

Australian Government – Productivity Commission

Via online: [Productivity Commission](#)



New South Wales
Aboriginal Land Council
ABN: 82 726 507 500

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

Thank you for the opportunity to provide a submission for the Implementation Review 2023 of the Murray-Darling Basin Plan. 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 28,000 members. We are the peak-elected Aboriginal community-controlled representative body for the 280,000 Aboriginal people in NSW, Australia's largest Aboriginal population.

Our network of LALCs has a vital role in the management of the lands and waters across NSW, the largest jurisdiction within the Murray-Darling Basin (the **Basin**). Aboriginal peoples possess inherent and pre-eminent rights, values and interests in our lands and waters due to our status as Australia's First Peoples. We are not just another stakeholder and government must engage in meaningful consultation and partnership with us.

NSWALC strongly supports efforts to improve the health of waterways and Country in NSW. However, significant concerns have been raised by the Aboriginal Land Rights Network regarding the Murray-Darling Basin Plan (the **Plan**) and associated mechanisms and legislation. These concerns are centred on the failure of the Murray-Darling Basin Authority (**MDBA**) and governments to properly acknowledge and promote the role of Aboriginal people in the management of the Basin, the impacts that the lack of water rights has on Aboriginal culture and heritage, and scepticism of whether the methodology, and integrity, of the Plan is capable of protecting and preserving Basin Country and waterways in NSW.

Aboriginal people's worldviews and cultural obligations to care for Country do not generally separate land, water and other natural resources. The physical and spiritual health of Country, including water, reflects the spiritual and physical health of Aboriginal people. NSWALC, LALCs and the broader Aboriginal community have long called for improved land and water management practices, involvement of Aboriginal people in governance and decision-making, increased access to and ownership of lands and waters for Aboriginal people for cultural and economic purposes, and improved accountability, transparency, and compliance.

The Plan is significant and unique for governments, industry, Aboriginal peoples and the broader community. Unfortunately, the successful implementation of the Basin Plan has suffered greatly due to ineffective water policies, the commodification of water and a bias toward industry over the environment, and the disappointing inaction of successive governments at both state and federal levels.

This submission seeks to address the Commission's inquiry into the effectiveness of the implementation of the Basin Plan; in particular, *how well the plan is addressing the interest of Aboriginal people*.

In response to the Commission's previous 2018 Inquiry, the Commonwealth and joint Basin governments committed to ensuring that: *Aboriginal peoples of the Basin will be included and their voices heard in decision-making on Basin water resources and they will have access to water for cultural and economic purposes*.

Unfortunately, the NSW Government and the Commonwealth have not met this commitment.

Sincerely,

Yuseph Deen
Chief Executive Officer
NSW Aboriginal Land Council
Date: 31 July 2023

ALWAYS WAS. ALWAYS WILL BE.

alc.org.au

NSW Aboriginal Land Council Submission

Murray-Darling Basin Plan: Implementation Review 2023

Introduction

NSWALC is committed to pursuing cultural, social and economic independence for Aboriginal peoples. As a self-funded statutory corporation established under the *Aboriginal Land Rights Act 1983 (ALRA)*, NSWALC has a legislated objective to improve, protect and foster the best interests of Aboriginal peoples and communities across the state.

LALCs are autonomous, elected bodies. The core business of each LALC is to protect Aboriginal culture and heritage, acquire and manage lands and waters for cultural and economic purposes, and as compensation for dispossession. Maintaining reciprocal spiritual and cultural relationships with Country, including river and sea Country, is an inherent obligation for Aboriginal people. The right to economically develop natural resources, consistent with cultural obligations, is also of significant importance.

The right to water is a basic human right that is protected by a wide range of international instruments, including the *International Covenant on Economic, Social and Cultural Rights*, the *International Covenant on Civil and Political Rights* and the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*. In 2009, Australia endorsed the UNDRIP, which recognises Aboriginal peoples' inherent rights, including rights to water:

Article 25 of the UNDRIP states that *"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"*.

NSWALC has consistently advocated that Aboriginal peoples and communities are afforded full participation in the design, delivery and implementation of policy, services and projects relating to water rights, environmental conservation, and culture and heritage.

Our recommendations in this submission seek to address the following key concerns:

- The lack of progress on water rights for Aboriginal people and inaction of successive governments to realise the aspirations of Aboriginal people in the Basin
- The need to align Closing the Gap priorities and partnership principles under the National Agreement on Closing the Gap
- The need for better recognition and promotion of the role of Aboriginal people in water management and ownership, including supporting the use of Traditional Ecological Knowledge in river restoration programs
- Overall concerns around the integrity of the Basin plan and efforts to recover water

We seek your support in addressing these issues with the federal and state governments and the MDBA to ensure that the future management and use of water in NSW is inclusive of the needs of Aboriginal Land Councils, and that there is improved engagement and working relationships going forward.

Recommendation 1: The Commonwealth, State Governments and Territories, and the Murray-Darling Basin Authority must commit to a **genuine partnership approach with NSWALC, LALCs and Aboriginal communities** regarding environmental, planning and water-related legislation and management, in line with the National Agreement on Closing the Gap.

Recommendation 2: Genuine social, cultural and economic opportunities for LALCs and Aboriginal landholders should be further explored, developed and supported in partnership with NSWALC and peak Aboriginal organisations in line with the National Agreement on Closing the Gap.

Recommendation 3: Representatives of the NSWALC Aboriginal Land Rights Network and the broader Aboriginal community should be included at every stage of **implementation, monitoring and review of the Plan**.

Recommendation 4: The Government and MDBA must consider and embed **Aboriginal Traditional Ecological Knowledge, perspectives and cultural practices** in work to manage the Basin, while ensuring Intellectual Property of this knowledge is respected, principled and consensual.

Recommendation 5: Provisions of all water-related strategies, including the Plan, **must be in accordance with international instruments**, including the *United Nations Declaration on the Rights of Indigenous Peoples*, the *Ramsar Convention*, the *Nagoya Protocol* and the *Kunming-Montreal Global Biodiversity Framework*.

Recommendation 6: The *Water Act 2007*, the Basin Plan and associated regulations, policies and frameworks must work to **realise the aspirations of Aboriginal people and LALCs in relation to the return of their lands and waters**.

Recommendation 7: NSW must address and overhaul water entitlements for Aboriginal communities, and that Aboriginal Water Allocations may be utilised by the Aboriginal peoples of the Murray-Darling Basin for spiritual, cultural, environmental, social and economic purposes of their choosing.

Recommendation 8: The NSW Government must **immediately address all shortcomings and implement the recommendations of inquiries and reports** related to Aboriginal access to water at all levels.

Recommendation 9: The Government must **abandon any questionable water efficiency and supply projects** and **redirect funds to purchase water for Aboriginal nations**.

Recommendation 10: Governments must go beyond reliance on 'cultural flows' as a means of increasing Aboriginal people's access to and ownership of water.

Recommendation 11: The Commonwealth Environmental Water Holder 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 must be increased at all levels of water management planning across the entire Basin Area.

Recommendation 12: Environmental flows and associated regulations, policies, frameworks and mechanisms **must be capable of achieving targeted environmental gains across the Basin**.

Recommendation 13: 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.

Recommendation 14: Water recovery for the environment, including the 450 GL, **should be purchased through buybacks.**

Recommendation 15: Australian Governments must implement **safeguards to protect against harm and destruction to Aboriginal culture and heritage**, particularly in relation to water efficiency and recovery measures.

Working in genuine partnership

As a ready-made system of democratic Aboriginal governance, there is great scope for the network of LALCs to play an important part in the management of lands and waters, and the management and mitigation of climate change. Given that LALCs are the elected voice for Aboriginal people in NSW with legislative responsibilities to advocate for the interests of local Aboriginal communities in their respective jurisdictions, it is imperative that LALCs be consulted and invited to participate in all land, water and climate-related matters that concern them.

Consultation and engagement with Aboriginal peoples must provide adequate notice, incorporate the principles of 'free, prior and informed consent', 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.

Aboriginal Land Rights must be seen as a public outcome in itself and as a way to deliver broader public benefits, including climate change resilience. There should be an increased focus by all levels of government to return both land and waters to Aboriginal peoples, and to Aboriginal Land Councils in NSW. Returning land and waters to Aboriginal peoples will:

- provide environmental protection and climate change resilience
- contribute to sustainable land and water management, the nourishment of culture and improved quality of life
- support economic development initiatives, stimulating local and regional economies, and provide jobs and training opportunities.

NSWALC seeks to ensure that governments meet their commitments outlined in the National Agreement on Closing the Gap (the National Agreement). The National Agreement provides an important framework for governments to work in partnership with Aboriginal people to support us maintaining our distinctive cultural, spiritual, physical and economic relationships with Country, and advancing our rights and interests in lands and waters.

All governments have committed to increasing Aboriginal land and water rights through a specific target¹ relating to land and waters in the National Agreement. The National Agreement includes four priority reforms (and a fifth in NSW) that aim to change the way in which governments work with Aboriginal people, these are:

1. Shared decision making
2. Building the Aboriginal community-controlled sector
3. Transforming mainstream institutions

¹ [People maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters | Closing the Gap](#)

4. Data sharing
5. Employment, business growth and economic prosperity (NSW specific)²

Recommendation 1: The Commonwealth, State Governments and Territories, and the Murray-Darling Basin Authority must commit to a **genuine partnership approach with NSWALC, LALCs and Aboriginal communities** regarding environmental, planning and water-related legislation and management, in line with the National Agreement on Closing the Gap.

Recommendation 2: **Genuine social, cultural and economic opportunities for LALCs and Aboriginal landholders** should be further explored, developed and supported in partnership with NSWALC and peak Aboriginal organisations.

Recommendation 3: Representatives of the NSWALC Aboriginal Land Rights Network and the broader Aboriginal community should be included at every stage of **implementation, monitoring and review of the Plan**.

Aboriginal Traditional Ecological Knowledge and Connection to Land and Waters

Aboriginal peoples in NSW and the network of Aboriginal Land Councils that represent them are key stakeholders in relation to the management of waterways across the state. LALCs are significant landowners and managers of lands with high biodiversity value, and at a local level are holders of specific Traditional Ecological Knowledge (TEK) and land management expertise accumulated over millennia.

The lands, waters, seas and their resources have been sustainably and successfully managed by Aboriginal peoples for millennia, who, in fulfilling customary obligations to care for Country, obtain physical as well as spiritual nourishment in return.

Article 25 of the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* states that “*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*”.

TEK can be defined as “*a cumulative body of knowledge, practice and being evolving by adaptive processes and handed down through generations by cultural transmission, about the relationship of living beings (including humans) with one another and with their environment*”³. The concept of TEK recognises the utility of traditional knowledge and methods of resource and environmental management, and it is increasingly being recognised that the inclusion of TEK is needed for more resilient and equitable natural resource management outcomes.

In addition to the UNDRIP, Australia is party to a number of international agreements regarding the protection of biodiversity, the rights of Indigenous peoples and TEK. The Ramsar Convention, the Nagoya Protocol, which Australia signed in 2012, and the recently signed Kunming-Montreal Global Biodiversity Framework, require parties to recognise and protect the inherent rights and interests of Indigenous peoples to their TEK and ensures policies and governmental use of such knowledge is principled and consensual.

² [Aboriginal Affairs NSW - Priority Reforms](#)

³ Berkes, et al. 2000, ‘Rediscovery of Traditional Ecological Knowledge as adaptive management’ in *Ecological Adaptations*, Vol. 10, No. 5, pp. 1251-1262.

We seek to advance the human rights of Aboriginal peoples, and to protect and create opportunities and/or processes for Aboriginal peoples to be active participants in the intergenerational protection and management of TEK.

Recommendation 4: The Government and MDBA must consider and embed **Aboriginal Traditional Ecological Knowledge, perspectives and cultural practices** in work to manage the Basin, while ensuring Intellectual Property of this knowledge is respected, principled and consensual.

Recommendation 5: Provisions of all water-related strategies, including the Plan, **must be in accordance with international instruments**, including the *United Nations Declaration on the Rights of Indigenous Peoples*, the *Ramsar Convention*, the *Nagoya Protocol* and the *Kunming-Montreal Global Biodiversity Framework*.

The Aboriginal Land Rights Act 1983 (NSW) and Aboriginal Water Rights

The ALRA was passed by the NSW Parliament to facilitate the return of land in NSW to Aboriginal peoples through a process of lodging claims for unused Crown land, as compensation for historic dispossession and in recognition of the ongoing disadvantage suffered by Aboriginal communities.

A key intention of the land rights system was to enable ‘*Vast tracks of Crown land (to) be available for claim (to) go some way to redress the injustices of dispossession...*’.⁴ Aboriginal Land Councils were established to acquire and manage land as an economic base for Aboriginal communities. When introducing the *Aboriginal Land Rights Bill 1983* into the NSW Parliament, the then Minister for Aboriginal Affairs, the Hon. Frank Walker, stated that ‘*...land rights has a dual purpose – cultural and economic*’ and that land rights ‘*lay the basis for improving Aboriginal self-sufficiency and economic wellbeing*’.⁵

Furthermore, the preamble of the ALRA highlights the multifaceted significance of land to Aboriginal peoples:

- (1) *Land and waters in the State of New South Wales were traditionally owned and occupied by Aboriginal persons—*
- (2) *Land and waters are of spiritual, social, cultural and economic importance to Aboriginal persons—*
- (3) *It is fitting to acknowledge the importance land and waters have for Aboriginal persons and the need of Aboriginal persons for land and waters—*
- (4) *It is accepted that as a result of past Government decisions the amount of land and waters set aside for Aboriginal persons has been progressively reduced without compensation—*⁶

While one of the intents of the ALRA is to facilitate the return of lands to Aboriginal peoples in NSW, mechanisms to support our ownership of, and decision-making in relation to water are not similarly recognised. In 1994, water rights were decoupled from land ownership and we have consistently advocated for amendments to the ALRA to reverse this policy, which contradicts the initial intent of the ALRA. Our rights and interests were not acknowledged for another decade when in 2004 the National Water Initiative (the **NWI**) was agreed to. However, progress on commitments made under this initiative has been hindered and we fully support a reimagined NWI that reflects our aspirations and leads to real and genuine outcomes for our communities.

⁴ New South Wales, *Parliamentary Debates*, Legislative Assembly, 24 March 1983, p.5095 (The Hon. Frank Walker) [Hansard & House Papers by Date \(nsw.gov.au\)](#)

⁵ *ibid* p.5089

⁶ [Aboriginal Land Rights Act 1983 No 42 - NSW Legislation](#)

Our ownership of water is minuscule and has been going backwards. For example, while Aboriginal people in the Murray Darling Basin constitute nearly 10 % of the total population, Aboriginal organisations hold only 0.2 % of the available surface water in the Basin and 0.1% across the state. Aboriginal water holdings between 2009 and 2018 indicate a new wave of dispossession. Almost one-fifth of Aboriginal water holdings by volume were lost during this time.⁷

There is growing public support for Aboriginal water rights, with 70 per cent of Murray Darling Basin residents backing the reallocation of water to Aboriginal communities. There is a significant opportunity to engage the broader public on Aboriginal water rights and NSWALC's position.⁸

Governments must ensure natural resource, environmental and planning legislations do not contradict the operation of the ALRA, which undermines the intention of NSW Parliament when passing the ALRA.

Recommendation 6: The *Water Act 2007*, the Basin Plan and associated regulations, policies and frameworks must work to **realise the aspirations of Aboriginal people and LALCs in relation to the return of their lands and waters.**

Recommendation 7: NSW must address and overhaul water entitlements for Aboriginal communities, and that Aboriginal Water Allocations may be utilised by the Aboriginal peoples of the Murray-Darling Basin for spiritual, cultural, environmental, social and economic purposes of their choosing.

Land activation for Aboriginal Land Councils

NSWALC and the Aboriginal Land Rights network have long called for reform to land use, water use, planning, and environmental laws and policies to facilitate the delivery of spiritual, social, cultural and economic outcomes for Aboriginal people and to support Aboriginal self-determination.

The disproportionate impact experienced by LALCs in respect to the management of natural resources and environmental and planning decisions is not a new problem. It was recognised as early as 1980 when the NSW Legislative Assembly Select Committee on Aboriginal people stated:

“the Aboriginal people of New South Wales suffer discrimination from various Government decision-makers in relation to land development and planning”.

In recognising this situation, the Committee recommended that:

“land owned by Aboriginal communities should be governed by special planning provisions... which would permit Aboriginal communities to develop projects that might otherwise be contrary to local planning ordinances,” and that *“there should be a positive requirement on local and State government authorities to consult with Aboriginal communities where their land or its immediate surrounds are likely to be affected by zoning or development changes”*⁹

Several more recent government reviews and parliamentary inquiries have recommended similar reforms. The 2016 NSW Parliamentary inquiry into Economic Development in Aboriginal communities recommended:

⁷ Trends in Aboriginal water ownership in New South Wales, Australia: The continuities between colonial and neoliberal forms of dispossession Lana D. Hartwig, Sue Jackson, Natalie Osborne 2020

⁸ Public attitudes to inequality in water distribution: Insights from preferences for water reallocation from irrigators to Aboriginal Australians, S. Jackson & D. Hatton MacDonald, R.H Bark <https://agupubs.onlinelibrary.wiley.com/doi/10.1029/2019WR025011>

⁹ New South Wales. Parliament. Legislative Assembly. Select Committee upon (Aboriginal people), 1980.

“That the Department of Planning and Environment review planning legislation to better accommodate the aspirations envisaged in the Aboriginal Land Rights Act 1983.”¹⁰

Similarly, the NSW Parliamentary Inquiry into Regional Planning Processes recommended reforms in planning processes – including agricultural and environmental planning - to ensure better engagement with, and provision for, the unique circumstances of Aboriginal Land Councils.¹¹ Environmental and planning laws are key mechanisms for regulating and controlling the use of land in NSW. Ensuring these systems promote and facilitate improved outcomes for Aboriginal peoples, including in delivering land justice, water rights and a range of community goals is increasingly recognised as important.¹²

Water Management and Governance in the Basin

NSWALC, LALCs and Aboriginal people have long called for improved water management and involvement of Aboriginal people in water governance. It is unacceptable that Aboriginal communities in NSW do not have access to clean, safe drinking water, or access to their rivers, lakes and cultural sites. Aboriginal Land Councils are well positioned to protect and manage natural resources for the benefit of all Aboriginal peoples, and ensuring cultural, social, environmental and economic outcomes are delivered. We seek to ensure that Governments recognise and promote Aboriginal Land Councils as key vehicles for community investment in water resources.

We reiterate and continue to hold a myriad of concerns around the management and governance of water in NSW and beyond. These include:

Non-existent Aboriginal water policy - Currently NSW has no Aboriginal water policy and has been left behind other states such as Victoria and South Australia. The NSW Government released the NSW Water Strategy in 2021. The Strategy identifies as a strategic priority to “recognise Aboriginal rights and values and increase access to and ownership of water for cultural and economic purposes”¹³ which included the development of a state-wide Aboriginal Water Strategy and provision of Aboriginal ownership of and access to water for cultural and economic purposes. Unfortunately, the Strategy has been delayed and water is yet to be returned.

Water Resource Plans and Water Sharing Plans – We are deeply concerned with the NSW Government’s inability to deliver water resource plans on time and a failure to include input from Aboriginal communities. Water resource plans were due in Feb 2019 and to date the majority, including for several major catchments, are yet to be approved. Seven more plans were withdrawn this year.¹⁴ We also highlight the development of concerning water sharing plans that favour irrigation over environmental and social and cultural outcomes and fall short of the recommendations of the Natural Resources Commission.

Water theft and floodplain harvesting – We are concerned with the significant risks associated with increasing largescale water harvesting, including negative impacts to:

- Aboriginal cultural heritage

¹⁰ Recommendation 34, NSW Parliamentary Inquiry into Economic Development in Aboriginal Communities, <https://www.parliament.nsw.gov.au/lcdocs/inquiries/1691/Final%20report%20-%2030%20September%202016.pdf>

¹¹ Page 66, <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2180/Report.pdf>

¹² For example, see Lane MB. 2006. *The Role of Planning in Achieving Indigenous Land Justice and Community Goals*. Land Use Policy, 23(4): 385-394; Australian Institute of Health and Welfare (2011) ‘What works to overcome Indigenous Disadvantage’, available at: http://www.aihw.gov.au/closingthegap/documents/annual_papers/what_works_to_overcome_disadvantage.pdf; and Janet Hunt (2010) ‘Looking after Country in New South Wales: Two case studies of socio-economic benefits for Aboriginal people’ available at: <http://caepn.anu.edu.au/publications/working.php>.

¹³ [Draft NSW Water Strategy](#)

¹⁴ [List of state water resource plans | Murray–Darling Basin Authority \(mdba.gov.au\)](#)

- Aboriginal fishers
- Downstream water users and town water supplies, reduced water quality and negative environmental impacts

Widely publicised allegations of significant water theft have plagued the NSW Government and agricultural industry. Furthermore, we are disappointed in the minimal financial penalties given to prominent irrigators and that such insignificant penalties are unlikely to deter irrigators from further theft.¹⁵ In NSW, floodplain harvesting has gone unregulated for far too long. Whilst NSWALC broadly supports the licensing and metering of floodplain harvesting, there is a range of other impacts, options and mechanisms that must be further explored. We hope the current NSW Government displays more transparency and integrity than the previous coalition as Floodplain Harvesting Policy is finalised.¹⁶

Critical human water needs – Australia is considered a ‘first world’ country and it is shocking that many communities across NSW do not have access to clean, safe drinking and domestic-use water. Drought, overirrigation, cotton farming and coal seam gas have impacted river water supply and quality. With increased rainfall, the river suffers algal blooms and black water events. Using the example of Walgett, town water supply relies on Artesian Basin bore water in times of drought or when water quality of the river deems it unpotable. The quality of Artesian Basin bore water is questionable and extremely high in sodium. People with chronic health conditions (renal, heart, diabetes etc) are particularly vulnerable.¹⁷ Disappointingly, the Australian Water Guidelines do not provide for health guidelines around sodium levels, only ‘palatability’. Technically, according to NSW Health, the water is safe to drink. A reverse osmosis (desalination) plant was installed in May 2020 and closed in September that year - “unsustainable due to poor planning and local consultation resulting in unsustainable disposal of concentrate wastes”¹⁸. A 2020 Audit NSW report stated DPIE has “not effectively supported or overseen town water infrastructure planning in regional NSW since at least 2014.”¹⁹

Environmental catastrophes – The most recent fish deaths seen in the Darling-Baaka River is not an isolated event. It follows the tragic fish deaths throughout the 40 Kilometre stretch of the Murray Darling River, recorded in 2022 due to flooding and stagnant water, and in 2018-2019 which were attributed to a rapid drop in temperature during drought resulting in an algal bloom de-oxygenating the river. An independent panel appointed to assess to 2018-19 events made 27 recommendations. At the time of this inquiry, the panel warned that if such recommendations were not implemented that more fish kill events could be expected to occur. Stating that “*there is a high chance that severe fish death events, such as those recently experienced in the lower Darling, will reoccur in the future, unless significant interventions are made.*”²⁰ In 2023, almost four years after this damning inquiry, Menindee saw one of the worst mass fish kills to date. With an estimated tens of millions of native fish being killed. In the wake of this event, it is evident that a number of recommendations from the 2019 report were not adopted. If all the 27 recommendations had been implemented in their entirety, then it is even more likely that the recent fish deaths could have been avoided. Government’s failure to implement evidence-based management approaches has left the community in a state of distrust and frustration. The NSW Government needs to work more closely with existing Aboriginal

¹⁵ [NSW irrigators to pay more than \\$500,000 after illegally taking nearly 2bn litres of water from river | Water | The Guardian](#)

¹⁶ ‘Flood plain harvesting legal status ‘uncertain’ in NSW government legal advice’, D. Cloughton and M Condon for ABC News [Flood plain harvesting legal status ‘uncertain’ in NSW government legal advice - ABC News](#)

¹⁷ [Walgett’s Drinking Water \(unsw.edu.au\)](#)

¹⁸ Rosewarne E, H.C., Bennett-Brook K, Coombes J, Corby C, Feeny E, Leslie G, McCausland R, McKenzie B, Webster J and Spencer W. 2021. A community in action: How Walgett is redefining food systems. The George Institute for Global Health

¹⁹ [FINAL - Support for regional town water infrastructure.pdf \(nsw.gov.au\)](#)

²⁰ Independent assessment of the 2018-19 fish deaths in the lower Darling, 2019. [Final-Report-Independent-Panel-fish-deaths-lower-Darling_4.pdf \(uts.edu.au\)](#)

structures, such as LALCs and Indigenous ranger programs on future water management approaches and to take into account Aboriginal people's knowledge and wisdom.

Recommendation 8: The NSW Government must **immediately address all shortcomings and implement the recommendations of inquiries and reports** related to Aboriginal access to water at all levels.

Efficiency and supply measures – We hold concerns over the billions of dollars in taxpayers' money handed to irrigators in the Basin under the water infrastructure scheme intended to support the environment which has enabled irrigators to use more water.²¹ Many projects under this scheme have been deemed high risk, are behind schedule or have been abandoned completely.

Delay of the Aboriginal Water Entitlements Program (AWEP) – NSWALC understands DCCEEW has recommenced consultations regarding the design and delivery of the AWEP and will comment separately in that forum. We are, however, extremely disappointed in not only the delay in the implementation of this program, but also hold concerns about the current market value of water holdings and that the purchasing power of the initially committed \$40m has greatly reduced since 2018. Regardless \$40 million is nowhere near sufficient for all Aboriginal nations in the Basin with water interests to meaningfully engage in the water market.

Recommendation 9: The Government must **abandon any questionable water efficiency and supply projects** and **redirect funds to purchase water for Aboriginal nations**.

Cultural Flows – The Echuca Declaration defines 'cultural flows' as "*water entitlements that are legally and beneficially owned by the Indigenous Nations of a sufficient and adequate quantity and quality to improve the spiritual, cultural, environmental, social and economic conditions of those Indigenous Nations. This is our inherent right.*"²²

As the example of the Nari Nari Tribal Council's use of its cultural access licence allocation demonstrates, cultural land management practices related to water often have compatibility with broader environmental objectives including those of the Basin Plan specifically. While that is the case, cultural access licenses, are not returning sufficient water justice for Aboriginal people.²³ Aboriginal peoples' interests in natural resources should not be labeled merely 'cultural'. The distinction between 'cultural' and 'economic' is a western construct that does not take into account the holistic nature of Aboriginal people's activities. Cultural access licences are described as a licence that: 'allow(s) communities to access water for important cultural purposes such as manufacturing traditional artefacts, hunting, fishing, gathering, recreation, cultural and ceremonial purposes. An Aboriginal cultural licence can also be used for drinking, food preparation, washing, and watering domestic gardens.'²⁴ However, cultural licences cannot be used for economic purposes and are limited to 10 megalitres. As a result, as they are currently structured cultural access licences do not provide Aboriginal people with the flexibility to deliver on all of the outcomes envisaged in the Echuca Declaration and for Aboriginal people to undertake their own priority setting and decision-making in relation to water.

Recommendation 10: Governments must go beyond reliance on 'cultural flows' as a means of increasing Aboriginal people's access to and ownership of water.

²¹ [With less than a year to go, the Murray-Darling Basin Plan is in a dreadful mess. These 5 steps are needed to fix it \(theconversation.com\)](https://theconversation.com/with-less-than-a-year-to-go-the-murray-darling-basin-plan-is-in-a-dreadful-mess-these-5-steps-are-needed-to-fix-it)

²² [Echuca declaration.pdf \(culturalflows.com.au\)](https://culturalflows.com.au/echuca-declaration.pdf)

²³ [86140_1.pdf \(griffith.edu.au\)](https://griffith.edu.au/86140_1.pdf)

²⁴ As above

Environmental flows – NSWALC broadly supports the recovery of water for environmental flows and much of the work undertaken by the Commonwealth Water Holder thus far. However, there remain ongoing community concerns regarding the efficacy of these flows and the extent to which they are restoring the waterways and floodplains of the Basin. The Commonwealth Environmental Water Holder 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 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.

Furthermore, we believe water buybacks are the only immediate solution to meet the 450GL recovery target. While we understand and appreciate the desire to avoid negative socio-economic impacts, it is fair to say that if the environmental decline of the Basin continues, all stakeholders, including irrigators and the broader community, will suffer. Water is indeed life.

Recommendation 11: The Commonwealth Environmental Water Holder 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 must be increased at all levels of water management planning across the entire Basin Area.

Recommendation 12: Environmental flows and associated regulations, policies, frameworks and mechanisms **must be capable of achieving targeted environmental gains across the Basin.**

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Recommendation 14: Water recovery for the environment, including the 450 GL, **should be purchased through buybacks.**

Impacts on Aboriginal culture and heritage - We are concerned that some measures to recover water do not provide adequate safeguards to protect Aboriginal culture and heritage from being damaged or destroyed during the development of water infrastructure and upgrades. Aboriginal culture and heritage is broadly comprised of both tangible objects and items such as middens, stone tools and scarred trees, along with intangible features such as ceremonies and songlines associated with broader cultural landscapes. Currently, Aboriginal heritage provisions are not well integrated within the planning, land use and development processes in NSW. This has resulted in a reactive system that often does not consider Aboriginal heritage until after the development assessment process or when Aboriginal heritage is under immediate threat of destruction.²⁵ The high rates of destruction of Aboriginal culture and heritage, both 'approved' and illegal, continues to cause deep distress within our communities. The destruction of Aboriginal culture and heritage impacts on the ability of Aboriginal peoples to connect with a living culture and create healthy communities.

²⁵ Hunt, J. (2020), Cultural vandalism: Regulated destruction of Aboriginal cultural heritage in New South Wales. Topical Issue No. 3/2020, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra.
<https://doi.org/10.25911/5ef088fdc313f>

Our culture and heritage must be protected to provide Aboriginal people with opportunities to strengthen and maintain culture, now and in the future.

Recommendation 15: Australian Governments must implement **safeguards to protect against harm and destruction to Aboriginal culture and heritage**, particularly in relation to water efficiency and recovery measures.

We hope that the recommendations made in this submission will be carefully considered by the Productivity Commission and Australia Governments and that we can work in partnership with you to implement them.

Should you require further information, please contact the NSWALC Strategy and Policy Unit on 02 - 9689 4444 or via e-mail: policy@alc.org.au.