Australian Peoples' Tribunal
for Community and Nature's Rights

2019 Citizens' Inquiry into the Health of the Barka/Darling River and Menindee Lakes

REPORT AND RECOMMENDATIONS

30 SEPTEMBER 2020

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Australian Peoples' Tribunal
for Community and Nature's Rights

an initiative of the Australian Earth Laws Alliance

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Cover image: Wilcannia Bridge over the Barka / Darling River. 24 March 2019.

The Australian Peoples' Tribunal for Community and Nature's Rights (APT) is an initiative of the Australian Earth Laws Alliance.

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Report and Recommendations

AUSTRALIAN PEOPLES' TRIBUNAL

The Australian Peoples' Tribunal for Community and Nature's Rights (APT) acknowledges that the sovereignty of the First Nations peoples of the continent now known as Australia was never ceded by treaty nor in any other way.

The APT acknowledges and respects First Nations peoples' laws and ecologically sustainable custodianship of Australia over tens of thousands of years through land and sea management practices that continue today.

Aboriginal and Torres Strait Islander readers are advised that this report may contain images of deceased persons.

SPECIAL ACKNOWLEDGEMENTS

The Australian Peoples' Tribunal (APT) for Community and Nature's Rights acknowledge and thank the following people:

— Barkandji First Nations Peoples for welcoming us to their Country and enabling us to speak with members of their communities, and all other First Nations peoples who participated in various ways, in the Citizens' Inquiry

— All the individuals and community members along the Barka/Darling River who attended a public hearing, spoke privately or on video, hosted us and made us feel welcome in their communities

— Mark Merritt and Susie Peake for their commitment in bringing the APT to the communities of the Barka/Darling River

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Sunset Strip boat ramp, Menindee Lakes. 24 March 2019

Lived experiences matter

The primary goal of this report is to share the perspectives, opinions and stories of people who live on, near or are connected to the Barka/Darling River and Menindee Lakes. It aims to share insights into how people are experiencing life on the interconnected, interdependent systems of the Barka/Darling River and Menindee Lakes and their suggestions for how the river and their communities can be brought back to life and managed in the future.

The Murray-Darling Basin has been the subject of a multitude of scientific, economic, governance and other inquiries and reports. This report does not aim to cover the same ground. **This report is built on the idea that individuals, families and communities matter, and that the people who live on the river should be listened to, and their views and opinions about how the river should be managed, should form the centre of river system management.**

Invitation to hear the voices of the local people: Video testimonies from the Tribunal

Video recordings of the 110 people who gave testimony at the Citizen Inquiry can be viewed on the Tribunal website - www.tribunal.org.au

Who participated?

The Tribunal recorded 110 testimonies and a dozen private interviews, and a dozen written testimonies from across 8 towns. The positions and experiences these people hold in the community include the following:

- Mothers, fathers, grandmothers and grandfathers
- Elders from the Barkandji Aboriginal Nation and Aboriginal nations in the Northern Basin
- Young people from the Barkandji Aboriginal Nation and Aboriginal nations in the Northern Basin
- Farmers and small-scale irrigators
- Small business owners
- Artists and musicians
- Author
- A Pilot
- A Veterinarian
- Retired irrigators
- Counsellors, health workers and healers
- People involved in local trucking and transport
- Wine grape grower
- Members of the Murray-Darling Wetlands Working Group
- A Mayor and former Mayor
- Councillors from Local Councils
- A cotton grower and cotton lobbyist
- School janitor

A Poem – Please Listen to Our Plea

Will you please listen to our plea
From all us kids here in Menindee
The water is really yucky and smelly
So we don't want to put that in our belly

We have to buy water and it costs lots of money
So we can't have other things and that's sad for mummy
But we make her happy and say don't be sad
We know you do this because the water is very bad

People say us bush kids are all real tough
But I heard a sad old man say 'gee we're doing it rough'
I asked daddy was the old man okay
He said 'yeah, he's never seen the river this way'

When we wash, water helps make us clean
But I don't think it will, 'cause the river is all green
It smells really bad and nearly makes you spew
It smells worse than an old emu's poo.

The water from our lakes has been taken away
So we can't go camping and play all day
When we went to the river Nan and Pop cried
I think they were sad because all the fish died

We hope our river gets clean with lots of rain
Then everyone in Menindee will be happy again
We don't want them to keep being sad
So if you can help us, we will all be glad

Think of us Darling River kids when you go to bed tonight
'cause what's happening here, is just not right

- Jordin Gilby

This poem was written by Jordin Gilby (pictured), an 8 year old girl from Menindee, with help from her Nan, Jan Fennell, 8 February 2019. She read her poem to the Citizens' Inquiry into the Health of the Darling River and Menindee Lakes at Menindee on 23 March 2019.

Managing water together

"(There was) a time when a giant frog drank up the water until the land was all dried up and in drought. To survive, the collective of animals agreed it was necessary for the frog to release the water it had drunk back on to the land. They decided that the strategy most likely to succeed was to make the frog laugh; by laughing the frog would release the water. After many attempts at humouring the giant frog, the animals succeeded and the frog let forth a large laugh and with it, released the water back onto the dry lands, filling up lakes, creeks and riverbeds.

As a future precaution, the animals then decided that they would prevent the event occurring again by reducing the power of the frog. So instead of there being one giant frog, many smaller frogs were created and the frog was never again in a position of power to monopolise the land's waters."[1]

Holy Cross Frog or Crucifix Toad (Notaden bennetti), found throughout the northern Murray-Darling Basin.[2]

1 Retold in Watson, Irene (2016) Aboriginal Peoples, Colonialism and International Law: Raw Law (Taylor & Francis Ltd) 16.

2 Holy Cross Frog found along the road near Pilliga, NSW. Photo by Flickr user eyeweed, licenced under CC BY-NC-ND 2.0.

Seeing the river change from the air

"Those dams in between Bourke and St George, none of those existed when I first came here. Round about the 1990s there was a few, from the 90s onwards. I remember coming back from a trip from Brisbane over St George to Bourke in about 2007. Now we flew over those 'turkey dams' one after the other. We flew for – because we timed it – 20 minutes. I flew for 20 minutes, 150 knots – that's 270 km an hour for those people who don't understand that. Twenty minutes at 270 km an hour, we were flying over one dam after another. That's how many that are up there *[in the headwaters of the Barka/Darling River]*. It's quite incredible.

"So you know there's quite an incredible amount of dams through there, and the point is they're also harvesting off the floodplain. All those little creeks, the water just doesn't get to them anymore. They've got little banks probably as high as this table all over the place, harvesting that water – **and it's not measured. Nobody knows how much they take off, so all those little creeks that feed ultimately into the Barka/Darling just don't get down there anymore**.... All those small flows that keep water in the river and keep it moist and keep the fish and other life alive just don't come through anymore. … Unless you keep those small flows coming down you've gotta actually get a big flood for the water to get through, and it just doesn't happen anymore."

— Don Crittenden, Pilot, Broken Hill

Aerial view of irrigation dams and canals near Goodiwindi, Southern Queensland.
tbate54 /shutterstock.com

Seeing the river change since 2012

"We do not, here in Menindee, get intakes from rain. It can rain here for days on end and it makes no difference to our storage whatsoever. We rely wholly and solely on getting water down the river, and that's not happening. **That ceased to happen in 2012 when this new [Barwon Darling Water Sharing] Plan came out and they lifted all restrictions on the smaller and medium flows coming down the river. They lifted the restriction so that the irrigators in the top of the system can pump at any time - any time there's water in the river, they can pump. So that's virtually what dried the river out in the lower Darling.** We used to rely on small and medium flows to keep our system down here healthy, and losing those small to medium flows is what has killed our region. And that's sadly what it's done - it's absolutely destroyed our region in every way, in tourism, in our health and well-being, in our economy. It's just absolutely destroyed a lot of it. And they have to rectify it, they just can't continue doing that to us."

— Karen Page, Menindee

Lake Menindee (March 2016). Photo by Tim Connors, licenced under CC BY-NC-SA 2.0.

1. REPORT SUMMARY

Bend in the Darling River, Wilcannia. 26 March 2019

1.1 Introduction

The primary goal of this report is to share the stories, perspectives and opinions of people who live on, near, or are connected to the Barka/Darling River and Menindee Lakes.

This Report is built on two fundamental ideas:

- **that individuals, families and communities matter, and that the people who live on the river should be listened to; and**
- **the knowledge and recommendations of local people and communities should be at the centre of how the river system is managed**.

This Report sets out community concerns, community solutions and Tribunal Panel findings and recommendations, based on community views and research we have considered.

Background to the 2019 Citizens' Inquiry

In October 2018 the Australian Peoples' Tribunal (APT) for Community and Nature's Rights, held a one day Citizens' Inquiry into the Impacts of Industrial Scale Agriculture on Rights of Nature, in Brisbane, Queensland. The 2018 Citizens' Inquiry heard statements from people in two bioregions – the first was the Brigalow Belt Bioregion and the second was the Barka/Darling River system and Menindee Lakes. The Inquiry heard statements from people living along the Barka/Darling River and Menindee Lakes in New South Wales (NSW). That session heard of environmental collapse, human suffering and economic failure in many river communities. Physical and mental illnesses and a real fear of contaminated water from rivers that had sustained communities for thousands of years was particularly concerning.

One of the recommendations made by the APT at the conclusion of the October 2018 Citizens' Inquiry was to convene a Citizens' Inquiry into the Health of the Barka/Darling River and Menindee Lakes. The APT scheduled the Citizens' Inquiry to visit river communities in March 2019, to hear testimony and stories from people who live along the rivers in western NSW.

1.2 Summary of Community Concerns

The overarching theme revealed by 110 recorded testimonies, a dozen private interviews and a small number of written testimonies across 8 towns, is that:

> People have never seen the Barka/Darling River in such a terrible state, and many believe the river system is suffering ecosystem collapse, and is dying.

The same issues appeared over and over again in discussions. People are concerned, stressed and traumatised by what is happening to their communities. There is concern about the deterioration and collapse of natural ecosystems; the lack of safe, clean drinking water and the lack of safe water supply for bathing, washing and gardening. People spoke of the ongoing loss of Indigenous Peoples' lands, water, culture and livelihoods; the negative impacts on human mental and physical health; the psychological and emotional toll of watching the natural environment, and much of its wildlife, disappear or die before their eyes. Testimonies shared information about the terrible impacts on the social, cultural and economic lives of affected communities and throughout all these stories came another common thread: the failure of governments – and allegations of *mismanagement and corruption* by governments - in managing the river system and looking after its people.

Community concerns about the Barka/Darling River and Menindee Lakes are directly quoted in this section of the report, and they are organised under the following headings:

- Lack of water in the river system and the resulting loss of wildlife and ecosystem health
- First Nations peoples are being deprived of access to lands, water and cultural practices
- Human health impacts – absence of safe water for drinking, household use or recreation
- Concerns about there being nothing left for children and future generations
- Concerns about the negative impacts on social and cultural lives of affected communities
- Concerns about the negative impacts on economic livelihoods of affected communities

1.3 Summary of Community-held beliefs about the causes of the crisis

The Citizens' Inquiry heard of rivers, wetlands and our interconnected river ecosystems transformed for irrigation purposes, and of harm imposed upon the Barka/Darling River and its tributaries by mismanagement and over use. The communities blame a mix of actions for the current state of the Barka/Darling River, particularly the gross over-allocation of water licences in the northern basin coupled with the more insidious malfeasance of floodplain harvesting and even water theft.

This report narrates a community-held belief that the Murray-Darling Basin has been transformed by water mismanagement and the associated diminishing returns for communities, negatively impacting the collective capacity of human and non-human populations to thrive, if not survive. The Inquiry heard from participants who spoke of industrial-scale farming practices that make a clear nexus between human agency and the significant and durable destruction, in whole, or in part of fragile ecosystems upon which human and non-human communities rely.[3]

The conflict around the current Murray-Darling Basin Plan is often presented as agriculture versus the environment, or upstream states versus downstream states. The testimonies throughout the Citizens' Inquiry demonstrated that while such framing may help politicians and advocacy groups champion their respective constituents, it distracts from the more important point: that Aboriginal people, communities, graziers, downstream water users, small irrigators and the natural environment are being disadvantaged and often sacrificed for the profits of ever more powerful irrigation corporations. Testimonies from people from all walks of life, in towns along the Darling River, pointed to the concentration of power and water in the hands of few people and corporations, and their ability to influence decisions that affect their own financial interests, to the detriment of everyone else and the environment.

People who provided video testimonies and private testimonies pointed to a number of issues that they say are causing the crisis along the Barka/Darling River and Menindee Lakes, including:

- Extraction of too much water from the top of the river system, including claims that the cotton industry takes too much water
- Floodplain harvesting
- Commodification of water and the introduction of water trading
- Mismanagement, bias, corruption and water theft – including allegations that the 2012 Barwon Darling Water Sharing Plan is illegal
- Alleged 'emptying out of the west' by governments
- Failure of current governance systems to include First Nations peoples, local communities and local knowledge
- Dominant cultural mindset is flawed – non-indigenous Australia doesn't understand the river, grow appropriate crops, or have a positive obligation/ethic to Care for Country

1.4 Summary of Community Solutions

Participants in the Citizens' Inquiry offered solutions for addressing the terrible state of the Barka/Darling River. In this section of the report, we provide an overview of these solutions. We have grouped people's various comments together, in a range of themes including:

- Let the rivers run; bring water back into the river, lakes and wetlands — reduce extraction, stop floodplain harvesting, use a science-based approach to understanding river health, reverse changes made to the draft 2012 Barwon Darling Water Sharing Plan
- Enforce the laws we do have to protect the river
- Royal Commission into the alleged illegal and corrupt management of the river by governments
- Commence a legal case against the government for mismanagement and negligence of its citizens
- Change the fundamental governance structures for managing the Barka/Darling River – freeze all water licences until a fairer system is created; involve local communities in a more innovative, accountable system.
- Introduce more transparent and accountable information management systems so communities and citizens know what's going on and enforcement can be strengthened

3 This reflects the generally accepted definition of Ecocide or criminal environmental harm.

- Introduce rights of nature laws – recognise the river as a sacred, living entity, not just as a water 'resource'
- Invest in helping communities to rebuild their health, culture and economies
- Educate other Australians about the importance of the Barka/Darling River

1.5 Findings and Recommendations

FINDING 1: The Barka/Darling River system is an ancient, complex, interconnected, living system that has supported human and non-human communities for millennia. Since European colonisation, this precious interconnected living system has been mismanaged, and unsustainable use of its land and waters has brought it to the brink of collapse.

FINDING 2: Evidence provided by community members along the Barka/Darling River system show that the health of the River system has been in decline for decades. Immediate emergency actions are required, to restore river health, to restore human health for community members living along the river, and to prevent the ongoing degradation of ecosystems in the region.

FINDING 3: The current legal system has not been adequate to Care for Country or sustainably manage the Barka/Darling river system and major governance reform, built around First Nations peoples' leadership and community ecological governance, is required if the river system is to be saved and restored.

FINDING 4: The *Water Act 2007* imposes an implied duty on administrators, governments and water managements to ensure that water management under the Basin Plan is undertaken in a way which ensures that critical human needs are met. Despite this, the *Water Act 2007*:

- fails to provide any effective enforcement mechanisms to ensure compliance with this duty; and
- fails to provide any remedies or recourse to persons whose critical human needs are not met under the Basin Plan.

FINDING 5: The Australian Government has *failed to protect* the ecological values and ecosystem services of the Murray Darling Basin, taking into account, in particular, the impact that the taking of water has on the watercourses, lakes, wetlands, ground water and water dependent ecosystems that are part of the Basin and on associated biodiversity as per the provisions (section (d)(ii) Objects) of the *Water Act 2007*.

FINDING 6: The Australian Government has *failed to return* to the river adequate environmental water sufficient to restore protected wetlands, water dependant ecosystems or endangered species populations.

FINDING 7: Australian Governments have breached their obligation under the Native Title Act to provide adequate water resources for drinking purposes to First Nations communities.

FINDING 8: Australian Governments have breached their obligation under the Native Title Act to ensure that First Nations communities are able to access their traditional food sources.

FINDING 9: Australian Governments have breached their obligation under the Native Title Act to ensure that First Nations communities are able to engage in their traditional cultural practices.

FINDING 10: The Australian Government has breached its obligation under Article 14(2)(h) of the *Convention on the Elimination of All Forms of Discrimination Against Women* to ensure that women in communities in the Darling River Basin enjoy the right to adequate living conditions, particularly in relation to water supply

FINDING 11: The Australian Government has breached its obligation under Article 24 of the *Convention on the Rights of the Child* to ensure that children in the Darling River Basin enjoy the highest attainable standard of health, by inter alia, failing to provide clean drinking-water.

FINDING 12: The Australian Government has breached its obligation under Article 27 of the *International Covenant on Civil and Political Rights* to ensure that Indigenous peoples in the Darling River Basin can exercise their right to enjoy their culture.

FINDING 13: The Australian Government has breached its obligation under Article 11 of the *International Covenant on Economic, Social and Cultural Rights* to ensure that people in the Darling River Basin enjoy the right to an adequate standard of living.

FINDING 14: The Australian Government has breached its obligation under Article 12 of the *International Covenant on Economic, Social and Cultural Rights* to ensure that people in the Darling River Basin enjoy the highest attainable standard of physical and mental health.

FINDING 15: The Australian Government has breached its obligation under Article 15 of the *International Covenant on Economic, Social and Cultural Rights* to ensure that Indigenous peoples in the Darling River Basin enjoy their right to take part in their cultural life.

FINDING 16: Evidence provided to the Citizens' Inquiry, of the degradation of the Barka/Darling River system over many decades to a state of near collapse, demonstrates a failure of existing laws to effectively manage and protect the health of the Barka/Darling River. Stronger, more innovative laws protecting the health and wellbeing of the entire Barka/Darling River system – including Rights of Nature laws – should be investigated.

FINDING 17: Basin Governments have made decisions, and omitted to make decisions, that have led to ecological harm on a massive scale that meets the definition of ecocide. In particular, decisions which led to excessive amounts of water being extracted from the dryland river system, decisions to allow floodplain harvesting, and decisions to ignore scientific, First Nations peoples' and local community advice about how to care for the river, have led to significant ecological harm.

FINDING 18: The Australian Government and Basin states have implemented policies leading to the collapse of the Barka/Darling River ecosystem. They have failed to create policies that would have avoided genocide against both First Nations peoples and remote rural communities, by allowing that collapse. Such actions and omissions have led to the loss of the opportunity for First Nations people to maintain their cultural practices and to transmit their culture to succeeding generations. Polices that could have prevented such destructive impact have been ignored or rejected.

FINDING 19 - The evidence provided to the Citizen's Inquiry demonstrates that non-indigenous Australian people, including non-indigenous members of Australian governments (at all levels) would benefit from understanding how to 'decolonise' their knowledge systems. Appropriate education is needed for non-indigenous Australians to understand and embrace the biophysical realities of living in Australia, and to understand and work in true solidarity with the First Nations peoples of this continent.

The Citizens' Inquiry panel visits the Darling River at Wilcannia, guided by Barkandji Elder David Clark. 26 March, 2019.

RECOMMENDATIONS OF THE INQUIRY PANEL

RECOMMENDATION 1: Basin States immediately *provide funding* for First Nations peoples and local communities along the Barka/Darling River to collaboratively design and implement an Emergency Community River Restoration Plan. The Plan should focus on ensuring healthy river flows, restoring the Menindee Lakes and guaranteeing that sufficient volumes of clean, healthy water will always remain in the Barka/Darling River during drought, as it used to in the past.

RECOMMENDATION 2: Basin States immediately *provide funding* for a River Ecological Restoration Fund, that will be used to implement the Emergency Community River Restoration Plan.

RECOMMENDATION 3: Basin States take immediate action to *end water trading in Australia*, including an immediate moratorium on water trading and a transition plan to repeal relevant legislation.

RECOMMENDATION 4: Basin States place a *moratorium on the granting of any new water licences* that would allow water extraction from the Barka/Darling River catchment and headwaters until the Emergency Community River Restoration Plan is created and implemented.

RECOMMENDATION 5: Basin States impose an *immediate ban on all floodplain harvesting and introduce new laws to remove existing floodplain harvesting structures* throughout the Barka/Darling River system.

RECOMMENDATION 6: Basin States place a *moratorium on all groundwater extraction* from the Barka/Darling River catchment until the Emergency Community River Restoration Plan is created and implemented.

RECOMMENDATION 7: Basin States place a *moratorium on all new dams* in the Barka/Darling River catchment and review existing dams, with a view to reducing the number of dams and the amount of water taken from the river for large scale irrigation purposes. The replacement weir downstream from Wilcannia should proceed.

RECOMMENDATION 8: Basin States *ban all future large-scale extraction from the Barka/Darling River system* and fund a transition plan to phase out all existing large-scale extraction from the Barka/Darling River system, in accordance with the Emergency Community River Restoration Plan.

RECOMMENDATION 9: That there should be a *moratorium on further land clearing* in southern Queensland and western New South Wales.

RECOMMENDATION 10: All Basin States should coordinate investment in *large scale land regeneration projects (including re-vegetation and re-forestation)* along the Barka/Darling River system.

RECOMMENDATION 11: Basin States create and fund an Emergency Barka/Darling River Community Health *Fund* that will be administered in compliance with the priorities identified by affected communities.

RECOMMENDATION 12: Basin States work with affected communities, to use the Emergency Barka/Darling River Community Health Fund to pay for and organise the immediate provision of clean, safe and free potable water to all affected communities, for as long as it takes to restore the health of the river system and ensure a safe water supply for river communities.

RECOMMENDATION 13: Basin States immediately fund an investigation into motor-neurone disease and other health problems (including skin rashes and other skin problems) suspected of being caused by people having to use poor quality water in Menindee, Wilcannia and other affected communities.

RECOMMENDATION 14: the NSW government provide financing for improved health care facilities — mental, physical and dental — for the towns along the Barka/Darling River Basin within NSW.

RECOMMENDATION 15: First Nations peoples along the Barka/Darling River system should be invited by Basin Governments – and paid by Basin Governments – to develop their own long term governance structure, that will enable First Nations peoples to lead all future river care and river restoration programs for the Barka/Darling River system. In addition, laws should be enacted making it mandatory for all elements of existing Barka/Darling River governance structures – at the federal, state and local Levels - to seek advice from and take recommendations from, the First Nations peoples connected to the Barka/Darling River.

RECOMMENDATION 16: The Water Regulations 2008 (Cth) be amended to list the International Covenant on Economic, Social and Cultural Rights as a 'relevant international agreement' for the purposes of s. 4 of the *Water Act 2007* (Cth)

RECOMMENDATION 17: The Water Act 2007 (Cth) be amended to create enforceable personal rights with respect to 'critical human water needs'

RECOMMENDATION 18: The Water Act 2007 (Cth), s. 86(H) be amended to create compliance mechanisms for other agencies and persons in relation to a breach of 'critical human water needs'.

RECOMMENDATION 19: That the entire Barka/Darling River system – including its creeks, streams, rivers, marshes, billabongs and groundwater - be designated by the Australian government for inclusion on the List of Wetlands of International Importance, under the Ramsar International Convention on Wetlands, because of their ecological, botanical, zoological, limnological, geological and hydrological importance.

RECOMMENDATION 20: That the Northern Barka/Darling River system be listed as a threatened ecological community under the Environment Protection and Biodiversity Conservation Act 1999, Part 13, Division 1 Listed threatened species and ecological communities. The ecological community could include: all natural creeks, rivers, streams and associated lagoons, billabongs, lakes, flow diversions to anabranches, the anabranches, and the floodplains of the Darling River within the states of Queensland and New South Wales.

RECOMMENDATION 21: That the Australian Government immediately take action to rectify its breaches under the Native Title Act, and restore water flows to the Darling River, in order to ensure First Nations communities have adequate water resources for drinking purposes, are able to access their traditional food sources and are able to engage in their traditional cultural practices.

RECOMMENDATION 22: The Australian Government take immediate steps towards the ratification of the *Optional Protocol to the Convention on the Rights of the Child*.

RECOMMENDATION 23: The Australian Government take immediate steps towards the ratification of the *Optional Protocol to the Covenant on Economic, Social and Cultural Rights*.

RECOMMENDATION 24: That the First Nations peoples of the Barka/Darling River system begin an independent process, together with local river communities, to investigate and advise governments at all levels, about the most culturally appropriate way to recognise that the Barka/Darling River system is a living entity with inherent rights to exist, thrive and regenerate. This process should include First Nations peoples of the Barka and local river communities providing advice to the Government about:

(i) how to best articulate the legal rights of the Barka/Darling River system to exist, thrive and regenerate;

(ii) how culturally appropriate laws can articulate, affirm and support First Nations peoples 'First laws' and obligations to care for country; and

(iii) how best to articulate the rights and obligations of First Nations people and river communities to defend the rights of the Barka.

River Red Gum (*Eucalyptus camaldulensis*), Wilcannia, 26 March 2019.

RECOMMENDATION 25: That civil society groups (non-government organisations and community groups): (i) investigate if government policies and laws have created environmental destruction in the Barka/ Darling River system on such a large scale that they meet the standards of ecocide, and (ii) provide a report to the community and Basin governments about how to ameliorate the damage already done, avoid committing further ecocide and undertake restoration.

RECOMMENDATION 26: That the Commonwealth government should take the lead in amending the Rome Statute to include ecocide as a crime under international law.

RECOMMENDATION 27: That Commonwealth and state laws be enacted making ecocide a crime and establishing appropriate penalties to be imposed for committing ecocide, including revocation of permission to carry out commercial activities within the Basin, together with forfeiture of lands and machinery associated with activities constituting ecocide.

RECOMMENDATION 28: That University Human Rights Centres and other appropriate civil society organizations be encouraged to establish an independent inquiry to determine the legal responsibility of Australian governments for the genocide of first Nations and river communities in the Barka/ Darling river Basin.

RECOMMENDATION 29: First Nations peoples and other communities along the Barka/ Darling River investigate the possibility of taking a claim to the United Nations, regarding genocide of their peoples due to the failure of the Australian and state governments to care for and manage the Barka/Darling River to ensure that neither the ecosystem nor the communities would suffer great harm.

RECOMMENDATION 31: The Australian Government establish a Royal Commission into Water Management in the Barka/Darling River ecosystem.

RECOMMENDATION 32: The Australian Government establish terms of reference for the Royal Commission into Water Management in the Darling River ecosystem which include:

A. Inquiry into how the state of the Darling River system has changed since the commencement of industrial-scale agriculture until the present day
B. Inquiry into causes of degradation of the health of the Darling River system
C. Inquiry into impacts of this change on local businesses and industries, small-scale farmers and the economic wellbeing of communities located along the Darling River system
D. Inquiry into impacts of this change on the physical and mental health of people in communities located along the Darling River system
E. Inquiry into impacts of this change on the social and cultural life of people in communities located along the Darling River system
F. Inquiry into impacts of this change on the social, economic and cultural lives of First Nations peoples in communities along the Darling River system
G. Inquiry into the legal implications of water management of the Darling River system on the Native Title rights of Native Title holders in communities along the Darling River system
H. Inquiry into the legal implications of water management of the Darling river system into the human rights of people in communities located along the Darling River system
I. Inquiry about the legal implications of water management of the Darling River system with respect to the Australian Government's international obligations under international treaties
J. Inquiry into economic, legal and social solutions to support people in communities along the Darling River system
K. Inquiry into economic, social, political and legal solutions to cease harmful activities which are contributing to, or intensifying, the degradation of the Darling River system
L. Inquiry into short-, medium- and long-term solutions to restore the health of the Darling River system
M. Inquiry into legal mechanisms required to provide protection for the Darling River system from degradation into the future.

RECOMMENDATION 33: The Australian Government establish terms of reference which provide the Royal Commission into Water Management in the Darling River with broad powers to:

A. Establish and conduct public hearings into relevant case studies
B. Receive and consider online or written submissions from parties with relevant information
C. Establish and conduct face-to-face or online roundtables with key stakeholders and representatives
D. Receive and consider online or written submissions from members of the public
E. Receive and consider direct personal testimonies from people in communities located along the Darling River system in community forums to be held in select communities along the Darling River system
F. Receive and consider direct personal testimonies from people in communities located along the Darling River system by participation in a face-to-face private session with a Royal Commissioner.

RECOMMENDATION 34: The Australian Government determine the full terms of reference of the Royal Commission with consultation with local councils, established community groups and Native Title representatives from communities along the Darling River system

RECOMMENDATION 35: The Australian Government establish an open consultation process for a limited amount of time to allow other interested parties to make submissions regarding the terms of reference for the Royal Commission into Water Management in the Darling River ecosystem

RECOMMENDATION 36: The Australian Government appoint a minimum of four and maximum of seven Royal Commissioners including:

A. A Royal Commissioner with relevant experience and expertise relating to the economic dimensions of water management of Australia's rivers
B. A Royal Commissioner with relevant experience and expertise relating to the scientific dimensions of water management of Australia's rivers
C. A Royal Commissioner with relevant legal experience and expertise relating to the legal dimensions of water management in Australia
D. A Royal Commissioner from a First Nations community in Australia

RECOMMENDATION 37: The Australian Government establish an Independent Commission into Alleged Corruption (ICAC), and provide the ICAC with broad investigative powers including the power to refer serious allegations of misconduct, corruption and misfeasance by public officers to the Australian Federal Police

RECOMMENDATION 38: Once established, ICAC engage in a broad-ranging investigation into Water Management in the Barka/Darling River system and fully investigate:

A. Allegations that the NSW Government has 'decommissioned' the Menindee Lakes and all related matters
B. Allegations that the taxpayer-funded Broken Hill pipeline was diverting water from the Menindee Lakes to a commercially operated mine.
C. Allegations that the creation and administration of water markets has been biased towards corporate private water users

RECOMMENDATION 39: After the Emergency Community River Restoration Plan (referred to in Recommendation 1) has been implemented, long term governance mechanisms need to be put in place to ensure that the knowledge and wisdom of First Nations peoples and local communities along the river, be respected by all Basin governments and allowed to *lead efforts* to review and improve governance structures for the Barka/Darling River and Menindee Lakes

RECOMMENDATION 40: That First Nations peoples and local communities along the Barka/Darling River consider creating *a new civil society river representation group, to raise the voice of all citizens who live along the river.*

— The new group would operate independently of government, and aim to provide a strong voice for citizens to advise and provide input on decision-making processes that are currently dominated by governments and businesses

— The new group could work like a confederation of existing groups. In other words, it would NOT aim to replace existing groups, but would recognise, respect and include existing First Nations groups and recognise, respect and include existing local not-for-profit community groups and small businesses that share the same values and goals in supporting the life of the Barka. The purpose of the confederation would be to create a new way for all citizens dependent on the Barka/Darling for their life and livelihoods to *work together and speak for the wellbeing of the environment and human communities along the Barka/Darling River.*

RECOMMENDATION 41: New governance structures be designed to safeguard against the domination of water allocation decision-making by private interests of politicians and commercial entities.

RECOMMENDATION 42: The NSW Police establish a Water Resources Crime Squad to investigate and prosecute crimes that affect the people, communities and environment of the Barka/Darling River catchment and its headwaters. The Crime Squad should have the powers to investigate and prosecute matters including water theft, illegal water extraction and floodplains harvesting.

RECOMMENDATION 43 - That new governance approaches must take into account the biophysical realities of the Barka/Darling River and Menindee Lakes as dryland river systems, and develop new, appropriate forms of human economic activity, including (but not limited to) transitioning from irrigated agriculture to appropriate dryland agriculture and other activities that do not extract water from the river system.

RECOMMENDATION 44: That First Nations peoples and people from local river communities be permanently funded to carry out ecological and wildlife restoration programs along the Barka/Darling River catchment and headwaters, including extensive funding for Indigenous Ranger programs.

RECOMMENDATION 45: That Basin governments fund a public education campaign about the threats to and solutions for restoring rivers and waterways in Australia, including the Barka/Darling River.

RECOMMENDATION 46: That Basin governments, led by the NSW Government, carry out economic analysis of, and provide resources and funding for, economic activities that support and rebuild devastated local communities along the Barka/Darling River and Menindee Lakes.

RECOMMENDATION 47: That civil society organisations and networks, such as the New Economy Network Australia (NENA), connect with local communities along the Barka/Darling River, to provide peer-to-peer learning and support, to co-create new economic initiatives that can ensure long term, sustainable local economies.

RECOMMENDATION 48: That all Australian governments support 'decolonisation' education about Australia's unique environment, that enables all Australians to develop in-depth understanding and appreciation of the diverse natural environment and ecosystems of the continent. In particular, all schools and universities should have compulsory education focussed on ensuring people learn about and understand their local ecosystems and bioregions.

RECOMMENDATION 49: That all Australian governments support decolonisation of Australian history, and promote education about Aboriginal and Torres Strait Islander culture, history and languages.

RECOMMENDATION 50: That the Basin governments provide significant funding for a multi-year, public information campaign about the threats to, and solutions for restoring, rivers and waterways in Australia, including the Barka/Darling River.

Barka / Darling River near Wilcannia. Photo by Rob Deutscher (2018), licenced under CC BY 2.0

2. ABOUT THE CITIZENS' INQUIRY

2.1 About the Australian Peoples' Tribunal for Community and Nature's Rights

The Australian Peoples' Tribunal (APT) for Community and Nature's Rights is a unique forum for ecological and social justice in Australia. It has been created as a permanent civil society institution to enable people to share their concerns about the destruction of the environment, articulate their vision for ecological justice and law reform, and work collectively to develop their ideas for building a socially just, Earth-centred society.

> The APT aims to respond to situations where the current Australian legal system is perceived as failing to support community and nature's rights.

The APT holds Public Inquiries and hears Ecological Justice Cases, brought on behalf of flora, fauna, ecosystems, bioregions and local communities around Australia. **As a 'citizens' tribunal' the APT is not a government-endorsed activity nor do any of its activities, decisions or recommendations have the force of government-sanctioned law**. The APT is independent, managed by volunteers and brings people together to speak out for justice. The APT provides an educative and culturally transformative forum in which to present a positive, alternative process to address environmental justice and Caring for Country.

The APT Panel is made up of First Nations peoples, lawyers, community representatives and eminent scientists. It hears Inquiries and Cases, and makes recommendations for restorative justice, innovative law reform and socio-political reforms that will Care for Country and protect Community and Nature's Rights.

You can read about the Australian Peoples Tribunal here: https://tribunal.org.au/about/

Above: The 2018 Australian Peoples' Tribunal panel. From left to right: Gill H. Boehringer, Mary Graham, Dr Michelle Maloney, Ross Williams, and Dr Gwynn McCarrick.

Right: Sarah Moles testifies at the 2018 APT hearings about the conditions of the Barka / Darling River and Menindee Lakes.

Photos from the 2018 Australian Peoples' Tribunal for Community and Nature's Rights.
Above: Professor Fran Sheldon, ecologist from the Australian Rivers Institute.
Right: Fred Hooper, Northern Basin Aboriginal Nations.
Below: Nunukul Yuggera Aboriginal Dancers open the 2018 Special Hearing of the Australian Peoples' Tribunal.

2.2 About the 2019 Citizens' Inquiry into the Health of the Barka/ Darling River and Menindee Lakes

The ***2019 Citizens Inquiry into the Health of the Barka/Darling River and Menindee Lakes*** (the Citizens' Inquiry, or The Inquiry) was a Special Hearing of the Australian Peoples' Tribunal for Community and Nature's Rights (APT).

Hosting the Citizens' Inquiry was a recommendation made by the 2018 APT Hearing into the impacts of large-scale agriculture.[4] At the 2018 APT Hearing, communities from along the Barka/Darling River gave evidence about the destruction of the Barka/Darling River and Menindee Lakes, and requested that the APT visit communities affected by the deteriorating state of the river system.

The 2019 Citizens Inquiry was created to give communities a fair, unbiased forum to share their stories and evidence about what's happening to the Barka/Darling River. They were also invited to make recommendations about what needs to happen to restore ecological and community wellbeing.

The Citizens' Inquiry is an independent, non-government, civil society initiative, created and managed by community leaders, environmental and human rights lawyers and First Nations Elders, who are volunteering their time to support communities affected by the declining health of the Barka/Darling River and Menindee Lakes.

The Inquiry ran from **21 January to 30 April 2019**, with public hearings held from **19-29 March**, in **Buronga/ Mildura, Wentworth, Broken Hill, Menindee, Wilcannia, Bourke, Walgett** and **Brewarrina**. Written submissions were open from 21 January to 30 April 2019.

All statements, testimonies and evidence provided by people along the Barka/Darling River and Menindee Lakes, have been collated by the Citizens' Inquiry as part of this report. All video testimonies are publicly available on the Citizens' Inquiry website: www.tribunal.org.au

2.3 Citizens' Inquiry Panel Members

The 2019 Citizens' Inquiry is managed by an Inquiry Panel, who are a group of First Nations Elders, environmental lawyers and human rights lawyers who are volunteering their time to support communities along the Barka/Darling River. The Inquiry Panel members are set out below.

The Public Hearings were attended by Dr Michelle Maloney, Gill Boehringer, Dr Gwynn MacCarrick, and Manav Satija (listed below), but all of the information gathered through the Public Hearings and online submissions will be reviewed and written up as a major report, by all the Panel Members listed below.

Facing page: The poster for the 2019 Citizens' Inquiry into the Health of the Barka / Darling River and Menindee Lakes, outlining the dates, towns and venues for the Inquiry.

4 https://tribunal.org.au/aptribunal/2018-tribunal

2019 Citizens' Inquiry Panel

Dr Michelle Maloney is a lawyer and Co-Founder/National Convenor of the Australian Earth Laws Alliance (AELA). She has a Bachelor of Arts/Law (Hons) from the Australian National University and a PhD from Griffith Law School. Michelle has 25 years' experience managing climate change, environmental justice and cross-cultural projects in Australia, the UK, Indonesia and the United States. She is on the Executive Committee of the Global Alliance for the Rights of Nature (GARN) and Ecological Law and Governance Association (ELGA).

Mary Graham, Adjunct Associate Professor, University of Queensland, is a Kombumerri person through her father's heritage and Wakka Wakka clan through her mother's heritage. With a career spanning more than 30 years, Mary has worked across several government agencies, community organisations and universities. Mary has been a dedicated lecturer with the University of Queensland, teaching Aboriginal history, politics and comparative philosophy. Mary has also lectured nationally on these subjects, and developed and implemented the core university subjects of 'Aboriginal Perspectives', 'Aboriginal Approaches to Knowledge' and at the post-graduation level 'Aboriginal Politics'.

Ross Williams is of the Bindal People in the region now known as Townsville. Ross has three decades' experience working to support Indigenous people's engagement with natural resource management programs for the Queensland State government, as well as working with his own and other Indigenous communities on economic development and caring for country projects. Ross is motivated by a strong desire to help indigenous groups, especially young Indigenous people, create their own economic futures through local community development and economic projects.

Gill H. Boehringer is an honorary senior research fellow and former Dean of Macquarie University School of Law. He has served in Peoples' Tribunals in Australia, Belgium and the USA. As a member of the Judges Panel of the Permanent Peoples' Tribunal, he sat on tribunals in Cambodia, Indonesia and Sri Lanka on the Asian garment industries, in Mexico on the social crisis in that country, in Malaysia on the genocide of the Rohingya in Myanmar; and the online session of the PPT on Unconventional Oil and Gas Extraction (fracking) around the globe. He has published over two hundred book chapters, articles and conference papers, and co-edited a monograph, *Critique of Law.*

Dr Gwynn MacCarrick has had a career as international counsel, principal lawyer and university lecturer and academic with the University of Tasmania. Gwynn was admitted as a legal practitioner in 1997 and has a doctorate in international law. She was *Amicus Curiae* to the recent International Monsanto Tribunal (IMT) advising on the question of Ecocide (Environmental Crime). The IMT was a Peoples' Tribunal, a civil society initiative established to support the efforts of communities world-wide seeking justice by referencing the legal advisory opinion of jurists who made determinations about the environmental impact of this agro-chemical and bio-technology multinational corporation.

Manav Satija is a lawyer, consultant and mediator with extensive experience in human rights, Indigenous rights, social justice and public law. Manav worked in Geneva, Switzerland as a legal advisor specialising in economic, social and cultural rights before returning to Australia to focus on justice for First Nations communities, including in *bush courts* in remote communities across the Northern Territory. Manav was part of the Royal Commission into Institutional Responses to Child Sexual Abuse and was involved in conducting over 400 historic *private sessions* with sexual abuse survivors across Australia. As the Director of Satija Legal & Consulting, Manav is currently involved in developing and implementing reparations and healing initiatives for Stolen Generations Survivors across New South Wales. Manav is also a trained mediator and a member of the Management Committee of the Australian Council of Human Rights Education.

2.4 Citizens' Inquiry Objectives and Methodology

2.4.1 Citizens' Inquiry Objectives

The Citizens' Inquiry was created to give communities a fair, unbiased forum to share their stories and evidence about what's happening to the Barka/Darling River. Our objectives were to hear directly from communities about:

1. How they had seen the state of the Barka/Darling River change
2. How the changing state of the Barka/Darling River was affecting their families, businesses, health and wellbeing.
3. What they believed was causing the changes to the Barka/Darling River system
4. What they believed needed to happen to stop further change to the Barka/Darling River system
5. What they believed needed to happen to restore the Barka/Darling River system to a healthy state
6. Any specific recommendations they had which could help achieve these objectives
7. Any other recommendations they had regarding the Barka/Darling River system and the impacts its changing state was having on local communities..

2.4.2 Citizens' Inquiry Process and Methodology

The Citizens' Inquiry into the Health of the Barka/Darling River and Menindee Lakes was conducted as a special hearing of the Australian Peoples' Tribunal for Community and Nature's Rights (APT). The Inquiry was conducted between 21 January 2019 and 30 April 2019. The inquiry was designed and conducted so as to meet the objectives stated in 2.4.1.

The APT's priority was to hear directly from people from communities along the Barka/Darling River who were directly or indirectly impacted by the changing state of the Barka/Darling River ecosystem. The Tribunal offered people the opportunity to participate in the Citizens' Inquiry in two ways:

1. People were invited to submit written or pre-recorded testimonies to us by post or via an online submission form. Written or pre-recorded testimonies were to be submitted to us before 30 April 2019.

2. People were invited to attend one or more Public Hearings to directly make submissions to the Expert Panel. Public Hearings were held from 19-29 March 2019 in Mildura, Wentworth, Broken Hill, Menindee, Wilcannia, Bourke, Walgett and Brewarrina. After attending a public hearing people were able to make further submissions to us by contacting us directly by post or email.

The findings and recommendations contained in this Final Report have been developed on the basis of the submissions provided to the Tribunal in either of these ways. In order to better understand the experiences, views and solutions of people and communities, we asked participants to address any or all of our Guiding Questions (see below).

It was important to ensure that participants providing answers to one or more of the questions felt comfortable to share their experience without limitation. The Tribunal was aware that many people in affected communities felt they had not been able to express their needs and experiences to previous inquiries. It was important to ensure participants felt their submissions to this inquiry were taken to be valid without them having to 'prove' their statements. The Tribunal treated the information provided by people as accurate and truthful information rather than as formal evidence. Participants were not required to take an oath or affirmation but were expected to tell the truth. Participants were not subject to cross-examination but were asked questions to clarify, contextualise and draw out the information being provided.

The Citizens' Inquiry was established to give voice to people and communities living by the Barka/Darling River system for whom the current state of health of the Barka/Darling River basin was having immediate and significant impacts. We acknowledge that as Inquiry participants came from communities most affected by the current state of the Barka/Darling River, the information provided by participants meets a threshold of validity and carries weight. The Guiding Questions addressed by participants were designed to draw directly from the lived experience of participants. Accordingly, the testimonies

provided by participants are treated throughout this report as if they were delivered by 'experts' since Inquiry participants *are* experts of their own lived experience.

Report Methodology

The approach or methodology used in several sections of this report is to reproduce direct quotations from the testimonies given by Inquiry participants rather than to paraphrase what we were told. Section 4 reproduces direct quotations from testimonies which are relevant to the past and current state of the Barka/Darling River system. Section 5 reproduces direct quotations which illustrate community concerns about the current state of the Barka/Darling River. Section 6 reproduces direct quotations about community-held beliefs about the causes of the crisis. Section 7 reproduces direct quotations of solutions and recommendations proposed by inquiry participants. Section 8 then provides the Tribunal Panel's perspectives and opinions about findings and recommendations.

DISCLAIMER

This Report reproduces direct quotations by Inquiry participants to ensure local voices and opinions are shared and heard. The Tribunal makes no statement, representation or claim about the accuracy, context or completeness of any of the quotes included in this report; they are reproduced as stated by participants.

2.4.3 Questions Guiding Witness Testimony

When the APT was invited to hold a Citizens' Inquiry into the Health of the Barka/Darling River, several key issues were flagged by community members, and these issues were used to frame key questions for witness testimony.

Our objective was to hear first-hand from people about their experiences of what was happening to their communities and ecosystems, and to hear their solutions and ways forward.

Everyone who participated in the Inquiry was asked to address some or all of the following questions:

- How are you reliant on the Barka/Darling River for drinking water, household water use, business use and/or farming?
- What is the current state of the Barka/Darling where you live? (Describe what you see.)
- What are the impacts of the Barka/Darling River on your personal and family life and your community or township?
- What are the impacts of the Barka/Darling River on your personal business and your community economies?
- What can you see as being the impacts of the zero-flows of the Barka/Darling River on the biodiversity and natural systems that make up the river and connected waterways, catchments and ecosystems?
- In your view and understanding, what are the prime causes of the current state of the Barka/Darling River Basin?
- In your view, what could, or needs, to be happening to restore the Barka/Darling River and its human and natural communities to a sustainable good health?

3. CONTEXT – BARKA / DARLING RIVER AND MENINDEE LAKES

Wilcannia Weir. 25 March 2019

3.1 Introduction and Summary of Section

In this section we provide a brief overview of the natural systems of the Barka/Darling River and Menindee Lakes, and the people who depend on the river for their identity, health and livelihoods. The goal is to provide an overview of relevant context, not provide an exhaustive discussion about the river and lakes systems. For more detailed information about the Barka/Darling River and Menindee Lakes, please refer to the reference section of this report.

3.2 Geographic Context - the Barka/Darling River nd Menindee Lakes

Barka/Darling River

Natural, living systems such as rivers and catchments are interconnected, complex and rarely fit neatly into the confines of human measurements. How the Barka/Darling River system is described or defined can depend on a person's world view and/or purpose of defining the system in the first place.

The Murray-Darling Basin Authority (MDBA) states that the Barka/Darling River is 2,740km long, from the confluence with the Murray River, to the source at the head near Killarney, Queensland. This definition of the Barka/Darling includes the Barwon and Condamine-Culgoa-Balonne. Others state that the Barka/Darling River is 1, 545 km long and is characterised by flat terrain, slow flowing rivers and extreme variations in volume of water.[5]

For non-indigenous management purposes, the Barwon Darling Water Sharing Plan states the system is the Barwon from Mungindi to Brewarrina. Some locals advised that the river system becomes the Barka/Darling at the Barwon's confluence with the Culgoa, just downstream from the fish traps. While others say it becomes the Barka/Darling at Bourke.

The Barka/Darling is dependent on inflows from the Northern Basin tributaries – the Macquarie, Bogan, Castlereagh, Namoi, Gywdir, Macintyre and Culgoa-Balonne (including the Birrie & Bokhara) all reach the Barka/Darling upstream of Bourke while the Warrego (occasionally) reaches it near Louth. The Paroo only rarely reaches the Barka/Darling upstream of Wilcannia. With the exception of the Warrego and Paroo, these rivers rise in the relatively high rainfall headwaters of the Great Dividing Range. In contrast to the Murray basin, rainfall is influenced by the Asian monsoon and falls predominately in summer months. The Barka/Darling is a 'flood pulse' river with an extremely variable hydrology. Long periods of low flows are punctuated by flood events that – before river regulation and intensive irrigation – spilled onto the floodplains generating rich pasture growth and filling thousands of wetlands and lagoons along its length. The Barka/Darling basin drains about 60% of the entire Murray-Darling basin. It is relatively flat and **all the major tributaries are regulated by large dams in their headwaters.**

The Murray-Darling Basin Authority (MDBA) catchment maps state that the "Upper Darling" Catchment flows into the Menindee Lakes. The Menindee Lakes are at the head of the "Lower Darling" Catchment.[6]

Menindee Lakes

The "Upper Darling" catchment flows into the Menindee Lakes, a series of 19 lakes located south east of Broken Hill. These lakes are at the head of the "Lower Darling" Catchment[7] and form the Menindee Lakes Ecosystem.

They cover 88,570 hectares and their sizes range from 103 hectares to nearly 16,000 hectares. Scientists regard them as crucial to the health of the Barka/Darling River.[8] The lakes are naturally occurring ephemeral lakes and, under natural conditions, water levels rise and fall, and lakes grow and shrink, as water flows into lakes, out into the Lower Barka/Darling, recharges the aquifers, or evaporates.[9]

5 Guest, Chris (2016) Sharing the Water: One Hundred Years of River Murray Politics (Murray-Darling Basin Authority).

6 'Lower Darling', Murray-Darling Basin Authority (Web Page, 2020) <https://www.mdba.gov.au/discover-basin/catchments/lower-darling>.

7 ibid.

8 'Menindee Lakes', Murray-Darling Basin Authority (Fact Sheet, 2018) <https://www.mdba.gov.au/sites/default/files/pubs/1104_MDBA-factsheet_menindee-lakes.pdf>; see also (2003) 'Stark Beauty Masks Landscape of Death' The Sydney Morning Herald (Article) < https://www.smh.com.au/national/stark-beauty-masks-landscape-of-death-20030208-gdg8j1.html>.

9 Slattery, Maryanne and Campbell, Rod (2018) Drying Up Money and Water in the Lower Darling (Trickle Out Effect, Report 1).

The Menindee Lakes were once connected to the Barka/Darling River by short creeks. The lakes would naturally fill during high river flows and subsequently recede, forming a series of pools that would periodically evaporate entirely.[10]

Many of these connections were changed by engineers in 1968 when the Menindee Lakes Scheme was introduced. "The alteration of the lakes through the addition of weirs, regulators, levees, and channels to allow the storage and release of water has substantially changed this natural regime"[11] and reduced the frequency of flooding in the Menindee Lakes resulting in "about 13,800 hectares of lignum and 8,700 hectares of Black box" being destroyed. Weirs and constant low flows have fragmented the river system and blocked fish passage.[12]

Murray-Darling Basin

The Murray-Darling Basin covers 14% of Australia (see **Figure 1**, below). It is an area of over 1 million square kilometres, 1,545 kms long, and drains around 1/7th of the Australian land mass.[13] It is made up of 23 river catchments and more than 30,000 wetlands. The landscape was forged over 60 million years, and today is characterised by flat terrain, slow flowing rivers and extreme variations in volume of water.[14]

The Basin includes 15 of the 89 bioregions in Australia, divided into 419 subregions.[15] It is the 20th largest river catchment, and one of the flattest in the world.[16] Most of the rivers in this system rise in the Great Dividing Range, then spread across riverine plains of low elevation and very low gradients. Compared with other rivers of the world, the rivers of the Basin have carved winding courses across the landscape and are slow flowing, in areas that are very dry, hot and receive little rainfall.[17]

The Barka / Darling River 20km south of Pooncarie. Photo by Gary Danvers, licenced under CC BY-SA 2.0.

10 Murray-Darling Basin Authority (n 7).

11 ibid.

12 'Darling River', Geology Page (Web Page, 2014) <https://www.geologypage.com/2014/06/darling-river.html>.

13 'Environment', Murray Darling Basin Authority (Web Page, 2018) <https://www.mdba.gov.au/discover-basin/environment>.

14 Guest (n 4).

15 Murray-Darling Basin Authority (n 12).

16 ibid.

17 ibid.

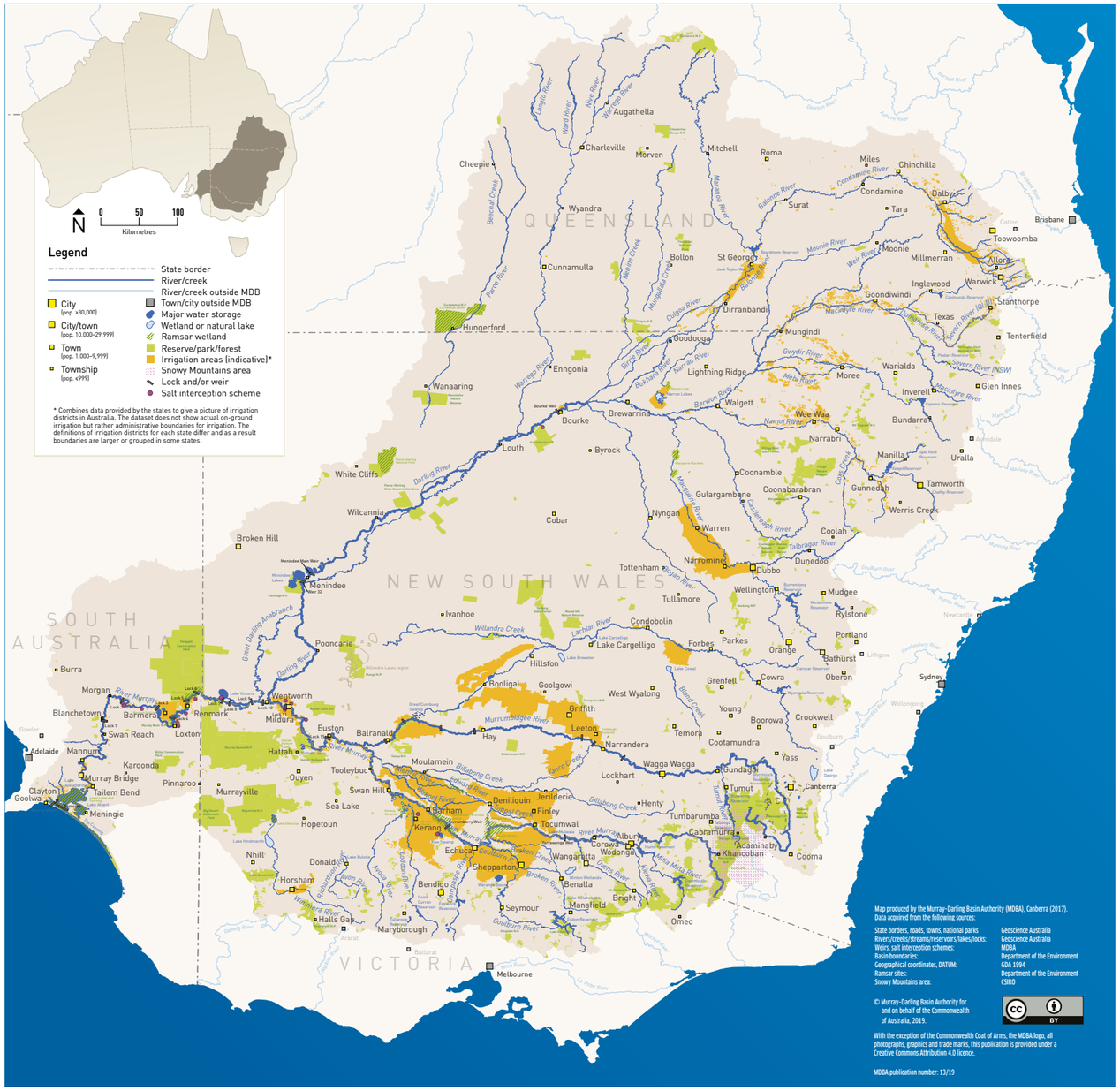


Figure 1: Map of the Murray-Darling Basin[18]

The Murray-Darling Basin is Australia's largest and most important food bowl, home to more than 40% of Australia's farms and 75% of all our irrigated agricultural production. Water is its most critical resource. In spite of its size, 86% of the area produces little regular runoff to rivers. Most of the regular inflows are from the higher rainfall areas on the eastern and southern margins.

18 Murray Darling Basin Authority, (2019) < https://www.mdba.gov.au/publications/products/murray-darling-basin-map-poster-2013>

Biodiversity of the Barka/ Darling River and Menindee Lakes

Biodiversity in its broadest terms describes the variety of natural organisms and includes the different species of plants, animals and micro-organisms, their genes and the ecosystems of which they are a part. The Biodiversity of the Murray Darling Basin ecological communities is fundamental to its continuing existence. Spanning over 15 geographical bioregions with diverse climates, the MDB supports more than 30,000 wetlands and thousands of ecosystems composed of rich, complex and dynamic biodiversity. However, species diversity is under threat. Within the MDB ecological communities, many plants and animals are known to be threatened with extinction.

Above: Sudell's Frog (*Neobatrachus sudelli*) from central NSW, Australia, by liquidGhoul, licenced under CC BY-SA 3.0.

Left: Lace Monitor (*Varanus varius*). Kinchega National Park, near Menindee, NSW, Australia, 2014. Photo by John Tann, licenced under CC BY 2.0.

Below: Easter Grey Kangaroo (*Macropus giganteus*) feeding, with Budgerigars (*Melopsittacus undulatus*) in the background, in wetlands near Cunnamulla, QLD. Photo by Hazel Watson, licenced under CC BY-NC 2.0.

3.4. First Nations Peoples' Connection to and Governance of the Barka

> "The Barka is my teacher, my mother, my father, my blood. She is not just water in a channel. She is the land and life around the river – she is the people, animals, plants, spirits, birds, all of this."
>
> — Larry Webster, Broken Hill

3.4.1 Ancient river culture

The First Nations peoples of the continent now known as Australia, are one of the oldest continuous civilisations on earth, with research on anthropological material indicating their presence in Australia for 120,000+ years.[19] First Nations peoples' belief that they have been here for 'all time' is increasingly supported by evidence which continually pushes the previously accepted timeframes further back in time: a stone in Arnhem Land dated to 65,000 years[20], a midden site at Warrnambool at 80,000 years, Lake George in Canberra showing signs of 125,000 years of Aboriginal occupation[21] and a midden and fire site at Moyjil in south west Victoria suggesting 120,000 years.[22]

Anthropological findings in the Murray-Darling Basin confirm peoples' presence for at least 60,000 years. Ancient structures such as the fish traps at Brewarrina have been determined by an archaeological team to be 40,000 years old at a minimum.[23] In an excavation of Cuddie Springs near Brewarrina "the bones of large, now extinct animals, other animals that are still alive, as well as stone artefacts – grinding stones and other tools" have been dated to 30,000 – 36,000 years.[24] Additional evidence of long occupation is found throughout the Basin, including ancient fireplaces, burial sites, middens and other cultural material.[25]

Research by Bruce Pascoe,[26] drew on the diaries of early European explorers and other settlers, and proved "the existence of sophisticated and advanced Indigenous societies at the time of colonisation including successful agriculture, cultivated crops and domesticated seeds."[27] These writings confirm that the river system was a highly populated area prior to European colonisation, with a complex civilisation using sophisticated technologies to live, farm, manage and trade along the land, rivers and lakes.[28]

Contrary to earlier assertions by colonial governments and others that First Nations peoples were solely nomadic hunter-gatherers, Pascoe found multiple diary entries of explorers recording the peoples of the Barka/Darling River engaged in sophisticated tool making, developing "endemic grains and tubers" and other examples of plant domestication and agricultural cropping.[29]

During his trip in 1829-30, Charles Sturt recorded fish traps in, and nets strung across, the Darling River. Edward Eyre, another European explorer, documented nets made for catching emu and kangaroo.[30] Other tools noted by explorers included bark canoes, fishing lines, snares, spears, boomerangs, clubs, baskets and mats.[31]

19 Bowler, Jim et al. (2018) The Moyjil Site, South-West Victoria, Australia: Fire and Environment in a 120,000-Year Coastal Midden - Nature or People? 130(2) Proceedings of the Royal Society of Victoria 71.

20 'Cuddie Springs Archaeological Site, New South Wales', Australian Museum (Web Page, 2018) <https://australianmuseum.net.au/learn/cultures/atsi-collection/australian-archaeology/cuddie-springs-archaeological-site-new-south-wales/>.

21 Pascoe, Bruce (2017) 'Bruce Pascoe on Aboriginal Culture and History' (Speech, Stephen Murray-Smith Memorial Lecture).

22 Bowler (n 17).

23 Pascoe (n 19).

24 *Australian Museum* (n 18).

25 Nutley, David and Smith, Tim (2003) Darling River, NSW, Maritime Archaeological Survey (NSW Heritage Office Report).

26 Pascoe (n 19).

27 ibid.

28 ibid.

29 ibid.

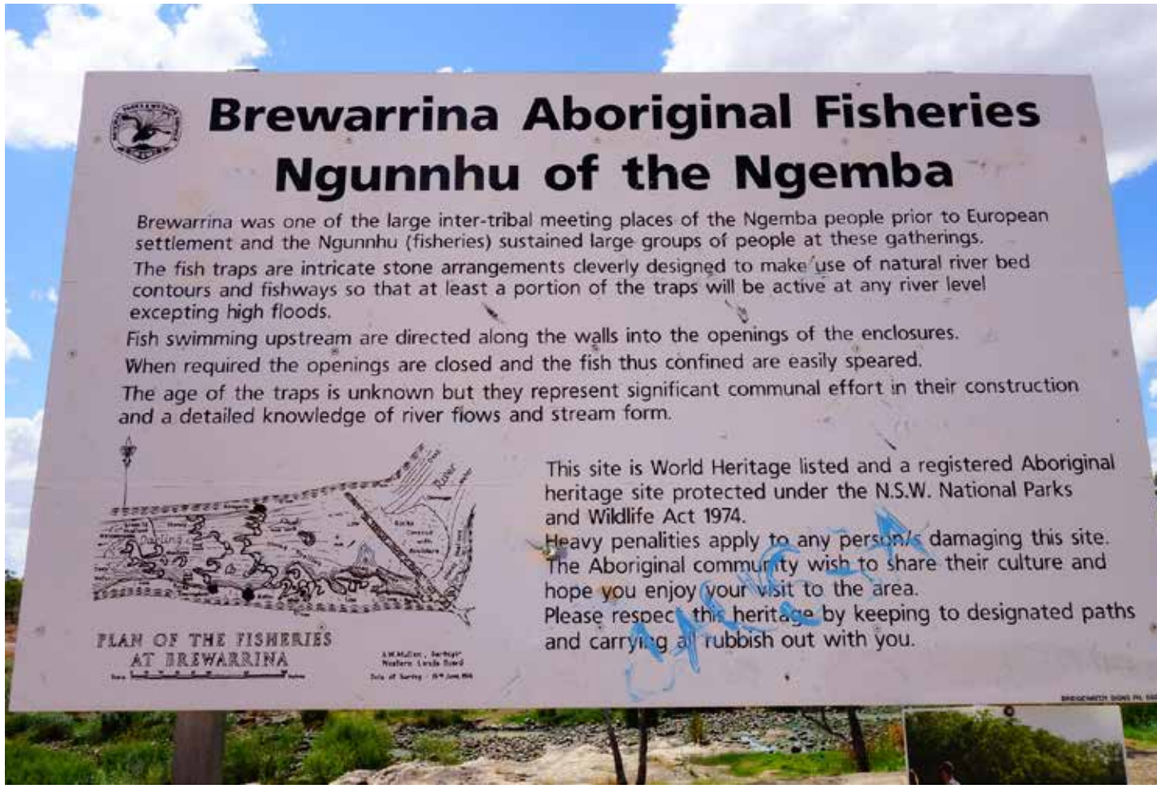
30 'Aboriginal Australians and the River: Aboriginal Life Along the Murray' *State Library - South Australia* (Web Page, 2010) <https://www.samemory.sa.gov.au/site/page.cfm?u=1316>.

31 ibid.

The extensive fish traps at Brewarrina are an example of "advanced knowledge of river hydrology and fish ecology."[32] In 1848 William Mitchell saw the traps and recorded the "ingenuity and skill" required to construct the traps, their ability to withstand floods and that each trap was named and distributed to family groups.[33] The traps were also an important site where "neighbouring tribes were invited...to join corroborees, initiation ceremonies, and meetings for trade and barter."[34]

Thomas Mitchell "rode through nine miles of stooked grain in the Queensland-New South Wales border area that his fellows describe as being like an English field of harvest."[35] These were "agricultural products grown on fields so wide the explorers could see neither their beginning nor their end. These crops are perennial. They were staples of Aboriginal diet and economy."[36]

Significant bodies of evidence from colonial writers has demonstrated that prior to the violence and disruption of colonisation, Aboriginal communities lived in good physical and spiritual health, within complex, clan-based societies that flourished within their respective nations' ecological limits.



Signage at the Brewarrina Fish Traps in Brewarrina, NSW.
Photo by Tim Connors (March, 2016), licenced under CC BY-NC-SA 2.0.

32 'National Heritage Places - Brewarrina Aboriginal Fish Traps (Baiame's Ngunnhu)' *Australian Government - Department of Agriculture, Water and the Environment* (Web Page) <https://www.environment.gov.au/heritage/places/national/brewarrina>.

33 Gammage, William (2012) *The Biggest Estate on Earth - How Aborigines Made Australia* (Allan & Unwin).

34 *Australian Government - Department of Agriculture, Water and the Environment* (n 31).

35 *State Library - South Australia* (n 29).

36 Pascoe (n 19).

3.4.2 The Impacts of Colonisation on First Nations Peoples

First Nations peoples began experiencing first contact with European people in various places along the Darling River in the early 1800s. In the 1820s, European people reached the headwaters of the Darling River – the Darling Downs in Queensland. Allan Cunningham is credited as the first European into the Darling Downs and he gave them their European names. The first European *settlers* in the Darling Downs were the Leslie brothers in 1840.

As noted by the Murray Darling Association, "guns, axes, fences and disease all had a major impact" on Aboriginal peoples along the Barka/Darling River and by the late 1830s, Aboriginal groups were "rapidly losing access to waterways, land and sacred sites."[37] As the pastoralists expanded, hostilities broke out and the violence of the frontier wars was experienced in the Darling Catchment and connected areas. Two particular confrontations in the Darling Catchment are noted by colonisers - at Myall Creek and Rufus River – and many other conflicts arose.

Increasing numbers of sheep and cattle graziers pushed into the basin from the 1830s. Tensions rose and hostilities escalated as First Nations peoples fought back against their people being killed and the colonisers' denial of access to their traditional lands, sacred sites and waters.[38] The frontier wars resulted in many murders and several documented massacres.[39]

In 1850, Governor Fitzroy created 20 Aboriginal reserves in the headwaters of the Darling. Between 1885 and 1894, the Aborigine Protection Board established additional reserves, one of these was at Pooncarie. Their creation marked the beginning of severe restriction on Aboriginal access to land.[40]

Charles Bayliss, *Bullock teams at Wilcannia* (1886). Photo: National Gallery of Victoria, Melbourne

37 'Indigenous Heritage', *Murray Darling Association* (Web Page, 2019) <https://www.mda.asn.au/indigenous-heritage.aspx>.

38 ibid.

39 'Some Known Conflicts in New South Wales', *Australian Frontier Conflicts 1788-1940s* (Web Page, 2020) <https://www.australianfrontierconflicts.com.au/some-known-conflicts-in-new-south-wales/>.

40 *Murray Darling Association* (n 36).

The Great Depression and War time period saw intense pressure on Aboriginal communities, particularly in the Darling tributaries, as well as continued conflicts over access to land and sacred sites. Despite the wool boom of the 1950s, the gradual reduction in pastoral work and the closure of remaining Aboriginal camps in the Western Division led to the growth of Aboriginal populations in towns like Wilcannia and Walgett. Throughout this time, First Nations peoples never relinquished sovereignty over, or connection to, their lands and waters.[41] Efforts to stamp out the use of traditional languages and cultural practices failed and transmission of knowledge continued, demonstrated in part by knowledge provided leading to successful Native Title claims,[42] and the day-to-day cultural activities of First Nations peoples in the basin.

Sovereignty was never ceded

Throughout the colonisation of Australia, including the Barka/Darling River region, First Nations peoples never relinquished their sovereignty over their lands or waters.

Government policies and institutional racism is evident in Colonial, then later State and Federal policies and laws, from 1788 to the present day. This institutional racism has seen successive government policies and laws, across all jurisdictions in Australia, implement a range of atrocities against First Nations peoples. These have included: forced removal of Aboriginal people from their lands onto reserves and missions, the Stolen Generations, Stolen Wages/Slavery practices and other unjust policies. Despite this 230 year history, Aboriginal peoples' ancient connections to land and sea country, obligations and cultures continue.[43]

It is important to note that the legacy of unjust government laws and policies continue today, and with respect to the Barka/Darling River this legacy has manifested itself in many ways, including (but not limited to): the failure of many government agencies to appropriately recognise, prioritise or implement, Aboriginal peoples' claims to cultural rights, land rights, water rights and even the right to be consulted appropriately, in matters regarding the governance of the Murray-Darling Basin generally, and the Barka/Darling River in particular.[44]

In the 1970s and 1980s, NSW laws saw many of the surviving Aboriginal reserves and housing settlements along the Barka/Darling placed under Aboriginal ownership and management. Local Land Councils were established to enable Aboriginal people to buy land and many large and viable properties were bought.

In the 1990s, Native Title legislation gave Aboriginal people the right to claim access and other rights on non-freehold land. Recognised by many as a deeply flawed and inadequate system, Native Title processes have not led to widespread benefits for Aboriginal People. Title claims have been made along much of the Barka/Darling River, but few have yet been determined.[45] Other changes in the legal status of lands claimed by the colonial governments have taken place. For example, Mutawintji, north of Broken Hill, was the first national park in NSW to be transferred to Aboriginal ownership, in September 1998.

41 Morgan, Monica et al. (2004) *Indigenous Rights to Water in the Murray Darling Basin* (AIATSIS Research Discussion Paper, No. 14).

42 'Barkandji Native Title Group Aboriginal Corporation RNTBC', *PBC* (Web Page) <https://www.nativetitle.org.au/find/pbc/4740>.

43 For example - the ***Aboriginal Protection and Restrictions of the Sale of Opium Act 1897*** was an Act of the Parliament of Queensland. It was the first instrument of separate legal control over Aboriginal people, and, according to Henry Reynolds, it "was far more restrictive than any [contemporary] legislation operating in New South Wales or Victoria, and implemented a system of tight controls and closed reserves."

44 For example, see Marshall, Virginia (2017) *Overturning Aqua Nullius: Securing Aboriginal Water Rights* (Aboriginal Studies Press) for an account of government failures to recognise Indigenous peoples' rights to water.

45 Breen,J. and Coote, G (2015) 'Largest native title claim in NSW acknowledges Barkandji people in state's far west', *ABC News* (Web Page) <https://www.abc.net.au/news/2015-06-16/nsw-largest-native-title-claim-determination/6549180>

3.4.3 First Nations Peoples and the Barka/Darling River Today

Today, there are 75,000 Indigenous people in the entire Murray Darling Basin, the majority belonging to one of "over 40 autonomous First Nations,"[46] each with their own rights and obligations under their law and custom. These include laws which "regulate the transmission of property rights, access to land and waters, responsibilities relating to land and waters, use of resources, and a myriad other rights, responsibilities and community controls. They continue to exert and exercise these rights and responsibilities."[47]

For generations, First Nations groups individually and collectively have "sought to engage government about the health of rivers ...."[48] They have put substantial effort into increasing non-indigenous peoples' understanding of the basin from their worldview - that "water is not separate to the river and the river is not separate from the water within it. The river incorporates all of the lands and natural resources that rely on the water, and without the necessary management of the river and its lands and natural resources the water disappears."[49] Furthermore, they have "an obligation under their traditional law and custom to protect, conserve, and maintain the environment and the ecosystems in their natural state to ensure the sustainability of the whole environment."[50]

There are multiple legislative frameworks and other mechanisms underpinned by a recognition of rights and the continuing custodianship of First Nations peoples. Some, like prescribed bodies corporate, are mandated following a successful determination of Native Title. Others, like the NSW Aboriginal Land Council, a statutory corporation, have legislated functions set out in the *Aboriginal Land Rights Act 1983 No 42*.

First Nations peoples established the Northern Basin Aboriginal Nations and the Murray Lower Darling Rivers Indigenous Nations.[51] Both organisations work to support First Nations peoples' engagement in natural resource management, caring for the river, achieving water rights and "recognition and respect for Aboriginal knowledge and cultural values and uses regarding land and water management" in the basin.[52]

These two groups are "an expression of the way First Nations and Aboriginal people have always done business - by caring for country and talking to our traditional neighbours upstream and downstream on the Murray and its sister rivers, creeks, lakes, billabongs and waterways."[53]

Despite a holistic and intergenerational worldview, "the separation of water from land in the current water reforms requires Indigenous people to now articulate their rights to waters separately in a language which governments can understand in the context of the property system".[54] This has not been easy, requiring First Nations peoples to pursue important matters such as water rights, cultural flows and a cultural economy as discrete issues outside of their cultural context.

46 'Murray Lower Darling Rivers Indigenous Nations', *Murray Lower Darling Rivers Indigenous Nations* (Web Page) <http://www.mldrin.org.au/>.

47 Morgan (n 40).

48 Australian Human Rights Commission (2008) *Case Study 2 The Murray-Darling Basin - an Ecological and Human Tragedy* (Native Title Report 2008).

49 Ibid.

50 Ibid.

51 'Nations & Delegates' *Murray Lower Darling Rivers Indigenous Nations* (Web Page) <https://www.mldrin.org.au/membership/nations/>.

52 'Keeping Our Water Spirits and Our Connections Alive', *Northern Basin Aboriginal Nations* (Web Page) <http://nban.org.au/>.

53 *Murray Lower Darling Rivers Indigenous Nations* (n 49).

54 Ibid.

3.5 Colonial Governance of the Darling River since 1788

3.5.1 Overview

The waters of the Murray-Darling Basin (MDB) region have been used by settler communities for more than 100 years, and the infrastructure and regulatory systems created for their 'resource management' have facilitated extensive water extraction, as illustrated by the following statistics based on a long-term average of 114 years (1895–2009).[55]

- Approximately 42% of the total surface water runoff to the MDB region is diverted for consumption, while 58% currently remains in the environment.
- The majority of the surface water consumed in the MDB region, 10.9 million ML/year, is diverted from the watercourse and used for irrigation and urban supply. In addition, 2.7 million ML/year is intercepted by local catchment storages and forestry plantations that intercept runoff before it reaches the watercourse.
- Around 1.7 million ML of groundwater is consumed each year from the MDB region's water resources.[56]
- A Murray-Darling Basin Cap (the Cap) was established in 1995 to limit the volume of surface water that could be diverted in the MDB region in any year to that based on the 1993–1994 levels of development.[57] The Cap does not place a restriction on groundwater extraction.

Image: Irrigation infrastructure near Bourke, NSW (2008). Photo by Brian Yap (葉), licenced under CC BY-NC 2.0.

55 'Guide to the Proposed Basin Plan', *Murray-Darling Basin Authority* (PDF, 2011) <http://download.mdba.gov.au/proposed/plain_english_summary.pdf>.

56 Ibid.

57 'The Cap', *Murray-Darling Basin Authority* (Web Page, 2012) <https://www.mdba.gov.au/programs/the-cap>.

With the enactment of the Water Act 2007, the Murray-Darling Basin Authority (MDBA) was established as an independent statutory agency. The MDBA is responsible for coordinating how the Basin's water resources are managed through the Basin Plan and is a partnership between all '**Basin governments**' – the Australian Government, NSW, Queensland, South Australian, Victorian and the Australia Capital Territory governments.

The Murray Darling Basin Royal Commission that commenced in January 2018, stated that the history and management of the Murray Darling Basin has been characterized by:

> **"self-interested and short-sighted regulation, allowing for exponential expansion of extractive uses that has wreaked a considerable cost to the Basin's natural ecosystem. This complacency has only been replaced by significant and constructive reform when severe environmental conditions made it abundantly clear that nothing short of action was viable."**[58]

3.5.2 Colonial use of the river: "for travel, for irrigation and for power"

After colonisation in 1788, the story of the Barka/Darling River and Menindee Lakes follows a 'classic colonial trajectory' where "rivers were for travel, for irrigation of the fields, and for power."[59]

As noted above, in **Section 3.4.2** of this Report, in the 1820s European people reached the headwaters of the Darling River – the Darling Downs in Queensland. Allan Cunningham is credited as the first European into the Darling Downs and he gave them their European names.

Charles Sturt and Hamilton Hume explored the Macquarie River system from 1828 and reached the upper Barka/Darling in 1829, providing it with its colonial name after the then NSW Governor at the time, Sir Ralph Darling. Major Thomas Mitchell travelled much of the length of the river in 1835, and though not reaching the Murray junction correctly assumed the rivers met.[60]

Navigation and the age of paddle steamers

Paddle steamers began to be used in South Australia and Victoria in the 1850s, to transport wool and other produce from the inner regions to Melbourne and Adelaide. In 1861, the first paddle steamer travelled up the Barka/Darling River to Walgett and River Ports were soon established in Bourke, Wilcannia and Wentworth, shipping wool and wheat to Adelaide for European export.[61]

> To ensure safe passage for river navigation, snags and sand bars were removed, which destroyed habitat for native fish and allowed the river to flow faster.[62] The destruction of many old waterholes changed the flow of the river, and is believed to have had many long-lasting impacts, including causing the silting up and destruction of drought resistant water habitats in the river system.[63]

River navigation was unreliable due to the variable natural climatic conditions and though South Australia began to invest in locks and weirs, these still did not overcome the natural condition of the river. By the 1880s the vagaries of inland river highways began to be replaced with rail lines. Victoria and NSW declined to support river navigation, instead investing in railway infrastructure, thus ensuring commercial interests stayed within their states.[64] Royal Commissions undertaken by NSW (1884) and Victoria (1885), pointedly excluding South Australia, agreed that the waters of the Murray River should be common property of the two states, and they agreed to share the water equally.[65]

58 Walker, Bret (2019) *Murray-Darling Basin Royal Commission Report* (Report).

59 Berry, Thomas (2000) *The Great Work: Our Way into the Future* (CROWN) 122.

60 'Darling River History: European History', *Discover Darling Outback NSW* (Web Page) <https://darlingriver.com.au/darling-river-history/>.

61 'The Darling River', *Central Darling Shire Council* (Web Page) <http://www.centraldarling.nsw.gov.au/about-the-shire/the-darling-river.aspx>.

62 Hutton, Mark (2018) *Broken Hill & Darling River Action Group Submission* (Murray-Darling Basin Royal Commission).

63 See 'The Darling's Waterholes: Going, Going?', *University of New England* (Web Page, 2018) <https://www.une.edu.au/connect/news/2018/10/the-darlings-waterholes-going-going>.

64 Guest (n 4) 8.

65 Ibid 11.

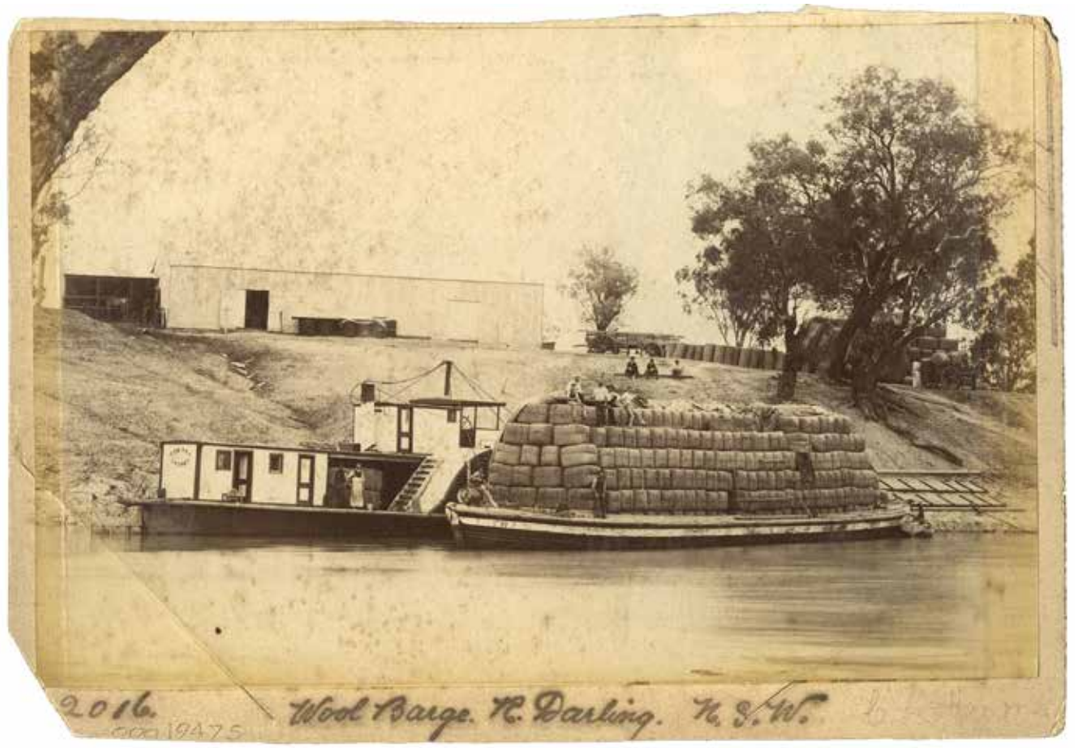


Image: Wool barge ROB ROY, River Darling, NSW. Photo taken circa 1890. Photographer unknown. From the Australian National Maritime Museum collection.

In 1886 Victoria passed the Irrigation Act, declaring water rights to be State property, distinct to the English Common Law, which provided for riparian rights. NSW followed Victoria's lead in 1896.

State rights and the Federal Constitution

The control and management of the Murray-Darling river systems was already a subject of heated debate and conflict between the states, and it became the most contentious issue in the Constitutional Convention Debates,[66] with transport and irrigation still seen as competing issues.

The Convention Debates demonstrate that many of the arguments held today between the Commonwealth and the States began prior to Federation.[67]

For example, Mr McMillan (Hon MP NSW) stated:

> "We want the control of the rivers as regards the use of the water, and, furthermore, it is necessary to have some control over the tributaries…… there ought to be some very general powers with regard to the control of the river, not merely for navigation purposes, but also for purposes of irrigation and the conservation of the water. That I look upon as one of the most important matters in connection with the whole scheme of federation.
>
> "We have larger rivers, which are absolutely essential to future schemes or irrigation and the conservation of water. These run through different colonies, and if economically managed by one power, equitably dealing with all the rights of the different states, they may be great sources of wealth in the future."[68]

Two provisions attempting to address the above two competing issues were incorporated into the Australian Constitution. Firstly, s98 provides for "the

66 Kildea, Paul and Williams, George (2010) 'The Constitution and the Management of Water in Australia's Rivers' (Speech, Supreme and Federal Courts Judges' Conference) 5.

67 Guest (n 4) 11.

68 Ibid.

power of the parliament to make laws with respect to trade and commerce extends to navigation and shipping, and to railways the property of any State"; and s100 "The Cth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation."

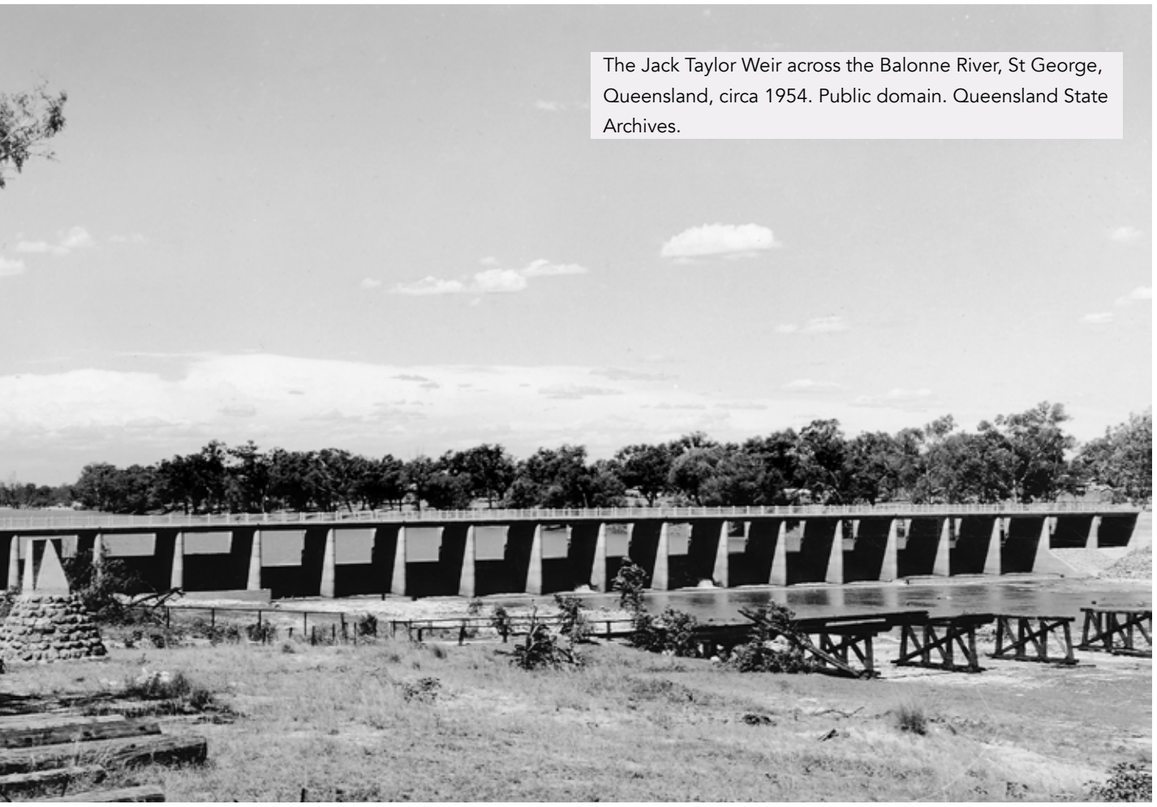
Though s98 explicitly enlarges the trade and commerce power in s51 (i) to navigation and shipping, reflecting the importance of MDB for river navigations,[69] this is greatly tempered by s100. It is important to note that "reasonable use" and "conservation" are not defined, and at the time of federation these terms would have a very different meaning to present day.[70]

In the Convention Debates, conservation meant "impounding of water," not its modern day meaning (e.g. LexisNexis Concise legal dictionary where Conservation is "the management of human use of the biosphere so that it may yield the greatest sustainable benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations)."

As Guest says, the sections "were a compromise of the worst sort, because they separately responded to the interests of the two sides."[71]

3.5.3 Federation of Australia, to the present

With the Constitution remaining silent on how to manage inter-state disagreement, inter-governmental agreements and commissions were instead established to manage the waterways. The first was ratified in 1914 - River Murray Waters Agreement 1914 – built infrastructure (s98).[72]



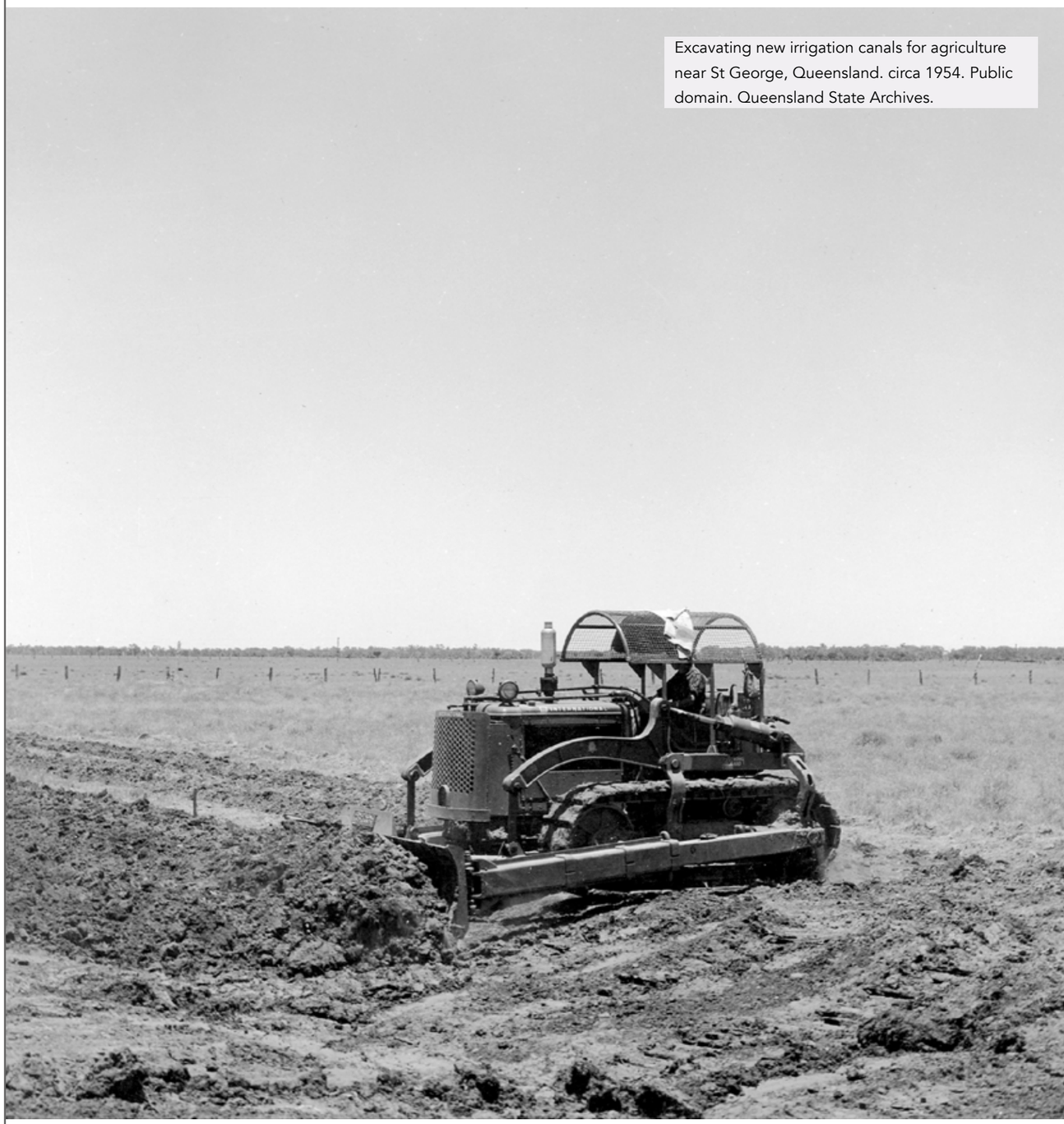
The Jack Taylor Weir across the Balonne River, St George, Queensland, circa 1954. Public domain. Queensland State Archives.

69 Kelly, Nicholas (2007) 'A Bridge? The Troubled History of Inter-State Water Resources' 30 *UNSW Law Journal* 639.

70 Kildea and Williams (n 64) 24.

71 Guest (n 4) 15.

72 Nicholas Kelly, "A Bridge? The Troubled History of Inter-State Water Resources" 2007 30(3) UNSW Law Journal 640.



Excavating new irrigation canals for agriculture near St George, Queensland. circa 1954. Public domain. Queensland State Archives.

Box 1 – Timeline – Management of Murray Darling Basin since Federation

This timeline lists the major governance developments since Federation, according to the MDBA website and other sources. The timeline is useful because it shows the extensive infrastructure constructed in the system and the changes in governance arrangements over more than 100 years.

1901 – Federation of the States and Territories of Australia

1902 – Corowa Irrigation Conference leads to 1902 Royal Commission to report on 'the conservation and distribution of the waters of the Murray and its tributaries for the purpose of irrigation, navigation and water supply'

1909 – Victorian Water Act formalises irrigation schemes

1914 – The River Murray Waters Agreement sets out the shares of water available to each state; and establishes a commission to administer the agreement

1917 – The River Murray Commission is established

1917-1940 – Locks and weirs constructed along the Murray River

1928 – Burrinjuck Dam opens near Yass, NSW.

1940 – Barrages built above Murray Mouth, South Australia

1946 – NSW-Queensland Borders Rivers Agreement finalised

1948 – Construction of Jack Taylor Weir at St George begins specifically for irrigation (pictured above)

1949 – Snowy Mountains Hydro Electric Power Act passes in Federal Parliament, to provide for hydro power, water for irrigation and water sharing between the States

1956 – Heavy rainfall and flooding across much of the Barka/Darling Basin triggers a massive dam building program (for flood mitigation and regional development), especially in NSW. There are 12 government owned dams greater than 10,000 ML with a total storage capacity of >4.8 million ML

1958 – Formal agreement reached between NSW and Victoria and work begins on Snowy Mountains Hydro Electric Scheme

1968 – the Menindee Lakes were modified by the NSW Government to improve storage capacity for farming, recreation, mining, urban water supply and to manage Barka/Darling River floods.

1982 – River Murray Waters Agreement amended to address water quality, particularly salinity

1992 – the Murray-Darling Basin Agreement establishes the Murray-Darling Basin Commission, to replace the River Murray Commission, and expands the resource-sharing arrangements between the states to cover the whole Murray-Darling Basin

1994 – COAG agrees to strategic *water reform framework* on 25 February

1995 – National Competition Council established to track water reform

1995 – Ministerial Council introduces Cap on water diversions at 1993-94 levels

1997 – The longest drought in Australia's recorded history begins (c.1997-2010)

1998 – Draft Condamine-Balonne Water Allocation & Management Plan (WAMP); Brimblecombe v Qld govt (challenge to Condamine-Balonne WAMP)

2000 – 2004 – Basin States introduce new water legislation to comply with the Cap on water diversions. 'Cap compliant water sharing plans' followed

2000 – Qld Water Act

2002 – Dredging begins to keep Murray Mouth open

2003 – The Living Murray Initiative - First Step decision announced - $650 million and 500 GL

2003 – COAG agrees to National Water Initiative to refresh 1994 reforms

2003 – The Living Murray Initiative is announced, which aims to recover and use 500GL of water and associated works (engineering projects) to improve the health of six icon sites along the River Murray

2004 – NSW Water Management Act

2004 – National Water Initiative created to achieve a more cohesive national approach to the way Australia manages, measures, plans for, prices and trades water

2004 – Condamine-Balonne Water Resource Plan

2007 – National Plan for Water Security announced by J Howard PM

2007 – The Water Act (Commonwealth) implements key reforms for water management in Australia; sets out requirements for a Basin Plan that will set sustainable limits on the amount of surface and groundwater that can be taken from the Basin

2008 – Murray Darling Basin Authority takes over the functions of the Murray Darling Basin Commission

2008 – Water for our Future program announced by K. Rudd PM

2010 – Guide to Basin Plan burned (November)

2010 – 58 scientists offer qualified support for Basin Plan (December)

2012 – The Basin Plan becomes law, providing for the first time a coordinated approach to water use across the Basin's four states and the Australian Capital Territory

2012 – Draft Barwon Darling Water Sharing Plan

2013 – Intergovernmental Agreement on Implementing Water Reform in the Murray Darling Basin (the IGA) came into effect (June)

2013 – T. Abbot PM abolishes COA Standing Committee on Water and Environment

2015 – National Water Commission abolished (June)

2018 – Northern Basin Amendment passes Parliament, reducing the Northern Basin water recovery target by 70GL to 320GL

2018 – Fish kills along Barka/Darling River attract international attention

Changes to the Menindee Lakes

As noted earlier in this report, in 1968, the Menindee Lakes were modified by the NSW Government to improve storage capacity for farming, recreation, mining, urban water supply and to manage Barka/Darling River floods.[73] Modifications included weirs, regulators, levees and channels.[74]

There is a complex agreement between the MDBA and NSW government regarding the operation of Menindee Lakes. This Agreement requires the MDBA to include the water held within the lakes as part of the shared resource of the River Murray System, and use the water in the lakes from the time when the volume in the lakes rises above 640 GL and until it next falls below 480 GL. Below 480 GL it comes under NSW control and is meant to be used to meet local demands.

The Lower Darling has long been considered part of the Murray system and was included in The Living Murray Initiative (TLM). The lakes are listed as one of the MDB wetlands significant for waterbirds – even after they were modified and all the blackbox trees around it drowned.[75]

Critique of the management of the Murray-Darling Basin prior to 1987

It has been said that the history of governance of the MDB up until 1987 is 'characterised by self-interested and short-sighted regulation.'[76] The Commonwealth's role was characterised not as one of leadership, but one of funding and representation on various commissions under the Water Agreements.[77] Though there was a shift to an eco-centric governance model from 1987, implementation of both the Living Murray Initiative (TLM) and National Water Initiative (NWI) lagged, and with the nation once again in the midst of a drought, the Commonwealth, in cooperation with the states, instigated a 'complete overhaul of the MDB's governance arrangements.'[78]

Water management since 2004

The 2004 Intergovernmental agreement, TLM, proposed increasing environmental flows to the MDB through efficiency measure, water buybacks and infrastructure.[79] At the same time, COAG finalised the NWI, a nation-wide goal of sustainable water in all catchments across Australia, which "envisaged a comprehensive regulatory framework for managing both surface and groundwater."[80] Both initiatives put the environment at the centre of policy and represented a shift away from focussing just on human interests.

The 2007 Water Act (Cth) ('the Act') was developed to address over-extraction of the water resources in the MDB. The Commonwealth's original intent envisaged a referral of State water management powers to the Commonwealth, and though supported by a majority of Basin States, Victoria ultimately refused.[81] Instead, the Act relies on the Commonwealth's External Affairs Head of Power in the Federal Constitution,[82] and is 'primarily a law with respect to external affairs.'[83] Due to this characterisation, the 2007 Water Act must give effect to the Commonwealth's obligations to certain International Agreements,[84] and in giving effect to those agreements, to 'promote the use and management of the Basin water resources in a way that optimises economic, social and

73 *Murray-Darling Basin Authority* (n 5).

74 'Menindee Lakes Project', *Australian Government - Department of Agriculture, Water and the Environment*, (Web Page, 2019) <http://www.agriculture.gov.au/water/mdb/programs/nsw/menindee-lakes>.

75 More on how Menindee is operated at *Murray-Darling Basin Authority* (n 7).

76 Walker (n 56).

77 Ibid 105.

78 Howard, John (2007) 'Address to the National Press Club, Great Hall, Parliament House' (Speech, Parliament House).

79 Walker (n 56). The Report found evidence that this was "almost" a world-first requiring a formal return of water to the environment.

80 Ibid 89.

81 Howard (n 76).

82 Ibid.

83 Walker (n 56) 107. Also see Australian Constitution s 51 (xxix); *Commonwealth v Tasmania* (1983) 158 CLR 1, 153. *The Environmental Protection & Diversity Conservation Act 1999* (Cth) also sources its authority from this head of power.

84 *Water Act 2007* (Cth) ss 3(a) - (d). Walker (n 56) describes the objects as "interlocking" (at 130).

environmental outcomes'.[85] The main agreements presently listed in the Water Act are the Convention on Wetlands of International Importance especially as Waterfowl Habitat (the 'Ramsar Convention') and the Convention on Biological Diversity ('CBD').[86] In addition, a number of other conventions and treaties are considered "complementary" to the broader obligations of the Ramsar Convention and the CBD, also listed in the Act.[87] The Act does not need to fully implement these international obligations, but must be able to be characterised as being appropriate and adapted to implementing the relevant provisions.[88]

The Objects of the Water Act are, inter alia:

a) manage water in the national interest;
b) give effect to Australia's international obligations;
c) in giving effect to those agreements, manage/use basin in a way that optimises "economic, social and environmental" outcomes.
d) Without limiting (b) and (c) ensure the return to environmentally sustainable levels of extraction and protect/restore ecological values and ecosystem services.[89]

The Basin Plan (s19, 20, 21) is the "tool" to manage the water resources, set the limits on water take, and promote the objects of the Act. The Act also establishes the MDBA and regulated water charge rules accredited by the ACC. The Water Amendment Act 2008 saw Basin states refer certain powers regarding management of the MDB to the Commonwealth and the abolition of the MDBC.

"Cawndilla Lake", Menindee. Photo by David Molloy , licenced under CC BY 2.0

85 *Water Act 2007* (Cth) ss 3(b), (c).

86 Ibid s 4.

87 Ibid. Additional treaties include: *Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa*, opened for signature 14 October 1994, 1954 UNTS 3 (entered into force 26 December 1996); *Convention on the Conservation of Migratory Species of Wild Animals*, signed 23 June 1979, 1651 UNTS 333 (entered into force 1 November 1983); *Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment*, signed 20 October 1986 [1988] ATS 22 (entered into force 1 September 1988); *Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds*, signed 6 December 2006 [2007] ATS 24 (entered into force 13 July 2007); *Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds in Danger of Extinction and their Environment*, signed 6 February 1974 [1981] ATS 6 (entered into force 30 April 1981); *Framework Convention on Climate Change*, opened for signature 9 May 1992, 1771 UNTS 107 (entered into force on 21 March 1994). Also see Walker (n 56) 107.

88 "Plainly a law that is reasonably capable of being considered appropriate and adapted to…" Walker (n 56) 109. Also see Kildea, Paul and Williams, George (2011) 'The Water Act and the Murray-Darling Basin Plan' 22(9) *Public Law Review*.

89 *Water Act 2007* (Cth).

3.6 Recent Inquiries, Reviews and Investigations

There have been multiple investigations into the management of the Murray-Darling Basin over the past few decades. The most recent include the following:

- Murray-Darling Basin Plan Five-year assessment: Productivity Commission Inquiry Report
- Murray-Darling Basin Royal Commission Report
- Investigation of the Causes of Mass Fish Kills in the Menindee Region NSW over the Summer of 2018–2019: Australian Academy of Science
- Independent Assessment of the 2018-19 Fish Deaths in the Lower Darling
- Murray-Darling Basin Water Markets Inquiry - Interim Report, July 2020

3.6.1 Productivity Commission Report

The Productivity Commission is mandated to report on the management of the Murray-Darling Basin Plan every five years and to provide recommendations regarding the implementation of the MDB Plan. The latest report was provided to the public in January 2019.[90]

The Commission described the Murray Darling Basin Authority as having conflicting roles, recognising that this conflict will only increase in the coming years. One role is to support Basin Governments to implement the Plan, whilst the other role is the regulator to ensure compliance with the Plan.

The report was critical of the modelling used in the Plan and also the Basin Governments' approach to the plan, which lacked transparency and candour with stakeholders, and was unclear about responsibilities and accountabilities.

The Commission also said that there were significant risks to implementation under the current governance arrangements, with reform required.

3.6.2 Murray-Darling Basin Royal Commission

The South Australia Royal Commission was established in January 2018 to investigate the operations and effectiveness of the Murray-Darling Basin System, following the corruption scandal of water theft aired by the ABC in 2017 on the Four Corners episode titled "Pumped".[91] The Commonwealth initiated injunction proceedings in the High Court to block Commonwealth employees, including those in the Murray-Darling Basin Authority, from giving evidence in the South Australian Royal Commission.[92]

The South Australian Royal Commission found Australia's Murray-Darling Basin Authority (MDBA) acted unlawfully and "completely ignored" climate change projections when determining water allocation. The findings of the Commission were made public in April 2019 and highlighted the complex web of issues threatening the Murray which are exemplified by the fish deaths in the Barka/ Darling River and dry riverbeds at Walgett in NSW since summer 2018/2019. The report was particularly critical of the government's failure to acknowledge scientists' recommendations in the past and lack of openness when describing water management decision-making processes.[93]

The South Australia Royal Commission Report, written by Commissioner Bret Walker SC, contained 111 findings and 44 recommendations including a complete overhaul of the scheme. The Murray-Darling Basin Plan's lack of climate change consideration was a significant issue and central to the recommendations of a complete overhaul of the scheme, with allegations of CSIRO reports being altered to satisfy a lesser environmental flow. In addition, a culture of secrecy imbued the MDBA and its implementation of the Act with key materials such as 'business cases, analyses, [and] decision-making registers' being kept confidential from the public.'[94]

90 Australian Government Productivity Commission (2018) *Murray-Darling Basin Plan: Five-Year Assessment* (Productivity Commission Inquiry Report, No 90).

91 'Pumped' *Four Corners* (Australian Broadcasting Corporation, 2017) <https://www.abc.net.au/4corners/pumped/8727826>.

92 MacLennan, Leah (2019) 'The Murray-Darling Basin Royal Commission Has Handed Down Its Findings. Here's How We Got Here' *ABC News* (Article) < https://www.abc.net.au/news/2019-01-29/murray-darling-basin-royal-commission-findings-to-be-handed-down/10756198>.

93 Henry, Olivia (2019) '"Australians Have Been Lied To" – Murray Darling Royal Commission' *Australia's Science Channel* (Article) <https://australiascience.tv/australians-have-been-lied-to-murray-darling-royal-commission/>.

94 Walker (n 56) 333.

The Royal Commission heard concerns that some crops, particularly rice and cotton, are unsuitable in the basin and have become "demonised,"[95] but said that the first thing to check is overall consumptive take is not excessive, regardless of the crop in question.[96]

Other issues addressed were the cost of water buybacks vs infrastructure grants and subsidies and floodplain harvesting and "simplistic assertions of a relationship between water reduction and a reduction in farm production and job losses which ignore other relevant factors, unrelated to water recovery, driving change and job or economic contraction in rural communities."[97]

The Report also found that the MDBA had unlawfully given weight to economic and social outcomes in the development of the Basin Plan. The MDBA's actions in *failing to privilege environmental considerations* were described as 'impermissible': "the MDBA has misinterpreted the Water Act, not in a minor way, not in an unimportant way, in a crucial way."[98]

Fish kill in the Barka / Darling River, December 2018. Photo supplied by Mark Merritt / Earthling Studios.

95 Walker (n 56).

96 Ibid.

97 Ibid.

98 Ibid. 188.

Fish kill in the Barka / Darling River, December 2018. Photo supplied by Mark Merritt / Earthling Studios.

Dry river bed with turtle shells and dead mussels. Photo supplied by Mark Merritt / Earthling Studios

3.6.3 Academy of Science

There were two large fish death events in December 2018 and on 6 January 2019 covering "a 40 kilometre stretch of the Lower Darling River, downstream of Menindee Lakes. The MDBA noted at the time that the exact number of fish deaths was unknown but that anecdotal estimates ranged from hundreds of thousands to at least three million."[99] A third event occurred on 28 January and the beginning of a fourth event was witnessed by the Academy of Science panel on 4 February.[100]

Bill Shorten, the then Leader of the Opposition, asked the Australian Academy of Sciences "to provide advice on the immediate causes, as well as exacerbating circumstances from water diversions, agricultural runoff or climate change, and to provide recommendations."[101]

> The Australian Academy of Science report determined that "the root cause of the fish kills is that there is not enough water in the Darling system to avoid catastrophic decline of condition through dry periods. This is despite a substantial body of scientific research that points to the need for appropriate flow regimes. Similarly, engagement with local residents, Indigenous and non-indigenous, has been cursory at best, resulting in insufficient use of their knowledge and engagement around how the system is best managed."[102]

The panel also noted its strong support for "the objectives of the Water Act 2007 and the framework of the Murray-Darling Basin Plan (2012), which were developed with bipartisan political support and intended to increase water for the environment."[103] However, their findings "point to serious deficiencies in governance and management, which collectively have eroded the intent of the Water Act 2007 and implementation of the Murray-Darling Basin Plan (2012) framework."[104]

3.6.4 Independent Assessment of the 2018-19 Fish Deaths in the Lower Darling

Following continued widespread public outcry, the federal government appointed an Independent Panel to determine the cause and actions to prevent future events. The final report was released in April 2019. The panel found that in addition to three main immediate causes — low flows, poor water quality and sudden change in temperature — there were contributing factors. Those considered were climatic conditions, hydrology and water management and Menindee Lakes operations. The Panel made 27 recommendations directed at policy makers and basin managers.[105]

3.6.5 Murray-Darling Basin Water Markets Inquiry-Interim Report

In the wake of concern about the condition of the river system and the criticism of water trading, the Australian Competition and Consumer Commission (ACCC) produced a report in July, 2020 which pointed to numerous problems with the water markets system, offered a few minor reforms, and recommended continued use of the markets.[106]

99 Murray-Darling Basin Authority (2019) *Response to Recent Fish Death Events: Recommended Action Plan* (Report for Australian Government Minister for Agriculture and Water Resources).

100 Australian Academy of Science (2019) *Investigation of the Causes of Mass Fish Kills in the Menindee Region NSW over the Summer of 2018 - 2019* (Report into Mass Fish Kills in the Menindee Region NSW).

101 Ibid.

102 Ibid.

103 Ibid.

104 Ibid.

105 Murray-Darling Basin Authority (2019) *Snapshot: Independent Assessment of the 2018-19 Fish Deaths in the Lower Darling* (Report).

106 Australian Competition and Consumer Commission (ACCC) (2020) *Murray-Darling Basin Water Markets Inquiry-Interim report.*

4. THE RIVER TODAY AND IN THE PAST

Darling River near Steamers Point, Wilcannia. 25 March 2019.

4.1 Introduction and Summary of Section

Only by acknowledging how the river used to be – in the short term, via the memories of people alive today, and over the longer term, via First Nations peoples' stories and early written records – can we truly appreciate how the river has been changed, and how much has been lost. This is important because these memories and records of how the river used to be, can help us understand some of what needs to be done to bring back a healthy, functioning river system.

The problem of forgetting past natural abundance, or of new generations not knowing about it, is known as 'shifting baseline syndrome', an idea coined in 1995 by Daniel Pauly at the University of British Columbia in Canada, but which is only slowly being backed up with evidence.[107] It is only by remembering the past that we can demand restoration, as noted by social ecologist and commentator, George Monbiot:

> "We have a fatal weakness: a failure to perceive incremental change. As natural systems shift from one state to another, we almost immediately forget what we have lost. … When our memories are wiped as clean as the land, we fail to demand its restoration. ... Remembering is a radical act."[108]

The testimonies given by people who participated in the Citizens' Inquiry shared common sentiments. **When people spoke about *how the river used to be*, most shared the same phrases and descriptions: river water used to be clear, safe to drink, the main form of recreation for their communities; people used to fish, yabby, swim, camp and spend time with family and friends, there was always water in the big waterholes, even in the worst droughts. The wetlands, the lakes, the rivers, were abundant with wildlife.**

When people spoke about how the river is now, a majority of participants spoke about the river in the past tense, how they can no longer spend time at the river because of the smell of dead animals, the lack of water or the presence of small pools of stagnant water. All agreed that the extent of devastation of life along the river is unprecedented. Most participants indicated that life is always tough during a drought, but they did not believe the current drought was 'natural' rather, it is human engineered. Everyone from Indigenous Elders to elderly members of non-indigenous communities said they had never seen the river like this, in any of the worst droughts, ever.

A reminder about our approach in this report: The methodology used in this report is to reproduce direct quotations from the testimonies given by Inquiry participants rather than to paraphrase what we were told. All Inquiry participants are treated as experts of their own lived experience. This section shares direct statements from people's testimonies which are relevant to the past and current state of the Barka/Darling River system.

107 Vaughan, Adam (2019) 'Young People Can't Remember How Much More Wildlife There Used to Be' *New Scientist* (Article) <https://www.newscientist.com/article/2226898-young-people-cant-remember-how-much-more-wildlife-there-used-to-be/>.

108 Monbiot, George (2018) 'In Memoriam' *Monbiot* (Article) https://www.monbiot.com/2018/07/02/in-memoriam/>.

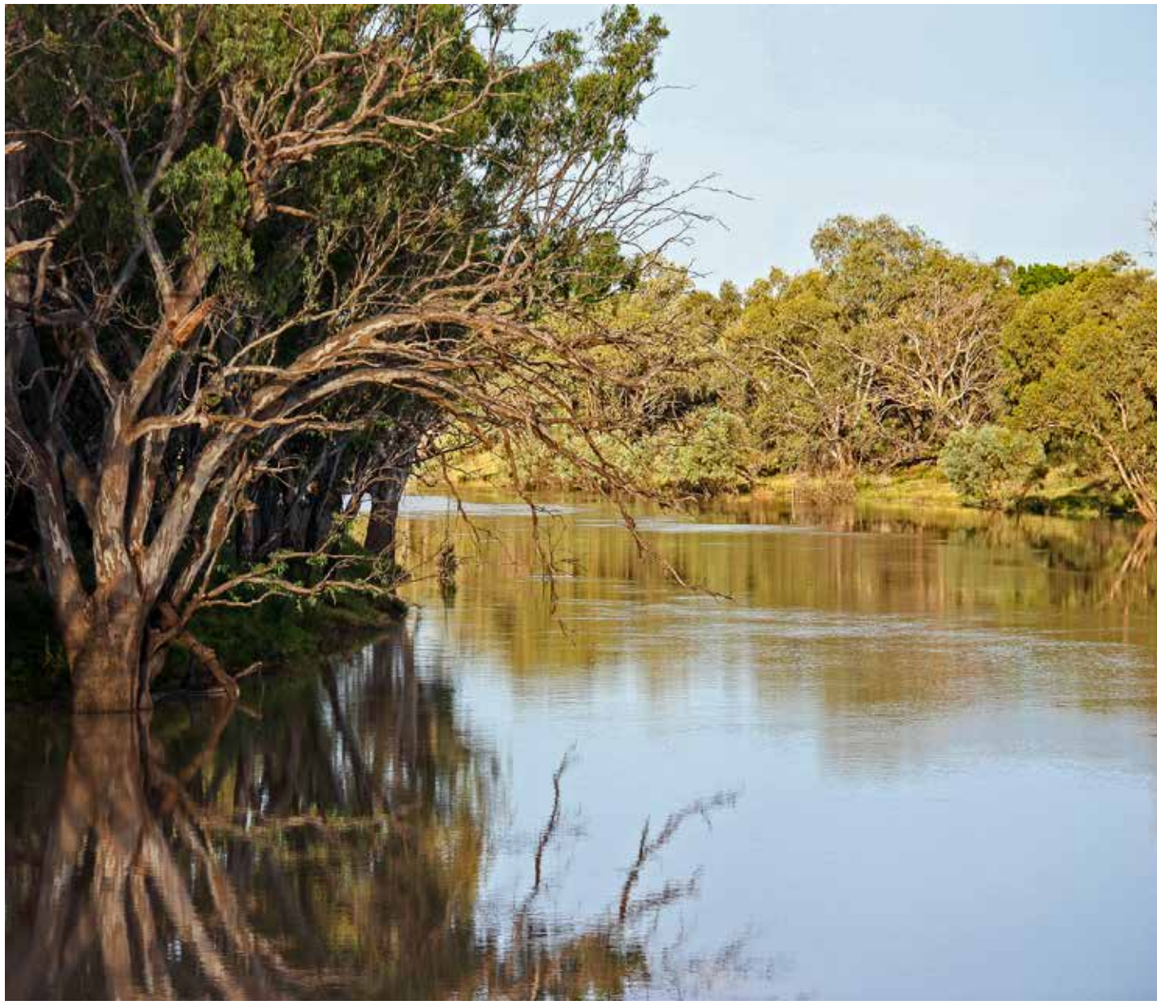
4.2 How the river used to be

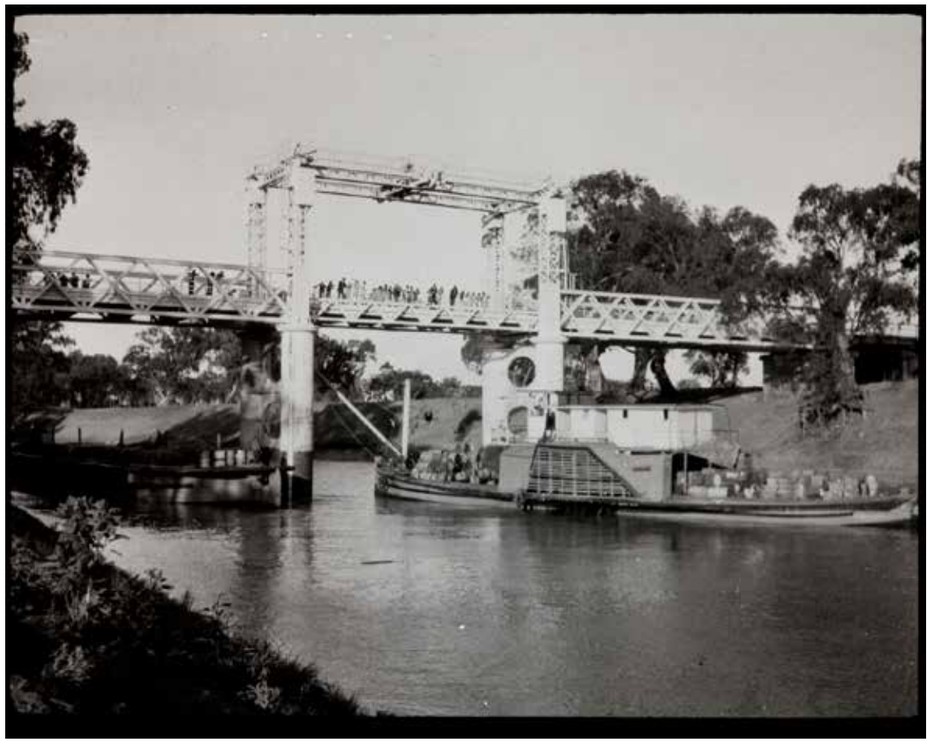
SUMMARY

All participants in the Inquiry shared personal stories about how important the Barka/Darling River, the Menindee Lakes, and or other connected waterways are to their lives. A majority of people spoke about the river as one of the most important places in their lives, for family and community gatherings, cultural connections, recreation and happiness. The Tribunal Panel were very aware of the emotion in the room, as people shared their stories. This emotion is hard to capture in a dry report, written in black and white.

We urge people to watch the videos from the Inquiry, to fully understand the depth of love and care that local people have for the Barka/Darling River and Menindee Lakes – www.tribunal.org.au

Below: the Barka / Darling River at Bourke in 2010. Photo by Tim J Keegan licenced under CC BY-SA 2.0.





Above and below: Colonial use of the Barka/Darling River, for recreation and commerce, in the 1930s. From the collection "Wilcannia, 1935-1937 / photographed by Rev. Edward ("Ted") Alexander Roberts."

Images from Mitchell Library, State Library of New South Wales

COMMUNITY COMMENTS

HOW THE RIVER USED TO BE

"We yabbied, we fished, we had many a picnic on the Darling River. You can't now. It's just a green mass of … well, if there is water in the puddles it's just murky water."

— Sandra Gregg, Mildura

"I remember when the river was clear, when you could see fish and you could fish and eat what you caught. These days I don't drink anything unless its boiled, even the stuff that comes out of our taps."

— Susan Nichols, Wentworth

"We'd run that fast down to the weir in Wilcannia. We'd jump in … and we'd float right down under the bridge. **We would swim under there and have a play around in the water there for an hour long and you could actually see through the water, we'd be drinking the water as we were swimming. We could see the fish floating around, you could see the bottom of the river. That's how clear it was back in those days**. … Many years later, as years went by, we could see how it got darker and darker and darker, muddier. … It's wrong that you can't drink that clean clear fresh water that we drank when we were kids."

— Clair Bates, Wentworth

"I can't remember when I couldn't swim in the river. It's just been a part of my life and we used to go down to the Deton Sandbar and swim there. … My father used to fish using a homemade spinner, dragged behind a boat on the Murray and they used to row in those days and the waters were clear. I can remember rowing the boat while my father would encourage me to stay at a constant speed. Many a good-sized cod were caught this way. Freshwater crayfish were also harvested. … There was always a line in the river for a perch or redfin when we were on the rivers camping. In the 1960s I can remember swimming in the Murray when it was still clear. This was pre-carp, 1962, you could see the snags and rock ledges 16 feet down to the bottom. … I didn't think about it then. It was just a way of life. We don't go camping on the Darling now. All you'll find is stagnant water."

— Ron Perry, Mildura

"I grew up for the better part of my life in Mildura and spent many years camping along the Darling at a friend's shack, just out the back of Wentworth. So I have some history of swimming, boating, fishing and mucking around in the clear waters of the Darling."

— Jane MacAllister, Mildura

"I have really fond memories of camping near Wilcannia in 1977 with the Italian side of my family. There was probably 40 of us in caravans and tents as the Darling River was coming out of flood and there was cod and perch and catfish. What was quite amazing was the size of the blue yabbies. I'm just reflecting on what it looks like now, which is green water in holes. It hasn't discharged into the Murray properly since they drained the lakes for a pipeline."

— Jason Modica, Mildura

"When I was a kid you could go to the junction (of the Darling and the Murray Rivers) and you'd see this amazing creamy milky white water swirling into the grey-green. This is the clear stuff swirling into the Murray. It was a defined confluence that was kind of cool. It was living off its own accord and off its own pulse and that's gone."

— Jason Modica, Mildura

"I'm 75 years old and I've never seen anything like this, but I've seen this coming probably ten years. …. I was born and bred on the Wimmera River down near Horsham, a little place called Quantong, a fair while ago and in my childhood, it was a paradise. It was a typical natural river and as soon as I could tear myself away from Mum's apron strings, I was on the river pretty well all the time, apart from a little bit of school. It was a beautiful place, finished up in the two big lakes at Albacutya and Hindmarsh. ... The Darling River is, and was, probably one of the most beautiful natural rivers you'd ever come across. Sitting on the Darling of a night is something to behold."

— Howard Jones, Mildura

"I was born in Broken Hill on my mother's land, grew up on her father's land in Wilcannia, but the river back then was totally different because we used to play in the river, chuck water up on the steep banks and we'd slide down the banks and into the river, it was just absolute fun and a lot of the clay was all white, so pure. But today … the mud is absolutely putrid and toxic – why did that happen?"

— Graham Clarke, Wentworth

"Growing up as a kid on and around the Darling River there was always water. You'd get a dry and it'd go very low but the river was never, never in the situation that it's in now."

— Graham Clarke, Wentworth

"I travelled up and down the Darling River, right up into Queensland, for 30 years. I watched the Darling River go through droughts, and now, terrible conditions, abuse of the river. … **We used to knock off on a weekend, when we were [transporting] grain, and we used to go out to these little underground water spas, beautiful spas. We used to hop in them all the time and we'd go and catch yabbies for a feed at night. Go out there now and see – in the last 10 years you'll not do any of that anymore. There's no underground water coming up**."

— Robert Pearce, Wentworth

"My family, we used to go up camping on the Darling River and so from a very young age my father taught me about the love and respect of the river, so it's just in my heart, the river. And some of our most beautiful times we spent there like fishing and catching yabbies and waking up in the morning and hearing the kookaburras and just sitting around a fire and having that beautiful time together. … We continued that for a long while, and when my children came along we used to take our children camping along the river as well. … and you know, my neighbours and friends, everyone would go up to the river camping. … I've had this incredible connection all of my life and so to see what's been happening, just watching steadily over the last few years, like on a personal level, has just absolutely broken my heart."

— Joanie Sanderson, Broken Hill

"I remember hearing stories of my father and uncle at low times, when the rivers were quite low, actually being out in the riverbed joining waterholes together so that they could pump that water to grow veg and even at that low, low level that water was of good enough quality that they could still farm on it."

— Paul D'Ettorre, from Menindee

"My husband and I used to go out to the lake, we had horses and carts and we used to be camped out at the lake. At [Pamamaroo]. My husband used to go on quite a few treks down the river and there was always plenty of drinking water available in the dams and and creeks etc etc. That's all basically gone. There was always feed available as you're travelling along. I used to go from here down as far as down as Wentworth with the horses etc. The great situation was one... we've brought a lot of wealth into the town and to see that now gone, it's just demoralising."

— Moya Reid, Menindee Lakes

Left: "Yabby with babies". Photo by Callie Nickolai, licenced under CC BY-NC 2.0. **Top right**: Black Box, (*Eucalyptus largiflorens*) and **above**: Belah, (*Casuarina pauper*), cone at the Kinchega National Park, NSW, Australia, November 2014. Photos by John Tann, licenced under CC BY 2.0. **Below**: White-necked Herons waiting for a feed on the Darling (2010). Photo by Darryl Kirby, licenced under CC BY-NC-SA 2.0.

"**I can remember back in the mid 50s when we used to go to the river every weekend. When the river was low, we went up there camping one weekend. And I can remember this vividly and I was about 8 years old – the water was up to my waist at the time. I could see my toes in the bottom of the water and yabbies crawling around the bottom of it. The water was so clear and clean at that time if you wanted a cup of tea … you could drink it straight out of the river or boil the billy or whatever you wanted to do. It was absolutely beautiful water**."

— Ray Johnston, Broken Hill.

"I was born and raised in Wilcannia, a descendant from the Barkandji tribe. In the earlier days, I lived on the river, on the Barka. In a tin humpy with my family. **Life was great, you know. Getting up in the morning you'd smell the smoke from all the camps along the river, and you'd see the families going down and getting their water from the river. … Life on the river was … our playground. So you know, any event that took place in our communities, it was always held on the river. Kids learn to swim. We sat around campfires with old people and learnt our cultural side of life. Listen to Dreamtime stories, and how the river was created**. Then you know, throughout life, you take the river for granted. You think it's something that's going to be there forever. … We thought it as the best thing, to stand in the middle of the river, the middle of the bridge, looking down at the fish. We don't see catfish in our river anymore. But we would look down and we'd see the catfish building their nests. … Our parents or the elders will be sitting down there fishing and you'd go through the bullrushes and you'd cut them and you'd break them open, and let them blow in the breeze. You don't see those anymore."

— Virgean Wilson, Barkandji, Menindee

"I was born here and it's a beautiful place. I used to look over the old bridge and see colourful fishes. I seen it with me own eyes today and there's nothing but a big sandpit. … I've been fighting for the river, for my people, for 24/25 years. Apparently now we got our land back, but what's the good of our land if there's no water?"

— Cyril Hunter, Barkandji, Wilcannia

"I grew up on the Barka, that was our playground every weekend. We used to love to go and sit down on the water and watch the river flow; catch fish, cook a Johnny cake. But our elders can't do that now … they get put in hospital and they're living on *packaged food*. It's wrong in so many ways."

— Alana Harris, Wilcannia

"The boat ramp down at Bourke, we could never touch the bottom there [river was so deep]. Now you can just walk straight across it and it's heart breaking…. We don't see the river as a commodity; it was a place to make memories, to take kids down and teach them to fish the traditional way."

— Will Middleton, Wilcannia

"We've taken families, five or six families all together – kids, dogs – to the river to spend a day fishing and in the night we'd learn a lot of stuff from there, like the discipline from The Dreamtime stories. … It's really difficult now to pass on these skills [without the river]."

— Eddy Harris, Wilcannia

"My father has a farm along the Darling River where he used to grow his grapevines. He was an Italian man so he had every fruit tree possible and everything else. When I was young if we wanted to go camping, fishing or anything like that, we used to go down to Menindee, pitch a tent, free camping along the lakes. Menindee, the lakes, is a good recreation area for Broken Hill because we don't actually have anything local."

— Karen di Franceschi, Broken Hill

"Pelicans at Pamamaroo Lake". Photo by David Molloy, licenced under CC BY 2.0.

HOW MENINDEE LAKES USED TO BE

"I'm about to turn 65 this year and during my life here, Menindee was always the mecca, known as the Kakadu of the south. Everyone's enjoyed social activities on the lakes whether it be fishing, boating, yabbying. Everyone's had a great life and then in the last 15 years it's just subsided."

— John Coombe, Menindee.

"A lot of people they talk about the Menindee Lake system, and they reckon it's a man-made system. It's not. There are man-made structures put on the lake to control the water and to get water from one lake into another. On that lake and Lake Tandou, there is lungfish what went back a long time ago. And so it proved water was there, the fish lived in Tandou a long time. I don't know how long ago. I haven't got a good education. But then at Lake Menindee we're getting carbon dates there what go back 45,000, right. So that means **Aboriginal people and Barkandji people, we was here for a long time and we got back further than that. … The cultural significance to me as an Aboriginal person is there.** … I'm a Barka, I'm a Darling River black fella so that is my connection there. But then let's go again to the white fellas' history. You know we're not only just talking about black fellas, we're talking about white fellas too. You get Sturt, Burke and Wills you name them, they was through our country. So there is history here and the significance of the Barka is not only my people, its everyone, there. And I think, what we got, we got dreaming stories along the Barka, things were created and things was put up in the sky and all that. But it's still there and that history, the black fellas' history and the white fellas' history should be enough to protect the Barka. And I think if we're gonna protect the Barka, we must all stand together as one and if you white fellas come to the Barka you say I've been at the Barka, or I come from the Barka. This is your river, we don't own it, it owns us."

— Badger Bates, Wentworth

"I remember visiting the lakes and we were pulling the hoop nets out, they were overflowing with yabbies. And there were stacks of people there catching yabbies. And that was only just one of the things we did - dad liked it so much - that's why we were living there. But when you used to get big waves and everything in Menindee lakes, you could walk along the beach and you'd be picking up yabbies that got caught in the waves and that wash up on the shore. So you didn't even need a net, it was incredible! And the fish, we had perch, black brim … And I know the river is important too. Even when we grew up as teenagers, that was our entertainment sort of area. You came up with your mates - all right we mucked up, we weren't angels - but you kept on the river. But I'd learnt so much as a young lad. I can remember getting in trouble, getting whacked for going walkabout, and looking at things. And the things that you learnt about the river."

— Steven Cicak, Menindee

"Going back in the 60s, 70s and 80s and even the early 90s, the community [at Sunset Strip, Menindee] was probably 60-70 people who lived there permanently. **Back in the old days when the river was flowing all the time, we sourced our water from the Darling River. We used to shower in muddy water up there. That wasn't a problem because it was so fresh and it was so nice**. On the weekend, [the Strip] would expand – there'd be speed boats on the lakes, people skiing, kids everywhere. It was a getaway from Broken Hill after a Saturday afternoon or a Friday afternoon so everyone would converge up to Sunset Strip or go and camp at Lake Pamamaroo, and you just cannot imagine, you know, the community. Everyone helped each other, it was such a lovely community and since '98 after the millennium drought when the lakes first dried up, it started to go backwards."

— John Ford, Broken Hill

"You'd come to the outskirts of Menindee and you recognise that you're getting closer because you'd see the grapevines and all the other irrigation and things you know growing, and life's good. Because you know you've got water and things growing and people are happy. But then you know throughout your life then you see the changes."

— Virgean Wilson, Menindee

"Like my friend over there, we were both born on this river around the same time and both our families were drovers. Beryl Carmichael and myself, we used to be with those droving teams. **You could walk down to a waterhole in this Darling River when it was at its worst back then. That water was crystal clear. You could fill your water bag up, have a drink of water, water your dogs, boil you billy - do what you wanted. You can see them big fish still swimming around in it.** Now this river is still running, but it's running green with pollution. And they're telling you on the radios and through the media don't drink it, don't shower in it, don't clean your teeth in it and most of all, don't let your dog swim in it. It is that polluted."

— Ross Files, Menindee

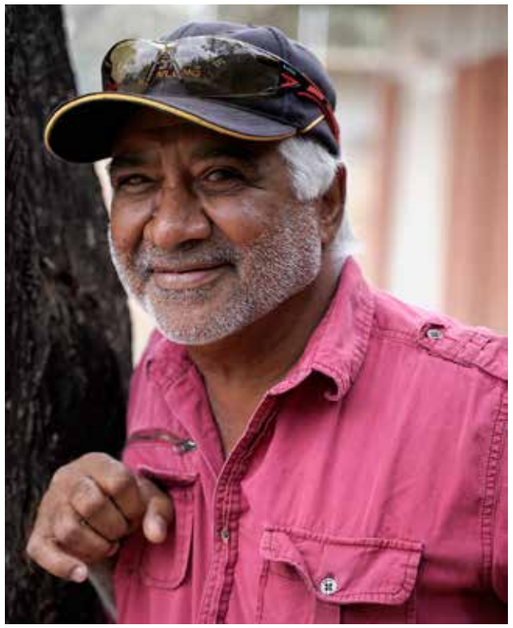
Wetland in the Murray Darling Basin (2010). Image by John Williams, via Water Alternatives, licenced under CC BY-NC 2.0

"We used to swim in the river. We got food from the river. We drank the water from the river. There used to be reeds that grew along the river and we actually used to strip them and make them into bread. We were forever on the river. My cultural upbringing was always being on the river. But there's nothing growing down there now. Nothing."

— Lyiata Ballangarry, Bourke

"I learnt to swim up where the Barwon meets the Darling. … You don't see any ibises along the River anymore. I used to set traps there when I was a kid to feed the people. And build those rocks and all that. Bad not to see the ibises as much along the river, and don't see the old Kingfisher much. I used to fish on the river and you'd see Kingfisher go and get bugs off the water. And the catfish - where's the catfish and all that gone? … I used to love walking along the river ... You'd go along the river, sit down on your own. I seen turtles come out the river and lay eggs. … I'd walk along the river and see the cod swimming. When I lived in Wilcannia years ago and when the water was clear, we used to be able to see fish swimming there below the weir. Everyone just used to go swimming and moving the rocks around catching fish."

— Ronald Dutton, Menindee (pictured)



BARWON AND NAMOI RIVERS

"My nan told me as a little girl, 'It is our responsibilities to look after our rivers, our land and animals. Take what you need, but don't get greedy.' These stories were told to me - walking or sitting by the two mighty Barwon and Namoi rivers. My Nan worked two jobs and still couldn't afford to feed us all. But we always had the river to rely on. We fed on yellow-belly cod and yabbies. We learned how to live and be happy by those rivers. The rivers fed us when our bellies were empty. It cooled us when we were hot. It kept us together as healthy, happy loving families. I think the greed and corruption are the number one causes of our water problems in our communities, and along our rivers today. When you have water ministers not doing their jobs, changing laws to suit a few, allowing them to divert entire rivers, and the people that'll live along these rivers are now suffering the consequences of bad decisions and bad choices."

— Vanessa Hickey, Walgett

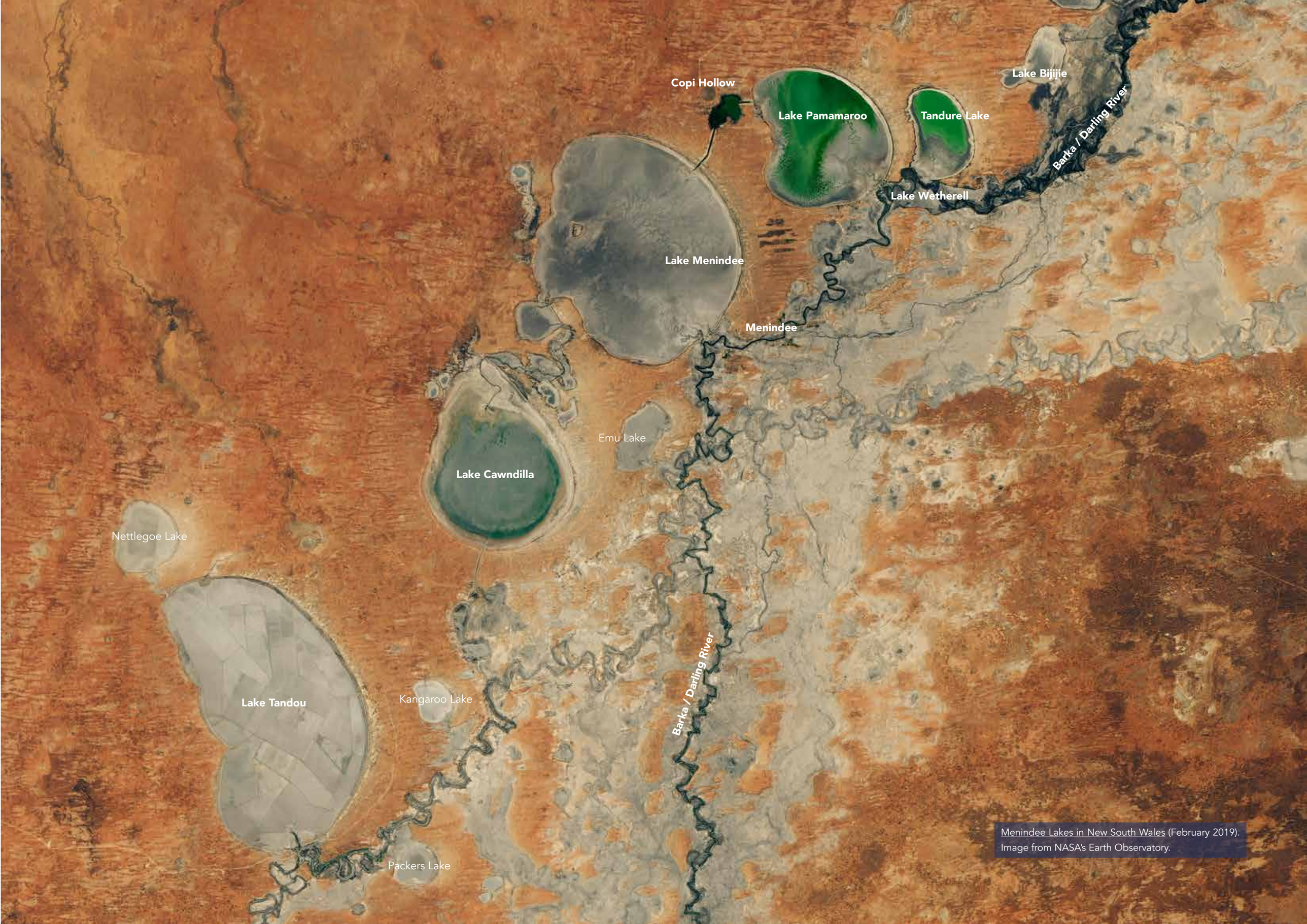
"As kids, we used to ride our horses into the river. There was reeds, there was fish (you could see them). There is none of that now."

— Coleen Edgar, Walgett

"Our river system on the Barka the [Kalgawa] and the [Beery] always had water. Even when [the river] dried up they left waterholes. … And we'd stir them waterholes, we'd stir them waterholes up, that's how we caught our fish. The fish come for air we'd knock them dead because that's how we caught our fish."

— Glenn Boney, Brewarrina

Left: Ronald Dutton, Menindee, 23 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka



Menindee Lakes in New South Wales (February 2019). Image from NASA's Earth Observatory.

"The [Barka] Darling River at Bourke in flood, March 2012". Photo by Tim J Keegan licenced under CC BY-SA 2.0.

4.3 How the river is now

SUMMARY

All participants in the Inquiry shared personal stories about the health of the river now, often with a focus on their own local community. Most people spoke about how the river had deteriorated in the past few years and many spoke about the river in the past tense, referring to it as being 'dead'. Common themes people talked about included: how much the river had changed; how there was no water where water used to be, even in bad droughts; how any water that is left is green, stagnant, smelly and dead; the volume of dead animals near the river and lakes; the disappearance of wildlife from their local ecosystems; the terrible plight of the remaining animals who are dependent on the water and habitats in and around the river and lakes; the complete lack of community recreation with the death of their river and lake system and so on.

As noted in the introduction to sub-section 4.2 "How the River Used to Be", the Tribunal Panel was very aware of how emotionally difficult it was for people to share their stories and their sadness and grief about the current state of the river and lakes. Many people broke down and cried, others were very (very) angry about the state of the river and the Menindee Lakes. Others were traumatised by the condition of the living world around them and the situation they found themselves in – with no safe water to drink, no help from the government - and they seemed to be in shock about the situation. These emotions are hard to capture in a dry report, written in black and white. We urge people to watch the videos from the Inquiry, to fully understand the depth of love and care local people have for the Barka/Darling River and Menindee Lakes – www.tribunal.org.au

Cattle grazing in the dry lake bed at Lake Menindee, 24 March 2019

COMMUNITY COMMENTS

HOW THE RIVER IS NOW

"We don't go camping on the Darling now. All you'll find is stagnant water."

— Ron Perry, Mildura

"I get very, very upset when I see the river now. It makes your gut twist, you know. And it makes me ashamed of being a white Australian."

— Barbara Webster, Broken Hill

"…you can't swim in it. No you can't do much. I went down there yesterday and the smell was so bad. Yeah I saw these poor old mussels these big fellows all just sitting there dead, picked it up and somebody was in there but he was dead. No one eat him. It was a little bit sad."

— Tia Whyman, Wilcannia

"Driving from Menindee to Broken Hill is just dead animals on the road everywhere. Sheep are dying but the government is blaming it on evaporation and drought but that's not the truth. It's water mismanagement… We might be a tiny town, but we're all suffering you know. **People don't even go fishing or yabbying anymore. There's no more water sports. I've never seen anything so devastating in all my life. I've lived here for 56 years and it's just tragic**. …"

— Reena Lombardo, Menindee

"I have never seen it so bad in my 72 years of life… I'm seeing a dead river. … Before it stopped you could always go down and play in the water, play on the sand. I wouldn't dare go down there [to the river] today."

— David William Clarke, Wilcannia

"Nothing will survive here today. We've got kangaroos dropping dead at the lip of the water; there's no feed out in the paddocks we've got nothing to offer our grandkids, can't take them on the river."

— Cyril Hunter, Wilcannia

"I was out at Louth recently, having not been there for 26 years. The landscape itself is a moonscape. There is a very fine clay dust. Even if there is a hell of a lot of water over the next few months, it will not restore the damage that has been done. We are looking at climate change in action."

— Jane MacAllister, Mildura

"For me, we're at a situation where a very unique, wonderfully amazing, supportive river that's been very fruitful for anybody living along it, from the Indigenous people through to the original station owners has really, in less than 20 years, been made into just an open channel with total disregard for anyone downstream."

— Jason Modica, Mildura

"It hurts very much to look at the river as it is now. My kids grew up there. They all grown up and got families of their own. And my mum and dad lived there all their life til they died. And my grandparents. Everything they taught us, they taught us on the riverbank and now that's not happening anymore. It's terrible. … I get stressed you know, about how much the river means to me. I grew up on the river, it was like our mum and dad, you know. The river's like your mum. The river was our life, our blood. We learnt to swim in the river. Took all our young siblings, younger than us to swim there and fish. School holidays we used to go up river and sleep on the riverbank for weeks and weeks on school holidays. That's not happening anymore now. We used to go in horse and carts. My mum and dad never had cars. Was taught to catch your own fish when we was knee-high to a grasshopper – we'd go fishing, take home heaps of fish you know, to mum and dad."

— Leila Webster, Broken Hill.

"In 2016 there was a flood, and there was 110,000 gigs of water going past the Wentworth Weir. But in 1956 the water going through was 360,000 gigs. So when you talk about the entity that is the Murray-Darling Basin and the ephemeral nature of the rivers, **I don't think people really understand the reach that it had and the places that the water went to.** … There's a simplicity in understanding that it's been changed so dramatically that we don't know the full effect we're having on it, particularly with those numbers, they're dramatic volumes of water."

— Jason Modica, Mildura

"I won't even have a cup of tea [with the local water] when I go to Wilcannia. I just use bottled water all the time. It's wrong that you can't drink the water. … It's sad to go home and see the dead animals .. all the skeletons …"

— Clair Bates, Wentworth

"Grandfather, his name's Charlie Edwards. They come around from Cunnamulla area. And he's lived in Bourke most of his life and he's never seen the river like that and he's late 70s. The boat ramp down in Bourke, we could never touch the bottom there. You'd never touch it. Now you can just walk straight across it. And it's heartbreaking. It's real. It's draining the community spiritually and culturally, you know."

— Will Middleton, Wilcannia

A decaying kangaroo at Copi Hollow, near Menindee. 24 March, 2019.

"Growing up as a kid on and around the Darling River there was always water. You'd get a dry and it'd go very low but the river was never, never in the situation that it's in now. … In my lifetime, I've seen a decline … what happened to the wombats? They disappeared from the area. I remember when I was younger I've seen koala bears out near the Lake Victoria area. I've seen the budgerigars disappear, the red robins disappear, a lot of blue wrens disappear. Wild flowers disappear, a lot of the Mulga and this is only my lifetime. The plants and the animals have got no say on the matter, what's happening with these river systems or in the outback here with tree clearing. They've got no rights whatsoever, the plants and the animals. So when I speak, I'm not speaking just on behalf of my people … but also on behalf of the animals and plants cos they've a right too."

— Graham Clarke, Wentworth

George Buckwell, Wentworth. 20 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"People's concerns have got deeper, because as said, it was always good water in the Darling. And then you see it slowly turning into a muddy colour, and it's just the way it's been handled."

— George Buckwell, Wentworth

"I stopped here [Wilcannia] because of the river. I passed by in 2007, on my way to White Cliffs. And I thought, "is this the Darling?" I couldn't believe it. Because I had a notion of the Darling River being the mighty, most important, river in Australia. And there was puddles of green and blue algae, similar to what we are seeing now."

— Nieves Rivera, Wilcannia

"The sulphur-crested cockatoos, the galahs, the kookaburras, they're all disappearing. You won't find an emu up there at the moment. They're all dead because there's no water for them. There's a leaky pipe [at my place] and it's a little pool of water two inches deep. At night time there's two or three hundred kangaroos and even some wild goats out there, coming in to feed, to get a drink. It's just so sad, what this government have allowed to happen to the river."

— John Ford, Broken Hill

"I've seen massive kangaroo die-offs that have been occurring … I've estimated that in Western NSW alone we've lost about 3 million roos due to die off. Those die-offs are related to climate and climate change, and over the last few years with the declining and poor water quality in the river systems. I mean it's obvious that animals die when there's no water but what about the quality of the water that's left?"

— Greg Curran (veterinarian and epidemiologist), Broken Hill

"You just need to see the condition that river's in, because I believe a lot of people just don't understand and don't realise. You could actually drive into that river and drive the riverbed in a car. It's that bad. It is seriously that bad. There are pools of water there that are green, like murky green. It's not usable. You wouldn't even feed the cows or your livestock with it. You just wouldn't do it. …. The Darling River is such a lifeline and it should get back to being that lifeline. It's a main waterway. It's a huge river. I myself was shocked to see how deep that river was in places. When you see a river empty you can really appreciate [just how deep it is]."

— Melisa Hederics, Wentworth

The dry Barka / Darling River at Wilcannia. March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"In terms of epidemiology, when you're seeing big blue-green algal blooms it means that there's a very high level of organic material in the water and that represents dysfunction. The river isn't working as it should when you've got that amount of basically loose organic matter."

— Greg Curran, Broken Hill

"You can't do anything with this water they're putting back into the river, because it's poison. You can't drink it. You can't wash in it. You can't do anything with it. The stock can't even drink it now at the moment and I've never seen blue-green algae in the river in my whole entire life until they started doing that, and we used to every weekend."

— Ray Johnston, Broken Hill.

"The whole system's broken. … One of the things we saw this morning was a big old man kangaroo under a tree … normally he wouldn't be anywhere near us, but he couldn't move. … On the other side of the river was a young [roo] and a young baby and they were drinking the water coz they had nothing else. You could see they were dying… I've been travelling here for 25 years, counting all the different animals. … when I came up [this time]) I saw four crows, two goats and one sheep and that was it for the whole trip which is absolutely amazing. I've never seen it so bad. [Normally we'd sit on the river] and watch blackhawks and whistling kites, there was 20 or 30 of them up and down the river feeding on fish. This morning there weren't any birds at all. I couldn't even hear the sparrows, the mud larks, anything. Everything's just dead."

— Curt Mountain, Menindee

"...we've got all these animals dying out…you're lucky to hear a frog … all these little amphibians and all these little, all these other little animals they're all going to be extinct one day. You know why? It's not because there's a drought and it's a natural thing. It is because of greed and it's because of people who don't allow water to come down because they want to sell it off ."

— Desmond Ord (pictured), Bourke

"When we reflect about our growing up on the river, it's like well, it's never gonna be like that again. … My grandchildren can never go and have that opportunity like I did. Because what is there? There's nothing. Like there's significant spots along the river that we identified, were told about by our elders, but there's no water there now to identify those areas. … **What's happened isn't 'nothing'– it's a national disaster."**

— Virgean Wilson, Menindee

"What's a river people without a river? What's the community without life in it? It's just a bad reflection on the white fella."

— Greg Cleary, Wilcannia

"Barkandji means we are people that belong to the river; it really is our mother and to see what this country is doing to our river and … mother – it's criminal. They're killing our mother."

— Murray Butcher, Wilcannia

"I understand and know that carp is a problem, but irrigation is also a problem. The river does not belong to anybody, it belongs to the country and it belongs to the whole community. I think it's so incredibly sad to see the kangaroos looking for water. There are small patches of water in the river that are going green, most of them. There's a lot of rubbish in the river. I also believe that, because there's so much irrigation, that the river seems to be silting."

— Coleen Edgar, Walgett

Desmond Ord, Bourke. 27 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"There's dead kangaroos scattered on the riverbank next to the hospital, out the back of the house, near the golf club; there's dead kangaroos everywhere. … Everything's freaking dying. There's no water. It's not rocket science, we need water. If there's no water, there's no insects, there's no birds, there's no fish, there's no mammals and there's no us. … We're all worn down with this. People are just so angry."

— Louise Moriarty, Wilcannia

Fallen kangaroo at Steamers Point, near Wilcannia

"It's heartbreaking when you see the river the way it is, you know, when you see what happens, and the lies that are told, and the justifications that are made."

— Fleur Thompson, Bourke

"I live near the Murray. But we go camping all the time and we've seen the disgusting water along the Darling. It's just disgusting and I've got a dog that fetches mussels. No one taught him to do it, he just duck dives and brings out mussels. Anyway, he doesn't do that anymore, he just – it's all slime – and just really weird stuff on the water and he doesn't duck dive anymore I've noticed. And he itches. He doesn't do it in the Murray, but he does in the Darling."

— Sophie Lockett, Mildura

"Last year when they had a rally up at Wilcannia, I went up there with a couple of my friends and we went down into the dry riverbed and the whole town went down there and I have never felt grief like it – ever. Like it was just this mass grief."

— Joanie Sanderson, Broken Hill

"We're very angry. We're very confused as to how this can happen, so we are appreciative of your time."

— Joanie Sanderson, Broken Hill

"I've been flying out here since 1977 and every lake in this whole district, every waterhole, was full of water. I haven't seen it since."

— Don Crittenden (pilot), Broken Hill

"I blame the cotton. I blame the cotton. We had droughts, but not like this you know. The drought didn't use to affect the river. I'm 66 years of age and I never seen the river ever, ever like this. And I blame the cotton. They took our water out of the river. … A lot of people talking about going up there to blow it up. They'll never do that. But people say it."

— Barbara Webster, Broken Hill

"There were some people here [in Bourke] and they've been watching you know as the river goes up and down over time, and there's this structure that would appear every now and then when the water is low. So for years we've been thinking ... 'Oh the river boat, it's the riverboat wreck.' Well the river's low enough now that the structure is clearly not a river boat. It is actually someone's trailer that's been dumped. It's just an old trailer that's been pushed into the river. *{But in all of your life you never knew what it was?}* No, that's how low the water is."

— Fleur Thompson, Bourke

"There was always a lot of water back then, because the paddle steamers went up the river all the way up to Walgett. And nobody ever thought the river would ever dry up actually. But since, you know, the introduction of cotton, which is a major factor in in the water usage and in the loss of water in our River, it's declined over the over the many years. And the only time we've ever seen water was whenever it flooded and I think the biggest flood was in '74. And then they had one again in 2012 and there was a lot of water that came down. But since then we've just had no water at all and most of the water doesn't even come past Moree now."

Lyiatta Ballangarry, Bourke"The rivers dried up so much that my brother and I went out the river last fortnight and we found a tree, a scarred tree, we found the scarred trees and actually a coffin tree, it fell into the river and since the water's gone down we found it now. We saw the sad state of the mussels - they were trying to reach back to the water and we just cried to watch them go back into the water and we were actually picking them up and throwing them back into the deep part. But one day they're not going to, there might not be any water there, and they will die. Even in other droughts the river has never looked like this. Cause we know it goes up and down. But never as low as this … to me I've never ever seen the river in this state."

— Lyiata Ballangarry, Bourke

Glen Green, Walgett. 28 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"I've lived here 51 years and I never ever seen the Namoi bone dry like that or the Barwon. Yeah, there was always waterholes left. No fish, fishes are gone. So I don't know how long it'll take fish n that to get back into the river, and yeah with the water like it is, we're just drinking bore water at the moment."

— Glen Green (pictured), Walgett

"I'm 75 years of age. I was actually born in Sydney, but I came out here as an Aboriginal welfare officer in 1967 and married a local Aboriginal girl, and I have Aboriginal children living in the town. … The algae blooms have been around (for a while). But seeing the river now, in this no flow situation, this is the worst I've seen the river."

— Bruce Wilson, Brewarrina

"My name is Harley Hickey. I'm 13 years old. It is sad seeing the rivers with no water in it. I grew up on these river bends around Walgett. Today we have no rivers, what's going on? What is going on? Well the fish are dead. *Why haven't we got water?* Water is there for all of us not just the rich and powerful. If it wasn't for the people around Australia who donated bottled water, we would have nothing to drink. This is my family's country and I see it getting destroyed and I'm too young to understand why this is happening."

— Harley Hickey, Walgett

"I brought my kids up one on the river water. My children are 31 and 32 years old now, so that's how long ago this water was clear and was drinkable. Then when the cotton industry came along … that's when you see the decline in the black bream, in all the fish you caught. You could go on a fishing trip, any day of the week and you'd be guaranteed to catch a yellow-belly. You go now you'll catch a carp, or you'll catch nothing. And that's the same as the Black River, you'd always catch one of those, you don't catch one, you never caught one for years. You're lucky to catch a yellow-nelly now. … I knew the river system was going … when the kingfisher, the bird, stopped swimming in the river to dive down to get fish. He went extinct, longest river system, the one bird that told a story about the river, why he never went back down to the river because they started to poison it."

— Glenn Boney, Brewarrina

"I was born here nearly 55 years ago ... I've just seen such a big deterioration in these rivers around here you know, from when I was a kid ... it just sickens me. Well, you can't really call them rivers because they hardly ever run and the only time they ever run is when you get a big flood."

— Phil O'Connor, Brewarrina

"For the community here, it's been devastation. We're lucky because we have the weir, so we have a good weir pool, so town itself isn't actually short of water but downstream the graziers, they have got very little water and what is there smells dreadful and it's not really suitable for stock, so those people in particular, are really distressed."

— Vivienne Slack Smith, Brewarrina

5. COMMUNITY CONCERNS

Menindee. 23 March 2019

5.1 Introduction and Summary of Section

The Citizens' Inquiry heard 110 people give testimony, across 8 towns. The same issues appeared over and over again in discussions: people were deeply concerned and distressed about the deterioration and collapse of local ecosystems and the horrific loss of wildlife; the lack of safe, clean drinking water; the ongoing loss of First Nations peoples' lands, water, culture and livelihoods; the negative impacts of the dying river system on human mental and physical health; the negative impacts on the social, cultural and economic lives of affected communities; the theft of water by large irrigators and the failure of governments – and allegations of corruption by government - in managing the river system and looking after its people.

Community concerns about the Barka/Darling River and Menindee Lakes are directly quoted in this section of the report, and they are organised under the following headings:

- Lack of water in the river system and the resulting loss of wildlife and ecosystem health
- First Nations peoples are being deprived of access to lands, water and cultural practices
- Human health impacts – absence of safe water for drinking, household use or recreation
- Concerns about there being nothing left for children and future generations
- Concerns about the negative impacts on social and cultural lives of affected communities

A reminder about our approach in this report: The methodology used in this report is to reproduce direct quotations from the testimonies given by Inquiry participants rather than to paraphrase what we were told. All Inquiry participants are treated as experts of their own lived experience. This section shares direct statements from people's testimonies which are relevant to community concerns about the state of the Darling River system.

"Today I'd just like to welcome everyone to the Barkandji land and we're not just here as a one race of people, black or white, we're all here as one people. Because we're all fighting for the same thing - for our river. And I just want to acknowledge all our elders, past and present. Our people have lived on these riverbanks for many generations, and have died here, were massacred here, and have been fighting for this land, for this river, for many years.

"…. I just hope and pray that one day, that someone will listen to us and let that the river start flowing clear again. Thank you."

— Clair Bates

Clair [right] and Jennifer Bates welcome the Citizens' Inquiry panel, guests and community members to Barkandji land. 20 March 2019.

5.2 River system is dying – collapse of natural systems

5.2.1 Lack of water in the river system and lakes

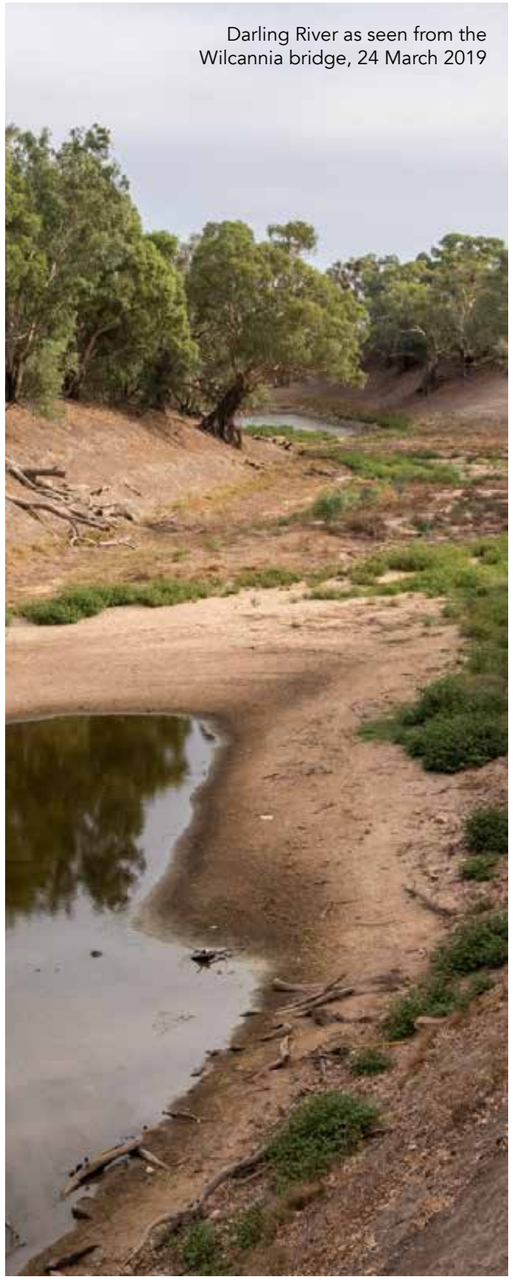
SUMMARY

Participants in the Citizens' Inquiry were all deeply concerned about the lack of water coming into the Barka/Darling River and the Menindee Lakes. Many also expressed sadness and concern for other rivers in the interconnected Murray-Darling Basin system – such as the Barwon, Anabranche, Murrumbidgee, and the Murray. Participants expressed concern about the absence of water in deep waterholes that previously, even in the worst droughts of the past, would normally still have water in them; pollution levels present in remaining water (allegedly from agricultural run-off and chemicals), and the resulting ongoing presence of blue-green algae. Connected to the lack of water and 'death' of the river system, people expressed deep grief and concern about the impacts of the dying ecosystems and dying wildlife.

Participants in the Citizens' Inquiry explained that the Barka/Darling River is not operating as a river, but is now pools of rancid water trapped between town weirs, and stagnant pools along a dry river bed. They say the state of the river indicates that the river system is not being managed correctly and suggest that the environmental flow is insufficient to sustain aquatic life (some of which are listed as endangered species).

A common concern for participants is the catastrophic impact that a river in a low or cease to flow condition, has on down-stream communities, not to mention disturbing the ecological balance of whole districts and accelerating biodiversity loss in favour of advancing an intensive form of food production with enormous associated reliance on water storages and chemical herbicide.

On the face of it, the MDB Plan has, so far, not provided enough flow to protect the environment, while communities dependent on irrigation say it threatens their social and economic future. The reality is that river communities are suffering catastrophic low levels of flow, which amounts to a national emergency. This current state of affairs has elevated the 'no flow' events to a global environmental crisis and heightened the international scrutiny of Australia's efforts to protect its environmental heritage, endangered species, protected wetlands, and cultural significance.



Darling River as seen from the Wilcannia bridge, 24 March 2019

COMMUNITY COMMENTS

LACK OF WATER IN THE RIVER SYSTEM AND LAKES

"The Darling River is dying. It has been remarkably quick compared to the length of her life – progressively during the past 25 or so years, with reprieves here and there. The river is now almost empty. Some weir pools remain with poor water quality not fit to wash in let alone drinking – for humans and animals."

— Larry Webster, Broken Hill

"We've been talking about the river and the water situation for such a long time. We've had fish kills and now … it seems to be at the top of the agenda for everyone. But we've been talking about this for so many years, for such a long time. Now there isn't a drop of water in that river."

— Melisa Hederics, Wentworth

"What's visible from the records that you'd take back 150 years, the record showed that in the past there have been more flows, higher flows and more low-level flows over the consistent period and that's why in times of drought you end up with waterholes and the waters are reasonable. You can still have fish surviving, still have people pumping water from it in more recent times. But in these recent years, the speed with which the river drops as the flow moves through, and the lack of height in the flows; the big flows aren't here anymore. Even the floods we've had, they've only been nine or ten metres. They haven't been 11 or 12 metres, which have flooded right across the plain. That's all changed."

— Paul Brown, Wilcannia

"We're not living in a third world country, it's really, really shocking to think that we could let this happen to our river, and our whole structure. It's not just for human beings, it's animals, it's everything. It's the fundamental side of us, our soul out here."

— Sophie Lockett, Mildura

"I just think it's a criminal act if they're gonna sell our water and take our water from us, what if they could take the air from us? None of us would be breathing because the ones with the money really wouldn't care whether you and I could breathe or not and that's basically what they're doing with the water."

— Joan Stockman, Wentworth

CONCERNS ABOUT THE MURRAY AND MURRUMBIDGEE RIVERS, DUE TO THE CRISIS IN THE DARLING

"As a Murray Darling Basin community member – and a mother, grandmother, Aunty and elder - who lives and breathes the river I am angry, frustrated and appalled at the current state of our wetlands and rivers in the Murray-Darling Basin. … I live on the Murray River near Echuca and what these politicians are doing directly affects me, my community and my part of country. Our rivers are connected, they are not separate. Our rivers rely on each other to be healthy. People of the Murray-Darling Basin are connected through the rivers and wetlands and we say this will stop."

— Tuesday Browell, Broken Hill

"I was walking on the island a few days ago and for the first time I saw that really nasty bright green-blue algae film on the Murray, and that was my first sort of sighting of the surface of the river looking nasty."

— Anne Spudvilas, Wentworth

"I'm also concerned for the Murray River as other people have said, you know, the almond plantations and stuff there, they've been put in without having a permanent water right. What business goes to that expense to put in that, and industrial-sized plantings, if they've not been promised water?"

— Jennifer Evans, Wentworth

"This morning we're talking about the Barka or the Darling. In 20 years' time are we going to be sitting here talking about the Murray? … With the degradation that we've done with the Darling, the same's going to happen on the Murray; they are combined, the two rivers."

— Susan Nicholls, Wentworth

"You can't keep taking water out and I think this is the canary in the coal mine. As regards all the tributaries further down, they're saying to grow cotton in places like Hay, Coonamble and all those tributaries of the Murray. If nothing's done, the Murray, it'll be the next one that's gonna suffer, if it's not suffering enough already."

— Don Crittenden (pilot), Broken Hill

"Murray water is going all over South Australia. How long can the Murray last if they're not going to feed water into it from the Darling? I know it comes from up the top and the Snowy Mountains, but my god there's some people dipping into the Murray and that's scary. I just think that'll be the next one, the way the water is being handled. I'm so disappointed in our governments for doing what they've done to us. I would never in my lifetime thought that they could do that."

— Joan Stockman, Wentworth

"If you think the Darling's crook, then just watch in in ten years' time on the Murrumbidgee. All you need to do is hop on your bike and go from Balranald to probably Darlington Point on the way to Narrandera and you'll see what I'm talking about. The earth that's been shifted there to manipulate water and use water – which was all grazing country 20 years ago – is to me, dumbfounding and horrifying."

— Howard Jones, Mildura

"In 2004 when the Anabranch pipeline - the stock and domestic pipeline – went in, that's all very good, very successful, no problem. But the Anabranch itself was supposed to have environmental flows and the environmental flows aren't going to be there, because there's no water in the Darling first up, and secondly, the Anabranch gets the water out of Lake Cawndilla. There's no other outlet out of Lake Cawndilla except in the Redbank Creek, down into the Anabranch. But, the gripe I've got is that the, there were 17 block banks — or control block banks … they had pipes in them, control block banks, in the Anabranch system and with the removal of those when the pipeline went in, **the Anabranch in parts now is completely smothered with trees and the thing is, if we get another big flood, I don't know where the water's, well I do know it's gonna go, it's gonna go AWOL**. The whole ecosystem has been changed. The trees are there and … there's no way you can walk through them."

— Roger Smith, Wentworth

"Redbank Weir, Murrumbidgee River" near Balranald, NSW (Feb, 2008). Photo by Jor, licenced under CC BY-NC-ND 2.0.

GRIEVING FOR THE ANABRANCH

Above: Margaret Whyte with her illustrated book, *The Death of a River*, in Wentworth. 20 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

A FUNERAL FOR THE ANABRANCH RIVER – DO WE NEED A FUNERAL FOR THE DARLING TOO?

"I'm Margaret Whyte and I lived for 52 years on Willow Point station which is between here and Broken Hill on the Anabranch River. It's all saltbush country there but we did have the Anabranch River which was – well, a river out here is like gold. It's really better than gold it's so precious. … in 2004 they decided to sell our allocation of water and put the Anabranch into a pipeline. So at that stage I did this series of paintings about that situation and how it affected … all these people, all these animals and birds which depended on the water so much - it was sacred to them …. it's been very sad for me to see the demise of the Anabranch River … we buried that river … and we're pretty well burying the Darling now. … We had a funeral for the Anabranch. We all wore black and we had big wreaths of cumbungi bead, reeds and we just had the whole burial then and now we're burying another river which I find really sad."

— Marg Whyte, Wentworth

5.2.2 Loss of wildlife and ecosystem health due to lack of water and polluted water

SUMMARY

Participants in the Citizens' Inquiry shared stories of deep concern and grief about the terrible plight of wildlife due to the lack of water in the river and lake systems. Everyone commented that while they had seen bad droughts before, this was different. The extent to which animals had either disappeared, or were still dying and suffering, was like nothing they had seen before. And the absence of the usual deep waterholes in the river, which provided a vital water source for animals and birds during droughts in the past, was particularly devastating.

One participant, a former NSW Government veterinarian and epidemiologist, stated that the extensive drying event will cause regional extinction of a whole range of riverine species and was impacting others, such as the wildlife that rely on the river as a water source.

Outbreaks of blue green-algae contributed to the death of millions of fish in the Murray Darling Basin over the last year. The phenomena of 'algae blooms', when the population of algae in a river rapidly grows and dies, can be devastating to local wildlife, ecosystems and people. The toxins can also affect domestic animals, such as dogs, when they drink contaminated water, and limit recreational use of lakes and rivers for swimming, boating and fishing.

The biodiversity of the Murray-Darling ecological communities is fundamental to its continuing existence. Biodiversity in its broadest terms describes natural organisms and includes the different species of plants, animals and micro-organisms, their genes and the ecosystems of which they are a part. Spanning over 15 geographical bioregions with diverse climates, the Murray-Darling Basin supports phenomenal biodiversity, with more than 30,000 wetlands and thousands of ecosystems composed of rich, complex and dynamic life. Birds, fish and vegetation are examples of key ecological assets, with many of them native to Australia. However the Murray-Darling species diversity is under threat. Within the Murray-Darling Basin ecological communities are known to be threatened with extinction.

In 2013, two entire sections of the River Basin were listed as 'critically endangered'– the lower stretches of the River Murray from the junction of the Darling River to the sea in Victoria and South Australia, and the wetlands and inner floodplains of the Macquarie Marshes in NSW. The listings required the overall impact on the river's ecosystem be considered before a major project along the river could be approved. The listings were made in the final weeks of the former Labor government after more than four years of research and assessment by a team of scientists known as the Threatened Species Scientific Committee. **However, in December 2013, the new federal government struck out listings of significant stretches of the Murray-Darling as critically endangered, saying it was an unnecessary protection for the massive river system**.[109]

The Basin's ecosystems are suffering and as a result, many species that depend on the region's natural flooding cycle face extinction.

Six (6) aquatic species that were previously common along the Lower Murray-Darling Rivers are now listed threatened under the NSW Fisheries Management Act 1994:

- Murray hardyhead - *Craterocephalus fluviatilis* (critically endangered);
- Trout cod - *Maccullochella macquariensis* (endangered);
- River snail - *Notopala sublineata* (endangered);
- Silver perch - *Bidyanus bidyanus* (vulnerable);
- Southern pygmy perch - *Nannoperca australis* (endangered);
- Southern purple-spotted gudgeon - *Mogurnda adspersa* (endangered)

Forty-six threatened animal species and 14 threatened plant species within the region are protected under the NSW Threatened Species Conservation Act 1995.

A majority of the Murray-Darling Basin's river valleys were rated as being in poor or very poor health based on assessments of fish, invertebrates and vegetation.[110] The Basin's ecosystems are suffering and as a result, many species that depend on the region's natural flooding cycle face extinction.

The endangered Southern purple-spotted gudgeon (*Mogurnda adspersa*). Photo by Guillermo Guerao Serra/Shutterstock.com

109 The Nature Conservancy Australia, 'Creating a Sustainable Murray-Darling' (Article) <https://www.natureaustralia.org.au/what-we-do/our-priorities/provide-food-and-water-sustainably/food-and-water-stories/creating-a-sustainable-murray-darling/>

110 The Nature Conservancy Australia

COMMUNITY COMMENTS

LOSS OF WILDLIFE AND ECOSYSTEM HEALTH DUE TO LACK OF WATER AND POLLUTED WATER

"We went up ... when all the dead fish were there and just seeing these big fish, that you knew were as old as your parents were, and they were laying dead along the side of the river. And the stench. So just watching this … it's been just grief for me."

— Joanie Sanderson, Broken Hill

"Many big breeding native fish have died, as have the smaller fish for their food. There's toxic blue-green algae water in puddles [once were deep holes] that roos are left to drink. Many birds have either died or moved on. The river goannas… turtles… mussels... fish eggs in the mud. Has the mud dried and killed them? We don't know. The bush medicine trees in the floodplain are having a hard time surviving."

— Larry Webster, Barkandi person, Broken Hill

"I'm passionate about birds and animals and a lot of those birds are territorial. They won't move. You think they will move to another river. They don't. They die there. You know western grey kangaroos, they're territorial. They die there. Kookaburras, they're territorial, they die. They get weak and die. On computers, you don't see it, you're immunised against all this that's happening on the spot, in the field and it's painful to watch it happen. Water rats dying, tortoises, kookaburras just weak and dying. … It's not just fish. And it's our lifeblood, it's precious."

— Marg Whyte, Wentworth

"This summer I've seen no snakes, but I'm seeing miles and miles of sand goannas. I'm not sure if that's just part of the dry … Kangaroos have just the most pitiful state I've ever seen them in my [30 years] out here. I haven't seen a decent blue (female kangaroo) for a bloody long time."

— Patrick O'Keefe, Wilcannia

"It's a desecration – massive clearing of mallee gum and what they forget very easily is these are habitats. There's little animals everywhere. They don't see them, you know. It's like they have to be six foot tall or something before they're recognised, but there's a lot of little critters out there, and when you desecrate a big area … you're desecrating habitats in mass scale, like with the cotton fields."

— Graham Clarke, Wentworth

"That's the saddest part about it, the loss of wildlife. A good healthy river system - frogs are a good indication. … when the lake was full and I was pulling two or three green tree frogs out of me toilet every time and putting them outside. You'd walk down the beach, you'd find green tree frogs. They're gone. They'll come back hopefully. [We used to] sit there and watch the black cockatoos come around all the time, the sulphur-crested, the galahs, the kookaburras - they're all disappearing. You won't find an emu up there at the moment. They're all dead because there's no water for them. I've got one out the back of my place. There's a leaky pipe and it's a little pile of water this big in a probably about two inches - at night time if there's not two or three hundred kangaroos, even some wild goats out there coming in trying to … get a drink. It's just so sad that this government have allowed this to happen."

— John Ford, Menindee

"Emus". Photo by Don Shearman, licenced under CC BY-NC-SA 2.0.

"Haven't seen emu for 12 months. There's another recreation (emu egg hunting) that our elderly uncles take our kids out to do. That's more sport and recreation that the government killed on our kids too. I can't see our emus regenerating. Our kangaroos are dropping dead in front of us. They're supposed to be our coat of arms aren't they? They're pinned on every building, sitting behind every judge in every court room, but they won't just give our water back."

— Alana, Wilcannia

"In my lifetime, I've seen a decline … what happened to the wombats? They disappeared from the area. I remember when I was younger I've seen koala bears out near the Lake Victoria area. I've seen the budgerigars disappear, the red Robins disappear, a lot of blue wrens disappear. Wild flowers disappear, a lot of the Mulga and this is only my lifetime. The plants and the animals have got no say on the matter, what's happening with these river systems or in the outback here with tree clearing. They've got no rights whatsoever, the plants and the animals. So when I speak, I'm not speaking just on behalf of my people … but also on behalf of the animals and plants cos they've a right too."

— Graham Clarke, Wentworth

"What happens to the animals, the wildlife? Because I'm very compassionate about them too. And it's just cruel that they can't get water, you know."

— Joan Stockman, Wentworth

"The wildlife is in town, right in people's yards you know, and the people, they put water out for the wildlife and sometimes they get warnings off the Shire, to say you're not allowed to use the water. But my niece she just don't care. She got awesome kangaroos, she got everything. She waters them."

— Barbara Webster, Broken Hill

"Red-tailed Black-Cockatoo (*Calyptorhynchus banksii samueli*)". The inland subspecies is listed as *vulnerable* under the NSW *Biodiversity Conservation Act (2016)*.[111] Photo by David Cook, licenced under CC BY-NC 2.0.

"The river's there and that's there - I fill that up out of fresh water and the river is over there. **You can see all those birds and even the kangaroos will come and drink out of that babies' bath, but they will not touch that water in the river**. That's the sort of pollution that we have got and if, when you look at birds and animal life that won't touch the river, you know in your own mind that it's doing no good to you"

— Ross Files, Menindee

"I've got to bring up pesticides. It's frightening. What's really frightening they [the government] just don't take no notice. ….95% of the native birds are gone, and this was happening in Victoria, then everywhere. Kookaburras have been disappearing for years and I know it's awful, but I'd rather be dead than sit and listen to people making up excuses for these people that are illegally using pesticides, herbicides. They're using 24D; DDT; you name it. Pesticides, Insecticides, herbicides, fungicides, urea, glyphosate."

— Barry Helm, Menindee

111 NSW Office of Environment and Heritage (OEH). *Red-tailed Black-Cockatoo (inland subspecies) - profile*. NSW OEH (web page) < https://www.environment.nsw.gov.au/threatenedspeciesapp/profile.aspx?id=10138>

"Not only is the river important to us people, to my people and other people that live in the surrounding areas, what about our animals and what about the plants?"

— Lyiata Ballangbarry, Bourke

"I'm 52 now, and [since the] 1980s.. I seen the river system change back then in my local community because how we lived on the river system, how we caught our fish, yabbies, turtles. I've seen the decline for probably about 35 years now. ... I seen that in the river, in the land when they started knocking all our bush tucker down, the trees for the farming, that's what I see. Since I was 17 I seen a lot of the birds became extinct like the quarian, the budgerigar, the red robins, one of the blue wrens, they all started to disappear and so did our waterholes."

— Glenn Boney (pictured), Brewarrina

Glenn Boney, Brewarrina. 29 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @ VoiceOfTheBarka

Eastern grey kangaroos (*Macropus giganteus*) forage below the Wilcannia Bridge, on the banks of the Barka / Darling River. 24 March 2019.

Box 2 – Narran Nature Reserve

"I'm a 'Guardian' of the Narran Nature Reserve (the Narran River is a watercourse of the Barwon catchment, which flows into the Darling) and the reserve is a key biodiversity area. And it's also a Ramsar wetland. **There's been no water in the Narran River since March 2018, and the big trees - the river red gums - are dying all along the riverbank**. The lakes at Narran are at the end of a terminal lake system, and their water is dependent on all the goings on around Dirranbandi. In the 1990s the water supply, I believe, got reduced by about 60% and the main thing is that Narran is famous for them absolutely amazing bird breeding when there is a big flood. …And now what's happening is, because the flooding events are so much further apart... did I say that the last reasonable bird breeding event was in 2010/12? An Ibis might breed once or maybe twice in its lifetime. Now the Ibis, its lifetime just isn't long enough to hang out for the next flood [the next big flood]. I know all the rules about what irrigators are supposed to do if there's a flow-through, but so far those rules haven't triggered, since I've been surveying at the lake. **At the moment it's an absolute dust bowl**. I would like to see - in order to bring the Narran back to its glory - I would like to see more control over water licences, more control over cotton growing.

"There's actually no water there and there's a series of lakes [at Narran Nature Reserve]. There is Clear Lake, Narran Lake, Milky Lake, Salty Lake. It's got sand lunettes. It's got many Aboriginal artifacts there, because it's a very sacred place for the Aboriginal people. But it's losing wilgas, and gum trees are all going, and the wilgas are going, and even the mulgas are looking sad. And it's lost its cumbungi, and the important thing is the lignum, in which a lot of birds live."

— Rosemary Maddox, Walgett

"Narran means water", mural on Opal Street, Lightning Ridge, NSW.
Photo by Brian Yap (葉), licenced under CC BY-NC 2.0.

5.3 First Nations Peoples' deprived of access to lands, water and cultural practices

5.3.1 Exclusion from land, water and culture

The poor health of the river has had devastating impacts on First Nations peoples and their communities. As outlined in Section 5.3 of this report, First Nations peoples have lived in the Basin for more than 40,000 years and share a deep cultural, social, environmental, spiritual and economic connection to their land and waterways. Since European colonisation of Australia, natural resource management has been focussed on enhancing economic and narrowly defined social values, with little consideration given to environmental and First Nations peoples' cultural values and rights. After more than a century of exploitation, country and its people are suffering.

The Citizens' Inquiry heard stories from a number of different First Nations peoples. Elders of the Barkandji Nation explained how the Barka is central to their law, culture, community and spirituality. For the Barkandji the decline of the Barka is a narrative of a country transformed by colonisation, corporate farming and livestock production. Several elders lamented that acts of injustice that occurred in the past, persist today. Several people said the death of the Barka is part of ongoing cultural genocide.

At the SA Royal Commission, Barkandji elder William (Badger) Bates recounted some of the stories of the Barka (Darling River).[50] He explained to the SA Royal Commission [51] what the river used to be like:

> "When I was young we lived beside the river in tents, humpies and tin huts, and moved a lot, getting to know every bend in the river, and everything about the river, billabongs, creeks and lakes, the plants and the animals. The river was always fresh enough to drink and we could always get a feed of fish, or yabbies, duck or turtle or something. Our river water should be a slightly milky colour from the clay, settling to a clearer colour after freshes settle down. We used to catch fish with a line, or net, or if the water was still and clear we would use spears we made. Our fish are beautiful to eat, we used to get cod, perch, black bream, catfish and bony bream. We used to get buckets and buckets of yabbies. There were birds everywhere along the river, water birds like pelicans, swans, cormorants, ibis, cranes, herons, and ducks. Often we would see a kite hawk swooping down to catch a fish. There were also lots of birds that would come in for a drink at dusk or hang in the cool of the river red gums, like parrots, finches and cockatoos. There were lots of water rats and river goannas and water dragons, now we only see the odd old goanna. The water had lots of insects such as water boatmen, and lots of wrigglers, that you don't see now. There were lots of water plants in the river and mainly in the billabongs, the fish and other things eat these, but they are disappearing."

Badger Bates also talked of the dreamtime story and the Barka's importance to the living cultural heritage of the local communities.

> "The Barka was created when Kuluwarra let the Ngatji (Rainbow Serpent) out of his waterbag up near Bourke, and the Ngatji lives in it still. Thirri also shaped the channel, bends and islands of the river after the Ngatji went through with the water. The Ngatji looks after us and we have to look after it, it is our traditional job to look after the Ngatji and the river and the other surface and sub-surface waters of the Barka and its floodplains. The Barka gives us healthy food and medicine, it gives us wood to make our artefacts, reeds to weave, it is where we go as families to swim, boat, camp, picnic, fish, go yabbying, and prepare and cook our traditional food."

William "Badger" Bates at Wentworth, 20 March 2019.


Menindee Sculptures, created by Brian Harris, Darren Bates, Garry Wayne Edge, Debbie Bates, and Frank Biasio.

COMMUNITY COMMENTS

FIRST NATIONS PEOPLES' DEPRIVED OF ACCESS TO LANDS, WATER AND CULTURAL PRACTICES

"My name is Larry Webster. I'm a Barkandji man, a traditional owner of the Darling River. It is obvious to us Barkandji People that the Barka, the Darling River, belongs to us, and we belong to the Barka. We are part of each other, and care for each other. I am 60 now. The river supplied us with food when we were kids every day. We wouldn't have been able to go to school without good food from the river. We lived by the river, as did our parents, grandparents and ancestors for 40,000 years or more. We had everything growing up on the Darling: a large web of family connections, all across the country, filled with great respect and great love. Generosity, sharing, kindness, forgiveness and humanity were the normal, not the exception. All taught to us kids on the river."

— Larry Webster, Broken Hill

"I grew up in Wilcannia most of my life for, I'm 45 years of age. I spent 41 of those years living in Wilcannia amongst my Barkandji family in my Barkandji community and the community of Wilcannia. … And the river, the Barka, is what we call the Darling River, as Australia knows it now. Us Barkandji people, we know it as the Barka. The word Barkandji means that we are people that are belonging to the river. That river is our mother. And to see what this country is doing to our river and our mother is criminal. They're killing our mother. They're killing our culture. And they're killing our way of life as Barkandji people. Our culture, that river, is at the core of our culture. And when these people is destroying our river, destroying by taking our water out and mismanaging. From the Murray-Darling Basin and also with these irrigators up north taking more water than what they should be taking out, it's having a detrimental effect not only on us Barkandji people, but all First Nations people in this country"

— Murray Butcher, Wilcannia

"I just come to the river, seeing it moving alive make you feel alive and healthy, and give you that energy."

— Eddy Harris, Wilcannia

"As the First Nations people we were given to understand that we own the water under the land, we own the water on top, we own the land. We never ever ceded our sovereignty over our country. And that's something that we got to be thankful for. So traditional law can still override Western law. So I'll be hanging on to that, and I'll be looking further into how we can overcome a lot of the issues that's been put up to us."

— Beryl Carmichael, Menindee

"Greed and spiteful ways that were introduced to this land 200 years ago have been trying to eliminate our spiritual ways that have been nourished by our Baaka for tens of thousands of years. So called 'civilised' mobs from overseas have not been able to provide a sustainable world or country for a small portion of the length of our culture. It is time these people ask for our forgiveness and humbly request our help and guidance to reverse the imminent disaster their misguided ways have bestown on our part of the world. Give us our river back, and together [with a respectful group of people], we may be able to restore the Baaka and all of its tributary rivers back to health, with mother nature. This would enable a future for all of our grandkids, wherever they originate from, Australia or elsewhere."

— Larry Webster, Broken Hill

"We've just gone through an 18-year Native Title, to get a determination, but for what? For what? You know we can't even get a cultural flow, let alone a medium flow. Or water for domestic use. So you know, 18 years of justifying who you are when you know for a fact that this is my country. But you know, you stand up there and you're fighting the government, justifying who you are and yet we can't even go to our river, to practise our culture."

— Virgean Wilson, Menindee

Beryl Carmichael, Menindee. 23 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"I was born on the river, Menindee Mission, with Aboriginal elders. So we grew up, my first bath was in the river. This is how special it is, and you can sit on the river when you're in trouble, you can watch the water flowing. You can talk to the water, knowing all your concerns will be taken downstream, it will go down. Not like today, where they're drawing it all upstream, forcing it to go back up against gravity. This is not on. **What day and age are we in, and am I in the right world or not? I don't know what world I'm in anymore. To think that humans can do what they're doing to human beings, without even sitting down on land and talking to them**."

— Beryl Carmichael (pictured), Menindee

"In 2015 they gave us native title, but what's the good of land to me: without the river I am nothing. … everyone should have a say in managing the Barka. It's our traditional lands."

— Badger Bates, Wentworth

"Rivers are our First Nations' creation stories, where the mother of life created the lands, the animals and the peoples. I lament over the disintegration of their lores. I cry inside for the animals, reptiles and insects who are suffering at the hands of our elected representatives. I am ashamed that we have all been complicit in the acts of greed, gluttony, pride and lust that is killing our natural world and that we allow a few to profit whilst others perish."

— Tuesday Browell, Broken Hill

'My child, my young boy is at the age right now … where I come from, he's supposed to be out in the bush right now, in five days, to be out in the bush with his people to get his next initiation process. His Pop is right here [but without river in the water], the only conversation they can have here is at home."

— Brendan Adams, Wilcannia

"We're seeing depressed people. It's really affecting in particular the Indigenous communities. It's kind of draining our spirits without the river; water is life. Without the water we can't survive. It's vital to us. You know we've got sacred sites and stuff along the river and for initiations and women's and men's ceremonies and stuff like that and we've lived and survived on this river for a long, long time and we want to continue to do that without bureaucracy and people starving of a resource that we really need."

— Will Middleton, Wilcannia

"I think the way the river is, is killing the community. A lot of the young fellas my age, you know, that's all we used to do is go down the river at weir and that, rock pools all that stuff. Now I don't even see any of the other boys around, like don't even see them getting around town or anything. A lot of them turn to things that they shouldn't be doing, you know, and it's no good. It's just sad really."

— James Dutton (pictured), Wilcannia

"I come from Gurundji Barkandji People and our country out there is a place where it's a living museum and you can walk anywhere out there, and you'll see the existence of my people. If they went out there and mined all this kind of stuff you know, us as a people would be, would be nothing. Our history would be gone, no one would ever know of our existence if this happens to us. … What do we tell our kids? What stories can we pass on to our children if there's no water? Because our, our stories are connected to the water. What happens if there's not ever going to be any more water? There will be no more stories. Our story lines, our song lines, will stop. We could never go on any further than that if that happens. … Keeping us away from water, keeping water away from us, robbing us from what is rightfully ours, it's just another form of oppression for my people."

— Lyiata Ballangarry, Bourke

James Dutton, Wilcannia. 25 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"We are river people. The rivers are our life and our culture. It isn't just water running through the land, it runs through our veins, just like blood. As a Kamilaroi woman, the impact it has on me is debilitating. I have sleepless nights, worried thoughts, especially about my children's future. It breaks my heart knowing I can't pass on my Nan's knowledge by the river, how I was taught. They'll never experience the connection as I did, by those gorgeous river bends, because of greed and corruption. Even our fish don't look right anymore. The sores that I've seen on them, I've never seen it before."

— Vanessa Hickey, Walgett

"The Fish Traps are the oldest man made structure in the world, and they're neglected; they build the dam right through it, it's full of weeds ... in our Dreamtime stories we don't know of any stories of when the river was so bad. ... We've always been able to look after [the river, the fish traps] we've done it for over 60,000 years so you know I just don't know why what's happening with it now so and it affects all of us regardless of what nationality you are. if you're living here, it really does affect you."

— Patricia Frail, Brewarrina

"The drought is not an unnatural phenomenon; it's a natural thing, happens everywhere, it's a problem that we've made worse because of the lack of water flowing through the system. ... When we as people educate and tell our young people ... it's very hard to do that when you don't have the number one resource. So like here we have the fish traps you know, the river right here, but it's very hard for kids to understand how the fish traps work with no water and there's no fish. ... While we could tell them stories it's very hard for them to understand it and once again they think, well that's just the way it is, must've always been like ... but it's not."

— Bradley Steadman, Brewarrina

Brewarrina, New South Wales, heritage listed fish traps in the bed of the Barwon river (date unknown). Photo by John Carnemolla/ Shutterstock.com

Genocide

"What really disgusts me about this whole process is that this is just part of an ongoing genocide … for years we've seen our people have to fight for our identity. … My identity was taken away from me and it took me years to find out who I was. Now I'm a father … my son hasn't got the opportunity to learn about the river the proper way from his grandfather. This is just plain genocide. … We just need the Barker back, the river. Let us control our life, our identity you know. We're the oldest continuous culture, and within 250 years, there has been every form of massacres, assimilation, genocide."

— Brendan Adams, Wilcannia

"We are so disgusted and annoyed that this is allowed to happen in this day and age! And they're getting away with it. The end result will be leading up to genocide if we don't do anything now. **So this will be the second time around the genocide will be forced on the First Nations people**."

— Beryl Carmichael (pictured), Menindee

"One time they could take us out and shoot us and they did that; now they kill us with policies. They're killing us and we're sitting back and doing nothing about it."

— Greg Cleary, Wilcannia

"It's all about you know, stopping any success that we might have as Aboriginal people, because my understanding of the problem, social problems in this town, was starting to be created back in the 1970s and the push from government at that time was to get rid of the Aboriginals living in Wilcannia and they haven't succeeded and they will not succeed. That's the thing about Wilcannia – the resilience that's here."

— David William Clarke, Wilcannia

"Why isn't the government listening to its people? Our water is almost gone. We are now reliant on the Great Artesian Basin, and we can't take its precious recharge zones for granted. I think the few that are stealing and diverting entire rivers should be held accountable and prosecuted. **People in power need to be accountable for this genocide**. You took our land. Now you take all the water. What will be next? Our food bowl? What is wrong with this government? I'm very angry at this government. I no longer trust and respect politicians and ministers. They take us for granted, treat us like shit — completely ignore us. This is the worst government I've seen in my lifetime. We need to vote them out of power, hopefully before they destroy our land and water."

— Vanessa Hickey, Walgett

Below: Beryl Carmichael, Menindee, 23 March 2019.

Yabby emerging from the water. Photo by Kristian Bell/Shutterstock.com.

Fighting for the river

"I used to look over the old bridge and see colourful fishes, they was deadly. I seen them with me own eyes. Today there's nothing but a big sandpit. And I've been up and down fighting for the river, for my people, for the land claim. Over 20 odd years. Twenty-four, -five years I've been travelling that whole river for meetings down in Wentworth with governments to give us our land back. Apparently now we got our land back. What's so good about land when there's no water. "

— Cyril Hunter, Wilcannia

"It was a very happy place this town, very happy, as I remember. Now … it's making me cry. One of my mob from the PBC, we got a group on the land claim, we fight for the people, the land, we fight for it, whatever the people want. That's our job, to fight government for it. And the longest day I live I'll still fight for the rights of our people. I'm one of them stubborn blokes. I'm like my old father, very stubborn in the head. I won't take no for an answer. So I hope the government's hearing what we saying today, get out here and see what we got to offer them. "

— Cyril Hunter, Wilcannia

"I'm a basket weaver and I travel everywhere to make baskets. … We women walk along the river where we gather our plants and weave. So when the river's dead, **we can't carry on our culture**, all that stuff like weaving and all that stuff that we'd used to make our baskets to carry our food, our water, our babies."

— Clair Bates (pictured), Wentworth

Clair Bates, Wentworth. 20 March 2019.

"You know we have the right, human rights and the cultural rights, to be continuing our heritage but that is not happening. That has been, once again, stolen, taken away."

— Brendan Adams, Wilcannia

Box 3 - The river as a cultural school

"The river is a school. It's a school. Our kids, we all got taught down there. The government doing this to us is taking our livelihood, our sport and rec – we don't need a million dollars for our kids to have sport and rec. Give us water! Our kids make their own sport and rec. Our kids need water. Our kids used to love to get up and see what's in the water, now they can't. We can't take them down there to catch a yabby; there's no food source. Once the government's taken the river, they've taken Wilcannia. And surely but sadly, they're going to start taking our lives. Everyone and everything needs water. We got our children walking around this town, they know what the government is doing to our river … My nine-year-old's asking – when are we going to the river? Oh, one day. But I don't want her to see dead pelicans, dead kangaroos, dead ducks, dead birds. … When [politicians] take their kids out, they can go to the park, chuck a few snags on the barbie. Kids got swings. We like to take our kids to the river. We'd love our kids to climb the river red gums. … we'd like our kids to have a Johnny cake, fish on the grill, chuck the kangaroo tail in the ashes. But we can't do that, thanks to the government."

— Alana Harris, Wilcannia

"We've taken families, five or six families all together – kids, dogs – to the river to spend a day fishing and in the night we'd learn a lot of stuff from there, like the discipline from the Dreamtime stories. … It's really difficult now to pass on these skills [without the river]."

— Eddy Harris, Wilcannia

"The river was a refuge to be able to go and camp, teach our kids and such. And so with that gone it makes it worse for the kids to try and get educated in a system that's against them."

— David William Clarke, Wilcannia

"We spent all of our school holidays on the Darling in Wilcannia. We could swim in that river at three or four years of age, us black kids. It's where we learnt of stories from our elders, how to care for animals, birds, nature, people, what was right and wrong, what we are allowed to eat and what is against our rules, our love. That's where we learnt respect – the most important lesson of all. Respect for elders, family, nature. You might say the Darling river, the Baaka, helped me with my education. It's still where I go to think, whether physically in person, or in my mind. The Baaka is like my teacher, my mother, my father, my blood. She is not just water in a channel. She is the land and life around the river as well, the people, animals, plants, spirits, birds, all of this."

— Larry Webster, Broken Hill

"I'm an artist and also I went away and got a degree in teaching arts and cultural practices. I came back to my community in Wilcannia here, to pass on these skills. And find it really difficult to practise this, in collecting timber from riverbanks and stuff like that, it's really hard. And teaching the kids about the traditional tucker and where to collect it, and all that. A lot of that stuff is dead now. Your resilience gets really tested on what's happened now, which is water."

— Eddy Harris, Wilcannia

Concerns about loss of First Nations land and culture – non-indigenous perspectives

"The Barka Peoples have a significant cultural history – one of the most important cultural histories in the world, and we're destroying it. I don't think I've given anybody permission – I don't think anybody has given anybody permission – to destroy our rivers. Who said you could do that? … I want to know why the cultural living of the people who live on the Barka, why their lives are being destroyed. I want to know why the Anabranch is being destroyed. They are fantastic cultural and environmental places and are connected to the Darling River."

— Robert Biggs, Mildura

"Coming out here and seeing families and kids are so devastated, but they are holding on to the one thing that humans could learn from and understand how we survive on this planet, long-term sustainability, and their systems are being smashed by this greedy corporate system",

— Louise Moriarty, Wilcannia

"What this cotton has actually done — the over-extraction of water has done – it's attacked the cultural interest for a starter. They cleared all this land illegally … no Aboriginal person, went and viewed that land to see if there was any sacred sites on it. All gone forever. We can never ever get that history back. Just building a pipeline alone between Menindee / Wentworth and Broken Hill, they destroyed four sacred sites. Badger Bates marked them out and they just ploughed straight through them – they did not give a rat's."

— Barry Stone, Broken Hill

"The Aboriginal community is really worried about their water rights and what they have to say in their situations and I don't speak for them but I do know that there's a hell of a lot of concern that they're being forgotten again. Yeah, overlooked again. … Brewarrina … has the oldest man-made structure on earth and it is not acknowledged [properly by the government], it is not recognised. The Brewarrina fish traps have been maintained consistently for 30,000 years until white settlement. That's significant. It's huge."

— Fleur Thompson, Bourke

"The government kept changing the goal posts and now that the shire has become the employer of Aboriginal people - and I don't know if that's good or bad – but they've taken off from where the Aboriginal people were. It's just another level of government [taking over] – 'we're not going to let the Aboriginal people run their own affairs, we will do it for them'. And I think that's what's happening in this town. See all those little buildings neat in the main of the town, there was the Aboriginal legal service, there was an Aboriginal housing company, but they're all closed. They've taken that away from the people, and they're empty, there's nothing there now."

— Bruce Wilson, Brewarrina

The Brewarrina Fish Traps on the day the Inquiry Panel visited. 29 March, 2019.

5.4 Human health impacts of dying river system

5.4.1 Absence of safe water for drinking, bathing and household use

SUMMARY

We were told by Inquiry participants about the terrible impacts the dying river was having on people's physical and mental health. We were repeatedly told by Inquiry participants that the household water available to residents in several towns along the Darling River was of a poor quality and not fit for consumption. Participants described the quality of the water coming from their household taps based on the look, smell and taste of the water.

The Tribunal was told that household water coming from the taps in participants' homes had a 'greenish' colour and smelt putrid. During the public hearing in Menindee, participants told us that their drinking water had been 'greenish' and 'putrid' for a length of time before the water supply was treated with chemicals to improve the quality of the water. Participants told us that while the drinking water coming from their taps did not retain the same 'greenish' colour after the water treatment, it smelt strongly of chemicals. Some participants described this treated water as also having a 'chemical' taste.

Physical impacts (discussed in 5.4.1.1, below) include dry, sore, itchy skin and feeling sick, and the emergence of a cluster of motor neurone disease in affected communities. Mental health impacts (discussed in 5.4.1.2) were just as significant. We were told that a very large proportion of residents in their communities were experiencing depression and other mental health conditions. Some inquiry participants spoke of the high incidence of suicide over recent months and years. Many inquiry participants said the incidents of depression, suicide and other mental health conditions were directly related to the degradation of the Darling River and its associated impacts, including the declining quality of household water supplies.

Lack of alternative sources of water

Inquiry participants in several towns told us that the quality of the water coming from their taps made the water unsuitable for other ordinary household uses such as for personal hygiene, cleaning purposes, feeding pets and gardening.

Inquiry participants told us that they and others in their communities had very few alternate sources of clean water which were fit for consumption and everyday household use. Participants in Menindee told us that they were avoiding or minimising their use of their household water for personal cleaning. These participants would instead use water at the homes of friends or families in other towns whom they would visit. Other participants told us they had been relying on water from their rainwater tanks, however due to the drought this supply was running dry.

We were told by participants in the public hearing in Menindee that the community was entirely reliant on alternate sources of drinking and household water. We were told that the town was receiving regular shipments of donated bottle water for the purpose of drinking. The donations were being organised by a number of people in Adelaide and Melbourne, including by former residents of the area who had heard of the plight of local residents. We were told that the local council and state government were not involved in organising this donated drinking water, or providing any other alternate sources of drinking water. We were told that the residents of Menindee were currently entirely reliant on this donated bottled water for drinking.

Inquiry participants told us that they were also receiving an alternate donated supply of tank water for their other household needs. One of the regular water donations had been entirely organised by a teenager based in Melbourne who was fundraising to acquire the water. We were told that a Facebook group had been setup to inform residents of when the tankers of water would be arriving into the town.

Inquiry participants expressed their dismay, disappointment and anger that governments were not providing safe water supplies to their communities.

Two B-double tankers of donated fresh water arriving in Menindee, 24 March 2019

COMMUNITY COMMENTS

LACK OF ALTERNATIVE SOURCES OF WATER

"People donating water - it's a lovely gesture but we've got to get a solution. It's a terrible situation in Australia that people have to drink bottled water."

— Greg Cleary, Wilcannia

"It's really nice how Australia comes together in a crisis, like water for human consumption and plus even the graziers, you know, like with the hay. They've been donated free hay and it's nice people Australia-wide are donating free water. But I think it's pretty sad that it had to come that situation though."

— Reena Lombardo, Menindee

"Sending the bottled water or containers of water into our communities that have undrinkable water is not a solution. And it's not a solution that private enterprise should have to do. It's not a solution that personal people should have to purchase water for the purpose of drinking. And if there was any foresight at all perhaps one of these [a water filter] in every kitchen is a better option and more economically viable than thousands of bottles of plastic that will never ever be recycled and that will just get put into our landfill."

— Fleur Thompson, Bourke

"We get water from the shire in our tanks for our household, and the bottled water that has been generously donated by many people from Victoria, from South Australia, from other parts of New South Wales. … I think there's a big tanker here this weekend, which has got bulk water to fill up containers and go to people's houses. It's another lot of donated water that's here this weekend."

— Karen Page, Menindee

"As a parent, you know, we're buying water. Everyone's drinking bottled water. We're very lucky that there's a lot of organisations out there, but guess what? They're not going to continue the donations...There's a few of our local leaders here that have got connections. So there's people in the community that are doing their best. We don't want government providing bottles of water, we just want government to give the water back."

— Brendan Adams, Wilcannia

"There's quite a few people that can't use the water for bathing. I wouldn't want to wash a dog in it. It stinks. We've been lucky to the extent that Mal Hyatt has been able to bring out some water filter systems for some people and I think he's putting some more back around the town. What really gets up my goat is the fact that it's had to be from someone outside of town. I mean, Mal used to be a Menindee boy and his parents were two lovely people but why did they have to come along and help his hometown when the government has said, "well, sorry you know we can't do anything about it." Why then do you have to rely on your fellow Australian to be come along and help. It's been fantastic that they have because I think honestly the place would have been even worse than it is now."

— Moya Reid, Menindee

"I bought bottled water until good people come along here a month or so back and gave me a heap of water. But not the government - they said no, no, if we did that it makes us look like we're bad [we've polluted the river now we're giving you bottled water]. They're trying to do a bit of a backflip coming up to this election I think, but a bit late."

— Ross Files, Menindee

"As you know, our shire goes up to the other side of Pooncarrie. We're trucking water out to these people on farms … and a lot of those people out there are so proud they're too proud to even ask for help."

— Melisa Hederics, Wentworth

"I live in Broken Hill now. It's not so hard for me because I can go out and buy water every day. When they run out of water over there [in Wilcannia] they've got to wait and catch a bus over, to buy their water."

— Leila Webster, Broken Hill

"I've run out of rainwater so I had to buy water because the river water was starting to smell. It was getting pretty bad. … Drinking bought water and donated water, but as far as showers go, they give us 10,000 litres and that's gotta last us two months; we've had a pretty hot period where you need an air conditioner. We've got what they call a 'swampy' which uses water, you know, and I like my shower every day and you gotta wash your clothes …"

— John Coombs, Menindee

"I've known for a long time people have not been drinking the water in this town. My water turned brown early this year [2019] and that was my catalyst to put my filter on which I've had in my possession for six years prior but hadn't put it on because I'd had reasonable flavoured water. But when it turned brown and it didn't turn back like with a flush, well I thought it was time to fix it. …. I rang the shire and complained about the metallic taste in my water and they came out and took a test sample from my meter and they did that two weeks in a row. And when I asked for the results I was told, "You can have them but not if you're going to put them on Facebook." I said, "Well don't bother sending them to me because I will make them public."

— Fleur Thompson, Bourke

Wilcannia River Radio manager, Brendan Adams, with palettes of donated water, ready for distribution to the Wilcannia community from the radio station warehouse. 26 March 2019.

Wilcannia Wier and pump. 25 March 2019.

"The water's horrible. We gotta buy water. I never thought when I was a kid that I'd have to buy water when I was a man and, you know, it's horrible."

— David William Clarke, Wilcannia

"Have you tried to drink the water here in Bourke? It's disgusting with all their fluoride and everything, no wonder people have to pay for water. I bring water from Moree when I come here. So the water in itself is undrinkable."

— Lyiata Ballangarry, Bourke

"The bore water at the moment in Walgett has 300 milligrams of salt content. I believe that's unhealthy. Comments that have been made is that it's no different to eating a packet of chips. Well you choose to eat a packet of chips, your water should be healthy. It's a fundamental necessity of life. The things that I'm concerned about is for the elderly with renal and heart problems, or the kids. Long-term high-salt content for kids is going to impact on them later in life. But I have a rainwater tank and I drink that, so I do not drink the local water. I don't like the local water, it's slimy, it's just not nice water. … Walgett has had river water for years, til now, and because when you're pumping it through into the town supply, I've been told that to clean it and to make it safe costs more and needs more chemicals (or whatever) than the bore water. And that's one reason I think why the shire would like to keep us on the bore water. But health-wise I don't think that's going to happen, because I think we'll just keep going on and on about it anyway. But the other thing in the town that I think is really, really sad is Walgett was always considered a 'green town'. Dry around, but you could come in and people had gardens, footpaths were maintained."

— Coleen Edgar, Walgett

"I don't drink it. I drink bottled water at the moment, yeah. There's been no river water for a year or more, and I don't drink the bore water. I've got an air conditioner on me roof and all the salt and that comes out of it and it's just cloggin' all the drains up, drains from the air conditioners sticking it through so couldn't be too good for your stomach. We got an elderly lady at home and we need good quality water."

— Glen Green, Walgett

5.4.2 Physical health impacts

SUMMARY

Inquiry participants told us that they and others in their communities were suffering health impacts as a result of consuming or coming into contact with their household water.

Participants who had used household water for showering and other personal hygiene told us that they felt itchy and formed rashes after using the water. We were told that the water that had been treated with chemicals was also causing some Inquiry participants to experience a burning sensation on their bodies after showering or using the water for personal hygiene.

A number of participants spoke of a cluster of motor-neuron disease which had affected a number of residents in affected communities. We were told that a number of residents had already been diagnosed with motor-neuron disease and had subsequently died, while others had only recently been diagnosed with motor-neuron disease. **Inquiry participants told us that they strongly believed that the increased incidents of motor neurone disease were directly related to consuming or coming into contact with household water that contained blue green algae**. Some inquiry participants in Wentworth told us that they suspected that several members of their family had experienced significant health impacts as a result of consuming river water over a number of years.

COMMUNITY COMMENTS

PHYSICAL HEALTH IMPACTS

"I spoke to a mother that said that her kids have got sores on their arms. When you go to the shire council they say that they bring the water up to health standards but where is that standard actually, you know? Because that water is toxic. All toxic and everything that's coming from the river it's got to go somewhere and unfortunately at the moment it's hitting our kids."

— Brendan Adams, Wilcannia

"Let them government people come out and drink the water in Wilcannia."

— Badger Bates, Wentworth

"Aww, its shocking. You can't explain it, it used to just make you itchy and Christ knows what, but if you buy a bit of cream and rub it in your feet and things, it can help, I don't know."

— Ronald Slater, Menindee (pictured)

Ronald Slater, Menindee, 23 March 2019, Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @ VoiceOfTheBarka

"You take a shower and you suffer the consequences. Whether you come out with a rash, or some other ill-formed thing on your body, then you've got to suffer that. Because how else are you going to wash yourself, clean your teeth? Who cares at the end of the day? … If I'm not here on that particular day when that water's being given out and I miss out, then I have to go into Broken Hill and pay for it."

— Virgean Wilson, Menindee

"If you leave a bucket of water out, it stinks within an hour or so, you leave it in the sun. It's just the smell that comes through is a very strong chemical taste to the water at times. A very strong chemical smell. So Lord knows what they're putting in in there to make it more palatable but what effect is that having on us, who are trying to use it to wash in it, to drink it, to use it for our cooking etc.? It's gotta have an effect on everyone."

— Moya Reid, Menindee

"I live about three kilometres downriver from the town, on the river. I rely on pumping from the river for my household and domestic use - which we can't do at the moment, because of the toxic condition of the water. It's completely unusable, even for our animals, our animals can't drink that. We've still got some sheep there that do drink it because I can't get other water for the sheep. I get water that's been donated for drinking in the house, and we get water delivered from the shire for our household domestic use. It's a huge problem for us."

— Karen Page, Menindee

"[The river] was dry from 2002 to 2010, but we had no problems at all using our household and domestic from the river, swimming in the river, no problems whatsoever. We used it, it wasn't toxic. It is so toxic now, as I said and as you've seen. The toxins in the water combined with the heat of the water is what's killed all the fish. And it's just going to keep happening... the lower that water goes in weir 32, there's going to be nothing, nothing whatsoever left in that river."

— Karen Page, Menindee

"My friend who lives across the river, she can't even bathe her five children in the water. She has to get up early and bring them all into her parents' home every day in Menindee, cuz the water is filtered there … And **people are still getting skin irritations if they're using water straight from the Darling River**…. But I have a friend who won't use the filtered town water for herself or her pets. …"

— Reena Lombardo, Menindee

"You know what, I'm putting extra bleach in my washing machine so that my clothes don't get stained … I'm putting extra detergent in my mop bucket, so that I'm not getting the stink smell."

— Virgean Wilson, Menindee

"A cousin of mine told us a story from a long time back. How one day her and other adults took the kids all down to the river for a swim. When they got down there, the river was just covered in this white foam, they didn't know what it was. The runoff from the insecticides of the spray from the crops and whatever. Well the kids thought that was great and they just ran and jump in the water swimming around and that's what they used to do. Polly herself and the other adults were fishing and as they were pulling the fish out, the fish were just covered in these big red sores. And our people were still eating those fish not realising what was happening to all those fish. Polly herself end up dying of cancer. We've had so many people that we've lost. … My question is – is it because of the water?"

— Clair Bates, Wentworth

"We shouldn't have to be fighting for a basic human right to have clean fresh water that flows in our waterways. If we don't look after our waterways, it doesn't matter how many jobs we produce or how many hospitals we build. Everybody will get sick. It's a basic human need … we shouldn't be having it as a political argument."

— Joanie Sanderson, Broken Hill

"I get water pumped to Wmy house, and it's got a sign on the tap that says, "Don't drink it". What the freak am I paying for? Why am I paying for that water? And then on top of that I'm paying for water availability - for water I can't drink."

— Barry Stone, Menindee

"So what gives them the right, this government, state government, the right to turn around and deny people fresh drinking water. I'd just like to know, I'd just like to be able to say to Minister Blair, 'Who gave you the right to do that to me? Who gave you the right to do that to everyone in this room, to my fellow residents in this town?' And he'd got no answer."

— Moya Reid, Menindee

'My kids have itchy skin, the water makes them itchy.'

— Fleur Thompson, Bourke

Stagnant water in the Barka / Darling River. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

5.4.2.1 Blue-green algae blooms and human health

Human health and the natural environment are inextricably linked: the health of human populations depends fundamentally on the quality of the environment in which they reside and on the capacity of the environment to support life. Protection of the environment and its ecosystems is a fundamental public health strategy for promoting wellbeing and preventing illness.

When river health declines there are human health impacts that result not only from the shortage of water but the potable state of the drinking water. In particular, the phenomena of 'algae blooms' can be devastating to local wildlife, ecosystems and people. So too toxins and contaminants in the waterways limit recreational use of lakes and rivers for swimming, boating and fishing.[112]

There are proven links between long-term exposure to neurotoxins present in algal blooms and the development of diseases such as motor neurone disease.[113]

112 In the past 30 years, Australian rivers have hosted some of the largest algal blooms in history. In 1991 a bloom stretched along more than 1,200km of the Darling River, prompting the New South Wales government to declare a state of emergency. The army was mobilised to provide aid to towns.

113 Research suggests toxin in blue-green algae blooms may increase neurological diseases. Research found that regular participation in water-based recreational activity resulted in a threefold increase in the risk of developing MND. Satellite mapping also revealed that waterways prone to algal blooms were often surrounded by clusters of MND patients. Recent research, too, has pointed to environmental toxins such as those found in blue-green algae for a range of neurological diseases. Motor neurone disease link to algae toxin exposure is a developing path of research, scientists say. See Tomevska, Sara (2019) 'Motor Neurone Disease Link To Algae Toxin Exposure A Developing Path of Research, Scientists Say' *ABC News* (Article) <https://www.abc.net.au/news/2019-03-28/scientists-say-link-between-algae-and-mnd-needs-furtherlook/10943826>.

John and Pam Brereton also lived in the Darling River town of Menindee for 19 years and used river water for cleaning and bathing, but drank filtered rainwater. Menindee resident John Brereton told the Citizens' Inquiry that his wife developed motor neurone disease (MND) due to exposure to a water supply affected by blue-green algae.[114] He stated that this was the view of his wife's treating specialist. This is supported by research that reveals that waterways prone to algal blooms are often surrounded by clusters of MND patients. Former Councillor of Menindee, Moya Reeves, stated that there are suspected clusters of cancers and MND in the region. Also, Menindee water advocate Karen Page said she knew of four cases of the disease around Menindee.

Residents say that the NSW Minister for Health, Jillian Skinner, confirmed there was a link between blue-green algae in the drinking water and MND.[115]

At some point, algal blooms crash when conditions become unsuitable. The resulting dead algae break down, providing an ideal food source for bacteria. This is when waters can become smelly, often with a rotten egg smell. As the bacteria multiply, they suck the oxygen out of the water. At this point, oxygen levels become low. If the area of low oxygen is extensive, such as a whole lake or many kilometres of a river system, fish and other animals may not be able to escape to more suitable oxygen levels, and major fish deaths typically occur.[116]

The Australian government is aware of the human impacts of algae in drinking water. State agencies monitor populations of types of bacteria in Australia, regularly testing water quality and issuing alerts when blooms are present. This testing is necessary because of the impressive number of toxins that cyanobacteria can produce, ranging from skin irritants to liver and neurological toxins. However Australia is yet to monitor the growth of neurotoxins in our algae.[117] Notwithstanding that algal blooms in major Australian rivers are releasing a toxic chemical that may contribute to the development of motor neuron disease (MND).

Green water at the confluence of the Barka Darling River and the River Murray, Wentworth, 21 March 2019.

114 Ibid.

115 In a letter to Member for Baron Kevin Humphries by NSW Minister for Health Jillian Skinner (July 2015) Jillian Skinner confirmed there was a link between Blue green algae in the drinking water and MND. *"[R]esidents who are not connected to the Menindee Town Water Supply should not be using untreated water from the Darling River for drinking under any circumstances as this water is contaminated from a wide range of sources,"* the Minister said. See also Murphy, Michael (2015) 'Blue Green Algae Possibly Linked to Motor Neurone Disease' *Barrier Daily Truth* (Article) <https://bdtruth.com.au/main/news/article/7669-Blue-green-algae-possibly-linked-to-motor-neurone-disease.html>.

116 Burford, Michele (2019) 'Explainer: What Causes Algal Blooms, And How We Can Stop Them' *The Conversation* (Article) <https://theconversation.com/explainer-what-causes-algal-blooms-and-how-we-can-stop-them-109646>. In 1991 a bloom stretched along more than 1,200km of the Darling River, prompting the New South Wales government to declare a state of emergency. The army was mobilised to provide aid to towns.

117 The neurotoxic compound BMAA, is not currently part of regular testing, despite links between long-term exposure to algal blooms and the development of diseases such as MND. BMAA is known to be produced by a type of freshwater and marine bacteria, as well as some species of algae.

COMMUNITY COMMENTS

BLUE-GREEN ALGAE BLOOMS AND HUMAN HEALTH

"People who have been using river water, brushing their teeth in the shower, (no-one drinks it now), may have unknowingly given themselves serious chronic disease, like motor neurone disease, that is in clusters around toxic blue-green algae waters – as it is in Menindee."

— Larry Webster, Broken Hill

"I lost a very good friend to motor neurone disease and that lady was living on the river. … I know of others. And it's been shown that medically-wise, it can contribute towards motor neurone disease and other health issues"

— Moya Reid, Menindee

An example of blue green algae in the Murray-Darling Basin. Photo by Aussie4x4/Shutterstock.com

Water quality warning sign on the Darling River, near Wentworth. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

Box 4 - People dying of motor neurone disease in Menindee and Broken Hill

"There's not many filtration systems that can remove blue-green algae from the water, not many at all. My best friend, Pam, had motor neurone disease. I was with her from the day she was diagnosed and I spoke to her two hours before she died. When she was diagnosed I'd seen on the telly that there was a link between blue-green algae and motor neurone, so I approached Kevin Humphries. And that's when I first approached the New South Wales government about funding for the water to be delivered to the people on the river that didn't have mains water, because I was so concerned about the toxicity in the water that people on the river were having to use. And then I received an email from Jillian Skinner — the New South Wales Health Minister — who confirmed that yes, there was a link with the blue-green algae to the motor neurone disease. Pam passed away, and three months before Pam a childhood friend also passed away of motor neurone, who lived out at the Lake Menindee caravan park. He was diagnosed after Pam, but he passed away just before Pam. Pam passed away three years November, and she was diagnosed two years before. My brother's brother-in-law has just been diagnosed with motor neurone. He lives in Broken Hill, but has spent his whole life up here on the river. He's in his early 60s, he's been given two years to live. And I've also heard of another fella that was diagnosed in Broken Hill just prior to Christmas as well, that spent his whole life at Copi Hollow, skiing on the river at Copi Hollow. It's extremely scary. I was cooking for Pam because she could only have liquid, so I was cooking for Pam weekly and vitamising her food and everything like that for her, until she got the pump thing put in. It was absolutely horrible, and like I said, it's scary."

— Karen Page, Menindee

Above: Karen Page speaks to the Tribunal panel in Menindee. 23 March 2019.

5.4.3 Mental health impacts

SUMMARY

The Citizens' Inquiry heard devastating stories about despair, hopelessness and suicides in communities suffering from the impacts of the dying river system and lakes. People spoke about how frightening it was to not have safe drinking water; how their skin was itchy and sore from having to shower in unsafe water sources. People spoke about friends and family members living in despair about, and fear for, their livelihoods and their children's welfare; people spoke about having had to stop their friends from committing suicide and yet others spoke of how they had to live with the impacts of suicides, deaths from illness and the departures of friends and families who they held dear, who have left the community. People spoke about feeling trapped, as they wanted to stay in their communities, but they were suffering by staying in such circumstances.

Many people who shared their stories were obviously stressed, and often showing signs of being in psychological shock while they spoke. Many were expressing shock that their governments could have let their communities reach this point, and let people suffer the way they were suffering.

The stories that people told – and the devastated way in which they told them – affected all of the Citizens' Inquiry Panel members. The raw emotion expressed by people giving testimony led several members of the Inquiry Panel to seek counselling support at the end of the two week public hearing period, due to their empathy for the suffering of the people who told their stories.

People in rural communities are extremely vulnerable to climatic factors and a lack of water can lead to individual financial hardship, unemployment and bankruptcy. This in turn can lead to depression, a sense of hopelessness, substance abuse or relationship conflict and/or breakdown — all of which are high risk factors attributing to suicide.

Given the closeness of small communities, everyone is affected by tragedies such as suicide, because they all know each other. A resident of Wilcannia in far west NSW said that having to personally stop four people from self-harming or dying by suicide last year is "devastating" proof that the community needs more effective services.

COMMUNITY COMMENTS

MENTAL HEALTH IMPACTS

"It's Depression City. Everyone's depressed. I'm suffering right now with depression, over trying to save people's lives. Sorry, I'm getting the shakes. Through my work, I have people come to me. They don't go to the doctors or go anywhere else, they go to see me for some reason. Or they ring me and say, 'I'm going to hang myself' or 'I'm gonna do this and do that'. **I've had four - in September, October, November and one just six months prior to that – that I had to actually leave my office and go and make sure that that person didn't harm themselves. One of them had a gun. He was about to shoot all his animals and himself, because he just had enough**. The water at the front of his house (it runs right past the front of his house), he can't leave his horse to go and drink out of it. Yes, these are the things that I've had to put up with just through my work alone. I'm an employment mentor, I'm not a psychiatrist or a psychologist. So yeah, we need a big wake up and we've got to stop this corruption [of the water management]."

— Barry Stone, Menindee

"I'm really, really concerned about the mental health issues of a lot of these people living out in these areas. … There's going to be a lot of other things coming out of where this Darling River is at the moment, and mental health is one of them that's right up there. … When we look at farmers that come into a drought relief meeting, these are grown men … they were in tears because they virtually just threw their hands up in the air and said what do we do?"

— Melisa Hederics, Wentworth

Barry Stone, Menindee & Broken Hill. 22 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"The River people, both First Nations and Europeans, are now suffering chronic stress. We all know that leads to depression and chronic illnesses and suicide."

— Larry Webster, Broken Hill

"I'm not Aboriginal, but when you've been for 230 years speaking up and saying what they are doing to them and no one listens, there comes a time that there's very few options left. Suicide is one of them."

— Nieves Rivera, Wilcannia

"We've pretty much made a conscious decision that we don't talk about the farm between ourselves. … Quite bluntly my wife's sick of hearing about it and she doesn't like what it does to my mental state. … I struggle with depression because of what's happening."

— Paul D'Ettorre, Broken Hill

"We've got other men in our community that also had to intervene with younger people, to stop suicide. [The community] has to deal with it on a daily basis."

— Brendan Adams, Wilcannia

"We've seen increased suicide rates … the draining of the Menindee Lakes has left communities without any recreational outlets … its depressing"

— Joan Sanderson, Broken Hill

"You can just feel it in people, when the rivers not running. There's so much more ... you know, I wouldn't say violence, but people are agitated. ... you can see people are getting sicker and sicker and ... it's just so sad to see."

— Phil O'Connor, Brewarrina

Nieves Rivera, Wilcannia. 25 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

5.5 Concerns about children and future generations

SUMMARY

Many Inquiry participants were extremely anxious and concerned about what the future might hold for their children and grandchildren. They expressed deep sadness that their children and grandchildren currently cannot enjoy the Darling River or Menindee Lakes the way they themselves did when they were children, and more traumatically, many asked if there would be anything of the Darling River ecosystems and human communities left if the current situation continues.

As noted in **Box 3** (above), First Nations peoples are deeply concerned about young people in their communities, because in addition to the mental health and physical health problems arising from living without water, the absence of water and life in the river system means they are often unable to teach their children about their ancient cultural practices connected to the river.

COMMUNITY COMMENTS

"I'm probably at the end of my life, but my children, grandchildren and great-grandchildren, they're the ones we've got to worry about for this country. It's a great country and unfortunately there are people in the country that are doing their damnedest to absolutely wreck what we've got."

— Susan Nicholls, Wentworth

"I know we need development to make Australia survive, … but when they start destroying rivers there is no future. Not only for us black people, but for white people too. What are our grandkids, our great grandkids going to have? … No more. Enough's enough. Fix it for the kids' generation, for the future generation. Our kids and our great grandkids. Let them enjoy what we enjoyed, not misery, what they're putting us through now."

— Badger Bates, Wentworth

"I am here today because I want my grandchildren to swim in the Darling River and to see the most wonderful Menindee Lakes. I am here to say that it is not right that a few heartless and morally corrupt politicians can decide to rearrange Australia's nature and stop a river from flowing, it is wrong that they are eroding our natural world."

— Tuesday Browell, Broken Hill

"Our kids … the poor little things, they don't really understand the true story of what's happening. But they used to always want to go to the river for a swim and play - they can't do that. They've got the big pool, but the big pool is not as good as the river. In the river you can play, and you can put the little yabby line in while you're fishing, and your little pets are down there with you as well. So it's a whole family thing to go down to the river and enjoy it."

— Beryl Carmichael, Menindee

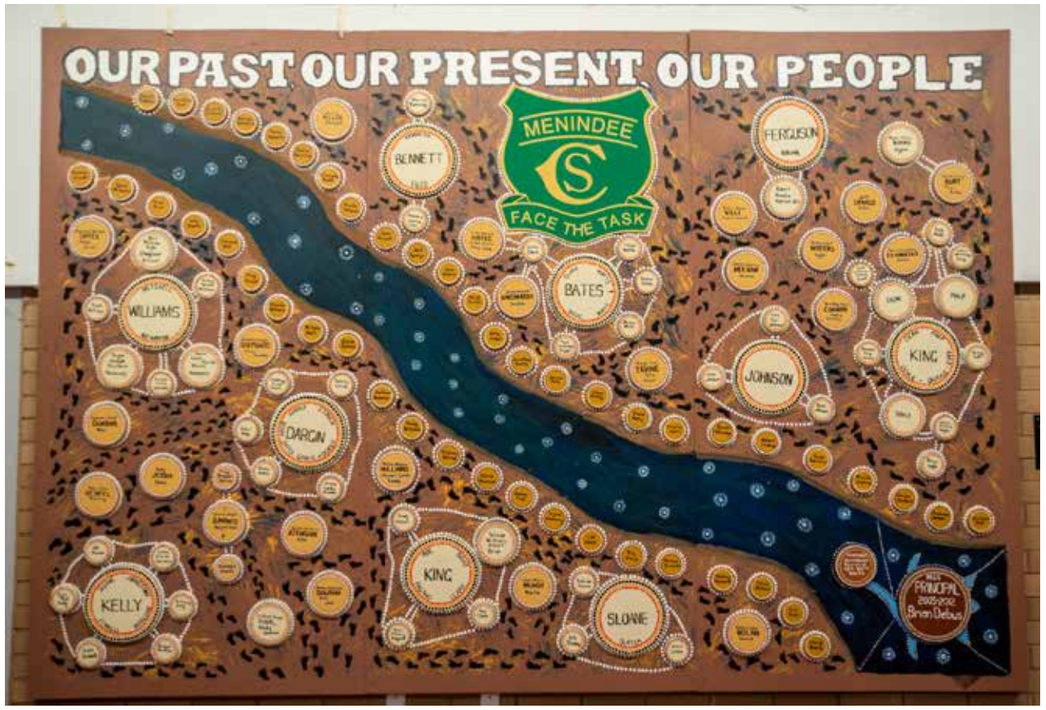
"We're failing the next generation and the one after that. What are we going to leave to our grandchildren?"

— Joanie Sanderson, Broken Hill

"Back home in Wilcannia, where I come from, the majority of the population are children and, you know, to not have any water in the river, it gives the children nowhere to go. So it tends to cause a bit of a problem. When there's children and they have nowhere to go and they're congregating on the streets, then that's a concoction for disaster, isn't it. … When the river's up our children are healthy and there's no crime rate. But when the river is down, our crime rates just go sky-high. At the end of the day, these people that mismanage that river, they just don't realise the extremes that they've done."

— Virgean Wilson, Menindee

Above: Nerida & Tia Whyman in Wilcannia speaking to the Citizens' Inquiry panel. 25 March 2019.
Right: Patricia Frail with children in Brewarrina. 29 March 2019.
Below: "Our Past, Our Present, Our People". Mural in the Central Menindee School hall, Menindee. 23 March 2019.



Concerns about children and future generations, continued

"In 20 or 30 years there'll be [no water left] if we keep going the way we are now. It has got to stop and it's up to us to do it right now, because as I've heard so many times, we're only borrowing this off our kids. And if we don't do something now, our kids have got nothing. I had my kids baptised in the river, that's how clear it was. Yeah, they're Aboriginal children baptised in that river. I would not even let my dog go in it now."

— Barry Stone, Menindee

"I can't even ask my grandkids to come here and say I've got enough fun to offer them. Alright, you come up and see the river that used to be there. They'll never look at the lake we *used* to have."

— Steven Cicak, Menindee

"I came out here for 10 years in about 2000 … running a youth performance project. Then more recently in the last year I've come back … working with the kids at the drop-in centre. … the kids are very disengaged, I think, like compared to last time I was here. It feels like they're really angry; they're just generally angry at the world and their trust factor is low and the respect for elders has gone out the window. … They're angry at me too - I mean they're just angry. Like, I run arts-based projects and it's a lot of a circus and usually you can engage kids in those things where it's fun but it just feels like day-to-day the struggle of getting through the day, it's wearing them down and it feels like they're really angry, like in terms of watching this community progress."

— Louise Moriarty

"I'd like to see the river flowing again. There's not much future for people in the lower end of the Darling if there's no water coming down."

— Marj Worrel, Wentworth

5.6 Impacts on social and cultural lives of affected communities

SUMMARY

In addition to the impacts of the dying river on the physical and mental health of people in local communities, participants in the Citizens' Inquiry commented on the unravelling social fabric within communities due to the loss of the river. The river – as noted elsewhere in this report – is said by many people to be a meeting place, a camping place, a source of recreation and happiness. Losing the river has brought about a traumatic loss of social and cultural life in rural NSW.

COMMUNITY COMMENTS

"Social losses are very hard to explain but I think unless we really logically look at the social losses, the real losses, so not just health, not just suicides, not just jobs, but the fact that *the loss of a whole river system … is really the death of our nation in a real sense*, not just in an emotional sense. .."

— Jacqui Pasquale, Mildura

"If you live in a city you've got plenty to do, if you live in the bush you haven't. And to take a boat in and put it on the river on a weekend, or take the kids there, or take them fishing, or have visitors for the weekend (like a lot of people do), that's our lifestyle. And that's what people know, and that's what we've known forever. And there's not a lot that happens outback, and when they take water away, to me it's a criminal act. There's no other word for it. To take our only river away, it's crazy stuff, just crazy."

— Joan Stockman, Wentworth

"It's not only us that's suffering here in Wilcannia, it's all our neighbours. The people we come to know and enjoy their company. Whether we're black or white, the benefits should flow to all of us, not just one or two."

— David William Clark, Wilcannia

"There's not a lot around this area for Broken Hill people to do, recreation-wise or anything like that. So I mean, with the drought on top of it, it's even more depressing which has made everything worse."

— Karen di Franceschi, Broken Hill

"Many farmers are suiciding. Landholders are leaving their lands, communities are dying and people's culture and history is being taken away to serve the few. I am here to say that the greed, inequity and corruption has to stop. I know graziers who have had death threats, farmers who are fighting each other, towns that are pitted against each other, environmentalists are being a verbally annihilated and common land-owners such as myself have nowhere to go. We have farmers against environmentalists, irrigators against farmers. This is the result of the divide and conquer strategy and it is working. **We are all frustrated, depressed and angry at a government that cares only for the rich who donate to their political parties.**"

— Tuesday Browell, Broken Hill

"Fishing is an outlet for people. Even just going down to the river for ourselves, going down to the river and having a swim. You can't do those things. Being boxed up in your house all the time because you can't go out and play under the hose. Those sorts of things do affect kids' health. I'm not getting my vitamin D like I did. There's no river recreation and as much as the little fishing club, 'Ain't Caught Nothing Yet' Fishing Club, they're barely hanging on as well, you know, like. Whatever small bit we can do, we're doing, but there's no way we can do anything to come up against these giants in amongst us."

— Fleur Thompson, Bourke

"**With the river, and the land clearing they've done, they've totally destroyed the land, and not only destroyed the land, they've destroyed communities, destroyed people's lives, mentally, physically, emotionally.** … People are gonna move. People are just gonna migrate out. I've seen it happen. You wouldn't believe how many people that lie along this river system that packed up and moved on. People you thought would never leave their community but already packed up and moved on. I've already seen them all in the cities and that."

— Glenn Boney, Brewarrina

Above: Banner outside a shop in Menindee, 23 March 2019

5.7 Impacts on economic livelihoods of affected communities

SUMMARY

People who participated in the Citizens' Inquiry shared stories about the economic impacts of the dying river on their personal lives, households, businesses and townships. The Inquiry heard about small farms that had to shut down because they no longer had any water (or insufficient volumes of water), while other large operations continued, up river. The Inquiry heard about the significant impact on local tourism in places such as Menindee Lakes and Broken Hill, of no longer having any water for recreation and tourism activities. The Citizens' Inquiry also heard about the flow-on affects for businesses in towns that no longer had the number of small farms and tourism to provide for.

The impacts on the township of Menindee were particularly stark. The small town has been devasted by the changing fortunes of resources and infrastructure. Hundreds of acres of dead grape vines stand like skeletons around the town; these vines were once sustained by small water licences. In March 2019, the main lake was empty of water, dead animals were everywhere, and the local community was reliant on donated bottled water.

COMMUNITY COMMENTS

"I've been a resident of Menindee for over 46 years and in that time I have seen the place go from a thriving community of grape pickers, where at Christmas time we had anything up to 2000 people that would come into town, grape pickers and others. That's all gone now. … This place was absolutely a goer, it was fantastic. It didn't matter where you went, there was water, there was people, there was friendly faces. It's only now it just seems depressing, just time after time. I mean we had fishing competitions, we had, you know, kids that would just go fishing for the day. It's just... that's gone and I don't know how we're going to get it back,"

— Moya Reid, Menindee

"It's a shame to see that all these river towns have gone backwards in the last few years and it's not the towns' fault. It's because of government policies and greedy water users. In Menindee, we're down to about 450 people I think at the moment, which is a loss from a thousand down to 450. And it's turned into a town where people are on the dole. Go back into the 1970s and 1980s, you could count on one hand how many people were on the dole. Everyone had a job. Everyone was happy. Now there's not a job to go to so they've had to leave town and it's pretty sad. … Everything's gone downhill. Grey nomads have stopped travelling here. We've only had two or three caravans in the last three months compared to how many we'd normally have in the summer. You'd see 20, 30, 40 a day during their peak season. They like to come up here in winter for health reasons."

— John Coombe, Menindee

John Coombe, Menindee. 23 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

Menindee Seedless grapes, Robinvale. On the Murray River near Mildura. Photo by malleefarmscapes, licenced under CC BY-NC-ND 2.0.

"I'm from Sunset Strip, Menindee. Born and raised in the district and grew up on the river and the lakes. And what I'm seeing now, it's an absolute disaster. …. since 2005, 2006 in Menindee alone we've lost over a thousand jobs. We've lost pickers, pruners, wrappers, permanent workers, cartmen, fishermen. The lakes used to provide fishermen with their employment - they're all gone - and this is just one part of the whole system."

— Barry Stone, Sunset Strip, Menindee

"[The lack of water] has killed tourism. We used to get plenty of tourists here. And I have friends who have the River Lady Tours. Well they might as well kiss that business goodbye. So many people are suffering."

— Reena Lombardo, Menindee

"I've worked at the [Broken Hill] information centre for 16, 17 years. I know with the tourism, the numbers pick up once the water is in there. The camping picks up. You have a lot of people come in and look for birdlife. And there's a lot of birdlife and wildlife."

— Karen di Franceschi, Broken Hill

"It's sad when you drive up [the old dry river bed] and you'll see abandoned farmhouses, you'll see abandoned barns and cattle yards, where people have just walked away."

— Melisa Hederics, Wentworth

"Back in 1950s we had a 120,000 tonnes of sultanas grown in this region. If you look now it's around about 25,000 tonnes. It's an absolute disgrace what we, our governments of all persuasions, state and federal, have done to pure country areas."

— Susan Nichols, Wentworth

"I'm so passionate about what's happened, the river is the life of the outback and the people in the outback certainly need it - they certainly need the visitors that come to be along the river, that camp. When we were at the hotel we had big groups of people from Victoria [the other side of Melbourne] that would come up and camp on the river for a week or two. It was a cheap holiday for them and they supported the little establishments while they were there. So I think they're just killing the outback."

— Joan Stockman, Wentworth

"Our region, Wentworth Shire, the main industry is agriculture. We have had, to date, the highest-security water on the Darling River – there is an amount of water that is high security and there are licences to use that. The irony is there's no water. If our largest economy can no longer exist, as we've seen in Menindee, economies fold. And add to that, recreational fishing and tourism. … A lot of tourism in our area does revolve around the river systems. … [If there's no water] what then for us? Nobody can answer that."

— Jane MacAllister, Mildura

"There's so many people that depend on the river. For recreation … and **I think the point that a lot of people miss is that the river has a lot of visitors**. We had the Pink Harry Hotel for nine years and it was the visitors that really kept us going, and it would have been the visitors that kept the shop going, which carries the fuel for the rest of the district and for the mail trucks that run in the area that outlying stations they get all their fuel from, so without the little shops and the hotels and the community meeting spaces — and that applies to right along the river — Menindee, Burk, Tulpa, right through there."

— Joan Stockman, Wentworth

Grape Vines near Mildura. Photo by Kevin Matthews, licenced under CC BY-NC-ND 2.0.

"I feel passionate about small family businesses surviving in these areas and not just, you know, I know that big plantations bring jobs and everything — but those small families are so precious to us because they belong to the show society, they help with the bowling club, they help with the tennis club, they, they're part of the school system, they play football in the area. We don't want to bury these communities as well as the river. They're really precious."

— Marg Whyte, Wentworth

"I'm a local grocer we've got country that runs down to the river just south of Wilcannia … one of my biggest concerns for the river — and I hate putting it in economic terms because it means so much more than that — but I **think it's a real economic redistribution of wealth that's my biggest concern because they are stripping just so much out of all this country by taking the water out of it** and they're not creating wealth by putting in big crops up there they're taking it from here — because that water when it comes down here, creates so much for tourism, creates social health and cohesion ... And it's the loss of biodiversity too. So the life that happens when you get a good flood, it's not just about us producing more wool and sheep or fat lambs and cattle — that does create a lot of wealth — but it's just everything that's created when the river's pumping you know - it's so much more than just a river; it provides just a ridiculous amount for everyone out here."

— James McClure (pictured), Wilcannia

"They talk about us Aboriginal people not working … and they take statistics all the time about it. And we're out here trying...all the blokes are trying, to get jobs going, like tourism and all that. **And we want people to come out and enjoy the rivers, like our people did for over 40,000 years. But we can't do that without water, so economically it's really affecting our shops and things like that as well**. So that's really, really upsetting. …Tourism is one of the biggest industries in Australia. And we are tourism, Aboriginal people of this land. People want to come here and see us on our traditional land. And it's no good for them to come out and see us on our traditional land, we are the river people and we got no river."

— Eddy Harris, Wilcannia

James McClure, Wilcannia. 25 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

Box 5 - The decline of a small irrigated holding at Menindee Lakes

"When I hear stories of some mayor in Queensland saying that if they changed the water allocations up there, they'll lose 200 jobs, I find that as an insult because Menindee lost over a thousand jobs. If we'd lost 200 jobs that would have been a good outcome. The turning point for us was 2001. Before then our farm - which is a smallish farm for some of the farms that were there, it's 30.4 hectares – was pretty much at full production. We had somewhere around 29 hectares under irrigation. That supported four full-time people — myself, my mother, my father and a farmhand who worked full-time for the year. I remember when it was tax time I would write out somewhere in the order of 200 group certificates. Now those people may have worked for one week, they may have worked intermittently for six months. I work seven days a week now - five days in Broken Hill paid, and I work the weekend on the farm unpaid because it doesn't generate enough income. My eldest son, he's a first year, second year apprentice. He comes and helps me on the farm and I can afford to pay him one day a week when he comes out. I've scaled the farm back too — now that we don't have the water security that we used to... Menindee was, the Menindee low security water for a long time was regarded as the highest low security water in New South Wales and so a lot of permanent plantings were established on low security water which isn't its intent, but operating practices over a number of years had led that to happen and we were no exception. So I have 60 mg high security allocation, a 272 general security low security allocation.

I've now scaled the farm back so that I'm trying to get most of the permanent plantings that will be, that can be maintained solely on the high security allocation, so we've gone from 29 hectares back down to seven. .. and in the last financial year we issued ONE group certificate."

— Paul D'Ettorre (pictured), Broken Hill

Paul D'Ettorre, Broken Hill. 22 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"It's a shame to see that all these river towns have gone backwards in the last few years and it's not the town's fault. It's because of government policies and greedy water users. In Menindee, we're down to about 450 people I think at the moment , which is a loss from a thousand down to 450. And it's turned into a town where people are on the dole. Go back into the 1970s and 1980s, you could count on one hand how many people were on the dole. Everyone had a job. Everyone was happy. Now there's not a job to go to so they've had to leave town and it's pretty sad. … Everything's gone downhill. Grey nomads have stopped travelling here. We've only had two or three caravans in the last three months compared to how many we'd normally have in the summer. You'd see 20, 30, 40 a day during their peak season. They like to come up here in winter for health reasons. "

— John Coombe, Menindee

"People are already oppressed. The social economics of this town (Bourke) is run by the wealthy system and so nobody has a job. So once water goes, guess what, there'll be nothing. But I'll tell you what, this will always be our country and our people will never leave here."

— Lyiata Ballangarry, Bourke

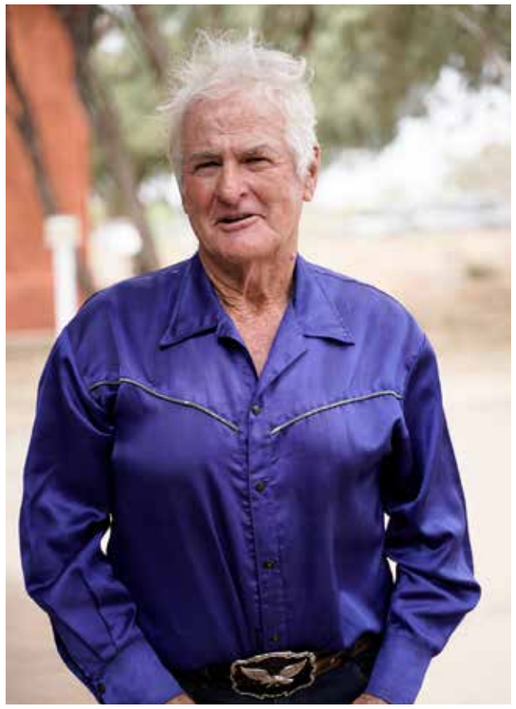
"I think that for everybody in Bourke, there's a social ladder in this place here. You can read that book called *Black, White or Brindle*. It's written by Gillian Cowlishaw about the social status of Bourke. And so you'll find that the hierarchy are allowed to do whatever and then the people like us, we have to abide by certain rules. And so that the town itself still suppresses the rest of the people, you know what I'm saying. Sure they might have went down there and had a big meeting with everybody else who are the representatives from this shire, but they still don't tell the grassroots people what's happening in this place. I come from Bourke so I know I know that I know what's happening here."

— Lyiata Ballangarry, Bourke

Box 6 - The decline of fisheries at Menindee Lakes

"I was a commercial fisherman in Menindee Lakes scheme for 37 years, until that was closed down — which they called the sunset clause. And the two gentlemen that brought that about are actually in prison now, but I won't mention any names. We did gill-net fishing commercially. We used to send the fish to Sydney, Melbourne, all over the place. There was a time when there were 20 commercial fishers working here at once, and there was still [enough] fish. We fished on Menindee Lakes, Mamaroo Lake, at Tandora, Black Lake, even up at Malta Lake, Bidjijee, Cawndilla, all these lakes. … Everyone was catching fish and they bred here in the zillions. This here is the greatest fish, bird breeding place in Australia. This should be a showpiece of Australia — of our wildlife, our fish and everything else. It's beautiful. We used to say to the fishermen when they met up on the lake, 'Another day in paradise'. It was just magnificent. And birds' nests out there just show the diversity of the birds that nested in those hollows out in the water. Up to 20 and 30 pairs in some dead tree with all little holes - it's marvellous! It's the greatest place on earth. It was. **…It all ended because they actually took our licences – the fishing never slowed. When they took it away in 2001 we were catching more fish. … But they only let us keep the yabby licence. … They were saying that [it was unsustainable], but we were proving by the returns from the fisherman going in there was more fish than ever."**

— Barry Helms, Menindee



Barry Helms, Menindee, 23 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"The community before, if you worked outside, you'd see some of your friends, they were happy communities. You go into some communities now you just feel the sadness because of all of those things I mentioned, you know [the state of the river, the state of communities]."

— Glenn Boney, Brewarrina

Menindee, 23 March 2019

"People have been lobbied to [about the alleged economic benefits of cotton] their entire lives. There's a tourism operator here and most of his spiel is how cotton's kept this city afloat and how cotton's built this town from nothing. Well I'm sorry but when cotton's not grown, the locals don't leave. It's not local people who are working for cotton companies, the locals don't leave. We're still here. We carry on. Unfortunately our town relies more on welfare dollars and the fact that the Indigenous community is quite poor and that's where the money in this town is, it's in the bureaucracy of health, welfare and poorness. It's not in cotton. It never has been."

— Fleur Thompson, Bourke

"In the early 1980s there was that much work and that much money; there was a lot of little farms, there was orchards and melons and grapes and there was miles of work because there were small farms. But then the big irrigators took over that type of farming … it all turned into large-scale cotton. … there was a lot of jobs back then, there was cotton chipping and Bourke probably had two or three hundred cotton jobs. But then planes came in and would spray a whole cotton farm in a couple of hours and all the jobs went; and then round balers came in and there were no cotton pickers. That's been a big change in employment."

— Phil O'Connor, Brewarrina

SmallW farm lots on the Darling River, from the collection "Wilcannia, 1935-1937 / photographed by Rev. Edward ("Ted") Alexander Roberts." Image from Mitchell Library, State Library of New South Wales

6. COMMUNITY HELD BELIEFS ABOUT THE CAUSES OF THE CRISIS

6.1 Introduction and Summary of Section

People who provided video testimonies and private testimonies pointed to a number of issues that they say are causing the crisis along the Barka/Darling River and Menindee Lakes, including:

- Extraction of too much water from the top of the river system, including claims that the cotton industry takes too much water
- Floodplain harvesting
- Commodification of water and the introduction of water trading
- Mismanagement, bias, corruption and water theft
  - Allegations of mismanagement and corruption
  - Problems with the 2012 Barwon-Darling Water Sharing Plan
- Alleged 'emptying out of the west' by governments
- Alleged breach of duty of care by governments, for the health and wellbeing of citizens and communities affected by the dying river system
- Failure of current governance systems to include First Nations peoples, local communities and local knowledge
- Dominant cultural mindset is flawed – non-indigenous Australia doesn't understand the river, grow appropriate crops, or have a positive obligation/ethic to Care for Country

A reminder about our approach in this report: The methodology used in this report is to reproduce direct quotations from the testimonies given by Inquiry participants rather than to paraphrase what we were told. All Inquiry participants are treated as experts of their own lived experience. This section shares direct statements from people's testimonies which are relevant to communit- held beliefs about the causes of the problems being experienced by, and around, the Darling River system and Menindee Lakes.

6.2 Extraction of too much water from the top of the river system

SUMMARY

Participants in the Citizens' Inquiry stated that the cause of the crisis with the Barka/Darling River is simply that too much water is being taken from the river system – especially from the northern/top part of the river. People believe that industrial-scale agriculture, including cotton, is allowed to take too much water, at the cost of towns and small farms further down the river. In addition, floodplain harvesting was identified as a practice that diverts too much water from the overall river system, benefitting large water users. People also pointed to what they saw as insufficient regulatory systems (rules and enforcement of rules) at the top, and across the whole, of the river system.

The blame has been firmly placed on the state governments by allowing too much water to be taken out of the system for many decades. It is a widely held belief that irrigation and unsustainable land use are the two primary local anthropogenic sources of stress on the Murray-Darling Basin. Indeed this was also a key finding of the Murray-Darling Basin Authority's own research which highlighted irrigation development in the northern Basin as playing a key role in reducing these smaller, regular flows, along with drought and climate change.[118]

If there is one thread that runs through all the testimonies, it is that the river should be allowed to flow, and experience its natural cycles of flood, flow, drying out, and flooding again – and so on.

118 Murray-Darling Basin Authority (2016) *The Northern Basin Review – Understanding the Economic, Social and Environmental Outcomes from Water Recovery in the Northern Basin* (Report).

Many Inquiry participants explained that the Barwon-Darling River is a "dryland river", which means it is naturally prone to periods of extensive low flow punctuated by periods of flooding. However, the presence of certain iconic river animals within its large waterholes tell us that a completely dry river bed is not normal for this system. Many testimonies stated that normally, even in drought, large waterholes kept supporting life, until the next rains or floods. The Murray cod that died in the horrific fish kills are the sentinels of permanent deep waterholes and river channels – you just don't find them in rivers that dry out completely. So too the presence of large river mussels who have inhabited the system for thousands of years (their shells are abundant in Aboriginal middens along the banks) show us that the river system has, until recent times, always had enough water in the deeper water holes to sustain aquatic life.

Participants felt that Government subsidised water efficiency measures fail to deliver efficiencies and went as far as to say that in some instances, taxpayer money was being misappropriated by government.

Criticisms were also made of several 'strategic water purchases' made where the purchase price was well above market value, often in circumstances where there was little or no return to the environment.

Disapproval was voiced that these were not transactions that were available to all water licence holders via an open tender.[119] **Participants argue that one of the reasons the $112 million water "buyback" will do nothing to benefit the river or water users downstream is the fact that water is being intercepted, diverted and harvested in the northern Basin before it reaches the river. Although Floodplain harvesting has been regulated under the Cap system since 1995, it has never been fully measured and accounted for.** Add to this a $25 million water efficiency fund provided to Queensland irrigators used to store water that flows over floodplains and prevent it from entering the river. It is obvious to anyone who has visited the Barka/Darling River system that these taxpayer-funded subsidies are not increasing the volume of water in our rivers. Participants criticised the billions of dollars being spent on projects that do not achieve their intended purpose. The reason is that the water is simply not getting to the wetlands and lakes.

A Dethridge Wheel for metering water flows and siphon tubing for irrigation near St George, Queensland (2008). Photo by Brian Yap (葉), licenced under CC BY-NC 2.0.

119 Above market value examples include;
1. 10.611 gigalitres of water in the Warrego valley for $16,977,600 – more than twice the price per megalitre paid by the Labor government.
2. $80m water buyback in Condamine-Balonne was 25% more than asking price and the company immediately recorded a $52m gain on the sale of the water. The commonwealth paid $2,745 a megalitre for the water, whereas the company had initially been seeking $2,200.

COMMUNITY COMMENTS

EXTRACTION OF TOO MUCH WATER FROM THE TOP OF THE RIVER SYSTEM

"The problem is historic over-allocation"

— Jason Modica, Mildura

"Who is greasing whose palm – all the water is at the top of the Darling and nothing's coming down. It's a sin for what's happened to it, it's just not right."

— George Buckwell, Mildura

"What we are hearing is that there's, up north further, there's been water users that have been taking more water than they're allowed to, they've been taking, you know, tampering with meters and all that sort of thing. That's a no-go. And you know they're not paying for the water they're taking. They're illegally taking water and then these people down here that are paying their rights for water."

— Susan Nichols, Wentworth

"I've travelled up and down the Darling River, right up into Queensland for 30 years. I watched the Darling River go through droughts, terrible conditions, now the abuse of the river. I've worked up there carting wheat in Walgett, seen what went on up there. … I won't name those big farmers … but I've seen it happen. I've been out on their properties and it's a disgrace. And it's all 'under here', money under the table for politicians. Why are those farms [up north] allowed to build dams in the last few years when we've got a water shortage?"

— Robert Pearce, Wentworth

"I've been told … there's four years of water available for large crop cotton growers in NSW and Queensland; that they're held off in turkey nest dams. They've been able to harvest off turkey nest dams and there's been a change in the way the water's been considered, so high flow off-take can be just taken for free and put into these turkey nest dams and they can use environmental money at times to actually divert the water into their turkey nest dams *illegally*. … Community outcomes have dropped to third place or fourth place."

— Robert Biggs, Mildura

"I can't understand why the government will allow so much water to be taken up by the farming upstream, that there's nothing left to come down here."

— Anne Spudvilas, Wentworth

"I want it stated here, now, that it's not the environmental water. It is the over-allocation and it is the misuse of that water with irrigation".

— Robert Biggs, Mildura

"Too much water is being taken. There is still no embargo to stop low-security irrigation from any small or medium flow that has (or will) enter the tributary river systems to the Darling River. Some irrigators upstream have managed to acquire water for cotton crops rather than allowing it to flow downstream and keep some life in the river system and water in some towns. It has rained in some catchments, the Macquarie, the MacIntyre, the Weir and a couple of other northern rivers, that should have reached at least Walgett, during the past six months. Some irrigators can still legally pump out 300% of their yearly allocation, even in low flows."

— Larry Webster, Broken Hill

"The river was part of my life, and to get as old as I am now and say this, to me it's an absolute catastrophe. It's a man-made catastrophe. It didn't need to happen, but it was greed — greed made the river like it is now. And I'm not gonna say it's dead or destroyed, mother nature is gonna fight back, but first we've got to get rid of this insatiable greed that's wrecking the river."

— Steven Cicak, Menindee

"Just stop being greedy, share the river. Share the river, share it, so people can get on with their lives and make a better future for this country. Not for one town, but the whole country. We need these rivers. We're going back to the pioneer days, it reminds me of the cowboy pictures we used to see. The Western pictures, where one guy goes upriver, with streams going through all the properties, and he goes upriver and then he puts a big dam up. And they're shooting one another. It's like that, we going back in the colonial days …. That's how I look at it."

— Eddy Harris, Wilcannia

"The first problem is the MDBA 70 gigalitre reduction in the northern Basin. It's a sham of smoke and mirrors. They say the socioeconomics was spot on but I don't know how you can come up with impact on irrigators up there when half of them aren't irrigated – half of them aren't metered in Queensland and probably half those meters don't work. And in NSW, well the *Four Corners* show could pretty well cover the argument there …"

— Howard Jones, Mildura

"They got satellites watching all over. All you got to do is Google it up. You'd see where all the green is – you'll see where all the dry country is. Then you see people growing cotton."

— Badger Bates, Wentworth

"This has got to be something that's happening from the top. If you're not getting enough water in, you don't let it out. It's very simple."

— Joanie Sanderson, Broken Hill

"I've done a lot of research in my time and yet they're just saying to people, 'You can have water, you can have water, you can have water and if we don't give it to you this year, we'll give you a couple of buckets next year,' and everyone says, 'Well I've got a right to the water I've purchased,' and yes they do, but they've been sold the emperor's new clothes. It doesn't exist in the first place... I do feel sorry for the family farms."

— Jennifer Evans, Wentworth

"The main problem was the over licencing of cotton farmers and other irrigators for whatever reason. I think the government didn't know what it was doing when they said we can manage this, by doing, this, and that – like allocating water that hasn't even arrived from the boss [God] yet."

— David William Clarke, Wilcannia

"I work on a sheep station and it's been a home to me 30 years. I love the place and love the people and it's very sad to see what's going on, but it's a little bit of a no-brainer as far as we're all concerned down here. You know we live in a semi-arid marginal area where water is at a premium and to have a system over-committed, that's a no-brainer that ties in with lack of supply, the ones further down the system are gonna suffer. So [things won't get better] until the Darling's seen as a system from 'go-to-whoa', without three different states or whatever."

— Patrick O'Keefe, (Wilcannia)

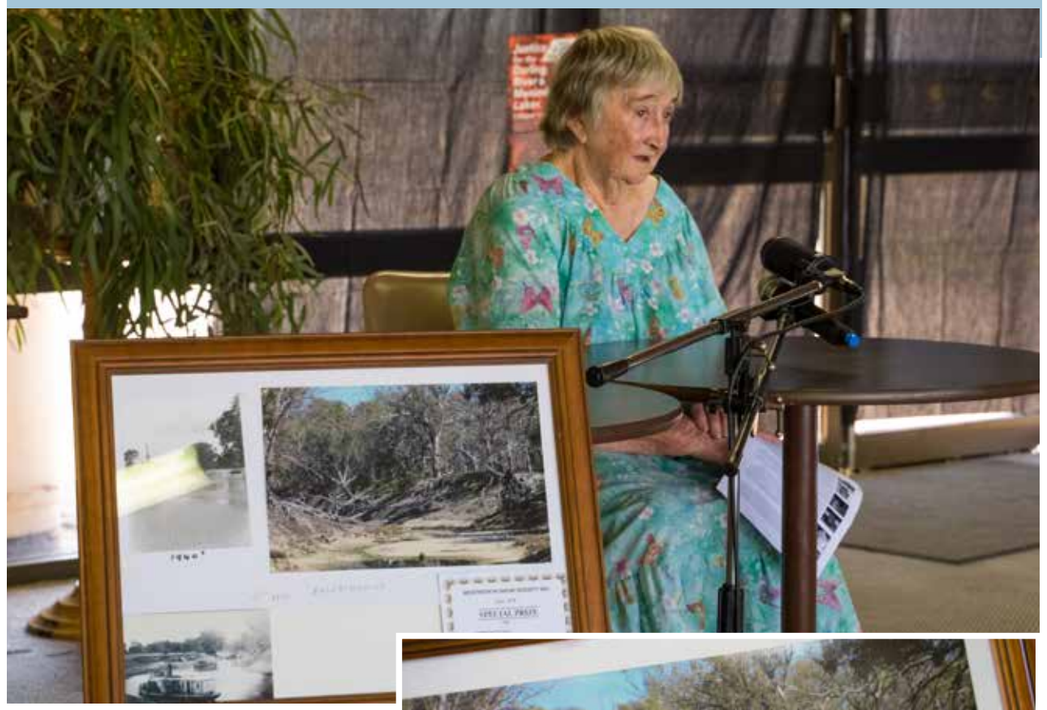
"But this is bullshit, absolute bullshit. … We got a cyclone that comes down. I don't see any water coming down. I think it's all harvested before it even gets to the upper waters, it's harvested."

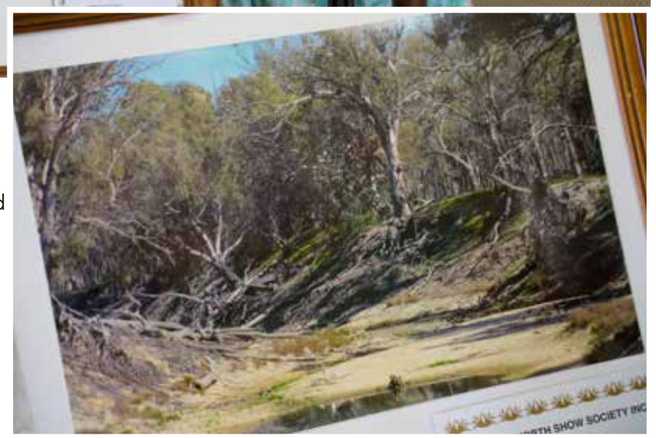
— Lee Rossetti, Broken Hill

Box 7 - Watching the same deep waterhole for 80 years

"Marj Worrel is my name, and I live in Wentworth. I'm nearly 85, and I've lived near the Darling nearly all my life. And these three photos tell the story that I want to tell you. **The top one [Photo 1] was taken in 2017 and I've never seen that bend of the river dry before.** The one with the boat on it [Photo 2] was taken in the 1940s, I'm not sure when my mother took it, but in the 1940s there was a great drought. And they tell you this problem is caused by drought… In 1940 when it rained the river would flood, and then [water levels] did go down and the river would be dry again, **but it never went dry in that corner, that's always had water in it**. The little photo down on the left-hand side [Photo 3] was taken in 1912. The river is very low there, but it was still enough water in it for the paddle boats to come up and that barge that's there, it sank and all the [wool] floated out. And my uncle he had the job of recovering it for miles and miles down the river. They dragged it out and put it out on the bank to dry ... So that's the story of those. **This today — what's wrong with the Darling at present — is not caused by drought. The drought isn't helping, but … the main reason for certain is because too much water is taken out at the top of the river, but as I said, the drought is not helping. … It has been mismanaged for years.**"

— Marj Worrell, Wentworth (85 years old)





Above: Marj Worrell speaking to the Tribunal panel at Wentworth.
Right: Detail of Photo 1, showing the river in 2017, "I've never seen that bend of the river dry before" - Marj Worrell.
Facing page: Marj Worrell with historical photos. Photo 1, top right; photo 2, top left, photo 3, bottom left.

Photos by Eduard Figueres - courtesy @VoiceOfTheBarka

"Wilcannia Bridge over the Darling" during the Millennium Drought (2002).
Photo by Spelio, licenced under CC BY-NC-SA 2.0.

Box 8 - Even the Millennium Drought had clear waterholes

"I was born in Broken Hill and I have had family here all my life. So I have spent most of my weekends here in Menindee. After we came here in 2002 it was the millennium drought. **They said that the millennium drought was the worst that they'd ever seen. But we could still use that water, we could still use the water in the river at that time.** We didn't get any water down until 2010. So between 2002 and 2010 we didn't have stinking, stale, rotten water - we could still use it. We could still swim in that river every day and we were fine, but since 2012 — when these new rules came out which changed the sysWtem, which stopped the water coming down the river — we've been stuffed. It's just completely changed us."

— Karen Page, Menindee

"Coming out from Moree you see quite a lot a number of large dams and there's properties there that have six and seven dams, you know. … There's a young guy here and he's got a drone and he actually shows me a lot of those dams. And they're actually really full. Most of the water doesn't even reach Collie today and if you go over there now that's at a standstill as well …. So the water's not even reaching Collie. If they let a huge lot of water out at Copeton Dam or anywhere to come into Moree it doesn't leave that area and to get down to the next town. So the people in in in places like Bre and Walgett and Bourke and going down the river will never see any of that water even if they let it out."

— Lyiata Ballangarry, Bourke

"**Drought is one of the major causes but really the main cause is the irrigation.** We've had droughts before and you talk to our elders and yes we've seen droughts before and I remember when I was a child my Nana was telling me there is going to be a big drought coming and so and our droughts usually last for about seven years and just about everything in life is a seven-year cycle and so for this to be continuing it really does say that there's something wrong happening in the environment. And the irrigation that's been taken out of the river is just atrocious and the fact that these companies are getting fined and the amount of money they're getting fined, it's nothing you know — they can pay that off with their interest from the sales of their industry so I'm very, very concerned about the industry."

— Patricia Frail, Brewarrina

"I'm 75 years of age. … the algae blooms have been around. But seeing the river now, in this no flow situation, this is the worst I've seen the river. I was asked to go on the river management committee, which was the plan for the Barwon-Darling River Committee, about the irrigation (around 2004/2005). What I found was … that the irrigators were on their own, because even the graziers had turned against the irrigators, because they could see how much water was being taken out."

— Bruce Wilson, Brewarrina

"The governments can all blame one another, but come and ask us Aboriginal people, we blame the whole lots of youse. From the politician to the cotton farmers to the irrigators, we blame the whole lot of youse. The whole lot of you got a lot to answer for. And the people need to be prosecuted, the people need to be prosecuted - to get the message that you cannot steal water."

— Glenn Boney, Brewarrina

"Water's being extracted from this system and has been extracted from the system since the 1880s. We're in 2019 now. The problem is not a new one but the problem is being repeated over and over with worse and worse outcomes so for us people living here."

— Bradley Steadman, Brewarrina

Patricia Frail, Brewarrina. 29 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

6.2.1 Comments specifically about the cotton industry at the top of the river system

SUMMARY

In each of our public hearings, a majority of people offered the opinion, often backed up with facts about allocation levels, that the greatest cause of destruction to the Barka/Darling River, is the cotton industry situated largely at the top of the river system. While many people stated that whether it's cotton, or another crop, taking too much water at the top of the system will be detrimental to the health of the whole river, a majority of people felt the cotton industry – how it operates, who owns it, how it seems to escape regulation and enforcement – was a serious problem for the river system.

"Bales of cotton on a farm" near Goondiwindi. Photo by tbate54/ shutterstock.com

COMMUNITY COMMENTS

COMMENTS SPECIFICALLY ABOUT THE COTTON INDUSTRY AT THE TOP OF THE RIVER SYSTEM

"I blame the cotton from the start and then Cotton Australia because it got so rich and then it got in Government ears and it said, 'We can have more, we can have more, we can have more' and they twisted and they manipulated every law, every rule in the bloody book. … They've gotten enough money to pay very, very clever people to get in the ears of all them politicians. We had droughts, but not like this, you know. The drought didn't affect the river. **I'm 66 years of age and I never seen the river ever, ever been like this. And I blame the cotton. They took our water out of the river. … And they say don't blame the cotton. Well who else is there to blame? This never ever happened, you know, until they started taking water out the river. Mucked our river right up, the cotton growers.**"

— Barbara Webster, Broken Hill

"The real issues coming out of the mouth of every person is over allocation and yet those cotton growers ... are still reaping the benefits. They need to be jailed. That's it, jailed. And all that money that that they've received, that's not their money. That money is there from the water."

— Brendan Adams, Wilcannia

"Why can't those people make a living and grow something? We can eat fruit, we can eat a lot of stuff, but we can't eat cotton, you know. Why is it open the door for up the top, the top of the system? They can have all the water they want. Down this way we got nothing. What about my people and the white people that live in Wilcannia, right up from Bourke down to here. Where's their water? Don't they got a right to live on the country? I'm not only talking about black fellas, I'm talking about white fellas too."

— Badger Bates, Wentworth

"You know they say cotton is not part of the blame, but they are the biggest part of the blame. The biggest part. You could do a flyover all around here you'll see the cotton farms, their dams are full of water. And you even got communities crying out for water…. **You gotta start somewhere - start with the cotton. The cotton has gotta go. Because you can drive around the country, from here to Dubbo, see the country is dead. But you'll see a big nice green cotton farm, with their channels full of water. I been this way, I been up the other way to Moree, I've seen these dead landscapes, but the cotton farms, they're green with channels full of water**."

— Glenn Boney, Brewarrina

"I was born on this river on the 18th of July 1939. Come July this year will make it 80 years. I've seen this river and what I can remember of it at its best and now at its worst. And I go back well before cotton. I can remember all the fruit farms here, grapes, everything. There was never pollution, but **the minute the cotton was grown at the top reaches of our rivers, that was the end of the river. It was just nothing but filthy pollution that came down this water, and it was used as a sullage drain off the big cotton farms**. … that's exactly what the cotton farms have used the Darling River as - a sullage drain off their cotton farms.... If they don't curb how much cotton is grown, if they're too afraid to wipe it all out, then they must cut back on it to stop this pollution of this river. And until such time as they do they are never, ever gonna stop the pollution that we're being putting up with now"

— Ross Files, Menindee

"I had to watch 10,000 megalitres a day be released in the upper catchment from October (2018) through to January (2019), and **not a single drop comes past here**. And I've just been to Dubbo and I've seen the Albert Priest Channel running full of water. **I've seen hundreds and thousands of acres of cotton irrigated with that water**. And it's all legal because of the carryover allocations. And more than likely they'll be left over this year. So if we aren't out of drought by next year the same thing will happen."

— Fleur Thompson, Bourke

"I'm upset that man can do this to man. They are doing it to their own people. They don't care. I've seen Cotton Australia on the internet, backing their people for doing the right thing. They're not doing the right thing. Get in a helicopter, go and have a look. Next time there's a flood come get in a helicopter and have a look. I spent 15 hours in the air in a helicopter, looking at what's going on. … **I've looked at these little towns that are dying and you can see for every town you can go and find one big irrigator which has taken that water … Big cotton isn't employing anyone; government bought the river licences, then they made their own creeks [through floodplain harvesting]; it's illegal to interfere with the rivers.**"

— Bruce Lamey

"I think cotton farmers are over-allocated water. I think we all have the ability to share the water, share properly. I think the Murray-Darling Basin Plan 2012 really favoured irrigators. I think their allocations should be cut in half.... We can all share it."

— Will Middleton, Wilcannia

"I want to see the carryover allocations stopped. If there is no water, there is no water. I don't want to see people pumping out. I don't want to see an area the size of Belgium be growing cotton in New South Wales when I've got a dry river. I don't want to drive to Dubbo and see acres and acres, hectares, of cotton lushly irrigated, whilst we have nothing."

— Fleur Thompson, Bourke

"I'm not a cotton grower or rice grower but I mean to me, they seem to use an awful lot of water and do we need to grow it in this country? I don't think so. There's a product called hemp that they — you can use it for multiple things — that uses far less water."

— Wal Banyard, Wentworth

Box 9 - Seeing water use change – from the air

"Those dams in between Bourke and St George, none of those existed when I first came here. Round about the 1990s there was a few, from the 90s onwards. I remember coming back from a trip from Brisbane over St George to Bourke in about 2007. Now we flew over those 'turkey dams' one after the other. We flew for – because we timed it – 20 minutes. I flew for 20 minutes, 150 knots – that's 270 km an hour for those people who don't understand that. Twenty minutes at 270km an hour, we were flying over one dam after another. That's how many that are up there. It's quite incredible.

"So you know there's quite an incredible amount of dams through there, and the point is they're also harvesting off the floodplain. All those little creeks, the water just doesn't get to them anymore. They've got little banks probably as high as this table all over the place, harvesting that water – **and it's not measured. Nobody knows how much they take off, so all those little creeks that feed ultimately into the Darling just don't get down there anymore**.... All those small flows that keep water in the river and keep it moist and keep the fish and other life alive just don't come through anymore. … Unless you keep those small flows coming down you've gotta actually get a big flood for the water to get through, and it just doesn't happen anymore."

— Don Crittenden, Pilot, Broken Hill

"Aerial view over farms" near Goodiwindi, showing examples of irrigation canals and dams.
Photo by tbate54/shutterstock.com

"**There's one thing I'd like to add before I go. It started off with cotton and then it changed to the rules of extracting water in this MDB Plan. So it doesn't really matter if they're growing cotton or any other thing up there. They're taking too much and they're allowed to do it. And that's the biggest problem now.** Because if we say you're not allowed to grow cotton anymore they'll use all that water and they'll clear more and more land … and they'll still have a buggered-up river."

— Barbara Webster, Broken Hill

"I was in the airplane business, chartering aircraft around the area. In the late '80s when Bob Smith and the crew were talking about putting cotton down at Lake Tandou, I took him on a charter to Lake George, Wee Waa and all those cotton growing areas. We were talking to various farmers up there and there was a, well, everywhere we went there were Americans. I said, 'How come there's all these Americans out here growing cotton in Australia? Don't you grow cotton in America?' He says, 'Oh yes we used to but the land's all ruined.' I thought, 'That's nice.' Anyway, it was pretty obvious to them that they had to move somewhere else."

— Don Crittenden, Broken Hill

"The other thing I really do worry about is that the land that's been cleared for cotton growing – I'm not 100% sure if this is accurate or not — but they tell me that at some point in the future, the land will eventually become no good for growing cotton because growing cotton makes the land infertile, and you can't do anything with it. So what are we going to do then?"

— Ray Johnston, Broken Hill

"Another thing – you hear a lot of talk about cotton and so forth, but the thing that never seems to get mentioned is the fact that the machines can't harvest the cotton unless they defoliate it first. Now I've asked people what they used to use. They used to use dieseline with water – just dilute it and spray it. But they don't use it anymore. I played golf with a guy in Port Macquarie who's a cotton farmer from Wee Waa and I asked him straight out, 'Now what do you use?' He gave some long-winded name. I said, 'Well what about, did you ever use diesel?' 'Oh yes, we used to, but that's been 20 years since we used that.' But I said, 'What about this chemical you use now, is there any residue?' 'Oh no, no, there's nothing, you know. It's harmless. It'll only take the leaves off the cotton.' But I mean, to me, anything that's strong enough to take the leaves off a cotton plant which is fairly substantial surely must leave some residue and that concerns me a great deal and seems to get very little publicity. … They say it's harmless, but so was DDT … so who knows in the long-term what's going to happen?"

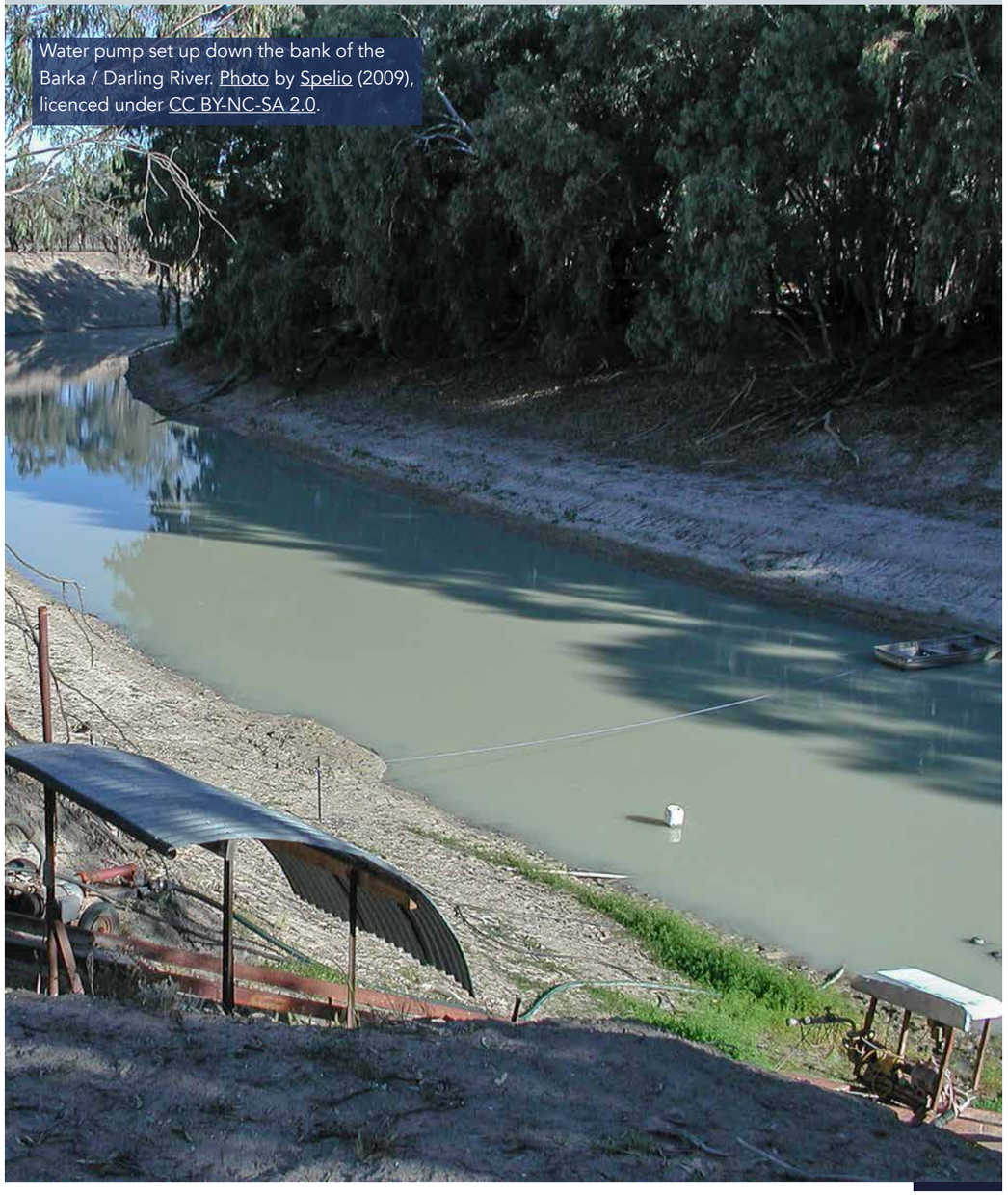
— Don Crittenden, Broken Hill

Lake Tandou (bottom) - including cotton grown in lake bed - and Cawndilla Lake (top). Photo by Gary Danvers, licenced under CC BY-SA 2.0.

Box 10 - Watching the pumps change the water

"This one particular day that my mum and myself had gone fishin' and was sitting down there and we're catching the fish, and all of a sudden see the water move. And mum, being the old elder thinking, you know, well maybe the spirits are doing something with the water. But you're sitting there and you're watching the water and it's like, well this is not right. Something's going on here. It's not no dreamtime thing, or a spiritual thing, it's a pump and it's sucking the water out, going back upstream. … And years down the track, you're hearing all these problems with the river … and you hear about the irrigation at the top end … and then people are saying they got a job on the cotton farm. And you don't have to be some academic person to know that cotton don't fit in our country. Nor does rice."

— Virgean Wilson, Menindee



Water pump set up down the bank of the Barka / Darling River. Photo by Spelio (2009), licenced under CC BY-NC-SA 2.0.

"We heard reports that it had rained in Queensland and there was water coming down the river. Now normally it takes three to four months to get down to Menindee. But all of a sudden this water was down here within 3-4 weeks and we thought that's a bit strange you know; what's going on. … A number of people noticed the same thing and they eventually found out that the cotton growers had all known the water was going to come down the river. They had let all their rubbish water go (from their dams), with all the nutrients in it and were taking all of the fresh water. That's gone on for years and years and years. I'm sure that it's all of the chemicals and the nutrients that they're putting back into the river. I'm pretty sure that's illegal. … I think there's a lot of corruption that's been going on."

— Ray Johnston, Broken Hill

"I know that the cotton industry is really important but the toxins are just killing our river system and they should have thought about it carefully and grown it elsewhere."

— Reena Lombardo, Menindee

"This is just pure corruption, all over the love of cotton. And dare anyone tell me different, because it is cotton. I'm not going to butter it up or anything like that, because we never had the problem until cotton come into existence. We never had the problem. Russia: lakes dried up - cotton. America: kicked off the Mississippi - cotton. China: depleting their cotton growth, because it's destroying their environment. They come over here and do it, so right now we've got to stop it. Right here in Australia: reduce it or stop, it that has to happen. Now, before it is too late for everything."

— Barry Stone, Menindee

"The water's getting more foul as we go and you won't be able to drink it. There's only one thing that's doing that and that's the chemicals coming off the cotton. You don't need to be a scientist to work that out, you know. … While ever chemicals are being put into that water it's going to get more toxic as it goes."

— David William Clark, Wilcannia

"They keep blaming the cotton all the time. If they had of put a cap on cotton, before it got like this, it wouldn't have happened. Like, if it's gonna be dry put a cap on cotton, don't plant this year. But, everywhere's the same. There's cotton. I've travelled all over Australia and they've been growing cotton up there for years and years and years. But as I said, mismanagement, and when it was dry they let the cotton keep taking the water but they shouldn't of. But they're [not] totally to blame. It's definitely mismanagement by the government."

— John Brereton, Menindee

"Our biggest cotton producers in Australia are America and China. Both countries have polluted the people that are out here, have polluted their own countries. …Then they come to Australia and now crooked politicians welcome them with open arms. All I'm just saying is how are we going to control this when your politicians are so corrupt - just how are we gonna stop it?"

— Ross Files, Menindee

"You drive along between here and Moree and you'll see green, you'll see their cotton - all beautiful and green. So where are they getting the water from if it's not reaching Collie? If it's not reaching into Brewarrina or the Bogan River or anywhere? Where are they getting the water from, who monitors this? I think they get token people to appease people - they'll fine someone with big money and they'll put it in the paper and then that just takes your focus off while, coz they're doing something."

— Lyiata Ballangarry, Bourke

"For people that have come in and grown all this cotton and has never given a thought to the little people, never given a thought to the traditional owners within the country, within our own country. We like to think that they're invaders anyway. And I would call them that — invaders — these greedy people. The dollar, the dollar is more important to them than a life."

— Lyiata Ballangarry, Bourke

"I was born and raised on the Namoi River. I know just about all the big waterholes in the river. The old people told me the big waterholes never went dry. There's only two big waterholes in the river now. And back when we was growing up as kids we had to carry water from the river and wash in the river. But all our parents in the area...when the cotton came, we were told not to swim in the river, because of the chemicals."

— Alan Tighe (pictured), Walgett

"I'd just like to say I think the cotton growing on the unregulated rivers is unsustainable, and it's got to be stopped."

— Bruce Wilson, Brewarrina

Alan Tighe, Walgett. 28 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"Above Dirranbandi is Cubbie [cotton] Station, which is still 80% foreign-owned [Japanese Chinese consortium]. And it takes 10% of the water from the river. It's a foreign company taking 10% of the water that goes through the Murray-Darling. I would like to see an end to floodplain harvesting. I would like better political decisions, especially during the last government [in the Turnbull government] by the Deputy leader of the Nationalist Party."

— Rosemary Maddox. Walgett

"Long irrigator from the dam wall". A lateral move irrigation system in Goondiwindi, QLD. Photo by Peter Albion. May 2019. Licenced under CC BY-NC-SA 2.0

"I feel for cotton growers and graziers and I can appreciate both arguments, but certainly I really feel for the graziers downstream because I do believe that certain cotton growers - not all of them, because as a whole I think they're a very nice group of people - I think there was a certain few that really have gone too far and really pushed their agenda especially to the detriment of Broken Hill and Menindee and downwards – in all that area they've really suffered."

— Claire Prestley, Brewarrina

"A lot of people say to me, 'You're always picking on cotton,' but it IS the problem; they've accessed these licences, they've got all these licences, they've been given out will-nilly for a river system that just can't handle the amount of water that's been handed out in these extraction licences - it just can't handle what's being extracted out. … I have a small A-class licence to irrigate 25 acres and, you know, I just can't use that anymore. I used to grow melons and crops that would employ a few people and create a few jobs for some people but no, now I can't access it. The biggest problem has been the change in the rules."

— Phil O'Connor, Brewarrina

Phil O'Connor, Brewarrina. 29 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"I've had threats from (a cotton lobbyist's) family. Verbal threats and Facebook threats. I had a threat last year from his sister, all these little comments add up … it was meant as an ominous threat to shut my mouth. *{'Do you ever feel frightened?'}* Yeah. *{'Do you think other people in this town feel frightened about speaking up?'}* Yeah, I do."

— Fleur Thompson, Bourke

"A lot of people are scared to come forward and talk about the corruption and malpractice that have gone on on these farms and, you know, I'm not here to say that they shouldn't step forward or they should — but there would be a hell of a lot more airplay if all of these people actually spoke about what they know is going on in these farms."

— Phil O'Connor, Brewarrina

6.3 Floodplain harvesting

SUMMARY

There was significant community concern about the various techniques used to capture, divert and use water from the floodplains (floodplain harvesting), before it reaches creeks, rivers and wetlands. This practice was said be occurring in a large number of catchments, including the Barwon-Darling. Everyone who spoke to the Citizens' Inquiry about floodplain harvesting said that the practice must be stopped, or at least monitored and regulated, because it doesn't just take water before it enters the river – which is devastating enough — it also contributes to the drying out (and dying) of many smaller tributaries and groundwater sources.

As noted in **section 6.2.1** of this report, many participants in the Citizens' Inquiry were angry about cotton aggregates and industrial-scale enterprises that have allegedly created massive earthworks to harvest water from the floodplains and divert the water for their exclusive use. It was also alleged that earthworks constructed on large cotton plantations have received tens of millions of dollars through the Commonwealth's Healthy Headwaters program to make their operations more water-efficient.

A common view voiced by river communities is that floodplain harvesting will undermine the national $13 billion plan to save the Australia's most important river system. This community view is backed by ecologists who say the harvesting of floodwaters will inevitably deprive the floodplains of water needed to support whole ecological communities and some of the country's most important wetlands. Communities say that it comes as no surprise that the harvesting of water from floodplains reduces the amount of water reaching or returning to rivers. This in turn decreases the amount of water available to meet downstream river health, wetland and floodplain needs and the water supply entitlements of other users.

Calls for floodplain harvesting to be stopped have been prominent in previous water inquiries and reports:

> "The floodwaters should not be taken unless we understand the significance of such activities on catchments and aquifers, based on an understanding of the total water cycle, the economic and environmental costs and benefits of the activities of concern, and to apply appropriate planning, management and/or regulatory measures where necessary to protect the integrity of the water access entitlements system and the achievement of environmental objectives."[120]

However, many communities are not optimistic about seeing an end to this practice. For example, the Department of Industry NSW is on record stating that floodplain harvesting … "*is an important source of water for industry, particularly in the northern Basin areas of NSW*".[121]

COMMUNITY COMMENTS

FLOODPLAIN HARVESTING

"Both Indigenous and the Settlers of the Lower Darling have had their quality of life and livelihood removed by the greed of corporate irrigators upstream in their quest for dollars by the over-extraction of the Darling waters. They're not just extracting what was available in the river in their quest for dollars, they also implemented floodplain harvesting, removing water from the environment which the river needs… **Floodplain harvesting takes water that breached the banks of a river. Just because it's broken out of a water course doesn't mean it's been lost to the river or the environment. The water still belongs to the river**."

— Ron Perry, Mildura.

"**Probably the greatest impact of the lot is floodplain harvesting in NSW. … It is the most corrupt anti-healthy river system that I've ever seen in my lifetime of watching water**. Compliance is going to help us immensely over the next few years."

— Howard Jones, Mildura

120 National Water Initiative, paragraph 56.

121 Department of Industry, NSW (2020). Floodplain harvesting program. *NSW DPI* (Web page). https://www.industry.nsw.gov.au/water/plans-programs/healthy-floodplains-project/harvesting

"What happens when you dam tributaries? Nothing goes in the river. So floodplain management has just continued from that. … The Darling River starts in the floodplains. It's ephemeral because it starts, you know, in a very wide catchment area so when they were all dammed, it was for short-term gain. … Floodplain harvesting has to change. That and water sharing have been the two things that have really impacted in a very concrete way."

— Jacqui Pasquale, Mildura

"People that live on the river … can see the illegal side of things underneath what people are being told that live in the city, or don't live on the river. You know, like they put in a levee bank or spend the money on putting up a road system that's actually a levee bank, that holds back the water. So it looked like a road. When it rained, the neighbours were flooded out because this unnatural bank's been put in, so floodplain harvesting was done underhand, and then it was passed through Parliament, and it's legal, you know."

— Tony Smith, Wentworth

"You can't alter nature's natural route of its courses or waterways – you can't alter 'em because when you start altering them, then that's going to affect one place and another place … it was mentioned before, a perfect example of what happened up north when they put that road in, and you know that man should go to jail because they put it under roadworks, but they actually built a 32km levee and raised the road so they could store the water, you know. .. It's destroyed one bloke on the other side and he benefits with water on this side."

— Graham Clarke, Wentworth

"I was at a 21st birthday party of [a local cotton-growing] family and heard them mocking and laughing about how they could do whatever they want, build whatever they want, because, 'No one can see us doing this,' you know, 'ha ha ha.' I didn't think to connect it then. But since Dad found it, he realised 3000 megalitres can be held back in that extended built-up 'road'. They've now been told to take it down, and they actually, they offered to take it down rather than be prosecuted."

— Fleur Thompson, Bourke

"With the floodplain harvesting, the amount of water that runs into the Namoi is decreased, therefore the flow into the Darling is decreased, therefore people further down don't get their water. I think we need to completely restructure how we allocate water."

— Coleen Edgar, Walgett

"I went up to Tamworth there a couple, about a month ago there and up in Wee Waa, the channels are full up there. Me son was there one day and we saw they had water up there in Pine Creek, yeah, and then they just made two channels and spread it across and pumped it straight in the dams. Yeah, even up the Namoi there they dug the river out so they can have big holes in the river. Mmm, so they, when the water comes down, all them holes just fill up for them. … They block if off with dirt and put a few trees across the riverbed and put the dirt up on it so they can, it looks like the trees blockin' the river, you know, mmm, but they just fillin' it up with dirt. … so they just blocking the river off a bit just so, so when it comes down they'll have waterholes and fill up their dams."

[...]

"Even the property owners, they just still pump it anyway. Yeah, people are getting, one bloke got fined the other day for pumping water that supposed to be just for us. Another fella — up in Goondiwindi – he put up a dam across his land and even his neighbours can't even get water from it, yeah. I saw from a nearby road where they just clogged the gullies in and let the water fill up in their back properties."

— Glen Green, Walgett

Dams under construction near Goondiwindi, Queensland. Photo by tbate54/Shutterstock.com

Box 11 - "Everything is blocked from coming out of Queensland" Floodplain harvesting in southern Queensland – impacts on the Barwon-Darling

Bruce Lamey

"Our property borders the McIntyre River, and it's five/six kilometres from our place to McIntyre. But our place is a floodplain as well. … We farm wheat and barley, and we have cattle, … I started when I was twelve years of age (I've been farming for 50 years now). **Our water problems are that the water is being held on us, by big banks, blockages in the river. The river has got unapproved bridges. There's lots of work across the plains, it's blocked the plain off and the water just doesn't get away.**

In the past we'd get a flood go through, it would devastate us. It would go. We'd have plenty of moisture, we'd farm on, everything was good. Crops would get wrecked, but we didn't lose them. But the water now, it comes to home and it's just blocked – completely blocked off. We took them to the Supreme Court in Brisbane to try to get some openings, put in these banks to allow the water to drain off our properties. **We were seven weeks under water, and it should have been seven days.** That water could have taken seven days.

And on the bottom-side, two kilometres down, those people haven't got water. It's blocked by a big bank. We went to the Goondiwindi Shire and complained about this bank.

Well, they call it an airstrip. It'll be anything up to 60 metres wide by two metres high. It'll run right across the floodplains. It's running through the bottoms of creeks that they effectively levied off. All this [floodplain harvesting] has been happening since 2013, when we had the big flood. After that there was some there, but then they gradually filled the bottom of them in. They filled the causeways in. **There were other old banks that has been there for a long time, but the water got away. But now what happens, the water doesn't get away. … They call it a road, they call it an airstrip, they call it dumps. … But the water just builds up against that, and goes back through our farm, backs back through where it goes down channels *where they're able to take it*.**

I got on me motorbike and I rode one bank, it was 22 kilometres. A bank across a floodplain, which is just holding water up. When I asked them the question, there was actually 52 kilometres of illegal bank. And then I was told there was up 100 kilometres of illegal banks - this across floodplains! And since that 2016-17 flood there's been that much happened, there's been that much land clearing on the top side of it. There is no more water, they have taken the lot.

The local shire [the Goondiwindi Shire] said the banks were illegal, gave them 40 days to remove them, three years ago. Nothing's been done. They've gotten bigger, they've gotten worse. The next flood we see will be worse than the ones before. They've been putting it all up to store water - drains and banks. There is not enough water coming down to do what they're doing. … It's affecting the McIntyre River, the Barwon River, the weir, the Yarrawonga, the Mooney … the whole lot are blocked. And I believe it's also weirs on rivers out further.

Everything is blocked, coming out of Queensland, with a levee bank.

What happened is, the government bought the water licences off these people [the licences to pump water from the river]. They bought them. Then these people effectively blocked the river off

and they've diverted it into their dams. What they've done is they have made blockages in those rivers, and been able to divert them. They've been able to cut the walls out of the banks of the river and create new creeks. **They call it floodplain harvesting, but they are making the water for themselves.** They're putting it out there.

I noticed there's another river coming down the Mooney which before Christmas had 13 inches of rain at Dalby. The water was at just underneath the Condamine bridge. The Mooney had a lot of water, and when I come down to Nindigully, the water was up in the caravan park at Nindigully. I drove 30kms down to the next town, which is Thallon. If you look 10kms above Thallon, they've completely blocked that water off. So that floodwater didn't get to Thallon. It was taken. **You can see it on the Google Maps today…they've put in a drain and they've just drained it straight into the storages. It's water theft.**

Everything starts up where I live. These banks are so big you can see them on the Google Earth.

I've looked at these little towns that are dying and you can see for every town you can go and find one big irrigator which has taken that water … Big cotton isn't employing anyone; government bought the river licences, then they made their own creeks; it's illegal to interfere with the rivers."

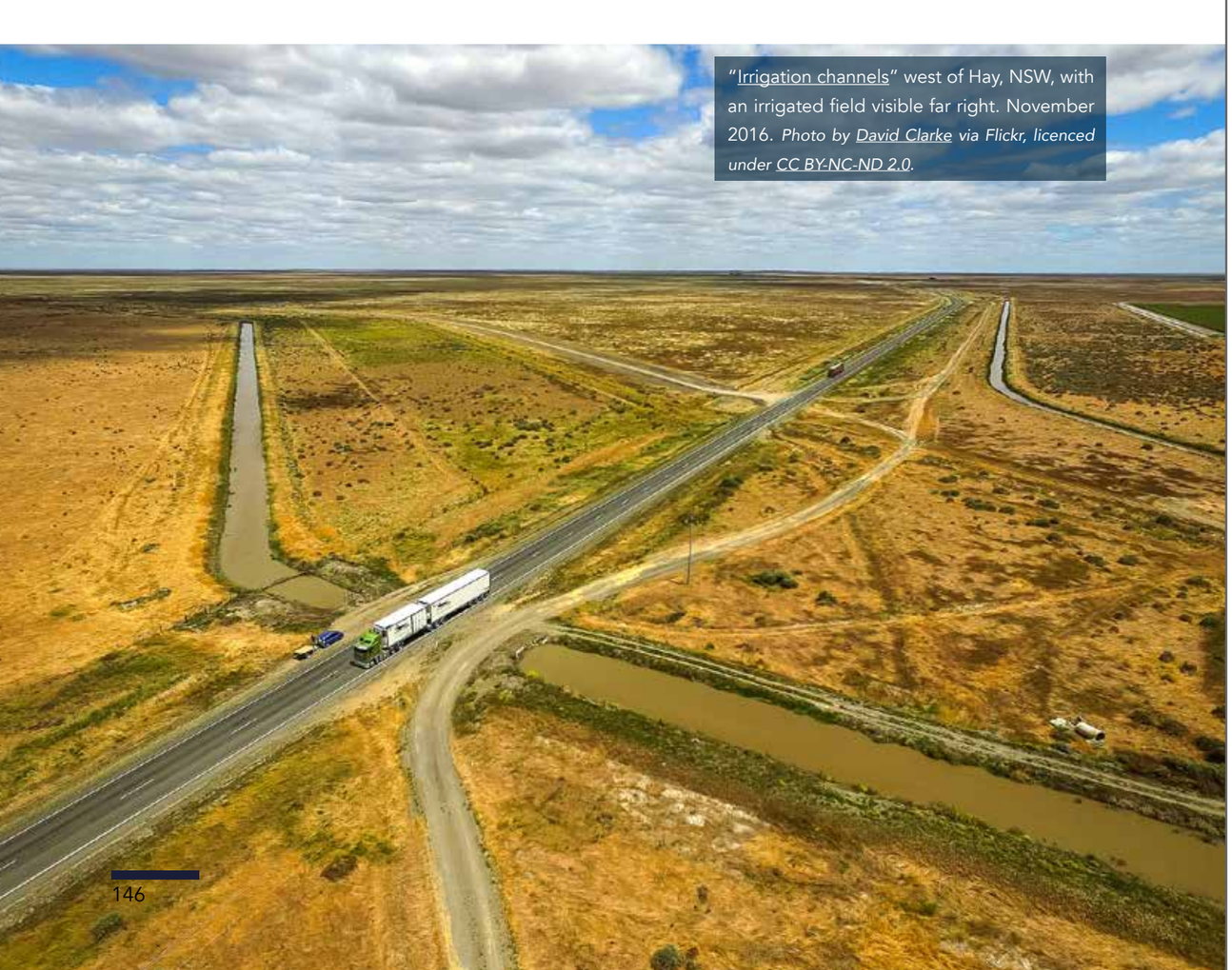
— Bruce Lamey, Queensland

Furrow (or flood) irrigation of cotton with siphons in St George, Queensland, November 2012. *Image by Hullwarren via Wikimedia, licenced under CC BY-SA 3.0.*

Box 12 - Floodplain harvesting – Example from the neighbouring Murrumbidgee Catchment, Hay Plains, NSW

"The other one which other people have mentioned too is floodplain harvesting. You know, in my nearly 60 years of life I've been over the Hay plains too many times to count in various forms right from a kid and used to be able to, there was nothing as far as the eye could see out on those plains. They've always been dry, been traditionally dry and that, and people understood that. People who live in the bush understood that they were dry. You go across there now, there's huge levee banks there's, there's channels, there's… the New South Wales government refers to some 'minor on-farm improvements' when what they are is massive levee banks and earthworks and instead of having a, what used to be a dam on a rural property which was to feed, to water stock, there's now dams that stretch four kilometres. That is not 'minor on-farm improvement'. That is massive, massive construction and earthworks and it has to be stopped. "You know that, that is just… I just find it unacceptable. Well if I was to start building a wall in my front yard of my house here in Wentworth, I'm going to get told to pull it down. so how can they, those corporates, do that out there in our bush? It's, it's just they've gotta, they've gotta be knocked down. They have to go. You know that's… you know when we do have rain, you know, we know, rain is intermittent. It's, you know, there's a long time between a drink out in this country and to then stop that water getting into the creeks and the watercourses to end up in the river is just sheer stupidity. There's no other way to describe it."

— Jennifer Evans



"Irrigation channels" west of Hay, NSW, with an irrigated field visible far right. November 2016. *Photo by David Clarke via Flickr, licenced under CC BY-NC-ND 2.0.*

6.4 Commodification of water

SUMMARY

The commodification of water and introduction of water markets was listed by many participants in the Citizens' Inquiry as one of the contributing causes of the water shortage crisis being experienced along the Barka/Darling River.

The 'commodification' of water refers to the process of changing the status of water, especially freshwater, from being a public (shared) resource into a tradable commodity that can be privately owned and controlled.[122] The introduction of water trading markets by governments around the world has grown globally since the 1980s, in the wake of neo-liberal economic policies.

Along the Barka/Darling River and connected systems, water management and legislation in the first 100 years after Federation focussed on the apportionment of water between individual competing interests, the orderly extraction of water and the use of rivers as supply. But in the 21st Century, legislative amendments changed the rules of engagement. The *Water Act 2007* provides for water markets and trading.[123] Water is traded on markets within catchments, between catchments (where possible) or along river systems. This form of trading allows water users to buy and sell water in response to their individual irrigation needs. Water trading has become a business tool for many irrigators. What many Australians do not know, is that some of the major investors buying and selling water are not irrigators, or people who need or use water. Many investors are involved in buying and selling water as just another commodity, for profit; and this disconnection between water and the land and people who need it, was stated by Inquiry participants to be a significant problem.

As noted above, the commodification of water changes the status of water from being part of the *commons*, available to everyone, to a *private commodity* that can be bought and sold within a man-made 'market' for water. The commodification of water means water can be traded *separately to its relationship with land* and separately from the ecosystems and communities who depend on the water. The commodification of water has created significant community concerns about water scarcity, environmental degradation and unequal access to water. If water can be *owned by those with the greatest financial resources*, then those with *less* financial resources can, logically, be deprived of water that they once had access to.

Concerns were expressed that private property rights over water interfere with the customary and human rights[124] of local communities. First Nations people and other local people at the Citizens' Inquiry spoke of dispossession, inequality and private wealth accumulation separating private water licence holders from former riparian and community users.

> "The conflict around the Basin Plan is typically presented as agriculture versus the environment, or upstream states versus downstream states. While such framing helps politicians and advocacy groups champion their respective constituents, it distracts from the more important point – that Aboriginal people, graziers, downstream water users, communities, small irrigators and the environment are being sacrificed for the profits of ever more powerful irrigation corporations. What is important is the concentration of power and water in the hands of few people, and their ability to influence decisions that affect their own financial interests, to the detriment of everyone else and the environment."[125]

122 In Australia the Productivity Commission defined water rights as "a legal authority to take water from a water body and to retain the benefits of its use"; Australian Government Productivity Commission (2013) *Water Rights Arrangements in Australia and Overseas* (Productivity Commission Research Paper) as cited in Durette, Melanie (2008) *Indigenous Legal Rights to Freshwater: Australia in the International Context* (Centre for Aboriginal Economic Policy Research, Working Paper No. 42) 4. Water rights can come in the form of licences, concessions, permits, access and allocations.

123 The *Water Act 2007 (Cth)* enables the Minister to make water charge and water market rules, having regard to advice from the ACCC (Part 4). The Water Act sets out Basin water charging objectives and principles and water market and trading objectives and principles that the rules must implement (Schedules 2 and 3). These objectives and principles are consistent with those set out in the 2004 National Water Initiative. Under Part 8 of the Water Act, the responsibility for enforcing the water charge and water market rules lies with the ACCC.

124 In 2010, the Human Right to Water campaign led by a number of international NGOs and grassroots activists who refer to themselves as the global water justice (GWJ) movement resulted in a United Nations General Assembly resolution that affirmed the existence of the human rights to water and sanitation in international human rights law. 'On 28 July 2010, through Resolution 64/292, the United Nations General Assembly explicitly recognised the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights.'; *The Human Right to Water and Sanitation*, GA Res 64/292, UN A/Res/64/292 (3 August 2010, adopted 28 July 2010).

125 Slattery and Campbell (n 8).

Water trading under Australian licencing is in direct opposition to the recognition of the human right to water and global movement geared towards the establishment of communal water rights based on a new socio-ecological reality (ie; 'new community economies').

The blame has been placed squarely with the federal government, which has redistributed environmental governance, resource management and social control to private users. The handing over of this key role of regulatory oversight has contributed to a re-framing of large-scale commercial use of water as a legal entitlement.[126]

Community members said they felt disenfranchised from a consultation process that favours large agribusinesses and similarly affords high levels of engagement and dialogue, in some cases even after the formal processes have discontinued, shifting water sharing agreements in favour of irrigators.[127]

Many people expressed concern that with rising water shortages, the value of water as a commodity will rise, with scant consideration for fragile ecosystems dependent on that water. Some said that this uncoupling of land from water entitlements has, and will continue to, lead to a relatively new breed in agriculture: 'the water baron' and the emergence of a new trend where Australian agriculturalists are following the money to be made in trading water. Menindee residents condemned the 'sweet deals' with a local licence holder paid above market price for water rights without proper tender (namely the $78 million buyback of Darling Water from Tandau Station) which was referred to ICAC. According to the National Irrigators Council there is $15 billion in water rights available.[128]

"Irrigation canal" in NSW (2008). Photo by Brian Yap (葉), licensed under CC BY 2.0

126 Karunananthan, Meera (2019) 'Can the Human Right to Water Disrupt Neoliberal Water Policies in the Era of Corporate Policy-Making?' 98 *Geoforum* 244, 250.

127 Note allegations that NSW Minister for Primary Industries, Nationals MP Katrina Hodgkinson, unilaterally altered the plan after it was finalised by her department. Hodgkinson resigned from parliament on July 31, 2017, a week after "Pumped" aired on the ABC (see *Four Corners* (n 89)). Several participants mentioned the negotiations surrounding the 2012 Barwon-Darling water sharing plan as being controversial.

128 Australian Government has put restrictions on how much can be traded and how much must be retained for the environment. Those regulations mean 65 per cent of the Murray-Darling Basin water is off limits to water traders.

COMMUNITY COMMENTS

COMMODIFICATION OF WATER

"They view water as a commodity. To us water is a necessity."

— Steven Cicak, Menindee

"It's virtual water and it gets exported out of Australia …I'll give you an example. At Euston – just over the border in NSW - is a 6000 hectare crop going in. It's got no water. Zero. So they buy temporary water. They have no crop. They make no money so they make a loss. What they do is accumulate the losses and we as a taxpayer, those losses become accumulated and then they can use those to lower their profits."

— Robert Biggs, Mildura

"Over-allocation and the commodification of water have reduced our rivers and their precious water to tradable commodities."

Jason Modica, Mildura

"I mean how can you sell water here and it finishes up 300 kilometres away or up on the cotton farm? I just can't understand it."

— Susan Nichols, Wentworth

"I think the difference is when non-indigenous people and politicians have seen our water as a commodity. That's what killed it. We don't see it as a commodity. Indigenous people, we don't see it as a commodity. We see it as life. We see it as a place to make memories; to take our kids down to teach them how to fish. Sometimes the traditional way too."

— Will Middleton, Wilcannia

"I know it's an old-fashioned probably way of thinking, but the day that they started to sell water for money was the beginning of the end. In my opinion, a lot of our water now is owned by big conglomerates in Adelaide, in the capital cities, and they're buying and selling that just like you would the share market to make money. And I just don't think that's fair. I'm so passionate about what's happened, the river is the life of the outback and the people in the outback certainly need it So I think they're just killing the outback."

— Joan Stockman, Wentworth

Susan Nichols, Wentworth. 20 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

Water stored in a dam on a cotton farm in Goondiwindi, Queensland. Photo by Peter Albion, lincenced under CC BY-NC-SA 2.0.

"You can't be trading water when there's no water. … Water has to be a concrete thing. Let's make water a concrete thing and everyone I've ever spoken to agrees that connectivity of the river systems is critical. … we need to do whatever we need to do to allow the river to flow again."

— Jacqui Pasquale, Mildura

"For me things get really interesting when they unbundle the water in 2000. From 1900 to 1999 there was two cease to flow events on the Darling: after World War One and after World War Two. And I think the hydrographs proved that the Darling did get low and sometimes would peter out but … big storms in Central Queensland or Northern NSW would come through and the river would fill again. From 2000 with the unbundling of water, the commodification of water, there's been 15 cease to flow events from 2000 until now – the longest lasting 520 days. … There is an absolute swathe of information that has suggested that this is happening and politicians have turned their back, for whatever reason, from looking at that."

— Jason Modica, Mildura

"When soldier settlers and those sorts of people, they were given a certain amount of megalitres of water attached to their land and like in those days there was plenty of water and you just used your water right, whereas now you can sell that water from your land the … there's a lot of people in Australia that haven't even got land but they've got water, so they're trading that every year as a commodity."

— Sandra Gregg, Mildura

"I think the privatisation of river water was crazy. It just goes so totally against the logic of how rivers work – that somebody here could have a water allocation and sell to somebody there."

— Jeannette Hope, Wentworth

"Naturally I know that droughts cause lack of rain which means lack of flow, but at the same time, the water they bought back is not returning to where it's originally meant to be; and I believe that it probably never ever will come back unless we do something about it."

— John Coombe, Menindee

Box 13 - Commodification of water – and its impact on small rural communities

"Commoditisation of water serves corporates. It does not serve family farmers.

"We all know now the mines and the corporates are buying water because they can afford to do it and family farms that are forced to sell water because that's the only thing they've got left and then they don't have any production on their properties and that allows the corporates to come in and snap more and more of them up. I think that's also played a large part in the, the rural towns dying off.

"Where you might have had, you know, five, six, seven, eight, nine, ten family farms - and what that means in terms of people who are part of the community and work with each other for the community's benefit - there's now one big corporate. They've got no interest in supporting local towns. Money goes out of the area. They're coming, using all the resources and then they disappear with it and if the water dries up here they'll just move their business elsewhere and you can see that when you look at what's happening with water around the world, the corporatisation is it destroys everything and they just walk off and find somewhere else to exploit . So they don't have any ties to the land. They don't have any ties to the, to the rivers so… and I think the corporatisation of the water market, and the water market has also created a lot of smoke and mirrors which makes it extremely difficult for the majority of people to understand what's happening. You can't actually find out what's happening.

"It's one, it's a river system. You can't say you know this bit here, this bucket here – it's all mixed up together. **The only reason to make something extremely complex is to exclude people from that. The same thing happens in a lot of professions. They create smoke and mirrors with the language specific to individual professions. It excludes people who are not of that profession from understanding what's happening"**

— Jennifer Evans, Wentworth

Jennifer Evans speaking to the Inquiry panel at Wentworth. 20 March 2019.

6.5 Alleged mismanagement, bias, corruption and water theft

SUMMARY

People who participated in the Citizens' Inquiry felt very strongly that there has been mismanagement of the Barka/Darling River – including non-compliance and non-enforcement of rules and laws, bias in the regulatory system towards business interests over community interests, corruption by political and government representatives and water theft by large irrigators.

Those who shared their testimony with the Citizens' Inquiry were very concerned about **evidence pointing to alleged government mismanagement and a lack of transparency in decision making**. Some of the issues participants raised included governments: (1) lacking the appropriate local knowledge to actually manage the waterways; (2) allowing unregulated floodplain harvesting; (3) funding 'water efficiency' on-farm earth works with taxpayer dollars; (4) actively encouraging market speculation on water as a natural resource; (5) facilitating 'sweet deals' with licence holders to pay above market price for water rights without proper tender (namely the $AU78 million buyback of Darling water from Tandau Station)[129]; (6) overstating of water savings (by as much as 90%) to the public; (7) failing to monitor compliance and investigate criminal acts of water theft (highlighted by the ABC's *Four Corners* program *Pumped*), and (8) the inexplicable act of draining the Menindee Lake system.

A further issue that many participants discussed, was **political corruption of the water allocation process**, citing evidence that big irrigators, who are also National Party donors, have been the major beneficiaries of the extra environmental water being returned to the river. Some participants talked about the 'corporatisation' of the National Party and said that water speculation had been encouraged and environmental water purchases were a way to privatise water for the financial gain of a handful of big corporate irrigators. Further, they said that the federal government has spent hundreds of millions of dollars on water 'buybacks'[130], for water that effectively does not exist, except during heavy rainfall conditions. There was a general belief that water buybacks would do nothing to benefit the river or downstream users.

Water theft, systemic non-compliance with water licences and failure to enforce compliance has resulted in significant amounts of water being diverted to a small few. Participants referred to a number of recent reports and investigations, including Maryanne Slattery's *The Basin Files: Maladministration of the Murray-Darling Basin Plan - Volume 1*:

> "Since allegations of large-scale water theft were aired on Four Corners in 2017, a flood of media reports have shown that the $13bn Murray-Darling Basin Plan is not being well implemented: agency cover-ups, political and regulatory capture, agencies with cultures of non-compliance, dodgy water deals, alleged fraud and unlawful amendments."[131]

The conflict around the Basin Plan is often presented as agriculture versus the environment, or upstream states versus downstream states. The testimonies throughout the Citizens' Inquiry demonstrated that while such framing may help politicians and advocacy groups champion their respective constituents, it distracts from the more important point: that Aboriginal people, communities, graziers, downstream water users, small irrigators and the natural environment are being disadvantaged and often sacrificed for the profits of ever more powerful irrigation corporations. Testimonies from people from all walks of life, in all towns along the Darling River, pointed to the concentration of power and water in the hands of a few people and corporations, and their ability to influence decisions that affect their own financial interests, to the detriment of everyone else and the environment.

One participant suggested that there ought to be a rule whereby families are prioritised over corporations, because families have a connection to the land and corporations will simply leave if the

129 This water buyback was personally negotiated by Federal Water minister Barnaby Joyce without a tender process. It was revealed that the government paid twice the market price for water (substantially above the market rate). This has been referred to ICAC.

130 Water buyback payment are provided for in the legislation, the issue became that the then Minister paid substantially above the market rate.

131 Slattery, Maryanne and Campbell, Rod (2018) *Maladministration of the Murray-Darling Basin Plan* (The Basin Files, Volume 1). Since allegations of large-scale water theft were aired on Four Corners in 2017, a flood of media reports have shown that the $13bn Murray-Darling Basin Plan is not being well implemented: agency cover ups, political and regulatory capture, agencies with cultures of non-compliance, dodgy water deals, alleged fraud and unlawful amendments.

"The Darling river at Bourke..." by John Carnemolla/Shutterstock.com

conditions are not favourable. Another participant suggested that water licences should attach to the land, so that if a farmer sells the water allocation he/she cannot simply establish themselves somewhere else. One elderly farmer In Mildura suggested that the rot really set in when water entitlements separated water rights from land title.

There were many references to the ABC *Four Corners* program *Pumped*, which screened on July 24, 2017, suggesting that the implementation of the Murray-Darling Basin Plan has created a financial windfall for a select few. Most participants expressed the belief that political corruption and fraud are systemic. National Party donors are alleged to be the major beneficiaries of the extra environmental water. Some participants talked about the 'corporatisation' of the National Party.

People observed that once, there were many small irrigators along the Murray-Darling river system. But that changed with the Murray-Darling Basin Plan and now just two companies own 70% of the licensed water in the Barwon-Darling. Water speculation has been encouraged. Environmental water purchases have ended up as simply a way to privatise water for the financial gain of a handful of big corporate irrigators.

Communities believe that taxpayer-purchased water intended for rivers has been harvested by irrigators[132] and that the government has not investigated criminal acts of water theft. Water metering compliance has not been enforced.

Criticisms were made of several strategic water purchases where the purchase price was well above market value, often in circumstances where there would be little or no return to the environment. Not only was there no environmental benefit but the buyback process was neither transparent nor competitive. These were not transactions that were available to all water licence holders via an open tender, which prompted local communities to believe that the process was at best unfair and potentially corrupt.

Many participants talked about the 'missing water' from the river. After the Commonwealth has poured billions of tax-payers' dollars into rescuing the Murray-Darling Basin to save it from environmental collapse, the shortfall in water recovered for the environment is enough to fill the Sydney harbour in terms of volumes of water.[133]

Communities believe that the best defence against mismanagement of water resources and the misdirection of public funds is to manage the river in the public's interest. A number of participants expressed the view that the first step is equitable access to accurate data collection. As far as the communities are concerned the public interest far outweighs any private considerations or commercial in-confidence agreements.

COMMUNITY COMMENTS

ALLEGED MISMANAGEMENT, BIAS, CORRUPTION AND WATER THEFT

Mismanagement

"It's occurred because of mismanagement over many, many years by governments of all persuasions."

— Susan Nichols, Wentworth (former councillor and Mayor)

"I was on the advisory board of Goulburn Murray Water for 15 years and I've been an irrigator … After being with Goulburn Murray Water, over here, New South Wales is just a heap of hicks as far as I'm concerned because Goulburn Murray Water, you can ask questions and get answers. In New South Wales … you can ask questions but it just depends what pub you're at as to what answer you get. So there's no real rules and regulations that the public know of [in NSW]."

— David Buck, Wentworth

132 Besser, Linton et al. (2017) 'Murray-Darling Basin Plan: Taxpayer-Purchased Water Intended for Rivers Harvested by Irrigators' *ABC News* (Article) < https://www.abc.net.au/news/2017-07-24/murray-darling-basin-water-pumped-by-irrigators/8732702>.

133 Williams, John and Quentin Grafton (2019) 'Missing in Action: Possible Effects of Water Recovery on Stream and River Flows in the Murray-Darling Basin, Australia' 23(2) *Australasian Journal of Water Resources* 78.

Box 14 – Mismanagement of Menindee Lakes

"Well, everybody here knows, that was man-made, this mismanagement why we got no water here in Menindee. They keep blaming the cotton, but that's only half to blame. These lakes were full and they let it all go. Mismanagement is what killed the fish, as everyone here knows."

— John Brereton, Menindee

"I've seen with my own eyes 25 years ago - when they used to let the water out of the Menindee Lakes and didn't understand what they were doing, they'd let it out so fast that the trees would slide into the river. Not falling, slipping — because all their root system had been washed away — and that's just poor management. Nobody running the lakes that really knew what they were doing and how they were doing, they let it go too fast. It's been going on for a long time. This is the end of the story what we're seeing now, but there has been bad management now (in my books) for about the last 30 years."

— Joan Stockman, Wentworth

"They lowered weir 32, lowered it so the water was too low, and it cooked them [the fish]. They say, it's all the algae and that, well that's part of it but the water stays low here and it's cooked them and … as we speak that hasn't been repaired. The fish ladder needs taking out and the weir put back the way it was before … They have to fix this weir here and fill these lakes again and keep them full until they're absolutely needed down south of Menindee. Otherwise it's going to happen again and again and again and there's nothing to stop it."

— John Brereton, Menindee

"It can easily be fixed, but next time it's got to be managed. They just cannot just be draining those lakes. I can't believe they can tell these lies to your face. I mean surely democracy… I thought democracy was a fair game for everybody. I thought politicians are honest. What happened to integrity, principle, do unto others (not, not religious mind you). What happened to all these good characters in human beings? These people seem to think once they get elected we're easy meat."

— Barry Helms, Menindee

"Our politicians, well I don't know what we should do with them. I really don't, because we used to be able to have confidence in those people.. … when you look at [what's been going on for years and years] it has to be classified as, you know, deliberate mismanagement of the river. You can't get away from anything else but to call it what it is and those in government at that time should be held accountable for it. They need to go to court."

— David William Clark (pictured), Wilcannia

Right: David William Clark, Wilcannia. 25 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"... our governments are probably not competent to deal with these problems. They need to commit themselves to dealing with it, firstly, which I don't believe they have. They need to understand the causes of that dysfunction, which I don't believe they have. … the government needs to recognise the value and importance of the report from the Australian Academy of Sciences."

— Greg Curran, Broken Hill

"We got rain in 2010, a small flood. **The New South Wales authorities had all the lakes dry, but they decided that they would let the water go down the river and flood our properties, rather than fill up Lake Menindee**. They refused to put water in Lake Menindee, and they sent the water down the river, flooding. That was the first time ever that I got involved and got angry with what the New South Wales authorities were doing. And I got into contact with them and I asked them why they were flooding my property, instead of putting water in the lake, when they had a dry lake there that they could have put water into. And they were flooding us out — not just me, there's a lot of people that live down where I live — they are flooding us all out. And the answer that I got was, 'Because we can'."

— Karen Page, Menindee

"But what hurts me is that there's nothing in place to make these people accountable for their actions. And we all know that he [the Minister] helped Littleproud, all that sort of thing. So there is a feeling of despondency."

— Nieves Rivera, Wilcannia

"Some people are pretty concerned that it may well be easier to get a water licence and an AWL than it is to put a pergola in your house."

— Jason Modica, Mildura

The Citizens' Inquiry Panel listening to the community in Wilcannia, 25 March 2019.

Alleged corruption and water theft

"Both our major political parties, with donations, they've been bought … those donations have corrupted the policies in favour of the corporates. This not only applies with the Darling but applies to mining, CSG, coal, all of the environmental factors have been just overridden for the corporate dollar."

— Ron Perry, Mildura

"I believe the Murray-Darling Basin Plan can work. The damn problem is you got the government who are changing – finding backdoors to change the Plan like Niall Blair has."

— John Ford, Broken Hill

"It's their mismanagement and corruption that's been going on that's caused this [water shortage] and what I really get concerned about is that it's really only focussing on a few of the bigger companies."

— Ray Johnston, Broken Hill

"When you're in crisis and, you know, you got politicians allowing irrigators to pump water when there's an embargo on it, who's pissin' in whose pocket, you know? And it's allowed. But when it's simple grassroots people, and if we had to run amok like that, you know where we'd be? Suffering the consequences and doing time in jail because you done the wrong thing."

— Virgean Wilson, Menindee

"The politicians, they must stop lying to us, just looking for votes. They must turn together and start acting on some of the promises they made, what put them in the Parliament in the first place."

— Badger Bates, Wentworth

"What sort of example are we giving to the young people when governments are corrupted? They're lying in our face, and they don't make people that are creating these disasters accountable. We are telling the young people that it's alright to do that, you have to be clever and keep doing what everybody else... if you want a good living."

— Nieves Rivera, Wilcannia

"I know there's both sides of government that have made mistakes. Okay. If you've made a mistake, own up to it. You know, it's not a blame game. It's about saying, 'Well we actually did that wrong and we've gotta suck it up and say that we're sorry and we're going to do something about it.' That's what people want. They want them to start being honest – not covering up and making excuses and passing the buck. That's what I'm hearing from people. We want some honesty. "

— Joanie Sanderson, Broken Hill

Ron Perry, Mildura, 20 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"These politicians have lied, lied to everyone in the city. Because we're only a small community, we don't, haven't got the votes out here. The votes are in the city, so we need the people in the city to come out here, have a look around, pay more attention and make sure that these politicians start doing the right thing."

— John Ford, Broken Hill

"The Nat Party has been corporatised. They have bigger fish to fry and they're very happy to worry about lobbyists and … being political rather than coming out and having a look at the rivers and seeing what the results of their actions to support mining and industrial agriculture are, instead of smaller farms… I really think that's a great indication of how things have changed in rural Australia where the representation of people has kind of been put away for the pursuit of money; it needs to be people over profits."

— Jason Modica, Mildura

"Back in the 1890s, there were devastating droughts, devastating, and yet the river system survived. And we still had paddle steamers going up and down. I just about cried when I came back from Sydney a few years ago and I saw half a bathtub of water under the bridge at Wilcannia. What's happened? Something serious has happened. And I don't know some of the people here may have seen the BDT [*Barrier Daily Truth*] a few weeks ago, but on the front pages the aerial photo of the river. There's no water in the river but behind the levee banks there are acres and acres, hectares, of water dammed up. And you can see where it's actually diverted into the holding system, and yet beyond that it's dry all the way. And that's why I saw half a bathtub of water under the bridge at Wilcannia. **And I sort of felt that this now has to be investigated. It has to stop. Someone, somewhere, some persons in high places, has caused devastation, and it's a crime**."

— Lee Rossetti, Broken Hill

"And yes, corruption in government, I just feel pretty disgusted the way things are at the moment and I'm really hoping at the elections on Saturday that we get some people who are really interested in the environment into government more and more. Someone was mentioning before about their grandchildren, I thought that climate change day last week was so inspiring to see all those young people really passionate about looking after things, and I think, yes, they're going to be taking all of this forward and we've got to vote in the right people to get that set up so that things can be done."

— Anne Spudvilas, Wentworth

Jason Modica, Mildura, 20 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"The 2007 Water Act was installed because John Howard recognised there was an overallocation of water, … the NSW Govt chose to sabotage the MDBA Plan. They actually chose to sabotage it … with the size of the pipes, the height of the water they could draw from and so on. They just set up a whole range of things. They deliberately didn't do any measurements … so we should be decommissioning over-allocated waters and we should decommission those last approved.

"Then [that crook] got a $190,000 fine for water theft. He'd been stealing water for 20 years. Every single one of us knows that. For 20 years. That government has now said $190,000. Well, whoop-dee-do. He'd get that out of his back pocket for lunch. **Bigger charges have to be laid against these people for the water theft**. They've made a tampering. Like if I went out and hit my meter with a with a hammer and destroyed it, and still pumped water, I'd go to jail. But it was alright for them to take the wiring out, destroy their pumps, for 20 years this has been going on. And nothing — all we get is lies, just lie, after lie, after lie from the government."

— Barry Stone, Menindee

"It's so bad, and to know that it was did with the blessings of the political parties in Australia (both federal and state – they and everyone from the political side, Labour, Liberal, Nationals) they were all in it. They knew what was happening to the rivers, and to this river particularly, but did nothing. Not a thing. Cotton was the big money, the easy money. Well, everyone knows that both sides of politics, their biggest contributions are the cotton fields. What do they call them? Agricultural growers or something. From upstream. They contribute to all the re-election campaigns - they're cotton farmers. That's where the money comes from."

— Ross Files, Menindee

Vanessa Hickey, Walgett. 28 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"Today, we have a government … that is openly and corruptly changing the face of our water landscape to suit a few. In my area farmers are desperate for water to grow crops. There is zero allocation for farmers to survive unless they are large shareholder corporations. Yet, large volumes of water are heading straight past our properties to somewhere. And many of us do not know where that somewhere is."

— Tuesday Browell, Broken Hill

"This is a man-made drought, caused by greed and corruption. Droughts come and go, but there is, there has always been water in our rivers. **It makes me sick knowing people in power doing the wrong things, making deals under the table. … I think the greed and corruption are the number one causes of our water problems in our communities, and along our rivers today. When you have water ministers not doing their jobs, changing laws to suit a few, allowing them to divert entire rivers, and the people that'll live along these rivers are now suffering the consequences of bad decisions and bad choices**."

— Vanessa Hickey, Walgett

Bias towards big business/ big irrigators

Criticisms were made about several strategic water purchases where the purchase price was well above market value, often in circumstances where there was little or no return to the environment. Disapproval was also voiced that tender transactions were not available to all water licence holders via an open tender.[134] Other participants commented that the whole regulatory and management system is biased towards business interests, at the cost of community interests.

Box 15 - Unfair rules, biased towards large irrigators

"I don't understand how some of the rules for water extraction are put in place that clearly lead to a situation where people are not treated equally. If there isn't enough irrigation, enough water to maintain the level of irrigation that is currently in place then fine, that that's a reality of life. **But I don't understand why my high security crops were sacrificed for low security cash cropping. Everyone points their finger at cotton. I'm uncomfortable doing that. Cotton just seems to be the crop that is grown there. But their conditions of extraction no way, are in no way similar to my conditions of extraction, so things like continuous accounting of their water allocations and things like that, I don't agree with them and the arguments that are put forward, I don't agree with them either in terms of forward contracting for cotton sales and things like that. … It's not so much the industry but how the water is allocated to them - you're treated differently, regulated differently**…. I'm willing to support the system in place where demands on irrigation or demands on water are ranked as: the environment, townships, stock and domestic, high security, low security. If those are the rules that have been agreed to then that's what we should be enforcing. … They're still growing, essentially, a low security crop and stock and domestic users downstream have nothing left in the river. … There is something, wrong with the way that water is shared. Now if they don't want to share the water that way, change the rules and follow the rules, but we're all expected to follow the rules. But it seems that whoever allocates the water out, they don't tend to follow their own rules which is a little bit frustrating."

— Paul D'Ettorre, Broken Hill

"River extraction pump, Narrabri, NSW" (2009). Image by NSW Department of Primary Industries, licenced under CC BY-NC-SA 2.0.

134 Above market value examples include;
1) 10.611 gigalitres of water in the Warrego valley for $16,977,600 – more than twice the price per megalitre paid by the Labor government.
2) $80m water buyback in Condamine-Balonne was 25% more than asking price and the company immediately recorded a $52m gain on the sale of the water. The Commonwealth paid $2,745 a megalitre for the water, whereas the company had initially been seeking $2,200.
3) Webster - $38 million, plus $40 million in compensation for loss of future business as well as a gift of 21 gigalitres of water from the Commonwealth for Tandou Station to grow a cotton crop in 2017-18 – the financial year after the purchase. The sale was well above market prices. The purchase was controversial at the time and has since been referred to the Australian National Audit Office. See also Slattery and Campbell (n 128).

Box 16 - Claims that government have used "evaporation" as an excuse to allocate more water to big irrigators

"Part of my business I have a high security allocation and a low security allocation. I don't use a lot of my high security allocation anymore. I trade that off. So **during 2017 when there was an active push to empty the Menindee Lakes as quickly as they could on the guise of saving water from evaporation**, I know that on trading sites and emails to me from the water trading people that I used, Water Find, there were trading conditions on me. I couldn't trade downstream into the Murray unless I found a trader who was going to trade the equivalent amount of water out of the Murray and back upstream, because at some, at one point the risk of flooding was at 80% or greater than 80% for most of the time - most of 2017, I believe, the risk of flooding from water trading was greater than 50% so there was no need.

"So my point then is that the water that they were releasing from the lakes to 'save evaporation' essentially was just flowing out to sea because there was so much water in the system. No one was using it, there's no other storage down there, Lake Victoria would have been full, that water was just flowing out to sea. So there was no benefit from it from a commercial sense. No one was making access of it. You could say that there are environmental benefits because the water was running through the system, but if that water hadn't been released, it still would have been in storage now. Part of it would have evaporated but you know, water flows are a closed cycle what evaporates, is then, makes rain. That water would now be available to, to release downstream so we still would have had the same environmental benefits of releasing it downstream anyway. **I don't think that the gains from saving evaporation were genuine gains. It was, they needed to make a paper saving which they then, which the powers that be then were able to release more water to other irrigators**.

"And now on to the Menindee Lakes, there's a lot of talk about evaporation and I think that is mainly to decommission the lakes. They never ever talk about the evaporation in Lake Alexandrina and the lower lakes. Which is probably heaps and heaps more. Or, also the countless numbers of huge cotton dams, so they don't talk about those which must be terrific as well. I say leave the Menindee Lakes alone."

— Geoff Holland, Wentworth

Bias toward big business evident in Broken Hill Pipeline

"Everyone knows this pipeline was built for the mining companies. It wasn't for Broken Hill. … This government deliberately created a disaster to empty our lakes to justify building the pipeline. If there was water in our lakes, we don't need a pipeline. But the thing is, we said to the government – please, if you're gonna build a pipeline to Broken Hill, will you please build it from Wentworth to Pooncarrie to Menindee and then to Broken Hill and you're going to help three communities. Where did they decided to build it? Directly on the Mildura Road – there's not one community out there."

— John Ford, Broken Hill

"When the pipeline was going in to Broken Hill going back three or four years ago and they were just talking about it, I said, 'I'll guarantee that pipeline goes to a couple of mines up there' and another said, 'Oh no, that'll never happen'. … **And then there's 1,700 jobs for a new mine coming, you know, so where're they gonna get their water from?** Is it gonna be something visible or is it something underground that no one knows about, you know? So you have a little bit of an insight as to the corruption because you live on the river, because you sort of take more notice of the, the way things could happen, not the way they're saying they're going to happen."

— Tony Smith, Wentworth

Above: Installation of the water pipeline near Broken Hill. Photo by Jimmy Wallace / Shutterstock.com

"The pipeline to Broken Hill, I've never seen anything put in place as quick as that in my life. And I'd say nobody else has either. And going on the west side of the Darling, it was absolutely ridiculous. They could have gone up to Menindee on the other side, fed the people up on the, on the east side, in to Menindee and used the pipeline from Menindee on. But I believe it was done for mining. That's my opinion."

— Geoff Holland, Wentworth

"We've got a pipeline that nobody wanted …. We got a pipeline, a reverse engineering by the way, they reversed it, 300 metres from here to Menindee, by half. One pumping station to pump water from Menindee to Broken Hill, 1000 kilometres from here to Mildura. Where's the common sense in that, when there's a river that runs right past their freaking doorstep? This is just pure corruption, all over the love cotton. And dare anyone tell me different, because it is cotton. I'm not going to butter it up or anything like that, because we never had the problem until cotton come into existence."

— Barry Stone, Menindee

"The pipeline up to Broken Hill was advocated for to bullet proof Broken Hill against drought. At the same time … they were draining the Murray, the Menindee Lakes, without need because there was already a high flow and they didn't need to do that … So whoever did that, I believe, is acting in a criminal way. … the pipeline ain't for Broken Hill, it's for two mining companies. … So

that's a half a billion dollar pipeline paid for by the taxpayer which seems to be now used for the private commercial developments of companies near Broken Hill."

— Robert Biggs, Mildura

"The big argument was, it would have jobs attached to it. Well yes, jobs for three months, that's how long it took to build."

— Jacqui Pasquale

"The pipeline to Broken Hill, I've never seen anything put in place as quick as that in my life. And I'd say nobody else has either. And going on the west side of the Darling, it was absolutely ridiculous, they could have gone up to Menindee on the other side, fed the people on the east side, into Menindee and used the pipeline from Menindee onwards. But I believe it was done for mining. That's my opinion."

— Geoff Holland, Wentworth

"Our politics is responsible for the death of millions of fish, toxic water, and the current demise of our wetlands. Pipelines are being disguised as water for towns when in reality they are for mining magnates."

— Tuesday Browland, Broken Hill

I feel very sad. I don't understand what's really happened at the top (of the river system) I guess we've heard snippets but, I don't know enough about it, but I think we've been sold out. So what we do about that I don't know. I think we can all have meetings and do what we like, but I don't think it's going to change the big fellas, they've made too much money. It is sad, I feel very sad, I feel very sad. I think it's a part of your life, my life, Australia's life. It's just another thing that should never happen. I feel very compassionate about it actually - you can't take the lifeblood out of the country and expect it to be what it used to be. But anyway, they've done it haven't they?"

— Joan Stockman, Wentworth

"Most people I speak to at Broken Hill, a lot of them are annoyed with the fact that the river and the Dart, the Cop – I mean we used to have speed boat championships down at Copi Hollow, which brought a lot of attractions. …. Copi Hollow had caravans. People would have their units and they'd go down on Easter weekends. … I'd like to know who's actually sucking whose dick because someone's getting away with blue murder. Because someone's making something out of it, and that's definitely not us, or the Darling River, or anyone else along the Darling River all the way down to Wentworth. … Someone is making money out of it and it's not us … we're the taxpayers, work the land, we pay our taxes. We should have input, consideration to what happens in this area. "

— Karen di Franceschi (pictured), Broken Hill

Karen di Franceschi, Broken Hill, 22 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

Barwon River. Photo by Tim Connors, licenced under CC BY-NC-SA 2.0

6.5.1 Manipulation of 2012 Barwon-Darling Plan Water Sharing Plan

SUMMARY

Many participants, from the bottom of the Barka/ Darling River, to the top, stated that the 2012 Barwon-Darling Water Sharing Plan was changed after the open consultation process was finished and has resulted in significant problems and injustices for water allocation along the Darling River. So many participants mentioned this contentious Plan, that it deserves special mention in this report.

COMMUNITY COMMENTS

"One of the big changes that is impacting us now is the changes that came through in 2012, regarding the changes to pumping conditions where we don't seem to get what everyone refers to as 'low and medium flows'. We only ever get the big top up flows … then for some reason there's this mad scramble to try and empty out the lakes on the guise of saving irrigation."

— Paul D'Ettorre, Broken Hill

"We've had very serious allegations of quite high-level and large amounts of water theft routing the system, including policy and I'll use the 2012 Barwon-Darling Water Sharing Plan as a case in point, where you know the big switcheroo between what was given to public submission and what was passed in Parliament"

— Jane McAllister, Mildura

"The Barwon-Darling Water Sharing Plan … I would think it's illegal and I think time will bear out that it is and was illegal."

— Howard Jones, Mildura

"We do not, here in Menindee, get intakes from rain. It can rain here for days on end and it makes no difference to our storage whatsoever. We rely wholly and solely on getting water down the river, and that's not happening. That ceased to happen in 2012 when this new Plan came out and they lifted all restrictions on the smaller and medium flows coming down the river. They lifted the restriction so that the irrigators in the top of the system can pump at any time — any time there's water in the river, they can pump. So that's virtually what dried the river out in the lower Darling. We used to rely on small and medium flows to keep our system down here healthy and losing those small to medium flows is what has killed our region. And that's sadly what it's done — it's absolutely destroyed our region in every way, in tourism, in our health and well-being, in our economy. It's just absolutely destroyed a lot of it."

— Karen Page, Menindee

Box 17 - Claims that the Barwon Darling Water Sharing Plan "illegal"

"When we did the water sharing plans and water reform in the late 80s through to 2003-4, when we tabled our water sharing plans there was an understanding and a belief that we had it right, the government had it right because we were involved. … When we came out of it all, there were quite clear rules in each of the water sharing plans in NSW – what role the water plan had and what responsibilities it had to the one below it. So when I saw … the Barwon- Darling Plan, that's the first time I'd seen the water sharing plans start to be silos and that's where we've got to. …

"Within the water sharing plans … there were downstream, third party impacts that were supposed to reflect what you do … to the people downstream. Quite simple. That's been taken out and *now they turned it into third party impacts for those irrigators within that water sharing plan.*

"I think that'll be found illegal, because it was taken out of the water sharing plan. A lot of the notes and a lot of the wording in the water sharing, the original sharing plan – those little explanations – were taken away, so you couldn't get the long term context of why that rule was put in there. … I could keep you here for an hour with what NSW has done since 2012. … They converted A class water – which really wasn't used because it was the old horticultural licence which you had a pipe that big and you couldn't store it …..in doing so, they placed B class water in front of stock and domestic, in front of town water. That's never ever happened in the history of water management in this country. Ever. … Very, very clever. He ought to get a medal for the cleverness and the deviousness of what he did."

— Howard Jones, Mildura

Bridge over the Namoi River, shortly before it joins the Barwon River, Walgett, 28 March 2019.

6.6 Alleged deliberate "emptying out of the west" by governments

SUMMARY

The Citizens' Inquiry heard testimony from many community members stating that they suspect governments of deliberately restricting water in the Barka/Darling River, and the Menindee Lakes, and deliberately redirecting water through the Broken Hill pipeline, so they can 'empty out the west' of people, and use water, land and mineral resources for large industry interests.

People said that decisions including the ones made to empty the Menindee Lakes, amount to 'decommissioning the lower Darling' and will challenge the very existence of towns like Pooncarie, (population 150).[135]

It was also stated that the existing pipeline between Menindee and Broken Hill will be decommissioned, adding to the suspicion that Menindee Lakes will never be replenished again.

COMMUNITY COMMENTS

ALLEGED DELIBERATE "EMPTYING OUT OF THE WEST" BY GOVERNMENTS

"Is there an ulterior motive to them taking the water from the [Menindee] lake, drying out this river? Is there an ulterior motive to them sand mining that lake out there? Is that what the problem is? I personally think it is. A few other people think it is and if that's the case then this place is never going to go ahead again. It's just, just going to dry up and blow away one day."

— Moya Reid, Menindee

"And the latest one is saying they want to start drilling for sand in Menindee Lake, because they're running out of sand down [south]. Well, I'll tell them they won't be putting their shovel in there. Now, we need a lot of voices to speak out against the sand mining, because that's destroying our whole ecology. And I won't stand for it."

— Beryl Carmichael, Menindee

"An interesting question is, why was the council dismissed in 2013? Because it would seem unusual to try to take away a council and several years later, take away the water. I think it was just a few ulterior motives there as well. I mean, I'm not looking for Russians under the bed or anything like that but there's always method in their madness to do the wrong thing, in their mind, for the right thing. And I think this was one of those things. There was a bit of administration problems at council, which I can't go into. I think it was pretty well known around but I'm not going to discuss that. And it was just another slap in the face for the residents of Menindee and Wilcannia and Ivanhoe and White Cliffs, to have that voice that we had taken away from us. Everything's just been taken out of our hands."

— Moya Reid, Menindee

"We believe there's a 20-year plan — create a disaster, get rid of the Menindee Lakes, decommission the Menindee Lakes, being maybe in 10 ,20 years' time they want to come back and they want to mine from Menindee all the way down through the Anabranch. We know there are minerals down there — good quality minerals — cobalt, heavy sands you name it."

— John Ford, Broken Hill

135 Pooncarie is a township 130km south of Menindee on the lower Darling. A hundred years ago it was a river port but now survives as a tourist town.

"I sorta had that thought in me head for a while — that the water will come, they will put the water back into our lakes, **but then all of a sudden they're talking about decommissioning the lakes.** But I thought that's not right either, but then they started looking for water up at some, on the lake itself and started drilling. Well we had the opportunity at times to have a chat with some of the drillers. 'Why are you taking samples for if you're only drilling for water?' 'Oh well we're just, um, we can't say anything. We've been, had to sign a confidentiality agreement,' but you know why. They're looking for minerals. As we all know there's all minerals in the lakes all the way down from Menindee through [Condilla], all the way down through the Anabranch"

— John Ford (pictured), Broken Hill

Above: John Ford, Broken Hill, speaking to the the Inquiry Panel.

"I mean really, what it seems to me is that if we could dig up all of this sand around here we'd find cobalt, titanium, iron ore. It really does feel like we're being depopulated because there's money to be had if we could get these pesky people and that silly river out of the way. That's how it feels. And it's not just me."

— Jane MacAllister, Mildura

"It makes no sense proofing Broken Hill against drought and at the same time draining the Menindee Lakes [twice]."

— Robert Biggs, Mildura

"What is the real motive of people blocking up the dams and all that? There's not just only cotton - I think it goes beyond that. I believe that they want to close the little towns down so that they can bring in the big mining corporations. They want our land because there's a lot of resources on our land and under the ground. And so we know that there's other stuff under the ground and minerals and stuff like that and so this shortage of water is just the beginning of what is really happening. … Why are they allowing all this to happen? Because they want to sell off our country."

— Lyiata Ballangarry (pictured), Bourke

Lyiata Ballangarry, Bourke, 27 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"Wilcannia" (2018) by Rob Deutscher, licenced under CC BY 2.0

6.7 Lack of care and concern by governments, for the health and wellbeing of people living in outback river communities

SUMMARY

The Citizens' Inquiry was told about a number of circumstances that made people feel that no-one in government (state or federal government) actually cares about the people out west.

The Inquiry was told that whole townships, including Wilcannia and Menindee, are reliant on bottled water donated by concerned fellow citizens in Melbourne, Adelaide and other locations. At the time of the Public Hearings, there appeared to be no national or state government plans to address these critical, life threatening water shortages.

People expressed their concerns that the terrible condition of the Menindee Lakes was even more difficult to address due to the absence of local councillors who can represent, speak on behalf of and make decisions for the community. A former Central Darling Shire councillor explained that the community distress about dwindling water levels has been compounded by a lack of local democracy. The outback New South Wales shire, which includes the towns of Menindee, Wilcannia, Ivanhoe and Whitecliffs, has been in administration, and without elected council officials, since 2013. The situation is scheduled to be reviewed in 2020.

People who spoke to the Citizens' Inquiry also said that the decision to drain the Menindee Lakes and construct a pipeline from Wentworth to Broken Hill, that bypasses whole communities, also showed a complete lack of concern for the welfare (economic and social) of these townships.[136] The decision to build the Broken Hill pipeline was contentious and local residents (including people working for local governments) say the $500 million project was rushed through without an environmental impact study, without a business case being made public, and with little consultation. Participants were astounded by the fact that the town of Broken Hill is now supplied by Murray River water. Locals criticise the pipeline and question for whose benefit the water supply was constructed. They suggest the water will be prioritised for the two mines at Broken Hill and only incidentally provide water to the Broken Hill township (see above, in the section about mismanagement and bias).

136 The new inland pipeline along the Silver City Highway will run past two proposed mine sites which need water for their operations: Carpentaria Mining's Hawsons magnetite mine and Silver City Mineral's lithium project.

COMMUNITY COMMENTS

LACK OF CARE AND CONCERN BY GOVERNMENTS, FOR THE HEALTH AND WELLBEING OF PEOPLE LIVING IN OUTBACK RIVER COMMUNITIES

"There's only 50,000 people west of Cobar in NSW and governments don't care – it's like a bureaucratic nightmare. There's people out here struggling and the NSW government just turned their back and it wouldn't matter what stripe they have. It wouldn't matter if it was, Labor, Green, National – they just look the other way. … This is historical over-allocation and historical mismanagement but because of the lack of population and the … remoteness of the area, people continue to look the other way."

— Jason Modica, Mildura

"It really annoys me that the government are not actually listening to us. I also find that Sydney people see New South Wales up to Dubbo and basically from Dubbo to Broken Hill, we don't exist. … I don't think the government's listened to any of our thoughts or suggestions or anything else over the last 20 years that I know of."

— Karen di Franceschi, Broken Hill

"**We seem to be forgotten, we're the forgotten people out here.** Beyond Dubbo no one seems to know that we're here and if we do start to rattle a few chains, they, oh, throw some money at them, but **money is not the problem. It's the way that we've been treated over the years and it's the way we've been shunned by government, state and federal**, over the years so I just really would like to see a joint effort of everyone from the far west."

— Moya Reid, Menindee

"Yes okay, you might have 5000 people live in one street in Sydney and there's 5000 votes, but we count too. We pay our taxes, we expect to be treated exactly the same as someone else. And that also comes down to our water situation. We're entitled to fresh, clean water and we've been denied that fresh, clean water."

— Moya Reid, Menindee

"I used to take time off work to come to meetings for the Murray Darling, and they came here with their glossy magazines and telling us all sort of things. And I'm trying to understand, with the other farmers, and ... I remember the last time I came there was someone trying to explain something to us and he was mumbling and I said, 'Excuse me, could you speak up?', and five minutes later [soft mumbling] and somebody else says, 'Can you speak up?' and then I realised you can't speak up when you are saying bullshit and you know it. And I walked away and I said. 'No... it might be your job, but you know that you are deceiving all these people."

— Nieves Rivera, Wilcannia

"I just spoke to a couple from the Central Coast and they sounded like they were concerned, but then the man just said, 'Oh, you're a fair way out, you know,' like more or less 'big deal' and I thought, 'Oh'. I got a bit irate with him and I said, '*You know, we matter*. We might be a tiny town but we're all suffering you know. You have plenty of water on the coast and that's lovely, but we also got our precious water out here as well – the Darling River and the lakes.'"

— Reena Lombardo, Menindee

"We are a shire the same size as Tasmania. When you've got a state government who denies democracy to an area 54,000 square kilometres and you've got no representation whatsoever, it means we are a people with no voice".

— Moya Reid, Menindee

"I'd like to see where we start talking out here, all the people in this western area or the western part of the state because that Macquarie Street and down in the capital, **they forget about us**. I think the state is too big to be run from out of Macquarie Street and … I think we need to put that on the table and start talking about creating our own state. I don't see where the shire council today is saying anything about the government, because as far as I'm concerned, they've been bought out and people here, we won't get a say in having people talk for us as far as the river and the shire is concerned, until September 2020."

— David William Clarke, Wilcannia

"I just wanted to thank you all – the Tribunal - for being here, for showing interest and mainly for giving us hope that somebody is interested."

— Jane MacAllister, Mildura

"We had the Minister for Water, Mr. Blair, I mean he just refused to come even to talk to people and had to have a police escort. I mean come on, we're not that backwards, people, okay? Needed a police escort? And then when he was confronted by the locals, we found out where he was, oh yes well he still had nothing much more to say. I mean come along, if you've got something to say come out and say it but don't just don't try and hide because it makes people suspicious of what you've got to hide, be upfront. Don't like the answer? Okay, fine. At least you got the right answer but don't try and fob us off. **And that's what we've been for the last two years, more, we've been fobbed off time and time again and it's people who just fed up with it, I'm fed up with it.**"

— Moya Reid, Menindee

"To think that we go through the system [the law system] that the government put up, and we vote. And still we are not heard out here in the country. It's a shame. To the people out there who might be watching this here [a bit of a film], we really need you guys to support us out here in the bush. And if you get the opportunity, come out and have a look at what's really happening. Because the politicians only come here and it's just in and out. They don't come here and spend time with people who live here and just want to see this town grow. We wanted it to grow, not decline like it is now."

— Eddy Harris, Wilcannia

"People are just surviving — they don't feel like they're being seen or heard."

— Louise Moriarty, Wilcannia

"Our council was dismissed in 2013, the Department of Local Government said it was no longer viable at that particular point of time and that they would review the situation again by 2020. Whether or not we do get another council or not I don't know but there we go again, we've got no representation, … Central Darling Shire covers 52,000 square kilometres that's up, that's a lot of area and there's not that many people, maybe 5000, that's beside the point. At the moment we have no representation, no elected council. We have a general manager who might come down here maybe once or twice a year. He doesn't care, he lives in Sydney. He doesn't care what goes on around here. So until such time as we can get representation for people who can go banging on doors and, and thumping tables etc, I really think we are just a voice in the dark that gets ignored."

— Moya Reid , Menindee

From top to bottom: Sarah Moles, Bourke. Bradley Steadman, Brewarrina. Rhonda Hynck, Wilcannia. Jack Bennett, Bourke. Photos by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

6.8 Failure of governments to include local communities and local knowledge adequately in river governance

SUMMARY

Community members expressed a feeling of being disenfranchised from all processes relating to the management of the Barka/Darling River and Menindee Lakes. They stated that consultation processes favour large agribusinesses and similarly affords high levels of engagement and dialogue, in some cases even after the formal processes have discontinued, shifting water sharing agreements in favour of irrigators.[137]

As a general rule, 'public participation' should define and assign rights and responsibilities through inclusive and participatory means. However where water from the Barka/Darling River is concerned, communities have felt that they have been completely disenfranchised as stakeholders. Instead, the depiction of corporations or consortiums as a 'local users' creates and perpetuates an un-level playing field where 'high value crops' take precedence and small holdings and family farms are priced out of the water sharing arrangements across the country. This in turn reshapes land use and local communities, undermines local biodiversity and food sovereignty while favouring large-scale profitable monoculture operations.

Community members also claimed that the new rules of engagement since the introduction of water trading has enabled water rights to be traded up and down the river. They say this has triggered a buying spree and consolidation of water to large agribusiness.[138]

As noted elsewhere in this report, historically, Indigenous peoples' rights to water have largely been excluded from Australia's complex water

137 NSW Minister for Primary Industries, Nationals MP Katrina Hodgkinson, unilaterally altered the plan after it was finalised by her department. Hodgkinson resigned from parliament on July 31, 2017, a week after "Pumped" aired on the ABC. Several participants mentioned the negotiations surrounding the 2012 Barwon-Darling water sharing plan

138 There used to be a host of smaller irrigators up and down this river system. But since the Murray-Darling Basin Plan was signed, there's been huge consolidation. Now, just two big players own 70 percent of the water in this river. One of the irrigators has a water portfolio worth about $300 million. *Four Corners, Pumped*

planning and management policies and programs.[139] Although the Native Title Act 1993 (Cth) includes water rights as a part of native title rights, *only rights to use water for domestic and personal purposes have been recognised by the courts*. The Native Title Act 1993 (Cth) does not provide for a right to negotiate over water.[140] Consequently, the voices of First Nations Peoples are absent from the Murray-Darling Basin negotiations. Indigenous peoples have had little to no involvement in the water reform and as a result the cultural significance of water to Indigenous peoples is not understood. Not only are cultural flows not guaranteed but the status of Indigenous water rights, particularly native title water rights, remains unresolved.

COMMUNITY COMMENTS

FAILURE OF GOVERNMENTS TO INCLUDE LOCAL COMMUNITIES AND LOCAL KNOWLEDGE ADEQUATELY IN RIVER GOVERNANCE

"There are all of these constructs around water that have been imposed to keep an understanding of the water away from the people, which is the most damaging thing you can do. One of the ways that our community has been damaged is by continually, and over a long period of time, having responsibility for decisions, and in fact any understanding of the way local systems work, the way the water moves, the way its captured, the way it recedes after a flood … *taken away from local communities* who know the systems best, by having standardised laws across the states …

"We [local people] can much better keep tabs on how they're operating, how they're interacting, what the licences are … called from one state to another … and whether it's working for each state."

— Jane MacAllister, Mildura

"I just feel if we had people that would listen to us, or listen to the people that are out on that river years ago, we wouldn't be in the situation we're in now. … We've been speaking about this Darling River system for over 15 years. … Has it all fallen on deaf ears?"

— Melisa Hederics, Wentworth

"The lakes are the breeding ground for so many, so many fish and other reptiles and animals and so if they had listened to the people that live along these places, that have been crying out and crying out, you know, 'Don't take all the river, don't take all the water because if you do these fish are going to die.' … P**eople have been trying to speak up and speak up and it's like we've just been forgotten. Nobody's listening to us out here and so you know, there's so many people that feel like that. We just want people to listen to the people that live along the river, that know what's best**."

— Joanie Sanderson, Broken Hill

"Local control doesn't exist on the river. [We're on an] unregulated section of the river. As far as NSW is concerned – NSW Water – the regulation finishes at Bourke and starts again at Menindee, so this is an unregulated section, so it's forgotten about, even though it's the conduit between those two areas, and the source of watering Menindee goes past this town…. So we have to point out to people that if you want to get water into Menindee, it's got to come past here and we need to have some say in it. Use of the water? We have our own uses, other people have pastoral uses. There are no big irrigation opportunities here and there never will be because of the type of country that it is, so I suppose in many ways we're a gatekeeper and we have to keep people advised of what's happening in this area, in between those two active areas north and south. There should be local rangers."

— Paul Brown, Wilcannia

139 Although the Native Title Act 1993 (Cth) includes water rights as a part of native title rights, only rights to use water for domestic and personal purposes have been recognised by the courts. The Native Title Act 1993 (Cth) does not provide for a right to negotiate over water. In 2004, the National Water Initiative was the first instance in which Indigenous rights to water had been formally recognised in national water policy. In 2009, Australia endorsed the United Nations Declaration on the Rights of Indigenous Peoples, which universally acknowledges Indigenous peoples' rights to water.

140 The NSW Aboriginal Water Initiative, tasked with re-engaging NSW Aboriginal people in water management and planning, ran from 2012 until the Department of Industry water disbanded the unit in early 2017.

"The MDB Plan was sort of meant to equalise and balance it out. All people should have an opportunity to participate in the debates and decisions about water that will affect their livelihoods. That's an important one and we are lacking that, certainly in the Darling system."

— Maria Riedl, Wentworth

"There have, over at least a decade, been a systemic dismantling of local structures that have supported engagement and management of the local landscape."

— Jane MacAllister, Mildura

"As [local] councils, what the community doesn't realise is that there are, especially in NSW, dozens and dozens of different committees and hoops you have to jump through to get anything done. … We're not big enough in numbers to … be politically influential."

— Susan Nichols, Wentworth

"The cause is mismanagement of water? It's the government. They're all stepping back saying, 'No, no, this has got nothing to do with us.' But I'll take my bloomers off and put them in Niall Blair's hand. I don't need cotton!! I don't need cotton. I'll take my bra off! I don't need cotton! … we've lived on this earth for thousands of generations without cotton and rice. Whatever little flow they send down, we ain't stupid. Who cares about the law? The law's not helping us. The law's like it's on the government's side. Not on our side. Here we are crying out for water, for our families, for our kids, for our livelihoods, and we shouldn't have to."

— Alana Harris, Wilcannia

"It should never ever again be left to politicians to say what can happen to the water in these lakes [when it can be released, when it can't. It must be taken away from politicians - they don't value the river like we do [the people that live on it]. We've gotta look after it, it's our livelihood"

— Ross Files, Menindee

"The one layer of government we don't need is state. If we were regions — our region would be Swan Hill, Mildura, the Riverlands, Wentworth and probably Broken Hill — and we managed our own finances, things would be a thousand percent better off because a stumbling block for most of the things we do is usually state government."

— Susan Nichols, Wentworth

From top to bottom: Clair Bates, Wentworth. Brendan Adams, Wilcannia. Maria Riedl, Mildura. Photos by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

6.9 Dominant cultural mindset is flawed – decision makers and broader population don't understand the rivers, are engaged in unsuitable agricultural practices and are not Caring for Country

SUMMARY

Many people stated that while reversing the 2012 Barwon-Darling Water Sharing Plan, changing the current MDB Plan, and reforming the current legislation is important, **at the heart of the problem is a cultural mindset that doesn't understand, respect or focus on caring for the health of the Barka/Darling River system.**

People pointed to colonial attitudes about the river as being a huge part of the problem. Many acknowledged that non-indigenous society – especially people who do not live along the river – continue to simply see the river system as an unlimited economic resource. In contrast, Indigenous and non-indigenous people who live along the river said that what's needed is for people (including decision makers) to understand the uniqueness of the river, to understand that the whole system is a living entity, and that as custodians we must work to ensure the Barka/Darling is in good health, for its own intrinsic value, and that humans "take what they need, not what they want".

The comments in this section demonstrate a deep understanding by many local people of the significant cultural changes that need to take place, in order for non-indigenous Australians to fully decolonise their minds and care for the river as if we *really* live here, in relationship with it. This can be reflected in how we think about and care for the river system, and also in the choices we make about the economic activities we expect the river to support.

"Irrigation canals from the Murrumbidgee River (NSW)". Dated 23 Feb 1931. NSW State Archives.

COMMUNITY COMMENTS

DOMINANT CULTURAL MINDSET IS FLAWED

"You've been here long enough, you should love her the way we do."

— Murray Butcher (pictured), Wilcannia

Murray Butcher, Wilcannia. 25 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"Since the English came to Australia they've been looking at the country from a particular perspective, they've paid more attention to when there *is* water, less attention when there *isn't* any water, not really understanding the natural systems at all – just trying to control it."

— Jeannette Hope, Wentworth

"I'm a white man … The prime cause of our current problems is the exploitative values of the 'white man' if you like. This is not a recent coming, I feel that since coming here at the beginning, we've had a set of exploitative values on the land and on all of its assets. … The main thing that it's been at the expense of is the Aboriginal and Indigenous views of the sacred nature of the land and the river. We have just pushed that to one side and we respond to a set of economic monetary and other values that just … we don't have anything that constrains us in nature. . And I say the white man because unless the white man — we are the ones in power — and our values frustrate good science, they frustrate good cultural views and the frustrate good laws."

— Robert Maxwell, Broken Hill

"Australia is a young and troubled country and we were foolish to think that we are lucky. Australia is actually an ancient continent that had a balanced natural world until the young lucky ones arrived and started to think like English farmers and American crop growers. We have dammed and altered, piped and manoeuvred nature until she no longer looks like she was. Eighty per cent of Australia's wetlands have diminished. …**We have not even considered farming for Australian conditions, we have merely copied those crops from where many of the lucky ones came from. We lack initiative and we lack the ability to talk to country. Many will balk at my statements saying we have the latest technology, the most efficient farming and world-class engineered crops. I do not agree. There are crops that need to be stopped …. The potential to farm Australian native crops is still laying dormant**."

— Tuesday Browell, Broken Hill

"At the moment, white man values are confined to a church which is a building with four walls where we go into that building and a light shines through the stained-glass windows and some holy water is spread and some words are said, but then we come out and we have no connection with the land we live in. … We wouldn't burn religious books because we consider them sacred. The river is also sacred and why would we destroy that river?"

— Robert Maxwell, Broken Hill

"I think we came here with the idea to own the land and to exploit the land and all its resources. … we have been totally dismissive of the Aboriginal view of the land, but yet their beliefs preserved the land. … They were exploiters of the land too, so we white and Aboriginal people

could work together to both exploit what we have here, but also protect it within a framework of a set of beliefs that just believed in the land and what we have needs to be preserved."

— Robert Maxwell, Broken Hill

"The environment is just a natural flow of nature. Now we can control that if we look after the water, but we've let all these people come in, build farms everywhere … now they're putting in almond trees. How did they get these things through? I don't know."

— Robert Pearce, Wentworth

"The government, the cotton industry … they didn't even care what they were damaging. To them it's a commodity. Resting water is a waste - let's grab it all while we can now, grow our cotton."

— Steven Cicak (pictured), Menindee

Steven Cicak, Menindee. 23 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"In 1904 John Monash wrote an engineering report recommending definitively against irrigation being developed in the western Riverina and was comprehensively ignored. … It's a fascinating report to read these days because it stands up … he knew what he was talking about. … [Later,] another book, *Australia Wet or Dry* [Bruce Robinson Davidson, *Australia Wet or Dry, 1970*] critiqued irrigation based on irrigation and the lock system. … **All that money might well have been better spent in researching and developing much more efficient dryland agriculture. We should stop. We should get out of the Groundhog Day mentality and actually look at managing the rivers with much, much longer time scale.** … It's now nearly 40 years ago that I came to Broken Hill and as I said, Groundhog Day. I'm getting old and I'm beginning to wonder whether anything's going to change."

— Jeannette Hope, Wentworth

"Environmental flows were there for thousands and thousands and thousands of years, way before any farmers stepped foot into this country, and you have to have environmental water and you have to have wetlands. You kill off the wetlands, then say goodbye to the river system because one thing affects another and another. And as I said, I'm seeing a lot of things disappearing and dying in my lifetime. … For a healthy river, you gotta have the wetlands."

— Graham Clarke, Wentworth

"If you look up on the iPad, you can find that, get quite a surprise when you find that an almond kernel take seven litres of water to grow."

— David Buck, Wentworth

"You don't have to be some academic person to know that cotton don't fit in our country. Nor does rice."

— Virgean Wilson, Menindee

"Nobody cares and where does it end? They've got 28,000 acres of water being held up in Queensland for cotton and **I don't think we should be growing cotton in this country anyway, we're a very dry country, probably the driest in the world.**"

— Joan Stockman, Wentworth

"Long irrigator" - Centre Pivot or Lateral Move irrigation system in Goondiwindi. Photo by Peter Albion, licenced under CC BY-NC-SA 2.0.

"The Darling river at Bourke..."
by John Carnemolla/Shutterstock.com

7. COMMUNITY SOLUTIONS

7.1 Introduction and Summary of Section

Participants in the Citizens' Inquiry offered a range of solutions for addressing the terrible state of the Darling River. In this section of the report, we provide an overview of these solutions. We have grouped people's various comments together, in a range of themes including:

- Let the rivers run; bring water back into the river, lakes and wetlands - reduce extraction, stop floodplain harvesting, use a science-based approach to understanding river health, reverse the Barwon-Darling Water Sharing Plan
- Enforce the laws we do have to protect the river
- Royal Commission into the alleged illegal and corrupt management of the river by governments
- Commence a legal case against the government for mismanagement and negligence of its citizens
- Change the fundamental governance structures for managing the Barka/Darling River – co-create systems whereby First Nations peoples can lead a process of caring for country and restoration.
- Freeze all water licences until a fairer system is created; involve local communities in a more innovative, accountable system.
- Introduce more transparent and accountable information management systems so communities and citizens know what's going on and enforcement can be strengthened
- Introduce rights of nature laws – recognise the river as a sacred, living entity, not just as a water 'resource'
- Invest in helping communities to rebuild their health, culture and economies
- Educate other Australians about the importance of the Barka/Darling River

A reminder about our approach in this report: The methodology used in this report is to reproduce direct quotations from the testimonies given by Inquiry participants rather than to paraphrase what we were told. All Inquiry participants are treated as experts of their own lived experience. This section shares direct statements from people's testimonies which are relevant to community held beliefs about solutions that will assist the health of the Darling River system and Menindee Lakes.

Waterholes along the Barka / Darling River at Wilcannia. 26 March 2019.

7.2 Let the River Run

7.2.1 Reduce extraction at the top of the river system, stop floodplain harvesting and restore water flow to the Menindee Lakes

COMMUNITY COMMENTS

"All we need is for them to take out all the locks and blocks and whatever they've got and put the fresh-flowing water back into the river. We'll survive – the water will bring back life to everything. But you know, it's really hard, and sometimes you think you want to give up, because they're not listening to you."

— Beryl Carmichael, Menindee

"We need the river to flow, give us our flow back. For the animals and us as people. So that we can go forward too, not only a majority group that buys water. They've got to share, like we do, we share."

— Eddy Harris, Wilcannia

"The first thing that has to go it all the dams. It's gotta be reviewed, and if the government has to pay for that allocation so be it."

— Steven Cicak, Menindee

"I don't think the water cap or extending the water cap to put back into the river is a solution. Over extraction is the problem. I believe a flow regime, particularly for the Darling and probably for the Murrumbidgee, is what's needed. For argument's sake, you must have a flow out for Pooncarrie, Menindee, Wilcannia, Bourke, Brewarrina, before you can take water from the river. If none of these are being met then the river's not healthy. We just need to put the flow back in the river."

— Ron Perry, Mildura

"To remain living things, our rivers and streams need to get the first drink. That's an important one. Once this need is satisfied water can be allocated for other purposes. We should always respect linkages between surface and groundwater. Piping water from one district to another is not a solution. … We need to allow the rivers to flow and that can be done by ensuring they listen to the precautionary principle and they listen to Indigenous rights."

— Maria Riedl, Wentworth

Patrick O'Keefe, Wilcannia. 25 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"At the end of the day we're in a marginal semi-arid area so any allocation should be measured on the minimum, not the maximum. And because the minimum is required to keep the whole system going, and everyone on it going, that seems like a no-brainer to me."

— Patrick O'Keefe (pictured), Wilcannia

"**Both black and white, we all got to work together and do what we can to bring the water back into our rivers.** It's sad to go home and see the dead animals from drinking the water … the skeletons. … I just hope and pray that one day, someone will listen to us and let the river start flowing clear again. Thank you."

— Clair Bates, Wentworth

"What can we do to restore it? Well when it rains up there, let the water run down the river instead of putting it out in dams - that would be the best thing to do. … It'd be nice if it could go back like it was. If it could just be allowed to run free."

— Marj Worrell, Wentworth

"Don't worry about the Caps, don't worry about the buybacks, just put in flow regimes for the Darling River."

— Ron Perry, Mildura

"We have a multi-state water that is not working, **we have unmeasured floodplain harvesting, overallocation of water to irrigators and we have water theft**. The latest news is that the dry Darling River now *owes* 600 gig of water to irrigators due to carry-over of water allowances. This is against all common sense and slaps the face of article 25 of the Universal Declaration of Human Rights that states, 'Everyone has the right to a standard of living adequate for the health and wellbeing of himself and [of] his family.' Menindee, Walgett, and every town below Bourke has little or no water or water that is unfit for human consumption."

— Tuesday Browell, Broken Hill

"No reconfiguration works for the Menindee Lakes or the communities, and that community support a blockade of any intended reconfiguration works on the Menindee Lakes."

— Robert Biggs, Mildura

"I want to see the water flowing, right? Right through. Cubbie Station had no right to do what they've done. We buying little bottles of water, right? And that's all bull. Never happened years ago."

— Cyril Hunter (pictured), Wilcannia

"Floodplain harvesting must be stopped for the benefit of the environment and the river."

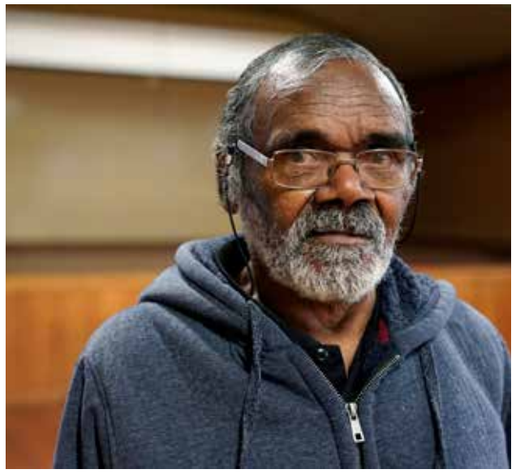
— Ron Perry, Mildura

"All those banks, all that harvesting of water from the floodplain should be ceased immediately. All those banks should be cut so that the water can flow back into all those tributaries and then you've got a chance of that area surviving you know; otherwise I don't see how it can."

— Don Crittenden, Broken Hill

"And that's all we're asking for now — for them to send water down as necessary. Not completely drain the lakes and only leave water up behind the main weir [which is their intention]. … We would like here — and I'm sure I speak on behalf of everybody — what we would like to see is that small to medium flows have permanent restrictions on them in the top half of the system, so that we've got a healthy river all the way through. And that when we do get a full system here, that they regulate it and take that water as necessary."

— Karen Page, Menindee



Cyril Hunter, Wilcannia. 25 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"**The government's got to take back some water licences**. And they've got to be banned from growing within a certain distance of the river, to stop the pollutants getting into the water table and flowing back into the system. We've got to stop it. We need a clear river for a certain distance, even if it's ten kilometres before you see one grain of cotton - one cotton plant or anything. You've got to stop this polluting and getting into the system, otherwise we're going to have no fish."

— Barry Stone, Broken Hill

"We don't need the gas, coal seam gas. We don't need the mining. We don't need cotton farms getting bigger and bigger while our rivers are suffering. That's all got to go. I'm sorry, but yeah. I disagree with all of it because since they've come up into our country, we're going backwards. To have no water today, like that's a scary thought. I've got children, and like what's going to be there for their future?"

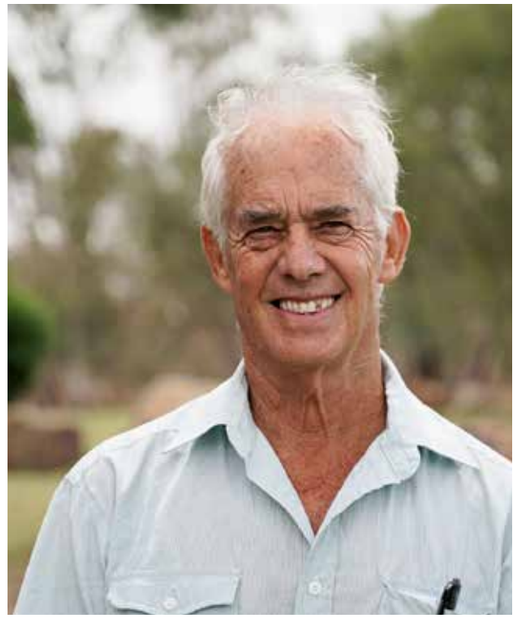
— Vanessa Hickey, Walgett

"[Over extraction] was a big part of the *Four Corners* show but after that, a lot of people said nothing will happen, nothing will happen, but there's been a hell of a lot of things happen and … hopefully great things will happen in the future, where hopefully these rivers will come back to be something like they were."

— Phil O'Connor, Brewarrina

"I've been trying to think what can we do to turn it around and I listen to my Aboriginal friends and they say there just shouldn't be any irrigation going on out here. And I think that's what it's gonna come to ... on this unregulated river. We're not getting water from any dams that's stored ¸— we can get water, but we're not — for irrigation, and I think on this unregulated river we've got to stop especially the big irrigators using the big pumps. The cotton growers. Maybe the farmers can pump a little bit of water to grow a little bit of lucerne for the horses and things like that, but now **I think there's got to be a major cutback in the amount of water being taken out**. Especially because of global warming, I can see the years are getting drier and drier out here. I walk through the old park and the trees are dying, things are changing and we've got to change with it. We gotta cut back on the amount of water getting out of the river, otherwise these towns won't be here in a few more years."

— Bruce Wilson (pictured), Brewarrina



Bruce Wilson, Brewarrina. 29 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"I grew up on a cotton, cattle and wheat farm on the lower Macquarie where it runs into the Barwon River which forms part of the Murray-Darling Basin. … We're on the bank of the Macquarie River so that's where the water sharing plans have failed. Irrigators have taken priority and essentially the water sharing plans have not ensured that the water reaches its destination, so **I think the only way you can sustain irrigation and the rest of the community, is make sure that water reaches its destination, then if there's enough left over the irrigators can then irrigate and do that cropping. But from what I can see they're getting the priority and the rest of the community the environment is suffering**."

— Claire Priestley, Brewarrina

7.2.2 Use a science based approach to understanding and managing river health

COMMUNITY COMMENTS

"Immediate action needs to be taken to ensure the rivers and the Murray-Darling flow and irrigation towns along them can thrive and **we need to restore connectivity to the MDB, by adhering to the science on river and water health, beginning with accurate baseline allocations with quantification of diversions and extractions**. … Enforce end-of-system targets and other identical flow requirements to maintain healthy river ecologies, standardised licence types, regulatory principles and terminology across the country to actively promote environmental recovery. Immediate upstream embargo is enforced when water quality alerts are issued; reinstate funding of native fish strategy to restore native fish levels to 60% of pre-European settlement levels by 2050."

— Jason Modica, Mildura

"I believe that the Darling River is essentially dysfunctional. It's not working as it should. And the fish kills, which we've looked at over time, the blue-green algal blooms, are symptoms of that dysfunction. The solutions … are really complex. I've been concerned that our governments are probably not competent to deal with those problems. They need to commit themselves to dealing with the problems, firstly, which I don't believe they have. They need to understand the causes of that dysfunction, which I don't believe they have. … Government needs to recognise the value and importance of the report from the Australian Academy of Sciences. … I believe the Premier of the State needs to direct the Minister for Environment and Heritage to take charge of the situation and work with the Minister for Regional Water for Primary Industries and Trade and Investment. I suppose I really see it as the minister that's essentially responsible for caring for the river and the environment … "

— Greg Curran, Broken Hill

"The biology, the plant and fauna are adapted to cycles. Red gums need floods to germinate and then they need dry time – so you know, they die when they're water-logged. You see all the dead trees in the weir pools. That's because they're wet all the time. So a lot of the plants, particularly along the riverside, are dependent on that 'up and down' and I wouldn't be surprised if some of the aquatic life also is adapted to that. The part of this whole mindset that I've been describing – a lack of recognition and taking into account of the longer term environmental history."

— Jeannette Hope (pictured), Wentworth

Jeannette Hope, Wentworth. 20 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

7.3 Enforce the laws we do have – penalise wrong doing and criminal activity

SUMMARY

Many members of the community told the Tribunal that just adhering to the existing rules, and ensuring fair enforcement, would be an important way to address the current problems of water theft.

COMMUNITY COMMENTS

"For the land clearing [by cotton], all this illegal land clearing, charges have to be laid. All the big dams that were built illegally, charges have to be laid [for the destruction of cultural heritage], because we've lost all that cultural history — that's all gone — we'll never ever get it back. Because they, over money, have destroyed it."

— Barry Stone, Menindee

"The way they've treated our Darling River and its system – well someone should be jailed over it. My People went to jail over less petty things than that. Stealing water, you know, is a major crime as far as I'm concerned and those who committed those things here … should be dealt a blow."

— David William Clark, Wilcannia

"[We need] the rules enforced. It's as simple as that. I mean, we can have this party and we can have that party in. People can bring in rules. But until they're actually enforced we're never gonna have a starting point because it's just an open slather."

— Patrick O'Keefe, Wilcannia

"What I see is a bloke up there that starts a pump and diddles numbers to make money and it's exposed and still nothing happens about it. That's what I see and I'm pretty sure that anyone who's in the business of starting pumps and sees the same thing goes, well let's roll the dice and make our money and then we'll fix it down the track if we have to, and they don't care, it's all about the almighty dollar."

— Patrick O'Keefe, Wilcannia

"Yes people have broken the rules. They've done so deliberately but even if they applied the rules, the rules are still too broad. There's more water allocated than can exist in the river and it's based on averages."

— Paul Brown, Wilcannia

"I think we have a legal case to say [the government's] mismanagement has led to this situation and therefore we charge you as a government on the issues that you are implementing here and that are impacting on us."

— Robert Biggs (pictured), Mildura/Buronga

Robert Biggs, Mildura. 19 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"[Laws aren't enforced.] The Goondiwindi Shire, who has approved the earthwork, or hasn't approved the earthwork, or haven't been there to police the earthwork. They just haven't policed! There is no police. You go out in the road and you get caught for speeding. The penalties these people are getting is nothing. They shouldn't be... in this case I believe there should be a bigger penalty. They should not only be fined, there should be some action taken against them. Not lock them up, but they shouldn't be allowed to take the water again for so many years, or something like that,... Because they just laugh at these $200,000 fines. You know, that's nothing. That's because of their size, big family groups. You go there and there's big families that are monsters in the business. I don't know, what can people do with all that money they're making?"

— Bruce Lamey

"[we need] the magistrates to really wake up and … actually fine the companies the amount that's actually — it's gonna hurt them so they know they can't do it in future. Yes, I kind of like proper enforcement."

— Patricia Frail, Brewarrina

"**I also think banks need to take responsibility now and that they shouldn't be lending to cotton growers that are under criminal conviction, you know, charges and investigations for destroying the environment.** So the banks really need to step up. In our case the National Australia Bank chose to foreclose on us and sell us out to one of the biggest cotton growers and wheat growers in Australia that's now subject to criminal charges for water theft. Now the bank did not take into consideration any of our dedication to the land, or our work on water groups, trying to sustain the river. The National Australia Bank, it's disgusting how they treated us. We've been made homeless, that's how we ended up in Brewarrina. We came here and now we're just trying to start a life again."

— Claire Priestley, Brewarrina

"I find the Darling River systems deplorable, the lack of care and lack of maintenance from the government and the management. I'd like to see laws where if people do the wrong thing they lose their licence. A $250,000 fine to someone who gets four million bucks or two million dollars for their crop, it's nothing, they'll pay the fine and just keep going. They should lose their licence and that water goes back to the river and can never be sold again … I was interested earlier when I heard the comment on environmental law and suing. And I'm thinking, can we sue the government? What they've done is really, really bad. We have a river system that people have relied on forever that's just destroyed. …"

— Coleen Edgar, Walgett

7.3.1 Reverse changes made to the 2012 Barwon Darling Water Sharing Plan

COMMUNITY COMMENTS

"Illegal 2012 amendments to the Barwon-Darling Water Sharing Plan need to be reversed. It wasn't publicly assessed and changed rules which increased legal pump sizes; removed limits on low flow, early extraction limits and allowed for more storage."

— Jason Modica, Mildura

"Black-fronted Dotterel" at Bowra Station, near Cunnamulla in SW Queensland. Photo by Leo, licenced under CC BY-NC-SA 2.0.

7.4 Royal Commission into alleged mismanagement, corruption and water theft

SUMMARY

At every hearing, in each of the eight towns along the Darling River, people called for a Royal Commission into the mismanagement, corruption and water theft along the Darling River.

COMMUNITY COMMENTS

"I believe we should have a royal commission on water within the MDB system and that it should be established immediately and I think there's got to be a strong call for that. I believe we need a transparent plan for this community and other communities, to respond to a position where there is no potable water, because there is no plan B."

— Robert Biggs, Mildura

"There should be a royal commission into this for sure. Into the MDBA and the New South Wales Government. It might follow on from the MDBA, might bring them into it anyway. That will, maybe, find out how much graft, if any — I use that rather loosely — has gone on."

— Geoff Holland, Wentworth

"I think a royal commission is needed. It needs to look into all the wheelings, the dealings, what transpired. How, in a country that lives on the need for water (to me, the rivers are the veins of the country) and we can do... and to me, the Darling... I learnt in school: along with the Murray and the Murrumbidgee River, they were the big rivers in Australia, and we can do this to one of the longest rivers in Australia."

— Steven Cicak, Menindee

"There has to be a royal commission into this what [the then] DBA and whatever they're called, did to this river and allowed this cotton to be grown up there. They know it's polluting it. The politicians do, but they don't want to do anything about it because there's corruption throughout our politics."

— Ross Files, Menindee

Tuesday Browell, Broken Hill. 22 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

"Bring on a royal commission, get the Plan working and bring each state to account. Rivers must flow."

— Tuesday Browell (pictured), Broken Hill

"When a river doesn't flow, its ecosystem dies. It has to flow to maintain its system. I'd really like to see a complete review of how water is allocated, where it's allocated."

— Coleen Edgar, Walgett

7.5 Fundamentally change agricultural practices along the river, to suit the reality of a dryland river system

SUMMARY

As noted in section 6 of this report, many participants in the Citizens' Inquiry pointed to the growing of cotton, rice, almonds and other water intensive crops as completely inappropriate to the sustainable use of the Barka/Darling River system. Section 6.9 of this report set out a range of opinions and quotes about how the current dominant 'colonial' mindset is responsible for misuse of the river. The quotes in that section are relevant here.

COMMUNITY COMMENTS

"**I'm not a cotton grower or rice grower but I mean, to me, they seem to use an awful lot of water and do we need to grow it in this country? I don't think so. There's a product called hemp that they, you can use it. for multiple things that uses far less water.** Do you want to have hemp shirts? I've got a couple of hemp shirts. I mean I can't roll them and put them in a cigarette and smoke them. It's the wrong kind. Different kind of hemp, I think. But it's, you know, that's what they used to have, all the sailing boats had all those ropes. It's so strong they built bridges from it."

— Wal Banyard, Wentworth

7.6 Change the fundamental governance structures for managing the Barka/Darling River

Community members had strong opinions about how law and governance systems currently controlling the Darling River and Menindee Lakes should be changed. Throughout this report, in other sections, people have provided a range of comments arguing that First Nations peoples need to lead processes for looking after country.

7.6.1 Change the fundamental goal of river governance to ensure holistic river health, from the top to the bottom of the system

COMMUNITY COMMENTS

"The political will has to look at the river as a whole. It's a holistic approach. You have to look at that river from top to bottom because if the bottom dies, the top dies and we have to prove to people that it is all one river, that it's not just our patch of river between there and here. .. We have to look at the whole thing because it's all intrinsic to the health of the river."

— Paul Brown, Wilcannia

"I think anyone who's aware of what's been going on in the politics lately, they'll know it's wisdom – Indigenous wisdom, local wisdom and scientific knowledge – that sits to the side when other political debates happen. … We're suffering from a lack of leadership."

— Greg Curran, Broken Hill

Below: "A mob of Red Kangaroos on the move near Ivanhoe, NSW" (September 2018). Photo by Darryl Kirby, licenced under CC BY-NC-SA 2.0.

"At the heart of it, it's a whole of the community problem and I believe that as we've heard other speakers, the government needs to acknowledge community concerns and try to pull it all together. That's their job as politicians."

— Greg Curran, Broken Hill

"Rivers have always given us water and they just kept giving and giving, and we just kept taking and taking. … we don't seem to realize that we have a responsibility - **we have a responsibility** because the river didn't come to us, we came to the river, so the responsibility is to ask how to do the right thing. The river itself is a community - we're the by-product of that community, as what we call a town. No town, no city, nowhere in the world, can live without water. No group of people or animals or anything can live without water. We still can't seem to grasp the immensity of that problem that we have created and we can't seem to grasp that simple fact that we cannot live without water."

— Chris Steadman, Brewarrina

"Corporate power, it's built on a sense of entitlement right; people think they're entitled to do what they like with what they want, without any thoughts for anybody else. A lot of people in Australia think they're entitled to do what they like and because they're successful in their terms, that's a result of my entitlement. Nobody's entitled to do anything. I'm not entitled to that river - probably why I say I *belong to that river*, because I lived near you all my life but that doesn't give me any entitlement; it gives me responsibility. So perhaps if we can work together and turn that around so we have a responsibility to good health for the river we might be able to make a start."

— Bradley Steadman, Brewarrina

"So [things won't get better] until the Darling's seen as a system from 'go-to-whoa', without three different states or whatever."

— Patrick O'Keefe, Wilcannia

7.6.2 Increase First Nations Peoples' leadership and control over river management; enable custodial obligations to care for country

COMMUNITY COMMENTS

"We need a change of government. We need some black people in there. I really believe we need to have some Murris sitting around in there discussing and making decisions for our Maaris, Murris and Gurris and Kurris all over the country. We need to have a change of Parliament; we need to have people in there with some compassion for the country that they're supposed to care for. I would like to see that. … I would like to see that there's more Maari input into the Darling, Darling-Murray Basin."

— Lyiata Ballangarry, Bourke

"Your laws can be twisted for loopholes and manipulated by greed. Our lores are stable, no loopholes. You are either walking the right path, or straying from it (which is the wrong way)."

— Anonymous, First Nations participant

"They've got to learn to listen to the Indigenous people, because they've managed this land for a lot longer than what we have, and it's like, listening to them and saying – what do you think we should do? Involving them more and more in the running of the waterways and the land and under the ground as well."

— Joanie Sanders, Broken Hill

"The recent migrants here [past 200 years] have a lot of catching up to do. Our River, the Baaka, can't wait that long. Nor can our kids and grandkids. That's why the Baaka, the Darling River, needs us Baakandji People (and other First Nations people) to have a major say in management of her. That means all the catchment rivers in Queensland, NSW, Barwon-Darling, Menindee Lakes and also the southern Basin (MLDRIN)."

— Larry Webster, Broken Hill

"One of the things I see missing from the framework of water management … is Indigenous water. The tokenistic rubbish they [the government] gave them [Indigenous peoples] recently was just enough to cause a shit fight … I mean, that's what I think is typical of the respect or *the lack of respect* they give to Indigenous water and Indigenous people in general."

— Howard Jones, Mildura

"How do you fix the problem? It's gotta go back to the heart of the people. It's really hard because we had no say on the matter with anything that happened on our lands. The mining companies in Broken Hill, we didn't know nothing about that. Then a pipeline goes in, none of us knew nothing of it. We had no say in the matter. Did they come and speak to us traditional people? No, they just went to a one-stop shop that was set up by government departments."

— Graham Clarke (pictured), Wentworth

Graham Clarke, Wentworth. 20 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

7.6.3 Increase local community control over governance of river

COMMUNITY COMMENTS

"**A lot of people have a very deep level of knowledge about how things operate in their little patch of Earth and while not perhaps used to, or desirous of, standing in front of people and telling them what they think, that wisdom needs to be tapped into respectfully, and those people encouraged to help support their patch with their knowledge.**"

— Jane MacAllister, Mildura

"Instead of having government bodies looking after our water, giving our water away, I think each section of the river needs a voice, a definite voice. Like we've got our lakes here but Wilcannia is only 100km away and they need a voice. Everyone needs a voice all the way down the river and definitely no-one in Canberra should have a voice at all. I think that needs to be taken completely away from them. They're not worthy of looking after our water system – any of them. I haven't seen a decent politician yet that knows how to look after water. … [Doesn't think local government should manage it either.] I think it needs someone completely impartial to any government department; needs putting in the hands of someone that knows."

— John Coombe, Menindee

"There should never be water extraction when there's low and medium flows going down that river channel. It should always be much more and it should be up to these people [the Barkandji] because it's their river. They never give it away to anyone. It should be their decision on whether it's okay to take it out."

— Barbara Webster, Broken Hill

"There should be local rangers. Local traditional owners should be the monitors of the water. That's how you're going to get truthful reporting and truthful prosecutions. If we can get that, that's a start."

— Paul Brown, Wilcannia

"Indigenous values which are called, broadly speaking, cultural values, have been brushed aside. They're the first casualty in the war to save the Darling River, but in fact they are, in my mind, the strongest set of values that will save the Darling River. … This river needs to live under the protection of a set of sacred values. I'm not saying they necessarily 100 percent Aboriginal values but they need to be a set of commonly held values between the white man and the Aboriginal views. As a white man, … I look upon the river as a sacred river for my own reasons. That's the reason I've come here, is to be in touch with the land and its spiritual values."

— Robert Maxwell, Broken Hill

"The lake is dead, and everything around it is dying as well. So it's like a virus and it's just spreading. I've heard talk of, 'Empty this lake, fill that one'... Leave it alone! It didn't need messing around with! You've got people that haven't got a clue in charge of picking out plans and projects for managing the lakes. Leave it as it is! Get the Aboriginal elders to tell you about, 'You can do it or you can't do' — I would rather that."

— Steven Cicak, Menindee

"There has to be more seats at the table for First Nations people. We have to listen to our traditional owners. They're the ones that have the knowledge of the systems and how they're linked and the importance of keeping them linked and if we don't put First Nations people at the table we're going to be in the same situation – we won't ever have water down the river."

— Jennifer Evans (pictured), Wentworth

"The first technology of humans on the planet is **sharing** and tribal culture is all about sharing. The fish traps up there [in Brewarrina], I think that seven tribes or something all access them. And you never take the water, even out of your enemies' traps. You let them fish. And that was the first technology of people on the planet, was sharing; the sense of we all share, everyone eats. Like there's no food —knowing, it's fair enough, but if there's something, everyone gets their, their portion of it. And so there's something really skewed about the way we're all operating here; stealing water."

— Louise Moriarty, Wilcannia

"**I think the only way is we've got to be more holistic towards the river - we gotta listen to the Aboriginal people in their holistic ways - how to treat the animals in the river, because the white people don't understand it. They see a little bit of water running out to sea as waste of the water. They don't understand how nature works. We want to control nature and we can't.**"

— Bruce Wilson, Brewarrina

Jennifer Evans, Wentworth. 20 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

7.6.4 Increase national oversight and enforcement, decrease state control over river system

SUMMARY

Citizens' Inquiry participants shared strong views that state governments should no longer have as much control over the Darling River system as they currently have. Alternative governance suggestions included a stronger role for federal management of water, to remove conflicting management systems and goals between the states, as well as a stronger role for local communities. Elements of a stronger federal role that were suggested included a National Water Management approach and National Water Ombudsman

COMMUNITY COMMENTS

"I don't want to dwell too much on how we got to here or any of the finger pointing. … I'll just skip straight to the solutions if you don't mind. **For some time now I've been advocating for a National Water Ombudsman because I feel that the Australian people have reached a point where they no longer have faith in the political process or indeed any of the political will to exert any real change in the current climate**. For me, the only reason that we can affect change under the current constitution … is to have the states divest their powers as they have for the purposes of the Murray-Darling Basin Plan, but into a National Water Ombudsman which would take that level of decision making, arbitration and maybe enforcement. … I think an Ombudsman, if they were given appropriate powers, and a need to publicly report what is in the greater public interest, would be able to help inform some level of standardisation across the states, which I think is a massive issue, especially to a cross-border community such as ours."

— Jane MacAllister, Mildura

"Create a National Water Ombudsman with federal jurisdiction with power to protect low flows and environmental watering."

— Jason Modica, Mildura

"I feel as though the planning of the rivers and the water management is really fragmented, because it covers four state governments, and I wish that there was sort of an overall body that was federal which had like, branches and representatives in all these little towns, that were actually here first hand – like you are today, talking to people, going out and see what's happening and actually understand at first hand instead of making decisions long distance. … I just feel pretty disgusted the way things are at the moment."

— Anne Spudvilas, Wentworth

"Under the Constitution, the state government holds a responsibility for water. There has been an increasing handballing of responsibility on to local councils – council isn't even advised and council provides town water to townships including Pooncarrie, Pomona, Wentworth, Gol Gol, etc. Councils need to be informed – kept in the loop, and hopefully have some sort of say."

— Jane MacAllister, Mildura

"The NSW government has released an **extreme events policy** which has no action attached to it. … It sets out which agencies and how they get together to resolve critical water issues which include quality as well as supply. Council does not have a seat at that table. … I believe that has now changed and I hope it's changed. …We should have somebody who is respected and has the faith and trust of us all … maybe it'd be an ombudsman or someone sitting underneath them in an enforcement sort of arm that can just press a button and kill a pump, a section of pumps, or if required, embargo a whole section of river because there's a downstream requirement."

— Jane MacAllister, Mildura

"Water needs to have its own portfolio. It shouldn't be rolled into an area of primary industries, because obviously there's a conflict of interest there, and when there's a conflict of interest, whoever has the deepest pockets wins …"

— Jennifer Evans, Wentworth

"The whole River Basin should be managed independently of the states. I know that's difficult. I understand the way our federation's written up and I know the states are never ever going to give up that level of control, but it doesn't mean we can't or shouldn't have that conversation. I think the whole Basin should be managed as one system – not a separate system, separate bits and pieces all over the place. … There has to be one body responsible for the river … so that there is one source of information."

— Jennifer Evans, Wentworth

7.6.5 Impose greater responsibility on irrigators, businesses and townships to care for the river system

COMMUNITY COMMENT

"The irrigators and our towns along the river have benefitted from basically free access to the water - unlimited access is probably a better word – for 50, 100 years — and the environment is feeling the pain. I think our towns and the irrigators are going to have to suffer some pain before our environment can be repaired, but whether they can accept that, it might take some convincing. But the irrigators can either come on and be a part of the solution, or they're a part of the problem."

— Ron Perry, Mildura

Combadello Weir, Moree, NSW. (April 2019) Photo by Michael Cleary.

7.7 Introduce more transparent and accountable information management systems so communities and citizens know what's going on and enforcement can be strengthened

Many people discussed how difficult it is for ordinary people to find information about water use, water licences etc. There was a call for greater provision of and access to timely, accurate, free publicly available information about water use and water quality.

Box 18 - Locals need to be able to access reliable information about water use in their region

"If old mate can row down the river and see his neighbours' pumps are all switched on at an inappropriate time, or when the river flow is so low that it's not appropriate, or … you know, they've run out of allocation because they told you down the pub last week. You've got that information anyway, **why should that information not be put on a database where people can see**, 'Oh, they've run out of their thing so now it's my turn', or whatever, you know, then you can plan your irrigation needs. …

Local people need to be … actively engaged in the management of water quality. … Where there are cluster diagnoses of anything that could be related to water quality, I believe they need to be reported publicly like communicable diseases are. GPs need to be on board and regions, areas and councils need to be involved in informing the public that there are quality issues that need to be dealt with, because otherwise there will be no way of knowing how the local water in your area is impacting you, or indeed the food chain. … Instate real-time public reporting on all water movement, rainfall, flow, extraction anomalies, storage, groundwater capacity and fluctuations." Jane McAllister, Mildura

"[Another problem] is the way information is held. There's no way to find out what the actual inflows into a system are. There's no clear way to know what the outtakes are from the system. Have they included the outtakes for towns and communities, or is that something seen as separate? You can't get that data because states hold it, local councils in some areas hold some of it. … the MDBA holds information and they don't share anything with anyone. You can't find out any of that information on their system. You can get more information about the Murray because it is more controlled … but in the Darling system, who knows? How long's a piece of string? I know the information issue has come up many times, that people just can't find it. And I've searched through state water things, I've looked at local council information about their water allocation for town supplies and things like that. I've looked federally, you know, MDBA provides nothing which they should; they should be the keeper of the data and if they have it, they certainly don't make it public and the only thing that makes me think is .. if they have the data and they're not making it public, they're hiding it, because they know we're all right and that it has been mismanaged, and it is overallocated. And if they don't have it then how on earth can they manage a system or make recommendations about management of a system if they don't know what on earth is coming in. … We're letting people get paid [in water] in advance when we don't even know if it's there to take next year. It's just bizarre."

— Jennifer Evans, Wentworth

7.8 Introduce stronger laws – including rights of nature laws - to increase legal protection for river health

COMMUNITY COMMENTS

"These rivers, they should be heritage-listed, because we used them for 40,000 years and still trying to use them today."

— Eddy Harris, Wilcannia

"Nature has rights and it should have a legal personality … and we have to respect nature because a healthy nature means a healthy community – simple."

— Maria Riedl, Wentworth

"When I speak, I'm not speaking just on behalf of my people and my community. It doesn't matter what race you're from. Also in my heart I'm speaking on behalf of the animals and plants cos they've a right too. They've all got feelings … animals are part of this environment and they always have been for thousands and thousands of years. "

— Graham Clarke, Wentworth

"In relatively good seasons … the river goes out of everyone's mind. It's there and it's always there and in times of good it needs looking after as well as in times of bad and it's not just an open slather when things are good, for them to go, 'Let's go ballistic and grow lots of cotton,' or whatever. ***It is its own entity.***"

— Patrick o'Keefe, Wilcannnia

"No one's taking the river seriously. The river is an energetic being in itself, like it's a living being. It's an organism, it's, so **it needs rights** and **I don't understand how a corporation can have more rights than a river** … what is gonna work is giving those spaces rights of their own because if a corporation has as much rights as a human being and a river has absolutely freakin' *no rights*, like, where do we go? Like, because that corporation is nothing. It's like it doesn't even exist, we made it up, it's not real, it's not a real thing. It's an entity that we as humans created and gave the same rights as living beings and the living beings within the environment of the bigger ecosystems that we rely on, they have known there's no care factor, there's no, like, they are just smashed and just being resources ripped up. True there's nothing left, like the river, as you can see, there's nothing left."

— Louise Moriarty (pictured), Wilcannia

Louise Moriarty, Wilcannia. 25 March 2019. Photo by Eduard Figueres (or) Ryan Jasper Walsh / courtesy @VoiceOfTheBarka

7.9 Support communities to rebuild community health and local economies

COMMUNITY COMMENTS

"There are already things in place that could happen in regard to transitioning local economies. The local anglers' group from NSW and Victoria work very hard to suggest that they add millions of dollars to the economies of their states, whether it's sea angling or in the river, so that's a good start. Sometimes you make more money out of tourism than you do out of agriculture, so there are things in place to consider."

— Jason Modica, Mildura

"We should prioritise community-based farmers – we have a corporatisation of our water as a resource, which has zero to do with our communities. … There is virtually zero employment outcomes. … need to support community irrigators."

— Robert Biggs, Mildura

"The tourism in Sunset Strip when the lakes were full, our local hall, we opened up the hall so we could service the tourist buses that were going up there. The amount of tourists that go up there to take pictures of the wildlife. Like we were saying, like the black cockatoos and you know, you don't get to see them very often and there's thousands of other animals around that lake. The people from Sunset Strip, if they need anything, they go into Menindee. So when you've got a community that on the weekend, that used — the way it used to be, with two or three hundred people up there — if you forget something, you go into Menindee, so there's a flow-on effect. The amount of people that used to camp on Lake Pamamaroo, you couldn't get a caravan park there for, three, three kilometres - it'll be chock-a-block. They'd all go into Menindee. The store would do well, the petrol station would do well. There's just this flow-on effect and this government now have totally taken that away from us. And like Paul was saying, I get sick and tired of hearing about the jobs oh they might lose upstream, when from, down from Bourke, they haven't considered the amount of jobs downstream that we've lost in Menindee. And it's the Aboriginal communities up there who are suffering the most."

— John Ford, Broken Hill

7.9.1 Stop issuing new water licences to large irrigators; let communities rebuild

COMMUNITY COMMENTS

"No new licences for irrigation to be issued and a review of all irrigated licences issued in the last 10 years, to help facilitate decisions regarding suitable water use. … We should be decommissioning irrigation developments.""

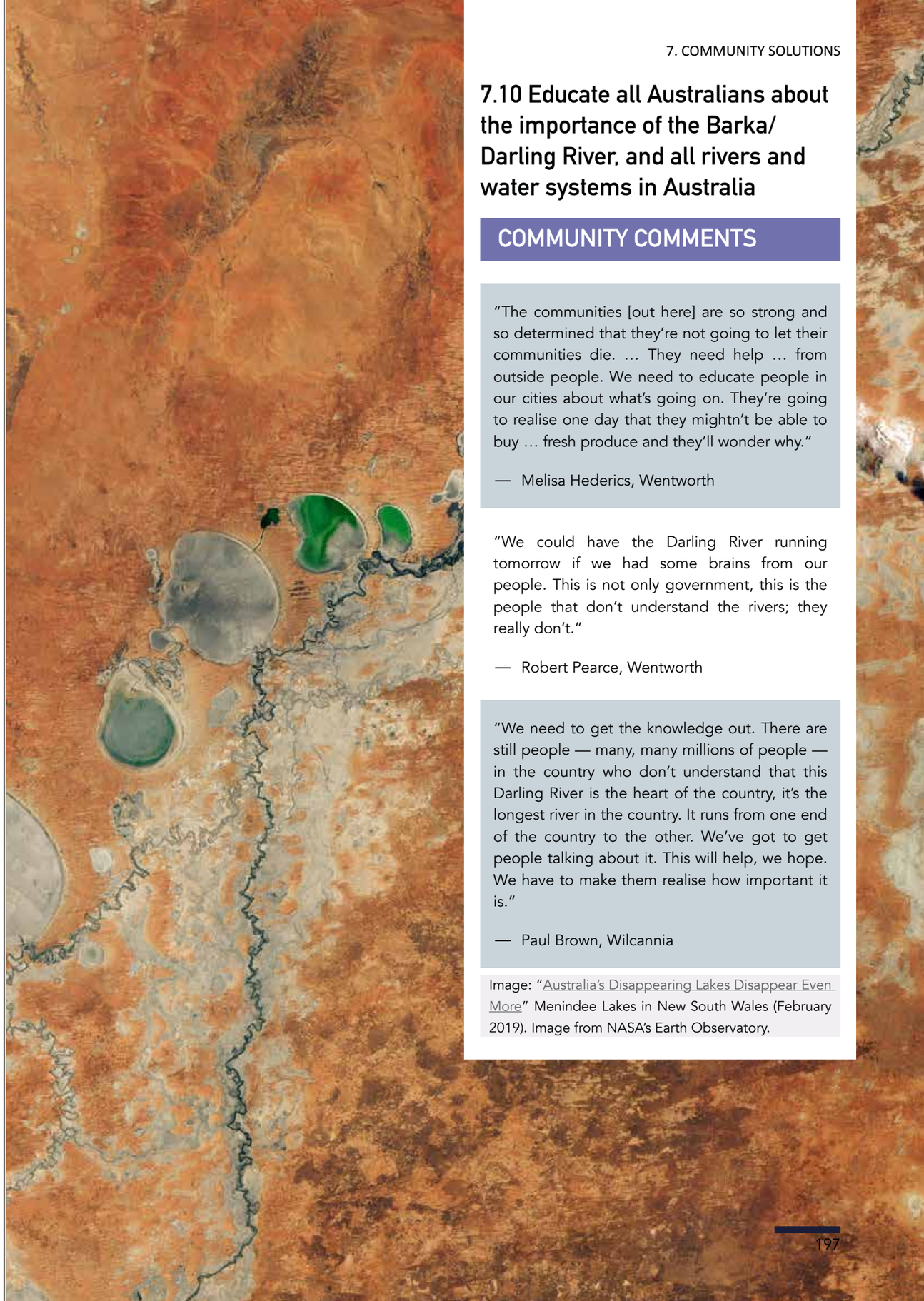
— Robert Biggs, Mildura

"I don't know who provides licences for irrigation but they've got to cut them down and they should perhaps immediately say right, perhaps a 10% reduction in all those cotton areas, and they've made these banks illegally."

— Don Crittenden, Broken Hill

"It'll take 50 years to wind back the licences and to change the industries that are living off it and the townships that have been developed around cotton. It'll take at least that, but it's got to be done. You have to make a start somewhere. That's all we're looking for."

— Paul Brown, Wilcannia



7.10 Educate all Australians about the importance of the Barka/ Darling River, and all rivers and water systems in Australia

COMMUNITY COMMENTS

"The communities [out here] are so strong and so determined that they're not going to let their communities die. … They need help … from outside people. We need to educate people in our cities about what's going on. They're going to realise one day that they mightn't be able to buy … fresh produce and they'll wonder why."

— Melisa Hederics, Wentworth

"We could have the Darling River running tomorrow if we had some brains from our people. This is not only government, this is the people that don't understand the rivers; they really don't."

— Robert Pearce, Wentworth

"We need to get the knowledge out. There are still people — many, many millions of people — in the country who don't understand that this Darling River is the heart of the country, it's the longest river in the country. It runs from one end of the country to the other. We've got to get people talking about it. This will help, we hope. We have to make them realise how important it is."

— Paul Brown, Wilcannia

Image: "Australia's Disappearing Lakes Disappear Even More" Menindee Lakes in New South Wales (February 2019). Image from NASA's Earth Observatory.

8. FINDINGS AND RECOMMENDATIONS FROM CITIZENS' INQUIRY PANEL

Lake Cawndilla (centre) (2018), with the Barka/Darling River in the foreground. Photo by Rob Deutscher, licenced under CC BY 2.0.

This section of the Citizens' Inquiry Report contains the findings and recommendations of the Citizens' Inquiry Panel. This section does not contain direct quotes from Inquiry participants but does refer to previous sections that set out community perspectives and opinions.

The Inquiry panel considered the testimony from 110 participants and reviewed a wide range of materials in order to attempt to understand the issues arising out of the conditions in the Darling River Basin. It was upon that information that the panel made a number of Findings and Recommendations, which have been grouped into six categories:

- **8.1 Urgent action required to restore the river system and community health**
- **8.2 Basin state governments have breached obligations under state, federal and international law**
- **8.3 Basin state governments are not complying with emerging international norms and standards**
- **8.4 Issues for further investigation**
- **8.5 The need for new governance approaches**
- **8.6 Long-term ecological restoration**

8.1 URGENT ACTION REQUIRED TO RESTORE THE RIVER SYSTEM AND COMMUNITY HEALTH

FINDING 1: The Barka/Darling River system is an ancient, complex, interconnected, living system that has supported human and non-human communities for millennia. Since European colonisation, this precious interconnected living system has been mismanaged, and unsustainable use of its land and waters has brought it to the brink of collapse.

FINDING 2: Evidence provided by community members along the Barka/Darling River system show that the health of the River system has been in decline for decades. Immediate emergency actions are required, to restore river health, to restore human health for community members living along the river, and to prevent the ongoing degradation of ecosystems in the region.

FINDING 3: The current legal system has not been adequate to Care for Country or sustainably manage the Barka/Darling river system and major governance reform, built around First Nations peoples' leadership and community ecological governance, is required if the river system is to be saved and restored.

8.1.1 Immediate emergency actions to restore river health

The Panel makes the following recommendations to address the urgent need to restore river health:

RECOMMENDATION 1: Basin States immediately *provide funding* for First Nations peoples and local communities along the Barka/Darling River to collaboratively design and implement an Emergency Community River Restoration Plan. The Plan should focus on ensuring healthy river flows, restoring the Menindee Lakes and guaranteeing that sufficient volumes of clean, healthy water will always remain in the Barka/Darling River during drought, as it used to in the past.

RECOMMENDATION 2: Basin States immediately *provide funding* for a River Ecological Restoration Fund, that will be used to implement the Emergency Community River Restoration Plan.

RECOMMENDATION 3: Basin States take immediate action to *end water trading in Australia*, including an immediate moratorium on water trading and a transition plan to repeal relevant legislation.

RECOMMENDATION 4: Basin States place a *moratorium on the granting of any new water licences* that would allow water extraction from the Barka/Darling River catchment and headwaters until the Emergency Community River Restoration Plan is created and implemented.

RECOMMENDATION 5: Basin States impose an *immediate ban on all floodplain harvesting and introduce new laws to remove existing floodplain harvesting structures* throughout the Barka/Darling River system.

RECOMMENDATION 6: Basin States place a *moratorium on all groundwater extraction* from the Barka/Darling River catchment until the Emergency Community River Restoration Plan is created and implemented.

RECOMMENDATION 7: Basin States place a *moratorium on all new dams* in the Barka/Darling River catchment and review existing dams, with a view to reducing the number of dams and the amount of water taken from the river for large scale irrigation purposes. The replacement weir downstream from Wilcannia should proceed.

RECOMMENDATION 8: Basin States *ban all future large-scale extraction from the Barka/Darling River system* and fund a transition plan to phase out all existing large-scale extraction from the Barka/Darling River system, in accordance with the Emergency Community River Restoration Plan.

RECOMMENDATION 9: That there should be a *moratorium on further land clearing* in southern Queensland and western New South Wales.

RECOMMENDATION 10: All Basin States should coordinate investment in *large scale land regeneration projects (including re-vegetation and re-forestation*) along the Barka/Darling River system.

8.1.2 Immediate emergency actions to restore human health

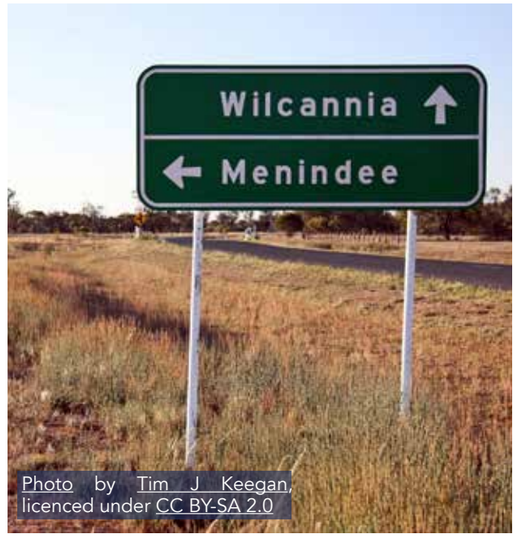
The Panel makes the following recommendations to address the urgent need to restore human health for community members:

RECOMMENDATION 11: Basin States create and fund an Emergency Barka/Darling River Community Health Fund that will be administered in compliance with the priorities identified by affected communities.

RECOMMENDATION 12: Basin States work with affected communities, to use the Emergency Barka/Darling River Community Health Fund to pay for and organise the immediate provision of clean, safe and free potable water to all affected communities, for as long as it takes to restore the health of the river system and ensure a safe water supply for river communities.

RECOMMENDATION 13: Basin States immediately fund an investigation into motor-neurone disease and other health problems (including skin rashes and other skin problems) suspected of being caused by people having to use poor quality water in Menindee, Wilcannia and other affected communities.

RECOMMENDATION 14: the NSW government provide financing for improved health care facilities — mental, physical and dental — for the towns along the Barka/Darling River Basin within NSW.



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8.1.3 Immediate action to ensure First Nations peoples play a leadership role in the management of the Barka/ Darling River system

The Citizens' Inquiry heard First Nations peoples and non-indigenous people along the entire Darling River system, state that any governance systems created to care for country and care for the rivers, should be led by First Nations peoples.

This Tribunal does not have the authority to make recommendations on behalf of the First Nations peoples of the Barka/Darling River, however in response to the testimony by First Nations peoples and non-indigenous people in the region, our key recommendation is that:

RECOMMENDATION 15: First Nations peoples along the Barka/Darling River system should be invited by Basin Governments – and paid by Basin Governments – to develop their own long-term governance structure, that will enable First Nations peoples to lead all future river care and river restoration programs for the Barka/Darling River system. In addition, laws should be enacted making it mandatory for all elements of existing Barka/Darling River governance structures – at the federal, state and local Levels - to seek advice from and take recommendations from, the First Nations peoples connected to the Barka/Darling River.

Little corellas (*Cacatua sanguinea*) in Menindee. 23 March 2019.

8.2 GOVERNMENTS HAVE BREACHED LEGAL OBLIGATIONS UNDER STATE, FEDERAL AND INTERNATIONAL LAW

8.2.1 Legal Obligations under State and Federal Law

The Water Act 2007 (Cth)

Around the time of the Inquiry, all towns from Wentworth to Brewarrina reported that there was a 'no flow' of water in the Darling River. In December 2018 and January 2019 three significant fish kill events occurred near Menindee NSW with estimates of around one million fish and higher.

The law relating to water rights in Australia can primarily be found in the Commonwealth Water Act 2007 as amended by the Water Amendment Act 2008. Amongst other things, the Water Act requires the development of a Basin Plan for the integrated management of water in the Murray-Darling Basin. The Murray-Darling Basin Plan, passed in 2012, is a legislative instrument that sits under the Water Act.

The Water Act 2007 was legislated to provide the legal basis for the control of the Murray-Darling Basin resources to enable the Commonwealth, in conjunction with the Basin States, to manage the Basin water resources in the national interest (s3a).

The Commonwealth head of power is claimed under Section 51(xxix) of the Australian Constitution which gives the Commonwealth Parliament of Australia the right to legislate with respect to 'external affairs' of the Australian Constitution with regards to its international treaty obligations.

The objects of section 3 of the Water Act 2007 states;

> the Commonwealth, in conjunction with the Basin States, to manage the Basin water resources in the national interest;
>
> and to give effect to relevant international agreements (to the extent to which those agreements are relevant to the use and management of the Basin water resources) and,
>
> in particular, to provide for special measures, in accordance with those agreements, to address the threats to the Basin water resources; and (c) in giving effect to those agreements, to promote the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes.

The Water Act 2007 under s4 lists the relevant international Agreements and Treaties. Relevant "international agreements" include the following: (i) the *Ramsar Convention 1971* (RAMSAR); (ii) the *Biodiversity Convention* (CBD); (iii) the *Desertification Convention*; (viii) the *Climate Change Convention 1992*. These treaties are reflected in the Commonwealth *Environment Protection and Biodiversity Conservation Act* 1999.

Obligations under the Water Act 2007 (Cth) relating to human needs

Part 2A of the *Water Act* contains provisions related to 'critical human needs' including the following:

> **86A Critical human water needs to be taken into account in developing Basin Plan**
>
> (1) Without limiting section 21, the Basin Plan must be prepared having regard to the fact that the Commonwealth and the Basin States have agreed:
>
> (a) that critical human water needs are the highest priority water use for communities who are dependent on Basin water resources; and
>
> (b) in particular that, to give effect to this priority in the River Murray System, conveyance water will receive first priority from the water available in the system.
>
> (2) *Critical human water needs* are the needs for a minimum amount of water, that can only reasonably be provided from Basin water resources, required to meet:
>
> (a) core human consumption requirements in urban and rural areas; and
>
> (b) those non human consumption requirements that a failure to meet would cause prohibitively high social, economic or national security costs.

The *Water Act* approaches the task of ensuring the Basin Plan meets critical human water needs by stipulating a risk management approach to implementing the Plan. The Basin Plan is required, for example, to:

- Include a statement of the amount of total water and conveyance water required in each Basin State to meet the critical human water needs of the communities in the State;[141]
- Specify water quality trigger points and salinity trigger points at which water in the River Murray System becomes unsuitable for meeting critical human water needs;[142]
- Specify arrangements for monitoring matters relevant to critical human water needs;[143]
- Specify the risk management approach for inter annual planning relating to arrangements for critical human water needs in future years.[144]
- The Plan must also address the possibility that there will be insufficient water to meet these critical needs. This includes duties to specify conditions for the commencement of Tier 2 or Tier 3 water sharing arrangements in place of Tier 1 water sharing arrangements among Basin States.[145]

As can be ascertained from this, the approach taken by the *Water Act* insofar as critical human needs are concerned is to mandate its consideration by decision makers and water managers acting pursuant to the Basin Plan. Critical needs are met in accordance with the arrangements contained within the Act, the Basin Plan, the MDB Agreement and the water sharing schedule that is part of the Agreement.

The *Water Act* does provide a framework by which compliance with the various provisions of the *Act* can be measured, and in some circumstances, enforced. With respect to critical human needs, the *Water Act* provides two separate sets of compliance regimes:

141 *Water Act 2007* (Cth) ss 86B(1)(a), (b).

142 Ibid s 86B(1)(c).

143 Ibid s 86C(1)(a).

144 Ibid (Cth) s 86C(1)(c).

145 Ibid ss 86D, 86E.

— The MDBA Authority and other agencies of the Commonwealth must perform their functions, and exercise their powers, consistently with, and in a manner that gives effect to, the matters included in Part 2A;[146]

— Other agencies and persons, including public and private sector organisations, are only required to act in a manner which is not inconsistent with the matters contained in Part 2A.[147]

The effect of this second limb is that other agencies and persons are not required to 'give effect' to the provisions in Part 2A, only to act in a manner which is not inconsistent with it. If an act was found to contravene either of these compliance mechanisms then a limited number of enforcement mechanisms are available to an applicant in Court.[148]

The *Water Act* does not provide any relevant enforcement mechanisms beyond ensuring that administrators, water managers and others act in accordance with the Basin Plan. If the Basin Plan itself was drafted ineffectively then the *Water Act* would not be able to provide any further means of enforcement. The *Water Act* does not create a legally enforceable overarching personal or community right to water.

Obligations under the Water Act 2007 (Cth) relating to environmental protection

Water law expert Dr Carmody, EDO, has said:

> "If I were to distil the purpose of Water Act and the Basin Plan in one single element, it would be to reinstate an environmentally sustainable level of [water] take."

The *Water Act 2007* is one of the only legislative instruments in the world that gives legislative priority to the environment above all other considerations. The Water Act goes on to spell out the underlying principles of sustainability. Specifically, s.3A Principles of ecologically sustainable development states that ecologically sustainable administration of water resources is:

(a) decision making processes should effectively integrate both long term and short term **economic, environmental, social** and equitable considerations;

(b) if there are **threats of serious or irreversible environmental damage**, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

(c) the principle of inter generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the **benefit of future generations**;

(d) the conservation of **biological diversity and ecological integrity** should be a fundamental consideration in decision making;

The Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act)

The EPBC Act is the Australian Government's central piece of environmental legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places.

The Objects of the EPBC Act

(1) The objects of the EPBC Act are:

(a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and

(b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and

(c) to promote the conservation of biodiversity; and

(ca) to provide for the protection and conservation of heritage; and

(d) to promote a co operative approach to the protection and management of the environment involving governments, the community, land holders and Indigenous peoples; and

(e) to assist in the co operative implementation of Australia's international environmental responsibilities; and

(f) to recognise the role of Indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and

(g) to promote the use of Indigenous peoples' knowledge of biodiversity with the involvement of, and in co operation with, the owners of the knowledge.

(2) In order to achieve its objects, the Act:

(a) recognises an appropriate role for the Commonwealth in relation to the environment by focussing Commonwealth involvement on matters of national environmental significance and on Commonwealth actions and Commonwealth areas; and

(b) strengthens intergovernmental co operation, and minimises duplication, through bilateral agreements; and

(c) provides for the intergovernmental accreditation of environmental assessment and approval processes; and

(d) adopts an efficient and timely Commonwealth environmental assessment and approval process that will ensure activities that are likely to have significant impacts on the environment are properly assessed; and

(e) enhances Australia's capacity to ensure the conservation of its biodiversity by including provisions to:

(i) **protect native species** (and in particular prevent the extinction, and promote the recovery, of threatened species) and ensure the conservation of migratory species; and

(iii) **protect ecosystems** by means that include the establishment and management of reserves, the recognition and protection of ecological communities and the promotion of off reserve conservation measures; and

(iv) identify processes that threaten all **levels of biodiversity** and implement plans to address these processes; and

(f) includes provisions to enhance the protection, conservation and presentation of world heritage properties and the conservation and wise use of **Ramsar wetlands of international importance**; and

(fa) includes provisions to identify places for inclusion in the National Heritage List and Commonwealth Heritage List and to enhance the protection, conservation and presentation of those places; and

(g) promotes a partnership approach to environmental protection and biodiversity conservation through:

(i) bilateral agreements with States and Territories; and

(ii) conservation agreements with land holders; and

(iii) **recognising and promoting Indigenous peoples' role** in, and knowledge of, the conservation and ecologically sustainable use of biodiversity; and

(iv) the involvement of the community in management planning.

ANALYSIS:

With no flow in the river between Brewarrina and Wentworth NSW, the federal government has prevented native species accessing a known drinking water supply and endangering already threatened species in that region. The fish kills in December 2018 at Menindee, estimated in the millions, included endangered fish species. The Tribunal has not heard any evidence that the government has tried to mitigate the effects of no flow on either the flora or fauna along the entire Darling for endangered species survival. What water that was found in pools along the river, was considered toxic to both animal and human health and deemed undrinkable.

The processes of floodplain harvesting and the nature of the reduced flow for the Barka/Darling brought up issues involving biodiversity affected by floodplain harvesting. The Inquiry believes that the use of floodplain harvesting is detrimental to biodiversity and affects threatened species in those

146 Ibid s 86G(1).

147 Ibid s 86H.

148 Ibid ss 140 - 164.

areas where it is practiced hence all down the river to Wentworth.

Evidence provided by testimonies during the Tribunal also pointed to the detrimental impact on biodiversity of extensive irrigated cotton growing throughout the northern parts of the Barka/Darling River. As a monoculture that requires land clearing, chemical input and significant volumes of water, the production of cotton was said to be incompatible with water conservation and biodiversity protection.

The Australian government is obligated under the Ramsar convention to protect its native wetlands of international importance. There are 16 of these wetlands, covering 638 hectares, located within the MDB. The designation of Ramsar sites carries specific responsibilities, one of these being to manage the sites in a way that would maintain their ecological character and promote their conservation values and wise use.

With no or low flows going down the Barka/Darling any wetlands would be detrimentally affected. Evidence was given that a number were already negatively impacted. Thus at Walgett an important wetland (Narran Lake Nature Reserve) just outside of the town had dried out and was described by a participant as a "dust bowl" and subsequently the birds had died or moved away.

Narran Lake Nature Reserve in north-west New South Wales was first listed under the Ramsar Convention in 1999, with a further area added in 2016.[149] The site was extended to capture more breeding and feeding habitat for waterbirds. It now covers a total area of 8447 hectares and comprises the whole floodplain area within Narran Lake Nature Reserve.

The Inquiry did not have sufficient time to determine what endangered native species have been adversely affected by the lack of flow, but it could be assumed safely that all animals, birds and fish that had once depended on the flow of the river and overland flows for water were now unable to access the river or were unable to drink its water because of the toxic nature. Evidence given of animals "dropping dead in front of my eyes" at the side of the river painted a toxic picture of the state of the Darling's water.

FINDING 4: The *Water Act 2007* imposes an implied duty on administrators, governments and water managements to ensure that water management under the Basin Plan is undertaken in a way which ensures that critical human needs are met. Despite this, the *Water Act 2007*:

- fails to provide any effective enforcement mechanisms to ensure compliance with this duty; and
- fails to provide any remedies or recourse to persons whose critical human needs are not met under the Basin Plan.

FINDING 5: The Australian Government has *failed to protect* the ecological values and ecosystem services of the Murray Darling Basin, taking into account, in particular, the impact that the taking of water has on the watercourses, lakes, wetlands, ground water and water dependent ecosystems that are part of the Basin and on associated biodiversity as per the provisions (section (d)(ii) Objects) of the *Water Act 2007*.

FINDING 6: The Australian Government has *failed to return* to the river adequate environmental water sufficient to restore protected wetlands, water dependant ecosystems or endangered species populations.

RECOMMENDATIONS:

RECOMMENDATION 16: The Water Regulations 2008 (Cth) be amended to list the International Covenant on Economic, Social and Cultural Rights as a 'relevant international agreement' for the purposes of s. 4 of the *Water Act 2007* (Cth)

RECOMMENDATION 17: The Water Act 2007 (Cth) be amended to create enforceable personal rights with respect to 'critical human water needs'

RECOMMENDATION 18: The Water Act 2007 (Cth), s. 86(H) be amended to create compliance mechanisms for other agencies and persons in relation to a breach of 'critical human water needs'.

149 The Ramsar site within the Narran Lake Nature Reserve is about 50 kilometres east of Brewarrina in north-west NSW. One section of the site was listed under the Ramsar Convention in 1999, and a further 3104 hectares were added in 2016.

RECOMMENDATION 19: That the entire Barka/Darling River system – including its creeks, streams, rivers, marshes, billabongs and groundwater - be designated by the Australian government for inclusion on the List of Wetlands of International Importance, under the Ramsar International Convention on Wetlands, because of their ecological, botanical, zoological, limnological, geological and hydrological importance.

RECOMMENDATION 20: That the Northern Barka/Darling River system be listed as a threatened ecological community under the Environment Protection and Biodiversity Conservation Act 1999, Part 13, Division 1 Listed threatened species and ecological communities. The ecological community could include: all natural creeks, rivers, streams and associated lagoons, billabongs, lakes, flow diversions to anabranches, the anabranches, and the floodplains of the Darling River within the states of Queensland and New South Wales.

8.2.2 Specific obligations under Federal and International Law relating to the rights of First Nations Peoples

While the Water Act 2007 does not include any specific legislation involving First Nations peoples, both the Native Title Act 1993 (see also Rights of Indigenous Peoples UN Declaration) and the Environment Protection and Biodiversity Conservation (EPBC) Act 1999, do recognise and promote Indigenous peoples' role in, and knowledge of, the conservation and ecologically sustainable use of biodiversity.

The United Nations Declaration on the Rights of Indigenous peoples (UNDRIP or DOTROIP) delineates and defines the individual and collective rights of Indigenous peoples, including their ownership rights to cultural and ceremonial expression, identity, language, employment, health, education and other issues. It "emphasises the rights of Indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations". It "prohibits discrimination against Indigenous peoples", and it "promotes their full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development". Australia recognised these rights in International law in 2009. [63]

While the UN Declaration is not a convention its content is well reflected in the Native Title Act 1993. The main objects of the *Native Title Act* are among others: to provide for the recognition and protection of native title. Under Sec. 23 of the Native Title Act, the expression native title or native title rights and interests means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:

> (1) The expression native title or native title rights and interests means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:
>
> (a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and
>
> (b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and
>
> (c) the rights and interests are recognised by the common law of Australia.
>
> Hunting, gathering and fishing covered
>
> (2) Without limiting subsection (1), rights and interests in that subsection includes hunting, gathering, or fishing, rights and interests.

Other interests under section 2 include water rights.

ANALYSIS:

First Nations peoples have stated that the water in the river (north of Wentworth, NSW) is unfit to drink where available or at the very least *unsafe to drink*. Most First Nations peoples we heard from reported having to buy drinking water.

First Nations communities also told the Inquiry that they are unable to access their traditional food sources. They told us that there was a scarcity of fish and other traditional food sources available to consume and that the toxic nature of the water made

the fish, freshwater mussels and yabbies inedible, where they had survived.

First Nations communities told the inquiry that they saw the Barka River as their "mother" and they experienced the lack of healthy flow in the river as the "death of their mother". This significantly impacts their ability to spiritually connect with the land and to engage in their traditional cultural practices. Some First Nations communities reported that they are unable to teach their children about their cultural practices as many children under the age of four have never seen the river flow. We were told that cultural practices also include the traditional seasonal hunt for emu eggs which is dependent on high water volumes and flooding and have inevitably been affected by the lack of flow in the river.

FINDINGS:

FINDING 7: Australian Governments have breached their obligation under the Native Title Act to provide adequate water resources for drinking purposes to First Nations communities.

FINDING 8: Australian Governments have breached their obligation under the Native Title Act to ensure that First Nations communities are able to access their traditional food sources.

FINDING 9: Australian Governments have breached their obligation under the Native Title Act to ensure that First Nations communities are able to engage in their traditional cultural practices.

RECOMMENDATIONS:

RECOMMENDATION 21: That the Australian Government immediately take action to rectify its breaches under the Native Title Act, and restore water flows to the Darling River, in order to ensure First Nations communities have adequate water resources for drinking purposes, are able to access their traditional food sources and are able to engage in their traditional cultural practices.

8.2.3 Obligations under International Treaties and Instruments to which Australia is a party

Australia has certain international law obligations with respect to the human rights of people within Australian jurisdiction. These obligations arise as a consequence of Australia's being a signatory to particular international human rights law instruments.

Some of the human rights instruments to which Australia is a party impose particular obligations with respect to water rights:

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Australia has been a signatory to CEDAW since 1980 and ratified the convention in 1983. Under CEDAW, Australia is required to take all appropriate measures to ensure that women, especially women in rural areas, enjoy the right to adequate living conditions, particularly in relation to water supply.[150]

Australia has also signed and ratified the Optional Protocol to CEDAW which provides a pathway by which an Australian applicant may apply to the relevant UN treaty body (the Committee on the Elimination of All Forms of Discrimination Against Women) alleging a breach of these relevant provisions of CEDAW. [151]

Convention on the Rights of the Child (CRC)

Australia signed and ratified CRC in 1990. Under Article 24 of CRC, Australia recognises the right of children in its jurisdiction to the enjoyment of the highest attainable standard of health. This includes the obligation to take appropriate measures to combat disease and malnutrition through the provision of clean drinking water.[152]

While an Optional Protocol providing a communications procedure in respect to alleged breaches of CRC has now come into force,[153] Australia has as yet neither signed nor ratified the optional protocol and as a result, alleged breaches of these relevant provisions of the CRC cannot be referred to the relevant international oversight mechanism.

International Covenant on Civil and Political Rights (ICCPR)

Article 27 of ICCPR requires that:

> In those States in which ethnic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of the group, to enjoy their own culture, to practise their own religion, or to use their own language.

The effect of this provision has been by the relevant treaty-monitoring body, the Human Rights Committee, which has said in respect to Article 27:

> With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure effective participation of members of minority communities in decisions which affect them.[154]

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Australia has been a signatory to ICESCR since 1972 and ratified the instrument in 1975. ICESCR does not itself specifically provide for a human right to water, however does impose other relevant obligations on Australia. Article 11 imposes obligations on Australia to ensure the right to an adequate standard of living for people in Australia. Article 12 imposes obligations to ensure the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

These two provisions have been interpreted by the UN Committee responsible for defining the scope and application of ICESCR, the Committee on Economic, Social and Cultural Rights (CESCR), as giving rise to a right to water. In its General Comment 15, CESCR interprets an adequate standard of living and highest attainable standard of health to include the right to water. The Committee goes on to define the normative content of these water rights as including both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.

CESCR also notes that Articles 11 and 12 contain an aspect of 'adequateness' both with respect to standard of living and standard of health. In providing the measure of 'adequateness' to the right to water, CESCR provides that there are particular minimum perquisites which must be met:

- ***Availability***: the water supply for each person must be sufficient and continuous for personal and domestic uses, including for drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.
- ***Quality***: the water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health. Furthermore, water should be of an acceptable colour, odour and taste for each personal or domestic use.
- ***Accessibility***: water must be physically and economically accessible without discrimination. CESCR provides that the accessibility factor includes the right to seek, receive and impart information concerning water issues.

As the human right to water is seen as derivative from the right to life, the focus of the right is upon an adequate quantity and quality of water to sustain human life. CESCR notes that water should be

150 *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) article 14(2)(h).

151 *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature 6 October 1999, 2131 UNTS 83 (entered into force 22 December 2000).*

152 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) article 24(2)(c).

153 *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*, opened for signature 19 December 2011, 2983 UNTS Reg No 27531 (entered into force 14 April 2014).

154 *CCPR General Comment No. 23: Article 27 (Rights of Minorities)* CCPR/C/21/Rev.1/Add.5 (8 April 1994) [7].

treated as a social and cultural good rather than primarily as an economic good. As is common to the interpretation of international human rights instruments, the obligations imposed by such a right includes the obligation to protect, respect and fulfil the right to water.

Article 15 of ICESCR provides a right of everyone within a State's jurisdiction to take part in cultural life. The Committee on Economic Social and Cultural Rights has identified Indigenous peoples as a category of persons requiring special protection, and has mandated that State Parties take measures to recognise and protect the rights of Indigenous peoples to own, develop, control and use their communal lands, territories and resources.[155] The rationale provided for this is:

> The strong communal dimension of indigenous peoples' cultural life is indispensable to their existence, well being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity.[156]

While an Optional Protocol providing a communications procedure in respect to alleged breaches of ICESCR has now come into force,[157] Australia has as yet neither signed nor ratified the optional protocol and as such, alleged breaches of these relevant provisions of the CRC cannot be referred to the relevant international oversight mechanism.

ANALYSIS:

Australia's international obligations do not automatically become enforceable domestic law when Australia signs and ratifies an international treaty. In order to give effect to these international obligations domestically, Australia would be required to legislate in the Australian Parliament to implement these international standards into domestic law. Notwithstanding this, it is an established principle of Australian law that by signing and ratifying an International instrument, Australia creates a legitimate expectation that it will abide by its obligations.[158]

While the provisions of the various international human rights instruments are not automatically enforceable in Australia, there is provision under some additional *Optional Protocols* for particular UN treaty bodies to receive and consider personal 'communications' alleging a breach of a State's international obligations under an instrument to which it is a party. Any such Optional Protocols need to be signed and ratified by Australia for it to be available to people within Australian jurisdiction. A person making a communication to a relevant treaty body must have also first exhausted all domestic remedies to the alleged breach before a treaty body will consider the communication.

On 28 July 2010, through Resolution 64/292,[159] the United Nations General Assembly explicitly recognised the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights. The Resolution calls upon States and international organisations to provide financial resources, help capacity-building and technology transfer to help countries, in particular developing countries, to provide safe, clean, accessible and affordable drinking water and sanitation for all. While 122 Nations voted in favour of this Resolution and none voted against, Australia was one of the 41 Nations that abstained from voting.

The United Nations' factsheet on the Human Right to Water provides the following definitions related to

155 *General Comment No. 21: Rights of Everyone to Take Part in Cultural Life (art. 15, para. 1(a), of the International Covenant on Economic, Social and Cultural Rights)* E/C.12/GC/21 (21 December 2009) [36].

156 Ibid.

157 *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, opened for signature 10 December 2008, UN A/RES/63/117 (entered into force 5 May 2013)

158 *Minister of State for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273.

159 *The Human Right to Water and Sanitation*, GA Res 64/292, UN A/Res/64/292 (3 August 2010, adopted 28 July 2010).

the content of the right:[160]

- ***Sufficient***: The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. According to the World Health Organization (WHO), between 50 and 100 litres of water per person per day are needed to ensure that most basic needs are met and few health concerns arise.
- ***Safe***: The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health. Measures of drinking-water safety are usually defined by national and/or local standards for drinking-water quality. The World Health Organization (WHO) Guidelines for drinking-water quality provide a basis for the development of national standards that, if properly implemented, will ensure the safety of drinking-water.
- ***Acceptable***: Water should be of an acceptable colour, odour and taste for each personal or domestic use. [...] All water facilities and services must be culturally appropriate and sensitive to gender, lifecycle and privacy requirements.
- ***Physically accessible***: Everyone has the right to a water and sanitation service that is physically accessible within, or in the immediate vicinity of the household, educational institution, workplace or health institution. According to WHO, the water source has to be within 1,000 metres of the home and collection time should not exceed 30 minutes.
- ***Affordable***: Water, and water facilities and services, must be affordable for all. The United Nations Development Programme (UNDP) suggests that water costs should not exceed three per cent of household income.

These emerging developments coincide with the United Nations' 'Water for Life' International Decade for Action (2005-2015) and appointment of Special Rapporteur on the human right to safe drinking water and sanitation. Notwithstanding the fact that Australia abstained from voting, the Resolution provides authoritative guidance on the right to water and implies that all UN treaties and instruments to which Australia is a party should be read in alignment with the principle that there is a general human right to clean water and sanitation.

FINDINGS:

FINDING 10: The Australian Government has breached its obligation under Article 14(2)(h) of the *Convention on the Elimination of All Forms of Discrimination Against Women* to ensure that women in communities in the Darling River Basin enjoy the right to adequate living conditions, particularly in relation to water supply

FINDING 11: The Australian Government has breached its obligation under Article 24 of the *Convention on the Rights of the Child* to ensure that children in the Darling River Basin enjoy the highest attainable standard of health, by inter alia, failing to provide clean drinking-water.

FINDING 12: The Australian Government has breached its obligation under Article 27 of the *International Covenant on Civil and Political Rights* to ensure that Indigenous peoples in the Darling River Basin can exercise their right to enjoy their culture.

FINDING 13: The Australian Government has breached its obligation under Article 11 of the *International Covenant on Economic, Social and Cultural Rights* to ensure that people in the Darling River Basin enjoy the right to an adequate standard of living.

FINDING 14: The Australian Government has breached its obligation under Article 12 of the *International Covenant on Economic, Social and Cultural Rights* to ensure that people in the Darling River Basin enjoy the highest attainable standard of physical and mental health.

FINDING 15: The Australian Government has breached its obligation under Article 15 of the *International Covenant on Economic, Social and Cultural Rights* to ensure that Indigenous peoples in the Darling River Basin enjoy their right to take part in their cultural life.

160 See 'Human Rights to Water and Sanitation', *United Nations* (Web Page) <https://www.unwater.org/water-facts/human-rights/>.

RECOMMENDATIONS:

RECOMMENDATION 22: The Australian Government take immediate steps towards the ratification of the *Optional Protocol to the Convention on the Rights of the Child.*

RECOMMENDATION 23: The Australian Government take immediate steps towards the ratification of the *Optional Protocol to the Covenant on Economic, Social and Cultural Rights.*

Menindee Lakes dam wall with the dry Menindee Lake in the background. 24 March 2019.

8.3 GOVERNMENT NON-COMPLIANCE WITH EMERGING INTERNATIONAL NORMS

As noted in 8.2, the Australian Government and Basin states have demonstrated a failure to meet the standards of *existing* international and relevant laws in Australia. The Australian Government and Basin state governments have also demonstrated a failure to engage with or meet the standards of existing international norms providing protections against persecution and the destruction of culture for minority and ethnic groups. Additionally, the Australian Government and Basin state governments have failed to comply with the standards inherent in *emerging* international norms and laws, which impose a stronger duty of care on environmental management and custodianship – including the emerging legal movement recognising the inherent Rights of Nature and the crime of ecocide.

8.3.1 Rights of Nature

Rights of nature laws recognise that the living world has a *moral and legal right to exist, thrive, evolve and regenerate*. The assertion of these legal rights in the legal systems of modern industrialised societies is significant, as it challenges the notion that nature is merely human property; it recognises the inherent moral and legal rights of the non-human world and it recognises the obligations of human societies to care for and not destroy the ecological integrity of the natural world. Rights of nature is a rapidly developing field of law; more than a dozen jurisdictions around the world now have Rights of Nature laws in operation.

The legal Rights of Nature have been recognised in the Constitution of Ecuador, in national laws in Bolivia and Uganda, in dozens of local laws in the USA and in multiple judicial decisions (court cases) around the world including in India, Colombia and Bangladesh. In some jurisdictions, such as New Zealand, living systems such as rivers, forests and mountains have been recognised by the Government as having their own legal rights (legal personhood) and are not the property of human beings. In these cases, First Nations peoples are recognised as having guardianship responsibilities for those ecosystems.

Evidence provided to the Citizens' Inquiry, of the degradation of the Barka/Darling River system over many decades to a state of near collapse, demonstrates the failure of existing laws to effectively manage and protect the Barka/Darling River and the life it supports. To protect the Barka/Darling River system, new legal and governance structures are required.

In Australia, Rights of Nature and concepts such as 'legal personhood' for nature are beginning to emerge in various ways. In 2017, a report by the Australian Panel of Experts on Environmental Law (APEEL) included recommendations concerning the 'next generation' of federal environmental laws in Australia, and Recommendation 8.4 in technical report no. 8 states that rights of nature and legal personhood for nature should be explored by law makers in Australia. In the same year, the Victorian Government passed the Yarra River Protection Act. While the Act does not change the legal status of the river (the river is still, in effect, the property of the Crown), the Act does recognise the river as a living entity, and provides for advocacy on behalf of the river by a Council made up of First Nations peoples and non-indigenous people.

Rights of Nature and community rights concepts are also being used by grassroots groups in Australia for communicating their demands and advocacy for protecting nature. On 20 March 2018, First Nations peoples and non-indigenous communities along the Wooditchup/Margaret River held a rally for the river, demanding it have its own voice and special protection. Also, communities in Hobart used 'rights of the mountain' framing for various rallies about protection of kunanyi/Mount Wellington.

On 21 August 2018 Federal Senator Mahreen Faruqui called for Rights of Nature laws in Australia. In November 2019, Diane Evers, Western Australian MP, introduced Australia's first Rights of Nature and Future Generations Bill into an Australian State Parliament. In April 2020, the Blue Mountains City Council resolved to explore the impacts of integrating Rights of Nature into its planning and operations.

A critical issue for Australia, is how to create Rights of Nature laws that support – and do not undermine – First Nations peoples' First Laws and cultural responsibilities.

FINDINGS

FINDING 16: Evidence provided to the Citizens' Inquiry, of the degradation of the Barka/Darling River system over many decades to a state of near collapse, demonstrates a failure of existing laws to effectively manage and protect the health of the Barka/Darling River. Stronger, more innovative laws protecting the health and wellbeing of the entire Barka/Darling River system – including Rights of Nature laws – should be investigated.

RECOMMENDATIONS

RECOMMENDATION 24: That the First Nations peoples of the Barka/Darling River system begin an independent process, together with local river communities, to investigate and advise governments at all levels, about the most culturally appropriate way to recognise that the Barka/Darling River system is a living entity with inherent rights to exist, thrive and regenerate. This process should include First Nations peoples of the Barka and local river communities providing advice to the Government about:

(i) how to best articulate the legal rights of the Barka/Darling River system to exist, thrive and regenerate;

(ii) how culturally appropriate laws can articulate, affirm and support First Nations peoples 'First laws' and obligations to care for country; and

(iii) how best to articulate the rights and obligations of First Nations people and river communities to defend the rights of the Barka.

8.3.2 Ecocide

The testimonies shared at the Citizens' Inquiry expressed the deep concern and grief of the people along the Barka/Darling River, about the devastation of the ecosystems in which they live and depend upon. Many expressed the view, from their personal experience and observations, that the system was in crisis and was in a state of ecological collapse. They are not alone of course, as this view is now common among people who know or have studied the Barka/

Darling River, and the Murray-Darling Basin.[161]

With the failure of existing laws to protect and manage the Barka/Darling River system, an appropriate next step could be to create new laws that criminalise environmental harm. One way to do this is to introduce ecocide laws. Evidence of unsustainable patterns of exploitation of the rivers' resources and unprecedented levels of catastrophic harm caused to our natural environment are good reasons to argue for the use of the criminal law and increased penalties and remedies to better manage our water and, more generally, support ecosystems and our own habitat.

Legislating for strong laws prohibiting environmental crime would allow Australian people and their governments to: utilise criminal sanctions to more effectively achieve compliance; educate the community, and especially corporate entities, as to the importance of environmental norms; stigmatise and constrain certain actions and actors for causing environmental destruction; distinguish more clearly between legal and illegal uses of water; identify and establish individual criminal responsibility; utilise criminal sanctions to more effectively achieve compliance; and ultimately prevent significant ecological harm.

The law of ecocide

A generally accepted definition of ecocide is: loss or damage to, or destruction of ecosystem(s) of a given territory(ies), such that peaceful enjoyment by the inhabitants has been or will be severely diminished. Currently ecocide is recognised in the laws of at least a dozen nation states. A substantial international movement to make ecocide a crime in peacetime, for example by amending the Rome Statute, has developed over several decades, supported by a rich literature on the topic. Australian activists and legal experts have played a significant role in that movement. Most recently, the French government has stated an intention to introduce the crime of ecocide into law.

According to one legal expert, responsibility for ecocide could be based upon strict liability. Having this standard established in law would in turn encourage preventive behaviour, advance the 'polluter pays' and 'precautionary' principles, and simplify issues of proof of knowledge, intent and causation.[162]

Under international law, ecocide is already a crime in wartime – exemplified by the USA's devastating bombing campaign in Vietnam, using Agent Orange to destroy much of the country's forests. But current advocacy groups are also arguing to make ecocide a crime in peacetime too.[163]

The facts of ecocide in the Barka/Darling River system

There is sufficient evidence to support a claim that what has happened in the Darling River Basin is ecocide. The absence of water in the river system, due to unsustainable irrigation, has led to terrible suffering for all life that relies on the ecosystem. Peaceful enjoyment has been severely diminished for the people who live near and are reliant on the river system. The highly publicised fish kills of 2018/19 are one of many examples of the extensive damage done to life in the river basin. The magnificent river red gums have been decimated and are struggling to survive. According to the people who spoke at the Citizens' Inquiry, the water that is left in the rivers is polluted with pesticides and other contaminants, and the animals that drink it often die. Humans suffer multiple forms of skin conditions and other ailments – including life threatening ailments such as kidney failure — from drinking or washing with river water or being forced by necessity to drink salt laden bore water, the only feasible alternative.

Inquiry participants told of the destruction of the river as a site of learning, as the state of the rivers was such that they could not teach their children the core values and principles of their heritage, including custodianship of the rivers. Others referred to the impact of the lack of river flow on the mental health of the river people. We learned that many local people are experiencing severe depression and some have already taken their own lives as a result.

While there have been a few criminal prosecutions in Australia regarding water, these have been for water theft (by tampering with water meters) and violating

161 For example see Simons, Margaret (2020) 'Cry Me a River: The Tragedy of the Murray-Darling Basin' *77 Quarterly Essay* 1.

162 Gray, Mark (1996) 'The International Crime of Ecocide' 26(2) *California Western International Law Journal* 215.

163 Ibid.

the Water Management Act (by pumping water during an embargo). It is of note that the MDBA is a corporation capable of suing and being sued, and that the evolving law in this area is crystallising the notion of corporate responsibility and corporate complicity for acts/omissions that cause significant and lasting destruction to an ecosystem, or ecosystem services, upon which humans rely.

FINDINGS:

FINDING 17: Basin Governments have made decisions, and omitted to make decisions, that have led to ecological harm on a massive scale that meets the definition of ecocide. In particular, decisions which led to excessive amounts of water being extracted from the dryland river system, decisions to allow floodplain harvesting, and decisions to ignore scientific, First Nations peoples' and local community advice about how to care for the river, have led to significant ecological harm.

RECOMMENDATIONS:

RECOMMENDATION 25: That civil society groups (non-government organisations and community groups): (i) investigate if government policies and laws have created environmental destruction in the Barka/Darling River system on such a large scale that they meet the standards of ecocide, and (ii) provide a report to the community and Basin governments about how to ameliorate the damage already done, avoid committing further ecocide and undertake restoration.

RECOMMENDATION 26: That the Commonwealth government should take the lead in amending the Rome Statute to include ecocide as a crime under international law.

RECOMMENDATION 27: That Commonwealth and state laws be enacted making ecocide a crime and establishing appropriate penalties to be imposed for committing ecocide, including revocation of permission to carry out commercial activities within the Basin, together with forfeiture of lands and machinery associated with activities constituting ecocide.

8.3.3 Genocide

Genocide is a process that takes many forms. In the context of the First Nations peoples of colonized lands such as Australia, it can be a process covering hundreds of years.

Generally speaking, genocide does not necessarily mean the immediate destruction of a nation or group although it can be accomplished by mass killings. **Genocide is intended rather to signify a coordinated plan of different actions aimed at the destruction of essential foundations of the life of groups, with the intention of annihilating the groups "in whole or in part".**[164] The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.[165]

Sometimes referred to as cultural genocide, "if individuals are organically integrated into the culture to which they belong, then they are not separable from it (or it from them). The killing of individuals and attacks on language, religious practice, or other cultural institutions are not two different kinds of violence belonging to two different kinds of genocide, but differing aspects of a multi-dimensional process."[166]

While it may generally be held that there is a need to prove the specific intent to destroy, there is an alternative view that general intent will suffice, i.e. 'an accused cannot avoid liability for the foreseeable consequences of a deliberate course of action…if the foreseeable consequences are, or seem likely to be, the destruction, whole or in part, of the group."[167]

The evidence provided by people from all communities along the Barka/Darling River and

164 United Nations (1948) *Convention on the Prevention and Punishment of the Crime of Genocide* Article II

165 Lemkin, Raphael (2005) *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (The Lawbook Exchange Ltd) 79.

166 Powell Christopher 'What Do Genocides Kill? A Relational Conception of Genocide' *Journal of Genocide Research* 9(4) 534

167 Australian Human Rights and Equal Opportunity Commission (2000) *Genocide in Australia: A Submission to the Senate Legal and Constitutional References Committee Inquiry into the Anti-Genocide Bill 1999* 13

Menindee Lakes points to profoundly disturbing actions and inaction by the Commonwealth and Basin states, regarding the essential foundations of the life of First Nations peoples along the river system.

During the Citizens' Inquiry, Barkandji people explained that water is intrinsically linked to the cultural and spiritual identity of First Nations. Without the Barka the Barkandji Nation has no mother, no affiliations, no networks of relationships, no social groups, no coordinates, no stable base for life. In addition to depriving First Nations peoples of their livelihood, damaging their principal water source and severely impacting their freedom of movement and communication, the over-extraction of water from the Barka/Darling River impacts affected communities by destroying cultural sites, healing places, as well as livelihood and primary food and water sources.

Failure to consult or give people access to water has led to significant devastation of cultural life for First Nations communities throughout the western sector of New South Wales (particularly the Barkandji Nation). It has also led to significant devastation for all remote and rural communities who live along the river system engaged in grazing and other forms of agriculture and horticulture.

FINDINGS:

FINDING 18: The Australian Government and Basin states have implemented policies leading to the collapse of the Barka/Darling River ecosystem. They have failed to create policies that would have avoided genocide against both First Nations peoples and remote rural communities, by allowing that collapse. Such actions and omissions have led to the loss of the opportunity for First Nations people to maintain their cultural practices and to transmit their culture to succeeding generations. Polices that could have prevented such destructive impact have been ignored or rejected.

RECOMMENDATIONS:

RECOMMENDATION 28: That University Human Rights Centres and other appropriate civil society organizations be encouraged to establish an independent inquiry to determine the legal responsibility of Australian governments for the genocide of first Nations and river communities in the Barka/ Darling river Basin.

RECOMMENDATION 29: First Nations peoples and other communities along the Barka/ Darling River investigate the possibility of taking a claim to the United Nations, regarding genocide of their peoples due to the failure of the Australian and state governments to care for and manage the Barka/Darling River to ensure that neither the ecosystem nor the communities would suffer great harm.

Below: "Trilby Station, near Louth NSW" on the Barka / Darling River. Photo by Gaye Launder, licenced under CC BY 2.0

8.4 ISSUES REQUIRING FURTHER INVESTIGATION

Section 3.6 of this report detailed the scope and findings of a number of previous reports related to water management and associated issues in the Murray-Darling Basin. Some previous reports include:

- Murray-Darling Basin Plan Five-year assessment: Productivity Commission Inquiry Report:
- Murray-Darling Basin Royal Commission Report
- Investigation of the Causes of Mass Fish Kills in the Menindee Region NSW over the Summer of 2018–2019: Australian Academy of Science
- Independent Assessment of the 2018-19 Fish Deaths in the Lower Darling
- ACCC Murray-Darling Basin Water Markets Inquiry-Interim Report

Many of these reports have been limited to specific subject areas such as mass fish deaths in the Darling River and Menindee Lakes in 2018-19. Reports such as the Productivity Commission Review focus specifically on the implementation of the Murray-Darling Plan. Arguably, the most comprehensive report to date has been the South Australian Royal Commission report, however even the scope of this report is limited by its Terms of Reference which understandably constrain the scope of the report to the implementation of the Murray-Darling Basin Plan within the State of South Australia.

Throughout the course of the Citizens' Inquiry we were repeatedly told that the causes of the crisis went beyond state boundaries. We were told, for example, that the manner in which water is used in northern Basin states had significant impacts on the quality and availability of water downstream in lower Basin states. If, for example, water users were building dams or engaging in floodplain harvesting upstream, then communities downstream were adversely affected.

We were told that since the causes of the crisis went beyond state boundaries, adequate solutions to the crisis would only come from a coordinated national effort, rather than piecemeal and inconsistent efforts by different Basin states. Some of the solutions offered by Inquiry participants included the development of alternative governance mechanisms which included a stronger role for federal management of water, to remove conflicting management systems and goals between the states. Suggestions also included the idea of a National Water Ombudsman.

8.4.1 The need for a Federal Royal Commission

Having heard the evidence of people from affected communities, it is the view of the Inquiry Panel that there is a need for a national investigation into the causes of the current crisis. It is essential that the body undertaking the investigation be independent from state and federal governments and have broad ranging powers to investigate and make recommendations to the governments of each Basin state and the federal government.

RECOMMENDATIONS:

RECOMMENDATION 31: The Australian Government establish a Royal Commission into Water Management in the Barka/Darling River ecosystem.

RECOMMENDATION 32: The Australian Government establish terms of reference for the Royal Commission into Water Management in the Darling River ecosystem which include:

A. Inquiry into how the state of the Darling River system has changed since the commencement of industrial-scale agriculture until the present day
B. Inquiry into causes of degradation of the health of the Darling River system
C. Inquiry into impacts of this change on local businesses and industries, small-scale farmers and the economic wellbeing of communities located along the Darling River system
D. Inquiry into impacts of this change on the physical and mental health of people in communities located along the Darling River system
E. Inquiry into impacts of this change on the social and cultural life of people in communities located along the Darling

River system

F. Inquiry into impacts of this change on the social, economic and cultural lives of First Nations peoples in communities along the Darling River system

G. Inquiry into the legal implications of water management of the Darling River system on the Native Title rights of Native Title holders in communities along the Darling River system

H. Inquiry into the legal implications of water management of the Darling river system into the human rights of people in communities located along the Darling River system

I. Inquiry about the legal implications of water management of the Darling River system with respect to the Australian Government's international obligations under international treaties

J. Inquiry into economic, legal and social solutions to support people in communities along the Darling River system

K. Inquiry into economic, social, political and legal solutions to cease harmful activities which are contributing to, or intensifying, the degradation of the Darling River system

L. Inquiry into short-, medium- and long-term solutions to restore the health of the Darling River system

M. Inquiry into legal mechanisms required to provide protection for the Darling River system from degradation into the future.

RECOMMENDATION 33: The Australian Government establish terms of reference which provide the Royal Commission into Water Management in the Darling River with broad powers to:

A. Establish and conduct public hearings into relevant case studies

B. Receive and consider online or written submissions from parties with relevant information

C. Establish and conduct face-to-face or online roundtables with key stakeholders and representatives

D. Receive and consider online or written submissions from members of the public

E. Receive and consider direct personal testimonies from people in communities located along the Darling River system in community forums to be held in select communities along the Darling River system

F. Receive and consider direct personal testimonies from people in communities located along the Darling River system by participation in a face-to-face private session with a Royal Commissioner.

RECOMMENDATION 34: The Australian Government determine the full terms of reference of the Royal Commission with consultation with local councils, established community groups and Native Title representatives from communities along the Darling River system

RECOMMENDATION 35: The Australian Government establish an open consultation process for a limited amount of time to allow other interested parties to make submissions regarding the terms of reference for the Royal Commission into Water Management in the Darling River ecosystem

RECOMMENDATION 36: The Australian Government appoint a minimum of four and maximum of seven Royal Commissioners including:

A. A Royal Commissioner with relevant experience and expertise relating to the economic dimensions of water management of Australia's rivers

B. A Royal Commissioner with relevant experience and expertise relating to the scientific dimensions of water management of Australia's rivers

C. A Royal Commissioner with relevant legal experience and expertise relating to the legal dimensions of water management in Australia

D. A Royal Commissioner from a First Nations community in Australia

8.4.2 The need to investigate allegations of corruption, abuse of power and misuse of public office

Due to the scale of public interest and concern about government mismanagement and corruption, an investigation through an independent and public process is required and justified. All allegations of corruption and water theft require investigation especially where there are systemic violations as we have heard in the Inquiry. Furthermore, restoration of the legitimacy of governments would be boosted by the investigation. It is vital that the cause of the failure of the current governance framework be objectively assessed and reported in order to inform the development of a new governance structure and water management strategies.

Inquiry participants made a number of alarming allegations against Ministerial and Departmental officers which require investigation and — if proved — prosecution, in order to restore the perceived integrity of these positions.

8.4.2.1 Allegations that the NSW Government has 'decommissioned' the Menindee Lakes

A frequently repeated allegation was that Government was deliberately 'decommissioning' the Menindee Lakes against community wishes and contrary to their statutory obligations. Lower Darling River residents have claimed the Murray-Darling Basin Authority was in the wrong for releasing flood water from Menindee Lakes in 2017, arguing that had it been held back, there would have been fresh supplies to replenish the river.

In fact, the water was released under the Menindee Lakes Water Saving Project which aims to deliver on NSW Government's commitment to the Murray-Darling Basin Plan to adjust the sustainable diversion limit by reducing evaporative losses. However, residents say the Lakes were drained in 2016-17 at a time when downstream areas did not need water - South Australia was experiencing flooding and all Murray irrigation demand was being met.

The MDBA's policy was aimed at reducing high evaporation rates from Menindee Lakes as a guiding factor for its management regime. But residents believe that it is an unusual logic that says that the Menindee Lakes will deliver more environmental water to the Murray Darling river system by reducing evaporation from the lakes by releasing water when unnecessary to do so.

Menindee residents contested the view that reducing evaporation rates translated to water savings, stating it was a false economy.[168] Residents say it will leave the lower Darling drier more often, cutting off the Murray from the Darling and leading to unknown environmental consequences for fish, bird and land-based wildlife that depend on the river. They also raised serious concerns about the impact on fish nurseries in the Menindee Lakes, which help restock the entire river.

The reality is that the amount of water retrieved under the Murray-Darling Basin Plan for environmental flows fell short of their target. Buying water rights back from irrigators proved to be only part of the solution. So former agriculture minister Barnaby Joyce proposed that the water could be found from projects that deliver "equivalent environmental outcomes" which translated into essentially borrowing water from the environment to pay back to the environment.

8.4.2.2 Allegations that the creation and administration of water markets has been biased towards corporate private water users

An underlying theme of many testimonies was the claim that collective water supplies are being appropriated by private users seeking to commodify what was formerly a common resource (i.e. part of the global commons). The blame is placed squarely with the Commonwealth government that has redistributed environmental governance, resource management and social control to private users. The handing over of this key role of regulatory oversight has contributed to a re-framing of large-scale commercial use of water as a legal entitlement.[169]

One participant suggested that water licences should attach to the land, so that if a farmer sells the water

168 A Deloitte report highlights that high-security water entitlements located on the Darling River downstream of Weir 32 and upstream of the Wentworth Weir will experience less reliable water supply following the implementation of the proposed Menindee lakes project; Deloitte (2018) *Lower Darling Water Security Options Analysis* (NSW Department of Industry, Findings Report).

169 Karunananthan (n 123) 250.

allocation he/she cannot simply establish themselves somewhere else. Things became particularly problematic when water entitlements separated water property rights from land title.

Communities say that water trading has become the preserve of *in-the-know* farmers and irrigators. Since the advent of real-time pricing, irrigators, farmers, water brokers and investors can now trade water up and down the Murray-Darling – it's open to all.

Inquiry participants expressed concern that their human right to water was being eroded by this system of water commodification. Water trading under Australian licencing is in direct opposition to the recognition of the human right to water and global movement geared towards the establishment of communal water rights based on a new socio-ecological reality (i.e. "new community economies").

Of particular concern to the Panel is the consistent allegations that the current system of water trading has been established, and is continually being administered in such a way to favour the interests of large-scale corporate irrigators. This is a particularly concerning allegation when considered in light of other allegations that have been made in the media alleging that some of these large-scale corporate irrigators have connections to, and have made political donations to, the Liberal National Party.

A further allegation which the Panel heard consistently from the communities in and around Broken Hill, was that a large, taxpayer-funded pipeline which had been built from the Menindee Lakes to Broken Hill was not in fact designed to supply water to the local community in Broken Hill as initially claimed by the Government, but rather was providing water to a mine close by.

The Panel is concerned that these allegations, if not properly investigated, could significantly impact the trust Australian citizens have in the integrity of their government. The Inquiry Panel is of the opinion that an inquiry by an independent commission into alleged corruption would be most effective with respect to any alleged crimes or misuse of public office, as such an inquiry could enforce findings and decisions.

RECOMMENDATIONS:

RECOMMENDATION 37: The Australian Government establish an Independent Commission into Alleged Corruption (ICAC), and provide the ICAC with broad investigative powers including the power to refer serious allegations of misconduct, corruption and misfeasance by public officers to the Australian Federal Police

RECOMMENDATION 38: Once established, ICAC engage in a broad-ranging investigation into Water Management in the Barka/Darling River system and fully investigate:

A. Allegations that the NSW Government has 'decommissioned' the Menindee Lakes and all related matters
B. Allegations that the taxpayer-funded Broken Hill pipeline was diverting water from the Menindee Lakes to a commercially operated mine.
C. Allegations that the creation and administration of water markets has been biased towards corporate private water users

Australian Bustard (*Ardeotis australis*). © Andrew Skeoch.

8.5 THE NEED FOR NEW GOVERNANCE APPROACHES

The voices of First Nations peoples and local communities are absent from the Murray-Darling Basin negotiations and have been rendered silent in the overall management, care and protection of the river system, by insufficient government laws, policies and practices. The recent crisis emphasises the perpetual sidelining of First Nations peoples' voices in water management in NSW and beyond and reinforces the critical need for First Nations peoples to be heard and to lead, at all levels, with mechanisms and funding that empower that involvement.

RECOMMENDATIONS:

RECOMMENDATION 39: After the Emergency Community River Restoration Plan (referred to in Recommendation 1) has been implemented, long term governance mechanisms need to be put in place to ensure that the knowledge and wisdom of First Nations peoples and local communities along the river, be respected by all Basin governments and allowed to *lead efforts* to review and improve governance structures for the Barka/Darling River and Menindee Lakes

RECOMMENDATION 40: That First Nations peoples and local communities along the Barka/Darling River consider creating *a new civil society river representation group, to raise the voice of all citizens who live along the river.*

— The new group would operate independently of government, and aim to provide a strong voice for citizens to advise and provide input on decision-making processes that are currently dominated by governments and businesses

— The new group could work like a confederation of existing groups. In other words, it would NOT aim to replace existing groups, but would recognise, respect and include existing First Nations groups and recognise, respect and include existing local not-for-profit community groups and small businesses that share the same values and goals in supporting the life of the Barka. The purpose of the confederation would be to create a new way for all citizens dependent on the Barka/Darling for their life and livelihoods to *work together and speak for the wellbeing of the environment and human communities along the Barka/Darling River.*

RECOMMENDATION 41: New governance structures be designed to safeguard against the domination of water allocation decision-making by private interests of politicians and commercial entities.

RECOMMENDATION 42: The NSW Police establish a Water Resources Crime Squad to investigate and prosecute crimes that affect the people, communities and environment of the Barka/Darling River catchment and its headwaters. The Crime Squad should have the powers to investigate and prosecute matters including water theft, illegal water extraction and floodplains harvesting.

8.5.1 The need to redesign river governance systems and human economic systems, to fit within the biophysical capacity of the Barka/Darling dryland river system

RECOMMENDATION 43 - That new governance approaches must take into account the biophysical realities of the Barka/Darling River and Menindee Lakes as dryland river systems, and develop new, appropriate forms of human economic activity, including (but not limited to) transitioning from irrigated agriculture to appropriate dryland agriculture and other activities that do not extract water from the river system

8.6 LONG TERM RESTORATION

8.6.1 The need for major, long term investment in Caring for Country and ecological restoration

RECOMMENDATION 44: That First Nations peoples and people from local river communities be permanently funded to carry out ecological and wildlife restoration programs along the Barka/Darling River catchment and headwaters, including extensive funding for Indigenous Ranger programs.

RECOMMENDATION 45: That Basin governments fund a public education campaign about the threats to and solutions for restoring rivers and waterways in Australia, including the Barka/Darling River.

8.6.2 The need for major, long term investment in restoration of community economies and societies

RECOMMENDATION 46: That Basin governments, led by the NSW Government, carry out economic analysis of, and provide resources and funding for, economic activities that support and rebuild devastated local communities along the Barka/Darling River and Menindee Lakes.

RECOMMENDATION 47: That civil society organisations and networks, such as the New Economy Network Australia (NENA), connect with local communities along the Barka/Darling River, to provide peer-to-peer learning and support, to co-create new economic initiatives that can ensure long term, sustainable local economies.

8.6.3 The need for education reform - regional and national ecological education about dryland river systems

FINDING 16 - The evidence provided to the Citizen's Inquiry demonstrates that non-indigenous Australian people, including non-indigenous members of Australian governments (at all levels) would benefit from understanding how to 'decolonise' their knowledge systems. Appropriate education is needed for non-indigenous Australians to understand and embrace the biophysical realities of living in Australia, and to understand and work in true solidarity with the First Nations peoples of this continent.

ANALYSIS:

There is a significant need to support the decolonisation of education across Australian society.

The first issue is that non-indigenous Australians should be required to learn about the unique, ancient and contemporary cultures, economies and laws of Aboriginal and Torres Strait Islander peoples. This can include, but not be limited to, providing mandatory programs of Aboriginal Studies, including Aboriginal languages, in schools and universities, and other education forums such as TAFE.

While the need for such studies was recognized explicitly as long ago as the Royal Commission on Aboriginal Deaths in Custody with its analysis and Recommendations, and in legislation in NSW and Victoria which have taken the lead in recognizing the importance of Aboriginal Studies in curricula (see for example the NSW Education Act), certainly a step forward in mandating the offering of such programs, this needs to be followed by all other states.

Such programs must be made mandatory, not just offered along with all the other elective courses as is the case at present.

The work done by the Australian Curriculum, Assessment and Reporting Authority (ACARA) in developing Aboriginal and Torres Strait Islander units in the curriculum currently being implemented across the nation for Years7-8 and 9-10 should be commended and these units should be followed

and built upon for years 11-12. Nevertheless, it is disappointing that such units that are now being implemented are not compulsory. disappointing complete absence of such requirements in the national curriculum produced by the Australian Curriculum, Assessment and Reporting Authority (ACARA) currently being implemented across the nation. To teach such material there must be a serious commitment to, and financing of, the development of teachers, especially Aboriginal teachers with Aboriginal language teaching training.

A second issue is that non-indigenous Australians should be required to learn about the unique bioregions and ecosystems of Australia, so that our society's governance systems can better connect with and care for the living world. We believe an important reform that would reflect current conditions would be a new, modern curricula that prioritises the understanding of human interdependence with nature, and human understanding of the functioning of ecosystems – including dryland river systems – in Australia.

The anthropocentric culture of Australian society, historically pervasive in schools and university curricula, reflected and reinforced by the media and the underlying "economic development" obsession of growth at any price (modified but not exorcised by "sustainability" and environmental laws that allow moderate, even sometimes substantial, injury to the ecosystems of our country) has led us to see Nature as something separate from us, essentially as a resource to be utilized, even destroyed where profit beckons. This worldview and approach to nature has nearly brought us undone. There is a crisis on the rivers and our ecosystems are being destroyed. Thus in addition to short term "solutions" we need to be looking at the long term in order to develop a society much more aware of the symbiotic relationship we have, necessarily, with nature, and how that society will greatly benefit in so many ways.

We believe that ecology and the study of bioregional ecosystems should be a compulsory core course in the curriculum. Such a course, taught throughout a number of years and, of course, suited to different age levels, involving carefully calibrated interdisciplinary study (of e.g. sciences, geography, political economy, history, philosophy and ethics, legal studies and social and multi-species justice, maths, economics, sociology and anthropology,) would provide the basis for a new understanding of the world we live in. Such a holistic, non-anthropocentric approach would therefore provide the background knowledge and empathy for nature and other beings that will provide an informed electorate that would exercise a New Custodianship over not only the Barka/Darling River system but all of nature.

Such an innovative curriculum would enable Australia to help lead the rescue of our planet and ensure that Australians live in a far healthier, more just, and sustainable land, securing the future for those who come after us.

RECOMMENDATIONS:

RECOMMENDATION 48: That all Australian governments support 'decolonisation' education about Australia's unique environment, that enables all Australians to develop in-depth understanding and appreciation of the diverse natural environment and ecosystems of the continent. In particular, all schools and universities should have compulsory education focussed on ensuring people learn about and understand their local ecosystems and bioregions.

RECOMMENDATION 49: That all Australian governments support decolonisation of Australian history, and promote education about Aboriginal and Torres Strait Islander culture, history and languages.

RECOMMENDATION 50: That the Basin governments provide significant funding for a multi-year, public information campaign about the threats to, and solutions for restoring, rivers and waterways in Australia, including the Barka/Darling River.

Epilogue

In October 2018 the Australian Peoples Tribunal (APT) for Community and Nature's Rights, held a one-day Citizens' Inquiry into the Impacts of Industrial-Scale Agriculture on the Rights of Nature, in Brisbane, Queensland. The 2018 Citizens' Inquiry heard statements from people in two bioregions – the first was the Brigalow Belt Bioregion and the second was the Barka/Darling River system and Menindee Lakes. The Inquiry heard statements from people living along the Barka/Darling River and Menindee Lakes in New South Wales. The Inquiry heard of environmental collapse, human suffering and economic failure in many river communities. Physical and mental illnesses and a real fear of contaminated water from rivers that had sustained communities for thousands of years was particularly concerning.

One of the recommendations made by the APT at the conclusion of the October 2018 Citizens' Inquiry was to convene a Citizens' Inquiry into the Health of the Barka/Darling River and Menindee Lakes. The APT scheduled the Citizens' Inquiry to visit river communities in March 2019, to hear testimony and stories from people who live along the rivers in western NSW.

Between December 2018 and February 2019, a series of massive fish kills put the focus on river communities and the lack of water in the Darling River. The fish deaths crisis became the focal point of international and domestic media. However scientific reports, inquiries and media coverage such as the ABC *Four Corners* program, *Pumped*, in July 2017, had already alerted the Australian public to the water theft and corruption advantaging irrigators that was threatening the Barka/Darling ecosystem to the point of collapse. The Australian and Basin state governments have long been aware of the accelerating problems and deterioration of the Barka/Darling River.

The Murray-Darling Basin is, for millions of Australians, a source of food, wealth, mental and physical health, economic stability and recreation. It is central to many First Nations peoples' traditions and culture. All of these attributes are being systematically degraded and, potentially, face permanent destruction.

Our Report is based primarily on the statements of the people we met in towns and communities along the Barka/Darling River, who have been directly affected by what is happening to their river ecosystems, primarily as a result of over-extraction of water for irrigation. Their narratives clearly demonstrate that we face an ecological emergency in the Barka/Darling River Basin, including the Menindee Lakes.

The evidence from our interviews (more than 100) tells a story of exploitation and mismanagement of the Barka/Darling River system, at the expense of the peoples and communities along the Barwon and Barka/Darling Rivers. It tells of the destruction of the primary cultural practices and artefacts of the First Nations peoples along all the rivers in the northern Basin and further south.

On a fair reading, and/or viewing of the evidence presented to the Citizens' Inquiry, the reader will come to understand that the 'Dying Darling'[170] has been struggling for many decades, and its care and restoration should have been made a priority on our national agenda years ago, so that the present emergency could have been avoided.

Our interviews are backed by a plethora of scientific, socio-economic and ecological evidence. The interviews are consistent with similar evidence gathered by a number of other recent inquiries, for example the northern Basin Commissioner Mick Keelty for his first report on compliance;[171] and that of the Progress Report of the Independent Assessment Panel on Social and Economic Conditions in the Murray-Darling Basin Communities,[172] and the very recent report on water trading markets.[173]

Reading the evidence in the context of what is known about the interconnectivity of natural phenomena across regions will also make clear that the drying of all the rivers in the Barka/Darling Basin and the resulting degradation of the Basin's ecosystems over many decades, need to be understood as a major amplifier of the severity, scope and frequency of droughts. Over the past year we have seen a deepening drought bringing Zero Water Day to

170 Moles, Sarah and Pospichil, Michael (2007) *The Dying Darling* (Envirobook).

171 Australian Government (2019) *Northern Basin Commissioner First Year Report 2019* (Report).

172 Panel for the Independent Assessment of Social and Economic Conditions in the Murray-Darling Basin (2019) *Progress Report: Listening to Community Voices* (Report).

173 Australian Competition and Consumer Commission (2020) *Murray-Darling Basin Water Markets Inquiry-Interim Report*

many towns and large regional centres in NSW, a phenomena of record proportions.

As we complete our Report, the nation is still reeling from the horrific summer of bushfires and floods of river-polluting ash experienced in the summer of 2019-2020. The drying out of the Barka/Darling River Basin bears a significant relationship to the drying out of the land and forests further east, as of course does the massive land clearing in western NSW and elsewhere. Deforestation has destroyed great swathes of another source of transpiring water back into the atmosphere.

But now that it has rained, not a lot has changed. Reports indicate that floodplain harvesting also commenced after the rains. The NSW government originally banned pumping from the new flows in the rivers. It also placed an embargo on floodplain harvesting. But only a few days later that ban was lifted and a special exemption was made to allow irrigators to resume such harvesting.[174] This is likely to deny those in the lower Barka/Darling of water that they rightfully expected to reach them. These actions have caused resentment and anger, especially amongst the downstream communities where the Barka/Darling is still dry.

Despite the rains, as we release our Report, many residents along the Barka/Darling River and Menindee Lakes will still be using publicly donated bottled water to wash, cook and drink.

How did this state of affairs come about?

> "They used to take us out and shoot us, now they kill us with their policies".[175]

During our journey along the Barka/Darling and Barwon rivers, two main issues dominated discussions. First, colonial/settler resource management and extractive practices have brought those rivers to a dreadful state. Second, First Nations peoples, exercising custodianship through their traditional knowledge and experience, have successfully lived with and cared for the land, water and the rest of nature for the preceding 65,000 years, or more. Now, as the quote above from a First Nations witness to the Inquiry indicates, their existence is under threat all along the river.

European settler mentality, and the economic system they imposed, had no respect for the First Nations peoples' cultural relationship to the rivers and land. Nor did the settlers care much for the preservation of the landscape, soils or the waters and their ecosystems. Economic development (sometimes referred to as nation building) was and remains the main engine of activity, involving exploitation of the land, extraction of water and minerals with little care for natural systems or First Nations peoples.

For various reasons governments have intervened over time to regulate the intrusion into nature that came with economic development, especially agriculture, mining and, of course, the expansion of population, requiring more extensive and intensive use of land and water. Yet the path to today's crisis has never been blocked effectively. To the contrary, warnings voiced decades ago about the degradation of the Murray and Barka/Darling River basins were ignored by governments, especially in NSW and Queensland, where there was a continuing policy of expanding irrigated agriculture.

Excessive land clearing and over extraction of water continues to the present day, bringing widespread desertification which in turn has made what was historically a manageably dry continent, one with regions now suffering extended droughts and fires. As a result, our people endure mortal tragedies and our ecosystems continue to collapse.

A further result, as clearly indicated in the evidence we heard, is the loss of the legitimacy of politicians, governments and their agencies, and the corporations that have been seen by communities as predators and corrupters, complicit in the destruction of the Barka/Darling River Basin ecosystem.

Governments have clearly failed in their responsibility to protect Australian citizens and the environment within which survival today in the Barka/Daring River Basin is only barely possible. Worse, they have failed repeatedly, over decades, due to promotion and protection of special interests. They have also failed by their intransigence: denial of climate change; refusal to act effectively against such activities as water theft and illegal floodplain harvesting by major

174 Davies, Anne (2020) 'NSW Green Light to Irrigators to Harvest Rainfall Angers Downstream Residents' *The Guardian* <https://www.theguardian.com/australia-news/2020/feb/12/nsw-green-light-to-irrigators-to-harvest-rainfall-angers-downstream-residents>.

175 Comment from First Nations witness to the Citizens' Inquiry, Wilcannia, New South Wales.

irrigators; and failure to enforce the laws already in place to protect our natural world and life supporting systems.

Perhaps the greatest failure is the exclusion of First Nations peoples from meaningful participation in decision-making regarding water and ecosystem management and protection. Their magnificent history of custodianship has been ignored for too long, except in the rare ritual political acknowledgement and the empty promises of 'consultation'.

Today, all across the world, the benefit of First Nations peoples being directly involved in ecological decision-making has been seen and recognised.[176] Australian governments must address systemic racism; provide for First Nations water rights;[177] and accede to the substantial leadership of First Nations people, and their values, into any future systems of water resource governance, management and ecological planning.

As we conclude writing this Report we hope that our Citizens' Inquiry Public Hearings, written Report and video recorded testimonies, play a role in telling the stories of what's happening to people and nature along the Barka/Darling River.

The local river communities know how to restore life to the precious Barka/Darling River – authorities need to listen and respond, and other Australian citizens need to support the transition to a regenerative future.

Facing page: "Sunset over Menindee Lakes in the far west of New South Wales, Australia". John Carnemolla/ Shutterstock.com.

176 Jones, Nicola (2020) 'How Native Tribes Are Taking the Lead on Planning for Climate Change' *Yale Environment 360* (Article) <https://e360.yale.edu/features/how-native-tribes-are-taking-the-lead-on-planning-for-climate-change>.

177 Marshall, Virginia (2017) *Overturning Aqua Nullius: Securing Aboriginal Water Rights* (Aboriginal Studies Press).

Glistening And Shining Into Light

Mark Merritt 19/2/2020

Whatever it takes
Menindee Lakes
back on country
back in our world.

Menindee Lakes
heart of lands
filled with life
swarming with birds
and mother of all fish.

Menindee Lakes
the great sacred pools
core of Baaka
breaths of life
a cosmos within.

Menindee Lakes
on country
under the sky
glistening and shining into light.

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