



Law Council
OF AUSTRALIA

Legal Practice Section

5 March 2019

Senator Jonathon Duniam
Chair of Environment and Communications Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: ec.sen@aph.gov.au

Dear Chair,

Water Amendment (Purchase Limit Repeal) Bill 2019

1. This submission has been prepared by the Australian Environmental and Planning Law Committee of the Law Council's Legal Practice Section (the **AEPL Committee**)¹. The AEPL Committee welcomes the opportunity to provide some brief comments on the Repeal Bill.
2. The object of the Repeal Bill is to remove the prohibition in the *Water Act 2007* (Cth) on the Commonwealth buying back more than 1500 gigalitres of water from allocations in the Murray-Darling Basin system. The Explanatory Memorandum for the Repeal Bill states that "if a review of the Murray-Darling Basin Plan, ... demonstrates the need for more water purchases then there is no legislative barrier to being able to achieve that policy".
3. Buying water back from third party holders of water entitlements in the Basin is one mechanism for ensuring that there is sufficient water in the Murray-Darling Basin system to maintain system health. Efficiency measures, through irrigation infrastructure upgrades, is the other.
4. According to Commissioner Bret Walker SC, approximately 1100 gigalitres of water has been purchased through the buy-back provisions in the Water Act.² The 1500 gigalitre cap on water buy-backs was inserted into the Water Act in 2015. Commissioner Walker noted that since 2015 "efficiency measures — usually on-farm or off-farm infrastructure upgrades — have been the focus of a supposed acquisition of additional water for the environment by the Commonwealth to achieve the Basin-wide [sustainable diversion limit]"³.

¹ The Law Council of Australia is a peak national representative body of the Australian legal profession. It represents the Australian legal profession on national and international issues, on federal law and the operation of federal courts and tribunals. The Law Council represents 60,000 Australian lawyers through state and territory bar associations and law societies, as well as Law Firms Australia.

² Murray Darling Basin Royal Commission Report (29 January 2019) page 390

³ Ibid. page 384

5. Chapter 9 of the Murray-Darling Royal Commission Report analyses in some depth the benefits and criticisms of both the water buy-back mechanism and efficiency measures as a means of achieving the objectives of section 86AA(3) of the Water Act and schedule 5 of the Murray-Darling Basin Plan. The Commission Report concludes that water buy-backs are the most cost-effective way to achieve those objects⁴ and that buy-backs, rather than efficiency measures, should be the mechanism used in the future to recover additional water for the environment⁵. Further, Recommendation 8 made in the Commission Report states that the 1500 gigalitre cap on buy-backs should be repealed. The Repeal Bill thus supports this recommendation.
6. However, the Commission Report makes other findings in relation to the provisions of the Water Act and there are recommendations for additional amendments to the Act. It is the AEPL Committee's view that amendments to the Water Act at this time should be done in a comprehensive manner and with regard to all the recommendations in the Commission Report, rather than on a piecemeal basis. While the Repeal Bill does implement one recommendation from the Commission Report, the AEPL Committee believes that Repeal Bill should not proceed in its current form, without regard to the balance of the findings and recommendations made in the Commission Report.
7. The Law Council would welcome the opportunity to discuss this submission with the Department. In the first instance, please contact AEPL Committee Chair, Robyn Glindemann on robyn.glindemann@lantegy.com.au.

Yours sincerely



Jonathan Smithers
Chief Executive Officer

⁴ Ibid. page 61

⁵ Ibid. pages 71-72, Recommendations 2 and 8