



**NATIONAL  
INDIGENOUS  
LAND AND  
SEA  
STRATEGY**

# **Discussion Paper: Water and Indigenous people**



**Australian Government**  
Indigenous Land and Sea Corporation



**The ILSC GROUP**

**PEOPLE. COUNTRY. OPPORTUNITY.**

***This paper was prepared by Brad Moggridge (a proud Murri from the Kamilaroi Nation and water scientist). The views expressed are for generating broader discussion and may not represent the position of the ILSC.***

---

**Koiki Mabo led the charge and overturned terra nullius. This generation's challenge may well be overturning aqua nullius involving reform of water legal and policy pathways, as well as wider public education and reconciliation activities.**

Colonisation allowed for the removal of Aboriginal people from their respective countries, took their rights away, made speaking their many diverse languages illegal and regulated every aspect of their life, all while they were placed on Missions and Reserves. This is not a long time ago, this was only three generations ago, just before me, as the author, was born. While Aboriginal people had their rights taken so was their land and water, given to the people willing to take on the frontier.

As time grew our land was taken and divided up and granted to the settler, not only land but water was also given to the settler as it was connected to land. All the while Aboriginal people were not seen as human, Aboriginal people were first counted in the census in the late 1960s thus making them human, by then all the good water and land was taken.

Major reforms following the 2004 National Water Initiative, state and territory legislation and the *Commonwealth Water Act 2007*, ultimately resulted in the decoupling of land and water into two separate markets, which further disenfranchised Aboriginal people. Aboriginal people may have land under Land Rights laws or access via Native Title determinations, but water entitlements remain missing.

Today, economic opportunities for Aboriginal people are limited to purchasing water entitlements from the water market in systems (in south-east Australia) that are fully or over-allocated in many areas.

Against a backdrop of ongoing inadequacies and inequities in water ownership, this paper examines how Indigenous interests are considered in national, state and territory legislation and considers the opportunities and challenges for Indigenous people looking to enter the water market.

## **1 Inadequacies and Inequities**

It was not until recently that a comprehensive 2020 study<sup>1</sup> by Dr Lana Hartwig and Dr Sue Jackson looked at the entitlements of NSW Aboriginal people in the Murray-Darling Basin. Their work uncovered the inadequacies and inequities in water ownership.

The study<sup>2</sup> covered 10 catchments in the NSW portion of the Murray-Darling Basin where, as of October 2018, Aboriginal people collectively hold just 12.1 gigalitres of surface water, a mere 0.2% of all available surface water. By comparison, Aboriginal people make up 9.3% of this area's population. The value of water held by Aboriginal organisations was \$16.5 million in 2015-16 terms, equating to just 0.1% of the value of the Murray-Darling Basin's water market.

The study identified four key findings for groundwater holding in the Murray-Darling Basin:

- 1.** A novel method was developed for comparing groundwater entitlements across groundwater SDL (sustainable diversion limits) resource units. The methodology determining available surface water cannot be applied to groundwater.
- 2.** Aboriginal organisations hold 0.556 GL of groundwater entitlements, which equates to 0.022% of the available groundwater resource across the whole Basin.
- 3.** A total of six Aboriginal-held groundwater entitlements were identified, all of which are located within NSW.
- 4.** Aboriginal-held groundwater entitlements are valued at approximately \$772,800 (in 2015-16 terms).

1 Hartwig, L.D., & Jackson, S. 2020. *The status of Aboriginal water holdings in the Murray-Darling Basin*. ARI Report No. 2020/004. Australian Rivers Institute, Griffith University, Australia

2 <https://theconversation.com/australia-has-an-ugly-legacy-of-denying-water-rights-to-aboriginal-people-not-much-has-changed-141743>

## 2 Legislative and Policy Context

There is considerable variation between Federal, State and Territory Governments in the way Aboriginal water interests are recognised, protected and advanced. This section examines this in more detail.

### 2.1 National

The Productivity Commission Inquiry into Water Reform<sup>3</sup> focusing on renewal of the National Water Initiative recommends the creation of a new element for Aboriginal and Torres Strait Islander people's access to water, to be developed by the Committee on Aboriginal Water Interests (CAWI). The codesign of the new element by the CAWI is to look at improving cultural outcomes and access for economic development to recognise Aboriginal water rights, increased access and/or ownership of water entitlements, and decisionmaking practices to deliver quinary bottom-line outcomes that support cultural, spiritual, economic, social and environmental outcomes.<sup>4</sup>

The issuing of entitlements and licensing for economic activities for Aboriginal people will move closer to meeting the 2021 *Closing the Gap* target #15 that 'People maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters'.<sup>5</sup>

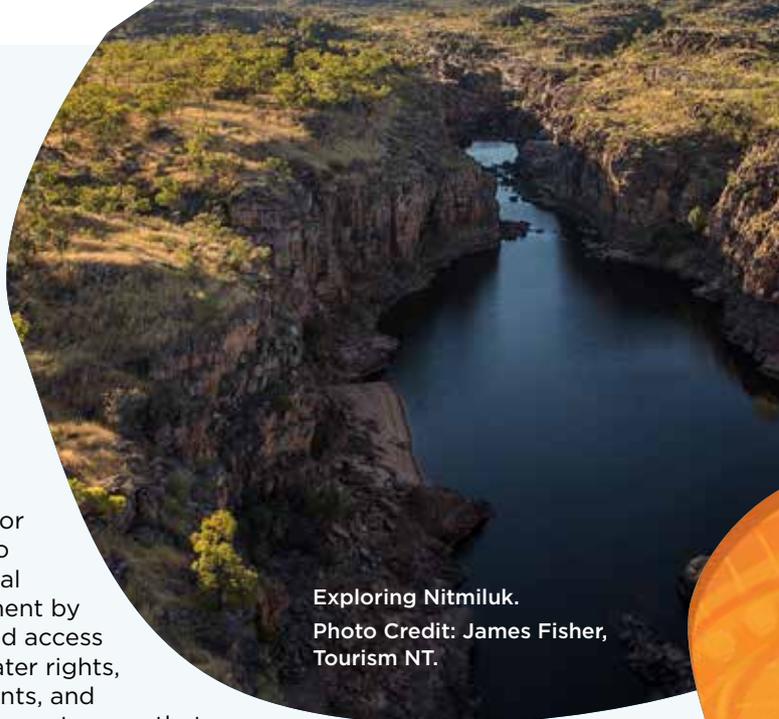
Negotiations at the highest levels of state and federal governments are seeking from the Coalition of Peaks<sup>6</sup> – a collective of Indigenous Organisations – a target of water ownership in each jurisdiction. At the time of this report there is no number/percentage determined.

### 2.2 Murray-Darling Basin Plan

The *Water Act 2007* (Cth) aims to achieve integrated management of the Basin's water resources and ensure there are sustainable limits on water taken from the Basin's surface and groundwater systems. There are two main instruments – the Basin Plan and Water Resource Plans (WRP). The purpose of the Basin Plan is 'to provide for the integrated management of the Basin water resources in a way that promotes the objects of this Act'.<sup>7</sup> Adopted in 2012, the Basin Plan may be amended and reviews are required every 10 years, or on request by the federal minister or all Basin states.<sup>8</sup> The Murray-Darling Basin Authority (The Authority) is required under the Act to advise the Ministerial Council by the end of 2020 (now past) on the impacts of the Basin Plan to date.

The *Water Act 2007* requires the Authority and Minister to consider Indigenous issues in the Basin Plan development under Chapter 10 Part 14.<sup>9</sup> The Basin Plan must have regard to and include information about the uses of Basin water, including by Indigenous people, and give regard to the 'social, spiritual and cultural matters (including cultural flows) relevant to Indigenous people in relation to the water resources of the water resource plan areas in the preparation of the water resource plan'.<sup>10</sup> The Authority must also engage the Indigenous community on the use and management of the Basin's water resources.<sup>11</sup>

- 3 Productivity Commission 2021, *National Water Reform 2020*, Inquiry Report no. 96, Canberra
- 4 National Water Reform 2020 Inquiry Report No.196, 28 May 2021 [www.pc.gov.au/inquiries/completed/water-reform-2020/report](http://www.pc.gov.au/inquiries/completed/water-reform-2020/report)
- 5 [www.closingthegap.gov.au/closing-gap-targets-and-outcomes](http://www.closingthegap.gov.au/closing-gap-targets-and-outcomes)
- 6 <https://coalitionofpeaks.org.au/>
- 7 Water Act (Cth), s 20
- 8 Water Act (Cth), s 45-49
- 9 Water Act (Cth), s 21(4)(v)
- 10 Water Act (Cth), s 22
- 11 Water Act (Cth), s 172



Exploring Nitmiluk.  
Photo Credit: James Fisher,  
Tourism NT.



Mark Schneider, Nari Nari Tribal  
Council at Gayini, NSW.  
Photo Credit: Annette Ruzicka &  
The Nature Conservancy.



Australian Pelican at Pollen Creek, Gayini, NSW.

Photo Credit: Annette Ruzicka & The Nature Conservancy.

The Basin Plan requires WRPs to include and strengthen:

*Indigenous values and uses, including Indigenous social, cultural, spiritual and customary objectives, and strategies for achieving these objectives.*

This must occur in consultation with Indigenous organisations. WRPs must also consider the views of relevant Indigenous organisations in relation to other matters, including:

- native title rights and claims, and Indigenous Land Use Agreements;
- registered Aboriginal heritage;
- inclusion of Indigenous representation and participation in WRP preparation and implementation; and,
- risks to Indigenous values and uses that may arise from the use of water resources in a WRP area.<sup>12</sup>

The Basin Plan does not provide water for Aboriginal people and many of the WRPs have failed to deliver water. Some jurisdictions have failed to deliver WRPs, further impacting Aboriginal people and their ability to secure water.

### 2.3 New South Wales

The *Water Management Act 2000* refers to the need to consult on (iii) *benefits to culture and heritage*, and (iv) *benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water*.

The Act further provides for specific purpose Aboriginal licences and the consideration of values in water sharing plans. All water sharing plans recognise the importance of rivers and groundwater for Aboriginal people. A licence may be granted if the uses are not associated with commercial activities; are not tradable; and are relinquished when the 'purpose' has expired, or the water is longer required.

Some NSW water plans for coastal rivers and groundwater systems may also allow applications for Aboriginal Community Development Licences (ACDL) as a licensed purpose. An aquifer ACDL<sup>13</sup> access licence is a sub-category that allows water to be taken by Aboriginal persons or communities for commercial purposes. The water taken under these licences must benefit the community in a way that fosters economic and social development. These licences are intended to provide opportunities for Aboriginal communities to develop water-based industries. However, they put NSW Aboriginal people somewhat at a disadvantage and well below the level of rights and access to water than other water users. **They are limited to outside the Murray-Darling Basin, due to the Cap (no new water); a licensee can only pump water in high flow (so almost flood conditions); and the licence is not tradeable.** This is done through the Water Act Regulation that allows for the granting of ACDL. Water sharing plans may also contain provisions in relation to the granting of these licences and can also specify a volume limit.<sup>14</sup>

12 Waschka, M., Macintosh, A., Simpson, A., Jones, J., Barber, M. (2020) Indigenous Strategic Issues in Water Planning for Northern Australia: Technical Report. Report for the Department of Agriculture, Water and the Environment. CSIRO, Canberra

13 From 2007 Aboriginal commercial licences were re-named as Aboriginal community development licences; however, water sharing plans made prior to 2007 still refer to Aboriginal commercial licences

14 Waschka, M., Macintosh, A., Simpson, A., Jones, J., Barber, M. (2020) Indigenous Strategic Issues in Water Planning for Northern Australia: Technical Report. Report for the Department of Agriculture, Water and the Environment. CSIRO, Canberra

## 2.4 Northern Territory

In 2016 the then NT Labour opposition went to the election with a commitment to review the policy position of Strategic Indigenous Reserves (SIR). After their election victory a discussion paper<sup>15</sup> was released proposing that SIRs be associated with a reserved volume of water exclusively accessible to Aboriginal landowners. Following the review, a policy framework was published<sup>16</sup> and the water entitlement was referred to as Strategic Aboriginal Water Reserves.

In October 2019 the NT government passed the *Water Further Amendment Act 2019*. This legislation establishes Aboriginal economic development as a new beneficial use category in the NT *Water Act 1992*, paving the way for water in new allocation plans to be assigned to Aboriginal water reserves. These reserves are defined in the policy as ‘...a reserved percentage of water from the consumptive pool within a Water Allocation Plan area exclusively accessible to eligible Aboriginal people **to use, or trade.**’

## 2.5 Victoria

Victoria released the *Water for Victoria*<sup>17</sup> policy in late 2016. Chapter 6 *Recognising and Managing for Aboriginal Values* included four key actions:

- 1 Recognising Aboriginal values and objectives of water.
- 2 Including Aboriginal values and traditional ecological knowledge in water planning.
- 3 Supporting Aboriginal access to water for economic development.
- 4 Building capacity to increase Aboriginal participation in water management.

The policy was associated with a funding programme of \$9.7 million, which included funds to create a targeted Aboriginal water unit.<sup>18</sup> The Department has established an Aboriginal Water Officers Network, closely linked to Catchment Management Authorities, which work closely with communities to develop cultural watering plans and deliver water in partnership with the Victorian Environmental Water Holder.

Water ownership in a river system was made available to Traditional Owners for the first time in the state’s history, by the Victorian Government. In a significant step the Gunaikurnai Land and Waters Aboriginal Corporation will receive two gigalitres of water in the Mitchell River.<sup>19</sup> This historic moment has enshrined Traditional Owner rights to water and will allow further opportunities for all Traditional Owners to access water within the current policy and legislative commitments.

The Birrarung Council<sup>20</sup> was established in September 2018 to advise the Government on matters associated with the ongoing protection of Birrarung (the Yarra River); to progress key Birrarung priorities under *Water for Victoria* and in the *Yarra River Protection (Wilip-gin Birrarung murrn) Act 2017*<sup>21</sup> (the first Australian legislation co-titled in a Traditional Owner language); and to advise how to best utilise the Yarra for community, Traditional Owner and recreational use.

15 Department of Environment and Natural Resources (DENR) 2017. “Strategic Indigenous Reserves Stakeholder Discussion Paper”. Darwin Northern Territory

16 Northern Territory Government (NT Government). 2017. “Strategic Aboriginal Water Reserve, Policy Framework”, Darwin NT

17 Department of Environment, Land, Water and Planning (DELWP, Victoria). 2016. “Water for Victoria”, [http://delwp.vic.gov.au/\\_data/assets/pdf\\_file/0006/377772/Water-Plan-strategy2.pdf](http://delwp.vic.gov.au/_data/assets/pdf_file/0006/377772/Water-Plan-strategy2.pdf)

18 Productivity Commission. 2017. “National Water Reform, Final Report”, Canberra

19 <https://theconversation.com/victoria-just-gave-2-billion-litres-of-water-back-to-indigenous-people-heres-what-that-means-for-the-rest-of-australia-150674>

20 [www.water.vic.gov.au/birrarung-council/home](http://www.water.vic.gov.au/birrarung-council/home)

21 [www.water.vic.gov.au/waterways-and-catchments/protecting-the-yarra/yarra-river-protection-act](http://www.water.vic.gov.au/waterways-and-catchments/protecting-the-yarra/yarra-river-protection-act)



Murrayfield Station  
on Bruny Island in  
Tasmania



Wanna Mar Stehr tuna fishing, Port Lincoln, SA

## 2.6 Queensland

Under the *Water Act 2000*, Aboriginal and Torres Strait Islander people can take or interfere with water in Queensland for traditional activities or cultural purposes without obtaining a water entitlement or licence. Since 2018 the Act has required strategies for achieving, monitoring and reporting on these cultural outcomes to be included in water plans.<sup>22</sup>

All 23 Queensland water area plans include the objective of supporting water-related cultural values, with the majority specifically referring to Indigenous cultural values. Of these plans, 12 also reserve water (in some form) specifically for Indigenous use and, of these, 11 state that this water is to support the economic aspirations of Indigenous people.<sup>23</sup>

## 2.7 Australian Capital Territory

The *Water Resources Regulation 2007* sets out several circumstances in which a person may obtain an exemption from the requirement for a licence to take water. It should be noted that none of the legislative or policy documents relating to water planning for the ACT contemplate or provide for the economic or commercial interests of Indigenous Peoples in relation to water resources.

## 2.8 South Australia

South Australian water allocation plans outside the South Australian Murray-Darling Basin reflect the previous limited consideration given to the water-related interests and objectives of Aboriginal people in the state, although some reference efforts to better understand and quantify Aboriginal water values and needs. An exception to this is the draft water allocation plan for the 'Far North Prescribed Wells Area' which includes the objective of supporting Aboriginal peoples' water interests through provision of access to the resource. It proposes a 'cultural water consumptive pool' which is only available to be used by an Aboriginal person for personal, domestic, cultural, spiritual or non-commercial communal needs. This is the only water allocation plan that appears to provide water from the consumptive pool specifically for Aboriginal use which is non-economic.<sup>24</sup>

## 2.9 Tasmania

The regime of water management established by the *Water Management Act 1999* makes limited reference to the interests of Tasmanian Aboriginal people. The Act is nearly 23 years old and lists 'cultural heritage' as a consideration relevant to the approval of dam works. However, in relation to Division 3 permits there is no further definition of 'cultural heritage' provided, while for Division 4 permits the term is cross-referenced to another statute that excludes Indigenous heritage from the term's scope.<sup>25</sup> The Water Management Planning policy document nominates the protection of Aboriginal cultural heritage as one of the 'shared benefits' that accrues from water planning, though it does not reference any other Indigenous interests in water.<sup>26</sup>

22 This requirement came into effect in October 2018, so there are some plans developed prior to this time that are yet to fully consider all Indigenous interests, and currently only include cultural interests.

23 Waschka, M., Macintosh, A., Simpson, A., Jones, J., Barber, M. (2020) Indigenous Strategic Issues in Water Planning for Northern Australia: Technical Report. Report for the Department of Agriculture, Water and the Environment. CSIRO, Canberra

24 Waschka, M., Macintosh, A., Simpson, A., Jones, J., Barber, M. (2020) Indigenous Strategic Issues in Water Planning for Northern Australia: Technical Report. Report for the Department of Agriculture, Water and the Environment. CSIRO, Canberra

25 Water Management Act (Tas), ss 155(1)(f)(iv), 164(2)(f). The term is linked to the meaning provided in the *Historic Cultural Heritage Act 1995* (Tas), s 15(1B)

26 Waschka, M., Macintosh, A., Simpson, A., Jones, J., Barber, M. (2020) Indigenous Strategic Issues in Water Planning for Northern Australia: Technical Report. Report for the Department of Agriculture, Water and the Environment. CSIRO, Canberra

## 2.10 Western Australia

No water plan in Western Australia currently reserves water specifically for use by Indigenous people for commercial use. The Yamatji Nation Indigenous Land Use Agreement provides up to 25 gigalitres from numerous groundwater resources for the Yamatji Aboriginal Water Reserve, with the majority in the Arrowsmith and Gascoyne groundwater areas. The reserve equates to 30% of the available groundwater in 2019 from each water resource across the Yamatji Nation area, which has been reserved for Yamatji Nation use and benefit.

## 3 Challenges

Inadequate recognition and protection of Aboriginal interests in Australia's water legislation and policies has led to, or compounded, many challenges for Aboriginal people in accessing or entering the water market. These include:

### 3.1 Difficult to enter an already over-allocated market

There is limited opportunity for Aboriginal people to apply for a licence for water in already full or over-allocated water markets. McAvoy noted 16 years ago that as the value of water on the Australian market has increased dramatically, the only water the Government can get back for purposes other than environmental, is compulsorily acquired water or to purchase water retired by water holders at sometimes exuberant prices.<sup>27</sup> For Indigenous people wanting to enter the current water market, they must purchase water licences that are surrendered or for sale through a water broker (such as Waterfind Australia).<sup>28</sup>

### 3.2 Inequitable legislation

Colonial settler water laws continue to benefit the settler, with laws changing only when and if they fail to benefit the settler. Traditional Owners do not have the luxury of lobby groups and access to Ministers that farmers, mining companies and irrigators have. The lobbying of these strong with influential groups is very targeted and direct to get beneficial change for farmers, mining companies and irrigators. A recent example is the multiple attempts by the NSW Government to pass laws for floodplain harvesting to be legal and licensed.<sup>29</sup> NSW has advised that out of the 500 proposed licences only one will be issued to an Aboriginal entity in the northern basin.

### 3.3 Limited access to capital and water literacy

Limited access to capital or funds to purchase water can leave Traditional Owners on the outside of the market. Water literacy, of understanding water law, is also a large issue for Traditional Owners. With limited windows of opportunity and consecutive governments promising change, to allow Aboriginal people the opportunity to understand and access water, Traditional Owners/custodians generally still do not understand the rules/laws – the licences/applications required to apply, own, and order the water – and the requirement for the infrastructure to pump and store it. The mob, especially Elders, find it hard to justify and pay for water that was theirs for thousands of generations.

27 McAvoy, T. 2006. "Water – Fluid Perceptions". *Transforming Cultures eJournal* . 1. 2 June 2006

28 [www.waterfind.com.au/](http://www.waterfind.com.au/)

29 [www.theguardian.com/australia-news/2021/dec/15/nsw-to-push-ahead-with-flood-plain-harvesting-despite-calls-for-more-research-on-impacts](http://www.theguardian.com/australia-news/2021/dec/15/nsw-to-push-ahead-with-flood-plain-harvesting-despite-calls-for-more-research-on-impacts)



Harvesting kuti (pipsis) on Ngarrindjeri country in SA.

Photo Credit: Andy Steven Photography & Goolwa PipiCo.

### 3.4 Limited means of access

The non-consumptive pool is relevant for Traditional Owners to access for primarily cultural, Native Title and environmental purposes, such as keeping water in the river for cultural species, extracting small amounts for bush food and medicine or ensuring water is present in the river or at a spring for ceremony or large gatherings. The non-consumptive use has non-economic outcomes and mostly involves non-tradeable activities. Some jurisdictions place cultural values into the environmental values and flows without consultation, based on the pure assumption that environmental water covers cultural values too.

The **consumptive pool** is the only tool in the water kit for Traditional Owners to acquire water entitlements for economic and social gain.

Opportunities for acquiring water entitlements in the consumptive pool can be restrictive and inequitable, challenged by the differences in water laws and policies across jurisdictions. For example, NSW has a well-established water market (fees, approvals, rules, regulated, unregulated and management) that is fully or over-allocated, whereas the NT has a relatively new system: where a water plan does not provide for a strategic Aboriginal reserve there is no protection, as water users can still apply for and be granted water licences, noting that NT has minimal fees for licenses.<sup>30</sup> The recent media around the 40 gegalitre licence proposed for Singleton Station is very controversial with Traditional Owners lobbying to have it cancelled.<sup>31</sup>

## 4 Opportunities

We have previously seen that federal and state jurisdictions have failed Indigenous people in water. Some jurisdictions have made minor improvements through recognition and inclusion of Indigenous people in planning processes and decision-making. There is less progress in others. Granting or extending the opportunity for water entitlements to Indigenous groups and communities is still bedded down in the colonial settler system where the settler benefits and Indigenous people still do not.

Securing recognition of prior Indigenous rights and ownership of the Australian continent remains an ongoing priority for Indigenous Australians, as Koiki Mabo led the charge and overturned *terra nullius*. This generation's challenge may well be overturning *aqua nullius* involving reform of legal and policy pathways, as well as wider public education and reconciliation activities. This section proposes some opportunities towards this.

### 4.1 Recommit to Aboriginal water rights and \$40m funding promise

In November 2018 the Australian Government made a \$40 million commitment to purchase water from the Murray-Darling Basin market for Aboriginal people, a commitment moved in October 2021 from the Water Minister's area to the Minister for Indigenous Australians and the National Indigenous Australians Agency (NIAA). In the three years since the announcement, not \$1 has been spent on water buybacks and it has not been placed in a 'trust fund' to generate interest over this period. With a new CEO at NIAA it may be an ideal time for the ILSC to start a new conversation about water rights and, at a minimum, placing the \$40 million<sup>32</sup> into a trust fund, to generate interest until the appropriate governance arrangements are developed. The ideal time for purchasing water in the Murray Darling Basin has been the wet period currently being experienced. The market allows for cheaper process when it is wet. Drought may be soon upon us, and water prices will rise with extra demand.

30 [www.clc.org.au/singleton-station-native-title-holders-serve-claim-against-nts-largest-water-licence/](http://www.clc.org.au/singleton-station-native-title-holders-serve-claim-against-nts-largest-water-licence/)  
The Central Land Council is taking the NT Government to court over the 40,000 ML water licence for Singleton Station

31 [www.abc.net.au/news/2021-04-08/singleton-granted-40-000-megalitre-water-licence/100055212](http://www.abc.net.au/news/2021-04-08/singleton-granted-40-000-megalitre-water-licence/100055212)

32 <https://znews.pro/2021/05/06/concern-over-aud-40-million-indigenous-water-funding-in-australia/>

## 4.2 Facilitate trade on the temporary market

If Aboriginal people have water, the governance of its use, rules, annual fees (administration and usage) along with its management can be a challenge. Some Local Aboriginal Land Councils (LALC) in southern NSW have been trading on the temporary market to generate revenue to cover other areas of need. For example, one LALC in mid-western NSW has successfully temporarily traded water to the Commonwealth Environmental Water Office as they were not comfortable trading it with an irrigator or grazer. **Temporary trades may be preferable to making permanent trades where the water is gone forever.**



## 4.3 Reduce barriers for access to the consumptive pool

The consumptive pool is the ideal place for Aboriginal people to access water. It can be accessed via:

1. 'Specific purpose' Aboriginal water licences. However, these can be restrictive in use and are bound by inequitable rules (only available in certain water plans, can only pump in certain times (high flow) and have restrictive trading rules).
2. The establishment of strategic Aboriginal reserves across the continent. The NT and Qld have gone down this major path for Aboriginal people to access water.
3. Jurisdictions that identify "new" or unallocated water (surface or ground water) prioritise Aboriginal people in those water plan areas to access entitlements prior to market offers or silent auctions.
4. The purchase of water entitlements for Aboriginal groups on the water market.

The latter option is the only real way Aboriginal people can access water entitlements, whether they are from past land acquisitions like many ILSC properties or where groups have the capital/funding to go to the water market and purchase water.

## 4.4 Improve water literacy

Governments of all levels could be supporting improved water literacy for Aboriginal communities covering knowledge of the water market and laws to ensure the right water is purchased for the intended use, supporting Aboriginal community engagement with water brokers (who have economic interests in the process) and enabling effective participation in water planning and allocation processes. One such example is a factsheet prepared by the NSW Aboriginal Land Council for NSW Local Aboriginal Land Council's explaining the process to purchase a water licence.<sup>33</sup>

## 4.5 Commit to the cultural flow methodology

The Echuca Declaration<sup>34</sup> introduced the concept of 'cultural flows' defined as:

*Water entitlements that are legally and beneficially owned by the Aboriginal nations and are of a sufficient and adequate quantity and quality to improve the spiritual, cultural, environmental, social and economic conditions of those Aboriginal nations; this is our inherent right.*

The definition of cultural flows is all encompassing including economic uses, but the reality is many jurisdictions are not providing economic flows and water entitlements from cultural flows. The Cultural Flow methodology<sup>35</sup> informed by Aboriginal Water Assessments<sup>36</sup> provides a methodology to apply scientific rigour to collating and documenting cultural values.

<sup>33</sup> <https://alc.org.au/publications/water-licences-fact-sheet/>

<sup>34</sup> Murray and Lower Darling Rivers Indigenous Nations (MLDRIN), 2007 "The Echuca Declaration". Adopted 14 November 2007

<sup>35</sup> National Cultural Flows Research Project (NCFRP). 2018 <http://culturalflows.com.au/>

<sup>36</sup> Mooney, W., and A. Cullen. 2019. "Implementing the Aboriginal Waterways Assessment Tool: Collaborations to Engage and Empower First Nations in Waterway Management." *Australasian Journal of Environmental Management* 26 (3): 197-215. doi:10.1080/14486563.2019.1645752

## Resources

Altman, J. C., & Arthur, W. S. 2009. *Commercial water and Indigenous Australians: A scoping study of licence allocations*. CAEPR working paper no. 57/2009. Centre for Aboriginal Economic Policy Research, The Australian National University. <http://caepr.cass.anu.edu.au/research/publications/commercial-water-and-Indigenoustralians-scoping-study-licence-allocations>

Behrendt, J., and P. Thompson. 2003. "The Recognition and Protection of Aboriginal Interests." *NSW Rivers, OCP 1008*. November. Healthy Rivers Commission of NSW.

Craig, D. 2006. *Indigenous Property Rights to Water: Environmental Flows, Cultural Values and Tradeable Property Rights*. Sydney: Macquarie University.

Department of Environment, Land, Water and Planning (DELWP, Victoria). 2016. "Water for Victoria", [http://delwp.vic.gov.au/\\_data/assets/pdf\\_file/0006/377772/Water-Plan-strategy2.pdf](http://delwp.vic.gov.au/_data/assets/pdf_file/0006/377772/Water-Plan-strategy2.pdf)

First People's Water Engagement Council (FPWEC). 2012a. *Policy Framework for the National Water Commission*. Canberra, A.C.T: National Water Commission.

First People's Water Engagement Council (FPWEC). 2012b. *Advice to the National Water Commission*. Canberra, A. C.T: National Water Commission.

Foundation, L. 2002. "Indigenous Rights to Water Report": Lingiari report to ATSIC Background Briefing Papers. Lingiari Foundation WA.

Hartwig, L. D. 2020. *Aboriginal water rights in New South Wales: Implications of water governance reform for self-determination* [Doctoral dissertation]. Griffith University.

Hartwig, L. D., Jackson, S., & Osborne, N. 2018. Recognition of Barkandji water rights in Australian settler-colonial water regimes. *Resources*, 7(1), Article 16. <https://doi.org/10.3390/resources7010016>.

Hartwig, L. D., Jackson, S., & Osborne, N. 2020. Trends in Aboriginal water ownership in New South Wales, Australia: The continuities between colonial and neoliberal forms of dispossession. *Land Use Policy*, 99, 104869. <https://doi.org/10.1016/j.landusepol.2020.104869>

Hemming, S., Rigney, D., Bignall, S., Berg, S., & Rigney, G. 2019. Indigenous nation building for environmental futures: Murrundi flows through Ngarrindjeri Country. *Australasian Journal of Environmental Management*, 26(3), 216–235. <https://doi.org/10.1080/14486563.2019.1651227>

Hemming, S., Rigney, D., & Pearce, M. 2007. Justice, culture and economy for the Ngarrindjeri nation. In E. Potter, A. Mackinnon, S. McKenzie, & J. McKay (Eds.), *Fresh water: New perspectives on water in Australia* (pp. 217–233). Melbourne University Press.

Hemming, S., D. Rigney, S. L. Muller, G. Rigney, and I. Campbell. 2017. A new direction for water management? Indigenous nation building as a strategy for river health. *Ecology and Society* 22(2):13. <https://doi.org/10.5751/ES-08982-220213>.

Jackson, S. 2018. Indigenous peoples and water justice in a globalizing world. In K. Conca & E. Weinthal (Eds.), *The Oxford handbook of water politics and policy*. Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780199335084.013.5>

Jackson, S. 2018. Water and Indigenous rights: Mechanisms and pathways of recognition, representation, and redistribution. *Wiley Interdisciplinary Reviews: Water*, 5(6), e1314. <https://doi.org/10.1002/wat2.1314>

Jackson, S., and M. Langton. 2012. "Trends in the Recognition of Indigenous Water Needs in Australian Water Reform: The Limitations of 'Cultural' Entitlements in Achieving Water Equity." *Journal of Water Law* 22 (2-3): 109-123.

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

Jackson, S., & Moggridge, B. 2019. Editorial: Indigenous water management. *Australasian Journal of Environmental Management*, 26(3), 193-196. <https://doi.org/10.1080/14486563.2019.1661645>

Jackson, S., & Nias, D. 2019. Watering Country: Aboriginal partnerships with environmental water managers of the Murray-Darling Basin, Australia. *Australasian Journal of Environmental Management*, 26(3), 287-303. <https://doi.org/10.1080/14486563.2019.1644544>

Maclean, K., R. H. Bark, B. Moggridge, S. Jackson, and C. Pollino. 2012. *Ngemba Water Values and Interests Ngemba Old Mission Billabong and Brewarrina Aboriginal Fish Traps (Baiame's Nguunhu)*. Australia: CSIRO.

Marshall, V. A. 2017. *Overturning Aqua Nullius: Securing Aboriginal Water Rights*. Canberra: Aboriginal Studies Press.

McAvoy, T. 2006. "Water - Fluid Perceptions". *Transforming Cultures eJournal* . 1. 2 June 2006

Moggridge, B. J., Betteridge, L., & Thompson, R. M. 2019. Integrating Aboriginal cultural values into water planning: A case study from New South Wales, Australia. *Australasian Journal of Environmental Management*, 26(3), 273-286. <https://doi.org/10.1080/14486563.2019.1650837>

Moggridge B.J. & R. M. Thompson 2021 Cultural value of water and western water management an Australian Indigenous perspective. *Australasian Journal of Water Resources* <https://doi.org/10.1080/13241583.2021.1897926>

Morgan, M., L. Strelein, and J. Weir. 2003. "Discussion Paper Indigenous Rights to Water in the Murray Darling Basin." In, *In Support of the Indigenous Final Report to the Living Murray Initiative*. Published Canberra: AIATSIS.

National Cultural Flows Research Project (NCFRP). 2018 <http://culturalflows.com.au/>

National Water Commission (NWC). 2014. "A Review of Indigenous Involvement". 2014. In *Water Planning*. Canberra: Australia

Nikolakis, W., & Grafton, R. Q. 2014. Fairness and justice in Indigenous water allocations: Insights from Northern Australia. *Water Policy*, 16(S2), 19. <https://doi.org/10.2166/wp.2014.206>



Nikolakis, W., & Grafton, R. Q. 2015. Putting Indigenous water rights to work: The sustainable livelihoods framework as a lens for remote development. *Community Development*, 46(2), 149-163. <https://doi.org/10.1080/15575330.2015.1009922>

O'Donnell, M. 2011. "Indigenous Rights." In *Water in Northern Australia. Report for NAILSMA- TRaCK 6.2*. John Toohy Chambers: Darwin, Australia

O'Donnell, E. L., and J. Talbot-Jones. 2018. Creating legal rights for rivers: lessons from Australia, New Zealand, and India. *Ecology and Society* 23(1):7. <https://doi.org/10.5751/ES-09854-230107>.

Productivity Commission, 2017. National Water Reform: Inquiry Report (Report no. 87). Retrieved from [www.pc.gov.au/\\_data/assets/pdf\\_file/0007/228175/waterreform.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0007/228175/waterreform.pdf).

Productivity Commission, 2018. Murray-Darling Basin Plan: Five-year assessment, Inquiry Report. Retrieved from [www.pc.gov.au/inquiries/completed/basin-plan/report/basin-plan.pdf](http://www.pc.gov.au/inquiries/completed/basin-plan/report/basin-plan.pdf). Riverina Local Land Services, 2018. Aboriginal Communities

Robison, J., Cosens, B., Jackson, S., Leonard, K., & McCool, D. 2018. Indigenous water justice. *Lewis & Clark Law Review*, 22(3), 841-921. <https://doi.org/10.2139/ssrn.3013470>

Synexe Consulting Limited. 2008. "Knowledge Notes 2008/ 03. Accounting for Indigenous Cultural Flows in Water Planning". Online resource at: [www.synexe.com/images/200803%20Cultural%20flows.pdf](http://www.synexe.com/images/200803%20Cultural%20flows.pdf)

Taylor, K. S., B. J. Moggridge, and A. Poelina. 2017. "Australian Indigenous Water Policy and the Impacts of the Ever-changing Political Cycle." *Australasian Journal Water Resources* vol.20 (2): 132-147. doi:10.1080/13241583.2017.1348887

Waschka, M., Macintosh, A., Simpson, A., Jones, J., Barber, M. (2020) Indigenous Strategic Issues in Water Planning for Northern Australia: Technical Report. Report for the Department of Agriculture, Water and the Environment. CSIRO, Canberra.



NATIONAL  
INDIGENOUS  
LAND AND  
SEA  
STRATEGY



Australian Government  
Indigenous Land and Sea Corporation



The ILSC GROUP

PEOPLE. COUNTRY. OPPORTUNITY.

## Join The Conversation



**Come along** to one of our face-to-face sessions or join an online session. Visit our website to book in.



**Complete the on line survey.**



**Phone us on** 1800 818 490 for a confidential chat.



**Email** your submissions to [NILSS@ilsc.gov.au](mailto:NILSS@ilsc.gov.au) to share your thoughts.



**Get your full Information Pack:** visit [www.ilsc.gov.au](http://www.ilsc.gov.au), or email [NILSS@ilsc.gov.au](mailto:NILSS@ilsc.gov.au).



A feedback report summarising what we have heard from you and how we will use this important information will be available on the website.



[www.ilsc.gov.au](http://www.ilsc.gov.au)