

EXPLANATORY STATEMENT

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

Water Act 2007

Basin Plan Amendment (SDL Adjustments) Instrument 2017

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

Background

The Basin Plan sets long-term average sustainable diversion limits (SDLs) 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 SDLs take effect on 1 July 2019.

The Basin Plan and the Water Act set out the processes to be followed and the criteria to be applied in determining an SDL adjustment in 2017.

The Basin Plan requires that any adjustment to the SDLs under this mechanism will maintain or improve environmental, social and economic outcomes. All Basin State jurisdictions and the Murray-Darling Basin Authority (the Authority) agreed in 2012 that this mechanism was desirable.

The SDL adjustment mechanism enables the Basin-wide SDL for surface water to be changed to reflect the measures that operate both to increase the quantity of water available to be taken ('supply measures') and to enhance environmental outcomes ('efficiency measures'). Supply measures achieve environmental outcomes equivalent to those that were anticipated under the Basin Plan in 2012 with a lower volume of held environmental water than would otherwise be required. The effect of supply measures and their corresponding contribution is to increase the SDLs. Efficiency measures increase environmental outcomes while maintaining or improving social and economic outcomes. The effect of efficiency measures and their corresponding contribution is to decrease the SDLs.

The maximum net adjustment to the total surface water SDLs permitted under these provisions is a net five per cent adjustment. The net five per cent limit is calculated as five per cent of the total surface water SDL for the Basin water resources as it stood when the Basin Plan first took effect in 2012. The total surface water SDL for the Basin water resources at that time was estimated to be 10,873 GL, and the net five per cent limit is therefore 543 GL per year.

Section 7.12 of the Basin Plan provides for the Basin Officials Committee (the Committee) to notify the Authority of supply and efficiency measures that the Committee considers the Authority should take into account in proposing adjustments to surface water SDLs. The Committee must amend any notification as soon as practicable after any notified details have changed. The Basin Plan also requires the notification to include details of the easing or removal of constraints to deliver environmental water, where relevant to a notified measure.

The Committee comprises representatives of the governments of Queensland, New South Wales, Victoria, South Australia and the Australian Capital Territory (the Basin States) and the Australian Government.

In accordance with section 7.12 the Committee has made two notifications to the Authority, on 5 May 2016 and 28 June 2017. The Committee has also given the Authority a number of amendments to the supply measure notifications. The final notified package for the purposes of the Authority's 2017 determination includes 36 supply measures and two efficiency measures.

The Authority must maintain a register of notified measures and additional efficiency measures (section 7.13 of the Basin Plan). The notified supply and efficiency measures are listed on the register at <https://www.mdba.gov.au/sites/default/files/docs/171120-register-of-measures.pdf>.

The Authority determined the 2017 SDL adjustments for those surface water SDL resource units affected by the notified supply and efficiency measures in accordance with the criteria set out in Chapter 7 of the Basin Plan.

The supply and efficiency contributions can adjust the SDLs in surface water SDL resource units that are identified in the notification as 'affected units'. All surface water SDL resource units in the southern connected Basin have been notified as affected units for the package of notified supply measures. All surface water SDL resource units in the whole Basin have been notified as affected units for notified efficiency measures.

The total supply contribution referable to notified supply measures was determined by the Authority in 2017 to be 605 GL. This was calculated based on the effect that the notified supply measures will have when they come into operation by 30 June 2024. This 605 GL supply contribution has been distributed between surface water SDL resource units in accordance with section 7.18 of the Basin Plan.

The Authority calculated the supply contribution in accordance with the applicable method, using the default method set out in Schedule 6 of the Basin Plan. With the notified supply measures, the Authority has determined that an increase in the SDLs of 605 GL will, when compared with outcomes anticipated under the Basin Plan in 2012 (the benchmark environmental outcomes):

- have no detrimental impacts on reliability of supply of water to the holders of water access rights that are not offset or negated;
- achieve equivalent environmental outcomes.¹

This determination also satisfies the environmental safeguards (limits of change) in Schedule 6 of the Basin Plan. In its report to the Authority, the Independent Expert Panel Murray-Darling Basin SDL Limits of Change Review, comprising ecologists and hydrologists, assessed the limits of change breaches that occurred in a few sites. The Panel concluded that these breaches are not material and there was very little environmental risk associated with them.

¹ *Sustainable Diversion Limit Adjustment Mechanism: Draft Determination Report*, Murray-Darling Basin Authority, 2 October 2017, see Attachment C – Modelling Metrics

The Authority determined that the efficiency contribution to the proposed SDL adjustment would achieve neutral or improved socio-economic outcomes compared with the outcomes under benchmark conditions of development. The efficiency programs improve the environmental outcomes under the Basin Plan by investing in projects that reduce consumptive water inefficiencies and losses, and recover this water for the environment. The reduction in consumptive water use must have no reduction in socio-economic outcomes.

The SDL adjustment is limited to a net five per cent of the unadjusted total surface water SDL for the Basin water resources (543 GL per year), after taking into account increases to the SDL from supply measures and decreases to the SDL from efficiency measures. This means that, as a result of the 2017 SDL adjustment, the Basin-wide SDL must always be within 543 GL of the SDL at the reference time of 24 November 2012, or within the range from 10,330 GL per year to 11,416 GL per year. Noting that the net five per cent limit applies at the Basin-scale, individual SDL resource units may increase or decrease by greater than five per cent, as long as the net Basin-wide SDL remains within that range.

Giving full effect to the 605 GL total supply contribution within the net five per cent limit can be achieved by a decrease in the SDLs through the efficiency contribution. The five per cent limit requires that the net SDL adjustment arising from the supply contribution and the efficiency contribution is less than or equal to 543 GL.

This means that at least 62 GL of efficiency contribution has to be acquired and accounted for in the SDL adjustment (which occurs progressively) for the full 605 GL supply contribution to be realised. Until this point in time, the supply contribution will need to be limited to ensure the SDL adjustment remains within the net five per cent limit. If necessary, the effect of this limit on the supply contribution will be distributed between surface water SDL resource units in a manner proportional to the volumes of the supply contribution for each SDL resource unit, until such time there is at least 62 GL of efficiency contribution.

The efficiency contribution will increase over time as efficiency entitlements are acquired through notified efficiency measures. There are two notified efficiency measures that could be rolled out in any of the SDL resource units up to 30 June 2024, firstly, through on-farm irrigation and other water use efficiency measures, and secondly, through urban or industrial and mining areas water efficiency measures. Funding is available for these efficiency measures from the Water for the Environment Special Account established under Part 2AA of the Water Act. The objective for efficiency measures is to increase environmental outcomes while maintaining or improving social and economic outcomes. As at 5 December 2017, 0.5 GL in efficiency entitlements are listed on the Authority's register of notified measures.

In accordance with section 7.05 of the Basin Plan, the Authority consulted with the Basin Officials Committee on the proposed adjustments in a draft determination report.

The Committee was satisfied with the draft determination and advised that the Authority's proposed supply contribution of 605 GL meets Basin Ministers' expectations to offset the full remaining water recovery gap in the Southern Basin, when combined with the delivery of all remaining contracted water recovery. The full advice from the Committee (dated 21 September 2017) is available at mdba.gov.au/publications/mdba-reports/sustainable-diversion-limit-adjustment-mechanism-assessment-draft.

The Authority published the *Sustainable Diversion Limit Adjustment Mechanism: Draft Determination Report* on its website in accordance with section 7.05 of the Basin Plan at mdba.gov.au/publications/mdba-reports/sustainable-diversion-limit-adjustment-mechanism-assessment-draft and invited the public to make submissions during a one month period running from 3 October to 3 November 2017.

The Authority has considered both the advice of the Committee and the submissions made by the public in proposing the 2017 SDL adjustment.

The Authority proposed SDL adjustments to the Minister in accordance with section 23B of the Water Act. The 2017 SDL adjustment is set out in the *Basin Plan Amendment (SDL Adjustments) Instrument 2017* (the Amendment Instrument), which gives effect to the proposed 2017 SDL adjustments set out in the *Water (SDL Adjustments) Notice 2017*. This notice also includes an outline of material on which the Authority based its decision in determining the adjustments, in accordance with section 23B of the Water Act.

In accordance with section 7.10(2) of the Basin Plan the Authority also advised the Minister on the implications of the proposed adjustments on declared Ramsar wetlands included on the List of Wetlands of International Importance established under the Ramsar Convention.² Eight Ramsar wetlands are located in the southern-connected Basin and are potentially affected by SDL adjustment projects (Barmah Forest, NSW Central Murray State Forests, Gunbower Forest, Hattah-Kulkyne Lakes, Fivebough and Tuckerbil Swamps, 'Riverland', Banrock Station Wetland Complex, and the Coorong and Lakes Alexandrina and Albert). An analysis of the outcomes from the SDL adjustment package has determined that the proposed adjustments are not likely to have a significant impact on the eight relevant Ramsar wetlands. The Authority provided the advice on the implications for Ramsar wetlands to the Minister.

In accordance with section 23B of the Water Act the Minister has decided to adopt the Amendment Instrument.

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*.

The *Water (SDL Adjustments) Notice 2017*, also tabled with the Amendment Instrument in accordance with the requirements of section 23B of the Water Act, is not a legislative instrument.

Purpose

The purpose of the Amendment Instrument is to adjust the Basin Plan surface water SDLs in accordance with the recommendation by the Authority to the Minister made under section 23B of the Act.

² *The Convention on Wetlands of International Importance especially as Waterfowl Habitat*, agreed at Ramsar, Iran on 2 February 1971.

Impact and Effect

The Amendment Instrument has the effect of enabling a net adjustment in 2017 to the Basin-wide SDLs of up to 543 GL per year.

The notified supply measures will enable environmental outcomes equivalent to those anticipated under the Basin Plan to be achieved with a 605 GL increase in the SDLs. This serves to minimise the remaining environmental water recovery task.

Two efficiency measures have been notified, enabling efficiency entitlements to be acquired and decrease the SDLs accordingly. The SDL adjustment formula in the Amendment Instrument provides for the SDL adjustment amount to decrease to reflect the efficiency contribution. Efficiency measures can be funded through the Water for the Environment Special Account established in section 86AB of the Act.

Due to the net five per cent limit on the SDL adjustment under the Basin Plan, the full effect of the notified supply measures will not take effect until at least 62 GL of efficiency entitlements have been acquired.

On 9 June 2017 the COAG endorsed the report by the Murray-Darling Basin Ministerial Council, *Implementing the Basin Plan*, outlining the overall approach taken to the implementation of the 2017 SDL adjustment. The COAG endorsed the report as providing a credible and balanced pathway to implement the Basin Plan package agreed in 2012, including:

- supply measures to offset the Basin Plan water recovery target of 2,750 GL by 2019, using the SDL adjustment mechanism;
- constraints measures to address impediments to delivering environmental water; and
- efficiency measures to recover an additional 450 GL by 2024, consistent with the Basin Plan legal requirement to achieve neutral or improved socio-economic outcomes.

Consultation

The Authority consulted with the public and the Committee on the proposed Amendment Instrument.

The Office of Best Practice Regulation was consulted in the preparation of the Amendment Instrument (ID 22938) and advised that no Regulatory Impact Statement was required for the Amendment Instrument because the proposal is minor in nature.

Details/ Operation

Further details of the Amendment Instrument are set out in the [Attachment A](#).

Other

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 Office of International Law also

advised that the proposed amendments are consistent with Australia's obligations under 'relevant international agreements' as defined under section 4(1) of the Water Act.

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

The Amendment Instrument commences on the day after registration.

Details of the Basin Plan Amendment Instrument (SDL Adjustments) Instrument 2017

Section 1 – Name

This section provides that the name of the instrument is the *Basin Plan Amendment (SDL Adjustments) Instrument 2017* (Amendment Instrument).

Section 2 – Commencement

This section provides for the Amendment Instrument to commence on the day after it is registered.

Section 3 – Authority

This section provides that the Amendment Instrument is made under section 23B of the *Water Act 2007* (Water Act).

Section 4 – Schedules

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

Schedule 1 – Amendments to the Basin Plan 2012

Chapter 6 of the Basin Plan specifies SDLs which take effect on 1 July 2019. Chapter 7 of the Basin Plan sets out a mechanism for adjusting the surface water SDLs.

The Amendment Instrument provides for the 2017 adjustment of the SDL for each affected surface water SDL resource unit and the adjustment of the SDL for the Basin surface water resources as a whole to be adjusted in response to a determination made by the Authority under section 7.10 of the Basin Plan. As required by the Basin Plan, the proposed SDL adjustment is in the form of a formula, as a function of time, that reflects the changes up until 30 June 2024 of the relevant efficiency contributions from time to time, and the operation of the net five per cent limit on adjustments in section 7.19 of the Basin Plan.

The SDL for each surface water SDL resource unit is set out in column 2 of the table in Schedule 2 of the Basin Plan. The SDLs for each surface water SDL resource unit is determined by the following formula: the relevant baseline diversion limit (BDL) reduced by the local reduction amount (if any) and reduced by the SDL resource unit shared reduction amount (if any) and then increased or reduced by the SDL adjustment amount (if any).

The BDLs establish a baseline from which to determine required reductions in diversions. They are set out in Schedule 3 of the Basin Plan.

The local reduction amount is defined in section 1.07 of the Basin Plan, and is the quantity of water identified in column 2 of the table in Schedule 2 of the Basin Plan as the local reduction amount for the unit or if no quantity is identified, zero.

The SDL resource unit shared reduction amount for each surface water SDL resource unit in a zone is the amount, in gigalitres (GL) per year, calculated in accordance with section 6.05. Under section 7.14A of the Basin Plan, a Basin State may provide a reallocation adjustment request for shared reduction amounts up to 30 June 2017. This reallocation adjustment request is for the purposes of the operation of the SDL adjustment mechanism only, that is, this shared reduction request will be used to calculate the SDL adjustments in 2017 and any reconciliation adjustments in 2024.

The SDL adjustment amount in 2017 reflects the overall impact for an SDL resource unit of the increase in the SDL from supply measures (supply contribution) and the decrease in the SDL from efficiency measures (efficiency contribution), including the operation of the net five per cent limit on adjustments in section 7.19 of the Basin Plan. The Amendment Instrument provides for the calculation of the SDL adjustment amount in accordance with Chapter 7 of the Basin Plan. The SDL adjustment amount for an SDL resource unit will be a positive number if the supply contribution is greater than the efficiency contribution, and a negative number if the efficiency contribution is greater than the supply contribution.

Item 1 inserts the new Schedule 6A in subsection 1.05(1), after the table item dealing with Schedule 6.

Item 2 inserts new definitions in subsection 1.07(1) of the Basin Plan. The terms ‘apportioned supply contribution’, ‘current efficiency contribution’, ‘net effect’, ‘reduced supply contribution’, ‘SDL adjustment amount’ and ‘total current efficiency contribution’ have the meanings given by Schedule 6A or section 6.05A of the Basin Plan.

Item 3 inserts a new section 6.05A, which defines the term ‘SDL adjustment amount’. The term ‘SDL adjustment amount’ applies at the surface water SDL resource unit level and can change between water accounting periods. The SDL adjustment amounts, which have been proposed by the Authority under section 23A of the Act, are calculated in accordance with Schedule 6A in GL per year. The long-term average sustainable diversion limits for SDL resource units, set in column 2 of the table in Schedule 2, include the SDL adjustment amounts.

Item 4 replaces the existing note to Schedule 2 of the Basin Plan. The new Note 1 indicates that sections 6.02, 6.04, 6.05 and 6.05A, Schedule 3, Schedule 6A, the definition of BDL in section 1.07, and Part 3 of Chapter 10 are all relevant to this Schedule 2. The new Note 2 clarifies the formula that is used to calculate the long-term average sustainable diversion limit for a particular SDL resource unit as:

$$\text{SDL} = \text{BDL} - (\text{local reduction amount}) - (\text{SDL resource unit shared reduction amount}) + (\text{SDL adjustment amount})$$

The note also includes the text for the definitions for the terms ‘BDL’, ‘local reduction amount’, ‘SDL resource unit shared reduction amount’ and ‘SDL adjustment amount’. These are the same definitions used elsewhere in the Basin Plan.

Item 5 amends the long-term average sustainable diversion limits for each surface water SDL resource unit, in column 2 of the table in Schedule 2 of the Basin Plan, to include the SDL adjustment amount.

Item 6 is a consequential amendment due to **Item 5** and inserts a note against each SDL resource unit that the SDL adjustment amount will be added to the estimates of the SDL for each resource unit.

Item 7 inserts a new Schedule 6A which sets out how the SDL adjustment amount will be calculated for each surface water SDL resource unit.

Section S6A.01 of Schedule 6A provides a simplified outline of the Schedule.

Section S6A.02 defines key terms ‘apportioned supply contribution’, ‘current efficiency contribution’, ‘net effect’ and ‘total current efficiency contribution’ (in subsection (1) and as further detailed below) and sets out in a table the apportioned supply contributions for each southern Basin surface water SDL resource unit (in subsection (2)).

The 605 GL supply contribution proposed by the Authority will be apportioned between SDL resource units as set out in this subsection (2). The Authority calculated the supply contribution in accordance with the applicable method, using the default method set out in Schedule 6 of the Basin Plan. For the SDL resource units listed in the table at section S6A.02(2) of Schedule 6A, ‘apportioned supply contribution’ is defined as the amount in GL per year listed in the table. For all SDL resource units not listed in the table, the ‘apportioned supply contribution’ is zero, including northern Basin surface water SDL resource units (items 1 to 12 in Schedule 2 of the Basin Plan).

The supply contribution has been apportioned between SDL resource units so that New South Wales receives 47.4 per cent of the supply contribution, Victoria receives 44 per cent of the supply contribution and South Australia receives 8.6 per cent of the supply contribution. This is based on the percentage proportions of the southern Basin shared reduction amount in section 6.05(3) of the Basin Plan, amended to distribute the Australian Capital Territory’s share between New South Wales, Victoria and South Australia.

‘Current efficiency contribution’ is defined as the number of efficiency entitlements registered as being available for the surface water SDL resource unit and for a particular water accounting period. The current efficiency contribution is determined as at the end of the first day of the particular water accounting period, disregarding any efficiency entitlement that might be registered after 30 June 2024. The current efficiency contribution for a surface water SDL resource unit will increase over time as more efficiency entitlements are acquired.

‘Net effect’ is defined as having the meaning given by subsection S6A.04(2) of Schedule 6A. Note 1 explains that the net effect is the difference between the total supply contribution and the total efficiency contribution for the water accounting period under sections 7.15 to 7.17 of the Basin Plan. Note 2 explains that the net effect might vary between water accounting periods. This is because the total efficiency contribution changes with time.

‘Total current efficiency contribution’ is defined, for the water accounting period, as equal to the sum of the current efficiency contributions of all surface water SDL resource units.

Section S6A.03 provides for the definitions of ‘proposed plan area limit’ and ‘proposed Basin limit’ within the meaning of subsection 23A(5) of the Water Act and for the purposes of the the *Water (SDL Adjustments) Notice 2017* prepared under subsection 23B(4) of the Water Act.

Section S6A.04 provides the method for calculating the ‘net effect’ for each water accounting period in GL per year. The net effect is the difference between the Basin-wide supply contribution (605 GL) and the total current efficiency contribution. The ‘total current efficiency contribution’ is equal to the sum of the current efficiency contributions (as defined in subsection S6A.02(1)) of all SDL resource units. The purpose of calculating the net effect is to determine whether the supply contribution needs to be reduced to bring the SDL adjustment amount within the net five per cent limit as required under section 7.19 of the Basin Plan.

If the net effect is greater than 543 GL, then section S6A.05 of Schedule 6A will apply to calculate the SDL adjustment amount. If the net effect is less than or equal to 543 GL, then section S6A.06 of Schedule 6A will apply to calculate the SDL adjustment amount.

The formula in Schedule 6A operates on the assumption that the net impact of the adjustment will be an increase in the Basin-wide SDL of up to five per cent, that is, a net effect of no more than 543 GL. The Basin Plan does not preclude that the net impact of the adjustment could be a decrease in the Basin-wide SDL. That is, if the total efficiency contribution was greater than the total supply contribution, then the Basin-wide SDL would adjust downwards. Practically, however, the efficiency contribution could never exceed 605 GL. The Water for the Environment Special Account established by section 86AA of the Water Act provides funding for measures that will increase the volume of Basin water uses available for environmental use by 450 GL. The total supply contribution of the notified measures is the total increase in the SDLs for all the units affected by notified supply measures (section 7.15 of the Basin Plan).

Section 6A.05 provides a method to calculate the SDL adjustment amount for each SDL resource unit if the net effect is greater than 543 GL per year (the net five per cent limit calculated under section 7.19). This five per cent limit will be reached if less than 62 GL of efficiency contribution has been achieved. The practical effect of this is that the 605 GL supply contribution will need to be reduced so that the net effect remains less than or equal to 543 GL. In this case, the formula for calculating the SDL adjustment amount for each SDL resource unit will be:

$$(\text{SDL adjustment amount}) = (\text{reduced supply contribution}) - (\text{current efficiency contribution})$$

The apportioned supply contribution will be reduced in each SDL resource unit in proportion to the volume of the total supply contribution that is apportioned to that SDL resource unit, in accordance with the provisions of section 7.19. The reduced supply contribution will be calculated using the following formula:

$$(\text{reduced supply contribution}) = (\text{apportioned supply contribution}) \times ((\text{total current efficiency contribution} + 543) \div 605)$$

As efficiency entitlements are acquired, this reduction to the supply contribution will relax, until the full 605 GL is available to be apportioned to the surface water SDL resource units. Efficiency entitlements from across the whole Basin can contribute to this relaxation, regardless of the SDL resource unit in which they are held. The SDL adjustment amount in

any SDL resource unit will be calculated using the volume of efficiency entitlements held in that SDL resource unit.

Section 6A.06 provides a method to calculate the SDL adjustment amount for each SDL resource unit if the net effect is less than or equal to 543 GL per year (the net five per cent limit calculated under section 7.19). This will occur if greater than or equal to 62 GL of efficiency contribution has been achieved. The practical effect of this is that the full 605 GL supply contribution can contribute to the SDL adjustment amount. Consequently, the formula for calculating the SDL adjustment amount for each SDL resource unit will be:

$$(\text{SDL adjustment amount}) = (\text{apportioned supply contribution}) - (\text{current efficiency contribution})$$

The two worked examples below illustrate how the formula in Schedule 6A applies to ensure that the SDL adjustment always operates within the net five per cent limit.

Worked example 1

- Total supply contribution: 605 GL
- Total efficiency contribution: 1 GL
- Net effect: 604 GL
- Net five per cent limit on the SDL adjustment: 543 GL

Without the net five per cent limit on the SDL adjustment, the Basin-wide SDL would increase by 604 GL (i.e. a 605 GL increase in the SDLs from supply measures and a one GL decrease in the SDLs from efficiency measures).

However, the net five per cent limit on the SDL adjustment will limit the SDL adjustment to an increase of 543 GL (i.e. a 544 GL increase in the SDLs from supply measures and one GL decrease in the SDLs from efficiency measures).

The total supply contribution will need to be reduced to 544 GL. This is a reduction of 61 GL. This reduction will be distributed across surface water SDL resource units in the same proportions as the apportionment of the 605 GL supply contribution.

For example, in Table 1 below, Murrumbidgee receives 26.78 per cent of the 605 GL supply contribution. Murrumbidgee will also be allocated 26.78 per cent of the 61 GL reduction. This means that the supply contribution allocated to Murrumbidgee will be reduced by 16.3 GL from 162 GL to 145.7 GL.

For each water accounting period, and as calculated at the end of the first day of each water accounting period, as new efficiency entitlements are acquired, the available supply contribution will increase by the amount of efficiency entitlements. The reduction (and its relaxation as efficiency entitlements are acquired) will always be applied in the same proportions. Therefore, an SDL resource unit will always have the same percentage of the available supply contribution.

Table 1: Worked example 1

Item	SDL resource unit (code)	Apportioned supply contribution (GL)	Percentage of the apportioned supply contribution (%)	Reduction in supply contribution (GL)	Reduced supply contribution (GL)
13	Lachlan (SS16)	0.0	0.00	0.0	0.0
14	Murrumbidgee (SS15)	162.0	26.78	16.3	145.7
15	New South Wales Murray (SS14)	124.8	20.63	12.6	112.2
16	Lower Darling (SS18)	0.0	0.00	0.0	0.0
17	Victorian Murray (SS2)	72.8	12.03	7.3	65.5
18	Kiewa (SS3)	1.3	0.21	0.1	1.2
19	Ovens (SS4)	3.0	0.50	0.3	2.7
20	Goulburn (SS6)	174.5	28.84	17.6	156.9
21	Broken (SS5)	1.1	0.18	0.1	1.0
22	Campaspe (SS7)	2.6	0.43	0.3	2.3
23	Loddon (SS8)	10.9	1.80	1.1	9.8
24	Wimmera-Mallee (surface water) (SS9)	0.0	0.00	0.0	0.0
25	South Australian Murray (SS11)	52.0	8.60	5.2	46.8
26	South Australian Non-Prescribed Areas (SS10)	0.0	0.00	0.0	0.0
27	Eastern Mount Lofty Ranges (SS13)	0.0	0.00	0.0	0.0
28	Marne-Saunders (SS12)	0.0	0.00	0.0	0.0
29	Australian Capital Territory	0.0	0.00	0.0	0.0

Item	SDL resource unit (code)	Apportioned supply contribution (GL)	Percentage of the apportioned supply contribution (%)	Reduction in supply contribution (GL)	Reduced supply contribution (GL)
	(SS1)				
Total		605.0	100.00	61.0	544.0

Worked example 2

- Total supply contribution: 605 GL
- Total efficiency contribution: 30 GL
- Net effect: 575 GL
- Net five per cent limit on the SDL adjustment: 543 GL

Without the net five per cent limit on the SDL adjustment, the Basin-wide SDL would increase by 575 GL (i.e. a 605 GL increase in the SDLs from supply measures and a 30 GL decrease in the SDLs from efficiency measures).

However, the net five per cent limit on the SDL adjustment will limit the SDL adjustment to an increase of 543 GL (i.e. a 573 GL increase in the SDLs from supply measures and a 30 GL decrease in the SDLs from efficiency measures).

The total supply contribution will need to be reduced to 573 GL. This is a reduction of 32 GL. This reduction will be distributed across surface water SDL resource units in the same proportions as the apportionment of the 605 GL supply contribution.

For example, in Table 2 below, Murrumbidgee still receives 26.78 per cent of the 605 GL supply contribution. Murrumbidgee will also be allocated 26.78 per cent of the 32 GL reduction. This means that the supply contribution allocated to Murrumbidgee will be reduced by 8.6 GL from 162 GL to 153.4 GL.

Compared to the first worked example above, the reduction to the supply contribution has relaxed by 29 GL from 544 GL to 573 GL. For each water accounting period, and as calculated at the end of the first day of each water accounting period, as new efficiency entitlements are acquired, the available supply contribution will increase by the amount of efficiency entitlements acquired in the previous year.

The reduction (and its relaxation as efficiency entitlements are acquired) will always being applied in the same proportions. Therefore, an SDL resource unit will always have the same percentage of the available supply contribution.

Table 2: Worked example 2

Item	SDL resource unit (code)	Apportioned supply contribution (GL)	Percentage of the apportioned supply contribution (%)	Reduction in supply contribution (GL)	Reduced supply contribution (GL)
13	Lachlan (SS16)	0.0	0.00	0.0	0.0
14	Murrumbidgee (SS15)	162.0	26.78	8.6	153.4
15	New South Wales Murray (SS14)	124.8	20.63	6.6	118.2
16	Lower Darling (SS18)	0.0	0.00	0.0	0.0
17	Victorian Murray (SS2)	72.8	12.03	3.8	69.0
18	Kiewa (SS3)	1.3	0.21	0.1	1.2
19	Ovens (SS4)	3.0	0.50	0.2	2.8
20	Goulburn (SS6)	174.5	28.84	9.2	165.3
21	Broken (SS5)	1.1	0.18	0.1	1.0
22	Campaspe (SS7)	2.6	0.43	0.1	2.5
23	Loddon (SS8)	10.9	1.80	0.6	10.3
24	Wimmera-Mallee (surface water) (SS9)	0.0	0.00	0.0	0.0
25	South Australian Murray (SS11)	52.0	8.60	2.8	49.2
26	South Australian Non-Prescribed Areas (SS10)	0.0	0.00	0.0	0.0
27	Eastern Mount Lofty Ranges (SS13)	0.0	0.00	0.0	0.0
28	Marne-Saunders (SS12)	0.0	0.00	0.0	0.0
29	Australian Capital Territory (SS1)	0.0	0.00	0.0	0.0

Item	SDL resource unit (code)	Apportioned supply contribution (GL)	Percentage of the apportioned supply contribution (%)	Reduction in supply contribution (GL)	Reduced supply contribution (GL)
Total		605.0	100.00	32.0	573.0

Illustrative examples of the SDL adjustments can also be found in the *Water (SDL Adjustments) Notice 2017*.

Statement of Compatibility with Human Rights

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

Basin Plan Amendment (SDL Adjustments) Instrument 2017

This Legislative 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 the integrated management of Murray-Darling Basin water resources in a way that promotes the objects of the *Water Act 2007* (Cth) (the Water Act), including setting sustainable diversion limits (SDLs) from 1 July 2019 to restrict how much water can be sustainably taken from the Basin. To provide flexibility, Chapter 7 of the Basin Plan includes a mechanism to adjust the SDLs in 2017. The process to adjust the SDLs in the Basin Plan is prescribed in sections 23A and 23B of the Water Act.

The *Basin Plan Amendment (SDL Adjustments) Instrument 2017* (the Amendment Instrument) proposes adjustments to the SDLs in response to supply and efficiency measures notified by the Basin Officials Committee under section 7.12 of the Basin Plan. The unadjusted surface water SDLs for the Basin water resources as a whole is estimated to be 10,945 GL per year. The maximum adjustment permitted under these provisions is a net five per cent adjustment (543 GL per year).

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 making an adjustment to the SDLs to provide additional water available for communities and by improving environmental outcomes while maintaining or improving socio-economic outcomes. Supply measures increase the quantity of water available to be taken and achieve equivalent environmental outcomes with a lower volume of held environmental water that would otherwise be required. Efficiency measures are measures that increase environmental outcomes while maintaining or improving social and economic outcomes. This means equivalent environmental outcomes are achieved with less water needing to be recovered, and this is in line with the Committee's emphasis on ensuring 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 supports the Committee's interpretation of Articles 11 and 12 of the ICESCR as including farmers and irrigators having equitable access to water and water management systems, to meet the requirements of a sustainable irrigation sector. The purpose of the Amendment Instrument is to continue to maintain an environmentally sustainable level of take while ensuring water is available for communities. 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.

The Amendment Instrument also supports Article 8(c)(d) and (i) of the Convention of Biological Diversity (CBD) through retaining an environmentally sustainable level of take in the Basin which regulates biological resources with a view to ensuring conservation and sustainable use; promoting the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings; endeavouring to provide the conditions needed for compatibility between present uses and the conservation of biological diversity and the sustainable use of its components. The Amendment Instrument additionally supports Article 10(e) of the CBD by encouraging cooperation between governmental

authorities and its private sector in developing methods for sustainable use of biological resources, by virtue of the consultative process required under the Water Act and Basin Plan to enable these amendments to be agreed amongst Basin States.

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 Murray-Darling Basin Authority consulted with the Basin Officials Committee and other relevant stakeholders on documents, including the Draft Determination Report, required for the development of this Amendment Instrument. The consultation in preparing this Amendment Instrument included Basin communities and Indigenous stakeholders through the public submissions process.

The Hon. Barnaby Joyce MP
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