



**The Victorian Government Submission to
the Review of the *Water Act 2007* (Cth)**

July 2014

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General Introduction — The Case for Change

With finalisation of the Murray-Darling Basin Plan in November 2012, and settlement of its associated agreements over the course of 2013 and 2014, it is arguable that portions of the *Commonwealth Water Act 2007* (the Act) have now served their purpose, while other portions have become less relevant and in some cases, less helpful to the complex task of implementing the Basin Plan. This is particularly true when viewed in light of the current spirit of intent with regards to the Plan's implementation and the cooperative intergovernmental arrangements that now support this approach.

The focus of effort by all Basin Governments has now moved towards putting in place the adaptive frameworks, and most pragmatic and sensible processes necessary, to ensure a fully functioning Basin Plan by mid-2019, in a way that minimises costs to governments, and effectively addresses any related impacts on communities and industry. A sensible transition towards Basin Plan start-up has been agreed by all parties as most desirable. The Act will play an influential role in determining whether or not this outcome can be secured, and whether streamlined and fit-for-purpose implementation can be sustained over the long-term.

With these outcomes in mind it is worth recalling that the understanding reached among Basin governments with respect to implementation of the Basin Plan during 2012 was support for:

- collaborative implementation of the Plan, recognising the differences in role, responsibility and capability amongst the implementation partners;
- adaptive capacity within implementation arrangements to ensure a best-fit outcome that is cost-efficient and reduces the impact on communities and industry wherever possible;
- acceptance that the cost of implementation must be carefully managed to ensure the legacy of past investment is secured, and any unnecessary cost burden going forward is avoided; and
- recognition by all parties that implementation is to be undertaken in a consistent and understood manner that offers certainty to Basin communities during the transition period through to start-up, and from thereon to on-going implementation and compliance.

The Victorian Government believes that this review of the Act must clearly acknowledge this understanding in any consideration of the Act's current effectiveness in securing its objects. Also fundamental to informing this consideration, the review must give due recognition to other important influencing factors on the 'effectiveness' question, such as the end of the millennium drought and the emerging effects of water recovery itself on the landscape of the Basin. These influences point quite directly to the importance of enabling adaptive capacity within Basin Plan implementation and its associated governance arrangements, which again poses the question of whether the Act helps or hinders in this regard.

To that end, the Victorian Government values the 'framework-setting' role of the Act, and welcomes the opportunity to contribute to a review process that will help ensure that it remains a relevant and useful tool in advancing Basin Plan implementation and the complementary reform effort being undertaken by state/territory governments to secure more resilient water systems across the Basin.

The Basin Plan is a valuable overarching water planning guidance mechanism and the Victorian Government is committed to fully implementing it within the state's existing water management framework. The next evolution of the state's framework is now well underway with the *Water Bill 2014* being introduced into the Victorian Parliament in late June.

The Victorian Government has always been a strong advocate for a balanced approach to Basin Plan implementation, one that protects the needs of Victorian communities and irrigators while also providing for good environmental outcomes. This very clear approach has underpinned the Government's involvement in all negotiations on the Basin Plan.

In preparing its submission to the review, the Victorian Government has considered the Terms of Reference outlined in the Act, alongside consultation advice that has arisen in associated discussions with the Commonwealth and other Basin governments. On this basis it appears that the overarching focus of the review relates to effective Basin Plan implementation, and in particular whether this will allow the Act to deliver on its objects with the minimum necessary regulatory burden imposed on the water industry, water managers and irrigators. It is from this perspective that Victoria puts forward the findings and recommendations contained in this submission.

From this perspective, it is considered that best value would be gained from this review if it is focussed on testing the Act to see if its current legislative configuration will drive and enable effective implementation of the Basin Plan, in a way that is fit-for-purpose, and consistent with the intent of the suite of agreements that have now been reached between Basin jurisdictions to inform and direct implementation of the Plan.

Drawing on this proposition, the Victorian Government suggests that the formative question of the review should be: *Does the Act help or hinder implementation of the Basin Plan?*

In the Victorian Government's view, an Act that would best support implementation of the Basin Plan is one that would include the following attributes:

1. Provides for the Basin Plan and state Water Resource Plans (WRPs) to run for a reasonable amount of time, in order to allow for their effects to be seen on the ground before the next review is undertaken.
2. Provides for efficient and effective accreditation and amendment processes, that allow all interested parties to participate in consultation through arrangements that are streamlined and not overly burdensome.
3. Supports cost-effective, fit-for-purpose compliance requirements, that focus primarily on matters that are material to Basin Plan outcomes, and are driven by the principle of continuous improvement.
4. Requires that all reporting and information provision meets the test of 'collect once, use often', in order to minimise costs to parties with regard to reporting obligations.
5. Provides for streamlined and cost-effective institutional capacity.

More broadly, the Victorian Government also considers that all elements of the full Basin Plan package should be implemented consistently, driven by the same set of underlying principles. From this perspective, a brief consideration of the *Water for the Environment Special Account* is provided in the final section of this submission.

The next sections of the submission provide an analysis of key elements of the Act against the five attributes listed above. Suggestions for how the Act could be contemporised to better deliver on these attributes are also provided.

Overall, the Victorian Government welcomes the opportunity to be a part of the Act review, and looks forward to the Expert Panel's response to the matters that have been raised in this submission.

Attribute One: — Does the Act provide for streamlined, sensible and efficient review processes for the Basin Plan and state Water Resource Plans (WRPs)?

Table 1: High-level summary of the current dates of key review processes as required under the Act.

Item	Section	Next Review Date	Comments
Review of the operation of the <i>Water Act 2007</i>	s253	December 2014	Before the end of 2014 a review of the operation of the Act and the extent to which its objects have been met must be undertaken. Does not specify if, or when a next review should take place.
Murray-Darling Basin Authority to advise Murray-Darling Basin Ministerial Council on impacts of the Basin Plan	s49A	November 2017	Murray-Darling Basin Authority (MDBA) to give advice to the Murray-Darling Basin Ministerial Council on impacts of the Plan, as soon as possible after the end of the first 5 years after the Plan takes effect.
Review of the Basin Plan water quality and salinity targets	s22(1) Item 13	November 2017	The arrangements for the review are outlined by the MDBA under Chapter 13 of the Basin Plan.
Review of the Basin Plan environmental watering plan	s22(1) Item 13	November 2017	The arrangements for the review are outlined by the MDBA under Chapter 13 of the Basin Plan.
Audits by National Water Commission	s88	By March 2018	National Water Commission (NWC) must audit the effectiveness of the implementation of the Basin Plan and state WRPs, with audits to be undertaken within 5 years of the most recent audit. An initial report was tabled in March 2013. The NWC advised it would table a more comprehensive report in 2015; however, the NWC will cease operation from 31 December 2014.
Water for the Environment Special Account — Review	s86AJ	30 September 2019 30 September 2021	Two independent reviews are to be conducted into whether the amount standing to the credit of, and to be credited to, the Special Account will increase, by 30 June 2024, the volume of Basin environmental water by 450 GL, and ease or remove constraints.
Review of the Basin Plan - General	s50	By November 2022	This is to be a general, regular 10 yearly review undertaken by the MDBA. The review may lead to an amendment of the Basin Plan. Either the Commonwealth Minister or the Basin states collectively can request a review after 2017.

Table 2: Key Implementation dates for Victoria.

Item	Section	Key Date	Comments
Victorian WRPs:	s 64		Accreditation of WRPs ceases to have effect after 10 years. Accreditation may be extended past this date but not for longer than 12 months. The Act does not specify a process for what happens after WRPs expire, other than the general requirement (s53(2)) that all water resource plan areas must have a WRP.
• Wimmera-Mallee (surface and groundwater)		1 July 2018	
• Northern Victoria and Victorian Murray (surface water)		1 July 2019	
• Goulburn-Murray (groundwater)		1 July 2019	
Sustainable Diversion Limits (SDLs)	s23A	1 July 2016	If notified of adjustment measures, ‘as soon as practicable’ after 30 June 2016 the MDBA must propose an SDL adjustment in line with arrangements specified under the Act and the Basin Plan.
SDLs across the Basin commence from 1 July 2019.	s23B	30 June 2024	Where infrastructure and other measures lead to adjustments to SDLs, these must come in to operation by 30 June 2024.

Attribute One — Does the Act provide for streamlined, sensible and efficient review processes for the Basin Plan and state WRPs?

Key Finding: The Act contains an excessive number of review arrangements that are duplicative, and which no longer align with agreed Basin Plan implementation timelines.

Recommendations:

1. Remove s88 of the Act, as the NWC will cease operation by 31 December 2014, and this evaluation role could be undertaken by the MDBA, in close consultation with the states.
2. The review and reporting requirements under s22(1) Item 13 and s49A should also be removed from the Act, and s50 should be amended to replace the current 10 year Basin Plan review requirement with a 15 year requirement. This will allow the first Basin Plan review to better inform how expiring state WRPs are dealt with in 2029.
3. The two reviews under Part 2AA must fully consider all associated community impacts, and address the operation of the Special Account alongside the full suite of Basin Plan arrangements that have now been agreed between governments.

Table 1 highlights that there are a substantive number of sections in the Act that provide for regular reviews, and reporting on, the Basin Plan and its implementation. Table 1 also highlights that the initial proposed timings for most of these reviews now no longer sensibly align with the November 2012 commencement date of the Basin Plan, and implementation of associated arrangements under its related intergovernmental agreements.

As the Basin Plan implementation framework currently stands, the Plan will fully commence across the Basin from 1 July 2019, with accreditation of all state WRPs to be completed by this date and formal commencement of all sustainable diversion limits (SDLs) across the Basin. This will be almost seven years after the Plan was first signed into law, which is still considered a sensible start-up period, given the large water recovery task the Commonwealth is undertaking, and the opportunity to off-set this recovery task through detailed exploration of measures under the SDL adjustment mechanism.

In large part, the success of state WRPs, in particular SDL implementation compliance, will determine whether the Basin Plan has been implemented effectively, and whether the objects detailed in the Act are being secured. It is unlikely that any detailed review of the Plan undertaken either before, or not long after 1 July 2019 will offer more than a high-level, indicative sense of the likely direction of performance against key milestones, namely: the benefits of reduced consumptive water use; increased environmental water delivery; and the 'joined-up' delivery of state WRPs across the Basin.

As such, the on-ground impact of the Basin Plan requires a longer-term view with regard to its assessment and evaluation, one which also recognises that where infrastructure and other measures lead to adjustments to SDLs, these have until 30 June 2024 to come into operation.

Most material to this assessment is s50 of the Act, which calls for a general review of the Basin Plan to be undertaken in 2022 (i.e. 10 years after the Plan first came into effect). A review in 2022 will only be three years after full commencement of SDLs and finalised WRPs, and two years before all SDL adjustment measures are required to come into operation. By this time, it is unlikely that the operation and combined effect of SDLs, WRPs and the full suite of adjustment measures will be truly measurable.

Further to s50, s49A provides that the MDBA will advise the Murray-Darling Basin Ministerial Council of the impacts of the Basin Plan five years after the Plan has taken effect. This will see the first report being prepared in 2017, one year after the MDBA is expected to have proposed an SDL adjustment, and two years prior to finalisation of all WRPs across the Basin and commencement of SDLs. In addition, in 2017 the full effect of Commonwealth efforts to recover its proposed additional 450 GL of water cannot be assessed as funding for this task first commences on 1 July 2016, and will run through to 2024.

On this basis, a report produced in 2017 is likely to offer little more than a high-level assessment of planning progress, coupled with some supplementary early information in areas where Basin Plan implementation has already commenced (i.e. water trading rules from 1 July 2014, and environmental watering activities, pending finalisation of the MDBA's Basin-wide strategy, and complementary state plans).

In hindsight, and given where agreed implementation arrangements have now ended up, the usefulness of a stand-alone report to Basin Ministers of the type envisaged by s49A warrants re-assessment. This is particularly true given that reporting of this type has the capacity to be captured in pre-existing arrangements, which are potentially also of more use to Basin Ministers. For example reporting of this nature could be captured through the MDBA's existing annual reports.

Related to this, regular reporting on Basin Plan progress and associated impacts is also already provided for by states through the rigorous reporting, compliance, and evaluation frameworks under the Basin Plan itself, as well as those associated with funding compacts under the *Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin*. Under these arrangements, Basin states are required to submit a Statement of Assurance (SoA) to the Commonwealth in order to receive funding for Basin Plan implementation, in addition to a second SoA to the MDBA demonstrating compliance with the Basin Plan, and a comprehensive monitoring and evaluation report to meet additional MDBA reporting requirements.

On the basis of the above analysis, with regard to the sections of the Act identified, efficiencies should be sought to streamline all associated review and evaluation processes through prudent use of the existing, very comprehensive annual reporting being undertaken by states.

In addition to the above, s88 of the Act provides that the NWC will complete an audit of the effectiveness of Basin Plan and WRP implementation five years after the commencement of the Act, and within five years of the most recent audit. The NWC produced an initial report in March 2013. This is a good example of how the reporting and review timelines in the Act no longer helpfully align with the agreed timelines for Basin Plan implementation. The Plan was signed into law four months prior to the NWC being required to produce a report on the effectiveness of its implementation, and as a consequence, the 2013 report instead focused on what the NWC would consider in its next audit.

While the role of the NWC under the Act in terms of providing independent assessment could be viewed as unique, the NWC will now cease operation from 31 December 2014. At a minimum, this section of the Act is likely to require amendment to address the reference to the NWC. However, at present, there is not another Commonwealth agency that possesses the NWC's operational understanding of national water policy, which is the specific skill-set required to deliver what is envisaged by s88.

As an alternative, s13.10 of the Basin Plan provides for the MDBA to conduct periodic audits to assess the extent of compliance with the Basin Plan. Noting the cooperative arrangements that now govern Basin Plan implementation, a cost effective, fit-for-purpose audit approach undertaken by the MDBA in close consultation with the states, could support the intent of both s88 of the Act, as well as s13.10 of the Basin Plan. In offering this as a potential alternative it is important to reiterate the comments made earlier. Any activation of s13.10 of the Plan, including to deliver on the intent of s88 of the Act, must build on and enhance, rather than seek to duplicate, the very comprehensive annual reporting that is already being undertaken by the Basin states.

Further to the general sections discussed above, the Act also requires reviews of two specific elements of the Basin Plan. Section 22(1) Item 13, requires a review of the Plan's water quality and salinity management targets, and environmental watering plan, every five years from the Basin Plan's commencement. The first reviews of this kind are currently scheduled to be completed in 2017, two years before state WRPs commence Basin-wide.

In line with suggestions above, a much more sensible and streamlined approach would be the removal of this review requirement from the Act, and instead, full utilization of the reporting, compliance and evaluation activities already in place under the Basin Plan and Schedule B of the *Murray-Darling Basin Agreement* to track progress in these areas. At a minimum, this option should be adopted during the transition through to 1 July 2019, and would ideally be extended until sufficient time has passed to sensibly test the impact of these aspects of the Basin Plan in combination with SDL and WRP commencement.

In making this assessment, it is also noted that s8.17 of the Basin Plan itself requires that the MDBA's Basin-wide environmental watering strategy be reviewed and updated no less than five years after it is made, meaning the first review could take place in November 2019. In addition, state long-term environmental watering plans are also to be reviewed and updated at intervals not exceeding five years. As such, the first of these reviews could take place in Victoria in November 2020. Consideration should be given to how best to streamline these reviews, and clarify their intended operation alongside the already onerous review obligations under the Act to ensure that all associated activity proves meaningful in terms of matters that are material to Basin Plan implementation and the objects of the Act. Paramount should be an assurance that all expectations with regard to information input to all of these reviews does not place an unnecessary reporting burden on the states and other holders of environmental water.

Part 2AA of the Act establishes the *Water for the Environment Special Account*, which is to be used to ease or remove constraints, and recover an additional 450 GL of environmental water for the Basin. Part 2AA provides for amounts to be credited to the Special Account through to 2023-24. Under s86AJ of the Act, two independent reviews will be conducted into whether the amount standing to the credit of, and to be credited to, the Special Account will address constraints, and increase the volume of Basin environmental water by 450 GL by 30 June 2024.

While these reviews relate primarily to funding and associated activities to address constraints and recover the 450 GL, it is important to note that these activities will be taking place at the same time that recovery tasks under the Basin Plan's 2750 GL are being finalised. It will be important that the two reviews under Part 2AA fully address the inter-linkages between the Basin Plan water recovery effort and the 450 GL, as well as any associated impacts on communities.

This will provide for a more fulsome understanding of the operation of the Special Account alongside SDLs, WRPs and the full suite of Basin Plan adjustment measures. It will also allow for critical commentary to be made as to whether all elements of the full Basin Plan package are being implemented consistently, driven by the same set of underlying principles.

The period between now and 2019 will be a time of transition and detailed planning to ensure that full commencement of the Basin Plan is as seamless as possible. The ability to understand the true benefits of the Plan, and whether it will deliver the objects of the Act, requires a longer-term approach to review and evaluation than the existing Act timelines currently provide for. In the interim, it is considered that effective monitoring of this transition period is already well covered by the rigorous reporting, compliance and evaluation that is being undertaken annually by the Basin states. The above sections of the Act should be reconsidered with this in mind.

Attribute Two: Does the Act provide a streamlined regulatory framework to accredit and amend the Basin Plan and associated instruments?

Table 3: Summary of key amendment and accreditation processes under the Act.

Task	MDBA	Minister (Commonwealth)	Comments
Accrediting State WRPs (s63)	Basin state submits WRP to MDBA requesting it be provided to the Commonwealth Minister for accreditation. MDBA must not recommend a WRP not be accredited unless written notice has been provided to the state, and the state has been given a right of reply.	May either accredit or not accredit the WRP and must table the decision in Parliament. Decision is a legislative instrument, but disallowance does not apply. If the decision does not follow the advice of the MDBA, the Minister must table a statement explaining why.	Section 63(2) specifies that where the submitted WRP is adjacent to a WRP area in another state, it must be prepared in consultation with the other state. Section 56(2) of the Act specifies which version of the Basin Plan the Minister must use in making a decision to accredit a WRP.
Accrediting amendments of accredited WRPs (s65)	Basin state submits a proposed amendment to MDBA requesting it be provided to the Commonwealth Minister for accreditation. MDBA must not recommend the proposed amendment not be accredited unless written notice has been provided to the state, and the state has been given a right of reply.	May either accredit or not accredit the proposed amendment and must table the decision in Parliament. This decision is a legislative instrument, but disallowance does not apply. If the decision does not follow the advice of the MDBA, the Minister must table a statement explaining why.	Pending clarification of relevant matters by regulation, s66 allows for minor, non-substantive amendments of accredited WRPs. States must notify the MDBA within 14 days of an amendment being made.
Amendments to state transitional and interim plans	Section 246 of the Act specifies that the process to accredit amendments to transitional and interim plans is the same as that for accredited WRPs. However, a different test applies with regard to Basin Plan consistency (s65(6)).	The Minister must accredit the amendment if satisfied that it makes the transitional, or interim plan no less consistent with the Basin Plan.	
Amendment of the Basin Plan (s45—s49)	The MDBA can prepare an amendment of the Basin Plan for the Minister's adoption. The MDBA must consult with states and the Basin Community Committee in the preparation of the amendment. The MDBA must also invite public submissions over an 8 week consultation period, and seek comments from the Murray-Darling Basin Ministerial Council, who have a minimum of 6 weeks to provide formal written feedback.	Must respond to the amendment within 12 weeks of receiving it. The Minister must either adopt the amendment in writing, or return it to the MDBA with suggested changes. The MDBA can undertake consultation if desired, and then alter the amendment, or return it to the Minister without changes. The Minister may then adopt the amendment or direct the MDBA to make modifications. The amendment is tabled in Parliament. This is disallowable.	Section 6.06 of the Basin Plan specifies a number of reviews of aspects of the Plan which may lead to amendments being proposed as early as 2015.
Proposing adjustments of SDLs (s23A)	Must first meet the criteria for proposing an adjustment as set out in the Basin Plan and seek and consider advice received from the Basin Officials Committee. Must not propose an adjustment without inviting and providing a reasonable amount of time for public submissions.		
Adopting proposed adjustments of SDLs (s23B)	Must prepare a detailed notice on the specifics of the adjustment and formal amendment of the Basin Plan. These must be provided to the Minister. The Basin Plan amendment is a legislative instrument, and is disallowable.	Either adopt the proposed SDL adjustment in writing, or give the MDBA notice that the amendment will not be adopted.	Under the Basin Plan (Chapter 7), the MDBA is expected to propose adjustments to surface water SDLs, if states produce planned adjustment measures by 30 June 2016.

Attribute Two — Does the Act provide a streamlined regulatory framework to accredit and amend the Basin Plan and associated instruments?

Key Finding: The Act contains an excessive degree of regulatory process for Basin Plan amendment and accreditation of WRPs. This is likely to create problematic inefficiencies in the operation of these key Basin Plan implementation processes.

Recommendations:

1. Streamline the WRP assessment requirements under s63 so they better align with, and support, state consultation arrangements as plans are prepared. Remove s63(2), as *Murray-Darling Basin Agreement* arrangements are already in effect.
2. Streamline the Act provisions related to assessment and accreditation of WRP amendments (s65), to ensure that implementation of the Basin Plan through state frameworks is as responsive as possible.
3. Streamline arrangements for amending the Basin Plan, including as these relate to adjustments to SDLs, so that consultation and advice preparation occurs concurrently, and proposed amendments are subject to a 'readiness check' by Basin Ministers collectively, before they are provided to the Commonwealth Minister for final sign-off.

Between now and 1 July 2019, 36 WRPs must be prepared by states, assessed by the MDBA and accredited by the Commonwealth Minister. The processes outlined in Table 3 are at risk of being too complex and prescriptive to be able to adequately support what will be a substantive task, which will require significant effort across the Basin.

Also evident from the high-level assessment provided in Table 3, longer term, the existing Act provisions do not seem capable of providing for an efficient method of reviewing, amending and accrediting WRPs. Also concerning, these provisions do not now seem capable of supporting the cooperative approach to Basin Plan implementation that has been agreed to by all Basin governments, and which is underpinned by an adaptive and responsive implementation framework.

These concerns extend to those provisions related to Basin Plan accreditation and amendment. In light of the cooperative spirit that now drives Basin Plan implementation, these provisions could be viewed as unnecessarily onerous, detailed and highly prescriptive.

Where this may create issues in the short-term is in relation to the expectation that adjustments will be made to SDLs following reviews of the SDL and baseline diversion limits for three groundwater resource units across New South Wales and Victoria. Where the outcome of these reviews recommends an SDL adjustment, particularly in the case of Victoria's Goulburn-Murray: Sedimentary Plain, this would need to be reflected in the Basin Plan prior to relevant WRPs being finalised. The ability for this to occur successfully, and in a timely way under the current Act provisions is unclear.

This current review of the Commonwealth Act provides an opportune time to consider whether the sections of the Act listed in Table 3 could be better streamlined to make them more operative and effective. Given what Basin governments are now collectively seeking to achieve under the Basin Plan, useful and sensible streamlining would help ensure that all associated implementation tasks are as straightforward and efficient as possible. Key suggested areas of focus are discussed in more detail below.

Firstly, it is suggested that the likely operation of s63 of the Act be reviewed and revised in light of the on-going discussion and consultation that will take place between the states and the MDBA as WRPs are prepared for submission to the Commonwealth Minister. In particular, it may be possible to streamline the various processes outlined for the MDBA, particularly given that Chapter 10 of the Basin Plan requires extensive consultation to take place as WRPs are prepared. This could also provide sufficient scope for the MDBA to conduct a 'readiness assessment' as states consult on WRPs, meaning a combined package of a finalised WRP and immediate accompanying set of MDBA recommendations could go to the Commonwealth Minister to inform a decision on accreditation.

Additionally, the Act requires a state to consult with another state if two WRP areas are located across a jurisdictional boundary. Victoria considers this to be an unnecessary and duplicative additional overlay to the existing long-standing cooperative arrangements that are enshrined under the *Murray-Darling Basin Agreement*. In particular, the shared intergovernmental forums of the Murray-Darling Basin Ministerial Council and the Basin Officials Committee are the latest iteration of governance arrangements that have been in place for 100 years. These arrangements are already highly effective at ensuring that consultation takes place between jurisdictions on cross-border and downstream impacts, and provides a highly effective open forum to discuss related issues. The relative necessity of s63(2) should be revisited in light of this.

Related to the above, the Act provisions that guide the process to assess and accredit amendments to both WRPs, and state transitional and interim plans, are not likely to be flexible enough to appropriately suit the requirements of state water management frameworks over the long-term. To illustrate, the nature of Victoria's water planning framework means that regular updates and amendments to key state instruments are necessary to ensure that water resource management arrangements are responsive to changing needs and conditions. Options to better streamline associated processes under the Act will allow states to focus on more material aspects of Basin Plan implementation, and would also ensure that implementation of the Plan through state frameworks is as responsive as possible.

In requesting the review consider and report on 'best-fit' arrangements for the development and amendment of state plans, the Victorian Government considers this to also be an opportune time to consider the broader processes for amending the Basin Plan, particularly given that proposed Plan amendments could occur as early as 2015. More streamlined Basin Plan amendment arrangements would also more suitably recognise that the Murray-Darling Basin is a highly variable system, and as such, an adaptive framework is more likely to effectively respond to this variability.

Suggestions for improvements are similar to those made above for WRP development. Namely, a discreet period for consultation could be provided for, with all parties (e.g. states as well as the public) consulted during this time. If the MDBA is closely involved with related consultation activities, its advice to Basin Ministers could be prepared concurrently and finalised shortly afterwards. The MDBA's advice and the proposed Plan amendment could then be subject to a 'readiness check' by the Murray-Darling Basin Ministerial Council, before being provided to the Commonwealth Minister for final sign-off. It is also worth considering how such a process could be adapted to s23A and s23B, which deal with proposals to adjust the Basin Plan SDLs.

Attribute Three: Does the Act support cost-effective, fit-for-purpose compliance arrangements, which are focused on matters material to Basin Plan outcomes?

Table 4: Policy summary of compliance arrangements under the Act and description of key processes.¹

Item	Section	Comments
Effect of Basin Plan on MDBA and other agencies of the Commonwealth	s34	Requires that agencies of the Commonwealth act consistently with, and in a manner that gives effect to, the Basin Plan.
Effect of Basin Plan on other agencies and persons	s35	Requires that all agencies of a Basin state or the holder of a water access right must not act in a way that may be inconsistent with the Basin Plan, and must not fail to act, if this results in an inconsistency with the Basin Plan.
Effect of WRP on MDBA and other agencies of the Commonwealth	s58	Requires that agencies of the Commonwealth act consistently with, and in a manner that gives effect to WRPs.
Effect of WRP on other agencies and bodies	s59	All agencies of a Basin state, or the holder of a water access right must not act in a way that may be inconsistent with a WRP, and must not fail to act if this results in an inconsistency with a WRP.
APPROACH IF THERE IS NON-COMPLIANCE UNDER s35 AND s59		
Enforcement	Part 8	Under the Act, the MDBA is identified as the appropriate enforcement agency for the Basin Plan and WRPs. For contraventions of s35 or s59, the MDBA may apply for an injunction. The MDBA may also issue an enforcement notice for conduct inconsistent with the Basin Plan or a WRP, or conduct that may ‘prejudice’ Basin Plan or WRP implementation.
MDBA (special powers)	Part 10	This Part provides the MDBA with powers to enter land for the purposes of gathering information necessary for the proper management of the Basin water resources and to monitor compliance with the Basin Plan and WRPs.
APPROACH IF A STATE DOES NOT SUBMIT A WRP FOR A WRP AREA, OR A SUBMITTED WRP IS NOT ACCREDITED BY THE COMMONWEALTH MINISTER		
Minister may request MDBA to prepare WRP (i.e. “step-in” action)	s68	Allows the Minister to request MDBA prepare a WRP for a WRP area if: <ul style="list-style-type: none"> • A state has not provided a WRP. • A state provides a WRP that is inconsistent with the Basin Plan. • If an accredited WRP requires amendment, and the amendment is not provided to the MDBA in ‘reasonable time’. • If a state provides a WRP amendment that is inconsistent with the Basin Plan.
Procedures to be followed before taking step-in action	Part 2 Division 3	The Commonwealth Minister must first attempt to negotiate a solution. If unsuccessful, the Minister will provide a preliminary notice, including the offer of mediation. If this does not provide a resolution, a formal notice will be issued indicating the Minister’s intention to consider exercising the step-in power, which the state may provide a formal response to. Following this, a formal notice indicating intention to proceed with step-in powers is delivered.

¹ This discussion highlights policy issues associated with these aspects of the Basin Plan and the Act. It does not constitute formal legal advice on these matters.

Attribute Three — Does the Act support cost-effective, fit-for-purpose compliance arrangements, which are focused on matters material to Basin Plan outcomes?²

Key Finding: The compliance and enforcement arrangements under the Act are highly prescriptive and pose a substantive regulatory burden. These arrangements are driven by a very generalized, non-specific threat of non-compliance, which runs counter to the agreed cooperative arrangements for implementation of the Basin Plan.

Recommendation:

1. Review and make amendments to s34 and s35, and s58 and s59 of the Act, to provide a more positive and fit-for-purpose emphasis for these sections that more consistently aligns with agreed Basin Plan implementation arrangements. This will render Part 8 and Part 10, and the Commonwealth Minister’s step-in powers, last resort options only.

As highlighted in the introduction to this submission, Basin states have now endorsed a Basin Plan, supported by a series of intergovernmental agreements which both states and the MDBA are signatories to, which provide for processes to both manage and resolve compliance concerns before the need to draw on related sections of the Act.

Table 4 sets out the logical inconsistency the Act creates in terms of what is required to deliver Basin Plan implementation for the Commonwealth versus the Basin states. To illustrate, when s34 and s35 of the Act are read together it is evident that, from a compliance and enforcement perspective, both the burden and risk of implementation non-compliance rests primarily with the states. This sentiment is reflected again in s58 and s59 which establish the same level of risk and obligation in relation to the implementation and management of the WRPs.

Alternatively, the obligation for agencies of the Commonwealth, including the MDBA, can be read as much more positive in its focus and intent. While these agencies must act consistently with the Basin Plan and WRPs, their behavior must serve to give effect to these key water planning instruments. The focus is more on the facilitation of implementation, rather than the management of an assumed risk that agents of the state will act in ways that prevent effective implementation from occurring.

This approach could now be viewed as contrary to what has been clearly articulated in the implementation agreements that support the Basin Plan and which have now been endorsed by the Commonwealth and Basin states. Rather than being driven by a perceived risk of non-compliance, the focus of these agreements is on effective collaboration between the states, the Commonwealth and the MDBA to ensure a successful, long-term, adaptive management framework for Basin Plan implementation.

² This discussion highlights policy issues associated with these aspects of the Basin Plan and the Act. It does not constitute legal advice.

This is further supported by separate commitments by the MDBA that a highly collaborative approach will underpin its regulatory role, contrary to what the Act provides for, and that it will only seek to exercise its powers under the Commonwealth Act as a last resort. The states, the Commonwealth and the MDBA all now agree that the burden of implementation is best shared equally amongst all involved, and that implementation should be focused on effective delivery of material outcomes in a cost-efficient way.

As further illustrated in Table 4, the method by which the MDBA can seek to compel agents of the state, or holders of a water access right to act consistently with the Basin Plan or WRPs, is provided for in Part 8 and Part 10 of the Act. Part 8 provides that for contraventions of s35 or s59, the MDBA may apply to a court for an injunction. Under Part 8, the MDBA may also issue an enforcement notice for conduct inconsistent with the Basin Plan or a WRP or for conduct that may 'prejudice' implementation of the Basin Plan or a WRP. Supplementing this, Part 10 of the Act provides the MDBA with special powers that allow it to enter land for the purposes of gathering information necessary for the proper management of Basin water resources and to monitor compliance with the Basin Plan and WRPs.

In reviewing these Parts of the Act, it would be worthwhile considering the climatic conditions that prevailed when the Act was first being developed. The Basin was in the midst of the millennium drought, and there was an urgency to finalise and enforce a Basin Plan as quickly as possible. With the rapid return to wetter conditions during the course of 2010, Basin governments were afforded the time to better think through the new Act's implementation arrangements in more detail, primarily through the intensive negotiations that surrounded finalisation of the Basin Plan. This allowed for the setting of a framework that was mutually agreeable to all parties, and which would be both robust enough and flexible enough to adapt, should there be a return to drier conditions.

As a result, the collective approach to Basin Plan implementation has now become a collaborative endeavor, with a focus on ensuring that implementation is undertaken in the most cost-efficient and least burdensome way possible. This is underpinned by a concerted effort to continuously improve the management task over time, with attention directed to those areas of the Basin Plan that are collectively considered to be of the greatest priority. Part 8 and 10 of the Act are now at risk of running counter to this approach.

While it is acknowledged that there may still be circumstances when the sections of the Act outlined above will need to be used, the implementation framework that has now been established provides for a much less burdensome, and much more cooperative approach to dealing with any concerns around compliance. This framework very effectively lends itself to the principle of avoiding regulation as the first response to a problem, a principle that is considered in more detail under Attribute Five. The intergovernmental arrangements underpinning this approach are also much more adaptive, and responsive to changing conditions across the Basin.

What this suggests is that the fundamental test is to ensure that the existing collaborative approach to Basin Plan implementation operates in a way so as not to trigger s34 and s35, or s58 and s59 of the Act. The most straightforward way to achieve this would be to review, and potentially revise, the working of these sections so that they serve to underpin, rather than undermine the cooperation needed to ensure the Basin Plan is successful. Such revisions would also serve to ensure that activation of compliance and enforcement arrangements under the Act would truly be a method of last resort.

To provide a robust, fully informed basis to manage any perceived risks associated with such a change to the Act, as noted previously, states are already undertaking annual, comprehensive reporting related to Basin Plan implementation and compliance. This includes the annual Statement of Assurance that states undertake to be eligible for Commonwealth funding to implement the Plan.

In combination, these reporting requirements provide a very direct, efficient and consistent way to monitor state delivery of Basin Plan obligations. If this reporting was matched with a more fit-for-purpose set of Basin Plan 'consistency' provisions, this would avoid the time consuming and onerous enforcement methods prescribed by Part 8 and Part 10 of the Act, except in the most extreme circumstances, where enforcement is likely to be warranted.

Related to the above, and as further highlighted in Table 4, if a Basin state does not submit a WRP, or a WRP is deemed by the Commonwealth Minister to be non-compliant with the Basin Plan, step-in powers under Part 2, Division 3 of the Act may be triggered. These sections provide that the Commonwealth Minister may "step-in" and ask that the MDBA prepare a WRP for an area within a state. Recognising the cooperative and collaborative approach now driving Basin Plan implementation, it is worth considering whether these step-in powers could still be viewed as fit-for-purpose and appropriate given the collectively agreed implementation task.

Overall, it is considered that Part 8, Part 10 and the Commonwealth Minister's step-in powers have the potential to generate unnecessarily burdensome and time consuming methods for managing implementation of the Basin Plan. As noted earlier, the approach underpinning these sections of the Act is fundamentally based around the management of perceived risks to compliance. This is now at odds with the approach that governments have collectively approved, which instead is focused on ensuring that the implementation task is as effective as possible where it is materially important for this to occur. Better presentation of the Basin Plan consistency provisions under the Act would further help with this.

As also discussed above, the annual reporting already being undertaken by states is considered to be robust, efficient and fit-for-purpose. In terms of tracking potential implementation risks, and addressing any associated issues in a timely way, there is merit in reviewing the sections in Table 4 and considering where the regulatory burden can be reduced, and implementation streamlined.

There is no doubt that a collaborative approach to implementation is more efficient and cost-effective when it comes to resolving and monitoring compliance.

Attribute Four: Does the Act meet the test of ‘collect once, use often’, to minimise costs to parties with regard to reporting obligations?

Table 5: Summary of the various reporting requirements under the Act.

Item	Section	Reporting requirement
Content of the Basin Plan — a program for monitoring and evaluating the effectiveness of the Basin Plan	s22(1) Item 13	This section establishes the Basin Plan monitoring and evaluation framework reporting requirements for the Commonwealth and the Basin states. It specifically requires 5 yearly reviews of the Basin Plan water quality and salinity targets and environmental watering plan.
Reporting obligations of Basin states	s71	This section requires Basin states to provide the MDBA, at the end of each water accounting year, with a broad suite of water use reporting. This reporting is intended to ensure that the MDBA has the information needed to monitor compliance with SDLs.
Water Rights Information Service – Murray-Darling Basin	Part 5	This section provides that the MDBA may establish a Murray-Darling Basin ‘Water Rights Information Service’ using information held in the various state registers of registered water rights. The service is intended to provide information on water access rights, with the aim of facilitating trade within the Basin.
Water Information	Part 7	Provides additional powers to the Bureau of Meteorology (BoM) to collect, hold, manage and disseminate information on water resources, water usage and water accounting, to forecast future water availability, and to commission investigations to enhance understanding of Australia’s water resources. Establishes that BoM manages the National Water Account and that this be published annually.

Attribute Four — Does the Act meet the test of ‘collect once, use often’, to minimise costs to parties with regard to reporting obligations?

Key Finding: The Act contains a large number of provisions, across several Commonwealth agencies, that are aimed at the collection and holding of water information. Without appropriate streamlining and a clear sense of purpose for the use of this information, the long-term reporting burden on states is expected to be very high and very inefficient.

Recommendation:

1. Assess how the water information requirements under the Act can be streamlined and rationalised to reduce all unnecessary regulatory burden on the states. This includes ensuring there is no overlap between state reporting under s71 and any future state reporting under the Basin Plan related to compliance with WRPs.

With the settlement of the Basin Plan and its implementation framework there is now a very valuable opportunity to consider the reporting and information requirements listed in Table 5 alongside those prescribed in the Basin Plan to determine whether these need to be re-aligned or rationalised to ensure the Act works to enable the principle of ‘collect once, use often’. This proposition is further supported by the February 2014 *Phase One Report of the National Commission of Audit*³, which determined that one of the key principles of good government should be reducing the administrative burden for the states by keeping the reporting of information to a minimum.

As noted previously in this submission, states are currently required to prepare two annual Statements of Assurance under the agreed Basin Plan arrangements, as well as further annual reporting established by the Act under s22(1) Item 13 and s71. This is in addition to any information that may also be required from states under Part 5 and Part 7 of the Act.

Of particular note, Chapter 13 of the Basin Plan clearly states that its associated reporting obligations are to be governed by the following principles:

- information must be collected efficiently, relying primarily on existing capabilities;
- any duplication and fragmentation of monitoring should be eliminated; and
- an adaptive approach to test and improve monitoring will be used.

These guiding principles go quite some way towards guaranteeing efficient Basin Plan reporting, and are worth re-visiting when considering the longer-term operation of a number of the items listed in Table 5, in particular s71 and Part 7. The ‘good government’ reporting principles from the Commission of Audit report should also be taken into consideration here.

³ http://www.ncoa.gov.au/report/docs/phase_one_report.pdf

As noted, s22(1) Item 13 of the Act is given material effect through Chapter 13 of the Basin Plan which establishes the program for monitoring and evaluating the Plan's effectiveness. While the general purpose of this section, in terms of setting up an annual reporting regime, does not pose a specific problem, as discussed in Attribute One, the longer term review timelines under this section are now no longer considered appropriate, or necessary for effective Basin Plan implementation.

As discussed in Attribute One, a more efficient approach would be to utilise the annual reporting already in place, until sufficient time has passed to properly test the impacts of SDL and WRP commencement, and finalisation of associated SDL off-set measures. Any streamlining of reporting and information provision requirements in the lead up to full commencement of the Basin Plan will also allow Basin states to focus their energy on the more material aspects of Plan implementation.

Related to this, s71 of the Act requires Basin states to provide comprehensive annual reporting on the use of water resources in WRP areas, for the purposes of allowing the MDBA to monitor compliance with SDLs. Currently, s71 provides a useful interim step in terms of tracking the use of Basin water resources. However, from 1 July 2019, as part of the annual reporting established under s22(1) Item 13 of the Act, states will also have to report on compliance with WRPs. It is considered that the relationship between s71 of the Act and this future reporting requirement for WRP compliance is at present very unclear. On this basis, future operation of s71 and annual reporting on WRP compliance under the Basin Plan must occur in a way that ensures there is no overlap or duplication in the information states will be expected to provide.

While the first two items in Table 5 address reporting requirements that states must respond to directly, Part 5 and Part 7 of the Act link to a broader and emerging issue associated with long-term implementation of the Basin Plan. To illustrate, Part 5 of the Act provides for the MDBA to establish a 'water rights information service' to make publicly available information on water access rights, water delivery rights, irrigation rights and rights that relate to access to and use of Basin water resources. Basin states provide this information to the MDBA and its purpose is to facilitate trading.

A water rights information service has not yet been established, however, the MDBA website includes a commitment in its role description to 'develop a water rights information service to facilitate water trading across the Basin'⁴. Depending on what the intentions of the MDBA are to develop this service, it would be highly valuable to specifically clarify in Part 5 of the Act that the MDBA will not request additional information beyond what it will already receive from states during each water accounting period under the Basin Plan. This will ensure that Part 5 of the Act is underpinned by the principle of 'collect one, use often'.

Further, Part 7 of the Act adds another Commonwealth agency to the mix of water reporting in the Basin. This Part expands the Bureau of Meteorology's (BoM) powers to include:

1. Collecting and disseminating information on Australia's water resources.
2. Providing regular reports and forecasts on the status of Australia's water resources.
3. Maintaining water accounts.
4. Issuing National Water Information Standards.
5. Undertaking/commissioning investigations to better understand Australia's water.

⁴ <http://www.mdba.gov.au/about-mdba>

Central to this is the requirement that BoM will publish the National Water Account each year and that it may request water information from states within a specified timeframe and form, and in accordance with any applicable National Water Information Standards. The Act provides that a failure to comply can result in a civil penalty.

In Victoria's experience, much of the data delivered to BoM is already managed and available on the state's various existing water reporting websites. A considerable portion of the data collected by BoM is also not subsequently made publicly available through BoM, so the value of the collection effort is limited.

While the information collection role of the MDBA and BoM as defined in Part 5 and Part 7 of the Act can be viewed as different, in the interests of pragmatism, and within a core focus of Basin Plan delivery, there is also very clearly a strong potential for overlap within the Act for these two Commonwealth agencies. In terms of potential duplication of effort and very unclear expectations regarding the reporting requirement on the states, these Parts of the Act run the risk of not aligning with the Commission of Audit's advice on 'good government' reporting principles.

On this basis, consideration should be given to how the information provision requirements under the Act can be rationalised and streamlined in order to reduce the reporting burden on the states. It is recommended that the Expert Review Panel give serious consideration to the possibility of creating a central repository of water resource information which would improve accessibility, reduce duplication and unnecessary complexity, and embed the principle of 'collect once, use often'. The central repository would only collect, store and use information that states already provide annually under the Basin Plan arrangements, and a broader draw on state information would not be sought.

Attribute Five: Does the Act drive streamlined, transparent and cost-effective institutional capacity?

Table 6: A high-level description of the governance arrangements under the Act.

Commonwealth Agency	Section	Description of High-Level Role/Responsibility
Murray-Darling Basin Authority (MDBA)	Section 18E	Under the 2008 amendments to the Water Act, the MDBA was given additional functions, powers and duties related to implementation of the <i>Murray-Darling Basin Agreement</i> (MDB Agreement; Schedule 1 to the Act).
	Section 19	The MDBA must prepare a Basin Plan to give to the Commonwealth Minister for adoption. The MDBA may also prepare Basin Plan amendments for the Minister to adopt, and must review the Plan at least every 10 years.
	Section 68	The Commonwealth Minister may request the MDBA to prepare a WRP for a WRP area (i.e. exercise of the ‘step-in’ powers under the Act).
	Section 103	The MDBA may provide an information service that allows access to information on registrable water rights.
	Section 137	Identifies the MDBA as the appropriate enforcement agency for the Basin Plan and state WRPs.
	Section 165	The MDBA may issue an enforcement notice for conduct inconsistent with the Basin Plan or a state WRP, or for conduct that may ‘prejudice’ Basin Plan or WRP implementation.
	Part 9	Establishes the MDBA’s administrative arrangements under the Act. Section 172 lists fifteen specific, broad functions for the MDBA, which include the varied responsibilities assigned to it elsewhere in the Act.
	Part 10	Provides the MDBA with powers to enter land to gather ‘necessary information’ for the proper management of the Basin water resources and to monitor compliance with the Basin Plan and WRPs.
Commonwealth Environmental Water Holder (CEWH)	Section 105(4)	Where Commonwealth environmental water holdings relate to water in the Murray-Darling Basin, the CEWH must manage these in accordance with the Basin Plan environmental watering plan.
	Section 106	Places limitations on the CEWH’s ability to sell water. Under this section, the CEWH can only sell water if: <ul style="list-style-type: none"> • within a water year, it isn’t needed to meet the objectives of the Basin Plan environmental watering plan; or • sale of the water improves the CEWH’s capacity to meet the objectives of the environmental watering plan.
	Section 109	The Commonwealth Minister can make rules related to the CEWH’s role in purchasing, selling or dealing in any other way in water rights. These rules will be a legislative instrument.
Bureau of Meteorology (BoM)	Section 120	Sets up additional functions for BoM, including: collecting, holding and disseminating water information; providing regular forecasts on future water availability; and compiling and maintaining a National Water Account.
	Section 126	As specified by regulation, a person or class of persons must give BoM a copy of required water information.
	Section 127	BoM’s Director may require a person to give information to BoM. A person must comply with this requirement.
	Section 130	BoM’s Director may, by legislative instrument, issue National Water Information Standards. Section 133 provides for compliance notices to be issued if the National Water Information Standards are contravened.
Australian Competition & Consumer Commission (ACCC)	Section 93	Upon request, the ACCC must give the Commonwealth Minister advice about proposed water charge rules, as well as any proposed amendments or revocations.
	Section 94	The ACCC is to monitor regulated water charges across the Basin and compliance with the water charge rules.
	Section 98	Upon request, the ACCC must give the Commonwealth Minister advice about water market rules, as well as any proposed amendments or revocations.
	Section 99	The ACCC is to monitor transformation arrangements and compliance with the water market rules.
	Section 137	Identifies the ACCC as the appropriate enforcement agency for the water charge and water market rules.
National Water Commission (NWC)	Section 87	The NWC is to audit the effectiveness of the implementation of the Basin Plan and state WRPs.

Attribute Five — Does the Act drive streamlined, transparent and cost-effective institutional capacity?

Key Finding: The Act sets out a large number of very broad roles and responsibilities for several Commonwealth agencies. Without appropriate streamlining and a clear sense of purpose for these roles and responsibilities, the long-term regulatory burden on states is expected to be very high and very inefficient.

Recommendations:

1. The Commission of Audit's 'good government' principles of avoiding duplication of services and providing better policy and program transparency should be used to streamline the large number of potentially competing roles and responsibilities that have been assigned to Commonwealth agencies under the Act.
2. In particular, to enable clearer recognition of, and transparency in, the MDBA's role in undertaking Joint Programs activities for Basin governments under the MDB Agreement:
 - a. Add to s172(1)(a) of the Act a fourth sub-part that refers specifically to Schedule 1 of the Act (i.e. the MDB Agreement).
 - b. Add to the MDBA's reporting provisions under Part 9 a requirement that the MDBA provide regular, clear and transparent financial and performance reporting to the MDB Ministerial Council, as it relates to implementation of the MDB Agreement.
3. Explore options around long-term operation of s106 and s109 to give CEWH greater flexibility to trade and carryover water, and to sell temporary water in dry years.

In total, the Commission of Audit has set out ten principles of 'good government'. A number of these are very useful shaping principles for the current review of the Act, particularly in terms of assessing whether the Act is capable of driving streamlined, transparent and cost-effective institutional capacity. These include:

- **Be transparent and honest:** Policy goals and program outcomes must be transparent.
- **Reduce complexity:** Reduce complexity which impacts on operation of the states, and the activities of community and business. Reporting should be kept to a minimum.
- **Avoid regulation as a first response to a problem.**
- **Do not deliver services if others are better placed to do it:** The delivery of public services should not be duplicated.

Relevant to the above, Table 6 provides a high-level description of the broad suite of roles and responsibilities that have been assigned to a range of Commonwealth agencies under the Act. From Table 6, and as discussed in more detail earlier under Attribute Four, it is evident that there are a number of areas of overlap between the intended functions of the MDBA and the BoM as they relate to the collecting, holding and disseminating of water information.

This has the potential to confuse the relative policy goals and program outcomes of these two agencies over the long-term, which could lead to unhelpful regulatory inefficiencies and an increased reporting burden on states. Such inefficiencies and unnecessary cost burdens should be avoided at all costs.

On this basis, it is recommended that the principle of avoiding the duplication of services, and providing better policy and program transparency be applied here. As recommended in Attribute Four, opportunities to streamline the water information functions and responsibilities of the MDBA and BoM should be explored, to ensure the principle of 'report once, use often' is reinforced over the long-term, and associated reporting and information provision is kept to a minimum.

Related to this, as discussed earlier in Attribute One, s88 of the Act should be removed, given the NWC will cease operation from 31 December 2014. Options should be explored to allow the MDBA to take on this evaluation role, in order to fulfill this aspect of Basin Plan delivery. Options should be developed in close consultation with states to ensure they are streamlined, fit-for-purpose and cost-effective.

Also associated with sensible Basin Plan delivery, as well as effective operation of the water charge and market rules, is the principle of avoiding regulation as the first response. This should be considered in light of comments made earlier in this submission that amendments should be sought to key Act provisions to ensure that Part 8 and Part 10 become last resort options only. A review of s126, s127 and s137 is also recommended to determine whether the risk of not activating these sections actually outweighs the cost of their enforcement. If not, amendments in these areas should also be sought.

More broadly, what Table 6 also highlights is that the MDBA has a very broad remit of functions and obligations under the Act. In light of this, the principle of transparency becomes paramount to ensure that the MDBA's delivery of all associated policy goals and program outcomes is clearly articulated.

This has been a long-standing focus in terms of the MDBA's two key roles under the Act:

- Delivery of Joint Programs in line with arrangements under the MDB Agreement.
- Delivery of the Basin Plan.

On 7 February 2014, the MDB Ministerial Council agreed to a package of reforms aimed at better strengthening and clarifying governance arrangements associated with the MDBA's delivery of Joint Programs. The MDB Agreement will be amended accordingly to support the new arrangements.

It is recommended that amendments to the Act be considered to enable clearer recognition of the MDBA's role in undertaking Joint Programs activities on behalf of the Basin governments. These amendments would primarily be aimed at better clarifying and separating this very critical interjurisdictional role from other responsibilities the MDBA is assigned under the Act.

In particular, it is strongly recommended that the Expert Review Panel put forward the following advice in its final report to the Commonwealth:

- Add to s172(1)(a) of the Act a fourth sub-part that refers specifically to Schedule 1 of the Act (i.e. the MDB Agreement).
- Add to the MDBA's reporting provisions under Part 9 a requirement that the MDBA provide regular, clear and transparent financial and performance reporting to the MDB Ministerial Council, as it relates to implementation of the MDB Agreement.

Good governance principles are also viewed as extremely relevant as they relate to the requirement in the review Terms of Reference (s253(2)(c)), that there be an assessment of the extent to which water is being used in higher value uses.

In the Victorian Government's response to the *proposed Basin Plan* (April 2012), it was noted that a largely unexplored aspect of minimizing the longer term social and economic impacts of implementing the Plan, particularly for irrigated agriculture, related directly to the CEWH's ability to trade. It was considered that, allowing the CEWH greater flexibility to trade and carryover water could substantially reduce costs to agriculture, particularly if the CEWH was able to sell temporary water during dry years.

The Victorian Government's position on this matter still stands. On this basis, it is recommended that options be explored around the longer-term operation of s106 and s109 to give CEWH greater flexibility to trade and carryover water, and to sell temporary water in dry years. This will help ensure the continued operation of key agricultural industries across the Basin, supported by the utilization of water in higher value activities.

Will implementation of the *Water for the Environment Special Account* fully align with the agreed Basin Plan implementation arrangements?

Table 7: High-level policy summary of the Act provisions underpinning the *Water for the Environment Special Account* (Part 2AA).

Item	Section	Purpose
Object of this part	86AA	Explains the purpose of Part 2AA is to enhance the environmental outcomes of the Basin Plan by protecting and restoring Basin environmental assets, and the biodiversity dependent on Basin water resources. This is to be done through the easing or removing of constraints, and by increasing the volume of environmental water available to the Basin by 450 GL.
Water for the Environment Special Account	86AB	Establishes the <i>Water for the Environment Special Account</i> .
Purposes for the Water for the Environment Special Account	86AD	Clarifies what the Special Account can be used for, in relation to addressing constraints and recovering 450 GL in a way that is 'socio-economically neutral'. This includes: <ol style="list-style-type: none"> 1. Improving the efficiency of infrastructure that delivers, stores or drains Basin water resources for irrigation, and/or improving or modifying infrastructure to ease constraints on the delivery of environmental water. 2. Better utilising dams and storages to deliver environmental water. 3. Agreements to acquire land to facilitate environmental watering. 4. Improving the rules, policies, practices and procedures around the management and use of Basin water resources. 5. Purchasing water rights in a 'strategic' way. 6. Payments that may address detrimental social or economic impacts on Basin communities.
Environmental Water Holdings - Commonwealth	86AE	Makes explicit that water rights acquired by the Special Account become part of the Commonwealth environmental water holdings, and they are to be only used within the Murray-Darling Basin.
Amounts to be credited to the Special Account	86AG	This section details the amounts that will be credited to the Special Account each financial year from 2014-15 to 2023-24.
Annual Report	86AI	At the end of each financial year the Commonwealth must prepare and present to Parliament, a report on the Special Account.
Reviews of this Part	86AJ	Two independent reviews are to be conducted (30 September 2019 and 30 September 2021) into whether the amount standing to the credit of, and to be credited to, the Special Account will increase, by 30 June 2024, the volume of Basin environmental water by 450 GL, and ease or remove constraints.

Will implementation of the *Water for the Environmental Special Account* fully align with the agreed Basin Plan implementation arrangements?

Key Finding: It is presently unclear whether the Commonwealth's intended strategy for implementing the *Water for the Environment Special Account* will fully align with the arrangements agreed between governments for implementing the Basin Plan.

Recommendations:

1. In close consultation with Basin states, the Commonwealth must determine a fair and equitable method for addressing system constraints and recovering its proposed 450 GL in a way that is strategic, and effectively avoids any associated socio-economic impacts.
2. Material to this, the Commonwealth must clarify the steps to be taken if the reviews under s86AJ show the amount credited to the Special Account will not achieve the objects of Part 2AA.

Part 2AA of the Act establishes the *Water for the Environment Special Account* (Special Account), the purpose of which is to fund projects to ease and remove constraints across the Basin and recover an additional 450 GL of environmental water beyond the 2750 GL already being recovered under the Basin Plan.⁵ Part 2AA sits apart from the Basin Plan sections of the Act, and is a non-mandatory aspect of the Plan. The Special Account will see the Commonwealth government spend an additional \$1.77 billion, over 10 years, on water recovery measures across the Murray-Darling Basin.

As shown in Table 7, Part 2AA goes as far as to establish the Special Account, outline the environmental outcomes to be enhanced, and details the amount to be credited to the Account from 2014-15 to 2023-24. It does not however, explain the Commonwealth's strategy for how the 450 GL will be recovered or how the easing and removal of constraints will be managed across the Basin, particularly in terms of addressing any associated third party impacts.

The Commonwealth's June 2014 *Water Recovery Strategy* states that \$200m has been allocated from the Special Account to help remove or ease constraints across the Basin. No further information has yet been provided to states on how the Commonwealth will phase expenditure of the \$200m over the next 10 years. Additionally, no specific timeline or approach has been provided indicating what the Commonwealth's strategy will be in order to recover the additional 450 GL in a fair and equitable way by 2024.

⁵ The Basin Plan allows the 2750 GL recovery task to be adjusted down by 650 GL under the SDL adjustment mechanism.

The lack of planning and clear strategy around the recovery of the 450 GL and the addressing of constraints raises a number of concerns. In particular, at the time the 450 GL recovery task will receive significant injections of Commonwealth funding, Victoria will be close to finalizing the delivery of its share of the 2750 GL under the Basin Plan. In areas where obligations related to the 2750 GL have not yet been completed, there is the potential for substantial confusion within communities if Commonwealth efforts around the 450 GL are occurring in parallel, and are not explained properly. As a result, it will be crucially important that areas of the Basin where the 2750 GL has been completed not be seen as an easy target for the additional 450 GL.

On this basis it is recommended that options for recovery of the 450 GL be discussed in greater detail between the Commonwealth and the Basin states in order to avoid the potential for inequitable burden shifting on to communities and industries. Such an approach would also closely align with and effectively follow, the precedent set in Basin Plan negotiations that water recovery is to be shared amongst Basin states relative to each state's use of Basin resources.

Furthermore, a failure to begin early planning around the recovery of the 450 GL could result in a last minute rush to identify water recovery measures, which in turn could result in an unplanned, and ill-thought out approach across the Basin.

More broadly, it is difficult at present to determine how recovery of an additional 450 GL under the Special Account in addition to the 2750 GL under the Basin Plan could have a completely neutral socio-economic impact on Basin communities and industries. While the Act provides that funding from the Special Account may be used to address detrimental social or economic impacts on Basin communities, and the recovery of the 450 GL must ensure social and economic outcomes for Basin communities are maintained or improved, undoubtedly the most effective way to deliver these outcomes is through a well-planned and managed approach that has been agreed in consultation with affected states.

Longer-term, as discussed earlier in Attribute One, s86AJ of the Act provides for two independent reviews to report on whether the amount standing to the credit of, and to be credited to, the Special Account will increase by 30 June 2024, the volume of Basin environmental water by 450 GL, and ease or remove constraints. These reviews should also fully address the inter-linkages between the Basin Plan water recovery effort and the 450 GL, as well as any associated impacts on communities. This will provide for a more fulsome understanding of the operation of the Special Account alongside SDLs, WRPs and the full suite of Basin Plan adjustment measures.

While the Act provides for the s86AJ reviews to determine whether credit in the Special Account is sufficient, it omits any reference to how a review that determines the \$1.77 billion is insufficient will be managed. It would be useful to clarify how the outcomes of the reviews will be managed, in particular whether they may result in a reduction of targets or additional credits being made to the Special Account.

Finally, the Act requires the Commonwealth to produce an annual report on the Special Account at the end of each financial year, meaning the first of these will be presented to Parliament in mid-2015. It is recommended that these reports be used to provide regular updates on the issues raised above and to provide strong inter-linkages to matters that are material to implementation of the broader Basin Plan package, particularly around the potential impact of the implementation task on Basin communities.