

Drawing the Roadmap for Aboriginal Access to Water (the Roadmap)

Discussion paper



Inviting an exchange
of ideas about what
should be included
in the Roadmap

October 2021

COVER: Aboriginal water totems representing the four corners of Victoria, by Taungurung artist, Mick Harding

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Acknowledgement

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of cultural and traditional practices.

We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the broader protection of Country and its waterways in the 21st century and beyond.



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Introduction

The Echuca Declaration, prepared by the Murray Lower Darling Rivers Indigenous Nations (MLDRIN) in 2007, recognised and reaffirmed that each Indigenous Nation has been since time immemorial sovereign over its own lands and waters, and that the people of each Indigenous Nation obtain and maintain their spiritual and cultural identity, life and livelihood from their lands and waters. It also affirmed that Indigenous Nations each have responsibilities and obligations under their Indigenous Law/Lore and Custom to protect, conserve and maintain the environment and the ecosystems in their natural state to ensure the sustainability of the whole environment.

The Echuca Declaration also defined “Cultural Flows” and set out processes for Australia’s governments to follow in the engagement and inclusion of Indigenous Nations in the management of their rivers and waterways.

The Echuca Declaration defined Cultural Flows as water entitlements that are legally and beneficially owned by the Indigenous Nations of a sufficient and adequate quantity and quality to improve the spiritual, cultural, environmental, social, and economic conditions of those Indigenous Nations.

The Echuca Declaration is consistent with the *United Nations Declaration on the Rights of Indigenous Peoples*, to which Australia is a signatory. It describes self-determination as the right of Indigenous peoples to ‘freely determine their political status and pursue their economic, social and cultural development’.

Given Australia’s history of dispossession, the Victorian Government has an obligation – on behalf of the people of Victoria – to work in partnership with Traditional Owners and First Peoples to support their right to self-determination.

In working towards a Treaty, and in establishing the Yoo-rrook Justice Commission, the State of Victoria acknowledges both the continuing impacts arising from historical injustices and the ongoing strength and resilience of Traditional Owners and First Peoples and survival of their living cultures, knowledge and traditions.

Through this commitment to uncovering truth, providing justice and reparation, supporting wellbeing and preventing further harm to Traditional Owners and First Peoples, Victoria is acting on the Treaty and Truth elements of the Uluru Statement from the Heart.

Victoria’s water plan *Water for Victoria 2016* included a policy commitment to facilitate the development of a Traditional-Owner-led Roadmap for Access to Water. This is to recognise that, as with land, a system of property rights has been applied to water without respect for Traditional Owners’ ancestral rights and obligations to water. Until that dispossession is addressed, we will continue to fall short in our collective pursuit of reconciliation.

This discussion paper represents another step towards that Roadmap. It aims to further the conversation about what the Roadmap might look like and what it might include. It outlines DELWP’s initial ideas about what the Roadmap might include, and it includes some conversation starters that Traditional Owners and First Peoples may wish to consider as they prepare to contribute their ideas about what the Roadmap should include.

Importantly, this document responds to the *Cultural Water for Cultural Economies* report of the *Accessing water to meet Aboriginal economic development needs* project. That report was developed through the facilitation of over 40 meetings with representatives from 20 Traditional Owner groups and First Peoples. It identifies specific law and policy pathways to increase access to water for Traditional Owners and First Peoples across Victoria. It also supports their aspirations to use water for economic development in accordance with cultural protocols.

This document also incorporates Traditional Owner feedback from eleven pilot projects that were funded through the Department of Environment, Land, Water and Planning (DELWP) to explore water-related enterprises for economic development opportunities. These projects tested the feasibility of aquaculture, bush foods, native plants, water-based education, and cultural tourism across Victoria.

Many of those pilot projects produced feasibility studies and business cases which outlined specific barriers and constraints preventing those enterprises from moving into implementation. These constraints included the need for access to water, water ownership, water infrastructure, land access, land ownership, and seed funding. Those barriers and constraints were investigated through the *Cultural Water for Cultural Economies* report.

These barriers and constraints now need to be addressed through the *Roadmap for Aboriginal Access to Water*. This is a critical third stage to deliver on the policy commitment made through Water for Victoria.

It will guide our next steps for investment and policy reform. The Roadmap must identify opportunities for Traditional Owners and First Peoples to access water as well as manage and own water for spiritual, cultural, environmental and social economic

purposes. All Victorian Traditional Owner groups and First Peoples are being invited to provide their crucial knowledge and expertise in preparing the Roadmap and informing implementation that benefits all Victorian Traditional Owners. DELWP understands that Traditional Owners have intrinsic connections to land and waterways; the Roadmap must reflect and respect those connections.

Funding has been provided to the Federation of Victorian Traditional Owner Corporations (The Federation) to support and coordinate Traditional Owner input into the Roadmap in partnership with MLDRIN. The two organisations have been working together with Traditional Owners to design an engagement approach that ensures the work takes a Nation-centred approach. Traditional Owner groups may also choose to engage directly with DELWP on the next steps to develop the *Roadmap for Aboriginal Access to Water*.



DELWP's Commitment to the Roadmap

DELWP is committed to reconciliation and supporting Treaties between the State and Victoria's Traditional Owners and First Peoples. We understand that reconciliation begins with self-determination – working in partnership with Traditional Owners and First Peoples as they take on water ownership and management.

DELWP recognises that Traditional Owners have never ceded rights to land and waters, and that they should determine where, when, and how they use water on Country. DELWP also recognises Traditional Owners and First Peoples will set their own priorities, and DELWP will respect their decision-making processes. Decisions on water management and planning must be based on free, prior, and informed consent. Traditional Owners are joint decision-makers in water planning and management, they are not stakeholders.

In that context, *Pupangarli Marnmarnepu 'Owning Our Future' Aboriginal Self-Determination Reform Strategy 2020–2025* was developed as an opportunity for DELWP and the State of Victoria to undertake significant reform and make peace with its colonial history – to build a better future for all. It was developed by listening to the priorities of Traditional Owners and First Peoples about how we approach this journey.

In that spirit, we have committed to working with Traditional Owners and First Peoples on a Roadmap which will bring Traditional Owners together with DELWP to design Aboriginal water policy. The Roadmap could provide for ongoing support services from DELWP to ensure Traditional Owners are empowered to achieve their water-related aspirations into the future.

The Roadmap will aim to achieve all three elements of cultural flows identified in *Cultural Water for Cultural Economies*:

- water rights for First Peoples
- increasing Traditional Owners influence and power in water landscapes
- transforming the foundations of the relationship between the State and the First Peoples so that there can be genuine leadership from Traditional Owners and First Peoples in water management on Country.

As a first step on that pathway to action, DELWP is seeking here to explore the policy directions that might guide the business of partnering with Traditional Owners individually or collectively. This starts with accepting the three key principles outlined in *Cultural Water for Cultural Economies* – **self-determination, healthy Country, and healthy people.**

Key Principles Cultural Water for Cultural Economies

Sovereignty and Self-determination

- Unceded rights to land and waters
- Flexibility to hold and use water for any purpose, as determined by each Nation
- Free, prior, informed consent
- Rights holders and partners, not stakeholders

Healthy Country

- Water flows in Country, around Country and through Country
- Water should stay on Country
- Water has spirit and agency

Healthy mob

- Water health and wellbeing
- Building a better future of our children
- No one gets left behind
- Acknowledge injustice and structural inequity

The pathway to action starts with DELWP accepting that while Traditional Owner groups might sometimes wish to work together to share ideas and develop policy positions, at times they may wish to work with government individually. For these reasons, it is important for DELWP to outline the policy directions it would like to explore as it works with each group.

The *Roadmap for Aboriginal Access to Water* will outline actions the government will take in partnership with Traditional Owners and First Peoples to progress water rights and aspirations now and in the future. The Roadmap will be released in mid-2022. Because it will set the directions for securing genuine water-related outcomes, it is critical that Traditional Owner and First Peoples' voices shape what is in it.

To make sure this happens, this discussion paper responds to the findings and recommendations from many important water projects that Traditional Owners have contributed to over the last five years. It is being released as a way to start the dialogue between DELWP and Traditional Owners about what the Roadmap might include.

The Federation and MLDRIN are available to support and resource Traditional Owners who would like some help in preparing their response to this discussion paper and in developing their contributions for the final Roadmap. They have research, legal and policy expertise that they can draw on to tailor support to each Traditional Owner group's aspirations, goals, and contexts. An alternative pathway for engagement is available through DELWP's Aboriginal Water Unit.

Having reaffirmed this commitment to the Roadmap, DELWP is keen to start working in partnership with Traditional Owners to progress it. Therefore, we offer our initial ideas on what the Roadmap might include, and we welcome each Traditional Owner group making its own contribution to developing the Roadmap – outlining their initial ideas on what will become a shared Roadmap.



DELWP's initial ideas on what the Roadmap might include

DELWP has identified ten main possible policy directions based on discussions so far with Traditional Owners and First Peoples about their aspirations for water ownership and management. DELWP is keen to discuss and explore these further with Traditional Owners to ensure that the final list of policy directions appropriately reflects their thinking and ideas.

These ten initial ideas for policy directions start with a commitment to returning water to all Traditional Owner groups. They then point to the need for policies covering unallocated water – that is, water outside the environmental water reserve that is currently unowned by anyone. They then cover the need for sustainable fees and charges for Traditional Owners and First Peoples who hold water. They then move on to cover the potential for changes to water-sector governance arrangements to make them more inclusive of Traditional Owners. They highlight the need to ensure that Traditional Owners have the resources and support they require to develop and implement self-determined water projects.

They then make sure that DELWP, public land managers, water corporations, catchment management authorities (CMAs), and the Victorian Environmental Water Holder (VEWH) develop meaningful partnership agreements with Traditional Owners. They finish with a commitment to develop options to create a specific Aboriginal water product if Traditional Owners and First Peoples are unable to achieve their water-related objectives in other ways.

Working through each of these policy directions will present challenges. It will be important to balance the needs of all water users, while acknowledging competing demands for water and the limitations of the existing water entitlement framework.

The Victorian Water Entitlement Framework provides a secure system of rights and entitlements. In accordance with this framework, any proposals considered for the Roadmap will not impact existing water entitlement holders.

Nonetheless, DELWP is aspiring to improve Aboriginal access to water as quickly as possible, especially where Traditional Owners have already identified opportunities to gain access to water. For these reasons, DELWP proposes to focus first on addressing access opportunities within the existing framework. At the same time, leaving open the longer-term option of reforming the framework through legislative change, if that proves necessary to improve Aboriginal access to water, create a more appropriate water product, or both.

The ten key policy directions are listed below. Each is then outlined in more detail in later sections of this document. The policy directions that DELWP would like to explore with Traditional Owners for inclusion in the Roadmap are:

1. Committing to specific returns of water to Traditional Owners.
2. Making a share of unallocated water available to Traditional Owners before market-based allocation mechanisms are used to make the remaining share available to other parties.
3. Developing a consistent and transparent policy for sustainable fees and charges for Traditional Owners to hold and use water
4. Working in partnership with Traditional Owners and First Peoples to address interjurisdictional issues, especially in the Murray-Darling Basin.
5. Establishing mechanisms for those Traditional Owners that do not hold freehold land, native title, or settlement agreements, to apply water to land on their Country.
6. Providing resources and support to Traditional Owners as they develop and implement self-determined water projects, management and planning for cultural, spiritual, social, economic, and environmental outcomes.
7. Developing water-sector governance arrangements to ensure that Traditional Owners are formally and informally embedded in all aspects of the water sector's design and implementation of both policy and strategy.
8. Requiring DELWP, water corporations and CMAs to provide opportunities, and support, for Traditional Owners to be involved, from the outset, in infrastructure projects.
9. Requiring DELWP, VEW, public land managers, water corporations and CMAs to enter into partnership agreements with Traditional Owners, where Traditional Owners want to work in partnership to achieve water-related objectives, with those agreements setting out how they will work with and support Traditional Owners.
10. Developing options to create a specific Aboriginal water product if Traditional Owners and First Peoples are unable to achieve their water-related objectives in other ways.

Conversation starters:

Are there other policy directions you would like to explore, and if so, what are they?

Are there any of these policy directions that you don't think the Roadmap should explore?

Which of these policy directions are more important to you than others?

How should Traditional Owners be involved in implementation?

What systems and processes would you like to see in place to support the Roadmap and its implementation?

1. Committing to specific returns of water to Traditional Owners.

DELWP would like the Roadmap to give a commitment to work towards water ownership for all Traditional Owners in the State.

The Victorian Government has already made two gigalitres of water entitlements available to the Gunaikurnai Land and Waters Aboriginal Corporation. This is a State first and is a step towards acknowledging, and restoring, Traditional Owners' rights to water access and ownership.

DELWP is actively reviewing projects underway that will provide opportunities to make water available for Traditional Owners. In addition, DELWP is already working closely with several Traditional Owner groups who have identified water that is available on their Country that they could use for the benefit of their people. DELWP would like to use the Roadmap as an opportunity to commit to action on making that water available to Traditional Owners.

For example, Gunaikurnai continue to assert their interests in surface and groundwater in other catchments with unallocated water on their Country, and the *Cultural Water for Cultural Economies* report highlighted that the process for allocating water to Wurundjeri Woi Wurrung is underway. DELWP agrees that this process should be pursued as a matter of priority.

Similarly, that report also highlights that in the south-west, Gunditj Mirring Traditional Owner Aboriginal Corporation has formally written to Southern Rural Water to make a specific claim for 2.5 gigalitres of unallocated surface water, and they have also expressed interest in the remaining unallocated surface and groundwater on their Country. Gunditj Mirring have also requested changes to the management of Lake Condah to increase their capacity to control water flows in Budj Bim, and they have highlighted the need for Government to engage with all Traditional Owners in the south-west to assess all their interests in unallocated water.

DELWP would like the Roadmap to demonstrate rapid progress on all of these fronts, and it would like the Roadmap to give a commitment to work towards water ownership for all Traditional Owners in the State. Existing aspirations should be resolved in the coming months. Achieving water ownership for all Traditional Owners may take several years.

Conversation starters:

Do you agree with DELWP that this is the highest priority of the Roadmap?

Which parts of Country need water, and what would you like to achieve there with water?

Which waterways or aquifers are involved?

What quantities of water are involved?

What changes to water management would you like to see?

What support would you like, if any, from DELWP, VEWH, CMAs or water corporations in identifying opportunities to achieve your aspirations, or address the barriers to them?

2. Making a share of unallocated water available to Traditional Owners before market-based allocation mechanisms are used to make the remaining share available to other parties.

DELWP is committed to working with Traditional Owners to ensure that they have access to a share of the water available for any further allocation in Victoria's surface water and groundwater systems. DELWP recognises that Traditional Owners have been excluded from such allocation processes in the past, through dispossession, and it is determined to avoid any further inequitable processes within the existing entitlement and allocation framework, while protecting the rights of existing entitlement holders.

DELWP would like the Roadmap to guide the allocation of water to Traditional Owners as it becomes available. For example, it might say that where more than one party has an interest in water entitlements to particular rivers and aquifers (unallocated water, and previously allocated water that can be re-allocated), Traditional Owners can be certain that they will receive a share of the available water entitlements along with other known interests.

This could perhaps be done through a transparent, and agreed, process that put critical human needs and Traditional Owner access to water ahead of other known interests.

It could also suggest that the share of unallocated water returned to Traditional Owners should be allocated as a matter of priority (without waiting for other shares to be allocated via auction processes or similar). Such an approach might balance the needs of all users while acknowledging competing demands.

This policy would also need to cover water made available through infrastructure projects and integrated water management systems. Policies intended to involve Traditional Owners and First Peoples earlier in the development of these projects are outlined under policy direction 9.

If necessary, DELWP will explore options for amending the existing framework to ensure equitable outcomes, while protecting the rights of existing entitlement holders. DELWP is also working on processes to ensure that Traditional Owners have an understanding of all the water resources associated with their Country. In particular, this will include information about any unallocated resources.

Developing a consensus around an unallocated water policy is likely to take one to three years.

Conversation starters:

What are your initial ideas on gaining access to unallocated water?

What are your ideas about the sorts of things that should guide decision making about sharing unallocated water?



3. Developing a consistent and transparent policy for sustainable fees and charges for Traditional Owners to hold and use water.

Experience with Aboriginal water holdings in NSW has demonstrated that the need to meet the annual fees and charges associated with holding water entitlements can limit the sustainability of water holding arrangements. DELWP would like to see the Roadmap include a commitment to developing policies for putting in place sustainable fees and charges for cultural flows, in a consistent way, throughout the State.

The issues that need to be worked through include being able to demonstrate broad consistency with pricing policies that already apply to consumptive water users and environmental water holders. At the same time, sustainable pricing policies must also reflect restorative justice in the context of a history of dispossession.

Some of the options might include the Government covering those fees and charges for water held or used for ensuring healthy Country. Where water

is being used for commercial activities it might, however, be appropriate to apply the same charges paid by irrigators and other commercial water users. The Roadmap must help DELWP and First Peoples to navigate their way to an appropriate price path.

The Roadmap will also need to address funding arrangements for any infrastructure that might be necessary to deliver water to where Traditional Owners wish to use it.

Conversation starters:

What are your thoughts on fees and charges for:

- Instream, cultural flows?
- Cultural flows applied to land?
- Cultural flows used for economic advancement?
- Economic and commercial uses by a Traditional Owner group?

4. Working in partnership with Traditional Owners and First Peoples to address interjurisdictional issues, especially in the Murray-Darling Basin.

Gaining access to water for Traditional Owners and First Nations is more complex in the regulated water systems of northern Victoria where actions need to be consistent with the Murray-Darling Basin Plan and changes must often be negotiated with the Commonwealth and with other state governments.

Where issues involve more than one government they are often referred to as being interjurisdictional. There are other interjurisdictional processes that affect Aboriginal access to water as well. For example, Gunditj Mirring Traditional Owners Aboriginal Corporation raise ongoing concerns for the health and capacity of waterways and aquifers along the Victorian and South Australian state border. DELWP is able to support Gunditj Mirring and the interests of other Traditional Owners in this border region, through advocacy and engagement in keeping with Traditional Owner aspirations.

Similarly, there will be cross-border issues to deal with in the groundwater systems around Murrayville. The same will be true for the Snowy River system and the Monaro and Oberon regions. DELWP is willing to advocate for Traditional Owners in each of these systems, when that is appropriate.

Aboriginal rights and interests in water have also been highlighted as a significant area requiring focus through the Productivity Commission's review of National Water Reform in 2017. For example, the Committee on Aboriginal Water Interests (CAWI) was established at the end of 2020 to provide advice to the National Water Reform Committee, through which the Australian, state and territory governments are working together on the refresh of the National Water Initiative. CAWI currently consists of ten Aboriginal water experts from across Australia and has to date held seven meetings.

In all these interjurisdictional forums DELWP would like to work in partnership with Traditional Owners and First Peoples to advocate for restorative justice.

Conversation starters:

What issues, if any, would you like to see pursued through these interjurisdictional or national forums?



5. Establishing mechanisms for those Traditional Owners that do not hold freehold land, native title, or settlement agreements, to apply water to land on their Country.

Under Section 8A of the *Water Act 1989*, members of Traditional Owner corporations which have entered into an agreement under Part 6 of the *Traditional Owner Settlement Act 2010*, whose Traditional Owner group is bound by the agreement have the right to take and use water on land covered by the agreement, if the land provides direct access to a waterway or a bore, or if the waterway can be accessed via a public reserve. Traditional Owners whose Native Title has been recognised also have rights to take water for domestic purposes.

Unfortunately, some Traditional Owners do not hold freehold land, nor do they have Native Title to such land or Traditional Owner Settlement Agreements in place. In addition, *Traditional Owner Settlement Act 2010* rights and Native Title rights to access water in Victoria are very limited. DELWP is committed to working with these Traditional Owner groups to find an alternative access to water. It is important to note that the *Water Act 1989* does not require the holder of a licence to own or occupy the land on which water is to be used if they have an agreement

with the landholder. In the case of Crown land, the agreement can be with the land manager or access could be granted through leases or licences. The partnership agreements outlined in policy direction 9 could provide a suitable vehicle for such agreements.

DELWP would like the Roadmap to include a commitment to work with Traditional Owners to develop and deliver policies and strategies to provide them with access to the land necessary for self-determined water priorities.

Conversation starters:

Can you provide examples of land where you would like to apply water but do not have access to the land?

What support would you like, if any, from DELWP, public land managers, CMAs or water corporations in gaining access to that land?

6. Providing resources and support to Traditional Owners as they develop and implement self-determined water projects, management and planning for cultural, spiritual, social, economic, and environmental outcomes.

As outlined in the Uluru Statement from the Heart:

“Our Aboriginal and Torres Strait Islander tribes were the first sovereign Nations of the Australian continent and its adjacent islands, and possessed it under our own laws and customs. ... *This sovereignty is a spiritual notion: the ancestral tie between the land, or ‘mother nature’, and the Aboriginal and Torres Strait Islander peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with our ancestors.* This link is the basis of the ownership of the soil, or better, of sovereignty. It has never been ceded or extinguished, and co-exists with the sovereignty of the Crown.”

For Traditional Owners to be empowered to undertake self-determined water projects on Country, they need to be adequately resourced, they need opportunities to develop projects that meet the outcomes they desire, they need adequate time to develop and implement projects, and they need influence over how the Crown exercises its sovereignty.

DELWP would like the Roadmap to enable it to work with Traditional Owners and First Peoples to develop sustainable funding models that enable them to develop and implement their own projects, to call on support from government agencies, and to contribute to the ongoing review and development of the existing water entitlement and allocation framework, while protecting the rights of existing entitlement holders.

Aboriginal Waterway Assessments, and Caring for Country Plans, have proven helpful for many Traditional Owners to use in identifying self-determined water projects for cultural, spiritual, social, economic, and environmental outcomes. They have also helped government agencies to improve the way they conduct their business. DELWP is committed to funding and supporting further such assessments, and it would like the Roadmap to reflect further opportunities for Traditional Owners to focus on water management and planning.

DELWP is reviewing the type of funding reform that should be made across the Department to improve the way DELWP provides funding to Traditional Owner Corporations and the way it draws support from Traditional Owners and First Peoples.

Conversation starters:

What are your initial ideas about the long-term support you would you like to see, if any, provided by DELWP, CMAs or water corporations regarding your self-determined water projects on Country?

What are your initial ideas about the support that you can provide to DELWP, CMAs and water corporations to improve the ways they carry out their functions?

What resourcing do you require to provide that support?



7. Developing water-sector governance arrangements to ensure that Traditional Owners are formally and informally embedded in all aspects of the water sector's design of both policy and strategy.

While exercising greater self-determination over water on Country, Traditional Owners can also help to improve existing governance infrastructure. DELWP would like to see the Roadmap explore ways to ensure ongoing Traditional Owner involvement in the governance of Victoria's natural resources.

In developing the *Cultural Water for Cultural Economies* report, all Traditional Owners repeatedly expressed their desire for formal decision-making powers in water planning and management on Country. There has been considerable progress in this regard, but more can be done. For example, a recent Productivity Commission draft report argues for a renewed national reform agenda that strengthens Aboriginal people's influence in water management systems to achieve cultural outcomes. The amendments made by the *Water and Catchment Legislation Amendment Act 2019* ensure that cultural values are taken into account in planning processes, but the Productivity Commission's draft report also argues that States and Territories should ensure both the specification of clear, measurable and well-informed cultural objectives in water plans, and the inclusion of monitoring and reporting arrangements that promote accountability and foster learning about what works.

DELWP would like to work with Traditional Owners to develop appropriate mechanisms to ensure that they are actively involved in the statutory processes through which the water entitlement and allocation framework continue to evolve. For example, the *Water Act 1989* might perhaps be used in its current form, or an amended form, to ensure that Traditional Owners have a place at the table in the development of future water policies and strategies.

For example, the forthcoming renewals of the *Victorian Waterway Management Strategy* and the next round of Sustainable Water Strategies are

opportunities to help pave the way for a greater Traditional Owner role in Victorian waterway management.

Traditional Owners have been telling us that they want co-management of all water. They want to be empowered to make the decisions about how water is used. They see prioritisation and water planning should be driven from the ground up, by Traditional Owners. Traditional Owners want to show the people of Victoria how to heal Country and maintain the intergenerational transfer of knowledge. They want water managers to listen deeply to what Traditional Owners have to say and they want access to science to back their objectives (not the other way round).

The Roadmap could provide an opportunity to set these processes in train. DELWP would like to see Traditional Owners involved at all levels of water management – in establishing policies, reviewing entitlements systems, applying water, monitoring outcomes and planning for the future.

DELWP would also like the Roadmap to consider options for reserving Board positions for Traditional Owners on the boards of water corporations and CMAs.

Some of these specific aspirations, such as providing for Traditional Owners to be involved in the development of the *Victorian Waterway Management Strategy* can be achieved in the coming months. Others such as reframing governance arrangements will be ongoing with significant advances in one to three years.

Conversation starters:

What are your initial ideas about the sorts of water governance arrangements that are needed for Traditional Owner involvement in the design of policy and strategy for the water sector?

8. Requiring DELWP, water corporations and CMAs to provide opportunities, and support, for Traditional Owners to be involved, from the outset, in infrastructure projects.

DELWP recognises that in the past Traditional Owners were not involved, from the outset, in most infrastructure projects. Some examples of infrastructure projects include irrigation district modernisations, recycled water projects, and stormwater harvesting projects.

As a result of this exclusion, Traditional Owners have not had a say in the proper management of Country and water, nor have they been involved when decisions have been made. If they have been consulted at all, it has been when cultural heritage approvals have been sought and it is too late in the process to influence the decision making.

DELWP is committed to ensuring that Traditional Owners are involved from the outset in significant projects in the future and would like to develop the mechanisms necessary to ensure this through the Roadmap. DELWP would like to see Traditional Owners empowered as essential partners in infrastructure development rather than being engaged after the fact.

One further way to help ensure this, could be to include a suitable clause in the *Statement of Obligations* for water corporations, and CMAs, requiring them to include Traditional Owners in all aspects of the deliberations over such projects.

It is important to note that this policy direction does not apply only to water infrastructure. Because they are committed to net zero emissions, water corporations will also be building power generating infrastructure in the future. It is important for Traditional Owners to be involved, from the outset, in these projects as well because they may provide other economic development opportunities for Traditional Owners and First Peoples.

Conversation starters:

What are your initial ideas about the best way to ensure Traditional Owners are involved, from the outset, in infrastructure projects?



9. Requiring DELWP, VEWH, public land managers, water corporations and CMAs to enter into partnership agreements with Traditional Owners, where Traditional Owners want to work in partnership to achieve water-related objectives, with those agreements setting out how they will work with and support Traditional Owners.

Once Traditional Owners have identified what water-related projects they wish to undertake, it is reasonable and appropriate for them to seek and receive support from DELWP, public land managers, water corporations and CMAs if they believe those organisations can help them achieve the best outcomes for Country and people. The Roadmap could include provision for DELWP, VEWH, public land managers, water corporations and CMAs to enter into appropriate partnership agreements with Traditional Owners in these circumstances. Again, suitable clauses in the relevant *Statement of Obligation* for these organisations could be one option to consider under the Roadmap.

Another option might involve changes to the *Water Act 1989* to make it a statutory responsibility for them to establish and resource Traditional Owner Partnership Agreements – while this approach might be stronger it would also take longer to secure.

As outlined in the *Cultural Water for Cultural Economies* report, since 2016, the State Government of Victoria has made some progress in increasing Aboriginal participation in water management. Every year since 2017, the Minister for Water has formally written to water corporations and CMAs stating her expectation of increased Traditional Owner participation in water resource management and backed this up with legislative changes in 2019.

Aboriginal employment at senior levels in water corporations and CMAs (including at the board level) has increased, but this expectation is presently not a formal obligation on water corporations. The Roadmap could provide an opportunity to set out ways to make this requirement stronger.

The Roadmap could also set out ways for water corporation and CMA procurement processes to favour contracting Traditional Owner and First Peoples' businesses. Water corporations currently have limited ability to include the costs of meeting this expectation in their pricing submissions to the Essential Services Commission.

Conversation starters:

What are your initial ideas about the sorts of partnerships, if any, that you would like to enter into with DELWP, VEWH, public land managers, water corporations or CMAs?

What are your initial ideas about the best way to ensure those organisations establish and resource Traditional Owner Partnership Agreements?

10. Developing options to create a specific Aboriginal water product if Traditional Owners and First Peoples are unable to achieve their water-related objectives in other ways.

It should be possible to accommodate Aboriginal access to water under the existing water entitlement and allocation framework. However, it is also possible that changes to the framework may be necessary, while protecting the rights of existing entitlement holders, to secure Cultural Flows as water entitlements that are legally and beneficially owned by Traditional Owners and First Peoples of a sufficient and adequate quantity and quality to improve the spiritual, cultural, environmental, social, and economic conditions of Traditional Owners and First Peoples.

It is also possible that a different approach is necessary to accommodate more than one Traditional Owner group working collaboratively to manage their water resources through a shared water manager.

In working through the previous nine suggested policy directions, or any others proposed by Traditional Owners and First Peoples, the Roadmap should help Traditional Owners and First Peoples determine whether or not there is a need for a fit-for-purpose entitlement that delivers meaningful volumes of accessible water to Traditional Owners. For the time being, that fit-for-purpose entitlement has been referred to as an Aboriginal water product.

Ideally, the Roadmap should include some guiding principles to assess whether or not the preferred framework is capable of supporting Cultural Flows as defined by the Echuca Declaration.

DELWP offers the following draft principles for possible inclusion in the Roadmap.

A water entitlement and allocation framework capable of supporting Cultural Flows, as defined in the Echuca Declaration, should:

- a. create holdings which are enduring
- b. reserve waters on Country for which the State has yet to formally recognise a Traditional Owner corporation
- c. hold water for Traditional Owners, with fees/charges born by government, for Traditional Owner corporations that are yet to determine the water's use
- d. protect Traditional Owners' water held in rivers for environmental/cultural purposes from downstream extraction
- e. protect the rights of all existing entitlement holders.

If this approach proves necessary, it is likely to take several years. By way of comparison, the processes leading into the development of the first river health strategy, the establishment of the environmental water reserve (including significant projects to enhance that reserve where it was inadequate), the setting up of the environmental water holder, and settling in the framework of seasonal watering plans, took 12 to 15 years to unfold. Faster results might be achieved by finding ways to accommodate cultural flows within the existing framework.

Conversation starters:

What are your initial ideas about the potential to meet your aspirations for access to water through the existing framework?

What examples do you have, if any, of particular issues that seem to fall outside the existing arrangements?

What are your initial thoughts about any changes that might be needed to create a water entitlement and allocation framework capable of supporting Cultural Flows?



Please tell us what you think should be included in the Roadmap

This discussion paper has outlined DELWP's initial ideas about what the Roadmap might include, but it is open to ideas about going beyond these ten policy directions. It is also keen to test the wisdom of the ideas outlined here through discussions with Traditional Owners and First Peoples.

Before moving into the business of establishing the Roadmap with Traditional Owners and First Peoples, it is important for DELWP to have an opportunity to reflect on other ideas that your group may want to raise.

This discussion paper has suggested some questions as a way to prompt discussion, but all ideas are welcome. DELWP is inviting Traditional Owners and First Peoples to put their ideas forward in whatever way suits their decision-making processes.

Would you like to see phrases or titles in traditional language included in the final Roadmap? If so, please include your suggestions in your response along with language group and translations in English.

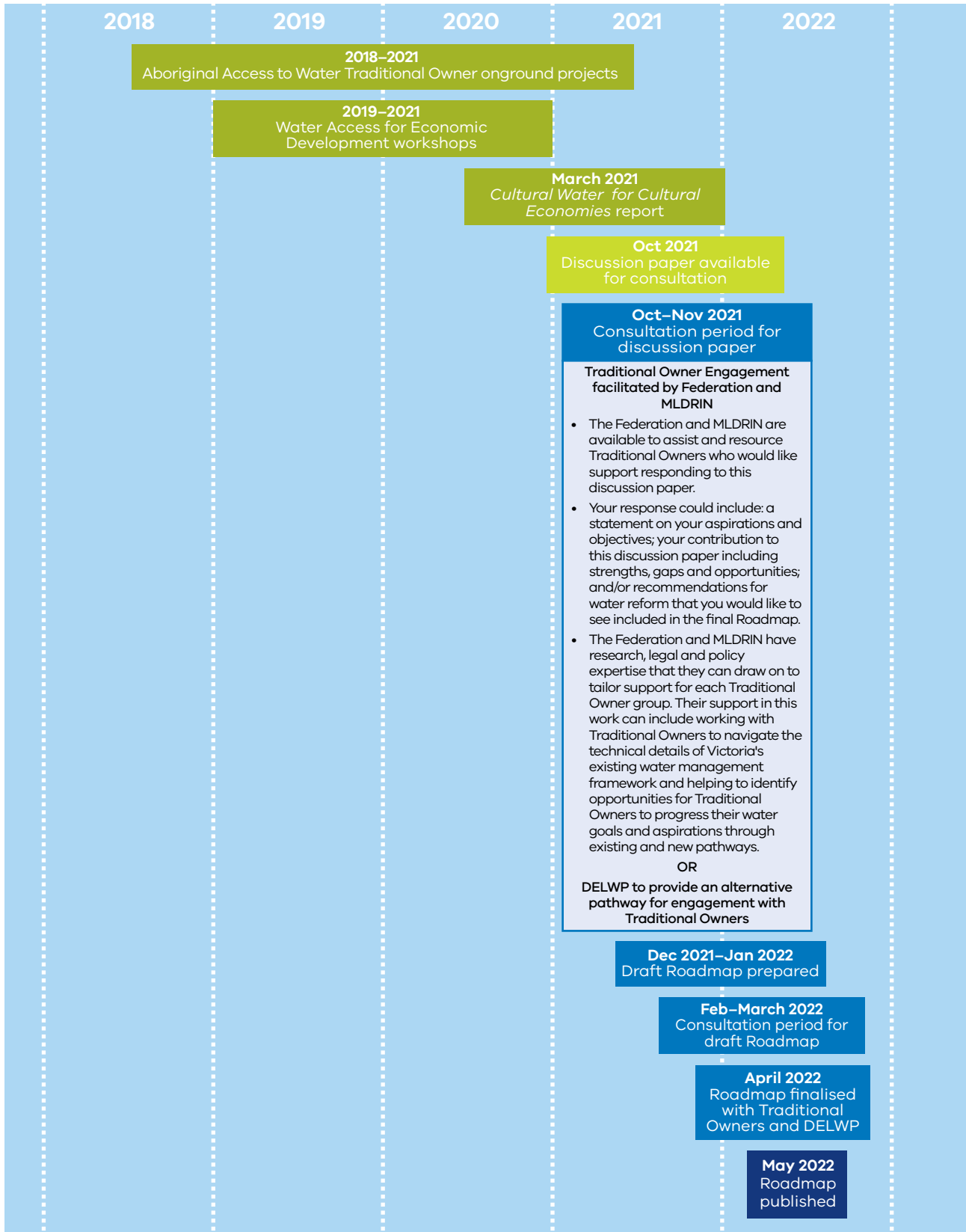
You can provide your contribution directly into the back of this document* or in another format and return to the following contacts:

- From the Federation, please contact Louissa Rogers, Senior Natural Resource Management Advisor (✉ louissa.rogers@fvto.com.au)
- From MLDRIN, please contact Lana Hartwig, Project Officer (✉ lane.hartwig@mldr.org.au)
- From DELWP, please contact Kirsty Savage, Senior Manager Aboriginal Water Unit (✉ kirsty.a.savage@delwp.vic.gov.au or ☎ 0437 166 092) or Cienan Muir, Senior Project Officer (✉ cienan.muir@delwp.vic.gov.au)

In addition, the Federation and MLDRIN are available to support and resource Traditional Owners who would like some help in preparing their response to this discussion paper and in developing their contribution for the final Roadmap. They have research, legal and policy expertise that they can draw on to tailor support to each Traditional Owner's aspirations, goals, and contexts. DELWP's Aboriginal Water Unit provides an alternative pathway for engagement.

Informed consent key information: The information you provide will be used to develop the draft Roadmap and shared with project delivery working group members from DELWP, the Federation and MLDRIN. If you do not want your response included in the draft Roadmap, or shared with all members, please indicate this in your submission. You can still contribute and influence the draft Roadmap without being identified. When contacted directly by MLDRIN and the Federation you can discuss how your responses will be included.

Next Steps and Timelines





* You can provide your contribution directly in this text box

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For further information visit:

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