



LEGISLATIVE COUNCIL LEGISLATION COMMITTEE

REPORT ON THE CONSIDERATION IN DETAIL OF THE WATER (COMMONWEALTH POWERS) BILL 2008

DECEMBER 2008

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EXTRACTS FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL

Tuesday, 11 November 2008

12 WATER (COMMONWEALTH POWERS) BILL 2008 — Debate continued on the question, That the Bill be now read a second time.

Question — put and agreed to.

Bill read a second time.

Ms Lovell moved, That the Water (Commonwealth Powers) Bill 2008 be referred to the Legislation Committee to report by 2 December 2008.

Debate ensued.

Question — put.

The Council divided — The President in the Chair.

AYES, 20

NOES, 18

Mr Atkinson	Ms Broad
Mr Barber	Ms Darveniza
Mrs Coote	Mr Eideh
Mr Dalla-Riva	Mr Elasmarr
Mr D.M. Davis	Mr Jennings
Mr P.R. Davis	Mr Leane
Mr Drum	Mr Lenders
Mr Finn	Mr Madden
Mr Guy	Ms Mikakos (<i>Teller</i>)
Mr Hall	Mr Pakula
Ms Hartland	Ms Pulford
Mr Kavanagh	Mr Scheffer (<i>Teller</i>)
Mr Koch (<i>Teller</i>)	Mr Smith
Mrs Kronberg	Mr Somyurek
Ms Lovell (<i>Teller</i>)	Mr Tee
Ms Pennicuik	Mr Thornley
Mrs Petrovich	Ms Tierney
Mrs Peulich	Mr Viney
Mr Rich-Phillips	
Mr Vogels	

Question agreed to.

Wednesday, 12 November 2008

12 LEGISLATION COMMITTEE — ASSEMBLY MINISTER'S ATTENDANCE —

Ms Lovell moved, That —

- (1) this House requests the Legislative Assembly to grant leave to the Honourable T.J. Holding, MP, Minister for Water, to appear before the Legislative Council Legislation Committee to give evidence and answer questions in relation to the Water (Commonwealth Powers) Bill 2008; and
- (2) Standing Order 16.11(3) be suspended and that the Minister, Minister representing, Mr David Downie, General Manager, Office of Water, Department of Sustainability and Environment, Dr Wendy Craik, Chief Executive Officer, Murray-Darling Basin Commission, Mr Peter Harris, Secretary, Department of Sustainability and Environment, and such other persons nominated by the Minister or determined by the Committee may give evidence to the Committee.

Debate ensued.

Question — put.

The Council divided — The President in the Chair.

AYES, 20

NOES, 18

Mr Atkinson	Ms Broad
Mr Barber	Ms Darveniza
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Mr Hall (<i>Teller</i>)	Mr Pakula
Ms Hartland	Ms Pulford
Mr Kavanagh	Mr Scheffer
Mr Koch	Mr Smith
Mrs Kronberg	Mr Somyurek
Ms Lovell	Mr Tee
Ms Pennicuik	Mr Thornley (<i>Teller</i>)
Mrs Petrovich	Ms Tierney
Mrs Peulich	Mr Viney
Mr Rich-Phillips (<i>Teller</i>)	
Mr Vogels	

Question agreed to.

LEGISLATION COMMITTEE

Committee Members

Mr Bruce Atkinson – Chair

Member for Eastern Metropolitan Region

Ms Candy Broad – Deputy Chair

Member for Northern Victoria Region

Mrs Andrea Coote

Member for Southern Metropolitan Region

Mr Damian Drum

Member for Northern Victoria Region

Ms Jenny Mikakos

Member for Northern Metropolitan Region

Ms Sue Pennicuik

Member for Southern Metropolitan Region

Ms Jaala Pulford

Member for Western Victoria Region

Substituted Members during consideration of Bill

Mr Greg Barber (substitute for Ms Sue Pennicuik)

Mr Martin Pakula (substitute for Ms Jaala Pulford) – for 19/11/08

Mr Sean Leane (substitute for Ms Jenny Mikakos) – for 19/11/08

Ms Wendy Lovell (substitute for Mrs Andrea Coote)

Mr Brian Tee (substitute for Ms Jenny Mikakos) – from 24/11/08

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Mr Richard Willis – Secretary, Council Committees

Dr Stephen Redenbach – Assistant Clerk – Committees

Mr Anthony Walsh, Research Assistant, Council Committees

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REPORT

The Legislation Committee of the Legislative Council, appointed pursuant to the Resolution of the Council on 17 April 2007, reports as follows:

1. The Legislation Committee is established by Standing Order 16.01 of the Legislative Council. The function of the Committee, prescribed by Standing Order 16.02, is to consider in detail a Bill or series of related Bills referred to the Committee by the Council and to report to the Council on the Committee's consideration of the Bill, which may include any recommendations for amendments to the Bill(s).
2. On Tuesday, 11 November 2008, on the motion of Ms Wendy Lovell, the House resolved to refer the Water (Commonwealth Powers) Bill 2008, to the Legislation Committee. The Bill is the third to be referred to the Legislation Committee in the 56th Parliament.
3. On Wednesday, 12 November 2008, on the motion of Ms Wendy Lovell, the House resolved that —
 - (1) this House requests the Legislative Assembly to grant leave to the Honourable T.J. Holding, MP, Minister for Water, to appear before the Legislative Council Legislation Committee to give evidence and answer questions in relation to the Water (Commonwealth Powers) Bill 2008; and
 - (2) Standing Order 16.11(3) be suspended and that the Minister, Minister representing, Mr David Downie, General Manager, Office of Water, Department of Sustainability and Environment, Dr Wendy Craik, Chief Executive Officer, Murray-Darling Basin Commission, Mr Peter Harris, Secretary, Department of Sustainability and Environment, and such other persons nominated by the Minister or determined by the Committee may give evidence to the Committee.
4. In response to part (1) of the above resolution, on 13 November 2008 the Legislative Assembly sent a Message back to the Legislative Council refusing to grant leave for the Minister for Water to appear before the Legislation Committee to answer questions in relation to the Bill.
5. The Committee subsequently invited the attendance of the Minister representing the Minister for Water in the Legislative Council, Mr Gavin Jennings MLC, Minister for Environment and Climate Change, together with those persons described in part (2) of the above Council resolution.
6. Mr Gavin Jennings MLC, wrote to the Committee on 17 November 2008 advising he would attend the hearings, together with Mr Peter Harris, Secretary, Department of Sustainability and Environment; Mr Phil Heaphy, Director Intergovernmental, Office of Water, Department of Sustainability and Environment; and Ms Fiona Harris, Policy Advisor, Office of Water, Department of Sustainability and Environment.
7. The Committee met on 19 November 2008 and received evidence from witnesses referred to in paragraph 6 above. The Committee further met on 24 November 2008 and received evidence from Dr Wendy Craik, Chief Executive Officer, Murray-Darling Basin Commission.
8. Mr David Downie, General Manager, Office of Water, Department of Sustainability and Environment did not accept invitations to give evidence on the dates offered by the Committee.

9. A number of the clauses were examined in detail by the Committee. No amendments to the Bill were proposed and the Committee agreed to the Bill without amendment.
10. The Committee's consideration of the Bill is found in the Minutes of the Proceedings included in this Report. The Hansard transcript of proceedings, including witness evidence, is also included in this Report. Following this consideration, the Committee recommends that this Report be adopted.

Committee Room,
1 December 2008

MINUTES OF THE PROCEEDINGS

The Minutes of the public proceedings of the Legislation Committee in relation to consideration in detail of the Water (Commonwealth Powers) Bill 2008 were as follows:

WEDNESDAY, 19 NOVEMBER 2008

The Committee met in the Legislative Council Committee Room to consider the Water (Commonwealth Powers) Bill 2008.

Members Present: Mr Bruce Atkinson, MLC (Chair)
Ms Candy Broad, MLC (Deputy Chair)
Mr Greg Barber, MLC (substitute for Ms Pennicuik, MLC)
Mr Damien Drum, MLC
Mr Sean Leane, MLC (substitute for Ms Mikakos, MLC)
Ms Wendy Lovell, MLC (substitute for Mrs Coote, MLC)
Mr Martin Pakula, MLC (substitute for Ms Pulford, MLC)

Witnesses: Mr Gavin Jennings, MLC, Minister for Environment and Climate Change
Mr Peter Harris, Secretary, Department of Sustainability and Environment
Mr Phillip Heaphy, Director Intergovernmental, Department of Sustainability and Environment
Ms Fiona Harris, Senior Policy Officer, Department of Sustainability and Environment

Also in attendance: Mr R. Willis, Secretary, Council Committees
Dr S. Redenbach, Assistant Clerk - Committees
Mr A. Walsh, Research Assistant, Council Committees

1. Meeting Opened

The Chair declared the meeting open at 2.03 p.m.

2. Consideration in detail

Clauses 1 to 3— consideration of clauses 1 to 3 ensued.

On the motion of Mr Pakula, the Committee resolved to postpone further consideration of Clauses 1 to 3 until the next meeting.

Adjournment

The Committee adjourned its deliberations at 3.32 p.m.

MONDAY, 24 NOVEMBER 2008

The Committee met in the Legislative Council Committee Room to consider the Water (Commonwealth Powers) Bill 2008.

Members Present: Mr Bruce Atkinson, MLC (Chair)
Ms Candy Broad, MLC (Deputy Chair)
Mr Greg Barber, MLC (substitute for Ms Pennicuik, MLC)
Mr Damien Drum, MLC
Ms Wendy Lovell, MLC (substitute for Mrs Coote, MLC)
Ms Jaala Pulford, MLC
Mr Brian Tee, MLC (substitute for Ms Mikakos, MLC)

Witnesses: Dr Wendy Craik, Chief Executive Officer, Murray-Darling Basin Commission

Also in attendance: Mr R. Willis, Secretary, Council Committees
Mr A. Walsh, Research Assistant, Council Committees

1. Meeting Opened

The Chair declared the meeting open at 2.20 p.m.

2. Consideration in detail

Clauses 4 to 26 - On the motion of Mr Barber, the Committee resolved to postpone further consideration of Clauses 4 to 26 until later this day.

Postponed Clause 1 – consideration of postponed clause 1 ensued.

Agreed to.

Postponed Clauses 2 to 26 – agreed to.

Bill agreed to without amendment.

Adjournment

The Committee adjourned its deliberations at 3.10 p.m.

Hansard Transcript of Proceedings

19 & 24 November 2008

PARLIAMENT OF VICTORIA

**LEGISLATIVE COUNCIL
LEGISLATION COMMITTEE**

Water (Commonwealth Powers) Bill

Wednesday, 19 November 2008

Chair

Mr B. Atkinson

Deputy Chair

Ms C. Broad

Members

Mr B. Atkinson	Ms J. Mikakos
Ms C. Broad	Ms S. Pennicuik
Mrs A. Coote	Ms J. Pulford
Mr D. Drum	

Substituted members

Ms G. Barber (for Ms S. Pennicuik)
Mr S. Leane (for Ms J. Mikakos)
Ms W. Lovell (for Mrs A. Coote)
Mr M. Pakula (for Ms J. Pulford)

Staff

Mr R. Willis, secretary

Also present

Mr G. Jennings, Minister for Environment and Climate Change
Mr P. Harris, Secretary, Department of Sustainability and Environment
Mr P. Heaphy, director intergovernmental, Department of Sustainability and Environment
Ms F. Harris, senior policy officer, Department of Sustainability and Environment

WATER (COMMONWEALTH POWERS) BILL*Legislation Committee***Referred from Legislative Council.**

The CHAIR — I formally declare the hearings open and welcome the minister and his accompanying departmental and policy advisers. Thank you for making yourselves available to the committee to go through the bill.

I indicate that substitute members for this hearing are: Wendy Lovell, Greg Barber, Shaun Leane and Martin Pakula.

The purpose of the committee is to go through the bill as it was referred by the house. The bill is being enacted to refer certain matters relating to water management to the commonwealth Parliament for the purposes of section 51(xxxvii) of the constitution of the commonwealth and to amend the Murray-Darling Basin Act 1993 to provide for the carrying out of an agreement between the commonwealth, New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory with regard to the water resources of the Murray–Darling Basin, to repeal all provision in that act as to any former agreement revoked by that agreement, to make consequential amendments to the Snowy Hydro Corporatisation Act 1997 and the Water Act 1989 to repeal the Murray-Darling Basin Amendment Act 2007 and for other purposes.

I understand from members of the committee so far — and I would ask members to indicate if there are other matters they wish to pursue in regard to specific clauses — that the members who sought the reference of this bill to the committee are principally concerned with the purposes clause, clause 1, rather than a lot of the more detailed clauses.

Mr BARBER — I would add definitions, and any bit that runs through part 2 of the bill, but not so much part 3 of the bill.

The CHAIR — Thank you, Mr Barber. Minister, I invite you to make to the committee any remarks with regard to an introduction to the legislation.

Mr JENNINGS — I will not take up 5 minutes. In fact, I will be quicker than that because I just want to go from first principles of what this bill is about and then talk about my role here and the people who are advising me and providing assistance to the committee, and how that all fits into place.

In relation to what the bill does, it has been designed to deliver on Victoria's obligations as part of the jurisdictions to deal with the all-state Murray-Darling Basin agreement (MDBA) and the conditions that actually cover that. It is to harmonise with other jurisdictions our approach to matters that come under the auspices of schedule 1 of the commonwealth's Water Amendment Bill 2008 to try to enable the Murray-Darling Basin Authority to exercise its powers and functions as have been reached at a level of agreement between the jurisdictions, and for it to undertake its responsibilities under the modified or new Murray-Darling Basin agreement. There is a specific referral power or a specific additional requirement that the basin plan consider, which would be amended to include specific provisions to deal with the conveyancing of water and critical human needs, and to extend the reach of the water charge and water market rules within the basin to cover all the bodies that charge regulated water charges and all irrigation infrastructure operations within the terms of that agreement and that referral to the Murray-Darling Basin Authority.

That is basically the reason why we are here. It is in the form that it is in here to actually get jurisdictional alignment between the commonwealth and the states in terms of the harmonisation of that in the legislation, the agreements that are in place and the jurisdictional responsibilities that will actually fall out of these arrangements, and to make sure that within the operation of the basin plan

there is consideration of the critical human need that has been incorporated. That is in identical terms within all those jurisdictions.

My role in terms of my understanding of why I am here, which is consistent with what would be happening if I was in the committee of the whole, is that I am representing the Minister for Water who is the responsible minister here. I know it might be tempting for people to try to make me act in a schizophrenic way between my acting responsibilities representing the Minister for Water or my role as the Minister for Environment and Climate Change, but I very clearly understand my role here is in terms of dealing with this legislation rather than being a commentator on the provisions of the bill from my portfolio's perspective. I thought I would just share that with you. The people who are with me are the people who have been part of the negotiations with the other jurisdictions in relation to this, so they are totally relevant people to be part of this conversation.

The CHAIR — Thank you. We will proceed to any questions that members might have under clause 1, which is the purposes clause.

Clause 1

Ms LOVELL — Minister, under the commonwealth Murray-Darling Basin plan, sustainable water diversions can be set, and that would alter the quantity of water available to each state, yet under the state Water Act, no permanent qualification of water rights can occur under section 33AAB of that act until August 2021. If the federal minister determines a reduction of water rights in Victoria before 2021, which law will take precedence — Victoria's or the commonwealth's?

Mr JENNINGS — I will take some technical advice on that matter, but it is a starting point of this story because this may be a feature about whose laws may take precedence over the other. The reason why the referral has been made in this form is so that there will not be confusion about that, so there will be harmonisation of the legislative arrangements, the agreements that are actually in place, and the operations of the Murray-Darling Basin Authority, which would mean that there will not be a misalignment of either the legislation or jurisdictional responsibility. That is the intention. That is the longwinded answer in terms of the concept.

In relation to the specifics about water allocations, I understand that part of the agreement arrangements covered by this is that the commonwealth respecting water allocations that come into Victoria up until 2019 is the building block of the agreement, which would cover the vast majority of the time frame that you have actually indicated in your question, but beyond that if there is any further technical explanation — —

The CHAIR — I think the default position in most of these situations is that if there is a difference between state law and federal law, federal law usually takes precedence, doesn't it?

Mr HARRIS — The commonwealth has made specific provision for the 2019 limitation to apply in the case of the state of Victoria and by 2014 in the case of all the other jurisdictions. That in effect means the state provisions will remain unless the state chooses to negotiate them subsequently with the commonwealth at a later point.

Mr BARBER — Can you just tell us where we find that within the material that is in front of us?

Mr HARRIS — It is in the commonwealth's original Water Act and it remains there.

Mr BARBER — Okay. It is not in the amendment bill?

Mr HARRIS — No. It is not in this legislation. It is in the original commonwealth Water Act.

Mr DRUM — So we can take it as given that if Victoria signs up, which we have, to this federal shifting of powers, that we will not have any realignment or readjustment of those water shares into the future before 2020–21.

Mr HARRIS — As I said, unless the state — —

Mr JENNINGS — By agreement.

Mr DRUM — By agreement.

The CHAIR — Thank you, minister. Are there any further questions on the purposes clause?

Mr BARBER — Is it the purpose of this legislation to provide a referral power which could be used by the federal government to make ongoing amendments to some sections of its act? Or alternatively, is it the case that the federal government will never be able to make amendments beyond what we have seen in front of us through its bill and our bill?

Mr JENNINGS — I would understand it that the referral authority in relation to the bill, as I described it in my introduction, is within the limits of what I have described.

So in terms of any further amendments, you would assume that if they impinge on either undertakings or the agreements that have been reached that relate to their act and how it harmonises with our act, how it harmonises with entitlements, how it harmonises with the operations of the authority, we would be operating on the assumption that there would not be actions of the commonwealth jurisdiction outside of the scope of that referral, and if there was intention to do it, it would be subject to negotiation and agreement, which would be the best way in which to achieve the most desirable outcome, I would have thought, for all parties concerned.

Mr BARBER — Maybe, Chair, when we do specific provisions, but I am really just asking a simple question: is there anything in this legislation, having referred state powers, or anything in the federal legislation that says they cannot ever amend those same provisions relying on this referral of power in the future, whether or not with agreement from the state? Is there anything that blocks them from doing it, apart from the state, of course, withdrawing from the entire scheme, which is a feature of the bill?

Mr JENNINGS — I think that is a mechanism that the commonwealth or the state would not exercise lightly, and I would have thought that really the answer that I have given you, even though it might not be necessarily as black and white in law as you might have liked, would cover the field in the reality of how this would be dealt with.

The CHAIR — I think Mr Barber is mindful that we never got the income tax back. Are there any further questions?

Mr DRUM — I was just interested in the actual basin plan and the way that it will be set down to determine Victoria's water availability as opposed to our water share. Will the basin plan effectively override the normal sharing arrangement, or can it?

Mr HARRIS — No.

Mr DRUM — In any circumstances?

Mr HARRIS — We have preserved our water shares under the revised agreements — Murray-Darling Basin agreements — and they are part of this legislation. In fact, a core issue where we have been in dispute with the commonwealth has been the preservation of state water shares.

Mr DRUM — Will the basin plan be a moving feast, though, from year to year?

Mr HARRIS — Subject to contradiction, my recollection is the basin plan is regularly repeated every five years. Is that right, Phil, do you know?

Mr HEAPHY — Yes. As much as we understand at the moment, there is not a provision for an annual process on it. They will be periodic — and my recollection is it is every 10 years, the basin plans.

Mr DRUM — What mechanism will the authority use to cater for the changing climatic conditions and the change in inflows to work out what amount of water is going to be allowed for each of the states when they all have the share which is set in this legislation?

The CHAIR — The question actually takes the purposes clause a fair way. Minister, I am happy to entertain an answer and to have some assistance from Mr Drum in this matter, but I am mindful that we do not stray too far from what this bill actually says and into provisions that are clearly outside the bill.

Mr DRUM — The basin plan is very clearly in the bill.

The CHAIR — Yes, but when we start talking about mechanisms — —

Ms LOVELL — I think what Mr Drum is trying to get at is that if there is a permanent requalification of water rights there is compensation available, at least from the commonwealth, anyway, and if it was able to be changed on an annual basis, it may qualify as a temporary qualification rather than a permanent requalification of the rights and then not be compensatable.

Mr JENNINGS — I am happy to take advice on that one.

Mr HARRIS — I think the proposition that will apply is one where the commonwealth will come up with the basin plan and it will propose a set of changes. The commonwealth has outlined under the national water initiative a set of compensation arrangements for variations to water entitlements, and Victoria, again under the national water initiative, which predates this, had a different set of arrangements. To date the commonwealth, to the best of my knowledge, has not aligned those arrangements, and it is likely therefore that those arrangements will be considered again by the commonwealth at a time when it finalises the basin plan, but in terms of a scenario which said, ‘We are only making a temporary variation to water entitlements’, again to my knowledge that is not envisaged. The purpose of the basin plan is to review long-term impacts, not make temporary adjustments, as I understand it. Certainly that has been the thematic, I think, from the commonwealth from the very start, that they are here to adjust, if adjustments are required, for the long haul, not for temporary arrangements.

The CHAIR — Ms Lovell, did you want to check on those compensation arrangements in the context of that answer?

Ms LOVELL — Yes. It just concerns me that they could change it each year temporarily so they become temporary changes rather than a permanent qualification which would attract — —

Mr HARRIS — As I said, that is not my understanding. My understanding is the basin plan is a long-term addressing of water allocation issues across the Murray–Darling Basin and not a temporary shift. To the best of my knowledge the commonwealth has not designed the basin plan, so we have not seen the document, but I think this is about long-term and not about short-term changes or temporary incremental shifts. I do not think any of the debate between us and the commonwealth has been at all around that kind of issue, because we have taken at face value the assertions of both the previous government and the current government that they are here to fix the problem for the long term.

Mr DRUM — In relation to the very genesis of the Victorian government deciding to sign up to the national water plan and to transfer its powers over to the federal government, what modelling did the Victorian government use to effectively outline its future so that it could then be in a position to transfer its powers over, knowing that it would be in a sound position going forward?

The CHAIR — Again, I am happy to have an answer, but I am conscious that this question is sailing close to the wind in terms of the purposes clause.

Mr JENNINGS — I suppose Mr Drum and I should not volley questions one way, back to the other. We are talking about a field — entitlements; water allocation regimes; a system, the Murray-Darling Basin Commission, operating for a long period of time; recognised water entitlements right across various jurisdictions that have been subject to a high degree of both a regulatory environment and market-based mechanisms — that has well and truly been established. They all relate to the regime that relates to the allocation of water in accordance with its reliability or availability depending on what the inflow availabilities of supply are. If that is what he is talking about modelling — —

Mr DRUM — Modelling of inflow availability is the main issue I was looking at.

Mr JENNINGS — Okay. Building on everything I have just described to you is a whole allocation regime. Within that there have been historic scenarios about water allocations that have been built up over a long period of time that are shown not to account for the existing very low inflow levels in terms of what has happened over the last few years.

There needs to be some reflection on their appropriateness going forward. In terms of projections going forward about what we could reasonably expect to be the inflows in climate change scenarios, many different scenarios have been analysed, and regardless of the outcomes of any of them ultimately we need to be able to account from the existing agreements and existing allocations on the basis of a combination of share, on a combination of the capacity to deliver, the capacity to pay.

They will be the determinations of how shares will be allocated in the future.

We do not actually have a whole new world order of modelling, with the exception that we, as a community, have to account for the fact that under climate change scenarios there may be less water coming into the inflows than there has been previously.

Beyond that, in terms of the plan, the plan will try to be structured in a way that accounts for those shares, those entitlements, those allocations, the capacity to deliver and to pay, going forward. In many ways that will be reflected in the nature of the plan. There has been a lot of work; to plonk it on the table and say, ‘Here is the Harvard Business School modelling’ — it does not exist in that form.

Mr DRUM — There must have been some rather alarming modelling undertaken by the government, because some of the actions taken by the government in relation to the adoption of this plan and within the definitions of the Murray–Darling Basin, with the excising of the Goulburn River — which is all a part of the government’s handing over of its water powers to the federal government — are quite extreme. There must have been some quite extreme modelling to have pushed the government to adopt this holistic package of reforms.

Mr JENNINGS — I will volunteer. We are now going into a field where of course we are concerned — the whole community is concerned about the lack of availability of water. Now that you invite me to talk about a whole range of actions that have taken place in relation to the food bowl modernisation, the reforms of the Goulburn system, the reform of water allocations and infrastructure in northern Victoria to try to address those situations, yes, of course we have been particularly mindful of the need to take decisive action, action that requires a high degree of investment by Victoria, by the commonwealth, just for the very reasons that are implied in your question.

Interestingly enough, they are a very contested issue between us politically, but nonetheless I think all of us can agree that there is a dire and urgent need to act. You might argue the toss about the way in which we are acting, and you reserve your right to box on in relation to that, but we are very determined to invest in infrastructure to support the allocation of water, to make sure we do not lose any water within the system and that we can allocate that for productive purposes and for environmental purposes and to address critical human need. They are the drivers of what we have been doing.

Mr DRUM — Irrespective of political opinion about certain aspects of your policy, what I am mainly concerned about is the modelling that you have used that has led you to believe that there is a dire and urgent need to act. What is the modelling? What modelling or projected inflows has put you in the position to believe that we have a dire and urgent need to act?

Mr JENNINGS — I will not be mischievous in the way in I respond to that, but I think you would probably be in this position — to be able to make some decisions — and probably Ms Lovell would be in a position to be able to make those assessments too. The ongoing inflow scenarios that have occurred in Victoria in the last decade warrant urgent action.

We have responded with that urgent action in terms of all the elements that I have actually described to you, in terms of the conceptual building blocks of that framework and in terms of northern Victoria, as outlined in the *Northern Sustainable Water Strategy*, which is a published document — the community has been engaged in it; in its last iteration it was quite thick in size. All those issues

are well and truly canvassed in terms of the approach to scenarios about inflows; they are all accounted for there.

The community has been invited to express its view about the appropriate way in which allocations and entitlements could be made within those scenarios. The government has not hidden from this issue; it has actually engaged the community in this issue, so there is a significant piece of work about.

The CHAIR — Would it not also be true, Minister, though, that this bill is not simply predicated on Victoria's water position but on an interest in bringing together the various states, and indeed the ACT and federal government, to have a broader view of water policy and water action in the interests of the country, as much as Victoria?

Mr JENNINGS — Absolutely. I was responding to Mr Drum's questioning about our appreciation of the issues within Victoria, as I understood it — perhaps that is a question of interpretation; I did not mean to necessarily limit it. Ultimately whilst the availability of inflow is very dire in Victoria, and in fact CSIRO modelling would actually suggest that south-eastern Australian inflows are about as dire as any part of the nation, a similar — to varying degrees — analysis applies across the whole of the basin. I do not want to abuse the fact that we are in the Victorian Parliament and use that as an opportunity to complain about inefficiencies in jurisdictions to our north, just as people in South Australia may accuse every other jurisdiction of these maladies. We all have to be mindful that all the way through the system the appropriate efficiencies should be found to make sure that right from the north, right through to the lower lakes in South Australia and everywhere in between, we are as efficient at allocating water as we possibly can be. Exactly the same scenario covers the basin.

Ms LOVELL — Minister, you have just said the availability of inflows is dire in Victoria, and yet part of the government's plan is to move water around Victoria, from the north to the south. Last week in relation to this hearing today, and also to the Senate hearing, the Minister for Water said that there was a real risk of Melbourne running out of water by 2010 if the pipeline was not built. Has your modelling for future inflows into Victoria taken into account the water that will be available to Melbourne from the north if current climatic conditions that would have Melbourne's water storages empty by 2010 were the same in northern Victoria?

Mr JENNINGS — Again, we are talking about matters that are related conceptually but are not necessarily reflected in the bill. To demonstrate some goodwill, I will indicate to you that basically what is consistent through all of this in relation to water for any purpose — including critical human need, and relating, in this case, to the human needs of the citizens of Melbourne — is that inflows are a concern; the availability of water is a concern. The quality of the infrastructure that supports water allocations in Victoria is identified as a shortcoming in our capacity to make sure that we are as efficient as possible in allocating the available water in Victoria for all the variety of purposes that it could be put. In this case water made available through the modernisation of the food bowl would be water available to come into Melbourne, water available for productive purposes in the Goulburn Valley and beyond and water available for environmental purposes. The modelling that is embedded in what I have been talking about — the projections — indicate there are significant savings to be found from better infrastructure and water efficiencies that would enable all of those allocations to be made; that has been the assumption.

Mr DRUM — I was just interested in the intergovernmental agreement on Murray-Darling reform from 2008, which formed the basis behind what we now have in this bill here before us. It relates to the new section 74A, that is included in the tabled text:

- (1) The Minister must, in writing, determine that a Basin State is a State to which this section applies if the Minister is satisfied that a State water management law of the State:
 - ...
 - (b) has applied that framework by, and at all times since:
 - (i) 30 June 2009; or
 - (ii) a later day specified in the regulations.

Do we intend to amend the state Water Act to include this, and if so, when can we expect the state to legislate?

Mr JENNINGS — I am going to take some advice on that one.

Mr HARRIS — Subject to contradiction, which Alison will look up, I think the answer is we do not need to legislate in order to do that. My understanding, from what you read out, is that it would not require us to legislate. Perhaps we could come back to that, and Alison can give me some advice.

Ms LOVELL — Can you tell us whether it would apply to the entire state or just that area within the Murray–Darling Basin?

Mr HARRIS — This is related to the implementation of the basin plan itself, so the construct would be the plan itself will provide advice to the federal minister on what adjustments the developers of the plan think are necessary, and they will frame it, if you like. At this stage no-one can be sure whether they will do a valley-by-valley analysis. Obviously, having gone into the sustainable water strategy business ourselves a few years ahead of them, we would recommend that the commonwealth adopt a process not unlike the Central Region Sustainable Water Strategy and now the Northern Region Sustainable Water Strategy, to be followed up by the other ones which we are just starting. We would be saying it is more likely they would do it on a broader basis than valley by valley, but it is quite possible the commonwealth will decide on a valley-by-valley approach, in which case the federal minister will still have to make that attestation that you have referred to from that provision on the efficacy of the state in implementing the requirements of the basin plan.

To the best of my knowledge, and subject to contradiction from our legal adviser, Alison, I do not think that is a requirement that obliges us to legislate. In other words, our debate between the commonwealth and the state all through this process has been about the fact that they could set the revised requirements and we would be happy for them to do so on a comprehensive basin-wide assessment, but we would implement them. We would use state law to implement them. That, now, has been agreed. That is the construct that is now in front of us, by comparison with the construct that was in front of us last year.

Mr DRUM — That is likely to change?

Mr HARRIS — No, I am saying we have achieved what we needed to achieve. We will be the implementing agency for the, if you like, revised basin plan requirements. We, the state of Victoria, will be the implementing agency, therefore we will use state legislation to be the implementing entity. That is why state legislation need not vary, unless we find something that is in the legal analysis now going on behind me that suggests that it does. I do not think it will.

Mr DRUM — I have one more question in relation to the purposes before we move on to definitions. It has to do with the 4 per cent annual cap on water trade between irrigation districts. Is this legislation likely to make that harder to maintain — the current 4 per cent cap that we have on trade from one water district to another water district?

Mr JENNINGS — This is something that has been subject to media and community commentary and subject to negotiations between the jurisdictions about this issue, so that is a challenging enough issue under the existing framework.

Mr DRUM — It is something that is very important, Minister, to a lot of the communities out there.

Mr JENNINGS — Too right it is, because I have witnessed many, many front page articles about the leader of my party actually defending the interests of the Victorian community in relation to this matter, so I am acutely aware of how important it is, and the government is. Again, one of the reasons that Victoria is very, very mindful of the rate at which we should move from that cap is for the issue that I was very circumspect about raising before. I am not interested in jurisdictional bashing by talking about inefficiencies in other states and other places, and in terms of making sure that Victoria plays its role in reform. This is an issue where Victoria is saying, 'Let's all get our acts together, let's all be very clear about how efficient we are in terms of our water allocations', in terms of whether we have used water very efficiently, and we allow the market to find its appropriate level in terms of where the availability of water could be best used for a variety of purposes, which in some instances is determined by entitlement provisions, some by market-based mechanisms. We have said that until we have confidence that

everybody has got their act together in relation to the efficiencies, we are very reluctant to disadvantage any user of water entitlements in Victoria, beyond the 4 per cent until we are satisfied that there is the ability to efficiently deliver water right throughout the basin in accordance with the efficiencies that we believe in Victoria.

That is not to be parochial, but it is parochial to the extent that we are protecting Victorian interests by protecting the 4 per cent cap. This is a matter that will continue to exercise all our minds about the way in which we might move from that target over time because in an ideal market where water was available you would not actually have mechanisms like caps. But we are not in an ideal market and we are not in an ideal situation in relation to the availability of water. There are urgent and appropriate needs in all parts of the basin that we have to be respectful of. As a first order issue we will never lose sight of the interests of Victoria in trying to move to a national regime. That is the dynamic that we are in.

Mr DRUM — When you mentioned, Minister, that you would make sure that other areas — you said ‘others’ — had their house in order in relation to efficiencies, are you talking about other states?

Mr JENNINGS — Pretty much, yes.

The CHAIR — Mr Harris, did you want to make any other comment in terms of the previous answer?

Mr HARRIS — Only a slightly clarificatory one if I can, Chair. This provision, clause 74A, relates to the national water initiative that I referred to earlier and the risk management arrangements under that, and, as I think I advised earlier, Victoria has a different arrangement in place. This is an option therefore under 74A, so my primary advice earlier is correct. We do not need to legislate.

Mr DRUM — Could you speak up, please.

Mr HARRIS — My primary advice is that we do not need to legislate. This is an option available and it is likely that it will be dealt with, probably by negotiation, at a subsequent point, if at all, but right now it is not required and it will not require state legislation in the immediate future because we have not agreed to take up this formula. We can if we choose, but we have not agreed to it.

Mr DRUM — If we did choose then we would have to legislate?

Mr HARRIS — I am not certain about that. Is the NWI (national water initiative) in legislation?

Mr HEAPHY — No it is not in legislation, Chair, the requirement that is now in the commonwealth Water Act through this is that the commonwealth minister would seek to see a recognition by a jurisdiction in adopting that formula through legislation. So yes, the answer is you would have to change the Victorian Water Act to adopt that revised risk-sharing formula that is reflected in these arrangements and, I suppose, spelt out to its best degree in the July IGA.

Mr DRUM — That would be optional for Victoria, to opt in to that risk?

Mr HEAPHY — That is right, yes.

Mr DRUM — I have some other questions that are better fitted into the definitions but I indulge the committee.

The CHAIR — Thank you. Are there any further questions in regard to clause 1, the purposes clause?

Ms LOVELL — Yesterday the chief executive officer of the Murray-Darling Basin Commission, Wendy Craik, told Louise Rae on ABC radio in Mildura that contractual arrangements for the Living Murray required Victoria’s share be delivered in 2009.

Is Victoria going to be non-compliant if the Living Murray water is be stored in Eildon to be delivered for Melbourne in 2010–11, and what will happen if Victoria cannot meet the 2009 deadline?

Mr JENNINGS — I will probably take some advice on the availability of water and our ability to deliver on those Living Murray arrangements and under what circumstances all of us will be able to deliver on those, which I think is a concern. I am not quite sure if that is a complete quote from Wendy Craik, but I — —

The CHAIR — The thing that concerns me more is whether or not the subject matter actually fits in the jurisdiction of this legislation as part of the purposes of this legislation.

Ms LOVELL — The legislation is about management of the Murray River and the Living Murray environment flows to the Murray River.

Mr BARBER — Does the basin plan envisaged by this expect to cover Living Murray waters?

Mr JENNINGS — Yes, it does. But the thing about it is that there is a disconnect between the line of inquiry that Mr Drum has been pursuing with some vigour, and he is quite right to actually talk about what the inflows are saying. What are they saying? They are actually saying that the availability of water right across the basin is in fact at an all-time low, that in fact in terms of all the entitlements that have been entered in and all the allocations that are to take place off the historical charts that have been created and maintained for 50 years or so about the way in which water allocations are made, none of those charts is relevant to the contemporary situation. In terms of the ability to deliver on some things such as the Living Murray, the Living Murray was predicated on an ability for water that was available to be within those charts and at the moment — —

Mr BARBER — So it is out the window now?

Mr JENNINGS — No, we are not on the chart at the moment on the basis of the availability of water. I would think — —

Ms LOVELL — There was some water on the chart, but it has now been quarantined for other uses.

Mr JENNINGS — I would think that Wendy Craik would be mindful of where the availability of water is on the charts and so I would not assume that you have given a complete quotation from what comments she would have made before she would have gone on and started to speculate about what Victoria would do with our internal water allocations. I doubt that she would have — —

Ms LOVELL — She was not speculating about what Victoria would do with its share. She was just saying that the contractual arrangements were that Victoria's share was to be delivered by 2009. It is the Brumby government that has said that it is going to quarantine water that was earmarked for Living Murray and Water for Rivers in order to send water to Melbourne in 2010–11.

Mr JENNINGS — We sit here today within the dire circumstances that we are confronting and have been talking about with the intention of meeting our obligations as described under the Living Murray. That is what we sit here with the intention of doing.

Mr BARBER — But, Chair, if I can follow this up: clause 18H, which is in part 1A of the federal bill, says:

- (1) The Authority must, if the Living Murray Initiative so provides, manage the rights and interests that:
 - (a) are:
 - (i) water access rights, water delivery rights, irrigation rights ...
 - ...
 - (b) are held for the purposes of the Living Murray Initiative.

If we pass this bill and the feds pass that bill, and that Living Murray water is sitting in Lake Eildon or wherever it is sitting, will the federal government be delivering that water to the Living Murray versus Ms Lovell's proposition, which is you may be taking some of it down the pipeline to Melbourne?

Mr HARRIS — The original question actually mixes up two or three unconnected propositions and the subsequent — —

Mr BARBER — Just start with mine, though.

Mr HARRIS — The subsequent question focuses on one of the propositions. The bottom line is the water to be supplied to Melbourne will not compromise any of the Living Murray requirements from the existing projects. It will not compromise any of the Living Murray requirements from the existing projects of the Victorian government, so the savings to be devoted to Melbourne will not come at the expense of any Living Murray commitments. The clause that Mr Barber has outlined is effectively I think an operational management clause which says in practice that the Murray-Darling authority will take over the operations of what is River Murray Water and they will be responsible for the delivery of that water. So that takes — —

Mr BARBER — It actually says ‘manage the rights and interests’.

Mr HARRIS — That is right, but I believe that — —

Mr BARBER — That are water access rights, water delivery rights, irrigation rights or other similar rights relating to water, or interests in, or in relation to, such rights.

Mr HARRIS — My answer remains exactly the same, regardless of what text you read out. There is an operational requirement here. The Murray-Darling authority will take over operations of River Murray Water. Currently River Murray Water is the Murray-Darling commission entity which calls and manages, if you like, the river flows to ensure that, rather than cascading over banks, they are delivered efficiently, and I believe that provision will be designed for that purpose. Certainly that is the intent, that the Murray-Darling authority will be able to coordinate, if you like, the delivery of those required waters. But the nub of the question, if I understand it correctly, is directed towards ‘Will Melbourne compromise the Living Murray waters?’, and the answer is no, it will not.

Ms LOVELL — Mr Harris, can you just explain how it will not be compromised, considering that water that has been funded under programs for Water for Rivers and the Living Murray and the CG1–4 and the Shepparton irrigation area modernisation, water that was funded under those programs that was to be delivered to the Living Murray by 2009, it has been said by this government that water will be stored in Eildon to be delivered to Melbourne in 2010. So how can it not compromise the Living Murray or Water for Rivers?

Mr HARRIS — The Shepparton irrigation modernisation project provides water savings both for the Living Murray and for effectively the government. In other words, there were more savings than were just required for the Living Murray. The non-Living Murray component, the Shepparton irrigation modernisation project, will be used to supply Melbourne.

Mr DRUM — Mr Harris, would you be able to inform the committee as to how much of the Living Murray commitment has still to be found?

Mr HARRIS — My rough recollection is we are required to provide 214 gigalitres. The projects are under way. Some of them involve water purchasing and some of them are in other jurisdictions, so we have a sharing arrangement where we purchase the rights to sharing water created in the other jurisdictions as well as in Victoria, but I think we are about 10 to 12 — if you like I can provide you a written answer on that, because it is quite a complex calculation. It does shift even now as a result of revised estimates of different projects, likelihood to deliver savings, particular savings in other jurisdictions — for example, water purchase programs in other jurisdictions. People forecast how much they will get under water purchasing, but they are not sure until they have actually completed the project.

Anyway, we are on course to deliver our Living Murray commitments. I think you have Wendy Craig coming before the committee. I think she will be able to confirm the same for you. When I say, ‘We are a little short’, it is a little short because we do not know the time frames in which projects will deliver water. The objective is to deliver them by 30 June 2009 for Living Murray. We have not got an absolute lockdown on all of the water savings at this point, but we are substantially advanced. We are probably in the 80 to 90 per cent certain category for what we have got. The last little bit we are quite confident will be made available, and we will meet our Living Murray obligations.

Mr DRUM — In the last three or four years since the Living Murray project was signed on to and agreed to, at what stage were the savings all of a sudden split between, ‘These savings are going to be allocated to Living Murray, and these savings are actually going to head towards Melbourne’?

Mr PAKULA — Chairman, if I could jump in, I think we are really straying from the bill. We can talk about water policy generally, but we have got a house of Parliament to do that. We are supposed to be considering this bill. The minister has been extraordinarily generous in trying to answer everything, but I am wondering whether we should start willowing it down to the bill.

Mr DRUM — In my opinion, Chair, I think it is all related to, in effect, the decision that the government has made to hand over these powers to the federal government for the betterment of Victoria. It is all of these factors that have been combined that have given the government the opportunity to be confident that it can make this decision. But all of these factors have a role to play in the government making its decision. Therefore, once you start drilling down, that is where we are at at the moment.

Ms BROAD — Can I equally make the point that under the previous federal coalition government The Nationals and the Liberals in Victoria were content to hand over all of these matters without any constraints at all to the federal government.

Mr DRUM — That is not true, Ms Broad.

Ms BROAD — It is true The Nationals and the Liberals took slightly different positions on this matter, but eventually they arrived at the same point. It is somewhat hypocritical to now be putting the position that you are.

Ms LOVELL — This is straying from the bill.

Mr BARBER — On this point of order or whatever it is, which seems to be to do with relevance, it depends on what the answer is to my earlier question, which was: does 18H of the federal bill make the federal government responsible for delivering the Living Murray program. If it is, then Mr Drum’s question as to whether Victoria has yet found that water becomes quite important. But Mr Harris seems to say it is only in relation to delivery. In the clause it actually says water access rights and water delivery rights. I would still like to get a description as to what the distinction is between those two different things. It would seem that if Victoria’s Living Murray water is not yet fully available and the federal government becomes responsible for delivering various rights, it could be a role for the federal government to simply takeover.

The CHAIR — Coming back to Mr Pakula’s point, I am keen to contain the questions and discussions to the legislation before us. I am not so interested in debates that might advance the cause of anyone in regard to broader debates or other projects that are not specifically covered by this legislation. I agree that the minister and Mr Harris have both been quite generous in addressing some of those questions and there has been a basis for, if you like, some of the subsequent questions provided by those answers. I am not going to shut it down in that sense, but I share Mr Pakula’s concern about the direction in terms of any broadening of discussion on these matters. There is a piece of legislation before us. It is a significant piece of legislation, but it nevertheless is fairly specific in terms of powers conferred and geographies associated with those powers, and I think we need to be mindful of that.

In regard to the *tete-a-tete* and matters that Ms Broad raised, I think they are also matters of political conjecture and outside the scope of the bill, notwithstanding that they might inform some members’ positions.

Mr Harris, Mr Barber raises the point about access as a concept as well as the delivery, which you had particularly spoken of. Mr Heaphy, I would invite you to address the term contained in that clause in regard to access.

Mr HEAPHY — Thank you, Chair. I take you back to the decision of the Murray-Darling ministerial council in 2003 for Living Murray First Step. The principle behind that agreement was that governments would work together to bring together a pool of environmental entitlement to the average annual value of 500 gegalitres. The principle there that that was a pool to be jointly managed at that time by the ministerial council for environmental outcomes along the six icon sites. As we get to the end of the period of pulling that pool of water together, you get this set of rights, entitlements and other legal instruments to that pool of water that come together.

What this clause is working to do is to make sure that the ability of the successor arrangements to continue to manage that pool of water collectively is secured. What is envisaged to underpin that in a practical documented form between the parties is a Living Murray asset agreement, which at the moment is being negotiated at an officials' level, that would spell out the arrangements by which the authority, still responsible to the new ministerial council, will use that water in the manner agreed to by the ministerial council for environmental outcomes.

Mr BARBER — Where it says 'If the Living Murray initiative so provides ...', you are talking about this agreement that is being worked on which by itself would become part of how this bill defines the Living Murray initiative — that is, the 2004 agreement, the 2006 agreement and section 3.9.2 of the Murray-Darling Basin reform?

Mr HEAPHY — That is right.

Mr BARBER — When that agreement is in place, it is the responsibility of this federal agency — the authority — to manage the water access rights and the water delivery rights? It has the power to do so?

Mr HEAPHY — That is right, and if you see that in the context that the Living Murray, as is spelt out in the July IGA, it is one of those matters of business under the new arrangement that still falls under the direct control of the Murray-Darling Basin Ministerial Council, and it is effectively saying the arrangements the council agreed for itself in 2003 and has continued to sort of augment over that time are still the province of the council to continue on in control of.

Mr BARBER — Yes, except this amendment falls under the category of amendments based on referral of power — it is in schedule 1 of the federal bill — so why does it need that federal referral of power to do the thing you just described, if you are saying it was just part of business as usual anyway?

Mr HEAPHY — For that one — —

Mr BARBER — Why is it not just in the other part of the MDBA? In schedule 2 or something?

Mr HEAPHY — The practical reason for that was that the Living Murray initiative was never formally part of the Murray-Darling Basin agreement. It came in the end.

Mr BARBER — It will be now?

Mr HEAPHY — It came through the decision of the council in 2003 that was then supplemented by the COAG agreement in June 2004, which provided the money for it. It has never been then translated in under the formal umbrella of the Murray-Darling Basin agreement.

Mr BARBER — But it will be now?

Mr HARRIS — If I could, Chair, it is covered in my earlier answer. The provisions of the first part are to create the MDBA; it needs to take that responsibility from the MDBC, and that is what the first part is about. That is, therefore, a function of the MDBA, and thus it needs legislative support.

Mr BARBER — Why does it need referral of power to do that specific thing?

Mr HARRIS — Because we expect them to undertake this level of activities. That is what we want to give the MDBA the ability to do. Our whole focus as Victoria throughout this has been to say there are certain things which we want you to run for the commonwealth — —

Mr BARBER — I am not saying it is a bad thing.

Mr HARRIS — I understand that, but I am just trying to be vehement here.

Mr BARBER — I am just asking the question: will the federal government have the power it needs to go ahead and implement requirements of the Living Murray at that point, pretty much regardless of what the state government law might provide?

Mr JENNINGS — The interesting thing about this conversation is that Mr Barber is surrounded by people at this table who might have a different desire for the outcome of water allocations than the one he has. But if you actually see this beyond the political dynamic that I have just described, what you have seen between the state of Victoria, other jurisdictions and the commonwealth has been dealing with the politics as well as a whole range of existing agreements, entitlements and market mechanisms that are in place that have been winnowed through over a number of years to arrive at this situation that describes the appropriate harmonisation between the legislative and other mechanisms available for the state of Victoria and what we have been prepared to refer to the commonwealth in the name of broader national objectives to try to achieve those results. We are now talking in fine grain detail about a specific element of that within the context of all of these things.

The authority has to be mindful of not only what is in the agreements but what people are entitled to and in fact what is available to it to allocate. When it puts the plan together on a national scale it cannot abrogate a whole range of pre-existing entitlements and agreements that are in place. It has to be mindful of it, just as we are. What we have been trying to do is to narrow down the potential overlap or disconnect between what we might take responsibility for and what it might be able to get entitlements for. In terms of being able to satisfy all of those obligations, the good news from our perspective is that without ripping up entitlements or going beyond the scope of what the climate has done to inflows we have not intruded on anybody who has got entitlements. Whether they be private entitlements or public entitlements or environmental entitlements to water, we have been able to do our best to maintain those within what is available to us and to be able to try to create a structure and a mandate for the authority to deal with those across the basin. I think it is a very good story that we are able to save 214 gigalitres of our Living Murray obligation, notwithstanding the pressures and the low inflows, and we are pretty close to be able to deliver on those. I think that is overall a pretty good story.

Ms LOVELL — The creation of the Murray-Darling Basin Authority, the new one, involves the referral of powerful management of certain tributaries within the Murray–Darling Basin. There are some tributaries that have been excluded. I just wondered if you would tell us how the basin plan will apply to Victorian tributaries, and can you explain how it will improve the operation of the basin plan to exclude certain tributaries?

Mr JENNINGS — In terms of the dividing line about the nature of the tributaries, in fact I might take some subsequent advice on that. Basically my answer that I have just given creates the framework and the mindset and the objectives that have tried to be achieved. On the overlay of that with the various tributaries and the waterways in Victoria, I would probably be wise to take some advice on the way in which they have been determined to be able to satisfy those range of expectations and pre-existing agreements that have tried to be harmonised through this referral. May be Mr Harris will volunteer for that?

Mr HARRIS — Under the commonwealth's original plan it was seeking comprehensive control of all water management in the basin, including operational control of all systems, including the Goulburn and the Murrumbidgee. It did not have that under the Murray-Darling Basin agreements; the commonwealth did not have that ability. Victoria did not agree to that proposition last year from the former commonwealth government. The former commonwealth then passed the Water Act 2007 based on its own constitutional powers, but it did not have the ability to takeover river operations — for example, in the Goulburn — under that act. Under the new arrangements, however, the ones that we are proposing to enter into with this legislation, operation of the Goulburn River thus remains with the state government. It has always been an objective of ours — and indeed of New South Wales with the Murrumbidgee — that we would maintain our operational control of the Goulburn River.

Mr DRUM — Excuse me, Mr Harris, when you say 'always', what do you mean by 'always'?

Mr HARRIS — Always — from the start of the Howard plan announcement. It was always one of the state's objectives that we did not want to cede total operational control to the commonwealth. Our proposition has always been: 'If you wish to reduce the water allocation arrangements within the basin and use good science to do that, excellent; go right ahead and we will be happy to work with you, but we will implement the revised arrangements under state legislation'. That has been a consistent position of the state throughout this.

Mr PAKULA — Are you saying New South Wales had the same concerns in regards to the Murrumbidgee?

Mr HARRIS — New South Wales certainly had the same operational concerns, but I think New South Wales would have been prepared to have conceded probably substantially more than the state of Victoria was prepared to concede, but had the same operational concerns. Thus the new position now advanced in this legislation is consistent with the objective the state had from the start.

Mr DRUM — In relation to the Campaspe, the Loddon and the Kiewa and those other tributaries, what was the state government's position on those tributaries? And the King — —

Mr HARRIS — As I said, operationally we wanted the commonwealth to determine revised water availability across the basin under its proposed reforms, but we would implement the changes. That was our proposition to them, and it remains our proposition. Indeed I think the commonwealth is quite happy to work with us on this basis. Thus you will see a draft Murray-Darling Basin plan published. It will be discussed with the state, presumably beforehand. It will be discussed with the state in the new revised arrangements that exist in this legislation, and then it will be put forward by the commonwealth as something that it expects to implement in conjunction with us. This has always been the crucial issue, and we expect to see that occur.

Mr PAKULA — Are you saying, Mr Harris, that those implementation arrangements which the state of Victoria retains control over in regard to the Goulburn is also the case for those other tributaries that Mr Drum has referred to?

Mr HARRIS — I am saying when we come to implement the basin plan, which is, I think, the nub of the question — that is what I am saying — we expect that the state will be an active participant with the commonwealth in implementing the basin plan, and I think the commonwealth expects that.

Mr DRUM — So there is no real difference between the Campaspe, Loddon, Goulburn, Kiewa, King, Ovens — they are all in the same category as to who controls them?

Mr HARRIS — The reason I cannot give you a black-and-white answer to this question is because you envisage a particular kind of basin plan, and it is not clear to me what kind of basin plan we will end up with. Clearly your question I think presumes that they will, say, limit the Kiewa River to a certain allocation or something like that.

Mr DRUM — No, it is not; it is based around responsibility — who takes responsibility and onus for operation.

Mr HARRIS — I can only answer you generically. We expect to be the party that the commonwealth would want to see implementing the basin plan in Victoria.

Mr DRUM — I am sorry, could you repeat that again, please?

Mr HARRIS — We expect to be the party that the commonwealth would want to see implementing the plan in Victoria.

Mr DRUM — You meant the basin plan?

Mr HARRIS — The basin plan.

Mr DRUM — To do with the Murray and all the other tributaries?

Mr HARRIS — You keep naming rivers and I cannot help you on naming rivers because I have not seen the basin plan, so all I can give you is the answer I have given you, and then it is terms of implementation.

Mr DRUM — I was going to leave this question until we got to definitions, but seeing that Ms Lovell has brought it up, does the state have any definition difference in relation to the Goulburn as opposed to any other tributaries?

Mr HARRIS — No. What is in the legislation is a reflection of the current reality. I guess that is what I am saying. Does that help you?

Mr PAKULA — Mr Harris, I think I can help. I think what Mr Drum is driving at is that he is suggesting there has been a particular and specific excision of the Goulburn River as distinct from all of the others he has named. I do not want to put words into his mouth, but — —

Mr DRUM — That is effectively what I am after, but Mr Harris was saying that is not the case.

Mr HARRIS — No, I do not think I am saying it is not the case. I am trying to answer your question in terms of the basin plan and tell you that we will be the implementing agency. The purpose in the Goulburn River being specified in legislation is because it is a reconfirmation of the arrangements that have always applied.

Mr DRUM — So it will be treated exactly the same as every other tributary, because they have also been applied in that way forever?

Mr HARRIS — You seem to be looking backwards here. I can only comment on this legislation in terms of the intent of the commonwealth to develop a basin plan.

Mr DRUM — Sure.

Mr HARRIS — My response to you has been that with the Goulburn River and all the other water allocation arrangements in Victoria, to the extent they are varied by a basin plan we would expect to see the commonwealth come to us and say, 'Here is our revised basin plan based on the best science that is available. We would like you to implement this via your state legislative arrangements'. We have designed this legislation to ensure as far as we can in any legal sense — noting that the commonwealth has constitutional powers of its own — that that will remain the case. In other words we are attempting to preserve our legislative basis, as per my earlier answers. That is what we are trying to do.

Mr DRUM — When the federal government goes to the Queensland government and says, 'We would like you to do this on the Darling', and they tell them to go jump in the lake, what happens then?

Mr BARBER — I would say, 'What lake'?

Mr DRUM — The federal government would be asking the state government — in that case, Queensland — to be the agency.

Mr HARRIS — It depends entirely on the constitutional ability of the commonwealth to enforce then a go-jump-in-the-lake proposition. Thus I cannot answer the question because it depends on what is stated in the basin plan and its legal link to the commonwealth's constitutional ability to enforce something.

Mr DRUM — So you would imagine that under this new plan once the federal government has the power referred to it, it will be able to direct a state government how to act in relation to a certain tributary?

Mr HARRIS — No.

Mr JENNINGS — No.

Mr HARRIS — I would not imagine anything. I would deal with the legal situation as it applies when it applies.

Mr JENNINGS — Exactly. There are two parallel elements; there are two concepts. One is the concept that Mr Harris has actually been talking about — the fact that you would hope that there would be a wise plan that is developed by the Murray-Darling authority which would be implemented in conjunction with the relevant state agencies, and in this case the Victorian element of it being implemented by us. So that is one concept that you should be mindful of, okay? That is the lengthy answer in relation to that.

The other parallel issue that you should talk about is in relation to the very neat construction that Mr Pakula put on your question: is there a conspiracy about the Goulburn? No, there is not. Why we assert there is not is because all the tributaries you mentioned previously, including the Goulburn and

all the others, are not covered by the Murray-Darling agreement. That is the pre-existing arrangement that is in place, okay?

The CHAIR — Can I just establish, which I think goes to the heart of this anyway, that the plan itself will be developed on science; correct?

Mr JENNINGS — Yes.

The CHAIR — And it will be developed collaboratively? In other words there will be consultation?

Mr JENNINGS — Yes.

The CHAIR — And therefore the plan will not come upon us as a great surprise, and Victoria's ability to actually implement will be already established to a large extent by the science and by the collaboration on developing the plan.

Mr JENNINGS — Yes.

The CHAIR — Is that correct?

Mr JENNINGS — Yes, that is what we believe.

Mr BARBER — Yes, but in relation to getting the water it needs for critical human needs the federal government is in a position to bring forward a basin plan that provides that water, and certainly one of the places it can get that water is from the Goulburn or any other significant tributary with any significant amount of water in it — at the end of the day.

Ms LOVELL — It is the main tributary of the Murray.

Mr JENNINGS — This is actually, finally, where you invert your logic or your principal concern to say that the commonwealth can send the water down the pipe to Melbourne. That is basically where you do your double backflip with pike in logic and concern to actually postulate that, because in fact the referral is in relation to critical human need.

Mr BARBER — Yes. So let us do that bit.

Ms LOVELL — I just want to take up something from Mr Harris's response. He said the commonwealth will revise the allocations under the basin plan but the state will implement them. Given we earlier explored the section of the tabled text that allows for compensation under the commonwealth act, and we were told the state would not be legislating to provide compensation, does that mean there will be no compensation for the reduction of allocations in Victoria?

Mr JENNINGS — Reductions in allocations on what basis? Because in fact at the moment what people actually get in their allocation is based upon the availability of water, so at the moment it might be running at 19 per cent.

Ms LOVELL — If the basin plan revises allocations by greater than 3 per cent under the commonwealth legislation there is a provision for compensation.

Mr JENNINGS — Yes, but a long time ago — and in this conversation about an hour ago — we talked about the fact that this is the long-term allocations, a long-term determination by the authority rather than short-term positioning. That is a different scenario to the one you are probably implying by your question, which is that if people do not get water from one year to the next there should be an opening up of provisions for compensation, which is not a feature of the existing arrangements, and I do not think it will be a feature of the future arrangements.

Ms LOVELL — It is a feature of the commonwealth legislation, and yet you are saying that the basin plan would be reviewed under the commonwealth legislation and that will be implemented by the state, and it is not a feature of the state legislation. I am seeking clarification on whether Victorians will still qualify for compensation under the federal legislation if the state implements a reduction in allocations?

Mr JENNINGS — I think I have answered that question. I think two issues have been confused, but if anyone else has a different interpretation or anything to add?

Mr HARRIS — No.

Ms BROAD — Can I ask the minister to confirm, since the Goulburn River has been such a focus of this conversation, that under the provisions of the bill before us and the agreement that it implements, operational responsibility for the Goulburn remains with the Victorian government, and that under the proposals put forward by the former commonwealth government that that would not have been the case; that it would have been in the hands of the commonwealth?

Mr JENNINGS — There are two questions there, and the answer to both of them is yes.

Ms BROAD — Thank you.

Mr BARBER — What does operational responsibility encompass in law? It does not mean the guy who turns the big wheel that makes the water come out only. It means other things too, doesn't it? It means the decision on how much water is to be released. It means the issue of a range of rights over that water.

Mr DRUM — The extraction caps.

The CHAIR — Collection of data.

Mr BARBER — Bulk entitlements.

Mr JENNINGS — I reckon Mr Atkinson's summation about 10 minutes ago about the way in which this would be done in terms of making operational decisions and the wisdom of the implementation of the plan, who does various elements of making the plan work — all the basket of issues we have been talking about right from the contractual ones, the legislative ones, the infrastructure delivery ones — all of those are trying to maximise the degree of harmonisation in approach and the knowledge and the science on which it is based, the transparency of that, and in fact in terms of hierarchy of responsibility to pare back some of that. But ultimately this is a scheme that only works by maximum buy-in of all the relevant places, so the answer to your question really depends upon which aspect of the operation you are talking about.

The CHAIR — I draw the committee's attention to the fact that it is 3.23 p.m.. If possible I would like to discharge the minister today. I will ask for further questions but perhaps if members could make them fairly rapid fire questions?

Mr DRUM — Again, in relation to Mr Harris's comments as to how the directions may be created from the plan, which is in effect the Murray-Darling Basin Authority, but the state will be the agency which will implement the actions, what sort of dispute resolution is in place for when the directions within the plan are not agreed to by the state?

Mr BARBER — It is in the bill; you take your bat and ball and go home.

Mr DRUM — Out of the whole lot?

Mr JENNINGS — That is the ultimate sanction. Obviously we are entering into this arrangement to try to maximise goodwill and compliance and agreed agendas. We are not entering into this on the basis that we are assuming there is no goodwill, no common sense and not an ability to do it, but just in case, there is a reserve exit clause.

Clause 1 postponed; clause 2 postponed.

Clause 3

Mr BARBER — I refer to the definition of 'express amendment' on page 4 of the bill. Do I take this to mean that we will be referring the power for the federal government, if it chooses, to make further or later amendments to those parts, above and beyond those that are just in the scheduled one?

Mr JENNINGS — Is this another version of the question that you asked before?

Mr BARBER — It is just a question.

Mr JENNINGS — No, no, I am just asking you: is it?

Mr BARBER — And I am asking about the powers that we are giving them — this is the Parliament of Victoria now, not government-to-government. If the Parliament refers this power up to the federal government and it makes the changes that we have already seen in the bill that it has shown us, using clause 4(1)(a), the text referral, and it also gets its clause 1(b), the subject referral, what I want to know is: will the federal government be able to make further amendments to parts 1A, 2A, 4 and 4A of its legislation, using this one referral that Parliament has given it?

Mr JENNINGS — This is the same question that I have been asked twice before, but you have not got a satisfactory answer, have you? Is that what you are worried about?

Mr BARBER — I think I asked you the other day. I do not think I asked you earlier.

Mr JENNINGS — I reckon you did.

The CHAIR — The question is, in effect, does the bill contain all of the referral or are there expanded referral possibilities under this definition and the referral of clauses?

Mr JENNINGS — I have wasted our time because what I am saying is that you had already asked this question three times, and now it is four times, and my answer is that there is an agreement in place that actually says that the commonwealth will not change their act beyond the scope of this referral without our agreement; and that is part of our agreement.

Mr BARBER — Where is that? Where can I see that agreement in these two bills?

Mr HARRIS — In the second part.

Mr BARBER — The second part of this definition?

Mr HARRIS — In the revised Murray-Darling Basin agreement.

Mr HEAPHY — It is the provision in the referral intergovernmental agreement that the first ministers have signed — that is that commitment that the commonwealth will not progress any amendments to this legislation until they have the consent of the first ministers of the basin governments.

Mr BARBER — But not with the express consent of the Parliament of Victoria?

Mr HEAPHY — No, you are right. It is the first ministers of the basin governments.

Mr PAKULA — You have to take the view that intergovernmental agreements are either worth something or they are not.

Mr BARBER — They are not.

Mr PAKULA — Either they are or they are not.

Mr BARBER — Once this Parliament votes, two things happen: the text of the federal government bill gets put into the federal government bill, and we have also handed it the power, at any stage in the future, to make amendments to parts 1A, 2A, 4, 4A, 10A and 11A of its act, with some other acts that it may bring up. And he is saying that it needs agreement from the government of Victoria according to the intergovernmental agreement, but there is nothing in the legislation that says that it cannot do it.

Mr JENNINGS — But there is nothing in the constitution of Australia that can prevent that either; and that is the reason why this is a bit cute; because you know — and in fact earlier in this conversation, you have reminded

me, as has Mr Drum, Ms Lovell and the Chair — that in fact if there is a piece of legislation where there is inconsistency between the commonwealth and the state, the High Court will usually, depending on whether there is scope of power, and whether in fact it is consistent with the constitution, fall on the side of the commonwealth legislation. You know that.

What you know in asking this question is, regardless of what we put in this legislation, that could be the outcome, and so it is only a cute question. It does not matter at law because ultimately the way in which we can rely on it is through the goodwill and the good sense of the commonwealth Parliament to act within its constitutional scope of authority to actually pass law, and then beyond that we are relying on not only the referral and the scope of it, which has been clearly outlined in this legislation, but also the terms of the agreement and acting on the assumption that those jurisdictions would act in a sensible way which is consistent with their constitutional rights and the terms of the agreement. That is what we are relying on, and the Parliament of Victoria cannot rely on anything more than that.

Mr BARBER — I did not say I was against it, minister. I just asked: is that the situation?

Mr JENNINGS — I am just saying that ultimately, whatever the outcome of this conversation, we would not be able to enhance the Victorian bill to protect the concern that you have.

Mr PAKULA — I think either yourself or Mr Harris said earlier that the reference would only be terminated in extreme or extraordinary situations. It is not something you would seek to do. May the breaching of the intergovernmental agreement by the commonwealth be one of those extreme circumstances?

If the commonwealth just decided to ignore it in the way that Mr Barber is suggesting that it might — —

Mr BARBER — I did not say it would ignore it. I said the state government could turn around and sign another intergovernmental agreement to do the thing that the federal government then turns around and does. I am just saying the Victorian Parliament will not have any say over it.

Ms BROAD — The Parliament can change its position as well.

Mr BARBER — The Parliament is not in a position to withdraw the referral, by the way.

The CHAIR — Can we contain this? I am particularly mindful of the time.

Mr BARBER — No, we are getting to the nub of it.

The CHAIR — Yes, but I also think the minister has explained it. I am not sure that there is much further to go.

Mr BARBER — I still have got a couple of other questions on this bit though.

The CHAIR — Can I just confirm that Mr Barber has the only other questions to the minister? Okay, then I propose that we continue for a couple minutes more so that I have the opportunity, as I said, to discharge the minister today on this investigation.

Mr BARBER — The last five lines of that same definition say:

... but does not include the enactment by a commonwealth act of a provision that has or will have substantive effect otherwise than as part of the text of those parts or those definitions;

Is that another bit of cuteness to say that we cannot go and bung some other provision into 1A, 2A or 4 that is way outside the scope of those provisions? Is that meant to be a further protection? Or is that telling me something different to what I am reading? It still says that if I am the commonwealth government, I can make further amendments to those sections of my legislation.

Mr JENNINGS — I think that is probably a parliamentary counsel way of saying that the commonwealth government can amend its legislation if there is some technical reason for it to amend it within the context of the referral that has been given.

Mr BARBER — Really? You are sure about that? Because I was seeing it quite differently, so that if we go to part 2A of the commonwealth government's Water Amendment Bill, as long as we stay broadly within the aims of what 2A is doing and we do not bend the rules too far, we can down the track make some other amendments to 2A — for example, section 86A(3), definition of the River Murray system; or section 86A(2), definition of critical human water needs.

Mr JENNINGS — I am advised, and I am grateful for it, that the answer that I gave is the answer that is technically correct and is the answer I should sit on.

Mr BARBER — Good on you.

The CHAIR — If there are there no further questions, I thank the minister for his time and indicate that when the committee reconvenes, he is excused from those deliberations. As we go through the bill clause by clause, it would probably be helpful to us though to have at least one of the advisers here to help us as we go through the clauses. Are there any amendments proposed to any of the clauses?

Mr BARBER — Not in this forum.

Ms LOVELL — Only in the committee of the whole.

The CHAIR — We do not need to worry about the support staff in that regard. Minister, Mr Harris, Mr Heaphy and Ms Harris, thank you for your attendance today and your assistance in going through the bill. The minister no doubt will await the report with some enthusiasm.

Mr JENNINGS — Exactly, I will.

Clause 3 postponed.

Committee adjourned.

PARLIAMENT OF VICTORIA

**LEGISLATIVE COUNCIL
LEGISLATION COMMITTEE**

Water (Commonwealth Powers) Bill

Monday, 24 November 2008

Chair

Mr B. Atkinson

Deputy Chair

Ms C. Broad

Members

Mr B. Atkinson	Ms J. Mikakos
Ms C. Broad	Ms S. Pennicuik
Mrs A. Coote	Ms J. Pulford
Mr D. Drum	

Substituted members

Ms G. Barber (for Ms S. Pennicuik)
Ms W. Lovell (for Mrs A. Coote)
Mr B. Tee (for Ms J. Mikakos)

Staff

Mr R. Willis, secretary

Also present

Ms W. Craik, chief executive officer, Murray-Darling Basin Commission

WATER (COMMONWEALTH POWERS) BILL*Legislation Committee***Resumed from 19 November.**

The CHAIR — I call the committee to order; we will resume our hearing. I have asked for the minutes from last week to be circulated. There was a view that we might take the minutes after each of the hearings and work on them together, given they contain the same subject matter and refer to a resumed hearing, but my concern with that is that there are some substitute members, so I think it is important to adopt them separately. We will adopt them a little later.

I extend a warm welcome to Dr Craik, and thank her for joining us today to help us in our consideration of the legislation. As I think you have been informed, the Legislation Committee is a creature of the Legislative Council, and by way of motion the Legislative Council suggested that this committee should go through the legislation and clarify some elements of it, and possibly consider amendments — although as I understand it, the amendments, such as they are, are likely to be pursued back in the committee of the whole rather than in the this Legislation Committee.

I do not know if you want to make any introductory remarks?

Dr CRAIK — No, I do not.

Clause 4

The CHAIR — At the moment we are on clause 4 of the legislation, having previously considered clauses 1 to 3.

Clauses 4 to 26 postponed.**Postponed clause 1**

The CHAIR — We will resume deliberations on clause 1, and I would invite any members who have any questions in regard to that clause to ask them of Dr Craik.

Mr DRUM — Thanks, Dr Craik, very much for making yourself available so we can ask you some questions in relation to how this legislation is likely to operate. In relation to the intergovernmental agreement on the Murray–Darling Basin, looking predominantly at clause 3.28 in relation to how the basin plan will let each of the states know exactly how much water can be taken through their state water share, does the basin plan actually override the state's water share?

Dr CRAIK — I am probably not the right person to ask detailed questions about the legislation simply because I am in the Murray–Darling Basin Commission, and I do not have any continuing role in the new arrangement. So while, yes, I read through earlier versions of the act and read the IGAs, given my non-continuing role I have to say that I have not made a feature of studying either the legislation or the detail around it.

Mr DRUM — In relation to the basin plan under which the new authority will effectively be put into place, do you envisage that the basin plan is going to be constructed in a manner that it could effectively override the state's water share?

Dr CRAIK — Again I do not actually really want to speculate on things that I am not particularly involved in, not particularly close to any more. I just do not think it would be appropriate for me to comment. I am not trying to avoid all these questions but it is just not the area that I focus on at the moment. My responsibility really is for the commission and our obligations under the existing Murray–Darling Basin agreement.

Mr DRUM — Is your role going to roll over into the new authority?

Dr CRAIK — No, my personal role will not. I do not have a role in the new agency, so I will be looking for another job basically.

Ms LOVELL — Dr Craik, what advice has been given to the Murray-Darling Basin Commission and to the basin states regarding the differences between the current basin states water shares and the sustainable diversion limits that will be implemented in the future? And how is it envisaged the proposed sustainable diversion limits will be implemented in Victoria given that Victoria's current water shares or bulk entitlements are enshrined in legislation until 2021?

Dr CRAIK — No formal advice has been given to the commission. What is available is what is in the IGA and what is in the basin plan. Other than that, formal advice has not been conveyed to the commission as such on that issue.

Ms LOVELL — You have no idea of how it is going to impact on or work in with Victoria's legislation?

Dr CRAIK — I know there are going to be new sustainable diversion limits for each of the valleys in the basin. I know that any change to state water shares under the existing arrangements will be a matter for the ministerial council and the basin officials committee, and I guess beyond that I am not in a position to comment.

Ms LOVELL — There has been no discussion about the fact that Victoria's water shares are enshrined in legislation until 2021?

Dr CRAIK — I could not say there has been no discussion but certainly it has not been an issue in the commission. I assume it would have been an issue in the discussions in relation to the new legislation, but I have not been involved in those for a couple of months now.

Mr DRUM — Dr Craik, in relation to the current state of the Living Murray initiative, we had some evidence last week from one of the DSE executives who in effect stated that it is going reasonably well and they are reasonably close to fulfilling their obligations. Is that your understanding?

Dr CRAIK — Yes, that is correct.

Mr DRUM — And do you know how close?

Dr CRAIK — How close you are? You have got four projects on the eligible measures register. We have got 120 gigalitres of water from the initial Goulburn Murray water recovery package on the — —

Ms LOVELL — 80:20.

Dr CRAIK — Yes, on the environmental water register, and of course the actual water depends on allocations against those entitlements. We have only got 167 gigalitres in total on the environmental water register, so 120 comes from Victoria in the sales water package, and there would be a little bit more — I do not know how much, but it would not be a great amount — from the purchase project that the commission undertook. We have purchased a little bit of that in Victoria. All the other projects that Victoria has add up to over 200 gigalitres and Victoria's target is 214. As we understand it, the majority of those projects will be such so that in June next year the water entitlements will be available to the Living Murray program. I guess I would say from Victoria's point of view, it is travelling pretty well. We have over 540 gigalitres of projects in total to recover 500 gigalitres, so projects are generally progressing pretty well. There may be some payments in 2009–10 to finalise the projects, but I think we are pretty well on the way to the 500 gigalitres that was required to be got.

Ms LOVELL — You just said then, though, that Victoria had 120 gigalitres on the register and you only had 167 in total?

Dr CRAIK — Yes. What I am saying is Victoria has a reasonable percentage of the ones that are on the environmental water register at the moment.

Ms LOVELL — So the other two states have only got 47.

Dr CRAIK — Yes, around about that because there is a bit of difference, but on that environmental register, that is when the projects are complete and the water is actually delivered. We have got 540 gigalitres of projects in total on the eligible measures register.

Ms LOVELL — How could Victoria have 120 actually delivered when that regarded sales water, and we have not actually had an allocation of sales water in Victoria so really there is no water delivered, full stop?

Dr CRAIK — That applies to everybody's entitlements. How much actual water we get in a year obviously depends on the allocations against the entitlements, but 120 gigalitres of Victorian entitlements have been credited to the Victorian environmental water register, just as about 47 gigalitres of entitlements have been credited from the other states to the environmental water register. In total we have only got about 2.5 gigalitres of real water this irrigation year.

Mr BARBER — 2.5?

Dr CRAIK — It is about 2.5 against all the entitlements that we have got, that is right.

Ms LOVELL — In other words you are saying that states can allocate water that may never ever be delivered, because it is quite possible that we will not get sales water again in this state, and yet they get a credit for that.

Dr CRAIK — Under the agreements for the Living Murray, which were put together in 2003–04 which was a different kind of water year at that time than we have been seeing in the last couple of years, the agreement — and the agreement still is in place — was that all entitlements of water were able to be credited, but they have to be credited to a standard, which is a long-term cap equivalent. We have sales water from Victoria, we have a number of supplementary water projects from New South Wales, which is a similar sort of entitlement. The good thing about that is we are going to need a variety of entitlements to deliver the environmental outcomes, and if there is a lot of water around in a flood year, in a water-abundant year, we will get the sales water from Victoria, we will get the supplementary water from New South Wales. It is part of the package.

Ms LOVELL — Last week Mr Harris, the secretary of DSE, gave evidence that supplying water to Melbourne via the north–south pipeline will not compromise Living Murray waters as not all of the water from the Shepparton modernisation, which is a Living Murray project, will go towards the Living Murray. Is that your understanding of that particular process?

Dr CRAIK — That is correct. We get a certain amount from the Shepparton modernisation; 30 gigalitres comes to the Living Murray and, as I understand it, there is another 52 gigalitres or something that is part of the project that is not part of the Living Murray.

Mr BARBER — Who is the 'we' who holds this water? You keep saying the program and we get it, but what I have seen is bulk entitlements from Victoria being modified to say these are now the entitlements for the Living Murray. My understanding is that often it is the CMAs down here that apply the water.

Dr CRAIK — Yes, the 'we', I suppose, is the program in the commission. Yes, the states retain the entitlement, but in Victoria they are becoming part of an environmental entitlement. In New South Wales I think they are ministers or environmental entitlements. Some of them will go to a CMA in South Australia. I think they are on a ministerial environmental register. They are held in the state according to the normal arrangements in that state, but the decision about where they are made, once they are signed over to the Living Murray program, is collectively made by the commission based on criteria that are set up and agreed in any one year — for instance, this year the criteria are things like supplying water to a drought refuge, supplying water to somewhere where you might lose a species, that sort of thing.

Mr BARBER — I have looked at all your plans so I understand where the water is meant to be going.

Dr CRAIK — So the 'we', I guess, is the commission or the Living Murray program.

Mr BARBER — But in Victoria it is the Minister for Environment and Climate Change that is actually getting these allocations.

Dr CRAIK — Victoria retains control over the Victorian entitlements in the system, that is correct.

Mr BARBER — In the bill that we are examining, and particularly the reference to the federal bill, there are some referrals of power coming from the states and there is a section in the federal bill that allows for managing

water access rights and water delivery rights for the Living Murray initiative by — it would be your organisation — this new body.

Dr CRAIK — The authority.

Mr BARBER — Yes. The form of the referral power is actually just to refer powers to do things that have already been agreed to — that is, under the 2004 and 2006 versions of the Living Murray agreement.

Dr CRAIK — Intergovernmental agreement, yes.

Mr BARBER — So why would that agency need that — I cannot ask you why, because it is not up to you to decide what goes, but what are the implications of that power being referred up to the federal government to deliver on the Living Murray program, when it could have just been continued the way it was, as a set of agreements?

Dr CRAIK — I cannot actually answer the detail of your question. It may be that the authority implements those things. The decisions may be made by the Basin Officials Committee and the ministerial council, as to where the actual water goes in a year, but I cannot actually answer that question.

Mr BARBER — Let me read you just a little bit of text:

The Authority must, if the Living Murray Initiative so provides, manage the rights and interests that:

(a) are:

(i) water access rights, water delivery rights, irrigation rights or other similar rights relating to water ...

(b) are held for the purposes of the Living Murray Initiative; in accordance with and in a way that gives effect to the Living Murray Initiative.

Then it describes what is the Living Murray initiative, by reference to the actual written agreements.

Dr CRAIK — What that might be referring to is the fact that the Murray-Darling Basin Commission purchased water on behalf of all four governments — for instance, we purchased 12 gigalitres. The water will be transferred to the authority, to the commission. Those water entitlements are being transferred to the commission, so I assume that legislative reference is talking about those entitlements that have been transferred to commission. That is a very small amount, about 2 gigalitres — no, it is a very small amount; I do not know the precise number from Victoria. That is what I assume that is referring to, just the stuff that the commission purchases, because looking after those assets would translate, I assume, to the Murray-Darling Basin Authority, if that makes sense.

Mr BARBER — So there are some water access rights that are held by the commission for the Living Murray program?

Dr CRAIK — Correct.

Mr BARBER — I still do not understand why we would be providing a referral of state power up to the federal government to allow you to apply those rights, when you already have them.

Dr CRAIK — To allow the federal government to apply those rights.

Mr BARBER — Yes. Why is this going up in a package of measures?

Dr CRAIK — Because right now it is agreed by all the states that we will do it — all the jurisdictions agree that we will do it — and we do it under the Murray-Darling Basin agreement, where all the jurisdictions have agreed that we will do it. I would assume that you are referring powers to the commonwealth, to allow them to do that, because the new entity will not be an interjurisdictional entity, it will be a commonwealth entity.

Mr BARBER — Is that the only reason, convenience?

Dr CRAIK — There may be more, but I cannot answer the question.

Mr BARBER — I can understand the critical human water needs and the power being referred off, but what I am trying to get to the heart of is: what is the practical difference of referring that matter up?

Dr CRAIK — I think the only practical difference is that it will enable the authority to do what the commission currently does, or what we would currently do, in terms of that water for the Living Murray program.

Mr BARBER — Just one other question I have, too, but I need to understand: what was your involvement with the drafting of the IGA?

Dr CRAIK — None — well, very little. One of the IGAs, I think it was the July one, I sat on a committee that met a number of times, but certainly the final rounds of the IGA were not involving the Murray-Darling Basin Commission staff; it involved just the states and the federal government, because it is an IGA between the states and the federal government.

Mr BARBER — Yes, I am not suggesting you were sitting at the table when it was negotiated. The section on critical human needs, which is 7.3 of the IGA, says that:

The parties agree that the arrangements for meeting critical human water needs for those communities dependent on the River Murray system ... and the potential input from tributaries that can provide significant volumes of water to the River Murray (i.e. the Murrumbidgee, Darling and Goulburn rivers), will be a mandatory part of the basin plan.

That part about the tributaries seems to have been excluded from the various definitions and various parts of the mechanics of this legislation that we have seen. Do you think there is a practical difference in terms of how this agency is going to continue? You have been managing the waters of what they call the River Murray.

Dr CRAIK — That is correct.

Mr BARBER — Which is the Hume, the Dartmouth, the locks — the actual river.

Dr CRAIK — The Murray and the Lower Darling; that is right. And the tributary inflows belong to the states; that is correct. They are not regarded as the shared water resources of the Murray, under the current Murray-Darling Basin agreement. What we have been doing when it has been a point of trying to make sure that could meet critical human requirements for all the states, the states would, as part of the contingency measures, 'lend' their tributary water to the system, to ensure that every state had enough water to meet its critical human need arrangements. Then that water would be subsequently repaid by the states which received that lent water, as water became more available.

Mr BARBER — So all this IGA is saying is that that, including the water from the tributaries, will be a mandatory part of the basin plan?

Dr CRAIK — The tributaries would be a part of the basin plan, as any other river would be a part of the basin plan in relation to the new critical sustainable diversion limits that will be set for each of the rivers in the basin — each of the valleys in the basin. I think what that would be saying would be that in terms of the basin plan there is a section on critical human need, and that section on critical human need will include not only the Murray but will pick up the issues of the tributaries into the Murray, simply because, I think, of the issues that we have already encountered in dealing with that critical human need, the need to have contingency measures that rely on borrowing, as it were, from the tributaries.

Mr BARBER — So the difference — when this bill passes, if you like, and that is what I am trying to get to get to the bottom of — is that the basin plan, in its section on critical human water needs, will look at the potential input from those tributaries and formalise it, and the federal government will then have power over it, as it does to create the basin plan, and that will be different to the current operation that you have been running?

Dr CRAIK — I do not know if the federal government will have power over it, whether that is an area that is being a referred power or not. The preparation of the basin plan, certainly it will involve it, because right now it is something that has been agreed, and voluntarily agreed, by the states and signed up under first ministers agreements.

From what you say, it sounds like the arrangements will change in the new arrangement, but I am only assuming that.

Mr BARBER — You also said earlier that there will be a sustainable diversion limit for each major valley in the basin plan.

Dr CRAIK — In the basin plan; that is correct.

Mr DRUM — Is that not already the case?

Dr CRAIK — Right now under the arrangements in the Murray-Darling Basin Commission each river in the basin has a cap, an extraction limit. Those limits were set mostly in 1995 and 1996. There are still a few being set in Queensland, and the Barwon-Lower Darling was set only just a year ago, and the ACT was only just set. They were set to limit further extractions. Rather than necessarily being at an environmentally sustainable level of extraction, they were set to put a cap on any further extractions. Yes, there is a limit.

It may in some cases be equivalent to an environmentally sustainable level of extraction but the one thing that the caps do not do at the moment is adequately or evenly — between the environment and consumption — reflect the impact of the very severe water shortages that we have had in the last couple of years. They are climatically adjusted but they just do not cope nearly as well with a really big climatic change; they cope with a small one pretty well but not the big ones we have been having in recent years. So that has got to be picked up in the new sustainable diversion limits as well, and they also have to pick up groundwater and a couple of other things that we do not currently pick up.

Mr DRUM — My understanding is a little bit different from Mr Barber's in relation to the authority going forward. I was of the opinion that those tributaries will come under the state?

Dr CRAIK — It will not have control in the same way it does over the Murray and the Lower Darling, but there is obviously some arrangement in relation to critical human need, because we do not have control over those tributaries; the commission as a whole does not. But they have been picked up under critical human need under a voluntary arrangement in the last few years, and I assume that voluntary arrangement is somehow going to be reflected in the basin plan in relation to critical human need.

Mr DRUM — I understand that your level of expertise sort of ceases in some respects at the implementation of this bill, but in relation to any of the dispute resolution that may take place into the future, where the authority is, like yourself, set up as effectively the governing body and the states are going to implement the action plan that is being put forward, do you understand how it is likely to work in relation to dispute resolution, when the states do not agree with the direction that is being given to them?

Dr CRAIK — As I understand, it goes up to the ministerial council for resolution of issues, much the same way as it does now. I am not sure what happens if the ministerial council does not agree.

Mr DRUM — What happens at the moment?

Dr CRAIK — At the moment there is a provision in the Murray-Darling Basin agreement that if agreement cannot be reached on a dispute, a Tasmanian judge will arbitrate on the dispute. To my knowledge that has been sufficient deterrent, that it has never actually been used.

Mr DRUM — In relation to the Murray, that will not be the case? Effectively the authority will lay down the law?

Dr CRAIK — The authority; that is correct. And the minister.

Mr DRUM — The federal minister?

Dr CRAIK — The federal minister; that is correct.

Mr DRUM — Yes, the federal minister will lay down the law, and the states will simply implement whatever they are told to implement?

Dr CRAIK — Well, they will be able to provide advice on the plan and things going through. Advice from the ministerial council is sought on the plan, and as I understand it, the ministerial council has one round where they can have input, but ultimately it is the authority that makes recommendations to the minister; yes, that is right.

Mr DRUM — But it will change when you talk about the tributaries? It will be effectively significantly different?

Dr CRAIK — In terms of sustainable diversion limits, the plan will have a role, and clearly there is a role in terms of critical human need in relation to the tributaries.

Ms LOVELL — Dr Craik, there have been two tributaries that have been specifically excluded from the control of the Murray-Darling Basin authority — the Murrumbidgee and the Goulburn. What do you see as the impact of these two being excluded from the basin plan, and do you think that it will improve the operation of the basin plan to exclude these tributaries?

Dr CRAIK — They will be included in the basin plan to the extent that new sustainable diversion limits will be set for both the Goulburn and the Murrumbidgee — all the valleys in the basin will have new sustainable diversion limits — so they will be included in that part of the basin plan, and clearly they will be picked up in some way in relation to critical human need, probably in much the same way they are now.

Ms LOVELL — I am told that last week on ABC Radio Mildura — I did not hear it myself — you said Victoria has an obligation to fulfil its commitments to the Living Murray by 2009?

Dr CRAIK — June 2009.

Ms LOVELL — Do you think Victoria will meet those obligations, and if Victoria does not meet those obligations by then, what are the implications?

Dr CRAIK — There are no sanctions on jurisdictions that do not meet their obligations, but every state has undertaken to use its best endeavours. As we understand it, the water from the Shepparton modernisation, that entitlement, will come to the program in June 2009, as will that from the Lake Mokoan one. That will come in June 2009. The Goulburn-Murray Water one I think comes to the program in 2009, then there is a small new program that has been listed on the eligible measures, sustainable dairy farms. I am not sure of the timing on that, but certainly Victoria has every reason to imagine it will meet its obligations. There may be some payments that go into the following year for finalising projects, but as we understand it, the vast majority of the water entitlements will be delivered to the program in June 2009 from Victoria.

Mr BARBER — There would be a verification regime for those savings that have been created and allocated?

Dr CRAIK — Yes, there is; that is correct. What happens is that if there is an entitlement actually just handed up and provided, then that is very easily verified. If it is looking at savings and you are paying on savings that have been achieved, say, from putting in infrastructure, and if those savings determine the size of the entitlement rather than just saying, 'Yes, we are going to give you X gigalitres of entitlement', then we send out an independent auditor to look at the actual savings. The project is independently audited to determine the savings.

Mr BARBER — Obviously we have got some very large and very leaky systems. We all know that that water is leaking back into the environment, and so we know we are taking with one hand in terms of stopping those leaks, but then we are giving back by saying, 'Here is your Living Murray or other environmental program'. When that is happening in the same system, how do we ensure it is not just a mere bookkeeping exercise?

Dr CRAIK — My understanding from the work that has been done is that they are genuine savings from the work that has been done, and it certainly provides a great deal more control about when you can actually use the water into the system. Certainly, as I understand it, it is regarded as genuine savings. All the jurisdictions have looked over these projects that have been put up, and they are genuine savings — the same with infrastructure projects from other jurisdictions.

Mr DRUM — Whilst you use the term 'genuine savings', the actual water is not there yet, is it? The water has not been saved yet, because the system is only running at a fraction of its capacity?

Dr CRAIK — That is correct.

Mr DRUM — The entitlements are in place, and the savings are there to be taken?

Dr CRAIK — That is correct.

Mr DRUM — Once the water starts to run?

Dr CRAIK — That is right. We will not have the entitlements to some of those until June 2009 — or the program will not have the entitlements until June 2009. But you are right; even then with the entitlements we do not actually get water until there is an allocation against those entitlements. That is right.

Mr DRUM — One of the big issues we have here in relation to taking water to Melbourne in the north–south pipeline is that if the water is just not there, and yet Melbourne is granted a bulk entitlement or a 75 gigalitre entitlement, where will that water come from?

Dr CRAIK — That is not for me to answer that question.

Mr DRUM — But you can confidently say it is not going to be delivered out of these savings projects unless things change dramatically?

Dr CRAIK — All I am talking about is the Living Murray. The notion of the water for Melbourne through the pipeline is not really a matter for the commission. We have been guaranteed the entitlement in June 2009 from the Shepparton modernisation project for the Living Murray — the 30 gigalitres of long-term cap equivalent — and we have no reason to suggest that that will not be provided in June 2009. Then, as with all the other entitlements, it is a matter of what the allocations are against those entitlements.

Mr DRUM — But the sheer fact is that most of the projects are similar in nature, are they not? The water infrastructure improvements that are taking place throughout the Goulburn Valley are quite similar in relation to the projects that have had their savings deemed to go to the Living Murray — the waters, the rivers or whatever — or deemed to go to the environment or deemed to go to Melbourne? The projects are similar.

Dr CRAIK — Yes, they are quite similar.

Mr DRUM — Your water is not available at the minute; as I said, of the hundreds of gigalitres that have actually been saved on paper, you have only received 2 gigalitres of actual water savings?

Dr CRAIK — That is correct.

Mr DRUM — So it would be a fair assessment to suggest that the other projects are going to have similar bookkeeping problems — or not problems, but there is going to be a similar situation?

Dr CRAIK — There may well be — and so will every irrigator who has an equivalent entitlement. That is right.

Ms LOVELL — Dr Craik, I understand you said you expect Victoria to meet its commitments, but if Victoria's promises for the Living Murray are not met, will the passage of this legislation empower the commonwealth to demand these prior commitments to be fulfilled prior to any savings that might arise from food bowl modernisation being allocated to the environment or to irrigators?

Dr CRAIK — Victoria has undertaken to provide the entitlement in June 2009 to the Living Murray. It has undertaken to do it. It has met the other commitments it has made, so there is no reason to doubt that it would not meet that. And then the allocations are a matter — —

Ms LOVELL — If it does not, will this legislation empower the commonwealth to demand that prior to the food bowl modernisation savings being shared?

Dr CRAIK — I cannot answer that question.

Mr DRUM — Dr Craik, in relation to the \$2 billion that has been put aside in the food modernisation project, the first billion effectively comes out of a combination of Melbourne Water money, state government money and local irrigators money?

Dr CRAIK — Yes.

Mr DRUM — My understanding is that they are going to get first dibs at the various projects, so that money is going to be spent on what you might call the lowest hanging fruit so they can go in and fix up the leakiest system?

Dr CRAIK — I am not sure.

Mr DRUM — You are not sure?

Dr CRAIK — No.

Mr DRUM — Are you aware of the strings attached to the second billion coming from the federal government, which is only going to be used for the irrigators and for the environment?

Dr CRAIK — No, I am not. I know the federal government is going to examine it, but beyond that, I do not know.

Mr DRUM — It has to actually pass each of the projects.

Dr CRAIK — I am not involved in any of that. The commission is not involved in that.

Mr DRUM — So you are not concerned that when the time comes for those works to be done, those projects may not be available?

Dr CRAIK — It is not really a matter for me. It is not a matter for the commission at all to get involved in. We have not been involved in that issue at all.

Mr DRUM — Was the commission consulted about this legislation at all?

Dr CRAIK — The commission had representatives on some of the early IGA drafting meetings at officer level but not the final meetings or the final negotiations. In terms of the legislation, the commission has had officers involved in some aspects of the legislation, but at the end of the day it is the Australian government jurisdiction and the states who decide. They decide the final agreements. We as officers provide advice based on our experience at the commission, but it is up to others whether they accept it or not.

Mr DRUM — So how in depth was that process of your members' involvement in the forming of this legislation?

Dr CRAIK — Many of them attended meetings, particularly in relation to assets and some of the elements of the legislation. Again, we offered to provide advice, but whether it was accepted or not was a matter for the states and the commonwealth government to make a decision.

Mr DRUM — Can you help me out with the change in the name of the governing body from a commission to an authority?

Dr CRAIK — I have no idea why. I assume it was to distinguish it from the commission.

Ms LOVELL — Dr Craik, recently you released the Murray–Darling Basin river health audit?

Dr CRAIK — Yes.

Ms LOVELL — That identified the Goulburn River as the river in the poorest health in the basin, and in particular the breakdown of the Goulburn River, that at the slope zone it was the most degraded area of the Goulburn, yet that is the very area from which the Victorian government plans to remove 75 gigalitres to pipe to

Melbourne. Does it concern you that that area is going to be the area where they are taking that water from? That is, from the river that has the poorest ecosystem health in the basin?

The CHAIR — Can I intervene? You are not obliged to answer that question, frankly, Dr Craik. If you wish to give us an opinion, that is fine, but it is outside the province of the legislation.

Dr CRAIK — It is outside the commission's involvement.

The CHAIR — Whilst I accept that some work has been done and an opinion has been formed on the health of the Goulburn, the government's position on extracting water for Melbourne is quite separate to this legislation. You are not obliged to answer, but if you are able to help the committee, I would obviously welcome that.

Dr CRAIK — The issue of the water going to Melbourne is not an issue for the Murray-Darling Basin Commission, so we do not have an opinion on that.

Ms LOVELL — Will the passage of the legislation make it harder for Victoria to maintain the current 4 per cent annual cap on water trade from the irrigation district and the 10 per cent cap on water that can be held by lone land-holders in Victoria?

Dr CRAIK — I honestly cannot be certain about that answer. I do not believe it is referred to directly in the legislation, but I could not be absolutely sure, and I am not sure of the role of the Australian Competition and Consumer Commission in relation to that.

The CHAIR — Are there any further questions?

Dr Craik, I express our gratitude to you. As Chair, I have allowed a fair range of questions, partly because you were quite competent in fielding them. I had no concern about intervening on some of those questions but you have certainly provided a range of information that is helpful. We appreciate that you have come some distance and made yourself available at some inconvenience personally to assist us in this inquiry. I indicate to you that it is very much appreciated. This is landmark legislation, hence the interest of committee members and our colleagues in the chamber in ensuring particularly that Victoria's rights are maintained within a context where we play our part in a multi-jurisdictional approach to water management.

Hansard staff have taken a record of proceedings which will be made available for you to peruse and highlight any areas of concern. As is always the case with *Hansard*, we cannot alter the substance, but if there are any matters that have not been clear as part of the record, we would certainly invite your comment on them. Thank you.

Dr CRAIK — Thank you very much.

The CHAIR — Thank you very much for being with us today.

Dr CRAIK — Sorry I could not be more helpful.

The CHAIR — We also wish you well with finding some new gainful employment. With somebody of your stature, I am sure we will be reading about you again in the future fairly soon, probably in relation to public policy issues. Thank you very much.

Dr CRAIK — Thanks a lot.

The CHAIR — I ask members if there are any clauses to which there are proposed amendments or any further discussion in relation to specific matters on clauses?

Mr DRUM — I suppose it is no great shock that I expected to be able to quiz Dr Craik some more on the practical workings of how the new legislation will work. Through no fault of hers she was unable to garner that information this afternoon. As to whether or not I will be moving amendments, I would not be foreshadowing that — I do not think that would be the case — but we certainly will need to be talking to the minister in the committee stage.

The CHAIR — That is fine. What happens in the chamber, happens in the chamber. I am more concerned about here and now. Are there any specific matters that anybody wants to address in any of the clauses of this legislation now? If not, I propose to put that clauses 1 to 26 be agreed to for the purposes of a referral back to the Legislative Council, obviously with a report and the attached transcripts.

Clause agreed to; clauses 2 to 26 agreed to.

Committee adjourned.