

Chapter 1

Introduction

1.1 The Water Amendment Bill 2008 (the Bill) was introduced into the House of Representatives on 25 September 2008 and referred to this committee for inquiry and report on 15 October 2008.

1.2 The Bill gives effect to the intergovernmental Agreement on Murray-Darling Basin Reform between New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory by amending the *Water Act 2007* to:

- transfer the powers and functions of the Murray-Darling Basin Commission to the Murray-Darling Basin Authority;
- expand the Basin Plan to include arrangements for critical human water needs for communities dependent on the River Murray System;
- extend the Australian Competition and Consumer Commission's role in relation to water market rules and water charge rules;
- provide for the appointment of the Chair to the Basin Officials Committee;
- effect a revised Agreement which establishes a Ministerial Council and Basin Officials Committee; and
- make transitional amendments.

1.3 The Bill also makes consequential and technical amendments to the *Legislative Instruments Act 2003*, *Trade Practices Act 1974* and *Water Act 2007* and repeals the *Murray-Darling Basin Act 1993*.

Conduct of the inquiry

1.4 Notice of the inquiry was posted on the committee's website and advertised in *The Australian* newspaper on 22 October and 5 November 2008. The committee received 7 submissions, which are listed in Appendix 1.

1.5 The committee held public hearings in Canberra on 12 and 13 November 2008. A list of witnesses who appeared at the hearings is in Appendix 2 and copies of the Hansard transcript are available through the Internet at <http://aph.gov.au/hansard>.

1.6 The committee thanks all those who provided submissions and evidence to the inquiry.

Background to the bill

1.7 The Water Amendment Bill 2008 is the latest initiative in a long series of intergovernmental efforts to improve water management in the Murray-Darling Basin.

Current Management Initiatives

1.8 In 1992 The Basin states signed the Murray-Darling Basin Agreement to establish a new process for Basin-wide management of the river system. This agreement replaced the River Murray Waters Agreement which had been in place since 1915 and was given full legal status by the passing of the Murray-Darling Basin Act by the contracting governments.

1.9 The purpose of the Agreement (Clause 1) is:

to promote and co-ordinate effective planning and management for the equitable, efficient and sustainable use of the water, land and other environmental resources of the Murray-Darling Basin.¹

1.10 The Agreement created a multi-tier management structure consisting of:

- the Murray-Darling Basin Ministerial Council;
- the Murray-Darling Basin Commission (MDBC), the executive arm of the Ministerial Council; and
- the Community Advisory Committee, which advises the Ministerial Council and provides a communication channel between the Council and the community.

1.11 The day-to-day management and administration of the Murray-Darling Basin is conducted by the MDBC.

The Commission is the executive arm of the Murray-Darling Basin Ministerial Council and is responsible for:

- managing the River Murray and the Menindee Lakes system of the lower Darling River, and
- advising the Ministerial Council on matters related to the use of the water, land and other environmental resources of the Murray-Darling Basin.
- The Commission is an autonomous organisation equally responsible to the governments represented on the Ministerial Council as well as to the Council itself. It is not a government department nor a statutory body of any individual government.

The main functions of the Commission, specified in clause 17 of the Murray-Darling Basin Agreement, are:

1 MDBC website, http://www.mdbc.gov.au/about/the_mdbc_agreement, accessed 14 November 2008.

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- to advise the Ministerial Council in relation to the planning, development and management of the Basin's natural resources;
 - to assist Council in developing measures for the equitable, efficient and sustainable use of the Basin's natural resources;
 - to coordinate the implementation of, or where directed by Council to implement, those measures; and
 - to give effect to any policy or decision of the Ministerial Council.

The Commission is also required to equitably and efficiently manage and distribute the water resources of the River Murray in accordance with the Murray-Darling Basin Agreement to obtain the highest achievable quality and efficiency of use of such resources.²

Living Murray Initiative

1.12 In 2002, the MDB Ministerial Council agreed to the Living Murray First Step program, a jointly funded initiative to return up to 500GL per year of permanent 'new water' to the River Murray by June 2009 as an environmental flow to protect six icon sites that include the River Murray Channel and five Ramsar sites.

National Water Initiative

1.13 The National Water Initiative (NWI) was signed by the Commonwealth and all states and territories on 25 June 2004 (except Tasmania and Western Australia which signed in June 2005 and April 2006 respectively). The NWI represents the Commonwealth government and state and territory governments' shared commitment to water reform. It built on the previous Council of Australian Governments (COAG) framework for water reform that had operated since 1994. In December 2004, the National Water Commission, now an independent statutory body in the Environment and Water Resources portfolio, was established to implement the national water reform agenda and to provide advice to COAG on national water issues. The principal goals of the NWI are to increase the productivity and efficiency of Australia's water use for the benefit of urban and rural users and to ensure the health of river and groundwater systems.

A National Plan for Water Security and the Water Act 2007

1.14 On 25 January 2007 the former Prime Minister announced a National Plan for Water Security (the Plan) to ensure sustainable use of the Basin's water resources. The Plan recognised the need for a radical change in Australia's water management practices and aimed to ensure that rural water use was placed on a sustainable footing within a decade.

2 MDBC website http://www.mdbc.gov.au/about/murraydarling_basin_commission, accessed 14 November 2008.

1.15 The Commonwealth announced its intention to invest \$10 billion over ten years to significantly improve water management across the nation, with a special focus on the Murray-Darling Basin (MDB). The Plan sought investment in water saving infrastructure, water resource monitoring and water use metering; a reduction in over allocation via entitlement purchases; and reform of the decision making processes in the Basin.

1.16 In order to accomplish this, the federal government sought the agreement of Basin states to refer their relevant constitutional powers to enable Commonwealth oversight of water management in the Basin.³ NSW, South Australia and Queensland agreed to refer their powers, but Victoria did not.

1.17 The subsequent Water Act 2007 was passed without an agreement on the referral of powers and relied solely on the constitutional powers of the Commonwealth. The Act provided for:

- establishment of a Murray-Darling Basin Authority;
- establishment of Basin wide planning through a Basin Plan;
- a role for the ACCC in water trading and pricing; and
- the expansion of the Bureau of Meteorology's functions in relation to water information and standards.

1.18 The Act makes the Murray Darling Basin Authority responsible for preparing the Basin Plan (including setting sustainable limits on water extraction from surface and groundwater systems); advising the Minister on the accreditation of State water resource plans; and developing a water-rights information service to facilitate water trading.

1.19 The Act also created a Commonwealth Environmental Water Holder to hold and manage water recovered through efficiency programs and structural readjustment for environmental purposes.

Memorandum of Understanding on Murray Darling Basin reform(The MoU)

1.20 At the 26 March 2008 COAG meeting, the Commonwealth and the Basin state Governments signed an MoU to merge the MDBC and the Murray Darling Basin Authority to create a single institution, known as the Murray-Darling Basin Authority (MDBA).

The new, independent Authority will be responsible for developing, implementing and monitoring the Basin Plan, which will include a sustainable cap on surface and groundwater diversions across the Basin. The Basin Plan will provide for the critical human water needs of communities that use water from the Murray River and its tributaries, a sustainable industry and enhanced environmental outcomes. The Basin Plan

3 National Plan http://www.nalwt.gov.au/files/national_plan_for_water_security.pdf, p. 13.

will recognise critical human needs as a priority and establish a decision-making process for determining the method for securing this water. The new Authority will also be responsible for the current functions of the Office of the Murray-Darling Basin Commission.⁴

1.21 The MoU was implemented through the signing of a new Intergovernmental Agreement on Murray-Darling Basin Reform at the 3 July 2008 meeting of the COAG.

1.22 The Water Amendment Bill 2008 is intended to give effect to this intergovernmental agreement. It will enable water resources in the Murray-Darling Basin to be managed in the national interest and aims to optimise environmental, economic and social outcomes.

Provisions of the Water Amendment Bill

1.23 The Bill relies heavily on the referral of powers to the Commonwealth by the Basin States to enact the bulk of its measures. These include:

- transfer of the current powers and functions of the Murray-Darling Basin Commission – as set out in the former Murray-Darling Basin Agreement – to the new Murray-Darling Basin Authority;
- increasing the role of the Australian Competition and Consumer Commission (ACCC) in advising on water charge and market rules and determining and approving regulated charges and by providing for any State or Territory to 'opt in' such that the water market and water charge rules apply to water resources outside the Murray-Darling Basin; and
- enabling the Basin Plan to provide for critical human water needs.⁵

1.24 The provisions of the Bill are divided in to three schedules.

1.25 Schedule 1 amends the Water Act based on the referral of powers by the states. It contains the text of the MDB Agreement (the Agreement), as amended from time to time in accordance with that Agreement, as a permanent schedule to the Bill.

1.26 Schedule 2 identifies other amendments to the Act, the Trade Practices Act, and the Legislative Instruments Act arising from the Reform IGA, or of a minor technical nature.

1.27 Schedule 3 deals with transitional matters relating to the reforms implemented by this Bill, which do not rely on a referral of powers.

4 Murray Darling Basin Reform, Memorandum of Understanding, http://www.coag.gov.au/coag_meeting_outcomes/2008-03-26/docs/attachment_a.pdf, p. 1.

5 Explanatory Memorandum, p.2.

1.28 Under Schedule 1 the Basin States refer to the Commonwealth the power to enact:

- the Murray-Darling Basement Agreement;
- management of the Basin water resources to meet critical human water needs;
- Basin water charge and water market rules (other than for urban water supply after the removal of the water from a Basin water resource);
- extended operation of Basin water charge and water market rules;
- transitional matters relating to the Murray-Darling Basin Commission; and
- interactions with State laws, and the Schedules in the Bill included for the purposes of those Parts (Schedules 1 and 1A).

Protocols of the MDBA

1.29 Under Section 18D, a protocol made by the MDBA under a Schedule to the Agreement is a legislative instrument, but disallowance and sunseting provisions of the Legislative Instruments Act apply.

Additional powers, functions and duties of the MDBA

1.30 The Bill will merge the MDBC with the Murray-Darling Basin Authority, transferring the functions, powers and duties of the MDBC to the MDBA. This will result in the MDBA acquiring additional powers and responsibilities that were previously undertaken by the MDBC. Section 18E of the Bill also confers on the MDBA any additional powers that are conferred upon it by the Agreement or its future amendments and relate to the water and other natural resources of the Murray-Darling Basin.

1.31 The MDBA will implement decisions made by a new Ministerial Council and the Basin Officials committee.

Critical Human Needs

1.32 Section 86A specifies that critical human water needs are to be taken into account in developing the Basin Plan.

(1) The Commonwealth and the Basin states have agreed:

- (i) that critical human water needs are the first priority water use for communities dependent on Basin water resources; and
- (ii) that conveyance water will receive the first priority from available water in the River Murray System.⁶

6 Water Amendment Bill 2008, Paragraph 86A(1)(a) & paragraph 86A(1)(b).

1.33 Definitions for the terms critical human water needs, are set out in subsection 86A(2).

Critical human water needs are the needs for a minimum amount of water, that can only reasonably be provided from Basin water resources, to meet:

- (a) core human consumption requirements in urban and rural areas; and
- (b) those non-human consumption requirements that a failure to meet would cause prohibitively high social, economic or national security costs.⁷

1.34 The Bill also requires that the Basin Plan include a statement of the amount of water required in each state to meet critical human water needs; the conveyancing water required to deliver it; and specify water quality and salinity trigger points at which water becomes unsuitable to meet these needs.

1.35 The Basin Plan must also specify arrangements for monitoring factors in the river system which may impact on the availability of water for critical human water needs and develop a risk management process for assessing and managing risks to water necessary for meeting these needs. It must specify the conditions under which special water sharing arrangements are implemented and the process that will apply during periods of low water availability.

Water Charges Rules and Water Market rules

1.36 The proposed part 4 of the Bill creates a uniform approach to the regulation of water markets and charges. The Australian Competition and Consumer Commission (ACCC) gains an extended regulatory role through the mechanism of water charge rules and water market rules. The water charge rules will be able to provide that the ACCC determines or approves all regulated water charges in the Basin, other than charges relating to urban water supply activities beyond the point at which the water has been removed from a Basin water resource. The ACCC is also able to monitor regulated water charges and compliance with water charge rules and water market rules and report the results to the Minister.

1.37 The Bill also allows states to extend the operation of water charge and water market rules outside the Basin, in order to achieve a uniform approach to water regulation across the state.

Interactions with state laws

1.38 This bill would not exclude or limit the concurrent operation of any state law. States retain the right to declare a matter to be an excluded matter and states retain the right to terminate the reference of powers to the Commonwealth.