

# Legal Tools for Water Sustainability, Planning & Watershed Governance



**Oliver M. Brandes**

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POLIS Project on Ecological Governance

**watersustainabilityproject**

# *Water Sustainably Act* – now in force

- February 29<sup>th</sup>, 2016, replaces 107-year old *Water Act*
- Still a work in progress: Phase 1 regulations complete but much more to come ...

## Why the Regulations Matter

- WSA is an enabling act
- Regulations: subordinate legislation.  
have the force of law, state how  
details of how law is interpreted/  
applied



***...Act not done until the regs in place and implemented!***

# Spectrum of Planning Tools in WSA

## Water Sustainability Plans

- Triggered by conflict
- Tailor-made to regional issues
- Binding & can change licences



## Area based regulations

- Designate specific areas and create unique thresholds and requirements for those places



## Sensitive stream designation

- To protect at-risk fish populations
- License terms and conditions related to mitigation, use of water, monitoring & reporting



## Water Objectives

- Link land and water - criteria for water quality and quantity that decision-makers to consider



# Water Sustainability Plans

*WSA*, sections 64-85

**An important vehicle to address watershed conflicts & articulate a cohesive vision.**

Provides a long-term formalized legal document (plan) to integrate:

- water quality
- water quantity
- a clear partnership (co-governance) mode of decision-making

**\*\* Primary way to deal with existing licences/allocations**





# Problems it could solve:

- **Water quantity/environmental flows** – can change licences
- **Water quality** –water objectives and changes to land use
- **Degraded ecosystems**
- **Siloed decision-making; land/water considered in isolation**
- **Greater role for local entities in plan development/implementation**
- **Can be legally enforceable**
- **More durable decisions based on local expertise and community buy-in**



# Triggers for implementation

- Conflict between water users
- Conflict between water users and environmental flow needs
- To address risks to water quality and aquatic ecosystem health
- Third party can request the Minister to initiate the plan



Ministry of  
Environment

# Water Sustainability Plans

## PROS

- ✓ Can adjust land and water use activities & practices – enforceable and durable solutions
- ✓ Opportunity for local entities to play formalized role as a convenor for developing and implementing the plan – co-governance approach
- ✓ Tailor-made to regional issues
- ✓ Could be a venue to integrate/support indigenous water laws

## CONS

- ✗ Requires political will for development and implementation
- ✗ Resource (\$\$) and time-intensive process

# WSP highlights (irrespective of FITFIR)

**1. Change water entitlements** (including claw back licences or parts of)

**2. Link land & water** – by binding others making decisions about land

- require that decisions take Plan into account
- explicit provisions can bind and limit decisions (prov and local gov't staff)

3. Establish a localized/contextual approach to **drought**

- specific & phased drought plan
- embed innovation – create a local drought fund to pay users to reduce water at critical times

**4. Long-term & comprehensive** enable water gov/management for local issues

- Umbrella (nested) for a variety of WSA tools (objectives, area based regs, storage requirements, eFlow thresholds, reserves, advisory boards etc)

5. Establish watershed-specific **dispute-resolution** processes

- Cycle of review and reform in response to data and ecosystem conditions

**6. Shared & delegated decision-making** – either through G2G forum/board, or more broadly, can establish a way to make certain decisions locally

**7. Adapt over time** – with built in process to revisit & revise as conditions change (eg every 5 years)





# Essential components:

- Data
- Water objectives
- Hydrological and land use planning
- Env flows
- Licensing
- Drought response
- Reserves
- Decision-making

\*\* includes scenarios to illustrate

\*\* Flow chart to break down key steps



An aerial photograph of a river delta, showing a complex network of channels and distributaries. The image has a blue tint, giving it a cool, aquatic feel. The text is overlaid on the right side of the image.

## ***A necessary synthesis***

...opportunity to use the tools in  
*Water Sustainability Act*  
to advance community level  
concerns around sustainability  
AND reinforce indigenous water  
laws & establish thresholds that  
protect watersheds & water rights