The Ramsar Convention in the Face of Climate Change: Just How Safe is the Coorong and Lakes Alexandrina and Albert Wetland?

By

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List of Abbreviations

CLL	Coorong and Lakes Alexandrina and Albert
COP	Conference of the Contracting Parties
ECD	Ecological Character Description
FNSE	First Nations of the South-East
MDB	Murray-Darling Basin
MEA	Multilateral environmental agreement
MNES	Matter of national environmental significance
RIS	Ramsar Information Sheet
STRP	Scientific and Technical Review Panel
WHC	World Heritage Convention

I INTRODUCTION

Wetlands are crucial for regulating the hydrological cycle, flood control and filtering pollutants.[1] Scientists and First Nations Peoples have long been aware of the value of these ecosystems,[2] and in the mid–late 20th century the international community finally caught up.

Concerned about the increasing loss and degradation of wetlands, the *Convention on Wetlands of International Importance Especially as Waterfowl Habitat* ('Ramsar Convention' or 'Convention') was adopted by countries and non-governmental organisations in Ramsar, Iran, in 1971.[3] The Convention entered into force on 21 December 1975, and Australia was among the earliest signatories.[4] By creating the Convention, states recognised the 'interdependence of Man [sic] and his environment',[5] and 'the fundamental ecological functions of wetlands as regulators of water regimes and as habitats supporting a characteristic flora and fauna'.[6] They were 'convinced that wetlands constitute a resource of great economic, cultural, scientific and recreational value, the loss of which would be irreparable'[7] and that their protection was therefore imperative.

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[1] Scott Leibowitz et al, 'National Hydrologic Connectivity Classification Links Wetlands with Stream Water Quality' (2023) 1(4) *Nature Water* 370.

[2] Ibid; Ngarrindjeri Nation and Steve Hemming, 'Ngarrindjeri Nation Yarluwar-Ruwe Plan: Caring for Ngarrindjeri Country and Culture: Kungun Ngarrindjeri Yunnann (Listen to Ngarrindjeri People Talking)' in Luke Mosley et al (eds), *Natural History of the Coorong, Lower Lakes, and Murray Mouth Region (Yarluwar-Ruwe)* (University of Adelaide Press, 2018) 3; Andy Ward and Stanley Trimble, *Environmental Hydrology* (CRC Press, 2nd ed, 2004); Geoffrey Matthews, *The Ramsar Convention on Wetlands: Its History and Development* (Ramsar Convention Secretariat, 1993).

[3] *Convention on Wetlands of International Importance Especially as Waterfowl Habitat*, opened for signature 3 February 1971, 14583 UNTS 996 (entered into force 21 December 1975) art 1.2 ('Ramsar Convention'); 'History of the Convention', *Convention on Wetlands* (Web Page, 26 December 2024) <https://www.ramsar.org/history-convention>.

[4] Ramsar Convention (n 3); 'Convention on Wetlands of International Importance Especially as Waterfowl Habitat', *United Nations Treaty Collection* (Web Page, 12 September 2025) <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280104c20>; Matthews (n 2).

[5] Ramsar Convention (n 3) preamble para 1.

[6] Ibid preamble para 2.

[7] Ibid preamble para 3.

Australia presently holds 67 Ramsar-listed wetlands covering roughly 84,000 km^2 of the country.[8] South Australia's Coorong and Lakes Alexandrina and Albert Wetland ('CLL'), shown in Figure 1, was listed under the Convention on 1 November 1985.[9]

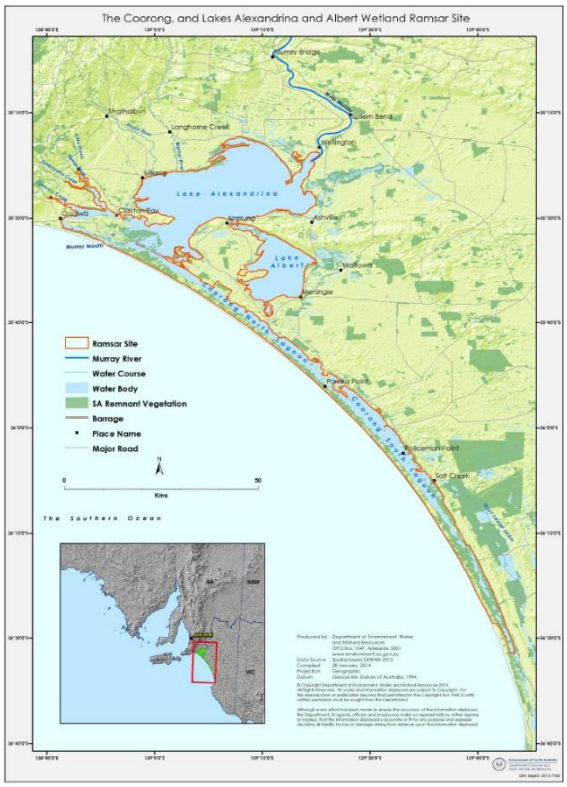

Figure 1: Defined boundaries of CLL site[9]

The *Kurangk* (Coorong) and surrounding area is of extreme significance to its First Nations Peoples,[10] being a place of prosperity, life and connection.[11] These groups have been known by many names over time,[12] but are now referred to as the Ngarrindjeri and the First Nations of the South-East ('FNSE').[13] Ngarrindjeri explain that their relationship to Country goes back to the Creation[14] when Ngurunderi, a spiritual ancestor, chased Pondi, the giant Murray Cod, from the junction where the Darling River and Murrundi (River Murray) meet,[15] carving the rivers and lakes. Throughout this journey and the shaping of Country,[16] foundational stories were established

[8] 'Australian Ramsar Wetlands', *Department of Climate Change, Energy, the Environment and Water* (Web Page, 2 November 2022) <https://www.dcceew.gov.au/water/wetlands/australian-wetlands-database/australian-ramsar-wetlands>.

[9] 'The Coorong, Lake Alexandrina & Albert Wetland', *Ramsar Sites Information Service* (Web Page, 1 January 2013) <https://rsis.ramsar.org/ris/321>.

[10] See 'First Nations Engagement', *CLLMM Research Centre* (Web Page) <https://cllmmresearchcentre.org/first-nations-engagement/>.

[11] Ngarrindjeri Nation and Hemming (n 2).

[12] Irene Watson, 'Colonial Logic and the Coorong Massacres' (2019) 40(1) *Adelaide Law Review* 167.

[13] 'First Nations Engagement' (n 10).

[14] Irene Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law* (Routledge, 2014) ch 2.

[15] Ngarrindjeri Nation and Hemming (n 2) 6.

[16] Ibid; 'We Are Ngarrindjeri', *Ngarrindjeri Regional Authority* (Web Page, 2014) <https://www.ngarrindjeri.org.au/>; SA Maritime Museum, 'Pondi: Kurri Winth-amaldi (Murray Cod: River Creator) – Murray Cod' (YouTube, 30 May 2022) <https://www.youtube.com/watch?v=y1Rnu823R6g>; Adelaide Festival Centre, 'Our Stories 2021: Thukeri, A Ngarrindjeri Story' (YouTube, 17 April 2023) <https://www.youtube.com/watch?v=sdn5K2gmxD4>.

which not only shape identity and law, but also guide environmental management through deep cultural knowledge and relational ethics.[17] Similar views are held by FNSE people.[18]

Located at the terminus of the Murray-Darling Basin ('MDB'), the CLL has endured profound disruption since British colonisation of the Australian continent.[19] The Murray River's transformation began in 1850,[20] when colonies began extracting its waters. In 1922,[21] the river's first major flow regulator was constructed, and in 1939[22] barrages were completed to prevent the exchange of sea and fresh water in Lakes Alexandrina and Albert. Over time, the river's natural rhythms were reshaped by a growing network of anthropogenic modifications.[23] Rivers die from the mouth up,[24] and in 1981, for the first time in recorded history, the Murray Mouth closed.[25] Even after the CLL was granted international protection following its listing in 1985, the decline continued,[26] and the site suffered through one of Australia's most severe droughts: the Millennium Drought.[27] Contemporary pressures from climate change exacerbate these impacts, and the three main effects on the region are:

(i) decreasing freshwater inflows;

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[17] Ngarrindjeri Nation and Hemming (n 2) 6.

[18] See, eg, Ken Jones, *The Angry Giant* (Knowledge Books and Software, 2021); Ken Jones, 'Boandik Water Wisdom: Stories That Flow Through Time', *Bush Adventures* (Blog Post, 7 May 2025) <https://www.bushadventures.com.au/post/boandik-water-wisdom-stories-that-flow-through-time>.

[19] Irene Watson, 'Colonial Logic and the Coorong Massacres' (n 12); Irene Watson, 'The Future is our Past: We Once Were Sovereign and We Still Are' (2012) 8(3) *Indigenous Law Bulletin* 12; Luke Mosley et al (eds), *Natural History of the Coorong, Lower Lakes, and Murray Mouth Region (Yarluwar-Ruwe)* (University of Adelaide Press, 2018).

[20] Murray-Darling Basin Authority, *The Living Murray Story – One of Australia's Largest River Restoration Projects* (Report No 157/11, 23 July 2011) iv <https://www.mdba.gov.au/sites/default/files/publications/living-murray-story.pdf>.

[21] Ibid.

[22] Ibid.

[23] Luke Mosley et al, 'Extreme Eutrophication and Salinisation in the Coorong Estuarine-Lagoon Ecosystem of Australia's Largest River Basin (Murray-Darling)' (2023) 188 *Marine Pollution Bulletin* 114648; Department of Environment, Water and Natural Resources, 'Information Sheet on Ramsar Wetlands' (Ramsar Information Sheet, May 2013) 21 <https://rsis.ramsar.org/RISapp/files/RISrep/AU321RIS.pdf> ('Updated RIS'); Emily O'Gorman, *Wetlands in a Dry Land* (Melbourne University Press, 2021).

[24] Conservation Council SA, 'A River Dies from the Mouth Up' (YouTube, 4 November 2021) <https://www.youtube.com/watch?v=H1sTXv14Hgg>.

[25] Murray-Darling Basin Authority, *The Living Murray Story* (n 20) iv.

[26] Letter Enclosing Article 3.2 Notification from Charlie Zammit to Peter Bridgewater, Convention on Wetlands Secretary General, 13 December 2006 <https://environment.gov.au/water/topics/wetlands/database/pubs/25-art-3-2-notification-20061213.pdf>.

[27] 'Previous Droughts', *Bureau of Meteorology* (Web Page, 26 September 2025) <https://www.bom.gov.au/climate/drought/knowledge-centre/previous-droughts.shtml>.

(ii) rising sea levels; and

(iii) warming land and water.[28]

Gillanders et al. explain that these variables interact in complex, cascading ways, so that wetlands like the CLL are shaped not by single stressors, but by interconnected drivers that accumulate to alter character.[29] This is depicted in Figure 2.

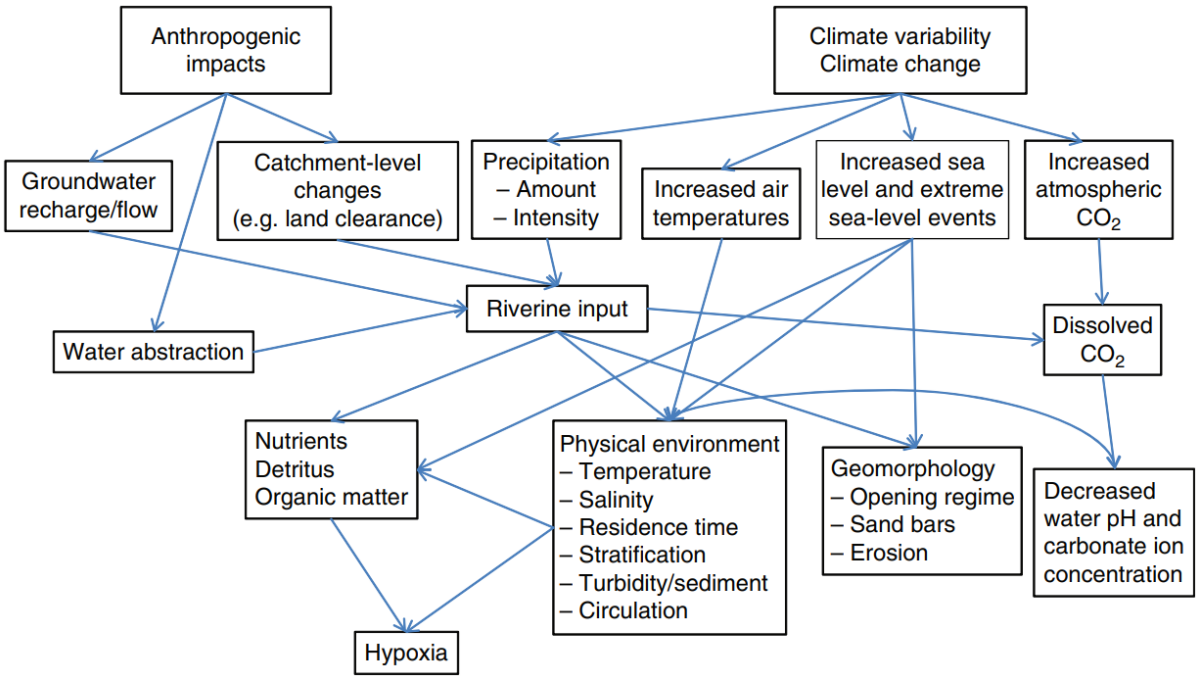

Figure 2: Potential links among influences on estuarine environments[29]

The story of the CLL is thus one of profound ecological and cultural significance under mounting pressure, where the impact of interconnected forces calls for urgent, coordinated and culturally sensitive action to protect its future.

[28] Gavin Rees et al, *Trajectories of Ecological Change in the Coorong and Lower Lakes, in Response to Climate Change* (Technical Report No 22/15, Goyder Institute for Water Research, 2022) 9.

[29] Bronwyn Gillanders et al, 'Potential Effects of Climate Change on Australian Estuaries and Fish Utilising Estuaries: A Review' (2011) 62(1) *Marine and Freshwater Research* 1115.

A *Roadmap*

In an era of intensifying climate change, protecting wetlands has become a central concern of academic inquiry.[30] Using the CLL as a case study, this dissertation assesses the Convention's adequacy, alongside Australia's implementation of its obligations, in addressing climate threats. This dual focus reflects the Convention's premise that 'the conservation of wetlands … can be ensured by combining far-sighted national policies with co-ordinated international action'.[31]

Following the adoption of the Convention's *Fifth Strategic Plan* in July 2025, this research contributes timely legal insight into the Convention's ability to embed climate resilience and Indigenous knowledges into wetland governance, these being key priorities of the Contracting Parties for the next decade.[32] Employing a doctrinal method enriched by a context-driven, phronetic approach,[33] it situates law within lived realities and identifies key reforms needed to fulfil the Convention's protective aims.

Chapter II outlines the Convention's history, purpose and evolution from waterfowl protection to broader wetland governance, and explains its operational framework, key obligations, and incorporation of climate considerations and Indigenous governance aspirations.

Chapter III explores the Convention's monitoring framework and its role in sustaining the ecological character of listed wetlands. My analysis highlights the Convention's limitations in scope, climate-blind definitions and triggers, and the undervaluation of Indigenous perspectives.

Moving to compliance and enforcement mechanisms, Chapter IV critiques the Convention's cooperative framework and how this shapes the protection of wetlands like the CLL. It evaluates the adequacy of compliance mechanisms and concludes that their largely voluntary, non-binding nature leads to under-utilisation and inconsistent outcomes. Through a comparison with

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[30] Ralph Temmink et al, 'Recovering Wetland Biogeomorphic Feedbacks to Restore the World's Biotic Carbon Hotspots' (2022) 376(6593) *Science* 1479; Catherine Lovelock et al, 'An Australian Blue Carbon Method to Estimate Climate Change Mitigation Benefits of Coastal Wetland Restoration' (2023) 31(7) *Restoration Ecology* 13739; Max Finlayson, 'Climate Change and the Wise Use of Wetlands: Information from Australian Wetlands' (2013) 708(1) *Hydrobiologia* 145; Neil Saintilan et al, 'Climate Change Impacts on the Coastal Wetlands of Australia' (2018) 39(6) *Wetlands* 1145.

[31] Ramsar Convention (n 3) preamble para 6.

[32] Conference of the Contracting Parties to the Convention on Wetlands, *The Strategic Plan of the Convention on Wetlands 2025–2034*, Resolution XV.3, COP15 (23–31 July 2025) <https://www.ramsar.org/sites/default/files/2025-09/xv.3_fifth_strategic_plan_e.pdf> ('*Fifth Strategic Plan*').

[33] Brendon Murphy and Jeffrey McGee, 'Phronetic Legal Inquiry An Effective Design for Law and Society Research?' (2015) 24(2) *Griffith Law Review* 288; Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) *Deakin Law Review* 83.

stronger analogous regimes such as the *World Heritage Convention* ('WHC')[34] and the *Convention on the Conservation of Migratory Species of Wild Animals* ('Bonn Convention'),[35] my analysis demonstrates how the discretion afforded to individual Contracting Parties and the limitation of procedural triggers together enable ongoing ecological decline.

Chapter V examines how Australia translates its obligations into domestic practice. It identifies three systemic shortcomings: fragmentation between federal, state and sectoral regimes; superficial incorporation of the Convention's principles, which sidesteps cumulative and climate-driven threats; and the marginalisation of Indigenous governance rights despite policy rhetoric.

Chapter VI then evaluates the modifications needed to ensure the long-term integrity of listed sites. I conclude with a call for binding intervention, genuine inclusion of Indigenous Peoples and climate-literate mechanisms to ensure that the Contracting Parties' ambitions translate into tangible wetland protection.

The Conclusion synthesises this dissertation's findings and reiterates the urgency of reform, offering a final reflection on how practices must evolve to safeguard wetlands like the CLL in a climate-altered future.

[34] *Convention Concerning the Protection of the World Cultural and Natural Heritage*, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975) ('World Heritage Convention').
[35] *Convention on the Conservation of Migratory Species of Wild Animals*, opened for signature 23 June 1979, 1651 UNTS 1 (entered into force 1 November 1983) ('Bonn Convention').

II The Convention's Structure, Purpose and Obligations

This chapter first discusses the structure and purpose of the Convention, providing an analytical overview of its mechanisms, goals and principles in fostering global wetland conservation. It then considers the Convention's operational framework, highlighting how its flexible design enables adaptation to emerging environmental challenges. In addition to this structural analysis, I examine the evolving nature of the Convention's obligations, particularly in the context of climate change.

A *The Convention's Purpose*

As the name suggests, the Convention was established to protect wetlands as waterfowl habitats.[36] Now, it is less bird-centric and acts primarily as a habitat protection regime.[37] Articles 3 and 4 frame the Convention's purpose as being for the long-term preservation of wetlands,[38] to be accomplished through national policies and coordinated international action,[39] emphasising the vital ecological, cultural and economic value of wetlands to global biodiversity and human wellbeing.[40]

The Convention defines wetlands broadly – as 'areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres'[41] – and waterfowl as birds that are 'ecologically dependent on wetlands'.[42] While these definitions do not strictly align with scientific classifications,[43] any feature that falls within them

[36] Matthews (n 2); Stuart Butchart et al, *Ecosystems and Human Wellbeing: Wetlands and Water* (Synthesis Report, World Resources Institute, 2005) <https://www.millenniumassessment.org/documents/document.358.aspx.pdf>.
[37] O'Gorman (n 23); Matthews (n 2).
[38] Ramsar Convention (n 3) arts 3–4.
[39] Ibid preamble para 6.
[40] Ibid.
[41] Ibid art 1.1.
[42] Ibid art 1.2.
[43] See Richard Kingsford, Alberto Basset and Leland Jackson, 'Wetlands: Conservation's Poor Cousins' (2016) 26(5) *Aquatic Conservation: Marine and Freshwater Ecosystems* 892; Edward Goodwin, 'Conservation of Coral Reefs Under the Ramsar Convention on Wetlands' (2006) 9(1) *Journal of International Wildlife Law & Policy* 1, 1; Scientific Technical Review Panel, 'Coral Reefs: Critical Wetlands in Severe Danger' (Fact Sheet, Ramsar Convention Secretariat, 2015) <https://www.ramsar.org/sites/default/files/documents/library/factsheet5_coral_reefs.pdf>.

and lies within a Contracting Party's territory receives a level of protection under the Convention.[44]

Article 2 mandates that Contracting Parties nominate suitable wetlands to be included on the List of Wetlands of International Importance ('List'),[45] designating 'at least one wetland'[46] when signing to the Convention. The List[47] presently contains 2,544 sites covering almost 2.6 million km^2 across 172 state territories.[48] Each wetland is selected with reference to the criteria stipulated in the Convention's text: 'ecology, botany, zoology, limnology or hydrology'.[49] This obligation has led to an expansive and diverse compilation of Ramsar sites worldwide.[50] The practicalities of listing are explored in Chapter III.

In line with general norms of international law,[51] the inclusion of a site on the List 'does not prejudice the exclusive sovereign rights of the Contracting Party in whose territory the wetland is situated'.[52] Further, inclusion on the List does not necessarily safeguard against harm; instead, it acts as an undertaking by the state to ensure the site's conservation[53] and 'wise use'.[54] In this context, the Convention encourages Contracting Parties to establish nature reserves, regardless of status,[55] to support waterfowl populations through habitat enhancement,[56] and to provide them with adequate 'wardening'.[57] The emphasis on training, research and knowledge exchange[58] reflects the Convention's deeper commitment to developing expertise in wetland management and, in this spirit, Contracting Parties are 'urged'[59] to pursue these goals through robust legal

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[44] Ramsar Convention (n 3) art 3.1.
[45] Ibid art 2.1.
[46] Ibid art 2.4.
[47] Ramsar Convention Secretariat, *The List of Wetlands of International Importance* (Official Document, 15 July 2025) <https://www.ramsar.org/sites/default/files/2023-08/sitelist.pdf>.
[48] Ibid; 'Ramsar Sites', *Ramsar Sites Information Service* (Web Page, 9 September 2025) <https://rsis.ramsar.org>.
[49] Ramsar Convention (n 3) art 2.2.
[50] 'Ramsar Sites' (n 48).
[51] Douglas Edgar Fisher, *Australian Environmental Law: Norms, Principles and Rules* (Thomson Reuters, 3rd ed, 2014) 59–84; Gerry Bates, *Environmental Law in Australia* (LexisNexis Butterworths, 10th ed, 2019) 72–8.
[52] Ramsar Convention (n 3) art 2.2.
[53] Ibid art 3.1.
[54] Ibid art 4.
[55] Ibid art 4.1.
[56] Ibid art 4.4.
[57] Ibid art 4.1.
[58] Ibid arts 4.5, 4.3.
[59] Conference of the Contracting Parties to the Convention on Wetlands, *Establishment of Wetland Reserves*, Recommendation IV.4, COP4 (27 June – 4 July 1990) <https://www.ramsar.org/sites/default/files/documents/library/key_rec_4.04e.pdf>.

frameworks, integrated management plans and public education programs.[60] Thus, while the Convention affirms state sovereignty over listed wetlands, it also includes clear expectations for proactive conservation, institutional strengthening and knowledge-sharing.

B *The Convention's Operational Structure and Reliance on COP Activity*

The Convention operates through three main bodies: the Conference of the Contracting Parties ('COP'), the Standing Committee and the Secretariat.[61] The COP, which meets every three years, sets priorities and makes key decisions.[62] Between COP sessions, the Standing Committee represents the Contracting Parties and provides oversight of the Secretariat.[63] The Secretariat manages daily functions, including maintenance of the List.[64] In addition, the Convention is supported by advisory bodies such as the Scientific and Technical Review Panel ('STRP'),[65] which formulates policies and provides technical guidance.[66] Together, these bodies form the core institutional framework that guides the implementation of the Convention and maintains oversight of its listed wetlands.

Since its inception, the Convention has undergone substantial evolution. Formal amendments to improve administrative and procedural efficiency were adopted in 1982[67] and 1987.[68] Notably,

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[60] Ibid; Ramsar Convention Secretariat, *Handbook 1: An Introduction to the Convention on Wetlands* (5th ed, 2016) 56 <https://www.ramsar.org/sites/default/files/documents/library/handbook1_5ed_introductiontoconvention_final_e.pdf>.

[61] 'The Bodies of the Convention', *Convention on Wetlands* (Web Page, 9 September 2025) <https://www.ramsar.org/about/bodies>.

[62] Ramsar Convention (n 3) art 6; 'The Conference of the Contracting Parties', *Convention on Wetlands* (Web Page) <https://www.ramsar.org/about/bodies/conference-contracting-parties>.

[63] 'The Standing Committee', *Convention on Wetlands* (Web Page, 9 September 2025) <https://www.ramsar.org/standing-committee>.

[64] Ibid; Daniel Klein and Edgar Fernandez Femandez, *Independent Analysis on the Legal Status of the Secretariat of the Convention on Wetlands (Ramsar Convention): Analysis of Options in Response to Decision SC57-14 of the Ramsar Convention Standing Committee* (Final Report, 15 July 2020) 7 <https://www.ramsar.org/sites/default/files/documents/library/independent_analysis_legal_status_secretariat_2020_e.pdf>;'The Secretariat', *Convention on Wetlands* (Web Page, 9 September 2025) <https://www.ramsar.org/about/bodies/secretariat>; Ramsar Convention (n 3) art 8.

[65] 'The Bodies of the Convention' (n 61).

[66] Ibid.

[67] *Convention on Wetlands of International Importance Especially as Waterfowl Habitat*, opened for signature 3 February 1971, 14583 UNTS 996 (entered into force 21 December 1975), as amended by Protocol opened for signature 3 December 1982, 1437 UNTS 344 (entered into force 1 October 1986) <https://treaties.un.org/doc/Publication/UNTS/Volume%201437/volume-1437-I-14583-English.pdf>.

[68] *Convention on Wetlands of International Importance Especially as Waterfowl Habitat*, opened for signature 3 February 1971, 14583 UNTS 996 (entered into force 21 December 1975), as amended by

Article 10-bis introduced a simplified amendment procedure for textual changes, requiring approval of only 'two-thirds of the Contracting Parties at the time of the adoption of that amendment'.[69] This allows the Convention to evolve more efficiently,[70] yet the majority of evolution has taken place in another way.

The Convention has evolved mainly through its broad, flexible obligations,[71] making it the earliest example of a multilateral dynamic or hybrid treaty.[72] The purpose of this structure was, and is, to use broadly worded provisions to establish a framework that can be rapidly developed in the light of new scientific findings.[73] This dynamic interpretation is based on the view that the text is a 'living instrument'.[74]

A substantial body of guidance, collectively known as COP activity, now supplements the Convention's text.[75] While such materials hold 'little meaning but for [their] connection to the treaty',[76] and they cannot create independent legal obligations,[77] the Convention should be read

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Protocol opened for signature 28 May 1987 (entered into force 1 May 1994) <https://www.ramsar.org/sites/default/files/documents/library/regina_amendments_e.pdf>.

[69] Conference of the Contracting Parties to the Convention on Wetlands, *Interpretation of Article 10 bis Paragraph 6 of the Convention*, Recommendation IV.1, COP4 (27 June – 4 July 1990) <https://www.ramsar.org/sites/default/files/documents/library/key_rec_4.01e.pdf> ('*Recommendation IV.1*')

[70] Ramsar Convention (n 3) art 10-bis(5).

[71] Viet Koester, *The Ramsar Convention on the Conservation of Wetlands – A Legal Analysis of the Adoption and Implementation of the Convention in Denmark* (Environmental Policy and Law Paper No 23, Ramsar Convention Bureau, 1989) 716 <https://www.nature.com/articles/188716b0>; Ornella Ferrajolo, 'State Obligations and Non-Compliance in the Ramsar System' (2011) 14(3) *Journal of International Wildlife Law & Policy* 243.

[72] Carina Bury, 'Deficient by Design? Why Australia's Ramsar Convention Implementation Deficits Are Symptomatic of Outdated Treaty Reception Mechanisms' (2024) 42(1) *Australian Year Book of International Law* 87, 93; Karen Scott, 'The Dynamic Evolution of International Environmental Law' (2018) 49(4) *Victoria University of Wellington Law Review* 607. See also Sebastián Andrés Rioseco Sullivan, 'The Influence of Conferences of the Parties on the Content and Implementation of their Parent Treaties' (PhD Thesis, University of Melbourne, 2021) 6.

[73] Bury, 'Deficient by Design' (n 72) 93; James Crawford, *Brownlie's Principles of Public International Law* (Oxford University Press, 9th ed, 2019) 365.

[74] Matthias Herdegen, 'Interpretation in International Law' in Anne Peters (ed), *Max Planck Encyclopedia of Public International Law* (Oxford University Press, online, 2020) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e723>; Daniel Moeckli and Nigel White, 'Treaties as "Living Instruments"' in Dino Kritsiotis and Michael J Bowman (eds), *Conceptual and Contextual Perspectives on the Modern Law of Treaties* (Cambridge University Press, 2018) 136.

[75] Bates (n 51) 60; Annecoos Wiersema, 'The New International Law-Makers? Conferences of the Parties to Multilateral Environmental Agreements' (2010) 31 *Michigan Journal of International Law* 231; Andrés Rioseco Sullivan (n 72) 6.

[76] Wiersema (n 75) 245.

[77] Ibid 250.

alongside its COP activity.[78] Article 6.3 also obliges Contracting Parties to 'ensure that those responsible … for wetlands management [are] informed of, and take into consideration'[79] such COP activity. This includes documents such as the Convention's *Fifth Strategic Plan*, adopted at the 15th meeting of the COP ('COP15') in July 2025,[80] which contains the Convention's goals and priorities for the next decade.[81] In this way, COP activity has become the primary vehicle for interpreting the Convention and steering its direction,[82] shaping how the Convention is operationalised and implemented across jurisdictions.

C *The Three Pillars*

The Convention imposes three key kinds of obligations.[83] Referred to as the Convention's 'three pillars',[84] the obligations may be grouped as relating to:

1. wise use;[85]
2. conservation of listed sites;[86] and
3. international cooperation.[87]

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[78] *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) arts 31(3)(a), 31(3)(b); Irina Buga, 'Subsequent Practice and Treaty Modification' in Dino Kritsiotis and Michael J Bowman (eds), *Conceptual and Contextual Perspectives on the Modern Law of Treaties* (Cambridge University Press, 2018) 363; Duncan French and Karen Scott, 'International Environmental Law' in Dino Kritsiotis and Michael Bowman (eds), *Conceptual and Contextual Perspectives on the Modern Law of Treaties* (Cambridge University Press, 2018) 677.

[79] Ramsar Convention (n 3) art 6.3.

[80] COP, *Fifth Strategic Plan* (n 32); 'Ramsar COP15 Concludes with Strengthened Global Commitment to Wetland Restoration and Inclusive Conservation', *International Union for Conservation of Nature and Natural Resources* (Web Page, 31 July 2025) <https://iucn.org/news/202507/ramsar-cop15-concludes-strengthened-global-commitment-wetland-restoration-and-inclusive>; 'Summary Report, 23–31 July 2025: 15th Session of the Conference of the Contracting Parties (COP15) of the Ramsar Convention on Wetlands', *International Institute for Sustainable Development* (Web Page, 10 September 2025) <https://enb.iisd.org/ramsar-convention-wetlands-cop15-summary>.

[81] COP, *Fifth Strategic Plan* (n 32).

[82] Wiersema (n 75), 250, 252–3; Duncan French, Matthew Saul and Nigel White, *International Law and Dispute Settlement: New Problems and Techniques* (Bloomsbury Publishing, 2012) ch 3; Scott (n 72) 618–25. See also Ramsar Convention (n 3) arts 6–7.

[83] Ramsar Convention Secretariat, *Handbook 3: Law and Institutions* (4th ed, 2010) 24 <https://www.ramsar.org/sites/default/files/documents/pdf/lib/hbk4-03.pdf>.

[84] Royal Gardner et al, 'Ramsar at the National Level: Application and Incorporation into Domestic Law' in Peter Gell, Nick Davidson and Max Finlayson (eds), *Ramsar Wetlands* (Elsevier, 2023) 69.

[85] Ramsar Convention (n 3) arts 3.1, 4.1, 4.4, 7.

[86] Ibid arts 2–4.

[87] Ibid arts 1.6, 4.2, 5, 6; COP, *Fifth Strategic Plan* (n 32); Conference of the Contracting Parties to the Convention on Wetlands, *Guidelines for International Cooperation under the Ramsar Convention*, Resolution VII.19, COP7 (10–18 May 1999) <https://www.ramsar.org/sites/default/files/documents/library/key_res_vii.19e.pdf> ('*Resolution VII.19*').

1 *Pillar One: Wise Use*

The Convention requires Contracting Parties to adopt far-sighted policies and laws,[88] and 'formulate and implement their planning so as to promote … the wise use of wetlands in their territory'.[89] This is perhaps the most well-known concept of the Convention,[90] and it has evolved drastically over time.[91]

Unlike the definitions of 'wetland'[92] or 'waterfowl',[93] the term wise use is defined solely through COP activity. This principle has been the subject of substantial debate since its inception,[94] and its first definition[95] differed significantly from its current formulation. Today, wise use means 'the maintenance of ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development'.[96] Thus, the principle – and by proxy the Convention – has been aligned with the broader principles and frameworks of global multilateral environmental agreements ('MEAs').[97]

The principle lies at the heart of the Convention and emphasises the sustainable utilisation and management of all wetlands to preserve their ecological character while simultaneously

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[88] Ramsar Convention (n 3) preamble para 6.
[89] Ibid art 3.1.
[90] Ibid.
[91] Ramsar Convention Secretariat, *Handbook 1: Wise Use of Wetlands: Concepts and Approaches for the Wise Use of Wetlands, vol 1* (4th ed, 2010) <https://www.ramsar.org/sites/default/files/documents/library/hbk4-01.pdf> ('*Handbook 1*'); Dave Pritchard, 'Wise Use Concept of the Ramsar Convention' in Max Finlayson et al (eds), *The Wetland Book: Structure and Function, Management, and Methods* (Springer Netherlands, 2018) 477.
[92] Ramsar Convention (n 3) art 1.1.
[93] Ibid art 1.2.
[94] See Ramsar Convention Secretariat, *Handbook 1* (n 91); Pritchard, 'Wise Use Concept of the Ramsar Convention' (n 91).
[95] Conference of the Contracting Parties to the Convention on Wetlands, *Wise Use of Wetlands*, Recommendation III.3, COP3, 27 May – 5 June 1987 <https://www.ramsar.org/sites/default/files/documents/library/key_rec_3.03e.pdf>.
[96] Ramsar Convention Secretariat, *Handbook 1* (n 91) 16.
[97] *Transforming Our World: The 2030 Agenda for Sustainable Development*, 70th session, Agenda Items 15, 116, UN Doc A/RES/70/1. See also Ramsar Convention Secretariat, *Handbook 18: Managing Wetlands* (4th ed, 2010) 19 <https://www.ramsar.org/sites/default/files/documents/pdf/lib/hbk4-18.pdf>; Scientific and Technical Review Panel, 'Evaluating the Risk to Ramsar Sites from Climate Change Induced Sea Level Rise' (Briefing Note No 5, Convention on Wetlands, December 2012) <https://www.ramsar.org/sites/default/files/documents/bn/bn5.pdf>; Jutta Brunnée and Christopher Campbell-Duruflé, 'Environment, Multilateral Agreements' in Anne Peters (ed), *Max Planck Encyclopedia of Public International Law* (Oxford University Press, online, 2022) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1760>.

addressing human needs for resources.[98] Indeed, wise use extends beyond conservation and encompasses significant social and economic aspects.[99] Accordingly, while the principle acknowledges the importance of sustainable practices to reduce impacts and safeguard ecological integrity,[100] it does not go as far as to recognise the intrinsic rights of wetlands.[101] Although wise use aspires to balance human needs with ecological preservation, its framing remains largely anthropocentric, emphasising the utility of wetlands to people.[102] Of course, their economic value is undeniable,[103] so attempts to reconcile social, environmental and economic objectives[104] often collapse into conflict,[105] with economic priorities typically prevailing.

2 *Pillar Two: Conservation of Listed Sites*

Article 3.1 requires parties to 'promote the conservation' of listed sites, that is, to maintain their ecological character.[106] As with wise use, ecological character has been defined through COP activity. Most recently, in 2005, the Contracting Parties defined the term as 'the combination of the ecosystem components, processes and benefits [that people receive from wetlands or]

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[98] Ramsar Convention (n 3) art 3.1, preamble para 1.

[99] Ramsar Convention Secretariat, *Handbook 1* (n 91); Max Finlayson et al, 'The Ramsar Convention and Ecosystem-Based Approaches to the Wise Use and Sustainable Development of Wetlands' (2011) 14(3) *Journal of International Wildlife Law & Policy* 176; Department of Climate Change, Energy, the Environment and Water, 'Australia's Obligations under the Ramsar Convention: Legislative Support for Wetlands' (Fact Sheet, 2021) <https://www.dcceew.gov.au/water/wetlands/publications/australias-obligations-under-ramsar-convention-legislative-support-wetlands-fact-sheet>; Conference of the Contracting Parties to the Convention on Wetlands, *Cultural Values and Practices of Indigenous Peoples and Local Communities and Their Contribution to Climate-Change Mitigation and Adaptation in Wetlands*, Resolution XIII.15, COP13, 21–29 October 2018 <https://www.ramsar.org/sites/default/files/documents/library/xiii.15_cultural_values_e.pdf> ('*Resolution XIII.15*'); Ramsar Convention (n 3) preamble para 3.

[100] Matthews (n 2) 11.

[101] For detailed discussion, see, eg, Jamie Murray, 'Earth Jurisprudence, Wild Law, Emergent Law: The Emerging Field of Ecology and Law – Part 2' (2015) 36(2) *Liverpool Law Review* 105; Erin O'Donnell, *Legal Rights for Rivers: Competition, Collaboration and Water Governance* (Routledge, 2019); Peter Burdon (ed), *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Wakefield Press, 2011).

[102] Ramsar Convention (n 3) preamble; Matthews (n 2) 11.

[103] Nick Davidson et al, 'Worth of Wetlands: Revised Global Monetary Values of Coastal and Inland Wetland Ecosystem Services' (2019) 70(8) *Marine and Freshwater Research* 1189.

[104] Ramsar Convention Secretariat, *Handbook 1* (n 91).

[105] Department for Environment and Heritage, *Murray Futures – The Coorong, Lower Lakes and Murray Mouth: Directions for a Healthy Future* (Report, May 2009) <https://data.environment.sa.gov.au/Content/Publications/cllmm_directions-for-a-healthy-future.pdf>.

[106] Conference of the Contracting Parties to the Convention on Wetlands, *Describing the Ecological Character of Wetlands, and Data Needs and Formats for Core Inventory: Harmonized Scientific and Technical Guidance,* Resolution X.15, COP10, 28 October – 4 November 2008 <https://www.ramsar.org/sites/default/files/documents/pdf/res/key_res_x_15_e.pdf> ('*Resolution X.15*').

services that characterise the wetland at a given point in time'.[107] Thus, the concept captures all human and non-human connections with wetlands. This definition explicitly recognises benefits to Indigenous Peoples,[108] thereby placing states under a duty to conserve those relationships. In the Australian context, this includes maintaining the cultural connectivity of the CLL to the FNSE and Ngarrindjeri.[109] The tools used to define and manage these ecological characteristics are the subject of the next chapter.

Building on this foundation, the Convention's *Fifth Strategic Plan* and related COP activity have sought to redress the historical sidelining of Indigenous perspectives by aligning the Convention with the *United Nations Declaration on the Rights of Indigenous Peoples*[110] and with evolving norms in international environmental law.[111] The *Fifth Strategic Plan* promotes collective action,[112] particularly through the involvement of Indigenous Peoples in restoration and conservation;[113] however, such involvement is encouraged rather than mandated.

The *Fifth Strategic Plan* also contains an explicit target to '[a]ddress the impacts of climate change on wetland degradation and loss'.[114] Given the acute vulnerability of wetlands to its impacts,[115] the mitigation of climate-induced degradation is framed as integral to their conservation.[116] This reinforces the ecological urgency of wetland protection while aligning climate adaptation and biodiversity conservation. While the second pillar centres on the internal duty of states to conserve their listed wetlands, the third extends this responsibility outward.

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[107] Conference of the Contracting Parties to the Convention on Wetlands, *A Conceptual Framework for the Wise Use of Wetlands and the Maintenance of Their Ecological Character*, Resolution IX.1, COP9, 8–15 November 2005, annex A <https://www.ramsar.org/sites/default/files/documents/pdf/guide/guide-wise-use-2005-e.pdf> ('*Resolution IX.1*').

[108] Ibid.

[109] COP, *Fifth Strategic Plan* (n 32) annex 1 [11(b)].

[110] *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007).

[111] COP, *Fifth Strategic Plan* (n 32) annex 1 [9]–[10]; Stefania Errico, 'Indigenous Peoples' (2023) 34(1) *Yearbook of International Environmental Law* 1; Hendrik A Strydom, 'Environment and Indigenous Peoples' in Anne Peters (ed), *Max Planck Encyclopedia of Public International Law* (Oxford University Press, online, 2022) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1761>.

[112] COP, *Fifth Strategic Plan* (n 32) annex 1 [7].

[113] Ibid; Ramsar Convention (n 3) art 3.1; Ramsar Convention Secretariat, *Handbook 1* (n 91).

[114] COP, *Fifth Strategic Plan* (n 32) annex 1 [29].

[115] Saintilan et al (n 30); Jamie Pittock, Lara Hansen and Robin Abell, 'Running Dry: Freshwater Biodiversity, Protected Areas and Climate Change' (2008) 9(3) *Biodiversity* 30.

[116] COP, *Fifth Strategic Plan* (n 32) annex 1 [10]–[11].

3 *Pillar Three: International Cooperation*

The Convention's third pillar supports the implementation of both pillars one and two. Article 2.6 stipulates that each Contracting Party 'consider its international responsibilities for the conservation, management and wise use of migratory stocks of waterfowl'.[117] Article 5 further articulates that the Contracting Parties should 'consult with each other about implementing obligations … especially in the case of a wetland extending over the territories of more than one Contracting Party or where a water system is shared'.[118] When consulting with one another, Contracting Parties are expected to 'endeavour to coordinate and support present and future policies and regulations concerning the conservation of wetlands and their flora and fauna'.[119] The third pillar thus operationalises the Convention's broader vision, being that wetland protection is to be pursued through shared responsibility and coordinated governance.

The Convention has created networks that support such collaboration,[120] and there are currently 18 such networks endorsed as operating under the framework.[121] The *East Asian-Australasian Flyway Partnership*[122] exemplifies regional cooperation in the protection of migratory bird species. As a key habitat within this network,[123] the CLL demonstrates Australia's broader obligations under the Convention's third pillar, being to evaluate the cross-border consequences of its actions while ensuring the protection of transboundary species across their full range.

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[117] Ramsar Convention (n 3) art 2.6.
[118] Ibid art 5.
[119] Ibid.
[120] Conference of the Contracting Parties to the Convention on Wetlands, *Ramsar Regional Initiatives*, Resolution XIV.7, COP14, 5–13 November 2022 <https://www.ramsar.org/sites/default/files/documents/library/xiv.7_ramsar_regional_initiatives_e.pdf> ('*Resolution XIV.7*').
[121] Conference of the Contracting Parties to the Convention on Wetlands, *Ramsar Regional Initiatives 2025–2028*, Resolution XV.5, COP15 (23–31 July 2025) <https://www.ramsar.org/sites/default/files/2025-09/xv.5_RRIs_e.pdf>.
[122] *Partnership for the Conservation of Migratory Waterbirds and the Sustainable Use of their Habitats in the East Asian – Australasian Flyway*, signed and entered into force 6 November 2006 <https://eaaflyway.net/wp-content/uploads/2020/06/EAAFP-Partnership-Doc-Updated-postMOP10-2020_04.pdf>; COP, *Resolution XIV.7* (n 120) 18.
[123] Department of Environment, Water and Natural Resources, 'Updated RIS' (n 23); Jody O'Connor, Daniel Rogers and Phil Pisanu, *Monitoring the Ramsar Status of the Coorong, Lakes and Murray Mouth: A Case Study Using Birds* (Technical Report No 2012/03, June 2012) <https://data.environment.sa.gov.au/Content/Publications/CLLMM_233_Monitoring%20the%20Ramsar%20Status%20-%20Case%20Study%20Using%20Birds_2012.pdf>.

D *Conclusion*

The Convention combines broad treaty text with COP guidance, and its three pillars establish a comprehensive vision. However, the principles underlying the Convention lack legal precision and they often remain rhetorical. This constrains the Convention's capacity to respond to present ecological threats. The next chapter demonstrates how this conceptual looseness translates into monitoring systems that fail to arrest ecological decline in practice, before Chapter IV considers how the Convention's obligations are enforced.

III The Maintenance of Ecological Character

This chapter explores the obligations arising under the Convention's second pillar, as articulated in Article 3,[124] and examines the application of the Convention's monitoring framework – primarily the use of Ecological Character Descriptions ('ECDs') – to the CLL in the context of accelerated environmental change. It argues that, in the face of climate change, the Convention's current approach is ill-equipped to accommodate the dynamic and complex realities of ecosystems. Likewise, it argues that, because the potential degradation of listed sites caused by climate change triggers no mechanism for restoration under the current framework, this threatens the stated purpose of the Convention 'to stem the … loss of wetlands now and in the future'.[125]

A *Describing a Site*

The terms "criteria" and "character" serve distinct roles in the nomination and management of Ramsar-listed wetlands. The two terms originate from separate parts of the Convention's text and subsequent COP activity.[126] Criteria are the specific qualifications a wetland must meet to be listed under the Convention, whereas character refers to the defined attributes of a site, including the interactions between them.[127]

Article 2.2 establishes that a wetland may be listed if it is of 'international significance in terms of ecology, botany, zoology, limnology or hydrology',[128] particularly where it provides habitat capable of supporting 'waterfowl at any season'.[129] The Convention currently uses nine criteria, grouped into two categories, to assess a wetland's importance.[130] The first category, Group A, focuses on the physical characteristics of the wetland itself, specifically, whether it contains 'representative, rare or unique wetland types'[131] within its biogeographic region. The second category, Group B,

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[124] Ramsar Convention (n 3) art 3; COP, *Resolution X.15* (n 106)
[125] Ramsar Convention (n 3) preamble para 4.
[126] See Ibid arts 6, 7.
[127] Ibid preamble para 2, art 2.2; COP, *Resolution X.15* (n 106).
[128] Ramsar Convention (n 3) art 2.2.
[129] Ibid.
[130] Ramsar Convention Secretariat, *Strategic Framework and Guidelines for the Future Development of the List of Wetlands of International Importance of the Convention on Wetlands 2022 Update* (Guidelines, 2022) <https://www.ramsar.org/sites/default/files/documents/library/xi.8_annex2_framework_for_new_rsis_e_revcop14.pdf> ('*Strategic Framework*'); Conference of the Contracting Parties to the Convention on Wetlands, *Streamlining Procedures for Describing Ramsar Sites at the Time of Designation and Subsequent Updates*, Resolution XI.8, COP11 (6–13 July 2012) Annex 2<https://www.ramsar.org/sites/default/files/documents/library/cop11-res08-e-anx2_revcop14.pdf>.
[131] Ramsar Convention Secretariat, *Strategic Framework* (n 130) 26.

encompasses the biological values of the wetland.[132] Group B criteria assess whether the site supports threatened species or ecological communities, contributes to regional biodiversity, provides critical habitat during key life stages, or serves as a refuge.[133] Group B also includes criteria specific to waterbirds, fish and other wetland-dependent animals.[134] A wetland may meet one or several of these criteria. For example, the CLL is presently listed under eight of the nine criteria,[135] reflecting its international significance in terms of its wetland types, ecological communities, waterbirds and fish.[136]

Although no criteria address cultural value directly,[137] a site's Ramsar Information Sheet ('RIS') can record cultural perspectives when the site holds significant cultural values alongside ecological values.[138] Accordingly, Ngarrindjeri perspectives are noted throughout the CLL's RIS. In practice, cultural values are rarely incorporated and tend to carry little weight in a site's management.[139] In fact, Oviedo and Ali reveal that, although almost all sites have been recognised as providing cultural ecosystem services, only 12.9% of sites are recognised for their cultural characteristics.[140] It is therefore notable that FNSE perspectives remain excluded from formal RIS recognition.[141]

This gap between cultural recognition and ecological framing matters. Cultural relationships shape and sustain a wetland's character, and maintaining that character is essential to meeting

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[132] Ibid.
[133] Ibid.
[134] Ibid 26–7.
[135] 'The Coorong, Lake Alexandrina & Albert Wetland' (n 9); Ramsar Convention Secretariat, *Strategic Framework* (n 130).
[136] 'The Coorong, Lake Alexandrina & Albert Wetland' (n 9); David Paton, Fiona Paton and Colin Bailey, *Ecological Character Description for Ruppia Tuberosa in the Coorong* (Report, Adelaide University School of Biological Sciences, June 2015) <https://data.environment.sa.gov.au/Content/Publications/CLLMM_220_ECD%20for%20Ruppia%20Tuberosa_2015.pdf>; Department of Environment, Water and Natural Resources, 'Updated RIS' (n 23).
[137] See Ramsar Convention Secretariat, *Strategic Framework* (n 130); Gonzalo Oviedo and Mariam Kenza Ali, *The Relationship of Indigenous Peoples and Local Communities with Wetlands* (Initial Report, Ramsar Convention Secretariat, August 2018); Steve Hemming et al, 'Ngarrindjeri Vision for the Ecological Character Description of the Coorong and Lower Lakes' in Luke Mosley et al (eds), *Natural History of the Coorong, Lower Lakes, and Murray Mouth Region (Yarluwar-Ruwe)* (University of Adelaide Press, 2018) 494.
[138] Department of Environment, Water and Natural Resources, 'Updated RIS' (n 23) 19; Ramsar Convention Secretariat, *Strategic Framework* (n 130) 69.
[139] Oviedo and Ali (n 137) 21; Department of Environment, Water and Natural Resources, 'Updated RIS' (n 23).
[140] Oviedo and Ali (n 137) 21.
[141] Department for Environment and Water, *Draft Ramsar Management Plan: the Coorong and Lakes Alexandrina and Albert Wetland* (Draft Report, March 2024) 23.

its original listing criteria.[142] For example, the ecological character of the CLL reflects the interplay of flora, fauna, freshwater flows, estuarine dynamics and cultural connections.[143] These interwoven dynamics highlight the need for clarity around how the CLL's character is defined and maintained, as explored below.

B *Framing Ecological Character: Issues and Limitations*

Ecological characteristics are a defining feature of Ramsar-listed wetlands,[144] and their ongoing monitoring and maintenance is a formal obligation under Article 3.1.[145] These characteristics are documented at the time a site is designated for listing,[146] serving as a baseline against which future changes are assessed.[147]

Recognising that the RIS format alone was insufficient to record the complexity of wetland ecosystems, Australia created some of the world's first ECDs.[148] This format was later formally adopted by the Contracting Parties in 2008.[149] Across some 330 pages, the CLL's 2006 ECD provides a detailed account of the site's ecological attributes and identifies key determinants of ecological character, including water quality parameters, biological components, and the structure and connectivity of habitats.[150] These elements are shaped by broader natural system drivers, such as climate,[151] which are themselves influenced by human activity.[152] In the case of

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[142] Ramsar Convention (n 3) art 3.1.
[143] Bill Phillips and Kerri Muller, *Ecological Character Description – Coorong, Lakes Alexandrina and Albert Wetland of International Importance* (Technical Assessment Report, Department for the Environment and Heritage, 2006) <https://cdn.environment.sa.gov.au/environment/docs/Coorong-and-Lakes-Alexandrina-and-Albert-Wetland-Ecological-Character-Description-2006.pdf>.
[144] Ramsar Convention (n 3) preamble para 2, art 2.2.
[145] Ibid art 3.2; COP, *Resolution X.15* (n 106).
[146] Conference of the Contracting Parties to the Convention on Wetlands, *Guidelines for Operation of the Montreux Record*, Resolution VI.1, COP6 (19–27 March 1996) [2.1] <https://www.ramsar.org/sites/default/files/documents/library/guidelines_for_operation_of_the_montreux_record_e.pdf> ('*Resolution VI.1*'); COP, *Resolution X.15* (n 106).
[147] Ramsar Convention Secretariat, *Handbook 15: Wetland Inventory a Ramsar Framework for Wetland Inventory and Ecological Character Description* (4th ed, 2010) <https://www.ramsar.org/sites/default/files/documents/pdf/lib/hbk4-15.pdf>.
[148] Dave Pritchard, *Change in Ecological Character of Wetland Sites – A Review of Ramsar Guidance and Mechanisms* (Consultant Report, Ramsar Convention Secretariat, 2014) <https://www.ramsar.org/sites/default/files/documents/library/ecological_character_report_long_18112914_e.pdf>; Department of the Environment, Water, Heritage and the Arts, *National Framework and Guidance for Describing the Ecological Character of Australian Ramsar Sites* (National Guidelines, 2008) <https://www.dcceew.gov.au/sites/default/files/documents/module-2-framework.pdf>.
[149] COP, *Resolution X.15* (n 106).
[150] Phillips and Muller, *Ecological Character Description* (n 143) 18, 166.
[151] Ibid.
[152] Ibid 167.

the CLL, anthropogenic influences are particularly significant.[153] These influences affect ecological processes and, in turn, the ecosystem services and benefits that define the site's character.[154]

The ECD identified numerous features in need of attention, including wading birds, wetland-dependent birds, estuarine fish species, and key flora and fauna.[155] The wetland habitats themselves were also found to require intervention.[156] Of the 54 parameters assessed, only three were considered adequately managed,[157] a finding so serious that the authors found it would be 'irresponsible … not to express their concerns'.[158]

Despite these clear warnings, subsequent efforts have failed to reverse the trajectory of decline.[159] The ecological attributes that justified the CLL's inclusion on the List are under increasing strain,[160] having endured a century of decline brought on by human pressures and exacerbated by the effects of climate change.[161] As a result, both the site's Ramsar status and its long-term viability are in jeopardy.[162] This ongoing ecological deterioration not only undermines the site's listing criteria but also places at risk the relationships embedded within its character.

Although cultural connectivity is recognised as part of ecological character,[163] incorporating First Nations' perspectives into an ECD is not mandatory.[164] Accordingly, while Ngarrindjeri perspectives are acknowledged, those of FNSE are noticeably absent. Ngarrindjeri people have

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[153] Phillips and Muller, *Ecological Character Description* (n 143) 18, 167.
[154] Ibid.
[155] Ibid.
[156] Ibid.
[157] Ibid.
[158] Ibid 240.
[159] Matthew Colloff et al, 'Murky Waters Running Clearer? Monitoring, Reporting and Evaluation of the State of the Murray–Darling Basin after More than Three Decades of Policy Reform' (2024) 75(18) *Marine and Freshwater Research* 24193; Nicky Grigg, Michael Dunlop and Maryam Ahmad, *Preliminary Climate Change Vulnerability Assessment for the Coorong, Lower Lakes and Murray Mouth* (Technical Report No 22/17, 2022).
[160] Rees et al (n 28) 2; Richard Kingsford et al, 'A Ramsar Wetland in Crisis – the Coorong, Lower Lakes and Murray Mouth, Australia' (2011) 62(3) *Marine and Freshwater Research* 255; Grigg, Dunlop and Ahmad (n 159).
[161] Phillips and Muller, *Ecological Character Description* (n 143) 240.
[162] Luke Mosley et al, 'Extreme Eutrophication and Salinisation in the Coorong' (n 23); Richard Beasley, *Commissioner for the River Murray in South Australia Annual Report 2023–24* (Report, 2024) <https://cdn.environment.sa.gov.au/environment/docs/RM-Commissioner-Annual-Report-2023-24.pdf>; Rees et al (n 28); Kingsford et al, 'A Ramsar Wetland in Crisis' (n 160); Grigg, Dunlop and Ahmad (n 159) 26.
[163] COP, *Resolution X.15* (n 106).
[164] Oviedo and Ali (n 137) 30, 48.

described the CLL as 'life giving waters',[165] central to Dreamtime stories, law and identity.[166] Comparable connections are held by FNSE people.[167] Without embedding all of these worldviews, the ECD cannot meaningfully reflect the ecological character as understood by all of the communities most intimately connected to the site.

Australia rightly included Ngarrindjeri in the formulation of the CLL's ECD.[168] This partnership aimed to 'transform the ECD from a narrow ecological perspective to a broader one that incorporates Ngarrindjeri values and perspectives throughout the whole document'.[169] However, the drafters concluded that the framework was 'inadequate for truly engaging with the Ngarrindjeri worldview based on principles of connectivity, responsibility, reciprocity and mutuality'.[170] This shortfall is particularly significant as climate change accelerates ecological decline and disrupts Indigenous relationships with Country.[171] Without capturing these principles,[172] the framework cannot address the impacts that follow, nor can it fulfil the Convention's commitment to inclusive socio-ecological protection.[173]

This weakness reflects a deeper conceptual problem. Although the Convention purports to protect Indigenous connections to place,[174] 'the current framing of ecological character and wise use perpetuates a nature–human dichotomy'.[175] This is inconsistent with the understandings of many First Peoples.[176] The ECD reinforces this separation by reducing the site to a series of

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[165] Phillips and Muller, *Ecological Character Description* (n 143) 244.
[166] Ngarrindjeri Nation and Hemming (n 2); Jessica Weir, *Murray River Country: An Ecological Dialogue with Traditional Owners* (Aboriginal Studies Press, 2009) 57; Hemming et al (n 137) 494.
[167] Department for Environment and Water, *Draft Ramsar Management Plan* (n 141) 13.
[168] Hemming et al (n 137) 496.
[169] Ibid.
[170] Ibid.
[171] Ben Taylor et al, *Ngarrindjeri Climate Yarning 2023* (Report prepared for Ngarrindjeri Aboriginal Corporation, 2023) <https://sadroughthub.com.au/wp-content/uploads/2024/02/Climate-Change-Yarning-Circles-2023-Report-FINAL.pdf>.
[172] Hemming et al (n 137) 496.
[173] COP, *Fifth Strategic Plan* (n 32); Oviedo and Ali (n 137); Simon Marsden, 'Indigenous Peoples and Local Communities: Wetlands Management in International Law and Australian Practice' (2023) 39(2) *Environmental and Planning Law Journal* 146; Ramsar Convention Secretariat, *Handbook 7: Participatory Skills* (4th ed, 2010) <https://www.ramsar.org/sites/default/files/documents/pdf/lib/hbk4-07.pdf>.
[174] Ramsar Convention (n 3) preamble para 2, art 2.2; COP, *Resolution X.15* (n 106).
[175] Ritesh Kumar, Pierre Horwitz and Max Finlayson, 'Wetlands as Social–Ecological Systems: Bridging Nature and Society' in Peter Gell, Nick Davidson and Max Finlayson (eds), *Ramsar Wetlands* (Elsevier, 2023) 525. See also Burdon (n 101); Deepa Joshi et al, 'Ramsar Convention and the Wise Use of Wetlands: Rethinking Inclusion' (2021) 39(1) *Ecological Restoration* 36.
[176] Hemming et al (n 137); Yvonne Vizina, 'Indigenous Perspectives of Sustainable Development' in Walter Leal Filho (ed), *Encyclopedia of Sustainability in Higher Education* (Springer International Publishing, 2019) 932; Butchart et al (n 36); Kamaljit Sangha et al, 'Ecosystems and Indigenous Well-Being: An

discrete attributes, rather than treating it holistically. For the Ngarrindjeri and FNSE Peoples, however, the CLL is not simply a collection of ecological attributes but a living cultural landscape,[177] tied to law, identity and responsibility.[178] While the ECD acknowledges Ngarrindjeri values in principle,[179] it fails to truly engage with their worldview; by omitting such perspectives, it compromises the very baseline against which meaningful change is detected.

C *What Is a "Change" In Ecological Character?*

Article 3.2 requires that Contracting Parties 'arrange to be informed at the earliest possible time'[180] of any change to the ecological character of their listed sites. While 'change' is generally understood,[181] its meaning under the Convention is far from straightforward.[182] For these purposes, a change in ecological character is 'the human-induced adverse alteration of any ecosystem component, process, and/or ecosystem benefit/service'.[183] This selective definition excludes both 'processes of natural evolutionary change occurring in wetlands'[184] and any changes considered to be 'positive human-induced change'.[185]

This narrow definition of change limits the obligations imposed by Article 3 to those changes deemed materially 'adverse'[186] and 'human-induced';[187] however, many supposedly objective

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Integrated Framework' (2015) 4 *Global Ecology and Conservation* 197, 200; Nicole Redvers et al, 'The Determinants of Planetary Health: An Indigenous Consensus Perspective' (2022) 6(2) *The Lancet Planetary Health* 156; Mamaweswen Niigaaniin and Timothy MacNeill, 'Indigenous Culture and Nature Relatedness: Results from a Collaborative Study' (2022) 44 *Environmental Development* 1.

[177] Terri Janke et al, 'Indigenous' in Commonwealth of Australia, *Australia State of the Environment 2021* (Report, 2021) <https://soe.dcceew.gov.au/indigenous/introduction>; Ngarrindjeri Nation and Hemming (n 2) 4; Weir (n 166) 48.

[178] Sangha et al (n 176); Scientific and Technical Review Panel, 'Limits of Acceptable Change: The Definition and Operation of Concepts and Approaches for "Limits of Acceptable Change" Which May Be Applicable to the Ramsar Context of Defining and Detecting Change in the Ecological Character of Wetlands' (Information Paper, COP11 Doc 24, 2012) <https://www.ramsar.org/sites/default/files/documents/pdf/cop11/doc/cop11-doc24-e-limits.pdf>; Ramsar Convention Secretariat, *Handbook 15* (n 147); Ramsar Convention Secretariat, *Handbook 19: Addressing Change in Wetland Ecological Character* (4th ed, 2010) <https://www.ramsar.org/sites/default/files/documents/pdf/lib/hbk4-19.pdf>.

[179] Phillips and Muller, *Ecological Character Description* (n 143) 255.

[180] Ramsar Convention (n 3) art 3.2.

[181] *Macquarie Dictionary* (online at 28 April 2025) 'change' (def 1).

[182] Grigg, Dunlop and Ahmad (n 159).

[183] COP, *Resolution IX.1* (n 107) annex A. See also Ramsar Convention Secretariat, *Handbook 19* (n 178) 10.

[184] COP, *Resolution IX.1* (n 107) annex A, 6.

[185] Ibid.

[186] Ibid; Ramsar Convention Secretariat, *Handbook 19* (n 178) 10.

[187] Ibid.

ecological values are shaped by cultural perspectives and societal preferences.[188] They reflect human-centred judgements that are deeply influenced by prevailing philosophical frameworks and the ways in which language constructs meaning.[189] Indeed, as Bridgewater – former Secretary General of the Convention – argued in 2008, while the Convention's human-scale framing is understandable, its definitions fail to reflect actual dynamics, especially amid rapid changes to the biosphere.[190] This definition exemplifies how political and cultural perspectives influence environmental governance, frequently promoting anthropocentric bias.[191] By framing change only in terms of what is considered to be negative or caused only by human activities, the Convention overlooks key drivers of change and narrows the scope of legitimate degradation.

Change is, by necessity, a threshold question. The quantifiable limits,[192] determined by the responsible Contracting Party, are defined in the site's ECD. The tension between the Convention's definitional thresholds and the dynamic ecological realities of wetlands exposes a misalignment between the Convention's working mechanisms and the ecosystems it protects, particularly under climate stress.[193] In effect, the strength and comprehensiveness of the ECD directly inform the Contracting Party's capacity to detect and respond to change. Without a robust ECD, it becomes difficult to assess whether a change has occurred, let alone whether it can justify a notification to the Convention under Article 3.2.[194]

D *Article 3.2 Notifications and Climate Exclusion*

Under Article 3.2, each Contracting Party must notify the Secretariat if the ecological character of one of its sites 'has changed, is changing, or is likely to change'.[195] Once a change in ecological

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[188] Dave Pritchard, 'Human Culture and Its Evolving Place in the Ramsar Convention' in Peter Gell, Nick Davidson and Max Finlayson (eds), *Ramsar Wetlands* (Elsevier, 2023) 417, 417. See also O'Donnell (n 101) 3.

[189] Pritchard, 'Human Culture and Its Evolving Place in the Ramsar Convention' (n 188) 417. See also O'Donnell (n 101) 3.

[190] Peter Bridgewater, 'A New Context for the Ramsar Convention: Wetlands in a Changing World' (2008) 17(1) *Review of European Community & International Environmental Law* 100, 106.

[191] See O'Donnell (n 101) 17–19; Burdon (n 101); Scientific and Technical Review Panel, 'Limits of Acceptable Change' (n 178) 30.

[192] Conference of the Contracting Parties to the Convention on Wetlands, *The Record of Ramsar Sites Where Changes in Ecological Character Have Occurred, Are Occurring, or Are Likely to Occur (Montreux Record)*, Resolution V.4, COP5, 9–16 June 1993 <https://www.ramsar.org/sites/default/files/documents/pdf/res/key_res_5.4e.pdf> ('*Resolution V.4*'); Scientific and Technical Review Panel, 'Limits of Acceptable Change' (n 178).

[193] Keely Mills et al, 'Cultural Landscapes: Human Impacts on Wetlands' in Max Finlayson, Nick Davidson and Peter Gell (eds), *Ramsar Wetlands: Values, Assessment, Management* (Elsevier, 2023) 237, 248.

[194] Ramsar Convention (n 3) art 3.2.

[195] Ibid.

character is confirmed and formally notified, a response strategy must be developed.[196] The trajectory of that response may see the site return to its original state, reach a new ecological equilibrium, or remain in flux.[197] Where the Contracting Party establishes a new baseline, it may rescind the notification and submit updated documentation, including an ECD, to reflect the change.[198]

Importantly, notifications are required only when degradation is attributable to 'technological developments, pollution or other human interference',[199] and deemed materially adverse,[200] not for all observable decline. Notification does not remove a site from the List; instead, it triggers the conservation measures explored in the next chapter of this dissertation.[201] To date, Australia has submitted 19 notifications for its 67 sites.[202]

In 2006, Australia lodged an Article 3.2 notification for the CLL,[203] confirming the site's long-term deterioration,[204] exacerbated by conditions throughout the Millennium Drought.[205] Despite the site's change in character,[206] it retained its place on the List.[207] Nineteen years later, that notification remains unresolved.[208] Over this period, human-induced reductions in river inflows

[196] Department of the Environment, Water, Heritage and the Arts, *National Guidance on Notifying Change in Ecological Character of Australian Ramsar Wetlands (Article 3.2)* (National Guidelines for Ramsar Wetlands, 2009) 11 <https://www.ramsar.org/sites/default/files/documents/library/wurc_australia_article3-2.pdf> ('*National Guidance on Article 3.2 Notifications*').
[197] Ibid.
[198] Ibid.
[199] Ramsar Convention (n 3) art 3.2; Ramsar Convention Secretariat, *Handbook 19* (n 178) 10; COP, *Resolution IX.1* (n 107) annex A.
[200] COP, *Resolution IX.1* (n 107) annex A; Ramsar Convention Secretariat, *Handbook 19* (n 178) 10.
[201] Ramsar Convention Secretariat, *Handbook 19* (n 178).
[202] Nick Davidson et al, 'A Review of the Adequacy of Reporting to the Ramsar Convention on Change in the Ecological Character of Wetlands' (2019) 71(1) *Marine and Freshwater Research* 117, app 1 ('Review of the Adequacy').
[203] Letter Enclosing Article 3.2 Notification (n 26).
[204] Ibid.
[205] Ibid; Rees et al (n 28) i.
[206] Ramsar Convention Secretariat, *Strategic Framework* (n 130) 15–16.
[207] Department of Environment, Water and Natural Resources, 'Updated RIS' (n 23) 4.
[208] Ramsar Convention Secretariat, *Report of the Secretariat Pursuant to Article 8.2 on the List of Wetlands of International Importance*, Doc 9 Rev 1, 15th Meeting of the Conference of the Contracting Parties, 23–31 July 2025 <https://www.ramsar.org/sites/default/files/2025-07/COP15_9_rev1_report_list_wii_e.pdf> ('*COP15 Article 8.2 Report*').

have continued to erode the site's integrity[209] and, when coupled with increased climate variability, these pressures threaten to accelerate its degradation.[210]

Crucially, though, climate-induced degradation is excluded from notification obligations. To date, the COP has been silent on the issue, and the STRP has advised that 'change in wetland ecological character as a result of climate change should be regarded as lying beyond the scope of Article 3.2 (regardless of whether or not it is anthropogenic), and that the use of Article 3.2 in this context should be discouraged'.[211] This problematic interpretation sidelines degradation caused by climate change from the notification process that triggers protection, leaving the Convention oblivious to one of the most pervasive drivers of wetland loss.

Australia has adopted a similar position, stating that

> A notification will not be made where climate change is the principal cause of identified ecological character change … [W]here it appears that climate change is the main driver of ecological character change, and until such a time as the Convention provides guidance on an approach to this issue, it will not be an accepted basis on which to make a notification.[212]

However, as the Standing Committee has noted, assigning a cause may be difficult as changes that seem natural may actually stem from human activities outside the site.[213] Indeed, this is particularly problematic where, as is the case in the CLL, climate change and human interference both produce the same effect, such as reduced inflows.

Australia's position, and that of the Convention itself, is that climate change is an uncontrollable driver. In reality, ecological change often reflects a complex interplay of pressures,[214] making it artificial to exclude certain impacts from notification. The difficulty of disentangling natural and human drivers of change is only heightened amid rapid climatic shifts. Despite the urgency of this issue, COP15 in July 2025 offered no guidance, leaving sites like the CLL effectively defenceless

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[209] Rees et al (n 28) 15, 33.
[210] Ibid 30.
[211] Scientific and Technical Review Panel, 'Limits of Acceptable Change' (n 178) [27].
[212] Department of the Environment, Water, Heritage and the Arts, *National Guidance on Article 3.2 Notifications* (n 196) 8–9.
[213] Conference of the Contracting Parties to the Convention on Wetlands, *Background and Rationale to the Framework for Processes of Detecting, Reporting and Responding to Change in Wetland Ecological Character*, COP10 Doc 27, COP10, 28 October – 4 November 2008, [40] <https://www.ramsar.org/sites/default/files/documents/pdf/cop10/cop10_doc27_e.pdf> ('*Background and Rationale*').
[214] Ibid 55; Gillanders et al (n 29).

against climate-related threats. Chapter VI returns to this gap, advocating reforms that bring climate change squarely within the scope of Article 3.2.

E *Conclusion*

The Convention confines change to 'human-induced' causes, excluding climate impacts and creating a blind spot that leaves wetland monitoring reactive and incomplete. By omitting Indigenous governance, it reduces ecological character to a technical construct, severed from cultural and relational dimensions. These gaps expose a structural misalignment between the Convention's aims and the realities it seeks to protect. Without evolution, its obligations will continue to fail in preventing irreversible loss. These failures are compounded by weak compliance and enforcement, examined in Chapter IV.

IV Compliance and Enforcement Processes under the Convention

The Convention was built on cooperation. Its founders believed that the protection of wetlands could be secured through national commitment supported by coordinated international action.[215] Unfortunately, the Convention has failed to live up to this ideal. The promised coordination remains largely aspirational and, when placed alongside other similar MEAs, the Convention's mechanisms appear uniquely toothless.

This chapter examines how the Convention ensures that its obligations are met. It first situates the Convention within the broader compliance and enforcement architecture of MEAs. It then outlines the Convention's preventive tools, with a particular focus on the Montreux Record ('the Record') and on reporting requirements. Next, it considers the Convention's corrective compensation mechanism, and finally reflects on the Convention's silence regarding disputes. Together, these elements reveal the limits of the Convention's cooperative compliance model in protecting sites like the CLL.

A *Compliance and Enforcement*

Compliance and enforcement mechanisms are essential to translate commitments into practice.[216] In contrast to domestic legal systems, where enforcement is typically centralised and backed by coercive authority, international law relies heavily on the voluntary cooperation of sovereign states.[217] As Tanaka observes, 'compliance procedures aim to encourage States to comply with treaty obligations by providing technical and financial assistance, rather than to determine the breach of treaty obligations and State responsibility'.[218] Accordingly, compliance mechanisms under MEAs,[219] including the Convention, tend to be facilitative rather than punitive,

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[215] Ramsar Convention (n 3) preamble para 3.

[216] French and Scott (n 78) [5.2]; Bates (n 51) 66–72.

[217] Ibid; Michael Bothe, 'Compliance' in Anne Peters (ed), *Max Planck Encyclopedia of Public International Law* (Oxford University Press, online, 2010) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e46?prd=EPIL>; Yuji Iwasawa, 'Various Means of Enforcement in International Law' (2023) 65(1) *Harvard International Law Journal* 1.

[218] Yoshifumi Tanaka, 'Compliance Procedures: Multilateral Environmental Agreements (MEAs)' in Anne Peters (ed), *Max Planck Encyclopedia of Public International Law* (Oxford University Press, online, 2021) [6] <https://opil.ouplaw.com/display/10.1093/law-mpeipro/e1893.013.1893/law-mpeipro-e1893>.

[219] French and Scott (n 78). See also World Heritage Convention (n 34); *Convention on Biological Diversity*, opened for signature 5 June 1992, 1960 UNTS 79 (entered into force 29 December 1993); *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, opened for signature 3 March 1973, 993 UNTS 243 (entered into force 1 July 1975); Bonn Convention (n 35); *Vienna Convention for the*

emphasising support for states over the imposition of consequences.[220] Enforcement, then, is the action adopted by states, as well as non-state entities,[221] to compel compliance with international obligations.[222] The Convention exemplifies this cooperative model.

The Convention's compliance processes are designed to pre-empt breaches,[223] but they are consistently criticised as being weak.[224] Ultimately, their effectiveness depends on the willingness of Contracting Parties to engage. Dragomir and Florescu caution that, 'without stronger enforcement mechanisms and increased international cooperation, the objectives of the Convention risk being compromised'.[225]

B *Preventive Tools*

Given that the conservation of listed sites is a primary duty of the Contracting Parties,[226] the Convention and associated COP activity outline a series of regulatory mechanisms aimed at promoting corrective action and preventing wetland loss.[227] These mechanisms are designed to support Contracting Parties to meet their commitments;[228] however, they are also largely procedural, lack binding enforcement power and depend heavily on the cooperation of

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Protection of the Ozone Layer, opened for signature 22 March 1985, 1513 UNTS 293 (entered into force 22 September 1988).

[220] Royal Gardner, Erin Okuno and Dave Pritchard, 'Ramsar Convention Governance and Processes at the International Level' in Max Finlayson, Nick Davidson and Peter Gell (eds), *Ramsar Wetlands: Values, Assessment, Management* (Elsevier, 2023) 37; Bates (n 51) 66–72. See also Royal Gardner et al, 'Ramsar Advisory Missions: Technical Advice on Ramsar Sites' (Briefing Note, 2018) <https://www.ramsar.org/sites/default/files/documents/library/rbn8_advisory_missions_e.pdf>; Ramsar Convention Secretariat, *Operational Guidance for Ramsar Advisory Missions* (Official Guidance, 2019) <https://www.ramsar.org/sites/default/files/documents/library/ram_ogs_2019_e.pdf>.

[221] See Antonio Cardesa-Salzmann, 'Reflections on International Environmental Adjudication: International Adjudication Versus Compliance Mechanisms in Multilateral Environmental Agreements' in Edgardo Sobenes, Sarah Mead and Benjamin Samson (eds), *The Environment Through the Lens of International Courts and Tribunals* (TMC Asser Press, 2022) 581, 584.

[222] Malgosia Fitzmaurice, 'Environmental Compliance Control' in Anne Peters (ed), *Max Planck Encyclopedia of Public International Law* (Oxford University Press, online, 2021) [20] <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1577>

[223] Ferrajolo (n 71) 251; French and Scott (n 78).

[224] Ferrajolo (n 71); Davidson et al, 'Review of the Adequacy' (n 202).

[225] Andreea-Nicoleta Dragomir and Ioana Florescu, 'Challenges and Strategies for Implementing the Ramsar Convention: Balancing Economic Development and Wetland Conservation' (2024) 22(4) *Studia Ecologiae et Bioethicae* 57, 57 <https://czasopisma.uksw.edu.pl/index.php/seb/article/view/14231>.

[226] Ramsar Convention (n 3) arts 2, 3.

[227] Ramsar Convention Secretariat, *Handbook 18* (n 97).

[228] Bates (n 51) 66–72.

Contracting Parties. Their effectiveness in safeguarding listed sites is therefore variable and often undermined.

1 *The Montreux Record*

The Convention's most visible compliance tool is the Record,[229] established in 1990 at COP4 in Montreux, Switzerland.[230] The Secretariat maintains the Record as part of the List, but includes only those sites where priority conservation attention is required.[231] It was intended to be the 'primary tool'[232] to record all Ramsar sites where 'changes in ecological character have occurred, are occurring or are likely to occur'.[233] In this way, the Record was supposed to be directly linked with Article 3.2 notifications for changes in ecological character.[234] Listing a site on the Record triggers technical assistance and international oversight until recovery occurs; however, the absence of political appetite and meaningful consequences has reduced it to a measure of reputational risk.

The Record process differs from similar listing techniques found under the WHC.[235] Central to the WHC's compliance framework is the World Heritage Committee and its associated tools, most notably the List of World Heritage in Danger ('Danger List').[236] When the World Heritage Committee determines that a World Heritage property is facing a serious threat, it can place the property on the Danger List.[237] Importantly, the consent of the state is not required for such a

[229] Ramsar Convention Secretariat, *List of Wetlands of International Importance Included in the Montreux Record* (Document, 26 March 2025) <https://www.ramsar.org/sites/default/files/documents/library/montreux_list_efs.pdf>.
[230] Conference of the Contracting Parties to the Convention on Wetlands, *Change in Ecological Character of Ramsar Sites*, Recommendation IV.8, COP4 (27 June – 4 July 1990) <https://www.ramsar.org/sites/default/files/documents/library/key_rec_4.08e.pdf> ('*Recommendation IV.8*').
[231] Ibid; Ramsar Convention Secretariat, *Handbook 1: An Introduction to the Convention on Wetlands* (n 60) 48.
[232] COP, *Resolution VI.1* (n 146) [3.1].
[233] COP, *Recommendation IV.8* (n 230) 1.
[234] Cyril de Klemm and Isabelle Creteaux, *The Legal Development of the Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat (2 February 1971)* (Report, 1995) 22 <https://www.ramsar.org/sites/default/files/documents/library/the_legal_development_of_the_ramsar_convention.pdf>; COP, *Resolution V.4* (n 192).
[235] World Heritage Convention (n 34); 'The World Heritage Convention', *UNESCO World Heritage Convention* (Web Page, 11 September 2025) <https://whc.unesco.org/en/convention/>.
[236] 'List of World Heritage in Danger', *UNESCO World Heritage Convention* (Web Page, 11 September 2025) <https://whc.unesco.org/en/danger-list/>.
[237] Ibid; World Heritage Convention (n 34) art 11.4.

listing.[238] Designation on the Danger List signals heightened international concern, attracts technical and financial support, and exerts diplomatic pressure on Contracting Parties to take remedial action.[239] Moreover, persistent failure to address the identified threats can lead, in exceptional circumstances, to the deletion of the property from the World Heritage List.[240] While rare,[241] such a delisting carries significant reputational costs and can impact tourism and funding prospects.[242] Indeed, despite valid criticism of the tool,[243] this creates a tangible incentive for compliance.[244]

In stark contrast to this, the addition of a site on the Record is wholly voluntary and requires the consent of the Contracting Party responsible for the wetland.[245] The result is that both the listing and the removal of sites from the Record remain within the 'exclusive competence'[246] of the

[238] World Heritage Convention (n 34) art 11.4; Kerstin von der Decken, 'World Natural Heritage' in Anne Peters (ed), *Max Planck Encyclopedia of Public International Law* (Oxford University Press, online, 2015) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1950>.
[239] Von der Decken (n 238); Herdis Hølleland, Evan Hamman and Jessica Phelps, 'Naming, Shaming and Fire Alarms: The Compilation, Development and Use of the List of World Heritage in Danger' (2019) 8(1) *Transnational Environmental Law* 35.
[240] Von der Decken (n 238) [17]–[19].
[241] 'Dresden Elbe Valley', *UNESCO World Heritage Convention* (Web Page, 11 September 2025) <https://whc.unesco.org/en/list/1156>;'Liverpool – Maritime Mercantile City', *UNESCO World Heritage Convention* (Web Page, 11 September 2025) <https://whc.unesco.org/en/list/1150>; 'Arabian Oryx Sanctuary', *UNESCO World Heritage Convention* (Web Page, 11 September 2025) <https://whc.unesco.org/en/list/654>;'World Heritage List – Delisted', *UNESCO World Heritage Convention* (Web Page, 11 September 2025) <https://whc.unesco.org/en/list/?&delisted=1>.
[242] Von der Decken (n 238) [17]–[19].
[243] Sophia Labadi, 'The World Heritage Convention at 50: Management, Credibility and Sustainable Development' (2024) 14(4) *Journal of Cultural Heritage Management and Sustainable Development* 750; Nicholas Brown, Claudia Liuzza and Lynn Meskell, 'The Politics of Peril: UNESCO's List of World Heritage in Danger' (2019) 44(5) *Journal of Field Archaeology* 287; Hølleland, Hamman and Phelps (n 239); Celmara Pocock, 'Great Barrier Reef World Heritage: Nature in Danger' (2021) 28(2) *Queensland Review* 118; Simon Marsden, 'The World Heritage Convention: Compliance, Public Participation and the Rights of Indigenous People' (2015) 32(6) *Environmental and Planning Law Journal* 534; Toshinori Tanaka, 'A Comparative Analysis of National Networks of International Conservation Institutions: World Heritage Convention, Ramsar Convention, UNESCO MAB Programme, and Global Geopark Network' (2016) 66(1) *Japanese Journal of Ecology* 155.
[244] Hølleland, Hamman and Phelps (n 239); Brown, Liuzza and Meskell (n 243); Roman Yu Kolobov et al, 'Peculiarities of Legal Protection of Natural World Heritage Sites in Australia on the Example of the Great Barrier Reef' (2023) 27(4) *RUDN Journal of Law* 969.
[245] Conference of the Contracting Parties to the Convention on Wetlands, *Assessing and Reporting the Status and Trends of Wetlands, and the Implementation of Article 3.2 of the Convention*, Resolution VIII.8, COP8 (18–26 November 2002) <https://www.ramsar.org/sites/default/files/documents/pdf/res/key_res_viii_08_e.pdf>; Klemm and Creteaux (n 234) 23; Ramsar Convention Secretariat, *Handbook 19* (n 178).
[246] Klemm and Creteaux (n 234) 23. See also Conference of the Contracting Parties to the Convention on Wetlands, *The Status of Sites in the List of Wetlands of International Importance,* Resolution XIV.13,

relevant Contracting Party. This is troubling, given the discrepancy between the number of sites listed on the Record and those that have been the subject of an Article 3.2 notification.[247]

At present, only 1.8% of total listed sites are on the Record[248] and, as noted at COP15 in 2025,[249] '[o]f the 185 Sites with open Article 3.2 files …, 46 (25%) are included in the [Record]'.[250] In fact, Davidson et al. note that use of the Record has steadily decreased since 1990.[251] Australia has never utilised the tool,[252] but it is not in the minority here: of the 172 Contracting Parties,[253] only 24 have a site currently on the Record.[254] Given the widespread deterioration of Ramsar-listed wetlands globally, the Record is not representative of sites facing human-induced ecological character change,[255] nor can it be considered the 'primary tool'[256] for highlighting sites where priority conservation attention is required, despite its intended purpose.

Perhaps this is unsurprising. The voluntary nature of the Record lends itself to under-usage, and its effectiveness depends entirely on the importance that individual states choose to assign to it.[257] Scholars note that a likely explanation for the limited use of the Record is the perception among some countries that it functions as a public reproach, comparable to how certain nations interpret the WHC's Danger List.[258] For wealthier countries like Australia, having a site added to the Record may be interpreted as an implicit critique of its domestic wetland management.[259] In fact, the Australian Government has indicated that it would only consider nominating a site for

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COP14, 5–13 November 2022, [9]–[11] <https://www.ramsar.org/sites/default/files/documents/library/xiv.13_sites_e.pdf> ('*Resolution XIV.13*')

[247] Evan Hamman, Tess Van Geelen and Afshin Akhtar-Khavari, 'Governance Tools for the Conservation of Wetlands: The Role of the Montreux Record under the Ramsar Convention' (2019) 70(11) *Marine and Freshwater Research* 1493, 1497.

[248] See 'Explore Sites – Montreux Record', *Ramsar Sites Information Service* (Web Page, 11 September 2025) <https://rsis.ramsar.org/?f%5B0%5D=montreuxListed_b%3A1>.

[249] Ramsar Convention (n 3) art 8.2

[250] Ramsar Convention Secretariat, *COP15 Article 8.2 Report* (n 208) 23.

[251] Davidson et al, 'Review of the Adequacy' (n 202) 121.

[252] Ramsar Convention Secretariat, *List of Wetlands of International Importance Included in the Montreux Record* (n 229).

[253] Ramsar Convention Secretariat, *Contracting Parties to the Ramsar Convention* (Official List, 24 August 2023) <https://www.ramsar.org/sites/default/files/documents/library/annotated_contracting_parties_list_e.pdf>.

[254] Ramsar Convention Secretariat, *List of Wetlands of International Importance Included in the Montreux Record* (n 229*)*.

[255] Davidson et al, 'Review of the Adequacy' (n 202) 121.

[256] COP, *Resolution VI.1* (n 146) [3.1].

[257] Hamman, van Geelen and Akhtar-Khavari (n 247) 1499.

[258] Ibid 1498; Labadi (n 243) 752.

[259] Hamman, van Geelen and Akhtar-Khavari (n 247) 1498.

inclusion on the Record 'if international assistance was required to address the change in character'.[260] This position has been viewed as a 'misreading of the intent of the relevant COP Resolutions'.[261]

As it stands, the Record's utility is undermined not by its concept,[262] but by the factors that restrict its use.[263] Indeed, where governments do nominate sites, the Record can be valuable. In these instances, it is 'used as a positive rallying cry … for effective collaborative conservation techniques'.[264] However, despite the COP's recommendation in 2008 that the Australian Government 'consider the appropriateness'[265] of adding the CLL to the Record, Australia chose not to nominate the site following its Article 3.2 notification for the site's change in character.[266] A decade later, the Minister for the Environment reiterated this stance, again refusing to list CLL on the Record on the basis that it was 'not appropriate while the Australian and South Australian governments continue to work towards the recovery of the site'.[267] So, while Australia must 'take into consideration [the COP's] recommendations',[268] there is no obligation to adhere to them, leaving wetlands like the CLL vulnerable to ongoing degradation despite their listed status. Australia's refusal to list on the Record is therefore a missed opportunity to galvanise international backing for the CLL.[269] It also demonstrates how the Record's politically sensitive structure can frustrate its intended function.[270] This makes the reporting obligations of Contracting Parties critical for accountability, and it is to these mechanisms that the analysis now turns.

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[260] Department of Sustainability, Environment, Water, Population and Communities, 'Notification of Change in Ecological Character' (Fact Sheet, 2013) 3 <https://www.dcceew.gov.au/sites/default/files/documents/notification-change-factsheet.pdf>.
[261] Pritchard, *Change in Ecological Character of Wetland Sites* (n 148) [7.16].
[262] COP, *Resolution VI.1* (n 146) annex 1 [3.1]; COP, *Recommendation IV.8* (n 230); Klemm and Creteaux (n 234) 23; COP, *Resolution V.4* (n 192). Cf 'List of World Heritage in Danger' (n 236).
[263] Hamman, van Geelen and Akhtar-Khavari (n 247) 1499.
[264] Ibid 1498.
[265] COP, *Resolution XIV.13* (n 246) [27(xiv)].
[266] Letter from Peter Garrett (Minister for the Environment, Heritage and the Arts) to Anada Tiega (Convention on Wetlands Secretary General), 27 October 2009 <https://environment.gov.au/water/topics/wetlands/database/pubs/25-montreaux-record.pdf>. See also Commonwealth, *Parliamentary Debates*, Senate, 24 June 2008, 23 (Penny Wong, Minister for the Environment, Heritage and Arts).
[267] Commonwealth, *Parliamentary Debates*, House of Representatives, 9 September 2019, 206 (Sussan Ley, Minister for the Environment).
[268] Ramsar Convention (n 3) art 6.3.
[269] Hamman, van Geelen and Akhtar-Khavari (n 247) 1499.
[270] COP, *Recommendation IV.8* (n 230); COP, *Resolution V.4* (n 192). See also Labadi (n 243); Brown, Liuzza and Meskell (n 243).

2 *Reporting*

Alongside the Record, the Convention relies heavily on reporting obligations, which require Contracting Parties to submit information on their listed sites at the time of the COP, and to maintain reporting between sessions.[271] Often, they do not.[272] At COP15, information was out of date for 1,872 sites – a staggering 74% of all listed wetlands.[273] Roughly 39% of Australia's Ramsar-listed sites, including the CLL, had outdated documentation.[274] This widespread failure to keep site data current is compounded by weak participation in national reports, which were provided by only 65% of the Contracting Parties.[275] Although Australia did provide its national report, it falls within the mere 27% of very high development status countries that consistently do so.[276] These patterns reveal that reporting, while central to the Convention's compliance framework, functions more as a procedural formality, and one that is not enforced.

Indeed, Davidson et al. observe a persistent shortfall in reporting by Contracting Parties, including under Article 3.2.[277] They observe that notifications are frequently initiated by third parties rather than the Parties themselves,[278] and that responses from Contracting Parties have become increasingly delayed.[279] This is 'a serious and widespread failure'[280] in the Contracting Parties' implementation of the Convention's key obligation, yet the absence of any consequence means that such neglect persists unchecked, leaving the system reliant on voluntary compliance and undermining its capacity to prevent wetland loss.

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[271] Conference of the Contracting Parties to the Convention on Wetlands, *An Integrated Framework and Guidelines for Avoiding, Mitigating and Compensating for Wetland Losses*, Resolution XI.9, COP9, 8–15 November 2005 <https://www.ramsar.org/sites/default/files/documents/pdf/res/key_res_ix_01_annexa_e.pdf> ('*Resolution XI.9*'); Davidson et al, 'Review of the Adequacy' (n 202).

[272] Davidson et al, 'Review of the Adequacy' (n 202).

[273] Ramsar Convention Secretariat, *COP15 Article 8.2 Report* (n 208) [10].

[274] Ibid annex 3b; Department of Environment, Water and Natural Resources, 'Updated RIS' (n 23).

[275] Ramsar Convention Secretariat, *COP15 Article 3.2 Report* (n 208) [3].

[276] Ibid [57].

[277] Davidson et al, 'Review of the Adequacy' (n 202) 120.

[278] Conference of the Contracting Parties to the Convention on Wetlands, *The Status of Sites in the List of Wetlands of International Importance*, Resolution XV.7, COP15, 23–31 July 2025, [13] <https://www.ramsar.org/sites/default/files/2025-09/XV.7_Status%20of%20Sites_e.pdf> ('*Resolution XV.7*'); Conference of the Contracting Parties to the Convention on Wetlands, *The Status of Sites in the Ramsar List of Wetlands of International Importance*, Resolution X.13, COP10, 28 October – 4 November 2008, [13] <https://www.ramsar.org/sites/default/files/documents/pdf/res/key_res_x_13_e.pdf> ('*Resolution X.13*'); COP, *Resolution XIV.13* (n 246).

[279] COP, *Resolution XV.7* (n 278); COP, *Resolution X.13* (n 278) [13]; COP, *Resolution XIV.13* (n 246).

[280] Davidson et al, 'Review of the Adequacy' (n 202) 120.

Together, these reporting shortfalls weaken the Convention's capacity to function effectively.[281] Without reporting systems that supply the Convention's bodies with robust data, they are unable to take meaningful action. This disconnect has direct consequences for wetland management, as early warning signs of degradation may be overlooked, ignored or reported too late to avert significant ecological loss.[282] Amid accelerating environmental change, these failures mean that the Convention's governing bodies are increasingly left unaware of site-level degradation and, when coupled with the challenges linked to the Record discussed above, this obstructs management responses. These deficiencies ultimately point to the necessity of robust domestic frameworks, a matter examined in depth in Chapter V. When these preventive tools fail, the Convention relies on its sole corrective mechanism: compensation.

C *Corrective Tools*

The Convention frames compensation as the ultimate fallback mechanism, intended to redress the loss of wetland habitat. Unlike the Convention's preventive processes, the compensation scheme accepts the loss of a wetland and seeks to offset it by protecting another.[283] It operates in four scenarios:[284]

1. where a site's boundaries are restricted or deleted on grounds of 'urgent national interest';[285]
2. where ecological components, processes or services are lost, but without triggering boundary restriction or deletion;[286]
3. where a site is found not to have met designation criteria at the time of listing;[287] and
4. where loss of ecological character results in delisting.[288]

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[281] Ibid.
[282] Ibid 123.
[283] COP, *Resolution XI.9* (n 271).
[284] Ramsar Convention Secretariat, *Handbook 19* (n 178) 29 [62]–[63].
[285] Ramsar Convention (n 3) art 4.2; Conference of the Contracting Parties to the Convention on Wetlands, *General Guidance for Interpreting 'Urgent National Interests' Under Article 2.5 of the Convention and Considering Compensation under Article 4.2*, Resolution VIII.20, COP8, 18–26 November 2002 <https://www.ramsar.org/sites/default/files/documents/pdf/guide/guide-urgent.pdf>.
[286] Conference of the Contracting Parties to the Convention on Wetlands, *Compensation for Lost Wetland Habitats and other Functions*, Resolution VII.24, COP7, 10–18 May 1999 <https://www.ramsar.org/sites/default/files/documents/library/key_res_vii.24e.pdf>.
[287] Conference of the Contracting Parties to the Convention on Wetlands, *Procedure for Initial Designation of Sites for the List of Wetlands of International Importance*, Resolution V.3, COP5, 9–16 June 1993 <https://www.ramsar.org/sites/default/files/documents/pdf/res/key_res_5.3e.pdf>.
[288] Conference of the Contracting Parties to the Convention on Wetlands, *Issues Concerning Ramsar Sites that Cease to Fulfil or Never Fulfilled the Criteria for Designation as Wetlands of International*

For example, under Article 4.2, when a Contracting Party deletes a site, or restricts a site's boundaries, because of its urgent national interests, it must, 'as far as possible',[289] 'compensate for the loss of wetland resources'.[290] Such a deletion or restriction is expressly permitted under Article 2.5.[291] When a Contracting Party invokes this right, it is required to create 'additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original habitat'[292] to counterbalance its loss. Similar schemes are applicable in each of the four scenarios.[293]

In practice, this provides no genuine protection for wetlands like the CLL. While Australia may satisfy the formal requirement to provide compensation, such gestures do little to arrest the decline of the site itself. Functioning effectively as offsets, they must be treated with caution,[294] and this is particularly true in an Australian context, where offsets are consistently criticised as being ineffective and problematic.[295]

In keeping with widespread criticism that offsetting can mask irreversible damage by offering superficial trade-offs,[296] the compensation scheme 'does not apply comprehensively to

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Importance, Resolution VIII.2, COP8, 18–26 November 2002, [6(b)] <https://www.ramsar.org/sites/default/files/documents/pdf/res/key_res_viii_22_e.pdf>.

[289] Ramsar Convention (n 3) art 4.2.

[290] Ibid.

[291] Ibid art 2.5.

[292] Ibid art 4.2.

[293] Ramsar Convention Secretariat, *Handbook 19* (n 178) 29–35.

[294] Sophus Ermgassen et al, 'The Ecological Outcomes of Biodiversity Offsets under "No Net Loss" Policies: A Global Review' (2019) 12(6) *Conservation Letters* 1.

[295] Justine Bell-James et al, 'Groundhog Day: The EPBC Act Reform Process' (2025) 41 *Environment and Planning Law Journal* 19; Robert Holbrook and Jan McDonald, 'Offsetting Cultural Heritage: Lessons from the Theory and Practice of Biodiversity Offsets' (2018) 35(3) *Environment and Planning Law Journal* 247; Justine Bell-James et al, *Wentworth Group Submission to Public Consultation South Australia's Draft Biodiversity Bill* (Submission, February 2025) 4–5 <https://wentworthgroup.org/wp-content/uploads/2025/02/Wentworth-Group-submission-South-Australian-Draft-Biodiversity-Bill.pdf>.

[296] Evangelia Apostolopoulou, Elisa Greco and William M Adams, 'Biodiversity Offsetting and the Production of "Equivalent Natures": A Marxist Critique' [2019] *ACME: An International E-Journal for Critical Geographies* 861 <https://shs.hal.science/halshs-02441026>; David Moreno-Mateos et al, 'The True Loss Caused by Biodiversity Offsets' (2015) 192 *Biological Conservation* 552; Anna-Kaisa Tupala, Suvi Huttunen and Panu Halme, 'Social Impacts of Biodiversity Offsetting: A Review' (2022) 267 *Biological Conservation* 109431; Anne-Charlotte Vaissière et al, 'Modeling Alternative Approaches to the Biodiversity Offsetting of Urban Expansion in the Grenoble Area (France): What Is the Role of Spatial Scales in "No Net Loss" of Wetland Area and Function?' (2021) 13(11) *Sustainability* 5951; Sebastian Theis et al, 'Compliance with and Ecosystem Function of Biodiversity Offsets in North American and European Freshwaters' (2019) 34(1) *Conservation Biology* 41.

ecosystems, but rather to definable values reflected in offset metrics'.[297] In terms of both culture and ecology, not all impacts can be offset.[298] While offsetting rests on the assumption that losses can be balanced elsewhere, in the context of local and First Nations heritage, the resulting impacts on cultural connectivity resist such substitution.[299] Holbrook and McDonald argue that '[t]he unique and irreplaceable nature of some cultural heritage places makes it imperative that specific identified areas be completely off limits to offsetting arrangements'.[300] Indeed, this reasoning is also applicable to narrow-range endemic species whose decline is accelerated through the loss of their irreplaceable habitat and ecological specificity.[301] At the CLL, the combined loss of habitat for endemic species and the erosion of FNSE and Ngarrindjeri cultural connectivity would render compensatory measures inadequate.[302]

As the final line of defence, the compensation scheme cannot remedy the irreversible ecological and cultural losses facing the CLL. Collectively, the persistent underutilisation of the Record, weaknesses in reporting and inadequacy of compensation schemes reveal the fragility of the Convention's second-pillar obligations. As climate pressures intensify, such shortcomings will deepen, leaving the framework unable to fulfil its protective purpose at the very moment it is most needed. These structural weaknesses are compounded by the Convention's silence on disputes, which undermines the capacity of Contracting Parties to respond when obligations are contested or breached.

D *The Silence on Disputes*

The Convention's text,[303] together with related COP activity,[304] repeatedly stresses the importance of cooperation between states.[305] Despite this, conflict is common, particularly in cases involving

[297] Moreno-Mateos et al (n 296) 554. See also Erica Marshall et al, 'What Are We Measuring? A Review of Metrics Used to Describe Biodiversity in Offsets Exchanges' (2020) 241 *Biological Conservation* 108250.
[298] Oviedo and Ali (n 137); Ngarrindjeri Nation and Hemming (n 2) 6–14.
[299] Holbrook and McDonald (n 295) 249.
[300] Ibid.
[301] Stephen Tillman and Jeffrey Matthews, 'Evaluating the Ability of Wetland Mitigation Banks to Replace Plant Species Lost from Destroyed Wetlands' (2023) 60(6) *Journal of Applied Ecology* 990; Tim Newbold et al, 'Widespread Winners and Narrow-Ranged Losers: Land Use Homogenizes Biodiversity in Local Assemblages Worldwide' (2018) 16(12) *PLOS Biology* e2006841; Tim New, 'Conserving Narrow Range Endemic Insects in the Face of Climate Change: Options for Some Australian Butterflies' (2008) 12(6) *Journal of Insect Conservation* 585.
[302] COP, *Resolution XI.9* (n 271).
[303] Ramsar Convention (n 3) arts 2.6, 5.
[304] Ramsar Convention Secretariat, *Handbook 1* (n 91).
[305] COP, *Resolution VII.19* (n 87).

transboundary resources.[306] Surprisingly, the Convention provides neither an institutional forum for addressing disputes nor any embedded mechanism for their resolution.[307] Ferrajolo opines that this 'is not a problem, if other legal instruments applicable between parties provide the legal basis for arbitration or judicial settlement'.[308] In practice, this means that when breaches occur affected states may pursue action through external forums such as the International Court of Justice,[309] but not within the Convention's own framework. [310]

The 2010 proceedings between Costa Rica and Nicaragua illustrate this reliance.[311] Costa Rica alleged 'breaches of Nicaragua's obligations towards Costa Rica'[312] under, among other things, the Convention,[313] including transboundary harm to a Ramsar-listed wetland in Costa Rica. It was Article XXXI of the Pact of Bogotá[314] and Nicaragua's declaration pursuant to Article 36.2 of the *Statute of the International Court of Justice* that gave rise to the Court's jurisdiction,[315] not the Convention itself. Costa Rica was ultimately awarded US$120,000 for the impairment and loss of ecosystem services, and a meagre US$2,708 for the restoration of its Ramsar wetland.[316] Therefore, while the Convention's obligations may be invoked, their enforcement depends entirely on external regimes, rather than its own framework.

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[306] José Antonio Peña-Ramos and Fernando Ramírez De Luis, 'Past, Present, and Future Conflicts over Freshwater' (2021) 17(1) *International Journal of Environmental Sustainability* 19; Rutgerd Boelens et al, 'Riverhood: Political Ecologies of Socionature Commoning and Translocal Struggles for Water Justice' (2023) 50(3) *Journal of Peasant Studies* 1125; David Kreamer, 'The Past, Present, and Future of Water Conflict and International Security' (2012) 149(1) *Journal of Contemporary Water Research & Education* 87.

[307] Ferrajolo (n 71) 257.

[308] Ibid.

[309] *Trail Smelter Case (Canada/United States)* (Arbitral Tribunal, Washington, 11 March 1941); *Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment)* [2010] ICJ Rep 14, 78 [191], [193]; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua) (Judgment)* [2015] ICJ Rep 665, 706–7 [104]; *Statute of the International Court of Justice*.

[310] See, eg, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua) (Judgment)* [2015] ICJ Rep 665.

[311] Ibid.

[312] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua) (Application)* [2010] ICJ Rep 150, 2.

[313] Ibid 4 [1(e)].

[314] *American Treaty on Pacific Settlement (Pact of Bogotá)*, signed 30 April 1948, 30 UNTS 55.

[315] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua) (Application)* [2010] ICJ Rep 150, 4 [3]; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua) (Judgment)* [2015] ICJ Rep 665, [49]–[52]; Ferrajolo (n 71) 257.

[316] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua) (Compensation Judgment)* [2018] ICJ Rep 15, 48 [157(1)].

Although the Convention exists within the broader international legal system, the lack of a specific dispute resolution mechanism leaves a structural gap in its framework. While some alternate dispute resolution avenues exist,[317] reliance on external mechanisms reinforces the Convention's dependency on broader frameworks rather than its own institutional strength. Enforcement, therefore, ultimately rests on systems that may neither reflect nor uphold its commitments.[318]

Other MEAs have adopted more robust approaches. For example, the Bonn Convention – which concerns the conservation of migratory species – contains dispute resolution provisions,[319] based on the reasoning that effective implementation requires mechanisms to address disagreements.[320] While the COP considered the adoption of a similar clause,[321] it was ultimately abandoned in 1987 and has not been revisited since.[322] The result is a permissive environment where Parties can neglect their obligations, particularly in transboundary or ecologically interlinked contexts, without facing consequences.

This deficiency is particularly acute for the first and third pillars, leaving the Convention's foundational obligations exposed in ways other MEAs have sought to avoid.[323] In fact, unlike the

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[317] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua) (Judgment)* [2015] ICJ Rep 665.

[318] Malgosia Fitzmaurice, 'The New Generation of Environmental Non-Compliance Procedures and the Question of Legitimacy' in Caroline Foster and Christina Voigt (eds), *International Courts Versus Non-Compliance Mechanisms: Comparative Advantages in Strengthening Treaty Implementation* (Cambridge University Press, 2024) 49, 59.

[319] Bonn Convention (n 35) art XIII.

[320] See Nikolas Sellheim and Jochen Schumacher, 'Increasing the Effectiveness of the Bonn Convention on the Conservation of Migratory Species' (2022) 25(4) *Journal of International Wildlife Law & Policy* 367; Mikael Lundmark, *The Bonn Convention: A Study of Approaches And Decision Making within the Field of Biodiversity Conservation* (Report, November 2011) 33–64; *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (n 219); *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*, opened for signature 22 March 1989, 1673 UNTS 57 (entered into force 5 May 1992); Raphael Heffron and Jean Monnet, 'Non-compliance Procedures (NCPs)' in Belen Olmos Giupponi (ed), *International Environmental Law Compliance in Context: Mechanisms and Case Studies* (Routledge, online, October 2020) <https://ebrary.net/140137/law/compliance_procedures_ncps>; Raphael Heffron and Jean Monnet, 'Environmental Dispute Resolution' in Belen Olmos Giupponi (ed), *International Environmental Law Compliance in Context: Mechanisms and Case Studies* (Routledge, online, October 2020) <https://ebrary.net/140138/law/environmental_dispute_resolution#412>.

[321] See for discussion Lundmark (n 320) 64.

[322] Klemm and Creteaux (n 234) 8; Ferrajolo (n 71) 257.

[323] Eg Conference of the Contracting Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, *CITES Compliance Procedures*, Conf 14.3, COP19, 14–25 November 2022 <https://cites.org/sites/default/files/documents/COP/19/resolution/E-Res-14-03-R19.pdf>;'Summary Report, 23–31 July 2025' (n 80).

second pillar, pillars one and three – relating to wise use and international cooperation – have no dedicated compliance or enforcement mechanism whatsoever.[324] This undermines the Convention's promise and allows Contracting Parties to effectively neglect these obligations without consequence, despite their central role in sustaining wetland health.

E *Conclusion*

This chapter has shown that the Convention's cooperative model, while politically attractive, lacks the capacity to secure compliance. Its key mechanisms are weakened by voluntarism, national discretion and the absence of independent triggers. The resulting framework rewards good faith but cannot respond to inaction. Therefore, participation has been prioritised over accountability. As climate and anthropogenic pressures intensify, this architecture is no longer fit for purpose, and it must be strengthened. Chapter V explores how structural weaknesses play out in Australia's governance of Ramsar sites, before Chapter VI addresses the reforms needed for their protection.

[324] Ramsar Convention Secretariat, *Handbook 20: International Cooperation* (4th ed, 2010) <https://www.ramsar.org/sites/default/files/documents/pdf/lib/hbk4-20.pdf>; Ramsar Convention Secretariat, *Handbook 1* (n 91).

V The Convention's Influence on Australian Wetland Management

Australia's governance of the CLL illustrates how the Convention's high-level aspirations falter in domestic law, especially under climate stress. This chapter has two main sections. First, it considers the formal incorporation of the Convention into Australian law; and second, how governance plays out in practice. Across these sections, I reveal three interconnected deficiencies: (i) the superficial incorporation of Convention obligations into siloed regimes; (ii) the persistent exclusion of Indigenous governance and knowledge from decision-making; and (iii) the absence of legal tools to adequately address cumulative and climate impacts. Ultimately, this chapter illustrates that, although Australia has enacted laws that nominally reflect the Convention's principles, the framework remains fragmented, jurisdictionally constrained and procedurally ill-equipped to address accelerating environmental decline, jeopardising the integrity of sites like the CLL.

A *Formal Incorporation of the Convention into Australian Law*

1 *The Status of the Convention in Australia*

Though the Convention holds significant influence in shaping Australia's approach to wetland conservation,[325] its status in Australian law highlights the broader complexities of incorporating international treaties into domestic legal frameworks.[326] As a dualist federation, Australia requires parliamentary implementation of treaty obligations,[327] but, as environmental

[325] South Australia, *Parliamentary Debates*, Legislative Council, 13 November 2024, 7233 (Tammy Franks); South Australia, *Parliamentary Debates*, Legislative Council, 2 April 2025, 8377; South Australia, *Parliamentary Debates*, House of Assembly, 27 October 2021, 6332; Commonwealth, *Parliamentary Debates*, Senate, 8 November 2012; Senate Environment and Communications Legislation Committee, Parliament of Australia, *Sustainability, Environment, Water, Population and Communities* (Report, 16 October 2012); Alexandrina Council, *Minutes of the Alexandrina Council Meeting* (Meeting Minutes, 3 May 2004) <https://lgasa-web.squiz.cloud/?a=192743>; Alexandrina Council, *Minutes of the Alexandrina Council Meeting* (Meeting Minutes, 7 June 2004) <https://lgasa-web.squiz.cloud/?a=191450>; Alexandrina Council, *Minutes of the Alexandrina Council Meeting* (Meeting Minutes, 7 October 2008) <https://lgasa-web.squiz.cloud/?a=192626>; 'Water Resource Plans', *Department for Environment and Water* (Web Page, 11 September 2025) <https://www.environment.sa.gov.au/topics/water-and-river-murray/basin-river-murray-lakes-and-the-coorong/basin-plan-and-murray-darling-basin-agreement/water-resource-plans>; Gardner et al, 'Ramsar at the National Level' (n 84).

[326] Ivan Shearer, 'The Relationship between International Law and Domestic Law' in Brian Opeskin and Donald Rothwell (eds), *International Law and Australian Federalism* (Melbourne University Press, 1997) 34.

[327] Ibid; *Vienna Convention on the Law of Treaties* (n 78) art 26; Fisher (n 51) 78; Crawford (n 73) 363; Daniela Popescu, 'The Principle Pacta Sunt Servanda: Doctrine and Practice' (2009) 16(1) *Lex et Scientia* 128.

management remains largely a state responsibility,[328] the Commonwealth's capacity to ensure uniform compliance is constrained.[329] While state powers are decisive in actualising the Convention's obligations, the requirement to uphold them ultimately rests with the Commonwealth Government.[330] Both federal and state laws are examined below.

2 *Federal Implementation*

The Commonwealth Parliament has legislated twice to implement its obligations under the Convention; first through the enactment of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('EPBC Act'),[331] and then the *Water Act 2007* (Cth) ('Water Act').[332] These two acts have been extensively criticised[333] and, in the age of climate change, their effectiveness is being tested.[334]

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[328] *Australian Constitution*; *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129; Sangeetha Pillai and George Williams, 'Commonwealth Power and Environmental Management: Constitutional Questions Revisited' (2015) 32 *Environmental and Planning Law Journal* 395, 396.
[329] James Crawford, 'The Constitution and the Environment' (1991) 13 *Sydney Law Review* 11; *Australian Constitution*; Brian Opeskin, 'International Law and Federal States' in Brian Opeskin and Donald Rothwell (eds), *International Law and Australian Federalism* (Melbourne University Press, 1997) 1.
[330] Opeskin (n 329) 218; Popescu (n 327); Beth Kruchek, 'Extending Wetlands Protection Under the Ramsar Treaty's Wise Use Obligation' (2003) 20(2) *Arizona Journal of International and Comparative Law* 409, 425; Jeanette Jensen and Alex Gardner, 'A Legal Obligation to Restore Wetlands by Environment Water Allocations' (2017) 1(2) *Chinese Journal of Environmental Law* 158; 'The Ramsar Convention on Wetlands', *Department of Climate Change, Energy, the Environment and Water* (Web Page, 20 October 2023) <https://www.dcceew.gov.au/water/wetlands/ramsar>; Murray-Darling Basin Authority, *Protection and Restoration of Water Dependant Ecosystems and Functions & Achievement of Environmental Outcomes* (Report, October 2024) 23 <https://www.mdba.gov.au/sites/default/files/publications/matter-2-7-protection-restoration-water-dependant-ecosystems-functions-achievement-environmental-outcomes.pdf> ('*Protection and Restoration*').
[331] See *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 16–17B ('EPBC Act').
[332] *Water Act 2007* (Cth) ss 9, 44(3)(b)(i) ('Water Act'); EPBC Act (n 331) s 3.
[333] See, eg, Graeme Samuel, *Independent Review of the EPBC Act* (Final Report, 2020); Bret Walker, *Murray-Darling Basin Royal Commission Report* (Final Report, 29 January 2019); Adam Loch et al, 'Assessing Effective Deterrence of Theft in Transboundary Water Systems' (2024) 2(4) *Nature Water* 380; Justin Brookes et al, 'How Well Is the Basin Plan Meeting Its Objectives? From the Perspective of the Coorong, a Sentinel of Change in the Murray-Darling Basin' (2023) 27(2) *Australasian Journal of Water Resources* 223; Sarina Locke, 'Conservationists Claim Basin Plan Breaches Australia's Obligations to Protect Wetlands', *ABC News* (online, 7 October 2012) <https://www.abc.net.au/news/rural/2012-10-08/conservationists-claim-basin-plan-breaches/6121338>; Productivity Commission, *Murray-Darling Basin Plan: Five-Year Assessment* (Inquiry Report, 25 January 2019) <https://www.pc.gov.au/inquiries/completed/basin-plan/report>.
[334] Wentworth Group of Concerned Scientists, *Preventing 'Death by a Thousand Cuts': Addressing Cumulative Impacts to Matters of National Environmental Significance (MNES) through Reforms to the EPBC Act* (Report, 2023); Emma Carmody, 'Climate Change Is Water Change: Integrating Water Management, Mitigation and Adaptation Laws and Policies' (2017) 31(10) *Australian Environment Review* 358; Colloff et al (n 159); Gilad Bino et al, 'Shifting Goalposts: Setting Restoration Targets for Waterbirds

(a) The EPBC Act

The EPBC Act is Australia's principal federal environmental legislation. Ramsar-listed wetlands are recognised under this Act,[335] defined as either an area designated under Article 2 of the Convention[336] or as declared by the federal Environment Minister.[337] Declarations may be made if the Minister is satisfied that 'the wetland is of international significance or is likely to be of international significance because of its ecology, botany, zoology, limnology or hydrology; and the ecological character of some or all of the wetland is under threat'.[338] Section 17A(1) adopts the terminology of Articles 2.1 and 2.2 of the Convention,[339] and it would therefore seem that the EPBC Act prima facie encapsulates the Convention's definition of each of these words.[340]

Under the EPBC Act, federal oversight is activated through seven specific 'triggers'[341] called 'matters of national environmental significance' ('MNES').[342] Relevantly, these include Ramsar-listed wetlands[343] and migratory birds.[344] In the case of a Ramsar-listed wetland, the 'matter protected' is its ecological character,[345] and given that ecological character is given its same meaning as under the Convention,[346] those characteristics examined in Chapter III, and outlined in the site's ECD, are protected.[347]

The EPBC Act creates strict liability offences for the unlawful taking of an action that results, will result or is likely to result in a significant impact on the ecological character of a declared wetland.[348] This impact may be 'direct'[349] or 'indirect'[350] and, while 'significant' is not defined by

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in the Murray-Darling Basin Under Climate Change' (2021) 9 *Frontiers in Environmental Science* 785903; Finlayson (n 30).

[335] EPBC Act (n 331) ss 16, 17, 17A, 17B.

[336] Ibid s 17(1).

[337] Ibid ss 17(2), 17A.

[338] Ibid s 17A(1).

[339] Ramsar Convention (n 3) arts 2.1, 2.2.

[340] *A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225, 230–1, 240; *Minister for the Environment and Heritage v Greentree [No 2]* (2004) 138 FCR 198.

[341] EPBC Act (n 331) ch 4. See also Department of Sustainability, Environment, Water, Population and Communities, 'EPBC Act – Environment Assessment Process' (Fact Sheet, 2010) <https://www.dcceew.gov.au/sites/default/files/documents/assessment-process_1.pdf>.

[342] EPBC Act (n 331) pt 3.

[343] Ibid ss 16, 17, 17A, 17B.

[344] Ibid ss 20, 20A, 20B.

[345] Ibid s 34 items 2, 2A.

[346] Ibid s 16(3).

[347] See Ramsar Convention (n 3) art 4.1.

[348] EPBC Act (n 331) s 17B.

[349] Ibid s 527E(1)(a).

[350] Ibid s 527E(1)(b).

the EPBC Act, there are associated guidelines[351] which provide direction on this matter.[352] An 'action' includes a project,[353] development,[354] undertaking,[355] a series of activities,[356] or any alteration of any of these things,[357] and 'controlled actions'[358] must not be undertaken without approval.[359] Approval should not be given if 'it would be inconsistent with maintaining the ecological character of the wetland'[360] or 'providing for the conservation and sustainable use of the wetland'.[361] When approving actions, 'the Minister must not act inconsistently with Australia's obligations under the Ramsar Convention'.[362] In this way, the EPBC Act operationalises key elements of the Convention within Australia's legal framework.

The Australian Ramsar Management Principles[363] reiterate that the purpose of the management of a Ramsar-listed wetland

> must be, in accordance with the Ramsar Convention:
>
> (a) to describe and maintain the ecological character of the wetland; and
>
> (b) to formulate and implement planning that promotes:
>
> (i) conservation of the wetland; and
>
> (ii) wise and sustainable use of the wetland for the benefit of humanity in a way that is compatible with maintenance of the natural properties of the ecosystem.[364]

The EPBC Act gives domestic effect to Australia's obligations by incorporating key definitions and principles into national law; however, it lacks universally enforceable standards applicable across all decisions.[365] While the EPBC Act establishes ecological character as the central

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[351] Department of the Environment, *Matters of National Environmental Significance – Significant Impact Guidelines 1.1* (Guidelines, 2013) <https://www.dcceew.gov.au/sites/default/files/documents/nes-guidelines_1.pdf>.
[352] Ibid 13. Cf *Booth v Bosworth* (2001) 114 FCR 39, [99]–[100]; *Minister for the Environment and Heritage v Greentree [No 2]* (2004) 138 FCR 198, [192]–[193].
[353] EPBC Act (n 331) s 523(1)(a).
[354] Ibid s 523(1)(b).
[355] Ibid s 523(1)(c).
[356] Ibid s 523(1)(d).
[357] Ibid s 523(1)(e).
[358] Ibid ss 67, 68.
[359] Ibid s 133; pts 6–7, 9.
[360] *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth) sch 6 cl 3.04(a) ('EPBC Regulations').
[361] Ibid sch 6 cl 3.04(b).
[362] EPBC Act (n 331) s 138.
[363] EPBC Regulations (n 360) reg 10.02, sch 6.
[364] Ibid sch 6 cl 1.01.
[365] Samuel (n 333) 209–10.

criterion for protection and seeks to align federal decision-making with the conservation and wise use of listed sites, the management and allocation of water resources that affect these wetlands remain governed by separate legislative regimes.

(b) The Water Act and Basin Plan

Australia has adopted an ad-hoc framework for managing its water resources,[366] and in the case of the MDB, the Water Act and its supporting instruments form the overarching framework for water governance. Created from a 'hotch-potch'[367] of constitutional heads of power, the Act is, in part, founded upon Australia's obligations under the Convention.[368] In giving effect to the Convention,[369] the Water Act seeks to 'promote the use and management of the [MDB] water resources in a way that optimises economic, social and environmental outcomes'.[370] In doing so, it aims to 'ensure the return to environmentally sustainable levels of extraction that are overallocated or overused'[371] and 'protect, restore and provide for the ecological values and ecosystem services of the [MDB]'.[372]

The Murray-Darling Basin Plan ('Basin Plan') is a legislative instrument of the Water Act[373] and its purpose 'is to provide for the integrated management of the Basin water resources in a way that promotes the objects of the Act',[374] particularly by 'giving effect to relevant international agreements'[375] such as the Convention.[376] Under the plan, the Convention's obligations inform the protection and restoration of water-dependent ecosystems,[377] water quality objectives for

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[366] Carmody (n 334).
[367] Paul Kildea and George Williams, 'The Water Act and the Murray Darling Basin Plan' (2011) 22 *Public Law Review* 3, 10. See also Brendan Grigg, 'Transboundary Environmental Governance in the Murray Darling Basin' in Robin Warner and Simon Marsden (eds), *Transboundary Environmental Governance: Inland, Coastal and Marine Perspectives* (Routledge, 2012) 21, 29, citing Anne Twomey, 'Aspirational Nationalism or Opportunistic Federalism?' (2007) 51(10) *Quadrant* 38, 40.
[368] Water Act (n 332) s 3(1)(b), 21(3). See also Adam Webster, 'Sharing Water from Transboundary Rivers in Australia – An Interstate Common Law?' (2015) 39 *Melbourne University Law Review* 263; Adam Webster and John Williams, 'Can the High Court Save the Murray River?' (2012) 29 *Environmental and Planning Law Journal* 281; John Williams and Adam Webster, 'Section 100 and State Water Rights' (2010) 21 *Public Law Review* 267.
[369] Water Act (n 332) s 4 'international agreement', 'Ramsar Convention'.
[370] Ibid s 3(1)(c).
[371] Ibid s 3(1)(d)(i).
[372] Ibid s 3(1)(d)(ii).
[373] Ibid s 33.
[374] Ibid s 20. See also Explanatory Statement, Basin Plan 2012 (Cth).
[375] Water Act (n 332) ss 20(a), 21.
[376] Ibid s 4 'international agreement', 'Ramsar Convention'.
[377] *Basin Plan 2012* (Cth) cl 8.05 ('Basin Plan').

basin water resources[378] and water quality targets.[379] The class of water allocated or managed specifically to protect or restore environmental assets, ecological functions and biodiversity within the MDB is referred to as environmental water.[380] Together, these provisions establish a framework through which the Convention's obligations are operationalised within basin-scale water planning, positioning environmental water as a key mechanism for delivering ecological outcomes.

One of the Basin Plan's objectives is the protection and restoration of 'water-dependent ecosystems of the [MDB], including by ensuring that declared Ramsar wetlands that depend on Basin water resources maintain their ecological character'.[381] The CLL is afforded another layer of protection on account of it being a 'hydrologic indicator site'[382] as a gauge of basin-wide ecological health.[383] Despite this regime, most MDB environmental indicators remain unmet and in poor condition.[384] This outcome is unsurprising[385] as, although the plan must 'promote the wise use of … Basin water resources'[386] and 'the conservation of declared Ramsar wetlands',[387] broadly defined 'critical human water needs are the highest priority water use'.[388] Thus, the Water Act and its Basin Plan entrench a hierarchy in which ecological outcomes are contingent on, and frequently subordinated to, the satisfaction of consumptive demands. The CLL's decline

[378] Ibid cls 9.03, 9.04.
[379] Ibid sch 9.
[380] Water Act (n 332) s 4 'environmental water', 'environmental watering'; Basin Plan (n 377) ch 8.
[381] Basin Plan (n 377) cl 8.05(2)(a).
[382] Ibid sch 6 cl 6.03. See also Murray-Darling Basin Authority, *Key Environmental Assets and Hydrologic Indicator Sites* (Map, 2010) <https://www.mdba.gov.au/sites/default/files/publications/lower-murray-key-assets.pdf>.
[383] See Murray-Darling Basin Authority, *Assessment of Environmental Water Requirements for the Proposed Basin Plan: The Coorong, Lower Lakes and Murray Mouth* (Report No 34/12, 2012) <https://www.mdba.gov.au/sites/default/files/publications/EWR-Coorong-Lower-Lakes-and-Murray-Mouth.pdf>.
[384] Colloff et al (n 159) 24–5.
[385] 'National Water Reform', *Wentworth Group of Concerned Scientists* (Web Page, 11 September 2025) <https://wentworthgroup.org/programs/national-water-reform/>. See also *Murray Lower Darling Rivers Indigenous Nations v Commonwealth* [2025] FCA 1029; 'Tanya Plibersek Approved Water Plan without Reading It, Court Finds', *ABC News* (online, 29 August 2025) <https://www.abc.net.au/news/2025-08-29/nsw-fractured-rock-water-resource-plan-traditional-owners-court/105711536>; 'First Nations Take Legal Action over "Inadequate" Murray-Darling Water Plan Consultation', *ABC News* (online, 26 October 2023) <https://www.abc.net.au/news/2023-10-26/first-nations-fractured-rock-water-resource-plan-legal-action/103021156>.
[386] Water Act (n 332) s 21(3)(a).
[387] Ibid ss 21(3)(b), 4 'declared Ramsar wetlands'.
[388] Ibid s 86A(1)(a).

illustrates that the Convention's reliance on facilitative, voluntary tools cannot overcome entrenched domestic allocation priorities under climate stress.[389]

3 *South Australian Wetland Governance*

The passage of the *Biodiversity Act 2025* (SA) ('Biodiversity Act')[390] marks a significant shift in elevating biodiversity protection as a state priority.[391] While the Biodiversity Act does not explicitly integrate the principles of the Convention, it nonetheless advances key environmental and cultural objectives. Importantly, it aims to conserve, restore and improve biodiversity as a shared responsibility, recognising Aboriginal people[392] as enduring custodians of land and waters, embedding climate resilience, and ensuring sustainable use for future generations.[393] Its guiding principles call for transformative action to halt biodiversity loss, respectful and informed engagement with Aboriginal communities, public participation, evidence-based decision-making that incorporates multiple knowledge systems, and precautionary measures even in the face of scientific uncertainty.[394]

Even so, environmental management involves the interplay of multiple legislative regimes, each with distinct administrative structures and regulatory cultures.[395] Planning decisions,[396] for instance, are governed separately from water-related offences, [397] reserves,[398] pollution[399] and Aboriginal heritage.[400] Collectively, these domains are critical to the preservation of the CLL's

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[389] See Department of Climate Change, Energy, the Environment and Water, *Managing Ramsar Wetlands under a Changing Climate* (Guidance Document, 2023) <https://www.dcceew.gov.au/sites/default/files/documents/managing-ramsar-wetlands-under-changing-climate.pdf>.

[390] *Biodiversity Act 2025* (SA) ('Biodiversity Act').

[391] Ibid s 6; Bell-James et al, *Wentworth Group Submission to Public Consultation South Australia's Draft Biodiversity Bill* (n 295); Teagan Goolmeer et al, 'Recognizing Culturally Significant Species and Indigenous-Led Management Is Key to Meeting International Biodiversity Obligations' (2022) 15(6) *Conservation Letters* 1.

[392] Biodiversity Act (n 390) s 3 'Aboriginal person'.

[393] Ibid s 7.

[394] Ibid s 8.

[395] See Neil Gunningham, 'Enforcing Environmental Regulation' (2011) 23(2) *Journal of Environmental Law* 169.

[396] *Planning, Development and Infrastructure Act 2016* (SA).

[397] *Landscape South Australia Act 2019* (SA).

[398] Ramsar Convention (n 3) art 4.1; *National Parks and Wildlife Act 1972* (SA) schs 3, 5; National Parks South Australia, *Coorong National Park* (Map, 2014) <https://coorongcountry.com.au/wp-content/uploads/2016/01/coorong-national-park-map.pdf>.

[399] *Environment Protection Act 1993* (SA).

[400] *Aboriginal Heritage Act 1988* (SA).

ecological character, given that hydrological, ecological, cultural and developmental factors all intersect within the same geographic landscape.[401]

Notably, the Biodiversity Act's critical habitat provisions empower the Minister to declare areas off-limits to development.[402] In theory, this mechanism could be used to protect vulnerable wetland sites like the CLL, but no such declarations have yet been made, leaving open the question of whether these protections will be meaningfully applied. Until then, the *Planning and Design Code*[403] designates the CLL as land subject to the Ramsar Wetlands Overlay.[404] This overlay is restricted to listed sites and does not embed the Convention's wise use principle across all wetlands. Thus, although the Convention stipulates that wetlands as a class should be afforded a heightened level of protection,[405] they are treated by these South Australian legislative schemes as any other land and are neither inherently protected nor managed in a way that ensures their wise use. Given that the majority of planning decisions happen at this level, this absence is concerning.

B *Governance in Action*

Although sites such as the CLL are theoretically protected under the Acts discussed in Section A, there remain significant gaps in outcomes. Indeed, as Bury observes, Australian incorporation 'falls short of fully integrating Ramsar requirements with the key interlinked Ramsar concepts of conservation and wise use'.[406] Site degradation continues due to inadequate enforcement,[407] legacy land uses[408] and failure to account for evolving threats like reduced river flows or sea-level

[401] See South Australia, *Parliamentary Debates*, House of Assembly, 14 May 2025, 12020 (Susan Close); Biodiversity Bill 2025 (SA).
[402] Biodiversity Act (n 390) ss 84–95, 97. See also Carina Bury, 'Lost in Translation? Why Outdated Notions of Normativity in International Law Explain Germany's Failure to Give Effect to the Ramsar Convention of 1971' (2023) 26(2) *Journal of International Wildlife Law & Policy* 135; Bury, 'Deficient by Design' (n 72).
[403] *Planning, Development and Infrastructure Act 2016* (SA) ss 65, 66; 'South Australia's Online Planning and Design Code', *PlanSA* (Web Page) <https://code.plan.sa.gov.au/>.
[404] 'Part 3 – Overlays – Ramsar Wetlands Overlay', *PlanSA (*Web Page) <https://code.plan.sa.gov.au/home/browse_the_planning_and_design_code>.
[405] Ramsar Convention (n 3) arts 3.1, 4.1.
[406] Bury, 'Deficient by Design' (n 72) 99.
[407] Samuel (n 333) 147.
[408] See, eg, Department for Environment and Water, *State of the Southern Coorong – Building a Shared Understanding of Current Scientific Knowledge* (Discussion Paper, June 2021) <https://cdn.environment.sa.gov.au/environment/docs/Southern-Coorong-desired-state-discussion-paper-June-2021.pdf>; Mosley et al, 'Extreme Eutrophication and Salinisation in the Coorong' (n 23).

rise.[409] In fact, 'insufficient inflows and flushing'[410] contribute to the site's declining condition. The latest assessment by South Australia's Department for Environment and Water explains that the site is 'at risk of no longer supporting some of the values (including social and ecological) that make it a wetland of local, national, and international importance'.[411] This persistent degradation despite formal protections illustrates the gap between legal commitments and ecological outcomes for Ramsar-listed wetlands, a gap caused by the three primary deficiencies examined below.

1 *Fragmentation and Jurisdictional Gaps*

As the Convention's Secretary General noted at COP15, wetlands continue to be sidelined in management strategies.[412] Common barriers 'include governance challenges [and] weak coordination',[413] both among institutions and across sectors. Resolution VII.7 of COP7 makes clear that promoting wise use effectively requires strong legal and institutional frameworks, operating at both local and national levels.[414] As such, the COP has endorsed legal and institutional reviews as a core element of wise use planning,[415] and stresses that harmonised approaches across federal systems are essential.[416] Further, Target 4.3 of the *Fifth Strategic Plan* calls on Contracting Parties to have effective legal and policy instruments 'in place to fully

[409] National Climate Change Adaptation Research Facility, 'Climate Change Adaptation in the Coorong and Lower Lakes' (Fact Sheet, April 2019); Catherine Gross et al, *Limits to Adaptation: Climate Change Adaptation in the Coorong, Murray Mouth and Lakes Alexandrina and Albert* (Synthesis Report No 6/12, 2012); Rees et al (n 28).

[410] Department for Environment and Water, *South Australian Evaluation of Environmental Outcomes under the Basin Plan 2024 – South Australian River Murray Water Resource Plan Area* (Report, 2024) 54 <https://cdn.environment.sa.gov.au/environment/docs/BP-Evaluation_Matter8_SA-River-Murray-Evaluation_2024.pdf>.

[411] Department for Environment and Water, *State of the Coorong – Building a Shared Understanding of Current Knowledge* (Discussion Paper, September 2024) 5 <https://cdn.environment.sa.gov.au/environment/docs/State-of-the-Coorong-discussion-paper-HCHB-FINAL-1026745.pdf>.

[412] Ramsar Convention Secretariat, *Report of the Secretary General on the Implementation of the Convention: Global Implementation*, Doc 8.1, 15th Meeting of the Conference of the Contracting Parties, 23–31 July 2025, [13] <https://www.ramsar.org/sites/default/files/2025-05/cop15_8_1_sg_report_global_implementation_e_0.pdf>.

[413] Ibid.

[414] Conference of the Contracting Parties to the Convention on Wetlands, *Guidelines for Reviewing Laws and Institutions to Promote the Conservation and Wise Use of Wetlands*, Resolution VII.7, COP7, 10–18 May 1999 <https://www.ramsar.org/sites/default/files/documents/library/key_res_vii.07e.pdf> ('*Resolution VII.7*'); Ramsar Convention Secretariat, *Handbook 3* (n 83) 29.

[415] Ibid.

[416] Ibid.

implement the Convention, its Resolutions and decisions'.[417] Through COP activity, Contracting Parties are urged to 'seek to institutionalise the principle … in all relevant sectors'[418] and to 'ensure horizontal and vertical coordination and support integrated management based on an ecosystem approach'.[419] Nevertheless, implementation remains uneven in federal systems like Australia.

As Pankakoski notes, regulatory fragmentation refers to situations where 'a single phenomenon is covered by several, possibly contradicting legal regimes'.[420] Nowhere in Australia is this more evident than in MDB governance, and the CLL exemplifies these tensions.[421] Vertical fragmentation arises from the division of powers between the Commonwealth and the states and territories.[422] Australia's dualist system, combined with inconsistent approaches among Federation members, creates gaps in translating the Convention's obligations into enforceable protections.[423] Horizontal fragmentation occurs within each tier of government, where environmental laws,[424] water laws,[425] planning laws[426] and a range of other legislative regimes operate in silos.[427]

Vertical fragmentation, which is noted as detrimental in the CLL's Ramsar Management Plan,[428] has direct ecological consequences. South Australia, located at the terminus of the MDB, depends on upstream flows to sustain the wetland.[429] Indeed, the CLL's Management Plan

[417] COP, *Fifth Strategic Plan* (n 32) annex 1 [44]. See also Conference of the Contracting Parties to the Convention on Wetlands, *The Protection, Conservation, Restoration, Sustainable Use and Management of Wetland Ecosystems in Addressing Climate Change*, Resolution XIV.17, COP14, 5–13 November 2022 <https://www.ramsar.org/sites/default/files/documents/library/xiv.17_climate_change_e.pdf>.
[418] Ramsar Convention Secretariat, *Handbook 3* (n 83) 50. See also COP, *Resolution VII.7* (n 414).
[419] Ramsar Convention Secretariat, *Handbook 3* (n 83) 50.
[420] Timo Pankakoski, 'Fragmentation' in Mortimer Sellers and Stephan Kirste (eds), *Encyclopedia of the Philosophy of Law and Social Philosophy* (Springer Netherlands, 2023) 1005, 1007.
[421] See Frank Biermann et al, 'Governance Fragmentation' in Frank Biermann and Rakhyun E Kim (eds), *Architectures of Earth System Governance: Institutional Complexity and Structural Transformation* (Cambridge University Press, 2020) 158, 162.
[422] Samuel (n 333), 154, 182–3.
[423] Ibid.
[424] *Environment Protection Act 1993* (SA); *Native Vegetation Act 1991* (SA); Biodiversity Act (n 390); EPBC Act (n 331).
[425] *Landscape South Australia Act 2019* (SA); Water Act (n 332).
[426] *Planning, Development and Infrastructure Act 2016* (SA); EPBC Act (n 331).
[427] See South Australia, *Parliamentary Debates*, Legislative Council, 13 November 2024, 7209 (Tammy Franks).
[428] Department for Environment and Heritage, *Coorong, and Lakes Alexandrina and Albert Ramsar Management Plan* (Management Plan, September 2000) 20 <https://cdn.environment.sa.gov.au/environment/docs/ramsar_management_plan.pdf>.
[429] Brookes et al (n 333).

explains that 'many of the environmental impacts that affect the region arise from outside the region or are the result of actions taken in response to intergovernmental agreements … made at the state and federal level'[430] and that altered hydrological regimes and reduced inflows pose an immediate threat to the ecological character of the site.[431] Indeed, though the Water Act purports to protect Ramsar-listed wetlands,[432] and in theory the CLL's water allocation plan should ensure that it receives sufficient water to sustain its ecological character,[433] current water allocations entrenched in the Basin Plan are insufficient to meet these needs.[434] In fact, river flows at hydrologic indicator sites routinely fall below projections,[435] and the CLL only receives roughly 70% of expected flows.[436] The ecological effects of this are visible.[437] Indeed, as Grigg, Dunlop and Ahmad observe, 'a core piece of the management puzzle for the [CLL] region has always been upstream water management and upstream deliberation and decision-making about water'.[438] It is therefore striking that a study by the Wentworth Group of Concerned Scientists revealed that less than one-third of the basin's assessed environmental water requirements were met over the past 43 years.[439] Alarmingly, in the decade following the enactment of the Basin Plan, only about a quarter of all assessed environmental flow requirements were achieved.[440] For the CLL, this chronic shortfall has resulted in rising salinity, habitat degradation and the ongoing collapse of key ecological communities.[441]

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[430] Department for Environment and Heritage, *Coorong, and Lakes Alexandrina and Albert Ramsar Management Plan* (n 428) 20.
[431] Department for Environment and Water, *Draft Ramsar Management Plan* (n 141) 23.
[432] Water Act (n 332) s 21(3)(c). See also Murray-Darling Basin Authority, *Basin Annual Environmental Watering Priorities 2024–2025* (Report, June 2024) <https://www.mdba.gov.au/sites/default/files/publications/basin-annual-environmental-watering-priorities-2024-2025.pdf>.
[433] Water Act (n 332) s 21(3)(c).
[434] Department for Environment and Water, *South Australian Evaluation of Environmental Outcomes under the Basin Plan 2024* (n 410) 54; Emma Carmody et al, *Are Murray-Darling Basin Rivers Getting the Water They Need to Stay Healthy?* (Report, 8 September 2023) <https://wentworthgroup.org/wp-content/uploads/2023/09/MDB-EWR-Report-8-Sept-2023-1.pdf>.
[435] Colloff et al (n 159) 24, 14.
[436] Ibid iii.
[437] Brookes et al (n 333); Mosley et al, 'Extreme Eutrophication and Salinisation in the Coorong' (n 23); Rees et al (n 28).
[438] Grigg, Dunlop and Ahmad (n 159) 27.
[439] Carmody et al (n 434). See also Matthew Colloff et al, *Assessment of River Flows in the Murray-Darling Basin: Observed Versus Expected Flows under the Basin Plan 2012–2019* (Report, August 2020) <https://wentworthgroup.org/wp-content/uploads/2020/08/MDB-flows.pdf>.
[440] Ibid.
[441] Mosley et al, 'Extreme Eutrophication and Salinisation in the Coorong' (n 23); Brookes et al (n 333).

Australian environmental laws often cite the Convention's obligations,[442] but without clear definitions they become tokenistic rather than enforceable.[443] This absence of operational clarity creates what Bury calls a 'statutory vacuum',[444] where obligations are acknowledged yet lack legal effect.[445] As a result, decisions are made without genuine integration of the Convention's conservation goals or consideration of evolving ecological risks,[446] undermining both enforceability and practical applicability.

For example, while the Basin Plan theoretically mirrors the Convention's wise use obligation through its "triple bottom line" approach,[447] which balances environmental, economic and social outcomes, its execution has been widely criticised.[448] The South Australian Government's Murray-Darling Basin Royal Commission savagely condemned this framework in 2019 for diluting environmental obligations and allowing political compromise to override ecological integrity.[449] According to Pittock et al., 'the Water Act sets up an inevitable tension' between meeting obligations under the Convention's first and second pillar, and the provision of the Act's broadly defined critical human consumption.[450] In this context, it is unsurprising that environmental priorities rarely supersede human interests and practices,[451] and that, in practice, the latter almost always prevails.

The Convention's guidance notes that neither protected area status nor site-specific management planning alone is sufficient to maintain a wetland's ecological character.[452] Thus, even the strongest state-level protections cannot compensate for inadequate upstream management, and effectiveness ultimately rests on decisions outside South Australia.

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[442] EPBC Act (n 331) ss 16, 17, 17A, 17B, 34C(1), 138; Water Act (n 332) ss 21(3), 73, 73C.
[443] Bury, 'Deficient by Design' (n 72) 102.
[444] Ibid 103.
[445] Maya Suzuki, 'Muddied Waters: Revealing Methodological Confusion in Australia's Environmental Impact Assessment Process' (2020) 37 *Environmental and Planning Law Journal* 267.
[446] Ibid.
[447] Murray-Darling Basin Authority, *The Triple Bottom Line Framework* (Explanatory Report, November 2016) <https://www.mdba.gov.au/sites/default/files/publications/763-nb-triple-bottom-line-report.pdf>.
[448] See, eg, Walker (n 333); 'Living Off Our Resources', *ABC News* (online, 19 January 2011) <https://www.abc.net.au/news/2011-01-19/cdspart2/43090>.
[449] Walker (n 333) 20.
[450] Jamie Pittock et al, 'Changing Character: The Ramsar Convention on Wetlands and Climate Change in the Murray-Darling Basin, Australia' (2010) 27 *Environmental and Planning Law Journal* 401, 421.
[451] 'Murray–Darling Basin: Water Access and Use', *Bureau of Meteorology* (Web Page, 11 September 2025) <http://www.bom.gov.au/water/nwa/2019/mdb/supportinginformation/wateraccessanduse.shtml>; 'Murray–Darling Basin: Supporting Information', *Bureau of Meteorology* (Web Page, 11 September 2025) <http://www.bom.gov.au/water/nwa/2023/mdb/supportinginformation/statementdetails.shtml#water_use>.
[452] Ramar Convention Secretariat, *Handbook 3* (n 83) 40.

Commonwealth legislative schemes foster fragmented decision-making and rarely align with state and territory environmental management,[453] creating gaps and overlaps in governance that hinder the integrated approach Ramsar-listed sites like the CLL require.[454] Indeed, the CLL's ongoing decline suggests that legal frameworks lack the strength to operate preventively or systemically.

While the Article 4.1 obligation to provide 'wardening'[455] of wetlands appears in both the federal and state frameworks – and the Water Act cites it[456] as the basis for criminalising water theft[457] – enforcement is minimal.[458] The aggravated offence applicable to the unlawful taking of water from a Ramsar-listed wetland[459] carries a maximum penalty of 'imprisonment for 5 years or [$99,000[460]], or both'.[461] Similarly, the protective provisions of the EPBC Act also carry significant civil penalties,[462] but are rarely enforced.[463] In the only successful example of civil enforcement in relation to a Ramsar site,[464] the Federal Court concluded that there had been a serious breach of the EPBC Act,[465] yet the penalties imposed were a mere fraction – only 8.2% – of the maximum penalty.[466] Unsurprisingly, the Samuel Review found these provisions 'outdated' and 'ineffective',[467] advocating for stronger MNES protection[468] and a 'complete overhaul'[469] of the

[453] Samuel (n 333) 184; Ramsar Convention Secretariat, *Handbook 3* (n 83) 34. See also Anne Davies and Lisa Cox, 'Legal Stoush between NSW and Commonwealth Halts Crucial Water Flows into Murray-Darling', *The Guardian* (online, 20 August 2025) <https://www.theguardian.com/australia-news/2025/aug/20/legal-stoush-between-nsw-and-commonwealth-halts-crucial-water-flows-into-murray-darling>.
[454] Ramsar Convention Secretariat, *Handbook 3* (n 83).
[455] Ramsar Convention (n 3) art 4.1.
[456] Water Act (n 332) s 73C(a).
[457] Ibid s 73A. See also 'Pumped', *Four Corners* (Australian Broadcasting Corporation, 24 July 2017) <https://www.abc.net.au/news/2017-07-24/pumped/8727826>.
[458] Loch et al (n 333).
[459] Water Act (n 332) ss 73B(1)(e)(vii), 73B(2), 73B(6).
[460] *Crimes Act 1914* (Cth) s 4AA(1).
[461] Water Act (n 332) s 73B(2). See also Loch et al (n 333).
[462] Brendan Grigg, 'Environmental Civil Penalties in Australia: Towards Deterrence?' (2011) 28(1) *Environmental and Planning Law Journal* 36, 42.
[463] Jamie Pittock, 'More than Waterbirds: Application of the Ramsar Convention on Wetlands in Australia' (2015) 30(6) *Australian Environment Review* 153.
[464] *Minister for Environment and Heritage v Greentree [No 2]* (2004) 138 FCR 198; *Minister for Environment and Heritage v Greentree [No 3]* (2004) 136 LGERA 89; *Greentree v Minister for the Environment and Heritage* [2005] FCAFC 128.
[465] *Minister for Environment and Heritage v Greentree [No 3]* (2004) 136 LGERA 89, [80].
[466] EPBC Act (n 331) s 16(1); *Minister for Environment and Heritage v Greentree [No 3]* (2004) 136 LGERA 89, [82].
[467] Samuel (n 333) 21.
[468] Ibid 209.
[469] Ibid 28.

EPBC Act's compliance and enforcement powers. This pattern of weak enforcement and fragmented oversight leaves Ramsar-listed wetlands vulnerable, and these shortcomings are exacerbated by the marginalisation of Indigenous governance rights.

2 *First Nations Governance*

The Convention's text is silent on Indigenous rights, yet its emphasis on wise use and participatory management, reinforced through COP activity,[470] aligns with the global shift towards inclusive environmental governance and the principles of the *United Nations Declaration on the Rights of Indigenous Peoples*.[471] Even so, the Convention's guidance concedes that there are 'shortfalls in political support for the involvement of Indigenous Peoples'[472] as sovereign partners in managing their lands and waters. Australia is no exception to this.

Nationally, recognition is often superficial.[473] The Samuel Review found a 'culture of tokenism'[474] in the EPBC Act, which prioritises Western science and dilutes Indigenous knowledge in decision-making. Similarly, the Water Act requires Basin management to consider Indigenous values,[475] but the 2025 Murray-Darling Basin Authority review of the Basin Plan acknowledged that '[m]ore work needs to be done to address consideration of ecosystem functions and services as part of maintaining ecological character'[476] to meet the Convention's wise use mandate. Without binding co-decision requirements, integration remains piecemeal, and with a meagre 0.2% of the MDB's surface-water allocation owned by First Nations Peoples,[477] federal inclusion remains critically lacking.[478]

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[470] See, eg, COP, *Fifth Strategic Plan* (n 32) [14], [19], annex 1 [11(b)], [19], [33], [41].
[471] *United Nations Declaration on the Rights of Indigenous Peoples* (n 110).
[472] Oviedo and Ali (n 137) 40.
[473] See, eg, EPBC Act (n 331) s 3(d); Water Act (n 332) s 3(fa).
[474] Samuel (n 333) 57.
[475] Water Act (n 332) s 3(1)(fa).
[476] Murray-Darling Basin Authority, *Protection and Restoration* (n 330) 23.
[477] Department of Climate Change, Energy, the Environment and Water, *Murray–Darling Basin First Nations Water Report 2023–24 – Provision of Sections 85E and 85F under Part 5, Division 6, of the Water Amendment (Restoring Our Rivers) Act 2023* (Final Report, 2024) 7 <https://www.dcceew.gov.au/sites/default/files/documents/mdb-first-nations-water-report-2023-24.pdf>.
[478] Milo Costanza-van Den Belt et al, 'Watering of Wetlands on Indigenous Country in the Murray–Darling Basin, Australia' (2022) 73(12) *Marine and Freshwater Research* 1413.

Fragmented governance further impedes inclusion as legislative compartmentalisation conflicts with the worldview of Australia's First Nations peoples,[479] and creates barriers to participation.[480] Relevantly, in this context, South Australia has made more tangible progress.[481] The Biodiversity Act acknowledges the critical role that First Nations people should play in environmental management and, as such, establishes the Aboriginal Biodiversity Committee[482] to advise on policy for 'Culturally Significant Biodiversity Entities'.[483] The Biodiversity Act defines these Culturally Significant Biodiversity Entities as 'a native species or ecological community to which some or all Aboriginal persons attribute cultural value and which is critical to their relationship with, and adaptation to, Country'.[484] They are then given enhanced protection,[485] and affected Aboriginal people are given additional standing with respect to the same.[486]

Importantly, the *Kungun Ngarrindjeri Yunnan Agreement* – which translates to 'listening to Ngarrindjeri talking' – also embeds active Ngarrindjeri participation.[487] Negotiated in the wake of the Hindmarsh Island Bridge development,[488] the agreement was made to 'enable Ngarrindjeri cultural values to become integral to all planning and future management arrangements that are made with respect to [Ngarrindjeri native title land]',[489] and to 'assure active Ngarrindjeri participation in those arrangements'.[490]

Without embedding Indigenous governance as a binding element throughout MDB management, state-level initiatives remain incapable of fulfilling the Convention's goals. Although South

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[479] Ngarrindjeri Nation and Hemming (n 2); Hemming et al (n 137); Lynley Wallis and Alice Gorman, 'A Time for Change? Indigenous Heritage Values and Management Practice in the Coorong and Lower Murray Lakes Region, South Australia' [2010] (1) *Australian Aboriginal Studies* 57.

[480] Jenke et al (n 177); Marsden, 'Indigenous Peoples and Local Communities' (n 173); Wallis and Gorman (n 479).

[481] See 'First Nations Partnerships', *Department for Environment and Water* (Web Page, 10 September 2025) <https://www.environment.sa.gov.au/topics/water-and-river-murray/projects-plans-and-security/water-projects/coorong/current-projects/first-nations-partnerships>; Department for Environment and Water, *Draft Ramsar Management Plan* (n 141) 82–91; Goolmeer et al (n 391).

[482] Biodiversity Act (n 390) ss 20–22.

[483] Ibid s 22(d)(ii).

[484] Ibid s 3 'Culturally Significant Biodiversity Entity'.

[485] Ibid ss 79(3), 84(6)(d), 129(c), 173(5)(a), 175(4)(b), 177(2)(f).

[486] Ibid s 116(1)(e).

[487] *Kungun Ngarrindjeri Yunnan Agreement*, Ngarrindjeri Tendi Incorporated – Ngarrindjeri Heritage Committee Incorporated – Ngarrindjeri Native Title Management Committee – State of South Australia (5 June 2009) <https://cdn.environment.sa.gov.au/environment/docs/cllmm-gen-kungunngarrindjeriyunnanagreement.pdf>.

[488] For background, see Margaret Simons, *The Meeting of the Water: The Hindmarsh Island Affair* (Hodder Headline, 2003).

[489] Kungun Ngarrindjeri Yunnan Agreement (n 487) 1.

[490] Ibid.

Australia has made strides in First Nations inclusion in environmental decision-making,[491] this remains insufficient – environmentally, because water entering the system is governed by upstream decisions;[492] and culturally, because interconnected ecosystems require governance that transcends state boundaries.[493] Genuine co-decision-making is therefore essential to ensure that the Convention's objectives translate into protection.

3 *Cumulative Impacts and Climate Exclusion*

While the Convention's text omits explicit reference to cumulative impacts or climate change, subsequent interpretations of the wise use principle have evolved to encompass both.[494] Australia's legislative frameworks are repeatedly criticised for excluding these considerations,[495] and the CLL demonstrates the consequences.

The EPBC Act's[496] significance test is applied to individual projects in isolation.[497] This narrow, project-by-project lens ignores how small, seemingly low-risk actions can accumulate into major ecological decline.[498] The result is a "death by a thousand cuts",[499] where incremental damage leads to significant degradation of MNES over time. The EPBC Act remains silent on cumulative

[491] Biodiversity Act (n 390); Kungun Ngarrindjeri Yunnan Agreement (n 487).
[492] Phillips and Muller, *Ecological Character Description* (n 143) ch 3.
[493] Hemming et al (n 137).
[494] Ramsar Convention Secretariat, *Handbook 1* (n 91); Ramsar Convention Secretariat, *Handbook 16: Impact Assessment Guidelines on Biodiversity Inclusive Environmental Impact Assessment and Strategic Environmental Assessment* (4th ed, 2010) <https://www.ramsar.org/sites/default/files/documents/pdf/lib/hbk4-16.pdf>. See also Evan Hamman, 'Cumulative Effects Assessment under the World Heritage and Ramsar Regimes' (2025) 75 *Environmental Management* 2886.
[495] Wentworth Group of Concerned Scientists (n 334).
[496] See EPBC Act (n 331) ch 4.
[497] Ibid; 'Water Capture to Restore Wetlands', *EPBC Act Public Portal, Department of Climate Change, Energy, the Environment and Water* (Web Page) <https://epbcpublicportal.environment.gov.au/all-referrals/project-referral-summary/project-decision/?id=200ba634-7e67-e511-b4b8-005056ba00ab>; 'Proposed Temporary Weir at Pomanda Island Near Wellington', *EPBC Act Public Portal, Department of Climate Change, Energy, the Environment and Water* (Web Page) <https://epbcpublicportal.environment.gov.au/all-referrals/project-referral-summary/?id=b7787a12-4c67-e511-b4b8-005056ba00ab>; 'Goolwa Channel Water Level Management Project', *EPBC Act Public Portal, Department of Climate Change, Energy, the Environment and Water* (Web Page) <https://epbcpublicportal.environment.gov.au/all-referrals/project-referral-summary/project-decision/?id=c601a634-7e67-e511-b4b8-005056ba00ab>; 'Murray Mouth Dredging', *EPBC Act Public Portal, Department of Climate Change, Energy, the Environment and Water* (Web Page) <https://epbcpublicportal.environment.gov.au/all-referrals/project-referral-summary/?id=197f7a12-4c67-e511-b4b8-005056ba00ab>.
[498] See EPBC Act (n 331) s 527E.
[499] Wentworth Group of Concerned Scientists (n 334).

effects, even after the Samuel Review recommended their inclusion.[500] Cumulative harm also arises from interacting external pressures,[501] yet these interactions are not systematically assessed. Climate change compounds the problem, as its multifaceted effects blur causal chains,[502] making it difficult to establish the clear lines of responsibility preferred in regulatory decision-making.[503] Taken together, these limitations leave the framework incapable of guarding against diffuse but profound threats.[504]

The Water Act and Basin Plan similarly fail to integrate climate change meaningfully. Although the Basin Plan was intended to restore sustainable water use, allocations remain tied to historic climate data[505] – an approach heavily criticised as obsolete in a rapidly changing climate.[506] This is especially detrimental in the southern MDB, where reduced rainfall and higher temperatures are already exacerbating water scarcity and threatening Ramsar sites[507] such as the CLL.[508] As Carmody contends, 'proper implementation of [the Convention] requires that [sustainable diversion limits] take into account likely future climate change'.[509] While the Basin Plan does contain an adaptive management scheme,[510] the Productivity Commission has noted that 'more clarity is needed about how the climate change objectives are measured and assessed'[511] and how they affect the environmentally sustainable level of take. In the absence of such clarity, adaptive management remains rhetorical. The consequences are evident: the target of keeping the Murray Mouth open 95% of the time without dredging[512] is 'unlikely to ever be met',[513] and the

[500] Samuel (n 333) 1.
[501] Wentworth Group of Concerned Scientists (n 334); National Climate Change Adaptation Research Facility, 'Climate Change Adaptation in the Coorong and Lower Lakes' (n 409); Rees et al (n 28).
[502] Laura Schuijers, 'Environmental Decision-Making in the Anthropocene: Challenges for Ecologically Sustainable Development and the Case for Systems Thinking' (2017) 34 *Environmental and Planning Law Journal* 179, 192.
[503] Ibid.
[504] See Bell-James et al, *Wentworth Group Submission to Public Consultation South Australia's Draft Biodiversity Bill* (n 195).
[505] Basin Plan (n 377) cls 7.15(1)(a), 10.10(4); sch 3.
[506] Walker (n 333) 247; Carmody (n 334) 360.
[507] Bino et al (n 334); Murray-Darling Basin Authority, *Basin-Wide Environmental Watering Strategy* (Report, 2nd ed, 22 November 2019) <https://www.mdba.gov.au/sites/default/files/publications/basin-wide-environmental-watering-strategy-second-edition.pdf>.
[508] National Climate Change Adaptation Research Facility, 'Climate Change Adaptation in the Coorong and Lower Lakes' (n 409).
[509] Carmody (n 334) 360.
[510] Basin Plan (n 377) cls 1.07, 5.02, 8.02, 8.11, 8.40, 13.03.
[511] Productivity Commission, *Murray-Darling Basin Plan: Implementation Review 2023* (Inquiry Report No 103, 19 December 2023) 22 <https://www.pc.gov.au/inquiries/completed/basin-plan-2023/report/basin-plan-2023-overview.pdf>.
[512] Water Act (n 332) s 86A(2)(c).
[513] Colloff et al, *Assessment of River Flows in the Murray-Darling Basin* (n 439) 25.

Murray Darling Basin Authority has conceded that 'it appears that under the drying climate the target for the Murray Mouth opening is unachievable'.[514] Whether this amounts to an effective abandonment of Australia's international obligations under the Convention remains a critical and troubling question, particularly as abandoning that target will fundamentally alter the estuarine dynamics of the CLL and therefore change its ecological character.

C *Conclusion*

Australia's implementation of the Convention reveals the limits of voluntary international norms when filtered through fragmented, politically mediated domestic regimes. The result is a patchwork system that acknowledges the Convention's obligations but rarely enforces them. The marginalisation of Indigenous governance and the exclusion of cumulative and climate-related impacts further hollow out the Convention's intent, and these deficiencies show how domestic structures can erode international commitment. The CLL exemplifies the consequences of such a system, where it is protected in law, but deteriorating in fact. This highlights the urgent need for reforms, as explored in the next chapter.

[514] Ibid 19, citing Murray-Darling Basin Authority, *The Living Murray Story* (n 20) 53.

VI THE NEED FOR REFORM

The contrast between the Convention's aspirations and the ecological reality of the CLL reveals both the structural fragility of the international framework under climate stress and the shortcomings of Australia's domestic governance. This chapter therefore advances three essential reforms: the introduction of climate-responsive Article 3.2 notifications and corresponding domestic policy, the enhancement of accountability, and furthering First Nations' role within wetland management.

A *Wins and Losses*

After over five decades, the Convention stands at a crossroads. On the one hand, since 1970, there has been considerable progress in reshaping human perception and understanding of wetlands.[515] Once dismissed as unproductive wastelands, frequently targeted for drainage or conversion to other land uses,[516] wetlands are now recognised as ecosystems of immense value.[517] This transformation in perception owes much to the work of the Convention,[518] and it is essential to the continued desire for wetland protection.[519]

On the other hand, it is also the case that, since 1970, at least 21–35% of global wetlands have been lost,[520] and that over half of those that remain are considered severely degraded.[521] Wetlands are disappearing at a rate three times faster than forests.[522] They are the most threatened ecosystems on Earth.[523] Such staggering figures highlight the limits of image

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[515] Michael Bowman, 'The Ramsar Convention on Wetlands: Has it Made a Difference' (2003) *Yearbook of International Co-Operation on Environment and Development* 61, 67.
[516] Matthews (n 2); O'Gorman (n 23).
[517] See Ramsar Convention (n 3) preamble; Convention on Wetlands, *Global Wetland Outlook 2025 – Valuing, Conserving, Restoring and Financing Wetlands* (Report, July 2025) <https://www.ramsar.org/sites/default/files/2025-07/GWO2025_Eng_Rev.1.pdf>; Millennium Ecosystem Assessment Board, *Ecosystems and Human Well-Being: Wetlands and Water* (Synthesis Report, 2005) <https://www.ramsar.org/sites/default/files/documents/pdf/document.358.aspx.pdf>; Matthews (n 2); O'Gorman (n 23).
[518] Bowman (n 515).
[519] Volker Mauerhofer, Rakhyun Kim and Casey Stevens, 'When Implementation Works: A Comparison of Ramsar Convention Implementation in Different Continents' (2015) 51 *Environmental Science & Policy* 95; Dragomir and Florescu (n 225); Peter Bridgewater and Rakhyun Kim, '50 Years On, W(h)ither the Ramsar Convention? A Case of Institutional Drift' (2021) 30(13) *Biodiversity and Conservation* 3919; Bowman (n 515).
[520] Etienne Fluet-Chouinard et al, 'Extensive Global Wetland Loss over the Past Three Centuries' (2023) 614(7947) *Nature* 281.
[521] Ramsar Convention Secretariat, *COP15 Article 8.2 Report* (n 208) 10.
[522] Ibid 15; Convention on Wetlands, *Global Wetland Outlook 2025* (n 517); Fluet-Chouinard et al (n 520).
[523] Ibid.

rehabilitation alone, and Australian wetlands exemplify this reality.[524] Faced with accelerated loss and degradation due to climate change,[525] practices must now evolve,[526] not merely to protect what remains, but to confront the ecological crisis with renewed urgency and transformative ambition.[527]

Fortunately, as Chapter II explained, the Convention already contains mechanisms for development, either through Article 10-bis, which enables textual amendments, or through COP activity, which guides interpretation and implementation.[528] For Australia, meaningful progress will depend on clear policy shifts and legislative reform.

B *Climate Change as the Stress Test*

One of the most important factors in the success of an MEA is its ability to adapt and expand to address new challenges over time.[529] The Convention falls short in this regard. Despite the Convention formally recognising the vulnerability of wetlands to climate change, its operational mechanisms are structured to exclude climate-induced transformations from the triggers of protective intervention.[530] As one of the greatest threats to global wetlands,[531] excluding climate change's manifestations not only ignores reality but also undermines the very basis for the Convention.[532] Climate change is therefore not just an external challenge, but a stress test that exposes the Convention's outdated and rigid design.

An example of such a manifestation is present on the South Australian coast: the 2025 harmful algal bloom.[533] Triggered by a confluence of "natural" events,[534] the bloom has made

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[524] Department of Climate Change, Energy, the Environment and Water, *State of the Environment Report: Rivers and Wetlands* (Summary Report, 2022) <https://www.dcceew.gov.au/sites/default/files/documents/9.%20DCCEEW-SOE_factsheet_Rivers%20and%20Wetlands.pdf>; Mosley et al, 'Extreme Eutrophication and Salinisation in the Coorong' (n 23); Brookes et al (n 333); Grigg, Dunlop and Ahmad (n 159); Rees et al (n 28).
[525] Fluet-Chouinard et al (n 520).
[526] Brunnée and Campbell-Duruflé (n 97) [34].
[527] COP, *Fifth Strategic Plan* (n 32).
[528] Ramsar Convention (n 3) art 10-bis; Wiersema (n 75); Bury, 'Deficient by Design' (n 72).
[529] Brunnée and Campbell-Duruflé (n 97) [34].
[530] COP, *Resolution IX.1* (n 107) 6; Scientific and Technical Review Panel, 'Limits of Acceptable Change' (n 178) [27].
[531] Convention on Wetlands, *Global Wetland Outlook 2025* (n 517).
[532] Ramsar Convention (n 3) preamble para 4.
[533] 'Algal Bloom Situation Update', *Department of Primary Industries and Regions* (Web Page, 3 September 2025) <https://pir.sa.gov.au/sardi/aquatic_sciences/marine_ecosystems/algal_bloom>.
[534] 'SA Algal Bloom Update', *Department for Environment and Water* (Web Page, 16 July 2025) <https://www.environment.sa.gov.au/news-hub/news/articles/2025/07/sa-harmful-algal-bloom-update>.

'graveyards'[535] of South Australia's coastline. Now, the bloom has spread into the waters of the CLL,[536] pushing the site dangerously close to its ecological tipping point.[537]

Of course, algae are natural, as are the climatic and hydrological conditions that fuel their proliferation.[538] South Australia's coastal features heighten vulnerability,[539] and climate change has greatly intensified the risk.[540] It is deeply problematic that the Convention may therefore exclude such impacts from notification requirements, merely because they emerge from processes deemed "natural" in origin or are principally driven by climate. This false dichotomy, where "natural" equates to benign,[541] obscures the anthropogenic fingerprints embedded in contemporary ecological disasters. The Convention needlessly complicates the question of attribution and creates a framework under which degradation may be left unaddressed.[542]

The Convention asks the wrong question. Rather than interrogating *whether* ecological character change is directly attributable to pollution, development or other conventional forms of human interference,[543] it should be asking *what* degradation is occurring and *why*. By anchoring its reporting obligations in narrow definitions of causation,[544] the Convention fails to acknowledge the layered realities of present ecological disruption. This rigid categorisation of causal factors inadvertently absolves Contracting Parties from confronting drivers like climate change, which manifests diffusely across time and space.[545]

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[535] Janine Baker, 'Great Southern Reef Foundation', *Still Blooming* (Web Page, 10 September 2025) <https://greatsouthernreef.com/2025-algal-bloom-june-update>.
[536] 'Test Results Confirm Coorong Algal Bloom', *Department for Environment and Water* (Web Page, 6 June 2025) <https://www.environment.sa.gov.au/news-hub/news/articles/2025/06/test-results-confirm-coorong-algal-bloom>.
[537] 'Coorong "On the Brink" Amid Fears Algal Bloom Could Be Final Straw', *ABC News* (online, 16 July 2025) <https://www.abc.net.au/news/2025-07-17/karenia-algal-bloom-leaves-coorong-on-the-brink/105528174>.
[538] Biodiversity Council, *Key Actions Needed to Respond to South Australia's Catastrophic Toxic Algal Bloom* (Report, July 2025) <https://biodiversitycouncil.org.au/admin/uploads/Biodiversity_Council_2025_Key_actions_for_response_to_SA_Algal_bloom_v2_e9f89ff535.pdf>.
[539] See Jochen Kaempf, 'South Australia's Large Inverse Estuaries: On the Road to Ruin' in Eric Wolanski (ed), *Estuaries of Australia in 2050 and Beyond* (Springer, 2014) 153; Biodiversity Council (n 538); 'Seven Steps Scientists Say Will Tackle Toxic Algal Bloom', *ABC News* (online, 23 July 2025) <https://www.abc.net.au/news/2025-07-24/seven-point-plan-to-tackle-sa-toxic-algal-bloom/105563974>.
[540] Biodiversity Council (n 538) 8.
[541] Ramsar Convention Secretariat, *Handbook 19* (n 178) 17.
[542] COP, *Background and Rationale* (n 213) [40].
[543] Ramsar Convention (n 3) art 3.2.
[544] Ibid.
[545] Rees et al (n 28) 30.

Certainly, as depicted above in Figure 2, the pressures that threaten the CLL do not fit the Convention's neat causal categories.[546] A protective mechanism that fails to reckon with such drivers risks irrelevance.[547] This exclusion is particularly untenable given the consensus that climate change itself is human-induced, meaning the text of Article 3.2 would not even require amendment to encompass it. To address the modern drivers of wetland loss, the Convention must evolve into a model that recognises climate impacts as a legitimate and notifiable form of degradation, and which then prompts conservation action. Australia has noted its frustration with the COP's silence on such triggers.[548] Given its history of reformist advocacy,[549] Australia is well-positioned to lead a renewed push for climate-responsive amendments to the Convention. The CLL's trajectory demands that Australia do so.

C *Implementation and Accountability*

Despite the ambitions expressed by the Contracting Parties,[550] the foundational instruments and processes of the Convention remain its greatest weaknesses. Compounded by its structurally weak compliance and enforcement architecture, it is unsurprising that an MEA with such high aspirations has performed so poorly on its key mission.[551]

As climate change exacerbates ecological degradation, the Convention's soft enforcement architecture faces increasing scrutiny.[552] As discussed in Chapter IV, the approach now struggles to elicit meaningful compliance from Contracting Parties.[553] The majority of wetlands in decline remain off the Record, reporting rates are low, and recommendations from the Convention's

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[546] Ibid; Gillanders et al (n 29); Grigg, Dunlop and Ahmad (n 159); COP, *Background and Rationale* (n 213) [40]; Ramsar Convention (n 3) art 3.2.
[547] Davidson et al, 'Review of the Adequacy' (n 202).
[548] Commonwealth Environmental Water Office, *Ramsar National Report to COP13*, COP13, 21–29 October 2018, 3 <https://www.ramsar.org/sites/default/files/documents/library/cop13nr_australia_e.pdf>
[549] Bowman (n 515); Matthews (n 2); Labadi (n 243).
[550] COP, *Fifth Strategic Plan* (n 32).
[551] Ramsar Convention (n 3) preamble para 4; COP, *Fifth Strategic Plan* (n 32) [1].
[552] Davidson et al, 'Review of the Adequacy' (n 202); Vera Batanjski et al, 'Critical Legal and Environmental View on the Ramsar Convention in Protection from Invasive Plant Species: An Example of the Southern Pannonia Region' (2016) 16(6) *International Environmental Agreements: Politics, Law and Economics* 833; Ferrajolo (n 71); Royal Gardner and Nick Davidson, 'The Ramsar Convention' in Ben A LePage (ed), *Wetlands: Integrating Multidisciplinary Concepts* (Springer Netherlands, 2011) 189; Gunningham (n 395); Jamie Faye Morgan, 'Considering the Effectiveness of International Environmental Agreements: A Case Study of the Ramsar Convention' (PhD thesis, University of California, Irvine, 2009).
[553] Hamman, van Geelen and Akhtar-Khavari (n 247); Davidson et al, 'Review of the Adequacy' (n 202); Ferrajolo (n 71); Morgan (n 552).

bodies are advisory at best.[554] As a result, the Convention lacks the capacity to enforce its own standards. To ensure credibility, the Convention requires an independent compliance mechanism capable of acting without the consent of the state concerned. Comparable frameworks demonstrate that such oversight can coexist with state sovereignty.[555]

Pragmatically, however, these revisions would require majority support from Contracting Parties.[556] A more immediate solution is available domestically. By revising domestic policy to align with the Convention's mechanisms, Australia could unlock access to support that remains unutilised for the CLL.[557] The Record is best viewed as a mechanism for bolstering support and facilitating corrective action,[558] a role that is critical for wetlands that are facing protracted decline. This value is recognised by local communities, activists, politicians and scientists alike. Such reforms are essential to bring Australia into line with the Convention's aims[559] and, after two decades, postponing responsibility is no longer viable. Australia must honour its obligations to the Convention, and more importantly to the communities and ecosystems whose future depends on turning those commitments into action.

D *Indigenous Governance*

Indigenous governance is not an optional add-on, but a precondition for effective wetland protection. This is especially true in an era defined by rapid climatic shifts.[560] Despite this, the exclusion of First Nations' perspectives, knowledges and practices remains a critical gap in the jurisdiction of Contracting Parties, including Australia.[561] Although South Australian law and agreements establish a foundation for managing the CLL at the site level, this will remain insufficient unless First Nations Peoples are empowered at the basin level. Without binding

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[554] Ibid; Gabriele Spilker and Vally Koubi, 'The Effects of Treaty Legality and Domestic Institutional Hurdles on Environmental Treaty Ratification' (2016) 16(2) *International Environmental Agreements: Politics, Law and Economics* 223; Ferrajolo (n 71); Hamman, van Geelen and Akhtar-Khavari (n 247).

[555] See Sellheim and Schumacher (n 320); Lundmark (n 320) 33–64; *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (n 219); *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* (n 320); Heffron and Monnet, 'Non-compliance Procedures (NCPs)' (n 320); Heffron and Monnet, 'Environmental Dispute Resolution' (n 320).

[556] Ramsar Convention (n 3) art 10-bis; COP, *Recommendation IV.1* (n 69).

[557] See Department of Sustainability, Environment, Water, Population and Communities, 'Notification of Change in Ecological Character' (Fact Sheet, 2013) 3 <https://www.dcceew.gov.au/sites/default/files/documents/notification-change-factsheet.pdf>.

[558] Hamman, van Geelen and Akhtar-Khavari (n 247) 1498.

[559] Pritchard, *Change in Ecological Character of Wetland Sites* (n 148) [7.16].

[560] Ngarrindjeri Nation and Hemming (n 2) 19.

[561] Costanza-van Den Belt et al (n 478).

processes to operationalise wise use, let alone in a culturally inclusive way,[562] Indigenous inclusion depends on goodwill, resulting in ad-hoc engagement.[563] This gap, reinforced by the Convention's facilitative ethos, perpetuates a pattern in which First Nations' voices are acknowledged but not determinative, despite their recognised custodial role.[564]

Recent COP activity has acknowledged these shortfalls but, without amendment to the Convention's key site descriptors, particularly the ECDs, active participation of Indigenous Peoples cannot truly be made effective by even the most well-intentioned Contracting Parties. Australia's experience in drafting the CLL's ECD evidences this.[565] Without instruments that recognise Indigenous knowledges,[566] engagement remains tokenistic and, even when some Indigenous perspectives appear in site documentation,[567] they are filtered through technical metrics that fail to engage with their worldviews.[568] If the Convention continues to rely on descriptors that privilege Western ecological framings while sidelining Indigenous connections to place, it cannot claim to uphold its commitments to inclusive governance or equitable participation.[569] Reform must therefore move beyond inclusion in principle to transformation in practice.

E *Conclusion*

The lessons of the CLL make clear that, without change, the Convention risks becoming a relic of the 20th century, rather than a tool for the 21st. Accountability, Indigenous leadership and climate-responsive adaptation are essential for the Convention to deliver on its promise; without them, it risks becoming a passive observer as wetland loss nears irreversibility. The CLL exemplifies the

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[562] See Joshi et al (n 175).

[563] Pip Abbott, 'The Path to Indigenous Water Justice: Reviewing Law and Policy Reforms for First Nations People in the Murray-Darling Basin' (2025) 40 *Environmental and Planning Law Journal* 370; Simon Young, Sarah Down and Sharon Mascher, 'Indigenous Rights in Freshwater: Mapping the Contested Space in Australia, New Zealand and Canada' (2023) 39 *Environmental and Planning Law Journal* 276; COP, *Resolution XIII.15* (n 99); Conference of the Contracting Parties to the Convention on Wetlands, *Guidelines for Establishing and Strengthening Local Communities' and Indigenous People's Participation in the Management of Wetlands*, Resolution VII.8, COP7, 10–18 May 1999 <https://www.ramsar.org/sites/default/files/documents/pdf/participation-guidelines.pdf>.

[564] Ramsar Convention Secretariat, *COP15 Article 8.2 Report* (n 208) [61].

[565] Hemming et al (n 137) 496.

[566] Ibid; Oviedo and Ali (n 137).

[567] Phillips and Muller, *Ecological Character Description* (n 143) 223–9.

[568] Hemming et al (n 137) 496; Ngarrindjeri Aboriginal Corporation, 'Rivers, the Veins of Our Country: Ngarrindjeri Aboriginal Corporation Yarning Circles Project' (Summary Paper, 2021) <https://www.mdba.gov.au/sites/default/files/publications/ngarrindjeri-aboriginal-corporation-yarning-circles.pdf>.

[569] COP, *Fifth Strategic Plan* (n 32) annex 1 [5], [11(b)], [21], [35].

growing gap between institutional ambition and ecological reality and, without reform, the CLL could stand as a symbol of systemic inertia, embodying a broader trajectory in which wetlands around the world continue to degrade.

In this context, climate change is a clarifying force that reveals institutional fragility, but which also presents an opportunity to reimagine ecological governance. The future of the CLL, and of the Convention itself, hinges on whether alterations are anchored not just in aspirational revisions, but in commitments that are inclusive, enforceable and climate literate. This imperative is sharpened by the reality that the Convention was drafted on the premise that 'the conservation of wetlands and their flora and fauna can be ensured by combining far-sighted national policies with co-ordinated international action'.[570] In the absence of both, the gap between original purpose and present reality is stark: rather than functioning as a genuine instrument of conservation, the Convention serves as a register of wetland decline.

[570] Ramsar Convention (n 3) preamble para 6.

VII Conclusion

This dissertation has shown that the Convention, though pioneering at its inception, is increasingly inadequate in the face of climate change. Designed in the 1970s to address wetland loss, it was deliberately framed in flexible terms to encourage participation and accommodate diverse national contexts. That flexibility has been both a strength and a weakness, enabling a global network of protected wetlands and fostering cooperation, but leaving the regime reliant on voluntary compliance and soft guidance.

The case study of the CLL illustrates these tensions clearly. Here, climate change is not a distant threat but a lived reality, to which the Convention's monitoring and compliance mechanisms remain ill-suited. Article 3.2 notifications exclude climate-driven change, enforcement relies on reporting and peer pressure, and compensation, the Convention's ultimate remedial tool, assumes wetlands are interchangeable units, an assumption that collapses under the weight of the irreplaceable cultural and ecological values at stake.

Equally troubling is the marginalisation of Indigenous governance. While the Convention gestures towards inclusivity, its frameworks remain grounded in Western scientific concepts that undervalue relational understandings of Country. At the CLL, Ngarrindjeri and FNSE knowledge systems offer sophisticated, place-based approaches to resilience, yet these are sidelined in both international and domestic governance. This exclusion deprives wetland management of insights essential to navigating climate uncertainty.

Together, these findings reveal a regime struggling to keep pace with the defining environmental challenge of our time. Although the Convention's achievements should not be understated, without development, they risk being overshadowed by its shortcomings. Climate change exposes the limits of a treaty built on assumptions of stability and incremental threats, rather than cascading, systemic transformations.

To remain relevant, the Convention must evolve. This means embedding climate change into its notification obligations, strengthening compliance and accountability, and moving beyond tokenistic involvement of Indigenous Peoples. Reform is also needed domestically. Australia must establish cohesive, climate-responsive governance frameworks that embed the Convention's principles and elevate Indigenous leadership in wetland management, while accepting the Convention's assistance for its sites facing change.

While this dissertation's focus on a single site necessarily limits the ability to capture the full diversity of the Convention's global application, the CLL provides a valuable lens through which to assess its strengths and shortcomings. Future scholarship should extend this inquiry to other contexts and jurisdictions. What is clear, however, is that, by modernising its frameworks, embracing climate-literate definitions and centring Indigenous governance, wetland management can transform from symbolic to substantial. The urgency of this cannot be overstated. For wetlands like the CLL, and for the ecological web that depends on it, the stakes are nothing less than survival.

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