

Queensland Government

Submission to the review of the Commonwealth *Water Act 2007*

The Queensland Government welcomes the opportunity to contribute to the independent panel's review of the Commonwealth *Water Act 2007* (the Act) and is pleased to see that the Terms of Reference has been expanded beyond the Act's requirements in order to examine opportunities to reduce and simplify regulatory and reporting burden.

Queensland supports the objectives of the Act, however much of its requirements is tailored for the southern Murray–Darling Basin, which results in a significant cost burden for Queensland. The objectives should be achieved in a fit-for-purpose manner instead of the current prescriptive, one-size-fits-all requirements of the Act.

Queensland context

Queensland makes up about 25 per cent of the Murray–Darling Basin in area, but its volume of Basin water resources is a much lesser proportion and connectivity to the southern Basin is low. The Queensland part of the Basin is characterised by unregulated ephemeral streams with highly variable flows and has comparatively small amounts of publicly-funded water infrastructure. These factors lead to lower levels of system regulation and small, disconnected water markets compared to those associated with the southern parts of the Basin

Summary of key messages

1. Queensland supports a key aim of the review to reduce regulatory burden and duplication. Unnecessary and duplicative reporting and auditing requirements are costly and should be removed from the Act. Furthermore, there are opportunities to increase the value and client-focus of outputs from the reported information.
2. The Act resulted in the proliferation of Commonwealth water agencies and substantial supporting multi-jurisdictional processes and committees that now need to be rationalised.
3. The Basin Plan framework should be outcomes-based, rather than overprescribing water resource plan accreditation requirements, and support a fit-for-purpose approach to implementation.
4. The *Murray–Darling Basin Agreement 2008* (Schedule 1 of the Act) needs to be rationalised to align with the post-Basin Plan situation.
5. The Panel's assessment of water trading performance should consider the nature of Queensland's disconnected systems and relatively few market participants.
6. The Panel's assessment of Basin Plan performance is premature. Future performance reviews should focus on outcomes rather than assessing whether all the prescriptive elements of the Basin Plan are being fulfilled.

Specific issues

1. Reduce regulatory burden and duplication

- Unnecessary regulatory burden can be simplified and reduced by rationalising Commonwealth institutional arrangements, applying an outcomes-based approach to implementing the Basin Plan and reducing the reporting/auditing burden. Attention to these elements presents the opportunity for more cost effective approaches to be identified and developed.

Water market information

- The Act, in s22 and s26, provides for the Basin Plan to set out rules regarding water trading to support the Act's Basin water market and trading principles and objectives (Schedule 3). The Basin Plan establishes a range of reporting obligations for information on water entitlements and related trade rules and accounts, and trade activity, which are excessive. Although the water market information reporting requirements, for the Murray–Darling Basin and nationally, may be considered beneficial for the southern Basin, there is no tangible on-the-ground benefit for the Queensland water market participants. The southern Basin accounts for 94% of Australia's temporary water trade. Out of the tens of thousands of entitlements and allocations traded in 2013–2013, there were only about 70 permanent trades and 100 temporary trades in the Queensland portion of the Basin. Due to the disconnected systems in the northern Basin, there is little scope for water to be moved across the landscape and thus for Queensland's market to expand to a level seen in the south.
- The Act and Basin Plan establishes excessive water entitlement and trade reporting obligations – e.g. provision of trade rules and information on interstate trade, information on water entitlements (that Queensland considers does not add to the function of its water market), notification on trade restrictions (which are to be contained in accredited water resource plans) – all of which duplicates information that already exists on the Queensland departmental and water service provider websites.
- In addition to the compliance cost to Government, it is doubtful that there is a net community or water market benefit. There may be a real potential to even confuse water market participants as to the authoritative source for accurate information.
- Similarly to the discussion in section 3 on accreditation of State planning frameworks and processes, there is an opportunity to explore whether a bilateral agreement could encompass existing State water market arrangements such as reporting arrangements and trade rules that are appropriate to Queensland conditions.

Water charges and pricing

- The Act and Basin Plan also establishes reporting obligations to the Australian Competition and Consumer Commission (ACCC) regarding water charges, with questionable benefits to the Queensland water market.
- Reporting requirements should be proportionate with the outcomes the Act is seeking to influence.
- Requiring annual reporting to the ACCC does not add to the transparency of water charges and fees and certainly does not add to the efficient functioning of Queensland's water market. It is not expected that a water user's behaviour will change as a result of publication

of the information. Additionally, the regular National Water Initiative (NWI) assessments already require reporting on water charges and this function just duplicates that existing obligation.

- The ACCC should not duplicate water charging and pricing functions (Part 4 and Part 4A) that are being carried out by the Queensland Competition Authority (QCA). Under s92 of the Act, there is an opportunity for the ACCC to accredit the QCA's arrangements for determining water charges, as an agency of the State. However, Queensland does not see the need for accreditation. Instead, the ACCC should not duplicate this function.
- For SunWater, compliance reporting on water pricing is required to both the ACCC and QCA, which have slightly different requirements. In addition, SunWater is also required to report on matters including pricing to the Murray–Darling Basin Authority for the purposes of the Basin Plan. These multiple layers of reporting places an administrative and compliance burden on SunWater that may otherwise be streamlined. SunWater estimates its annual cost for reporting on pricing and associated information to be about \$100,000 and start-up costs for Basin Plan water trading requirements to be in excess of \$50,000. See **Attachment 3** for further information on estimated SunWater costs.

Water information

- In relation to the BoM's function to collect water information, there is significant data input into BoM, however, there are minimal tangible outputs of benefit to water resource management in Australia. While BoM's traditional water outputs (e.g. flood interpretation and publications) are highly valued, the same cannot be said of their national water account outputs. The type and format of data collected must have a greater customer focus to improve its value for water research and management.
- There is a need for the Commonwealth to identify what data the BoM actually needs, data requirement priorities, and the desired specific client benefits. This may allow unnecessary reporting requirements to be removed and guide any high-priority improvements necessary to the Queensland systems that collect and report data (including those of SunWater and other water service providers).
- Queensland is yet to meet some of its Category 5 (water use) and Category 6 (water entitlement) reporting requirements as set out in the Water Regulations 2008 due to system limitations. Currently, Queensland cannot justify the required investment in upgrading these systems as the benefits associated with this investment cannot be established.
- The frequency of reporting for some matters as set out in the Water Regulations 2008 also appears excessive e.g. weekly reporting on permanent entitlement trades, and weekly reporting of leases. The permanent water market is essentially the same as the house and land market – weekly updates of house and land prices is not something that the property market is requesting. Price movements of permanent water trades occur over several months and not weeks, so the reporting frequency is burdensome with no market benefit. For data that does not change often, the frequency of reporting may be reduced to minimise costs. Additionally, reporting on a weekly basis means that the data provided often is in a raw (unvalidated) form and will need to be subsequently corrected.
- There also is some duplication of reporting requirements, such as for water availability and use and water entitlements and trades for the Murray–Darling Basin Authority under the Basin Plan (s71) and for BoM (s126) – the same data may be reported to a single entity such as BoM from which the authority may access.

Audit processes

- There are multiple levels of auditing and compliance reporting for the Basin Plan. Part 2 of the Act requires the National Water Commission to conduct an audit of the effectiveness of the implementation of the Basin Plan and water resource plans, whilst Chapter 13 of the Basin Plan also provides for periodic evaluations, reviews, audits and assessments.
- Basin States must also submit annual statements of assurance demonstrating compliance with the Basin Plan to the Authority under an *Implementation Agreement*, and must also submit an annual statement relating to compliance to the National Water Commission under the *National Partnership Agreement on Implementing Water Reform 2014*.

2. Rationalise Commonwealth institutional arrangements and simplify supporting multijurisdictional governance processes

- The growth of Commonwealth water agencies and the substantial array of multi-jurisdictional processes and committees following the arrival of the Act would benefit from fresh appraisal and subsequent rationalisation.
- The preamble of the Review's terms of reference suggests that the Murray–Darling Basin Ministerial Council is separately progressing a review of the governance arrangements. Queensland is not seeing any meaningful evidence of that occurring.
- An insight into the challenging institutional structure that currently exists is demonstrated by the diagram contained in Schedule C of the Agreement on Murray–Darling Basin Reform which emerged on 3 July 2008 (see **Attachment 1**). This framework then functions alongside of the roles and responsibilities for the Department of the Environment (DotE), the Commonwealth Environmental Water Office (CEWO), the National Water Commission (noting that this entity is to be abolished), the Bureau of Meteorology (BoM) and the Australian Competition and Consumer Commission (ACCC).
- A possible and simpler governance framework outlined in **Attachment 2** seeks to give a clearer separation between the water planning/regulatory/program delivery function from that of the water service provider.

3. Outcomes-based Basin Plan framework

- Implementation of the Basin Plan needs to be fit-for-purpose rather than being driven by one-size-fits-all approaches. Queensland believes that the Water Act is overly prescriptive. Although the fit-for-purpose principle is included in the *Basin Plan Implementation Agreement*, this principle does not appear to be well supported in the Act, which, inevitably, will result in a focus on whether the prescription is complied with rather than on whether the intended outcome has been achieved.
- The over prescription in the Act has correspondingly resulted in over prescription in the Basin Plan. To illustrate the point, the Act's eleven water resource plan accreditation requirements (s22(3)) have multiplied to around 54 accreditation requirements in the Basin Plan. Many of these requirements are southern-centric and do not necessarily fit the Queensland water planning and management context well (i.e. requirements appropriate to heavily regulated water systems are not necessarily appropriate to highly unregulated systems). Accreditation of product/content as well as a process is overly burdensome to both the MDBA as the regulator and Basin States as the regulated. There is little justification for the current 'big brother' process and reflects an immature relationship between the Commonwealth and Basin States.

- Queensland suggests that alternative arrangements to the current accreditation requirements should be explored, such as the possibility of establishing bilateral agreements with Basin States to accredit State planning frameworks and processes used in preparing Commonwealth water resource plans (Commonwealth WRPs) e.g. as allowed for in the Environment Protection Biodiversity Conservation Act 1999 (s45(2)). Queensland's legislated planning frameworks and processes provide for the sustainable management of water resources and align with the objectives of the Basin Plan.
- The process for the review and amendment (s45–52) of the Basin Plan is very protracted and could be streamlined for amendments that do not have basin-wide implications e.g. possible amendment of northern Basin Sustainable Diversion Limits as an outcome of the Northern Basin Work Program.
- Queensland water resource plans in the Murray–Darling Basin have transitional status until 2019. Prior to the review and replacement of the transitional plans, any amendments to these plans also need to undergo accreditation (s246). While most of the burden for this process will fall on the MDBA, this requirement is onerous. A simple requirement that any plan amendments must not be less consistent with the Basin Plan would suffice.

4. *Rationalise the Murray-Darling Agreement 2008 to align with post-Basin Plan situation (Schedule 1)*

- It is currently unclear as to how the 2008 Agreement and the Act relate to each other.
- In 2008, the Murray–Darling Basin Agreement (Schedule 1 to the Act) was expanded to include giving *effect to the Basin Plan*.
- Now that the Basin Plan is finalised, Queensland is seeing a polarisation of activities and accountabilities between those that are whole-of-Basin (Basin Plan and the main body of the Act) and those that are focussed predominately on the River Murray operations (which remains the essence of Schedule 1 to the Act).
- The ongoing relevance of the 2008 Agreement for Queensland is negligible as previously-relevant joint activities are either carried out under the Basin Plan or are no longer undertaken.
- The current functions of the 2008 Agreement are now primarily limited to River Murray operations and related programs. There is an opportunity to rationalise the Agreement to cover this function, with separate governance arrangements associated with Basin Plan implementation (see **Attachment 2**). Without rationalisation, the 2008 Agreement results in a cost burden to Queensland. For example, Queensland's Minister for Natural Resources and Mines is party to the Murray-Darling Basin Ministerial Council and is required to attend and make decisions on matters of tenuous relevance to Queensland.

5. *The Panel's assessment of water trading performance should consider the nature of Queensland's disconnected systems and relatively few market participants.*

Under s253 of the Act, the review must assess the extent to which water trading is occurring effectively and efficiently, water is being used in higher value uses, and how charging regimes are contributing to achieving the charging objectives for the Murray–Darling Basin. The progress of improving water information systems is also required to be examined.

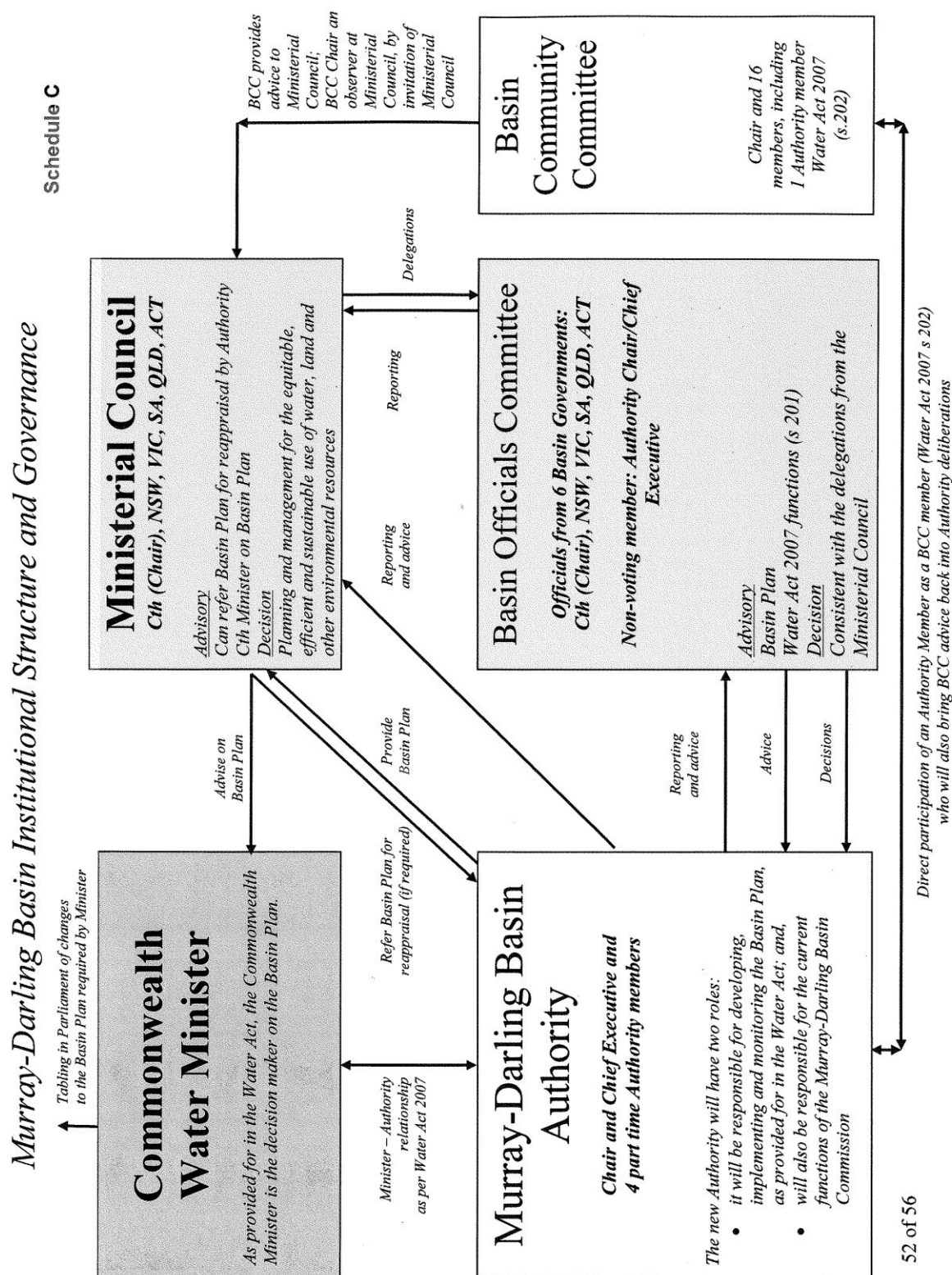
Water markets

- Given the Basin Plan trade rules commence on 1 July 2014, it is difficult for this review to make a judgement on market performance.
- Furthermore, the water market metrics in the Terms of Reference of this review (i.e. an assessment of the extent to which “...water trading is occurring effectively and efficiently” and “...water is being used in higher value uses”) need to be considered in the regional context in drawing any conclusion on Queensland’s water market performance. Such metrics are widely used and are regularly misinterpreted because low market activity and water not moving to a higher ‘value’ use (as opposed to its most highly ‘valued’ use) does not necessarily mean an ineffective or inefficient market.
- The water market is not a single homogenous entity and any assessment of its performance should consider Queensland’s discrete trade areas and how this directly influences its market design and depth.
- Queensland’s water markets are functional and cater for the practical needs of water users, The only ‘barriers’ to trade are legitimate restrictions to protect third-party security or reliability of water supply and environmental objectives. When assessing performance, other factors that influence trade activity should be considered, and include fundamentals related to hydrological connectivity of areas, demand for water and constraints related to soil types and climatic conditions and the impact on commodity types, etc.

6. The Panel’s assessment of Basin Plan performance

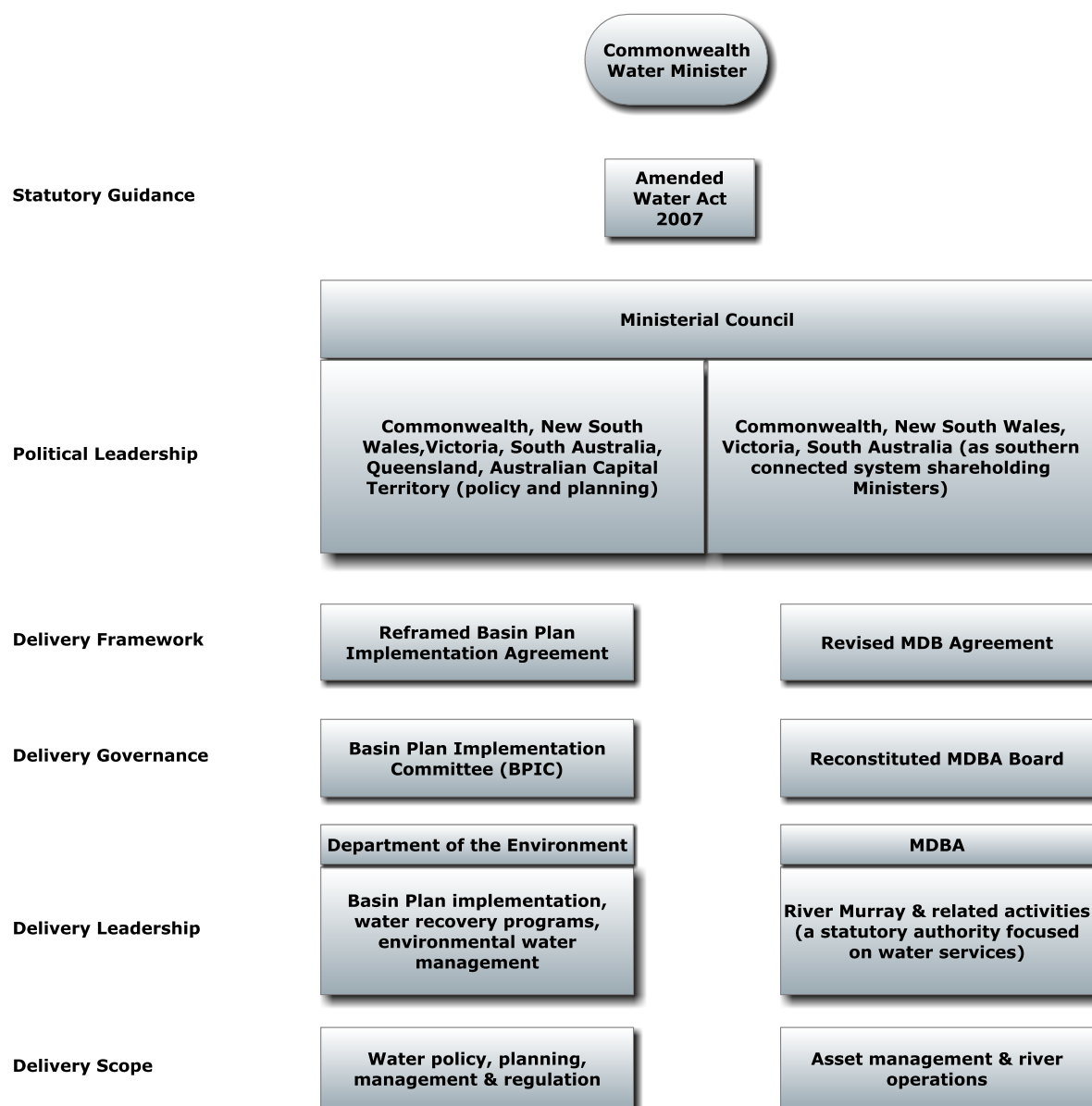
- As outlined in the review terms of reference, the panel is required to assess the extent to which the management objectives and outcomes, long-term sustainable diversion limits, targets, and other key elements in the Basin Plan are being met or implemented.
- There is an inherent difficulty in doing this when the Basin Plan is only about 18 months into its ten year life. A better time to undertake such an assessment might be at the half way mark of the of the Plan’s life i.e. 2017. This timeframe provides the scope for consideration to be given to the outcomes of the northern Basin review and the SDL adjustment processes which are currently underway.
- It is Queensland’s view that any future performance assessment should focus on whether the objectives and outcomes of the Basin Plan are being met rather than whether all the prescriptive elements of the Basin Plan are being fulfilled.
- In relation to assessing the extent to which Sustainable Diversion Limits (SDLs) are being met, the situation in Queensland catchments is not the same as it is for the rest of the Basin. Basin-wide, the current story is that two thirds of the so-called gap has been bridged and there are multiple avenues available that can minimize the need for further buyback. However in Queensland, only one third of the gap has been bridged to date (and no groundwater has been recovered) and buyback seems likely to remain the dominant recovery mechanism for the future.
- The previous Commonwealth Government acknowledged that insufficient science was done to establish the starting SDL propositions in the northern Basin - particularly in relation to the northern zone shared reduction amount. This resulted in the Authority agreeing to conduct research and investigations into the basis for the SDL that has been set for the northern shared zone. The Panel is encouraged to include this matter in its assessment of ‘other key elements’ of the Basin Plan.

Attachment 1 — Murray-Darling Basin institutional structure and governance arrangements (as presented in Schedule C of the Agreement on Murray-Darling Basin Reform, 3 July 2008)



Attachment 2 — Murray-Darling Basin institutional and governance reform — possible option suggested by Queensland

Informing the 2014 Commonwealth Water Act Review A Governance Reform Option



Attachment 3 — SunWater’s estimated costs of reporting water information

SunWater is a scheme operator for 23 water supply schemes in Queensland, of which six are located in the Queensland Murray–Darling Basin. In addition to SunWater’s reporting requirements to the (Queensland) Department of Natural Resources and Mines, additional requirements arise from the *Water Act 2007* (Cth) provisions:

- Preparation of annual returns to the ACCC on the Queensland Murray–Darling Basin schemes – approximately 3 days per year or \$3,300 per annum.
- Compliance with ACCC water pricing requirements, which differ in some respects from requirements of the Queensland irrigation water pricing regulator (Queensland Competition Authority) — approximately \$550 per annum.
- System set-up and ongoing costs associated with data upload to the BOM. Approximately \$45,000 per annum (including licencing). An additional \$43,000 has been spent this year to upgrade the data transfer system to ensure ongoing compliance with the regulations. This could increase as new requirements have just been released.
- Compliance (starting 1 July 2014) with the Basin Plan water trading requirements, regulated by the MDBA e.g. provision of price and other data associated with approval of seasonal water assignments. It is estimated that system set-up costs may be between \$5,000 to \$30,000 initially.
- Administrative costs, costs for due diligence on keeping up to date with changing requirements, interactions with regulators and other associated personnel costs are estimated at \$50,000 per annum.

These reporting costs place an administrative and compliance burden (both ITC system costs and personnel costs) on SunWater.