Re: Draft report on the Barwon-Darling Water Sharing Plan Review

The Board of MLDRIN appreciates the opportunity to provide the following comments and responses to the Draft report on the Barwon-Darling Water Sharing Plan Review (hereafter, ‘the Draft Report’).

Summary

MLDRIN applauds the Natural Resources Commission (NRC) for its robust and frank assessment of the serious impacts on ecosystem health and community wellbeing associated with the current Water Sharing Plan (WSP). MLDRIN shares many of the views and key concerns articulated by the Commission in its Draft Report and hopes that this review can be an opportunity to address critical risks to the river system. We share the Commission’s concerns about the impacts of water sharing rules on cultural, social and environmental outcomes and resilience.

MLDRIN strongly supports the Commission’s key recommendation that the Plan needs to be amended and subsequently remade to meet the water sharing principles outlined in the Water Act 2000. We support overarching recommendations 1 and 2 in the Draft Report.

While time constraints do not permit us to provide detailed comments on each of the recommendations throughout chapters 4-13, we support the Commission’s proposed roadmap towards a new plan, noting that measures to protect low flows and mitigate the risk of further fish deaths are a matter of urgency.

We agree that amendment of the plan should be informed by diverse stakeholders through an equitable and transparent process, clearly communicated and consistently delivered. First Nations should be engaged as rights-holders and key partners to negotiate amendments to the Plan.

We strongly support the Commission’s recommendations in relation to protection of Aboriginal values and uses. Specific responses to the recommendations are included below.
Plan performance

MLDRIN welcomes the Draft Report’s detailed consideration of the performance of the WSP and water sharing arrangements under the WSP. The Draft Report details specific adverse provisions in the WSP, changes made subsequent to the public-exhibition of the plan and questionable modelling assumptions that have contributed to poor outcomes and undermined the ability of the Plan to meet its objectives and align with the principles of the Water Act 2000. The WSP provisions have allowed for extraction of low flows, contributing to an altered flow regime which poses severe impacts on threatened species, basic human needs and social and cultural outcomes.

The Commission has clearly articulated the requirement for the WSP to prioritise environmental outcomes and basic land-holder rights over other uses. The failure of the WSP to provide for appropriate prioritisation is starkly illustrated in the experience of Barkandji people and their efforts to have Native Title rights recognised and protected.

Evaluation and monitoring

We support comments in Chapter 5 and Recommendation 4, regarding the need for identification of social and cultural values, objectives and performance indicators. We wish to highlight that effective and culturally appropriate methodologies are being actively employed in other parts of the Basin to identify and articulate water-dependent cultural values, indicators, threats and objectives. Since 2016, MLDRIN has been utilising the Aboriginal Waterways Assessment (AWA) tool in partnership with Victorian and NSW Traditional Owners to great success.¹ The National Cultural Flows Research Project has also furnished First Nations with a new and rigorous framework for documenting water values and determining flow requirements.² We commend these two methodologies to the Commission as offering practical pathways to addressing the absence of First Nations values and objectives in the WSP.

MLDRIN supports Recommendation 5 and believes this could be strengthened by inclusion of an identified role for Barkandji and other First Nations rangers and Water Officers in monitoring and compliance.

Social needs

The Draft Report succinctly describes the adverse impacts of current water sharing arrangements on First Nations’ uses of and connections to waterways: “Aboriginal communities within the Plan area are being disproportionately impacted as connections with land, water and culture are critical to their health and well-being.”

This is a critical point which should inform future amendments to the Plan.

**Native title and cultural values**
Chapter 10 provides a detailed assessment of the extent to which the Plan has achieved cultural outcomes and provided for the recognition and protection of cultural values and First Nations’ water rights.

MLDRIN strongly endorses the Draft Report’s findings including:
- That the Plan fails to provide effective access to water as part of native title rights
- That the Plan does not adequately identify or define cultural values and objectives
- That there has been no access to water under the Cultural Access provisions
- That engagement with First Nations to date has been deficient

These deficiencies have not been addressed despite the concerted efforts of Traditional Owners to document and address serious impacts to cultural health and wellbeing and to advocate for their rights as native title holders and traditional custodians.

MLDRIN strongly supports Recommendations 14 (a – e) and Suggestion H. We offer the following comments in response to the recommendations.

**14 (a) Amending current provisions to include recognition of Barkandji and Malyangapa native title rights.**
This is required in order to ensure the WSP complies with legislation. We also argue that the process undertaken to quantify water requirements for native title rights in the WSP must employ best-practice methodologies for identification of water-dependent values and associated flow requirements. It is essential to understand the flow dependencies for key species, significant places and activities which underpin the enjoyment of native title rights. The WSP must specify a permanent allocation of water for native title that reflects these real flow dependencies.

**14 (b) Including a timeframe of three months to undertake initial amendments of the Plan following future determination of any other native title claims and Indigenous Land Use Agreements, and a further 12 months to undertake the detailed engagement, final amendment and allocation process.**
We agree that a minimum of 12 months would be required to undertake appropriate engagement and determine allocations required to support the enjoyment of native title rights.

**14 (c) Providing an interim water allocation for each nation in the Plan area.**
We strongly endorse this recommendation as a first step towards restoring fairness, rebuilding confidence and re-prioritising allocation of water resources in line with the Act. We agree that adequate time is needed to undertake a thorough process to identity Aboriginal water-related values, objectives and outcomes, and develop final agreed flow allocations in consultation with nations. We are encouraged that the
Commission recognises the importance of determining final allocations by determining the flow dependencies for Aboriginal water-related values, objectives and outcomes. Interim allocations will demonstrate commitment and can help to build participation of community members to determine final allocations.

14 (d) Simplifying licence categories and processes for Aboriginal water access that can address include cultural, environmental, social and economic purposes. We strongly agree that the current cultural, community development and environmental access licence provisions are inadequate and have not been adequately utilised, promoted and supported in order to ensure improved outcomes for First Nations outcomes. MLDRIN understands that DPIE-Water has undertaken a review of the effectiveness of the cultural access and community development licence provisions. However, we have not been informed of the results of this review. DPIE-Water should immediately release the results of any review undertaken.

14 (e) Building on the established nation-by-nation engagement already being undertaken as part of developing water resource plans to identify Aboriginal values and uses, objectives and outcomes, and flow allocations. MLDRIN strongly endorses the Commission’s views regarding the paucity of information about cultural values, objectives and performance indicators and the implications this has on the performance of the WSP. Water law and policy at a State and Federal level mandates the recognition and protection of cultural values in water planning. We strongly support this recommendation to identify and account for First Nations values and objectives within the Plan, so long as the process of identification and documentation is led by First Nations.

We wish to stress that the identification and documentation of cultural values, objectives and indicators is a complex and sensitive process. MLDRIN has extensive experience in cultural assessment and values mapping through our application of the Aboriginal Waterway Assessment (AWA) tool in Victoria and NSW. Our experience highlights that cultural mapping and objective setting processes must be Traditional Owner led, allow for adequate time to ensure free, prior and informed consent and include appropriate protections for cultural knowledge and intellectual property.

The Commission has recommended that the Plan needs to specify Aboriginal water related values, objectives and outcomes through a process informed by relevant standards and guidance including “processes of flow allocations set out in the National Cultural Flows Project.” MLDRIN supports this recommendation and wishes to stress that the identification of Aboriginal water-related values, objectives and outcomes must be approached carefully through a process co-designed with First Nations.

MLDRIN has recently appointed a Cultural Flows Project Officer whose role will be to implement National Cultural Flows Project water planning tools, with funding provided by the Federal Government. We are exploring opportunity to work with First Nations to identify cultural flow objectives in the area.
**Suggestion (H) Develop a NSW Aboriginal Water Strategy to provide consistent and transparent guidelines for Aboriginal involvement in water planning and management in NSW.**

MLDRIN strongly endorses this suggestion, which reflects the consistent advice provided by First Nations and Aboriginal representative organisations to NSW Government. The Murray Darling Basin Plan requirements have established new expectations and benchmarks for First Nations engagement in water planning. While NSW has unfortunately regressed in terms of formal commitments to supporting First Nations involvement, a significant process of consultation and engagement is currently underway for the development of water resource plans. It essential that the progress made through this consultation work is consolidated through development of a formal strategy and funded policy commitments to support ongoing First Nations involvement and leadership in water management across NSW, including beyond the current water resource plan development process.

Recent, successful reforms in Victoria present a good model that the NSW Government could look to. There, the implementation of the *Water for Victoria* plan\(^3\) has created positive opportunities for First Nations to document water-dependent values, collaborate with water management agencies and pursue economic development opportunities through access to water. The recently passed Water and Catchment Legislation Amendment Bill 2019 has formalised obligations for Victorian water and catchment management agencies to engage with and support opportunities for First Nations.

**Conclusion**

The NRC has undertaken a comprehensive review of the WSP and produced a compelling case for amendments to restore public confidence, ensure fairness and to meet the principles of the Act. MLDRIN is conscious of the strong public and political pressure which is brought to bear on decisions regarding water access and allocation in this region. We urge the Commission to resist any efforts to dilute the strong recommendations included in the Draft Report. MLDRIN looks forward to working with NSW agencies and local Traditional Owners to progress these positive recommendations.

---