



Australian Government
Department of Agriculture
and Water Resources

South Australian Murray-Darling Basin Royal Commission
Submission by the Department of Agriculture and Water Resources

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INTRODUCTION

1. The Department of Agriculture and Water Resources (the department) welcomes the opportunity to make this voluntary submission to the South Australian Murray-Darling Basin Royal Commission (the Commission). The department is making this submission to assist the Royal Commission in undertaking and completing its Inquiry.
2. In doing so, the department acknowledges that it previously indicated that it would provide a submission to the Commission by the end of May 2018. However, the department's preparedness to do so was impacted by other developments, including:
 - a. The summonses the Commission issued to the Commonwealth, including to provide any legal advice provided to the Commonwealth relating to the *Water Act 2007* (Water Act) and *Basin Plan 2012* (Basin Plan).
 - b. The proceedings which the Commonwealth commenced in the High Court earlier this year, to obtain a ruling on whether the Commission can compel Commonwealth entities and officials to provide information or give evidence.
3. In highlighting these developments, the department notes that the decision to commence proceedings in the High Court was never about water resources, the content of the Water Act, the content and implementation of the Basin Plan, or an unwillingness by the Commonwealth to engage with the Commission. There were broader issues at play, as reflected in the Commonwealth's submission to the High Court available at:
http://www.hcourt.gov.au/assets/cases/03-Canberra/c7-2018/MurrayDarling_Plf.pdf
4. The Commonwealth took the view that it was not appropriate to engage with the Commission while the High Court proceedings were underway.
5. The department also wishes to take this opportunity to acknowledge that it is a long-standing Commonwealth practice not to waive privilege over legal advice provided to the Commonwealth or Commonwealth agencies. While there may be occasions where legal advice is made publicly available, the Commonwealth's standard position is to preserve confidentiality over advice it has obtained.
6. The department is however committed to engaging in public debate and open dialogue on important national issues, including in relation to water resources, and otherwise to ensuring transparency, including in relation to decision-making.
7. With this in mind, and noting that the High Court proceedings having been discontinued following advice from the Commissioner that the summonses had been withdrawn, the department is now able to make this voluntarily submission to the Commission.
8. In making this submission, the department has had regard to its role and responsibilities in relation the Water Act and Basin Plan. It is noted in this respect that there are a number of Commonwealth entities involved in the Basin Plan, each with discrete roles and responsibilities, as follows:
 - a. The Murray-Darling Basin Authority (MDBA) has primary responsibility for preparing and reviewing the Basin Plan, measuring, monitoring, evaluating and reporting, including

undertaking five-yearly Basin Plan evaluations, as well as conducting research to improve Basin water resources.

- b. The department assists the Minister for Agriculture and Water Resources in his or her statutory responsibilities under the Water Act, which include adopting the Basin Plan (and any amendments) and accrediting water resource plans (WRPs). The department also has primary responsibility for the implementation, monitoring and reporting of programs that support the Basin Plan, including the Commonwealth's water recovery program.
 - c. The Commonwealth Environmental Water Holder (CEWH) manages environmental water held by the Commonwealth in collaboration with the MDBA, state governments and local water managers.
9. The focus of this submission is on addressing matters that relate to compliance with Basin water laws (Terms of Reference 7 to 11). However, the department has also provided some additional information in response to particular material that has been presented to or raised by the Commission to date. In doing so, the department has:
 - a. provided links to relevant publicly available information which it considers will be of assistance to the Commission in undertaking and completing its inquiry; and
 - b. attached any relevant documents not publicly available, but which it also considers will be of assistance to the Commission.
10. In making this submission, it is the department's view that:
 - a. The Basin Plan is a significant step in the ongoing process of managing the Basin's water for the benefit of all its users and the environment.
 - b. The Basin Plan is visionary, long-term policy, and it's working. There has been significant progress in implementing the Basin Plan to date, particularly in recovering water for environmental use. The agreement reached between the Australian Government and the Federal Opposition in May 2018 to secure outcomes relating to both the sustainable diversion limit (SDL) adjustment mechanism and the Northern Basin Review has been key to recent progress.
 - c. There are sufficient compliance frameworks and mechanisms in place to ensure compliance on all aspects of the Water Act and the Basin Plan.
 - d. The Commonwealth discharges its roles and responsibilities in relation to water policy efficiently, effectively, economically and ethically and otherwise in compliance with relevant laws.
 - e. Continuing implementation of the Basin Plan is not easy and not without its challenges. Notwithstanding, with water recovery required to bridge the SDL gap now substantially complete and other Basin Plan implementation tasks well underway, it remains Australia's best pathway for securing the future of this vital shared water resource.
 - f. The department is of the view that the successful delivery of reforms to the Basin over the terms of successive governments requires bipartisan support at the Federal level and the ongoing support of the Basin States and the ACT. The Basin Plan continues to elicit strong bipartisan support in the Federal Parliament, and all Basin governments remain committed to delivering the Basin Plan.

- g. The Basin Plan provides for benefits which will continue to accrue over the next 50 to 100 years. Other countries look to Australia as having some of the best and most successful water management policies in the world.
 - h. Successive governments, both State and Commonwealth, have repeatedly reaffirmed their commitment to the Plan. The Commonwealth and Basin State Governments continue to work cooperatively to meet existing Basin Plan timeframes.
11. The basis on which the Basin Plan was developed, including amendments arising from the Sustainable Diversion Limit (SDL) adjustment mechanism and the Northern Basin Review, are entirely consistent with the requirements of the Water Act. The Australian Government's position on some of the issues raised by the Commission in this respect in Issues Paper No. 2 are outlined in the explanatory statement to the letter from Minister Littleproud to the Hon. David Speirs MP, dated 2 July 2018. A copy of this explanatory statement is at [Attachment A](#).

PART 1 – COMPLIANCE

12. On 24 July 2017, certain allegations were made on the ABC *Four Corners* program regarding water theft and the misuse of environmental water within the Basin. A number of reviews have been completed or are now underway in response to the allegations. Basin communities and the public need to have confidence that the rules that underpin fair and lawful water use throughout the Basin are being followed. Illegal water take and the misuse of environmental water not only have the effect of eroding the integrity of the water entitlement framework, but also has the potential to significantly impact on the environmental, social and economic objectives of the Water Act and Basin Plan. Basin governments are working together to build a strong framework for compliance and enforcement of water laws.

Reviews into compliance matters in the Murray-Darling Basin

13. The Australian Government continues to be committed to delivery of the Basin Plan and otherwise supporting the Basin States to sustainably manage and use the water resources of the Murray-Darling Basin. In this respect, the Australian Government already has a number of measures and frameworks in place to support these objectives. It is within this context that the department is supportive of the various reviews underway or completed and will work with the Basin governments, as appropriate, to implement relevant review recommendations.
14. Reviews that are now underway or have been completed, include:
- The MDBA's and Independent Panel's [The Murray-Darling Basin Water Compliance Review](#) (Completed)
 - NSW Independent review of water management and compliance ([Matthews Review](#)) (Completed)
 - NSW Ombudsman's [Investigation into water compliance and enforcement 2007–17](#) (Completed)
 - Independent [audit of Queensland non-urban water measurement and compliance](#) (Completed)

- [Productivity Commission Inquiry into the effectiveness of the implementation of the Basin Plan](#) (In progress, draft report released on 30 August 2018, final report due by December 2018)

15. The department has made submissions to the following inquiries:

- Australian National Audit Office (**ANAO**) **assurance review** on the department's assessment of the performance of NSW under the National Partnership Agreement (NPA) on Implementing Water Reform in the Murray-Darling Basin, relevant to the protection and use of environmental water for the 2014–15 and 2015–16 financial years (Completed)
- Senate **"Inquiry into the integrity of the water market in the Murray-Darling Basin"** (In progress, to report by November 2018)
- Standing Committee on the Environment and Energy **"Inquiry into the management and use of Commonwealth environmental water"** (In progress, reporting date to be determined)
- Productivity Commission **Inquiry into the effectiveness of the implementation of the Basin Plan** (the department's [first submission](#) to the PC was provided on 7 May 2018. Submission in response to the draft report is at [Attachment B](#))

16. The reviews that have been completed to date have delivered important findings and recommendations for the consideration of Basin governments. The Commonwealth and Basin governments have, are or otherwise will be taking appropriate steps to prioritise the implementation of the various recommendations.

17. Set out below is an overview of some of the main objectives and outcomes of some of these reviews.

MDBA and Independent Panel compliance review

18. On 30 July 2017 the former Prime Minister, the Hon. Malcolm Turnbull MP, announced that the MDBA would carry out an independent Basin-wide compliance review. An independent panel was also commissioned to provide a separate report on the MDBA compliance review to Basin water ministers, including on the MDBA's own role in compliance and enforcement practices, and ways in which these could be improved.

19. The MDBA and Independent Panel [Murray-Darling Basin Water Compliance Review](#) was released on 25 November 2017, in two parts; one prepared by the MDBA and one prepared by the Independent Panel. Key recommendations related to:

- implementation of a 'no meter, no pump' policy across the Basin;
- improvements to measurement and monitoring of water availability and take;
- greater transparency of compliance activities;
- more comprehensive compliance powers and penalties to be added to the Water Act;
- the need to protect environmental flows; and
- the need for the MDBA to be more assertive in its enforcement and compliance function.

20. On 25 November 2017, the former Prime Minister and former Assistant Minister for Agriculture and Water Resources, Senator the Hon. Anne Ruston, welcomed the findings of the compliance review, supporting the direction of the recommendations of the MDBA and Independent Panel, and calling on Basin States to do the same.
21. The former Prime Minister and former Assistant Minister announced a [six point Implementation Agenda](#) for delivering the Basin Plan, including building a strong culture of compliance across the Basin. This included a commitment to making current funding for Basin states under the National Partnership Agreement on Implementing Water Reform in the Murray Darling Basin contingent on achieving the improved compliance outcomes identified by the MDBA and Independent Panel's compliance review.
22. The Commonwealth has provided \$9.1 million in funding to the MDBA to strengthen its compliance functions. The MDBA has already implemented a number of recommendations from the compliance reviews including:
 - publication of an online register to report on the handling and progress of reported compliance matters;
 - adoption and publication of an escalation pathway that sets out when and how the MDBA will follow-up on alleged breaches;
 - establishment of an Office of Compliance to strengthen the MDBA's focus on water compliance in line with Basin Plan requirements;
 - establishment of an independent assurance committee to provide expert advice on the design, implementation and adequacy of the MDBA's Basin Plan compliance program; and
 - quarterly reports on progress with water resource plans (WRPs), providing increased transparency and accountability in the development and accreditation of WRPs.
23. As part of a package announced on 7 May 2018, the Government has also committed \$20 million in funding to support the development of remote sensing and other technologies to enhance monitoring, measurement and compliance in all Basin jurisdictions and improved hydrometric networks in the Northern Basin.
24. In addition, on 23 August 2018 the Minister for Agriculture and Water Resources, the Hon. David Littleproud MP, announced the appointment of Mr Mick Keelty as the new Northern Basin Commissioner in a role that includes monitoring and reporting on implementation of compliance commitments and other matters in the Northern Basin.

Basin Compliance Compact

25. One of the MDBA's recommendations in its compliance review was for the Council of Australian Governments (COAG) to commit to a Basin Compliance Compact (the Compact) to implement the recommendations of the review.
26. Commonwealth agencies have fully engaged in the development of a Basin-wide Compliance Compact that seeks to address all the recommendations of recent compliance reviews. Basin water ministers endorsed this Compact on 8 June 2018 and it is now publicly available on the MDBA's website at:
www.mdba.gov.au/sites/default/files/Basin-Compliance-Compact-180702-D18-31184.pdf

ANAO review

27. The department has responsibility to assess progress made by Basin states against milestones in the *National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin* (NPA). The department's most recent assessment evaluates milestone progress made by Basin states in the year 1 July 2016 to 30 June 2017, for financial contributions due to be paid in 2017-18. New South Wales did not receive a payment in 2017-18.
28. In 2017 the ANAO undertook an assurance review of the department's assessment of NSW's performance under the NPA in 2014-15 and 2015-16. The focus of the review was NSW's progress against NPA milestones relevant to the protection and use of environmental water.
29. The department agreed there were opportunities to improve the NPA assessment process and subsequently revised the criteria used to assess progress against the NPA milestones based on the ANAO findings and the recommendations of an independent mid-term review of the NPA completed in August 2017. This strengthened approach to assessing NPA payments in future years represents a sound response to the ANAO's concerns.

Productivity Commission Inquiry into the effectiveness of the implementation of the Basin Plan

30. The Commonwealth has fully engaged in numerous reviews and inquiries relating to the Basin Plan, including the first of the Productivity Commission's five-yearly assessments of the effectiveness of implementation of the Basin Plan and WRPs that is in progress.
31. On 7 May 2018, the department provided its [first submission](#) to the Productivity Commission's Inquiry, which included the department's actions, specific targets and current arrangements required to implement the Basin Plan, with respect to achieving its intended outcomes.
32. The department also responded to the Productivity Commission's draft report on the Basin Plan five-year assessment ([Attachment B](#)). The Productivity Commission's final report is due to the Australian Government by 31 December 2018.

PART 2 - ADDITIONAL INFORMATION

33. The department provides the following additional information in response to some material that has been presented to or raised by the Commission to date.

Water recovery

34. The Sustainable Rural Water Use and Infrastructure Program (SRWUIP), is the key mechanism to bridge the gap to long-term average sustainable diversion limits (SDLs) established by the Basin Plan. Funding under SRWUIP is provided under three main categories:
 - Irrigation infrastructure projects
 - Water purchase measures

- Supply measures (noting that funding for supply measures is available from funding originally set aside for water purchase, and that the modified package of supply measures has reduced the water recovery amount by up to 605 GL).
35. As indicated below, there are two main ways the Commonwealth recovers water:
- a. By investing in water infrastructure programs, whereby the Commonwealth funds the implementation of a water saving project and in return for which the relevant water entitlement holder agrees to transfer a share of any agreed water savings to the Commonwealth; and
 - b. By directly purchasing water entitlements from an entitlement holder, including open and limited tender processes consistent with the Commonwealth Procurement Rules.
36. In both circumstances, the Commonwealth undertakes an appropriate due diligence process to ensure that the water it is proposing to acquire can be transferred to the Commonwealth and registered as part of the Commonwealth environmental water holdings. That water is then managed by the CEWH for environmental watering purposes. Water recovery is reported at the point at which water savings or purchase have been agreed in the relevant purchase contract or transfer deed. Until water purchase contracts or transfer deeds have been exchanged and completed however, these figures may be subject to change.
37. While water purchase, including through open public tenders, would be the lowest financial cost to recover water, this approach is widely recognised as having significant social and economic consequences. Therefore, the Australian Government has committed to prioritise recovery of water through irrigation infrastructure programs. Recovery through this means costs more per megalitre than open tenders, but delivers positive net social and economic benefits and contributes to a more modern and efficient irrigation system. Detailed information about the SRWUIP, 1,500 GL cap on surface water purchasing, surface and ground water purchasing, approach to market and water market price information is available on the department's website at: www.agriculture.gov.au/water/markets/commonwealth-water-mdb
38. The department publishes the progress of contracted environmental water recovery on a monthly basis. Progress of water recovery can be found here: www.agriculture.gov.au/water/mdb/progress-recovery
39. Progress of water recovery that has been transferred to the Commonwealth environmental water holdings and managed by the CEWH can be found here: www.agriculture.gov.au/water/mdb/progress-recovery/registered-water-recovery
- i. The Australian Government reports that, as at 31 August 2018, 2117.5 gigalitres (GL) of surface water on average over the long term (LTAAY) had been recovered or contracted to be recovered towards reaching the SDLs under the Basin Plan. The volume of surface water which is registered as part of the Commonwealth environmental water holdings is 1,883.7 GL LTAAY, with Basin States holding an additional 162.6 GL that can be used for environmental purposes. The remaining 121.2 GL LTAAY is water that is contracted but not yet delivered.
 - ii. Efficiency measures water recovery as at 31 August 2018 is 1.5 GL LTAAY of which 0.46 GL is registered as part of the Commonwealth environmental water holdings.

- iii. Assuming a full supply contribution, the total remaining recovery is 29.5 GL of surface water to bridge the gap to the SDLs by 30 June 2019. For the supply contribution not to be constrained by the 5 per cent limit in the SDL adjustment mechanism, at least 62 GL LTAAY of efficiency measures must also be recovered.
 - iv. Groundwater recovery registered as part of the Commonwealth environmental water holdings which contributes to meeting the groundwater SDLs is 2.7 GL located in Queensland. A further 37.7 GL is required to bridge the gap for groundwater SDLs. A groundwater tender in Queensland Upper Condamine Alluvium has recently closed and is expected to yield further volumes towards this target, subject to contracting.
40. Recovery progress is verified with the CEWH on a monthly basis for registered water volumes. Each quarter, the MDBA collects and verifies State based water recoveries and undertakes, with the department, a reconciliation on the water recovery data.
41. To accurately measure how much water has been recovered, each SDL resource unit entitlement class is given a long term diversion limit equivalent factor to translate through to expected use so they can be counted on equal terms. All water recovery figures are expressed in long term average annual yield (LTAAY) terms. Water recovery amounts are calculated using the current long-term diversion limit equivalent factors (v2.05) agreed by the Ministerial Council in November 2011. All Overland Flow water recoveries have their factors individually modelled by the MDBA.
42. Updated factors are being developed now, ahead of the accreditation of each water resource plan, to ensure plans are aligned with, and consider, the most recent information on water use. The factors will be used to determine if the water recovery required in each catchment has been completed by June 2019, when the SDLs come into effect under the Basin Plan.
43. The updated factors will affect the amount of water recovered against the targeted recovery in some catchments. The final outcome will be known closer to the deadline of June 2019, as state water resource plans are finalised, and recovery programs and projects are completed.
44. In addition, water recovery volumes may change due to:
- Changes to water recovery currently reported as contracted or in agreed funding contracts are not achieved.
 - Valid requests to re-allocate shared reduction amounts for SDL resource units are received from Basin States by 31 December 2018 as provided for in subsections 6.05(9)–(12) of the Basin Plan.

Strategic Purchases vs Infrastructure Costs

45. The government's approach to water recovery takes into account the social and economic impacts of water recovery efforts.
46. Achieving value for money is a key principle governing the department's assessment on any decision to recover water. These decisions are consistent with the Commonwealth Procurement Rules, paid at a fair market rate, and involves the assessment of both financial and non-financial costs.

47. The market multiple is the cost of water to the Australian Government compared with the prevailing market price for the same entitlement at the time of the project approval. On-farm irrigation upgrades have recovered water at a market multiple of between approximately 2.0 and 2.5 times the value of water rights whereas off-farm delivery systems modernisation projects are more expensive in terms of the relative cost per unit of the water savings. Under the Murray-Darling Basin Water Infrastructure Program (MDBWIP), a new Basin-wide water infrastructure program funding water recovery across the Basin, funding to undertake water efficiency infrastructure upgrades is calculated at up to 1.75 times the value of the water rights transferred to the Commonwealth for each project.
48. The Australian Government's policy for recovering water entitlements is set out in the [Water Recovery Strategy for the Murray-Darling Basin, Commonwealth of Australia 2014](#) (the Water Recovery Strategy). The Water Act also includes a statutory limit of 1,500 GL on surface water purchases (section 85C).
49. Consistent with the Water Recovery Strategy, the Australian Government's water recovery program focuses on investment in water saving infrastructure, but considers, in consultation with Basin States, strategic water purchases in areas where they present exceptional opportunities to achieve Basin Plan objectives.
50. Factors considered in any strategic purchase include achieving a fair market price; meeting a local or shared water recovery target; contributing to a wider environmental benefit; size of the water offer in the relevant location, or representing an otherwise exceptional opportunity. Other considerations include where the purchases lead to economic or social benefits beyond the actual financial transaction, such as supporting state government policies and programs; or reduce the need for purchasing that would have greater social and economic impacts.
51. The department will consider the substance of relevant expert valuation advice before entering a strategic purchase negotiation:
- For simple purchases, such as part of the water holdings for a property, there is a focus on the market value of water in a region and the type and quantity of water being purchased.
 - For larger or more complex purchases, commercial valuers consider a range of factors, such as the value of the products that the water can produce; the opportunity cost of lost productivity; and the diminished value of the remaining assets, particularly where the right to future irrigated agriculture has been surrendered.
 - Larger parcels of water occur infrequently in the market. They tend to be associated with significant on-farm infrastructure which may diminish in value after the sale of the water. Commercial valuers recognise this loss and have advised that the department should be prepared to pay a higher price to encourage the sale of large volumes.
52. Information about recent strategic purchases conducted at Lower Darling (Tandou), Warrego and Condamine-Balonne (Eastern Australia Agriculture) is available on the department's website at: www.agriculture.gov.au/about/media-centre/on-the-record/background-significant-commonwealth-strategic-water-purchases-2017

53. In regards to the Tandou Limited purchase in the lower Darling catchment, this represented an opportunity to acquire a major parcel of water entitlements in a highly strategic location in a single transaction, and the department was satisfied that it achieved a value for money outcome. The overall cost to the Commonwealth was \$78 million, comprising approximately \$38 million for the transfer of the water entitlements and approximately \$40 million as consideration for the diminution of the value of the Property and completion of obligations to enable the property to transition to dryland farming, including cancellation of works approvals and the decommissioning of irrigation infrastructure servicing the property.
54. In deciding to enter into an agreement with Tandou, the Commonwealth considered all available analyses including a report prepared by the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) and an independent valuation of Tandou station by Herron Todd White (HTW) commissioned by the NSW Government, as well as undertaking its own value for money assessment and due diligence process.
55. The ABARES report only considered the value of Tandou's water entitlements. The amount paid for the water entitlements was in the middle of the range of values provided by ABARES which was \$24 million to \$52 million. The ABARES report specifically noted that it only considered the value of the water and did not value the loss in property value from moving to dryland farming.
56. The HTW valuation considered the value of Tandou station including its water entitlements, land use and infrastructure against a range of water availability scenarios. The HTW valuation indicates that the value of the station would be significantly reduced without water entitlements from \$86.5 million to \$4 million. In recognition of the loss of business value and productive capacity that would result from the purchase of the water entitlements, the Commonwealth paid \$40 million to Tandou. The total cost of the agreement with Tandou to the Commonwealth is \$78 million (exclusive of GST), which was below the loss of value of the property identified in the HTW valuation.
57. The department's response to The Australia Institute report on Commonwealth water purchase in the Condamine Valley is available at: www.agriculture.gov.au/about/media-centre/on-the-record/response-australia-institute-report-water-purchase
58. The ANAO has identified in its 2018-19 audit program an audit to examine the procurement of strategic water entitlements by the department, including consideration of value for money and the application of the Commonwealth Procurement Rules.

Efficiency Measures

59. The legislation provides a framework for the recovery of additional water for the environment through efficiency measures with neutral or beneficial socio-economic outcomes. Under the Basin Plan (section 7.17), this is achieved through either voluntary participation in projects that recover water through works to improve on- or off-farm water use efficiency, or alternative arrangements proposed by a Basin State, and assessed by that State as achieving water recovery with neutral or improved socio-economic outcomes.
60. The Commonwealth On-Farm Further Irrigation Efficiency (COFFIE) South Australian pilot program currently provides funding for irrigation infrastructure and other on-farm water

efficiency activities in the South Australia Murray region. It allows water to be recovered to improve river health while maintaining or improving farm productivity. In return, irrigators transfer the water rights they are confident of saving from the project to the Commonwealth. All additional savings are retained by the irrigator.

61. The South Australian pilot of COFFIE commenced in September 2016 and is being delivered by the [South Australian Murray-Darling Basin Natural Resources Management Board](#). Over 60 on-farm projects in the South Australia Murray region are being managed or have been completed. The pilot has been crucial in developing and informing the design of the recently launched efficiency measures program, the [Murray-Darling Basin Water Infrastructure program](#) (MDBWIP). The pilot program stopped accepting new proposals on 5 October 2018.
62. The MDBWIP is the new Basin-wide water infrastructure program funding water recovery across the Basin. Through this program, water contributions will be made to finalise bridging the gap for the SDL and for the 450 GL of efficiency measures under the Basin Plan with neutral or positive social-economic impacts.
63. The program is funded by the Australian Government. Projects will be managed by Delivery Partners acting for water rights holders or directly through contracts with water rights holders as Project Partners. The program provides local communities, businesses and irrigators with the opportunity to modernise their water infrastructure while also improving productivity, consistent with the Murray-Darling Basin Ministerial Council (MinCo) agreement of 8 June 2018. On-farm projects are eligible in Queensland, South Australia and the ACT.
64. The programs five streams will fund water efficiency projects, including:
 - a. Urban water efficiency projects such as water recycling, stormwater capture and water recycling, reducing leakage, upgrading sewerage processing practices, demand management, and the introduction of better urban metering technology.
 - b. Industrial water efficiency projects such as improved processing practices, plant upgrades, processing or product redesign and implementation, and water recycling.
 - c. Off-farm projects such as refurbishment or replacement of channel systems, improving stock and domestic pipelines, and improving dams and water storages.
 - d. Metering projects such as replacing or upgrading meters so that they are compliant with the Australian Standard, and the removal or installation of associated flow regulation infrastructure.
 - e. On-farm projects in Queensland, South Australia and the Australian Capital Territory such as improving water delivery infrastructure, installing smarter technology to reduce overwatering, and replacing open channels with pipes.
65. The Government is now seeking tenders for [projects](#) and [delivery partners](#). The department is currently running tenders on a monthly basis to identify delivery partners and assess Projects through the Project Partner tender. More information about the MDBWIP is available on the department's website at: <http://www.agriculture.gov.au/water/mdb/programs/basin-wide/mdbwi-program>

Return Flows

66. As discussed above, the department administers successful programs that return water to the environment in the Murray-Darling Basin, with a priority focus on improving the efficiency of irrigation infrastructure.
67. Claims that more efficient irrigated agriculture damages the environment by reducing 'return flows' to rivers are overstated and inaccurate. Return flows occur when excess water from irrigation runs off the surface and back into the river system or leaks into the ground. The claim made is that more efficient water infrastructure means there is less excess water and therefore there is less return flows available for the environment. At the extreme the claim is that the reduction in return flows exceeds the water recovered by the Commonwealth for the environment.
68. The department disagrees with this view. While 'return flows' can be reduced by more efficient irrigation infrastructure, this is typically a good thing. 'Return flows' can cause environmental damage, particularly where:
 - irrigation surface run-off contains high levels of nutrients, salt or other pollutants; or
 - seepage due to inefficient watering causes rising water tables and salinisation of rivers and the associated landscape.
69. Water savings as water entitlements which form part of the Commonwealth environmental water holdings are recovered through the Australian Government's irrigation efficiency programs. The CEWH is able to use this water when and where it can have the most benefit to the environment. This represents a much better environmental outcome than 'return flows', which are invariably of poor quality and by their nature are not able to be directed to best environmental effect.
70. Over time, irrigators who strive to improve their efficiency have less wastage and reduced salinity and water quality issues. Irrigators could fund these efficiency improvements themselves and retain all of the water savings in production or for sale to other irrigators. Instead, Australian Government-funded programs ensure that water savings are shared between farmers and the environment.
71. To date, water entitlements yielding around 2100 GL annually (on average) have been recovered or contracted, and will deliver on an ongoing basis significant environmental benefits across the Basin.
72. The MDBA has commissioned the University of Melbourne and Dr Glen Walker to undertake an independent expert review of the risks to the effectiveness of water recovery posed by reduced return flows. As part of this work, the multi-disciplinary Advisory Committee on Social, Economic and Environmental Sciences (ACSEES) recently hosted a workshop where experts in the field were invited to critique the methods and analysis being used by the independent reviewers and to test preliminary findings. There was consensus from the workshop that the approach and methodology used for the review was sound. With regards to the preliminary results, there was agreement that there is no prima facie case that the impacts of reduced return flows on stream

flows has substantially undermined the Basin Plan. The final report is expected to be finalised by October 2018 and will be made available on the MDBA's website.

73. The department's response to Professor Grafton's editorial 'Water Reform and Planning in the Murray-Darling Basin' is available at: www.agriculture.gov.au/about/media-centre/on-the-record/response-professor-grafton

Monitoring and Evaluation (M&E) of Commonwealth Programs

74. The department undertakes monitoring and evaluation of all its water infrastructure programs. The examples provided below only refer to some Commonwealth programs, as it would be extensive to list all of them here.

Sustainable Rural Water use and Infrastructure Program

75. The \$10 billion SRWUIP is a national program investing in rural water use, management and efficiency. It is the key mechanism to recover and return water to the Murray Darling Basin river system, including through investment in improved water use efficiency through on and off-farm upgrades. SRWUIP also provides for investment in monitoring the socio-economic outcomes of water recovery.
76. The Monitoring, Evaluation, Review and Improvement (MERI) framework in place for the SRWUIP program was established in 2013. Under the MERI framework, data is constantly collected and evaluated to inform current and future program management. The department has MERI frameworks in place for all its programs including those that support the Basin Plan, such as the Private Irrigation Infrastructure Operators Program in NSW.
77. The ANAO has conducted four performance audits on programs funded through SRWUIP, as well as performance audits on the Adelaide Desalination Plant and the Water Smart Program. Internally commissioned audits have also been conducted across the range of water programs and all recommendations have been incorporated into ongoing administration.

Private Irrigation Infrastructure Operators Program in New South Wales

78. The department monitors, evaluates and reports on the Private Irrigation Infrastructure Operators Program in NSW (PIIOP) which is part of the SRWUIP. Under PIIOP, fourteen projects with funding of \$917 million have been approved to improve the efficiency of off-farm irrigation systems and on-farm water use.
79. The funding agreement obligations and monitoring arrangements support the department's framework for checking project progress and the expenditure of project funding. This monitoring includes receipt of progress reports which provide documentary evidence of the achievement of each project milestone, including certifications from funding recipient's management and independent auditors. These were recognised as robust in the ANAO's review of the program in 2012. The ANAO further noted in 2012 the need to develop key performance indicators (KPIs) or collect the data necessary to measure and report on PIIOP's performance.
80. Funding agreements require reporting on the generation of water savings and irrigation system productivity improvements resulting from investment. Subsequent to the ANAO review, the

department has worked with funding recipients to present information on how their projects are helping to secure a sustainable future for the irrigation communities. This information, including final project reports are available on the department's website at:

www.agriculture.gov.au/water/mdb/programs/nsw/piop-nsw

81. In addition to this the department engages consultants to undertake independent on-site financial and work health and safety reviews for all water infrastructure programs it manages. Financial reviews assist in ensuring financial practices, procedures, systems, reporting, governance and accountability are consistent with the funding agreement. WHS reviews assist in ensuring that funding recipients have appropriate WHS management systems in place, consistent with their obligations under the funding agreement.

Marsden Jacob Associates analysis of the economic effects of water recovery

82. In October 2017, the department released a report by Marsden Jacobs Associates (MJA) analysing the [*"Economic effects of the Commonwealth water recovery programs in the Murrumbidgee Irrigation Area"*](#)
83. The MJA study found that employment increased significantly from 2013 and was modelled to peak in the construction phase in 2019, with 298 additional jobs created in the Griffith region in that year. These net gains in employment are expected to continue well beyond 2020. MJA also estimated a \$470 million increase in regional domestic product over 25 years to 2034.

Commonwealth On-Farm Further Irrigation (COFFIE) Program – South Australia Pilot

84. In accordance with the Monitoring, Evaluation, Reporting and Improvement (MERI) Framework for the SA Pilot of the COFFIE program the arrangements to monitor, evaluate and report on the day-to-day implementation of the COFFIE SA Pilot are as follows:
- The South Australia Murray Darling Basin Natural Resource Management Board (SAMDBNRMB), as the Delivery Partner for the Pilot, is required to submit a biannual progress report to the department every six months on the progress of each approved project.
 - A project closure report is submitted at the completion of each project confirming works completed, outcomes and benefits and water savings achieved. In addition an annual report against key performance indicators is submitted to the department by the SAMDBNRMB, along with a quarterly report on compliance with the Indigenous participation plan. These reporting requirements are complemented by the department's monitoring of projects to assist in understanding how projects benefit both the irrigator and the community.
 - The department has recently engaged an independent consultant to conduct technical audits of around 30 per cent of projects to ensure works are carried out as per the approved project proposal and Works and Transfer Agreement.
 - Lessons Learnt from delivering the pilot are also documented and have been taken into consideration in relation to the implementation of the Murray Darling Basin Water Infrastructure Program.
 - Additional information on the program is located at:
www.agriculture.gov.au/water/mdb/programs/basin-wide/coffie/sa-pilot-coffie

ABARES Monitoring and Reporting framework

85. In order to improve current monitoring, evaluation and reporting arrangements, the department has arranged for the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) to develop a new monitoring and evaluation framework for assessing the socio-economic effects of the Commonwealth's water recovery programs.
86. This work is underway and will form the basis for the department's monitoring and evaluation effort to feed into the MDBA's 2020 Basin Plan evaluation. The new program was announced in November 2017, as part of the Government's [Six Point Agenda](#) for delivering the Murray-Darling Basin Plan.

Regional Wellbeing Survey (2013-2016)

87. In February 2018, the department released the report entitled: "[Insights from the Regional Wellbeing Survey](#)". [Commissioned by the department](#), this report presents a synthesis of insights from the University of Canberra Regional Wellbeing Survey (2013-16) on the socio-economic effects of Commonwealth water recovery in the Basin, focusing on the Australian Government's on and off-farm infrastructure programs and water purchase. The report was based on key findings of three technical reports which were commissioned by the department from the University of Canberra. In addition, the department has recently commissioned the University of Canberra to undertake an additional technical analysis of the socio-economic effects of Commonwealth water recovery in the Basin as part of its 2018 Regional Wellbeing Survey.

Assistance for Indigenous and Regional Communities

88. On 7 May 2018, the Government reached an agreement with the Federal Opposition which included commitments to improve water management outcomes for Indigenous people across the Murray-Darling Basin. Key new commitments included:
- \$40 million over four years to support Basin Indigenous communities' investment in cultural and economic water entitlement and associated planning activities. The \$40 million will be allocated equally between the northern and southern Basin. Work to settle program arrangements is progressing in consultation with the MDBA, Department of the Prime Minister and Cabinet, and Indigenous nations and organisations. This initiative recognises the importance of water to Aboriginal cultures, societies and livelihoods throughout the Basin.
 - Funding to support two full-time staff positions for three years to support Northern Basin Aboriginal Nations (NBAN) and Murray and Lower Darling Indigenous Nations (MLDRIN) to work with local member nations and government agencies to translate the findings of the National Cultural Flow Research project into practical and effective ways forward. The positions will be supported by a \$1.5 million fund for costs associated with these activities.
 - Work with NSW and Queensland to identify water entitlements that could be allocated to Indigenous communities through state water resource plans.

- MDBA to report publicly each year on how Indigenous values and water uses were considered in environmental water use and how Indigenous people were involved in that decision-making.

In addition, the agreement also includes a \$20 million program over four years to provide grants for economic development projects for Indigenous, remote, rural and regional communities most impacted by the Basin Plan.

Cultural Flows

89. The National Cultural Flows Research Project final report was released in June 2018. This project was managed by a research committee that includes MLDRN, NBAN, Northern Australia Indigenous Land and Sea Management Alliance, MDBA, CEWH, National Native Title Council and Basin States. The project drew on a range of scientific methods along with cultural knowledge to:

- develop and use methods to describe and measure cultural water uses, values and needs of Indigenous communities;
- quantify water volumes to meet cultural values and needs, including scientific assessment of trial flows (two case study sites in the Murray-Darling Basin – Toogimbie Wetlands in the south and Gooraman Swamp in the north);
- develop and implement a monitoring methodology of the economic and socioeconomic, health and wellbeing outcomes of cultural flows and analyse how they compare with environmental flow outcomes;
- recommend policy, legal and institutional changes that will enable cultural flows for the economic, social and cultural benefit of Indigenous communities;
- build the capacity of Indigenous communities; and
- inform Indigenous communities of the process and activities related to the research program.

The final report, entitled *Cultural Flows – A Guide for First Nations* can be accessed at:
www.mldrin.org.au/wp-content/uploads/2018/06/Community-Guide.pdf

ATTACHMENT A - Explanatory statement attached to the letter from Minister Littleproud to the Hon. David Speirs MP dated 2 July 2018

Consistency of the Murray-Darling Basin Plan with the *Water Act 2007*

Summary

The Basin Plan, and subsequent amendments, have been developed consistently with the requirements of the *Water Act 2007* (Cth) (the Water Act). In particular:

- The Water Act envisages the inherent complexity of the river system and makes it clear that the Basin Plan is to serve environmental purposes, and is also to provide for the use and management of the Basin water resources in a way that optimises economic and social outcomes.
- The Water Act requires that the long-term average sustainable diversion limits (SDLs) for the Murray-Darling Basin reflect an environmentally sustainable level of take (ESLT).
- The Murray Darling Basin Authority (the MDBA) was tasked with determining an ESLT for the Basin. Determining an ESLT for the Basin as a whole is a complex task. It is an exercise which has been conducted consistently with the Water Act and has been informed by the best available information.
- There is no single objective answer to what is an ESLT. The ESLT can exist as a range with different levels of certainty and risk attaching to numbers within that range. A spectrum of possible choices and impacts was therefore explored.
- Ultimately, some of the options examined were considered to fall outside the range of an ESLT whereas others were worthy of further investigation.
- Initial analysis examined a reduction in the broad range of 3000 – 4000 GL. This analysis was gradually narrowed to 2400 GL – 3200 GL based on ecological outcomes and risk. The minimum required to achieve acceptable outcomes across the Basin, including for the Coorong and Lower Lakes, was subsequently judged to be 2,800 GL.
- Consistent with this refinement of understanding, in settling the Basin Plan the range considered in the greatest detail was 2800 – 3200 GL.
- Final analysis supported the view that a Basin-wide SDL of 10,873 GL (representing a 2,750GL reduction) reflected an ESLT.
- In determining an SDL within the ESLT range identified, it was appropriate the MDBA take into account economic and social outcomes, provided that the SDL met the requirement that it reflected an ESLT.
- Subsequent amendment of the Basin Plan through the Northern Basin Review and SDL adjustment processes was undertaken consistent with the Water Act, with the Basin Plan and were informed by best available information.
- The government's focus remains on ensuring this framework is implemented with integrity and, in relation to the Basin Plan, in full and on time.

Introduction

1. In Issues Paper No 2, released by the South Australian Royal Commission on 30 April 2018, the Royal Commission identified a number of concerns about the validity of the *Murray-Darling Basin Plan 2012* (the **Basin Plan**), and the approach used in determining the long-term average sustainable diversion limit for the Basin as a whole. The Royal Commission also raised concerns about the subsequent amendment of the Basin Plan.
2. The Commonwealth's view is that the Water Act was properly made and supported, that the Basin Plan was properly made and supported and that both of these frameworks have and will continue to be implemented according to their terms. Any assertion that the Commonwealth has acted unlawfully or without foundation are refuted.
3. The government's focus remains on ensuring this framework is implemented with integrity and, in relation to the Basin Plan, in full and on time.

The objectives of the Water Act

4. Section 41 of the Water Act conferred on the Murray-Darling Basin Authority (**MDBA**) the responsibility for preparing the Basin Plan which was then given to the Minister for adoption, in accordance with s 44. The Basin Plan came into effect in 2012.
5. The MDBA has subsequently recommended amendments (the **SDL Adjustment Mechanism (SDLAM) amendments**) to the Basin Plan which is wholly consistent with the process set out in ss 23A and 23B of the Water Act, and Chapter 7 of the Basin Plan (the **SDLAM mechanism**).¹ Further amendments arising from the Northern Basin Review (the **NBR amendments**) were also prepared by the MDBA consistent with section 45 to 48 of the Water Act.
6. It is useful to note the provisions of the Water Act which set out the purpose of the Basin Plan and the basis on which it was developed, as these are relevant to how the powers of the MDBA and the Minister in preparing and adopting the Basin Plan, including in developing the SDLs in the Basin Plan, are to be (and have been) exercised.
7. It is appropriate, when considering the operation of the Water Act and Basin Plan, to consider the objects of the Water Act.² The objects of the Water Act are set out in s 3. The relevant objects in that section are as follows:
 - (a) *to enable the Commonwealth, in conjunction with the Basin States, to manage the Basin water resources in the national interest; and*
 - (b) *to give effect to relevant international agreements (to the extent to which those agreements are relevant to the use and management of the Basin water resources) and, in particular, to provide for special measures, in accordance with those agreements, to address the threats to the Basin water resources; and*
 - (c) *in giving effect to those agreements, to promote the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes; and*
 - (d) *without limiting paragraph (b) or (c):*
 - (i) *to ensure the return to environmentally sustainable levels of extraction for water resources that are overallocated or overused; and*
 - (ii) *to protect, restore and provide for the ecological values and ecosystem services of the Murray-Darling Basin (taking into account, in particular, the impact that the taking of water has on the watercourses, lakes, wetlands, ground water and water-dependent ecosystems that are part of the Basin water resources and on associated biodiversity); and*

¹ Basin Plan Amendment (SDL Adjustments) Instrument 2017.

² *Acts Interpretation Act 1901 (AIA)* s 15AA.

(iii) *subject to subparagraphs (i) and (ii)—to maximise the net economic returns to the Australian community from the use and management of the Basin water resources; and*

(e) *to improve water security for all uses of Basin water resources; and*

...

8. While the achievement of environmental objectives is an important object of the Water Act, the achievement of non-environmental objectives are also objects of the Act, specifically:

- enabling the Commonwealth, in conjunction with the Basin States, to manage the Basin water resources **in the national interest**
- in giving effect to international agreements, promoting the use and management of Basin water resources in a way that optimises **economic, social** and environmental outcomes
- to **maximise the net economic returns** to the Australian community from the use and management of the Basin water resources (subject to the matters referred to in s 3(d)(i) and (ii))
- to **improve water security** for all uses of Basin water resources.

The purpose of the Basin Plan

9. Section 20 of the Water Act sets out the purpose of the Basin Plan. This section is relevant to how the content of the Basin Plan is to be determined, by the MDBA and the Minister, and to the interpretation of the Basin Plan.³

10. Section 20 states that the purpose of the Basin Plan is to:

... provide for the integrated management of the Basin water resources in a way that promotes the objects of ... [the Water Act] in particular by providing for:

(a) *giving effect to relevant international agreements...; and*

(b) *the establishment and enforcement of environmentally sustainable limits on the quantities of ...water... that may be taken from the Basin water resources...; and*

(c) *Basin-wide environmental objectives for water-dependent ecosystems of the ...Basin and water quality and salinity objectives; and*

(d) *the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes; and*

...

As with s 3, s 20 of the Water Act makes clear that the Basin Plan is to serve environmental purposes and is also to provide for the management of Basin water resources in a way that optimises economic and social outcomes (s 20(d)).

11. Section 21 is entitled 'General basis on which Basin Plan to be developed'. It provides guidance to the MDBA and the Minister in determining the content of the Basin Plan. Section 21(1) requires that the Basin Plan must be prepared so as to provide for giving effect to relevant international agreements. Section 21(2) provides that the Basin Plan must be prepared having regard to the fact that the use of the Basin water resources has had significant adverse impacts on the conservation and sustainable use of biodiversity, and that the Basin water resources required special measures to manage their use to conserve biodiversity. Section 21(3) provides that the Basin Plan must also promote the 'wise use' of all the Basin water resources, promote the conservation of declared Ramsar wetlands, and take account of the ecological character descriptions of all declared Ramsar wetlands and all other key environmental sites endorsed by the Natural Resource Management Ministerial Council.

12. Section 21(4) goes on to set out matters which the MDBA and the Minister must take into account, act on and have regard to, in exercising powers and performing functions under Part 2 Div 1 of the Water Act. Those powers and functions include developing the Basin Plan, and proposing amendments to the Basin Plan. Section 21(4) provides that 'subject to subsections (1),

³ See s 13(1) of the *Legislation Act 2003* and AIA s 15AA.

(2) and (3)' (i.e., the environmental considerations referred to in the previous paragraph), the MDBA and the Minister must (among other things) take into account the principles of ecologically sustainable development and act on the basis of the best available scientific knowledge and socio-economic analysis. The MDBA and the Minister must also 'have regard to... the consumptive and other economic uses of Basin water resources'.

13. It is also noted that the overarching objective of the Water Act and the Basin Plan is to give effect to relevant international agreements, including the Convention on Biological Diversity⁴ and the Ramsar Convention⁵ relating to wetlands. However, neither Convention requires that the Parties disregard economic and social considerations in giving effect to the environmental obligations. Both Conventions establish a framework in which environmental objectives have primacy but the implementation of environmental objectives allows consideration of social and economic factors.

The Environmentally Sustainable Level of Take and the Sustainable Diversion Limits

14. Section 22(1) of the Water Act contains a table setting out the mandatory content of the Basin Plan. Item 6 of the table states that the Basin Plan must include:

The maximum long-term annual average quantities of water that can be taken, on a sustainable basis, from:

- (a) *the Basin water resources as a whole; and*
- (b) *the water resources, or particular parts of the water resources, of each water resource plan area.*

*The averages are the **long-term average sustainable diversion limits** for the Basin water resources, and the water resources, or particular parts of the water resources, of the water resource plan area.*

The 'long-term average sustainable diversion limits' are commonly referred to (including in the Basin Plan) as 'SDLs'. The Basin Plan provides that the SDL for the Basin water resources as a whole is the sum of the SDLs for all SDL resource units (s 6.04).

In the Basin Plan, as originally made, the SDL for each surface water SDL resource unit⁶ is set out, as a formula, in column 2 of Schedule 2 of the Basin Plan. A note to s 6.04 of the Basin Plan stated that MDBA estimated the SDL for all surface water SDL resource units (i.e. for surface water in the Basin as a whole) was 10,873 GL per year. This was 2,750 GL less than the MDBA's estimate of surface water 'BDL' or baseline diversion limit.⁷

15. In the third column in item 6 of the table in section 22(1) of the Water Act headed 'specific requirements', it is stated that the SDL must comply with s 23. Section 23 provides:

23 Long-term average sustainable diversion limits

- (1) *A long-term average sustainable diversion limit must reflect an environmentally sustainable level of take.*

16. The process of determining the SDL therefore has 2 steps: working out an ESLT, and then working out an SDL which reflects that ESLT.

⁴ Done at Rio de Janeiro, 5 June 1992 [1993] ATS 32.

⁵ Convention on Wetlands of International Importance especially as Waterfowl Habitat, Ramsar, Iran, 2 February 1971, [1975] ATS 48.

⁶ Issues Paper 2 concerns only surface water – see footnote 1. For completeness, however, note that the SDLs for groundwater SDL resource units are set out in Schedule 4.

⁷ The effect of the SDLAM amendments was to include, for each surface water SDL resource unit, an additional 'SDL adjustment amount' in the formula in column 2 of Schedule 2. That amount is calculated, for each unit for each water accounting period (i.e. financial year), in accordance with new Schedule 6A.

Working out an environmentally sustainable level of take

17. The expression 'environmentally sustainable level of take' is defined in s 4 of the Water Act as follows:

environmentally sustainable level of take for a water resource means the level at which water can be taken from that water resource which, if exceeded, would compromise:

 - (a) key environmental assets of the water resource; or
 - (b) key ecosystem functions of the water resource; or
 - (c) the productive base of the water resource; or
 - (d) key environmental outcomes for the water resource.
18. In Issues Paper No 2, the Royal Commission correctly identifies that, in determining the ESLT, it is this definition that sets out the matters that are to be considered.
19. However, it appears that the Royal Commission may be suggesting that an ESLT can be determined, for the purposes of determining the SDL, without any exercise of discretion or judgment. Moreover, it appears that the Royal Commission may be suggesting that the ESLT which results from consideration of this definition will be a single figure.
20. This is a misunderstanding of the ESLT.
21. The ESLT exists as a range. The Murray-Darling Basin is a large and diverse region and determining an ESLT was a complex task. There is no simple objective mechanism for determining an ESLT. It was (and remains) an exercise of expert judgement, informed by the best available information and a thoughtful consideration of the relevant factors prescribed by the Water Act.
22. First, there are a variety of ways of assessing each of the matters in the definition (for example, an end-of-system flow analysis or an indicator site method). Second, any approach will involve a high level of complex analysis which will require the making of certain assumptions. As a consequence of these uncertainties, the outcome of analysis could, and did in fact, result in a range, rather than a single number. It is unavoidable that differing levels of certainty and risk are associated with different numbers within the range. To say this another way, each level of water recovery can achieve an associated number of key ecological outcomes with different levels of confidence in reaching them.
23. In the process of determining an ESLT for the water resources of the Basin as a whole, the MDBA landed on a range. In 2010 the MDBA released, for public comment, an initial range in the *Guide to the proposed Basin Plan* of 3,000 to 4,000 GL.
24. Following extensive public comment (including from the scientific community) and drawing on further scientific information and analysis, the MDBA subsequently tested 3 options (reductions in take of 2,400, 2,800 and 3,200 GL). The assessment showed that a reduction in take of 2,400 GL was insufficient to achieve a number of key environmental objectives for the River Murray downstream of the Murrumbidgee junction (including the Coorong, Lower Lakes and Murray Mouth), whilst modelling at 3,200 GL showed an increased level of confidence in the achievement of environmental outcomes relative to the 2,800 GL option. The MDBA stated in relation to this conclusion that the method it used gives '*confidence that the selected environmental objectives can be achieved and the proposed ESLT meets the requirements of the Water Act, in terms of not compromising key environmental assets, key ecosystem functions, the productive base and key environmental outcomes*,' addressing the terms of the definition of ESLT. This effectively set an ESLT range.
25. Subsequent to modelling the 2,800GL reduction, the MDBA undertook further analyses in the Condamine–Balonne region to investigate alternative SDL options within the ESLT range and the water recovery strategies necessary to implement an equivalent SDL. The reduction was adjusted to 2,750 GL following these analyses. Modelling showed that a Basin wide SDL of 10,873 GL reflected an ESLT.

Key assets, ecosystem functions and environmental outcomes

26. In exercising the discretion and judgement necessary to work out an ESLT, economic and social matters can be relevant to the interpretation of the definition of that term in the following way.
27. Paragraphs (a), (b) and (d) of the definition of ESLT refer to 'key' assets, ecosystem functions and environmental outcomes. No guidance is given as to what 'key' means in this context. But it is self-evident that reasonable minds could differ as to whether an asset, ecosystem function or environmental outcome met the test of being 'key'; the inclusion or otherwise of particular assets, functions or outcomes in the assessment of what is an ESLT will change what the ESLT would be.
28. In identifying which environmental assets are 'key', it was necessary for the MDBA and the Minister to comply with the specific requirements of the Water Act, interpreted in light of the objects; and act in accordance with the purposes of the Plan in s 20 (including promoting the objects in s 3).
29. This means that, while the MDBA and the Minister must give effect to the environmental objectives of the Water Act and the Basin Plan and relevant international agreements, the MDBA and the Minister are also to give effect to the object of optimising economic social and environmental outcomes (s 3(c)) (where possible, within the specific requirements of the Water Act, and relevant to the provision at hand). Although the specific obligations under s 21 apply to the exercise of the MDBA's (and the Minister's) process of determining an ESLT, this object is also relevant when determining which assets, ecosystem functions or environmental outcomes are 'key', as part of making that determination. An environmental asset would not be 'key' if its protection was not necessary to achieve the specific requirements of the Water Act (such as those under s 21) and its protection would have significant negative social and economic effects.
30. A key reference in understanding the approach taken on these things is 'The proposed 'environmentally sustainable level of take' for surface water of the Murray-Darling Basin: Method and outcomes' (November 2011).

Setting the SDLs that reflect an ESLT

31. Having worked out the range representing an ESLT, the next step is to determine an SDL reflective of the ESLT.
32. The Issues Paper puts forward the proposition that an SDL reflecting an ESLT is to be determined solely on the basis of environmental criteria and that 'social and economic outcomes are irrelevant to this determination' (at [39]). The Issues Paper also appears to suggest that, in determining the ESLT, the MDBA first worked out a number which achieved the necessary environmental outcomes, and then, taking into account social and economic matters, increased that number, so that the ESLT it determined was higher than was environmentally sustainable. This is not correct.
33. As was noted above, the complexity of the process of determining an ESLT means that what is determined to be an ESLT can be a range.
34. When consideration is being given to an SDL for the Basin that reflects an ESLT, a discretion exists. In determining where in the range of the ESLT the SDL should sit the MDBA and Minister can take into account economic and social outcomes (s3 objects of the Water Act and the matters in ss20 and 21).
35. This means that, contrary to what is suggested in Issues Paper No 2, it is relevant to consider economic and social matters in the process of determining an SDL consistent with the Water Act, provided that the SDL still reflects an ESLT.

36. The MDBA must ‘act on the basis of the best available scientific knowledge and socio-economic analysis’ (Water Act s 21(4)(b)). As alluded to above, what constitutes the ‘best’ scientific knowledge and analysis will always be a matter of judgement, rather than certainty. Recognising that scientific knowledge changes over time. The Water Act provides for periodic review of the Basin Plan; a provision that is important for the adaptive management of Basin rivers and water resources over time. The MDBA has and will continue to place a high value on the peer review of key components of scientific information and analysis.
37. Finally, it is worth noting that system constraints and associated rules that limit where and how much water can be sent through the system at any one time can limit the achievement of environmental outcomes. These rules and constraints can change if state governments agree, and third party impacts are addressed. However, under the current system, entitlement and operational constraints make it almost impossible to achieve some environmental outcomes no matter what volume of water recovery is delivered.

The SDLAM amendments

38. The MDBA recently proposed an adjustment of the SDLs in accordance with s 23A. This adjustment was adopted by the Minister in accordance with s 23B and the Basin Plan (including the Basin SDL) has been amended accordingly. The process for determining the amount of the adjustment is set out in Chapter 7 of the Basin Plan. Section 23A(3)(b) provides that the SDL that is produced after the adjustment proposed has been taken into account must reflect an ESLT.
39. The Issues Paper notes that:
- the supply measures which have been taken into account for the purposes of the SDLAM are not required to be implemented until 2024;
 - the SDL for the southern connected Basin has been increased in light of these notified supply measures.
- and questions whether the amended SDL will still reflect an ESLT as at 1 July 2019. The Issues Paper suggests that the Water Act requires that the SDL must always reflect an ESLT, and questions whether the amended SDL will reflect an ESLT (for example, as at 1 July 2019) when the package of supply measures on which it was based is yet to be fully implemented.
40. The process of determining an adjustment to the SDL by assessing supply measures (including those which are merely proposed) and efficiency measures is set out in detail in the Basin Plan. The process followed by the MDBA in determining the amount of the proposed adjustment was wholly consistent with Basin Plan requirements. It is clear that the Basin Plan allows for the operation of the SDLAM to take effect over the period to 2024.
41. This is reflected in the treatment of the reconciliation process, of the latitude to amend notifications and the provision made for the notification of additional efficiency measures.
42. As is explained at the beginning of Chapter 7 of the Basin Plan,
- ... the Authority can propose adjustments to surface water SDLs to take account of certain additional changes in infrastructure and other measures that will come into operation by 30 June 2024.*
43. In this way the Basin Plan provides for the MDBA to determine an SDL adjustment based on the effect that the package of notified supply measures will have when they come into operation between now and 30 June 2024.
44. In making its determination, the MDBA had a high degree of certainty (given the representations of Basin States) that the package of supply measures notified to the Authority would be implemented, and that it would be implemented by 30 June 2024.
45. It is significant that the Basin Plan provides for a reconciliation process in 2024 under which the SDL will be reviewed in light of supply measure implementation. This process is intended to

account for any variation in ecological outcomes between the package of supply measure projects as originally notified to the MDBA (i.e. as the basis for the operation of the mechanism in 2017), and the final configuration of projects as implemented by 30 June 2024. This process ensures that any discrepancy between the 2017 adjustment and actual adjustment is determined.

46. It is also relevant that the Basin Plan provides for efficiency measures to be taken into account as they come into effect over the period 2019-2024. The objective of efficiency measures in the Basin Plan is to increase environmental outcomes without impacting on socio-economic outcomes.
47. The size and complexity of the task of assessing and implementing supply and efficiency measures within the Basin is immense. Generally, the Water Act and Basin Plan, in a range of mechanisms, provide for movement over time to environmentally sustainable levels of extraction.

The Northern Basin Review

48. The Issues Paper states that the Commission 'has similar concerns' in relation to the NBR amendments, meaning concerns similar to those raised in relation to the SDLAM amendment.
49. The Northern Basin Review is foreshadowed in the Note to s 6.06(1) of the Basin Plan. The NBR amendments were prepared consistent with the requirements of sections 45 to 48 of the Water Act.
50. The NBR amendments to the Basin Plan were disallowed on 14 February 2018, meaning that they are not presently reflected in the SDL for the Basin or for affected water resource plan areas. However, as noted at the outset, the *Water Amendment Act 2018* amends the Water Act to enable the Minister to direct the re-proposal of an instrument, the same in effect, as the NBR amendments. The *Water Amendment Act 2018*, which has recently passed, amends the Water Act to enable the Minister to direct the re-proposal of an instrument, the same in effect, as the NBR amendments. The Minister has subsequently directed the MDBA to prepare such an instrument for his consideration.
51. Amongst other matters, the NBR amendments proposed a revision to the SDL which would involve increasing the SDL by 70 GL. That proposed amendment takes into account new scientific evidence about the northern Basin which had not been available when the Basin Plan was made in 2012, which suggested that the ESLT in the northern Basin was higher than had been previously assumed. The new scientific evidence about the northern Basin means that the SDL, as increased by 70 GL, continues to reflect an ESLT.
52. The NBR amendments are supplemented by 'toolkit measures' being measures that the States of Queensland and New South Wales proposed to take to deliver improved environmental outcomes, thereby improving the efficiency of environmental water in those areas. These measures are complementary and intended to enhance environmental outcomes. They are not an alternative to achieving an ESLT. A range of materials is available on the MDBA's website which speaks to these things.

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ATTACHMENT B – Department’s Submission to the Productivity Commission’s Draft Report on the Murray-Darling Basin Plan: Five-year assessment

Executive Summary.

The Department of Agriculture and Water Resources (the Department) welcomes the opportunity to respond to the Productivity Commission's (the Commission) *Draft Report on the Murray-Darling Basin Plan: Five-year assessment* (the Draft Report). This submission reflects the views of the Department, noting that all findings and recommendations are draft. Key findings and recommendations will be considered by the Australian Government following release of the final report.

As the Draft Report notes, the *Basin Plan 2012* (the Basin Plan) is a significant step-change in re-setting the balance between environmental and consumptive uses of water, and establishing a new framework for sustainable water resource management. Basin States, the Murray-Darling Basin Authority (MDBA), the Commonwealth Environmental Water Holder (CEWH) and the Department continue to work closely together in delivering Basin Plan outcomes.

The Australian Government, in making the Basin Plan in 2012, ensured that all Basin States agreed to the Basin Plan adopted by the then Commonwealth Water Minister. Successive governments, both Basin State and Commonwealth, have repeatedly reaffirmed their commitment to the Basin Plan. The Department is of the view that the successful delivery of the complex and inter-related reforms to the Basin over the terms of successive governments requires bipartisan support at the Federal level and the ongoing support of the Basin Governments.

The Department, the MDBA, the CEWH and the Basin States have individual and collective responsibilities for implementing various parts of the Basin Plan. The Department agrees with the Commission that strong cooperation between all these entities is required to implement this interjurisdictional reform and achieve Basin Plan outcomes. The Department recognises that differences in views of governments and tensions in relationships can, at times, result in sub-optimal outcomes and rigidity in decision making, whilst also accepting that the Basin Plan is inherently a successful example of the Australian cooperative Federalism approach. These challenges will continue to be a feature of delivering the Basin Plan over the remaining years of its implementation.

The Commission acknowledges the significant progress to date in implementing the Basin Plan, particularly in recovering water entitlements for environmental use. With water recovery complete⁸ in 22 of 28 water catchments in the Basin (as at 31 August 2018), we are now in the final stages of water recovery for the Basin and are on track to meet the water recovery target before 1 July 2019, when Basin Plan sustainable diversion limits (SDLs) take effect. The Department supports the Commission's finding that new management arrangements established under the Basin Plan, including for both environmental watering and water trading, have proven successful.

The agreement reached between the Australian Government and the Federal Opposition on 7 May 2018 to secure the outcomes of both the SDL adjustment mechanism and Northern Basin Review was important to maintaining bi-partisan support for Basin reform in the Federal Parliament. The key commitments and outcomes arising from this agreement are intended to: strengthen protection of environmental flows; strengthen compliance with Basin water laws; improve outcomes for Indigenous people and address the social and economic impacts of the Basin Plan; improve confidence in Northern Basin Review data; and strengthen implementation of the SDL adjustment mechanism outcomes. Progress by the Australian Government towards delivery on these commitments is now well underway.

⁸ Subject to accreditation and finalisation of Water Resource Plans.

The Department is working hard to support Basin jurisdictions to continue working together to deliver Basin Plan outcomes, as set out in the Murray-Darling Basin Ministerial Council's (Ministerial Council) plan to the Council of Australian Governments (COAG) *Implementing the Basin Plan* (March 2017) (the COAG Plan). However, the Department acknowledges that there are significant challenges ahead in the efficient delivery of some key Basin Plan outcomes, including the timely accreditation of Water Resource Plans (WRPs) and the delivery of 450 gigalitres (GL) of efficiency measures with neutral or positive socio-economic outcomes.

At the 8 June 2018 meeting of the Ministerial Council, Basin Governments (the Commonwealth Government and the Basin States) agreed to:

- progress the funding and delivery of SDL adjustment (supply measure) projects, in consultation with local communities
- develop an integrated work plan for constraints
- set the basis on which the Commonwealth's Basin-wide infrastructure program will roll-out to recover the initial 62 GL in efficiency measures and the remaining gap-bridging water by 1 July 2019
- development of additional program criteria to ensure neutral or beneficial socio-economic outcomes for on-farm projects; develop a communication strategy to build social license and understanding of the need for an efficiency measures program; and develop a work plan to recover 450 GL in efficiency measures with neutral or beneficial socio-economic outcomes, at their December 2018 meeting, and
- report through the Basin Officials Committee (BOC) on progress towards implementing pre-requisite policy measures by 30 June 2019.

New South Wales, Queensland and Commonwealth Governments have also committed to fund and implement 'toolkit' measures across the northern Basin.

As always, the hard work is in implementing these agreements in practice. Basin Governments and the MDBA will continue progressing this work and delivering key commitments through regular meetings of the Ministerial Council and the BOC.

In relation to the Commission's concerns about existing governance arrangements, we would note that an independent review of inter-jurisdictional governance arrangements for the Basin, being undertaken by Greg Claydon (former State Government Water Executive), is now underway, and is expected to report to Basin Governments in the first quarter of 2019. The terms of reference for this review are at **Attachment A**, and we are hopeful that this review will provide detailed, practical suggestions to improve Basin governance.

The Department acknowledges that there have been a number of matters that have recently challenged public confidence in the operation of the Basin Plan, including allegations of water theft and disallowance of the initial Northern Basin Review amendment by the Senate.

In response to concerns around compliance, on 8 June 2018 the Ministerial Council approved the Basin Compliance Compact (Compliance Compact) – to be provided to the COAG for endorsement at its next meeting. The Compliance Compact details a compliance implementation framework, including specific plans to improve compliance and enforcement activities in each Basin jurisdiction, and transparent reporting and accountability arrangements on progress.

In addition, on 24 August 2018, the Hon. David Littleproud MP, Minister for Agriculture and Water Resources, (the Commonwealth Water Minister), appointed the former Australian Federal Police Commissioner, Mr Mick Keelty AO APM, as the Northern Basin Commissioner. The Northern Basin

Commissioner has a wide-ranging remit, and will report annually to the Commonwealth Water Minister on progress across a number of areas including the roll-out of toolkit environmental works and measures, and on the implementation of compliance commitments in the northern Basin.

Looking forward to 2024

Looking forward, the Department continues to work to deliver the Government's commitment to implement the Basin Plan in full and on time by 2024. The timelines will be challenging to meet as the Basin Plan relies on Commonwealth and Basin State cooperation to deliver key outcomes.

Nevertheless, the Department does not support the Commission's draft recommendations to extend Basin Plan timeframes. While we acknowledge there are challenges ahead, we remain committed to implementation of the Basin Plan, and of key Basin Plan outcomes such as SDLs, in full and on time. The Department also considers that keeping to the legislated deadlines is important to drive consensus and cooperation between the Commonwealth and Basin State Governments. It is also critical to providing a degree of certainty to Basin industries, communities and other stakeholders who are looking for the Basin Plan to be implemented.

The Department acknowledges that some WRPs are behind schedule and there are challenges in delivering the efficiency measures with neutral or positive socio-economic outcomes. Nevertheless, the Department is working closely with Basin States and the MDBA to ensure that key Basin Plan outcomes are delivered in a way that maintains the integrity of Basin Plan measures, objectives and outcomes.

Comments on the Commission's draft findings and recommendations.

3. Recovering water to meet Sustainable Diversion Limits by 1 July 2019

Draft finding 3.1 - Water recovery to date and the remaining task

The Department agrees that the risk of not meeting water recovery targets by 1 July 2019, is low (**draft finding 3.1**). The Department will continue its focus on finalising the remaining gap-bridging water requirement of 29.5 GL for surface water and 37.7 GL for groundwater (as at 31 August 2018⁹) by 30 June 2019 and the recovery of 62 GL of efficiency measures in the same timeframe. The Department would like to provide the following updates to the remaining water recovery task listed in **draft finding 3.1**.

As at 31 August 2018:

- recovery in the Northern Basin of a further 29.1 GL from the following SDL resource units:
 - Queensland - Condamine Balonne, Queensland Border Rivers
 - Northern New South Wales - Barwon-Darling, Namoi and New South Wales Border Rivers.
 - a groundwater purchase tender in the Queensland Upper Condamine Alluvium has recently closed and is expected to yield about 32 GL, leaving a small residual amount of less than 1 GL to be recovered in the Central Condamine Alluvium, and 4.8 GL in the Upper Condamine Alluvium Tributaries
 - the Wimmera-Mallee SDL in Victoria requires a further 0.4 GL of water recovery. Changes to planning assumptions may adjust the recovery required once the WRP for the Wimmera-Mallee is settled.
 - the Australian Government has existing contracts with delivery partners, including State governments, for the delivery of 121.2 GL of water. Until water transfer contracts have been exchanged however, these figures may be subject to change, and
 - efficiency measures water recovery is 1.5 GL, of which 0.46 GL is registered with the CEWH.
- It is important to note that updated 'cap factors' are currently in development by Basin States and will be confirmed as WRPs are finalised and accredited by 30 June 2019. Revised cap factors may affect reported water recovery figures.

Draft recommendation 3.1 - over-recoveries

The Department notes that the final amount of 'over-recoveries', if any, in particular zones or SDL resource units is not yet known and is dependent on a number of factors, including:

- changes in planning assumptions and the impact of any changes to cap factors will vary recovered volumes (to be resolved, as discussed above), and
- delivery of all water currently reported as contracted or in agreed funding contracts with States being recovered by 30 June 2019.

⁹ For total water recoveries allow for minor rounding.

All water recovery figures are expressed in gigalitres long term average annual yield (GL LTAAY) terms. Water recovery is reported at the point at which water savings or purchase have been received, estimated or agreed in signed contracts. These figures may be subject to change, until such time as water transfer contracts have been exchanged.

With the exception of those remaining Commonwealth-funded water recovery projects administered by Basin States, the Commonwealth is responsible for recovering remaining water against the targets in the Basin Plan. This includes the 62 GL of efficiency measures required to be recovered by 30 June 2019 to enable the full supply measure offset of 605 GL to take effect from that time. As agreed by the Ministerial Council, Basin Governments are working to develop an agreed efficiency measures work plan through to 2024.

The Australian Government has commenced work regarding policy arrangements and timeframes to address any over-recovery, should this be required at 2019. If there are any over-recoveries identified post 30 June 2019, handling of any such over-recovery volumes would need to comply with legislative requirements, including the requirements for Commonwealth water holdings. Any decisions regarding the management of the Commonwealth water holdings, primarily rest with the CEWH.

Draft finding and recommendation 3.2 - environmental value of recovered water

The Department disagrees with the Commission's **draft finding 3.2** that it does not have a systematic and transparent process to demonstrate the water recovered has environmental value. The Department agrees that transparency in its operations is important, however with regard to the environmental value of water acquisitions, the Department takes into account the confidential advice of the CEWH. Water holdings are used by the CEWH, consistent with the statutory function set out in the *Water Act 2007* (the Water Act), and responsibilities under the Basin Plan. The CEWH routinely publishes information demonstrating the utility of the entitlements recovered, through forward-looking environmental watering plans and reports illustrating the effectiveness of water use to achieve the environmental outcomes.

Requests for the Department to publish environmental acquisitions advice provided by the CEWH are considered on a case-by-case basis as this information is confidential in nature, may have market implications, and may be relied upon by the Department in negotiating future recovery of water. The Department will continue to be guided by advice from the CEWH as it recovers water through to 2024, and release of such advice will continue to be assessed on a case-by-case basis.

Draft finding 3.3 – return flows

The Department urges caution in relation to **draft finding 3.3** concerning return flows, and does not support recent claims, including by Professor Quentin Grafton, that more efficient irrigated agriculture damages the environment by reducing 'return flows' to rivers. While return flows can be reduced by more efficient irrigation infrastructure, this is usually a good thing. Return flows can cause environmental damage, particularly where:

- irrigation surface run-off contains high levels of nutrients, salt or other pollutants, or
- seepage due to inefficient watering causes rising water tables and salinization of our rivers and landscape.

The Australian Government's irrigation efficiency programs recover at least 50 per cent of water savings as water entitlement held by the CEWH. The recovered entitlements allows the CEWH to target the use of held water when and where it can have the most benefit to the environment. This often means that environmental water is used to achieve multiple environmental objectives as it moves through the system. Return flows coming from farm land are not able to be directed to best environmental effect.

Over time, irrigators who strive to improve their efficiency have less wastage and reduced salinity and water quality issues. Irrigators are always able to fund these efficiency improvements themselves and retain all of the water savings in production or for sale to other irrigators. Instead, Australian

Government-funded programs to date have enabled water savings to be shared between farmers and the environment. Advocates of the return flows thesis also argue for water purchases rather than infrastructure. Under their thesis, these purchases would also have an embedded return flows element. To date, water entitlements yielding around 2,100 GL annually (on average) have been recovered or contracted, and will deliver on an ongoing basis significant environmental benefits across the Basin.

The Department advises that the MDBA has commissioned the University of Melbourne to undertake an independent expert review of the risks to the effectiveness of water recovery posed by reduced return flows. The final report is expected to be finalised shortly and will be made available on the MDBA's website, but preliminary analysis indicates that the extent of water recovery replacing return flows claimed by Professor Quentin Grafton and others is not supported by detailed analysis of available data.

Draft finding 3.5 – strategic water purchase and cost-effectiveness of water recovery

The Department has greatly increased its transparency and published on its website the volume, location and value of all strategic water purchases. The Department releases market valuation information on a case-by-case basis, having regard to the need for further water recovery and possible impacts relating to commercial sensitivities.

The application of a multiple of the market rate for water obtained through infrastructure projects, provides an incentive for participation and enhances broader regional economic benefits. This has been the policy of successive governments since water recovery activities commenced. Water recovered through investment in water saving infrastructure delivers substantial long term benefits for Basin communities and industries, beyond the market value of the water recovered for the environment.

All Australian Government water recovery programs are required to achieve value for money, with individual programs differing slightly in their assessment criteria and processes, tailored to reflect each program's objectives and delivery arrangements. Applications submitted by State Governments or other proponents under Australian Government water programs are assessed in accordance with the relevant approved program guidelines that align Australian Government objectives and anticipated program outcomes. All projects are subject to robust due diligence processes that may include technical input from independent experts, auditors and other Australian Government agencies, including modelling advice from the MDBA.

Draft recommendation 3.3 – further assistance to communities

The Australian Government's commitment to plan, modernise and invest in infrastructure has provided rural communities with support and the ability to improve their resilience.

In 2017, the Department commissioned Marsden Jacobs Associates (MJA) to analyse the social and economic impacts of the Australian Government's on- and off-farm infrastructure modernisation programs in the Murrumbidgee Irrigation Area in New South Wales (MJA 2017). The study found that employment will increase significantly from 2013 to the peak of the construction phase in 2019, with an estimated 298 additional jobs to be created in the Griffith region in 2019. These net gains in employment are expected to continue well beyond 2020. MJA also estimated a \$470 million increase in regional domestic product over 25 years to 2034.

The Australian Government will continue to prioritise water recovery through water infrastructure investment in a way that minimises impacts on communities, and contributes to supporting improved water use efficiency and agricultural productivity. Given the market multiple applied through infrastructure programs, the funding put into the system exceeds the asset value of the water being

removed, providing a net injection of capital into rural communities. The programs also aim to enable farms to produce as much output as prior to the investment (as only part of the water savings are recovered by the Commonwealth).

As noted by the Department in its submission to the Commission's issues paper for this inquiry (DAWR 2018), full delivery of the outcomes of the Northern Basin Review, including the recommendations of the Northern Basin Review taskforce, and the successful operation of the SDL adjustment mechanism will further support these objectives.

On 7 May 2018, the Commonwealth Water Minister announced a \$20 million grant program over four years for economic development projects for Indigenous, remote, rural and regional communities most impacted by the Basin Plan. This program will provide assistance and give the highest priority to communities in most need of support as identified by the MDBA in the Northern Basin Review and the 2017 evaluation of the Basin Plan.

4. Supply measures and toolkit measures

Draft recommendation 4.1 - governance arrangements for supply measures

Basin Governments, in consultation with the MDBA, are continuing to work together to establish robust and integrated governance arrangements to facilitate the efficient and timely implementation of the package of supply measure projects. These arrangements are necessary to facilitate collaboration, incentivise timely delivery, and to monitor and manage risks effectively during implementation. The National Partnership Agreement (NPA) that will be established during 2018-19 will cover the implementation of the supply measures and associated matters. Under the NPA, project schedules will specify timeframes for project implementation, clear performance milestones and the schedule of Commonwealth milestone payments. There will be a two-stage funding approach that means the second stage of funding will not be provided until the project has been through the robust gateway review process (see further detail below).

Basin Governments also recently agreed to establish an Adjustment Implementation Committee to support the delivery of the entire package of supply and constraints measures to achieve the 605 GL offset, in a manner that is consistent with Basin Plan requirements.

Draft recommendation 4.2 - 2024 timeframe for implementation of supply measures

The Department acknowledges that there are challenges associated with the implementation by Southern Basin Governments of supply measures by 2024. Nevertheless, the Department considers that any decision to extend the 30 June 2024 timeframe at this stage, for implementation of supply measures, would be pre-emptive. The first priority is to ensure supply measure project risks – including risks to timely delivery – are adequately addressed before construction begins. Retention of the 30 June 2024 timeframe for supply measures to be operational remains important to incentivising the timely commencement of supply measure projects by proponent States and to guard against the associated risk of a blow-out in implementation costs.

Progress in implementation of the package will be closely monitored through the proposed governance arrangements including through regular milestone reporting and assessment, and monitoring and management of implementation risks.

Draft recommendation 4.4 - Determining value for money

Consistent with the 2013 *Intergovernmental Agreement on implementing Water Reform in the Murray Darling Basin*, total Commonwealth funding for the agreed package of state-led supply measure projects is limited in aggregate to the cost of recovering the same amount of water through water

purchase. This arrangement, which was agreed by all Basin First Ministers, ensures that the package of projects as a whole delivers value for money outcomes.

As detailed above, the Department has established a two-stage approach to the implementation of supply measures consisting of an initial phase and an implementation phase. The initial phase will involve the provision of funding to Basin States to undertake pre-construction activities including progressing statutory approvals and conducting stakeholder consultation.

At the end of the initial phase, each project will be subject to a robust gateway review process that will determine whether or not the level of funding sought for individual projects is appropriate for the proposed activities, and whether the individual projects should proceed to implementation. The gateway review process will assist in the management of implementation risks by determining the viability of projects, focussed on whether they can achieve their intended outcomes within Basin Plan timeframes.

South Australia has provided its initial phase funding proposal for its constraint measure project (also notified as a supply measure) to the Department, which the Department is now considering. The Department expects to receive supply measure funding proposals from New South Wales and Victoria shortly.

As the Commission is aware, funding for supply measures is provided for the package as a whole. The supply measures are modelled together as a package as the offset benefits of individual projects are highly co-dependent on their interaction with other measures in the package. To individually assess the cost-effectiveness of each project would overlook the interactions between, and other benefits that arise from, operating the measures together as a package and would potentially undermine achievement of the offset benefits and other outcomes associated with the full package as a whole.

In this context it is likely that the estimated SDL 'offset' benefit of any individual project would vary considerably, not only as a result of interactions between projects, but also depending on the order it was added to or removed from the package of measures. For these reasons any assessment of a project's individual contribution to the package would be unreliable.

Draft recommendation 4.5 - toolkit measures

In relation to **draft recommendation 4.5** regarding the northern Basin toolkit implementation, governance arrangements for implementing toolkit measures are now being established by the New South Wales, Queensland and Australian Governments (the northern Basin jurisdictions).

Since June 2017, there have been a number of significant developments relating to northern Basin water reform, including the disallowance of the first Northern Basin Review amendment to the Basin Plan in February 2018 and the re-making of the amendment in July 2018. The parliamentary disallowance period for the Northern Basin Review amendments expired on 20 September 2018, meaning that these amendments remain in law. The new Northern Basin Commissioner, whose role includes monitoring progress in delivering the toolkit, will report on this and other matters to the Commonwealth Water Minister. The reports will then be provided to Basin Ministers and tabled in the Australian Parliament.

The Commonwealth, New South Wales and Queensland Governments are working together to finalise governance arrangements for a consistent and cooperative implementation of toolkit measures in the northern Basin. The arrangements include the establishment of an interjurisdictional group to monitor and report to the BOC. The group is now working to progress development of a prioritisation

framework for toolkit measures. Chaired by the Department, the group includes members from New South Wales and Queensland, the MDBA and the Commonwealth Environmental Water Office.

A National Partnership Agreement is also being developed which will set out the various obligations for jurisdictions and include individual project schedules, which will specify clear milestones for the environmental works and measures project activities and the payment of associated Commonwealth funding to the States.

5. Efficiency measures

Draft finding 5.1 – socio-economic outcomes

The Department recognises continuing community concern in some parts of the Basin regarding the potential for socio-economic impacts arising from on-farm water recovery projects. While on-farm irrigation upgrades have positive outcomes at the farm scale, concerns focus on their potential for regional impacts, such as water market price rises and the improved capacity of participating irrigators with upgraded farming systems to out-compete irrigators who do not upgrade their systems. It is generally accepted that urban, industrial and off-farm efficiency projects have positive socio-economic outcomes. This was supported in 2017 by a major review into the socio-economic impacts of further water recovery across on-farm, off-farm, urban and industrial uses, undertaken by EY.

The EY report to Ministerial Council (*Analysis of efficiency measures in the Murray-Darling Basin 2018*) identified that on-farm irrigation efficiency upgrades have resulted in positive social and economic outcomes for participants. However, the report also identified four potential ways that an on-farm program might have an adverse socio-economic impact, though it found no evidence that any such impact was occurring. The Department has developed a monitoring and evaluation framework that draws from the EY advice, and will continue to examine the results of the program investment through these four potential pathways, helping us to identify and respond to any unintended impacts that do occur from on-farm irrigation efficiency projects.

Recent reports to the Victorian Government on the impacts of on-farm water recovery have found that small impacts on water prices can occur, with the impact on allocation price only around 4-6% of the impact experienced from weather. The Aither report (Aither 2017) identified that the impact from drought, without program investment, was \$337/ML while the impact from efficiency measures programs alone was \$13-\$18/ML, but only on the assumption that the full 450 GL of water recovery occurs solely in on-farm modernisation in the southern Murray-Darling Basin. This means that the potential for impact from water recovery programs overall is much less than \$13-18/ML.

It must also be noted that an increase in water allocation prices, in a market with both buyers and sellers, does not in itself equate to an adverse socio-economic impact. Rather, it reflects an increase in the capital value of water entitlements.

The Department is working closely with Basin States to develop additional program criteria for on-farm projects that take into account the potential for wider regional impacts and the impact of cumulative implementation of programs. In addition, the Department is developing a stakeholder engagement process to help promote understanding of the need for the efficiency measures program and help inform and improve the program design, for example, through industry-led initiatives. This work will be considered at the next Ministerial Council meeting in late 2018.

The Department is not aware of any evidence that off-farm, urban or industrial efficiency projects may give rise to any adverse socio-economic impacts.

Draft finding 5.2 and draft recommendation 5.2 – recovery of 450 GL and environmental outcomes

The Department notes **draft finding and recommendation 5.2** and notes that there are challenges ahead in the delivery of 450 GL in efficiency measures by 2024, as this will require Basin Governments to continue to work together in a cooperative and collaborative manner.

Recovery of 450 GL in efficiency measures

On 8 June 2018, the Ministerial Council made a number of important commitments in relation to efficiency measures (see [Communique](#)). As a result, Basin Government officials are working together to develop a work plan for efficiency measures for the period 2019-2024. Basin Governments are also working together on additional program criteria for on-farm efficiency measures (see response to 5.1 above). Both of these programs of work are due to be provided to Basin Ministers in December 2018 for consideration and agreement. The matters raised by the Commission in **draft recommendation 5.2** will be addressed by the efficiency measures work plan and program criteria.

On 13 July 2018, the Australian Government launched the new Murray-Darling Basin Water Infrastructure Program to recover both the remaining gap-bridging water required by June 2019 and water for the environment through efficiency measures with neutral or beneficial socio-economic outcomes. Under this program, a series of tenders have now been launched seeking projects in urban, industrial, off-farm and metering streams Basin-wide. On-farm projects can also be tendered in Queensland, South Australia and the Australian Capital Territory. The program design is sufficiently flexible that it can be adapted as a result of community and industry feedback or as a result of learnings from the monitoring and evaluation framework. It is not intended to release a new water efficiency strategy or program in 2019.

Efficiency measures and constraints proposals

Several key constraints projects are included in the notified package of supply measures, and are required to be delivered by mid-2024. The modelling undertaken as part of the SDL adjustment mechanism takes into account the effect of supply measures, including these constraints measures and the associated 'hydro-cues' project, in determining the supply SDL adjustment and associated reduction in the water recovery target.

The Basin Plan intends that the easing of constraints and recovery of water through efficiency measures will together deliver better environmental outcomes. However, it is important to note that only some of the environmental benefits associated with recovering more water are dependent on relaxing constraints.

The evaluation of proposed efficiency projects under the Basin-wide program will take into account the contribution the proposed water savings would make to the enhanced environmental outcomes set out in Schedule 5 of the Basin Plan.

Efficiency measures programs are funded by the Water for the Environment Special Account (WESA). Under Section 86AJ of the Water Act, the Commonwealth Water Minister must cause two independent reviews to be conducted into whether the resources allocated to the WESA is sufficient to recover 450 GL by 30 June 2024, and to ease or remove constraints on the capacity to deliver environmental water to environmental assets. The report for the first review is due in September 2019.

The Department's approach to efficiency measures water valuation has been clearly articulated and made available [online](#) for all potential program participants. Where there is an active market, the Department will be guided by published market prices. Where there are insufficient or no published market values on the relevant state government water register or other market data sources to derive a

market value, the Department will procure external valuation advice from an industry-accredited valuer, or use existing relevant, recent external valuation advice previously obtained.

The Department will publish the per-megalitre price agreed for each contract awarded under the Program and the agreed price will not change for the life of the particular project.

Basin Governments are working together on arrangements to ensure the timely delivery of all constraints projects, and on a pathway to recover water through efficiency measures, with neutral or beneficial socio-economic outcomes.

Draft recommendation 5.3 – Water for the Environment Special Account

The Water Act sets out quite explicitly the requirements for the two reviews of the WESA. Within these provisions, the Minister may consider whether the suggestions raised by the Commission in 2018 remain relevant in 2021 and should be considered by the review. At this point, it would not be appropriate to pre-empt the outcomes of these two reviews.

It is important to note that the WESA does not provide for payments that are not associated with an adjustment to the sustainable diversion limit in a WRP area.

6. Water Resource planning

Draft finding and recommendation 6.1 – water resource plan delivery timeframes

The Department does not consider it appropriate to extend the statutory timeframes for the completion and accreditation of state WRPs. However the Department does acknowledge that some Basin State WRPs are behind schedule and there are challenges in the accreditation of all State WRPs by 30 June 2019.

Basin States have established their work plan to deliver WRPs through the assessment and accreditation processes before 30 June 2019 and agreed through the COAG Plan to provide WRPs to the MDBA for assessment by the end of February 2019. Basin States are working hard to complete quality WRPs within this timeframe. The MDBA is working directly with each Basin State on progress towards meeting work plan timelines, and publishes a quarterly WRP progress report. The most recent quarterly report was published in September 2018.

It is important to note that the Basin Plan statutory framework is able to accommodate late WRPs. The Water Act provides an opportunity for the Minister and Basin States to negotiate in good faith to address circumstances in which a WRP has not been provided to MDBA for assessment by a certain time or it is not consistent with the Basin Plan. This process also includes consultation with the States, to ensure that quality WRPs are developed while ensuring key elements of the Basin Plan, such as SDL compliance, are able to be given effect from 1 July 2019, by agreement between ministers.

While the timeframes for WRPs remain very important, it is worth noting that with almost all 'gap-bridging' water now recovered, the way is clear for the SDLs to take effect in WRP areas from 1 July 2019. The Department will continue to support the MDBA and Basin States with a view to ensuring that quality WRPs are developed, assessed and accredited on time.

7. Indigenous values and uses

Draft finding 7.1 – engaging Traditional Owners in WRP development

On 8 June 2018, the Ministerial Council welcomed the increased commitment of all jurisdictions to engage, work with and actively involve Indigenous communities in all aspects of water management. Basin Governments have committed to the active involvement of and consultation with Indigenous

communities in the development of WRPs in accordance with the MDBA guidelines for WRP consultation, consistent with the Convention on Biological Diversity's Akwé: Kon guidelines. Further, Basin Governments have committed to supporting Indigenous communities to work with water managers to enable improved delivery of water for cultural purposes.

The Department acknowledges the challenge to complete effective engagement with Traditional Owners, by 1 July 2019, as part of WRP development, particularly in New South Wales. However the MDBA has provided additional resourcing to both Northern Basin Aboriginal Nations (NBAN) and Murray Lower Darling Rivers Indigenous Nations (MLDRIN) and are working to streamline processes so this consultation can be done in the most effective and timely manner.

Draft finding 7.2 - \$40 million commitment

As part of the package of commitments announced by the Commonwealth on 7 May 2018 to support Basin Plan implementation, the Australian Government will provide \$40 million over four years (\$20 million each for the northern and southern Basin) to help Indigenous communities invest in water for cultural and economic purposes. With regard to **draft finding 7.2**, the Department confirms that this funding is limited to the benefit of Indigenous communities within the Basin. This commitment is part of a number of initiatives intended to enhance Indigenous involvement in water planning and management in the Basin, recognising that water is crucial to Indigenous communities and livelihoods in the Basin. The Department will continue to report to the Australian Government on progress in the delivery of this \$40 million commitment, along with other initiatives under this package of commitments.

8. Water quality

In relation to the Commission's **draft recommendation 8.1**, the Department agrees that it would be useful for the Basin Plan salt export objectives to be reviewed within the MDBA 2020 review of salinity and water quality targets, with specific consideration given to the relationship between the salt export objective and site-specific salinity targets.

With respect to the management of water quality in the Lower Darling (**key finding 8.2**), development and accreditation of the New South Wales Murray and Lower Darling WRP will be useful to resolve this concern as WRPs are required under the Basin Plan to include a water quality management plan.

9. Critical Human Water Needs

Draft finding 9.2 – management of critical human water needs in the Lower Darling

The Department agrees with the Commission's concerns regarding the management of critical human water needs (CHWN) during periods of low flow in the Lower Darling.

The MDBA has processes in place for CHWN, noting also that control of Menindee Lakes reverts to New South Wales when lake levels are low, and therefore sits outside formal CHWN processes agreed between the Basin Governments. The Department agrees that a CHWN provision for management of low flows at these times in the Lower Darling WRP would be useful. The MDBA also notes if the water supply to Broken Hill comes from diversions from the River Murray in the future, then it will need to readjust the New South Wales volumes which are part of the jointly agreed CHWN process.

10. Water trading rules

In relation to **draft finding and recommendation 10.1**, the Department agrees that the actions recommended will promote progress by facilitating a consistent, transparent approach to assessment of

trade restrictions against the Basin Plan trading rules, and monitoring and reporting on progress to address compliance issues where trade restrictions are inconsistent with the trade rules.

The Department also considers that **draft findings 10.2 and 10.3**, and **draft recommendation 10.2** are useful.

The effects on third parties and the environment, arising from trade growth, including increased demands on delivery capacity and pressure on delivery constraints in some parts of the Basin is of concern to the Department and other Basin Governments have also raised concerns. It is appropriate that there be a coordinated response to ensure proposed solutions are consistent with the water trade rules and messaging to the public is also consistent and transparent, to maintain confidence in the water market.

The MDBA is currently collaborating with the southern Basin States investigating current and long-term risks to meeting state water orders in the River Murray System. The work is also looking at how best to manage and mitigate these risks.

In September 2018 the MDBA also published a fact sheet on its website titled [*Understanding River Murray water delivery shortfall risks*](#).

Victoria is undertaking a review of delivery shares in northern Victoria in recognition of rapidly changing irrigation use patterns due to reduced water availability, new technology and global markets and commodity prices. The preliminary findings report and summary were released on 24 July 2018. The preliminary findings report lists a number of options for managing delivery patterns, including options for trade in delivery rights. Consultation on the preliminary findings report closed on 31 August 2018.

11. Environmental water planning and management

Draft finding 11.1- Pre-requisite policy measures

The MDBA assessed the adequacy of each pre-requisite policy measure (PPM) implementation plan, including seeking independent advice. As noted by the Commission, all implementation plans were endorsed by the MDBA. To ensure PPMs will be in place by 30 June 2019, Basin Governments have agreed to report, through the BOC, on ongoing implementation, including written annual reports to the BOC.

Draft Recommendation 11.4 – governance arrangements for environmental watering

The Department considers that existing formal governance arrangements for environmental watering are now generally working well.

Southern Basin

The Southern Connected Basin Environmental Watering Committee (SCBEWC) has been operating since 2015. Its role is to plan for and coordinate the delivery of environmental water in the southern connected Basin. The committee's members cover all southern Basin jurisdictions, the CEWH and the Department.

The Department considers that the SCBEWC is the formalised arrangement to coordinate environmental watering across the southern connected Basin.

SCBEWC has considered, and will continue to consider, ways to improve its operation and effectiveness, including by identifying and recommending any changes to its Terms of Reference

required to ensure the most effective and efficient use of environmental water consistent with the Basin Plan Environmental Watering Plan and its objectives.

The CEWH has also established partnership agreements that set out arrangements for how the CEWH and Basin State environmental water managers (delivery partners) work together for planning and delivery of environmental water.

Northern Basin

The CEWH and the Office of the Environment and Heritage in New South Wales are the only environmental water holders operating in the northern Basin and formal arrangements on cooperative planning and coordination of environmental watering events are already established through a partnership agreement.

12. Compliance

Compliance Compact

In agreeing the Compliance Compact on 8 June 2018, Ministerial Council acknowledged the importance of prompt and comprehensive implementation of these shared commitments. The Compliance Compact represents a consistent and transparent approach to ensuring compliance with all Commonwealth and state laws applicable to water use in the Basin. As noted by the Commission, the Compliance Compact is expected to be provided to COAG for endorsement at its next scheduled meeting.

The Compliance Compact details a compliance implementation framework, including specific plans to improve compliance and enforcement activities in each Basin jurisdiction and transparent reporting and accountability arrangements on progress.

Basin Governments and the MDBA have commenced work on their obligations under the Compliance Compact with some significant progress towards providing greater transparency, accountability and confidence in water management arrangements. Progress towards delivering the commitments set out in the Compliance Compact, including improved metering of water take, will be reported through the arrangements set out in the Compliance Compact.

The Department agrees that the Commission's scheduled 2023 inquiry into Basin Plan implementation will be an appropriate point to review the effectiveness of the commitments made by Basin Governments in relation to compliance (**draft finding 12.2**).

As part of the package of commitments announced under the agreement reached with the Federal Opposition of 7 May 2018, the Government has committed \$20 million to support improved hydrometric networks in the northern Basin and the development of remote sensing and other technologies to enhance monitoring, measurement and compliance in all Basin jurisdictions.

The BOC has agreed to a number of measures to improve water metering as part of the Compliance Compact. A related commitment by BOC includes examining the case to review the Australian Standard 4747, which applies to meters and the practical application of those standards. While state metering policies are matters for Basin States, the Department supports efforts to improve metering standards. The implementation of widespread metering is an important step in restoring public confidence in the measurement and compliance activities associated with the take of water.

Northern Basin Commissioner

As previously mentioned, the Commonwealth Water Minister recently appointed Mr Keelty as the Northern Basin Commissioner. The Commissioner will play an important role in providing independent assurance that key reforms and initiatives in the northern Basin are delivered, including the outcomes of both the Northern Basin Review and the Compliance Compact. The Commissioner will also audit and report on Northern Basin matters including knowledge and information requirements, engagement with Indigenous communities, protection of environmental flows and implementation of water use compliance commitments. The Commissioner will report to the Commonwealth Water Minister, with reports also being made available to Basin Governments and the public.

Compliance monitoring using satellite imagery

The MDBA has also recently published a report on a case study undertaken into compliance monitoring. In a trial, MDBA used imagery provided by Geoscience Australia to track water flows in the Barwon and Darling River systems during a major release of water for the environment into northern rivers between April and June. The report found that satellite images provide an important line of evidence for compliance. The report is now published on the MDBA's website:

<https://www.mdba.gov.au/publications/mdba-reports/compliance-monitoring-using-satellite-imagery>

13. Reporting, monitoring and evaluation

Draft recommendation 13.1 - Basin Plan implementation intergovernmental agreements

The Department does not agree with the Commission's draft finding of weaknesses in the *National Partnership Agreement on Implementing Water Reform in the MDB* (NPA) (**draft finding 13.1**). It is not the case that milestones in the NPA were listed as met where there was evidence to the contrary.

The Draft Report references an audit undertaken by the Australian National Audit Office (ANAO), which reported on the Department's assessment of New South Wales' performance in 2014-15 and 2015-16. Overall, the ANAO found the Department had followed agreed processes for monitoring performance but there was a lack of evidence used to substantiate its assessment of New South Wales in light of information provided by the MDBA and CEWH, and that it did not provide adequate information to the Commonwealth Water Minister. While acknowledging it could have provided more detail around matters of concern, the Department did not agree with the finding, arguing that relevant factors were taken into account. The Department's response is available at www.agriculture.gov.au/about/media-centre/on-the-record/response-anao-assessment-murraydarling.

The Department also does not agree there were delays in the release of assessments in some years (**draft finding 13.1**). Under the NPA, the assessments are not published by the Department until required processes, including the Minister's authorisation and release of the report to Basin Governments, are completed. The NPA does not specify a timeframe for this.

Basin Plan Evaluation Framework

The Department acknowledges the relevance of **draft recommendations 13.2** and **13.3**, and will consider them further in consultation with Basin States and the MDBA. An effective program of monitoring, evaluation and reporting is crucial to delivering accountability and continuous improvement as the Basin Plan is implemented.

The first interim evaluation of the Basin Plan was conducted by the MDBA in 2017 and we understand that preparations for the next evaluation are already underway. If a new evaluation framework and strategy is developed in time, it could contribute to the MDBA's 2020 Basin Plan

evaluation reporting. A key component of this evaluation work is to establish a robust evaluation framework and an integrated program of monitoring and evaluation effort, consistent with the draft recommendations of the Commission.

The Commonwealth continues to share findings of ongoing monitoring and evaluation, which is important for maintaining and improving public confidence in the implementation and operation of the Basin Plan. However, the Department notes there may be different interpretations of these findings by stakeholders.

While monitoring, evaluation and reporting on Basin Plan outcomes is primarily led by the MDBA, the Department, Basin States and the CEWH also actively contribute to this work. The Department is also collaborating with the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) to develop a new framework and work plan for monitoring and evaluating the socio-economic effects of Commonwealth water recovery programs. When completed, this new framework will help the Department to prepare and provide useful input to the MDBA's 2020 Basin Plan evaluation.

14. Institutional and governance arrangements

Draft Finding 14.1 - institutional and governance arrangements

The Water Act establishes the MDBA and provides the framework for its roles and responsibilities. The Water Act covers the functions of the MDBA as relates to both (i) the Basin Plan and (ii) serving the needs of Basin jurisdictions in accordance with the Murray-Darling Basin Agreement (the Agreement) set out in Schedule 1 of the Water Act. The legislative framework also provides the setting for managing any potential for real or perceived conflict of interest, and assists in keeping the agency functioning as efficiently and responsively as possible.

These arrangements reflect the wishes of all Basin Governments, as set out in the *Intergovernmental Agreement on Murray-Darling Basin Reform* (the 2008 IGA), as agreed by all Basin First Ministers on 3 July 2008. In particular, Basin Governments considered it both unnecessary and inefficient to maintain the former Murray-Darling Basin Commission and its office as an institution that was separate to the MDBA, noting in particular the overlap in skills, knowledge and expertise required to deliver the two core functions described above.

Accordingly, arrangements under this framework articulate the roles and responsibilities of the MDBA and Basin Governments and provide appropriate intergovernmental arrangements for consultative and collaborative purposes (as relates to the MDBA's Basin Plan functions) and decision-making and operational purposes under the Agreement.

In addition, the MDBA operates its jointly funded activities in accordance with a Service Level Agreement that exists between the MDBA (as the agent of the Basin States) and the Ministerial Council.

In order to ensure that the intergovernmental arrangements are efficient, effective and transparent to continue to deliver the Basin Plan, the Ministerial Council agreed on 8 June 2018 to review the joint governance arrangements supporting the delivery of the Basin water reforms. The independent reviewer, Mr Greg Claydon (former State Government Water Executive), was appointed in September 2018. The aim of the review is to ensure streamlined decision making; improve clarity of the roles and responsibilities of the various committees; improve the efficiency and cost effectiveness of joint governance arrangements; and to increase transparency and community confidence.

The review is expected to be completed by February 2019. Any decisions on the findings of the review will be a matter for Basin State Governments, the MDBA and the Australian Government.

Prior to this, Basin Governments have commissioned, at various times, reviews of cost share arrangements under the Agreement; the structure and strategic directions of joint programs; and the cost-efficiency of River Murray Operations (RMO) (including options to manage RMO cost spikes into the future). All outcomes of these and other reviews are considered by Basin Governments collectively.

Managing the risk of real or perceived conflict between Policy, Program delivery and Regulatory functions

The MDBA has well-established internal processes to manage any risk of real or perceived conflict arising from its roles.

In addition, Basin Governments have committed to a number of initiatives and measures to support the MDBA to effectively perform its collaborative service delivery functions (as an agent of governments) while also serving as an independent and credible regulator that ensures compliance with the Plan, with minimal risk of a real or perceived conflict.

These initiatives to support the MDBA include:

- the Ministerial Council agreed Compliance Compact that was developed from the findings of the MDBA and the Independent Panel comprehensive review of Basin-wide compliance matters across the Murray–Darling Basin
- the establishment of the MDBA Office of Compliance
- the Independent Assurance Committee to strengthen the focus and integrity of its Basin-wide regulatory role, and
- the appointment of the independent Northern Basin Commissioner for a three-year term.

Draft Recommendation 14.2 – institutional reform of the Murray-Darling Basin Authority

The functions of the MDBA are set out in section 172 of the Water Act. These functions are reflected in the 2008 IGA. Broadly these functions are divided into:

- functions performed on behalf of the joint Basin Governments (discussed above), which include the operation of the River Murray on behalf of Basin Governments, management of jointly-funded assets and the administration of other jointly funded activities, and
- the Authority's Basin Plan functions, which can loosely be divided into development and review of the Basin Plan and preparation of amendments; generating data, information and knowledge pertaining to Basin rivers and water resources; assisting states in implementation matters including the development of WRPs for assessment and accreditation; and regulating and enforcing compliance with the Basin Plan.

As a general principle, the Department does not agree that the potential for any real or perceived conflict between policy, operational and regulatory roles should necessarily require institutional separation of these roles. Indeed, there are numerous instances where regulatory functions within governments (such as the biosecurity and Water Efficiency Labelling and Standards scheme regulatory functions within this Department) operate under the same institutional framework as policy and operational functions.

Other considerations, including: Government policy pertaining to Commonwealth corporations and statutory authorities; capacity to manage conflict; and the cost-efficiency of government services; are equally important considerations for Commonwealth public sector institutional arrangements. The Department does not agree that the claimed benefits of two new institutions in place of the MDBA is warranted, and nor does it agree that such an arrangement would deliver better and more cost-effective and efficient public administration.

Draft recommendation 14.3 – Basin Officials Committee and Basin Plan implementation

The Department recognises that the governance arrangements for Basin Plan implementation would benefit from further analysis to support improvements for ongoing intergovernmental collaboration. As noted above, Basin Governments are in the process of reviewing the joint governance arrangements and the terms of reference for this review are at **Attachment A**. The review is being undertaken by Greg Claydon and is expected to report to Basin Governments in the first quarter of 2019. The review is expected to include an examination of the committee arrangements, and associated capability and resource requirements to support ongoing intergovernmental collaboration for implementing the Basin Plan. Any decisions on the findings of the review will be a matter for Basin Governments, the MDBA and the Australian Government. The Department notes that any decision to change existing governance arrangements prior to the finalisation of this review, would be pre-emptive.

Draft Recommendation 14.4 – expanding the role of the MDBA's Office of Compliance to include compliance and evaluation functions

In December 2017, the MDBA established an Office of Compliance. This was supported by additional funding from the Australian Government. The Office of Compliance is the focal point within the MDBA to improve water compliance across the Basin in line with the Basin Plan.

The MDBA anticipates that its regulatory functions will expand over time to include compliance with WRPs (once accredited), and to incorporate the MDBA's Basin Plan monitoring, evaluation and reporting.

Given the magnitude and complexity of the MDBA's work in supporting the development of Basin Plan compliant WRPs, the Commonwealth considers that broadening the role of the Office of Compliance at this time would be both unhelpful and disruptive to the task of supporting States in completing WRPs.

As noted in 14.2 above, the Commonwealth does not agree that the potential for any real or perceived conflict between policy, operational and regulatory roles should necessarily require institutional separation of these roles.

Draft Recommendation 14.5 – efficacy of proposed institutional arrangements

As discussed above, the Commonwealth does not consider that the claimed benefits of establishing a new institution of the Basin Plan Regulator would deliver better, more efficient and more cost-effective public administration in ensuring compliance with the Basin Plan and Water Act.

It is important to note that the Water Act was subject to a thorough and extensive review by an Independent Expert Panel in 2014. Notwithstanding some recommendations for statutory change, subsequently implemented by the Australian Government, the review largely validated the existing statutory framework setting out the expectations of the MDBA and Authority members.

The Government responded very positively to the findings and recommendations of the Water Act Review.

As recommended in the report of the Independent Review of the Water Act, the next review of the Water Act will be undertaken in 2024. The Commonwealth agrees that a review at that point will provide a timely opportunity to revisit matters such as the role of the MDBA, the MDBA's performance in exercising its regulatory functions, and the knowledge and skills mix of Authority members.

Reference List

Aither 2017, [Water market impacts of on-farm water use efficiency programs that require entitlement transfer](#), Aither

DAWR 2018, [Submission by The Australian Department of Agriculture and Water Resources Murray-Darling Basin Plan: Five-year assessment Productivity Commission Issues Paper](#), Department of Agriculture and Water Resources.

EY 2018, [Analysis of efficiency measures in the Murray-Darling Basin](#), Ernst & Young, Canberra.

MJA 2017, [Economic effects of the Commonwealth water recovery programs in the Murrumbidgee Irrigation Area](#), Marsden Jacobs Associates.

Attachment A

Review of the Murray-Darling Basin Joint Governance Arrangements Terms of Reference

Background to the Review

On 8 June 2018, the Murray-Darling Basin Ministerial Council agreed to the Murray-Darling Basin Compliance Compact (the Compact). The Compact brings together the findings from various compliance reviews, including the Basin-wide compliance review undertaken by the Murray-Darling Basin Authority (MDBA) and an independent panel. The Compact details a compliance implementation framework, including specific plans for improving compliance and enforcement activities for each Basin jurisdiction and the MDBA, and a commitment for the MDBA and Basin governments to report annually on progress.

To progress one element of the Compact, the Australian Government and Basin State and Territory governments agreed to review the joint governance arrangements supporting the delivery of the Basin water reforms. The review is to take account of the governance recommendations in the MDBA Compliance Review and will seek to improve the efficiency and effectiveness of current arrangements.

Basin water management is complex, highly inter-related and entails a range of policy, program and regulatory responsibilities. It is important that the governance arrangements support and facilitate joint decision making in the areas where it is required and efficient consultation where decisions are the responsibility of a single entity.

More specifically, the existing Murray-Darling Basin governance arrangements provide for inter-governmental committees for decision-making under the Murray-Darling Basin Agreement (Agreement) on the one hand, and to support the delivery of Basin Plan objectives and outcomes on the other.

In these circumstances, effective governance requires collaboration and consultation across a range of different, but related and sometimes overlapping areas covering the Basin Plan, the Agreement, and environmental watering. To ensure inter-governmental arrangements are sufficiently robust and collaborative to deliver on these expectations, a review of the structure and purpose of governance and associated committee arrangements is warranted.

The aims of this review are to ensure streamlined decision making; to improve clarity of the roles and responsibilities of the various committees; to improve efficiency and cost effectiveness of joint governance arrangements; and to increase transparency and community confidence.

Principles

1. To maintain the collaborative commitment to progress Murray-Darling Basin reforms and implement key elements of the Basin Plan.
2. To ensure clear assignment of decision making responsibilities at appropriate levels.
3. To ensure that all those with implementation obligations are engaged, statutory roles are respected and decisions are appropriately integrated.
4. To build transparency and community confidence in implementation of the Basin Plan through joint government arrangements.

Purpose

To review the Murray-Darling Basin inter-governmental committee arrangements (refer **Attachment B** for current joint arrangements) to achieve the most efficient and effective arrangements to implement the Basin Plan and administer the Agreement within the context and objectives of the *Water Act 2007* (Water Act), the Basin Plan, and the Agreement.

Scope

The review will assess the existing joint governance arrangements supporting both Basin Plan implementation and administration of the Agreement, and will be structured around five key questions:

1. What needs to be delivered?
2. Who is responsible for each deliverable and under what authority have they been given that responsibility?
3. What are the practical alternate governance arrangements to support this delivery, having regard to other related responsibilities of Basin governments, and what are their pros and cons?
4. What should be the requirements of members of the recommended arrangement(s) including level of authority, skills, behaviours and culture?
5. How should ongoing performance, including structures, processes and participants be best assessed?

Within this context, the analysis undertaken will provide advice on:

- a. the effectiveness of existing committee arrangements with an initial priority focus on higher level committees and subcommittees supporting the delivery of the Basin Plan and administration of the Agreement. This will include an assessment of the:
 - i. role, responsibilities, performance and reporting arrangements of each of the committees and subcommittees, including consideration of disbanding committees when they are no longer required.
 - ii. roles, responsibilities and performance of the chairs and supporting secretariats
 - iii. barriers which may be affecting the committees and subcommittees ability to achieve their objectives, including any possible revised/additional legislative requirements.
- b. the suitability and capability of committee members to participate in providing advice and decision making on Basin Plan and the Agreement matters in line with both individual governments' governance responsibilities and respective inter-governmental requirements including the:
 - i. level of authority and expertise required for each committee
 - ii. scope of membership of the BOC and relevant committees and subcommittees related to the delivery of the Basin Plan and the Agreement.
- c. alternate approaches to achieving efficient and effective committee arrangements to implement the Basin Plan and the Agreement, including consideration of:
 - i. the benefits, costs, and risks, and any other relevant considerations (including legal, regulatory and cultural issues)

- ii. a proposed transition path to implement preferred alternatives, including consideration of a phased approach to meet key milestones – June 2019, 2019-2014 and post 2024 in Basin Plan implementation
- iii. any associated legislative amendment and resourcing requirements.

The review will **NOT** address the Murray-Darling Basin Ministerial Council, Murray-Darling Basin Authority constitution or agency structure, Basin Community Committee, or advisory committees established for a specific short-term purpose.

The review should have regard to:

- the *Water Act 2007* (s201, 203);
- The Murray Darling Basin Agreement (Schedule 1 to the Water Act) (c18, c20, c21, c22, 26.1, c25, c27)
- *Intergovernmental Agreement on Murray-Darling Basin Reform (2008)*
- the roles and responsibilities of the Commonwealth and Basin states in implementing the objectives of the Water Act, Basin Plan and the Agreement
- Basin Officials Committee Guide to Procedures
- Service Level Agreement between the Murray-Darling Basin Ministerial Council and the Murray-Darling Basin Authority
- Basin Plan Implementation Agreement between the MDBA, Basin states and the Commonwealth Environmental Water Holder.

The review should also have regard to the Murray-Darling Basin Compliance Compact and the findings of the Murray-Darling Basin Water Compliance Review (including Independent Panel). It should also consider any relevant inquiries including the Productivity Commission reviews and government responses, and any reform initiatives at the jurisdictional level relevant to the scope of the review.

Any recommendations for change in governance arrangements for committees should be consistent with the objectives of the Water Act, Basin Plan and the Agreement.

Process

The review will be led by an independent person (the review leader) commissioned by the BOC and contracted by the MDBA on behalf of the BOC. The review leader will report to BOC through the Chair. Any recommended changes to committee governance arising from the review will be considered and progressed by the BOC.

The review leader will consult with Basin governments, the MDBA, the Commonwealth Environmental Water Holder and other key stakeholders to identify issues and areas for improvement.

The review will include preparation of a draft discussion paper for consultation with the relevant parties, a draft report and final report on the findings.

Deliverables

The review will conclude with a final report to be provided to the BOC Chair (Department of Agriculture and Water Resources) by **16 November 2018** to allow for consideration by the BOC prior to being provided to the Ministerial Council for consideration at its scheduled 14 December 2018 meeting.

Milestones

	Activity	Date
1	Prepare a draft discussion paper on the review for consultation with Basin officials and the MDBA	7 September 2018
2.	Consult with Basin officials, the MDBA and other key stakeholders on the discussion paper.	28 September 2018
3.	Prepare a draft report based on findings from the discussion paper for consideration by Basin officials and the MDBA.	26 October 2018
4.	Prepare a draft final report for consideration by the BOC chair, Basin officials and the MDBA.	9 November 2018
5.	Final report to be delivered to the BOC chair	16 November 2018