



30 October 2024

## Comments for consideration - Constraints Relaxation Implementation Roadmap

The Murray-Darling Conservation Alliance (the Alliance) is a national voice for the rivers, wetlands and wildlife of the Murray-Darling Basin. Our members include conservation groups in every Basin state, representing half a million people in rural communities and east coast cities. Each group has been advocating for the environment at the state level for more than 50 years. Together we have a shared vision for healthy inland rivers.

The Alliance is pleased to provide comments for consideration ahead of the release of the MDBA's Constraints Relaxation Implementation Roadmap.

**Relaxing constraints on river flow is essential.** Without these projects, 'achieving so-called enhanced environmental outcomes will either not happen, or will result in limited outcomes'.<sup>1</sup> These projects are also essential to realise the greatest benefit from water that has been recovered. The failure of state governments to implement these measures has, in the broader water management context, meant that only 7% of the wetland area in targeted river valleys is receiving effective environmental flows.<sup>2</sup>

The length of time between flood events during dry times has grown substantially. The CSIRO (2008) found that as a result of water resource development, the average period between beneficial spring-summer overbank flows has more than tripled from 2.4 years to 9.3 years.

Constraints relaxation would also provide notable benefits, including forward planning for infrastructure to protect communities from larger floods as well as more sophisticated early warning systems. The physical works needed to make roads and bridges accessible in smaller environmental flows will prove beneficial in larger, unplanned events. Similarly, updated modelling and measurement and incorporating observations from flooding will provide a better understanding for how water will flow across the landscape.

### Objective of the Roadmap

The roadmap aims to resolve shared issues by providing a common approach across river systems and jurisdictions to reporting, transparency and public accountability; program

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<sup>1</sup> Walker, 'Royal Commission Report,' p 60.

<sup>2</sup> Chen et al, 'A trickle, not a flood,' p 601.

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implementation and governance including regulatory approvals; supporting the acceleration of constraint measures; and managing impacts on third parties.

Given the limited timeframe, complexity of the issues, number of interested and affected stakeholders and the current Commonwealth approach to limited, targeted and controlled consultation and engagement, the Constraints Relaxation implementation Roadmap is likely to be limited to documenting issues and identification of notional pathways for resolution.

**Unless there is an urgent high level of engagement and commitment by Basin governments, Water Ministers, and first ministers through the national cabinet, or a similar forum, it is likely that any progress on constraints relaxation will be delayed until after the next federal election.**

Issues and actions to be agreed jointly by all Basin Water Ministers as soon as possible

#### Commonwealth Leadership

Unlike similar complex multi-jurisdictional projects, there does not appear to be a clear Ministerial level mandate for constraints relaxation delivery. Progress to date has been at officer level with limited senior officials oversight. To date there has been no evidence of high-level central agency, attorneys general and treasury participation in the development and implementation of the program.

The Commonwealth to date has adopted a 'hands-off, these are State projects' approach, with its role limited to funding and reporting, with little evidence of a mandate or capacity for effective facilitation, coordination and common issue resolution.

**Governance arrangements that provide clear responsibility and accountability for the delivery of the constraints relaxation program and the resolution of common issues is required.**

#### Sustainable Diversion Limit Adjustment Mechanism (SDLAM)

Six of the constraints relaxation projects are part of the overall Sustainable Diversions Limits Adjustment Mechanism (SDLAM) program which are due to be completed by 31 December 2026. A recent independent assessment for the Commonwealth DCCEEW found that none of these projects will be completed by December 2026.

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The current timelines for completion of these constraints relaxation projects is unrealistic. Current estimates are another 5 – 10 years would be required completion. Funding also ends on 31 December 2026. There needs to be an in principle agreement for continued funding from the Commonwealth to stop the program from stalling. **The combination of unrealistic statutory timeframes and uncertainty about further funding are a major impediment to progressing current projects and any future delivery under the Constraints Roadmap.**

#### Progress in NSW and Victoria

NSW has progressed the Reconnecting River Country program, however shifted focus to the Murrumbidgee and pausing work in the Mid-Murray due to the complexity of multi-jurisdictional issues.

Victoria has released a Constraints Measures Program Feasibility Study (June 2024),<sup>3</sup> which provides a template for mapping out the benefits of constraints relaxation in other jurisdictions. The Consultative Committee included a range of stakeholders and recommended proceeding to the next phase of the program. The next steps identified in the report echo concerns in this submission, calling for a united and consolidated approach across jurisdictions, the need for an interjurisdictional environmental assessment (rather than piecemeal state-by-state assessments) and concerns about the timeline given most constraints relaxation projects have been tied to SDLAM.

The committee also called for further research into:

- further system level modelling to determine whether the notified flow rates can be achieved
- an assessment of the broader system-level benefits and risks

As a result of Victoria not supporting the 2023 Restoring Our Rivers amendment to the Water Act 2007 and the Basin Plan, we do not know if there is funding for Victoria to progress constraints relaxation projects both within Victoria and any cross-jurisdictional projects being undertaken jointly by Victoria and NSW.

#### Recommended Steps

To provide a clear high-level political mandate to deliver constraints relaxation across jurisdictions there are a number of steps all Basin water ministers, state and federal, could undertake immediately to address the long standing delays in the delivery of this critical program:

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<sup>3</sup> [https://www.water.vic.gov.au/\\_data/assets/pdf\\_file/0027/709524/Victorian-CMP-Feasibility-study.pdf](https://www.water.vic.gov.au/_data/assets/pdf_file/0027/709524/Victorian-CMP-Feasibility-study.pdf)

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- a. A multijurisdictional governance framework needs to be agreed and established as a matter of urgency to provide clear responsibility and accountability for program implementation and delivery. It should be agreed and put in place by the time the Roadmap is completed.
- b. Multi-jurisdictional legislative amendments to enable overbank flows, among other matters, require multiple Ministerial and cabinet approvals to allow the program to be delivered. In particular, action is needed to minimise the time required to gain planning approvals in Victoria. These legislative amendments need to be identified and progressed as a matter of urgency.
- c. Given both the lack of progress to date and the complexity of the task, the existing statutory timeframes for program delivery are clearly unrealistic. There is a need for in-principle agreement to a decadal timeframe (subject to necessary legislative amendments) to provide sufficient certainty to allow constraints relaxation projects to continue to progress.
- d. Further in-principle agreement, (subject to necessary legislative amendments) is required to separate constraints relaxation projects from the existing SDLAM program and to postpone the associated reconciliation process for constraints relaxation projects to provide greater certainty on timelines and funding necessary to allow these projects to progress.
- e. The Commonwealth needs to provide a commitment for further project funding beyond 31 December 2026 to provide certainty to allow constraints relaxation projects to progress.
- f. MDB governments and water ministers need to acknowledge and promote the multiple broader benefits of constraints relaxation, including:
  - i. The development of new constraints relaxation operating rules, better data, improved modelling and increased monitoring will allow river operators to also better manage minor and moderate floods.
  - ii. Assistance to relocate or upgrade private and public infrastructure on the lower floodplain will provide greater community resilience and potentially reduced impacts of minor to moderate inundation, including natural flood events.
  - iii. Progressing constraints relaxation also provides an opportunity to review, revise and update existing flood operating rules to consistently address all overbank flows, including deliberate releases and natural flood events, and to enable the early release of environmental water to achieve both flood mitigation and environmental benefits in the case of moderate to major natural flooding.
- g. Murray-Darling Basin governments and water ministers need to be encouraged to support and seek the urgent development of an in-principle agreement among the Murray-Darling Basin jurisdictions to provide the necessary certainty needed to progress on-ground delivery of the Murray-Darling Basin constraints relaxation program on a 'no regrets' basis while the necessary legislative and funding arrangements are negotiated and finalised.

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## Feedback on points raised on the consultation website

The MDBA website for the Constraints Relaxation Implementation Roadmap<sup>4</sup> includes a number of dot points, which we have responded to below.

- *Flow rates for nominated 'reaches' across the Basin.*

As the original *Constraints Management Strategy 2013 to 2024* pointed out, small increases to river peak height, up to around the minor flood level, could result in a relatively large increase in environmental outcomes.<sup>5</sup> The MDBA's new Constraints Roadmap should begin with the notified flow rates in this original strategy and cross-reference them with the findings of recent reports, such as the Victorian feasibility study. Any discussion of flow targets should also consider the recommendations of the NSW Expert Panel on Connectivity for the Northern Basin. Reconnecting rivers in the northern Basin is a priority and remains unaddressed at the federal level.

However, these studies by state governments have limited scope and do not fully account for system-wide benefits, so further research is needed into how a co-ordinated approach could achieve the flow targets at the SA border.

Ultimately, given constraints relaxation relies on social licence, the flow rates will need to strike a balance between environmental outcomes and avoiding unwarranted fears about large flooding. Proposing flow rates no higher than minor flood level, and using satellite data from recent floods to ground-truth the models and show levels of actual inundation, could deliver the right balance.

Given the limited time to create the Constraints Roadmap, resources may be better focused on other aspects that have stalled progress to date – such as effective and co-ordinated governance across multiple jurisdictions, buy-in at the Ministerial level, and a pathway for negotiating social licence with affected landholders. We have covered these in the above section 'Issues and actions to be agreed jointly by all Basin Water Ministers as soon as possible'.

- *Approaches to managing impacts associated with flows that target the floodplain.*

The current approach to the issue has given a small number of vocal landholders an effective veto over a critical program that could benefit the rest of society and the environment. The framing of

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<https://www.mdba.gov.au/water-management/basin-plan/relaxing-constraints/constraints-relaxation-implementation-roadmap>

<sup>5</sup> <https://www.mdba.gov.au/sites/default/files/publications/Constraints-Management-Strategy.pdf> p.6

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the issue has also focused almost entirely on losses to the landholder, without fully articulating the benefits.

Benefits of constraints relaxation include:<sup>6</sup>

- Upgraded local infrastructure which could be used during natural flooding events
- Significant investment in regional communities
- Ecosystem services that benefit agriculture or forestry in the form of improved floodplain pasture and timber production
- Ecosystem services that benefit the environment and all water users including nutrient cycling, water recharge and better quality habitat for species
- Increased tourism, recreational fishing and cultural values for Indigenous communities as a result of healthier wetlands and floodplains
- Removing barriers to use of water for cultural flows once Traditional Owners are given more substantial water entitlements
- Reduced risk of large unplanned floods – relaxing constraints would allow more environmental water to be used, increasing dam airspace, and allowing dams to store more flood inflows at crucial times.

This ‘benefits-based’ narrative and approach has not been tried, resulting in an entirely ‘cost-based’ discussion. In particular, the potential benefits of constraints relaxation to reduce the risk of large unplanned floods from dam spillage should be explored.

Ultimately, even with this argument about benefits, the negotiation of flood easements will still be key. NSW has shown a willingness for the compulsory acquisition of easements, as they do in other important areas of policy such as transport and the energy transition, and so should other jurisdictions. Achieving 100% consensus of all affected landholders is not possible. Local catchment management authorities have extensive experience working with local landholders and can offer suggested approaches.

While acquisition of flood easements is the preferred option, other instruments exist including various forms of options contracts, voluntary land acquisition and paying landowners for ecosystem services. Basin state and territory governments could also consider how planning laws could be used to gazette flood zones for both natural floods and environmental flows.<sup>7</sup>

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<sup>6</sup> Institute for Water Futures, Policy Brief 1, p.4. Based on Kahan, G., Colloff, M., & Pittock, J. (2020). *Using an ecosystem services approach to re-frame the management of flow constraints in a major regulated river basin*. *Australasian Journal of Water Resources*, 25(2), 222–233.  
<https://doi.org/10.1080/13241583.2020.1832723>

<sup>7</sup> Submission to the Senate Select Committee on Multi-Jurisdictional Management and Execution of the Murray Darling Basin Plan

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- *Approaches for managing regulatory approvals at the state and Commonwealth levels.*

We have largely covered this above, but here are some additional comments. The Victorian constraints feasibility study noted that a multi-jurisdictional approach is needed. Currently, under Victorian law, the constraints projects would be assessed in the same way as a new coal mine proposal, which is completely inappropriate. The report notes ‘The current environmental approval process for a project of this scale, nature and cross-border interfaces is complex, expected to be very expensive and take 3 years or more to complete. As part of any future stage of the Constraints Measures Program, the New South Wales, Victorian and Commonwealth (as funder) Ministers must agree on the interjurisdictional approval framework for the program across all states.’<sup>8</sup>

- *Communication and stakeholder engagement approaches, particularly for the upper and mid Murray reaches.*

One problem to date has been a lack of simple, clear public communication about the importance of reconnecting the river channel and the floodplain, and why we need to remove barriers to allow more natural flows. The language of ‘constraints relaxation’ itself is off putting for the media, local community and affected landholders. The project needs to be reframed in simpler terms from the top down. The MDBA needs to produce materials that explain the concept better and clearly articulate the benefits as described above.

**As a priority, the MDBA should unequivocally debunk the commonly held myth that 80,000 ML/day at the South Australian border is a legislated target for environmental flows.**

In addition, credible and trusted messengers are needed to reach landholders. These messengers should be landholders themselves with affected properties who support the program – regenerative farming organisations, Trust for Nature and environmental watering agencies may have networks to reach these people.

In each area projects should be co-designed with the community to build trust and support. We have other ideas on this topic and, as a stakeholder in the debate, would be keen to discuss further.

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Dr Matthew Colloff 11th November 2020

<https://www.aph.gov.au/DocumentStore.ashx?id=d3ce31c2-4746-4794-8025-e4125aa0b372&subId=695725>

<sup>8</sup> [https://www.water.vic.gov.au/\\_\\_data/assets/pdf\\_file/0027/709524/Victorian-CMP-Feasibility-study.pdf](https://www.water.vic.gov.au/__data/assets/pdf_file/0027/709524/Victorian-CMP-Feasibility-study.pdf) p.150

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