WATER AMENDMENT (WATER FOR THE ENVIRONMENT SPECIAL ACCOUNT) BILL 2012

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Sustainability, Environment, Water, Population and Communities)
GENERAL OUTLINE

1. The Water Amendment (Water for the Environment Special Account) Bill 2012 (Bill) amends the Water Act 2007 (Water Act) to establish the Water for the Environment Special Account (the Account) pursuant to section 21 of the Financial Management and Accountability Act 1997 (FMA Act). The Bill specifies the nature of amounts that may be credited to the Account, the purposes for which amounts may be debited from the Account and requires annual performance based reporting on the achievements of the Account.

2. The proposed Murray-Darling Basin Plan (the Basin Plan) sets a long-term average sustainable diversion limit reduction of 2,750 gigalitre (GL). The Government is committed to building on the Basin Plan to achieve environmental outcomes beyond those delivered by a 2,750GL reduction while maintaining or improving economic and social outcomes. These additional environmental benefits will be achieved by funding projects to acquire additional environmental water entitlement, and funding projects to ease or remove constraints on the efficient use of environmental water.

3. The Bill provides for a secure funding stream for the Government’s commitment to achieving environmental benefits by appropriating $1,775 million over 10 years from 2014-2015 to the Account. The Bill establishes the Account to set aside these funds to enable water to be recovered and constraints to be removed without negatively impacting on the wellbeing of communities in the Basin. That water will be recovered in a way that meets the requirements of the Basin Plan that there are no negative social or economic impacts on Basin communities.

4. This Bill complements the Water Amendment (Long-term average sustainable diversion limit adjustment) Bill 2012 (SDL Adjustment Bill) introduced into this Parliament on the 20th of September this year. It would allow funds to be dedicated to projects and programs to decrease the long-term average sustainable diversion limit (SDL) provided they will, or are reasonably likely to be relevant to the determination of an SDL adjustment. Projects funding from the Account will be considered alongside projects to increase the SDL by using environmental water more efficiently so that Governments have a complete picture of what the final SDL will be in all catchments.

Special Account

5. In accordance with the Constitution, all revenues or moneys raised or received by the Government of the Commonwealth form one Consolidated Revenue Fund (CRF) and may not be spent unless under an appropriation by the Parliament for the purposes of the Commonwealth. A special account is an appropriation mechanism that sets aside an amount within the CRF to be expended for a specific purpose. A special account may be established by legislation as recognised under section 21 of the FMA Act. Any amounts credited to this account are quarantined and can only be debited from the account for the purposes outlined in the enabling legislation. The amount of appropriation that may be drawn from the CRF,
through the Special Account, is limited to the balance of the Special Account. This Bill establishes the Water for the Environment Special Account for the purposes of section 21 of the FMA Act.

6. The Bill also includes a special appropriation which would credit funds to the Account from the CRF in each financial year from 2014-15 to 2023-24. The Bill would provide long-term funding certainty through prescribing the Government funding that the Account is to receive each year.

Water for the Environment Special Account

7. This Bill supports the Government’s commitment to the Murray-Darling Basin reform, by establishing the Account and special appropriation for funds of $1,775 million for the next 10 years. The funds must be managed consistently with the objectives of the Bill to ensure that additional environmental benefits are achieved through acquiring up to an additional 450GL in permanent environmental water entitlement and easing and removing constraints on the efficient delivery and use of environmental water.

8. The Bill provides funding for the acquisition of an additional 450GL of water and the removal of physical constraints. The Bill identifies key enhanced environmental benefits which could be achieved. Reducing levels of salinity in the Coorong and Lower Lakes will allow the water dependent ecosystems of the Coorong and Lower Lakes to be restored. Increasing the water levels in the Lower Lakes is necessary to prevent acidification, acid drainage and river bank collapse. Maintaining the Murray Mouth at greater depths will reduce the risk of dredging being needed to keep it open. Increasing the amount of salt flushed from the Basin is crucial to the overall health of the Murray-Darling Basin system. Increasing barrage flows to the Coorong will mean that there are more years in which critical fish migrations can occur for estuarine fish. Environmental watering of floodplains of the Murray-Darling Basin will improve the health of forests and fish and bird habitat, improve connections to the river system, and replenish groundwater.

9. The establishment of the Special Account and Special Appropriation will provide assurance that the funds received from the Special Appropriation and credited to the account could only be used for the purposes provided by the Special Account. These include both measures to increase the volume of water available for the environment defined in general terms to allow a variety of projects to be undertaken and constraints removal.

10. Amounts credited to the special account may be debited for purposes including: improving the water efficiency of infrastructure (e.g. on-farm irrigation efficiency programs); improving or modifying infrastructure that constrains the delivery of environmental water in order to ease or remove those constraints, increasing the capacity of dams and storages to deliver environmental water, and entering into easements or agreements; purchasing water access rights, and making payments in relation to projects whose aim is to further the objects of Bill. Payments may also be made from the Account to address any detrimental social or economic impact on the well being of any community in the Murray-Darling Basin that is associated with a project as mentioned above so as to offset any such impacts.
Acquiring additional environmental water

11. It is envisaged that the Government will acquire the additional water primarily through investment in on-farm irrigation efficiency projects and also through off-farm efficiency projects, the purchase of water access entitlements and other agreed mechanism where the social and economic outcomes can be maintained or improved. This would achieve enhanced environmental outcomes by increasing the volume of water available for environmental use, without adversely impacting on the productive capacity of the Basin.

12. Any water acquired through the use of funds made available by this Bill would form part of the Commonwealth Environmental Water Holdings. The Commonwealth Environmental Water Holder would have responsibility for managing the use of this additional volume of water.

Constraints removal

13. The Murray Darling Basin Authority (the Authority) has identified a suite of constraints throughout the Basin which could be addressed to maximise the environmental benefits from implementation of the Basin Plan.

14. The Bill provides funding to allow the constraints removal to facilitate delivery of the additional environmental water recovery and achieve improved environmental outcomes from those water holdings. This could be done through a range of project including acquisition of flood easements, provision of access works (for example, bridges, culverts), changed watering regimes and increased outlet capacity on major dams and storages.

15. Basin jurisdictions will jointly identify projects that will provide the greatest environmental benefit. Constraints projects will only be implemented after community consultation, negotiation and detailed proposal design.

FINANCIAL IMPACT STATEMENT

16. This Bill appropriates $1,775 million to the Water for the Environment Special Account over a 10 year period from 2014-15 to 2023-24. Any unused funds at the end of this period will return to the Budget.

REGULATORY IMPACT STATEMENT

17. A Regulatory Impact Statement is not required.
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Water Amendment (Water for the Environment Special Account) Bill 2012

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

This Bill amends the Water Act 2007 (Cth) (Water Act) which, among other things, established the Authority and provided it with a role to develop the Basin Plan for adoption by the relevant Minister. This Bill amends the Water Act for the establishment of a Special Account pursuant to section 21 of the FMA Act and a Special Appropriation. It will allow for enhanced environmental outcomes from the Basin Plan to be achieved.

Human rights implications

The Bill engages the right to an adequate standard of living and right to health in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to an adequate standard of living, including adequate food, clothing and housing is protected in article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to health is protected in article 12 of the ICESCR.

Access to sufficient, safe acceptable and physically accessible water for personal and domestic uses is supported by the Water Act and the Murray-Darling Basin Plan generally, as reflected in section 20 of the Water Act which sets out the purpose of the Basin Plan. It is also supported through specific content that must be included in the Basin Plan, required by the Water Act, including content relating to critical human water needs and water quality. This Bill does not modify or amend any provisions which would prevent access to sufficient, safe, acceptable and physically accessible water for personal and domestic uses provided in the Water Act.

This Bill is compatible with human rights as it supports that those rights identified in ICESCR as interpreted by the Committee on Economic, Social and Cultural Rights.

Minister for Sustainability, Environment, Water, Population and Communities
The Hon Tony Burke MP
NOTES ON INDIVIDUAL CLAUSES

Clause 1- Short Title

1. This clause provides that the Act is to be cited as the Water Amendment (Water for the Environment Special Account) Act 2012.

Clause 2- Commencement

2. Clause 2 provides that Sections 1 to 3 and anything in the Act not elsewhere covered in the table will commence on the day it receives the Royal Assent.

3. Schedule 1 commences the later of:
   a) the start of the day this Act receives the Royal Assent; and
   b) the start of the day the Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Act 2012 receives the Royal Assent.

4. However, Schedule 1 does not commence at all if the event mentioned in paragraph (b) above does not occur.

5. Any information in column 3 of the table is not part of this Act.

Clause 3- Schedule(s)

6. This clause provides for amendments to the Water Act specified in the Schedules.

SCHEDULE 1 – WATER FOR THE ENVIRONMENT SPECIAL ACCOUNT

Water Act 2007

Item 1 – Subsection 4(1) - Definitions

7. This item inserts the definition of the Water for the Environment Special Account into subsection 4(1) of the Water Act 2007 (Water Act). The Water for the Environment Special Account is defined to mean the Special Account established by the new section 86AB.

Item 2 – New Part 2AA – Water for the Environment Special Account

8. This item inserts a new Part 2AA after Part 2 of the Water Act to establish the Water for the Environment Special Account.

New Section 86AA – Object of this Part

9. Section 86AA provides the object of new Part 2AA and how the object is to be achieved.

10. Subsection 86AA(1) provides that the object of new Part 2AA is to enhance the environmental outcomes that can be achieved by the Basin Plan as in force from time to time by protecting and restoring the environmental assets of the Murray-Darling Basin and protecting biodiversity dependent on the Basin water resources so as to give effect to relevant international agreements.
11. Subsection 86AA(2) provides without limiting subsection 86AA(1), examples of how environmental assets may be protected and restored. These include the following:

   a) increasing the flow of water through barrages to the Coorong;
   b) increasing the average depth of water in the Lower Lakes to maintain flows to the Coorong;
   c) reducing the average salinity levels in the Coorong and Lower Lakes;
   d) increasing the average depth of water at the mouth of the River Murray;
   e) flushing salt from the water resources of the Murray-Darling Basin to reduce the average salinity levels of the Basin;
   f) allowing for environmental watering of floodplains of the Murray-Darling Basin; and
   g) providing flows of water over the banks of rivers and streams to improve connections between water-dependent ecosystems in the River Murray System.

12. Subsection 86AA(3) provides that the object of this Part is to be achieved by easing or removing constraints on the capacity to deliver environmental water to the environmental assets of the Murray-Darling Basin and increasing the volume of the Basin water resources that is available for environmental use by up to 450 gigalitres.

New Section 86AB – Water for the Environmental Special Account

13. This section establishes the Water for the Environment Special Account (the Account) and specifies that the Account is a Special Account for the purposes of the Financial Management and Accountability Act 1997.

New Section 86AC – Credits to the Account

14. This new section specifies the nature of the amounts that must be credited to the Account. The following amounts must be credited to the Account:

   - all amounts appropriated by the Parliament for the purposes of that Account;
   - amounts paid by a Basin State, under an agreement between the Commonwealth and the State, for crediting to that Account;
   - amounts received from crediting to that Account by the Commonwealth under any other agreement;
   - amounts equal to money received by the Commonwealth in relation to property paid for with money debited from that Account; and
   - amounts equal to amounts of any gifts given or bequests made for the purposes of that Account.
15. The note provides that an Appropriation Act provides for amounts to be credited to a Special Account if any of the purposes of the Account are a purpose that is covered by an item in the Appropriation Act.

16. Subsection 86AC(2) provides that amounts equal to money received by the Commonwealth from the disposal of or other dealings with water access rights paid for with amounts debited from the Account are not to be credited to that Account. Such amounts are to be credited to the Environmental Water Holdings Special Account (see paragraphs 105(2)(a) and 112(1)(b) of the Water Act).

New section 86AD – Purposes of the Water for the Environment Special Account

17. This section sets out the purposes of the Account and purposes for which the Account may be debited. Funds can only be debited from the account for the purposes outlined in this section. If the Basin Plan is not in effect, the objects of Part 2AA cannot be achieved and therefore funds cannot be expended from the Account.

18. Sub-paragraph 86AD(2)(a) provides that amounts standing to credit of the Account may be debited for the purposes of making payments in relation to projects whose aim is to further the object of the new Part 2AA by:

   i. improving the water efficiency of the infrastructure that uses Basin water resources for irrigation;

   ii. improving the water efficiency of any other infrastructure that stores, delivers or drains Basin water resources for the primary purpose of providing water for irrigation;

   iii. improving or modifying infrastructure (including bridges and roads) that constrains the delivery of environmental water to the environmental assets of the Murray-Darling Basin in order to ease or remove those constraints;

   iv. increasing the capacity in dams and storages to increase the capacity to deliver environmental water to the environmental assets of the Murray-Darling Basin;

   v. entering agreements to acquire an interest in land (including easements) to facilitate environmental watering of the environmental assets of the Murray-Darling Basin; and

   vi. improving the rules, policies, practices and procedures in relation to the use and management of the Basin water resources.

19. Paragraph 86AD(b) provides that amounts standing to credit of the Account could be debited for the purpose of purchasing water access rights which relate to Basin water resources for the purpose of furthering the object of the new Part 2AA.

20. Paragraph 86AD(2)(c) provides that amounts standing to credit of the Account may be debited for the purposes of making any other payments in relation to projects whose aim is to further the object of the new Part 2AA; or to address any detrimental social or economic impact on the wellbeing of any community in the Murray-Darling Basin that is associated
with a project or purchase referred to in paragraph 86AD(2)(a) or (b) or subparagraph 86AD(2)(c)(i) so as to offset any such impact.

21. Paragraph 86AD(2)(d) provides that the Account may be debited for the purposes of meeting the expenses of administering the Account. For the purposes of this section, the expenses of administering the Account do not include the cost of salaries of the Department.

22. Paragraph 86AD(4) provides that an amount may be debited from the Account for the purposes of making a payment in relation to a project or purchase referred to in paragraph 86AD(2)(a) or (b) or subparagraph 86AD(2)(c)(i) only if the project or purchase is related to an adjustment of a long-term average sustainable diversion limit (SDL) for the water resources of a particular water resource plan area (or a particular part of those water resources) under section 23A of the Water Act (whether or not the adjustment has been proposed, and whether or not the adjustment has been adopted as an amendment) because the project or purchase achieves the object of the new Part 2AA in accordance with subsection 86AA(3). Section 23A is a new provision included in the Water Act by the Water Amendment (Long-term Average Sustainable Diversion Limit) Adjustment Bill 2012. Amounts credited to the Account can only be debited if the Murray-Darling Basin Plan includes a mechanism to adjust the SDL in accordance with s 23A and the project is relevant to the Murray-Darling Basin Authority proposing that a SDL adjustment should occur.

23. The Note to paragraph 86AD(4) provides that a SDL variation proposed by the Authority may be adopted by the Minister as an amendment of the Basin Plan under subsection 23B(6) of the Water Act.

New Section 86AE – Commonwealth environmental water holdings

24. Subsection 86AE(1) makes clear that water access rights acquired by the Commonwealth with amounts debited from the Water for the Environment Special Account form part of the Commonwealth environmental water holding as defined by section 108 of the Water Act, and that the Commonwealth Environmental Water Holder must manage the holdings in accordance with sections 105 and 106.

25. Subsection 86AE(2) provides that paragraphs 105(3)(b) and 4(b), 106(2)(b) and (c) and subsection 105(5) of the Water Act do not apply in relation to any water access right that forms part of the Commonwealth environmental water holdings if the water access was acquired by the Commonwealth with amounts debited from the Account. This means that water acquired using amounts debited from the Account cannot be used or disposed of for the purposes of protecting or restoring the environmental assets of areas outside the Murray-Darling Basin.

New Section 86AF – Arrangements to make payments

26. Subsection 86AF(1) provides that the Minister may, on behalf of the Commonwealth, enter into arrangements and make payments for the purposes of subsection 86AD(2).
27. If a Basin State is granted financial assistance with an amount debited from the Account, the terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the Basin State.

New Section 86AG – Amounts to be credited to the Account

28. This section inserts a new table which identifies, for each financial year (specified in the first column of the table) the maximum payment amount to be credited to the Account. The total amount to be credited to the Account is $1,775,000,000.00.

29. Payments are appropriated each financial year, where the first payment will be made at the beginning of the 2014-2015 financial year and last payment will be made at the beginning of the 2023-2024 financial year.

New Section 86AH – Special Provisions for the 2024-25 financial year

30. This section provides that the balance of the Account from the beginning of 1 July 2024 is to be zero. This means that any unspent funds in the Account will be returned to the Budget.

New Section 86AI – Annual Report

31. This section provides that as soon as practicable after 30 June each financial year, the Secretary of the Department must prepare and give to the Minister, for presentation to the Parliament, a report on the Account during that year.

32. Subsection 86AI(2) provides that the contents of the annual report must include:

   a) the objectives and priorities for amounts debited during the report year from the Account;
   
   b) the achievements against these objectives and priorities including any increase in the volume of the holdings as a result of the amounts debited from the Account, descriptions of water access rights and its water resource plan areas acquired by the Commonwealth;
   
   c) descriptions of each project in relation to which to the amount was debited for the purposes of paragraph 86AD(2)(a) or subparagraph 86AD(2)(c)(i);
   
   d) details of any significant developments in relation to a project where an amount was debited during a previous financial year. This is only required for amounts that were debited for the purposes of new paragraph 86AD(2)(a) or subparagraph 86AD(2)(c)(i); and
   
   e) any amounts debited from the Account during the report year and the purpose for the amount was debited.

33. The Minister must table the annual report in each House of the Parliament within 15 sitting days after the day the Minister receives the report, and cause a copy of each annual report to
be given to the relevant State minister for each of the Basin States on or before the day the report is first tabled in a House of the Parliament.

**Item 3 – Subsection 105(3)**

34. This item inserts a new Note at the end of subsection 105(3) to provide that subsection 105(3) and 105(4) are modified in relation to water access rights acquired by the Commonwealth with amounts debited from the Account (see subsection 86AE(2)).

**Item 4 – Subsection 106(2)**

35. This item inserts a new Note at the end of subsection 106(2) to identify that subsection 106(2) is modified in relation to water access rights acquired by the Commonwealth with amounts debited from the Account (see subsection 86AE(2)).

**Item 5 – Subsection 108(1)**

36. This item inserts a new Note at the end of subsection 108(1) to clarify that water access rights acquired by the Commonwealth with amounts debited from the Account form part of the Commonwealth environmental water holdings (see subsection 86AE(1)).

**Item 6 – Paragraph 251(2)(ea)**

37. This item inserts a new paragraph 251(2)(ea) after paragraph 251(2)(e) to provide that the Minister cannot delegate his power to enter into arrangement under section 86AF(1) that contains, or is to contain, terms and conditions referred to in subsection 86AF(2).