

# Submission on the Discussion Paper for the 2026 Murray-Darling Basin Plan Review

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**This submission has been prepared on behalf of the Mehi Centre, a not-for-profit First Nation community organisation.**

**The focus on this submission will be the recognition of water rights for First Nation People.**

## First Nation water rights

Water of our aquifers and rivers are a manifestation of our culture. We consider them living beings, with their own rights and are central to our Dreaming creation stories. The maintenance of natural water systems underpins the ongoing manifestation of our culture, through totems, stories and Law. Obligations by clans to look after the lands and waters of their country were not just an economic imperative, they were fundamental to the way our Law is formed. This Law has existed for 10s of 1000s of years and is still practised today.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), with whom Australia is a signatory, identifies several components of indigenous rights pertaining to the maintenance of cultural connections to country, including waters:

Article 11 (1). *'The right to maintain, protect and develop the past, present and future manifestations of their culture ...'* Loss of those rights demands redress to those who have deprived of these rights, (2) *'States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws...'*

There is a recognition that First People have the right to make decisions regarding the management of their country. Article 18. *'Indigenous people have the right to participate in decision making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures ...'*

The spiritual component of First people's relationship with their country is recognised. Article 25. *'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 ...'*

Water is a resource to First Nation People. In the sense we relied on the production from the rivers to provide water and food of many kinds, fish, plants and invertebrates. Article 26. *'Indigenous peoples have the right to the lands, territories and resources which they have traditionally, owned occupied or other wise used ... Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of*

*traditional ownership ... States shall give legal recognition and protection to these lands, territories and resources...'*

We have the right that these resources are protected and used. Article 29 (1). *'Indigenous peoples have the right to the conservation and protection of the environment and productive capacity of their or territories or resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection ...'*

However, when it comes to Australian Law, such expressions of First Nation sovereignty are almost completely lacking, outside of the *Native Title Act 1993* which recognises prior and ongoing ownership of the continent by First Nation people, with a vague mention of 'waters'.

This Review is an opportunity to modify existing legislation, particularly the *Water Act 2007*, to reflect some of these principles in relation to First Nation water rights.

The **Closing the Gap** (CTG) policy specifically emphasise the need to restore First Nation rights in relation to land and water, with an objective that states that, *'Aboriginal and Torres Strait Islander people maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters.'*

There is one target (15a) that states, *'By 2030, a 15 per cent increase in Australia's landmass subject to Aboriginal and Torres Strait Islander people's legal rights or interests.'*

With only four years to go, in the Murray-Darling Basin, First Nations people hold rights to about 40% of land through various native title agreements, although they own less than 0.2% of surface water entitlements. First Nation people hold no entitlement for groundwater. Maintaining a distinctive cultural, spiritual and economic relationship with 'waters' is difficult when there is no specific interest recognised in law. The Water Act and the Basin Plan are a key way these rights can be expressed and recognised, which would also fill a large gap in the recognition of First Nation rights that exists in relation to resources.

## **Survey of attitudes**

The Murray Darling Basin Authority (MDBA) conducted a wide Aboriginal consultation process to fulfil their community consultation requirements for the Plan. Feedback from the community covered a range of views including recognition that *'First Nations rights are very poorly recognised, and their involvement in water and environmental decision-making is very limited.'*

They also recognised the poor condition of the Barwon Darling River and its tributaries due to current and past management of the ecosystem.

- poor river health, lack of river connectivity, mass fish deaths, and drought has decreased community wellbeing for First Nations peoples who depend on healthy Country for Cultural practices and spiritual wellbeing
- growing concerns about the impacts of poor water quality on First Nations peoples' health and wellbeing
- unsafe drinking water and loss of access to water sources for Cultural practices
- the quality and consistency of engagement vary widely depending on the jurisdiction

- participation in water resource management planning is often limited to the preparation of the plans
- tangible on-the ground outcomes for First Nations peoples have been slow.

These comments reflect what First Nation people of the Basin have experienced in recent decades. The loss of flow during the big drought of 2018-19 has not seen the river recover sufficiently since. The lack of a baseflow in times of low flow has seen the water holes dry up and the natural communities they support also disappear. The Plan talks about the fish, but all the other resources we relied on for millennia are not mentioned, the reeds, the yabbies, the mussels, the birds and turtles. The river is an ecosystem that means all parts of it are needed for it to be healthy, including the people. The Plan advocates a 'landscape approach' to river health but fails to recognise the river as an ecosystem.

An example of the environment coming last when it comes to both the Commonwealth and state governments mismanagement is the plight of the Gingham Watercourse. It supports the Ramsar-listed Gwydir Wetlands are vital for waterbird breeding and general biodiversity but rely on managed flows for their health and survival. The NSW Government's Reconnecting Watercourse Country Program supposedly targets improvements in the Lower Mehi River, and the Gingham and the Lower Gwydir watercourses "*to enhance water delivery and environmental outcomes*".

The Plan states that "*Planning is advanced for mitigation measures, including flow easements, and long-term solutions for the Gwydir raft.*" However, a dispute between NSW and landowners about how environmental water is to be delivered has prompted the state government to withhold water flows in the gingham watercourse such that the normally permanent Gingham waterhole has dried leaving a remnant population of turtles on the edge of local extinction. They had to be rescued by a concerned biologist.

Water regulation has caused the death of local populations of water life perhaps many times. The Gwydir Raft is a 20 mile long stretch of watercourse clogged up by the remnants of past land clearing and human refuse and has been a feature of the landscape in the wetlands for over 50 years.

**We suggest the Plan recognise the Barwon Darling as a 'living being.'**

Alongside this loss of our key resources, swimming places and totem animals is the loss of good water quality. The lack of flow in low flow times sees the river shrink into stagnant anaerobic puddles which become toxic to life and overrun with algae. Towns like Walgett and Bourke and Wilcannia are deeply affected by this issue. Water is generally turbid with agricultural residues and unfit for human consumption at the best of times.

Participation has always been an issue because of settler-based ways of communication. Setting up committees with Aboriginal members is one way of being 'inclusive'. Ideas of 'cultural safety' are still to be addressed within the Department and Authority. Genuine community participation would include structures such as regional traditional owner and elder reference groups, and not through aboriginal and non-aboriginal employees of the Government.

## **Water Act**

The *Water Act 2007* states that the Commonwealth is legally required to ensure that management of the Basin, “... *takes into account spiritual, cultural, environmental, social and economic matters relevant to Indigenous people, including in relation to their knowledge, values, uses, traditions and customs*”, and that it “... *recognises and protects the interests of Indigenous people*” by “*support(ing) opportunities for Indigenous people to participate in determining and developing priorities and strategies for the development or use of Basin water resources, including opportunities for participation that incorporates free, prior and informed consent*”.

The Murray-Darlin Basin Authority through the Plan acknowledges that in relation to First Nation rights and interests, it must, “... *move(ing) beyond consultation to genuine participation in water management.*”

This emphasis on facilitating increased participation is consistent with the recommendations made by Grafton, Colloff, Marshall and Williams (2020), who state that:

*“... using deliberative democracy, engaging in more effective and inclusive participation in decision making in terms of water planning and allocations, especially those of the long-excluded such as the First Peoples of Australia”.*

The Basin Plan outlines several steps the Government intends to follow:

- support existing agreements between governments and First Nations peoples, such as the National Agreement on Closing the Gap
- align with agreed national and state water policies that seek to elevate First Nations voices
- respect Indigenous Data Sovereignty and Indigenous Cultural and Intellectual Property, and ensure culturally safe and enabling spaces for participation
- support self-determination through processes that involve First Nations peoples in setting priorities and strategies, including through free, prior and informed consent.

While commentators call for the need for greater participation by First Nation people, as identified in the Plan, by itself this is not recognition of First Nation *water rights* as such. The Plan calls for greater support for self-determination by setting strategies and priorities within a colonial framework, but this by itself is not self-determination. The Government’s current approach is to obfuscate First Nation people’s rights to water and lands, through promises of participation, but genuine participation is hampered by a reluctance to engage with the traditional owners and a range of views from the affected communities in a culturally appropriate way.

First People cultural rights to water has been left out of consideration by successive Australian Governments. Now, under the ‘Water Market’ regime, water rights have seen a further step in the alienation of water from First Nation ownership being a form of privatisation of this public resource, much like freehold land.

## **Recent moves by Minister**

The long-standing erosion of rights has been implicitly recognised by Government through some more recent actions it seems, are aimed at restoring some form First Nation 'ownership' and interest in water outcomes in the Basin by the implementation of two strategies, not articulated in the Plan.

The first is recognition that First Nation interests in water as a resource now is limited and but can be achieved under the current market regime by the establishment of a First Nation body to buy water and hold water entitlement. This has led to the establishment of an Aboriginal Water Entitlement Program and intention to set up an Aboriginal Water Holding body with the allocation of \$100 million dollars initially to invest. It is yet to be seen how effective this process is as it is really a minor re-allocation of water entitlements through the market, though to be valued at over \$300 billion.

The Basin Plan however implies that further water buy backs are not necessary, noting the harmful impacts of the loss of water allocations has caused to some towns. The Plan also implies that the remaining issues of Basin health concern should focus on resolving off-stream and floodplain water flow issues. However, while floodplain harvesting remains a significant issue, particularly in the Northern Basin, the 2,100 GL of water so far moved to the environmental water holder, while welcome, is regarded many scientists as still insufficient to guarantee ecosystem restoration and baseflow where it is needed most. Moves by the Minister to institute a buy-back program and planning for cultural flows needs full support within the Plan.

The Commonwealth now recognises 'cultural water' flows and has allocated \$40 million to a program to plan for cultural outcomes from environmental flows. The Plan states that cultural outcomes can be achieved through the right use of environmental water. 'Cultural water' has no definition under the Act.

## **Recommendations**

First Nation Water rights need to be written into Plan and Act. There are number of ways this can be achieved.

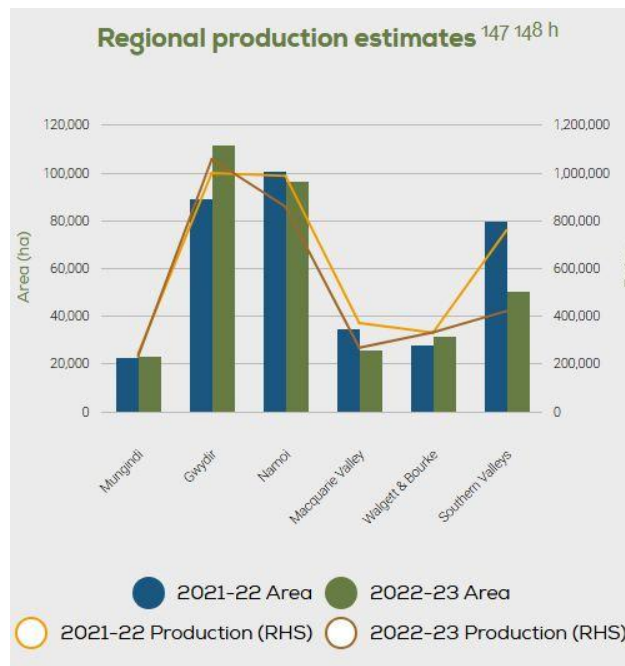
A clear statement of intent in the legislation to acknowledge the existence of first nation water rights would be a first step.

Supporting and building on existing programs for cultural water and an Aboriginal owned water holding body within the Plan, would be simple. These programs can be expanded in subsequent years.

But given the recognition of First Nation prior and continuing ownership of the continent, and the almost complete loss of First Nation rights in relation to water there is a strong case that Basin First Nations people are entitled to a levy as a form of restitution for past wrongs and dispossession of their water resources.

Consistent with the articles of UNDRIP, would be the establishment of an export levy on agricultural products. In 2025, cotton by itself is predicted to generate \$US 2.21 billion in export earnings, most of which comes from the Gwydir catchment, which produced 1.7 million bales in 2022-2023.

Only a minor levy of few percent, would go a long way to self-determination than any proposal the MDBA currently professes, but could be model for the Australian Government to pursue.



The Plan states, that some of these issues would be dealt with during the Plan Review.

*“It is important to note that the outcomes described in the Basin Plan do not reflect the Plan’s legislative purpose to account for First Nations peoples’ rights and interests in water management. This is a gap that will be addressed through the Basin Plan Review.”*

To this end we make the following recommendations:

Legislate changes to the Water Act and Plan and policy changes by the MDBA that incorporate First Nation rights and interests clearly. This should include:

- 1. A clear statement of the intent to provide Aboriginal water rights clearly into the Act.**
- 2. Establishment of regional Aboriginal-owned Water Entitlement Holding Bodies in perpetuity and registered under the ATSIIC and/or the ACNC. The current AWEP program is headed in this direction and warrants full support by the MDBA.**
- 3. The MDBA sanction further water buy backs and improvements to floodplain flow as a matter of policy.**
- 4. The Water Act and Plan recognise ‘cultural flows’ as an entity separate and additional to ‘environmental flows’**
- 5. In a move to develop self-determination, establish a First Nation levy of agricultural exports and legislate a body to hold and distribute the funds.**

Sincerely,

Polly Cutmore

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