

MLDRIN Proposed amendments

Note: The below amendments will need to be supported by amendments to the Basin Plan 2012. We have not drafted those amendments.

Proposal	Proposed text
<p>1. Include First Nations outcomes in the Objects of Water Act section 86AA to facilitate First Nations water access through WESA.</p>	<p>Amend s 86AA to insert:</p> <p>“(2A) Without limiting subsection (1) and (2), environmental outcomes must be enhanced in a manner that recognises and promotes the use and management of Basin water resources by Basin Indigenous peoples.”</p> <p><i>Alternative: Move to subsection 86AA(3) and amend as follows:</i></p> <p><i>(3) The object of this Part is to be achieved by:</i></p> <p style="padding-left: 40px;"><i>(b) [...]; “and</i></p> <p style="padding-left: 40px;"><i>(c) recognising and promoting the use and management of Basin water resources by Basin Indigenous peoples”.</i></p>
<p>2. Include specific reference to activities or measures that will support First Nations objectives and outcomes in the Act at section 86AA(2) or in the Purposes of the WESA (section 86AD).</p>	<p>[In addition to above]</p> <p>Amend s 86AA to insert:</p> <p>“(2A) Without limiting subsection (1), outcomes for Indigenous Basin Peoples can be enhanced in the following ways:</p> <p>(i) acknowledging cultural and spiritual connections to land, biodiversity and resources through a relationship with country; and</p> <p>(ii) recognising and promoting the use and management of Basin water resources by Basin Indigenous peoples supporting participation in decision-making, planning and the development of policies, programs and processes; and</p> <p>(iii) facilitating access to biodiversity and providing opportunities for economic advancement;”</p> <p>Amend s 86AD to insert:</p> <p>“(ba) purchase water access rights in relation to Basin water resources or make payments for the purpose of:</p> <p style="padding-left: 40px;">(i) enabling Basin Indigenous peoples to use and manage Basin water resources;</p> <p style="padding-left: 40px;">(ii) otherwise delivering cultural flows; and</p>

	(iii) recognising and promoting Basin Indigenous peoples' use and management of Basin water resources."
3. WESA funding and any 'surplus amount' referred to in proposed new s86AH should be applied for the benefit of Basin First Nations, within the purposes of the Water Act.	Amendments to be drafted accordingly.
4. Establish a commitment and program to ensure Basin First Nations' outcomes from WESA, including through land and water package purchases, and a defined percentage or allocation of funding from the special account to resource these activities.	Amendments to be drafted accordingly.
5. Amend section 86AE to specify that a minimum volume of water, to be secured through the WESA, will be transferred to Basin First Nations ownership, in a way determined by Basin First Nations.	<p>Amend s 86AE to insert:</p> <p>"(1A) To further avoid doubt, the use and management of water access rights referred to in subsection (1) is subject to the provisions in subsection 105(3A)."</p> <p><i>Alternatively, Indigenous control over environmental water holdings could be achieved by way of amendments concerning the Environmental Watering Plan under ss 28-30. The CEWH must use its water holdings in accordance with this plan. To the extent CEWH/Cth waterholdings form the basis of indigenous control or influence over those holdings this could be done via amendments concerning the EWP. That would also require amendments in the Basin Plan regarding the EWP, which we do not have time to consider here.</i></p> <p>Regarding the EWP:</p> <p>Amend s 28(1) to insert:</p> <p>(f) to recognise and promote the rights and interests of Basin Indigenous peoples in use and management of Basin water resources...</p> <p>Amend s 28(2) to insert:</p>

	<p>(ba) the manner or methods by which the rights and interests of Basin Indigenous peoples are to be recognised and given effect under the environmental watering plan...</p> <p>Amend subs 28(3) to insert:</p> <p>(e) water holdings over which Basin Indigenous peoples exercise rights, interests or authority (which may be expressed volumetrically)</p> <p>Amend s 105 to insert:</p> <p>“3A The CEWH must consult and cooperate in good faith with Basin Indigenous peoples through their representative bodies in order to obtain their free and informed consent on the use and management of Commonwealth water holdings in ways that benefit Basin Indigenous Peoples.”</p>
<p>6. Stipulate that any combined land and water package purchase facilitated through WESA must be held, owned and managed by Basin First Nations and/or their nominated representative organisations.</p>	<p>Amendments to be drafted accordingly.</p>
<p>7. Amend section 86AD(2)(c)(ii) to ensure a dedicated component of the WESA funds is committed to provide for payments that address the detrimental impacts of poor water management, ecological degradation and stalled Basin Plan implementation on Basin First Nations.</p>	<p>Amend s 86AD(2)(c) to insert:</p> <p>[...]</p> <p>“(iii) to address detrimental social, economic or health impacts on the wellbeing of any community in the Murray-Darling Basin arising from acute water shortages or water quality issues; and</p> <p>(iii) achieve cultural flows, water justice outcomes and facilitate opportunities for economic advancement for Basin Indigenous Peoples.”</p>
<p>8. Revise the Bill to include amendments to the Water Act 2007 that recognise and advance First Nations water rights and interests, as guided by long standing advocacy</p>	<p>See notes for recommendation 13 below.</p>

<p>from MLDRIN and other First Nations organisations.</p>	
<p>9. Amend the Objects (section 3) of the Water Act to recognise the rights and interests of Basin First Nations in the Basin water resources, as articulated through relevant principles and articles of the UNDRIP, including Articles 26 and 32.</p>	<p>Amend s 3 (Objects) and insert new paragraph 3(ca)</p> <p>The objects of this Act are: [...]</p> <p>“(ca) in giving effect to those agreements, to recognise and promote Basin Indigenous Peoples’ rights and interests in the use and management of Basin water resources and specifically in ways that optimise Basin Indigenous peoples’:</p> <ul style="list-style-type: none"> (i) right to practice and revitalize cultural traditions and customs; (ii) right to maintain and strengthen distinctive relationships with their traditional lands and waters (iii) right to revitalize, use, develop and transmit to future generations histories, language, lore, oral traditions, and knowledge as they relate to Basin water resources; (iv) right to conservation and protection of the environment and productive capacity of lands and waters to which they have a traditional connection; (v) right to maintain, control, protect and develop their cultural heritage, traditional knowledge, and traditional cultural expressions as they related to Basin water resources; (vi) right to determine and develop priorities and strategies for use of Basin water resources to which they have a traditional connection;”
<p>10. Include the UNDRIP in the definition of “relevant international agreements” in the Act and amend section 3 and sections 20 and 21 of the Act to reflect this inclusion.</p>	<p>Amend s 4 (Definitions) of the Act to insert:</p> <p>A new subpara under the definition of “relevant international agreements” to include “(i) the United Nations Declaration on the Rights of Indigenous Peoples”</p> <p>Re-number existing para (i) accordingly.</p> <p>Amend s 4 to insert:</p> <p>“UN Declaration on the Rights of Indigenous Peoples means [add details of the making of that Declaration and Australia’s endorsement of it]”</p> <p>To give effect to the above, amend “relevant international agreement” to “relevant international <u>instrument</u>” throughout the Act.</p>

<p>11. Include substantive provisions in the Act to establish a clear and positive duty on decision makers (Commonwealth, MDBA and Basin States) to give effect to, or act in accordance with UNDRIP and the Convention on Biological Diversity Article 8(j) in the preparation of the Basin Plan, Water Resource Plans, and other subsidiary instruments.</p>	<p>See recommendations 13(e) and 13(f) below.</p>
<p>12. Change references to “Indigenous people” or “indigenous organisations” in the Water Act and Basin Plan to be “Basin First Nations people” or “Basin First Nations Organisations” and change the corresponding definitions.</p>	<p>Alternatively amend “Indigenous peoples” in the Act and Basin Plan to “Basin Indigenous peoples”</p> <p>Amend s 4 to include:</p> <p>“Basin Indigenous peoples means</p> <ul style="list-style-type: none"> (a) People who are recognised in the Indigenous community or by a relevant representative Aboriginal: <ul style="list-style-type: none"> (i) as having spiritual or cultural affiliations with a site or area in the Murray Darling Basin; or (ii) as holding native title in respect of a site or area in the Murray-Darling Basin; and (b) who is entitled to undertake activities under Aboriginal custom or tradition in a site or area in “the Murray-Darling Basin.”¹
<p>13. Amend Water Act sections 20, 21 and 22 to include substantive requirements to give effect to First Nations procedural rights as defined in Article 19 of the UNDRIP, including</p>	<p>See amendments below.</p>
<p>a. Amend section 20 to add a new subsection that states ‘by providing for Basin First Nations people’s rights and interests’, and</p>	<p>Amend s 20 of the Act to insert:</p> <p>“(da) the use and management of Basin water resources in a way that recognises and promotes the rights and interests of Basin Indigenous Peoples.”</p>

¹ Drafting based on existing state legislation: see, for example, *Great Barrier Reef Marine Park Act 1975* (Qld), s 3 (definition of ‘traditional owner’).

<p>that section 20(a) be amended to refer specifically to UNDRIP.</p>	
<p>b. Amend Water Act section 21 to ensure proper consideration of Basin First Nations rights, interests and objectives and proper implementation of relevant international agreements.</p>	<p>Amend s 21(2)(a) of the Act to insert:</p> <p>“(iii) the fact that the cultural rights of Basin Indigenous Peoples have been adversely impacted by historic and current use and management of Basin water resources and special measures are required to ensure consistency with relevant international agreements; and”</p> <p>Amend s 21 to insert:</p> <p>(3A) Without limiting subsection (1), the Basin Plan must also:</p> <p>(a) recognise the traditional or cultural knowledge and practices of Basin Indigenous Peoples relevant to the use and management of Basin water resources; and</p> <p>Note 1: See Article 8(j) of the Convention on Biological Diversity.</p> <p>(b) recognise and promote Basin Indigenous Peoples’ right to the use and management of Basin water resources; and</p> <p>Note 2: See Articles 26 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples.”</p> <p>Amend s 21(4)(c)(v) of the Act as follows: social, cultural, Indigenous and other public benefit issues;</p> <p>Insert in subs 21(4):</p> <p>“(d) consult and cooperate in good faith with Basin Indigenous Peoples through their own representative institutions in order to obtain their free and informed consent prior to the performance of that function or exercise of that power to the extent it may reasonably be expected to impact on Indigenous peoples’ connections to or interests in Basin water resources.”</p> <p>Note 1: See Article 32 of the United Nations Declaration on the Rights of Indigenous Peoples.”</p>
<p>c. Amend s 21(4)(b) to specify that the Authority and Minister must act in accordance/take into</p>	<p>Amendments to be drafted accordingly.</p>

<p>account First Nations water knowledge and cultural science (and amend the definition of ‘best available scientific knowledge’ accordingly).</p>	
<p>d. Insert a new section 21(4)(d) to establish a requirement for the Authority and the Minister to act consistently with the rights and interests of Basin First Nations, in exercising their powers and performing their functions.</p>	<p>See recommendation 13(b) above.</p>
<p>e. Amend section 22 to specify that the content of the Basin Plan must substantively address Basin First Nations rights and interests, including in the management objectives and outcomes and in water resource plans.</p>	<p>Insert new s 14 of the Act:</p> <p>“In performing any of their functions that may reasonably be expected to impact on Basin Indigenous Peoples’ rights and interests, including a function or power under this Act, an agency of the Commonwealth or a Basin State must consult and cooperate in good faith with Basin Indigenous Peoples through their own representative institutions in order to obtain their free and informed consent prior to the performance of that function or exercise of that power.”</p> <p><i>Alternative: “In performing any of their functions that may reasonably be expected to impact on Basin Indigenous Peoples’ rights and interests, including a function or power under this Act, an agency of the Commonwealth or a Basin State must give proper consideration to [the Objects of this Act / relevant international agreements].”²</i></p> <p><i>[Draft based on existing state legislation: see, for example, Flora and Fauna Guarantee Act 1988 (Vic), s 4B].</i></p>
<p>f. Amend section 22, Item 11 and section 22(3)(ca) to specify that a requirement for the preparation of water resource plans is to secure the free, prior and informed consent of relevant Basin First Nations.</p>	<p>Repeal subs 22(3)(ca).</p> <p>Insert:</p> <p>“22(3)(ca) the requirement for an agency of the Commonwealth or a Basin State to consult and cooperate in good faith with Basin Indigenous peoples, through their representative bodies, in order the obtain free and informed consent to the preparation of water resource plans prior to their accreditation;</p>

² Drafting based on existing state legislation: see, for example, *Flora and Fauna Guarantee Act 1988* (Vic), s 4B.

	(cb) the use and management of Basin water resources by Basin Indigenous peoples in accordance with their law and custom and connection to those Basin water resources.” ³
14. Amend section 50 of the Act to add a subsection that specifically relates to First Nations rights and interests including consideration of current First Nations water ownership across the Basin, achievement of cultural flows and related targets.	Amendments to be drafted accordingly.
15. Include an Object in section 3 of the Act to facilitate partnerships with Traditional Owners in the management of water resources, water dependent assets and Ramsar wetlands.	Insert new subsection: “(g) facilitates partnership with Basin Indigenous Peoples in the management of Basin water resources, water dependent environmental values and Ramsar wetlands”. ⁴
16. Amend section 23(1) of the Act to require that the Long-term average sustainable diversion limit must also be capable of meeting Basin First Nations cultural objectives and watering requirements, or establish an allowance for cultural water requirements (as determined through an appropriately resourced program of assessment undertaken by Basin First Nations or their nominated representative body).	Amendments to be drafted accordingly.
17. Amend section 22(1) of the Act to include a requirement that water	Amendments to be drafted accordingly.

³ This amendment requirements corresponding amendments to the Basin Plan.

⁴ Drafting based on existing state legislation: see, for example, *Great Barrier Reef Marine Park Act 1975* (Qld), s 3(e).

<p>resource plans must include a program, to be implemented over the life of the WRP, that designs and delivers cultural flows (as defined in the Echuca Declaration), being controls over water resources sufficient to improve the spiritual, cultural, environmental social and economic conditions of Basin First Nations within the WRP area. Foundationally, this must include resourcing Basin First Nations, or their nominated representative body to undertake this work.</p>	
<p>Amend review of the Water Act provision</p>	<p>Section 253: Review of the operation of the Act.</p> <p>Add new subsection 253(3A):</p> <p>“(3A) The Minister must consult and cooperate in good faith with Basin Indigenous peoples through their representative bodies in order to obtain their free and informed consent prior to exercising their powers and functions under this section.”</p>
<p>Amend review of the Basin Plan provision</p>	<p>Section 50: Review of the Basin Plan</p> <p>Add new subsection 50(1A):</p> <p>“(1A) The Minister must consult and cooperate in good faith with Basin Indigenous peoples through their representative bodies in order to obtain their free and informed consent prior to exercising their powers and functions under this section.”</p>
<p>Snowy Water Licence provisions</p>	<p>Repeal subsections 21(6) and (7) of the Water Act.</p> <p>Repeal section 1.08 of the Basin Plan.</p> <p>Insert new section 253A:</p>

	<p>Review</p> <p>(1) Before the end of 2024, the Minister must cause to be conducted a review of:</p> <ul style="list-style-type: none">(a) the 2002 Snowy Water Inquiry Outcomes Implementation Deed; and(b) the NSW Snowy Water Licence; and(c) the extent to which they are consistent with the provisions in Part 2 of this Act. <p>Report of review</p> <p>(2) The Minister must cause to be prepared a written report of the review.</p> <p>(3) The Minister must make a copy of the report available on the [X]'s website.</p> <p>No amendment to s 215C is required as Part 12 is already captured under s 215(1)(a)(i).</p>
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