

01-06-2018
Murray-Darling Basin Royal Commission
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Murray-Darling Basin Royal Commission – Issues Paper No 2

Dear Commissioner,

Cotton Australia, as the peak industry body for the cotton industry welcomes the opportunity to provide a submission to the South Australian Royal Commissions second Issues Paper. Cotton Australia, provided an in-depth submission for the first Issues Paper. That submission detailed the operational facts of the Basin Plan and how it interacts with the cotton industry while addressing the Terms of Reference and how the Basin Plan is positively achieving its triple bottom line objectives.

The second Issues Paper requires considerable legal analysis and expertise around statutory interpretation and constitutional validity. Cotton Australia does not have the inhouse resources or expertise to provide the standard of legal analysis and commentary required to address the issues accordingly. However, Cotton Australia will provide commentary around the issues raised in a broad sense for the Commissioner to consider, from a major industry stakeholder perspective.

Cotton Australia's understanding of the issues raised in the paper, in short are concerns relating to the legal interpretation of the *Water Act 2007* ('the Act') and its interaction with how the Basin Plan has been constructed. Specifically, the Commissioner asserts that the Act;

"...requires environmental considerations to be paramount, and that economic and social outcomes are irrelevant to the determination of an ESLT' (environmentally sustainable level of take)."

Cotton Australia Response

Concerns relating to international agreements, constitutional validity and the consideration of economic and social factors in determining Environmentally Sustainable Level of Take ('ESLT') around the Act and its interaction with the Basin Plan were duly consulted and investigated in the period preceding the final plan being tabled to parliament in 2012. The Hon. Tony Burke, MP at the time sought the advice from the Australian Government Solicitor relating to the scope of the Act, in which it considered the role of economic and social factors in the Basin Plan¹. Upon receipt of that advice, Burke MP, provided a Ministerial Statement which articulated that²;

"Broadly, the advice outlines that the Water Act:

- *Gives effect to relevant international agreements,*
- *Provides for the establishment of environmental sustainable limits on the quantities of water that may be taken from Basin water resources,*
- *Provides for the use of the Basin water resources in a way that optimizes economic, social and environmental outcomes,*
- *Improves water security for all uses, and*
- *Subject to environmentally sustainable limits maximizes the net economic returns to the Australian community."*

More specifically the advice itself considered the overarching objectives of the Act and the Basin Plans interaction with international agreements. It also made clear that the international agreements themselves recognise the relevance of economic and social factors being considered in decision making³.

Cotton Australia, has no reason to question the quality of that advice and are satisfied with the assurances from Government on that basis. Cotton Australia submits that the scope for differing interpretations is inherent in all legislative instruments. The advice sought considered these issues in depth and was the basis for continuing the development of the Basin Plan, at the time, and its

¹ The Australian Government Solicitor, *The Role of Social and Economic Factors in the Basin Plan*, 25 October 2010.

² The Hon. Tony Burke MP, *Ministerial Statement Murray Darling Basin Reform – Interpretation of the Water Act 2007*, 25 October 2010.

³ The Australian Government Solicitor, *The Role of Social and Economic Factors in the Basin Plan*, 25 October 2010.

eventual adoption by the Federal Government with bipartisan support and with the Basin States, including South Australia. The Act and the Basin Plan underwent significant public consultation and independent assessments relating to issues of constitutional validity, International agreement obligations and stakeholder impacts; socially, economically and environmentally. The Basin Plan which we now have needs to be recognized as a mechanism that balances all of these complex and competing issues.

Cotton Australia submits that continual debate and academic argument that questions the implementation of the Basin Plan detracts from the meaningful efforts by government and stakeholders to successfully achieve reform that has real social, economic and environmental benefits. The Basin Plan is a mechanism that will achieve its objectives through long-term transformation, it is a complex and politically challenging task, that requires a large degree of compromise from all involved. Cotton Australia takes the view that debate and effort should be channeled into optimizing environmental outcomes from the water acquired and being acquired through the Basin Plan.

The Basin Plan is the key to Australia's water reform and provides a path for Australia to create a viable and sustainable water resource that will improve environmental outcomes and further enable industry and Basin communities. Cotton Australia supports the implementation of the Basin Plan in full and is confident in the legal advice received at the time of the Basin Plan being drafted. Cotton Australia believes that it is entirely consistent with the legal interpretation of the Water Act at the time of implementation. Cotton Australia does not support debate which further creates uncertainty for stakeholders and communities in the Basin. The Basin Plan is only working due to the long-term approach adopted by all stakeholders, that water reform requires active participation and compromise to create a viable and sustainable natural resource for the economic and social objectives to be achieved for industries like cotton.

As previously advised Cotton Australia would welcome the opportunity to appear before the Commission.



Advancing Australian Cotton

For further information on this submission, or to discuss further participation by Cotton Australia please contact General Manager – Michael Murray – 0427 707868 or michaelm@cotton.org.au.

Yours sincerely,

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