



27 July 2021

Committee Secretary
Senate Standing Committee on Rural and Regional Affairs and Transport

Submission lodged via My Parliament

CICL Submission Senate Standing Committee Rural and Regional Affairs and Transport Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021

How to make the Murray-Darling Basin Plan (the Plan) better

- The timeframe for reconciliation of the Sustainable Diversion Limit Adjustment mechanism (SDLAM) needs to be extended from 2024 with the Murray-Darling Ministerial Council made responsible for determining the date for reconciliation to occur.
- The Basin Plan needs to be amended to allow states to introduce new projects to be included in the SDLAM through new notification measures, including complementary measures.
- The Ministerial Council agreed social and economic neutrality test for supply measures should be explicitly included in the Basin Plan.
- The Ministerial Council should be responsible for advising changes to Schedule five of the Plan that reflect modelling which is consistent with current expectations of constraints relaxation.
- The Ministerial Council should also be responsible for proposing alternative options for achieving improved environmental outcomes consistent with the proposed amended Schedule five of the Plan. This should include the inclusion of complementary measures to enhance environmental outcomes.
- The water portfolio should be returned to cabinet.

Introduction

1. Coleambally Irrigation Co-operative Limited (CICL) values the opportunity to propose constructive changes to the Water Act 2007 (*Cth*) (the Act) and Basin Plan.
2. We welcome parliament's support for changes to the Act to establish the Inspector-General Water Compliance. This is an important initiative which will improve the governance of Basin Plan implementation. CICL expects the work of the Inspector-General will make a material difference to building community trust through improved transparency and accountability of water management in the Basin. In undertaking this role, it is important there is clear delineation between state responsibilities and the Inspector-General's.
3. CICL for some time has advocated that the Basin Plan needs increased flexibility in its implementation because there is abundant evidence that elements of the Plan cannot be achieved in the time allowed and assumptions about key projects when the Basin Plan was made are now incorrect.
4. In supporting flexibility CICL is not seeking to dramatically change the Basin Plan or to no longer have the Basin Plan. Whilst some sectors may advocate for this CICL does not believe this is an effective solution, it is just a disruption. CICL does not want communities subject to the uncertainty that prevailed after the Act was made

and the Basin Plan negotiated. CICL believes this would be the outcome of the Basin Plan losing the support of the states.

5. What CICL expects is for governments to recognise the Basin Plan is a complex and difficult reform and respond constructively to the obvious problems.
6. A lot has been achieved to date and this needs to be acknowledged. The environmental holdings are significant¹ with additional volumes available from NSW through the Living Murray.² These contributions are replicated with Living Murray contributions from Victoria and South Australia. At the same time the Plan has had distributional impacts and it has placed pressure on communities and accelerated structural change.
7. However, the remaining elements face significant hurdles and require more time, better engagement with communities and willingness from all stakeholders that recognise that a different approach is required, including more innovation. The current prescriptive settings in the Basin Plan do not support this approach and this is why change is needed.
8. This inquiry is an opportunity for the political process to consider changes to the Basin Plan which open opportunities for a 'better' Basin Plan. It is an opportunity for the political process to demonstrate it is listening to the concerns of communities particularly those who are directly impacted by this reform.

About CICL

9. CICL is based in the Riverina and supplies irrigation and drainage services to nearly 500 farms via an open, earthen, gravity fed, channel network. Our scheme is a 'group' scheme and an off-river channel and drainage system.
10. The CICL area of operations is 456,821 ha including 317,281 ha which is serviced by the West Coleambally Outfall Channel. The intensively irrigated area is approximately 80,000 ha. Our members grow a range of irrigated crops. Their farming systems are predominately annual production, but there is some investment in permanent plantings.
11. CICL operates and maintains the irrigation supply and drainage system and delivers a range of corporate services on behalf of its members and is also responsible for the future replacement of the major assets within/under/over the supply and drainage systems.
12. CICL was previously government owned and on separation from government in 2000 our customers 'statutory water' rights were converted to contractual rights or 'irrigation rights' (CICL water entitlements). Whilst CICL owns the water access licences, the Water Market Rules 2009 (*Cth*) and Water Charge Rules (*Cth*) place significant limitations on CICL's ability to restrict the transformation of members 'irrigation rights'. CICL also places no restrictions on members' sale of annual allocation from our water access licence.
13. CICL accelerated its modernisation journey on separation from government. Our modernisation journey was based on the philosophy 'if you cannot measure it you cannot manage it'. Since the early 2000s CICL has invested in technology to improve the measurement of water from its offtake, through its channel system and onto farm.
14. In parallel, CICL has invested in complex hydraulic modelling software, solar powered technology and radio networks that allow remote monitoring and control of our infrastructure and automation of our farm delivery service using Total Channel Control™. This approach has delivered improvements in water efficiency and our irrigation service to members.

¹ [Environmental water holdings | Department of Agriculture, Water and the Environment](#), accessed Monday 26 July 2021.

² [Current water holdings | NSW Environment, Energy and Science](#) accessed Monday 26 July 2021.

15. Modernisation has been funded by CICL and by government, with government investment contingent on a share of the water savings being transferred from CICL's conveyance licence to government.
16. Our [website](#) contains more detailed information about our operations.

Water for the environment

17. The environment now holds water entitlements for environmental water use that were previously owned by either CICL or its members. Changes to CICL's licence volumes since 2008³ as a result of CICL decisions or our members decisions to sell water to the government for environmental use are material. CICL has transferred to the Government 10 percent (12,629ML) of its conveyance licence for environmental use.
CICL's general security licence, as a result of water recovery from our members for the environment, has reduced by 15 percent (71,880ML). These reductions are reflected across the southern Basin.
18. Changes in water availability arising from the commencement of the Murrumbidgee Regulated River Water Sharing Plan 2003 through the introduction of a number of planned environmental rules have reduced the long-term average annual extraction volume by 90GL compared to the Murray-Darling Basin Cap on diversions.⁴
19. The benefits to the environment of these significant increases in water for the environment are starting to emerge and are reliant on governments continuing to fund monitoring and evaluation and to learn from their environmental watering actions in conjunction with communities. The quote below is an example:
So, while the Basin Plan's objectives will take a long time to be realised, there are positive signs that it is slowly achieving its major goal of improving environments in the Murray-Darling Basin, underpinning more sustainable social, environmental and economic outcomes into the future.
The Conversation Mark Southwell, Geomorphologist, Eco Logical Australia; and Shane Brooks, Director, LitePC Technologies⁵
20. Even in South Australia government is celebrating improvements in critically endangered species arising from environmental water management.⁶

Extend the timeframe for the SDLAM

21. The sustainable diversion limit adjustment mechanism (SDLAM) is an essential element of the Basin Plan which was intended to achieved better social, economic and environmental outcomes than the 2,750GL Basin Plan and it was about being 'smarter' in the way water is being managed in the southern Basin. It keeps water in the 'consumptive' pool by making changes to infrastructure, rules and or water management to achieve the equivalent environmental outcomes. The evidence supporting the need for change to SDLAM and its timeframes from reports to government alone is compelling.
22. The final report of the Independent Assessment of Social and Economic Conditions in the Murray-Darling, April 2020 (the Sefton Report) highlighted the importance of the success of the SDLAM and some of the challenges facing its implementation.

³ 2008 is used as the starting year because it is considered a sound basis for comparison of changes to CICL's primary licences, general security and conveyance. 2008 is the first year involving Government transactions for environmental purposes and it is the first year after the conversion of general security water entitlements to high security water entitlements under the Water Management Act 2000 (NSW) ceased.

⁴ MDBA 2020 Trends in water use relative to the SDL in the southern Murray Darling Basin pg. 14.

⁵ Ibid.

⁶ [Record numbers of critically endangered River Murray fish | Premier of South Australia](#), 18 July 2021.

The SLDAM is a key adaptive mechanism for reducing the amount of water needed for the environment, while improving environmental outcomes.

The Panel supports the SDLAM. Delivering SDLAM measures with equivalent value of 605 GL is critical. Basin communities cannot afford additional water recovery from the consumptive pool if the SDLAM projects are not delivered.

Sefton et al 2020⁷

23. The Productivity Commission (PC) Inquiry Final Report, Five-year review of the Basin Plan, made extensive recommendations to improve implementation of the Basin Plan. The PC is the Australian Government's independent research and advisory body on a range of economic issues. The following extracts from the PC in its Inquiry Final Report Five-year review of the Basin Plan are relevant to the importance of extending reconciliation beyond 2024.

The package of supply measures to achieve equivalent environmental outcomes using 605 GL less water recovery is highly ambitious. Failure of key projects would delay environmental benefits and could cost taxpayers about half a billion dollars for further water recovery. To manage the risks, Basin Governments need sound governance arrangements for integrated delivery. Before implementation, projects need to be independently reviewed to give confidence that they will deliver the predicted environmental outcomes and offer value for money. For some key projects, realistic implementation timeframes are likely to extend beyond 2024.⁸

Governments need to confront the reality that some projects may require more time.

Failure to successfully implement these projects by 2024 would mean that either Basin States or the Australian Government will most likely need to make good any shortfall in the offset which could include further water recovery. The 2024 deadline for a number of these projects (particularly the constraints projects) is highly ambitious, if not unrealistic.⁹

To enable worthwhile projects to be implemented in realistic timeframes, Basin Governments should be open to the possibility of extending the 30 June 2024 deadline and make this clear to project proponents prior to detailed business cases being completed. This should not be interpreted as scope for a blanket extension for all projects or a reason for Basin States to procrastinate. Nor is it a reason to avoid making good if projects fall short. But being open to legitimate extensions of time avoids rejecting worthwhile projects or progressing projects with milestones that just cannot be met. Projects with unrealistic milestones will likely further erode community confidence that projects are achievable and worth doing.¹⁰

24. The PC also highlighted the massive consequences of failure of the SDLAM. *There is still about \$4.5 billion in Australian Government funding left for implementing the Plan. Most of this is allocated to resetting the balance through supply and efficiency measures. If major shortcomings in current arrangements are not addressed, projects are likely to fail or be implemented poorly.*

⁷ Sefton, R, Peterson, D, Woods, R, Kasselbaum, A, McKenzie, D, Simpson, B & Ramsay, M 2020. *Final Report: Independent Assessment of Social and Economic Conditions in the Murray Darling Basin, Melbourne*. Pg. 15.

⁸ Productivity Commission, *Murray-Darling Basin Plan: Five-year assessment, Inquiry Report 2019*. Pg. 2.

⁹ *Ibid* Pg. 19.

¹⁰ *Ibid* Pg. 19.

Failure will mean:

- *the future cost of resetting the balance could be in excess of \$564 million higher (the cost of having to make good by acquiring water entitlements plus any cost of wasted expenditure on failed projects).*
- *lower environmental outcomes as the anticipated benefits of projects are either delayed or do not eventuate.*
- *community trust and confidence in the Plan and Basin Governments will be reduced further, particularly if there is a perception that money is being wasted as Governments are unaware of issues, or unwilling to confront them.*
- *there will be shortcomings in key arrangements that will have potentially significant implications for how water is managed for the environment and to meet users' needs.¹¹*

25. The Sefton Report made clear recommendations on the SDLAM. Recommendation one highlighted the importance of the strengthening of community consultation so that consultation on issues with potentially material social, economic and environmental implications are not rushed, with specific reference to SDLAM projects.¹²

Recommendation five supported an extension of the timeframe to avoid community consultation being rushed and to ensure projects of an equivalent value of 605 GL are delivered.¹³

Evidence base for supporting the need for flexibility to allow new projects

26. The Government's most recent report on progress with implementing the SLDAM said that seven projects are unlikely to be delivered before 30 June 2024 without major intervention.¹⁴

27. These projects contribute 160.5 GL and INDEC, the government's consultant, is recommending a range of actions including project resets for the constraints projects and Menindee.¹⁵

28. This report follows on from previous reports of progress by the Murray-Darling Basin Authority (MDBA).

In its 2019 annual progress report, the MDBA noted that while progress had been made, there was still a substantial amount of work to be done, that difficult policy and legislative issues were yet to be resolved and that completing all the projects by 2024 would be challenging.

A year later, it is clear that while there continues to be steady progress on the design and implementation of some projects, some significant projects are falling behind and are at high risk of not meeting the June 2024 deadline. In addition, there are significant stakeholder concerns associated with those 'at risk' projects which are contributing to significant and ongoing delays. These stakeholders' concerns relate to the effects and benefits the projects will have to local environmental outcomes relative to achieving broader Basin-wide objectives. Additionally, the authorising environment (Government support) in which the significant projects exist has modified over time with increased emphasis on community co-design.

MDBA 2020.¹⁶

¹¹ Ibid Pg. 31.

¹² Sefton, R, Peterson, D, Woods, R, Kasselbaum, A, McKenzie, D, Simpson, B & Ramsay, M 2020. *Final Report: Independent Assessment of Social and Economic Conditions in the Murray Darling Basin, Melbourne*. Pg. 15

¹³ Ibid. Pg.19

¹⁴ Indec, 2021, Status assessment Sustainable Diversion Limit Adjustment Mechanism, Pg.1

¹⁵ Ibid Pg. 1.

29. With such strong evidence that 2024 is not a realistic timeframe and that key projects are not supported by communities directly impacted, CICL believes governments can no longer avoid or ignore the challenges facing the SDLAM and that governments need to provide an opportunity for new projects to be included in the SDLAM. To provide the certainty communities are seeking requires changes to the Basin Plan.
30. Recommendation five of the Sefton report was explicit.
*If the existing SDLAM projects do not deliver the anticipated 605 GL, there should be flexibility to allow new or other existing projects to close the SDLAM gap. The 605 GL must be achieved through the SDLAM.*¹⁷

The Sefton report went on to support the implementation of complementary measures.

Complementary measures are widely supported on a 'more than water' approach to environmental management, reflecting that more than just environmental watering is needed to deliver environmental outcomes. The Panel notes complementary measures can include non-flow and flow-based measures.

Complementary measures need to progress from concept stage to practical plans for implementation and measurement as a priority. This work is currently progressing too slowly.

The Panel considers the MDBA, working with Australian and state governments and Basin communities, should develop an agreed method to determine the impact of local complementary measures on supporting or making progress towards Basin Plan objectives.

*The Panel considers complementary measures should count towards Basin outcomes and reduce water recovery targets where the complementary measure delivers equivalent or better target environmental outcomes than water recovery.*¹⁸

31. The PC also acknowledged the importance of a range of non-flow related measures and activities to maximise the benefits of environmental water use and achievements of environmental outcomes in the Plan.¹⁹

The Ministerial Council agreed the social and economic neutrality test for supply measures should be explicitly included in the Plan.

32. In December 2018 the Murray-Darling Basin ministers made the following statement.

Ministers have agreed that [socio-economic criteria](#) and the associated assessment be adopted as the basis of the neutrality test for assessing efficiency measures projects.

*Ministers agreed that these criteria be applied to all efficiency measures projects that are part of the additional 450 gigalitres proposed, prior to any approval of projects.*²⁰

33. The Basin Plan currently includes a note:

¹⁶ MDBA 2020 Annual Progress Report 2020 Sustainable Diversion Limit Adjustment Mechanism Pg. 2.

¹⁷ Sefton et al, 2020 Pg. 19.

¹⁸ Ibid. Pg. 20.

¹⁹ Productivity Commission, Murray-Darling Basin Plan: Five-year assessment, Inquiry Report 2019. Pg. 292.

²⁰ <https://www.mdba.gov.au/media/mr/murray-darling-basin-ministers-meet-melbourne>, accessed 26 July 2021.

An 'efficiency measure' is one that makes savings in the amount of water required for consumptive purposes. Examples include investment in more efficient irrigation infrastructure. The water saved by efficiency measures will be allocated to environmental use but, due to the nature of efficiency measures, this will achieve neutral or improved social and economic impacts. An adjustment made because of efficiency measures will decrease the SDL (increase the reduction amount).

The Basin Plan, chapter 7.²¹

34. CICL believes that this commitment to social and economic neutrality should be legislated to provide confidence to communities that government is committed to this test as it pursues efficiency measures.

The Ministerial Council should be made responsible for advising of changes to Schedule five consistent with the status of proposed constraints relaxation projects.

35. Schedule 5 of the Basin Plan is based on the relaxed constraints modelled by the MDBA in 2012. It clear that the assumptions made by the MDBA in 2012 for constraints relaxation are incorrect and need to be amended.

36. In December 2018 the PC made the following statements:
*First, and as a matter of priority, the MDBA should update Basin modelling to establish the environmental benefits of additional water recovery within current operating conditions (including existing constraints), and the expected benefits arising from the agreed constraints proposals. This would identify those constraints projects that are most important for achieving the Schedule 5 outcomes and the entitlement types that should be prioritised in water recovery programs.*²²

*The 2012 Basin Plan modelling that underpinned the development of the Schedule 5 outcomes and the efficiency measures package made a number of assumptions that have since changed. In particular, the modelling suggested that without easing constraints to allow higher flow rates, additional environmental water would have few additional benefits. Since then, Basin States have developed proposals for constraints projects that will allow lower flow rates than those included in the 2012 modelling.*²³

*The Australian Government also appears reluctant to countenance that at least some of the measures to ease or remove constraints may not be operational by 2024. If constraints projects are not implemented as expected, rushing to recover the full 450 GL by 2024 would risk the Australian Government spending hundreds of millions of dollars for an asset that (potentially) cannot be used for some time.*²⁴

37. To gauge an assessment of the enormity of the task of relaxing constraints or easing constraints these involve negotiations with over 3,000 landholders across five areas. In contrast, it took the MDBA eight years to negotiate with 103 landholders between Hume Dam and Yarrawonga Weir to negotiate easements at current operational levels.²⁵
38. The independent report prepared for the NSW and Victorian governments on Murray-Darling Basin constraints modelling concluded that while the modelling may be suitable for river operations and floodplain management, the models do not

²¹ <https://www.legislation.gov.au/Details/F2017C00078>, accessed Monday 26 July 2021.

²² Productivity Commission, Murray-Darling Basin Plan: Five-year assessment, Inquiry Report 2019. Pg. 23.

²³ Ibid Pg.21.

²⁴ Ibid Pg. 22.

²⁵ Ibid Pg. 18.

produce the information required to assess and communicate risks to landholders, local governments and infrastructure managers at the scale needed.²⁶

The following observation was also made:

*The Panel has been advised that given these uncertainties, flows of 80,000 ML/d at the South Australian border will occur when there is a coincidence of large rainfall and 'natural' flow events in the Murray or its key tributaries, but river operators will not be creating 'managed' 80,000 ML/d flows at the South Australian border.*²⁷

39. Further evidence to supporting a need for Basin states to review and provide advice on Schedule 5 can be found in the WESA review.²⁸ This review had the following main findings:
- The volume of water recovered through efficiency measures programs and transferred to the Commonwealth at 30 June 2024 will be well short of 450 GL and the funding will not be fully expended.
 - Based on current water market prices and the current program's funding formula, the Special Account allocation would cover around one-third of the cost to recover 450 GL by 30 June 2024.
 - The constraints measures program will not be delivered by 30 June 2024.

The Ministerial Council should be made responsible for advising of changes to investments and management actions that contribute to achieving the outcomes of Schedule 5.

40. It is CICAL's view there is overwhelming evidence that assumptions made about the timeframes in the Basin Plan and feasibility of key projects, prior to its making in 2012, are incorrect. In addition, the Sefton report²⁹ highlighted the challenges for many communities' implementation of both the Basin Plan and wider water reforms and argued strongly for a slowing of the pace of water recovery and in parallel to maximise the environmental benefits from water recovery.
41. The Sefton report also highlighted the loss of trust in government and the need for governments to deliver sound long-term policy in support of rural and regional Basin communities.³⁰
42. CICAL believes elected representatives, through this inquiry, have an opportunity to make recommendations to improve the Basin Plan and firmly place responsibility on the states to reach consensus on a constructive way forward for the Basin Plan. Seeking a revision of Schedule 5 is a pragmatic way forward. It will require governments to focus on what can be achieved and ways to explore alternative options for watering flood plains, rather than acquiring held water entitlements.

Other issues

43. The removal of the water portfolio from cabinet is extremely disappointing and reflects poorly on the government's priorities and their attitude towards rural and regional communities. Water and its management are vital resources. The Commonwealth through the Water Act has increased its influence in water management in the Murray-Darling Basin (the Basin) with significant consequences

²⁶ Murray -Darling Basin constraints modelling, Report by the NSW and Victorian Minister's Independent Expert Panel, December 2019.

²⁷ Murray -Darling Basin constraints modelling, Report by the NSW and Victorian Minister's Independent Expert Panel, December 2019. Pg.4.

²⁸ Australian Government 2020, *First Review of the Water for the Environment Special Account*, Canberra.

²⁹ Sefton et al 2020, multiple references.

³⁰ Ibid pg.11.

for some communities. The importance of the Basin to Australia's social, economic and environmental values is well documented.³¹

- 44. The removal of the water portfolio from cabinet is a direct insult to the people who live in the Basin and whose lives, and the things they value, are directly impacted by Commonwealth decisions on water management.
- 45. CICL would welcome this inquiry providing this advice to government.

Conclusion

- 46. In preparing this submission CICL has relied on evidence produced either by or for government about the Basin Plan implementation challenges. CICL believes the government's own evidence provides a compelling case for change and it will be neglectful of governments not to introduce more flexibility to the current Basin Plan settings.
- 47. The way the current Plan is constructed, communities that rely on irrigated agriculture as the basis of their social and economic fabric will be impacted if the Basin Plan does not become more adaptive. CICL believes this outcome is not acceptable. Water is a contested space and will continue to be, however, decisions must be made by government that transcend political differences and be respectful of the communities who are materially impacted by government decisions.
- 48. CICL has proposed that the state and commonwealth water ministers become responsible for providing solutions to the obvious problems. This forces governments to work harder to develop solutions that are in their collective interests. It is only by working through these hard issues and reaching agreement that the Basin Plan will achieve increased stability and support across communities and the political spectrum.

Yours sincerely

Clifford Ashby
Chief Executive Officer

³¹ [Why the Murray-Darling Basin matters | Murray-Darling Basin Authority \(mdba.gov.au\)](https://www.mdba.gov.au/why-the-murray-darling-basin-matters), accessed Friday 23 July 2021.