

This notice advises that the Victorian member of the Murray-Darling Basin Ministerial Council (Council) has additional comments on various aspects of the Proposed Basin Plan transmitted to the Council on 28 May 2012. This notice specifies additional Victorian comments and matters of disagreement with the Proposed Basin Plan, to those raised in Attachment A.

SDL Adjustment Mechanism

1. Victoria strongly endorses the Council's request that the Authority work with Basin States to develop an 'SDL Adjustment Mechanism' for inclusion in the Basin Plan, that is capable of adjusting the SDL reduction amount up to a range of +/- 25%.
2. Related to this, Victoria recognises that Commonwealth held water may be as low as 2100 GL, pending the outcome of any SDL adjustment in 2016 and the proposed review of SDLs in the northern Murray-Darling Basin.
3. The inclusion of an SDL Adjustment Mechanism in the Basin Plan will allow for the formal recognition of options that achieve environmental outcomes with less water, without requiring a formal amendment of the Plan. This will allow the socio-economic impacts of water recovery to be better managed, and wherever possible, substantially mitigated.
4. Victoria maintains its long-held position that the priority for any additional water for the environment should be infrastructure and on-farm programs, ahead of purchase. Complementing this, environmental works and measures and smart systems operations should be undertaken wherever possible to ensure efficient use of environmental water, thus reducing the volume of water that needs to be taken from productive use.
5. In line with Council's request, Victoria looks forward to working closely with the MDBA to further develop the SDL Adjustment Mechanism methodology, benchmark modelling and relevant draft Basin Plan provisions, with a view to finalising advice to Basin Water Ministers by the end of July 2012. To this end, Victoria strongly recommends that the following be used to inform this work:
 - In the Authority's February 2012 Hydrologic Modelling Report (p. 196), it noted that in the development of the Proposed Basin Plan and SDLs, current works under the *Living Murray Initiative* did not contribute to an off-set of the SDL reduction amount. Instead, the Authority proposed that an assessment of these off-sets would form a major input to the proposed 2015 Review of the Plan. Under the parameters of the proposed 2015 Review, *Living Murray Initiative* works could provide for the SDL reduction amount to be substantially reduced. In line with this, Victoria believes that the SDL off-sets associated with current works under the *Living Murray Initiative* must allow for the SDL reduction amount to be adjusted under the requested SDL Adjustment Mechanism.
 - Beyond this, the SDL Adjustment Mechanism package of initiatives should also include additional environmental works to improve watering regimes and outcomes at key assets, and operational measures that provide equivalent or improved environmental outcomes more efficiently.

NOTICE BY THE VICTORIAN GOVERNMENT UNDER SECTION 43A(4) OF THE WATER ACT 2007

- Victoria notes that the baseline for environmental and socio-economic factors is critical to the successful application of the SDL adjustment mechanism, and therefore needs to be agreed with States. In line with this, and in recognition of Council's preferred 2,750 GL benchmark modelling run as outlined in the Authority's Hydrologic Modelling Report, Victoria acknowledges that some technical modifications of the modelling may be required at times. Any proposed changes to the benchmark modelling should be overseen by a multi-jurisdictional working group established under the auspices of the Basin Officials Committee. This is analogous with existing processes that oversee changes to the Basin models used for Cap compliance or salinity audits.
 - Finally, whilst Victoria supports the Authority undertaking the modelling to ascertain the final SDL adjustment, to ensure transparency and confidence, it is preferable that the process of undertaking the assessment includes oversight by a multi-jurisdictional working group of the type described above.
6. Victoria further notes Council's view that the proposed SDL Adjustment Mechanism should operate through an objective method which will determine the quantum of SDL adjustment. Recognising the related list of matters for consideration provided at Annex A to Attachment A, Victoria's strong preference is that the method to determine the quantum of SDL adjustment include the following specifically:
- Scoring the predicted ecological outcomes by assessing:
 - The flood frequency, duration and length of dry spells generated from model runs, taking into account the area and conservation significance of inundated land;
 - The area inundated by the eligible initiatives relative to the area of the floodplain that can be actively managed (note that this is the approach referred to in the Authority's 'Ecologically Sustainable Level of Take' report);
 - Other matters could be included where information is relevant and available, and methods are agreed.
 - Scoring of eligible initiatives and comparing them to the benchmark score within: the river reach that is directly affected by the initiative(s); at all relevant key indicator sites; and the relevant river system scale.
 - No net diminution of outcomes at a system scale (e.g. Hume to Wellington), with a limit on the extent of not achieving particular targets at remaining sites (e.g. no targets can go down by more than 10% at priority sites).
 - Summing the scores at individual sites and reaches along the River Murray.
7. Victoria notes that the process for developing initiatives for incorporation into the Adjustment Mechanism will be governed by a gateway process that will be overseen through cooperative arrangements between jurisdictions. Fundamental to this, Victoria considers that Commonwealth funding could be made available from existing funding mechanisms to provide support for this process. Arrangements for this could subsequently be outlined in the Basin Plan Implementation Inter-Governmental Agreement (IGA).

8. Supporting this, at the point when SDLs are adjusted in 2016, Victoria recommends that a final baseline model should be settled for the purposes of assessing SDL compliance from 1 July 2019. This model should be accredited in line with existing arrangements under which States' Cap models are independently audited. Utilisation of the accredited model to assess SDL compliance should also take account of all credits that have been accumulated under the existing Basin Cap arrangements.
9. Related to the above, Victoria is strongly supportive of Council's advice to the Authority that the proposed 2015 Review be removed from the Basin Plan.

Apportionment and Water Recovery

10. Victoria is strongly supportive of Council's view that, on balance, an apportionment approach is appropriate under the Basin Plan. This will provide much needed certainty to Victorian communities with regard to SDLs, particularly in terms of future investment and planning purposes.
11. Victoria supports Council's position, as outlined in Attachment A, that State apportionment for the Southern Basin shared downstream reduction be included in the Basin Plan, and for a process to review the shared northern reduction and its apportionment for the Northern Basin by 2015/16.
12. In line with Council's advice on this matter, Victoria looks forward to working closely with other Basin Water Ministers to give further consideration to the most consistent, equitable and transparent approach to determining the apportionment of SDLs. Victoria's view remains that apportionment must be incorporated into the Basin Plan prior to it being made, and strongly urges the Authority to take into account Council advice in this regard.
13. Victoria also acknowledges the undertaking of the Commonwealth Government to develop a Water Recovery Strategy that aligns with Council's advice regarding the SDL Adjustment Mechanism and apportionment of SDLs. To complement this, Victoria strongly recommends that the Commonwealth link its Water Recovery Strategy to a Commonwealth funded socio-economic adjustment package, which must outline its actions to provide structural adjustment assistance for Basin communities.

Delivery Mechanisms

14. Victoria is aware that the delivery of environmental water has the potential to cause unintended third party impacts due to the flooding of private land, and access to land. Victoria strongly recommends that the Authority ensure that the Basin Plan sets in place mechanisms whereby third party impacts will be avoided to the greatest extent possible, and notes that in the first instance, any acquisition of land for easements should be voluntary.
15. Victoria strongly recommends that the Authority take this matter into account when preparing the Constraints Management Strategy under the Basin Plan, which Council has requested be prepared under Attachment A.

16. Similarly, Victoria considers that the Environmental Watering Plan under the Basin Plan should also incorporate delivery arrangements that specifically address third party impacts.

Commencement of SDLs

17. Victoria acknowledges that Council prefers to set a timeframe of 2019 to commence enforcement of SDLs in order to provide certainty for Basin communities, and strongly endorses this position.

18. Related to this, Victoria has remained concerned that under the Plan, States may be left liable for any 'gap' should SDLs not be fully met by 1 July 2019, or recovery/SDL adjustments anticipated under constructed works are not completed by this time.

19. To ensure this outcome does not eventuate, Victoria considers that States should not be required to enforce SDLs where, through no fault of their own, a gap between BDLs and SDLs remains at the time compliance arrangements commence. Victoria strongly urges the Authority to take into account Council's observation in Attachment A that the Basin Plan may specify the use of reasonable excuse provisions in the compliance mechanism to ensure that States are not unfairly or unreasonably bound to enforce any residual SDL liability from 1 July 2019, including if anticipated works associated with any SDL adjustment mechanism are not completed by this time.

Jurisdictional Implementation Obligations

20. Victoria has repeatedly expressed its concern regarding the wide range of implementation obligations that are expected to be placed on Basin States by the Basin Plan, and their associated cost impact. As noted by Council in Attachment A, Victoria supports an approach whereby implementation of the Basin Plan takes place in a way that achieves its objectives in an efficient and cost-effective manner.

21. To give effect to this, Victoria strongly urges the Authority to accept Council's advice that a general provision be included in the Plan that allows it to enter into agreements with States in relation to the implementation of obligations under the Plan. Victoria considers that this intent is best captured through a general provision in the introductory section of the Plan, and be reiterated wherever obligations under the Plan have the potential to pose a large cost impact.

22. To support finalisation of these agreements, Victoria strongly advises the MDBA to clarify its intended implementation requirements for States, preferably before the next iteration of the Plan is returned to Council for further consideration and comment. Where this is intended to be underpinned by guidelines on any matter, Victoria also requests the Authority to prepare these in close consultation and agreement with Basin States, before those implementation requirements commence.

23. Related to this, Victoria urges the Authority to adopt Council's advice in Attachment A as it relates to 'must have regard to' provisions under the Plan. Council has noted that this phrase is used in several Chapters of the Proposed Plan, with a slightly different contextual basis in many cases. In line with this, Victoria strongly supports Council's request that the Basin Plan define the phrase 'must have regard to' as it applies to the entire Plan. Based on Victoria's previous experience in this area¹, the following text is provided for the Authority's consideration. It further clarifies Victoria's preferred approach in this regard:

must have regard to imposes a positive obligation to think about Basin Plan content. This obligation is balanced by a discretion to determine what weight should be given to that content. 'Have regard to' does not mean that all of the specified matters must be applied, and includes the option to give little or no weight to specified content in a particular case.

Note: Where agreed, protocols may be developed to clarify the process for 'having regard' as it relates to the operation of particular Chapters.

24. Supporting the above, once finalisation of implementation agreements under the Plan is complete, it is Victoria's strong preference that the Commonwealth Minister make a regulation under the Commonwealth Water Act 2007, that reflects the scope and standards under those agreements as they apply to State Water Resource Plan accreditation.

25. Informing this, in Victoria's view, State Water Resource Plan accreditation arrangements must be fit-for-purpose, based on the principle of cost efficiency, and be implementable within existing State water management frameworks (i.e. not require major legislative amendment to give them effect).

Requirements for Determining 'Actual Take'

26. Victoria endorses Council's view in Attachment A that determinations of 'actual take' must be made by using cost-effective, fit-for-purpose methods. Victoria considers this to be a highly sensible principle for the Authority to incorporate into the final Basin Plan, as a number of the accounting requirements in the Proposed Plan will offer little material benefit for the expected large cost impact of implementing them.

27. In line with this, and expanding on Council's advice as provided in Attachment A, Victoria strongly recommends that where forms of take are not expected to materially impact on other uses, the Basin Plan allow for them to be estimated. The Plan should also allow for such estimations to include an error margin, and subsequently those estimations would not change for the life of the Plan.

¹ http://www.transport.vic.gov.au/data/assets/pdf_file/0013/30820/tia-fact-sheet-have-regard-to-Feb-16.pdf

Water Quality and Salinity

28. Victoria is strongly supportive of the intent of Council's advice in Attachment A as it relates to Water Quality and Salinity. Victoria's firm view is that the intended operation of the Water Quality and Salinity Management Plan (WQSMP) under the Basin Plan must be made as clear as possible, particularly with regard to:

- the ongoing status of the *Basin Salinity Management Strategy* (BSMS) and the continued operation of Schedule B of the *Murray-Darling Basin Agreement* (MDB Agreement); and
- without limiting the above, the non mandatory nature of targets under the WQSMP, particularly in terms of clarifying that operation of targets has no third party impact.

29. Recognising Council's requested changes to the WQSMP in Attachment A, the following text is provided for the Authority's consideration. It further clarifies Victoria's preferred approach for reflecting Council's requested changes within the Basin Plan itself:

- In order to further underpin the status of relevant content of the MDB Agreement (Schedule 1 of the Commonwealth Water Act), it is recommended that the following changes to section 8.12 and section 8.17 of the Proposed Plan, as underlined, are made:

8.12 Targets for managing water flows

(1) Without limiting the operation of section 141 or Schedule B of the Agreement [Schedule 1 of the Water Act], the Authority must have regard to the targets in subsection (5) when performing its functions under the Agreement relating to the management of water flows.

(2) Without limiting the operation of section 141 or Schedule B of the Agreement [Schedule 1 of the Water Act], the Basin Officials Committee must have regard to the targets in subsection (5) when performing its functions under the Agreement relating to the management of water flows.

(3) Without limiting the operation of section 141 or Schedule B of the Agreement [Schedule 1 of the Water Act], an agency of a Basin State must have regard to the targets in subsection (5) when performing functions relating to the management of water flows.

8.17 Salinity Targets

(1) This section sets out surface water salinity targets for the purpose of long-term salinity planning and management for the Murray-Darling Basin.

(2) The Murray-Darling Basin and End-of-Valley Targets for salinity are set out (as absolute values) in Appendix 1 of Schedule B to the Agreement as amended from time to time.

(3) In line with arrangements specified in Schedule B of the Murray-Darling Basin Agreement, the following entities will apply the targets in performing long-term salinity planning and management functions:

- (i) the Authority;
- (ii) the Basin Officials Committee;
- (iii) agencies of Basin States.

30. Victoria also strongly supports Council's request to the Authority that corresponding sections of Chapter 9 of the Basin Plan (i.e. sections 9.29 – 9.35, *Water Quality Objectives*), be modified to clearly reflect the overall intent of the WQSMP, particularly as it relates to the non mandatory nature of targets and that targets have no third party impact.

31. In accordance with this, Victoria supports Council's view that section 9.33 be modified to note that a Water Quality Management Plan, to be included in a State Water Resource Plan, may identify measures, but is not expressly required to identify measures.

32. In its entirety, the inclusion of these changes to the Basin Plan would ensure that salinity will continue to be managed in a way that is practical and feasible, and which also recognises the operational realities of the system.

33. Complementing the above Victoria reiterates its view that in its entirety, arrangements under the WQSMP should be consistent with those already in place under existing national policies for water quality management including the *National Water Quality Management Strategy (NWQMS)* and the *Australian and New Zealand Environment and Conservation Council (ANZECC) Guidelines*.

Trading rules

34. Victoria remains concerned that the Basin Plan does not allow a suitable transition period for the State to meet the Authority's trading rule requirements under Chapter 11.

35. There are inconsistencies between the trading rules approach proposed in Chapter 11 of the Plan, and the Victorian Water Act and existing State policies with regard to trade. These cannot be addressed with any assurance within the Authority's proposed commencement of Chapter 11 provisions on 1 July 2014.

36. To comply with the Basin Plan will require changes to Victoria's legislation and, subsequently, changes to legislative instruments, the water register system, forms, procedures and communications. Accordingly, the current 1 July 2014 timeframe for Chapter 11 to come into effect allows insufficient leeway for the delivery of the complex transitional activities described above.

37. Should the requisite changes to State arrangements not be achieved in time, there is a high risk that a situation could arise where a trade cannot be approved under Victoria's legislation, but has to be approved under the Basin Plan.

38. To avoid this highly undesirable outcome, Victoria requests that the Basin Plan require a commencement date for Chapter 11 of 1 July 2015.

39. Notwithstanding this, Victoria reiterates the commitment it made under the October 2011 *Agreement Supporting the Victorian Food-Bowl Modernisation Project*, to remove the 4 per cent limit on out of district trade by 30 June 2014.

Environmental Watering Plan

40. Victoria is strongly supportive of the intent of Council's advice in Attachment A as it relates to the Environmental Watering Plan (EWP) under the Basin Plan. In Victoria's view, the Authority's acceptance of Council advice with regard to requested changes to the EWP, will maximise the efficiency and effectiveness of future Basin-wide environmental watering arrangements.

41. Complementing this, Victoria recommends that the Authority give due consideration to ensuring that targets under the EWP are capable of giving communities confidence that there has been sound thought put into determining what needs to be, and can be achieved with both the EWP and the water returned to the environment under the SDLs.

Groundwater SDLs

42. The SDLs for some groundwater resources in Victoria have been set by the Authority without full acknowledgement of the management expertise and conservative, risk-based methods already adopted by the State in managing those resources.

43. In Victoria, the Authority's proposed SDLs undermine the State's already highly sustainable approach to groundwater management by not fully recognising Permissible Consumptive Volumes² (PCVs) for the Lower Ovens and Katunga, and the technical grounding on which they are based.

44. In addition it is Victoria's strong view that the SDLs for Victoria's deep groundwater areas are unreasonably conservative, and appear to have no rational scientific or policy basis.

45. Further, there remain issues related to the SDL resource unit boundaries for Victoria's groundwater areas, which must be addressed before the Basin Plan is finalised.

46. Victoria recognises and supports Council's advice in Attachment A that the Authority work with the States' hydrogeologists within the next three weeks to finalise the SDLs for the next version of the Basin Plan.

47. The table below is intended to provide the Authority with indicative advice of the position Victoria will put forward in relation to how it considers the State's groundwater SDLs should be reflected in the Plan. In line with Council's advice, Victoria will ensure its hydrogeologists are available in the next three weeks to present the detailed technical basis for these numbers.

48. Beyond this Victoria notes that should there be, within the final Basin Plan, a 'gap' in relation to groundwater SDLs for the State, the Victorian Government expects that under the 'Bridging the Gap' commitment, the difference will be secured through Commonwealth buy-back of entitlements.

² PCVs effectively cap the total volume of groundwater that can be used in a particular area. They are an effective management tool, and form a fundamental part of Victoria's long standing approach to groundwater management.

Indicative Advice – Victoria’s Preferred Amendments to Schedule 4

**[Note: Includes underlined text at rows 6 & 7.]

<u>Victoria</u>				
Goulburn-Murray water resource plan area (GW2)				
4	Goulburn-Murray: Sedimentary Plain (GS8)	all groundwater from the land surface to 200 metres below the surface or 50 metres below the base of the Tertiary sediments, whichever is the deeper, excluding groundwater in item 2	203.5 217.9	199.4 217.9
5	Goulburn-Murray: deep (GS8)	all groundwater, excluding groundwater in items 2, 3 and 4	0.0	5.00 20.0
Wimmera-Mallee (groundwater) water resource plan area (GW3)				
6	Wimmera-Mallee: Highlands (GS9)	all groundwater in the outcropping Palaeozoic rocks (or the in-situ weathered horizon where it is within 5 metres of the surface) <u>from the land surface to 200 metres below the surface</u>	1.26	2.14
7	Wimmera-Mallee: Sedimentary Plain (GS9)	all groundwater from the land surface to 200 metres below the surface or 50 metres below the base of the Tertiary sediments, whichever is the deeper	68.9 <u>To be determined based on revised area excluding the part of the defined Murray Darling Basin that lies inside the West Wimmera Groundwater Management Area.</u>	190.7 <u>To be determined based on revised area excluding the part of the defined Murray Darling Basin that lies inside the West Wimmera Groundwater Management Area.</u>
8	Wimmera-Mallee: deep (GS9)	All groundwater, excluding groundwater in items 6 and 7	0.0	5.00 20.0