

7 December 2022

Mr Andrew McConville
Chief Executive
Murray Darling Basin Authority (MDBA)

Re: MLDRIN's Assessment of the 2022 version of the proposed New South Wales (NSW) Government's Lachlan Alluvium Water Resource Plan (WRP)

Dear Mr McConville,

Murray Lower Darling Rivers Indigenous Nations (MLDRIN) is pleased to submit our advice for the 2022 version of the proposed Lachlan Alluvium WRP in order to inform the Authority's advice to the Commonwealth Minister for Water.

It is important to acknowledge that, like the Commonwealth Water Minister, the MDBA, and the NSW Government, MLDRIN wants to see all NSW WRPs accredited, operational, and succeed. We all share an interest in having functional and operational water governance plans in place that uphold the intent of the Basin Plan and that strike a better balance between water use(r)s and needs in the Basin. However, WRPs must, at a minimum, be underpinned by Traditional Owner engagement that meets the MDBA's own assessment criteria and be of a standard that meets the Chapter 10, Part 14 Basin Plan requirements, as has been the case for WRPs in all other Basin jurisdictions.

Following the assessment process outlined below, MLDRIN has formed the view that this WRP does not meet the minimum legal requirements of any of the thirteen requirements listed in Chapter 10, Part 14 of the Basin Plan. The consultation underpinning the WRP's development also met none of the MDBA's Assessment Criteria to a satisfactory degree. Based on this assessment, MLDRIN recommends that the 2022 version of the proposed Lachlan Alluvium WRP should not be accredited as a Water Resource Plan under the Basin Plan.

Fundamentally, appropriate and informed consultation is essential for the NSW Government to demonstrate compliance with the minimum legal standard set by Basin Plan requirements (especially 10.52, 10.53 and 10.54). As documented in MLDRIN's assessment of the 2020 version of the proposed Lachlan Alluvium WRP, Traditional Owner workshop participants are still of the position that the NSW Government has not provided opportunities for their Nations to speak about and be consulted on groundwater matters. Rather than return to the Nations for follow up consultation to address this, the NSW Government has extracted material from their Nations' Consultation Reports and added that into this groundwater WRP. This is a significant problem because that material was shared by Traditional Owners who were led to believe that the consultation was surface water focused. Additionally, the NSW Government has not sought prior and informed consent to do this.

Other issues and concerns raised during the WRP assessment workshop have previously been recorded and reported in MLDRIN's original assessment of the 2020 version of the proposed

Lachlan Alluvium WRP. Workshop participants were disappointed that these remain unaddressed too.

Participating First Nations representatives urged NSW to begin addressing the gaps and correcting engagement shortcomings urgently rather than waiting for this WRP (or other WRPs) to be accredited. Additionally, and despite the overall assessment and recommendation, they also want to move forward to a situation where the NSW Government starts working and building relationships with Traditional Owners to implement the proposed initiatives and commitments outlined in the WRP.

Assessment approach

The formal assessment of the proposed Lachlan Alluvium WRP was undertaken by MLDRIN in accordance with the note included under Part 14 of Chapter 10 of the Basin Plan. MLDRIN's assessment approach was informed by reviewing key requirements and guidelines (including Basin Plan Chapter 10, Part 14; MDBA Guidelines; the Akwé:Kon Guidelines; and MLDRIN's 2016 WRP Discussion Paper). The assessment was conducted in a way that respects the cultural authority and decision-making of individual First Nations, reviewing the plan in line with their objectives, outcomes, values and uses.

MLDRIN's formulated assessment framework uses a Likert Scale to guide and focus assessment of performance against key requirements, criteria, and guidelines. It also includes qualitative input based on discussions between Nation Delegates, MLDRIN staff, and others. This approach results in a user-friendly but comprehensive assessment. MLDRIN has applied this same assessment approach to all Basin State-submitted WRPs to date across the southern Basin, including South Australia, Victoria, the Australian Capital Territory, and the 2020 and 2022 versions of NSW's proposed WRPs.

MLDRIN's assessment of the 2022 version of the proposed Lachlan Alluvium WRP included:

- A two-day workshop (14th and 15th November 2022) in Albury, attended by MLDRIN staff and representatives from the following Nations: Nari Nari, Ngiyampaa, Wiradjuri, and Yita Yita.¹
- Review of relevant material from NSW Government agencies (including the 2022 and original 2020 versions of the WRP and associated documents) and communications between MLDRIN and NSW Government agencies between 2015 and 2022.

This assessment report does not represent the views of those Nations that did not participate (i.e. Barkandji/Maljangapa Nations).

Just like MLDRIN invites MDBA to join and present at each assessment workshop, MLDRIN also invites representatives from the NSW Government. On this occasion, NSW was unable to supply a resource to attend during the workshop. This was interpreted as a lack of respect for the process and the values of the Nations' contributions to the assessment process.

Part of this assessment included reviewing MLDRIN's original First Nations assessment of the 2020 version of the WRP against the MDBA Criteria and Basin Plan requirements. The 2022 version of the WRP has received identical scores despite the appearance that NSW has added to or changed the WRP text. The attached detailed matrix report provides specific reasoning unique to each requirement, but the overall sentiment was summarised in the following statement from the Wiradjuri Nation organiser during the assessment workshop: *"We were consulted about surface water [in 2018-19]. NSW can make all the changes they want, but until*

¹ The Nari Nari and Yita Yita Nation representatives were unable to participate for the full workshop duration.

they come and speak to us about groundwater, it doesn't matter. They need to make that move." Several other overarching factors are worth noting here:

- Original First Nations assessments of all NSW's WRPs, including the Lachlan Alluvium WRP, recommended the NSW Government further engage with Nations due to major flaws, gaps, and oversights in the initial WRP engagement that occurred during 2018 and 2019. MLDRIN also asserted the essential need for this engagement beyond the WRP assessments, including through written correspondence and meetings, sometimes with the MDBA represented too. Further engagement was deemed essential to meet the minimum legal requirements of the Basin Plan. Even though NSW committed to further engagement on several occasions, including in writing from the current NSW Water Minister, this has not eventuated.
- In addition, Nations have received no updates, notifications, or engagement opportunities regarding the revision of the WRP, not even via online updates or phone calls. This is despite (a) the extensive concerns raised about NSW's poor practice in providing opportunities to Nations throughout all stages of water resource planning documented in the MLDRIN assessment of the 2020 version of the WRP; (b) the specific recommendations for NSW to further engage with Nations and NSW committing to do so (see point above); and, (c) NSW repurposing, in new ways, Nations' Consultation materials from the original engagement in 2018-19 in the 2022 proposed WRP, without consent from Nations.

Findings

When assessing the 2022 version of the proposed Lachlan Alluvium WRP against the requirements stipulated in Chapter 10, Part 14 of the Basin Plan, MLDRIN and the participating Nations found that the Plan did not meet the minimum legal standard to demonstrate satisfactory compliance with any requirement. All requirements were assessed as absent:

- 10.52(1)(a): Identify the objectives of Indigenous people in relation to managing the water resources of the water resource plan area.
- 10.52(1)(b): Identify the outcomes for the management of the water resources of the water resource plan area that are desired by Indigenous people.
- 10.52(2)(a): Having regard to the social, spiritual and cultural values of Indigenous people that relate to the water resources of the water resource plan area.
- 10.52(2)(b): Having regard to the social, spiritual and cultural uses of the water resources of the water resource plan area by Indigenous people.
- 10.52(3): Identifying opportunities to strengthen the protection of Indigenous values and Indigenous uses.
- 10.53(1): Having regard to the views of First Nations in relation to 10.52.
- 10.53(1)(a): Having regard to the views of First Nations in relation to Native Title.
- 10.53(1)(b): Having regard to the views of First Nations in relation to registered cultural heritage.
- 10.53(1)(c): Having regard to the views of First Nations in relation to inclusion of Indigenous representation in the preparation and implementation of the plan.
- 10.53(1)(d): Having regard to the views of First Nations in relation to Indigenous social, cultural, spiritual and customary objectives, and strategies for achieving these objectives.
- 10.53(1)(e): Having regard to the views of First Nations in relation to encouragement of active and informed participation.

- 10.53(1)(f): Having regard to the views of First Nations in relation to risks to Indigenous values and Indigenous uses arising from the use and management of the water resources of the water resource plan area.
- 10.54: Having regard to the views of Indigenous people with respect to cultural flows.
- 10.55: Maintaining the level of protection as provided for in transitional or interim WRPs.

When assessing the 2022 version of the proposed Lachlan Alluvium WRP against the Part 14 'Assessment Template' criteria provided by the MDBA, MLDRIN and the participating Nation representatives found it did not adequately meet any of the criteria. Nation representatives expressed frustration with the need to assess the WRP against these criteria when no further consultation had taken place since before the 2021 assessment. All criteria were assessed to be absent:

- A planned approach was applied to properly engaging Nations and resulted in an Indigenous Engagement Strategy that guided preparation of the Water Resource Plan (e.g. adequate time, appropriate venues, and resources).
- Appropriate Nations were identified and involved throughout all stages of the water planning process.
- Nations were properly notified of the opportunities to be involved in the water resource planning process (e.g. print, phone, electronic and personal media, and town meetings).
- Information about water resource planning processes and content provided was clear to Nations.
- Appropriate tools and mechanisms for recording, understanding, and incorporating Aboriginal objectives and outcomes were used.

A brief assessment of the Lachlan Alluvium WRP was made against the Akwé:Kon Guidelines. Due to time constraints, only overarching scores were recorded without detailed qualitative responses. The Nation representatives scored the WRP and its development as not meeting any of these guidelines (i.e. absent). Scores are recorded in the attached assessment matrix.

This WRP review, informed by input from Nation representatives, identified some marginal improvements when contrasted with the 2020 version. These include:

- Attempts by the NSW Government to demonstrate greater awareness of, and links to, content in the First Nations Consultation Reports within the main WRP document (though see concerns about the approach to this below).
- The inclusion of some tangible commitments and actions in the WRP, including those embedded within the accredited text, particularly related to cultural flows (requirement 10.54). These inclusions are important for the NSW Government's accountability into the future.

These positive elements add to those identified in the 2021 assessment, which included:

- The NSW Government's overarching Nation-based approach to consultation supported and assisted by local First Nation organisers was viewed as good in principle.
- Some Nation organisers reported having good relationships with the consultants engaged to complete the First Nations consultation, finding some approachable, knowledgeable, supportive, and helpful.

Despite these positive elements, the assessment demonstrates that NSW's approach to consultation and preparation of the WRP did not meet the minimum legal standards, let alone

best practice guidelines. The assessment identified numerous shortcomings, many of which were identified in MLDRIN's assessment of the 2020 version of the proposed Lachlan Alluvium WRP. Examples of key specific and recurring concerns include:

- Overarching issues with NSW's WRP First Nations Consultation (e.g., not collecting views about certain matters and lack of clarity about the scope of engagement) and those specific to individual Nations remain unaddressed and unresolved. To be extremely clear, all Nation participants remain of the view that their engagement outcomes should not be used in this WRP (or other groundwater WRPs) because (a) they were led to believe their engagement was focused on surface water and (b) it is not culturally appropriate for NSW to interpret Nation views on groundwater, as NSW has done in this WRP.
- The intent and overall impact of some additional material and tables within the WRP were unclear and developed without Traditional Owner oversight or guidance. The impact of some supplementary information and tables presented in this WRP caused real harm to participating representatives. For instance, Nation representatives were upset and offended by Table 3 of the Consultation Report, which inappropriately extracts and exploits Traditional Owner knowledge, which was shared with the NSW Government in good faith. The workshop participants believed that if NSW had made an effort to evaluate culturally delicate parts of the WRP with the appropriate Nation groups before submitting it for accreditation, this may have been avoided.
- Participants were not satisfied with the new reasons NSW offered in the Consultation Report about why Traditional Owners' views about native title and registered Aboriginal cultural heritage were not sought, seeing that NSW still has legal obligations in this regard as set by the Basin Plan.
- The unclear framing of cultural flows in regards of groundwater as "cultural connection to groundwater".
- NSW frequently suggests it had regard to numerous matters in preparing this WRP by deferring to *future* activities and commitments, some up to eight years away, and most without clear deliverable timeframes and resourcing commitments. Workshop participants reported that NSW has a poor track record of delivering on past commitments, including regarding this WRP, and so were not instilled with confidence about these commitments. The general lack of deliverable timeframes and resourcing commitments, which are necessary for helping to build certainty about implementation and to track that implementation, reinforced this concern.
- Attempting to demonstrate that Traditional Owners' concerns and priorities can be addressed through state processes or systems that Traditional Owners have no part in and/or have been developed independently is not appropriate.
- Some WRP text appears exaggerated and, in some cases, untruthful. Nations have been afforded no opportunities to review the WRP and Consultation Report (Schedule C) text, and bring these errors to light. Consequently, the workshop participants described feeling that NSW had complete and unfettered power over the framing of engagement and their efforts to meet the Chapter 10, Part 14 requirements.
- Gaps in communication with Traditional Owners (especially Nation organisers) about WRP development and the new commitments and activities referred to in the WRP.

Further detailed qualitative commentary that explains the above assessment scores and elaborates on these high-level summary points is provided in the attached assessment matrix.

The overall assessment result for each criterion and requirement (e.g. Absent to Excellent) was determined by those present at the workshop.

On a final note, and beyond the scope of this assessment, Nation participants were not only concerned that NSW's efforts to develop this WRP did not meet the minimum legal standard set by the Basin Plan requirements. They were also troubled by – and repeatedly commented on – the very low standard set by the current Chapter 10, Part 14 requirements of the Basin Plan. Some participants were of the view that these requirements at best problematically allow the status quo to continue and clearly do not compel action. MLDRIN looks forward to contributing to the strengthening of these requirements in the forthcoming Basin Plan review process.

Conclusion

The NSW Government has undoubtedly included additional content in the 2022 version of the proposed Lachlan Alluvium WRP in an attempt to better address Chapter 10, Part 14 of the Basin Plan. These additions appear to reflect a decent amount of further work on face value and, certainly, would have required an investment of time.

However, closer examination reveals that these additional words and tables only summarise material collected through the original consultation – which MLDRIN has detailed on numerous occasions to be problematic – and/or existing mechanisms, policies, and instruments that, in the view of the NSW Government, may be 'relevant'. Much of the summarised consultation content has been pulled apart and shoehorned to fit into NSW's already established water management framework and the relevant Water Sharing Plan. These text-only changes and additions have occurred without guidance, involvement, or consent from contributing Nations.

Suggestions for how the NSW Government can avoid repeating the consultation problems and issues that occurred during original WRP engagement have already been conveyed to the NSW Government by MLDRIN, NBAN, and Traditional Owners through an array of forums over the last number of years. Participants and MLDRIN were disappointed that the NSW Government seems to have continued to disregard much of this advice in preparing the 2022 version of the Lachlan Alluvium WRP.

MLDRIN strongly recommends that the NSW Government reconsider its approach to amending and finalising WRPs and working with First Nations before submitting any more to the MDBA for assessment for accreditation. We seek to evaluate NSW WRPs that more appropriately address, and meet the minimum legal requirements of, Chapter 10 Part 14 of the Basin Plan. MLDRIN remains eager to continue working with Basin States, the MDBA and First Nations to ensure that the preparation, assessment, and implementation of all WRPs are best practice and support genuine outcomes for Traditional Owners across the Basin.

Yours sincerely,



Grant Rigney
Chair, MLDRIN

Lachlan Alluvium Water Resource Plan (WRP) Assessment

December 2022



Criteria	Assessment of performance				
MDBA Assessment Criteria					
Criterion #1: A planned approach was applied to properly engaging Nations and resulted in an Indigenous Engagement Strategy that guided preparation of the water resource plan (e.g. adequate time, appropriate venues and resources)	Absent	Partial	Satisfactory	Good	Excellent
	1	2	3	4	5
	Key text reviewed relating to this criterion:				
	<ul style="list-style-type: none">Relevant parts of the 2022 version of the proposed Lachlan Alluvium WRP¹ that refer to First Nations consultation (e.g., Section 1.3.1, pp. 3-8; Section 1.7 and 1.7.1, pp. 14-22);The Lachlan Alluvium WRP Consultation Report (Schedule C);The First Nations Consultation Reports attached to Schedule C; and,The limited material about and from NSW’s consultation with the Barkandji/Maljangapa Nations.				
	Assessment comments: Workshop participants noted and reviewed the above materials, giving particular focus to the new and changed elements of the 2022 version of the proposed WRP compared to the 2020 version. Nation organisers also recalled their Nation’s NSW water resource planning consultation experiences, including their involvement to support NSW’s engagement (where relevant). The assessment workshop also reviewed the findings from MLDRIN’s assessment of the 2020 version of the proposed WRP, including the fundamental inadequacies identified with the consultation process and the lack of a strategic approach to consultation. Participants noted that there are some additions and amendments to the WRP content regarding the consultation approach. These amendments seek to (i) present the view that the NSW Government did develop a strategic approach to WRP consultation, ² (ii) outline commitments to future consultation, ³ and (iii) assert that the values, uses, objectives and outcomes, solicited through First Nations engagement, are related to surface water and groundwater				

¹ Where necessary, this assessment distinguishes between the 2020 and 2022 versions of the proposed Lachlan Alluvium WRP. If the year is not stated, it should be clear from the surrounding context. MLDRIN and First Nations original assessment of the 2020 version was submitted to the MDBA in May 2021.

² For example, a new comment in the accredited text at p. 7 of the WRP, for the purpose of sections 10.52 of the Basin Plan, states that "NSW had regard to advice from NBAN about the engagement process with First Nations to ensure that the consultation was culturally appropriate and relevant to water resource planning."

³ For example, a new statement in the accredited text at p. 14 of the WRP, for the purpose of section 10.53 of the Basin Plan, states that "NSW is committed to furthering the discussion to meet the requirements of Part 14 of Chapter 10 of the Basin Plan through engaging with Aboriginal people, including Traditional Owners and Aboriginal organisations, over the coming 12 months."

sources (detailed further below). The WRP makes the overall claim that “The process undertaken for Aboriginal consultation followed the MDBA Guidelines for meeting Basin Plan (Chapter 10) requirements in relation to Aboriginal peoples’ objectives and outcomes for water. Those guidelines suggest appropriate consultation processes to ensure that the concerns of Traditional Owners are taken into account and draw on the *Akwé: Kon Guidelines in a water resource planning context*. Consultation with First Nations must be meaningful and fulfill the requirements of the Basin Plan” (p. 18).

Contrary to this, the evaluation of the 2022 version of the Lachlan Alluvium WRP documentation, including the First Nations Consultation Reports, along with the workshop participants' testimonies about their Nations’ consultation, leads MLDRIN to conclude that NSW did not adequately plan for, or deliver, consultation to meet the Basin Plan requirements. Consequently, a score of **absent** was deemed appropriate for this criterion. This assessment is supported by several lines of evidence, which are detailed further below, but in summary, are:

- NSW has not contacted, let alone consulted, Nation organisers since the original WRP engagement in 2018-19. This course of action not only defies Nations’ recommendations in MLDRIN’s original assessment, but it also contravenes the NSW Government’s own commitments to do so through numerous mediums. Acting on these commitments would have gone some way towards demonstrating that engagement, at least since the first assessment, was planned and the NSW Government had regard for the original WRP assessment advice.
- Fundamentally, and without further Nation engagement, Nations still understand the engagement in 2018/19 was focused on surface water systems, values, uses, objectives, and outcomes, and therefore, it remains inappropriate for NSW to draw from or use those Nations Consultation Reports to satisfy any MDBA Criteria or Basin Plan requirements associated with the Lachlan Alluvium WRP. During the assessment workshop, several Nation organisers framed this issue simply as “We were not consulted about groundwater... [this criterion] has to be absent.”
- Nation representatives consistently reported the 2018-19 consultation as poor quality, rushed, inadequately resourced, and frequently inappropriate. These issues were reported thoroughly in MLDRIN’s original assessment of the WRP and remain unaddressed in this 2022 version. The way the NSW Government has prepared and written the WRP materials masks these issues and, in some cases, is untruthful.

Further explanation of each of these reasons and lines of evidence is provided below.

(a) Lack of WRP related engagement or other remedies from NSW since initial engagement

	<p>Participants discussed how, following NSW's withdrawal of the 2020 version of the proposed WRP, the state had an opportunity to develop a strategy that addressed the consultation deficiencies identified in MLDRIN's original assessment. In fact, the NSW Department made statements and commitments to MLDRIN (sometimes with the MDBA present) to the effect that:</p> <ul style="list-style-type: none"> • NSW recognised that consultation had not sought the views of Traditional Owners on all matters covered in Chapter 10, Part 14 of the Basin Plan. For example, NSW Department representatives confirmed during a meeting with MLDRIN staff and Directors on 19 October 2021 that "some things were just not even asked" during the consultation process, particularly regarding Basin Plan 10.53 requirements. And, • Additional consultation would be required on some matters to meet the requirements, and this would be undertaken to guide the preparation of a revised WRP before submission to the MDBA. NSW Department representatives confirmed during a meeting with MLDRIN staff and Directors on 19 October 2021 that NSW would come back to MLDRIN and go back to the Delegates from each area, to have a further discussion regarding cultural heritage and native title. Statements in letters to MLDRIN in December 2021 from Jim Bentley (NSW Water Sector CEO) and March 2022 from The Hon Kevin Andrews (NSW Minister for Lands and Water) confirmed this. <p>Despite these statements and commitments, no further WRP related consultation with Nations has taken place, nor has NSW contacted Nation organisers. Table 1-4 of the 2022 version of the proposed Lachlan Alluvium WRP (p. 21) confirms this. Participants acknowledged that COVID-19 has certainly created some engagement challenges but saw that, at a minimum, online options were still possible.</p> <p>MLDRIN interprets the following statement with the WRP accredited text as a concession that the consultation to date is not sufficient for the NSW Government to meet the relevant Basin Plan requirements: "NSW is committed to <i>furthering the discussion to meet the requirements of Part 14 of Chapter 10 of the Basin Plan</i> through engaging with Aboriginal people, including Traditional Owners and Aboriginal organisations, over the coming 12 months" (p. 14, emphasis added; this text also appears in the WRP explanatory text on page 18). It should be noted that during a presentation to a previous WRP assessment workshop, NSW representatives clarified that this timing means the 12 months following the WRP's accreditation.</p> <p>In lieu of any further engagement or conversations with Nation organisers, NSW appears to have instead embedded more information from the initial engagement within the WRP. For example, the additional information in the new</p>
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‘Section 1.7.1 Aboriginal consultation’ of the WRP (pp. 18-22) and the incorporation of Nation Consultation materials into the WRP (e.g., excerpts on pages 4-5 and 40) may be attempts by NSW to strengthen evidence that the state had a planned approach to consultation. In other places, it seems NSW attempts to remedy issues in the WRP raised in MLDRIN’s assessment of the 2020 version of the WRP by reviewing and summarising material collected during initial consultation (examples include Table 1-3 and Table 3-3, which are analysed later in this assessment). Participants were of the view, however, that these additions do not correct or make up for the deficiencies of that initial engagement as outlined in this assessment (and in MLDRIN’s original assessment).

(b) NSW Government’s approach to engaging with Nations about groundwater

As detailed in MLDRIN’s original assessment, participants experienced consultation that did not clearly include – or, in one case, explicitly excluded – groundwater. The Nari Nari and Ngayampaa Nation organisers were unaware that their consultation was supposed to include both surface water and groundwater. As the Nari Nari Nation organiser explained, “They came to us and only engaged on surface water. Then they’ve rolled that [information] into groundwater WRPs which we didn’t know about at the time. They never got our values and uses, or objectives for groundwater, so we’ve had no say in groundwater planning.” The Yita Yita Nation organiser also reflected on how consultation had focused on that Nation’s values and uses associated with “rivers” and as far as she was concerned, the consultation was therefore incomplete. These Nation organisers were frustrated to find their information – which they had shared with the understanding they were contributing to a surface water focused process – appear attached to the Lachlan Alluvium WRP, especially given that this fundamental issue was detailed at length in MLDRIN’s original assessment of the 2020 version of the proposed WRP.

By contrast, the Wiradjuri Nation organiser explicitly asked about groundwater during their Nation’s consultation, particularly at the Euabalong workshop (27 November 2018). She was told by the consultant that “We won’t be talking about that [groundwater] this time round. There’s no time. The consultation has closed.” Public exhibition consultation for the Lachlan Alluvium WRP had, indeed, finished on 6 November 2018. This Nation organiser was deeply troubled that Wiradjuri were explicitly told they could not contribute to groundwater planning and discussions in this way, especially when “groundwater is equally, if not more, important than the Lachlan River water” to the Wiradjuri Nation, largely underpinned by concerns with over-extraction of, and water quality impacts to, groundwater associated with mining. That NSW included that material in the 2020 version of this groundwater WRP was troubling enough, but to see NSW do the same thing despite clear direction from the Wiradjuri Nation organiser (via MLDRIN) that this was unacceptable was viewed as inappropriate and disrespectful.

These two sets of experiences have their differences, but both point to issues with the clarity of the scope of engagement and transparency about how any contributed information would be used. Both experiences also bring into question the quality of consultants' and NSW's communication about this scope and their ability to stimulate helpful and informative lines of questioning that speak to the whole scope. As was the case for the 2020 version of the proposed Lachlan Alluvium WRP, this fundamental issue – whether an oversight, communication issue, or other – remained unaddressed in the assessed WRP. It demonstrates that the engagement was not well planned and that relying on the outcomes of engagement to demonstrate this groundwater WRP's compliance with the Basin Plan is deeply flawed. Subsequently, this issue arose repeatedly throughout the assessment workshop. This is reflected throughout the assessment of the remaining MDBA criteria and Basin Plan requirements in this report.

What is new or different in the 2022 version of the WRP, is how the NSW Government appears to address or respond to this matter without returning to conduct more consultation and/or seek express permission from Nations to use the original engagement outcomes for this groundwater WRP. The following statement has been added to the explanatory text: "While some of the examples provided in the First Nation reports relate to surface water, Aboriginal people see all water as one and the cultural connection Aboriginal people have to water is not limited by where the water sits in the landscape. These examples have therefore been included in this groundwater WRP" (p. 18).

Workshop participants found this broad and sweeping statement to be inappropriate and insulting on several fronts. First, the fact is that Nations in the Lachlan Alluvium WRP area (WRPA) were not asked about groundwater or its possible connections with surface water or its possible differences. Notably, NSW has no material from Nations in this plan area to inform or base this comment. As a result, the NSW Government appears to be claiming to be an expert on Aboriginal peoples' connections to water. Secondly, representatives observed that this statement has only been added after MLDRIN's original assessment highlighted NSW's consultation flaws and gaps. This timing and context further underscore their views that this statement was a "cop out" in that NSW has conveniently used Traditional Owners' concepts of interconnectedness to justify not returning to run further engagement while masking its initial lack of transparency during consultation.

MLDRIN sought advice about the inclusion of this statement in other 2022 versions of WRPs, including how the statement had been informed by or tested with Nations. NSW Department staff advised that "This statement was guided by the National Water Initiative Policy Guidelines for Water Planning and Management - Engaging Indigenous

	<p>Peoples in Water Planning and Management (2017)."⁴ This module was prepared by Australian, state, and territory governments, and therefore is not appropriate to be used as an authoritative source in this way, especially without testing with local Nations.</p> <p>The NSW Government's decision to not follow the original advice and return to Nations, or at the very least, Nation organisers, to speak about groundwater has made the state's engagement approach appear more insensitive to Nations. Not only has this approach denied a collection of individual Nations the chance to speak about and articulate groundwater systems (and their connections to surface waters) in their own individual ways. It has also denied NSW the ability to account for how different Nations hold different water objectives and outcomes informed by their own unique values and uses in the WRP. Nation representatives maintain the position that NSW must ensure all First Nations have opportunities to speak about both surface water and groundwater, a recommendation that has already been made.</p> <p>(c) Overarching issues with the consultation undertaken by NSW</p> <p>When reviewing the WRP material and reflecting on their consultation experiences, assessment workshop participants agreed that NSW's Nation-based approach to engagement was suitable in theory. However, representatives' recollections and descriptions of how the NSW Government planned and delivered this approach reveal significant flaws documented below, many of which were contained in MLDRIN's original assessment. These issues provide evidence of how engagement was not well planned and not considered "proper" by workshop participants, as required by this MDBA Criterion:</p> <ul style="list-style-type: none"> ● Across the state, NSW engaged consultants to undertake its WRP engagement. MLDRIN understands that this was intended to offer transparency and independence to the process, but it actually created a barrier or degree of separation between local Nations (including the Nation organisers) and the NSW Government. Participants agreed that the execution of the Nation-based approach to consultation was a missed opportunity for the NSW Government (including the staff and leadership from relevant departments and agencies) to build rapport and relationships with local First Nations communities, which are essential to future consultation and actions as offered throughout the WRP. Nations had no influence over the consultants appointed by the NSW Government to run their engagement, which was seen by Nation organisers as unsuitable and likely contributed to many of the consultant-specific challenges detailed in this assessment report.
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⁴ NSW Groundwater Planning Manager (pers comms, 8 September 2022).

	<ul style="list-style-type: none"> ● Ad-hoc planning, inadequate and inflexible timeframes, and limited consultation options restricted opportunities for participation: <ul style="list-style-type: none"> ○ The Ngiyampaa Nation organiser advised that his request for additional workshops and consultation opportunities had been denied by consultants and NSW Department representatives. This meant that consultation missed key people, places, and important content. Reasons like time constraints and inadequate resourcing were given when the requests were denied. Additionally, Ngiyampaa’s three workshops were required to be held on three consecutive days in towns up to three hours’ drive apart. This shows how the consultants were “rushed”, as described by the Nation organiser, as well as the time pressure and expectations placed on the organiser. ○ All Nations reported receiving inadequate notice of the upcoming consultation (see also Criterion #3). ○ Assessment workshop participants, in their capacities as Nation organisers, had requested follow-up workshops and discussions after the initial WRP engagement had concluded to ensure consultation was equitable and fit for purpose. However, no further workshops or engagements with the Nations regarding WRPs were planned or delivered between April 2019⁵ and the submission of the assessed version of the WRP in October 2022 (see Table 1-4, p. 21 of the WRP). ● Inadequate resourcing for consultation: <ul style="list-style-type: none"> ○ Elders and Traditional Owners cannot always afford to travel to consultation opportunities, particularly where they live outside of town centres where engagement is offered. Some Nation organisers reported that they had to advise community members about workshops and transport them at their own personal cost because travel compensation was not available from NSW. Participants reported that, in many cases, Elders and Traditional Owners were not provided with any in-kind recognition for their contributions, against the advice of the Nation organisers. The Yita Yita Nation organiser stated that this approach meant that “Traditional Owners weren’t given respect”. ○ Limited resourcing restricted the number of workshops and interviews that could be held for most Nations, and therefore the number of people engaged and the amount of information that could be collected. In some cases, meeting venue options were also limited due to resources. ○ On some occasions, Nation Organisers reported feeling unfairly relied on to organise workshops and/or notify participants. Often, this occurred in the context of insufficient time or resources. ○ The consultants did not have adequate expertise to appropriately answer questions from participants about the purpose of the consultation and did not deliver answers to questions on notice.
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⁵ Table 1-4 lists consultation workshops occurred with Barkandji and Maljangapa Nations in June and October 2019, but this consultation has not informed the WRP.

- In some cases, culturally unsafe and insensitive consultation models and practices:⁶
 - Many Nation organisers reported feeling ashamed, embarrassed, and/or personally conflicted as a result of poor communication from NSW staff and consultants and the inadequate resourcing and support for WRO consultation. They were frequently left to bear the brunt of community frustrations.
 - The Wiradjuri Nation organisers described an example of how when sorry business necessitated postponement of a planned workshop, the consultant left the region without notifying the Nation organiser or helping to communicate the news of the postponement of workshops.
 - The Yita Yita Nation organiser reported not being supported to identify and notify all Yita Yita people about the engagement, despite her requests for this assistance. This has led to challenging community implications for her after the consultation was completed, with Elders still telling her today that the consultation “wasn’t done properly and they weren’t consulted”.
 - The Yita Yita Nation organiser had no say over the workshop being held in Balranald, which is not Yita Yita Country. She reported, “I had no say over it. It wasn’t culturally appropriate, especially when an elder says, ‘We’re doing this the wrong way. We’re sitting on Muthi Muthi Country doing Yita Yita business.’ I was thrown in the deep end. I was trying to find a culturally appropriate place to have the workshop, but there was no time for me to get that happening.” This example directly contradicts the WRP’s statement that “venues were chosen according to the instruction of the Nation organiser following culturally appropriate knowledge and protocols” (p. 20).

The WRP’s description of the consultation – both in the main WRP and the overarching Consultation Report (Schedule C) – masks these core issues. In some cases, the WRP materials present what MLDRIN and Nation representatives interpret as inaccurate and false consultation descriptions. Examples are presented throughout this assessment report, with several already offered in the assessment of this criterion. One final example worthy of noting here, is the following statement: “A Nation based consultation method ensures Aboriginal people continue in their traditional roles of custodians and that each individual Nation can contribute to the WRPs. It allows First Nations people to work with government to make better decisions in water planning within the context of their cultural boundaries” (WRP, pp. 18-19). Assessment workshop participants wholly rejected the suggestion that Nations were offered any opportunity to “work with government” and do not see that any “better” decisions have been made as a result of their consultation. Further, this WRP presents Nations’ material at the WRP area (WRPA) scale and offers no evidence of how their contributions have influenced any Country-specific or “cultural boundary” specific decisions or

⁶ Ensuring culturally safe environments for participation is a core consideration in properly planning and delivering First Nations engagement, as required by this Criterion.

	outcomes.				
Criterion #2: Appropriate Nations were identified and involved throughout <u>all</u> stages of the water planning process.	Absent 1	Partial 2	Satisfactory 3	Good 4	Excellent 5
	<p>Key text reviewed relating to this criterion:</p> <ul style="list-style-type: none"> • Relevant parts of the 2022 version of the proposed Lachlan Alluvium WRP that refer to First Nations consultation (e.g., Section 1.3.1, pp. 3-8; Section 1.7 and 1.7.1, pp. 14-22); • The Lachlan Alluvium WRP Consultation Report (Schedule C); • The First Nations Consultation Reports attached to Schedule C; and, • The limited material about and from NSW's consultation with the Barkandji/Maljangapa Nations. <p>Assessment comments:</p> <p>The reasons outlined below demonstrate that all the appropriate Nations for the WRPA were identified in the WRP. More significantly, however, Nation representatives are of the view that they “haven’t been involved in any part of the groundwater panning process,” as stated by the Wiradjuri Nation organiser and agreed to by all others present at the assessment workshop. Overall, workshop participants scored the WRP’s performance against this criterion as absent.</p> <p>(a) All appropriate Nations were identified in the WRP</p> <p>Participants noted that the 2022 version of the WRP identifies all appropriate Nations with territories in the WRPA. This notionally meets the first component of this MDBA Criterion.</p> <p>(b) Nations were not involved in any, let alone all, groundwater planning stages</p> <p>Participants discussed the exclusion of Traditional Owners from important stages of NSW’s water planning processes generally. They reviewed timeframes for key water planning processes, including public exhibition, development of the Risk Assessment, and commencement of Stakeholder Advisory Panels (SAPs)⁷ meetings. The Nations representatives believe that this review demonstrates that Nations were not given active and equitable participation at any stage of developing the Lachlan Alluvium WRP.</p>				

⁷ Of note, the SAP meetings concluded before engagement workshops commenced with most Nations in the WRPA. As all groundwater sources were covered by one NSW-wide groundwater SAP and no SAP meetings occurred since MLDRIN’s assessment of the 2020 version of the proposed Lachlan Alluvium WRP, please review that assessment report for additional relevant evaluation and commentary.

As noted in assessment of MDBA Criterion #1, the Nari Nari, Ngiyampaa, Yita Yita, and Wiradjuri Nations did not receive adequate prior and informed consent about the focus of the engagement or how the information they contributed would be used by the NSW Government. For the first three Nations, this was due to poor communication of consultation scope by the NSW Government and/or its consultants. When the Wiradjuri Nation tried to discuss groundwater specifically during their engagement, they were told that it was “too late” and so “we weren’t allowed to or weren’t given the opportunity to speak about groundwater” (Wiradjuri Nation Organiser).

The timing of the consultation occurred extremely late in the overall water planning process. For example, First Nations consultation workshops run by NSW that should have informed the Lachlan Alluvium WRP commenced at the earliest in July 2018. The draft Lachlan Alluvium WRP was on public exhibition from 25 September 2018 to 6 November 2018⁸ with only **one** completed Nation Consultation Report attached. This period occurred prior to consultation workshops even commencing with the remaining **four** Nations with interests in the WRPA. This raises questions about procedural fairness for these Nations to comment on their material – or on how their material influenced the prepared WRP – in the public exhibition process and demonstrates that the publicly exhibited draft WRP was clearly incomplete. Importantly, this situation is entirely due to the NSW Government’s own delays in starting First Nations consultation.

Participants also reviewed new text in Section 1.3.1 of the WRP, which includes additional details regarding “Nations where consultation reports are not complete” (p. 3 & 8). Regarding the Barkandji/Maljangapa Nations, the accredited text states that: “Subject to the Nations Agreement, the department will incorporate the Nations’ objectives and outcomes for the management and use of water resources of the WRPA based on their values and uses into the WRP *at a later date*” (p. 8, emphasis added; also appears in the explanatory text on page 3). The WRP does not describe how this inclusion may occur, and MLDRIN understands it would require an amendment to the WRP.

(c) Absence of engagement in the most recent water planning stage: revising the WRP

In addition to the evidence and findings presented so far (which are consistent with the original assessment), participants pointed to the failure of NSW to involve First Nations in the most recent and incredibly critical stage of the WRP development and planning process: revising the WRP for the purposes of accreditation. Not only is it

⁸ See NSW Department of Planning, Industry and Environment, Lachlan Alluvium Water Resource Plan Fact Sheet (June 2020) <https://www.industry.nsw.gov.au/_data/assets/pdf_file/0005/312584/outcomes-from-the-public-consultation-fact-sheet.pdf>.

	<p>important as its own stage, but workshop participants saw that this most recent stage was one where the NSW Government had opportunities to correct its previous mistakes in WRP First Nations engagement.</p> <p>MLDRIN and Lachlan Alluvium WRP Nations previously recommended that, following NSW's withdrawal of the 2020 version of the WRP, a follow-up round of consultation would be essential for NSW to address the consultation gaps and deficiencies and to meet the Basin Plan requirements. Among other matters, this engagement needed to create space for Nations to speak about their values, uses, objectives, outcomes, and other views in relation to groundwater, as they had not yet been afforded this opportunity. Indeed, it was understood that NSW had committed to completing additional consultation. But, as mentioned, NSW did not offer any further engagement and instead drew materials from the Nations' Consultation Reports directly into the main WRP without Traditional Owner advice, guidance, or even consent (see MDBA Criterion #1 for further commentary on this). The fact that the NSW Government has repeated this specific and intentional practice of exclusion, despite advice from Traditional Owners in the assessment of the 2020 version of the proposed WRP, was and continues to be seen as insensitive. Additionally, this missing feature in the WRP process inevitably undermines the extent to which the WRP can be seen to have regard for First Nations' people and knowledge.</p>				
<p>Criterion #3: Nations were properly notified of the opportunities to be involved in the water resource planning process, (e.g. print, phone, electronic and personal media and town meetings)</p>	<p>Absent 1</p>	<p>Partial 2</p>	<p>Satisfactory 3</p>	<p>Good 4</p>	<p>Excellent 5</p>
	<p>Assessment comments:</p> <p>Workshop participants reflected on the communication and notification processes relating to their own Nation's involvement in water resource planning processes, including during the revisions of the WRP in the last 12-18 months. Overall, a score of absent as determined for this criterion as justified by the points below.</p> <p>(a) WRP Consultation was surface water focused</p> <p>As already detailed, Nations were under the impression – and in the case of Wiradjuri, explicitly told by consultants – that the WRP Consultation concerned surface water systems. Accordingly, all Nation representatives asserted that their Nations had received no notifications about opportunities to be involved in groundwater planning processes and, therefore, on this point alone, this criterion was to be scored as absent. The following points offer additional support for this score.</p> <p>(b) Original engagement (2018-19) notification processes</p> <p>Assessment and evaluation comments regarding this criterion from MLDRIN's original assessment of the 2020 version of the proposed Lachlan Alluvium WRP remain pertinent, with Nation representatives reporting recurring issues with</p>				

	<p>the adequacy of notifications in the November 2022 assessment workshop. Primarily, these focused on the timing and deadline challenges (see MDBA Criterion #1), which meant that the period for advertising engagement events – and time for Nation representatives to “spread the word” – was not adequate. Several Nation organisers reported having only about a week to bring everyone together for workshops. This inappropriate lead time also affected the ability of Traditional Owners to feel sufficiently prepared to participate.</p> <p>Although Nation organisers generally supported the use of word of mouth, in some cases, the NSW Government and its consultants relied too much on Nation organisers to notify others about the consultation events. Nation organisers reported that this included making phone calls and driving around to visit their community and notify them of the events, often at their own expense without reimbursement. Two Nation organisers (for Yita Yita and Wiradjuri) reported they were supplied with a flyer about the workshop for posting on social media and at the workshop locations, but only a short time before the workshop was due to occur. Others were not supplied with any such materials.</p> <p>These factors together meant that Nation organisers perceived that notification was not afforded to enough, let alone all, relevant Traditional Owners, as demonstrated by the low number of attendees at some Nation workshops.</p> <p>(c) Notification of opportunities to be involved in water resource planning since 2018-19</p> <p>Participants again noted that no additional consultation has occurred since before NSW’s submission of the 2020 version of the WRP to the MDBA, adding to the justification for this score. As detailed already, NSW has reviewed and amended its WRPs over the last 12-18 months. Nation representatives at the assessment workshop reported that they had received no notification from NSW about this period or process of revision for resubmission to the MDBA, let alone notifications about opportunities to contribute to or guide the review of their Nation’s materials. This is made more disappointing in that (i) MLDRIN impressed on NSW that further engagement was needed and (ii) on numerous occasions, NSW committed to further engagement.</p>				
Criterion #4: Information about water resource planning processes and content provided was clear to Nations	Absent 1	Partial 2	Satisfactory 3	Good 4	Excellent 5
	Assessment comments: Workshop participants reflected on the information provided by NSW during development of the WRP. It was their view that clear information to Nations about the overarching water resource planning process and the purpose of engagement was not provided. Consequently, this criterion was assessed as absent , with several key justifications.				

(a) Paucity of appropriate information provided during engagement

Workshop participants' comments were consistent with the original MLDRIN advice provided to the MDBA regarding this criterion. Key issues with the quantity and quality of information provided to First Nations during WRP consultation were reported during the 2022 assessment workshop. They included:

- The complexity of water planning processes was not always explained in accessible language, and/or the information that was presented was often not understood by attendees.
- Some consultants did not have a detailed understanding of the water planning mechanisms or processes in which First Nations information would be used.
- Participants reported that they were not made fully aware of the scope of the consultation.
- Participants stressed the importance of needing access to appropriate information in order to make informed decisions and contributions. This includes ensuring enough time so that Nations can read over any information provided and understand the terminology.

To demonstrate these concerns, it is useful to point to the Wiradjuri Nation Consultation Report: “during the Cowra workshop, it was decided by participants that the workshop should not proceed due to there being no prior consultation or information provided for the Traditional Owners to be making informed comments and decisions about Water Resource Planning” (p. 12). Free, prior, and informed consent are the basic principles of engaging with Indigenous people.

Another concern regarding the suitability of information provided during the WRP engagement was the lack of information shared by NSW and its consultants about groundwater systems. The Yita Yita Nation organiser shared how that Nation's engagement had been focused on the values and uses of “rivers” generally, without being more clear or specific that this included groundwater systems, and that their information would form part of groundwater WRPs, or more broadly, any information about groundwater systems. Other Nations shared similar experiences.

(b) New textual additions to the WRP contradict Nations' experiences⁹

Workshop participants reviewed and reflected on the amended text relating to consultation design and delivery in the 2022 version of the proposed Lachlan Alluvium WRP and its Consultation Report. Specifically, participants discussed the new text included in Section 2.3 of the Consultation Report, which states, “the consultation was an important opportunity for the department to share knowledge and insight into how water is managed in NSW. As

⁹ Commentary here is also relevant to assessment of 10.53(1)(e).

	<p>such, the engagement activities were responsive to participants’ desire[s] to understand how water policy and management decisions are made” (p. 7). Additionally, Table 2 of the Consultation Report claims that “a shared understanding of water management [was] developed prior to conducting workshops with the broader group of First Nation Traditional Owners” (p. 11).</p> <p>Given the matters already detailed in this MDBA Criterion’s assessment and MLDRIN’s original assessment of the 2020 version of the WRP, participants strongly disagreed with these statements, describing them as “untruthful” and their addition as “offensive”. The Wiradjuri Nation organiser observed that this description was the “opposite” of what happened: “we asked questions about water policies, but the consultants couldn’t answer them. They weren’t interested in going to see places on Country. They were always checking their watches and were wary of the time. They were <i>not</i> responsive to us – I asked them to come back to us with the information about what legislation they were consulting us on because how can we give them any information about what we want if we don’t even know what we’re being consulted on? They couldn’t answer our questions. They knew nothing.” The Ngiyampaa Nation organiser shared a similar experience: “the consultants were expecting us to talk about what we wanted, but we were expecting them to tell us what they [NSW] could offer us.”</p> <p>Other assessment workshop participants questioned what evidence the NSW Government has to justify these statements and conclusions, particularly those about NSW being “responsive” and developing “relationships” and “shared understandings” with Traditional Owners. These statements directly contradict – and in turn, show disregard for – the collective Nations’ experiences and advice provided in MLDRIN’s original assessment. These issues point to the importance of including Traditional Owners in drafting documents so that false or misleading statements such as these can be verified, and where necessary, corrected prior to publication and accreditation.</p> <p>Broader general comments:</p> <p>In reflecting on the information provided to the Nari Nari Nation during consultation, and how the NSW Government has used their information in its WRPs, the Nation organiser made the following comment: “In the future, if NSW going to consult with us, we’re going to get an expert from that field to work with us before we start consultation. We needed expert independent advice [in the WRP engagement process], but we never had that opportunity.”</p>										
<p>Criterion #5: Appropriate <u>tools and mechanisms</u> for</p>	<table><tr><td>Absent</td><td>Partial</td><td>Satisfactory</td><td>Good</td><td>Excellent</td></tr><tr><td>1</td><td>2</td><td>3</td><td>4</td><td>5</td></tr></table> <p>Assessment comments:</p>	Absent	Partial	Satisfactory	Good	Excellent	1	2	3	4	5
Absent	Partial	Satisfactory	Good	Excellent							
1	2	3	4	5							

<p>recording, understanding and <u>incorporating Aboriginal objectives and outcomes</u> were used.</p>	<p>The evaluation of this criterion by participants recognised that although the information Nations shared during consultation had been adequately recorded in most cases, that material was not relevant to groundwater. Additionally, the WRP documentation demonstrates that tools to (i) confirm understanding of their material and (ii) incorporate it into the WRP were inadequate. This rendered an assessment score of absent. A detailed justification is offered below.</p> <p>(a) WRP Consultation was surface water focused</p> <p>As previously stated, Nations were led to believe—and, in the case of the Wiradjuri, were explicitly told by consultants—that the WRP Consultation only concerned surface water systems. Accordingly, all Nation representatives asserted that their groundwater-related objectives and outcomes were yet to be recorded, understood, or incorporated into the WRP. In the words of the Ngiyampaa Nation organiser: “Groundwater was not explained, so we couldn’t have shared objectives and outcomes in that sense.” On this point alone, this criterion was scored as absent. The following points were offered during the assessment workshop to reinforce and add extra support for this score.</p> <p>(b) Tools and mechanisms for recording</p> <p>Workshop participants discussed the main tools that were used by consultants to collect and record their Nations’ <i>surface</i> water-focused objectives and outcomes: (i) face-to-face interviews and (ii) First Nations workshops. This corresponds with the details contained in the Lachlan Alluvium WRP Consultation Report (Schedule C) and the attached First Nations Consultation Reports. Representatives generally saw that these tools were acceptable but that the rushed and compressed timeframes undermined their effectiveness.</p> <p>For example, several Nation organisers reported that the tight engagement timelines did not allow for the co-design of the questions for their Nation’s face-to-face interviews. The Wiradjuri Nation organiser saw her Nation’s interviews as more like assisted (and poorly developed) questionnaires that did not allow for the level of detail that participants offered in their answers. She explained that Elders wanted to share the full stories, but it felt like the consultants were only looking for “yes” or “no” responses and did not seem that interested in seeing or hearing about places of importance to them. Not enough Wiradjuri interviews occurred for this Nation’s Consultation Report to offer any kind of authority regarding objectives and outcomes. Despite being assured that she would receive a copy of her interview transcript before any information was used, and asking several times for a copy, the Wiradjuri Nation organiser reported that she still has not seen the transcript. The Wiradjuri Nation organiser also reported requesting that</p>
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workshops and interviews be video recorded – partly to capture participants’ information more thoroughly and partly to leave something behind for her community – but these requests were unanswered by NSW.

Several participants expressed dissatisfaction with the fact that WRPs do not use information already collected with other established tools, many of which have been developed by First Nations (e.g., Aboriginal Waterway Assessments, Cultural Flows Methodology, Use and Occupancy Mapping, etc.). Nations in the Lachlan Alluvium WRP did not have opportunities for on-Country consultation, which representatives described as inadequate. Indeed, the Yita Yita workshop was located on another Nation’s Country (see assessment of MDBA Criterion #1). MLDRIN considers these points to be directly relevant to this criterion because they point to other options available to NSW.

(c) Tools and mechanisms for understanding objectives and outcomes and incorporating them into water resource planning

The First Nations Consultation Reports appear unchanged from the versions submitted by the NSW Government with the 2020 version of the Lachlan Alluvium WRP. Therefore, the analysis regarding the review of Nation Consultation Reports and associated recommendations that appeared in the original assessment remains relevant and is reproduced here:

“From MLDRIN’s review of the First Nations Consultation Reports, it is apparent that consultants developed the themes, categories and subcategories relating to objectives and outcomes (as well as values, uses, risks and impacts) based on information recorded during one-on-one interviews and Nation workshops. Once developed and drafted, report sections were then returned to First Nations to review and verify their interpretations. This may mean some Nations did not get to review their whole Consultation Report. Moreover, MLDRIN assessment workshop participants and the content of their First Nations Consultation Reports revealed that different review methods were used by different consultants.

The Yita Yita, Nari Nari, and Ngiyampaa Nations Consultation Reports indicate some re-engagement with workshop participants to review the reports, but different amounts of preparedness and time were invested in doing so. The Ngiyampaa Nation Consultation Report shows the draft findings were “read aloud to participants” through in-person meetings with Traditional Owners who reportedly appreciated this process (p. 24). For the Yita Yita, the consultants arranged face-to-face meetings with all original face-to-face interviewees to review the draft findings part of the report. Where possible, this was emailed ahead of time (Yita Yita Nation Consultation Report, p. 13). For the Nari Nari, draft findings of the report were presented to Traditional Owners on 18 December 2018 in a review session (one month after the Nation’s workshop). It was emailed one week prior to this as well. The

Nari Nari Nation organiser explained that this session was held online rather than in person, and the overall process felt very rushed.

Certainly, some review processes did allow for some changes and corrections to the First Nations Consultation Reports. However, the approaches used (not just of the review mechanisms but also the data collection and recording tools) and limited timeframes mean that errors persist in some reports and not all Nations were afforded these options.

As a particularly serious example, the Wiradjuri Nation Consultation Report only contains a single sentence about the review process: “Traditional Owners from both the face-to-face interviews and workshops have been invited to review the draft report either via email or in person” (p. 11). No information on whether this actually occurred is presented. The Wiradjuri Nation organiser shared that she felt hesitation and resistance from the consultant when she requested a draft of the report. When she was provided a copy, she found a lot of the information that her community had shared during consultation workshops was missing. Moreover, the consultant asked her to sign off on the report on behalf of the whole Wiradjuri community without having the time to take the report to others that participated in those workshops. As she said to the consultant, and to the [2021] MLDRIN assessment workshop: “I can’t sign it on behalf of everyone! It’s not my responsibility.” In a July 2019 Condobolin workshop, Tim Golland (Manager, Water Resource Plan Deliverables, Water Policy, Planning and Sciences Division – DPIE) worked with the Wiradjuri community to try and correct the content of the Wiradjuri Nation Consultation Report. However, the occurrence of this workshop is absent from the report submitted for accreditation, and because of this, MLDRIN is unsure if this version includes the corrections made during that workshop. Another Wiradjuri participant shared that she feels like the Wiradjuri Nation Consultation Report is a document written for white people and their interests. She was frustrated that the report was only developed because the Basin Plan required consultation to happen.

Other errors and questions across the Lachlan Alluvium WRP documentation were noted by MLDRIN and workshop participants leading up to and during the [2021] assessment workshop. The most obvious example here, is the fact that the WRP refers to and includes First Nations Consultation Reports that detail the outcomes of seemingly surface water focused consultation. Participants agreed that such issues and errors could have been raised earlier if (i) more attention and investment had occurred during First Nations consultation, (ii) consultation had begun earlier, and (iii) First Nations were more centrally involved in drafting and framing content in the First Nations Consultation Reports and how that information was then included in the WRP.

Workshop participants agreed that NSW needed to come back with the draft Nation Consultation reports – and WRP components – and sit down with those previously engaged (and others in the community) and ask: “Are you happy with what’s in here?” Although this might have taken several days to work through, such an exercise was seen as absolutely necessary, especially given these documents claim to capture Traditional Owners’ voices and views. Had NSW started consultation earlier, it would have had the time to do this. Participants asserted that NSW must return where review processes were incomplete or unsatisfactory. This should be determined in partnership between individual Nations and the NSW Government. At a minimum, it should include NSW providing hard copies of the reports for participants to mark up and meet with those that participated to check report accuracy. It requires NSW listen to and follow the advice and recommendations that Traditional Owners provide through this process. It is not appropriate for consultants or NSW to seek out and rely on only the Nation organiser (or some other individual person) to authorise changes or sign off on a Nation’s whole report. Most participants also advised that there should be opportunities for Traditional Owners to provide direct input and direction about the writing of the WSP and main WRP text.”¹⁰

Workshop participants reviewed the revised Lachlan Alluvium WRP and associated documentation during the November 2022 assessment workshop. This included both the ‘new’ text added to various elements of the 2022 version of the proposed Lachlan Alluvium WRP as well as errors in some Nation Consultation Reports that were identified in the MLDRIN’s original WRP assessments during 2020 and 2021 (some, but not all, are mentioned above). Not only were participants frustrated to see NSW not address the problems they had already raised, but they were surprised and, in some cases, offended by the contradictory material that the NSW Government has *added* (see MDBA Criterion #1 and Criterion #4 as just two examples).

MLDRIN and the workshop participants wish to reiterate that material written about First Nations must be directed and guided by relevant First Nations. At the very least, Nation organisers or key Nation contacts should be afforded the opportunity to review such material so that mistruths and inaccuracies can be corrected, especially where they pertain to their own information or their own Nation’s engagement. Just one further example here is the development and addition of Tables 3 and 4 in the Consultation Report. Email correspondence with NSW Department staff shows: “The tables were based on information provided in the First Nations reports. We did not consult with First Nations to ensure correct interpretation. This is the first step in analysing the alignment of water sharing plan

¹⁰ See MLDRIN’s Assessment Matrix Report of the Lachlan Alluvium Water Resource Plan (WRP), May 2021, pages 16-18.

	objectives and First Nations objectives and further consultation will be undertaken.” ¹¹ With the Tables already published and intended for accreditation, such commitments about future engagement are not suitable. These Tables are examined further in the assessment of 10.52(1) below, but the point of relevance here is that, by the NSW Department’s own admission, they were developed without direction or input from Traditional Owners, despite containing their information. This is to the detriment of the quality of the plan, and offers evidence of how the NSW Government has not met this criterion.				
Basin Plan Chapter 10, Part 14					
10.52(1)(a) A water resource plan must identify the <u>objectives</u> of Indigenous people in relation to managing the water resources of the water resource plan area <i>[Assessment Note: Are these Objectives tangible and detailed enough to be addressed? Has the content of the Objectives been informed and shaped by genuine consultation with appropriate TOs?]</i>	Absent	Partial	Satisfactory	Good	Excellent
	1	2	3	4	5
	Key text reviewed relating to this requirement: <ul style="list-style-type: none">• Accredited text in the 2022 version of the proposed Lachlan Alluvium WRP for the purposes of 10.52 (pp. 7-8);• Explanatory text in Section 1.3.1 of the WRP (pp. 3-6);• Table 3, Consultation Report (Schedule C) (referenced in the Accredited Text);• Section 2.3, Consultation Report (Schedule C) (pp. 7-18);• The First Nations Consultation Reports attached to Schedule C; and,• The limited material about and from NSW’s consultation with the Barkandji/Maljangapa Nations including the absence of their objectives [and outcomes].				
	Assessment comments: Participants reviewed the accredited text for 10.52 and the explanatory text in Section 1.3.1 of the 2022 version of the proposed Lachlan Alluvium WRP, as well as Table 3 of the attached Consultation Report (Schedule C). Participants noted that references to sections of Nations Consultation Reports that list the objectives [and outcomes] in the accredited text are now correct. Despite this, participants felt that the WRP’s attempts to identify the objectives [and outcomes] were ultimately undermined by the flaws and gaps in the consultation detailed in this assessment already, in addition to the key points below, justifying a score of absent . (a) Impact of inappropriate consultation on correctly identifying objectives and outcomes Workshop participants reviewed the objectives [and outcomes] listed in their own Nation’s Consultation Reports, as referred to in the accredited text (p. 7). Most were broadly comfortable with those listed for their Nation because				

¹¹ NSW Groundwater Planning Manager (pers comms, 8 September 2022).

they reflected those discussed during engagement (and within the timeframe and resourcing constraints noted earlier). The Ngiyampaa Nation organiser, for example, stated: “The objectives and outcomes [in our report] reflect what we spoke about, to some degree.” The Wiradjuri Nation organisers, however, observed that some of the economic and self-determination-based objectives and outcomes their Nation had discussed during consultation (regarding surface water) were missing, particularly around the economic value of water, the Wiradjuri Nation’s right to use water, and the links to self-determination. This Nation’s Consultation Report was therefore deemed incomplete (see also assessment of MDBA Criterion #5).

Despite this, Nation representatives argued that these objectives [and outcomes] were surface water-focused and thus irrelevant to this groundwater WRP. Ultimately, and as detailed already, the Nations in this WRPA were under the impression – and in the case of Wiradjuri, explicitly told by consultants – that the WRP Consultation concerned only surface water systems. This means that their groundwater related objectives and outcomes are yet to be discussed or recorded, let alone identified in the Nation Consultation Reports or the Lachlan Alluvium WRP. This fundamental gap is the core line of evidence behind Nations representatives maintaining a score of absent for this requirement. The following points offer additional support for this score.

(b) Not all Nations’ objectives and outcomes are identified

The WRP does not identify any Barkandji/Maljangapa Nations’ objectives [or outcomes], nor does it provide an explanation or justification for why they are absent from the document. The revised accredited text does, now, obligate NSW to “seek further opportunities to consult with” this Nation and to provide the MDBA with a progress report within two years (p. 13). The absence of these objectives [and outcomes] contributed to the score of absent.

(c) Significant concerns with the development, content, and intent of Table 3 (Consultation Report)

Participants noted that the accredited text for requirement 10.52 (p. 7) presents information documenting the “alignment” of First Nations objectives and outcomes with Water Sharing Plan (WSP) objectives, via Table 3 of the Consultation Report (Schedule C). This material’s inclusion appears to be intended to demonstrate that the WRP, and NSW water planning instruments, have *had regard to* the objectives and outcomes developed through consultation, although this particular action is not stipulated within Basin Plan requirement 10.52.¹² The overall intent of the Table and underpinning exercise is unclear.

¹² The analysis of Table 3 presented here is also relevant to the assessments of 10.52(2), 10.53(1) and 10.53(1)(d), presented later.

	<p>Participants raised a series of concerns with the development and content of Table 3 and Table 4 as explained here. First, Nation organisers were unaware of this exercise until MLDRIN's WRP assessment workshops. The WRP text is unclear about who conducted this exercise or if and how the comparison was guided or verified by the Nations that contributed information. Following MLDRIN's request for further information about the development process,¹³ the NSW Manager Groundwater Planning confirmed on 8 September 2022 that Table 3 (and Table 4) of the Consultation Report "were based on information provided in the First Nations reports. We did not consult with First Nations to ensure correct interpretation. This is the first step in analysing the alignment of water sharing plan objectives and First Nations objectives and further consultation will be undertaken."</p> <p>Traditional Owners shared their cultural knowledge in good faith during consultation, with the expectation that the NSW Department and staff would be respectful. Conversely, confirmation that Table 3 was designed without First Nations' guidance, direction, or prior knowledge and put together by people that were not part of the consultation did not convey nor demonstrate respect. During the workshop, Nation representatives shared that they could not understand or make sense of this decision. NSW's approach directly contravenes MLDRIN's previous advice about this exercise provided in the original assessment of this WRP:</p> <p><i>"DPIE has advised MLDRIN that it is "mapping the objectives identified in the First Nation reports against WSP objectives to identify where these align and any gaps" (Manager Groundwater Planning – DPIE, 9 April 2021). Moreover, "where gaps exist the department will consider how to address those that are able to be influenced through the water sharing plan" (Manager Groundwater Planning – DPIE, 9 April 2021). MLDRIN notionally sees this as a positive step, however, it is essential that these actions occur in partnership with First Nations representatives."</i>¹⁴</p> <p>Because of, and building on, this exclusion of contributing First Nations, the workshop participants felt uncomfortable with how their information has been interpreted and included in Table 3 and Table 4. Specifically:</p> <ul style="list-style-type: none"> • NSW has "aligned" Nations' surface-water focused objectives with the groundwater WSP's objectives. The Wiradjuri Nation organiser observed that these objectives "are not relevant to groundwater" so should not be used in this way for this groundwater WRP. The Nari Nari Nation organiser shared this view, stating that "Until NSW come and consult on groundwater, they can't be lining up our material with this Groundwater Water Sharing Plan's objectives." Had the NSW Government sought Nations' advice and input, Nations could have
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¹³ This request arose from observing similar material in another NSW Government proposed WRP.

¹⁴ See MLDRIN's Assessment Matrix Report of the Lachlan Alluvium Water Resource Plan (WRP), May 2021, page 25.

	<p>advised the NSW Government of this significant flaw much earlier.</p> <ul style="list-style-type: none"> • No [surface water] objectives identified in the four First Nations Consultation Reports attached to Schedule C are aligned with any of the Aboriginal cultural objectives within the WSP, and only a handful are aligned with other WSP objectives. This is surprising and begs the question “why?”. One possible interpretation is that Table 3 is incomplete and needs further work under the (appropriately resourced) guidance and direction of Nations. • If, on the other hand, the NSW Government sees that this alignment exercise <i>is</i> complete, the relevance and suitability of the WSP’s Aboriginal cultural objectives must be questioned. Previous correspondence from NSW¹⁵ has advised MLDRIN that, “The Aboriginal cultural objectives in the inland groundwater water sharing plans (WSPs) are based on a standard template,” so the fit and suitability of the template itself must also be questioned. To be effective (and avoid being meaningless), this WSP and all groundwater WSPs must be reflective of First Nations’ <i>actual</i> objectives and priorities. <p>In summary, the exercise reflected in Table 3 misuses Traditional Owners cultural knowledge and was described by workshop participants as “unsuitable”. In the words of one workshop participant, the alignment in Table 3 “is based on NSW’s opinions and beliefs” because it lacks Nations’ input or advice. Workshop participants assessed that the occurrence of this exercise without Nations’ participation or prior knowledge, <i>plus</i> the publication of the resulting table in the Consultation Report and its use as evidence to address Basin Plan requirements, were not appropriate – culturally or otherwise. They observed that these matters present evidence that the NSW Government disrespected their cultural information, contradicting statements of respect for Traditional Owners throughout the WRP. This includes, for example, the Acknowledgement¹⁶ of the <i>Water Sharing Plan for the Lachlan Alluvial Groundwater Sources 2020</i>. The NSW Government must exercise more caution and consideration for the effects it may have for First Nations. Overall, it was the participants’ strong recommendation that Table 3, and all references to it, be removed from this WRP.¹⁷</p> <p>Broader general comments:</p> <p>In addition to assessing that the Basin Plan requirement 10.52(1) has not been met due to the matters outlined above, workshop participants spoke at length about other related inadequacies. One primary issue was the lack of</p>
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¹⁵ NSW Groundwater Planning Manager (pers comms, 8 September 2022).

¹⁶ Part 2, Clause 7.

¹⁷ MLDRIN wrote to the NSW Government directly about these kinds of concerns on 12 October 2022. No reply has been received to date.

	<p>strategies within the WRP to help Nations progress their objectives. MLDRIN acknowledges that such a reflection extends beyond the minimum legal requirements set by the Basin Plan.</p> <p>Nation participants recommended that instead of simply lining up Nations' objectives with those in the WSP (from NSW's perspective) as in Table 3, NSW needed to identify the specific parts of the WSP and other water management mechanisms that would need to be adjusted in the future to achieve Nations' objectives like those in Table 4, as well as what appropriate reforms would entail. At the very least, NSW needs to make a specific commitment to undertake a review such as this. While Table 4 might be considered the very first step in this process, it alone is not sufficient assurance that future steps will follow.</p> <p>Nation representatives challenged some statements in the text introducing Tables 3 and 4 in the Consultation Report. As just one example: "Water sharing plans have provisions for access to water for ... Native Title purposes, which are an important objective for First Nations in this area" (p. 12). Representatives challenged that NSW could make this claim seeing as elsewhere in the Consultation Report, the department had decided it was "not appropriate to conduct general discussions about Native Title where a Nation had not lodged an application or received a determination" (p. 10). (Further commentary about native title is offered in assessment of 10.53(1)(a).) The inclusion of this statement about the importance of water for native title purposes may be due to NSW's copy-and-paste approach to much of the WRP's materials that are relevant to Chapter 10, Part 14, an approach that Nations deemed inappropriate.</p> <p>Workshop participants saw the overall inadequate integration of First Nations' objectives [and outcomes] into the WRP, including strategies for progressing them, as further evidence that First Nations are not listened to.¹⁸</p>				
<p>10.52(1)(b) A water resource plan must identify the outcomes for the management of the water resources of the water resource plan area that are desired by</p>	<p>Absent 1</p>	<p>Partial 2</p>	<p>Satisfactory 3</p>	<p>Good 4</p>	<p>Excellent 5</p>
	<p>See assessment of 10.52(1)(a) above.</p>				

¹⁸ This experience reinforces the following statement that appears several times in the WRP's explanatory text: "Aboriginal people feel as though their voices are not heard in water management and cultural flows and outcomes are not considered in policy and implementation" (p. 59, and similar on p. 39).

<p>Indigenous people.</p> <p>[Assessment Note: Are these Outcomes tangible and detailed enough to be addressed? Has the content of the Outcomes been informed and shaped by genuine consultation with appropriate TOs?]</p>											
<p>10.52(2)(a) In identifying the matters set out in subsection (1), regard must be had to the <u>social, spiritual and cultural values</u> of Indigenous people that relate to the water resources of the water resource plan area (<i>Indigenous values</i>)</p> <p>[Assessment Note: Is the matter specifically addressed in the text of the WRP? Does the WRP set out how proper, genuine and realistic consideration of Traditional Owner views informed the Plan? Is the matter addressed as part of the accredited text? Is the matter addressed as part of the supporting text?]</p>	<table><tr><td>Absent 1</td><td>Partial 2</td><td>Satisfactory 3</td><td>Good 4</td><td>Excellent 5</td></tr><tr><td colspan="5"><p>Key text reviewed relating to this requirement:</p><ul style="list-style-type: none">● Accredited text for the purposes of 10.52 (pp. 7-8);● Explanatory text in Section 1.3.1 of the WRP (pp. 3-6);● Table 3, Consultation Report (Schedule C) (referenced in the Accredited Text);● Section 2.3, Consultation Report (Schedule C) (pp. 7-18);● The First Nations Consultation Reports attached to Schedule C; and,● The limited material about and from NSW’s consultation with the Barkandji/Maljangapa Nations.<p>Assessment comments:</p><p>Workshop participants noted various additions and amendments in the 2022 version of the proposed Lachlan Alluvium WRP in relation to 10.52. MLDRIN notes that the accredited text and explanatory text in the WRP are not always explicitly linked to specific Basin Plan requirements within 10.52, so it was necessary for MLDRIN to interpret what material was intended to address this requirement (10.52(2)), with some overlap with the assessment above in 10.52(1). Overall, participants felt that the 2022 version of the WRP has not demonstrated any regard for the substantive and unique values and uses of First Nations, as determined through suitable consultation, in identifying their objectives and outcomes that pertain to the Lachlan Alluvium water sources. Thus, they awarded a score of absent. Detailed justifications for this score are detailed below.</p><p>(a) Impact of inappropriate consultation on having regard to values and uses relevant to the WRPA</p><p>Participants reviewed the values [and uses] listed in their own Nation’s Consultation Reports, as referred to in the</p></td></tr></table>	Absent 1	Partial 2	Satisfactory 3	Good 4	Excellent 5	<p>Key text reviewed relating to this requirement:</p> <ul style="list-style-type: none">● Accredited text for the purposes of 10.52 (pp. 7-8);● Explanatory text in Section 1.3.1 of the WRP (pp. 3-6);● Table 3, Consultation Report (Schedule C) (referenced in the Accredited Text);● Section 2.3, Consultation Report (Schedule C) (pp. 7-18);● The First Nations Consultation Reports attached to Schedule C; and,● The limited material about and from NSW’s consultation with the Barkandji/Maljangapa Nations. <p>Assessment comments:</p> <p>Workshop participants noted various additions and amendments in the 2022 version of the proposed Lachlan Alluvium WRP in relation to 10.52. MLDRIN notes that the accredited text and explanatory text in the WRP are not always explicitly linked to specific Basin Plan requirements within 10.52, so it was necessary for MLDRIN to interpret what material was intended to address this requirement (10.52(2)), with some overlap with the assessment above in 10.52(1). Overall, participants felt that the 2022 version of the WRP has not demonstrated any regard for the substantive and unique values and uses of First Nations, as determined through suitable consultation, in identifying their objectives and outcomes that pertain to the Lachlan Alluvium water sources. Thus, they awarded a score of absent. Detailed justifications for this score are detailed below.</p> <p>(a) Impact of inappropriate consultation on having regard to values and uses relevant to the WRPA</p> <p>Participants reviewed the values [and uses] listed in their own Nation’s Consultation Reports, as referred to in the</p>				
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<p><i>Are there strategies in place to address the matter? Are the strategies binding and measurable?]</i></p>	<p>accredited text (p. 7). Most participants were broadly comfortable with those listed for their Nation because they reflected those discussed during engagement (and within the timeframe and resourcing constraints noted earlier) but reiterated that they concerned <i>surface water</i>. As the Nari Nari Nation organiser explained: “What’s in our consultation report is what we said, but that was for surface water.”</p> <p>Accordingly, Nation representatives were of the positions that these values and uses were not relevant nor appropriate to include in this WRP. Without any consultation or discussion about Nations’ groundwater values and uses to inform their groundwater related objectives and outcomes, it remains impossible for the NSW Department to make any claim that it had regard to those values and uses, and is compliant with the Basin Plan. All Nation representatives asserted that this requirement cannot be scored higher than absent.</p> <p>This fundamental gap cannot be overlooked and is the primary line of evidence for Nation representatives maintaining a score of absent for this requirement. The following points offer additional support for this score.</p> <p>(b) Issues with First Nations consultation and its depiction in the accredited text</p> <p>Like in the 2020 version, the accredited text in the 2022 version of the proposed Lachlan Alluvium WRP states: “Regard to Aboriginal values and uses, including the risks to these, is demonstrated through consultation with Aboriginal people” (p. 7). As in the assessment of the 2020 version of the WRP, participants again did not agree that undertaking consultation could be considered evidence of proper, genuine, and realistic consideration. Justification for this is detailed in the assessment of MDBA Criterion #1-#5. In short, the consultation process was poorly planned, rushed, under-resourced, and poorly executed. This inherently restricts the quality of the information shared by First Nations that NSW could draw upon and have regard to, especially regarding groundwater. These fundamental issues are relevant to all the accredited text dot points addressing 10.52 that are underpinned by, and build on, that consultation.</p> <p>Also of concern in the accredited text is this statement: “NSW had regard to advice from NBAN about the engagement process with First Nations to ensure that the consultation was culturally appropriate and relevant to water resource planning” (p. 7). Based on other WRPs assessed to date, MLDRIN and Nation representatives are of the view that this statement is supposed to refer to MLDRIN at least in addition to, if not instead of, NBAN. Even if corrected, the statement would still not be transparent because it would unfairly implicate MLDRIN in the NSW Government’s approach to engagement. MLDRIN has offered views and advice on appropriate participation and</p>
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	<p>engagement to the NSW Government for several years before the NSW consultation began and since then, but most recommendations were not acted on. Also, and as already detailed in this assessment (and MLDRIN’s assessments of the 2020 versions of NSW’s WRPs), consultation was not “culturally appropriate”. The Nari Nari Nation organiser observed that it is “insulting” to position MLDRIN as providing advice like this as it unjustifiably places blame on MLDRIN even though NSW frequently did not act on or follow the advice. As recommended in MLDRIN’s advice on the 2020 version of the proposed WRP, NSW must review all instances in the WRP that refer to MLDRIN’s role in and/or influence on the consultation process for accuracy.</p> <p>(c) Relationship between the WRP First Nations engagement and the Water Sharing Plan (WSP) (Schedule A)</p> <p>Participants noted that the 2022 version of the proposed Lachlan Alluvium WRP no longer states that consultation to identify Indigenous objectives and outcomes “<i>informed</i> the provisions relevant to Aboriginal people in relation to water management” as set out in the relevant WSP.¹⁹ This point now reads: “These objectives and outcomes <i>will be considered in future updates</i> to the provisions in Part 2 of the Water Sharing Plan for the <i>Lachlan Alluvial Groundwater Sources 2020</i> (Schedule A) relevant to Aboriginal people in relation to water management in the Lachlan Alluvium WRPA” (p. 7, emphasis added).</p> <p>MLDRIN and participants supported this replacement, and more accurate representation, of the interaction between the outcomes of WRP consultation and the provisions of the WSP (Schedule A). However, the fact remains that Nations have had no input or influence over the WSP. The significance of this exclusion from the WSP’s development is demonstrated in that the <i>WSP for the Lachlan Alluvium Groundwater Sources 2020</i> is not due to be replaced until 2030, possibly eight years away (if not longer).²⁰ Additionally, this accredited text dot point now does not clearly refer to Part 2 of the WSP being evidence of addressing this requirement and, therefore, MLDRIN does not consider it to form part of the accredited text. Given these matters, this accredited text point offers no evidence of how the Basin Plan requirement has been met in this WRP.</p> <p>MLDRIN acknowledges that the inclusion of Table 3 in Schedule C within the accredited text may be an effort to demonstrate how NSW had regard to values [and uses] as required by 10.52(2). This suggestion is based on the</p>
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¹⁹ This correction is only a result of MLDRIN seeking clarification from NSW about this noted error in other 2022 versions of groundwater WRPs. MLDRIN interprets this inability of NSW to accurately describe its work even with this advice as further evidence that the state has not properly, genuinely, or realistically considered Nations views in preparing the WRP.

²⁰ Following a review in their last five years, WSPs may be extended for a further 10 years. If such an extension of the *Water Sharing Plan for the Lachlan Alluvial Groundwater Sources 2020* is recommended, then it could be up to 18 years before this accredited text commitment is acted upon.

statement that objectives and outcomes were “developed” from the identified values and uses in the accredited text on page 7. Regardless, participants rejected the suggestion that this table’s alignment of First Nations objectives (developed from values and uses) with those in the WSP demonstrates proper, genuine, and realistic consideration as the Basin Plan requires. (See 10.52(1)(a) for more detailed analysis of and commentary about this table.)

(d) Other possible evidence of “regard” within the WRP

Participants noted the new and amended explanatory text in Section 1.3.1 of the WRP. These additions could be attempts by NSW to demonstrate greater integration of First Nations materials into the WRP. As evidence for addressing 10.52(2) can appear outside the accredited text,²¹ it must be considered in this assessment.

The first addition that attracted some comments from workshop participants was the “extracts from the Nation reports that summarise the deep cultural connections and values and uses that the Nations place on the water resources of the WRPA” (p. 4); in other words, the Lachlan alluvium groundwater resources and area. Some representatives were comfortable with these extracts (pp. 4-5), describing them as “true” and “appropriate” but in the context of surface water, not groundwater, meaning they are “inappropriate” within this WRP. It is unclear how these summaries were collated and how decisions about what content to include were made, which again points to the importance of including First Nations in drafting material about them.

Another new addition to the explanatory text that attracted considerable comments at the assessment workshop appears towards the end of Section 1.3.1 (p. 6), where NSW presents four dot points that purport to show that “[t]here are links between existing water management initiatives and the values and uses, risks, objectives, and outcomes identified by Aboriginal people.” These points could be an attempt by NSW to demonstrate that the WRP, and associated water planning instruments, have regard to First Nations’ values [and uses], specifically values [and uses] relating to springs and waterholes. Identifying links with existing water planning provisions, on the other hand, is not an appropriate approach to, or evidence of, the NSW Government taking into account First Nations’ values [and uses]. This is not only because the Nations were not afforded clear opportunities to speak about groundwater during engagement. These points also suggest that NSW is drawing on mechanisms intended to address environmental and other objectives as surrogates for First Nations’ values [and uses] and desired outcomes, without any engagement with First Nations about these very mechanisms. Fundamentally, it is not appropriate to suggest that matters of

²¹ MDBA, *Basin Plan Water Resource Plan Requirements Position Statement 1B Interpreting ‘have regard to’* (August 2015). Available online: <<https://www.mdba.gov.au/sites/default/files/pubs/WRP-Position-Statement-1B-Interpreting-have-regard-to.PDF>>.

	concern to Traditional Owners can be addressed through processes or systems that they are not part of or are not afforded power over. Participants stressed the importance of urgent and direct First Nations' involvement in risk assessments and Monitoring, Evaluation, and Reporting Plans (dot points 2 and 3).				
<p>10.52(2)(b) In identifying the matters set out in subsection (1), regard must be had to the <u>social, spiritual and cultural uses</u> of the water resources of the water resource plan area by Indigenous people (<i>Indigenous uses</i>);</p> <p><i>[Assessment Note: Is the matter specifically addressed in the text of the WRP? Does the WRP set out how proper, genuine and realistic consideration of Traditional Owner views informed the Plan? Is the matter addressed as part of the accredited text? Is the matter addressed as part of the supporting text? Are there strategies in place to address the matter? Are the strategies binding and measurable?]</i></p>	<p>Absent 1</p>	Partial 2	Satisfactory 3	Good 4	Excellent 5
	See assessment of 10.52(2)(a) above.				
<p>10.52(3) A person or body preparing a water resource plan may</p>	<p>Absent 1</p>	Partial 2	Satisfactory 3	Good 4	Excellent 5
	Key text reviewed relating to this requirement:				

<p>identify opportunities to strengthen the protection of Indigenous values and Indigenous uses in accordance with the objectives and outcomes identified under subsection (1), in which case the opportunities must be specified in the water resource plan</p>	<ul style="list-style-type: none"> ● Accredited text for the purposes of 10.52 (pp. 7-8); and ● Explanatory text in Section 1.3.1 of the WRP (pp. 3-6). <p>Assessment comments:</p> <p>MLDRIN acknowledges that the MDBA interprets this requirement as optional for states due to the inclusion of the word “may”. Workshop participants instead understand that to address this requirement, the NSW Government “must” specify opportunities for strengthening protection of values and uses in a WRP if and where they are identified (see MDBA WRP Part 14 Guidelines, p. 6). As the Wiradjuri Nation organiser offered, “Why do the consultation if you’re not going to act on the outcomes?”</p> <p>Workshop participants used this framing to examine the updated material in the accredited and explanatory text of the WRP for the purposes of 10.52(3). The new links to other NSW strategies and plans were, in principle, welcomed. But the issues raised in MLDRIN’s assessment of the 2020 version of the WRP remain unaddressed, and further issues have come to light since the original assessment. As stepped out below, after considering each point in the WRP that addresses this requirement, workshop participants found that each lacked substance beyond the words on the page, so much so that some must not be considered as relevant evidence. As a result, the 2022 version of the proposed WRP’s performance against this requirement was assessed as absent.</p> <p>(a) Claims that the Nation Report copyright statements and associated protocols are evidence of protection already being “strengthened” were questioned</p> <p>The workshop discussed the data use protocols and associated statements in each Nation Consultation Report. This discussion was triggered by the last dot point in the accredited text on page 7 of the WRP. It was unclear why the accredited text refers to these protocols for protecting First Nations values and uses (as is the focus of this Basin Plan requirement), given the protocols are more about protecting the intellectual and cultural knowledge of those uses and values. Broader concerns about these protocols and statements were raised during the discussion, many of which were detailed in the original WRP assessments from MLDRIN, and include:</p> <ul style="list-style-type: none"> ● The accuracy of the statement “There is currently no specific legal protection for cultural knowledge under Australian law” (p. 7, accredited text), given that Intellectual Property laws exist, and intangible cultural knowledge and heritage protections are possible under the <i>Aboriginal Heritage Act 2006</i> (Vic). ● If this accredited text statement is correct, it raises the question of whether Nations' cultural knowledges in Nation reports are legally protected in any way.
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- There were grave concerns about the lack of transparency and free, prior, and informed consent in relation to the data use agreements for all Nations in the WRPA as they were not (adequately) informed that their information would be used in groundwater WRPs.
- Questions about who exactly owns the Intellectual Property within the First Nations Consultation Reports.
- Not all Nations and/or Nation participants understanding the data use agreements they were asked to sign.

These points and concerns are relevant because they cast doubt on NSW's claims in the WRP that they address this Basin Plan requirement.

As part of this assessment, MLDRIN has closely reviewed the Data Use Agreements for interviews and workshops attached as appendices to each First Nations Consultation Report. These present conflicting information about how and for what purposes NSW can use the materials collected during consultation, adding further justification to the concerns raised by workshop participants. Specifically:

- The Nari Nari, Ngayampaa, and Yita Yita Nations Consultation Reports each include an "Interview Information Use Agreement" (Appendix C) and "Data Use Agreement Workshops" (Appendix D). In the former, a range of possible uses are listed, including in the development and creation of WRPs; to obtain accreditation for the WRP from the Murray Darling Basin Authority; for water planning in NSW; and for internal research and education. The latter workshop Data Use Agreement states that written notes collected during the workshop[s] "will be used to write a consultation report to inform the development of specific Water Resource Plans in New South Wales" and that "The report and notes will not be used for any other purpose".
- The Wiradjuri Nation Consultation Report includes "Interview questions and privacy statement" (Appendix B) and a "Data Use Agreement Workshops" (Appendix C). The Privacy statement for interviews states that the information provided during interviews will only be used "for the purposes of determining First Nations people's values and objectives for water, [and] informing future Water Resource Plan under the Commonwealth Basin Plan 2012 unless otherwise agreed" (p. 35). The workshop Data Use Agreement contains the same use provisions as the other three Nations' corresponding agreement, described above.

In both cases, the workshop data use provisions are narrower than the Interview-related provisions. They are also narrower than the copyright statements that appear inside the cover of the Nation Consultation Reports: "This report includes Traditional Knowledge of the [name] Nation, provided by the Traditional Owners who have consented to its use in this report and for the purposes of development and accreditation of Water Resource Plans and water planning in NSW." These discrepancies raise questions about the claims throughout the WRP regarding (i) the protections that

	<p>the Data Use Agreements provide both as part of engagement and since; (ii) the transparency of the data collection process; and (iii) the ongoing and future purposes for which NSW can use the information collected during engagement.²²</p> <p>For 10.52(3), in particular, workshop participants contested the claim within the accredited text that “Protection of Indigenous values and uses has been strengthened through the consultation process and adoption of a definition and protocols for First Nations Cultural Knowledge” (p. 7). How such a claim can be true is not clear from the evidence in the WRP documents. Indeed, participants determined that as long as there is confusion and uncertainty about this accredited text, it cannot be used as evidence to demonstrate compliance with this Basin Plan requirement or others that refer to the data use agreements. At the risk of overstepping our assessment role, MLDRIN strongly encourages the MDBA and the NSW Government to seek legal advice about the accuracy of the accredited text. Further details on this recommendation are offered in the “Broader general comments” section of this requirement’s assessment below.</p> <p>(b) Commitment to updating the WSP is irrelevant</p> <p>Participants noted that the accredited text includes the following statement: “As groundwater water sharing plans are replaced, consultation with Aboriginal communities in the Lachlan Alluvium WRP will provide an opportunity to improve recognition of social, spiritual and cultural values in water management” (p. 8). As noted already, the WSP concerning these groundwater resources is not due to be replaced until 2030.²³ Therefore, this accredited text seems to offer little meaning or relevance to the accreditation of <i>this</i> WRP. Indeed, participants expressed frustration and disappointment with the already long delays in recognising First Nations values and uses and advancing First Nations water rights through this WRP (and in NSW more broadly). Participants felt that instead of waiting until 2030, NSW should have worked to improve the recognition and protection of nations' values and uses in the 2020 version.</p> <p>(c) Other stated commitments to strengthen the protection of Aboriginal values and uses</p> <p>Participants observed that the WRP accredited text now states that “development and implementation of the NSW Water Strategy and the development of the associated Aboriginal Water Strategy, and through the draft Lachlan</p>
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²² Including, for example, in Table 3 and Table 4 of the Consultation Report (Schedule C) (see assessment of MDBA Basin Plan requirement 10.52(1)(a)) and development of the NSW Water Strategy (see commentary later in assessment of this requirement).

²³ Following a review in their last five years, WSPs may be extended for a further 10 years. If such an extension of the *Water Sharing Plan for the Lachlan Alluvium Groundwater Sources 2020* is recommended, then it could be 18 years before this accredited text commitment needs to be acted upon.

	<p>Regional Water Strategy” (p. 7), are ways that the NSW Government will work to strengthen protection of Aboriginal values and uses.</p> <p>MLDRIN and Nation representatives acknowledged that this addition by NSW may be an effort to respond to suggestions provided by MLDRIN’s assessments of 2020 versions of NSW WRPs. While it was considered positive that NSW has now made this link, the WRP is unclear about the specifics of <i>how</i> these strategies would provide enhanced protection. With the Regional Water Strategy still in draft form and no draft Aboriginal Water Strategy yet available, Nation representatives were unable to rely on these strategies to gain insight on any mechanisms either. Moreover, MLDRIN notes that the NSW Government’s recent Progress Report for the NSW Water Strategy lists the status of the Aboriginal Water Strategy as “Work has commenced but will take longer than expected”.²⁴ This overall lack of transparency and evidence behind the WRP’s claims regarding strategies and actions for future protection, on top of the poor WRP engagement experiences documented in this assessment, contributed to representatives’ concluding that the WRP must be assessed as “absent” for this requirement again. They added that such a score will remain appropriate until there is evidence of NSW implementing mechanisms and actions.</p> <p>MLDRIN and the workshop participants found it surprising that the 2022 version of the proposed Lachlan Alluvium WRP makes no mention of the NSW Groundwater Strategy. Given that proposed Action 2.3 of the draft NSW Groundwater Strategy is to support Aboriginal groundwater rights, values, and uses, it is hard to understand how such a connection – even as broad as the existing reference to the not-yet-developed Aboriginal Water Strategy – is not included in this WRP’s accredited text (or anywhere else in the WRP).²⁵</p> <p>Another point in the accredited text that MLDRIN interprets to be relevant to 10.52(3) states: “NSW is working to strengthen the engagement and input from First Nations into water resource planning and water sharing plans” (p. 8). This point felt incomplete to workshop participants, who noted that further detail is essential so the Inspector General, the MDBA, and First Nations can measure NSW’s progress against such a commitment over time.</p>
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²⁴ DPIE, *Report on the strategy’s progress: The report on the progress made from the 2021-22 Implementation plan* (September 2022), p. 22. Available online: <https://water.nsw.gov.au/_data/assets/pdf_file/0003/527043/nsw-water-strategy-annual-progress-report-on-implementation.pdf>.

²⁵ This includes sub-Action 2.3.2: “Protect groundwater-dependent places of significance to Aboriginal communities,” which is particularly relevant here. See DPIE, *Draft NSW Groundwater Strategy* (July 2022), p. 69. Available online: <https://water.dpie.nsw.gov.au/_data/assets/pdf_file/0005/518639/draft-groundwater-water-strategy.pdf>. MLDRIN acknowledges that at the time of this assessment, public exhibition of the draft Groundwater Strategy had concluded. But, given the WRP repeatedly refers to the Aboriginal Water Strategy, for which there is no draft yet, it seems reasonable to expect meaningful links to the Groundwater Strategy.

Broader general comments

MLDRIN strongly encourages the MDBA and the NSW Government to seek legal advice about the accuracy of the accredited text in the dot point split across pages 7-8 regarding the data use agreements and copyright statements. The exact brief and lawyers engaged should be determined in consultation with Nation representatives (via MLDRIN, for example), and could review and document matters such as:

- The true protections provided by the copyright statement in each Nations' Consultation Report;
- Procedures and protocols for requests for information from third parties;
- What purposes the NSW Government and its agencies can (and cannot) use material in First Nations' Consultation Reports without seeking further consent, and how any breaches of this are to be managed (especially given the identified discrepancies between Data Use Agreements);
- How Nations can withdraw, edit, or update information shared during the WRP engagement process and/or apply (new) use conditions; and,
- How these (or revised) protocols, Data Use Agreements, and copyright statements can strengthen protection for First Nations people in the future.

Obtaining legal advice and clarity on these fundamental issues will empower both First Nations and the NSW Government moving forward. It is essential not only for this WRP (and others), but also for the development of the Aboriginal Water Strategy, which this WRP (and others) refers to as evidence for addressing this and other Basin Plan requirements. That is, the recent Progress Report for the NSW Water Strategy states that "Scoping of the draft Aboriginal Water Strategy has begun and draws on significant First Nations/Aboriginal engagements from 70 workshops conducted in recent years on water resource planning and regional water strategies."²⁶ As detailed above, the WRP Workshop Data Use Agreements do not allow for the collected material to be used for "any other purpose" beyond "informing the development of specific Water Resource Plans." Accordingly, the NSW Government must gain consent from contributing Nations and individuals to continue with this exercise.

Participants welcome the statement that NSW will review the effectiveness of opportunities to strengthen the protection of Indigenous values and uses via "future monitoring and evaluation" (p. 8). They, however, require NSW to provide more details about how such a framework will look, including the roles of First Nations.

²⁶ DPIE, *Report on the strategy's progress: The report on the progress made from the 2021-22 Implementation plan* (September 2022), p. 22. Available online: <https://water.nsw.gov.au/_data/assets/pdf_file/0003/527043/nsw-water-strategy-annual-progress-report-on-implementation.pdf>.

	<p>Workshop participants spoke at length about their disappointment with (i) the weakness of the wording of this Basin Plan requirement, and (ii) NSW not committing to clear, measurable, and time-bound opportunities to strengthen the protection of Indigenous values and uses. First Nations people are frustrated that they always seem to be at the beck and call of governments' goodwill. First Nations desire to see commitments embedded in law reforms.</p>
<p>10.53(1) A water resource plan must be prepared having regard to the views of relevant Indigenous organisations with respect to:</p> <p><i>[Notes for Assessment: Is the matter specifically addressed in the text of the WRP? Does the WRP set out how proper, genuine and realistic consideration of Traditional Owner views informed the Plan? Is the matter addressed as part of the accredited text? Is the matter addressed as part of the supporting text? Are there strategies in place to address the matter? Are the strategies binding and measurable?]</i></p>	<p>Overall observations:</p> <p>Requirement 10.53(1) compels NSW to (i) ensure consultation directly and intentionally elicited First Nations' views and input about each of the matters in 10.52 and 10.53(1)(a)-(f) and then (ii) describe how regard to those views occurred (see MDBA's WRP Part 14 Guidelines). As identified in MLDRIN's original assessments of 2020 versions of NSW WRPs, it remains the case that not all of these matters were discussed during consultation. Despite advice from MLDRIN that NSW needed to urgently re-engage with First Nations on these matters, Nation organisers were disappointed that such engagement did not occur before this WRP was resubmitted for assessment.</p> <p>In the 2022 version of the proposed Lachlan Alluvium WRP, MLDRIN observed an improvement in the structuring of the accredited text for addressing 10.53(1)(a)-(f). This includes accredited text addressing each specific requirement, as well as five accredited text dot points that respond to Basin Plan requirement 10.53(1) as a whole (p. 14). It was also observed that new material has been included in the accredited text (and referenced in the accredited text). These additions could be considered as attempts by NSW to better demonstrate meeting the minimum legal standards set by the Basin Plan requirements. However, a closer review of the material reveals that some points are irrelevant, while others are inaccurate or false. More detailed comments are provided throughout the assessment of each requirement below.</p> <p>"Indigenous/Aboriginal organisations"</p> <p>One matter discussed throughout the assessment of 10.53 was the meaning of "Indigenous organisations". MLDRIN acknowledges that the "Indigenous organisations" expression is derived from the Basin Plan legal instrument, and any critique about that is beyond the scope of this assessment. Nonetheless, participants recommended that the language in the Basin Plan be revised to better position Traditional Owners as the priority for engagement.</p> <p>Participants emphasised that, regardless of the language in the Basin Plan, when it comes to WRPs and related issues involving waterways and groundwater, the NSW Government must work with and take advice from traditional owners because they have the cultural authority to speak for Country. In this vein, participants raised concerns about WRP references about engaging with "Aboriginal organisations" because Aboriginal organisations are not necessarily</p>

made up of, or represent, Traditional Owners for a particular area. Some felt this language conveyed disrespect for Traditional Owners (whether intentional or not). Examples include (but are not limited to):

- “Aboriginal organisations” throughout the accredited text addressing 10.53 (pp. 14-16) and the explanatory text in Section 1.7.1 of the WRP (especially pp. 18-19).
- Specifically listing that “Local Aboriginal Land Councils (LALCS), Aboriginal Medical Services (AMS) and where relevant the local community working party of the Murdi Paaki Regional Assembly” had been consulted (p. 9, Consultation Report).
- New text in the Consultation Report that identifies specific “Aboriginal Organisations” contacted during consultation (p. 9) based on details in Nation reports. Of relevance here, the Ngiyampaa Nation organiser explained that although there were people associated with the organisations listed on page 9 who attended the Ngiyampaa engagement, they participated as Ngiyampaa Traditional Owners and not “with their organisations’ hats on”. Contrary to the suggestion that these organisations were “contacted” regarding the consultation, these organisations were identified *during* the engagement because consultants asked Traditional Owner participants about their connections.

MLDRIN recognises that some of these additions – particularly the last dot point – may be included in response to some First Nations assessments of the 2020 versions of NSW WRPs. However, relying on the identification of individual organisations’ names in the First Nations Consultation Reports rather than directly identifying those that NSW engaged for each Nation and/or WRP suggests NSW does not have this information. Further, the overarching text includes reference to the Aboriginal Medical Services (dot point 2 above), but this organisation is not named in this Nation-specific list of organisations. This inconsistency adds to the appearance that NSW does not have a clear understanding of which organisations were actually engaged, and has relied on a copy-and-paste approach to preparing WRPs. Consequently, these additions do not address the original assessment suggestions and, in fact, add to the murkiness observed in the 2020 version of the WRP.

There are two key reasons for including these comments about “Indigenous/Aboriginal organisations” here. First, some participants expressed concern that the NSW Government (and others) could use the vague and open meaning of this term to engage any Aboriginal people, to the detriment of Traditional Owners. MLDRIN emphasises that Traditional Owners *must* be the first point of contact on matters relating to Country, and that governments must seek out local advice on this. It would be extremely difficult for the NSW Department to keep track of all Aboriginal organisations’ compositions given the number across NSW. It is also the case that some “Aboriginal organisations” *do*

	<p>include Traditional Owners in their membership. Therefore, it is essential that the NSW Government build and rely on direct relationships (not via consultants) with local Nation organisers and representatives in order to establish these lines of connection and communication.</p> <p>The second is to highlight the importance of language and using the right terminology. Workshop participants were of the view that NSW seemed to use phrases such as “Traditional Owner”, “Aboriginal”, and “Indigenous” interchangeably. This practice could be understood as those within the NSW Government having low awareness of the actual meanings of these terms. Workshop participants recommended that the WRP material be reviewed and re-written to be more accurate and appropriate, informed by suitable guidance on terminology use.</p> <p>A final concern regarding “Indigenous/Aboriginal organisations” that workshop participants discussed was the Consultation Report’s framing that it was “the role of the First Nations Community Organiser to assist the department in identifying key stakeholders, including Aboriginal Organisations” (p. 9). Nation organisers present at the assessment workshop challenged this statement and instead reported that they were only directed to bring their mob together and were not contracted or resourced to identify Aboriginal organisations. This framing, whether intentional or not, positions Nation organisers as the scapegoat for what was the role of NSW and/or its consultants.</p>				
<p>10.53(1) The matters identified under section 10.52</p>	<p>Absent 1</p>	<p>Partial 2</p>	<p>Satisfactory 3</p>	<p>Good 4</p>	<p>Excellent 5</p>
	<p>Key text reviewed relating to this requirement:</p> <ul style="list-style-type: none">● Accredited text for the purposes of 10.53 generally (p. 14);● Accredited and explanatory text for the purposes of 10.52 (pp. 7-8);● Table 2, Consultation Report (Schedule C) (p. 10); and,● Section 2.3, Consultation Report (Schedule C) (pp. 7-18). <p>Assessment comments: Workshop participants considered the material provided in the WRP for 10.52 including Table 3 of the Consultation Report, and how the WRP appeared to have regard to Nations’ views on these matters. For all the reasons detailed in the above assessment of 10.52, the WRP was also scored as absent here.</p> <p>Workshop participants made the following observations in relation to the overarching 10.53(1) accredited text dot points (p. 14):</p>				

		<ul style="list-style-type: none"> • Dot point three appears to suggest that NSW recognises it has not met the minimum legal standard set by the Chapter 10 Part 14 Basin requirements. Workshop participants were frustrated that this point only commits NSW to “furthering the discussion to meet” these requirements, rather than committing to actually meeting them, as NSW is compelled to do under the Basin Plan. • As noted earlier, during a presentation at a previous WRP assessment workshop, NSW representatives clarified that the 12-month timeframe in dot point three means 12 months after the WRP is accredited. Some Nation representatives interpreted this framing as unfair; it can be interpreted as though NSW is offering that First Nations engagement can progress, but only on the condition that the WRP is first endorsed for accreditation. Nation representatives were of the view that this was inappropriate. • Given the assessment provided in MDBA Criterion #4 in particular, delegates disagreed with the WRP’s claim in the fourth dot point that the “consultation process is viewed as informed participation” (p. 14) from the perspectives of First Nations (see also the assessment of 10.53(1)(e) below). <p>The description for the overarching 10.53(1) row of Table 2 of the 2022 version of the Consultation Report states that “MLDRIN assisted as nation organisers and had an important role in the consultation process” (p. 10). As documented in MLDRIN’s original assessment of this WRP, that statement is not accurate. See the assessment of 10.53(1)(c) below for further explanation on this.</p>
	10.53(1)(a) Native title rights, native title claims and Indigenous Land Use Agreements provided for by the <i>Native Title Act 1993</i> in relation to the water resources	<div> <div>Absent</div> <div>Partial</div> <div>Satisfactory</div> <div>Good</div> <div>Excellent</div> </div> <div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> </div> <p>Key text reviewed relating to this requirement:</p> <ul style="list-style-type: none"> • Accredited text for the purposes of 10.53 generally, and 10.53(1)(a) (pp. 14-15); • Table 2, Consultation Report (Schedule C) (p. 10); and, • Section 2.3, Consultation Report (Schedule C) (pp. 7-18). <p>Assessment comments:</p> <p>Participants noted the amendments to the accredited text for the purposes of 10.53(1)(a) in the 2022 version of the proposed Lachlan Alluvium WRP (pp. 14-15). With most Nations not being asked by NSW about native title, especially in the context of groundwater, and the WRP accredited</p>

	of the water resource plan area	<p>text referring largely to outcomes from desktop searches, the WRP does not meet the minimum legal standard of what is required to address this Basin Plan requirement according to the <i>MDBA WRP Part 14 Guidelines</i>. Thus, participants determined a score of absent for this requirement.</p> <p>(a) Consultation approach to seeking views on native title was not appropriate</p> <p>As noted in MLDRIN’s assessment of the 2020 version of the proposed WRP, First Nations WRP consultation did not adequately seek the views of Traditional Owners about native title matters. Fundamentally, this remains unaddressed in the 2022 version. Most workshop participants stressed that the way NSW carried out the engagement meant that the onus was on Traditional Owners to raise native title matters, with only the Yita Yita Nation representative stating that consultants raised the matter. Additionally, all Nations in the Lachlan Alluvium WRP participated in what they understood to be surface water consultation.</p> <p>The first accredited text dot point states that the NSW Government “contacted” NTSCORP (p. 14). As noted in MLDRIN’s original assessment of the 2020 version of the proposed WRP, in accordance with the Basin Plan,</p> <p><i>“Governments had a legislative imperative and responsibility to speak to First Nations about native title. All that the accredited text offers in relation to this, however, is that NSW “contacted” Native Title Services Corporation (NTSCORP) as part of WRP consultation activities ... Across the WRP documentation, there is little detail about how the views of NTSCORP (or the views of the Nations they represent) were sought, or how NSW had regard for these views. MLDRIN and workshop participants disagreed that approaching NTSCORP was a sufficient means for contacting and consulting Nations to hear their views about native title determinations, claims and ILUAs as required by the Basin Plan.”²⁷</i></p> <p>These comments remain valid because the accredited text has not been altered and no additional detail in the WRP clarifies the contact and engagement with NTSCORP.</p> <p>(b) Conflicting commentary about native title discussions during WRP consultation within WRP documentation</p> <p>Participants noted that the 2022 version of the WRP includes new material in the fifth accredited</p>
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²⁷ See MLDRIN’s Assessment Matrix Report of the Lachlan Alluvium Water Resource Plan (WRP), May 2021, page 36.

		<p>text dot point for 10.53(1)(a) that refers to Table 2 of the Consultation Report. This Table explicitly states that “The department decided that it was not appropriate to conduct general discussions about Native Title where a Nation had not lodged an application or received a determination” (p. 10). Participants were concerned about NSW’s revised position on native title consultation presented in the 2022 version of the Consultation Report for several reasons. These include:</p> <ul style="list-style-type: none"> • Participants noted that this position contradicts that which was included in the 2020 version of the Consultation Report: “Discussions on native title rights, native title claims and Indigenous Land Use Agreements and the Native Title Act 1993 in relation to the water resources of the Lachlan catchment” had occurred (p. 10). This means at least one of these versions of events must be erroneous and misleading. • Most importantly for this assessment, in accordance with the Basin Plan, the NSW Government had a legal obligation to inquire about and consider these views. As the Wiradjuri Nation organiser asked: “How can NSW have regard without asking the question?” Another Wiradjuri representative asked, “how can NSW override the Commonwealth Basin Plan requirement?” • By extension, participants saw that all Traditional Owners should have had the opportunity to speak about claims that their own Nation, or others, have made and the ways these claims interact with the management of the water sources and the protection of their values and uses. • The 2022 version’s series of events does not line up with the Yita Yita Nation organiser’s recollection that the consultants raised native title as a topic of discussion during consultation. • As noted in the assessment of 10.52(1)(a), NSW should not make the claim that “access to water for ... Native Title purposes” was “an important objective for First Nations in this area” (Consultation Report, p. 12) if it also claims not to have asked about native title in consultation. <p>Ultimately, participants assessed that NSW needed to have sought the views of each Nation (or at the very least, the Nation organiser) about whether it was appropriate to speak about native title during engagement and not have made that decision alone and behind closed doors.</p> <p>The Consultation Report states that “The Nation consultations have identified areas for further development in pursuit of Aboriginal objectives and outcomes in water management, including...</p>
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		<p>Native Title” (p. 12). This statement suggests insufficient work and/or time was put into ensuring that consultation addressed and considered views on native title rights, claims, and ILUAs (see also the assessment of MDBA Criterion #1). This statement by the NSW Government justifies the assessment score here. After considering this statement, some participants interpreted the new text in Table 2 of the Consultation Report (p. 10) as an attempt by NSW to retrospectively justify or explain the failure to engage in the first place about native title.</p> <p>(c) Native title claims are now included in accredited text</p> <p>Participants observed that the third accredited text dot point addressing this Basin Plan requirement now includes references to registered native title claims within the WRP and a commitment to amend the WSP upon determination (p. 15). Workshop participants considered that this addition, along with recognising determined native title claims and referencing the relevant WSP clause in the second accredited text dot point, demonstrated slightly better consideration of native title matters compared with the 2020 version of the WRP. However, participants still felt that this approach does not demonstrate the minimum legal requirement as set by 10.53(1)(a): to have regard to the <i>views</i> of First Nations regarding native title rights, native title claims, and Indigenous Land Use Agreements in relation to the water resources of the WRP.</p> <p>Broader general comments:</p> <p>Representatives commented on how native title rights in and to water, as well as the effects of other activities on these rights, are not well understood or developed in Australian legal frameworks.</p>
	<p>10.53(1)(b) Registered Aboriginal heritage relating to the water resources of the water resource plan area</p>	<p>Absent Partial Satisfactory Good Excellent 1 2 3 4 5</p> <p>Key text reviewed relating to this requirement:</p> <ul style="list-style-type: none"> ● Accredited text for the purposes of 10.53 generally, and 10.53(1)(b) (p. 15); ● Table 1-3 of the WRP (p. 17), referred to in the accredited text; ● Explanatory material in Section 4.4.2 of the WRP (pp. 59-61), including Table 4-2 (pp. 60-61); ● Table 2, Consultation Report (Schedule C) (p. 10); and, ● Section 2.3, Consultation Report (Schedule C) (pp. 7-18).

		<p>Assessment comments:</p> <p>Workshop participants noted significant additions to the 2022 version of the proposed Lachlan Alluvium WRP for the purposes of 10.53(1)(b). Participants observed, however, that the additional accredited and explanatory text is not always specific or relevant to cultural heritage matters or to water sources and is not always helpful for meeting the minimum legal requirements of 10.53(1)(b). The WRP does not provide evidence of having elicited the views of First Nations on this matter or having had regard to such views in its preparation. Therefore, participants agreed that a score of absent was warranted.</p> <p>(a) Consultation approach to addressing registered Aboriginal heritage was not appropriate</p> <p>As noted in MLDRIN’s assessment of the 2020 version of the proposed WRP, the First Nations consultation in 2018-19 did not adequately seek the views of Traditional Owners about registered Aboriginal heritage matters, and fundamentally, this remains unaddressed in the 2022 version. Workshop participants stressed that the way NSW carried out the consultation meant that the onus was on Traditional Owners to raise their views on water-related cultural heritage and heritage protection. In other words, NSW and its consultants did not specifically seek out views on these matters, particularly in the context of groundwater.</p> <p>This omission appears to be confirmed in several places throughout the WRP materials:</p> <ul style="list-style-type: none"> • New explanatory text on page 6 of the WRP states: “Across the state, consultation has identified areas for further development in pursuit of Aboriginal objectives and outcomes in water management, including Cultural Heritage.” Nearly identical text also appears on page 12 of the Consultation Report. • Table 2 of the Consultation Report states that “opportunities arose” (p. 10) for Local Aboriginal Land Council representatives to speak about any sites listed in the heritage register, suggesting that the views of Traditional Owners were not proactively sought or considered. (As an aside, Nation organisers questioned why this text still explicitly refers to Local Aboriginal Land Councils when their representatives were frequently not in attendance, as demonstrated on page 9 of the Consultation Report.) <p>These statements suggest that insufficient work and/or time was put into ensuring that consultation sought out views relating to cultural heritage.</p>
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		<p>Assessment workshop participants acknowledged that government agencies can face complexities in trying to solicit information about cultural heritage and that First Nations may not want to share such information. (This is recognised in the WRP to some degree in the third (and new) dot point of the accredited text for 10.53(1)(b) on page 15 – more on this below.) While this may mean that consultation cannot capture details about specific locations or the significance of specific cultural heritage features, participants argued that, in accordance with the Basin Plan, it was essential for the NSW Government to create intentional opportunities for Nations to share their views on these matters. In other words, <i>Traditional Owners</i>, not government agencies, should direct government agencies on the appropriate form of dialogue.</p> <p>(b) New accredited text and referenced material does not address the requirement</p> <p>Workshop participants observed the additions to the accredited text, including the improved acknowledgement of the complexity and diversity of cultural heritage material appearing in the first three sentences of the third dot point addressing 10.53(1)(b) (p. 15). Participants recommended, however, that NSW re-write this text with Traditional Owners.</p> <p>The fourth sentence of this third accredited text dot point attempts to demonstrate that Nations’ inputs do inform water planning with the statement: “Where this information is shared and incorporated into the water planning process, it forms part of considerations for water management decisions” (p. 15). However, this statement appears to confirm the preceding point that it was the responsibility of participating Traditional Owners to raise cultural heritage views during engagement. Therefore, the extent of influence that such information has on water planning in NSW is discretionary and inconsistent. This was of grave concern to the workshop participants.</p> <p>Participants reviewed the new Table 1-3 in the WRP, which is referred to in the third dot point of the accredited text (p. 15). Table 1-3 extracts examples of how NSW understands Traditional Owners spoke about cultural heritage during engagement, as recorded in the First Nations Consultation Reports. This table may show that NSW reviewed the Consultation Reports, but it was deemed to be a token exercise and not evidence of NSW demonstrating genuine regard for the</p>
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	<p>issues raised to address the Basin Plan requirement. Wiradjuri and Nari Nari participants disputed the accuracy and meaning of the material presented in Table 1-3 for their Nations, reinforcing that they should have been involved in the table’s development. It also seems like an unusual exercise given that the consultation did not include intentional spaces for discussion about cultural heritage. Furthermore, the Table makes no references (direct or otherwise) to groundwater-related heritage.</p> <p>(c) New Section in Chapter 4 does not address the minimum legal standard of this requirement</p> <p>Section 4.4.2 is another new addition to the WRP (see pp. 59-61). It contains no accredited text, nor is it referred to in any accredited text, and so it is unclear if the protections outlined are intended to demonstrate how NSW has met requirement 10.53(1)(b) or 10.55 (or both). The row of Table 2 in the Consultation Report that relates to 10.53(1)(b) states that “More information is included in Chapter 4 of the Water Resource Plan” (p. 10), so MLDRIN has interpreted this to mean that it is at least of some relevance here.²⁸</p> <p>The addition of Section 4.4.2 and particularly Table 4-2 (pp. 60-61) appears to document how existing NSW legislation may provide legal protection for Aboriginal heritage. Participants saw this inclusion as NSW showing it was aware of its own regulations in this regard, but the messaging was confusing. For example, Table 4-2 is named “Key legislation in NSW that protects <i>water related</i> Aboriginal heritage” (emphasis added), but the text introducing the Table states: “It is acknowledged that this legislation does not have water related requirements” (p. 59). A closer examination of Table 4-2 shows that while it does include some groundwater specific protections (i.e., see row 1, p. 60), the relevance of other protections to (ground)water related cultural heritage is unclear. One example is the reference to the <i>Game and Feral Animals Control Act 2002</i>, whereby “Certain Aboriginal people are exempt from licence requirements for hunting feral animals” (p. 61). Given these inconsistencies, questions about the Table’s intent and relevance were raised. The WRP claims that Figure 4-2 (p. 60) shows how legislation can operate to protect cultural heritage values.</p>
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²⁸ The heading for the overarching section 4.4 (“Cultural connections to groundwater and retention of the current level of protection for Aboriginal values and uses”) appears to relate more to requirements 10.54 and 10.55 than to 10.53(1)(b).

		<p>Participants determined that the above additions to the WRP text did not address the lack of adequate consultation regarding registered Aboriginal heritage relating to the water resources of the WRPA, which is required as a first step to meeting the minimum legal standard set by 10.53(1)(b). These additions also do not describe the way in which the views of First Nations about registered Aboriginal heritage were given proper, genuine, and realistic consideration in preparing the proposed WRP. As a result, participants felt these additions to the WRP text were only superficial and without significance. The Wiradjuri Nation organiser summarised the position like this: “We were consulted about surface water. NSW can make all the changes they want, but until they come and speak to us about groundwater, it doesn’t matter. They need to make that move. They need us to direct them that it’s okay to connect it with surface water and not just assume that is acceptable.” In the words of the Nari Nari Nation organiser: “Until NSW come and engage properly about groundwater, the score will be absent.”</p>
	<p>10.53(1)(c) Inclusion of Indigenous representation in the preparation and implementation of the plan</p>	<p>Absent Partial Satisfactory Good Excellent 1 2 3 4 5</p> <p>Key text reviewed related to this requirement:</p> <ul style="list-style-type: none"> ● Accredited text for the purposes of 10.53 generally, and 10.53(1)(c) (p. 15); and, ● The Consultation Report (Schedule C), in particular Section 2.3.3 (pp. 8-12). <p>Assessment comments:</p> <p>Participants noted that the accredited text relating to this requirement was barely amended from the 2020 version of the proposed Lachlan Alluvium WRP. With no additional consultation undertaken with Traditional Owners since then, participants maintained that their views regarding Indigenous representation in preparing and implementing the WRP have not been collected and/or not been regarded by NSW. Again, this is especially the case when it comes to preparing and implementing groundwater WRPs (such as the Lachlan Alluvium WRP) given that the Nations were not adequately informed that their material would be used for these WRPs. Further, participants were disappointed that there seemed to be no active follow-up or communication about the preparation or implementation of the WRP beyond when workshops ceased in 2018-19. These factors combined to justify assigning a score of absent for this requirement.</p>

		<p>(a) Accredited text is inaccurate and therefore, not evidence for addressing this requirement</p> <p>Reviewing the accredited text addressing 10.53(1)(c) in the 2022 version of the WRP, it states, “A range of Aboriginal organisations were involved in the consultation. NBAN and MLDRIN were consulted about the appropriate Traditional Owners to engage in First Nation consultation in the WRP area” (p. 15). This offers no great functional change compared with the 2020 version of the WRP. Therefore, MLDRIN’s assessment of the 2020 version, including advice about correctly framing MLDRIN’s role and level of influence during NSW’s engagement, applies again.</p> <p>Specifically, this assessment was:</p> <p><i>“Current statements across the WRP documents misconstrue MLDRIN’s role in First Nations WRP engagement to be much greater than it was in reality. These statements are misleading and potentially jeopardise MLDRIN’s independence from the consultation which is crucial for assessing WRPs. MLDRIN has previously alerted the NSW Government to this kind of erroneous phrasing in draft WRP documentation, yet such errors remain in the version submitted to the MDBA.”²⁹</i></p> <p>During the November 2022 workshop, participants again <i>“disagreed with th[is] accredited text statement; they also saw that it alone does not justify or satisfy the Basin requirement, even if it were true.”³⁰</i> NSW continues to inconsistently describe – and in some cases, misrepresent – the role of MLDRIN in the consultation process throughout the WRP documentation. Each reference to MLDRIN must be reviewed for accuracy.</p> <p>Not only does the framing of MLDRIN’s role in engagement remain incorrect within the accredited text, but it is now also contradicted by the description in the 10.53(1)(c) row of Table 2 of the 2022 version of the Consultation Report, which states: “The Nation organiser guided the Nation consultation process and gave advice, input and recommendations on which Traditional Owners to engage. This resulted in the relevant Traditional Owners for the Lachlan Alluvium WRP area being represented” (pp. 10-11). This statement is generally a more accurate description of how individual Traditional Owners were identified (i.e. by Nation organisers rather than MLDRIN) though see further comments below.</p>
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²⁹ See MLDRIN’s Assessment Matrix Report of the Lachlan Alluvium Water Resource Plan (WRP), May 2021, page 43.

³⁰ See MLDRIN’s Assessment Matrix Report of the Lachlan Alluvium Water Resource Plan (WRP), May 2021, page 44.

		<p>(b) Inclusion of Indigenous representation in the <i>preparation</i> of the WRP</p> <p>Beyond the WRP’s accredited text, participants noted that some amendments to the explanatory text and to the Consultation Report could be attempts by NSW to demonstrate consideration of the inclusion of First Nations representation in preparing the plan (even if they are not part of or referred to in the accredited text). For example, additional explanatory text in Section 2.3.3 of the Consultation Report (pp. 8-9), describes the way Aboriginal organisations were consulted for the plan. However, this does not demonstrate how regard has been given to views about what this representation should entail. Additionally, advice from the Ngiyampaa Nation organiser (noted in the overall comments regarding 10.53(1)) explains that individuals participating in engagement were not “representing” these organisations.</p> <p>The entry for 10.53(1)(c) in Table 2 of the Consultation Report seems to offer some suggestion that NSW had regard for First Nations’ views about representation in the WRP’s preparation via advice from the Nation organisers (quoted above). However, this material implies that the NSW Government heeded Nation organisers’ views and advice on appropriate consultation and representation, contradicting the experiences of the Nation organisers whose numerous requests for additional workshops, better resourcing, and more information (for example) were frequently ignored or denied. Participants at the workshop felt that, while the role of Nation organisers and the opportunity to express their views on representation in plan preparation were critical, their effectiveness was hampered by the NSW Government, which added to the justification for a score of absent.</p> <p>For example, the Nari Nari Nation organiser reported that the “consultants didn’t really follow my direction and that was surface water focused.” As another example, the Yita Yita offered: “The consultants took my direction, but the consultation overall could have been done better. There was representation and input as directed by and from me.” However, she was engaged as the Nation organiser quite late in the engagement period and felt this limited how much influence and direction she was able to offer.</p> <p>In a more practical sense, some Nation organisers again stressed the need for Nations to have a</p>
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		<p>greater influence over reviewing the material collected during engagement before the Nation Consultation Reports were drafted and finalised. There should have been opportunities for Indigenous representation in the drafting of the WRP material too (see MDBA Criterion #5).</p> <p>(c) Inclusion of Indigenous representation in the <i>implementation</i> of the WRP</p> <p>Participants observed that Indigenous representation in the WRP's implementation was not directly discussed with Traditional Owners during consultation, further justifying the score awarded here.</p> <p>The WRP does include several references to new and forthcoming strategies, which may be evidence of NSW trying to address the 'implementation' part of this Basin Plan requirement. These ongoing processes, such as WSP reviews, the NSW Water Strategy, Regional Water Strategies, and the Aboriginal Water Strategy, all appear in the accredited text for 10.52, 10.53(1)(d) and 10.53(1)(e), as well as in the explanatory text of the WRP (p. 6, 40). Accredited text in relation to 10.52 also refers to "future monitoring and evaluation" (p. 8) and in relation to 10.53(1)(d), to a "monitoring, evaluation and reporting framework" (p. 15), both of which relate to implementation too. There is, however, insufficient material available about these possible forms of implementation (either within the WRP or elsewhere). Additionally, the WRP is silent on First Nations representation provisions relating to these implementation mechanisms.</p> <p>Broader general comments:</p> <p>By using consultants, the NSW Government missed an opportunity to build relationships directly with Traditional Owners that could support ongoing work and implementation. It is critical that the NSW Government considers the lessons and challenges of this approach (i.e., using consultants), particularly in the context of the ongoing development and implementation of the Aboriginal Water Strategy. Participants noted that the value of these opportunities will be undermined if the NSW Government does not maintain active and regular communication with Nations.</p>
	<p>10.53(1)(d) Indigenous social, cultural, spiritual and customary</p>	<p>Absent Partial Satisfactory Good Excellent</p> <p>1 2 3 4 5</p> <p>Key text reviewed related to this requirement:</p> <ul style="list-style-type: none"> Accredited text for the purposes of 10.53 generally, and 10.53(1)(d) (pp. 15-16);

	objectives, and strategies for achieving these objectives	<ul style="list-style-type: none"> ● Section 1.3.1 of the WRP, as referred to in the accredited text; ● Table 3-3 of the WRP, as referred to in the accredited text; ● Section 2.3 of the Consultation Report (Schedule C) (pp. 7-18); and, ● The First Nations Consultation Reports, attached to Schedule C. <p>Assessment comments:</p> <p>Participants reviewed the updated accredited text in the 2022 version of the proposed Lachlan Alluvium WRP, which offers evidence of “having regard” for this Basin Plan requirement (pp. 15-16). Additional relevant text in Section 1.3.1 of the WRP and in Section 2.3.4 of the Consultation Report was also considered by the workshop participants. Participants observed some new linkages and references to NSW’s development of water strategies within the accredited text but could not find where NSW demonstrates how these processes and ‘strategies’ have regard to their views about achieving First Nations objectives. Ultimately, with communication gaps following the initial WRP consultation and uncertainty about how NSW’s water strategies will progress, participants determined a score of absent for this requirement.</p> <p>(a) Nations’ WRP consultation was not relevant to groundwater</p> <p>The first accredited text dot point for 10.53(1)(d) states that “Aboriginal objectives and outcomes for water management were discussed during consultation,” and the second says that these objectives are included in Section 1.3.1 of the WRP (p. 15), which refers on to the First Nations Consultation Reports attached to Schedule C. As detailed at length earlier in this assessment (see MDBA Criterion #1 and 10.52(1) especially), it was not made clear to Nations that groundwater was within the scope of WRP consultation. Therefore, Nations representatives did not agree that the objectives listed in their Nation reports and referred to in Section 1.3.1 are applicable to this groundwater WRP. By extension, they disagreed that the consultation and Section 1.3.1 demonstrate compliance with 10.53(1)(d) as stated in the accredited text.</p> <p>The second accredited text dot point also states that “Where strategies for achieving desired objectives were expressed during the First Nations’ consultation process, those views are included in each of the respective Nation Reports” (p. 15). From this, it remains unclear whether consultants actively sought the views of First Nations regarding strategies to achieve their identified objectives</p>
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		<p>during engagement. As groundwater-specific (or interconnected) objectives were not discussed in consultation, it follows that views about associated strategies were unlikely to have been inquired about or discussed too.</p> <p>Although offered in a consultation context understood to be surface water focused, the following example was offered by the Wiradjuri Nation organiser during the original (2021) assessment workshop and remains relevant here:</p> <p><i>“The Wiradjuri participants reflected on one objective and related strategy they brought up during consultation. They want to have greater control and power over cultural flow[s], and not be told by government how they can or cannot use water. A strategy to address this was discussed, which included changing the current rules and limitations associated with the Cultural Access Licence framework, including allowing that water to be used for economic purposes. (Wiradjuri participants interpret the current restrictions as a violation of their economic rights that are protected in international instruments, such as the United Nations Declaration on the Rights of Indigenous Peoples.) However, the Wiradjuri participants reported being told “that we wouldn’t have a hope in hell of changing things”. ”³¹</i></p> <p>This same example was raised during the 2022 assessment workshop.</p> <p>Critically, participants noted a key view about strategies for achieving First Nations’ objectives more broadly (i.e. beyond specific surface water or groundwater conversations) that <i>was</i> conveyed to consultants and NSW Government representatives during WRP engagement, including the need for continuity in communication and follow-up with Nation organisers and communities. Such a strategy was envisaged to ensure that the objectives put forward during the WRP consultation could be developed and progressed. However, this has not happened (see the assessment of MDBA Criterion #1). Participants acknowledged that Covid-19 may have hindered face-to-face engagement since NSW WRPs were originally submitted in 2020, but telephone and online options were still possible.</p> <p>(b) New accredited text links to other NSW-led reviews, strategies, and initiatives</p>
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³¹ See MLDRIN’s Assessment Matrix Report of the Lachlan Alluvium Water Resource Plan (WRP), May 2021, page 47.

		<p>Participants observed that new text has been added to the WRP in an attempt to address this requirement. The third accredited text dot point mentions several seemingly disconnected elements, each lacking great clarity and explanation about how they contribute to NSW meeting the minimum legal standard required by 10.53(1)(d). In the first sentence, the first element is a review that was undertaken at the NSW level to “identify similarities and gaps between the social, cultural, spiritual and customary objectives identified through the First Nation engagement and existing objectives in water sharing plans” (p. 15). Based on correspondence with NSW Department managers querying similar text in another groundwater WRP,³² MLDRIN understands Tables 3 and 4 of the Consultation Report are the result of this review for this WRPA, despite the text not directly making this link. Accordingly, the detailed commentary – including major concerns – recorded about this exercise in the assessment of 10.52(1)(a) is relevant here and contributes to the evidence justifying the score awarded here.</p> <p>The remaining sentences in the third accredited text dot point refer to a second element – Table 3-3 of the WRP. The significance of Table 3-3 for addressing this Basin Plan requirement is unclear given that it lists “instruments that address risks and impacts”. Although the final sentence states that “Insofar as those instruments [from Table 3-3] are relevant to First Nation objectives, strategies to address these will be included as considerations in the work to establish a monitoring, evaluation and reporting framework for water sharing plans” (p. 15), MLDRIN finds the meaning unclear. Rather than wait until a monitoring, evaluation, and reporting framework is established, strategies must be enacted immediately so their effectiveness can be subject to such a framework. Further comment about Table 3-3 is presented below in the assessment of 10.53(1)(f).</p> <p>The fourth accredited text dot point commits to consultation as part of future WSP replacements, which will “build on learnings and relationships developed with First Nations to ensure that social, cultural, spiritual and customary objectives and strategies are considered” (p. 15-16). Like a similar statement in the assessment of 10.52(3), this is of little meaning given that the WSP replacement is at least eight years away.</p>
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³² On 8 September 2022, the NSW Groundwater Planning Manager advised that “The review that is referred to in this statement is the work that is presented in Table 3 and Table 4 of Schedule C.” Furthermore, and as noted earlier in assessment of 10.52(1)(a), Tables 3 and 4 and therefore the review mentioned in accredited text for 10.53(1)(d) “were based on information provided in the First Nations reports. We did not consult with First Nations to ensure correct interpretation. This is the first step in analysing the alignment of water sharing plan objectives and First Nations objectives and further consultation will be undertaken.”

		<p>The new accredited text in the fifth dot point makes high-level links to broader NSW strategies (such as the NSW State Water Strategy, the Aboriginal Water Strategy, and Regional Water Strategies) (p. 16).³³ Text regarding these strategies and other initiatives (such as Closing the Gap targets) appears in the WRP explanatory text as well (for example, p. 6). However, these links and the strategies themselves currently lack clear implementation and measurable actions. For example, there is no inland waters target yet developed, and no draft Aboriginal Water Strategy. Additionally, NSW has not yet worked with First Nations to develop a shared understanding about how each of these initiatives is intended to directly (or otherwise) address their Nations' views about objectives. Given this, Nation representatives were surprised to find that the fifth accredited text point suggests that developing these strategies “<i>continues</i> to include specific engagement with Aboriginal communities about social, cultural, spiritual and customary objectives” (p. 16, emphasis added). As noted already, MLDRIN is surprised that this WRP makes no references or connections to the NSW Groundwater Strategy (see 10.52(3)).</p> <p>Finally, new text in Section 2.3.4 of the Consultation Report states: “A full range of strategies will be developed in partnership with Aboriginal people over the coming years” (p. 14) through the development of the above-mentioned broader water strategies. This addition was viewed as positive in principle. However, there is so little detail on how it will play out in practice. This section also refers to “the department’s engagement program with First Nations” as a mechanism for addressing Nations’ objectives that focus on “culturally appropriate consultation, inclusion, and ownership of information” (p. 14). Nation organisers and workshop participants questioned what this “program” is referring to given the lack of engagement that has occurred since the original WRP consultation.</p> <p>(c) Commitments for the future do not demonstrate regard to Nations’ views in <i>this</i> WRP</p> <p>While the Lachlan Alluvium WRP includes some assurances that First Nations views will be considered going forward, it appears to have been prepared with little regard for First Nations</p>
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³³ MLDRIN acknowledges that this commentary about links (or gaps) to other strategies may be construed as straying from direct relevance to this Basin Plan requirement given that these are separate processes. However, these water strategies are directly related to the scope of how NSW has attempted to address and respond to this requirement (dot point five of the accredited text addressing 10.53(1)(d) (p. 16), as well as other references in the explanatory text and Consultation Report). Therefore, MLDRIN and the participants are of the strong view that this information is directly relevant to the assessment.

		<p>views about strategies to achieve their desired objectives as required by the Basin Plan. At best, if preparing the other strategies included having regard to their views, the links have not been made clear or communicated to Nations (or presented in the WRP).</p> <p>Overall, participants assessed that the preparation of the 2022 version of the proposed Lachlan Alluvium WRP does not evidence proper, genuine, or realistic consideration for First Nations views about their water-related objectives or strategies for achieving them. The NSW Government seems to be asking participants to trust that it will deliver on these outcomes, but based on their past experiences, many participants expressed little confidence in the NSW Government's assurances for the future. As one representative explained, "NSW always puts out aspirational documents, but [past experience shows] it doesn't deliver."</p> <p>Broader general comments:</p> <p>Workshop participants expressed frustration about the lack of specific, clear, tangible, and implementable strategies and initiatives within the WRP and WSP that can help Nations achieve their desired outcomes. The inclusion of even some of these strategies would provide clearer and stronger evidence of regard to their views, as required by 10.53(1)(d). It seems that NSW intends to work on strategies at a later time, such as through the Aboriginal Water Strategy, but participants agreed with the following sentiment shared by the Ngiyampaa Nation organiser: "All we do is talk, but nothing ever happens." The Nari Nari Nation organiser added: "All of this is just words, but no action."</p> <p>Relatedly, workshop participants observed that, like the 2020 version, the 2022 version of the Consultation Report continues to misrepresent consultation discussions about strategies as being "what people would want in the <i>future</i>" (p. 11, emphasis added). But, as the Wiradjuri Nation representative asserted in the assessment workshop and others agreed, "we don't want strategies and outcomes in the future, we want them now. We've been saying what we want for too long. We're sick of aspirational words. We need concrete things to happen now."</p> <p>Returning to the earlier point about the importance of communication and continuity following WRP engagement, participants expressed concern that communication and notification about the State Water Strategy and relevant Regional Water Strategies (and the draft Groundwater Strategy)</p>
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		<p>had not been sufficient. For some participants, MLDRIN’s assessment workshops were the first time they had heard about the NSW Government’s intent to use these strategies to address the WRP requirements and to develop a “monitoring, evaluation and reporting framework for water sharing plans” (p. 15). While NSW believes that certain initiatives and frameworks have the potential to address Nations’ objectives, MLDRIN emphasises the importance of NSW collaborating with Traditional Owners to develop and implement these initiatives.</p>
10.53(1)(e) Encouragement of active and informed participation of Indigenous people	<p>Absent Partial Satisfactory Good Excellent</p> <p>1 2 3 4 5</p>	<p>Key text reviewed related to this requirement:</p> <ul style="list-style-type: none"> • Accredited text for the purposes of 10.53 generally, and 10.53(1)(e) (p. 16); and, • Section 2.3.3, Consultation Report (Schedule C) (pp. 8-12). <p>Assessment comments:</p> <p>To address requirement 10.53(1)(e), the NSW Government needed to ask First Nations for their views about encouraging active and informed participation and then properly, genuinely, and realistically consider those views. Participants discussed the new and explicit accredited text intended to address this requirement. But, as detailed below, participants again assessed that the 2022 version of the proposed WRP, including its Consultation Report (Schedule C), provides insufficient evidence that regard to Nations’ views occurred, especially in the context of groundwater. Alternative claims presented throughout the WRP documentation were deemed problematic, false, and dishonest. This assessment, combined with the earlier detailed analysis in the assessment of MDBA Criterion #4, saw workshop participants score the WRP as absent for this requirement.</p> <p>(a) Misrepresentative and unjustified claims of active and informed participation</p> <p>As an overarching comment and general principle, all people must be appropriately and accurately informed, prior to consultation, about the purpose of consultations and how their contributions will be used. As this assessment report has thoroughly detailed, this principle was not upheld by NSW in its consultation with First Nations regarding the Lachlan Alluvium water resources. The Wiradjuri Nation organiser explained, “unless NSW come and do the consultation with us on groundwater, they’ve not met this requirement... All of this material [in the WRP] is irrelevant because they didn’t consult with us about groundwater.” No further detail about this specific point</p>

		<p>is offered here to avoid further duplication.</p> <p>The first accredited text dot point addressing 10.53(1)(e) states: “Based on guidance from NBAN and MLDRIN, the Department engaged with First Nations in a way that encouraged active and informed participation” (p. 16). Participants strongly disagreed that NSW’s engagement efforts were shaped by MLDRIN’s advice. In fact, MLDRIN’s consistent advice, provided through numerous channels – both directly to the NSW Government and publicly – seems to have been frequently disregarded by NSW. This statement and how it implicates MLDRIN is problematic and requires correction. Furthermore, participants strongly disagreed that NSW could describe its efforts in such a way, especially in the context of groundwater. The assessments of the MDBA Criteria earlier in this report, particularly #1 and #4, provide detailed reasons why, along with examples of how, the engagement did not occur “in a way that encouraged active and informed participation,” as NSW claims. MLDRIN’s 2020 and 2021 assessments also provide this information, and MLDRIN can provide further evidence predating NSW’s submission of the 2020 WRPs if required.</p> <p>Relevant to this accredited text dot point, participants noted that text relating to 10.53(1)(e) in Table 2 of the Consultation Report had been altered since the 2020 version to now state that the consultation “was designed to follow cultural protocols to ensure active and informed participation of Indigenous people, within the timeframes available” (p. 11). Participants observed that the addition of this statement, including in particular the “<i>within the timeframes available</i>” clause, could be an admission that consultation did <i>not</i> support active and informed participation in many cases. Workshop participants noted that the constrained timeframes were entirely due to NSW’s inaction, not any inherent limitation in the Basin Plan process itself. They also noted that, even within the timeframes available, NSW did not have regard to their views about active and informed participation, despite NSW’s claims. Participants also saw that NSW’s difficulties in delivering the original WRP consultation in their own time frames, combined with the fact that the WRP materials are dishonest about this, make it difficult to trust NSW’s assertions about future and “continued” engagement with Nations that appear throughout the WRP.</p> <p>It is important to recognise that NSW has added the above mentioned statement to the WRP Consultation Report <i>after</i> MLDRIN assessed the 2020 version, which included a detailed description of the issues with the WRP consultation. This sequencing was viewed by participants as</p>
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		<p>dishonest and “insulting”. The Wiradjuri Nation organiser interpreted the timing of this comment’s addition as NSW continuing to disregard Nations’ views and advice about encouraging active and informed participation. It was requested that this assessment report record that Nation representatives “strongly object” to NSW’s addition of this text in the Consultation Report. Nation representatives were of the view that evidence was needed in order for NSW to retain this statement.</p> <p>The second accredited text dot point makes claims about the state-wide Aboriginal Water Strategy being based on a “co-design approach”. Nation representatives have not, however, been contacted yet regarding this Strategy or its development. Additionally, as noted, the development of the Aboriginal Water Strategy is behind schedule.³⁴ These lines of evidence indicate that the claim in the second accredited text dot point is not truthful and therefore cannot be viewed as evidence of how NSW has addressed Basin Plan requirement 10.53(1)(e).</p> <p>The following claim appears in Table 2 of the 2022 version of the Consultation Report in relation to 10.53(1)(e) (and appeared in the 2020 version too): “Relationships with Traditional Owners and a shared understanding of water management were developed prior to conducting workshops with the broader group of First Nation Traditional Owners” (p. 11). Nations strongly disagreed with this suggestion that “relationships” were developed, especially given the lack of follow-up and communication since the initial WRP engagement. This statement misrepresents the consultation.</p> <p>(b) False claims about data use agreements underpinning informed participation</p> <p>The first dot point of the accredited text addressing 10.53(1)(e) refers to the Data Use Agreements for managing First Nations’ cultural information shared during WRP engagement as an example of providing informed engagement (p. 16). These agreements seem to have been well intended, but:</p> <ul style="list-style-type: none"> ● As documented during MLDRIN assessments of 2020 versions of NSW’s proposed WRPs, these instruments did not inform Nations that the information they shared could be displayed on public websites. While this particular issue has now been rectified, the fact that it occurred at all still raises questions about the suitability and clarity of the data use
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³⁴ DPIE, *Report on the strategy’s progress: The report on the progress made from the 2021-22 Implementation plan* (September 2022), p. 22. Available online: <https://water.nsw.gov.au/_data/assets/pdf_file/0003/527043/nsw-water-strategy-annual-progress-report-on-implementation.pdf>.

		<p>agreements and/or how well NSW complied with their conditions.</p> <ul style="list-style-type: none"> • New to this WRP assessment, MLDRIN has observed an inconsistency in the stated provisions around how NSW can use the information collected during interviews and workshops (see further explanation in 10.52(3)). • Nation representatives also saw the development and inclusion of Table 3 in the Consultation Report as undermining the claim in the accredited text that data use agreements “ensure that information is managed and used in accordance with First Nations rights to cultural information that they share” (p. 16) (see assessment of 10.52(1)(a)). <p>Accordingly, pointing to these tools as evidence for NSW having regard to First Nations peoples’ views about encouraging active and particularly <i>informed</i> participation was questioned. See further comments about these agreements in the assessment of 10.52(3).</p> <p>(c) Commitments for the future do not demonstrate regard to Nations’ views in <i>this</i> WRP</p> <p>The second accredited text point attempts to highlight ongoing and <i>future</i> consultation activities as evidence of having regard to views about informed participation in <i>this</i> WRP. The accredited text states that the NSW “Department is strengthening First Nations’ participation in water planning and management,” via (for example) priority 2 of the State Water Strategy and developing an Aboriginal Water Strategy “based on a co-design approach that includes capacity building and sharing of water planning and management knowledge with communities” (p. 16). Participants observed that developing the Aboriginal Water Strategy by “co-design” will require genuine commitments and ongoing relationships with Nations, and were concerned that these relationships do not exist. Comments in 10.52(3) and 10.53(1)(d) regarding links to these (and other) NSW strategies and initiatives are relevant here.</p> <p>The third accredited text dot point for this requirement states NSW is “progressing work to support Aboriginal water literacy and engagement in regulatory water planning” (p. 16). While participants welcomed this idea, noting that it directly corresponds with requests made during WRP engagement, it is unclear what new or additional information this dot point is intended to reflect that is not already included in the second accredited text dot point for 10.53(1)(e). The</p>
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		<p>WRP’s text is written in the present tense, implying this work is already underway, but participants were of the view that the NSW Government is yet to begin delivering on this.</p> <p>In sum, the Nation representatives were very wary of NSW attempting to address Basin Plan requirement 10.53(1)(e) by putting off actions into the future, especially given the state’s poor track record of delivering on past actions. Comments in 10.53(1)(d) regarding the unsuitability of using commitments to future actions to demonstrate regard to Nations’ views in this WRP are relevant here too.</p> <p>Broader general comments:</p> <p>It was noted that Table 3-3 of the WRP includes a “Water literacy program” alongside other existing management instruments (e.g., NSW Water Strategy and Regional Water Strategy) (p. 45). However, participants and MLDRIN are unaware of this program. Perhaps it relates to that mentioned in the third dot point of accredited text for 10.53(1)(e), but the link is not explicit.</p> <p>As noted, workshop participants reported that they had not yet been engaged with, let alone contributed to the “co-design” of the Aboriginal Water Strategy. While this point alone is relevant to the assessment of this requirement (as noted above), Nation representatives offered additional comments that extend beyond the minimum legal requirements but remain relevant. These include concerns that the NSW Government is scoping the draft Aboriginal Water Strategy drawing “on significant First Nations/Aboriginal engagements from 70 workshops conducted in recent years on water resource planning and regional water strategies,”³⁵ especially given the deeply troubling issues with this consultation set out in this and other WRP assessments and earlier offered evidence that the Workshop Data Use Agreements associated with these workshops does not allow for this purpose (see assessment of 10.52(3)). More than this, the Nari Nari Nation organiser questioned the appropriateness of the NSW Government considering and drawing from all Nations’ views and aspirations to produce one single Aboriginal Water Strategy. A more suitable approach, from this representative’s perspective, would be to support the development of Nation-based strategies that are focused on and targeted towards individual sovereign Nations’ priorities.</p>
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³⁵ DPIE, *Report on the strategy’s progress: The report on the progress made from the 2021-22 Implementation plan* (September 2022), p. 22. Available online: <https://water.nsw.gov.au/_data/assets/pdf_file/0003/527043/nsw-water-strategy-annual-progress-report-on-implementation.pdf>.

	<p>10.53(1)(f) Risks to Indigenous values and Indigenous uses arising from the use and management of the water resources of the water resource plan area</p>	<table><tr><td>Absent</td><td>Partial</td><td>Satisfactory</td><td>Good</td><td>Excellent</td></tr><tr><td>1</td><td>2</td><td>3</td><td>4</td><td>5</td></tr></table> <p>Key text reviewed related to this requirement:</p> <ul style="list-style-type: none">● Accredited text for the purposes of 10.53 generally, and 10.53(1)(f) (p. 16);● First Nations Consultation Reports, attached to Schedule C;● Explanatory text in Section 3.4 of the WRP (pp. 38-40);● Table 3-3 of the WRP (pp. 41-46); and,● Risk Assessment (Schedule D). <p>Assessment comments:</p> <p>Participants noted that the NSW Government has attempted to include more material about the risks described by First Nations during the original consultation in the 2022 version of the proposed Lachlan Alluvium WRP compared to the 2020 version. Principally, this additional material appears in the updated accredited text (p. 16), the inclusion of Table 3-3 (pp. 41-46), and the explanatory text in Section 3.4 (pp. 38-40). However, participants noted a number of shortcomings with how NSW had attempted to show regard to First Nations’ views about risks to Indigenous values and uses, as set out below. These issues are of such significance that participants saw that NSW’s efforts could not be scored higher than absent.</p> <p>(a) First Nations consultation did not include groundwater</p> <p>The first accredited text dot point addressing 10.53(1)(f) states that “Risks and impacts, values and uses were discussed during consultation” (p. 16). The third accredited text dot point identifies the specific locations that list the risks discussed in each First Nations Consultation Report. While participants agreed that they had opportunities to speak about <i>surface water</i> risks, all disagreed that this statement – and the referenced parts of their Nations Consultation Reports – sufficiently reflected their views about risks related to the use and management of groundwater. This stems from the consultation-based issues already detailed at length in this assessment. As summarised by the Wiradjuri Nation organiser, “our consultation was non-existent for groundwater. NSW need to come back and have a discussion with us about risks and risk assessments.” Again, this fundamental gap is the key justification for the score of absent.</p>	Absent	Partial	Satisfactory	Good	Excellent	1	2	3	4	5
Absent	Partial	Satisfactory	Good	Excellent								
1	2	3	4	5								

		<p>For example, participants considered the following statement in the new explanatory text in Section 3.4, which appears to have been added by NSW as an attempt to address or overcome this concern: “An inclusive approach was used to identify groundwater risks, which recognises the connected nature of surface water and groundwater systems. Accordingly, risks identified by First Nations that relate to flows in rivers and creeks in addition to specific risks to groundwater are included in this groundwater WRP” (p. 39). However, workshop participants disagreed with this presumption, which is similarly depicted in other blanket statements about consultation in the WRP (see discussion in MDBA Criterion #1, for example). Additionally, Nations were not invited to share “specific risks to groundwater” as implied by this statement. Put simply, NSW has no authority to make statements or claims about how sovereign Nations view the world or their Country, especially when Nations were not given clear opportunities to speak about this matter, as is the case for this WRP.</p> <p>What appears to be the fourth accredited text dot point addressing 10.53(1)(f) states that “NSW will continue to strengthen the engagement with First Nations regarding risks and impacts to cultural values and uses through the water planning process” (p. 16). No further actions or timeline details are provided. Participants found it hard to see how the NSW Government can say that it will “<i>continue</i> to strengthen” this engagement given that, so far, some Nations have been afforded few to no engagement opportunities about groundwater risks and impacts.</p> <p>Several alternative additions and actions that the NSW Government should have followed instead of adding these statements were discussed during the workshop. These included returning to Nations to offer engagement opportunities that clearly and explicitly included groundwater. Phone calls to Nation organisers to discuss the situation and other alternative courses of action could have occurred too. At a bare minimum, from the Wiradjuri Nation Organiser’s perspective, NSW should have provided more truthful additions to the WRP, such as acknowledging that consultation had only focused on surface water and a commitment to undertake (not ‘continue’) “further dialogue with Nations to extend risk discussions to groundwater.”</p> <p>(b) Additions to Section 3 of the WRP (Risks to water resources) in relation to 10.53(1)(f) The second accredited text dot point for 10.53(1)(f) refers to Table 3-3 (pp. 41-46). This Table is a new addition to the 2022 version of the proposed WRP and was viewed by the workshop</p>
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		<p>participants to reflect some of the risks and issues they and others had raised during engagement in the context of surface water. Table 3-3 appears to include some groundwater risks and related management ‘instruments’ (e.g., “distance rules for new bores from groundwater-dependent cultural sites” throughout). However, the NSW Groundwater Strategy is missing from this Table, and the overwhelming majority of “risks” and “instruments” relate to surface water only, and some of these are irrelevant. For example, the top line on page 45 refers to water crossing between Queensland and NSW without any statement about the relevance to this Lachlan Alluvium WRP.</p> <p>Of note, the accredited text states that Table 3-3 is a summary of the “risks and impacts raised by the Nari Nari, Ngiyampaa, Wiradjuri and Yita Yita Nations during consultation” (p. 16). Conversely, the explanatory text introducing the Table says it summarises “the risks identified by the First Nations across NSW to date” (p. 40). Reviewing the Table 3-3 in contrast with the Nations Consultation Reports, it is clear that the latter of these statements is accurate and the accredited text is not. Table 3-3 appears to be another new element in the WRP developed without First Nations’ input or advice. Participants were not comfortable with the way their risks had been interpreted and combined together or how the risks had been categorised into themes without their involvement. It is also worth noting that extracting and using Nations’ materials beyond “specific” (i.e., directly relevant) WRPs in this manner is not compliant with the use provisions set out in the WRP Workshop Data Use Agreements established and agreed to by participating Traditional Owners in 2018 and 2019.</p> <p>From reviewing Table 3-3 and its accompanying explanatory text, it is unclear what NSW intended to convey by listing the instruments within the Table. Their inclusion could imply they are strategies to address corresponding risks, but it is questionable whether some of the identified instruments are fit to actually address the risk(s) they are listed against (i.e. specific purpose ‘cultural’ entitlements as a means to address many identified risks, especially given their known low take-up and the associated challenges of using them, which remain unaddressed). This is further complicated by the fact that many of these instruments were in place during the period when the described risks arose or worsened. Alternatively, the intent may have been to simply list instruments that are considered ‘relevant’ to each risk – including WRPs and WSPs – but there is no explanation of how they do (or could) address, reduce, mitigate, or manage the risks. This led</p>
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		<p>participants to question the substantive impact of Table 3-3 and the depth of regard that NSW is attempting to convey through its inclusion. The explanatory text that introduces the Table is not helpful in clarifying this intent in that its distinction between column two (relevant water management instruments) and column three (other relevant resource, economic, and social planning instruments) is confused by water instruments frequently included in both columns.</p> <p>A new illustration (Figure 3-1) also appears in the explanatory text (p. 39), which purports to show “how First Nations Peoples effectively have become separated from many locations of cultural significance along rivers” (p. 38). This illustration relates to surface water risks, and participants disagreed that it helped to demonstrate regard as required by 10.53(1)(f).</p> <p>(c) Lack of changes to the Risk Assessment (Schedule D)</p> <p>Participants observed that the Risk Assessment submitted with the 2022 version of the proposed Lachlan Alluvium WRP retains significant omissions regarding risks to First Nations values that were identified in MLDRIN’s assessment of the 2020 version. Specifically, the Risk Assessment states that risks to the suitability and availability of water for Indigenous, social, and cultural benefits have “not been formally assessed in this document” (p. 95, Schedule D). Without this assessment, no management or mitigation strategies have been developed, which Nation representatives and MLDRIN remain troubled about. This exclusion was interpreted as evidence of NSW’s disregard for Nations’ views about risks.</p> <p>Section 7 of the Risk Assessment offers regard instead by including, assessing, and addressing other risks (see p. 95). Such a surrogate approach is erroneous given the unique specificity of First Nations’ water dependent values (see First Nations Consultation Reports, for example).³⁶ Participants saw that in taking this approach, the NSW Government demonstrates how First Nations people were excluded from crucial steps in the WRP development process (further justifying the assessment of MDBA Criterion #2).</p> <p>Workshop participants rejected the statements in the Risk Assessment that suggested that data was unavailable and that current methodologies were inadequate for assessing risks to the</p>
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³⁶ Also, see generally, B Moggridge, ‘Aboriginal People and Groundwater’ (2021) 126 *Proceedings of The Royal Society of Queensland* 11-27.

		<p>suitability and availability of water for Indigenous, social, and cultural benefits (p. 95). Significant data regarding surface water risks are contained within the First Nations Consultation Reports, and the NSW Government had the opportunity to ask Nations about groundwater related risks and other suitable and informative methods (e.g. Use and Occupancy Mapping, AWAs, etc.) during consultation. Participants were disappointed that the Risk Assessment said “[f]uture risk assessments <i>could</i> include an assessment of these risks” (p. 95, emphasis added), as stronger action and intent could have been included.</p> <p>(d) Overall connectivity of risk materials relating to First Nations</p> <p>After reviewing the individual risk-related components of the WRP, participants reviewed their connectivity and integration. They were disappointed to find that these elements were not well interconnected. For example:</p> <ul style="list-style-type: none"> • The accredited text for 10.53(1)(f) makes no reference or connection to the Risk Assessment; • The new Section 3.4 of the WRP makes no reference or connection to the Risk Assessment; • First Nations’ identified risks in the individual First Nations Consultation Reports, and those summarised in Table 3-3, are not incorporated into the Risk Assessment; • The Risk Assessment does not refer to Section 3.4 or Table 3-3 of the WRP – the parts that directly identify First Nations risks in response to 10.53(1)(f) and form part of the WRP’s risk section – despite referring to other (arguably less relevant) components of the WRP (see p. 95, Schedule D); and, • The Risk Assessment refers to Section 4.4 of the WRP for “further information relevant to risks to Indigenous values and uses of groundwater” (p. 95); however, neither the WRP accredited text relating to 10.53(1)(f) nor Section 3.4 make connections to this Section.³⁷ <p>In short, the 2022 version of the proposed WRP appears to go to greater lengths to document and extract Nations’ views on risks from the First Nations Consultation Reports and seeks to show how existing instruments are “relevant” to addressing those risks. However, this work is not integrated into the Risk Assessment, nor are any strategies for mitigation presented for implementation. This</p>
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³⁷ For MLDRIN’s assessment of various components in Section 4.4, see assessment of 10.53(1)(b), 10.54, and 10.55.

		<p>lack of integration suggests that First Nations' views about risks are still effectively as isolated and without genuine regard as they were in the 2020 version of the WRP, when they only appeared in the First Nations Consultation Reports. This poor interconnectivity signals that NSW has made disparate additions to the WRP without properly and genuinely considering the implications for other components of the WRP. This commentary is relevant because it provides additional evidence justifying the score of absent for 10.53(1)(f).</p> <p>Broader general comments: Additions to Section 3 of the WRP (Risks to water resources) relating to Basin Plan requirement 10.41</p> <p>MLDRIN offers the following advice, acknowledging that it extends beyond our contractual obligation to assess the WRP against the Chapter 10 Part 14 requirements of the Basin Plan. Nonetheless, we raise this matter of concern with the expectation that the MDBA will consider it further as part of its own farther-reaching assessment of this WRP, including the Risk Assessment requirements (Chapter 10 Part 9 of the Basin Plan).</p> <p>Sections 10.41(1)-(3) of the Basin Plan require NSW to prepare the WRP "having regard" to risks, including those in s.4.02 (which include risks to First Nations water interests). MLDRIN has observed that the accredited text for the purposes of these requirements has been amended in the 2022 version of the proposed WRP (p. 29), which now includes a reference to "the provisions for accreditation in Table 3-3" of the WRP as well as "section 7" of the Risk Assessment (Schedule D).</p> <p>Section 10.41 of the Basin Plan also states, "(4) The water resource plan must list the risks identified for the purposes of subsection 10.41(1)" and "(5) The water resource plan must <i>assess</i> each risk" (emphasis added). Accordingly, the accredited text for 10.41(4) and 10.41(5) should connect to Table 3-3's material (either directly in Table 3-3 or in the Table 3-1 Risk assessment outcomes), given that it is identified for the purposes of 10.41(1). However, the corresponding accredited text on page 32 of the WRP does not make this connection and, therefore, has not met the minimum legal standard. Even if the connection to Table 3-3 was made to address 10.41(4) (thus more likely meeting that requirement), the minimum legal standard set by requirement 10.41(5) to <i>assess</i> all the identified risks clearly would not be met with this table or elsewhere across the WRP, but Table 3-3 only lists risks.</p>
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		<p>MLDRIN strongly urges the MDBA to further consider this matter as part of its own assessment of the 2022 version of the proposed Lachlan Alluvium WRP against the Basin Plan requirements.</p> <p>Other broader general comments:</p> <p>Nation representatives made several remarks about the following statement, which appears in the explanatory text of Section 3.4: “regarding water management Aboriginal people feel as though their voices are not heard” (p. 39). These included:</p> <ul style="list-style-type: none"> • From the Ngiyampaa Nation organiser: “We don’t ‘feel’ our voices aren’t being heard, we <i>know</i> it.” Workshop participants saw this was demonstrated by NSW’s efforts to develop WRPs, including after the original WRP assessment processes in 2020 and 2021. • A Wiradjuri Nation representative added: “It’s not just our voices, but our <i>rights</i> that are ignored. In doing so, NSW is breaching its own laws every day.” • A second Wiradjuri Nation representative clarified that for their Nation, “Our voices weren’t heard about groundwater because the consultants didn’t let us speak about groundwater in consultation.” <p>Some felt that the categorisations in Table 3-3 missed key causal factors underpinning risks. For example, one participant stated: “Racism is the core problem, and it is embedded and perpetuated in the [water] system today.” This Wiradjuri participant strongly desired the core issues of racism and greed to be more directly acknowledged in the WRP. Relatedly, participants acknowledged that the explanatory text does include this statement: “often these risks [in Table 3-3] related to historic and systemic issues, such as the dispossession and discrimination that First Nations have continued to experience since colonisation [sic]” (p. 40). While this may seem to acknowledge the severity and longevity of these impacts and risks on one level, it also appears to excuse or justify the lack of past actions, or any actions in this WRP, to address them.</p> <p>Section 3.4 contains inaccuracies and/or errors that require correction. These include:</p> <ul style="list-style-type: none"> • The following quote is without any citation: “direct, causal relationships between the availability of water and Aboriginal socio-cultural life” (p. 39). MLDRIN understands that this quote is taken from a Northern Basin focused report, and therefore, it is presented in the wrong context in this southern Basin WRP.
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		<ul style="list-style-type: none">Table 3-3 of the WRP erroneously states that “The application of Native Title does not apply to water in the waterways” (p. 41). This requires correcting because native title can apply to waters.			
<p>10.54 A water resource plan must be prepared having regard to the views of Indigenous people with respect to cultural flows</p> <p><i>[Notes for Assessment: Is the matter specifically addressed in the text of the WRP? Does the WRP set out how proper, genuine and realistic consideration of Traditional Owner views informed the Plan? Is the matter addressed as part of the accredited text? Is the matter addressed as part of the supporting text? Are their strategies in place to address the matter? Are the strategies binding and measurable?]</i></p>	<p>Absent 1</p>	<p>Partial 2</p>	<p>Satisfactory 3</p>	<p>Good 4</p>	<p>Excellent 5</p>
	<p>Key text reviewed related to this requirement:</p> <ul style="list-style-type: none">Accredited text for the purposes of 10.54 (p. 59);First Nations Consultation Reports attached to Schedule C and referred to in the accredited text;Explanatory text in Section 4.4.1 of the WRP (p. 59); and,Table 2 of the Consultation Report (Schedule C) (p. 11). <p>Assessment comments:</p> <p>Participants reviewed the updated accredited and explanatory text in the WRP that relates to Basin Plan requirement 10.54 (p. 59). The enhanced commitment to implementing the National Cultural Flows Research Project guides in partnership with First Nations was welcomed, as was the removal of the explanatory text that had erroneously conflated cultural and environmental outcomes, which appeared in the 2020 version of the proposed WRP. However, participants determined that these changes do not demonstrate that the <i>views</i> of First Nations regarding cultural flows were adequately sought or considered, especially in relation to groundwater as detailed in MLDRIN’s original assessment. Therefore, assessment of the 2022 version of the proposed Lachlan Alluvium WRP in addressing this requirement was determined to be absent.</p> <p>(a) Issues with First Nations consultation</p> <p>The first accredited text dot point in the 2022 version of the proposed Lachlan Alluvium WRP states: “[t]his Plan has regard to the views of Aboriginal people with respect to cultural flows (cultural connection to groundwater) by including Attachments A and D of Schedule C” (p. 59). It is unclear why only Attachment A (Nari Nari Nation Consultation Report) and Attachment D (Yita Yita Nation Consultation Report) are specified in the accredited text, leaving out the Ngiyampaa and Wiradjuri Nations Consultation Reports. This may be a typographical error (e.g. it could be “Attachments A <u>to</u> D”), but MLDRIN is required to assess that which is presented in the WRP text.</p> <p>Regardless, representatives disagreed that NSW attaching any number of their Nations’ reports demonstrated regard to their views about cultural flows. Fundamentally, this is because few participants recalled discussing cultural flows</p>				

at all during engagement, and where they did, it was (i) in relation to surface water flows and delivery, not groundwater, and (ii) generally because Traditional Owner participants raised the matter rather than appropriate facilitation by consultants. Claiming that the consultation process and attaching the First Nations Consultation Reports were how the WRP had regard to Nations' views on cultural flows means that NSW has not addressed the concerns about, and deficiencies of, this approach as recorded in the original First Nations assessment.

The absence of dialogue during (or since) consultation with Nations representatives about cultural flows in groundwater contexts therefore remains the core reason for scoring this requirement as absent. It also brings into question other claims made across the relevant accredited and explanatory text in the WRP. For example, Nation representatives were unsure what the accredited text was implying when it states that NSW will "*continue* to work with First Nations and Aboriginal people and organisations" (p. 59, emphasis added) in progressing cultural flows.

The changes to Table 2 of the Consultation Report and the explanatory material in the WRP reveal that the NSW Government is sending mixed messages about its work to understand First Nations' views on cultural flows, suggesting that this work is incomplete and ongoing. For example, the 2020 version of the Consultation Report indicated that additional consultation for this requirement was underway. This statement has been removed from the 2022 version and replaced with this new statement: "Throughout the First Nations consultation, cultural flows was a key theme raised as cultural practices and events are supported by cultural flows" (p. 11). Questions about the grounds for changing the original text were raised given that no engagement has occurred since the 2020 version was assessed.

The 2022 version of the proposed WRP explanatory text states, "Across the state, consultation has identified areas for further development in pursuit of Aboriginal objectives and outcomes in water management, including ... cultural flows" (p. 6; near identical text appears on page 12 of the Consultation Report). This statement suggests that the original consultation did not sufficiently address cultural flows, so the change in Table 2 of the Consultation Report presented here remains unclear and is potentially dishonest.

(b) New links to important cultural flows materials

NSW has revised the WRP accredited and explanatory text to include clearer links to important cultural flows materials. This includes the definition of cultural flows as established by Basin Traditional Owners in the Echuca Declaration and key processes and guides developed through the National Cultural Flows Research Project. While this

	<p>was considered a “promising small step”, participants did not see that these additions addressed the minimum legal standard of this Basin Plan requirement and its need for NSW to have regard to the <i>views</i> of First Nations. That is, it remains the case that Nations were given little opportunity to share their views about cultural flows in consultation and not at all in the context of groundwater. Moreover, while the WRP now offers the definition of cultural flows from the Echuca Declaration, it does not go as far as stating that the NSW Government endorses or adopts this meaning.</p> <p>(c) Unclear meaning of “cultural flows (cultural connections to groundwater)” expression</p> <p>Nation representatives and MLDRIN were unsure what the NSW Government meant by the expression “cultural flows (cultural connections to groundwater)” in the accredited and explanatory text and why the descriptor in parentheses is included. One interpretation³⁸ is that the NSW Government does not see that cultural flows are attainable in groundwater contexts.</p> <p>Certainly, the application of cultural flows to groundwater is less developed than its application to surface waters. However, a key feature of cultural flows as defined by the Echuca Declaration and the National Cultural Flows Research Project is water ownership and the associated right for First Nations to make decisions about and manage water for their own determined outcomes. This idea of water ownership is certainly transferable to groundwater contexts³⁹ in NSW, but this would require further discussion and exploration with Traditional Owners.</p> <p>Broader general comments:</p> <p>Discussions during the assessment workshop covered broader cultural flows matters. This included a shared frustration with the limited genuine commitments from governments to return water to First Nations despite fighting relentlessly for many years. In particular, participants discussed the important role of water purchases and transfers for securing ongoing water for cultural flows at no cost to Nations, and their frustration with the NSW Government’s (and indeed other governments’) lack of interest, investment, or action in progressing this.</p> <p>Regardless of the fact that the NSW Government and consultants were not clear or transparent about the scope of consultation, Nations representatives asserted that if the NSW Government wanted to rely on the views captured in</p>
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³⁸ MLDRIN sought clarification about the inclusion of this term from the NSW Department in August 2022, but no clarity was offered in the reply received in September 2022

³⁹ See for example: E O’Donnell, L Godden and K O’Bryan, *Cultural Water for Cultural Economies* (2021) https://law.unimelb.edu.au/data/assets/pdf_file/0008/3628637/Final-Water-REPORTspreads.pdf; R Nelson, ‘Water rights for groundwater environments as an enabling condition for adaptive water governance’ (2022) 27(2) *Ecology and Society*, 28.

	<p>the First Nations Consultation Reports as evidence for addressing this requirement, those views needed to be translated into mechanisms and actions within the WRP, in partnership with the Nations themselves. This includes (but is not limited to) embedding rules and/or mechanisms to secure Aboriginal ownership, access, and control of water flows into the WSP (beyond the current 10ML Aboriginal Cultural Water Access Licence provisions), the WRP, or other legislation. Such provisions should not stop at securing ownership, but also need to ensure that when a cultural flow is delivered, it is protected with pumping embargoes on other users.</p> <p>In this vein, and much like in the assessment of 10.53(1)(f), participants agreed strongly with the following statement in the explanatory text: “Aboriginal people feel as though their voices are not heard in water management and cultural flows and outcomes are not considered in policy and implementation” (p. 59). They stressed that the development of this WRP objectively demonstrates that Nations views are not being heard or acted upon (not just that this is how Aboriginal people “feel”).</p>				
<p>10.55 A water resource plan must provide at least the same level of protection of Indigenous values and Indigenous uses as provided in:</p> <p>(a) a transitional water resource plan for the water resource plan area; or</p> <p>(b) an interim water resource plan for the water resource plan area.</p>	<p>Absent 1</p>	Partial 2	Satisfactory 3	Good 4	Excellent 5
<p>Key text reviewed related to this requirement:</p> <ul style="list-style-type: none"> • Accredited text for the purposes of 10.55 (p. 63); • Table 4-3 of the WRP (pp. 62-63) which the accredited text refers to, as well as the mechanisms and clauses referred to in this table, including relevant parts of the WSP in Schedule A; • A transitional WRP, the <i>Water Sharing Plan for the Lower Lachlan Groundwater Source 2003</i>, and an interim WRP, the <i>Water Sharing Plan for the Lachlan Unregulated and Alluvial Water Sources 2012</i>; and, • Explanatory text in Section 4.4.3 of the WRP (p. 61 & 63). <p>Assessment comments:</p> <p>Participants reviewed the updated accredited text and changes to the material in Table 4-3 (pp. 62-63) and the explanatory text in Section 4.4.3 (p. 61 & 63) in the 2022 version of the proposed WRP. They evaluated that NSW addressed this requirement of maintaining the level of protection of Indigenous values and uses by making claims that all existing provisions will be retained and some provisions will be improved. Workshop participants expressed concerns that these claims were unsubstantiated and that a lower quality of protection is offered due to changes to at least one provision that NSW does not report transparently in the WRP. Therefore, performance against this requirement was assessed as absent.</p> <p>(a) Maintaining the status quo does not offer the same level of protection</p>					

	<p>Nation representatives see that the current state of the environment, including groundwater systems, and the enjoyment of their values and uses are worse now compared to 2003 and 2012, when the listed transitional and interim WRPs commenced, respectively. Moreover, workshop participants were concerned that issues such as climate change, floodplain harvesting, and water theft, including illegal bores, will further affect water availability and groundwater recharge. These points mean that the baseline health of Country trending downward. MLDRIN is not assured that NSW's water resource modelling and planning, which underpin the WRP,⁴⁰ account for these important factors. Under such conditions, upholding the status quo, which NSW effectively proposes with the provisions listed in Table 4-3 (referred to in the accredited text), will also see the level of protection trend downward. In other words, it will not maintain the current level of protection, failing to meet this requirement.</p> <p>(b) Lack of evidence justifying claims of 'improved' protection</p> <p>In Table 4-3, NSW suggests four occasions where protections of Aboriginal peoples' values and uses for water have been "improved" due to changes associated with the WRP:</p> <ul style="list-style-type: none"> • The first two (in the top two rows of Table 4-3 on page 62) relate to the same set of changes to Part 2 of the WSP, and are discussed further below. • The third (see second row of Table 4-3, p. 62) relates to Part 9 of the WSP, which "applies rules for managing water supply works near groundwater dependent culturally significant areas". As recorded in MLDRIN's assessment of the 2020 version of the proposed WRP, this statement is false⁴¹ and should instead say "Retained from pre WRP arrangements." • The fourth regards formal data use agreements with First Nations (see the last row of Table 4-3 on page 63). The commentary captured earlier in this assessment shows that participants disagreed with this suggestion. To avoid duplication, see the commentary about the issues associated with the Data Use Agreements earlier in the assessment of 10.52(3).⁴²
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⁴⁰ During the NSW Government's presentation to a previous WRP assessment workshop (in August 2022), the NSW representatives shared that the most up to date climate change modelling data has not yet been incorporated into the water planning that underpins WRPs and WSPs. Although the NSW representative offered that NSW "is heading in the direction" of using and incorporating this information into their water planning, MLDRIN and Nation representatives are concerned by the answer.

⁴¹ Specifically: "*Part 9 of the WSP is listed as an improvement. However, such provisions do appear in the transitional WRP for the WRPA (WSP for the Lachlan Groundwater Source 2003, cl 39) though with some different language, so the claim that this is an improvement seems unjustified*" (p. 61). Recent analysis for the purpose of this assessment, finds this statement applies to the interim WRP (*Water Sharing Plan for the Lachlan Unregulated and Alluvial Water Sources 2012*, cl 58) now listed in the 2022 version of the WRP as well.

⁴² One important point to add here is concern that the following statement in Table 4-3 breaches the data privacy provisions that Nation organisers agreed to: "Third parties are directed to the relevant First Nations to seek permission to use information for any other purpose" (p. 63). As clarified by Nation representatives during MLDRIN's assessment workshop, Nation organisers did not give consent for their contact details to be shared with any third party. Instead, when NSW is approached to access information, NSW should contact Nation organisers about the request, not the third party. This distinction and clarity of meaning is important.

The workshop considered the changes to the 2022 version of the proposed WRP (specifically Part 2 in the 2020 WSP) compared to the transitional and interim WRPs for the WRP listed in the accredited text. Table 1 below shows the comparison of the Aboriginal cultural objectives (or similar) in each. It is important to note that other objectives within the WRPs are relevant to Aboriginal people, but the first row of Table 4-3 specifically refers to “Acknowledgement of and identification of Aboriginal cultural objectives” and so that is the focus here. The bolded verbs in Table 1 reveal that the proposed WRP likely offers the *lowest* level of protection across the different WRPs. The Wiradjuri Nation organiser observed that “this is not an improvement. It’s a regression.” The workshop participants agreed that the WSP should protect, not just maintain. MLDRIN observes that the proposed WRP includes additional targeted objectives that did not appear in previous versions. However, these ‘targeted’ objectives clearly do not support the entire “broad” objective, with just one example being that none relate to economic values and uses.

Table 1: Comparison of Aboriginal cultural objectives across transitional, interim, and proposed WRPs for the WRP

	WSP name [version]	Relevant objectives text
Transitional WRPs	<i>Lower Lachlan Groundwater Source 2003</i> [versions dated from 12 August 2011 to 29 June 2020]	11 The objectives of this Plan are to: (d) provide for the recognition and protection of heritage sites and cultural values associated with groundwater. Note: The expected outcomes of this objective are that: heritage sites and cultural values associated with groundwater and their degree of dependency are identified; and, there is no loss of heritage and cultural values due to groundwater extraction.
Interim WRP	<i>Water Sharing Plan for the Lachlan Unregulated and Alluvial Water Sources 2012</i> [version dated from 14 September 2012 to 3 January 2013]	10 The objectives of this Plan are to: (b) protect, preserve, maintain and enhance the Aboriginal, cultural and heritage values of these water sources, (c) protect basic landholder rights
Proposed WRP	<i>Water Sharing Plan for the Lachlan Alluvial Groundwater Sources 2020</i> [WRP Schedule A]	11 (1) The broad Aboriginal cultural objective of this Plan is to maintain the spiritual, social, customary and economic values and uses of groundwater by Aboriginal people. (2) The targeted Aboriginal cultural objectives of this Plan are as follows: (a) to provide access to groundwater in the exercise of native title rights, (b) to provide access to groundwater for Aboriginal cultural use, (c) to protect groundwater-dependent culturally significant areas,

		(d) to contribute to the maintenance of groundwater salinity (total dissolved solids) within existing ranges that support groundwater-dependent Aboriginal cultural values and uses.
	<p>Table 2 at the end of this assessment offers a comparison of the relevant strategies and performance indicators that relate to Aboriginal peoples in the transitional, interim, and proposed WRPs. This comparison reveals:</p> <ul style="list-style-type: none"> • The proposed WRP offers strategies that are more clearly linked to the targeted Aboriginal objectives. While the transitional and interim WRPs lacked specific strategies structured in this way, the WRPs still contained strategies that aligned with some of those listed in the Aboriginal cultural objectives section of the proposed WRP. Moreover, the legal “notes” associated with the strategies in the proposed WRP line up with provisions that were already in the transitional and interim WRPs (most of which Table 4-3 identifies as “retained from pre-WRP arrangements”). So, it could be argued that the proposed WRP offers a slight improvement over the previous arrangements, but only in the way that the objectives and strategies are structured. • The proposed, transitional, and interim WRPs all identify performance indicators. Those that appear in the proposed WRP are comparatively more detailed but not necessarily able to be more easily measured than those in the transitional and interim WRPs. <p>On balance, the proposed WRP does not offer evidence to demonstrate that it provides “improved” protection. Some elements (i.e., strategies and performance indicators) could be construed as slight improvements. However, the objectives – which the strategies and performance indicators measure progress against and, therefore, are arguably the element that most substantially drives the level of protection – appear to be weaker and offer less protection in the 2022 version of the proposed WRP than the transitional or interim WRPs. Table 4-3 masks this nuance. This assessment means that the WRP does not meet the minimum legal standard required by 10.55.</p> <p>Other issues with the “Aboriginal cultural objectives” clauses in Part 2 of the 2020 WSP were identified in MLDRIN’s original assessment of the 2020 version of the WRP, including gaps and clarity for application, and remain unaddressed. Workshop participants were of the view that this allows for lapses in NSW’s accountability.</p> <p>Table 2 of the Consultation Report suggests that “Improved water sharing plan objectives <i>ensure</i> protection for Indigenous values and uses aligned with practical strategies and quantifiable performance indicators” (p. 11, emphasis added). Based on the above analysis, workshop participants questioned how the WSP’s objectives could be described as “improved”. They further queried how the objectives offer, let alone “ensure”, protection of Indigenous</p>	

	<p>values and uses given they are derived from a standard template and are not fit for purpose and informed by consultation outcomes (see the earlier analysis of Tables 3 and 4 in the Consultation Report in the assessment of 10.52(1)(a)). Evidence is needed to confirm and justify such claims.</p> <p>Overall, without evidence justifying NSW's claims that the 2022 version of the proposed Lachlan Alluvium WRP will maintain (let alone strengthen) the protection of Indigenous values and uses as described here, participants assessed parts of Table 4-3 to be misleading. Given these issues of transparency, participants were not satisfied that Table 4-3 could be relied on for addressing the minimum legal standard set by this Basin Plan requirement. MLDRIN recommends that the MDBA pay close attention to NSW's claims throughout the WRP and not just accept them at face value.</p> <p>(c) Inaccurate framing and misrepresentation of content</p> <p>MLDRIN and Nation representatives were disappointed that much of Table 4-3 in the 2022 version of the proposed WRP has been reproduced from the 2020 version without correcting the inaccurate framing and possible misrepresentation of protections already offered in MLDRIN's original assessment. Key examples are reproduced here in italicised text⁴³ (and, where necessary, updated):</p> <ul style="list-style-type: none"> • Schedule 4(16) of WMA 2000 (<i>"Land vested in a Aboriginal Land Council declared as exempt from the payment of rates and fees"</i>): <i>This statement is potentially misleading and open to misinterpretation. Not all lands vested in Land Councils are exempt; only land that is demonstrated to meet set criteria can be declared exempt, and this declaration only happens through application to the Minister.</i> ⁴⁴ <i>The relevance to water, and specifically protection of Aboriginal peoples' water values and uses, is not articulated."</i> • s.55 of the WMA 2000 (native title): <i>The WSP provisions referred to only accommodate native title water rights once a determination is made that native title rights exist but even then, such WSP provisions are yet to offer meaningful rights and protections to Traditional Owners with a determination. It is still unclear how much water native title holders can actually use."</i>
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⁴³ See MLDRIN's Assessment Matrix Report of the Lachlan Alluvium Water Resource Plan (WRP), May 2021, page 60, with others also detailed on page 61.

⁴⁴ NSW Aboriginal Affairs, *Rate Exemptions* (July 2018) < <https://www.aboriginalaffairs.nsw.gov.au/land-rights/the-aboriginal-land-rights-act-1983-akra/rate-exemptions/Rates-Exemptions-July-2018.pdf>>.

	<ul style="list-style-type: none">61(1)(a) of the WMA 2000 (“Aboriginal cultural” subcategory specific purpose licences): “the utility and uptake of these entitlements remains poor across NSW.⁴⁵ Reasons for low uptake are extensive and overlapping, and include (for example) the need for water frontage to access water; infrastructure to access, pump and move water; entitlement use costs; water literacy; and, use and trade limits.” When assessing the 2020 version of the proposed WRP, “participants described these entitlements as overly prescriptive given the government-defined ‘cultural’ definition and use limits that exclude economic uses, and questioned why they have to justify application or use of water in this way.” Similar comments were recorded in the 2022 assessment workshop, with the addition that to “provide access to groundwater” as provided in cl 11(2)(b) of the WSP for the Lachlan Alluvial Groundwater Sources 2020, access to bores and land are as important as the entitlements.The NSW Water Management (General) Regulation 2018, Schedule 3: “Of the entitlement subcategory options listed, only “Aboriginal cultural” is available in the WSP for the Lachlan Alluvial Groundwater Sources 2020, despite the text stating that the others listed are “of relevance to this plan”. This must be corrected. Without reference to these other specific purpose entitlements, this row does not add anything to the row for “61(a) of the WMA 2000” (see previous dot point), and should be removed.” <p>Broader general comments:</p> <p>Many of the provisions listed as “Retained from pre WRP arrangements” in Table 4-3 of the WRP are components of the WSP for the Lachlan Alluvial Groundwater Sources 2020. As this WSP will not be reviewed until at least close to 2030, the status quo will now be in place for at least another eight years. Workshop participants were deeply troubled by this picture, regardless of what it meant for this assessment.</p> <p>Workshop participants expressed frustration with the weak wording of this Basin Plan requirement. Even so, with the evidence detailed above, they still determined that the NSW Government had not satisfied the minimum legal standards necessary to meet this requirement.</p>				
Akwe:Kon Guidelines					
Notification and public consultation of the proposed development by the proponent	Absent 1	Partial 2	Satisfactory 3	Good 4	Excellent 5

⁴⁵ The NSW Water Strategy reveals only seven have ever been used across NSW (including outside the Basin), and only two remain in use with no detail about the uptake specifically in groundwater systems. DPIE, *NSW Water Strategy* (August 2021), p. 57. Available online: <https://water.nsw.gov.au/_data/assets/pdf_file/0007/409957/nsw-water-strategy.pdf>.

Identification of indigenous and local communities and relevant stakeholders likely to be affected	Absent 1	Partial 2	Satisfactory 3	Good 4	Excellent 5
Establishment of effective mechanisms for indigenous and local community participation, including for the participation of women, the youth, the elderly and other vulnerable groups	Absent 1	Partial 2	Satisfactory 3	Good 4	Excellent 5
Establishment of an agreed process for recording the views and concerns of the members of the indigenous or local community whose interests are likely to be impacted	Absent 1	Partial 2	Satisfactory 3	Good 4	Excellent 5
Establishment of a process whereby local and indigenous communities may have the option to accept or oppose a proposed development that may impact on their community	Absent 1	Partial 2	Satisfactory 3	Good 4	Excellent 5
Identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local	Absent 1	Partial 2	Satisfactory 3	Good 4	Excellent 5

community participation in all phases of the process					
Establishment of an environmental management or monitoring plan (EMP), including contingency plans regarding possible adverse cultural, environmental and social impacts resulting from a proposed development	Absent 1	Partial 2	Satisfactory 3	Good 4	Excellent 5
Identification of actors responsible for liability, redress, insurance and compensation	Absent 1	Partial 2	Satisfactory 3	Good 4	Excellent 5
Conclusion, as appropriate, of agreements, or action plans, on mutually agreed terms, between the proponent of the proposed development and the affected indigenous and local communities, for the implementation of measures to prevent or mitigate any negative impacts of the proposed development	Absent 1	Partial 2	Satisfactory 3	Good 4	Excellent 5
Establishment of a review and appeals process	Absent 1	Partial 2	Satisfactory 3	Good 4	Excellent 5

Table 2: Comparison of Aboriginal cultural strategies and indicators⁴⁶ across transitional, interim, and proposed WRPs for the WRP

	WSP [version]	Strategies	Performance Indicators
Proposed WRP	<i>Water Sharing Plan for the Lachlan Alluvial Groundwater Sources 2020</i> [WRP Schedule A]	11(3) The strategies for reaching the targeted Aboriginal cultural objectives of this Plan are as follows: (a) manage access to groundwater consistently with the exercise of native title rights, (b) provide for groundwater associated with Aboriginal cultural values and purposes, (c) manage extractions under access licences and basic landholder rights within the extraction limits, (d) manage the construction and use of water supply works to minimise impacts on groundwater quality, (e) manage the construction and use of water supply works to minimise impacts on groundwater-dependent culturally significant areas. <i>'Notes' for (b)-(e) link to provisions that Table 4-3 identifies are "retained from pre-WRP arrangements".</i>	11(4) and 11(5) - <i>Numerous listed, appearing in some cases (but not always) to be more measurable than the previous comparable WRP provision.</i>
Transitional WRPs	<i>Lower Lachlan Groundwater Source 2003</i> [versions dated 12 August 2011 to 29 June 2020]	12 The strategies of this Plan are to: (b) establish rules for the protection of basic landholder rights, ... (e) establish rules for the granting of access licences, (f) establish rules for determining the groundwater available from time to time under access licences, ... (h) establish rules for minimising the local impacts of groundwater extraction on the environment, the aquifer itself, and between groundwater users, ... (j) establish the conditions that will apply to all access licences and water supply work (bore) approvals.	13 For the purpose of section 35 (1) (b) of the Act the following indicators are to be used to determine the performance of this Plan against its objectives: (d) change in groundwater quality, ... (h) extent to which native title rights requirements have been met, and (i) extent of recognition of spiritual, social and customary values of groundwater to Aboriginal people.
Interim WRP	<i>Water Sharing Plan for the Lachlan Unregulated and Alluvial Water Sources 2012</i> [version dated 14 September 2012 to 3 January 2013]	11 The strategies of this Plan are to: (c) identify water requirements for basic landholder rights, ... (e) establish rules for the granting and amending of access licences and approvals, (f) establish rules that place limits on the availability of water for extraction, (g) establish rules for making available water determinations, ... (i) establish rules which specify the circumstances under which water may be extracted.	12 The following indicators are to be used to measure the success of the strategies to reach the objectives of this Plan: (f) the extent to which domestic and stock rights and native title rights requirements have been met, ... (i) extent of recognition of spiritual, social and customary values of water to Aboriginal people.

⁴⁶ Strategies and Performance Indicators specific to Aboriginal cultural objective(s) appear only in the proposed WRP. Those listed for the transitional and interim WRPs are aligned most with those in the proposed WRP for comparison purposes.