

Dear Member of Parliament,

The Murray-Darling Basin (**MDB**) is Australia's largest and most well-known river basin. It is also home to over 40 Aboriginal Nations, all of whom continue to endure the lasting impacts of water dispossession.

While multiple rounds of water reform at both the State and Commonwealth level have sought to limit extractions and provide for 'environmental flows' across the MDB, there has been a persistent and notable failure to acknowledge and safeguard First Nations' rights and interests in water laws and policies.

This has culminated in legal and policy frameworks that almost entirely deprive First Nations peoples of any decision-making power over water management processes that affect their Country, communities, agency and well-being. This includes First Nations peoples routinely being deprived of access to Country and to culturally significant sites of water. It has also resulted in First Nations peoples owning a mere 0.2% of surface water entitlements across the MDB. More generally, declining river health has a negative impact on the ability of First Nations peoples to uphold customary law, meet obligations to their Country, to engage in cultural practices such as fishing, harvesting bush medicine plants, and to meet their cultural obligation to provide clean, flowing water to downstream neighbours.

Significantly, the *Water Act 2007* (Cth) (**Water Act**) does not refer to, or provide for, First Nations rights and interests in its objects; nor does it include substantive provisions capable of delivering any modicum of water justice to First Nations peoples.

This critique extends to the Water Act's subordinate instrument, the Basin Plan. Indeed, the Plan's sole 'concession' to the Basin's Aboriginal Nations is a series of provisions requiring 'consultation' in relation to the development of catchment-specific instruments known as 'water resource plans' (**WRPs**).

The most recent, proposed reform to the Water Act, namely the *Water Amendment (Restoring Our Rivers) Bill 2023* (**Bill**), is entirely silent in relation to First Nations rights and interests. At best, this silence amounts to a tacit endorsement of the abysmal status quo. At worst, it serves to further entrench a water management framework that systematically excludes and discriminates against First Nations peoples. Further to this point, there is no reference to native title holders or their recognised prescribed bodies corporates.

It is our view as legal practitioners and academics that the Water Act and its amending Bill are entirely inconsistent with the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**), which was endorsed by Australia in 2009.

We therefore implore the Australian Parliament to break with the decades-long cycle of discriminatory water reforms and amend the Bill and Act to ensure that it is consistent with the UNDRIP, as well as with the recommendations of relevant non-government self-determined Indigenous organisations, such as the Murray-Lower Darling Rivers Indigenous Nations (**MLDRIN**). This includes amending the Water Act to require:

- the UNDRIP to be added to the list of 'relevant international agreements';
- the Water Act's objects to explicitly provide for Basin Nation's rights and interests, including in relation to customary law;

- the Basin Plan, WRPs and any other subsidiary instruments (and their preparation) to be consistent with the UNDRIP;
- the Basin Plan and WRPs to be developed on the basis of Basin First Nations water knowledge and cultural science;
- the contents of the Basin Plan and WRPs to substantively address and provide for the rights and interests of Basin First Nations, including customary law;
- the Basin-wide long-term annual average extraction limit to be capable of meeting Basin First Nations cultural objectives and watering requirements; and
- WRPs to include a program to deliver cultural flows (as defined in the Echuca Declaration)¹, sufficient to improve the spiritual, cultural, environmental, social and economic conditions of Basin First Nations within the WRP area. Basin Nations must have agency over how this work is conducted, including who is engaged to undertake its delivery without limitations.

We believe that these legislative amendments must be complemented by adequate resourcing across two key areas. This includes proper resourcing of:

- Basin First Nations, including their nominated non-government self-determined representative Indigenous body or bodies to:
 1. employ the necessary operational staff to ensure thriving sustainable businesses that support Nation building; and
 2. to undertake the program of work required to develop Nation-based cultural flows projects.
- The Aboriginal Water Entitlements Program, to ensure that it can provide meaningful pathways towards water entitlements being owned and managed by Basin First Nations.

The Australian Parliament has a critical decision before it which will have tangible and lasting consequences for Basin First Nations. We trust that this decision will be a resounding rejection of the status quo and that Australia will hold itself to a higher standard by, *inter alia*, aligning the Water Act and its subsidiary instruments with UNDRIP.

Yours sincerely,

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¹ <https://www.mldrin.org.au/wp-content/uploads/2018/07/Echuca-Declaration-Final-PDF.pdf>

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