

Office of the NSW Chief Scientist & Engineer (OCSE)  
Level 6, 52 Martin Place  
Sydney 2000  
[02 9228 5769](tel:0292285769)  
Via email: [fishdeaths@chiefscientist.nsw.gov.au](mailto:fishdeaths@chiefscientist.nsw.gov.au)



**Re: New South Wales Aboriginal Land Council Submission – Independent inquiry into Menindee fish deaths**

The New South Wales Aboriginal Land Council (**NSWALC**) welcomes the opportunity to make this submission. The NSW Aboriginal Land Council (**NSWALC**) is the largest member based Aboriginal organisation in Australia, with a network of 121 Local Aboriginal Land Councils (**LALCs**) and over 28,000 members. We are the peak elected Aboriginal community controlled representative body for the 230,000 Aboriginal people in NSW, Australia's largest Aboriginal population.

We note the expert advisory panel seeks to inquire and undertake an independent review into the February-March fish death event in the Darling-baaka River at Menindee. Including:

1. Likely cause/s of the fish death event
2. Response to the fish death event
3. Recommendations.

The NSW Aboriginal Land Rights Network is the key vehicle to deliver social, cultural and economic outcomes to Aboriginal communities, and is the framework for achieving self-determination in NSW. The NSWALC's first goal in the Strategic Plan for achieving self-determination is to 'Secure Our Land and Water Rights to Country'. Goal 1 commits NSWALC to maximise the amount of water that is in Aboriginal ownership, control, and management, and the social, cultural and economic outcomes of water. We are not just another stakeholder and government must engage in meaningful consultation and partnership with us. It is imperative that Aboriginal people have a say in NSW policies and plans relating to the management of our waterways.

## Introduction

As a self-funded statutory corporation established under the *Aboriginal Land Rights Act 1983 (ALRA)*, NSWALC has a legislated objective to improve, protect and foster the best interests of Aboriginal peoples and communities across the state.

NSWALC, LALCs and Aboriginal people have long called for improved land and water management practices, involvement of Aboriginal people in governance and decision-making, increased access to and ownership of lands and water for Aboriginal people for cultural and economic purposes, and improved accountability, transparency, and compliance.

LALCs are autonomous, elected bodies. The core business of each LALC is to protect Aboriginal culture and heritage, acquire and manage lands for cultural and economic purposes, and as compensation for dispossession. Maintaining spiritual and cultural relationships with land, water and Country are intertwined for Aboriginal people. The right to economically develop natural resources, consistent with cultural obligations, is also of significant importance.

While the ALRA is facilitating the return of lands to Aboriginal peoples in NSW, mechanisms to support our ownership of, and decision making in relation to water, are not similarly recognised. Our ownership of water

is miniscule and has been going backwards. For example, while Aboriginal people in the Murray Darling Basin constitute nearly 10% of the total population, Aboriginal organisations hold only 0.2 % of the available surface water in the Basin and 0.1% across the state. Aboriginal water holdings between 2009 and 2018 indicate a new wave of dispossession. Almost one fifth of Aboriginal water holdings by volume were lost during this time.<sup>1</sup>

The Productivity Commission<sup>2</sup> has highlighted the lack of progress by governments to date in delivering water outcomes to Aboriginal people. They have signalled the need for governments to work with First Nations peoples to secure Aboriginal and Torres Strait Islander people's interests in water.

The National Agreement on Closing the Gap provides an important framework for governments to work in partnership with us to ensure Aboriginal people maintain distinctive cultural, spiritual, physical and economic relationships with water, and advance Aboriginal people's rights and interests in water. NSWALC is committed to working with the NSW Government, partners and Aboriginal communities to empower and advance water rights for all Aboriginal people.

Our recommendations in this submission aim to strengthen governments engagement with Aboriginal people and the Aboriginal Land Rights network and for government to recognise the wisdom inherent in Aboriginal Traditional Ecological Knowledge.

#### NSWALC's Recommendations:

1. The Office of the NSW Chief Scientist & Engineer must consider why the **27 recommendations from independent assessment of the 2018-19 fish deaths in the lower Darling** were not implemented in their entirety.
2. NSWALC recommends that **the previous 27 recommendations be implemented** to prevent further poor river health and fish killing events.
3. The NSW Government must commit to **working with the existing Aboriginal structures to support authentic collaboration**, for example, the LALCS and Indigenous Ranger programs.
4. The NSW Government must commit to a **genuine partnership approach with NSWALC, LALCs and Aboriginal communities** regarding environmental and planning legislation, in line with the National Agreement on Closing the Gap.
5. **Genuine social, cultural and economic opportunities for LALCs and Aboriginal landholders** should be further explored, developed and supported in partnership with NSWALC and peak Aboriginal organisations.
6. Representatives of the **NSWALC and Aboriginal Land Rights Network should be included at every stage of the inquiry and consultation**
7. The NSW Government must consider and embed **Aboriginal Traditional Ecological Knowledge, perspectives and cultural practices in work to manage biodiversity**, while ensuring Intellectual Property of this knowledge is respected, principled and consensual.
8. A **review and reform of related planning, environmental and land use laws** to better facilitate the objects of the ALRA should be undertaken in partnership with NSWALC and LALCs.
9. The NSW Government must implement **safeguards to protect against harm and destruction to Aboriginal culture and heritage**, particularly in relation to the health and management of the Darling-Baaka River.
10. The NSW Government must engage with LALCs to ensure **communication material is culturally appropriate and socially focused**.

<sup>1</sup> Trends in Aboriginal water ownership in New South Wales, Australia: The continuities between colonial and neoliberal forms of dispossession Lana D. Hartwig, Sue Jackson, Natalie Osborne 2020

<sup>2</sup> [National Water Reform - Draft Report \(pc.gov.au\)](https://www.pc.gov.au/reports/indigenous-water-reform/draft-report)

## Likely causes of the fish death event

The most recent fish deaths seen in the Darling-baaka River is not an isolated event. It follows the tragic fish deaths throughout the 40 Kilometre stretch of the Murray Darling River, recorded in 2022 due to flooding and stagnant water, and in 2018-2019 which were attributed to a rapid drop in temperature during drought resulting in an algal bloom de-oxygenating the river.

At the time, an independent panel was appointed by the Hon David Littleproud MP, Minister for Agriculture and Water Resources, to assess fish death events in December 2018 and January 2019. The panel found there were three main immediate causes of the fish death events: low flows, poor water quality and sudden change in temperature. In the lead up to the fish death events, there were other influencing factors that the panel also considered, including: climatic conditions, hydrology and water management and Menindee Lakes operations. The panel made 27 recommendations in response. At the time of this inquiry, the panel warned that if such recommendations were not implemented that more fish kill events could be expected to occur. Stating that *“there is a high chance that severe fish death events, such as those recently experienced in the lower Darling, will reoccur in the future, unless significant interventions are made.”*<sup>3</sup>

***“The current situation remains critical – without significant inflows, further deaths of surviving fish may be expected.”***<sup>4</sup>

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In 2023, almost four years after this damning inquiry, Menindee saw one of the worst mass fish kills to date. With an estimated tens of millions of native fish being killed. In the wake of this event, it is evident that a number of recommendations from the 2019 report were not adopted.

While the Government did allocate funding following these recommendations<sup>5</sup>, not all 27 recommendations were implemented. A document published by the Government in December 2021 outlined their ‘progress in implementing recommendations of the Independent Assessment of the 2018-19 Fish Deaths in the lower Darling’. At that time, only 9 recommendations had been implemented, while 7 were still in the progress of being implemented and 11 were subject to state action or not supported<sup>6</sup>.

Community members and LALC’s have raised repeated concerns in the past about water mismanagement occurring in the Darling-Baaka River leading to poor river health. The panel conducting the 2019 Inquiry referenced this concern in their 6<sup>th</sup> recommendation.

***“Recommendation 6: NSW and QLD should adopt an active event-based management approach to providing flows through the Barwon-Darling system. Flow management strategies should be implemented as soon as possible to protect first flushes, protect low flows, shepherd environmental releases, enhance system connectivity, and improve water quality.”***<sup>7</sup>

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<sup>3</sup> Independent assessment of the 2018-19 fish deaths in the lower Darling, 2019. [Final-Report-Independent-Panel-fish-deaths-lower Darling 4.pdf \(uts.edu.au\)](#)

<sup>4</sup> *ibid*

<sup>5</sup> Australian Government Response to the final report of the Independent Assessment of the 2018-19 Fish Deaths in the Lower Darling (the Vertessy Report) [Australian Government Response to the final report of the Independent Assessment of the 2018-19 Fish Deaths in the Lower Darling \(the Vertessy Report\) - DAFF \(agriculture.gov.au\)](#)

<sup>6</sup> Progress in implementing recommendations of the Independent Assessment of the 2018-19 Fish Deaths in the lower Darling – December 2021. [progress-in-implementing-recommendations-independent-assessment-2018-19-fish-deaths-dec2021.docx \(live.com\)](#)

<sup>7</sup> *ibid*

This recommendation is a result of their findings that, at the time, current water management arrangements were ‘relatively passive.’ Recommendation 6 demonstrates that if an active water management practice had been implemented the recent fish kills could have been avoided.

Recommendation 6 was not addressed in the Government's response to the Inquiry. Instead In 2021, the government committed \$20 million to expand research on the Murray-Darling Basin for better water and environmental management and to address knowledge gaps<sup>8</sup>. This funding could have been used to work towards establishing tangible water management arrangements that include local Aboriginal communities and organisations. The 2019 Independent Inquiry stating that *“Achieving full active event-based management in the Barwon–Darling with community support is a long-term endeavour, so it is also recommended that the NSW, Queensland and the Australian government work together to address any policy conflicts and resourcing shortfalls required to overcome the active management challenges in this river system.”*<sup>9</sup>

If all the 27 recommendations had been implemented in their entirety, then it is even more likely that the recent fish deaths could have been avoided. Government's failure to implement evidence-based management approaches has left the community in a state of distrust and frustration. The NSW Government needs to work more closely with existing Aboriginal structures, such as LALCs and Indigenous ranger programs on future water management approaches and to take into account Aboriginal people's knowledge and wisdom.

1. The Office of the NSW Chief Scientist & Engineer must consider why the **27 recommendations from independent assessment of the 2018-19 fish deaths in the lower Darling** were not implemented in their entirety.
2. NSWALC recommends that **the previous 27 recommendations be implemented** to prevent further poor river health and fish killing events.
3. The NSW Government must commit to **working with the existing Aboriginal structures to support authentic collaboration**, for example, the LALCS and Indigenous Ranger programs.

## Response to the fish death event

There has been inadequate engagement with the Aboriginal Land Rights Network and Aboriginal communities following the Menindee fish deaths. The NSW Government has missed an opportunity to actively promote the involvement of Aboriginal peoples in this ecological water issue and to understand our perspectives not only as biodiversity stewards with Traditional Ecological Knowledge but also as significant landholders and developers.

Local Aboriginal community members were the first to respond to the mass fish killings event. Concerns were raised from community members who had witnessed fish dying almost four to five weeks prior to the mass fish deaths. Unfortunately, their concerns were dismissed.<sup>10</sup>

Recommendations were made in the 2019 Inquiry surrounding the need for ongoing monitoring, establishing emergency responses and early warning systems. The Australian Government even implemented the Native Fish Emergency Response Plan, which forms part of the Native Fish Management and Recovery Strategy in 2019 and an Interim Native Fish Emergency Response Plan for 2020-21. This was in response to

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<sup>8</sup> Australian Government Response to the final report of the Independent Assessment of the 2018-19 Fish Deaths in the Lower Darling (the Vertessy Report). [Australian Government Response to the final report of the Independent Assessment of the 2018-19 Fish Deaths in the Lower Darling \(the Vertessy Report\) - DAFF \(agriculture.gov.au\)](#)

<sup>9</sup> Independent assessment of the 2018-19 fish deaths in the lower Darling, p. 75, 2019. [Final-Report-Independent-Panel-fish-deaths-lower-Darling\\_4.pdf \(uts.edu.au\)](#)

<sup>10</sup> Notes from phone conversation with LALC.

recommendation 13 in the independent inquiry. However, it is unclear if these emergency response plans were adequate in identifying early warning signs in the most recent 2023 Menindee fish killing event.

In the most recent fish killing event, both the Native Fish emergency Response Plan and the Local Aboriginal community warning signs were in place. It is clear that the two emergency response systems were ignored.

Recommendations 12 and 13, if implemented in their entirety, could have provided official early warning signs to the most recent mass fish killing event. Potentially saving the lives of 20 million native fish and protecting the health of the river, commonly used by community for everyday use.

***Recommendation 12: Once the adverse environmental conditions have abated, NSW should undertake monitoring of fish populations in the lower Darling to more fully understand the impacts of the recent fish death events on fish numbers and remaining fish population status.***

***Recommendation 13: NSW and MDBA should jointly undertake a risk assessment to identify parts of the Darling Basin that are most at risk of future fish death events. This information should be used to inform the development of future early warning systems and emergency response plans.<sup>11</sup>***

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Recommendations 12 and 13 were in response to warning signs that were ignored prior to the 2018 and 2019 mass fish killing event. A blue-green algal bloom event was identified in the Water NSW Lower Darling Operations Plan 15 months prior to the fish death events occurring. The 2019 independent inquiry identified that these warning signs were ignored. History has repeated itself in the 2023 mass fish killing event. However, the death toll has risen from 1 million to almost 20 million native fish being killed and covering more than 30 km of the waterways. More could have been done if Aboriginal community voices were listened to.

The 2019 independent inquiry recommended that the Government engage with key local Aboriginal stakeholders. The government response to this recommendation was the Recovery Reach Program which is the primary means of implementing on-ground actions under the Strategy. Recovery Reach coordinates actions in designated areas that benefit native fish and engage the local community.<sup>12</sup> Despite these efforts, Local Aboriginal stakeholders have raised concerns following the most recent fish killing event around the lack of transparency in the Government's response.

***Recommendation 16: Basin governments should ensure that the Basin Native Fish Management and Recovery Strategy is adequately resourced and involves authentic collaboration with government water scientists, academics and consultants, local communities and Aboriginal stakeholders. This strategy should build on efforts such as the lapsed Native Fish Strategy and current State programs.<sup>13</sup>***

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In 2021, following this inquiry The Australian Government invested \$5 million into the Native Fish management and Recovery Strategy as a Basin-wide strategy to enhance the management of native fish

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<sup>11</sup> Independent assessment of the 2018-19 fish deaths in the lower Darling, 2019. [Final-Report-Independent-Panel-fish-deaths-lower-Darling\\_4.pdf \(uts.edu.au\)](#)

<sup>12</sup> Progress in implementing recommendations of the Independent Assessment of the 2018-19 Fish Deaths in the lower Darling – December 2021. [progress-in-implementing-recommendations-independent-assessment-2018-19-fish-deaths-dec2021.docx \(live.com\)](#)

<sup>13</sup> Independent assessment of the 2018-19 fish deaths in the lower Darling, 2019. [Final-Report-Independent-Panel-fish-deaths-lower-Darling\\_4.pdf \(uts.edu.au\)](#)

populations.<sup>14</sup> However, Recommendation 16 also speaks of authentic collaboration with stakeholders. As a ready-made system of democratic Aboriginal governance, there is great scope for the network of LALCs to play an important part in the management of water ways and specifically the Darling-Baaka River. Given that LALCs are the elected voice for Aboriginal people in NSW with legislative responsibilities to advocate for the interests of local Aboriginal communities in their respective jurisdictions, it is imperative that LALCs be consulted and invited to participate in all land, marine and climate-related matters that concern them.

Communication is at the centre of authentic collaboration. Unfortunately, some key Aboriginal stakeholders in Menindee have highlighted that the technical jargon commonly used when discussing this issue is a barrier for collaboration. NSWALC believes that the Government should take more responsibility to disseminate information in a user-friendly format and to recognise that the health of NSW waters is not just a scientific issue but also a social issue.

4. The NSW Government must commit to a **genuine partnership approach with NSWALC, LALCs and Aboriginal communities** regarding environmental and planning legislation, in line with the National Agreement on Closing the Gap.
5. **Genuine social, cultural and economic opportunities for LALCs and Aboriginal landholders** should be further explored, developed and supported in partnership with NSWALC and peak Aboriginal organisations.
6. Representatives of the **NSWALC and Aboriginal Land Rights Network should be included at every stage of the inquiry and consultation** and that this level of involvement should be included in the Aboriginal Engagement Strategy.
7. The NSW Government must consider and embed **Aboriginal Traditional Ecological Knowledge, perspectives and cultural practices in work to manage biodiversity**, while ensuring Intellectual Property of this knowledge is respected, principled and consensual.
8. A **review and reform of related planning, environmental and land use laws** to better facilitate the objects of the ALRA should be undertaken in partnership with NSWALC and LALCs.
9. The NSW Government must implement **safeguards to protect against harm and destruction to Aboriginal culture and heritage**, particularly in relation to the health and management of the Darling-Baaka River.
10. The NSW Government must engage with LALCs to ensure **communication material is culturally appropriate and socially focused**.

We hope that the recommendations made in this submission will be carefully considered by the NSW Government and that we can work in partnership with you to implement them.

**Should you require further information, please contact the NSWALC Strategy and Policy Unit on 02 - 9689 4444 or via e-mail: [policy@alc.org.au](mailto:policy@alc.org.au).**

Sincerely,



**Sara Hudson**

Acting Manager Strategy and Policy Unit

NSW Aboriginal Land Council

Date: 4/07/2023

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<sup>14</sup> Progress in implementing recommendations of the Independent Assessment of the 2018-19 Fish Deaths in the lower Darling – December 2021. [progress-in-implementing-recommendations-independent-assessment-2018-19-fish-deaths-dec2021.docx](https://www.alc.org.au/progress-in-implementing-recommendations-independent-assessment-2018-19-fish-deaths-dec2021.docx) ([live.com](https://www.alc.org.au))