

Final Looking back to move forward

A literature review of First Nations water goals and progress in the Murray-Darling Basin

Cox Inall Ridgeway

Acknowledgement of Country

Cox Inall Ridgeway (CIR) acknowledge First Nations peoples and communities across the Murray-Darling Basin and their ongoing dedication to improving water management in Australia.

We pay our respects to their Elders past and present, who have protected and maintained water resources for thousands of years, and passed on the knowledge, stories and lessons through the generations.

We acknowledge and pay our respects to all First Nations peoples across Australia who continue to hold deep spiritual, cultural and customary connections to Country and its waterways.

About Cox Inall Ridgeway

Cox Inall Ridgeway (CIR) is a First Nations full-service consultancy. CIR specialises in community and stakeholder engagement, creative communications and public relations, strategy, policy, social research and evaluation, as well as Connecting with Country. CIR is a proudly Supply Nation registered business and is a member of the NSW Indigenous Chamber of Commerce (NSWICC) and Kinaway, the Victorian Aboriginal Chamber of Commerce. When working with partners, associates and clients, we have a series of cultural principles that guide both our relationships, as well as projects themselves.

About this document

This document has been developed by CIR to provide up to date insights on the progress of if/how the Basin Plan 2012 has contributed towards furthering First Nations water interests. Thus, any views and conclusions are the product of CIR's analysis of literature and MDBA's insights. MDBA has validated information relating to the remit of the Basin Plan and the Water Act (2007).

Importantly, any First Nations peoples/organisations referred to/quoted in the document remain owners of their views expressed, and CIR has made every attempt to ensure their views are represented accurately and in context.

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DISCLAIMER: This report is dated 30/10/2024 and incorporates information and events up to that date only and excludes any information arising, or events occurring, after that date which may affect any opinions or recommendations reflected in the report.

First Nations Cultural Knowledge: CIR have made all reasonable inquiries in preparing this report, but it cannot be certain that all information material to the preparation of this report has been provided as there may be information that is not publicly available at the time of inquiry. We note the views in this report are not likely to be reflective of all Basin First Nation communities. CIR notes the importance of continued and ongoing engagement to ensure First Nations perspectives are embedded through the lifecycle of any project. CIR have worked with MDBA to implement MDBA's draft Indigenous Cultural Intellectual Property (ICIP) policy. Permission was sought to reuse published material where the original source required. Some authors did not give permission to reuse their published material, so these references are cited rather than extracts being used.

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The sharing of any cultural knowledge or ICIP rights owned by First Nations people and organisations during this project remains vested with these people.

This report has been prepared with due care and diligence by CIR and the statements, opinions, recommendations, and advice given by CIR in this report are given in good faith and in the belief on reasonable grounds that such statements and opinions are correct and not misleading.

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GLOSSARY OF TERMS AND ACRONYMS

Throughout this literature review there are several terms and acronyms that are used consistently throughout. A summary table is included below to clarify the meaning of these terms. Regarding the included acronyms, many of these are spelled out in full at first reference, however, are also included here for the ease of the reader.

Table 1. Glossary of terms and acronyms.

Terminology	Meaning/Reference
Basin First Nations	First Nations peoples and communities within the Murray-Darling Basin
First Nations or First Nations people and/or communities	First Nations peoples and communities at a broader level which may or may not be specific to the Basin. This report primarily uses the terms 'First Nations,' 'First Nations peoples,' and 'Basin First Nations'. Other terms including 'Aboriginal and Torres Strait Islander' and 'Indigenous' are used where they originate directly from references.
The Basin	The Murray-Darling Basin
Basin States	All states and territories who have a responsibility for the Basin

Acronyms	Meaning/Reference
ACCos	Aboriginal Community Controlled Organisations
ALRA	<i>Aboriginal Land Rights Act 1983</i> (NSW)
AWEP	Aboriginal Water Entitlements Program
The Basin Plan	<i>The Basin Plan 2012</i> (Cth)
BCC	Basin Community Committee
Closing the Gap	National Agreement on Closing the Gap
CAWI	Committee on Aboriginal and Torres Strait Islander Water Interests
CEWH	Commonwealth Environmental Water Holder
CEWO	Commonwealth Environmental Water Office
CHWN	Critical human water needs
DCCEEW	Federal Department of Climate Change, Energy, the Environment and Water
DEG	Dharriwaa Elders Group
DELWP	Victoria's Department of Environment, Land, Water and Planning
Garma Declaration	Garma International Indigenous Water Declaration 2008

ICIP	Indigenous Cultural and Intellectual Property
LALC	Local Aboriginal Land Council
MDBA	Murray-Darling Basin Authority
NBAN	Northern Basin Aboriginal Nations
NCFRP	National Cultural Flows Research Project
NRM	Natural resource management
NSWALC	New South Wales Aboriginal Land Council
Productivity Commission (2023)	Productivity Commission's Murray-Darling Basin Plan: Implementation Review (2023)
Ramsar	The Ramsar Convention on Wetlands
The Sefton Review (2020)	Independent Assessment of social and economic conditions in the Basin 2020
SDL	Sustainable Diversion Limit
TEK	Traditional Ecological Knowledge
UNDRIP	United Nations Declaration of the Rights of Indigenous People
The Water Act	The <i>Water Act 2007</i> (Cth) - (unless other specified) the Act before the <i>Water Amendment (Restoring our Rivers) Act 2023</i>
WRP	Water Resource Plan

BACKGROUND

This report evidences the years of advocacy and work undertaken by Basin First Nations, who continue to fight for their water rights. Together, First Nations peoples have changed the conversation and the legislative and policy landscape, such as through the *Echuca Declaration* of 2007. Despite this advocacy work, it is acknowledged that resulting outcomes have been deemed inadequate in many cases, and that change has been slow.

Cox Inall Ridgeway (CIR) has been commissioned by the Murray-Darling Basin Authority (MDBA) to undertake an exploratory piece of research to identify how the *Basin Plan 2012* (Cth) (the **Basin Plan**) has contributed towards achieving the aspirations of Basin First Nations.

***The MDBA believes that this report will only be successful
if First Nations peoples can see their own lived experience in its pages***

The *Looking back to move forward* report will play a central role in informing the 2025 Basin Plan Evaluation. It will also be used to begin a yarning process with Basin First Nations, on what changes they want to see in the Basin Plan. The MDBA expects to start yarning with First Nations communities in the latter half of 2024, to develop new policies that better progress Basin First Nations water management goals. The proposed engagement timeline is outlined in Appendix I.

The draft literature review and the evaluation of progress that CIR has described in this report, will be tested with First Nations peoples from mid-2024 prior to being refined and finalised.

Funding for the *Looking back to move forward* report was received from the Basin Condition Monitoring Program.

METHODOLOGY

The research question/s addressed are:

1. What are the water policy goals that Basin First Nations have advocated for since 2012, including:
 - a. Those identified in the *Review of the 2012 'A Yarn on the River' report* (2023)
 - b. Other publicly available First Nations goals identified through key submissions/journal articles that directly relate to water resource management in the Murray-Darling Basin

An integrative literature review methodology was undertaken to target the literature relating specifically to the research question/s (Torraco, 2016¹). The primary source informing the identification of key themes is the *Review of the 2012 'A Yarn on the River' report* (MDBA, 2023²). Secondary sources have included grey and scientific literature from the websites of major First

¹ Torraco, R. J. (2016). Writing integrative literature reviews: Using the past and present to explore the future. *Human resource development review*, 15(4), 404-428.

² MDBA, *Review of 2012 A Yarn on the River Basin Condition Monitoring Program – Project 4.1* (June 2023).

Nations organisations and non-government organisations (**NGOs**) as well as from governmental archives, and relevant peer reviewed academic journal articles. Most of these sources were provided by the MDBA, with CIR also undertaking online research through databases and other relevant literature.

CIR have worked with MDBA to implement MDBA's draft Indigenous Cultural Intellectual Property (**ICIP**) policy. Permission was sought to reuse published material where the original source required. Some authors did not give permission to reuse their published material, so these references are cited rather than extracts being used.

Some cited literature in this report require permission to reuse material and it is advised that if you seek to reuse material i.e. quotes from other sources, diagrams etc. that you check if permissions are required from the original source. Some quotations within this report are from the 2024 Looking back to move forward workshops, workshop participants provided their written consent for this content to be used and are de-identified as per the MDBA's ICIP policy, this content cannot be reused without seeking the appropriate permissions.

The sharing of any cultural knowledge or ICIP rights owned by First Nations people and organisations during this project remains vested with these people.

This report is structured around the key themes and issues outlined in the *Review of the 2012 'A Yarn on the River' report*, with the use of secondary sources to supplement and contextualise this information where relevant.

The second part of the report is aimed at:

1. Determining whether the goals identified under each theme were within the scope of the Basin Plan.
2. If they were in scope (or partially in scope) to then **evaluate** how the implementation of the Basin Plan contributed toward progressing those goals: see Table 2 below.

At the end of each theme, there is a table that summarises the outcomes of this evaluation, with CIR providing a rating on the progress made. Barriers to progress are also suggested. Table 2 below describes the purpose of each section of the table. Literature used by CIR to determine the progress evaluation relied on government sources such as the Productivity Commission's 2023 report, submissions by First Nations peoples and organisations and feedback received during the testing of the report at the 2024 workshops with Basin First Nations

TESTING THE REPORT: WORKSHOPS HELD ACROSS THE BASIN WITH FIRST NATIONS

First Nations peoples and communities were invited to participate in a series of face-to-face workshops as part of the testing phase. Four face-to-face workshops were held between August-September 2024 in central locations across the Basin in Berri, Toowoomba, Wodonga and Dubbo. Additionally, one workshop was held virtually. The number of participants across these workshops totaled 102.

First Nations peoples were given an opportunity to test and validate what has been heard in the literature through First Nations lived experiences, particularly regarding the implementation of the

Basin Plan. The workshops were hosted by MDBA and facilitated by First Nations owned consultancy, Murawin. At the workshop CIR talked about the report and sought Basin First Nations feedback on whether:

- This report has missed any significant literature that describes First Nations water management goals in the Murray-Darling Basin.
- There are new goals or barriers that have not been reflected in the report.
- Basin First Nations think if the assessment of progress in the tables seem about right and reflect lived experiences or not – noting that consensus is not needed.

After the workshops, CIR finalised the report based on what was heard, through the addition of a “What we heard” section as part of each theme and revised progress ratings. The workshops also discussed the key areas of focus for looking forward, as the MDBA continues to work with First Nations People through the Basin Plan Review.



Figure 1. Word cloud generated from content of the 2024 workshops with Basin First Nations.

Table 2. Methodology describing the intent of each box within each theme's evaluation table.

<p>Box 1</p>	<p><i>Was this in scope of the Basin Plan?</i></p> <p>This box describes whether the Basin Plan could contribute to outcomes in this theme. If there is nothing in the Basin Plan that contributes towards achieving a goal/s in this theme, CIR will be transparent about this.</p> <p>The <i>Water Act 2007</i> (Cth) (Water Act) sets out what should be included in the Basin Plan, and the MDBA must prepare the Basin Plan to address the purpose and contents described in the Act. If it is not required by the Act, it is not required to be in the Basin Plan.</p> <p>In Scope – If the Basin Plan had scope to contribute towards progress on this theme</p> <p>Out of Scope – If the Basin Plan had no mechanism to contribute towards this theme</p>
<p>Box 2</p>	<p><i>What was included in the Basin Plan that contributes towards this theme?</i></p> <p>This summary has been provided by the MDBA and will be fact checked by relevant government stakeholders.</p> <p>This box describes what the Basin Plan set out to do when it was first approved. It will highlight in plain-English, specific sections of the Basin Plan that contribute towards achieving some or all of the First Nations goals identified in this theme. It should be</p>

	<p>acknowledged that some of these goals may have been identified after the Basin Plan was finalised more than 10 years ago.</p> <p>This box will use the Basin Plan or the Water Act chapter and section headings/numbers, so that it is easy to find the official wording of each section in the Basin Plan or the Act itself.</p>
	<p><i>Assessment of progress towards the theme goals and how/if the Basin Plan contributed towards this.</i></p> <p>This box will summarise the progress made in implementing those parts of the Basin Plan that are described in Box 2.</p> <p>CIR has provided a draft rating (see below) on the progress made, from the perspectives of Basin First Nations using the literature review as evidence. This rating will be thoroughly tested by Basin First Nations at the <i>Looking back to move forward</i> workshops. If most Basin First Nations who provide feedback on the report wish to change the rating, the rating will be reviewed and changed.</p>
Box 3	<p>Not rated, as the goals in this theme were not in scope of the Basin Plan – Where progress towards this goal was found not to be a requirement in the Basin Plan.</p> <p>No progress – If no progress has been made and/or there has been no indication that progress will be made.</p> <p>Limited progress - If there is some progress made, but there are significant barriers/inhibitors to achieve the goal/s.</p> <p>Some progress – If there is some progress being made, however more can be done.</p> <p>Progress made – If progress is being made towards meeting the goals.</p>
Box 4	<p><i>Other progress</i></p> <p>This box includes other legislation, projects, or initiatives that contribute towards achieving the First Nations goals in this theme, but that are not directly related to the Basin Plan.</p> <p>For example, the Indigenous Rangers program is a program that contributes to achieving First Nations goals under theme VII (Natural resource management). However, it is not something that the Basin Plan requires Basin States to implement. CIR has not provided a rating for this box, because it is outside the scope of this report.</p>
Box 5	<p><i>Barriers</i></p> <p>This box summarises potential barriers identified in CIR’s literature review, which are impacting on progress towards achieving the goals in this theme. The barriers include those that relate to water resource management within the Basin, as well as other barriers such as access to land.</p>

SUMMARY

The Murray-Darling Basin is the largest and most complex river system in Australia. It covers one million square kilometers of south-eastern Australia spanning across New South Wales, Queensland, South Australia, Victoria and the Australian Capital Territory³. The Basin contains extremely significant spiritual, cultural, environmental and economic values, being home to over 50 First Nations communities, internationally significant wetlands and ecosystems, significant tourism activity and high agricultural productivity.

Over the years, the combination of natural droughts and increasing human use of the waterways for agriculture, manufacturing and community activity, has led to a decline in the health of the Basin. Water management in the Basin is regulated through an interaction of Commonwealth, State and Basin-specific laws and regulations, including through the Water Act, the Basin Plan and State-based water laws and regulations. Importantly, the National Water Initiative is the national blueprint for water reform and is a shared commitment by governments, the Australian Government has committed to renew the NWI and is currently developing a new intergovernmental agreement on water. Please note, it is beyond the scope of this paper to provide a comprehensive summary of these.

Basin First Nations have deep cultural, spiritual and environmental connections to the Basin's lands and waters dating back more than 45 000 years⁴. Basin First Nations are guided by traditional laws and customs and have obligations to care for Country. They hold an interconnected, relational worldview spanning lands, waters, plants, animals and peoples. Importantly for First Nations peoples, water is not seen as an isolated element of the landscape, but as an integral part of a complex and interconnected system. The cultural, social, emotional, and economic wellbeing of First Nations peoples is intrinsically tied to the health and wellbeing of Country, which particularly in Basin communities is entirely dependent on water and its flow. Basin First Nations have important physical and intangible cultural heritage in Basin areas, many of which depend on water for continued survival⁵.

This report summarises the documented goals of Basin First Nations with regards to water policy and management, using the key themes outlined in the *Review of the 2012 'A Yarn on the River'* report. These documented goals are broad and encompass a range of issues centered around the desire to self-determine water allocations according to traditional Lore, laws and customs for the benefit of Country and community. Key themes include sovereignty, self-determination and ownership, water entitlements, cultural flows, water for the environment, engagement and participation in decision-making, integrating Traditional Ecological Knowledge (**TEK**) into western scientific water management paradigms and increasing partnership, co-design and co-management opportunities.

³ MDBA 2023, *The Basin*, viewed 20 November 2023, <<https://www.mdba.gov.au/basin>>

⁴ Ibid.

⁵ MDBA 2023, *First Nations cultural flows*, viewed 20 November 2023, <<https://www.mdba.gov.au/water-use/water-first-nations/first-nations-cultural-flows>>

Each theme in the report is divided into two parts. Part a) summarises the literature relating to each theme while part b) contains a summary of what we heard during the 2024 workshops with Basin First Nations related to each theme.

As described in the methodology section, at the end of each theme, a table is provided with a high-level overview of evidence to date, regarding progress of the Basin Plan implementation that contributes towards achieving First Nation goals in the Basin. Draft progress ratings were assigned by CIR in the draft report; these ratings were updated after taking into account feedback received during the 2024 workshops with Basin First Nations. A visual summary of Basin Plan progress across key areas is provided below.

Some progress has been made in the areas of environmental watering (theme VI.) and engagement and representation (theme III.). With regard to the former, the literature reviewed showed continued improved engagement with First Nations on the development of annual environmental watering priorities, partly through collaboration with Basin States and the Commonwealth Environmental Water Holder (**CEWH**). However, feedback received during the 2024 workshops with Basin First Nations highlighted that there has not been lived experience of progress across the board in Basin communities. Workshop participants are also deeply concerned about the decline of rivers and waterways across Country caused by changing natural flows and the overallocation of water.

Some progress has also been made in engagement and representation (theme III.). The provisions of the Basin Plan require Basin States to engage with First Nations peoples in the preparation of Water Resource Plans (**WRPs**), although outcomes vary by jurisdiction and there is dissatisfaction with the level of engagement in some states. The views of First Nations peoples summarised through this report have highlighted this as an area which has either contributed to better outcomes and relationship-building (Victoria) or which has been poorly implemented (New South Wales).

Representation has improved through the MDBA including through the appointment of a First Nations person on the Authority, and through the appointment of at least two First Nations people as part of the Basin Community Committee (**BCC**). The *Water Amendment (Restoring our Rivers) Act 2023*, included a second First Nations Authority member to be appointed.

During the 2024 workshops with Basin First Nations detailed feedback was given on how engagement practices and protocols can be improved in a way that builds and maintains mutual trust, respect, cultural safety and reciprocity with communities.

The last 4 themes within scope of the Basin Plan have seen limited or no progress made. This is consistent with what we have heard from Basin First Nations peoples who have been expressing their frustrations and calls for continued reform. At the 2024 workshops, we heard considerable grief, anger and frustration from workshop participants at the continuing state of aqua nullius for Basin First Nations.

The final four themes have been deemed not to be the original remit of the Basin Plan as required by the Water Act and, as such, were not rated. While these First Nations goals and aspirations were not

within the original scope of these instruments, some feedback received at the 2024 workshops highlights that Basin First Nations peoples want these issues considered in scope going forwards.

Throughout this report, the evaluation tables below each theme describe to what extent the provisions of the Basin Plan have been able to contribute towards First Nations water interests/goals, highlighting barriers and opportunities for future change.

During the 2024 workshops with Basin First Nations, water health (theme VIII) and access (part of theme IX) were highlighted as priority issues that continue to impact the wellbeing of Basin First Nations. These are both issues within the scope of the Basin Plan to address which have seen little or no progress.

The provisions of the Basin Plan and to what extent they address the interests of First Nations peoples have been scrutinized by several stakeholders, particularly through the 2017 and 2023 assessments by the Productivity Commission. Murray Lower Darling Rivers Indigenous Nations (**MLDRIN**) has also provided several formal submissions addressing this question, which highlight specific provisions in need of reform. These are referred to in theme I.

It is also important to note that progress to date in some areas varies widely depending on jurisdiction, such as the WRP engagement processes described above. Additionally, while there are numerous examples identified in this report of policies, programs and partnerships that evidence positive change, these tend to be on an ad hoc basis. Theme VII. Natural Resource Management, while found to be technically out of scope of the Basin Plan, provides some examples of partnerships influencing ‘on the ground’ outcomes while also listing barriers that continue to impede further progress.

This report has reviewed several initiatives capable of leading to substantial progress, such as Victoria’s *Water is Life Roadmap* and the Commonwealth’s *Aboriginal Water Entitlements Program (AWEP)*. However, these programs will not independently or automatically lead to positive outcomes, as effective and sustained implementation in partnership with Basin First Nations is required.

While each theme has been analysed separately, the issues are interlinked and should be considered holistically. Several sources which highlight the complexity of achieving meaningful reforms point to the need for paradigm-shifting solutions such as through the *Cultural Water Paradigm* (discussed in theme II. below). This was a sentiment echoed through the 2024 workshops with Basin First Nations, emphasising the need for holistic management solutions which address interconnected issues. Workshop participants urged the MDBA to play an active role in facilitating solutions across siloed, cross-jurisdictional Government Departments and agencies.

Both the literature reviewed and feedback received at the 2024 workshops with Basin First Nations shows that achieving real progress towards increasing held water rights and cultural flow allocations is one of the highest priorities for Basin First Nations. While several initiatives are seen to be laying the foundation for this work and are being implemented such as through the AWEP, the National Cultural Flows Research Project (**NCFRP**) and a joint MDBA/MLDRIN/Northern Basin Aboriginal

Nations (**NBAN**) project to draft cultural flows plans, it should be acknowledged that ‘on ground’ outcomes are, in many places, still yet to materialise. A further discussion of these topic areas and the barriers that have contributed towards a lack of meaningful progress are discussed in themes IV. and V.

Climate change is another critical issue which was found out of scope of the current Basin Plan. This is because the current Basin Plan does not have any provisions to recognise the impact of climate change on First Nations peoples. We heard at the 2024 workshops with Basin First Nations that it is crucial that the Basin Plan’s targets and objectives in relation to climate change to be developed in partnership with Basin First Nations through a co-design process.

This report evidences the years of advocacy and work undertaken by Basin First Nations in fighting for their water rights which have since changed the conversation and policy landscape, such as through the *Echuca Declaration 2007*. These landmarks, as well as broader advocacy and dialogue which have led to policy and legislative changes throughout the years, are incremental shifts. They lay the foundation for the broader systemic changes needed for ongoing, on the ground outcomes, led and implemented by First Nations on Country. Now is a pivotal time to take stock of where we currently stand, in order to focus on what can be built on and what still needs to be done, to inform the upcoming *Basin Plan Review* in 2026.

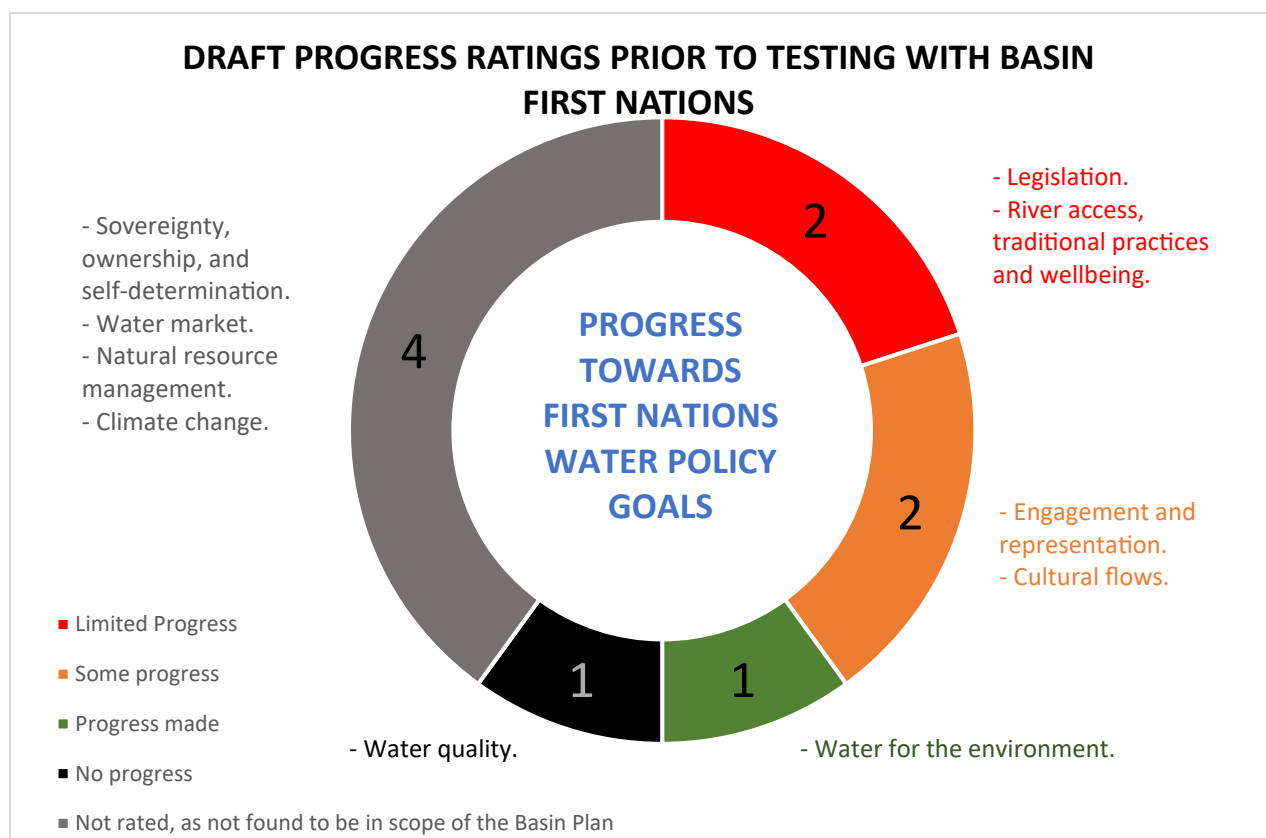


Figure 2. Initial progress ratings provided by Cox Inall Ridgeway, prior to testing with Basin First Nations. Assessment of progress towards First Nations water policy goals and how/if the Basin Plan contributed towards this. Goals are based on the 11 key themes from the Review of the 2012 ‘Yarn on the River’ report.

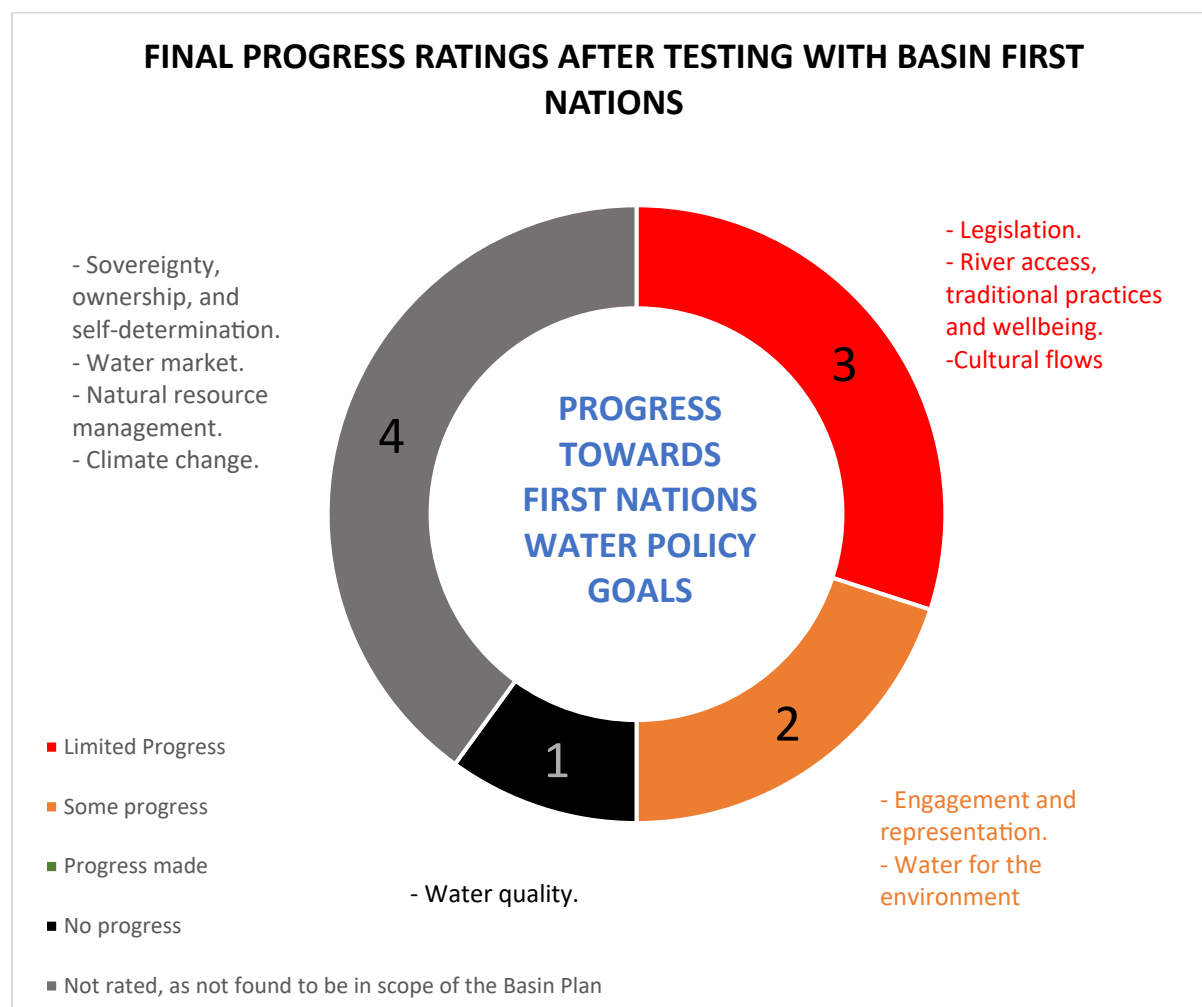


Figure 3. Revised progress ratings updated by Cox Inall Ridgeway after testing with Basin First Nations. Assessment of progress towards First Nations water policy goals and how/if the Basin Plan contributed towards this. Goals are based on the 11 key themes from the Review of the 2012 'Yarn on the River' report.

INTRODUCTION

The review and progress section of this report provides a summary of Basin First Nations water policy goals since the introduction of the Basin Plan in 2012. The structure is organised around the key themes outlined in the *Review of the 2012 'A Yarn on the River'* report, which have been condensed from 12 to 11 key themes:

- I. Legislation
- II. Sovereignty, ownership and self-determination
- III. Engagement and representation
- IV. Water market
- V. Cultural flows
- VI. Water management (water for the environment)
- VII. Natural resource management
- VIII. Water quality
- IX. River access, traditional practices and wellbeing
- X. Economic
- XI. Climate change

The theme of climate change was added, while the themes of river access, traditional practices and wellbeing have been amalgamated, due to an overlap across the issues and there being limited evidence in the literature to address each theme separately. While these themes have been arranged separately, there are significant overlaps and linkages between them, and it is critical to consider all issues holistically.

Review of the 2012 'A Yarn on the River' report

The MDBA's *Review of the 2012 'A Yarn on the River' report* collates information originally provided by Basin First Nations to the 2012 draft Basin Plan and is stored in the *Aboriginal Submissions Database* (ASD), the review informed Project 4.1 *Pathways to the Basin Plan Review of the Basin Condition Monitoring Program* (BCMP).

[*A Yarn on the River \(2012\)*](#) was an engagement process delivered with 32 Basin First Nations communities which facilitated yarning around the open question, 'How is the river important to you?'. According to the *Review of the 2012 'A Yarn on the River'* report, "The yarning prompted a conversation about the person's relationship with the river systems, and their life experience of the rivers and surrounding environments in their own terms.⁶" More details regarding the background of the submissions and the consultation process undertaken to ensure Free, Prior and Informed Consent for use of the submissions, are contained in the full report.

Due to issues accessing the original submissions (given that the access and use agreements for the submissions had expired), information is instead collated from seven key reports which directly use and discuss information from the ASD, a process agreed to by MLDRIN. The information was collated into 11 key themes, which summarise key issues and goals raised by Basin First Nations regarding

⁶ MDBA, above n2, page 1.

water policy and management in the Basin. We note this means that the information relied on for this report has been summarised through secondary articles and not directly through the words of Basin First Nations peoples.

The Basin Plan

The Basin Plan is established under the Water Act and provides the framework for the collective approach to water management in the Basin amongst the Commonwealth and the relevant State/Territory governments, being New South Wales, Queensland, Victoria, South Australia and the Australian Capital Territory. The Basin Plan guides the management of water use in the Basin, with the overall intent of the Basin Plan being to achieve a “healthy and working” Basin. The MDBA has responsibilities and functions in connection with the implementation of the Basin Plan.

The purpose of this report is to ‘look back’ and review what progress has been made from implementing the Basin Plan, so then we can ‘move forward’ and focus on what needs to be done. Therefore, this report notes the amendments recently made to the Water Act 2007 through the Water Amendment (Restoring our Rivers) Act 2023 but does not include them in the assessment of progress so far. These amendments to the Act in 2023 will be part of how the MDBA moves forward with First Nations in the Basin Plan Review 2026.

A key function of the Basin Plan is to establish environmentally sustainable limits, referred to as sustainable diversion limits (**SDLs**) on the quantities of surface water and groundwater that can be taken for consumptive use from Basin water resources. The Basin Plan also sets out the requirements for water resource plans (Chapter 10) and accreditation process for WRPs and the method for determining compliance with the SDLs (Chapter 6).

The Basin Plan explicitly recognises First Nations interests, including through the following provisions:

- Chapter 4 – Identification and management of risks to Basin water resources: Insufficient water available or not suitable to maintain cultural and First Nations values is identified as a risk under this section. Strategies to manage and address risks include to “improve knowledge of water requirements in the Basin relating to the social, spiritual and cultural uses of water resources by Indigenous people:” s4.03(3)(g)(ii). The MDBA is required to have regard to these strategies when undertaking its functions.
- Chapter 5 – Management objectives and outcomes of the Basin Plan: Overall outcomes for the Basin Plan include a “healthy and working MDB” that provides “sufficient and reliable water supplies that are fit for a range of intended purposes, including ... cultural use:” s5.02(2)(a). This section also includes objectives in relation to maintaining appropriate water quality and salinity sufficient for cultural uses: s5.04(1). However, previous reports such as the *Review of water quality targets in the Basin Plan (2020)* have observed that there is no

water quality objective for cultural use in Chapter 9 of the Basin Plan and recommends this be addressed going forwards⁷.

- Chapter 8 – Environmental water plan: Requires the MDBA to have regard to Indigenous values and uses during preparation of environmental watering plans: s8.15(4)(e). Environmental watering is to be undertaken in a way that maximises its benefits and effectiveness by having regard to Indigenous values, among other matters.
- Chapter 13 – Monitoring and evaluation: The best available local and cultural knowledge should be used, where practicable, to assist in the monitoring and evaluation process for the Basin Plan: Principle 7 (s13.04 (6)).

Basin States are required to consider First Nations rights and interests throughout the drafting of WRPs, outlined in the following provisions in Chapter 10:

- Consultation with Indigenous organisations is required to identify the objectives and desired outcomes of Indigenous people in relation to managing water resources. “Regard” must be had to these Indigenous values and uses.
- Opportunities to strengthen the protection of Indigenous values and uses must be specified.
- WRPs must be prepared having regard to matters including Indigenous interests in water resources, including views regarding cultural flows.
- The same level of protection must be provided to Indigenous values and uses as provided in a transitional or interim WRP for the water resource plan area.

The Authority is expected to consult relevant Indigenous organisations in relation to whether the above requirements have been met, in preparing recommendations for the Minister, with regard to whether a WRP should be accredited.

REVIEW AND PROGRESS OF FIRST NATIONS GOALS BY THEME

1a. Legislation

The theme of legislation covers goals including compliance with standards in international law, as well as consideration of how First Nations rights and interests are accounted for in the Basin. The *Review of the 2012 ‘A Yarn on the River’* report notes the following key issues were raised⁸:

- a. The Basin Plan needs to be consistent and comply with international conventions such as the United Nations Declaration of the Rights of Indigenous People (**UNDRIP**).
- b. There are a lack of management objectives and outcomes regarding the protection of First Nations peoples uses and values in the Basin, including in relation to implementation and transitional arrangements.
- c. There is concern that the draft Basin Plan contained no specific water resource plan objectives or outcomes for Aboriginal values and uses.

⁷ RMCG, *Review of water quality targets in the Basin Plan: Final Report – Murray-Darling Basin Authority*, October 2020, page 6.

⁸ MDBA, above n 2, page 10. Please note original references have been removed for readability – please refer to the full report for in-text references.

- d. The Basin Plan needs to include a requirement that water resource plans include a reference to federal and state heritage legislation in water resource plans to ensure protection of Aboriginal heritage sites.
- e. Cultural flows need to be secured in legislation, i.e., better and more strongly explained and expressed in all chapters of the Basin Plan and amendment of the Water Act.
- f. First Nations approaches to Caring for Country need to be recognised and worked with in an equitable and integrated manner in the Basin Plan.
- g. Regarding means of protecting Aboriginal uses of waterways, references to Aboriginal lore are made throughout the ASD, including teaching, heritage protection, cultural licenses, water licenses and controls such as indigenous habitat protection, are identified.

International instruments

The aspiration for Australian water policy to strengthen its consideration of First Nations rights and interests in line with international instruments (particularly the UNDRIP⁹, endorsed by Australia in 2009) is noted throughout the literature.

UNDRIP Article 19 refers to Indigenous peoples' rights to Free, Prior and Informed Consent prior to the adoption or implementation of any legislation or administrative measures that may affect them. Furthermore, Articles 25 and 32(2) refer to Indigenous peoples' rights to maintain and strengthen their traditionally owned and used waters and their rights to Free, Prior and Informed Consent over any decision affecting their use of water. MLDRIN (2023) notes their view in a submission to the Productivity Commission that the Basin Plan is not consistent with international instruments such as UNDRIP¹⁰. Other key points raised throughout the literature include:

- The *Background Paper to the National First Nations Water Roundtable 2023*¹¹ (**ANU et al. Roundtable Background Paper 2023**) discusses how conforming with the UNDRIP principles of self-determination and Free, Prior and Informed Consent requires governments to cease making decisions affecting First Nations peoples' rights and interests by imposition – requiring a higher standard of consultation such as co-design and consequential influence in policy, planning and management decision-making.
- O'Bryan and harriden (2023¹²) note that First Nations peoples in recent times are more commonly turning to international instruments and conventions to argue for the recognition of their rights and interests.
- The Garma International Indigenous Water Declaration 2008¹³ (**Garma Declaration 2008**) urges States to fully adopt, implement and adhere to international instruments that recognise the rights of Indigenous peoples and their rights to land and water, and includes a list of applicable instruments.

⁹ UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution by the General Assembly, 2 October 2007.

¹⁰ MLDRIN, Submission to the Productivity Commission's Murray-Darling Basin Plan: Implementation Review 2023, August 2023, page 3.

¹¹ Australian National University, Indigenous Land and Sea Corporation and National Native Title Council, *Background Paper – National First Nations Water Roundtable, securing water rights for First Nations' self determination*, 16-17 May 2023, Canberra, page 7.

¹² O'Bryan K. & harriden K. (2023) Hear Their Voices: Australia's First Nations Women and the Legal Recognition of Their Rights to Water, *Australian Feminist Law Journal*, DOI: 10.1080/13200968.2023.2253015.

¹³ The Garma International Indigenous Water Declaration, 2008.

The NCFRP (2018) is an Aboriginal-led, multi-stage research project resulting in a substantial body of work with regard to achieving cultural flows. The NCFRP (2018) focuses on the legal and policy dimensions of achieving cultural flows and recommends that policy development around cultural flows include tracking against UNDRIP standards¹⁴.

Table 2. Contribution of Basin Plan towards First Nations goals for legislation – international agreements.

<p><i>Was this in scope of the Basin Plan?</i> In Scope</p>
<p><i>What was included in the Basin Plan that contributes towards this theme in relation to international agreements?</i></p> <p>The objectives of the Water Act include 3(b) to give effect to relevant international agreements (to the extent to which those agreements are relevant to the use and management of the Basin water resources) and, in particular ... to address the threats to the Basin water resources.</p> <p>The agreements are listed in the Water Act and include the Ramsar and Biodiversity Conventions. UNDRIP is not listed or otherwise explicitly referenced in the Water Act and the Basin Plan.</p> <p>An objective of the Basin Plan is to “give effect to relevant international agreements through integrated management of water resources” (section 5.02 1(a)) and more specifically that environmental watering needs to be consistent with relevant international agreements (Chapter 8).</p> <p>First Nations outcomes within these Conventions include the Ramsar Convention on Wetlands. Recommendation 6.3 encourages Contracting Parties to 'involve' Indigenous communities in the management of Ramsar wetlands. The Biodiversity Convention includes obligations “to respect and preserve the traditional practices of Indigenous communities.”</p>
<p><i>Assessment of progress towards the theme goals and how/if the Basin Plan contributed towards this – LIMITED PROGRESS MADE</i></p> <p>MDBA engages with First Nations peoples using the Biodiversity Convention’s Akwe: Kon Guidelines and encourages Basin States to use these guidelines for engaging with First Nations on WRPs.</p> <p>Some First Nations groups consider that the Basin Plan is inconsistent with these Conventions. As such, progress against this goal is assessed as limited, noting there is some progress made, though it is unclear how the Basin Plan is contributing to this goal. At the 2024 workshops with Basin First Nations, the majority of feedback received at the workshops held in 2024 to test this report also agreed with CIR’s rating of ‘Limited progress’.</p>
<p><i>Other Progress</i></p> <p>Through the management of environmental watering there has been some progress at Ramsar sites within the Murray-Darling Basin, where First Nations peoples are involved in wetland management.</p> <p>Amendments to the Water Act through the <i>Water Amendment (Restoring our Rivers) Act 2023</i>, included that:</p> <ul style="list-style-type: none"> • The review of the Basin Plan requires the Authority to consider and report on how water management under the Basin Plan can, or could:

¹⁴ NCFRP 2018, *Cultural flows a multi-layer plan for cultural flows in Australia: legal and policy design*, page 73.

- enable improvement of conditions for First Nations people;
- provide for protection of First Nations' interests; and
- enable First Nations participation in making policies and strategies for the use and management of Basin water resources, including where that could involve free, prior and informed consent (FPIC).
- The review of the Water Act by 2027 must identify opportunities to promote the principles set out in UNDRIP.

What are the barriers?

The focus to date has been on achieving biodiversity and conservation outcomes as part of fulfilling the relevant international agreements listed in the Water Act.

Water rights and interests

In response to concern over a lack of management objectives and outcomes relating to the protection of First Nations peoples uses and values, the 2012 Basin Plan was strengthened in this area.

The Basin Plan Chapter 10, Part 14, outlines the provisions which explicitly recognise the rights and interests of First Nations peoples in connection to the preparation of water resource plans by Basin States. A range of these provisions directly address some of the issues outlined above from the *Review of the 2012 'A Yarn on the River'* report. These include specific management objectives for WRPs to consider First Nations uses and values.

The *2020 Basin Plan Evaluation*, in noting the Basin Plan's specific provisions regarding Basin First Nations, found:

There have been a range of beneficial outcomes achieved so far through the incorporation of First Nations' views and objectives in the management of Basin resources that align with Basin Plan requirements to have regard for Indigenous uses and values. -Basin Plan Evaluation 2020 Full Report, page 89

The MDBA's *Basin Plan Evaluation (2020)* mapped the provisions of the Basin Plan with consequential First Nations outputs and positive actions that were being achieved, noting that strengthened engagement processes between the MDBA and Basin First Nations were leading to a range of outcomes including¹⁵:

- Reconnecting with Country.
- Building mutual respect and good relationships.
- Increasing knowledge of cultural sites and traditions.
- Improving ecological and cultural outcomes.
- Development of Indigenous-led water planning tools such as the Aboriginal Waterways Assessment.

¹⁵ MDBA, *The Basin Plan 2020 Evaluation*, Canberra, page 88.

However, throughout numerous Basin and water management inquiries and submissions, MLDRIN has continued to raise issues related to the provisions and operation of the Basin Plan regarding First Nations peoples¹⁶. In their submission to the *Productivity Commission's Murray-Darling Basin Plan: Implementation Review (2023)* (**Productivity Commission 2023**), MLDRIN raises several issues with regard to the Basin Plan's requirements and processes for consulting with First Nations people¹⁷.

The *Productivity Commission (2023)* noted that all stakeholders in the Basin agree that the Basin Plan needs to do more to deliver on the values and interests of First Nations peoples and recommend a series of actions that Basin States could take, including¹⁸:

- Increasing accountability for Basin States to meaningfully consider and address the objectives of First Nations peoples in making WRPs, such as being required to publicly report on how WRPs deliver on the objectives of First Nations peoples and publicly respond to concerns and issues raised by First Nations groups through this process.
- Delivering public reporting on how Basin States engage with First Nations peoples on the implementation of the Basin Plan.

Other key issues noted by sources within the theme of legislation include:

- The need for water management policy and regulation to integrate cultural heritage protections, particularly with regard to water efficiency and recovery measures as highlighted by The NSW Aboriginal Land Council (**NSWALC**)'s submission to the *Productivity Commission (2023)*.¹⁹
- The need for water planning and management legislation and regulatory mechanisms to be consistent with both UNDRIP and native title²⁰; as noted in the *National First Nations Water Roundtable, securing water rights for First Nations' self-determination Outcomes Report* (**ANU et al. Roundtable Outcomes Report 2023**).

Committee on Aboriginal and Torres Strait Islander Water Interests (**CAWI**) advises the National Water Reform Committee (NWRC) on First Nations water reform matters. CAWI has compiled a pictorial timeline of Aboriginal and Torres Strait Islander Peoples water interests, advocacy and reform, depicted along the graphic of a river²¹. The graphic compiles key pieces of advocacy, policy and legislation in this area while providing an illustration of the momentum in recent years (depicted through an increase in programs/policies towards the latter of the graphic).

¹⁶ Including submissions to the Productivity Commission's five-year Basin plan review (2018), the Productivity Commission's National Water Initiative review (2020) and the South Australian Murray-Darling Basin Royal Commission (2019).

¹⁷ MLDRIN, above n 10, pages 4-13.

¹⁸ Productivity Commission 2023, *Murray-Darling Basin Plan: Implementation Review 2023, Final Report*, page 163-164.

¹⁹ NSWALC, Submission to the Productivity Commission's Murray-Darling Basin Plan: Implementation Review 2023, July 2023, page 11.

²⁰ Australian National University, Indigenous Land and Sea Corporation and National Native Title Council, *National First Nations Water Roundtable, securing water rights for First Nations' self-determination Outcomes Report* (**ANU et al. et al. Roundtable Outcomes Report**), 16-17 May 2023, Canberra, page 10.

²¹ Committee on Aboriginal and Torres Strait Islander Water Interests (CAWI) Moggridge, B. and Duncan P. (2023): History of Aboriginal and Torres Strait Islander Peoples water interests, advocacy and reform (2023).

Ib. Legislation: What we heard from Basin First Nations

NB: All quotations are from de-identified workshop participants who have provided their written consent for this content to be used, as per the MDBA's ICIP policy.

Key issues raised throughout the workshops under the theme of Legislation included the need for stronger recognition of and rights for Basin Nations in water, accessibility of the Basin Plan, compliance, governance and strengthening UNDRIP principles.

Discussions throughout the workshops showed the connections, overlaps and linkages between issues across all themes, showing the need for water to be considered holistically from a First Nations' perspective. Participants at the workshops (**participants**) agreed that the Basin Plan needs to have stronger recognition of First Nations' rights and interests in water. Participants noted that Indigenous ownership of water is a key indicator for Closing the Gap and at the moment ownership rates are falling far below targets.

Across the workshops, participants noted that the terms used throughout the Basin Plan including "have regard to" and "take into account" are far too weak to effectively support First Nations' peoples rights in the water space: *"'have regard to' is too vague. Who defines these words?"* This phrasing was seen as vague and allowing for a way to avoid commitment:

- *"Language and terminology is very important. There's a loop-hole in current terminology. It should be changed to 'account for...'"*
- *"'Have regard to' is too weak a standard - needs to be stronger."*

Other issues raised in terms of the provisions of the Basin Plan included:

- Stronger use of UNDRIP and its principles, including Free, Prior and Informed Consent. Compliance with any UNDRIP principles must also be required.
- Use of Article 1 of the International Covenant on Economic, Social and Cultural Rights, as well as Article 1 of the International Covenant on Civil and Political Rights, which refer to the right of all peoples to self-determination and pursual of their economic, social and cultural development (which preceded UNDRIP).
- Legislation should recognise and support cultural requirements such as the difference between men's and women's business.
- Legislation should support outcomes such as safe drinking water and water health that supports health outcomes.
- The Basin Plan could contain a cultural continuity statement which recognises Basin First Nations. This statement should be co-designed with all Basin First Nations and could include issues such as: the ongoing cultural care for Country and waters by First Nations and truth telling over colonisation/dispossession of land.

WRPs were also discussed often throughout the workshops. Some of the issues raised regarding WRPs included:

- The WRP processes must be more transparent.

- WRP consultation processes should be improved. There were varying experiences of the process, including some negative experiences noted in NSW.
- Calls for MDBA to be more involved in oversight of drafting and compliance with WRPs.
- MDBA should review content of WRPs going forward.

Basin literacy, along with accessibility of the Basin Plan, were noted as major issues preventing engagement in the water sphere. Participants want to be able to engage with the Basin Plan in a more accessible format, noting the level of jargon and technicality is a major barrier to engagement. There were requests for MDBA to provide upskilling and support for First Nations communities (via their chosen governance structures) to better understand the provisions of the Basin Plan:

- *“It must be more understandable. Can MDBA present to committees and explain what legislation means.”*
- *“We want to understand the legislative landscape – who is who, who does what.”*
- *“If you talk in a language people don’t understand it is bad communication.”*
- *“Count on one hand people understanding the Water Act and the Basin Plan. Young people need to learn and we need to bring them along.”*

The difficulty in finding common ground between the western legal system and Aboriginal worldviews was highlighted by one participant, who spoke to the need for more flexibility:

Trying to fit a living river system that has been there since creation into a man-made law that is stagnant and does not fit. We need to fit it in a living document that can move like the water does. Laws need to change to fit the river system.

- De-identified First Nations participant, MDBA LBMF workshop, 2024.

Decision making and governance structures was another key topic of conversation. Participants noted the importance of broad and consistent consultation with Basin First Nations through preferred governance institutions including native title Prescribed Body Corporates (**PBCs**), LALCs etc. The role of lore for First Nations was raised, as well as the importance of governance structures having cultural authority/representation (further explored in theme III.).

It was also questioned how competing water interests are weighed up and balanced in the Basin Plan and through its implementation. Throughout the workshops, participants noted their lived experience that other stakeholders (such as farmers and industry) consistently outweighed their own. The ongoing lack of water allocations for First Nations was pointed to as evidence of this (explored more in themes IV. and V.). Participants expressed frustration, anger and grief over the lack of progress in the space since the creation of the Basin Plan:

- *“Nothing’s changed.”*
- *“We’re not being heard.”*
- *“We’re talking of decades of work and where has it gone?”*

It was noted there is no transparency in Basin Plan processes to account for how decisions over competing interests are weighed and made. Some participants put this down to systemic discrimination and racism, with some recounting their experiences of racism from senior water

bureaucrats in the past. Participants said that going forwards, Basin First Nations want to speak directly to decision-makers in Government (i.e. the Minister), rather than through intermediaries such as the MDBA.

Accountability and compliance were major concerns raised at every workshop. Participants pointed out that the provisions of the Basin Plan were meaningless if there was no accountability for breaches or oversight of compliance. Examples of potential non-compliance and corruption which have ongoing impacts for Basin First Nations included pumping groundwater out of unregulated rivers and ongoing floodplain harvesting by private landholders:

- *“When there is a flow in the river, the farmers pump it all out first (i.e. floodplain harvesting).”*
- *“In 2022 the biggest flood happened in Bourke, within 3 weeks the water was gone – the river was dry at the weir. This happens every time a flood comes.”*

At one workshop, participants had the idea for the MDBA to draft a statement of commitment (explored further in theme III.) which includes a commitment to delivering on outcomes.

Barriers to progress in the water space were discussed at the workshops. These included institutionalised racism (evident through participants’ experiences at local and State government levels), which impacts the ability of First Nations people to access both land and water. The complexities of the Basin Plan which involves multiple layers of bureaucracy across jurisdictions was also raised as a major barrier to engagement. Participants asked the MDBA to play a larger role in the co-ordination between jurisdictions in driving outcomes for Basin First Nations. Some requested MDBA to facilitate conversations between Basin First Nations (with them in the room) and relevant Government agencies: *“we need people who care who can help us and find a way through engagement with LGAs, the correct agencies and other Nations.”*

There need to be a First Nation person in government or an ally if First Nations people to help First Nations to understand the bureaucratic processes or the legislation that block Aboriginal people from acting on their rights or interests.

- De-identified First Nations participant, MDBA LBMF workshop, 2024.

Table 3. Contribution of Basin Plan towards First Nations goals for legislation – water rights and interests.

The intent of what each box describes in this table is outlined in the methodology section (see [Table 2](#)).

<i>Was this in scope of the Basin Plan? In Scope</i>
<p><i>What was included in the Basin Plan that contributes towards this theme in relation to First Nations rights and interests?</i></p> <p>The Basin Plan does not provide provisions for water ownership or self-determination. However, First Nations <i>interests</i> have been considered via the Basin Plan provisions to have regard to First Nations values and uses through the following ways:</p>

- Chapter 8 of the Basin Plan requires the MDBA to have regard to Indigenous values and uses (interests) during the preparation and review of the Basin-wide environmental watering strategy and the development of annual environmental watering priorities.
- Chapter 10, Part 14, Basin State WRPs, require that Basin States must identify First Nations objectives and outcomes (interests) for the management of water resources and must have regard to First Nations social, spiritual, and cultural values and uses, including native title and heritage.
- Chapter 4 of the Basin Plan is used to identify the strategies to address those risks to Basin water resources, for example, water quality and insufficient water. The Basin Plan (section 4.02 (2)) is also required to identify and manage the consequences that arise because of those risks, including “that insufficient water is available, or water is not suitable to maintain social, cultural, Indigenous and other public benefit values.”
- The Basin Plan description of the Basin water resources and the context for their use includes Indigenous peoples (Schedule 1).

Assessment of progress towards the theme goals and how/if the Basin Plan contributed towards this – LIMITED PROGRESS MADE

The development of annual environmental watering priorities has seen improved progress to include First Nations interests, however comparatively, there has been less progress on the Basin-wide environmental watering strategy.

All 13 water resource plans across Queensland, South Australia, Victoria, and the Australian Capital Territory remain accredited and in operation. There are 20 NSW WRPs, 11 of which have been accredited as of 29 February 2024.

Through the water resource plan development process, First Nations objectives outcomes, values and uses have been identified. However, in the MDBA’s June 2023 Report Card, it recognised that there is concern amongst First Nations peoples about the states’ engagement approach to water resource plans, and the accreditation of plans to date.

As noted above, First Nations peoples have raised concerns about a lack of protection for cultural heritage, which could be better accommodated through Chapter 4.

Schedule 1 (para 30 and 31) provides a brief description of First Nations uses of Basin water resources and a definition of cultural flows.

As documented in the literature above, First Nations peoples believe that the way that First Nations rights and interests are recognised through the Basin Plan needs to be improved. At the 2024 workshops with Basin First Nations, the evidence received from workshop participants confirmed CIR’s initial rating of ‘*Limited progress*’.

Other Progress:

The Commonwealth has announced a total of \$100 million to invest in cultural and economic water entitlements as part of the AWEF. However, since the initial announcement in 2018, progress on developing a governance structure and purchasing water has been delayed, with significant consultation not starting until mid-2023.

Following amendments to the Water Act through the *Water Amendment (Restoring our Rivers) Act 2023*, the following legislative additions have been made:

- A new ‘object’ of the Water Act and ‘purpose’ of the Basin Plan have been added “to ensure that the use and management of Basin water resources takes into account spiritual, cultural,

environmental, social and economic matters relevant to Indigenous people, including in relation to their knowledge, values, uses, traditions and customs”.

- In reviewing the Basin Plan, the Authority must consider and report on:
 - (a) matters relevant to Indigenous people in relation to management of Basin water resources.
 - (b) the extent to which the Basin Plan, including requirements relating to water resource plans: (i) recognises and protects the interests of Indigenous people; and (ii) supports opportunities for Indigenous people to participate in determining and developing priorities and strategies for the development or use of Basin water resources, including opportunities for participation that incorporates Free, Prior and Informed Consent.

The CAWI is informing the evaluation of the Basin Plan and the renewal of the *National Water Initiative (2004)*. CAWI’s [Insights Papers](#) includes a set of water values, principles and actions that they encourage Federal, State and Territory Governments to adopt.

In 2024, DCCEEW (Cth) are ‘Seeking views on a future national water agreement’ to update the National Water Initiative (NWI). The first round of consultation occurred in early 2024 on a [discussion paper](#) which included First Nations objectives and outcomes. In June 2024, a [National Water Reform Outcomes Framework](#) was released including revised objectives and outcomes for a new national water agreement. Next steps are that the Commonwealth, alongside state and territory governments, will continue to develop a draft agreement through the National Water Committee, its sub-committees and also with the Committee on Aboriginal and Torres Strait Islander Water Interests. There will be 4 phases of engagement to supplement the Productivity Commission’s 2024 inquiry report into National Water Reform which is being reviewed as part of the evidence base for the new agreement. Importantly, a provision of the *Water Act 2007* is that the Basin Plan is to ‘have regard to’ the National Water Initiative (NWI) section 21(4)(c)(i). Therefore, any updated/new National Water Agreement will need to be considered as part of the Basin Plan review.

A national [Inland Water target](#) is being developed under the National Agreement on Closing the Gap (**Closing the Gap**).

The Victorian [Water is Life: Traditional Owner Access to Water Roadmap \(2022\) \(Water is Life Roadmap 2022\)](#) is being implemented.

The inclusion of the [NSW Water Strategy Priority 2](#) Action 2.2; Develop state-wide Aboriginal Water Strategy.

[What are the barriers?](#)

First Nations peoples believe that the wording “have regard to” is not strong enough to ensure their interests are included in water management and planning.

First Nations’ cultural heritage aspects, that are dependent on water, are not adequately considered or protected in current policies.

Water laws and policies are overly complex and do not reflect the holistic view of First Nations peoples.

Ila. Sovereignty, ownership, self-determination

This theme includes issues and goals related to the unceded sovereignty of First Nations' lands and waters, including the desire for First Nations peoples to self-determine water management decisions affecting their Countries. Key issues outlined in the *Review of the 2012 'A Yarn on the River'* report include²²:

- a. Need to recognise the customary sovereign rights of First Nations peoples. This recognition would include sovereignty, dominion, and ultimate title over water within the MDB. Full First Nations management of all environmental water was proposed.
- b. First Nations peoples have an irrefutable relationship with their Country and never ceded ownership of Country, with evidence of ownership under customary law of unique Country, landscapes and waterscapes, through Ancestors and Descendent Clans and despite ongoing dispossession.
- c. Possible existence of native title rights to water is not accounted for in the draft Basin Plan.
- d. Interest in First Nations land assets (such as recognised ownership of water and Country) being given a monetary value, affording licensing and royalties.
- e. Some hope to move away from crisis management and towards increasing levels of Aboriginal self-determination and power in matters of cultural significance.
- f. Belief in Ceremony and the presence of Ancestral spirits, (who foresaw and are now guiding the course of the MDB system to bring forward shared Caring for Country, and recognition of Speaking for Country), as a legitimate source of authority that the Traditional/Ancestral Owners enact.

MLDRIN's *Echuca Declaration (2007)* positions the goals of Basin First Nations' water management in the context of unceded sovereignty and notes that the colonial development of water law and policy has had widespread impacts on First Nations²³. *The Garma Declaration (2008)* covers similar content²⁴.

The assertion of First Nations sovereignty over lands and waters is closely tied with goals of ownership and self-determination in terms of water policy, regulation and planning. The *Productivity Commission (2023)* notes the policy landscape has changed considerably since the introduction of the Basin Plan in 2012, with an important shift in the recognition of First Nations in the community²⁵.

The *ANU et al. Roundtable Background Paper (2023)* notes that improving outcomes for First Nations peoples in water management will require "approaches that empower First Nations to define water governance and management frameworks for their lands and waters, followed by their genuine incorporation into water policy and planning processes."²⁶ This involves a "reframing of water policy, planning and governance frameworks with a shift away from tokenism to genuine structural

²² MDBA, above n 2, page 11.

²³ MLDRIN 2007, *Echuca Declaration*, page 1.

²⁴ Garma Declaration, above n 13, page 1.

²⁵ PC, above n 18, page 147.

²⁶ ANU et al., above n 11, page 13.

reform²⁷,” with recognition of water ownership and control as well as influence over how water is managed being required.

Other key issues noted under this theme throughout the literature include:

- The importance of recognising the ongoing impact of colonialism and dispossession on First Nations’ rights and governance systems, including in the context of water²⁸.
- That sovereignty is discussed in the context of data sharing and providing First Nations peoples sovereignty over their data, as well as protection of ICIP²⁹.

O’Donnell et al. (2023) discuss the First Nations’ led *Cultural Water Paradigm* (Figure 4) which embeds First Nations’ sovereignty and self-determination over water management as a premise³⁰:

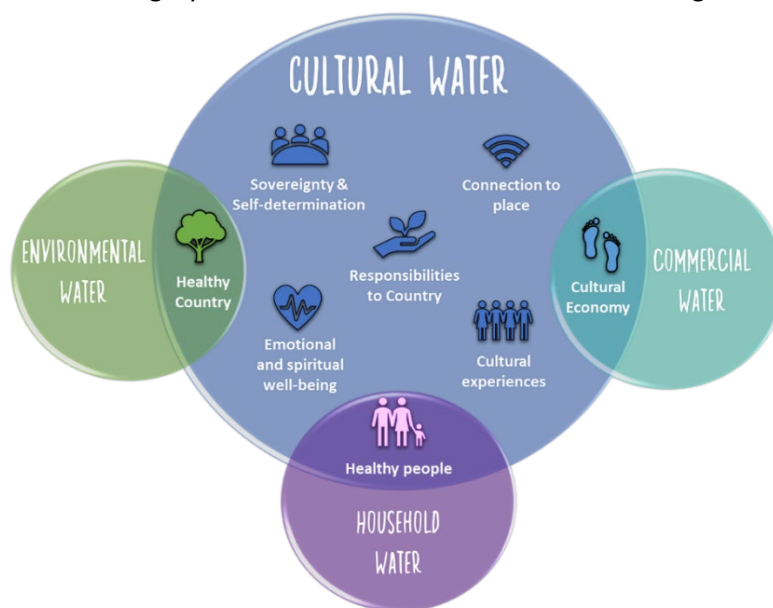


Figure 4. *The Cultural Water Paradigm*, image created by Melissa Kennedy, from O’Donnell and Kennedy (2023) ‘The legacy of Aqua Nullius is causing a sustainability disaster,’ published in Pursuit, University of Melbourne, August 11, 2023 (reprinted with permission).

The *Cultural Water Paradigm* positions First Nations peoples as decision-makers who are empowered to assert their cultural, environmental and economic rights to Country through water management frameworks. O’Donnell et al. (2023) consider the paradigm “establishes the foundation for transformational change in water management policy³¹.”

Finally, Victoria’s Department of Environment, Land, Water and Planning (**DELWP**) *Water is Life Roadmap* (2022) recognises sovereignty, ownership and self-determination as core components of First Nations’ inclusion in water management³². *The Water is Life Roadmap* (2022) begins by

²⁷ Ibid.

²⁸ ANU et al, above n 20, page 40.

²⁹ Ibid, page 51.

³⁰ O’Donnell E., Kennedy M., Garrick D., Horne A. and Woods R., 2023, ‘Cultural water and Indigenous water science,’ *Science*, Vol 381 Issue 6658, accessed 21 November 2023 <https://www.science.org/doi/10.1126/science.adi0658>, page 620.

³¹ Ibid.

³² Victoria Department of Environment, Land, Water and Planning 2022, *Water is Life Traditional Owner Access to Water Roadmap Section 1*, page 15.

recognising the ongoing impacts of colonialism on First Nations peoples, acknowledges First Nations rights to water and presents these issues through the need for truth-telling, while taking a restorative justice approach to water management reforms³³. Section B of the *Water is Life Roadmap (2022)* contains Nation Statements from 27 First Nations peoples from Victoria, many of whom are connected to Basin First Nations. The overwhelming majority of these statements begin by stating the unceded sovereignty of First Nations rights to Country, lands and waters. *The Water is Life Roadmap (2022)* and the specific regulatory and management pathways presented throughout the document are considered further in other sections of this report.

IIb. Sovereignty, ownership, self-determination: What we heard from Basin First Nations

NB: All quotations are from de-identified workshop participants who have provided their written consent for this content to be used, as per the MDBA's ICIP policy.

Issues under this theme were raised frequently throughout the workshops and went to the heart of Basin First Nations' standpoints on water. Participants pointed out that sovereignty was never ceded, and that land and waters were stolen from First Nations peoples at colonisation without compensation leading to aqua nullius today. That First Nations people have no authority to access lands and waters and make decisions about the allocation and management of water was a reoccurring issue and source of grief and frustration for participants. The Australian Government's lack of recognition of First Nations sovereignty was seen as a foundational issue:

- *"We are not from overseas, we have never left here, we didn't give this to no one, it was taken."*
- *"How do we navigate colonial structures when the whole government system is built upon it?"*

Flowing from this, participants pointed out that Basin First Nations want to be decision makers, rather than simply providing advice on a consultation level. Engagement and representation from Basin First Nations should address decision-makers (i.e. the Minister) directly, as previously noted in theme I.

Participants discussed ways that the MDBA can support Basin First Nations' self-determination. Discussions highlighted the importance of broad and respectful engagement at a local level with Traditional Owners (explored further in theme III.) One recurring suggestion was for MDBA to expand their role to provide co-ordination, facilitation and support for Basin First Nations in the water space (previously discussed in theme I.): *"MDBA could support self-determination with different mobs through having representatives e.g. dealing with technical advisors."*

Sovereignty was also talked about in terms of cultural obligations to care for Country. It was noted that the concept of "ownership" in the theme heading doesn't fit well with Aboriginal worldviews and "belonging to Country" is better wording. Participants talked about the importance of following lore and cultural protocols, including engaging with the correct people to speak for Country (discussed further in theme III.).

³³ Ibid.

Overall, participants noted that sovereignty, ownership and self-determination can't be realised without actual outcomes on the ground. Participants also recounted their lived experiences of systemic racism in Government and competing in the water market against economically powerful industry groups, explored further in themes I. and IV.

- “Without access to land and water, how can there be self-determination?”
- “We need to access our Country to Care for Country.”

Table 4. Contribution of Basin Plan towards First Nations goals for sovereignty, ownership and self-determination.

The intent of what each box describes in this table is outlined in the methodology section (see [Table 2](#)).

<p><i>Was this in scope of the Basin Plan?</i> Not in Scope</p>
<p><i>What was included in the Basin Plan that contributes towards this theme?</i></p> <p>The Water Act (section 21) sets out the purpose of the Basin Plan and the basis on which it should be developed. The Act does not explicitly require the Basin Plan to have regard to First Nations sovereignty, ownership of water or self-determination. It does require the Basin Plan to have regard to social, spiritual and cultural matters relevant to Indigenous peoples in relation to the water resources of the water resource plan area in the preparation of the water resource plan (s 22(3)(ca)). Additionally, in exercising powers and performing functions under Division 1 of Part 2 of the Act (which includes the requirement to undertake the 2026 Basin Plan review), the MDBA and Minister must have regard to social, cultural, Indigenous and other public benefit issues (s 21(4)(v)).</p> <p>The Basin Plan refers to Native Title rights in the context of developing water resource plans (section 10.53). A native title right is within the definition of a basic right. Basic rights form part of the volume of water for consumptive use under the sustainable diversion limit (section 10.13).</p>
<p><i>Assessment of progress towards the theme goals and how/if the Basin Plan contributed towards this – NOT RATED, AS THE GOALS IN THE THEME WERE NOT IN SCOPE OF THE BASIN PLAN.</i></p> <p>Since the Water Act does not require the Basin Plan to progress sovereignty and First Nations water ownership, the Basin Plan has not contributed to progress towards this goal. However, the MDBA was a partner to the NCFRP which has progressed understanding of how cultural flows can be incorporated into water resource management, and highlighted the need to recognise sovereignty of First Nations peoples and promote ownership and self-determination.</p> <p>First Nations peoples have expressed frustration over native title rights and water not being met under the Basin Plan, but it is unclear if this is because of the Basin Plan or other laws and policies.</p> <p>At the 2024 workshops with Basin First Nations, the evidence received from workshop participants was in favour of this theme being included in the scope of the Basin Plan going forwards. It was argued that the existence of the Basin Plan and Chapter 10, Part 14 impacts the sovereignty of Basin First Nations peoples and therefore brings it within scope.</p> <p>CIR has assessed that there has been no progress made towards this goal, acknowledging this is not a requirement of the Basin Plan.</p>

Other Progress

Progress following the initial announcement of \$40 million in 2018 for First Nations water purchases, was limited. In 2023, this funding was increased to \$100 million for the Murray-Darling Basin through AWEF and initiated a Basin-wide co-design process with First Nations.

A commitment to consultation on an enduring [First Nations Water Holder](#) with \$9.2 million available for consultation with First Nations peoples nationally, on the best way to hold and manage water entitlements for the benefit of all First Nations peoples.

Existing partnerships between government and First Nations peoples that provide for self-determination / co-management of lands and waters in the Basin such as through [Gayini](#) (Nimmi Cairra).

Water reform activity within the Basin States such as through the [Water is Life Roadmap](#) (2022) by the Victorian state government. This Roadmap promotes self-determination and supports the transfer of relevant decision-making from government to Traditional Owners.

The inclusion of the [NSW Water Strategy Priority 2](#) Action 2.3; Provide Aboriginal ownership of and access to water for cultural and economic purposes.

The establishment of the [CAWI Water Interests](#) in 2020, with funding support extended to 2026. The committee advises the National Water Reform Committee on national water reform matters. This includes renewing the *National Water Initiative* (2004).

What are the barriers?

The Water Act does not explicitly require the Basin Plan to consider First Nations sovereignty.

First Nations peoples want water rights included in native title.

IIIa. Engagement and representation

Key issues and goals raised under this theme center around improving consultation and engagement processes with First Nations peoples in the Basin. As per the *Review of the 2012 'A Yarn on the River'* report³⁴:

- a. Insufficient First Nations representation on MDBA water management committees and a First Nations role in all decisions related to water management was requested.
- b. The mainstream populations need to be educated about how to listen to, respect and participate with First Nations people and their ways of knowing and living – held in many submissions as being crucial to governance, and to sustaining a viable socio-ecological system.

³⁴ MDBA, above n 2, page 11.

- c. Seek further recognition and resourcing for the two First Nations representative organisations in the Basin – MLDRIN and NBAN, who [at the time] comprise nearly all the Basin Nations.

There is widespread acknowledgement throughout the literature of the need to improve engagement and representation of First Nations peoples through water policy and regulation in the Basin area. However, there are also indicators of some improvements in this area, particularly through the involvement of First Nations peoples in environmental watering³⁵. Engagement and representation are broad areas that encompasses both First Nations' control and decision-making, as well as hold influence over and speak to participation in water landscapes and processes more broadly³⁶. There is strong overlap here with Theme II. Sovereignty, ownership and self-determination.

MLDRIN's submission to the *Productivity Commission (2023)* provides one of the most comprehensive outlines of the various deficiencies to current Basin Plan engagement requirements and how these work in practice for First Nations peoples. Some of these have already been outlined previously in Theme I. Legislation. *The Productivity Commission (2023)* notes that submissions to the review highlighted concerns around water resource planning engagement processes, including a lack of meaningful engagement, rushed processes and differences in quality across jurisdictions³⁷. Consultation fatigue, overly technical language and limited capacity were also noted as key factors making it difficult for First Nations participants to meaningfully engage. The NSW Government's engagement processes have been highlighted as especially deficient:

A number of participants emphasised that the NSW Government has failed to address key gaps in their WRP processes, including limited or no consultation with all Nations identified in WRPs, a lack of clarity about the scope and purpose of the engagement, and insufficient time for participants to respond or follow up when substantial issues or concerns emerge.

-Productivity Commission Final Report (2023), page 160.

An example of DELWP's approach to engagement with Traditional Owners for the purpose of updating Victorian WRPs is documented through the *Traditional Owner Objectives and Outcomes Report (2019)*. DELWP's approach was framed by Victoria's Aboriginal Water Policy, following a case-by-case engagement approach with each Traditional Owner group involving meetings on Country³⁸. Support was provided to Traditional Owners groups where requested. The engagement process supported the following outcomes³⁹:

- Identifying each group's desired objectives for the management of water.
- Providing a cultural values risk assessment framework.
- Building relationships between the DELWP and each Traditional Owner group.
- Discussing opportunities for building community capacity and economic development.
- Supporting the celebration and sharing of cultural and traditional practices.

³⁵ See Section VI. below on Water management (water for the environment).

³⁶ NCFRP, above n 14, page 35.

³⁷ PC, above n 18, page 160.

³⁸ Victoria Department of Environment, Land, Water and Planning 2019, *Traditional Owner objectives and outcomes: Compilation of contributions to Victoria's water resource plans*, Victoria, page 4.

³⁹ Ibid.

The contributions of First Nations peoples from this process are thoroughly documented in the report according to the wishes of each Traditional Owner group.

In the Queensland context, the *Water Connections: Aboriginal people's water needs in the Queensland Murray-Darling Basin (2019)* report summarises the process undertaken to review water plans in the Condamine-Balonne, Moonie and Border Rivers catchment area water plans (for both rivers and groundwater) were reviewed between 2016-2019 through an extensive process of engagement with Aboriginal nations⁴⁰. Engagement was Nation-based, including on-Country visits with flexibility to accommodate the meeting preference of participants. The engagement process explored cultural values and uses of water, objectives and outcomes for water management and led to the inclusion of new cultural outcomes for each water plan. The relationship-building that occurred through this process is seen as fundamental to the ongoing implementation of the water plans.

Also in Queensland, although in a region outside the Basin, the renewal of the *Water Plan (Mary Basin) 2006* is taking place based through meaningful on-Country engagement with four key Traditional Custodian stakeholders⁴¹. As opposed to the previous *Mary Basin Water Plan*, the new plan includes specific cultural outcomes relating to water-based values, as identified by the Traditional Custodians in the area. To support these aspirations, the plan proposes to provide a First Nations water reserve including surface and groundwater, to be provided in consultation with the Traditional Custodian stakeholders.

The *Productivity Commission (2023)* recommends early planning of engagement activities, as well as engaging on the basis of Free, Prior and Informed Consent. The following MDBA-led initiatives aimed to improve engagement and representation with First Nations peoples⁴²:

- The MDBA's *Strategy for Engagement with First Nations (2022-26)*.
- The appointment of a First Nations member to the MDBA Board.
- The increase of First Nations representation on the BCC.

The Productivity Commission *Supporting Paper D May 2021 – National Water Reform 2020, Securing Aboriginal and Torres Strait Islander people's interests in water (Productivity Commission 2021)*⁴³ also found that while many States and Territories had made progress in engaging Traditional Owners in water planning since the Productivity Commission's previous *National Water Reform Report* in 2017, more needs to be done. It was also noted that enhancing the influence of Traditional Owners in water management processes is the most effective way to achieve cultural outcomes on Country. High quality engagement with Traditional Owners should be a key focus for any revisions to water management frameworks and agreements.

Other key points raised throughout the literature regarding engagement and representation include:

⁴⁰ Queensland Department of Natural Resources, Mines and Energy 2019, *Water Connections: Aboriginal people's water needs in the Queensland Murray-Darling Basin*, Queensland, page 9.

⁴¹ Queensland Department of Regional Development, Manufacturing and Water 2023, *Draft water plan (Mary Basin) 2023: cultural values: information sheet*, Queensland, accessed 22 January 2024 <<https://nla.gov.au/nla.obj-3147695511/view>>

⁴² PC, above n 18, page 170.

⁴³ Productivity Commission 2021, *Securing Aboriginal and Torres Strait Islander people's interests in water*, Supporting Paper D, National Water Reform 2020 Inquiry Report no. 96, page 16.

- That while some reforms have improved First Nations' participation in water planning and access to water, in practice, improved outcomes are yet to materialise and outcomes are often dependent on jurisdiction. This is noted in the *Independent Assessment of social and economic conditions in the Basin 2020 (Sefton Review 2020⁴⁴)*. Recommendation 17 states, that participation by Basin First Nations should be embedded in water policy and strategy development at all levels of government⁴⁵.
- That transformational institutional change is required at national and jurisdictional levels. The *ANU et al. Roundtable Outcomes Report (2023)* notes that this will require more First Nations people being employed as water practitioners and holding positions of leadership across all levels of the bureaucracy, and requires increased participation from First Nations peoples in collective decisions concerning water management⁴⁶.
- That community consultation and engagement can be improved by increased resourcing of local Aboriginal Community Controlled Organisations (**ACCOS**)⁴⁷. The need for Basin States to invest in capacity building and partnerships with First Nations organisations is also discussed by the *Productivity Commission (2023)*.

IIIb. Engagement and representation: What we heard from Basin First Nations

NB: All quotations are from de-identified workshop participants who have provided their written consent for this content to be used, as per the MDBA's ICIP policy.

At the workshops, participants discussed engagement and representation issues in depth, including meaningful engagement processes, barriers to engagement and governance. Feedback was provided to MDBA regarding how Basin First Nations want to be engaged and ways of working together, emphasising the importance of respect, mutual trust, accountability and commitment:

"Conversations begin with relationships, relationships build trust, trust is key."

Meaningful engagement which leads to real outcomes beyond "tick a box" consultations is seen as crucial. Communities shared their lived experience of past engagement, some of which had been done poorly, stating this led to a lack of trust and could contribute to internal conflict within communities. While there were varying local experiences of previous MDBA engagement (including some positive), in some participants' experience there was visible frustration at poor communication and engagement practices in the past:

- *"Trust issues from hundreds of years of broken trust."*
- *"Not one person in the MDBA/department got back to us. No appetite on your side [for respectful engagement] as far as I can see."*
- *"Trust is a two-way street, it can't be you and us, it is both together."*

⁴⁴ Independent Assessment of Social and Economic Conditions in the Basin 2020, *Final Report: Independent assessment of social and economic condition in the Murray-Darling Basin*, page 26.

⁴⁵ Ibid, page 27.

⁴⁶ ANU et al., above n 23, page 56.

⁴⁷ Dharriwaa Elder's Group, Submission to the Productivity Commission's Murray-Darling Basin Plan: Implementation Review 2023, August 2023, page 11.

Feedback given about how Basin First Nations want to be engaged going forward:

- Speaking to the right people from every Nation who have cultural authority, whether this is through established and existing governance institutions such as native title PBCs, LALCs, Traditional Owner groups or otherwise. Where there are no existing established governance bodies, broad consultation should be undertaken on a community level. This was seen as a due diligence issue in ensuring the right people are at the table to speak for Country.
- Engagement to be respectful, reciprocal, ongoing and long-term.
- There should be funding for representatives to go back to their respective Nations, discuss and get authority. Timeframes should account for these processes.
- The need to consider that not all people in a community have access to internet/emails and online access can be a barrier to participation. Some community members requested information to be delivered via hard copy.
- Consideration be given to ensuring a balanced gender representation and variety of age groups, with opportunities given to young people to learn.
- A preference for meetings on Country: *"We need to have meetings on rivers, not in a boardroom. A lot of my knowledge comes from the Elders on the river."*
- MDBA staff to be given cultural awareness training by Basin First Nations Elders, ideally on Country, to build their capacity to engage.
- All engagement to be done in a way that is respectful and prioritises cultural safety.
- The MDBA and Basin First Nations draft and sign a joint Statement of Commitment with a preamble by Basin First Nations, in plain English.

Participants spoke to the importance of more leadership positions within the MDBA and throughout the water space generally, including having equal seats at the MBDA Board level.

Participants noted that other barriers to effective engagement include:

- Engaging in a siloed way across all the different Government Departments and agencies in the water space.
- Not speaking directly to leaders and decision-makers in Government.

The importance of governance was raised throughout the workshops, with this being a priority issue in some regions. Participants discussed the importance of a coalition or peak body of Basin Nation groups to represent their joint interests, with some participants strongly advocating for MDBA to resource them to develop their own culturally authoritative governance arrangements.

There is also a demand for Basin First Nations to have a way to share information between themselves in the water space. In general, participants discussed the importance of building the internal governance of all Basin First Nations to engage in the water space, noting that every group is at a different point in terms of their Basin literacy and capacity. It was also pointed out that from a cultural perspective, *"different Nations have different responsibilities about water."*

In one location, participants requested time for self-reflection on what hasn't worked from a community perspective since 2012. There were a broad range of frank reflections ranging from issues of accountability for disseminating information among community, lateral violence, a loss of good governance practices and a need to build Basin literacy amongst community.

Table 5. Contribution of Basin Plan towards First Nations goals for engagement and representation.

The intent of what each box describes in this table is outlined in the methodology section (see [Table 2](#)).

<p><i>Was this in scope of the Basin Plan? In Scope</i></p>
<p><i>What was included in the Basin Plan that contributes towards this theme?</i></p> <p>The Basin Plan sets out the requirements that Basin States' water resource plans must comply with. These include that a water resource plan be prepared having regard to the views of relevant First Nations organisations on several matters including the inclusion of "Indigenous representation in the preparation and implementation of the plan" and the "encouragement of active and informed participation of Indigenous people" (section 10.53)</p> <p>The Basin Plan requires that the MDBA consult with relevant First Nations organisations on whether the Basin States have met the requirements of the Basin Plan in a way that provides for Indigenous values and uses in the preparation and consultation of water resource plans (Part 14).</p> <p>The preparation of the Basin Plan's Basin-wide environmental water strategy (section 8.15) requires the MDBA to have regard to Indigenous values and uses.</p>
<p><i>Assessment of progress towards the theme goals and how/if the Basin Plan contributed towards this – SOME PROGRESS MADE</i></p> <p>In December 2020, there was an appointment of an Indigenous Authority member, as a permanent role on the board. A second Indigenous Authority member will be appointed in <TBA>.</p> <p>Since 2018, the BCC has been required to have at least two Indigenous members and provide for the creation of the BCC Indigenous Water Subcommittee. As of February 2024, of the 15 BCC members, three are First Nations representatives.</p> <p>Since 2012, the MDBA has engaged with First Nations peoples through the NBAN and MLDRIN organisations. This has included providing core funding and project funding to empower those organisations to engage with First Nations peoples and communities on projects including cultural flows plans, Aboriginal Waterways Assessments and Use-and-Occupancy mapping. In 2022, the MDBA finalised its contractual arrangements with NBAN and is re-engaging with northern Nations individually or as groups as initiated by those Nations.</p> <p>To a certain extent, the first purposeful conversations between the states and First Nations on water resource planning were initiated as a result of the Basin Plan. However, as indicated above, First Nations peoples are dissatisfied with these processes, the inconsistencies between states, and do not see much progress in meaningful engagement and representation. CIR has assessed there has been 'some' progress made towards this goal.</p> <p>At the 2024 workshops with Basin First Nations, the evidence received from workshop participants regarding CIR's rating of 'Some progress' was mixed, with some views reflecting support for the rating and others commenting that more needs to be done. In view of the feedback, CIR has left the rating unchanged.</p>

Other Progress

In 2017, the National Water Initiative Module: [Engaging Indigenous peoples in water planning and management](#) was developed to support water planners and managers to improve and build on existing engagement processes, to ensure inclusive approaches to water planning that support genuine consideration of First Nations social, spiritual and customary objectives.

Amendments to the Water Act in late 2023 included that:

- An additional Indigenous MDB Authority member will be appointed to the Authority.
- The Basin Plan review, requires the Authority to consider and report on how water management under the Basin Plan can, or could:
 - enable improvement of conditions for First Nations people;
 - provide for protection of First Nations' interests; and
 - enable First Nations participation in making policies and strategies for the use and management of Basin water resources, including where that could involve free, prior and informed consent (FPIC).

In 2023, the NSW Government established 12 [Regional Aboriginal Water Committees](#) across the state with the purpose of giving greater recognition to Aboriginal water rights and interests and ensuring Aboriginal people can contribute to water management.

What are the barriers?

Water sector language is highly technical and can alienate First Nations peoples and communities.

First Nations peoples have reported that engagement is inconsistent across the Basin and should be more meaningful.

First Nations peoples often experience consultation fatigue because of multiple levels of government consultation and /or an experience of governments not 'having regard' to their voices and objectives.

Water planning processes occur to government timelines and do not allow for First Nations' own governance and consultation needs.

First Nations organisations are not adequately funded to engage and provide advice to water resource planning processes.

IVa. Water market

This theme relates to First Nations participation in the water market. Key issues as outlined in the *Review of the 2012 'A Yarn on the River'* report include⁴⁸:

- a. First Nations people want participation and parity in the water market – opportunities to participate in the water economy and water management have been limited. This would be achieved by allocation of First Nations water and the establishment of a First Nations water holder to manage this water.
- b. First Nations owning and managing a percentage of water as cultural flows will bring additional water and socioeconomic benefits to local communities adding to the notion of practical reconciliation.
- c. Participation in farming and owning water through licensing was seen as increasing the possibility of having a voice at the decision-making level for land use and the allocation of water licenses.
- d. Trading of water entitlements with regard to NSW cultural water licences was discriminatory because the NSW cultural water licences were non-tradable whereas other classes of licences could generally be traded or transferred.

Participation in the water market

Many sources have identified the ongoing lack of access that First Nations peoples have to water access entitlements of any form. This is discussed through Marshall's (2017)⁴⁹ concept of 'aqua nullius', discussed by O'Donnell et al. (2023), who note that the occupation of Australia was premised on flawed assumptions with "no acknowledgement that First Nations had and continue to have laws governing the care and management of water."⁵⁰ These assumptions are now "comprehensively embedded within the settler-state legal, regulatory, and institutional arrangements for water management in the MDB⁵¹."

NSWALC's submission to the *Productivity Commission (2023)* argues that the decoupling of water rights from land ownership in 1994 contradicted the intent of the *Aboriginal Land Rights Act 1983* (NSW) (**ALRA**) and has resulted in low water ownership rates for Aboriginal and Torres Strait Islander peoples:

Our ownership of water is minuscule and has been going backwards. For example, while Aboriginal people in the Murray Darling Basin constitute nearly 10 % of the total population, Aboriginal organisations hold only 0.2 % of the available surface water in the Basin and 0.1% across the state. Aboriginal water holdings between 2009 and 2018 indicate a new wave of dispossession. Almost one-fifth of Aboriginal water holdings by volume were lost during this time.

-NSWALC's submission to the *Productivity Commission (2023)*, page 7.

The *ANU et al. Roundtable Background Paper (2023)* echoes this point regarding native title, noting that the exclusion of First Nations peoples from water law and policy frameworks is compounded by

⁴⁸ MDBA, above n 2, pages 11 and 13.

⁴⁹ Marshall V., *Overturning Aqua Nullius: Securing Aboriginal Water Rights* (Aboriginal Studies Press, 2017).

⁵⁰ O'Donnell et al. , above n 31, page 619.

⁵¹ Ibid, page 620.

the limited recognition of water rights under native title systems⁵². The *ANU et al. Roundtable Outcomes Report (2023)* also notes:

Land allocations to First Nation's bodies may be substantial transfers, but if they don't include water, half of Country is missing. To address this irregularity, two key constitutional issues need to be overcome, over-allocation and over-extraction. The MDB being a clear example. We need to increase the ambition to achieve transformational change to address water injustices.

-*ANU et al. Roundtable Outcomes Report (2023)*, page 17.

Increasing First Nations' access to water entitlements is broadly seen to support a range of outcomes, including the cultural, social and economic wellbeing of Basin First Nations. The literature outlines the following key issues:

- That substantive outcomes for Basin First Nations from water entitlement, planning and market reforms were yet to materialise, noting there had been minimal progress in SA, NSW and QLD. This is highlighted in *The Sefton Review (2020)*.⁵³ It recommended that the conditions of water licences allocated for First Nations cultural purposes be reviewed to allow for trade or use for economic activities and outcomes⁵⁴.
- That Closing the Gap is currently reviewing targets for water ownership and control, which link to targets related to economic development and employment opportunities⁵⁵.
- That overall ownership rates remain very low, although some progress has been made in Victoria, as highlighted in the *Productivity Commission (2023)*.
- That economic development opportunities could arise through access to water entitlements and could support employment, management of cultural and social sites, education programs and environmental programs⁵⁶.

Marsden Jacob (2020) note that "there is little evidence that Basin reform has provided Indigenous people with access to water for economic purposes,⁵⁷" noting that Indigenous peoples have access to conventional pathways such as the trade of water entitlements which involves a number of challenges.

Hartwig et al. (2023) recently examined involvement by First Nations organisations in the water market, in the NSW portion of the Basin⁵⁸. Hartwig et al. found that in a small number of cases, Local Aboriginal Land Councils (**LALCs**) were able to acquire water entitlements attached to land. Within the study area, 25 Aboriginal organisations were found to hold 55 water entitlements totaling 12.1GL in 2018, with an estimated value of A\$16.5 million in 2015-16 terms.

⁵² ANU et al. Roundtable Background Paper, above n11, page 7.

⁵³ Sefton Review, above n 45, page 61.

⁵⁴ Ibid, page 26.

⁵⁵ As noted in ANU et al., above n 11, page 6.

⁵⁶ Marsden Jacobs, (2020?) 'Indigenous Water in the Murray-Darling Basin: Supporting the Independent Assessment of Economic and Social Conditions in the Murray-Darling Basin', prepared for the Social and Economic Assessment Panel, page 19.

⁵⁷ Ibid, page 19.

⁵⁸ Hartwig L., Jackson S., Smart J., Osborne N. (2023) 'Water trading by Aboriginal organisations in NSW, Australia,' *Journal of Rural Studies*, 100:102997 <<https://doi.org/10.1016/j.jrurstud.2023.03.005>>.

The study found that most sales by Aboriginal organisations were one-off sales of immediately available water⁵⁹. This was found to offer a degree of flexibility and financial independence, and supplement the LALCs income stream. However, while some LALCs expressed aspirations to use their water entitlements for a range of cultural, social and economic purposes:

Most Aboriginal organisations and communities find themselves in a situation where they are effectively 'stuck' in a cycle of temporarily selling their water allocations rather than directly using their water to build wealth or pursue other outcomes.

-Hartwig et al. (2023), page 10.

Lack of access to financial capital, physical infrastructure, suitably productive land, resources, capacity, and support were cited by study participants as limiting factors⁶⁰. The *Productivity Commission (2021)* also identified a range of these barriers, noting that “without adequate supporting arrangements, gaining access to water through markets and maximising the value of the resource can be difficult for Aboriginal and Torres Strait Islander people.⁶¹”

The *ANU et al. Roundtable Outcomes Report (2023)* also notes that resources are required to support business planning that relies on water access entitlements⁶².

The literature outlines a number of recommendations aimed at addressing the above barriers to participation in the water market by First Nations peoples and communities, including:

- Providing water allocations and licenses to First Nations peoples in perpetuity, which can be used for any purpose including economic development and trading⁶³. In undeveloped regions this could be via reserves, while in fully allocated areas such as the Basin this could be achieved via purchase of water allocations on the market⁶⁴.
- Providing a mechanism for the trading of Indigenous water rights across Indigenous communities for customary and cultural traditions⁶⁵.
- Monitoring and documenting by the MDBA and Basin State water managers of the use of Indigenous water values, knowledge and interests to better inform policy and understand the economic impact of water reforms⁶⁶.
- Providing infrastructure to move water from a river or aquifer to on-Country storage to support cultural or economic outcomes, noting that this is a controversial topic which highlights the need for high quality engagement with Traditional Owners⁶⁷.
- Building the capacity of First Nations to understand and participate in water markets and water management frameworks.

⁵⁹ Ibid, page 5.

⁶⁰ Ibid, page 10.

⁶¹ PC, above n 44, pages 22-23.

⁶² ANU et al., above n 20, page 52.

⁶³ Marsden Jacobs, above n 57, page 23.

⁶⁴ PC, above n 44, page 26.

⁶⁵ Marsden Jacobs above n 57, page 23.

⁶⁶ Ibid.

⁶⁷ PC, above n 44, page 26.

Pathways to increase water entitlements to First Nations peoples in the context of cultural flow allocations are considered in theme V. Cultural flows below.

IVb. Water market: What we heard from Basin First Nations

NB: All quotations are from de-identified workshop participants who have provided their written consent for this content to be used, as per the MDBA's ICIP policy.

For the theme of Water market, major discussion points raised throughout the workshops centered around inequity and exclusion of First Nations peoples' access to the water market.

There was frustration expressed by participants at aqua nullius and the ongoing lack of water entitlements held by Basin First Nations. It was noted that water ownership targets are currently not meeting the targets under Closing the Gap. At the heart of many comments was anger, grief and issues of sovereignty and inequity (explored also in theme II.):

- *"Why should we have to buy water?"*
- *"Space needs to be made for First Nations people to participate in the water markets"*
- *"I read about an 80 gig water license given to a farmer in Alice Springs for free."*

Aspirations from participants centered around equality of participation in the water market and access of water entitlements for any purpose. Participants noted that there also needs to be investment in capacity building and upskilling on the mechanics of water markets, as well as addressing the need for land and infrastructure to hold and transport water:

- *"We have to have access to Country to get whatever water we get to it and for that we need channels, infrastructure, pumps and delivery points."*

Expense and complexity are seen as barriers to First Nations participation in the water market, with some suggesting there should be exemptions for Traditional Owners from water market rules. Participants noted that current restrictions in NSW regarding cultural water allocations (which exclude economic uses) are discriminatory. The question of governance of Aboriginal water was also raised:

- *"Costs a fortune to be a part of the water market."*
- *"Don't want to be under the same banner and rules of the water market."*
- *"For Aboriginal owned water – who owns the water?"*
- *"Don't like water licence being allocated to individuals, need community owned licence for First Nations."*

There were questions raised regarding the intersection between the water market, cultural flows and environmental flows; along with how these systems work in practice. Some participants commented that the definitions and segmentation was confusing, with Aboriginal water being holistic in nature. In general, participants noted that the "ownership" of water is a concept which is at odds with Aboriginal conceptions of water and Country:

- *"Value of water from them (MDBA) is different to our values."*
- *"Decisions around water management short term - traditional knowledge has different scales."*

Along these lines, there was criticism of the water market, which incentivises financial profit over other outcomes. Ethical issues were raised at the suggestion that in the future First Nations people might lease their water entitlements to irrigations for profitability.

Some commented that water allocation decisions for all stakeholders should be co-designed with First Nations. Others suggested having a veto right for First Nations over major allocations of water, akin to the Right to Negotiate process under the Native Title Act 1994 (Cth) which requires Traditional Owners to give consent to large scale mining projects. Accountability and compliance in terms of over-use of water by farmers and industry was raised and is discussed further in theme I.

Table 6. Contribution of Basin Plan towards First Nations goals for water market.

The intent of what each box describes in this table is outlined in the methodology section (see [Table 2](#)).

<p><i>Was this in scope of the Basin Plan?</i> Not in Scope</p>
<p><i>What was included in the Basin Plan that contributes towards this theme?</i></p> <p>The Basin Plan talks about cultural flows (Chapter 10 Part 14 10.54) and adopts the <i>Echuca Declaration (2007)</i> definition of cultural flows (Schedule 1 para 31) which includes economic outcomes. Cultural flows are discussed in detail in the next progress table. This table discusses the water market.</p> <p>The Basin Plan at Chapter 12, provides for water trading rules within the Basin. Basin States set trading rules within their respective states. These rules need to be consistent with the Basin Plan and generally outline:</p> <ul style="list-style-type: none"> • Where trade is allowed between different locations • How trade transactions need to be conducted within the State <p>These water trading rules do not apply to water access rights that are not able to be traded under State water management law, for example, through stock and/or domestic rights.</p> <p>Water trade involves water entitlements and water allocations. Water entitlements are rights to an ongoing share of water within a system. Water allocations are the amount of water distributed to users (water entitlement holders) in a given water year. Water can be traded permanently by trading water entitlements, or temporarily, by trading water allocations. As noted above, very few First Nations organisations own water entitlements, but for those that do, the trade of those water entitlements and allocations are affected by these rules in the same way as other entitlement holders.</p> <p>The Water Act and the Basin Plan, do not refer to specific water access rights for First Nations peoples.</p>
<p><i>Assessment of progress towards the theme goals and how/if the Basin Plan contributed towards this – NOT RATED, AS THE GOALS IN THE THEME WERE NOT IN THE SCOPE OF THE BASIN PLAN.</i></p> <p>At the time that the Basin Plan was first developed, the Water Act did not require the Basin Plan to provide for First Nations water entitlements. Therefore, there were no specific requirements for Basin States to allocate water to First Nations peoples in their water resource plans.</p> <p>Basin States have different water policies in place for First Nations peoples to access cultural water, but these licences, regulations, reserves and the like, have rules that may limit the amount of water, what the water can be used for and how the water can be used by First Nations peoples.</p>

For example, some water access rights may not be tradeable, diverted or used for economic outcomes, which limits progress towards achieving First Nations outcomes.

CIR has assessed that there has been no progress made towards this goal. CIR acknowledges this is not a requirement of the Basin Plan.

At the 2024 workshops with Basin First Nations, the evidence received from workshop participants was in favour of this theme being included in the scope of the Basin Plan going forwards. It was argued that the existence of the Basin Plan and Chapter 10, Part 14 impacts the ability of Basin First Nations to access the water market and therefore brings it within scope.

Other Progress

See points already raised in previous sections on [legislation](#) and [sovereignty, ownership, and self-determination](#). Additional points include:

- \$100 million has been committed for the Murray-Darling Basin [AWEP](#)
- [Strategic Water Purchasing Framework \(Bridging the Gap\) and supporting documents: DCCEEW](#)
- There is consultation on an enduring [First Nations Water Holder](#) with \$9.2 million available to consult with First Nations peoples nationally, on the best way to hold and manage water entitlements for the benefit of all First Nations peoples.
- There is a [Draft Restoring our Rivers Framework](#) which has listed an alternative water recovery opportunity to purchase land and water holdings.

What are the barriers?

The Basin Plan does not currently provide for First Nations water entitlements. However, other barriers discussed more broadly include:

- That state borders can be a barrier to restorative justice and Traditional Owner aspirations for water as identified in the *Water is Life Roadmap (2022)*.
- That water entitlements were historically given to landowners and allocations were based on historical use. Even though the water market today operates outside of land title, it is still a barrier for First Nations peoples who may be able to access water but not land, or own land but not water.
- That First Nations peoples without a water entitlement, are unable to fully participate in the water market and exercise self-determination.
- That overallocation of water resources in some areas limits First Nations' ability to purchase water entitlements.
- That the cost of water is usually prohibitive for many First Nations people and organisations.

Va. Cultural flows

This theme relates to specific water allocations for cultural uses which are managed by First Nations peoples, termed cultural flows. Key issues as outlined in the *Review of the 2012 'A Yarn on the River'* report include:

- a. Specific cultural-flows entitlement/allocation to be managed by First Nations people.
- b. Cultural water is used for restoring natural ecosystems, cultural, spiritual and human health outcomes. Cultural flows are a means for healing and building a healthy future – restoring water quality, water quantity and species rehabilitation, which in turn establish

the desired balances between traditional and contemporary First Nations peoples' lives in the Basin.

- c. Cultural flows need to be aligned with First Nations values for natural resource governance, management, implementation and outcomes. They need to provide enough water for First Nations people to conduct their ceremonial business when it's seasonally appropriate.
- d. Assurance is needed that cultural flows are seen as the way in which Caring for Country is recognised and shared in effective governance partnerships with the mainstream, such as through an agreement with all water holders that cultural flows can and should produce environmental, economic and social benefits for First Nations communities in the Basin, in order to secure different aspects of cultural health.
- e. Understanding how environmental and cultural flows work together is unknown, however where they are delivered needs to be directed, including places of cultural significance.
- f. Cultural flows are not seen to be for economic gain – rather they should be seen to fund economic activities for the benefit of the environment, the social health of First Nations people (including employment opportunities), and the broader non-Indigenous population.

Moggridge and Thompson (2021) trace the history of the term 'cultural flows' to its introduction in the *Echuca Declaration (2007)*, where it is defined as having spiritual, cultural, environmental, social and economic dimensions.

Moggridge and Thompson (2021) note that this is a broad concept not currently provided for in the Water Act⁶⁸. As noted in the Final Report of the *Independent Panel's Review of the Sustainable Diversion Limit Water Accounting Framework (2019)*, while the Basin Plan provides some recognition of cultural flows regarding WRPs, the SDL framework does not currently explicitly report on or account for cultural flow allocations⁶⁹.

Cultural flows are broadly seen as a pathway towards better inclusion of First Nations peoples in water regulation and access, particularly when access is guaranteed for any purpose⁷⁰. Key points from the literature regarding potential outcomes and benefits of allocated cultural flows include:

- Supporting First Nations' custodial rights to care for Country and customary obligations to care for Country and water⁷¹.
- Ensuring the continuation of water-based cultural values and activities, including creation sites, teaching sites, men's and women's business, foraging, hunting and gathering of resources along water ecologies and totemic species⁷².
- Preserving and protecting cultural heritage assets including burial mounds, scarred trees and campsites which maintain connection to Country⁷³.

⁶⁸ Moggridge B. & Thompson R. (2021) 'Cultural value of water and western water management: an Australian Indigenous perspective', *Australasian Journal of Water Resources*, 25:1, 4-14, DOI: 10.1080/13241583.2021.1897926, page 6.

⁶⁹ Turner, G., Vanderbyl, T. and Kumar, S. (2019) *Final Report of the Independent Panel's Review of the Sustainable Diversion Limit Water Accounting Framework*, page 34.

⁷⁰ Sefton Review, above n 45, page 11 and PC, above n 18, page 160.

⁷¹ Moggridge and Thompson, above n 69.

⁷² Ibid.

⁷³ MDBA, above n 5.

- Acknowledging the links to the social and emotional wellbeing of First Nations communities (explored more below in theme IX. River access, traditional practices and wellbeing). Identifying measurable benefits to empowerment, identity and esteem, increasing visibility as a stakeholder, improving Nation knowledge and confidence and directly contributing to the use and protection of TEK⁷⁴ (these points are expanded on below in theme VII. Natural resource management).

The NCFRP is a First Nations-led, multi-part research project, which aims to build a knowledge base for understanding and achieving cultural flow allocations in Australia. Importantly, the project adopts the definition of cultural flows espoused in the *Echuca Declaration (2007)*, which includes water allocations for economic development.

The NCFRP has developed a methodology for determining cultural flow allocations in hydrological and hydraulic terms, through co-design and partnership with several First Nations communities and partner organisations.

In the *NCFRP Final Report (2018)*, consideration is given to how existing policy and legal structures in Australia could increase water entitlements held and managed by First Nations organisations, including through⁷⁵:

- Legal tools and concepts from water legislation and associated statutory schemes (e.g., water authorities and institutions).
- Common law water and property doctrines.
- Laws that govern Indigenous peoples' relationships with land and waters.

Moggridge and Thompson (2021) discuss the range of issues related to realising cultural flows, including⁷⁶:

- Overallocation of the water market in most areas, requiring Government buy back or compulsory acquisition (as is the case in the Basin).
- Governance and operationalising of cultural flows. For example, identifying who would manage the interaction between statutory land rights and native title groups.
- Establishment would need to be based on benchmarks set by international instruments including Free, Prior and Informed Consent, co-design and execution with First Nation peoples. This would require access to technical and scientific support and capacity building.

The Water is Life Roadmap (2022) provides a Victorian framework to support First Nations water rights for cultural and economic activities through 12 targeted outcomes. These include a range of mechanisms to increase cultural flows and reduce barriers to water ownership⁷⁷. As outlined in outcomes 7-11, these include:

- Identifying opportunities to return water to Traditional Owners including via water entitlements, through issuing unallocated water and developing future opportunities. This includes funding to assist Traditional Owners to submit applications for water entitlements.

⁷⁴ National Cultural Flows Research Project, *Cultural Flows Field Studies Final Report* (2017), page 47.

⁷⁵ NCFRP, above n 14, page 9.

⁷⁶ Moggridge and Thompson, above n 69, page 9.

⁷⁷ DELWP, above n 37.

- Removing the requirement to own land as a barrier to water entitlement access for Traditional Owners.
- Funding of fees and charges associated with water entitlements unless the use is purely commercial.

The Water is Life Roadmap (2022) operates within the context of broader Victorian initiatives towards Aboriginal water ownership, including⁷⁸:

- The creation of the Aboriginal Water Program, which allocates \$18 million for Traditional Owner water projects across 2020-2024.
- Funding for 17 Aboriginal Water Officers to support Aboriginal values and uses of water across the State.

The Commonwealth Government's AWEPP originally announced funding of \$40 million for the purchase of cultural and economic water entitlements to support First Nations' goals in the Basin. However, the *Productivity Commission (2023)* notes that since the commencement of the program in 2018, there has been little progress and no actual purchases of water have been made. However, since mid-2023 the Commonwealth has bolstered their commitment to the AWEPP through increasing the total funding to \$100 million and commencing a co-design process with First Nations peoples to consider governance and investment options.

The use of cultural flows for any purpose including economic activities is an issue raised throughout the literature and explored further below in theme X. Economic.

Vb. Cultural flows: What we heard from Basin First Nations

NB: All quotations are from de-identified workshop participants who have provided their written consent for this content to be used, as per the MDBA's ICIP policy.

Discussions on cultural flows overlap with topics raised in other parts of this report, especially themes III., IV., VI. and IX.

Participants expressed frustration at the lack of progress on implementing cultural flows, given the decades of advocacy and work to date on this issue. Examples provided of important work in this space driven by Basin First Nations included MLRDIN's Echuca Declaration and the National Cultural Flows Research Project. Progress was not seen to have been made given the lack of cultural flow allocations held and used by Basin First Nations, emphasising the importance of tangible outcomes on the ground:

- "You can change policies and procedures but at the end of the day if we don't have access it doesn't change it."
- "Been talking about it for years. Not much results from all the talking."
- "Cultural flows are the lowest priority and the issue of delivery of cultural flows isn't up to us."

⁷⁸ Ibid, page 8.

Participants also expressed frustration at having to apply for cultural flows through the western regulatory system, which fails to recognise the sovereignty of First Nations peoples over lands and waters (explored further in themes II. and IV.):

- *“Being told what we can have, when we can have it – there’s no authority to use water for what we want, we’re still being told what to do.”*
- *“Still being denied, you can have a little bit but you can only use it this way, we’re still abiding by their rules.”*

A potential solution raised was for simplified application processes for First Nations to access cultural flows:

Simplify the allocation as a need – if each mob says I want a cultural flow or environmental flow at each time, we shouldn’t have to justify why we need either for, we shouldn’t have to justify why, the application process is taking away sovereignty, it’s getting us to grasp at straws – mob knows what they need that water for, be it birds, burial sites etc. We don’t need to justify why we need that.

- De-identified First Nations participant, MDBA LBMF workshop, 2024.

There was also confusion around the definition of cultural flows, with some participants not agreeing with the wording or concept. It was highlighted that the definition of cultural flows has never been formally endorsed by all Basin First Nations: *“Get the definition of cultural flows and get everyone to sit down and discuss it, endorse it or not. Ask, what do you think? Do you agree? Redefine it. We need to think about these things.”*

There were also questions raised regarding the difference between environmental and cultural flows, with many noting that often there is no difference for First Nations peoples:

- *“If ladies are sitting by the river weaving baskets – is that environmental or cultural flows?”*

Participants also said they wanted to understand cultural flows better, including having more information and upskilling to build Basin literacy. Some asked the MDBA to come and present at Board meetings of local Basin First Nations representative organisations.

Other points raised with regard to cultural flows included:

- Equality of access to cultural flows by all Basin First Nations.
- The link between cultural flows and social and emotional wellbeing (also referred to in theme IX.): *“We know water is worth more than gold. The health and wellbeing of our mob is the value.”*
- Discussions around cultural flows are often missing references to the animals that rely on flowing water and their relationship to water.
- Cultural flow mapping and reporting need to have stronger ICIP processes and protections.
- Water provided through cultural flows needs to be of good health/quality (linked to theme VIII.)

Participants strongly viewed economic benefits as an essential part of cultural flows. The link between cultural flows and cultural economies was highlighted, with participants noting their

aspirations around supporting on Country businesses, partnerships and employment: “*Cultural flows support cultural economies, this link is very important.*” This is discussed further in theme VII.

Table 7. Contribution of Basin Plan towards First Nations goals for cultural flows.

The intent of what each box describes in this table is outlined in the methodology section (see [Table 2](#)).

<p><i>Was this in scope of the Basin Plan?</i> In Scope</p>
<p><i>What was included in the Basin Plan that contributes towards this theme?</i></p> <p>The Basin Plan states “A water resource plan must be prepared having regard to the views of Indigenous people with respect to cultural flows.” (Chapter 10 Part 14).</p> <p>Schedule 1 (para 31) of the Basin Plan includes the definition of cultural flows from the <i>Echuca Declaration (2007)</i> as “Water entitlements that are legally and beneficially owned by the Indigenous Nations and are of sufficient and adequate quantity to improve the spiritual, cultural, environmental, social, and economic conditions of those Indigenous Nations. This is our inherent right”.</p>
<p><i>Assessment of progress towards the theme goals and how/if the Basin Plan contributed towards this – LIMITED PROGRESS MADE</i></p> <p>The Water Act and the Basin Plan do not go so far as to require Basin States to allocate or report on water for cultural flows, and cultural flows are not considered in the sustainable diversion limit. However, as above, the Basin Plan does require water resource plans to have regard to cultural flows (section 10.54).</p> <p>MDBA was a partner to the NCFRP which developed a detailed methodology for quantifying cultural flows with a legal and policy analysis of how they can be achieved.</p> <p>Building on the NCFRP, the MDBA engaged with MLDRIN and NBAN to commence the development of cultural flow plans. Some Basin States have water policies in place for First Nations peoples to access cultural water, although there are rules in place that limit the use of this water. For example, the NSW Aboriginal cultural access license is non-tradeable and is limited to 10 ML/year.</p> <p>The Victorian <i>Water is Life Roadmap (2022)</i> provides a framework to support First Nations water rights for cultural and economic activities through 12 targeted outcomes that include a range of mechanisms to increase cultural flows and reduce barriers to water ownership.</p> <p>In 2023, the NSW Aboriginal Water Program ran a pilot program with 6 First Nations community groups across the State to develop Cultural Watering Plans. The plans will address the significance of cultural water, explore options for water access and ownership and establish monitoring mechanisms.</p> <p>CIR acknowledges there is limited progress made, recognising the that the Basin Plan does not require an allocation of water for cultural flows. At the 2024 workshops with Basin First Nations, the evidence received from workshop participants supported the progress rating being downgraded to ‘<i>Limited progress</i>’. This highlights the strong sentiment heard through the workshops that First Nations communities want evidence of tangible outcomes on the ground.</p>

Other Progress

See points already raised in previous sections on [legislation](#); [sovereignty, ownership, and self-determination](#); and [water market](#), which mentions the AWEP and consultation on an enduring First Nations Water Holder. Additional points about cultural flows include:

- Following recent changes to the Water Act (section 50 (4A)) in reviewing the Basin Plan, the MDBA must now consider the following matters and report on them: (a) matters relevant to Indigenous people in relation to the management of Basin water resources including, but not limited to, the extent to which Basin water resources could be managed so as to improve the spiritual, environmental, cultural, social and economic conditions of Indigenous people.
- In late 2023, an additional \$20 million was committed for First Nations peoples to develop cultural flows plans across the Murray-Darling Basin.

What are the barriers?

The SDL framework within the Basin Plan does not require cultural flows to be allocated or reported on.

Overallocation of the water market in most areas is a barrier to establishing cultural flows.

There is inconsistency between jurisdictions about whether cultural flows include water for economic uses.

Where states have allocated water for cultural purposes, there may not be ownership or self-determination on the use of the water.

Vla. Water management (water for the environment)

The *Review of the 2012 'A Yarn on the River'* report's water management theme chiefly concerns water for the environment and Country, including the following issues and goals:⁷⁹:

- a. 'Please give water back to Country' is a recurring message along with repeated voices of alarm regarding the loss of natural flows and the impacts of over extraction. More than 20% of the submissions in the ASD discuss the issue of flows.
- b. A viable balance between environmental, social and economic needs in the context of climate change is necessary – current management regimes were not seen to be delivering at the expense of both the environment and First Nations people (culture and wellbeing) throughout the Basin. In particular, this was often attributed to over-allocation of water licences, floodplain harvesting, mismanagement and waste such as over extraction by the irrigation industry, and water management technologies such as pumping.
- c. The current balance of water for the environment and water for irrigation is bad for Country, although acknowledged by some that it is food for the broader economy. More water for the environment and less for irrigation would be good for Country (providing

⁷⁹ MDBA, above n 2, page 12.

First Nations environmental, cultural, social and economic benefits), and some thought this would be good for the economy too.

- d. The quality and flow of water that reaches the mouth of the Basin system is unable to keep waterways alive, and large quantities of water are going to agricultural production. The Coorong is dying and introduced water infrastructure to improve the quality of the water is not trusted.
- e. Clarification sought on the intent to restore environments subject to past and ongoing destruction, such as degradation of wetlands and infrastructure interfering with natural flows.
- f. For some, the Basin Plan's intention of retaining or returning water to the environment provokes a hope to restore natural flows (resolving problems such as siltation); for others, a better balance to serve biodiversity, culture, water quality and social amenities in particular, is hoped for.
- g. The loss of landscape such as the loss of creeks, springs, waterholes and beaches as a result of the regulated water system.
- h. Storing water in natural reserves such as lagoons is a way of managing drought and supporting biodiversity through difficult times.
- i. Inter-jurisdictional and State/Commonwealth problems with water management continue to make water quality and quantity issues unresolved. There is strong cultural knowledge to reduce these problems and environmental flows are seen to also produce strong ecological results.

The literature broadly reiterates the key issues under this theme, namely, the centrality of water for Country as a core aspiration for First Nations peoples. For example, advice from WRP consultation reports regarding key themes and inputs from various Basin First Nations, list “water is life,” and “healthy Country and people” as consistent themes, where available⁸⁰. Many of the Victoria's *Water is Life Roadmap* (2022) Part B Nation Statements are in Basin areas and articulate goals for their Nations which involve reversing damage to Country, restoring major ecosystems such as forests and wetlands, and restoring culturally and ecologically important species such as the platypus⁸¹.

There is a clear link between healthy Country and the cultural, social and economic activities that it supports. For example, the Dharriwaa Elders Group (DEG) describes the centrality of the river to First Nations peoples in Walgett, noting that a healthy river provides water, food and healing for people and the ecosystems it supports⁸².

For Basin areas, outcomes that support the health of Country and its people are dependent on water allocations that support meaningful environmental outcomes⁸³. It is common knowledge that the Basin Plan has failed to meet its environmental water recovery targets⁸⁴. The poor state of the environment in many Basin communities is seen as an indicator that the Basin Plan is not achieving its goals. NSWALC emphasises in its submission to the *Productivity Commission* (2023) that

⁸⁰ NSW Department of Planning and Environment, Basin Plan Implementation, *Macquarie-Castlereagh Surface Water Resource Plan Consultation Report*, Schedule C, page 12.

⁸¹ DEWLP, above n 33, Part B, see for example Bangerang Statement.

⁸² DEG, above n 48, page 3.

⁸³ Ibid. See also MDBA and NBAN, *Our Water, our life: An Aboriginal study in the northern basin* (2016), page 11.

⁸⁴ O'Donnell, above n 31, page 619.

“environmental flows and associated regulations, policies, frameworks and mechanisms must be capable of achieving targeted environmental gains across the Basin⁸⁵.”

In terms of environmental outcomes, the MDBA (2020) found that the Basin Plan is having a significant and positive impact on the Basin environment. Indicators provided include⁸⁶:

- Protection of flow regimes in many areas in the southern Basin which has resulted in positive ecological responses from having water in the environment.
- Identified environmental gains in regulated rivers in the northern Basin, mitigating the impact of drought in some areas.
- Delivery of water to the environment in the Coorong, Lower Lakes and Murray Mouth ecosystem during the drought, mitigating environmental degradation when compared to the Millenium drought.

However, the MDBA (2020) also notes that long term outcomes are unlikely without further implementation and actions being fast-tracked⁸⁷. Several challenges with regard to achieving environmental gains are noted, including the need for whole-of-system management to mitigate events such as fish kills, and improved approaches to managing water quality and salinity⁸⁸.

Several sources (particularly several First Nations submissions to the *Productivity Commission (2023)*⁸⁹ indicate an erosion of trust between First Nations communities and Basin States, due to the poor implementation of the Basin Plan and the failure to deliver on environmental outcomes through environmental flow management. For example, the *Sefton Review (2020)* found that many people in Basin communities have diminished trust in Federal and State Governments to deliver good long-term policy and there is a frustration over a perceived lack of action in response to previous independent reviews: “over-consulted and under-listened to⁹⁰.”

Other common issues leading to the erosion of trust in regulatory institutions include the perceived lack of action over water theft and floodplain harvesting in the northern Basin⁹¹, the power of industry over Government decision-making⁹² and scepticism of the efficacy of water efficiency infrastructure projects to deliver environmental water⁹³.

⁸⁵ NSWALC, above n 19, page 11.

⁸⁶ MDBA, above n 15, page xiii.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ MLDRIN, above n 10, page 14.

⁹⁰ Sefton Review, above n 45, page 6.

⁹¹ NSWALC, above n 19, and DEG above n 48.

⁹² DEG, above n 48, and ANU et al., above n 20.

⁹³ NSWALC, above n 19.

Environmental vs cultural flows

Several sources discuss the relationship between environmental and cultural flows. The MDBA (2022) in their *First Nations participation in water for the environment* reports, outline the ways in which water for the environment can support cultural practices when undertaken with active involvement with First Nations peoples⁹⁴.

However, Moggridge and Thompson (2021) note the importance of differentiating between environmental and cultural flows:

There has been a misconception that the needs for cultural water may be met through the existing means of allocating water to the environment. The environmental flow concept in many jurisdictions is deemed to satisfy all environmental (ecological) values, including Indigenous cultural values. Weir (2007) identified clear differences between environmental flows and cultural values, as environmental flows do not recognise different jurisdictions and language groups. Indigenous water flows are about the relationship between the traditional owners and their country.

The environmental flow does not know those relationships. Regardless of land tenure, many Indigenous Nations want to be involved in protecting Country through environmental flow management, as it is their custodial responsibility to do so.

- Moggridge and Thompson (2021), page 8.

Research through the NCFRP project and as summarised in the *Cultural Flows Field Studies Final Report (2017)*, there are important differences in outcomes from environmental and cultural flows, noting that ownership and control was a significant factor resulting in measurable benefits for cultural flow entitlements when compared to environmental flows⁹⁵. In that research study, the benefits measured included empowerment, identity and esteem related to fulfilling cultural obligations and increased visibility and recognition as a stakeholder in water management. These benefits were shown to have flow-on benefits for governance, planning and leadership.

However, the NCFRP *Cultural Flows Field Studies Final Report (2017)* highlights the potential synergies between cultural and environmental flow outcomes, which can be made clear through identifying flow objectives. Ultimately, based on the research in two key case study areas, it was concluded that only cultural flows achieved both cultural and environmental outcomes⁹⁶.

In terms of defining the quantities of water required to meet intertwined cultural and environmental outcomes, the terms “baseline flows” or “natural flows” appear throughout the literature. On this issue, the NCFRP *Literature Review (2014)*, notes that quantifying cultural flows requires direct involvement of First Nations⁹⁷.

⁹⁴ MDBA, *First Nations participation in water for the environment 2021-2022*, Canberra, page 21.

⁹⁵ NCFRP, above n 75, page 47.

⁹⁶ Ibid, page 48.

⁹⁷ NCFRP, *Literature Review (2014)*, page vi.

Improvements in First Nations participation in environmental watering

In 2018, the Commonwealth Government issued the *Water (Indigenous Values and Uses) Direction 2018* pursuant to s175 of the Water Act, requiring the MDBA to report on how holders of environmental water have considered First Nations values and uses and involved First Nations peoples. Since 2018, there have been four published reports which demonstrate a general trend towards increased participation in environmental watering by First Nations peoples, including the following outcomes from the 2021-2022 report:

- The establishment of the *First Nations Environmental Water Guidance Project*, which seeks to integrate the guidance provided by First Nations peoples through independent, culturally authoritative and strategic input from First Nations⁹⁸.
- Resources to support the inclusion of First Nations knowledge and input to the review of nine existing long-term watering plans.
- A range of State-specific outcomes regarding improved research, engagement and co-design of outcome delivery for WRPs⁹⁹.
- First Nations representation as members of the Northern Basin Environmental Watering Group¹⁰⁰.
- Expanded participation of MLDRIN as active members of the Southern Connected Basin Environmental Watering Committee.
- The MDBA's *Living Murray Indigenous Partnerships Program*, which funds management, monitoring and First Nations engagement at key sites along the Murray River.

There is widespread support throughout the literature for increasing the quality and rate of participation by First Nations environmental water management and water releases. Notably, this is through increased partnerships, co-design and co-management of projects to deliver both environmental and cultural outcomes. The literature highlights that there are opportunities for synergies between environmental and cultural flows, however there is a need to better integrate participation by First Nations peoples and TEK in environmental watering programs¹⁰¹.

The *Productivity Commission (2023)* notes that involvement of First Nations peoples in environmental watering is an area which has seen some important developments in recent years, including¹⁰²:

- The 2019-2020 *First Nations Environmental Water Guidance project*, which seeks to better integrate First Nations outcomes directly into Basin Plan water management by synthesising the environmental watering priorities of 16 southern Basin Nations. This project originated in discussions between First Nations representative organisations MLDRIN and NBAN and was co-funded by the Commonwealth Environmental Water Office (CEWO).
- The *First Nations Environmental Watering Statement 2021-22* coordinated by the CEWO, which sets out southern Basin Traditional Owners' preferred outcomes from environmental

⁹⁸ MDBA, above n 15, page 10.

⁹⁹ Ibid, page 12.

¹⁰⁰ Ibid, page 13.

¹⁰¹ ANU et al., above n 11, page 6.

¹⁰² PC, above n 18, page 148.

water management and First Nations peoples' views on the legal, policy and governance settings affecting water management in the southern Basin.

- The *First Nations Environmental Water Partnership Pilot Program*, which saw \$3.5 million of funding given to the Commonwealth Environmental Water Holder to establish the program, which seeks to embed First Nations peoples' knowledge and science into the future science program, to ensure environmental watering is underpinned by the best available knowledge.

Partnerships, co-design and co-management of water delivery projects are considered further below in theme VII. Natural resource management.

The *Water is Life Roadmap (2022)* provides mechanisms to support the inclusion of First Nations environmental water management, including through supporting the development of multi-year agreements between waterway managers and Traditional Owner groups to transfers of environmental water allocations¹⁰³, see (Figure 5) below.

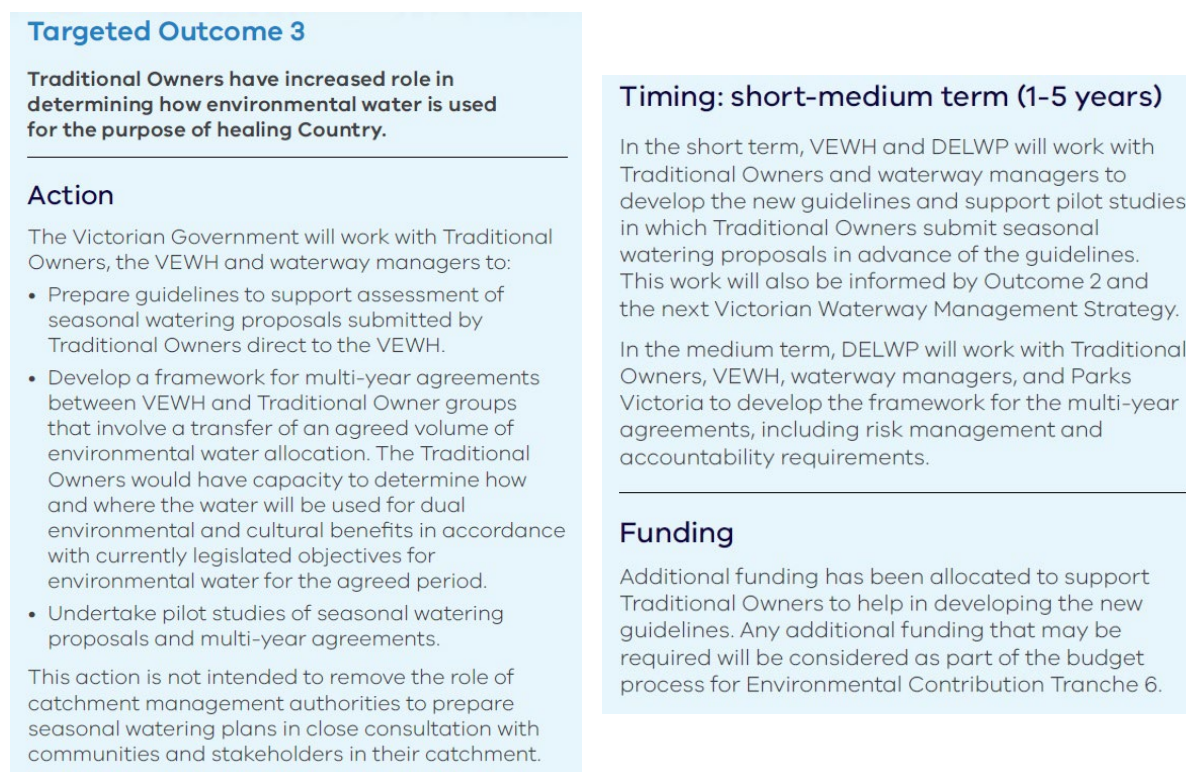


Figure 5. Excerpt from *Water is Life Roadmap*, page 33.

However, noting the growth in Basin First Nations' involvement in environmental water management since 2012, MLDRIN (2023) has noted that the Basin Plan should be updated to reflect the growing participation of Basin First Nations in environmental water management¹⁰⁴.

¹⁰³ DEWLP, above n 33, page 33.

¹⁰⁴ MLDRIN, above n 11, page 19.

Vlb. Water management (water for the environment): What we heard from Basin First Nations

NB: All quotations are from de-identified workshop participants who have provided their written consent for this content to be used, as per the MDBA's ICIP policy.

Participants expressed grief at the degradation of Country, which is intrinsically tied to its waterways, rivers, lagoons, creeks and wetlands: *"the rivers are dying – our people are dying."* The key aspirations expressed by participants revolve around healthy Country and people: *"Key words - 'Alive and Healthy'."* Participants spoke about the link between environment and culture, and the importance of having a healthy environment that supports life on Country including plant and animal species used for food and medicine (linked to issues explored in theme IX.)

Participants were critical of the Basin Plan's ability to lead to positive environmental outcomes, noting concern over:

- The lack of consideration of climate change and loss of biodiversity
- The SDL mechanism not taking into account *"tipping points or feedback loops"*

It was recommended that the Basin Plan adopt a framework in line with the Federal Government's recently released Nature Positive Strategy.

Water overuse (overallocation), farming and development projects along with the installation of weirs and dams that have permanently changed the flow of water over Country were all cited as contributing factors. Participants spoke to the way that altering natural flows with badly designed infrastructure has had flow-on effects on fish and other creatures that are not able to travel freely across waterways (such as the yellow belly/golden perch, which can travel 10,000kms along a river). There were comments advocating for the removal of weirs and dams to allow the return of natural flows and healing of Country.

Participants noted that Basin First Nations want a higher standard of involvement in the implementation of environmental flows (such as co-design), given the detailed traditional knowledge held by communities which could improve outcomes from environmental flows. The importance of strong ICIP protocols was raised, with participants concerned about the terms of use of their traditional knowledge in the environmental flow space. Access after environmental flows occur was also raised (the issue of access is explored further in theme IX.).

- *"Aboriginal people having a say on how much environmental water is needed."*
- *"Releases from the dams are never consulted with mob. They are only listening to the irrigators. There is no consideration of First Nations views."*
- *"Land/water management of the past was detrimental, but First Nations can help with that now. The 60+ First Nations of the MDB extend an invitation to all to work with them on this in collaboration."*
- *"Provide access for mob after environmental watering has happened on floodplain, not just access for university students."*
- *"You are not getting our knowledge. It will be used by us on our terms."*

However, some participants reflected on the amount of work and progress in the environmental watering space to date, particularly the work of NBAN in driving the First Nations partnership program and the work of other Basin First Nations on the Culliwatta Environmental Watering Strategy. This work was seen as reflective of the years of advocacy and hard work by Basin First Nations in progressing their water rights.

Participants urged that better management of environmental flows in partnership with Basin First Nations will stop the destruction of cultural heritage and lead to better environmental outcomes, particularly for traditionally important species. It was pointed out that there is no distinction for Basin First Nations between environmental flows and traditional knowledge and practice. Participants cited many instances of their lived experience of environmental flows being managed badly, which led to damage to native species and cultural heritage: *“Environmental flows are damaging cultural heritage sites e.g. scar trees, burial sites, middens – the up and down water levels.”*

I called years ago asking [the MDBA] can you let us get involved with the release of water? Need to slow water down because you are destroying the riverbanks. Destroying the fish eggs and cultural heritage.

- De-identified First Nations participant, MDBA LBMF workshop, 2024.

Needs to be consistency of water allocation across the States. With the releases (and the strength of flows) the best grinding stone ever seen was found. But now many of them [grinding stones, middens] have been washed down the river or into the sea.

- De-identified First Nations participant, MDBA LBMF workshop, 2024.

On the other hand, the intersection between environmental flows and TEK could provide opportunities for partnerships and co-design with Basin First Nations (explored further in theme VII). There were a range of comments about the intersection between environmental management and natural resource management issues (theme VII). These included comments regarding:

- The need for holistic management across siloed legislative frameworks, i.e. water and environmental laws, riverways and riparian zones etc.
- Improving catchment management frameworks.
- The need to include groundwater in any consideration of environmental water.
- Carp as a significant problem in a number of local waterways.
- The need for long term commitment and funding cycles for programs.
- The environment is not seen as a priority for the Government, with the need to manage competing interests such as fishing, hunting and industry.

Table 8. Contribution of Basin Plan towards First Nations goals for water management (water for the environment).

The intent of what each box describes in this table is outlined in the methodology section (see [Table 2](#)).

<p><i>Was this in scope of the Basin Plan? In Scope</i></p>
<p><i>What was included in the Basin Plan that contributes towards this theme?</i></p> <p>The MDBA must have regard to Indigenous values and uses during the preparation and review of the Basin-wide environmental watering strategy (section 8.15) and preparation of annual environmental watering priorities (section 8.29).</p> <p>That environmental watering is undertaken in a way that maximises its benefits and effectiveness by having regard to Indigenous values and social and economic outcomes (section 8.35).</p>
<p><i>Assessment of progress towards the theme goals and how/if the Basin Plan contributed towards this – SOME PROGRESS MADE</i></p> <p>There has been continued improved engagement with First Nations peoples on the development of annual environmental watering priorities in collaboration with Basin States and the Commonwealth Environmental Water Holder.</p> <p>It is recognised that collaboration with First Nations peoples on the Basin wide environmental watering strategy needs to be improved.</p> <p>In 2017, in partnership with Wailwan and Barapa Barapa Nations, two case studies highlighting outcomes for First Nations peoples through environmental watering at Macquarie Marshes and Gunbower, were developed</p> <p>In 2018, MDBA was instructed to annually report on how First Nations peoples and communities were being considered in the planning and delivery of water for the environment in the Murray-Darling Basin with four reports published to date.</p> <p>In 2019–20 the First Nations Environmental Water Guidance Project was initiated. Through this project, NBAN and MLDRIN worked with First Nations peoples to develop environmental watering objectives that describe tangible benefits experienced by First Nations peoples from the delivery of environmental water on Country. This project built on the existing opportunities available to First Nations peoples at the state level, to participate in decisions on water for the environment in their regions.</p> <p>The CEWH has an Approach to partnering with First Nations in the planning, delivery, and monitoring of water for the environment. A few examples of this approach include First Nations input into planning, the Toogimbie Indigenous Protected Area, and Teringie Wetlands.</p> <p>The CEWH science program Flow-MER is due to finish in 2024 with Flow-MER2.0 striving to embed First Nations knowledges and science into the future program.</p> <p>At the 2024 workshops with Basin First Nations, the evidence received from workshop participants supported the progress rating being downgraded to “Some progress.” The downgrading of this rating reflects that lived experience of outcomes on the ground by Basin First Nations is extremely varied due to the ad hoc nature of environmental flows partnerships and initiatives, and that progress has not been experienced across the board by Basin First Nations. It</p>

also reflects the urgency for meaningful action to heal Country in partnership with First Nations which was heard at the workshops.

Other Progress

Amendments to the Water Act through the *Water Amendment (Restoring our Rivers) Act 2023* included:

- That the Authority must annually prepare information on how holders of environmental water have, when planning environmental watering, considered Indigenous values and uses, and involved Indigenous people (section 85E).

The Victorian *Water is Life Roadmap (2022)* Targeted Outcome 3, supports the development of multi-year agreements between waterway managers and Traditional Owner groups to transfer environmental water allocations that can be used for dual environmental/cultural outcomes.

[First Nations Partnerships - Project Coorong](#) supports environmental outcomes for the Coorong to ensure that cultural knowledge is appropriately included in strategies, policies and plans to improve the restoration of the Coorong and surrounding lands and waters.

What are the barriers?

The Basin Plan's [environmental water recovery targets are yet to be fully realised](#).

Basin First Nations have also advocated for a higher level of involvement in all environmental watering processes (such as co-design and partnership), to help integrate TEK into environmental watering processes for better ecological and cultural outcomes. Basin First Nations have pointed to poorly managed environmental watering leading to destruction of cultural heritage and native species.

It's noted that while there are improvements, there needs to be equity throughout the basin and that First Nations peoples are represented on and participate in governance structures relating to environmental water management, planning and delivery on their Country.

VIIa. Natural resource management

This theme includes issues and goals related to the importance of integrating First Nations worldviews, methodologies and TEK into natural resource management (**NRM**) strategies, including water management. Key issues outlined in the *Review of the 2012 'A Yarn on the River'* report include¹⁰⁵:

- a. Repeatedly throughout the Aboriginal Submissions Database the statement is made that Aboriginal knowledge is distinctive from non-Aboriginal knowledge, by being holistic and intergenerational, and that science cannot separate water from land, or land from people if it is to have value to the future wellbeing of communities.
- b. Incorporate First Nations science, values, worldviews and approaches to Caring for Country in the management and implementation of NRM strategies and integrate water with land management.
- c. Combining cultural knowledge, traditional values and intellectual property about a preferred way of using water-dependent resources ensures Traditional Owners are included in decisions with authorities regarding cultural flows and managing natural resources.
- d. Participation in NRM opportunities contributes to keeping water quality and quantity heading towards being drinkable for future generations.
- e. While there are increased opportunities for First Nations people to participate and be included in NRM governance and deliveries, they are still finding it hard to be heard and struggle with the capacity to participate with so many competing pressures. First Nations people want meaningful, active involvement in NRM and the operation of the rivers.
- f. Use of country that could be understood to be in line with Caring for Country made up the bulk of thinking about future commercial uses of land. Ideas included:
 - establishing and maintaining natural reserves
 - providing labor for feral animal management and eradication programs (e.g., water lettuce, carp)
 - the use of feral plant and animal material for fertiliser production
 - developing and maintaining wildlife corridors
 - sand mining to reduce siltation of rivers.
 - riparian zone rehabilitation and management
 - removing rubbish from waterways to improve public safety for their use.

The literature discusses the growing need, as well as the challenges, to incorporating First Nations land/water management approaches and knowledges into western scientific paradigms, including water management. The *ANU et al. Roundtable Background Paper (2023)* notes that water policy, planning and management regimes in Australia are “both technically complex and politically challenging,¹⁰⁶” being based on science, economics and engineering, which makes it difficult to incorporate First Nations’ knowledge and values¹⁰⁷.

The literature discusses the following issues:

¹⁰⁵ MDBA, above n 2, page 13.

¹⁰⁶ ANU et al., above n 11, page 6.

¹⁰⁷ Ibid.

- Water sector language is highly technical and can alienate First Nations' knowledge and values¹⁰⁸. It has been suggested that agreed resources to improve accessibility of language around water management for Indigenous and non-Indigenous people are urgently needed¹⁰⁹.
- First Nations' values in relation to water are poorly understood and overlooked, making it difficult for policy makers to quantify volumes or articulate in allocation decisions, and relate explicitly to a particular flow regime¹¹⁰.
- The need to recognise multiple worldviews on water. Indigenous water science emphasises diversity and pluralistic ways of knowing, open to much longer histories of water management than western hydrological datasets¹¹¹.

Potential pathways towards better integrating TEK approaches in water management are not siloed. They are interlinked with various other issues discussed throughout this report, including goals involving self-determination, engagement, water ownership and cultural flows. The research broadly discusses this as a need to move towards a new water paradigm, such as the *Cultural Water Paradigm* illustrated in theme I. Legislation above¹¹². Changing the foundations of water management in Australia is complex and multi-faceted, involving:

...tackling water injustice in research programs and priorities, building long-term research partnerships with Indigenous communities, and broadening the criteria for who counts as a water scientist to address the roadblocks faced by Indigenous scientists and practitioners in water management.

- O'Donnell et al. (2023), page 621.

Similarly, the ANU et al. *Roundtable Outcomes Report (2023)* notes:

Indigenous knowledge is often framed as a 'tool' used to achieve ecological sustainability however there are few examples of Indigenous knowledge modelling policy. We need to formulate how western and Indigenous ways of understanding can come together; it requires a systems' change at national and multidisciplinary levels.

-ANU et al. *Roundtable Outcomes Report (2023)*, page 17.

Partnerships, co-design and co-management

The Review of the 2012 'A Yarn on the River' report points d)-f) above, refer to issues and goals regarding partnerships, co-design and co-management. Partnerships, co-design and co-management projects/approaches to support holistic water management are seen as vital to addressing multiple goals of First Nations peoples, including incorporating TEK into water management, achieving targeted cultural and environmental outcomes and providing economic development opportunities for First Nations peoples. The literature contains numerous examples of developments and partnership approaches, many of which are working well, particularly in the Basin area. These include:

- The Nari Nari Tribal Council partnership with the CEWH, which has brought together cultural objectives, Indigenous science, Western environmental science, community partnerships,

¹⁰⁸ Ibid, page 5.

¹⁰⁹ Moggridge and Thompson, above n 69, page 7.

¹¹⁰ Ibid.

¹¹¹ O'Donnell et al, above n 31.

¹¹² See for example, O'Donnell above n 31, DEWLP above n 33 and ANU et al. above n 11.

conversation skills and sustainable agriculture to deliver a holistic Country-based framework that recreates floodplain functions through environmental watering in the Lowbidgee Floodplain¹¹³.

- The *Murray-Darling Basin Indigenous River Rangers Program*, the *First Nations Environmental Water Guidance Project* and partnership programs through Catchment Management Authorities, which draw on First Nations TEK of river systems to design and implement water management initiatives¹¹⁴. The DEG River Rangers have been upskilled through partnerships to undertake daily observations including monitoring water quality in the Walgett area¹¹⁵.
- The Victorian Government's commitment to set aside 1.36 gigalitres of water savings for Traditional Owners in northern Victoria, and to work closely with that community to determine long-term management arrangements for its use¹¹⁶.
- Funding to increase First Nations water rangers, such as the *Murray-Darling Communities Investment Package* by the Commonwealth Government and Victoria's *Water for Victoria Program*¹¹⁷.
- The Queensland Government's \$11.7 million funding over 3 years, to support stronger and more meaningful engagement with First Nations communities and more culturally inclusive water planning, including the co-design of a First Nations Water Strategy¹¹⁸.
- The Snowy Water Initiative's attempt to improve cultural linkages to water through improving the recognition, representation and responsibility of First Nations values, knowledge and approaches in environmental water releases¹¹⁹.

Some key issues noted throughout the literature regarding NRM partnerships include:

- While increased partnership initiatives between Basin governments and First Nations are encouraging, they do not automatically lead to improved outcomes¹²⁰.
- The numerous initiatives across different legislation and policies can lead to approaches being ad hoc - a coordinated approach should be considered¹²¹.
- Natural resource managers should be required to develop long-term relationships with Traditional Owners based on high quality, direct engagement. This would facilitate collaborative working in on-ground management programs to promote cultural outcomes¹²².
- The potential opportunity to increase joint management programs with existing governance structures such as the NSW land council network¹²³.
- The need for capacity building for both First Nations' organisations and water managers to better communicate.

¹¹³ O'Donnell et al, above n 31, page 621.

¹¹⁴ PC, above n 18, page 162.

¹¹⁵ Ibid.

¹¹⁶ Ibid, page 152.

¹¹⁷ PC, above n 44, page 20.

¹¹⁸ Queensland Department of Regional Development, Manufacturing and Water, First Nations water strategy (2023), Queensland, accessed 22 January 2024, <https://www.rdmw.qld.gov.au/water/consultations-initiatives/first-nations-water-strategy>.

¹¹⁹ Connolly, D., Williams, A., and Williams, S. (2017). 'Recognition of the cultural significance of water to the Wolgalu Aboriginal nation in the upper Murrumbidgee River catchment'. Snowy Flow Response Modelling and Modelling program, NSW DPI Water, Sydney.

¹²⁰ PC, above n 18, page 163.

¹²¹ PC, above n 44, page 20.

¹²² Ibid.

¹²³ NSWALC, above n 19.

- The need for capacity building via partnerships to address holistic catchment monitoring and management outcomes¹²⁴.
- The need for ongoing funding for First Nations' organisations to be upskilled, undertake mapping of cultural water-dependent assets in their areas and obtain water allocations to meet meaningful outcomes.
- In order to better understand the cultural and economic benefits of improving First Nations access to water, First Nations groups should be funded to work with experts in valuing ecosystem services provided by culturally significant sites such as RAMSAR sites in the Basin¹²⁵.
- The tension between governance arrangements for water projects such as native title bodies or Traditional Owners versus land rights bodies¹²⁶.

VIIb. Natural resource management: What we heard from Basin First Nations

NB: All quotations are from de-identified workshop participants who have provided their written consent for this content to be used, as per the MDBA's ICIP policy.

Participants spoke about the potential for synergy between water management science and TEK, noting this needs to be based on robust engagement, governance and agreement. Moving towards co-design and co-management with Basin First Nations, along with addressing natural resource management issues holistically, were key stated aspirations:

- *"Talk to the old black fella who has been sitting on the bank of the river for 50 years rather than a white scientist."*
- *"Our ancestors kept people alive for tens of thousands of years – that's the best form of water management."*

On the ground examples were given of how localised observation and traditional knowledge can improve water and species management. These included the design of water infrastructure to allow yabbies, crayfish and fish to pass through, and the filtration of water via re-introducing native reeds and water vegetation.

The MDBA's Aboriginal Waterways Assessment Program was raised as an example of an appropriate tool that allows interlinked resource management issues to be addressed more holistically and in line with First Nations' values and ways of being. The River Rangers program was also well-regarded. Participants were supportive of long-term funding for expansion of both programs.

Despite widespread support for more integration of TEK into water management, there were significant concerns around ICIP and data sovereignty issues. It was noted that TEK can't be separated from First Nations peoples:

- *"you can't separate the people from the knowledge."*
- *"Incorporate Indigenous people as owners of their traditional knowledge to inform water management and processes."*
- *"Important to avoid misappropriation."*

¹²⁴ DEG, above n 48.

¹²⁵ Sefton Review, above n 45, page 26.

¹²⁶ ANU et al., above n 11, page 7.

The power disparity between community members when engaging with Government and water practitioners was also raised as a barrier to engagement, along with the jargon and technicality of language in the water space. Concerns around language use and the difficulty of finding common ground between western and Aboriginal value systems were also raised, explored in more detail in themes I. and IV.: *“language around ‘resources’ a mismatch. Use of terminology is problematic.”*

Participants also raised the following barriers to more integration of TEK into natural resource management:

- Long term funding cycles.
- Transportation and access to rivers.
- Established mentorship for knowledge transference.
- Need for education to drive partnerships with farmers.
- Upscaling use of appropriate technology to assist i.e. drones.

Carp was raised repeatedly as a significant issue and priority to address:

- *“Removing carp- we can't fix the problem by introducing another problem. We could create employment for the people by fixing the problem of carp.”*
- *“Rangers and local shire need to work together and clear the banks from dead carp to get dead fish away.”*

Participants spoke about opportunities for economic development for Basin First Nations in addressing a range of natural resource management issues on Country. Suggested programs/enterprises include native fish breeding nurseries and carp fertiliser businesses. These programs could respond to local/regional priorities and be developed and implemented in collaboration with Basin First Nations. Participants also raised the potential opportunities for holistic management plans to make improvements across interlinked issues:

The billabong at the mission is dry because everything upstream has been destroyed. Newcastle University are writing a cultural plan to clean it and keep the carp out - like a Healthy Country Plan to manage the water. For example: we could have Billabong Rangers and establish tours to tell the story of our cultural heritage.

- De-identified First Nations participant, MDBA LBMF workshop, 2024.

At one of the workshops, there was a group statement drafted to emphasise the importance of establishing Aboriginal-owned industries, as opposed to short-term funded initiatives:

Clearer, more specific focus on supporting the establishment and maintenance of Aboriginal-owned industries. The industries are:

- *More sustainable and reliable than funded in initiatives*
- *Support stronger TEK*
- *Empowerment of communities*
- *Example: if there was an industry to use carp for garden mulch & there was a price on carp like bottles & cans it would create work and contribute to healthier river.*
- *Sustainable & not at the mercy of funding bodies*
- *Creating capacity for Aboriginal people to work on what is important.*

-De-identified group statement from First Nations participant, MDBA LBMF workshop, 2024.

Table 9. Contribution of Basin Plan towards First Nations goals for NRM.

The intent of what each box describes in this table is outlined in the methodology section (see [Table 2](#)).

<p><i>Was this in scope of the Basin Plan?</i> Not in Scope</p>
<p><i>What was included in the Basin Plan that contributes towards this theme?</i></p> <p>The overall objectives of the Basin Plan reflect the key purpose of the Plan as described in the Water Act (sections 20, and 21), and align with concepts of NRM:</p> <p>The objectives for the Basin Plan as a whole (section 5.02) include:</p> <ul style="list-style-type: none"> • To give effect to relevant international agreements through the integrated management of Basin water resources, • To establish a sustainable and long-term adaptive management framework for the Basin water resources, that considers the broader management of natural resources in the Basin • To optimise social, economic, and environmental outcomes arising from the use of Basin water resources in the national interest. <p>The international agreements include the Biodiversity Convention and the Ramsar Convention.</p>
<p><i>Assessment of progress towards the theme goals and how/if the Basin Plan contributed towards this – NOT RATED, AS THE GOALS IN THE THEME WERE NOT IN SCOPE OF THE BASIN PLAN.</i></p> <p>The Basin Plan does not direct Basin States to provide capacity building or funding for partnerships. However, the MDBA has supported several initiatives including:</p> <ul style="list-style-type: none"> • Supporting MLDRIN and NBAN in the development of the Aboriginal Waterways Assessments program since 2013. The tool has been adapted from the New Zealand Cultural Health Index for First Nations peoples to consistently measure and prioritise river and wetland health so that they are better placed to negotiate for their Country's water needs. Pilot studies include Wemba Wemba, Barapa Barapa, Dhudhuroa, Waywurru, Gamilaraay Nations and, Ngunnawal. • Collaborating with NBAN and MLDRIN in 2016-17, to set up the <i>Aboriginal Weather Watchers Project</i> with over 15 stations across the Basin. • Making 8 First Nations specific recommendations in the Native Fish Recovery Strategy 2020, along with establishing a Cultural Advisory Group comprising of eight First Nation members across the Basin. <p>At the 2024 workshops with Basin First Nations, the evidence received from workshop participants was in favour of this theme being included in the scope of the Basin Plan going forwards. It was argued that the existence of the Basin Plan and Chapter 10, Part 14 impacts the ability of Basin First Nations to manage lands and water across the Basin and therefore brings it within scope.</p>
<p><i>Other Progress</i></p> <p>At the holistic level of caring for Country, there are many NRM and conservation programs for example:</p> <ul style="list-style-type: none"> • First Nations peoples and communities are developing their own Country Plans • There are new and expanding Indigenous Protected Areas and Indigenous Rangers Program including River Rangers which was initiated with support from MDBA. • Local Catchment Management Authorities (NSW & Vic) or Landscape Boards (SA) are funding and partnering with First Nations people to deliver on ground Country/NRM projects.

- Federal and state governments have also established First Nations programs for the protection of cultural heritage, biodiversity and conservation within National Parks and are establishing co-managed parks.

Aboriginal Waterways Assessments are also undertaken more broadly across Basin States outside of the MDBA's program.

In 2014, six Indigenous facilitators were appointed to identify opportunities for planning and managing six Living Murray icon sites. This is a joint funded program between the Basin States and the MDBA.

The Aboriginal Water Program in Victoria has funding for 17 Aboriginal Water Officers to support Aboriginal values and uses of water across the state.

In 2018, the [Indigenous Land Corporation Bill](#) was passed at Parliament to enable the Indigenous Land and Sea Corporation to pursue water-based projects.

What are the barriers?

NRM is seen to be a colonised term that isn't meaningful to First Nations peoples.

Not having long-term funding arrangements in place for training, capacity building and employment of First Nations peoples on Country.

Funding is not seen to be equitable in respect to First Nations science vs western science.

VIIIa. Water quality

The Review of the 2012 'A Yarn on the River' report contains First Nations peoples' goals relating to water quality. These are closely related to those goals and considerations outlined in theme VI.

Water management (water for the environment), and include¹²⁷:

- I. Poor water flow and quality, such as black water events causing mass deaths of fish and yabbies, is restricting access to important food sources. Flooding causes problems with pollutants in the river and when water levels are low there is carp infestation, and catfish and cod are almost non-existent.
- II. First Nations people are concerned about the decline in water quality, introduced species and the impact of chemicals and fertilisers on the health of the river.
- III. First Nations people desire to have a river system that is increasingly protected from pollution and affords the spiritual connection of clean drinking water and reignites a healthy, direct relationship.

As discussed in theme VI. Water management (water for the environment) above, First Nations peoples aspire for water management in the Basin that leads to meaningful outcomes for Country and people. Goals around water management, cultural flows and the broader cultural values dependent on water, are directly linked to the state of local ecosystems and their water quality. For

¹²⁷ MDBA, above n 2, page 14.

example, the *Echuca Declaration (2007)* links cultural flows with a range of environmental, cultural, social and economic indicators¹²⁸.

The *ANU et al. Roundtable Outcomes Report (2023)* similarly discusses water quality as a key aspirational benchmark, noting that water quality must be sufficient to support Country and community¹²⁹. Specific water quality issues raised throughout the literature include:

- That there should be mandatory and regular reporting on water quality in terms of pesticides and other pollutants, especially in the Basin's downstream communities¹³⁰.
- Environmental catastrophes such as the fish kills in 2018-19 and 2022 due to flooding and stagnant water and the need for urgent action to prevent further events occurring¹³¹.

The NSW Government Chief Scientist & Engineer (2023) conducted an independent review into the 2023 fish deaths in the Darling-Baaka river at Menindee, which included listening sessions with the Barkandji Traditional Owners¹³². The Traditional Owners talked about the impacts the fish kills had on their community and their connection to Country, including a loss of protein sources through not being able to fish. Other feedback provided by Traditional Owners included¹³³:

- Fish death events of this scale are not natural – there are no storylines of mass fish deaths. They are a modern issue caused by river regulation and development.
- There is a broader context of long-term degradation of the Darling-Baaka River and decline in water quality, including loss of flows and native species, loss of culturally significant species and increase in invasive species. This was also noted in the context of memories of past times when you could swim, drink and fish directly from the river.
- Government (emergency) responses compounded community distress. Traditional Owners felt their deep knowledge and experience of the river system was overlooked/dismissed, with the overall decline of the river system not being recognised.
- Review-fatigue exists, with cynicism and concern over lack of progress or implementation of recommendations from previous reviews.

The Chief Scientist found in its report:

The most likely (proximate) cause of the mass fish deaths – consistent with available data – was hypoxia, resulting from low dissolved oxygen (DO) in the water column. Low DO can be driven by a number of factors including flow rates, temperature, the presence of algae, a large number of fish in enclosed areas (biomass) and poor overall water quality – all of which are considered in the Review.

However, mass fish deaths are also symptomatic of a degradation of the broader river ecosystem over many years.

¹²⁸ MLDRIN, above n 10, page 3.

¹²⁹ ANU et al., above n 20, page 44.

¹³⁰ NSWALC, above n 19, and DEG, above n 48.

¹³¹ Ibid.

¹³² NSW Government Chief Scientist & Engineer 2023, *Independent review into the 2023 fish deaths in the Darling-Baaka River at Menindee*, NSW.

¹³³ Ibid, page 10.

Changes to flow regime and fish passage from water infrastructure and altered water use in the northern Basin are likely key factors in decreasing water quality, the decline of native species, and the susceptibility. P14

-NSW Chief Scientist & Engineer (2023), page 14 (emphasis added).

The Chief Scientist's report included several recommendations, such as the construction of fishways and the development of an integrated national invasive fish species management plan. Several of these specifically recommend that First Nations peoples be involved in the design and implementation stage, and that cultural knowledge is taken into consideration.

A notable issue raised in the report was ensuring that rivers support water for critical human needs. Improving the water security of Basin towns and cities, including First Nations communities, is a key recommendation of the *Sefton Review (2020)*. The DEG located in Walgett, NSW, provides a detailed submission on this issue, noting that the Basin Plan currently only provides for critical human needs regarding water, in extreme events¹³⁴. The use of bore water by residents is leading to disproportionate health and other impacts on the majority First Nations residents in town¹³⁵.

VIIIb. Water health*: What we heard from Basin First Nations

NB: All quotations are from de-identified workshop participants who have provided their written consent for this content to be used, as per the MDBA's ICIP policy.

Water health issues go to the heart of First Nation people's aspirations for healthy Country and people. Participants shared their lived experience of how poor water health impacts on Basin First Nations' communities. Participants described their memories of swimming and drinking river water as children, which they wouldn't do now because it is polluted and potentially toxic: *"When I was a kid, I swam in the river but would not swim in it now. Our staple diet that came from the river is not the same as before, we used to have fish five or six times a week."*

Toxicity was spoken about as a major concern, including viral/bacterial diseases, chemical pesticides, fertilisers, refuse and pollutants. Pollution from cattle and livestock defecating or dying and rotting directly into rivers was raised, as well as impacts from mining, coal seam gas and major industry with run-off going directly into rivers, lakes and waterways.

Anecdotal evidence raised by participants included seeing deformed and poisoned fish in rivers and community members getting diarrhea or needing to be hospitalised after drinking or swimming in river water: *"always see carp, see deformed catfish, the yellow belly with sores."* The potential for water health to be linked to significant human health impacts was also raised, with participants saying there were cancer clusters in some towns.

Participants also spoke about noticing declining fish, crustaceans and water animals in water habitats, the fish kills, blue green algae outbreaks and other issues which overlap with the discussion about destruction of Country in theme VI.

¹³⁴ DEG, above n 48, page 6.

¹³⁵ Ibid, pages 6-8.

*A participant commented that the theme's wording should be changed to "water health," which is more in line with Aboriginal values and encompasses a broader range of measures compared to traditional water quality assessments. Some participants raised the fact that water holds memory from both a cultural and potentially scientific standpoint, and the implications this may have for how water is managed. The concept of 'water health' captures the broader aspirations and concerns of Basin First Nations with regard to water:

I picked up from a water scientist the sentiment that water quality for white people and mob is different as mob talk about water health. The Aboriginal Waterways Assessments found that what was good health under water quality measures was poor water health under Aboriginal Waterways Assessments.

- De-identified First Nations participant, MDBA LBMF workshop, 2024.

It was raised that current water quality testing only captures data on limited parameters and this should be expanded: "expanding parameters of quality and quantity e.g. water quality testing (nitrogen, phosphorus)." There were also calls for more First Nations involvement in independent water quality testing or a First Nations monitoring system partnering with respected institution such as CSIRO.

Compliance with current regulations as well as broader accountability for impacts to water health were strongly called for. It was highlighted that managing water quality can't occur in a silo:

- "No accountability for impacts on water quality."
- "Calling for non-Indigenous people's behaviour to be held accountable for reduced water quality."

Who is the watch-body of farmers actions? Who agreed to locks? Livestock are polluting water, and nothing is being done. There has also been destruction of cultural sites from ploughing over the decades – relocated artefacts. Developers get access to prime riverfront land before First Nations peoples, then flood comes and washes everything downstream.

- De-identified First Nations participant, MDBA LBMF workshop, 2024.

Compliance and accountability is also discussed throughout themes I., IV. and VI.

Transparency over impacts to water health was raised, with some participants describing this information as impossible to get from Government Departments:

Farmers have changed the water levels and poisoned the water. There needs to be a truth-telling on what chemicals are actually in our waters and what their role has been in this. For example: What poisons were used, how often are soil tests done and where is all this data archived?

- De-identified First Nations participant, MDBA LBMF workshop, 2024.

There were also significant concerns raised over the quality of drinking water, including expanding rights for water for critical human need:

- *“Can’t drink water for the last 4.5 years in Narrandera because of its low quality so have to buy bottled water.”*
- *“We have to drink bottled water because we can’t drink the river water. Hot water systems are all corroded, so imagine what our bodies are like. There needs to be independent test done on the water.”*

Table 10. Contribution of Basin Plan towards First Nations goals for water quality.

The intent of what each box describes in this table is outlined in the methodology section (see [Table 2](#)).

<i>Was this in scope of the Basin Plan? In Scope</i>
<p><i>What was included in the Basin Plan that contributes towards this theme?</i></p> <p>The Basin Plan includes a set of management objectives and outcomes that are to be achieved, including a specific objective regarding water quality:</p> <p>Section 5.04. Objective and outcome in relation to water quality and salinity:</p> <p>(1) The objective in relation to water quality and salinity is to maintain appropriate water quality, including salinity levels, for environmental, social, cultural and economic activity in the Murray-Darling Basin.</p> <p>(2) The outcome in relation to water quality and salinity is that Basin water resources remain fit for purpose.</p> <p>Chapter 9, regarding Water Quality and salinity management plan, contains the following objectives for Basin water resources (section 9.03):</p> <p>(a) objectives for:</p> <p>(i) declared Ramsar wetlands; and</p> <p>(ii) other water-dependent ecosystems.</p> <p>(b) objectives for raw water for treatment for human consumption.</p> <p>(c) the objective for irrigation water.</p> <p>(d) the objective for recreational water quality.</p> <p>(e) the objective of maintaining good levels of water quality.</p> <p>(f) the salt export objective.</p> <p>Chapter 10, Part 7 of the Basin Plan requires Basin States to prepare Water Quality Management plans that align with the objectives described in Chapter 9 (above). The Basin Plan refers to critical human water needs (Chapter 11) and a requirement to meet critical human water needs and water quality during extreme events (Chapter 10 Part 13).</p> <p>A review of water quality targets, environmental watering plan and social and economic impacts must also be undertaken (Chapter 13, Part 3 Division 2).</p>
<i>Assessment of progress towards the theme goals and how/if the Basin Plan contributed towards this – NO PROGRESS MADE</i>

While First Nations cultural water needs may be met or partially met by objectives 9.03 (a), (d) and (e), Chapter 9 does not explicitly outline objectives for First Nations cultural needs. It was noted by the Water Quality Taskforce during the independent review of water quality targets, that there are no water quality objectives nor targets for cultural uses specified in Chapter 9 of the Basin Plan and that this gap should be addressed in the lead up to the *2026 Basin Plan Review* (MDBA, 2020¹³⁶).

CIR has assessed progress towards this goal as nil, noting this is a requirement in the Basin Plan. At the 2024 workshops with Basin First Nations the evidence received from workshop participants confirmed CIR's initial rating of "No Progress," so this rating has remained unchanged.

Other Progress

The Australian Government has committed \$150 million within the [National Water Grid](#) Fund to support water infrastructure for First Nations communities in regional and remote Australia.

Conversations through [Ngarrindjeri Yarning Circles](#) as part of The Living Murray project discussed how the water quality is not good enough for drinking and how river water is no longer clear.

What are the barriers?

A lack of standardised monitoring and public reporting of pollutants and other pesticides across the Basin.

Critical human water needs (CHWN) is a policy that is determined by triggers (e.g., drought) and is not a policy in place at all times. This means that there are ongoing water quality issues in some parts of the Basin outside of the CHWN triggers, for example in Walgett and the Lower Darling.

IXa. River access, traditional practices and wellbeing

This section has merged themes 9-11 from the Review of the 2012 'A Yarn on the River' report, which contain the themes of river access, traditional practices and learning and wellbeing. A selection of key goals and issues from that report include¹³⁷:

- a. Restricted physical access to rivers and their systems, negatively impacts on physical and intangible properties, and creates its own experience of re-lived, inter-generational trauma for individuals.
- b. Loss of / lack of / blocked regulated access to river frontage and wetlands is a major issue preventing First Nations people from food sources, fishing, hunting, burning, gathering wood, harvesting natural resources and undertaking other cultural activities – to care for each other, Care for Country and sustain their health.
- c. A healthy restored river system reignites or strengthens memory, story, language, cultural practices, health and social life (past and present).
- d. The current damage that the regulated system does to sacred sites continues, disappearing a people's history, cultural experiences and practices in the process, and the associated impacts on future generations.

¹³⁶ RMCg, above n 7.

¹³⁷ MDBA, above n 2, pages 14-17.

- e. Loss of the Basin river systems is seen as the end of Basin First Nations learning practices, which bind generations to each other and the river systems. Without access to sites, clean water and viable species of flora and fauna, there is neither the setting nor the purpose for Indigenous learning to continue. This loss results in a loss of First Nations sciences regarding NRM, which further drives the degradation of the river system and the First Nations peoples.
- f. The loss of knowledge about Caring for Country is seen to threaten the identity of a whole people.
- g. A desire for Sovereign Nations to have their own learning centers, including a capacity for Aboriginal-owned research to drive the recognition and development of contemporary Aboriginal knowledge.
- h. Involving young people in programs on Country is an important use of Country. These programs are related to cultural education, scientific education, recreation, skill development for employment and rehabilitation services.
- i. Fishing is the most discussed traditional use of rivers and waterholes and is important as a cultural practice and for food sources.
- j. The well-being of First Nations people has been eroded in line with environmental degradation while gaining nothing through the diversion of water for consumptive purposes.
- k. Many submissions discuss the practices of keeping the connections strong. First Nations families in particular, have a deep connection to the rivers. It increases people's sense of self-worth and their connections to peers and Nations.
- l. The health of the river is seen as a reflection of the health of the people. Spiritual wellbeing is directly connected to the river's health. When the river is healthy First Nations people are spiritually happy, more content in the knowledge that the rivers are flowing, the fish are breeding and plentiful, and that the fish, birds and land around the river are healthy.
- m. Collective grief, anger, despair and confusion arising from observing (in many instances, over decades) the degradation, regulation and mechanisation of the Basin and its many water-related features.
- n. The loss of sacred sites, scar trees and whole landscapes which carry history, personal and language-group identity.

The above issues cover a breadth of topics which are closely related to issues explored throughout this paper, particularly in Themes IV-VII. The literature regarding these topics highlights the ongoing impact of colonial systems on Basin First Nations water rights and the way this continues to impact the social, cultural and emotional wellbeing of such communities.

In 2016, as part of the Northern Basin Review, the MDBA and NBAN undertook a joint project to study the importance of environmental water to Northern Basin Aboriginal Nations. Findings from this project included that:

202 respondents over the age of 14 years assessed environmental water to have a 92% importance rating to their sociocultural Assets which are recognised as the determinants of viable socioeconomic development.

-MDBA and NBAN, *Our Water, our life: An Aboriginal study in the northern basin*, page 11.

The study recommended that Basin First Nations' socioeconomic development could be strengthened through further:¹³⁸

- Exploring the relationship between environmental watering and Aboriginal socioeconomic development.
- Developing the concept of Aboriginal Capital Assets held by Basin Nations, through participation with these Nations.

Basin First Nations' goals of water policy and management are intrinsically tied to the continuation of their cultures and overarching custodial rights and obligations to care for Country. Moggridge and Thompson (2021) summarise the range of water-dependent cultural activities and values that are dependent on surface water, seasonal flows, over-bank flows or groundwater. These include¹³⁹:

- Protection of creation sites and sites recorded in creation stories or storylines.
- Cultural sites associated with totemic species and/or for education and initiation of young people.
- Sites associated with resource collection (food, weaving, medicine) or manufacture (ochre, tools, musical instruments) or which relevant to cultural economic and social activities.
- Historic sites including burial and massacre sites.
- In South Australia, scarred trees (representing manufacture of implements, weapons and watercraft). Linkage between places and language (loss of site may lead to loss of language, meaning and significance).

*The Water is Life Roadmap (2022)*¹⁴⁰ Part B Nation Statements, also contain detailed information regarding the interlinked cultural, environmental and social goals of many Basin First Nations. The ability to practice culture (whether through caring for Country, ceremonial activities or intergenerational teaching) in Basin areas is dependent on access to riverbanks and other cultural sites associated with water, many of which are located on private land. Diminished access to rivers, and as such, 'flow on' impacts to maintaining living cultural practices, is cited throughout the literature as an ongoing issue¹⁴¹.

Other key issues noted throughout the literature include:

- The need for culture and heritage safeguards to be integrated into water policy and processes to prevent harm to sites taking place, particularly for the planning and construction of water efficiency and recovery upgrades.¹⁴²
- The potential impacts of climate change and the disproportionate impact they will have on First Nations communities' wellbeing.¹⁴³

¹³⁸ MDBA and NBAN, above n 84, pages 11-12.

¹³⁹ Moggridge and Thompson, above n 69, page 6.

¹⁴⁰ DEWLP, above n 33.

¹⁴¹ DEG, above n 48, page 2, PC, above n 44, page 20 and DEWLP, above n 33, page 68.

¹⁴² NSWALC, above n 19, page 11.

¹⁴³ ANU et al., above n 11, page 6.

While the literature discusses the centrality of water to the ongoing cultural, social, emotional and economic wellbeing of First Nations' peoples and the various traditional activities supported by water, aside from the Nation Statements outlined above, there is a lack of data on the specific goals of Basin First Nations¹⁴⁴.

Similarly, the *Sefton Review (2020)* noted there are:

...many gaps in information on the social and economic conditions of First Nations communities. Based on lived experience and the limited evidence that is available, First Nations communities appear to be experiencing poorer and sometimes worsening social and economic conditions. In these communities, the gap is widening, not closing.

-*Sefton Review (2020)*, page 46.

Resourcing for First Nations' communities to undertake detailed mapping of cultural sites and activities dependent on water, and to quantify the cultural flows required to sustain these activities is raised in the NCFRP¹⁴⁵.

IXb. River access, traditional practices and wellbeing: What we heard from Basin First Nations

NB: All quotations are from de-identified workshop participants who have provided their written consent for this content to be used, as per the MDBA's ICIP policy.

Some of the most commonly raised issues throughout the workshops related to access, traditional practices and wellbeing. These were often raised in connection to the other themes throughout the report (especially themes IV., V., VI., VII. and VIII.), given that First Nations' access to water entitlements and cultural flows are interlinked with the ongoing practice of culture and the social and emotional wellbeing of communities: *"river used to be a place of breeding and corroboree but now it isn't because of no cultural flows."*

Access to waterways on Country continues to be a major issue for First Nations across the Basin. Participants at every workshop spoke about the ongoing difficulty in accessing rivers, creeks, lagoons and wetlands on their Country, and the impact that this has on their ability to practice culture and access cultural heritage sites. Participants described their sadness, anger and frustration at not being able to access their Country and waters, places that their family had been caring for over generations:

Six months of the year we lived on the river. It provided everything we need and seeing those changes on the river is so sad. We are mud people, we can't get access to the river to where we heard our grandfather's stories.

- De-identified First Nations participant, MDBA LBMF workshop, 2024.

- *"Landowners don't own the river so why are there fences that stop access?"*

¹⁴⁴ At the time of drafting, First Nations consultation reports for WRPs were not available to the author.

¹⁴⁵ NCFRP, above n 98, page vi.

- *“Why are there reserves on the river where you can’t access, because it is locked behind a neighbouring property?”*
- *“Occupancy and Use mapping shows we currently have no access to what we traditionally had access to. These maps are very illustrative of how occupied the landscape was by First Nations.”*
- *“We may have water rights, but without access it doesn’t make sense.”*

In terms of improving access rights, one idea was for the MDBA to work with relevant State Departments to facilitate access rights along waterways when leases are renewed: *“when departments renew/review leases, change to allow ‘unvetted’ access [for First Nations].”*

There were different opinions raised on whether there are access rights to a riverbank. Some participants thought there are access rights up to 22 meters from the center of the river, or that there are provisions under the ALRA.

Participants described how poor relationships with farmers and landowners, including racism and discrimination, are contributing to lack of access. In one case, a participant recalled a culturally significant site being destroyed intentionally by a farmer.

Cultural heritage was spoken about frequently throughout the workshops. It was noted that many significant sites are close to water. Participants spoke of the impact of flooding on cultural sites and places, and the need to prioritise protection, recording and registering of these sites. It was pointed out that intra-generational knowledge transfer depends on having these sites of teaching: *“all the important places are so close to water. Why aren’t they being protected, tell me grandson this is the scar tree, this is why it is here.”*

Other points raised throughout the discussions at the workshops included:

- The connections between cultural flows, healthy Country and ongoing cultural practice. An example given was the flooding regime needed for river redgums, an extremely important cultural species. Participants also noted that the gathering of food and medicine has declined.
- There should be cultural awareness for non-Indigenous people of men’s/women’s business, places and knowledge.
- MDBA to take a leadership role with States to facilitate outcomes on these issues.

Table 11. Contribution of Basin Plan towards First Nations goals for river access, traditional practices and wellbeing.

The intent of what each box describes in this table is outlined in the methodology section (see [Table 2](#)).

<i>Was this in scope of the Basin Plan? In Scope</i>
<i>What was included in the Basin Plan that contributes towards this theme?</i> This theme is closely related to theme III and Chapter 10, Part 14 of the Basin Plan, which requires Basin States to engage with First Nations peoples and include their “values and uses” within water resource plans. States’ water resource plans must; identify the objectives of and outcomes for Indigenous people, and have regard to the social, spiritual and cultural values and uses of

Indigenous people that relate to the water resources of the water resource plan area (section 10.52 (2)).

The preparation of the Basin Plan's Basin-wide environmental water strategy (section 8.15) requires the MDBA to have regard to Indigenous values and Indigenous uses.

As above, the Basin Plan is required to give effect to international agreements including the Biodiversity Convention which includes obligations "to respect and preserve the traditional practices of Indigenous communities."

Chapter 4 of the Basin Plan is used to identify the risks, and the strategies to address those risks, to Basin water resources. These may include water quality and insufficient water. The Basin Plan (section 4.02 (2)) is also required to identify and manage the consequences that arise because of those risks including "that insufficient water is available, or water is not suitable to maintain social, cultural, Indigenous and other public benefit values."

The Basin Plan acknowledges the deep responsibility First Nations peoples have for the health of the rivers in Schedule 1.

The Basin Plan is not required to provide access to waters/rivers for First Nations peoples. However, the sections highlighted above do include provisions that acknowledge traditional practices and wellbeing.

Assessment of progress towards the theme goals and how/if the Basin Plan contributed towards this – LIMITED PROGRESS MADE

There is overlap with this theme and others.

As noted in Theme I. Legislation, the *Basin Plan Evaluation (2020)* found that Chapter 10, Part 14 of the Plan is leading to a range of positive outcomes for First Nations peoples including: reconnection with Country and improved ecological and cultural outcomes. However, the literature review also acknowledges that First Nations peoples continue to raise issues in the provisions and operation of the Basin Plan, particularly in relation to water resource plans.

Despite the Basin Plan not being required to provide access to waters/rivers for First Nations peoples, there are projects that are making progress in this area and which are having a positive influence on wellbeing. In addition, the MDBA has initiated several other projects including:

- MDBA has progressed partnering with First Nations on a Cultural Landscape Plan for Tar-Ru (Lake Victoria) which is implemented with Barkindji Maraura Elders Council to protect cultural heritage from water storage operations.
- MDBA partners with the First Peoples of the River Murray and Mallee have been [monitoring sacred trees of Chowilla](#) since 2012.
- MDBA collaborated in 2016 with NBAN to produce *Use-and-Occupancy Maps*, a respected way for research into resource access and use by Aboriginal people to negotiate for the protection of land and water to meet cultural, social, environmental, spiritual and economic obligations. Undertaken in the Northern Basin in Brewarrina, Walgett, Goodooga, Lightning Ridge, Dirranbandi, St George, Mungindi, Thallon, and Collarenebri.
- MDBA partnered with Ngarrindjeri community to co-develop a native yabby and fish monitoring project in the Lower Murray in 2022, [Protecting the sacred Nga:tjar \(totemic species\)](#).

CIR acknowledges there has been limited progress towards this goal. At the 2024 workshops with Basin First Nations, the evidence received from workshop participants confirmed CIR's initial rating of 'Limited progress', so this rating has remained unchanged.

Other Progress

Following recent changes to the Water Act (*section 50 (4A)*) the Authority is required to consider and report on how water management under the Basin Plan can, or could

- enable improvement of conditions for First Nations people;
- provide for protection of First Nations' interests; and
- enable First Nations participation in making policies and strategies for the use and management of Basin water resources, including where that could involve free, prior and informed consent (FPIC).

What are the barriers?

Common law and private property laws prevent First Nations peoples access to lands and waters.

First Nation heritage sites are under threat during regulated river operations, low flows, droughts and floods.

There is limited data on First Nations social, economic and wellbeing status.

Xa. Economic

This theme includes broad economic goals and issues related to water management, including the following issues from the *Review of the 2012 'A Yarn on the River' report*¹⁴⁶:

- a. The centrality of money as a value system for mainstream culture remains a core problem to First Nations peoples whose primary asset, the river system, has not yet been given a monetary value that reflects their values.
- b. Financial compensation for environmental losses – for some this point included compensation and/or royalties from water flowing through or over sovereign territory.
- c. The possibility that a fairer share of owning and benefitting from water business will also increase respect for Aboriginal people and strengthen their voices in how the Basin is managed.
- d. The commercialisation of water holds the potential of affording economic autonomy and self-determination to First Nations but transgresses some perspectives of cultural authenticity which see water as spiritual, and as a human and environmental right and which should never be given a commercial value.
- e. Having a greater presence in farming in the Basin was also of interest, including traditional stock farming, the production of food such as fruit, vegetables and stock foods such as sorghum. Additionally, participation in carbon farming, irrigation and cotton farming were also discussed. Creating businesses from bush tucker and being employed in monitoring water harvesting were additional ideas about First Nations peoples' commercial uses of Country associated with the waterways.

The literature chiefly discusses economic aspects of First Nations peoples' water rights in the context of the lack of recognition for First Nations peoples' economic interests in water, discussed briefly in Theme V. Cultural flows above. This is placed in the historic context of the broader dispossession of

¹⁴⁶ MDBA, above n 2, page 18.

First Nations peoples' and the alienation of their rights to lands and waters¹⁴⁷. As outlined previously in this report, the *Echuca Declaration (2007)* defines cultural flows in a way that includes economic dimensions, which is the definition widely adopted by First Nations-led organisations and projects such as the NCFRP.

The exclusion of First Nations peoples from water access entitlements that can be used for economic activities is noted as having ongoing negative impacts on economic development opportunities:

Many First Nations people are excluded from Australia's economic wealth that is tied to water access entitlements. This makes it extremely challenging for First Nations to increase the productivity of their Country through agriculture, fishing, aquaculture, tourism, and other industries. Many systems are fully allocated. Buying water entitlements on the open market is usually not an option as First Nations people are often priced out. Regardless, buying back their own water is fundamentally an injustice.

-ANU et al. *Roundtable Outcomes Report (2023)*, pages 18-19.

This is often also framed in the literature as a right for First Nations' peoples to self-determine their right to water. The literature highlights a range of barriers to First Nations peoples' use of water entitlements for any purpose, including economic. For example:

- While the Basin Plan Chapter 10 Part 14 (10.54 Cultural Flows) requires "a water resource plan be prepared having regard to the views of Indigenous people with respect to cultural flows," the SDL mechanism does not require cultural flows to be accounted or reported for – see above¹⁴⁸.
- Furthermore, Schedule 1 of the Basin Plan at paragraph 31, includes the complete definition of cultural flows from the *Echuca Declaration (2007)*.
- The NSW Government is rolling out the *NSW Cultural Watering Plan program*, which adopts the NCFRP methodology and guides, while excluding economic-based water goals from the program.¹⁴⁹
- Victoria's *Water is Life Roadmap (2022)* adopts the definition of cultural flows as espoused in the *Echuca Declaration (2007)* and supports First Nations' water entitlements for any purpose, including commercial.
- The Commonwealth Government has announced funding through the AWEP to invest in water for cultural and economic activities¹⁵⁰.

The *Productivity Commission (2021)* outlines the history and development of First Nations peoples goals to water for economic uses¹⁵¹, noting that the *National Water Initiative* of 2004 is a product of its time which does not support the broader goals of Traditional Owners¹⁵². The Productivity Commission supports enabling access to water for economic use for First Nations peoples:

Where, as part of co-design processes to determine Traditional Owners' preferred pathway for ongoing economic development, governments and communities agree that access to

¹⁴⁷ NSWALC, above n 19, page 7.

¹⁴⁸ Turner G. et al, above n 70, page 34.

¹⁴⁹ NSW Department of Planning and Environment, Cultural Watering Plans, viewed 4 December 2023

<<https://water.dpie.nsw.gov.au/our-work/projects-and-programs/aboriginal-water-program/cultural-watering-plans>>

¹⁵⁰ NIAA, MDB Aboriginal Water Entitlements Program, viewed 4 December 2023 <<https://www.niaa.gov.au/indigenous-affairs/environment/murray-darling-basin-aboriginal-water-entitlements-program>>

¹⁵¹ PC, above n 44, page 21.

¹⁵² Ibid, page 6.

water is the best way to support Aboriginal and Torres Strait Islander communities' economic development objectives, governments should facilitate access to that water as efficiently and transparently as possible within existing entitlement frameworks.

-Productivity Commission (2021), page 25.

The *Productivity Commission (2021)* also notes several barriers including that¹⁵³:

- It is difficult for First Nations organisations to access water markets due to the need to purchase water entitlements, pay fees and charges and make decisions on the use or trade of seasonal allocations depending on circumstances.
- Native title rights do not recognise a commercial right to use or extract water.
- There is competition from other water users.

Hartwig et al (2023)'s study on the participation in the water market in the NSW portion of the Basin by LALCs is also relevant and has been detailed in theme IV. Water market above¹⁵⁴. Potential solutions to alleviate these barriers discussed throughout the literature include:

- The establishment of an enduring funding model such as a First Nations' statutory water holder¹⁵⁵.
- Allocation or reserves in systems where water is not fully allocated¹⁵⁶.
- In fully allocated systems, the purchase of water entitlements on the market by Governments¹⁵⁷.

The NCFRP (2018) explores legal and regulatory mechanisms to enhance water entitlements to First Nations peoples for any use in detail, which has been summarised in Theme IV of this report.

Xb. Economic: What we heard from Basin First Nations

NB: All quotations are from de-identified workshop participants who have provided their written consent for this content to be used, as per the MDBA's ICIP policy.

There was significant overlap in the workshop discussions between issues in the Economic theme and other themes (especially themes II. and VII.). Participants noted the links between the economic rights and outcomes for First Nations and issues of sovereignty, cultural flows, engagement and representation, partnerships, capacity building, employment opportunities and healthy Country. Participants spoke about the potential economic base for First Nations having been degraded through over-grazing and over-take of water since colonisation. There was also frustration at the exclusion of First Nations from economic rights to water and aqua nullius, with participants noting there had not been any compensation for First Nations to date (also discussed in themes II. and IV.): *"we've always been denied economic water rights."*

¹⁵³ Ibid, page 23.

¹⁵⁴ Hartwig et al, above n 59.

¹⁵⁵ ANU et al., above n 20, page 10 and NCFRP, above n 14, page 29.

¹⁵⁶ PC, above n 44, page 25 and NCFRP, above n 14, page 27.

¹⁵⁷ PC, above n 44, page 26.

Aspirations from participants included jobs and opportunities that provide *“long-term benefits to support the next generation,”* and were interlinked with social, emotional and cultural wellbeing benefits: *“Belonging, Purpose, Identity.”*

There was a lot of interest in economic development opportunities, especially those developed through collective leadership and representative governance institutions. In a number of workshops, the tourism industry was highlighted as an important opportunity. Other opportunities raised include cultural tourism, fish stocking, bush food enterprises and breeding programs, which depend on cultural flows and ecosystem rehabilitation. The potential to partner with LALCs, as well as jointly-managed National Parks, was highlighted: *“big hope is for tourism to give us economic opportunities.”*

We need support to manage the land and mission. There is salt bush everywhere – this could be sold. Quandongs too. Cultural flows essential for economic, e.g. bird tourism – bush turkeys breed at Narran Lakes then migrate to Queensland. Wedge-tailed eagles are rare but are coming back with the breeding program.

- De-identified First Nations participant, MDBA LBMF workshop, 2024.

There was a call for more funding to help establish such enterprises, including training and funding for Basin First Nations to develop business plans and write grant applications. There was also reflection on the need for First Nations organisations to improve financial transparency going forwards.

For progress to date on this theme – please refer to progress outlines in Table 6. Contribution of Basin Plan towards First Nations goals for water market and Table 7. Progress of First Nations goals for cultural flows.

XIa. Climate change

Climate change is one of the four key themes that will be considered in the *2026 Basin Plan Review*. The *Review of the 2012 ‘A Yarn on the River’* report contains the following references to climate change (emphasis added):

- I. There is joy in seeing a river system respond to restored natural flows and become more resilient to climate change.
- II. There need for a viable balance between environmental, social and economic needs in the context of climate change – Current management regimes were not seen to be delivering to the expense of both the environment and First Nations peoples (culture and wellbeing) throughout the Basin.
- III. Acknowledgement of a continuous relationship with Country including degrees of knowledge and memory of how the Basin was before it was impacted by development, industry, regulation and climate change.

While several sources include a consideration of climate change issues in the Basin, there are limited references to First Nations peoples’ views on and goals with regard to climate change in the Basin. For example, the MDBA (2020) includes the theme of adapting to climate challenges and increasing

resilience as part of its major findings and includes several recommendations against this theme, one of them referring to First Nations:

Recommendation 5 – Basin water users, managers, First Nations and community groups need to plan for the future climate. As well as Basin-wide assessment, local climate opportunities and risks should be given attention along with implications, trade-offs and adaptation priorities.

MDBA commitment:

The MDBA will facilitate the sharing and coordination of information on Basin climate adaptation. The MDBA will bring water managers together with communities, industries, First Nations and governments to explore strategies.

-MDBA, *Basin Plan Evaluation (2020)*, pages 118-119.

The MDBA (2020) also notes that the focus of climate change adaption should include “establishing new objectives and targets for the Basin in collaboration with Basin communities and First Nations¹⁵⁸.” More generally, the risk that climate change poses to achieving the social, economic and environmental goals of the Basin Plan is highlighted.

Other key references to First Nations views/goals regarding climate change throughout the literature include:

- The *Water is Life Roadmap (2022)* acknowledges the impact of climate change affecting the flows and conditions of waterways and the continuing impact this will have on the reliability of water supplies and entitlements for water users including Traditional Owners, emphasising the importance of increasing Traditional Owner involvement in water management in this context¹⁵⁹.
- The *ANU et al. Roundtable Background Paper (2023)* notes the disproportionate burden climate change poses to First Nations communities, and the potential to entrench socio-economic disadvantage:

First Peoples across Australia are already observing changes to seasons, coastlines, waterways, flora and fauna that impact not only the health of Country, but also Indigenous knowledge systems and cultural economies. Extreme events such as heatwaves, cyclones, intense flooding and severe droughts have the effect of exacerbating existing pressures on freshwater resources and further entrenching First Peoples’ socio-economic disadvantage – and are likely to become increasingly frequent into the future.

- *ANU et al. Roundtable Background Paper (2023)*, page 6.

- The *ANU et al. Roundtable Outcomes Report (2023)* refers to climate change multiple times in the context of a threat/risk to First Nations water management goals. It also notes that

¹⁵⁸ MDBA, above n 15, page 120.

¹⁵⁹ DEWLP, above n 33, page 18.

with regard to conservation and land management initiatives, that First Nations peoples “are leading local and regional climate change responses.”¹⁶⁰

XIb. Climate change: What we heard from Basin First Nations

NB: All quotations are from de-identified workshop participants who have provided their written consent for this content to be used, as per the MDBA’s ICIP policy.

Participants shared their lived experience of climate change, which is happening now and affects First Nations peoples disproportionately. Some spoke of losing important cultural plants and animals such as the bogong moths. Others shared how their traditional knowledge is informing adaptation, such as noticing how climate change has affected emus laying eggs earlier and the flowering of wattles.

Participants strongly called for the Basin Plan’s targets and objectives in relation to climate change to be developed in partnership with Basin First Nations through a co-design process, and for partnerships with Basin First Nations to be a key method for meeting targets. Participants noted that First Nations people have unique knowledge and skills from 65 000+ years of living and adapting on Country. The importance of taking a pro-active and holistic approach which considered climate change, increasing natural disasters and protection of sacred sites was raised. It was suggested that the MDBA should support existing First Nations climate change initiatives:

- *“I think there should be a new paradigm spearheaded by instinctual First Nations science and knowledge and western science to prepare and offset for climate change.”*

However, it was pointed out that Basin First Nations’ capacity to engage and affect change was interlinked with issues raised in the themes throughout the report, including access, water allocations and cultural flows:

- *“How do we mitigate this if we don’t have access.”*
- *“Indigenous communities can contribute to reduced climate change, but only if there is access to water.”*

Participants also discussed the range of activities that contribute to climate change, such as changing flows, large scale farming and deforestation.

¹⁶⁰ ANU et al, above n 20, page 100.

Table 12. Contribution of Basin Plan towards First Nations goals for climate change.

The intent of what each box describes in this table is outlined in the methodology section (see [Table 2](#)).

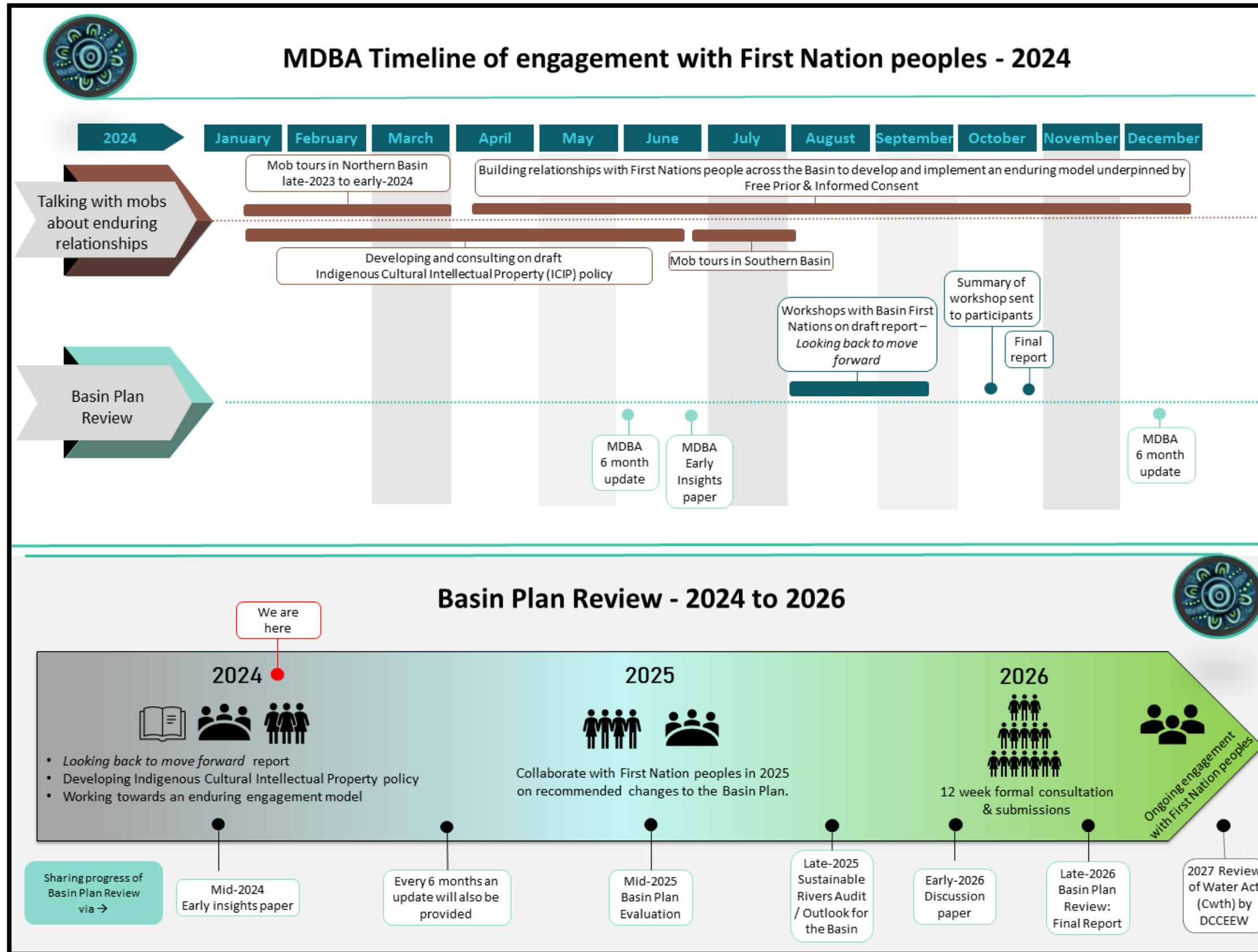
<p><i>Was this in scope of the Basin Plan?</i> Not in Scope</p>
<p><i>What was included in the Basin Plan that contributes towards this theme?</i></p> <p>Within the Water Act, the Climate Change Convention is listed as a relevant international agreement (United Nations Framework Convention on Climate Change established in New York on 9 May 1992).</p> <p>The Basin Plan does not explicitly provide provisions for recognising the current and continuing impact of climate change on First Nations peoples.</p> <p>The Basin Plan has environmental objectives to ensure water-dependent ecosystems are resilient to climate change (section's 8.07 and 5.03) and there is a need to improve knowledge on the impact of climate change on water resources (section 4.03).</p> <p>There is a provision in the Basin Plan that the water market can adapt to future climate change (section 5.07) and that the review of the Plan must also have regard to the management of climate change risks (section 6.06). Under extreme events in Chapter 10, Part 13, consideration must also be given to whether water resources should be managed differently if there is evidence to do so (section 10.51).</p> <p>As mentioned in previous sections, Chapter 4 of the Basin Plan is used to identify the risks and strategies to address those risks, to Basin water resources, for example water quality and insufficient water. The Basin Plan (section 4.02 (2)) is also required to identify and manage the consequences that arise because of those risks including "that insufficient water is available, or water is not suitable to maintain social, cultural, Indigenous and other public benefit values."</p>
<p><i>Assessment of progress towards the theme goals and how/if the Basin Plan contributed towards this – NOT RATED - as the Basin Plan is currently not required to establish First Nations objectives and targets for Climate Change.</i></p> <p>As mentioned above in the literature review, the <i>Basin Plan Evaluation (2020)</i> notes that the focus of climate change adaption should include "establishing new objectives and targets for the Basin in collaboration with Basin communities and First Nations".</p> <p>CIR has assessed that there has been no progress made towards this recommendation, acknowledging this is not a requirement in the Basin Plan. At the 2024 workshops with Basin First Nations, the evidence received from workshop participants was in favour of climate change and its impact on First Nations being included in the scope of the Basin Plan going forwards.</p>
<p><i>Other Progress</i></p> <p>The <i>Water is Life Roadmap (2022)</i> Outcome 3 is to "In Victoria, water corporations are expected to incorporate Aboriginal customary knowledge into water management (where appropriate), and assist Traditional Owners to plan for, and adapt to, the impacts of climate change."</p>
<p><i>What are the barriers?</i></p> <p>Governments are faced with many challenges in planning for climate change, including:</p> <p>Uncertainty about what climate change means and the risks that may occur.</p>

Difficulty in engaging with different communities on what climate change means to them.

Uncertainty in what changes are required to adapt to climate change from a legal, planning and regulatory sense.

Having effective leadership in place for decision-making to occur.

Appendix I – MDBA timeline of engagement with First Nation people for 2024 and, 2024 – 2026 during Basin Plan Review



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