Lifeblood Alliance submission to the Productivity Commission's Draft Report 'National Water Reform 2020'.

Lifeblood Alliance (LBA) consists of environmental, First Nation and community groups committed to keeping the rivers, wetlands and aquifers of the Murray-Darling Basin healthy for the benefit of current and future generations.

Member groups and associated individuals of the Lifeblood Alliance span the breadth of the Basin and beyond and include landowners, farmers, irrigators, commercial and recreational fishers, nature tourists, Local Government representatives, Traditional Owners, ecologists, townspeople and conservationists. This submission has been assembled with input from many of these groups and represents the views of a broad cross-section of society. As our interest is in the environmental health of rivers, wetlands and aquifers, we focus on the environmental aspects of the National Water Initiative (NWI).

We welcome the Productivity Commission's draft report 'National Water Reform 2020' and support many of its recommendations for a renewed NWI. We particularly welcome the strong focus on bringing climate change impacts into water management and the proposal to introduce two new principles into the NWI 'one to secure the interests of Aboriginal and Torres Strait Islander people in water resource management and the other to include principles for efficient investments in major water infrastructure'.[1]

However the Commission does not go far enough in addressing historic over-allocation and the need to return extraction to an environmentally sustainable level of take, the impact of climate change on river health (in particular protecting longitudinal and lateral connectivity), or achieving water justice for First Nations. Stronger recommendations for reform are needed, as discussed in this submission.

1 Draft report p41

Our key recommendations are:

- Water sharing arrangements need overhauling to provide more equitable sharing between the environment and consumptive use, a more reliable environmental share and better protection for low flows, connectivity and town water supply in times of water shortage.
- A renewed NWI must continue to focus on addressing over-allocation and over use and a return to a properly calculated Environmentally Sustainable Level of Take, which should be the basis for all water planning.
- The addition of a new goal: 'In committing to this agreement, the parties recognise First Nations' peoples' reverence and responsibility for rivers and groundwater systems, and their enduring rights to manage and access water resources.'
- Reinstatement of an independent oversight body, with functions similar to the National Water Commission.
- Lifeblood Alliance strongly supports the proposal to remove exemptions for mineral and petroleum industries. Loopholes for other forms of interception such as floodplain harvesting should also be closed.
- Regular statutory review of the impact of climate change on how water is shared between the environment and consumptive use should occur. If the review reveals a disproportionate impact, then the consequences of that impact can be assessed and remedial action taken as required.
- Trade-offs should be made explicit, transparent and considered from all angles, upstream and downstream.
- First Nations and FN organisations are sophisticated and informed actors who have rights to access and use water resources to optimize a range of values and assets within their Country including economic, social, environmental, cultural and spiritual outcomes. Advice in chapter 9 should operationalise this principle.
- We strongly support the Commission's advice (10.1) on decoupling water reform from structural adjustment.
- Lifeblood Alliance strongly supports the Commission's advice to include a new element in the NWI 'that all infrastructure is to be assessed as economically viable and environmentally sustainable prior to the commitment of funding, with cost recovery from users as the norm'.

Detailed comments and recommendations

Ch 2 - NWI progress and the case for reform

Impacts of drought

In summarizing the impacts of severe drought, the Commission makes the following comments:

> 'These experiences have put extreme pressure on landscapes and communities, with lessons for NWI renewal. For example, shortcomings exposed in water management arrangements suggest that water plans must include improved and well-defined provisions to support communities in dealing with drought. Environmental distress, exacerbated by compliance failures and incomplete water recoveries, highlights the need for improvements in environmental management policy principles, frameworks and practices. Compliance failures point to the value of an enhanced focus on integrity. Inadequacies in planning and service delivery brought into sharp relief in some regional areas underscore the need for effective preparation and emergency response plans. And the recent drought has uncovered gaps in the understanding of water security for regional towns'.[2]

This analysis misses a vital point about the failure of water management plans to protect low flows and connectivity in river systems. The fact that water extraction exacerbates the impacts of drought has been known for many years, as the Victorian government acknowledged in 2007:

> 'In these (dry) years, about 95 per cent of the flow is extracted for towns and irrigation. The drought now being faced by the Campaspe River environment is 20 times harsher than natural drought'.[3]

The reports on the 2018-19 lower Darling fish kills[4] show that not much has changed. The operation of the Barwon Darling Water Sharing Plan exacerbated the impacts of drought by allowing irrigators to pump low flows and increased the risk of a major fish kill occurring. This problem is widespread, for example the Macquarie River in northern NSW is treated as a "credit" river, with allocations based on historic records of rainfall and run-off into Burrendong dam rather than actual storage levels in the dam. This means that allocations may exceed actual inflows, leaving no drought reserve for future use or environmental protection. The augmentation of the Chaffey dam in 2016 only resulted in increased allocations for Peel Valley irrigators, not increased water security for Tamworth or environmental benefits.

The point is that it is not just environmental management and compliance provisions that need improving, it is the water sharing arrangements themselves that need overhauling to provide more equitable sharing between the environment and consumptive use, a more reliable environmental share and better protection for low flows, connectivity and town water supply in times of water shortage.

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2 Draft report p30

3 Department of Sustainability and Environment (2007) *Why rivers need water*

4 Australian Academy of Science (2019) *Investigation of the causes of mass fish kills in the Menindee region NSW over the summer of 2018-19*; Vertessey et al (2019) *Independent assessment of fish deaths in the lower Darling, 2018-19*

Historic over-allocation

The Commission does not return to the impacts of historic over-allocation on environmental health that are such an important feature of the NWI. While progress has been made and environmental water recovery has occurred, the Commission does not discuss the difficulty in calculating an Environmentally Sustainable Level of Take (ESLT) as defined in the Water Act nor the many issues in implementation identified by the South Australian Royal Commission into the Murray-Darling.[5] Commissioner Walker made many findings and recommendations about how the calculation of the ESLT can be brought into line with the Water Act, and it is extraordinary that the Productivity Commission does not reflect on this.

A renewed NWI must continue to focus on addressing over-allocation and over use and a return to a properly calculated ESLT.

Climate change

Lifeblood Alliance warmly welcomes the Commission's strong focus on climate change. However there remains a tendency to under-estimate its impacts. For example the MDBA describes a 50% decline in inflows due to climate change as a 'moderate' change.[6] There is nothing 'moderate' about a 50% decline (imagine if you lost 50% of your income), it is a severe change and should be treated as such.

Recent work by the Interim Inspector General showed that inflows to the MDB have already declined by 50% over the last 20 years.[7] In its evaluation, the MDBA has chosen a scenario of a 2°C temperature rise and 10% overall decline in rainfall by 2050 as the most plausible representation of the future.[8] Given the changes in rainfall and inflows already observed, this seems a gross underestimate.

Ch 3 - NWI renewal – a refreshed intent

We support the new principles for the NWI outlined on p42 and the key elements of advice:

> 'Three major themes run through all aspects of this advice, reflecting the fact that the lessons of the past 17 years and the profound challenges facing the water sector indicate that in the coming years communities are going to have to:
>
> • be able to contend with droughts and withstand shocks
>
> • know when and how to adapt to changes in the baseline — permanent shifts in resource availability — wrought by climate change
>
> • adopt fit-for-purpose arrangements — that is, arrangements that address the diversity of circumstances across the country'. [9]

5 Bret Walker (2019) *Murray-Darling Basin Royal Commission Report*

6 MDBA (2020) Basin Plan evaluation

7 Interim Inspector-General of Murray-Darling Basin Water Resources (2020) *Impact of Lower Inflows on State Shares Under the Murray–Darling Basin Agreement*,

8 https://www.mdba.gov.au/sites/default/files/pubs/bp-eval-2020-snapshot-climate.pdf

9 Draft report p42

Draft Advice 3.1 – modernised goal

This draft advice omits any reference to historic over-allocation or environmentally sustainable levels of extraction. The phrase from the original NWI goal 'to ensure the health of river and groundwater systems by establishing clear pathways to return all systems to environmentally sustainable levels of extraction' must be reinstated.

The addition of a reference recognising the significance of water to First Nations in the overarching goal of the NWI is necessary and welcome. However, the wording presents 'the importance of water to the lives' of First Nation people as ancillary or secondary to the primary pursuits of productive water use and improved river health. It presents recognition of First Nations water rights, interests and obligations as a kind of footnote to the real business of water management. The goal would be significantly strengthened by embedding an understanding of First Nations water knowledge, and a commitment to recognise First Nations water rights and interests, as a central concern of a national approach to water management.

We suggest a change of wording for the goal to state 'In committing to this agreement, the parties recognise First Nations' peoples' reverence and responsibility for rivers and groundwater systems, and their enduring rights to manage and access water resources.'

Draft advice 3.2 – overarching objective

Inclusion of a fourth 'cultural' category to provide a 'quadruple bottom line' objective is welcome. The term 'cultural' is used as shorthand for outcomes arising from the unique connection for First Nations people with their Country. It may be advisable to qualify that by stipulating 'First Nations cultural outcomes'.

However the idea that 'optimising economic, environmental, social and cultural outcomes through best practise management' will provide certainty for 'investment, water users and the environment' is not realistic or achievable. The experience of the Murray-Darling Basin Plan, which by law has to optimise outcomes and provide best practise management, has been constantly bedevilled by claims that it does not provide certainty for water users. It has not optimised environmental outcomes. The Plan demonstrates how the whole concept of optimisation is highly vexed and subject to manipulation.[10]

While the intent of the objective is positive, jurisdictions will need more guidance on how to achieve it.

Draft Advice 3.3 – Modernised objectives

We support this advice with the following key additions shown in red

'Full implementation of this Agreement will result in:

A — a nationally-consistent planning, market and regulatory based system of managing surface and groundwater resources for rural, urban and remote use that:

• optimises economic, environmental, social and cultural outcomes

10 Bret Walker (2019) *Murray-Darling Basin Royal Commission Report* has detailed critique

• enables entitlement holders, communities and the environment to contend with climate variability and adapt to a changing climate by achieving the following:

1. clear, nationally-consistent statutory systems for secure water access entitlements

2. transparent, statutory-based water planning that: (a) is risk-based, matching the level of management with the level of water extraction in a system (b) includes all sources of water, recognises connectivity between surface and groundwater, and takes into account water quality (c) clearly identifies the agreed environmental, cultural and other public benefit outcomes to be met through the water planning process (d) includes agreed processes for water sharing and management during periods of water scarcity (e) includes clear pathways to an agreed and improved balance between the environment and consumptive water use in overallocated or overused systems and a return to an environmentally sustainable level of take (f) includes clear triggers and processes for reviewing the balance between water for the environment and consumptive use, such as in response to the effects of climate change

3. statutory water provisions for the environment to ensure system connectivity and which are integrated with complementary natural resource management to achieve agreed environmental outcomes and where this does not compromise environmental outcomes, managed to also achieve cultural and social benefits

4. secure and effective pathways to enable Aboriginal and Torres Strait Islander people to strengthen their influence in water planning and natural resource management that affect Country and access to water consistent with the 2020 National Agreement on Closing the Gap[11]

5. the capacity to trade water to promote its highest value use within the physical, ecological and social constraints of water systems in an open, transparent water market with a level of regulation that is proportional to the maturity of market development

6. a system of water metering, measurement and accounting, coupled with effective compliance, that promotes water user and community confidence in the integrity of water management and water markets

7. clarity on the assignment of risk arising from future changes in the availability of water for the consumptive pool and how future adjustment should be managed'. [12]

Ch 4 – Building in good governance for a renewed NWI

We agree with the Commission's analysis of best practice governance arrangements and Draft Finding 4.1

[11] MLDRIN will provide further advice on whether consistency with the Closing the Gap Agreement brings any benefits

12 Draft report p45

Draft Advice 4.1 on governance arrangements

This advice contains an inconsistency. In the preceding pages the Commission correctly describes the erosion of NWI governance arrangements over the years

> 'These governance arrangements were key to progress in the early years of the agreement, but much of this architecture has been eroded over recent years. In 2013 the Australian Government disbanded the responsible Ministerial Council and subsequently abolished the NWC in 2014.Initial jurisdictional implementation plans lapsed many years ago and were never renewed.
>
> Today, a senior water officials' committee —the National Water Reform Committee (NWRC) provides some oversight of the NWI amongst other matters'. [13]

The Commission then goes on to say, again in our view correctly:

> 'No existing organisation exhibits the characteristics that should be held by the entity responsible for ownership of the agreement. While the NWRC is representative of governments, its members lack the authority to bind their governments as parties to an agreement. Long-standing practice in the conduct of Australian interjurisdictional affairs is that a Minister of the Crown can exercise such authority. Nor does the NWRC have the status that conveys to water sector participants and the broader community that governments see water, and reforms to ensure it is used to best effect, as important'.[14]

Yet in Draft Advice 4.1 the Commission suggests a role for the NWRC for which it is patently unsuited (final dot point):

- 'the National Water Reform Committee should provide ongoing collective oversight of the agreement, initiating policy advice and guidance, if need arises, and commission the 10 yearly reviews of the agreement.'

We would prefer to see an independent body similar to the National Water Commission in this role. An independent body can provide proper oversight of NWI implementation and provide Ministers with independent advice and guidance sourced from outside existing government departments. This arrangement drove significant progress in the early years of the NWI and the NWC was respected by all sectors. It should be reinstated.

Ch 5 – a fit for purpose framework

We support the general approach that more stressed catchments need higher levels of management but the NWI needs to recognise that some essential elements of environmental flows (eg first flush) must be protected in all catchments whatever the level of development.

The NWI should also provide protection for currently free-flowing rivers from future development. Major unregulated rivers such as the Paroo, Coopers Creek, and the Mitchell in

13 Draft report p52
14 Draft report p55

Victoria are now very rare, particularly in south eastern Australia, and a refreshed NWI should have a clause to keep them that way.

The missing element in the water planning framework is local government. While potentially outside the NWI framework, local government has an important role to play in land use planning decisions and in setting regional development goals which have implications for water resources and water infrastructure.

The recent developments in permanent horticulture along the Murray are a case in point. These have had an impact on water availability and deliverability to the extent that the Victorian Water Minister has called in all new applications for irrigation extraction licences in the lower Murray region.[15] There appears to have been a failure in planning for the water impacts of these developments and we would welcome advice from the Commission on how the situation could be improved.

Ch 6 – Water entitlements and planning

Draft Advice 6.1 – entitlements framework

Lifeblood Alliance strongly supports the proposal to remove exemptions for mineral and petroleum industries. The exemptions afforded by Clause 34 are among the worst and most inequitable aspects of the current NWI and should be abandoned immediately. This is particularly so given the many legal exemptions available to the mining and petroleum sectors in water and related natural resources Acts and the impact of the sector's activities on water quality.

The *'special circumstances'* and '*specific management arrangements outside the scope of this Agreement'* referred to in NWI Clause 34 are the state legislation, regulations and policies that administer the energy resources, minerals, petroleum and gas industries and have shown themselves to be flawed. To the best of our knowledge, there are currently no published standard conditions and approaches between agencies within some jurisdictions and between some States. The results are inconsistencies between jurisdictions and across shared water sources; and increased risks of overlooking important issues at individual sites. There is an urgent need for legislative reform and a requirement for consistency across state borders. Consistency is also required in water quality monitoring, objectives, targets and criteria; in terms of compliance and resources for enforcement; even in terms of language and definitions to avoid further confusion of already complex situations.

The legal processes and pathways are particularly convoluted in Queensland where (s4) of the *Water Act 2000* binds all persons to the Act but not the operation of the *State Development and Public Works Organisation Act 1971*, nor the powers of the Co-ordinator General under that Act. The provisions of the SDPWO Act are phrased in terms of the almost absolute discretion of the Coordinator General. Projects designated 'state significance' thereunder (or a 'prescribed project' under Amendments to the *SD&PWO Act* in 2006), follow the Coordinator General's

[15] https://www.stockandland.com.au/story/6264969/strict-conditions-imposed-on-new-sunraysia-developments/

streamlined EIS assessment process which can override the detailed requirements of all other environmental laws and reduce the powers of other state government agencies eg from 'concurrence' to 'advice' agencies. A feature of this process is that the proponent prepares the EIS and once approved, conducts much of the required monitoring. Such levels of self-assessment and self-monitoring lack transparency and are not a good foundation for community confidence. Nor is the fact that the *SD&PWO* Act lacks an Objects clause and does not include penalties for providing false or misleading information. This is a very poor standard of governance and public accountability.

We are also concerned about the risk-based approach to interception, particularly for large scale interception such as floodplain harvesting. While we are strong supporters of bringing interception activities into the licencing framework, risks and impacts must be fully assessed. For example, during floods in February 2020 it is estimated that 40% of Darling flows were intercepted by floodplain harvesting after the NSW government lifted an embargo on pumping from the first flush[16].

NSW is currently implementing a floodplain harvesting licencing policy without first assessing the cumulative impact the practice has had on downstream environments and communities over the last several decades. This assessment is a key requirement before any licencing regime is contemplated. NSW is also providing a rainfall runoff exemption for irrigated fields when there is no overland flow. This is a further example of an unacceptable exemption of quite substantial volumes of water that will not be accounted for or brought under a licensing regime.

We believe a refreshed NWI should provide guidance on how to deal with increased interception due to regrowth following bushfires, which will have an increasing impact on already diminished water resources under climate change.

S6.1 Best practice planning

We find the section on 'Trade-offs made in line with community values' (p70) challenging. The question is – which community? What is an acceptable trade-off to an upstream community may not be acceptable to a downstream community, and vice versa, with recent conflicts along the Darling-Baaka a case in point. While transparency and water literacy are absolutely crucial when trade-offs are considered, perhaps we need an additional criterion of 'what level of river condition would you like to receive from the community upstream and pass on to the community downstream?' This kind of consideration is an essential part of First Nation care for rivers.

While the discussion of climate change and drought (p73) still makes it sound as if these are future and extreme circumstances, we strongly support the following statement:

> 'Plans should include provisions to deal with periods of water scarcity, priorities for water sharing and actions relating to meeting critical human and environmental needs. Provisions could also include rules in some rivers for limiting water extraction during

16 Barrier Daily Truth 12/8/20 Report reveals northern impact by Craig Brealey

critically low flows to protect ecologically important refuges, protecting the resumption of flows and managing connectivity across the landscape.'[17]

Protecting low flows, first flush and connectivity will be key to maintaining river health and ecological processes in a drier climate. Consideration should also be given to setting aside drought reserves for towns and critical human needs before any allocations for irrigation use are made.

Information request 6.1 – rebalancing environmental and consumptive shares

In its discussion of rebalancing how water is shared, the Commission misses the point that the environment's share of available water is uniquely vulnerable to climate change because it mostly made up of above cap and rules based (or planned) environmental water. This point is well made in Chapter 8 but is highly relevant to this discussion of rebalancing. The environmental share is likely to be disproportionately impacted by climate change and any rebalancing has to take this as a starting point. One tool that would be effective is to require the setting of minimum end-of-system flows for each catchment.

The recent Long-Term Water Resources Assessment (LTWRA) for southern Victoria[18] showed not only that there had been an overall decline in water availability but that the decline had impacted more heavily on the environment's share in developed catchments. In no case had the environment's share increased compared to the consumptive share, even where water recovery had occurred. The impact on the environment was greatest in catchments with the highest level of use, and these are now subject to Ministerial review through a new Central and Gippsland Region Sustainable Water Strategy, which is just beginning with outcomes as yet unknown.[19]

The process for a LTWRA is set out in the Victorian Water Act, which gives a clear statement of its purpose:

'A long-term water resources assessment must identify whether or not either or both of the following has occurred—

(a) there has been any decline in the long-term availability of surface water or groundwater and whether the decline has fallen disproportionately on the environmental water reserve or on the allocation of water for consumptive purposes;

(b) there has been any deterioration in waterway health for reasons related to flow'.[20]

The Act is much less clear about how the LTWRA should do this or the process for subsequent review, saying only

'the Minister must undertake a review to determine the action that is required to be taken—

(c) to restore the balance between the environmental water reserve and the allocation of water for consumptive purposes; or

(d) to restore the health of waterways.' [21]

17 Draft report p73
18 DELWP (2020) Long-Term Water Resource Assessment for southern Victoria
19 https://www.water.vic.gov.au/planning/long-term-assessments-and-strategies/ltwra
20 Victorian Water Act 1989 s22L
21 Victorian Water Act 1989 s 22P

While the LTWRA process serves as potential model for rebalancing, the NWI could provide much clearer guidance for jurisdictions about what is an equitable, reliable share of water for the environment in the first place. A river needs a guaranteed share of its own water before any water is allocated for consumptive use, which can be achieved through the establishment and adoption of a properly calculated ESLT as defined in the Commonwealth Water Act.

'environmentally sustainable level of take for a water resource means the level at which water can be taken from that water resource which, if exceeded, would compromise:

(a) key environmental assets of the water resource; or

(b) key ecosystem functions of the water resource; or

(c) the productive base of the water resource; or

(d) key environmental outcomes for the water resource.'[22]

In an ideal world, the trigger for a rebalance would be if the ESLT had been breached in a substantive way. This has obviously happened in the past and continues to happen with depressing regularity without triggering a review, for example in the MDB the decline in condition of the Ramsar sites, declining fish and bird populations, fish kills, blackwater events, acidification etc etc. Therefore regular statutory review of the impact of climate change on how water is shared between the environment and consumptive use appears to be a more reliable model. If the review reveals a disproportionate impact, then the consequences of that impact can be assessed and remedial action taken as required.

Ch 8 Environmental management

The Commission correctly states that 'Rules-based provision is the primary means of implementing environmental water objectives across Australia' (p 90). This means that the vast majority of environmental water is uniquely vulnerable to climate change, unable to be actively managed and likely to be less reliable than consumptive water.

The Commission goes on to say

> 'Moreover, the recent drought has exposed weaknesses in environmental management policy principles, frameworks and practices. National principles for environmental management and underlying jurisdictional management frameworks and practices must also evolve and transform to enable the environment to best weather shocks such as drought, floods and bushfire and adapt to a changing climatic baseline.' [23]

While this may be true, it is equally true of the entire water management and sharing framework. The relegation of the environment's share to largely rules based provisions has made environmental management uniquely difficult when that share is likely to disappear under conditions of water shortage. Again we stress the need to establish a properly calculated ESLT to enable the environment to weather shocks and adapt to climate change.

We agree with the need for clearly specified environmental objectives and outcomes and that discussion should be informed by science to ensure identified outcomes are objective and

22 https://www.legislation.gov.au/Details/C2007A00137
23 Draft report p93

achievable (p93). However we need to quantify the benefits of the environmental assets to inform potential trade-offs and to consider the indirect value of environmental watering, for example in preventing and mitigating blackwater events. Many trade-offs are already being made, for example the environmental condition of some of our most valuable sites, such as the Coorong and the Macquarie Marshes, continues to decline as a result of upstream water extraction. Again we question which communities will objectives be discussed with and how upstream/downstream conflict will be resolved.

The operation of the SDL Adjustment Mechanism under the Basin Plan brings the question of trade-offs to a whole new level. The supply projects involve trade-offs between environmental outcomes that have not been discussed with the communities involved, and the consequences of those trade-offs at a basin scale is unknown. There is a great need for transparency in any discussion of trade-offs, of exactly what is being gained and lost.

A major trade-off for the environment has already occurred over time with high levels of extraction and unaccounted for extraction. Any 'balancing' must be to redress past poor planning and unsustainable water extraction.

We strongly support the Commission's comments on adequate low flow provisions and the statement that 'future water plans and water reviews need to ensure that water sharing arrangements during low flow and prolonged dry periods are explicitly considered and clearly described'. (p 95).

Draft Advice 8.2 and draft recommendation 8.1 - integrated management

We support these recommendations. However it is important to note that environmental water and complementary NRM actions are both required to support river health. NRM actions are not a substitute for environmental water recovery, they are a complement to it and both are needed for optimal results.

We would like to suggest that water users make a contribution to complementary NRM actions required to restore damage to rivers and wetlands as a result of water extraction. In Victoria this is partially achieved through a mandatory Environmental Contribution paid by water corporations.[24] While not an adequate contribution, it at least embeds the principle of 'user pays' in river restoration. In NSW anyone who constructs, alters or modifies a dam, weir or reservoir on a waterway must provide a means of fish passage.[25]

Draft Advice 8.3 –waterway oversight

This advice lacks an obvious commitment to protecting and restoring waterway health!

Draft Advice 8.4 - review processes for outcomes

This advice requires a parallel process for economic and social outcomes, revisiting what is possible under climate change scenarios in the same way as is proposed for environmental outcomes. Such a process is essential if we are to achieve the revised objective of 'optimising'

[24] Victorian Water Industries Act 1994 s192
[25] NSW Fisheries Management Act s218

social, environmental, economic and cultural outcomes (draft advice 3.2) rather than trading off environmental outcomes in favour of other outcomes.

Draft Advice 8.5- held water

The criteria and objectives seem sensible but there is a need to avoid embedding impediments that can be remedied. For example, third party impacts could be avoided if constraints on environmental water delivery are addressed

Draft Advice 8.6-8.8 - trade strategies

We support the intent of this advice. The conditions under which the CEWH can trade are clearly set out in the Water Act[26] and further developed in the CEWH's water trading framework.[27] Other water holders should operate under similar conditions and we agree that revenues from water trades should be kept in a dedicated, ring-fenced account.

As stated in the text (p105), any sales of environmental water need to be part of long-term portfolio management strategy. This should be reflected more clearly in Draft advice 8.8.

Draft Advice 8.9 - public benefit outcomes

This advice places the onus on environmental water managers to seek public benefit outcomes from watering and is very one-way, which does not reflect the text discussion (p106). There should also be a requirement for those seeking recreational or social benefits to work with water managers, for example timing a rowing competition to coincide with an environmental water release or a temporary ban on fishing and (in Victoria) duck hunting when environmental water is released into critical refuge habitat.

We support the advice to improve collaboration and co-operation with Traditional Owners in meeting cultural objectives, and also noting where cultural and environmental objectives differ.

Draft Advice 8.10 – independent management

We strongly support the need for environmental water holders to be independent and at arm's length from government, and we agree with the need for auditing the adequacy of environmental water provision. However it is important to take all environmental needs into account when assessing adequacy. For example the Victorian Environmental Water Holder does not set objectives for overbank watering because it considers them unachievable due to third party impacts. Thus a vital component of the flow regime would be missing from any assessment of the adequacy of the water holdings to meet objectives. We are already seeing how difficult overbank watering is to achieve in the recent MDBA evaluation of the Basin Plan which shows that shows 'floodplain outcomes not being achieved'.[28]

Draft Advice 8.12 - adaptive management.

We support the advice on adaptive management. To increase transparency, public reporting should include the reasons why environmental objectives cannot be met– is it because of a lack

[26] Commonwealth Water Act 2007 s106

[27] https://www.environment.gov.au/water/cewo/publications/water-trading-framework-nov2016

28 MDBA (2020) Basin Plan evaluation

of adequate water, low allocations against environmental entitlements or failure to resolve constraints which are blocking delivery of environmental flows to target wetlands?

Ch 9 Securing Aboriginal and Torres Strait Islander people's interest in water

Draft advice 9.1 and 9.2 on strengthening the recognition of First Nations (FNs) rights to influence water planning and the development of a new element through the Committee of Aboriginal Water Interests are heading in the right direction. However, the advice fails to address a fundamental component of First Nations water rights, access to actual water resources and thus appears completely out of step with a changing policy context and decades of FNs advocacy since 2004. Draft Advice 9.3 is the only section that discusses pathways to provide access to water to FNs. And that advice includes has some glaring flaws 1) it suggests that Governments should have the mandate to decide whether 'providing access to water is an effective way to support the economic development of Aboriginal and Torres Strait Islander communities' and 2) it appears to restrict pathways to water access for FNs to a narrow 'economic development' frame.

This approach completely misrepresents the messaging from FNs groups though the Cultural flows research work and other research that MLDRIN has previously presented to the Commission. Firstly, FNs have inherent rights, recognized through UNDRIP and articulated through the Echuca Declaration, to enjoy the benefits of water access on their Country. This seems to be recognized elsewhere in the draft report but is absent from the actual advice provided by the Commission. It should not be up to governments to decide whether accessing water is a strategy that is 'good' for First Nations. They have already asserted that right and governments are bound to act and respond.

Secondly, Nations have consistently articulated their right to access water for servicing a diverse range of outcomes and assets on Country (not just economic development). Defining economic development as the only pathway for securing water access is paternalistic, and completely out of step with evolving policy and FNs led research. The advice appears conservative and outdated in that sense. This is a missed opportunity to highlight that Nations and FN organisations are sophisticated and informed actors who have rights to access and use water resources to optimize a range of values and assets within their Country including economic, social, environmental, cultural and spiritual outcomes.[29]

Ch 10 Ensuring the integrity of water resource management

We support Draft Advice 10.1-10.4 on ensuring integrity. The framework for trusted institutions in fig 10.1 should be incorporated in the advice.

We support the need for quality assurance to enhance the credibility of water information (p130), in particular in relation to the use of models. Models must be ground-truthed to make

[29] See also https://theconversation.com/water-injustice-runs-deep-in-australia-fixing-it-means-handing-control-to-first-nations-155286

sure they are an accurate representation of reality and tested against real situations. For example, the MDBA had the opportunity to test the veracity of its environmental equivalence methodology for the SDL adjustment mechanism by comparing actual results at Living Murray sites with modelled outcomes. Instead it chose to rely on the modelling, which remains a black box with no transparency about how trade-offs are made

In another example the NSW government has spent $37 million on data collection and modelling to inform its licensing program for floodplain harvesting. Yet the figures remain highly contentious and disputed and the work has not resolved tensions between upstream and downstream users. The accredited reports that reflect the actual level of take in 1994 are not available to the public, without them the community has no confidence in the modelled figures presented to them and no way of assessing whether the outcomes of the modelling reflect reality.

Ch 12 Water reform in rural Australia

We strongly support the Commission's advice (10.1) on decoupling water reform from structural adjustment, in particular the statement that 'Better outcomes could be achieved at a lower cost by addressing adjustment separately from the main policy reform' (p164). We have consistently advocated for cost-effective, transparent and equitable water recovery through open tender buybacks coupled with targeted investment in impacted regional communities to support economic diversification and improved services. As the Commission points out, this approach is far more likely to create jobs than reliance on water infrastructure upgrades.

Ch 13 Government investment in major water infrastructure

Lifeblood Alliance strongly supports the Commission's analysis and conclusions on government investment in water infrastructure. We support Draft Advice 13.1 to include a new element in the NWI 'that all infrastructure is to be assessed as economically viable and environmentally sustainable prior to the commitment of funding, with cost recovery from users as the norm'. This is essential!

We support your comments on project assessment and criteria for economic viability and environmental sustainability that lead to Draft Advice 13.2, which is also supported.

The business cases for dam proposals in NSW must be released prior to any EIS being funded. Information that has been made public about the Wyangala dam wall raising, Macquarie River re-regulating storage, Mole River dam and Dungowan dam through the current NSW Upper House inquiry[30] has raised serious concerns about the economic justifications for these political promises.

[30] Rationale for, and impacts of, new dams and other water infrastructure in NSW

We support Draft Advice 13.3 on transparent review processes and suggest that the threshold for review of water infrastructure projects by Infrastructure Australia should be returned to $100 million.

Information request 13.1

MLDRINs recommendation in our submission to the Inquiry on this matter was that a refreshed NWI should include "*A requirement that consultation for development of water infrastructure must conform to a standard of 'deep consultation', equivalent to a form of negotiation, and establish processes whereby First Nations may have the option to accept or oppose a proposed development that may impact on their community"*

Establishing a standard of 'quadruple bottom line' assessment for any new water infrastructure projects is essential. Such assessments would need to consider the cumulative and downstream impacts of new infrastructure on First Nations culture and heritage (not just the immediate impact at the project footprint). MLDRIN is aware that options assessment frameworks for new infrastructure programs in NSW include First Nations cultural 'criteria' for consideration of impacts. Applying conventional options assessment or cost-benefit analysis approaches to determine impacts of infrastructure development on cultural outcomes can be problematic, due to limited data, culturally sensitive information and the need for extensive community involvement.

Critically, the development of new water infrastructure must include protocols centring First Nations as decision makers and procedures for seeking the free, prior and informed consent of affected First Nations. A process of deep consultation, where Nations are supported with the information, resources and decision-making power to make informed choices is needed.

The Akwe:Kon Guidelines are an international standard for the conduct of cultural, environmental and social impact assessment regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by First Nations communities. The Guidelines were agreed by the Conference of the Parties to the Convention on Biological Diversity. The Guidelines suggest a ten-step process for impact assessment of proposed development including:

- Establishment of effective mechanisms for indigenous and local community participation, including for the participation of women, the youth, the elderly and other vulnerable groups, in the impact assessment processes;

- Establishment of an agreed process for recording the views and concerns of the members of the indigenous or local community whose interests are likely to be impacted by a proposed development;

- Establishment of a process whereby local and indigenous communities may have the option to accept or oppose a proposed development that may impact on their community;

- Identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local community participation in all phases of impact assessment procedures;

- Establishment of an environmental management or monitoring plan (EMP), including contingency plans regarding possible adverse cultural, environmental and social impacts resulting from a proposed development;

- Identification of actors responsible for liability, redress, insurance and compensation;

- Conclusion, as appropriate, of agreements, or action plans, on mutually agreed terms, between the proponent of the proposed development and the affected indigenous and local communities, for the implementation of measures to prevent or mitigate any negative impacts of the proposed development;

- Establishment of a review and appeals process.

The Akwe:Kon guidelines provide useful guidance on the kinds of steps necessary to support free, prior and informed consent and ensure the cultural impacts of new infrastructure projects are understood and mitigated. The guidance should be adopted as a standard in any new water infrastructure development processes and incorporated into Australian legislation.

Ch14 Community engagement

We support Draft Advice 14.1 on improved community engagement. However it does not resolve the issue of who is engaged on water reform issues. There has been an increasing tendency in recent years for engagement to focus only on immediate water users and environmental stakeholders have repeatedly been left out. For example as recently as March 2021 irrigator groups were invited to meet with the MDBA Chair on a visit to Shepparton whereas our member Goulburn Valley Environment Group was not.

There is also a tendency for community engagement to end at the boundary of a catchment with no consideration of downstream users or the downstream environment, or indeed the interests of the broader public who care about the issue or are impacted as visitors, anglers, bird watchers, boaters and nature lovers. The Barwon-Darling water sharing plan is the most notorious example of these kinds of gaps. Jurisdictions should consider where on the IAP2 spectrum these stakeholders fit and make sure they are involved in decision making in an appropriate way.

Ch 15 Knowledge and capacity building

We support Draft Advice 15.1.

The IIG report emphasized the need for improved water literacy and this should be given high priority in the renewed NWI. The message needs to be front and centre that Australia's water resources are finite and limited, and that the government cannot provide endless water supplies at every location. Sustainable management of water supplies needs to be the main goal, with provision to sustain river systems with sufficient flows to enable them to continue to support extractive uses. There should also be a strong emphasis on recycling and re-use of water.

In particular, for the MDB, the information about the varying security of different classes of water licences needs to be actively circulated so that irrigators understand the risk of reduced supply. With approximately 17,500 GL/y of water licensed in the MDB, with no account taken for the effects of climate change, there is very significant potential for serious unrest the next time general security licence holders have to watch water flow past their pumps while their allocation is zero.

For further information about this submission, please contact:

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Lifeblood Alliance consists of environmental, First Nations and community groups committed to keeping the rivers, wetlands and aquifers of the Murray-Darling Basin healthy for the benefit of current and future generations.

Australian Conservation Foundation, NSW Nature Conservation Council, Conservation Council of South Australia, Environment Victoria, Queensland Conservation Council, Murray Lower Darling Rivers Indigenous Nations, Northern Basin Aboriginal Nations, River Lakes and Coorong Action Group, Environmental Farmers Network, Inland Rivers Network, National Parks Association of NSW, Goulburn Valley Environment Group, Healthy Rivers Dubbo and Central West Environment Council.