

The Senate

Standing Committee on
Rural and Regional
Affairs
and Transport

Water Amendment Bill 2008

November 2008

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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.

-
- 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 sunset 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

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.

Chapter 2

Issues raised during the inquiry

2.1 Overall there was broad consensus from the evidence received that the Bill should be passed as expediently as possible. It was felt by most witnesses that the situation in the Murray-Darling Basin required urgent action and that it was critically important to pass the bill and enable the MDBA to begin operating in its new role. Issues individual groups raised in relation to the Bill were not regarded as sufficiently significant to warrant a delay while amendments were negotiated with state governments.

2.2 This sentiment was shared by both irrigators and environmental groups. Mr Gregson from the NSW Irrigators Council summed up his organisation's view:

The detail that is in that basin plan is what will affect irrigators. It is what will affect their communities and it is what will affect everybody right across the Murray-Darling Basin. It is the basin plan that needs to be focused on, where the detail needs to be right, and it is time to get on with that. In that respect we ask that this legislation now be passed so that we can get on with the process of formulating the basin plan.¹

2.3 Dr Arlene Buchan, from the Australian Conservation Foundation echoed this sentiment:

I really think, spurred on by Ms Mattila, that the most important thing that I can say today is that the sooner the amendment bill is passed and these reforms come into being the better.....the worst thing we can do is delay, delay and delay, more and more and more, because that is why we are in the situation that we are in. There is no reason to delay any further in rolling out the reform program.²

2.4 However, despite this agreement there were several issues that emerged as consistent concerns.

Critical Human Water Needs

2.5 The definition in the Bill of Critical Human Water Needs was the most common issue. The inclusion of 'non-human consumption requirements' proved to be contentious for many witnesses, and the assessment of these requirements against social, economic or national security costs was regarded by some witnesses as vague

1 Mr Andrew Gregson, NSW Irrigators Council, *Committee Hansard*, 12 November 2008, p.32.

2 Dr Arlene Buchan, Australian Conservation Foundation, *Committee Hansard*, 13 November 2008, p. 11.

or imprecise and left open the potential for some inequities in water consumption between irrigators and other general water users. The general opinion was summed up by Dr Buchan:

Take the definition of ‘critical human needs’, which I think is very confusing, very ambiguous and incredibly broad. In the discussion of, ‘What are critical human needs?’, it is right and proper that critical human needs should be seen as a priority. But whatever was wrong with health, drinking water and sanitation? They are critical human needs. 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.³

2.6 The definition of Critical Human Water Needs is established by the Bill, but it has been based on negotiations among the state and federal governments. Dr Horne of DEWHA stated that:

The scope of this definition was subject to very extensive negotiations with the states during the negotiation of the intergovernmental agreement on Murray-Darling Basin reform. The current definition was considered to reflect the interests of all communities in the basin.⁴

2.7 While a common sense approach to the term would tend to restrict the definition to water critical to sustaining human life and health, it is also apparent to the committee that the economic activity of towns and communities is dependent on access to water above and beyond that required for ‘drinking, sanitation and health’ and the committee recognises that there is an argument for extending the definition beyond the most basic essentials.

2.8 Although the definition was criticised as vague, the committee notes that the real mechanism for managing water resources in the Basin is the Basin Plan and the less prescriptive definition allows the MDBA greater flexibility in formulating strategies for managing water resources. Dr Horne clarified this:

Through the Basin Plan, the Murray-Darling Basin Authority will be required to specify the amount of water required to meet critical human needs of communities dependent on the River Murray system. The Water Amendment Bill recognises that each state is responsible for meeting its own critical human needs and that each state has autonomy over decisions on how water from its state’s waterfare is used. If a state considers that critical human needs should be limited to drinking water and water required for sanitation and health, they could seek to have their critical human needs requirement as specified in the Basin Plan reflect this.⁵

3 Dr Buchan, ACF, *Committee Hansard*, 13 November 2008, p. 11.

4 Dr James Horne, Department of the Environment, Water, Heritage and the Arts, *Committee Hansard*, 13 November 2008, p.26.

5 Dr Horne, DEWHA, *Committee Hansard*, 13 November 2008, p.26.

2.9 While industries in towns and urban areas currently consume water in a manner which is distinct from irrigators, the NSW Irrigators Council highlighted that this need not necessarily remain the case.

We can see a process by which industry can enter the water market to purchase their water rights in the same way that irrigators have to. Under the provisions of it being a high economic cost to an industry of not having water, I am sure you would appreciate the cost of an irrigation entity not having water is also extremely high.⁶

2.10 The committee notes that there is nothing in the current definition of Human Critical Water Needs that would prevent this from occurring in the future under a revised Basin Plan or Agreement.

2.11 The committee also notes that this definition has emerged out of a protracted process of negotiation and is among the powers referred by the states. Amendment of this definition would likely result in a further round of negotiation, potentially delaying the entire process.

States use of water

2.12 The committee heard from several witnesses who were concerned about the extraction of water from the Basin by state governments. Of particular note was the issue of the construction of a pipeline from the Goulburn River to provide drinking water for Melbourne, the Sugarloaf Pipeline.

2.13 The committee heard that the pipeline's proposed extraction of 75 gigitalitres would be a net loss to the basin water resources, and as such was equivalent to a much higher allocation to irrigators or other users, where a substantial proportion of the water used actually returns to the river system.⁷ The committee also heard that although the volume was not high overall, in a period of extreme drought it represents a substantial fraction of the available water.

2.14 As explained by Dr Tony McLeod of the MDBA, the use of the Sugarloaf Pipeline for human critical needs is not covered by the Bill or the Basin Agreement:

In the case of the pipeline project it is a form of extraction on one of the tributary systems to the River Murray system, and not the River Murray system itself, and thus is not directly affected by these provisions.⁸

2.15 The pipeline water is considered an extraction under the state's share which is a management matter for the state and not affected by the provisions of the Bill. In this respect it is consistent with other water uses across the basin. Dr Horne of DEWHA stated that:

6 Mr Gregson, NSW Irrigators Council, *Committee Hansard*, 12 November 2008, p. 33.

7 Prof Mike Young, *Committee Hansard*, 12 November 2008, p. 3.

8 Dr Tony McLeod, MBDA, *Committee Hansard*, 12 November 2008, p.31.

There are several existing pieces of infrastructure that divert water from within the basin to elsewhere. There are, I think, seven such pieces of infrastructure in Victoria, five in South Australia and two in New South Wales, and these pieces of infrastructure have implications for Adelaide, Whyalla, Lithgow, Ararat and Bacchus Marsh, just to name a few areas. The basin plan will set a limit on the amount of water that can be diverted from basin water resources, and this limit will be set at a level of individual resource plan areas identified in the basin plan. The act does not constrain how the water is subsequently used, whether inside or outside the basin. What is relevant to the protection of the environment of the Murray-Darling Basin is the amount of water that stays in the system. It remains a matter for the states to allocate water for consumptive use.

Construction of the Sugarloaf Pipeline has been approved under the Environment Protection and Biodiversity Conservation Act 1999, subject to a number of conditions, including that the water it transports is demonstrably acquired through water savings achieved through the Food Bowl Modernisation Project. An independent audit is required under the conditions of EPBC Act approval to demonstrate this. These approval conditions are enforceable under the act.⁹

2.16 The committee notes that under the Basin Agreement, it is the states responsibility to allocate their share of the sustainable diversion limits as they see fit. The committee also notes, that while the Ministerial Council is required to agree any changes to state water shares on the River Murray System, the level of utilisation of the water available to each state from such sharing is determined by the Basin Plan, upon which the Commonwealth Minister is the decision maker.

2.17 The state shares arrangement applies only to surface water in the River Murray system, which includes the Darling south of the Menindee Lakes. The requirements of the Basin Plan will take into account changes in runoff from the effects of climate change throughout the Basin. Given that the state shares arrangement only applies to the River Murray system a change in rainfall and runoff in the northern Basin would not be impacted by the state shares arrangement.

Amendment of the agreement

2.18 The Murray-Darling Basin Agreement forms the basis of the powers of the MDBA and the Basin Plan. Any future change to the Murray-Darling Basin Agreement, such as a change to the water sharing rules between states on the River Murray System, can be effected by a decision of the Ministerial Council.¹⁰ The

9 Dr Horne, DEWHA, *Committee Hansard*, 13 November 2008, pp. 26,27.

10 A decision by the Ministerial Council will be reflected in regulations that amend the copy of the Murray-Darling Basin Agreement set out in proposed Schedule 1 to the Water Act 2007 (as amended by the Water Amendment Bill 2008), and the amendment to the Agreement will take effect when those regulations are registered on the Federal Register of Legislative Instruments (see clause 5(3) of the Agreement, also reflected in section 18C of the Bill).

Ministerial Council must meet at least once per year, but can meet at other times as it sees fit.¹¹ This arrangement allows for flexible amendment of the Agreement without requiring the passage through the Parliament of an amendment to the Water Act.

2.19 Some members of the committee expressed concern that the requirement for unanimous decisions by the Ministerial Council would mean that states have an effective power of veto over major decisions, which would limit the ability of the Council to respond to future issues, such as the potential need to adjust state water sharing rules to take into account changing circumstances.

2.20 Basin States, however, have clearly indicated that they wish to retain the requirement that decisions to amend the Murray-Darling Basin Agreement be unanimous.

2.21 It should be noted however, that this decision making arrangement will not apply to the new Basin plan. Whilst the new Basin plan will involve consultation with the Ministerial Council, the final decisions rests with the Commonwealth Minister.

Water trading rules

2.22 The Bill provides for an expanded role for the ACCC in determining water market rules. In accordance with its role under the current Water Act, the ACCC has prepared draft water market rules for public consultation. The committee heard evidence arguing that these proposed rules, if adopted, could have adverse consequences for private irrigation schemes. Specifically, the committee heard that the ACCC has interpreted the transformation arrangements in the Bill in a way that could undermine certainty for irrigation corporations.

My main concern relates to the transformation issue. My understanding was at the time that transformation issue was only meant to relate to transfers of water entitlements from an irrigation scheme to an external third party—what is called in the business an ‘external permanent transfer’. However, the ACCC has chosen to interpret it to allow an irrigator who is currently within an irrigation scheme to convert that entitlement to the state register. The significance of that in terms of trying to run one of these businesses is actually profound because it would result potentially in the break-up of that irrigation scheme.¹²

2.23 The committee also heard that the ACCC has interpreted state irrigation corporations as representing the crown:

The ACCC’s brief does not go that far; it is only about the water market and trading rules. The thing that I would come back to, which I think is straightforward in the act but which seems to have got confused, is that the government owned corporations, in my view, should be caught by the

11 See clause 13 of the Agreement.

12 Ms Jenni Mattila, Bondi Group, *Committee Hansard*, 13 November 2008, p. 3.

Water Act, but for some reason the ACCC has taken the view that they are the Crown. However, as a lawyer I say that they are not the Crown; they are statutory corporations. Statutory corporations, as a matter of law, are generally not the Crown unless they are so closely linked to government that they have virtually no separate, independent existence. So it seems that that area under the act needs to be looked at more carefully because it seems to me that entities such as State Water, Goulburn-Murray Water and Lower Murray Water are not the Crown; they should be covered by the Water Act.¹³

Risk Assignment

2.24 The ambiguity inherent in the Bill arising from the concept of risk assignment in apportioning the risk accrued from the effects of climate change, versus a change in government policy in response to climate change was raised by several witnesses.

2.25 This issue relates to the National Water Initiative, Clauses 48 and 50. Clause 48 states:

Water access entitlement holders are to bear the risks of any reduction or less reliable water allocation, under their water access entitlements, arising from reductions to the consumptive pool as a result of:

- (i) seasonal or long-term changes in climate; and
- (ii) periodic natural events such as bushfires and drought.¹⁴

2.26 While under clause 50:

Governments are to bear the risks of any reduction or less reliable water allocation that is not previously provided for, arising from changes in government policy (for example, new environmental objectives).¹⁵

South Australian carry over

2.27 The NSW Irrigators Council expressed concern that South Australia's ability to store carryover water upstream could potentially result in them extracting more than 100 per cent of their entitlement in a single year.

Limitation on carryover for SA is not provided. In NSW and VIC, only a maximum of 100% of entitlement can be extracted in any one year. If such a maximum is not enforced on SA, there is significant potential for a breach

13 Ms Mattila, Bondi Group, *Committee Hansard*, 13 November 2008, p.3.

14 Intergovernmental Agreement On A National Water Initiative, <http://www.nwc.gov.au/resources/documents/Intergovernmental-Agreement-on-a-national-water-initiative.pdf>, pp. 8, 9.

15 *Ibid.*

in the cap on annual extractions, the impact of which will be felt by NSW and VIC irrigators as a drop in reliability.¹⁶

2.28 Mr Andrew Gregson of the NSW Irrigators Council explained in greater detail why this might occur:

Potentially under the provisions of the bill an irrigator in South Australia could carry water over to the extent that they extract in excess of 100 per cent of their entitlement, which means in that year South Australia would breach cap, and there is the potential then for liability impacts to irrigators upstream, particularly in New South Wales and Victoria. We understand that South Australia will be under an obligation not to breach the cap and, as a result, is likely to enter into negotiations to have that 100 per cent limit.

2.29 Mr Gregson acknowledged that South Australia has a history of abiding by the cap and stressed that his organisation believes the issue could be dealt with via the provisions of clause 50 of the NWI, rather than amending the bill:

We would prefer that the bill had said explicitly that there would be a limit on 100 per cent of extraction. That said, we do not want to delay the passage of the bill and, again, if the clause 50 risk assignment provisions of the NWI are allowed into place by mention of this being a policy change, that will be covered.¹⁷

2.30 The committee noted that access to carryover by South Australia is subject to a 'no disadvantage' test. According to Dr Horne:

The revised agreement in the bill sets out a no disadvantage test that limits South Australia's new storage rights in relation to water for critical human needs. The agreement ensures that South Australian storage of water for critical human needs must not affect water availability for New South Wales and Victoria. The agreement also ensures that carryover for private purposes in South Australia must not affect either water availability or access in New South Wales or Victoria.¹⁸

Variability and averages

2.31 Professor Mike Young and the Wentworth Group highlighted the variability of the upper reaches of the river system and questioned the suitability of the concept of averages throughout the Basin Agreement.

The act as drafted at the moment talks about using averages, but this misunderstands the skewed nature of water supplies. In particular, if you work it out, the variability for the River Murray system is 15.5, but for the Darling system it is 300 times greater than that. It is actually 4,705.2. Hence to put into a basin plan a framework that says manage on averages over

16 NSW Irrigators Council, *Submission No. 7*, p. 4.

17 Mr Gregson, NSW Irrigators Council, *Committee Hansard*, 12 November 2008, p.33.

18 Dr Horne, DEWHA, *Committee Hansard*, 13 November 2008, p. 26.

constrains the options. I would like to recommend that we delete the word 'average' so that the authority when it prepares the basin plan can contemplate using means, medians, shares and all other mechanisms to set a sustainable limit. To constrain it to averages makes a mistake for the future of Australia. I recommend to you that you consider taking the word 'average' out so that we invite the authority in its basin plan to define the long-term sustainable diversion limit.¹⁹

Indigenous water

2.32 The Murray Lower Darling Rivers Indigenous Nations highlighted the lack of any provision in the Bill or the Basin Agreement to recognise Indigenous water rights.

Indigenous Nations are and have been since time immemorial connected and responsible for their lands and waters, and the peoples of each Indigenous Nation obtain and maintain their spiritual and cultural identity, life and livelihood from their lands and waters. In addition, Indigenous Nations each have responsibilities and obligations under their Indigenous Law/Lore and Custom to protect, conserve and maintain the environment and the ecosystems in their natural state to ensure the sustainability of the whole environment.²⁰

2.33 The submission seeks the recognition of the rights of Indigenous peoples in the Basin to 'Cultural Flows' and greater consultation by the MDBA with Indigenous communities.

"Cultural Flows" are water entitlements that are legally and beneficially owned by the Indigenous Nations of a sufficient and adequate quantity and quality to improve the spiritual, cultural, environmental, social and economic conditions of those Indigenous Nations.²¹

Conclusion

2.34 The committee believes that the Bill will enable water resources in the Murray Darling Basin to be managed in the national interest, optimising environmental, economic and social outcomes. The Bill represents the basis for the long term reform of water management in the Murray-Darling Basin.

2.35 The committee notes that the Bill allows the Basin Agreement to be independently and regularly amended and considers that this will ensure that future issues are dealt with expeditiously and efficiently.

2.36 While a number of issues were raised in relation to the legislation during the inquiry it is in the implementation of the Basin Agreement and the development of the Basin Plan that the benefits of this Bill will materialise. The Committee agrees with

19 Prof. Young, Tabled Document, 12 November 2008.

20 Murray Lower Darling Rivers Indigenous Nations (MLDRIN), *Submission* No 6, p. 6.

21 MLDRIN, *Submission* No 6, p. 8.

the submitters and witnesses that a rapid and smooth progress of the Bill is in the best interests of all parties.

Recommendation

2.37 The committee recommends the passage of this legislation without amendment.

A handwritten signature in blue ink, consisting of a stylized 'G' followed by a large, circular flourish.

**Senator Glenn Sterle
Chair**

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 gegalitres 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.

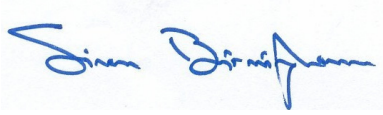
Climate Change and 'new knowledge'

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:

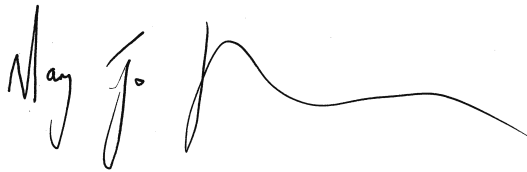
 From the early discussions with respect to the NWI right through the consultation with respect to the *Water Act 2007*, irrigators have made the point that the definition of what is climate change and what is new knowledge has not been determined. This determination will have significant implications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

Senator Simon Birmingham

A handwritten signature in black ink that reads "Mary Jo Fisher". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Senator Mary Jo Fisher

A handwritten signature in black ink that reads "Bill Heffernan". The signature is written in a cursive style with a long, sweeping tail on the final letter.

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 long, sweeping tail on the final letter.

Senator Fiona Nash

Australian Greens Minority Report

Chapter 1: Response to the Water Amendment Bill 2008

Introduction

The Australian Greens believe that there are two fundamental problems with the approach currently being taken by the Commonwealth Government to delivering a long-term sustainable solution to the equitable sharing of limited water resources within the Murray Darling Basin and therefore with the *Water Amendment Bill 2008*.

1. Basin communities and water users (including environmental advocates) have not been part of the consultation and negotiation process for the new arrangements. The only key stakeholders engaged have been the State and Territory Governments, leading to some perverse outcomes (e.g. the definition of 'critical human needs' as discussed below). A more consultative and democratic approach would generate a fairer, more robust and sustainable outcome.
2. Commonwealth investment in water buyback, infrastructure improvements and structural adjustment is being rolled out slowly in an ad hoc fashion with no consideration for the social, economic, environmental or structural impacts of where water is bought or irrigation efficiencies invested in. A more consultative approach based on informed and empowered community planning and investment in which buyback and improvements could be combined to redesign local systems would deliver a more sustainable and cost effective outcome and minimise 'stranded assets' and negative impacts on local communities.

The Australian Greens are well aware of the need to move quickly to establish the MDBA and get the Basin Plan underway. We are both disappointed and frustrated that – after dragging their feet on the legislative reform process and failing to get the necessary legislation to federal and state parliaments in a timely fashion – our governments are now attempting to undermine and circumvent normal democratic processes of legislative review by arguing that amendment to this legislation is not possible because it would require re-negotiation with the States over the details of the powers referred. We note however that this is not strictly true for those existing parts of the Water Act and those parts of the Water Amendment Bill which are not dependent on the referral of powers.

This situation was clear from the outset, as were the concerns held by the Australian Greens (many of which were on record as proposed amendments to the Water Act from 2007) and by a number of key stakeholders, including irrigators, floodplain grazers, basin communities and environmental advocates. Nevertheless the Commonwealth proceeded with a very opaque and closed-door approach to negotiation with States and Territories through COAG and other means, and stonewalled efforts to get more information on and have input into the process and the reform model it was developing. This is quite frankly not acceptable.

The Government should not rely on the concern and commitment of the community and the Greens to securing a better outcome to compel us to accept a flawed but slightly better outcome against the risk of a significant delay to introduce a fairer and more robust system – particularly when part of the deal effectively means that the cap on sustainable diversions will not be

operating in Victoria until 2019 and other States until 2014. This last fact undermines the argument of urgency. The Greens in fact believe that the Basin Plan should be in operation as soon as possible ... and certainly long before 2019.

The irony of the problems that have been brought about by the Rudd Government taking a 'behind closed doors' approach to negotiating the framework for basin reform is that the very problems that undermine the current approach (as encapsulated in the Water Amendment Bill) – of States clinging to narrow self-interest and forcing limiting compromises – would have been amenable to the moral suasion brought about by an open and robust debate into the pros and cons of particular measures. We would not be left, for example, with a definition of 'critical human need' in the intergovernmental agreement and Schedule 1 of the Bill which does not reflect the interests or concerns of basin communities and defies common-sense understandings of the term. Contrary to the claims of DEWHA's Dr Horne who said:

"The Scope of this definition was subject to very extensive negotiations with the states during the negotiation of the intergovernmental agreement on Murray Darling Basin reform. The current definition was considered to reflect the interests of all communities in the basin."

It is clear from the evidence received by the committee in both this inquiry and the other ongoing RRAT inquiry into the Murray Darling Basin and the Coorong and Lower Lakes that key stakeholders and communities within the basin do not consider this definition to be in their best interest. It may be possible that the States may genuinely consider this to be in the communities best interests, but this misapprehension could only arise in a consultative vacuum and would not have withstood open community debate.

To this end the Australian Greens will be introducing amendments to tighten the definition of 'critical human need'.

A similar situation exists in relation to the Sugarloaf Pipeline in Victoria, which intends to extract an additional 75GL from the Murrumbidgee catchment for Melbourne's urban water supply. We note that 'critical human need' provisions do not relate to this water and it will be secured from State allocations to irrigation licences as those allocations become available under normal water sharing arrangements – meaning that in low rainfall years when Melbourne's water demands are the most critical there may be little or no water available. While we acknowledge that under the current Basin Agreement it is up to the State to allocate their share of water (... ultimately within what will eventually be set as the sustainable diversion limit) we remain concerned that a move to implement significant new extractions for use of populations outside the basin at a time of basin-wide crisis and significant community suffering is a retrograde and unnecessary step – which threatens to undermine the impetus and community commitment for whole of basin reform.

The Australian Greens believe that, as a matter of principle in this time of crisis, water resources secured within the basin through necessary investments in efficiency improvements need to be used to address the pressing needs of the basin – to reduce over-allocation back to sustainable diversion levels, to help farming communities adapt to significantly reduced irrigation entitlements, and to ensure the health of the river and the survival of threatened basin ecosystems. There is only limited scope for achieving water efficiency gains within the basin, so while this water is being secured through State Government investments in infrastructure upgrades, this is modernisation activity that Victoria should be undertaking anyway as part of their contribution to basin water reform – and the water being diverted is reducing the quantum of water available to

help the river survive and basin communities restructure. At a time at which basin communities are hurting and receive significant public sympathy, and there is widespread concern over the threat to basin ecosystems, there is a strong argument for stopping additional new extraction occurring for uses outside of the basin.

To this end the Australian Greens will be introducing amendments to the provisions of the Basin Plan to exclude consideration of new extractive uses outside of the basin.

We note the evidence to the ongoing RRAT inquiry the Murray Darling Basin, and the Coorong and Lower Lakes that Adelaide is moving to reduce its dependence on the basin and applaud its efforts. By comparison Melbourne has a huge untapped stormwater resource and discharges 400GL per year of stormwater on average into the sea.

The separate issues of the definition of 'critical human need' and the Sugarloaf Pipeline are discussed in more detail later in this report.

River health and ecosystem resilience

In the face of the combined challenges of a drier and warmer climate, significantly reduced prospects for freshwater runoff in the basin, and the need to address the social and economic crises currently facing the communities of the basin we need to be thinking about and planning for the long-term future. As the recent inquiry into the Coorong and Lower Lakes demonstrated, in considering how to balance competing water uses we need to be mindful of the role that a healthy river plays in sustaining healthy communities. With 80%-90% of the basin's wetlands already gone¹ and the majority of those remaining highly stressed, the basin's wetlands role in maintaining the health of the river and delivering ecosystem services and their ability to maintain water quality (by effectively acting as the 'kidneys' of the system) is severely threatened.

As the late professor Peter Cullen pointed out², we need to put into place a comprehensive ongoing program for monitoring the health of the basin's ecosystems that allows us to measure and adaptively manage their resilience. While putting aside a baseline environmental water allocation is a necessary starting point, the health of many of these systems is dependent on a variable wetting and flushing cycle rather than a constant trickle.

One of the outstanding concerns with the Murray Darling Basin Sustainable Yields Project undertaken by the CSIRO which will inform and underlie the Basin cap is the extent to which it has predominantly focused on the hydrology of available water resources – which is only half of the story. While it provides us much needed data on the extent of the hydrological resource of individual catchments, it does not focus on the science on the ecological water needs to maintain the health and resilience of basin ecosystems from which we can determine what truly 'sustainable' yields are. The ultimate product of the MDBSYP will be an invaluable whole-of-basin mathematical model of the relationship between rainfall, run-off, groundwater flows, et cetera that allows us to determine how much water we have at any given point, and what transmission losses we are likely to experience as water moves through the system ... but it does not provide an evaluation of the health and resilience of the river, its wetlands and other dependent ecosystems that allow us to determine watering requirements and adaptively manage environmental outcomes.

This issue was raised by the late Professor Peter Cullen in the inquiry into the Water Act 2007. While the need to undertake this work is arguably implicit in mandate of the new Murray Darling Basin Authority to develop a Basin Plan and set limits on sustainable diversions, we remain concerned that this is not made explicit within the Water Act ... and it is not at all clear whether there is an appropriate and ongoing resource allocation and responsibility for undertaking the monitoring and assessment of ecosystem health.

To this end the Australian Greens will be moving amendments to ensure that ecosystem health and resilience are explicitly contained in the objects of the Act, and that the MDBA is given explicit responsibility for carrying out those objects.

We note that these amendments were suggested by the Wentworth Group of Concerned Scientists at the previous inquiry into the Water Bill 2007 and put to the Senate by the Australian Greens in 2007,

¹ ACF & IRN, *Wetlands for our Future* report, 2008.

² Professor Peter Cullen, ECITA inquiry into the Water Bill 2007, Hansard.

at the time the ALP (then in Opposition) said they had not had enough time to consider the proposed amendment. We hope the Government should by now have had sufficient time to consider them. These amendments do not impact upon the referral of powers as contained in the intergovernmental agreement.

When the Water Act was first introduced by the Howard Government in 2007, the ECITA committee held a rushed inquiry into the provisions of the bill, during which it heard significant evidence from stakeholders and water policy experts of potential limitations of the Act. Despite the committee being given a very short time to consider the Bill and report, the fact that the RRAT committee had only recently completed a substantial and far-reaching inquiry into water policy initiatives³ enabled senators to quickly and effectively respond to the issue. On this basis the Australian Greens put forward a series of amendments based on this combined expert advice. We note that these amendments still remain pertinent to outstanding limitations within the Water Act and the proposed Water Amendment Bill, and have been re-presented to the Senate by Professor Mike Young and Dr Arlene Buchan as part of this inquiry. We also note that to date only one of these amendments has been partially adopted by the Rudd government and express our disappointment with their failure to give due consideration to these issues and engage in consultations with these stakeholders and ourselves around their adoption.

Issues covered by these Australian Greens amendments include:

- **Making sure the Act and the MDBA have an explicit focus on managing environmental health and resilience**
- **Integration with EPBC and compliance with Ramsar and other international environmental treaties (which has been partially implemented)**
- **Ensuring that water entitlements are defined as shares of available water, and take into account the variability of the northern basin**
- **Reducing the ability of the Minister to direct the MDBA and giving it more independence**
- **Including public standing provisions comparable to the EPBC Act to ensure public accountability and to facilitate enforcement of the Act.**

³ RRAT, Water Policy Initiatives Inquiry,
http://www.aph.gov.au/Senate/committee/rrat_ctte/completed_inquiries/2004-07/rural_water/index.htm

Sugarloaf Pipeline and 'critical human need'

There has been some confusion around the provisions relating to 'critical human need' and whether they apply to water extracted by the Sugarloaf Pipeline.

'Critical human need' applies only to water within the River Murray channel and not to its tributaries or other parts of the wider Murray-Darling system, so therefore the Sugarloaf Pipeline will not be able to extract water from the Goulburn River under the 'critical human need' provisions.

The 'critical human needs' provisions only apply during times of extremely low inflows and low water availability within the system - where the level of water available is lower than the worst case flows provisions of the previous Murray Darling Basin agreement, such as has occurred during the last two years.

The Sugarloaf Pipeline is seeking to obtain water for Melbourne's urban water supply by making efficiency gains to irrigation systems operating under water licences which receive seasonal water allocations as a share of available water only when there is water available for allocation.

This means that during periods of extremely low inflows when the 'critical human needs' provisions are triggered there is unlikely to be any water available for allocation to the water licences that the Sugarloaf Pipeline depends on. While the rainfall patterns for Melbourne and the Murray Darling Basin differ, this is still likely to mean that the pipeline is unlikely to be able to deliver extra water in the dry years when Melbourne needs it most.

The other implication of the 'critical human needs' provisions not applying to the Sugarloaf Pipeline is that once the water is in the pipeline there are no restrictions on how that water may be used and no obligation that it only be used to meet the survival needs of humans. If Melbourne Water choose to sell it to industry or use it to water golf courses that is entirely up to them.

We have a particular concern with the diversion of water resources for uses outside of the Basin. There are two reasons for this. One is that we believe as a matter of principle our cities and towns should be aiming to use their own water resources as efficiently and effectively as possible, and we believe it makes little sense to be increasing water extraction from within the basin at a time when it is experiencing severe reductions in inflows ... particularly to move it to a city in a wetter catchment which is managing its own water resources poorly.

The second concern relates to ground water flows. When water is used for irrigation purposed within the basin there is a component of that water use which infiltrates to groundwater and eventually returns to the channel via groundwater flows. In this way the share of the total available water resource within the basin that this allocation represents effectively includes this groundwater return component, meaning that if this water is extracted and used outside the basin it is in fact having a larger impact on basin water resources that needs to be calculated and accounted for. In this way the extraction and use of 75GL outside the basin might have an impact equivalent to, say, 100GL of irrigation use.

This also means that we need careful monitoring and accounting in those situations where we are making water efficiency improvements by lining channels or replacing them with pipes or converting on-farm irrigation infrastructure to ensure that we allow for the groundwater return component. We support such improvements being made and would be keen to see Commonwealth funding for

irrigation improvements being rolled out quicker in a more targeted fashion, but emphasise that we must account fully for water recovery and water use.

The building of the Sugarloaf Pipeline has been assessed by Environment Minister, Peter Garrett under the Environmental Protection and Biodiversity Conservation (EPBC) Act, and the impact of the building of its physical structure on directly affected communities in the path of the pipeline approved. However, water extraction will have to be consistent with the water licences under which particular water allocations are received and limited to that which is made under particular seasonal allocations. It will also be subject to the Cap on Sustainable Diversions when the Basin Plan is enacted, which may well result in significant reductions in water allocations where water is currently over-allocated and extraction exceeds sustainable levels of use,⁴ as the following exchange illustrates:

Senator XENOPHON—"There have been assertions made both from the Victorian government and those opposed to the project as to what the water savings would be on that plan as it applies to other parts of the basin in terms of water saving measures. In relation to the north-south pipeline water saving assertions by the Victorian government and the contrary assertions made, what power does the authority have to test those assertions to independently audit whether those assertions or claims of water savings are verifiable?"

Mr Freeman—"The authority will have to familiarise itself sufficiently with that project to understand the economic, social and environment impacts of the project. It will have to essentially look at the project and ascertain what are the economic, social and environmental. It will have to understand the hydrology of the project. It is not there in an audit role, because what it will then do is take that into consideration in setting the sustainable diversion limit for that valley. Whether that water is applied to Melbourne or whether it is applied to irrigation is an issue for the Victorian government, but the authority will have to understand the project. ... Water resource planning is a state responsibility that sits within the framework of the basin plan."⁵

The Victorian Auditor-General in his report "*Planning for Water Infrastructure in Victoria*" (9 April 2008), concluded that "*the level of information provided to the community on water supply projects has been inadequate and needs to be improved*". Specifically, he noted "*the processes underpinning the Victorian water plan fell short of the standard the Department applied when developing the white paper and the Central Region strategy.*" He further criticised the Victorian Water Plan for "*widely varying levels of rigour around the plan's costs and expected water savings benefits.*"⁶ The project should not proceed given that there has not been an independently prepared due diligence report and comprehensive audit of the savings asserted by the Victorian Government.

The impacts of mining on groundwater systems

The Australian Greens are concerned by the potential of mining operations, such as long-wall coal mining in the Liverpool Plains region, to impact on the connectivity of groundwater systems and

⁴ Murray Darling Basin Authority, Answers to questions on notice from Senator Siewert.

⁵ RRAT Hansard, Wednesday 12 November 2008, Canberra, page 30.

⁶ Victorian Auditor-General, *Planning for Water Infrastructure in Victoria*, 9 April 2008
http://www.audit.vic.gov.au/reports_publications/reports_by_year/2008/20080409_water_infrastructure.aspx

adversely affect water quality and rates of flow. There is evidence that suggests that in some circumstances these mining operations can have unintended consequences of intercepting and diverting groundwater flows.

In response to questions on this issue, the Murray Darling Basin Authority indicated that where mining activities impact upon groundwater flows there would be a requirement that that such water 'use' is licenced⁷, saying that:

- (l) Under the *Water Act 2007* s4, interception activity means the interception of surface water or ground water that would otherwise flow, directly or indirectly, into a watercourse, lake, wetland, aquifer, dam or reservoir that is a Basin water resource. An action that intercepts water is an interception activity under the Act.

The MDBA also asserted that the potential of such mining activities to impact upon groundwater flows might require pre-assessment, asserting:

- (j) Subsection 22(7) of the *Water Act 2007* provides that the Basin Plan may require that interception activities with, or with the potential to have, significant impacts on the water resources of the water resource plan area are assessed to determine whether they are consistent with the water resource plan before they are approved ... and may require that water access rights be held for specified kinds of interception activities. This provision provides a pathway to address such an issue.

While the answers from the MDBA indicate that such mining activities would be recognised as water interception activity for the purposes of the Act, and the existing provisions of the Act would provide the Authority with remedy once this situation occurred, the Australian Greens remain concerned that under many circumstances it may be impossible to repair the damage (or prohibitively expensive). On this basis the Australian Green believe that a proactive preventative strategy is warranted and the requirement for such assessment activity should be made explicit in the Act.

To this end, the Australian Greens believe that section 255 of the Act should be amended to ensure that, prior to exploration licences being granted for mining operations an independent expert study must be undertaken to determine the impacts of the proposed mining operations on the connectivity of groundwater systems, surface water and ground water flows and water quality. Where a substantial risk is identified, these exploration licences should not be granted.

The Australian Greens acknowledge the work of Tony Winsor MP on this issue and note that he moved similar amendments to the Act in the House of Representatives. We also note we believe that such an amendment does not impact upon the water sharing and governance arrangements contained within the intergovernmental agreement (Schedule 1) and the referral of powers by State Governments.

⁷ Murray Darling Basin Authority, Answers to questions on notice from Senator Siewert, page 2 item (i)

Chapter 2: The Way Forward – *The MDB 2010-2050 Plan*

The need for a planned and integrated approach to investment

The Australian Greens believe that a more integrated approach to water buyback, infrastructure improvements and structural adjustment is needed to maximise the benefits of the reform to basin governance represented by the Water Act 2007, the Water Amendment Bill 2008, and the principles enshrined in the National Water Initiative. We share the concerns of irrigation communities, environmental advocates and water policy experts about the ad hoc nature of the current water buyback process, the timeframe within which the \$12.9 billion *Water for the Future* investment is being rolled out, and the lack of targeting, coordination and planning to bring forward infrastructure investments as part of a regional approach to building the industries and communities of the future.

As Jenni Mattila from the Bondi Group put it, there has been a lack of consideration and planning for the shape of the future basin emerging from the current restructuring process, and a lack of focus on which farming system option and in what proportion might produce the most profitable and sustainable mix:

"I think that that is probably the fairest thing to say—that we do need to think through the issues a little bit more than we have. As we know from last time, there has not been a socioeconomic impact statement done on the buyback. It is meant to be done in May next year. I think that we need to be clear that it is quite clear that the basin is actually overallocated. However, one of the things that we need to sort through is what we are going to focus on. Are we going to focus on high security water? Are we going to focus on permanent plantings—because you must have water to do that? Are we going to focus on general security water? Are we going to focus on crops that you can either plant or not plant depending on the environmental conditions? From what I can see, those sorts of issues have not been thought through in enough detail."⁸

The Australian Greens want to see a focus on ensuring the viability and ongoing profitability of our most sustainable and productive food production areas, and appropriate support given to farmers who want and need to transition to more adaptable and resilient farming systems. We want to see clear and reliable information given to farmers and communities about the kind of future they face, the choices that have to be made and the relative prospects of their region. We believe that the basin communities are best positioned to make decisions about the future prospects and shape of their districts and regions once they are given the information, tools and support to do so.

The Australian Greens would like to see an honest and open debate with the community about the future shape of the basin. We want to see a process for taking the Murray Darling Basin forward that puts community at the centre of the decision-making process, rather than excluding them from the debate. We believe that a focus on planning for sustainable regional communities can allow individual landholders to come together to discuss how they can balance investments in infrastructure, structural adjustment and the sale of water allocations to ensure planning with appropriate economies of scale to ensure communities can thrive and grow into the future. An excellent example of how such an

⁸ Bondi Group, RRAT Committee Hansard, Thursday 13th November 2008, pages 8-9.

approach can succeed is given in the case study of the Torrumbarry Reconfiguration and Asset Modernisation Strategy (TRAMS) discussed in the submission from ACF⁹:

"I have been having discussions with irrigation corporations, water services committees and irrigation districts, and one of their concerns is that an ad hoc approach to water purchase across the basin could have that Swiss cheese effect—leaving stranded infrastructure and so on. ... One of our concerns is that the investment in infrastructure improvement could end up creating gold plated infrastructure where ... we will end up with gold plated stranded assets in the future.

... Those communities across the basin have had enough time now to really start thinking about what is the best option for them in a 50- to 100-year time frame looking at the impacts that climate change is likely to have on them. The resounding message is that the best outcomes will come not from keeping the buyback separate from infrastructure improvement and structural adjustment but from integrating those different funding streams into a single program and looking at the process of change from the irrigation district level upwards. An example of that would be the Torrumbarry irrigation district, which has got its community together, looked at the long-term impact of climate change and other risks to its area, taken a realistic view of what really good areas will remain viable for irrigated agriculture into the future and what areas will not be viable for irrigated agriculture into the future and asked what the best use for that land is. Is it conversion to dryland cropping? Is it conversion to grazing? Is it for some other purpose, for example carbon credits or some sort of ecosystem services investment. That district has really tried to work out from that understanding what the types of land and water reforms are which are necessary to put them on a sustainable trajectory.

One of the biggest improvements could be made to the basin not by the Commonwealth government maintaining the silos over its different funding programs but by bringing them together and starting to ask those irrigation communities to have a good hard look at what they think their futures ought to be. That is not only because it is a 50- to 100-year time frame that we are looking at but also because those communities are ready for change. We are not where we were two years ago, when communities were saying: 'There is nothing wrong with us; we will be fine. The environment doesn't need any more water, and we want it all for irrigation.' There has been a quantum shift in the attitude of most of those communities, who know that change is required and want to be involved in the process."¹⁰

In putting the position of the National Farmers Federation to the RRAT inquiry, Ben Fargher also advocated for an integrated approach to the investments made through *Water for the Future*:

"Our position on these things is that we have supported the water reform agenda; we have supported the government's reform—we have got some modification of technical detail; we have supported the operation of the market; and, if acquisition is to occur, it will be from willing sellers only. We also want that linked as a strategic package with investment on farm to help farmers do more with less on farm and through system. It is not as though we have a policy on the specific purchase or otherwise of that particular property. Our concern is

⁹ Submission 5, ACF. *Land and water reform in the Murray Darling Basin*, pages 4-5.

¹⁰ Dr Arlene Buchan, ACF, RRAT Committee Hansard, Thursday 13th November 2008, pages 17-18.

focused only on buyback if it is not integrated in a package with on-farm and through-system investment. If it is in such an integrated package and governance reform and other issues—such as metering and monitoring and the acceleration of the National Water Initiative—are happening, farmers and irrigators are happy to engage in the water reform process in this country. If it is being done non-sequentially, then obviously we have a concern.

With our lobbying activities we are saying, 'Let's keep it together. Acquisition will be from willing sellers only. Farmers and irrigators need a healthy river too. But, with food shortages and all the challenges that we face in regional Australia, let's back farmers to do more with less on farm and through system as well.' We have a record of delivering more with less; we can do more so in the future, but we need the tools to be able to do it. If we can keep those two aspects together, then we will be centrally engaged in the debate."¹¹

There is a real danger that the current ad hoc approach will deliver what Dr Arlene Buchan described as a "Swiss cheese" effect – with holes in irrigation infrastructure where individual irrigators have been forced by financial pressures to bail out that make it harder for their neighbours to maintain existing irrigation infrastructure ... increasing both the risk of stranded assets and the likelihood of the economies of local communities dropping below sustainability thresholds. As Professor Mike Young put it:

"...There is a real risk that we could spend on infrastructure that proves to be redundant. It is a very difficult time. The National Water Initiative, which all governments agreed to comply with, requires a level playing field. What is happening at the moment is that we are finding bits of the system that are inefficient and we are upgrading them. That breaches the National Water Initiative. There is a real risk this could come at a cost to the nation. While investment goes into the core bits of infrastructure, which you would expect to survive no matter what happens, there is no problem. If we go one step further than that, my strong advice as an economist dealing with issues like this is that we reset the system in terms of the overall plan, first, which includes looking at the structure of the river, because there is natural infrastructure, and then there is built infrastructure for supplying water. We are upgrading the built infrastructure, but we have not yet looked at the natural infrastructure, the river itself, and that must also be a priority."¹²

As was pointed out in evidence to the committee by Deborah Kerr from the National Farmers Federation there is a significant opportunity that is being missed to invest in irrigation infrastructure improvements at a time when low or zero allocations have meant that many irrigation properties are not in operation.

"If you look at the drought, currently many irrigation farms are not being utilised. Now is an ideal opportunity for those works to be undertaken, as there could also be some beneficial flow-on impacts to communities where currently contractors who used to do sowing, harvesting or whatever for farmers perhaps could be used to implement these on-farm works. So, with the drought, we think there would be some beneficial impacts to communities if those works were rolled out here and now."¹³

¹¹ Ben Farghar, NFF, RRAT Committee Hansard, Wednesday 12th November 2008, page 12.

¹² Prof. Mike Young, RRAT Hansard, Wednesday 12 November 2008, Canberra, page 5.

¹³ Ms Deborah Kerr, NFF, RRAT Hansard, Wednesday 12 November 2008, Canberra, page 12.

Investing in infrastructure improvements during this 'forced downtime' would provide much-needed jobs and cash-flow to the basin communities that are hurting the most. It would also give irrigators something to do with during this time of despair and provide that other commodity that is in particularly short supply within the basin at the moment – hope.

"... I think that, importantly, in order to achieve that, to expedite the implementation of the act and the Water for the Future program we should be accelerating the rollout of the Commonwealth programs— all of the buyback, the infrastructure investment and the structural adjustment programs; these are all important parts of the reform process. There is no justification for delaying the rollout of any of them. I think that there are great opportunities to not maintain those as individual, separate, siloed projects anymore but to integrate the investment of those different funding streams. And there are great opportunities to be looking from an irrigation district upwards—giving communities some of the information and the tools they need so that they can start planning their irrigation districts and work out what they want them to look like in the future. So, kind of moving away from the ad hoc implementation of those programs, to looking at an irrigation district and asking: what do they want this area to be like over a 50-year, 70-year, or 100-year time frame, taking into consideration the impacts that climate change and so on will have, and giving them some of the information and tools they need to be involved in the decision-making and the planning process."¹⁴

In addition to the evidence presented by both the ACF and NFF about the need for and benefits of a planned and integrated approach, Dr Don Blackmore also advocated a similar approach during the previous RRAT inquiry into the Murray Darling Basin, Coorong and Lower Lakes:

"Given that there are significant community assets, I want to see the irrigation community not protected but supported in the future, because I see them, as I always have, as a very important part of the future of Australia. ... But it is not going to be the same industry, so which bits of the industry are we going to deal with? The first issues you have to deal with are how you are going to rebalance it with the environment and what climate change number you are going to pick to put into the equation, because it will be different for each river.

Who is going to do that? The science is not going to give you that. It is a judgement call because, as you would have heard today I imagine, the rainfall variation under the climate models is still significant, even though the aggregated impact is pretty clear.

The second issue you have is: what are you going to do with an irrigation industry? On the basis of the evidence that I see, you have to remove the consumptive burden on the basin by between 15 and 30 per cent. How do you do that equitably? Are you going to let the market do it? You can work out how the Commonwealth should invest and in which areas it should invest. At the moment it has a market mechanism in which people are willing sellers, but they are willing sellers because of where they are on their mortgage and not where they are located in the landscape. I am an observer of this now and not managing it, so I can probably be a bit more freewheeling, but what I see is that in one area we go out and we buy water and in exactly the same channel system we are investing millions of dollars to upgrade the channel system so it is an effective part of our future.

¹⁴ Dr Arlene Buchan, ACF, RRAT Hansard, Thursday 13th November 2008, page 10.

... We need to go and talk to the leaders of the industry, the Laurie Arthurs and a heap of others, and ask, 'What is a healthy industry?' We need to sit down with them and say, 'This industry is going to change, unfortunately'—we would all like it to be more comfortable, but it is going to change—'so how do we facilitate that change in such a way that we leave a viable industry and viable communities in place?' The current market mechanisms are not taking very much water out of the system, so they do not much matter. But, if you are going to get into a significant market intervention, you would want to have some better navigation in this space."¹⁵

Dr Blackmore also provided some information about how existing data could be put together to assist irrigation communities in their planning and decision making:

"In the irrigation industry, it is relatively easy to set out the profit at full equity for farms. Take the ABS and GIS data and lay it out; you can soon see where the properties that are not going to be viable in the medium to long term exist. You lay over that two or three other biophysical parameters. One of them is the salinity of the groundwater, the second one is the depth of the groundwater and the third is access to drainage. You soon understand which people are irrigating in areas where it is going to be very difficult to sustain them in the future. As it turns out, because of the way the geomorphology of the southern basin is laid out, many of those properties are located towards the end of channel systems, where it is more saline, away from the rivers and the alluvial and near-alluvial plains. Many of those people already are the water traders and many of them hang on to their water because it has been profitable for them to be a speculator. They have been in the business for a very long time, have low debt and can trade. I know many of them personally. They do very nicely out of it.

These areas also require water to travel hundreds of kilometres down channels. If you believe what I am saying—that water is going to concentrate more in the summer—it would be better to take some of that burden off the channel system to make the rest of it more effective for those that remain. So what I am suggesting is—something that is a little different from what Mike was suggesting—that we go in and we target the areas that we should be purchasing water on. We should pay a premium to purchase water from those areas, for two reasons. One is that you want people to go out with dignity. The other is that you are going to get the channel losses back as a saving as well, so you can afford to pay a premium. Not only do you get the water right, you also get the channel losses."¹⁶

The Australian Greens do not want to see some of our smartest and most efficient farmers walking off potentially productive properties in some of our more sustainable districts because of the uncertainty, or because of financial difficulties that have nothing to do with the profitability of their enterprises and everything to do with the costs of credit at a time of extremely low water allocations. We have expressed concern in the past about the risk of investing in infrastructure improvements on what may become stranded assets. Taking a planned approach to targeting infrastructure investment based on planning at the irrigation district level with the support of the best available science on its future

¹⁵ Dr Don Blackmore, RRAT Hansard, *MDB and Coorong and Lower Lakes inquiry*, Tuesday 9th September, Canberra, Pages 92-3.

¹⁶ Dr Don Blackmore, RRAT Hansard, *MDB and Coorong and Lower Lakes inquiry*, Tuesday 9th September, Canberra, Pages 94.

prospects would be a way to minimise this risk – while at the same time helping to build community engagement at a time where community support is at its most valuable.

To this end the Australian Greens are advocating a *MDB 2010-2050* plan and recommend that the Commonwealth Government should:

- **Resource and support community planning as a matter of priority**
- **Enable communities to produce plans which integrate infrastructure investment, water sales and structural adjustment**
- **Provide incentives and support for them to do so**
- **Give integrated community plans priority in assessing funding applications**
- **Empower the MDBA to develop an indicative but non-binding Basin Plan (including likely levels for catchment sustainable diversion limits) as quickly as possible to support this community planning process**
- **Create community planning support teams and resources to bring together expertise in relevant fields and to produce decision-support tools including district maps with overlays of relevant information**
- **Learn from and publicise successful community planning initiatives (such as TRAMS) and facilitate the sharing of knowledge and experience between communities**
- **Develop a vision for the Basin in 2050 of a vibrant community sustained by a healthy river system that delivers food, fibre and ecosystem services to the nation – with all communities plans finalised and underway by 2010.**

Recommendations

That Basin Plan be developed and implemented by 2011.

That existing State water sharing plans should be required to come into line with the Basin Plan within 6 months of its release, and not delayed until 2014 (or 2019 in Victoria).

That the principles of the National Water Initiative and the proportional allocations indicated under existing water sharing plans be used as a basis for revising those plans where they exceed the sustainable limit on extraction set out by the Basin Plan.

That the Bill is amended to:

- **tighten the definition of 'critical human need'**
- **exclude consideration of new extractive uses outside of the basin in the provisions of the Basin Plan**
- **ensure the Act and the MDBA have an explicit focus on managing environmental health and resilience**
- **achieve integration with EPBC and compliance with Ramsar and other international environmental treaties (which has been partially implemented)**
- **ensure that water entitlements are defined as shares of available water, and take into account the variability of the northern basin**
- **reduce the ability of the Minister to direct the MDBA and to give it more independence**
- **Include public standing provisions comparable to the EPBC Act to ensure public accountability and to facilitate enforcement of the Act**

- to ensure that, prior to exploration licences being granted for mining operations an independent expert study must be undertaken to determine the impacts of the proposed mining operations on the connectivity of groundwater systems, surface water and ground water flows and water quality.

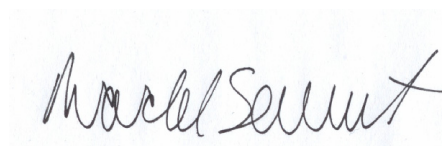
That the Commonwealth Government support and develop a *MDB 2010-2050 Plan*, to develop a vision for the Basin in 2050 of a vibrant community sustained by a healthy river system that delivers food, fibre and ecosystem services to the nation, by:

- making community planning a matter of priority
- enabling communities to produce plans which integrate infrastructure investment, water sales and structural adjustment
- providing incentives and support for them to do so
- giving integrated community plans priority in assessing funding applications
- Empowering the MDBA to develop an indicative but non-binding interim Basin Plan (including likely levels for catchment sustainable diversion limits) as quickly as possible
- creating community planning support teams and planning resources to bring together expertise in relevant fields and to produce decision support tools including district maps with overlays of relevant information
- publicising successful community planning initiatives (such as TRAMS) and facilitating the sharing of knowledge and experience between communities
- ensures community plans are up and running by 2010

Conclusion

The Basin is facing a crisis of a scale and magnitude that outstrips any agricultural or environmental challenge of the past. The magnitude of our response must reflect this scale if we are to avoid serious social consequences for basin communities, a significant threat to our food security, and the irretrievable loss of precious habitats. Importantly, our response must also engage and empower basin communities to rethink the way they use water resources looking to a future in which there may be much less to go around. We need to support and empower communities to build a vision of a vibrant and resilient Murray Darling Basin for 2050 and provide the resources they need to restructure and rebuild their economies. An *ad hoc*, Swiss cheese approach will not deliver a sustainable future. We have only one chance to get this right.

Commonwealth, State and Territory Governments have a choice – they can provide democratic leadership and partner with communities to build this future ... or they can continue with the parochial, lowest common denominator approach that has, over the last century, been at the root of our problems with whole-of-basin governance and over-allocation.



Senator Rachel Siewert
Australian Greens Senator for Western Australia

WATER AMENDMENT BILL 2008

MINORITY REPORT

SENATOR NICK XENOPHON

I endorse and support the remarks and conclusions contained in the minority report of the Australian Greens into the Inquiry on the *Water Amendment Bill 2008*.



NICK XENOPHON
Independent Senator
for South Australia

Appendix 1

List of Submissions

- 1.** Mr Greg Cameron VIC
- 2.** Environmental Defender's Office (NSW)
- 3.** National Parks Association of NSW
- 4.** National Farmers' Federation ACT
- 5.** Australian Conservation Foundation VIC
- 6.** Murray Lower Darling Rivers Indigenous Nations SA
- 7.** NSW Irrigators' Council NSW

Appendix 2

Witnesses who appeared before the Committee at Public Hearings

Wednesday, 12 November 2008

Parliament House

Canberra

The Wentworth Group

Professor Michael Young, Water Economics and Management

National Farmers' Federation

Mr Ben Fargher, Chief Executive

Ms Deborah Kerr, Manager-National Resource Management

Plug the Pipe

Mr Ken Pattison

Mr Chris Harrison

Murray-Darling Basin Authority

Mr Robert Freeman, Acting Chair and Chief Executive Officer

Dr Tony McLeod, Executive Manager, Water Planning, Basin Plan Division

The National Irrigators Council

Mr Andrew Gregson, Chief Executive Officer

Thursday, 13 November 2008

Parliament House

Canberra

The Bondi Group

Ms Jenni Mattila, Coordinator

Australian Conservation Foundation

Dr Arlene Buchan, Healthy Rivers Program Coordinator

Department of Agriculture, Fisheries and Forestry

Mr Allen Grant, Executive Manager, Agricultural Production

Mr Michael Ryan, Manager, Irrigated Agriculture

*Mr Peter Gooday, Manager, Productivity, Water and Fisheries Branch,
Australian Bureau of Agricultural and Resource Economics*

Department of Environment, Water, Heritage and the Arts

Dr James Horne, Deputy Secretary

Mr Robert Orr, Deputy General Counsel, Australian Government Solicitor

*Ms Robyn Briese, Australian Government Solicitor, acting as counsel to the Water
Policy Branch*

Mr Russell James, Water Policy Branch

