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## What else is needed for an environmentally credible Commonwealth Water Act?

Victoria's refusal to refer their necessary powers to the Commonwealth has meant that the Commonwealth is now relying on their external affairs powers to exert jurisdiction across water management. This means they have drawn on international obligations under the Ramsar Convention, Convention on Biological Diversity and Migratory Bird Agreements. Consequently the Federal Water Act must genuinely give effect to these agreements and address a number of issues to secure the future of our rivers, wetlands and wildlife.

The National Plan for Water Security (NPWS) was cautiously welcomed by conservation and farming groups alike when it was unveiled by the Prime Minister in January this year. Since then, the Water Act, which is to give effect to the NPWS, was rushed through several iterations and rounds of limited consultation with key stakeholders.

ACF remains supportive of the NPWS in principle. But the Water Act requires significant amendment if it is to effectively achieve the objectives of the NPWS and the National Water Initiative, particularly restoring rivers and wetlands to healthy ecological condition. The gaps and inadequacies in the Act call into question the environmental credibility of the overall plan as it currently stands, which itself could be improved on several fronts (see brief comments on page 4).

The following key areas remain outstanding:

### **Murray-Darling Basin Authority must be independent as promised**

A history of poor, parochial decision making by the states, perpetuated by a dysfunctional Murray-Darling Basin Commission, is a major reason the Murray-Darling Basin is in dire straits. The NPWS aims to remedy these issues and the problems of political interference by instituting an independent Murray-Darling Basin Authority to make decisions on best available science. This was articulated in the 23 February Communiqué.<sup>1</sup>

This commitment is not fully reflected in the Water Act - the Minister can still give the Authority a range of directions, including over two key aspects of its role – setting a sustainable diversion limit and developing an environmental watering plan. Similarly if the Authority is bound by a Ministerial Council (as proposed in the IGA) its independence and ability to function free from political interference will clearly be inhibited.

Current arrangements will also have a MDB Authority in tandem with the existing MDB Commission which will only add further complexity and red tape to a system that has already suffered from poor institutional arrangements in the past. While ever these arrangements remain, changes must be made to the Commission to overcome parochial lowest-common denominator outcomes, such as those suggested by John Scanlon.

If the new governance arrangements are to avoid previous mistakes and weaknesses and fix the water problem once and for all, the Act should be amended to provide for:

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<sup>1</sup> [www.pm.gov.au/government/water.cfm#security](http://www.pm.gov.au/government/water.cfm#security)

- An independent, skills based Authority that has the ability to develop the Basin plan and environmental watering plan, and set and enforce ecologically sustainable diversions limits on the basis of best available scientific evidence without Ministerial intervention.

### **A robust sustainable diversion limit is essential for an environmentally credible Water Act**

Robust criteria to guide the development of the sustainable diversion limit will give the public greater confidence that the plan will indeed deliver on its commitment to tackle over-extraction and deliver a healthy system.

The Act should be amended to require the Authority to ensure the sustainable diversion limit:

- reflects an ecologically sustainable share of the total resource and is not based on volumetric limits;
- flexibly responds to wet periods and dry periods;
- protects the environment in critical low and medium flow years;
- takes into account climate change impacts to protect critical minimum environmental flows;
- uses median figures, which reflect the reality of flows in the system more effectively than long term averages; and
- takes into account the double accounting of surface water and groundwater.

The reference to “long term average” in regards to the sustainable diversion limit should also be removed.

### **Protection for internationally and nationally significant wetlands and threatened species**

The Commonwealth has made it clear that they are relying on international commitments to wetlands and biodiversity to take the Water Act forward. Hence they are clearly obligated to now begin to fulfil outstanding commitments and protect wetlands, principally by reducing extraction to ecologically sustainable levels in order to provide much needed environmental flow.

As well as promoting water security for irrigators, the Water Act must protect high conservation value freshwater assets, including the integrity of Ramsar wetlands, threatened species and ecological communities. Currently the protection offered by the principal national legislative vehicle for conservation, the Environmental Protection and Biodiversity Conservation (EPBC) Act, is unable to either secure flow regimes for these assets, or to provide adequate protection for our wetlands and their wildlife.

Whilst not limiting the Authority, the Water Act must be amended to spell out some requirements for the Authority to deliver on these international commitments, including:

- Ensure that plans and strategies developed under the EPBC Act are incorporated into the Basin Plan and environmental watering plan to give effect to them;
- Require Ramsar management plans to be mandatory and provide the Authority with the ability to prepare plans if agencies fail to do so;
- Require that the impact of *all* actions likely to have a significant impact on matters of national environmental significance be subject to assessment and approval under EPBC Act;
- Include an explicit requirement that investment through the National Plan for Water Security be directed by the Basin Plan, and;
- Include a requirement that the Basin Plan ensures that enough water is set aside to mitigate the impacts of climate change and other risks on key wetlands and threatened species.

## **The Darling River Basin – missing in action**

The Darling River Basin must be effectively integrated into the Water Act – it is of critical importance to flows in the lower Murray River and its icon sites and to Adelaide’s water supply. The Darling also has iconic and internationally significant wetlands of its own.

The Water Act is centred on the Murray River Basin, which is quite different from the Darling River Basin in terms of geography, climate and the way water is extracted and used in irrigation. In particular most of the \$6 Billion for modernising irrigation is unlikely to find its way to the Darling, leaving it with very little real investment to address its water woes.

The Water Act should be amended to ensure it has:

- The explicit jurisdiction and capacity to protect environmental flows from diversion and theft; and
- The ability to regulate water extraction from river plains (floodplain harvesting) and associated development to address overextraction and development that inhibits the delivery of environmental water.

## **A robust environmental watering plan must include targets and timelines**

Firm targets and timelines for water recovery would improve planning and accountability and increase the likelihood of the Water Act achieving its objective of addressing over-extraction.

The Water Act currently requires targets to be set to achieve the objectives of the Basin Plan. This is a start, but for the Water Act to be a robust and credible piece of legislation there should be:

- Explicit requirements for the environmental watering plan to include not only targets that specify quantities and outcomes, but also timelines or environmental water recovery, and benchmarks or annual milestones for environmental watering.

## **The Environmental Water Holder needs to be free from inappropriate limitations**

The Commonwealth Environmental Water Holder should be free to acquire, hold and use water to most effectively achieve NPWS objectives and restore the environment. It should not be subject to limitations such as the 4 per cent limit on moving water out of a designated irrigation area or the 10 per cent limit Victoria has placed on water ownership by an entity that is not a landholder.

- The limited exemption of the Water Holder from limitations currently in the Water Act is not enough – the section included in the first draft of the Water Act (originally section 270) that ensures the Water Holder is not frustrated by arbitrary limitations at a state or regional scale should be reinstated.

## **Third party rights and public accountability**

Currently the lack of an open standing provision greatly restricts the accountability of the Act. The Act should be amended so that it contains:

- Public standing provisions equivalent to those in the EPBC Act so the Authority and the Minister can be held accountable in exercising their public interest functions under the legislation and also assist in the enforcement of the legislation.

## **What else is needed for an environmentally credible National Plan for Water Security?**

- 1 Clear timelines and targets for environmental water recovery to tackle over-allocation and over-use, including the return of at least 1,500 gigalitres to the Murray River by 2014.
- 2 Commitments to immediately finance the recovery of urgently needed environmental flows

- 3 A commitment to formally recognise and manage a broader suite of nationally significant High Conservation Value (HCV) freshwater areas
- 4 Commitments to mitigate the impacts of climate change on critical basic environmental water so that our river system, wetlands and wildlife are resilient to the changing climate.
- 5 Clear coordination between the Basin Plan and the \$10 Action NPWS investment packages to ensure cost efficient, effective water recovery to address overuse.
- 6 Independent chair for the Basin Community Committee.
- 7 Streamlined and efficient water management and decision-making for the MDB within one independent body the MDB Commission and MDB Authority with their own Ministerial Councils and advisory committees.

### **Related resources**

Joint environment groups' comments on the 2<sup>nd</sup> draft of the Water Act 2007:

[www.acfonline.org.au/uploads/res\\_water\\_Act.pdf](http://www.acfonline.org.au/uploads/res_water_Act.pdf)

Six Critical Tests for the Murray-Darling agreement:

[www.acfonline.org.au/uploads/res\\_FINALWATERPLAN.pdf](http://www.acfonline.org.au/uploads/res_FINALWATERPLAN.pdf)

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