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Murray Lower Darling Rivers Indigenous Nations (MLDRIN)

Submission to the Water Amendment (Restoring Our Rivers) Bill 2023
Senate Standing Committees on Environment and Communications

About MLDRIN

MLDRIN is a representative confederation comprising delegates from more than 20 First Nations in the southern part of the Murray Darling Basin. Since 1998 MLDRIN has worked to provide a united voice to advance First Nations water justice in the Basin. MLDRIN has played a central role in advocating for measures to address the dispossession of First Nations' water rights. In 2007, MLDRIN produced the formative *Echuca Declaration*, which spells out the principles and processes for establishing First Nations water entitlements, or cultural flows¹, under the settler-colonial water management framework. MLDRIN has worked to advance our members rights and interests through implementation of the Basin Plan, including through the preparation and assessment of Water Resource Plans, involvement in the Basin Environmental watering plan and development of Cultural Flows Management Plans.

This submission makes the following key points:

- Basin First Nations have enduring rights to manage, own and access water on their Country.
- Australian law and policy has systematically failed to recognise and address these rights, leading to the marginalisation of First Nations in water decision making and dispossession from water access, management and ownership.
- The Albanese government has made explicit election commitments to “Increasing First Nations ownership of water entitlements and participation in decision making.”
- The Water Amendment (Restoring Our Rivers) Bill 2023 ('the Bill') includes no substantive measures to improve outcomes for First Nations and fails to deliver on a key part of the government's *Five Point Plan for the Murray Darling Basin*.
- The Bill must be amended to include specific measures that address Basin First Nations water rights and interests through the delivery of the Water for the Environment Special Account (WESA).

¹ As per Article 1 of the *Echuca Declaration*, 2007: “Water entitlements that are legally and beneficially owned by the Indigenous nations and are of sufficient and adequate quantity to improve the spiritual, cultural, environmental, social and economic conditions of those Indigenous nations. This is our inherent right.”

- The Bill must be amended to introduce important improvements to the Water Act 2007 to recognise First Nations rights and interests, including procedural justice and water ownership.
- The Government must make additional policy, program and resourcing commitments to deliver on water justice for First Nations.

First Nations' water rights in the Murray Darling Basin

Nations of the Murray Darling Basin have distinct rights and cultural obligations relating to water, waterways and river Country. These rights have been recognised and affirmed in international agreements to which Australia is a signatory, including the United Nations Declaration on the Rights of Indigenous People (UNDRIP) and the Convention on Biological Diversity (COB)².

Australian domestic law and policy (including the Water Act 2007) provides only cursory and inadequate consideration of First Nations water rights. The Water Act 2007 (Cth) 2007, the Basin Plan and subordinate instruments include limited, weak legal requirements that have largely failed to give effect to First Nations water rights or provide meaningful access to water for First Nations.³ Commissioner Bret Walker SC, in delivering the report of the Murray Darling Royal Commission highlighted that:

“The absence in the Water Act and Basin Plan of any clear or express reference to the relevance of international obligations in the Biodiversity Convention to the role of Aboriginal people in the Basin’s biodiversity is striking...A stronger legal platform for the role of Aboriginal people in managing Basin water resources is required.”⁴

First Nations have been marginalised from water management and decision making, and dispossessed from water access and ownership. First Nations own just 0.2% of available surface water in the Basin⁵ and in some regions water ownership has *decreased* since the Basin Plan was legislated.⁶ Funding of \$40 million for acquisition of water entitlements for Basin Nations (the Aboriginal Water Entitlements Program or AWEP) has still not been delivered more than 5 years since it was committed by the Turnbull government. Analysis conducted by water market research firm Aither, for MLDRIN, has confirmed a

² Notably The Convention on Biological Diversity Article 8(j) - Traditional Knowledge, Innovations and Practices. <https://www.cbd.int/traditional/>

³ As outlined in MLDRIN’s Submission to the Murray Darling Basin Royal Commission (2018). See also Melissa Kennedy, Brendan Kennedy & Sangeetha Chandrashekeran, ‘*Terra nullius has been overturned. Now we must reverse aqua nullius and return water rights to Traditional Owners,*’ *The Conversation*, March 30, 2022. <https://theconversation.com/terra-nullius-has-been-overturned-now-we-must-reverse-aqua-nullius-and-return-water-rights-to-first-nations-people-180037>

⁴ South Australia, Murray-Darling Basin Royal Commission, Report (2019).

⁵ MLDRIN and NBAN (2021). *Research into how much water is held by First Nations and Traditional Owner Organisations in the Murray-Darling Basin in 2020: A First Nations Summary*. https://www.mldrin.org.au/wp-content/uploads/2021/07/1342_MILDRIN-16pp-Report-Lana_v3-min-1.pdf

⁶ See: <https://www.theguardian.com/australia-news/2020/jul/24/australias-water-market-is-excluding-indigenous-people-study-finds#:~:text=%E2%80%9CA%alarmingly%2C%20we%20also%20found%20that,worth%20more%20than%20%2416bn.>

significant decrease in the value of the AWEF funding. At today's prices, funding committed for Nations in the southern basin can only buy two-thirds of the water that could have been acquired in 2018. In 2023, buying the same volume of water that could have been purchased in 2018 will cost almost \$11 million more.⁷ These failings highlight the inequity experienced by Basin Nations under the Murray Darling Basin water allocation and management framework.

Government commitments

Water Minister Tanya Plibersek has stressed that the Restoring our Rivers Bill aims to deliver on the Government's election commitments on the Murray Darling Basin. The Albanese Government's *five-point plan for the Murray Darling Basin* included a commitment to "Increasing First Nations ownership of water entitlements and participation in decision making."⁸ Minister Plibersek has also said an agreement between Basin States to amend the Basin Plan (directly relevant to this Bill) will "ensure there is secure and reliable water for...First Nations."⁹

We note that other key policy commitments of the Australian government¹⁰ anticipate strengthened recognition of First Nations water rights and stronger, more appropriate avenues for First Nations people to contribute to water management decision making¹¹.

However, the Bill does not include any provisions directed to advance outcomes for First Nations people and fails to deliver on a key part of the government's *five-point plan for the Murray Darling Basin*. Delaying the scheduled statutory review of the Water Act until 2027 means substantive reform could be deferred beyond this term of government, increasing uncertainty and putting the progress of First Nations water justice at risk.

The Restoring our Rivers Bill 2023 is a long-overdue opportunity to update legislation, policy and resourcing arrangements to ensure they address the enduring rights of First Nations and the ongoing legacy of dispossession. This could also ensure legislation and policy aligns with the Australian Government's commitments, growing public understanding of First Nations water rights¹² and the expectations of Basin Nations.

⁷ See Aither Water Portfolio Investigation, prepared for MLDRIN: https://mldr.in.org/wp-content/uploads/2023/08/WEB_20230829-MLDRIN-Slide-Deck-FINAL-STC.pdf

⁸ See: <https://anthonyalbanese.com.au/media-centre/labors-plan-to-future-proof-australias-water-resources-butler>

⁹ See: <https://minister.dcceew.gov.au/plibersek/media-releases/historic-deal-struck-guarantee-future-murray-darling-basin>

¹⁰ Relevant policy commitments include the Closing the Gap inland waters target, development of national First Nations water holding arrangements and the proposed 'refresh' of the National Water Initiative

¹¹ Andrew McConville (MDBA CEO), 'Address to the National and Rural Press Club on the 10th anniversary of the Basin Plan' (Speech, 22 November 2022) <https://www.mdba.gov.au/news-and-events/newsroom/address-national-and-rural-press-club>

¹² For example, a 2019 survey found that About 70% of 2,695 respondents from Murray-Darling jurisdictions support reallocating water from irrigators to Aboriginal communities. Jackson, S., Hatton MacDonald, D., & Bark, R.

This submission proposes that the Committee make the following recommendations to begin addressing the continued water injustices faced by Basin First Nations:

- (a) Improve the provisions outlined in the Bill to ensure tangible benefits for Basin First Nations through delivery of the Water for the Environment Special Account (WESA) and other measures
- (b) Ensure the Bill incorporates further amendments to the Water Act 2007 to recognise Basin First Nations' procedural and substantive rights relating to Basin water resources
- (c) Commit to additional policy, program and resourcing commitments including
 - (i) Adequate resourcing for Basin First Nations water acquisition and the AWEP
 - (ii) Adequate resourcing for Basin First Nations water assessment, planning and implementation of cultural flows.

Provisions of the Bill

The Water Amendment (Restoring Our Rivers) Bill 2023 does not provide for any specific measures or legislative amendments that address ongoing water injustice faced by Basin First Nations.

Water for the Environment Special Account (WESA)

Critically, proposed amendments to increase flexibility for the delivery of the WESA represent a significant missed opportunity to support water access and management for Basin First Nations. From briefings provided by DCCEEW officials, MLDRIN understands that it is *intended* that expanding the type of projects that can deliver the 450 GL target could involve benefits for Basin First Nations through land and water purchase packages¹³. However, the Bill makes no explicit provision for Basin First Nations outcomes through land and water purchases, nor has the government outlined any policy, program or implementation approach to realise such benefits. MLDRIN is concerned that implementation will depend entirely on policy design and will be subject to political expediency. With the Bill in its current form, there is no guarantee or assurance that any Basin First Nations will be able to benefit. Tangible measures to address Basin First Nations water injustice should be enshrined in legislation to counteract the impacts of the ever-changing political cycle¹⁴

If the government is committed to generating Basin First Nations outcomes from proposed changes to the WESA, then the Bill should specify that any combined land and water purchase facilitated through WESA must be held and managed by Basin Nations. There is a moral and policy imperative to do this.

H. (2019). Public attitudes to inequality in water distribution: Insights from preferences for water reallocation from irrigators to Aboriginal Australians. *Water Resources Research*, 55, 6033–6048.

<https://doi.org/10.1029/2019WR025011>

¹³ Briefing provided by DCCEEW officials to MLDRIN staff, 22nd September, 2023.

¹⁴ Katherine Selena Taylor, Bradley J. Moggridge & Anne Poelina (2016) Australian Indigenous Water Policy and the impacts of the ever-changing political cycle, *Australasian Journal of Water Resources*, 20:2, 132-147, DOI:

[10.1080/13241583.2017.1348887](https://doi.org/10.1080/13241583.2017.1348887)

<https://www.tandfonline.com/action/showCitFormats?doi=10.1080%2F13241583.2017.1348887>

We recognise that water recovered through WESA will have to deliver environmental outcomes. Member Nations of MLDRIN want to be able to hold and deliver water to sustain and enhance their Country, informed by Nation-led planning and cultural science. The flexible delivery of WESA should advance this goal. Any proposal to return water to Basin First Nations with prescribed use limitations (such as environmental outcomes) *must* be accompanied by other legal, policy or program commitments to secure additional water holdings *without* use restrictions. Examples are presented later in this submission.

In addition to addressing outcomes from WESA, the Bill must also ensure equitable support for Basin First Nations in adjusting to the impacts of water management decisions. MLDRIN contends that Basin First Nations have borne the greatest impacts from unsustainable management of the Basin's rivers and have benefited least from the exploitation of water resources. If the Australian government is to "invest in Basin communities impacted by further water recovery"¹⁵ consideration must be given to investing in Basin First Nations who have been impacted by dispossession, poor water management and exploitation of water resources. The recent disastrous fish kills in the Barka/Darling River are a stark example of these kinds of impacts¹⁶.

Other provisions of the Bill

- MLDRIN supports the proposal to rescind the 1500 GL cap on Commonwealth water purchases. MLDRIN strongly opposed this restriction on effective water recovery when it was instituted in 2015¹⁷. Removing the cap is an important step towards realising improved outcomes for Country.
- MLDRIN recognises the importance of timely action on constraints relaxation and supports the concept of a constraints relaxation roadmap. MLDRIN is aware that some First Nations are involved in discussions with state governments on this issue and urges that all parties should consider how implementation of constraints management can support improved watering of Country and improved land and water access for First Nations.
- MLDRIN is concerned that the proposal to allow additional supply measures to be notified has been developed without any consultation with Basin First Nations who contend with the direct impacts of floodplain infrastructure projects. Many First Nations people and organisations have expressed concerns and raised opposition to supply measures that entail significant alterations to the cultural character of floodplain areas and risk directly damaging cultural heritage features¹⁸. Basin states and the Basin Officials Committee must not notify new supply measures unless these have received the free, prior and informed consent of affected Basin First Nations.

¹⁵ Explanatory Memorandum for the Water Amendment (Restoring Our Rivers) Bill 2023

¹⁶ Office of the Chief Scientist and Engineer, Independent review into the 2023 fish deaths in the Darling-Baaka River at Menindee, Final Report.

https://www.chiefscientist.nsw.gov.au/data/assets/pdf_file/0006/584142/Menindee_Full_Report_FINAL.pdf

¹⁷ MLDRIN, 2015 Submission to Inquiry into the Water Amendment Bill 2015

¹⁸ See *First Nations statement on Victorian Sustainable Diversion Limit Adjustment Mechanism Supply Measure projects*: <https://engage.vic.gov.au/download/document/30478>

- MLDRIN is extremely concerned that the proposal to delay the statutory review of the Water Act to 2027 means that election commitments addressing First Nations outcomes may not be adequately addressed by this government and could be deferred indefinitely (see 'Improving the Water Act below).

Recommendations

The Bill must be amended to ensure that WESA can provide for improved Basin First Nations water access, ownership, and management.

1. Include First Nations outcomes in the Objects of Water Act section 86AA to facilitate First Nations water access through WESA.
2. Include specific reference to activities or measures that will support First Nations objectives and outcomes in the Act at section 86AA(2) or in the Purposes of the WESA (section 86AD).
3. WESA funding and any 'surplus amount' referred to in proposed new s86AH should be applied for the benefit of Basin First Nations, within the purposes of the Water Act.
4. Establish a commitment and program to ensure Basin First Nations' outcomes from WESA, including through land and water package purchases, and a defined percentage or allocation of funding from the special account to resource these activities.
5. Amend section 86AE to specify that a minimum volume of water, to be secured through the WESA, will be transferred to Basin First Nations ownership, in a way determined by Basin First Nations.
6. Stipulate that any combined land and water package purchase facilitated through WESA must be held, owned and managed by Basin First Nations and/or their nominated representative organisations.
7. Amend section 86AD(2)(c)(ii) to ensure a dedicated component of the WESA funds is committed to provide for payments that address the detrimental impacts of poor water management, ecological degradation and stalled Basin Plan implementation on Basin First Nations.

Improving the Water Act 2007

First Nations are playing an increasingly active and important role in the management of Basin water resources and the restoration of Country. The *Restoring our Rivers Bill* represents a critical opportunity to update the Water Act to better reflect and support First Nations active involvement in Basin water management.

First Nations have been left out of the substantive provisions of the Water Act and it is now starkly apparent that this omission is not only unjust, but also impractical. Basin First Nations can no longer be regarded as ancillary to Basin Plan implementation or the administration of the Act. It is patently not appropriate for First Nations to be grouped as part of a general 'public interest' consideration for

development of the Basin Plan¹⁹. First Nations must be expressly recognised as *rights*-holders (not ‘stakeholders’), and substantive provisions to recognise their rights and interests must be included in the Act. This recognition should align with and give effect to the Australian Government’s endorsement of the United Nations Declaration on the Rights of Indigenous People (UNDRIP). The recently released South Australian Government response to the Murray Darling Basin Royal Commission reiterates the need for ‘statutory amendments’ to address First Nations water rights and interests.²⁰

First Nations organisations had anticipated the 2024 statutory review of the Water Act as an opportunity to update the legislation to reflect the active involvement of Nations in Basin water management. For Basin First Nations, the review is not a ‘distraction’²¹, it is a critical priority for necessary water reform. To delay the review for an additional three years further disenfranchises Basin First Nations. The Restoring our Rivers Bill can institute changes to the Act that deliver on the Albanese Government’s election commitments and create a pathway for enhanced water justice through review and implementation of the Basin Plan and related instruments.

The Water Act must be amended to give effect to three key principles:

- 1) recognition of First Nations water rights and interests
- 2) First Nations procedural justice and decision making rights; and
- 3) substantive rights for water access and ownership.

There are a range of options for practical drafting changes that could give effect to these principles. Our recommendations highlight the policy outcomes required of key changes and highlight some specific drafting options for amendments.

Recommendations

Principle 1: Recognition

8. Revise the Bill to include amendments to the Water Act 2007 that recognise and advance First Nations water rights and interests, as guided by long standing advocacy from MLDRIN and other First Nations organisations.
9. Amend the Objects (section 3) of the Water Act to recognise the rights and interests of Basin First Nations in the Basin water resources, as articulated through relevant principles and articles of the UNDRIP, including Articles 26 and 32.
10. Include the UNDRIP in the definition of “relevant international agreements” in the Act and amend section 3 and sections 20 and 21 of the Act to reflect this inclusion.

¹⁹ See Water Act 2007 section 21(4)(c)(v): the Authority and the Minister must have regard to social, cultural, Indigenous and other public benefit issues.

²⁰ Government of South Australia (2023) Response to the Murray Darling Basin Royal Commission. p. 43.
<https://cdn.environment.sa.gov.au/environment/docs/Murray-Darling-Basin-Royal-Commission-response-report-for-online-viewing.pdf>

²¹ Water Amendment (Restoring Our Rivers) Bill 2023, *Explanatory Memorandum*. p 5

11. Include substantive provisions in the Act to establish a clear and positive duty on decision makers (Commonwealth, MDBA and Basin States) to give effect to, or act in accordance with UNDRIP and the Convention on Biological Diversity Article 8(j) in the preparation of the Basin Plan, Water Resource Plans, and other subsidiary instruments.
12. Change references to “Indigenous people” or “indigenous organisations” in the Water Act and Basin Plan to be “Basin First Nations people” or “Basin First Nations Organisations” and change the corresponding definitions.

Principle 2: Procedural justice

13. Amend Water Act sections 20, 21 and 22 to include substantive requirements to give effect to First Nations procedural rights as defined in Article 19 of the UNDRIP, including:
 - a. Amend section 20 to add a new subsection that states ‘by providing for Basin First Nations people’s rights and interests’, and that section 20(a) be amended to refer specifically to UNDRIP.
 - b. Amend Water Act section 21 to ensure proper consideration of Basin First Nations rights, interests and objectives and proper implementation of relevant international agreements.
 - c. Amend s 21(4)(b) to specify that the Authority and Minister must act in accordance/take into account First Nations water knowledge and cultural science (and amend the definition of ‘best available scientific knowledge’ accordingly).
 - d. Insert a new section 21(4)(d) to establish a requirement for the Authority and the Minister to act consistently with the rights and interests of Basin First Nations/Traditional Owners, in exercising their powers and performing their functions.
 - e. Amend section 22 to specify that the content of the Basin Plan must substantively address Basin First Nations rights and interests, including in the management objectives and outcomes and in water resource plans.
 - f. Amend section 22, Item 11 and section 22(3)(ca) to specify that a requirement for the preparation of water resource plans is to secure the free, prior and informed consent of relevant Basin First Nations.
14. Amend section 50 of the Act to add a subsection that specifically relates to First Nations rights and interests including consideration of current First Nations water ownership across the Basin, achievement of cultural flows and related targets.
15. Include an Object in section 3 of the Act to facilitate partnerships with Traditional Owners in the management of water resources, water dependent assets and Ramsar wetlands.

Principle 3: Water access and ownership

16. Amend section 23(1) of the Act to require that the Long-term average sustainable diversion limit must also be capable of meeting Basin First Nations cultural objectives and watering requirements, or establish an allowance for cultural water requirements (as determined through an appropriately resourced program of assessment undertaken by Basin First Nations or their nominated representative body).

17. Amend section 22(1) of the Act to include a requirement that water resource plans must include a program, to be implemented over the life of the WRP, that designs and delivers cultural flows (as defined in the Echuca Declaration), being controls over water resources sufficient to improve the spiritual, cultural, environmental social and economic conditions of Basin First Nations within the WRP area. Foundationally, this must include resourcing Basin First Nations, or their nominated representative body to undertake this work.

Policy, program and resourcing commitments

Statutory amendments are essential to secure recognition of First Nations rights and interests. Additional policy, program and resourcing commitments are also necessary to realise outcomes for First Nations and to deliver on the Government's election commitments. The Committee must consider and make recommendations for measures to support First Nations outcomes that align with and strengthen proposed legislative amendments.

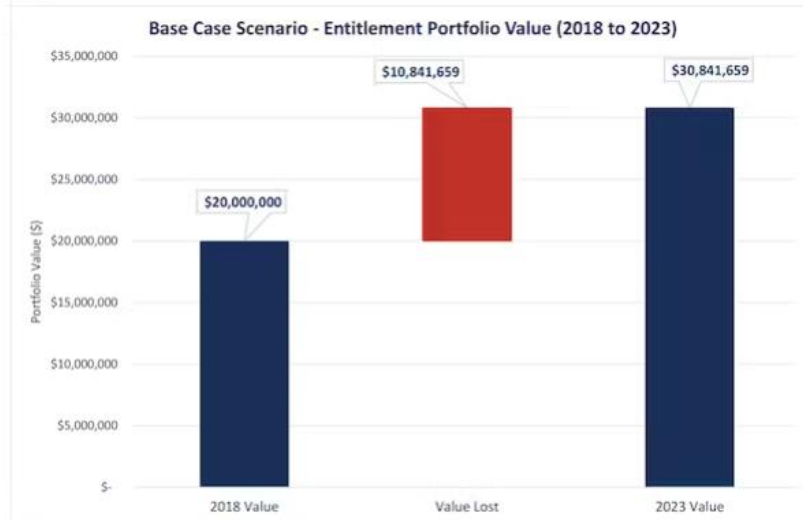
Water Access

The Murray Darling Basin is a fully allocated system and Australia's most mature water market, worth billions of dollars annually. First Nations own just 0.2% of available surface water in the Basin. The Government has committed to increasing Basin First Nations ownership of water entitlements in the Murray Darling Basin. To deliver on this commitment and progress the Closing the Gap inland water target, urgent resourcing commitments must be made to address barriers to entry to the water market for Basin First Nations.

To date, the only funding available to support acquisition of water entitlements by Basin First Nations is the \$40 million AWEP. Despite consistent advice from peak First Nations organisations since 2018²², successive governments have failed to deliver the \$40 million. As a result, Basin First Nations have witnessed a significant reduction in the value of the only funding source available for water acquisition. Analysis undertaken by water research firm Aither for MLDRIN highlights that, based on 2023 water prices, funding committed for First Nations in the southern Basin can only buy two-thirds of the water that could have been acquired in 2018. In 2023, buying the same volume of water that could have been purchased in 2018 will cost almost \$11 million more.²³ This lost value is a stark illustration of the continuing injustice faced by Basin First Nations. Please see Appendix A to review Aither's detailed analysis of the foregone value of the \$40 million AWEP.

²² The *What we heard: consultation draft* prepared by DCCEEW for the AWEP states that "Through the consultation process trust models have emerged as the preferred arrangement."
<https://www.dcceew.gov.au/sites/default/files/documents/what-we-heard-consultation-draft-awep.pdf>

²³ See Aither Water Portfolio Investigation, prepared for MLDRIN: https://mldr.in.org/wp-content/uploads/2023/08/WEB_20230829-MLDRIN-Slide-Deck-FINAL-STC.pdf



Source: Aither Trade Database (SA, VIC and NSW water register data)

Figure 1: Extra funding (almost \$11 million) would be required to buy the same volume of water in the southern basin in 2023 as would have been available in 2018. Aither

In 2019, the Australian Labor Party committed to deliver an additional \$50 million for cultural water, on top of the \$40 million already committed to AWEP if it won government in that year’s election²⁴. That commitment was not honoured in the ALP’s platform in the lead up to the 2022 Federal election. If significant additional funding for Basin First Nations water acquisition was deemed a necessity by the ALP in 2019, there is no reason why that commitment should be any less critical in 2023. The commitment must be honoured by the current Labor Government.

Recommendations

18. Properly resource the Aboriginal Water Entitlements Program (AWEP) to provide a meaningful pathway towards water justice by (at a minimum):
 - a. supplementing the program to make up for the lost purchasing power of the \$40 million caused by unnecessary delays, significantly increased water entitlement prices and foregone trade revenue; and
 - b. honouring the commitment made by the Australian Labor Party in the lead up to the 2019 election to contribute an additional \$50 million to the AWEP.
 - c. Investing in Basin Nations’ preferred representative bodies to determine appropriate water holding arrangements for entitlements acquired through AWEP.

²⁴ Tony Burke MP, Media Release: *Labor Will get the Basin Plan Back on Track*. <https://www.tonyburke.com.au/media-releases/2019/5/6/media-release-labor-will-get-the-basin-plan-back-on-track>

Genuine Investment in Cultural Flows is Needed Now

As noted earlier in this submission Cultural Flows were first defined in Article 1 of the Echuca Declaration (2007). The methodology for determining Cultural Flows was subsequently operationalized by the multi-year National Cultural Flows Research Project (NCFRP)²⁵ (2011 -2019) in which MLDRIN, along with NBAN and NAILSMA, took leading roles. The NCFRP was supported by several agencies, including the Murray-Darling Basin Authority, the Commonwealth Environmental Water Office, the National Water Commission and the Department of Families, Housing, Community Services and Indigenous Affairs.

In 2018, the Littleproud-Bourke 'Deal-Sheet' (Appendix B, 3 a) included seed funding of \$1.5 million to MLDRIN and NBAN respectively. The funds were to enable each organisation to (1) employ one full-time staff member for three years and (2) undertake Cultural Flows implementation projects within each organisation's respective geographic footprint.

In 2023, MLDRIN is the only representative Basin Nation organisation currently developing Cultural Flows implementation projects with Nations²⁶. As such, MLDRIN is uniquely positioned to provide authoritative and trusted advice on the status of Cultural Flows and the necessary conditions for current and future success.

- The importance of this work cannot be understated. A program (or programs) of work, that continues to deliver Cultural Flows projects Basin-wide is foundational to achieving the necessary legal and policy reform forecast in this submission. Cultural Flows projects, when developed appropriately, empower Basin Nations to contribute to 'the best available science'.
- There are no shortcuts to securing Basin Nations inputs into *genuine* Cultural Flows projects. Given the magnitude and complexity of the task, the work (which is without question achievable) requires: (1) sufficient and highly skilled staff, (2) sufficient time and (3) sufficient investment in Basin Nations. Currently all three conditions for the success of Basin Nations and/or their representative bodies are not being met.
- There are over 40 Basin Nations. The Basin covers more than 1 million square kilometres, including 75% of NSW, more than 50% of Victoria, 15% of Queensland, 8% of South Australia and all of the Australian Capital Territory²⁷. It was patently an impossible task for two staff to deliver this work in 3 years (per 2018 Littleproud-Bourke Deal-Sheet).
- Both the process and outcomes of Cultural Flows must empower Nations.

²⁵ <http://culturalflows.com.au/>

²⁶ MLDRIN's ongoing capacity to continue this work will be curtailed within the next 6 months due to the absence of any available ongoing funding (advice provided to MLDRIN during meetings with the funding body, 12th September and 4th October, 2023).

²⁷ <https://www.mdba.gov.au/basin/basin-location>

It is MLDRIN's opinion, informed by praxis, that Cultural Flows are best undertaken as a collaboration between Basin Nations and their preferred representative body. This work requires specialized skill sets and long-term investment to deliver empowering Cultural Flows processes and outcomes²⁸.

The level of resourcing required to deliver Cultural Flows for 40 Nations is 10-fold the 2018 investment and will minimally require 5 years of funding should this work be delivered by MLDRIN or another Basin Nation representative body. Working with an established body would effectively minimise transactional costs.

Recommendation

19. Genuinely resource a comprehensive Basin-wide program of Cultural Flows without delay.

²⁸ This cannot be achieved by fly-in-fly-out consultants. Nor is it appropriate for government agencies to initiate and/or implement programs named in such a way as to invoke the impression, both amongst Nations and stakeholders, that such programs can and will deliver Cultural Flows (they won't and they can't).