

Water is Life

Traditional Owner Access to Water Roadmap

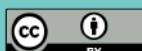




Acknowledgment

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.



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Section A: Victorian Government policy

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Acknowledgement

For tens of thousands of years, First Nations and Traditional Owners¹ in Victoria have practised their law and lore, customs and languages, and nurtured Country through their spiritual, cultural, material and economic connections to land, water and resources.

The Victorian Government acknowledges all First Nations and Traditional Owners of Victoria and pays respect to their Elders past and present. First Nations and Traditional Owners hold the knowledge, stories, custodial obligations, and cultural expertise that has always ensured the health of waterways and river Country. Each Nation and Traditional Owner group holds the cultural authority to speak for water, rivers, and river Country within their traditional region.

It must be acknowledged that Colonisation and the establishment of the State of Victoria has had long-lasting, far-reaching and intergenerational consequences, including the dispossession of First Nations and Traditional Owners of their Country. The reality of Colonisation involved establishing Victoria with the specific intent of excluding Aboriginal people and their laws, cultures, customs and traditions, including through horrific violence perpetuated at individual, societal and systemic levels. This history, and the systems it gave rise to, continue to harm First Nations and Traditional Owners today.

Water is Life is a first step towards acknowledging these injustices and establishes a framework to increase Traditional Owner roles in and resources for water management across Victoria.

The Victorian Government gratefully acknowledges the time, energy and expertise of First Nations and Traditional Owners who participated in developing in *Water is Life*. Participation by First Nations and Traditional Owners in this policy process should not be taken as implying that any First Nation or Traditional Owner has approved of or authorised the content of Section A of *Water is Life* (the Victorian Government policy commitments) or the settler-colonial water regime that has been imposed on their Country. Further, lack of participation in *Water is Life* by any Traditional Owner group does not indicate a lack of interest in water and waterway management.

Budj Bim
GMTOAC

1. The terms First Nations and Traditional Owners are used (together and separately) throughout *Water is Life* to include groups that have been formally recognised by the state as Traditional Owners, Native Title holders, or Registered Aboriginal Parties, as well as self-recognised Nations (see Box 1).



Some of the policy options presented in *Water is Life* may not be appropriate or acceptable to all Traditional Owners. DELWP and water sector agencies will continue to strengthen engagement with all First Nations and Traditional Owners to increase their participation in water planning in a way that supports self-determination.

Section B (the Nation Statements) comprises documents prepared by Traditional Owner groups and First Nations, in their own words, for inclusion in *Water is Life*. These documents are not the policy of the Victorian Government. Publication of these Nation Statements should not be taken as an endorsement of the policy content by the Victorian Government. Where Nation Statements refer to Nation boundaries, this does not reflect any position of the Victorian Government in relation to any formal boundary determination processes.

The Victorian Government thanks all Traditional Owner groups who prepared their Nation Statements for inclusion in *Water is Life*. Understanding the detail, depth and complexity of Nations' and Traditional Owners' water-related objectives and interests will inform partnerships between the water sector and Traditional Owners.

Data Sovereignty Statement

The Department of Environment, Land, Water and Planning (DELWP) is committed to protecting Traditional Owners' intellectual property and personal information in accordance with Victorian privacy laws. The information and knowledge contained in the Nation Statements remains the property of each Traditional Owner group and must be handled in accordance with Indigenous Data Sovereignty principles, as described by the United Nations Declaration on the Rights of Indigenous Peoples.

The following principles apply to the use of the Traditional Owner Nation Statements:

1. All information including personal information and data collected and generated for *Water is Life* will be used only for the purposes of preparing *Water is Life* and any direct actions arising from *Water is Life*.
2. Traditional Owner Nation Statements will not be edited or altered by DELWP or any other party without free, prior and informed consent from the Traditional Owners.
3. Ownership of the intellectual property and knowledge included in Traditional Owner statements, as generated by them, is retained for all time by the contributing Traditional Owners (even where it appears within materials published by the Victorian Government).
4. DELWP will seek prior permission for any other use of Traditional Owner statements, or the knowledge generated from them.

Nation statement contributions

Bangerang Aboriginal Corporation
 Baraparapa Traditional Owners
 Barengi Gadjin Land Council Aboriginal Corporation
 Bidwell First Nations Clans Aboriginal Corporation
 Bunurong Land Council Aboriginal Corporation
 Dalka Warra Mittung Aboriginal Corporation
 Dja Dja Wurrung Clans Aboriginal Corporation
 Duduroa Dhargal Aboriginal Corporation
 Eastern Maar Aboriginal Corporation
 First People of the Millewa Mallee Aboriginal Corporation
 Gunaikurnai Land and Waters Aboriginal Corporation
 Gunditj Mirring Traditional Owners Aboriginal Corporation
 Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation
 Jaithmatang Traditional Owners
 Latji Latji Traditional Owners/Latji Latji Mumthelang Aboriginal Corporation
 Ngurai Illum Wurrung
 Nindi-Ngujarn Ngarigo Monero Aboriginal Corporation
 Tati Tati Traditional Owners
 Taungurung Land and Waters Council
 Wadawurrung Traditional Owners Aboriginal Corporation
 Waddi Waddi Traditional Owners
 Wadi Wadi Land and Water Indigenous Corporation
 Wamba Wemba Traditional Owners
 Weki Weki Traditional Owners
 Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation
 Yorta Yorta Nation Aboriginal Corporation

If any member of a Traditional Owner group requires a copy of their Nation statement, or have concerns, feedback and comments regarding *Water is Life*, please contact the Aboriginal Water Unit at Aboriginal.WaterProgram@delwp.vic.gov.au



Minister's foreword

The Victorian Government is committed to working with Traditional Owners to increase access to water entitlements under current frameworks and increase cultural benefits from the way we store, deliver, and use water.

I acknowledge that the application of State laws, underpinned by the sovereignty of the Crown, continue to deny First Nations and Traditional Owners their fundamental rights to care for, and to maintain custodianship of, their lands and waters. The Victorian Government is making significant and positive steps towards advancing, recognising and protecting First Nations' and Traditional Owners' access and rights to land and water in Victoria, but the work has just begun.

Recognising First Nations' and Traditional Owners' rights and connection to water is a key part of *Water for Victoria* (2016) – our long-term strategy for managing the state's water resources – which included a commitment to delivering this document, *Water is Life*, as a pathway to increasing Traditional Owner self-determination and decision-making in water management.

We have already begun delivering on Traditional Owners' aspirations to own and manage water, including:

- 2 gigalitres of unallocated water from the Mitchell River in Gippsland returned to the Gunaikurnai Land and Waters Aboriginal Corporation in early 2021 for cultural and economic development purposes.
- 2.5 gigalitres of unallocated water in the Palawarra (Fitzroy River) system in southwest Victoria returned to the Gunditj Mirring Traditional Owner Aboriginal Corporation, who plan to use the water within the UNESCO World Heritage Listed Budj Bim Cultural Landscape, which was inscribed in 2019 for its cultural values to the Gunditjmara community.



- 1.36 gigalitres of additional water savings from the Goulburn Murray Connections project set aside for Traditional Owners in Northern Victoria. This is a small but important step towards improving Traditional Owners' access to water and DELWP is working with Traditional Owners in northern Victoria to determine the appropriate process and arrangements for the long-term management of this water.

These returns of water do not affect the rights or costs of other water users but are a critical step on the pathway of restorative justice for Traditional Owners, an acknowledgement of the continuing impacts of historical injustices and the ongoing strength and resilience of Traditional Owners and First Nations.

The Victorian Government will also continue to advocate to the Commonwealth Government to deliver on its 2018 funding commitments to provide \$40 million for First Nations' water interests, to help Indigenous communities invest in water for cultural and economic activities.

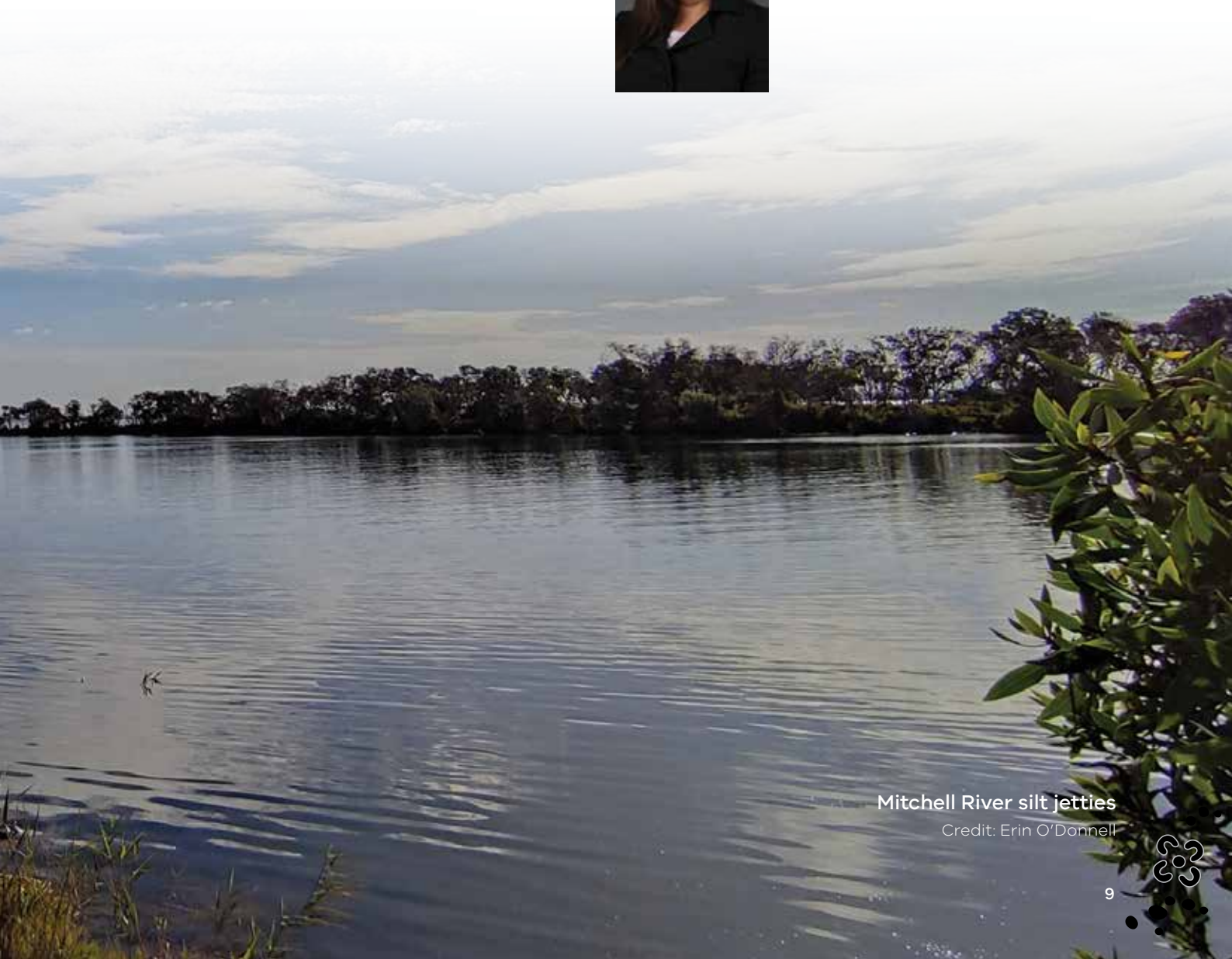
As of June 2022, the Victorian Government has appointed six Aboriginal Victorians to water corporations' boards, and seven Aboriginal Victorians to catchment management authority boards. In 2021, the first Aboriginal Victorian was appointed as chair of a water corporation. In addition, the Victorian Government has created the Aboriginal Water Program, including \$18 million for Traditional Owner water projects (2020-2024) and funding for 17 Aboriginal Water Officers to support Aboriginal values and uses of water across Victoria. We have also appointed the first Aboriginal Victorian as the chair of the Gippsland Lakes Consultative Committee.

I am immensely proud to publish the Victorian Government policy position alongside the voices of Traditional Owners in their Nation Statements. I look forward to working with all Traditional Owners and First Nations across Victoria in the implementation of *Water is Life*.



A blue ink handwritten signature of Harriet Shing.

Harriet Shing MP, Minister for Water



Mitchell River silt jetties

Credit: Erin O'Donnell



Water is Life outcomes and actions

Throughout *Water is Life*, targeted outcomes are identified that reflect what we have heard from Traditional Owners (Table 1). To achieve each outcome, the Victorian Government is committing to specific actions over the short, medium and long term.

Table 1: Twelve targeted outcomes in *Water is Life*

PART 1		
Targeted Outcome	Action summary*	Timing
1. Recognition of waterways and their surrounding lands as living, integrated, natural, and cultural entities in law, with Traditional Owners recognised as a unique 'voice' of the living entities	Develop new legislative proposals to recognise waterways as living entities through engagement with Traditional Owners and wider stakeholders for Government consideration	Short (1-3 years)
2. Traditional Owners can enter formal partnership agreements with the water sector that increase the capacity and resources available to Traditional Owners to make and implement decisions about water landscape management on their Country	Develop new provision in statements of obligation for Ministerial consideration requiring formal partnerships between Traditional Owners and CMAs and water corporations	Short (1-3 years)
	Develop new provision in Ministerial rules for the VEWH requiring formal partnerships with Traditional Owners for Ministerial consideration	Medium (3-5 years)
3. Traditional Owners have increased role in determining how environmental water is used for the purpose of healing Country	Develop new guidelines for Traditional Owners to submit seasonal watering proposals to the VEWH	Short (1-3 years)
	Undertake localised pilot environmental watering projects	Short (1-3 years)
	Develop framework for agreements for transfer of environmental water allocation to Traditional Owners for dual environmental and cultural benefit in accordance with environmental water requirements	Medium (3-5 years)
4. Increased involvement of Traditional Owners in public land management	Explore a range of public land management opportunities for Traditional Owners through the renewal of Victoria's public land legislation	Short-medium (1-5 years)
5. Recognition of Traditional Owners as waterway managers for specific locations	Identify and address barriers to Traditional Owners taking on waterway management functions and develop new legislative proposals through engagement with Traditional Owners and wider stakeholders for Government consideration	Long (5+ years)
6. Recognition of Traditional Owners as environmental water holders	Identify barriers to Traditional Owner management of environmental water and consider any potential new legislative proposals through engagement with Traditional Owners and wider stakeholders for Government consideration	Long (5+ years)

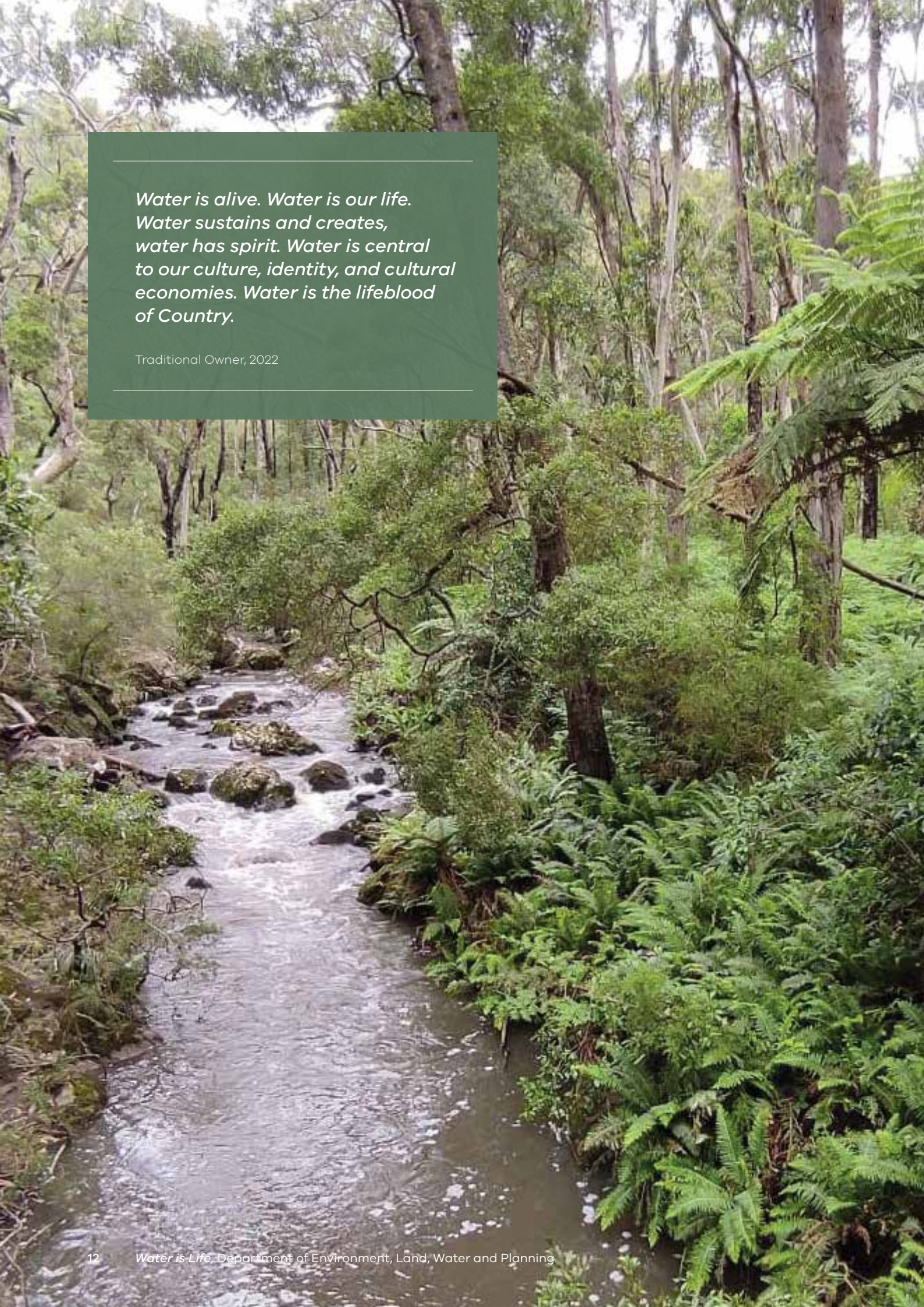
PART 2

Targeted Outcome	Action summary*	Timing
7. Water is returned to Traditional Owner groups across Victoria through the issue of water entitlements for their self-determined use	<p>Enable water to be returned to Traditional Owners across the state by:</p> <ul style="list-style-type: none"> Acting quickly on existing opportunities within the current entitlement framework Developing guidelines for unallocated water and water infrastructure projects Developing future opportunities as part of infrastructure projects and regional management plans Developing a framework to support Traditional Owners entering the water market for when no alternative pathways to water for economic development are available <p>The Victorian Government is not proposing to establish a direct water entitlement purchase program</p>	Short (1-3 years)
8. Access to land will not be a barrier to Traditional Owners applying for or holding water entitlements	Work with public land managers to identify available land	Short (1-3 years)
	Work with water corporations as licensing authorities to streamline licence application processes	Short (1-3 years)
9. Traditional Owners will be funded to pay any fees and charges associated with their water entitlements unless use is purely commercial	Provide funding to pay for fees and charges associated with water entitlements held by Traditional Owners unless water corporations can waive the fees and charges	Short-medium (1-5 years) Ongoing
10. Where Traditional Owners become purely commercial users of water, they will become responsible for an increasing portion of fees and charges over time to full cost recovery	Undertake pilot commercial project funding agreements with Traditional Owners to inform framework	Short (1-3 years)
	Develop a framework for identifying commercial use and timelines to transition to full cost recovery	Medium (3-5 years)
11. Traditional Owners can hold and manage water in culturally appropriate ways	Identify barriers to culturally appropriate use of water and develop new legislative proposals through engagement with Traditional Owners and wider stakeholders for consideration by Government if needed	Long (5+ years)

PART 3

Targeted Outcome	Action summary*	Timing
12. Traditional Owners have oversight of the implementation of Water is Life	Establish an oversight committee, including one representative from each Traditional Owner group	Short (1-3 years)

* The contents of Table 1 should be read as a summary of each outcome and action specified in Section A of *Water is Life*. The summaries should not be read as complete statements of the action.



*Water is alive. Water is our life.
Water sustains and creates,
water has spirit. Water is central
to our culture, identity, and cultural
economies. Water is the lifeblood
of Country.*

Traditional Owner, 2022



Overview

Water is Life is a pathway to genuine, meaningful outcomes for Traditional Owners. *Water is Life* recognises the central importance of the relationship between people and Country, embodied in the cultural water paradigm. Caring for Country and water can deliver thriving cultural economies and benefits for Traditional Owners, existing entitlement holders, and all Victorians.

For countless generations, Traditional Owners have cared for Country and waterways, maintaining the health and flow of water and sustaining connections to place, each other, animals, culture, and Country. Water has been provided and maintained by the ancestors, and Traditional Owners today continue to have obligations to care for water and Country. However, since the colonisation of land and waters, Australia's First Nations peoples have been treated as bystanders in the management, allocation, and ownership of water and water landscapes.

Over this time, Traditional Owners have observed the destruction of food and water sources and sites of cultural significance. Dispossession and environmental degradation, the effects of a violent colonial history, have curtailed the ability of Traditional Owners to use traditional ecological knowledge to support healthy Country and thriving cultural economies. The economic, environmental, cultural, physical, mental and spiritual loss for First Nations and Traditional Owners has been enormous. First Nations and Traditional Owners continue to face economic disadvantage as a result of the State's denial of pre-existing rights to and traditional ownership of land and waters. In addition, Victoria's water management and planning has not benefited from traditional ecological knowledge.

A Cultural Benefits Framework (Figure 1) has been developed by the Traditional Owner Partnership for the Central Gippsland Region Sustainable Water Strategy to highlight the wide-ranging benefits of Traditional Owners managing and owning water.

Increasing access to water for Traditional Owners will deliver real benefits for Traditional Owners and the wider Victorian community. For Traditional Owners, holding and managing water leads to improved well-being, including physical and mental health. Flow on benefits of this include reduced demands on health care systems, increased labour productivity, and improved social cohesion.

Greater use of traditional ecological knowledge by Traditional Owners in managing water will lead to healthy and thriving ecosystems.

Increased water for economic development by Traditional Owners supports increased economic independence and nation-building for Traditional Owner communities, with important well-being outcomes and increased autonomy and self-determination.

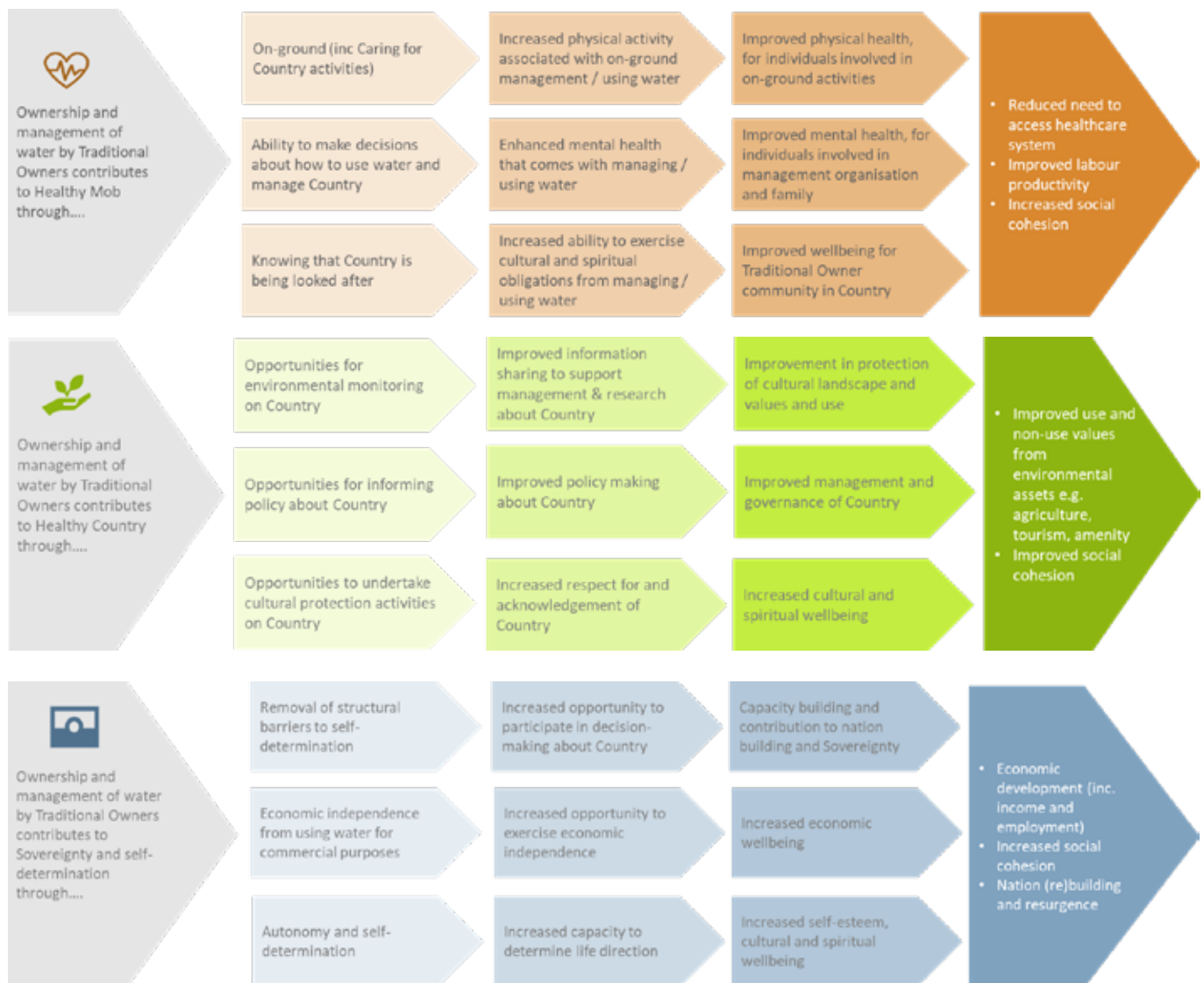
***Healthy water, waterways
and Country are good
for all.***

Traditional Owner Partnership
(Central Gippsland Region Sustainable
Water Strategy, 2022)

St Georges River

Credit: Erin O'Donnell

Figure 1 Cultural Benefits Framework (Traditional Owner Partnership and Alluvium, 2022)



The Gunditjmara people claim these rights to water as part of our inherent rights to cultural flows, which include the use of this water for spiritual, cultural, environmental, social and economic outcomes. In doing so, we are fulfilling our moral obligation to care for water and Country in accordance with our law and customs.

Gunditj Mirring Traditional Owner Aboriginal Corporation, letter to Southern Rural Water (Cultural Water for Cultural Economies report, 2021)

Truth-telling: recognising the impacts of colonisation

As with land, a system of entitlements and rights has been applied to water without respect for Traditional Owners' ancestral rights and obligations to water. The phrase *terra nullius* was used to justify the colonisation of Australia by the British, as it describes an 'empty land' that belongs to no one.

The reality of the vesting of sovereignty in the British Crown, on the basis of the now rejected application of the doctrine of *terra nullius*, was the State-sanctioned dispossession of Traditional Owners' land and waters on a devastating scale.

The assumption of *terra nullius* also informed the development of settler state water law – namely, Victoria's current water management system is designed around the premise that the Crown has the right to the use, flow and control of all water in a waterway and all groundwater. The phrase *aqua nullius* has been used by Dr Virginia Marshall, a Wiradjuri Nyemba woman, principal lawyer in her legal firm Triple BL Legal and a pre-eminent academic scholar in Aboriginal water rights and interests, when discussing "the omission of Indigenous peoples' water rights and interests", and the Western view that water belongs to no one (Marshall, 2016; Marshall, 2017).

Baseline: Aboriginal water holdings in Victoria

In 2022, Aboriginal people hold less than 0.2 per cent of all water access entitlements in Victoria, which includes water shares and take and use (section 51) licences (Table 2). Low levels of water ownership are also found in other Australian states and territories (see, for example, Hartwig and Jackson, 2021).

Water is part of Country, and the exclusion of Traditional Owner rights and interests in water and water management denies Traditional Owners the

right to care for Country, which is the essence of Aboriginal social, spiritual, economic, and physical wellbeing, and the basis of cultural lore. Traditional Owners say that this exclusion has affected the health of Country, and the health and wellbeing of Traditional Owners. It has also meant that today's water management practices have not been able to benefit from the knowledge of Traditional Owners who have managed land and water sustainably for thousands of generations. As a result, this exclusion affects everyone.

Table 2: Water access entitlements held by Traditional Owner entities in Victoria.

Entitlement category	Water access entitlement volume* (ML)	Water access entitlement volume held by Traditional Owners (ML)
Water share – High reliability	1,888,584	1,066**
Water share – Low reliability	822,301	449**
Take and use licence – surface water	278,698	4,639
Take and use licence – groundwater	843,424	642.4
TOTAL	3,833,007	6,797

* These "water access entitlements" totals were collated for the purpose of establishing a baseline of available water against which a Closing the Gap target for the return of water to Traditional Owners would be set. "Water access entitlements" are defined for this purpose as: *A perpetual or renewable entitlement to exclusive access to a share of water from a specified consumptive pool as defined in the relevant water plan, policy or legislation. This definition includes relevant Strategic Aboriginal Water Reserves, and excludes entitlements for the purposes of drinking water supplies and household power generation.* The definition does not include environmental entitlements, and Victoria does not have Strategic Aboriginal Water Reserves.

**Figure does not include 1.36GL recently set aside for return to Traditional Owners in Northern Victoria as this has not yet been issued as water shares to Traditional Owners.

Access to water for Wadawurrung Traditional Owners is a major aspiration for us. It enables economic development for the Wadawurrung but it also meets obligations around the overall health of the Country. This also contributes to self-determination.

Wadawurrung (Central Gippsland Region SWS, 2022)



A pathway forward

Given this history of dispossession, the Victorian Government has made a commitment – on behalf of the people of Victoria – to work in partnership with Traditional Owners and First Nations to support their right to self-determination. In doing so we further our collective pursuit of reconciliation.

In *Water is Life*, we begin to chart a pathway forward in which existing water users continue to have certainty and confidence in the water entitlement framework, but where a **restorative justice approach** is taken to respect the rights of Traditional Owners and enable the omission of their water rights and interests to be addressed. In acknowledging this objective, it is also important to note that there is no intent to overturn existing rights to water, but rather to provide Traditional Owners greater access to water and management within the existing water entitlement framework.

The Victorian Government recognises that Traditional Owners have never ceded rights to land and waters and that Traditional Owners should have the opportunity to determine where, when, and how they use water on Country. Since colonisation, these opportunities have been very limited. *Water is Life* seeks to achieve progress towards decisions on water management and planning relating to Traditional Owners being based on their free, prior, and informed consent. Traditional Owners are increasingly seeking to become joint decision-makers in water planning and management.

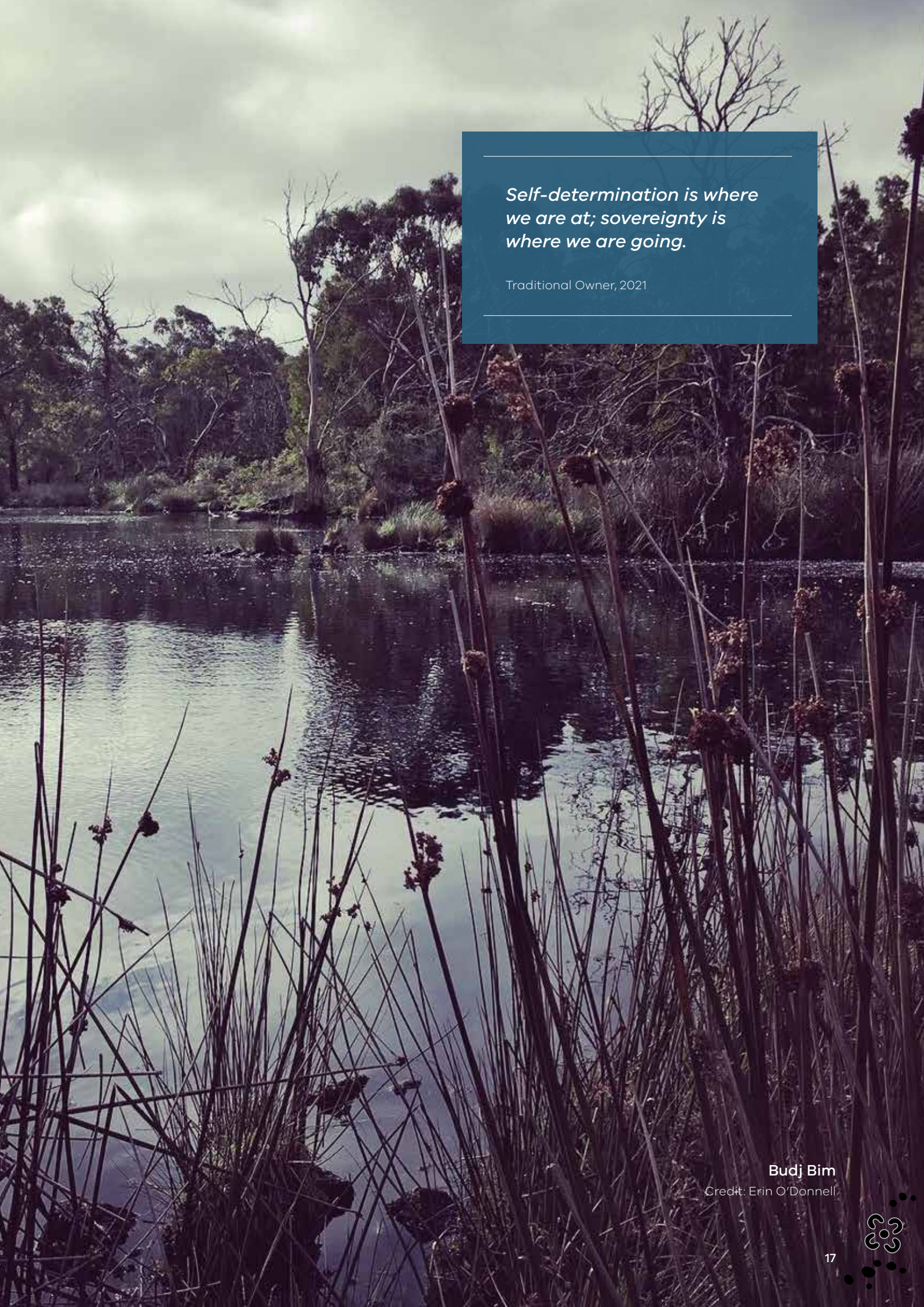
Water is Life is also informed by Traditional Owner law and lore, the foundation of which is a relationship of respect and reciprocity with Country as a bio-cultural landscape. Cultural landscapes are the product of the skills, knowledge and activities of Aboriginal land managers over thousands of generations. Cultural landscapes are reflections of how Aboriginal people engage with the world (*Cultural Landscapes Strategy*, 2022).

Water is Life is an opportunity for all Victorians to reset our relationships with rivers and waterways that we all depend on.

I think seeing more landholders donating their water entitlements to Country will have a flow-on effect for the health of country which should ultimately mean all values associated with waterways benefit whether it's agricultural, recreational, or environmental.

Matt Shanks, Taungurung Land and Waters Council (ABC News, 23 March 2022)





*Self-determination is where
we are at; sovereignty is
where we are going.*

Traditional Owner, 2021

Budj Bim

Credit: Erin O'Donnell

How *Water is Life* works

The Victorian Government is committed to self-determination and supporting the transfer of relevant decision-making from the State to Traditional Owners. That is why, in 2016, the Victorian Government committed to pursuing Treaty.

The State of Victoria will work with Traditional Owners and Aboriginal Victorians² as equal partners on this journey. It is important for government not to pre-empt what may be in a treaty – instead, it must listen to the aspirations of Traditional Owners and Aboriginal Victorians expressed through the treaty process, and work together to deliver a treaty or treaties that will benefit all Victorians.

Water is Life is not a Treaty, but it is underpinned by the Victorian Government's commitment to justice and self-determination. Water is likely to be a significant consideration in future Treaty negotiations. Policies and actions in *Water is Life* will be regularly reviewed and updated in line with outcomes from the treaty process.

Water is Life is the fulfilment of a commitment made in Victoria's water plan, *Water for Victoria* (2016), and sets out clear pathways to increase Traditional Owner resourcing for and role in the care and management of water landscapes. This includes increasing the volume of water returned to Traditional Owners for cultural, spiritual, and economic use.

Water is Life will also progress the vision of the *Victorian Aboriginal Affairs Framework (2018-2023)*, which states: "All Aboriginal Victorian people, families and communities are healthy, safe, resilient, thriving and living culturally rich lives". *Water is Life* is an important step towards supporting Traditional Owner-led management and control of land, water and other natural resources and strengthening Aboriginal leadership, representation, decision-making and resource allocation/distribution at the local, regional and state levels.

By acknowledging the truth of the historic and ongoing harms of colonisation and the dispossession of land and water rights from Traditional Owners, *Water is Life* is also aligned with the important work of the independent Yoorrook Justice Commission. Throughout this document, Victorian law is referred to as 'settler state law' to distinguish it from the laws of Traditional Owners.

As a step towards a future in which Traditional Owner voices are heard alongside those of the State, and in acknowledgement of Traditional Owner self-determination and sovereignty, *Water is Life* has two sections.

Throughout this document, quotes from Traditional Owners are also used to show Traditional Owners' perspectives on specific issues. These quotes are a transparent mechanism to include Traditional Owner voices but do not reflect the policy of the Victorian Government.

Section A: Victorian Government policy

Section A of *Water is Life* sets out the Victorian Government commitments and policy pathways in the short, medium, and long term to increase decision-making and resources for Traditional Owners in the management of water landscapes, as well as increasing Traditional Owner access to water.

This section has three main parts:

1. Increasing Traditional Owners' decision-making in caring for water landscapes
2. Returning water for healthy Country, healthy mob, and cultural economies
3. Implementation and accountability.

Section A recognises the importance of the relationship between Traditional Owners and First Nations and Country, and begins with the actions that increase Traditional Owners' ability to give effect to their obligations to care for Country. Although some of these actions may take longer to achieve, they are an important step in the restorative justice approach for Traditional Owners. *Water is Life* then moves from the transformative, long-term policy agenda into the medium- and short-term outcomes and actions.

Section A is underpinned by four foundational principles:

1. Applying a restorative justice approach
2. Existing entitlements to water remain protected
3. A progressive approach to implementation, and
4. A commitment to self-determination.

These four principles recognise the ongoing impacts of colonisation to Traditional Owners whilst also ensuring that existing entitlements to water are not impacted by the policy reforms. These principles also support an implementation plan that enables 'learning by doing', and foreground Traditional Owner self-determination in choosing if, when, and how to participate in the *Water is Life* actions.

We also acknowledge that *Water is Life* is being developed at a time when climate change is already affecting streamflow and the environmental condition of stressed waterways. The volumes of water flowing in

2. Aboriginal Victorian refers to an Aboriginal person living in Victoria who may not be a Traditional Owner.

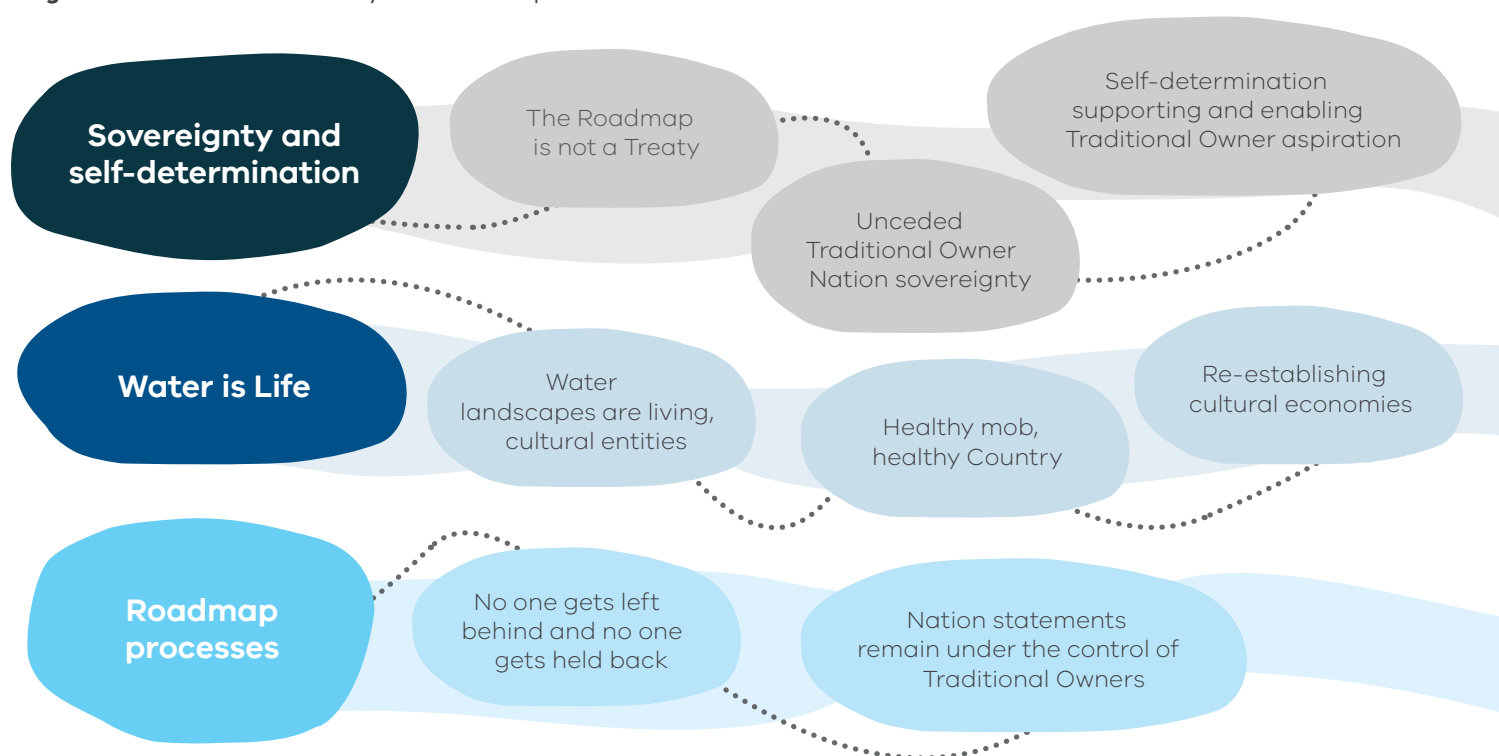
Victoria's rivers are declining, affecting the health of the state's rivers, wetlands, floodplains, estuaries and water catchments. Climate change will continue to impact reliability of water supplies for all entitlement holders including Traditional Owners, towns, farmers, and industry. As we all face the challenges of responding to climate change, there has never been a more important time to increase Traditional Owner roles and responsibilities in water and waterway management.

Section A of *Water is Life* is further guided by eight key ideas that reflect what the Victorian Government has heard from Traditional Owners. These ideas ensure that the *Water is Life* policy proposals reflect the long-term aspirations and inherent rights of Traditional Owners and help chart a pathway towards these goals in the long term, as well as delivering real, tangible action in the short term (Figure 2).

The Victorian Government will work with Traditional Owners and the water sector to strengthen the role of Traditional Owners in water planning and management and by working to return water entitlements to Traditional Owners, as water becomes available. Returning water and increasing the decision-making authority and resources of Traditional Owners on their Country can help to revive culture and contribute to an improved sense of identity. This process will continue to respect existing entitlements to water.

The National Agreement on Closing the Gap commits Parties to negotiate a new Inland Waters target. The target is currently being negotiated between the Commonwealth, states and territories and the Coalition of Peaks. *Water is Life* will play a key role in guiding local actions to ensure Victoria contributes to a national target when agreed.

Figure 2 Traditional Owner key themes and priorities for water



***It is our human right – the rights of the Indigenous people of Australia.
To be involved in water, have the right of access to water, and be
participating players in the decisions made regarding water.***

Traditional Owner, July 2017 (DELWP, 2020)



Implementation will take an adaptive ‘learn by doing’ approach, informed by pilot studies undertaken by specific Traditional Owner groups and State agencies (see Part 3 of Section A). As a result, implementation will not be evenly distributed across Victoria.

Where funding has been committed, this has been specified as part of the relevant outcome and action. However, due to the longer time frames for some actions, not all actions are fully funded at this time. Future decisions about implementation of actions after 2024 will be made in line with standard government policy and budget processes. The Victorian Government will continue its commitment to rigorous decision-making about initiatives that require funding, legislative amendments or new regulations in line with its economic and fiscal strategy, including the government’s long-term financial management objectives. In particular, actions requiring budget funding in future years will be assessed against budget capacity, with business cases and cost–benefit analyses being applied in accordance with government policy.

Any new legislative proposals developed as part of *Water is Life* for consideration by Government and Parliament will also involve a public engagement process, including an assessment to ensure consistency with maintaining existing entitlements to land and water, and that any third-party impacts are minimised.

Section B: Traditional Owner Nation Statements

Section B of *Water is Life* comprises the Nation Statements submitted by First Nations and Traditional Owner groups across Victoria. These statements have been written by each Traditional Owner group in their own words, and are published without alteration (unless free, prior and informed consent was provided by that Traditional Owner group). The Nation Statements express Traditional Owners’ cultural and water-related values, goals, aspirations, outcomes, and any other relevant information deemed important by each Nation.

The Nation Statements are an essential step for increasing wider knowledge and awareness of Traditional Owner law, lore, and expectations for water management. In doing so, they offer a pathway for Traditional Owners to inform the Victorian Government’s long-term policy agenda.

It is important to remember that these documents are not the policy of the Victorian Government and do not represent Victorian Government commitments. Publication of these Nation Statements should not be taken as an endorsement of the content by the Victorian Government.



Box 1: Implementation and working with Traditional Owner organisations

DELWP commits to working with all Traditional Owner organisations who wish to do so, and that have the capacity (or wish to strengthen their capacity) to manage or own water, regardless of their status in settler-state recognition systems. For the purpose of *Water is Life*, this does not include other Aboriginal organisations such as community health organisations or peak bodies. The importance of the connection and obligation to land, water, and Country is what makes a Traditional Owner group distinctive from an Aboriginal organisation.

Hard boundaries of Traditional Owner land recognised by the State may not always reflect the relationship to Country of Traditional Owners. Boundaries have historically been meeting places and may also include shared Country. Opportunities to take on specific land or water management roles will be based on a Nation's willingness and capacity, not their state-recognised status.

Traditional Owner organisations with state-recognised status (Registered Aboriginal Party - RAP, Traditional Owner Settlement agreement, or Native Title) will continue to be recognised as the right people for Country.

Where Country does not have a state-recognised Traditional Owner organisation, arrangements will need to be managed on a case-by-case basis with the relevant self-recognised Nation. In northern Victoria, this will include Traditional Owner Nations as identified in the Murray Darling Basin Authority's *Guide to Traditional Owner Groups for Water Resource Plan Areas (2018)*, which was approved by the Murray Lower Darling Rivers Indigenous Nations (MLDRIN).

Where there is more than one Traditional Owner Nation or organisation for a particular location, it is expected that all interested parties will be empowered appropriately. Where there is contested land, arrangements will need to be managed on a case-by-case basis with all the relevant Traditional Owners.

For us to have water rights within Bunurong Country, means that once again we can continue to care for Country in ways we were not able to before; bringing cultural flows back to dry creeks and tributaries and assisting with the biodiversity issues caused by bad planning and decision making in the past. It also allows us to take part in the broader water economy, which is long overdue. We can't live without water and Country cannot function without water.

Bunurong Land Council Aboriginal Corporation (Central Gippsland Region SWS, 2022)



Cultural Water: a holistic approach to water management

To move forward on our journey together, we need to better understand what *cultural water* is, and what it means to Traditional Owners.

Cultural Water means water entitlements controlled or held by Traditional Owner Nations to benefit a range of outcomes as determined by each Traditional Owner group. The *cultural water* paradigm encompasses a holistic approach to managing and thinking about water, based on the rich and long-lasting history and knowledge of Traditional Owners and First Nations. Cultural water management processes can restore the conditions of Country and deliver water justice for Traditional Owner groups who have been deprived of water rights and access.

A specific example of cultural water in practice is the Murray Lower Darling Rivers Indigenous Nations (MLDRIN) concept of *cultural flows*. In response to the diminishing conditions of waterways and decades of water injustice, Traditional Owners in the Murray-Darling Basin developed the definition of cultural flows, which aims to improve the conditions of waterways and First Nations communities.

Cultural Flows, defined in the Echuca Declaration, are water entitlements that are legally and beneficially owned by Nations of a sufficient and adequate quantity and quality to improve the spiritual, cultural, natural, environmental, social, and economic conditions of those Nations (MLDRIN, 2007).

The Echuca Declaration also states that water is a living entity with its own spirit and needs to be recognised. Although the Echuca Declaration was the first written statement, the concepts of 'cultural flows' and cultural water have been interpreted by every Traditional Owner in accordance with their own laws and cultural protocols for tens of thousands of years.

How can Cultural Water be used?

Water entitlements legally controlled by Traditional Owner groups can be used in different ways depending on individual Nations' goals, values, or priorities for mob and Country.

Traditional Owners firmly maintain that the use and management of water is a cultural activity performed as a process of upholding custom, lore, ceremony, spiritual connections, and responsibility to Country. Once water entitlements have been issued to Traditional Owners, the definition of what constitutes cultural water is not restricted or determined by the Victorian Government, as Traditional Owner decision-making and sovereignty are vital components of cultural flows. Similar to other water users, any other conditions on use, such as volumetric limits, will continue to apply to any water entitlements issued to Traditional Owners, and use of water entitlements by Traditional Owners will need to comply with the requirements of the *Water Act 1989*.

Sometimes Cultural Water will align closely with environmental water objectives. This means there is an opportunity for Traditional Owners to take on more decision-making in the management of environmental water (see Part 2). At other times, Cultural Water will be used to support cultural economies, including commercial uses of water (see Part 2). Different sources of water can be returned to Traditional Owners for use as Cultural Water (Figure 3).

A common misconception is that environmental water is interchangeable with cultural water and transferring environmental water to Traditional Owners can fulfil cultural obligations. This is an incorrect assumption. Within a cultural water paradigm, water managed by Traditional Owners can capture outcomes for Country and culture that are an extension of environmental

That's our way of being economical. If we're able to grow our bush medicines, bush tucker, from free water that actually belonged to us in the first place, then we're doing well.

Traditional Owner (Cultural Water for Cultural Economies, 2021)

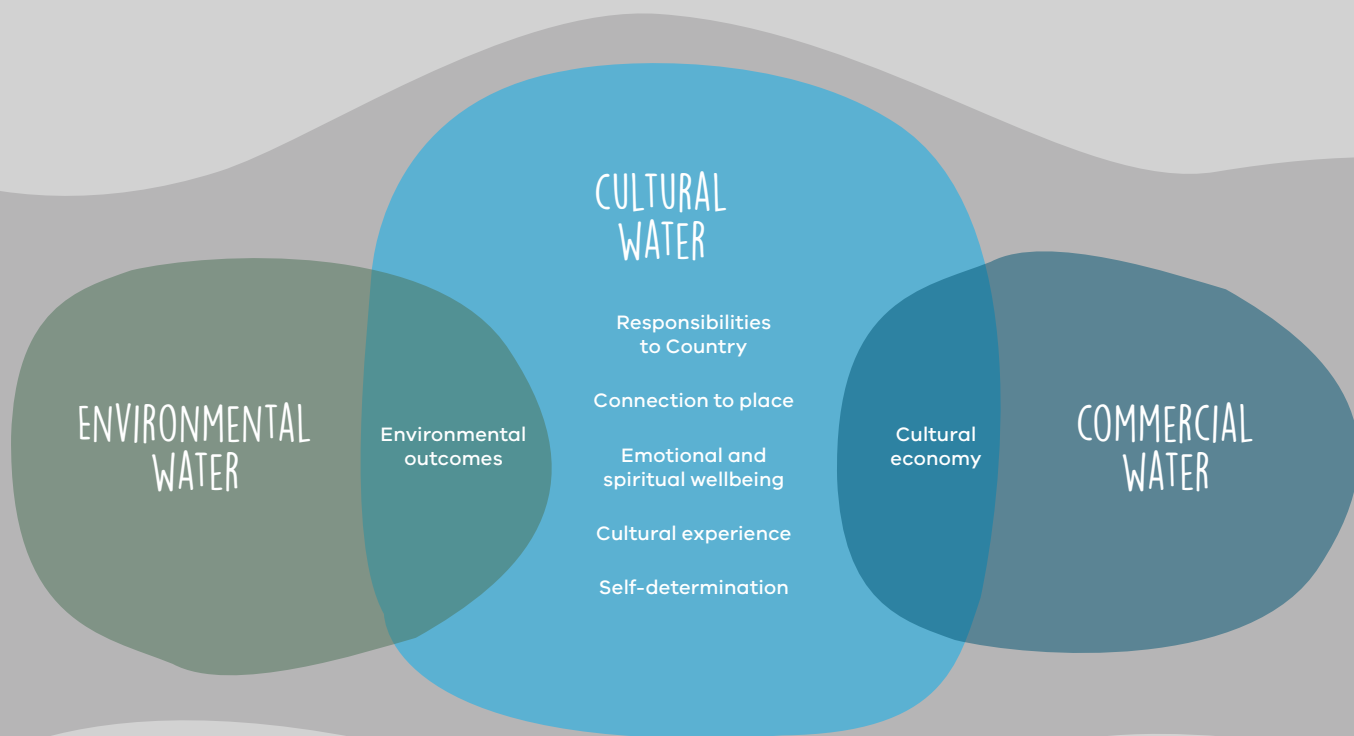


Figure 3 Cultural Water outcomes

watering objectives (Figure 3). These outcomes are *in addition* to the positive environmental outcomes that environmental watering achieves.

The cultural flows methodology provides a powerful platform for Traditional Owner groups to assert their inherent rights to care for and make decisions for water.

Just as ‘environmental flows’ are needed to sustain the ecological values of waterways, ‘cultural flows’ are needed to support the cultural traditions and community development needs of Traditional Owners.

Similarly, cultural water also encompasses the economic uses of water (Figure 3). Cultural economies depend on sustainable water management to support activity such as eel aquaculture, fisheries, and harvests of weaving grasses, old man weed and other significant plant species. The cultural water paradigm enables the sustainable use of water for healthy Country, healthy mob, and cultural economies.

Cultural flows are water rights that we hold in our own name and are not held in trust by Government, AND provide us with enough clean water to improve all parts of our lives.

Echuca Declaration (2007)



*Our custodianship is a human right,
but it's also an inherited obligation
we have as Aboriginal people.*

Bunurong Land Council Aboriginal Corporation
(Central Gippsland Region SWS, 2022)

*As Gunaikurnai, we see our land
(Wurruk), waters (Yarnda), air
(Watpootjan) and every living thing
as one. All things come from Wurruk,
Yarnda and Watpootjan and they
are the spiritual lifegiving resources,
providing us with resources and
forming the basis of our cultural
practices. We have a cultural
responsibility to ensure that all
of it is looked after.*

Gunaikurnai (Whole of Country Plan, 2015)

*Looking after Country. That's the
primary driver in all of this. We have
a cultural responsibility for Country.*

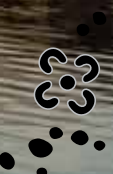
Traditional Owner (Cultural Water for Cultural
Economies report 2021)

PART 1

Caring for Cultural Water and Cultural Landscapes

Murray River

Credit: Erin O'Donnell



Caring for Cultural Water and Cultural Landscapes

For time immemorial, land and water in Victoria have been understood as living, bio-cultural landscapes, co-created by the enduring relationships between Traditional Owners and Country. Caring for Country, including its waterways and water bodies, is a foundational responsibility of Traditional Owners, as is their custodial obligation to manage the health of Country. Healthy Country, in turn, supports healthy people and strong culture.

Water is Life begins by acknowledging the central importance of this relationship to Traditional Owners and First Nations. In Part 1, the targeted outcomes show how the existing settler state water management frameworks can transition towards recognising cultural landscapes and supporting this relationship between people and place.

Water landscapes

Water landscapes are part of cultural landscapes that Traditional Owners have cared for and managed for tens of thousands of years. Traditional Owner Cultural Landscape Planning (including Country Plans) describes the relationship between holistic objectives and actions on Country.

For Traditional Owners, connections to land and waterways on their Country are inextricably linked to their cultural identity, health and community wellbeing. Caring for Country speaks to the reciprocal relationship between the environment and Aboriginal people. Traditional Owners have inherent obligations under cultural lore to protect, conserve and maintain the environment and the ecosystems in their natural state to ensure the sustainability of the whole environment and all its peoples.

Outcome 1: Waterways as living entities

Waterways and Country are a connected system. This connection is more than physical, and includes connection to community wellbeing, to culture, and to identity. Water is the lifeblood of Country and waterways are the basis for many creation stories. The Victorian Government is committed to reforms that reinforce the link between waterway management and caring for Country.

Traditional Owners have a unique cultural perspective on water that relates to their identity and attachment to place, environmental knowledge, resource security and custodial responsibilities. Outcome 1 recognises the importance of the relationship between Traditional Owners and Country and establishes this relationship as central to sustainable water management.

Outcome 1 builds on the important experience of the *Yarra River Protection (Wilip-gin Birrarung murrnong) Act 2017* (the Birrarung Act), which recognises the Birrarung (Yarra River), and its riverine parklands, as one living and integrated natural entity. In the recent Waterways of the West and Barre Warre Yulluk (Rivers of the Barwon) Action Plans, the Victorian Government recognised that we have a collective and individual responsibility to keep waterways alive, and committed to recognise these waterways as living, integrated entities and Traditional Owners as a unique voice of those entities.

Subject to direction provided by Traditional Owners and engagement with wider communities, the concepts of living entity and unique voice can be embedded into the water management framework (Box 2).

Any potential legislative design will need to involve wide engagement with Traditional Owners and wider communities, as well as:

- Enable a place-based approach without creating new and significant barriers to Traditional Owners once the legislation is passed (for example, a gazettal of declared areas may be a more efficient process than multiple Acts of Parliament).
- Enable those Traditional Owners who have already addressed the complex challenge of defining the boundaries of a living entity to act, by enabling successive recognition of waterway entities.
- Provide an enduring presence of Indigenous languages.
- Provide the prominence of visibility of legislation, as well as potential streamlining of provisions which may be replicated across other key legislation.
- Support economy in statutory drafting and minimise additional complexity for waterway management.

Box 2: Key considerations to guide development of legislative proposals

- Ensuring that Traditional Owners can be identified as a 'voice of a living entity'.
- Requiring that a living entity is to be a declared area but allowing flexibility on the spatial scale of a living entity. A living entity could be a single waterway, catchment, RAP area, or region (for example, the Waterways of the West region).
- Enabling recognition of the many cultural, health, ecological, agricultural, recreational and other values of waterways as living entities.
- Requiring that any process to declare a waterway landscape as a living entity includes working with the Traditional Owners of that waterway landscape, and a self-determined decision to 'trigger' the declaration of a living entity.
- Enabling multiple Traditional Owners to be a 'voice of the living entity' if the entity crosses Nation boundaries.
- Recognising Country Plans as statements of Traditional Owner aspirations for Country and enabling parts of those plans to be embedded in law (subject to self-determination).
- Engaging with water users and the wider community on how these proposals should relate to the coordinated management of waterways.
- Integrating these changes with the renewal of Victoria's public land legislation (Outcome 4).

Outcome 1 is an important step towards recognising Traditional Owners as a unique voice for waterways and their lands, and that enabling this voice provides increased influence in management of water landscapes, and recognition of their cultural responsibility to care for Country. It is not intended to exclude or reduce the role of other parts of the community with interests in waterways. Outcome 1 also reflects ideas in several Nation Statements (see Section B) in which Traditional Owners describe the importance of their relationships with waterways.

The Millu (Murray River) is a cultural being, a spiritual entity, and the lifeblood of our Country and people.

Tati Tati Traditional Owners, 2022

Targeted Outcome 1

Recognition of waterways and their surrounding land as living, integrated, natural and cultural entities in law, with Traditional Owners recognised as a unique 'voice' of the living entities.

Action

The Victorian Government will work with Traditional Owners across Victoria to develop legislative proposals for consideration by Parliament. These proposals would engage communities and stakeholders and enable waterways and the lands through which they flow to be recognised as living and integrated cultural entities, and Traditional Owners as the voice of those entities.

The objectives and scope associated with this will be developed in a way that enables each Traditional Owner group to self-determine how these concepts would be applied on their Country and in consultation with communities that value and rely on healthy rivers for healthy ecosystems, drinking water, growing food and fibre, recreation and other uses.

Timing: short term (1-3 years)

Over the next 1-3 years, Traditional Owners will be supported to work with DELWP and stakeholders to develop legislative proposals for consideration by Government. DELWP will also consult with the water sector in developing these proposals, which will also be subject to a public consultation process with the wider community.

Funding

During 2022-23 and 2023-24, additional funding has been allocated to enable Traditional Owners to participate in this process.

Partnerships

Outcome 1 helps all Victorians to re-set their relationship with waterways. Outcomes 2 and 3 focus on how to integrate Traditional Owner knowledge, expertise and objectives into water decision making through secure, formal partnerships with water corporations, VEWH, and waterway managers.

Victoria's waterway and catchment management framework has been designed to support holistic approaches to land and water management since 1994. CMAs work closely with water corporations public land managers, and the VEWH to manage water for the environment. CMA boards incorporate members with diverse expertise in primary production, land management, waterway management and the natural environment. Until very recently, Traditional Owners have been almost entirely excluded from the management of and care for water landscapes.

This is finally beginning to change, as Traditional Owners take up leadership roles across the water sector (Box 3).

Box 3: Increasing Aboriginal participation in water landscape management

- Seven Aboriginal Victorians on Catchment Management Authority Boards
- Six Aboriginal Victorians on Water Corporation Boards
- One Aboriginal Victorian Chair of a Water Corporation Board
- One Aboriginal Victorian Commissioner of the Victorian Environmental Water Holder (2017-2022)
- Traditional Owner Land Management Boards with joint management responsibilities
- Three Traditional Owners appointed to the Birrarung Council
- Traditional Owners appointed to Ministerial Advisory Committees for the Waterways of the West and Rivers of the Barwon
- First Aboriginal Victorian appointed as the chair of the Gippsland Lakes Consultative Committee.

Waterway managers (CMAs and Melbourne Water) are already working with Traditional Owners to support their aspirations to heal Country through participating in waterway management (see Box 7).

Victoria's water corporations are progressively increasing their engagement with Traditional Owners. Since 2017, the Minister's letters of expectations to

water corporations have identified delivering water for Aboriginal cultural, spiritual and economic values as a key policy priority for the Victorian Government. As part of meeting these expectations, water corporations need to:

1. Include Aboriginal values and objectives for water through water planning, increased participation and supporting access to water for economic development. Collaborating with Traditional Owners in water planning and management is an aspect of maintaining access to Country and its resources.
2. Improve access to water for Traditional Owners and Aboriginal Victorians to provide opportunities for economic development. Water-related Aboriginal enterprises can contribute to economic self-determination for Traditional Owners.
3. Incorporate Aboriginal customary knowledge into water management (where appropriate), and assist Traditional Owners to plan for, and adapt to, the impacts of climate change.

In addition, the Victorian Government, through the Aboriginal Water Program at DELWP, currently funds 17 Aboriginal Water Officers (AWOs). AWOs support Aboriginal values and uses through Victoria's existing water resource planning and management processes. AWOs deliver projects in partnership with Traditional Owner Corporations, Aboriginal communities, CMAs and water corporations. The positions provide a dedicated water expert on Country who supports Traditional Owners to self-determine how they partner with the water sector.

The Aboriginal Water Unit, in partnership with AWOs, has also established the Aboriginal Water Officer Network as a forum to share knowledge and practices. It is administered by AWOs to provide support for each other and strengthen capability to participate in the water industry.

'River rangers' programs are another way in which Traditional Owners are resourced to take on more water landscape responsibilities. In southern Victoria, Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation is being funded to develop a Birrarung Rangers project as part of the Victorian Government commitments in *Burndap Birrarung burndap umarkoo (Yarra Strategic Plan)*.

In addition, there is an ongoing process to recognise cultural values in the Environment Reference Standard (ERS). The ERS is a new tool made under the *Environment Protection Act 2017*. In Victoria, from 1 July 2021, the ERS sets out the environmental values to be achieved or maintained in Victoria (including for water). The ERS recognises Traditional Owner cultural

values as important but does not yet state specific indicators or objectives for these values. In the Central Gippsland Region SWS, the Victorian Government has committed to a policy that enables Traditional Owners to determine their own priorities for developing indicators and objectives to protect Traditional Owner cultural values recognised in the ERS.

Outcome 2: Formal partnerships

Formal partnership agreements between Traditional Owners and the water sector (water corporations, Victorian Environmental Water Holder, and CMAs) can help us take the next step: increased levels of Traditional Owner decision-making for specific functions at specific locations of interest to Traditional Owners. Formal partnerships can build on existing joint management and partnership agreements and support 'learning by doing'.

Formal partnerships would include resourcing of partnership activities with each Traditional Owner group, with additional funding required to support new roles and responsibilities of Traditional Owners, including risk management. Funding would be multi-year, and program-level to enable Traditional Owners to plan and manage their increased workload sustainably. Detailed decisions about the funding will be made in line with normal government policy and budget processes (see detail under Targeted Outcome 2).

A formal partnership agreement would be open to any Traditional Owner group on whose Country the water corporation or CMA operates. Where there are boundary uncertainties, DELWP will work with the relevant water corporations and CMAs to support a case-by-case approach (see Box 1).

Formal partnerships would be adapted to the needs of each Traditional Owner organisation. As part of the new Victorian Waterway Management Strategy process, Traditional Owners will be supported to identify specific waterway management responsibilities (including the location over which the responsibility would exist) that each Traditional Owner group wishes to participate in (and ultimately take responsibility for in the longer term, subject to wide stakeholder engagement), including delivery of environmental water, preparation of seasonal watering proposals, and preparation of long-term planning for water landscapes (see Box 4).

Targeted Outcome 2

Traditional Owners can enter formal partnership agreements with the water sector that increase the capacity and resources available to Traditional Owners to make and implement decisions about water landscape management on their Country.

Action

The Victorian Government will work with Traditional Owners, catchment management authorities and water corporations to develop an amendment to the statements of obligations for water corporations and catchment management authorities for consideration by the Minister for Water. This amendment would support formal partnerships with Traditional Owners.

The Victorian Government will also work with Traditional Owners and the VEWH to develop an amendment to the Ministerial Rules for consideration by the appropriate Minister.

This action does not propose to abolish water corporations, catchment management authorities or VEWH, and it does not propose to cease water agency engagement or forums with other parts of the community.

Timing: short-medium term (1-5 years)

In the short term, DELWP will work with Traditional Owners, water corporations, the VEWH, CMAs and Department of Treasury and Finance to develop a new provision in the statements of obligation and Ministerial rules (and ensure consistency with the requirement for efficient service provision of water services by water corporations). Traditional Owners will also develop their own proposals about which water and waterway management functions are of most interest to them.

In the medium term, water corporations, the VEWH and CMAs will negotiate new formal partnership agreements with Traditional Owners, using the proposals developed by Traditional Owners as a starting point for discussion. Partnerships with the VEWH and CMAs will be informed by the new Victorian Waterway Management Strategy.

Funding

Additional funding has been allocated to support Traditional Owners to develop their own proposals about water and waterway management functions of interest to them.

In the medium term, additional funding for CMAs and Traditional Owners may be required and will be considered as part of the Environmental Contribution Tranche Six budget process (2024-28). Water corporations will incorporate funding to resource development and implementation of Traditional Owner partnerships as part of their future water pricing submissions to be considered by the Essential Services Commission.

On the natural rises along the waterways our people camped and caught eels, other fish and waterbirds to eat. Important decisions were made on the banks of these waterways by our Ancestors. They were important living and meeting places. Just as they are today.

Paleert Tjaara Dja, Let's make Country good together 2020–2030 (Wadawurrung Country Plan)

We've been managing the river as custodians from the beginning of time, but governments are not asking us how we did that.

Traditional Owner, 2021

Water Rangers would allow us to practise our culture without asking government permission to do so. In real terms, we could actually be custodians of the river.

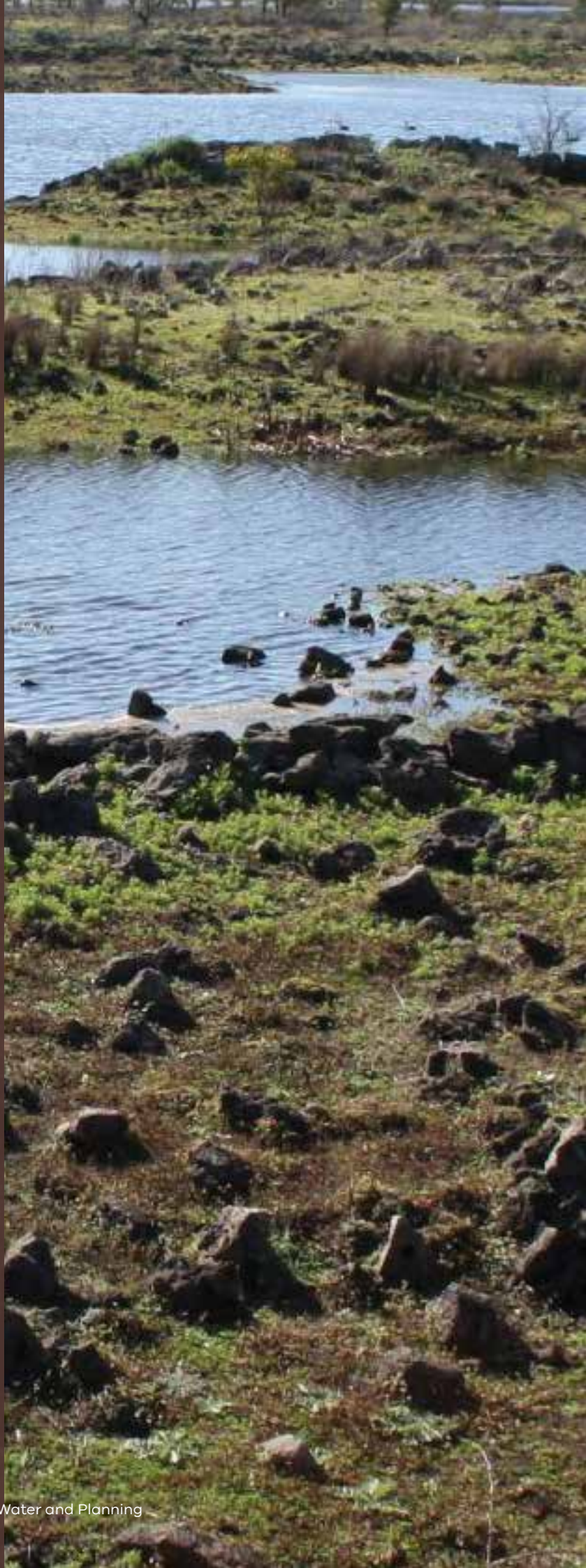
Wurundjeri Woi Wurrung (Burndap Birrarung burndap umarkoo, 2022)

One of our dreams long ago, instead of us going to government, we're set up where the government comes to us. We need to be embedded in water management.

Traditional Owner (Cultural Water for Cultural Economies report 2021)

Budj Bim

Credit: Gunditj Mirring Traditional Owner Aboriginal Corporation



Box 4: Waterway management responsibilities

Under the *Catchment and Land Protection Act 1994*, Victoria is divided into 10 catchment management regions and each has a CMA responsible for the integrated planning and co-ordination of land, water and biodiversity management in their region, except in the Port Phillip and Westernport catchment region where it is Melbourne Water. Under the *Water Act 1989*, authorities are designated with specific responsibility for the management of waterways, including roles in drainage and floodplain management. The designated waterway management authorities are the nine CMAs and Melbourne Water who have the lead role in developing and delivering regional programs for waterway management. The *Victorian Waterway Management Strategy* (2013) lists the range of functions that waterway managers undertake, including:

- developing a regional Waterway Strategy
- developing and implementing regional work programs to maintain or improve the environmental condition of waterways
- authorising works on waterways and acting as a referral body for planning applications, licences to take and use water and construct dams, for water use and other waterway management issues
- identifying regional priorities for environmental watering and facilitating environmental water delivery
- providing input into water allocation processes
- developing and co-ordinating regional floodplain management plans
- providing advice and undertaking investigations regarding flood events
- managing regional drainage in some areas
- assisting response to natural disasters and extreme events (such as bushfires and floods) where they affect waterways
- providing water quality advice for emergency water quality management; and
- undertaking community participation and awareness programs.

The VEWH was established through an amendment to the *Water Act 1989* to manage Victoria's environmental water entitlements. The VEWH works with the waterway managers, the Murray Darling Basin Authority and the Commonwealth Environmental Water Office, to ensure environmental water entitlements are used to achieve the most efficient and effective environmental outcomes.

Traditional Owners will also be supported to identify specific water resource management responsibilities (including the location over which the responsibility would exist) that each Traditional Owner group wishes to participate in (and ultimately take responsibility for in the longer term, subject to wide stakeholder engagement), including storage management, water supply and water planning (Box 5).

Box 5: Overview of water management responsibilities

Victoria's 18 water corporations provide a range of services to customers and communities across the state. Their responsibilities include:

- the supply of drinking and recycled water, and the removal and treatment of sewage and trade waste – known as 'urban' water services
- water delivery for irrigation, domestic and stock purposes, drainage and salinity mitigation – known as 'rural' water services.

Water corporations will also provide water for environmental purposes (such as passing flows), manage bulk water storages and designated recreational areas, and help the Minister for Water operate the Victorian Water Register. Water corporations also operate and maintain infrastructure that enables them to perform their responsibilities, including treatment plants, pumping stations, pipes, channels, reservoirs, dams, gates and meters. Water corporations may also act as the delegate of the Minister for Water.

Current regulations are insufficient to support the development and resourcing of fully funded partnership agreements between the water sector and Traditional Owners. One way to address this problem is to include the requirement to negotiate formal partnerships with Traditional Owners in the statements of obligations for water corporations and CMAs. These regulatory instruments are established under the *Water Industry Act 1994*, the *Catchment and Land Protection Act 1994*, and the *Water Act 1989*. The proposed amendments to the statements of obligations and Ministerial rules could:

- Require the water corporation, CMA or VEWH to negotiate a partnership agreement with each Traditional Owner organisation on whose Country the water corporation, CMA or VEWH is carrying out one or more of its functions. This requirement would be subject to agreement from the relevant Traditional Owner, who may choose not to negotiate a partnership.



- Enable water corporations to fund the partnership agreement adequately through their pricing processes, so that Traditional Owners are being paid for the services they provide. Any future pricing submission will continue to include customer participation and review by the Essential Services Commission.
- Enable the VEWH and CMAs to develop funding proposals to DELWP that include additional funding to resource formal partnerships with Traditional Owners (subject to future budget processes).

Box 6: Key considerations for formal partnerships

- Traditional Owner internal governance: many Traditional Owners would require additional resourcing for corporate structures and systems, an important 'bridging tool' already identified in the *Cultural Landscape Strategy* (FVTOC 2021). This would also assist in nation-strengthening and support self-determination.
- Training for new responsibilities: Traditional Owners have identified training and education as key enablers for them to take on more responsibilities in water and waterway management. Traditional Owners would require additional resourcing to complete this training and ensure these partnerships are set up to succeed.
- Risk management and accountability: the partnership agreement would need to be clear on how risk is managed and who remains accountable for any potential liabilities associated with water and waterway management activities. In keeping with the requirements for free, prior and informed consent, these risks would need to be clearly detailed as part of the negotiation of partnership agreements.
- Funding: additional funding may be required to support negotiation as well as implementation of partnerships. Further funding may also be required to support any additional public liability insurance for Traditional Owner organisations as they take on additional responsibilities. Any future funding will be considered as part of standard government budgetary processes.

Outcome 3: Environmental water management

Planning and delivery of environmental water occurs within both long-term and annual cycles of decision-making. The state-wide framework is established in the 2013 *Victorian Waterway Management Strategy* (with a new strategy commencing development). Regional Waterway Strategies (RWS) identify priority waterways where environmental values are at risk from altered water regimes and identify high level management objectives for the long term. These management objectives take into account the other values of the waterway, including social, cultural and economic values.

The VEWH is the key decision-maker for prioritising the use of environmental water entitlements across Victoria. The VEWH makes decisions by prioritising watering actions described in its annual seasonal watering plan, after considering factors such as seasonal conditions, water availability and ecological triggers and outcomes. The VEWH makes decisions about the way available environmental water will be used each year and communicates these decisions through its seasonal watering statements.

Traditional Owners are already participating in environmental water planning and management (Box 7), and they are seeking to take on a greater role and seeking greater resourcing for environmental water decision-making by working directly with the VEWH.

Traditional Owners say that change is necessary to overcome existing barriers, including the lack of a direct relationship with the VEWH, which limits opportunities for Traditional Owners to contribute to VEWH decision-making on how environmental water is used (including decisions to trade water allocation). Where decisions are made without involvement of Traditional Owners, potential uses of environmental water to heal Country can be overlooked.

Traditional Owners can incorporate Traditional Owner knowledge and ways of managing connected landscapes, to benefit both the environment and culture. This knowledge contributes to holistic water management and supports robust decision-making and may help environmental water managers set priorities where there are competing ecological values, as well as giving Traditional Owners more of a say on managing water on Country. Identifying cultural values is crucial to achieving shared benefits with Traditional Owners from water for the environment. Traditional Owners are already using a range of ways to do this, including Cultural Value Studies, Aboriginal Waterway Assessments, and other methods. Traditional Owners are also playing an increasing role in environmental water planning, decision-making, delivery, and monitoring (Box 3 and Box 7).

Traditional Owners are also using some of the water they already hold for environmental outcomes. Where this is a formal transfer to the VEWH, this water is also accounted for as environmental water use. For example, Taungurung Land and Waters Council holds a water share on the King River, and each year, they have donated the majority of this water allocation to the environment (ABC News 2022). In 2022, a private landholder on the King River also donated 50 ML of water allocation to the VEWH.

Box 7: Horseshoe Lagoon: an environmental water partnership with Taungurung

Taungurung Land and Water Council (TLaWC) is leading the way at Horseshoe Lagoon demonstrating how cultural values, environmental objectives and on-Country knowledge sharing are critical to long term water management, Healing Country and meaningful collaboration. Culturally significant to Taungurung Traditional Owners, Horseshoe Lagoon near Seymour continues to show promising response to environmental flow deliveries. Since the water has returned, it is again a living wetland full of birds, frogs and turtles.

Watering activities at Horseshoe Lagoon provide an opportunity to heal knowledge through developing TLaWC capacity and confidence in water management. In 2019, Taungurung women held a Welcome to Country at the site, marking and celebrating the return of water through environmental flows. Water was again delivered to the lagoon in 2020 and 2021, with TLaWC responsible for managing the pumping and delivery. Taungurung rangers also carried out aquatic plantings at the site in 2022.

“We work in collaboration and with the support of our partners. We have taken on more and more responsibilities with time and the support of our partners is essential. Goulburn Broken CMA, Parks Victoria and the VEWH have shown true support for this purpose,” said TLaWC’s Water Management Officer.

Source: Victorian Environmental Water Holder website

In the Murray-Darling Basin, the Commonwealth Environmental Water Holder (CEWH) has also entered into agreements with Traditional Owners in which environmental water allocations are provided to Traditional Owners to manage (Box 8).

Targeted Outcome 3

Traditional Owners have increased role in determining how environmental water is used for the purpose of healing Country.

Action

The Victorian Government will work with Traditional Owners, the VEWH and waterway managers to:

- Prepare guidelines to support assessment of seasonal watering proposals submitted by Traditional Owners direct to the VEWH.
- Develop a framework for multi-year agreements between VEWH and Traditional Owner groups that involve a transfer of an agreed volume of environmental water allocation. The Traditional Owners would have capacity to determine how and where the water will be used for dual environmental and cultural benefits in accordance with currently legislated objectives for environmental water for the agreed period.
- Undertake pilot studies of seasonal watering proposals and multi-year agreements.

This action is not intended to remove the role of catchment management authorities to prepare seasonal watering plans in close consultation with communities and stakeholders in their catchment.

Timing: short-medium term (1-5 years)

In the short term, VEWH and DELWP will work with Traditional Owners and waterway managers to develop the new guidelines and support pilot studies in which Traditional Owners submit seasonal watering proposals in advance of the guidelines. This work will also be informed by Outcome 2 and the next Victorian Waterway Management Strategy.

In the medium term, DELWP will work with Traditional Owners, VEWH, waterway managers, and Parks Victoria to develop the framework for the multi-year agreements, including risk management and accountability requirements.

Funding

Additional funding has been allocated to support Traditional Owners to help in developing the new guidelines. Any additional funding that may be required will be considered as part of the budget process for Environmental Contribution Tranche 6.

Box 8: Nari Nari agreement with Commonwealth Environmental Water Holder

Nari Nari Tribal Council manages a 7,000 ha property, 'Toogimbie' with a frontage to the Murrumbidgee River at Hay, NSW. Toogimbie is an Indigenous Protected Area (IPA) managed with the goal of restoring natural vegetation communities. A developed area is leased for irrigated cropping using a general security water allocation. Nari Nari Tribal Council intends to revive a range of cultural practices in the area. They have an agreement with the CEWH in which the CEWH has provided 1,500 ML in 2016-2017 and 1,000ML in 2017-2018 to the Nari Nari Tribal Council to water a floodplain. Nari Nari Tribal Council members have expressed that they consider the agreement as beneficial because it acknowledges their aspirations for a high degree of control over the environmental watering.

Source: Jackson & Nias (2019)

Outcome 3 provides two different mechanisms to increase the role of Traditional Owners in environmental water management. Firstly, they may choose to submit seasonal watering proposals direct to the VEWH, instead of submitting their proposals via a CMA. CMAs may continue to develop their own seasonal watering proposals for that site, or they may choose to support or contribute to the proposal prepared by the Traditional Owners.

Secondly, Traditional Owners could enter into multi-year agreements that would transfer an agreed volume of environmental water allocation for them to use each year. Traditional Owners could then choose where, when, and how to use environmental water to achieve healthy Country. Delivery of the water to sites may still require partnerships with CMAs, water corporations (see Outcome 2), and public land managers (see Outcome 4).

Any seasonal watering proposals or multi-year agreements with Traditional Owners for the use of environmental water must still meet the environmental water reserve objective specified in the *Water Act 1989* (and other relevant legal instruments, such as the Murray-Darling Basin Plan). This includes the need to keep and maintain records of environmental water use, and the requirement to report every five years on the achievements of environmental watering at the river/wetland scale under the Murray-Darling Basin Plan.

Holistic land and waterway management

Traditional Owners have said that they want to be decision-makers on Country and to be able to give effect to their Country Plans and cultural obligations to care for Country. Traditional Owners have diverse forms of governance arrangements, and each Nation has a different development pathway and outcome. These diverse pathways towards self-determination need to be understood and supported, and each Traditional Owner organisation will adapt their water landscape management approach to meet their own needs.

Victoria's water landscapes include floodplains, lakes, rivers, estuaries, wetlands and aquifers. The *Victorian Waterway Management Strategy* (2013) currently defines waterways as rivers and streams, their associated estuaries and floodplains (including floodplain wetlands) and non-riverine wetlands. Under the *Water Act 1989*, waterway has a more specific and complex meaning and excludes water collected in private dams or natural depressions on private land. The different definitions of waterways can make it challenging for Traditional Owners to engage in holistic management of the water landscape.

Many culturally important wetlands are located on private land. DELWP will continue to identify pilot projects with Traditional Owners and interested private landholders to develop voluntary partnership models that enable people to work together under stewardship agreements to support healing and caring for Country.

Many Traditional Owners aspire to being the managers of land and water in a holistic way on their Country. This is a long-term goal that requires overcoming specific barriers.

Water is Life identifies a pathway to management of water landscapes by Traditional Owners as part of three targeted outcomes for land and water that will, over time, increase the role of Traditional Owners in waterway management, public land management, and environmental water management.

Outcome 4: Public land management

As part of its response to the Victorian Environmental Assessment Council's 2017 *Statewide Assessment of Public Land: Final Report*, the government committed to renewing Victoria's public land legislation. DELWP is currently exploring opportunities to review and update the legislation to recognise, enable and support Traditional Owner self-determination with respect to public land. The public land reforms will complement the other Outcomes to be realised through *Water is Life*.

Some Traditional Owners currently have joint management arrangements in place under the *Conservation, Forests and Lands Act 1987* which allows for Traditional Owners and the State to undertake joint management through the appointment of a Traditional Owner Land Management Board. In addition to existing joint management opportunities, Traditional Owners have expressed interest in being direct managers of areas of public land.

As well as advancing Traditional Owner self-determination through enabling greater involvement in public land management, DELWP is also exploring opportunities to embed appropriate recognition of Traditional Owners through the new legislation. This may include guiding objectives and principles to promote Traditional Owners' self-determination and recognise Traditional Owners' knowledge of, and rights and interests in, public land management.

Outcome 4 is an important step towards enabling greater involvement of Traditional Owners in the management of public land, and works alongside the recognition of waterways as living entities (Outcome 1), the appointment of Traditional Owners as waterway managers (Outcome 5) and the potential recognition of Traditional Owners as environmental water holders (Outcome 6).

Outcome 4 is also intended to build upon the Traditional Owner partnerships in place with public land managers, such as Parks Victoria and their *Managing Country Together Framework* (2019).

Box 9: Key considerations to guide development of legislative proposals

- Integrating Outcome 4 with the potential recognition of waterways as 'living entities' (Outcome 1).
- Engaging with Traditional Owners.
- Engaging with the wider community on how these proposals should relate to the management of public land.

Targeted Outcome 4

Increased involvement of Traditional Owners in public land management.

Action

The Victorian Government is currently exploring opportunities to embed appropriate recognition of Traditional Owner values and interests in the renewed public land legislation, which may include:

- Enabling Traditional Owners to be directly appointed as public land managers
- Providing greater flexibility in joint management between a Traditional Owner group and a State agency partner.

This action will complement current public land management arrangements involving existing public land managers, such as State agencies, local governments or committees of management.

Timing: short-medium term (1-5 years)

DELWP is engaging Traditional Owners on proposals to enable self-determination through reforms to Victoria's public land legislation, to ensure that the renewed legislation reflects Traditional Owner rights, aspirations and values for management of public land and Country.

Funding

Any additional funding that may be required to enable Traditional Owners to take up public land management responsibilities will be considered as part of future budgetary processes.

Outcome 5: Traditional Owners as waterway managers

Outcome 5 will build on the experience and lessons of Outcomes 2 and 4. In particular, implementation of Outcome 2 will assist in the identification of specific barriers to Traditional Owners becoming waterway managers of water landscapes. To address these barriers, under Outcome 5, new legislative proposals to amend the existing water legislation will be explored and developed.

A key aspect of this possible new legislation would be to enable Traditional Owner groups to manage specific water landscapes, through being appointed as a waterway manager for particular locations (e.g., sites such as wetlands, billabongs and river reaches). This would enable Traditional Owners to take on functions such as:

- preparing seasonal watering proposals for sites on their Country,
- undertaking environmental water management (consistent with the objectives of the environmental water reserve), and
- carrying out on-ground works to maintain and improve waterway condition within a designated area.

Not all Traditional Owners may be seeking to take on management for waterway management responsibilities. Others may aspire to waterway management but are not yet able to take on these responsibilities. All Traditional Owner groups will be supported to develop the pathway that best meets their needs.

As part of implementing Outcome 5, governance frameworks and accountability arrangements (including funding arrangements, public liability, and institutional capacity) for waterway managers will need to be adapted. Transitional arrangements will be needed to support Traditional Owners as they take on new responsibilities. In particular, Traditional Owners may choose to begin by taking on a subset of waterway management responsibilities for specified locations.

Where waterway systems cross state borders, such as the Murray River, additional considerations, such as interjurisdictional agreements and Federal Government legislation, may limit the opportunities for Traditional Owners to be appointed as waterway managers, as these are not within the control of the Victorian Government.

Targeted Outcome 5

Recognition of Traditional Owners as waterway managers for specific locations.

Action

The Victorian Government will work with Traditional Owners across Victoria to identify and address barriers preventing them from taking on waterway management responsibilities for specific locations. This will include developing new legislative proposals in consultation with communities and stakeholders for consideration by Parliament that enable Traditional Owners to be appointed as waterway managers, with defined functions and responsibilities for specific locations.

This action is not intended to abolish the existing statutory waterway managers: catchment management authorities or Melbourne Water.

Timing: long term (5+ years)

Over the next 5 years, Traditional Owners will be supported to work with DELWP and wider stakeholders to develop legislative proposals for consideration by Parliament. This work will build on lessons from implementation of Outcomes 1, 3, 4 and 5. In the short term, Traditional Owners will be resourced to develop their own proposals about waterway management functions of interest to them as part of the Victorian Waterway Management Strategy (Outcome 3).

Funding

Potential funding for implementation of Outcome 5 will be considered as part of budget processes for the Environmental Contribution Tranche 6.

Outcome 6: Traditional Owners as environmental water holders

Delivering water for the environment benefits plants and animals but can also help achieve cultural outcomes. For Traditional Owners, all water on Country is integral to life itself, and interconnected with the broader cultural landscape. Keeping as much water as possible in waterways is vital in achieving Healthy Country, Healthy Mob, and for self-determination.

Legal recognition of Traditional Owners as environmental water holders under Outcome 6 would enable Traditional Owners to hold environmental entitlements (as well as other water entitlements) for the purpose of healing Country. These environmental entitlements would continue to be managed in accordance with the environmental water reserve objective and would be accounted for as environmental water under Victoria's water accounting frameworks.

Outcome 6 would work alongside the VEWH's role as environmental water holder. Under this outcome, it is not proposed to replace the VEWH, but rather to extend the some ability to hold environmental entitlements to Traditional Owner organisations.

The Victorian Government could also work with the Commonwealth and other Basin governments towards enabling environmental entitlements held by Traditional Owners to be recognised as part of Victoria's commitments to the Sustainable Diversion Limits in the Murray-Darling Basin.

Implementation of Outcome 6 will build on the experience of Traditional Owners, waterway managers, and the VEWH as Traditional Owners take on more responsibility for environmental water decision-making (Outcome 3).

Targeted Outcome 6

Recognition of Traditional Owners as environmental water holders.

Action

The Victorian Government will work with Traditional Owners across Victoria to overcome remaining barriers to their aspirations to manage environmental water on Country. This will include, if necessary, developing new legislative proposals for consideration by Parliament to enable Traditional Owner organisations to hold environmental water entitlements.

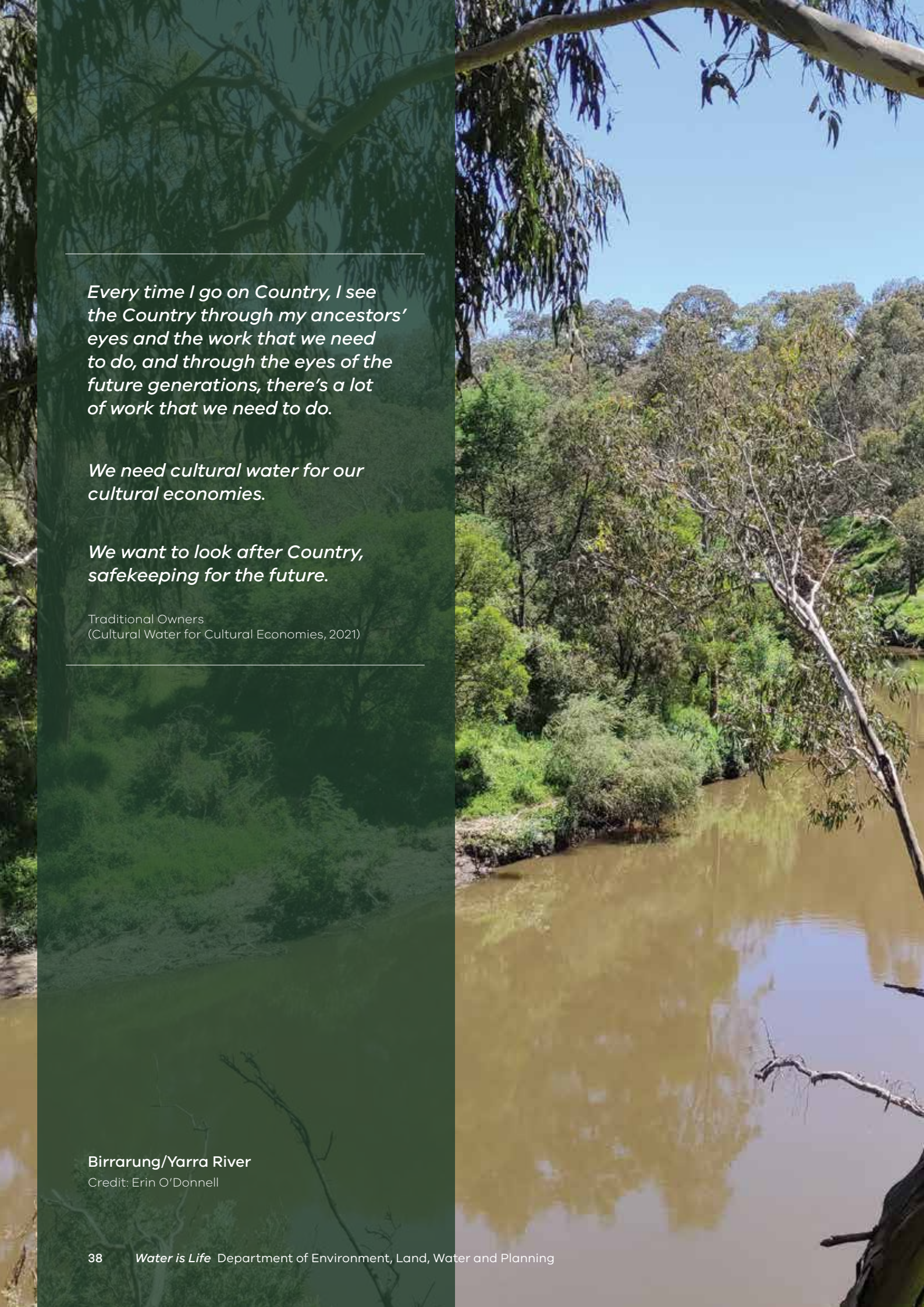
This action is not intended to abolish the Victorian Environmental Water Holder.

Timing: long term (5+ years)

Over the next 5 years, DELWP will work with Traditional Owners and wider stakeholders to identify barriers and develop solutions to them, including legislative proposals for consideration by Government if required. This work will build on lessons from implementation of Outcomes 1, 4 and 5. In the short term, Traditional Owners will be resourced to develop their own proposals about waterway management functions of interest to them as part of the Victorian Waterway Management Strategy.

Funding

Potential funding for implementation of Outcome 6 will be considered as part of budget processes for the Environmental Contribution Tranche 6.



Every time I go on Country, I see the Country through my ancestors' eyes and the work that we need to do, and through the eyes of the future generations, there's a lot of work that we need to do.

We need cultural water for our cultural economies.

We want to look after Country, safekeeping for the future.

Traditional Owners
(Cultural Water for Cultural Economies, 2021)

Birrarung/Yarra River

Credit: Erin O'Donnell



PART 2

Cultural Water and Cultural Economies



Cultural Water and Cultural Economies

Cultural economies, which have supported Traditional Owners for thousands of years, have been impacted by the loss of access to water.

Traditional Owners have never ceded rights to water, yet in Victoria, Aboriginal people own less than 0.2 per cent of water rights (Table 2). The extremely low level of water entitlements currently held by Traditional Owners means that they have also been almost entirely shut out of commercial water use and have not had the same opportunities to develop their own water businesses or build intergenerational wealth. Returning water rights to Traditional Owners is an acknowledgement of previous injustice and an important step to redressing this harm.

Finding opportunities to return water rights to Traditional Owners within the existing entitlement framework has been DELWP policy since *Munganin Gadhaba* (DELWP Aboriginal Inclusion Plan 2016–2020) and *Water for Victoria* (2016).

Returning water to Traditional Owners

Although Traditional Owners hold very little water at present, the volume of water in Traditional Owner hands has increased as the Victorian Government has returned some water to Traditional Owners (Figure 4).

Traditional Owner communities are developing plans for the use of this water under the Cultural Water paradigm, which include strengthening cultural economies.

In northern Victoria, there are two processes already underway that are exploring ways to return water to Traditional Owners (Box 10). By focusing on how to share water between multiple groups and support the flow of water across Country, both processes support the key priority that ‘no one gets left behind’.

An equally important priority is that ‘no one is held back’. Some Traditional Owner groups have very well-developed business plans for water-based economic development. As part of the commitments in *Water for Victoria* (2016), 11 Traditional Owner groups were funded to undertake feasibility studies and develop business plans for economic uses of water as part of strengthening cultural economies (see examples in Box 11). These projects tested the feasibility of aquaculture, bush foods, native plants, water-based education and cultural tourism across Victoria. For Traditional Owner groups with business plans in place, gaining access to water entitlements is an essential step towards bringing these plans to life.

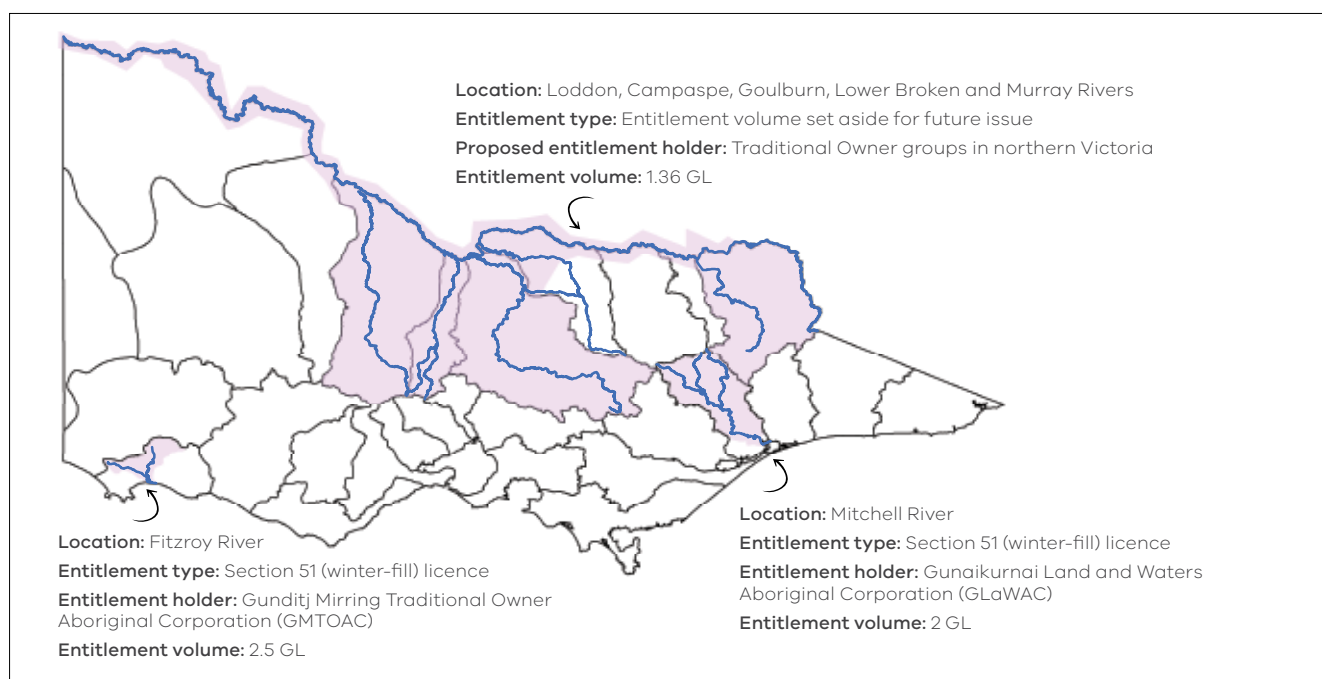


Figure 4 Recent water returns to Traditional Owners in Victoria

Box 10: Existing processes for water returns in Northern Victoria

Sharing 1.36 GL between northern Victorian Nations

In 2022, the Victorian Government committed to set aside 1.36 GL of water savings generated by the Connections Project for Traditional Owners and First Nations in northern Victoria. Traditional Owner groups will advise government on the preferred approach, including undertaking options analysis and recommending a strategy for returning this water to Traditional Owners as quickly as possible. This work will be undertaken in 2022-23.

Commonwealth Government funding for water purchase in the Murray-Darling Basin

In 2018, the Commonwealth Government committed \$40 million to acquire water to support economic development for Traditional Owners and First Nations people across the Murray-Darling Basin. While no water has been acquired to date, Aboriginal peak bodies, including MLDRIN, are currently working with the Commonwealth Government to access this funding and acquire water.

Box 11: Cultural economies in water

Gunditj Mirring Traditional Owner Aboriginal Corporation 'Killara Kooyang' project

This eel (kooyang) aquaculture project will inform the long-term and sustainable water needs for this business at the Lake Condah Mission site. The project will harvest eels for the local community. The kooyang farm is completely 'off-grid' and uses a reticulating aquaculture system. This project has been in partnership with Wannon Water and Deakin University and aims to re-establish traditional kooyang farming and restore its integral role for Country.

Source: Water Community and Country, Victoria's Aboriginal Water Program, Progress snapshot 2020

First Peoples of the Millewa Mallee 'Native Fish Hatchery' project – 300ML

The project will deliver a detailed native fish hatchery design to be located on Ned's Corner Station. It will use key information from the First Peoples of the Millewa-Mallee Aboriginal Corporation's (FPMMAC) fish hatchery business plan, which was supported through an earlier funding initiative of the Aboriginal Water Program. An Indigenous Aquatic Operations Manager will also be employed, in readiness for operation of the facility. FPMMAC has started discussions with the Victorian Fisheries Authority to set up a memorandum of understanding about supplying native fish to Victoria through the project, as part of an election commitment to buy and stock eight million native fish.

Source: Aboriginal Water Program Annual Report 2021

Outcome 7: Water returns

Ownership and management of water by Traditional Owners increases their economic well-being by supporting economic development and nation-building. Increased economic independence also supports increased autonomy and self-determination. As part of the commitment to support economic development in *Water for Victoria* (2016), the Victorian Government will work with Traditional Owners to find pathways for them to access water for economic development. The Victorian Government is not proposing to buy water from existing water holders for the purpose of returning water to Traditional Owners. This is not intended to rule out Traditional Owners seeking any future funding support for economic development purposes or to pre-empt any future Treaty negotiations.

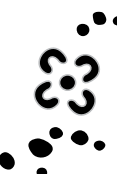
Any water returned to Traditional Owners under Outcome 7 will form part of meeting Victoria's Closing the Gap targets. The intent is to return water to each Traditional Owner group where possible, although not all Traditional Owners will receive the same volume.

There are opportunities to return water to Traditional Owners under Victoria's existing entitlement framework, including unallocated water, supplies by agreement and donations. As water is recovered from water savings projects (from investment in increasing water use efficiency) and new sources of water are developed (such as stormwater and desalination), water returns to Traditional Owners will be considered from these sources. Increasing reliance on new sources of water can also help to free up water in rivers and aquifers, which may be returned to Traditional Owners.

By acting quickly on these existing opportunities, and in accordance with existing legislation and the foundational principles, the Victorian Government will seek to return water to Traditional Owners as a matter of priority. This water may be used by Traditional Owners for any purpose (within the existing water management rules), including supporting the growth and development of cultural economies.

However, many of these opportunities to return water to Traditional Owners are limited in scope. In many parts of Victoria, only small volumes of unallocated water remain available. In northern Victoria, significant investments have already been made in water savings by increasing water use efficiency, and the large volumes of water savings generated have been already allocated.

To ensure that pathways to water access are open to all Traditional Owners, the Victorian Government is proposing to develop a framework that supports Traditional Owners to access water through other



Targeted Outcome 7

Water is returned to Traditional Owner groups across Victoria through the issue of water entitlements for their self-determined use.

Action

The Victorian Government will enable water to be returned to Traditional Owners across the state by:

- Acting quickly on existing opportunities within the current entitlement framework, including providing information to Traditional Owners about what opportunities exist (now or in the future) in their area,
- Developing guidelines for unallocated water and water infrastructure projects that make sure the interests of Traditional Owners are considered and any water returns are enabled,
- Developing future opportunities to return water to Traditional Owners as part of infrastructure projects and regional management plans (such as Sustainable Water Strategies), and
- Developing a framework to support Traditional Owners to access water in other ways, including through water markets, when there are no alternative pathways to provide water for economic development (including cultural economies).

The Victorian Government is not proposing to establish a direct water entitlement purchase program, although this is not intended to pre-empt any future Treaty negotiations.

This action will not affect the volume of water that can be extracted from rivers or aquifers (permissible consumptive volumes) or the security or reliability of existing water entitlements. It will also not affect the volume of water in the environmental water reserve. Traditional Owners holding water entitlements will have the same rights and obligations as non-Traditional Owner entitlement holders.

Timing: short term (1-3 years)

In the next 1-3 years, DELWP will continue to identify opportunities to return water to Traditional Owners through the issuing of water entitlements, including finalising statewide guidance on issuing unallocated water and developing future opportunities. When the Minister for Water has the opportunity to re-allocate water (for example where an entitlement is not needed for its the purpose for which it was granted), opportunities to return a proportion of available water to Traditional Owners will be considered.

DELWP will work Traditional Owners, water corporations, relevant government departments and the wider community to develop the framework to find pathways for Traditional Owners to access water for cultural economies.

Funding

During 2022-23 and 2023-24, additional funding has been allocated to support Traditional Owners in submitting applications for water entitlements, developing a mechanism to share water entitlements between multiple Traditional Owners, and developing the framework.

means, including entering water markets, when there are no alternative pathways available. Any such framework would be subject to engagement with Traditional Owners and wider stakeholders. It would be premised on principles such as:

- Maintaining sustainable diversion limits
- Achieving net socio-economic benefits (including cultural benefits) for regional communities
- Avoiding negative third party impacts, and
- Using small scale pilot projects with robust business cases as the basis for developing and refining the framework.

Under Outcome 7, Traditional Owners would be able to use their water for any self-determined purpose, within the existing water management rules. This mirrors the arrangement for all current water entitlement holders who may determine how they exercise their water rights within the rules and conditions of their licence or entitlement. Traditional Owners could also have the opportunity to access diverse water sources and entitlement types as relevant on their Country, for example access to recycled water.

Over the next 12 months, DELWP will develop:

- Guidelines for Traditional Owner access to unallocated water. The guidelines will provide clarity and transparency on how all potential uses of unallocated water will be considered. The guidelines will build on existing processes that ensure unallocated water is only made available where there are no unacceptable impacts on the environment and existing entitlement holders.
- Guidelines to enable the interests of Traditional Owners to be considered early in the development of all infrastructure projects with water recovery opportunities. Where possible, Traditional Owners would have the opportunity to provide input on the development of any infrastructure projects, and to enable them to consider whether the benefits they might receive from any future water entitlements would offset other impacts of new infrastructure projects on their Country. Increasing Traditional Owner participation in new infrastructure projects will be a process of continuous improvement. Existing projects that have already received approval may continue, but where possible, projects underway will apply the new guidelines to their decision-making processes.
- Guidelines to support the development of the framework to support Traditional Owners to access water through other means, including entering water markets, when there are no alternative pathways available.

Supporting Cultural Economies and self-determined water use

There are two further barriers for Traditional Owners seeking access to water for self-determined use: (1) access to land; and (2) the ability to pay the associated fees and charges.

Outcome 8: Access to land

The Victorian Government will work to ensure that ownership of land is not a barrier to Traditional Owners applying for, or holding, water entitlements.



Targeted Outcome 8

Access to land will not be a barrier to Traditional Owners applying for or holding water entitlements

Action

The Victorian Government will provide more appropriate mechanisms within the Victorian water entitlement framework to support access to water for Traditional Owners for cultural use purposes.

Timing: short (1-3 years)

In the next 12 months, the Victorian Government will work with Traditional Owners and public land managers to support identification of appropriate land parcels that can be nominated for assessment and decision-making on applications for section 51 licences. This may include:

- Providing Traditional Owners with information on public land that can be nominated to enable the application and issuing of licences for cultural use and streamlining permissions with public land managers.
- Working with water corporations to streamline existing approval requirements and reduce red tape for Traditional Owners wanting to apply for a section 51 licence.



Outcome 9: Water fees and charges

Water entitlements, as well as associated rights to use water, incur fees and charges. Returning water rights without addressing fees and charges would be a significant financial burden for Traditional Owner groups and may result in Traditional Owners having to sell their water to pay the fees (see Hartwig, Jackson and Osborne, 2020). This would undermine the restorative justice approach, which aims to begin addressing the harms of colonisation, including the almost total exclusion of Traditional Owners from holding water entitlements.

Outcome 9 establishes new arrangements to fund the fees and charges associated with water entitlements held by Traditional Owner groups. Existing entitlement holders will not cross-subsidise any fees and charges associated with water entitlements held by Traditional Owners.

Outcome 9 builds on the existing policies of some water corporations to waive fees and charges for cultural use (see Box 12) and provides additional protections for existing users by explicitly defining the circumstances in which fees and charges could be waived. In these circumstances, any additional costs would be negligible, and the water corporation may be able to absorb these costs without increasing fees for other water users.

Where the fees and charges cannot be waived, the Victorian Government would enter into a funding agreement with the relevant Traditional Owners to cover the fees and charges associated with their water entitlements (including any existing water entitlements held by Traditional Owner groups in Victoria).

Other water users in a specific water system will not be responsible for increased costs or subsidising fees and charges associated with Traditional Owner water entitlements without their consent. Some water corporations may choose to seek approval from their customers to support absorbing higher fees and charges, but this will depend on receiving customer support.

In the short term, existing funding sources are likely to be sufficient to fund the fees and charges associated with water entitlements held by Traditional Owners, but this could change over time. Under this proposed action, the Victorian Government would explore options to securing a more sustainable, ongoing funding arrangement. The Victorian Government may also work with the Commonwealth Government, and advocate for similar policies to cover fees and charges for Traditional Owner water entitlements acquired through Commonwealth Government processes.

Targeted Outcome 9

Traditional Owners will be funded to pay fees and charges associated with their water entitlements unless use is purely commercial (see Outcome 10).

Action

The Victorian Government will provide funding to Traditional Owner groups to pay for the fees and charges associated with water entitlements issued to them in accordance with the following:

- Fees and charges will be waived by the relevant water corporation for entitlements where there are no associated management costs, such as section 51 licences where water remains in-stream or in-aquifer in unregulated rivers or groundwater.
- Fees and charges for Traditional Owner water entitlements will be funded by the Victorian Government where there are associated management costs, such as in a regulated system, and/or where water is extracted for use (subject to transitional arrangements in Outcome 10).

Timing: short-medium (1-5 years), ongoing

Over the next 12 months, and on an ongoing basis as needed, DELWP will develop funding agreements with Traditional Owner groups that hold water entitlements (including water entitlements held on trust for the benefit of Traditional Owner groups). Over the next 3-5 years, DELWP will work with Traditional Owners, water corporations, and Department of Treasury and Finance to develop a long-term sustainable funding program.

Funding

Additional funding has been allocated to cover the costs associated with water entitlements held by Traditional Owners for the next two years. Any future funding that may be required future funding arrangements will be considered as part of the future government budget processes.

Box 12: Southern Rural Water policy on cultural water licence charges

Licence fees are charged for the management of these resources to provide resources to ensure benefits of the use the resource is balanced by the need for sustainable and equitable sharing of the resource. To remove any doubt, if water extracted under this policy is used for commercial applications, normal licence fees shall apply.

Fees will not be charged for section 51 licences issued to Traditional Owners for cultural purposes where:

1. The use of the water is consistent with the intent of *Water for Victoria*, that being, the primary purpose of the water is for cultural use, and
2. There is not an easily discernible distinction between commercial and cultural use.

The waiving of fees will be subject to approval by the relevant SRW delegate in accordance with the Ministerial delegations under the Water Act. Trading of the water to a third party is viewed as a commercial activity regardless of the intended purpose of the income generated.

In support of implementing the intent of *Water for Victoria*, Traditional Owners have requested fee relief on the basis that the intent of self-determination is to support Traditional Owners right to decide what happens to their water, including use for cultural purposes, without requiring an economic benefit be realised to offset licence fees. Balancing these requests is also the need to ensure that the creation of cultural water allocations also does not economically impact on existing licence holders, either directly or indirectly.

Where the allocation of water is from unallocated volumes, and the use of the water does not have an easily discernible distinction between commercial and cultural use, this is seen to be achieved as:

- The fee waiver does not create a disproportionate commercial advantage over other customers (compared to a purely economic venture that would be competing with similar businesses).
- The entitlement comes from previously unallocated water and is therefore not already attracting fees.

Use of the water purely to generate economic returns for the benefit of the Traditional Owners would be seen as an example of an easily discernible distinction between commercial and cultural use.

Source: *Southern Rural Water (2021) Policy – Circumstances when a section 51 licence fee is not charged.*

Outcome 10: Commercial water use

Under Outcome 10, where Traditional Owners become commercial users of water, they will eventually become responsible for an increasing portion of fees and charges over time to full cost recovery. However, Outcome 10 also acknowledges that the almost total exclusion of Traditional Owners from holding water entitlements (Table 2) means that they have not had the same opportunities to build intergenerational wealth through the commercial use of water as other Victorians. To support economic development as part of a restorative justice approach, the Victorian Government will provide funding to cover fees and charges associated with water entitlements during the initial phase of the water-based business.

A transitional arrangement will be necessary to ensure Traditional Owners can establish a commercial use of water if they choose. Under these arrangements, the Victorian Government would continue to pay a portion of the fees and charges for a set period as part of a 'start up' funding grant for the Traditional Owner for profit business.

The Victorian Government will develop a framework to support these transitional funding arrangements, including a timeframe for transition to Traditional Owners paying the full fees and charges. The framework will be informed by pilot commercial projects developed in partnership with one Traditional Owner group. Expressions of interest will be sought for these projects in the next 12 months.

Table 3 shows how fees and charges paid by Traditional Owners could increase across consecutive years of operation of a business. This time span reflects what we have heard from Traditional Owners about the importance of enabling Traditional Owners to build the kind of intergenerational wealth that other Victorians have had the opportunity to create.

Table 3 Possible transitional arrangements for payment of fees and charges by Traditional Owners.

Years of commercial water use	1-3	4-7	8-10	11-15	16-20	21+
Annual fees and charges paid by Traditional Owners	0	20%	40%	60%	80%	100%

The framework will also aim for simplicity for Traditional Owners (keeping additional reporting requirements to a minimum) and will not impose constraints on how water may be used by Traditional Owners. The funding arrangements could be documented in a funding agreement between the Victorian Government and the Traditional Owner business operators. If Traditional Owners sell the business, the funding agreement with the Victorian Government would cease. If the business is sold to





Targeted Outcome 10

Where Traditional Owners become commercial users of water, they will become responsible for an increasing portion of fees and charges over time to full cost recovery.

Action

The Victorian Government will develop a framework for the payment of fees and charges associated with water entitlements held by Traditional Owners and used for purely commercial purposes, including:

- An appropriate transition period, over which Traditional Owner groups will pay an increasing portion of fees and charges under a transitional arrangement to full cost recovery
- Clear and culturally appropriate definitions of what constitutes a purely commercial use of water.

This action is intended to support Traditional Owner commercial uses of water and avoid imposing additional costs on other entitlement holders.

Timing: short-medium term (1-5 years)

Over the next 12 months, and on an ongoing basis as needed, DELWP will enter into funding agreements with Traditional Owners, including agreed transition arrangements. Over the next 3-5 years, DELWP will develop a framework for the payment of fees and charges associated with water used for purely commercial purposes.

Funding

Additional funding has been allocated to support a small number of pilots over the next 2 years. Any additional funding that may be required to support further commercial use transitional funding agreements will be considered as part of the budget process for Environmental Contribution Tranche 6.

another Traditional Owner group to operate as a for-profit business, the agreement may need to be renegotiated on a case-by-case basis. In some cases, it may be appropriate to commence at year 1, but in cases where the new operators are an existing for-profit entity it may be more appropriate for the new agreement to commence with a higher portion of the fees being paid by the new Traditional Owner entity.

The framework will also provide greater clarity on identifying water that is being used for purely commercial purposes (see Table 4 as a possible option). In accordance with Victoria's water entitlements framework, the proposed use of a water entitlement needs to be specified to the relevant decision maker (usually a water corporation) when the application for the water entitlement is made. Details such as the volume, proposed use, location of extraction may be necessary for the water corporation to consider when issuing the water entitlement and under what conditions. However, the determination as to whether the use of that water is purely commercial would then be the subject of the agreement between the Traditional Owner and the Victorian Government.

To align with the Victorian Government commitment to Traditional Owner self-determination, the first step in identifying whether water is being used for purely commercial purposes is proposed to be a self-assessment for Traditional Owners. This ensures that the Victorian Government is not involved in determining whether an activity is cultural or commercial. An example of a possible self-assessment process is provided in Table 4. A completed self-assessment would be presented to DELWP as part of developing the funding agreement for the fees and charges.

In addition to the self-assessment at the commencement of a funding agreement, Traditional Owners may also need to report on how water was used each year to ensure that the self-assessment remains accurate.

Table 4 Possible Traditional Owner checklist for commercial use assessment

Step	Checklist question	Action	
1.	Are you a not-for-profit organisation?	NO – Go to Q4	YES – Go to Q2
2.	Are you in selling a product or service in competition (or potentially in competition) with other businesses in your area?	YES – Go to Q4	NO – Go to Q3
3.	Briefly explain why not (for Q2), including necessary documentation	Your water use is not purely commercial, and you will not pay fees and charges.	
4.	What percentage of your water entitlement volume is for commercial use? i.e., how much water will you be using to make your product or provide your service which you plan to profit from?	<p>If less than or equal to 20ML or 25% of your total water entitlement volume or annual allocation (whichever is the smaller), you will not pay fees and charges.</p> <p>If greater than 20ML or 25% of your total water entitlement or annual allocation, you will pay fees and charges for this volume under an agreed transitional arrangement.</p>	

Culturally appropriate water entitlements

Outcome 11: Future water entitlement reform

As Traditional Owners increase their water holdings, it will be possible to identify specific barriers in the existing water entitlement framework that prevent Traditional Owners from holding or using water in a culturally appropriate way. To overcome these barriers, under Outcome 11, new legislative proposals will be explored and developed. Outcome 11 will build on the experience and lessons of Outcomes 7-10.

There are many ways to access water in Victoria, but none of these were designed with Traditional Owner interests in mind. Traditional Owners tell us there are constraints and barriers to Traditional Owners using and holding water (Box 13). For example, Traditional Owners want water rights in perpetuity to reflect their ongoing relationship to Country, however, water held under a section 51 licence, for example, has a maximum 15-year term. We will continue to work with Traditional Owners to identify barriers and improve Traditional Owners' access to water.

As part of this process, existing entitlements will remain protected. Any potential third party impacts will be transparently assessed and minimised through a public consultation process.

Box 13: issues to be considered in developing culturally appropriate water entitlements

- how to best meet the principles of self-determination
- potential uses of the water and how existing arrangements can support them
- the physical and governance characteristics of the system
- types of entitlements already available to meet Traditional Owner needs
- removal of time limits on duration of ownership or management arrangements
- how water can be used on land where Traditional Owners do not have freehold title, native title, or other land use agreement
- streamline application process for surface or groundwater to remove initial requirement for access to land
- whether the current legislation can support Traditional Owner needs
- the roles and responsibilities of each organisation involved in facilitating and delivering water justice.







All mobs have their own water.

We're all here to get water for our people.

Traditional Owners
(Cultural Water for Cultural Economies report, 2021)



Targeted Outcome 11

Traditional Owners can hold and manage water in culturally appropriate ways.

Action

The Victorian Government will work with Traditional Owners across Victoria to identify and overcome any further barriers preventing them from holding and managing water as part of a cultural water paradigm and to update *Water Is Life* accordingly.

Timing: long term (5+ years)

Over the next 5 years, as Traditional Owner water holdings increase, DELWP will work with Traditional Owners and water corporations to identify barriers and develop proposals to overcome them. Existing water users and the wider community will be consulted on any new proposals.

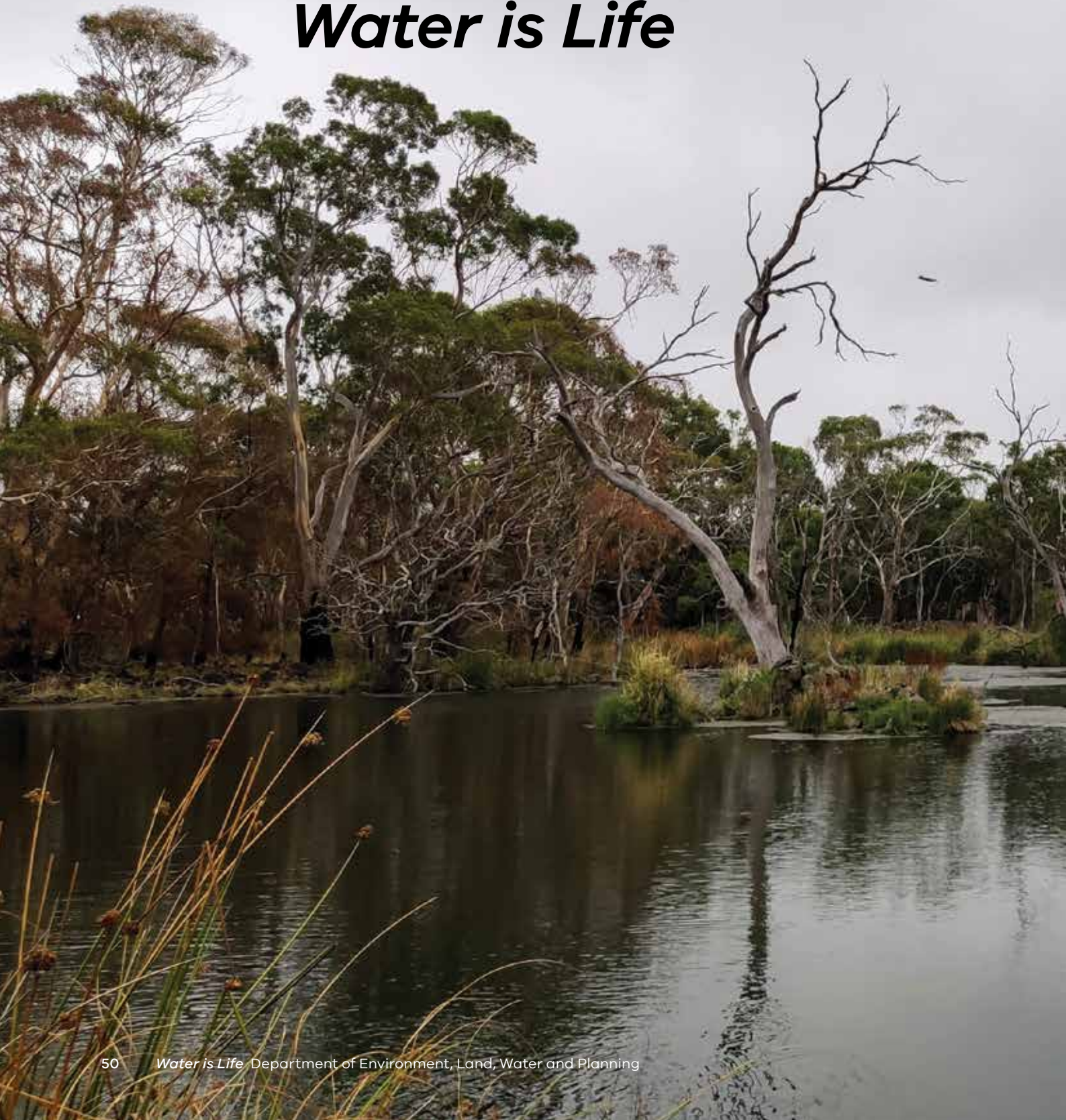
Funding

Any future funding that may be required to support implementation of Outcome 11 will be considered as part of longer-term budget processes.

Erskine River estuary
Credit: Erin O'Donnell

PART 3

Implementation of *Water is Life*



Water is Life will be implemented in a staged, transitional manner that uses pilots and partnership projects between the water sector and Traditional Owners to support a 'learning by doing' approach.

Part 3 establishes two important components for the success of this approach: (1) Traditional Owner oversight of the implementation process; and (2) guidance on how the staged implementation will affect water sector agencies.

Budj Bim

Credit: Erin O'Donnell



Traditional Owner oversight of implementation

Traditional Owners have strongly requested that they have oversight of the *Water is Life* implementation process, including the ability to hold DELWP to account for commitments made in *Water is Life*. As the implementation will also include actions undertaken by water corporations, waterway managers, and the VEWH, Traditional Owners have also requested that this oversight process includes a direct line to the Minister for Water.

Outcome 12: Traditional Owner Oversight Committee

The Victorian Government will appoint an advisory panel, consisting of one representative from each Traditional Owner group in Victoria. This advisory panel would constitute the oversight committee, which may make recommendations to DELWP (or the Minister) but would not replace or limit the sovereignty and self-determination of any Traditional Owner group.

In accordance with the commitment to self-determination, establishing the precise terms of reference and functions of the committee should be the task of the committee itself. One of the first tasks of this advisory panel will be to work with DELWP to design a formal committee structure, including terms of reference, arrangements to manage potential conflicts of interest, and lines of reporting to senior DELWP and the Minister for Water.

Targeted Outcome 12

Traditional Owners will have oversight of the implementation of *Water is Life*.

Action

The Victorian Government will work with Traditional Owners across Victoria to establish an oversight committee, comprising one representative from each Traditional Owner group.

Timing: short term (1-3 years)

DELWP will call for expressions of interest from each Traditional Owner group for membership of the oversight committee for up to two years. Committee members will develop a terms of reference for an ongoing oversight committee as needed.

Funding

Additional funding has been allocated to support the oversight committee. Future funding of the oversight committee after 2024 will be considered as part of a budget bid under the Environmental Contribution Tranche 6.

Implementation of *Water is Life*

Implementation of *Water is Life* will involve coordination and collaboration between government departments (DELWP and other departments as needed), Traditional Owners, and water sector agencies, including water corporations, CMAs and the VEWH.

In doing so, the Victorian Government is building on its strong track record of delivering important change in the water sector to better recognise Traditional Owner rights and interests. Water sector agency response to changed expectations and operational requirements has been strong and we will continue to work together to deliver these important policy outcomes. Implementation of each Targeted Outcome will proceed in a staged way, involving consultation and collaboration with the wider community (Figure 5).

Water will also be a significant consideration in Treaty negotiations. As Treaties come into effect, *Water is Life* policy and implementation will be updated to reflect Treaty outcomes.

Increasing Traditional Owners and First Nations roles and responsibilities in water and waterway management as part of implementation of *Water is Life* is more complex where water systems, and the frameworks for managing them, cross state borders. This includes the regulated water systems of northern Victoria, where actions need to be consistent with the Murray-Darling Basin Plan, as well as the Snowy River in the far east of Victoria, and waterways and aquifers along the Victoria-South Australia border. The Victorian Government cannot make unilateral decisions in these systems and change must often be negotiated with the Commonwealth government, other States, or a combination. However, state borders should not become a barrier to restorative justice and Traditional Owner aspirations for water. Throughout implementation of *Water is Life*, the Victorian Government will work in partnership with Traditional Owners in these border regions and advocate for their interests (see Box 14).

Water is Life identifies short-, medium- and long-term actions. However, even the short-term actions will not require immediate changes to existing operational arrangements by the water sector. Where immediate action is required, this will largely be undertaken by the Victorian Government departments, with the roles and responsibilities of water sector agencies gradually increasing over time (Figure 5).

Box 14: Working together across jurisdictions

The Australian Government's \$1.54 billion Off-Farm Efficiency Program under the Murray-Darling Basin Plan provides an opportunity for Basin states to put forward project proposals that allow some of the achieved water savings to be retained by the state and allocated for other uses such as water entitlements for Traditional Owners. Informed by ongoing conversations with the Murray Lower Darling Rivers Indigenous Nations (MLDRIN), DELWP identified an opportunity with a Lower Murray Water proposal whereby retained water savings would be allocated on a 50:50 basis, to deliver water for Traditional Owners and improved urban water security for LMW customers in Mallee towns.

To promote this approach more widely across the Basin, MLDRIN and DELWP co-authored a case study about the LMW Efficiency Project proposal to present to Basin Officials. By promoting this joint approach, other basin governments could consider opportunities that they may not have previously considered.

Co-authoring a case study for Basin Officials was a unique opportunity for MLDRIN and DELWP to advocate together on the importance of cultural water for Traditional Owners and encourage Basin governments to engage early with Traditional Owners in the development of infrastructure projects to identify possible benefits of working collaboratively. Together they were able to show Traditional Owners not as competitors in the water market but rather framed as partners, and that such returns of water do not need to affect the rights (including entitlements) of other water users or costs to users. It also unpinned the shared understanding that programs, projects and mechanisms that include tangible benefits (i.e. water returns) for Traditional Owners, should be prioritised for investment.

Water sector agencies that partner with Traditional Owners in the pilot projects will begin to implement the changes earlier than other agencies. However, each pilot project will also be undertaken as a genuine pilot: to learn about barriers and potential gaps, and what needs to be done to address them. Water sector agencies engaged in pilot projects will be supported by DELWP to undertake this work. Where additional funding is required to support water sector involvement, funding timelines may result in some actions being delayed for some water sector agencies. For instance, amending the statements of obligations (Outcome 2) will only affect future water pricing submissions by water corporations, and some partnership actions may therefore need to wait until an appropriate funding stream is available.



Existing state-wide water sector forums, such as the VicWater Managing Directors' forum, the Environmental Water Leadership committee, the Victorian Waterway Managers Forum and the Environmental Water Reserve Officer network, will all be valuable opportunities for DELWP and the water sector agencies to come together and share lessons from the pilot projects. These state-wide forums will play an essential role in supporting an adaptive management approach. The Aboriginal Water Officers Network and the Traditional Owner oversight committee will also be an important opportunity for Traditional Owners to share their experiences with different pilot projects or early partnership approaches, and may choose to send delegates to attend other state-wide water sector forums.

Foundations for change

The Victorian Government has already taken some important first steps to begin to address the exclusion of Traditional Owners from water ownership and water management. This track record demonstrates the ongoing commitment of the Victorian Government to deliver real tangible outcomes for Traditional Owners as part of a process of measured law and policy reform that enables all participants to learn by doing.

In 2019, the Victorian Government passed the *Water and Catchments Amendment Act 2019*, which amended the Water Act 1989 to include consideration of Aboriginal cultural values and uses of waterways in the way that Victoria's water resources are managed, and to increase the requirement to consult and engage with Aboriginal people in water and waterway management. The purposes of the Act now include: 'to consider Aboriginal cultural values and uses of waterways, along with social and recreational uses and values, in the management of waterways.' Further amendments now specify requirements for Sustainable Water Strategies (SWS) to consider opportunities to provide for Aboriginal cultural values and uses of waterways in the SWS region. They also require at least one Aboriginal person as a member on the consultative committee tasked with advising the Minister on the preparation of the SWS. Similarly, the committees to advise on management plans for water supply protection areas must also include at least one Aboriginal person representative of the area under consideration (where possible).

In 2017, in an Australian first, the landmark *Yarra River Protection (Wilip-gin Birrarung murrnong) Act 2017* enshrined in law the protection of the iconic Yarra River, the Birrarung, and its management as a one living and integrated natural entity. Core to this legislation is the recognition of the Wurundjeri Woi wurrung Traditional Owners and their knowledge through the bilingual title and preamble. The Act includes principles to acknowledge, reflect, protect and promote Aboriginal cultural values, heritage and knowledge of Yarra River land (listed as one of the

Yarra Protection Principles); and to acknowledge the role of Traditional Owners as custodians of Yarra River land through partnership, representation and involvement in policy planning and decision-making. This Act also established the 'Birrarung Council' as the 'voice of the river' and legislates a requirement that the composition of the Birrarung Council must include at least two nominees of the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation, the Traditional Owner of the river from the city to the mountains.

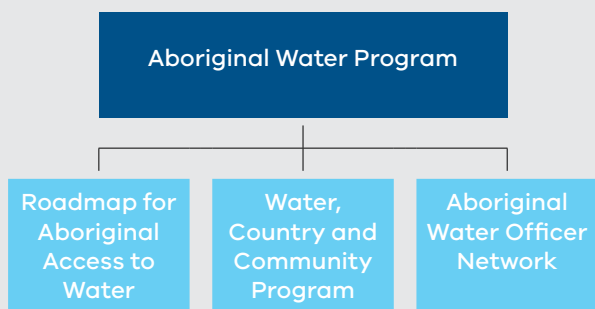
Since *Water for Victoria* in 2016, through the Aboriginal Water Program, the Victorian Government has committed \$31 million, to support Aboriginal participation in water management and improve outcomes for Aboriginal Victorians (Box 15). This included \$5.7 million to establish an Aboriginal Water Program to incorporate Aboriginal values and expertise into water management. The Aboriginal Water Program provided funding for the employment of 17 full-time Aboriginal Water Officers as well as funding for projects that bring Traditional Owners together to spend time engaging on Country, improve understanding of cultural values and uses, and share their expertise through the Aboriginal Water Program.

The remaining \$5 million has been used to support the development of *Water is Life* to increase Aboriginal water access. This included funding 13 Traditional Owner groups to explore how access to water can support their economic development, as well funding Traditional Owner participation in the Cultural Water for Cultural Economies Project (2018-2021), and development of *Water is Life* (2021-22). This led to Victoria's first return of water to Traditional Owners in 2020 (Box 16).

Based on the success of phase 1 of the Aboriginal Water Program, a record investment of \$18 million was secured through the 2020-21 State Budget for Traditional Owner self-determined water projects and Aboriginal Water Officer positions through to 2024.

Box 15: Victoria's Aboriginal Water Program

The Victorian Government is enabling self-determination for Victorian Traditional Owners and First Nations. Aboriginal water values are now being recognised in settler state law and water planning and management frameworks across the state. The Aboriginal Water Program plays a key role in this process.



Highlights for 2020-21

- \$18 million directed to Traditional Owner water-related priorities 2020 - 2024
- 17 Aboriginal Water Officers funded for a further four years
- 13 self-determined water projects funded for four years
- 6 Aboriginal Water Officers Network meetings held
- 2 gigalitres returned to Gunaikurnai Land and Waters Aboriginal Corporation
- Stage 2 of the Water, Country and Community Program open grant round launched
- Cultural Waters for Cultural Economies report delivered
- Drawing the Roadmap discussion paper released

Box 16: Victoria's first return of water to Traditional Owners

In November 2020, the Victorian government announced the first formal hand-back of water rights to Traditional Owners. In March 2021, Gunaikurnai Land and Waters Aboriginal Corporation (GLaWAC) received 2 GL on the Mitchell River in south-eastern Victoria. This water is in the form of a section 51 'winterfill' licence (meaning that water can only be extracted from the river during the high flow winter-spring period from 1 July to 31 October).

Roger Fenwick, former GLaWAC CEO, said that this commitment is a 'momentous outcome' that 'recognises the importance of gaining rights to water to restore customary practices, protect cultural values and uses, gain economic independence and heal Country'.

Victoria's water and catchment frameworks

Victoria's water entitlement framework makes water available for consumptive use in an efficient and sustainable way. Thriving communities rely on safe, reliable and affordable water supplies for households, farmers, business and industries, as well as recreation and tourism. Healthy waterways need water for the environment, which has been increasingly provided over the past 30 years. Water is also needed for Traditional Owners to support cultural and other self-determined uses of water, which has been historically almost entirely absent from Victoria's entitlement framework.

In performing their functions under the *Water Act 1989*, water corporations must consider opportunities to provide for Aboriginal cultural values and uses of waterways and must have regard to a range of sustainable management principles, including Aboriginal cultural considerations. Alongside this, *Water for Victoria (2016)* also sets the expectation that water corporations should notify Traditional Owners about opportunities to access water entitlements; opportunities for water to be returned to Traditional Owners as part of regional SWS; and opportunities to provide seed funding and business finance to invest in Aboriginal water-based economic development projects.

The VEW must consider opportunities to provide for Aboriginal cultural values and uses of waterways in performing its environmental water management functions under the *Water Act 1989*. Between 2017-2022, one of the four VEW commissioners is an Aboriginal Victorian.

As waterway managers under the *Water Act 1989*, CMAs and Melbourne Water must develop, identify, and plan for the environmental values; Aboriginal cultural values and uses; social, and recreational uses and values; and economic values. Under the *Catchment and Land Protection Act 1994* (also amended in 2019), CMAs must give notice to and consult with relevant specified Aboriginal parties and must have regard to Aboriginal cultural values and traditional ecological knowledge of management of land and water resources of the catchments in the region in the development of Regional Catchment Strategies (RCS). Traditional Owners and other Aboriginal groups have worked with CMAs in a self-determined way to participate in the development of the current RCSs (2021-2027). The level and method of involvement in RCS development has been guided by Traditional Owners, and is a mix of direct engagement and/or participation in steering committees, working groups, providing content for working papers and writing or contributing to RCS objectives related to Traditional Owners' interests. The RCSs each have a specific section with dedicated content written and/or authorised by Traditional Owner groups directly.



Water is Life staged implementation process

Implementation of *Water is Life* will be informed by close collaboration between Traditional Owners, government departments, water sector agencies, public land managers, and the wider community. Implementation will progress through stages that enable adaptive management, and policies and processes for water sector agencies that will change gradually over time, as actions are implemented.

Figure 5 Staged implementation process

PART 1						
Targeted Outcome	2022	2023	2024	2025	2026	2027
1. Recognition of waterways and their surrounding lands as living, integrated, natural, and cultural entities in law, with Traditional Owners recognised as a unique ‘voice’ of the living entities	Legislation development			Waterways begin to be declared as living entities		
Water sector agencies	Increasing uptake of idea in strategies			Agencies begin to work with living entities where relevant		
2. Traditional Owners can enter formal partnership agreements with the water sector that increase the capacity and resources available to Traditional Owners to make and implement decisions about water landscape management on their Country	Develop new provision in statements of obligation		Partnership negotiation			
Water sector agencies	Transition from existing arrangements to new partnerships over time					
3. Traditional Owners have increased role in determining how environmental water is used for the purpose of healing Country	Guidelines and pilot projects			Framework for multi-year agreements		New agreements begin
Water sector agencies	Partners for pilot projects			Transition to new arrangements		
4. Increased involvement of Traditional Owners in public land management	Legislation development				Traditional Owners begin to be appointed as land managers	
Public land managers	Increasing partnerships				Transition to new arrangements	
5. Recognition of Traditional Owners as waterway managers for specific locations	Barrier identification and legislation proposals					
Water sector agencies	Participation (lessons from outcomes 1, 2, 3, 4)					
6. Recognition of Traditional Owners as environmental water holders	Barrier identification and legislation proposals					
Water sector agencies	Participation (lessons from outcomes 1, 2, 3, 4)					

PART 2

Targeted Outcome	2022	2023	2024	2025	2026	2027
7. Water is returned to Traditional Owner groups across Victoria through the issue of water entitlements for their self-determined use	Water returns via water entitlements issued to Traditional Owners					
Water sector agencies	Increasing issue of water entitlements and engagement with Traditional Owners					
8. Access to land will not be a barrier to Traditional Owners applying for or holding water entitlements	Work with public land managers and water corporations to streamline process			Identify additional barriers		
Water sector agencies and public land managers	Streamline water licencing process			Apply new water licencing process		
9. Traditional Owners will be funded to pay any fees and charges associated with their water entitlements unless use is purely commercial	New funding agreements			New long-term framework for sustainable funding		
Water sector agencies	Work with DELWP and Traditional Owners to support funding arrangements					
10. Where Traditional Owners become purely commercial users of water, they will become responsible for an increasing portion of fees and charges over time to full cost recovery	Pilot commercial projects and new funding framework				New funding agreements for commercial projects	
Water sector agencies	Work with DELWP and Traditional Owners to develop framework				Operate under new framework	
11. Traditional Owners can hold and manage water in culturally appropriate ways	Barrier identification and legislation proposals					
Water sector agencies	Participation (lessons from outcomes 7, 8, 9)					

PART 3

Targeted Outcome	2022	2023	2024	2025	2026	2027
12. Traditional Owners have oversight of the implementation of Water is Life	Oversight committee			Future oversight committee arrangements		
Water sector agencies	Work with DELWP and oversight committee as needed					

* The contents of Figure 5 should be read as a summary of each outcome and action specified in Section A of *Water is Life*. The summaries should not be read as complete statements of the action.

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Reedy Swamp

Credit: Erin O'Donnell

