



**National Farmers'**  
FEDERATION

# **REVIEW OF WATER ACT 2007 SUBMISSION**

**CONTACT:**

Jack Knowles  
Manager, Natural Resources Policy

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## Abbreviations & Acronyms

The Act	The <i>Water Act</i> , 2007
MDBA	Murray-Darling Basin Authority
CEW	Commonwealth Environmental Water
CEWH	Commonwealth Environmental Water Holder
MDB	Murray-Darling Basin
ML	Megalitre
GL	Gigalitre
TOR	Terms of Reference
ACT	Australian Capital Territory
NSW	New South Wales
MOU	Memorandum of Understanding
IGA	Intergovernmental agreement
SDL	Sustainable Diversion Limit
BCC	Basin Community Committee
NRM	Natural resource management

## 1. Introduction

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The National Farmers' Federation (NFF) welcomes the opportunity to provide a submission to the Review of the Commonwealth *Water Act* (2007) [herein The Act].

NFF is the peak national body representing farmers and the agriculture sector across Australia. The NFF's membership comprises all Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. While our members address state-based 'grass roots' or commodity specific issues, the NFF's focus is representing the interests of agriculture and progressing our national and international priorities. NFF's members are -



NFF provides a unique viewpoint on water policy issues. On matters related to water and irrigation, NFF is the only national body that brings a 100% farmer-focused viewpoint. We represent the interests of farmers that are affected by water management decisions including irrigators, riparian and floodplain landholders.

This submission adopts the following structure:

- Part 2 responds to the terms of reference for the Review
- Part 3 highlights individual clauses and Parts in the Act that in NFF's view warrant consideration by the Review Panel for amendment.

## 2. Response to the Terms of Reference

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### 2.1 Terms of Reference 1(a), Achievement of the Objects of the Basin Plan

While the Basin Plan has been agreed, the implementation of the Plan is still in its early phases. To measure the effectiveness of the Plan in achieving its objects at this time is, in NFF's view, somewhat premature.

Some objects of the Basin Plan - such as those relating to sufficient and reliable water supplies and user certainty during drought – were achieved by state-based water reforms prior to the passing of the Act and prior to the development of the Basin Plan. In NFF's view, the Basin Plan does not enhance the ability to achieve these outcomes. To confidently attribute significant change to the Basin Plan, NFF suggests that comprehensive analysis of the difference in likely outcomes of previous policies compared to those articulated in the Basin Plan would be required.

In light of the above comments, the following presents NFF's views on where change has resulted from Basin Plan reforms, and where change has not yet been observed by our sector.

Areas where considerable change has been observed include:

- *“bridging the SDL gap”* through both buy back and water infrastructure projects, though this is less evident in some catchments in the northern Basin. The delay in the providing an adequate review of the science underpinning the Northern Basin SDLs is slowing implementation of water recovery programs in these catchments.
- The commencement of the Basin Plan *Water Trade Rules* on 1 July, 2014.

Areas where in NFF's view considerably less change has been observed include:

- *the achievement of identified environmental outcomes and coordinated environmental watering.* In NFF's view while there is evidence of cooperation between organisations with environmental water responsibilities, the formalisation of desired outcomes and clear articulation of roles, responsibilities and relationships is yet to be clearly demonstrated to stakeholders. Stakeholder expectation in this regard hinges on the success of the Basin Environmental Watering Strategy (which is yet to be finalised by the MDBA), which will comprise of longer term (5 year) outcomes and annual watering priorities. In NFF's view, the outcomes and priorities must extend beyond the current focus on the volume and timing of environmental water delivery, and include non-volume related management actions that contribute to the achievement of ecosystem and biodiversity outcomes. NFF questions the robustness to the approach adopted for monitoring and evaluating the achievement of environmental outcomes. The approach appears to lack coordination between the MDBA, the CEWH and state environmental water managers. While there is some monitoring activity for environmental water events, NFF does not yet have confidence that the system is in place that will enable us to measure the effectiveness of the collective environmental watering efforts
- *The SDL adjustment mechanism.* There is a lack of transparency about the proposed operation of the SDL adjustment mechanism. NFF remains concerned about the modelling approach that provides the foundation of the adjustment mechanism.

Transparency in establishing this foundation is essential to engendering stakeholder confidence in the process of assessing projects under mechanism.

- *Productive and resilient water industries.* Over time, NFF anticipates that irrigated commodities will settle into a new trajectory. This trajectory will be fundamentally different to that which would have occurred without the Basin Plan. In NFF's view, observing irrigated commodity performance compared to years immediately prior to the Basin Plan does not adequately assess the impacts of the Basin Plan on the sector. The Millennium drought was followed by some years of relatively high seasonal water allocations. These years of higher allocation coincided with reasonable commodity prices. To attribute upward trends in production or profitability in recent years with 'industry confidence' due to the Basin Plan would be incorrect. Removing 2,750GL from production by 2019 will have impacts, and the full extent of the adjustment required is yet to be fully realised.

## 2.2 Terms of Reference 1(b), Consistency in Water Charging

The water charging objectives and principles set out in Schedule 2 of the Act are consistent with those agreed by COAG in the National Water Initiative. These objectives and principles are supported by NFF.

In NFF's view, the important consideration is the degree of consistency in the application of these principles when regulators determine water charges. In essence, given that the ACCC has only reviewed pricing for NSW, there has been limited opportunity to fully test the application of these principles.

The National Water Commissions' 2011 NWI assessment of progress towards achieving pricing objectives and principles found that:

*There has been progress in the implementation of the water pricing and institutional reforms envisaged under the NWI and the 1994 COAG Water Reform Framework. However, implementation has been patchy, varying across jurisdictions and between the metropolitan, regional urban and rural sectors<sup>1</sup>.*

NFF awaits the release of the NWC's 2014 Triennial, due to be released later this year for a more contemporary assessment of this issue.

In NFF's view, the greatest area of inconsistency in water charging, is the recovery of costs associated with the service functions of the MDBA (such as asset management, River Murray Water operations).

Recognising that the governance and efficiency of joint Basin activities is currently being examined by the Murray-Darling Basin Ministerial Council, NFF takes this opportunity to reiterate our view that there needs to be a clear and transparent process for establishing the prudent and efficient costs of MDBA service delivery. The contributions made by the MDB jurisdictions to the MDBA's service delivery functions are passed through to irrigators in some jurisdictions.

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<sup>1</sup> National Water Commission 2011, The National Water Initiative—securing Australia's water future: 2011 assessment, NWC, Canberra, pg 80.

Consistent with the National Water Initiative and earlier competition policy reforms required of State-based water service providers, NFF is of the view that in recovering costs associated with water user service provision the MDBA should meet the water charging objectives and principles of the Act.

### **2.3 Terms of Reference 1(c), Higher Value Uses**

The basis of this term of reference was a belief by the Government of the day that water reform resulting from the Act would lead to water being used for “higher value uses” than was the case prior to the Act coming into being.

Notwithstanding seasonal variability, the largest shift in water use since the passing of the Act in 2007 has been the transfer of water from production to environmental water. As at 31 May 2014, the Commonwealth environmental water holdings stood at approximately 1,729 gigalitres (GL) of registered entitlements, equating to 1,267GL long term average annual yield<sup>2</sup>.

If the Review Panel was to accept the hypothesis of the government of the day, they would have to conclude that either:

- the environment is a higher value use, and thus the Act had achieved its goals in this regard; or
- that the Act had not achieved this desired goals.

Any number of definitions of “higher value” use could be adopted by the Review Panel. Examples of these could include a point in time measure of the gross value of production per megalitre (ML) of water used or the gross margin per ML of water used. In NFF’s view, such definitions are highly subjective, and are unlikely to reflect the broader social and economic value of water use over time.

There are numerous examples of water shifting to what was deemed a “high value use” in the past (e.g. wine grapes in the Murrumbidgee Valley) only to have the value of the commodity drop considerably in subsequent years. Further, a diversification of consumptive water uses is likely to lead to a more diversified and hence resilient economy, particularly in regional areas that may have relatively narrow economic bases. This economic diversification consideration should be included when taking a broader view on defining ‘higher value uses’.

There are a range of drivers that influence individual water use. These drivers include available capital, soil type, machinery, skills, farming system, proximity to supply chains, market fluctuations, individual risk appetite and ultimately an individual judgement on likely returns over time. In NFF’s view, individuals are best placed to make decisions that maximise their profits.

While further gains can be made, water markets in in most areas of the MDB are sufficiently developed to support both temporary trade of allocations and permanent trade of entitlements. In other areas, reforms are continuing to further develop markets. The existence of the water market means that individuals are able to make decisions about how they utilise their water – whether that be choosing between crops for productive use – or trading. Trading also provides

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<sup>2</sup> <http://www.environment.gov.au/topics/water/commonwealth-environmental-water-office/about-commonwealth-environmental-water>. Viewed 30 June 2014

flexibility in the farming systems adopted by livestock industries (e.g. dairy), as to whether the feed base is grown on-farm, sourced off-farm or a mix of both.

In NFF's view, the approach to "higher value" that was envisaged at the time the Act was drafted is simplistic and largely irrelevant to informing long term sustainable water management in the Basin. Higher value use means different things to different commodities and different communities.

## **2.4 Terms of Reference 1(d), Water Information**

The Act requires this review to assess progress made in the implementation of improved water information systems, including the National Water Account. It is noted that the water information provisions of the Act are national, extending beyond the MDB.

The Bureau of Meteorology has diligently established the standards and systems to collect, collate and present water information in publications such as the National Water Account. The question that remains for NFF is who uses this information, how and is it cost effective?

NFF appreciates that water information is important for a range of reasons – for example to inform policy or management decisions. Irrigators will source information about water allocations and temporary water market patterns to inform cropping decisions. From this perspective, the National Water Account is neither sufficiently detailed nor timely to inform on-farm management decisions.

From a policy viewpoint, NFF encourages the Review Panel to question policy makers as to the extent to which they relied on information collected under the auspices of this Act to inform their decisions. The MDB Plan is arguably the most significant policy decision made since the establishment of the Act. There is an opportunity for the Review Panel to inquire as to the extent to which the Basin Plan development and implementation process was/is based on data and information sourced from the MDBA's own systems and those of the MDB jurisdictions as compared to that generated from the National Water Account.

In NFF's view, there is an opportunity to comprehensively review the water information that is collected and collated under the provisions of the Act. There are substantial costs associated with complying with the water information provisions of the Act. The cost of data provision imposed on water companies, authorities and infrastructure operators are ultimately met by irrigators. In NFF's view it is timely to more comprehensively evaluate the costs and benefits of these activities.

## **2.5 Terms of Reference 2(a), Achieving the Objects of the Act**

The objects of the Act reflect the constitutional basis on which the Act is founded.

The following provides an overview from NFF's perspective as to the extent to which the objects are being achieved. To avoid repetition, comments relating to the achievement of the objects of the Basin Plan (TOR 1(a)) are largely relevant in response to TOR 2(a).



### **2.5.1 To enable the Commonwealth, in conjunction with the Basin States, to manage the Basin water resources**

Since the passing of the Act, a number of agreements have been reached between the Basin States (NSW, Victoria, Queensland, South Australia), the ACT and the Commonwealth. These include the:

- In March 2008, the Basin States, the ACT and the Commonwealth entered into an MOU which documented in principle agreement for cooperative management
- In July 2008, these parties to the Intergovernmental Agreement (IGA) on Murray-Darling Basin Reform which documented an agreement for limited referral to the Commonwealth
- In late 2008, the jurisdictions passed legislation which gave effect to the MDB Reform IGA.
- By early 2010 Water Management Partnership Agreements were agreed between the Commonwealth and each jurisdiction.
- By February 2014 the parties had agreed to an IGA on Implementing Water Reform.

These formal agreements provide the basis and framework for reform. They have enabled Commonwealth funds to flow for State-based water infrastructure projects, projects that have resulted in water savings returned to the Commonwealth Environmental Water Holder (CEWH).

Despite the reaching of these agreements, NFF has observed an increasingly combative relationship between the Commonwealth and the jurisdictions over time. Once the Basin Plan was finalised in 2012, there were considerable delays and protracted negotiations to reach the February 2014 Implementation IGA. The shift away from the co-management arrangements that existed under the Murray-Darling Basin Commission to a more centralised Canberra based model is, in NFF's view a primary driver for the tension that we observe.

There are opportunities to improve the ways that the States and the Federal Government cooperate in the implementation of the Basin Plan. A focus on describing outcomes – rather than centralised bureaucratic process – would support the devolution of implementation and management. In NFF's view, such an approach would facilitate greater consideration of integrated catchment management solutions and provide greater flexibility to achieve the outcomes through a range of measures. These issues are explored further in Section 3.5 of this submission.

### **2.5.2 To give effect to relevant international agreements**

Relevant international agreements include the Ramsar Convention on Wetlands, the Convention of Biological Diversity and International Migratory Bird Agreements (JAMBA, CAMBA, and ROKAMBA).

The focus on international agreements is reflected in both the objects of the Basin Plan and in the watering priorities of the CEWH. In the Basin Plan, the principles for and method to determine priorities for applying environmental water and the criteria for identifying environmental assets are closely tied to international agreements.

The CEWH, in its Framework for Determining Commonwealth Environmental Water Use is explicit in reinforcing the objects of the Act:

*The Water Act requires that Commonwealth environmental water is managed to protect or restore environmental assets, so as to give effect to relevant international agreements<sup>3</sup>*

The recently released Basin Plan Annual Watering Priorities<sup>4</sup> again describes the “significance” of environmental watering priorities in terms of these international agreements and Australian instruments that give effect to these (e.g. the Environment Protection and Biodiversity Conservation Act, and the Directory of Important Wetlands of Australia).

In NFF’s view, this object of the Act has cascaded consistently through the governance requirements, planning and management of Basin Water Resources and the Commonwealth Environmental Water Holdings.

### **2.5.3 In giving effect to international agreements, promote the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes**

The external affairs and limited referral powers which form the Constitutional basis of the Act means that economic, social and environmental outcomes cannot be optimised. Kildea and Williams conclude that:

*The Water Act affirms the relevance of social and economic considerations while also making clear that they are secondary to the MDBA’s and Minister’s obligation to give effect to the relevant international agreements<sup>5</sup>*

...

*However, these latter factors [social and economic] cannot be given such weight as would prejudice the faithful implementation of the international environmental conventions upon which the validity of the Act depends.*

Accepting the primacy of international agreements, NFF questions the extent to which economic and social impacts have been secondarily optimised and indeed how such ‘optimisation’ is measured and over what timeframes. For example, in “bridging the gap” the progress of water recovery through water buybacks was accelerated, and it is anticipated that up 1500GL of the 2750GL to be recovered (55%) will be done through direct purchase. Buybacks have considerably greater social and economic impacts – particularly when analysed at smaller scales – than investment in infrastructure. Savings through infrastructure investment provide some buffer on the impact of reduced water availability – for example through more efficient delivery or by supporting productivity improvements.

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<sup>3</sup> Commonwealth Environmental Water Office (2013) Framework for Determining Commonwealth Environmental Water Use May 2013, pg 6. <http://www.environment.gov.au/resource/framework-determining-commonwealth-environmental-water-use>

<sup>4</sup> Murray-Darling Basin Authority (2014) 2014–15 Basin Annual Environmental Watering Priorities. <http://www.mdba.gov.au/what-we-do/environmental-water/environmental-watering-priorities/priorities-14-15>

<sup>5</sup> Paul Kildea and George Williams (2011) *The Water Act and the Murray-Darling Basin Plan* Public Law Review at (2011) 22 PLR 9.

The experience of investment in on-farm water use efficiency in the Southern Connected Basin shows that there is significant unmet demand for investment in water infrastructure. In the last round of this program, projects that met program guidelines and the cost-benefit benchmarks were unsuccessful as the program was oversubscribed.

Measured most simply through this lens, had Government sought to optimise the social and economic outcomes (i.e. cause the least social and economic impact) then priority would have been given to achieving water savings through investment in infrastructure.

The process of developing the Basin Plan did not seek to minimise the social and economic impacts associated with the Plan. In NFF's view, the Basin Plan process did not clearly demonstrate how the SDL was established – and thus provide robust justification for reform; nor did it consider alternatives to achieving environmental outcomes without removing water from industries and communities.

It is reasonable to expect that if social and economic impacts were to be optimised, non-volume considerations (such as environmental works and measures, infrastructure efficiency investment, river operations) to achieve desired environment outcomes would have been considerably more prominent in the Basin Plan development process, and not just the focus of the additional 450GL facilitated by the SDL adjustment mechanism.

#### **2.5.4 Return to environmentally sustainable levels of extraction**

In NFF's view, the Government has made considerable progress in bridging the gap between historical levels of extraction and the Sustainable Diversion Limits set in the Basin Plan in most water sources, with the exception of those in Queensland.

#### **2.5.5 Protect, restore and provide for the ecological values and ecosystem services**

As highlighted above, NFF's view is that considerable steps have been made in seeking to restore ecological values through the acquisition and use of the Commonwealth Environmental Water portfolio. While progress has been made, in NFF's view, these have been somewhat limited by a single focus on hydrology and volume, and a lack of focus on natural resource management activities that contribute to achieving environmental outcomes.

NFF's views on effective and efficient environmental water management are further explored in Section 3.5 of this submission.

#### **2.5.6 Subject to SDLs and environmental protection, to maximise the net economic returns**

As highlighted in Section 2.5.3, the policy decisions of government have – and will continue to result in - economic impacts that could have been lessened had the focus of bridging the gap been investment in infrastructure.

NFF notes that the water market is the primary mechanism to maximise the economic returns from water over time. Continued development of the water market, and sound environmental water portfolio management that supports trade of environmental water further the achievement of this object in the future.

### **2.5.7 To improve water security for all uses**

As highlighted in Section 2.1, in NFF's view, this object was being achieved by state-based water reforms prior to the passing of the Water Act (2007). Neither the Act nor the Basin Plan do anything to protect or enhance the reliability or yield of water entitlements that would provide greater water security to extractive users.

### **2.5.8 To ensure that water management takes into account the broader management of natural resources**

In NFF's view, the focus of reform to date has been on the recovery of a volume of water for the environment, and managing the delivery this volume to identified environmental assets.

Broader NRM issues that can affect the achievement of environmental outcomes include the management of feral pests and animals, fire, runoff, grazing, nutrient management and water temperature.

As highlighted above, in NFF's view the Act has facilitated narrow focus on the management of a portfolio of water to achieve environmental objectives, at the cost of adopting a more integrated approach to achieving environmental outcomes.

### **2.5.9 To achieve efficient and cost effective water management and administrative practices**

As highlighted in Sections 2.1 and 2.2, NFF's view is that more could be done to improve the administrative efficiency and cost-effectiveness of water administration. These areas include the apparent duplication in roles and responsibilities for environmental water management (both between Commonwealth agencies, and between the Commonwealth and the States) and the absence of the regulation of cost recovery for the delivery of services by the MDBA. NFF's views on these issues are further explored in Sections 3.5, 3.11, and 3.12 of this submission.

### **2.5.10 To provide for the collection, collation, analysis and dissemination of information**

NFF's views on the information objects of the Act are explored in Section 2.4.

## **2.6 Terms of Reference 2(b), Reducing Regulatory Burden**

As outlined above, NFF is of the view that there is an opportunity to review the water information provisions with a view to reducing the regulatory burden and costs associated with the collection, collation and reporting of data.

Additional opportunities to streamline the Act (for example the Water Rights Information Service) are presented in Section 3 of this submission.

NFF notes that irrigation infrastructure operators have identified a range of specific provisions in the Act that add to the regulatory burden of their businesses. Given the costs of these regulatory responsibilities are passed on to the customers of those operators, NFF supports comprehensive consideration of opportunities to reduce red tape.

## **2.7 Term of Reference 3, Future Review Points for the Act and Basin Plan**

Section 253 establishes the terms of reference for the periodic review of the Act. The Terms of Reference relate not only to the effectiveness of the Act in achieving its objects, but also the

effectiveness of the implementation of the Basin Plan. The Audits and Reviews of the Basin Plan duplicate this effort.

In NFF's view, there is an opportunity to reduce duplication by refining the Terms of Reference of future reviews of the Act. NFF's view is that future reviews of the Act should be focused on the efficiency and effectiveness of the operation of the Act, and the extent to which the objects of the Act have been achieved. NFF suggests that the monitoring and reporting of the effectiveness of Basin Plan and audits of Basin Plan implementation will provide a considerable evidence base to assess the extent to which a number of the objects of the Act are being achieved.

NFF's view is that the Act should be reviewed every 10 years, with the next review scheduled in 2025.

The Act requires the Basin Plan to be subject to review during the tenth year of the period that starts when the Basin Plan first takes effect. This review date is 2022. While the statutory instrument commenced in 2012, the Basin Plan is not actually implemented until after the commencement of Water Resource Plans in 2019. In essence, the current provisions of the Act would require a formal Review of the Plan just 3 years after it has been fully implemented.

In NFF's view, a comprehensive review of the entire plan in 2022 is premature. The Basin Plan currently includes provision for numerous adjustments and reviews of sustainable diversion limits, environmental watering strategies and plans. The review provisions of the Plan contain sufficient elements to enable adaptive management over time. In NFF's view, the formal review of the Basin Plan would be better timed to enable the outcomes to be included in the process for developing second generation water resource plans in 2028-29.

## **2.8 Reach of the Water Act**

While not specifically related to the terms of reference for the review, NFF takes this opportunity to respond to inquiry by the Expert Panel regarding the extent to which the provisions of the Water Act should extend beyond the Murray Darling Basin.

With the exception of the water information provisions, and the ability of the Commonwealth Environmental Water Holder to hold any water entitlements, the Act is largely focused is on the management of the Murray Darling Basin.

NFF's view is that the reach of the Act should not be altered.

## **3. Specific Amendments to the Act**

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### **3.1 Introduction**

This section of NFF's submission provides recommendations relating to specific provisions of the Act for the Review Panel's consideration. In NFF's view, the amendments canvassed here would improve the effectiveness of the Act in meeting its objects, and provide greater efficiency and transparency in the administration of the Act and the achievement of desired social, economic and environmental outcomes.

### 3.2 Section 3, Objects of the Act

The Objects of the Act reflect the constitutional context in which the Act was passed by the Commonwealth Parliament in 2007. NFF recognises that – in the absence of comprehensive referral by the States - Australia’s external affairs provide the Heads of Power under the Constitution for the Act.

The Act provides primacy for the environment, over the social and economic outcomes that we seek to achieve from basin water resources. This is contrary to the National Water Initiative, which has the goal to optimise economic, social and environmental outcomes. Despite the difficulties with optimisation, In NFF’s view, this balanced perspective is a goal which should form the basis for the Act.

***NFF seeks review of the Act to:** provide for equal consideration of social, economic and environmental outcomes in the management of water resources in the Murray-Darling Basin*

### 3.3 Sections 23A & 23B, Adjustments of SDLs

The current provisions of the Act require the MDBA to seek the advice of the Basin Officials Committee and to invite submissions from the public on proposed adjustments (s23A(2)). However, there is no requirement for these consultation processes to be transparent, nor is there any onus on the Authority to publicly report how they have considered the advice of the Basin Officials Committee and responded to concerns raised by members of the public.

***NFF seeks amendment to the Act to:** Strengthen the transparency of the application of the SDL adjustment mechanism to ensure that the MDBA transparently reports how it is taken into account the advice of the Basin Officials Committee and responded to public concerns*

### 3.4 Part 2AA, The Environmental Special Account

Part 2AA gives effect to the SDL adjustment mechanism. Section 86AD(2)(b) enables the Environmental Special Account to be used for purchase of water access rights. The policy intent of the Special Account is to provide funds to support the operation of the SDL Adjustment mechanism. To reflect this policy intent, NFF suggests that the Act provide greater clarity on the use of Special Account funds. The acquisition of any water entitlements with Special Account funds should be limited to the purchase of savings derived from investment in off-river water infrastructure and efficiency projects.

***NFF seeks amendment to the Act to:** ensure that purchases of entitlement using the Environmental Special Account are limited to recovery associated with a supply or efficiency measure as per Part 7 of the Basin Plan.*

Section 86AA(3) requires the Federal Government to recover 450GL to achieve the objects of the Environmental Special Account, regardless of whether this additional recovery will lead to the achievement of the environmental outcomes set out in this part. NFF’s view is that the Act be amended to provide sufficient flexibility to increase the volume of the Basin water resource that is available for environmental use by *up to* 450 gegalitres.

***NFF seeks amendment to the Act to:** provide for flexibility in the operation of the environmental special account for water recovery up to 450 GL.*

The NFF also seeks an amendment that will ensure that recovery of additional water entitlements under the auspices of the Environmental Special Account only occur once the gap to the Basin Plan Sustainable Diversion Limit (i.e. recovery of 2750 GL) has been achieved. Further, In NFF’s view, recovery beyond 2750GL should be subject to:

- the capacity to achieve environmental outcomes
- the capacity to deliver the water
- the ability to overcome constraints; and
- ensuring that 3<sup>rd</sup> party impacts are avoided.

### **3.5 Sections 28-32 and others, Environmental Water Management**

In NFF’s view, there is an opportunity to review the roles and responsibilities of parties associated with environmental water administration and management.

NFF recognises the need for establishing environmental outcomes at both a Basin-wide scale and for connected water resources. NFF is of the view that decisions about environmental water management should be devolved as much as possible. States generally have more experience and expertise in water management. Further, States ultimately have responsibility for water planning and delivery and they often own – or play an active role in the management of key environmental assets.

The Act currently establishes an active role for the MDBA in setting objectives, identifying priorities, developing water schedules and coordinating the delivery of environmental water. In practice this overlaps with the operations of the CEWH and state-based environmental water holders, managers and advisory groups.

There is also duplication in the reporting of environmental water management. For example, Section 32 requires the MDBA to account for all held environmental water, regardless of the holder – a role which is duplicated under s114 relating the reporting requirements of the CEWH and that which is required by state-based environmental water holders.

Since the passing of the Act, NFF has observed the CEWH taking a much more active role in environmental water management when compared to the original vision of a “portfolio manager” that could contribute water to achieve the environmental outcomes articulated by others. This is not a criticism of the CEWH. In part, the CEWH has sought to fill a void created by the gap between the creation of the Commonwealth environmental water holdings and the development of Basin Plan Environmental Watering Strategy, and long term and annual watering plans.

The desired outcome in the Act should be that the right architecture is in place to ensure effective and coordinated management of environmental water and cost efficient administrative arrangements. This should be determined by considered review, rather than a hasty re-casting of the roles and responsibilities.

The formal role of the states in environmental water management is largely overlooked in current arrangements. The States hold significant parcels of environmental water, own or manage a large number of the environmental assets to be sustained and control water delivery. Given this, in NFF’s view, there is an opportunity to more formally recognise their roles and

responsibilities in the way that the roles and responsibilities of Commonwealth agencies are established by the Act.

In NFF's view, the following should form the basis for considering any proposed change to environmental water arrangements.

- Administrative efficiency of the institutional structures that 'own' held environmental water portfolios. In NFF's view, consolidation of ownership lends itself to administrative efficiency.
- Clearly articulated Basin-wide outcomes that reflect the connected nature of the Basin. In NFF's view, these outcomes should be described by the Basin Plan.
- Clearly articulated catchment outcomes that contribute to achieving Basin-wide arrangements. In NFF's view, catchment scale planning should be devolved as much as possible.
- Water delivery arrangements that recognise that held environmental water is one of many "customers" of a water service provider. Service providers must operate within recognised constraints to delivery.
- Integrated management of *all* water dedicated to the environment, regardless of who owns it and regardless of its form (i.e. held or planned water). In NFF's view, management at a catchment scale most supports integrated management.
- Integrated management of important environmental assets, that recognise that the volume and timing of watering events is only part of the solution. In NFF's view, management at a catchment scale most supports integrated management and the incorporation of local knowledge and expertise.
- Holistic and coordinated monitoring and evaluation that is used to inform future management actions and is able to describe the extent to which environmental outcomes are being achieved.

*NFF seeks review of the Act to: ensure that efficient and effective governance arrangements for environmental water planning and management are in place.*

### **3.6 Section 106, Trading of Commonwealth Environmental Water**

Section 106 significantly constrains the ability of the CEWH to optimise the management of the CEW portfolio. Management of CEW is, in NFF's view, very much in its infancy. The CEW portfolio will continue to increase in size as the Basin Plan is implemented, and with time, the CEWH will become a more sophisticated portfolio manager. Furthermore, as longer term environmental objectives and watering priorities are more clearly articulated, the CEWH will have an increasing ability to plan the use of CEW over a timeframe longer than the annual water accounting period.

NFF's view is that the Act should provide greater flexibility to enable the CEWH to optimise the environmental outcomes achieved from the management of the portfolio. NFF's view is that the CEWH should have flexibility in the use of any funds generated from trade so long as any expenditure is associated with the achievement of the stated environmental outcomes.



***NFF seeks amendment to the Act to:*** provide greater flexibility for the CEWH to trade the CEW holdings on both a temporary and permanent basis, subject to maintaining the ability to achieve agreed environmental objectives.

The Commonwealth Environmental Water holdings is the portfolio that holds and manages entitlements that contribute to bridging the gap between historical levels of extraction and the sustainable diversion limits established by the Basin Plan. With respect to the Basin, NFF is of the view that the holdings should be restricted to hold only water entitlements that contribute to bridging the gap.

***NFF seeks amendment to the Act to:*** restrict the size of the CEW portfolio to the volume required to bridge the gap to the established SDLs.

### **3.7 Part 2, Division 4 Allocation of risks of reduced water availability**

Both the Labor and Coalition Governments that have implemented the Water Act have committed to achieving reductions in sustainable diversion limits - “bridging the gap” – through investment in water buybacks and water infrastructure projects that achieve efficiencies. These acquisitions were voluntary and this commitment should be reflected in any legislative changes recommended by this review.

Water security for irrigators could be improved by amending the risk assignment provisions to enshrine this commitment and provide assurance that the SDL gap will not be recovered by measures that diminish the reliability of entitlements over time.

If and when reliability is diminished, the Commonwealth should fully compensate water access entitlement holders at the market rate.

***NFF seeks amendment to the Act to:*** enshrine the bipartisan commitment to bridging the gap in a manner that involves voluntary participation and does not diminish the reliability of entitlements. Any action of government that results in diminution of entitlement reliability should be fully compensable.

### **3.8 Part 3, Role of the National Water Commission**

NFF acknowledges that the Government is currently considering the legacy of some of the roles and responsibilities of the National Water Commission, including the Basin Plan audit function that is established under Part 3 of the *Water Act 2007*.

NFF takes this opportunity to reiterate our view that the agencies involved in the development and implementation of the Basin Plan should not be charged with auditing the effectiveness of the implementation of the Plan. Our view is that the entity charged with auditing the Basin Plan must be independent, appropriately skilled, and able to balance the diverse views and interests in water management.

Furthermore, Part 3 of the Act does not currently require the National Water Commission to seek the views of relevant stakeholders (such as the Basin Officials Committee) or members of the public in conducting this audit process.

***NFF seeks amendment to the Act to:*** transfer the role of conducting audits of the effectiveness of the implementation of the Basin Plan and Water Resource Plans to an independent and appropriately skilled entity.

***NFF seeks amendment to the Act to:** require the entity established under Part 3 as auditor of the Basin Plan and Water Resource Plans to seek the views of relevant stakeholders and members of the public to inform the audit process.*

### **3.9 Part 5, Water Rights Information Service**

Provisions in the Act to establish a water rights information service duplicates the water entitlement registration systems of both the States and private water infrastructure operators. Aside from collation at a single point, in NFF's view, such a service would provide little benefit over and above the State-based systems.

The National Water Market System Project largely sought to achieve the outcomes that were envisaged for the Water Rights Information Service. The project sought to improve the efficiency of state and territory water registers, transactions and market information functions. Despite considerable investment, the project has failed, and the Commonwealth has withdrawn from any further investment.

In NFF's view, Part 5 should be deleted, as it duplicates existing arrangements provided by the States.

***NFF seeks amendment to the Act to:** delete Part 5.*

### **3.10 Section 202, the Basin Community Committee**

The Basin Community Committee (BCC) is intended to provide advice to the MDBA on community matters related to basin water resources and on engaging with the community in the preparation of each draft Basin Plan.

The Act provides for an open and public process for receiving nominations to the BCC. However, in NFF's view, there is insufficient transparency given to the operation of the BCC and a lack of empowerment for the BCC to progress issues that are raised by members of the community. Given that the BCC is providing advice to the Authority that affects the community, in NFF's view, both the advice provided by the BCC, and how the Authority has considered and taken that advice into account should be transparent to the community. The BCC should publish a communique of its meetings, and the MDBA should be required to publish a response to this communique in a timely fashion.

Furthermore, while currently practice, there is no legislative mechanism that enables the BCC to report directly to either the Basin Officials Committee or the Murray-Darling Basin Ministerial Council.

***NFF seeks amendment to the Act to:** empower the BCC to report directly to the Basin Officials Committee and the Murray-Darling Basin Ministerial Council.*

***NFF seeks amendment to the Act to:** require the MDBA to publish in a timely manner the advice that it receives from the BCC.*

***NFF seeks amendment to the Act to:** require the MDBA to publish in a timely manner how the Authority has taken the advice of the BCC into account when making decisions.*

### **3.11 Part 9, Roles & Functions of the MDBA – separation of water regulation & management and service provision**

Competition policy reform that commenced in the 1990s included a principle of institutional separation of regulator and service provider. In the context of water, this principle was further reiterated in the National Water Initiative. The signatory parties agreed *that as far as possible, the roles of water resource management, standard setting and regulatory enforcement and service provision continue to be separated institutionally* (NWI, Clause 74).

These reforms have largely been achieved by the Murray-Darling Basin States. However, in the Murray Darling Basin Authority, we continue to see the roles of both regulator and service provider.

NFF recognises that institutional separation is significant reform and one that should be pursued in close consultation with the MDB states. However, NFF is of the view that active consideration of this reform that is long overdue, and as such the Water Act should enable such a process to be considered and implemented over time.

***NFF seeks review of the Act to:** ensure that the provisions of the Act can support future reform to institutionally separate the regulatory and service delivery functions of the MDBA.*

### **3.12 Part 9, Division 5 cost recovery of MDBA service functions**

NFF recognises that the mechanism to recover the costs of MDBA's service functions (such as asset management, River Murray Water operations) is subject to the agreement of all parties to the Murray-Darling Basin Agreement. NFF also recognises that the governance and efficiency of joint Basin activities is currently being examined by the Murray-Darling Basin Ministerial Council.

NFF takes this opportunity to reiterate our view that there needs to be a clear and transparent process for establishing the efficient costs of agreed services delivered by the MDBA. Ultimately, in some jurisdictions it is irrigators who pay the costs of this service provision.

Consistent with the National Water Initiative and the competition policy reforms required of State-based water service providers, NFF is of the view that in recovering costs associated with water user service provision the MDBA should be subject to:

- independent regulatory oversight for monopoly service provision;
- transparency in the process of establishing the cost base to be recovered and then how these costs are to be recovered;
- a sound process of benchmarking of the costs to be recovered to determine whether these are efficient, prudent and relevant;
- periodic review of cost recovery
- processes to establish agreed service standards with end users and to independently review the effectiveness of the business in achieving these service standards.

In NFF's view, a comprehensive process to establish agreed service levels and an transparent mechanism to recover efficient costs negates the need for the MDBA to have specific powers (such as those provided in section 212) to charge ad hoc fees for service.

***NFF seeks review of the Act to:** ensure that the provisions of the Act can support future service delivery and cost recovery reform, subject to the agreement of Murray Darling Basin jurisdictions.*

### **3.13 Section 50, Review of the Basin Plan**

The Act requires the Basin Plan to be reviewed during the tenth year of the period that starts when the Basin Plan first takes effect. This review date is 2022.

While the statutory instrument commenced in 2012, the Basin Plan will not be fully implemented until after the commencement of water resource plans in 2019. In essence, the current provisions of the Act would require a formal review of the Plan just 3 years after it has been fully implemented.

In NFF's view, a comprehensive review of the entire plan in 2022 is premature. The Basin Plan includes provision for numerous adjustments including reviews of sustainable diversion limits, environmental watering strategies and plans. The provisions of the Plan contain sufficient elements to enable adaptive management over time. In NFF's view, the formal review of the Basin Plan would be better timed to enable the outcomes of the review to be included in the process for developing second generation water resource plans in 2028-29.

***NFF seeks amendment to the Act to:** align the 10 yearly reviews of the Basin Plan to the development of Water Resource Plans.*

### **3.14 Section 253, Review of the Act**

Section 253 establishes the terms of reference for the periodic review of the Act. The Terms of Reference relate not only to the effectiveness of the Act in achieving its objects, but also the effectiveness of the implementation of the Basin Plan. The Audits and Reviews of the Basin Plan duplicate this effort.

In NFF's view, there is an opportunity to reduce duplication by refining the Terms of Reference required in review of the Act. Our view is that future reviews of the Act should be focused on the efficiency and effectiveness of the operation of the Act, and the extent to which the objects of the Act have been achieved. NFF suggests that the monitoring and reporting of the effectiveness of Basin Plan and audits of implementation will provide a considerable evidence base to assess the extent to which a number of the objects of the Act are being achieved.

Our view is that the Act should be reviewed every 10 years, with the next review scheduled in 2025.

***NFF seeks amendment to the Act to:*** *reduce duplication by refining the terms of reference for reviewing the Act, and to review the Act by 2025.*