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SLIDES: Procedural Justice: The Legal Recognition of Indigenous Participation in Water Management in the Murray-Darling Basin

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Procedural Justice

The legal recognition of Indigenous participation in water management in the Murray-Darling Basin

Dr Katie O'Bryan, Monash University
Indigenous Water Justice Symposium, 6 June 2016

Murray-Darling Basin



<http://pegsnet.pegs.vic.edu.au/>

Governance Structures - Commonwealth

Water Act 2007 (Cth):

- Murray-Darling Basin Authority
 - Prepares, implements and monitors the Basin Plan
- Commonwealth Environmental Water Holder
 - Manages Commonwealth environmental water holdings
- Basin Community Committee
 - Provides advice to the Murray-Darling Basin Authority

Commonwealth Review

- Expert Panel appointed in May 2014
- Submissions closed 14 July 2014
 - 74 submissions received
 - 13 sought better recognition of Indigenous interests
- Consultations with Indigenous organisations:
 - Murray and Lower Darling Rivers Indigenous Nations
 - Northern Basin Aboriginal Nations
 - Federation of Victorian Traditional Owner Corps
 - National Native Title Council
- Report tabled in December 2014

Expert Panel Report 2014

RECOMMENDATION 20

The Panel recommends that:

- (a) section 178(3) of the Act be amended to include expertise in Indigenous matters relevant to Basin water resources as a field relevant to the Authority's functions
- (b) section 172(1) of the Act, 'Authority's functions' be amended to add 'engage the Indigenous community on the use and management of Basin water resources' as a distinct function of the Authority
- (c) section 202(5) of the Act be amended to provide that the Basin Community Committee's membership must include at least two individuals with expertise in Indigenous matters relevant to Basin water resources.

Government Response 2015

- Response released in December 2015.
- Accepted all of the recommendations (2 in part).
- Water Amendment (Review Implementation and Other Measures) Bill 2015.
- Senate Committee recommended that the Bill be passed.
- Bill became law on 4 May 2016.
- Improves on recommendation 20(c).

Governance Structures - Victoria

- *Water Act 1989 (Vic)*
 - Water Corporations
 - Victorian Environmental Water Holder
- *Catchment & Land Protection Act 1984 (Vic)*
 - Catchment Management Authorities
 - Victorian Catchment Management Council
- No requirement for Indigenous representation on any of these entities

Victorian Review 2012-14

- Appointment of an expert panel:
 - Consulted with 'key stakeholders'
 - Limited and belated Indigenous involvement
- Release of a Water Bill Exposure Draft:
 - Explanatory documents & fact sheets (including one on Indigenous interests)
 - 9 public meetings
 - Separate meeting with the Federation of Victorian Traditional Owner Corporations
 - 146 submissions received, 20 sought better recognition of Indigenous interests

Victorian Review 2012-14

Outcome:

- Water Bill introduced into Parliament:
 - Minimal difference to the Exposure Draft re Indigenous interests - change to definition of cultural values to make it clear that it included Indigenous cultural values.

Conclusion:

- Consultation merely a 'tick-a-box' exercise.

Footnote:

- Water Bill lapsed because of a change in government, current *Water Act 1989* (Vic) still in force.

'Soft' law recognition and future reform

- Many existing strategies, policies and plans recognise importance of Indigenous involvement
- 2016 discussion paper on a new statewide water plan – strategic policy document on water management
 - 9 key elements, including 'recognising and managing for Aboriginal values'.
 - Acknowledges that Indigenous involvement in water management has been lacking to date.
- Other progress re governance:
 - Recent Indigenous appointments to Water Corporations and Catchment Management Authorities

Victoria and the MDB.

- Victoria is a Basin State.
- Under the MDB Plan, Basin States must prepare water resource plans.
- Water resource plans can consist of various documents, including existing strategies and policies.
- Victoria's strategies and policies encouraging Indigenous involvement in water management indicate compliance with Indigenous requirements of the MDB Plan.

Messages

- Consultation, without political will, is not inherently useful.
- There is a reluctance to formally recognise Indigenous interests in water management.
- Where formal legal recognition does occur, little change to existing arrangements.
- Symbolic value of formal legal recognition - elevation of status.
- Does it matter? Policies, strategies and plans - achieving more results on the ground...



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