Professor Poh-Ling Tan and
Dr Sue Jackson
Griffith University
111 Kessels Road, Nathan
QLD 4011
Email:p.tan@griffith.edu.au

17 Dec 2014

The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001
Email: nativetitle@alrc.gov.au

Submission to Australian Law Reform Commission Review of the *Native Title Act 1993* (Cth), Discussion Paper 82 of October 2014

We welcome the opportunity to provide input to the Australian Law Reform Commission (ALRC) in its review into the *Native Title Act 1993* (Cth) (NTA). We note the Terms of Reference for the ALRC's review and the intent to enhance the opportunity to address and reduce barriers to the recognition of native title.

As academics who have a special interest in how the NTA affects access to water for Indigenous people, we draw the ALRC's attention to our various contributions on this subject (e.g. Tan and Jackson 2013; Jackson and Altman 2009). We base our submission on (1) analysis of how the NTA and other relevant legislation operate in practice and (2) the interests of key stakeholders as articulated by Indigenous participants to our research,[1] as well as Indigenous advocacy groups such as the First Peoples Water Engagement Council[2] and the Indigenous Water Policy Group of the North Australian Indigenous Land & Sea Management Alliance (NAILSMA)[3].

Reform of the NTA is critical for Indigenous access to water because two iterations of national water policy over the past twenty years have failed to advance Indigenous people's rights and interests in water. The first, Council of Australian Governments (CoAG) reform in 1994 mainly addressed economic and environmental implications of water use with no mention of Indigenous access to water. While the National Water Initiative (NWI) (CoAG, 2004) expressly recognised the interests of Indigenous peoples in water, the policy had little Indigenous input and is criticised for not providing enough guidance for its implementation (Jackson & Morrison, 2007) nor is it sufficiently broad or compelling in its directives. The NWI encourages Indigenous participation in water planning and expects that their interests and values should be recognized in plans, however, its implementation is largely reliant on Indigenous people having rights under the NTA. In its 2011 audit of water reforms, the NWC stressed that despite improved consultations with Indigenous

[1] This includes data from interviews, focus groups and general discussion at a Queensland Aboriginal Land and Water Management Forum attended by 30 Aboriginal participants (Queensland Aboriginal Forum, Brisbane, 2013).
[2] See http://www.nwc.gov.au/organisation/partners/fpwec
[3] See http://www.nailsma.org.au/water-resource-management/indigenous-water-policy-group-iwpg.

communities in water planning and management by most jurisdictions, there was a general failure to incorporate effective strategies for achieving Indigenous social, spiritual and customary objectives in water plans as envisaged under the NWI (NWC, 2011, p. 46). Indigenous access to water remained, in the view of the National Water Commission, as a reform objective that had not been met.

We now address matters specifically related to Discussion Paper 82.

Five guiding principles

Principle 4, which is that reform should reflect Australia's international obligations in respect of Indigenous peoples and that governments at all levels should have regard to UNDRIP recognizes as a key element FPIC.

FPIC and water rights

The special relationship between land and *water* and Indigenous peoples is well established. At international law and in the policies of international financial institutions and development agencies, such as the Inter-American Development Bank and the World Bank, this relationship has been translated into requiring special safeguards for indigenous peoples in projects that affect their traditional lands, territories, and resources, reflecting legal norms including ratified international treaties (Carino and Colchester 2010; Human Rights Council, 2010).

The UN Permanent Forum on Indigenous Issues proposes several solutions which include 'promoting self-determination through collective economic activities, maintaining the integrity of indigenous governance, implementing models of development where the intended outcome is considered in terms of improving the quality of life, enriching the notion of balance with Mother Earth, and promoting spiritual practices and the knowledge institutions of indigenous peoples' (Human Rights Council, 2012, p 6, /HRC/21/55 para 17).

These are the precise sorts of measures called for in the landmark *Indigenous Peoples Kyoto Water Declaration*, delivered at the Third World Water Forum in 2003. The declaration articulates a reverence for life-giving force of water and specifically affirms indigenous peoples' '…relationship to Mother Earth and responsibilities to future generations….' It states that, 'we recognise, honour and respect water as sacred and sustaining of all life (p. 1). Consistent with the UNDRIP, the Kyoto Declaration asserts, inter alia, a right to 'freely exercise full authority and control of our natural resources **including water'** (emphasis added p. 2).

The NTA as it currently stands and water legislation of all Australian states and of the Commonwealth do not as yet honour or implement FPIC in respect of water. There are numerous occasions where the UN has censured Australia for not conforming to international standards (refer to UPC, various other matters in AHRC submissions). In Tan and Jackson 2013 we point to the lack of a robust consent mechanism in relation to Indigenous rights and this is summarized in the next paragraph.

The right to negotiate and water

When the NTA was passed, the scope was defined to include rights over waters located within traditional estate boundaries. It confirmed Crown ownership of water and minerals, while guaranteeing rights to customary use of resources for sustenance (hunting, gathering and fishing). In addition, a right to protect sites or areas of significance that include waters has been recognized as a native title right. A number of commentators have observed the negative effect of the Ten

Point Plan on Indigenous water rights when, in 1998, native title holders lost the short-lived right to negotiate (RTN) over water resource developments. Gardner et al observe that native title to water "had the potential to be of great significance in the allocation and management of water rights in Australia" but this potential "has been denied by the manner of its development both under common law and statute". In a brief period between 1993 and 1998 Indigenous peoples could negotiate rights over water resource developments; however, amendments to the *Native Title Act* abolished that right. A United Nations Committee considered that Australia was not only in breach of its international obligations, but that it had created legal certainty for States and third parties at the expense of native title.

It is likely that the RTN over water resource development may not even be adequate to protect Indigenous values in water. As the Mithaka example later in this submission will demonstrate, a RTN over mineral development has not proved satisfactory to Indigenous groups.

FPIC required for water development

The idea of requiring FPIC in respect of water and resource management is not new. It was a fundamental tenet of a Private Members Bill to protect the rights of Traditional Owners (TOs) by requiring that wild rivers declarations could proceed only with their consent. This Bill was introduced by the present Prime Minister, Tony Abbott, while he was Leader of the Opposition, in the speech introducing the *Wild Rivers (Environmental Management) Bill 2011 (Cth)* Abbott referred to UNDRIP and called on the Rudd government to give practical effect to Aboriginal peoples rights to "own, use, develop and control" their own land and resources (Abbott, 2011 p 9950). Another example of the FPIC applied to natural resource management and heritage is found in relation to questions raised in relation to *Cape York Peninsula Heritage Act 2007* (Qld) nomination for World Heritage listing. Tony Burke, then Minister for Environment, assured Aboriginal groups in the Cape that nomination would only go ahead with free prior and informant consent (Logan, 2013, p. 169). Tan (under review) discusses other issues about wild rivers, which are not strictly relevant to this submission.

FPIC has also been endorsed by the First Peoples Water Engagement Council (FPWEC) and their 2012 national report calls for: self-determination (recognition element); full free and informed consent; right to maintain and protect culture and environment including water; and a right to social and economic development. These key claims by include a call for the opportunity to be 'intrinsically involved' in decision-making (p. 10), and point to the shortcomings of the current model of consultation saying that 'consultations should not be limited about the minor details of a policy when the broad policy direction has already been set.'

Similarly in the context of wild rivers legislation and large scale development which impact on water resources, Aboriginal groups in Queensland have called for the implementation of FPIC where policy decisions are made (Queensland Forum, 2013).

As the benefits of water development are less easily articulated than mineral development, and the impacts on the environment and other third parties even more widespread, **we submit that the principle FPIC should be recognized for all forms of water development, further allocation of water entitlements, including any other large scale mining or commercial development which has an impact on water resources.**

Our reasons are:

- In many areas of Australia, because of the restrictive evidentiary requirements of proving NT including connection to land, many Indigenous groups have insurmountable barriers placed and have failed to prove NT, thus permanently locking them out of both land and *water.*
- For other claimants the complexity of the NT process has impaired their future opportunity to access water which has been converted to a tradable entitlement in the hands of current users.

Complexity of NT process undermining future prospects of Indigenous peoples

We support the ALRC proposal in Chapter 5 that there be explicit acknowledgment in the *Native Title Act* that traditional laws and customs under which native title rights and interests are possessed may adapt, evolve or otherwise develop. We also support that that the definition of native title in s 223 of the Act clarify that rights and interests may be possessed under traditional laws and customs where they have been transmitted between groups in accordance with traditional laws and customs.

We support the ALRC view that while it is important that claims are rigorously tested, these requirements can result in long time frames for determinations. Such considerations, however, must be balanced by the acknowledgment that it is necessary to invest sufficient time and resources in the claims process to secure enduring outcomes for all parties (Para 1.8 of DP 82)

From our research we find that the long delays in determination has adverse impact on access to water for Indigenous claimants, while water plans roll out locking in entitlements for non-Indigenous consumptive use. Except for Western Australia, most State water plans suggest that water managers appear to be waiting for native title determinations before assessing the potential requirements arising from successful claims (Tan and Jackson, 2013). In New South Wales, for example, as of April 2012 there had been only two determinations that recognised native title. The slow pace and low numbers of determinations are likely to limit the allocation for native title purposes and prejudice potential claimants.

The objective of thorough claim assessment is a worthy one however we would like to draw attention to the consequences of lengthy processes, particularly in relation to native title cases where rights to commercially valuable and limited resources are in question. Australia has seen a number of new commodity markets develop in certain natural resources, the two most notable being water and carbon. Indigenous peoples have interests in both and their recent experience in pursuing opportunities in these sectors reveals deficiencies in the native title regime and its administration.

Market-based instruments like cap and trade systems need to create scarcity by limiting access to a resource. Once allocated, access to tradeable and valuable entitlements or permits can only be obtained by buying from willing sellers. Questions of timing of allocations and the recognition of rights can therefore have a bearing on the degree of equity of access to resources. These increasingly popular approaches to resource allocation protect the interests of those with established and recognized rights and interests. There is therefore a real risk that those indigenous groups whose rights are yet to be recognized through a determination may be locked out of a market approaching full allocation if their claim is to take many years to be heard (see Jackson and Altman 2009 for a water rights case in the Northern Territory). Such an outcome is counter to the

National Indigenous Reform Agreement policy that aims to encourage economic participation by Indigenous communities (see page 29 of the ALRC Discussion Paper).

A case from the Northern Territory illustrates the need for reform. Indigenous water reserves first introduced in Queensland were further developed in the NT to overcome or address the lengthy process anticipated in the Katherine native title claim. Current NT water law does not recognise the need for a specific indigenous allocation for commercial purposes. Sustained lobbying by indigenous organisations in the NT and beyond during the past three years has resulted in a significant Australian water policy innovation, the Strategic Indigenous Reserve, which was designed to provide economic benefits to indigenous people from the use of and trade in water. An SIR was first proposed in 2009 in the Katherine (Tindal Aquifer) Water Allocation Plan. The Katherine Plan (2009–2019) mandates 680ML for indigenous commercial development if the existence of native title is recognised within five years of plan commencement. This amount of water was determined by the percentage of the plan area under native title claim in 2009 – some 2% approximately. For as long as the native title determination is unresolved, there remains no indigenous specific allocation.

The Mataranka Plan immediately to the south of the Tindal Plan proposes to substantially amplify the scale and significance of the SIR because Indigenous freehold title comprises approximately 75% of the plan area. The amount specified in the draft Mataranka Plan is 4875 ML/year, or 25% of the commercial allocation (Part 5, Clause 20, DNRETAS 2011). In the form contemplated in the Mataranka Plan, the reserve could be accessible by the grant of licenses (entitlements) that are saleable as a temporary trade. The rules surrounding the issue of water licences for that part of the licence pool designated as a SIR have not yet been developed but were to be documented in the implementation strategy for the Plan. Since the draft Plan was published the new NT government placed a moratorium on SIRs leaving indigenous communities with no rights to use water for commercial purposes in at least three rapidly developing water resource areas (Tindal, Oolloo, Mataranka).

Commercial interests in water be recognized as part of native title rights

We support Proposal 8–1 that Section 223(2) of the Native Title Act should be repealed and substituted with a provision that provides:

> Without limiting subsection (1) but to avoid doubt, native title rights and interests in that subsection: (a) comprise rights in relation to any purpose; and (b) may include, but are not limited to, hunting, gathering, fishing, commercial activities and trade.

We support the inclusion of commercial activities and trade in the list of purposes to which native title rights may relate. With respect to water, where the necessary connection and other requirements for native title are currently satisfied, the content of rights to water within a native title claim are generally regarded by the courts as usufructuary in character, and a number of native title determinations have recognized limited, non-exclusive and non-commercial rights to use water without the need for a license. In a similar vein to the comments above, this narrow definition is having the effect of excluding Indigenous people from valuable markets and is counter to national Indigenous policy. Definitions and interpretations of native title that preclude commercial use will perpetuate and entrench Indigenous disadvantage and marginalization, thus we support the proposal that the definition in s 223 reflect the law in *Akiba v Commonwealth*, that native title is a 'right for any purpose'. We support that the ALRC does not propose that the terms 'commercial activities' and 'trade' be defined in the Act.

Jurisprudence in other common law countries provides a wider spectrum of potential legal understandings of the nature of such rights. For example, Australian interpretations contrast with the 'hard' property rights recognized in the US decision of 1909 in *Winters v United States,* which have provided 'tribal seats at the bargaining table' and proven effective in delivering substantial water rights, federal funds and management authority over a range of tribal activities (Jackson and Langton 2012). While the Winter's doctrine supports Indian development rights to take water to fully use the reserve for agriculture,
recent U.S.decisions have considered the use of water for other than agriculture and the non-consumptive nature of an Indian water right to support hunting and fishing.

Reform of NTA's limited protection of Indigenous rights against resource exploitation

In addition, two recent examples reveal shortcomings in the level of protection afforded to Indigenous peoples facing resource development proposals. These relate to the Mithaka people of the Channel Country and the Quandamooka people of Stradbroke Island, both in Queensland. It is an avowed objective of the present government to encourage resource development. A new policy for petroleum development released in August 2014 will lead the way to amend current regulatory framework to "support" and "encourage" the development of the petroleum industry, including providing greater tenure security for industry and supporting the efficient delivery of necessary infrastructure (Queensland Government 2014).

There are several limitations to the Right to Negotiate as presently allowed in the NTA. In their submission to the UN Special Rapporteur on the Rights of Indigenous Peoples in December 2014, the Mithaka people drew attention to the limitations of procedural rights to negotiate. Since 2002, the Mithaka people have a registered claim over 47,150 km^2 in South Western Queensland, comprising part of the catchments of the Cooper Creek, Diamantina, and a small part of the Georgina. This area is part of a larger bio-region often referred to as the Channel Country.

Currently there are proposals for large scale CSG and petroleum exploration and exploitation over the Channel Country. The *Wild Rivers Act 2005 (Qld)* provided regional protection over land and water in the fragile floodplain areas (Gorringe, 2014, Tan in press). The Mithaka people welcomed the statutory framework and worked collaboratively with water managers in constructing a Declaration for limiting development on natural features considered worthy of high protection. The *Wild Rivers Act 2005 (Qld)* took precedence over petroleum legislation.

To the dismay of the Mithaka, in November 2014 the Queensland government repealed the Wild Rivers legislation and effectively dismantled statutory protection replacing them with a scheme under the *Regional Planning Interest Act 2014 (Qld)* (RPIA) which has weaker environmental provisions. Significantly, the RPIA does not prohibit petroleum mining and exploration except for open cut mining. Approvals for these activities, unlike project-specific mining development, do not require consultation with the public or NTA registered claimants. Hence registered claimants such as the Mithaka are excluded from policy decisions or participation in decisions of large scale exploitation and exploration of petroleum resources. The only right to participate is in the development of environmental impact statements, which for reasons outside the scope of this review, are found to be "so limited as to be ineffectual" (Gorringe, 2014 p 24).

The right to negotiate under the NTA is limited in its protection of the Mithaka's values relating to the landscape or environment. The RTN does not grant any right to participate in the EIA process, or in policy-making. Further, as the Mithaka point out, where the negotiation process fails, the dispute is referred to an arbitral body, usually the National Native Title Tribunal. For a critique of

the arbitration performance of the NNTT in mining negotiations see Corbett & O'Faircheallagh 2006. Gorringe (2014) states;

> *The Tribunal rarely decides that the grant of tenure cannot be made… an arbitral body cannot impose a condition requiring the payment of royalty-type payments (i.e., payments worked out by reference to profits, income, or production). Accordingly, if native title claimants/holders believe that the arbitral body is highly likely to allow the grant of tenure, and wish to obtain financial benefit from the inevitable resource exploitation of their lands, there is a strong incentive for them to agree to the grant of tenure during negotiations so that the matter is not transferred to an arbitral body which cannot order royalty-type payments. As a result, native title claimants/holders are in a weak bargaining position if they do not want to consent to the grant of tenure (footnotes omitted).*

Data from public records further supports the allegation that the NNTT rarely rejects a mining proposal when called on to arbitrate competing claims. In 2011-2012, the Tribunal found that only 4 out of 16 contested future acts were not allowed; in 2010-2011, the Tribunal found that only 1 out of 27 contested future acts was not allowed; and in 2009-2010, the Tribunal allowed all 9 contested future acts to be done.[4]

Another dispute which illustrates the difficulties over mining relates to leases over North Stradbroke Island. In *Delaney on behalf of the Quandamooka People v State of Queensland* [2011] FCA 741 *t*he Quandamooka were granted native title of the Island by the Federal Court in July 2011 in a consent determination. The Quandamooka-State of Queensland Indigenous Land Use Agreement (ILUA) was registered by the National Native Title Tribunal on 8 December 2011, and this provided an agreement with the State Government for mining to stop in 2019. The Bligh State Government passed the North Stradbroke Island Protection and Sustainability Act (NSIPSA) in 2011. This act included key points of the ILUA and legislated the end of mining at the Yarraman Mine in 2015, owned by Belgian mining company Sibelco. The act also facilitated an extension of mining at Enterprise Mine until December 2019, and states that the relevant mining interest cannot be renewed. In accordance with NSIPSA, full native title rights, would revert to the Quandamooka People in 2019.

In late 2013, the Newman Government amended the NSIPA. The amendments extend sand mining on North Stradbroke Island and expand the area of the island available to be mined, without the consent of the native title holders, the Quandamooka people. Instead of expiring on 2019, the 2013 amemdmets allow for the mining company to apply for a renewal of the Yarraman mine until 2020, the Enterprise potentially until 2035, and in some circumstances to 2040 (section 11 E). The Quandamooka people have lodged a High Court challenge in June 2014 alleging that there was no consultation at all with the Indigenous peoples while there were numerous meetings between the

[4] See National Native Title Tribunal, Annual Report 2011-2012, above n 25, Table 13 (page 61); National Native Title Tribunal, Annual Report 2010-2011, Table 13 (page 82), http://www.nntt.gov.au/Reporting%20Publications/Annual%20Report%202010-2011.pdf; National Native Title Tribunal, Annual Report 2009-2010, Table 23 (page 82), http://www.nntt.gov.au/Reporting%20Publications/Annual%20Report%202009-2010.pdf (both accessed November 11, 2014). See also, Australian Lawyers for Human Rights, Exposure Draft – Native Title Amendment Bill 2012 (October 23, 2012), paragraph 8, http://www.ag.gov.au/Consultations/Documents/Currentnativetitlereforms/Australian%20Lawyers%20for%20Hu man%20Rights%20Submission%20[PDF%20536KB].pdf (accessed November 11, 2014): "The Tribunal (once its power to arbitrate is enlivened) almost always allows future acts to be done...

State politicians and the mining company (Case B26/2014). On 28 November 2014, at a directions hearing, it was pointed out that the argument would probably narrow to whether on the construction of the ILUA that all future acts in in relation to the island, and that the ILUA provided an exhaustive list of those acts. If so then the state's *North Stradbroke Island Protection and Sustainability and Another Act Amendment Act* 2013 (Qld) is inconsistent with a Commonwealth law, namely the *Native Title Act* 1993 (Cth) and invalid by operation of s 109 of the Constitution.

Neither the Mithaka or Quandamooka peoples are completely opposed to resource development on their traditional lands. They however want to see that development does not compromise the spiritual, cultural and environmental values that are central to their identity. We believe that reform to the NTA by allowing for FPIC and a duty to act honourably and in good faith will allow for the required consideration, evaluation and recognition.

Procedural issues relate to an implementation of the FPIC in relation to mining and other large scale developments. However in a recent NT claim over Cape York we see that Indigenous peoples have abandoned separate native title claims to form one body to negotiate their rights (McKenna, 2014). This move suggests that Indigenous peoples are seeking new forms of organizations that will allow for governments and large corporations to seek FPIC.

Duty of to act honourably and in good faith

Allegations raised by the Quandamooka peoples in the claim relate to the Queensland government not acting in good faith. The Canadian Supreme Court considered these issues in *Haida Nation v. British Columbia (Minister of Forests*).[5] Traditional homelands for the Haida people had rich timber resources over which logging licences had been issued. In 1999 three licences were reissued. The Haida people who had lodged claims over the land, but not yet received title, launched a lawsuit. Key questions were – did the government, who held legal title to the land, owe a duty to consult with the Haida people, and to accommodate their concerns regarding the logging? And did this duty arise *before* the Haida people proved their title to land? Even though the Haida's claim was strong, it was also complex and would take many years to prove. Absent consultation and accommodation, the Haida might 'win their title but find themselves deprived of forests that are vital to their economy and their culture'.[6]

The similarities between the interests of Canadian and Australian Indigenous peoples are apparent, but the policy and legal responses taken by governments differ, and this ALRA review is an opportunity to adopt the duty found in Canada. The duty to consult with Aboriginal peoples and accommodate their interests found by the Canadian Supreme Court in *Haida Nations* is

> *grounded in the principle of the honour of the Crown, which must be understood generously… the Crown, acting honourably, cannot cavalierly run roughshod over Aboriginal interests where claims affecting these interests are being seriously pursued… The duty to consult and accommodate is part of a process of fair dealing and reconciliation … Consultation and accommodation before final claims resolution preserve the Aboriginal interest and are an essential corollary to the honourable process of reconciliation… that s. 35 of the Constitution Act, 1982, demands.*[7]

Section 35(1) of Canada's Constitution Act, 1982 provides that "the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognised and affirmed." *R v Sparrow* was the Canadian court's first opportunity to explore the scope of s. 35(1) and established that the

[5] [2004] 3 S.C.R. 511, 2004 SCC 73.
[6] Ibid [7].
[7] Ibid.

Crown had a duty to act in a fiduciary capacity to Aboriginal people.[8] Significantly in *Haida Nations*, the Court found that the duty to consult and accommodate Aboriginal peoples springs not from this fiduciary duty but a duty to act honourably. The Canadian Supreme Court went on to ground the duty as *part of the process of reconciliation* that begins with the assertion of sovereignty and continues beyond formal claims resolution.[9]

The Canadian approach is founded on its Constitution and cannot be easily transported to Australia where no similar duty has been found by our courts. In the eyes of doctrinal legal analysts, this would put an end to the matter. However, in the context of legal reform, we submit that the Canadian approach, i.e. *to act honourably towards Indigenous peoples*, should be given utmost consideration.

In conclusion, we thank the ALRC for the opportunity to make this submission.

Yours faithfully

Professor Poh-Ling Tan & Dr Sue Jackson

[8] *R v Sparrow* 12/18/14[1990] 1 SCR 1075, 1106-8. For a full analysis of *Sparrow* and more recent cases see M Morellato, 'The Crown's Constitutional Duty to Consult and Accommodate Aboriginal and Treaty Rights' (Research Paper for the National Centre for First Nations Governance, 2008).
[9] *Haida Nations*, above..

References

Abbott, T 2011. Hansard, House or Representatives, Monday 12 September, First Reading, http://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/24fe5c5f-1391-455b-808d-7943b3d1ab3e/toc_pdf/House of Representatives_2011_09_12_411_Official.pdf;fileType=application%2Fpdf - search="r4646 first reading"

Corbett, T. and C. O'Faircheallaigh 2006. Unmasking the Politics of Native Title: The National Native Title Tribunal's Application of the NTA's Arbitration Provisions, UWAL REV 33 153-177.

Council of Australian Governments 2004. *Intergovernmental Agreement on a National Water Initiative*. Retrieved from the National Waer Commission website http://www.nwc.gov.au/__data/assets/pdf_file/0008/24749/Intergovernmental-Agreement-on-a-national-water-initiative.pdf

First Peoples Water Engagement Council. 2012. *Advice to the National Water Commission: May 2012*. Retrieved from National Water Commission Website http://www.nwc.gov.au/__data/assets/pdf_file/0004/22576/FPWEC-Advice-to-NWC-May-2012.pdf

Jackson, S. and J. Altman 2009. Indigenous rights and water policy: perspectives from tropical northern Australia, *Australian Indigenous Law Review* 13(1): 27–48.

Jackson, S. and M. Langton 2012. Trends in the recognition of indigenous water needs in Australian water reform: the limitations of 'cultural' entitlements in achieving water equity, *Journal of Water Law* 22(2/3):109-123.

Mckenna, M 2014. "Clans unite for record Cape York Claim", *The Australian*. 12 December p 1

National Water Commission 2011. *The National Water Initiative – Securing Australia's Water Future: 2011 Assessment* .

Queensland Aboriginal Forum 2013. *Queensland Aboriginal Forum held 15 and 16 November 2013*. Brisbane, Queensland. Report of proceedings available from author.

Queensland Government, Department of Natural Resources and Mines 2014. A framework for the next generation of onshore oil and natural gas in Queensland, accessed December 2014 at http://www.dnrm.qld.gov.au/__data/assets/pdf_file/0015/201183/framework-deep-gas-oil.pd

Tan, P. and S. Jackson 2013. Impossible Dreaming - does Australia's water law and policy fulfill Indigenous aspirations? *Environment and Planning Law Journal* 30: 132-149.

Tan, P (under review). "Aboriginal access to water and wild rivers legislation in Queensland: Implications for trans-jurisdictional governance".

Thompson, C 2014. "Quandamooka high court challenge. *The Stringer,* 13 December. Accessed 17 December 2014 at http://thestringer.com.au/quandamooka-high-court-challenge-9183#.VJDWV4d62-I