

Key developments in water law and management in 2016

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Source: abc.net.au



Introduction

Focus of the presentation

- The SDL adjustment mechanism
 - Supply measures
 - Efficiency measures and the Water for the Environment Special Account
- The Murray-Darling Basin Authority's Northern Basin Review.

Water Act 2007 (Cth)

- National leadership provided through 1994 COAG water reform framework and 2004 National Water Initiative
- Direct Commonwealth intervention through the *Water Act 2007* (Cwth) and the Murray-Darling Basin Plan (November 2012).
- *Water Act 2007* (Cth) established the Murray-Darling Basin Authority.
- MDBA required, among other matters, to prepare and implement the Basin Plan, including **setting sustainable diversion limits** that must reflect an “**environmentally sustainable level of take**” (s23)

Water Act 2007 (Cth)

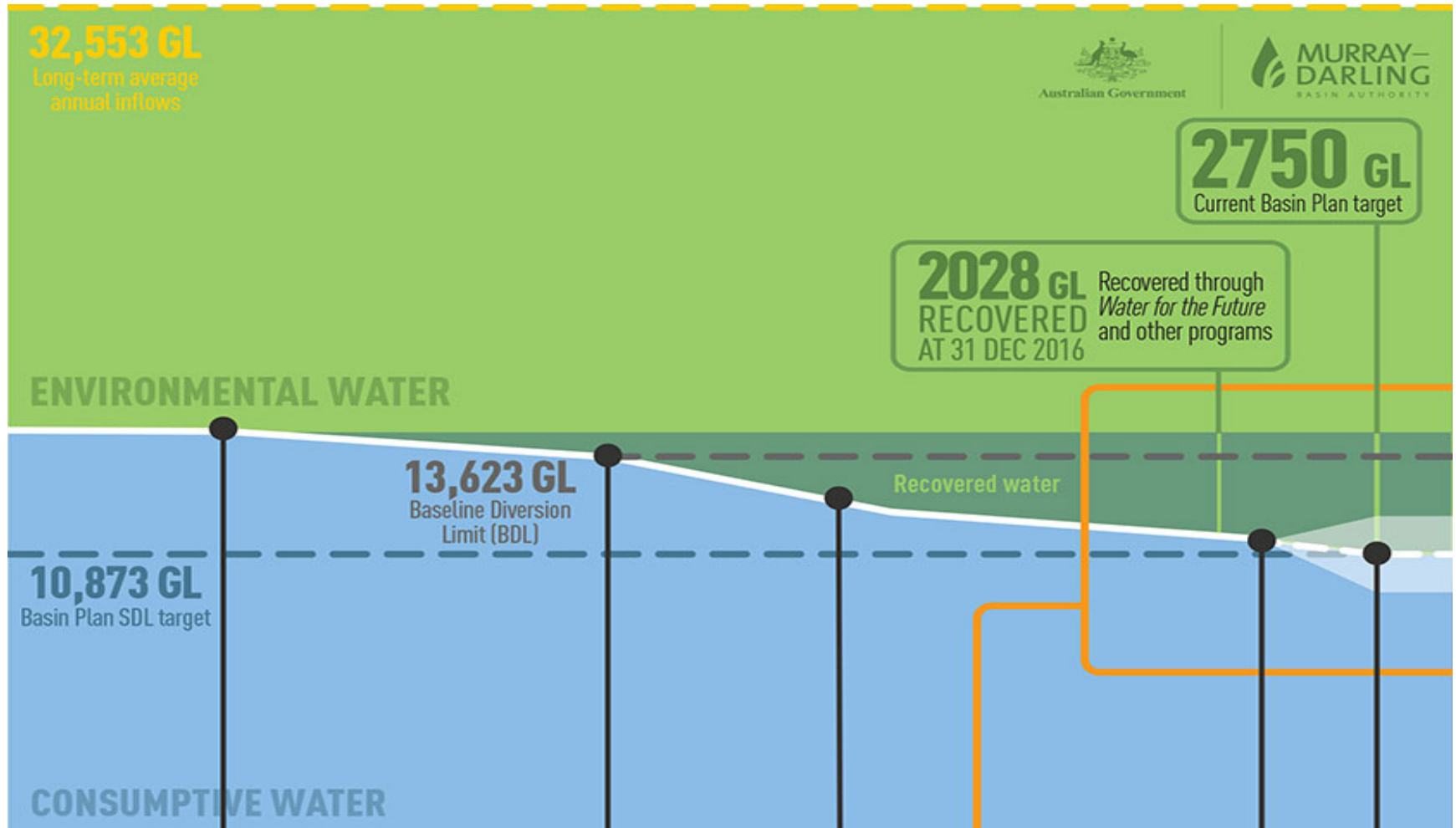
- Basin Plan to be put into effect through accreditation, oversight and enforcement by MDBA of **state water resource plans** (to be effective after transitional and interim plans cease) (s22, and Pt 2, Div 2)
- Each water resource plan will contain mechanisms for implementing SDL applicable to it (s 22 and Pt 2, Div 2)
- **Aggregate** effect of plans **to meet SDL**.
- State water plans to be accredited through period 2012-2019.
- **SDLs will not be implemented until 2019.**

Water Act 2007 (Cth)

*‘The **tyranny of incrementalism** and the lowest common denominator must end.... we need to confront head-on the over-allocation of water in the Murray-Darling Basin. We must strike a sustainable balance between the demands of agriculture, industry and towns on the one hand and the needs of the environment on the other.’*

John Howard, January 2007

Murray-Darling Basin Plan



Source: mdba.gov.au

SDL adjustment mechanism

- During final negotiations, Water Act amended to include an “SDL adjustment mechanism” (ss 23A and 23B) to allow the SDL to be adjusted up or down within a 5% range.
- Under the Water Act, the Basin Plan may provide for the Authority to propose an adjustment to the long-term average sustainable diversion limits (s 23A).
- Chapter 7 of the Basin Plan empowers Authority to propose adjustments to the long-term average sustainable diversion limits under section 23A of the Act, provided measures come into operation by 2024.
- “Supply” and “efficiency” measures.

SDL adjustment mechanism



Source: ourriverourfuture.org

SDL adjustment mechanism



Source: environment.gov.au

SDL adjustment mechanism



SDL adjustment mechanism

Water for the Environment Special Account (Pt 2AA, Water Act 2007 (Cth)).

- Section 86AA:

(1) The object of this Part is to **enhance the environmental outcomes that can be achieved by the Basin Plan**, as in force from time to time, by:

(a) protecting and restoring the environmental assets of the Murray-Darling Basin; and

(b) protecting biodiversity dependent on the Basin water resources;

.....

(3) The object of this Part is to be achieved by:

(a) easing or removing constraints on the capacity to deliver environmental water to the environmental assets of the Murray-Darling Basin; and

(b) **increasing the volume of the Basin water resources that is available for environmental use by 450 gigalitres.**

- See also Basin Plan, cl 7.09

SDL adjustment mechanism

Section 86AD

....

(2) Amounts standing to the credit of the Water for the Environment Special Account may be debited for any of the following purposes:

....

(4) An amount may be debited from the Water for the Environment Special Account for the purpose of making a payment in relation to a project or purchase referred to in paragraph (2)(a) or (b) or subparagraph (2)(c)(i) **only if the project or purchase is related to an adjustment of a long-term average sustainable diversion limit for the water resources of a particular water resource plan area (or a particular part of those water resources) under section 23A...**

SDL adjustment mechanism



Source: [heraldsun.com](https://www.heraldsun.com.au)



Source: [indaily.com.au](https://www.indaily.com.au)

SDL adjustment mechanism

7.17 Ensuring that criteria for amounts of adjustments are satisfied

- (1) If, after calculating the total supply and efficiency contributions under sections 7.15 and 7.16, the Authority is not satisfied that a determination of proposed adjustments based on those amounts can be made under this Division that satisfies the criteria below, the Authority may reduce the total supply contribution, or the efficiency contribution for any affected unit, to a level at which such a determination can be made.
- (2) The applicable criteria are the following:
 - Equivalent environmental outcomes*
 - (a) The supply contributions to the proposed adjustments achieve equivalent environmental outcomes compared with the benchmark environmental outcomes.
 - Neutral or improved socio-economic outcomes*
 - (b) The efficiency contributions to the proposed adjustments achieve neutral or improved socio-economic outcomes compared with the outcomes under benchmark conditions of development as evidenced by:
 - (i) the participation of consumptive water users in projects that recover water through works to improve irrigation water use efficiency on their farms;

SDL adjustment mechanism

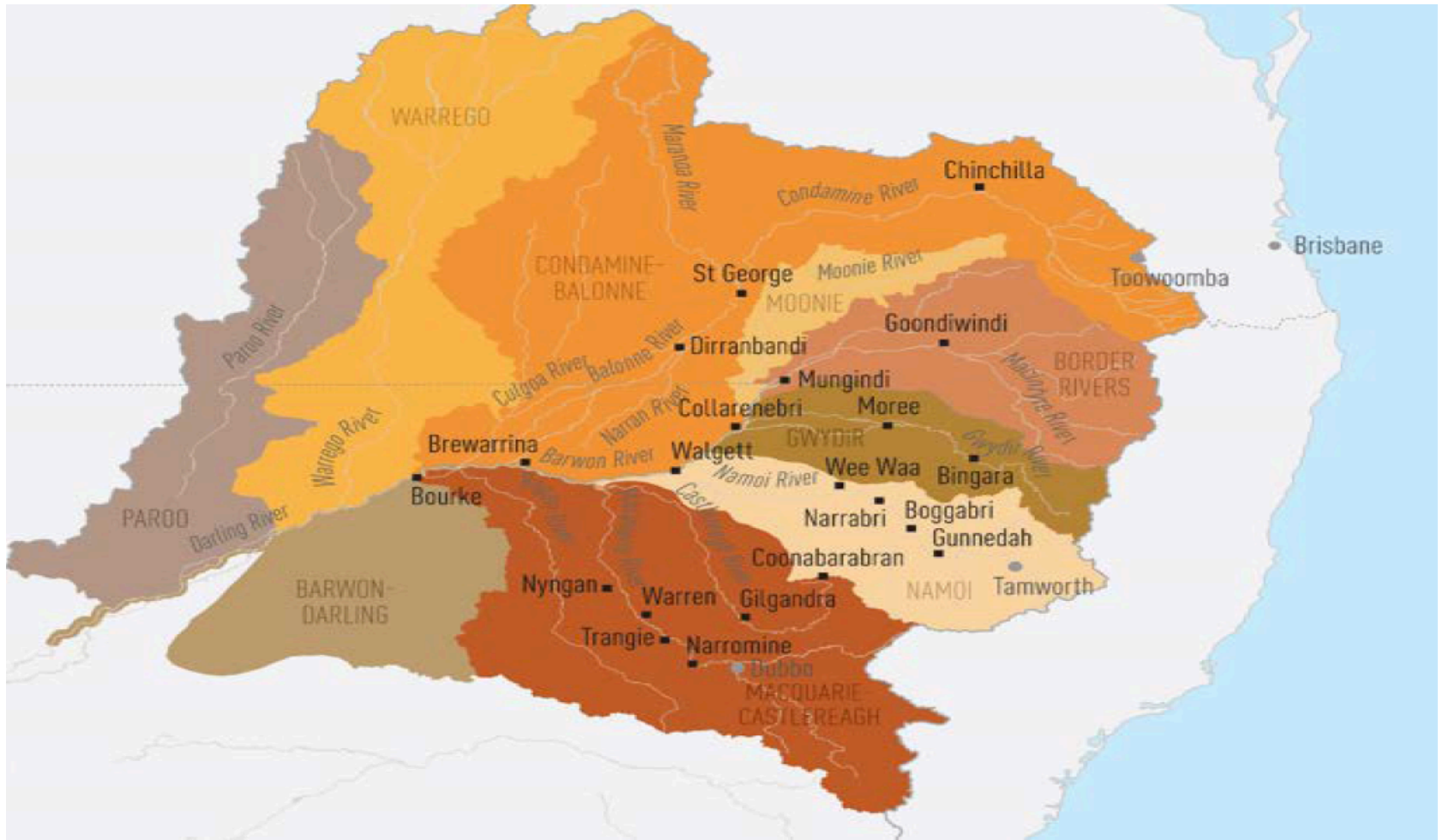
‘...so that we end up with those parts of the plan that were things that were demanded by irrigation communities being delivered in full and those parts of the plan that were demanded by environmentalists and downstream people generally—but that is often summarised as being the state of South Australia—do not happen, where the specific additions to the plan that they sought do not happen.’

...

‘Unless he can step back from his argument that the 450GL is undeliverable by refusing to quote the entirety of the plan, Labor will have no choice but to move an amendment to the Water Act ... which says you cannot get the full 650GL unless the 450GL is delivered as well. We are having that amendment drafted now.’

- Tony Burke, House of Representatives, 13
February 2017

Northern Basin Review



Source: mdba.gov.au

Northern Basin Review

- The *Water Act 2007* (Cth) provides for regular 10-yearly reviews and reviews requested by the Minister or Basin States (s 50).
- Northern Basin Review noted specifically in the Basin Plan. A Note in cl 6.06 provides:

Note: For example, the Authority intends to conduct research and investigations by 2015 into aspects of the Basin Plan in the northern Basin, including the basis for the long-term average sustainable diversion limits for surface water and groundwater SDL resource units, and in doing so will draw on local community input that will be sought from relevant local bodies.
- The current recovery target for the Northern Basin is 390 GL/yr.
- MDBA report recommends a reduction to 320 GL/yr, combined with implementation of a suite of 'toolkit' measures.
- Southern Basin will be assessed as part of regular 10-year review cycle, ie 2026. MDBA to release a 'report card' this year.