

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Agriculture and Water Resources

Water Act 2007

Basin Plan Amendment Instrument (No. 1) 2018

The *Basin Plan 2012* (the Basin Plan) provides for the integrated management of Murray-Darling Basin water resources in a way that promotes the objects of the *Water Act 2007* (the Water Act).

The *Basin Plan Amendment Instrument (No. 1) 2018* (the Amendment Instrument) was prepared by the Murray-Darling Basin Authority (the Authority) following a direction from the Minister made under section 49AA of the Water Act. The Amendment Instrument is the same in effect as a Basin Plan amendment that has previously been disallowed, or taken to have been disallowed, by either House of Parliament, that is, the *Basin Plan Amendment Instrument 2017 (No. 1)* (the Disallowed Instrument). This instrument was disallowed by the Senate on 14 February 2018.

As this amendment is the same in effect as the Disallowed Instrument and prepared under section 49AA of the Water Act, the Authority is not required under subsection 49AA(4) to undertake the extensive consultation process under sections 46-48 of the Water Act.

The Amendment Instrument amends the Basin Plan to implement changes to the Basin Plan arising from several reviews: the Northern Basin Review of sustainable diversion limits (SDLs); a review of SDLs for three groundwater areas; and the Australian Government's response to the independent review of the Water Act. The Amendment Instrument also includes a number of other technical amendments to ensure the smooth operation of the Basin Plan. These include better aligning water resource plan (WRP) areas with state water planning boundaries; modifications to SDL resource unit boundaries; clarifying certain water trading rules; allowing additional time for states to nominate a preferred allocation of the shared reduction amounts; providing separate requirements for groundwater water quality management plans; and clarifying requirements relating to determining compliance with SDLs.

Legislative Authority

This Amendment Instrument was adopted under section 49AA of the Water Act. The Disallowed Instrument was prepared under sections 45 to 48 of the Water Act. As the Amendment Instrument is the same in effect as the Disallowed Instrument, both legislative processes are described under the heading 'Consultation' below.

Background

The background to each of the following parts of the Amendment Instrument is detailed below in Attachment A, in the following order:

1. Northern Basin Review amendments;
2. Groundwater Reviews and other groundwater amendments;
3. Water Act Review amendments; and

4. Other technical amendments.

Consultation

The Authority prepared the Disallowed Instrument in accordance with the consultation requirements detailed in sections 46 to 48 of the Water Act, as summarised below. As the Amendment Instrument has been prepared under section 49AA of the Water Act, the Authority is not required to undertake the extensive consultation process under sections 46-48 of the Water Act. The consultation process undertaken for the Disallowed Instrument is outlined below.

There are a number of limitations on the section 49AA directions power to ensure that it is not used inappropriately, as discussed further below. For any Basin Plan amendment prepared by the Authority under this power, it must be the same in effect as the disallowed amendment. This safeguard ensures that the Authority cannot propose changes to the Basin Plan amendment that have not previously been subject to the detailed process in the Water Act, including the Authority's consultations with the Basin Officials Committee, Basin Community Committee, the Basin States, the Murray-Darling Basin Ministerial Council and the public.

In addition, the section 49AA directions power is limited to amendments which have been disallowed in the previous 12 months. This limitation ensures that the issues raised through all consultations (including public consultation) undertaken by the Authority on the disallowed amendment under sections 46 to 48 of the Water Act remain both relevant and timely. In this case for the Amendment Instrument, the section 49AA direction (the *Water Act (Northern Basin Review and Other Measures) Direction 2018*) relating to the Disallowed Instrument commenced on 29 June 2018 and this is less than six months from the date of disallowance of the Disallowed Instrument, that is, 14 February 2018.

Consultation for the preparation of the *Basin Plan Amendment Instrument 2017 (No. 1)* (the Disallowed Instrument)

The Authority may prepare an amendment of the Basin Plan and give the proposed amendment to the Minister for adoption (under section 45 of the Water Act).

In preparing the Disallowed Instrument, the Authority undertook the consultation processes detailed in sections 46-48 of the Water Act. Under sections 46-48 of the Water Act, the Authority must consult with Basin States, the Basin Officials Committee and the Basin Community Committee (subsection 46(1), Water Act). The Authority must obtain, and have regard to, the advice of the Australian Competition and Consumer Commission in preparing any amendment of the water trading rules in Chapter 12 of the Basin Plan (subsection 46(2), Water Act). Once the Authority has prepared a proposed amendment, the Authority must allow the public and the Basin States a minimum of eight weeks to make submissions on the proposed amendment to the Basin Plan (section 47, Water Act).

The Authority consulted with the public and the Basin States on the proposed Disallowed Instrument from 22 November 2016 until 24 February 2017. Members of the public were invited to provide feedback on the proposed amendments and information sessions were held throughout the Basin. The Authority received 2,144 submissions and held 50 meetings during this public consultation period. The Authority held meetings and talks with community

members, as well as irrigators, floodplain graziers, Indigenous people and groups, conservation groups, local government, natural resource management groups and Basin State governments. The Authority considered the issues raised by the Basin States and the public during consultation, and the community consultation report was published on the Authority's website.

Following the public and Basin State consultation, the Authority gave the Murray-Darling Basin Ministerial Council (the Ministerial Council) the proposed Disallowed Instrument for comment on 11 May 2017 for a six week period. On 16 June 2017, the Ministerial Council provided a notice with two consensus comments on the proposed Disallowed Instrument. The Authority incorporated further amendments that addressed these comments to the proposed Disallowed Instrument and provided it back to the Ministerial Council for comment on 26 June 2017 for a three week period. The Ministerial Council had no comments on the proposed Disallowed Instrument by 17 July 2017.

The Authority then provided the proposed Disallowed Instrument to the Minister for adoption, noting that the Minister had the opportunity to provide suggestions and directions, in accordance with the requirements of this section (section 48, Water Act). The Disallowed Instrument was adopted by the Assistant Minister for Agriculture and Water Resources on 13 November 2017 and commenced in law on 14 November 2017. The Disallowed Instrument was subsequently tabled in both Houses of Parliament and was subject to disallowance in accordance with the requirements of the *Legislation Act 2003*. On 14 February 2018 this instrument was disallowed by the Senate.

Consultation for the *Basin Plan Amendment Instrument (No. 1) 2018 (the Amendment Instrument)*

The Minister may direct the Authority to prepare an amendment of the Basin Plan under subsection 49AA(1) of the Water Act, that has been disallowed (or is taken to have been disallowed) under subsection 42(1) or (2) of the *Legislation Act 2003*, without going through the full consultation process under sections 46 to 48 of the Water Act. Section 49AA of the Water Act was inserted following amendments made by the *Water Amendment Act 2018* which commenced on 28 June 2018.

On 29 June 2018, the Minister directed the Authority, pursuant to the *Water Act (Northern Basin Review and Other Measures) Direction 2018*, to prepare a Basin Plan amendment the same in effect as the Disallowed Instrument, which was disallowed by the Senate on 14 February 2018. This Amendment Instrument, made following the section 49AA direction on 29 June 2018, is the same in effect as the Disallowed Instrument.

Sections 46 to 48 of the Water Act do not apply to an amendment of the Basin Plan that is prepared or adopted under subsection 49AA(4) of the Water Act. Under subsection 49AA(6) of the Water Act, a number of changes are specified as not preventing an amendment from being the same in effect as the earlier amendment (as defined in section 49AA). These include: a change that is required because another amendment of the Basin Plan has commenced after the commencement of the earlier amendment; or a change that is required because a requirement under the Basin Plan has already occurred, or been met, after the commencement of the earlier amendment.

In directing the Authority to prepare a Basin Plan amendment the same in effect as the Disallowed Instrument, the Minister directed the Authority to include the matters specified in paragraphs 2(2)(a), (b) and (c) of Schedule 10 to the Water Act. These paragraphs provide that certain amendments to the Basin Plan made in response to a request by the Minister to remake the Disallowed Instrument do not prevent those amendments from being the same in effect as the Disallowed Instrument.

- Paragraph 2(2)(a) provides for a change to the definition of re-allocation adjustment request to enable a request to be made in anticipation of this provision being amended in the Basin Plan;
- Paragraph 2(2)(b) provides for a change in subsection 6.05(13) to provide that the Authority must publish variations to the SDL resource unit shared reduction amounts on its website, even when there has not been an initial re-allocation adjustment requirement; and
- Paragraph 2(2)(c) provides for a change to section 7.14A that will reflect that the 2017 sustainable diversion limit adjustments have already occurred.

The Amendment Instrument is a legislative instrument, which is required to be tabled in Parliament and is subject to disallowance in accordance with the requirements of the *Legislation Act 2003*. This provides for the same parliamentary scrutiny of the Amendment Instrument as for the Disallowed Instrument.

Limitations on the directions power

Section 49AA of the Water Act provides that the power of the Minister to give a direction to the Authority to prepare another Basin Plan amendment is subject to limitations to ensure it is not used inappropriately. These limitations are paramount to ensure that the integrity of the consultation process conducted for the disallowed amendment is retained and that the Authority does not propose any amendments to the Basin Plan that have not been subject to the consultation already undertaken for the disallowed amendment. The extensive consultation process for a Basin Plan amendment requires consultation with the Basin Officials Committee, Basin Community Committee, the Basin States, the Murray-Darling Basin Ministerial Council and the public.

The limitations on the Minister's power to direct the Authority under section 49AA are as follows:

- an amendment prepared under the Minister's direction must be the same in effect as a disallowed amendment which was originally prepared under Subdivision F of Division 1 of Part 2 of the Water Act (that is, in accordance with the consultation requirements set out in sections 46 to 48 of the Water Act). This limitation ensures that the amendments have already been subject to the consultation requirements of the Water Act and provides a safeguard to ensure that the Authority cannot include any new or different amendments (except as permitted under section 49AA and the transitional provisions in Schedule 10 to the Water Act), as these would not achieve the same effect as the disallowed amendment.
- the directions power is limited to amendments which have been disallowed in the previous 12 months. This limitation ensures that the public consultation that took place on the disallowed amendment is still relevant and timely.

- the Minister's power to direct the Authority cannot be delegated to an executive or officer of the Department of Agriculture and Water Resources (the Department). This means that the power can only be exercised by the Minister.
- an amendment prepared pursuant to a direction under section 49AA is still required to be tabled in both Houses of Parliament for 15 sitting days as a disallowable legislative instrument. This provides for the same parliamentary scrutiny of the Basin Plan amendment as for the Disallowed Instrument, which means that the amendment prepared under the power is a disallowable instrument. If an amendment made under section 49AA is subsequently disallowed (that is, disallowed a second time), the Minister will not be able to direct the Authority to prepare another amendment under section 49AA.

Details/ Operation

Further details of the Amendment Instrument are set out in the Attachment A.

Other

The Authority certified to the Office of Best Practice Regulation that it had completed a regulatory impact statement-like process for the Disallowed Instrument. The Office of Best Practice Regulation confirmed there were no impacts on regulatory burden associated with the Disallowed Instrument, identification number 20794. The Amendment Instrument is the same in effect as the Disallowed Instrument, that is, it achieves the same outcomes. The Department has certified to the Office of Best Practice Regulation that the analysis undertaken by the Authority for the Disallowed Instrument is sufficient, identification number 20794.

The Amendment Instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

The Amendment Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Items 62 to 67 commence on the commencement of item 1 of Schedule 1 to the *Water Amendment (Review Implementation and Other Measures) Act 2016*. All other items commence on the day after registration.

Details of the *Basin Plan Amendment Instrument (No. 1) 2018 (the Amendment Instrument)*

Section 1 – Name of instrument

This section provides that the name of the instrument is the *Basin Plan Amendment Instrument (No. 1) 2018*.

Section 2 – Commencement

This section provides that the Amendment Instrument (excepting items 62 to 67) commences on the day after it is registered. Items 62 to 67 commence on the commencement of item 1 of Schedule 1 to the *Water Amendment (Review Implementation and Other Measures) Act 2016*.

Section 3 – Amendment of the Basin Plan

This section provides that the *Basin Plan 2012* (the Basin Plan) is amended as set out in Schedule 1.

Schedule 1 – Amendments *Basin Plan 2012*

The background to each of the following parts of the Amendment Instrument is detailed below, in the following order:

1. Northern Basin Review amendments;
2. Groundwater Reviews and other groundwater amendments;
3. Water Act Review amendments; and
4. Other technical amendments.

1. Northern Basin Review amendments (Items 14 to 17, 74, 76, 79 and 80)

In finalising the Basin Plan in 2012, the Murray-Darling Basin Authority (the Authority) undertook to conduct research and investigations into aspects of the Basin Plan in the northern Basin (the Northern Basin Review), including the basis for long-term average sustainable diversion limits (SDLs) for surface water SDL resource units (see note to subsection 6.06(1) of the Basin Plan). The purpose of the Northern Basin Review was to improve the Authority's knowledge of the northern Basin, including the water needs of water-dependent ecosystems, and how water recovery has affected communities. The Authority's Northern Basin Review report is published at <https://www.mdba.gov.au/basin-plan-roll-out/basin-plan-amendments/basin-plan-amendments-northern-basin>.

The Amendment Instrument changes the SDLs for some northern Basin surface water SDL resource units to reflect the outcomes of the Northern Basin Review. The Authority concluded that the increase, in net terms, to the SDLs in the northern Basin and the reduction in the water recovery target minimises socio-economic impacts in northern Basin communities and delivers almost equivalent environmental outcomes. The Murray-Darling Basin Ministerial

Council (the Ministerial Council), in considering the proposed Disallowed Instrument under section 47A of the Water Act, agreed to the proposed reduction in the water recovery target in the northern Basin from 390 gigalitres (GL) to 320 GL. The Ministerial Council also agreed to an in-principle commitment to the implementation of a comprehensive suite of environmental outcomes for the northern Basin, subject to funding being available. These agreed environmental works and measures (referred to as toolkit measures in the Northern Basin Review) target improved water management and environmental outcomes across the northern Basin.

The Amendment Instrument also includes changes to the northern Basin zone shared reduction amount. The northern Basin zone will be divided into two zones, the northern Basin Queensland zone and the northern Basin New South Wales zone, each with its own shared reduction target.

Changes to surface water sustainable diversion limit resource units

The Basin Plan sets long-term average SDLs for all Basin water resources. SDLs represent the maximum long-term annual average quantities of water that can be taken on a sustainable basis from Basin water resources as a whole, and from each SDL resource unit. A surface water SDL resource unit describes the geographical area which contains a set of water resources, generally based on catchments. The *Water Act 2007* (the Water Act) requires that SDLs reflect an environmentally sustainable level of take.

When the Basin Plan was prepared in 2012, it was estimated that water users in the northern Basin were extracting 3,858 GL a year on average. The Basin Plan set the limit for consumptive use in the northern Basin at an estimated 3,468 GL — around 10% or 390 GL less for consumptive use on average a year.

The Amendment Instrument increases, in net terms, the SDLs in the northern Basin and changes the reduction amount for the northern Basin SDLs from 390 GL a year to 320 GL a year. The Authority is satisfied that this change represents an environmentally sustainable level of take and strikes the best balance in ensuring healthy river systems while minimising the impacts on communities. **Item 15** includes a note at subsection 6.04(3) of the Basin Plan that states this change in the reduction amount for the northern Basin SDLs.

Item 14 of the Amendment Instrument also updates the note at subsection 6.04(2) to reflect this change to the northern Basin SDLs at a Basin-wide level and the increase in the estimate of the baseline diversion limit for the Australian Capital Territory (ACT), as discussed below in **item 94**. The note now states that the Authority had estimated, as at 14 November 2017, the long-term average SDL for all surface water SDL resource units to be 10,945 GL per year, which reflects a reduction of 2,680 GL per year from the Authority's estimate of the baseline diversion limit.

The Basin Plan divides the 320 GL reduction amount for the northern Basin into a volume to meet local environmental needs (the local reduction amount) and a volume that contributes to a shared reduction amount to meet the environmental needs of the Barwon–Darling River.

Changes to surface water SDL resource unit local reduction amounts

The Amendment Instrument sets out various changes to Schedule 2 (Matters relating to surface water SDL resource units) of the Basin Plan, which sets out the long-term average SDLs for all surface water SDL resource units in the Murray-Darling Basin. The Amendment Instrument changes the local reduction amount specified in Schedule 2 for several northern Basin SDL resource units (see **items 74, 76, 79 and 80**). Following the amendments to the Basin Plan made by the *Basin Plan Amendment (SDL Adjustments) Instrument 2017*, the SDL adjustment amount has been added to the formula for calculating SDLs in these previously mentioned items. Table 1 (below) sets out the previous local and shared reduction amounts, and the current local and shared reduction amounts in the Amendment Instrument for all northern Basin surface water SDL resource units.

Table 1: Changes to the local and shared reduction amounts for northern Basin surface water SDL resource units

Sustainable diversion limit resource unit		Previous (in GL per year)	Current (in GL per year)
QLD local reduction amounts	Paroo (SS29)	0	0
	Warrego (SS28)	8	8
	Nebine (SS27)	1	1
	Condamine-Balonne (SS26)	100	100
	Moonie (SS25)	0	0
	Queensland Border Rivers (SS24)	8	14
	Queensland total local reduction	117	123
NSW local reduction amounts	Intersecting Streams (SS17)	0	0
	Barwon-Darling Watercourse (SS19)	6	32
	NSW Border Rivers (SS23)	7	7
	Gwydir (SS22)	42	42
	Namoi (SS21)	10	20
	Macquarie-Castlereagh (SS20)	65	55
	NSW total local reduction	130	156
Northern Basin total local reduction		247	279
Northern Basin QLD zone shared reduction			17
Northern Basin NSW zone shared reduction		143 (the previous Northern Basin zone)	24
Northern Basin total shared reduction		143	41
Northern Basin total local and shared reduction		390	320

Changes to surface water SDL resource unit shared reduction amounts

Item 16 of the Amendment Instrument amends subsection 6.05(2) of the Basin Plan, replacing the northern Basin zone (covering Queensland and New South Wales) with the northern Basin Queensland zone and the northern Basin New South Wales zone. This change assists each Basin State to administer the allocation of the shared reduction in the SDL

resource units in each of their respective zones. **Item 16** also changes the northern Basin zone shared reduction amount from 143 GL a year and splits the shared reduction into 17 GL a year for the northern Basin Queensland zone and 24 GL per year for the northern Basin New South Wales zone. This change relates to subsection 6.05(3) of the Basin Plan (see **Item 16**).

The following SDL resource units comprise the ***northern Basin Queensland zone***:

- Condamine-Balonne
- Moonie
- Nebine
- Paroo
- Queensland Border Rivers
- Warrego (SS28).

The following SDL resource units comprise the ***northern Basin New South Wales zone***:

- Barwon-Darling Watercourse
- Gwydir
- Intersecting Streams
- Macquarie-Castlereagh
- Namoi
- NSW Border Rivers.

Item 16 of the Amendment Instrument, subsection 6.05(3), details that the shared reduction targets for the two new northern Basin zones are as follows:

- a) ***northern Basin Queensland zone*** — 17 GL per year
- b) ***northern Basin New South Wales zone*** — 24 GL per year.

These volumes have been calculated using the formula set out in subsection 6.05(4) of the Basin Plan, which allocates the reduction target for the zone in proportion to the amount of its baseline diversion limit, including any component of water diverted for urban water use, but excluding any component due to interception activities.

The Authority may update the distribution of these shared reduction volumes assigned to each of these zones on the provision of a re-allocation adjustment request by either the Queensland government, in respect of the northern Basin Queensland zone, and New South Wales government, in respect of the northern Basin New South Wales zone, in accordance with the provisions of section 6.05 of the Basin Plan. Note that **item 16** is also discussed below in 4. *Other Technical Amendments – Shared reduction amount methodology* of this explanatory statement.

Environmental works and measures (referred to as toolkit measures)

The Amendment Instrument changes the northern Basin reduction amount from 390 GL a year to 320 GL a year. In addition, the Australian, New South Wales and Queensland governments have committed to implementing a number of toolkit measures designed to improve water management. These toolkit measures include arrangements to protect environmental flows, targeted recovery of water, event-based mechanisms (such as options for pumping and store-and-release), improving the coordination and delivery of environmental water, and environmental works and measures to promote fish movement and

habitat. In the Gwydir in particular, this includes measures to remove constraints and manage flows to the wetlands.

Item 15 of the Amendment Instrument includes a note at subsection 6.04(3) that recognises the importance of implementing a package of toolkit measures and the need for commitment from the State and Commonwealth governments.

Item 17 repeals the note below subsection 6.06(1). This is a spent provision as the research and investigations in 2015 into certain aspects of the Basin Plan in the northern Basin have now been completed.

2. Groundwater Reviews and other groundwater amendments

The Amendment Instrument makes a number of amendments to various provisions in the Basin Plan that are specific to groundwater, including:

- a) Amendments to implement the outcomes of three groundwater reviews;
- b) Other groundwater baseline diversion limit and SDL changes;
- c) Changes to certain groundwater water resource plan (WRP) area boundaries;
- d) Changes to certain groundwater SDL resource unit boundaries;
- e) Introducing a new compliance test for groundwater SDL resource units; and
- f) Providing separate requirements for groundwater water quality management plans.

a) Amendments to implement the outcomes of three groundwater reviews (items 18, 44, 45, 51, 95)

The Basin Plan introduced, for the first time, SDLs on all groundwater use in the Basin. Subsections 6.06(6)–(9) of the Basin Plan included a requirement for reviews of the baseline diversion limits and SDLs for three groundwater areas:

- Western Porous Rock SDL resource unit (NSW);
- Eastern Porous Rock WRP area (NSW); and
- Goulburn-Murray: Sedimentary Plain SDL resource unit (Victoria).

The Authority engaged three expert panels to separately review the limits for each of the three groundwater areas following a request from the governments of New South Wales and Victoria (the Groundwater Reviews). The Groundwater Reviews are published on the Authority's website at <https://www.mdba.gov.au/basin-plan-roll-out/basin-plan-amendments/basin-plan-amendments-groundwater>. **Item 18** deletes subsections 6.06(6)–(9) of the Basin Plan as the three Groundwater Reviews have been undertaken, so these provisions are now spent.

As a result of these Groundwater Reviews, and subsequent requests from Basin State governments, the Amendment Instrument changes a number of Basin Plan provisions dealing with how groundwater is managed in the review areas. The Groundwater Reviews found that the long-term environmentally sustainable level of take in these areas could be increased as long as the Basin States enforced specific local management rules. The increase in the extraction limits will have minimal potential impact on the environment, as mandatory rules will be in place for Basin State governments to offset any effects.

Local management rules and adjustment to review provision

The Amendment Instrument implements the recommendations of the review panels of the three groundwater areas covered by the Groundwater Reviews. In particular the Authority and Basin States focused on allowing more water to be taken from the three groundwater areas once the states demonstrate how they will limit impacts to acceptable levels.

To implement these recommendations of the review panels, **item 45** of the Amendment Instrument adds a section (section 10.21) to the Basin Plan that makes the local groundwater management rules (section 10.18 to section 10.20) mandatory in the three groundwater areas the groundwater reviews examined. **Item 45** also deletes the previous section 10.21. This section 'Environmental outcomes relating to groundwater' has been repealed because it has been added as a new section 10.35C 'Consideration to be given to rules or measures' in the Amendment Instrument, in respect of requirements to protect the structural integrity of groundwater units and water quality for groundwater water quality management plans (see **item 49** as discussed below).

The reviews of the New South Wales groundwater areas also recommended that a process be included to review these mandatory rules. **Item 51** of the Amendment Instrument adds an additional section 10.47A, which requires New South Wales and Victoria to review both the effectiveness of the implementation of the local management rules and the extent to which the rules achieve the objectives in sections 10.21 and 10.35C whenever a relevant WRP referred to in this section is reviewed.

Item 44 of the Amendment Instrument clarifies the operation of section 10.20 to ensure that structural damage to an aquifer is not too broadly defined, for instance to include the drilling of a basic rights bore which could cause some structural damage. This will enable reasonable implementation of the WRP requirements of the Basin Plan. **Item 44** amends section 10.20 to provide that a WRP must be prepared having regard to whether it is necessary for it to include rules to ensure the operation of the plan does not compromise either the overall structural integrity of the aquifer arising from take within the SDLs, or the overall hydraulic relationships between and within groundwater systems, or between groundwater and surface water systems.

Changes to matters relating to groundwater SDL resource units, including SDL changes

Schedule 4 of the Basin Plan lists 80 groundwater SDL resource units, including name, SDL volume, baseline diversion limit volume and the definition of the groundwater resources covered by each SDL resource unit.

The panels for the Groundwater Reviews for the two New South Wales groundwater areas and the one Victorian groundwater SDL resource unit supported an increase in SDL volumes in the four SDL resource units reviewed (see Table 2 below and **item 95**). This reflects the view of the panels that a less conservative approach to setting SDLs than that previously taken by the Authority can be justified if suitable management actions are in place to manage the potential impacts of increased groundwater take. The Amendment Instrument amends the Basin Plan to provide for mandatory local management rules in section 10.21 (see **item 45** as discussed above). The Authority recognised this as the most appropriate mechanism for managing the potential impacts of increasing the SDLs above their current volumes.

The Groundwater Review panel for the Victorian groundwater areas also recommended small changes to the SDL resource unit boundaries in the review area to align them with the Victorian groundwater unit planning boundaries. This recommendation was adopted for the Goulburn-Murray: Sedimentary Plain and Goulburn-Murray: Highlands groundwater SDL resource units in the Amendment Instrument. Also, after consultation with Victoria, this small change to the boundaries was applied to the groundwater SDL resource units in the Victorian Wimmera-Mallee groundwater WRP area for consistency, noting Victoria has only two groundwater WRPs. This change to the boundaries has resulted in a small reallocation of SDLs between two SDL resource units (Wimmera-Mallee: Sedimentary Plain and Wimmera-Mallee: Highlands) in the Wimmera-Mallee (groundwater) WRP area (Victoria) (GW3) (see **item 95** of the Amendment Instrument, in particular items 6 and 7 in Schedule 4 of the amended Basin Plan).

Note that section 22, item 2 of the Water Act states that the water resource planning areas (including SDL resource unit boundaries) in the Basin Plan should be aligned, as far as possible, with the state water resource planning areas. Table 2 below also illustrates how the SDL has changed for these Victorian SDL resource units.

b) Other groundwater baseline diversion limit and SDL changes (item 95)

In addition to an increase in SDLs in the four SDL resource units as a result of the Groundwater Reviews, some other changes to baseline diversion limits and SDLs were made in groundwater areas, as outlined below. These changes to SDLs are all minor and still ensure an environmentally sustainable level of take in these groundwater areas, as further explained below.

South Australia asked the Authority to amend a number of baseline diversion limits and SDL volumes in the South Australian Murray Region WRP area (see **item 95** of the Amendment Instrument, in particular items 10 and 15 in Schedule 4 of the amended Basin Plan). This was to account for some minor inaccuracies in the baseline diversion limit and SDL volumes when the Basin Plan was being made. Table 2 below also illustrates how the SDL has changed for these SDL resource units, that is, the Mallee (Murray Group Limestone) SDL resource unit has decreased by 2.1 GL per year (both the SDL and the baseline diversion limit) and the SA Murray Salt Interception Schemes SDL resource unit baseline diversion limit has increased by 2.1 GL per year. The SDL for the SA Murray Salt Interception Schemes SDL resource unit was not increased because there was considered to be room for growth under the current SDL.

The ACT requested the Authority to increase the baseline diversion limit estimates for groundwater, based on new information, recent investigations and the subsequent issuing of entitlements, which indicate that the Commonwealth was using more water in the ACT in 2009 than was previously allowed for. Accordingly, **Item 95** of the Amendment Instrument increases the baseline diversion limit for the ACT's groundwater WRP area by 0.57 GL per year, from 1.70 GL to 2.27 GL per year (see item 1 in Schedule 4 of the amended Basin Plan). No change to the ACT groundwater SDL is proposed as there is still room for growth under the current SDL of 3.16.

In total, the groundwater baseline diversion limit and SDL changes detailed in this explanatory statement at *2(a) Amendments to implement the recommendations of three groundwater reviews* and *2(b) Other groundwater baseline diversion limit and SDL changes*, will affect eight SDLs and three baseline diversion limits across six WRP areas (two in New

South Wales, two in Victoria, one in South Australia and one in the ACT). The SDL changes increase the Basin-wide total for groundwater SDLs from 3,334 GL per year to 3,494 GL per year (an overall increase of 159.9 GL per year or 4.8%). The reviews found that the long-term environmentally sustainable level of take in these areas could be increased as long as the Basin States enforced specific local management rules, the requirement for which is included in the Amendment Instrument. Other minor SDL changes do not affect the environmentally sustainable level of take.

Table 2 below provides the SDLs of the SDL resource units where the SDL is changing. These changes are included in **item 95** of the Amendment Instrument (see items 3, 4, 6, 7, 10, 22, 23, 24 in Schedule 4 of the amended Basin Plan). Table 2 also includes the state water management plan limits for these SDL resource units which differ from the baseline diversion limit in these cases due to the extent of issued entitlements at the time the Basin Plan was made. Baseline diversion limit changes are also included in **item 95** of the Amendment Instrument (see items 1, 10, 15 in Schedule 4 of the amended Basin Plan). Table 2 below also illustrates how the baseline diversion limit and the SDL has changed for these SDL resource units.

Table 2: Groundwater baseline diversion limit and sustainable diversion limit changes

SDL Resource unit	Previous BDL (GL/y)	Basin Plan BDL (GL/y)	BDL change (GL/y)	Previous SDL (GL/y)	Basin Plan SDL (GL/y)	SDL change (GL/y)
<i>NSW Murray-Darling Basin Porous Rock WRP area (NSW) (GW6)</i>						
Western Porous Rock SDL resource unit (GS50)	63.1	63.1	No change	116.6	226.0	+109.4
Gunnedah-Oxley Basin MDB SDL resource unit (GS17)	22.1	22.1	No change	114.5	127.5	+13.0
Sydney Basin MDB SDL resource unit (GS41)	3.12	3.12	No change	17.2	19.1	+1.9
<i>Goulburn-Murray WRP area (Vic) (GW2)</i>						
Goulburn-Murray: Sedimentary Plain SDL resource unit (GS8)	203.5	203.5	No change	203.5	223.0	+19.5
Goulburn-Murray: Highlands SDL resource unit (GS8)	38.3	38.3	No change	50.5	68.7	+18.2
<i>Wimmera-Mallee (groundwater) WRP area (Victoria) (GW3)</i>						
Wimmera-Mallee: Sedimentary Plain SDL resource unit (GS9b)	68.9	68.9	No change	190.7	190.1	-0.6
Wimmera-Mallee: Highlands SDL resource unit (GS9a)	1.26	1.26	No change	2.14	2.75	+0.6
<i>South Australian Murray WRP area (SA) (GW4)</i>						

SDL Resource unit	Previous BDL (GL/y)	Basin Plan BDL (GL/y)	BDL change (GL/y)	Previous SDL (GL/y)	Basin Plan SDL (GL/y)	SDL change (GL/y)
Mallee (Murray Group Limestone) SDL resource unit (GS3b)	65.7	63.6	-2.1	65.7	63.6	-2.14
South Australian Murray Salt Interception Schemes SDL resource unit (GS7)	11.1	13.2	+2.1	28.6	28.6	No change
<i>Australian Capital Territory (groundwater) water resource plan area (GW1)</i>						
Australian Capital Territory (Groundwater) (GS52)	1.70	2.27	+0.57	3.16	3.16	No change
Total			+0.57			+159.9

c) Changes to certain groundwater WRP area boundaries (items 7, 8, 9, 10, 71, 73, 92, 93, 95)

The Amendment Instrument changes groundwater SDL resource unit boundaries to address a number of matters that have emerged since the Basin Plan came into effect in 2012, or that have arisen from the merger of groundwater SDL resource units or WRP areas.

WRP area boundaries

Since the Basin Plan was made in 2012, a number of Basin States have refined the boundaries of their own water planning areas. New South Wales and Queensland have requested that the Authority change the Basin Plan WRP boundaries, referred to in Chapter 3, to align them with the state water planning boundaries. Note that section 22, item 2 of the Water Act states that the water resource planning areas in the Basin Plan should be aligned, as far as possible, with the state water resource planning areas.

In New South Wales, the percentage of change is less than 1% of the NSW Murray-Darling Basin area. New South Wales has also requested that four groundwater WRP areas be merged into two, and Queensland has requested that two of their WRP areas be merged.

The merged WRP areas are:

- **NSW:** the Western Porous Rock WRP area and the Eastern Porous Rock WRP area becomes the NSW Murray-Darling Basin Porous Rock WRP area (and also will incorporate the Oaklands Basin SDL resource unit)
- **NSW:** the Lachlan and South-Western Fractured Rock WRP area and the New England Fractured Rock and Northern Basalts WRP area become the NSW Murray-Darling Basin Fractured Rock WRP area
- **Queensland:** the Queensland Border Rivers WRP area and the Moonie WRP area become the Queensland Border Rivers-Moonie WRP area. The Queensland WRP merger applies to the surface and groundwater resources in the WRP areas.

These changes mean the number of WRP areas will decrease from 36 to 33. Table 3 shows the changes.

Table 3: Water Resource Plan area changes

Basin Plan 2012 (prior to the amendments) WRP areas	Water resource	Current WRP areas
14	Surface water	14
16	Groundwater	14
6	Surface and groundwater	5
36	Total	33

These amendments to the WRP area changes are detailed in section 3.06 ‘Water resource plans – groundwater’, see paragraphs (d) and (i), and section 3.07 ‘Water resource plan areas – surface water and groundwater’ (see **items 8 and 9**). Changing these boundaries results in changes to WRP maps and datasets referenced in Chapter 3 (paragraphs 3.03(1)(c) (Datasets for identification of surface WRP areas) (see **item 6** discussed below at 4(c) *Surface water WRP and SDL resource unit boundary amendments* of this explanatory statement) and 3.03(2)(c) (Datasets for identification of groundwater WRP areas) (see **item 7**)) (see **items 12 and 13** discussed below at 4(c) *Surface water WRP and SDL resource unit boundary amendments* and 2(d) *Changes to certain groundwater SDL resource units boundaries* of this explanatory statement) and consequential changes in Column 2 of Schedule 4 of the Basin Plan (see **item 95**).

Consequential amendments to reflect these WRP changes for the NSW Murray-Darling Basin Porous Rock, the NSW Murray-Darling Basin Fractured Rock and the Queensland Border Rivers-Moonie WRP areas are detailed in **items 10, 71, 73, 92, 93, 95**.

In **item 95** of the Amendment Instrument, the consequential changes are in the following parts of Schedule 4:

- changes to headings to reflect the new NSW Murray-Darling Basin Porous Rock, NSW Murray-Darling Basin Fractured Rock and the Queensland Border Rivers-Moonie WRP areas;
- deletion of the Eastern Porous Rock WRP area (and moving of the relevant SDL resource units to NSW Murray-Darling Basin Porous Rock WRP area, note Oaklands Basin SDL resource unit also moved from Murray Alluvium WRP area to the NSW Murray-Darling Basin Porous Rock WRP area);
- deletion of the New England Fractured Rock and Northern Basalts WRP area (and moving of the relevant SDL resource units to NSW Murray-Darling Basin Fractured Rock WRP area);
- deletion of the Moonie WRP area (and moving of the relevant SDL resource units to the Queensland Border Rivers-Moonie WRP area); and
- changes to numbering of the SDL resource units in Schedule 4 to reflect the above changes to WRP areas.

d) Changes to certain groundwater SDL resource units boundaries (items 11, 12, 13 and 95)

New South Wales, Queensland and Victoria requested that the Authority make changes in the Basin Plan to SDL resource unit boundaries to align them with state planning boundaries. Note that section 22, item 2 of the Water Act states that the water resource planning areas in the Basin Plan should be aligned, as far as possible, with the state water resource planning areas. Changing these New South Wales, Queensland and Victoria boundaries results in changes to maps and datasets referenced in Chapter 6 (paragraphs 6.02(1)(c) – for surface water and 6.03(1)(c) – for groundwater) (see **items 12 and 13**) and consequential changes in Column 2 of Schedule 4 of the Basin Plan (see **item 95**). The updated maps are published on the Authority's website and became effective as at 14 November 2017, the date of commencement of the Disallowed Instrument.

New South Wales requested that the vertical boundaries of some New South Wales groundwater SDL resource units be revised. This is to align with existing New South Wales water sharing plans and allow for separate accounting from a groundwater SDL unit that sits below another unit (a buried resource). A similar issue occurs in Queensland but not the other Basin States of the ACT, South Australia and Victoria. Prior to the amendments, Schedule 4 of the Basin Plan, defined the groundwater resources of these SDL resource units as 'all groundwater' in or below a particular area, implying that whatever unit is at the surface of the ground goes to the centre of the Earth. This was problematic where a groundwater resource is located above another groundwater system. It causes inaccurate accounting in cases where two systems sit one above the other (for instance, Alluvial and Porous Rock WRP areas) and extraction is from the buried resource (for instance, the Fractured Rock or the Great Artesian Basin shallow WRP areas).

To reflect the changed definitions of the groundwater covered by New South Wales groundwater SDL resource units in Schedule 4, Column 2 of the Basin Plan, there are some consequential changes to the names of certain New South Wales groundwater SDL resource units (see **item 95**, column 1, lines 29, 30, 33 and 34).

As a result of the merging of the Queensland Border Rivers and Moonie WRP areas, the Queensland government requested that two groundwater SDL resource units be merged. The Amendment Instrument merges what was previously the Sediments above the Great Artesian Basin: Border Rivers and Sediments above the Great Artesian Basin: Moonie SDL resource units to form the Sediments above the Great Artesian Basin: Border Rivers–Moonie SDL resource unit. There is no change to the total of the baseline diversion limit and the SDL for these SDL resource units as a result of this merger.

The Amendment Instrument also changes certain Victorian SDL resource unit boundaries to reflect the Victorian Groundwater Review panel's support for the Victorian government's water planning boundaries.

The above described changes to SDL resource unit boundaries do not change the SDL for any of these SDL resource units. The SDL for these SDL resource units continues to reflect an environmentally sustainable level of take.

There are nine groundwater SDL resource units that have a single groundwater system (GS) code (Schedule 4, Column 1 of the Basin Plan) that refers to separate SDL resource units with

separate baseline diversion limit and SDL volumes. The Amendment Instrument revises the coding, adding a second order letter (a, b or c) to individual GS codes to distinguish between individual SDL resource units (see **item 95**, column 1 – Groundwater SDL resource unit (code)).

Item 11 of the Amendment Instrument inserts a note at the end of section 3.07 that clarifies that Schedule 4 of the Basin Plan lists each of the groundwater SDL resource units that are included in each WRP area listed in section 3.07. The same note is added in **item 10**, at the end of section 3.06, to provide the same clarification.

e) Introducing a new compliance test for groundwater SDL resource units (items 1, 2, 3, 19, 20, 21, 22, 23, 24, 26, 27, 31, 42 and 43)

Compliance test

Under the Basin Plan, from 2019, the Authority will conduct an annual compliance test for each surface water and groundwater SDL resource unit. Prior to the amendments, the same compliance test was used for both surface water and groundwater (see Division 2 of Part 4 of Chapter 6 of the Basin Plan). Due to the issue of the accumulation of groundwater credits (as described below), **Item 31** of the Amendment Instrument introduces a new Division 3 – Method for determining compliance – groundwater, with new sections 6.12A, 6.12B and 6.12C.

The annual groundwater compliance test records the difference between the annual permitted take and annual actual take for a water accounting period. Where annual actual take is greater than the annual permitted take, a debit is recorded on the register of take. Where annual actual take is less than the annual permitted take, a credit is recorded.

Debits and credits will accumulate from 1 July 2019. Non-compliance for a groundwater SDL resource unit will occur if the accumulated debits exceed the accumulated credits by more than 20% of the annual SDL from 1 July 2019 until 30 June 2028. Non-compliance will not apply if a Basin State has a reasonable excuse, as set out in subsection 6.12C(1) of the Basin Plan. This reasonable excuse provision allows a Basin State to remain compliant with the SDL for a SDL resource unit despite exceeding 20% of the SDL. A Basin State is taken to have a reasonable excuse if the excess arises as a result of: the operation of the WRP for the SDL resource unit; or circumstances beyond the Basin State's control. However, the application of a reasonable excuse is not limited to these two circumstances.

Subsection 6.12C(5) provides that once the Authority has determined that the Basin State has a valid claim for a reasonable excuse then the Basin State needs to provide the Authority with the steps it will take to reduce the cumulative balance of the register of take to zero (the 'make good' steps). The 'make good' steps will not be required in the particular circumstance where, for reasons beyond the Basin State's control, the Commonwealth has failed to reach its water recovery target for a SDL resource unit. Further information is provided below under the headings '*Decoupling of certain steps relating to the claim for a reasonable excuse*' and '*Forgiveness due to the Commonwealth failing to reach its water recovery target for a groundwater SDL resource unit*'.

From 1 July 2028, a new groundwater compliance method will be introduced, for the following reasons. Over time, credits and debits are expected to balance out in surface water

SDL resource units but not in the case of many groundwater SDL resource units. As a result of the difference between the total basin-wide groundwater SDL (3,334 GL per year) and the current average basin-wide groundwater take (1,374 GL per year), an annual groundwater SDL credit of about 1,950 GL would have accumulated. Under the Basin Plan, prior to the amendments, the credit would have continued to accumulate without a practical limit and well beyond any feasible extraction. For example, after 10 years there could have been an accumulated groundwater SDL credit of 19,500 GL.

This credit would have been an outcome of the compliance method previously used for both surface water and groundwater (see Division 2 of Part 4 of Chapter 6 of the Basin Plan). This issue (described above) with the compliance method for groundwater was raised during the review of groundwater resource areas in Victoria and the review panel recommended that the Authority investigate and address the matter.

Water accounting periods after 30 June 2028 – 10-year rolling average compliance method

After the Authority consulted the Basin States, the Authority drafted the Amendment Instrument (see **item 31**) to provide that a 10-year rolling average compliance method be used for groundwater SDL resource units (while the existing compliance method remains for surface water) from 1 July 2028. This approach will avoid the issue for groundwater SDL resource units identified above, that is, the accumulation of credits without a practical limit and well beyond any feasible extraction.

This 10-year rolling average compliance method will mean that **non-compliance** with a SDL in a water year for a groundwater SDL resource unit will occur if:

- the average annual actual take over the 10 year period ending with that water year
is greater than:
- the average annual permitted take over the same period, and;
- the Basin State does not have a reasonable excuse for the excess.

Interim compliance method from 1 July 2019 to 30 June 2028

For the first nine years (1 July 2019 to 30 June 2028) the interim method at subsection 6.12C(1) (see **item 31**) applies. This interim compliance method for a groundwater SDL resource unit is the same method used in section 6.12 for assessing compliance for a surface water SDL resource unit (see **item 31**, in particular the note below subsection 6.12C(1)).

This means **non-compliance** with a SDL in a water accounting period for a groundwater SDL resource unit will occur if:

- the cumulative sum of annual actual take in each water year since 1 July 2019
is greater than:
- the cumulative sum of annual permitted take for the same period, plus 20% of the annual SDL for the SDL resource unit, and;
- the Basin State does not have a reasonable excuse for the excess.

The 20% tolerance will be retained to 2028 to provide for no change, compared to the Basin Plan, prior to the amendments. This tolerance is expected to be most relevant in the early

years following 2019 due to the introduction of the SDL compliance method. The 20% tolerance will not be continued beyond 2028 as discussions with the Basin States concluded it was unnecessary.

Item 31 of the Amendment Instrument introduces a new Division 3 – Method for determining compliance – groundwater, with new sections 6.12A, 6.12B and 6.12C. Section 6.12A clarifies that the method set out in the new Division 3 is to determine compliance with the SDLs for each groundwater SDL resource unit after 30 June 2019. Section 6.12B details the steps for calculating annual permitted take and annual actual take. Subsection 6.12C(1) details the compliance method for groundwater up to 30 June 2028, which is the same as the compliance method for both surface water and groundwater in section 6.12 of the Basin Plan, prior to the amendments (see the note below subsection 6.12C(1)). Subsections 6.12C(2)–(5) detail the 10 year rolling average compliance method for groundwater after 30 June 2028, as described in further detail above.

Decoupling of certain steps relating to the claim for a reasonable excuse

Item 31 of the Amendment Instrument also de-couples the two steps required for a Basin State to claim it has a reasonable excuse, as previously set out under subsection 6.12(3) of the Basin Plan (which applied to both surface water and groundwater), prior to the amendments. Subsection 6.12C(3) provides that for a Basin State to claim to the Authority that it has a reasonable excuse for an excess in a SDL resource unit, then it must also provide a report to the Authority setting out the reasons for the excess. Subsection 6.12C(5) provides that once the Authority has determined that the Basin State has a valid claim for a reasonable excuse then the Basin State needs to provide the Authority with the steps it will take to reduce the cumulative balance of the register of take to zero (the ‘make good’ steps).

Note 1 at subsection 6.12C(5) (see **item 31**) deals with the circumstance where the Basin State’s cumulative balance will be adjusted under paragraph 6.12C(1)(a) or (2)(a) to give a credit for any amount attributable to particular circumstance where, for reasons beyond the Basin State’s control, the Commonwealth has failed to reach its water recovery target for a SDL resource unit. In this circumstance the Basin State does not need to provide any ‘make good’ steps to the Authority.

Note 2 at subsection 6.12C(5) (see **item 31**) relates to the Authority’s powers under the Water Act to undertake audits in relation to compliance.

This de-coupling of the steps for claiming a reasonable excuse has also been applied to the surface water compliance provisions set out in section 6.12 and discussed in further detail below at *4(b) Compliance with SDLs for surface water* of this explanatory statement.

There are consequential amendments as a result of **item 31**, that is, to section 1.07 (the definitions section) of the Basin Plan, to refer to the definition for annual actual take in section 6.12B (see **item 1**) and the definition for annual permitted take in section 6.12B (see **item 2**). **Item 3** introduces a definition of groundwater, which is identical to the definition of ‘ground water’ in the Water Act. The term ‘groundwater’ is used throughout the Basin Plan, and it was necessary to add this as a definition so that it could be distinguished from ‘ground water’ as defined under the Water Act.

Items 19, 22, 23, 24, 26 and 27 are consequential amendments to clarify that there is now a separate compliance method for surface water SDL resource units (section 6.12) and groundwater SDL resource units (section 6.12C). **Items 20 and 21** are also consequential amendments, **item 20** states that the register of take for each groundwater SDL resource unit must include a record of amounts in accordance with the method set out in Division 3 of the Basin Plan. **Item 21** states that when the register of take commences for each surface water SDL resource unit from 1 July 2019, that the balance will be zero.

Items 42 and 43 are also consequential amendments due to the new method for determining compliance with groundwater, by adding a reference to the new definition of annual permitted take for groundwater in subsection 6.12B(1) (see **item 42**) and the new definition of annual actual take in subsection 6.12B(2) (see **item 43**).

Forgiveness due to the Commonwealth failing to reach its water recovery target for a groundwater SDL resource unit (**item 31**)

The Amendment Instrument includes a provision in the compliance method for groundwater in line with a similar provision that has been introduced for the surface water compliance method (refer to subsection 6.11(5) of the Basin Plan, **item 25** of the Amendment Instrument – as discussed below at *4(b) Compliance with SDLs for surface water* of this explanatory statement). In general terms, this provision enables the removal of any debits from the register of take, where the debits are associated with the particular circumstance of the Commonwealth failing to reach its water recovery target for a groundwater SDL resource unit after 30 June 2019 (see **item 31**, in particular paragraph 6.12C(1)(a) – water accounting periods up to 2028, and paragraph 6.12C(2)(a) – water accounting periods after 2028).

Item 31 of the Amendment Instrument (paragraphs 6.12C(1)(a) and 6.12C(2)(a)) enables an adjustment of the cumulative balance on the register of take for a groundwater SDL resource unit for the annual removal of any debits incurred in the previous water accounting period, but only if the debit occurred due to the particular circumstance where the Commonwealth has not achieved the water recovery target it has set for itself in relation to the SDL resource unit (that is, the example in paragraph 6.12C(4)(b) applied). The debit must have been attributable to this particular circumstance occurring and it must also be beyond the Basin State's control. This means if the state hindered the Commonwealth's water recovery efforts or if a state commits to recover water and it fails to meet this commitment, then this circumstance would not apply, and an adjustment to the register of take would not be made. This example refers to the Australian Government's commitment to 'bridge the gap' to the SDLs under the Basin Plan.

f) Providing separate requirements for groundwater water quality management plans (items 39, 46, 47, 48 and 49)

Part 7 of Chapter 10 of the Basin Plan details the requirements for water quality management plans. Prior to the amendments, the Basin Plan had the same requirements for water quality management plans for both surface water and groundwater WRP areas, with additional requirements for groundwater under the previous section 10.21. The Amendment Instrument introduces separate requirements for water quality management plans for groundwater WRPs.

Item 47 deletes and replaces section 10.29, to detail that Divisions 2 and 3 set out requirements for water quality management plans for surface water WRPs, groundwater WRPs and for WRPs that comprise of both surface water and groundwater SDL resource units. The WRP areas that contain both surface water and groundwater SDL resource units will be required to comply with the water quality management plan requirements under Division 2 for surface water SDL resource units and Division 3 for groundwater SDL resource units.

Item 49 inserts a new Division 3 of Part 7 of Chapter 10 for the water quality management plan requirements for groundwater SDL resource units. These new requirements have been tailored for groundwater SDL resource units, rather than using the previous water quality management plan requirements, which were drafted in the surface water context. These requirements ensure that the groundwater water quality management plans will provide relevant information of a similar standard to surface water water quality management plans. This includes the identification of the causes or likely causes of water quality degradation in the WRP area (see section 10.35A), the identification of water quality target values (see section 10.35B), and consideration of whether it is desirable to include rules or measures to support the maintenance of water quality in the groundwater SDL resource unit against effects of elevated levels of salinity and other types of water quality degradation (see section 10.35C). Subsection 10.35C(2) also includes the requirements that were previously detailed in section 10.21 ‘Environmental outcomes relating to groundwater’ of the Basin Plan, prior to the amendments.

Item 49 also inserts a new section 10.35D, which provides additional requirements for water quality management plans for the groundwater SDL resource units that were subject to the Groundwater Reviews. This section sets a mandatory requirement for water quality management plans in these groundwater SDL resource units to include rules that ensure objectives are achieved, that is, water quality is maintained against the effects of elevated levels of salinity and other types of water quality degradation. This can be contrasted with the requirements under section 10.35C which allow a Basin State to determine whether it is desirable to include rules or measures to achieve this objective.

Items 46 and 48 are consequential amendments that insert new headings into Part 7 of Chapter 10, which are required due to the introduction of the new Division 1 – Requirement for water quality management plan (**item 46**), and the new Division 2 – Surface water (**item 48**).

Item 39 is another consequential amendment to clarify that the water quality objective for irrigation water in section 9.06 applies to surface water and groundwater, as these water quality objectives are referred to in the amendments relating to groundwater water quality management plans, in subsection 10.35B(3) (see **item 49** as discussed above).

3. Water Act Review amendments (items 59-67)

Items 59 to 67 of the Amendment Instrument amend the Basin Plan as a result of the Australian Government Response to the *Report of the Independent Review of the Water Act*

2007 (the Water Act Review Government Response). This is available on the Department of Agriculture and Water Resources' (the Department) website at <http://www.agriculture.gov.au/water/policy/legislation/water-act-review>.

The Water Act Review Government Response recommended changes to both the Water Act and the Basin Plan. The Amendment Instrument updates some reporting requirements in the Basin Plan, re-phases the timing of certain reviews and fixes a minor cross-reference to the Water Act, following amendments contained in the *Water Amendment (Review Implementation and Other Measures) Act 2016* that have not yet commenced.

Reporting requirements: Annual reporting

The Water Act previously required the Authority to report on the effectiveness of the Basin Plan each year in its corporate annual report. Following the 2016 amendments to the Water Act made by the *Water Amendment (Review Implementation and Other Measures) Act 2016*, the Authority must now make this a separate report to the Minister by the end of December each year (section 52A of the Water Act). **Item 59** updates paragraph 13.05(1)(a) to make it consistent with the current requirements of the Water Act, which requires the Authority to report to the Minister on the effectiveness of the Basin Plan by the end of each calendar year.

Reporting requirements: Reporting to Ministerial Council

The Water Act previously required the Authority to provide a one-off report to the Ministerial Council on the impacts of the Basin Plan in 2017. The 2016 amendments to the Water Act postponed this report until 2020.

Item 60 updates paragraph 13.05(1)(b) to make it consistent with the Water Act, which provides that the Authority must provide advice to the Council on the impacts of the Basin Plan before the end of 2020. This is part of the broader alignment of Basin Plan reviews and evaluations aimed at ensuring reviews are conducted, and advice provided, at a time when Basin Plan outcomes can be more fully assessed, noting the commencement of sustainable diversion limits on 1 July 2019.

Re-phasing of reviews of the water quality and salinity management plan targets and environmental watering plans

The Amendment Instrument re-phases a number of reviews from 2017 to 2020 in accordance with the recommendations of the Water Act Review Government Response. The re-phasing of these reviews to 2020, when the Basin Plan is fully implemented, will allow time to observe outcomes and collect evidence to inform the reviews. Note that **items 62 to 67** (discussed further below) commence on the commencement of item 1 of Schedule 1 to the *Water Amendment (Review Implementation and Other Measures) Act 2016*.

Items 64 and 65 re-phase the five-yearly reviews of the water quality and salinity management plan targets (**item 64**, subsection 13.08(1)) and the environmental watering plan (**item 65**, subsection 13.09(1)) from 2017 to 2020. The re-phasing of these reviews to 2020

(when the Basin Plan is fully implemented) will enable adequate time to observe outcomes and collect evidence to inform these reviews. These amendments maintain the current requirements to complete the reviews within every 5 years, after the initial 2020 reviews.

Social and economic impacts

The 2016 amendments to the Water Act included a new requirement for the Basin Plan monitoring and evaluation program to include five-yearly reviews of the social and economic impacts of the Basin Plan. This aligns closely with the Basin Plan requirement under item 3 of Schedule 12 to report every five years on the extent to which the Basin Plan has affected social and economic outcomes. However, in order to fully implement the new Water Act requirement, the Amendment Instrument includes a review of social and economic impacts in the Monitoring and Evaluation Program in Chapter 13.

Items 61, 62 and 63 provide a new requirement to include social and economic impacts as part of the Authority's five yearly evaluation of the effectiveness of the Basin Plan. This is in addition to existing review matters including the environmental watering plan, water quality and salinity, the water trading rules and water resource planning. These amendments ensure that Basin Plan requirements are consistent with the Water Act.

Item 66 adds a new clause 13.09A, which provides that the Authority must complete a review, in consultation with the Basin States and the Commonwealth, of the social and economic impacts of the Basin Plan every 5 years, with the first review due by 2020.

Monitoring and reporting capabilities

The Amendment Instrument reschedules an assessment of monitoring, evaluation and reporting capabilities from 2017 to 2020. Therefore **Item 67** amends subsection 13.23(1) of the Basin Plan to align this provision with the new 2020 timing of the other three reviews outlined above.

4. Other technical amendments

Other technical amendments made by the Amendment Instrument include:

- a) Shared reduction amount methodology;
- b) Compliance with SDLs for surface water;
- c) Surface water WRP boundary and SDL resource unit amendments;
- d) Water trading rules requirements;
- e) Revised baseline diversion limit for the Australian Capital Territory;
- f) Water Resource Plan requirements; and
- g) Other minor amendments.

a) Shared reduction amount methodology (items 16, 32-38)

Sustainable diversion limit resource unit shared reduction amount

The Basin Plan sets an overall limit on the amount of water that can be taken for town water supplies, industry, agriculture and other human or consumptive uses, while ensuring there is enough water to achieve healthy river and groundwater systems. It sets the amount of water that needs to be recovered to achieve a healthy working basin.

The Basin Plan divides this recovery into a volume to meet local environmental needs and a volume that contributes to the environmental needs of the Murray and Darling rivers. The local reduction amount is (in most cases) the minimum reduction required within each SDL resource unit to satisfy local environmental needs. Shared reduction amounts are the further recovery required, in addition to the local reduction amounts, to satisfy the environmental needs of these large rivers.

Subsection 6.05(4) of the Basin Plan sets out a default method for allocating the shared reduction amount amongst SDL resource units in each of the shared reduction zones, that is, the zones set out in subsection 6.05(3).

Outcome of the amendments to the re-allocation of the shared reduction requests

The intended outcome of the changes to sections 6.05 (see **item 16**), 7.14A (see **item 37**) and the deletion of section 7.23 (see **item 38**) was to provide Basin States more time to finalise a re-allocation adjustment request of the shared reduction amount for a zone (the shared reduction request).

Item 37 inserts a new section 7.14A that, when introduced in the Disallowed Instrument enabled a Basin State to advise a reallocation of the shared reduction amount by 30 June 2017 for the purpose of allowing the Authority to determine the SDL adjustment in December 2017 and June 2024. Re-introducing section 7.14A in this Amendment Instrument will provide certainty in the process if there is a reconciliation of SDL adjustment mechanism required in 2024. That is, the same shared reduction amounts used for the purpose of calculating initial adjustments in 2017 will also be used any reconciliation in 2024. See further detail on section 7.14A (**item 37**) below.

Item 16 repeals and substitutes section 6.05 to enable a Basin State to request a reallocation of the shared reduction amount up to 30 June 2018, in anticipation of this Amendment Instrument becoming law. This is for the purpose of settling SDLs for accreditation of the WRPs, while also enabling the Australian Government to plan any remaining water recovery required to ‘bridge the gap’ by 30 June 2019. See further detail on section 6.05 (**item 16**) below.

Additional flexibility has also been provided by allowing Basin States to make a variation to the shared reduction volumes by 31 December 2018, in circumstances where the Authority

and the Department consider it appropriate to accommodate changes in water recovery targets.

Shared reduction requests for the purposes of the SDL adjustment mechanism (**items 32-38**)

Item 37 inserts a new section 7.14A in Division 4 of Part 2 of Chapter 7 of the Basin Plan. This section recognises that the Basin States were able to provide a request for the re-allocation of the shared reduction amount by 30 June 2017, in anticipation of the insertion of the section by the Disallowed Instrument, for the purposes of the operation of the SDL adjustment mechanism.

Subsection 7.14A(1) provides for the default shared reduction calculated under subsection 6.05(4) of the Basin Plan to apply for the purposes of the SDL adjustment mechanism unless a Basin State has made a re-allocation reduction request in accordance with subsections 7.14A(2) and (3). Subsection 7.14A(3) defines a ‘re-allocation reduction request’ as one made under section 7.23 (as it stood prior to its repeal by the Disallowed Instrument) by 30 June 2016, or one made between 1 July 2016 and 30 June 2017 under section 7.14A, in anticipation of the insertion of the section by the Disallowed Instrument.

Under paragraph 7.14A(3)(b) a re-allocation reduction request must ensure the total of the SDLs for the zone is the same as the shared reduction target set out in subsection 6.05(3) and cannot be less than zero for any SDL resource unit.

The Disallowed Instrument also inserted a similar version of section 7.14A into the Basin Plan which was in effect when the Authority determined the initial adjustments to the SDLs in 2017 (under Part 2 of Chapter 7 of the Basin Plan). This meant that, in determining the 2017 adjustments, the Authority determined the amount of the adjustments on the basis of the shared reduction amounts as requested by the states which met the definition of ‘re-allocation reduction request’.

Note 1 clarifies that in 2024 the shared reduction amounts that were used for the calculation of the SDL adjustment mechanism determination in 2017 will also be used in the reconciliation of the SDL adjustment mechanism in 2024.

Note 2 clarifies that these shared reduction requests are for SDL adjustment mechanism calculation purposes only and are not to be used for the purposes of section 6.05, which deals with shared reduction requests for the purpose of WRP accreditation.

Item 38 repeals Part 3 (section 7.22 and section 7.23 of the Basin Plan). These sections are no longer required, as the Amendment Instrument provides for a new method for making shared reduction requests for the purposes of the SDL adjustment mechanism (section 7.14A) and for WRP accreditation (section 6.05).

Items 32, 33, 34, 35 and 36 are consequential amendments that remove references to Part 3 of Chapter 7, which has now been repealed under **Item 38**.

Shared reduction requests for the purpose of WRP accreditation (item 16)

Item 16 of the Amendment Instrument (section 6.05) deletes the previous section 6.05 and sets out the process for Basin States to request an adjustment to the default distribution of shared reduction amounts. There are some changes to section 6.05 of the Basin Plan relating to shared reduction zones and amounts as a result of the Northern Basin Review. Refer above to *1. Northern Basin Review amendments* in this explanatory statement.

Subsection 6.05(1) states that the SDL resource unit shared reduction amount detailed in column 2 of the table in Schedule 2 is determined in accordance with this section.

Subsection 6.05(2) details the 6 zones within the Basin, and the SDL resource units that form part of these zones.

Subsection 6.05(3) sets out the shared reduction targets for each of the 6 zones.

Subsection 6.05(4) sets out the method for calculating the default shared reduction amount as at 31 December 2016, in the absence of any alternative shared reduction request in accordance with the subsections 6.05(5)–(14).

Subsection 6.05(5) states that a shared reduction request may be made by a Basin State.

Subsection 6.05(6) details the requirements for a shared reduction request (called a ‘re-allocation adjustment request’ in this section) to be made by a Basin State:

- firstly, it must be made before 1 July 2018 and before any WRP in the zone is submitted to the Authority for assessment (excluding any WRP submitted before 14 November 2017);
- secondly – if the request is made before the Amendment Instrument comes into effect, the request is to be expressed as being made in anticipation of this Amendment Instrument becoming law;
- thirdly, the request must ensure the total of the SDLs for the zone meets the reduction target for the zone (as set out in subsection 6.05(3)) and the shared reduction amount cannot be less than zero for any SDL resource unit, and;
- fourthly, the request takes into account the amount of water already recovered by the Commonwealth as of the date of the request.

In summary, this subsection 6.05(6) enables a Basin State to have made a shared reduction request by 30 June 2018 (if that is before this Amendment Instrument becomes law) and this will be a valid shared reduction request.

Subsection 6.05(7) states that a shared reduction request cannot be varied or replaced once made. Noting that an additional request for a variation of shared reduction amounts under subsections 6.05(9) – (12) may be made by a Basin State between 1 July 2018 and 31 December 2018.

Subsection 6.05(8) provides that if the Authority receives a shared reduction request it must publish, as soon as practicable, the requested SDL shared reduction amounts on its website.

Subsections 6.05(9)–(13) set out the process for Basin States to request variations to the shared reduction amounts or to the default shared reduction amount between 1 July 2018 and 31 December 2018, due to a change in water recovery. The variation request must comply with the requirement in paragraph 6.05(6)(c), take into account Commonwealth water recovery, and cannot change the shared reduction amounts for a WRP that has already been submitted to the Authority. If a Basin State makes a variation request, the Authority may agree to the request only if the Authority and the Department consider it appropriate to accommodate changes in water recovery targets. If there is a variation request agreed by the Authority, then the Authority must update the relevant shared reduction amounts that have been published, or if those amounts have not yet been published, publish them on its website.

Subsection 6.05(14) clarifies that once published, the shared reduction amounts cannot be changed. The resulting SDLs are the SDLs that will be used in WRPs for accreditation.

b) Compliance with SDLs for surface water (items 25, 28, 29 and 30)

Method for determining compliance with the long-term sustainable annual diversion limit

The method for assessing compliance with the SDLs is contained in Chapter 6 of the Basin Plan. As discussed above, in *2(d) Groundwater reviews and other groundwater amendments - Introducing a new compliance test for groundwater SDL resource units* of this explanatory statement, **item 31** of the Amendment Instrument introduces a separate compliance test for groundwater SDL resource units in the new Division 3 of Part 4 of Chapter 6 of the Basin Plan.

Compliance will be determined for each SDL resource unit in each water accounting period, after 30 June 2019, through the register of take. The method for determining compliance for surface water SDL resource units is provided in the Basin Plan as follows:

- If the annual actual take is greater than the annual permitted take, the difference is recorded as a debit.
- If the annual actual take is less than the annual permitted take, the difference is recorded as a credit.
- If the annual actual take and the annual permitted take are equal the difference is recorded as a zero.
- The cumulative balance of the difference between permitted take and actual take is recorded annually on a register kept by the Authority.
- If there is a cumulative debit (adjusted to take into account any buying and selling of environmental water) equal to or greater than 20% of the SDL, a Basin State may provide a reasonable excuse for the debit in the SDL resource unit.

The Basin Plan contains a reasonable excuse provision (see section 6.12 of the Basin Plan) to allow a Basin State to remain compliant with the SDL for a SDL resource unit despite

exceeding 20% of the SDL. A Basin State is taken to have a reasonable excuse if the excess arises as a result of: the operation of the WRP for the SDL resource unit; or circumstances beyond the Basin State's control. However, the application of a reasonable excuse is not limited to these two circumstances. If a Basin State has a cumulative debit balance (after adjustment to take into account any buying or selling of environmental water) equal to or greater than 20% of the SDL, and a reasonable excuse is provided for the excess (or a portion of the excess that will bring the Basin State to under 20% of the SDL), the Basin State will be compliant with the SDLs for the relevant SDL resource unit.

Subsection 6.12(5) provides that once the Authority has determined that the Basin State has a valid claim for a reasonable excuse then the Basin State needs to provide the Authority with the steps it will take to reduce the cumulative balance of the register of take to zero (the 'make good' steps). The 'make good' steps will not be required in the particular circumstance where, for reasons beyond the Basin State's control, the Commonwealth has failed to reach its water recovery target for a SDL resource unit. Further information is provided below under the headings '*Forgiveness due to the Commonwealth failing to reach its water recovery target for a surface water SDL resource unit*' and '*Decoupling of certain steps relating to the claim for a reasonable excuse*'.

Forgiveness due to the Commonwealth failing to reach its water recovery target for a surface water SDL resource unit

Item 25 of the Amendment Instrument (subsection 6.11(5) of the Basin Plan) enables an adjustment of the cumulative balance on the register of take for a surface water SDL resource unit for the annual removal of any debits incurred in the previous water accounting period, but only if the debit occurred due to the particular circumstance where the Commonwealth has not achieved the water recovery target it has set for itself in relation to the SDL resource unit (that is, the example in paragraph 6.12(4)(b) applied). The debit must have been attributable to this particular circumstance occurring and it must also be beyond the Basin State's control. This means if the state hindered the Commonwealth's water recovery efforts or if a state commits to recover water and it fails to meet this commitment, then this circumstance would not apply, and an adjustment to the register of take would not be made. This example refers to the Australian Government's commitment to 'bridge the gap' to the SDLs under the Basin Plan. This is a separate matter to the accounting for the disposal and acquisition of held environmental water under paragraph 6.12(1)(a) of the Basin Plan.

Decoupling of certain steps relating to the claim for a reasonable excuse

Items 28 and 30 of the Amendment Instrument de-link the two steps required for a Basin State to claim it has a reasonable excuse, as previously set out under subsection 6.12(3) of the Basin Plan, prior to the amendments. **Item 28** (subsection 6.12(3)) provides that for a Basin State to claim to the Authority that it has a reasonable excuse for an excess in a SDL resource unit, then it must also provide a report to the Authority setting out the reasons for the excess. **Item 30** (subsection 6.12(5)) provides that a Basin State that relies on a claim for a reasonable excuse must then provide the Authority with the steps it will take to reduce the cumulative balance of the register of take to zero (the 'make good' steps).

Note 1 at subsection 6.12(5) (see **item 30**) deals with the circumstance where the Basin State's cumulative balance will be adjusted under subsection 6.11(5) to give a credit for any amount attributable to particular circumstance where, for reasons beyond the Basin State's control, the Commonwealth has failed to reach its water recovery target for a SDL resource unit. In this circumstance the Basin State does not need to provide any 'make good' steps to the Authority.

Note 2 has been repealed from below subsection 6.12(4) (see **item 29**) and replaced at subsection 6.12(5) (see **item 30**). This note relates to the Authority's powers under the Water Act to undertake audits in relation to compliance.

c) Surface water WRP and SDL resource unit boundary amendments (items 6 and 12)

The Basin Plan refers to maps which identify the sustainable diversion limit resource unit boundaries, and the WRP area boundaries. The maps are held by and published by the Authority at <https://www.mdba.gov.au/publications/maps-spatial-data>.

The WRP areas, where possible, are intended to align with state water planning areas. Note that section 22, item 2 of the Water Act states that the water resource planning areas in the Basin Plan should be aligned, as far as possible, with the State water resource planning boundaries. Basin States have proposed modest changes to these maps as they have varied their existing state boundaries. For example, a small area has been moved from one WRP area to another WRP area.

The WRP areas are divided into SDL resource units. Each unit is generally based on a catchment, and is intended to align with state planning boundaries, where possible. The states have asked the Authority to better align the Basin Plan WRP and SDL resource unit map boundaries with the state water management planning boundaries.

New South Wales surface water boundary changes

The Amendment Instrument changes the surface water WRP boundaries (see **item 6**, paragraph 3.03(1)(c) of the Basin Plan) and surface water SDL resource unit boundaries (see **item 12**, paragraph 6.02(1)(c) of the Basin Plan). The change is to the boundaries of ten New South Wales surface water SDL resource units and nine New South Wales WRP areas. The Amendment Instrument adopts the current New South Wales water sharing plan boundaries, identified under the *Water Management Act 2000* (NSW), for the Basin Plan SDL resource unit and WRP area boundaries. This amendment reduces the administrative burden for both New South Wales and the Authority by assisting in facilitating the smooth transition from the current water sharing plans under the *Water Management Act 2000* (NSW) to WRPs under the *Water Act 2007*.

The Basin Plan references maps that the Authority holds to identify the boundaries of both the SDL resource units and the WRP areas. **Items 6 and 12** update the references in the Basin

Plan to reflect the updated maps for surface water WRPs and surface water SDL resource units. The updated maps are published on the Authority's website and became effective as at 14 November 2017, the date of commencement of the Disallowed Instrument.

The surface water SDL resource units affected by the boundary changes are the New South Wales Murray, Murrumbidgee, Lower Darling and Lachlan. In addition, changing the boundary of the Barwon-Darling Watercourse will result in changes to all adjoining SDL resource units: Namoi; Gwydir; Macquarie-Castlereagh; NSW Border Rivers and Intersecting Streams. All of these changes are very minimal. None of the changes have any impact on the SDLs in any of the SDL resource units listed in Schedule 2 of the Basin Plan and hence ensures that the SDLs continue to reflect an environmentally sustainable level of take.

The WRP areas for surface water, which are affected by the boundary changes, are the New South Wales Murray and Lower Darling, Murrumbidgee and Lachlan. In addition, changing the boundary of the Barwon-Darling Watercourse will result in changes to all adjoining WRP areas in New South Wales: Namoi; Gwydir; Macquarie-Castlereagh; NSW Border Rivers and Intersecting Streams. All of these changes are very minimal. The percentage of change is less than 1% of the NSW Murray-Darling Basin area. The area changes do not change the SDLs in the associated SDL resource units and hence ensure that the SDLs continue to reflect an environmentally sustainable level of take.

Queensland WRP amalgamation

Items 9 and 10 of the Amendment Instrument (as discussed above at 2(c) *Changes to certain groundwater WRP area boundaries* of this explanatory statement), combine two Queensland WRP areas: Queensland Border Rivers WRP area; and Moonie WRP area. The amalgamation of these two WRP areas results in one WRP area, the Queensland Border Rivers-Moonie WRP area. It will encompass two surface water SDL resource units: the Moonie SDL resource unit; and the Queensland Border Rivers SDL resource unit.

The Queensland Government requested this amalgamation as it reduces the administrative burden on both the state and the Authority. There are no impacts on any of the SDLs currently set in either of the WRP areas, or the SDL resource units as a consequence of this amalgamation and hence ensures that the SDLs continue to reflect an environmentally sustainable level of take. See above 2(b) *Other groundwater baseline diversion limit and SDL changes* of this explanatory statement, for further detail regarding the amendments to the Basin Plan as a consequence of the Queensland WRP amalgamation.

South Australian surface water boundary changes

The Amendment Instrument changes the surface water WRP boundaries (see **item 6**, paragraph 3.03(1)(c) of the Basin Plan) of two South Australian WRP areas: South Australian River Murray WRP area and Eastern Mount Lofty Ranges WRP area. The amendment to the WRP boundaries fixes an error in the boundary lines between the two areas which occurred during the drafting of the maps held by the Authority.

The changes only impact the WRP area boundaries and there are no changes required to the SDL resource unit boundaries. The percentage of change is less than 1% of the South Australian Murray-Darling Basin area. The area changes do not change the SDLs in the associated SDL resource units and hence ensures that the SDL continue to reflect an environmentally sustainable level of take.

d) Water trading rules requirements (items 4, 5 and 52-58)

Chapter 12 of the Basin Plan sets out the water trading rules for trading (including transfer) of tradeable water rights in relation to Basin water resources. These rules contribute to achieving the Basin water market and trading objectives and principles that are set out in Schedule 3 to the Water Act. The rules aim to ensure that trade of water access rights within a regulated system, between regulated systems and within unregulated systems, occurs free of any restriction other than allowable restrictions. In implementing the water trading rules, the Authority identified a few rules that required clarification to ensure they operated in the manner that was originally intended.

The Authority obtained advice from the Australian Competition and Consumer Commission in preparing the Amendment Instrument, as required by subsection 46(2) of the Water Act.

The Australian Competition and Consumer Commission advice identified minor amendments to the water trading rules to improve clarity and function. The advice is available on the Authority's website at <https://www.mdba.gov.au/publications/mdba-reports/basin-plan-amendments-minor-practical-changes>.

Clarifying free trade in surface water systems

Prior to the amendments, sections 12.16 and 12.17 of the Basin Plan ensured that trade in surface water within a regulated system, between regulated systems and within unregulated systems, occurred free of any restriction on trade, other than a restriction that is allowable under section 12.18 (see section 1.07 of the Basin Plan for definition of *restriction*). Section 12.17 previously expressly prohibited a restriction of trade that was a *volumetric limit* (as defined in that section), except for allowable restrictions under section 12.18, but did not expressly set out the relationship between the defined terms *restriction* and *volumetric limit*.

Items 4 and 53 of the Amendment Instrument expressly provide that the term *restriction* includes a *volumetric limit*. This means that section 12.17 is no longer necessary, so this section is repealed by **item 54**.

Item 4 amends the definition of *restrict* to clarify that a volumetric limit is a type of restriction, consistent with the consolidation of sections 12.16 and 12.17.

Item 5 adds the definition of *volumetric limit* to section 1.07(1) (this definition was previously included in section 12.17), and also updates this definition to make it clear that a volumetric limit also includes a limit whose purpose or effect is to cap the total volume of water that may be traded into an area, as well as out of an area.

Items 53 and 54 also remove any ambiguity that may have existed in relation to the inappropriate use of volumetric limits to restrict trade within unregulated systems, as this was not explicitly specified in section 12.17 prior to the amendments. This amendment makes it easier for regulated entities to understand their obligations in relation to providing for free trade within a regulated system, between regulated systems and within unregulated systems.

The effect of the amendments in **items 4, 5, 53 and 54** is that a restriction on trade (including a volumetric limit) continues to be prohibited under the water trading rules, other than a restriction that is allowable under section 12.18. These amendments clarify and remove any ambiguity under the previous section 12.17 that may have existed in relation to the inappropriate use of a volumetric limit to restrict trade.

Items 52, 55, 56 and 57 are consequential amendments to remove references to section 12.17 as this section longer exists, due to the amendment made by **item 54**.

Maintaining information reporting requirements

Subsection 12.47(5) of the Basin Plan, requires irrigation infrastructure operators that meet criteria set out in the *Water Charge (Infrastructure) Rules 2010* (WCIR) to provide their trading rules to the central information point. Prior to the amendments, section 12.47 cross-referenced criteria in the WCIR. **Item 58** removes this cross reference to the WCIR and explicitly includes the criteria in the Basin Plan. This item maintains the previous effect of subsection 12.47(5) and means that the Basin Plan requirements in section 12.47 can operate independently of any future decision to amend the WCIR.

Item 58 removes the references to criteria in the WCIR and inserts new subsections 12.47(4A), (5) and (5A) to explicitly include these criteria in the Basin Plan.

Subsection 12.47(5) incorporates provisions of Rule 15 of the WCIR, which determine when the rule applies to an infrastructure operator, and subsection 12.47(4A) includes consequential amendments as a result of incorporating provisions of Rule 15 into this section.

Subsection 12.47(5A) adds two definitions of *customer* and *infrastructure service* from the WCIR, which are used in Rule 15.

e) Revised baseline diversion limit for the Australian Capital Territory (items 91 and 94)

The Basin Plan defines a baseline from which to determine required reductions in diversions. The Basin Plan refers to this as the baseline diversion limit. Schedule 3 of the Basin Plan sets out descriptions of the baseline diversion limits for each surface water SDL resource unit and includes notes of the Authority's estimate of the quantity of water (in GL per year) represented by the descriptions of baseline diversion limits.

Item 94 of the Amendment Instrument updates the description of the baseline diversion limit for the ACT (surface water) in item 29 of Schedule 3 of the Basin Plan. Item 29 of Schedule 3 describes the limit of water taken by reference to subclause 9(1) of Schedule E to the Murray-Darling Basin Agreement (Schedule 1 of the Water Act).

Item 94 updates item 29 of Schedule 3 based on advice from the ACT that an improved description of the baseline diversion limit is available due to population growth up to 30 June 2009 (0.5GL per year), The Living Murray contributions made by the ACT (2 GL per year) and new information on historic Commonwealth water use within the ACT (0.2 GL per year). This is updated in both paragraph (a) of item 29 of Schedule 3 of the Basin Plan and the note to paragraph (a). The note to paragraph (a) also updates the Authority's estimate from 40.5 GL per year to 42.7 GL per year based on the improved description of the baseline diversion limit due to population growth, The Living Murray contributions and historical Commonwealth water use. Note that even though Column 2 of item 29 of Schedule 3 of the Basin Plan has been repealed and substituted, there have been no changes to paragraphs (b), (c) and (d) of this Column 2, nor the notes relating to these paragraphs.

The ACT has met its contribution to The Living Murray with the recovery of 2 GL per year from New South Wales. To avoid double counting of this water, it was necessary to update the ACT's baseline diversion limit and reflect these arrangements in Schedule 3.

The ACT has also provided new information on historic Commonwealth water use, based on improved understanding. This is due to the enactment of the *Australian Capital Territory Water Management Legislation Amendment Act 2013*, which transferred the management of certain Commonwealth water resources to the ACT. The ACT now meters the Commonwealth's water use in the ACT and identified there would have been a higher level of Commonwealth water use than originally estimated under the long-term diversion cap for the ACT specified in subclause 9(1) of Schedule E to the Murray-Darling Basin Agreement.

Item 91 updates the Authority's estimate of the ACT (surface water) baseline diversion limit, from 52.5 GL per year to 54.7 GL per year. This increase of 2.2 GL per year is a consequential amendment following the update to the estimate of the baseline diversion limit of the ACT in **item 94** above. Relevant basin-wide figures have also been updated in the Basin Plan where appropriate, for instance in **item 14** (the note at subsection 6.04(2) as discussed above at *1. Northern Basin Review Amendments* of this explanatory statement).

The change to the baseline diversion limit in the ACT changes the SDL, as the SDL is the BDL minus the shared reduction amount of 4.9 GL per year plus the SDL adjustment amount. Following the amendments to the Basin Plan made by the *Basin Plan Amendment (SDL Adjustments) Instrument 2017*, the SDL adjustment amount has been added to the formula for calculating SDL. This change to the baseline diversion limit reflects a better understanding of the circumstances in 2009. The consequential adjustment to the SDL is minor, such that it continues to represent an environmentally sustainable level of take.

f) Water Resource Plan requirements (items 40 and 41)

Chapter 10 of the Basin Plan sets out what material must be contained in WRPs for them to be accredited or adopted as consistent with the Basin Plan, by the Minister under the Water Act. The Amendment Instrument makes minor amendments to the Basin Plan to simplify how this material is compiled by Basin States in order to reduce duplication and the potential for errors and inconsistencies.

Form of a WRP

A WRP can be constituted by a number of instruments and texts (see section 10.04 of the Basin Plan). Where two or more instruments are used, a WRP must include a list that specifies each Basin Plan requirement in Chapter 10 of the Basin Plan and the part of the WRP that addresses each requirement (subsection 10.04(4) of the Basin Plan). This list enables the Authority and the Minister to know which parts of the WRP to assess when determining consistency with the Basin Plan.

Item 40 of the Amendment Instrument amends paragraphs 10.04(4)(a) and (b) of the Basin Plan and adds a note in subsection 10.04(4) to clarify that information which meets several WRP requirements may be compiled into a single document and the list for subsection 10.04(4) of the Basin Plan may specify that a single document addresses a group of WRP requirements.

Minor correction of note about WRP accreditation

Item 41 repeals and substitutes the note below Division 2 – Take for consumptive use of Part 3 of Chapter 10 of the Basin Plan. The 2016 amendments to the Water Act removed the default 10-year period for accreditation of WRPs. Section 64 of the Water Act now provides that accreditation is valid as long as the WRP has effect under the state water management law, unless there is an amendment to the Basin Plan that affects WRP accreditations. **Item 41** amends the Basin Plan reference to the 10-year accreditation period so it is consistent with the Water Act.

g) Other minor amendments (item 50, 68-70, 72, 74-90)

Item 50 corrects an error in the heading of section 10.44 by replacing the text in the heading ‘water access entitlements’ with ‘water access rights’. The text in the section refers to water access rights.

Items 68-70, 72, 74-90 update the notes in Column 2 of Schedule 2 by deleting any redundant text relating to the remaining reduction to be achieved in relation to surface water SDL resource units as of 30 June 2012.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Basin Plan Amendment Instrument (No. 1) 2018

The Basin Plan Amendment Instrument 2018 (No.1) (the Amendment Instrument) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Basin Plan 2012* (the Basin Plan) provides for co-ordinated and sustainable management of water resources in the Murray-Darling Basin. It sets new long-term average sustainable diversion limits to provide for a healthy river system, while ensuring that the communities and industries that rely on Basin water resources remain productive into the future.

The changes to the Basin Plan made by this Amendment Instrument arise from several reviews: the Northern Basin Review of sustainable diversion limits (SDLs); a review of sustainable diversion limits for three groundwater areas; and the Australian Government's response to the independent review of the *Water Act 2007* (the Water Act).

The Amendment Instrument increases net SDLs in the northern Basin by 70 gigalitres (GL). The reduction in water recovery will minimise socio-economic impacts within northern Basin communities and deliver almost equivalent environmental outcomes by taking a more targeted approach to water recovery.

The Amendment Instrument increases the SDL for the extraction of the Basin's groundwater from 3,334 GL per year to 3,494 GL per year. The increases in groundwater extraction limits will have minimal impact on the environment due to suitable management actions in place to manage the potential impacts of increased groundwater take.

A number of other technical amendments aim to ensure the effective operation of the Basin Plan. These include better alignment of water resource plan areas with state water planning boundaries; changes to the compliance methodology for surface water and groundwater SDL resource units; clarifying certain water trade rules based on advice from the Australian Competition and Consumer Commission; and allowing additional time for Basin States to nominate their preferred allocation of the shared reduction amounts.

Human Rights Implications

The Amendment Instrument engages the right to an adequate standard of living and the right to health in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to an adequate standard of living is protected in Article 11 of the ICESCR and the right to physical and mental health is protected in article 12 of the ICESCR.

The Committee on Economic, Social and Cultural Rights (the Committee), established to oversee the implementation of the ICESCR, has interpreted these articles as including a human right to water, which encompasses an entitlement to ‘sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses’.

The Committee has noted the importance of ensuring sustainable access to water resources for agricultural purposes, to realise the right to adequate food. Attention should be given to ensuring that farmers have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology. In order to ensure that there is sufficient and safe water for present and future generations, countries should adopt programs that reduce depletion of water resources through unsustainable extraction and diversion.

The human rights implications of the Amendment Instrument must be considered in the context of the Water Act. The overall framework of the Water Act supports access to sufficient, safe, acceptable and physically accessible water for personal and domestic uses. This is reflected in the Water Act by section 20, which sets out the purpose of the Basin Plan, and is supported by subsection 22(1) which sets out the specific content required to be included in the Basin Plan, such as a water quality and salinity management plan (item 10). These sections, together with paragraph 86A(1)(a) of the Water Act, which requires regard to be given to critical human water needs and water quality, support the human right to water.

The Amendment Instrument supports the right to an adequate standard of living by reducing the water recovery target in the northern Basin from 390 GL to 320 GL, which will minimise any adverse socio-economic effects on communities. At the same time, the Amendment Instrument delivers almost equivalent environmental outcomes in line with the Committee’s emphasis on ensuring that there is sufficient and safe water available for future generations.

The Amendment Instrument does not change the Basin Plan requirements for Basin States to consider Indigenous values and uses in water resource planning. Chapter 10 of the Basin Plan ensures that a water resource plan must be prepared in consultation with relevant Indigenous organisations and consider certain specified matters relevant to Indigenous people. Indigenous people and organisations were consulted during the amendment process and the Amendment Instrument continues to maintain Indigenous peoples’ access to adequate and safe water, which helps to achieve Indigenous social and cultural objectives as they relate to waterways.

The Amendment Instrument also increases the SDL for the extraction of the Basin’s groundwater from 3,334 GL per year to 3,494 GL per year. The increases in groundwater extraction limits will have minimal impacts on the environment due to suitable management actions in place to manage the potential impacts of increased groundwater take.

The Amendment Instrument supports the Committee's interpretation of Articles 11 and 12 as including farmers and irrigators having equitable access to water and water management systems in order to meet the requirements of a sustainable irrigation sector. The Amendment Instrument continues to maintain sustainable limits on water use. This means managing the water resources in the Basin to meet the needs of all Australians, including Indigenous people, who use the Basin water resources for cultural, social, environmental, spiritual and economic purposes; farmers, who need reliable stock and domestic supplies; tourism operators, rural and regional communities and cities, which need reliable, clean, drinking supplies.

Conclusion

The Amendment Instrument is compatible with human rights because it advances the protection of human rights, specifically in relation to the right to an adequate standard of living and the right to the highest attainable level/standard of physical and mental health in the manner described.

The Hon. David Littleproud MP
Minister for Agriculture and Water Resources