



NSWIC
NEW SOUTH WALES
IRRIGATORS'
COUNCIL

PO Box RI437
Royal Exchange NSW 1225
Tel: 02 9251 8466
Fax: 02 9251 8477
info@nswic.org.au
www.nswic.org.au
ABN: 49 087 281 746

Briefing Note

COMMONWEALTH WATER ACT AMENDMENT ACT

081030

Andrew Gregson
Chief Executive Officer

Member Organisations: Bega Cooperative Limited, Border Rivers Food & Fibre, Coleambally Irrigation Co-Op Ltd, Cotton Australia, Gwydir Valley Irrigators' Association Inc., Hunter Valley Water Users' Association, Lachlan Valley Water, Macquarie River Food & Fibre, Murray Irrigation Limited, Mungindi-Menindee Advisory Council, Murray Valley Water Diversers' Association, Murrumbidgee Groundwater Preservation Association, Murrumbidgee Horticultural Council Inc., Murrumbidgee Irrigation Ltd, Murrumbidgee Private Irrigators' Inc., Namoi Water, NSW Farmers' Dairy Committee, NSW Farmers' Association, Ricegrowers' Association of Australia, Richmond Wilson Combined Water Users Association, Riverina Citrus, Southern Riverina Irrigators, South Western Water Users', West Corrgan Private Irrigation District, Wine Grapes Marketing Board.

Introduction

The Commonwealth Government has introduced the Water Amendment Bill 2008 into the House of Representatives.

The introduction of the Bill follows the Inter Governmental Agreement executed by Basin States. It formalises the Commonwealth assumption of control in the Basin.

In essence, the Bill seeks to amend the *Water Act (Cth) 2007* (“the Act”) on the basis of the COAG agreements.

Construction of the Bill

The Bill is in four parts:

1. The Bill

The Bill is very short, consisting of a Title, a Commencement provision and reference to the Schedules.

The detail lies in the Schedules.

2. Schedule One

This Schedule lists amendments to the Act derived from the referral of powers currently underway from the States. (Note that NSW has passed legislation, and VIC, QLD and SA have introduced but not yet passed legislation).

Further, this Schedule annexes the Murray Darling Basin Agreement to the Act, effectively enshrining it in legislation.

3. Schedule Two

This Schedule lists “other” amendments. That is, those other than amendments deriving from the IGA process. They are initiatives – and within the power – of the Commonwealth. Many are technical in nature.

4. Schedule Three

This Schedule deals with the transferral process from the MDBC to the MDBA.

This construction makes the task of assessing changes difficult. A “tracked changes” version of what the Act will consist of if all amendments are passed is available from our office.

Points of Interest

NSWIC, with assistance from member and other organisations, has considered the Bill in detail, identifying several key points.

New Section 18C

This section deals with the process of making amendments to Schedule 1 by regulation.

Schedule 1 is the Murray Darling Basin Agreement, which includes interstate (Murray) water sharing arrangements. NSWIC has maintained that the Agreement must not be changed without the agreement of all states. We hold concerns that these new arrangements may give power to the Commonwealth Minister to unilaterally change the Agreement by Regulation.

The new section reads:

“The regulations may make amendments to Schedule 1 by incorporating into the Agreement amendments made to, and in accordance with, the Murray-Darling Basin Agreement.”

That is, the Bill suggests that the Schedule can be changed by Regulation only in accordance with the Schedule (a rather circular arrangement). That said, if the Agreement is now a Schedule to an Act, then the Minister (via Parliament) can potentially amend the Schedule without reference to the States – exactly what NSWIC has consistently opposed.

New Section 18H

This section now provides that the MDBA must, on request by Living Murray, manage the water owned by Living Murray.

Section 21

Amendments to this section will see a wide range of ecological issues required to be addressed by the MDBA in formulating the Basin Plan, including consideration of RAMSAR wetlands and the like. Whilst immaterial in terms of dictating the impacts of the Basin Plan, it will add a significantly to the workload of the MDBA.

New Section 43A

This section implements the COAG agreement with respect to consideration by the Ministerial Council of the Basin Plan. It also codifies the requirement that the MDBA provide social and economic advice to the Ministerial Council with the draft Basin Plan.

New Section 47A

This new section codifies the process of the Ministerial Council being offered the opportunity to make comment on any amendment to the Basin Plan.

New Section 75(1A)

This section effectively precludes irrigators from having climate change be classified as new knowledge (by reference to the NWI) for the purposes of risk assignment.

This is a significant setback for our argument. We note that there has been **absolutely no consultation** as part of this move. It should be viewed as a pre-emptive blow to what should have been a mutually beneficial engagement between government and irrigators.

Minister Wong has previously indicated that the distinction between climate change and new knowledge would be made by the MDBA. This amendment precludes a significant portion of that distinction and should be viewed as a reversal of the position put to irrigators by the Minister.

New Section 86 A to J

This new series of sections deals with Critical Human Needs (CHN).

Section 86A(2) defines CHN widely pursuant to the IGA. NSWIC has maintained (along with the NIC) that CHN should be limited to drinking, sanitation and health only. We will continue to pursue this definition.

Further, implementation of Tiers 2 and 3 (or, importantly, the preparation for such implementation) will have impacts of irrigation reliability. This is a policy change and therefore should be compensable pursuant to the NWI risk assignment principles. This should be detailed in the Bill.

Section 105(5)(b)

The Commonwealth Water Holder will be able to apply their water to environmental assets outside the MDB.

Section 202(7)

The Basin Community Committee will now have representation from forestry groups.

Section 204(3)

This amendment effectively gives the Ministerial Council a veto power over BCC members.

New Section 239R

This amendment allows committees of the MDBC to become committees of the MDBA. Theoretically, this could allow the CAC to be rolled over into the BCC – a move which NSWIC (and NIC) have opposed.

It is unlikely, given the assurances of Minister Wong, that this will occur. Further assurances will be sought.

The Agreement

Section 91

This new Section codifies the COAG Agreement for South Australian access to upstream storages for both CHN and private carryover. For CHN, storage must not affect water availability for NSW and VIC but it can affect storage access. Private carryover must not affect either access or availability.

A major concern, however, is that 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 in the cap on annual extractions, the impact of which will be felt by NSW and VIC irrigators as a drop in reliability.

A simple method of dealing with both issues is to describe – explicitly – the SA carryover provisions as policy change, hence triggering Clause 50 of the National Water Initiative (risk assignment). NSWIC will actively pursue this.