Recommendations

CHAPTER 2: MANAGEMENT OF BASIN WATER RESOURCES

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.

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 program 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.

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.

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.**

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.

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.

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).

CHAPTER 4: BASIN WATER CHARGE AND MARKET RULES

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.

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.

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.

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.

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.

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.

CHAPTER 5: MURRAY–DARLING BASIN WATER RIGHTS INFORMATION SERVICE

RECOMMENDATION 14

The Panel recommends that Part 5 of the Act, 'Murray–Darling Basin Water Rights Information Service', be repealed.

CHAPTER 6: COMMONWEALTH ENVIRONMENTAL WATER HOLDER

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.**

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.

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.

CHAPTER 7: WATER INFORMATION

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.

CHAPTER 8: ENFORCEMENT

RECOMMENDATION 19

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

CHAPTER 9: MURRAY–DARLING BASIN AUTHORITY

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.

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.

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.

CHAPTER 11: MISCELLANEOUS

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.

Conclusions

Chapter 1: Objects and operating framework of the Act

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.

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.

Chapter 2: Management of Basin water resources

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

2.12: EFFICIENCY MEASURES

The Australian Government should engage and communicate with stakeholders at an early stage on the program 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 Program so that the impacts can be appropriately scrutinised and made transparent.

Chapter 3: Audits by the National Water Commission

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.

Chapter 4: Basin water charge and market rules

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.

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.

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 program to create more efficient services for users.

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 COAG for trade processing and approval times.

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.

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.

Chapter 6: Commonwealth Environmental Water Holder

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.

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.

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.

Chapter 7: Water information
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.
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.
Chapter 8: Enforcement
8.1: ENFORCEMENT
A sensible and cooperative approach to monitoring and compliance activities should be applied by regulators under the Act.
Chapter 9: Murray–Darling Basin Authority
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.
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.
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.