

Yoorrook Justice Commission

WITNESS STATEMENT OF THE HON. HARRIET SHING MP

I, Harriet Shing, Minister for Water, of 1 Treasury Place, East Melbourne, Victoria, affirm and say as follows:

1. I make this statement in my capacity as the Minister for Water.
2. I am the Minister for Water and am responsible for the Department of Energy, Environment and Climate Action (**DEECA** or **the Department**), which combines Victoria's climate action, energy, environment, water, agriculture and resources responsibilities into a single department led by Secretary John Bradley and consisting of approximately 5,000 staff.
3. In addition to the water portfolio of which I am the responsible Minister, the Department supports the following Ministers and portfolios:
 - a. the Hon. Steve Dimopoulos MP, Minister for Environment (**Minister Dimopoulos**).
 - b. the Hon. Lily D'Ambrosio MP, Minister for Energy and Resources, Minister for Climate Action and Minister for the State Electricity Commission (**Minister D'Ambrosio**);
 - c. the Hon. Ros Spence MP, Minister for Agriculture (**Minister Spence**).
4. The Department came into existence as DEECA following a machinery-of-government change in December 2022, with effect from 1 January 2023. The Department was previously known as the Department of Environment, Land, Water and Planning (**DELWP**). Where the context requires it in my statement below, I also refer to DELWP.
5. In preparing this statement, I consulted with subject matter experts within DEECA and have also been assisted by lawyers engaged by the State of Victoria (the **State**). I have read and had regard to the Department's responses to Requests for Information relevant to my portfolio (**DEEC.0003.0001.0083**).
6. I have also read and had regard to the background papers that DEECA has produced to the Commission and to the background paper that the Department of Premier and Cabinet produced to the Commission titled: "Historical Timeline – State laws, policies and practices that drive dispossession in Victoria" (**DPC.0009.0012.0021**).
7. In Appendix A to my statement, I have included a Table of Acronyms for assistance with terms commonly referred to in my statement. In my statement, I generally use the term First Peoples with the same meaning as is set out in the Commission's Letters Patent, unless the context requires otherwise; examples of this include: if another document refers to the term Aboriginal Victorian or the usage of Indigenous Nations in reference to the Echuca

Declaration as it reflects the language used in that declaration. I also use Traditional Owner(s) to mean an Aboriginal person(s) who has traditional connections to an identified geographical area of Country.

8. The opinions I express in my statement are informed by the documents I have reviewed, the consultations I have engaged in as I outline above at paragraph 5, and from my professional experience as a Minister and Parliamentarian. I will supplement the evidence I give in my statement orally at the Commission's Land Injustice Inquiry hearing.

9. My statement is structured as follows:

a. **Part 1: Acknowledgment.** In this Part, I provide my acknowledgment of and respect for the Traditional Owners and Custodians of Country, my reflections on the devastating effects of dispossession of First Peoples' land and waters by the State, and on the enduring strength of their unique connections to Country and culture.

b. **Part 2: Background and Qualifications.** In this Part, I set out my Parliamentary and Ministerial experience, including in my capacity as Minister for Water.

c. **Part 3: Dispossession of Water from First Peoples.** In this Part, I provide an overview of the effects of Crown proclamation of sovereignty and ownership of land and waters in Victoria and the resulting dispossession of and denial of First Peoples' rights in relation to water.

d. **Part 4: Progress to address injustices.** In this Part, I outline the evolution of frameworks governing water, the ways in which First Peoples continue to be excluded from accessing water and its cultural, spiritual and economic benefits, and progress to date to start to address these injustices.

e. **Part 5: The Pathway Forward.** In this Part, I provide an overview of *Water is Life: Traditional Owner Access to Water Roadmap (Water is Life)* and its key commitments, and other reform opportunities for Traditional Owners including:

- Changing our conceptualisation of water
- Partnerships with Traditional Owners
- Waterway management and environmental management
- Water returns – removal of barriers
- Increasing funding and resources.

Part 1 - Acknowledgements

10. With deep respect I acknowledge the Traditional Owners of the Country on which I live and work on, the lands of the Wurundjeri Woi Wurrung people. I acknowledge and pay my respects to the ancestors of this Country, the Elders, past and present, the knowledge holders, the leaders, and emerging leaders. I acknowledge that sovereignty has never been ceded.

11. I acknowledge the strength of First Peoples in maintaining and protecting the world's oldest living culture. For tens of thousands of years, First Peoples in what is now known as Victoria have practised their laws, customs and languages and nurtured Country through their spiritual, material and economic connections to the land, water, and resources. I acknowledge the ongoing leadership of First Peoples communities across Victoria in striving to build on these strengths to address inequalities and to heal Country.
12. I acknowledge all First Peoples of Victoria and pay respect to their Elders past and present. As the Minister for Water, I acknowledge that First Peoples hold the knowledge, stories, custodial obligations, and cultural expertise that has always ensured the health of waterways and river Country. I acknowledge that each Traditional Owner group holds the cultural authority to speak about and for water, rivers, and river Country.
13. I acknowledge that colonisation involved excluding First Peoples and their laws, cultures, customs, and traditions, including through violence perpetrated at individual, societal and systemic levels. This history, and the systems it gave rise to, continue to harm First Peoples today.
14. Colonisation and the establishment of the State of Victoria has had long-lasting, far-reaching, and intergenerational consequences, including dispossession of First Peoples' Country and the living entities that constituted the waterways of Victoria. I acknowledge that water was taken from First Peoples, and that First Peoples were denied and continue to be denied their ongoing and intergenerational rights and opportunities to care for Country.
15. I acknowledge that as the result of the proclamation of sovereignty by the British Crown, and its ownership of all the lands of the colony, ownership and the allied right to make decisions about water was also, and remains to this day, vested in the Crown in right of the State of Victoria.
16. I acknowledge that as part of the adoption of the British legal system and systems of government, based as they were on British and European values and assumptions, emphasis was placed on the economic value of water.
17. I fully appreciate that this conception of water as property is very different to First Peoples conceptions of water. Water landscapes are part of cultural landscapes that First Peoples have cared for and managed for tens of thousands of years. Caring for Country speaks to the reciprocal relationship between the environment and First Peoples. As I understand it from my conversations and meetings with First Peoples in my capacity as the Minister for Water, First Peoples have obligations under cultural lore to protect, conserve and maintain the environment and ecosystems to ensure the sustainability of the whole environment and all its peoples.
18. I acknowledge that the decisions of successive governments have separated First Peoples from their traditional lands and waters and excluded them from decisions that affect Country and community. Given that Country is inextricably linked to the cultural identity, health, and community wellbeing of First Peoples communities, this separation continues to impact on First Peoples in a range of ways.
19. As part of the colonisation of what became known as the State of Victoria, construction of dams and weirs altered water flows across Country, land was cleared for agriculture and the nature and course of waterways and wetlands changed significantly. Rivers were

polluted and modified, wetlands were drained, riparian ecosystems were damaged, plants and animals were rendered extinct, and cities and towns spread over floodplains.

20. I acknowledge that while First Peoples have consistently called for recognition of the significance of water to their practice of culture and their responsibility to care for Country, it has taken too long to learn to listen to the cultural authority of First Peoples to speak about and for water, rivers, and Country within their traditional regions.
21. That failure to listen led to First Peoples being denied access to the abundant landscapes and resources of healthy waterways, and to traditional aquacultural infrastructure — among the oldest human structures in the world — being damaged or destroyed. That failure to listen has also caused long-lasting damage to waterways throughout Victoria.
22. I acknowledge that, since colonisation, First Peoples have been excluded from the management, allocation and ownership of water and water-dependent landscapes.
23. The current system of water management and entitlements in Victoria was established to meet our urban, rural, recreational and, more recently, environmental needs. I acknowledge that it was not set up to meet cultural needs and, in many instances, does not align with First Peoples perspectives on water. There are many ways to access water in Victoria, but none of these was designed with First Peoples interests in mind.
24. I acknowledge that First Peoples have carried out decades of work, advocacy, and activism and have advocated to successive governments for recognition of the need to both return water to them and for the Victorian Government to work in partnership with First Peoples in managing water.
25. While progress is being made to recognise past injustices and create a path forward, barriers to First Peoples accessing water for self-determined purposes, and their meaningful inclusion in decision-making in water management, remain. Water is Life demonstrates the Victorian Government's commitment to change and outlines a suite of next steps. I acknowledge that more must be done.
26. I am determined to work with and alongside First Peoples to navigate the path forward to self-determination in managing water to heal Country and communities and to support connection, economic growth and self-determination.

Part 2 - Background and qualifications

27. I have held the position of Minister for Water since June 2022. I have also been the Minister for Equality since June 2022 and the Minister for Housing since October 2023.
28. As the Minister for Water, my statutory responsibilities include those under the following Acts: *Catchment and Land Protection Act 1994 (CaLP Act)* (administered jointly and severally with the Minister for Environment and Climate Action); *Groundwater (Border Agreement) Act 1985*; *Murray-Darling Basin Act 1993*; *Water Act 1989 (Water Act)*; *Water (Commonwealth Powers) Act 2008*; *Water Efficiency Labelling and Standards Act 2005*; *Water Industry Act 1994*, and the *Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017*. I am also responsible for parts of the *Conservation, Forests and Lands Act 1987* (where relevant to the CaLP Act) and the *State-Owned Enterprises Act 1992* (as far as it relates to the Water Training Centre). I am supported in that role by the Water and Catchments Group within DEECA.
29. I appoint boards to oversee the governance of Victoria's water corporations, catchment management authorities (CMA), the Victorian Environmental Water Holder, and appoint

members to the Birrarung Council. These organisations are established as public entities and operate in accordance with functions, powers and governance responsibilities under legislation including the *Public Administration Act 2004* and the *Financial Management Act 1994*. They also operate in accordance with statements of obligation, directions and expectations issued by me as the Minister for Water and under the Victorian Public Sector Commission's Code of Conduct.

30. I am Victoria's representative on the Water and Murray-Darling Basin Ministerial Council, and responsible for meeting Victoria's obligations under the Commonwealth *Water Act 2007*, *Basin Plan 2012*, and relevant intergovernmental agreements such as the *Intergovernmental Agreement on a National Water Initiative (2004)*.

Part 3 - Dispossession of Water from First Peoples

31. Since colonisation, First Peoples have been excluded from the management, allocation and ownership of water and water-dependent landscapes.
32. I refer to the Water Background Paper (**DEEC.0001.0001.0067**) and the Department of Premier and Cabinet (**DPC**) timeline of events (**DPC.0009.0012.0021**) which set out the key events in the establishment of the colony of Victoria and ways in which First Peoples were dispossessed of their traditional lands, and with those lands, their traditional sources of water. As a result, First Peoples deeply held cultural and spiritual connections to Victoria's waterways were and continue to be disrupted.
33. Upon the proclamation of sovereignty and Crown ownership of the lands of the colonies, the Crown assumed ownership and control of the colonies' waters and waterways. The Crown could then distribute equal-sized parcels of water to each hectare of designated land (originally mostly inside irrigation districts). This gave thousands of settlers materially comparable access to the potential to make a living from irrigation. But, at the same time, it deprived First Peoples of that opportunity whilst also creating intergenerational cultural, economic and social damage.
34. From the late 1800s to the late 1970s, governments in Australia focused on water to supply cities and towns, for regional growth and for irrigation and mining industries. With increasing competition for water, water rights were developed.¹ First Peoples were systematically excluded from decisions and were not issued any of the water entitlements that were created.
35. Without any consultation with First Peoples, water markets were gradually introduced in the 1980s and 1990s to encourage more efficient irrigation water use through water trade. The widespread salinity and waterlogging problems of the 1960s, 70s and 80s, which had damaged the environment and other irrigation farms, have since been managed down to highly localised and now largely residual levels.
36. While the maturing of the water market brought with it prosperity to the State and settlers in terms of food and fibre production, First Peoples did not reap the same benefits from these developments. It reinforced the concept of water as property and moved us further away from the concept of water as an integral component of Country.
37. Compounding this disconnection, the process for separating water entitlements from land (called 'unbundling') began in Victoria in 2007, again without the involvement or agreement

¹ Jane Doolan, *The Australian Water Reform Journey: An Overview of three decades of policy, management and institutional transformation, the Australian Water Partnership*, August 2016, p. 5.

of, or consultation with, First Peoples. I acknowledge the disconnection and devastation wrought to First Peoples by the forced disconnection of water from Country.

Part 4 - Progress to address injustices

Evolution of water legislation and policy to present day.

Legislation

38. Until recently, the Water Act, the key legislation for the management of water in Victoria, contained no acknowledgement or recognition of First Peoples for management and planning of waterways and catchments.
39. This omission was addressed through the 2019 Water Act amendments, with the purposes of the Water Act now including: “to consider Aboriginal cultural values and uses of waterways in the management of water resources and waterways”. Further amendments now specify requirements for Sustainable Water Strategies to consider opportunities to provide for First Peoples’ cultural values and uses of waterways in the Sustainable Water Strategy region. Sections 22C, 22P, 33AAB, 33DD, 92, 93, 189, and 190 of the Water Act now variously require consideration of First Peoples’ cultural values for a series of activities including: preparing regional waterway strategies, undertaking a review of long-term water resource assessments, permanent qualifying water rights; and for Water Corporations, CMAs and the Victorian Environmental Water Holder in delivering their functions, powers, duties and objectives under the Act.
40. In 2010 the *Traditional Owner Settlement Act 2010 (Vic) (TOS Act)* was enacted in Victoria to enable the Victorian Government to enter into agreements with Traditional Owner Group entities (as defined by the TOS Act) which recognises Traditional Owner rights, and which confer rights on Traditional Owner groups in relation to ownership and management of public land. As a result, the Water Act was amended to refer to Traditional Owners for the first time by the insertion of section 8A. This confirms Traditional Owner access to and use of water on land subject to a natural resource agreement (**NRA**) and Traditional Owner natural resource agreement (**TOLNRA**) under Part 6 of the TOS Act. Importantly however, this right is restricted by the terms of the agreements which to date have included a clause restricting use to non-commercial purposes.
41. At a national scale, the Murray Darling Basin Plan calls for each state to work with Traditional Owners to make water available for cultural needs. The *Water Act 2007 (Cth)* and Basin Plan 2012 (Cth) have implications for water management in Victoria as they establish requirements for states to produce Water Resource Plans accredited by the commonwealth minister.
42. Those parts of Victoria within the Murray-Darling Basin are subject to these requirements, and Water Resource Plans covering the Wimmera, Mallee and north of the State were accredited in 2019. Contributions from Traditional Owner groups were integral to the success of those plans; Traditional Owners identified areas of cultural significance for managing water resources, and they shaped the objectives for water management.
43. The contributions of nine different Traditional Owner Groups can be found in Part 11 of the Wimmera-Mallee Water Resource Plan (Comprehensive Report). The contributions of 14

Traditional Owner groups can be found in Chapter 7 of Victoria's North and Murray Water Resource Plan (Comprehensive Report).²

44. The Victorian Government worked closely with Murray-Lower Darling Rivers Indigenous Nations (**MLDRIN**) to design a comprehensive engagement strategy for the development of Traditional Owner contributions to Water Resource Plans. This engagement occurred over two years and was designed to ensure there was sufficient time and support for all Traditional Owner Groups within the Water Resource Plan areas to make what they considered to be meaningful contributions.

Recognition of cultural values in water policy

45. Prior to 2004, Victorian Government water policy had not recognised First Peoples or cultural values.
46. In 2004, the Victorian Government launched *Our Water Our Future*: a long-term plan designed to secure water supplies and sustain growth over 50 years. This plan referred to the cultural value of water for First Peoples but did not go so far as to include specific actions to support this.
47. Throughout the 2000s and early 2010s, the approach to First Peoples participation in water policy and program development was inconsistent.
48. First Peoples were not consulted in the development of the 2002 *Victorian River Health Strategy*, the creation of the Environmental Water Reserve (2005) and the establishment of the Victorian Environmental Water Holder (2011).
49. In contrast, the following programs and policies strongly engaged with First Peoples:
- a. The 2006, Living Murray Indigenous Partnership Program, established through a memorandum of understanding between MLDRIN and the Murray-Darling Basin Commission (now the Murray-Darling Basin Authority), which employed First Peoples as cultural heritage monitors during the design and construction phases of the Living Murray, and this program enabled Traditional Owners to connect to Country, while also protecting areas of cultural significance.
 - b. The *Northern Region Sustainable Water Strategy (2008)* was Victoria's first statutory water-related document to consciously engage with Traditional Owners; it established a higher-education scholarship program and a commitment to support Traditional Owners participation in waterway management and decision making.
 - c. In 2011 Sustainable Water Strategies were developed for Gippsland and the Western Region and also included engagement with Traditional Owners, laying the foundation for *Water for Victoria's (2016)* commitments to recognise and manage for First Peoples' values.
50. The first significant policy change occurred in 2013 with the release of the *Victorian Waterway Management Strategy*, which included a specific requirement for DEECA to include and engage with First Peoples in the development of programs and related

² Department of Energy, Environment and Climate Action, *Water resource plans*, December 19, 2023. Accessed January 10, 2024. <https://www.water.vic.gov.au/our-programs/murray-darling-basin/water-resource-plans>

activities consistent with the Aboriginal Inclusion principles set out in the *Victorian Aboriginal Affairs Framework 2013-18*.

51. This was an important step towards a future in which all water sector agencies work in partnership with First Peoples.
52. An *Aboriginal Participation Guideline* was developed in 2016 in consultation with First Peoples to guide catchment management authorities as they built their capacity to work with First Peoples. It was an early step in ensuring cultural values were given consideration in the way environmental water was managed.
53. It is important to note that while governments have been slow in their engagement with First Peoples, nonetheless First Peoples have been consistent and clear in what they expected. An example of this is the Echuca Declaration.
54. The 2007 *MLDRIN Echuca Declaration*, was a ground-breaking statement that declares Indigenous Nations sovereignty, aspirations for access to water and defines water as a living entity. The declaration defines 'cultural flows' and the benefits that cultural flows would bring to the health of Country and First Peoples. This declaration is from Indigenous Nations across the Murray-Darling Basin, including those whose Country is in northern Victoria. It is a significant record of Indigenous Nations aspirations for access to water.
55. Victoria's long-term plan for water resources *Water for Victoria* was released in 2016. It includes a chapter on recognising and managing for Aboriginal values. Since 2016 the Victorian Government has invested to support First Peoples' participation in water management and to improve outcomes for First Peoples by:
 - a. recognising Aboriginal values and objectives of water,
 - b. including Aboriginal values and traditional ecological knowledge in water planning,
 - c. supporting Aboriginal access to water for economic development, and
 - d. building capacity to increase Aboriginal participation in water management.

Progression of resourcing and decision making for First Peoples

Aboriginal Water Program

56. Until 2015/16 there was no dedicated funding stream to support First Peoples access to water. Initial pilot projects were funded from reprioritisation of departmental budgets, with co-contribution from the Commonwealth and CMAs. It was not until 2015/16 that Departmental contingency funds provided the first tranche of funding for First Peoples for water management with \$2.8 million over the two years to 2016-17.
57. Between 2016 and 2020, \$9.7 million was invested to create the *Aboriginal Water Program*. The program was designed to better include First Peoples in the way water is managed in Victoria, and to reconnect communities to water for cultural, economic, customary, and spiritual purposes. It funded eight projects under the *Recognising Aboriginal values and uses of water* initiative and 13 projects under the *Aboriginal access to water for economic development* initiative. It also funded 17 Aboriginal Water Officers in 17 organisations.

58. In 2020, a further \$21 million was invested in the second phase of the *Aboriginal Water Program - the Water, Community and Country Program* – which runs from 2020 until 2024. Funding was provided to extend existing projects and new projects were established with seven additional Traditional Owner organisations. Overall, funding was provided for 24 Aboriginal Water Officers, including the creation of seven new positions.
59. Aboriginal Water Officers play a vital role in their organisations and communities, delivering on Country activities and strengthening input in water planning and management decisions. These roles have also improved Traditional Owner organisational capacity to work with government and to lead their own water projects and programs.
60. I understand that many *Aboriginal Water Program* partner organisations report being over-stretched and that the scale of workload for individual Aboriginal Water Officers in their respective organisations has become increasingly challenging for one person to navigate alone. I recognise the implications of these challenges for individuals and organisations (wellbeing, cultural load, burnout, staff turnover), as well as the benefits of collaboration in the workplace, shared workloads and the importance of leadership pathways. I am continuing to discuss the resourcing pressures that Aboriginal Water Officers and their organisations face and engage on ways that this pressure might be alleviated.
61. The 2022-23 State Budget invested a further \$3.85 million over two years to help improve water access and ownership for First Peoples, specifically through the initial implementation of *Water is Life*.
62. First Peoples are increasingly being funded to participate in the water planning and management activities of the Victorian Government and the water sector. For example, the *Central and Gippsland Region Sustainable Water Strategy* has also provided \$950,000 over three and a half years for First Peoples to partner in the development and implementation of the strategy. The strategy includes an action to continue to fund First Peoples to enable a self-determined role in implementation over the next ten years.

Representation on water sector boards and committees

63. Under the legislative and policy framework established in 1994, the Victorian Government took responsibility for centralised water policy. DEECA now has responsibility for water sector governance under a devolved service delivery model comprising 18 water corporations and nine catchment management authorities.
64. Between Victoria's 18 water corporations, nine CMAs, and the Victorian Environmental Water Holder, the number of First People board members in 2024 has increased to 20, up from 11 in 2019 and 13 in 2021. With this increased representation, 18 of the 28 water sector Boards have First Peoples board members.
65. In addition, four Traditional Owners and one Aboriginal Victorian are now members of the Birrarung Council established under the *Yarra River Protection (Wilip-gin Birrarung murrn) Act* and Traditional Owners have been appointed to Ministerial Advisory Committees for the Waterways of the West and the Rivers of the Barwon and the consultative committee of the *Central and Gippsland Region Sustainable Water Strategy*.
66. For the first time, a Gunaikurnai Traditional Owner has also been appointed as the chair of the Gippsland Lakes Consultative Committee.

67. The Water Act requires at least one Aboriginal person as a member on the consultative committee tasked with advising the Minister on the preparation of each Sustainable Water Strategy.
68. I acknowledge that these are positive steps. However, there is still a long way to go, and while representation may provide influence, it does not necessarily empower decision-making, nor facilitate self-determination.

Participation in water planning

69. First Peoples are having a greater involvement in the development and implementation of water plans and strategies, such as the *Central and Gippsland Sustainable Water Strategy* and the *Victorian Waterway Management Strategy*.
70. The *Central and Gippsland Region Sustainable Water Strategy* is the first Sustainable Water Strategy to formally include Traditional Owners as members of the consultative committee, alongside other representatives from the water sector, the Victorian Environmental Water Holder and DEECA.
71. This was a genuine partnership with Traditional Owners where representatives of the Traditional Owners in the region sat alongside decision-makers from the Victorian Government and the water sector and guided the development of the Strategy. A strong and respectful partnership was formed and continues throughout the implementation stage of the project, and it remains my commitment to support enduring respect, shared space and collaboration.
72. A stand-alone chapter within the Strategy was written by the *Traditional Owner Partnership*, formed by Bunurong Land Council Aboriginal Corporation, Gunaikurnai Land and Waters Aboriginal Corporation (**GLaWAC**), Wadawurrung Traditional Owners Aboriginal Corporation (**WTOAC**) and Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation. Through the Strategy, the Victorian Government and Traditional Owners of the region to which the Strategy applies have worked together to ensure that Traditional Owners' voices and water needs are considered alongside the needs of other water users when discussing water availability and water sharing. The Partnership will endure throughout the implementation of the sustainable water strategy.
73. As the previous *Victorian Waterway Management Strategy* has reached the end of its lifespan, a new *Victorian Waterway Management Strategy* is needed to ensure that strong and resilient policies are in place for managing Victoria's waterways, particularly in the face of our changing population and climate conditions. A key focus of the new Strategy will be identifying pathways to increase First Peoples self-determination and decision-making in waterway management.

Water Returns – current progress

74. While progress is being made, including longer-term reforms to policy and legislation, I agree and acknowledge that progress in delivering on return of water to First Peoples is slow.
75. First Peoples currently own less than 0.2 per cent of Victoria's water entitlements. The volume of water held by First Peoples organisations reflects their systemic exclusion from the water entitlement framework and the barriers that still exist to prevent First Peoples participating in the entitlement framework.

76. The low level of water held by First Peoples across Victoria significantly compromises the ability for First Peoples to benefit from holding, using and managing water for self-determined purposes. Therefore, the ability for First Peoples to derive cultural, social, economic and/or environmental outcomes and benefits from water remain significantly compromised. This is in stark contrast to the benefits derived by the community, and the state, from Traditional Ecological Knowledge, work and voice in water management.
77. There are several projects currently underway that seek to return further water to First Peoples in Victoria, this includes:
- a. water savings from the *Goulburn Murray Connections Project*. DEECA is working with First Peoples in northern Victoria to determine how water shares across a number of catchments can be held in the future by First Peoples;
 - b. water in the Latrobe River system that has become available because of private operators' decisions to progressively cease coal fired power generation (known as the 3-4 Bench entitlement). GLaWAC is working in partnership with DEECA, Southern Rural Water, the Victorian Environmental Water Holder and West Gippsland CMA to determine an equitable approach to sharing this water;
 - c. water savings from the Moorabool River to be shared between the environment and the WTOAC for their self-determined use, and to increase water security for Geelong over the long term;
 - d. evaluating opportunities to return water to the Bunurong Land Council Aboriginal Corporation and Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation (**WWCHAC**) that is currently used by the Royal Botanic Gardens;
 - e. multiple applications from First Peoples for unallocated water in southern Victoria, which Southern Rural Water, as the licencing authority is now working on; and
 - f. continuing work with WWCHAC on the transfer of a 1.4 GL entitlement in the Yarra River.
78. I acknowledge this progress and the importance of these initial water returns to First Peoples respecting their deep cultural, spiritual, and economic connection to land and water. I also acknowledge that this limited progress has been deeply frustrating and has been hard-won, following years of advocacy, and more recently the frustration and harm of navigating a licensing process that requires 'applying' for water that has been taken from Country and has not been designed to meet First Peoples needs.
79. As I acknowledged above, our current systems, including water entitlements, were not designed with First Peoples in mind and consequently there is much work to be done to return water to First Peoples. I am determined to work in partnership with First Peoples to determine how they can hold and manage water in culturally appropriate and self-determined ways.
80. *Water is Life* outlines the Victorian Government's commitment to return water to First Peoples as a priority, while also committing to understand, identify and address the systemic barriers within the existing framework over the medium- to long-term. Additional policies and strategies are also informed by and reiterate this commitment, including the *Central and Gippsland Region Sustainable Water Strategy*.

Part 5 - The Pathway Forward

81. As Minister for Water, I have the responsibility and opportunity through the work of the Commission and beyond, to effect change to address the exclusion of First Peoples from the ownership of and decision-making about the management of water in Victoria.
82. While I know there is much work still to be done, through legislation, policy and practice across my portfolio, I am encouraged by progress to date and by the good practice occurring across my portfolio.
83. I acknowledge my responsibility to strengthen the Victorian Government's work in partnership with First Peoples to increase their voice and agency in water planning in ways that support self-determination.
84. All of Victoria's water-related legislation, strategies and policies must recognise First Peoples as our partners in water management. *Water is Life*, the *Yarra River Protection (Wilip-gin Birrarung murrn) Act 2017*, the *Yarra Strategic Plan (Burndap Birrarung burndap umarkoo)*, the *Central and Gippsland Region Sustainable Water Strategy*, and the *Victorian Murray Floodplain Restoration Project* make a start in that direction.
85. I understand the Commission will make recommendations for healing, system reform and practical changes to laws, policy and education, as well as to matters to be included in future treaties. I acknowledge my role and the role of my Department in working in partnership with First Peoples to continue to progress better outcomes.

Water is Life

86. *Water is Life: Traditional Owner Access to Water Roadmap*, released in 2022, is a first step towards acknowledging injustices and establishes a framework to increase First Peoples roles in and resources for water management across Victoria.
87. The commitment to develop *Water is Life* was first made in Action 6.3 of *Water for Victoria 2016*, and centres First Peoples as partners in the co-design and development of a dedicated roadmap setting the direction for First Peoples' water policy in Victoria.
88. *Water is Life* builds on the work delivered under DEECA's Aboriginal Water Program since its inception in 2016 and, crucially, the long history of advocacy and activism by First Peoples for water justice in Victoria.
89. Guidance, advice and input from First Peoples was essential throughout the development of *Water is Life*, which relied on an extensive program of engagement and significant time, good faith, resources and expertise from First Peoples across Victoria.
90. I acknowledge the Nation Statements that sit alongside the Victorian Government policy section of *Water is Life*. These Nation Statements, prepared by First Peoples who wished to participate articulate their water-related cultural values, goals, aspirations, outcomes and other information for the Victorian Government and the people of Victoria to recognise. These statements are an essential step for increasing wider knowledge and awareness of traditional law, lore and expectations for water management and its connection to establishing and maintaining healthy Country.
91. In bringing these two sections alongside each other, the Victorian Government acknowledges the voices of the First Peoples and sets out a shared pathway forward.

92. First Peoples have my deepest respect and appreciation for the trust they have shown in providing these statements. Trust that their words would be unchanged and sit alongside Victorian Government policy.
93. I understand that participation by First Peoples in the development of *Water is Life* does not imply that they have approved of, or authorised, the Victorian Government policy commitments under *Water is Life*. Nor does it imply that First Peoples accept the settler-colonial water regime imposing on their Country. Further, I acknowledge that absence of participation in *Water is Life* by any First Peoples does not indicate a lack of interest or broader engagement in water and waterway management.
94. *Water is Life* recognises and respects the rights of First Peoples and enables the omission of their water rights and their exclusion from water management and planning to begin to be addressed. *Water is Life* sets out clear pathways to increase resourcing for and roles in the care and management of water and water-dependent landscapes and commits to increase the volume of water returned to First Peoples for cultural, spiritual, and economic use.
95. *Water is Life* is long-term and directional in nature, and will require coordination and collaboration between the Victorian Government, the water sector and First Peoples to inform long-term sector-wide change.

Changing our conceptualisation of waterways

96. Through *Water is Life*, the Victorian Government has also committed to work with First Peoples across Victoria to enable waterways, and the lands through which they flow, to be recognised as living and integrated cultural entities, with First Peoples giving voice to those entities.
97. This recognition has already been reflected in the *Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017* which recognises the Birrarung (Yarra River) and its riverine parklands as one living and integrated natural entity and guides the 50-year community vision *Yarra Strategic Plan – Burndap Birrarung burndap umarkoo* (the Plan) which was developed in partnership with the Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation and supported by the Bunurong Land Council Aboriginal Corporation. The Plan was guided by the Wurundjeri Woi-wurrung water policy, *Nhanbu narrun ba ngargunin twarn Birrarung – Ancient Spririt and Lore of the Yarra*.
98. Through the advice and advocacy provided by the Birrarung Council, the transformational concept of the Birrarung as a living entity is starting to shift how waterways are understood and ultimately how they are managed. As evidenced by the *Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017* and its allied policies and processes, we have seen waterways being recognised as a source of life, a representation of culture and heritage, and a place for connection between the community, Country and water.
99. This way of conceptualising water is beginning to be integrated and embedded within land-use planning and decision-making along the Birrarung corridor.
100. For example, in the recent *Waterways of the West and Barre Warre Yulluk (Rivers of the Barwon) Action Plans*, the Victorian Government recognised that we have a collective and individual responsibility to keep waterways alive, and committed to recognise these waterways as living, integrated entities and First Peoples as a unique voice of those entities.

101. Through *Water is Life*, the Victorian Government has committed to work with First Peoples across Victoria to develop legislative proposals for consideration by Parliament. These proposals aim to engage communities and stakeholders, and they aim to enable waterways, and the lands through which they flow, to be recognised as living and integrated cultural entities, with First Peoples giving voice to those entities.
102. The objectives and scope associated with these proposals will continue to be developed in ways that enable each Traditional Owner group to determine for themselves how these concepts will be applied on their Country. This will involve consultation with communities that value and rely on healthy rivers for flourishing ecosystems, drinking water, recreation, growing food and fibre, and other uses.
103. Any potential legislative design will need to involve extensive engagement with First Peoples and wider communities, and, as outlined in *Water is Life*, it will also need to:
- a. enable a place-based approach without creating new and significant barriers to Traditional Owners once the legislation is passed (for example, a gazettal of declared areas may be a more efficient process than multiple Acts of Parliament);
 - b. enable those Traditional Owners who have already addressed the complex challenge of defining the boundaries of a living entity to act, by enabling successive recognition of waterway entities;
 - c. provide for the enduring presence of Indigenous languages;
 - d. provide the prominence of visibility of legislation, as well as potential streamlining of provisions which may be replicated across other key legislation; and
 - e. support economy in statutory drafting and minimise additional complexity for waterway management.

Water Sector Partnerships with Traditional Owners

104. Through *Water is Life*, the Victorian Government has committed to ensuring that Traditional Owners, should they choose to and be supported to enter formal partnership agreements with the water sector that increase the capacity and resources available to Traditional Owners to make and implement decisions about the management of water landscapes on their Country.
105. Traditional Owners have invested significant time, good faith, resources, and effort to build relationships with CMAs and water corporations. In some instances, there are informal partnerships in place, while in other instances there is a Memorandum of Understanding or a formal partnership agreement. While the building and strengthening of these partnerships is a positive step, Traditional Owners' places in discussions and decision-making forums depend on ad hoc good-will of people in the water sector, or across the government sector more broadly.
106. The Victorian Government is developing an amendment to the Statements of Obligations for water corporations to support formal partnership agreements with Traditional Owners and will seek to include provisions for formal partnership agreements in:
- a. Statements of Obligations with CMAs, and
 - b. Ministerial Rules with the Victorian Environmental Water Holder.

107. The Victorian Government will work with Traditional Owners to develop guidelines that include details and considerations for formal partnership agreements with Traditional Owners.
108. Formal partnership agreements between Traditional Owners and water sector entities (water corporations, the Victorian Environmental Water Holder, and CMAs) can help us take the next step: through increased levels of Traditional Owner decision-making for specific functions at specific locations of interest to Traditional Owners. Formal partnerships can build on existing joint management and partnership agreements and support “learning by doing”.
109. Formal partnerships will include resourcing for partnership activities with each Traditional Owner group, with additional funding required to support new roles and responsibilities for Traditional Owners, including risk management. Funding will be multi-year, and program-level to enable Traditional Owners to plan and manage their increased workload sustainably. Detailed decisions about the funding will be made in line with normal government policy and budget processes.
110. A formal partnership agreement will be open to any Traditional Owner group on whose Country the water corporation or catchment management authority operates. Where there are boundary uncertainties, DEECA will work with the relevant Traditional Owner and water sector entity to support a case-by-case approach.
111. Formal partnerships will be adapted to the needs of each Traditional Owner organisation.

Waterway management and Environmental Water Management

112. As part of the new *Victorian Waterway Management Strategy* process, First Peoples will be supported to identify specific waterway management responsibilities (including the location over which the responsibility would exist) that each Traditional Owner group wishes to participate in.
113. New legislative proposals need to be developed, in consultation with communities and stakeholders, for consideration by Parliament that enable First Peoples to be appointed as waterway managers, with defined functions and responsibilities for specific locations. First Peoples will be supported to work with DEECA to develop these proposals.
114. I acknowledge that not all First Peoples may be seeking to take on waterway management responsibilities and Traditional Owner groups will be supported to develop the pathways that they determine to be most important to them.
115. *Water is Life* commits the Victorian Government to have an increased role for First Peoples in determining how environmental water is used for the purpose of healing Country, which in a multitude of ways is entirely aligned with priorities and objectives of communities, industry and different levels of government and portfolios within them.
116. The Victorian Government is working with Traditional Owners, the Victorian Environmental Water Holder, and waterway managers (CMAs and Melbourne Water) to:
- a. prepare guidelines to support assessment of seasonal watering proposals submitted by Traditional Owners direct to the Victorian Environmental Water Holder;

- b. develop a framework for multi-year agreements between the Victorian Environmental Water Holder and Traditional Owner groups that involves a transfer of an agreed volume of environmental water allocation. Traditional Owners would have capacity to determine how and where water will be used for dual environmental and cultural benefits in accordance with currently legislated objectives for environmental water for the agreed period; and
 - c. undertake pilot studies of seasonal watering proposals and multi-year agreements.
117. Legal recognition of Traditional Owners as environmental holders would enable them to hold environmental entitlements (as well as other entitlements) for the purpose of healing Country. *Water is Life* commits to working with Traditional Owners to realise their aspirations to manage environmental water on country. This may include, if necessary, developing new legislative proposals for consideration by Parliament.

Water Returns – removal of barriers

118. As an increasingly scarce resource, the future availability of water within Victoria is challenging, particularly with a growing population and climate that is projected to become even drier, with extreme variability. This is particularly evident in Northern Victoria, where intensive agriculture, the effects of drought and water scarcity and the challenges of interjurisdictional water management through the Murray-Darling Basin exacerbate competing demands for water.
119. Water policy is complex and highly contested throughout Australia, particularly in the Murray-Darling Basin. I acknowledge that careful consideration and leadership from governments will be required to return water to First Peoples in a way that also maintains support of local communities and other water users. I commit to continuing my calls upon the Commonwealth Government to allocate resources, time and decision-making processes to improving the interjurisdictional outcomes for First Peoples where multiple levels of government are involved, including through the Ministerial Council.
120. For those parts of Victoria where water entitlements have not been separated from land (most of southern Victoria, the upland parts of northern Victoria and all groundwater across Victoria), it is still necessary to associate licences to take and use water with land.
121. As a short-term measure, to reduce barriers to holding water entitlements that have not been separated from land, the Victorian Government is working with First Peoples and public land managers to identify public land parcels that can be associated with licences to take and use water. This may include:
- a. providing First Peoples with information on public land that can be nominated to enable the application and issuing of licences for cultural use and streamlining permissions with public land managers,
 - b. working with water corporations to streamline existing approval requirements and reduce red tape for First Peoples wanting to apply for a licence to take and use water, under section 51 of the Water Act.
122. Funding will be required to cover the costs associated with water entitlements held by First Peoples and this will be considered as part of government budget processes in the coming years.

123. The Victorian Government has also committed to fund First Peoples to pay fees and charges associated with the acquisition and management of non-commercial water entitlements. DEECA will work with First Peoples, water corporations, and the Department of Treasury and Finance to develop a long-term sustainable funding program.
124. A long-term commitment in *Water is Life* is for the Victorian Government to work with First Peoples to identify and overcome the systemic and operational barriers that prevent First Peoples from holding and managing water in culturally appropriate ways. This outcome reflects the fundamental limitations of the current water entitlement framework.
125. DEECA is also working with water corporations across the Central and Gippsland region to develop proposals for how reliance on river water entitlements could be reduced, potentially to free up water to be returned to First Peoples.
126. The Victorian Government is developing guidelines for returning unallocated water and water saved through water infrastructure projects to ensure these projects deliver water returns to First Peoples.
127. The Victorian Government is committed to developing a framework to support First Peoples to access water in other ways, including through water markets, when there are no alternative pathways to provide water for economic development (including cultural economies).

Increasing Funding and Resources

128. Through *Water is Life*, the Victorian Government has made unequivocal commitments to increase Traditional Owner resourcing.
129. Even with a total investment so far of \$38.3 million, Traditional Owner organisations are not currently sustainably resourced to fully engage with opportunities to participate in water programs and initiatives, to share traditional ecological knowledge, or to employ sufficient organisational staff to support strategic planning.
130. For Traditional Owner organisations to partner with the Victorian Government and contribute to government processes from an informed and sufficiently resourced position, they must first be able to determine and articulate their water priorities. I have heard from First Peoples that this work requires dedicated staff in organisations and resources to undertake water-related projects, such as engaging with community on Country, completing surveys and monitoring of Country, (re)connecting to Country and facilitating opportunities for Elders to share their voice and water knowledge.
131. Progress in enabling First Peoples to pursue these projects and priorities has been made through investment in programs such as Victoria's *Aboriginal Water Program* since 2016, as outlined above.
132. With increased partnerships with First Peoples in water management, I acknowledge that there are increased demands on the time, resources, leadership and expertise of Traditional Owner organisations and individuals, who in many instances undertake multiple roles in engagement with and advocacy to all levels of government. Without sufficient and sustainable resourcing, Traditional Owner organisations are likely to continue to face the challenge of balancing and triaging competing priorities — often government priorities rather than their own — thereby reducing their ability to exercise self-determination in water management. This is compounded by the pressure of creating and

maintaining self-determined opportunities and leadership pathways for emerging Traditional Owner voices and representatives.

133. Additional funding is needed to build on past investment in the Aboriginal Water Program and to progress commitments outlined in *Water is Life* in partnership with First Peoples, water entities and the Victorian Government to support First Peoples self-determined priorities for water management, including in employment of Aboriginal Water Officers to deliver self-determined water projects, and to strengthen partnerships.
134. I acknowledge that more systemic change is needed to the way that First Peoples are funded to care for Country as by their very nature, the budgetary timeframes present further barriers to Traditional Owner decision-making, work, and certainty for the achievement of long-term objectives. I am committed to working with First Peoples and my colleagues in the Victorian Government to make this change.

Conclusion

135. It is an honour, a significant responsibility, and a privilege to make this statement as part of the Commission's land injustice inquiry in relation to land, sky, waters and other natural resources, collectively known to First Peoples as Country.
136. I have the deepest respect for First Peoples' enduring cultural and spiritual connection to Country. I have reflected on the voices of First Peoples, including through the work of the Commission, and am humbled by the dignity and determination with which they speak of the trauma of dispossession of their traditional lands and waters. I, in turn, am determined to work to ensure that their calls for justice are heeded through the work of the Commission and beyond.
137. While progress is being made to recognise both past and ongoing injustices perpetrated by the State in relation to water and waterways, including through meaningful truth telling by the State, and its proposals to create a path forward, I accept and agree that there is so much more work to be done.
138. I am determined to be a contributor to redressing the past and ongoing injustices and impacts of colonisation on First Peoples.

Sign here : 

Print name: HARRIET SHING

Date : 12/3/24

Witness. 

Date : 12/3/24

ANNEXURE A – TABLE OF ACRONYMS

Acronym	Definition or use in this Witness Statement (including Annexure A)
Basin Plan	Murray Darling Basin Plan
CaLP Act	Catchment and Land Protection Act 1994 (Vic)
CMA	Catchment Management Authority
DEECA	Department of Energy, Environment and Climate Action
DELWP	Department of Environment, Land, Water and Planning
DPC	Department of Premier and Cabinet
GLaWAC	Gunaikurnai Land and Waters Aboriginal Corporation
MLDRIN	Murray-Lower Darling Rivers Indigenous Nations
NRA	Natural Resource Agreement
TOLNRA	Traditional Owner natural resource agreement
TOS Act	Traditional Owner Settlement Act 2010 (Vic)
Water Act	Water Act 1989 (Vic)
Water is Life	Water is Life: Traditional Owner Access to Water Roadmap
WTOAC	Wadawurrung Traditional Owners Aboriginal Corporation
WWCHAC	Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation