

Office of the Chief Executive

Submission to the Productivity Commission Draft Report on National Water Reform

Thank you for the opportunity to provide a submission in response to the draft report of the *Inquiry into progress towards achieving the objectives and outcomes of the National Water Initiative*.

Please find the MDBA's submission attached highlighting the following areas of interest:

- Aboriginal involvement in water resource management
- Water market and trade
- Environmental management

The MDBA would be pleased to provide further assistance should the Commissioners wish to discuss any aspect of the submission in more detail.

Furthermore, given the recent focus on metering and compliance in the Murray Darling Basin, and its important role in maintaining the integrity of the water entitlement system, I think there is an opportunity to expand the discussion on metering and compliance that is currently in the draft report. In particular, the interim report of the first review into certain aspects of water management and compliance has already been released by the NSW Government. This work was completed by Ken Mathews, and includes some important findings and clear recommendations that could be more broadly applicable elsewhere in Australia. The MDBA is also conducting an independent review of the compliance arrangements across the Murray-Darling Basin. If this is an area that requires further work ahead of the finalisation of the report, then I would welcome an opportunity to discuss these matters with the Commissioners.

If you wish to seek clarification of any of the issues raised in our submission, or would like to meet to discuss metering, compliance or other issues, then please contact Mr Colin Mues, who can be contacted

Yours sincerely,

Phillip Glyde
Chief Executive

23 October 2017

Aboriginal Involvement in Water Resource Management

Framing our response

Our submission makes some general comments about the report, which are followed by specific suggestions with regard to selected draft recommendations. Our selection of recommendations focuses on those that have either stated or unstated relevance to the MDBA's obligations to Traditional Owners' interests in water management in the Murray-Darling Basin. These obligations are identified in several sections of the Basin Plan:

- Chapter 4: Risks
- Chapter 5: Management objectives
- Chapter 8: Environmental watering plan
- Chapter 10: Indigenous values and uses
- Chapter 13: Basin Plan monitoring and evaluation

The Murray-Darling Basin Authority (MDBA) meets these obligations in several ways including reviewing Water Resource Plans, enabling Aboriginal representation on several advisory groups, and reflecting consideration of Aboriginal uses and values for water across different agency functions.

Our Aboriginal policy position is articulated through our Aboriginal Partnerships Action Plan, which is a cross-cultural capacity building framework, endorsed by the Authority. It is delivered through a funded partnership with the two Traditional Owner governance groups, together representing 47 Nations whose Country is in the Basin: the Murray Lower Darling Rivers Indigenous Nations, and the Northern Basin Aboriginal Nations. Both these organisations have adopted the Echuca Declaration (2009) as their position statement regarding their rights to water and cultural flows.

We recognise that the Murray-Darling Basin Plan is an element of the National Water Initiative's scope of considered works, and we have no concerns with the Draft Report's representation of the current state of progress with Aboriginal interests in water. Not surprisingly, our responses are in alignment with the Basin Plan's obligations to Aboriginal peoples as further reflected in the National Water Initiative. Our responses are limited to our knowledge of Traditional Owners' water interests within the Basin, as expressed by them, and as validated in current referenced scholarship.

General comments

The MDBA commends the Productivity Commission for its timely, informed and needed direction with regard to Aboriginal interests in water. In consideration of Aboriginal peoples' socioeconomic circumstances in the Basin, enabling water policy to afford economic benefits for Aboriginal peoples is a timely and much needed reform. When delivered in the context of also achieving Aboriginal cultural and environmental outcomes from water management, as the Draft Report describes, such reform is also informed by Aboriginal sociocultural values.

It is refreshing to see a seamless integration of traditional, customary and also contemporary Aboriginal interests in water policy in the Draft Report. For example, reporting on current State and Territory progress or otherwise, in approaches to including Aboriginal peoples' interests and active participation in water management, and acknowledging that standard consultation processes are inadequate for Aboriginal populations are also true to our experience of these matters.

We note the Commission's ambivalence with regard to native title and its role in enabling Aboriginal rights to water being accommodated in water planning. In response to the

invitation to contribute more information about this matter (p. 314-5) we confirm that native title does not inhibit access to water and water markets, as it is a platform on which to negotiate these rights. However, with the exception of one case in northern Australia, no government has recognised these rights in native title settlements as they are generally not seen as "traditional". We provide a current reference to this ongoing issue which builds on your cited Tan and Jackson (2013) paper¹.

The Draft Report claims that most governments have made arrangements for Aboriginal participation in water planning (p.11). We agree that with regard to the preparation of water resource plans, Queensland, Victoria, ACT and South Australia have indeed made significant progress in this area. However this has not come about without the MDBA's insistence on Chapter 10, Part 14 of the Basin Plan being adhered to at the same time as all other aspects of water planning are completed. In other words, it is early days and no complacency can be afforded if Aboriginal participation in water planning is to be assured.

We commend the Draft Report's commentary regarding the need for training, business support and community direction in the instance of managing increasing amounts of environmental water, particularly in the context of Aboriginal communities (p.15). We encourage any training in business to be cognisant of the specific nature of Indigenous business² which if not appreciated may result in limited or even harmful outcomes from investment in such a development.

There is discussion about population growth, climate change and increased pressures on water uses in Australia (p.36). The Murray-Darling Basin is the home ground for about 18% of Australia's Aboriginal population (ABS, 2011). At a national scale, Aboriginal people own about 33% of land and waters through Native Title, Land Rights and other land use agreements. In the Basin, this share is less than 1% of both land and water. This is largely due to the early occupation of lands by farming interests such that 84% of the Basin is now used for primary production³. Consistent with the Productivity Commission's findings we, through analysis of ABS census figures, are also seeing Aboriginal populations in rural communities increasing. The upshot of this situation is that the relative importance of this stakeholder group, and the associated demand for Aboriginal water rights to be recognised in water management in the Basin is likely to strengthen over time, and the negative impacts of climate change on vulnerable populations, including some Aboriginal communities, is also likely to be of increasing significance⁴.

For the past five years, the MDBA has been supporting the National Cultural Flows research project. While the results are entirely owned by the North Australian Indigenous Land and Sea Management Alliance, MLDRIN and NBAN, the research is providing findings that identify how much water is needed to protect and enhance cultural values and uses, underpinning self-determination as defined by each Nation group. The research takes into account climate variability and local ecosystem characteristics to promote the concept of "Aboriginal water management", including processes that Nations can use to negotiate water ownership and management structures and procedures to enable cultural flows. Currently the research is exploring institutional mechanisms to enable cultural flows to become a reality.

¹ Robison, J. A., Cosens, B.A., Jackson, S., Leonard, K. & McCool, D. (2017) Indigenous Water Justice (August 1, 2017). Available at SSRN: <https://ssrn.com/abstract=3013470>

² Foley, D. (2006) indigenous Australian Entrepreneurs: not all community organisations, not all in the outback. Discussion paper no 279/2006. CAEPR.

³ Arthur, W.S. (2012) The Murray-Darling Basin Regional and Basin plans: Indigenous water and land data. Murray-Darling Basin Authority, Commonwealth of Australia.

⁴ Altman, J.C. & Jordan, K. (2008) Impact of climate change on Indigenous Australians: Submission to the Garnaut Climate Change Review. CAEPR Topical Issue # 3/2008.

The Draft Report notes that environmental water has economic benefits for Aboriginal people (p.94). The MDBA has adapted the capital assets framework⁵ to research and report on the multiple capital assets of Aboriginal populations that can be improved by environmental watering. This approach is a holistic view of water management, consistent with the Productivity Commission's thinking, it shows that water reform can produce environmental benefits which in turn strengthen social, human, financial, physical and cultural capital assets for distinctive Aboriginal communities and their Nations⁶.

The Draft Report (p.71) notes that the National Water Initiative recognises that Aboriginal people need preferential water access to support their economic development. It also states that where State and Territory Governments provide access to water for Indigenous economic development, they should ensure adequate supporting arrangements (such as training and business development) are in place to enable Indigenous communities to maximise the value of the resource, involve Indigenous communities in program design, and ensure future governance arrangements are specified and implemented. We strongly support these suggestions and would also suggest that in line with this direction there is a strong case for strategies to be developed to accelerate Aboriginal people's involvement in the water industry, such as the financial resources to acquire water, or for infrastructure to use water for their purposes. We also suggest that when improving arrangements to facilitate open and efficient water markets for non-indigenous water uses, consideration is also given to what assistance might need to be provided to Aboriginal people and their organisations to facilitate and optimise their participation in water markets. For example, we are of the understanding that some Basin Aboriginal organisations participate in water trading as a means of funding their costs including employing Aboriginal staff, and also watering culturally significant sites. How can lessons learned by these organisations be shared for the benefit of other Aboriginal organisations?

At the conclusion of this submission we also provide some details about Aboriginal sociocultural economics in the Basin, which are distinctive from the more remote and less developed parts of Australia, and crucially important to understand for its distinctiveness from say, urban Aboriginal life on the one hand, or remote homeland Aboriginal life on the other. It is important that such regional differences are accounted for in water reform at a regional scale, so that investment can yield sustainable outcomes and from a Basin Aboriginal perspective ensure that Aboriginal interests are not overlooked as they often have been in the past. As Traditional Owners in the Murray-Darling Basin often say, they are forgotten because they live 'south of the tropic of Aboriginality'.

Responses to specific recommendations

Recommendation 3.1 Governments should ensure that entitlement and planning reforms are maintained and improved...

(d) State and Territory Governments should ensure that, as water plans reach the end of their planning cycle, suitable review processes are undertaken that allow optimisation of water use and system operation across all users, include explicit consideration of Indigenous cultural values and involve adequate community and stakeholder engagement.

Summary response: Agree

⁵ Sayer, J., Campbell, B., Petheram, L., Aldrich, M., Perez, M.R., Endamana, D., Dongmo, Z-L., Defo, L., Mariki, S., Doggart, N. & Burgess, N. (2006) Assessing environment and development outcomes in conservation landscapes. Biodiversity and Conservation, August 2007.

⁶ Murray-Darling Basin Authority (2016) Our water, our life: An Aboriginal study in the northern basin. Commonwealth of Australia.

- The terms “suitable review”, “consideration” and “adequate community and stakeholder engagement” are open to interpretation without a standard to apply. Additionally, Aboriginal Nations do not see themselves as either “community” or “stakeholders”, but as owners of Country.
- We suggest Chapter 10 Part 14 of the Basin Plan has established a viable standard with regard to consulting Aboriginal populations and producing significant improvements in how Aboriginal interests are included in water resource plans. This approach could be considered for application more widely.
- In light of their historic exclusion from water resource planning we suggest that the National Water Initiative makes specific recommendations for: a) Aboriginal populations’ participation in review of water resource plans as they end their planning cycles, b) the requirement to identify Aboriginal objectives and outcomes from water resource planning, and c) involve Aboriginal Nations in co-design and co-delivery of Aboriginal engagement in water resource planning.

Responses to specific recommendations

Recommendation 6.3 State and Territory Governments should:

(b) require that decision-making processes are consistent with good planning principles, in particular that they consider all options fully and transparently, including both centralised and decentralised approaches (including indirect and direct potable reuse, and reuse of stormwater), and are adaptive in response to new information.

Summary response: Agree

- In adopting a more inclusive and fully transparent process the National Water Initiative needs to ensure that the process is inclusive of, and visible and accessible to Aboriginal people.
- This is in recognition that past methods of involving Aboriginal people and disseminating information between non-indigenous and Aboriginal audiences have been lacking in both reaching Aboriginal audiences in culturally informed ways and including Aboriginal perspectives in adaptive management approaches that need to meet a diversity of socioeconomic and environmental needs.

Responses to specific recommendations

Recommendation 8.1 Australian, State and Territory Governments should:

- a. identify the key knowledge and capacity building priorities needed to support the ongoing implementation of the National Water Initiative (including the revisions and enhancements recommended in this report)*
- b. develop mechanisms through which the jurisdictions can work cooperatively and share knowledge to build overall capability and capacity.*

Summary response: Agree

- We strongly agree with this recommendation and suggest that either the recommendation or the accompanying text can be strengthened through recognition that resources may need to be provided to ensure Aboriginal knowledge is recognised for its scientific value.

- It is our view that a range of benefits can also flow from employing Traditional Owners as knowledge brokers. This can protect access to and use of their cultural knowledge so that its use benefits their own people while also informing non-indigenous knowledge and capacity building mechanisms.

Responses to specific recommendations

Recommendation 8.2 Where Governments consider there are significant and rapid adjustment issues affecting communities as a consequence of water reform, the response should:

- a. avoid industry assistance and subsidies*
- b. consider all the factors impacting on the community (not just water reform)*
- c. target investment to developing the capacity of the community to deal with the impacts of structural adjustment*
- d. be subject to monitoring and publicly reported evaluation of outcomes.*

Australian, State and Territory Governments should revise relevant provisions in the National Water Initiative to align with recommendations 8.2 (a) to 8.2 (d).

Summary response: Agree

- Rapid changes to water management have impacts on Aboriginal populations that are both similar to non-indigenous populations and also very different to them. Consequently, it is important that any response to significant and rapid adjustment issues is multi-faceted to take into account the different effects on different parts of the community, and that the most effective form of support for Aboriginal populations is likely to be different to non-indigenous populations.
- The development of strategies for the investment in community capacity to deal with the impacts of structural adjustment should take into account that Aboriginal populations are growing and have the potential to be a considerable contributor (rather than cost) to regional economies. Targeted investment can help build Aboriginal capability to participate in regional economies as both owners of regional businesses as well as work forces that go beyond manual labour and include white collar roles.

Responses to specific recommendations

Recommendation 9.2: In developing the renewed National Water Initiative, Australian, State and Territory Governments should:

- a. consult with relevant stakeholders, including by establishing an Indigenous working group to provide advice on the development of relevant provisions*
- b. ensure that progress with implementing a renewed National Water Initiative continues to be independently monitored and reported on every three years*

Summary response: Agree

- We strongly agree with the formation of an Aboriginal working group to provide advice on the development of relevant provisions.

- For it to be fully effective, it will be important that it is adequately resourced. It will also need to be recognised as independent to ensure that it can be a trusted source of communication with Aboriginal grass roots networks, and build trust in the advisory group's role and confidence in the outcomes associated with its advice.
- We suggest that implementation of the National Water Initiative involves consideration of existing relevant committees to do this work, rather than creating a new group with the need to build Aboriginal governance mechanisms to carry the work out. The MDBA has well established arrangements with the Murray Lower Darling Rivers Indigenous Nations and Northern Basin Aboriginal Nations which could be built upon for these purposes.

Aboriginal sociocultural economic interests related to water in the Basin

As mentioned in our opening statements, and in recognition of the National Water Initiative's proposed development of economic outcomes from water reform for Aboriginal populations, we conclude our submission with some information about Traditional Owners' statements about the subject:

"So when I say that we see the river and the water as being more valuable than mining, what I am saying is that the river economy (agriculture, water trading, recreation and tourism, essential services) keeps the money with us, and by keeping our people well and happy, we have healthier communities which also keeps the money with us." William Riley, Maljangapa Nation

The MDBA carried out extensive consultation with Traditional Owners in 2012 regarding the value of the waterways to them. As a result of this process, 480 submissions were received resulting in over 2000 pages of material. One theme of the responses received was a vision to increase the level of water dependent economic activity and development.

Use of Country that is be understood to be in line with cultural values and uses make up the bulk of thinking about commercial uses of land. Ideas such as establishing and maintaining natural reserves, providing labour for feral animal management and eradication programs (e.g. carp), the use of feral plant and animal material for fertilizer production, developing and maintaining wildlife corridors, riparian zone rehabilitation and management, and removing rubbish from waterways to improve public safety for their use were discussed by the submission makers.

Tourism, including ecotourism was also discussed. Camping, fishing, bush walking, bird watching, canoeing, artworks including sculpting and photography as elements of tourism, and owning and managing caravan parks near rivers made up aspects of this industry that interest Aboriginal people. Tourism depends on healthy waterways, as commentators clearly stated that when the waterways have low flows and unhealthy water people are not drawn to them for their rest and recreation. As noted in the quotation above, when the waterways are healthy, money comes into the communities, and local peoples' money stays in the communities.

Involving young people in programmes on Country was also an important use of Country. These programmes are related to cultural education, scientific education, recreation, skill development for employment and social rehabilitation services.

Having a greater presence in farming in the Basin was also of interest. This includes traditional stock farming, the production of food such as fruit, vegetables and stock foods such as sorghum. Redgum harvesting is also of interest. Additionally participation in carbon farming was also discussed.

Creating businesses from bush tucker and being employed in monitoring and compliance of water take were raised as additional opportunities for Aboriginal people from the commercial use of water.

At a more strategic level, there was interest in Aboriginal people owning water and land in a form that has monetary value, affording licensing and royalty opportunities. Participation in farming and owning water were seen as increasing the possibility of having an influential voice in decision-making regarding land and water.

Overall Aboriginal participation in business and government activities related to waterways, which generate income without compromising identity or the health of the waterways, is seen as a positive approach to improving the condition of water and Country as well as the wellbeing of Aboriginal people and their communities.

Where the National Water Initiative seeks correlations between environmental and cultural outcomes, Aboriginal people also seek correlations between, cultural, environmental and economic outcomes.

Water Markets and Trade

- The MDBA regulates the Basin Plan Water Trading Rules, through powers under the *Water Act 2007*.
- The MDBA is also responsible for sharing the waters of the River Murray system between the states, as part of the *Murray–Darling Basin Agreement* (the Agreement). This includes making adjustments to state resources when water is traded between New South Wales, Victoria and South Australia, and coordinating interstate water trade on behalf of the states.
- The MDBA is working with Basin states on a significant project to examine ways to improve interstate water trade in the southern-connected Basin, which has the potential to improve the transparency and effectiveness of trade restrictions. Further information on the project is below:
 - Since the commencement of interstate water trade in the mid 2000's, we have seen significant growth in interstate trade, as well as changes to trading patterns and water use.
 - However the trade adjustment processes, which support the current trade rules in the southern Murray-Darling Basin and adjusts state resources when water is traded between states, have been relatively unchanged over that time.
 - The MDBA, in conjunction with Basin states, is now taking the opportunity to review these arrangements as part of good business practice and continual improvement. This review is called the trade adjustments project.
 - The project follows a review of Schedule D of the Murray-Darling Basin Agreement (which sets out the arrangements for interstate trade) which identified some possible areas of improvement to trade adjustment processes.
 - The trade adjustment project will explore whether there are opportunities to improve how trade adjustments are made. In doing so, it will ensure the trade rules continue to support the efficient functioning and ongoing maturing of water markets in the River Murray system.
 - The MDBA is also working with states on improving understanding of capacity and shortfall risks in the River Murray system and findings from this work may inform parts of the trade adjustments project.
 - An update on the trade adjustments project will be provided to the Basin Officials Committee in mid - 2018.

- The MDBA also considers there is potential to further improve the transparency and efficiency of trade restrictions throughout the whole Murray-Darling Basin.
- There has been significant improvement the quality and accessibility of market information since the commencement of the Basin Plan water trading rules. Although improvements can still be made in relation to the transparency of trade restrictions such as the Barmah Choke it should be acknowledged that there is a trade-off between improving the reporting of live trade limits and the ease of access to such opportunities when it is available. This is a complex issue which governments are considering, together with the MDBA, given its role in publishing the live Barmah Choke balance.
- While some trade restrictions are necessary because of the physical constraints of river systems and the deliverability of water, the MDBA considers that not all restrictions are necessary and some create a significant risk to the efficient operation of water markets in the Basin (as outlined in our strategic priorities paper <https://www.mdba.gov.au/publications/policies-guidelines/strategic-priorities-basin-plan-water-trading-rules>)
- The MDBA notes that States removed a number of significant administrative barriers to entitlement trade prior to the commencement of the Basin Plan. However, there has been limited progress with removing unnecessary restrictions on allocation trade.
- It is still early days in the implementation of the Basin Plan, so the full effect of implementing the Basin Plan water trading rules has not yet been realised. Some factors have affected the effective implementation of the Basin Plan water trading rules. For example, state trading rules in interim and transitional plans are not required to be consistent with the Basin Plan water trading rules. The MDBA has offered to provide Basin states advice on such matters as they review their own water planning arrangements in parallel with preparing their Water Resource Plans for accreditation, with states needing to address a number of inconsistent trade restrictions before 2019.

Responses to specific recommendations

Draft recommendation 4.1

Australian, State and Territory Governments should maintain trade reforms to date and improve arrangements to facilitate open and efficient water markets.

Priorities are:

- a. State and Territory Governments should remove those residual trading rules, policies (whether or not explicitly stated) and other barriers that prevent water being traded, or otherwise transferred, between the irrigation and urban sectors*
- b. the Australian Government should commission and independent review of the effectiveness and efficiency of service standards for trade approvals. The review should consider whether the standards should require shorter approval times*
- c. the role of Governments in providing water market information should be focussed on ensuring the quality and accessibility of basic trading data. In fulfilling this role, State and Territory Governments should improve the quality and accessibility of trade data in water registers.*

Australian, State and Territory Governments should revise relevant positions in the National Water Initiative to align with recommendation 4.1 (a).

Summary response: Agree

- The MDBA supports recommendation 4.1, especially section (c). The MDBA is concerned with accurate price reporting. As recognised in the draft report there are a number of areas that can be improved in relation to accurate price reporting. The MDBA is undertaking work to encourage accurate price reporting to approval authorities.
- Under the Basin Plan, the MDBA publishes a large amount of information to support market participants trading decisions. One area the MDBA is specifically concerned with is the clear, consistent reporting of entitlement information. Currently, Basin States provide the MDBA with information about their 70 most traded water access entitlements, which the MDBA publishes. The aim of this reporting is to provide a central point to help people make decisions about the mix of entitlements available to them and make decisions about the ones best suited to their business. This information is important in markets like the southern connected Basin where there are a number of entitlement products available to users.
- The MDBA is working to improve the comparability and usefulness of this information. Improved information about the carryover, reliability and other aspects of states water access entitlements is important in areas where a number of different entitlement products are available.

Environmental Management

Responses to specific recommendations

Draft Recommendation 5.1

Australian, State and Territory Governments should ensure that their policy frameworks provide for the efficient and effective use of environmental water to maximise environmental outcomes, and where possible, provide additional community outcomes relating to water quality, Indigenous values, recreation and economic benefits.

Australian, State and Territory Governments should enhance the National Water Initiative to align with this recommendation.

Summary response: Agree

- The Basin Plan and its arrangements for efficient and effective environmental water management are working towards achievement of a healthy working Basin that meets the needs of communities, industry and the environment.
- The Basin Plan's key outcome is to achieve a healthy and working Murray-Darling Basin with communities with sufficient and reliable water supplies that are fit for purpose, productive and resilient water-dependent industries, and healthy and resilient ecosystems.
- Accordingly, many of the key environmental water management instruments of the Basin Plan – the Environmental Watering Plan, the Basin-wide Environmental Watering Strategy, Regional Longterm Watering Plans and the Basin and regional Annual Environmental Watering Priorities – all include requirements to optimise or have regard to social, environmental, economic and cultural outcomes.
- Furthermore the Basin Plan and its key instruments promote effective and efficient environmental water planning and delivery through the implementation of appropriate information sharing and coordination arrangements between the MDBA, state resource managers, environmental water managers and river operators.

Responses to specific recommendations

Draft recommendation 5.2

State and Territory Governments should ensure the management of environmental flows is integrated with complementary waterway management at the local level.

To achieve this:

- a. State and Territory Governments should ensure that consistent management objectives for rivers, wetlands and floodplains govern the use of environmental water and complimentary waterway management activities*
- b. Where possible, one planning process should be used to set objectives for both activities, but if not, State and Territory Governments should ensure planning at the local level aligned and coordinated. Planning processes should also provide explicitly for other public benefit outcomes where these are compatible with environmental outcomes.*

Australian, State and Territory Governments should enhance the National Water Initiative to align with recommendations 5.2 (a) and 5.2 (b).

Summary response: Agree

- The management of environmental flows should be integrated with complementary waterway management at the local level.
- Complementary waterway management activities will assist in achieving the Basin Plan environmental objectives.
- Monitoring of environmental water has demonstrated that where complementary activities have been implemented greater ecological responses to environmental water have been seen. For example: improved vegetation and native fish outcomes with carp control in the Gunbower Forest.
- Links between environmental flows and complementary waterway management do exist, but MDBA agrees that there is always room for improvement.

Responses to specific recommendations

Draft recommendation 5.3

Where Governments hold significant environmental water holdings, they should ensure that decisions on the use of the holdings are made by independent bodies at arm's length from government.

The Australian and New South Wales Governments should review current governance arrangements for held environmental water to ensure holdings are managed:

- a. Independently of government departments and political direction*
- b. by statutory office holders with an appropriate range of expertise.*

Australian, State and Territory Governments should enhance the National Water Initiative to align with this recommendation.

Summary response: Agree

- Environmental water should be managed independently of government or political influence. Steps to ensure this should continue to be encouraged.
- MDBA's management experience of delivery of jointly held environmental water is that it has not been subject to undue government department, political or stakeholder influence.

- Current water holder models of either being an independent agency or a statutory position within a government department both appear to be effective governance models. Clear accountability and independent oversight are the critical factors in terms of ensuring freedom from undue government or political influence.
- However a corporatized governance model would not work. Environmental water is primarily managed as a public asset for public good. It would be difficult to derive a sustainable revenue and income without compromising the environmental objectives and outcomes for which the water is primarily intended to achieve.

Responses to specific recommendations

Draft recommendation 5.4

Australian, State and Territory Governments should ensure there are clear roles and responsibilities for managing environmental water in shared resources, with no duplication.

Consistent with this principle, The Living Murray should be disbanded as there is no clear rationale for its continued existence in the context of the Murray-Darling Basin Plan. Each Basin jurisdiction should manage its share of former Living Murray entitlements as part of its broader portfolio of held environmental water. The Murray-Darling Basin Authority should complete the divestment of its holdings.

Summary: Agree in part

- The MDBA and the jurisdictions are working hard to achieve efficient and effective environmental water management with clear roles and responsibilities, with no gaps or duplication.
- As part of this, the Living Murray (TLM) Initiative and its governance arrangements, environmental water portfolio, icon site management and monitoring and Indigenous Partnerships programs, have been progressively transitioning under the Basin Plan.
- The complex nature of TLM initiative, the Basin Plan rollout, the SDL Adjustment and the River Murray system mean that the transition is being undertaken carefully and appropriately. While MDBA is divesting the TLM entitlements it holds back to the State of origin, disbanding the portfolio in the manner stated in this recommendation is not considered a viable option at this point in time.
- As a result, further work is expected to identify the long-term home of the various components of TLM initiative.

More detailed response:

- The overarching principle above is strongly supported.
- However, the subsidiary recommendation requires further clarification of its intent and scope before it can be supported. The following points however describe how TLM is evolving and integrating with the Basin Plan.
- In 2014, Joint Governments considered disbanding Living Murray Initiative, its relevant intergovernmental agreements and all associated functions – with entitlements be transferred back to the state of origin or under another option, to the CEWH. However, disbanding TLM in these ways was considered problematic for a number of reasons, including:
 - Jurisdictions receiving the disbanded entitlements would not be able to manage the associated asset liability and entitlement costs on their own,
 - Loss of control of portfolio decision making by some jurisdictions, and
 - Lack of joint decision making might impact on volume of water allocated to TLM works and hence the potential return on the SDL adjustment.

- Instead, Ministerial Council agreed that the Living Murray Initiative be streamlined and transitioned into the Basin Plan framework. Since then, pre-Basin Plan TLM governance frameworks were disbanded – namely The Living Murray Committee and the Environmental Watering Group.
- The Southern Connected Basin Environmental Watering Committee (SCBEWC), was established in 2014 as a key forum for coordination between the respective portfolios, held by individual jurisdictions, in order to optimise the environmental outcomes achieved in the Southern Basin. In addition, SCBEWC was given a decision making responsibilities for a number of jointly-held water portfolios – not just TLM – and these require consensus-based decision making.
- Other elements of TLM such as the icon site monitoring programs currently support the Basin Plan by providing the only data on the condition of the icon sites and information to underpin a sound understanding of how the environmental watering works can be operated. Notwithstanding this, further work is to be undertaken to improve alignment of TLM monitoring activities with other monitoring activities under the Basin Plan.
- Continued joint venture funding of these activities also ensures there will be no additional or unequal cost burden to any individual jurisdiction.
- Further work is underway to identify and implement opportunities to streamline environmental water management in the southern Basin, consistent with the Basin Plan. These activities are focusing on all environmental water management, not just on selected programs.

Responses to specific recommendations

Draft recommendation 5.5

Where capable partners are available, Australian, State and Territory Governments should devolve the use of held environmental water to the lowest practical level, consistent with the principle of subsidiarity.

Australian, State and Territory Governments should enhance the National Water Initiative to align with this recommendation.

Summary response: Agree in part

- Limited volumes of environmental water need to be well coordinated and return flows delivered from one catchment to the next to ensure we achieve all of the necessary environmental outcomes sought by the Basin Plan.
- This requires a system-level scale of management involving efficient portfolio management, decision making and coordination processes across environmental water managers and river operators that effectively meet the collective needs of a series of sub catchments and their intertwined ecosystems.
- A coordination mechanism at larger spatial scales (cross-jurisdiction) is therefore required in addition to local level action.
- MDBA agrees with capacity building and strengthening local community involvement, but accountability and efficiencies of scale are equally important considerations which can be achieved through central decision making agencies. Local community involvement would appropriately include Traditional Owners as they have distinctly different interests and values from other non-indigenous community members.

Responses to specific recommendations

Draft recommendation 5.6

Australian, State and Territory Governments should improve monitoring, evaluation, auditing and reporting to demonstrate the benefit of allocating water to the environment, build public trust in its management, keep managers accountable and make better use of environmental water over time.

Priorities are:

- a. Australian, State and Territory Governments should increase their focus on monitoring environmental and other public benefit outcomes – not just flow delivery – where additional effort would be commensurate with the risk to, and value of, those outcomes*
- b. monitoring and evaluation should involve collaborative and complementary partnerships, consistent methods that enable to synthesis of outcomes across different temporal and spatial scales, and long-term investment. In the Murray-Darling Basin, governments should develop a strategy to coordinate monitoring and evaluation of the outcomes of environmental flows, both planned and held*
- c. all managers of environmental flows should publicly report on whether outcomes have been achieved or not, and the reasons why*
- d. Australian, State and Territory Governments should establish arrangements for independent auditing of environmental flow outcomes to support transparency*
- e. managers of held environmental water should use the results of monitoring, evaluation and research to improve water use as part of an adaptive management cycle. To achieve this, managers should clearly allocate responsibility and provide adequate resourcing for adaptive management.*

Australian, State and Territory Governments should enhance the national Water Initiative to align with recommendation 5.6 (e).

Summary response: Agree

- Joint government funding of monitoring already focus' on more than flow and/or delivery, by reporting environmental outcomes, and by using results to improve management practice in real time. An example at the site scale would be the monitoring of fish movement at Gunbower, which was used to allow large numbers of native fish move to the River Murray, but trap large numbers of carp in a drying wetland. An example at the system scale was the TLM monitoring discovery of the importance of the lower Darling for golden perch breeding and populations across the southern connected basin.
- It would be useful to more formally measure the economic and social benefits of watering.
- MDBA is already involved in collaborative monitoring and partnerships (e.g. EWKR) and is always looking to strengthen and align these relationships.
- Consistency of methods is useful, and MDBA has a track record here (e.g. SRA had basin-wide protocols and so does MDBA fish survey). More work can be done in this area. However, differences between sites need to be taken into account.
- Long term investment in monitoring is needed – the value of long term data sets has been illustrated by joint venture monitoring which has tracked icon sites from drought , through improving conditions and use of environmental works to show improvements in ecological conditions as sites receive water.
- Governments should coordinate monitoring efforts in the MDB. This happens already to some degree through existing joint government forums, but could

always be improved. For example CEWH does not conduct monitoring in Icon Sites when they are aware that joint governments fund monitoring in these areas.

- The outcomes of e-watering should be publicly reported. Joint Governments and MDBA have done this for some years by publishing monitoring reports on the MDBA website, including the TLM monitoring outcomes/synthesis report. We are currently looking at how we might improve this (possibly by introducing “report cards” which would track progress over time.
- Monitoring results should be used in the adaptive management process to improve outcomes in future waterings. For example, this is an established practice at (TLM) icon sites, where site managers use the results of monitoring as inputs to annual planning.
- Any evaluation and monitoring of water use over time could also explicitly develop evaluation frameworks that reflect Aboriginal values and criteria for success.
- Evaluation and monitoring of water use could seek the views of Aboriginal people who have culturally recognised right and authority to speak for the Country so that the results have legitimacy and viability within Aboriginal as well as non-indigenous audiences. This should be done using culturally informed methods of engagement of Aboriginal people throughout the design, research reporting and dissemination stages. It has been our experience that there can also be opportunities to directly employ Aboriginal people to assist with the conduct of these activities.
- The ancillary benefit of directly involving Aboriginal people in water use evaluation is that this can help develop a deeper understanding of water management and uses. This would have the further benefit of helping prepare Aboriginal people for other roles in water management.