ACT Government
Environment, Planning and Sustainable Development

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Productivity Commission
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Dear Commissioner

ACT Submission to the Productivity Commission's discussion paper: Murray Darling Basin Plan – Implementation Review 2023

I am pleased to make this submission on behalf of the ACT Government Environment, Planning and Sustainable Development Directorate (EPSDD) to the Productivity Commission, supporting your inquiry on the effective implementation of the Murray Darling Basin Plan and related water resource plans.

The ACT Government supports the full implementation of the *Basin Plan 2012* as a framework for sustainable water resource management. The environmental watering program has demonstrated the environmental outcomes that can be achieved with complementary benefits for communities.

In order to realise the full benefits of the Basin Plan, the ACT requires that any future reimaging of the Plan's implementation should remain focused on the intended outcomes and restore public confidence through improved accountability and transparency.

Thank you for the opportunity to put forward our submission as part of the Commission's consultation process. I look forward to further engagement throughout the Inquiry.

Yours sincerely

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ACT submission in response to the Productivity Commission's discussion paper: Murray Darling Basin Plan – Implementation Review 2023

Context for this submission

The National Water Initiative (2004) provided the blueprint for the Water Act and the Basin Plan. The key components of the Basin Plan represent the implementation of national policy within the Murray-Darling Basin.

The *Water Act 2007* (the Act) draws its head of power from the Australian Government's obligations to international obligations, specifically the Convention on Biological Diversity, Convention on Wetlands of International Importance and several migratory waterbird agreements. The Basin Plan must give effect to these international agreements[1]. For this purpose, the Basin Plan has been developed to bring into balance the distribution of water resources to achieve environmentally sustainable development, measured through the objectives and quantifiable outcomes of the Environmental Watering Plan[2].

The Basin Plan was founded on a sound scientific basis[3], and then negotiated to introduce measures to reduce the volume of environmental water required to be recovered for equivalent environmental outcomes; that being, unimplemented policy measures (referred to as Pre-requisite policy measures – PPMs), Northern Basin Review and Toolkit, and Sustainable Diversion Limit Adjustment Mechanism (SDLAM). Achieving the objectives and outcomes of the Basin Plan require these negotiated measures to be implemented in full, on time and effectively.

The Basin Plan has not been delivered in full or on time. The Plan remains the subject of negotiation. Reviews and inquiries, including but not limited to the South Australian Royal Commission[4] and a Senate Committee inquiry[5], conducted throughout the course of Basin Plan implementation consistently raise significant issues on transparency, accountability, institutional arrangements and governance and, importantly, the effective delivery of measures to achieve the expected environmental outcomes.

This submission does not aim to re-prosecute the issues raised in previous inquiries but to provide reflections in response to the Productivity Commission's Discussion Paper that may encourage the Commission to contemplate ambitious recommendations for improvements in future Murray-Darling Basin water reforms.

Achieving water recovery targets

The Basin Plan water recovery targets were founded on assumptions for water take limits, anticipated operation of the river systems (e.g. un-implemented policy measures, relaxation of operating flow constraints) and the implementation of Supply and Efficiency measures (SDLAM

[1] Water Act 2007, Part 2
[2] Basin Plan, Chapter 8
[3] Murray-Darling Basin Sustainable Yields, CSIRO, 2008; Guide to the proposed Basin Plan, Murray-Darling Basin Authority, 2010
[4] Murray-Darling Basin Royal Commission Report, 2019
[5] Senate Selection Committee on the Multi-Jurisdictional Management and Execution of the Murray Darling Basin Plan, 2021

projects) to achieve the expected environmental outcomes. The Plan sets out the framework for delivering on the water recovery targets and process for implementation.

The Murray Darling Basin Authority's (MDBA) Report Card[6] of Basin Plan implementation and annual assurance report of the SDLAM[7] provide sobering accounts of the status of activities to deliver environmental water recovery. Key planning assumptions for the Basin Plan implementation do not appear to have been delivered in full or in some cases at all. The on-going implementation of PPMs, policies underpinning the effective and efficient use of the Commonwealth's held environmental water, has not been reported since 2019.

The Constraints Management Strategy was developed in 2013 to guide the implementation of arrangements that would enable the use of held environmental water to inundate wetlands of local, national and international importance. Watering these sites required river flow rates that exceed the historic operating conditions. Projects to address the operational constraints were adopted as Supply Measures in 2018. While marginal improvements to river operations have occurred, the use of held environmental water does not match the Plan's planning assumptions; for example, operational limits for environmental watering of Barmah-Millewa Forest.

Evidently more time is needed. However, the Commission's discussion paper raises pertinent questions on what future arrangements are required in a redesigned program, to provide public confidence that the intended water recovery and environmental outcomes would be achieved.

A redesign of the water recovery program should include:

- All water recovery options should be on the table, including the re-commencement of purchases from willing sellers through the water market and improving the effective use of planned environmental water releases including those made by Snowy Hydro.
- Genuine water recovery projects (Supply Measures) with realistic timeframes and basin-wide outcomes to continue to be supported, but the immediate withdrawal of implausible projects that only undermine public trust.
- Empowering landowners to make their own personal business choices on engaging in on-farm water efficiency measures and voluntary sale of water.
- Community-led structural adjustment projects that are guided by national policy on sustainable agriculture.
- Strengthened accountability for project delivery through funding agreements, improved reporting and independent oversight (refer to the section on Institutional and Governance Arrangements below).

The Inspector General of Water Compliance (IGWC) was established under the Water Act in 2021 to provide public confidence in water resource management and independent oversight of the functions of Basin governments under the Act, the Basin Plan and Basin funding agreements. The status of Basin Plan implementation and water recovery reaffirms the importance of the independent oversight role of the IGWC to strengthen accountability in any future redesign of Basin Plan implementation.

Basin management arrangements

The Basin Plan has had no discernible effect in the upper Murrumbidgee region.

[6] Basin Plan Report Card, June 2023, MDBA
[7] SDLAM Annual Assurance Report, July 2023, MDBA

The upper Murrumbidgee River, in its current state, is not supporting threatened native fish species listed under the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999*. In 2019, the perennial Murrumbidgee River ceased to flow at the ACT border, impacting critical human water needs. Annually, the water quality of summer river flows entering the ACT do not meet human health guidelines for enterococci bacteria.

The operation of Tantangara Dam by Snowy Hydro, climate impacts, and cross-border water management arrangements upstream of the ACT border are unfortunately compromising the health and function of the upper Murrumbidgee River. Water management issues within catchment headwaters have a direct effect on downstream water resources. These regions are highly vulnerable from extreme climate events and unsustainable water resource development.

The MDBA have not effectively engaged with communities in the upper Murrumbidgee region to understand the basin-scale issues impacting environmental values and water security. As a result, long-standing issues remain unaffected by the Basin water management arrangements. Matters raised by the ACT with the MDBA, including within the accredited ACT WRP, receive no genuine interest to progress.

Water Resource Plans

The Commonwealth's Water Resource Plans (WRP) for the ACT provides no value-add, represents the ACT water management arrangements that pre-existed the Basin Plan, and only stifles opportunities to improve water resource management and sustainable development.

The value-add of WRPs is to improve water management across jurisdictional boundaries and between catchments, protect the inherent rights of the environment, and provide water security for downstream communities. For WRPs to be effective, all WRPs must be in place, meet the requirements prescribed under the Basin Plan and have genuine consideration of cross-border water resource management for Basin-scale outcomes.

The WRP for the NSW Murrumbidgee has not been accredited. Planned environmental water between Tantangara Dam and the ACT border is not protected from extraction and there appears little regard for downstream impacts within the ACT. The Act empowers the MDBA to "step-in" to develop and accredit WRPs where required. The use of the Commonwealth's step-in powers have not been invoked despite the delays.

WRPs are conceptually an important Commonwealth planning instrument with detailed requirements described in the Basin Plan. However, the design of the document, the scale of the water management area, scope of requirements and interpretation of those requirements, limit their effectiveness.

The process to accredit plans and low materiality threshold for amendments create a barrier for incorporating better scientific knowledge, refined content and to embed policy improvements designed by jurisdictions to address future resource challenges. The accreditation process is labour intensive and requests for relatively minor text amendments trigger reaccreditation.

The WRP for the ACT will become outdated before the Basin Plan review in 2026.

The effectiveness of WRPs could be improved by:

- redesigning the structure and content of plans to focus on the core elements that value-add or mitigate specific risks for basin-scale outcomes;

- plans being developed at a geographical scale that represents the scale of outcome sought, for example, upper Murrumbidgee region, Darling-Barwon that includes the lower Darling River;
- developing a simplified and efficient process for amendment and accreditation; and
- revising the materiality threshold for 'minor' amendments to be risk-based.

Water quality

The water quality and salinity targets under the Basin Plan is a duplication of other processes and responsibilities, and provide no value add to water management and planning in the ACT or upper Murrumbidgee region.

National water quality guidelines are developed and reviewed under the national water reforms. The ACT applies the relevant guidelines through its environmental protection regulation and policies. Implementation of water quality policies are subject to jurisdictional compliance and enforcement.

Basin Salinity Management, Schedule B under the Murray Darling Basin Agreement, places obligations on governments for managing salinity impacts through end-of-valley targets, procedures, audits and annual reporting. The Water Quality and Salinity Management Plan of the Basin Plan adds to this administrative burden without providing a value-add to addressing the water quality issues impacting the ACT and upper Murrumbidgee River.

Servicing the Commonwealth's multiple forums, procedures and duplicative reporting requirements for water quality and salinity is not representative of the level of risk within the ACT or provides return on effort. A more nuanced approach is required by the MDBA to target areas of high risk and water quality matters of regional relevance.

The water quality and salinity management within the Basin requires rationalising for cost-effectiveness.

Environmental water planning and management

The Basin Plan's Environmental Watering Plan (Chapter 8) establishes a sound framework for achieving the environmental objectives and outcomes of the Basin Plan. Notwithstanding, some refinements can be made to improve its effectiveness for basin-scale outcomes.

The Basin Evaluation (2025) should provide valuable insights on the effectiveness of the Plan's environmental framework. The environmental watering program has delivered to the extent possible without the assumed changes to river operations and policies (e.g. PPMs), and full water recovery. A distinction between the environmental outcomes that have been achieved and the expected outcomes from the full implementation of the Basin Plan is expected to be reported through the evaluation, highlighting the consequence from unresolved negotiations.

The Basin Environmental Watering Strategy (BWS) is subject to review in 2023. The timing of this review is out-of-step with the Basin Evaluation that is due in 2025, and this means the BWS is subject to change without an evaluation of its effectiveness for delivering the environmental outcomes. An evaluation and thorough review of BWS is warranted to adapt the environmental watering program to future challenges such as climate change. Evaluation of the BWS should test the assumptions underlying the existing themes, targets and watering regimes to affirm their validity for addressing threatened species and representative populations of native biota. Changes to the BWS should remain focused on delivering the environmental objectives set out in Chapter 8 of the Basin Plan.

Environmental water planning is yet to transition from sub-catchment, catchment and state-based management to basin-scale and in the national interest. The Environmental Watering Plan provides the foundation, however improving its effectiveness could occur by Long-term Watering Plans (LTWP) being developed at a geographical scale appropriate for addressing the causal factors impacting environmental outcomes and facilitating regional collaboration. For example, developing a LTWP for the upper Murrumbidgee region that transcends jurisdictional/catchment boundaries.

The Water Act and Basin Plan explicitly exclude the water diversions by Snowy Hydro from the Commonwealth's water management framework and yet the operation of Tantangara Dam undermines the Basin Plan's objectives and outcomes within the upper Murrumbidgee River[8][9][10]. Water dependent ecosystems are under increasing risk from extreme variations in climate and water availability that can only be addressed by including Snowy Hydro operations within the Basin's planning and management framework.

Improved effectiveness of the Basin Plans environmental water management framework could be achieved through:

- alignment of evaluation and review processes to support better integration of adaptive management within the environmental framework;
- LWTP to be developed at an appropriate geographical scale to affect the causal factors impacting basin-scale outcomes, e.g., upper Murrumbidgee region;
- the Basin Plan and BWS to directly address the causal factors adversely impacting environmental outcomes, for example the operation of Tantangara Dam;
- improving public information reporting with independent assurance on the effective volume of environmental water from Basin Plan implementation to inform future evaluation and reviews;
- publishing the underpinning planning assumptions for the quantified environmental outcomes to support the review and adaptation for the BWS and LTWP; and
- refining the *Principles to be applied in environmental watering*[11] to maintain focus on the core purpose of the environmental watering framework rather than on secondary matters "to have regard to".

Institutional and governance arrangements

The Commission's discussion paper raises the question of whether governance arrangements for Basin Plan implementation have improved since its 2018 inquiry and the suitability of these arrangements to provide transparency, integrity, conflict management and accountability.

In short, the Basin Plan has not been implemented in full, on time and remains subject to negotiation. The issues reported by the MDBA and contained within the Commission's Discussion Paper were identified in 2018 and reaffirmed through a succession of inquiries and reviews without effective course correction.

[8] ACT Government Basin Annual Report Case Study, 2020-21
[9] ACT Government Basin Annual Report Case Study, 2021-22
[10] The Forgotten River, Australian River Restoration Centre, 2022
[11] Basin Plan, Chapter 8, Part 4, Division 6

The partial implementation of the Basin Plan and the diminished public confidence reported through the history of the Basin Plan brings to question the effectiveness of the current institutional and governance arrangements legislated for Basin Plan implementation.

The functions of the MDBA can be generally characterised as: service agent of state governments for River Murray operations; Basin policy and planning; Basin water science and information; Basin program oversight; and Basin project delivery. These differing functions can conflict; this was recognised in 2020-21 with the transfer of compliance functions from the MDBA to the IGWC.

Recent flooding in the River Murray demonstrates the long-established professionalism of the MDBA for river operations under the Joint Venture. The Joint Venture is established under the Murray Darling Basin Agreement, and the services of the MDBA are funded and directed by Basin governments. The Basin Officials Committee oversee the river operations function of the MDBA.

Regarding the SDLAM, the MDBA:

- led the development of a Supply Measure project (the Enhanced Environmental Water Delivery project, EEWD) and is facilitating its implementation as project lead;
- was responsible for incorporating the package of Supply projects into the assessment model;
- certified the SDLAM package of measures and advised the Australian Government on making the SDL adjustments in 2017;
- provided program oversight and assurance; and
- is responsible for the independent reconciliation of the SDL adjustment in 2024 (certifying program delivery).

The MDBA conduct their Basin Plan responsibilities under the decision-making of the MDB Authority and Basin Officials Committee.

To note the Productivity Commission's summary of SDLAM delivery in their Discussion Paper, there is a 190-315 GL shortfall from the MDBA certified Supply Measure package and 424 GL shortfall in Efficiency Measures. The imbedded role of the MDBA throughout the history of SDLAM does not embody independent oversight, nor does the status of program delivery demonstrate effective accountability.

The erosion of public trust and confidence in Basin Plan implementation has been reported in the findings of previous inquiries and reviews. Inconsistency in information on water availability and use undermines public confidence and contribute to misunderstanding and frustration. For example, the amount of water reported as used in the Basin during the 2018-19 year, reported by Commonwealth Government agencies (MDBA, BOM, ABS, ABARES), ranged from 4,176 gigalitres to 7,484 gigalitres. Information on water use must be credible, relatively consistent, validated through independent audit and methods for the preparation of the data disclosed through public statements.

Governance improvements

The IGWC was a positive division of responsibilities to address conflicting functions previously held by the MDBA. The ACT Government supports the role and function of the IGWC. The timely and full implementation of water reforms in the Murray-Darling Basin, with the trust and confidence of communities, can only be achieved with effective accountability measures and transparency. Progressing the outstanding SDLAM projects, for example, warrants strengthened accountability

through independent oversight provided by the IGWC. This oversight function has not yet been exhibited in practice.

The NWI provided the blueprint for the Murray-Darling Basin reforms. Key policy challenges affecting future Basin Plan implementation appear consistent with the emerging priorities for national water reforms. Addressing the basin-scale issues highlighted in the Productivity Commission's Discussion Paper may best be delivered through national policy and by the appropriate agencies with a national purview.

The ACT Government welcomes the Productivity Commission's consideration of ambitious improvement in the institutional and governance arrangements formed with context of the Basin Plan's history, implementation status, the multiple roles of the MDBA and national reform priorities. For this purpose, the following suggestions are made:

- conduct an independent functional review of the Commonwealth institutional and governance arrangements for future Basin Plan implementation and water policy reforms;
- separate the functions of program delivery/river operations from water policy, planning and program oversight, that may result in rationalising the roles of the MDBA and further transfer of responsibilities (suggestions are provided below);
- embed the role of the IGWC in Basin Plan oversight, to give full effect to their legislated functions; and
- improve water information reporting and public assurance.

Delineation of functions to efficiently support both Murray-Darling Basin and national water reforms could take the approach below:

- Policy reform is conducted through a National Water Commission – this result in some other MDB functions being subsumed however with new NWC oversight;
- Basin and climate science delivered through the CSIRO;
- Water information through the Bureau of Meteorology;
- River operations and Joint Venture program delivery by MDB River Murray Operations;
- Regulation, compliance and oversight provided through the IGWC; and
- Environmental water planning and management is conducted through the respective Commonwealth and state environment agencies.

<u>Emerging issues and challenges</u>

The Commission's Discussion Paper highlights the forward challenges for Basin Plan implementation; including incorporating climate change projections into water resource management, addressing First Nations water rights and urban water security (critical human water needs).

These issues are not unique to the Murray-Darling Basin and are emerging as priorities for national water reforms.

Each jurisdiction is taking its own approach to responding to these challenges, and the MDBA has initiated its own program of work on some matters.

The nature and scale of these issues would benefit from national policy direction, through the renewed National Water Initiative, and coordinated through a national policy agency.

Structural adjustment

The Water Act and Basin Plan were a significant response to redress the overallocation of water resources across much of the Murray-Darling Basin. The Australian Government's response recognised that the overallocation and extraction of water was creating an unsustainable negative impact on river communities and the environment. Rebalancing the sharing of water resources would inherently have socio-economic impacts; positive and negative.

There has been much focus on the negative socio-economic impacts. However, restoring river flows through water recovery and active environmental water management (held environmental water) has socio-economic benefits that need to be quantified in comparable economic terms to provide a balanced assessment of impacts. There is inherent value in a healthy environment and its effect on community wellbeing. However, there are also tangible benefits from reducing river salinity, improving soil moisture and ground cover growth from overbank flows, and improvements in water resource availability as environmental water reduces the volume required for river conveyance and dedicated water quality allowances. Discrete case studies of these benefits exist; however, the positive economic impacts need to be quantified using a structured methodology to inform a balanced public debate on water recovery.

Adjusting the sharing of water resources is recognisably challenging for long established industries founded on the historic supply of water. Adaptation to the redistribution of water resources (for environmental purposes or emerging industries) and a drying climate would benefit from targeted support for structural adjustment. For this purpose, we encourage consideration of a structural adjustment package founded on the following:

- empowering individual farm businesses to make their own adaptation decisions, including through engagement in on-farm efficiency measures and voluntary sale of water;
- community-led structural adjustment projects to support new industry development; and
- national sustainable agriculture strategy to guide new industry development that is resilient to a drying climate.

Summary

Water reforms in the Murray-Darling Basin are not complete and a Basin Plan will continue to be required post-2026, in some form. Environmental water has been acquired, however the operating and policy arrangements to maximise the value from these water holdings, the assumptions underpinning the environmental outcomes of the Plan, have not been fully established in practice.

The National Water Initiative provided the underpinning blueprint for the development of the Water Act and Basin Plan. A refreshed NWI should again provide the direction to any future refinements to the Basin Plan, including through national policy on issues of climate adaptation, First Nations water interests, urban water security, and sustainable agriculture.

Parts of the Basin Plan framework remains fit-for purpose and it has an appropriate focus on the environmental outcomes. Many of the improvements suggested within this submission predominately focus on *how* the Basin Plan is implemented and *who* is best to lead future reforms.

Substantial improvements are required to provide confidence in the implementation, removing the uncertainty, ambiguity and opportunity for misinterpretation. Improved administrative efficiency in process would enable water resource plans to maintain their currency as Basin governments adapt their water planning and policy setting in response to future challenges or their own legislative

requirements. The scale of intervention by the Commonwealth is yet to transition from site and catchment management to intervalley and sub-basin water management that would best serve the intended basin-scale outcomes.

MDBA has served an important role in setting the foundations of the Basin Plan. The challenges that have arisen through the course of implementation and emerging policy reforms present a case for the governance and institutional arrangements to evolve and change. We encourage the Commission to be ambitious in its findings for the governance and institutional arrangements that would be required for future Basin Plan implementation.

The ACT Government looks forward to the Commission's consideration of the issues and recommendations to continue these important water reforms.