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Melbourne Centre for Law and the Environment

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Redistribution Committee for Victoria
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THE UNIVERSITY OF
MELBOURNE

Submission on suggestions for the 2023-24 Victorian Redistribution

We are interdisciplinary teachers and researchers at Melbourne Law School and The University of Melbourne, and we are members of the Melbourne Centre for the Law and the Environment. Between us our expertise lies in the areas of legal geography, climate and disaster law, and river management and governance.

Our submission is that **Melbourne's watercourses should cease to be the dominant landscape feature that defines electoral boundaries**. In their place, freeways and highways are much more appropriate landscape features that should be used to divide electorates.

We have formed this view and make this submission for the following reasons:

1. Rivers are highly functional and living entities that are best cared for and managed if they are seen as being a part of, and within a community, rather than being at the periphery or boundary of a community.
2. Melbourne's rivers, including the Birrarung/Yarra River, have always been crossed. Melbourne's rivers typically did not form the basis of boundaries of the Kulin Nation, and current law and policy views the Birrarung/Yarra as a living entity that requires integrated, collaborative management. This would be facilitated if elected officials viewed the Birrarung/Yarra as part of their electorate and custodianship.
3. As climate change advances, it makes extreme weather events, including those that cause flooding, more likely. Flooding, pollution and other water resources issues affect the catchments of watercourses (the whole area that drains to the watercourse) and require coordinated responses across catchments.
4. The effect of using Melbourne's watercourses as electoral boundaries has been to create, especially to the north of the CBD, elongated electorates: a pizza cutting of metropolitan Melbourne that artificially groups communities that are otherwise largely disconnected from one another and disaggregates communities with shared features.
5. There is a history of scholarship, often exploring the adverse effects of highway building, that demonstrates how highways and freeways effectively divide communities. As a result, they present the most logical geographic feature to bound electorates.

We make the following brief additional comments on each of these points, and are happy to be consulted further on any points, should you require further insights.

Rivers should be a part of communities

The Birrarung/Yarra is the first river in Australia to be recognised as a 'single, living, integrated natural entity'¹ in the law of the settler state. The Birrarung/Yarra has a formal 'voice', the Birrarung

¹ *Yarra River Protection (Wilip-gin Birrarung murron) Act 2017* (Vic), s 1.

Council,² to speak for the river and enable all members of the wider community to engage directly with the river as a living entity. Within Melbourne, organisations such as the Yarra Riverkeeper Association and the multitude of ‘Friends of’ organisations, such as the Friends of Merri Creek, show that communities within Melbourne are already embracing rivers and waterways as community members. The state government of Victoria has committed to developing new legislation to recognise all other waterways in the state as living entities.³ In recognising the rivers as alive, the community is drawn into relation with the river as a member of the community.⁴ Electoral boundaries should reflect this shared understanding of who the community comprises.

Rivers are a shared resource

Rivers are best understood and cared for as single, integrated entities, from the source to the sea, and all the land from which rainfall flows into the river. In Melbourne, rivers provide many resources to multiple communities: drinking water (the Birrarung/Yarra continues to provide up to 70% of Melbourne’s drinking water⁵), stormwater drainage, recreation, amenity and green space, and biodiversity. A key driver for recognising the Birrarung/Yarra and its lands as a single living entity was to enable a modern collaborative governance approach to support the health of the river and its lands from source to sea.⁶ In 2022, the Birrarung Council reported that although there was evidence of emerging collaboration, the 14 responsible public entities, including the various local governments where the river frequently operates as a jurisdictional boundary, still tend to ‘want to look after their patch and not share broader responsibilities’.⁷ In ceasing to construct rivers merely as geographic markers, a boundary that belongs to no one, it will be far easier to cultivate and maintain shared responsibility for maintaining and caring for the shared resource.

Co-ordination in catchments is impeded by watercourses as electoral boundaries

Electoral boundaries based on watercourses can impede coordination and political representation of important, shared water-related risks that will become increasingly urgent for Melbourne – as the October 2022 floods starkly revealed and an independent review revealed.⁸ Dividing electorates along watercourses can fragment community engagement with water issues, dilute their resilience, and make it challenging to build a collective understanding of water-related problems and solutions, and in the event of emergency has the potential to confuse communication or politicise disaster (for instance where a watercourse divides electorates represented by different political parties).

² We note that one of us, Erin O’Donnell, is a member of the Birrarung Council, but is not acting in that capacity in making this submission.

³ Department of Environment, Land, Water and Planning, *Water Is Life: Traditional Owner Access to Water Roadmap* (State Government of Victoria, 2022) <https://www.water.vic.gov.au/aboriginal-values/the-aboriginal-water-program>, Targeted Outcome 1.

⁴ Erin O’Donnell, ‘Repairing Our Relationship with Rivers: Water Law and Legal Personhood’ in Rhett Larson and Vanessa Casado Pérez (eds), *Research Agenda for Water Law* (Edward Elgar, 2023) 113.

⁵ Katie O’Byrne, ‘The Changing Face of River Management in Victoria: The Yarra River Protection (Wilip-Gin Birrarung Murrumbidgee) Act 2017 (Vic)’ (2019) 44(6–7) *Water International* 769.

⁶ Yarra River Protection Ministerial Advisory Committee, *Protecting the Yarra River (Birrarung) Ministerial Advisory Committee Final Report* (Department of Environment, Land, Water and Planning (Vic), 2016); *Yarra River Protection (Wilip-gin Birrarung murrumbidgee) Act 2017 (Vic)*, s 5(c).

⁷ Birrarung Council, *Birrarung Council Annual Report to Parliament on the Implementation of Burndap Birrarung Burndap Umarkoo (Yarra Strategic Plan)* (Department of Environment, Land, Water and Planning (Vic), 2022), 47.

⁸ GT Pagone, et al, *Maribyrnong River Flood Event Review* (August 2023), 117.

The use of watercourses to create electorates in Melbourne causes creates disconnected and disaggregated communities

Australian scholars have been at the forefront of explaining how legal decisions affect or create the places in which humans live.⁹ Electoral boundaries are an example of a legal instrument that inadvertently create communities in tandem with the politicking and conduct of local members whose efforts are to present narratives of service across electorates. Electorates should therefore be designed to group communities with shared interests and needs. Yet that has not been the experience of creating electorates in Melbourne, particularly north of the city, where electorates fan out from the centre, like a pizza. This is because electorates have been drawn bounded by the Birrarung/Yarra, Merri Creek and the Maribyrnong. The composition of the recently created electorate of Fraser is an example. Bounded by the Maribyrnong to one side this electorate resultingly divided the suburb of Yarraville and aggregated inner western Melbourne communities with outer western Melbourne communities – including those beyond the Western Ring Road. Many submitters to this redistribution have urged you to “cross the Yarra”. We urge you to go further and create electorates of communities with shared features and interests across Melbourne’s watercourses.

Highways and freeways are a more logical geographic feature for use as electoral boundaries

We noted the electorate of Fraser and the crossing of the Western Ring Road because while the history of Melbourne has been that rivers have not impeded physical crossings or the create of cross riverine communities, freeways have long been appreciated and opposed for their effect in dividing communities.¹⁰ We consider they should be the feature in the landscape around which this redistribution should be cast – because this would allow for the benefits of co-ordination, custodianship and care of our rivers.

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If you would like to speak further to us about the matters in this submission, we are happy to make a time.

Yours sincerely

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⁹ Robyn Bartel, et al, ‘Legal Geography: An Australian Perspective’ (2013) 51 *Geographical Research* 339.

¹⁰ Recently: Adam Millard-Ball, et al, *Dividing Highways: Barrier Effects and Environmental Justice in California* (October 2022)