

Coalition Senators Additional Comments

Background

1.1 The Water Amendment Bill 2008 aims to amend the Water Act 2007 by giving effect to the Intergovernmental Agreement on Murray-Darling Basin Reform (IGA) signed by the Prime Minister and First Ministers of each of New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory (the Basin States under the Act at the 3 July 2008 meeting of the Council of Australian Governments (COAG)).

1.2 Water reform realised by the Water Act 2007 was an initiative of the former Coalition Government, which recognised the need to change the management of the water resources within the Basin. Coalition Senators recognise that climatic conditions, and resultant inflows across the Basin, have further deteriorated since then Prime Minister John Howard and then Minister for the Environment and Water Malcolm Turnbull announced the National Plan for Water Security in January 2007, meaning the issues demand even greater urgency than envisaged at that time.

1.3 Coalition Senators are therefore concerned at Labor having demonstrated an inability, at Commonwealth and State levels of government, to progress implementation more quickly, especially on necessary water-saving infrastructure projects, and the implementation of a Basin Plan before 2011, let alone 2019 when it will actually take full effect.

1.4 Amendments to the Water Act 2007 make changes to the cooperative planning, management and regulatory regime in the Murray-Darling Basin.

1.5 The amendments reflect agreement by the Basin States to refer constitutional powers to the Commonwealth to broaden the Commonwealth's planning, management and regulatory powers.

1.6 Coalition Senators are disappointed with the parochial and political approach applied by some states throughout this process, in particular Victoria's Labor State Government. We note that in many respects the hands of the Senate have been tied as a result of the need to honour the IGA. Aspects of the IGA, particularly the maintenance of final veto rights for each state in certain instances, will seriously impede effective long-term management decisions, such as changing the formula for allocation between the states. These fundamental flaws mean this model falls a long way short of the full referral of powers originally sought under the Howard-Turnbull model.

1.7 Coalition Senators broadly support the intent of the Water Amendment Bill 2008. However, the Coalition Senators believe that the Bill could be improved with the adoption of a number of amendments.

Community Impact Statements for water purchases

1.8 Given the significant volume of water that the Government is intending to pursue with the water buy-back programme, Coalition Senators believe it is vitally important that the potential impact on communities of the buy-back is assessed and understood.

1.9 Evidence given to the inquiry by the Department of the Environment, Water, Heritage and the Arts revealed that there had been no research undertaken to determine the potential social and economic impacts on rural and regional communities of the Government's initial \$50 million water buy-back programme.

Senator NASH—Nine thousand megalitres as an entitlement is quite a significant amount. Potentially the reason for buying that is that water eventually will be returned to the system.

Dr Horne—That is right.

Senator NASH—So my question is: around those buybacks, what socioeconomic impact studies have been done for communities of potentially removing that water?

Dr Horne—On those particular purchases there has been no specific study done at this point in time.¹

1.10 Concerns were also raised by Ms Jenni Mattila, Coordinator, Bondi Group. Ms Mattila stated that

The significance of that is that the government proposes to buy back 1,500 gegalitres; if we are talking about that buyback being mainly in the southern Murray region, potentially roughly a third of the water entitlements currently on issue could be subject to buyback, and we have to consider the environmental impact, the social impact on the economic impact.²

1.11 Evidence given to the inquiry by Mr Rob Freeman of the Murray-Darling Basin Authority referred to criteria underpinning sustainable diversion limits. In doing so he indicated that under the Basin Plan the sustainable diversion limit set for each catchment would need to balance economic, social (including cultural) and environmental factors.³

1.12 Coalition Senators believe if this criteria, which requires assessment of the full range of potential impacts on local communities, is to be applied in relation to future sustainable diversion limits, it should similarly apply in relation to all buybacks in the interim period. Undertaking such assessments is especially important given the significant quantities of water for which licences are currently being purchased.

¹ *Committee Hansard*, 13 November 2008, p. 32.

² Ms Jenni Mattila, *Committee Hansard*, 13 November 2008, p. 3

³ Mr Robert Freeman, Murray-Darling Basin Authority, *Committee Hansard*, 12 November 2008, pp. 25 and 31.

1.13 Related to issues surrounding water buy-backs, Coalition Senators are concerned with flaws in both the structuring of exit packages and the failure of the current buy-back system to take account of exit fees faced by some irrigators within irrigation groups who choose to sell licences to the Commonwealth. It is clear that many growers believe the structuring of the buy-pack and of exit packages is unfair. Significant reform is required to provide appropriate equity and incentive for all involved.

Recommendation 1

1.14 That the Government amend the Water Amendment Bill 2008 to ensure a guaranteed Community Impact Statement for water purchases by the Commonwealth from each sub region of the Basin.

Full disclosure process for transparency of Commonwealth water purchases

1.15 Concerns have been raised that the water buy-back process undertaken by the Commonwealth is lacking in transparency.

1.16 For communities to have an understanding of the trading arrangements in the current water market, the necessity exists for a full disclosure process with regard to the Commonwealth's buy-back programme. This is the case not only in respect of stand-alone water purchases, but also in respect of purchases of property with water rights attached. Transparency expectations as to the latter extend to disclosure of the factors taken into account in determining to proceed to purchase, and the evidentiary basis for any subsequent changes to the use of land so-acquired.

1.17 This means ensuring full transparency with regards to price, volume, security, location and (where applicable) any subsequent change in land-use.

Recommendation 2

1.18 That the Government implement:

- a. a full disclosure process to ensure that any water purchases undertaken by the Commonwealth are fully transparent with regards to price, volume, security and location and, where applicable, any subsequent change in land use; and**

- b. a real time or live exchange disclosing irrigation region, latest sale and value, bid and offer and price by megalitre.**

Ensure a structural adjustment assistance programme for communities affected by water purchases

1.19 Coalition Senators believe that a structural adjustment package is necessary to allow communities to adjust and restructure due to reduced water availability as a result of water buyback.

1.20 Coalition Senators note acknowledgement by the Department of the Environment, Water, Heritage and the Arts, in evidence to the inquiry, that some structural adjustment will occur in regional communities as a result of reduced water availability:

In the absence of impediments, changes will naturally occur as markets direct resources from less profitable to more profitable activities. Consequently structural adjustment occurs throughout regional economies.⁴

1.21 However, Coalition Senators are concerned at a failure by the Department to acknowledge that the impact on markets, and therefore on the communities in question, will be greater as a result of Government buybacks of water licences.

1.22 Coalition Senators further note that whilst it has recognised that there will be structural adjustment, the Government has failed to provide any direct support for affected communities beyond the water licence holders from whom licences are being purchased.

1.23 Consistent with our belief that Community Impact Statements should be prepared in relation to water purchases, Coalition Senators believe structural adjustment assistance should follow for those communities experiencing significant impacts.

Recommendation 3

1.24 That the Government allocate, on a ratio of need arising from the Community Impact Statements, funding for a structural adjustment assistance package, to enable communities to adjust and restructure due to reduced water availability as a result of the Government's water buy-back programme.

Set time frames for water saving infrastructure to be delivered

1.25 Coalition Senators believe that a key component of ensuring the sustainability of the Murray Darling Basin into the future is Government investment in water saving infrastructure.

1.26 To date, the Government has prioritised the water buy-back scheme over irrigation efficiencies. Coalition Senators believe this is not the best way to progress sustainability of the Basin.

⁴ Department of the Environment, Water, Heritage and the Arts, answer to question on notice, 18 November 2008

1.27 Investing in water saving efficiencies will return water to the environment and increase on-farm efficiencies, at the same time potentially retaining production levels on-farm. An ability to do more with less is of critical importance to our food security, economic prosperity and environmental sustainability.

1.28 Coalition Senators are concerned at revelations in Senate Supplementary Budget Estimates that while the Government has been prompt in commencing some infrastructure projects, such as potable water pipelines for the Lower Lakes and Narrung Peninsula communities, other projects, such as the re-engineering of the Menindee Lakes in New South Wales, will be the subject of three years' dithering on options and assessments before any decision to proceed is taken.

1.29 Without in any way questioning the worth of the potable water pipelines to the Lower Lakes and Narrung communities, Coalition Senators note this project will deliver little or no water savings to the Basin yet the re-engineering of the Menindee Lakes would have the potential to return up to 200 gigalitres of water to environmental flows.

1.30 Unlike the Minister, Coalition Senators together with the Shadow Minister for the Environment, The Hon Greg Hunt MP, recently travelled the length of the Murray-Darling and note the significant number of potential water-saving infrastructure projects highlighted by communities and organisations.

1.31 Coalition Senators believe it is a priority that potential projects be identified and pursued by the Government at the earliest possible opportunities.

Recommendation 4

1.32 That the Bill provide for the setting of clear targets for water to be saved from on-farm and off-farm infrastructure projects, and require the tabling by 1 July 2009, with updates to be tabled at least annually, of a schedule of such projects both being undertaken and planned, specifying the expected savings from each project, the share of savings dedicated to environmental, irrigation or other purposes and the licence attached to these savings.

Move to prevent the North-South pipeline

1.33 The sustainability of the Murray-Darling Basin into the future is an absolute priority for the Coalition.

1.34 As such, Coalition Senators believe that the Water Amendment Bill 2008 must be amended to ensure that there are no new extractions from the Murray-Darling Basin to outside of that Basin that could impact on its future sustainability.

1.35 The Victorian Government is currently planning to breach its obligations under the Living Murray Agreement and divert to Melbourne water purchased in part by Commonwealth investment for the Murray-Darling Basin. This is how initial extractions through the North-South Pipeline will be sourced.

1.36 Once the Food Bowl Modernisation project is completed, the Victorian Government will then divert 75 billion litres per year from the Goulburn Murray and Lower Lakes to Melbourne – in perpetuity. As the pipeline will have significantly greater capacity, this figure has the potential to rise.

1.37 Coalition Senators believe this should immediately be stopped. Evidence was given to the inquiry that supported the view that to make yet another urban centre outside of the Murray-Darling Basin reliant on its finite water resources at this time of crisis is tantamount to stupidity.

1.38 The water needs of the Basin should have priority. Any water savings acquired within the Murray-Darling Basin should stay within the Basin. According to evidence given by Dr Arlene Buchan, Australian Conservation Foundation:

You have the Murray-Darling Basin, which is on its knees, and there is a suggestion that they will move 75 gigs of water annually from the Goulburn district to Melbourne when Melbourne pumps about 400 gigs of water out to sea every year as wastewater. It is ridiculous. The basin is on its knees. Why would anyone propose moving water from a basin which is on its knees, away from communities and the environment which are stuffed, and send it to Melbourne, which can look after itself?⁵

1.39 Coalition Senators believe 75 gigalitres is a very substantial quantity of water that would make a significant and valuable contribution to food security and/or environmental sustainability in the Goulburn Valley and throughout the wider Basin were it to be available to irrigators and/or environmental flows there as opposed to supplementing urban supplies outside the Basin.

1.40 Coalition Senators note the evidence from the Department of the Environment, Water, Heritage and the Arts that neither the Intergovernmental Agreement nor the referral of powers legislation is contingent on the construction or commissioning of the North-South pipeline:

Senator BIRMINGHAM—Is there anything in the IGA or agreements leading to this bill or within this bill that actually requires the north-south pipeline to be built?

Dr Horne—Not at all.

Senator BIRMINGHAM—Or the Commonwealth to support or facilitate the building of the north-south pipeline?

⁵ Dr Arlene Buchan, Australian Conservation Foundation, *Committee Hansard*, 13 November 2008, p. 12.

Dr Horne—No, not at all—nothing at all.⁶

1.41 Coalition Senators believe that self sufficiency of urban water supplies should be an objective of all state governments. No state government should be increasing its reliance on the Murray-Darling Basin, especially in relation to urban areas outside the Basin, at a time when others are seeking to reduce their reliance through increased efforts in areas such as desalination, stormwater capture, water recycling and improved efficiency. Where necessary, the Commonwealth could provide support towards such options being pursued.

1.42 Coalition Senators believe cleaning up, recycling and re-using Melbourne's 300 billion litres of waste water for agriculture and industry will not only free up fresh water from those activities, but will both clean up our coasts, provide up to four times the water savings as the North-South Pipeline and also protect the Goulburn Murray system.

Recommendation 5

1.43 That the Water Amendment Bill 2008 be amended to prevent construction of the North-South Pipeline and the extraction from the Murray-Darling Basin of any water associated with the North-South Pipeline.

Critical Human Needs

1.44 Coalition Senators consider that 'critical human needs' is not clearly defined by section 86A(2) of the Bill.

1.45 Evidence provided to the Committee overwhelmingly favoured the need for the Bill to more clearly define 'critical human needs'. To that extent, the inclusion of 'critical human needs' provisions was generally supported. However, beyond this, support and consensus dissipated.

1.46 Whilst there was general agreement that a clearer definition was needed, there was little agreement about what should be and what could be the meaning of the human critical needs provisions of the Bill.

1.47 Coalition Senators note the evidence from the National Farmers' Federation that there is no shared understanding of the term 'critical human needs' at this time:

Senator FISHER—What are NFF's views of the meaning of the term 'critical human needs' in the bill, and in particular the meaning of 'core human consumption requirements in urban and rural areas'?

⁶ *Committee Hansard*, 13 November 2008, p. 36

Mrs Kerr—Our view is that critical human needs are the needs that are required to address core human drinking water requirements. I know some of the states have reserved critical human needs for particular industries where there would be economic and social impacts. It leads to the broader question, and I note that you have raised this issue on a number of occasions. It probably brings to the fore the broader question of a shared understanding of what critical human needs is. It is like over-allocation. Everybody talks about overallocation and we all have different views about what that might mean, and in this case it is a similar term that probably needs the development of a shared understanding about what that might be.

Senator FISHER—So there is no shared understanding at the moment of the meaning of ‘critical human needs’?

Mrs Kerr—With the way it has been implemented there are different aspects in different states that are probably causing some confusion, and the development of a shared understanding or defining of ‘critical human needs’ might be appropriate.⁷

1.48 The Australian Conservation Foundation’s Dr Arlene Buchan stated that:

The way I read the amendment bill, ‘critical human needs’ could cover anything—and, in fact, they have covered things from abattoirs to golf courses.⁸

1.49 Dr Buchan went on to question whether the definition could encompass spray irrigation of a regional golf course.

1.50 Comments of this nature typified the lack of agreement among witnesses of what should or does constitute ‘critical human needs’. However, there was broad agreement amongst witnesses that the Bill should clearly define who or what ‘critical human needs’ covers, and further, that the Bill fails to do so.

1.51 Indeed, some witnesses effectively suggested that the critical human needs provisions of the Bill will make matters worse.

1.52 The NSW Irrigators’ Council (NSWIC) stated:

Section 86A(2) defines Critical Human Needs (CHN) in such a wide fashion as to render it effectively meaningless. ..this definition has allowed abattoirs, feed lots and mines to access water under CHN, which clearly they are not....CHN should be limited to drinking, sanitation and health only...the bill will entrench a definition of CHN that is ludicrous.⁹

⁷ Mrs Deborah Kerr, *Committee Hansard*, 12 November 2008, p. 10

⁸ Dr Arlene Buchan, *Committee Hansard*, 13 November 2008, p. 11

⁹ *Submission 7*, page 3

1.53 Coalition Senators consider suggestions that ‘critical human needs’ has a ‘common sense’ meaning to be unconvincing and unacceptably dismissive of the wisdom of testing the meaning of the term.

1.54 Coalition Senators note the comment in the majority report that:

this definition (in the Bill) has emerged out of a protracted process of negotiation...

1.55 This is an indictment of a key outcome of the intergovernmental processes, and illustrates the fallacy of suggestions that ‘critical human needs’ has a ‘common sense’ meaning.

1.56 Leaving the definition of ‘critical human needs’ deliberately vague unjustifiably prolongs uncertainty and lack of transparency. Worse, it exacerbates past and ongoing perceptions of inequity. Worst of all, it pushes the hardest decisions over critical human needs onto a newly established Authority, and sets the Authority up for a fall.

1.57 The Bill raises more questions than it answers in relation to ‘critical human needs’ and in this respect provides clarity, certainty and transparency for nothing and no one.

Recommendation 6

1.58 That the definition of ‘critical human needs’ be amended so that the grounds upon which water is allocated in any given instance for critical human needs is clear, certain, equitable and transparent.

Climate Change and 'new knowledge'

1.59 Coalition Senators note concerns expressed by the NSWIC with regard to the impact of proposed New Section 75(1A) insofar as it impacts on the calculation of the Commonwealth Government policy component or the new knowledge component related to any reduction in the long-term average sustainable diversion limit for the water resources of a water resource plan area. These concerns were highlighted in the NSWIC submission that stated:

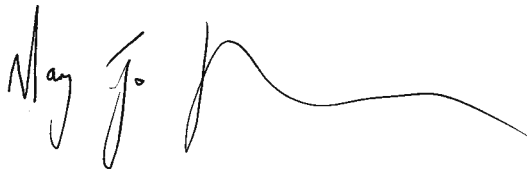
From the early discussions with respect to the NWI right through the consultation with respect to the *Water Act 2007*, irrigators have made the point that the definition of what is climate change and what is new knowledge has not been determined. This determination will have significant implications for irrigators with respect to compensation.¹⁰

¹⁰ *Submission 7*, p. 3.

1.60 Coalition Senators believe the impact of the amendment on the rights of irrigators to receive appropriate and adequate compensation for any reduction in entitlement needs to be clarified by the Government.

A handwritten signature in blue ink that reads "Simon Birmingham". The signature is written in a cursive style with a prominent initial 'S'.

Senator Simon Birmingham

A handwritten signature in black ink that reads "Mary Jo Fisher". The signature is written in a cursive style with a prominent initial 'M'.

Senator Mary Jo Fisher

A handwritten signature in black ink that reads "Bill Heffernan". The signature is written in a cursive style with a prominent initial 'B'.

Senator the Hon. Bill Heffernan

A handwritten signature in black ink that reads "Fiona Nash". The signature is written in a cursive style with a prominent initial 'F'.

Senator Fiona Nash