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***Water For Victoria* Discussion Paper – 13th May 2016**
Murray Lower Darling Rivers Indigenous Nations Submission

About MLDRIN

The Murray Lower Darling Rivers Indigenous Nations (MLDRIN) is a confederation of Sovereign First Nations from the Southern part of the Murray Darling Basin. The group currently includes Delegates from 24 Nations across Victoria, NSW and South Australia.

MLDRIN is the leading advocate for Aboriginal water rights in Australia. Since 1998, MLDRIN has worked as a united voice for Traditional Owners across the Southern Murray Darling Basin. In 2007 we formalised the concept of Cultural Flows, which continues to inspire and guide evolving policy and discourse about water management.

In Victoria, MLDRIN'S membership includes the following First Nations: Dja Dja Wurrung, Taungurung, Barapa Barapa, Wadi Wadi, Yorta Yorta, Dhudhuroa, Waywurru, Ngintait, Wamba Wamba, Latji Latjia and Tati Tati.

As well as advocating for Aboriginal water rights, MLDRIN works closely with the Murray Darling Basin Authority and State Governments on the implementation of the Basin Plan and water resource plans (WRPs). We have been involved in the development of the *Water For Victoria* Discussion Paper ('the Discussion Paper') through the Water Plan Stakeholder Group.

Response to the Discussion Paper

MLDRIN would like to commend the Victorian Government for taking a proactive and progressive approach to addressing one of the key areas of unfinished business in water reform. The Discussion Paper marks a significant improvement in understanding and commitment to improving outcomes for Victorian Traditional Owners. It also ensures that Victoria is making positive progress towards meeting the National Water Initiative requirements relating to Indigenous participation and access to water.

In particular MLDRIN endorses the following key components of the Discussion Paper:

- Establishment of an Aboriginal Water Unit, to implement commitments arising from the Basin Plan and State planning requirements
- Establishment of projects to identify Aboriginal objectives in water management
- Establishment of Aboriginal reference groups to provide oversight and expert input into water planning
- A commitment to help address barriers to Traditional Owners' entry into the water market

While these are important positive improvements, MLDRIN recognises that there are still significant gaps and shortcomings in the framework, as it is outlined in the Discussion Paper.

The Victorian Government should capitalise on growing momentum and interest in Aboriginal water issues. The Discussion Paper represents an opportunity to map out comprehensive reform that will address the social justice, environmental and economic aspects of Aboriginal water rights for the coming decades.

MLDRIN looks forward to discussing the following comments and recommendations in detail as the Government continues to develop a Water Plan for Victoria.

Comments on Chapter 6 - 'Recognising and Managing for Aboriginal Values'

Proposed objective

The proposed objective for Chapter 6 is passively worded and does not provide adequate direction to guide implementation of the range of measures included in the Plan. The use of the terminology 'have regard to' is problematic from the perspective of our membership, due to its weak legal status and lack of commitment to substantive action. The objective is focussed on cultural values and doesn't address rights to own and access water.

Recommendation 1

- Strengthen the proposed objective of chapter 6 to guide implementation of the strategic directions. We suggest the following alternative text: 'Victoria's water planning and management frameworks will address Aboriginal people's rights to a meaningful stake in the management and ownership of water. This will be achieved through Aboriginal participation and empowerment in water management and addressing barriers to entry for Aboriginal people in the water market.'

Measuring success

The targets or measures of success included on page 86, whilst positive, lack ambition, clarity and commitment to measurable outcomes. The first target, for

example, represents a very weak commitment. Agencies operating ‘with regard’ to Traditional Owners’ rights is not an effective measure of success.¹

These targets, and the strategic directions need to be strengthened with defined, measureable targets and accountabilities. They should, where possible, be informed by data regarding Aboriginal access and participation rates. Measures of success should reflect high-level aspirations articulated by Traditional Owners.

Recommendation 2

- Strengthen the measures of success to reflect Victorian Government commitments to self-determination. Some suggestions for high-level measures of success include:
 - All Traditional Owner groups in the State have the opportunity to be involved in locally based projects to identify their water needs and objectives
 - Cultural values of waterways are recognised, protected and enhanced through planning and management. Traditional Owners are better equipped to monitor the cultural health of waterways.
 - Traditional Owners are increasingly able to access the water market for self-determination and economic development

Strategic Direction 6.1

MLDRIN strongly supports the development of an expanded program of projects to identify Aboriginal values, uses and objectives across the State.

This section needs to more clearly define 1) what are the current projects being run or funded and 2) what is the commitment to an expanded program of projects.

The map (Figure 6.1) and text on page 87-88 indicate that four projects are currently being run ‘to start to understand Aboriginal water values, uses and sites of significance, and to develop supporting water objectives’. We note that the Dhudhuroa and Waywurru Aboriginal Waterways Assessment (AWA) of the Victorian Alps has been completed and was a pilot research program for the AWA, funded by the Murray Darling Basin Authority. MLDRIN suggests that it is not appropriate to include this project in a list of current activities. If the commitment to four projects stands, the Plan needs to include a fourth, ongoing project.

Figure 6.1 highlights the significant gaps in the coverage achieved by the four existing or planned projects. There are no projects in North West Victoria of the Mallee, arguably the most water scarce and also water-dependent regions of the

¹ Legal interpretation of the terminology ‘have regard to’ highlights that it is a weak requirement. For example: MDBA. Basin Plan Water Resource Plan Requirements, Position Statement 1B. p. 4 states that ‘the requirement to have regard to certain matters does not mean that [a water resource plan] is ultimately bound to contain any particular material or provide for any particular thing.’

state. This indicates the need for a comprehensive, expanded program of projects. The proposed strategic direction alludes to this however there are no hard commitments to the scale of an expanded program, funding or timelines for roll-out.

We believe it is vital that a program for identifying Traditional Owners' water-related values, uses, objectives and outcomes must be able to contribute to a process that actively addresses Aboriginal people's water needs through entrance to the market or reallocation (see Recommendations 6 and 8 below).

Recommendation 3

- Remove the Dhudhuroa and Waywurru Aboriginal Waterways Assessment from the list of four projects under strategic direction 6.2. Work with MLDRIN to identify a range of Traditional Owner groups and sites where projects can commence in the short and medium term. Define timelines for a broad roll out of projects to identify Aboriginal water needs. Link these projects to a program of ongoing monitoring and assessment as well as a practical commitment to address any gaps identified through support for entrance to the water market or reallocation of resources.

Strategic Direction 6.2

MLDRIN is supportive of this direction. It aligns with consistent advice provided by the National Water Commission and the requirements of the Murray Darling Basin Plan.

We suggest that greater clarity be provided in relation to the following text of the strategic direction: 'A range of mechanisms for achieving priority Aboriginal water objectives will be developed through partnership and collaboration between water resource managers and Traditional Owners.' The explanatory text could elucidate what these 'range of mechanisms' might be.

Strategic direction 6.3

MLDRIN strongly supports the proposal to work with Traditional Owners to identify cultural flow objectives, identify barriers to enter the market and overcome those barriers. We also endorse the proposal for a program of capacity building and engagement through expert, professional reference groups.

However, this strategic direction lacks detail about proposed mechanisms or pathways to address Aboriginal peoples historic dispossession and marginalization from the mainstream water market.

Capacity Building

MLDRIN believes that the approach to capacity building outlined in the Discussion Paper could be improved by including a stronger focus on the role of Aboriginal organizations in delivering programs to communities. It should also capitalize on emerging opportunities by supporting Traditional Owners and Aboriginal organisations to deliver projects arising out of WRP requirements and other State government commitments.

MLDRIN has consistently highlighted the need for an extensive program of community engagement and education on water literacy, run by Aboriginal organisations, to help overcome the complex and exclusionary nature of water management discourse.²

Communications and engagement to improve water literacy is essential to underpin meaningful participation in water management, particularly in water resource planning and through any Aboriginal water reference groups established.

Recommendation 4

- The Discussion Paper should highlight the opportunities associated with utilizing and supporting existing networks and organizations to improve water literacy within the broader Aboriginal community.

Capacity building programs should also actively support the direct participation of Traditional Owners and Aboriginal organizations in projects arising from WRP requirements and other commitments. In order to comply with the Basin Plan and various State policies, the Victorian Government and water management agencies, will need to undertake a number of projects. Traditional Owners and Aboriginal organizations should be supported to coordinate and deliver these projects wherever possible.

For example: cultural mapping, cultural health assessment and environmental monitoring projects could be undertaken by Traditional Owners and Aboriginal organisations if provided with appropriate training and materials. Capacity building that supports TO's ability to deliver projects will generate other positive outcomes including more time spent on Country, employment and self-empowerment.

Recommendation 5

- The strategic direction (p.93) should include a commitment from government to support TOs and Aboriginal organisations to coordinate and deliver projects arising from Basin Plan and State policy commitments.

Accessing the market

MLDRIN recognizes the need to build a body of evidence that documents Aboriginal water requirements, as well as the limitations of the current entitlement framework in meeting those requirements. We welcome the commitment in the Discussion Paper to 'identify barriers to accessing water, and [...] seek ways to overcome them.' However, the Discussion Paper lacks clarity around the mechanisms or pathways to achieve this key target: Aboriginal ownership of water entitlements. The proposal included in the strategic direction (p.93) to work with Traditional Owners to 'inform their decision about whether to enter the water market,' suggests that Traditional Owners have the financial and other resources to enter the market, if they so chose.

² Environmental Justice Australia, MLDRIN, 2015. *Legal Dimensions of Water Resource Plan requirements under the Basin Plan*. p. 10.

This statement appears to invalidate the significant historical, social and financial barriers to entry to the water market.

MLDRIN seeks clarification as to how the government will support Traditional Owners to overcome barriers to enter the market and empower their choices, if research indicates the need to acquire water. The strategic direction (p.93) should commit to provide funding and other support needed to acquire water to address cultural flow requirements identified through research and assessment projects.

Without a defined commitment to support entry to the market, the processes of assessment, engagement and capacity building outlined in the Discussion Paper may not be able to generate substantive outcomes.

Recommendation 6

- Amend the proposed strategic direction on p.93 to include a commitment to provide funding and support for Traditional Owners to acquire water entitlements to address cultural flow requirements identified through research and assessment projects.

Comments on Chapter 3 - 'Waterway and Catchment Health'

MLDRIN recognises the importance of regional priority setting undertaken with local communities through the regional waterway strategies (RWSs). We support the proposal for coordinated, large-scale projects to improve environmental outcomes on 36 priority waterways across the State.

We note that figure 3.3 on page 36 mentions 'Aboriginal cultural heritage sites'. We suggest this should be amended to reflect contemporary discussions of Aboriginal connection with waterways.

Recommendation 7

- Change the terminology 'Aboriginal cultural heritage sites' in Figure 3.3 on page 36 to read 'Aboriginal cultural values and heritage sites'.

The involvement of Traditional Owners in identification of priority waterways through the RWSs is an important policy contained in the Victorian Waterway Management Strategy (2013) ('VWMS'). The VWMS (Action 6.3) commits to 'Investigate methods for identifying Aboriginal values associated with waterways and how they can be better incorporated in regional planning processes for waterways.' We believe there are opportunities for the Discussion Paper to progress actions outlined in the VWMS, and enhance the inclusion of Traditional Owners in priority setting and delivery of environmental projects.

Recommendation 8

- The Discussion Paper should identify opportunities for a program of Aboriginal waterway assessments to contribute to better-informed and more transparent priority setting in RWSs. Ongoing assessment and monitoring of cultural values should be incorporated into long-term management of priority waterways. Waterway research should incorporate assessment and monitoring of cultural values and cultural health on a systematic, long-term basis. These inclusions also align with and complement the Strategic Direction outlined on page 48 and page 49.

Similarly the VWMS recognises that Traditional Owner organisations and natural resource management business enterprises may also be engaged in the implementation of management activities outlined in the RWSs.

Recommendation 9

- The Discussion Paper should commit to support and enhance capacity for Traditional Owner organisations and businesses to undertake activities and deliver contracts associated with major environmental works projects on 36 identified priority waterways.

Further Comments

Recognising historically disadvantaged water users

The discussion paper needs to explicitly recognise the causes of Aboriginal marginalisation from the water market and initiate a practical conversation about re-allocation with the Victorian public.

MLDRIN is concerned that the Discussion Paper frames Aboriginal Victorians as 'latecomers' to a mature water market where 'water resources are largely already being used at their sustainable limits' ('Vision' p.8). However, it fails to acknowledge the historical, political, economic and cultural factors that have operated to marginalize Aboriginal people from land and water ownership in Victoria since European colonization.

Aboriginal people had an established water economy at the time of colonisation. Due in large part to colonial and State policies of land and water resource allocation, Aboriginal people have been excluded from the beneficial use of water resources. Victorian Aboriginal people view the management and allocation of natural resources, including water, as a social justice issue, inherently tied to the reality of dispossession. While the rights of existing entitlement holders are affirmed consistently throughout the Discussion Paper, it commits to meeting Aboriginal objectives only 'where they are complementary to meeting the needs of existing entitlement holders.' This approach risks entrenching disadvantage and legitimizing an inequitable allocation framework.

Chapter 8 clearly contemplates the reality of changing conditions and community values, including the recognition of Aboriginal water rights. Victoria's entitlement framework must continue to be adaptable to change. Once information is available from research and assessment projects, a discussion regarding entitlements to meet Traditional Owners' objectives will be required. The Long Term Water Resource Assessment (LTWA) process may be an appropriate forum for this discussion.

Recommendation 10

- The Discussion Paper needs to explicitly acknowledge the historical and economic processes that have led to Aboriginal people being dispossessed of water and, now, facing significant barriers to entry to the contemporary water market. The historical overview in the 'Our Vision' section does not address this reality.

Recommendation 11

- The Discussion Paper needs to confront the issue of reallocation as a means to address dispossession and disadvantage, ensure cultural survival and support economic development. This is consistent with the Victorian Government's commitment to self-determination and treaty. The issue of reallocation could be practically progressed by considering the availability of water to meet Aboriginal objectives as part of the contents of Long Term Resource Assessments (LTWA).

Alignment across government

The reforms outlined in the Discussion Paper will need to be enabled by changes to legislation dealing with Traditional Owner settlement arrangements and use of natural resources.

The current settlement framework does not cover meaningful access to water, beyond customary use under Section 8A of the *Water Act 1989*. The settlement framework should be upgraded to meet evolving policy commitments and community expectations about access to water.

Enhancing access to the water market for social and economic development, for example, will also need to be complemented by greater access and ownership of land to allow for productive use.

Recommendation 12

- Changes to the settlement framework, and other legislation, will be needed to ensure alignment across government to deliver reforms contemplated in the Discussion Paper.

