

Re: NSWALC Submission – Murray-Darling Basin Plan: Implementation Review 2023 - Interim Report

Thank you for the opportunity to comment on the Implementation Review 2023 of the Murray-Darling Basin Plan - Interim Report (the **Interim Report**). The NSW Aboriginal Land Council (**NSWALC**) is the largest member-based Aboriginal organisation in Australia, with a network of 121 Local Aboriginal Land Councils (**LALCs**) and over 29,000 members. We are the peak-elected Aboriginal community-controlled representative body for the 280,000 Aboriginal people in NSW, Australia's largest Aboriginal population.

NSWALC strongly supports Aboriginal ownership of, and access to, water for cultural and economic purposes. We seek strengthened commitments to recognise and provide for Aboriginal rights and interests in water sharing plans, water resource plans (**WRPs**), environmental watering plans and related instruments. This includes increased water access entitlements and more secure and reliable water allocations for Aboriginal people and Aboriginal Land Councils.

NSWALC welcomes the Productivity Commission's (the **Commission**) key point: *"Recognising First Nations values and delivering on First Nations interests requires Basin governments to improve how they partner and share decision-making with Aboriginal and Torres Strait Islander people. Basin governments should publicly report on how water resource plans deliver on First Nations objectives and outcomes, and strengthen the capacity of Aboriginal and Torres Strait Islander people to engage in Basin Plan activities"*. The Commission's Final Report, the upcoming Basin Plan Review and the potential amendments to the "Rivers Bill" are prime opportunities to address unfinished water business for Aboriginal communities of the Basin. It is also an opportunity for the Federal Government to honour its commitments under the Closing the Gap National Agreement, specifically Priority Reform One – working in genuine partnership with Aboriginal and Torres Strait Islander People and Socio-Economic Target 15 – Aboriginal and Torres Strait Islander people maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters.

Comments on interim recommendations

NSWALC supports, in principle, many recommendations put forward by the Productivity Commission in the Interim Report, including:

- Calls to 'reset the balance' and improve transparency, assurance and reporting around supply, constraints-easing and northern Basin toolkit measures
- For the Federal Government to renew and be transparent about its strategy for water recovery. In particular, NSWALC requests the government outlines clearly:
 - How it will assess the 'socio-economic impact' on Aboriginal communities in affected irrigation areas
 - How community 'community adjustment assistance programs' will be implemented and the measures the government will take to ensure specific support for already marginalised Aboriginal communities in the Basin

- How it will address concerns and mitigate negative consequences of voluntary buybacks on the water market in relation to the Aboriginal Water Entitlement Program (**AWEP**) funding and purchasing power
- Improving the effectiveness of the Basin-Wide Environmental Watering Strategy and delivering shared benefits from the use of ‘environmental water’. All governments and the Commonwealth Environmental Water Holder (**CEWH**) must prioritise partnerships with First Nations communities throughout the Basin to ensure environmental water programs deliver on cultural outcomes. Aboriginal participation and the incorporation of Traditional Ecological Knowledge (**TEK**) must be increased at all levels of water management planning across the entire Basin Area. Governments must address community concerns around the testing and monitoring of environmental water quality downstream; whether these flows are capable of restoring rivers and riparian environments and look to resourcing capacity building for First Nations involvement in further research, monitoring and compliance.
- While it is likely that the requirements for WRPs are ‘unnecessarily difficult’ to meet, we appreciate the Commission’s concerns that NSW is tracking well behind other states with less than half of their WRPs accredited to date. This has significantly impacted the implementation of the Basin Plan including SDL compliances and implications for water quality and critical human needs. There have, indeed, been no consequences for NSW’s non-compliance and inherent failures in this space and consultation of First Nations people has been minimal. NSWALC is aware that legal action has commenced in the Federal Court regarding the Fractured Rock WRP, with the Commonwealth, NSW and MDBA as respondents.¹
- We reiterate that Governments must go beyond reliance on ‘cultural flows’ as a means of increasing Aboriginal people’s access to and ownership of water and recognise that it is Aboriginal people’s inherent right as First Peoples to have water entitlements of a sufficient and adequate quality to enable cultural, social, environmental and economic outcomes as outlined in the Echuca Declaration. NSW DPE’s commencement of a scoping project called ‘Cultural Watering Plans’ excludes water for economic purposes and the poorly allocated ‘Aboriginal Cultural Water Access Licences’ preclude commercial activities and therefore are not in line with the Echuca Declaration.
- Any improvements to the Plan and WRP requirements and reporting must strengthen and embed genuine partnership and dialogue with First Nations in the Basin. As a member of the NSW Coalition of Aboriginal Peak Organisations (**CAPO**), NSWALC leads many Closing the Gap initiatives across the Priority Reforms and Target 15 – Lands and Waters. We fully support calls for Basin governments to:
 - *publish the input and advice received from Aboriginal and Torres Strait Islander people and organisations on draft water resource plans*
 - *publicly report on how the advice is considered, actioned and reflected in finalised water resource plans.*
- Decades of ‘well intended’ consultation have resulted in little positive change and holding government accountable to report on these activities and action feedback is vital moving forward. NSWALC agrees that the MDBA should improve accountability by developing monitoring and reporting frameworks around government engagement with First Nations of the Basin.
- NSWALC welcomes the Productivity Commission’s emphasis that all governments must underpin water-related policies, projects and procedures with the commitments outlined in the National Agreement on Closing the Gap. We fully support any improvement to the way governments work with Aboriginal communities, especially in NSW, and that genuine partnership, accountability and transparency are strengthened. The development of any new monitoring and reporting frameworks must be First Nations-led and contributors must be fully resourced for their time and input.

¹ [MLDRIN launches legal challenge over Water Resource Plan – Murray Darling River Indigenous Nations](#)

- Basin governments must go further than this by ensuring all water and related policies and projects are undertaken in a coordinated fashion with both the MDBA and the Commonwealth. Community is fatigued by ongoing consultation for myriad policies and programs that are uncoordinated, and duplicative and lead to little positive outcomes on the ground. Trust in the government has waned and attempts to engage the community often present themselves as bureaucratic box-ticking exercises. Communities and Aboriginal community-controlled organisations (**ACCOs**) with interests in waters need to be resourced appropriately so they can engage independent advice and capacity building to meaningfully participate in water policy and water market discussions.
- It is possible that there may be merit in *establishing a new Basin-wide body to represent Aboriginal and Torres Strait Islander people's water interest in Basin Plan decision-making*. However, NSWALC reiterates that:
 - Any approach to this must be underpinned by Aboriginal self-determination and be community-led. Relevant Local Aboriginal Land Councils and Basin Nations must be consulted on the establishment of any proposed governance structures. They must be involved in every stage of decision-making regarding this recommendation – including determining the structure and purpose of the new 'body', the scope and terms of reference, and the selection of representatives from across the Basin.
 - Consultation and engagement with Aboriginal peoples must provide adequate notice, incorporate the principles of 'free, prior and informed consent' (**FPIC**), and actively seek Aboriginal people's views. Initiatives to engage and partner with Aboriginal peoples in the management of land, waters and climate must not be undertaken in isolation or on a 'one off' basis.
 - A lack of genuine consultation and disregard for the principles of FPIC continues to perpetuate a history of marginalisation of Aboriginal people regarding water legislation and will result in further mistrust of the government. Ask community if and how they want to be consulted or represented and resource communities appropriately.
 - Existing consultations, committees and governance structures in NSW must be taken into account and duplication avoided where possible.
- It is vital that the Plan embed climate change research, science and targets moving forward. As we have discussed in previous submissions, Aboriginal people have been stewards of the Basin for millennia and it is imperative that their knowledge is incorporated along with western science. As always, the principles of free, prior and informed consent must be respected, consensual and upheld.

In light of the recently tabled *Water Amendment (Restoring our Rivers) Bill 2023*, we call on the Productivity Commission to consider our submission² and the recommendations of the *Inquiry into the Water Amendment (Restoring our Rivers) Bill 2023*³ in the Murray-Darling Basin Plan: Implementation Review 2023 - Final Report.

Overall, working to achieve Aboriginal outcomes must be a focus of all state and Commonwealth water initiatives. There are opportunities to improve the Plan and associated legislation to ensure stronger action and alignment by governments to deliver social, cultural and economic outcomes for Aboriginal people.

We look forward to working in genuine partnership with the NSW Government, the MDBA and the Commonwealth to further develop and implement actions to support the Plan in line with Aboriginal people's rights, interests and aspirations.

Should you require further information, please contact the NSWALC Strategy and Policy Unit

² NSWALC Submission No. 64 [Submissions – Parliament of Australia \(aph.gov.au\)](https://aph.gov.au/submissions)

³ [Water Amendment \(Restoring Our Rivers\) Bill 2023 \[Provisions\] \(aph.gov.au\)](https://aph.gov.au/bills/2023/water-amendment-restoring-our-rivers-bill-2023-provisions)

Sincerely,

Kate Aubrey Poiner

A/Executive Director Land, Legal and Strategy

24 November 2023

ALWAYS WAS. ALWAYS WILL BE.

alc.org.au