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Introduction

The Federation of Victorian Traditional Owner Corporations (FVTOC) is the peak body for Traditional Owners in Victoria. We welcome the opportunity to respond to the *Senate Committee Multi-Jurisdictional Management and Execution of the Murray Darling Basin Plan Issues Paper*.

The Murray Darling Basin Plan (MDBP) is an important tool for responding to increasing concerns about ongoing ecological destruction occurring in the Murray Darling Basin (MDB).¹ The long-term effects of these changes are having a devastating impact on these river ecosystems and on the Traditional Owners and First Nations Peoples within the Basin.²

Traditional Owners have obligations, rights, and responsibilities to water that stem from their own systems of governance. For Traditional Owners and First Nations People water is sacred and a fundamental element of spiritual, cultural, social, economic and ecological wellbeing.

These rights are recognised under a range of international, commonwealth and state laws³ including the *United Nations Declaration on the Rights of Indigenous Peoples* that states

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.⁴

This submission notes that there are a number of provisions within the MDBP that seek to improve and increase Traditional Owner led collaboration in the water sector, particularly those set out in Chapter 10, Part 14: Indigenous Values and Uses. However, through the implementation of the MDBP it has become evident that these requirements provide only a limited scope for realising the full rights and aspirations of Traditional Owners when it comes to access, management and ownership of water.

¹ Jessica K. Weir, (2011) 'Water Planning and Dispossession', in Daniel Connell and R. Quentin Grafton (eds) *Basin Futures: Water reform in the Murray darling Basin*, ANU Press. pp. 180-181.

² Lana D. Hartwig, Sue Jackson and Natalie Osborne, (2018), 'Recognition of Bankandji Water Rights in Australian Settler-Colonial Water Regimes', *Resources*, 7 (16): 1-26; Sue Jackson and Lesley Head, (2020), 'Australia's Mass Fish Kill as a Crisis of Modern Water: Understanding Hydrosocial Change in the Murray Darling Basin', *Geoforum*, 109: 44-56.

³ These include United National Declaration on the Rights of Indigenous Peoples, Native Title Act 1993 (Cth) and Traditional Owner Settlement Act 2010 (Vic), Environment Protection and Biodiversity Conservation Act 1999(Cth), Aboriginal Heritage Act 2006 (Cth).

⁴ United Nations Declaration on the Rights of Indigenous Peoples

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In particular, the separation of economic values and uses of water from cultural, spiritual, social, and environmental values and uses does not reflect a holistic approach to caring for Country. This concern is specifically identified by Traditional Owners in their contributions to the two Victorian Water Resource Plans: *Wimmera Mallee Water Resource Plan and Victoria's North and Murray Water Resource Plan*.

While significant progress towards Traditional Owner participation in the water sector has occurred, it has been uneven across the Basin and we call for greater monitoring and support for the consistent implementation of the requirements in accordance with the MDBP Chapter 10, Part 14: Indigenous Values and Uses, to be a priority across the whole Murray Darling Basin. There is still significant work to be done to meet the identified objectives in improving access, management and ownership of water.

We encourage the MDBA to continue to support all Basin states in moving from a limited consultation approach to a participatory one underpinned by the principles of self-determination and free, prior and informed consent. We also call for greater attention to be given to how the MDBA and Basin States can strengthen their recognition of Traditional Owner rights when it comes to ownership of water through a range of mechanisms, including participation in the water market.

We note the ongoing commitment to addressing these limitations through the *Cultural Flows Research Project* and its work to establish cultural flows as a mechanism that will see a gradual transition to Traditional Owner led water management and protection. We encourage the continuation of the important work being done in partnership with the Murray Lower Darling Indigenous Nations (MLDRIN) and Northern Basin Aboriginal Nations (NBAN).

Recommendation

1. The requirements under Chapter 10, Part 14, Indigenous Values and Uses in the Murray Darling Basin Plan are implemented consistently across the whole Murray Darling Basin.
2. Commitment by the MDBA and Basin States to move from a consultative to a participatory approach underpinned by the principle of self-determination, free, prior and informed consent with Traditional Owners in improving access, management, and ownership of water.



Cultural Flows

The *National Cultural Flows Research Project* explains the deep connection between water, identity, spirituality, economy and culture and the unique responsibilities this imparts to Traditional Owners in Caring for Country.⁵ The Murray Lower Darling Indigenous Nations (MLDRIN) Echuca Declaration, recognised in the MDBP defines Cultural Flows as:

Cultural Flows are water entitlements that are legally and beneficially owned by the Nations of a sufficient and adequate quantity and quality to improve the spiritual, cultural, natural, environmental, social and economic conditions of those Nations. These are our inherent rights.⁶

The MDBA has committed to supporting Cultural Flows becoming an established part of Australia's Water Management Framework.

In line with this commitment, we draw the Committee's attention to MLDRIN's Submission to the ACCC's *Murray Darling Basin Plan: Five Year Review* which explicitly rejects the division of economic and cultural values in water management as 'arbitrary and reflecting a non-Aboriginal, utilitarian worldview that does not align with our member Nations'.⁷ There is little in the Issues Paper that acknowledges this concern, nor is there sufficient discussion of how the MBDP could improve efforts to enable greater progress towards achieving Cultural Flow entitlements across all Basin states.

We welcome the continued support for the National Cultural Flows project by the Murray Darling Basin Authority (MDBA)⁸ and we encourage greater commitment to promote the evidence, and implement the recommendations, from the National Cultural Flows Project.

Recommendation

3. Cultural Flows are fully integrated into Australia's Water Management Framework.
4. Recognition that the division of economic values and uses of water as separate from cultural ones, does not reflect Traditional Owner and First Nations worldviews.

⁵ National Cultural Flows Research Project, Final Report, p. 3.

⁶ MLDRIN, *Echuca Declaration*

⁷ MLDRIN, *Murray Darling Basin Plan Five Yearly Review*, productivity Commission Inquiry Report, No. 90, 19 December, 2018: Submission No. DR139, p. 2.

⁸ Murray Darling Basin Authority, *Murray Darling Basin Authority Annual Report 2018-2019*.

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Water Resource Plans

The MDBP requires states within the MDB to prepare WRPs and, as outlined in Chapter 10, Part 14, the WRPs must identify and have regard to the objectives and outcomes of Indigenous peoples in relation to water values and uses.⁹ There are two Victorian Water Resource Plans: *The Wimmera Mallee Water Resource Plan* and *Victoria's North and Murray Water Resource Plan*.

Both WRPs engaged with Traditional Owner Groups across the two WRP Areas and documented the fundamental importance of water to Caring for Country. It is clear from the contributions of Traditional Owners Groups to the WRPs that sustainable forms of funding and support are needed to enable ongoing participation in water planning, management and decision making.

While there have been significant improvements through the commitments outlined in Chapter 6 of *Water for Victoria*, ongoing funding arrangements and resourcing were cited by some groups as necessary for self-determination in water management.

The Victorian WRPs also identified a number of risks to the availability and condition of water that have a significant potential to impact on Aboriginal water values and uses.¹⁰ These include climate change, land use change, extreme drought, extreme wet, bushfires, increased utilisation of entitlements, and non-compliance with the Victorian Water Act.¹¹ Each of these risks have the potential to reduce water availability and further exclude Traditional Owners from access to water.

They also have the potential to affect water quality. These risks need to be managed effectively as they have a significant impact on Traditional Owner water values and uses.

Many groups expressed concern that loss of access to water, and water that is not of an adequate quantity and quality, contributes to loss of culture and connection to Country.¹² Strengthening connection to Country and ensuring the transmission of knowledge to younger generations require healthy water that is managed by Traditional Owners in culturally appropriate ways.

⁹ Basin Plan 2012 (Cwlth) pp. 122-123.

¹⁰ DELWP, *The Wimmera Mallee Water Resource Plan* and *Victoria's North and Murray Water Resource Plan*, 2019.

¹¹ Ibid.

¹² Ibid.



Recommendation

5. Engagement of Traditional Owner Groups in the development and implementation of Water Resource Plans are informed by the principle of Self-determination.
6. Ongoing funding and support to build capacity and resourcing to enable Traditional Owner Groups to fully participate in the development of WRPs, and the management and ownership of water that meets each Traditional Owner Group's spiritual, cultural, environmental and economic needs.
7. Risks to water quantity and quality are monitored and evaluated with regard to how the mitigation and management of these risks will impact on Traditional Owner interests and rights, now and in the future, especially when it comes to commitments to establishing Cultural Flow entitlements.

Water Trading

This section considers questions in the Issues Paper regarding the efficiency and transparency of water trade in the Basin, unintended consequences, and potential improvements to how it is being managed. Consideration of these questions in the context of Traditional Owner water rights, and informed by the principle of self-determination, requires a clear acknowledgement of the history of Traditional Owner dispossession from land and water through the violence of colonialism.¹³

This dispossession was then further compounded when water was separated from land ownership through entitlement rights under Australia's water reforms outlined in the 2004 *National Water Initiative*. In other words, water became a new category of property right¹⁴ and Traditional Owners were once again excluded from exercising their rights to access, manage and own water on Country.

Providing opportunities for Traditional Owners to participate in the water market is just one way to begin to address this continued dispossession and exclusion from the water sector. As the Issues Paper notes however, there are significant barriers to entry including inconsistencies in compliance with trading rules, and accurate pricing information.¹⁵

¹³ Virginia Marshall, (2017), *Overturning Aqua Nullius: Securing Aboriginal Water Rights*, (Canberra, ACT: Aboriginal Studies Press).

¹⁴ Ibid. p. 14.

¹⁵ Commonwealth of Australia, *Senate Select Committee on the Multi-Jurisdictional Management and Execution of the Murray Darling Basin Plan*, Issues Paper, p. 66.



Recommendation

8. Identification of policy barriers to Traditional Owners entry to, and participation in, the Water Market and development of clear strategies to address these.
9. Identification of opportunities for Traditional Owner participation in the water market and development of strategies to enable this.

Environmental Water

Chapter 8 of the MDBP requires that the MDBA 'have regard to' Indigenous values and uses in the planning and delivery of water for the environment. There are certainly opportunities for shared and co-benefits in environmental watering, but the current provisions within the MDBP are fairly weak and there is no clear direction on how states should consult with Traditional Owners.

In Victoria this happens through various mechanisms including in the preparation of Water Resource Plans, through the Victorian Environmental Water Holder (VEWH), and at a catchment level through CMAs. While there are many examples of successful partnerships with Traditional Owners in the delivery of environmental water, there is no clear Basin-wide strategy to ensure that participation and decision making of Traditional Owners is consistent. Without a Basin wide strategy there is a risk that partnership occurs on an ad hoc basis and relies on the proactive leadership of individuals.

The Issues Paper statement that environmental water can potentially achieve 'secondary benefits' in that it 'can also provide for Indigenous water values'¹⁶ highlights that while there are significant areas of shared benefit, environmental water offers only a limited pathway for realising Traditional Owner values in water. Traditional Owner rights and responsibilities to water encompasses spiritual, social, economic, and environmental values thus requiring a holistic approach to management and use.

As Jessica Weir states 'the concerns Indigenous people bring to environmental issues are much broader, and do not fit within the compartmentalism of environmental issues in Western knowledge frameworks.'¹⁷

Weir goes on to argue that this understanding has significant implications for deciding adequate water allocations and flows to meet environmental needs.¹⁸ In other words, when Traditional Owners are enabled to exercise genuine management and decision-making rights over environmental water,

¹⁶ Commonwealth of Australia, *Senate Select Committee on the Multi-Jurisdictional Management and Execution of the Murray Darling Basin Plan*, Issues Paper, p. 59.

¹⁷ Jessica K. Weir, (2011) 'Water Planning and Dispossession', p. 183.

¹⁸ Ibid. p. 184.



there is significant potential for more holistic cultural, social and economic outcomes through the restoration of healthy river ecosystems.

Traditional Ecological Knowledge is recognised internationally for contributing to a range of conservation and sustainable natural resource management outcomes.¹⁹ Examples from Australia demonstrate the importance of the respectful integration of Traditional Ecological Knowledge and Western (European) Knowledge in Natural Resource Management in achieving positive environmental and sustainability outcomes.²⁰

Traditional Ecological Knowledge in aquatic ecosystems is essential to achieving the MDBP goal of restoring the Murray Darling Basin to health.²¹ Thus genuine partnership that respectfully integrates Traditional Ecological Knowledge should be central to environmental water decision making and management as it offers significant co-benefits in all of these areas.

Recommendations

10. Acknowledgement of the importance of Traditional Ecological Knowledge in management of water and respectful incorporation of this into Water Resource Plans across the whole Murray Darling Basin.

11. Environmental Water planning and management framework that enables Traditional Owners to exercise genuine joint planning, management and decision making over environmental water across the whole Murray Darling Basin.

Climate Change

The MDBP was created to address the significant ecological degradation being cause by water consumption and management at the time, and the effects of the millennium drought. While there is a great deal of variability and some uncertainty in the modelling for precipitation patterns over the whole Basin, several trends are likely to emerge as a result of increasing temperatures, including a

¹⁹ Fikret Berkes, Johan Colding, ad Carl Folke, (2000), 'Rediscovery of Traditional Ecological Knowledge as Adaptive Management', *Ecological Applications*, 10 (5): 1251-1262.

²⁰ Erin L. Bohensky, James R. A. Butler and Jocelyn Davies, (2013), 'Integrating Indigenous Ecological Knowledge and Science in Natural Resource Management: Perspectives from Australia', *Ecology and Society*, 18 (3): 1-20.

²¹ Jessica Weir, (2009), *Murray River Country: An Ecological Dialogue with Traditional Owners* (Canberra, ACT: Aboriginal Studies Press); Sue Jackson and Bradley Moggridge, (2019), 'Indigenous Water Management', *Australasian Journal of Environmental Management*, 26 (3): 193-196.



decline in rainfall at the Basin-scale, and less water in the Southern Basin.²² Likewise it is expected that the intensity of extreme rainfall, and the frequency and duration of drought will increase.²³

These changes in the hydrology of the Basin system will increase the pressures and risks for Traditional Owners rights to water, and, as the MDBA notes, will likely mean ‘that the management, sharing and delivery of the Basin water resources will become significantly more complex, and contested’.²⁴

It is imperative that Traditional Owners are participants in the planning and implementation of climate mitigation and adaptation policies, that there is a respectful integration of Traditional Ecological Knowledge in planning and management in the context of climate change, and that the impacts of these measures on Traditional Owners rights to water are identified and addressed in the five yearly evaluations and the Basin Plan Review in 2026. We recommend, however, that measures to mitigate the risks from climate change are designed and implemented well before the 2026 Review.

Recommendation

12. Respectful integration of Traditional Ecological Knowledge into water planning, management and decision making within the context of climate change and its impacts in the Murray Darling Basin.
13. Traditional Owners lead the research and design and implementation of climate change mitigation and adaptation policies.

Yours sincerely

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²² Murray Darling Basin Authority, (2019), *Climate Change and the Murray Darling Basin Plan*, p. 8.

²³ Ibid. p. 9.

²⁴ Ibid. p. 10.