



Australian Government



Guidelines for amendments to water resource plans – Part 2

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Acknowledgement of the Traditional Owners of the Murray–Darling Basin

The Murray–Darling Basin Authority pays respect to the Traditional Owners and their Nations of the Murray–Darling Basin. We acknowledge their deep cultural, social, environmental, spiritual and economic connection to their lands and waters.

The guidance and support received from the Murray Lower Darling Rivers Indigenous Nations, the Northern Basin Aboriginal Nations and our many Traditional Owner friends and colleagues is very much valued and appreciated.

Aboriginal people should be aware that this publication may contain images, names or quotations of deceased persons.

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Key points

- The processes for amending accredited water resource plans (WRPs) are provided for in sections 65 and 66 of the *Water Act 2007* (Cth) (the Water Act).
- Amendments provided under s 65 will be assessed by the MDBA using the process set out in Part 1 of the WRP amendment guidelines and tailored to match the scale and complexity of the amendment when assessing compliance with the Basin Plan requirements. The amendment will then be provided to the Minister, with the MDBA's recommendation, to decide whether to accredit those amendments.
- These guidelines relate to the accreditation of minor or non-substantive amendments under s 66 of the Water Act.
- The preparation of an amendment should be a collaborative process between Basin states and the MDBA.
- Each amendment will be different so engaging early provides the MDBA with the opportunity to provide assistance and guidance where necessary.
- In making an amendment to an accredited WRP it is important to be very clear about the changes being made, for example by applying 'track changes' or providing a list of changes.
- Amendments notified under s 66 are taken to have been accredited under section 65 at the time when the formal notice is given to the Authority, as long as the amendment is of a kind prescribed by regulation 2.11A in the [Water Regulations 2008](#) (the Water Regulations) and the state gives notice within 14 days of the making of the amendment.

What is a minor or non-substantive amendment?

A minor or non-substantive amendment is an amendment to an accredited WRP of a kind that is prescribed in regulation 2.11A. The kinds of amendments that have been prescribed do not alter the substance of the WRP or affect rights or obligations. This includes amendments that:

- correct errors of spelling, punctuation, grammar or syntax
- update references to any law, or a provision of any law (including subordinate legislation)
- update references to a person, body or entity or a position held by a person
- update references to a place, document or thing e.g. a water entitlement
- change the format of a WRP
- numbers or renumbers a provision of a WRP
- changes the order of definitions, or other provisions of a WRP
- affects the format, layout or printing style of maps (as long as the amendment does not change the depiction of boundaries of the WRP area, of any SDL resource unit)
- corrects errors in numbering, cross-referencing and alphabetical ordering
- corrects errors in law, or provisions of any law.

In practice, the process of drafting an amendment, and determining whether an amendment is an amendment under s 65 or a minor or non-substantive amendment under s 66, is likely to be decided on a case-by-case basis and should be a collaborative process between Basin states and the MDBA. It will be important for Basin states to engage with the MDBA early in the process of drafting the amendment.

Examples:

An example of a minor amendment is, if the title of the *Basin Plan 2012* was updated to the *Murray–Darling Basin Plan 2020* but no other changes were made to the instrument then all references to the *Basin Plan 2012* in a WRP could be updated to *Murray–Darling Basin Plan 2020* under s 66.

It could also be that changes are made to the provisions of legislation, but those changes are not related to the operation of the WRP, and it is likely that referring to those laws or provisions will be allowed as a minor or non-substantive change to a WRP.

However, if changes are made to the provisions of legislation that affect the operation of the WRP then that would be considered a material change to a law, and would have to be amended under s 65 (refer the process set out in Part 1 of the WRP amendment guidelines).

Another example of a minor or non-substantive change is an update to the name or role of a person. For example, the head of a Basin State agency may be nominated to be the person responsible under s 10.06 of the *Basin Plan 2012* and the name of the role may change, or the name of the person may change. The update to a WRP to reflect the change in the name of the role is likely to be considered a minor or non-substantive change.

The title of a Basin state agency changing may also be considered a minor or non-substantive change. Where there is a change proposed for a WRP where the nature of a role has substantially changed in relation to the way the function is carried out in terms of the operation of the WRP, updating a reference to that role is more likely to constitute a substantive change under section 65 (refer the process set out in Part 1 of the WRP amendment guidelines).

More detailed examples are provided in the Explanatory Statement for the *Water Amendment (Minor Amendments to Water Resource Plans) Regulation 2020*, which is the regulation amending the Water Regulations to insert regulation 2.11A.

Preparing an amendment – Assist phase

An amendment to an accredited WRP under s 66 of the Act should be a streamlined and collaborative process (**Attachment A**).

Early engagement is important as, in practice, it may not be clear when an amendment will be provided under s 66 or s 65 of the Act until initial liaison has occurred.

When considering an amendment to an accredited WRP Basin states should notify the MDBA as early as possible. Initially this could be a phone call or email exchange at officer level, followed by informal sharing of the proposed amendment(s) to the appropriate person with tracked changes to allow MDBA to provide guidance on whether the proposed changes are amendments under s 65 or s 66. It is important that Basin states make it clear that, at this stage, the information is only being provided informally. The MDBA may choose to involve the Department in guiding its assessment of whether the amendments should be provided to the MDBA under s 65 or s 66.

In providing a proposed amendment to the MDBA it is important to be very clear about the changes being made. To assist this the Basin state, in providing an amendment to the MDBA, should list the changes – either as track changes or through a clear list documenting the edits. For amendments where it is considered that s 66 of the Act applies, the Basin state should also list, in its view, the categories within regulation 2.11A it believes the amendments fall into and provide a brief rationale for this view.

The MDBA will consider the changes with the Basin state, including which amendments are likely to be considered as amendments under s 65 or minor or non-substantive amendments under s 66. Where several amendments are being proposed concurrently, it is possible that some of the proposed amendments can be considered under the s 66 processes, and some will require more detailed assessment under s 65 processes. Where this is the case, the MDBA will process s 66 amendments separately to s 65, according to the processes outlined below.

Formal notification of the amendment – Submission phase

When providing formal notification in writing to the Authority, it is important to be very clear about the changes being made. To assist this the Basin state should list the changes – either as track changes or through a detailed list documenting the edits and indicate clearly that the submission is being made formally. The Basin state should also describe the effect of the changes, noting that where the changes are intended to be accredited under s 66, the effect should be minor or non-substantive by definition.

Additionally, it is important to be clear about which section of the Water Act applies, and, if amendments are being notified under both s 65 and s 66, to clearly identify which amendments are presented for consideration under s 65 and which under s 66. This can be done through a description in a cover letter, or as comments against each amendment in the accredited WRP. For amendments made under s 66, the Basin state should indicate what categories in regulation 2.11A the amendments fall into.

For the process for amendments notified under s 65 [see Part 1 of the guideline](#).

Amendment taken to be accredited – Final phase

For submissions under section 66, as long as the amendments proposed fit within one or more of the categories prescribed in regulation 2.11A, the amendment will be taken to have been accredited at the time notice is given to the MDBA. Each Basin state may adopt different processes for making the amendment. Generally, it is appropriate to consider that once a Basin state uploads the amended water resource plan to their public-facing website that the amendment will be considered to be “made”.

The notice must be given to the MDBA in writing within 14 days of the amendment being made.

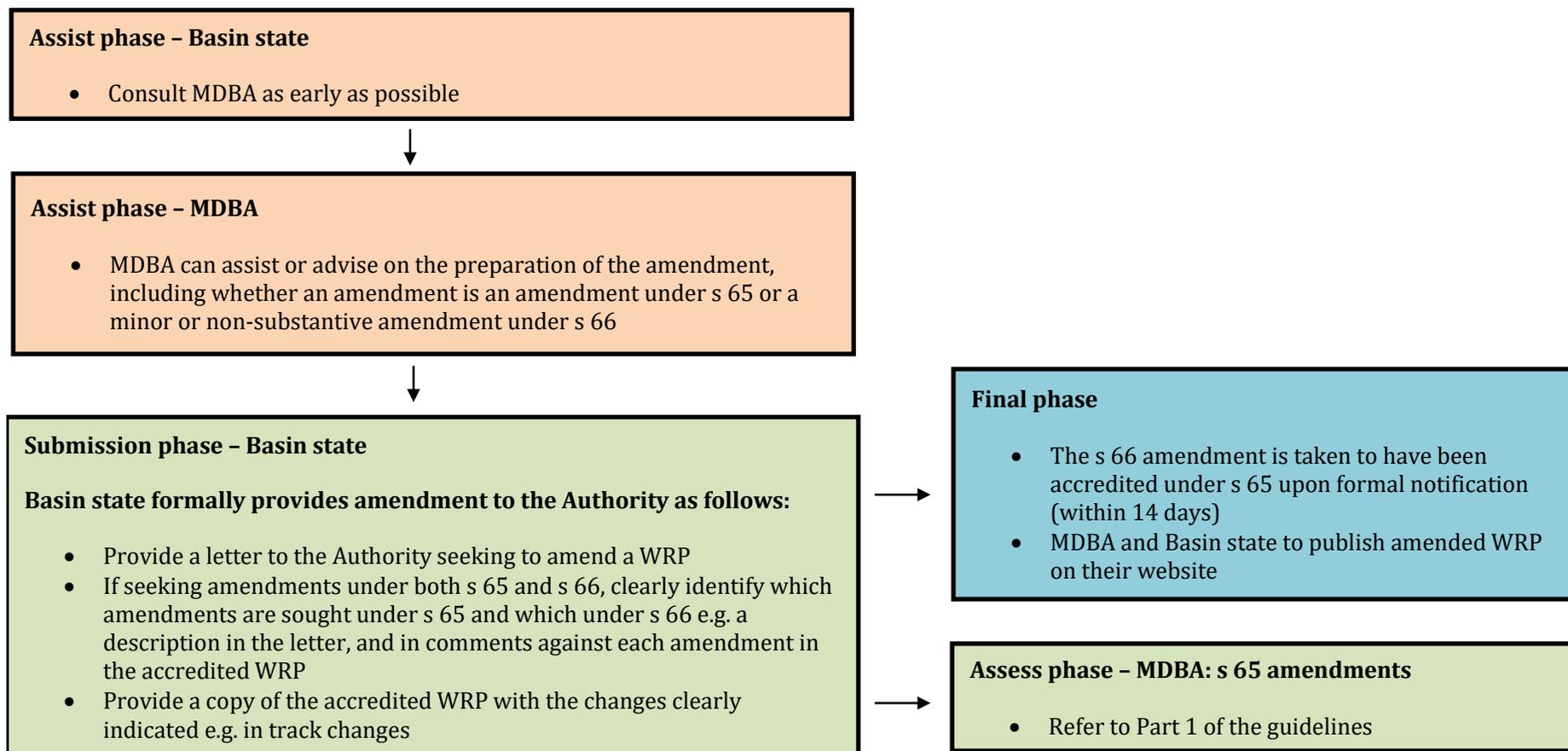
These steps are prescribed by section 66 of the Water Act. It is important that Basin states engage early with the MDBA to enable the MDBA to provide guidance on whether the amendments fit within section 65 or 66, and in the case of section 66, to avoid a situation where the MDBA has to notify the Basin state that, despite the Basin state following the majority of these steps, the amendment is not taken to be accredited on the basis of not meeting one or more requirements.

The aim of early engagement is to avoid this, however, in the event that the MDBA forms the view that the amendment (or parts of the amendment) are not considered to be accredited by virtue of not fitting within one or more of requirements prescribed by section 66, the MDBA will write to the Basin State advising them of this. The letter may encourage the Basin state to formally submit the minor amendments again with changes so as, if possible, to make it consistent with the s 66 and regulation 2.11A, and to avoid confusion for stakeholders. Where this is not possible, the letter may encourage states to submit the amendment under s 65.

To enable transparency, the MDBA will also publish the amended WRP on their website.

To make the changes easy to understand for stakeholders and the public, Basin states are encouraged to:

1. Make note on their website once the MDBA has been notified within 14 days that the amendments have been made, and that the amendments are taken to be accredited under section 65 of the Water Act (assuming that the MDBA has not notified the Basin state otherwise). The MDBA will also publish this kind of statement on their website, along with the amended WRP.
2. Publish supporting material on their websites, such as tracked change or compilation versions to ensure the changes can be easily identified.



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