



Hon Lisa Neville MP

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Senator Slade Brockman
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Ref: MIN063303



Dear Senator Brockman

MURRAY-DARLING BASIN PLAN SUBMISSION

Thank you for your letter on 8 August 2019 to the Premier inviting a submission to the Senate Select Committee on the Multi-Jurisdictional Management and Execution of the Murray-Darling Basin Plan. As Minister for Water, this matter is in my area of responsibility. Your correspondence has been forwarded to me so that I may respond.

Victoria remains committed to working with the Commonwealth Government, other Basin jurisdictions and the Murray-Darling Basin Authority (MDBA) to deliver the Basin Plan in a way that balances social, economic and environmental outcomes, as agreed.

Victoria does not support starting again, or renegotiating Victoria's committed water recovery targets. Victorian irrigators have already done the heavy lifting in recovering water.

We want to ensure the Plan is getting the best outcome for our communities and the environment. The Basin Plan and its implementation was always intended to be adaptive and responsive to emerging issues and new information, and we need to work together to ensure this occurs.

Victoria has recovered over 800 GL of water for the environment, and with our share of the 605 GL offsets, we are on track to meet Victoria's 1,075.3 GL target. The water recovered is already delivering for the environment, with improved vegetation, fish populations, and waterbird breeding.

Our next priority is delivery of the offset projects. These include the construction of pipes and pumps in key iconic Victorian ecological sites such as Hattah Lakes. These projects will help increase the resilience of these sites to drought and dry conditions and support tourism and recreation opportunities for the community.

A detailed submission against matters raised in your terms of reference is attached for the Committee's consideration.

Yours sincerely

 Hon Lisa Neville MP
Minister for Water

27/9/19

**Victorian Government submission to Select Committee on the
Multi-Jurisdictional Management and Execution of the Murray-Darling Basin Plan**

September 2019

Terms of Reference 1: Responsibilities in relation to the management and execution of the Murray Darling Basin Plan consistent with the objects of the Water Act 2007, in particular: a) Commonwealth responsibilities, b) state and territory responsibilities, and c) areas of uncertainty or potential conflict in respect of responsibilities

Victoria would not support any constitutional changes to the current Commonwealth and State/Territory responsibilities for managing water resources in the Murray-Darling Basin.

Victoria is recognised for our strong regulatory framework that protects public health and the environment, with well-established and transparent institutions and pricing arrangements, understanding of water availability and climate dependence, water efficiency and world-class infrastructure, and a robust water entitlement framework, including a water trading system and water markets.

Victoria's water entitlement framework is established by the *Water Act 1989* (Vic) (the Act). Under the framework, the Minister for Water is responsible for setting caps, allocating water entitlements, and setting rules for extraction to ensure available water is shared equitably between users and the environment. The framework is designed to provide certainty and flexibility to allow individuals to manage their water use decisions. It is also an important way to manage water in a highly variable climate. The effectiveness of Victoria's approach was demonstrated through the Millennium Drought, and we have applied lessons learned through that drought to continue to make improvements.

Victoria takes a conservative approach to the way we allocate water to ensure more water is available for high-reliability entitlements when conditions are dry. When making the 1 July seasonal determination, the Northern Victoria Resource Manager considers the volume of water in storage, expected inflows over the planning period, and the need to meet commitments. Commitments include unused allocation carried over to the next water year by irrigators and the environmental water holders and the losses caused by evaporation and transmission of water through channels and rivers. Victoria's policy is to secure the year's seasonal determination for high-reliability water entitlements before making seasonal determinations against low-reliability entitlements. This is to make sure reserves are established to secure the availability of high-reliability entitlements in the following year if conditions remain dry. Victoria's policy also includes securing Goulburn and Murray delivery system operating needs for the year so that customers with allocation can access their water when needed. The reserve policy means users are assured of receiving their water when it is ordered, and do not have to wait for system operating needs to be reserved in the new season, even if allocations are zero.

Arrangements for protecting environmental water are well established in Victoria. In 2018-19, these arrangements enabled environmental water holders to deliver over 450 gigalitres in Northern Victoria, of which approximately 370 gigalitres was re-used downstream for additional environmental benefit. On 28 June 2019 the Murray-Darling Basin Authority (MDBA) determined the prerequisite policy measures as defined in the Basin Plan measures met the requirements of the Basin Plan (<https://www.mdba.gov.au/publications/mdba-reports/prerequisite-policy-measures>).

States are responsible for ensuring that individuals comply with the regulatory regime and the conditions of their licenses and water access rights. The MDBA's 2017 compliance review showed that Victoria has a strong culture of compliance and widespread metering. Our policy is that all significant use must be metered. Recently, Victoria passed legislation which:

- increased the maximum fine for intentional water theft and related offences if they cause substantial harm, to \$990,000 for companies or \$198,000 for individuals;

- allows the suspension or cancellation of licences for unauthorised take of water and illegal works; and
- will enable water corporations to issue penalty infringement notices for less serious water offences.

States also report to the MDBA on their compliance with Basin Plan sustainable diversion limits. Compliance with the sustainable diversion limit is annually demonstrated through comparison of actual take with permitted take calculated using best available tools including hydrological models. All hydrologic models of Victorian systems in the Murray-Darling Basin are being verified by the MDBA as part of the Water Resource plan accreditation.

Victoria welcomes and supports the decision to establish an Inspector-General Murray-Darling Basin Water Resources. This is a good step towards greater compliance, accountability and transparency across the Basin. Victoria has been consistent in calling for all jurisdictions to have robust arrangements in place. Victoria will work with Basin Governments to ensure that the arrangements for the Inspector-General do not replicate the state based regulatory compliance regimes, and that the Inspector-General role has a systemic and strategic focus.

The role of the MDBA is complex, as it has both service delivery and regulatory functions. There is a need for increased clarity and confidence in the role the MDBA is performing in Basin Plan implementation and delivery of river operations and NRM programs on behalf of governments. In the joint governments' response to the Productivity Commission's *Murray-Darling Basin Plan: 5-year Assessment final report*, endorsed by the Council of Australian Governments (COAG) on 9 August 2019, governments acknowledged the Productivity Commission's concerns and the importance of a clear and robust approach to compliance in the Basin. Governments committed to further consider the need to separate the MDBA's service delivery and regulatory functions in 12 months and ask the Inspector-General for advice to support their further decision making.

Recent amendments to the Act have improved Victoria's recognition of Traditional Owner values in water management. This legislation supports Aboriginal cultural uses of water and will underpin opportunities to use water for economic development for Traditional Owners and Aboriginal Victorians. It will also support the self-determination of Traditional Owners by providing opportunities that best meet their water management needs. Greater consideration for recreational and Aboriginal values will not compromise core responsibilities of water corporations to deliver high quality water for communities and water for entitlement holders when they need it.

Victoria would not support any constitutional changes to the current Commonwealth and State or Territory responsibilities for managing water resources in the Murray-Darling Basin. These arrangements build upon around 100 years of shared river management and rely on governments working closely together to deliver the water needed to support communities, agriculture and the environment. The Basin Plan is intended to be adaptive, but care is needed to ensure adaptive changes do not result in changes to roles and responsibilities without agreement.

Terms of Reference 2: the effects, positive or negative or otherwise, of the different approaches of the states and territories to water resource management in the Murray Darling Basin including, but not limited to: a) legislation, regulations and rules, b) management and administration, including differences in management organisations, c) measuring, monitoring and compliance, d) enforcement, and e) openness and transparency

Differences in water management have emerged as an expected consequence of water being the responsibility of the states under the Commonwealth constitution. Differences between jurisdictional frameworks have arisen as they were developed, as well as from differences in geography, the different water needs of the different commodities produced in each state, and water use patterns.

Victoria's framework was developed on the principle of subsidiarity, and in consultation with the community. In Victoria water, including irrigation districts, is managed by public entities, which is not

the case in all jurisdictions. The majority of Victoria's water systems are highly regulated and tend to support a large number of smaller diverters, compared to systems in the northern Basin which are often based on unregulated flows and smaller numbers of large diverters. Victoria's water framework must also accommodate the half of the State which sits outside the Basin. Care needs to be taken to ensure that any changes in the Basin in management, compliance, enforcement do not create inconsistency with non-Basin parts of a state. Further, there may be matters which are better considered at a national level rather than just within the Basin.

The framework for managing water resources in the Basin reflects and accommodates the differences between State and Territory frameworks. While jurisdictions have different arrangements, the Basin Plan, particularly through water resource plans, and associated agreements such as the Compliance Compact provide a way for all jurisdictions to bring relevant State based arrangements to an appropriate and consistent standard across the Basin. Note that 'consistent' does not mean 'identical'. The COAG Best Practice Regulation principles outline that government action should be effective and proportional to the issue being addressed. This approach respects the sovereignty of each jurisdiction while working towards achieving the outcomes of the Basin Plan.

For example, a critical element of the Basin Plan is compliance with sustainable diversion limits (SDLs). Water Resource Plans (WRPs) set out how jurisdictions will comply with SDLs. The Basin Plan established a set of requirements for WRPs to align water resource management of jurisdictions across the Basin. Victoria can meet Basin Plan requirements with existing regulatory instruments, policy and strategies, including bulk and environmental entitlements, groundwater management plans and sustainable water strategies. Therefore, Victoria's WRPs do not create any new policy for Victoria, and do not change other Victorian government policy in relation to other Basin Plan related matters.

Similarly, the approach to improving compliance and enforcement systems supports the range of jurisdictional frameworks. While some reviews have recommended that jurisdictions make their compliance systems more uniform, Victoria's view is that this is impractical, and inconsistent with the COAG Principles of Best Practice Regulation. For example, penalties for water related offences are part of Victoria's broader state penalty framework. Any changes to bring about greater uniformity in water-related compliance would result in either these penalties being out of step with the rest of the State based penalty regime, or require a complete overhaul of those regimes (i.e. changes broader than water related offences).

Jurisdictions are also all at different points in developing their compliance and enforcement systems, and practical or geographic limitations: such as lack of mobile network coverage making telemetry-read metering impossible- mean that a one-size-fits-all approach is not implementable. Nor would a one-size-fits-all approach be consistent with the risk-based approach of the COAG Principles. With this in mind, the Compliance Compact aimed to enable jurisdictions to bring their systems to an agreed standard, while supporting the differing frameworks between jurisdictions. Given the strength of Victoria's existing systems, Victoria's view is that a wholesale review and amendment of our compliance framework is not required.

Particular parts of Basin Plan implementation do require the same approach to be used across jurisdictions. For example, several of the projects aimed at removing or easing constraints to delivery of high environmental flows (constraints projects) are located along the River Murray. Victoria wants to ensure that landholders on either side of the river are treated and consulted with consistently throughout the development and implementation of these projects. To ensure this, Victoria and NSW are working together on the implementation of all Murray constraints projects and have agreed on a consistent approach to communications.

Differences between jurisdictional frameworks mean that transparency is critical. Victoria has a strong focus on transparency and works actively with other Basin jurisdictions to share information about our system, and to build our understanding of other systems. There is a role for Basin governments to build the transparency and community understanding of the different parts of the Basin to help ensure

the community can have confidence in these aspects. For example, there is currently a strong community interest in the northern Basin and Lower Lakes.

Substantial costs and complications could be associated with changes to any jurisdiction's water management framework. For example, the asset value of water entitlements is linked to the expected reliability and yield of that entitlement. Any changes to this would have implications for the owners of those assets. Victoria considers it likely that the cost of transitioning to a more uniform system would outweigh any benefits, particularly when as described above, systems are in place to manage differences. In any case, outcomes can be achieved without the need to have a single framework which, given differences in state requirements, systems and approaches would almost certainly be complicated and unwieldy.

It is important to note that while there are differences between states there is now a functioning water market which enables trade across state boundaries, even though there are different types of entitlements with different characteristics (such as reliability and deliverability) within and between states.

Terms of Reference 3: complications in respect of basin-wide or cross jurisdiction oversight, including the oversight roles and jurisdictional limitations of: i) state, territory and federal parliaments, ii) state, territory and federal courts, and iii) state, territory and federally-instituted inquiries and Royal Commissions

Regular reviews are an important part of implementing the Basin Plan in an adaptive management framework. Several oversight and review functions are set out in the *Water Act 2007* (Cth) and in the Basin Plan. These include the 5-yearly reviews of the Basin Plan by the Productivity Commission, and the 2026 Basin Plan review. Victoria supports the use of the existing review arrangements including the current review by the Australian Competition and Consumer Commission Murray-Darling water markets inquiry to continue the adaptive implementation of the Basin Plan.

Terms of Reference 4: Any bill related to the Murray Darling Basin referred to the committee

Victoria understands that there are upcoming legislative amendment processes in order to introduce the Inspector-General of Murray-Darling Basin Water Resources, and to make changes to the MDBA's compliance role as described in the Basin Compliance Compact. We look forward to being consulted throughout the development of this legislation.