

Environment Victoria submission on Inquiry into Auditor-General's Report No. 202: Meeting Obligations to Protect Ramsar Wetlands (2016)

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TO:

Public Accounts and Estimates Committee

Parliament of Victoria

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Environment Victoria welcomes the opportunity to make a submission to the Parliamentary Inquiry into Auditor-General's Report No. 202: Meeting Obligations to Protect Ramsar Wetlands (2016).

Environment Victoria is an independent and not for profit organisation that has been campaigning to look after Victoria's environment since 1969. With more than 40-grassroots member groups and 150,000 individual supporters, Environment Victoria is a growing community of Victorians standing up for a safe climate, healthy rivers and a sustainable future.

In 2016 the Victorian Auditor General released a report on Victoria's management of Ramsar Wetlands: Meeting Obligations to Protect Ramsar Wetlands (the "Report"), and concluded that 'There is limited evidence that all Ramsar sites are being effectively managed and protected from decline'¹. Frustratingly, the Report's findings should have not come as a surprise to the Victorian government as most of these problems have been previously pointed out by past performance audits.

One of the major threats to Ramsar sites in Victoria, as correctly identified by the Auditor-General, is the lack of an integrated and coordinated effort to promote the wise use and preserve the ecological character of Ramsar wetlands, but this problem runs deeper and presents a bigger threat to these unique ecosystems than as stated in the Report.

Increased funding for Ramsar Wetlands preservation and improved monitoring and reporting of their ecological values would be welcome improvements. However, these changes need to be accompanied by a greater commitment to prioritising protection of Ramsar sites.

¹ Victorian Auditor-General, 2016. *Meeting Obligations to Protect Ramsar Wetlands*. p. 10.

Unless the preservation of Ramsar sites becomes a key objective for all Victorians authorities whose decisions can affect their ecological values, it is unlikely that we will see improvement in condition. We are concerned that authorities whose decisions can permanently change the character of a Ramsar site (e.g. the Murray-Darling Basin Authority, the Department of Environment, Land, Water and Planning and local councils) seldom prioritise the preservation of wetlands.

1. Murray-Darling Basin Plan Supply Measures

I. Overview

In the management of Ramsar wetlands, the Murray-Darling Basin Plan permits the use of ‘supply measures’ – offset projects intended to provide the same environmental outcomes as water recovery. These projects utilise pumps and regulators to deliver water to isolated sites rather than restoring floodplain connectivity. The implementation of these projects is likely to damage the ecological character of Ramsar sites.

The review and approval of these engineering projects requires increased rigor and transparency if they are to be brought into alignment with the obligations of the Ramsar Convention. They present a critical issue for the management of Ramsar sites.

II. Planning Instruments Under Ramsar Convention

The Ramsar Convention requires Contracting Parties to formulate and implement planning to promote the conservation of listed wetlands and their ‘wise use’.² The planning includes three key documents for each Ramsar site: the Ramsar information sheet (RIS), ecological character description (ECD) and management plan. The Victorian Auditor-General’s report also identifies Commonwealth and Victorian legislation that overlaps with this framework, equally relevant to wetland management, including the Water Act (2007).

The Water Act and Murray-Darling Basin Plan (Basin Plan) were designed in part to ensure the conservation and wise use of Ramsar wetlands. The first objective of the Basin Plan is ‘to give effect to relevant international agreements through the integrated management of Basin water resources’.³

The Basin Plan also recognises ‘an objective is to protect and restore a subset of all water-dependent ecosystems of the Murray-Darling Basin, including by ensuring that: declared Ramsar wetlands that depend on Basin water resources maintain their ecological character’.⁴

² *Ramsar Convention*, art 3(1)

³ *Basin Plan 2012* (Cth) sec 5.02(1)(a)

⁴ *Ibid* sec 8.05(2)(a)

It is clear that the Water Act and Basin Plan are relevant instruments to be considered and incorporated into site management plans which are tasked with detailing strategies to maintain the wetland's ecological character and reduce risks to the wetland.

In service of these objectives, the Basin Plan also contains provisions for project proposals in Ramsar sites which may have a significant impact as defined under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). This warrants additional consideration by this committee.⁵

III. Supply Measures: Flawed Strategies to Maintain Ramsar Wetlands

The Basin Plan has reinforced the importance of overbank flows for wetland and floodplain health.⁶ Water spilling out of the river channel and onto the floodplain is critical for maintaining wetlands, triggering breeding events, and sustaining trees like River Red Gums.

The Basin Plan aims to deliver 'healthy and resilient ecosystems with rivers and creeks regularly connected to their floodplains'.⁷ By restoring an environmentally sustainable level of take and recovering water for the river, Ramsar wetlands would have the water they need to maintain their ecological character.

In 2010, the best available evidence produced by the Murray-Darling Basin Authority suggested a range of water recovery could deliver these outcomes throughout the system: between 3,856 GL (high uncertainty) and 6,983 GL (low uncertainty) of surface water returned to the river system from an annual consumptive use of 13,623 GL.⁸

In 2012, the Authority's Board refused this advice, putting forward a Basin Plan to recover 3,200 GL of surface water, including the option to adjust this amount by initiating projects which could produce 'equivalent' environmental outcomes.

Such projects include 'supply measures' - or offset projects - intended to provide the same or better environmental outcomes using less water. These measures include pumps and concrete regulators to deliver water to isolated sites rather than recovering water directly for the river.

These engineering solutions are fraught with uncertainty. The Independent Review Panel charged with assessing the offset methodology - determining the equivalent ecological outcomes to be

⁵ Commonwealth of Australia Department of the Environment, 2013. *Matters of National Environmental Significance: Significant impact guidelines, 1.1 Environment Protection and Biodiversity Conservation Act 1999*.

⁶ Murray-Darling Basin Authority, 2012. *Assessment of Environmental Water Requirements for the Proposed Basin Plan*

⁷ *Basin Plan 2012* (Cth) sec 5.02(2)(c)

⁸ MDBA, 2010. *The Guide to the proposed Basin Plan: Technical background Part 1*. Murray-Darling Basin Authority. p.114.

expected from the supply measures - stated that the 'process described in the Basin Plan is policy operating in 'unchartered waters' from both a scientific and management perspective. No one should assume that adoption of [the method] is without significant uncertainty or risk'.⁹

The method presents inherent challenges to the maintenance of a site's ecological character.

First, it allows allows environmental outcomes to be traded if regional outcomes are maintained. The Murray-Darling Basin Authority's fact sheet for the Environmental equivalence test presents a summary:

'While regional environmental outcome scores must be maintained, the test does allow for tradeoffs between selected environmental outcomes. This can be tradeoffs within and/or between river reaches (for example improved outcomes in one of the nine reaches in the Southern Basin region and decreased outcomes in another reach), or a tradeoff between different ecological classes and elements (for example improved outcomes for plants and decreased outcomes for fish)'.¹⁰

In application, this will enable watering of low-lying floodplains at the expense of higher floodplains - prioritising River Red Gums over Black Box forests. In testimony for the South Australian Murray-Darling Basin Royal Commission, Professor Jamie Pittock argued that the mechanism's discrimination is not compatible with Australia's obligations under the Ramsar Convention to conserve representative areas of different ecosystems and species. The commissioner accepted 'the unchallenged evidence'.¹¹

Second, the projects fail 'to apply existing floodplain inundation and climate change models'.¹² It is unclear whether environmental water will be able to reach wetlands in the future under a range of water availability scenarios. This is particularly concerning given that the use of the projects functionally precludes the recovery of the offset quantity of environmental water. The survival of the wetlands is made to depend more heavily on engineering works which may have unreliable inputs.

Unproven environmental engineering solutions are a poor substitute for directly returning real water to our rivers and wetlands. As proposed, they are incompatible with the objectives of the Ramsar Convention.

IV. Proposed Supply Measures Projects

⁹Independent Review Panel, 2014. *SDL Adjustment Ecological Elements Method Development Report – Review of final project report*.

¹⁰ Murray-Darling Basin Authority. Fact Sheet: *Environmental equivalence test (for SDL adjustment assessment)*.

¹¹ Walker, Bret SC Commissioner, 2019. *Murray-Darling Basin Royal Commission Report*. p.309

¹² Pittock, Finlayson, Howitt, 2012. *Beguiling and risky: 'Environmental works and measures' for wetland conservation under a changing climate*.

The Wentworth Group of Concerned Scientists (Wentworth Group) evaluated the supply measure projects using eleven conditions agreed by Basin governments and sourced from the Basin Plan, as well as one further condition drawn from an independent stocktake of supply measure projects commissioned by the Authority in 2015. The conditions are safeguards against 'unacceptable risks to communities and the environment (e.g. salinity, blackwater, unforeseen collateral damage)'.¹³

The assessment showed that no projects in Victoria met the conditions necessary for approval. Many of the projects require additional information before a proper assessment can even be undertaken.

This includes the Barmah-Millewa Forest Environmental Allocation, which potentially shifts seasonal flooding events and may result in different or lower environmental outcomes, including the inability to support bird breeding events.¹⁴

The Hattah Lakes North Floodplain Management Project, which proposes the use of regulators and a causeway to support flooding across higher floodplain terraces, faces potential challenges with ongoing operations and maintenance resourcing.¹⁵

The Gunbower National Park Floodplain Management Project proposal includes a pump station and a number of regulators. The project has failed to address risks of hypoxic blackwater events and altered connectivity through irrigation channels rather than natural connections between the Murray River and the forest. Salt may be mobilised through changes to the groundwater level and surface runoff with impacts to the River, highlighting the need for resourced monitoring and modelling. Achieving the proposed flows will require close collaboration with river operators and environmental water holders in order to deliver water with the preferred timing, frequency and duration.¹⁶

The Nyah Floodplain Management Project and Vinifera Floodplain Management Project propose to water 500 and 350 hectares of the floodplains, respectively. The works consist of regulators and track-raising to enable control of flood waters and pumped flows. The projects fall short on similar conditions: both need to demonstrate an exceedance of natural flows, secure long-term governance arrangements, ensure natural operation of structures, ensure the project can operate within cost limitations and include provisions for monitoring to support operations and water accounting.¹⁷

¹³ Wentworth Group of Concerned Scientists, 2018. *Requirements of SDL adjustment projects to ensure they are consistent with the Water Act 2007, Basin Plan 2012, MDBA policies and intergovernmental agreements*. p.1.

¹⁴ Ibid Attachment A, p. 2

¹⁵ Ibid Attachment A. p. 18

¹⁶ Ibid Attachment A. p. 19

¹⁷ Ibid Attachment A. p. 21-23

The projects present common environmental risks: water quality impacts, salt migration, blackwater, eutrophication, increases in pest fish species, native fish stranding, limited protections of black box floodplain forests, and unreliable water in climate change conditions. These may be considered significant impacts on the ecological character of Ramsar sites, as defined under the Federal Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).

The projects threaten each of the significant impact criteria, presenting a real chance of:

- areas of the wetland being destroyed or substantially modified
- a substantial and measurable change in the hydrological regime of the wetland, for example, a substantial change to the volume, timing, duration and frequency of ground and surface water flows to and within the wetland
- the habitat or lifecycle of native species, including invertebrate fauna and fish species, dependant upon the wetland being seriously affected
- a substantial and measurable change in the water quality of the wetland – for example, a substantial change in the level of salinity, pollutants, or nutrients in the wetland, or water temperature which may adversely impact on biodiversity, ecological integrity, social amenity or human health, or
- an invasive species that is harmful to the ecological character of the wetland being established (or an existing invasive species being spread) in the wetland ¹⁸

V. Recommendations

The Auditor-General's assessment recommends the development and implementation of robust governance arrangements for managing Ramsar sites, including clarifying roles, responsibilities and accountabilities for planning, management and reporting.

Strengthening management plans and developing effective governance arrangements requires the participation of parties involved in the implementation of the Basin Plan and relevant projects. Participating agencies must ensure that construction in Ramsar sites should not conflict with the priorities of the site's long-term management.

The untested supply measures and environmental engineering presents a potential threat to the ecological character of the wetland ecosystem. It is unclear whether the supply measures can meet the requirements of the Basin Plan, site management plans or the EPBC Act. Project proponents must demonstrate that these measures can maintain the ecological character of the wetland, not impact the natural properties of the ecosystem and include adequate public consultation.

¹⁸ Commonwealth of Australia Department of the Environment, 2013. *Matters of National Environmental Significance: Significant impact guidelines, 1.1 Environment Protection and Biodiversity Conservation Act 1999.*

If the ecological character of a Ramsar site is likely to change, the Victorian Government has committed to:

‘notify the Australian Government and develop a response strategy for the site and monitor the effectiveness of its implementation. If there are no feasible or cost-effective management response options to maintain the site’s ecological character, Victoria will engage the Australian Government to agree on a process to review management objectives for the site. This will be done in consultation with the community and will be aimed at facilitating adaptation to a new ecological regime that maximises existing and likely future values’.¹⁹

As it stands, these supply measures are not proposed as actions to restore or rehabilitate Ramsar sites, or as measures for climate adaptation. They are proposed as offsets: cosmetic measures to meet dubious criteria for ecological health.

The supply measure projects, and the gateway process for their approval, must meet the obligations of the Ramsar Convention. Addressing relevant governance arrangements and responsibilities will be a critical issue for this committee.

2. Environment Protection Authority’s proposed subordinate legislation if unchanged will put Victorian Ramsar sites at increased risk of degradation

The VAGO Report concluded in 2016 ‘There was limited evidence that all Ramsar sites are managed effectively and protected from further decline’.²⁰

Since 1988, EPA regulations have prevented approvals of new wastewater discharges in areas of high conservation significance such as Ramsar Wetlands. This provision—currently stated in the clause 22(3) of the State environmental Protection Policy (Waters) which is due to be replaced in July of next year—has protected Victorian Ramsar wetlands’ ecological values by forbidding the discharge of polluted waters within their boundaries.

This key provision has been challenged in the past by corporations (such as AGL) looking to discharge waste water in what are currently classified as high conservation value areas. In fact, as part of the development of the current SEPP (Waters), a draft version of the SEPP (Waters) was open for public consultation in 2018. During this process AGL argued²¹ in favour of weakening the prohibition on new wastewater discharges on areas of high conservation value (such as

¹⁹ Victorian Auditor-General, 2016. *Meeting Obligations to Protect Ramsar Wetlands*. p. 40.

²⁰ The Victorian Auditor-General’s Report Meeting Obligations to Protect Ramsar Wetlands, 2016. <https://www.audit.vic.gov.au/report/meeting-obligations-protect-ramsar-wetlands>

²¹ https://www.water.vic.gov.au/_data/assets/pdf_file/0033/394971/AGL.pdf

Ramsar wetlands) and to move away from prescriptive licence limits and adopt the use of risk assessments.

Given that AGL was, at the time, developing its plans to put forward a gas import terminal in Westernport Bay (a Ramsar-listed wetland), it is hard to see AGL's arguments as anything other than an attempt to clear regulatory roadblocks to its damaging project.

In response to AGL's submission, the EPA in 2018 responded that 'Clause 22 acknowledges that there are areas formally recognised by government as needing to be managed to preserve their conservation value.'²²

As part of the new regulation under the Environment Protection Amendment Act 2017, SEPPs will no longer exist but many of their provisions will be incorporated into new instruments. This in itself is not an issue. Our concern is that EPA's recently proposed subordinate legislation omits the explicit protections provided by clause 22(3) of the SEPP Waters. In our view this would send Victorian environmental legislation in the wrong direction by lowering the standard of protection of areas of high conservation value, including Ramsar wetlands.

If the draft regulations are not amended, this omission will expose all Victorian wetlands of international importance listed under the Ramsar Convention to potential further environmental degradation.

Further, this regulatory change – if confirmed – will undermine Victorian efforts to improve its management of Ramsar sites and comply with its obligations under the Ramsar Convention as the discharge of industrial waste-water could hardly be characterised as a 'wise use'²³ of a wetland.

3. Lack of an impact assessment framework capable of protecting the ecological character of Ramsar sites.

Another threat to Ramsar sites in Victoria is the lack of an impact assessment framework that adequately addresses the importance of preserving said sites. Existing assessment processes, at a national and state level, rarely stop or substantially modify projects despite their potential to negatively impact the environment.

Projects in Victoria that could potentially impact the ecological character of a Ramsar wetland are assessed under the Environment Effects Statement Act 1978, which establishes the Environment

²² https://www.water.vic.gov.au/_data/assets/pdf_file/0021/395031/SEPP-Waters-Summary-of-Comment-and-Response-Report.pdf

²³ "Wise use of wetlands is the maintenance of their ecological character, achieved through the implementation of ecosystems approaches, within the context of sustainable development."
<https://www.ramsar.org/sites/default/files/documents/library/info2007-07-e.pdf>

Effects Statement Process (EES) process, the highest level of environmental assessment in the state.

At a national level, under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), any action that has, will have, or is likely to have a significant impact on a Ramsar wetland is required to undergo an assessment and approvals process, adding an extra layer of environmental assessment.

In 2014 Victoria and the Commonwealth signed a bilateral agreement on assessments. The agreement allows Victoria to assess proposals that otherwise would be evaluated by the Commonwealth under the EPBC Act. While the Commonwealth still makes the final approval decision under the EPBC Act, in practice the EES process is the only environmental assessment of projects that have the potential to impact the ecological character of Ramsar wetlands in Victoria.

The problem is that the EES process has shown lack of independence and legal teeth to prevent adverse development. These perceptions are validated by the fact that up to this date, to our knowledge, since 1978 only 6 projects have been deemed to have unacceptable environmental effects by the Planning Ministry. This track-record is particularly worrisome to members of the Westernport community who are currently facing AGL's plan to build a gas import terminal within the boundaries of the Westernport Ramsar wetland.

Victoria should urgently develop a special impact assessment process for Ramsar sites (and other high conservation value areas) to ensure that only activities compatible with preserving the ecological character of these ecosystems are considered. Failing that, the Environmental Effect Statement process should be revamped to adequately address the commitments made by Australia under the Ramsar Convention to prevent further approval of projects that threaten the integrity of Victorian Ramsar sites.

Conclusion

The importance of wetlands for wildlife and human life needs to be acknowledged and they must be preserved accordingly. This is particularly true for wetlands of international importance under the Ramsar Convention.

We urge the Victorian Government to adopt an integrated approach to preserve some of the most precious ecosystems in the world. Unless all relevant decision-makers adopt the preservation of Ramsar sites as one of their priorities, any on-site efforts to preserve wetlands could be undone by a government decision-maker who does not consider their preservation as a matter of importance.

In the face of a climate and biodiversity crisis, we encourage the Victorian government to play its part in complying with international commitments and to ensure we have a healthy environment for present and future Victorians, as the foundation for a healthy society and economy.

Regards,



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