



COMMISSIONER FOR
BETTER REGULATION

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9 August 2017

Mr Andrew Cooney
Executive Director
Policy, Governance and Legislation
Water and Catchments
Department of Environment, Land, Water and Planning
8 Nicholson Street, Melbourne, VIC 3000

Dear Mr Cooney

I would like to thank the staff of Department of Environment, Land, Water and Planning (DELWP) for working with our team on the preparation of the Regulatory Impact Statement (RIS) for the proposed *Water (Resource Management) Regulations 2017*. These Regulations are proposed due to the sunset of current arrangements on 30 November 2017.

Under section 10 of the *Subordinate Legislation Act 1994* (the Act), the Commissioner for Better Regulation is required to provide independent advice on the adequacy of all RIS prepared in Victoria. The Commissioner's role is to advise on the adequacy or otherwise of the analysis presented in the RIS, rather than the merits or otherwise of policy or regulatory proposals. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written, 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 7 August 2017 meets the adequacy requirements of the Act.

The current *Water (Resource Management) Regulations 2007* prescribe a number of matters to support the operation of the *Water Act 1989 (Victoria)* and to facilitate the trading in water rights which ensures, as far as possible, that Victoria's water resources are applied to their highest valued uses including for agricultural purposes such as irrigation and stock watering.

In particular, the Regulations enable the ongoing operation and maintenance of the Victorian Water Register (VWR) by prescribing a set of fees to recover the costs incurred by the water corporations and the VWR of:

- approving and recording dealings in various water rights (regulated under Part 3A and Part 4B of the Water Act); and
- recording and allowing searches of information on a wider range of water rights, licences to take and use water, and works licences and agreements to supply water under section 124(7) of the Water Act.

In addition, the Regulations:

- prescribe the purposes for which application for a take and use licence can be made in a declared system (Part 4);

- prescribe the persons who may be considered 'occupiers' of land for the purpose of obtaining a water-use registration (Part 4A); and
- require certain landholders to notify the Minister prior to constructing or altering small private dams within rural residential areas (Part 5).

The Department has reviewed Parts 4 and 4A and concluded that the current 'prescribed purposes' and 'prescribed persons' continue to be appropriate, and that these elements should be remade in the proposed Regulations.

During the development of this RIS, the Department determined that Part 5 of the Regulations should not be remade at this stage because it has not been effective in achieving its policy objective of improving the management of domestic and stock water use. The Department will review this policy issue further in a separate process to determine the best course of action going forward.

The proposed Regulations will therefore replace the current Regulations with one substantive amendment that there will no longer be a requirement to notify the Minister prior to the construction or alteration of small private dams.

The RIS states that the current costs of operating the VWR are essentially unchanged from their 2009 levels and that current funding from all sources (including water rights holders and transactors and the Department's contribution as a user of the VWR) continue to fully recover the estimated operating costs of around \$2.6 million annually.

The RIS notes that the proposed Regulations are likely to have a low impact – the current fees for transactions conducted on the VWR raised less than \$1m in 2015-16 compared with the value of approximately \$594m of water traded in that year.

The RIS states that stakeholders consulted during the development of the proposed Regulations consider that the current Regulations remain necessary and that the current fee structure continues to be appropriate.

As you know, it is government practice that this letter be published with the RIS when it is released for public consultation.

Should you wish to discuss any issue raised in this letter, or the implications of new information or policy options identified through the public consultation process for your proposal, please do not hesitate to contact me on (03) 9092 5800.

Yours sincerely



Anna Cronin

Commissioner for Better Regulation