

23<sup>rd</sup> August 2016



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Sam-Hussey-Smith  
Assistant Director  
Department of Agriculture and Water Resources  
Australian Government

Dear Sam,

**Re. *Water Legislation Amendment (Sustainable Diversion Limit Adjustment) Bill 2016***

MLDRIN has outlined the concerns of our membership regarding the potential for inequitable distribution of negative impacts on Aboriginal cultural objectives, outcomes, values and uses arising from the operation of the Sustainable Diversion Limit (SDL) Adjustment Mechanism.

We have two main concerns about the mechanism

- 1) The development of infrastructure, including supply measures is likely to entail direct disturbance of cultural heritage sites, intangible heritage and cultural landscapes.
- 2) The environmental equivalence methodology designed to test and manage the impacts of the SDL Adjustment does not take Aboriginal cultural objectives, outcomes, values and uses into consideration.

A key principle underlying the design of the mechanism is socio-economic 'neutrality' and environmental 'equivalence'. The operation of the mechanism should not result in additional impacts on the economy, communities or the environment, above and beyond those initiated by the current Basin Plan water recovery targets.

From our analysis, and as confirmed by correspondence from the MDBA<sup>1</sup>, the mechanism does not take into account the potential impacts on Aboriginal cultural values. Given the lack of clarity around these impacts, we have serious concerns that the operation of the SDL Adjustment will **not** deliver neutral or 'equivalent' outcomes for Aboriginal people. The operation of the mechanism may result in diminution of cultural values, contrary to the intention of the Basin Plan.

These concerns have been detailed in correspondence sent to the MDBA, the BOC and the SDLAAC (attached).

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<sup>1</sup> Letter: Mr Russel James - Executive Director, Policy and Planning (MDBA) to Darren Perry – Chair, MLDRIN, 25th January 2016.

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MLDRIN has asked consistently for a thorough, independent assessment of the potential impacts on cultural values to be built into the adjustment mechanism. We understand that the MDBA is bound by the methodology specified in the Basin Plan and that, at present, the defined methodology is deficient in relation to an assessment of cultural impacts.

The *Water Legislation Amendment (Sustainable Diversion Limit Adjustment) Bill 2016* provides a valuable opportunity to address this deficiency. The Amendment would establish a significant delay in formal operation of the mechanism. The rationale, as outlined by the Government, is to improve the outcomes of the Basin Plan by allowing additional time to maximise the benefits of the SDL adjustment. It is critical that this deficiency be addressed in order to manage impacts and maximize benefits for Indigenous stakeholders in the Basin.

MLDRIN urges the Government to consider including a mechanism to assess the cultural impacts of a proposed SDL Adjustment as part of the *Water Legislation Amendment (Sustainable Diversion Limit Adjustment) Bill 2016*. The MDBA in correspondence with MLDRIN has elaborated one approach to undertaking this assessment.<sup>2</sup> The method involves:

- Specifying particular culturally important flows (ie a flow rate, duration, timing and /or frequency at specific locations that is needed to achieve flow objectives defined by Aboriginal people)
- Assessing the potential change in these flows arising from the proposed SDL Adjustment
- Assessing whether the changed flow regime is likely to have material impacts on Aboriginal objectives, outcomes, values and uses at particular sites.

An assessment of this kind would at the very least provide clarity regarding potential impacts. Further work would be needed to determine appropriate responses to ameliorate any impacts that are identified.

MLDRIN would be willing to work with the Department to develop an appropriate amendment to be included in the Bill.

We request that the Department of Agriculture and Water Resources provide a written response to this submission, outlining its position on the inclusion of a Cultural Assessment into the SDL Adjustment Mechanism.

Yours Sincerely,

Darren Perry  
Ngintait Nation - Chairperson, MLDRIN

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<sup>2</sup> Letter: Mr Russel James - Executive Director, Policy and Planning (MDBA) to Darren Perry – Chair, MLDRIN, 25th January 2016.