

5th April 2019



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Philip Glyde
Chief Executive Officer
Murray Darling Basin Authority

Re. Assessment of Wimmera-Mallee Water Resource Plan

Dear Mr Glyde,

We are pleased to submit our advice following an assessment of the Water Resource Plan for the Wimmera-Mallee region (WM WRP).

This assessment report relates to MLDRIN's review of an amended version of the WM WRP received in March 2019, reflecting changes made since MLDRIN's initial assessment of the Plan in August 2018.

Following an assessment process outlined below, MLDRIN has formed the view that the amended WM WRP has fulfilled ten of the thirteen requirements enumerated under Basin Plan, Chapter 10, Part 14.

MLDRIN's review of the plan, informed by input from Delegates and representatives of the First Nations engaged, has highlighted significantly improved consultation for the purposes of WRP development and content responding to Basin Plan requirements, including:

- Identification and inclusion of appropriate first Nations in consultation
- Consideration of relevant water sources in the WRP area
- Identification of detailed First Nations objectives and outcomes
- Demonstration of how proper, genuine and realistic consideration was given to First Nations values and uses relating to the WRP area water resources
- Identification of opportunities to strengthen the protection of First Nations values and uses

Despite these improvements, the assessment noted remaining gaps and shortcomings in the WRP in relation to the following Chapter 10 Part 14 requirements:

- s10.53 (1) (a): Having regard to the views of relevant Indigenous organisations with respect to native title rights, native title claims and

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Indigenous Land Use Agreements provided for by the *Native Title Act 1993* in relation to the water resources of the water resource plan area

- s10.53 (1) (b): Having regard to the views of relevant Indigenous organisations with respect to Registered Aboriginal heritage relating to the water resources of the water resource plan area
- s10.53 (1) (e): Having regard to the views of relevant Indigenous organisations with respect to encouragement of active and informed participation of Indigenous people

These improvements and deficiencies are discussed in more detail below and in our completed Assessment Framework attached.

MLDRIN recommends that the WM WRP, in its current form, has met ten out of the thirteen specific requirements listed in Chapter 10, Part 14 of the Basin Plan. We submit this advice to the MDBA in order to inform the Authority's advice to the Minister for Agriculture and Water Resources.

In providing this advice, MLDRIN delegates wish to highlight the following views and considerations:

- MLDRIN's assessment has reviewed the degree to which the submitted WM WRP fulfils the requirements of Chapter 10, Part 14 of the Basin Plan. In identifying compliance with these requirements, our assessment does not constitute an endorsement of the WRP or the frameworks governing water allocation and management in Victoria.
- There are a number of further actions and commitments that are needed to give force and effect to the WRP content. In particular:
 - Ongoing funding for *Water for Victoria* actions which have been identified as strategies to address risks to Indigenous values and uses
 - Co-design of implementation plans to ensure appropriate progress of opportunities to strengthen the protection of values and uses
 - Proper, genuine and realistic consideration of the views of First Nations about native title rights and registered cultural heritage in relation to the water resources of the WRP area.

Assessment approach

This formal assessment of the WM WRP was undertaken by MLDRIN in accordance with the note included under Part 14 of Chapter 10 of the Basin Plan.

MLDRIN's assessment was informed by reviewing a number of 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 of Nations, reviewing the plan in line with their objectives, outcomes, values and uses.

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MLDRIN formulated an assessment framework. The framework used a Leichardt Scale to guide and focus assessment of performance against key requirements, criteria and guidelines. It also included qualitative input based on discussions between Nation Delegates, MLDRIN staff and others. This resulted in a user-friendly but comprehensive assessment.

The assessment included

- A one-day workshop (held 20th March 2019) attended by MLDRIN staff and Chairperson, DELWP staff and MLDRIN Delegates or representatives of the following Nations: Latji Latji (First Peoples of the Millewa Mallee), Dja Dja Wurrung, Wamba Wamba, Wadi Wadi and Tati Tati
- Targeted engagement with relevant MLDRIN Nations representatives and key contacts who were not able to participate in the workshop (including Barengi Gadjin Land Council, Barapa Barapa and Weki Weki representatives).
- Regular engagement with Victoria DELWP staff on preparation and drafting of the plan between 2015-2019

The assessment allowed MLDRIN to identify where the WM WRP had met the Basin Plan requirements and where there was partial fulfilment or major gaps.

Findings

When assessing the WM WRP against the requirements stipulated in Chapter 10, Part 14 of the Basin Plan, MLDRIN found that the Plan demonstrated good compliance in the following sections:

- s 10.52 (1)(a): identify the objectives of Indigenous people in relation to managing the water resources of the water resource plan area
- s 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.
- s 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
- s 10.52(2)(b): Having regard to the social, spiritual and cultural uses of Indigenous people that relate to the water resources of the water resource plan area
- 10.52(3): Identifying opportunities to strengthen the protection of Indigenous values and Indigenous uses
- 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

MLDRIN found that the Plan demonstrated satisfactory compliance in the following sections:

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- 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
- s10.54: having regard to the views of Indigenous people with respect to cultural flows
- 10.55: maintenance of levels of protection as provided for in interim WRPs

The following requirements were found to have been only partially fulfilled:

- 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) (e) having regard to the views of First Nations in relation to encouragement of active and informed participation.

When assessing the WM WRP against the 'Assessment Template' criteria provided by the MDBA, MLDRIN found the plan demonstrated satisfactory compliance with the following 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)
- 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)

MLDRIN found that the WM WRP demonstrated partial compliance with the following three criteria:

- Appropriate Nations were identified and involved throughout all stages of the water planning process.
- Information about water resource planning processes and content provided was clear to Nations
- Appropriate tools and mechanisms for recording, understanding and incorporating Aboriginal objectives and outcomes were used.

MLDRIN notes that in many cases, approaches to consultation and the preparation of the WRP fell short of best practice guidelines provided by the MDBA and by MLDRIN in collaborative forums and formal guidance, such as the MDBA's *Water Resource Plan Part 14* Guidance document.

Given the length and complexity of the WRP document, MLDRIN was not able to undertake a review of the WRP against the Akwe:Kon guidelines.

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Other Matters

MLDRIN wishes to draw the MDBA's attention to detailed concerns and issues raised in our previous assessment report for the Wimmera Mallee WRP relating to:

- Lake Albacutya Ecological Character Description and best available science
- Consistency with international agreements and
- Impacts on Indigenous Values and Uses and Native Title rights

We request that MDBA confirm receipt of this information and respond to the issues and questions raised in our previous report. We also wish to ensure that these matters are included in material provided by MDBA to the responsible Minister to inform his views on accreditation.

We look forward to being able to continue to work with Basin States, The MDBA and Aboriginal Nations to ensure that the preparation and assessment of WRPs achieves best practice and supports genuine outcomes for Traditional Owners.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rene Woods', written in a cursive style.

Rene Woods
Chairperson, MLDRIN

Criteria	Assessment of performance										
MDBA Assessment Criteria											
<p>1. A planned approach was applied to properly engaging Nations and resulted in an Indigenous Engagement Strategy that guided preparation of the water resource plan (e.g. adequate time, appropriate venues and resources)</p>	<table border="0" data-bbox="786 427 1518 502"> <tr> <td>Absent</td> <td>Partial</td> <td>Satisfactory</td> <td>Good</td> <td>Excellent</td> </tr> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> </tr> </table> <p>Assessment Comments:</p> <p>Delegates noted that, subsequent to MLDRIN’s assessment of the first iteration of the WMWR, DELWP did prepare and commit to implementing an engagement strategy to guide renewed consultation and address gaps for the WRP.</p> <p>All Delegates agreed that planning for consultation was significantly improved, and greater time, commitment and resources had been dedicated to performing consultation.</p> <p>The delegate agreed by consensus to rate performance against this criterion as satisfactory.</p> <p>Delegates reflected on the challenge of disseminating information and coordinating participation across large and diverse Nation groups. There may be multiple organisations, family groups, areas of interest and levels of involvement within a Nation. A Nation may span more than one State and individuals may have affiliations in one area rather than another. This context can complicate the process of engaging communities and seeking informed input. State agencies need to understand and navigate these contexts with appropriate time and guidance from First Nations</p> <p>There was some concern expressed by Delegates that information has not necessarily filtered</p>	Absent	Partial	Satisfactory	Good	Excellent	1	2	3	4	5
Absent	Partial	Satisfactory	Good	Excellent							
1	2	3	4	5							

out to all Traditional Owners. Consultation is vested largely in a smaller cohort, linked to Boards and other key roles. Consultation needs to reach out to TOs beyond the corporate structures of all Nations and organisations.

Wadi Wadi delegate notes that there were other individual members of the Nation who couldn't attend WRP consultation workshops, but who wanted to contribute their views to the WRP development. The Wadi Wadi rep noted that she had informed DELWP about their interest, but did not receive a response.

Tati Tati Delegate noted that the previous assessment had recorded performance against this criteria as 'partial.' He noted that DELWP have now developed a coordinated strategy, which wasn't in place before. Tati Tati Delegate expressed the opinion that there had been some improvement on this criteria and, in his opinion, it should be rated as satisfactory.

Dja Dja Wurrung delegates noted that DDW had chosen to submit content developed for the Northern Victorian WRP. There was no additional engagement or content development focussed on the Wimmera Mallee waterways. DDW noted that DELWP staff had sought to engage around management of the Avon/Richardson rivers, but DDW were not in a position to progress that.

Latji Latji Delegate noted that she was satisfied with the starting work on engagement and the discussions they had had with DELWP. DELWP have 'put some meat on the bones'.

The Wadi Wadi Delegate noted her view that performance against the criteria was satisfactory. DELWP could have done better to engage with some of the TOs. Both Wadi Wadi Delegates tried to engage with the right people. First Nations Legal and Research Services (FNLRs) were asked to send letters to all relevant people. Wadi Wadi Delegates attempted to bring more together for that consultation.

	<p>Wamba Wamba Delegate noted: in the initial WRP consultation meetings, there were insufficient people there. This was partly because there is no functioning Native Title organisational structure set up to bring everyone together. We're just in the process of starting.</p> <p>Some Delegates expressed misgivings about communication and notification of WRP meetings via FNLRS. Some don't attend meetings convened by FNLRS. There is a degree of mistrust about that organisation. Delegates discussed ways that MLDRIN could perform the role of convening Nation members to attend WRP consultation workshops. It was noted that Basin States have the responsibility to coordinate the process, they are funded to get the word out.</p>
<p>Appropriate Nations were identified and involved throughout <u>all</u> stages of the water planning process.</p>	<p>Absent Partial Satisfactory Good Excellent 1 2 3 4 5</p> <p>Assessment Comments:</p> <p>While delegates noted that DELWP had taken additional efforts to engage with appropriate Nations throughout the WRP area, they could not amend their earlier advice in response to this criterion.</p> <p>This was due to the fact that it was clear that engagement with some Nations had not occurred through all stages of the water planning process. The omission of some groups in the initial iteration of consultation was still viewed as a major limitation. Groups reiterated their concerns expressed in the first assessment. DDW Delegates noted their advice regarding the lack of consideration of formal consultation protocols stipulated in DDWs Recognition and Settlement Agreement.</p>

<p>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>	<table border="0"> <tr> <td>Absent</td> <td>Partial</td> <td>Satisfactory</td> <td>Good</td> <td>Excellent</td> </tr> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> </tr> </table> <p>Assessment Comments:</p> <p>Delegates agreed that performance against this criterion could be judged as satisfactory.</p> <p>Some delegates noted that, as far as they were aware, all Nations had been notified of opportunities to be involved, with various forms of communication used.</p> <p>Some delegates expressed concerns about the clarity and distribution of notifications for workshops within their Nation group. The Latji Latji Delegate felt that communication and notification of workshops had largely been coordinated through the Board of the First Peoples of the Millewa Mallee Corporation and that effort was required of individuals to pursue opportunities for participation on their own initiative. Notification wasn't provided to all local TOs.</p> <p>The Latji Latji delegate also expressed misgivings about the conflation of workshops focussed on development of a Country Plan, with discussions about input to the Water Resource Plan. The delegate noted that the results of the process were satisfactory, but she was not appropriately informed that the workshop would include discussion of WRP input, before the event.</p> <p>"If we knew we were going there to talk about water in the Wimmera Mallee, we would have talked about water. We didn't know that was what we were going there for."</p> <p>One Delegate noted that workshops held to discuss content of the WRP could have been more specifically focussed on the Wimmera-Mallee area and waterways. Holding workshops within the Wimmera-Mallee geographical area, or at key sites within that region, would have honed</p>	Absent	Partial	Satisfactory	Good	Excellent	1	2	3	4	5
Absent	Partial	Satisfactory	Good	Excellent							
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	<p>inputs.</p> <p>Delegates discussed the importance of MLDRIN representatives being involved in planning and organising consultation activities. This can help ensure they can monitor the distribution of notifications and communication about workshops. Notifications for workshops and engagement activities should include specific reference to water resource planning, so that Traditional Owners are aware of the purposes of discussions and how their inputs are contributing the state water planning processes.</p>
<p>Information about water resource planning processes and content provided was clear to Nations</p>	<p>Absent Partial Satisfactory Good Excellent 1 2 3 4 5</p> <p>Assessment Comments:</p> <p>Delegates agreed that Victoria had partially met this criterion through their engagement activities for the Wimmera Mallee.</p> <p>Some delegates noted that presentations provided at workshops were generally clear and outlined key issues related to water resource planning.</p> <p>However, there was a recognition that, across the Nations it is unclear whether information provided by government had fostered a greater understanding of the function of WRPs and the role of Traditional Owner input within that.</p> <p>Some delegates noted that, while their organisations had been briefed on the WRP, it may not be clear to members of the Nations precisely what Traditional Owner input is intended to achieve or how it will influence water outcomes. Traditional Owners may still be left wondering</p>

	<p>why they are supplying information on their objectives, outcomes, values and uses and where that information will go.</p> <p>Some delegates also felt that, given the length of time available to build more effective communication, the actual dissemination of information was rushed meaning that most Traditional Owners did not gain a clear understanding of the function of WRPs or the value of Traditional Owner input. Delegates noted that, if a process of focused engagement on WRPs had been established earlier, Nations would have had more time to grapple with and contextualise the information.</p> <p>Improving the timeliness and clarity of information about what a water resource plan is, and what it does, would greatly assist the understanding of First Nations and support free, prior and informed consent.</p>
<p>Appropriate <u>tools and mechanisms</u> for recording, understanding and <u>incorporating</u> <u>Aboriginal objectives and outcomes</u> were used.</p>	<p>Absent Partial Satisfactory Good Excellent 1 2 3 4 5</p> <p>Assessment Comments:</p> <p>Delegates determined that this criterion had been partially fulfilled through development of the Wimmera-Mallee WRP.</p> <p>Delegates noted that key tools and mechanisms for recording, understanding and incorporating Aboriginal objectives and outcomes included workshops, Nations preparing their own content, Aboriginal Waterways Assessments and other field-based research and, in one case, Consultants engaged by NSW Government running community workshops and collecting data. Delegates discussed the efficacy of different tools and mechanisms used.</p>

Some delegates communicated a positive response to the consultation workshops undertaken for the development of Victorian WRPs. Workshops allowed for good discussion across a wide range of issues. Some delegates felt that the collection of information was conducted well. Nation members were comfortable to engage and provide information.

Delegates also noted that they were comfortable with the arrangement whereby Nations were provided the opportunity to produce their own content for the WRP.

DDW delegates noted that they had conducted internal consultation within their Nation, as agreed with Victoria. They had nominated to include the same content as provided for the Northern Victoria Plan in the Wimmera Mallee Plan. This is because they weren't resourced to provide detailed information about the Wimmera-Mallee region. There has been some discussion with DELWP and other Traditional Owners about working towards assessment of the Avon/Richardson rivers (waterways within the WM WRP area), but that has not moved forward to date.

Delegates expressed some misgivings about the replication of material, including objectives and outcomes, across both the Wimmera-Mallee and Northern Victoria WRPs. Workshops and opportunities for Traditional Owner input were largely conducted at a 'Nation' scale, encompassing Nations views relating to both WRP areas. Support for more targeted discussions, focussed on the water bodies and resources within each WRP, would have been preferable and this would have provided more specific input into the plan.

One delegate advised that workshops and consultation activities should ideally have been held within the Wimmera Mallee area, allowing for visits and focussed discussion on Wimmera-Mallee waterways.

	<p>There was some concern about the way information was collected during consultation workshops. Handwritten notes, collected by DELWP staff, were used in a number of cases and it would be preferable to see how comments and discussions were being recorded and amalgamated into Nation inputs.</p> <p>Delegates expressed concern about inconsistency of the mechanisms used to collect information about values and uses. While there was a need to adjust engagement approaches based on each Nations capacity and priorities, the use of varying mechanisms could make assessment of how regard was had to various matters more complicated.</p> <p>Other concerns related to the management of information collected during workshops and the provision for Nation members to review and sign off WRP content. One delegate expressed concern that it was not clear how potentially sensitive or confidential information collected during engagement activities was being held or stored by DELWP staff. Delegates questioned whether any confidentiality or information use agreements had been used to oversee the collection, storage and use of Traditional Owner information.</p> <p>Delegates were also unclear about the procedure for formally endorsing or ‘signing off’ on content before inclusion into the WRP. Some delegates noted that they had not been given an opportunity to review the content before sign off</p>										
Akwe Kon Guidelines											
Notification and public consultation of the proposed development by the proponent	<table border="0" style="width: 100%; text-align: center;"> <tr> <td>Absent</td> <td>Partial</td> <td>Satisfactory</td> <td>Good</td> <td>Excellent</td> </tr> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> </tr> </table> <p>Assessment Comments:</p>	Absent	Partial	Satisfactory	Good	Excellent	1	2	3	4	5
Absent	Partial	Satisfactory	Good	Excellent							
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<p>Identification of indigenous and local communities and relevant stakeholders likely to be affected</p>	<p>Absent 1 Partial 2 Satisfactory 3 Good 4 Excellent 5</p> <p>Assessment Comments:</p>
<p>Establishment of effective mechanisms for indigenous and local community participation, including for the participation of women, the youth, the elderly and other vulnerable groups</p>	<p>Absent 1 Partial 2 Satisfactory 3 Good 4 Excellent 5</p> <p>Assessment Comments:</p>
<p>Establishment of an agreed process for recording the views and concerns of the members of the indigenous or local community whose interests are likely to be impacted</p>	<p>Absent 1 Partial 2 Satisfactory 3 Good 4 Excellent 5</p> <p>Assessment Comments:</p>
<p>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</p>	<p>Absent 1 Partial 2 Satisfactory 3 Good 4 Excellent 5</p> <p>Assessment Comments:</p>
<p>Identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local community participation in all phases of the</p>	<p>Absent 1 Partial 2 Satisfactory 3 Good 4 Excellent 5</p> <p>Assessment Comments:</p>

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

Basin Plan Chapter 10, Part 14 Requirements					
<p>s 10.52 (1)(a): A water resource plan must identify the objectives 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>	Absent 1	Partial 2	Satisfactory 3	Good 4	Excellent 5
<p>Assessment Comments:</p> <p>Based on a review of the relevant chapter of the Wimmera-Mallee WRP, delegates agreed that the WRP has met this requirement.</p> <p>Delegates were pleased to note the detailed information about objectives and outcomes in the accredited text of the Plan. They felt it provided a basis for monitoring and accounting for the performance of Victoria’s water management framework in relation to First Nations rights and interests.</p> <p>Delegates agreed that the objectives included in the text reflected much more concerted and culturally appropriate engagement with relevant First Nations. Objectives are clearly recorded and document in the accredited text of the plan. Nations that had not been appropriately consulted in the development of the first iteration of the WRP were now included.</p> <p>Some delegates felt that DELWP staff had done a good job of collating and summarising inputs from community workshops into the objectives and outcomes. Some Delegates expressed a view that, by allowing Nations to prepare the content relating to their objectives, Victoria has ensured good quality input that strongly reflected Nations’ views. Nations could prepare content based on culturally appropriate consultation within their community.</p>					

	<p>The Latji Latji delegate noted that objectives and outcomes for the three Nations that make up the First Peoples of the Millewa Mallee Native Title group are conflated in the text. The Objectives and Outcomes are not specific to each Nation. However, the delegate was happy with what had been included and the level of detail.</p> <p>There was some concern noted that the content of the Wadi Wadi section of the Chapter, prepared by consultants engaged by NSW, was not consistent with the other sections.</p> <p>Delegates noted that the content for Wek Weki Nation was still identified as a placeholder.</p>
<p>s 10.52 (1)(b): A water resource plan must identify the outcomes for the management of the water resources of the water resource plan area that are desired by Indigenous people.</p> <p><i>[Assessment Note: Are these Outcomes tangible and detailed enough to be addressed? Has the content of the Outcomes been informed and shaped by genuine consultation with appropriate TOs?]</i></p>	<p>Absent Partial Satisfactory Good Excellent 1 2 3 4 5</p> <p>Assessment Comments:</p> <p>Based on a review of the relevant chapter of the Wimmera-Mallee WRP, delegates agreed that the WRP has met this requirement.</p> <p>Please see notes above relating to identification of objectives.</p> <p>In its assessment of the earlier iteration of the plan, MLDRIN noted that outcomes for a number of Nations with interests in the WRP area were either absent or unclear. Delegates noted significant improvement from the previous iteration, with inclusion of outcomes for all relevant Nations. Outcomes were clearly presented and identified in the accredited text of the WRP.</p> <p>Delegates noted that the content for Wek Weki Nation was still identified as a placeholder.</p>
<p>s 10.52(2)(a): In identifying the matters set</p>	<p>Absent Partial Satisfactory Good Excellent</p>

	1	2	3	4	5
<p>out in subsection (1), regard must be had to the social, spiritual and cultural values 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? Are the strategies binding and measurable?]</i></p>	<p>Assessment Comments:</p> <p>Based on a review of the relevant chapter of the Wimmera-Mallee WRP, delegates agreed that the WRP has met this requirement.</p> <p>Evidence of how regard was had was noted in the detailed sections developed for, and in some cases, by, each Nation detailing their water-related interests. Having regard was also evidenced by commitments to strengthen protection of First Nations values and uses and to implement strategies that address risk to First Nations values and uses of water.</p> <p>Delegates reflected on the Victorian Government’s decision not to include accredited text addressing the requirement to ‘have regard to’ various matters, as stipulated in Basin Plan s 10.52, 10.53 and 10.54. Delegates felt that identification of specific commitments, actions and strategies to address the objectives and desired outcomes expressed by First Nations would represent a stronger response to the requirements.</p> <p>Delegates noted that the plan demonstrates that the social, spiritual and cultural values of First Nations within the WRP have been considered. All Nations within the region had an opportunity to contribute views about their values relating to water resources and the WRP shows that these were given some consideration. Delegates felt that Victoria has more appropriately considered the WRP area as a connected area of Country, with various Nations holding distinct but also overlapping values.</p> <p>Dja Dja Wurrung delegates noted that they had determined not to include details of values and uses relating to specific locations or waterways in their content submitted for the plan. Delegates recognised that it could be compromising to provide too much detail on values and</p>				

	uses.										
<p>s 10.52(2)(b): In identifying the matters set out in subsection (1), regard must be had to the social, spiritual and cultural uses of the water resources of the water resource plan area by Indigenous people (<i>Indigenous uses</i>);</p> <p><i>[Assessment Note: Is the matter specifically addressed in the text of the WRP? Does the WRP set out how proper, genuine and realistic consideration of Traditional Owner views informed the Plan? Is the matter addressed as part of the accredited text? Is the matter addressed as part of the supporting text? Are there strategies in place to address the matter? Are the strategies binding and measurable?]</i></p>	<table border="0"> <tr> <td>Absent</td> <td>Partial</td> <td>Satisfactory</td> <td>Good</td> <td>Excellent</td> </tr> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> </tr> </table> <p>Assessment Comments:</p> <p>Based on a review of the relevant chapter of the Wimmera-Mallee WRP, delegates agreed that the WRP has met this requirement. See comments above.</p> <p>Evidence of how regard was had was noted in the detailed sections developed for, and in some cases, by, each Nation detailing their water-related interests. All Nations had opportunities to provide information regarding social, spiritual and cultural uses of water resources.</p> <p>Information on the social, spiritual and cultural uses of the water resources was included in some of these sections. The Tati Tati delegate felt that the inclusion and recognition of Tati Tati concerns about development of structures that interfere with the flow of water on Country was evidence that Tati Tati uses of water were being given consideration. The WRP identified specific Tati Tati views about how water should be used and managed on Country.</p> <p>DDW's table of objectives and outcomes also cross-referenced key values and uses. DDW representatives noted that DDW were reluctant to provide detail on uses, so they compromised by having general categories. There is also a case study on values and uses included in the DDW section, focussed on an AWA run in collaboration with MLDRIN.</p> <p>Delegates again noted the risks associated with providing detailed information regarding First Nations uses relating to water resources. Many Traditional Owners are reluctant to hand over detailed information of this nature.</p>	Absent	Partial	Satisfactory	Good	Excellent	1	2	3	4	5
Absent	Partial	Satisfactory	Good	Excellent							
1	2	3	4	5							

	<p>Delegates recognised that DELWP addressed this risk sensitively, acknowledging (in the First Peoples of the Millewa-Mallee section, at p. 240) that not all groups will want to include detailed information on cultural uses of water.</p>										
<p>s 10.52(3): 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 resource plan</p>	<table border="0" data-bbox="786 448 1512 518"> <tr> <td>Absent</td> <td>Partial</td> <td>Satisfactory</td> <td>Good</td> <td>Excellent</td> </tr> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> </tr> </table> <p>Assessment Comments:</p> <p>Delegates noted that the Wimmera-Mallee WRP does identify specific opportunities to strengthen the protection of Indigenous values and Indigenous uses.</p> <p>Delegates noted that further opportunities had been identified, in addition to those listed in the earlier version of the WRP assessed in August 2018. Specific references in relation to engagement in the development of the Long Term Watering Plan and the Northern Sustainable Water Strategy were noted and welcomed.</p> <p>Delegates noted that the identified opportunities are contingent on appropriate ongoing funding, policy backing and, in some cases, political good will. The delegates advised that implementation plans to support the provision and uptake of these opportunities are required if they are to be effective. In some cases, there is a concern that strategies and opportunities identified in the WRP could become redundant once current funding allocations lapse. Existing State policy commitments and actions may not provide an effective mechanism to strengthen protection of values and uses and address risks if they are not backed by appropriate, secure and ongoing funding.</p> <p>Delegates highlighted the need for implementation plans to support provision and uptake of the</p>	Absent	Partial	Satisfactory	Good	Excellent	1	2	3	4	5
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		identified opportunities.
<p>S 10.53 (1) A water resource plan must be prepared having regard to the views of relevant Indigenous organisations with respect to:</p> <p><i>[Notes for Assessment: Is the matter specifically addressed in the text of the WRP? Does the WRP set out how proper, genuine and realistic consideration of Traditional Owner views informed the Plan?]</i></p>	<p>(a) Native title rights, native title claims and Indigenous Land Use Agreements provided for by the <i>Native Title Act 1993</i> in relation to the water resources of the water resource plan area</p>	<p>Absent Partial Satisfactory Good Excellent 1 2 3 4 5</p> <p>Assessment Comments:</p> <p>Based on a review of the relevant WRP Chapter, Delegates at the assessment workshop felt that the Wimmera Mallee WRP had only partially fulfilled this requirement.</p> <p>Delegates agreed that the WRP did not demonstrate how the <i>views</i> of relevant First Nation organisations regarding native title rights, native title claims and Indigenous Land Use Agreements in relation to water resources had been given proper, genuine and realistic consideration.</p> <p>Delegates noted the absence of detail addressing Nation’s views about native title rights in relation to water. Sections 11.5.1 and 11.5.2 provide only general cursory information about native title determinations and the Traditional Owner Settlement Act. More detailed references to BGLC views regarding the exclusion of water from native title negotiations, which were included in the earlier iteration of the Plan, appear to be absent from this version.</p> <p>Delegates advised that they had not been asked to present their views on native title, native title rights (and associated arrangements) in relation to water during consultation for the WRP. Delegates noted that a template provided by DELWP to guide preparation of content by Nations asked them to list any current or pending determinations or agreements, but did not elicit their views about how Native Title and native title rights intersects with water resources management of the WRP provisions.</p>

<p><i>Is the matter addressed as part of the accredited text?</i> <i>Is the matter addressed as part of the supporting text?</i> <i>Are there strategies in place to address the matter?</i> <i>Are the strategies binding and measurable?]</i></p>		<p>Delegates noted with concern that, even in areas where native title rights have not been formally recognised, the existence of extant rights that could be addressed in a future native title claim, warrants proper consideration of Nations views in the WRP. The potential for future native title determinations within the WRP area, that recognise First Nations water-related native title rights, means those rights should be given proper consideration in the WRP.</p> <p>The MDBA’s <i>Water Resource Plan Part 14</i> provides specific guidance on how states should meet this requirement including identifying ‘how the native title right interacts with the WRP requirements’ and how ‘the views of relevant Aboriginal organisations have been incorporated in the proposed water resource management actions and measures’.</p> <p>No express or implied views of relevant indigenous organisations appear to be recorded in respect of native title in the relevant WRP chapter. DDWAC’s settlement arrangements are noted. The existence of native title, claims and ILUAs is document, including that native title is not recognised in relation to water (see Appendix D, p. 754; Comprehensive Report, p 291-3). It is not clear from the information available that it was put specifically to relevant indigenous organisations that their views on these matters was to be accounted for. That would be especially significant for bodies such as BGLC as native title holder for rights and interests in land along and under the Wimmera River and terminal lakes.</p>
	<p>(b) Registered Aboriginal heritage relating to the water resources of the water resource plan area</p>	<p>Absent Partial Satisfactory Good Excellent 1 2 3 4 5</p> <p>Assessment Comments:</p> <p>Based on a review of the relevant WRP Chapter, Delegates at the assessment workshop felt that the Wimmera Mallee WRP had only partially fulfilled this requirement.</p>

		<p>Delegates noted that information contained in the text of the relevant WRP chapter (at section 11.5.3) provides only cursory discussion of the <i>Victorian Aboriginal Heritage Act 2006</i>. It states that ‘While many cultural heritage sites are near water, the Act does not prescribe how water near or on culturally significant sites is to be managed.’</p> <p>There was no content in the WRP demonstrating how the views of relevant First Nations organisations in relation to the Registered Aboriginal heritage relating to the water resources of the water resource plan area had been sought or included in the plan.</p> <p>Delegates noted that there were no discussion or questions about views regarding registered cultural heritage relating to water resources during consultation activities. It was noted that the template provided to support Nations to produce their own content for the WRP did not elicit views or input relating to registered cultural heritage. Delegates felt that DELWP ‘never indicated that it needed to be in there.’</p> <p>Delegates noted the existence of important cultural heritage features throughout the WRP region, including significant registered cultural heritage at Lake Tyrell. Despite the existence of this well documented, registered cultural heritage, the WRP has not addressed First Nations views</p> <p>The MDBA’s <i>Water Resource Plan Part 14 Guidelines</i> advises States to ‘identify any registered Aboriginal heritage that relates to the water resources in the WRP area and the views of relevant Aboriginal organisations/TOs in relation to this heritage, and describe any arrangements that differ from existing management of registered Aboriginal heritage informed by these views.’</p>
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	<p>(c) Inclusion of Indigenous representation in the preparation and implementation of the plan</p>	<p>Absent Partial Satisfactory Good Excellent 1 2 3 4 5</p> <p>Assessment Comments:</p> <p>Based on a review of the relevant chapter of the Wimmera-Mallee WRP, delegates agreed that the WRP has met this requirement. See comments addressing the MDBA Assessment Criteria above.</p> <p>Delegates noted that the Victorian Government had largely listened and responded to views and concerns raised during an earlier assessment of the WRP. A much more extensive process of consultation had been undertaken to contribute to the development of the plan under assessment. Groups that had not been adequately engaged in previous consultation efforts have now been given opportunities to present their views and have their objectives identified in the plan.</p> <p>Some delegates indicated that they were pleased that DELWP had been responsive to group’s aspirations to prepare their own content for the WRP and seek the views of Nation members through an internal process.</p> <p>In relation to implementation, delegates were less clear about how Nations’ views had been considered. More specific commitments, secure funding and agreed implementation pathways are needed to ensure that opportunities and strategies identified in the plan are progressed according to Traditional Owner aspirations, rights and interests.</p>
	<p>(d) Indigenous social, cultural,</p>	<p>Absent Partial Satisfactory Good Excellent 1 2 3 4 5</p>

	<p>spiritual and customary objectives, and strategies for achieving these objectives</p>	<p>Assessment Comments:</p> <p>Based on a review of the relevant chapter of the Wimmera-Mallee WRP, delegates agreed that the WRP has met this requirement.</p> <p>The plan demonstrates consideration of social, cultural, spiritual and customary objectives through detailed input from each of the relevant Nations and in the recognition of opportunities to strengthen protection.</p> <p>Strategies for achieving Nations’ objectives have been considered, but not given the weight or support that some Nations would have preferred. Strategies to address risk to First Nations values and uses go some way to address view. However, the plan does not give due consideration to some identified strategies that could, if pursued, help to achieve objectives and outcomes desired by Nations. For example, the plan does not make any provision to progress strategies identified by BGLC for the restoration of the Ramsar-listed terminal lakes of the Wimmera River</p>
	<p>(e) Encouragement of active and informed participation of Indigenous people</p>	<p>Absent Partial Satisfactory Good Excellent</p> <p>1 2 3 4 5</p> <p>Assessment Comments:</p> <p>Based on a review of the relevant chapter of the Wimmera-Mallee WRP, delegates agreed that the WRP has partially met this requirement.</p> <p>Delegates noted the significant improvement in DELWP’s support for active and informed participation, but identified limitations and barriers relating to:</p>

		<p>Compressed timeframes for consultation and informed community participation. Some delegates felt that, given the time available since the introduction of Basin Plan requirements, the time dedicated to building involvement and eliciting input from Traditional Owners was insufficient.</p> <p>Limited opportunities for involvement and decision making from community members below the Board and high-level representative level. Some delegates felt that consultation efforts were too strongly focussed on engagement with Board and executive level representatives of Aboriginal organisations.</p> <p>There was a concern expressed by some delegates that funding and human resources dedicated to consultation did not allow for the full, active and informed participation of First Nations' communities through inclusive workshops. It was not feasible to invite and cover reasonable costs for whole groups or large groups, meaning individuals were required to make decisions and restrict invitation lists to fit within budgets.</p> <p>There was also some concern that DELWP could have more effectively and proactively communicated the tangible benefits of being involved in consultation to relevant First Nations, in order to encourage active and informed participation. A focus on Water Plan development and implementation up to 2017 meant that opportunities to build community interest and 'buy-in' to WRP development were limited.</p>										
	<p>(f) Risks to Indigenous values and Indigenous uses arising from the use and</p>	<table border="0"> <tr> <td>Absent</td> <td>Partial</td> <td>Satisfactory</td> <td>Good</td> <td>Excellent</td> </tr> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> </tr> </table> <p>Assessment Comments:</p>	Absent	Partial	Satisfactory	Good	Excellent	1	2	3	4	5
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	<p>management of the water resources of the water resource plan area</p>	<p>Based on a review of the relevant chapter of the Wimmera-Mallee WRP, and the risk assessment at Appendix B delegates agreed that the WRP has met this requirement.</p> <p>Delegates noted that, in addition to the consideration of risks and strategies to address risk outlined in section 11.4 and Appendix B of the WRP, greater regard for risks to First Nations values and uses is demonstrated through the individual Nation sections.</p> <p>There was some concern noted at the absence of any consideration of risks to native title rights that may be recognised in the plan area in future. It is likely that native title or TOS Act determinations may, in future, formally recognise native title rights related to water in the plan area. The absence of information about First Nations views regarding native title rights related to water means that the risks to these rights may not have been given due consideration.</p> <p>Delegates identified the need for appropriate implementation mechanisms and secure funding to ensure that strategies to address risk (detailed in Appendix B) are effectively executed and enduring. Delegates sought assurances from DELWP that First Nations would be involved in developing implementation plans for the relevant strategies.</p> <p>As actions provided for in Water for Victoria, Chapter 6, are identified as key strategies to address risks to First Nations water related values and uses, it is critical that ongoing funding is provided for these actions. It was noted that, as of June 2019, Delegates were not aware of any further funding allocation from the Victorian Government to support these actions, the initial \$9.7 million allocation having been largely expended.</p>									
<p>s10.54: A water resource plan must be prepared having regard to the views of Indigenous people with respect to cultural</p>	<table border="0"> <tr> <td>Absent</td> <td>Partial</td> <td>Satisfactory</td> <td>Good</td> <td>Excellent</td> </tr> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> </tr> </table> <p>Assessment Comments:</p>	Absent	Partial	Satisfactory	Good	Excellent	1	2	3	4	5
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<p>flows</p> <p><i>[Notes for Assessment: Is the matter specifically addressed in the text of the WRP? Does the WRP set out how proper, genuine and realistic consideration of Traditional Owner views informed the Plan? Is the matter addressed as part of the accredited text? Is the matter addressed as part of the supporting text? Are their strategies in place to address the matter? Are the strategies binding and measurable?]</i></p>	<p>Based on a review of the relevant chapter of the Wimmera-Mallee WRP, delegates agreed that the WRP has met this requirement.</p> <p>The WRP identifies relevant First Nations views and aspirations regarding cultural flows. All Nations expressed views about cultural flows. The WRP, at p. 294, refers to the individual Nation inputs regarding cultural flows as evidence of how regard has been had, in response to Basin Plan requirement 10.54.</p> <p>Delegates noted that First Nations views had been recorded and the plan ‘acknowledges that Traditional Owners are seeking cultural flows and the conversation about these flows will continue as Victoria implements the Aboriginal Water Policy ‘ (p.294). The WRP also includes ‘further engagement on the National Cultural Flows Research Project ... to identify opportunities to progress understanding of, and respond to, cultural flows in Victoria ,’ as part of the accredited text in response to 10.52(3). However, the WRP provides no accredited text in response to 10.54 and this was viewed as a shortcoming. Given the detailed aspirations put forward by some Nations and the increasing availability of information and research tools to support understanding of cultural flows, delegates felt that a stronger enabling commitment to progressing Nations aspirations should have been included.</p>										
<p>s10.55: A water resource plan must provide at least the same level of protection of Indigenous values and Indigenous uses as provided in:</p> <p>(a) a transitional water resource plan for the water resource</p>	<table border="0"> <tr> <td>Absent</td> <td>Partial</td> <td>Satisfactory</td> <td>Good</td> <td>Excellent</td> </tr> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> </tr> </table> <p>Assessment Comments:</p> <p>Based on a review of the relevant chapter of the Wimmera-Mallee WRP, delegates agreed that the WRP has met this requirement.</p>	Absent	Partial	Satisfactory	Good	Excellent	1	2	3	4	5
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<p>plan area; or</p> <p>(b) an interim water resource plan for the water resource plan area.</p>	<p>Participants noted that the WRP included general commitments to implementation of the Water for Victoria water plan which provide a higher level of protection for Aboriginal values and uses than was previously afforded.</p>
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31st May 2019



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Dr Peta Derham
A/g Executive Director
Water Resource Planning and Accounting Division
Murray Darling Basin Authority

Re. Assessment of Wimmera-Mallee Water Resource Plan

Dear Peta,

Thank you for your letter, dated 20th May 2019, regarding MLDRIN's assessment of the amended Wimmera-Mallee Water Resource Plan. We appreciate the MDBA's rigorous review of WRPs and the close attention paid to MLDRIN's advice on the Wimmera-Mallee WRP.

MLDRIN has developed what we consider to be an effective and rigorous assessment process for water resource plans. This process draws primarily on the informed perspective of traditional owners who have participated in consultation for the preparation of WRPs.

Our assessment of the Wimmera-Mallee plan, conducted in March 2019, included a detailed review of preparation and content of the plan against the MDBA's assessment criteria and the Basin Plan Chapter 10, part 14 requirements. We are confident that we have satisfied the requirement for advice as to whether the requirements of Chapter 10 part 14 have been met, as identified by the note under Chapter 14 and in our funding agreement with the MDBA.

We have reviewed the Wimmera-Mallee WRP assessment advice provided to the Authority and spoken to the MLDRIN Delegates involved in that assessment. The assessment workshop participants felt that the advice provided (in March 2019) is sufficient to assist the Authority and Minister to form an opinion on accreditation. Workshop participants were not comfortable to amend or add to the advice provided.

MLDRIN understands the Authority's preference for definitive advice on how WRPs meet the requirements of Chapter 10, Part 14. We will always endeavour to provide detailed and definitive advice. However, given the varied nature of the plans, contexts and workshop participants, the format and content of our assessment advice may differ at times.

31st May 2019

We look forward to continuing to work with the MDBA to undertake assessment of WRP.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rene Woods', written in a cursive style.

Rene Woods
Chair, MLDRIN