



**Submission to the Independent Expert Panel appointed by the
Federal Department of Environment on the**

2014 REVIEW OF THE *WATER ACT 2007* (CTH)

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NSW Farmers' Association Background

The NSW Farmers' Association (the Association) is Australia's largest state farmer organisation representing the interests of its farmer members – ranging from broad acre, livestock, wool and grain producers, to more specialised producers in the horticulture, dairy, egg, poultry, pork, oyster and goat industries.

Executive Summary

NSW Farmers welcomes the opportunity to provide a submission to the Independent Panel tasked with undertaking a review of the Water Act 2007 (Cth). NSW Farmers are confident in the panel and the process outlined to date and we look forward to an ongoing dialogue along with our national counterparts the National Farmers Federation (“NFF”) and our state based irrigator representatives, the NSW Irrigators’ Council (“NSWIC”) on this issue.

NSW Farmers’ submission will not differ largely from that of the NFF and the NSWIC, and we submit the below comments along with endorsement of those two submissions.

After the announcement of the review and the independent expert panel in early 2014, the NSW Farmers’ president wrote to the Parliamentary Secretary to the Minister for the Environment recommending the inclusion of two additional aspects in the terms of reference for the review. These points relate to, firstly, a closer scrutiny of the effects of the Murray Darling Basin Plan (“MDBP”) and in particular, analysis of the environmental water entitlements. Secondly, we feel that the commercial considerations for trading environmental water entitlements, and third party impacts from environmental flow targets should also be considered. NSW Farmers’ submission will focus on these additional recommendations. We particularly support the submissions of the NFF and the NSWIC on the existing points around consistency and clarity at both a state and national level.

NSW Farmers submits that it is important to analyse the effects of the MDBP to date, and not merely whether the water trading is occurring as per the Act and the Plan. NSW Farmers was encouraged to note the inclusion of the additional terms of reference announced by Senator Birmingham on 12th May 2014, being the effectiveness of the Act in achieving its objectives. We are pleased to note this inclusion as the objectives relate closer to the management of the Basin water resources in the national interest (section 3 (a)) and promoting the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes (section 3 (c)). Consideration of these objectives in particular are what NSW Farmers believes was a significant cause of concern in the original formation of the Act and an analysis of these objectives will prove the most productive use of the panel’s time and expertise during this important review period.

In summary, NSW Farmers recommendations to the Panel at this early stage in the review are:

That the terms of reference for the Water Act 2007 include an assessment of:

- ***The role of the MDBA with a transparent Cost Benefit Analysis (CBA),***
- ***The commercial considerations for trading environmental water entitlements,***
- ***The third party impacts from environmental flow targets,***
- ***The balance between social, economic and environmental considerations with a clear analysis,***
- ***The practical implementation and viability of the additional 450GL “up water”, above the 2750GL sustainable diversion limit.***

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1. The role of the MDBA and commercial considerations

It is NSW Farmers' submission that the Murray Darling Basin Authority ("MDBA") lacks transparency, clarity and accountability when it comes to its operations in the context of achieving outcomes set out in the Act and the Basin Plan.

The consideration of the MDBA's work to date would be more beneficially utilised if complemented with a comprehensive cost-benefit analysis of the Authority's work. This, along with commercial considerations for trading environmental water entitlements, is key information to invoking an educated debate of policy. Furthermore, such an analysis would go some way in fulfilling the 'triple-bottom-line' objectives which are peppered throughout the extensive Murray Darling Basin Plan documentation and supporting documents.

In this regard, the following terms of reference are relevant.

Section 253 (2)(a)(i): An assessment of the extent to which the management objectives and outcomes of the Basin Plan are being met

The management objectives and outcomes of the Basin Plan are found in Chapter 5 of the Basin Plan (and section 21 of the Act):

As a whole:

- *To give effect to relevant **international agreements** through the integrated management of Basin water resources; and*
- *To establish a sustainable and long-term **adaptive management framework** for the Basin water resources, that takes into account the **broader management of natural resources** in the Murray-Darling Basin; and*
- *To **optimise the social, economic and environmental outcomes** arising from the use of Basin water resources in the national interest; and*
- *To **improve water security** for all uses of Basin water resources.*
- *A healthy and working Murray-Darling Basin that includes*
 - *Communities with sufficient and reliable water supplies that are fit for a range of intended purposes, including domestic, recreational and cultural use; and*
 - *Productive and resilient water-dependent industries, and communities with confidence in their long-term future; and*
 - *Healthy and resilient ecosystems with rivers and creeks regularly connected to their floodplains, and ultimately, the ocean (emphasis added).*

In terms of international agreements, which are listed and include 'any other international convention to which Australia is a party'¹ in section 4 of the Act, the Ramsar Convention is the first listed convention to which both the Act and MDBA must be ultimately accountable to, in the fulfilment of obligations. Although successful Commonwealth coordination for a Basin Plan may have been the impetus for a reliance on the external affairs (Australian Constitution) head of power, a comprehensive analysis of the MDBA's work is appropriate, given the importance of that head of power and in order to view the issue in the 'national interest.' To use the example of the Ramsar Convention, its mission is:

¹ *Water Act 2007 (Cth) s 4.*

The conservation and wise use of all wetlands through local, regional and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world².

As can be taken from this mission, conservation of water does not and cannot occur in isolation. The inclusion of the 'wise use' principle as well as the mission towards sustainable development makes it clear that there are many factors to contribute towards fulfilment of the mission. Key public debate during the formation and initial review of the Water Act centred on whether environmental considerations were to be *prioritised* over that of social and or economic considerations. This review may not be the place to carry out that debate, which would largely come down to a legal interpretation, but regardless of a 'correct interpretation' of the Act's management objectives, it is still prudent to at least bring to bear the social and economic realities of the work of the Plan in order to take out the assessment.

The key point that NSW Farmers' members will be looking for in terms of management objectives will be the extent to which the Act is able to truly facilitate a balanced approach to triple-bottom line objectives, something which is clearly embedded in the Act and Plan. Unfortunately, the Act is silent as to what the social and economic outcomes under consideration are, and so we take a general and broad view of these terms. NSW Farmers submits that an examination of the role of the MDBA using critical analysis has been missing to date and we recommend that the Panel include this within the ambit of their review.

NSW Farmers' recommendation:

That the Water Act 2007 be amended to properly reflect the results of a cost benefit/cost effectiveness analysis of the work of the Murray Darling Basin Authority to date.

² Ramsar Convention Secretariat, 2013. *The Ramsar Convention Manual: a guide to the Convention on Wetlands* (Ramsar, Iran, 1971), 6th Ed, Ramsar Convention Secretariat, Gland, Switzerland.

2. Third party impacts from environmental flow targets and triple bottom line balance

NSW Farmers submits that the review panel include an exploration of third party impacts, be it by other water users, or in a more general sense, rural and urban communities, of environmental flow targets. This would fit into the management objectives of the Act as per section 253 and above, in both an economic and 'social' objective sense.

A key part of the Plan is to allocate the 'sustainable level of diversions and extractions from surface and ground water resources to ensure the ongoing health and resilience of the environment.'³ NSW Farmers submits that consideration needs to be given to impacts on other characteristics of the Basin that aren't exclusively the 'environment.' Farmers rely on a healthy and resilient environment for agriculture. There is not one without the other. NSW Farmers does not dispute the fact that use of water needs to be comprehensively considered and used wisely as a precious and scarce resource, however we do not accept that environmental values need to necessarily be at the expense of agricultural objectives, and quite the opposite. NSW Farmers advocacy in this space and many other policy areas is promoting the identification where these objectives can be mutually satisfied, and we firmly believe it can be the case.

For reasons stated above (point number 1), environmental considerations should not be taken in isolation of what rural communities value, as per the management objectives of the Act. We cannot have a weighting of factors if we do not have the facts and figures, and what options exist to consolidate values through the use and trade of environmental water. NSW Farmers supports a more sophisticated approach to identifying wise use of environmental water and money that flows from environmental trade. The Act mentions social and economic considerations, and the Ramsar Convention implies same, but the Act does not provide guidance on where or how to undertake considerations of this type. NSW Farmers submit that third party impacts from environmental flow targets are an integral means to analyse those considerations and that it form part of the review.

NSW Farmers' recommendation:

That third party impacts from environmental flow targets are identified and that this information be used to inform amendment to the Water Act 2007 to include guidance on a balance of social, economic and environmental factors.

³ Australian Government Department of the Environment *Water Recovery Strategy for the Murray-Darling Basin* June 2014.

3. Additional 450 GL up-water

Given that the 450 GL additional environmental water was included in the later stages of forming the Basin Plan agreement (October 2012), NSW Farmers submits that this addition needs some clarification. The NSW Office of Water has stated that if certain constraints are lifted, the Basin Plan indicates that the recovery of the additional 450GL will be from efficiency measures that do not incur any social or economic impact⁴. If this 'up water' were included in the original target for environmental water recovery, NSW Farmers could accept the fact that its effects would be purely efficiency gains. However, given that it exists beyond the 2,750GL SDL, NSW Farmers submits that the viability of the total amount of water to be retained needs examination and extrapolation, beyond that of a constraints management strategy, which has a sole and exclusive purpose.

NSW Farmers submits that an examination of the additional 450GL in addition to the 2750GL must be scrutinised in the overall context of the management objectives of the Act.

NSW Farmers' recommendation:

NSW Farmers recommends that a term of reference for the review of the Water Act 2007 be a review of the practical implementation and viability of the additional 450GL up-water, above the 2750GL sustainable diversion limit.

⁴ NSW Department of Primary Industries, Office of Water, *Basin Plan Update NSW : Issues and current progress* May 2013 page 2.

Conclusion

NSW Farmers welcome this review and believe that it is an opportune moment to review some critical aspects of the Act and the Basin Plan. A key impetus for our submissions to this review is the lack of transparency surrounding the role of the Murray Darling Basin Plan to date. NSW Farmers are confident that both the Act and our implication in international agreements mandate that we consider all three of environmental, social, and economic outcomes when forming policy under this Act. NSW Farmers also pushes for these analyses as we believe with all of the information at hand we can achieve more sophisticated solutions to water saving, for the benefit of all.