

7 October 2022

Andrew McConville  
Chief Executive  
Murray Darling Basin Authority (MDBA)

**Re: MLDRIN's Assessment of the 2022 version of the proposed New South Wales (NSW) Murray-Darling Basin (MDB) Porous Rock Water Resource Plan (WRP)**

Dear Mr McConville,

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

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

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

MLDRIN representatives and the Traditional Owners who partook in a two-day assessment workshop evaluated the 2022 version of the NSW MDB Porous Rock WRP, including the new changes compared with the 2020 version. Fundamentally, these Traditional Owner workshop participants determined that the changes and additions do not go far enough, with the assessment of the WRP against all Chapter 10 Part 14 Basin Plan requirements still scoring unsatisfactorily, as detailed below (and more extensively in the attached assessment matrix).

Many of the issues identified in this report stem from flaws in NSW's First Nations WRP consultation and the associated First Nations Consultation Reports. Concerns were also raised around the WRP sign off processes implemented by NSW. All who were involved in MLDRIN's 2022 assessment were troubled that the majority of these issues – especially the substantive ones – were already detailed in MLDRIN's original assessment of the 2020

version of the proposed NSW MDB Porous Rock WRP and yet remained unaddressed in the 2022 version of the WRP. Despite this assessment and overall recommendation, assessment workshop participants stressed that they want to move forward to a situation where NSW implements the proposed initiatives and commitments outlined in the WRP, and where NSW will be held accountable for doing so. Therefore, it is imperative that NSW begin addressing and correcting these shortcomings as soon as possible rather than waiting for this WRP (or other WRPs) to be accredited.

### **Assessment approach**

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

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

MLDRIN's assessment of the 2022 version of the proposed NSW MDB Porous Rock WRP included:

- A two-day workshop (13<sup>th</sup> and 14<sup>th</sup> September 2022) in Mildura, attended by MLDRIN staff and representatives from the following Nations (some participated via Zoom): Barapa Barapa, Maraura, Mutthi Mutthi, Ngiyampaa, Tati Tati, Wadi Wadi, Wemba Wemba, and Wiradjuri (across two river systems).
- Review of relevant material from NSW Government agencies (including the 2022 and original 2020 versions of the WRP and associated documents) and communications between MLDRIN and NSW Government agencies between 2015 and 2022.
- Phone conversations during September 2022 with Nari Nari and Gomeroi Nation representatives who were unable to participate in the assessment workshop due to other commitments. These representatives granted permission for MLDRIN to draw from their feedback provided during MLDRIN's 2020, 2021, and 2022 NSW WRP assessment workshops as appropriate to the NSW MDB Porous Rock WRP and its assessment.<sup>1</sup> The Gomeroi Nation representatives also requested that their standalone advice, which was prepared and provided as part of MLDRIN's assessment of the 2020 version of the NSW MDB Porous Rock WRP, again be attached to this assessment, unaltered. They note that although their Nation

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<sup>1</sup> The Nari Nari Nation representative wanted it noted that they wish to see NSW address the many issues raised by Nations and MLDRIN in the original assessment of the proposed NSW MDB Porous Rock WRP, including making and acting on genuine and binding commitments to improve First Nations water access and outcomes across the state.

Consultation Report has been withdrawn from NSW WRPs, their other concerns remain unaddressed.

Other Nations with interests in the WRP area were invited to participate in the assessment process, where MLDRIN had contact details. NBAN advised MLDRIN that Ngarabal is not a member Nation and did not provide further contact details. This assessment report does not represent the views of those Nations that did not participate.

The Tati Tati representative chose to withdraw their participation from this assessment process following the workshop. This was after learning about the MDBA's recommendation to accredit, and the Minister accrediting, the Border Rivers Alluvium WRP against the advice of NBAN and the Traditional Owners that it should not be accredited. At this time, they see that it is not culturally safe to continue participating in a process where their advice and concerns may not be handled appropriately or respectfully by the MDBA.

Part of this assessment included reviewing MLDRIN's original First Nations assessment of the 2020 version of the WRP against the MDBA Criteria and Basin Plan requirements. In some cases, the 2022 version of the WRP has received lower scores. The assessment workshop discussed this disparity at length and agreed that these lower scores were justified for the following key overarching reasons (in addition to those specified for each criterion and requirement in the attached detailed matrix report):

- Original First Nations assessments of all NSW's WRPs, including the NSW MDB Porous Rock WRP, recommended the NSW Government further engage with Nations due to major flaws, gaps, and oversights in the initial WRP engagement that occurred during 2018 and 2019. MLDRIN and NBAN also asserted the essential need for this engagement beyond the WRP assessments, including through written correspondence and meetings, sometimes with the MDBA represented too. Further engagement was deemed essential to meet the minimum legal requirements of the Basin Plan. Even though NSW committed to further engagement on several occasions, including in writing from the current NSW Water Minister (see detailed matrix assessment), this has not eventuated.
- Nations have received no updates, notification, or engagement opportunities regarding the WRP being revised, not even via online updates or phone calls. This is despite (a) the extensive concerns raised about NSW's poor practice in providing opportunities to Nations throughout all stages of water resource planning raised during the original WRP assessments; (b) the specific recommendations for NSW to further engage with Nations (see point above); and, (c) NSW repurposing, in new ways, the Nations' Consultation materials from the original engagement in 2018-19 in the 2022 proposed WRP, without consent from Nations.
- The Maraaura Nation prescribed a 'shelf life' in their data use agreements, which permitted the NSW Government to use the information collected during their engagement process for three years. This timeframe has now expired, and NSW has not approached the Maraaura Nation to seek additional permission to continue using their cultural knowledge and information for this WRP or others. For these reasons, the Nation organiser provided lower scores compared to previous WRP assessments.
- Nation representatives have had additional time to consider the WRP development process, including its underpinning engagement and its implications. This has seen some Nation representatives revise their positions and perspectives recorded during previous WRP assessments completed by MLDRIN.

- Nation representation and participation in assessment workshops of the 2020 and 2022 versions of the proposed NSW MDB Porous Rock WRP differed slightly for a range of reasons. Accordingly, the collection of views and perspectives also varied in the workshops, which may have contributed to different scores.

## Findings

When assessing the 2022 version of the proposed NSW MDB Porous Rock WRP against the requirements stipulated in Chapter 10, Part 14 of the Basin Plan, MLDRIN and the participating Nations found that the Plan did not meet the minimum legal standard to demonstrate satisfactory compliance with any requirement. The following requirements were found to have been partially fulfilled:

- 10.52(1)(a): Identify the objectives of Indigenous people in relation to managing the water resources of the water resource plan area.
- 10.52(1)(b): Identify the outcomes for the management of the water resources of the water resource plan area that are desired by Indigenous people.

The remaining requirements were assessed as absent:

- 10.52(2)(a): Having regard to the social, spiritual and cultural values of Indigenous people that relate to the water resources of the water resource plan area.
- 10.52(2)(b): Having regard to the social, spiritual and cultural uses of the water resources of the water resource plan area by Indigenous people.
- 10.52(3): Identifying opportunities to strengthen the protection of Indigenous values and Indigenous uses.
- 10.53(1)(a): Having regard to the views of First Nations in relation to Native Title.
- 10.53(1)(b): Having regard to the views of First Nations in relation to registered cultural heritage.
- 10.53(1)(c): Having regard to the views of First Nations in relation to inclusion of Indigenous representation in the preparation and implementation of the plan.
- 10.53(1)(d): Having regard to the views of First Nations in relation to Indigenous social, cultural, spiritual and customary objectives, and strategies for achieving these objectives.
- 10.53(1)(e): Having regard to the views of First Nations in relation to encouragement of active and informed participation.
- 10.53(1)(f): Having regard to the views of First Nations in relation to risks to Indigenous values and Indigenous uses arising from the use and management of the water resources of the water resource plan area.
- 10.54: Having regard to the views of Indigenous people with respect to cultural flows.
- 10.55: Maintaining the level of protection as provided for in transitional or interim WRPs.

When assessing the 2022 version of the proposed NSW MDB Porous Rock WRP against the Part 14 'Assessment Template' criteria provided by the MDBA, MLDRIN and the participating Nation representatives found it did not adequately meet any of the criteria. Nation representatives expressed frustration with the need to assess the WRP against these criteria when no further consultation had taken place since before the 2021 assessment. It was found that the WRP demonstrated partial compliance with four criteria:

- A planned approach was applied to properly engaging Nations and resulted in an Indigenous Engagement Strategy that guided preparation of the Water Resource

- Plan (e.g. adequate time, appropriate venues, and resources).
- Appropriate Nations were identified and involved throughout all stages of the water planning process.
- Nations were properly notified of the opportunities to be involved in the water resource planning process (e.g. print, phone, electronic and personal media, and town meetings).
- Appropriate tools and mechanisms for recording, understanding, and incorporating Aboriginal objectives and outcomes were used.

The remaining criterion was assessed as absent:

- Information about water resource planning processes and content provided was clear to Nations.

A brief assessment of the NSW MDB Porous Rock WRP was made against the Akwe:Kon Guidelines. Due to time constraints, only overarching scores were recorded without detailed qualitative responses. The Nation representatives scored the WRP and its development as partially meeting most guidelines or not at all (i.e. absent). Scores are recorded in the attached assessment matrix.

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

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

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

- The WRP identifies objectives and outcomes for many Nations, which are broadly reflective of their Nation's interests, as discussed during consultation.
- The NSW Government's overarching Nation-based approach to consultation, supported and assisted by local First Nation organisers, was favourable in principle.
- Some Nation organisers reported having good relationships with the consultants engaged to complete the First Nations consultation, finding them approachable, knowledgeable, supportive, and helpful.

Despite these positive elements, the assessment demonstrates that NSW's approach to consultation and the preparation of the WRP did not meet the minimum legal standard, let alone best practice guidelines provided by the MDBA and by MLDRIN detailed in collaborative forums and formal guidance such as the MDBA's *Water Resource Plan Part 14* Guidance document. The assessment identified numerous shortcomings, many of which were identified in MLDRIN's assessment of the 2020 version of the proposed NSW MDB Porous Rock WRP. Examples of key specific and recurring concerns include:

- Overarching issues with NSW's WRP First Nations Consultation (e.g., not collecting views about certain matters and lack of clarity about the scope of engagement) and those specific to individual Nations remain unaddressed and unresolved. To be extremely clear, some Nation participants are of the view that their engagement outcomes should not be used in this WRP (or other groundwater WRPs) because (a) they did not speak about groundwater during engagement and (b) it is

not culturally safe for NSW to interpret Nation views on groundwater, as NSW has done in this WRP.

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

Further detailed qualitative commentary that explains the above assessment scores and elaborates on these high-level summary points is provided in the attached assessment matrix. Where permitted, qualitative comments are included from some Nation representatives that were not present during the workshop. However, the overall assessment result for each criterion and requirement (e.g. Absent to Excellent) was determined only by those present at the workshop.

On a final note, and beyond the scope of this assessment, Nation participants were not only concerned that NSW's efforts to develop this WRP did not meet the minimum legal standard set by the Basin Plan requirements. They were also troubled by – and repeatedly

commented on – the very low standard set by the current Chapter 10, Part 14 requirements of the Basin Plan. Some participants were of the view that these requirements at best problematically allow the status quo to continue and do not clearly compel action. MLDRIN looks forward to contributing to the strengthening of these requirements in the forthcoming Basin Plan review process.

### **Conclusion**

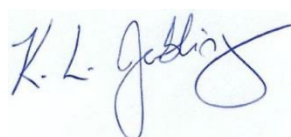
The NSW Government has undoubtedly included additional content in the 2022 version of the proposed NSW MDB Porous Rock WRP in an attempt to better address Chapter 10, Part 14 of the Basin Plan. These additions appear to reflect a decent amount of further work on face value and, certainly, would have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

However, closer examination reveals that these additional words and tables only summarise material collected through the original consultation – which MLDRIN (and NBAN) has detailed on numerous occasions to be problematic – and/or existing mechanisms, policies, and instruments that, in the view of the NSW Government, may be ‘relevant’. Much of the summarised consultation content has been pulled apart and shoehorned to fit into NSW’s already established water management framework and the relevant Water Sharing Plan. These text-only changes and additions have occurred without guidance, involvement, or consent from contributing Nations, with some workshop participants alarmed to see material they contributed in good faith appear in circumstances they were not aware of.

During the NSW MDB Porous Rock WRP assessment workshop, First Nations participants and MLDRIN representatives discussed options to address the shortcomings in the content of the 2022 version of the proposed WRP. Suggestions for ways to avoid repeating the consultation problems and issues that have occurred during WRP engagement were also offered. These suggestions have been conveyed to the NSW Government through an array of forums over the last number of years. Participants and MLDRIN were disappointed that the NSW Government seems to have continued to disregard much of this advice in preparing the 2022 version of the NSW MDB Porous Rock WRP.

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

Yours sincerely,



Karmen Jobling  
Executive Officer, MLDRIN

Enclosed: MLDRIN’s assessment matrix report of the NSW MDB Porous Rock WRP  
Gomerai Nation’s written advice, originally prepared in mid-2021



# NSW MDB Porous Rock Water Resource Plan Assessment

## September-October 2022



Criteria	Assessment of performance
<b>MDBA Assessment Criteria</b>	
<p><b>Criterion #1:</b> A planned approach was applied to properly engaging Nations and resulted in an Indigenous Engagement Strategy that guided preparation of the water resource plan (e.g. adequate time, appropriate venues and resources)</p>	<p>Absent    <b>Partial</b>    Satisfactory    Good    Excellent            1            2                3                4                5</p> <p><b>Key text reviewed relating to this criterion:</b></p> <ul style="list-style-type: none"> <li>• Relevant parts of the 2022 version of the proposed NSW MDB Porous Rock WRP<sup>1</sup> that refer to First Nations consultation (e.g., Section 1.3.1, pp. 5-13; Section 1.7 and 1.7.1, pp. 19-32);</li> <li>• The NSW MDB Porous Rock WRP Consultation Report (Schedule C);</li> <li>• First Nations Consultation Reports attached to Schedule C; and,</li> <li>• The limited material about and from NSW’s consultation with Barkandji/Maljangapa, Gomeroi/Kamilaroi/Gamilaroi/Gamilaraay, Tati Tati and Weki Weki Nations.</li> </ul> <p><b>Assessment comments:</b></p> <p>Workshop participants noted and reviewed the above materials, giving particular focus to the new and changed elements compared to the 2020 version of the proposed WRP. Nation organisers also recalled their Nation’s NSW water resource planning consultation experiences, including their involvement to support NSW’s engagement (where relevant). The assessment workshop also reviewed the findings from MLDRIN’s assessment of the 2020 version of the proposed WRP, including the fundamental inadequacies identified with the consultation process and the lack of a strategic approach to consultation.</p> <p>Participants noted that there are some additions and amendments to the WRP content regarding the consultation approach. These amendments seek to (i) present the view that NSW did develop a strategic approach to WRP consultation,<sup>2</sup> (ii) outline commitments to future consultation,<sup>3</sup> and (iii) assert that the values, uses, objectives and</p>

<sup>1</sup> Where necessary, a distinction is made between the 2020 and 2022 versions of the proposed NSW MDB Porous Rock WRP. If the year is not stated, it should be clear from the surrounding context.

<sup>2</sup> For example, a new comment in the accredited text at p. 18 of the WRP, for the purpose of sections 10.52 of the Basin Plan, states that “NSW had regard to advice from MLDRIN and NBAN about the engagement process with First Nations to ensure that the consultation was culturally appropriate and relevant to water resource planning.”

<sup>3</sup> For example, a new statement in the accredited text at p. 28 of the WRP, for the purpose of section 10.53 of the Basin Plan, states that “NSW is committed to furthering the discussion to meet the requirements of Part 14 of Chapter 10 of the Basin Plan through engaging with Aboriginal people, including Traditional Owners and Aboriginal organisations, over the coming 12 months.”



outcomes, solicited through First Nations engagement, are related to surface water and groundwater sources (detailed further below). The WRP makes the claim that “The process undertaken for Aboriginal consultation followed the MDBA Guidelines for meeting Basin Plan (Chapter 10) requirements in relation to Aboriginal peoples’ objectives and outcomes for water. Those guidelines suggest appropriate consultation processes to ensure that the concerns of Traditional Owners are taken into account and draw on the Akwé: Kon Guidelines in a water resource planning context. Consultation with First Nations must be meaningful and fulfill the requirements of the Basin Plan” (WRP, p. 24). However, the evaluation of NSW’s WRP documentation and the First Nations Consultation Reports, along with the workshop participants’ testimonies about their Nations’ consultation, has led MLDRIN to conclude that, contrary to claims in the WRP, NSW did not adequately plan for, or deliver, consultation to meet the Basin Plan requirements.

The inconsistent consultation experiences, as revealed throughout this assessment and some First Nations Consultation Reports, also indicate that the engagement was not well planned. Added to this is the fact that Nations reported not being contacted, let alone consulted, by NSW regarding WRPs since their original WRP engagement in 2018-19. Overall, a score of low **partial** was deemed appropriate for this criterion. Further explanation of the reasons justifying this score is provided below.

First, though, workshop participants wanted several Nations’ experiences to be acknowledged upfront because they included some elements of how engagement should have looked for other Nations. This includes, firstly, the Wadi Wadi Nation consultation, whose engagement was scored by the Nation organiser as ‘satisfactory’ for this criterion.<sup>4</sup> Favourable elements included:

- Resourcing: The engagement was fully funded – this included the Nation organisers’ time and expenses and Traditional Owners’ time. This was likely because of the Victorian Government’s support.
- Influence and control: the Nation organiser felt empowered to shape and direct the engagement and had the final say about how the engagement would work: “it was how we wanted to approach our mob.”
- Culturally appropriate: the consultants were described as culturally aware, prepared, and appropriate.

The Wadi Wadi Nation’s engagement and how NSW has used the consultation outcomes, however, were not ideal. As the workshop progressed, the Wadi Wadi Nation organiser noted that while she considered elements of the engagement to be “deadly”, the information that was discussed during the engagement did not appear to be reflected in the WRP document. Additional matters of concern are detailed throughout this assessment report.

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<sup>4</sup> The workshop participants, including the Wadi Wadi Nation organiser, decided to exclude this score and experience from the overall score because it was a standalone anomaly.

Secondly, the Maraura Nation organiser confirmed that the consultant his Nation worked with was respectful and ran culturally appropriate engagement. This position is consistent with the generally positive feedback provided by this representative during previous NSW WRP assessments. However, the Nation organiser explained that the Maraura Nation included a 3 year “shelf life” timeframe on their data use agreements, within which NSW was permitted to use the information shared during engagement. This agreement has now expired, but NSW has not approached the Maraura Nation to seek permission to continue using the material in this WRP or others. This key issue, along with the fact that his Nation has not received any information or updates from the consultants or NSW since the engagement, caused him to revisit the positive and higher scores and assessment comments offered in previous WRP assessments.

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

Participants discussed how, following NSW’s withdrawal of the 2020 version of the proposed WRP, the state had an opportunity to develop a strategy that addressed the consultation deficiencies identified in MLDRIN’s original assessment. In fact, the NSW Department made statements and commitments to MLDRIN (sometimes with the MDBA present) to the effect that:

- NSW recognised that consultation had not sought the view of Traditional Owners on all matters covered in Chapter 10, Part 14 of the Basin Plan,<sup>5</sup> and,
- Additional consultation would be required on some matters to meet the requirements, and this would be undertaken to guide preparation of a revised WRP before submission to the MDBA.<sup>6</sup>

Despite this, further consultation has not occurred with Nations or even Nation organisers. Table 1-4 of the 2022 version of the proposed NSW MDB Porous Rock WRP (pp. 27-31) confirms this. Additionally, MLDRIN interprets the accredited text for the purpose of Basin Plan requirement 10.53 as a concession that the consultation undertaken to date is not sufficient for the NSW Government to meet the relevant Basin Plan requirements: “NSW is committed to *furthering the discussion to meet the requirements of Part 14 of Chapter 10 of the Basin Plan* through engagement with Aboriginal people, including Traditional Owners and Aboriginal organisations, over the coming 12 months” (p. 19, emphasis added). (It should be noted that during a presentation to the assessment workshop, NSW representatives clarified this timing to mean the 12 months following the WRP’s accreditation.)

<sup>5</sup> For example, NSW Department representatives confirmed during a meeting with MLDRIN staff and Directors on 19 October 2021, that “some things were just not even asked” during the consultation process, regarding Basin Plan 10.53 requirements.

<sup>6</sup> NSW Department representatives confirmed during a meeting with MLDRIN staff and Directors on 19 October 2021 that NSW would come back to MLDRIN and go back to the Delegates from each area, to have a further discussion regarding cultural heritage and native title. This was confirmed in letters to MLDRIN in December 2021 from Jim Bentley (NSW Water Sector CEO) and March 2022 from The Hon Kevin Andrews (NSW Minister for Lands and Water).

Participants acknowledged that COVID-19 has certainly created some engagement challenges, but saw that, at a minimum, online options were still possible. In lieu of any further engagement or conversations with Nation organisers, NSW appears to have instead embedded more information from the initial engagement within the WRP. For example, the additional information in the new 'Section 1.7.1 Aboriginal consultation' of the WRP (pp. 24-26) and its links to Nation Consultation Reports may be an attempt to strengthen evidence that NSW had a planned approach to consultation. In other places, it seems NSW attempts to remedy issues in the WRP raised in MLDRIN's assessment of the 2020 version of the WRP by more closely reviewing material collected during initial engagement (details are presented later in this report). Participants were of the view, however, that these additions do not correct or make up for the deficiencies of that initial engagement as outlined in this assessment (and in MLDRIN's original assessment).

**(b) The NSW Government's approach to engaging with Nations about groundwater**

Multiple participants experienced consultation that, upon reflection, did not have a clear or transparent scope. In particular, some were unaware that their consultation was supposed to address both surface waters and groundwaters. This fundamental issue was raised in the assessment of the 2020 version of the WRP and remains unaddressed in the 2022 proposed version, with the NSW Government again using outcomes from what Nations understood to be surface water focused consultation to meet Basin Plan requirements of this groundwater plan. This scoping or communication issue, combined with inconsistent experiences,<sup>7</sup> indicates that the engagement was not well planned.

Participants reviewed new text in the 2022 version of the WRP that appears to be an attempt to address this matter without returning to conduct more consultation and/or seek expression permission from Nations to use the original engagement outcomes for this groundwater WRP. This includes, in particular, the following statement in the explanatory text at p. 24 of the WRP: "While some of the examples provided in the First Nation reports relate to surface water, Aboriginal people see all water as one and the cultural connection Aboriginal people have to water is not limited by where the water sits in the landscape. These examples have therefore been included in this groundwater WRP."

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<sup>7</sup> As noted in previous assessments, this was not the experience of all Nations. For example, the Maraura Nation organisers did specifically discuss groundwater with their consultants and during their WRP consultation.

Importantly, some Nation representatives agreed that elements of this statement were correct for them. However, some found the addition of this broad and sweeping statement to be highly presumptuous because of the context in which it has been added. That is, NSW has conveniently used Traditional Owners' concepts of interconnectedness to justify not returning and to excuse or mask its lack of transparency to begin with. Some viewed the addition as the NSW Government attempting to "gloss over their own inconsistencies" and "cover up" its consultation gaps, especially seeing as the statement has only been added after the original First Nations' assessment of the 2020 version of this WRP (and other 2020 groundwater WRP versions) raised the fact that it was not made clear to all Nations that consultation was supposed to cover surface water and groundwater.

As one example, the Wemba Wemba Nation organiser shared that his Nation had not known that they were supposed to be sharing surface water *and* groundwater objectives, outcomes, values, uses, and risks during their WRP engagement. This scope had not been made clear to them. It is the role of engagement facilitators to communicate this scope clearly not only at the outset but throughout the whole engagement experience. The Nation's organiser said: "We were only talking about surface water, but NSW has construed that information to be examples that apply in groundwater contexts... NSW presumed that we knew the engagement was about groundwater too, and so they're applying our surface water related objectives into groundwater contexts. They cannot presume these things." What makes this situation more frustrating for the Wemba Wemba Nation organiser – and other Nation representatives in similar situations – is that these major consultation oversights, and unacceptable use of their materials, were raised in MLDRIN's original WRP assessments along with recommendations on suitable remedies. In the words of the Wemba Wemba Nation organiser: "If NSW came back and spoke to us, we could have told them more, rather than add in that presumptuous paragraph."

The NSW Government's decision to not follow the original advice and return to Nations, or at the very least, Nation organisers, to speak about groundwater with more clarity, has made the state's engagement approach appear more insensitive to Nations. Not only has this approach denied a collection of individual Nations the chance to speak about and articulate groundwater systems (and their connections to surface waters) in their own individual ways. It has also denied NSW the ability to account for how Nations hold different water objectives and outcomes informed by their own unique values and uses in the WRP. NSW needs to ensure all First Nations have opportunities to speak about both surface water and groundwater, a recommendation that has already been made. It may be the case that some Nation organisers are satisfied that their initial engagement did sufficiently allow for discussion of both water sources, such as the Maraura Nation (though see below), but the opportunity must be offered.

As was the case for the 2020 versions of NSW groundwater WRPs, this fundamental issue – whether an oversight, communication issue, or other – remained unaddressed in the assessed WRP. Subsequently, this issue arose repeatedly throughout the assessment workshop, and this is reflected throughout the assessment of the remaining MDBA criteria and Basin Plan requirements in this report.

**(c) Overarching issues with the consultation undertaken by NSW**

When reviewing the WRP material and reflecting on their consultation experiences, many assessment workshop participants agreed that NSW’s Nation-based approach to engagement was suitable (as identified in MLDRIN’s original assessment). However, Nations’ experiences of engagement varied considerably across the WRP area (WRPA). For example, some Nation organisers, including the Maraura and Wadi Wadi Nations, reported having positive working relationships with their consultants. As noted at the outset of this Criterion assessment, they reported having opportunities to directly influence the consultation approach their consultants took as well as the types of questions asked during the engagement. But even in these cases, their working relationships occurred within, and were impacted by, the constraints and decisions imposed by the NSW Government.

Recurring key issues raised by participants relating to the planning and delivery of consultation are documented below and are consistent with MLDRIN’s original assessment. These issues provide evidence of how engagement was not well planned and not considered “proper” by workshop participants, as required by the MDBA Criterion:

- Ad-hoc planning, inadequate and inflexible timeframes, and limited consultation options restricted opportunities for participation:
  - Several Nation organisers (e.g., Ngiyampaa and Wiradjuri (Murrumbidgee & Murray) Nations) advised that their requests for additional workshops and consultation opportunities during engagement period had been denied by consultants and NSW Department representatives. This meant that the consultation missed key people, places, and important content. Participants said consultants and/or NSW gave reasons like time constraints and inadequate resourcing when denying these requests.
  - The Wiradjuri (Murrumbidgee & Murray) Nation organiser recounted how the consultant lacked timing flexibility. He had asked the consultant numerous times for a date and time for the Wagga Wagga workshop. When he was eventually told a date, little lead time was available, and the Nation organiser immediately advised that the selected date would not work because it clashed with another Wiradjuri community event. Against the Nation organiser’s advice, the WRP consultation event went ahead with no repeat offered. This meant that Wiradjuri Traditional Owners from the Riverina area were not afforded an appropriate opportunity to participate and contribute.

	<ul style="list-style-type: none"> <li>○ The Maraura Nation organiser reported a lack of flexibility when his Nation had unexpected sorry business coincide with the workshop date. Although the consultant was understanding and wanted to postpone the workshop too, they advised the Nation that NSW said it was not possible due to tight timeframes. This was viewed as insensitive and culturally inappropriate.</li> <li>○ Some assessment workshop participants, in their capacities as Nation organisers, had requested follow-up workshops and discussions after the initial WRP engagement had concluded to ensure consultation was equitable and fit for purpose. However, no further workshops or engagements with the Nations regarding WRPs were planned or delivered between November 2019 and the submission of the 2022 version of the WRP (see Table 1-4, pp. 27-31 of the WRP).</li> <li>● Inadequate resourcing for consultation: <ul style="list-style-type: none"> <li>○ Elders and Traditional Owners cannot always afford to travel to consultation opportunities, particularly where they live outside of town centres where engagement is offered. Some Nation organisers reported that they had had to advise community members about workshops and transport them at their own personal cost because travel compensation was not available from NSW. Participants reported that, in many cases, Elders and Traditional Owners were not provided with any in-kind recognition of the commitments they had made.</li> <li>○ Limited resourcing restricted the number of workshops or interviews that could be held for each Nation, and therefore the number of people engaged and the amount of information that could be collected. In some cases, the meeting venue options were also limited due to resources.</li> <li>○ On some occasions, Nation Organisers reported feeling unfairly relied upon to organise workshops and/or notify participants. Often, this occurred in the context of insufficient time or resources.</li> </ul> </li> <li>● In some cases, culturally unsafe and insensitive consultation models and practices:<sup>8</sup> <ul style="list-style-type: none"> <li>○ Many Nation organisers recorded feeling ashamed and/or personally conflicted as a result of poor communication from NSW staff and consultants and the inadequate resourcing for consultation. They felt like they were frequently left to bear the brunt of community frustrations.</li> <li>○ The Wadi Wadi Nation organiser reported not being supported to identify and notify all Wadi Wadi people about the engagement, creating challenging community implications for her after the consultation had been completed.</li> <li>○ A Gomeroi/Kamilaroi/Gamilaroi/Gamilaraay Nation representative confirmed that their Nation’s</li> </ul> </li> </ul>
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<sup>8</sup> MLDRIN is of the position that this point is relevant to this criterion because ensuring culturally safe environments for participation is a core consideration in properly planning and delivering First Nations engagement.

	<p>approval of their Consultation Report had been withdrawn because their consultation was not appropriate.</p> <ul style="list-style-type: none"> <li>○ The Wadi Wadi representative stated that her Nation Consultation Report includes sensitive material that was discussed during engagement, which she had directly told the consultants was “off the record” and not to be included in the report. The Wadi Wadi Nation Consultation Report also includes images of culturally sensitive material that the Traditional Owners have not given consent to photograph or include in the report (see also Criterion #5).</li> </ul>
<p><b>Criterion #2:</b> Appropriate Nations were identified and involved throughout <u>all</u> stages of the water planning process.</p>	<p>Absent    <b>Partial</b>    Satisfactory    Good    Excellent  1            2                3                4                5</p> <p><b>Key text reviewed relating to this criterion:</b></p> <ul style="list-style-type: none"> <li>● Relevant parts of the 2022 version of the proposed NSW MDB Porous Rock WRP that refer to Nation consultation (e.g., Section 1.3.1, pp. 5-13; Section 1.7 and 1.7.1, pp. 19-32);</li> <li>● The NSW MDB Porous Rock WRP Consultation Report (Schedule C);</li> <li>● The Nation Consultation Reports attached to Schedule C; and,</li> <li>● The limited material about and from NSW’s consultation with Barkandji/Maljangapa, Gomeroi/Kamilaroi/Gamilaroi/Gamilaraay, Tati Tati and Weki Weki Nations.</li> </ul> <p><b>Assessment comments:</b></p> <p>Workshop participants scored this criterion as <b>partial</b>. The reasons outlined below demonstrate that, although all the appropriate Nations for the WRPA were identified, the latter, more substantial, parts of this criterion have not been met. That is, based on the evidence in the WRP documentation and Nation representatives’ experiences, it is not possible to say that any Nation was involved in all stages of the water resource planning process, with some not involved in any.</p> <p><b>(a) All appropriate Nations were identified in the WRP</b></p> <p>Participants noted that the 2022 version of the WRP again identifies all appropriate Nations with territories in the WRPA. This meets the first component of the MDBA Criterion and, therefore, participants agreed that a score that is higher than absent was appropriate.</p> <p><b>(b) Not all identified Nations were involved in the water planning process</b></p> <p>Participants reviewed new explanatory text in Section 1.3.1 of the WRP, which includes additional details regarding “Nations where consultation or consultation reports are not complete” (pp. 5-7). The updated text includes entirely</p>



new sections for Barkandji/Maljangapa and Gomeroy/Kamilaroi/Gamilaroi/Gamilaraay, as well as amended text for Tati Tati and Weki Weki. This updated text appears to provide more detail and attempts to justify the lack of inclusion of these four Nations' materials in the WRP. The Consultation Report (Schedule C) includes similar information.

The text relating to the Barkandji/Maljangapa Nation and the Gomeroy/Kamilaroi/Gamilaroi/Gamilaraay Nation states: "Subject to the Nations Agreement, the department will incorporate the Nations' objectives and outcomes for the management and use of water resources of the WRPA based on their values and uses into the WRP *at a later date*" (p 5 & 6). The text does not describe how this inclusion may occur, and MLDRIN understands it would require an amendment to the WRP. It is also noteworthy that the following statement, which appeared in the 2020 version of the WRP regarding Tati Tati and Weki Weki Nations has been removed from the 2022 version: "Consultation is still underway for the following Nations with Final Reports not available in time for submission of this WRP for accreditation" (p. 8). The new text for these Nations instead more clearly shows that consultation did not occur.

**(c) Where Nations were involved in the WRP process, opportunities were not available during all stages**

Participants discussed the exclusion of Traditional Owners from important stages of NSW's water planning process. They reviewed timeframes for key water planning processes, including public exhibition, development of the Risk Assessment, and commencement of Stakeholder Advisory Panels (SAPs)<sup>9</sup> meetings. This review indicated Nations were not afforded active and equitable participation until very late in the WRP preparation process.

For example, the First Nations consultation workshops run by NSW that should have informed the NSW MDB Porous Rock WRP commenced at the earliest in April 2018.<sup>10</sup> This is very late in the statutory timelines for water resource planning given that all WRPs were supposed to be accredited by 30 June 2019. Moreover, the draft NSW MDB Porous Rock WRP was on public exhibition in July and August 2019 with only **four** completed Nation Consultation Reports attached. As this WRPA concerns the Country of **14** Nations, the publicly exhibited draft WRP was clearly incomplete. Furthermore, the exhibition period occurred prior to the start of consultation workshops with **six** of the First Nations with interests in the WRPA. This situation was viewed by a Nation representative as "insulting". It raises questions about procedural fairness for First Nations in that most were not afforded the opportunity to comment on their

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<sup>9</sup> Of note, the SAP meetings concluded before engagement workshops commenced with most Nations in the WRPA. As all groundwater sources were covered by one NSW-wide groundwater SAP and no SAP meetings occurred since MLDRIN's assessment of the 2020 version of the proposed NSW MDB Porous Rock WRP, please review that assessment report for additional relevant evaluation and commentary.

<sup>10</sup> These April 2018 workshops were with the Gomeroy/Kamilaroi/Gamilaroi/Gamilaraay Nation, but this Nation Consultation Report has been withdrawn from WRPs.

material – or on how their material influenced the prepared WRP – in the public exhibition process due to engagement delays that were entirely beyond their control.

As raised in the assessment of MDBA Criterion #1, the communication from NSW and consultants about the scope of some First Nations' WRP engagement – specifically, that it included groundwater – is a contributing factor to the absent score determined here. Specifically, some Nation organisers were of the position that they had not been involved throughout any stages of the groundwater planning processes given that, as far as they understood, their consultation had been surface water focused.

**(d) Engagement opportunities were not afforded to enough, let alone all, relevant Traditional Owners**

Consultation challenges – particularly resourcing unavailability and tight timeframes – left Nation organisers feeling unable to ensure their Nations' participation included all the right people or enough people. In some examples, this is demonstrated in the low numbers of engagement participants (see also MDBA Criterion #1 and #3). The Wadi Wadi Nation representative, who had felt adequately supported regarding logistics (i.e., adequate resourcing and timeframes), reported feeling unsupported when it came to accessing information to find and reach her Nation group. She reported seeking advice from Native Title services, for example, but was offered no assistance. As a result, she felt that not enough Wadi Wadi Traditional Owners were contacted and missed out on participating.

**(e) Absence of any engagement in the most recent water planning stage: revising the WRP**

In addition to these findings, participants noted the failure of NSW to involve First Nations in the most recent, and incredibly critical, stage of the WRP development and planning process: revising the WRP for the purposes of accreditation. This missing feature in the WRP process inevitably undermines the extent to which the WRP can be seen to have regard for First Nations' people and knowledge.

MLDRIN and NBAN have both recommended that, following NSW's withdrawal of the 2020 version of the WRP, a follow-up round of consultation would be essential for NSW to address the initial gaps and deficiencies and to meet the Basin Plan requirements. Many Nations organisers have requested this too. This engagement needed to create space for Nations to speak about their values, uses, objectives, outcomes, and other views in relation to groundwater, should they feel they were not afforded this opportunity in the initial engagement. Indeed, as outlined in MDBA Criterion #1 above, it was understood that NSW had committed to completing additional consultation. But, as mentioned, NSW did not offer any further engagement and instead drew materials from the Nations' Consultation Reports directly into the main WRP without Traditional Owner advice, guidance, or even consent (see MDBA Criterion

	<p>#1 for further commentary on this). The fact that the NSW Government has repeated this specific and intentional practice of exclusion, despite advice from Traditional Owners in the assessment of the 2020 version of the proposed WRP, was and continues to be seen as insensitive.</p> <p>Workshop participants were aware that NSW could not go back in time and involve Traditional Owners in all stages of the water planning process. However, the NSW Government did have the opportunity over the past two years to learn from and address their mistakes. At a minimum, it would have been expected that NSW involved Traditional Owners in the most recent review and revision of the WRP, particularly where it concerns their own information.</p>
<p><b>Criterion #3:</b> Nations were properly notified of the opportunities to be involved in the water resource planning process, (e.g. print, phone, electronic and personal media and town meetings)</p>	<p>Absent    <b>Partial</b>    Satisfactory    Good    Excellent  1            2                    3                    4                    5</p> <p><b>Assessment comments:</b>  Workshop participants reflected on the communication and notifications relating to their own Nation’s involvement in water resource planning processes, including during the revisions of the WRP in 2021. Overall, they scored this criterion as <b>partial</b> as explained below:</p> <p><b>(a) Original engagement (2018-2019) notification processes</b>  Assessment and evaluation comments from MLDRIN’s original assessment of the 2020 version of the proposed NSW MDB Porous Rock remain pertinent. As raised in that assessment, and highlighted again by representatives during the September 2022 assessment workshop, Nations encountered varied notification processes. The key shared and recurring issues that affected the adequacy of notification were the timing and deadline challenges (see MDBA Criterion #1) which meant that the period for advertising engagement events – and time for Nation representatives to “spread the word” – was often not long enough. Several Nation organisers reported only being given about a week to bring everyone together for workshops, which was not sufficient, particularly when those Nation organisers held other jobs. This issue of inadequate notification and lead time is identified in numerous Nation Consultation reports.<sup>11</sup></p> <p>Although Nation organisers generally supported the use of word of mouth, in some cases, the NSW Government and its consultants relied too much on Nation organisers to notify others about the consultation events. Nation organisers reported that this included phone calls and driving around to visit their community and notify them of the events, often at their own expense. Some Nation organisers (e.g., Wadi Wadi) reported that they were supplied with</p>

<sup>11</sup> See, for example, Barapa Barapa Nation Consultation Report (p. 17), Muthi Muthi Nation Consultation Report (p. 8), and Wiradjuri (Murrumbidgee & Murray) Nation Consultation Report (p. 20, 23).

	<p>supporting materials, including flyers and letters, while most others were not. This reliance on Nation organisers was sometimes too great. These factors together meant that, in many cases, Nation organisers perceived that notification was not afforded to enough, let alone all, relevant Traditional Owners as demonstrated by the low number of attendees at some Nation workshops (see MDBA Criterion #2).</p> <p><b>(b) Notification of opportunities to be involved in water resource planning since original engagement</b></p> <p>Participants noted that no additional consultation had been undertaken since NSW’s submission of the 2020 version of the WRP to the MDBA. This meant Nations had not been notified of any opportunities to be involved in that stage of the planning process, adding to the justification for this score. As detailed already, NSW has reviewed and amended the WRP over the last 12 months. Nation representatives at the assessment workshop reported that they had received no notification from NSW about this period or process of revision for resubmission to the MDBA, let alone notification about opportunities to contribute to or guide the review of their Nation’s materials. This is made more disappointing in that (i) MLDRIN and NBAN impressed on NSW that further engagement was needed and (ii) on numerous occasions, NSW committed to further engagement.</p>
<p><b>Criterion #4:</b> Information about water resource planning processes and content provided was clear to Nations</p>	<p><b>Absent</b>      Partial      Satisfactory      Good      Excellent</p> <p><b>1</b>              2              3              4              5</p> <p><b>Assessment comments:</b></p> <p>Workshop participants reflected on the information provided by NSW during development of the WRP. It was their view that clear information to Nations about the overarching water resource planning process or the purpose of engagement was not provided. Consequently, this criterion was assessed as <b>absent</b>, with several key justifications.</p> <p><b>(a) Paucity of appropriate information provided during engagement</b></p> <p>Workshop participants’ comments were consistent with previous MLDRIN advice provided to the MDBA. For Nations represented at the workshop, key issues with the quantity and quality of information provided to First Nations during engagement included:</p> <ul style="list-style-type: none"> <li>• The complexity of water planning processes was not always explained in accessible language and/or the information that was presented was often not understood by attendees. The Maraura Nation’s experience differed though, with the Nation organiser reporting that the consultants had helpfully used plain English and that he also drew on his experience to assist with explaining some terms and concepts in support.</li> <li>• Some consultants did not have a detailed understanding of the water planning mechanisms or processes in which First Nations information would be used.</li> <li>• Participants reported that they were not made fully aware of the scope of engagement during workshops.</li> </ul>

- Participants stressed the importance of needing access to appropriate information in order to make informed decisions. This includes ensuring enough time is provided so that Nations can read over any information provided and understand the terminology.

To demonstrate these concerns, it is useful to point to these relevant comments from the Wiradjuri (Murrumbidgee & Murray) Nation Consultation Report: “the community were not given sufficient supporting information for review prior to attending the workshop and were given less than one week’s notice regarding the date of the workshop. Furthermore, [the Traditional Owner] also believed that the intended outcomes for the workshop could not be achieved without prior information to review and sufficient notice” (p. 20).

Participants spoke about what information was shared with them about WRPs and relevant legislation. For many, this information was reportedly incomplete or poorly articulated, and at best<sup>12</sup> was limited to Chapter 10, Part 14 requirements of the Basin Plan. While several participants reported that the consultants had made clear the purpose of the engagement, others did not. For example, the Wiradjuri (Murrumbidgee & Murray) Nation Organiser shared that “we had no clear conversations about what a WRP is so that we could talk about our concerns with it. There was no information shared [with us], only grabbed [from us]; they asked us silly questions about our water and then ran off with the information. There was no dialogue about ‘What is a WRP?’ and we still don’t really know.”

Another concern regarding the suitability of information provided during the WRP engagement was the lack of information shared by NSW and its consultants about groundwater systems. One Nation representative shared how their Nation’s engagement had been focused on “water and rivers” generally, without being more clear or specific that this included groundwater systems, that their information would form part of groundwater WRPs, or more broadly, any information about groundwater systems. By way of example, Nation representatives suggested that the information the NSW Department representatives shared about different groundwater systems as part of their presentation to the assessment workshop should have been shared during WRP engagement workshops. This would have helped to provide a better context in which the information they shared would be used. By contrast, as the Wiradjuri (Murrumbidgee & Murray) Nation organiser stated, “We were not provided with free, prior and informed consent about the consultation process in order to understand what information to share... We also were not provided with the appropriate documentation or resources, which we really needed to be informed to participate.” Free, prior, and informed consent are basic principles of engaging with Indigenous people.

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<sup>12</sup> ‘At best’ because, as demonstrated later in this assessment, not all matters within Chapter 10, Part 14 were discussed with all Nations.

Nation representatives also noted that they have not received any information or updates about water resource planning since their original engagement or, in the case of Weki Weki and Tati Tati Nations, since the original invitations for engagement as detailed on pages 6 and 7 of the WRP. This includes no updates or advice that NSW was revising the WRPs after the initial assessment for resubmission to the MDBA.

**(b) New textual additions to the WRP contradict Nations' experiences<sup>13</sup>**

Workshop participants reviewed and reflected on the amended text in the 2022 version of the proposed NSW MDB Porous Rock WRP and its Consultation Report that relates to the consultation design and delivery. Specifically, participants discussed the new text included in Section 2.3 of the Consultation Report, which states, "the consultation was an important opportunity for the department to share knowledge and insight into how water is managed in NSW. As such, the engagement activities were responsive to participants' desire[s] to understand how water policy and management decisions are made" (p. 7). Additionally, Table 2 of the Consultation Report claims that "a shared understanding of water management [was] developed prior to conducting workshops with the broader group of First Nation Traditional Owners" (p. 13).

Given all the matters already detailed in this MDBA Criterion assessment and MLDRIN's original assessment of the 2020 version of the WRP, participants strongly disagreed with these statements, describing them as "untruthful" and their addition as "offensive". The Wiradjuri (Murray & Murrumbidgee) Nation organiser stated, "It's quite the opposite of what actually happened," a sentiment that many others agreed with. Participants questioned, "Where's the evidence for NSW to draw this conclusion and make these statements?" These reactions were of such a strong nature, particularly because the added statements directly contradicted – and in turn, showed disregard for – the collective Nations' experiences and advice provided in the original First Nations' assessment. Subsequently, participants interpreted these additions as "NSW ticking their boxes." These issues point to the importance of including Traditional Owners in drafting documents so that false or misleading statements such as these can be ground-truthed, and where necessary, corrected, prior to publication.

**Broader general comments:**

Participants suggested that the diversity of experiences regarding engagement broadly – and the quantity and quality of information shared specifically – could in part be explained by the different consultants and their grasp of water

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<sup>13</sup> Commentary here is relevant to assessment of 10.53(1)(e).

	management. They also felt that it raised questions about the level of direction that the NSW Government provided consultants with to begin with, and NSW’s oversight across the engagement period to ensure consultants were consistently offering culturally appropriate engagement opportunities to all Nations.
<p><b>Criterion #5:</b>  <u>Appropriate tools and mechanisms for recording, understanding and incorporating Aboriginal objectives and outcomes were used.</u></p>	<p>Absent    <b>Partial</b>    Satisfactory    Good    Excellent  1            2                    3                    4                    5</p> <p><b>Assessment comments:</b>  Evaluation of this criterion by participants recognised that although Nations’ materials had been recorded appropriately where engagement occurred, the WRP documentation demonstrates that tools to (i) understand and test that understanding as well as (ii) to incorporate that material into the WRP were inadequate. This rendered an assessment score of <b>partial</b>. Further justification is presented below.</p> <p><b>(a) Tools and mechanisms for recording</b>  Workshop participants discussed the main tools that were used by consultants to collect and record Aboriginal objectives and outcomes where engagement took place.<sup>14</sup> Generally, these were (i) face-to-face interviews and (ii) First Nations workshops. This corresponds with the details contained in the NSW MDB Porous Rock WRP Consultation Report (Schedule C) and the attached First Nations Consultation Reports. Representatives generally saw that these tools were appropriate, though some were concerned that the rushed and compressed timeframes undermined their effectiveness. The Barapa Barapa Nation organiser noted his appreciation for the consultant providing him with a recording of his interview on USB. The Maraura Nation organiser similarly reported that their consultants had returned recordings to all Maraura participants for checking.</p> <p>Several Nation organisers were dissatisfied that the discussion did not more clearly or openly include groundwater sources. From the perspectives of these Nation organisers consultants did not use any ‘tools or mechanisms’ to understand their Nations’ understandings about groundwater and surface water connectivity (or otherwise). In the words of the Ngiyampaa Nation organiser: “Groundwater was not explained, so we couldn’t have shared objectives and outcomes in that sense.” Subsequently, questions were raised about how NSW could make overarching claims about the interchangeable use of First Nations’ engagement outcomes across surface water and groundwater WRPs (such as those found in the explanatory text on p. 24 of the WRP, see MDBA Criterion #1) given there had not been explicit conversations about whether this was true with the majority of engaged Nations.</p>

<sup>14</sup> Where Nations were not engaged, no tools were used (e.g., Tati Tati and Weki Weki).



Several participants also expressed dissatisfaction with the fact that WRPs do use information already collected with other established tools, many of which have been developed by First Nations (e.g., Aboriginal Waterway Assessments, Cultural Flows Methodology, Use and Occupancy Mapping, etc.). While the Wadi Wadi and Wiradjuri (Macquarie-Castlereagh) Nations had on-Country engagement opportunities, most did not, a situation that was viewed by participants as inadequate. The Wiradjuri (Murrumbidgee & Murray) Nation organiser also reflected on how tools and mechanisms such as Aboriginal place nominations, many of which are water-based, and Ramsar site management plans did not inform nor were addressed in their Consultation Report. MLDRIN considers these points are directly relevant to this criterion because they point to options that are (and were) available to NSW.

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

Some workshop participants shared that they had been given the opportunity to review portions of their Nation Consultation Reports before their finalisation.

The Wadi Wadi Nation organiser, for example, was generally satisfied that their consultant had offered opportunities for reviewing and, where necessary, revising material within portions of their Nation Consultation Report. However, as noted earlier, there are a couple of exceptions to this point. That is, the Wadi Wadi Nation Consultation Report includes sensitive material on page 20 that the Nation organiser had directly told the consultants was 'off the record' during engagement and not to be included in the report. The Wadi Wadi Nation Consultation Report also includes images of culturally sensitive material [REDACTED] that the Traditional Owners had not given consent to photograph or include in the report. The Nation organiser did not recall these photographs being included in the draft she was given to review.

MLDRIN's assessments of 2020 versions of WRPs included detailed comments about the mechanisms employed by some NSW consultants and/or the NSW Government for reviewing First Nations' Consultation Reports and drafting the WRPs. This included concerns about restricted timeframes for reviewing material; consultants only seeking approval and sign-off from one individual on behalf of communities; unclear explanations provided about how the Nation Consultation reports could be used; and in some cases, no review opportunities at all. A pointed example of this is that the Gomerai/Kamilaroi/Gamilaroi/Gamilaraay representative reported requesting a copy of their Nation's Consultation Report before it was completed but never received a copy.

Workshop participants reviewed the revised WRP and associated documentation during the assessment workshop. This included both the 'new' text added to various elements of the 2022 version of the proposed NSW MDB Porous Rock WRP as well as errors in some Nation Consultation Reports that were identified in the MLDRIN's original WRP assessments during 2020 and 2021. Not only were participants frustrated to see NSW not address the problems they had raised during the initial assessments, but they were surprised and, in some cases, offended by the content that the NSW Government had *added* (see MDBA Criterion #1 and Criterion #4 as just two examples).

MLDRIN and the workshop participants wish to reiterate that material written about First Nations must be directed and guided by relevant First Nations. At the very least, they should be afforded the opportunity to review the material so that mistruths and inaccuracies can be corrected. One example of this has already been provided in MDBA Criterion #4, but another is worth raising to further demonstrate this issue.

Finally, questions about the suitability (and presence) of tools and mechanisms used to incorporate the consultation findings, such as objectives and outcomes (but also values, uses, risks, and other information) into the WRP (and associated water management instruments, etc.) were raised. Participants emphasised that for their information to be 'incorporated' (as per this Criterion) and for the NSW Government to have a genuine and realistic consideration of their contributions and knowledge, it must be embedded into and impact upon policies and processes. As just one example, which is detailed further in the assessment of 10.52(1) below, the NSW Government's attempts to incorporate Nations' objectives and outcomes through Table 3 (and 4) of the Consultation Report occurred without direction or input from Traditional Owners to the detriment of the quality of the plan.<sup>15</sup> Indeed, several Nation representatives felt that Table 3 was a demonstration of NSW *misinterpreting* Traditional Owners' knowledge and information, highlighting how problematic this exercise had been without Traditional Owner guidance.

**Broader general comments**

Broader discussion during the workshop regarding the tools and mechanisms used in developing WRPs revealed additional concerns and reflections that extend beyond this criterion. For instance, at the time of the assessment workshop, there was considerable water across NSW due to recent ongoing rainfall events. Several participants noted that such dramatically different landscapes have triggered their thinking of additional objectives, outcomes, values, and uses. Others noted that new objectives and outcomes not captured during Nation engagement have arisen

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<sup>15</sup> Email correspondence from the NSW Manager Groundwater Planning confirmed on 8 September 2022 that "The tables were based on information provided in the First Nations reports. We did not consult with First Nations to ensure correct interpretation. This is the first step in analysing the alignment of water sharing plan objectives and First Nations objectives and further consultation will be undertaken."

	<p>simply in the passing of time since 2018/19 when the original engagement occurred. This is perhaps unsurprising, noting the tight timeframes for numerous Nations' engagement, but also points to the fact that First Nations' objectives and outcomes are not static. MLDRIN encourages NSW to continue to engage with Nations now (rather than waiting until WRPs are accredited) in order to be aware of and understand these additional objectives and outcomes, and to consider how water planning can support them.</p>										
<p><b>Basin Plan Chapter 10, Part 14</b></p>											
<p><b>10.52(1)(a)</b> A water resource plan must identify the <b>objectives</b> of Indigenous people in relation to managing the water resources of the water resource plan area</p> <p><i>[Assessment Note: Are these Objectives tangible and detailed enough to be addressed? Has the content of the Objectives been informed and shaped by genuine consultation with appropriate TOs?]</i></p>	<table border="0"> <tr> <td>Absent</td> <td><b>Partial</b></td> <td>Satisfactory</td> <td>Good</td> <td>Excellent</td> </tr> <tr> <td>1</td> <td><b>2</b></td> <td>3</td> <td>4</td> <td>5</td> </tr> </table> <p><b>Key text reviewed relating to this requirement:</b></p> <ul style="list-style-type: none"> <li>• Accredited text in the 2022 version of the proposed NSW MDB Porous Rock WRP for the purposes of 10.52 (pp. 11-13);</li> <li>• Explanatory text in Section 1.3.1 of the WRP (pp. 5-11);</li> <li>• Table 3, Consultation Report (Schedule C) (referenced in Accredited Text);</li> <li>• Section 2.3, Consultation Report (Schedule C) (pp. 7-25);</li> <li>• First Nations Consultation Reports attached to Schedule C; and,</li> <li>• The limited material about and from NSW's consultation with Barkandji/Maljangapa, Gomeroi/Kamilaroi/Gamilaroi/Gamilaraay, Tati Tati and Weki Weki Nations, and absence of these four Nations' objectives [and outcomes].</li> </ul> <p><b>Assessment comments:</b></p> <p>Participants reviewed the accredited text for 10.52 and the explanatory text in Section 1.3.1 of the 2022 version of the proposed NSW MDB Porous Rock WRP, as well as Table 3 of the attached Consultation Report (Schedule C). Participants noted that references in the accredited text to respective sections of Nations Consultation Reports that list the objectives [and outcomes] are now correct. Despite this, participants felt that the WRP's attempts to identify the objectives [and outcomes] were ultimately undermined by the concerns detailed below, which together rendered a score of <b>partial</b>.</p> <p><b>(a) Impact of inappropriate consultation on correctly identifying objectives and outcomes</b></p> <p>Participants reviewed the objectives [and outcomes] listed in their Consultation Report. Some participants were broadly comfortable with the objectives listed for their Nation, as they reflected those discussed during engagement (and within the timeframe and resourcing constraints noted earlier). The Ngiyampaa Nation organiser, for example,</p>	Absent	<b>Partial</b>	Satisfactory	Good	Excellent	1	<b>2</b>	3	4	5
Absent	<b>Partial</b>	Satisfactory	Good	Excellent							
1	<b>2</b>	3	4	5							

stated: “The objectives and outcomes [in our report] reflect what we spoke about, to some degree.”

Nonetheless, Nation representatives disagreed that these objectives [and outcomes] are relevant to this WRP. This is especially true when the focus and nature of consultation were not clear to the Nations, as detailed earlier in MDBA Criterion #1. For these Nations, it was reported that no, or not enough, groundwater objectives were discussed or, therefore, documented. The Wiradjuri (Murrumbidgee & Murray) Nation organiser said, “there are other things that are missing from our objectives, especially when it comes to groundwater. It stems back to the kinds of questions we were asked during consultation, which was all about ‘rivers’. There’s a little in our report about springs, but our groundwater objectives weren’t truly documented.” As one participant explained: “We were not provided with free, prior-informed consent about the consultation process in order to understand what information to share.”

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

Four Nations’ objectives [and outcomes] are not identified in the 2022 version of the WRP; this is an *increase* from the three not identified in the 2020 version. In some cases, this is because consultation did not occur and, therefore, there was no way for NSW to have identified the objectives [and outcomes] for these Nations (e.g., Tati Tati and Weki Weki). In other cases, consultation did occur, but objectives [and outcomes] are not identified for reasons known by NSW and those Nations (Barkandji/Maljangapa and Gomeroi/Kamilaroi/Gamilaroi/Gamilaraay). The WRP does not provide an explanation or justification for why these objectives [and outcomes] are absent. Regardless, the fact that these four Nations’ objectives [and outcomes] are not identified in the WRP was a large contributing factor for participants determining that NSW had not met the minimum legal standard set by this requirement.

The WRP’s new accredited text now obligates NSW to “explore further opportunities to consult with” these Nations and to provide the MDBA with a progress report within two years (p. 13). While this may sound promising, representatives from the Tati Tati and Weki Weki Nations questioned what attempts NSW had made to start creating such opportunities since the 2020 version of the proposed WRP was submitted.

**(c) Major concerns with the development, content, and demonstration of Table 3 (Consultation Report)**

Participants noted that the accredited text for requirement 10.52 (p. 12) presents information documenting the “alignment” of First Nations objectives and outcomes with Water Sharing Plan (WSP) objectives, via Table 3 of the Consultation Report (Schedule C). The inclusion of this material appears to be intended to demonstrate that the WRP, and NSW water planning instruments, have *had regard to* the objectives and outcomes developed through

consultation, although this particular action is not stipulated within Basin Plan requirement 10.52.<sup>16</sup>

Participants reacted strongly to Table 3. Its development and content was seen as “extracting” and “exploiting” Traditional Owners’ cultural knowledge; knowledge that was shared in good faith during consultation, under the expectation that it would be respected by NSW. Nation organisers were unaware of this exercise until MLDRIN’s assessment workshops. The WRP text is unclear about who conducted this exercise or if and how the comparison was guided or verified by the Nations that contributed information. Following MLDRIN’s request for further information about the development process,<sup>17</sup> the NSW Manager Groundwater Planning confirmed on 8 September 2022 that Table 3 (and Table 4) of the Consultation Report “were based on information provided in the First Nations reports. We did not consult with First Nations to ensure correct interpretation. This is the first step in analysing the alignment of water sharing plan objectives and First Nations objectives and further consultation will be undertaken.” Nation representatives were disappointed and frustrated by this confirmation.

Because of, and building on, the exclusion of First Nations from the development of Table 3, many Nation representatives felt uncomfortable with how their Nation’s information had been interpreted and included in Table 3. Specifically, Table 3:

- i. Separates and disaggregates First Nations’ information without First Nations’ participation or consent or control. Nation representatives described feeling uncomfortable with the way that Table 3 “picks and chooses” pieces of their information that were shared during engagement. As a result, this segments interconnected knowledges.
- ii. Shoehorns First Nations’ information to fit within, and in some cases to justify, existing mainstream water management objectives without the consent of Nations representatives. Nation representatives saw the decision to align First Nations quotes with the NSW WSP objectives in Table 3 as a falsification of information that took their quotes out of their intended context. It also gives an inaccurate and unfair impression that the quotes, and by extension the Nations, support the continuation of those objectives. One representative described this as “fitting our objectives into their objectives and what’s already in place. It doesn’t match [and] they’ve misinterpreted what we said and meant to begin with.” In some examples, this exercise sees quotes from Nations consultation reports lined up against – and could be construed to indicate support of – non-

<sup>16</sup> The analysis of Table 3 presented here is also relevant to the assessments of 10.52(2) and 10.53(1)(d), presented later.

<sup>17</sup> This request arose from observing similar material in another NSW Government proposed WRP.

Indigenous commercial-based groundwater extraction objectives that to date have generated no benefit to First Nations (and, instead, only impacts to Country).

- iii. Aligns quotes from certain Nations with WSP objectives that are not relevant to their Country. For example, quotes from the Wemba Wemba and Barapa Barapa Nations have been aligned with WSP environmental objectives about Groundwater Dependent Ecosystems and/or economic objectives that relate to groundwater extraction. Yet, the portion of the WRPA (and WSP) that overlaps with these Nations' Country is the Oaklands Basin (GS38), which is completely buried, without surface water connectivity, and not subject to extraction (NSW MDB Porous Rock WRP, p. 38).

MLDRIN acknowledges that NSW's preparation of Table 3 was not likely meant to cause these problems, but NSW must exercise more caution and consideration for the effects it may have for First Nations. Indeed, the Maraura Nation representative shared that he fears the way Nations' information has been "twisted" to fit into this table could be used against First Nations people in the future.

Another concern about Table 3 arose out of the inadequacy of NSW's consultation to convey that the engagement was related to both groundwater and surface water. That is, some surface water-focused objectives and outcomes appear in Table 3. The Wemba Wemba representative, for example, stated, "It is not appropriate for NSW to pick and choose from our objectives and outcomes – which were surface water based anyway... how can NSW presume that it can apply our surface water objectives in groundwater contexts?" A specific example relates to extraction – Wemba Wemba is in no way interested in extracting groundwater, wanting to keep it in the ground. However, there may be instances in which the Nation is interested in extracting surface water. Due to the NSW Government's method of engagement, this significant difference in these two objectives is not reflected in the Wemba Wemba Nation's Consultation Report or the WRP (including Table 3).

In summary, the exercise reflected in Table 3 misuses Traditional Owners cultural knowledge and was described by workshop participants as "disgraceful" and "appalling". Workshop participants assessed that the occurrence of this exercise without Nations' participation or prior knowledge, *plus* the publication of the resulting table in the Consultation Report and its use as evidence to address Basin Plan requirements, were not appropriate – culturally or otherwise. They observed that these matters present evidence that the NSW Government disrespected their cultural information, contradicting statements of respect for Traditional Owners throughout the WRP. This includes, for

	<p>example, the Acknowledgement<sup>18</sup> of the <i>Water Sharing Plan for the NSW Murray Darling Basin Porous Rock Groundwater Sources 2020</i>. Overall, it was the participants’ strong recommendation that Table 3, and all references to it, be removed from the WRP.<sup>19</sup></p> <p><b>Broader general comments:</b></p> <p>In addition to assessing that the Basin Plan requirement 10.52(1) has not been met due to the matters outlined above, workshop participants spoke at length about other related inadequacies. This includes that (i) the Basin Plan does not compel the NSW Government to do anything more than identify their water management objectives and outcomes, and (ii) the NSW Government has not developed strategies that help to address and advance these objectives and outcomes. As the Wiradjuri (Murrumbidgee &amp; Murray) Nation organiser explained, “Most of our objectives are captured, but there’s no substance to enforce them.” See also assessment of 10.53(1)(d).</p> <p>Participants also reviewed Table 4 of the Consultation Report, which presents First Nations objectives that do not match up with existing targeted WSP objectives. Participants stressed that the NSW Government must work on these too: “Many of these are important objectives and we don’t want to exclude them from consideration in water planning or see them sidelined.” The overall inadequate integration of First Nations’ objectives [and outcomes] into the WRP left participants feeling that First Nations were not listened to.<sup>20</sup></p>										
<p><b>10.52(1)(b)</b> A water resource plan must identify the <u>outcomes</u> for the management of the water resources of the water resource plan area that are desired by Indigenous people.</p> <p>[Assessment Note:</p>	<table border="0"> <tr> <td>Absent</td> <td><b>Partial</b></td> <td>Satisfactory</td> <td>Good</td> <td>Excellent</td> </tr> <tr> <td>1</td> <td><b>2</b></td> <td>3</td> <td>4</td> <td>5</td> </tr> </table> <p>See 10.52(1)(a) above.</p>	Absent	<b>Partial</b>	Satisfactory	Good	Excellent	1	<b>2</b>	3	4	5
Absent	<b>Partial</b>	Satisfactory	Good	Excellent							
1	<b>2</b>	3	4	5							

<sup>18</sup> Part 2, Clause 7.

<sup>19</sup> MLDRIN is preparing a letter directly to the NSW Government to raise these concerns.

<sup>20</sup> This reinforces the following statement in the WRP’s explanatory text: “Aboriginal people feel as though their voices are not heard in water management and cultural flows and outcomes are not considered in policy and implementation” (p. 67).



<p><i>Are these Outcomes tangible and detailed enough to be addressed?</i></p> <p><i>Has the content of the Outcomes been informed and shaped by genuine consultation with appropriate TOs?]</i></p>											
<p><b>10.52(2)(a)</b> In identifying the matters set out in subsection (1), regard must be had to the <b><u>social, spiritual and cultural values</u></b> of Indigenous people that relate to the water resources of the water resource plan area (<i>Indigenous values</i>)</p> <p><i>[Assessment Note: Is the matter specifically addressed in the text of the WRP? Does the WRP set out how proper, genuine and realistic consideration of Traditional Owner views informed the Plan? Is the matter addressed as part of the accredited text? Is the matter addressed as part of the supporting text? Are there strategies in place to address the matter?]</i></p>	<table border="0"> <tr> <td style="background-color: yellow;"><b>Absent</b></td> <td>Partial</td> <td>Satisfactory</td> <td>Good</td> <td>Excellent</td> </tr> <tr> <td style="background-color: yellow;"><b>1</b></td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> </tr> </table> <p><b>Key text reviewed relating to this requirement:</b></p> <ul style="list-style-type: none"> <li>● Accredited text for the purposes of 10.52 (pp. 11-13);</li> <li>● Explanatory text in Section 1.3.1 of the WRP (pp. 5-11);</li> <li>● Table 3, Consultation Report (Schedule C) (referenced in Accredited Text);</li> <li>● Section 2.3, Consultation Report (Schedule C) (pp. 7-25);</li> <li>● First Nations Consultation Reports, attached to Schedule C; and,</li> <li>● The limited material about and from NSW’s consultation with Barkandji/Maljangapa, Gomeroi/Kamilaroi/Gamilaroi/Gamilaraay, Tati Tati and Weki Weki Nations.</li> </ul> <p><b>Assessment comments:</b></p> <p>Participants noted various additions and amendments in the 2022 version of the proposed NSW MDB Porous Rock WRP in relation to 10.52. MLDRIN notes that the accredited text and explanatory text in the WRP are not always explicitly linked to specific Basin Plan requirements within 10.52, so it was necessary for MLDRIN to interpret what material was intended to address this requirement (10.52(2)), with some overlap with the assessment above in 10.52(1). Overall, participants felt that the 2022 version of the WRP has not demonstrated any regard for the substantive and unique values and uses of First Nations in identifying their objectives and outcomes, and thus awarded a score of <b>absent</b>. Specific justifications for this score are detailed below.</p> <p><b>(a) Issues with First Nations consultation and its depiction in the accredited text</b></p> <p>Like the 2020 version, the accredited text in the 2022 version of the proposed NSW MDB Porous Rock WRP states: “Regard to Aboriginal values and uses, including the risks to these, is demonstrated through consultation with Aboriginal people” (p. 12). As in the assessment of the 2020 version of the WRP, participants again did not agree that undertaking consultation could be considered evidence of proper, genuine, and realistic consideration. Justification</p>	<b>Absent</b>	Partial	Satisfactory	Good	Excellent	<b>1</b>	2	3	4	5
<b>Absent</b>	Partial	Satisfactory	Good	Excellent							
<b>1</b>	2	3	4	5							

Are the strategies binding and measurable?]

for this is detailed in the assessment of MDBA Criterion #1-#5, but in short, the consultation process was poorly planned, rushed, and under-resourced. This inherently restricts the quality of the information shared by First Nations that NSW could draw upon and have regard to. In particular, most Nations represented at the assessment workshop did not feel they had been given adequate opportunities to speak about their groundwater-related values [and uses]. These fundamental issues are relevant to the remaining accredited text dot points that address 10.52 given they are all underpinned by, and build on, that consultation.

Also of concern in the accredited text is this statement: “NSW had regard to advice from MLDRIN about the engagement process with First Nations to ensure that the consultation was culturally appropriate and relevant to water resource planning” (p. 12). MLDRIN and Nation representatives are of the view that this statement is not transparent and unfairly implicates MLDRIN in the NSW Government’s approach to engagement. MLDRIN has offered views and advice on appropriate participation and engagement to the NSW Government for several years before the NSW consultation began, but most of these recommendations were not acted on. Additionally, as already detailed in this assessment (and MLDRIN’s assessments of the 2020 versions of NSW’s WRPs), consultation was not “culturally appropriate”. As recommended in MLDRIN’s advice on the 2020 version of the proposed WRP, NSW must review all instances in the WRP that refer to MLDRIN’s role in and/or influence on the consultation process for accuracy.

**(b) Claims by NSW about the interaction between WRP First Nations engagement and Water Sharing Plan (WSPs) (Schedule A)**

Participants noted that the 2022 version of the proposed NSW MDB Porous Rock WRP states that the identified values [and uses] were used to identify Indigenous objectives and outcomes, and that these objectives and outcomes “inform[ed] the provisions in Part 2 of the *Water Sharing Plan for the NSW Murray Darling Basin Porous Rock Groundwater Sources 2020* (Schedule A) relevant to Aboriginal people in relation to water management” in the WRPA (p. 12, emphasis added). MLDRIN interprets that this statement attempts to demonstrate how NSW had regard to Indigenous values [and uses]. However, correspondence with NSW staff in 2021 revealed that WRP consultation outcomes did *not* inform or shape the WSP.<sup>21</sup> Thus, MLDRIN was confused by the inclusion of the statement again in the 2022 version of the proposed WRP.

MLDRIN sought clarification from NSW about this inconsistency after a similar statement appeared in a 2022 version

<sup>21</sup> The NSW Groundwater Planning Manager advised MLDRIN that “The Aboriginal cultural objectives in the inland groundwater WSPs are based on a standard template which was applied across the plan areas” (9 April 2021).

of another groundwater WRP. On 8 September 2022, the NSW Groundwater Planning Manager acknowledged that this is an error and that, contrary to the WRP text, “The Aboriginal cultural objectives in the inland groundwater water sharing plans (WSPs) are based on a standard template which was applied across the plan areas.” The manager also stated that: “The objectives and outcomes identified during the consultation sessions *have not yet informed* the Aboriginal cultural objectives in the water sharing plans” (emphasis added). The NSW Groundwater Planning Manager also advised that the text should instead read that “the objectives and outcomes will be considered in future updates to the provisions in Part 2 of the WSP.” Participants noted that the *WSP for the NSW Murray Darling Basin Porous Rock Groundwater Sources 2020* is not due to be replaced until 2030, possibly eight years away (if not longer).<sup>22</sup> Given these matters, this accredited text point offers no evidence of how the Basin Plan requirement has been met.

Significantly, MLDRIN alerted the MDBA of the erroneous nature of this statement in our assessment of the 2020 version of the proposed WRP, stating that “workshop participants and MLDRIN stress that the NSW Government must clarify and be transparent in their documentation” and that “the scale of this issue or error – regardless of if it is accidental – is not acceptable.” This same issue was raised in MLDRIN’s assessments of other WRPs submitted by NSW in 2020. It is MLDRIN’s understanding that all these statements of advice are provided to the NSW Government, so it is disappointing to find this erroneous claim retained in the WRP – intentional or otherwise.

A detailed assessment of the accredited text’s reference to Table 3 in Schedule C is presented above in the assessment of 10.52(1)(a), but MLDRIN acknowledges this table may in fact be an effort to demonstrate how NSW had regard to values [and uses] as required by 10.52(2). This suggestion is based on the statement that objectives and outcomes were “developed” from the identified values and uses in the accredited text on page 12. Participants rejected the suggestion that this table’s alignment of First Nations objectives (developed from values and uses) with those in the WSP demonstrates proper, genuine, and realistic consideration as the Basin Plan requires. (See 10.52(1)(a) for more detailed analysis on this table, which is applicable here.)

**Broader general comments**

Participants noted the new and amended explanatory text in Section 1.3.1 of the WRP. The first new part that attracted substantive comments was the “extracts from the Nation reports that summarise the deep cultural connections and values and uses that the Nations place on the water resources of the WRPA” (p. 7), in other words,

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<sup>22</sup> Following a review in their last five years, WSPs may be extended for a further 10 years. If such an extension of the *Water Sharing Plan for the NSW Murray Darling Basin Porous Rock Groundwater Sources 2020* is recommended, then it could be up to 18 years before this accredited text commitment is acted upon.

	<p>the NSW MDB Porous Rock water resources and area. These excerpts (pp. 7-9) are not substantive provisions of the WRP but could be an attempt by NSW to demonstrate greater integration of First Nations materials into the WRP. Some representatives were comfortable with these extracts and appreciated their inclusion in the WRP, but others disagreed. For example, the Wemba Wemba Nation representative highlighted that their extract (p. 9) includes the same two sentences repeated. He also raised concern with the content that was included, given that this was a groundwater WRP. For example: “How do we use groundwater for transportation?” It is unclear how these summaries were collated and how decisions about what content to include were made, which again points to the importance of including First Nations in drafting material about them.</p> <p>The other new explanatory text that attracted considerable comments at the assessment workshop appears towards the end of Section 1.3.1 (p. 11), where NSW presents four dot points which are purported to show that “[t]here are links between existing water management initiatives and the values and uses, risks, objectives, and outcomes identified by Aboriginal people.” These points could be an attempt by NSW to demonstrate that the WRP, and associated water planning instruments, have regard to First Nations’ values [and uses], specifically values [and uses] relating to springs and waterholes.</p> <p>Identifying linkages with existing water planning provisions is not sufficient evidence to demonstrate how (or even whether) proper, genuine, and realistic consideration has been given to First Nations’ values [and uses]. This is not only because not all Nations were afforded clear opportunities to speak about groundwater values [and uses] during engagement. These points also suggest that NSW is drawing on mechanisms intended to address environmental and other objectives as surrogates for First Nations’ values [and uses] and desired outcomes, without any consultation or engagement with First Nations about these mechanisms. Fundamentally, it is not appropriate for NSW to suggest that matters of concern to Traditional Owners can be addressed through processes or systems that they are not part of or are not afforded power over. Participants stressed the importance of First Nations’ direct involvement in risk assessments and Monitoring, Evaluation, and Reporting Plans (dot points 2 and 3).</p>										
<p><b>10.52(2)(b)</b> In identifying the matters set out in subsection (1), regard must be had to the <b><u>social, spiritual and cultural uses</u></b> of the water resources of the</p>	<table border="0"> <tr> <td><b>Absent</b></td> <td>Partial</td> <td>Satisfactory</td> <td>Good</td> <td>Excellent</td> </tr> <tr> <td><b>1</b></td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> </tr> </table> <p>See 10.52(2)(a) above.</p>	<b>Absent</b>	Partial	Satisfactory	Good	Excellent	<b>1</b>	2	3	4	5
<b>Absent</b>	Partial	Satisfactory	Good	Excellent							
<b>1</b>	2	3	4	5							

<p>water resource plan area by Indigenous people (<i>Indigenous uses</i>);</p> <p><i>[Assessment Note: Is the matter specifically addressed in the text of the WRP? Does the WRP set out how proper, genuine and realistic consideration of Traditional Owner views informed the Plan? Is the matter addressed as part of the accredited text? Is the matter addressed as part of the supporting text? Are there strategies in place to address the matter? Are the strategies binding and measurable?]</i></p>	
<p><b>10.52(3)</b> A person or body preparing a water resource plan may identify opportunities to strengthen the protection of Indigenous values and Indigenous uses in accordance with the objectives and outcomes identified under subsection (1), in which case the opportunities must be specified in the water</p>	<p><b>Absent</b>      Partial      Satisfactory      Good      Excellent</p> <p><b>1</b>              2              3              4              5</p> <p><b>Key text reviewed relating to this requirement:</b></p> <ul style="list-style-type: none"> <li>• Accredited text for the purposes of 10.52 (pp. 11-13); and</li> <li>• Explanatory text in Section 1.3.1 of the WRP (pp. 5-11).</li> </ul> <p><b>Assessment comments:</b></p> <p>Participants observed the updated material in the accredited text and explanatory text of the WRP that is relevant to 10.52(3). By contrast to what they reviewed, participants stressed that they instead needed to see NSW explain how it plans to work with First Nations to progress opportunities to strengthen the protection of First Nations’ values and uses, and they saw that what NSW offered in response to this requirement provides little to no assurances for First Nations in this regard. Moreover, the issues raised in MLDRIN’s assessment of the 2020 version of the WRP remained unaddressed and further issues have come to light since the original assessment. Thus, workshop participants</p>

resource plan	<p>awarded a score of <b>absent</b>; a lower score than the original assessment of the 2020 version of the proposed WRP. The key reasons for this score are presented below.</p> <p><b>(a) Claims about the statements in Nation reports as evidence of protection already being “strengthened”</b></p> <p>The workshop discussed the data use protocols and associated statements in each Nation Consultation Report at length. This discussion was triggered by the last dot point in the accredited text on page 12 of the WRP. Concerns raised during this discussion, many of which were detailed in original WRP assessments from MLDRIN, include:</p> <ul style="list-style-type: none"> <li>● The accuracy of the statement “There is currently no specific legal protection for cultural knowledge under Australian law” (p. 12, accredited text), given that Intellectual Property laws exist, and intangible cultural knowledge and heritage protections are possible under the <i>Aboriginal Heritage Act 2006</i> (Vic).</li> <li>● If this accredited text statement is correct, there was concern about whether Nations’ cultural knowledges in the Nation reports have any legal protections.</li> <li>● Grave concerns about the lack of transparency and free, prior, and informed consent in relation to the data use agreements (particularly those that did not realise their information would be used in groundwater WRPs). Some felt that this issue could nullify any consent for NSW’s ongoing use of the data.</li> <li>● Questions about who exactly owns the Intellectual Property within the First Nations Consultation Reports.</li> <li>● Not all Nations and/or Nation participants understanding the data use agreements they were asked to sign.</li> </ul> <p>As part of this assessment, MLDRIN has closely reviewed the Data Use Agreements for interviews and workshops that are attached as appendices to each First Nations Consultation Report. These present conflicting information about how information collected during engagement can be used by NSW, adding further justification to the concerns raised by workshop participants. That is, in the Interview Data Use Agreement (generally Appendix C to each Nation Consultation Report), a range of possible uses are listed, including in the development and creation of WRPs; to obtain accreditation for the WRP from the Murray Darling Basin Authority; for water planning in NSW; and for internal research and education. The Workshop Data Use Agreements (generally Appendix D to each Nation Consultation Report), however, permit more narrow uses, stating that notes during the workshop “will be used to write a consultation report to inform the development of specific Water Resource Plans in New South Wales” and “The report and notes will not be used for any other purpose.” These are two distinct purposes, the implications of which require further serious consideration.<sup>23</sup></p>
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<sup>23</sup> Notably, the latter would not permit NSW to use Nations’ materials in Table 3 of the Consultation Report (Schedule C) – see assessment of MDBA Basin Plan requirement 10.52(1)(a).

Due to these significant concerns and discrepancies, workshop participants contested the claim within the accredited text that “Protection of Indigenous values and uses has been strengthened through the consultation process and adoption of a definition and protocols for First Nations Cultural Knowledge” (p. 12). How such a claim can be true is not clear from the information available in the WRP documents. Indeed, participants determined that as long as there is confusion and uncertainty about this accredited text, it cannot be used as evidence to demonstrate compliance with this Basin Plan requirement. At the risk of overstepping our assessment role, MLDRIN strongly encourages the MDBA and the NSW Government to seek legal advice about the accuracy of the accredited text. Further details on this recommendation are offered in the “Broader general comments” of this requirement’s assessment below.

**(b) Commitment to updating the WSP seems irrelevant**

Participants noted that the accredited text includes the following commitment: “As groundwater water sharing plans are replaced, consultation with Aboriginal communities in the NSW MDB Porous Rock WRP will provide an opportunity to improve recognition of social, spiritual and cultural values in water management” (p. 13). As noted already, the WSP concerning these groundwater resources is not due to be replaced until 2030. Therefore, this accredited text seems to offer little meaning or relevance to this WRP. Indeed, participants expressed frustration and disappointment with the already long delays in NSW recognising First Nations values and uses and advancing First Nations water rights through this WRP. Suggestions of possible action in future reforms and consultation processes were deemed by participants to not amount to genuine consideration for the purposes of this WRP, especially when such processes are eight years away (if not longer).<sup>24</sup>

**(c) Other stated commitments to strengthen the protection of Aboriginal values and uses**

Participants observed that the WRP accredited text now states that “development and implementation of the NSW Water Strategy and the development of the associated Aboriginal Water Strategy” (p. 12) are ways that the NSW Government will work to strengthen protection of Aboriginal values and uses. MLDRIN and Nation representatives acknowledged that this addition by NSW may respond to suggestions provided by MLDRIN’s (and NBAN’s) assessments of 2020 versions of NSW WRPs. However, participants were unclear about the specifics of how these two strategies would provide enhanced protection and the status of the NSW Aboriginal Water Strategy. MLDRIN and the workshop participants found it interesting that the 2022 version of the proposed NSW MDB Porous Rock WRP

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<sup>24</sup> Following a review in their last five years, WSPs may be extended for a further 10 years. If such an extension of the *Water Sharing Plan for the NSW Murray Darling Basin Porous Rock Groundwater Sources 2020* is recommended, then it could be 18 years before this accredited text commitment needs to be acted upon.

makes no mention of the NSW Groundwater Strategy. Given that proposed Action 2.3 of the draft NSW Groundwater Strategy is to support Aboriginal groundwater rights, values, and uses, it is hard to understand how such a connection – even as broad as the existing reference to the not-yet-developed Aboriginal Water Strategy – was not included in this WRP's accredited text.<sup>25</sup>

Another point in the accredited text that MLDRIN interprets to be relevant to 10.52(3) states: “NSW is working to strengthen the engagement and input from First Nations into water resource planning and water sharing plans” (p. 12). This point felt incomplete to workshop participants, noting that further detail is essential so the Inspector General, the MDBA, and First Nations can measure NSW’s progress against such a commitment over time. Finally, NSW claims it will review the effectiveness of opportunities to strengthen the protection of Indigenous values and uses via “future monitoring and evaluation” (p. 12). Participants welcome monitoring and evaluation but request that NSW supply more details about what such a framework will look like, including the role for First Nations.

**Broader general comments**

MLDRIN strongly encourages the MDBA and the NSW Government to seek legal advice about the accuracy of the accredited text in the final dot point on page 12 regarding the data use agreements and copyright statements. The exact brief and lawyers engaged should be determined in consultation with Nation representatives (such as via MLDRIN and NBAN), and could review and document matters such as:

- the true protections that are offered by the copyright statement within each Nation report;
- clearly step out the protocol that manages third party requests to use information;
- clarify for what purposes NSW can (and cannot) use the material in the Nations’ Consultation Reports without seeking consent, and any breaches of this (especially given the above identified discrepancies between Data Use Agreements used for interviews and workshops);
- obligations on NSW given that the “shelf life” of the information shared by the Maraura Nation during NSW WRP engagement has not expired;
- how Nations can withdraw, edit, or update information shared during the WRP engagement process and/or provide use conditions to NSW; and

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<sup>25</sup> This includes sub-Action 2.3.2: “Protect groundwater-dependent places of significance to Aboriginal communities,” which is particularly relevant here. See [https://water.dpie.nsw.gov.au/data/assets/pdf\\_file/0005/518639/draft-groundwater-water-strategy.pdf](https://water.dpie.nsw.gov.au/data/assets/pdf_file/0005/518639/draft-groundwater-water-strategy.pdf). MLDRIN acknowledges that at the time of this assessment, the Groundwater Strategy is in draft form on public exhibition. But, given the WRP repeatedly refers to the Aboriginal Water Strategy, for which there is no draft yet, it seems reasonable to expect meaningful links to the Groundwater Strategy.



	<ul style="list-style-type: none"> <li>• how these (or revised) protocols, data use agreements, and statements of copyright can strengthen protection for First Nations people in the future.</li> </ul> <p>Securing legal advice and clarity on these fundamental issues will empower both First Nations and the NSW Government moving forward.</p> <p>Workshop participants spoke at length about their disappointment with (i) the weakness of this Basin Plan requirement and (ii) NSW not committing to clear, measurable, and time-bound opportunities to strengthen the protection of Indigenous values and uses. First Nations people are frustrated that they always seem to be at the beck and call of the NSW Government’s goodwill. Participants desire to see commitments embedded in law reforms.</p>
<p><b>10.53(1)</b> A water resource plan must be prepared having regard to the views of relevant Indigenous organisations with respect to:</p> <p><i>[Notes for Assessment: Is the matter specifically addressed in the text of the WRP? Does the WRP set out how proper, genuine and realistic consideration of Traditional Owner views informed the Plan? Is the matter addressed as part of the accredited text? Is the matter addressed as part of the supporting text? Are there strategies in place to address the matter? Are the strategies binding and measurable?]</i></p>	<p><b>Overall observations:</b></p> <p>Requirement 10.53(1) compels NSW to (i) ensure consultation directly and intentionally elicited First Nations’ views and input about each of the matters in 10.53(1)(a)-(f) and then (ii) demonstrate how regard to those views occurred (see MDBA’s WRP Part 14 Guidelines). As identified in MLDRIN’s original assessments of NSW WRPs, it remains the case that not all of these matters were discussed during engagement. Despite advice from MLDRIN that NSW re-engage with First Nations urgently on these matters, Nation organisers were disappointed that such engagement did not occur before this WRP was resubmitted for assessment. Moreover, without four Nations’ engagement outcomes captured in the WRP, it is difficult for NSW to demonstrate regard to these Nations’ views on the matters in 10.53(1)(a)-(f).</p> <p>In the 2022 version of the proposed NSW MDB Porous Rock WRP, MLDRIN observed an improvement in the structuring of the accredited text for addressing 10.53(1)(a)-(f). This includes accredited text addressing each specific requirement, as well as five accredited text dot points that respond to Basin Plan requirement 10.53(1) as a whole (p. 19). It was also observed that new material has been included in the accredited text (and referenced in the accredited text) of the 2022 version of the proposed WRP, which, on first glance, attempts to better demonstrate meeting these requirements. However, after closely reviewing the material, workshop participants discovered that some of it was irrelevant to meeting the minimum legal standards set by the 10.53(1)(a)-(f) Basin Plan requirements, and that some was inaccurate or false. From the participants’ perspectives, this has the effect of making the WRP more convoluted. More detailed comments are provided throughout the assessment of each requirement below.</p> <p>Workshop participants made the following observations in relation to the overarching accredited text (p. 19):</p> <ul style="list-style-type: none"> <li>• Dot point three appears to suggest that NSW recognises it has not met the minimum legal standard set by the Chapter 10 Part 14 Basin requirements. Workshop participants were frustrated that this point only commits</li> </ul>

NSW to “furthering the discussion to meet” these requirements, rather than committing to actually meet them, as NSW is compelled to do under the Basin Plan.

- As noted earlier, during a presentation to the assessment workshop, NSW representatives clarified the 12 month timeframe in dot point three means 12 months after the WRP is accredited and not 12 months from now. Some Nation representatives interpreted this framing as unfair; it can be interpreted as though NSW is offering for First Nations engagement to progress, but only on the condition that the WRP is endorsed for accreditation. Nation representatives shared that this felt unsafe and inappropriate.
- Given the assessment provided in MDBA Criterion #4 especially, delegates disagreed with the WRP’s claim in the fourth dot point that the “consultation process is viewed as informed participation” (p. 19) from the perspectives of First Nations (see also assessment of 10.53(1)(e) below). As detailed already in this assessment, the First Nations Consultation Reports provide evidence of this.

**Indigenous organisations:**

One matter discussed at length throughout assessing 10.53 matters was the meaning of “Indigenous organisations”, and some concerns that the NSW Government (and others) could use the vague and open meaning of this term to engage any Aboriginal people, to the disadvantage of Traditional Owners. MLDRIN acknowledges that the “Indigenous organisations” expression is derived from the Basin Plan legal instrument, and any critique or concerns about that is beyond the scope of this assessment. Nonetheless, participants recommended that the language in the Basin Plan be revised in the future to better position Traditional Owners as the priority for engagement.

Regardless of the language in the Basin Plan, participants stressed that when it comes to WRPs and related issues involving waterways and groundwater, the NSW Government must work with, and take advice from, Traditional Owners because they have the authority to speak for Country. In this vein, participants raised concerns about references in the WRP about engaging with “Aboriginal organisations” because Aboriginal organisations are not necessarily made up of, or represent, Traditional Owners for a particular area. Some felt this language conveyed disrespect for Traditional Owners (whether intentional or not). Examples include (but are not limited to):

- “Aboriginal organisations” throughout the accredited text addressing 10.53 (pp. 19-21) and the explanatory text in Section 1.7.1 of the WRP (pp. 24-25).
- Specifically listing that “Local Aboriginal Land Councils (LALCS), Aboriginal Medical Services (AMS) and where relevant the local community working party of the Murdi Paaki Regional Assembly” had been consulted (p. 10, Consultation Report).

- New text in the Consultation Report that identifies specific “Aboriginal Organisations” contacted during consultation (p. 11) based on details in Nation reports. Of relevance here, the Ngiyampaa Nation organiser explained that although there were people associated with the organisations listed on page 11 who attended the Ngiyampaa Nation engagement, they participated as Ngiyampaa Traditional Owners and not “with their organisations’ hats on”. The Maruaura Nation reported the same was true for their Nation.

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

There are two key reasons for including these comments about “Indigenous organisations” in this assessment. First, to emphasise that Traditional Owners *must* be the first point of contact on matters relating to Country, and that governments must seek out local advice on this. It would be extremely difficult for NSW DPE to keep track of all Aboriginal organisations’ compositions given the number across NSW. It is also the case that some “Aboriginal organisations” *do* include Traditional Owners in their membership. Therefore, it is essential that the NSW Government builds and relies on direct relationships (not via consultants) with local Nation organisers and representatives in order to establish these lines of connection and communication.

The second is to highlight the importance of language and using the right terminology. Workshop participants were of the view that NSW seemed to use phrases such as “Traditional Owner”, “Aboriginal” and “Indigenous” interchangeably. This practice could be understood as low awareness of the NSW Government regarding the actual meanings of this language. Workshop participants recommended that the WRP material be reviewed and re-written to be more accurate and appropriate, and that NSW would need to seek guidance and support on terminology.

A final concern regarding “Aboriginal organisations” that workshop participants discussed was the Consultation Report’s framing that it was “the role of the First Nations Community Organiser to assist the department in identifying key stakeholders, including Aboriginal Organisations” (p. 10). Nation organisers present at the assessment

	<p>workshop challenged this statement and instead reported that they were only told to bring their mob together; they were not contracted nor resourced to identify Aboriginal organisations. Because of this disjuncture, participants interpreted the text in the Consultation Report as NSW putting its own responsibilities unfairly onto the Nation organisers. Intentional or not, this positions Nation organisers as a scapegoat for what was the role of NSW and/or its consultants, which workshop participants described as “highly offensive” and “culturally inappropriate”.</p>										
<p><b>10.53(1)(a)</b> Native title rights, native title claims and Indigenous Land Use Agreements provided for by the <i>Native Title Act 1993</i> in relation to the water resources of the water resource plan area</p>	<table border="0"> <tr> <td data-bbox="808 360 943 400"><b>Absent</b></td> <td data-bbox="943 360 1055 400">Partial</td> <td data-bbox="1055 360 1256 400">Satisfactory</td> <td data-bbox="1256 360 1368 400">Good</td> <td data-bbox="1368 360 1536 400">Excellent</td> </tr> <tr> <td data-bbox="808 400 943 440"><b>1</b></td> <td data-bbox="943 400 1055 440">2</td> <td data-bbox="1055 400 1256 440">3</td> <td data-bbox="1256 400 1368 440">4</td> <td data-bbox="1368 400 1536 440">5</td> </tr> </table> <p><b>Key text reviewed relating to this requirement:</b></p> <ul style="list-style-type: none"> <li>• Accredited text for the purposes of 10.53 generally, and 10.53(1)(a) (p. 19);</li> <li>• Table 2, Consultation Report (Schedule C) (p. 12); and,</li> <li>• Section 2.3, Consultation Report (Schedule C) (pp. 7-25).</li> </ul> <p><b>Assessment comments:</b></p> <p>Participants noted the amendments to the accredited text for the purposes of 10.53(1)(a) in the 2022 version of the proposed NSW MDB Porous Rock WRP (p. 19). With most Nations not asked by NSW about native title, especially in the context of groundwater, and the WRP accredited text referring largely to outcomes from desktop searches, participants determined a score of <b>absent</b> for this requirement.</p> <p><b>(a) Native title claims are now included in accredited text</b></p> <p>Participants observed that the third accredited text dot point now includes references to registered native title claims within the WRPA and a commitment to amend the WSP upon determination (p. 19). Workshop participants considered that this addition, alongside recognising determined native title claims and referencing the relevant WSP clause in the second accredited text dot point, demonstrated slightly better consideration of native title matters compared with the 2020 version of the WRP. However, participants still felt that this approach does not demonstrate the minimum legal requirement as set by 10.53(1)(a): to have regard to the <i>views</i> of First Nations regarding native title rights, native title claims, and Indigenous Land Use Agreements in relation to the water resources of the WRPA.</p> <p><b>(b) Consultation approach to seeking views on native title was not appropriate</b></p> <p>As noted in MLDRIN’s assessment of the 2020 version of the proposed WRP, First Nations WRP</p>	<b>Absent</b>	Partial	Satisfactory	Good	Excellent	<b>1</b>	2	3	4	5
<b>Absent</b>	Partial	Satisfactory	Good	Excellent							
<b>1</b>	2	3	4	5							

		<p>consultation did not adequately seek the views of Traditional Owners about native title matters and, fundamentally, this remains unaddressed in the 2022 version. Workshop participants stressed that the way NSW carried out the engagement meant that the onus was on Traditional Owners to raise native title matters. Some Nation representatives stated that native title issues were raised during their engagement, but by First Nations participants rather than consultants or NSW. The handful of participants who had this experience included Nations without native title claims or determinations. These conversations did not, though, discuss the impacts of (ground)water management on native title rights.</p> <p>The first accredited text dot point states that the NSW Government “contacted NTSCORP” (p. 19). As noted in MLDRIN’s original assessment of the 2020 version of the proposed WRP, “Governments had a legislative imperative and responsibility to speak to First Nations about native title. All that the accredited text offers in relation to this, however, is that NSW “contacted” Native Title Services Corporation (NTSCORP) as part of WRP consultation activities ... Across the WRP documentation, there is little detail about how the views of NTSCORP (or the views of the Nations they represent) were sought, or how NSW had regard for these views. MLDRIN believes that insufficient evidence of contacting and consulting Nations to hear their views about native title is presented across the WRP documentation” (p. 38). These comments remain valid because the accredited text has not been altered and no additional detail in the WRP clarifies the contact and engagement with NTSCORP.</p> <p style="text-align: center;"><b>(c) Conflicting commentary about native title discussions during engagement within WRP documentation</b></p> <p>Participants noted that the 2022 version of the WRP includes new material in the fourth accredited text dot point or 10.53(1)(a) that refers to Table 2 of the Consultation Report. This Table explicitly states that “The department decided that it was not appropriate to conduct general discussions about Native Title where a Nation had not lodged an application or received a determination” (p. 12). Participants noted that this position contradicts the representation included in the 2020 version of the Consultation Report, which stated that “Discussions on native title rights, native title claims and Indigenous Land Use Agreements and the Native Title Act 1993 in relation to the water resources of the NSW Murray-Darling Basin Porous Rock WRP area” had occurred (p. 10).</p>
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		<p>Participants were concerned about NSW’s revised position on native title consultations for several reasons. At first, it contradicts that which appeared in the original 2020 version of the WRP, so at least one must be erroneous and misleading. Second, and most importantly for this assessment, in accordance with the Basin Plan the NSW Government had a legal obligation to inquire about and consider these views. As one participant asked, “How can NSW have regard if we weren’t asked or notified about this?” Third, and by extension, participants saw that all Traditional Owners should have had the opportunity to speak about claims that their own Nation, or others, have made and the ways these claims interact with the management of the water sources and protection of their values and uses. For example, a representative from a Nation with a current native title claim shared concerns about how “others’ extractions of water at enormous rates, including from groundwater systems, is compromising our native title rights, yet we were never asked about or discussed this during our WRP engagement.” Ultimately, participants assessed that NSW needed to have sought the views of each Nation (or at the very least, the Nation organiser) about whether it was appropriate to speak about native title during engagement and not have made that decision alone and behind closed doors.</p> <p>The Consultation Report states that “The Nation consultations have identified areas for further development in pursuit of Aboriginal objectives and outcomes in water management, including... Native Title” (p. 13). This statement suggests insufficient work and/or time was put into ensuring that consultation addressed and considered views on native title rights, claims, and ILUAs (see also assessment of MDBA Criterion #1). This statement by the NSW Government justifies the assessment score here. Additionally, having considered this statement, some participants then interpreted the new text in Table 2 of the Consultation Report (p.12) as an attempt by NSW to retrospectively justify or explain the failure of engagement to seek Nations’ views about native title.</p> <p><b>Broader general comments:</b> Representatives commented on how native title rights in and to water, as well as the effects of other activities on these rights, are not well understood or developed in Australian legal frameworks.</p>
	10.53(1)(b)	<b>Absent</b> Partial    Satisfactory    Good    Excellent

	<p>Registered Aboriginal heritage relating to the water resources of the water resource plan area</p>	<p style="text-align: center;"><b>1</b>      2      3      4      5</p> <p><b>Key text reviewed relating to this requirement:</b></p> <ul style="list-style-type: none"> <li>● Accredited text for the purposes of 10.53 generally, and 10.53(1)(b) (p. 20);</li> <li>● Table 1-3 of the WRP (pp. 21-22), referred to in the accredited text;</li> <li>● Explanatory material in Section 4.4.2 of the WRP (pp. 68-70);</li> <li>● Table 4-2 of the WRP (pp. 69-70);</li> <li>● Table 2, Consultation Report (Schedule C) (p. 12); and,</li> <li>● Section 2.3, Consultation Report (Schedule C) (pp. 7-25).</li> </ul> <p><b>Assessment comments:</b></p> <p>Workshop participants noted some significant additions to the 2022 version of the proposed NSW MDB Porous Rock WRP, including the accredited text for the purposes of 10.53(1)(b) and new possibly related explanatory text (Section 4.4.2). Participants observed, however, that the additional text is not always specific or relevant to cultural heritage matters or helpful for meeting the minimum legal standard of 10.53(1)(b). The WRP does not provide strong evidence of having elicited the views of First Nations on this matter or having regard to such views in its preparation. Therefore, participants agreed that a score of <b>absent</b> was warranted.</p> <p style="text-align: center;"><b>(a) Consultation approach to addressing registered Aboriginal heritage was not appropriate</b></p> <p>As noted in MLDRIN’s assessment of the 2020 version of the proposed WRP, First Nations WRP consultation did <i>not</i> adequately seek the views of Traditional Owners about registered Aboriginal heritage matters and, fundamentally, this remains unaddressed in the 2022 version. Workshop participants stressed that the way NSW carried out the engagement meant that the onus was on Traditional Owners to raise views on water-related cultural heritage and heritage protection. In other words, NSW and its consultants did not specifically seek out views on these matters.</p> <p>This omission appears to be confirmed in several places throughout the WRP:</p> <ul style="list-style-type: none"> <li>● The accredited text for section 10.53 overall states: “NSW is committed to furthering the discussion to meet the requirements of Part 14 of Chapter 10 of the Basin Plan through engagement with Aboriginal people, including Traditional Owners and Aboriginal</li> </ul>
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		<p>organisations, over the coming 12 months” (p. 19).</p> <ul style="list-style-type: none"> <li>● Table 2 of the Consultation Report states: “opportunities arose” (p. 12) for Local Aboriginal Land Council representatives to speak about any sites listed in the heritage register, suggesting that the views of Traditional Owners were not proactively sought or considered. (As an aside, Nation organisers questioned why this text still explicitly refers to Local Aboriginal Land Councils when their representatives were not always in attendance, as demonstrated on page 11 of the Consultation Report.)</li> <li>● The new text in the Consultation Report states: “The Nation consultations have identified areas for further development in pursuit of Aboriginal objectives and outcomes in water management, including Cultural Heritage” (p. 13).</li> </ul> <p>These statements suggest that insufficient work and/or time was put into ensuring that consultation sought out views relating to cultural heritage.</p> <p>Participants acknowledged that government agencies can face complexities in trying to solicit information about cultural heritage and that First Nations may desire to not share such information. (This is recognised to some degree in the third (and new) dot point of the accredited text for 10.53(1)(b) on page 20 – more on this below.) While this may mean that consultation cannot capture details about specific locations or the significance of specific cultural heritage features, participants argued that in accordance with the Basin Plan it was nonetheless essential for the NSW Government to create intentional opportunities for Nations to share their views on these matters. In other words, it should be up to <i>Traditional Owners</i> to direct government agencies on the appropriate form of dialogue. Unless directed by Nation organisers, government agencies should not be making the call about what they should and should not ask.</p> <p><b>(b) New accredited text and referenced material does not address the requirement</b></p> <p>Workshop participants observed the additions to the accredited text, including the improved acknowledgement of the complexity and diversity of cultural heritage material appearing in the first three sentences of the third dot point addressing 10.53(1)(b) (p. 20). Participants recommended, however, that NSW re-write this text with Traditional Owners.</p> <p>The fourth sentence of this third accredited text dot point attempts to demonstrate that</p>
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		<p>Nations’ inputs do inform water planning with the statement “Where this information is shared and incorporated into the water planning process, it forms part of considerations for water management decisions” (p. 20). However, this statement appears to confirm that the responsibility to raise cultural heritage views during engagement was on the Nations (see above). Therefore, the extent of influence that such information has on water planning by NSW is discretionary and inconsistent. This was of grave concern to workshop participants.<sup>26</sup></p> <p>Participants reviewed the new Table 1-3 in the WRP, which is referred to in the third dot point of the accredited text (p. 20). Table 1-3 summarises some examples of how NSW understands Traditional Owners spoke about cultural heritage during engagement, based on material in the Nation Consultation Reports. This table may show that NSW reviewed the Nation Consultation Reports, but it was deemed to be a token exercise and not sufficient evidence of NSW demonstrating genuine regard for the issues raised to address the Basin Plan requirement. It also seems like an unusual exercise given that the consultation did not include intentional spaces for discussion about cultural heritage. Furthermore, the Table makes no references (direct or otherwise) to groundwater-related heritage.</p> <p>Including this Table in the WRP is another example of NSW preparing material from Nation reports without Traditional Owner guidance and/or verification. As one participant explained, “It is not appropriate for NSW to make comments and interpret our information from our report like this.” The Wemba Wemba Nation organiser questioned how his Nation’s entry in Table 1-3 reflects cultural heritage: “Wemba Wemba people have experienced disconnection from country, identity and their waterways due to private land ownership” (p. 22). The inclusion of this was further questioned on the basis that the Wemba Wemba Nation Consultation Report contains no commentary about “disconnection from country”. What might have been more appropriate from the Nation organiser’s perspective is, for example, acknowledgement of the over 300 registered cultural heritage sites across Wemba Wemba Country.</p>
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<sup>26</sup> Commentary included within the MDBA Criterion #5 assessment is relevant here, particularly that regarding the availability of information already collected through tools like AWAs, Land and Use Occupancy mapping, and previous work of the Aboriginal Water Initiative. Participants saw that the NSW Government should have made efforts to ask Nations about whether this information – including and beyond registered heritage information – could be included and embedded within water planning, including WRPs. Important to this, though, and in line with the principles of free, prior, and informed consent, is ensuring Traditional Owners are properly briefed about how their data will be inserted into the planning process.

		<p><b>(c) New Section in Chapter 4 does not address the minimum legal standard of this requirement</b></p> <p>Section 4.4.2 is another new addition to the WRP (see pp. 68-70). It contains no accredited text, nor is it referred to in any accredited text, and so it is unclear if the protections outlined are intended to demonstrate how NSW has met requirement 10.53(1)(b) or 10.55 (or both). The row of Table 2 in the Consultation Report that relates to 10.53(1)(b) states that “More information is included in Chapter 4 of the Water Resource Plan” (p. 12), so MLDRIN has interpreted this to mean that it is at least of some relevance here.<sup>27</sup></p> <p>The additions of Section 4.4.2 and particularly Table 4-2 (pp. 69-70) appear to document how existing NSW legislation may provide legal protection for Aboriginal heritage. Participants saw this inclusion as NSW showing it was aware of its own regulations in this regard, but the messaging is confusing. For example, Table 4-2 is named “Key legislation in NSW that protects <i>water related</i> Aboriginal heritage” (emphasis added), but the text introducing the Table states: “It is acknowledged that this legislation does not have water related requirements” (p. 68). Reviewing Table 4-2 shows that while it does include some groundwater specific protections (see row 1, p. 69), the relevance of other protections to water related cultural heritage is unclear. One example is the reference to the <i>Game and Feral Animals Control Act 2002</i>, whereby “certain Aboriginal people are exempt from licence requirements for hunting feral animals” (p. 70). In light of these inconsistencies, questions about the Table’s intent and relevance were raised. The WRP claims that Figure 4-2 (p. 69) shows how legislation can operate to protect cultural heritage values.</p> <p>Participants assessed that the above additions to the WRP text did not address the lack of adequate consultation regarding registered Aboriginal heritage relating to the water resources of the WRPA, which is required as a first step to meeting the minimum legal standard set by 10.53(1)(b). These additions also do not demonstrate how the views of First Nations about registered Aboriginal heritage were given proper, genuine and realistic consideration in</p>
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<sup>27</sup> The heading for the overarching section 4.4 (“Cultural connections to groundwater and retention of the current level of protection for Aboriginal values and uses”) appears to relate more to requirements 10.54 and 10.55 than to 10.53(1)(b).

		<p>preparing the proposed WRP. As a result, participants felt these additions to the WRP text were only superficial and without significance.</p> <p><b>Broader general comments:</b> One Nation representative suggested that NSW consider adopting the idea of Aboriginal water reserves in relation to groundwater to support the protection of groundwater dependent (registered) Aboriginal cultural heritage sites (and also other matters, like cultural flows). A similar concept appears in some Queensland Groundwater WRPs and in surface water systems across Northern Australia.</p>										
	<p><b>10.53(1)(c)</b> Inclusion of Indigenous representation in the preparation and implementation of the plan</p>	<table border="0"> <tr> <td style="background-color: yellow;"><b>Absent</b></td> <td>Partial</td> <td>Satisfactory</td> <td>Good</td> <td>Excellent</td> </tr> <tr> <td style="background-color: yellow;"><b>1</b></td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> </tr> </table> <p><b>Key text reviewed related to this requirement:</b></p> <ul style="list-style-type: none"> <li>• Accredited text for the purposes of 10.53 generally, and 10.53(1)(c) (p. 20); and,</li> <li>• The Consultation Report (Schedule C), in particular Section 2.3.3 (pp. 10-13).</li> </ul> <p><b>Assessment comments:</b> Participants noted that the accredited text relating to this requirement has barely been amended from the 2020 version of the proposed NSW MDB Porous Rock WRP. With no additional consultation undertaken with Traditional Owners since then, participants maintained that their views regarding Indigenous representation in preparing and implementing the plan have either not been collected and/or not been regarded by NSW. Further, participants were disappointed that there seemed to be no active follow- up or communication about the preparation or implementation of the WRP beyond when workshops ceased in 2018/2019. Therefore, a score of <b>absent</b> was awarded.</p> <p><b>(a) Accredited text is insufficient to</b> Reviewing the accredited text addressing 10.53(1)(c) in the 2022 version of the WRP states, “A range of Aboriginal organisations were involved in the consultation. NBAN and MLDRIN were consulted about the appropriate Traditional Owners to engage in First Nation consultation in the WRP area” (p. 20). This offers no functional changes or additions compared with the 2020 version of the WRP. Therefore, MLDRIN’s assessment of the 2020 version, including advice about correctly framing MLDRIN’s role and level of influence during NSW’s engagement, applies</p>	<b>Absent</b>	Partial	Satisfactory	Good	Excellent	<b>1</b>	2	3	4	5
<b>Absent</b>	Partial	Satisfactory	Good	Excellent								
<b>1</b>	2	3	4	5								

		<p>again.</p> <p>Specifically, this assessment was: “Current statements across the WRP documents misconstrue MLDRIN’s role in First Nations WRP engagement across the state to be much greater than it was in reality. These statements are misleading and potentially jeopardise MLDRIN’s independence from the consultation which is crucial for assessing WRPs. MLDRIN has previously alerted the NSW Government to this kind of erroneous phrasing in draft WRP documentation, yet such errors remain in the version submitted to the MDBA.” During the September 2022 workshop, participants again “disagreed with th[is] accredited text statement; they also saw that it alone does not justify or satisfy the Basin requirement, even if it were true.”<sup>28</sup> NSW continues to inconsistently describe – and in some cases, misrepresent – the role of MLDRIN (and NBAN) in the consultation process. Each reference to MLDRIN and/or NBAN in the WRP documents must be reviewed for accuracy.</p> <p>Not only does the framing of MLDRIN’s role in engagement remain incorrect within the accredited fact, but it is now also contradicted by the description in the 10.53(1)(c) row of Table 2 of the 2022 version of the Consultation Report, which states: “The Nation organiser guided the Nation consultation process and gave advice, input and recommendations on which Traditional Owners to engage. This resulted in the relevant Traditional Owners for the NSW MDB Porous Rock WRP area being represented” (p. 12). This statement is generally a more accurate description of how individual Traditional Owners were identified (i.e. by Nation organisers rather than MLDRIN or NBAN) (though see further comments below).</p> <p><b>(b) Inclusion of Indigenous representation in the <i>preparation</i> of the WRP</b></p> <p>Beyond the WRP’s accredited text, participants noted that some amendments to the explanatory text and to the Consultation Report could be attempts by NSW to demonstrate consideration of the inclusion of First Nations representation in preparing the plan (even if not part of, or referred to in, the accredited text). For example, additional explanatory text in Section 2.3.3 of the Consultation Report (pp. 10-11), describes the way Aboriginal organisations were consulted for the plan. However, this does not demonstrate how regard had been given to</p>
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<sup>28</sup> See MLDRIN’s Assessment Matrix Report of the NSW Murray-Darling Basin (MDB) Porous Rock Water Resource Plan (WRP), April 2021, page 46.

		<p>views about what this representation should entail. Additionally, advice from the Ngiyampaa and Maraura Nations organisers (noted in the overall comments regarding 10.53(1)) show that individuals participating in engagement were not “representing” these organisations.</p> <p>Additionally, the entry for 10.53(1)(c) in Table 2 of the Consultation Report seems to offer some suggestion that NSW had regard to First Nations’ views about representation in the WRPs preparation via advice from the Nation organisers (see above). However, this material implies that the NSW Government heeded Nation organisers’ views and advice on appropriate consultation and representation, contradicting the experiences of the Nation organisers whose numerous requests for additional workshops, better resourcing, and more information (for example) were frequently ignored or denied. This resulted in some Traditional Owners missing out on consultation activities and limited the scope and content of consultation (see earlier assessment of MDBA Criteria). Workshop participants felt that, while the role of Nation organisers and the opportunity to put forward their views on representation in plan preparation were crucially important, the effectiveness and impact were stymied by the NSW Government, adding to the justification for a score of absent.</p> <p>In a more practical sense, some Nation organisers again stressed the need for Nations to have a greater influence over reviewing the material collected during engagement before the Nation Consultation Reports were drafted, and before the draft Nation Consultation Reports were finalised. There should have been opportunities for Indigenous representation in the drafting of the WRP material too (see MDBA Criterion #5).</p> <p><b>(c) Inclusion of Indigenous representation in the <i>implementation</i> of the WRP</b></p> <p>Participants observed that the issue of WRP implementation is not explicitly addressed in the WRP accredited text, nor was it discussed with Traditional Owners during consultation, further justifying the score awarded here. There are, however, references throughout the WRP to new and forthcoming strategies, which may be evidence of NSW trying to address the ‘implementation’ part of this Basin Plan requirement.</p> <p>These ongoing processes include WSP reviews, the State Water Strategy, the Regional Water Strategies, and the Aboriginal Water Strategy, and appear in the accredited text for 10.52,</p>
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		<p>10.53(1)(d) and 10.53(1)(e), as well as in the explanatory text of the WRP (p. 10, 49). Accredited text in relation to 10.52 also refers to “future monitoring and evaluation” (p. 12) and in relation to 10.53(1)(d), to a “monitoring, evaluation and reporting framework” (p. 20), both of which may relate to implementation too. There is, however, insufficient material about these possible forms of implementation (either through the WRP or elsewhere), and the WRP text is silent on the specifics relating to First Nations representation and how it aligns with Nations views on the matter, as mandated by this Basin Plan requirement.</p> <p><b>Broader general comments:</b> By using consultants, NSW missed an opportunity to build relationships with Traditional Owners that could support ongoing work and implementation. It is important that the NSW Government reflects on lessons and challenges from this approach (i.e., using consultants) moving forward, particularly in building and working on the Aboriginal Water Strategy. Participants noted that the value of these opportunities will be undermined if the NSW Government does not maintain active and regular communication with Nations. Indeed, assessing the WRP was the first time some participants learned that NSW plans to use these other strategies and mechanisms to implement the WRP.</p>										
	<p><b>10.53(1)(d)</b> Indigenous social, cultural, spiritual and customary objectives, and strategies for achieving these objectives</p>	<table border="0"> <tr> <td><b>Absent</b></td> <td>Partial</td> <td>Satisfactory</td> <td>Good</td> <td>Excellent</td> </tr> <tr> <td><b>1</b></td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> </tr> </table> <p><b>Key text reviewed related to this requirement:</b></p> <ul style="list-style-type: none"> <li>● Accredited text for the purposes of 10.53 generally, and 10.53(1)(d) (p. 20);</li> <li>● Section 1.3.1 of the WRP, as referred to in the accredited text;</li> <li>● Table 3-3 of the WRP, as referred to in the accredited text;</li> <li>● Section 2.3 of the Consultation Report (Schedule C) (pp. 7-25); and,</li> <li>● The First Nations Consultation Reports, attached to Schedule C.</li> </ul> <p><b>Assessment comments:</b> Participants reviewed the updated accredited text in the 2022 version of the proposed NSW MDB Porous Rock WRP, which offers evidence of “having regard” for this Basin Plan requirement (p. 20). Additional relevant text in Section 1.3.1 of the WRP and in Section 2.3.4 of the Consultation Report was also considered by the workshop participants. Participants observed some new linkages and references to NSW’s development of water strategies</p>	<b>Absent</b>	Partial	Satisfactory	Good	Excellent	<b>1</b>	2	3	4	5
<b>Absent</b>	Partial	Satisfactory	Good	Excellent								
<b>1</b>	2	3	4	5								

		<p>unrelated to WRPs, but could not see that NSW demonstrates how these processes have regard to their views about achieving First Nations objectives. Ultimately, with communication gaps following the initial WRP consultation and uncertainty about how NSW’s water strategies will progress, participants determined a score of <b>absent</b> for this requirement.</p> <p><b>(a) Many Nations’ WRP consultation was not relevant to groundwater</b></p> <p>The first accredited text dot point for 10.53(1)(d) states that “Aboriginal objectives and outcomes for water management were discussed during consultation” and the second says that these objectives are included in Section 1.3.1 of the WRP (p. 20), which refers readers to the First Nations Consultation Reports attached to Schedule C. As detailed at length earlier in this assessment (see MDBA Criterion #1 and 10.52(1) especially), it was not made clear that groundwater was within the scope of some Nations’ consultation. Therefore, those Nations do not agree that the objectives listed in their Nation reports and referred to in Section 1.3.1 are of relevance to this groundwater WRP. By extension, they disagreed that the consultation and Section 1.3.1 demonstrate compliance with 10.53(1)(d) as stated by the accredited text and the corresponding row in Table 2 of the Consultation Report (p. 12).</p> <p>The second accredited text dot point also states that “Where strategies for achieving desired objectives were expressed during the First Nations’ consultation process, those views are included in each of the respective Nation Reports” (p. 20). From this, it remains unclear whether consultants actively sought the views of First Nations regarding strategies to achieve their identified objectives during engagement. Where Nations were not clearly informed about groundwater being within engagement scope and no groundwater-specific (or interconnected) objectives were discussed, it therefore follows that views about associated strategies were unlikely to be enquired about or discussed.</p> <p>Critically, participants noted a key view about strategies for achieving First Nations’ objectives that <i>was</i> conveyed to consultants and NSW Government representatives during WRP engagement was the need for continuity in communication and follow-up with Nation organisers and communities. Such a strategy was envisaged to ensure that objectives put forward during the WRP consultation could continue to be developed and progressed. However, this has not happened (see assessment of MDBA Criterion #1). Participants</p>
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		<p>acknowledged that Covid-19 may have hindered face-to-face engagement, but telephone and online options were still possible.</p> <p><b>(b) New accredited text links to other NSW-led reviews, strategies, and initiatives</b></p> <p>Participants acknowledged that this 2022 version of the WRP includes new accredited text in the fifth dot point that, at a high level, makes links to broader NSW strategies (such as the NSW State Water Strategy, the Aboriginal Water Strategy, and Regional Water Strategies) (p. 20). Text regarding these strategies and other initiatives (such as Closing the Gap targets) appear in the WRP explanatory text as well (for example, p. 10). However, these links and the strategies themselves currently lack clear implementation and measurable actions. For example, there is no inland waters target yet developed,<sup>29</sup> and no draft Aboriginal Water Strategy. Additionally, NSW has not yet worked with First Nations to develop a shared understanding about how each of these initiatives is intended to directly (or otherwise) address their Nations’ views about objectives. As noted already, MLDRIN is surprised that this WRP makes no references or connections to the NSW Groundwater Strategy (see 10.52(3)).<sup>30</sup></p> <p>The third accredited text dot point mentions a review being undertaken at the NSW level to “identify similarities and gaps between the social, cultural, spiritual and customary objectives identified through the First Nation engagement and existing objectives in water sharing plans” (p. 20). The WRP does not explain how this review contributes to NSW meeting the minimum legal standard required by 10.53(1)(d). It also does not provide any further information about the proposed review, including how this activity would proceed, the role of Traditional Owners in the review, and how it differs from the information presented in Tables 3 and 4 of the Consultation Report (pp. 15-25).</p> <p>MLDRIN sought further information from DPE managers about this review following the</p>
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<sup>29</sup> Of note, in writing about the Closing the Gap inland water target, the Consultation Report states that “Further engagement with First Nations will be a critical component of these initiatives” (p. 13). However, Nations and MLDRIN reported no such engagement occurring to date, despite it being described as “critical”.

<sup>30</sup> MLDRIN acknowledges that this commentary about links (or gaps) to other strategies may be construed as straying from direct relevance to this Basin Plan requirement given that these are separate processes. However, these water strategies are in fact directly related to the scope of how NSW has attempted to address and respond to this requirement (dot point five of the accredited text addressing 10.53(1)(d) (p. 29), as well as other references in the explanatory text and Consultation Report). Therefore, MLDRIN and the participants are of the strong view that this information is directly relevant to the assessment.



		<p>inclusion of similar commitments in other WRPs, and learned that, in fact, this review <i>is</i> that which is reflected in Tables 3 and 4.<sup>31</sup> Accordingly, the detailed commentary – including major concerns – recorded in the assessment of 10.52(1)(a) is relevant here too, and contributes to the evidence justifying the score awarded here.</p> <p>The fourth accredited text dot point commits to future consultation as part of future WSP replacements, which will “build on learnings and relationships developed with First Nations to ensure that social, cultural, spiritual and customary objectives and strategies are considered” (p. 20). As noted in the assessment of 10.52(3), this statement is of little meaning given it is at least eight years away.</p> <p>Another addition to the accredited text relating to 10.53(1)(d) (within dot point three) is the reference to Table 3-3 of the WRP. The significance of Table 3-3 for addressing this Basin Plan requirement is unclear given that it lists “instruments that address risks and impacts” rather than responds to or identifies strategies that can address objectives identified by First Nations, as is the focus of 10.53(1)(d). Further comment about Table 3-3 is presented below in the assessment of 10.53(1)(f). The action proposed in the final sentence of this third accredited text dot point is unclear and does not appear tangible as currently written: “Insofar as those instruments are relevant to First Nation objectives, strategies to address will be included as considerations in the work to establish a monitoring, evaluation and reporting framework for water sharing plans” (p. 20). It was therefore difficult to understand how these statements reflected genuine consideration of the views put forward during consultation in preparing the WRP.</p> <p>Returning to the earlier point about the importance of communication and continuity, participants expressed concern that communication and notification about the State Water Strategy and relevant Regional Water Strategies (and the draft Groundwater Strategy) had not</p>
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<sup>31</sup> On 8 September 2022, the NSW Groundwater Planning Manager advised that “The review that is referred to in this statement is the work that is presented in Table 3 and Table 4 of Schedule C. The work was completed after we started reviewing the WRPs. We missed updating the tense in accredited text in the WRP section 1.7 following the completion of the work.” Furthermore, and as noted earlier in assessment of 10.52(1)(a), Tables 3 and 4 and therefore the review mentioned in accredited text for 10.53(1)(d) “were based on information provided in the First Nations reports. We did not consult with First Nations to ensure correct interpretation. This is the first step in analysing the alignment of water sharing plan objectives and First Nations objectives and further consultation will be undertaken.”

		<p>been sufficient. For some participants, MLDRIN’s assessment workshops were the first time they had heard about NSW’s intent to use the above-mentioned strategies to address the WRP requirements and to develop a “monitoring, evaluation and reporting framework for water sharing plans” (p. 20). Where NSW is of the position that certain initiatives and frameworks have the potential to address Nations’ objectives, MLDRIN stresses the importance of NSW working with Traditional Owners to develop <i>and</i> implement them.</p> <p>Finally, new text in Section 2.3.4 of the Consultation Report states: “A full range of strategies will be developed in partnership with Aboriginal people over the coming years” (p. 14) through the development of the above-mentioned broader water strategies. This addition was viewed as positive in principle. However, there is so little detail on how it will play out in practice. This section also refers to “the department’s engagement program with First Nations” as a mechanism for addressing Nations’ objectives that focus on “culturally appropriate consultation, inclusion, and ownership of information” (p. 14). Nation organisers and workshop participants questioned what this “program” is referring to given the lack of engagement that has occurred since the original WRP consultation.</p> <p><b>(c) Commitments for the future do not demonstrate regard to Nations’ views in <i>this</i> WRP</b>  While the plan includes some additional assurances that First Nations views will be considered going forward, it appears to have been prepared with little regard for First Nations views about strategies to achieve their desired objectives as required by the Basin Plan. At best, if preparing these other strategies included having regard to their views, the links have not been made clear or communicated to Nations.</p> <p>Overall, participants assessed that the preparation of the 2022 version of the proposed NSW MDB Porous Rock WRP does not evidence proper, genuine, or realistic consideration for First Nations views about their water-related objectives or strategies for achieving those objectives. The NSW Government seems to be asking participants to trust that it will deliver on these outcomes, but based on their past experiences, many participants expressed little confidence in the NSW Government’s assurances for the future. As one representative explained, “It’s cheating – NSW says that ‘We’re going to do things in the future,’ but they haven’t done it in the past.”</p>
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		<p><b>Broader general comments:</b> Workshop participants expressed frustration about the lack of specific, clear, tangible, and implementable strategies and initiatives within the WRP and WSP that can help Nations achieve their desired outcomes. The inclusion of even some such strategies in the WRP that align with the demands from Nations heard throughout engagement would provide clearer and stronger evidence of regard to their views as required by 10.53(1)(d). It seems that NSW intends to work on such strategies at a later time, such as through the Aboriginal Water Strategy, but participants agreed with the following sentiment shared by the Ngiyampaa Nation organiser: “All we do is talk, but nothing ever happens.”</p>
	<p><b>10.53(1)(e)</b> Encouragement of active and informed participation of Indigenous people</p>	<p><b>Absent</b>      Partial      Satisfactory      Good      Excellent  <b>1</b>              2              3              4              5</p> <p><b>Key text reviewed related to this requirement:</b></p> <ul style="list-style-type: none"> <li>• Accredited text for the purposes of 10.53 generally, and 10.53(1)(e) (pp. 20-21); and,</li> <li>• Section 2.3.3, Consultation Report (Schedule C) (pp. 10-13).</li> </ul> <p><b>Assessment comments:</b> To address requirement 10.53(1)(e), the NSW Government needed to ask First Nations for their views about encouraging active and informed participation and then properly, genuinely, and realistically consider those views. Participants discussed the new and explicit accredited text intended to address this requirement. But, as detailed below, participants again assessed that the 2022 version of the proposed WRP, including its Consultation Report (Schedule C), provides insufficient evidence that regard to Nations’ views occurred, and that claims otherwise throughout the WRP documentation were deemed problematic, false, and dishonest. This assessment, combined with the earlier detailed analysis in the assessment of MDBA Criterion #4, meant that participants scored the WRP as <b>absent</b> for this requirement.</p> <p><b>(a) Unjustified claims of active and informed participation</b> The first accredited text dot point addressing 10.53(1)(e) states: “Based on guidance from NBAN and MLDRIN, the Department engaged with First Nations in a way that encouraged active and informed participation” (p. 20). Participants strongly disagreed that NSW’s engagement efforts were shaped by MLDRIN’s (and NBAN’s) advice. In fact, MLDRIN’s consistent advice, provided</p>

		<p>through numerous channels – both directly to the NSW Government and publicly – seems to have been frequently disregarded by NSW. This statement, and how it implicates MLDRIN and NBAN, is problematic and requires correction. Furthermore, participants strongly disagreed that NSW could describe its efforts in such a way. The MDBA Criteria Assessments earlier in this report, especially relating to Criterion #1 and #4, provide detailed reasons why, along with examples of how, the engagement did not occur “in a way that encouraged active and informed participation” (MLDRIN’s 2020 and 2021 assessments also provide this information).</p> <p>Relevant to this accredited text dot point, participants noted that text relating to 10.53(1)(e) in Table 2 of the Consultation Report had been altered since the 2020 version to state that consultation “was designed to follow cultural protocols to ensure active and informed participation of Indigenous people, within the timeframes available” (p. 13). Participants observed that the addition of “<i>within the timeframes available</i>” could be an admission that consultation did <i>not</i> support active and informed participation in many cases. Participants noted that the constrained timeframes were entirely due to inaction by NSW, not any inherent limitation in the Basin Plan process itself, and that, even within the timeframes available, NSW did not ensure active and informed participation.</p> <p>It is also important to recognise that NSW has added this statement to the Consultation Report <i>after</i> MLDRIN assessed the 2020 versions of the WRP, including the engagement issues. This sequencing of when NSW added claims that it followed “cultural protocols to ensure active and informed participation of Indigenous people” (regardless of the timeframes available) was viewed by participants as dishonest. Some requested that this assessment report record that they “strongly object” to NSW’s addition of this “wrong” text in the Consultation Report. Nation representatives were of the view that evidence and justification were needed in order for NSW to retain this statement.</p> <p>The following claim also appears in Table 2 of the Consultation Report in relation to 10.53(1)(e): “Relationships with Traditional Owners and a shared understanding of water management were developed prior to conducting workshops with the broader group of First Nation Traditional Owners” (p. 13). Even those Nations that reported having comparatively more positive working arrangements with their consultants (e.g., Maraura and Wadi Wadi Nations) disagreed with this</p>
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		<p>suggestion that “relationships” were developed, especially given the lack of follow-up and communication since the initial WRP engagement.</p> <p>Detailed assessment and commentary across all five MDBA Criteria earlier offer numerous other examples of how the engagement did not support active and informed participation, counter to NSW’s claims in the accredited text.</p> <p><b>(b) False claims about data use agreements underpinning informed participation</b></p> <p>Also relevant to the first dot point of the accredited text addressing 10.53(1)(e) is the reference to the Data Use Agreements used to manage First Nations’ cultural information shared during WRP engagement as an example of providing informed engagement (p. 21). These agreements seem to have been well intended, but:</p> <ul style="list-style-type: none"> <li>● As documented during MLDRIN assessments of 2020 versions of NSW’s proposed WRPs, these instruments did not inform Nations that the information they shared could be displayed on public websites. While this particular issue has now been rectified, the fact that it occurred at all still raises questions about the suitability and clarity of the data use agreements and/or how well NSW complied with their conditions.</li> <li>● New to this WRP assessment, MLDRIN has observed an inconsistency in the stated provisions around how NSW can use the information collected during interviews and workshops (see further explanation in 10.52(3)).</li> <li>● Nation representatives also saw the development and inclusion of Table 3 in the Consultation Report as offering counter evidence to the claim in the accredited text that data use agreements “ensure that information is managed and used in accordance with First Nations rights to cultural information that they share” (p. 21) (see assessment of 10.52(1)(a)).</li> </ul> <p>Accordingly, pointing to these tools as evidence for NSW having regard to First Nations peoples’ views about encouraging active and particularly <i>informed</i> participation was questioned. See further comments about these agreements in the assessment of 10.52(3).</p> <p><b>(c) Commitments for the future do not demonstrate regard to Nations’ views in <i>this</i> WRP</b></p> <p>The second accredited text point attempts to highlight ongoing and <i>future</i> consultation</p>
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		<p>activities as evidence of having regard to views about informed participation in <i>this</i> WRP. The accredited text states that the NSW “Department is strengthening First Nations’ participation in water planning and management,” via (for example) priority 2 of the State Water Strategy and developing an Aboriginal Water Strategy “based on a co-design approach that includes capacity building and sharing of water planning and management knowledge with communities” (p. 21). Participants observed that developing the Aboriginal Water Strategy by “co-design” as NSW intends will require genuine commitments and ongoing relationships with Nations, and were concerned that these relationships are not established. Nation organisers present at the workshop had not yet been approached about its co-design. Comments in 10.52(3) and 10.53(1)(d) regarding links to these (and other) NSW strategies and initiatives are relevant here.</p> <p>The third accredited text dot point for this requirement states NSW is “progressing work to support Aboriginal water literacy and engagement in regulatory water planning” (p. 21). While participants welcomed this idea, noting that it directly corresponds with requests made during WRP engagement, it is unclear what new or additional information this dot point is intended to reflect that is not already included in the second accredited text dot point for 10.53(1)(e). Participants were not satisfied that this point could be described as a commitment because the wording is vague and immeasurable, and the channel(s) through which the actions will be delivered is missing. The WRP’s text is written in present tense, implying this work is already underway, but participants were of the view that the NSW Government is yet to begin delivering on this given the lack of contact since the WRP engagement in 2018-19.</p> <p>In sum, the Nation representatives were very wary of NSW attempting to address Basin Plan requirement 10.53(1)(e) by putting off actions into the future in attempts, especially given the state’s poor track record of delivering on past actions. Comments in 10.53(1)(d) regarding the unsuitability of using commitments to future actions to demonstrate regard to Nations’ views in this WRP are relevant here too.</p> <p><b>Broader general comments:</b> It was noted that Table 3-3 includes a “Water literacy program” alongside other existing management instruments (e.g., NSW Water Strategy and Regional Water Strategy) (p. 54).</p>
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		<p>However, participants and MLDRIN are unaware of what this program entails. Perhaps it relates to that mentioned in the third dot point of accredited text for 10.53(1)(e), but the link is not explicit.</p>
	<p><b>10.53(1)(f)</b> Risks to Indigenous values and Indigenous uses arising from the use and management of the water resources of the water resource plan area</p>	<p><b>Absent</b>      Partial      Satisfactory      Good      Excellent <b>1</b>              2              3              4              5</p> <p><b>Key text reviewed related to this requirement:</b></p> <ul style="list-style-type: none"> <li>● Accredited text for the purposes of 10.53 generally, and 10.53(1)(f) (p. 21);</li> <li>● First Nations Consultation Reports, attached to Schedule C;</li> <li>● Explanatory text in Section 3.4 of the WRP (pp. 47-49);</li> <li>● Table 3-3 of the WRP (pp. 49-54); and,</li> <li>● Risk Assessment (Schedule D).</li> </ul> <p><b>Assessment comments:</b></p> <p>Participants noted that the NSW Government has attempted to include more material about the risks described by First Nations during the original consultation in the 2022 version of the proposed NSW MDB Porous Rock WRP compared to the 2020 version. Principally, this additional material appears in the updated accredited text (p. 21), the inclusion of Table 3-3 (pp. 49-54), and the explanatory text in Section 3.4 (pp. 47-49). However, participants noted a number of shortcomings with how NSW had attempted to show regard to First Nations’ views about risks to Indigenous values and uses, as set out below. These issues are of such significance that participants saw NSW’s efforts could not be scored higher than <b>absent</b>.</p> <p><b>(a) Issues with First Nations consultation</b></p> <p>The first accredited text dot point addressing 10.53(1)(f) in the 2022 version of the proposed WRP states that “Risks and impacts, values and uses were discussed during consultation” (p. 21). The third accredited text dot point identifies specific locations that list the risks in each First Nations Consultation Report. While participants agreed that they had opportunities to speak about surface water risks, many did not agree that this statement – or the parts of their Nations Consultation Reports – sufficiently reflected their views about risks related to the use and management of groundwater. This stems from the consultation-based issues already detailed in this assessment.</p>

	<p>Participants considered the explanatory text that NSW has included in Section 3.4 as an attempt to address or overcome this concern: “An inclusive approach was used to identify groundwater risks, which recognises the connected nature of surface water and groundwater systems. Accordingly, risks identified by First Nations that relate to flows in rivers and creeks in addition to specific risks to groundwater are included in this groundwater WRP” (pp. 48-49). However, workshop participants disagreed with this presumption by NSW, which is similarly depicted in other overarching blanket statements throughout the WRP (see further discussion in MDBA Criterion #1, for example). Put simply, NSW has no authority to make statements or claims about how sovereign Nations view the world or their Country. Additionally, some Nations were not afforded the opportunity to provide “specific risks to groundwater” as suggested by this statement.</p> <p>The fourth accredited text dot point includes a new commitment that “NSW will continue to strengthen the engagement with First Nations regarding risks and impacts to cultural values and uses through the water planning processes” (p. 21). No further actions or timeline details are provided. Participants found it hard to see how the NSW Government can say that it will “<i>continue</i> to strengthen” this engagement given that, so far, some Nations have been afforded low (to no) engagement opportunities about groundwater risks and impacts.</p> <p><b>(b) Additions to Section 3 of the WRP (Risks to water resources) in relation to 10.53(1)(f)</b></p> <p>The second accredited text dot point for 10.53(1)(f) refers to Table 3-3 (pp. 49-54). This Table is a new addition to the 2022 version of the proposed WRP, and was viewed by the workshop participants to reflect some of the risks and issues they and others had raised during engagement (noting, though, that not all had spoken about groundwater during engagement). Table 3-3 appears to include some groundwater risks and related management ‘instruments’ (e.g., “distance rules for new bores from groundwater-dependent cultural sites,” p. 49 and 51). However, the NSW Groundwater Strategy is missing from this Table, and the overwhelming majority of “risks” and “instruments” relate to surface water only.</p> <p>From reviewing Table 3-3 and its accompanying explanatory text, it is unclear what NSW intended to convey by listing the instruments within the Table. Their inclusion could imply they are ‘strategies’ to address corresponding risks, but it is questionable whether some of the</p>
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	<p>identified instruments are fit to actually address the risk(s) they are listed against (i.e. specific purpose ‘cultural’ entitlements as a means to address many identified risks, especially given their known low take-up and the associated challenges using them which remain unaddressed). This is further complicated by the fact that many of these instruments were in place during the period when the described risks arose. Alternatively, the intent may have been to simply list instruments that are considered ‘relevant’ to each risk, but there is no explanation of how they do (or could) address, reduce, mitigate, or manage the risks. This led participants to question the substantive impact of Table 3-3 and the depth of regard that NSW is attempting to convey through its inclusion. The accompanying explanatory text is not overly helpful in clarifying this intent in that its distinction between column two (relevant water management instruments) and column three (other relevant resource, economic, and social planning instruments) is confused by the fact that water instruments are frequently included in both columns.</p> <p>A new illustration (Figure 3-1) also appears in the explanatory text (p. 48), which purports to show “how First Nations Peoples effectively have become separated from many locations of cultural significance along rivers.” This illustration relates to surface water risks, and participants disagreed that it helped to demonstrate regard as required by 10.53(1)(f). They also questioned whether engaging a First Nations artist to depict disconnection from Country and “sick Country” was appropriate or culturally safe.</p> <p><b>(c) Lack of changes to the Risk Assessment (Schedule D)</b></p> <p>Participants observed that the Risk Assessment submitted with the 2022 version of the proposed NSW MDB Porous Rock WRP retains significant omissions regarding risks to First Nations values that were identified in MLDRIN’s assessment of the 2020 version. Specifically, the Risk Assessment states that risks to the suitability and availability of water for Indigenous, social, and cultural benefits have “not been formally assessed in this document” (p. 142, Schedule D). Without this assessment, no management or mitigation strategies have been developed which Nation representatives and MLDRIN remain troubled about.</p> <p>Section 7 of the Risk Assessment offers that regard was had instead, by including, assessing, and addressing other risks (see p. 142). Such a surrogate approach is erroneous given the unique specificity of First Nations’ water dependent values (see First Nations Consultation Reports, for</p>
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		<p>example).<sup>32</sup> Participants saw that in taking this approach, the NSW Government demonstrates how it cut First Nations people out of crucial steps (risk assessment and mitigation) in the WRP development process (further justifying the assessment of MDBA Criterion #2).<sup>33</sup></p> <p>Participants rejected the statements in the Risk Assessment that suggest that data was unavailable and that current methodologies were inadequate for assessing risks to the suitability and availability of water for Indigenous, social, and cultural benefits (p. 142). Significant data is contained within the First Nations Consultation Reports and the NSW Government had the opportunity to ask Nations about suitable and informative methods (e.g. Use and Occupancy Mapping, AWAs, etc.). Participants were also disappointed that the Risk Assessment said “[f]uture risk assessments <i>could</i> include an assessment of these risks” (p. 142, emphasis added), as stronger action and intent could have been included.</p> <p><b>(d) Overall connectivity of risk materials relating to First Nations</b></p> <p>After reviewing the individual risk-related components of the WRP, participants reviewed their connectivity and integration. They were surprised to find that these elements were not well interconnected. For example:</p> <ul style="list-style-type: none"> <li>● The accredited text for 10.53(1)(f) makes no reference or connection to the Risk Assessment (Schedule D);</li> <li>● The new Section 3.4 of the WRP makes no reference or connection to the Risk Assessment (Schedule D);</li> <li>● First Nations’ identified risks in the individual First Nations Consultation Reports, and those summarised in Table 3-3, are not incorporated into the Risk Assessment (Schedule D);</li> <li>● The Risk Assessment (Schedule D) does not refer to Section 3.4 or Table 3-3 of the WRP – the parts that directly identify First Nations risks in response to 10.53(1)(f) – despite referring to other (arguably less relevant) components of the WRP (see p. 142, Schedule D); and,</li> </ul>
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<sup>32</sup> Also, see generally, B Moggridge, ‘Aboriginal People and Groundwater’ (2021) 126 *Proceedings of The Royal Society of Queensland* 11-27.

<sup>33</sup> Some Nations raised concerns about the results of the risk assessment as presented in Table 3-1 of the WRP (pp. 42-45), offering further possible evidence that Nations were cut out of the Risk Assessment.

		<ul style="list-style-type: none"> <li>• The Risk Assessment (Schedule D) refers to Section 4.4 of the WRP for “further information relevant to risks to Indigenous values and uses of groundwater” (p. 142), however, neither the WRP accredited text relating to 10.53(1)(f) or Section 3.4 make connections to this Section.<sup>34</sup></li> </ul> <p>In short, while the 2022 version of the proposed WRP appears to go to greater lengths to document and summarise Nations’ views on risks and seeks to show how existing instruments are “relevant” to addressing those risks, this work is not integrated into the Risk Assessment, nor are any strategies for mitigation presented. This lack of integration suggests that First Nations’ views about risks are still effectively as isolated and without genuine regard as in the 2020 version of the WRP when they only appeared in the First Nations Consultation. This poor interconnectivity signals that NSW has made disparate additions to the WRP without properly and genuinely considering the implications for other components of the WRP or the whole WRP. This commentary points to additional evidence justifying the absent score for 10.53(1)(f).</p> <p><b>Broader general comments: Additions to Section 3 of the WRP (Risks to water resources) relating to 10.41</b></p> <p>MLDRIN offers the following advice, acknowledging that it extends beyond our contractual obligation to assess the WRP against the Chapter 10 Part 14 requirements of the Basin Plan. Nonetheless, we raise this matter of concern with the expectation that the MDBA will consider it further as part of its own farther-reaching assessment of this WRP, including the Risk Assessment requirements (Chapter 10 Part 9 of the Basin Plan).</p> <p>Sections 10.41(1)-(3) of the Basin Plan require NSW to prepare the WRP “having regard” to risks, including those in s.4.02 (which include risks to First Nations water interests). MLDRIN has observed that the accredited text for the purposes of these requirements has been amended in the 2022 version of the proposed WRP (p. 39), which now includes a reference to “the provisions for accreditation in Table 3-3” of the WRP as well as “section 7” of the Risk Assessment (Schedule D).</p>
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<sup>34</sup> For MLDRIN’s assessment of various components in Section 4.4, see assessment of 10.53(1)(b), 10.54, and 10.55.

		<p>Going further, Section 10.41 also states, “(4) The water resource plan must list the risks identified for the purposes of subsection 10.41(1)” and “(5) The water resource plan must <i>assess</i> each risk” (emphasis added). Accordingly, the accredited text for 10.41(4) and 10.41(5) should connect to Table 3-3’s material (either directly in Table 3-3 or in the Table 3-1 Risk assessment outcomes) given that it is identified for the purposes of 10.41(1). However, the corresponding accredited text on page 42 of the WRP does not make this connection and, therefore, has not met the minimum legal standard. Even if the connection to Table 3-3 was made to address 10.41(4) (thus meeting that requirement), the minimum legal standard set by requirement 10.41(5) to <i>assess</i> all the identified risks clearly would not be met with this table or elsewhere across the WRP.</p> <p>MLDRIN strongly urges the MDBA to further consider this matter as part of its own assessment of the 2022 version of the proposed NSW MDB Porous Rock WRP against the Basin Plan requirements.</p> <p><b>Other broader general comments:</b></p> <p>In making this evaluation, participants wanted this report to record that the Basin Plan requirement sets the bar too low. In lieu of NSW appropriately having proper, genuine and realistic consideration of Nations’ views about the impacts of water management and use to Indigenous values and uses (as documented here), participants recommended that the NSW Government resource First Nations to complete a risk assessment on NSW and its water management framework, including its WRPs.</p> <p>Table 3-3 appears to be another new element in the WRP developed without First Nations’ input or advice. Participants were not comfortable with the way their risks had been interpreted and combined together or how the risks had been categorised into themes without their involvement. One participant went as far to say that NSW has put the WRP at risk of not being accredited by misinterpreting and misusing their information in this way (and in Table 3 of the Consultation Report, for example). Some felt that the categorisations in Table 3-3 missed key causal factors underpinning risks. For example, one participant stated: “‘Invasion’ is the greatest risk and cause and underscores each of the three themes. You can’t start addressing the problem without going back to the beginning.” Relatedly, participants acknowledged that</p>
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		<p>the explanatory text does include the statement “often these risks [in Table 3-3] related to historic and systemic issues, such as the dispossession and discrimination that First Nations have continued to experience since colonialisation” (p. 49). While this may seem to acknowledge the severity and longevity of these impacts and risks on one level, upon further consideration, it also appears to excuse or justify the lack of past actions, or any actions in this WRP, to address them.</p> <p>Section 3.4 contains inaccuracies and/or errors that require correcting. These include:</p> <ul style="list-style-type: none"> <li>● The following quote without any citation: “direct, causal relationships between the availability of water and Aboriginal socio-cultural life” (p. 48);</li> <li>● Stating that “Each Nation in the MDB Porous Rock WRP area is concerned that...” (p. 48) given that not all Nations in this WRPA were engaged and afforded opportunities to put forward their concerns.<sup>35</sup></li> <li>● The accredited text states that Table 3-3 summarises the “risks and impacts raised by the Barapa Barapa, Maraura, Muthi Muthi, Nari Nari, Ngarabal, Ngiyampaa, Wadi Wadi, Wemba Wemba, Wiradjuri and Yorta Yorta Nations during consultation” (p. 21), but Section 3.4, which includes Table 3-3, opens by stating: “This section refers to risks and their impacts based on consultation across the state” (p. 47).</li> <li>● Table 3-3 of the WRP erroneously states that “The application of Native Title does not apply to water in the waterways” (p. 50). This requires correcting because native title can apply to waters.</li> </ul> <p>MLDRIN has separately written to the MDBA about the workshop participants’ concerns about the Ngarabal quote on page 49 of the WRP. Namely, this material appears to be culturally sensitive and should be redacted until the MDBA is able to confirm with NSW that it has sought express consent to include this quote in this way. MLDRIN acknowledges that, at the time of writing this report, this quote has now been redacted from the NSW MDB Porous Rock WRP hosted on the MDBA’s website. On top of this cultural sensitivity concern, the expression in the quote needs reviewing to offer a clearer meaning.</p>
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<sup>35</sup> MLDRIN acknowledges that Section 3.4 opens by stating “This section refers to risks and their impacts based on consultation across the state and does not include specific risks identified by the Barkandji/Maljangapa, Gomeroi/Kamilaroi/Gamilaroi/Gamilaraay, Tati Tati and Weki Weki Nations” (p. 47). Nonetheless, the explanatory text could have been written more precisely.

<p><b>10.54</b> A water resource plan must be prepared having regard to the views of Indigenous people with respect to cultural flows</p> <p><i>[Notes for Assessment: Is the matter specifically addressed in the text of the WRP? Does the WRP set out how proper, genuine and realistic consideration of Traditional Owner views informed the Plan? Is the matter addressed as part of the accredited text? Is the matter addressed as part of the supporting text? Are their strategies in place to address the matter? Are the strategies binding and measurable?]</i></p>	<table border="0"> <tr> <td style="background-color: yellow;"><b>Absent</b></td> <td>Partial</td> <td>Satisfactory</td> <td>Good</td> <td>Excellent</td> </tr> <tr> <td style="background-color: yellow;"><b>1</b></td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> </tr> </table> <p><b>Key text reviewed related to this requirement:</b></p> <ul style="list-style-type: none"> <li>• Accredited text for the purposes of 10.54 (p. 68);</li> <li>• First Nations Consultation Reports attached to Schedule C and referred to in the accredited text;</li> <li>• Explanatory text in Section 4.4.1 of the WRP (pp. 67-68); and,</li> <li>• Table 2 of the Consultation Report (Schedule C) (p. 13).</li> </ul> <p><b>Assessment comments:</b></p> <p>Participants reviewed the updated accredited and explanatory text in the WRP that relates to Basin Plan requirement 10.54 (p. 68). The enhanced commitment to implementing the National Cultural Flows Research Project guides in partnership with First Nations was welcomed, as was the removal of the explanatory text that had erroneously conflated cultural and environmental outcomes, which appeared in the 2020 version of the proposed WRP. However, participants determined that these changes do not demonstrate that the <i>views</i> of First Nations regarding cultural flows were adequately sought or considered (especially in relation to groundwater) as detailed in the original First Nations assessment. Therefore, assessment of the WRP in addressing this requirement was determined to be <b>absent</b>.</p> <p><b>(a) Issues with First Nations consultation</b></p> <p>The first accredited text dot point in the 2022 version of the proposed NSW MDB Porous Rock WRP states: “[t]his Plan has regard to the views of Aboriginal people with respect to cultural flows (cultural connection to groundwater) by including Attachments A to O to Schedule C” (p. 68). By contrast, few participants recalled discussing cultural flows at all during engagement, and where they did, it was generally (i) because Traditional Owner participants raised the matter rather than direct questioning by consultants (with the exception of the Wadi Wadi Nation), and (ii) in relation to surface water flows and delivery, not groundwater.</p> <p>In claiming that the consultation process and inclusion of the First Nations Consultation Reports is evidence of having regard to Nations’ views on cultural flows in the 2022 version of the WRP, NSW has not addressed the concerns about, and deficiencies of, this approach as recorded in the original First Nations assessment. Participants asserted that even if views were sought about cultural flows, “having regard” to those views in preparing a WRP requires more than simply recording matters raised in consultation and attaching that information to the WRP. The views captured in the First Nations Consultation Reports need to be translated into the WRP, such as via rules and/or mechanisms to secure Aboriginal ownership, access, and control of water flows embedded in the WSP (beyond the current 10ML</p>	<b>Absent</b>	Partial	Satisfactory	Good	Excellent	<b>1</b>	2	3	4	5
<b>Absent</b>	Partial	Satisfactory	Good	Excellent							
<b>1</b>	2	3	4	5							

Aboriginal Cultural Water Access Licence provisions), WRP, or other legislation. Moreover, the WRP needed to include some explanation of how its development had regard to these views.

As some Nation representatives reported not having any discussions with the NSW Government about cultural flows – either during the WRP engagement or since – they were unsure what the accredited text meant when it states that NSW will “*continue* to work with First Nations and Aboriginal people and organisations” (p. 68, emphasis added) in progressing cultural flows.

Changes to Table 2 of the Consultation Report and the explanatory material in the WRP revealed that the NSW Government has been sending mixed messages about its work to understand First Nations’ views on cultural flows, suggesting that this work is incomplete and ongoing. For example, the 2020 version of the Consultation Report indicated that additional consultation for this requirement was underway. This statement has been removed from the 2022 version of the Consultation Report and replaced with a new statement: “Throughout the First Nations consultation, cultural flows was a key theme raised as cultural practices and events are supported by cultural flows” (p. 13). This raises questions about the grounds for changing the original text, given that no engagement has occurred since the original WRP engagement or since the 2020 version of the WRP was assessed.

Moreover, the 2022 version of the Consultation Report states elsewhere that “The Nation consultations have identified areas for further development in pursuit of Aboriginal objectives and outcomes in water management, including ... cultural flows” (p. 13). This statement suggests that the original consultation did not address cultural flows sufficiently, so the change in Table 2 of the Consultation Report presented here remains unclear and is potentially dishonest.

**(b) New links to important cultural flows materials**

In response to the original First Nations assessment, NSW has revised the WRP accredited and explanatory text to include clearer links to important cultural flows materials. This includes the definition of cultural flows as established by Basin Traditional Owners in the Echuca Declaration and key processes and guides developed through the National Cultural Flows Research Project. While important, participants did not see that these additions address the minimum legal standard of this Basin Plan requirement and its need for NSW to have regard to the *views* of First Nations. Moreover, while the WRP now offers the definition of cultural flows from the Echuca Declaration, it does not go as far as to endorse or adopt this meaning.

	<p><b>(c) Unclear meaning of “cultural flows (cultural connections to groundwater)” expression</b></p> <p>It is unclear what the NSW Government means by the expression “cultural flows (cultural connections to groundwater)” in the accredited and explanatory text, and why this descriptor in parentheses is included. One interpretation is that the NSW Government does not see that cultural flows are attainable in the groundwater context. Certainly, the application of cultural flows with regard to groundwater is less developed in comparison with its application to surface waters. However, a key distinguishing feature of cultural flows as defined by the Echuca Declaration and the National Cultural Flows Research Project is water ownership and the associated right for First Nations to make decisions about and manage water for their own determined outcomes. This idea of water ownership is certainly transferable to groundwater contexts in NSW,<sup>36</sup> but requires further discussion and exploration with Traditional Owners.</p> <p><b>Broader general comments:</b></p> <p>Discussions during the assessment workshop covered broader cultural flows matters. This included a shared frustration with the limited genuine commitments from governments to return water to First Nations to support cultural flows despite fighting relentlessly for water returns for many years. A few examples of Nations accessing and delivering water held by governments for environmental purposes to achieve cultural outcomes were noted during these discussions. However, in these examples, First Nations’ control over the water was not legally binding and therefore not completely in line with the definition of cultural flows as set out in the Echuca Declaration. Participants discussed the important role of water purchases and transfers for securing ongoing water for cultural flows, and their frustration with the NSW Government’s (and indeed other governments’) lack of interest, investment or action in progressing this.</p> <p>In this vein, participants agreed strongly with the following statement in the explanatory text: “Aboriginal people feel as though their voices are not heard in water management and cultural flows and outcomes are not considered in policy and implementation” (p. 67). They wished for this assessment report to record their shared view that the development of this WRP represents another example of their voices not being heard.</p>										
<p><b>10.55</b> A water resource plan must provide at least the same level of</p>	<table border="0"> <tr> <td><b>Absent</b></td> <td>Partial</td> <td>Satisfactory</td> <td>Good</td> <td>Excellent</td> </tr> <tr> <td><b>1</b></td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> </tr> </table> <p><b>Key text reviewed related to this requirement:</b></p>	<b>Absent</b>	Partial	Satisfactory	Good	Excellent	<b>1</b>	2	3	4	5
<b>Absent</b>	Partial	Satisfactory	Good	Excellent							
<b>1</b>	2	3	4	5							

<sup>36</sup> E O’Donnell, L Godden and K O’Bryan, *Cultural Water for Cultural Economies* (2021) [https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0008/3628637/Final-Water-REPORTspreads.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0008/3628637/Final-Water-REPORTspreads.pdf); R Nelson, ‘Water rights for groundwater environments as an enabling condition for adaptive water governance’ (2022) 27(2) *Ecology and Society*, 28.



<p>protection of Indigenous values and Indigenous uses as provided in:</p> <p>(a) a transitional water resource plan for the water resource plan area; or</p> <p>(b) an interim water resource plan for the water resource plan area.</p>	<ul style="list-style-type: none"> <li>● Accredited text for the purposes of 10.55 (p. 72);</li> <li>● Table 4-3 of the WRP (pp. 71-72) which the accredited text refers to, as well as the mechanisms and clauses referred to in this table, including relevant parts of the WSP in Schedule A;</li> <li>● The transitional WRP, the <i>Water Sharing Plan for the NSW Murray Darling Basin Porous Rock Groundwater Sources 2011</i>; and,</li> <li>● Explanatory text in Section 4.4.3 of the WRP (p. 71).</li> </ul> <p><b>Assessment comments:</b></p> <p>Participants reviewed the updated accredited text and changes to the material in Table 4-3 (pp. 71-72) and the explanatory text in Section 4.4.3 (p. 71) in the 2022 version of the proposed WRP. They evaluated that NSW addressed this requirement of maintaining the level of protection of Indigenous values and uses by making claims that existing provisions will be retained and some will be improved. Workshop participants expressed concerns that these claims were unsubstantiated and that less protection was offered due to changes to at least one provision. Therefore, performance against this requirement was assessed as <b>absent</b>.</p> <p><b>(a) Maintaining the status quo does not offer the same level of protection</b></p> <p>The WRP lacks assurances or evidence that the provisions listed in Table 4-3 (which is referred to in the accredited text) offer any “protection” of, or benefits to, Indigenous values and uses. Nation representatives see that the current state of the environment and the enjoyment of their values and uses are worse now compared to 2011, when the listed transitional WRP commenced. More detailed comments about the questionable protection offered by certain items in Table 4-3 (such as Land Council rates exemptions, native title provisions, cultural access licences, and advertising works approvals in newspapers) were presented in MLDRIN’s assessment of the 2020 version of the WRP and are not repeated here because the comments and advice remain unchanged. It is disappointing that much of this Table has been reproduced in the 2022 version of the proposed WRP without even addressing the issues with inaccurate framing and possible misrepresentation identified in that assessment.</p> <p>Moreover, workshop participants were concerned that issues such as climate change, floodplain harvesting, and water theft, including illegal bores, will further affect water availability and groundwater recharge opportunities. MLDRIN is not assured that these important factors have been accounted for in NSW’s water resource modelling and</p>
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planning that underpins the WRP<sup>37</sup> and, therefore, that the baseline health of Country will continue its current trajectory of decline. Under such conditions, upholding the status quo, which NSW effectively proposes with Table 4-3 (though see below), will not maintain the current level of protection. In other words, any level of protection offered by the provisions of Table 4-3 will also trend downwards.

**(b) Lack of evidence justifying claims of ‘improved’ protection**

In Table 4-3, NSW suggests three occasions where protections of Aboriginal peoples’ values and uses for water are “improved” due to changes associated with the WRP. The first two (in the top two rows of Table 4-3 on page 71) relate to the same set of changes to Part 2 of the WSP, and are discussed further below. The third regards formal data use agreements with First Nations (see last row of Table 4-3 on page 72). The commentary captured earlier in this assessment regarding the latter meant that participants disagreed with the WRP’s suggestion that the data use agreements have “improved” protection of Indigenous values and uses.<sup>38</sup> To avoid duplication, issues associated with the data use agreements presented earlier in the assessment of 10.52(3) are relevant here.

The workshop considered the changes to the 2022 version of the proposed WRP (specifically Part 2 in the new WSP) compared to the ‘transitional WRP’ that operated for the WRPA (the *Water Sharing Plan for the NSW Murray Darling Basin Porous Rock Groundwater Sources 2011*). Table 1 below offers a comparison of the relevant key provisions that relate to Aboriginal peoples. It is important to note that other objectives, strategies, and performance indicators within the WSPs are relevant to Aboriginal people and their objectives too, but the first row of Table 4-3 specifically refers to “Acknowledgement of and identification of Aboriginal cultural objectives, strategies, and performance indicators” and so that is the focus here.

**Table 1: Comparison of Aboriginal cultural objectives, strategies and performance indicators across the transitional and proposed WRPs**

Component	“Transitional WRP”: <i>WSP for the NSW MDB Porous Rock Groundwater Sources 2011</i>	“Proposed WRP”: <i>WSP for the NSW MDB Porous Rock Groundwater Sources Order 2020</i>
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<sup>37</sup> During the NSW Government’s presentation to a previous WRP assessment workshop (in August 2022), the NSW representatives shared that the most up to date climate change modelling data that covers a longer time scale has not yet been incorporated into the water planning that underpins the WRP and WSP. Although the NSW representative offered that NSW “is heading in the direction” of using and incorporating this information into their water planning, Nation participants were concerned by the answer, and argue that it further justifies the concerns and score recorded here.

<sup>38</sup> At best, these data use agreements could offer protection of Traditional Owners’ knowledge, not necessarily protection of their values and uses.

	<p><b>Objectives</b></p>	<p>9 The objectives of this Plan are to: (b) <b>protect, preserve, maintain and enhance</b> the Aboriginal, cultural and heritage values of these groundwater sources</p>	<p>11(1) The broad Aboriginal cultural objective of this Plan is to <b>maintain</b> the spiritual, social, customary and economic values and uses of groundwater by Aboriginal people.  (2) The targeted Aboriginal cultural objectives of this Plan are as follows:  (a) to provide access to groundwater in the exercise of native title rights,  (b) to provide access to groundwater for Aboriginal cultural use,  (c) to <b>protect</b> groundwater-dependent culturally significant areas.</p>
	<p><b>Strategies</b></p>	<p><i>None identified specific to Aboriginal cultural objective(s), but some are relevant such as:</i></p> <p>10 The strategies of this Plan are to:  (b) identify water requirements for basin landholder rights, ...  (d) establish rules for the granting of access licences and approvals,  (e) establish rules that place limits on the availability of water for extraction, ...  (h) establish rules which specify the circumstances under which water may be extracted</p>	<p>11(3) The strategies for reaching the targeted Aboriginal cultural objectives of this Plan are as follows:  (a) manage access to groundwater consistently with the exercise of native title rights,  (b) provide for groundwater associated with Aboriginal cultural values and purposes,  (c) manage extractions under access licences and basic landholder rights within the extraction limits,  (d) manage the construction and use of water supply works to minimise impacts on groundwater quality,  (e) manage the construction and use of water supply works to minimise impacts on groundwater-dependent culturally significant areas.  <i>'Notes' for each of these links to provisions that Table 4-3 identifies are "retained from pre-WRP arrangements".</i></p>
	<p><b>Performance Indicators</b></p>	<p>11 The following indicators are to be used to measure the success of the strategies to reach the objectives of this Plan:  (f) extent of recognition of spiritual, social and customary values of water to Aboriginal people.</p>	<p>11(4) and 11(5) - <i>Numerous listed, appearing in some cases to be measurable than the previous comparable WSP provision.</i></p>
<p>Table 1 reveals several points, including:</p>			

- The transitional WRP sought to “protect, preserve, maintain and enhance” Aboriginal values and uses, whereas the proposed WRP seeks to only “maintain” them. This is clear evidence of a *reduced* level of protection, rather than improvement.
- The transitional WRP lacked strategies specific to the stated Aboriginal cultural objective but did offer some strategies that are relevant (and which align with some of the strategies in the proposed WRP). The proposed WRP offers strategies that are more clearly linked to the targeted Aboriginal objectives. However, the ‘note’ associated with each strategy lines up with provisions that were already provided in the transitional WRP (most of which Table 4-3 identifies as “retained from pre-WRP arrangements”). So, it could be argued that the proposed WRP offers a slight improvement over the previous arrangements, but only at a superficial level, and whether these offer improved *protection* of Indigenous values and uses remains unclear.
- The transitional WRP and proposed WRP both identify performance indicators. Arguably, the latter is comparatively more detailed and more suitable for measurement than the transitional WRP, but not always in an absolute sense.

On balance, the WRP does not offer evidence to definitively demonstrate that the 2022 version of the proposed WRP has “improved” protection as stated in the WRP. Some elements (i.e., strategies and performance indicators) could be construed as improvements. However, the objectives – which are arguably the element that most substantially drives the level of protection for values and interests and therefore of greatest weighting here – appear to be weaker and offer less protection in the 2022 version of the proposed WRP. The Wiradjuri (Murrumbidgee & Murray) Nation organiser called this a “backwards step”, while another observed that the 2022 WSP “uses more words to do less and offer less protection”. Given the way that Table 4-3 masks this nuance and can be interpreted as questionable, MLDRIN recommends that the MDBA pay close attention to NSW’s claims throughout the WRP and not just accept them at face value.

Other issues with the “Aboriginal cultural objectives” clauses in Part 2 of the 2020 WSP that were identified in MLDRIN’s assessment of the 2020 version of the WRP, including gaps and clarity for application, remain unaddressed. Workshop participants were of the view that leaving these matters unaddressed allows for lapses in NSW’s accountability. Indeed, Table 2 of the Consultation Report still suggests that “Improved water sharing plan objectives ensure protection for Indigenous values and uses aligned with practical strategies and quantifiable performance indicators” (p. 13). Participants questioned how the improved objectives could “ensure” the protection of Indigenous values and uses, given that this is not something that NSW can guarantee, especially without clear and meaningful strategies. Evidence is needed to confirm such certainty.

Overall, without evidence justifying NSW’s claims that the 2022 version of the proposed NSW MDB Porous Rock WRP will actually maintain (let alone strengthen) protection of Indigenous values and uses as described here, participants assessed parts of Table 4-3 to be misleading and questioned its significance. Without Table 4-3, the WRP does not offer any other clear evidence or justification that the level of protection of Indigenous values and uses is maintained, which is necessary to meet the minimum legal standard set by this Basin Plan requirement.

**Broader general comments:**  
 Most of the “maintained” provisions listed in Table 4-3 are components of the *WSP for the NSW Murray Darling Basin Porous Rock Groundwater Sources 2020*, which will not be reviewed until at least close to 2030, meaning that this status quo will now be in place for at least another eight years. Workshop participants were deeply troubled by this picture, regardless of what it meant for this assessment.

Participants were frustrated by the weak wording of this Basin Plan requirement.

<b>Akwe:Kon Guidelines</b>					
Notification and public consultation of the proposed development by the proponent	<b>Absent</b> 1	<b>Partial</b> 2	Satisfactory 3	Good 4	Excellent 5
Identification of indigenous and local communities and relevant stakeholders likely to be affected	<b>Absent</b> 1	<b>Partial</b> 2	Satisfactory 3	Good 4	Excellent 5
Establishment of effective mechanisms for indigenous and local community participation, including for the participation of women, the youth, the elderly and other vulnerable groups	<b>Absent</b> 1	<b>Partial</b> 2	Satisfactory 3	Good 4	Excellent 5
Establishment of an agreed process for recording the views and concerns of the	<b>Absent</b> 1	<b>Partial</b> 2	Satisfactory 3	Good 4	Excellent 5

members of the indigenous or local community whose interests are likely to be impacted					
Establishment of a process whereby local and indigenous communities may have the option to accept or oppose a proposed development that may impact on their community	<b>Absent</b> <b>1</b>	Partial 2	Satisfactory 3	Good 4	Excellent 5
Identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local community participation in all phases of the process	<b>Absent</b> <b>1</b>	Partial 2	Satisfactory 3	Good 4	Excellent 5
Establishment of an environmental management or monitoring plan (EMP), including contingency plans regarding possible adverse cultural, environmental and social impacts resulting from a proposed development	<b>Absent</b> <b>1</b>	Partial 2	Satisfactory 3	Good 4	Excellent 5
Identification of actors responsible for liability, redress, insurance and compensation	<b>Absent</b> <b>1</b>	Partial 2	Satisfactory 3	Good 4	Excellent 5
Conclusion, as appropriate,	<b>Absent</b>	Partial	Satisfactory	Good	Excellent

of agreements, or action plans, on mutually agreed terms, between the proponent of the proposed development and the affected indigenous and local communities, for the implementation of measures to prevent or mitigate any negative impacts of the proposed development;	<b>1</b>	2	3	4	5
Establishment of a review and appeals process.	<b>Absent</b> <b>1</b>	<b>Partial</b> <b>2</b>	Satisfactory 3	Good 4	Excellent 5

## Gomeri/Kamilaroi Nation's specific feedback on the NSW MDB Porous Rock WRP

A MLDRIN representative attended a separate half-day meeting with the Gomeri/Kamilaroi Water Committee and Applicants on 22<sup>nd</sup> April 2021 in Tamworth, NSW. Staff from NSW DPIE, Water Infrastructure NSW, Environment, Energy and Science NSW and Commonwealth Environmental Water Office were present; no MDBA staff were in attendance.

Gomeri/Kamilaroi informed the MLDRIN representative that a sub-committee would prepare advice for the assessment report prior to its delivery to MDBA during the week of 3<sup>rd</sup> May 2021. The following feedback is the advice about the NSW's WRP consultation with Gomeri/Kamilaroi and the NSW MDB Porous Rock WRP provided at the meeting and notes afterwards.

The Gomeri/Kamilaroi Nation agree with MLDRIN's overall assessment that the the NSW MDB Porous Rock WRP should not be accredited as a Water Resource Plan under the Basin Plan.

The Gomeri/Kamilaroi Nation engagement was **not** one of the positive examples of Nation-based consultation. It relied on using short-term, poorly resourced consultants that lacked content knowledge.

Specific feedback from the Gomeri/Kamilaroi Nation includes:

- NSW Government may have engaged the consultants early, but notification for the Gomeri/Kamilaroi community of the four workshops on their Country was less than 3 working days' notice (via email). This is not an appropriate level of service.
- NSW Government followed the Queensland Government model of not employing Aboriginal water staff (while removing the NSW Aboriginal Water Initiative structure), going to Nation-based meetings and hiring external (inexperienced) consultants to undertake short-term work. This was not impactful, and the results of the Gomeri/Kamilaroi consultation show this. Specifically, for one of the largest Nations on the Eastern seaboard, only 30 Traditional Owners and 31 total attendees participated across only four workshops during April 2018 (see page 6, NSW MDB Porous Rock WRP).
- The four workshops held for Gomeri/Kamilaroi by NSW DPIE, informed by NBAN, failed to mention or collect the objectives and outcomes for the values and uses aligned to the NSW MDB Porous Rock WRP and specifically the Gunnedah-Oxley Basin water source.
- The disconnection between NSW and Queensland Governments when dealing with Border River communities and Nations. The Gomeri/Kamilaroi are one of those and the unfortunate waste of resources engaging with the same community twice, asking similar questions and seeking the same objectives and outcomes for values and uses was not appropriate.
- The Aboriginal Waterways Assessment (AWA) methodology is not fit for groundwater sources only surface water and wetlands. The AWA cannot consider interconnected waters or groundwater either.



- With the pending introduction of Flood Plain Harvesting Licences, there has been no consideration of the impact on Gomeroi/Kamilaroi values and uses in the NSW MDB Porous Rock WRP.
- The Gomeroi/Kamilaroi reject the findings of the consultant (Dhurrangal Solutions) that the interviews with eight Traditional Owners during March 2018 provided access and advice for the representation of “12,320 different people” (see page 13, Gomeroi/Kamilaroi Nation Consultation Report).
- There was no consistent consultation requirements and expectations set by the NSW Government, leading to a disrespectful approach and a lack of appropriate notice for Gomeroi/Kamilaroi people to attend the desired engagements during March and April 2018.
- The advice/knowledge provided at the workshops by the Gomeroi/Kamilaroi people has not been included as rules or flows in the pending or gazetted water sharing plan in Schedule A of the WRP.
- *Groundwater Dependent Ecosystems & Groundwater Dependant Cultural Sites* must not be put in the same box or treated as the same issue (see page 97, NSW MDB Porous Rock WRP) as the potential triggers are very different, and it places Aboriginal people with the flora and fauna again. For instance, the *Action* provided in the WRP to “Define water quality targets/thresholds for cultural sites” (see page 97), cannot be met as the NSW Government is in no position to provide data or resources for this.
- There is no regard to Gomeroi/Kamilaroi access to groundwater for economic, cultural, social or environment uses in the Gunnedah-Oxley Basin component of the NSW MDB Porous Rock WRP.
- The Murray Darling Cap restricts the issuing of Specific Purpose Access Licences with the Aboriginal Community Development subcategory (economic) within the MDB portion of NSW. Consequently only Cultural Access Licenses of 10ML/application for cultural purposes are available (which do not allow economic gain).
- There is a significant opportunity for the NSW Government to provide the Gomeroi/Kamilaroi people with access to the unassigned water in the Gunnedah-Oxley Basin as a controlled allocation, with the LTAAEL at 127,500ML/year and SDL of 125.5GL/year.

Like MLDRIN, the Gomeroi/Kamilaroi Nation recommends that the NSW MDB Porous Rock WRP in its current form has not met the requirements of Chapter 10, Part 14 of the Basin Plan to a satisfactory degree.

Prepared by:

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