



Fourth Respondent's Defence

NSD1201 of 2023

Federal Court of Australia
District Registry: New South Wales
Division: General

MURRAY LOWER DARLING RIVERS INDIGENOUS NATIONS (ACN 118 364 079)

Applicant

COMMONWEALTH OF AUSTRALIA AND ORS

Respondents

A. Jurisdiction

1. The Fourth Respondent admits the allegation in paragraph 1 of the Statement of Claim filed on 23 October 2023 (**SOC**).

B. The parties

2. The Fourth Respondent admits the allegations in paragraph 2 of the SOC.

3. In response to paragraph 3 of the SOC, the Fourth Respondent:

- a. admits that the Applicant has standing to seek the relief sought in the Originating Application; and
- b. otherwise denies the allegations in that paragraph.

4. The Fourth Respondent admits the allegations in paragraph 4 of the SOC.

5. The Fourth Respondent admits the allegations in paragraph 5 of the SOC.

6. The Fourth Respondent admits the allegations in paragraph 6 of the SOC.

7. The Fourth Respondent admits the allegations in paragraph 7 of the SOC.

C. Statutory functions

8. The Fourth Respondent admits paragraph 8 of the SOC but relies on the *Water Act 2007* (Cth) (**Water Act**) for its full force and effect.

Filed on behalf of (name & role of party)	The State of NSW, Fourth Respondent		
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9. The Fourth Respondent admits paragraph 9 of the SOC but relies on the Water Act for its full force and effect.
10. The Fourth Respondent admits paragraph 10 of the SOC but relies on the Water Act for its full force and effect.
11. The Fourth Respondent admits paragraph 11 of the SOC on the assumption the reference to s 63(4)(c) is intended to be a reference to s 63(3)(c), but relies on the Water Act for its full force and effect.
12. In response to paragraph 12 of the SOC, the Fourth Respondent:
 - a. says that the “Basin Plan” referred to in s 34(1) is defined in s 4 of the Water Act as the Basin Plan adopted by the Minister under s 44 (as amended from time to time);
 - b. says that the Basin Plan adopted at the time of the impugned decisions was the Relevant Basin Plan as defined in paragraph 13 of the SOC;
 - c. otherwise admits the paragraph; and
 - d. relies on the Water Act for its full force and effect.

D. Requirements of the Basin Plan

13. The Fourth Respondent admits the allegations in paragraph 13 of the SOC.
14. In response to paragraph 14 of the SOC, the Fourth Respondent:
 - a. admits that paragraph 14 paraphrases some of the requirements contained in the Relevant Basin Plan;
 - b. relies on the terms of the Relevant Basin Plan for their full force and effect; and
 - c. otherwise denies the allegations in the paragraph.

E. The First Water Resource Plan

15. The Fourth Respondent admits the allegations in paragraph 15 of the SOC.
16. The Fourth Respondent does not know and therefore cannot admit the allegations in paragraph 16 of the SOC.
17. The Fourth Respondent admits the allegations in paragraph 17 of the SOC.
18. The Fourth Respondent admits the allegations in paragraph 18 of the SOC.
19. The Fourth Respondent admits the allegations in paragraph 19 of the SOC.
20. In response to paragraph 20 of the SOC, the Fourth Respondent:

- a. admits that in the 2021 Notice of Grounds (as defined in paragraph 20 of the SOC) the Authority indicated it was not satisfied certain requirements in ss 10.52(1), 10.52(2), 10.53 and 10.54 of the then applicable version of the Basin Plan had been met;
- b. relies upon the terms of the 2021 Notice of Grounds for their full force and effect; and
- c. otherwise denies the allegations in that paragraph.

21. The Fourth Respondent admits the allegations in paragraph 21 of the SOC.

F. The Fractured Rock Water Resource Plan

22. The Fourth Respondent admits the allegations in paragraph 22 of the SOC.

23. The Fourth Respondent admits the allegations in paragraph 23 of the SOC.

24. In response to paragraph 24 of the SOC, the Fourth Respondent:

- a. says that the allegations are vague, embarrassing and ought be struck out; and
- b. under cover of that objection:
 - i. relies on the terms of the Proposed Water Resource Plan provided to the Authority on or about 14 July 2022 (**2022 PWRP**) for their full force and effect; and
 - ii. otherwise, denies the allegations in the paragraph.

25. In response to paragraph 25 of the SOC, the Fourth Respondent:

- a. says that the 2022 PWRP recorded at Section 1.3.1 that:
 - i. the Fourth Respondent sought to engage with the Tati Tati Nation via a nominated delegate of the Applicant;
 - ii. the engagement was not able to be progressed due to difficulties in maintaining contact with the Tati Tati Nation through the delegate;
 - iii. in November 2019 the Tati Tati Nation expressed interest in involvement in the process on the basis of payment for workshop attendees, but the 2022 PWRP noted that this was not a model used as part of the First Nation engagement by the Fourth Respondent although the Fourth Respondent does cover a range of costs associated with engagement;
 - iv. the Fourth Respondent sought permission from the Tati Tati Nation to consider relevant information supplied as part of the Victorian Water Resource Plans, and that while in principle support had been received no explicit permission had been provided; and

- v. in September 2020 further follow up was undertaken via the delegate to offer an additional opportunity for involvement, but no response had been received to indicate interest; and
 - b. otherwise admits the paragraph.
- 26. The Fourth Respondent does not know and therefore cannot admit the allegations in paragraph 26 of the SOC.
- 27. The Fourth Respondent admits the allegations in paragraph 27 of the SOC.
- 28. In response to paragraph 28 of the SOC, the Fourth Respondent:
 - a. relies on the terms of the MLDRIN Report (within the meaning of paragraph 27 of the SOC) for their full force and effect; and
 - b. otherwise denies the allegations in that paragraph.
- 29. The Fourth Respondent admits the allegations in paragraph 29 of the SOC.
- 30. The Fourth Respondent admits the allegations in paragraph 30 of the SOC.
- 31. The Fourth Respondent admits the allegations in paragraph 31 of the SOC.
- G. Ground for relief sought**
- G.1 The Recommendation Decision
- 32. In response to paragraph 32 of the SOC (including the grounds numbered (i) to (iii) appearing beneath that paragraph), the Fourth Respondent:
 - a. says that the allegations are vague, embarrassing and ought be struck out; and
 - b. under cover of that objection, denies the allegations.
- G.2 The Accreditation Decision
- 33. In response to paragraph 33 of the SOC (including the grounds numbered (i) to (iv) appearing beneath that paragraph), the Fourth Respondent:
 - a. does not know and therefore cannot admit the allegation in ground (iv);
 - b. in relation to the balance of the allegations:
 - i. says that the allegations are vague, embarrassing and ought be struck out; and
 - ii. under cover of that objection, denies the allegations.
- G.3 The Instrument
- 34. The Fourth Respondent denies the allegations in paragraph 34 of the SOC.

H. Orders Sought

35. In the premises, the Fourth Respondent:

- a. takes no position as to whether the Applicant is entitled to relief on the basis of the matters pleaded at ground (iv) under paragraph 33 of the SOC;
- b. otherwise denies that the Applicant is entitled to the relief sought in its Originating Application filed on 24 October 2023 and says that the Originating Application should be dismissed.

Date: 21 December 2023



Signed by Erin Gavin
Lawyer for the Fourth Respondent

This pleading was prepared by Craig Lenehan, Senior Counsel.

Certificate of lawyer

I Erin Gavin certify to the Court that, in relation to the defence filed on behalf of the Fourth Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 21 December 2023



Signed by Erin Gavin
Lawyer for the Respondent

NOTICE OF FILING

Details of Filing

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Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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