



Water Resource Plans Part 14 guidelines

Guidelines for meeting Basin Plan (Chapter 10) requirements in relation to Aboriginal peoples' objectives and outcomes for water

Acknowledgement of the Traditional Owners of the Murray-Darling Basin

The Murray-Darling Basin Authority (MDBA) acknowledges and pays its respect to the Traditional Owners and their Nations of the Murray-Darling Basin. The contributions of earlier generations, including the Elders, who have fought for their rights in natural resource management are also valued and respected.

The MDBA recognises and acknowledges that the Traditional Owners and their Nations in the Murray-Darling Basin have a deep cultural, social, environmental, spiritual and economic connection to their lands and waters. The MDBA understands the need for recognition of Traditional Owner knowledge and cultural values in natural resource management associated with the Basin. Further research is required to assist in understanding and providing for cultural flows. The MDBA supports the belief of the Northern Basin Aboriginal Nations and the Murray Lower Darling Rivers Indigenous Nations that cultural flows will provide beneficial outcomes for Traditional Owners.

The approach of Traditional Owners to caring for the natural landscape, including water, can be expressed in the words of the late Ngarrindjeri elder Tom Trevorrow: “our traditional management plan was don't be greedy, don't take any more than you need

and respect everything around you. That's the management plan—it's such a simple management plan, but so hard for people to carry out.”

This traditional philosophy is widely held by Traditional Owners and respected and supported by the MDBA.

Introduction

The information in this document is provided by MDBA in good faith with the intention of assisting the development of water resource plans (WRPs) in a manner consistent with the Basin Plan. The information is provided 'without prejudice' and is not intended as an indication that a particular course of conduct will guarantee accreditation. The MDBA's intention is to provide assistance in a way which does not fetter either the Authority's assessment process or the Minister's decision

Purpose

This Part 14 guideline aims to assist Basin State governments to develop WRPs in accordance with Basin Plan water resource plan requirements of Chapter 10, Part 14 – Aboriginal values and uses; in particular sections 10.52 – 10.55:

- s10.52 Objectives and outcomes based on Aboriginal values and uses
- s10.53 Consultation and preparation of water resource plan.

- s10.54 Cultural flows
- s10.55 Retention of current protection

In developing this Part 14 guideline, the MDBA considered how the *Akwé: Kon Guidelines* may be applied in the context of water resource planning, and specifically to address the requirements of Basin Plan Chapter 10 Part 14. It should be noted that the process outlined in the *Akwé: Kon Guidelines* needs to be adjusted to suit local communities' preferences.

MDBA's application of the WRP requirements in Part 14 seek to ensure that, at the very least, the concerns of Traditional Owners (TOs) (i.e. their stated objectives and outcomes based on their values and uses) are taken into account in the water resource planning process, and the level of protection of Aboriginal values and uses are maintained in the WRPs.

In addition, these Part 14 guidelines aim to document best practice and outline how the preparation of WRPs may present opportunities to strengthen the consideration for Aboriginal values and uses as it relates to Basin water resources. Consideration of these aspects are not required as part of meeting accreditation of a WRP. For example, best practice would be to plan to incorporate ways to share economic benefits of water resource development with TOs. While this is beyond the scope of the Basin Plan requirements, there is opportunity and it would be of merit to include it in a WRP.

This guideline is structured to provide a background and context for the application of Part 14, including the key strategic and legislative frameworks. The guidance in this document reflects discussions with representatives from Murray Lower Darling Rivers Indigenous Nations (MLDRIN), Northern Basin Aboriginal Nations (NBAN),

Basin States and other Aboriginal community members. It represents MDBA's interpretation of these discussions in the context of the Basin Plan and Water Act, as well as experience to date from assessment considerations for a limited number of WRPs. The guidance notes for each Part 14 section are set out under five sub-headings:

1. Section requirements
2. Position statement guidance on how to meet section requirements (from PS 14A)
3. Guideline recommendations/ references on how to meet section requirements
4. MDBA assessment considerations
5. Further considerations/options for better practice.

The guideline aims to explain what MDBA considers is required for each Part 14 section. Key points from position statement 14A¹ are mentioned, followed by notes on what in MDBA's view is required to comply with each section. What MDBA is 'looking for' when it assesses Part 14 in WRPs is also set out for each section, as well as suggestions for voluntary and best/better practice.

Appendices 1 and 2 provide additional overarching practical examples on how to genuinely consult with Aboriginal people.

Explanation of language and terms

There are different preferences for naming inherited identities of original peoples living in the Murray-Darling Basin and their connections to Country. For example, some prefer Ancestral ownership, others Sovereign or Traditional ownership. Also,

¹ Available from MDBA's website

some prefer the term Aboriginal while others prefer Indigenous. Others again prefer First Nations peoples. The *Water Act (2007)* (Cth) and the *Basin Plan (2012)* uses the term Indigenous to refer to matters that relate to Aboriginal people. To avoid disrespect, the term Aboriginal is used throughout this guideline to refer to matters that relate to the broad demographic group. The term Traditional Owners is used to refer to those with recognised cultural authority to speak for Country. The exception is where specific sections from the *Water Act* or *Basin Plan* are directly quoted, when naming formal instruments, and in the *Akwé:Kon Guidelines* (which refer to indigenous communities in relation to culturally distinct groups affected by colonisation). In all other instances the term Aboriginal is used.

Background

The independent review of the *Water Act 2007* (Cth) (the Act) in 2014 recommended that the MDBA prepare guidelines to assist Basin State governments to develop WRPs in accordance with Basin Plan requirements relating to Aboriginal values and uses. The recommendation specified that the guidelines should draw on the Convention on Biological Diversity's *Akwé: Kon Guidelines*, as appropriate.

Akwé: Kon Guidelines – relevant sections

The *Akwé: Kon* are 'voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities'. The *Akwé: Kon* provides guidance on how to incorporate cultural, environmental and social considerations into new or existing impact assessment procedures. The key aspects include:

- Notification and public consultation of proposed development by the proponent
- Identification of indigenous and local communities and stakeholders likely to be affected by the proposed development
- Establishment of mechanisms for indigenous and local community participation
- Establishment of an agreed process for recording the views and concerns of the members of the indigenous or local communities whose interests are likely to be impacted by a proposed development.
- Identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local community participation in all phases of impact assessment procedures

General considerations include:

- Prior informed consent of the affected indigenous and local communities
- Gender considerations
- Impact assessments and community development plans
- Legal considerations
- Ownership, protection and control of traditional knowledge, innovations and practices and technologies used in cultural, environmental and social impact assessment processes
- Mitigation and threat-abatement measures
- Need for transparency
- Establishment of review and dispute resolution procedures

Links to MDBA Position statements and legislative resources

This Part 14 guideline builds on work undertaken by the MDBA in a series of position statements which aim to provide

clearer guidance to Basin States regarding WRP requirements. The guideline also explains the focus of MDBA's assessment when checking State WRPs for consistency with the relevant Basin Plan provisions. All position statements are available on the MDBA website under water resource planning. Whilst several are relevant², position statement 14A – *Aboriginal values and uses* (PS 14A) are of particular importance. It highlights the criteria that the MDBA will use to determine if genuine consultation has been undertaken by States, to satisfy requirements about Aboriginal values and uses in line with Basin Plan Chapter 10 Part 14. The development of PS 14A is based on and is consistent with the *Akwé: Kon Guidelines*.

The Part 14 guideline makes some references to sections of the *Basin Plan (2012)* and the *Commonwealth Water Act (2007)*. As legislation can change from time to time, when considering specific sections in the legislation, readers are advised to apply the relevant version of a legal instrument. These are available from online legal sources (for example <http://www.austlii.edu.au/>). Hard copies of the Basin Plan and the Water Act are also available by contacting the MDBA.

Basin Plan Chapter 10, Part 14 requirements

Specific guidance for each provision in Part 14 is set out below.

Section 10.52 Objectives and outcomes based on Indigenous values and uses

Section 10.52 requirements:

The section requires a WRP to:

1. Identify the objectives and outcomes desired by Aboriginal people that relate

to the management and use of water resources in a WRP area.

2. Obtain information about desired Aboriginal objectives and outcomes through appropriate consultation with relevant Aboriginal organisations.
3. Provide a fair-minded representation of information and knowledge gained through the consultation process.

If any opportunities to strengthen the protection of Aboriginal uses and values are identified, these should be specified.

Position statement guidance on how to meet section requirements:

The focus of Part 14 is on how States involve Aboriginal organisations in identifying objectives and outcomes for cultural values and uses. MDBA's expectation is for the consultation to give focus to the TOs who are associated with a water resource plan area.

MDBA will not be assessing the validity or merit of the Aboriginal objectives and outcomes and associated values and uses identified in WRPs. However, it is anticipated that States use the following to guide their consultation with TOs:

- a planned approach to properly engaging TOs (e.g. adequate time, appropriate venues and resources)
- identification and involvement of appropriate TOs
- TOs are properly notified of the opportunity to be involved in the water resource planning process, (e.g. print, phone, electronic and personal media and town meetings)

² In particular **1B** – *Interpreting 'have regard to'*, and **1M** – *WRP imposing [legal] obligations*

- clear information about water resource planning processes and content is provided to TOs
- use of appropriate tools and mechanisms for recording and understanding Aboriginal objectives and outcomes

Guidelines recommendations/references on how to meet section requirements:

Useful references to inform consultation processes include the National Water Commission's report on Aboriginal involvement in water planning, the engagement principles outlined in the MDBA Aboriginal Partnerships Action Plan and strategies outlined in the Yarns Woven report (planned for publication in 2017). Basin States should confirm preferred participation methods at the start of the discussions with local TOs.

The consultation processes should be arranged with the aim to identify TOs' objectives for water management, and the desired outcomes that the objectives would contribute towards. 'Objectives' are commonly understood to mean 'aspirations' or 'goals', and is often expressed as wishes. 'Outcomes' is commonly thought of as the result of achieving an objective - in other words, what happens (or envisaged to happen) when a wish is fulfilled. The exact definitions of these terms by Basin States may vary. It is important that a shared understanding of key terms is agreed and applied with TOs for the purpose of the consultation. MLDRIN has provided definitions of these and other terms which may be useful to consider.

As a basis, consultation about TO objectives and outcomes requires that the relevant water resources are clearly identified, both in WRP and TO terms. In some cases questions may arise about geographic locations and areas. It is important that any techniques and resources suggested for use in identifying areas are fully understood and

accepted by the relevant TOs. The MDBA has in consultation with MLDRIN and NBAN developed a guide in the form of maps with indicative areas of interest for Aboriginal Nations. These are available for Basin States, for example as a starting point for engaging with TOs about WRP consultation. It is important to note that Aboriginal Nation boundaries mostly don't correspond with State boundaries and therefore some Nations are involved with processes in different States. It is strongly encouraged that neighbouring States address this by coordinating consultation processes as much as possible. Further, it might be practical to set-up cross-border working groups involving representation from each of the relevant States, MLDRIN and/or NBAN, and if required the MDBA.

Consultation should also aim to bring to light the values and uses of water which make these objectives and outcomes important to TOs, in a culturally sensitive way.

To demonstrate how regard was had to these Aboriginal values and uses in identifying the objectives and outcomes for section 10.52(1), systematic measures of values and uses such as an Aboriginal Waterways Assessment, Use and Occupancy Mapping, or Aboriginal Submissions Database information may be used in conjunction with the consultation process. Despite the Intellectual Property resulting from any of these initiatives remaining with the TOs, they are not only a useful engagement tool they also provide a valuable resource for TOs to use as they prefer.

See appendices 1 and 2 for practical detail.

MDBA assessment considerations:

The MDBA will not be assessing the veracity of the Aboriginal objectives and outcomes, but has taken the view that appropriate consultation will provide the appropriate content for the WRP. The WRP should

therefore provide a description of the consultation with TOs that was undertaken to develop both Part 14, and the WRP more generally. This description is required to meet section 10.04 of the Basin Plan (which sets out requirements for the form of the WRP).

Through the consultation process, a range of other Aboriginal objectives and outcomes not related to WRP water resources, or social, spiritual and cultural values and uses may also emerge as being important to TOs. The scope of what needs to be included in the WRP is limited, and while Basin States may wish to include outcomes beyond the requirements of the Basin Plan, it will be important to identify the specific content of the WRP that meets the requirement set out in section 10.52. It is also important that the consultation process is designed to take into account the broad views and desires of TOs, and manages these expectations in a respectful and appropriate way.

In preparing a WRP, and through consultation with TOs, a Basin State may identify opportunities to strengthen the protection of Aboriginal values and uses. If such opportunities are identified, the WRP should set out the circumstances or context of the opportunity, what will be done, which objective or outcome is expected to be strengthened, and how the identified actions would contribute to increased protection.

Further considerations/options for *better practice*:

Consultation with relevant Aboriginal organisations: The maturity of processes for water resource planning varies across the Basin. For some areas and water resources, the available information might not be current or comprehensive. While information might be considered broadly sufficient for the purpose of meeting WRP assessment requirements, *better practice* would expand and update available knowledge and understanding about the relevant

stakeholder groups that are linked with the Basin water resources in an area.

Having regard to social, spiritual and cultural values and uses: Position statement 1B has further information about how to interpret “have regard to”. In relation to Part 14, the MDBA will look for evidence of how regard has been given to Aboriginal values and uses in a WRP. *Best practice* could be for a WRP to include information that goes a step further, to address “so what” – in other words, information about how outcomes for Aboriginal values and uses can be strengthened.

Strengthening protection of Aboriginal values and uses under section 10.52(3): The Basin Plan provides opportunities to achieve outcomes and objectives beyond the regulatory requirements. Collaboration and cooperation are typical enabling tools for achieving an extension of positive results. Often such provisions can be an opportunity to combine or link with other areas of planning and management, for example with wider strategic goals beyond water resource planning. Basin Plan implementation arrangements focus on building relationships with and between stakeholders. Section 10.52(3) is an opportunity to link existing or new over-and-above arrangements to strengthen the objectives and outcomes. As this section is voluntary, MDBA’s assessment role is to note arrangements. In other words, if no arrangements are specified under this sub-section it would not be likely to impact on MDBA’s recommendation to accredit or not accredit a WRP. The value of the section is in the scope to initiate consideration and collaboration about arrangements for water resource management that has potential to deliver further positive outcomes for Aboriginal people.

When considering arrangements to strengthen protection, it should be noted that the *Water Act* section 22(10) specifies that

the Basin Plan does not regulate land use or land use planning, or management of natural resources that are not defined as Basin water resource. Consultation is in many areas likely to identify access to water resources as a concern. In most instances, access would involve crossing or stopping on land. However, any regulation of activity that involves crossing and stopping on land would most likely be a part of conditions of land tenure and use. For the purpose of WRPs, any measures would therefore be a matter of voluntary arrangements. However, the provision in section 10.52(3) effectively provides a statutory mechanism that can serve as support for such arrangements.

Section 10.53 Consultation and preparation of water resource plan

Section 10.53 requirements:

This section seeks to ensure that the views of Aboriginal organisations on certain matters are taken into account in the development of the WRP. The MDBA's assessment of the provision would focus on TOs views in relation to:

- Native title rights and claims, and Indigenous Land Use Agreements
- Registered Aboriginal heritage relating to the water resources in the WRP area
- Inclusion of Aboriginal representation in the preparation and implementation of the WRP
- Aboriginal social, cultural, spiritual and customary objectives, and strategies for achieving these objectives
- Encouragement of active and informed participation of Aboriginal people, and
- Risks to Aboriginal values and uses arising from the use and management of the water resources of the WRP area.

Position statement guidance on how to meet section requirements:

It is anticipated that States will use the same approach as for section 10.52, and articulate how the perspectives of TOs were regarded on the points listed in section 10.53 for the preparation of the WRP.

See appendices 1 and 2 for practical detail.

Guidelines recommendations/references on how to meet section requirements:

Basin States should seek the views of TOs with regard to the above list of matters *early* in the development of the WRP. It may also be appropriate to revisit these views at various stages in the development of the WRP. For example, Basin States may seek the views of TOs on strategies for encouraging the participation of TOs in the development of WRPs, and later seek views on how to encourage the participation of TOs in the specific strategies for achieving Aboriginal social, cultural, spiritual and customary objectives that are planned as part of the WRP.

A description of how to deal with links to Part 9 in relation to any risks to Aboriginal values and uses arising from the use and management of the water resources of the WRP area needs to also be included. Separate Part 9 guidelines for WRP risk assessments are under development, and will include further guidance on requirements of how to consider relevant social and cultural consequences of insufficient quantity and/or quality of water, and health of related eco-systems.

MDBA assessment considerations:

The WRP needs to demonstrate proper, genuine and realistic consideration of views. The MDBA will assess how the material is reflected in the WRP. To support MDBA's assessment of whether regard has been had to the matters, an explanation of the approach, tools or information used in the

preparation of the WRP to give proper, genuine and realistic consideration to each matter should be provided as supporting evidence. The WRP should describe any changes to water resource management (e.g. 'existing' or pre-WRP) that have or have not been made in the WRP as a result of consultation on these matters, and if possible an explanation of why this was the case, for example:

- describe any changes that have or have not been made to the objectives of Aboriginal people identified in the WRP
- describe any changes that have or have not been made to the outcomes desired by Aboriginal people identified in the WRP
- description of consultation undertaken that sets out the views of the relevant Aboriginal organisations/TO groups for the WRP area, and a description of changes that were or were not made as a result of these views
- what opportunities have been identified, what actions are proposed in the WRP to incorporate these opportunities, and whether they reflect the views of the relevant Aboriginal organisations/TO groups in the WRP area
- identify any Native Title rights, claims and Indigenous Land Use Agreements (ILUAs) that are operating in the WRP Area, how the ILUA or Native Title claim/right interacts with the WRP requirements, and set out how the views of the relevant Aboriginal organisations/TO groups in relation to these matters have been incorporated in the proposed water resource management actions and measures in the WRP
- 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

- identify the Aboriginal representative groups who have taken part in the preparation of the WRP. It should also set out how the WRP will involve Aboriginal people in the implementation of the WRP - this should be developed in consultation with Aboriginal peoples' views on the matter and specify actions that will involve participation of Aboriginal people
- set out what these social, cultural, spiritual, and customary objectives contained in the WRP are, the strategies for achieving these objectives, and how proper, genuine and realistic consideration of the views of relevant Aboriginal organisations/TOs was had when developing these objectives and strategies
- incorporate identification of risks to Aboriginal values and uses arising from risks to water availability and quality, and ecosystem health for the relevant water resources in the WRP area. The explanation should describe how the views of relevant Aboriginal organisations were recognised in the WRP risk assessment, and how the WRP subsequently identifies those risks and proposes to manage them. In some instances there might be a low level of pre-existing information at the time the general WRP risk assessment is undertaken. In such circumstances it is expected that the WRP consultation with Aboriginal organisations/TOs will identify social and cultural consequences of risks to water resources, and incorporate these appropriately during the development of the WRP.

Further guidance on how to demonstrate that regard has been had, see Position statement 1B and the MDBA Handbook for Practitioners.

Further considerations/options for better practice:

This section is prescriptive about which matters must be given regard in the WRP with respect to Aboriginal organisations' views. It emphasises three areas:

- formal claims and land use agreements, and registered heritage,
- key quality considerations for good practice consultation processes, and
- relevant social and cultural risks arising from insufficient and/or poor quality water and damage to ecosystem health.

In regards to formal arrangements, the prescribed frameworks might not (yet) have captured important information from all relevant Aboriginal groups. Or important aspects might be captured as part of other (newer) formal arrangements. It is an ongoing challenge for Aboriginal organisations to engage multiple and repeated times with governments for a range of purposes. Best practice would be for a WRP to include updated information about all relevant arrangements. Information gathering by States in preparation for consultation processes should be as comprehensive as possible, and include relevant information from other government agencies. The aim would be for WRP development to be as well-informed as possible about Aboriginal values and uses prior to the consultation. This includes considerations for Aboriginal Nations which straddle State borders and therefore need to participate in two separate and potentially different planning processes.

The quality of consultation is typically defined by considerations for comprehensive

participation, opportunity for all relevant stakeholders to speak and have respectful acknowledgment of points of view, and a fair-minded and balanced reflection of the information provided. Best practice would have sufficient time and resources to ensure thorough efforts to identify and engage all relevant stakeholders.

Ideally, when undertaking risk assessments to inform a WRP there is current and comprehensive information about risk to social and cultural values arising from insufficient quantity and/or quality of water, and damage to ecosystems. However, it may be that in many instances the WRP risk assessment precedes the consultation with Aboriginal organisations. It is therefore important that the consultation includes opportunity to discuss and identify risks to social, cultural and other values for Aboriginal people if any risks to a water resource should materialise. Separate Part 9 guidelines for WRP risk assessment is under development, and will include further guidance on better practice.

Section 10.54 Cultural flows

Section 10.54 requirements:

In addition to the matters listed in section 10.53, this section requires that the WRP be prepared with specific regard to the views of Aboriginal people on cultural flows.

Position statement guidance on how to meet section requirements:

It is anticipated that States use the same approach as for sections 10.52 and 10.53 and articulate how the perspectives of TOs are regarded in relation to cultural flows in preparing the WRP.

Further guidance on how to demonstrate that regard has been had, see Position statement 1B and the MDBA Handbook for Practitioners.

Guidelines recommendations/references on how to meet section requirements:

It is also important to distinguish cultural flows (which are entitlements to water owned and managed by Aboriginal people and which may also have a commercial benefit) from environmental water that may deliver mutual benefits both environmentally and culturally (Aboriginal environmental outcomes). The information provided on cultural flows in the WRP should therefore be distinguished from the description of environmental watering and the potential benefits environmental water also provides to Aboriginal objectives and outcomes, and values and uses.

MDBA assessment considerations:

This section of the Basin Plan requires the WRP to be prepared having regard to cultural flows. The WRP needs to demonstrate proper, genuine and realistic consideration of those views and how they have impacted on the material in the WRP. To support the MDBA's assessment of whether regard has been had to the views of Aboriginal people in relation to cultural flows, an explanation of the approach, tools or information used in the preparation of the WRP to give proper, genuine and realistic consideration to cultural flows should be provided as supporting evidence. The WRP should describe any changes to arrangements (e.g. 'existing' or pre-WRP) that have or have not been made to the WRP as a result of consultation on cultural flows.

Further considerations/options for better practice:

The definition of cultural flows provided in Item 31 of Schedule 1 in the Basin Plan suggest that cultural flows may be interpreted as entitlements arising from new legislation. In areas where existing arrangements allow for Aboriginal water licenses, such as cultural access licenses in

NSW, it would be best practice to give the information due regard in the WRP. In order to take advantage of existing efforts in other sectors, it could also be important that a WRP identifies linkages to other frameworks and arrangements that have potential to generate benefits that are broader than those which narrowly link to specific aspects or characteristics of water resources.

Section 10.55 Retention of current protection

Section 10.55 requirements:

This section requires a WRP to maintain the same level of protection of Aboriginal values and uses as provided for in existing transitional or interim WRP.

Position statement guidance on how to meet section requirements:

In relation to section 10.55 a statement is required outlining the level of protection (if any) of Aboriginal values and uses in transitional or interim water resource plans and how these are maintained or enhanced.

Guidelines recommendations/references on how to meet section requirements:

If the WRP provides a higher level of protection for Aboriginal values and uses than the existing transitional WRP, the documentation should set out how it is a higher level and what changes are proposed to be made in implementing that level of protection; e.g. what changes will it make to the objectives and outcomes for, and desired by, TOs for that WRP area. The WRP could also identify how it will address any risks to Aboriginal values and uses arising from the use and management of the water resources identified for section 10.53(f).

MDBA assessment considerations:

The WRP should state whether or not the same level of protection of Aboriginal values and uses is applied as in the existing

transitional WRP. Supporting information could include State documentation where different levels of protection and their requirements are set out.

Further considerations/options for better practice:

When consulted on key social, spiritual and cultural (and economic) matters relating to Basin water resources, Aboriginal people often identify and raise concerns about ongoing connections with and access to water resources for social, spiritual and cultural purposes. This includes a strong emphasis on opportunities to transmit those connections to younger generations. Such access and connection is consistently identified as strongly linked with health, wellbeing and development outcomes for Aboriginal people, both at individual, community, and intergenerational levels. As such, ongoing access and connection is a key matter for decision makers to consider when aiming to fulfil strategic goals as well as obligations (including in international agreements) in relation to cultural values and uses of water resources by Aboriginal people. In some instances there could be divergent views about the level of protection, or a transitional/interim plan may be based on an undeveloped level of information.

As part of the consultation with TOs, it may therefore be important to capture information about the existing level of protection and how effective it is in protecting a full range of Aboriginal values and uses. In some instances the existing level of protection might be considered as a “low base”, or of uneven benefit. It is important for the consultation process with TOs to facilitate the views and information about what a better level of protection might look like. The advice under section 10.52 (above) has further information about strengthening the protection of Aboriginal values and uses.

Appendix 1

Overarching strategies for achieving Aboriginal cultural, social and spiritual objectives

- Allow for a *minimum of 3 months* (and up to a year) prior to implementing the consultation process to enable Aboriginal Elders to participate as decision makers
- With full participation of appropriate Aboriginal leadership, and using appropriate Aboriginal protocols and using the protocols of *free, prior and informed consent to participate*, invite *Elders to determine their preferred approaches* to consultation with regard to the planning, implementing, monitoring and review of customary values and uses of water in a water resource planning area
- *Identify characteristics and histories* of the Traditional Owners in a water resource planning area
- Using the protocols of free, prior and informed consent to participate, include participation from *both grass roots community members* as well as established Aboriginal organisations and leadership, reflective of demographic characteristics of the region
- *With permission from appropriate Aboriginal leadership, include non-Aboriginal organisations* and individuals who have trusted and respected histories with a local Aboriginal community to participate in identifying, planning, implementing and reviewing the strategies for and achievement of social, cultural and spiritual objectives (e.g. councils, historical groups, social services, health services as needed)
- Ensure Aboriginal Elders are included *in any aspect* of the planning, implementation and review process that they consider they need to be included in
- Include *Aboriginal cultural authorities* (Elders, Aboriginal scholars, organisations) in the planning, implementation, monitoring and review of Aboriginal cultural objectives and the strategies to achieve them
- Incorporate cultural protocols and *intellectual property rights* for working with Aboriginal knowledge and learning practices with regard to Aboriginal cultural values and uses of water
- Include *contingency planning* (timing, budget, mentoring and/or resourcing) to involve those who have difficulty with accessing activities
- Ensure *maximum access to participation activities* for as many members of a population group as possible and appropriate to decision-making taking place
- Enable *recognition and building of capacity*, and remuneration for Aboriginal facilitators to implement planning, implementation, monitoring and review activities
- Be aware that objectives are locally distinct and need to allow for opportunities and protections of social, cultural and spiritual objectives.
- Incorporate jurisdictional, Commonwealth and international *legislations, regulations and agreements* that recognise and protect Aboriginal cultural values and uses of water in a local planning area where relevant, allowed and possible
- Allow for ongoing consultation in relation to Aboriginal values and uses especially when water management changes have impacts on those values and uses
- *Communicate* outcomes of participation and engagement back to Aboriginal leadership

Appendix 2

Genuine engagement of Traditional Owners for water resource planning – a suggested approach

Context

In order to meet requirements of Chapter 10 Part 14 State/Territory water planners need to demonstrate genuine engagement with Traditional Owners (TOs) in the water resource planning process. MDBA's position statement 14A outlines the criteria MDBA will use to assess if WRPs are in line with requirements of the Basin Plan.

It is suggested that relevant TOs in a WRP area are engaged for two specific purposes:

1. Information sharing/relationship building meetings:
 - a. Meet & greet, relationship building, and provision of information about water resource planning and the associated processes and timelines. This is likely to require more than one meeting within a WRP area.
2. Technical workshops
 - a. Workshops to invite TOs input specific to the clauses of Part 14 (ss 10.52 – 10.55). It is likely that a series of sessions is required to ensure sufficient opportunity to identify, learn and discuss.

It is important that throughout the consultation process TOs are invited to be included in the planning and implementation of the engagement process, and the engagement is based on free, prior and informed consent. In line with the MDBA position statement 14A and based on the *Akwé: Kon guidelines* engagement with TOs requires:

- a planned approach to properly engaging TOs (e.g. adequate time, appropriate venues and resources)
- identification and involvement of appropriate TOs
- TOs are properly notified of the opportunity to be involved in the water resource planning process, (e.g. print, phone, electronic and personal media and town meetings)
- clear information about water resource planning processes and content is provided to TOs
- use of appropriate tools and mechanisms for recording and understanding Aboriginal objectives and outcomes

Meetings and workshops

Make sure all relevant TOs are identified and notified of any planned meetings with appropriate lead in times. Water planners need to organise Nation-based meetings and workshops (which may require different arrangements compared with 'town-based' meetings), observe local protocols and potential politics. This may mean holding separate meetings for each relevant family group or clan to participate in. It could also be worth including a facilitator with community connections or relevant experience including strong cultural awareness to run the meetings.

Be up front about remuneration and explain whether this is available or not when making initial contact with TOs. Keep in mind setting up expectations for any future work and meetings.

Ensure initial invitations to meetings are followed-up and confirmed, and that the purpose of meetings is clearly explained. Make certain that TOs understand that these meetings will impact on how water is managed on their Country. Use both written and personal communication.

A possible agenda outline for meetings could include the following:

1. Information sharing/relationship building meetings
 - a. Welcome to Country by a local TO
 - b. Introductions from all participants (TOs, water planners and anyone else present at the meeting)
 - c. Explain purpose of the meeting and clarification of each person's roles and responsibilities
 - d. Preferred engagement protocols
 - e. General outline of the water planning process (State/Territory processes, Basin Plan, Basin Plan chapter 10)
 - f. In more detail discuss Chapter 10 Part 14
 - g. Discuss and agree on the approach for the technical workshop: timing, participants, location, preferred mechanisms of communications, structure of the workshop, roles and responsibilities, type of information to be provided, method for recording information, options for managing sensitive information.
2. Technical workshops
 - a. Welcome to Country
 - b. Introductions from all participants (TOs, water planners and anyone else present at the meeting)
 - c. Explain purpose of the meeting and clarification of each person's roles and responsibilities
 - d. Recap and agree on outcomes from previous meeting(s)
 - e. Address and workshop each provision in Chapter 10 Part 14 as agreed under g. in the previous meeting (and confirmed under d. in this meeting)
 - f. Record discussion and outcomes as agreed under g. in the previous meeting (and confirmed under d. in this meeting)
 - g. Agree on how to provide feedback and communicate after this meeting

A note on proposing site visits: In some instances it may be beneficial to visit sites together with TOs. However, this must be raised and discussed with TOs in a sensitive and respectful manner. It is important that visits to sites are conducted according to terms and protocols set by TOs. In some instances it may not be appropriate to conduct visits to certain sites by certain visitors and/or members of the community. It is important that a relationship of trust has been established before proposing visits to sites, and to ensure that visitors understand and observe the required protocols.

WRP/Reporting

The way in which each State/Territory decides to include the information and perspectives from TOs on sections 10.52 – 10.55 varies and depends on their internal WRP framework. It is however important to have discussed this with TOs in meetings and it is good practice to inform them prior to submitting it to MDBA for assessment.

The report to document how the requirements of Chapter 10 Part 14 have been addressed could include the following headings and should be compiled as a result of consultation with relevant TOs:

- Acknowledgement of TOs
- Context – about water resource planning
- Description of the water resource plan area identifying the relevant Aboriginal Nations and groups
- Objectives and Outcomes based on Aboriginal values and uses as compiled
 - Addressing section 10.52(1)(a) of the Basin Plan
 - Addressing section 10.52(1)(b) of the Basin Plan
- Aboriginal values and uses of water
 - Addressing section 10.52(2) of the Basin Plan
 - Addressing section 10.52(3) of the Basin Plan
- Consultation with Aboriginal people in preparation of the water resource plan
 - Addressing section 10.53 of the Basin Plan
 - Outline of engagement with Aboriginal people
 - Native Title claims, Indigenous Land Use Agreements
 - Registered Aboriginal heritage
 - Aboriginal representation in the preparation and implementation of the plan
 - Risks to Aboriginal values and uses
- Cultural Flows
 - Addressing section 10.54 of the Basin Plan
- Retention of current protection
 - Addressing section 10.55 of the Basin Plan

The above are suggested approaches and several of each type of meeting might be required to achieve genuine involvement of TOs in the planning process. Adjustments may be needed in accordance with local preferences and processes.

Appendix 3

List of suggested resources and further readings

Name of source	Key elements
<p>Murray Lower Darling Rivers Indigenous Nations Discussion Paper April 2016: <i>Ensuring equity in the development and assessment of water resource plans</i></p>	<p>Outline of MLDRIN's preferred approach to water resource planning. It is framed around the concepts of:</p> <ul style="list-style-type: none"> • Procedural justice • Distributive justice • Representative justice <p>To obtain a copy please contact MLDRIN EO on: executiveofficer.mldrin@gmail.com or visit the MLDRIN website here</p>
<p>Echuca Declaration 2007</p> <p>link</p>	<p>Definition of Cultural Flows</p> <p>'Cultural Flows are water entitlements that are legally and beneficially owned by Indigenous Nations of a sufficient and adequate quantity and quality, to improve the spiritual, environmental, social and economic conditions of those Indigenous Nations. This is our inherent right.'</p>
<p>Article: Impossible dreaming – does Australia's water law and policy fulfil Indigenous aspirations? (2013)</p> <p>Notes from analysis of the National Water Initiative and general arguments by Poh-Ling Tan and Sue E Jackson</p>	<p>Key points</p> <ul style="list-style-type: none"> • Cultural and economic expectations of Indigenous people remains an unmet demand in the Australian water systems • Frameworks generally contain vague statements which are in no way purposive or require states to <i>actually</i> do something • Most Indigenous groups do not actually have fully formed strategies for using water for commercial purposes – maybe this is something that can be addressed in guidelines to meet Indigenous economic needs • Native title is not sufficient in protecting water dependent cultural values – water resource plans (if used properly) could fill this gap • Briefly from 1993-1998, Indigenous peoples could negotiate their rights over water resource developments. Something to explore <ul style="list-style-type: none"> ○ Notes further that such negotiations would require specific structure under legislature or policy • Some states have provisions which allow for the implementation of strategic water reserves for Indigenous purposes (e.g. see Cape York Peninsula Region, QLD) – purpose is to meet social and economic needs • NSW has implemented special water licences for specific Indigenous purposes. • Co-management frameworks have potential: allows for collaborative management of water resources with

<u>Name of source</u>	<u>Key elements</u>
	<p>Indigenous representatives. Designs institutions which draw on Indigenous knowledge, initiative and expertise, and offers opportunities for Indigenous involvement in decision making.</p> <ul style="list-style-type: none"> ○ Such approaches have been instituted in NZ and Canada, to great success. ○ Notes that co-management in Canada has not redefined government power or recognised Indigenous title; rather it has 'enshrined a decision-making relationship between First-Nations and the rest of society'. ○ See example in Australia with the Kowanyama community's cooperative management of fishery resources in Mitchell River <p><u>What was missing?</u></p> <ul style="list-style-type: none"> ● Provisions that bind states to correcting issues regarding Indigenous recognition, and to progress past the 'identification' stage. ● Features of the NWI restricted the expression and acknowledgement of economic objectives of Indigenous community stakeholders. ● NWI provided no guidance on how to navigate competing state/state and state/commonwealth claims. ● Guidance for water resource managers and bodies on how to meet Indigenous objectives and access needs.
<p><u>United Nations Declaration on the Rights of Indigenous Peoples</u></p> <p>(Endorsed by the Australian federal government in April 2009)</p> <p><u>Implementing the UN Declaration on the Rights of Indigenous Peoples - handbook for Parliamentarians</u></p>	<ul style="list-style-type: none"> ● Article 19: States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislature or administrative measures that may affect them ● Article 25: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources ● Article 26: recognise and protect Indigenous rights to own, develop and control lands, territories and resources traditionally owned, occupied or otherwise used (paraphrased) ● Article 32: States shall consult and cooperate in good faith with Indigenous people to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources particularly in connection with the development, utilisation or exploration of mineral, water or other resources ● Article 38: States, in consultation and cooperation with Indigenous peoples, shall take the appropriate measures,

Name of source	Key elements
	including legislative measures, to achieve the ends of this Declaration.
<p><u>Waikatio-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (NZ)</u></p> <p><u>Co-Management Agreement for Waikato River Related Lands</u></p>	<ul style="list-style-type: none"> Established a single co-management entity (the Waikato River Authority – purpose, functions and powers outlined in s22-24). Outlines the agreement between the Waikato Raupatu River Trust and the Waikato Regional Council regarding the co-management arrangements for the Waikato River Related Lands.
<p>Module to the National Water Initiative (NWI) Policy Guidelines for Water Planning and Management (DAWR, 2016)</p>	<ul style="list-style-type: none"> Outlines the concept of Strategic Indigenous Reserves (3.3.1) as a means of ensuring Indigenous communities can access water for economic purposes. It involved setting aside or reserving water from the unallocated consumptive pool for Indigenous people to use in the future Provides in-depth guidance on consultation
<p>‘Principles and guidelines for good practice in Indigenous engagement in water planning’ in <i>Journal of Hydrology</i> (2012) – Sue Jackson, Poh-Ling Tan <i>et al</i></p>	<ul style="list-style-type: none"> Presents findings from study of three water planning case studies in Australia (and the involvement, or lack thereof, of Indigenous Australians), and produces a series of guidelines for basic Indigenous engagement in water planning processes <p><u>In summary, guidelines are:</u></p> <ul style="list-style-type: none"> Draw on available Indigenous knowledge Involvement through all stages of the water planning cycle Build capacity for Indigenous representatives to capably fulfil a demanding role Include Indigenous people in environmental flow assessment and management Indigenous water requirements need to be determined for each water plan as a matter of priority Monitor and evaluate plan objectives <p><u>Other key points made throughout the text:</u></p> <ul style="list-style-type: none"> Studies have found that ‘assessments’ of Indigenous values regarding water planning processes usually involve desktop reviews, reviews of government databases or simply photographing key cultural sites <ul style="list-style-type: none"> Instead, emphasis should be put on engaging in participatory research and consultation and ‘well-resources studies of the hydrological linkages between aquatic ecosystems and Indigenous uses and values’ (58) Emphasises again that water resource plans rarely <i>address</i> Indigenous objectives, rather they simply identify as a matter of ticking a box. Also points to the little

Name of source	Key elements
	<p>guidance provided to water resource managers on how to meet Indigenous objectives</p> <ul style="list-style-type: none"> • 'We argue that improved outcomes for Indigenous people will at a minimum require their direct participation in water planning as well as their informed contribution to water policy debates' (58) • Identifies water management plan for Tiwi Islands in Northern Territory as a good example of consideration of Indigenous values (59)
<p>World Bank's Operational Policy 4.10: Indigenous Peoples</p> <p>Initially developed 2005, revised 2013</p> <p>Link</p>	<ul style="list-style-type: none"> • Guidelines include: identifying Indigenous attachment to the land, a social assessment, consultation, preparation of an Indigenous Peoples Plan/Indigenous Peoples Planning Framework, and disclosure of this • Emphasises the importance of acknowledging Indigenous peoples connections to land and ecosystems when preparing plans which regard land, water and other natural resources <p><u>Indigenous Peoples Plan</u></p> <ul style="list-style-type: none"> • A plan which sets out the measures through which the applicant the local Indigenous communities will receive 'culturally appropriate social and economic benefits', and when potential adverse effects on Indigenous people are identified, these are minimised, mitigated, avoided or compensated. Must be prepared in consideration of the guidelines. <p><u>Indigenous Peoples Planning Framework</u></p> <ul style="list-style-type: none"> • A planning framework which is designed when it is clear via the Bank's screening that Indigenous people are likely to be affected by the plan area, but their presence or collective attachment cannot be determined until the project or subproject is fully identified
<p>Cambodia: Indigenous Peoples Policy Framework – Mekong Integrated Water Resource Management Project Phase 3</p> <p>World Bank, 2014</p>	<p>A report regarding the implementation of water resource management plans along the Mekong River. Plan consisted of two components: (1) establishing a sustainable fisheries management plan, and (2) river basin management planning process. Relevant key points from the plan as follows:</p> <ul style="list-style-type: none"> • Report stated that a conflict resolution system would be developed, to ensure the voices of affected communities are sufficiently heard in the planning and plan implementation processes • Consultation was undertaken in Indigenous languages and in locations which are conveniently accessible for the affected communities • Projects produced annual implementation plans to indicate the plan's annual forecast; and periodically updated social assessments to track the impact of the plan implementation

<u>Name of source</u>	<u>Key elements</u>
	<ul style="list-style-type: none"> • Series of trainings were to be provided to all individuals and local agencies implementing the plan • Management plans and strategies were developed in a way which ensured local communities would have full participation and ownership over the plans and their outcomes
<p><u>The World Commission on Dams Framework</u></p>	<p>The report findings do not specifically relate to Indigenous peoples, rather all peoples affected by dams and other resource projects. Its recommendations nonetheless can still apply to Indigenous peoples. They include:</p> <ul style="list-style-type: none"> • (4) All stakeholders should have the opportunity for informed participation in decision-making processes related to large dams through stakeholder fora. Public acceptance of all key decisions should be demonstrated. • (4) Decisions affecting Indigenous peoples should be taken with their free, prior, and informed consent • (5) The project should provide entitlements to affected people to improve their livelihoods and ensure that they receive the priority share of project benefits (beyond compensation for their losses) <ul style="list-style-type: none"> ○ This relates to Indigenous cultural flows • (6) Affected people should be able to negotiate mutually agreed and legally enforceable agreements to ensure the implementation of mitigation, resettlement and development entitlements
<p><u>Study on the impact of the mining boom on Indigenous communities in Australia</u> UN ECOSOC and the Permanent Forum on Indigenous Issues 2013, item 8, ref: E/C.19/2013/20</p>	<p>Item III(A)(6) found that when resource (in this case mining) activities occur on Indigenous lands for commodification purposes, then it therefore follows that the benefits (including financial) of such activities should be made available to the Indigenous communities on which those activities occur</p> <p>These agreements should consider the long term benefits to the Indigenous communities and cover not just the distribution and preservation of revenue, but also of poverty, education, training, health, culture, and opportunities for employment.</p>
<p><u>Akwé: Kon Guidelines</u> Convention on Biological Diversity, 2004.</p>	<p>A few key points made within the guidelines</p> <ul style="list-style-type: none"> • (19) suggests establishing an environmental management or monitoring plan to provide framework within which the development can take place, and should provide contingency plans for adverse social or cultural impacts. These should be guided by an affected community's development plan and prior consultation • (22) establishing a review and repeal process of resource management plans, and including affected Indigenous peoples within this plan

Name of source	Key elements
	<ul style="list-style-type: none"> • Generally, provides a guide re: approaching & developing assessments of the cultural and social impacts of resource management plans • (46) Economic considerations: proposed developments on Indigenous lands and waters 'should ensure that tangible benefits accrue to such communities, such as payment for environmental services, job creation, revenue, access to markets and diversification of income-generating (economic) opportunities'
<p>'Continued Challenges in the policy and legal framework for collaborative water planning' in <i>Journal of Hydrology</i> – (2012) Poh-Ling Tan, K. H. Bowmer and C. Baldwin</p> <p>Doi:10.1016/j.jhydrol.2012.02.021</p> <p>Link to pdf</p>	<ul style="list-style-type: none"> • Identifies barriers limiting the effectiveness of early planning strategies: planning is treated as a technical process and not a social one, thus omitting views of community groups through limited engagement or because the process is difficult to understand; water planners have inadequate skills for dealing with socio-political issues; poor community consultation, mediation and negotiation. • 'We recommend that national policy guidelines endorse principles of collaborative planning as identified in literature and practice, noting that measures need to be adaptable or tailored to the local conditions.' – claim made after analysis 'poor' approaches and transparency to the impacts of the CSG industry in the Condamine area (p.86) • Says the most effective type of engagement must be determined for each community area – stakeholders can't be expected to make big decisions. • Planners must provide community groups with a clear outline of the plan and proposal so useful and relevant feedback can be provided. Planners should aim to engage in expectation management, and be clear about what can/cannot be achieved through the plan • 'Indigenous peoples do not view themselves as mere stakeholders, and specialised engagement needs to occur to accommodate their needs and interests.' (p.87) – clear indication that Indigenous groups are not being sufficiently engaged, and are becoming disenfranchised/ignored • Researchers found that present engagement strategies will target '<i>organised</i> stakeholders' (p.87) – issue is that Indigenous communities may not necessarily be, or be viewed as, <i>organised</i> stakeholders • Stakeholder engagement is not necessarily reflected within policy in its most conceptually agreed sense • Engagement with Indigenous groups should be legitimate and considered: 'In all cases where we engaged the Indigenous community, we found that it was essential to spend time in the field discussing matters of interest to them. Water planner usually lack the time and often the skills to foster deliberation.' (p.87) – as such, 'engagement' with Indigenous communities are generally found to be

Name of source	Key elements
	<p>very basic, desktop engagement. Clearly, much is to be improved in this regard</p> <ul style="list-style-type: none"> • Expectation management, agenda setting, engagement should occur initially at the early stages of planning, and consistently thereafter • During the engagement processes, Indigenous (and other stakeholder) representatives should be provided with plans and documentation in language and manner which is easy to understand and digest
<p>‘Deliberative tools for meeting the challenges of water planning in Australia’ in <i>Journal of Hydrology</i> (2012) – Poh-Ling Tan, Kathleen H. Bowner and John Mackenzie</p> <p>Doi: 10.1016/j.jhydrol.2012.02.032</p> <p>Link to pdf</p>	<ul style="list-style-type: none"> • Recommendations identified include: improving engagement and engagement strategies; building confidence in the planning process (consider that Indigenous communities may have very little confidence); and providing better, more explicit mechanisms to include Indigenous interests in water planning, with Indigenous cultural and economic expectations as yet unmet • Analysis of the Basin Plan approach indicates that while approaches to public collaboration and consultation have improved, this is still lacking greatly with regard to Indigenous communities • Participatory approach is highlight recommended as an approach to come to mutually beneficial outcomes, and ensure transparent understanding of individual community approaches (i.e. balancing approaches between ‘Western science’ and Indigenous knowledge) • Early and consistent engagement will build confidence in planning • ‘Evaluations showing that while participatory mapping is best able to communicate Indigenous knowledge, it was ‘visits to country’ and community workshops that were most effective in bridging this divide in the Tiwi Islands, Northern Territory.’ (p.8) • Notes that Indigenous water reserves and innovative methods are more readily accepted in the Northern Territory because there is less competition for water – so Indigenous communities in overused catchments struggle to find recognition for their interests and values • As such ‘Indigenous values are viewed as lacking sufficient influence, often producing only token recognition by water planners.’ (p.8)
<p>‘Providing for social equity in water markets: the case for an Indigenous reserve in northern Australia’ (by William Nikolakis) in <i>Water Resources Planning</i></p>	<ul style="list-style-type: none"> • Identifies a lack of recognition of Indigenous rights to water to address their economic aspirations (p.634,p.641 e.g.) <ul style="list-style-type: none"> ○ Suggests that this will help alleviate social inequities (e.g. p.641) • If water is treated as an economic good, there will be implications for Indigenous people who are economically disadvantaged. (p.636)

Name of source	Key elements
<p><i>and Management</i>, eds. R. Quentin Grafton and Karen Hussey (2011)</p> <p>Link to pdf</p>	<ul style="list-style-type: none"> • Points that ‘where water markets are developed, there should be a restorative element to these frameworks, so that Indigenous rights and interests can be adequately redressed.’ (p.636) • Advocates for the establishment of Indigenous water reserves as a means to ensuring Indigenous communities get sufficient water access <ul style="list-style-type: none"> ○ Yet these reserves should earmark water for economic purposes as well, (note the Tindall reserve ignores economic needs) • Identifies that the communal nature of Indigenous rights will pose challenges when these are translated into tradeable entitlements (p.642) • ‘As well, some cultural heritage values may be under-represented as they are less understood, or they may be highly significant and impossible to quantify, particularly if they are spiritual in nature.’ (p.642)
<p>‘Indigenous rights and water policy: Perspectives from tropical northern Australia’ in <i>Australian Indigenous Law Review</i> 13(1) (2009) – Sue Jackson and Jon Altman</p>	<ul style="list-style-type: none"> • Identify major issues and challenges to be: <ul style="list-style-type: none"> ○ Poor understanding of Indigenous cosmology, environmental philosophies and resource management institutions ○ Lack of capacity in Indigenous and water resource agencies to address cross-cultural issues and lags in native title claim processes ○ Narrow interpretations of Indigenous water property in current water resource management plans and discourse ○ Poor formal recognition of the right of Indigenous groups to participate in management of waters (e.g. <i>Native Title Act</i> doesn’t provide for an Indigenous increased role in water management) • Notes that Indigenous groups who are unable to frame and specify their requirements within the frameworks are at a disadvantage when competing against more organised groups for water – accommodations thus must be made for this (p.32) • Notes also the importance of understanding and incorporating Indigenous knowledge of particular plan areas, especially where there is limited scientific knowledge thus the exclusion of this not only detracts the interests of indigenous stakeholders, but also the effectiveness of water resource management processes (p.32)
<p>Indigenous Fresh Water Planning Forum: Proceedings, Outcomes and Recommendations</p>	<ul style="list-style-type: none"> • Restrictive nature of cultural licences discourage Indigenous persons/bodies to apply – cites non-consumptive aspect, that they’re only available on an annual basis and only allow a small volume of water

Name of source	Key elements
<p>(2009) – Sue Jackson, Poh-Ling Tan, Jon Altman</p> <p>Link to pdf</p>	<ul style="list-style-type: none"> • Recommends legally enforcing cultural flows to ensure that water will be available for cultural purposes and reduce the need for a licence • Echoes recommendations for Indigenous reserves across water plans • Echoes recommendations that Indigenous representatives should be consulted at all stages of the planning process: particularly in (1) identifying the values and needs of water (2) quantifying requirements, and (3) being present at trade-off negotiations • Reminds that differences between Indigenous nations across water plan areas must be taken into account: cannot assume that values/ requirements for one nation will apply to all. Individual consultation • Due to the contested nature of water as a resource, provisions and entitlements for Indigenous peoples should be made by Basin States and the Commonwealth to protect and guarantee Indigenous access to water • Suggests that Indigenous management systems should be both recognised and adopted within water resource plans: planners should work with Indigenous representatives to determine relevant aspects • Recommends that in cases where native title has been determined, there should be an obligation among planners to quantify this share of water and issue this as an entitlement
<p>‘Indigenous communities and climate change: a Recognition, Empowerment and Devolution (RED) framework in the Murray-Darling Basin, Australia ‘ in <i>Journal of Water and Climate Change</i> 7(1) (2016) – William Nikolakis, Quentin Grafton, and Aimee Nygaard</p> <p>DOI: 10.2166/wcc.2015.058 No link, but copy with Anni</p>	<ul style="list-style-type: none"> • As quality/quantity of available water decreases due to climate change, the access afforded to Indigenous peoples are more limited • Lack of land ownership (and acknowledgment of traditional land) by Indigenous communities has flow-on impact where they are being neglected from environment, climate change and related debates • Notes that effects of colonisation in relation to water and climate change still being felt and not adequately redressed by governments • Reiterates the inherent connection between Indigenous values/livelihood and the basin ecosystems – this isn’t being recognised • As water becomes increasingly subject to commodification, Indigenous communities are losing out because due to socioeconomic disadvantages, they do not have significant stakes in water market • Study found that managing icon sites within the MDB on a site-by-site basis ignores the interconnectivity of land and water within the MDB, and the relationship these have with Indigenous values

<u>Name of source</u>	<u>Key elements</u>
	<ul style="list-style-type: none"> • Present resource management arrangements do not acknowledge the economic needs of Indigenous communities, and the impact of climate change and other degradation on these – notes a lack of recognition of both customary economy and agricultural economy • Interviewees note that there has been limited improvement in Indigenous involvement in co-management and decision making. True engagement is urged, not just ‘tick the box’ consultations • One interviewee: ‘You know all we do is advise these groups... We don’t want to be sitting there feeding them information. We want to be at the table making decisions with them.’ (p. 12) • Encourages a ‘human rights approach’ to climate change policy, with improved dialogue and engagement with Indigenous groups – see e.g. Ross and Gerrard (2008) (p.15)

<u>Name of source</u>	<u>Key elements</u>
	<p data-bbox="507 288 1398 322"><u>Recognition, Empowerment and Devolution (RED) Framework</u></p> <ul data-bbox="555 329 1439 1505" style="list-style-type: none"> <li data-bbox="555 329 1426 465">• Essentially a framework which gradually removes barriers to Indigenous communities in the resource governance, and gradually enhancing capabilities and control toward a devolved system <li data-bbox="555 472 1431 763">• <i>Recognition</i>: recognising the need to access to resources, and thus enter the economy and have authority and management over land/water/resources to use on non-market-outcomes. Points to the Nari-Nari Nation in NSW, which have utilised water trading of the commercial water which they have rights to, and then using the proceeds from this to purchase cultural licenses to irrigate wetlands which are of importance to the community's values <li data-bbox="555 770 1417 1061">• <i>Empowerment</i>: Empowering Indigenous communities to confidently identify their needs and make decisions, and take actions according to these needs. Steps include creating a space for Indigenous representatives at the policy table, and later requiring government support to empower Indigenous groups to make effective decisions, and for the government to acknowledge, respect & abide by these decisions <li data-bbox="555 1068 1430 1317">• <i>Devolution</i>: going the next step and providing Indigenous reps with an equitable share over decision making, and devolving access and rights to ownerships and benefits of the land and water. This would increase protections for non-market values, generate local solutions for local problems, and bring a holistic perspective to decision making. <li data-bbox="555 1323 1434 1460">• Though this has been created with regard to the impact of climate change on land and water, and thus on Indigenous communities, this framework can be applied to Indigenous inclusion within general resource management policy <li data-bbox="555 1467 1082 1505">• RED framework (located on p.16)

