

Review of the Murray-Darling Basin Plan

**Submission Guide: Summary
and Recommendations**



Environmental
Defenders Office



Review of the Murray Darling Basin Plan: Submission Guide

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SUMMARY OF THE GUIDE AND RECOMMENDATIONS

This Review is a once in a decade opportunity to have your say

This is the first time the Murray Darling Basin Plan (**Basin Plan**) has been reviewed by the Murray Darling Basin Authority (**Authority**). The review is required by the *Water Act 2007* (**Water Act**) (Cth). The next review will be in ten years.

The Basin Plan, made under the Water Act, has helped Basin ecosystems recover and species come back from the brink. **Where it has occurred, Environmental water delivery has improved river flows and, in some cases, provided enough**



water to flood wetlands. This has allowed native fish such as the iconic [Murray Cod](#) and [Golden Perch](#) to migrate to their spawning grounds, and delivery of water to wetlands has maintained critical habitat for species such as the [Southern Bell Frog](#). Without environmental water delivered under the Basin Plan, Basin ecosystems would be in a much worse state. **However, there is a long way to go.**

The timing of this Review is critical: Basin ecosystems are collapsing; species are declining; and two major ecosystems in the Basin were recently listed, as endangered and critically endangered. First Nations continue to experience water dispossession and are still mainly considered as mere stakeholders in Basin planning and management – despite their expert care and management of the Basin over tens of thousands of years.

All of this makes **this Review an important, once in a decade opportunity to have a say about** water resource management across the Basin. This Review is a critical chance to build on the successes and strengthen of the Basin Plan to date, so that it can achieve its full objectives into the future – particularly in the face of accelerating climate change.

The legal requirements for this Review

The Water Act says **the Review must consider and report specific matters** relating to:

- First Nations people in the Basin; and
- the management of climate change risks.

The Review should also be guided by the objects and purposes of the Water Act and Basin Plan. We think this means **an essential part of the Review should be assessing whether the Basin Plan is achieving its core purposes.** In particular, is the Basin Plan:

- reducing water take to an environmentally sustainable level?
- protecting and restoring the health of the Basin's river and groundwater systems?
- based on the best available scientific knowledge?

For the Review to achieve these objectives, we think **the Discussion Paper should have:**

- accurately, transparently and clearly reported on up to date information so that the public can understand the state of the Basin's river and groundwater systems, including dependent species and ecosystems; and

- identify key barriers to the Basin Plan achieving the core objects and purposes of the Water Act and Basin Plan. This includes: identifying gaps in the regulatory framework and implementation issues.

For the public to meaningfully engage with the Review, we think the **Discussion Paper should also** propose clear, well-developed options for amending and improving the Basin Plan that could address identified gaps and issues. Unfortunately, the Discussion Paper has not done this.

The Discussion Paper falls short

We think the **Discussion Paper falls far short** of the expected standard for such a significant review. We think this casts doubt over whether the Review will meet the applicable legal requirements. Problems with the Discussion Paper include the following:

- The **Discussion Paper completely ignores the long-standing criticism and scientific consensus** that the Sustainable Diversion Limits are not, and never have been:
 - consistent with an Environmentally Sustainable Level of Take; or
 - based on the best available scientific information.

This is critical to assessing whether the Basin Plan – in its current form – can realistically achieve its object and purpose.
- More broadly, the **Discussion Paper fails to grapple with the legislative framework established by the Water Act and Basin Plan**. This legal framework should be driving the Authority’s approach to the Review. The Discussion Paper should transparently demonstrate how and why the Authority has identified particular ‘issues’ and ‘options’, by reference to:
 - the core objects and purpose of the Water Act and Basin Plan; and
 - the matters this Review must consider under the Water Act.
- The **Discussion Paper relies on assessments of the Sustainable Diversion Limits that are merely ‘initial’ and incomplete**.
 - The Sustainable Diversion Limits mechanism sits at the heart of the Basin Plan. Comprehensive, completed assessments of whether the limits are achieving the objectives of the Water Act and Basin Plan should be treated as a keystone in this Review. It is unclear why the analysis has not been completed (at all, or to standard); it must be.
- The **Discussion Paper is not based on the best available scientific information**. For example:
 - The Authority only partially reports on the scientific evidence base and offers an incomplete picture of the state of Basin ecosystems.

- The Authority claims that the majority of Sustainable Diversion Limits are supporting Basin Plan environmental outcomes, despite the science showing that many Basin Plan environmental outcomes are not being met and are predicted to worsen as climate change advances.
- The **Discussion Paper almost entirely fails to grapple with climate change impacts**. There is no meaningful description and assessment of how climate change is likely to interfere with achieving the core objectives of the Basin Plan, and no options identified as to how to meaningfully and effectively respond to climate change.
- In relation to **First Nations**, the Discussion Paper fails to engage with critical issues such as Aboriginal water dispossession and opportunities to provide for cultural flows.
- The **'options' that are presented** in the Discussion Paper **are typically vague and incomplete**. This undermines the potential benefits of the public consultation process and makes it difficult for the community to understand or predict what amendments to the Basin Plan the Authority thinks might be necessary useful.

How to use this Submission Guide

This Guide identifies what EDO thinks are the **key priority issues the Authority should address** in this Review. Our selection of the issues has been guided by the applicable legal requirements, including the core objects and purposes of the Water Act and the Basin Plan. For each topic we discuss, we have included recommendations.

We have divided our analysis into three critical keystone issues, followed by seven other important issues.

For each of the keystone issues ((1) environmentally sustainable levels of take; (2) climate change; and (3) First Nations specific requirements) we set out:

- key legal requirements;
- some general context to explain the issue;
- how we say the Discussion Paper falls short; and
- our recommendations.

We the additional issues, we have discussed the legal and scientific context at a high level and included recommendations

Our recommendations are intended to promote:

- a more effective Review process; and

- better outcomes overall under the Basin Plan (including in many cases by proposing amendments to the Plan).

When you make a submission, you can either respond to the three questions put by the Authority or you can make a 'free text submission'. The Authority's three questions are:

- What do you think of the issues and options presented?
- Are there other issues and options that should be considered?
- What do you see as the priorities and why?

You are welcome to extract content from this Guide to include in your submission, including from our recommendations.

The issues we have identified are by no means comprehensive and there might be other issues you want to make a submission about. The last part of this Guide provides some information to help you think about writing a submission about any issue that matters to you.

Key issues we think the Review should address

Keystone issues

The Environmentally Sustainable Level of Take and Sustainable Diversion Limit

The central purpose of the Water Act is to reduce the amount of water being taken from the Basin to environmentally sustainable levels. In 2019, the South Australian Murray Darling Basin Royal Commission Report ([SA Royal Commission Report](#)) concluded that the Basin Plan Sustainable Diversion Limits are neither environmentally sustainable nor lawful. The latest scientific evidence demonstrates that much of the Basin remains in serious decline and that this is likely to get worse due to climate change.

Despite all of this, the Discussion Paper fails to:

- engage with the SA Royal Commission findings;
- consider and act on the best available science; and
- apply realistic, evidence-based assumptions about whether and when the water recovery targets will be satisfied (i.e. the 'Bridging the Gap' water recovery targets, full delivery of outcomes under the SDLAM projects, and full recovery of the additional 450 GL/year)).

Climate change

Climate change was not taken into account when the original Sustainable Diversion Limits were set. This is one of the reasons the SA Royal Commission found that the Basin Plan Sustainable Diversion Limits were unlawful.

The Authority recognises the current and future likely impacts of climate change. The Authority must also deal with the management of climate change risks (under s 50(4A)). Despite this the Authority proposes to postpone, for another 10 years, any response to climate change in terms of changing how much water can be taken from the Basin. This is an extraordinary gap in the Review and a failed opportunity that must be addressed.

Review requirements that specifically apply to First Nations

First Nations are the Traditional Owners of lands and waters across the Basin and have cared for Country for tens of thousands of years.

The Water Act, as amended in late 2023, requires this Review to consider and report on important questions about whether the Basin Plan is working for First Nations peoples.

The Review doesn't do this. On the most part, the Discussion Paper misses opportunities to engage with and propose ways to address critical issues faced by First Nations across the Basin – including, for example:

- water dispossession;
- a lack of meaningful participation opportunities;
- failure to provide for cultural flows; and
- lack of access to clean drinking water.

On top of this, the Discussion Paper:

- fails to clearly demonstrate that there has been adequate, appropriate consultation with First Nations that reflects the principles in the [United Nations Declaration on the Rights of Indigenous Peoples](#); and
- proposes options that would *further weaken* the already inadequate requirements for First Nations involvement in developing Water Resource Plans.

Other Important Issues

Recovery of the 450 GL/year of Environmental Water

The Commonwealth Water Minister has a legal duty to take 'all reasonable steps' to recover an additional 450 GL per year of water for the environment by the end

of 2027. Progress on this additional water recovery target has improved since the Water Act was amended in 2023 to create the legal duty around it. However, still only about half has been recovered so far.

The Discussion Paper fails to meaningfully engage with whether the recovery target is realistic and what to do to achieve it.

Floodplain harvesting

Floodplain harvesting diverts vast volumes of water in the northern Basin, with significant consequences for ecosystem health.

Floodplain harvesting volumes were not accurately accounted for in the original Basin Plan water recovery assessments. Since then, Basin States have incorporated and, at least in theory, legalised significant volumes of additional water take to account for floodplain harvesting. This was done by increasing the Sustainable Diversion Limits outside of the processes in the Water Act that were specifically designed for this purpose. This is concerning in terms of both legality and environmental impact, as well as adverse flow on impacts experienced by First Nations peoples.

The Inspector General of Water Compliance has [recently raised concerns](#) about this process and also about whether the amount of water taken as floodplain harvesting take is properly measured.

Critical Human Water Needs in the northern Basin

‘Critical human water needs’ refers to the minimum amount of water that is needed to meet defined purposes (s 86A(2)). It captures core requirements such as drinking water.

The Commonwealth and Basin States have agreed that critical human water needs are the highest priority water uses under the Basin Plan.

However, the Discussion Paper does not reflect this priority, nor the on the ground reality of unsafe drinking water. The Discussion Paper fails to explore or propose Basin Plan amendments that could help fix critical human water needs issues in the northern Basin, such as access to safe drinking water.

Invasive species

Low flows are not the only driver of environmental decline in the Basin – invasive species have been identified as one of the four most important drivers of change that are directly relevant to water resource management.

The Authority already has powers to respond to some of the challenge of invasive species. EDO thinks there is scope under the Basin Plan to expand these powers. The Discussion Paper has failed to properly address this important issue.

Data collection, transparency and reporting

Lack of transparency has been a concern since the Basin Plan started, and data collection is an issue clearly brought to light by this Review.

The Discussion Paper reveals that data collection over the life of the Basin has likely not been adequate to support the Sustainable Diversion Limit assessments, or to confidently track the health of the Basin. Despite this finding, the Discussion Paper proposes that Basin Plan monitoring, evaluation and reporting be consolidated into 5 year cycles – that is, less, rather than more – and better - reporting. This proposal fails to address the key issues in relation to data collection, transparency and reporting and risks making the situation worse.

Regulatory Design: Inspector General of Water Compliance

The Inspector-General for Water Compliance is a relatively new position under the Water Act, established in 2021. EDO thinks this role is critical as it provides independent oversight of the Basin Plan. Unfortunately, the Discussion Paper has said almost nothing about the role of the Inspector General, other than proposing options to ‘streamline’ water resource plans which would limit the Inspector General’s oversight role.

This approach is a missed opportunity to strengthen and support the Inspector General’s important role.

Several complex reviews are happening at once

We think it is important to note that several important and complex public consultation processes relating to the Basin are happening at around the same time as this Review. This overlap creates a significant barrier to proper public participation in the Review. This may in turn compromise the quality and reliability of the findings of the Review down the track.

How to make a submission about other issues that matter to you

If there are other issues you want to make a submission about, we suggest you think about how the issue links to the overarching objects and purpose of the Water Act and Basin Plan, and the specific legal requirements for this Review, relate to the issue. We have provided some information and guidance to help with this.

RECOMMENDATIONS

Environmentally Sustainable Level of Take and Sustainable Diversion Limit

1. The Authority must acknowledge that Sustainable Diversion Limits do not currently, and without changes will not, reflect an Environmentally Sustainable Level of Take.
2. The initial SDL assessments are inadequate. The Authority must, as a priority, complete a proper assessment of Sustainable Diversion Limits using the best available science.

These assessments **must**:

- Be entirely transparent in their decision-making by making publishing the data, methodology, and the decision framework applied when concluding whether Sustainable Diversion Limits are consistent with an Environmentally Sustainable Level of Take. This is also important to enable independent peer review.
- Incorporate the impacts of climate change into projections of future water availability.
- Account for flows that will be required in disconnected ecosystems once constraints are relaxed.

These assessments **must not**:

- Assume any water recovery for the purposes of these assessments until or unless it is actually recovered (e.g. full recovery of the Sustainable Diversion Limit Adjustment Mechanism ('water saving') projects where the Authority currently predicts a 300 GL/year shortfall)
3. Once the Authority has completed an adequate Sustainable Diversion Limit assessment, as recommended above, the Authority should propose any necessary changes to the Sustainable Diversion Limit to the Minister. These changes must ensure the Sustainable Diversion Limits are consistent with the core object of the Water Act, being to 'return extraction to an environmentally sustainable level of take'. (See also **Recommendation 5** and **Recommendation 8** in relation to climate change).
 4. The Authority must prioritise the relaxation of constraints. Constraints need to be relaxed to deliver water to disconnected ecosystems, including Ramsar

listed wetlands. Constraints relaxation must occur in parallel with adopting ecologically sustainable limits on water extraction.

Climate Change

5. The Authority must consider climate change in its assessment of whether Sustainable Diversion Limits reflect an Ecologically Sustainable Level of Take (see **Recommendation 2** and **Recommendation 8** for further relevant detail).
6. The Basin Plan is not currently drafted to manage the risks of climate change. The Authority must identify mechanisms to ensure extraction can be adjusted flexibly to respond to increasing climatic variability. This is critical to ensure water take is ecologically sustainable. Examples of ways to do this include:
 - Incorporating a climate change buffer into the Sustainable Diversion Limits, to support a more adaptive approach to managing flows without compromising the relationship between Sustainable Diversion Limits and ecological sustainability.
 - Incorporating a mechanism that enables rapid adjustments to Sustainable Diversion Limits to respond to increasing climate variability caused by climate change.
7. In comparison to licensed water, planned environmental water (**PEW**) will be disproportionately impacted by climate change. The Authority must identify and recommend amendments to the Basin Plan to protect Planned Environmental Water volumes from being eroded due to the impacts of climate change.
8. In implementing **Recommendations 1-7**, the Authority must consider the principles of Ecologically Sustainable Development. The principles of Ecologically Sustainable Development include the precautionary approach and intergenerational equity. By applying these principles, climate adaptation should do the following:
 - Ensure smoother and incremental transitions, to help communities adapt.
 - Provide for **certainty** in water allocation, by foreshadowing potential changes in advance.
 - Account for the **lifetime of any decisions** about adapting to climate change.

- Measures to adapt to climate change impacts must take into account the time it takes from deciding to act through to benefits taking effect – including the time taken to implement the decision. History plainly shows that reform of the Basin Plan is complex, difficult and slow.
- Consider **distributive justice** across generations (**intergenerational justice**): fairness between the present generation and future generations.

Failure to take decisive action now will leave future generations bearing the burdens of historical overextraction compounded by climate change.

Review Requirements that apply specifically to First Nations

9. The Basin Plan has never set aside water for Basin Nations. The Authority should examine and identify mechanisms for providing cultural flows. Cultural flows must benefit the environmental, social and economic conditions of Basin Nations. This process must occur in consultation with self-determined Basin Nation governance bodies.
10. The Authority must identify ways to embed the principles of the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* into the Basin Plan and should recommend amendments to the Basin Plan to give effect to those principles. The Basin Plan could be amended, for example, to:
 - establish a framework for First Nations to operate as co-managers of water resources that flow through a Nation’s traditional lands;
 - ensure that First Nations participation in decision making is meaningful to First Nations people;
 - empower and support Basin Nations to play a key role in the conservation and protection of Basin ecosystems within each Nation’s traditional lands.

Such measures must be developed in collaboration with self-determined Basin Nation governance bodies.

11. The Authority should propose amendments to the Basin Plan that would embed the principles of Free, Prior and Informed Consent (**FPIC**). Fundamental prerequisites to FPIC that should be protected in the Basin Plan include, for example:

- Basin Nation governance structures must be properly and reliably resourced, including for the purpose of engaging in government consultations;
- timelines for all First Nations consultations must be sufficient to ensure meaningful participation; and
- membership of any First Nations representative bodies that Government proposes to consult must be self-determined – or at least endorsed - by Basin Nations.

These measures must be developed in collaboration with self-determined Nation governance bodies.

12. As the only mechanism in the Basin Plan that currently requires any First Nations engagement in Basin water resource management, it is crucial that in relation to Water Resource Plans:
- the existing provisions of Chapter 10 Part 14 of the Basin Plan; and
 - Commonwealth oversight of State WRPs;
- are strengthened, **not** watered down. EDO expressly opposes the options set out at page 76 of the Discussion Paper.

Recovery of the 450 GL/year of Environmental Water

13. The 450 GL/year must be delivered in full.
14. The Sustainable Diversion Limits assessment must not assume recovery of the 450 GL/year until it has been recovered (see **Recommendation 2** and **Recommendation 5** for further detail about Sustainable Diversion Limit assessments).

Floodplain Harvesting

15. The Authority must assess whether volumes of floodplain harvesting in the northern Basin are consistent with an Environmentally Sustainable Level of Take. The results of this assessment must be published.
16. The Authority must propose amendments to the Basin Plan to ensure floodplain harvesting does not push extraction above an Environmentally Sustainable Level of Take.

Critical human water needs in the northern Basin

17. The Authority must consider and propose amendments to the Basin Plan to ensure:
- critical human water needs are given the highest priority water use in both the northern and southern Basin;
 - critical human water needs are always protected; and
 - there is a compliance framework that establishes an enforceable duty to ensure that critical human water needs are satisfied.

Invasive Species

18. The Authority has already established some programs for reducing the impacts of invasive species. Full roll out of existing programs must be prioritised to reduce the impact of invasive species, such as reducing cold water pollution.
19. The Authority must establish a data monitoring work program targeted at invasive species (alongside other urgently needed monitoring). This program must be specifically directed at understanding interactions between water resource management and invasive species, taking into account the impacts of climate change.
20. The Authority must consider and recommend amendments to the Basin Plan to require and facilitate optimal management of invasive species, which are a key threat to Basin ecosystems.

Data collection, transparency and oversight

21. The Authority must collect adequate data to track the health of the Basin and assess whether the Basin is achieving its environmental objectives.
22. The Authority must publish data sets, analyses and decision-making frameworks concerning the state of ecosystems and species of the Basin, Sustainable Diversion Limits assessments, and any other matters relevant to water take or delivery.

23. The Authority must also release its historical and current modelling underpinning Sustainable Diversion Limit calculations and assessments and future water availability forecasting under climate change.

Regulatory Design: Inspector General of Water Compliance

24. The Inspector-General of Water Compliance plays a critical role as the independent compliance agency in the Basin. The role must be supported, including by identifying opportunities to strengthen powers of the Inspector General that could support and enhance achievement of the Basin Plan's objectives. It would be a backwards step to wind back the Inspector-General's powers.

Several complex reviews at once

25. The Authority's final Review Report should include:

- details of the level of community engagement e.g. the number of submissions; and
- consideration of, and comment on, whether there has been adequate opportunity for the community to participate, in the context of the concurrent and related reviews.

26. The Authority must ensure that First Nations across the Basin are properly resourced and supported to engage in the current consultation, as required by the principles of FPIC. This includes ensuring Basin Nations can self-determine who participates and how. This is particularly important because of the multiple, concurrent reviews that raise complex legal and scientific issues.