



Australian Government
**Department of Agriculture
and Water Resources**

**REPORT OF THE INDEPENDENT REVIEW OF THE *WATER ACT 2007*
AUSTRALIAN GOVERNMENT RESPONSE**

PREAMBLE

The *Water Act 2007* (Cth) (the Act) provides the legislative framework for managing Australia's largest water resource – the Murray-Darling Basin – in the national interest, as well as for providing information on Australia's water resources.

The Australian Government welcomes the Report of the Independent Review of the *Water Act 2007*. Prepared by an eminent Panel of experts (the Panel), chaired by Mr Eamonn Moran PSM QC, the report has been prepared following extensive consultation with all state and territory governments and interested stakeholders across the irrigation, community, Indigenous and environment sectors. The report was tabled out of session in the Australian Parliament on 19 December 2014.

The Government welcomes the Panel's overarching finding that the Act is an effective legal framework for the delivery of its objects. In doing so the report recognises that implementation of the Murray-Darling Basin Plan (Basin Plan) and some other reforms that fall under the Act remain incomplete.

Importantly, the report's findings include the conclusion that the "Act's framework does provide for the achievement of economic, social and environmental outcomes." In this regard the Panel emphasised the continuing challenge of balancing these outcomes in implementing the Basin Plan.

The Government's response to this challenge is to enhance social and economic outcomes without diminishing the environmental outcomes of the Basin Plan. The Government is unwavering in its commitment to implement the Basin Plan in full and on time, and to do so by bridging the gap to the Basin Plan's sustainable diversion limits by prioritising investment in productivity enhancing water infrastructure and legislating a 1500 gigalitre (GL) limit on surface water purchases.

The independent Sustainable Diversion Limit Adjustment Mechanism Stocktake Report, commissioned by the Murray-Darling Basin Ministerial Council and released on 27 August 2015, provides further confidence that the gap can be bridged without reaching the 1500GL limit. The report found that a total supply contribution of 508GL is plausible and Basin State water Ministers have committed to continue to work towards achieving a total 650GL supply offset. The greater the supply contribution from the adjustment mechanism, the smaller the remaining water recovery task to implement the Basin Plan. Such an outcome is in the interests of all Basin Governments and communities to deliver.

The Government is prioritising water infrastructure initiatives that deliver a wide range of benefits to Basin communities. Between now and June 2019, \$3.9 billion in Government

investment is forecast to be spent on water infrastructure projects in Basin communities to improve irrigation productivity and build more sustainable farming businesses in the process. The Government has committed a total of almost \$13 billion to implement the Basin Plan through a range of programmes in the Basin through to 2024.

The Panel made 23 recommendations to amend the Act and to amend or review its subordinate instruments, in ways that improve its operation and address areas of unnecessary regulatory burden.

The Panel also provided, in the form of 'conclusions', advice on a number of best practice operational approaches which, if implemented (or continue to be implemented), will help to ensure that the Act's objects are achieved as effectively and efficiently as possible. Some of the Panel's conclusions fall within the remit of State powers due to the joint government nature of water reform in Australia. The Government encourages States to consider and act on these as appropriate.

The Government has previously accepted two recommendations (11 and 18), which called for further work to streamline the Water Charge Rules and water information reporting requirements provided under the Act. The water information review is now complete and the review of Water Charge Rules is well underway and due to report by December 2015. The Government will respond to the recommendations of the water information review shortly.

In its Response, the Government is accepting all remaining recommendations made by the Panel, with recommendations 9 and 21 agreed in part. The Government believes that these changes will help to ensure that the Act can be streamlined while also ensuring that its policies are implemented as intended.

The Government thanks the Panel for their work on the review – Mr Eamonn Moran PSM QC (Chair), Mr Peter Anderson, Dr Steve Morton and Mr Gavin McMahon. The Government also acknowledges the efforts of governments and stakeholders that took the time to contribute their knowledge and expertise through submissions, and by participating in meetings and interactive workshops with the Panel.

RECOMMENDATION 1

The Panel recommends that the Murray-Darling Basin Authority prepare guidelines to assist Basin State governments to develop water resource plans in accordance with Basin Plan water resource plan requirements relating to Indigenous values and uses, with the guidelines to draw on the Convention on Biological Diversity's Akwé: Kon Guidelines as appropriate.

The Panel also recommends that, after 1 July 2019 when the Basin State water resource plans have been accredited, the case to amend section 22(3) to include a new section that reflects existing Basin Plan water resource plan requirements dealing with Indigenous values and uses should be considered.

Government response: Agreed

The Government will request the Murray-Darling Basin Authority prepare guidelines, drawing from the *Akwé: Kon Guidelines* as appropriate, to assist Basin State governments develop water resource plans in accordance with the requirements in the Basin Plan relating to Indigenous values and uses.

The Government will also seek to amend the Act to require that water resource plans are prepared having regard to Indigenous values and uses.

RECOMMENDATION 2

To align with requirements in Chapter 13 of the Basin Plan, the Panel recommends that item 13 of section 22(1) 'Mandatory Content of the Basin Plan' be amended to require that the programme for monitoring and evaluating the effectiveness of the Basin Plan includes five-yearly reviews of the extent to which the Basin Plan has affected social and economic outcomes in the Murray-Darling Basin.

Government response: Agreed

The Australian Government will amend the Act to lock in the existing requirement under the Basin Plan (Schedule 12, Item 3) to evaluate and report on the extent to which the Basin Plan has affected social and economic outcomes in the Murray-Darling Basin. This will ensure that the requirement to undertake five-yearly reviews of social and economic outcomes is an enduring mandatory requirement for the Basin Plan.

RECOMMENDATION 3

The Panel recommends that regulations be made to set out a process for minor amendments to the Basin Plan, consistent with section 49 of the Act.

Government response: Agreed

The Australian Government will make regulations under section 49 of the Act to set out the process to be followed by the Murray-Darling Basin Authority when making minor or non-substantive amendments to the Basin Plan. A streamlined fit-for-purpose process will reduce the administrative burden for the Basin States, the Murray-Darling Basin Authority and the Commonwealth in making minor or non-substantive amendments to the Basin Plan, consistent with the Government's regulatory reform agenda.

Consistent with the original purpose of this provision, minor or non-substantive amendments might include procedural improvements that do not affect the substantive nature of the Basin Plan, the elaboration and clarification of matters already contained in the Basin Plan, and the correction of any typographical or grammatical errors. Minor or non-substantive amendments would not include changes to sustainable diversion limits or alter the rights of water access right holders or obligations imposed by the Basin Plan.

While the consultation processes for amending the Basin Plan set out at sections 46, 47 and 48 of the Act will not apply to minor and non-substantive amendments, it is anticipated that the Murray-Darling Basin Ministerial Council would be consulted on such amendments.

The Government will consult Basin States and stakeholders during the preparation of draft regulations.

RECOMMENDATION 4

The Panel recommends that:

(a) section 50 of the Act be amended to provide for the next scheduled review of the Basin Plan to be finalised in 2026, with 10-yearly reviews thereafter

(b) other review points be amended or re-phased as follows:

(i) amend section 49A of the Act to postpone the first five-yearly report on Basin Plan impacts to the Murray-Darling Basin Ministerial Council from 2017 to 2020

(ii) postpone the first of the five-yearly reviews of the Environmental Watering Plan and Water Quality and Salinity Management Plan from 2017 to 2020, then undertake the reviews concurrently every five years (this will require an amendment to the Basin Plan)

(iii) undertake the social and economic evaluation (see Recommendation 2) concurrently with those reviews and every five years thereafter, consistent with the Basin Plan.

Government response: Agreed

The Australian Government will amend the Act to require that the first review of the Basin Plan be completed in 2026. This will ensure that the Basin Plan is reviewed at a time when outcomes can be assessed, noting the proposed 2024 review of the Act (recommendation 23 refers), the 1 July 2019 commencement date of sustainable diversion limits and the final reconciliation of any sustainable diversion limit adjustment in 2024.

The Government will propose amendments to the Act to align the accreditation of second and subsequent generation water resource plans with Basin Plan reviews (section 50 of the Act refers). This change will deliver on the intention that the timing of Basin Plan reviews should strike a balance between the need to provide sufficient time to observe outcomes and collect evidence to inform the review and the need to inform the next generation of water resource plans.

The Government will also seek to re-phase and align a number of existing Basin Plan

reviews and evaluations, resulting in the following advice or reviews being conducted in 2020:

- the section 49A advice on Basin Plan impacts provided by the Murray-Darling Basin Authority to the Murray-Darling Basin Ministerial Council, subject to amending the Act; and
- the first of the five-yearly reviews of the water quality and salinity management plan and environmental watering plan, subject to amending the Act and Basin Plan.

All other five-yearly evaluations set out in Schedule 12 to the Basin Plan, and the review of the Basin-wide environmental watering strategy will also be re-phased to inform the above five-yearly reporting cycle commencing in 2020, subject to amending the *Murray-Darling Basin Plan 2012 Implementation Agreement*. The Government will also consult with Basin States on delivering preliminary evaluation results to Basin communities, including on socio-economic impacts of the Basin Plan, in 2017. This could take the form of an interim pilot or trial evaluation targeting key areas of interest to inform 2020 reporting.

RECOMMENDATION 5

The Panel recommends that section 56(2) be amended to provide flexibility for Basin States to nominate a more recent version of the Basin Plan for the Murray-Darling Basin Authority to use when assessing water resource plans for accreditation.

Government response: Agreed

The Australian Government will amend the Act to provide this flexibility for Basin States for the current phase of water resource plan accreditation by 2019.

For the accreditation of second and subsequent generation water resource plans, the Government will propose amendments to align accreditation processes with Basin Plan reviews. This approach will ensure that future water resource plans are accredited against the Basin Plan as amended consequential to a 10 yearly section 50 review. This will ensure that changes are adopted in state water resource plans in an efficient and consistent manner.

In the event that the Murray-Darling Basin Authority determines that no amendments are necessary following a section 50 review, accreditation of water resource plans will be ongoing until three years after the Basin Plan is amended pursuant to a section 50 review. Should Basin States nevertheless wish to bring forward a water resource plan for accreditation at this time, then the Basin Plan as reviewed will be applied for accreditation purposes. Consistent with current arrangements, Basin States can bring forward an amendment to a water resource plan for accreditation at any time.

RECOMMENDATION 6

The Panel recommends that the Australian Government consult Basin States on:

(a) making regulations under section 66 of the Act to avoid the need for minor non-substantive amendments to water resource plans to go through a full accreditation process

(b) amending the Act to streamline accreditation processes for water resource plan amendments with the aim of ensuring that implementation of the Basin Plan through Basin State frameworks is as responsive as possible.

Government response: Agreed

The Government will consult Basin States on making regulations to set out the process for accreditation of minor or non-substantive amendments to water resource plans and any other means of streamlining accreditation processes.

RECOMMENDATION 7

The Panel recommends that a new provision be included in section 77(5) of the Act to require that, for the purposes of an amount payable by the Commonwealth, regard must be had to a presumption that a water access entitlement holder should be fully compensated for any reduction in the market value of the entitlement that is reasonably attributable to the Commonwealth share of the diversion limit reduction, consistent with sections 77(4) and 77(6).

Government response: Agreed

The Australian Government will amend the Act to clarify further that the holder of a water access entitlement who qualifies for a payment under section 77 of the Act is entitled to receive a payment equal to the reduction in market value of the holder's water access entitlement that is reasonably attributable to the Commonwealth's share of the diversion limit reduction.

The Government is committed to avoiding any such reduction in value by 'bridging the gap', prioritising on-farm and off-farm infrastructure investment.

RECOMMENDATION 8

The Panel recommends that a detailed analysis of the potential benefits of reassigning the Basin Plan water trading rules function from the Murray-Darling Basin Authority to the Australian Competition and Consumer Commission be undertaken.

Government response: Agreed

The Australian Government will consider undertaking an analysis of the potential benefits of reassigning the Basin Plan water trading rules function to the Australian Competition and Consumer Commission, while having regard to the Government's response to recommendation 50 of the Competition Policy Review. Recommendation 50 proposed that

the Australian Competition and Consumer Commission's price regulation and related advisory roles under the Act be transferred to a single national Access and Pricing Regulator.

The Government agrees with conclusion 4.1 that, given the recent commencement of the Basin Plan water trading rules on 1 July 2014, the rules should be implemented in their current form and be assessed over the medium to longer term when assessment of outcomes is possible, before any substantive changes are made. As such, following the Government's response to recommendation 50 of the Competition Policy Review, the Government will also consider an appropriate medium-term timeframe for an evidence-based review of the rules.

RECOMMENDATION 9

The Panel recommends that industry develop, in consultation with the Australian Government, an industry-led scheme of regulation for water market intermediaries. The scheme could include voluntary accreditation, a code of conduct and a defalcation fund. If a scheme is not developed, the Australian Government should regulate water market intermediaries. State referrals would be necessary to give effect to Basin-wide or national regulation.

Government response: Agreed in part

The Australian Government considers that industry-led self-regulation of water market intermediaries directed at protecting the integrity of the water markets has merit and will encourage water market industry representative bodies to establish such arrangements. This approach recognises that there have been very few reported cases of misconduct by water market intermediaries and no evidence of overall adverse effects on the market requiring Commonwealth intervention. A scheme of industry-led self-regulation is consistent with the Government's regulatory reform agenda.

The Government will also explore options that may improve transparency in the water market.

Commonwealth regulation will be considered if evidence emerges that this would alleviate or remove risks in the water market and hence provide an overall net benefit to business, individuals and community organisations.

RECOMMENDATION 10

The Panel recommends that section 253 of the Act be amended to remove the term 'higher value uses'.

See also Recommendation 23 relating to this section.

Government response: Agreed

The Australian Government will amend the Act to remove the term 'higher value uses', as this term was only relevant for the terms of reference for the 2014 review of the Act and is not used in the Basin Plan.

As the 2014 review of the Act has now been completed, section 253 has no current operation and will be amended to remove the mandatory terms of reference (section 253(2)) and provide for a further review of the Act in 2024 (Recommendation 23 refers).

RECOMMENDATION 11

The Panel recommends a separate review of the Water Charge (Infrastructure) Rules, the Water Charge (Termination Fees) Rules and the Water Charge (Planning and Management Information) Rules. The review should be undertaken by the Australian Competition and Consumer Commission in consultation with industry and Basin State governments. It should focus on reducing the cost to industry and governments and should report on:

- (a) the continuing appropriateness of tiered regulation of infrastructure operators and the potential for streamlining or eliminating regulation, including whether to remove the current requirements for member-owned operators under Part 5 of the Water Charge (Infrastructure) Rules*
- (b) the current process for accreditation of Basin States' regulators, the effectiveness in applying water charging regimes by different regulators, and the form and content of charge determinations by all regulators*
- (c) opportunities for advancing the consistent application of the water charging objectives and principles, including options to rank objectives and define terms*
- (d) lessons learned from other sectors in relation to appeal mechanisms*
- (e) opportunities to combine the water charge rules and Water Market Rules in one instrument*
- (f) consistency with the Australian Government's deregulation objectives*
- (g) the effectiveness of the Water Charge (Planning and Management Information) Rules, the extent to which their effectiveness could be enhanced and the likely impacts if they were to be repealed.*

The review should take into account the views the Panel has expressed in this report, submissions made to this Review and any further submissions.

Government response: Agreed

In accordance with the Government's terms of reference, the Australian Competition and Consumer Commission is undertaking a review of the water charge rules and providing advice to the Australian Government, including draft rule amendments by the end of 2015. The terms of reference and Issues Paper for the review are available on the Australian Competition and Consumer Commission's website at <http://www.accc.gov.au/regulated-infrastructure/water/water-projects/review-of-the-water-charge-rules-advice-development>.

Public submissions on the Issues Paper closed at the end of June 2015. Public consultation forums were held in centres across the Murray-Darling Basin throughout August to gain further input from infrastructure operators, irrigators, Basin States and other

members of the public. Further public consultation is now underway on the draft advice released on 24 November 2015.

RECOMMENDATION 12

The Panel recommends that section 92(4) of the Act be amended to give regulators applying the Water Charge (Infrastructure) Rules the discretion to determine or vary regulatory periods, so long as the regulatory periods are longer than those already provided for in the rules.

Government response: Agreed

The Australian Government will amend the Act, to add flexibility for regulators to vary regulatory periods applicable to determinations or approvals of charges, subject to agreement by the referring Basin States.

This change will enable regulators to respond to the broader economic environment, while maintaining sufficient pricing certainty for water users and regulated businesses. Extended periods can provide greater certainty to infrastructure operators by enabling them to undertake business planning and make investment decisions in relation to regulated charges over longer timeframes.

RECOMMENDATION 13

The Panel recommends that minor technical amendments be made to the definitions in the Act for 'bulk water charge', 'infrastructure operators' and 'irrigation infrastructure operators' to remove ambiguity for stakeholders.

Government response: Agreed

The Australian Government will amend the Act to ensure the definitions of 'bulk water charge', 'infrastructure operators' and 'irrigation infrastructure operators' are clearer to stakeholders and also maintain the policy intent of the Act.

As these amendments relate to referred provisions of the Act, the agreement of the referring Basin States will be required.

RECOMMENDATION 14

The Panel recommends that Part 5 of the Act, 'Murray-Darling Basin Water Rights Information Service', be repealed.

Government response: Agreed

The Australian Government will repeal Part 5 of the Act noting it has not been utilised to date and there are no plans to establish a Murray-Darling Basin Water Rights Information Service.

The Government acknowledges that access to timely, high quality, water trading data is essential to the functioning of Australian water markets. Several initiatives being undertaken by Commonwealth agencies are contributing towards the improved

information necessary to support effective and efficient markets. These initiatives include:

- the Murray-Darling Basin Authority's Water Markets Product Information website, which sets out information about different types of water access rights across the Basin; and
- the Bureau of Meteorology's weekly water market reports, which report on volumes and prices for trades of water allocations and entitlements on issue across Australia.

RECOMMENDATION 15

The Panel recommends that section 106(2) of the Act be amended to allow trade revenue to be used for other environmental activities in addition to water acquisitions to maximise environmental outcomes from the use of Commonwealth environmental water, with the following safeguards:

(a) only revenue generated from the trade of Commonwealth environmental water allocations (not Commonwealth environmental water entitlements) may be used for environmental activities other than acquisitions

(b) any disposal of water and use of proceeds for non-water acquisition purposes must reasonably be expected to improve environmental outcomes from the use of Commonwealth environmental water

(c) trading activity should not impact on the achievement of sustainable diversion limits in the long-term

(d) trade revenue cannot be used to fund operational expenses of the Commonwealth Environmental Water Holder such as holding and delivery fees and charges.

Government response: Agreed

The Australian Government will amend the Act to enable greater flexibility for allocation trade revenue from Commonwealth environmental water holdings to be used to invest in a wider range of measures than currently permitted, to maximise environmental outcomes from Commonwealth environmental water use.

For example, the greater flexibility would allow allocation trade revenue to be used by the Commonwealth Environmental Water Holder to invest in regulators, fishways and carp exclusion screens that support the delivery of water to off-channel wetlands. By selling a small volume of allocations in one year to fund the construction of such works at a wetland inlet, it could improve the effectiveness of larger volumes of environmental water delivered over several years, thereby improving environmental outcomes.

The Government agrees with the safeguards outlined by the Panel as necessary for any amended provision to ensure that the sale of water and how proceeds are used improves environmental outcomes, consistent with the Act and the Basin Plan.

The Commonwealth Environmental Water Holder will undertake public consultation on

how the greater flexibility in the use of trade revenue will be exercised, while adhering to the safeguards identified by the Panel. The Commonwealth Environmental Water Holder will also report on trading decisions as part of its additional reporting requirements agreed in response to recommendation 17.

Trade proceeds will not be used to fund water recovery towards bridging the gap or efficiency measures, which are to be funded from other sources.

RECOMMENDATION 16

The Panel recommends that section 106(1) of the Act be amended to remove the restriction on disposal of allocations that could be reasonably expected to result in forgoing future allocations, such as in continuous accounting systems.

Government response: Agreed

The Australian Government will amend the Act to provide the Commonwealth Environmental Water Holder with the flexibility to trade water allocations that would otherwise be likely to result in forgoing future allocations.

Section 106(1) of the Act currently allows for the trade of allocations that would be forfeited at the end of the financial year due to carryover limits, which apply in parts of the southern Murray-Darling Basin. It does not allow the trade of allocations in continuous accounting systems, where allocations remain in the account until used or sold and thereby prevent the account holder from receiving any additional allocations that would exceed the account limit. The Government proposes to amend the Act to accommodate the different terminology used in northern parts of the Basin under continuous accounting systems, where allocations may be forgone due to account limits, rather than forfeited due to carryover limits.

The amendment would enable the Commonwealth Environmental Water Holder to manage the asset in a fiscally responsible manner and achieve greater environmental benefits from its holdings, and provide consistent treatment of allocations in different parts of the Basin.

RECOMMENDATION 17

The Panel recommends that section 114 of the Act be amended to require the Commonwealth Environmental Water Holder to report annually on trading decisions.

Government response: Agreed

The Australian Government will add a statutory requirement in the Act for the Commonwealth Environmental Water Holder to report annually on any trading that has been undertaken in the previous year.

Information on trading activity is currently available on the Commonwealth Environmental Water Office's website: <http://www.environment.gov.au/water/cewo>.

RECOMMENDATION 18

The Panel recommends that an interagency working group led by the Bureau of Meteorology be established to report to the Australian Government on:

(a) current water information reporting requirements under the Act and associated regulatory burdens for data providers, including an estimate of current costs

(b) the benefits of the suite of information products with reference to associated costs borne by data providers

(c) options to reduce the regulatory burden imposed on data providers in the order of 20 per cent or more compared to current regulatory burdens.

The working group should undertake the review in consultation with data providers and report to the Australian Government in the first half of 2015.

Government response: Agreed

The Australian Government accepted this recommendation on 19 December 2014 and asked the Bureau of Meteorology to lead an interagency working group to undertake the review. The review focussed on reducing the burden on business, individuals and not-for-profit organisations, as provided by the Government regulatory burden measurement framework. The terms of reference for the review are available on the Department of the Environment's website:

<http://www.environment.gov.au/water/legislation/water-act-review>.

The Interagency Working Group on Commonwealth Water Information Provision completed the review in June 2015, in consultation with data providers. The Government will respond to the review shortly.

RECOMMENDATION 19

The Panel recommends that regulations be made to prescribe types of enforceable undertakings, in consultation with stakeholders.

Government response: Agreed

The Australian Government will prepare regulations in consultation with stakeholders to expand the range of enforceable undertakings that are available under the Act to enable less costly and burdensome means of resolving contraventions of the Act.

As outlined in the Review Report, enforceable undertakings are voluntary arrangements between the relevant enforcement agency and a person the agency considers to have committed a contravention of the Act, the Water Market Rules, the water charge rules or the Water Regulations made under the Act. Undertakings can be enforced through the courts in cases of non-compliance.

RECOMMENDATION 20

The Panel recommends that:

(a) section 178(3) of the Act be amended to include expertise in Indigenous matters relevant to Basin water resources as a field relevant to the Authority's functions

(b) section 172(1) of the Act, 'Authority's functions' be amended to add 'engage the Indigenous community on the use and management of Basin water resources' as a distinct function of the Authority

(c) section 202(5) of the Act be amended to provide that the Basin Community Committee's membership must include at least two individuals with expertise in Indigenous matters relevant to Basin water resources.

Government response: Agreed

The Australian Government will amend the Act in accordance with this recommendation.

Recommendation 20(a) will strengthen the Murray-Darling Basin Authority's expertise in Indigenous matters and its capacity to manage Indigenous water issues.

Recommendation 20(b) will recognise the Murray-Darling Basin Authority's role in relation to engaging Indigenous groups representing the Basin's Indigenous communities on Basin-wide water resource management. For example in Part 14 of Chapter 10 of the Basin Plan, the Murray-Darling Basin Authority is expected to consult with relevant Indigenous organisations as to whether the requirements relating to Indigenous engagement have been met by the Basin States. Murray-Darling Basin Authority engagement on these matters will not duplicate Basin State responsibilities relating to engagement of Indigenous communities in developing water resource plans for catchment areas.

The Government will further amend the Act so as to require that the two individuals with expertise in Indigenous matters on the Basin Community Committee, identified in recommendation 20(c), also be Indigenous persons. The Basin Community Committee represents the diverse interests of the Basin's communities through its provision of advice to the Murray-Darling Basin Authority and the Murray-Darling Basin Ministerial Council on matters of importance to the people of the Basin.

These amendments will strengthen the representation of Indigenous expertise in Basin water management governance structures and committees, and thereby enable more effective incorporation of Indigenous values and uses in Basin water management.

RECOMMENDATION 21

The Panel recommends that section 212 be amended so that the Murray-Darling Basin Authority's powers to charge fees for services are restricted to regulated water charges as defined by Part 4 of the Act and that these charges are regulated by rules equivalent to those that apply to an infrastructure operator that is a Part 6 operator as defined by the Water Charge (Infrastructure) Rules.

Government response: Agreed in part

As part of its Review of the *Water Charge (Infrastructure) Rules*, the Australian Competition and Consumer Commission is considering the suitability of the *Water Charge (Infrastructure) Rules* in terms of their application to the Murray-Darling Basin Authority in the event that the Murray-Darling Basin Authority were to impose regulated water charges (Recommendation 11 refers).

Section 212 already makes it clear that the water charge rules would govern the charging of fees by the Murray-Darling Basin Authority, should regulated water charges be introduced in the future. However, the Murray-Darling Basin Authority currently manages River Murray Operations on behalf of the partner governments under the Murray-Darling Basin Agreement.

The Murray-Darling Basin Authority's annual budget for River Murray Operations is funded in its entirety by contributions from the southern Basin jurisdictions and the Commonwealth. To increase the transparency of River Murray Operations, a number of recommendations from the recent Development of a Building Blocks Model and Efficiency Review of River Murray Operations' ('the Cost Efficiency Review') will be progressively implemented over the next few years. The final reports from this Review are available on the Murray-Darling Basin Authority's website.

RECOMMENDATION 22

The Panel recommends that the Act be amended to de-link the requirement for the Murray-Darling Basin Authority to produce an annual effectiveness report on the Basin Plan from the Murray-Darling Basin Authority's annual report requirements, with the effectiveness report to be submitted to the Minister by 31 December annually for tabling in Parliament.

Government response: Agreed

The Australian Government will amend the Act to separate the annual effectiveness report on the Basin Plan from the Murray-Darling Basin Authority's annual report. The annual effectiveness report is to be submitted to the Minister by 31 December each year for tabling in Parliament.

RECOMMENDATION 23

The Panel recommends that section 253 of the Act be amended:

(a) to provide for a review of the Act in 2024 without mandatory terms of reference for that review being specified in the Act

(b) to repeal the mandatory terms of reference specified in that section.

Government response: Agreed

The Australian Government will amend the Act to require a future review of the Act in 2024, to be informed by the scheduled five-yearly audit of the Basin Plan in 2023, and coincide with the sustainable diversion limit reconciliation in 2024. The review of the Act

will also inform the Basin Plan review proposed to be completed in 2026.

Terms of reference for future reviews will be determined by the Minister in consultation with the states and territories, and the Act will not specify mandatory terms of reference. The current mandatory terms of reference in the Act will be repealed for the next review in 2024.

CONCLUSIONS

1.1: Economic, social and environmental considerations

The Act's framework does provide for the achievement of economic, social and environmental outcomes.

However, decision-makers—governments, their agencies and water managers—need to more transparently demonstrate how economic, social and environmental considerations are taken into account in decision-making under the Act and the Basin Plan.

The Act and the Basin Plan provide for the consideration of economic, social and environmental outcomes in all areas of Basin Plan implementation.

The Government is amending the Water Act to limit surface water purchase to 1500GL, to further ensure that implementation of water reforms serve the optimisation of economic, social and environmental considerations. The Government is also prioritising investment in water infrastructure with more than \$3.9 billion forecast to be spent over the next four years on modernising water infrastructure to improve productivity and water use efficiencies. Information on these programmes is available on the Department of Agriculture and Water Resources website.

The operation of the sustainable diversion limit adjustment mechanism represents a key opportunity to build on the environmental and socio-economic outcomes of the Basin Plan. To enhance transparency and leverage community input and expertise on programme design and implementation, the Murray-Darling Basin Ministerial Council released a joint government communications booklet titled *The Sustainable Diversion Limit Adjustment Mechanism*, and the Department of Agriculture and Water Resources is currently consulting on the design of efficiency measure programmes with jurisdictions and a range of stakeholders. The recently released Stocktake Report estimating a plausible supply contribution of 508GL is a further example of providing information throughout the process of implementation of the Basin Plan.

Improvements in nationally consistent water information continues to inform water policy developments and management decisions. As reflected in the recently released Agriculture White Paper, the core National Water Initiative principles of decision making based on transparent trade-offs between social, economic and environmental outcomes will continue to guide Government investments.

As part of the broader suite of programmes around water reform, the Government continues to invest in water infrastructure and regional adjustment programmes within the Basin.

1.2: Indigenous water resource plan requirements

The effective implementation of the Basin Plan water resource plan requirements relating to Indigenous values and uses is essential to ensuring that these requirements translate into a positive step forward in integrating Indigenous peoples' objectives into Basin water planning frameworks.

See Recommendation 1.

2.1: Coordination of monitoring and evaluation activities

Monitoring and evaluation of Basin Plan outcomes must be coordinated to ensure that performance against the Basin Plan's objectives and outcomes—economic, social and environmental—is rigorously assessed, demonstrates Basin-wide outcomes and builds confidence in, and support for, the reforms.

A framework for evaluating the outcomes of the Basin Plan has been developed and is detailed in a public document entitled *Murray-Darling Basin water reforms: Framework for evaluating progress*. This framework sets out the respective monitoring and reporting responsibilities of the Commonwealth and state governments and the Murray-Darling Basin Authority. It also explains how the evaluation of this information will identify the factors that support better coordination and the achievement of Basin-wide priorities. In particular, the Murray-Darling Basin Authority is undertaking significant monitoring and research into the social and economic outcomes of the Basin Plan. Furthermore, the Commonwealth has committed \$30 million to monitor and evaluate Commonwealth environmental water use in the Murray-Darling Basin over 5 years to June 2019. This project seeks to understand the role environmental water plays in the implementation of the Water Act and Murray-Darling Basin Plan by examining the contribution of Commonwealth environmental water to the objectives of the Basin Plan, while assisting the Commonwealth to demonstrate outcomes and adaptively manage the water holdings.

2.2: Fit-for-purpose water access for the mining and petroleum sectors

Basin States should develop fit-for-purpose water allocation arrangements that ensure the mining and petroleum industries are able to operate within the same entitlement and water market frameworks as all other consumptive users.

Basin States are responsible for setting out how the water resources of a water resource plan area are to be shared across users and managed over time in a way that is consistent with the Basin Plan sustainable diversion limits. The former National Water Commission's publication titled *Water for mining and unconventional gas under the National Water Initiative* (December 2014) provides advice for governments on water management approaches that will enable water use by extractive industries that is consistent with the *National Water Initiative*, manages the risk of third party and cumulative impacts and provides industry with the confidence to invest including ensuring all water take is accounted for under a coordinated framework with all other users.

2.3: Sustainable diversion limit adjustment mechanism

The Act and the Basin Plan contain safeguards that appear appropriate and adequate to ensure that the Act's objects will be achieved in the sustainable diversion limit adjustment mechanism process.

The Murray-Darling Basin Authority and Basin States should engage openly with stakeholders, clearly communicating how the sustainable diversion limit adjustment mechanism will operate, explaining roles and responsibilities and rigorously testing its methods and processes so that stakeholders have confidence in its future operation in a manner consistent with the Act's objects.

The Australian Government is committed to engaging with stakeholders on the operation and implementation of the sustainable diversion limit adjustment mechanism. Basin States are responsible for consulting with stakeholders on the development of individual supply and constraint measure projects. In November 2014, the Murray-Darling Basin Ministerial Council released a joint government communications booklet on the Sustainable Diversion Limit Adjustment Mechanism, available on the Department of the Environment's website. Further information, including details of proposed supply and constraint measure projects and the results of the Stocktake of projects, is available on the Murray-Darling Basin Authority's website. The Government will continue to work with Basin State governments to provide opportunities for stakeholder engagement through the implementation of the mechanism.

The *Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin* outlines how Basin governments will propose, assess and agree to the package of supply, efficiency and constraints measures. Basin State governments have agreed guidelines to rigorously assess supply and constraint measure projects and the Australian Government is developing efficiency measures programme guidelines in consultation with Basin States. The Murray-Darling Basin Authority has worked with the CSIRO to develop and trial a method to calculate the supply measure sustainable diversion limit adjustment. The method has been developed in consultation with Basin States and has been peer-reviewed by a panel of independent expert scientists. The Murray-Darling Basin Authority will continue to work with Basin states if refinements to the assessment framework are needed as the framework is applied to a larger set of supply measure projects.

2.4: Environmental watering: coordination

The Australian Government, Basin States and water holders should work together to communicate to stakeholders and the community on:

- (a) the roles and responsibilities of all parties involved in environmental watering**
- (b) the arrangements in place to coordinate environmental watering to maximise the achievement of the Basin Plan's environmental objectives.**

The Australian Government and Basin States recognise the importance of clearly communicating the roles and responsibilities of different agencies involved in environmental water management and have already been taking steps to achieve this. These steps include joint engagement activities with local communities and through publications, such as the Basin-wide environmental watering strategy, which provides an overview of the roles and responsibilities of state government agencies, the Commonwealth Environmental Water Holder and the Murray-Darling Basin Authority.

Delivery of beneficial Basin-wide and local outcomes through environmental watering involves coordination between a range of participants, including the Commonwealth Environmental Water Holder, the Murray-Darling Basin Authority, state government agencies, communities and river operators. The principles that govern and foster coordination between agencies and the management of environmental water in the Murray-Darling Basin are set out in the Basin Plan, and these are used for both planning and real-time water delivery. For example, the Southern Connected Basin Environmental Water Committee brings together both environmental water managers and river operators in the River Murray (and tributaries) to support coordinated planning and use of environmental water.

2.5: Achieving complementary outcomes through environmental watering decisions

All Basin water holders and managers should fully engage with the Basin's industries and communities to understand and identify social, economic and cultural priorities that may be achieved together with the environmental objectives of environmental watering events.

Environmental water holders and managers undertake extensive community engagement to inform decisions on environmental water use. In addition to providing information on local environmental water needs and risks associated with specific watering actions, ongoing engagement with communities is enhancing opportunities to deliver environmental water in ways that achieve complementary social, economic and cultural outcomes. Across the Basin this occurs through a range of mechanisms including:

- community reference groups;
- environmental and other water advisory committees;
- the recent establishment of a network of local and regional engagement officers;
- regional and local Indigenous engagement forums and facilitators; and
- broad community engagement forums and direct engagement of industry groups, local government, non-government organisations (including water trusts) and individual landholders.

2.6: Enforcement of Basin Plan water trading rules

All Basin States and the Murray-Darling Basin Authority should identify and resolve any areas of non-compliance with the Basin Plan water trading rules as soon as possible, noting that a commonsense approach to resolving issues should be taken.

The Murray-Darling Basin Authority is currently working through a number of potential non-compliance issues with the Basin Plan water trading rules. Where non-compliance with the Basin Plan water trading rules is identified, the Murray-Darling Basin Authority will work closely with regulated entities, including Basin States to negotiate acceptable timeframes for resolving issues and achieving compliance.

2.7: New information and adjustments to sustainable diversion limits

Industry, Basin States and the Murray-Darling Basin Authority should work together to ensure that new information concerning Basin water resources, whether produced by industry or by government, is comprehensively considered so as to inform possible sustainable diversion limit amendments.

The Basin Plan is designed to provide an adaptive framework for managing the Basin's water resources, recognising that new or better information can come to light on the Basin's water resources and their management. The Basin Plan provides for new information to be included in the calculation of sustainable diversion limits for groundwater (section 7.25(1)), while section 6.06 of the Plan provides for broader reviews – including of the sustainable diversion limits by the Murray-Darling Basin Authority in consultation with Basin States and other interested parties. The Northern Basin Review is an example of a review under section 6.06, which may recommend changes to sustainable diversion limits in the northern Basin.

2.8: Water resource plan accreditation

The Murray-Darling Basin Authority and Basin States should work together in partnership, each respecting the others' roles, responsibilities and expertise, to facilitate the successful accreditation of all Basin State water resource plans by 1 July 2019.

Consistent with the *Basin Plan Implementation Agreement* between the Murray-Darling Basin Authority and the Basin States, the parties have committed to working together on the accreditation of all Basin State water resource plans by 1 July 2019. A working group has been established for this purpose. The Murray-Darling Basin Authority has also developed guidance, such as the *Handbook for Practitioners: Water resource plan requirements*, which sets out a collaborative, risk based and iterative approach to the preparation and assessment of water resource plans.

2.9: Basin State water resource plans and Basin Plan water trading rules

The Murray-Darling Basin Authority and the Australian Competition and Consumer Commission should work together on those aspects of Basin State water resource plans that relate to trade, to ensure that accredited provisions are consistent with the Basin Plan water trading rules.

The Murray-Darling Basin Authority and the Australian Competition and Consumer Commission will work together on those aspects of water resource plan requirements that relate to trade. Working arrangements will be considered as part of any analysis conducted on the water trading rules function (Recommendation 8 refers).

2.10: Harmonisation of state water planning and management terminology

All Basin State governments should proactively take opportunities to work towards greater uniformity of terminology used under their water planning frameworks.

The Australian Government considers that greater uniformity of State water planning terminology is desirable and encourages Basin State governments to work towards greater consistency as opportunities arise.

2.11: Risk assignment framework

Basin States that have not adopted the National Water Initiative risk assignment framework in their own legislation should provide clear and transparent information on the alternative arrangements that have been put in place to build entitlement holders' confidence that entitlements will not be eroded without appropriate compensation in relevant circumstances.

The Australian Government encourages those Basin States that have not yet incorporated the *National Water Initiative* risk assignment framework in their own legislation to provide clear and transparent information to entitlement holders on alternative arrangements they have made to provide certainty to entitlement holders on the ongoing value of entitlements.

2.12: Efficiency measures

The Australian Government should engage and communicate with stakeholders at an early stage on the programme design for efficiency measures, demonstrating clearly how the additional water is to be recovered while maintaining the benchmark social and economic outcomes of the Basin Plan.

The Murray-Darling Basin Authority should also monitor the impact of efficiency measures as part of its broader Basin Plan Monitoring and Evaluation programme so that the impacts can be appropriately scrutinised and made transparent.

The Australian Government Department of Agriculture and Water Resources is discussing the design of efficiency measures programmes with Basin States through the Sustainable Diversion Limit Adjustment Assessment Committee, and directly with representatives, peak bodies and through forums involving industry and non-government organisations.

The Murray-Darling Basin Authority will monitor the socio-economic impact of efficiency measures as part of its Basin Plan monitoring and evaluation programme.

3.1: Basin Plan audits

The continuation of five-yearly audits of Basin Plan implementation by an independent expert body is essential to the successful delivery of the Basin Plan.

Following the passage of the *National Water Commission Abolition Act 2015* (Cth) through Parliament, the Productivity Commission will conduct independent five-yearly audits of implementation of the Basin Plan and associated water resource plans, with the next audit due to be completed by the end of 2018. The Commission's work will be led by an Associate Commissioner with expertise in water policy and be informed by input from a stakeholder reference panel.

4.1: Basin Plan water trading rules

The Basin Plan water trading rules, which commenced on 1 July 2014, should be implemented in their current form and should then be assessed over the medium to longer term when assessment of outcomes is possible, before any changes are made to the rules.

See response to Recommendation 8.

4.2: Basin Plan water trading rules: interaction with Schedule D of the Murray-Darling Basin Agreement

The Murray-Darling Basin Authority and Basin States should progress work on addressing any inconsistencies between Schedule D of the Murray-Darling Basin Agreement and the Basin Plan water trading rules, such as differences in how exchange rates are used within and between regulated systems, as a matter of priority.

In consultation with Basin States, the Murray-Darling Basin Authority is progressing amendments to Schedule D of the Murray-Darling Basin Agreement and the protocols in operation under the schedule. Priority amendments to remove inconsistencies between Schedule D and the Basin Plan water trading rules were agreed by the Murray-Darling Basin Ministerial Council at its 29 May 2015 meeting, with these amendments to be made by regulation in 2015.

4.3: Interoperability and efficiency of Basin State water registers

Basin State governments should take opportunities to enhance the interoperability of registers, building on the work that has been undertaken through the National Water Markets System programme to create more efficient services for users.

The Australian Government encourages Basin States to look for opportunities to build on the work that has already been undertaken through the National Water Markets System programme.

4.4: Transaction fees and timeframes

Fees imposed by Basin States for trade processing should be efficient, and variations of fees between the Basin States should be reduced. Basin States should continue to improve their performance against the service standards agreed by the Council of Australian Governments for trade processing and approval times.

The Australian Government notes that the existing Council of Australian Governments water trade processing standards have largely been met by Basin States, and encourages them to continue to improve their performance against the standards. The Government also encourages Basin States to ensure that costs associated with trade processing fees are both efficient and transparent, in order to support the efficient operation of water markets across the Basin.

4.5: Commonwealth Environmental Water Holder: trading transparency

The Commonwealth Environmental Water Holder should continue to provide timely and transparent information to the market, including by raising stakeholder awareness of its Trading Framework and quarterly portfolio management statements.

The Australian Government notes that, under the *Commonwealth Environmental Water Trading Framework*, the Commonwealth Environmental Water Holder has committed to making trading information publicly available both prior to and after each trading action. The Trading Framework is available at:

<http://www.environment.gov.au/water/cewo/publications/water-trading-framework-dec2014>.

4.6: Electronic access to water charge information

Electronic transmission of, or online access to, information is desirable. Regulators should recognise the efficiency and desirability of electronic communication when developing and applying regulation.

In the context of information relevant to water charge rules; the Australian Competition and Consumer Commission has commenced a review of the water charge rules which will include consideration of opportunities for reducing the regulatory burden for participants in complying with publication, consultation and reporting requirements to make as much use as possible of electronic options.

6.1: Commonwealth Environmental Water Holder: Indigenous engagement

The Commonwealth Environmental Water Holder should develop a more structured, transparent approach to Indigenous engagement to complement current engagement arrangements.

The Commonwealth Environmental Water Holder and staff of the Commonwealth Environmental Water Office will continue to engage directly with interested Indigenous communities, with the aim of identifying synergies between environmental and cultural flows. The Commonwealth Environmental Water Office is exploring ways to provide greater structure and transparency to this engagement.

6.2: Commonwealth Environmental Water Holder: operating costs

The Commonwealth Environmental Water Holder's operating costs should continue to be met from Commonwealth consolidated revenue to ensure that the Commonwealth Environmental Water Holder is appropriately and transparently funded to deliver Basin Plan outcomes.

See Recommendation 15, specifically 15(d).

6.3: Environmental watering: The Living Murray

Environmental watering should be coordinated, including through integration of The Living Murray portfolio within Basin Plan frameworks where possible. Consideration should be given to transferring The Living Murray entitlements held by the Murray-Darling Basin Authority to the Commonwealth Environmental Water Holder.

The Australian Government notes that, in October 2014, the Murray-Darling Basin Ministerial Council agreed to establish the Southern Connected Basin Environmental Watering Committee to oversee the integration and coordination of environmental watering, including The Living Murray activities, to ensure they reflect the Basin Plan framework. It also notes that consideration of any transfer of The Living Murray entitlements held by the Murray-Darling Basin Authority to the Commonwealth Environmental Water Holder is a decision for the Murray-Darling Basin Ministerial Council, in consultation with the Commonwealth Environmental Water Holder.

7:1 Water information: Products and services

The Bureau of Meteorology should engage with stakeholders on a continuing basis with a view to developing products where the benefits outweigh the costs, and should adapt and refine its existing product suite in light of user feedback. It should also clearly communicate the benefits of its products and demonstrate their usefulness.

The Government agrees with the Panel that significant progress has been made to date in improving Australia's water information. The Government, including the Bureau of Meteorology, is committed to continuous improvements through ongoing stakeholder engagement and communication of water information products and their benefits, ensuring that data collection is fit-for-purpose and limited to data that is required for that purpose.

7.2: Water information: reporting requirements

Australian Government agencies should ensure that data collected under the Act is collected in the right form at the right time for the right purpose and used to create information that is of value, while minimising regulatory burdens and any duplication of requests imposed on data providers.

The Government is determined to identify and remove any duplication of reporting burden imposed on data providers and will respond to the Water Information Interagency Working Group's report shortly (recommendation 18 refers).

8.1: Enforcement

A sensible and cooperative approach to monitoring and compliance activities should be applied by regulators under the Act.

Part 8 of the Act contains enforcement mechanisms that support compliance with the provisions of the Act. Regulators such as the Australian Competition and Consumer Commission and the Murray-Darling Basin Authority have a range of tools available to enforce compliance, and generally take a graduated approach when assessing the appropriate response to a contravention. The regulators aim to improve the understanding of compliance measures through education and to use practical and proportionate regulatory measures as a priority, with the use of formal enforcement powers as a last resort. As noted in the Australian Competition and Consumer Commission's enforcement guide, the most appropriate regulatory response will be determined on a case by case basis and will depend on a range of factors including the willingness of the regulated entity to cooperate and the amount of loss or damage caused by any contravention.

9.1: Murray-Darling Basin Authority: transparency of Basin Plan and River Murray Operations functions

The Murray-Darling Basin Authority should consider how it can more clearly differentiate between its Basin Plan, River Murray Operations and other joint activity functions and associated costs in its financial reporting.

The Murray-Darling Basin Authority currently manages its budget under clear accounting separation arrangements to ensure separate allocation, reporting, and auditing of joint programme funds from that of the Basin Plan.

Following the independent review the Cost Efficiency Review into the River Murray Operations administered by the Murray-Darling Basin Authority, the southern Basin jurisdictions, the Commonwealth and the Authority are considering measures to further enhance the transparency of Basin Plan and River Murray Operations functions.

9.2: Murray-Darling Basin Authority: corporate plan

The Murray-Darling Basin Authority and joint governments should make the whole of the Authority's corporate plan publicly available.

The public release of the information relating to the joint programmes in the Murray-Darling Basin Authority 2014-15 to 2017-18 Corporate Plan and subsequent Corporate Plans is a decision to be made by the Murray-Darling Basin Ministerial Council. The Australian Government supports the public release of this information.

9.3: Murray-Darling Basin Authority: River Murray Operations budget and costs

Information on the River Murray Operations budget and costs (compatible with information provided on assets and operations through water charge determinations made under Part 4 of the Act) should be made publicly available by the Murray-Darling Basin Ministerial Council.

Options are currently being canvassed to increase the transparency of River Murray Operations in response to recommendations made in the Cost Efficiency Review (to be available on the Murray- Darling Basin Authority's website). Once developed, these options are expected to be considered by the Murray-Darling Basin Ministerial Council.