



Ms Helen Vaughan  
Deputy Secretary, Water and Catchments  
Department of Environment, Land, Water and Planning  
8 Nicholson Street  
EAST MELBOURNE VIC 3002

11 March 2021

Dear Ms Vaughan

### **REGULATORY IMPACT STATEMENT FOR GOULBURN TO MURRAY TRADE REVIEW**

I would like to thank your staff at the Department of Environment, Land, Water and Planning (DELWP) for working with the team at Better Regulation Victoria on the preparation of a Regulatory Impact Statement (RIS) for several legislative instruments being proposed as part of the Goulburn to Murray Trade Review (the Review).

As you know, the Commissioner for Better Regulation provides independent advice on the adequacy of analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be written clearly so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 10 March 2021 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

### **Background**

The RIS explains that due to the increased demand for water by irrigators in the Murray system over the two irrigation seasons of 2017-18 and 2018-19, the lower Goulburn River had substantially increased flows during summer and autumn of those years. Although supplied under the terms of the Goulburn inter-valley trade account, the increased flows during what would naturally have been a low flow period caused significant environmental impacts on the banks of the river and recreational and Aboriginal cultural values associated with use of the river. In response, the Victorian Government announced a review of the Goulburn to Murray trade rule in May 2019.

In March 2020, DELWP released an initial consultation paper, inviting comments on a range of options for future trade rules. DELWP hosted a series of public webinars about the review between March and June 2020, presenting to farming communities, water holders and other stakeholders. In August 2020, it released a “Closing the Loop” report summarising the review and consultation process so far.

Following this process, the Department is proposing to create or adjust a number of instruments made under the *Water Act 1989*:

- the Water (Tagged Water Allocations) Regulations 2021;
- the Ministerial Determination for Tagged Water Allocations 2021; and
- the Trading Rules for Declared Water Systems.

The proposed Regulations and Determination would replace the current Water (Tagged Water Allocations) Interim Regulations 2020. The RIS explores the impact of these various changes.

DELWP also proposes to update the lower Goulburn River operating rules, which are embedded in operating plans for river operators. Although the rules are not a legislative instrument, these changes are included in the RIS to support the analysis of and consultation on the other instruments above.

### **Impact Analysis and Preferred Option**

In the RIS, DELWP considers four options which combine different elements of the various regulatory tools, comparing these against a base case where no action is taken and the current interim operating rules and interim tagged water allocation regulations are allowed to expire.

Drawing on the broader review objectives, the options’ impacts are considered against the following five criteria:

- environmental values;
- recreational values;
- Aboriginal cultural values;
- river operations and shortfall risks (such as variability in seasonal water flows); and
- water trade opportunities.

The RIS considers the impact of each option on each of these criteria, based on the available data and using a combination of quantitative and other methodologies, detailed in its appendices. For example, the “environmental values” criterion is assessed based on advice from a scientific panel established by DELWP and its partner agencies, and on DELWP’s estimates of the avoided cost of environmental remediation from the different options.

In deciding on its preferred option, DELWP draws on both quantitative and qualitative analysis: essentially it is having to exercise judgement in balancing out the competing objectives. The main analysis in the body of the RIS discusses the trade-offs between these criteria, and suggests an option that adequately addresses environmental risks, while achieving a good balance of the other objectives. DELWP concludes that the preferred option (option number 2) is to:

- set operating rules that prescribe variable base flows providing an average monthly flow of 1,100 ML per day over summer and autumn, also allowing up to three short pulses of up to 3,000 ML per day;
- set a two-part trade rule, consisting of a “rolling” Winter-Spring limit where trade would be stopped when the Inter-Valley Trade balance exceeds a designated balance (like current/base case rule), and a more restrictive “Fixed” Summer-Autumn limit where trade would be capped from mid-December onwards to ensure all water in the IVT account can be delivered that year within the recommended environmental flow regime; and
- restrict use of “tagged water allocations” so it is consistent with the trade limits described above. This preferred option retains the exemption provided under Basin Plan water trading rules section 12.23 for tags established before 22 October 2010 - generally referred to as ‘grandfathered’ tags - while clarifying which change of ownership approvals would result in such tags being restricted in Victoria.

This was preferred over other options which the Department considered to have stronger environmental outcomes, because it will sufficiently protect environmental values but, at the same time, will provide additional economic benefit (through higher water trade), while continuing to protect cultural values and providing recreational benefits.

While the preferred option will not bar any firms from accessing water, it may reduce the amount of water available from the Goulburn River to water users in the Murray region by up to about 105 GL per year from recent peaks (noting that the actual figure will fluctuate year-to-year, and it may be possible to deliver additional supplies from other tributaries and other States). DELWP asserts that this competition impact is necessary to achieve its objectives, and that after taking that into account, the Department expects a net-positive impact from the proposal.

### **Lower Broken Creek**

For the purposes of the Goulburn to Murray trade rule, the Lower Broken Creek is considered a part of the Murray River system. The RIS states that without special arrangements, tagged use from the Goulburn system to the Lower Broken Creek would be subject to the Goulburn to Murray trade limit in the same way as other parts of the Murray system.

In turn, customers in the Lower Broken Creek would be unnecessarily restricted in a way that does not reflect the risks their trade poses to the system.

This area accounts for only a small proportion of the water trade and environmental risks discussed in this RIS. DELWP considers arrangements for the Lower Broken Creek using a qualitative discussion of three different options for more specific tagged use rules. The preferred option is to:

- apply the same rules for allocation trade from the Goulburn as to the rest of the Murray;
- provide eligible tagged Goulburn entitlement holders with the option to exchange them for local Murray entitlements (allowing them to use these entitlements within their own trading zone); and
- specify zone-specific tagging restrictions which are different to those for the wider Murray system, in recognition of the unique attributes of this Murray trading zone.

### **Implementation and Evaluation**

DELWP proposes to commence the proposed new arrangements from 1 July 2021, and to work with its partner agencies including the Goulburn Broken Catchment Management Authority (GBCMA), Victorian Water Register and catchment management authorities to clearly communicate the changes. This is proposed to involve transitional timings (amending the start and end dates of the “rolling” and “fixed” periods in the first year), and directly contacting water users if the rules governing their tagged water allocations will be different from the rules communicated to them as part of the roll-out of the current interim regulations.

In the RIS, DELWP explains how the Department plans to work with the GBCMA, the Yorta Yorta Aboriginal Nation Corporation, the Taungurung Land and Water Council and the Victorian Fisheries Authority to coordinate monitoring and evaluation of the effects of the new arrangements once they are in place.

DELWP commits to a review in three years’ time, to determine whether the lower Goulburn River may be able to tolerate greater flows, or whether there is a need to move towards lower flows.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on 03 7005 9772.

Yours sincerely



**Anna Cronin**

Commissioner for Better Regulation