



**Federation of  
Victorian Traditional  
Owner Corporations**

10 June 2022

Hon. Lisa Neville MP  
Minister for Water  
Level 17, 8 Nicholson Street  
East Melbourne  
Victoria, 3002  
By email: [lisa.neville@parliament.vic.gov.au](mailto:lisa.neville@parliament.vic.gov.au)

Dear Minister Neville,

**Response to draft Water is Life: Traditional Owner Access to Water Roadmap**

Thank you for your letter on 12 May 2022, and for providing the Federation of Victorian Traditional Owner Corporations (the Federation) a copy of the draft *Water is Life: Traditional Owner Access to Water Roadmap (Water is Life)* for review and comment.

Please find the Federation's response in Attachment A, which summarises what we've heard from Traditional Owners through a variety of engagement approaches, including individual Nation scale workshops, regional and state-wide forums, and numerous informal conversations.

Much of the in-depth advice has been provided already through the tri-party Roadmap Working Group<sup>1</sup>, and in the Federation's and MLDRIN's responses to *the Discussion paper: Roadmap for Aboriginal Access to Water*. We appreciate that there has been some sound and principled work over the last few years in progressing this ambitious program. We acknowledge your commitment that *Water is Life* will deliver systemic change with real and tangible outcomes as informed by Traditional Owners, and note that there are several components of *Water is Life* that Traditional Owners see as good steps forward, including the considerations and actions for:

- Traditional Owners working directly with the Victorian Environmental Water Holder (VEWH) to plan for, and deliver, environmental water
- Recognising Traditional Owners as environmental water holders
- Facilitation of water returns through issue as entitlements for self-determined use
- Recognising water landscapes as living entities and TOs as their voice
- Partnership agreements with the water sector to transition power and resources in water landscape management
- Transitioning Traditional Owners to become waterway managers and public land managers

Some of these actions could go further, and we provide specific feedback on these in our detailed response in Attachment A.

We highlight three important areas with you as areas to amend or address in the final *Water is Life*.

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<sup>1</sup> Comprising members from the Federation, Murray-Lower Darling Rivers Indigenous Nations (MLDRIN) and the Department of Environment, Land, Water and Planning (DELWP) Aboriginal Water Unit (AWU).

### 1. The framing of the purpose of *Water is Life*

The Government has acknowledged, through its commitment in *Water for Victoria*, that the current system, as it relates to Aboriginal access to water, is flawed. The foundation of this flaw sits with successive Government's policies that have led to the dispossession of Traditional Owners from their Country.

While it is worthwhile to share what the Government has delivered to date to address this flaw, the way this is currently included has been described as smothering. The overarching purpose for *Water is Life* is to address the government's legacy of dispossession and to deliver systemic change with real and tangible outcomes, as informed by Traditional Owners. The achievements of Government to date should follow on from that purpose.

### 2. Leaving the door open on Government purchase of water entitlements

*Water for Life* provides two possible pathways, both of which are limited:

- While working directly with the VEWH will enable Traditional Owners to begin to care for Country and achieve biocultural outcomes, environmental water is still burdened by Government environmental objectives which may not directly support other cultural outcomes or economic development ambitions.
- The mechanisms for water returns, as outlined out in Action 2.3, will not deliver volumes large enough for all Traditional Owners Nations to effectively develop economic enterprises and for each Nation's communities to thrive and prosper.

Given that, as a consequence of dispossession, most Nations do not have access to the funding required to purchase water on the market, we propose that the government leaves the door open for government purchase of entitlements and/or allocations. It is possible to restore water ownership to Traditional Owners without impacting the 'rights' of existing entitlement holders or distorting the market. We provide more detail on how this could be achieved in Attachment A.

### 3. Development of a sustainable funding model.

Traditional Owners are calling for Nations to be funded at a program scale, with multi-year funding, to deliver on self-determined priorities and to move away from grants funding that:

- forces Traditional Owner groups to compete with each other
- limits self-determination, with application processes requiring Traditional Owners to respond to DEWLP investment priorities; and
- are administratively burdensome – especially when funding is alongside many other small-scale projects.

Finally, it is critical that *Water is Life*, and its implementation, honours that good faith and hope through which Traditional Owners have been participating. Implementation must be adequately resourced to achieve the short to medium term actions for **each Traditional Owner group** and to deliver the longer-term change required to address the serious consequences of dispossession, and for every Nation's community to thrive and prosper.

Yours sincerely,



Paul Paton,  
CEO, Federation of Victorian Traditional Owner Corporations

## **ATTACHMENT A - Detailed response and proposed areas for amendment to *Water is Life***

### **Actions within *Water is Life* that we welcome but don't go far enough**

We welcome the inclusion of several actions that will benefit and support Traditional Owners in their aspirations. However, we have also identified ways in which these actions can be enhanced to better reflect the expectations of Traditional Owners and deliver real and tangible outcomes:

1. Action 2.1 that commit the Victorian Environmental Water Holder (VEWH) to working directly with TOs in annual watering proposals, initially delivering on environmental priorities but with a view to transition to co-manage entitlements with the VEWH under a cultural water paradigm; and
2. Action 2.2 – commitment to recognise Traditional Owners as environmental water holders.

While these two actions address what we have been hearing from Traditional Owners, *Water is Life* also needs to:

- recognise that some Nations want environmental water entitlements to be reallocated and to take on sole management, as water holders and waterway managers.
- enable the environmental water reserve (EWR) to be recognised as a cultural water reserve to deliver cultural outcomes (which may be objectives to heal Country that are at conflict with EWR objective).

We recognise these are long-term commitments and could potentially require a legislative change at a federal level. It is therefore important that the State works closely with Traditional Owners to gather evidence to advocate to the Murray Darling Basin Authority and/or the Commonwealth Environmental Water Holder how cultural outcomes be aligned with the Basin Plan. This could build on the work undertaken by the VEWH and Traditional Owners to incorporate cultural values in environmental water planning, monitoring and measuring the outcomes to understand how environmental and cultural objectives align.

3. Action 3.2 – formal partnership agreements with the water sector to transition power and resources in water landscape management.

Traditional Owners have consistently asserted their authority as rights holders. It is critical that these partnership agreements, and the Statements of Obligation, are developed with Traditional Owners. Further, Traditional Owners must be declared as decision makers, equal to the State, in order to give effect to true partnership, and to embed self-determination through the systems of decision-making.

4. Action 3.3 – recognition of Traditional Owners as waterway managers for specific locations.

To support this action, it will be critical to support “Waterway manager 101” training so Traditional Owners can identify the roles and responsibilities that they wish to take on.

In addition, this action needs to also include the ability to address ‘whole of Country’, and recognise that Traditional Owners want to be responsible for managing floodplains as well as waterways. Some Traditional Owners have advised that they want to take on decision making authority over a range of programs currently managed by Catchment Management Authorities, such as floodplain management and rural draining.

We support the proposal for Government to support reforms within the Public Land Act, to enable Traditional Owners to be public land managers. Some Traditional Owner groups want to take this further and also work with private landholders to develop water landscape healing programs.

## **Key areas that require addressing or amendment**

### **Framing Water is Life**

The introductory chapter in *Water is Life* should open with Traditional Owners' relationship with Country. Traditional Owners have a profound physical and spiritual connection Country. Country is home, and land and water are integral to that. Land and water hold the spirit of ancestors and this remains central to the identity of all Traditional Owner Nations today. Traditional Owners are the custodians of waterways; it is their responsibility to care for Country using traditional knowledge and practice. This relationship to Country is most important and should frame all the work *Water is Life* commits to.

***“Where our old ones are laying, they need protecting. We have responsibility for those old people whether we like it or not. There are spiritual consequences if we don't uphold that”***

**Aunty Esther Kirby OAM 26 March 2022**

Further, the opening section needs to tell the truth of dispossession. Traditional Owners never consented, surrendered, nor ceded their rights to land and water. Traditional Owners were forcibly and violently removed from their lands, and prevented from caring for Country with knowledge and practices handed down over tens of thousands of years. This dispossession continues today via the many laws (such as s.7 of the *Water Act 1989*), regulations, policies & procedures of government institutions today. The consequences have been devastating for Aboriginal people and their communities. This also includes the spiritual consequences of not only not being able to care for Country and being unable to prevent the ongoing and significant degradation of land and water caused by poor land and water management practices since European occupation.

*Pupungarli Marnmarnepu* acknowledges this ongoing dispossession and the obligation of Government to address the legacy of dispossession that occurred, and is occurring, under policies of past and current Governments.

*“To unlock our shared future, we need to come to terms with the dispossession of Traditional Owners that occurred with colonisation – and make right what can be made right. We must also recognise where the legacy of past policy continues to influence current practice”* Secretary John Bradley's forward page 4.

*“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 Aboriginal Victorians to support their right to self-determination”* page 5.

As such, the opening chapter of *Water is Life* must clearly outline that its purpose is to address this ongoing legacy through delivering systemic change, with real and tangible outcomes as informed by Traditional Owners.

### Government purchase of water – Action 2.3

We strongly object to the draft *Water is Life* closing the door on government purchase of entitlements, as is implied by the caveat under the list of Action 2.3 commitments. There are two reasons why this is unacceptable:

1. As per framing *Water is Life* above, sovereignty was never ceded, the claim over land and water under colonisation was based on the false policies of terra and aqua nullius. Water was stolen from Traditional Owners and dispossession has resulted in serious harm. The Government is obliged to address this legacy of dispossession.

The legacy of dispossession has caused intergenerational poverty and lower standards of living, while at the same time has provided benefits including through the unbundling of water and creation of water as a commodity that now has a collective capital asset worth \$11 billion across northern and southern Victoria (Table 1).

Table 1: Entitlements on issue and total market value by entitlement type (as of 30 May 2022)

Entitlement type	Entitlements on Issue (ML)	Currently held by the environment (ML)	Enviro % of EOI	Consumptive pool (ML)	Total market value (\$)
High Reliability	2,671,398	733,636	27.5%	1,937,762	\$10,259,872,720
Low Reliability	932,051	103,462	11.1%	828,589	\$728,776,633
Spill Reliability	12,501	0	0.0%	12,501	\$2,500,120
<b>Total</b>	<b>3,615,949</b>	<b>837,097</b>	<b>23.2%</b>	<b>2,778,852</b>	<b>\$10,991,149,473</b>

Figure 1 demonstrates the increasing value of entitlements in some northern Victorian systems, particularly since 2016. The Government and *Water is Life* must acknowledge the quantum of the wealth generated by dispossession.

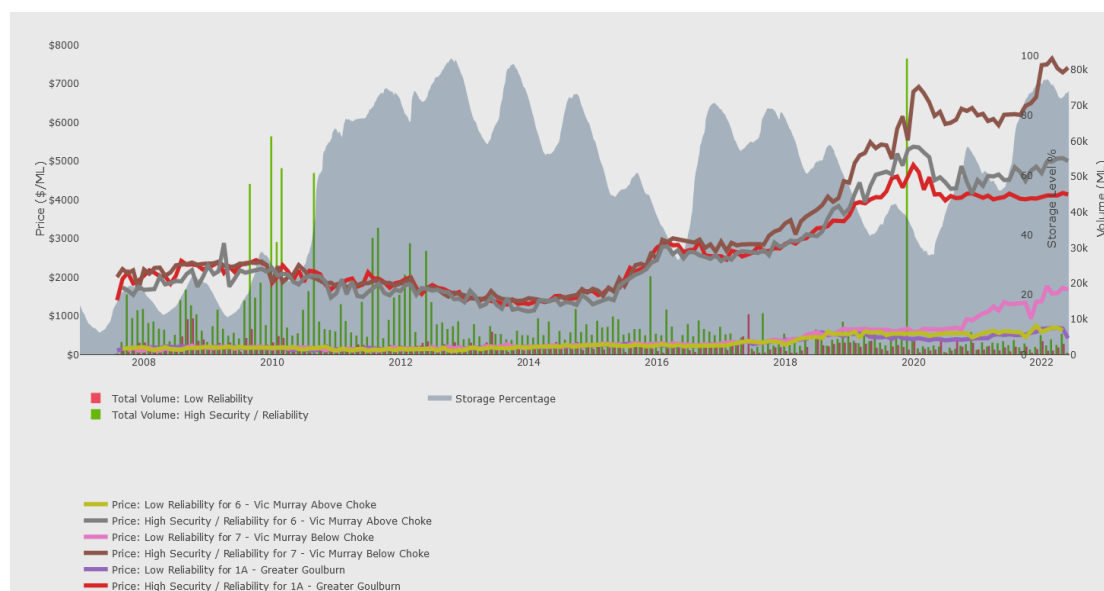


Figure 1: Victoria Goulburn (zone 1A/1B) and Victorian Murray (zone 6 and 7) entitlement prices (\$/ML) and volumes 2007-22 Source: Marsden Jacob Waterflow™

2. The proposed pathways for access to water outlined in Chapter 2 of the draft *Water is Life* are great first steps, however:
  - a. while working directly with the VEWH, with a move to working under a ‘cultural water paradigm’ will enable Traditional Owners to begin to care for Country and achieve biocultural outcomes, environmental water is still burdened by Government environmental objectives. As stated on page 18 of *Water is Life*: this will not directly support other cultural outcomes or economic development ambitions.
  - b. Section 51 licenses are opportunistic, winter fill licenses that are available for four months of the year, and under some circumstances (such as low stream flow) they won’t be available at all. Further, without access to land, and the ability to store water for use in the warmer months of the year, Traditional Owners will be limited in what the water can be used for, as opposed to water shares which are available, within allocation volumes, across the whole year.
  - c. pathways for access as outlined out in Action 2.3 will not deliver volumes large enough for **each** Traditional Owners Nations to effectively develop economic enterprises and for each Nation’s communities to thrive and prosper. Especially in the north, where Traditional Owners have repeatedly been advised that there is no unallocated water, and in fact the region is overallocated. With this knowledge, the term frequently used by Traditional Owners is that Government is handing back the ‘scraps’.

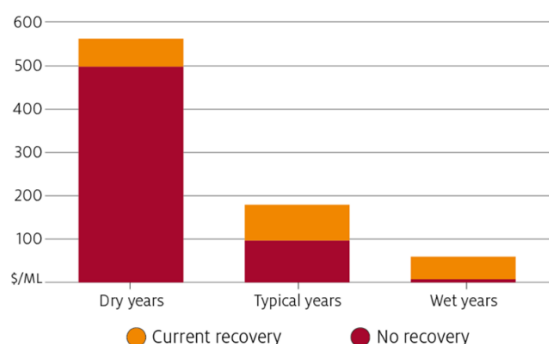
*Comparison with environmental buy-backs*

We recognise that concerns exist that a water purchasing program would inflate the market. However, it is important to note that Government purchase of entitlements for Traditional Owners is different from water buy-back/recovery for the environment.

Traditional Owners accessing water on the market to use for self-determined uses, or for trading back into the market, will not necessarily remove water from the consumptive pool the same way water for environment has. In fact, under the current framework it would stay in the consumptive pool. Water use through trade by Traditional Owners and water use for the environment are not the same thing and should not be thought about in the same way.

Furthermore, current evidence is that water recovery has not been the main factor driving water prices. Key drivers include drought and drier conditions, increased water demand for crops such as almonds and other horticulture, and water recovery, largely in that order (see Figure 2 below, Marsden Jacob, 2022).

*Figure 2: ABARES suggests water recovery has a modest impact on prices relative to seasonal conditions*



### *Purchase can be undertaken without market distortion*

The annual reporting of temporary trade by the Victorian Environmental Water Holder demonstrates that case-by-case trading does not distort the market. Distortion of the market is dependent on the volume of water being traded. A progressive approach to implementation (Foundation Principle 3) could see Government purchase of water entitlements on a case-by-case basis.

The *Water is Life* implementation plan could be used as the platform for case-by-case purchasing, through the development of pilot projects (such as those developed through Program 2 of the Roadmap development). This would help to establish a process where Traditional Owners could develop plans and work with Government to purchase water as it becomes available on the market and build the evidence over time for further purchase arrangements.

It is our understanding that such an approach would not distort the market any more than irrigator trading behaviour based on commercial decision making.

### *Purchase leading to broader socio-economic benefits*

Water purchased for Traditional Owner business will lead to socio-economic benefits within regional communities, as the businesses operate on Country across Victoria. These benefits will be amplified by addressing not only the legacy of dispossession, but also by contributing to closing the gaps through delivery of secure employment, wellbeing and justice.

The **‘Framework: Multiple benefits of ownership and management of water by Traditional Owners’** developed for the Central Gippsland SWS Traditional Owner Partnership Forum is a good place to start. Traditional Owners must be co-designers of any monitoring programs.

### **Sustainable funding model**

*Water is Life* does not identify any actions around the development of a sustainable funding model. We welcome the \$3.9 million over two years announced by you last month, including the transparency that the funding will cover salaries for Traditional Owner positions on water sector boards, three more positions and a grants program. It is important that you know that Traditional Owners have consistently advised that grant programs administered at a project scale from within DELWP are inappropriate because:

- They force Traditional Owner groups to compete with each other
- They limit self-determination, with application processes requiring Traditional Owners to respond to DEWLP investment priorities; and
- They’re administratively burdensome – especially when funding is alongside many other small-scale projects.

Traditional Owners are calling for Nations to be funded at a program scale, with multi-year funding, to deliver on Nation self-determined priorities. Some groups have also called that funding should come directly from treasury rather than through DELWP.