



**Submission to the
Commonwealth Government**

On

**Murray-Darling Basin Reform
Memorandum of Understanding**

4 June 2008

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1. Introduction

On 26 March 2008, the Council of Australian Government's (COAG) agreed in principle to a Memorandum of Understanding for reform of the Murray-Darling Basin (MOU). The MOU covers a range of issues and the National Farmers' Federation (NFF) welcomes the opportunity to provide comments on the MOU, which will form the basis for the current negotiations on the Intergovernmental Agreement (IGA).

The comments provided by the NFF must be taken in the context and understanding that the NFF only has access to the MOU. In the meantime, jurisdictions are negotiating the legal text IGA and this may be substantially different from the MOU.

NFF also notes that some of the changes incorporated in the MOU will require changes to the Water Act 2007. NFF reserves the right to make comment on the proposed changes to the Act as these are drafted and consequently tabled in Parliament.

2. National Farmers' Federation

The National Farmers' Federation (NFF) was established in 1979. NFF is the peak national body representing farmers, and more broadly agriculture across Australia.

The NFF's membership comprises of all Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations collectively form the NFF.

Each of these state farm organisations and commodity council's deal with state-based 'grass roots' issues or commodity specific issues, respectively, while the NFF represents the agreed imperatives of all at the national and international level.

In 2007, the NFF established stronger linkages with the irrigation sector and specifically established a Water Industry Working Group (WIWG) and a Water Technical Working Group (WTWG).

The WIWG was comprised of NFF members and any other interested irrigation industry organisations in Australia. The terms of reference were to provide a forum to consult, collaborate and take collective action on issues of mutual importance and agreement, where appropriate and for

Government to consult collectively with industry on water including open dialogue of policy developments.

The WTWG was established with membership limited to individuals with particular technical expertise in water. The terms of the reference of this group are to provide a forum for technical industry-Government analysis of water reform.

Water is a vital part of the NFF Strategic Plan and the importance of water to the productivity and viability of farm businesses, industry and rural communities is cannot be underestimated. Water reform undoubtedly will affect all current and future water entitlement holders. Therefore, NFF seeks to work constructively and productively with the Federal Government to find solutions that seek to balance the concerns of all stakeholders whilst minimising the impact on the property rights of entitlement holders.

3. Australian Agriculture

There are approximately 130,000 farm businesses in Australia (99% of which are family owned and operated), utilising approximately 60% of Australia's landmass. The agricultural sector, at farm-gate, contributes approximately 3% of Australia's total Gross Domestic Product (GDP). The gross value of Australian farm production in 2006-07 was \$34.4 billion, down from \$38.4 billion the previous year¹.

However, when factoring in the vital value-adding activities that occur to farm outputs post farm-gate, and the value of all the economic activities supporting farm production in the farm-input sector, agriculture has averaged a contribution of 12.1% of GDP (approximately \$103 billion in 2004-05 dollar terms) in the six years ending 2003-04².

As a subset of Australian agriculture, irrigated agriculture is vitally important with 80% of the farm profits derived from 0.5% of the Australian land mass (i.e. irrigated land)³. This means that the ongoing implementation of water reform in Australia has the potential to affect the most profitable farms in Australia and their communities.

Reform must be managed in a way that maintains the productive capacity of farms whilst minimising the impacts on farm businesses. Acceptance by the irrigation sector of the reform process and practical solutions that

¹ ABARE, 2007 Australian Commodity Statistics, Canberra

² Australian Farm Institute, March 2005, *Australia's Farm Dependent Economy*

³ Land & Water Australia, 2000 National Land & Water Resources Audit, Canberra

minimise the impacts clearly requires fair consideration of the sector that is most affected by the decisions of Governments.

4. Preamble

The preamble outlines the major issues covered in the MOU, i.e. the merger of the Murray-Darling Basin Commission (MDBC) with the new Murray-Darling Basin Authority (MDBA) and functions covered by the new MDBA.

The preamble also notes that there is a commitment from COAG to sign an Intergovernmental Agreement (IGA) at the July 2008 COAG meeting.

The timeframe provided by COAG must ensure that there is sufficient inclusive consultation with stakeholders on the draft IGA. Without meaningful consultation, irrigators may be disenfranchised and acceptance by this sector of the water reforms may not be achieved.

Recommendation 1

That the Federal Government ensures that there is sufficient inclusive consultation with stakeholders on the draft IGA ahead of the 3 July 2008 COAG meeting.

5. Heads of Agreement

Institutional Structure and Governance

The NFF supports the merger of the MDBC and the MDBA. Continuation of two different institutions would result in inefficiency and a real potential for duplication of roles and responsibilities inevitably resulting in increased costs for the Commonwealth Government and irrigators.

State Shares and Sharing Rules

The NFF welcomes the undertaking in the MOU to preserve the States' water shares. However, the MOU is silent on the mechanisms to preserve these shares. The NFF is also concerned about the potential for the rules, as currently enshrined in the Murray-Darling Basin Agreement (the "Agreement") to be altered, hence effectively altering the water allocated to the States under the State's water shares.

Any reduction to the water allocated at a State level may lead to an erosion or attenuation of water access entitlements – including those held by the Commonwealth Environmental Water Holder.

The options for Governments are to adopt the current Agreement rules in or annexed to the IGA, as a schedule to the Water Act 2007 or as separate concurrent legislation in NSW, Victoria, South Australia and the Commonwealth.

NFF believes that concurrent legislation offers the most surety for all water entitlement holders including Governments. Several precedents support this proposal. As an example, there was concurrent legislation for the corporatisation of Snowy Hydro and for the arrangements the management of the Murray-Darling Basin.

Recommendation 2

That the NFF recommends to the Federal Government that matching concurrent legislation is introduced into the Parliaments of NSW, Victoria, South Australia and the Commonwealth that enshrines, in totality, the water sharing rules currently contained in the Murray-Darling Basin Agreement that underpin the States' water shares.

NFF understands that any alteration of the rules and hence any State's water shares, resulting in an erosion of an individual irrigators' property right will trigger the risk assignment provisions in the NWI and Water Act 2007.

Appointment of Authority Members

The development of the Basin Plan will inevitably mean changes for irrigators. The degree of change will be determined by the trade off between the science, and the social and economic impacts of the sustainable diversion limit contained in the Basin Plan.

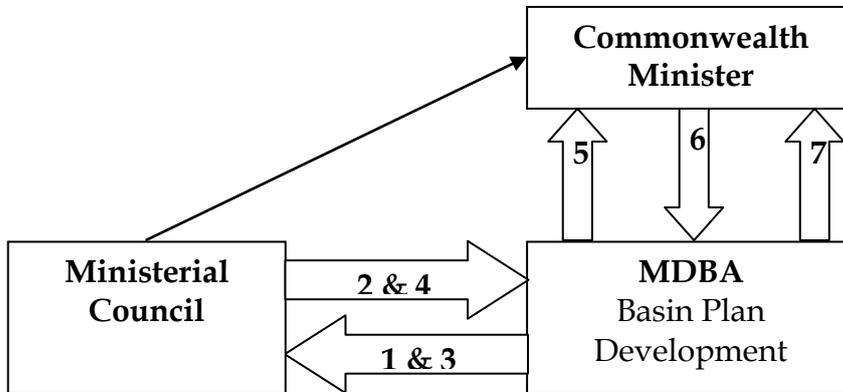
To ensure that the interests of irrigators are adequately considered and that the irrigation sector has ownership of reforms, it is imperative that the Authority includes a member with strong connections to the irrigation sector. NFF are recommending the following individuals with appropriate skills, for consideration of appointment as an Authority member:

- Mr Laurie Arthur;
- Mr Richard Anderson; and
- Mr Bruce Atkinson.

Commonwealth Minister's Powers

The NFF notes the provisions of the Water Act 2007 that provide for the Commonwealth Minister to have the sole decision making powers on the Basin Plan, including directing the Authority to make modifications to the Basin Plan. The MOU also provides for the establishment of a new

Ministerial Council to provide advice to the Commonwealth Minister on the Basin Plan. These arrangements, as understood by the NFF, are described in the figure and the numbered points below:



1. The Authority will develop the Plan and submit this to the Ministerial Council.
2. The Ministerial Council (or any individual ministers) will review the plan, its development and associated issues, and if the Ministerial Council disagrees, these matters would be referred back to the Authority for reappraisal.
3. The Authority will consider this advice resubmit the Plan to the Ministerial Council.
4. The Ministerial Council then returns the Plan to the Authority, although it is unclear from the MOU whether the Plan is submitted straight to the Commonwealth Minister or via the Authority. NFF assumes the latter.
5. The MDBA will finalise the Basin Plan having given due consideration to the views of the new Ministerial Council and forward the plan to the Commonwealth Minister. The plan may or may not have the support of the new Ministerial Council. The process may finish here if the plan is adopted.
6. If the Commonwealth Minister does not adopt the Plan, the Minister will return the plan to the MDBA with suggestions for consideration.
7. The MDBA may or may not choose to amend the plan in accordance with the direction of the Commonwealth Minister and will then return the Plan to the Minister.
8. The Commonwealth Minister must provide reasons to the Parliament for directing the Authority to modify the plan.

NFF are concerned about the devolution of all power on the Basin Plan to the Commonwealth Minister. Whilst it would be difficult for the

Commonwealth Minister to make a decision against the advice of the Ministerial Council, nevertheless, this situation could occur.

Additionally, with the numerous pathways for development of the Basin Plan, there are a number of opportunities for the creation of a deadlock between the Authority, Ministerial Council and the Commonwealth Minister. NFF recommends the following remedies for consideration.

Recommendation 3

“That NFF recommends to the Federal Government that:

- *In the event that the Ministerial Council does not support the Plan and the Minister intends to sign off on it, a majority of the Ministerial Council with the support of the Basin Community Committee can force the Commonwealth Minister to adopt the Plan of the Ministerial Council; and*
- *In the event that the Minister has directed the Authority to modify the plan; the views of the Community Committee must also be tabled in Parliament.”⁴*

Cost Sharing Arrangements for MDBA

NFF notes that the Basin States will contribute to the Authority for the existing functions currently performed by the MDBC and that there will be no additional costs as a result of the reforms outlined in the MOU.

NFF notes that this does not include the new functions of the Authority. NFF does not support the transfer of these costs either directly or indirectly (via the States) to irrigators. The Commonwealth must fully fund these new functions from its own revenues.

Furthermore, NFF recommends that any existing MDBC costs recovered from irrigators (via the States) only recover those efficient and relevant costs attributable to irrigators and set in accordance with the National Water Initiative principles of cost recovery.

Within most jurisdictions, there is oversight by an independent regulator of the costs to be recovered from irrigators. To date, the costs of the MDBC have had no such regulatory oversight. It is imperative that the Commonwealth establish a regulator for the Authority. NFF recommends that the ACCC is charged with this function and as such is required to undertake significant consultation with irrigators with full disclosure and transparency.

Commonwealth Investments

⁴ These recommendations are contingent on the Basin Community Committee being appointed on the basis of expertise as proposed by NFF (please refer to section 7 of this document).

The NFF notes the provisions in the MOU that Commonwealth investment of projects within a Basin State is tied to the progress in key water reform outcomes, notably water market and trading arrangements, water charging regimes and water registers.

NFF strongly supports the progress in these key water reform areas. However, projects originating from non-government organisations submitted to COAG for funding approval by the Commonwealth, may be unnecessarily delayed should that particular State Government continue to be tardy in delivery the water reform outcomes.

Recommendation 4

That NFF recommends to the Federal Government that the requirement for State Government outcomes on key water reforms must be removed from any private or on farm projects under the \$5.8 billion investment program.

NFF is also concerned that that the Commonwealth may be showing preference to support major projects, like the Food Bowl, rather than a number of smaller projects (including on farm water efficiency investment). In some states, like Queensland, major infrastructure investment may not be relevant due to the type of infrastructure that characterises irrigation (i.e. mainly on farm water infrastructure).

The Commonwealth's investment (purchase and infrastructure) must be based on a holistic approach across the Basin. The Commonwealth investment of funds at a regional level must be informed by the hot spots assessment of delivery infrastructure, and the sustainable diversion limit established in the Basin Plan. Investment that is not targeted to achieve the require adjustment in stressed systems may not resolve the current issues underpinning the water reform agenda and may lead to less than optimal outcomes for the Commonwealth, irrigators, industry and their communities.

The Commonwealth Government must ensure that there is equal attention to and funding of the socio and economic effects (both negative and positive) to ensure that there is a robust Basin Plan. Such important decisions will inevitably require tradeoffs for irrigators, their communities, industry and the environment.

NFF reiterates its previous public statements that Commonwealth investment in infrastructure must include the on farm system. NFF can demonstrate major gains in on-farm water efficiency that can be accelerated with government investment.

NFF understands that a Commonwealth investment in on farm infrastructure may require convincing for a large number of small volumes of water entitlement. However, if representative organisations and or commodity groups manage such investment, it can be successful.

NFF notes that nine on farm pilot projects have been approved to progress to the second stage of full project proposals. It is incumbent on the Commonwealth to ensure that on farm projects are not limited to these pilot projects only and that transparent guidelines for the approvals process are established.

Recommendation 5

That NFF recommends to the Federal Government that on farm investment in irrigation infrastructure must be maintained as part of the \$5.8 billion infrastructure investment program.

The Commonwealth Government must appreciate that precedents will be established by investment in priority projects such as Victoria's Food Bowl, specifically regarding the agreed sharing between Governments and irrigators of the funding of projects and sharing of proposed water savings. This precedent must be applied to all other investments under the \$5.8 billion infrastructure investment projects to ensure competitive neutrality and equity for all projects.

Likewise the Commonwealth must ensure application of identical standards of due diligence are applied to projects from all states.

The NFF notes that the Commonwealth has agreed to fund a number of infrastructure investments outside the Basin (largely election promises), including projects in Tasmania and Western Australia and that there will be no further investment outside the Basin.

A number of irrigation areas outside the Basin are facing significant issues, such as the need to modernise irrigation infrastructure on and off farm, stranded assets and the need to examine decommissioning some schemes (the latter will require assistance to allow communities and irrigators to adjust). These areas should not be excluded from the infrastructure investment program and will need accelerated planning processes.

Australian Competition and Consumer Commission (ACCC)

NFF notes that COAG is to recommend ways to strengthen the role of the ACCC; however, there is no explanation of what this might mean. NFF does not support any moves to remove the role of the State pricing regulators, in setting the prices for costs to be recovered from irrigator's, in favour of the ACCC.

The ACCC's role is to set the rules only for the water market, water trade and water charges and to ensure consistent application of these rules across jurisdictions.

Critical Human Needs (CHN)

NFF supports the provision of CHN in the Basin Plan.

In the first instance, jurisdictions must take proactive steps to reduce the requirement to utilise the CHN provisions in the Basin Plan. In the first instance, State planning processes should take into account both climate change and population growth and include the development of and investment in alternative water supplies such as desalination plants. This is particularly important given that Governments have accepted the reality of climate change and that there are significant risks to the Basin's resources.

Should the situation require implementation of the CHN provisions under the Basin Plan, the trigger to commence these provisions should largely be determined by market failure, i.e. when there is no water from the market from which water can be purchased in the market (including from other States) to assist providing for human needs.

In assessing the volume required for CHN, this must only include provisions for basic human use (i.e. drinking and sanitation) and basic landholder rights.

In setting aside CHN, each state should be responsible for the provision of its own needs from its own resources in the first instance. Where water is provided outside of a State's resources, accounts must be maintained on CHN and adjusted following the conclusion of a declared CHN period. This is consistent with the long held principles underpinning the cross jurisdictional support for continuous accounting in the Southern Basin.

NFF supports the proposition that South Australia is allowed to set aside its CHN reserves (or carry over) **only** in the upstream storages⁵. NFF does not support a permanent reserve, as this will have third party impacts on the licence holders in all states. Therefore, the trigger(s) that starts and ends the CHN reserve is important.

NFF suggests that South Australia's stored CHN reserve is the first water to spill followed by the carry over water for each state, i.e. this is the

⁵ South Australia should not see this provision as triggering a reserve for the carry over of water for entitlement holders.

trigger to end the CHN reserve. This principle is consistent with carry over water being the first stored water to spill.

The triggers to be established to commence storing of CHN water is less clear. Modelling will be required, and the triggers may be a combination of individual or multiple year triggers including levels of allocation and inflow conditions. NFF reserves the right to comment on commencement triggers following modelling advice from the Authority.

A maximum upper limit must also be applied the volume available to South Australian for its CHN reserve in the upstate dams. This principle is consistent with maximum limits for the storage of NSW and Victoria water in the dams, and the Barmah-Millewa Forest allocation (the latter includes both volume and duration limits).

NFF recommends that where modelling shows third party impacts, those impacts must be negated by acquiring the appropriate water products in the market. If this not possible, the third party impacts should trigger compensation to affected entitlement holders.

Complementary Management of Environmental Water

NFF supports the proposition that efforts to maximise the management of environmental water to deliver on agreed environmental objectives must be a priority for all Governments.

Enforcement of the Basin Plan

NFF has no tolerance for the illegal diversion of water by any party. Compliance standards must be improved across the basin in a cost effective manner.

Risk Assignment Framework

The NFF had called on the Commonwealth to close the risk assignment framework that arose when the Water Act 2007 was passed by parliament. NFF commends the Commonwealth for closing this gap.

NFF believes that the development of the new Basin Plan is new knowledge for the purposes of the National Water Initiative risk assignment provisions, and hence any changes to existing water sharing arrangements are compensable under the Water Act 2007.

6. Improved Environmental Outcomes

The NFF supports the future delivery of environmental outcomes through the Basin Plan and the Commonwealth's investment through the Water for the Future Plan.

However, NFF remains concerned that Governments must define clearly what environmental outcomes the Commonwealth investment is seeking to achieve. Once this has been determined and agreed, it is then necessary to determine what mix of entitlements are required to deliver these environmental outcomes. Intelligent and clever use of smaller water volumes may in fact deliver better environmental outcomes than larger volumes mismanaged.

It is unfortunate that public debate has focussed on water volumes rather than environmental outcomes. The release of the CSIRO sustainable yields audit results is further skewing public debate without the balance that will result from equal weighting of social and economic impacts. The sustainable yields audit must be seen as the first input in a lengthy process to develop the sustainable diversion limit under the Basin Plan. The sustainable diversion limit will indicate the volume of water in each water system that requires the Commonwealth's investment.

Governments should ensure that the Australian community understands that the CSIRO SYA is the first of a number of inputs into the Basin Plan that will inform investment in the purchase of entitlements and investment under the \$5.8 billion infrastructure investment fund.

7. Other Issues

Basin Community Committee

The NFF supports the role and membership of the Basin Community Committee as outlined in the Water Act 2007. NFF understands that the establishment of this committee will necessarily mean the end of the existing MDB Ministerial Council Community Advisory Committee (CAC) and the Living Murray Community Reference Committee (CRG). The current work of the CAC should be rolled into the Basin Community Committee. The role of the CRG will finish with the conclusion of the Living Murray Initiative in June 2009.

NFF understands that the proposed transition arrangements for the Basin Community Committee are simply to roll the current CAC into the Basin Community Committee with similar functions, roles, and responsibilities as the current CAC.

NFF has concerns that the expertise of some of the CAC is not adequately targeted to the issues of the Basin Plan. The enhanced role of the Basin Community Committee as proposed by the NFF (see Recommendation 3) also necessitates the appointment of highly skilled individuals to the committee.

Because of the major impact on irrigators of the Basin Plan, the NFF strongly recommends that there is no transition process for the Basin Community Committee. In lieu, when the Authority commences, the Basin Community Committee is appointed with the membership as outlined in the Water Act 2007. The Authority must undertake a public advertising process calling for nominations, and that members of the current CAC are encouraged to apply.

NFF also recommends that the Basin Community Committee be resourced sufficiently to ensure that it is able to undertake its functions and additionally to consult directly with the Basin's communities. The costs of the Committee should be funded by the Commonwealth and not recovered from irrigators either directly or indirectly via the State Governments.

Recommendation 6

NFF supports the establishment of the Basin Community Committee as currently described in the Water Act 2007, that there are no transition arrangements for the Basin Community Committee, that the Committee is appointed at a similar time to the members of the Authority; and that the Committee is resourced sufficiently to undertake its functions and to consult across the Basin.

Competitive Neutrality

NFF supports the principle of competitive neutrality to underpin fair and equitable water trading between irrigators in different jurisdictions. NFF notes that water sharing plans of different durations of 10 or 15 years do affect competitive neutrality.

Ultimately, water sharing plans across Australia must of a consistent duration.

Multiple Uses of Environmental Water

The Water Act 2007 outlines the roles and responsibilities of the Commonwealth Environmental Water Holder. NFF accepts and endorses the need to deliver on environmental outcomes.

NFF is concerned that the Act limits flexibility in the use of Commonwealth water entitlement holdings. There are likely to be

circumstances where it is appropriate to annually trade water back to the agricultural sector.

There are a number of different options to achieve the required environmental objectives.

NFF urges the Commonwealth to ensure that its purchases of a mix of water entitlements across the Basin as well as to consider the positive benefits of cancellation of entitlements for both the environment and irrigators.

Cancelling entitlements will lead to increased dam spills and more flows in the system (as unregulated). This will deliver environmental benefits that more reflect natural flows as well as improving the reliability of all entitlement holders.

The NFF also urges the Commonwealth to consider the role its water entitlement asset may potentially play in the current debate concerning food security. Its neighbours often see Australia as having a wealth of agricultural and other resources. With food security at a high prominence for the Governments of other countries, Australia may be asked to use its environmental water entitlements to provide urgent humanitarian assistance in times of famine.

Overseas Investment in Australia Water Resources

With water previously tied to land, a foreign purchaser of land in Australia would have been required to have the purchase assessed by the Foreign Investment Review Board.

NFF recommends that the Commonwealth establish appropriate mechanisms whereby the purchase of water entitlements by non-residents triggers an assessment by the Foreign Investment Review Board.

Small Infrastructure Operators

The NFF acknowledges that the work to date regarding water trading has focussed on reforms for the larger infrastructure operators. Many smaller infrastructure operators have been excluded from these reforms. State law and policies have underpinned their operations and in some cases, reforms cannot occur for various reasons, e.g. for technical reasons small infrastructure operators in NSW have not been able to incorporate.

NFF acknowledges that many of these small infrastructure operators are ill equipped in terms of human and financial resources to make the

required adjustments to improve the trade environment for their members.

As per the NFF's submission to the ACCC, it is incumbent on Governments to assist these smaller infrastructure operators to reform their water market rules. Smaller infrastructure operators must be provided with similar mechanisms as provided to the larger infrastructure operators. This assistance might include the provision of grants, the development of pro-forma trading documents (permanent and annual trades), water delivery contracts, provision of 4% permanent trade cap and access termination fees.

NFF recommends that in the first instance, the ACCC or the Department of Environment, Water, Heritage & the Arts is required to undertake regional workshops to ascertain the issues for small infrastructure operators.

Water Act Compensation Provisions

As part of the changes to the Water Act, NFF will be looking to review the effectiveness of some of the provisions for compensation under the Act and looks forward to further discussions with the Government on this issue.