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Abstract:

The Murray Darling Basin, Australia, famously described as Australia’s food bowl, suffered intense drought for the period 2001 to mid 2010. In late 2010 and early 2011 the drought ended, punctuated by severe flooding in the Northern basin and Southern Basin. Following a succession of water trading reforms which delivered limited gains during a period high water scarcity from the mid 1990s to 2004, the Australian Federal government recognized a need to engage in centralized management of the water resources of the Murray Darling Basin in 2007, enacting the Water Act 2007. The new legislation left power to grant water entitlements as property rights in the hands of Basin State governments. The key feature of the new Federal law is a Basin wide plan to be managed by a new Federal government agency, the Murray Darling Basin Authority.

The legislation was subsequently refined by the Water Amendment Act 2008, breaking ground by expressly recognizing the human right to water to serve critical human needs in water planning alongside delivering rights in environmental water flows which had been established in the original Federal law. The Water Act 2007 is also unique in setting mandatory requirements to produce socio-economic risk management strategies to address the impacts of sustainable diversion cuts to be made for the delivery of environmental flows under section 22, Items 3 and 5. In these two respects the Water Act 2007 and Water Amendment Act 2008 seek to balance human rights to water in environmental flows, property, drinking water and for broader socio-economic security goals.

However room for reform within the Water Act 2007 and the Water Amendment Act 2008 remains. Two seminal principles of international water law which remains in its entirety customary law are missing, namely, the principles of reasonable and equitable utilization and no significant harm. The two legal principles are inherently bound to one another and express recognition of these principles is now clearly necessary for the management of disputes between Basin states. Furthermore both pieces of legislation, having been drafted during a period of extreme drought, now require a second set of amendments making express reference to the linkages between flood mitigation strategies and drought management.

This paper reviews the key features of the Water Act 2007 and the Water Amendment Act 2008, with reference to the critical literature, principles of international water law and, trade and environmental law, with a view establishing a need to engage in the development of more detailed legal reforms.

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