being adequately harvested.²⁶

22 *Committee Hansard*, 10 March 2009, p. 35.

23 *Committee Hansard*, 13 March 2009, p. 7.

24 *Committee Hansard*, 10 March 2009, p. 16.

25 *Committee Hansard*, 10 March 2009, p. 16.

26 *Committee Hansard*, 10 September 2008, p. 4. See also: Dr Tom Hatton, CSIRO, *Committee Hansard*, 9 September 2008, pp 23 and 28; Dr Kerri Muller, *Committee Hansard*, 10 September 2008, pp 10-11; the Hon. Karlene Maywald, *Committee Hansard*, 19 September 2008, p. 39; and Conservation Council of South Australia, *Submission 14*, p. 7.

Water sharing plans

8.37 The committee received substantial evidence relating to the inadequacies of the water sharing plans for the management of water in the Basin. For example, Dr Kerri Muller provided the following damning assessment on how overallocation of water throughout the Basin is impacting on the South Australia:

Current Governance arrangements are failing the Basin's natural assets and in particular the Lower Lakes and Coorong that are subject to failures to implement sustainable water allocations and river management policies across the whole Basin given their location at the bottom of the system. There are over 140 plans covering the South Australian portion of the Murray-Darling Basin alone. Too much water is taken out of the Basin for its water dependent ecosystems to survive and this has been evident in the declining state of the environment particularly since the wet conditions of the 1990s that spawned extensive water resource development as well as a burst of health for the Basin's wetlands.²⁷

8.38 The Inland Rivers Network (IRN) provided the following opinion on the inadequacies of the NSW approach to water sharing in the Basin:

The experience of IRN with respect to the *Water Sharing Plan* approach as applied in NSW, which has effectively entrenched a 15-year regime of over allocation, a cap system that has failed to take account of floodplain harvesting, and lack of adequate resources to ensure compliance, has been disappointing. This suggests that it is the lack of political will, rather than a lack of expert scientific understanding, that has allowed the impending MDB crisis to build to its current level.²⁸

8.39 IRN acknowledge that 'winding back' is more painful than placing restrictions in the first place, noting that communities have been allowed to establish and expand on the premise that economic growth is necessary and good, without being required to consider the economic 'externalities' that ultimately lead to high cost, socially and financially.²⁹

8.40 The CSIRO's submission also expressed the view that existing state water plans in the MDB offer very little protection for the environment under a future situation of a long-term reduction in average surface water availability:

Existing water sharing plans provide greater reliability to consumptive water users than to the environment. Although all jurisdictions have programs of environmental condition monitoring, these are not used in an adaptive management framework to improve water sharing arrangements in order to achieve more balanced outcomes. More flexible and adaptive

27 *Submission 40* to Part 1 of the inquiry, p. 7.

28 *Submission 9*, p. 1.

29 *Submission 9*, pp 1-2.

processes for resource sharing and environmental management would be necessary for achieving environmental targets.³⁰

8.41 Dr Bill Young of CSIRO highlighted that these comments are not about the level of protection for the environment *per se*. Rather, the comments are specifically about the impact on consumptive use verses the environment at times of reduced water availability under climate change.³¹

Committee view

8.42 The issue of a lack of harmonisation and integration in relation to natural resource management is probably a function of the historic fragmented management arrangements for the MDB, which were discussed in Chapter 2 of this report.

8.43 In considering the states and territories water management arrangements, the committee noted that discussions, at times, appeared to deteriorate to the level of a finger-pointing match as to who is doing the worst job. For this reason, the committee was pleased to receive material provided by the NFF outlining evidence that Australia's water management is leading the world.³²

8.44 The committee is conscious that there are no easy solutions to water management. The committee believes that the on-going drought in the MDB and the very real impacts of climate change that are occurring in the Basin have done much to focus the attention of state and territory governments on this issue.

8.45 The committee reiterates its conclusions from Chapter 1, that what is required now is the cooperation between the Commonwealth and Basin States. The committee urges all parties to engage in the process of developing a Basin Plan and make the necessary adjustments to water sharing plans that are required under that process.

30 *Submission 2*, p. 6. This issue is discussed in greater detail in Chapter 6 of this report.

31 *Committee Hansard*, 16 March 2009, p. 9.

32 Answers to questions on notice, 13 March 2009 (received 31 March 2009).