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MLDRIN Submission on the Draft NSW Water Strategy

Murray Lower Darling Rivers Indigenous Nations (MLDRIN) welcomes the opportunity to comment on the Draft NSW Water Strategy. MLDRIN is the peak representative body of Sovereign First Nations in the lower part of the Murray Darling Basin, including many Nations across southern NSW.

MLDRIN acknowledges and appreciates the inclusion of a whole Priority and six specific Actions that are targeted at improving outcomes for Aboriginal people across NSW. The proposed Priority 2 Actions are generally responsive to First Nations' longstanding claims and demands to recognise their customary and inherent rights, including to have stronger roles in water decision making, and to have greater access and control over water resources and entitlements. Additionally, MLDRIN welcomes the Water Strategy's emphasis on shifting towards a more cohesive and interconnected approach to water management in NSW. Intentions to increase understanding (and adjust management) to better accommodate the interconnections between up and downstream, surface and groundwater, and land and water are a promising first step.

Alongside these positive elements of the Draft NSW Water Strategy, MLDRIN considers there are numerous opportunities for the Strategy to be strengthened to better recognise or advance First Nations' water rights and interests. Of particular concern, is the need to make actions clearer, measurable and binding, including with funding and time-stepped progress commitments. The overall cohesiveness of the Strategy should also be strengthened in the Final version, including how Actions outside of Priority 2 will intentionally offer opportunities and outcomes for Traditional Owners and First Nations, and thus progress Priority 2.

It is important to be reminded that water is there to support all life across our systems. Greed and incompetence, have, though, seen our rivers degraded, our wetlands drained, and the lifeblood of Country stored in public and private taxpayer-funded dams. The current regime in water has prevented end of system flows from occurring, limited fish breeding events in good years and caused significant fish kill events in bad years. We must see this addressed before we lose our culturally significant biodiversity across NSW and the MDB.

This submission further unpacks these comments in further detail in response to the Priorities and Actions of the Draft NSW Water Strategy. MLDRIN appreciates the extra time afforded us to prepare this submission. This enabled us a more appropriate period of time to gather feedback from our NSW member delegates about the Strategy. This submission is also informed by relevant Traditional Owner feedback shared during MLDRIN-run assessments of NSW WRPs over the last 10 months. MLDRIN recommends that NSW prioritise best practice engagement with Traditional Owners and First Nations when formulating new policies such as this Strategy.

Priority 1: Build community confidence and capacity through engagement, transparency and accountability

Action 1.1 Improve engagement, collaboration and understanding

MLDRIN supports this priority, generally. However, greater and particular attention on building the trust and confidence of Traditional Owners and First Nations in government water management is needed. This is because NSW Government decisions and actions, both historically and recently, have resulted in unique implications for and impacts on Traditional Owners and First Nations people.

In the last decade, for example, the unexpected removal of the Aboriginal Water Initiative (AWI) significantly undermined the degree of trust and relationships that had been built during its operation. Additionally, MLDRIN's recent assessments of NSW's Water Resource Plans (WRPs) show that the use of consultants to complete First Nations WRP consultation in many cases likely hindered the NSW Government's development or rapport and relationships with local First Nation communities. Therefore, NSW must consider and specify how, in addition to the general elements in Action 1.1, it will intentionally rebuild trust and relationships specifically with Traditional Owners and First Nations. This may form part of Action 1.1 and/or Action 2.4.

Action 1.3 Enhance modelling capabilities and make more data and models openly available

For too long, water management decisions have been made based on insufficient and inaccurate data and information; in particular that which does not accommodate or is responsive to our drying and increasingly variable climate now and in the future. According, the fact that the NSW Government has invested in improving climate and water modelling (p. 50) and is using this information to inform decision-making is, in principle, a positive step especially when compared to recent history.¹

However, MLDRIN (and some Traditional Owners we engaged with) is of the view that developing these new data sets and associated climate models were an opportunity for Traditional Owners to be directly involved and included in science and policy development. That is, developing climate modelling includes looking back on the past. Traditional Owners are the original managers of NSW's landscapes and hold detailed knowledge of Country, including its past climate conditions. Seeking Traditional Owner input during development could have helped NSW to ground-truth the climate models, and would also have been an opportunity to actively demonstrate some of the principles and commitments declared by NSW in Priority 2.

MLDRIN recognised this specific opportunity has now likely passed, but we encourage NSW to more actively and intentionally seek out input and advice from First Nations in all phases of policy development.

Action 1.5 Take the final steps in floodplain harvesting reform

MLDRIN notes that the details and dates relating to floodplain harvesting reforms in Action 1.5 require amending following the recent disallowance motion. MLDRIN remains concerned by the proposed floodplain harvesting licencing and management frameworks put forward by NSW to date. At the very least, these frameworks must include downstream flow targets to enhance and

¹ For example, Peter Hannam, 'Fight looms between Commonwealth and NSW over water-sharing plans', *Sydney Morning Herald* (online, 30 June 2020) <<https://www.smh.com.au/environment/sustainability/water-fight-over-nsw-floodplain-harvesting-moves-one-step-closer-20200630-p557mf.html>>.

² Lana D Hartwig, Sue Jackson and Natalie Osborne, 'Trends in Aboriginal water ownership in New South Wales, Australia: The

protect catchment interconnectivity (in line with Priority 3 of this Strategy). Adding to this, MLDRIN sees that the NSW Government handing out new property rights to floodplain harvesters through licencing frameworks while doing nothing to respond to the fact that First Nations own just 0.2% of available surface water in the MDB portion of NSW² is shameful.

Action 1.6 Review the regulation of domestic and stock basic landholder rights

While Action 1.6 specifically focuses on reviewing stock and domestic basic landholder rights, MLDRIN recommends NSW add a new Action that commits to reviewing native title rights provisions, which are also basic landholder rights.³ The recommendation follows the advice from the Natural Resources Commission in its review of the *WSP for the Barwon-Darling Unregulated and Alluvial Water Sources 2012*.⁴ Currently, the phrasing of native title provisions across NSW WSPs is unclear, and offers no clarity or certainty about what water native title holders can actually use.

Priority 2: Recognise Aboriginal rights and values and increase access to and ownership of water for cultural and economic purposes

MLDRIN asserts that it is essential for NSW to recognise who has the authority to speak for Country and how this should determine who is engaged in discussions and projects that impact water and Country in NSW. Traditional Owners are the direct descendants of First Nations with sovereignty over and authority to speak for Country and water affected by the state of NSW. Therefore, Traditional Owners must be at the forefront of any conversation around land and water as it is their ancestral birthright. Any process, person or organisation that seeks to usurp this connection is in breach of Traditional Law.

MLDRIN supports the inclusion of the Closing the Gap National agreement within the NSW Water Strategy (p. 60). MLDRIN recommends that the inland water target currently being developed by Closing the Gap be acknowledged in the NSW Water Strategy; Actions 2.3 and 2.4 should represent progress toward this target.

Action 2.1 Establish a partnership agreement with the Aboriginal Water Coalition

MLDRIN appreciates being a core member of the Aboriginal Water Coalition (p. 62). However, MLDRIN urges NSW to be cautious about making commitments to establish a partnership agreement given that successful completion is entirely dependent on the decisions of Nations and organisations outside of government. MLDRIN is working through the process of gaining endorsement from its delegation for this partnership agreement currently. This action could perhaps be better situated within, or as a practical example of, Action 2.2.

Action 2.2 Strengthen the role of First Nations in water planning and management

MLDRIN supports efforts to see greater inclusion of First Nations people in water planning and management. Inclusion is a positive step forward that will help foster a more holistic approach to water and a greater understanding of its integral role in supporting life on this continent. However, at this stage, MLDRIN is concerned that this Action reads more like a set of principles. MLDRIN

² Lana D Hartwig, Sue Jackson and Natalie Osborne, 'Trends in Aboriginal water ownership in New South Wales, Australia: The continuities between colonial and neoliberal forms of dispossession' (2020) 99 *Land Use Policy* 104869.

³ *Water Management Act 2000* (NSW) cl 55.

⁴ Natural Resources Commission, *Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012* (Final Report, Document No: D19/4123, September 2019) 133.

would like to see more detail provided as to how Action 2.2 will be implemented and over what time frame.

Also of relevance in line with this is action, is the following statement in the Draft NSW Water Strategy: "Further, all water planning processes should engage with Native Title holders or registered claimants, and account for the possible existence of Native Title rights to water in any given area" (p. 62). MLDRIN seeks to clarify that this statement be amended to be must, not should, as engaging with Native Title holders is a statutory requirement.

Action 2.3 Develop a state-wide Aboriginal water strategy

MLDRIN is concerned that a lot of the heavy lifting regarding Water Policy in the state of NSW is proposed to be actioned through the NSW State Water Strategy and the Regional Water Strategies. From speaking with our member delegates, MLDRIN is aware of concerns that a state-wide Aboriginal Water Strategy (AWS) may carry little 'weight' in the overall policy framework and may have little influence and direct impact on addressing the concerns of First Nations people.

Given that options like infrastructure development have been strongly supported by NSW Government through both the NSW Water Strategy and the Regional Water Strategy documents, despite concern and, in some cases, direct opposition from affected First Nations, greater insight into what funding will be committed to developing and implementing this state-wide Aboriginal Water Strategy is required. Our members also want clarity about what the status of the AWS will be within the overall policy framework. This will go some way to address the above noted perception.

MLDRIN notes that one of the original document where the NSW Government committed to developing a state-wide Aboriginal Water Strategy was in its September 2019 response to the Vertessy Report and the Natural Resources Commission's review of the Barwon-Darling Water Sharing Plan.⁵ Recognising that the Covid-19 pandemic has perhaps hampered some progress on this strategy, MLDRIN hopes to see significant progress on this strategy in the near future.

Also in the abovementioned response document, NSW committed to support the Commonwealth re-acquire Class A entitlements in the Barwon-Darling system. NSW stated that it "will ask the Commonwealth to transfer some of this water to Aboriginal ownership for cultural use. We have heard from the communities in Bourke and Wilcannia that they want this water to be left instream so that it can flow to Wilcannia. Feedback is that this will lead to better environmental, socio-economic and cultural outcomes in the Barwon-Darling. We will work with the Commonwealth and Aboriginal communities to design how this transfer will work."⁶ MLDRIN has not heard how this has progressed, and suggests that this could be included into the Final NSW Water Strategy to offer accountability for advancement in this space, possibly within Action 2.4.

Action 2.4 Provide Aboriginal ownership of and access to water for cultural and economic purposes

MLDRIN strongly supports this action. Recent studies have shown that Aboriginal people in NSW own 0.2% of available surface water in the NSW portion of the MDB. Lack of water ownership

⁵ NSW Government, *NSW Government response to the Vertessy Report and the Natural Resources Commission's review of the Barwon-Darling Water Sharing Plan* (September 2019)

<https://www.industry.nsw.gov.au/__data/assets/pdf_file/0008/279080/NSW-Government-response-to-NRC-report.pdf>.

⁶ Ibid 3.

results from generations of systemic marginalisation of Traditional Owners from their ancestral birthrights and dispossession of Country.⁷

Many First Nations peoples assert that nobody should own water; that water ‘ownership’ is a construct of the colonial and capitalist system that Australia operates within. However, First Nations people are also seeking water ownership as a pragmatic response to the issue of rapidly deteriorating environmental conditions, and cultural wellbeing, in all sections of the Murray-Darling Basin. Ownership of natural resources, including water, is a key pillar of the *United Nations Declaration on the Rights of Indigenous Peoples*. Any measures taken by the government to return water ownership to First Nations need to focus on Traditional Owners, those who have a connection to water and Country through ancestral ties. Traditional Owners must be at the forefront of these conversations.

Any mechanisms to support return of water to Aboriginal ownership must allow for genuine self-determination and First Nations-led decision making. Current options in NSW, such as through the Cultural Access Licence framework and native title basic landholder rights, do not truly allow this; they restrict water use options. The Cultural Access Licence framework has other known issues and challenges that likely contribute to the poor uptake described in the Draft NSW Water Strategy. Specifically, only seven of these licences have ever been issued, with two in use today (p. 59). Examples of known issues and challenges with this framework include, but are not limited to: uncertainty about use and rules; costs associated with using water and infrastructure when water is to be moved (e.g. to a wetland that is blocked from the main river channel); land access and ownership; etc. Accordingly, MLDRIN recommends that the Final NSW Water Strategy clarify if and how Action 2.4 will help address these known issues with the current Cultural Access Licence framework (p. 59).

On a related note, the Draft NSW Water Strategy identifies that Water Sharing Plans (WSPs) “create certainty for water users by ... protecting water for the environment, basic landholder rights and cultural needs” (p. 32). Based on MLDRIN’s knowledge of WSPs, we have assumed this statement is referring to the Aboriginal Cultural Access Licence provisions which are available in every WSP. Given these have had such poor take up (p. 59), MLDRIN does not see that these provisions constitute protection of water for cultural needs. The framing of this statement should be revised and/or its inclusion reconsidered.

Overall, MLDRIN recommends the Final Strategy further detail how NSW will support Traditional Owners to realise Cultural Flows. For example, MLDRIN would like to see NSW stipulate what initial funding it is committing to advance First Nations water access and ownership, time-stepped timeframes for when this commitment will be actioned by, and how its success will be measured.

Action 2.5 Work with First Nations to improve shared water knowledge

Traditional Owners find current water management priorities and flow regimes completely upside down. It is frustrating and truly unjust that an irrigator can place a water order from the top of the system to the middle with two weeks notice, and out of season to the natural flow regime while, at the same time, Traditional Owners watch on as their fish spawning grounds are shallow, murky pools not even deep enough for aquatic flora to stand at full height.

⁷ Lana D Hartwig, Sue Jackson and Natalie Osborne, ‘Trends in Aboriginal water ownership in New South Wales, Australia: The continuities between colonial and neoliberal forms of dispossession’ (2020) 99 *Land Use Policy* 104869.

MLDRIN welcomes steps toward including Traditional Ecological Knowledge within the water sector. But, as currently proposed, the knowledge-sharing approach does not go far enough to ensure that our rivers do not degrade to a point where they are unrecognisable. Elders across the Basin talk about how they remember the rivers in their childhood. What they describe can be difficult to reconcile with how the rivers appear presently; they have gone from high flowing, clear, clean water to shallow muddy, slow-moving toxic soup, as a result of over-extraction. Any knowledge sharing needs to be more than another “tick the box” exercise where consultation is undertaken without any beneficial outcomes.

Therefore, MLDRIN recommends that NSW increase the emphasis in this Action to be about both sharing *and* implementing Traditional Ecological Knowledge. This process should be led by Traditional Owners to repair and restore degraded sites throughout the system. This Action must also offer assurance that any Traditional Ecological Knowledge and cultural information shared by Traditional Owners remains their Intellectual and Cultural Property.

Action 2.6 Work with Aboriginal people to maintain and preserve water-related cultural sites and landscapes

Traditional Owners understand the whole of their Country to be a cultural site. There is no one place that is any less significant than another. These sites form part of an interconnected system that sustains life. Specific sites provide a function for ceremony or collection of food and materials. The Strategy’s focus on particular sites, and how water management decisions will impact these individual locations, does not encompass the full context of First Nations’ deep spiritual and cultural connection to Country and the crucial role water plays in sustaining life.

The phrase "meaningful engagement" is met with some suspicion across NSW (and the MDB more broadly) as our people have experienced negative outcomes associated with water management and infrastructure decisions that did not take First Nations values into account (be it Burrendong Dam, Wyangala Dam or Lake Hume). The NSW Government built these dams in culturally significant locations. The impacts these infrastructure projects have generated through the years go beyond just the destruction of the cultural heritage at the dam footprint. They include considerable damage to every cultural place, along the extent of the river system, due to changed flow regimes. We must move the conversation from engagement around maintenance of sites, and instead look to state-wide watershed restoration led by Traditional Owners.

MLDRIN strongly recommends that the focus of this action shift to encompass projects that will bring the system back to health and fertility, informed by Cultural Knowledge of First Nations

Priority 3: Improve river, floodplain and aquifer ecosystem health, and system connectivity

Overall, MLDRIN supports commitments from NSW to better understand system connectivity, and to use this information to improve how our landscapes are managed. Priorities and aspirations to better accommodate the interconnections between up and downstream, surface and groundwater, and land and water are long overdue. The NSW Government would be wise to work with Traditional Owners on these priorities and aspirations seeing as Traditional Owners intimately understand these kinds of interconnections and hold extremely relevant and significant insights and knowledge.

MLDRIN recommends NSW include watershed and landscape rehydration practices such as Natural Sequence Farming in the Final State Water Strategy. Principles of Natural Sequence Farming include:

- Restoring fertility held by nutrients and organic matter improves the biological function of soils;
- Reinstating hydrological balance increases groundwater storage in the flood-plain aquifer, increasing freshwater recharge and hence reducing saline groundwater discharge;
- Re-establishing natural vegetation succession through pioneer species promotes the healthy growth of native plant communities;
- Understanding the hydrological and biogeochemical processes that drive the natural landscape system allows their management to restore ecological function.⁸

There are a range of examples of watershed and landscape rehydration projects within NSW working at a pilot scale and commitment from government is required to assist in realising greater adoption of these practices within the agricultural sector.

Action 3.1 Implement NSW Long Term Watering Plans to protect and enhance ecological systems

Page 70 of the Draft NSW Water Strategy states that NSW's Long Term Water Plans "draw together local, traditional and scientific knowledge." As part of MLDRIN's recent assessments of WRPs in southern NSW, we examined relevant NSW Long Term Water Plans. In doing so, we generally found little to no evidence of or explanation about how traditional knowledge was drawn on. For that matter, we also found little to no evidence of how registered Aboriginal cultural heritage or registered Aboriginal places influenced the substantive content of these Long Term Water Plans. MLDRIN recommends NSW further explain how these different knowledges were drawn together in the spirit of transparency. Furthermore, specific roles for First Nations in implementing, reviewing and amending Long Term Water Plans should be established as part of this action.

Action 3.5 Adopt a more intense, state-wide focus on improving water quality

Water quality is just as important as water availability, and MLDRIN is satisfied to see a specific action committing to the improvement water quality. MLDRIN notes, though, that Water Quality Management Plans attached to each WRP submitted to the MDBA for approval include a water quality objective for First Nations, as well as strategies to address this and other water quality objectives. To MLDRIN's knowledge, Traditional Owners and First Nations people were not involved in developing those plans. Additionally, these documents statement that no water quality targets or thresholds are defined for Aboriginal cultural, spiritual or ceremonial outcomes.

From this experience, MLDRIN recommends that the NSW Government commit to reflecting Traditional Owner and First Nations' values and uses in the NSW Water Quality Objectives during its proposed review under Action 3.5 (p. 77). We suggest NSW review the 2018 *Australian & New Zealand Guidelines for Fresh & Marine Water Quality* which includes guidance on water quality measures to preserve cultural and spiritual values⁹ as a minimum to work from. It will be essential that First Nations have clear roles in establishing, monitoring and assessing these objectives, and identifying other water quality risks.

Action 3.6 An enhanced, state-wide focus on sustainable groundwater management

⁸ John Williams, The principles of Natural Sequence Farming (2010) 5(4) *International Journal of Water* 396.

⁹ Australian & New Zealand Guidelines for Fresh & Marine Water Quality, *Cultural and spiritual values* (2018) <<https://www.waterquality.gov.au/anz-guidelines/guideline-values/derive/cultural-values>>.

As part of developing the NSW Groundwater Strategy and Action Plan (p. 78), MLDRIN recommends that NSW investigate options for accommodating Traditional Owners' and First Nations' management priorities. One option for this may include distributing entitlements to currently unallocated groundwater sources to Traditional Owners and First Nations. MLDRIN's recent work in Victoria reveals such an option could generate benefits and outcomes that align both with improved groundwater management, and improving First Nations' water access and self-determination (such as that captured in Priority 2 of NSW Draft Water Strategy).¹⁰ Research indicates similar possibilities can and should be explored across other jurisdictions particularly where surface water is already over-allocated, such as inland NSW.¹¹

Action 3.7 Work with communities to better understand and improve system connectivity

MLDRIN and member Nations very much support NSW's increased focus on improving river and valley connectivity. MLDRIN recommends, though, that NSW include more details in relation to Action 3.7 about how improving this connectivity will be "community-driven and transparent" (p. 80), including the roles for Traditional Owners and First Nations.

Priority 4: Increase resilience to changes in water availability (variability and climate change)

Action 4.4 Better integrate land use planning, development approvals and water management

MLDRIN supports more integrated decision making that considers both land and water use. Item (d) in Action 4.4 (p. 94), however, requires more explanation. In particular, clarity is needed about what is meant by "cultural values", how this information is currently collected and stored, and what input or roles Traditional Owners and First Nations people have in compiling, access and sharing this information.

Priority 5: Support economic growth within a capped system

MLDRIN welcomes the NSW Government's recognition that water supplies are less secure than previously thought (e.g. p. 24). Given this acknowledgement, though, it is jarring to read the "doing more with less" rhetoric that appears at times throughout this policy document, particularly in Priority 5 and the Actions it contains. MLDRIN questions if this direction is feasible or desirable given that too much water is being extracted from surface water and groundwater systems already, and the drying climate and insecure water access that characterise our future. Moreover, such a direction seems inconsistent and incompatible with much of the detail of Priority 2 and Priority 3 of this Draft NSW Water Strategy.

To be clear, MLDRIN supports the creation of secure employment, particularly in regional NSW where Aboriginal populations are growing remarkably rapidly. For example, recent analysis shows that in the MDB portion of NSW, the Indigenous population increased at a growth rate of 4.5% per year from 2006 to 2016, which is extreme by demographic standards. For comparison, the non-Indigenous population over this time grew by only 0.2% per year. First Nations people would make

¹⁰ Erin O'Donnell, Lee Godden and Katie O'Bryan, 'Cultural water for cultural economies' (University of Melbourne, 2021) 25 <https://law.unimelb.edu.au/__data/assets/pdf_file/0008/3628637/Final-Water-REPORT-spreads.pdf>.

¹¹ Lana Hartwig and Sue Jackson, 'The status of Aboriginal water holdings in the Murray-Darling Basin' (Griffith University, 2020) 55-56 <<http://hdl.handle.net/10072/400302>>.

up over 16% of the population in the MDB portion of NSW in 2031 if these remarkable 2006–16 growth rates continue.¹²

However, the creation of employment must not rest on heavily water extractive industries and, therefore, continued unsustainable infrastructure developments and landscape modifications. MLDRIN recommends NSW commit to investing in alternative industries that support healthy and resilient landscapes and people. For example, river restoration, ranger programs, and landscape rehydration can be part of improving resilience.

Action 5.2 Invest in R&D and new technologies to lift water productivity in NSW industries

In principle, MLDRIN is in support of improving water use efficiencies and some water alternatives. However, rather than continue to divert any recovered water from such improvements or programs (such as those on p. 104) back into unsustainable production, water savings should instead be returned to First Nations' ownership and management. Again, our work in Victoria also demonstrates that some Traditional Owners and First Nations may be open to accessing alternative water sources including treated, fit-for-purpose recycled water supplies.¹³ NSW should commit to exploring the feasibility of similar options with Nations in NSW as part of this Action, and/or Action 2.4.

Action 5.4 Identify infrastructure and operational options for each region of NSW

MLDRIN supports transparent evaluation of water measures. We remind the NSW government that any "cultural evaluation" of such options (p. 107) must include First Nations.

Moreover, MLDRIN questions the continued reliance on and viability of large-scale water infrastructure developments (including the proposed Wyangala Dam Wall Raising Project, Macquarie Re-regulating Project, and Menindee Lakes Project) to support economic and commercial development. MLDRIN is deeply concerned about the detrimental impacts that construction and operation of these kinds of projects already have and will continue to have on First Nations' cultural heritage, water-dependent cultural assets, and other culturally sensitive sites within immediate project footprints and downstream landscapes. MLDRIN is deeply troubled that currently proposed projects will pose significant, new threats to river systems that are already critically stressed. We are also concerned about the transparency of Traditional Owner engagement and consultation relating to proposed infrastructure projects to date.¹⁴

Critically, the development of any new water infrastructure must shift away from typical practices, and instead include protocols centring First Nations as decision makers and procedures for seeking the free, prior and informed consent of affected First Nations. A process of deep consultation, where Nations are supported with the information, resources and decision-making power to make informed choices is needed.

The Akwé: Kon Guidelines are an international standard for the conduct of cultural, environmental and social impact assessment 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 First

¹² Lana D Hartwig, Sue Jackson, Francis Markham and Natalie Osborne, 'Water colonialism and Indigenous water justice in south-eastern Australia' (2021) *International Journal of Water Resources Development*.

¹³ Erin O'Donnell, Lee Godden and Katie O'Bryan, 'Cultural water for cultural economies' (University of Melbourne, 2021) 27 <https://law.unimelb.edu.au/__data/assets/pdf_file/0008/3628637/Final-Water-REPORT-spreads.pdf>.

¹⁴ For more detail see MLDRIN, Submission No 30 to Portfolio Committee No. 7 - Planning and Environment, *Inquiry into the rationale for, and impacts of, new dams and other water infrastructure in NSW* (6 October 2020).

Nations communities.¹⁵ The Akwé: Kon Guidelines were agreed by the Conference of the Parties to the Convention on Biological Diversity. They provide useful guidance on the kinds of steps necessary to support free, prior and informed consent and ensure the cultural impacts of new infrastructure projects are understood and mitigated. MLDRIN recommends that this guidance be adopted as a standard for assessing any new water infrastructure development processes in NSW and incorporated into the state's legislation.

Priority 6: Support resilient, prosperous and liveable cities and towns

MLDRIN supports increasing the reliability and quality of drinking water across NSW, particularly in regional parts of the state. This is essential so that the concerning water shortages experienced in recent years (partly due to poor government preparation and investment) are not repeated again.¹⁶

Priority 7: Enable a future focused, capable and innovative water sector

Action 7.3 Invest in water sector workforce and capability

While investing in water sector workforce and capability (p. 131), NSW should also be intentional about the composition of that workforce. For example, MLDRIN encourages NSW to develop goals for employing First Nations peoples. Additionally, NSW should actively foster a culturally aware and sensitive workforce and workplace culture through training and development.

Monitoring, evaluation and reporting of water management outcomes

MLDRIN appreciates that the “final NSW Water Strategy will include clear actions, responsibilities and timeframes for delivery” (p. 133). However, we are disappointed that the draft Strategy does not include more information about this to give us (and others) the opportunity to comment and report on this before being finalised.

In preparing this component of the Final NSW Water Strategy, MLDRIN recommends that NSW:

- mandate the reviews are completed by an independent third party, as was the case for the NSW Water Reform Action Plan.¹⁷ Doing so would help to build transparency, and thus be well aligned with Priority 1 of the NSW Water Strategy. It will also help ensure that the necessary reviews actually take place and progress is monitored regularly;¹⁸
- clearly identify the links and interconnections to the monitoring, evaluating and reporting processes and frameworks associated with the Regional Water Strategies, Water Resource Plans, and Water Sharing Plans; and,
- establish roles and opportunities for Traditional Owners and First Nations to contribute to any monitoring, evaluation and assessment processes relating particularly (but exclusively) to Priority 2.

Implementation Plan

¹⁵ Secretariat of the Convention on Biological Diversity, *Akwé: Kon Guidelines* (2004) <<https://www.cbd.int/doc/publications/akwe-brochure-en.pdf>>.

¹⁶ Anne Davies, ‘Damning report blames NSW government for water shortages in regional towns’, *The Guardian* (online, 24 September 2020) <<https://www.theguardian.com/australia-news/2020/sep/24/damning-report-blames-nsw-government-for-water-shortages-in-regional-towns>>.

¹⁷ NSW Government, *Water Reform Action Plan* (webpage) <<https://www.industry.nsw.gov.au/water/what-we-do/water-reform-action-plan>>.

¹⁸ Noting that this has not always happened with other water management policies and regulations in NSW. See Kylar Loussikian, ‘Damning, disappointing’: Debacle in state's water sharing plans’, *Sydney Morning Herald* (online, 18 February 2020) <<https://www.smh.com.au/politics/nsw/damning-disappointing-debacle-in-state-s-water-sharing-plans-20200218-p541xg.html>>.

MLDRIN recognises that the “final Strategy will be accompanied by an implementation plan that will outline roles and responsibilities, and timeframes for implementation of actions” (p. 142). From reviewing the Draft strategy as well as the indicative material in Attachment 2, MLDRIN has identified a number of opportunities where NSW can strengthen its transparency and accountability in relation to implementation and action that should be included in the Final Strategy. For example:

- Some of the actions included throughout the Strategy appear to be existing commitments (for example Action 1.5 – taking the final steps in floodplain harvesting reform). For transparency and accountability, NSW should indicate this in the document in some way.
- MLDRIN strongly recommends that specific and measurable resourcing is pledged to key priorities and/or actions. This is necessary to ensure that resourcing is set aside in departmental and/or treasury budgeting, and to truly demonstrate the NSW Government’s commitment to enacting and implementing the Strategy. MLDRIN recommends these commitments be included in the body of the NSW Water Strategy, not just in the Implementation Plan.
- Similarly, clearer timeframes for action should be included for each Action as part of the Implementation Plan. The current three-tiered “horizon” model does not offer strong enough means for accountability.
- MLDRIN observes that some Actions appear to be more principle- or ideals-based. This is a first and important step, but makes measuring and evaluating implementation progress difficult. Accordingly, we suggest that NSW review each and every Action to ensure that they contain sufficient detail to be evaluated and progress monitored.

Final comments

To be effective, the NSW Water Strategy must work as an interconnected whole. That is, all the priorities and actions must be able to co-exist and be achieved together, without contradicting and undermining others. Some priorities and actions do appear to be cohesive and interconnected. An example of how this is demonstrated at the Action level is the inclusion that Action 6.3 will help to achieve or advance Action 7.3 (see page 131).

MLDRIN sees that the overall cohesiveness of the Strategy can be further strengthened and demonstrated in the Final version. In particular, there are considerable opportunities to identify connections and the complementary nature of opportunities and outcomes relating to Traditional Owners and First Nations people across the Priorities. Currently, these are limited to the Actions within Priority 2. This may be a symptom of this Priority being developed in isolation from others. This submission offers NSW a series of examples or suggestions for where cohesions with Priority 2 can be strengthened across the other Priorities and Actions. MLDRIN expects that NSW will work with Traditional Owners and First Nations, and the Aboriginal Water Coalition, to identify others.