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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

WATER AMENDMENT BILL 2015

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Parliamentary Secretary to the Minister for the
Environment)

WATER AMENDMENT BILL 2015

GENERAL OUTLINE

1. The Water Amendment Bill 2015 (the Bill) will amend the *Water Act 2007* to impose a statutory limit of 1500 gegalitres on Commonwealth purchases of surface water across the Murray-Darling Basin.
2. The Bill will also amend the Murray-Darling Basin Plan 2012 (the Basin Plan) to provide increased flexibility in the recovery of 450 gegalitres of water through efficiency measures funded under the Water for the Environment Special Account.
3. On 2 June 2014, in the *Water Recovery Strategy for the Murray Darling Basin* (Water Recovery Strategy), the Commonwealth outlined its strategy for the recovery of water necessary to bridge the gap to the Sustainable Diversion Limits (SDLs) in the Basin Plan.
4. The Water Recovery Strategy outlines that the Commonwealth is prioritising environmental water recovery through infrastructure investment over water buybacks and announced that a 1500 gegalitre limit would be placed on surface water purchases across the Basin.
5. On 10 March 2015, the Commonwealth announced its intention to enshrine this commitment in legislation. This Bill gives effect to that commitment, providing increased assurance to rural and irrigation communities regarding the implementation of the Basin Plan and the commitment to minimise the potential socio-economic impacts of Commonwealth environmental water purchases.
6. The legislation does not impose additional requirements for water recovery, nor does it undermine the efforts of the Commonwealth to implement the Basin Plan. The purpose of the legislation is to provide certainty to communities and businesses throughout the Basin, while continuing to deliver on the environmental outcomes outlined in the Basin Plan.
7. The cap on water purchases complements the focus on water recovery through infrastructure investment and efficiency projects. The Commonwealth is investing \$2.5 million per day to 2019, for the future sustainability of irrigated agriculture, as well as the environment and Murray-Darling Basin communities.
8. At the same time, the Bill will provide increased assurance regarding the recovery of 450 gegalitres of additional water for the environment. Efficiency measures improve the environmental outcomes under the Basin Plan by recovering additional water for the environment; however, these options are only able to be pursued where there are neutral or improved social and economic outcomes.
9. Both of these changes will assist the effective and timely implementation of the Basin Plan. The Basin Plan sets out SDLs, which are the maximum long-term annual average quantities of water that can be taken for surface and groundwater extraction in the Basin.
10. In terms of surface water, the Basin-wide long-term average SDL is 10,873 gegalitres per year. This represents a reduction of 2,750 gegalitres per year from the 2009 baseline diversion level (BDL) ('the gap'). The Basin Plan includes a mechanism to enable the Basin-wide surface water SDL to be changed up or down by 5 percent, provided environmental, social and economic outcomes are not compromised.

FINANCIAL IMPACT STATEMENT

11. No immediate or direct impact. This 1500 gigalitre limit proposal legislates an already announced budget measure. The 450 gigalitre amendments provide greater flexibility in the recovery of the 450 gigalitres of additional water for the environment, within existing funding available under the Water for the Environment Special Account.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS- PART 3 HUMAN RIGHTS (PARLIAMENTARY SCRUTINY) ACT 2011

12. The Water Amendment Bill 2015 (the Bill) will amend the *Water Act 2007* to assist with the effective and timely implementation of the Murray-Darling Basin Plan 2012 (the Basin Plan). The Bill will address the concerns of rural and irrigation communities regarding the potential socio-economic impacts of Commonwealth environmental water purchases by placing a 1500 gegalitre limit on the amount of surface water that can be purchased ('water purchase contracts') by the Commonwealth in 'bridging the gap' to the sustainable diversion limits (SDLs) set out in the Basin Plan. The Bill will also provide increased assurance regarding the recovery of 450 gegalitres of additional water for the environment. Efficiency measures improve the environmental outcomes under the Basin Plan by recovering additional water for the environment, but only where there are neutral or improved social and economic outcomes.
13. This Bill engages the right to an adequate standard of living and the right to health in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to an adequate standard of living is protected in Article 11 of the ICESCR and the right to physical and mental health is protected in Article 12 of the ICESCR. The Committee on Economic, Social and Cultural Rights (CESCR), established to oversee the implementation of the ICESCR, has interpreted these articles as including a human right to water which encompasses an entitlement to 'sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses' (human right to water).¹
14. The human rights implications of this Bill must be considered in the context of the Water Act. The overall framework of the Water Act supports access to sufficient, safe, acceptable and physically accessible water for personal and domestic uses. This is reflected in the Water Act by section 20 which sets out the purpose of the Basin Plan and is supported through subsection 22(1) which sets out the specific content required to be included in the Basin Plan, such as a water quality and salinity management plan (Item 10). In addition, subparagraph 86A(1)(a) requires that the Basin Plan be prepared having regard to the fact that the Commonwealth and the Basin States have agreed that critical human water needs are the highest priority water use for communities who are dependent on Basin water resources.
15. This Bill is compatible with human rights. The Water Act will continue to support the human right to water when amended to include a 1500 gegalitre limit on water purchases.

¹ CESCR General Comment No. 15: The Right to Water E/C 12/2002/11.

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A BILL FOR AN ACT TO AMEND THE WATER ACT 2007 TO PROVIDE FOR A 1,500 GIGALITRE LIMIT ON SURFACE WATER PURCHASES, AND FOR THE PURPOSE OF ALLOWING MORE FLEXIBILITY WITH EFFICIENCY MEASURES

Clause 1 – Short Title

This is a formal provision setting out how the Act is to be cited, that is, the *Water Amendment Act 2015*.

Clause 2 – Commencement

This clause provides that sections 1 to 3 of this Act will commence on the day after the Act receives the Royal Assent. Schedule 1 will commence on a single day to be fixed by Proclamation, or, if the provisions do not commence within six months of the day this Act receives the Royal Assent, on the day after the end of that period.

Clause 3 – Schedules

- (1) This clause is the formal enabling provision providing that each Act specified in a Schedule is amended or repealed as set out in that Schedule.
- (2) This clause is a machinery provision, providing that the amendment of the *Basin Plan 2012* under subsection (1) does not prevent the Murray-Darling Basin Authority from preparing an amendment of the *Basin Plan 2012*, as so amended, under section 23B or 45 of the *Water Act 2007*.

SCHEDULE 1 – AMENDMENTS

Part 1 – Amendment of the *Water Act 2007*

Item 1

This item renumbers section 86, in Division 4 of Part 2 of the Act, to section 85A. This amendment enables Division 5 of Part 2 of the Act to begin at section 85B.

Item 2

This item adds new Division 5 into the Act.

New section 85B sets out a simplified outline of the Division.

New subsection 85C(1) imposes a duty on the Commonwealth not to exceed the 1500 gegalitre limit on surface water purchases in the Basin at the time of entering into a ‘water purchase contract’. This limit is determined by adding the long-term annual average quantity of water that can be accessed under the water access entitlement purchased under the new contract to the total long-term annual average quantities of water that can be accessed from water access entitlements purchased under previous contracts.

The Department reports progress of water recovery on its website and will continue this practice after the commencement of the Act. This reporting will ensure transparency regarding the Commonwealth’s progress against the limit:

www.environment.gov.au/water/rural-water/restoring-balance-murray-darling-basin/progress-water-recovery.

New subsection 85C(2) provides that the limit operates until a report is received following the first ten year review of the Basin Plan by the Murray Darling Basin Authority, under subsections 50(1) or (2) of the *Water Act 2007*.

Section 85C(3) specifies the criteria that must be satisfied for a contract to be a ‘water purchase contract’, as follows:

- the contract is (or was) entered into by the Commonwealth to purchase a water access entitlement for surface water in the Murray-Darling Basin: (see paragraphs 85C(3)(a) and (b)), and either
 - it was entered into between 2 February 2008 and 23 November 2012 (ie prior to the commencement of the Basin Plan) (see para 85C(3)(c)), or
 - it is or was entered into on or after 24 November 2012 (ie post-Basin Plan) for the purpose of achieving the Commonwealth’s share of reduction in the long term average sustainable diversion limit (SDL) as set by the Basin Plan (see para 85C(3)(d)).

24 November 2012 is the date on which the Basin Plan commenced. Section 6.13(6) of the Basin Plan provides that the Commonwealth’s share of the reduction is 100 percent of the reduction between the Baseline Diversion Limits (BDL) and the Sustainable Diversion Limits (SDL) (‘the gap’).

New subsection 85D(4) sets out the water purchase contracts that are not counted towards the limit. These are contracts for:

- a) purchases associated or integrated with infrastructure rationalisation and reconfiguration, from the commencement of the new section.
- b) purchases from Basin state governments, from the commencement of the new section.
- c) water recovered through Commonwealth funded activities relating to water infrastructure (for example, contracts entered into under the Sustainable Rural Water Use and Infrastructure Program).
- d) purchases made under Part 6 of the Water Act.
- e) water recovered through the Water for the Environment Special Account (under Part 2AA of the Water Act).

Consistent with the Water Recovery Strategy, subparagraphs 85C(4)(a) and (b) exclude purchases integrated with infrastructure rationalisation and reconfiguration and purchases from States from the limit. However, the legislation will ensure that these exclusions operate prospectively from commencement of the new section. Subparagraph 85C(4)(b) will provide flexibility to the Commonwealth in working with the states to consolidate water holdings to meet Basin Plan requirements to bridge the gap to SDLs. Purchases by the Commonwealth from States are excluded from the 1500 GL cap because these are not open market transactions. Additionally, this may also allow the Commonwealth to purchase water entitlements currently held by the states that would assist in bridging the gap.

Paragraph c) provides that water recovered through irrigation infrastructure investment, such as under the Sustainable Rural Water Use and Infrastructure Program, is not counted towards the limit as this water entitlement has been made accessible due to Commonwealth investment in infrastructure upgrades.

Paragraph d) provides that purchases by the Commonwealth Environmental Water Holder (CEWH) on behalf of the Commonwealth do not count under the 1500 gigalitre limit. CEWH trade under part 6 of the Act (i.e. purchase and disposal of entitlements) is a key tool available to the CEWH to adjust the Commonwealth environmental water holdings to maximise the environmental outcomes that can be achieved from within its existing water portfolio.

Paragraph e) provides that water recovery under the Water for the Environment Special Account is excluded for the purposes of the 1500 gigalitre cap. Additional water recovered under Part 2AA must be recovered in a way that ensures social and economic outcomes for Basin communities are maintained or improved. Under this Part the Commonwealth will not recover this additional water through open market water purchase. Instead, water access rights may only be obtained in conjunction with projects to improve water use efficiency or alternative arrangements proposed by a Basin State, as set out in section 7.17 of the Basin Plan.

New section 85D clarifies that a breach of a provision or provisions of the Bill, once enacted into law, will not affect the validity of a contract. The Secretary and the Department will be accountable for compliance with the cap through the *Public Governance Performance and Accountability Act 2013* and the *Public Service Act 1999*. It is appropriate that the Department, rather than sellers of water access entitlements, should be accountable for compliance with the cap. This provision provides sellers of water access entitlements who have contracted with the Commonwealth in good faith with certainty that the validity of those contracts cannot be challenged in the event that there has been a breach of the cap.

Part 2 – Amendment of the *Basin Plan 2012*

Item 3

Item 3 will amend s 7.17(2) of the Basin Plan to add new subparagraph 7.17(2)(b)(ia). New subparagraph 7.17(2)(b)(ia) provides for the participation of consumptive water users in projects that recover water through works to improve water use efficiency off-farm.

The amendment will operate in conjunction with Part 2AA of the *Water Act 2007* to afford greater flexibility in the recovery of 450 gigalitres of water for the environment through efficiency measures funded under the Water for the Environment Special Account.

The approach of ‘participation of off-farm consumptive water users’ in projects to recover water being evidence of neutral or improved socio-economic outcomes is consistent with the approach to evidence of neutral or improved socio-economic outcomes as the Basin Plan requires for ‘on-farm’ water recovery projects.

Some examples of ‘off-farm’ efficiency projects that would qualify as efficiency measures under this amendment would include, but are not limited to:

1. Reshaping and lining water delivery channels to reduce water losses through infiltration
2. Replacement of water delivery channels with gravity pipeline systems
3. Installation of improved irrigation management system and associated telemetry.