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Aboriginal Land Council

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Basin Plan Inquiry  
Productivity Commission  
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Via email: [basin.plan@pc.gov.au](mailto:basin.plan@pc.gov.au)

To the Productivity Commission,

**Murray Darling Basin Plan: Five year assessment – Draft Report**

The NSW Aboriginal Land Council (NSWALC) welcomes the opportunity to provide comment on the Productivity Commission's *Murray Darling Basin Plan: Five year assessment – Draft Report (Draft Report)*.

NSWALC and the network of 120 Local Aboriginal Land Councils represent over 23,000 Aboriginal people in NSW. We are a democratically-elected voice of Aboriginal peoples, and we strive for a future in which the Aboriginal peoples of NSW can live their lives to their full potential.

Please find NSWALC's submission enclosed. Should you require further information in regards to any issues that have been raised in this submission, please do not hesitate to contact the NSWALC Strategy and Policy Unit on (02) 9689 4444 or via e-mail: [policy@alc.org.au](mailto:policy@alc.org.au).

Sincerely,

James Christian PSM  
Chief Executive Officer  
NSW Aboriginal Land Council

Date: <sup>th</sup> 16 OCTOBER, 2018

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## **NSWALC Submission to the Productivity Commission Comments and recommendations for the Murray Darling Basin Plan: Five year assessment – Draft Report**

### **Aboriginal water rights**

Land and water rights remain central to Aboriginal peoples. Reacquiring our lands and waters is at the heart of our future.

We reiterate and share the concerns raised by Murray Lower Darling Rivers Indigenous Nations (**MLDRIN**) and Northern Basin Aboriginal Nations (**NBAN**), that to date the Murray Darling Basin Plan has not delivered social, cultural or economic outcomes for Aboriginal people in NSW. Aboriginal peoples' rights to Basin water, natural assets and related outcomes remain unfulfilled.

The right to water is a human right that is protected in 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' rights, including rights to water:

Article 25 of the UNDRIP states that Indigenous peoples have the right to maintain their spiritual relationship with their traditional lands, territories, waters and coastal seas and the right to uphold their responsibilities in this regard.

Article 26 of the UNDRIP states that Indigenous peoples have rights to their traditional lands and waters, to own, to use, develop and control these resources and that States shall give legal recognition and protection to the same.

Clean, fresh water is a basic human right, essential for life. Maintaining spiritual and cultural relationships with land, water and Country are just as important to Aboriginal people. The right to economically develop natural resources, consistent with cultural obligations, is also of significant importance. Yet, in NSW today, Aboriginal water entitlements comprise less than 0.01 percent of all water allocations. There is a situation where many Aboriginal communities in NSW do not have secure access to clean, safe drinking water, or access to their rivers, lakes, wetlands, cultural sites or cultural flows. In much of Western NSW, the dire health of our river systems is contributing to the poor health and outcomes for our communities. The over allocation of water, poor management, poor compliance, and over extraction of water is leading to dry river beds and unreliable access to drinking water during times of drought.

### **Basin governance and management**

For Aboriginal people, current water management and governance arrangements lack transparency and accountability. Aboriginal organisations are not adequately represented within the governance arrangements in place for Commonwealth or NSW State Government water management regimes. This is but one indication that First Nations rights to water are not adequately recognised and accommodated in current Basin governance and management arrangements.

The Draft Report recognises that Aboriginal people's rights and interest in water includes social, cultural, economic and spiritual aspects. Aboriginal peoples are not merely stakeholders in water management, but possess inherent and pre-eminent rights, values and interests in the lands and

waters as Australia's First Peoples. 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.

Aboriginal peoples emphasise the interconnections between people, country and water. So it is concerning to observe that even for the same locations, current State and Commonwealth water planning and management instruments are neither aligned nor adequately coordinated. This includes the situation with regard to Commonwealth Water Resource Plans and State Water Sharing Plans. While the Draft Report notes that the NSW Government has more recently improved processes for engaging Traditional Owners in water resource planning processes<sup>1</sup>, unfortunately Aboriginal Land Councils have not been properly involved in these discussions. Where engagement has occurred it has largely been at very short notice, and not on the basis of free, prior and informed consent. Continued poor engagement with Aboriginal people further risks Government's ability to achieve meaningful and lasting outcomes in water planning and management.

The Draft Report has found that Water Resource Plans are severely behind schedule, and that, "*Basin States have left too little time before July 2019:*

- *to complete effective engagement with Traditional Owners,*
- *to have regard to the views of Traditional Owners in preparing their WRPs, and*
- *for MLDRIN and NBAN to develop their advice about whether the WRP requirements for Indigenous values and uses have been met. This concern is greatest for New South Wales*"<sup>iii</sup>

The water resource planning process must not be rushed, and must engage with Aboriginal people and Aboriginal Land Councils. Water Sharing Plans must be better aligned with these processes. We note the Draft Report recommends that Basin Governments agree to extend the 2019 deadline where there is a material risk to the quality of plans.

#### **Recommendations**

1. That the NSW Government ensure Aboriginal Land Councils are engaged in water planning and management processes.
2. That the Commission maintains its draft recommendation to extend deadlines for water resource plans where there has not been meaningful engagement with Aboriginal people.
3. That additional measures to support the sustainability of our river and groundwater systems are adopted, and that climate change is included in management calculations.

#### **Compliance and Monitoring**

The Draft Report highlights the tensions between the Commonwealth supporting States to conduct Basin initiatives on the one hand, and on the other being responsible for overall implementation, which requires a level of monitoring and enforcement of State activities.

The delays to the water resource planning process and the inability of the Commonwealth Government to take action to force States to prevent water theft are examples of this problem. There are also concerns that the Commonwealth is paying inflated prices for environmental water from some irrigators. Overall the system is vulnerable to exploitation and mismanagement.

The Draft Report recommends that the MDBA is separated into two institutions — the Murray-Darling Basin Corporation and the Basin Plan Regulator, in order to provide a degree of division between the implementation and compliance roles. NSWALC strongly agrees with this recommendation.

#### Recommendations

4. That improved monitoring and evaluation is built into the MDB Plan, and for this to include proposals to hold State and Commonwealth governments to account for the commitments in the Plan, including those relating to Aboriginal people's values and uses.
5. That increased transparency and accountability measures are developed to reduce the risk of water theft, improve the outcomes from the buying of environmental water from irrigators and to ensure that Basin systems benefit from these and other measures.
6. That Aboriginal groups are consulted and engaged in the reform of water compliance and enforcement systems, and that consideration be given to the development of an independent Aboriginal water authority.

#### Resources and funding

The Draft Report includes the following finding in relation to funding to Aboriginal people:

*"In addition to the development of Water Resource Plans, Basin Governments have developed a range of tools and processes to support the recognition of cultural values and uses in state water planning and environmental management and planning.*

*The Australian Government has committed \$40 million to administer a program to support Indigenous investment in cultural and economic water entitlements in the Basin. The objectives and principles guiding the implementation of this program have not yet been articulated. It is unclear why this funding is limited to Indigenous communities in the Basin, rather than being available to all Indigenous communities in Australia".<sup>iii</sup>*

We suggest that more needs to be done in NSW to support Aboriginal people's rights and interests in water. While the \$40 million is welcomed, this amount is inadequate for supporting Aboriginal people's cultural and economic water aspirations in the Basin.

#### Recommendations

7. That funding is allocated to support genuine Aboriginal involvement in MDBA governance and management processes, including for the establishment of an independent Aboriginal water authority.
8. That funding is allocated to establish and monitor progress towards benchmarks for Aboriginal involvement in water management.
9. That the NBAN and MLDRIN cultural flow methodology be adopted and used to calculate the proportion of water that would better reflect the quantum of water that Aboriginal people need to meet their basic needs.

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<sup>i</sup> Draft Report, page 169 and 176, <https://www.pc.gov.au/inquiries/current/basin-plan/draft/basin-plan-draft.pdf>

<sup>ii</sup> Draft Report, page 176

<sup>iii</sup> Draft Report, page 180