



*Murray Lower Darling Rivers
Indigenous Nations (MLDRIN)*

**Ensuring equity in the development and
assessment of water resource plans**

**MLDRIN Discussion Paper
April 2016**

EXECUTIVE SUMMARY

At a joint meeting in October 2015, between Basin State representatives, the Murray Darling Basin Authority (MDBA), MLDRIN and Northern Basin Aboriginal Nations (NBAN), Indigenous representatives undertook to document:

- 1) Expectations regarding the development and content of Water Resource Plans (WRPs); and
- 2) Processes for communication, assessment and advice on the accreditation of WRPs.

This discussion paper has been developed to provide an outline of MLDRIN's preferred approach to water resource planning. It is framed around the concepts of procedural, distributive and representative justice, which align well with the requirements of water resource planning as stipulated in the Basin Plan and other relevant policies and guidelines. The paper draws on current statutory requirements, policies, guidelines and research to highlight MLDRIN's preferred approach and outlines a process for MLDRIN to provide advice on the accreditation of WRPs.

Procedural justice is concerned with making and implementing decisions according to fair processes that ensure "fair treatment." In this context it relates to the way in which engagement and consultation with Aboriginal people is carried out. MLDRIN's key recommendations and advice relating to procedural justice are as follows:

- Capacity building to support free, prior and informed consent.
- A strategic approach to ensuring active and informed participation.
- Support for appropriate mapping, research and assessment tools.
- Documentation of consultation and evaluation of results.

Distributive justice is concerned with giving all members of society a "fair share" of the benefits and resources available. In this context it relates to the content of WRPs and the way they contribute to equitable allocation of water resources. MLDRIN's key recommendations and advice relating to distributive justice are as follows:

- Include strategies to give effect to Indigenous outcomes and objectives.
- Utilise current frameworks and additional measures to progress objectives.

Representative justice is concerned with the inclusion of historically disenfranchised or under-represented communities in decision-making structures and hierarchies. In this context it relates to the inclusion of Aboriginal people in decision-making roles relevant to water planning. MLDRIN's key recommendations and advice relating to representative justice are as follows:

- Aboriginal appointments in high-level decision-making bodies.
- State-based planning with Aboriginal employees and advisory structures.

MLDRIN's preferred approach to assessment includes the following:

- Comprehensive assessment of plans.
- Resourcing for effective assessment.

Each of the detailed recommendations in the discussion paper identify the agencies and jurisdictions with primary responsibility for implementation. For simplicity's sake, we have used the following colour-coding:

- **STATES:** Southern Basin State Governments and Departments with responsibility for water, planning and Aboriginal engagement
- **CTH:** The Commonwealth Government
- **MDBA** Murray Darling Basin Authority
- **MLDRIN:** The Murray Lower Darling Rivers Indigenous Nations
- **MANAGERS:** Regional waterway managers including CMAs, Local Land Services and NRM Boards

This is a working document, whose key points may be updated by MLDRIN, to reflect new information and evolving approaches to engagement and water planning.

We welcome feedback and discussion on the content of this paper.

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1 PROCEDURAL JUSTICE

Objective: active and equitable participation of Traditional Owners in water resource planning in a way that ensures our rights and interests are taken into account, and builds our total capacity to engage in and influence water planning.

MLDRIN wants to see active and informed participation of Traditional Owners, consistent with the principle of free, prior and informed consent. This entails a strategic, considered approach to including Aboriginal engagement in the various components of water resource planning throughout the WRP development timeframe.

1.1 General Guidance

1.1.1 MDBA Position Statement 14A

MLDRIN believes Position Statement 14A (PS14A) establishes some good general guidelines for engagement, including some requirements that are not specified in the Basin Plan:

- Development of an Indigenous Engagement Strategy for WRPs;
- Involvement of Traditional Owners through all stages of the water planning process; and
- The use of appropriate forms of communication and forums for engagement.

See Section 4.1 for comments on assessment and accreditation relating to PS14A.

1.1.2 MDBA Principles to Engage Indigenous People in the Murray-Darling Basin¹

These high level principles have been endorsed by MLDRIN and are consistent with our preferred approach to consultation and engagement. We note that the Principles have not specifically been developed for, and may not be fit for purpose in terms of guiding WRP engagement, however, they highlight some important factors, including:

- The relevance of the United Nations Declaration of the Rights of Indigenous People (UNDRIP) (see 1.1.3.);
- The importance of free, prior and informed consent;

¹ <http://www.mdba.gov.au/kid/files/1564-IndigenousEngagementPrinciples.pdf>

- The importance of capacity building; and
- The need for clearly defined accountability and authority.

1.1.3 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

The UNDRIP should be utilised as an international standard for good engagement processes with First Nations. Article 18 of the Declaration states that:

*'Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves, in accordance with their own procedures.'*²

The Australian Government is a signatory to the UNDRIP and MLDRIN would like to see all jurisdictions work towards implementation of the Declaration. The handbook for *Implementing the UN Declaration on the Rights of Indigenous Peoples*³ contains a discussion of consultation and participation in relation to the important principle of free, prior and informed consent. The Handbook states that:

*'Consultation processes with the objective of obtaining the free, prior and informed consent of indigenous peoples must be undertaken in relation to resource development projects, legislation affecting indigenous peoples, and administrative measures related to indigenous lands, territories, natural resources and sacred sites.'*⁴

1.1.4 Akwé: Kon Guidelines

MLDRIN endorses the use of these guidelines as a framework for undertaking consultation with Indigenous communities. The *Akwé: Kon Guidelines*⁵ provide a detailed procedure for best practice consultation on development proposals. Although not designed in the context of water planning, they offer a systematic approach to

² <https://www.humanrights.gov.au/publications/un-declaration-rights-indigenous-peoples-1>

³ United Nations, Inter-Parliamentary Union, 2014 *Implementing the UN Declaration on the Rights of Indigenous Peoples: Handbook for Parliamentarians* No.23.
<http://www.ipu.org/PDF/publications/indigenous-en.pdf>

⁴ibid p.28

⁵ Secretariat of the Convention on Biological Diversity, 2004. *Akwé: Kon Guidelines*.

seeking or obtaining free prior and informed consent. This procedure can be applied to a planning process such as WRPs.

In November 2015, The Commonwealth Government's response to an Independent Review of the Water Act 2007 endorsed a recommendation that the MDBA prepare guidelines on Indigenous consultation for WRPs drawing on the *Akwé: Kon* Guidelines. MLDRIN believes this is an important undertaking.

MLDRIN requests a dedicated joint workshop to work through the *Akwé: Kon* Guidelines with State, MDBA and other Indigenous representatives. This is required because of the detailed nature of the guidelines. Their application in particular contexts therefore needs to be discussed and understood by all parties.

1.1.5 National Water Initiative Module: Engaging Indigenous Peoples in Water Planning and Management

The National Water Initiative (NWI) sets out a number of requirements that all jurisdictions need to achieve, including requirements covering Indigenous participation in water planning and management. These are important procedural requirements for jurisdictions to consider. The Module is intended to:

*'further assist jurisdictions in developing and implementing NWI-consistent, inclusive water planning and management processes that support Indigenous social, spiritual and customary objectives.'*⁶

It includes guidance on appropriate engagement approaches and methodologies for incorporating Indigenous values into water planning.

1.2 Basin Plan Requirements

Basin Plan: Chapter 10, Part 14 specifies a number of matters in relation to which Aboriginal people's and organisations' knowledge or opinion needs to be sought or incorporated into planning. The scope of these matters is open to some interpretation. The MDBA's *Yarns Woven* report provides an in-depth analysis of the meaning and application of some of

⁶ Australian Government, 2015. Module to the National Water Initiative (NWI) Policy Guidelines for Water Planning and Management. Engaging Indigenous Peoples in Water Planning and Management. P. 6

these terms. MLDRIN recognises that an understanding of ‘objectives’, ‘outcomes’, ‘values’ and ‘uses’, and how they interrelate is important to guiding good engagement.

The following summaries⁷ taken from *Yarns Woven* offer a suggested interpretation of these terms as they relate to water resource planning:

- Objectives: aspirations, goals, often expressed as a broad concept or wish.
- Outcomes: practical results on Country, the practical results of realising the objective. Outcomes allow values and uses to be safeguarded and enhanced.
- Values: something people hold dear, what we consider to be important to the way we live and work (can be social, spiritual and/or cultural).
- Uses: can involve extraction, consumption or changing the form of the thing to meet the purpose (can be social, spiritual and/or cultural).

An important point is that objectives, outcomes, values and uses all interrelate. They inform and support each other. MLDRIN proposes that further in-depth discussion and clarification of these terms needs to occur as part of ongoing discussions between State Governments, the MDBA, MLDRIN, NBAN and Traditional Owners.

While Chapter 10 Part 14 establishes a specific set of requirements, MLDRIN’s advice is that appropriate consultation should include engagement on a range of WRP components. These are found throughout Chapter 10 and other parts of the Basin Plan.

Chapter 10, Part 14 creates a broad-ranging requirement for consultation across the framework of WRPs. There is a broad requirement to have regard to the views of Indigenous organisations with respect to:

‘inclusion of Indigenous representation in the preparation and implementation of the plan’ (cl.10.53 (1) (c)) and ‘encouragement of active and informed participation of Indigenous people’ (cl.10.53 (1) (e)).

⁷ “Yarns Woven: Interpreting Chapter 10 Part 14 of the Murray Darling Basin Plan – Indigenous values and uses of water.” (2016) Murray-Darling Basin Authority (forthcoming).

Appropriate consultation should include, but not necessarily be limited to, engagement on the following WRP components:

1.2.1 Risk Identification and Assessment

The Basin Plan (cl.4.02) outlines risks to the condition, or continued availability, of Basin water resources, and consequential risks (cl.4.02(2)(b)) including that:

‘insufficient water is available, or water is not suitable to maintain social, cultural, Indigenous and other public benefit values.’

Water Resource Plans need to be prepared having regard to these identified risks. Water Resource Plans must also be prepared having regard to:

‘strategies to manage or address identified risks’, (cl.4.03(3)), including (g) ‘to improve knowledge of water requirements within the Murray- Darling Basin ... relating to the social, spiritual and cultural uses of Basin water resources by Indigenous people;’

... as well as any guidelines that the MDBA may establish to implement the Strategies.

Risk identification and assessment is key to determining what matters need to be addressed through strategies in each WRP. WRPs must be prepared having regard to current and future risks to the condition and continued availability of the water resources of the water resource plan area (as set out in Chapter 10, Part 9).

WRPs must list identified risks, assess each risk and define the level of risk as either high, medium or low. For all risks rated medium or high, strategies must be included to address the risk (cl.10.43). This highlights the need for thorough engagement with Traditional Owners to understand risks pertaining to Indigenous values and beneficial uses of water.

MDBA Position Statement 9A states that social and economic information should be taken into account when making risk assessments. This reinforces the need for high quality monitoring and information regarding Aboriginal values. MDBA Position Statement 12A also states that WRPs must be based on the best

available information. The limited availability of high quality information regarding Aboriginal cultural values may be a barrier to thorough assessment of risks.

MLDRIN suggests that working to equip Traditional Owners with tools and expertise to collect their own data, assess risks and monitor outcomes will help ensure that WRPs are based on the best possible information. Where there is a lack of information or methodologies to identify and assess risks to Aboriginal values and beneficial uses of water resources, the latter should be classed as 'high risk'.

1.2.2 Interception Activities

Basin Plan cl.10.41(2) (c) also identifies risks arising from interception activities. Risks from interception activities have the potential to pose consequences for Aboriginal cultural values. For example, establishment of commercial plantations, dams or mining activities could impact on values and uses within a catchment area. Risks to Indigenous values and uses associated with interception activities should be identified and assessed as part of the risk assessment.

1.2.3 Long Term Environmental Watering Plans

States must prepare long term watering plans for each water resource plan area. Under cl.8.20 (1)(d) a Basin State must prepare a long term watering plan in consultation with:

'local communities, including bodies established by a Basin State that express community views in relation to environmental watering'.

Under cl.8.20 (3) a long term environmental watering plan must be developed consistently with the principles to be applied in environmental watering, including maximising environmental benefits by:

'utilising local knowledge and experience' and 'having regard to Indigenous values' (cl.8.53 (b)(IV)).

1.2.4 Cross-Border Engagement

The Water Act 2007 (Cth) establishes requirements for States to consult with other Basin States if a WRP area is adjacent to another State. The Basin Plan requires development of a WRP to have regard to the management of water resources in any other WRP area, where there is a significant hydrological connection with a water resource in another WRP area (see Position Statement 1J).

MLDRIN suggests that discussions about management of water resources between States and between WRP areas should take into account Aboriginal people's views about the cultural connectivity or interrelations of a given water resource.

States should understand and describe any significant cross-border cultural connectivity. MLDRIN may serve as a useful forum for discussion of these cross-border issues.

1.2.5 Documenting Engagement

Documenting consultation is an important step to ensuring clarity and transparency for all stakeholders. Basin Plan cl.10.07(1) explains that Water Resource Plans must contain a description of the consultation undertaken in relation to the Plan.

MDBA Position Statement 1B requires that explanation of the approach, tools or information used to have regard to a matter should be included in a WRP.

Comprehensive documentation of Aboriginal engagement undertaken for each plan should be made available to MLDRIN/NBAN and the Authority.

1.2.6 Evaluation and Reporting Requirements

Basin Plan Chapter 13 Part 4 establishes requirements for States, the MDBA, the CEWH and other agencies to report on a number of matters (listed in Schedule 12 of the Basin Plan). Aboriginal outcomes are not specifically included in the schedule, however, should be addressed as part of reporting for a number of matters, including the extent to which the Basin Plan has affected social, economic and environmental outcomes (Schedule 12, Item 3) the Environmental Watering Plan and Water Resource planning.

The authority should include requirements for reporting on Aboriginal outcomes in any agreements (established under cl.13.15) and guidelines for reporting requirements (cl. 13.16).

1.3 MLDRIN's Preferred Approach to Engagement and Consultation

1.3.1 Capacity Building to Support Free Prior and Informed Consent

- Research indicates a generally low level of understanding of WRP processes and requirements⁸ and ongoing gaps and challenges to engagement between water planners and Traditional Owners.⁹
- Basin governments should provide funding to run WRP capacity building forums and workshops in the Southern Basin, and develop communication tools to support outreach and capacity building. **STATES, MDBA**

1.3.2 A Strategic Approach to Ensuring Active and Informed Participation

- A transparent, planned approach to engagement and consultation for each WRP area, based on the principle of free, prior and informed consent, and developed in collaboration with MLDRIN/NBAN. **STATES, MANAGERS**
- Ongoing dialogue and agreed communication protocols between State agencies and MLDRIN/NBAN. **STATES, MLDRIN, MANAGERS**
- A dedicated joint workshop to work through the *Akwé: Kon* Guidelines and consider their application in the WRP context. **MDBA**
- Engagement and inclusion of Indigenous perspectives across all components of the WRP framework and over time. **STATES**
- An inclusive approach to engaging with the right people/groups in each area informed by input from MLDRIN and NBAN. **STATES, MLDRIN**
- Adequate resourcing and timelines for effective engagement, including measures for participation of Elders, young people and women. **STATES**

⁸ Environmental Justice Australia, MLDRIN, 2015. *Legal Dimensions of Water Resource Plan requirements under the Basin Plan*. p. 10.

⁹ Alluvium Consulting, 2015. *Documenting engagement on environmental watering across Victoria*. Executive Summary. p. 4.

- Adequate resourcing for regional waterway management agencies to build on and enhance working relationships with Traditional Owners. **STATES, MANAGERS**

1.3.3 Support for Appropriate Mapping, Research and Assessment Tools

- Basin Governments should fund the further development and application of culturally appropriate methodologies for determining and identifying Traditional Owners' objectives, outcomes, values and uses. **STATES, MDBA**
- Traditional Owners have final authority over how and which tools are used on their Country. Basin Governments should support Traditional Owners and MLDRIN to fully manage and operate any mapping and assessment programs. **STATES, MDBA**
- Basin Governments should provide support for autonomous research, management and decision-making processes of Nations, where capacity exists (e.g. developing assessment methodologies and writing their own water plan components), in line with UNDRIP Article 18. **STATES, MDBA**

1.3.4 Documentation of Consultation and Evaluation of Results

- Full documentation of consultation including detailed records of input and opinions of Traditional Owners. **STATES**
- Ongoing evaluation and reporting on the effectiveness of strategies included in WRPs. **STATES, MDBA**

2 DISTRIBUTIVE JUSTICE

Objective: water resource plans and associated water management and allocation frameworks that support and give effect to Traditional Owners' rights, objectives, interests and aspirations.

Appropriate Indigenous engagement and consultation is essential to good planning, however it is also vital that WRPs include substantive and equitable outcomes. There is a risk that failure to meaningfully address Traditional Owners' rights and interests will result in lack of community confidence and faith in the planning system. Substantive and equitable outcomes will need to be achieved through the distribution, allocation and management of water resources.

2.1 Implementation Plans and Strategies

The National Water Initiative module states that:

*'new and revised water plans should reflect Indigenous social, spiritual and customary objectives, and include strategies for ongoing implementation, management and monitoring of these objectives throughout the life of the water plan.'*¹⁰

The inclusion of strategies to address identified risks and implement the objectives and outcomes identified under Chapter 10, Part 14 will ensure that WRPs are instrumental in achieving meaningful results for Aboriginal people.

2.2 'having regard to'

Basin Plan: Chapter 10 Part 14 contains a hierarchy of obligations. At the top of the hierarchy is the obligation to *'identify'* Indigenous objectives and outcomes. The obligation to *'have regard to'* various elements is far less onerous.

Consideration of this terminology is fundamental in determining what WRPs can actually accomplish. MDBA Position Statement 1B and the MDBA water resource plan *Handbook for Practitioners*¹¹ offer some advice on this.

¹⁰ NWI Module. p. 7

¹¹ Murray Darling Basin Authority, 2013. *Handbook for Practitioners – Water resource plan requirements*. Commonwealth of Australia (MDBA).

In these documents, 'having regard to' is further defined as giving:

'proper, realistic and genuine consideration' to a matter.'

MLDRIN's understanding is that the requirement to 'have regard to' a matter means that a WRP may not even need to explicitly address the matter in any substantive way.¹² While Chapter 10, Part 14 requires a WRP to 'identify' Indigenous objectives and outcomes, how a Plan addresses those matters is largely discretionary. This is extremely problematic from the perspective of Traditional Owners who have aspirations to see their interests reflected in the content of plans.

MLDRIN proposes that 'proper, realistic and genuine consideration' entails addressing and responding substantively to matters or issues raised in consultation with Aboriginal people. The content of the plans should align with the objectives, outcomes and views expressed by Aboriginal people during consultation. If a WRP does not, or cannot so align then 'genuine consideration' must include identification of the disjuncture between the objectives, outcomes or views expressed by Aboriginal people and the terms contained in the plan. There should also be an explanation of this disjuncture or departure.

In the case of medium or high risks identified through the WRP process, there is a clear requirement to modify management arrangements and implement strategies to address those risks. The content of a WRP must align with the types and severity of the identified risks. The same approach should be applied when providing for significant Indigenous objectives and outcomes.

Basin Plan cl.10.52(3) allows a jurisdiction developing a WRP to identify opportunities to strengthen the protection of Indigenous values and Indigenous uses in accordance with the objectives and outcomes identified under s10.52(1). MLDRIN suggests that all WRPs should include strategies and measures that give effect to objectives and outcomes, and address other matters identified during consultation, including the views of Aboriginal people regarding cultural flows.

¹² MDBA. Basin Plan Water Resource Plan Requirements, Position Statement 1B. p. 4 states that 'the requirement to have regard to certain matters does not mean that the water resource plan is ultimately bound to contain any particular material or provide for any particular thing.'

There are a number of ways in which jurisdictions can give effect to Indigenous objectives and outcomes, and respond to matters raised during consultation, within the existing entitlement framework. These include:

- Incorporating Indigenous objectives and outcomes into environmental water planning and delivery;
- Establishing rules on the take and use of water, to support cultural values or objectives in particular locations;
- Providing Cultural Access licences (in NSW);
- Establishing an Indigenous Reserve with any unallocated water in a WRP area; and
- Supporting social and economic objectives by creating opportunities for establishing and/or enhancing Aboriginal people's and organizations' access to the water market.

These approaches to improving Aboriginal people's access to water are consistent with the advice provided by the National Water Commission.¹³

2.3 Overall Consistency

In order to be accredited, WRPs need to be consistent with the Basin Plan as a whole. This includes consistency with Basin Plan management objectives and outcomes (s5.02). MLDRIN proposes that WRPs that include strategies to provide water for Aboriginal objectives and outcomes would be consistent with the Basin Plan outcome of:

'a healthy and working Murray-Darling Basin that includes: communities with sufficient and reliable water supplies that are fit for a range of intended purposes, including [...] cultural use.' 5.02 (2) (a).

We would encourage all jurisdictions to align WRPs as strongly as possible with this objective.

2.4 MLDRIN's Preferred Approach to WRP Content

2.4.1 Include Strategies to Give Effect to Indigenous Outcomes and Objectives

- All WRPs to include strategies to implement, manage and monitor Indigenous outcomes and objectives, as identified

¹³ National Water Commission, 2012. 'Indigenous access to water resources'. <http://www.nwc.gov.au/nwi/position-statements/indigenous-access>

through consultation, and to support the maintenance and enhancement of Aboriginal values and uses. **STATES**

- All WRPs to include substantive measures to address the views and aspirations of Traditional Owners in relation to the matters raised in Chapter 10, Part 14, including cultural flows. **STATES**

2.4.2 Utilise Current Frameworks and Additional Measures to Progress Objectives

- Utilise the existing entitlement and planning framework to give effect to Indigenous objectives and strengthen the protection of Indigenous values and uses. **STATES**
- Complimentary measures to support WRP provisions such as the establishment of a fund to purchase allocations/entitlements to provide for Aboriginal objectives, outcomes, values and uses. **STATES, CTH**

3 REPRESENTATIVE JUSTICE

Objective: decision-making structures that ensure the inclusion of Aboriginal people, rights and interests at all levels.

As well as being the focus of consultation, Aboriginal people should also be engaged and employed at decision-making levels within State Government agencies, the MDBA and any relevant boards and advisory bodies with a role in Basin Plan implementation.

Ensuring that Aboriginal people have defined roles at the decision-making level in State and Commonwealth processes will help to ensure that Indigenous interests are given proper, genuine and realistic consideration. It will also improve community confidence in the water resource planning process.

The inclusion of Aboriginal representatives in decision-making hierarchies is consistent with the MDBA's Aboriginal Partnerships Action Plan, as well as National Water Commission advice and a range of other State government inclusion plans.

Aboriginal appointees and employees should also be guided and supported by appropriate community representative bodies. This includes MLDRIN and NBAN, but could also include State and Regional based advisory groups, working groups and Traditional Owner Corporations.

3.1 MLDRIN's Preferred Approach to Aboriginal Representation

3.1.1 Aboriginal Appointments in High Level Decision-Making Bodies

- At least one Aboriginal person with expertise in the management of Basin water resources on the Board of the Murray Darling Basin Authority. **CTH**
- Ongoing appointment of at least two Aboriginal representatives on the Basin Community Committee. **CTH**
- At least one Aboriginal representative on all CMA Boards (VIC), Local Land Services Boards (NSW) and NRM Boards (SA). **STATES**

3.1.2 State-Based Planning with Aboriginal Employees and Advisory Structure

- Aboriginal employees at decision-making level in Basin State Departments with responsibility for water planning. **STATES**

- Aboriginal advisory groups, with a strong community mandate, to guide and support Aboriginal employees. **MLDRIN, STATES**
- Ongoing support, assistance and training for Aboriginal representatives. **STATES, CTH, MLDRIN**

4 HOW MLDRIN WILL ASSESS AND PROVIDE ADVICE ON WRPs

4.1 Scope of Assessment

A note under Basin Plan Chapter 10, part 14 establishes that the MDBA should consult with relevant Indigenous organisations, including MLDRIN and NBAN, in relation to whether the requirements of Chapter 10 Part 14 have been met.

MLDRIN's advice on these matters should be reflected in any recommendations prepared by the MDBA for the Minister on whether the proposed water resource plan should be accredited (Water Act 2007, 63(3)(b)).

MLDRIN understands that this note establishes a broad requirement for MDBA to consult with MLDRIN on whether *all* requirements under Chapter 10, Part 14 'have been met'.

In making that assessment, MLDRIN will be bound to consider the full scope of any given WRP. This is because it is impossible to determine whether a WRP has been prepared 'having regard to' certain matters without considering the entirety of the WRP and the totality of its application to Country. 'Regard' for certain matters is likely to be demonstrated in various components of a given plan. For example, the objectives and outcomes sought by Aboriginal people could relate to various aspects of water resource planning such as water quality management, environmental watering and interception activities. Similarly, strategies for achieving social, cultural, spiritual and customary objectives would need to be enacted through these different components of a plan.

MDBA Position Statement 14A identifies the criteria that the MDBA will use to determine whether genuine engagement has been undertaken by States. The Position Statement specifically excludes assessment of:

'the veracity of Aboriginal objectives and outcomes, and associated values and uses identified in water resource plans.'

While MLDRIN recognises that it is a matter for Traditional Owners, in partnership with State governments, to identify objectives and outcomes, the way that these objectives and outcomes are addressed within WRPs should be subject to assessment.

MLDRIN questions whether it is possible to determine whether the requirements of Chapter 10, Part 14 'have been met' if there is no assessment of the way

Aboriginal objectives and outcomes, values and uses have been addressed. MLDRIN recognises that it is possible for excellent engagement and consultation processes to result in no 'proper, genuine and realistic' consideration of Aboriginal matters in the WRP itself. Therefore, 'genuine engagement' is not a surrogate for meeting the requirements of Chapter 10, Part 14, but rather one component of the requirements.

MLDRIN will therefore seek to provide full advice on whether the requirements under Chapter 10, Part 14 have been met.

4.2 Internal Procedures for Assessment of WRPs

MLDRIN's assessment of WRPs would be guided by the following tools and processes:

4.2.1 Feedback from MLDRIN Members and Traditional Owners

MLDRIN would seek input from Traditional Owners regarding how their objectives, outcomes, values and uses have been identified and considered in WRPs.

4.2.2 Guidance Documents and Best Practice

MLDRIN would assess WRPs and States' engagement with Traditional Owners in light of the *Akwé: Kon* Guidelines and other relevant, best practice procedures. Where relevant agreements between member Nations and State agencies, such as the Ngarrindjeri Regional Authority/South Australia 'Statement of Commitment' would also be considered.

4.2.3 Strategies and Outcomes

MLDRIN would consider whether the WRPs give effect to Traditional Owners' objectives and outcomes and how 'regard' has been demonstrated for various matters outlined in Basin Plan Chapter 10, Part 14. MLDRIN would specifically consider whether strategies and outcomes in WRPs align with the objectives and outcomes identified by Traditional Owners.

4.2.4 Register of Engagement Activities

One approach could be for MLDRIN to develop and maintain a register of engagement activities. This would be a running spreadsheet that records activities undertaken by State Government representatives in relation to WRP engagement activities.

The value of such a register is that it would allow MLDRIN, and other parties if agreed, to understand the activities and approach being utilised

by each State. This would assist with MLDRIN's assessment of WRPs and enhance transparency for all involved.

4.2.5 Communication and Protocols with States/MDBA

MLDRIN has already commenced work on a communications protocol with the NSW Aboriginal Water Initiative. This would establish procedures for how AWI and MLDRIN share information about engagement activities and Traditional Owner contacts in WRP areas. We would like to see similar protocols established with the other Southern Basin States.

4.3 Timelines and Resources

MLDRIN wishes to stress that the principle of free, prior and informed consent implies that sufficient time should be allocated to Indigenous communities to fully consider the costs and benefits of actions and policies that affect their traditional lands.

It is difficult to estimate the time and resources that will be required to undertake a thorough assessment of WRPs. Variations in the structure and content of WRPs will also entail variability in how they will need to be assessed.

Timelines, which will be informed by guidelines contained in the *Akwé: Kon* Guidelines, will need to be negotiated between MLDRIN, MDBA and the Basin States

4.3.1 Resources

The *Akwé: Kon* Guidelines also highlight the need for:

*'identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local community participation...'*¹⁴

Completion of thorough assessments for each relevant WRP will require funding beyond MLDRIN's current financial agreement with the MDBA. It may also be necessary to engage the services of experts and professionals to assist with interpretation and technical components of WRPs.

¹⁴ *Akwé: Kon Guidelines*. p.11

4.4 MLDRINs Preferred Model for Assessment of WRPs

4.4.1 Comprehensive Assessment of Plans

- Assessment to consider whether the requirements of Chapter 10, Part 14 have been met. This entails consideration of each Plan in its entirety and consideration of how Plans address and enable Aboriginal objectives and outcomes. **MLDRIN**

4.4.2 Resourcing for Effective Assessment

- Time frames for assessment of WRPs to be negotiated between all parties. Adequate time is required to ensure proper consideration and endorsement of Plans. **MLDRIN, STATES, MDBA**
- Provision of adequate resources to support MLDRIN staff and delegates to conduct assessment. **STATES, MDBA**
- Resources or in-kind support to recruit scientific, legal or other technical expertise to assist with assessment as needed. **STATES, MDBA, MANAGERS**