



Nature Conservation Council

The voice for nature in NSW

Water Act Review Secretariat
Water Reform Division
Department of the Environment
GPO Box 787
CANBERRA ACT 2601

By email: wateractreview@environment.gov.au

4 July 2014

Dear Sir/Madam,

Re: The 2014 Review of the Commonwealth Water Act 2007

The Nature Conservation Council of NSW (NCC) is the peak environment organisation for New South Wales, representing more than 120 member societies across the state. Together we are committed to protecting and conserving the wildlife, landscapes and natural resources of NSW.

We welcome the opportunity to provide a submission to the 2014 review (**the Review**) of the operation of the Commonwealth *Water Act* 2007 (**the Act**).

Please find **enclosed** our completed Submission Template form.

The principal aspect of the review is the consideration of the operation of the Act within the prescribed terms of reference (primarily how well its objectives are being met) - Part 1 of the Submission Template.

NCC notes that significant achievements have been made under the operation of the Act. However, it also recognises that these achievements are generally transitional in nature or represent the establishment of rules and tools, and that significant elements of the Act (notably the Basin Plan) have not been established within specified timeframes.

The Act should not be fundamentally disturbed as it now seeks to achieve its original objectives in the coming years. Environmental water must be secured quickly and efficiently, and environmental watering activities should be appropriately resourced and implemented to ensure there is an appropriate return on the significant public investment that has been made in recent decades. We are concerned that the extraction limits currently included in the Basin Plan are too high, overly concerned with socio-economic consideration, and may be inconsistent with key elements of the Act itself.

With respect to the consideration of the Act in regards to the Government's deregulation agenda - Part 2 of the Submission Template - NCC notes that the Act, in addition to dealing with environmental water, establishes the basis for an efficient market based water industry through the clear sharing of access to this essential resource and division of responsibilities.

NCC acknowledges that this 2014 Review of the Act marks the 40 year anniversary of the introduction of embargoes on issuing new licences and the introduction of limited allocation trade on NSW's inland regulated rivers. It also marks the 30 year anniversary of the audit of water resources in the Murray-Darling Basin (**the Basin**), which resulted in the then Basin Commission Ministerial Council's cap on development/diversions in acknowledgment that surface water resources were fully developed and many water dependent ecosystems stressed and degraded. Since 2000 we have experienced the Millennium Drought, which has increased knowledge of the scarcity of this essential resource.

Whilst preliminary steps have been made in restoring the balance between consumptive uses and environmental requirements, progress has been arguably slower than the generational change of participation in water using industries and related communities.

Whilst acknowledging that the shift towards a sustainable balance will result in change for some communities, NCC notes that there are few, if any, real socio-economic justifications for further delays to the introduction of an effective Basin Plan, or for the capping of purchases for the environmental water holdings, or for the pursuit of 'magical' water savings through high cost and high risk investments in private infrastructure.

Additional comments on the Commonwealth Environmental Water Holder (CEWH), the recovery of water holdings and the Murray-Darling Basin Authority (MDBA) are provided at the end of the Submission Template. The independence of the CEWH must be maintained and the position should be appropriately resourced, noting the environmental water holdings were never established as a self-funding portfolio. Similarly the MDBA should be supported and resourced as it now begins to administer the Basin Plan.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kate Smolski', written in a cursive style.

Kate Smolski

Chief Executive Officer



REVIEW OF THE WATER ACT 2007 SUBMISSION TEMPLATE

This template has been prepared to provide a simple format for responding to some or all of the matters identified in the terms of reference for the Review of the *Water Act 2007* (Water Act). Please provide supporting information and examples as far as possible when providing comments. For each of the terms of reference, brief background information has been provided along with details on where to find further information.

PART 1

Part 1 of the template contains questions pertaining to the mandatory terms of reference, set out in section 253 of the *Water Act 2007* (Water Act).

The Water Act requires that an assessment of questions 1 to 5 below must have regard to the extent to which water resource plans are in transition.

State water resource plans will be progressively accredited by the Commonwealth Minister responsible for water in the lead up to commencement of the Sustainable Diversion Limits (SDLs) on 1 July 2019. To date, no state water resource plans have been accredited. In the meantime, special arrangements have been put in place under the Water Act and Water Regulations 2008 which recognise existing state water resource plans.

1. In your opinion, are the management objectives and outcomes of the [Basin Plan](#) (Murray-Darling Basin Plan) being met?

The management objectives and outcomes of the Basin Plan are set out in Chapter 5 of the Basin Plan. They include objectives and outcomes for the Basin Plan as a whole as well as in relation to environmental outcomes, water quality and salinity, long-term average SDLs, the operation of the SDL adjustment mechanism and water trading.

The Objects of the Act should not be revised. They provide a logical hierarchy for establishing a sustainable basis for water extraction, and the promotion of social and economic benefits within sustainable limits. They recognise, appropriately, that social and economic benefits can only be achieved when there is a sustainable balance between consumptive use and the maintenance of essential environmental services.

NCC notes that the objectives of promoting social and economic outcomes is required in giving effect to measures that address threats to Basin water resources, that ensure sustainable levels of extraction and that protect, restore and provide for ecological values and ecosystem services. The Objects do not allow for measures that compromise sustainable ecological outcomes in response to the consideration of social and economic factors. Such measures would be self defeating. However the Basin Plan and its core environmental water provisions are overly influenced by the consideration of socio-economic factors. The Basin Plan (section 5.05) includes an exhaustive list of socio-economic objectives and outcomes in relation to long-term average sustainable diversion limits while mentioning the environment in passing (in 1 and 2(a)), and does not recognise the primacy of sustainability over short term socio-economic concerns.



2. Do you think the long-term average sustainable diversion limits being met?

Consistent with the Water Act (sections [22\(1\)](#) and [23](#)), the Basin Plan provides SDLs which set water use at environmentally sustainable levels for surface water and ground water resources across the Basin (see Chapter 6 of the Basin Plan). For Basin wide resources the long-term average SDL is 10,873 gigalitres (GL) a year for surface water, requiring a reduction of 2,750GL.

The Water Act further provides, at sections [23A](#) and [23B](#), that the SDLs may be adjusted through amendment to the Basin Plan within defined limits. Chapter 7 of the Basin Plan sets out the process by which the Murray Darling Basin Authority (MDBA) may propose an adjustment.

Further information on the SDLs and the adjustment process can be found on the [Department of the Environment's website](#).

The establishment of the Basin Plan has been inordinately delayed and influenced by sectors with a vested interest in maintaining the status-quo of unsustainable water extraction.

NCC is not convinced that the SDLs have been prepared in accordance with the Objects of the Act, as it risks compromising sustainable ecological (and long term socio-economic) outcomes in order to shelter the most current generation of extractive water users from the required industry adjustment.

Furthermore, contrary to subsection 21(4)(b) of the Water Act 2007, the SDL is not based on best available scientific knowledge and the socio-economic analysis is subjective and dated. For instance:

- The base case for socio-economic analysis assumes that current levels of extraction can be maintained without incurring costs associated with degrading environmental services, resulting in the over estimation of implementation costs;
- The yield estimates for groundwater are too high, representing statistically improbable outcomes, and do not adequately account for surface-groundwater connectivity, which transfers unreasonable risk to the environment and future generations

3. In your opinion, are the targets in the Basin Plan being met?

The Basin Plan includes targets that relate to environmental watering (section 8.08 and schedule 7), water quality and salinity (section 9.14 to 9.19), and SDL resource unit shared reduction amount targets (section 6.05). These targets aim to assist with the measurement of progress against objectives in the Basin Plan.

Assessment of whether these targets are being met is dependant on monitoring and evaluation results and it is too early to attribute meaningful impacts to the operations of the Basin Plan.



4. Do you think water trading is occurring effectively and efficiently?

The Water Act includes a number of measures intended to support efficient and effective water trading, consistent with the Water Act's objectives. These measures build on reforms put in place by the Australian Government and Murray-Darling Basin (MDB) states since 1990 to facilitate water trade and support the development of water markets.

Measures relevant to the Act and Basin Plan include:

- The Water Market Rules 2009 have been made to support the development of the water market and to prevent specific barriers and inefficiencies from emerging. The Rules regulate 'transformation', which refers to the process where an irrigator in a certain irrigation scheme is able to transform an irrigation right into a water access entitlement. [Part 4](#) and [Schedules 2 and 3](#) of the Water Act address the Water Market and Water Charge Rules. More information on the Water Market Rules and the Water Charge Rules can be found on the ACCC website at <http://www.accc.gov.au/regulated-infrastructure/water/accc-role-in-water>.
- Water trading rules, which will commence on 1 July 2014 and be enforced by the MDBA (Item 12 of section [22\(1\)](#) of the Water Act) have been developed to improve the efficiency and effectiveness of water markets by providing greater clarity and consistency in the operation of the Basin's water markets and ensuring the freer trade of surface water, except where subject to certain types of allowable restrictions. More information on the trading rules is available on the [MDBA website](#).

NCC notes that significant progress has been made in removing barriers to trade.

5. Do you think the key elements of the Basin Plan are being implemented?

Consistent with the Water Act's objects and the objectives and outcomes for the Basin Plan, the Basin Plan aims to ensure:

- that water recovered for the environment delivers on environmental objectives consistent with the environmental watering plan (Chapter 8);
- water quality is fit for purpose and salinity is managed consistent with the water quality and salinity management plan (Chapter 9);
- sufficient water is set aside for critical human water needs (Chapter 1); and
- monitoring and evaluation is undertaken (Chapter 13).

Other parts of the Basin Plan you may also wish to consider are identification and management of risks to Basin water resources (Chapter 4) and water resource plan requirements (Chapter 10).

It is too early to judge the achievement of environmental objectives (Chapter 8) or water quality/salinity (Chapter 9) although sufficient water is being made available for critical human needs (Chapter 1).



6. What are your views on the current level of Basin wide consistency in water charging regime?

The Water Act supports the consistent application of the Water Charge Rules as made under [Part 4](#), and parts two and three of [Schedule 2](#). Water charge rules aim to provide for consistent treatment of: termination fees; rural water infrastructure charges; and transparency for planning and management charges. Information on each of the rules can be found on the [Australian Competition and Consumer Commission \(ACCC\) website](#).

The ACCC has responsibility for advising, enforcing and monitoring these Rules. In line with this responsibility, the ACCC publishes an annual monitoring report, available on [its website](#), which provides an account of regulated water charges (including termination fees) and compliance with the Water Charge Rules and Water Market Rules.

Nil Response

7. What are your views on the contribution made by water charging regimes to achieving the Basin water charging objectives?

[Schedule 2](#) of the Water Act sets out the Basin water charging objectives, which are based on those set out in clauses 64 to 77 of the [National Water Initiative](#).

Nil Response

8. In your opinion, is the water being used in higher value uses?

Rules under the Water Act, including the Water Market Rules, Water Charge Rules and the Basin Plan Water Trading Rules, seek to remove barriers to water trade in the Basin. The removal of barriers can facilitate water moving to higher value uses in response to drivers such as climactic conditions, commodity prices and environmental needs.

There have been a wide range of significant factors driving sectoral adjustments in water using industries over the past twenty years - such as dairy price deregulation, shifts to capital intensive higher value annual crops, shifts from fruit to viticulture, increased water use efficiency through land forming and recycling, and the movement of activities from degraded to newly/more intensively developed land.

Water markets have facilitated efficient transfer in water access to accommodate these changes, the removal of institutional barriers to trade has better enabled inter-regional adjustments, and the clear specification of entitlements and allocations has allowed water users to customise their portfolio of access products. NCC notes that there is no evidence to suggest that, over time, water access has not moved to higher value uses.



9. What are your views about the progress in the implementation of improved water information systems, including the National Water Account?

Water information systems implemented under [Part 7](#) of the Water Act include: the National Water Account; Australian Water Resources Assessment; Australian Water Resources Information System (AWRIS); National Groundwater Information System (an IT project to be released in late 2014); and seasonal streamflow forecasts. Information on these systems is available at the [Bureau of Meteorology website](#).

Nil Response

PART 2

This part contains questions relevant to the terms of reference that are additional to the mandatory matters for consideration as prescribed in the Water Act.

10. Do you have any comments on the effectiveness of the Water Act in achieving its objects?

The objects of the Water Act are set out in [section 3 of the Act](#).

It is too early to consider the effectiveness of the Water Act in achieving its objects as these principally relate to environmental outcomes.

The NCC notes that implementation, to date, has extended on the Competition Policy reforms of the 1990s in deregulating the water industry and establishing an efficient market based water access framework. Improvements in the legal security and tradability of licenced access arguably drove most of the doubling in the market value of many water entitlements between 2000 and 2010.

11. Do you have comments about opportunities to reduce or simplify the regulatory and/or reporting burden while maintaining effective standards?

This review provides an opportunity to consider the regulatory costs imposed by the Water Act in delivering its objectives.

Examples of regulatory costs imposed on business and individuals can include costs incurred in meeting and demonstrating compliance with regulation, such as reporting and record keeping costs. It can also include expenses or loss of income arising from application or approval delays.

Further information can be found in the Australian Government's Guide to Regulation at <http://www.cuttingredtape.gov.au/handbook/australian-government-guide-regulation>

Nil Response



12. Do you have any comments on the timing of future reviews of the Water Act and Basin Plan?

Section 253 of the Water Act prescribes only one review of its operation – the current review which is underway in 2014. Section 50 of the Water Act requires the Basin Plan to be reviewed every 10 years, or any time between every 5 and 10 years at the request of the Environment Minister or all the Basin States.

The first scheduled review of the Basin Plan is in 2022 – three years after the SDLs are scheduled to commence.

With the dissolution of the NWC it is essential that the Act be amended to identify and enable a politically independent expert group to audit the implementation of the Act on an as needs basis. The future of the Basin's water resources, and dependant human and ecological communities of the Basin, is too important to risk partisan audits that are not based on the best available knowledge.

FURTHER COMMENTS

13. Please provide any additional comments below.

The Commonwealth Environmental Water Holder (CEWH)

The CEWH's independence from government interference must be maintained and the position appropriately resourced and supported. The portfolio of water holdings has only been established in recent years and has yet to receive direction under the Basin Plan sufficient to make any judgement on its effectiveness.

NCC does not support any changes to Part 6 except those that provide greater certainty over the resources available to the CEWH. The portfolio of water holdings managed by the CEWH has the specific purpose of use in environmental watering, and this clear purpose should not be muddled or inhibited by broadening the CEWH's functions or overly limiting its resources.

The portfolio size (and consequent yield) were determined after considering a balance between social, economic and environmental needs, and the acquisition of the environmental water portfolio has been limited on occasion by 'caps' imposed for social and economic reasons. If the functions of the CEWH were extended to include social and economic considerations it would imply a double (or even triple) consideration of social and economic factors at the expense of the environment, and the size of the holdings would need to be commensurately increased in size. We note that Section 108(3) implies that the Commonwealth would establish distinct holdings for the performance of functions not related to those under the Water Act 2007.

The CEWH should not be required (or allowed) to deliberately manipulate market prices as has been requested by some water users (notably the Victorian Farmers Federation).

The capping of buy-backs for the water holdings portfolio should not be allowed, and the buy-back should be reinstated before considering investments in private infrastructure. As previously noted, water using industries have known of scarcity in future water access for forty years, have been subject to many and various adjustments in recent years, and there is little excuse for further delays in achieving sustainable extraction levels or an effective environmental water portfolio.



NCC notes that buy-backs provide the most cost effective and secure means of acquiring a portfolio of environmental water products and should be pursued, consistent with the government's general obligation to invest public money efficiently. Public investment in private infrastructure to increase water use efficiency should not generally be pursued. They are not an efficient use of public money and come at a significantly higher risk than investments in existing water entitlements through a buy-back. If an investment in private infrastructure is economically efficient, the owner of that infrastructure would make that investment privately and would be able to then sell their anticipated savings to a buy-back scheme or another buyer in the market. Public investment in high cost and often high risk private infrastructure is not appropriate at this time of fiscal constraint. Furthermore, only investment in reducing evaporation (not drainage or recycling) can be considered to provide a public benefit because water percolates naturally through the environment and is not limited to the units used to describe or manage water resources. Reducing seepage and increasing recycling will generally only provide private savings (not a system wide benefit) and therein reduce the water that is currently made available to other consumptive water users.

The CEWH was not established as a self funded entity. Section 112 should be amended to ensure that appropriation acts will provide, at a minimum, those costs identified under Section 113(2)(a) relating to the fees and charges arising from holding and using the portfolio. NCC notes that under the cost sharing arrangements in place for water entitlements and allocations, governments fund environmental management activities. Maintenance of the water holdings portfolio is such an activity. Government should formally commit to separately funding the costs of maintaining the water holdings portfolio and not require the CEWH to fund them through asset sales. Otherwise the portfolio will need to be significantly increased in size so that asset sales could provide provision for fees and charges without jeopardising environmental watering outcomes. It is, at best, ironic that the portfolio incurs fees and charges associated with supporting the infrastructure and operations of water managers in their servicing of extractive water users, which in themselves create the very need for the portfolio in the first place.

The Murray-Darling Basin Authority

Whilst the MDBA might be simplistically viewed as another layer of government, it is in a unique position to provide a wide range of public benefits for the Basin community (and nation) as a whole. The MDBA should be maintained and appropriately resourced. The Authority (and previous Commission) has proven to be an effective forum for discussing, negotiating and operationally coordinating water (quality and quantity) and environmental management policies and activities across State/Territory borders, amongst other things. Furthermore, it has played a critical role in influencing States and Territories against making unilateral decisions for parochial advancement that would be too the detriment of other Basin communities. NCC notes that Australia is considered to be a world leader in water management and the MDBC model for inter-jurisdictional coordination has been promoted and adopted in various regions at national and international scales. It would be more than ironic if Australia were to dismantle or fail to adequately resource the MDBA at this critical juncture in the implementation of the Basin Plan and Act in general.