

10 December 2015

COFFIE program  
Water Division  
Department of Agriculture and Water Resources  
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Canberra City ACT 2601

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To whom it may concern

### **Commonwealth On-Farm Further Irrigation Efficiency Program (COFFIE)**

Thank you for the opportunity to comment on the design of the COFFIE program.

EDOs have 30 years' experience advising Australian communities on using the law to protect the environment, including advice, casework, education and law reform. These services are fundamental to providing 'access to justice' across the spectrum of federal and state environmental and planning laws.

EDOs of Australia have extensive experience advising on the *Water Act 2007* (Water Act) and Basin Plan. Our law reform and policy work includes submissions responding to the Draft Basin Plan, strategies made pursuant to the Basin Plan, and various amendments to the Water Act.<sup>1</sup>

We wish to comment on two legal issues which are relevant to the design of the COFFIE program. These concern first, the statutory requirement to use 'up water' to procure certain outcomes in the Coorong, Lower Lakes and Murray Mouth (**CLLMM**) and second, the nature of entitlements acquired through the program. We will briefly discuss each of these in turn.

#### **1. CLLMM**

The COFFIE program forms part of the 'efficiency works' prescribed and funded under Part 2AA of the Water Act. As such, the program is required to procure 'enhanced environmental outcomes' (**outcomes**) in the Murray-Darling Basin.

These outcomes are described in the objects to Part 2AA in both general and specific terms. As you would be aware, the specific outcomes sought concern the CLLMM. These outcomes are quite particular and include (but are not limited to) the reduction of salinity, maintaining prescribed water levels in the Lower Lakes and keeping the Murray Mouth open in 95% of years.

Given the fragile nature of the CLLMM and ongoing concern regarding its sustainable management, it would be useful to understand how the COFFIE program and the entitlements purchased as part of this program (discussed in point 2) will help to achieve the outcomes set out in the Act.

## **2. Entitlements**

It is our understanding that the Commonwealth has thus far sought to acquire a mixture of entitlements through the 'Restoring the Balance' program.

It is unclear, however, whether the Government has developed an internal policy with respect to the purchase of entitlements through the COFFIE program (and more generally in respect of on-farm efficiency works mandated under the Water Act and Basin Plan).

The nature of entitlements acquired through the COFFIE program will have a significant impact on the Commonwealth's capacity to achieve the outcomes described in Part 2AA of the Water Act. As such, it would be useful for the community to be provided with more detailed information regarding the nature of entitlements sought, and how these will help to deliver these outcomes, particularly in the CLLMM.

As a first step, we would greatly appreciate if we could meet to discuss these issues early next year.

Yours sincerely,  
**EDO NSW**



Dr Emma Carmody  
Policy and Law Reform Solicitor

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<sup>i</sup> Our submissions are available online at: <http://www.edo.org.au/water1>