Murray Irrigation

2014 Statutory Review of the Water Act 2007

Submission to the Independent Expert Panel

July 2014

Contents

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Executive summary

The *Water Act* 2007 (*Water Act*) was drafted at a time when it was thought the Basin Plan (the Plan) would be developed and implemented as a whole and therefore the statutory requirement for a review of the Act assumes the Plan is operational.

The reality has been that the development of the Plan was a complex process and it became evident there needed to be phased implementation to allow regulators and communities to adjust. Adding to the complexity is the fact the States retain the key legal responsibility for water management and river operations.

The phased implementation is welcome; however, this cannot negate the uncertainty still felt in many communities unsure what the future will look like until the Plan and all associated measures, including the constraints management strategy and the sustainable diversion limit (SDL) adjustment mechanism have been finalised. All must be fully implemented and operational before a review of the Plan is undertaken.

The Plan and the *Water Act* have had an impact on the water market in our region. Murray Irrigation has previously raised concerns with the effect of Government water entitlement purchases on prices. The impact of less water in the consumptive pool became evident in the last water season with record high prices for allocation in a year of high water availability.

A strong and active market is welcome; however, it alone is not the answer to social and economic impacts resulting from the implementation of the Plan and the loss of water from productive use.

While these are market issues resulting from the Plan and community adjustment is not the remit of the Expert Panel, they are important to keep in mind when reviewing the *Water Act*.

A core concern for Irrigation Infrastructure Operators (IIOs) is the increased reporting requirements and the added complexity in the water market created by the multiple layers of State and Federal legislation and regulation.

IIOs are licenced to operate under State legislation and therefore have significant reporting requirements at a State level, regulated in NSW under the *Water Management Act 2000*. Many of these reports supply the same information, albeit in a different format, to those supplied to federal agencies under the *Water Act*.

The *Water Act* led to the creation of the multiple rules relating to the water market, water charging and information administered by multiple agencies.

The *Water Act* has also created other areas of duplication. A key example is the fact the *Water Act* establishes the Commonwealth Environmental Water Holder but provides for the Murray-Darling Basin Authority to manage water held under the Living Murray Initiative. Therefore, there are two agencies managing environmental water to achieve virtually identical objectives in the River Murray and tributaries.

Murray Irrigation has sought to identify specific areas of concern in the *Water Act* and relevant subordinate legislation, including Chapter 12 of the Plan. In this submission we explain the intent of our recommendations so the Expert Panel can apply judgement as to how best to achieve them.

Murray Irrigation urges the Expert Panel to carefully consider the multiple reporting arrangements and areas of duplication within the *Water Act* with a view to minimising red tape in a way that delivers on the objectives of the *Water Act* in the most efficient and effective manner.

1 Background

Murray Irrigation is pleased to provide this submission to the Independent Expert Panel and would be available to respond to any queries or to meet with the Panel to discuss this submission if required.

1.1 Murray Irrigation

Murray Irrigation is an unlisted public company that provides irrigation water and associated services to approximately 1,200 family farm businesses over an area of 748,000ha through 3,000km of channels in the NSW southern Riverina. As such, we are a Part 5 operator under the Water Charge (Infrastructure) Rules 2010.

Murray Irrigation is governed by a Board of Directors comprised of six shareholder directors and two non-shareholder directors.

Murray Irrigation's shareholders are farmers with food, fibre and livestock being the focus of regional production. Murray Irrigation's source of water is the regulated River Murray and the company's water supply is almost exclusively NSW Murray General Security water.

Murray Irrigation is a not-for-profit company and we do not pay dividends.

1.2 Membership

Murray Irrigation is a member of both the NSW Irrigators' Council and the National Irrigators' Council. We work with these bodies to ensure the interests of irrigators are represented.

2 Mandatory Terms of Reference

2.1 Assessment of the implementation of the Basin Plan

While the Plan is still in the implementation phase it is too early to assess the extent to which terms of reference 1i) to iii) have been achieved. Certainly steps have been taken towards achieving the objectives and outcomes of the Plan, however, until the Plan is fully implemented in 2019, and the SDLs are finalised in 2024, communities are still in a state of flux and cannot be sure what their future looks like. In fact it will be impossible to tell if the objective of the Plan in Chapter 5, Section 5.02(2)(b) will be achieved until after 2024, two years after the first 10 year review of the Plan as it is currently legislated:

> *The outcome for the Plan as a whole is a healthy and working Murray-Darling Basin that includes:*
>
> > *(b) productive and resilient water-dependent industries, and communities with confidence in their long-term future.*

2.2 Water trading occurring effectively and efficiently

Water trading in the southern connected system has been in place since the 1990s and has developed into an active market place, particularly with the trade of annual allocation. Murray Irrigation operates the Murray Water Exchange which provides a platform for people to trade annual allocation. There is no requirement to be a Murray Irrigation customer and or landholder in order to access or use the Murray Water Exchange.

The *Water Act* describes the content and process for developing Water Charge Rules (WCR) and Water Market Rules[1] (WMR). The WMR are designed to ensure Irrigation Infrastructure Operators (IIOs) do not act in a way that prevents or unreasonably delays a person's ability to trade an entitlement held against that operator.

Section 7(4) of the *Water Act* defines infrastructure operators as:

> *S7(4) If the infrastructure operator operates the water service infrastructure for the purposes of delivering water for the primary purpose of being used for irrigation:*
>
> *(a) the operator is an **irrigation infrastructure operator**; and*
> (b) *the infrastructure is the operator's **irrigation network**.*

The Water Market Rules released in 2012 provide no additional or alternate definition of an irrigation infrastructure operator.

Murray Irrigation is confident that as an IIO it is compliant with the WMR; however, we are concerned that to date the ACCC is unable to list all IIOs in the Basin, given that by this definition all small irrigation trusts and cooperatives fall into the category of being an IIO. It is important that the ACCC conduct an audit to ensure all IIOs are compliant with the WMR to ensure fair and efficient trade throughout the Basin.

It is Murray Irrigation's assertion that the multitude of smaller irrigation trusts, districts and cooperatives in NSW are not compliant with the WMR; consequently the water market is not a "level playing field".

2.2.1 Water Trade Rules

Section 22 of the *Water Act* requires the Plan to include rules for the trading or transfer of tradeable water rights in relation to Basin Water Resources. This has led to the development of Chapter 12 of the Plan – Water Trading Rules (WTR).

[1] *The Water Act 2007, Part 4, Divisions 1 and 2, Sections 91 to 100.*

2 Mandatory Terms of Reference

The WTR requires State water managers and IIOs to remove trade barriers and is administered by the MDBA. The States are not captured by the WMR currently administered by the ACCC. Both the WMR and the WTR regulate delivery entitlements the WMR with respect to contractual obligations and the WTR with respect to trade - despite not being required by the *Water Act*.

Murray Irrigation supports the intent of both the WTR and the WMR, but questions the need for two sets of rules, administered by different agencies, regulating the interrelated areas of water market and water trade. Further, there are sections of the WTR that are beyond the scope required by the Water Act 2007.

Recommendation: Review and consolidate the WTR and the WMR to be administered by one agency to provide administrative clarity and simplify compliance and enforcement.

As a minimum, Murray Irrigation would recommend the following recommendations relating to the WTR be considered.

Section 12.02 outlines the application or otherwise to the Trade Rules and subsections (2) through (4) allow for restrictions to be applied if they meet certain criteria. Subsection (5) requires the MDBA to conduct a review of subsections (2) to (4) by 2020.

Recommendation: Remove 12.02(5) and (6) from the Plan Chapter 12 and include the review provisions in the Plan review at Section 50 of the *Water Act*.

Section 12.06 of the Plan requires water access rights to be free of any condition to trade on the basis of a location related right such as water delivery rights, works or water use approval.

Chapter 12 commenced 1 July 2014. While NSW and South Australia have unbundled water rights allowing unencumbered trade of water rights and water allocations compliant with the intent of Chapter 12, Victoria has maintained a link between the trade of allocation or 'limited term transfers' and either land ownership or bulk entitlement stewardship[2]. Although Part 5 of the Victorian Trade Rules limiting volumes of trade has been repealed, the relevant sections of the *Water Act* 1989[2] remain and can be interpreted to mean that transfers of water allocation cannot be made to a holder of a water share that is not associated with land. By contrast in both NSW and South Australia a non-landholder can hold a non-landholding, zero-balance water account and trade annual allocation without restriction, outside of those allowed by Section 12.18.

The Victorian Government introduced a new *Water Act* to Parliament[3] which, according to an exposure draft published in December 2013, proposes small changes to facilitate water trade including removing restrictions on acquisition and trade of water allocation[4]. However the exposure draft also states the Act has a "proposed commencement date of 1 January 2016". The information sheet[4] released with the exposure Bill went on to say:

"*None of the changes mentioned below [in the information sheet] will come into effect before this time*."

This would indicate that Victoria will still have restrictions on trade of allocation related to landholdings until 2016 which could be interpreted as being a location-related condition on trading which does not comply with any allowable restriction reasons as described in Chapter 12.18 of the Plan.

Recommendation: Ensure the WTR are enforced consistently across the Basin.

[2] *Victorian Water Act 1989 Section 33U and 33V.*
[3] *http://www.peterwalsh.org.au/_blog/Media_Releases/post/victorias-water-laws-consolidated-in-new-act/*
[4] *Water for irrigation in Victoria, Water Bill Exposure Draft Information Sheet, Office of Living Victoria, December 2013.*

2 Mandatory Terms of Reference

Chapter 12.13 of the Plan refers to “overallocation”. This term is misleading as an allocation can be adjusted between and within water seasons in accordance with water availability and therefore, “overallocation” would only occur if a water manager has miscalculated available water at a given point during a season.

Section 12.18 adequately outlines allowable restrictions to trade and as such any move by a State or IIO to implement a restriction on the grounds of “overallocation” or cap or SDL compliance would not be considered an “allowable restriction” and would therefore be in contravention of the WTR regardless of the existence on Section 12.13.

Recommendation: Remove Plan Chapter 12.13 as the use of the term “overallocation” is misleading and the inclusion of this section is unnecessary except for the express purpose to perpetuate the myth that a water source is “overallocated”.

Division 2 of Chapter 12 relates to the trade of water delivery rights. Murray Irrigation sees no reason for the trade of delivery rights to be covered in the WTR or the Plan. Delivery rights are a mechanism for private IIO to recover fixed costs and or allocate available infrastructure capacity and are of no value or consequence outside the IIOs boundaries. The Water Market Rules (WMR) outline contractual terms and conditions of delivery rights and obligations to provide customers with information which should provide adequate protection for customers. That should be enough to have this section excluded from the WTR.

The fees charged for delivery rights are published in the Fees and Prices schedule as required by the Water Charge (Infrastructure) Rules (WCIR). The Water Charge (Termination Fees) Rules (WCTR) also impose limits on fees IIOs can charge terminating customers. Murray Irrigation understands the rationale for the WTR to allow for trade of delivery rights to provide customers with an alternative to termination; however it is not in the interest of IIOs to limit trade where possible as ongoing income through both delivery rights and water use is preferable to termination.

Due to the closed market nature of delivery rights, trade of them has no impact on the wider water market. Therefore, Murray Irrigation believes the WTR go beyond the scope of the requirements of the *Water Act* 2007 and consideration must be given to excising those sections of the WTR that are excessive, specifically those relating to water delivery rights.

Recommendation: Remove all sections of the WTR relating to the trade of delivery rights within an IIO.

At the very least, Murray Irrigation is concerned that the obligation on IIOs to specify delivery rights and irrigation rights and “give notice”, including a statement of ‘reasons’[5] is excessive and significantly increases the administrative burden. Customers have access to their account information including delivery rights and irrigation rights held; however, ‘reasons’ will only be provided to comply with the WTR and results in additional administration for Murray Irrigation.

Recommendation: Remove 12.32(2)(a) and 12.34(3) from the Water Trade Rules.

2.2.2 Trade of Commonwealth Environmental Water

The *Water Act* does not restrict how much water can be held by the Commonwealth Environmental Water Holder (CEWH), however, it does restrict how the CEWH may dispose of both entitlement and allocation under Section 106. In summary, S106 states that:

[5] *Plan, Chapter 12, 12.32(2)(a) and 12.34(3)*

2 Mandatory Terms of Reference

- The CEWH cannot dispose of allocation or holdings unless they are not required to meet the objectives of an environmental water plan and cannot be carried over; however,
- The CEWH can dispose of allocation or holdings in a system with carryover provisions if the proceeds are used to acquire entitlement or allocation in another water area.

The restriction that currently exists on Commonwealth environmental water trade has the potential to limit the efficient and effective management of Commonwealth environmental water holdings. This restriction prevents the CEWH from considering alternate means to achieve environmental outcomes, such as upgrading regulating structures to allow improved or higher flow delivery, installing fishways to promote fish passage or undertaking environmental works and measures to better manage environmental flows.

Amending Section 106 to allow the CEWH to use the proceeds from a sale of environmental water in any way it sees fit will not lead to lesser outcomes for the environment because the CEWH is obliged to function for the purpose of protecting or restoring environmental assets[6] and must manage water holdings in accordance with the Plan[7]. These obligations ensure the CEWH could only use proceeds in a way that fulfils the fundamental objectives as per Part 6, Division 1 Section 105 of the *Water Act*.

Recommendation: Remove Section 106(1)(b) of the *Water Act* and amend Section 106(2) to remove reference to water holdings acquired with the proceeds of a disposal.

2.3 Basin wide consistency in water charging regimes

"Inconsistent pricing policies across interconnected markets can create trade distortions with ramifications for the economically efficient use of, and investment in, water infrastructure."[8]

The *Water Act* Section 10 outlines the basis for Basin water charge, water trading and water market rules including charges relating to Basin water resources and water service infrastructure[9].

While the intention of this section and the relevant rules is good, the reality is that they have not achieved the intended goal and the result is that States that were already regulated now have an additional layer of bureaucracy, as do private and public IIOs, while States that have not been regulated in the past are still not captured.

This anomaly is most obvious when reviewing the ACCC's Water Monitoring Report which provides hypothetical Bills for bulk water suppliers and private diverters as well as IIOs. The ACCC notes that hypothetical bills for private diverters vary considerably throughout the Murray-Darling Basin[10] but does not make the point that private diverters in South Australia pay no bulk water charges, unlike diverters in Victoria, Queensland and NSW. This highlights that there is no consistency and or equity in water charges across the Basin which also assist distort permanent and allocation markets.

NSW operates under the "beneficiary pays principle" and State Water Corporation received the final determination conducted in accordance with the WCIR by the ACCC, as the default regulator, for fees and charges for the period 2014-2017 on 26 June 2014. The Essential Services Commission in Victoria has been accredited as the price regulating authority under Part 9 of the WCIR and it is difficult to determine to what extent regulated water charges are subsidised by Government through their process. South Australia pays no regulated water charges and therefore water holders outside of irrigation trusts pay no ongoing water management or water use charges.

[6] *Water Act 2007, Part 6, Division 1, Section 105(3)*
[7] *Water Act 2007, Part 6, Division 1, Section 105(4)*
[8] *Explanatory Statement, Water Charge (Infrastructure) Rules 2010, p3.*
[9] *Water Act 2007, Part 1, Section 10(1)(a)*
[10] *Water Monitoring Report 2012-13, ACCC, p94-97*

2 Mandatory Terms of Reference

Unlike Victoria, NSW decided not to have the State pricing agency, the Independent Pricing and Regulatory Tribunal (IPART) accredited under Part 9 due to the inflexibility provided for a State to address state specific issues and operate under broader objectives and principles provided for under their State legislation.

This has added further complexity for water users in NSW whose charges are now regulated by the ACCC for State Water charges and IPART for NSW Office of Water charges. Murray Irrigation would support allowing State Based regulators to approve regulated water charges by applying their own pricing principles as long as the intent is consistent with that of the WCIR.

Adding to the inconsistent nature of water charges throughout the Basin, there is no uniformity in how State Governments recover MDBA charges. In NSW the majority of these charges are passed onto irrigators through both State Water and NSW Office of Water charges.

Further, despite the WCIR applying to water charges in relation to Basin water resources, they do not capture the MDBA which is the agency responsible for coordination of River Murray operations and water sharing under the Murray-Darling Agreement. The MDBA receives funding from State Governments and the Commonwealth for river operations and joint programs (discussed further below), however, there is no transparency for irrigators in these cost sharing arrangements. The MDBA only reports against one outcome under the federal budget and there is no obvious distinction between Plan costs, river operations costs and costs of other programs. The lack of transparency led the NSW Government to review the State's contribution to the MDBA that subsequently resulted in a Ministerial Council review of joint programs.

The MDBA produces a Corporate Plan which outlines internal business areas and costs, however, this document is not publicly available. The corporate plan should be made public with some form of determination to review and analyse costs. Without this, it is impossible for stakeholders, including Governments to be confident they are paying only what is effective and efficient, or that funds earmarked for one business unit are not cross-subsidising another business unit.

Recommendation: Amend Part 4 of the *Water Act* to enable regulated prices to be approved by State based regulators.

Amend Part 4 of the *Water Act* to incorporate regulation of MDBA charges relating to River Operations consistent with Part 1, Section 10 (1)(a)(i) – charges relating to Basin water resources - to allow for scrutiny and ensure Basin Governments are only asked to fund effective and efficient activities with appropriate cost shares.

Amend Schedule 1 of the *Water Act*, the Murray-Darling Basin Agreement to allow for an open, transparent and public process to determine MDBA joint program costs and cost shares.

2.3.1 Network Service Plan

Part five of the WCIR require Part 5 IIOs: member owned operators with a volume of water from managed resources of over 125GL, to produce a Network Services Plan (NSP) outlining a five year plan for the IIOs business, capital expenditure, revenue streams and operating costs.

The WCIR also prescribe the method of consultation with customers to be undertaken in preparing the NSP. The WCIR require both the Network Consultation Paper (NCP) and the NSP must be physically provided to all customers of the IIO. In the case of Murray Irrigation, that required us to post both documents to ensure all of our customers physically received, rather than had access to, the papers. This requirement alone cost Murray Irrigation thousands of dollars in postage on top of the administrative and labour costs to prepare both documents. We make a further recommendation on how to address the increased cost burden that this requirement places on IIOs in this submission (3.2.1).

2 Mandatory Terms of Reference

The fact that Murray Irrigation only had seven responses from over 1,200 farm businesses on our Network Consultation Paper is indicative of the degree in which our customers want to engage in that level of detailed business planning. As a member owned company with a Board of predominantly shareholder directors, our members have other opportunities to engage with the company about operations and costs.

There is nothing in the *Water Act 2007* that stipulates that private, member owned operators, must be subject to such stringent requirements.

In a guideline, published by the ACCC to assist IIOs to comply with the WCIR, the ACCC separates the rules that apply to IIOs into three tiers[11]:

1. Require that all IIOs publish regulated water charges with wider publication requirements for those that provide services in relation to more than 10GL of water;
2. IIOs that can be defined as Part 5 operators must develop NSPs; and
3. Require larger non-member owned infrastructure operators to have regulated water charges approved or determined by an independent economic regulator.

Murray Irrigation believes Tier 2 rules, which are outlined in Part 5 of the WCIR, requiring the development of a Network Consultation Paper followed by a Network Services Plan are excessive and create unnecessary administrative burdens and costs for private IIOs. All member owned IIOs should be treated equally and conform to Tier 1 rules.

Recommendation: Part 5 of the Water Charge (infrastructure) Rules be amended to remove Section 16(1)(a).

2.3.2 MDBA Fees

Section 212 of the *Water Act* allows the MDBA to charge fees for services it provides in performing its functions, however S212(2)(a) requires the ACCC to advise that the fee is reasonable.

As mentioned above, the MDBA is responsible for delivering joint programs including salinity management, the Living Murray Program and other programs determined by the Ministerial Council. These programs are funded by the Commonwealth and Basin State Governments that form the Ministerial Council. The MDBA is also responsible for River Murray Operations which are also funded by Basin State Governments with a capital contribution from the Commonwealth. Finally the MDBA is responsible for the Plan, wholly funded by the Commonwealth Government.

Therefore, there should be no reason for the MDBA to need to charge fees for services as all the services it currently provides are services to, and funded by, Governments.

Recommendation: Remove S212 as there should be no reason for the MDBA to charge fees for service excess to State and Federal Government contributions.

2.4 Extent to which water is used in "higher value uses"

The term "higher value use" is a subjective assessment that depends largely on factors beyond an irrigator's control (as price takers) at any given time and is not relevant to the effectiveness of the Plan. What is highest value to one water holder one year, may not be to another

Murray Irrigation believes the focus should be on the effective and efficient use of water and the operation of a water market with consistent pricing principles rather than whether the water is being used to the "highest value".

[11] *A guide to the water charge (infrastructure rules): Tier 2 requirements, ACCC, June 2011*

3 Additional reporting

Further, as the water market has advanced various water and water related products have been developed that allow water licence holders to make risk management decisions based on how they can best utilise their water (entitlement or allocation) at any point in time taking into account their own circumstances, climate, water availability and commodity prices amongst other things. Such growth in the market should be encouraged to further ensure water holders (including the CEWH) have access to tools that enable them to operate effectively without excessive regulatory burden.

3 Additional reporting

3.1 Effectiveness of Act in achieving objectives

The *Water Act* lists as a primary objective at Section 3(a) the management of Basin water resources in the national interest.

Murray Irrigation submits that the Act itself prevents the efficient management of Commonwealth Basin water resources because it specifically isolates water held in the Living Murray account from other Commonwealth held water leading to duplication of planning and administration as well as potential conflict of priorities.

Section 18H of the *Water Act* provides for the MDBA to manage water rights and associated rights held for the purposes of the Living Murray initiative. Further, section 108(3)(d) specifically excludes such rights from Commonwealth Environmental Water Holdings which are managed by the CEWH.

The Living Murray program aims to manage water to achieve ecological objectives of identified icon sites along the River Murray[12], including the Barmah-Millewa Forest, the Lower Lakes Coorong and Murray Mouth and the entire River Murray Channel. By the same token, the CEWH is to manage Commonwealth environmental water for the purposes of protecting or restoring environmental assets of the Murray-Darling Basin[13] while acting consistently with the Plan[14] that has the objectives to protect and restore water dependent ecosystems and functions while ensuring that environmental watering is co-ordinated between managers of environmental water and assets[15].

There is just under 500GL long term average in the various state held and Commonwealth Living Murray accounts while the CEWH will be responsible for the equivalent of 2,750GL by 2019 under the Plan. Both the Living Murray and the Plan require annual watering priorities, annual watering plans and monitoring and reporting. In NSW the Office of Environment and Heritage (OEH) manage all State held environmental water regardless of whether it is Living Murray or other environmental water. They work in association with the CEWH to deliver outcomes under all environmental programs, and the MDBA for management of Living Murray watering projects.

Often, these priorities correspond and both Living Murray and CEWH water is used to complete a watering action. For example in 2013-14 over 200GL of Living Murray water was delivered to the Lower Lakes, Coorong and Murray Mouth and the Lower River Murray Channel while during the same water year up to 100GL of CEW water was provided to the same site on top of 433GL that had been delivered earlier in the season.

[12] *http://www.mdba.gov.au/what-we-do/environmental-water/river-murray/tlm-portfolio-and-delivery*
[13] *Water Act 2007, Part 6, Division 1, Section 105(3).*
[14] *Plan, 2012, Chapter 8, Part 1, Section 8.03.*
[15] *Plan, 2012, Chapter 5, Section 5.03.*

3 Additional reporting

A more recent example is the imminent watering of Hattah Lakes announced on Wednesday 25 June 2014[16]. For this event the CEWH, the Victorian environmental water holder and the Living Murray Initiative have combined their efforts to provide 116GL to the Lakes. While this is an example of good coordination and cooperation, it raises the question why two Commonwealth agencies need to be involved in the same project. This is the epitome of duplication and government inefficiency.

As the objectives of the Living Murray Initiative are consistent with the objectives the Plan - to which the CEWH must have regard, Murray Irrigation would support the Commonwealth held Living Murray water assets and management responsibilities being transferred to the CEWH to allow consistent and streamlined management of Basin Water assets in the national interest to conform to Section 3(a) of the *Water Act*.

Acknowledging the Living Murray program is an intergovernmental agreement entered into in June 2004 between the southern Basin States and the Commonwealth, any move to transfer these assets would require State agreement and may require a caveat on the water assets to ensure they are only used in accordance with the original Living Murray watering priorities. This should not be too difficult to overcome.

It is our understanding that the Murray-Darling Basin Ministerial council is currently reviewing the Living Murray arrangements as part of a broader review of joint programs carried out by the MDBA.

Recommendation: Amend Section 18H of the Act to provide for the CEWH to manage water access rights for the Living Murray initiative.

Remove Section 108(3)(d) which excludes the CEWH from managing Living Murray water rights.

Amend the relevant sections of Schedule 1 to the *Water Act*, the Murray-Darling Agreement to allow Commonwealth held Living Murray water rights to be transferred to the CEWH.

3.2 Opportunities to reduce regulatory burden

The *Water Act* lays the foundations for the development of the *Water Market Rules* (WMR), *Water Charge (termination fees) Rules* (WCTR), *Water Charge (Planning and management information) Rules* (WCPMR), and the *Water Charge (Infrastructure) Rules* (WCIR) administered by the ACCC; Part 7 of the *Water Regulations 2008* administered by the Bureau of Meteorology and the *Water Trade Rules* (WTR) administered by the MDBA.

Further, there are additional regulations that include reporting requirements under the *National Water Initiative* (NWI) administered by the National Water Commission (NWC), although the future of these is now unknown with the Government announcing the abolishment of the NWC.

These multiple layers of regulations are on top of similar State regulations which water licence holders and IIOs have to comply with.

Aside from the obvious suggestion referred to previously to combine the WMR and the WTR, the following recommendations could be considered in an effort to reduce the regulatory burden.

3.2.1 Providing information to customers

NSW is the only southern State that is subjecting its operators to the ACCC review of regulated bulk water charges with the Victorian Essential Services Commission gaining accreditation under Part 9 of the WCIR and South Australia not paying regulated bulk water charges.

[16] *http://www.peterwalsh.org.au/_blog/Media_Releases/post/helping-the-iconic-hattah-lakes/*

3 Additional reporting

There are several sections contained in the WCIR that require us to physically post certain information including the Network Consultation Paper and Network Services Plan mentioned previously, the Fees and Prices Schedule and the Fees and Prices Information Statement.

This not only increases the administrative burden and complexity for customers to understand, but also the cost burden on IIOs such as Murray Irrigation. For example each mail-out of the smallest document, the Fees and Prices and Information Statement costs around $5,000 in printing and postage services alone. The cost for multi-page brochures such as the Network Services Plan is much higher.

One way that this burden can be relieved while still providing customers with access to information is to amend sections of the WCIR to require IIOs to "make available" information rather than "provide". As it is, Murray Irrigation is required to both post and publish this information on the Company website.

Examples of where the rules could be changed to allow for publication rather than physical provision:

Recommendation: Amend the WCIR Sections:

Part 4 change "provide" to "make available"

18(1) change "provide" to "make available"

18(3) and (4) change "when providing" to "when making available"

19(2) change "must give" to "must make available"

20(3)(a) change "give" to "make available"

22 change "provided" to "made available"

3.2.2 Determination timing and notification

As mentioned, the ACCC finalised the State Water Price Determination on 26 June 2014. Murray Irrigation operates on a financial year with changes to fees and charges applying, as far as possible, from 1 July for the full water season. Murray Irrigation passes government charges through to our customers.

In the absence of the final price determination, in order to meet the requirements to provide customers the required notice in writing, Murray Irrigation had to estimate the Government charges. Due to changes in State Water's base price from the ACCC's draft determination and the late inclusion of the MDBA costs – not available at the time of the draft determination – there is a discrepancy between our estimates of charges, which are the basis of our now published fees, and the actual charges.

It must be acknowledged that the delay in the determination was due to the late application by State Water and the late inclusion of MDBA charges was because they were only provided to the ACCC by NSW at the end of May 2014.

However, due to this difference in our fees and prices schedule and the final determination and the need for Murray Irrigation to adjust our fees and prices accordingly, Murray Irrigation sought advice from the ACCC regarding our 2014/15 schedule of charges and compliance with the WCIR as a result of the late release of the pricing determination. The ACCC responded with a letter signed by Sebastian Roberts from the ACCC's Water Branch dated 6 June 2014:

> "The timing of the ACCC's decision does not change your legal obligation to comply with the WCIR notification requirements. If you provide to your customers and/or publish a schedule of charges after the public release of the ACCC's decision but levy the new charges from 1 July 2014, you will breach the WCIR."[17]

This inflexibility places Murray Irrigation in a difficult position as our customers are charged on a quarterly basis. If we change our charges to better reflect the final State Water price determination, we cannot back date the charges to the start of the quarter, despite the delay being not of our making.

[17] *Letter from Sebastian Robers, General Manager, Water Branch, ACCC, 6 June 2014*

3 Additional reporting

Alternatively, we, or our customers, must absorb the difference until the start of the next quarter or we must pay the added cost of altering our accounts system to apply different rates for a specified time period. At the same time, we must also incur the cost of mailing out a new fees and prices schedule and information statement as mentioned above.

Recommendation: Amend the WCIR to ensure that the determination process is conducted to conclude by 30 April in the year the determination is to take effect to allow sufficient time for Regulated agencies to provide adequate notice to customers to allow appropriate measures to be undertaken in time for the commencement of the financial year.

Amend the WCIR to ensure that annul price reviews are concluded by 30 April in the year the price is to take effect in line with the above recommendation.

3.2.3 Reporting

The *Water Act* and associated regulations have increased the reporting requirements for IIOs to the extent that we are now reporting against at least six new regulations over and above reporting required under the National Water Initiative and reporting to State agencies.

It is important to note that NSW IIOs are licenced to operate under State legislation and therefore have significant reporting requirements at a State level, much of which is now duplicated at the Federal level. For example, the water use data supplied to the Bureau of Meteorology (BOM) under category five to comply with Part 7 of the *Water Regulations 2008*, is similar information to that which must be provided to State Water Corporation in accordance with our licence conditions. Further, water quality information provided to the BOM under category 9 is similar to information collected and held by the NSW Environment Protection Authority (EPA).

Much of the data supplied to different agencies is similar in content as the examples in the table below illustrate. This is not a comprehensive list of all reporting requirements.

Type of information	Collection agency	Related rules	Frequency
Water supply and use	ABS	On request	
	ACCC	WCIR, WCR, WMR	Annual
	BOM	Water regulations 2008	Annual
	NSW Office of Water	Works approval	Monthly
	State Water	Operating licence	Monthly
Water trade/market data	BOM	Water regulations 2008	Annual
	NWC	NWI	Annual
Performance data	NWC	NWI	Annual
	BOM	Water Regulations 2008	Annual
	ACCC	WCIR, WCR, WMR	Annual
	NSW Office of Water	Metering strategy	Annual
Financial statements	ASIC	Corporations Act	Annual
Water Quality	NSW EPA	Environment protection licence	Weekly Annual
Network characteristics	ACCC	WCIR, WCR, WMR	Annual
NSP, NCP	ACCC	WCIR	Five yearly

4 Future Reviews

Murray Irrigation supports the development of a single reporting portal for collection of water use and trade information for Commonwealth agencies. Further, we would support an agreement between Commonwealth and State agencies for the single portal to extend to collection of information required by State water regulation.

Recommendation: Develop a single reporting portal to collect data for all Commonwealth agencies.

Amendments to Part 7 of the *Water Regulations 2008* to allow the BOM to collect water use and water quality information from licencing authorities (NSW Office of Water, State Water Corporation and NSW EPA) rather than individuals or IIOs.

4 Future Reviews

Part 3 of the *Water Act* outlines audits to be undertaken by the NWC. In the 2014 Budget, the Coalition Government announced the closure of the NWC. The five yearly audits of the Plan are an important tool to ensure the reform is being effectively implemented and is achieving the desired outcomes. In the absence of the NWC, another independent agency must be identified to conduct these audits.

Recommendation: Amend Part 3, Sections 87 to 90 to provide for another independent agency to conduct five yearly audits of the Plan.

Under Part 2, Subdivision F of the *Water Act*, the MDBA may prepare an amendment of the Plan after consultation with Basin States, Basin Officials and the Basin Community Committee. Murray Irrigation is concerned that there is no requirement for such an amendment to follow a comprehensive review of the Plan or the *Water Act*.

Murray Irrigation does not believe the MDBA should be the authority to determine whether a substantive amendment should be drafted for the Minister. Murray Irrigation believes an amendment should only be drafted on direction from the Ministerial Council. However Murray Irrigation recognises there may be times where a non-substantive amendment is required and we are satisfied that these can be dealt with under Part 2, Division 1, Subdivision F, section 49.

Recommendation: Remove Part 2, Division 1, Subdivision F, sections 45-48.

In the absence of the above recommendation, strengthen the requirement to consult widely by inserting under Section 46(1)(c) a new subsection (d) the Public.

The *Water Act* requires a review of the Plan during the 10th year after it first takes effect[18]. It also allows for the Minister or all of the Basin States to request a review of the Plan but not within the first five years of it taking effect[19].

The intention of this section was clearly to ensure the Plan was implemented and had time to be adequately monitored before being reviewed. This would prevent situations that we have witnessed before where one reform is effectively superseded by further reform undertaken before the first reform is fully implemented and evaluated.

[18] *Part 2, Division 1, Subdivision G, Section 50, Water Act 2007.*
[19] *Part 2, Division 1, Subdivision G, Section 50(4), Water Act 2007*

5 Additional comments

An example of such an instance is the Living Murray Initiative, signed off in 2004 to return water to the environment and address ecological concerns; however, due to drought and political pressure, the *Water Act* was drafted and passed into law before the Living Murray initiative had been finalised and evaluated. Indeed many of the Living Murray initiative works and measures are only being commissioned now. It is Murray Irrigation's firm view that if policy makers had waited to evaluate the outcomes of the Living Murray program, the *Water Act* may have looked much different than what we have today.

As it currently stands, Section 50 of the *Water Act*, which was drafted at a time when the assumption was the Plan would be immediately implemented and enforceable, will require a review of the Plan in 2022, 10 years after it was passed into law in 2012.

The reality is, however, that during the development of the Plan it became apparent that there needed to be transitional implementation to allow regulators and communities time to adapt. The Plan will not be enforceable until 2019 when the Water Resource Plans are implemented. Further, the SDL adjustment mechanism allows for revision and final determination of SDL volumes in 2016 and again in 2024[20].

This means that there will be a review of the Plan only three years after it is enforceable and two years before the final SDL determination has been undertaken. This is not appropriate and risks a review not being able to evaluate the true outcomes of the reform.

Recommendation: Amend Section 50 of the *Water Act* to require a review of the Plan during the fifth year of the period that starts when the final determination of the Sustainable Diversion Limits is made in 2024.

The above recommendation will also ensure that the review of the Plan and the first review of Water Resource Plans required by Division 2 of Part 2 of the *Water Act* will more closely align.

Future reviews of both the Plan and Water Resource Plans should then be conducted every 15 years, rather than every 10 years to provide water users and communities with more stability into the future.

Recommendation: Amend Section 50 of the *Water Act* to require future reviews of the Plan during the 15th year of the period that starts when the MDBA gives the Minister the report of the most recent review of the Plan.

Amend Division 2, Part 2, Section 64 of the *Water Act* to enable Water Resource Plans to be accredited for a period of 15 years starting on the date on which the Water Resource Plan is accredited.

5 Additional comments

5.1 Risk assignment

Part 2, Division 4 provides for the allocation of risk in relation to reductions in water availability and is based on the risk assignment framework agreed upon by the Council of Australian Governments (COAG) under the National Water Initiative.

The risk assignment framework was designed to apportion reductions in water availability to determine what "share" of the reduction is attributed to Government.

[20] *Murray-Darling Basin Plan, 2012 Chapter 7, Section 7.20 and 7.21*

5 Additional comments

The Plan, Chapter 6, Part 5 appropriately allocates 100% of the reduction between the baseline diversion limits and the sustainable diversion limits to the Commonwealth acknowledging the bi-partisan policy to "bridge the gap".

However, the Plan also states:

> *"Nothing in the Plan requires a change in the reliability of water allocations of a kind that would trigger Subdivision B of Division 4 of Part 2 of the Act."*[21]

Subdivision B outlines risks arising from changes to the Plan and Section 80(2) specifically states:

> *"When a change to the Plan would result in a change in the reliability of the water allocations in relation to the water resources of a water resource plan area, the Plan identifies the change and may also specify the Commonwealth's share (if any) of that change in reliability."*

While this provision is consistent with the National Water Initiative, it is not consistent with current Government, and bi-partisan, policy to "bridge the gap" with regard to the Plan. Murray Irrigation is of the view that this subdivision should be amended to reflect the Government's commitment to fully compensate water licence holders for any reduction in reliability of, or access to water entitlements as a result of the Plan.

This also relates to Schedule 3A, Section 49 of the *Water Act*.

Recommendation: Amend Subdivision B of Division 4 of Part 2 of the *Water Act* to state that the Commonwealth carries 100 percent of the risk allocation arising from any change to the Plan that results in a change in reliability of water allocations or a further reduction in access to water entitlements in keeping with the "bridge the gap" policy.

5.2 Cap on buyback

Consistent with the allocation of risk, the Review Panel must consider how to legislate the Commonwealth's commitment to cap general water buyback at 1,500GL.

The Coalition previously proposed amendments to Part 2AA, to include a limit on purchase of water access rights. The addition of such an amendment does not preclude the Government recovering more than 1,500GL, nor does it limit the Government to only recovering a set amount, but it does require the Government of the day to look to other avenues for water recovery such as infrastructure programs, or offsets through environmental works and measures.

Buyback in simplistic terms appears to provide the most value for money but is in fact the most detrimental to communities because it does not implement measures to maintain productivity in a region. So while an individual is compensated for the reduction in water (through sale of entitlement) the community is not compensated for the flow-on impacts of the sale.

The reverse is true when water is recovered through infrastructure measures that allow land holders or IIOs to restructure their business to maintain productivity while reducing consumptive water use.

Recommendation: Amend Part 2AA to insert a Section to limit the total volume of water access rights purchased by, or on behalf of, the Commonwealth to 1,500GL.

5.3 Mandatory Recovery Target

In 2012 the House of Representatives Standing Committee on Regional Australia reviewed the *Water Act* Amendment Special (water for the Environment) Account Bill. In making its recommendation for the amendment to be passed by Parliament the Committee noted:

[21] *Murray-Darling Basin Plan, 2012, Chapter 6, Section 6.14*

6 Conclusion

> *"The Committee does not agree with the recommendation made by the Senate Committee to amend subclause 86AA(3)(b) to establish a mandatory recovery target of 450GL.*
>
> *The program established by the Special Account is entirely voluntary. To establish a mandatory recovery target of 450GL as recommended by the Senate would establish a quasi-compulsory program which the Committee is strongly opposed to."*[22]

The amendment was passed with the mandatory recovery target as recommended by the Senate Environment and Communications Legislation Committee and the words "up to" were removed from S86AA(3)(b). This means that the Government is obliged to recover 450GL of water regardless of whether or not it can achieve outcomes; it represents value for money; or it is consistent with the objects of the SDL adjustment mechanism.

Recommendation: Reinsert the words "up to" in S86AA(3)(b) to enable Government and industry to work together to achieve sound, cost effective and efficient water recovery and constraints management targets.

6 Conclusion

Murray Irrigation believes there is scope to amend the *Water Act* to improve the operating environment for water holders while still providing for conditions that will deliver on the objectives of the Act.

It is imperative that the Plan be allowed to be finalised, implemented and fully operational for an appropriate period of time before it is reviewed. Communities in the Murray Darling Basin have now been through three decades of water reforming, commencing with the Cap on Diversions in the 1990s, and are now seeking a period of stability to allow businesses to adjust to the new operating environment the Plan has created.

Most of the recommendations suggested by Murray Irrigation would ease the regulatory burden for IIOs and our customers while still facilitating a strong and active water market free of unnecessary restrictions and allowing the full implementation of the Plan.

Anthony Couroupis
General Manager

[22] *Advisory Report, Water Amendment (Water for the Environment Special Account) Bill 2012, House of Representatives Standing Committee of Regional Australia, November 2012, p14*