



Australian Government

Department of Climate Change, Energy,
the Environment and Water

Committee on Aboriginal and Torres Strait Islander Water Interests

submission to the

Australian Law Reform Commission
Issues Paper for the Review of the
Future Acts Regime

February 2025



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Acknowledgement of Country

We acknowledge the Traditional Owners of Country throughout Australia and recognise their continuing connection to land, waters and Culture. We pay our respects to their Elders past and present.

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2 Acknowledgement

The Committee on Aboriginal and Torres Strait Islander Water Interests (the Committee) wishes to acknowledge and thank the many Aboriginal and Torres Strait Islander-run organisations, peak bodies and body corporates, as well as Traditional Owner groups, researchers, scientists, and individuals who have worked tirelessly to establish your own agreement making platforms with government, so you are able to have a 'seat at the table' and meaningfully advocate for land and water rights and interests in native title.

The Committee encourages all Aboriginal and Torres Strait Islander Peoples to submit a response to the Australian Law Reform Commission Issues Paper for the review of the Future Acts Regime to ensure your diverse views and perspectives are also heard.

3 Authors

The following members of the Committee developed this submission:

Dr Virginia Marshall (Chair)

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Ms Kay Blades

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The Committee also wishes to acknowledge previous members who contributed knowledge and expertise, which informed the development of the Insights Paper which has informed this submission.

4 Indigenous Cultural and Intellectual Property

This submission contains Indigenous Cultural and Intellectual Property (ICIP) and is underpinned by the principle of *free, prior, and informed consent* in relation to ICIP, as set out in the United Nations Declaration on the Rights of Indigenous Peoples. The Committee is the owner of all ICIP in this submission. The Committee must be acknowledged as the owner of this submission in any use of it. Further, this submission must not be appropriated or used in any other way than its intended purpose without the consent of the Committee.

5 About the Committee on Aboriginal and Torres Strait Islander Water Interests

The Committee was established in 2020, it is a non-statutory advisory body and is led by a membership of 6-9 Aboriginal and Torres Strait Islander Peoples with extensive expertise across western and Cultural water rights and interests, water science and management, and water policy and planning.

Committee members do not represent, speak, or act for any individual First Nation, organisations, or community groups. Committee members do not represent federal, state, or territory governments; however, where possible, the Committee does seek to have at least one representative from each state and territory to draw on their knowledge and experience at the local level to bring to the national discussion.

The Committee is supported by an Executive Officer, Secretariat, and secretariat policy team within the First Nations Water Branch in the Australian Government Department of Climate Change, Energy, the Environment and Water. The First Nations Water Branch plays a significant internal and external role to increase the Committee's exposure, reputation, and reach.

The Committee plays a unique role in advising federal, state and territory governments on world-leading water reform initiatives occurring in Australia. The Committee recognises that Aboriginal and Torres Strait Islander Peoples have been advocating for an equal voice in Australia's water planning and management legislation for a very long time. Aboriginal and Torres Strait Islander Peoples have never ceded sovereignty of their lands, waters and skies. It is the exclusive birth right of Aboriginal and Torres Strait Islander Peoples to be supported to honour their Cultural, spiritual, social, economic, and environmental water interests.

The Committee operates within, and promotes, an environment of truth-telling about the impacts of ongoing colonisation on Aboriginal and Torres Strait Islander Peoples' water rights and interests. The Committee aims to elevate the Cultural, spiritual, social, economic, and environmental interests of Aboriginal and Torres Strait Islander Peoples within Australia's water policies, programs, and legislation, to ultimately ensure Aboriginal and Torres Strait Islander Peoples have enduring access to, ownership of, and management of water.

More information about the Committee is available at [Committee on Aboriginal and Torres Strait Islander Water Interests - DCCEEW](#)

6 Progress to date

Since colonisation, Australia's laws and policies related to water, such as the *Native Title Act 1993*, have disenfranchised and disempowered Aboriginal and Torres Strait Islander Peoples regarding their water rights and interests. The Australian Law Reform Commission noted in their *Connection to Country*¹ Final Report that, "*there has been a longstanding pre-occupation in the Australian legal system and its colonial forbears with the factual character of Aboriginal and Torres Strait Islander peoples' laws and customs*".²

The Committee acknowledges and thanks the many Aboriginal and Torres Strait Islander Peoples that have worked tirelessly to uphold their water rights and interests and their ongoing traditional physical connections as Australia's First Peoples. There has been a steady increase, particularly in the last decade, in advocacy efforts, but there is still much that needs to be achieved before Aboriginal and Torres Strait Islander Peoples are supported by all levels of government to honour their Cultural, spiritual, social, economic, and environmental water interests.

The Committee has developed a living, historical truth-telling representation of Australia's water management laws and policies and our advocacy efforts are to ensure that these are not forgotten. As a living document, the timeline will be updated annually to capture new achievements as they come to light. These strategic documents can be found at [Committee on Aboriginal and Torres Strait Islander Water Interests - DCCEEW](#)

The Committee's ongoing efforts includes working with the Australian Government to elevate Aboriginal and Torres Strait Islander water rights and interests in a new National Water Agreement (NWA), as well as implementation of Closing the Gap Target 15 (Aboriginal and Torres Strait Islander people maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters) and the Aboriginal Water Entitlements Program, among other things. Under the governance arrangements for the new draft NWA, the Committee looks forward to an ongoing role in the design, implementation, monitoring and evaluation of the NWA.

More information on these bodies of work can be found at [First Nations water policy - DCCEEW](#).

¹ Australian Law Reform Commission (2015).

² Australian Law Reform Commission (2015).

7 The Committee's submission

The Committee welcomes the opportunity to provide a submission to the Australian Law Reform Commission Issues Paper 50 Review of the Future Acts Regime.

The Committee understands, as per the terms of reference, that this review is to consider the following:

- a) Rectify any inefficacy, inequality, or unfairness in how the regime currently works, as well as ways to make it work more efficiently;
- b) Support native title holders so they can effectively engage with the future acts regime, as well as supporting fair negotiation and collaboration between native title holders and proponents; and
- c) Strengthen data collection and data transparency to support the operation of the future acts regime into the future.

The following submission represents the Committee's initial views related to this review which centres upon [CAWIs Terms of Reference](#). We discuss both Aboriginal and Torres Strait Islander Peoples' water rights, interests and values, as well as the key policy considerations that have, are or will affect these and to which a precautionary principle should be applied under the future acts regime.

The Committee reserves the right to make further submissions should further consultation be undertaken. The Committee also encourages other Aboriginal and Torres Strait Islander Peoples and their organisations such as Prescribed Body Corporates, land councils and Indigenous Peak Bodies to make a submission.

Aboriginal and Torres Strait Islander water rights, values and interests

It is important to state at the outset that, while the broader *Native Title Act 1993* (the Act) covers both lands and waters, Section 211 of the Act limits this recognition to only water rights and interests for 'hunting, fishing, gathering, or cultural and spiritual activities', the Act does not take into consideration the full suite of Cultural, spiritual, social, economic and environmental *water rights, values and interests* that Aboriginal and Torres Strait Islander Peoples have. The future acts regime also gives governments the power to override and undermine Aboriginal and Torres Strait Islander Peoples rights to lands and waters that have existed for millennia, and which has by its own admission been recognised by western law.³ Both components create fundamental unfairness within the native title framework and

Despite holding rights to 40% of Australian land through native title, Aboriginal and Torres Strait Islander Peoples own less than 0.2% of surface water

³ The Committee acknowledges Aboriginal and Torres Strait Islander Peoples traditional and customary rights to land and waters, where determinations under native title have been negative or where other legislation applies,

are in direct contradiction to the rights and principles outlined in the United Nations Declarations on the Rights of Indigenous Peoples (UNDRIP). Further, there are no mechanisms within the broader Act or, where additional interests are granted through the future acts regime, to protect the lands and waters which support Aboriginal and Torres Strait Islander Peoples Cultural, spiritual, social, economic or environmental water rights, values and interests, whether this is from unsustainable or improper management of natural resources (such as groundwater over-extraction) or by destruction caused by mining or industry (as was the case for the Juukan Gorge). The future acts regime under native title relating to water resources must include application of the precautionary principle to protect all water resources – rather than taking a default position that compensation alone is sufficient.

The systemic challenges faced by Aboriginal and Torres Strait Islander Peoples in relation to water mostly mirror those faced in relation to land, such as difficulties in engaging in rigid formal processes or tight timeframes and a general lack of resources or organisational capacity of native title prescribed bodies. Many Aboriginal and Torres Strait Islander communities have endured and experienced negative effects of being involved in native title. Noting that Professor Bartlett ‘suggested the amendments to the Act were largely directed to efficiency, efficacy, timeliness, streamlining, rather than addressing inequality’⁴ – we stress the significance of ensuring that native title meets the needs of Aboriginal and Torres Strait Islander communities is paramount in this inquiry.

Despite being Australia’s First Peoples for the past 65,000+ years, Aboriginal and Torres Strait Islander Peoples are now a minority⁵ which faces the most amount of disadvantage and exclusion in society. How Aboriginal and Torres Strait Islander Peoples – and their needs, values and aspirations – are included (or excluded) in policies and frameworks that affect them, will have a direct impact on Australia’s future and aspirations – as well as the United Nations Universal Periodic Review reporting on Australia’s human rights record – which is being drafted this year.

To better understand Aboriginal and Torres Strait Islander water interests and values, the Committee recommends that the ALRC Review fully considers the following key documents as part of its review:

1. *CAWI Insights Paper* (attached) developed by the Committee which outlines the key Aboriginal and Torres Strait Islander Peoples water values and interests which all governments should consider when undertaking native title reform.
2. *The History and Timeline* of Aboriginal and Torres Strait Islander water (attached).
3. *All targets under the National Agreement on Closing the Gap*, which are all highly dependent on water in some form or another.
4. The *draft National Water Agreement* (attached), particularly Objective 3 and any other relevant sections related to Aboriginal and Torres Strait Islander Peoples.
5. The UNDRIP (adopted by the United Nations General Assembly on 13 September 2007, noting *Article 3 Indigenous Peoples have the right to self-determination – to determine and develop priorities and strategies for the development or use of their lands or territories and other resources; and Article 32(1) – the right to own, develop, control and use the lands and*

⁴ Australian Law Reform Commission (2015).

⁵ Under the 2021 census, Aboriginal and Torres Strait Islander Peoples comprise 3.8% of Australia’s population.

territories, including the total environment of the lands, air, waters, coastal seas, sea-ice flora, fauna and other resources that they possess by reason of traditional ownership or other traditional occupation or use ... Article 26(2)).

6. The following recommendations in *Overtaking Aqua nullius: Securing Aboriginal Water Rights* (2017) of 1; 2; 4(h)(i); and 5(a).
7. Jurisdictional legislation such as *Queensland's Human Rights Act 2019*, particularly section 27 and section 28 that defines cultural rights generally, and addresses the distinct 'Cultural Rights' of Aboriginal and Torres Strait Islander Peoples. Including, but not limited to, (d) to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom; and (e) to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.

These documents highlight that:

- Water management *must* recognise that water, land and skies and all its ecosystems are interconnected, and what happens to one will affect the other. This includes what happens with land use, upstream and downstream water, surface water and groundwater.
- For Aboriginal and Torres Strait Islander Peoples, water does more than just provide an economic benefit. Water is vital to Aboriginal and Torres Strait Islander Culture, spirituality, social lives and management of the environment,⁶ as well as to economic livelihoods. All are of equal priority and are dependent on each other. All domains must be factored into water and non-water policies and frameworks, with conscious efforts made to minimise any adverse impacts for Aboriginal and Torres Strait Islander Peoples.⁷
- As Australia's First Peoples, Aboriginal and Torres Strait Islander Peoples have never ceded water ownership. Aboriginal and Torres Strait Islander Peoples must be supported to increase

⁶ Note that there may be different values for Aboriginal and Torres Strait Islander men and women across all of these.

⁷ For example, the construction of dams in the wrong location can have disastrous effects for river flows, dependent ecosystems and Aboriginal and Torres Strait Islander Peoples' Cultural, spiritual, social, economic and environmental values and interests.

their management, ownership and governance of water, in line with the National Agreement on Closing the Gap Target 15c.⁸

- Aboriginal and Torres Strait Islander Peoples must have a say in matters that affect them – and must be included in *all* aspects of water management by shared decision making, underpinned by the human rights principles of self-determination, free, prior and informed consent (FPIC) and Indigenous cultural and intellectual property (ICIP).
- Aboriginal and Torres Strait Islander Peoples have valuable traditional knowledges and sciences which can support a more comprehensive, holistic approach to current water management challenges, practices and decisions, including native title and the future acts regime.

Supporting human rights through native title in Australia

The Committee would like to note the research undertaken by the Australian National University (Wyrwoll et al. 2022) which showed a lack of water quality monitoring in remote Indigenous communities across Western Australia, Northern Territory and Queensland. The researchers also found that almost 630,000 people across 408 locations in Australia faced gaps in access to drinking water which met health and Australian Drinking Water Guidelines, 40% of which were from remote Indigenous communities. This suggests significant issues remain in Aboriginal and Torres Strait Islander Peoples' access to safe, clean drinking water, despite this being a fundamental human right under the United Nations Sustainable Development Goals.

The Committee further notes recent media reporting regarding long-standing water supply issues in several remote Indigenous communities in the Northern Territory and Zenadth Kes (the Torres Strait region of Queensland) which have required the distribution of bottled water.

Water is central to all aspects of Aboriginal and Torres Strait Islander Peoples' lives. Fundamental issues around access to clean water will undermine efforts to improve key indicators and achieve real, meaningful and enduring progress for Aboriginal and Torres Strait Islander Peoples.

'Water security' is critical for native title in Australia

The Committee notes that, despite various references to 'water security', there is no nationally recognised definition in Australia (including in Commonwealth water legislation or the new draft National Water Agreement).

Where water security is defined (e.g. the Town and City Water Security Framework) these are for specific contexts or purposes and may not provide the holistic view of 'water security' required for

⁸ Target 15c - Progress towards securing Aboriginal and Torres Strait Islander interests in water bodies inland from the coastal zone under state and territory water rights regimes. This will include data development to identify a nationally consistent measure for inland waters encompassing, for example, water licenses, water rights and water allocation plans.

Australia. It is difficult to identify, monitor and ultimately assess the current extent of ‘water security’ in Australia, particularly for Aboriginal and Torres Strait Islander Peoples.

The Committee supports the globally accepted definition developed by the United Nations (see Text Box 1) – and as one of its member states. This definition holistically includes key elements of *quantity, quality and affordability/access*, and considers ecosystems and the impacts of climate change.

Text Box 1. United Nations (UN; 2013) definition of water security

“the capacity of a population to safeguard sustainable access to adequate quantities of acceptable quality water for sustaining livelihoods, human well-being, and socio-economic development, for ensuring protection against water-borne pollution and water-related disasters, and for preserving ecosystems in a climate of peace and political stability.”

Water security includes four key pillars: drinking water & human well-being, ecosystems, economic development and hazards such as climate change (see Appendix Table 1).

In relation to the global evidence-based reporting undertaken, for instance, by the Intergovernmental Panel on Climate Change, in its 2023 report it states that *“vulnerability of ecosystems will be strongly influenced by past, present, and future patterns of unsustainable consumption and production, increasing demographic pressures, and persistent unsustainable use and management of land, ocean, and water”*.⁹ However the native title legal regime has not accounted for the significant changes in climate change since the native title legislation commenced – which particularly affects the future acts and water resources. The most marginalised Australians, Aboriginal and Torres Strait Islander Peoples will substantially bear the brunt of these pressures – invariably on the insatiable demand for water.

Only a small amount of Australia’s large wet season rainfall¹⁰ flows into freshwater rivers (about 20%) and underground aquifers (about 15%),¹¹ although even at these small levels they are vital to sustaining Australia’s precious ecosystems and all living things within it.

Is the Future Acts Regime keeping pace?

The Committee notes that Australia is heavily dependent on water for a range of reasons and that Australia’s current and planned policy settings indicate a future where there is increasing demand for water. *Where will this water come from?* How will surface water and groundwater be regularly monitored and managed to ensure that any future acts regime is sustainable and will not be to the detriment of our ecosystems or native title holders. Any reform to the future acts regime must consider how this will affect Aboriginal and Torres Strait Islander Peoples’ Cultural, spiritual, social, economic and environmental values and interests, as well as their land and water rights. Encompassing cultural rights, not to be subjected to forced assimilation or destruction of their culture through inadequate reform or regime change.

⁹ Intergovernmental Panel on Climate Change (2023).

¹⁰ During the dry season, there is next to no rainfall and reduced surface water available.

¹¹ The remaining 65% is lost to evaporation or used up by plants (CSIRO in Australian Government 2015).

Agriculture

The Committee notes that agriculture is often viewed as a key driver for economic growth in many states and territories, yet we know that it requires a significant amount of water.¹² Higher water stress levels¹³ coincide with higher levels of agricultural water abstractions; but, as an example, there is only enough water to irrigate one tenth of the 17 million hectares of agricultural land in north Australia (Australian Government 2015). This indicates that increasing agricultural activities in the future will require a substantial amount of water. In addition, poor agricultural practices bring risks to water and the surrounding environment, such as reduced native vegetation cover, eroded soil, reduced water absorption and increased water contamination. Different forms of agriculture e.g. crop farming also bring risks which need to be fully understood when making policy decisions. Particularly in light of any reform to the native title future acts regime and its impact on native title holders.

Water Stress: the ratio of total freshwater withdrawal to total renewable freshwater resources, after taking into account environmental flow requirements

Groundwater

Notwithstanding that most of the water used for consumptive purposes (e.g. for drinking and agricultural use) in many parts of Australia already come from *groundwater*, the Committee notes that, during dry times, less water tends to come from surface-water sources and more comes from groundwater (Australian Government 2021). We expect this trend to increase as more and more impacts of climate change occur.

It takes a very long time for groundwater systems to naturally recharge. CSIRO (2024) estimate that the average recharge rate is only 44 millimetres per year. Although it differs greatly depending on where you live given each system has different characteristics that contribute to their overall health and replenishment rate. Sustainable management of our groundwater systems will likely require customised management approaches that monitor the rates of drawdown compared to the natural replenishment for each individual system and deploy unique mitigation measures. Unfortunately, there is generally a lack of data relating to many groundwater systems, including how they react to impacts in real-time. The Committee has also considered the importance of Aboriginal fire regimes in overall health and replenishment, especially where these seasonal fire regimes play an important role in primary water loss, interception loss and its function in healthy systems and the productive capacity of their lands and waters, and their subsistence foods, and traditional medicines and other resources.

The Australian Government, under the *Resourcing Australia's Prosperity* initiative, is undertaking a 'first of its kind stock take' of national groundwater. The Committee notes that, while this will allow a greater, one-off understanding of Australia's groundwater resources, easier access to such information may also result in higher rates of groundwater drawdown. There are currently no national plans to undertake ongoing monitoring of these systems to alert us when groundwater levels are reaching critical and unsustainable levels or if their quality is being compromised.

¹² Agriculture accounts for 74% of water consumption in Australia (Department of Agriculture, Fisheries and Forestry 2024).

¹³ Sustainable Development Goal 6.4.2 seeks to ensure sustainable withdrawals and supply of freshwater to address water scarcity.

Recommendations from CAWI

The Committee makes the following recommendations to the Australian Law Reform Commission:

1. Any reform to the future acts regime must consider how it will affect Aboriginal and Torres Strait Islander Peoples' Cultural, spiritual, social, economic and environmental values and interests, as well as their land and water rights.
2. Any reform to the future acts regime must address equality to meet the needs of Aboriginal and Torres Strait Islander communities.
3. The future acts regime relating to water resources must include application of the precautionary principle to protect all water resources, especially for their environmental and cultural values.
4. The future acts regime is to account for climate change on water resources in native title legislation.

8 Attachments

- Insights Paper
- Draft National Water Agreement
- History of Aboriginal and Torres Strait Islander Peoples' water interests, advocacy and reform
- Timeline of Aboriginal and Torres Strait Islander Peoples' water interests, advocacy and reform
- UNDRIP
- Overturning Aqua nullius: Securing Aboriginal water rights (2017) book by Dr Virginia Marshall

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Australian Government

Department of Climate Change, Energy,
the Environment and Water

Insights Paper

Pathway to enduring recognition of Aboriginal and Torres Strait Islander Peoples' water interests in national water reform initiatives

Committee on Aboriginal and Torres Strait Islander Water Interests
December 2023



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Acknowledgement of Country

We acknowledge the Traditional Owners of Country throughout Australia and recognise their continuing connection to land, waters and Culture. We pay our respects to their Elders past and present.

Foreword

Water in all its forms is precious and life-giving, and it is woven through the fabric of Aboriginal and Torres Strait Islander Peoples' customs, stories, livelihoods, and Cultures. Aboriginal and Torres Strait Islander Peoples have strong Cultural obligations to protect, and be custodians of, Australia's waterways (highways), anabranches (arteries and veins), submerged landscapes, wetlands (supermarkets), lagoons, billabongs, and groundwater aquifers (old water).

In 2021, Australia's State of the Environment report summarised the centrality of water to Aboriginal and Torres Strait Islander Peoples, stating, 'The rivers are the veins of Country, carrying water to sustain all parts of our sacred landscape. The wetlands are the kidneys, filtering the water as it passes through the land. Aboriginal and Torres Strait Islander Peoples have rights and a moral obligation to care for water under their law and customs. These obligations connect across communities and language groups, extending to downstream communities, throughout catchments and over connected aquifer and groundwater systems'¹.

Aboriginal and Torres Strait Islander Peoples have been excluded from being able to practice our obligations and customs around water. This has affected the social-emotional dimensions and wellbeing of Aboriginal and Torres Strait Islander Peoples because we are restricted from being able to access, manage and protect our water and Cultural flows². The Committee is determined to see this change.

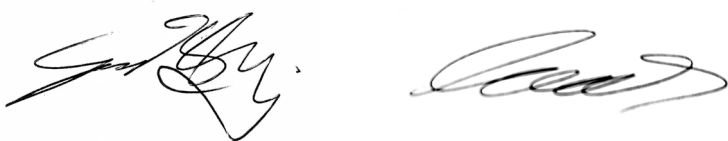
Aboriginal and Torres Strait Islander Peoples own and control less than 0.2 per cent of our surface water entitlements³. Now is the time for Australia to develop an enduring arrangement that supports Aboriginal and Torres Strait Islander Peoples to own, access, and manage water in Australia.

Over the coming few years, Australia has a world-leading opportunity to elevate and recognise Aboriginal and Torres Strait Islander Peoples' water rights, interests, and values across several national water initiatives, including the renewal of the National Water Initiative, the evaluation of the Murray–Darling Basin Plan, establishing a National Closing the Gap Inland Waters target, and the review of the *Water Act 2007 (Cth)*.

In addition to the above-mentioned national water reform initiatives, state and territory governments, Aboriginal and Torres Strait Islander Peoples and Traditional Owner groups are driving their own important water reforms, which aim to recognise the exclusive birth right of Aboriginal and Torres Strait Islander Peoples to have enduring access to, ownership of, and management of water.

This Insights Paper presents a set of Aboriginal and Torres Strait Islander water values, principles, and actions that the Committee wants recognised and reflected within national water reform initiatives. However, we do recognise that these may not capture all Aboriginal and Torres Strait Islander Peoples' water interests and values and we welcome comments and questions so that we can continue to advocate for water rights and advise the Australian Government to the best of our ability.

It is our hope that this Insights Paper supports conversations and a shared understanding about Aboriginal and Torres Strait Islander Peoples' water interests and values.



06 December 2023

Mr Grant Rigney and Mr Rene Woods

Co-Chairs

Committee on Aboriginal and Torres Strait Islander Water Interests

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Mackenzie Waterfall Mackenzie River Grampians National Park, Victoria © Wirestock Creators

Acknowledgement

The Committee on Aboriginal and Torres Strait Islander Water Interests wishes to acknowledge and thank the many Aboriginal and Torres Strait Islander-run organisations, peak bodies and body corporates, as well as Traditional Owner groups, researchers, scientists, and individuals who have worked tirelessly to establish your own agreement making platforms with government, so you are able to have a 'seat at the table' and meaningfully advocate for our water rights and interests.

It is because of your decades-long energy, effort, and commitment that Aboriginal and Torres Strait Islander Peoples have a world-leading opportunity to achieve enduring recognition of our water interests and values in national water reform initiatives.

We thank you.

Authors

The following members of the Committee developed this Insights Paper.

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The Committee also wishes to acknowledge previous members who contributed knowledge and expertise, which informed the development of the Insights Paper. Previous members include Associate Professor Bradley Moggridge (inaugural co-Chair of the Committee) and Professor (HonD) Leslie 'Phil' Duncan.

Indigenous Cultural and Intellectual Property

The Insights Paper contains Indigenous Cultural and Intellectual Property (ICIP) and is underpinned by the principle of *free, prior, and informed consent* in relation to ICIP, as set out in the United Nations Declaration on the Rights of Indigenous Peoples. The Committee is the owner of all IP in the Insights Paper, including all ICIP. The Committee must be acknowledged as the owner of the Insights Paper in any use of it. Further, the Insights Paper must not be appropriated or used in any other way than its intended purpose without the consent the Committee.

About the Committee on Aboriginal and Torres Strait Islander Water Interests

The Committee was established in 2020 and is led by a membership of Aboriginal and Torres Strait Islander Peoples with extensive expertise across western and Cultural water rights and interests, water science and management, and water policy and planning.

Committee members do not represent, speak, or act for any individual nation, organisations, or community groups. Committee members do not represent federal, state, or territory governments; however, where possible, the Committee does seek to have at least one representative from each state and territory to draw on their knowledge and experience at the local level to bring to the national discussion.

The Committee is supported by an Executive Officer, Secretariat, and secretariat policy team within the First Nations Water Branch in the Australian Government Department of Climate Change, Energy, the Environment and Water. First Nations Water Branch plays a significant internal and external role to increase the Committee's exposure, reputation, and reach.

The Committee plays a unique role in advising federal, state and territory governments on

world-leading water reform initiatives occurring in Australia. The Committee recognises that Aboriginal and Torres Strait Islander Peoples have been advocating for an equal voice in Australia's water planning and management legislation since colonisation in 1788. Aboriginal and Torres Strait Islander Peoples never ceded ownership of lands and waters. It is the exclusive birth right of Aboriginal and Torres Strait Islander Peoples to be supported to honour their Cultural, spiritual, social, economic, and environmental water interests⁴.

The Committee operates within, and promotes, an environment of truth-telling about the impacts of colonisation on Aboriginal and Torres Strait Islander Peoples' water rights and interests. The Committee aims to elevate the Cultural, spiritual, social, economic, and environmental interests of Aboriginal and Torres Strait Islander Peoples within Australia's water policies, programs, and legislation, to ultimately ensure Aboriginal and Torres Strait Islander Peoples have enduring access to, ownership of, and management of water.

More information about the Committee is available at dcceew.gov.au/water/policy/first-nations/cawi.

Water values, principles, and actions

Below are a set of Aboriginal and Torres Strait Islander water values, principles, and actions that the Committee encourages federal, state, and territory governments to consider when planning for, engaging in, and developing national water reform initiatives. The Committee may adapt these values, principles, and actions for inclusion in particular national water reform initiatives.

Table 1 Water and land, in all their forms, are interconnected living entities.

Value	Water and land, in all their forms, are interconnected living entities
Principles	<p>Acknowledge the impacts that research and policy decisions have on Aboriginal and Torres Strait Islander Peoples' water values and water dependent heritage sites, including waterways (highways) and anabranches (arteries and veins), submerged landscapes, wetlands (supermarkets), lagoons, billabongs, and groundwater aquifers (old water).</p> <p>Strive for bold aspirations that challenge and empower all jurisdictions to recognise the Cultural, spiritual, social, economic, and environmental water interests of Aboriginal and Torres Strait Islander Peoples.</p>
Actions	<p>Water reform and water planning processes must consider Aboriginal and Torres Strait Islander Peoples' native title and non-native title rights to water in catchment and/or aquifer areas.</p> <p>Aboriginal and Torres Strait Islander Peoples' knowledge and water interests, as well as their inherent relationships and emotional and social obligations to the environment, inform scientific research – across urban, regional, and remote locations – to support continuous improvements in water planning and management.</p>

Table 2 Self-determination is protected, defined, and realised in water management.

Value	Self-determination is protected, defined, and realised in water management
Principles	<p>Procedures, programs, and processes relating to accessing, owning, and managing water in Australia, are developed through engagement with Aboriginal and Torres Strait Islander Peoples early and often. This includes acknowledging and incorporating expert Indigenous knowledge systems such as gendered sciences, innovation, and research and methods of applied traditional law and custom in decision making.</p> <p>The Committee on Aboriginal and Torres Strait Islander Water Interests guide the use of appropriate language and terminology, that is consistent, inclusive, and accurate in describing Aboriginal and Torres Strait Islander Peoples' Cultural rights and water interests.</p>
Actions	<p>Water planning processes consider bioregional perspectives (ecological, Cultural, and geographical boundaries) as well as water responsibilities upstream and downstream.</p> <p>Water planning processes incorporate Aboriginal and Torres Strait Islander Peoples' Cultural rights and interests and consider the social-emotional dimensions and impacts that Cultural flows have on wellbeing.</p> <p>The Department of Climate Change, Energy, the Environment and Water develops education products to support Aboriginal and Torres Strait Islander Peoples' water literacy and governance capacity.</p> <p>National water reform initiatives use strong, committal phrasing such as 'we will' and 'we commit to'. This ensures that Aboriginal and Torres Strait Islander Peoples' rights and interests in accessing, owning, and managing water are appropriately acknowledged and supported.</p>

Table 3 Protection of Indigenous Cultural Intellectual Property and knowledge.

Value	Protection of Indigenous Cultural Intellectual Property and knowledge
Principles	<p>Two-way knowledge exchange is led by Aboriginal and Torres Strait Islander Peoples and maintains a focus on the inherent rights of Aboriginal and Torres Strait Islander Peoples to access, own and manage water.</p> <p>Robust knowledge sharing pathways between Aboriginal and Torres Strait Islander Peoples and legislative and government demarcations are open and transparent and capture Aboriginal and Torres Strait Islander Peoples' experiences – as well as social and emotional wellbeing, political, and economic interests – to inform the development of holistic and ethical policies and strategies.</p>
Actions	<p>Knowledge sharing is anchored by the characteristics of self-determination, inclusiveness, timeliness, partnership, respect, access to information, transparency, responsiveness, and continuous improvement.</p> <p>Aboriginal and Torres Strait Islander Peoples are involved in monitoring, reporting, and evaluating the implementation of tangible priorities within national water reform initiatives.</p>

Table 4 Recognition of water rights and interests.

Value	Recognition of water rights and interests
Principles	<p>Recognise and incorporate Aboriginal and Torres Strait Islander Peoples' Cultural rights and interests in water management, ownership, and governance.</p> <p>Recognition is underpinned by declarations at a national and international level, and has regard to the principle of <i>free, prior, and informed consent</i> in the United Nations Declaration on the Rights of Indigenous Peoples⁵.</p>
Actions	<p>National water reform initiatives acknowledge that Aboriginal and Torres Strait Islander Peoples never ceded water ownership and that Aboriginal and Torres Strait Islander Peoples have holistically managed water for more than 65,000 years, including during dynamic ever-changing climate challenges.</p> <p>The Department of Climate Change, Energy, the Environment and Water develops case studies that illustrate effective versus ineffective engagement with Aboriginal and Torres Strait Islander Peoples, and which prioritise the principle of <i>free, prior, and informed consent</i>. Case studies are drawn upon by jurisdictions.</p>

Table 5 Enduring access to healthy, quality water.

Value	Enduring access to healthy, quality water
Principles	<p>Water accounting, trade and extraction for environmental and public benefit acknowledges Aboriginal and Torres Strait Islander Peoples' water values, and these values are applied in policy making, laws, and data sovereignty decisions.</p>
Actions	<p>Water planning, laws, and policies, embed robust human rights⁶ through promotion of Aboriginal and Torres Strait Islander Peoples' rights to have accessible, secure, healthy, quantity and quality water⁴.</p> <p>Water planning processes with a budget component have dedicated funding to support Aboriginal and Torres Strait Islander Peoples' outcomes, including for infrastructure, training, and capacity building needs.</p>



Elephant Rock Ord River Kununurra Western Australia © Matt Deakin

Key narratives on Aboriginal and Torres Strait Islander Peoples' water interests

The below narratives are endorsed by the Committee for use by Aboriginal and Torres Strait Islander Peoples, and federal, state, and territory governments, during co-design and engagement processes and/or development of national water reform initiatives.

- Aboriginal and Torres Strait Islander Peoples have holistically managed water for more than 65,000 years, including during dynamic ever-changing climate challenges; however, since colonisation they have been deliberately excluded from decision making about water.
- For Aboriginal and Torres Strait Islander Peoples, water represents far more than just concepts of trade, irrigation, or transport. Water is a living entity and takes many forms, including as waterways (highways) and anabranches (arteries and veins), submerged landscapes, wetlands (supermarkets), lagoons, billabongs, and groundwater aquifers (old water).
- For Aboriginal and Torres Strait Islander Peoples, water is Cultural, spiritual, social, economic, and environmental. These five values must be recognised and acknowledged – *early* and *often* – in all co-design and engagement processes.
- Meaningful recognition of Aboriginal and Torres Strait Islander Peoples' Cultural rights and interests in water management, ownership and governance requires a coordinated, enduring, self-determined approach across federal, state and territory government.
- Water policies, plans and decisions consider Aboriginal customary law and Torres Strait Islander Peoples' *Ailan Kastom*, as well as Cultural, spiritual, social, economic, and environmental values[^].
- Co-design and engagement with Aboriginal and Torres Strait Islander Peoples must embed the principle of *free, prior, and informed consent*. Co-design and engagement should ultimately aim to elevate Aboriginal and Torres Strait Islander Peoples' experiences, interests, and knowledge systems in decision making.
- All levels of government should look for ways to invest in the capacity building of Aboriginal and Torres Strait Islander Peoples.
- Time and effort must be set aside early during co-design and engagement planning to consider and evaluate whether there are any impacts or risks to Aboriginal and Torres Strait Islander Peoples, regardless of whether the engagement is qualitative (yarning, deep listening, two-way knowledge sharing) or quantitative⁷.
- Co-design and engagement with Aboriginal and Torres Strait Islander Peoples must be anchored by the characteristics of inclusiveness, timeliness, partnership, respect, access to information, transparency, responsiveness, and continuous improvement.

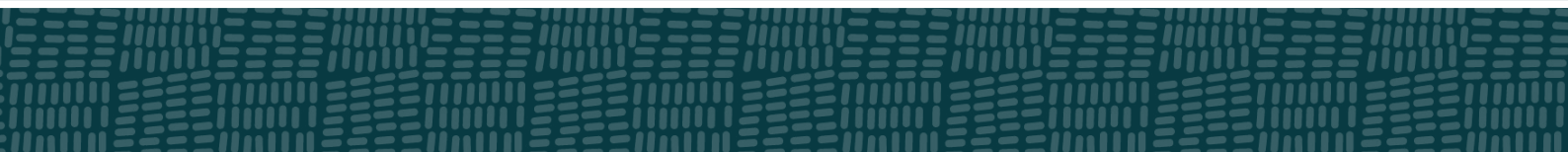
[^] For Aboriginal and Torres Strait Islander Peoples, the terms 'customary law' and 'Ailan Kastom' represent a way of thinking and talking about our environment and water interests. 'Customary law' and 'Ailan Kastom' can be viewed as a Cultural framework that puts Country, family, knowledge, obligations, inheritance, property, and sustainability of landscapes (Country), at the very forefront of everything we do. These terms also give weight to ideas around consent and self-determination, which are central to ensuring Aboriginal and Torres Strait Islander Peoples are supported to access, own and manage water. *This description of customary law and Ailan Kastom has been developed by the Committee.*

Glossary

Term	Definition
Ailan Kastom	A narrative about the meaning of Ailan Kastom (Island Custom) is available from the Torres Strait Regional Authority .
AWEP	Murray–Darling Basin Aboriginal Water Entitlements Program
BOC	Basin Officials Committee – is made up of representatives from the state government departments of the Basin jurisdictions (New South Wales, Victoria, Queensland, South Australia, and the Australian Capital Territory), the Commonwealth Government, and the Murray–Darling Basin Authority.
Cultural flows	A key self-determination aspiration of Aboriginal and Torres Strait Islander Peoples. Cultural flows are water entitlement legally and beneficially owned by Aboriginal and Torres Strait Islander Peoples to improve the spiritual, Cultural, environmental, social, and economic conditions of those Aboriginal and Torres Strait Islander Peoples ¹ .
Customary law	Further information about customary law is available on the Australian Law Reform Commission's website (The Definition of Aboriginal Customary Laws).
Echuca Declaration	In 2007, Murray Lower Darling Rivers Indigenous Nations created the Echuca Declaration, a groundbreaking statement that outlined Aboriginal and Torres Strait Islander Peoples' rights and aspirations in water management. A key part of the Echuca Declaration was a definition of Cultural Flows.
Environmental flows	Water entitlements held by government to improve river health.
Ground water	Water held underground in the soil or in pores and crevices in rock.
MinCo	Water and Murray–Darling Basin Ministerial Council . In September 2022, Cabinet established a new National Water and Murray–Darling Basin Ministerial Council (MinCo) to focus on issues of national significance. Membership of the new Council, which incorporates the previous Murray–Darling Basin Ministerial Council, includes basin state and national water ministers. The first meeting of the new council is expected to be scheduled in early 2024.
MDBA	Murray–Darling Basin Authority.
NWRC	National Water Reform Committee. The NWRC advises on, oversees, and coordinates the implementation of water policy reforms at the national level. It is made up of senior officials from the Australian Government and all state and territory water agencies.
NWI	National Water Initiative. The Productivity Commission led an inquiry into progress towards achieving the objectives and outcomes of the NWI in 2017 and 2020. The NWI is being renewed.
Surface water	Waters above the ground, including creeks, rivers, billabongs, and lakes.
<i>Water Act 2007</i> (Cth)	The <i>Water Act 2007</i> (Cth) (the Water Act) provides the legislative framework for ensuring that the Murray–Darling Basin – Australia's largest water resource – is managed in the national interest. The Water Act was reviewed in 2014 and is due for another review in 2027.
Water allocation	The amount of water that is made available to water entitlement holders by state and territory governments each year.
Water entitlement	An ongoing permit to a share of water. It is granted by state and territory governments. Water entitlements have a dollar value. This dollar value changes depending on the number of people wanting water, where and when. There are different types of water entitlements. Some water entitlement types may only get water allocations in wetter years when there is plenty of water. These are described as having lower reliability or, in some states, lower security.
Water for the environment	Water that is set aside in storage places, such as reservoirs and dams, which is managed for plants, animals, and river health.

References

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- 2 Australian Indigenous HealthInfoNet, [Social and Emotional Wellbeing](#), (accessed on 6 November 2023).
- 3 Australian Government Department of the Prime Minister and Cabinet, [Delivering water ownership for First Nations](#), 27 April 2023 (accessed on 20 September 2023).
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- 5 General Assembly of the United Nations 2007, [United Nations Declaration on the Rights of Indigenous Peoples](#), Department of Economic and Social Affairs, (accessed 14 August 2023).
- 6 Dr Virginia Marshall 2017, [Overturning aqua nullius: securing Aboriginal water rights](#), Aboriginal Studies Press, (accessed 22 August 2023).
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Updated Draft National Water Agreement

REVISED OBJECTIVES, OUTCOMES, PRINCIPLES AND DRAFT GLOSSARY OF TERMS

Introduction

Australia needs a new national agreement to secure our water resources now and into the future.

All Australian water ministers affirmed their shared commitment to renew the 2004 *Intergovernmental Agreement on a National Water Initiative* (NWI) at the Water Ministers' Council meeting of 28 June 2024.

A new National Water Agreement will build on the NWI, which has been Australia's blueprint for sustainable water resource management since 2004.

Successive Productivity Commission inquiries into national water reform in 2017, 2021 and 2024 collectively received more than 650 submissions providing views from across Australia on what is needed to renew the NWI.

The recommendations across the three PC inquiry reports informed drafting, as did the continuing calls from stakeholders to maintain the important elements of the 2004 National Water Initiative.

This draft includes the following changes in response to the third round of public consultation on the National Water Agreement:

- **SIMPLER:** principles have been mapped to outcomes to address complexity.
- **SHORTER:** removed 52 draft provisions (22 outcomes and 30 principles) to avoid repetition or streamline the content; and edited draft principles to simplify the language.
- **RESPONSIVE:** added content in response to stakeholder feedback.
- **CLEARER:** introduced a draft glossary of terms to address stakeholder calls for more clarity.

As a result, the updated draft National Water Agreement comprises:

- **7 OBJECTIVES:** high-level goals all governments will work towards as key priorities for water reform and management
- **40 OUTCOMES:** these set out the changes that will result from implementing the agreement and help to assess what impact efforts have had to achieve the objectives
- **143 PRINCIPLES:** providing guidance that Parties must consider to achieve the objectives and outcomes consistently
- **6 SCHEDULES:** providing further information such as a glossary of terms and technical aspects of water management
- **GLOSSARY OF TERMS:** once agreed, will become Schedule A.

The updated draft has been published to show the progress that has been made. This is not the final agreement. It is appropriate that after three rounds of consultation, work to settle the final agreement text is conducted between governments.

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Objective 1 – Safe and secure supply of sufficient water quality and quantity to sustain communities, culture, natural environments and economic prosperity

Access to safe, secure and accessible water supplies is critical to the wellbeing of all Australians. It is essential for a prosperous economy, agriculture, industry, Aboriginal and Torres Strait Islander peoples' water interests and values, resilient ecosystems, safe drinking water, public health, community wellbeing and climate change mitigation. Meeting growing demands while ensuring adequate supplies of acceptable quality water for all uses is a significant challenge. It requires innovation in the use of all available water supply options to ensure a resilient and diversified water supply that can adapt to changing conditions. Water service provision must strive to meet community expectations, balancing affordability, sustainability of services, competing uses and climate change impacts, with the need to operate in an environmentally, culturally and socially sustainable manner and support economic growth. While pricing must reflect the true costs of supply to ensure long-term viability, governments must also balance this with the need for services to be accessible and equitable.

Water service provision

Outcome 1A – Water services provide Australians, including regional and remote communities, with reliable access to clean, safe, accessible and affordable water for drinking and sanitation.

Principles

- 1.1. Drinking water supply, including in regional and remote communities, is secure, managed in accordance with the Australian Drinking Water Guidelines and as far as possible, meets community expectations for aesthetic water quality indicators.
- 1.2. A risk-based, adaptive approach to planning is undertaken to ensure maintenance of urban water security across Australia in response to climate change and variability, including increased flood and drought risk, population change and other pressures.
- 1.3. In line with Australia's national and international agreements, including the National Agreement on Closing the Gap and the United Nations Sustainable Development Goals, all efforts are made to ensure people living in regional, rural and remote communities have fair and reasonable access to water services.

Outcome 1B – Water service provision serves the long-term and evolving interests of customers and communities, industries and the environment.

Principles

- 1.4. Water, wastewater and stormwater services:
 - 1.4.1. are based on defined service levels, determined in collaboration with communities, met over time and under changing supply and demand
 - 1.4.2. meet service level expectations for quantity, quality, efficiency, affordability and accessibility
 - 1.4.3. aim to meet community expectations for public health outcomes and take up appropriate opportunities to increase liveability of cities and towns and support urban biodiversity.

- 1.5. Strategic urban and rural water supply planning incorporates and plans for the water needs of all sectors and the impacts of these uses upon water availability, quality, water dependent ecosystems, economic outcomes and new and emerging water uses.
- 1.6. Parties must also consider Schedule C on urban water planning.
- 1.7. Roles and responsibilities in water planning and management and other intersecting processes are clearly assigned and coordinated between governments, service providers, regulators, developers and other relevant entities.

Outcome 1C – Water services plan for and incorporate integrated management of all sources of water supply and demand.

Principles

- 1.8. Water services take an integrated approach to managing and using surface water, groundwater and other water source options conjunctively.
- 1.9. Processes for planning and managing water include consideration of all water supply and demand options, including climate resilient sources, based on a transparent assessment of all costs and benefits, identifying and addressing any barriers to using these options.
- 1.10. Water service provision practices implement circular economy principles, including maximising recycling and reuse of water; reducing consumption, waste and pollution; and encouraging innovative infrastructure investment.
- 1.11. Water-sensitive urban design principles that are appropriate for local conditions and support environmental, cultural, social and economic objectives, are integrated into urban planning.
- 1.12. Lower quality water sources are considered for uses which do not require high water quality.
- 1.13. Policy and strategy across all sectors consider water needs, sources and potential impacts early in planning and investment processes.
- 1.14. Water demand management practices, regulations and incentives to encourage efficient water use, conserve water supply and maintain quality are promoted and implemented.

Outcome 1D – Water, wastewater and stormwater infrastructure is fit for purpose to enable safe and reliable water service provision.

Principles

- 1.15. Water service providers' investment and operational decisions are evidence based and transparent and take account of the full suite of economic, environmental and social costs and benefits.
- 1.16. Planning and delivery of new or upgraded water, wastewater and stormwater infrastructure is timely, coordinated, strategic and consistent with land use planning and customer needs.

Outcome 1E – Water service providers have the appropriate technical skills and capabilities to ensure safe and reliable water and wastewater services.

Principles

- 1.17. Wherever possible, water industry training and qualifications are recognised across states and territories.

- 1.18. Where communities are responsible for managing their own water supply systems, they are empowered through appropriate capacity building and training to operate and maintain the necessary infrastructure.

Water pricing and institutional arrangements

Outcome 1F – Water pricing and institutional arrangements:

- **promote economically equitable, efficient and sustainable use of water resources, water infrastructure assets and government resources to manage water by accounting for the full suite of costs and benefits**
- **ensure sufficient revenue streams to allow efficient delivery of the required services**
- **facilitate the efficient functioning of water markets**
- **give effect to the principle of user pays while avoiding perverse or unintended pricing outcomes**
- **achieve pricing transparency in respect of water storage and delivery in irrigation systems and cost recovery for water planning and management**
- **support positive environmental, social and cultural outcomes.**

Principles

- 1.19. Pricing policies for water service provision (including water supply from all sources, water storage, wastewater treatment and disposal and stormwater management and use) facilitate efficient water use and trade, including through:
- 1.19.1. consumption-based pricing
 - 1.19.2. full cost recovery for water services, including for environmental externalities where practical, noting that in some small regional and remote areas these services will never be economically sustainable but must be maintained to meet social and public health needs
 - 1.19.3. transparent reporting on the rationale for, and size of, any subsidy or Community Service Obligation payment where full cost recovery is unlikely to be achieved in the long term
 - 1.19.4. continued progress to upper-bound pricing in large urban water systems – and in small urban and rural systems where practicable – while not exceeding upper bound limits
 - 1.19.5. achievement of lower-bound pricing for all systems to ensure the viability of water service provision
 - 1.19.6. consistency in pricing policies across sectors and jurisdictions where water can be traded.
- 1.20. Pricing policies for recycled water and stormwater use and management are congruent with pricing policies for potable water, promote efficient water use and supply and account for broader environmental and other public benefit outcomes beyond a water supply source.
- 1.21. Costs for water planning and management are priced and attributed consistently as they relate to the following activities:
- 1.21.1. identification of all costs associated with water planning and management, including the costs of systems underpinning water markets such as water registers, accounting and measurement frameworks and performance monitoring and reporting
 - 1.21.2. identification of the proportion of costs that can be attributed to water access entitlement or licence holders consistent with the principles that:

- 1.21.2.1. charges exclude activities undertaken for government (such as policy development and activities undertaken for ministerial or parliamentary services)
 - 1.21.2.2. charges are linked as closely as possible to the costs of activities or products.
- 1.22. States and territories report publicly on cost recovery for water planning and management as part of annual reporting requirements, including on:
 - 1.22.1. the total cost of water planning and management
 - 1.22.2. the proportion of the total cost of water planning and management attributed to water access right entitlement or licence holders and the basis on which this proportion is determined
 - 1.22.3. how environmental, cultural and other externalities have been factored into pricing, where applicable.
- 1.23. Parties must also consider Schedule D on water services pricing.
- 1.24. As far as possible, the roles of water resource management, standard setting and regulatory enforcement are separated institutionally from service provision.
- 1.25. Financial separation is maintained where local governments retain ownership of urban water service providers.
- 1.26. Regulatory bodies are independent from bodies responsible for implementing and monitoring water planning and infrastructure projects.
- 1.27. Government regulatory and legislative frameworks align and evolve with water sector needs and objectives, using an outcomes-based approach.

Outcome 1G – Accounting for environmental externalities in water service provision supports the sustainable use of water.

Principles

- 1.28. Environmental externalities are managed through a range of regulatory measures (such as setting extraction limits in water management plans and specifying the conditions for the use of water outside of water management plan areas).
- 1.29. The feasibility of using market-based mechanisms such as pricing to account for positive and negative environmental externalities associated with water use is regularly examined.

Outcome 1H – Urban water service provider performance monitoring and reporting:

- **drives improvement in pricing and service outcomes**
- **contributes to state and territory government policy decisions**
- **supports economic oversight, transparency and confidence in the urban water sector.**

Principles

- 1.30. States and territories provide annual, public reports on pricing and service quality for all urban water service providers.
- 1.31. Operating costs for these performance monitoring and reporting systems are met by jurisdictions through recovery of water planning and management costs.

Outcome 1I – Regulation and review of water pricing support the efficient provision of water services, meet community needs and achieve customer confidence.

Principles

- 1.32. Regulation and review processes are transparent and made public, incorporating community engagement on the desired outcomes from water service provision and willingness to pay.
- 1.33. Independent bodies are used to:
 - 1.33.1. set or review prices, or price-setting processes, for water storage and delivery by government water service providers case by case, consistent with the principles set out in 1.20 to 1.24
 - 1.33.2. publicly review and report on pricing in government and private water service providers to ensure that the principles set out in 1.19 to 1.23 are met.
- 1.34. Where the costs of independent pricing regulation or review can be transparently demonstrated to outweigh the benefits, other forms of regulation or review may be applied.

Objective 2 – Investment in major¹ water infrastructure that is effective, strategic and transparent

Sustainable major water infrastructure aims to balance human needs with ecological health, provide safe and reliable water for communities and invest responsibly for productive use, including to support food production, while ensuring that water resources remain viable for future generations. This Agreement seeks to ensure that major water infrastructure investments are made judiciously, foster trust in the investment process and provide transparency, inclusive engagement and accountability, meeting critical needs and contributing, first and foremost, to the efficient and sustainable management of Australia's water resources.

Outcome 2A – Public confidence in major water infrastructure investment decisions is provided through robust and transparent decision-making processes.

Principles

- 2.1. Major water infrastructure projects are subject to robust and transparent selection processes based on:
 - 2.1.1. investment in projects that have the highest net positive expected social, economic, ecological and cultural outcomes over time of all options considered and consider intergenerational equity
 - 2.1.2. deliverability
 - 2.1.3. meeting the community's aspirations and values, including cultural values, where possible
 - 2.1.4. economic, financial and ecological sustainability under future demand and supply conditions
 - 2.1.5. resilience to system changes.
- 2.2. Prior to committing funding for major water infrastructure, governments demonstrate through a business case that:
 - 2.2.1. the proposed project is the most effective means of addressing an issue or to achieve stated objectives
 - 2.2.2. the proposed project is assessed as value for money, deliverable and sustainable, taking into account economic viability and ecological sustainability under future demand and supply conditions
 - 2.2.3. any necessary supporting infrastructure is (or will be) in place.
- 2.3. Business cases should:
 - 2.3.1. articulate a clear problem/opportunity statement and rationale for investment
 - 2.3.2. demonstrate the project's alignment to regional water assessments and plans, broader jurisdictional and Australian Government strategic priorities and the needs of communities and Aboriginal and Torres Strait Islander peoples
 - 2.3.3. prioritise regions with the highest water security concerns/opportunities

¹ Major water infrastructure refers to large-scale projects and facilities designed to manage, store, distribute and treat water resources across the country such as dams, reservoirs and distribution systems.

- 2.3.4. include an assessment of all potential water supply and non-infrastructure options to meet investment objectives
- 2.3.5. identify the full suite of economic, environmental, cultural and social costs and benefits over time based on the best available information
- 2.3.6. assess projected demand and supply for the relevant water source
- 2.3.7. comprehensively identify and manage, within existing regulatory processes, impacts on cultural heritage and cultural resources in affected areas, informed by meaningful partnership and shared decision making with Aboriginal and Torres Strait Islander peoples
- 2.3.8. use the best available science, knowledge, information and modelling to assess the proposed infrastructure's resilience to climate change or other stressors
- 2.3.9. give due consideration to and identify responsibility for operation and maintenance costs over the lifetime of the potential infrastructure.
- 2.4. Business cases will be published except where it could compromise commercially sensitive data.
- 2.5. Independent peer review assessments of business cases are undertaken by qualified institutions or experts and published with a commitment to release post-completion reviews, except where it could compromise commercially sensitive data.
- 2.6. Institutional roles and responsibilities underpinning government investment in major water infrastructure are clearly and publicly identified.
- 2.7. All relevant levels of government are engaged in decision making for major water infrastructure, with state and territory governments having primary responsibility for proposing projects and managing government involvement in their jurisdictions.

Outcome 2B – Economic sustainability, long-term reliability and efficiency of major water infrastructure is supported through adequate cost recovery.

Principles

- 2.8. Costs are recovered from users as the norm, with any government subsidy provided as described in 2.9.
- 2.9. Investment in any major infrastructure project that is assessed as a priority due to persisting problems around water security, but not as economically sustainable, is subject to an explicit government decision acknowledging any subsidy provided through a transparent mechanism. This will be limited to where:
 - 2.9.1. cost recovery would not enable provision of water quantity, quality and affordability for critical human needs or other essential services
 - 2.9.2. unrecovered costs from investment are best borne by governments to achieve substantial public benefits
 - 2.9.3. an equity argument exists (for example, to support access to essential services in high-cost regional town water systems where the cost of supplying a basic level of service is considered unaffordable)
 - 2.9.4. cost recovery incorporates consideration of funding for maintenance and upgrades to the asset.

Objective 3 – Water management that recognises and protects Aboriginal and Torres Strait Islander water interests and values

This objective provides outcomes and principles that are foundational to Aboriginal and Torres Strait Islander peoples' water interests and values and apply across the Agreement. For the purposes of this objective, water 'interests and values' means 'cultural, spiritual, social, economic and environmental water interests and values'.

Aboriginal and Torres Strait Islander peoples consider that waters in all their forms are interconnected with lands and move freely between water landscapes, including upstream, downstream and between surface water and groundwater.

This Agreement recognises the value of Aboriginal and Torres Strait Islander peoples' involvement, knowledge and contributions to land and water management. Governments across Australia are working to integrate Aboriginal and Torres Strait Islander peoples' interests and values into water planning and management.

Outcome 3A – Aboriginal and Torres Strait Islander peoples are recognised as custodians and knowledge holders of the lands and waters of Australia.

Principles

- 3.1. Aboriginal and Torres Strait Islander peoples' cultural water rights, interests and values are recognised and incorporated into water management and governance processes, in accordance with international and national agreements and instruments to which Australian governments are a party.

Outcome 3B – Water planning and management processes are built on enduring and respectful government partnerships with Aboriginal and Torres Strait Islander peoples, underpinned by shared decision making and the principles of self-determination and free, prior and informed consent.

Principles

- 3.2. Aboriginal and Torres Strait Islander peoples are consulted through genuine partnerships and shared decision-making that recognises and includes their diverse views and opinions.
- 3.3. Water organisations build cultural capability to enable genuine partnerships with Aboriginal and Torres Strait Islander peoples.
- 3.4. Engagement is designed to maximise opportunities for Aboriginal and Torres Strait Islander peoples to lead processes that affect their Country and community.

Outcome 3C – Water reform provides meaningful opportunities and builds capacity for Aboriginal and Torres Strait Islander peoples to practice their customary laws and to care for, manage and protect water.

Principles

- 3.5. Water management frameworks recognise, protect, define and incorporate the cultural water rights, interests and values of Aboriginal and Torres Strait Islander peoples, wherever possible.
- 3.6. Water planning and management processes recognise and respect Aboriginal and Torres Strait Islander peoples' gendered roles in relationship to lands and waters.

Outcome 3D – Aboriginal and Torres Strait Islander peoples have enduring access to safe water of acceptable quality and quantity, determined in partnership with communities.

Principles

- 3.7. Water and wastewater service provision for Aboriginal and Torres Strait Islander communities meets health and wellbeing targets, including those under the National Agreement on Closing the Gap.
- 3.8. Water service levels for Aboriginal and Torres Strait Islander communities are determined in collaboration with those communities.

Outcome 3E – Aboriginal and Torres Strait Islander peoples' access to, management of and/or ownership of inland waters is increased, in line with the National Agreement on Closing the Gap.

Principles

- 3.9. Good faith efforts are made to increase Aboriginal and Torres Strait Islander peoples' custodianship of waters through enduring and sustainable water rights and enabling reforms, including participation in water markets and purchase of water.
- 3.10. Good faith efforts are made to remove barriers in water management frameworks impeding the access to, management of and/or ownership of water by Aboriginal and Torres Strait Islander peoples.
- 3.11. Access to, management of and/or ownership of water for Aboriginal and Torres Strait Islander peoples allows them to decide how this water is used, wherever possible, in accordance with the principle of self-determination.
- 3.12. Consideration is given to making unallocated water, or new water rights from the development of a water resource, available for Aboriginal and Torres Strait Islander peoples to contribute to their access to, management of and/or ownership of water.

Outcome 3F – Water planning, management, policies and decisions support Aboriginal and Torres Strait Islander peoples' participation, including in measurement, monitoring, evaluation and reporting.

Principles

- 3.13. Aboriginal and Torres Strait Islander peoples are empowered to participate in water planning and management processes, including planning for, and adapting to, the impacts of climate change.
- 3.14. Aboriginal and Torres Strait Islander peoples are supported to participate in, and lead, regular monitoring, evaluation and reporting of water management activities that impact upon Aboriginal and Torres Strait Islander peoples' water interests and values.

Objective 4 – Evidence-based decision making in water management that is underpinned by robust and coordinated use of science, data and cultural knowledge

Using evidence-based decision making and the best available data in water management is essential for creating effective, sustainable solutions to complex water challenges. This approach relies on using the latest research, technological advancements, local knowledge and scientific data, such as hydrological models, climate projections and ecological assessment. By grounding decisions in rigorous evidence, water managers can better anticipate risks like droughts, flooding, or ecosystem degradation and design strategies that are resilient to changing conditions.

It allows for adaptive management, where strategies can be refined over time as new data emerges or conditions change. Integral to this is incorporating Aboriginal and Torres Strait Islander peoples' traditional knowledge and understanding of ecosystems to inform modern water management. A coordinated approach enables transparent sharing and communication of the evidence base to build an understanding of the impacts that water planning and management must address.

Evidence-based decision making

Outcome 4A – Water planning and management decisions are evidence-based, using the best available science, data and research.

Principles

- 4.1. Research, modelling, and the data sets used to inform planning and management decisions, are fit for purpose, accurate, validated, current, publicly available, accessible and understandable and subject to an appropriate level of independent review and refinement.
- 4.2. Evidence-based decision making in water planning and management uses:
 - 4.2.1. up-to-date, innovative and contemporary science incorporating new technological systems and long-term research and sampling data
 - 4.2.2. knowledge-building priorities identified and coordinated through processes that draw on input from researchers and the broader community, public strategies and plans and national priorities identified by all jurisdictions
 - 4.2.3. models that include cultural water for Aboriginal and Torres Strait Islander peoples, wherever possible.
- 4.3. The application of science and data is precautionary in line with the level of inherent uncertainty, including around potential damage to ecosystems.
- 4.4. Knowledge generation supports implementation and review of national strategies and guidelines such as the *Australian Drinking Water Guidelines* and the *Australian and New Zealand Guidelines for Fresh and Marine Water Quality*.

Collaboration and partnerships

Outcome 4B – Active and effective data and information sharing within and across jurisdictions fosters collaboration among decision makers, resource and environment managers, community members, industry and researchers.

Principles

- 4.5. Common terminology is used for water availability and quality projections, uncertainty and risks.
- 4.6. Governments work together on the generation and communication of research, knowledge and data investments where there are cross-border impacts or benefits from using a consistent, coordinated or collaborative approach.
- 4.7. Water data systems are collaboratively designed and developed by jurisdictions to enable interoperability, integration and co-investment opportunities.
- 4.8. Governments maintain strong, durable and actively managed partnerships between decision-makers, the research community, natural resource managers, agriculture and other industry and traditional knowledge holders and encourage the use of citizen science.

Ongoing data collection and review

Outcome 4C – Monitoring and evaluation enables governments and regional resource managers to understand the current state of water systems, anticipate future trends and assess potential impacts of management strategies across competing demands.

Principles

- 4.9. Evaluation and adaptation pathways are identified as part of water planning and management, to be implemented at specified points or time periods.
- 4.10. The health of water ecosystems, water availability and distribution, and identification of potential risks, are assessed through:
 - 4.10.1. long-term research and sampling data to support planning that considers current and future needs
 - 4.10.2. ongoing fit for purpose monitoring of biodiversity, water quality and habitat conditions.

Aboriginal and Torres Strait Islander peoples' knowledge

Outcome 4D – Aboriginal and Torres Strait Islander peoples' knowledge systems, innovation and customs inform the development of water plans and strategies.

Principles

- 4.11. Aboriginal and Torres Strait Islander peoples have the opportunity to contribute their knowledge, science and research to water management frameworks, decisions, plans and actions.
- 4.12. Aboriginal and Torres Strait Islander peoples' knowledge, science and Indigenous cultural and intellectual property, are used, collected, analysed, stored, communicated and shared in accordance with cultural protocols and wishes and respecting data sovereignty.
- 4.13. Aboriginal and Torres Strait Islander peoples have access to data and information that enables them to make informed decisions on water management activities that impact them.

Objective 5 – Sustained community trust and confidence in government, water agencies, water managers and water users

Public trust and confidence in the governance and management of water underpins successful reform and ongoing stewardship. These must be built through consistent, concerted effort over time. Such practices strengthen public confidence, creating a foundation of trust that supports long-term water security.

Including communities in decision making through genuine engagement ensures that diverse voices are heard, especially those of people who are directly affected by changes in water policy, resulting in better outcomes.

Transparency in planning and communication can help communities understand the reasons for decisions and the benefits of long-term sustainability efforts even if agreement on action is not always reached. Transparent reporting on compliance efforts and outcomes further supports community trust, as it shows that water management is well-regulated and open about its processes and results.

Community engagement in water management

Outcome 5A – Public trust, confidence and stewardship in the management of water resources is built and maintained.

Principles

- 5.1. Engagement is meaningful, inclusive, timely, respectful and accessible; makes clear statements about what is negotiable or can be influenced; and demonstrates how community input was considered.
- 5.2. Engagement is cost-effective and scaled appropriately, with an understanding of community needs and limitations, and coordinated, especially for multi-jurisdictional activities.

Outcome 5B – The values and needs of communities, the environment and industries are acknowledged and incorporated within water planning and management frameworks.

Principles

- 5.3. Governments and water managers build their understanding of and ability to engage with the values and needs of communities, the environment, agriculture, industry and other stakeholders.
- 5.4. Trusted and collaborative relationships are built and maintained between communities, governments and water managers.

Outcome 5C – Water planning and management processes are clearly communicated, participatory and transparent.

Principles

- 5.5. Capacity building, community education and engagement on water matters support people to build water literacy to effectively engage, strategise, lead and negotiate with governments and water managers on decisions that directly or indirectly impact them.
- 5.6. The community and water rights holders have access to clear, logical and timely information in accessible formats that help them to understand their obligations, build trust and enable meaningful engagement.

- 5.7. Communities are informed of and provided with suitable opportunities to shape the design of water planning and management activities.

Monitoring, evaluation and reporting of water management outcomes

Outcome 5D – Progress towards achieving water management objectives is demonstrated through robust and transparent monitoring, evaluation and reporting.

Principles

- 5.8. Monitoring and reporting of progress towards outcomes is timely, efficient, cost-effective and consistent and publicly available, supporting evaluation processes.
- 5.9. Responsibilities for implementation of monitoring, evaluation and reporting and the timing for when these activities are conducted, are identified as part of water planning policies, projects and programs.

Compliance

Outcome 5E – Effective compliance and enforcement regimes are in place with clear, open and transparent objectives.

Principles

- 5.10. Metering, monitoring and compliance activities are commensurate with risks to, and values associated with, the resource and provide for water user accountability.
- 5.11. Compliance and enforcement systems focus on proactive metering regulation and/or increasing water rights holders' awareness of their obligations.

Community partnerships and adjustment

Outcome 5F – Adjustment issues raised by the implementation of this Agreement are addressed.

Principles

- 5.12. Social and economic impacts of reform arising from this Agreement are assessed to identify possible structural adjustments and community needs.
- 5.13. Where adjustment measures are used:
- 5.13.1. they focus on building resilience and adaptive capacity, secure employment or business opportunities, target the most vulnerable individuals and avoid direct industry assistance and subsidies
 - 5.13.2. there is regular monitoring and evaluation of the effectiveness of these measures and public reporting of results.

Objective 6 – Environmentally sustainable water planning and management that is interconnected, adaptive and responsive to climate change and other circumstances

With the evolving challenges posed by climate change, including longer and hotter droughts and natural disasters such as storms, floods and bushfires, there is a critical need for flexible, connected and climate-resilient approaches to water management in Australia. Water planning and management are key tools that support the sustainable use of water resources critical for the environment, communities, agriculture and industries that rely on them. Water frameworks must consider managing third-party risks, impacts across connected systems and the appropriate, fit-for purpose planning needed to adequately address risks to water resources for their sustainable management.

Water planning and management

Outcome 6A – Water planning and management seek to maximise the achievement of identified objectives and outcomes for surface water and groundwater systems.

Principles

- 6.1. Jurisdictional strategies, policy and legislative frameworks:
 - 6.1.1. demonstrate a commitment to adaptability, using risk-based approaches to adjust policies and processes that address reduced water availability and quality
 - 6.1.2. adopt strategies that enhance sustainability, cultural values and conservation
 - 6.1.3. use firm pathways and open processes to return overallocated and/or overused surface water and groundwater systems to sustainable levels of extraction and prevent overextraction in relatively undeveloped systems
 - 6.1.4. identify and acknowledge surface water and groundwater systems of high conservation value and manage these systems to protect and enhance those water systems and their dependent ecosystems under plausible climate scenarios
 - 6.1.5. set out a hierarchy of uses that serves the greatest public interest, prioritising critical human water needs and environmental sustainability
 - 6.1.6. determine the consumptive pool and the rules to allocate water
 - 6.1.7. provide certainty about the management of severe weather events through clear triggers, roles and responsibilities for action
 - 6.1.8. take a precautionary approach in water use growth and allocation of water from resources with high levels of uncertainty
 - 6.1.9. respect the property rights and interests of Aboriginal and Torres Strait Islander peoples in a water resource area, including holders of native title
 - 6.1.10. address impacts on both the quality and availability of water, including through measures to increase the climate resilience and adaptability of environmental systems
 - 6.1.11. consider upstream and downstream needs and impacts in connected catchments
 - 6.1.12. manage surface water and groundwater resources in highly connected systems as a single resource, including joint arrangements where resources are shared between jurisdictions

- 6.1.13. maintain strong longitudinal and latitudinal waterway connectivity
- 6.1.14. provide a transparent basis to identify and account for the relative environmental and other public benefit outcomes desired by communities for surface water and groundwater systems with as much specificity as possible
- 6.1.15. provide a transparent basis to identify and account for different community values for surface water and groundwater systems with as much specificity as possible
- 6.1.16. define the appropriate water management arrangements to maximise the achievement of these outcomes for surface water and groundwater systems
- 6.1.17. consider and communicate any trade-offs in water uses transparently.
- 6.2. Water quality is considered as a core objective in water planning and management including through implementation of the National Water Quality Management Strategy and Australian and New Zealand Guidelines for Fresh and Marine Water Quality.
- 6.3. Where it is necessary to recover water to achieve environmental and other public benefit outcomes, the following principles will be used for determining the most effective and efficient mix of water recovery measures:
 - 6.3.1. consideration of all available options for water recovery, including:
 - 6.3.1.1. investment in more efficient water infrastructure
 - 6.3.1.2. purchase of water on the market, by tender or through other market-based mechanisms
 - 6.3.1.3. investment in more efficient water management practices, including measurement
 - 6.3.1.4. investment in behavioural change to reduce water consumption
 - 6.3.2. assessment of the socio-economic costs and benefits of the most likely prospective options, including the impacts on downstream users and the implications for wider natural resource management outcomes (for example hydrological and ecological consequences and impacts on water security, quality or salinity)
 - 6.3.3. selection of measures based on optimising cost-effectiveness and with a view to managing socio-economic impacts
 - 6.3.4. early consideration of opportunities to integrate complementary, non-volumetric natural resource management measures and partnerships to achieve defined environmental outcomes.

Outcome 6B – Water planning will be at an appropriate scale, with planning levels increasing with the level of complexity and risk to the resource.

Principles

- 6.4. Statutory water plans or, in the absence of a plan, appropriate water management regulation or policy will apply to surface water and groundwater management units in which water access rights are issued.
- 6.5. Where there is no water plan in place for a water resource:

- 6.5.1. planning frameworks clearly and transparently identify what circumstances will trigger the requirement to develop a water plan
- 6.5.2. guidance is provided through policy, legislative and regulatory frameworks that ensure that allocation processes are fit for purpose and appropriately manage any risk to the resource, including overuse.
- 6.6. Subject to legislative requirements, a state or territory will determine whether a water plan is prepared, what area it should cover, the level of detail required, its duration, how often it is reviewed and the resources devoted to its preparation.
- 6.7. Decisions to develop water plans are informed by the best available science, knowledge, socio-economic analysis and community input and based on an assessment of:
 - 6.7.1. the level of water system development
 - 6.7.2. projected future consumptive demand
 - 6.7.3. the risks of not having a detailed plan.
- 6.8. The duration of a water plan is consistent with the level of knowledge on, and development of, the water resource.
- 6.9. Water policies, strategies and/or legislative frameworks clearly and transparently identify circumstances that trigger reconsideration of existing water-sharing arrangements under a water plan.
- 6.10. Parties to this Agreement monitor the effectiveness of water plan objectives, outcomes and water management arrangements and regularly review them through an evidence-based, participatory and transparent process to factor in knowledge improvements and provide regular public reports.
- 6.11. In developing water plans, Parties must also consider Schedule B on water planning and management.

Outcome 6C – The interconnected nature of actions on land and water is recognised and managed.

Principles

- 6.12. Administrative arrangements and decision-making processes at all levels of government ensure an integrated approach to the management of water sources and their connected land catchments.
- 6.13. Strategic and regional planning objectives and actions incorporate effective coordination between land use and water planning to prevent negative impacts on surface water and groundwater systems and uses.

Climate change adaptation

Outcome 6D – Water planning processes enhance the resilience and adaptability of water systems to the impacts of a changing climate.

Principles

- 6.14. Water planning and management processes prepare for a future climate in which variability is expected to exceed historical records by:
 - 6.14.1. factoring impacts on future water availability into environmental and cultural water requirements and consumptive pools

- 6.14.2. clearly identifying relevant trends and projections in the development of water plans, planning frameworks and supporting documentation, including changes in rainfall variability, temperature and the frequency and intensity of extreme weather events
- 6.14.3. using flexible water allocations where appropriate that are informed by seasonal and inter-annual water availability as climate conditions continue to evolve
- 6.14.4. using decision making processes that describe how water planning approaches may adapt over time to respond to potential longer-term climate impacts, including clear pathways to balance or rebalance between environmental and consumptive uses as part of reviewing arrangements
- 6.14.5. having regard to anticipated water demands from new industries and the need to mitigate climate change impacts without adversely affecting water resources, as part of supporting Australia's transition to net zero emissions.

Environmental water

Outcome 6E – Water set aside for the environment protects, preserves and restores the health and integrity of surface water and ground water-dependent ecosystems.

Principles

- 6.15. Jurisdictions establish and maintain effective and efficient management and institutional arrangements to achieve environmental outcomes, including through:
 - 6.15.1. identifying the water quantity and quality requirements needed to sustain high conservation value rivers, reaches, aquatic habitats such as wetlands, coastal environments and groundwater dependent ecosystems, or other water dependent ecosystems, including during extreme events
 - 6.15.2. committing water to meet these requirements through clear and transparent rules, allocations in surface water and groundwater plans, or other planning frameworks
 - 6.15.3. joint arrangements for water for the environment, where resources are located across jurisdictions, or shared arrangements in the case of significantly inter-connected surface water and groundwater systems
 - 6.15.4. periodic independent audit, review and public reporting on the achievement of environmental outcomes and the adequacy of environmental water provision and management.
- 6.16. The management of held environmental water is supported by waterway managers that:
 - 6.16.1. are accountable for the management of held environmental water provisions for the achievement of environmental outcomes
 - 6.16.2. are enabled to trade water on temporary markets as set out in Outcome 7B.
- 6.17. Where relevant, environmental water managers have the necessary authority and resources to provide sufficient water of adequate quality at the right times and places to achieve identified environmental outcomes, including across state/territory boundaries.
- 6.18. Environmental water managers seek to deliver cultural outcomes whenever these are consistent with their ecological obligations.

Interception

Outcome 6F – Water planning considers and provides for the management of all forms of water take.

Principles

- 6.19. Water planning considers all forms of water take and use, including for which a water access entitlement or licence is not currently required, in assessing sustainable levels of extraction for a resource.
- 6.20. In water systems that are fully allocated, overallocated, or approaching full allocation:
 - 6.20.1. interception activities in the relevant water plan area or surface water or groundwater system are identified and estimates are made of the amount of water likely to be intercepted over the life of those activities
 - 6.20.2. a precautionary approach is taken to accounting for and managing the potential impacts of interception on achieving the outcomes and objectives identified in relevant water plans or strategies, and other uses of the resource
 - 6.20.3. where interception activities are identified as a potentially significant risk to water resources, the regulatory approach taken:
 - 6.20.3.1. includes interception within water accounting and modelling methods for water plans and planning frameworks
 - 6.20.3.2. includes interception in water access entitlement systems or licensing regimes
 - 6.20.3.3. manages the activities to avoid impacts on outcomes and objectives identified in relevant water plans or strategies or third-party impacts on water users
 - 6.20.3.4. monitors the ongoing efficacy of management or regulation of the interception activity
 - 6.20.3.5. considers proposals for new interception activities assessed as a potentially significant risk to the water resource as part of water plans, access entitlements systems and licensing regimes
 - 6.20.4. long-term average annual extraction limit estimates are updated and other amendments to water sharing plans are made where necessary.
- 6.21. For still developing water systems, fit-for-purpose measurement, accounting and management of interception activities, and monitoring of the ongoing efficacy of interim measures, are undertaken.
- 6.22. Co-produced water will be avoided or minimised. Where it cannot be avoided:
 - 6.22.1. a robust and transparent assessment of potential environmental, economic, cultural and social impacts, be undertaken in accordance with relevant state and territory policies and legislation and proportionate to the risk to the resource. This includes:
 - 6.22.1.1. considering cumulative risks to the resource, including from other existing or planned actions, as part of assessments
 - 6.22.1.2. making assessment findings publicly available, except where it could compromise commercially sensitive data

- 6.22.1.3. regular monitoring of and reporting on groundwater levels and rate of decrease, water quality levels, and recharge rates.
- 6.23. Methods to return coproduced water to its source should be encouraged and preferred, in line with principle 6.25 to ensure the return of water will not deteriorate the aquifer groundwater quality or affect its integrity. Where not returned, the water should be used for other purposes.
- 6.24. The impacts of coproduction on third parties, where not avoided, will be mitigated and made good.

Aquifer management

Outcome 6G – Groundwater is effectively managed to protect aquifers and dependent uses.

Principles

- 6.25. Where aquifer recharge and storage are practised:
 - 6.25.1. the quality of recharge source water is fit for its intended use
 - 6.25.2. the aquifer and aquitard are protected from damage by water quality impacts, depletion, over-pressurisation and physical damage
 - 6.25.3. impacts on surface waters downstream are acceptable and taken into account.
- 6.26. Where groundwater drawdown is unavoidably occurring through planned depletion (including to meet town water supply needs where no other cost-effective supply exists):
 - 6.26.1. an assessment of the impact of this decision on other uses/users (current or future), including ecosystems and cultural water interests and values dependent on the resource, is carried out and made publicly available, including the likely depletion date
 - 6.26.2. strategies to mitigate any identified negative impacts of drawdown are developed and implemented
 - 6.26.3. where these impacts are unknown, research is undertaken to better understand trade-offs
 - 6.26.4. groundwater levels and rate of decrease, water quality levels and recharge rates are regularly monitored and reported
 - 6.26.5. ecosystems dependent on groundwater are monitored to prevent degradation due to drawdown
 - 6.26.6. long-term research to identify alternative sources is undertaken in a timely manner where the water use or dependency is ongoing
 - 6.26.7. adaptive management practices are used that allow for the adjustment of strategies based on monitoring data and changing conditions.

Objective 7 – Water management frameworks that facilitate judicious and efficient use of water

Productive and sustainable use of Australia’s water resources relies on water management frameworks that:

- *allocate water based on sustainable levels of extraction*
- *provide certainty about conditions under which water can be accessed and used*
- *incentivise innovation and efficient use*
- *enable water users to adapt to change.*

Statutory arrangements provide security by defining the essential characteristics of water access rights, the conditions of use and clearly assigned ownership of risks arising from future changes to the resource. Fixed-term arrangements, such as licences, balance water users’ need for security with water managers’ need for flexibility to manage resources under changing conditions or where a resource is not well understood. Efficient water markets enable water to be allocated to its highest value use through trading, to support economic activity and growth and the long-term sustainability of water resources.

Water access rights

Outcome 7A – Water rights holders have confidence to use water access rights for a range of business purposes.

Principles

- 7.1. Consumptive use and allocation of water requires a water access entitlement or licence, consistent with the relevant water plan or legislative framework.
- 7.2. Water access entitlements and licences:
 - 7.2.1. specify the essential characteristics of the water product
 - 7.2.2. are exclusive
 - 7.2.3. can be traded, given, bequeathed or leased
 - 7.2.4. can be subdivided or amalgamated
 - 7.2.5. can be used as collateral for accessing finance
 - 7.2.6. are enforceable and enforced
 - 7.2.7. clearly indicate the responsibilities and obligations of the entitlement holder consistent with the water plan or the jurisdiction’s water legislation relevant to the source of the water
 - 7.2.8. can only be cancelled at ministerial and agency discretion where the responsibilities and obligations of the entitlement and licence holder have clearly been breached
 - 7.2.9. can be varied (for example, to change extraction conditions) by mutual agreement between the government and the entitlement and licence holder
 - 7.2.10. are subject to any provisions relating to access to water during emergencies, as specified by legislation in each jurisdiction.
- 7.3. Regulatory approvals enabling water use at a particular site for a particular purpose are to be specified separately to the water access entitlement or licence, as referred to in Schedule F.

7.4. The provisions in 7.1 to 7.3 are subject to the following conditions:

- 7.4.1. Fixed-term water access rights such as licences may be issued for consumptive use where this is demonstrably necessary, such as:
 - 7.4.1.1. in areas with poorly understood and/or less developed water resources
 - 7.4.1.2. where the access is contingent upon opportunistic allocations
 - 7.4.1.3. where the access is provided temporarily as part of an adjustment strategy
 - 7.4.1.4. where the community and stakeholders support the establishment of a licensing regime.
- 7.4.2. Water access rights that are tied to land may be issued for consumptive use where this is demonstrably necessary, such as:
 - 7.4.2.1. in areas where adverse impacts from water use are localised (such as in groundwater systems)
 - 7.4.2.2. where the use of water is inextricably connected with the underlying land (for example stock and domestic rights and water access rights for native title and/or cultural uses)
 - 7.4.2.3. where the community and stakeholders support the establishment of such water access rights.
- 7.4.3. The risks of expected development and demand on resources are assessed through an ongoing process and moved into a full entitlement framework when this becomes appropriate for their efficient management.

Outcome 7B – Water access entitlements, licences and market frameworks support the achievement of environmental and other public benefit outcomes.

Principles

- 7.5. Water that is provided by jurisdictions to meet environmental and other public benefit outcomes, as recognised in water plans or a jurisdiction’s legislative frameworks, have at least the same degree of security as water access rights for consumptive use and are fully accounted for.
- 7.6. Arrangements for water markets are integrated with broader water management frameworks and consistent with water management objectives.²
- 7.7. Water for environmental and other public benefit outcomes, if held as a water access entitlement, may be traded when not required to meet these outcomes, provided such trading is not in conflict with those outcomes.
- 7.8. For water resources with significant connectivity, water access entitlements and licences are specified in a manner that takes into account the interactions between those resources.

² Water management objectives include operating within sustainable extraction limits, not causing an increase in commitments to take water from a water resource, not causing flow regimes above sustainable limits identified in water plans, or otherwise adversely affecting water-dependent ecosystems and riparian zones.

Water markets and trading

Outcome 7C – Water can be transferred between uses efficiently and cost-effectively in response to business drivers, community needs and changing water availability.

Principles

- 7.9. Water management frameworks facilitate the efficient movement of water between uses by:
 - 7.9.1. minimising transaction costs on trades and transfers
 - 7.9.2. enabling compatible arrangements across jurisdictions
 - 7.9.3. facilitating access to information.
- 7.10. Where water resources cross jurisdictional boundaries, water access entitlements and licences, and protocols for facilitating trade, are compatible and competitively neutral to improve investment certainty and enable trade.
- 7.11. Water management frameworks facilitate the operation of water markets and promote opportunities for trade where system and water supply considerations permit.
- 7.12. Water markets operate free of restrictions, except where restrictions are needed to manage impacts on the water resource or environment impacts, or to provide appropriate protection for third-party interests.
- 7.13. Access to trading opportunities is not restricted based on who is trading the right or the intended use of the right being traded (for example, an environmental or cultural water rights holder).
- 7.14. Water market rules and protocols for facilitating trade are publicly accessible. Any changes to water management frameworks that have an impact on water markets are communicated in a way that is clear, timely and accessible to market participants.
- 7.15. Regulation, compliance and enforcement of market conduct is fit for purpose and effective, ensures integrity and gives confidence to market participants that markets are operating in a fair and transparent manner.
- 7.16. Water management frameworks enable the development of an appropriate mix of water products, driven by user needs and consistent with broader water management frameworks.
- 7.17. Water market arrangements recognise and are adaptable to all sources of water and consumptive uses, including sources not previously included in trading frameworks.

Outcome 7D – Water rights holders and the community have confidence in the integrity of water access rights and the amount of water being traded, extracted for consumptive use and managed for environmental and other public benefit outcomes.

Principles

- 7.18. Water access entitlements and licences and transfers of ownership of tradeable water rights are recorded in publicly accessible, reliable water registers that state unambiguously who owns the entitlement or licence and the nature of any encumbrances on it.
- 7.19. Basic trade data, including the type of right, location of right, price paid, volume, reason for trade and date of trade, is collected, accurate, reliable and publicly available in a timely manner to support market participants and enable regulators to effectively trace trades.

7.20. Water resource accounts are maintained that:

- 7.20.1. provide transparent, practical, credible and reliable information on which to base water management decisions
- 7.20.2. provide information on the broader water context to meet the needs of system participants
- 7.20.3. use agreed accounting system standards and standardised reporting formats that enable ready comparison of water use, compliance against entitlements and trading information and the production of national water accounts.

7.21. Water resource accounts are reconciled annually and aggregated to produce a national water balance that:

- 7.21.1. covers how much water is in a system and all significant water use, for all managed water resource systems
- 7.21.2. integrates the accounting of groundwater and surface water use where close interaction between groundwater aquifers and streamflow exists
- 7.21.3. considers land use change, climate change and other externalities as elements of the water balance.

7.22. Water resource accounts provide regular public reports on environmental and cultural water, including water held as a water access entitlement or licence and water assigned for environmental or cultural use in water plans or legislative frameworks. Reports include information about the source, volume, location of use and security and whether its use has achieved the environmental or cultural outcomes sought.

7.23. Metering and measurement of surface water and groundwater take is robust, fit for purpose, efficient, feasible to implement and undertaken on a consistent basis where:

- 7.23.1. categories of entitlements or licences are identified in a water planning process as requiring metering
- 7.23.2. water access rights are traded
- 7.23.3. there are disputes about sharing of available water in an area
- 7.23.4. new entitlements or licences are issued
- 7.23.5. there is community demand.

7.24. Metered water use is made public in reports that include associated compliance and enforcement actions, trade outcomes and environmental water management actions.

7.25. Water regulation for non-urban water conforms with Australian standards and agreed national approaches for non-urban water metering.

Risk assignment

Outcome 7E – Certainty for water rights holders is provided through clear provisions to allocate risk for reductions in water availability.

Principles³

- 7.26. Risks arising from future changes in the availability of water for consumptive use are clearly assigned in legislation or publicly available policy, to help users understand and plan for long-term changes in water supply.
- 7.27. Where a water access entitlements framework has been established, the risk assignment framework at principles 7.28 – 7.31 apply to any future reductions in the availability of water for consumptive use.⁴
- 7.28. Water access entitlement holders are to bear the risks of any reduction or less reliable water allocation, under their water access entitlements, arising from reductions to the consumptive pool as a result of:
 - 7.28.1. seasonal or long-term changes in climate
 - 7.28.2. periodic natural events such as bushfires and drought.
- 7.29. The risks of any reduction or less reliable water allocation under a water access entitlement, arising as a result of bona fide improvements⁵ in the knowledge of water systems' capacity to sustain particular extraction levels are to be shared over each ten-year period in the following way⁶:
 - 7.29.1. water access entitlement holders to bear the first 3% reduction in water allocation under a water access entitlement
 - 7.29.2. state/territory governments and the Commonwealth Government to share one-third and two-thirds respectively reductions in water allocation under water access entitlements of between 3% and 6%
 - 7.29.3. state/territory and Commonwealth governments to equally share reductions in water allocation under water access entitlements greater than 6%.
- 7.30. A government is to bear the risks of any reduction or less reliable water allocation that is not previously provided for, arising from changes to its policy (for example, new environmental objectives). In such cases, the government may recover this water in accordance with the

³ 7.28 to 7.31 of this Agreement replicate clauses 48 to 51 of the NWI.

⁴ This framework applies to water reductions additional to those identified as required to address known overallocation and/or overuse in accordance with pathways agreed under National Competition Policy commitments.

⁵ Bona fide improvements in the knowledge of water systems: information that is added to or modifies existing models or theories accepted by water managers and implemented on this basis in legislation or regulation or otherwise given effect, other than knowledge relating to matters covered by 7.28.

⁶ The 2004 NWI provided that up to 2014, the risks of any reduction in the size or reliability of water allocations under a water access entitlement were to be borne by water users if the reduction arose from bona fide improvements in the knowledge of water systems' capacity to sustain particular extraction levels. This was to allow for statutory water plans to be put in place to address known overallocation and/or overuse. From 2014, all jurisdictions were expected to have water plans or other legislative arrangements in place under which water allocations were made to water access entitlement holders.

principles for assessing the most efficient and cost-effective measures for water recovery (as set out in principle 6.3)⁷.

- 7.31. Alternatively, the Parties agree that where affected parties, including water access entitlement holders, environmental stakeholders and the relevant government agree, on a voluntary basis, to a different risk sharing formula to that proposed in paragraphs 7.28-7.30 above, that this will be an acceptable approach.

Unallocated water

Outcome 7F – The release of unallocated water promotes the sustainable and efficient use of scarce water resources as part of a balanced assessment of all water uses.

Principles

- 7.32. Alternative ways of meeting water demand, such as water trading, water rights holders using the unused parts of existing water access rights, or increasing water use efficiency, are fully explored before unallocated water is released.
- 7.33. Decisions on the release of unallocated water take into account the current ecological function of that water and potential impacts on other uses, including existing water entitlements and licences.
- 7.34. To the extent practicable, where releases of unallocated water are made, this occurs through market-based mechanisms.

⁷ Changes in government policy: change in legislation or regulatory measures made by government to address a specific problem, other than a reduction as described at 7.28 or 7.29.

Glossary of terms

Climate resilient source – a source of water supply which is less impacted by climate change than conventional sources of water supply, typically because it is less dependent on rainfall. Climate resilient sources may include recycled water and desalinated water.

Community – refers to a group of people living in the same place. For the purposes of this Agreement, this includes Aboriginal and Torres Strait Islander peoples.

Complementary measures – a range of non-flow based natural resource management activities to achieve environmental outcomes such as installation of fishways, riparian management and habitat restoration.

Consumptive pool – the amount of water resource that can be made available for consumptive use in a given water system under the rules of the relevant water plan or planning instrument.

Consumptive use – use of water for private benefit consumptive purposes including irrigated agriculture, industry, urban and stock and domestic use.

Co-produced water – refers to water taken from a resource through a process that does not use the water, for example through coal seam gas extraction and mine dewatering.

Cultural heritage – Aboriginal and Torres Strait Islander peoples' knowledges, lore, law, areas and objects, both tangible and intangible, significant to Aboriginal and Torres Strait Islander peoples.

Cultural water – refers to Aboriginal and Torres Strait Islander peoples' kinship with water as a living entity, as defined by lore/law, custom, custodial responsibilities and knowledge sharing and which may have a range of applications as determined by the beliefs, values and aspirations of Aboriginal and Torres Strait Islander peoples, including restoring Country, preserving water landscapes, establishing economic opportunities and protecting sacred sites.

Cultural water rights – recognises Aboriginal and Torres Strait Islander peoples' right to preserve and sustain their cultural water practices.

Customary law – enduring cultural frameworks consisting of knowledges, beliefs, lore, law (rules/protocols), traditions, practices and resources that govern Aboriginal and Torres Strait Islander peoples' way of life, relationships and obligations to other people, lands, waters and all physical and non-physical entities. Self-determination and consent are fundamental to the expression of customary law. In Torres Strait Islander peoples' cultures, this concept is often referred to as *ailan kastom*.

Environmental and other public benefit outcomes – environmental and other public benefit outcomes are agreed as part of water planning processes, are required to be specified in water plans and may include:

- environmental outcomes: maintaining ecosystem function (e.g., through periodic inundation of floodplain wetlands); biodiversity, water quality; river health targets
- other public benefits: Aboriginal and Torres Strait Islander peoples' cultural and spiritual values, mitigating pollution, public health (e.g., limiting noxious algal blooms), recreation, fisheries, tourism, navigation and amenity values.

Environmentally sustainable level of extraction – the level of water extraction from a particular system which, if exceeded, would compromise key environmental assets, environmental outcomes, ecosystem functions or the productive base of the resource.

Exchange rate – the rate of conversion calculated and agreed to be applied to water to be traded from one trading zone and/or jurisdiction to another.

Externality – a side effect of water management practices that impacts on another party’s wellbeing and may not be appropriately factored into the decision-making process. This may include environmental externalities; negative impacts on environmental health from water management decisions that can be ameliorated through measures such as factoring these into water pricing.

Free, prior and informed consent – principles that safeguard against actions that may impact Aboriginal and Torres Strait Islander peoples’ cultural rights and interests, contained in the United Nations Declaration on the Rights of Indigenous Peoples and implemented as best practice in other international and national instruments. For the purposes of the National Water Agreement, governments will support self-determination practices consistent with the National Agreement on Closing the Gap priority reforms. References to ‘free, prior and informed consent’ in the National Water Agreement context do not infer a right of veto over projects, legislation or policies being actioned by governments through this Agreement.

Gendered roles – refers to Aboriginal and Torres Strait Islander peoples exercising their gender responsibility for meeting cultural water practices.

Groundwater – water that is stored beneath the earth’s surface in soil, sand and rock layers and underground aquifers.

Indigenous cultural and intellectual property – all aspects of Aboriginal and Torres Strait Islander peoples’ cultural heritage, including tangible and intangible cultural heritage.

International agreements – refers to Australia’s commitments under international agreements, treaties, conventions and declarations relevant to water management, which may include, but are not limited to, the United Nations Sustainable Development Goals, the United Nations Declaration on the Rights of Indigenous Peoples, the Ramsar Convention on Wetlands of International Importance and the United Nations Convention on Biological Diversity, including the Kunming–Montreal Global Biodiversity Framework.

Lower bound pricing – the level at which to be viable, a water business should recover, at least, the operational, maintenance and administrative costs, externalities, taxes or tax equivalent regimes (not including income tax), the interest cost on debt, dividends (if any) and make provision for future asset refurbishment/replacement. Dividends should be set at a level that reflects commercial realities and stimulates a competitive market.

Overallocation – refers to situations where with full development of water access entitlements in a particular system, the total volume of water able to be extracted by entitlement holders at a given time exceeds the environmentally sustainable level of extraction for that system.

Overused – refers to situations where the total volume of water actually extracted for consumptive use in a particular system at a given time exceeds the environmentally sustainable level of extraction for that system. Overuse may arise in systems that are overallocated, or it may arise in systems where the planned allocation is exceeded due to inadequate monitoring and accounting.

Precautionary approach – using caution and review processes when making a decision which may have the potential for causing harm to a resource or value due to lack of information, extensive scientific knowledge or data. These protections should be relaxed only once sound evidence is provided that no harm will result.

Rural water – water and wastewater service provision principally for irrigated agriculture and industrial uses outside of cities, towns or communities, such as in irrigation schemes.

Self-determination – The Australian Human Rights Commission notes that *“Self-determination can mean different things to different groups of people. At its core, self-determination ‘is concerned with the fundamental right of people to shape their own lives’”*.

Stormwater services – services provided to move and capture stormwater in urban areas to manage flooding risk and pollution and harvest water, including through natural or human-made means such as road gutters, drains, levee banks and wetlands. Interchangeable with *drainage services*.

Surface water – water that flows over land and in water courses or artificial channels and can be captured and stored in, and supplemented from, lakes, dams and reservoirs.

Tradeable water right – means a right or authorisation conferred by or under a jurisdiction’s water legislation that is tradeable under that jurisdiction’s water legislation.

Trading zones – zones established to simplify administration of a trade by setting out the known supply source or management arrangements and the physical realities of relevant supply systems within the zone. Trade can occur within and between zones without first having to investigate and establish the details and rules of the system in each zone.

Upper bound pricing – the level at which, to avoid monopoly rents, a water business should not recover more than the operational, maintenance and administrative costs, externalities, taxes or tax equivalent regimes, provision for the cost of asset consumption and cost of capital, the latter being calculated using a weighted average cost of capital.

Urban water – water and wastewater service provision in a city, town or community, principally for domestic, public, commercial and industrial uses.

Large urban water system – an urban water system that has 10,000 or more connections.

Small urban water system – an urban water system that has fewer than 10,000 connections.

Water access entitlement – a perpetual or ongoing entitlement to exclusive access to a share of water from a specified consumptive pool as defined in the relevant water plan or planning instrument.

Water access right – means a right or authorisation conferred by or under a jurisdiction’s water legislation to take or use water from a water resource.

Water allocation – the specific volume of water allocated to water access entitlements in a season, defined according to rules established in the relevant water plan or planning instrument.

Water dependent ecosystem – an ecosystem that relies on a regular supply and quality of water from either surface or ground water sources to maintain its ecological function, biodiversity and health.

Water licence – a fixed-term arrangement to take a specific quantity of water from a water resource under certain conditions. In this agreement it refers to the primary way a state or territory allocates water for consumptive use where water access entitlements are not used.

Water quality – the physical, chemical and biological characteristics of water. Common standards for water quality used are those for drinking water, safety of human contact and ecosystem health.

Water resources – include surface water, such as in rivers, lakes or dams, groundwater, including water stored through managed aquifer recharge, wastewater, stormwater, desalinated seawater, recycled wastewater and brackish water.

Water sensitive urban design – the integration of urban planning with the management, protection and conservation of the urban water cycle, that ensures urban water management is sensitive to natural hydrological and ecological processes.

Proposed schedules

The National Water Initiative contained 7 schedules that are to be retained, updated or removed.

6 schedules are currently proposed for the new National Water Agreement:

Schedule A – Glossary of terms

Schedule B – Water planning and management

- NWI Schedule E
- *NWI Policy Guidelines for Water Planning and Management*
- *NWI Policy Guidelines for Water Planning and Management - Risk Assessment Module*
- *NWI module on Considering Climate Change and Extreme Events in Water Planning and Management*

Schedule C – Urban water planning

New schedule to build on the National Urban Water Planning Principles and address emerging needs

Schedule D – Water services pricing

National Water Initiative Pricing Principles

Schedule E – Engaging Aboriginal and Torres Strait Islander peoples

NWI module on *Engaging Indigenous peoples in water planning and management (2017)*

Schedule F – Water administration

Schedules E, F and G from the 2004 NWI.

Where schedules from the NWI are being updated, the original NWI schedule will remain in place until such time that parties to the agreement agree to update them. There will be ongoing consultation during 2025 on the action plans.

Additional schedules will include guidelines prepared after the development of the NWI, such as the NWI Pricing Principles. These will be updated where necessary to align with the new agreement.



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History of Aboriginal and Torres Strait Islander Peoples' water interests, advocacy and reform

This timeline has been developed by the Committee on Aboriginal and Torres Strait Islander Water Interests.

The Committee acknowledges the contributions of previous members who provided research, including Associate Professor Bradley Moggridge (inaugural co-Chair) and Professor (HonD) Leslie 'Phil' Duncan.

The timeline is a historical truth-telling representation of Australia's water management laws and policies, which have disenfranchised and disempowered Aboriginal and Torres Strait Islander Peoples. The timeline shows the steady increase, particularly in the last decade, in advocacy and effort to ensure Aboriginal and Torres Strait Islander Peoples have enduring access to, ownership of, and management of water.

There is still much that needs to be achieved before Aboriginal and Torres Strait Islander Peoples are supported by all levels of government to honour their Cultural, spiritual, social, economic, and environmental water interests. As a living document, the timeline will be updated annually to capture new achievements as they come to light.

Please contact CAWI@dcceew.gov.au if you have any comments about the timeline or would like to propose additions.

This timeline contains Indigenous Cultural and Intellectual Property (ICIP) and is underpinned by the principle of free, prior, and informed consent in relation to ICIP, as set out in the United Nations Declaration on the Rights of Indigenous Peoples. The Committee is the owner of all IP in the timeline, including all ICIP. The Committee, Associate Professor Bradley Moggridge, and Professor (HonD) Leslie 'Phil' Duncan, must be acknowledged as the owners of the timeline in any use of it. Further, the timeline must not be appropriated or used in any other way than its intended purpose without the consent of Associate Professor Bradley Moggridge, Professor (HonD) Leslie 'Phil' Duncan, and the Committee.

Narrative about the period from pre-65 000 to pre-1788

65,000 to pre-1788 Aboriginal and Torres Strait Islander Peoples sustainably and holistically managed their lands and waters for the health of their Countries and peoples for more than 65,000 years, including during dynamic ever-changing climate challenges. Spending time on rivers and billabongs provided opportunity to harvest fresh food, share knowledge and stories, and maintain wellbeing and family time. Aboriginal and Torres Strait Islander Peoples have strong Cultural obligations to protect, and be custodians of, Australia's waterways (highways), anabranches (arteries and veins), submerged landscapes, wetlands (supermarkets), lagoons, billabongs, and groundwater aquifers (old water).

Narrative about the period from 1788 –1901

During this period, Aboriginal and Torres Strait Islander Peoples were systematically dispossessed of traditional lands and waters through forced removals from Country to missions, reserves, and settlements. Stories passed down within families speak of poisoning of waterholes, massacres, the destruction of food sources and fish traps, and loss of access to water and waterways. Truth telling inquiries are helping to ensure these stories become part of Australia's official archive.

1788

Colonisation Water was never ceded.

1901

Federation

1902

Corowa Water Conference and Interstate Royal Commission (attended by Premiers of New South Wales and Victoria, the Attorney General of South Australia, and the Prime Minister Edmund Barton).



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1914

River Murray Waters Agreement.

1914

Western Australia passed the *Rights in Water and Irrigation Act 1914*, which removed custodial water rights from Traditional Owners in Western Australia and vested them in the Western Australia Government.

1917

Formation of the River Murray Commission (now the Murray–Darling Basin Authority), responsible for the construction of locks and dams on the river, including the Hume Dam near Albury NSW.

1946

Supreme Court of the Northern Territory (Item 6/1946) orders the removal of Aboriginal weirs from the Roper River at Elsey Station refusing to allow traditional Aboriginal practices to continue under British Common Law Riparian Rights.

1956

Murray River major flood in South Australia caused by heavy rains in Queensland, New South Wales, and Victoria.

1972

Aboriginal Heritage Act 1972 passed to protect Aboriginal heritage sites in Western Australia.

1976

Commonwealth *Aboriginal Land Rights (Northern Territory) Act 1976* established and enabled 4 Northern Territory Land Councils to be established.

1981

10.2 per cent of South Australia's land area was returned to the Pitjantjara/Yankunytjatjara (*Anangu Pitjantjara Yankunytjatjara Land Rights Act 1981*).

1984

The *Maralinga Tjarutja Land Rights Act 1984* returned lands in the western area of South Australia to the Pitjantjara people.

1982

Protests against Franklin River dam in Tasmania creates a political precedent for the raising of environmental concerns in Parliament.

1983

NSW Aboriginal Land Rights Act 1983 established.

1985

Commonwealth, New South Wales, Victoria, and South Australia governments agree to establish the Murray–Darling Basin Ministerial Council and the Murray–Darling Basin Commission.

1988

Murray–Darling Basin Commission publishes the Salinity and Drainage Strategy.

1992

The Council of Australian Governments (COAG) endorses the National Strategy for Ecologically Sustainable Development, which aims to maintain the ecological processes on which life depends.



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1992

The National Water Quality Management Strategy (NWQMS) introduced and follows the guiding principles set out in the National Strategy for Ecologically Sustainable Development.

1992

The United Nations Earth Summit Agenda 21 included a chapter on recognising and strengthening the role of Indigenous peoples and their communities.

1994

Expansion of water markets across Murray–Darling Basin.

1994

COAG endorses a landmark National Water Reform Framework to balance allocation to water resources (this Framework incorporates the NWQMS).

1997

Murray–Darling Basin Cap on surface water diversions was introduced to protect and enhance the riverine environment.

1998

Murray Lower Darling Rivers Indigenous Nations (MLDRIN) established during Yorta Yorta Native Title case.

1998

South Australia's First Indigenous Protected Area declared, Nantawarrina, Flinders Ranges.

2000

The NWQMS Australian and New Zealand Guidelines for Fresh and Marine Water Quality (Paper No. 4) was released, which recognised that water resources have important Cultural and spiritual values, particularly for Indigenous Peoples.

2000

NSW *Water Management Act 2000* established.

2000

NSW *Aboriginal Water Trust* established.

2000

Tasmanian *Water Management Act 1999* enacted.

2000

The Queensland *Water Act 2000* establishes the Queensland water planning framework incorporating national water initiatives and sustainable development principles.

2002

Ngarrindjeri Nation develop the *Kungun Ngarrindjeri Yunnan Agreement - Listen to Ngarrindjeri Speaking* to protect Aboriginal and Torres Strait Islander Peoples' interests in the Murray River.

2002

Lingiari Foundation Water Rights report published.

2003

The Murray–Darling Basin Commission announces the Living Murray program (still active), which aims to use 500 GL of water to improve the health of six sites along the Murray.

2003

Indigenous Peoples Water Declaration, Kyoto, Japan.

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2004

Intergovernmental agreement on a National Water Initiative is created and there is agreement to establish a National Water Commission to assist with implementation.

2006

The North Australian Indigenous Land and Sea Management Alliance Ltd forms the Indigenous Water Policy Group.

2006

The CSIRO holds the *Recognising and Protecting Indigenous Values in Water Resource Management* workshop in Darwin.

2006

Victorian Aboriginal Heritage Act 2006 provides for the protection of Aboriginal Cultural heritage and Aboriginal intangible heritage in Victoria.

2007

Echuca Declaration signed by united Aboriginal Nations along the Murray River. The Declaration defines the concept of Cultural flows.

2007

The *Water Act 2007 (Cth)* established. It details requirements for sustainable limits on the amount of surface and groundwater that can be taken from the Basin.

2007

The Gulf Water Plan 2007 includes Indigenous water reserves for the first time in Queensland.

2007

In line with the *Water Act 2007 (Cth)*, the Commonwealth Environmental Water Holder is established, which allows the government to purchase water entitlements from willing sellers.

2007

Australia does not sign the *United Nations Declaration on the Rights of Indigenous Peoples*.

2008

Garma International Indigenous Water Declaration revised to include onshore and offshore water rights.

2008

Federal Government's *Water for the Future* plan announced.

2008

The Commonwealth Environmental Water Office established.

2008

The Murray–Darling Basin Authority takes over the functions of the Murray–Darling Basin Commission.

2008

Australian Human Rights Commission's Native Title Report published. Of note, *Chapter 6: Indigenous Peoples and Water*.

2009

Standing together for water rights: North Australian Indigenous Experts Water Futures Forum at Mary River, Northern Territory.



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2009

Joint Steering Committee established by COAG to review the *ANZECC National Water Quality Management Strategy. Cultural and Spiritual Values Guidance* prepared.

2009

First meeting of the Murray–Darling Basin Ministerial Council (MinCo).

2009

The First Peoples' Water Engagement Council established to provide strategies for achieving Indigenous social, spiritual, and customary objectives in water plans.

2010

Victorian *Traditional Owner Settlement Act 2010* provides for the making of Recognition of Settlement Agreements, and use of water for traditional purposes.

2010

Northern Basin Aboriginal Nations (NBAN) established.

2010

Northern Australia Land and Water Taskforce releases report.

2011

NSW Office of Water (Liberal) receives external funding from NSW Treasury for the establishment of an Aboriginal water unit under *Federal Closing the Gap*.

2011

MLDRIN expanded to represent 24 Nation Groups at a meeting in Echuca.

2011

Murray–Darling Basin Authority publishes *A Yarn on the River: Getting Aboriginal voices into the Basin Plan*.

2011

CSIRO National Research Flagships Water for a Healthy Country published a report titled *Indigenous Water Values and Water Planning in the Upper Roper River, NT*.

2012

The NSW Office of Water (Liberal) establishes the Aboriginal Water Initiative – a team of Aboriginal water specialists.

2012

In line with the *Water Act 2007* (Cth), the Basin Plan is agreed to in Parliament and aims to bring the Basin back to a healthier and sustainable level.

2012

Indigenous Water Advisory Council and the North Australian Indigenous Land and Sea Management Alliance advocated for recognition of Strategic Indigenous Reserves.

2012

Northern Territory Government publishes *Indigenous engagement framework – effective methods of engagement between water planners and Indigenous stakeholders*.

2013

National Cultural Flow Project receives funding to begin research project with 8 research components.

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the Environment and Water**

2013

Amendments to the *Environment Protection and Biodiversity Conservation Act 1999* became law, making water resources a matter of national environmental significance in relation to coal seam gas and large coal mining.

2013

QLD Water Act 2000 amended to enable an Aboriginal party to take or interfere with water for traditional activities or Cultural purposes.

2013

National Water Commission releases, *A Review of Indigenous Involvement in Water Planning*.

2013

Intergovernmental Agreement on Implementing Water Reform in the Murray–Darling Basin comes into effect.

2013

In line with the *Water Act 2007 (Cth)*, the Water for the Environment Special Account is established (\$1.575 billion is allocated to recovering 450 GL from July 2014 to June 2024).

2014

The QLD Water Act 2000 is amended to include statutory rights to take or interfere with water for traditional activities or Cultural purposes.

2014

National Water Commission abolished.

2014

Victorian Federation of Traditional Owners release *Water Policy Framework*.

2014

Lake Eyre Basin Partnership wins Australian River Prize.

2014

Water Reform Committee established.

2015

Delivering Essential Services to Remote Aboriginal Communities. Western Australia Auditor General's report on repair and maintenance of services to selected remote communities.

2015

National Cultural Flows Research Project launches the Aboriginal Cultural Flows Health Indicator.

2015

Australian Government Northern Australia White Paper released, with a chapter titled *Developing the North's Water Resources*.

2015

Murray–Darling Basin Authority releases *Aboriginal Waterways Assessment Program Report and Aboriginal Partnerships Action Plan*.

2015

Australian Capital Territory and Region Catchment Management Coordination Group established to improve water catchment activities in the ACT and surrounding region.

2015

The Ngarrindjeri Regional Authority received the Australian Riverprize for its long-term commitment to integrated river basin management, including Aboriginal and Torres Strait Islander Peoples involvement.



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2016

Victorian Government releases the Water for Victoria Strategy, committing \$9.7 million to Aboriginal Water.

2016

New South Wales Government abolishes Aboriginal Water Initiative structure.

2016

Northern Territory Government has opposition pre-election promise to re-visit Strategic Indigenous Reserves.

2016

Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Act 2016 established.

2016

Fitzroy River Declaration. Traditional Owners state their concerns regarding the potential damage to Martuwarra from the cumulative impacts of development.

2017

Government of South Australia establishes the Aboriginal Partnerships Program to increase the participation of Aboriginal people in managing landscapes.

2017

Northern Territory Government releases, *Strategic Aboriginal Reserves Stakeholder Discussion Paper* and legislates Strategic Aboriginal Reserves in 2019.

2017

National Water Initiative releases module titled *Engaging Indigenous Peoples in Water Planning and Management*.

2017

Murray–Darling Basin Authority publishes *Culture Flows: A Guide for First Nations*.

2017

Yarra River Protection (Wilip-gin Birrarung murrnong) Act 2017 passed through the Victorian Parliament. It identifies the Yarra River and its corridor as a single living entity for protection.

2017

Productivity Commission Inquiry report into the National Water Initiative handed to the Australian Government.

2017

In response to the Productivity Commission Inquiry report, work begins on renewing the National Water Initiative.

2018

Water Amendment Bill 2018 amends the *Water Act 2007* (Cth) to enable the Commonwealth Water Minister to direct the Murray–Darling Basin Authority to prepare an amendment to the Basin Plan.

2018

Martuwarra Fitzroy River Council established to manage the challenges, risks and opportunities related to northern development for the Fitzroy River Catchment.

2018

Productivity Commission Inquiry into the Murray–Darling Basin Plan: Five Year Assessment identified water needs for Aboriginal and Torres Strait Islander Peoples as a reform priority.



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2018

National Cultural Flows Research Project findings launched by NBAN and MLDRIN.

2018

2 x Independent Science Studies into Lower-Darling Fish Kills (both with no Aboriginal members).

2018

Northern Territory Western Davenport Water Allocation Plan established the first Aboriginal water reserve in the NT.

2018

The Birrarung Council is established as the voice of the Birrarung (Yarra River) to provide independent advice on, and advocate for, protecting and improving the Birrarung / Yarra River.

2018

Victorian Advancing the Treaty Process with Aboriginal Victorians Act 2018 passes the Victorian Parliament.

2018

Aboriginal Water and Environmental Advisory Group established to advise the Western Australia Government on water and environment matters, to ensure Aboriginal and Torres Strait Islander Peoples' knowledge, values, and needs are incorporated.

2018

QLD *Water Act 2000* amended to provide for water plans to include Cultural outcomes for Aboriginal and Torres Strait Islander Peoples, separately from other social, economic, and environmental outcomes.

2019

Australian Government commits to renewing the National Water Initiative.

2019

Queensland Government publishes *Water Connections – Aboriginal People's Water Needs in the Queensland Murray–Darling Basin – Condamine and Balonne, Border Rivers, and Moonie catchments*.

2019

The Nimmie-Caira project is completed. The project balances environmental and Aboriginal Cultural heritage protection with commercial use.

2019

NSW Government Murrumbidgee Surface Water Resource Plan released.

2019

The Queensland Government *Water Act 2000*, under the Water Plan (Cape York) 2019, set aside 500GL of water for Aboriginal and Torres Strait Islander Peoples' economic aspirations.

2019

Northern Territory Water Act 1992 amended to legislate to establish Aboriginal water reserves.

2019

The Russell River Catchment Sustainability Plan 2020–2035 released, which provides a systems repair approach to water quality improvement to the Great Barrier Reef lagoon.

2019

Senate Select Committee, Select Committee on the Multi-Jurisdictional Management and Execution of the Murray–Darling Basin Plan (Issues paper).



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2019

Victorian Government *Water and Catchment Legislation Amendment Act 2019* requires consideration of Aboriginal water values and management practices.

2020

WA Government develops the *Bindjareb Djilba Bindjareb, A plan for the protection of the Peel-Harvey estuary*, which includes actions for the Bindjareb Noongar people to be active partners in estuary management.

2020

Yamatji Nation Indigenous Land Use Agreement embeds Aboriginal water reserves for the first time in WA.

2020

United Nations Sustainable Development Goal 6: *Ensure availability and sustainable management of water and sanitation for all.*

2020

Committee on Aboriginal and Torres Strait Islander Water Interests (CAWI) established (*web team please link to this site [Committee on Aboriginal and Torres Strait Islander Water Interests - DCCEEW](#)*).

2020

Murray–Darling Basin Authority appoints Aboriginal board member.

2020

The Australian Water Association, Catchment Management Network, released a statement saying: *Principle 11: Indigenous Australian participation in source protection is vital.*

2020

The Agreement on Closing the Gap states: *Aboriginal and Torres Strait Islander Peoples maintain a distinctive Cultural, spiritual, physical, and economic relationship with their land and water.*

2021

Report released on Productivity Commission Inquiry into the National Water Initiative identified water needs for Aboriginal and Torres Strait Islander Peoples as a reform priority.

2021

Productivity Commission Annual Closing the Gap Report released, stating the target of increasing Aboriginal and Torres Strait Islander Peoples' legal rights and interests in land and waters.

2021

MLDRIN and NBAN publish research into how much water is held by Aboriginal and Torres Strait Islander Peoples and Traditional Owner Organisations in the *Murray–Darling Basin in 2020: A First Nations Summary*.

2021

Australia State of the Environment Report published. The report states Aboriginal and Torres Strait Islander Peoples' knowledge and connections to Country are vital for sustainability and healing Australia.

2021

Tasmania releases its *Rural Water Use Strategy*, which has an action to ensure Aboriginal water interests are considered in water planning and Aboriginal people are engaged in water forums.

2021

Commencement of the South West Native Title Settlement (an area close to the size of the state of Victoria) supports Aboriginal and Torres Strait Islander Peoples to develop economic, social and Cultural opportunities from the use of their lands and waters.



Australian Government

Department of Climate Change, Energy, the Environment and Water

2021

Victorian Water, Country and Community - Aboriginal Water Program secures \$21 million to reconnect Aboriginal communities to water for Cultural, economic, customary and spiritual purposes.

2021

The Victorian Yoorrook Justice Commission is established as the first formal truth-telling process into historical and ongoing injustices experienced by Aboriginal and Torres Strait Islander Peoples.

2022

Water Act 2007 (Cth) water resource plans established across many states and territories, which must have regard for Aboriginal and Torres Strait Islander Peoples' water values and uses, including social, spiritual and Cultural values.

2022

Inaugural Aboriginal and Torres Strait Islander appointment to the Murray–Darling Basin Authority, independent Advisory Committee on Social, Economic and Environmental Sciences (ACSEES).

2022

Department of Natural Resources and Environment Tasmania sets the following Aboriginal focused strategic priority: *Put Tasmanian Aboriginal people at the heart of managing land and sea Country.*

2022

Nature Positive Plan: better for the environment, better for business states that partnerships with Aboriginal and Torres Strait Islander Peoples will improve environmental management and protect Cultural heritage.

2022

Burndap Birrarung burndap umarkoo (Yarra Strategic Plan) 10-year strategy embeds Traditional Owners in the governance and implementation of the Plan.

2022

Victorian Government *Water is Life: Traditional Owner Access to Water Roadmap* released.

2022

Water and Murray–Darling Basin Ministerial Council established replacing the Murray–Darling Basin Ministerial Council. Members include the Commonwealth minister responsible for water, and the 8 state/territory ministers for water.

2023

What We Heard consultation draft report released on the Aboriginal Water Entitlements Program (AWEP).

2023

Productivity Commission Inquiry into the Basin Plan and Water Resource Plan commenced on 2 May 2023.

2023

The *National First Nations' Water Roundtable* held. A joint initiative of the Australian National University, Indigenous Land and Sea Corporation, and National Native Title Council.

2023

The Murray–Darling Basin Authority River Reflections Water Conference held in Narrabri, New South Wales.

2023

Four face-to-face (and 1 virtual) AWEP gatherings held with Aboriginal representatives across the Murray–Darling Basin in July and August.

**Australian Government****Department of Climate Change, Energy,
the Environment and Water**

2023

Territory Water Plan has priority actions to enhance Aboriginal participation in water decisions and better understand Aboriginal Cultural water values.

2023

The Government of Western Australia *Aboriginal Cultural Heritage Act 2021* is repealed, and the *Aboriginal Heritage Act 1972* is amended and restored.

2023

Commonwealth minister responsible for water announces the Murray–Darling Basin Plan won't meet its water recovery targets by the legislated June 2024 deadline and submits the Water Amendment (Restoring our Rivers) Bill 2023 to extend the Basin Plan to 2026. The amendment does not include any outcomes for Basin Aboriginal and Torres Strait Islander Peoples.

2023

The Department of Natural Resources and Environment Tasmania releases the '*What are we learning?*' report, which highlights Tasmanian Aboriginal freshwater interests.

2023

The Government of Western Australia releases policy 'Planning for water' which includes the outcome: *Aboriginal and historic Cultural heritage values of water resources are protected and, where appropriate, promoted.*

2023

Power and water services to 141 Aboriginal communities in Western Australia transferred to public utilities, to improve essential services, with input from the communities.

2023

Australia votes against the Voice Referendum to recognise Aboriginal and Torres Strait Islander Peoples in the Constitution by establishing an Aboriginal and Torres Strait Islander Voice.



**UNITED NATIONS
DECLARATION ON
THE RIGHTS OF
INDIGENOUS
PEOPLES**



United Nations



UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES



United Nations



Resolution adopted by the General Assembly on 13 September 2007

*[without reference to a Main Committee (A/61/L.67
and Add.1)]*


61/295. United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006¹, by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

¹ See Official Records of the General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53), part one, chap. II, sect. A.



Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

*107th plenary meeting
13 September 2007*

Annex


United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,



Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples




affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,



Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,


Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights² and the International Covenant on Civil and Political Rights,² as well as the Vienna Declaration and Programme of Action,³ affirm the fundamental importance of the right to self-determination of all peoples, by

2 See resolution 2200 A (XXI), annex.

3 A/CONF.157/24 (Part I), chap. III.




virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,



Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,


Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all



human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁴ and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

4 Resolution 217 A (III).



Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.



Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - (d) Any form of forced assimilation or integration;
 - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.



Article 9


Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.


- 
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future genera-




tions their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including




those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous




cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect



their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

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 legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.



Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.



Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.



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 and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.



Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take



the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.




Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the




right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order 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, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and



appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.



Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and re-



spect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38


States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective



remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.



Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44


All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

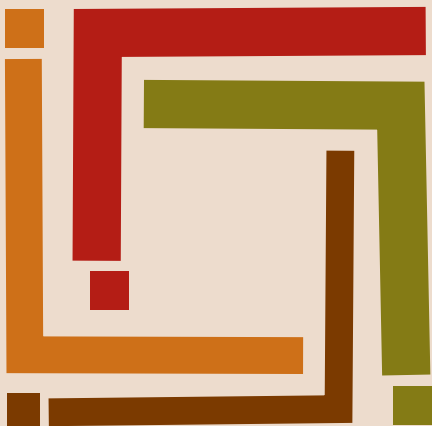
Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismem-



ber or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.
3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.



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organisation undoubtedly determined access to land and water ... A consequence of close social and ceremonial ties with Northern Territory based language groups ... is also used to describe land interests.⁶

Water landscapes hold meaning and purpose under Aboriginal laws. After thousands of years, the spiritual relationship of being part of Country remains integral, and despite the significant political and social change heaved upon the lives of Aboriginal communities the sacredness of water shapes the identity and values of Aboriginal peoples.

The creation story that opens this chapter recognises the relationship of Nyikina peoples to the river system, the land and the *liyan* (spirit) in its peoples and all things on Nyikina Country.⁷ Nyikina peoples have a name for the river, *mardoowarra* (the Fitzroy River), and *yimardoowarra* means Nyikina peoples 'belong'⁸ to the lower part of the *mardoowarra*.⁹ Underground water, which travels through neighbouring Aboriginal land, creates a joint responsibility.¹⁰

Aboriginal water management, as discussed in a Northern Territory study of water values and interests in the Katherine Region, represents a complex web of relationships:

Every aspect of water as a phenomena and physical resource as well as the hydro morphological features it creates is represented and expressed in the languages of local Aboriginal cultures: mist, clouds, rain, hail, seasonal patterns of precipitation, floods and floodwater, river flows, rivers, creeks, waterholes, billabongs, springs, soaks, groundwater and aquifers, and the oceans (saltwater).¹¹

The inherent relationships of Aboriginal peoples with land and water are regulated by traditional knowledge. For generations Aboriginal peoples have developed significant water knowledge for resource use. Aboriginal water knowledge, traditional sharing practices, climate and seasonal weather knowledge underpin water use knowledge. Aboriginal customary water use cannot be decoupled from the relationship with the environment and water resources because Aboriginal water concepts are central to community and kinship relationships. Unlike Western legal concepts, water cannot be separated from the land because Aboriginal creation stories have laid the foundations for Aboriginal water values.

The Western commercial value of Aboriginal knowledge systems – such as water knowledge, Aboriginal foods and the use of medicinal plants – has attracted significant interest from institutions and corporations because of the commercial research value of Aboriginal knowledge. I have worked, and continue

to work, in this area on a pro bono basis for Traditional Owners and Aboriginal representative organisations in the Kimberley region of Western Australia. This includes volunteer work with my husband Paul and commercial lawyer Mark Allen, negotiating and developing various stages of the ‘Mudjala Aboriginal Medicine Research and Development Project’, to ensure its unique Aboriginal knowledge use and international patent rights of community are defended. My husband Paul was employed as administrator/manager in the early days of the Kimberley Land Council (KLC) when John Watson was the KLC Chair. Our community work with the Jarlmadangah Burru Aboriginal Community and other Kimberley Aboriginal organisations is focussed on strategic capacity building, community skills training and enterprise development on country.

I lived in Derby, Western Australia, and through my marriage, I have kinship with Nyikina Mangala peoples and have been given a skin name to ensure the marriage is ‘straight’ (correct kinship marriage). My husband’s skin is Tjangala and my skin is Nangarrayi. A skin name is the kinship (group) to which one belongs. This familial relationship has opened my eyes to the significant water issues faced by Aboriginal peoples in the Kimberley region and commonalities with other Aboriginal peoples in Australia on water rights and interests.

Like Aboriginal plant and medicine knowledge, Aboriginal water knowledge can be vulnerable to unfettered exploitation by others if such knowledge has weak legal protection. Aboriginal water knowledge has the potential for commercialisation but also exploitation by non-community organisations and individuals, for instance in the way Aboriginal knowledge in Aboriginal bush foods and Aboriginal art have often been exploited.

Aboriginal language is a conduit for water knowledge – language misinterpreted by poor translation into the English language can seriously misrepresent the nature of Aboriginal water rights and interests. The variation of spellings in writing Aboriginal language is common.

The interface of Aboriginal water knowledge and water values present challenges for governments and water authorities in drafting policy and legislative instruments because these values are not understood. The water needs of Aboriginal communities are treated as just another interest group. If government is to address those challenges it should consult with Aboriginal peoples widely *prior* to drafting policy and legislative instruments and also ensure that Aboriginal peoples within their respective agencies and community are engaged in the drafting process. Australia’s national water reform process clearly lacked this involvement.

The creation stories of Aboriginal peoples across Australia have often been interpreted by non-Aboriginal writers as simple child-like narratives. During the early to mid-1900s many non-Aboriginal writers were fascinated by what was generally referred to as Aboriginal mythology.¹² But Aboriginal knowledge is complex and encoded within ceremony, creation story and is replete with cultural subtleties.¹³ Problems arise in transferring these values into Western concepts. An Aboriginal creation story interpreted by Charles P Mountford entitled the 'Salt Lakes of Kiti' illustrates a reconstruction of Aboriginal knowledge:

Gumuduk was a tall, thin, medicine man, who belonged to the hills country. He owned a magical bone of such power that he could use it to make rain fall in season, the trees bear much fruit, the animals increase, and the fish multiply. Because of such good fortune the hills people always had plenty of food.

However, the tribe that lived on the fertile plain below the Kiti range captured the medicine man and his bone, convinced that they, too, would in future have more food.

But instead of bringing them prosperity, the theft resulted in a calamity which totally destroyed their country. For the medicine man escaped, and was so angry over the indignity he had suffered that, plunging his magical bone into the ground, Gumuduk decreed that wherever he walked in the country of his enemies salt water would rise in his footsteps.

Those waters not only contaminated the rivers and lagoons, but completely inundated the tribal lands. And when these waters dried up, the whole area was changed to an inhospitable desert of salt lakes, useless to both creatures and the aborigines.¹⁴

Mountford uses words such as 'magical' to describe the 'bone' belonging to the 'medicine man'. The reference to the 'medicine man' conjures up powerful symbolism of Aboriginal primitive powers. However, the reconstruction of Aboriginal story and knowledge through a Western interpretation of values, beliefs and practices is often inaccurate, and the 'ethnographic writing of frontier settlers, colonial writers and diarists, is founded upon the writer's preoccupation, prejudice and assumptions about Aboriginal peoples'.¹⁵

Lawyers and policy drafters in the same way often deconstruct Aboriginal laws and practices, to then reconstruct them into less complex Western legal concepts. This approach fails because it seeks simplistic Western concepts which

compartmentalise the diverse social and cultural experiences of Aboriginal peoples.

Aboriginal wellbeing is integral in the development of water policy and achieves positive outcomes in Aboriginal health and self-determination as well as maximising the potential for Aboriginal economic development. Although not all Aboriginal communities seek to exploit water rights through commercial opportunities or seek to trade water rights for financial gain, wealth creation through Aboriginal water ownership would become a reality when national and state water reforms are initiated.

The complexity of the interplay between Aboriginal and Western perspectives demands the examination of a broad range of interconnected themes because the Australian legal system has developed, over time, distinct non-Aboriginal legal concepts that are at odds with Aboriginal water use. Arguments in water management and water use in this book are presented through the lens of Aboriginal ontology or put simply how Aboriginal peoples view the world and the universe, and not from the other perspectives, or beliefs and interpretations of Aboriginal water rights. To unbundle the many layers of Aboriginal meaning in water resources requires a particular emphasis on developing an Aboriginal voice and Aboriginal narrative.

The Aboriginal perspective of this book examines concepts and values of water and shows that values exist as ancestral rights which should be formally incorporated within the body of Australian law. Although ancestral water use and contemporary use represent different ideological concepts, cultural and economic water requirements of Aboriginal communities across Australia must be viewed as primary water rights.

This perspective establishes a new understanding of the significance of water to Aboriginal peoples — a value that is inextricably connected to, and informed by, a wider system of laws and customs that govern its use and protection. Aboriginal peoples continue to maintain their cultural rights to water in Australia. This requires national recognition to harmonise Aboriginal water rights and interests throughout the commonwealth, states and territories; unlike the hotchpotch of Australia's Aboriginal heritage laws. The widespread legal destruction of Aboriginal heritage sites is testament to the low worth placed on Aboriginal values, as is the unregulated sale of Aboriginal artefacts on the internet. The continued devaluation of Aboriginal ways of understanding and relating to an Aboriginal environment impedes reconciling past injustice.

Nuances of Aboriginal language are critical to understanding Aboriginal water resource use and the relationship of Aboriginal peoples within their Aboriginal

environment. This book uses Aboriginal narratives to explain Aboriginal values because Aboriginal peoples are better placed to tell their own stories. Aboriginal narratives depict the care and protection for water landscapes within ‘country’ as a legal obligation and a cultural expectation to abide by Aboriginal laws on country.

The purpose of this book is to cultivate a new understanding of Aboriginal water rights and interests by looking at key features such as Aboriginal water concepts, Aboriginal water management and Aboriginal water policy development. Because research in this area is an emerging jurisprudence, it requires an interdisciplinary approach to identify the range of Aboriginal issues that interface with Australian water management, such as international human rights.

This book is divided into three parts. Part A, ‘The interconnected waterscape’, examines the history, culture and stories of water of Aboriginal peoples in Australia and focuses on Aboriginal perspectives of water and how it is distinguished from Western and European perspectives in water values, use and management.

Part B, ‘Trading water — the disconnect in water values’ considers Aboriginal water values in relation to the Western ideologies, policies and laws that have led Australia to its current situation. These first two parts are brought together in Part C, ‘A paradigm shift for Aboriginal water rights’, which proposes solutions to address the rights and interests of Aboriginal peoples by formally incorporating robust human rights within Australian water law and policy.

This book demonstrates that when the unique Aboriginal concept of water resources, and their value and purpose, is interpreted in legislation and in common law definitions, it should be evaluated from the perspective of the Aboriginal community – which is to say, the community that holds the knowledge. There is an inherent danger in defining and interpreting Aboriginal water concepts through Euro-Australian frameworks. This often reconstructs Aboriginal concepts or cultural interpretations incorrectly and diminishes the nature of Aboriginal property rights. The federal amendments to native title legislation and its interpretation provide ample examples of diminishing Aboriginal human rights.

A changing waterscape — cultural identity in contemporary Australia

In contemporary Australia, Aboriginal identity can be a synthesis of Aboriginal and Western social constructs. Aboriginal peoples may seek to maintain Aboriginal customary practice – for example, in their spiritual attachment to water

sources to exercise cultural obligations, recognising familial relationships to place, and pursuing economic rights to water while respecting cultural values. However, Aboriginal peoples are generally expected to remain static in exercising traditional customs, law and practices, and when Aboriginal peoples adapt to Western influence and revitalize traditional laws, customs and practices they are generally excluded from exercising their inherent rights or interests. The credulous reasons given in the High Court decision of *Yorta Yorta Community v Victoria*¹⁶ that all Aboriginal peoples should remain in a time warp prior to British invasion/settlement hit hard. Aboriginal communities cannot be expected to live in a colonial vacuum.

[A]boriginal rights are not frozen in time. Aboriginal culture is inherently dynamic and adaptive and should not be bound to archaic constructs of what practices encompassed traditional life in the pre-historic past. Although Aboriginal rights are identified in a western timeframe, they are not doomed to a static existence.¹⁷

The Australian Law Reform Commission in its important inquiry into ‘The Recognition of Aboriginal Customary Laws’ (1986) acknowledged that Aboriginal communities should be allowed to adapt their customs and practices to the changing environment:

[c]hanges or adaptations in traditional rules or customs, to cope with the drastic difficulties European settlement has posed for Aborigines, may produce something which could be described as synthetic. It is hardly surprising that Aboriginals have attempted to synthesise these new elements along with their own beliefs, traditions and world view. All legal and cultural systems with a long history are likely to be synthetic in this sense. But that does not mean that they are less real or important to those whom they affect.¹⁸

Jackson, Storrs and Morrison (2005) in ‘Recognition of Aboriginal Rights, Interests and Values in River Research and Management’, note the importance of the waterscape for Aboriginal communities:

Aboriginal people have managed their water bodies and riparian areas for millennia. They rely heavily on these nationally and internationally significant wetlands for food, for cultural values, and, increasingly, for economic independence. The need for external advice or assistance has arisen chiefly from relatively recent changes driven by European settlement and other land management practices.¹⁹

Aboriginal communities are inherently connected to tangible and intangible Aboriginal values, and practices and customs that connect to Aboriginal identity,

both as individuals and collectively. A holistic set of Aboriginal water values exists within all types of water because Aboriginal identity is characteristic of water kinship. To culturally identify as an Aboriginal person is important for the individual and the community, and resonates with a unique Aboriginal perspective in defining values, beliefs and practices. Historian Jackie Huggins, a Bidjara and Birri-Gubba Juru woman, described her Aboriginal identity like this:

Foremost I detest the imposition that anyone who is non-Aboriginal can define my Aboriginality for me and my race. Neither do I accept any definition of Aboriginality by non-Aborigines as it insults my intelligence, spirit and soul, and negates my heritage. The reincarnate anthropologists have made a stunning career out of a continuous 'Daisy Bates' serial. There are no books written by non-Aboriginals that can tell me what it is like to be Black as it is a fiction and an ethnocentric presumption to do so. I would never presume to know what it is to be white (except when I dine at the Hilton).²⁰

It has been suggested in Australia that Aboriginal culture has been weakened because of the import of Western values and beliefs:²¹

The Dreaming is a set of doctrines and values – the value of everything – which were determined once-for-all in the past. The things of the Market – money, prices, exchange values, saving, the maintenance and building of capital – which so sharply characterises our civilisation.²²

Aboriginal ownership to water and land is held, from an Aboriginal perspective, by an Aboriginal title that is passed on by kinship succession planning when there are members of a group no longer alive to care for country. The Western notion that Aboriginal law is unstructured and random is baseless.

In his award winning book *Dark emu black seeds*, Bruce Pascoe unearthed archival materials in drawings of permanent dwellings and agricultural use of the land by Aboriginal peoples which contradicts the notion of Aboriginal peoples as nomadic 'hunters and gathers'.²³ Aboriginal customary values and beliefs are regulated by rules under Aboriginal laws that have operated for thousands of years. Australia's emerging colonies and plans for economic development saw governments demand unfettered possession of the land: '[p]re-European Aboriginal *country* was a set of complex and changing rights over land which does not translate into British real estate land subdivision'.²⁴

Aboriginal peoples in Australia have experienced economic competing rights for their lands and waters since the introduction of common law and the concepts

of English property law. These two distinct legal systems continue to be in dispute because of the increased demands on the use of and access to water, and demands for land and resource development. The ‘bundle of rights’ concept used in court judgements on determinations of native title compartmentalises cultural or legal rights as unconnected and separate rights (see Chapter 6).

Most notably, since the Commonwealth *Native Title Act* (1992) Aboriginal peoples have sought to assert their ownership of the land and the waters under the Australian legal system, and court decisions have not always met the expectations of Aboriginal communities.

The culture of the common law has imposed a conceptual grid over both space and time which divides, parcels, registers, and bounds people and places in a way that is often inconsistent with Indigenous participation and environmental integrity.²⁵

Professor Craig Arnold, an internationally recognised scholar on issues of land use, water, property, and the environment, argues that ‘property concepts applied to understand human being’s relationship with an object of property such as private property rights or the concept of the property right require a new metaphor’ – that rights in property should be seen as a ‘web of interests’ in order to explain how everything is interconnected.²⁶

Professor Arnold’s concept of understanding the wider relationships between the owner of the property and the property itself struck me as a concept that could provide a better understanding for others to appreciate Aboriginal concepts and values of water. Aboriginal water values are not simple generic concepts that represent all Aboriginal peoples, as nuances exist. The development of a metaphor for Aboriginal relationships to water may be challenging because of the diversity which underpins community knowledge and community groups.

Australian society has defended the right to progress and to capitalise the development of the lands and waters, whilst available water resources such as groundwater and soaks held for millennia by Aboriginal groups have been marginalised by the establishment of the Australian colonies and the federation of Australia’s states. Western values in property ownership underpin the control of the land and waters by non-Aboriginal interests and gives advantage to property owners in water. Exclusive ownership in water provides a legal expectation to fully participate in policy development.

In the development of Australian capitalism other forms of ownership have become important, but the value accorded [to] land ownership has not diminished and,

quintessentially represented in pastoral property, it continues to confer social and economic power.²⁷

The dialogue on water rights and property rights is similar to the issues surrounding native title and Aboriginal freehold land because Australia's hierarchy of rights and interests favours dominant Australian societal values.

Labelling indigenous property rights as different from or non-analogous to common law interests in land ... is an assertion of the cultural superiority of Western legal schemes over those of Aboriginal peoples ... The continuance of such stereotypes makes it easier to assume the inferiority of Aboriginal property rights ...²⁸

Dominant values reside where Australia's legal concepts such as native title laws expressly state that the common law must prevail above Aboriginal rights.

Challenging the myth of *aqua nullius*

Gleeson CJ has argued that 'the next legal battleground for Australia will be water'.²⁹ There are transboundary water conflicts in various parts of the world and water scarcity is a major policy issue for developed countries and, according to the World Health Organisation, more so for developing nations. Clean water is vital for all peoples no matter where they live on this earth. Many communities do not have adequate clean water and services, including Aboriginal peoples living in remote areas of Australia. In the same way *terra nullius* was used by foreign powers and governments to seek to extinguish Aboriginal peoples ownership over Australia, there remains an intransigent myth of *aqua nullius*. Both fresh and marine waters, as well as submerged land, occupied and used by Aboriginal peoples, require urgent attention. Aboriginal communities' desire to exercise their traditional fishing rights across Australia are over regulated and a prime example of flawed government policy.

When the common law arrived with the First Fleet it brought Western views on water use and a failure to understand that Aboriginal country was unlike England or Europe. History records numerous examples of the British Empire and Government colonising the occupied lands of Indigenous peoples in countries such as Australia, the USA, Canada, New Zealand, parts of Africa and various island communities. The British plan to colonise the Indigenous-held lands and waters of Australia was backed up by hundreds of years of British experience and knowledge of interacting with Indigenous peoples.

The economic value of water in Australia today is highly prized. From an Aboriginal cultural perspective, however, water equates to much more than a water utility, aesthetic water value and drinking water, and is characterised through many layers of customary knowledge.

Australians use more than 14,600 million cubic metres of water a year – the equivalent of 30 times the capacity of Sydney Harbour ... [It] is the basis of one of our largest industries; it accounts for \$90 billion worth of infrastructure investment; it contributes about \$6 billion to annual revenues through irrigated agricultural production in New South Wales.³⁰

The European four seasons of autumn, winter, spring and summer are not the seasonal cycles of Aboriginal peoples in Australia. Prior to British contact and the staggered stages of colonisation, Aboriginal communities applied laws within their respective countries to manage and resolve land or water issues.

Aboriginal water rights today should be regarded in a similar manner as Aboriginal land rights were when they were legally recognised by the High Court *Mabo* decision which formally acknowledged that Aboriginal title survived. Aboriginal peoples will always tell you that their sovereignty exists, yesterday, today and tomorrow. In the same way that Eddie Mabo and others changed the way Australian society understood *terra nullius* and challenged the fiction that British colonial settlement extinguished Aboriginal rights to land, water and resources, we also need to challenge the prevailing fiction of *aqua nullius*.³¹

Aboriginal communities relate to and contemplate value in the environment as integral to Aboriginal identity in a way that articulates both communal and individual belonging to country. The land, the waters and the creation stories are the essence of Aboriginal identity, where ‘sacredness’ particularises an inherent relationship to the environment unique to Aboriginal peoples. There is nothing English about an Aboriginal environment.

The landmark decision in *Mabo v Queensland [No 2]* 1992 (Cth)³² reformed the national dialogue on the concept of common law and statutory property rights. The *Mabo* decision did change the way all Australians had been conditioned to understand *terra nullius* and the notion that British colonial settlement had extinguished Aboriginal rights to land, water and resources.³³ Strangely enough, around the time of Australia’s recognition of native title the Council of Australian Governments (COAG) was planning radical structural legal reform for water resources, which did not include reflecting upon the importance of Indigenous water rights and interests.

In the early 1990s when COAG decided to establish a national water reform framework, our peak Australian human rights agencies, Aboriginal organisations and Aboriginal Local Land Councils advocated for Aboriginal water rights to be included in the national discussion. Little interest was shown for First Peoples' water rights. In 2004 COAG agreed to implement the 'National Water Initiative' and the states entered into a legal agreement (the Intergovernmental Agreement) to advance a blueprint for national water reform.

Among other things, it meant that separating water from the land introduces water as new category of property right. The question of interests and rights to water became more complex for all stakeholders under these reforms. This was particularly so for Aboriginal communities because federal, state and territory laws had, prior to the introduction of national water reform, virtually ignored the water rights and interests of Aboriginal peoples.

A new understanding of the multiple issues involved with incorporating Aboriginal water rights and interests is overdue. An examination of the breadth of legal issues and social determinants affecting Aboriginal water access and use in Australia has not been previously attempted from an Aboriginal perspective, nor has a legal textbook been dedicated to articulate the themes discussed in this book.

The importance of research being undertaken by Aboriginal peoples on water issues is crucial to inform policy and law reform, and over time incrementally increases the critical mass of Aboriginal legal researchers and academics. In the words of Valerie Cooms, an Aboriginal Judge of the National Native Title Tribunal and Traditional Owner of the Nunukul people of North Stradbroke Island, 'unless there are more Indigenous people writing and publishing, there's not a lot for other scholars to hang their theory on'.³⁴

An informed national discussion between Aboriginal communities and other water users is a priority, in particular how national policy and legislative water reform will be guided and based upon foundational Aboriginal concepts and values about, and relationships with, water that prioritise traditional Aboriginal knowledge. It is important to recognise the diversity of the Aboriginal values in water and the rich dialogue held in Aboriginal language. This recognition will create the paradigm shift needed to position Aboriginal water rights as Australia's priority.

Chapter 2

'WE BELONG TO WATER' — ABORIGINAL IDENTITY AND CULTURAL AUTHORITY

Aboriginal social, cultural, spiritual and economic water values are interwoven, as spiritually-linked concepts and values held within Aboriginal kinship, among all water resources.

According to Gagudju, a Senior Lawman of the Bunitj, the distinct cultural identity of Aboriginal people intrinsically exists as an inseparable part of the environment:

If you feel sore ...
headache, sore body,
that mean somebody killing tree or grass.
You feel because your body in that tree or earth.
Nobody can tell you,
You got to feel it yourself.¹

Western social constructs struggle to accommodate Aboriginal water values – which permeate the relationship of Aboriginal peoples' connection to country. Jackson and Morrison (2007) suggest that 'the characteristics of Aboriginal water use warrants further consideration of the broad landscape perspectives in assessing impacts and engaging Indigenous communities'.²

In Australia, Aboriginal peoples recognise a unique cultural identity within the water landscape through familial connections,³ recognising kinship values and identity through such descriptors as saltwater, freshwater and bitterwater, which are especially relevant when travelling across traditional trade routes and boundaries.⁴ In 2006 we went to Narooma for a family fishing holiday and called in to see Lionel Mongta, a Traditional Owner of Gulaga Mountain in the south coast of New South Wales. In conversation he explained that 'saltwater refers to Aboriginal coastal communities, freshwater to communities from